

TOWARD UNIVERSAL CLINICAL LEGAL EDUCATION: WHY THE TIME IS RIPE FOR REQUIRING CLINICAL COURSES FOR ALL LAW GRADUATES

Karen Tokarz, Peggy Maisel, Robert F. Seibel, Antoinette Sedillo Lopez

I. Introduction

This is an unprecedented time in the development of legal education in the United States. Perhaps more than any point in recent history, this is a time of intense examination of the preparation of lawyers for practice; a time of significant clamoring for change; and a time when legal education is uniquely ripe for curricular change. In particular, this is a time uniquely ripe for the adoption of clinical education for all law students.

In 2007, the Carnegie Foundation for the Advancement of Teaching¹ published a major evaluation of legal education, “Educating Lawyers,” - the first such evaluation by an organization outside of the legal profession in almost four decades.² Also in 2007, the Clinical Legal Education Association published an extensive and detailed book describing “Best Practices for Legal Education.”³ These publications and other factors have spawned a number of national conferences focused on curricular reform in legal education,⁴ as well as dean and associate dean conferences focused on curricular reform. And, in late 2008, the American Bar Association (ABA), the accrediting body for law schools in the United States, launched a comprehensive review of accreditation standards through the Standards Review Committee of the Section on Legal Education and Admissions to the Bar. That committee is expected to report recommendations to the Section in late 2010.⁵

This heightened attention to law school curricula, teaching methodology, and assessment of readiness for practice has ignited a national discourse about the skills and values required for competent and ethically-prepared lawyers, and a debate on the threshold contributions law schools should make to the preparation of law graduates for entry into the profession.⁶ Much of this recent discussion harkens to earlier work by a committee of the ABA Section on Legal

¹ Founded by Andrew Carnegie in 1905 and chartered in 1906 by an act of Congress, The Carnegie Foundation for the Advancement of Teaching is an independent policy and research center. Its current mission is to support needed transformations in American education through tighter connections between teaching practice, evidence of student learning, the communication and use of this evidence, and structured opportunities to build knowledge.

² William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (San Francisco: Jossey-Bass, 2007).

³ Roy Stuckey, et al, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP* (Clinical Legal Education Association, 2007).

⁴ **Insert info about the 3 Crossroads conferences**

⁵ See American Bar Association: <http://www.abanet.org/legaled/committees/comstandards.html>

⁶ See e.g. Antoinette Sedillo Lopez, *Leading Change in Legal Education - Educating Lawyers and Best Practices: Good News for Diversity*, 31 Seattle U.L. Rev. 775 (2008).

Education and Admissions to the Bar, known widely as the MacCrate report, which identifies fundamental legal professional skills and values.⁷

The legal profession is not alone in its re-examination of curriculum and its inquiry into curricular change in the U.S. The Carnegie Report on educating lawyers for practice is part of the Foundation's larger Preparation for the Professions Program, which involves in-depth studies of the clergy, engineering, legal, medical, and nursing professions. According to William M. Sullivan, one of the authors of the Carnegie Report on Educating Lawyers, the challenge for professional education as a whole, "is how to teach the complex ensemble of analytical thinking, skillful practice, and wise judgment upon which each profession rests."⁸

In addition to the various reports and endeavors, there are other significant precipitators for major changes to legal education and to the preparation of lawyers for practice: increased competition for students among law schools, increased student demand for clinical education, increased market demand for practice-ready law graduates, increased numbers of law grads going into solo and small firm practice, and a generational shift in law school faculties bringing an increased number of faculty with prior clinic experience into the academy. This is a time when legal education is uniquely ripe for curricular change and uniquely ripe for the adoption of clinical education for all law students.

This paper reviews these reports and developments in legal education, and ultimately argues that clinical legal education courses are best suited to meet the challenge of preparing competent, ethical graduates for the legal profession. We define clinical legal education courses and examine the educational and professional goals that we assert can best (only?) be achieved through teaching, learning, and lawyering in clinical legal education courses. We next explore the motivations for the current push for universal clinical legal education. We discuss the experiences of law schools in the United States and elsewhere that currently require clinical legal education, and examine the educational preparation for other professions. We then explore some of the tensions and risks involved in the push for universal clinical legal education in the United States. We conclude that clinical legal education courses provide the foundational and essential learning necessary for the education and preparation of competent and ethical practitioners, and that law schools should require that each student complete at least one clinical legal education course before graduating.

II. Perceived Deficiencies in Legal Education and Preparation for Attorney Practice

As early as 1969, Chief Justice Warren E. Burger asserted that "[t]he shortcomings of today's law graduate lies ... in ... that he has little, if any training in dealing with facts or people-the stuff of which cases are made."⁹ Even though law schools have done much to improve legal education in the four decades since the Chief Justice spoke these words, the MacCrate Report,

⁷ LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, ABA, July 1992.(hereinafter MacCrate Report).

⁸ WILLIAM M. SULLIVAN, WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN NORTH AMERICA (2nd ed., Jossey-Bass, San Francisco, 2005).

⁹ William P. Quigley, *Introduction to Clinical Teaching for the Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 469-470 (1995) (citing Chief Justice Warren Burger, Address Before the ABA Convention Prayer Breakfast (Aug. 10, 1969)).

the Carnegie Report, and Best Practices all demonstrate that law students still lack the practical legal education and experience that will make them both practice ready and ready for the profession. Neither the ABA accreditation standards nor current state bar licensing regulations sufficiently assess and ensure practice competence.

A. MacCrate Report

The Task Force on Law Schools and the Profession: Narrowing the Gap, generally referred to as the MacCrate Report, was prepared in 1992 by a group of practicing and academic lawyers who were appointed by the American Bar Association. The taskforce's formal name "reveals the motive for its establishment, namely, to address the perceived gap between expectation and reality in the education of United States lawyers."¹⁰ The MacCrate Report significantly critiques the traditional law school curriculum and makes the case for clinical legal education, concluding that competent and ethical lawyers "must also be able to do legal research, conduct factual investigations, problem solve, communicate effectively, counsel clients, negotiate, organize and manage legal work, recognize and resolve ethical dilemmas, and, in some instances, litigate and effectively use alternative dispute resolution procedures," as well as be able to analyze and apply legal rules.¹¹ The report notes increasing criticism of law schools for not graduating lawyers with these skills and values, suggesting that law schools have "grown increasingly remote and alienated from the work of the profession."¹²

The MacCrate Report begins and ends with the fundamental assumption that "the business of improving practical skills, at least for the first three years of legal training, belongs to the law schools."¹³ Clinical legal education courses seem ideally situated to bridge this gap in educating students on how to "do like a lawyer." Commentators note that "the absence of an apprenticeship requirement, or of a comparable alternative, has been emphatically linked to incompetence and to the public harm caused by attorneys who know nothing of lawyering when licensed to practice."¹⁴ Because apprenticeships have proven not to be the answer, the obvious alternative would be live-client clinical education. Just like apprenticeships, the goal of clinical legal education is to "move students from theory to practice just before they take on the role of practicing attorney."¹⁵

B. Carnegie Report

As noted above, the Carnegie Foundation for the Advancement of Teaching published a report in 2007 on preparing law students for the profession of law.¹⁶ According to the Carnegie

¹⁰ JOHNSTONE AND VIGNAENDRA, LEARNING OUTCOMES AND CURRICULUM DEVELOPMENT IN LAW 1 (unpublished manuscript on file with author).

¹¹ Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Should Change*, 81 NEB. L. REV. 363, 364 (2002).

¹² Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 596 (1994).

¹³ Christopher T. Cuniff, *The Case for the Alternative Third Year Program*, 61 ALB. L. REV. 85, 114 (1997).

¹⁴ Jeffrey Duban, *The Bar Exam as a Test of Competence: The Idea Whose Time Never Came*, 63 Aug. N.Y. St. B.J. 34 (1991).

¹⁵ Richard Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 German L.J. 823, 832 (2009).

¹⁶ Sullivan Colby, Wegner, Bond and Shulman, *EDUCATING LAWYERS Preparation for the Profession of Law*, John Wiley & Sons (2007).

Foundation report, “the formation of competent and committed professionals deserves and needs to be the common, unifying purpose” of legal education.¹⁷ However, the report also concludes that in order to graduate law students with the “capacity for judgment guided by a sense of professional responsibility,” law schools must make substantial curricular and pedagogical changes. Although the report recognizes that important changes have been made in legal education over the past decade, it notes that these efforts have been “more piecemeal than comprehensive”¹⁸ and that “legal educators will have to do more than shuffle the existing pieces. It demands their careful rethinking of both the existing curriculum and the pedagogies law schools employ to produce a more coherent and integrated initiation into a life in the law.”¹⁹

The Carnegie Report asserts that legal academics have “undermined the academic legitimacy of practical knowledge”²⁰ through the failure to blend the academic and practitioner traditions in legal training resulting in a method of training which teaches legal knowledge “separate from learning to practice,”²¹ and defers practical experience until entry to the profession.²² According to the report, the current law degree “requires no experience beyond honing legal analysis in the classroom and taking tests.” While the Carnegie Report recognizes that the Socratic case dialogue is the signature pedagogy of American law schools and that there are some benefits to the method,²³ “the [report] contends that the case-dialogue method generates diminishing returns, particularly when extended beyond the first-year classroom[,a] decline in pedagogical efficacy [that] is not seen elsewhere in professional education.”²⁴ It asserts that this approach falls short by failing to teach law students more than how to reason like lawyers and contends that at most schools “preparation for practice [is left] entirely up to student initiative.”²⁵ In fact, the authors of the Carnegie Report conclude that “legal education typically pays little attention to direct training in professional practice.”²⁶ While the report concludes that this approach does not work, it falls short of proposing specific solutions.²⁷

¹⁷ Carnegie at 13.

¹⁸ Carnegie at 243?

¹⁹ Carnegie at 180 ?

²⁰ Carnegie p5

²¹ Carnegie p5-6

²² Anthony V. Alfieri, *Review: Against Practice*, 107 MICH L. REV. 1073, 1076-77 (2009).

²³ For example, the Report indicates that the Socratic process “affords flexibility in adjusting case dialogue and exposes indeterminacy in the application of rules ... and to a more limited extent ... also expands the interpretative and policy repertoire of student.” Alfieri, *supra*, note at 1078.

²⁴ Alfieri, *supra*, note at 1078.

²⁵ Alfieri, *supra*, note at

²⁶ Carnegie at 240 ?

²⁷ *Id.* This failure to offer explicit suggestions duplicates their earlier failure to do so in their 1972 report on *New Directions in Legal Education*, in which they noted that law schools fail to teach students how to integrate legal theory and practice. The earlier report actually raises doubts that clinical education “is the solution that many of its proponents claim it to be or that it should be the dominant trend of legal education in the future”. (Packer and Ehrlich, 1972 p 46 (Carnegie p 93)). That report recommended experimentation with many modest curricular reforms, rather than an embrace of clinical education for all students. This failure can be explained by the authors’ desire to provide a critique and encourage educators to respond to the critique and to develop the specific details of educational experiences that address the issues raised by the critique.

The Carnegie Report acknowledges that “virtues and skills of legal professionals are developed “through modeling, habituation, experiment, and reflection.””²⁸ Additionally, Carnegie notes that lawyers need to rely on judgment, which is best learned “by receiving feedback while approximating the modeling done by an expert.”²⁹ The Report lists six tasks that need to be accomplished by legal education;³⁰ of these six tasks, five³¹ can be accomplished through clinical legal education courses.

While the MacCrate report moved legal education strongly in the direction of preparing students for practice by teaching skills and ethical values within the curriculum, the more recent report by the Carnegie Foundation goes even further, explicitly noting the importance of clinical education. The Carnegie Report asserts:

Decades of pedagogical experimentation in clinical-legal teaching, the example of other professional schools, and contemporary learning theory all point toward the value of clinical education as a site for developing not only intellectual understanding and complex skills of practice but also the disposition crucial for legal professionalism.³²

The report proposes that clinical training be used to a greater degree to provide a bridge “from the academic skill of thinking like a lawyer to the professional skill of lawyering.”³³ Such “[e]ducational experiences oriented toward preparation for practice can provide students with a much-needed bridge between the formal skills of legal analysis and the more fluid expertise needed in much professional work,” including an “important motivation for engaging with the moral dimensions of professional life, a motivation that rarely accorded status or emphasis in the present curriculum.”³⁴ In fact, the report indicates that legal clinics are “the law school’s primary means of teaching students how to connect the abstract thinking formed by legal categories and procedures with fuller human contexts.”³⁵ While endorsing the significant and essential value of clinical legal education, the report stops short of mandating clinical education for all graduating law students. As mentioned above, this report has catalyzed recent conferences and national discussion of curriculum reform at many law schools across the U.S.³⁶

C. Best Practices for Legal Education³⁷

²⁸ Mootz, *supra*, note at 1274 (citing Carnegie at 14). 83 CHI.-KENT L. REV. 1261(2008).

²⁹ Mootz, *supra*, note at 1275.

³⁰ 1. Developing in students the fundamental knowledge and skill, especially an academic knowledge base and research. 2. Providing students with the capacity to engage in complex practice. 3. Enabling students to learn to make judgments under conditions of uncertainty. 4. Teaching students how to learn from experience. 5. Introducing students to the disciplines of creating and participating in a responsible and effective professional community. 6. Forming students able and willing to join an enterprise of public service. Carnegie at 22.

³¹ Tasks 2-6, *Id.* note, *supra*

³² *Id.*

³³ Mootz, *supra*, note at 1276.

³⁴ Carnegie at 96? (Best Practices cites at 12)

³⁵ Carnegie at 52-53.

³⁶ David Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 3, 17-8 (2009) (citing William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law 120* (Carnegie Foundation for the Advancement of Teaching ed., Jossey-Bass 2007)). Footnote some of these conference s (Eg Maryland) and initiatives at individual law schools

³⁷ Roy Stuckey, et al, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (Clinical Legal

The Best Practices book was motivated by a “concern about the potential harm to consumers of legal services when new lawyers are not adequately prepared for practice” and to “provide a vision of what legal education might become if legal educators step back and consider how they can most effectively prepare students for practice.”³⁸ According to Best Practices, American legal education has been criticized “[s]ince its inception ... as serving only some of the educational needs of lawyers”³⁹ and, as currently established, it is “a system of education which ... is simply indefensible.”⁴⁰ Best Practices, therefore, begins with the conclusion that “[t]here is a compelling need to change legal education in the United States in significant ways.”⁴¹ According to Best Practices, current programs of instruction at U.S. law schools “are little more than a series of unconnected courses on legal doctrine ... [whose] educational goals are ... unclear.”⁴² The result is that the second and third years of law school are not useful to students, with “a surprising percentage of third year students [being] profoundly disengaged from the educational experience.”⁴³

Consequently, Best Practices argues that “[a] serious, thoughtful consideration of legal education in the United States is long overdue.”⁴⁴ As did the Carnegie Report, Best Practices contends that law schools should “broaden the range of lessons they teach, reducing doctrinal instruction that uses the Socratic dialogue and the case method[;] integrate the teaching of knowledge, skills and values, and not treat them as separate subjects addressed in separate courses[;] and give much greater attention to instruction in professionalism.”⁴⁵

Best Practices argues that “most law school graduates lack the minimum competencies required to provide effective and responsible legal services”⁴⁶ and “are not sufficiently competent to provide legal services to clients or even to perform the work expected of them at large firms.”⁴⁷ The authors pin this deficit on their perception that “most law schools are not committed to preparing students for law practice,”⁴⁸ despite “general agreement ... that one of the basic obligations of a law school is to prepare its students for the practice of law.”⁴⁹ Best

Education Association, 2007) (hereinafter “Best Practices”).

³⁸ Roy Stuckey, et al, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 1 (Clinical Legal Education Association, 2007). “The vision of legal education articulated in the Carnegie Report and Best Practices are very similar, and Best Practices includes many of the same critiques and suggestions for legal education reform that are made in the Carnegie Report. Best Practices, in fact, frequently references and quotes extensively from the Carnegie Report.” 58 DEPAUL L. REV. 851 () n. 161

³⁹ *Id.* at 1.

⁴⁰ BEST PRACTICES, *supra*, note , at (citing Gary Bellow, *On Talking Tough to Each Other: Comments on Condlin*, 33 J. Legal Educ. 619, 623 (1983)).

⁴¹ *Id.* at 5.

⁴² BEST PRACTICES, *supra*, note , at 17-18.

⁴³ *Id.* at 112.

⁴⁴ *Id.*, at 1.

⁴⁵ Roy Stuckey, et al, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP vii (Foreword by Robert MacCrate, Esq.)

⁴⁶ BEST PRACTICES, *supra*, note, at 1

⁴⁷ BEST PRACTICES, *supra*, note, at 19.

⁴⁸ *Id.* at 5.

⁴⁹ *Id.* at 11. It is noted that this obligation was not made clear in the ABA’s accreditation standards until 1996, as a

Practices concludes that few of the skills and capacities that law graduates will require in practice⁵⁰ “are given much attention in the traditional law school curriculum even though they are obviously critical for success in law practice.”⁵¹

To develop graduates who are competent in law practice, therefore, Best Practices argues that “law schools need to emphasize the development of students’ expertise in three different areas: legal analysis, training for practice, and development of professional identity.”⁵² Additionally, Best Practices concludes that “[h]elping students [to] acquire an understanding of legal problem-solving and to begin developing their expertise as problem-solvers is the most important task of legal education.”⁵³ Best Practices argues that law schools can “help students acquire the attributes of effective, responsible lawyers including self-reflection and lifelong learning skills, intellectual and analytical skills, core knowledge and understanding of law, professional skills, and professionalism,”⁵⁴ by adopting the primary goal of “develop[ing] [student] competence, that is, the ability to resolve legal problems effectively and responsibly.”⁵⁵ As part of this program, endorses universal clinical education arguing that all students should be required, during their third year of law school, “to participate in externship courses or in-house clinics in which students represent clients or participate in the work of lawyers and judges, not just observe it.”⁵⁶

D. Perceived Deficiencies in State Bar Licensing

The current method of licensing attorneys for practice in the U.S. generally, though not universally, involves graduation from an ABA approved law school and passing a state bar examination and a character and fitness determination. The asserted purpose of the licensing process is to protect the public by establishing minimum competency to practice law. However, as asserted in Best Practices, it is becoming more and more apparent that the current licensing process for attorneys does not protect the public.⁵⁷

Although each state’s licensing board decides the requirements for practicing law in that state, the first requirement in most states is graduation from a law school accredited by the ABA.⁵⁸ Hence, ABA accreditation standards play an important role in the outcome of legal

response to the MacCrate report (*see* ABA Accreditation Standard 301(a)), but that “[u]nfortunately, the implications of this mandate are not fully developed.” *Id.* at 12.

⁵⁰ These skills include the ability “to diagnose and analyze problems, to talk to and listen to people, to facilitate conversations, to negotiate effectively, to resolve disputes, to understand and present complex material, to use ever-changing technologies, to plan, to evaluate both economic and emotional components and consequences of human decision-making, and to be creative.” BEST PRACTICES, *supra*, note , at 15 (citing Carrie Menkel-Meadow, *Taking Problem-Solving Pedagogy Seriously: A Response to the Attorney General*, 49 J. Legal Educ. 14, 14 (1999)).

⁵¹ BEST PRACTICES, *supra*, note , at 15,

⁵² *Id.* at 45.

⁵³ *Id.* at 48.

⁵⁴ *Id.*, at 6.

⁵⁵ *Id.*, at 6.

⁵⁶ BEST PRACTICES, *supra*, note , at 209.

⁵⁷ BEST PRACTICES, *supra*, note , at 8.

⁵⁸ A few states do not require attendance at an ABA approved law school, but instead approve graduation from state certified law schools that may be less expensive to attend. In addition, some states do permit admission to the bar

education and, therefore, on the competency of newly graduated attorneys. The failure of legal education in preparing graduates to be competent for practice and the failure of the ABA to require same for accreditation have been documented.⁵⁹

The second requirement for attorney licensing in most states is the passing of a state bar examination,⁶⁰ which is supposed to establish minimum competency to practice law.⁶¹ States vary greatly in the content of their bar examinations, with some requiring a thorough knowledge of state law (refer to how many) and some focusing mostly on the core first year law school subjects tested on the multi-state bar examination (MBE) (identify number of states). Thirty-two states require an additional multistate practical examination, developed by the National Bar Examiners as a response to criticism that the MBE does not test for legal skills.⁶² Thus, there is a wide variation in state bar examination requirements.⁶³

through routes other than law school graduation. These states recognize the limits of current legal education, and the importance that practical training plays in developing lawyer competence. According to the ABA Comprehensive Guide, seven states provide a means whereby an individual can be admitted to the bar despite not having completed a three-year academic program. In four states, Washington, Vermont, California, and Virginia, an individual can be admitted to the bar despite never having spent any time in law school. In New York and Wyoming, at least one year of law school is required prior to completion of a law-office study program. In Maine, a student may gain admission to the bar by completing two years of law school followed by one year of law-office study. 2010 Comprehensive Guide to Bar Admission Requirements 10-13, (Erica Moeser and Claire Huissman ed.) National Conference of Bar Examiners and American Bar Association. Some effort is made in most of these states to regulate who may serve as supervising attorneys, which are generally required to be practicing attorneys or judges who have been admitted and practiced in the state for a minimum period of time. In some states, apprentices must be tested periodically by their supervisors, who must certify that specified aspects of the law office study have been completed. Christopher T. Cuniff, *The Case for the Alternative Third Year Program*, 61 Alb. L. Rev. 85, 133-35 (1997).

⁵⁹ See sections on the MacCrate Report, the Carnegie Report, and Best Practices, *supra*, notes and accompanying text.

⁶⁰ These exams are generally composed of a Multi-State Bar Exam (MBE), developed by the National Bar Examiners, and a separate exam covering only state law.

⁶¹ Wisconsin is the only state in the U.S. where law school graduates are not required to take a bar examinations to be admitted to practice. The only requirement for graduates from a Wisconsin law school is certification by their law school as to their legal competence and certification of their character and fitness by the Board of Bar Examiners. (Graduates from states other than Wisconsin, however, are required to take a bar examination). This is known as the "diploma privilege." Out of state attorneys who have practiced for three years, not necessarily all in the same state, can apply for bar admission solely based on their practical experience. Clearly, there are other ways, apart from examinations, to determine that graduates possess the minimum competency to practice law. See Wisconsin Court System, Diploma Privilege, <http://www.wicourts.gov/services/attorney/bardiploma.htm> (last visited Oct. 20, 2009); Wisconsin Court System, Admission on Proof of Practice, <http://www.wicourts.gov/services/attorney/> (last visited Oct. 20, 2009).

⁶² Kristin Booth Glenn, *Thinking Out of the Bar Exam Box: A Proposal to "MacCrate" Entry to the Profession*, 23 Pace L. Rev. 343, 408-15 (2003); Lawrence M. Grosberg, *Should We Test For Interpersonal Lawyering Skills?*, 2 Clinical L. Rev. 349, 374 n.75 (1996). National Conference of Bar Examiners, Jurisdictions Using MPT in 2010, <http://ncbex.org/mustistate-tests/mpt/mpt-faqs/jurs1/> (listing the jurisdictions using the MPT in 2010, including 32 states, Guam and the Northern Mariana Islands) (last accessed October 28, 2009). See these articles for an analysis of the MPT:

⁶³ This is another reason that the only way to insure that graduates from the two hundred ABA approved law schools know something about legal practice is to require a clinical course during law school.

Whether bar examinations adequately test competency for practice is in question.⁶⁴ The primary arguments against state bar examinations and the multi-state bar examination (“MBE”) are that they are “not valid indicators of a new lawyer’s ability to practice law effectively and responsibly” and do not test for “minimal competency in the broad range of skills and values required for the basic practice of law.”⁶⁵ It is generally understood that much of what is tested on bar examinations “is memorized in commercial cram courses and quickly forgotten once bar examinations end.”⁶⁶ Nonetheless, upon passing the bar examination and a character and fitness review, a law school graduate receives an unrestricted license to practice law, authorized to accept any client, whom she can represent on any matter, “guided only by his or her own sense of responsibility.”⁶⁷

Consequently, many argue for the abolition of bar examinations in favor of alternative methods for testing law graduates on their readiness for practice, such as pre- or post-graduate, supervised practice, coupled with evaluations.⁶⁸ In response to criticisms of bar examinations, New Hampshire recently embarked on a pilot effort to eliminate the bar examination and to replace it with a clinical course of study during law school with assessment throughout the clinical course that certifies a student’s readiness for licensure.⁶⁹ [NOTE: Check if it is accurate to state that criticism of bar examinations was the reason New Hampshire did this.]

These concerns are not new to those regulating the bar and admission to practice, nor is the inclination to adopt some form of mandated apprenticeship. As early as 1876, Lewis L. Delafield, then president of the organization that gave birth to the ABA, stated that “the best system is [for bar applicants to] learn the principles of law in a school, then apply them for a year in an office . . .”⁷⁰ The need for more practical training has been recognized in the U.S. by states

⁶⁴ See e.g. Kristin Booth Glenn, *Thinking Out of the Bar Exam Box: A Proposal to "MacCrate" Entry to the Profession*, 23 Pace L. Rev. 343 (2003); Daniel R. Hansen, Note: Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives, 45 Case W. Res. L. Rev. 1191(1995); Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Should Change*, 81 Neb. L. Rev. 363, 399 (2002);

⁶⁵ BEST PRACTICES, *supra*, note , at 9. Other arguments include the high rate of failure of minority law school test takers. Kristin Booth Glenn, *Thinking Out of the Bar Exam Box: A Proposal to "MacCrate" Entry to the Profession*, 23 Pace L. Rev. 343, 381-89 (2003).

⁶⁶ BEST PRACTICES, *supra*, note , at 9.

⁶⁷ BEST PRACTICES, *supra*, note , at 9.

⁶⁸ See also. Kristin Booth Glenn, *Thinking Out of the Bar Exam Box: A Proposal to "MacCrate" Entry to the Profession*, 23 Pace L. Rev. 343, 375-78 (2003); Daniel R. Hansen, Note: *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 Case W. Res. L. Rev. 1191, 1206-10(1995). For a more complete list of discussions on alternatives to bar examinations, see BEST PRACTICES, *supra*, note , at 9 n. 21.

⁶⁹ John D. Hutson, *Preparing Law Students To Become Better Lawyers, Quicker: Franklin Pierce's Webster Scholars Program*, 37 U. Tol. L. Rev. 103 (2005); Clark D. Cunningham, *Rethinking The Licensing of New Attorneys--An Exploration of Alternatives to the Bar Exam: Introduction*, 20 Ga. St. U. L. Rev. vii (2004); Lorenzo A. Trujillo, *The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 U. Colo. L. Rev 69 (2007).

⁷⁰ Christopher T. Cuniff, *The Case for the Alternative Third Year Program*, 61 Alb. L. Rev. 85, 86-87 (1997.)

that provide an alternative route of law office study for admission⁷¹ or that require an apprenticeship before admission to the bar.

Mandatory post-graduate apprenticeships have never been widely endorsed in the U.S. Although some states experimented with post-graduate apprenticeships, all but two⁷² have abandoned the practice.⁷³ In 1977, George Neff Stevens conducted a survey of bar examiners, including judges and law school deans and professors, and found little support for them.⁷⁴ The concerns were, generally, that “practitioners will not agree to supervise clerkships or, if they do, they will not provide students with a meaningful experience.”⁷⁵ A further concern is that the clerkship will turn into some form of “slave labor” where the “clerk [is] expected to put in a substantial number of hours per day on law office business for which service he receive[s] no compensation on the theory that the service was payment for the training received.”⁷⁶ Additional concerns are similar to those expressed of other professional apprenticeship programs:⁷⁷ that there will be lack of uniformity in training, that the supervising attorney will not have time to devote to the apprentice, that clerks will perform menial and repetitious tasks that will not add to the apprentice’s skill, and that the supervising attorney will probably be a specialist, limiting the skills that can be imparted to the apprentice.⁷⁸

Nonetheless, both Delaware and Vermont currently require some form of apprenticeship. In Delaware, students are required to perform an aggregate of five months of full-time work at a private or public service law office, government agency, or as a judicial clerk prior to state bar

⁷¹ See notes, *supra*, and accompanying text.

⁷² Delaware and Vermont. See notes, *infra*, and accompanying text. See also Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Should Change*, 81 Neb. L. Rev. 363, 402-3 (2002); Christopher T. Cuniff, *The Case for the Alternative Third Year Program*, 61 Alb. L. Rev. 85, 133 (1997)..

⁷³ One of the reasons that apprenticeships were abandoned was because “modern inventions rendered the services of law students of no value to law firms. “The general introduction, since 1880, of telephones, stenographers, typewriters, dictating and copying devices, and improvements in printing, in connection with changes in practice already noted, has made *students* not only unnecessary but actually undesirable in most of the active law offices. Plainly speaking, they are considered to be a nuisance.” BEST PRACTICES, *supra*, note, at 112 n. 493 (citing William V. Rowe, *Legal Clinics and Better Trained Lawyers – A Necessity*, 11 ILL. L. REV. 591, 600 (1917)) OTHER REASONS MIGHT BE HELPFUL HERE.

⁷⁴ Daniel R. Hansen, Note: *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 Case W. Res. L. Rev. 1191, 1229 (1995).

⁷⁵ Daniel R. Hansen, Note: *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 Case W. Res. L. Rev. 1191, 1230 (1995).

⁷⁶ Daniel R. Hansen, Note: *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 Case W. Res. L. Rev. 1191, 1230 (1995) (citing George N. Stevens, *Diploma Privilege, Bar Examination or Open Admission*, 46 B. EXAMINER 15 (1977)).

⁷⁷ For a specific example, see the discussion on Canada, *infra*, notes and accompanying text.

⁷⁸ Daniel R. Hansen, Note: *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 Case W. Res. L. Rev. 1191, 1230 n. 210 (1995). Even as recently as 1970, Pennsylvania graduates were required to serve a three month “law practice clerkship” whose purpose was to instill in the new lawyer the qualities of the legal profession that could not be taught by books and to provide the new lawyer with practical legal skills so that he might be ready to perform legal work on his own. The system was criticized as having all the shortcomings expressed in the Neff Stevens study. Barry J. London, Geoffrey C. Lord & Paul M. Schaeffer, *Admission to the Pennsylvania Bar: The Need for Sweeping Change*, 118 U. Pa. L. Rev. 945, 966-70 (1970).

admission.⁷⁹ This work may be done while in law school and need not be continuous. A list of thirty tasks must be completed during this “apprenticeship.”⁸⁰ However, there is no requirement that the tasks be completed “competently.”⁸¹ Additionally, a large percentage of the “apprenticeship” is spent observing rather than “doing,” which reduces the learning value considerably.⁸²

Vermont also requires a period of apprenticeship within two years of passing bar examinations, before being admitted to the bar.⁸³ Graduates must spend at least three months “pursu[ing] the study of law” in the office of a judge or an attorney.⁸⁴ Unfortunately, the Vermont Bar has left it up to the student to arrange with the supervising attorney “a systematic course of study which will prepare him or her for the general practice of law and including, but not limited to, the subjects of examination . . .”,⁸⁵ which likely leads to the same problems that have been demonstrated with apprenticeships and articling positions:⁸⁶ inconsistency, lack of quality, and use of the students as “gofers.” In fact, the MacCrate report evaluated Vermont’s clerkship requirement, concluding “that the single most disturbing aspect of clerkships is that there is no guarantee that an applicant will learn, or even be exposed to the fundamental lawyering skills necessary for minimum competency.”⁸⁷

Concern that current licensing practices do not provide for minimum competency of new attorneys over the years has given rise to a number of articles, conferences and efforts in various states to replace state bar examinations with post-graduate clinical experiences during which law school graduates are assessed for their competency to practice.⁸⁸ However, the main barrier to instituting these post-graduation alternatives to state bar examinations is that they are expensive and difficult to administer, particularly in large states. They also impose a burden on students who have already gone through three years of law school and are then expected to pay for additional practical experience to learn and demonstrate competency to practice. Other than in small states, such as New Hampshire and Vermont, such alternatives to the bar examination are

⁷⁹ Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Should Change*, 81 Neb. L. Rev. 363, 402 (2002); Board of Bar Examiners, Frequently Asked Questions <http://www.courts.state.de.us/bbe/faq.htm#8>.

⁸⁰ Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Should Change*, 81 Neb. L. Rev. 363, 402 (2002).

⁸¹ Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Should Change*, 81 Neb. L. Rev. 363, 402 (2002).

⁸² Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Should Change*, 81 Neb. L. Rev. 363, 402 (2002).

⁸³ Rules of Admission to the Bar of the Vermont Supreme Court, §6(i) (2008) available at <http://www.vermontjudiciary.org/LC/d-BBELibrary/BBERules8-18-08.pdf>.

⁸⁴ Rules of Admission to the Bar of the Vermont Supreme Court, §6(i) (2008) available at <http://www.vermontjudiciary.org/LC/d-BBELibrary/BBERules8-18-08.pdf>.

⁸⁵ Rules of Admission to the Bar of the Vermont Supreme Court, §6(m) (2008) available at <http://www.vermontjudiciary.org/LC/d-BBELibrary/BBERules8-18-08.pdf>.

⁸⁶ See notes, *supra*, and accompanying text discussing apprenticeship and articling.

⁸⁷ Daniel R. Hansen, Note: *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 Case W. Res. L. Rev. 1191, 1234 (1995).

⁸⁸ See e.g. Peggy Maisel, *An Alternative Model To United States Bar Examinations: The South African Community Service Experience In Licensing Attorneys*, 20 U. Ga. L. Rev. 977 (2004); Kristin Booth Glenn, *Thinking Out of the Bar Exam Box: A Proposal to "MacCrate" Entry to the Profession*, 23 Pace L. Rev. 343(2003); Sally Simpson & Toni Massaro, *Students with "CLAS": An Alternative to Traditional Bar Examinations*, 20 Ga. St. U. L. Rev. 813 (2004); Clark D. Cunningham, *Rethinking The Licensing of New Attorneys-An Exploration of Alternatives to the Bar Exam: Introduction*, 20 Ga. St. U. L. Rev. vii (2004); SYMPOSIUM: *Rethinking the Licensing of New Attorneys: An Exploration of Alternatives to the Bar Exam*, held on January 29, 2004 by the Georgia State University Law Review.

unlikely to happen. Even states such as these with an apprenticeship requirement still present problems. The additional problem of cost, both for the state and the law graduate, associated with any post-graduate practical training requirement, also argues against these as a method of insuring the competence of new attorneys.

Some commentators argue that high quality mandatory clinical legal education during law school is a more realistic and effective and systematic method of bridging the gap between legal education and practice.⁸⁹ As discussed in the section below, there are those who speculate that changing the ABA accreditation standards may be the only way to insure that law schools adopt a clinical education requirement for all law students.

E. Perceived Deficiencies in the ABA Accreditation Standards

[Add Section on the ABA historically, the position of the standards on curriculum requirements, and the current debate on this issue:]

III. What Is Clinical Legal Education and Why Should It Be Required?

A. Clinical Legal Education Courses Include Clinics and Field Placements...

Under our definition, clinical legal education courses include clinics and field placements in which the law student assumes the roles and responsibilities of a lawyer;⁹⁰ the law student works in an office with a supervising attorney, performs legal work, and provides legal services; the law student engages in contemporaneous reflection on the experience, on the values and responsibilities of the profession, and on the development of her ability to assess her performance; and the law student receives academic credit for the course and guidance, feedback, and assessment from her instructor on her performance.

Experiential learning requires that the learner be in touch directly with the realities being studied, as compared with learning where the learner only reads, hears, or talks about the realities but does not come in contact with them as part of the learning process.⁹¹ For “in-house” clinical legal experiential programs, as they are most often conceived, students are engaged with real clients and real legal problems, and the clinical instructor typically (but not always) fulfills both the role of supervising the legal work and providing guidance and feedback for reflection; the office where the legal work is provided is often housed within the law school or at an off-campus, law-school affiliated location.⁹² In “field placement” experiential programs, as they are most often conceived, the student’s legal work is generally supervised by a lawyer from the

⁸⁹ Stephen Ellman, *The Clinical Year*, 53 N.Y.L. Sch. L. Rev. 877 (2008/2009); Jessica Dopierala, *Bridging The Gap Between Theory And Practice: Why Are Students Falling Off The Bridge and What Are Law Schools Doing to Catch Them?*, 85 U. Det. Mercy L. Rev. 429 (2008).

⁹⁰ Experiential learning may be defined as requiring that the learner be directly in touch with the realities being studied, as compared with learning where the learner only reads, hears, or talks about the realities but does not come in contact with them as part of the learning process. LEARNING TO LEARN FROM EXPERIENCE, Cell, Edward, State University of New York Press, Albany, NY, 1984, p viii; LEARNING BY EXPERIENCE—WHAT, WHY AND HOW, Morris T. Keeton and Pamela J. Tate, eds, Jossey Bass, San Francisco, 1978, p 2.

⁹¹ *Id.*

⁹²

placement site who generally does not have faculty status, while the reflective feedback components are overseen by a full time or adjunct member of the law school faculty;⁹³ the locus of the legal work is generally the field placement office. These field placements are often called externships.⁹⁴ There are many hybrid permutations that fall on a spectrum between these two formats. Under our definition, a classroom component providing opportunity for training and reflection should accompany both in-house and field placement programs.

Of course, significant learning is possible through work experiences that are extra-curricular, such as pro bono activity, paid or un-paid internships during law school, summer associate and judicial clerking positions, and the like.⁹⁵ Frequently, however, these experiences may not be educational⁹⁶ or the learning may be dysfunctional.⁹⁷ The educational goals of experiential clinical learning cannot be achieved without substantial opportunities for reflection with a faculty member, all of which merits the award of credit to the student. (Need to expand this idea; not enough information to support this thesis, especially the requirement of credit) We will explain later the crucial role of the law school and law faculty that we believe is not duplicated in the marketplace, and which justifies both charging tuition for experiential learning courses and requiring such a course for each student.⁹⁸ (Will one course suffice in achieving the outcomes you identify?)

Valuable, educational benefits are also available from student participation in simulation programs. But, we do not include this form of learning within our definition of clinical education course that should be required for all law students. Rather, we view simulation courses are excellent vehicles to prepare students for a client service clinical experience. Simulation-based courses no doubt can help cultivate students' practical wisdom and professional values. For example, students who conduct initial client interviews will consider how to develop rapport with clients and whether and how to obtain personal information from clients. Students who counsel clients will gain insights into how clients' cultural backgrounds and personal values affect their decisions. And students who negotiate with each other must decide whether to lie to gain an advantage. Thus, simulated experience can give students experiences where they can be guided by their personal values and their capability to react to fluid situations, while engaging in a detached analysis of the legal problem embedded in the simulation.

Even the best simulation-based courses, however, provide make believe experiences with no real consequences on the line. As early as possible in law school, law students would benefit from being exposed to the actual practice of law. Exposure to law practice may be the only way

⁹³ Stacy Caplow, *From Courtroom to Classroom: Creating an Academic Component to Enhance the Skills and Values Learned in a Student Judicial Clerkship Clinic*, 75 NEB. L. REV. 872 (1996) (Ogilvy and Lextern website??)

⁹⁴ See James H. Backman, *Where Do Externships Fit? A New Paradigm Is Needed: Marshaling Law School Resources to Provide an Externship for Every Student*, 56 J. LEG. ED. 615, 640 (2006)

⁹⁵ Cite to Brook Baker and others.

⁹⁶ Expertise levels quickly reach a plateau after which repeated experience, without reflection, generally does not result in learning and may, in fact, result in reduced professional performance (cite deliberate learning and Ericsson??)

⁹⁷ Behaviors that are defensive, destructive, or simply adopted from other persons or organizations may be learned through experience, Cell, p. 26 Observations and experiences that cannot be contextualized because of the limited range of experience of the learner can be misleading (cite ?)

⁹⁸ See infra p. ??

through which students can really begin to understand the written and unwritten realities of law in action and the standards of law practice and the degree to which those standards are followed. Students need to observe and experience the demands, constraints, and methods of analyzing and dealing with unstructured situations in which the issues have not been identified in advance. Otherwise, their problem-solving skills and judgment cannot mature.”⁹⁹“Experience exerts a powerful influence over the exercise of discretion.”¹⁰⁰

While simulation courses may meet the definition of experiential learning,¹⁰¹ students do not assume client service responsibilities with potential real consequences in order to understand the fundamental issues related to the role of the lawyer. Clinical experiential learning is not only about teaching and learning lawyering skills. For us, a key rationale for requiring universal clinical education is its capacity to teach and learn the skills, the values, and the role parameters of the legal profession.

B. Why should Clinical Legal Education Courses Be Required?

In our view, clinical legal education courses provide the foundational and essential learning necessary for the preparation of competent and ethical practitioners. Through clinical legal education courses, students are best prepared for competent and ethical practice as attorneys.

1. Through Clinical Legal Education Courses, Students Develop Professional Role and Identity

Law students can learn about professional roles and responsibilities in many ways; however, they cannot fully understand and internalize professional identity without actually assuming the roles and responsibilities of an attorney, and reflecting on the experience of discharging those responsibilities. What constitutes a profession can be elusive. The earliest professions were established before the industrial revolution. In the 18th century, the major professions included clergy, law and medicine.¹⁰² In the early days, the path to professional qualification was almost exclusively through apprenticeship, and the major qualifications included the social standing and financial resources to find and complete a lengthy apprenticeship with little or no financial compensation. Lack of formal education requirements did not mean a lack of standards and apprenticeships were considered rigorous and sufficient to ensure competence.

Too often discussions of curricular reform in legal education focus on outputs and assessment toward the goal of graduating law students who are “practice ready.”¹⁰³ We believe

⁹⁹ BEST PRACTICES, *supra*, note , at 111

¹⁰⁰ BEST PRACTICES, *supra*, note , at 111 (citing Eleanor Myers, “Simple Truths” About Moral Education, 45 Am. U. L. Rev. 823, 835-36 (1996)).

¹⁰¹ See note 90 *infra*.

¹⁰² Professions, Competence, and Informal Learning, Cheetham, Graham and Chivers, Geoff, Edward Elger, Northampton, MA, 2005, p. 22.

¹⁰³ See, e.g., John Burwell Garvey and Anne F. Zinkin, *Making Students Client-Ready: A New Model in Legal Education*, 1 DUKE FORUM FOR LAW & SOCIAL CHANGE 101, 129 (2009) (Author states that law schools should prepare students to succeed as professionals, but then explains this by stating: “Law schools have an obligation to make students client-ready...”).

that goal is narrow and potentially misleading.¹⁰⁴ Rather, the broader mission of legal education generally and clinical education specifically is to graduate law students who are “ready for the profession.”

What do we mean by “ready for the profession” or “professionalism”? The difficulty of defining this term has been noted by many, including Neil Hamilton who studied and described definitions in scholarly literature, and in various panels that have investigated the issue.¹⁰⁵ Hamilton notes reasons why a clear definition of the term is important, including the fact that a lack of clarity will undermine the public’s trust of the profession; lawyers are less likely to pay attention to and comport with notions that are vague and ambiguous; and law schools can’t assess whether pedagogies are effective or assess students’ progress toward internalization without a clear definition.¹⁰⁶ We adapt Hamilton’s conclusion of a functional definition of professionalism¹⁰⁷ expected of each lawyer:

- Continues to grow in personal conscience and understanding of the core values of the profession over his or her career, including ongoing reflection on the relative importance of income, wealth, and personal satisfaction in light of the profession’s responsibility to the public good and access to justice;
- Complies with and holds other lawyers accountable for the ethics of duty—the minimum standards for professional competence and ethical conduct set by the rules and the law of lawyering;
- Strives to realize and encourage other lawyers to realize and act toward the ethics of aspiration—the core values and ideals of the profession including internalizing the highest standards for the lawyer’s technical and ethical conduct; and
- Acts as a fiduciary where his or her self interest is overbalanced by devotion to serving the client and the public good, including pro bono representation, support of access to justice for all, or improving the public’s understanding of the legal system. [note :possibly add/use the Carnegie definition? Must justify the reason for the choice.]

Many law students enter law school with little experience with lawyers. They probably have had significant exposure to media representations of lawyers, both real and fictional, through television, movies, news reports, and the internet. Much of their perceptions may be colored by what is deemed entertaining rather than an accurate reflection of the norms of professional behavior. To provide a powerful counterbalancing context, observation of real lawyers in action and assumption of the lawyer role under both simulated and real situations is necessary. Merely

¹⁰⁴ The MacCrate report includes a detailed analysis of the composition of the profession as of 1988. It shows that while the percentage of all lawyers in private practice was relatively steady at about 71% between 1960 and 1988, the portion of lawyers in solo and small firms, as compared to larger firms dropped dramatically during that period. The growing diversity of the private sector suggests strongly that even within the “practice of law” the range of specific skills and knowledge that may be used varies considerably. The report also notes considerable growth in both public representation of poor people through legal aid and public defender offices and in lawyers employed by various government entities. *Id.* at pp. 29-102. [note can we update these statistics for the past 20 years to see if there are further changes?]

¹⁰⁵ Neil Hamilton, *Professionalism Clearly Defined*, 18 THE PROFESSIONAL LAWYER 4, 2-5 (2008).

¹⁰⁶ *Id.* at 3

¹⁰⁷ *Id.* at 5

reading law school texts or discussing hypothetical problems is insufficient to either ensure deep understanding or to assist in formulating the sense of professionalism that will predict the actions that they will later take as members of the profession.¹⁰⁸ [need more here]

2. Through Clinical Legal Education Courses with Real Clients and Real Cases, Students Integrate Essential Professional Skills and Values

We believe that full integration of professional legal skills and values occurs through the experience of delivering legal services to real clients and engaging in real cases. While, it is possible to learn *about* skills by reading scholarly and practical materials, and while practice in simulated circumstances can sharpen technique, professional mastery requires the ability to assess real life situations and understand the choices that are presented in context. In this way, that judgment can be developed to choose the skills that are most appropriate in different circumstances. It is also helpful to observe real lawyers making real choices and then discuss those situations and choices with real lawyers and academics. [Bob has a resource that talks about the difference between rote level learning of skill components, like asking closed-end questions, or making summary statements in an interview, and distinguishes that kind of automatic activity with the more difficult tasks of choosing the appropriate response in different contexts. This difference is part of what we are trying to get at here]

A good example might be taken from some events in a Wills course. One of the relatively simple pieces of knowledge covered in this course includes the rules and requirements for proper execution of a will. It did not take a lot of work for most students to be able to recite the rules and describe the procedure that would be required to ensure that a client properly executed a will. However, in a simulation exercise in the class, over half the students in the class completed the brief exercise with at least one error that would have led to the will being declared invalid. While this was probably a good learning experience about the underlying rules and the skills needed to apply the rules, without having to face real consequences of the action, it is likely that students engaged in the exercise were not approaching it with the crucial sense of responsibility that would be an important part of real lawyering. In contrast, students who supervised the signing of wills by real clients in the clinic rarely had to be corrected during the process. They learned a very important lesson about the nexus between knowledge, skill, and professional responsibility that can only be learned in the crucible of real legal work. Observing real lawyers making real choices and having an opportunity to discuss those situations and choices with real lawyers and academics can help. [Need source; need to analogize to trial practice, evidence, and interviewing, etc.]

The MacCrate Report identified ten skills and four fundamental values of the legal profession.¹⁰⁹ There might be disagreement about whether these are sufficient or accurate, or even up to date.¹¹⁰ Regardless, it seems imperative that law schools should develop and

¹⁰⁸ *Id.*

¹⁰⁹ See note 7, *infra*.

¹¹⁰ Cultural competence is a practice skill that has been elaborated upon since publication of the MacCrate Report, See Susan Bryant & Jeanne Koh Peters, *The Five Habits: Building Cross Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001); ., Marjorie Silver, *Emotional Competence, Multi-cultural Competence and Race*, 3 FLORIDA COASTAL L.J. 219 (2002) (describing the relationship of race to culture and the ways in which racism affects inter-cultural and inter-racial attitudes and interactions and describing the need to explore one's own racism) Antoinette SedilloLopez, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness,*

articulate their vision of the professional skills and values that believe their students should learn by the time they graduate. This is another way of saying that the law school should identify the learning objectives for their program of instruction. Of course, some of the skills and values of the competent lawyer are developed before law school, then reach a formative and intensive stage during the law school experience, and continue to develop throughout a lawyer's professional career.¹¹¹ The Carnegie Report¹¹² suggests that law schools should pay more attention to both skills and values to balance the current emphasis on knowledge or doctrine and legal analysis.

The unique benefit of clinical education courses is the intimate integration of skills and values that inevitably comes with serving clients. The foundation for that work, permeating the values and the skills, is knowledge of the law and the law of lawyering, so those domains are not ignored. However, in order to internalize an understanding of the values and the process of critically examining them, real life experience and exposure to real professional activity and problems in the context serving a client is required.¹¹³ Client service is essential because in that role the student learns about the foundational requirement of serving as a fiduciary for the client, putting the client's interests before his or her own, counseling and advising a client, and the other skills related to serving the client's interests. While a law license is not required for judicial, legislative or other types of a work, it is required to client representation, thus client service experience is necessary to prepare students for that important lawyering role.

The challenge of learning professional values is complicated by potential confusion between understanding professional responsibility and understanding professional role and values. The ABA currently mandates that all law students receive "substantial instruction" in professional responsibility.¹¹⁴ And, most states require applicants to pass the Multistate Professional Responsibility Examination (MPRE) in order to be admitted to practice. These requirements have led most law schools to require students to complete a course in professional responsibility heavily weighted to the Model Rules of Professional Conduct. This approach focuses on rules of limitation—they inform the limits of acceptable behavior not the best practices or even the prevailing norms of practice.

Yet, it is critical that students understand that there is a wide range of acceptable approaches to solving problems for clients and that they will frequently have to make choices within that range that have important consequences and implications for them individually, for their clients, and for the general functioning and perception of the legal system and the profession. In discussing the relationship between experiential education and "moral" education, Cell points out

and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic, 28 WASH. U.J.L. & POL'Y 37 (2008).

¹¹¹ *Id.* From the introduction.

¹¹² See note **Error! Bookmark not defined.** *infra*.

¹¹³ We need citations here, probably to Peggy's discussion of Carnegie and perhaps others

¹¹⁴ ABA Accreditation Standard 302(a)(5) reads:

"(a) A law school shall require that each student receive substantial instruction in...

(5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members." And this has been interpreted as:

"Interpretation 302-9 The substantial instruction in the history, structure, values and responsibilities of the legal profession and its members required by Standard 302(a)(5) includes instruction in matters such as the law of lawyering and the Model Rules of Professional Conduct of the American Bar Association."

that “moral” education suffers because it sits between traps of indoctrination on one side and fruitless debate on the other. Experiential learning avoids this because “[a] student who must live with the consequences of acts has a discipline that no bull session can provide and that no program of indoctrination can test and develop”.¹¹⁵ Law schools should assume a role in providing students with skills and information needed to make those choices and to understand the implications. That can only come through experiential learning and exposure to the way that lawyers actually identify options and choose a course of conduct in the context of providing legal services and interacting with legal institutions.

The modern roots of clinical education in law schools are intertwined with the need for law students to learn about professional responsibility through experience. In the 1960’s and 1970’s, many law school clinics were started with funding from the Ford Foundation through the Council on Legal Education for Professional Responsibility (CLEPR). Over 100 law schools received grants to commence client service clinics in which law students would provide representation under the supervision of law school faculty. This represented two thirds of the ABA accredited law schools at that time.¹¹⁶

3. Through Clinical Legal Education Courses, Students Experience the Complexity and Indeterminacy of facts, legal issues, ethical challenges, and policy that exist in the course of legal representation of real clients and real cases; and understand and engage legal problems in a broader problem solving context

While some simulation experiences and hypothetical problems can introduce students to the importance of fact development, legal analysis, ethical decision-making, and policy-making, only real clients and real cases involving real world problems present the indeterminate and complex situations necessary to develop an understanding of the role of facts, law, ethics, and policy realities in the development of solutions to legal problems. Law students who spend three years in law school will next spend 30 or 50 years in practice. These 30 or 50 years will be a learning experience whether we like it or not. It can be, as conventional wisdom has it, merely a hit-or-miss learning experience in the school of hard knocks. Or it can be a mediated and systematic learning experience if the law schools undertake as part of their curricula to teach students techniques of learning from experience. Clinical courses can do this – and should focus on doing it – because their very method is to make the student’s experience the subject of critical review and reflection.¹¹⁷

Students are attracted to obtaining law degrees in no small part by the wide range of activities and careers that they can pursue in which their legal training will be valuable.¹¹⁸ Legal educators rarely know what career choices their students will make and many students will go through several changes over the course of their careers. What we can be certain about is that they need to be equipped to learn effectively from any and all lawyering experiences. “Experiential

¹¹⁵ *Id.* p. x, quoting Ormond Smythe from a chapter in *Enriching the Liberal Arts through Experiential Learning*, Steven E. Brooks and James E. Althof, eds, Jossey-Bass, San Francisco, 1979, p. 11.

¹¹⁶ Need citation for this, possibly Ogilvy or Joy articles.

¹¹⁷ BEST PRACTICES, *supra*, note , at 126 (citing Mark Neal Aaronson, *We Ask You to Consider: Learning About Practical Judgment in Lawyering*, 4 *Clinical L. Rev.* 247, 249 (1998).

¹¹⁸ Need citation

education is the best tool for helping students develop self-directed learning skills, if it is done properly.”¹¹⁹

As Cell puts it:

[T]he greatest justification of an experiential component in formal education seems to me to lie not in the content of what is learned from those experiences but in what is learned about the process of learning from any experience. An age of rapid change puts a special premium on the ability to learn continually from our transactions.¹²⁰

Socialization is a key part of the development of a professional. A student learns the values, beliefs, attitudes and assumptions that are associated with right and wrong ways of behaving in professional role. This may involve significant changes in prior patterns of behavior and adoption of new ones.¹²¹

4. Through Clinical Education Courses, Students Learn About and Reflect on the Responsibilities of a Lawyer, and Learn to Learn from Experience

Guided reflection is a key component of clinical legal education and key to the professional development of a reflective practitioner. Law schools should “give students an understanding of the values, behaviors, attitudes, and ethical requirements of a lawyer and to infuse a commitment to them.”¹²² Universal clinical education must involve the ongoing duty to evaluate the individual’s conscience and balance individual interests with public responsibilities and responsibilities to the client. Reflection is a crucial role in fulfilling that duty.

5. Through Clinical Legal Education Courses, Students Comprehend “the quintessential value of the legal profession: a duty to ensure access to justice for those who might otherwise go under-represented or unrepresented”

Because most clinical programs serve financially or socially disadvantaged populations, clinical courses embody and reinforce this duty. Even students who do not intend to practice law should be exposed to the practice of law to serve the unmet need for legal services. These students will become community leaders and it is important that they come into these leadership positions with an understanding of the gap in legal services available to poor and moderate income individuals so that they can be more effective decision makers and can internalize the ABA aspirations of professionalism. [need more here, or combine with 1?]

C. Is There Empirical Evidence That Clinical Legal Education Courses Lead to Competency?

Despite a large body of literature from clinical professors both providing intellectual evidence of the benefits of legal education and describing clinics as “sites of both skills

¹¹⁹ BEST PRACTICES, *supra*, note , at 127.

¹²⁰ Cell, *id* at p. ix.

¹²¹ *Id.* p. 25.

¹²² BEST PRACTICES, *supra*, note , at 59.

instruction and the development of professional identity and responsibility,”¹²³ there are no empirical studies that examine the relationship between clinical education and competent lawyering. However, the “After the JD Study,” conducted by the ABA,¹²⁴ does provide some insight into how early-career lawyers evaluate their clinical training and its effectiveness in making the transition to early work assignments.¹²⁵

In 2000 (check this date), the ABA initiated a longitudinal study of 5,000 new law school graduates. The purpose of the study is to obtain a “nationally representative picture of lawyer career trajectories and an in-depth portrait of the careers of women and racial and ethnic minority lawyers.”¹²⁶ The study follows the career of new lawyers over the first ten years after graduation.¹²⁷ Those surveyed come from 18 different legal services markets in the United States, including large metropolitan cities, smaller urban cities and some rural areas. Study participants graduated from “a full range of law schools and worked in a wide variety of legal and non-legal jobs.”¹²⁸

The first survey, conducted in 2002 only two years after the lawyers were admitted to practice, was answered by over 3,500 (71%) of those surveyed.

The data received were analyzed by Rebecca Sandefur and Jeffrey Selbin to help bridge the evidence gap that exists in support of clinical instruction. Their analysis provided some interesting findings.¹²⁹ The data indicate that new attorneys who had participated in clinics during law school found these useful in learning practical skills. When asked how helpful different specified elements of their law school years were in making the transition into early work assignments as a lawyer, only summer legal employment and school-year legal employment experiences were rated as more helpful than legal clinics in making the transition to working as an attorney.¹³⁰ Legal writing and internships were rated slightly less helpful than clinics, while upper-level lecture courses, course concentrations, and the first year curriculum were considerably less helpful in this transition.¹³¹ Least helpful of all were pro bono service work and training in legal ethics.¹³² The data indicates that “those law school experiences that involve the use of and training in skills that practicing lawyers use in their work are the

¹²³ Rebecca Sandefur and Jeffrey Selbin, *CLEPR’S 40th Anniversary: Papers and Speeches from the AALS-ABA-CLEA Celebration of CLEPR: The Clinic Effect*, 16 CLINIC. L. REV. 57, 79 (2009)

¹²⁴ A.B.A. Research, Current Projects: After the JD, <http://www.americanbarfoundation.org/research/project/44> (last accessed February 2010).

¹²⁵ Rebecca Sandefur and Jeffrey Selbin, *CLEPR’S 40th Anniversary: Papers and Speeches from the AALS-ABA-CLEA Celebration of CLEPR: The Clinic Effect*, 16 CLINIC. L. REV. 57, 81 (2009)

¹²⁶ Rebecca Sandefur and Jeffrey Selbin, *CLEPR’S 40th Anniversary: Papers and Speeches from the AALS-ABA-CLEA Celebration of CLEPR: The Clinic Effect*, 16 CLINIC. L. REV. 57, 82 (2009)

¹²⁷ Three surveys will be conducted throughout the study. The first survey was conducted in 2002, the second in 2007, and the third is planned for 2010. However, only data from the first survey are publicly available at this time.

¹²⁸ Rebecca Sandefur and Jeffrey Selbin, *CLEPR’S 40th Anniversary: Papers and Speeches from the AALS-ABA-CLEA Celebration of CLEPR: The Clinic Effect*, 16 CLINIC. L. REV. 57, 82 (2009).

¹²⁹ However, their analysis comes with some caveats, since it appears from the data that some of the survey respondents did not follow instructions and provided information and opinions on experiences they did not actually have during their law school education. Sandefur & Selbin, *supra*, note at 84-85.

¹³⁰ Sandefur & Selbin, *supra*, note at 86.

¹³¹ Sandefur & Selbin, *supra*, note at 86.

¹³² Sandefur & Selbin, *supra*, note at 87.

experiences that new lawyers rate as most helpful of making the transition to practice.”¹³³ Additionally, it was significantly more likely that clinical training was “extremely helpful” for making this transition than were legal writing training, upper-year lecture courses, course concentrations, pro bono service, the first year curriculum or legal ethics training.¹³⁴ This was true across all law school tiers.¹³⁵

The data do not provide a clear picture about the effect of clinical education on new lawyers’ commitment to public interest and social justice issues. While the study did not indicate a relationship between clinical education and participation in pro bono work and service in public-minded organizations, there is a “significant positive correlation between clinic participation and subsequent public service employment.”¹³⁶ The data indicate, although the causal factor is unclear, that students who entered law school with civic motivations and who found clinical training to be helpful were two times more likely to be working in public service jobs than those who had similar motivations but had not participated in clinics or who found these not to be helpful.¹³⁷ This appears to indicate a “clinic effect” on public service employment.¹³⁸ (Insert concluding section).

IV. Motivations for The Current Push for Universal Clinical Legal Education

A. Increased Numbers of U.S. Law Schools (and Law Schools Abroad) Have Adopted Universal Clinical Education

Universal clinical legal education is not new in the U.S. and the number of law schools requiring a clinic for graduation is growing. Approximately 16 U.S. law schools¹³⁹ and 20 or more international law schools¹⁴⁰ require their law students to enroll in clinics before graduation.

¹³³ Sandefur & Selbin, *supra*, note at 87.

¹³⁴ Sandefur & Selbin, *supra*, note at 88.

¹³⁵ Sandefur & Selbin, *supra*, note at 88.

¹³⁶ Sandefur & Selbin, *supra*, note at 59.

¹³⁷ Sandefur & Selbin, *supra*, note at 99.

¹³⁸ Sandefur & Selbin, *supra*, note at 100.

¹³⁹

Tokarz data from summer 2009: where is this located? Find cite

U.S. law schools:

- CUNY (min. 12 credits clinic or externship)
- Inter American University of Puerto Rico (min 6 credits clinic)
- Thomas Cooley (min. 3 credits clinic)
- Gonzaga University (min. 3 credits clinic)
- St. Thomas University, Miami (min. 6 credits clinic or externship)
- Northeastern University (4 externship co-ops req., not for credit)
- U of California-Irvine (min. 4 credits clinic or externship)
- U of Dayton (min. 4 credits externship)
- U of Detroit Mercy (clinic or externship)
- U of District of Columbia (min. 14 credits clinic)
- U of Maryland (min. 5 credits clinic)
- U of Montana
- U of New Mexico (min. 6 credits clinic)
- U of Puerto Rico (min 3 credits clinic)
- U of Washington (clinic, externship, or street law)

The experience of these law schools dispels the view that the perceived barriers to clinical requirements are insurmountable and illuminates the benefits.¹⁴¹ This section surveys some of the law schools that have successfully implemented mandatory clinical programs in order to help answer the questions of whether schools can overcome potential barriers to mandatory clinical education and what are the outcomes in terms of preparing their graduates for practice.

Antioch (now District of Columbia School of Law), the City University of New York (CUNY), Northeastern (“co-ops” required, although not for credit), and the University of New Mexico pioneered mandatory clinical education between the late 1950’s and the early 1980’s. These law schools share a commitment to providing law students with lawyering skills and values, and instilling in students the professional obligation for public service and service to low-income communities. In the mid- to late 1980’s, a second wave of law schools adopted mandatory clinical legal education, including state law schools such as the University of Maryland and the University of Montana. A third and more recent wave of law schools began mandating clinical education in the past decade in the period of heightened criticism of legal education. This wave includes newer law schools such as Thomas Cooley, begun in 1972, expanded in 2002 (when it first started requiring clinical education – **is this true?**), now the largest law school in the U.S.;

Washington & Lee (clinic, externship, or transnational program)

¹⁴⁰ Non-U.S. law schools:

Bar Ilan University, Ramat Gan, Israel (clinic)
Carlos III University of Madrid (practicum)
Catholic University of Honduras (clinic)
Catholic University of Chile Law School
Diego Portales University Law School, Chile
El Bufete Juridico, Universidad Centro Americana, Managua, Nicaragua (clinic)
London College of Law (clinic practicum required for legal aid solicitors)
University of Northumbria Law School, Newcastle [\(\)](#)
National University of Rwanda (min. 2 credits clinic)
Universidad Catolica de Temuco, Chile
U of Buenos Aires School of Law, Argentina
University of Chile Law School
U of KwaZulu-Natal, South Africa (clinic or street law)
U of the Philippines
U of Tasmania (clinic required for postgraduates to be admitted to the Bar)
Uniwersytet Opolski, Poland (min. 4 credits clinic)

¹⁴¹ Changing law school curriculum is difficult. However, a recent trend as to bar passage in US law schools suggests that curricular change can happen when law schools perceive and embrace the need. Bar passage rates have always been important to students in choosing among schools in a particular state. For a number of reasons, including the US News & World Report ranking of law schools, the issue of bar passage rates (one of the indicators on the survey) has grown in importance. The ABA changed their regulations in **(insert year)** to allow law schools to institute bar prep courses as part of the curriculum. Since then, many law schools have instituted such courses and many, particularly with low bar passage rates, have started to require such courses. The amount of money spent on academic support and bar passage by law schools also has increased dramatically. This transition suggests that law schools can make major curricular changes and institute new mandatory requirements for graduation to prepare students for bar admission and practice. However, the emphasis at many places has been focused on courses that prepare students for an exam, in contrast to clinical courses that prepare students for law practice. It is troubling that law schools spend scarce resources on preparing students for an exam that is widely recognized as not reflecting what lawyers need to know for practice, rather than requiring instead that students participate in clinical courses that better educate them for what they will need to know as lawyers.

and the University of California-Irvine, which opened its doors in fall 2008....[maybe New Hampshire and Stanford??]

1. First Wave of U.S. Law Schools Requiring Clinical Education for All Graduates

Leading the first wave, as early as 1950, University of New Mexico students were offered the option of working with the local legal aid office for credit - and in 1955, students were required to work with either the legal aid or the public defender's office prior to graduation. The in-house clinic was founded in the late 1960's and a clinical experience became a requirement for graduation in 1970.¹⁴² Currently, students at the University of New Mexico are required to "participate satisfactorily in at least six hours of clinical law school credit, as prescribed by the faculty." No extern field experience courses or skills courses apply toward this requirement.¹⁴³ One important aspect of New Mexico's model is the expectation that virtually all members of the faculty will teach clinical courses, "an approach that not only permits a large number of clinical offerings, but also results in a traditional curriculum that is infused with clinical methodology"¹⁴⁴ The University of New Mexico School of Law's Clinical Law Program asserts

¹⁴² Articles describing UNM clinical law programs include: Christine Zuni Cruz, *Four Questions on Critical Race Praxis: Lessons from Two Young Lives in Indian Country*, 73 *Fordham L. Rev.* 2133 (2005) (analyzing the connection between critical race theory and her work in the UNM clinical program, Southwest Indian Law Clinic); Christine Zuni Cruz, *[On the] Road Back in: Community Lawyering in Indigenous Communities*, 24 *Am. Indian L. Rev.* 229 (2000) (Analyzing culture and community issues raised in working with Native American communities); J. Michael Norwood & Alan Paterson, *Problem-Solving in a Multidisciplinary Environment? Must Ethics Get in the Way of Holistic Services?*, 9 *Clinical L. Rev.* 337 (2002) (analyzing multidisciplinary practice in the UNM Child Advocacy Clinic); Michael Norwood, *Scenes from the Continuum: Sustaining the Maccratte Report's Vision of Law School Education into the Twenty-First Century*, 30 *Wake Forest L. Rev.* 293 (1995) (analyzing the impact of clinical education during law school); Michael Norwood, *Requiring a Live Client, In-House Clinical Course: A Report on the University of New Mexico Law School Experience*, 19 *N.M. L. Rev.* 265 (1989) (analyzing the structure and history of the UNM clinical program); Antoinette Sedillo Lopez, *Teaching a Professional Responsibility Course: Lessons Learned from the Clinic*, 26 *J. Legal Prof.* 149 (2002) (describing UNM clinical experiences and the crossover with professional responsibility); Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 *Clinical L. Rev.* 307 (2001) (describing the impact of specialization on skills training and social justice); Lee E. Teitelbaum, Antoinette Sedillo Lopez & Jeffrey Jenkins, *Gender, Legal Education, and Legal Careers*, 41 *J. Leg. Educ.* 443 (1991) (analyzing the impact of the UNM clinical programs in gender, legal education and careers); Alfred Dennis Mathewson, *Commercial and Corporate Lawyers 'n the Hood*, 21 *U. Ark. Little Rock L. Rev.* 769 (1999) (describing the impact of the UNM clinical program on small businesses especially on training minority lawyers); Margaret E. Montoya, *Comment: Voicing Differences*, 4 *Clinical L. Rev.* 147 (1997) (describing the impact of clinical training in pedagogy); *Amicus Briefs in Grutter v. Bollinger and Gratz v. Bollinger, in Support of The University of Michigan: Brief of Amici Curiae, The New Mexico Hispanic Bar Association, The New Mexico Black Lawyers Association, and The New Mexico Indian Bar Association*, 14 *La Raza L.J.* 51 (2003) describing the impact of the UNM clinical program on low-income racial minorities); Andrea M. Seielstad, *Unwritten Laws and Customs, Local Legal Cultures, and Clinical Legal Education*, 6 *Clin. L. Rev.* 127 (1999) (describing some of the "legal culture" issues students must address in the clinic.) Renee Taylor, *All my Relationships*, 26 *N.M. L. Rev.* 191 (1996) (comparing the UNM clinical program with the clinical program at the Vancouver Aboriginal Justice Centre). Nancy Cook, *Legal Fictions: Clinical Experiences, Lace Collars and Boundless Stories*, 1 *Clinical L. Rev.* 41 (1994) .

¹⁴³ University of New Mexico School of Law, J.D. Program, <http://lawschool.unm.edu/programs/jd/requirements.php>

¹⁴⁴ Margaret Martin Barry, Jon C. Dubin and Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 *CLINICAL L. REV.* 1, 44 (2000).

that its program is “one of New Mexico's largest law firms and serves a broad spectrum of low-income clients.”

Antioch Law School opened its doors in 1972, built around an urban law institute where students represented clients in in-house clinics starting in the first year and during every semester before graduation.¹⁴⁵ Antioch law students rotated through public, private and criminal law divisions having a clinical experience in every area of law before graduation. In addition, they spent one semester clerking for a judge. Students took standard law school classes over the three years while participating in the clinics. Antioch asserts that its graduates are well prepared to practice law at graduation and many graduates have gone on to distinguished practice in law.¹⁴⁶ [Maybe include some examples of Antioch graduates successful in practice, since the claim is that this type of education makes for better lawyers.).

The District of Columbia Law School (DCLS) was created in 19[redacted] to “retain Antioch's curriculum, program and personnel.”¹⁴⁷ Known as the “successor to Antioch Law School, DCLS is “institutionally committed to increasing diversity and has a mission and pedagogy closely related to CUNY's.”¹⁴⁸ Students attending DCLS are required to “[e]arn credit in at least two (2) semesters of seven (7) credit client service clinical courses, at least one of which is a direct client service clinic” and perform 40 hours of community service.¹⁴⁹ Though this is far more than required other law schools (other than CUNY), it is not the equivalent of the initial incarnation of Antioch Law School.

CUNY Law School opened its doors in 1983 as a law school designed to integrate clinical pedagogical methods with traditional areas of legal study.¹⁵⁰ Role playing and simulation are integral to teaching in all courses and faculty coordinate teaching across areas. Students are required to take at least one in-house clinic or externship for graduation. According to Eleanor Fox, “It is one of the predictable ironies of life that tradition ousts inspiration. The bar examiners demand that law graduates know that which they have always required law graduates to know. The CUNY curriculum did not mesh with the bar examiners' demands.”¹⁵¹ But, in 1992, CUNY

¹⁴⁵ Antioch Law School received much of its funding for its law school clinics from the Legal Services Corporation. In 1986 the LSC denied Antioch's renewed application for funding for its Urban Law Institute (its clinical program) although the law school was being “sold” to the District of Columbia Law School. See Resolution of the Board of Directors of the Legal Services Corporation, <http://www.lsc.gov/pdfs/1986-01.PDF>. In spite of that refusal, the District of Columbia Law School has continued Antioch's tradition of requiring all law students to enroll in a clinical course before graduation. The D.C. law school received full ABA accreditation in [redacted].

¹⁴⁶ E.g., Professor Mary Ellena Fullerton (Brooklyn Law School), Professor Susan Jones (GW Law School). Antioch also started the first masters program to educate clinical law teachers. Graduates of this program include Professor Jack Sammons (Mercer) and Professor Peggy Maisel (FIU Law School).

¹⁴⁷ Paul Marcotte, 3 *Law Schools in Transition*, 72 A.B.A.J. 49 (1986)

¹⁴⁸ Kristin Booth Glen, *Haywood Burns: A Commemoration: To Carry It On: A Decade of Deaning After Haywood Burns*, 10 N.Y. City L. Rev. 7, 63 n. 256 (2006).

¹⁴⁹ David A. Clark School of Law, Graduation Requirements, <http://www.law.udc.edu/?page=GradRequirements>

¹⁵⁰ Leonard D. Pertnoy, *Skills is Not a Dirty Word*, 59 MO. L. REV. 169, 178-180 (1994).

¹⁵¹ Leonard D. Pertnoy, *Skills is Not a Dirty Word*, 59 MO. L. REV. 169, 178-180 (1994). (citing Eleanor M. Fox, *The Good Law School, The Good Curriculum, and the Mind and the Heart*, 39 J. Legal Educ. 473, 481 (1989).

was awarded full accreditation by the ABA and it has recruited and educated a high number of non-majority lawyers.¹⁵²

Northeastern University Law School, begun in 1968, predated both Antioch and CUNY with a program of mandatory “co-ops” for each law student. The cooperative education program requires every second- and third- year student to spend four quarters in legal work experiences “in law firms, with judges, and in public interest law settings, including government and service organizations.”¹⁵³ However, students do not pay tuition and no credit is given for these field experiences, although some students receive stipends from the law school during their placements.¹⁵⁴ Northeastern University asserts “the premise ... that legal training gained through supervised work experiences that are integrated with academic course work produces attorneys exceptionally well prepared to practice law.”¹⁵⁵ Beginning in fall 2011, Northeastern University students will be required to take one field placement with an accompanying classroom course for two credits, in addition to three other required externship co-ops for no credit.¹⁵⁶

2. Second Wave of U.S. Law Schools Requiring Clinical Education for All Graduates

Law schools requiring clinical education courses of all graduates in the second wave, during the early 1980’s through the 1990’s, include the University of Maryland, the University of Montana, the University of Washington, and the University of Puerto Rico. In part, these public law schools that are financed primarily through state appropriations and student tuition, determined that clinical education was necessary to insure a high level of competency for their law graduates and the lawyers practicing in their states; to accomplish this mission, the schools developed innovative and successful clinical curricula.¹⁵⁷

The University of Maryland School of Law prides itself in being “unique among law schools nationally” in requiring students who initially enroll as first-year, full-time students must provide legal assistance to those who are poor or otherwise unable to access legal assistance.¹⁵⁸ According to the school, the Cardin Requirement “makes experiential education a key component of the law school's curriculum.”¹⁵⁹ Students may fulfill this requirement by participating in one of the law school’s legal clinics, or through enrollment in one of seven legal

¹⁵² Kristen Booth Glen, *Haywood Burns: A Commemoration: To Carry I On: A Decade of Deaning After Haywood Burns*, 10 N.Y. CITY L. REV. 7,9 (2006).

¹⁵³ James H. Backman, *Papers Presented at the “Externships 3: Learning from Practice Conference: Practical Examples for Establishing an Externship Program Available to Every Student*, 14 CLINICAL L. REV. 1, 9-10 (2007); Northeastern University School of Law – Cooperative Legal Education Program, <http://www.northeastern.edu/law/co-op/index.html> (last accessed October 17, 2009).

¹⁵⁴ James H. Backman, *Papers Presented at the “Externships 3: Learning from Practice Conference: Practical Examples for Establishing an Externship Program Available to Every Student*, 14 CLINICAL L. REV. 1, 9-10 (2007).

¹⁵⁵ Northeastern University School of Law – Cooperative Legal Education Program, <http://www.northeastern.edu/law/co-op/index.html> (last accessed Oct. 17, 2009).

¹⁵⁶ Need to cite to memo..

¹⁵⁷ Insert footnote

¹⁵⁸ University of Maryland School of Law, The Cardin Requirement, <http://www.law.umaryland.edu/publicservice/cardin.html>

¹⁵⁹ *Id.*

theory and practice courses.¹⁶⁰ [need to verify that all students engage in clinics or field placements]. The school describes the purpose of the practical requirement as follows: “The clinical and legal theory and practice courses encourage students to develop a professional identity valuing service to the poor and other underrepresented persons and communities. Most importantly, however, the Cardin experience enables students to understand, apply, and critique legal theory and law practice to help them analyze how to improve the law and access to justice.”¹⁶¹ [University of Montana? U of Puerto Rico? U of Washington?]

3. Third Wave of U.S. Law Schools Requiring Clinical Education for All Graduates

A third wave of law schools adopting universal clinical education includes law schools such as Thomas Cooley, the largest law school in the U.S., which opened in 1972, and the University of California-Irvine, whose clinic requirement goes into effect in fall 2010 - schools determined to adopt new, innovative curricula. [William & Mary, New Hampshire, Stanford?].

Stanford Law School disseminated a press release in 2006 detailing its goal of creating a “new model for legal education.”¹⁶² According to the press release, Stanford aims to “transform the JD into a three-dimensional degree program that combines the study of other disciplines with team-oriented, problem-solving techniques and expanded clinical training that enables students to represent clients and litigate cases—before they graduate;” the asserted purpose of this transformation is “to teach students how to work with clients and colleagues, how to address the ethical dilemmas that arise in practice, and how to apply legal concepts taught hypothetically or in the abstract in the classroom to a real world, client representation situation.” This includes the addition of a “clinical rotation,” similar to those offered in medical schools, where an entire quarter is spent by students performing only clinic work, with no other classes or exams to compete for their time, that Stanford expects “to deliver a much more intensive experience, including a better professional ethics component” while also permitting it “operate clinics in a greater variety of settings—including overseas.” While Stanford has moved to full clinical quarters as of fall 2009, they have yet to adopt a mandatory clinic requirements

[Stephen Ellman wrote about a proposal to institute a clinical third year that may be mandatory.¹⁶³ Should we include schools like Washington University that has had a “clinic guarantee” for over a decade?]

B. Increased Student Demand, In Part Precipitated by Tougher Job Market

C. Increased Market Demand for Practice-Ready Law Graduates

¹⁶⁰ University of Maryland School of Law, Course Catalog, Courses Satisfying the Cardin Requirement, <http://www.law.umaryland.edu/academics/program/curriculum/catalog/index.html>

¹⁶¹ University of Maryland School of Law, The Cardin Requirement, <http://www.law.umaryland.edu/publicservice/cardin.html>

¹⁶² A “3D” JD: Stanford Law School Announces New Model for Legal Education, available at www.law.stanford.edu/news/pr/47/

¹⁶³ 53 N.Y.L. Sch. L. Rev. 877

D. Increased Competition Among Law Schools in Part Precipitated by Increased Availability of Data and Rankings

E. Generational Shift in Law School Faculty Composition

F. Increased Recognition by Educators of Need for Better Legal Education and Better Preparation of Graduates

V. What Can We Learn From How Other Countries Prepare Lawyers for Practice and How Other Professions Practitioners

A. Legal Education in Non-U.S. Countries

How to prepare knowledgeable, ethical, skilled attorneys for legal practice both at home and in a global legal system is not a problem unique to the United States. Just as it is may prove useful to look at the education systems of other professions, it may be helpful to look to other countries to see if there are any lessons or models that can guide legal education in the United States. No country requires a clinical education course for all law school graduates, although several foreign law schools do have such a mandatory requirement.¹⁶⁴

Many (most?) non-U.S. countries require post-law school apprenticeship, a post-graduate practical training course, or both before a law school graduate can be licensed. These countries include England¹⁶⁵, Australia¹⁶⁶, Scotland, Germany and Canada and South Africa.¹⁶⁷ The purpose of both the apprenticeships and the practical training courses is to bridge the gap between what is considered to be lacking in law school preparation and independent practice as lawyers. These apprenticeships are supposed to prepare the law graduate to be minimally competent to independently handle a variety of cases upon admission to the bar by “equip[ping] the student with practical legal skills and knowledge of the day-to day operations of a law practice.”¹⁶⁸ As can be expected, the main benefit of the supervised practical experience provided by an apprenticeship is the “bridge from theory to practice.”¹⁶⁹ It is the perfect

¹⁶⁴ Cite UKZN and other law schools that require courses

¹⁶⁵ Daniel R. Hansen, *Do We Need the Bar Examination? A Critical Evaluation of the Justifications for the Bar Examination and Proposed Alternatives*, 45 CASE W. RES. L. REV. 1191, 1222-1225 (1995).

¹⁶⁶ Ross Nankivell, *Legal Education in Australia*, 72 OR. L. REV. 983, 984 (1993).

¹⁶⁷ In the majority of those nations the legal education process is different from that in the U.S. system, since the law degree is essentially an undergraduate level degree. Canadian legal education, however, is very similar to the U.S. system, generally requiring that students complete at least three years of undergraduate education prior to law school admission, while requiring three years of legal education which follows a curriculum quite similar to that used by U.S. law schools.

¹⁶⁸ Hansen, *supra* note 1, at 1226.

¹⁶⁹ Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Should Change*, 81 NEB. L. REV. 363, 400 (2002).

environment, if properly administered, to apply substantive and procedural law and to learn the details of proper law office management.¹⁷⁰

These post-graduate, practice requirements demonstrate that other countries have recognized that legal education is not adequately preparing law graduates to practice law. Some advocate that the U.S. move to a similar system due to the belief that it provides better preparation for practice than the U.S. system of law school education followed by state-administered bar examinations, and assures that those who are licensed are at least minimally competent. However, these models, in practice, may not achieve what they sets out to do in theory. Evaluations of these apprenticeship systems have found significant problems that could be overcome by instead requiring mandatory clinical education while in law school. This section will explore the problems countries experience with their apprenticeship programs. It will be evident that incorporating such requirements into a required and well supervised law school clinical program would work better. However, other countries apprenticeship and post-graduate training course requirements do demonstrate that the United States needs to do more to prepare law school graduates for the practice of law. . In fact, it has been considered that “the failure to require supervised practice before full licensure [is] the biggest shortcoming of the United States’ method of producing lawyers.”¹⁷¹

B. Other Professional Education Related to Legal Education

Other professional education fields have already embraced both experiential learning and competency based outcome evaluation. Medical education has long required clinical experience as part of the professional education, indeed in most medical schools the second half of the program is largely devoted to clinical studies. In addition, after graduation from medical school every state requires at least 1 year of postgraduate practical training before a candidate can obtain a license to practice¹⁷² While medical education may have flaws, its particular focus on skills training offers some insights to the priority on service to patients.

Medical School accreditation is governed by the Liaison Committee on Medical Education (L CME). It establishes standards and reviews medical schools in a manner similar to the structure for accreditation of law schools. In defining the required Academic Environment, the standards include a provision that: “Medical students should learn in clinical environments where graduate and continuing medical education programs are present.”¹⁷³ The idea is to ensure that

¹⁷⁰ But on the question of whether to require passage of a bar examination, the Common law countries differ on the question of whether to require a bar examination for admission to practice. For example, Australia has no bar examination, while in Canada there is wide disparity between the provinces, with some provinces requiring extensive examinations, some quite minimal examinations, and others requiring none. In common law countries with a divided bar there is also no uniformity in the requirement of examinations. In Scotland, law graduates who wish to be advocates must have passed a bar examination prior to pupillage, but solicitors need only complete a practical training course and two years of training after completion of law school. Similarly, solicitors in England and Wales do not have to take an examination, while starting this year, prospective barristers must pass three examinations in Civil Litigation, Criminal Litigation, and Ethics. South Africa continues to require passage of a bar examination for both attorneys and advocates.

¹⁷¹ BEST PRACTICES, *supra*, note , at 114 n.500.

¹⁷² See the website of the Federation of State Medical Boards, http://www.fsmb.org/usmle_eliinitial.html .

¹⁷³ Standard IS-12-A, see <http://www.lcme.org/functionslist.htm>.

medical students are exposed to work with graduate and continuing education activities even before they enter the profession.¹⁷⁴

In addition, the standards require that medical schools make available sufficient opportunities for medical students to participate in service-learning activities as well as research and other scholarly activities, essentially placing service-learning on equal footing with research and scholarly activity. Service-learning is defined as “a structured learning experience that combines community service with preparation and reflection. Students engaged in service-learning provide community service in response to community-identified concerns and learn about the context in which service is provided, the connection between their service and their academic coursework, and their roles as citizens and professionals.”¹⁷⁵ The standard does not require that every student participate in service learning, but it does require that a medical school provide “sufficient opportunities” which is defined to mean that “students who wish to participate in service-learning activity should have the opportunity to do so.”¹⁷⁶

Medical schools have some latitude in establishing the objectives of their programs, but those objectives “must be stated in outcome based terms that allow assessment of student progress in developing the competencies that the profession and the public expect of a physician”¹⁷⁷ The standards also require that there must be a system with central oversight to assure that the faculty define the types of patients and clinical conditions that students must encounter, the appropriate clinical setting for the educational experiences, and the expected level of student responsibility. The faculty must monitor student experience and modify it as necessary to ensure that the objectives of the clinical education program will be met.¹⁷⁸

¹⁷⁴ The Accreditation Council for Graduate Medical Education (ACGME) governs the accreditation of the graduate programs that the undergraduate medical students interact with as part of their clinical training. ACGME developed a list of core competencies general enough to be implemented in 2001 as part of the standards for accrediting all residency programs. Undergraduate medical students are therefore made familiar with the competencies that they will be required to master once they enter into the required graduate education program, and these, of course, reflect what is expected of them as licensed professionals. The competencies are:

1. Interpersonal and Communication Skills
2. Medical Knowledge
3. Patient Care
4. Practice-Based Learning and Improvement
5. Systems Based Practice
6. Professionalism

See <http://www.acgme.org/acWebsite/home/home.asp>

¹⁷⁵ Id. IS-14-A

¹⁷⁶ Id.

¹⁷⁷ Id. ED-1-A

¹⁷⁸ Id. ED-2

Finally, the medical school standards require that “the education program must include instructional opportunities for active learning and independent study to foster the skills necessary for lifelong learning”¹⁷⁹ and that each medical school has a curriculum which must, among other things, “allow students to acquire skills of critical judgment based on evidence and experience; and develop students’ ability to use principles and skills wisely in solving problems of health and disease”¹⁸⁰ Most of the benefits that we see for universal clinical education in law school are mandated by the accreditation standards for medical school, even though the medical profession also requires post graduate experience for licensure.

[Need info from recent Carnegie report of the practice of medicine. Need to address social work, accounting, or at least one other profession.]

VI. Perceived Barriers and Risks to Instituting Mandatory Clinical Legal Education

As this article demonstrates, it is arguable that it would be of great value to the legal profession if every student took at least one law school clinical education course. As a doctor on a panel at a recent medical/legal conference remarked, “I can’t imagine graduating doctors who have never seen a patient.”¹⁸¹ It should equally inappropriate to graduate lawyers who have never seen a client or performed any type of practical legal work. An important question, therefore, is why law schools have not embraced clinical education and made at least one clinical course a graduation requirement. We have identified at least six perceived barriers often given for the failure to make such a change to the law school curriculum.

A. Tradition and Vested Interests of Academics

Law schools have been teaching law students in much the same way for over 100 years “[I]t is difficult to break the cycle of doing things as we have always done them. This is especially true when most other law schools with which a single law school competes for applicants are doing things exactly, or nearly exactly, the same way. Perhaps that is why many of the most significant changes in American legal education over the past 100 years have been imposed by outside forces, like the MacCrate Task Force Report.”¹⁸²

Perhaps there is selfish motivation of legal academia in maintaining the status quo.¹⁸³ This has been used by some to explain the resistance of non-clinical faculty to move from just teaching law students “how to think like lawyers” to a system where law students are also taught to “be lawyers.” Whatever the motivation, the authors of the Carnegie Foundation Report urge instructors of both doctrinal and practical courses to “have some significant experience with the other complimentary area... However it is organized, it is the sustained dialogue among faculty with different strengths and interests united around a common educational purpose that is likely to matter most.”¹⁸⁴ The key to the success of this suggestion is that the faculty be committed to

¹⁷⁹ Id ED-5-A

¹⁸⁰ Id ED-6

¹⁸¹ Conference in September 2009 at Georgia State Law School.

¹⁸² David Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 Pac. McGeorge Global Bus. & Dev. L.J. 3, 13 (2009)

¹⁸³ See e.g. Christopher T. Cuniff, *The Case for the Alternative Third Year Program*, 61 ALB. L. REV. 85, 114 (1997)

¹⁸⁴ David Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 Pac. McGeorge Global Bus. & Dev. L.J. 3, 13 (2009) (citing Sullivan et al., *Educating Lawyers: Preparation for the*

maximizing educational outcomes for students with the knowledge that “whatever incidental purposes are cherished by particular law schools, the main end of legal education is to qualify students to engage in the professional practice of law.”¹⁸⁵ Nonetheless, a focus on practical training of students need not require an abandonment of legal scholarship. Indeed, Best Practices asserts that “[i]f law teachers begin giving more thought to how students learn as well as what lawyers do and how they do it, new avenues of legal scholarship will be opened beyond the traditional scholarship about doctrine and judging.”¹⁸⁶

(Some additional quotes from Best Practices

“Law schools have a tradition of emphasizing instruction in theory and doctrine over practice and of treating theory and doctrine as distinct, separate subjects from practice. The separation of theory and doctrine from practice in the law curriculum was an unfortunate fluke of history that hinders the ability of law schools to prepare students for practice.”¹⁸⁷

It has long been common in academia to look down on “practice”¹⁸⁸

“[L]aw professors know quite a lot about how lawyers acquire expertise in solving doctrinal problems. But we know virtually nothing about how lawyers acquire the other abilities most valued by clients: expertise, judgment, problem-solving abilities in areas beyond doctrine. Legal academics have largely ignored these other aspects of lawyering practice, seeing them as either uninteresting or unfathomable.”¹⁸⁹

“Most law schools have been faculty-centered, not student-centered, and the law faculties have controlled what they taught and how they taught it.”¹⁹⁰

“[I]aw professors not only have no incentive to change their teaching methods, they have no incentive to change at all.”¹⁹¹

“[M]ost law schools continue to place more value on a new faculty member’s potential for scholarly research and writing and to reward law professors almost exclusively for their scholarly activities.”¹⁹²)

B. Perceived Increased Financial Costs

Profession of Law: Summary Report 9 (2007), available at http://www.carnegiefoundation.org/files/elibrary/EducatingLawyers_summary.pdf.)

¹⁸⁵ Christopher T. Cuniff, *The Case for the Alternative Third Year Program*, 61 ALB. L. REV. 85, 113 (1997) (citing Alfred Z. Reed, *Training for the Public Profession of the Law* (Daniel J. Boorstin ed., Arno Press 1976) (1921)).

¹⁸⁶ Best Practices, *supra*, note at 4.

¹⁸⁷ BEST PRACTICES, *supra*, note , at 71.

¹⁸⁸ BEST PRACTICES, *supra*, note , at 71 (Judith Wegner, *Theory, Practice, and the Course of Study – The Problem of the Elephant 7-8* (Draft 2003) (unpublished manuscript on file with Roy Stuckey))

¹⁸⁹ BEST PRACTICES, *supra*, note , at 71 n.278 (citing Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. Legal Educ. 313, 315-16 (1995)).

¹⁹⁰ BEST PRACTICES, *supra*, note , at 211.

¹⁹¹ BEST PRACTICES, *supra*, note , at 211 (citing Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 San Diego L. Rev. 347, 360-62 (2001)).

¹⁹² BEST PRACTICES, *supra*, note , at 78.

One of the reasons often cited for resisting clinical legal education, and especially mandatory clinical education, is that the costs of running such programs are high. “[I]t is often put forward as an insurmountable barrier to the delivery of expanded opportunities for clinical legal education.”¹⁹³ Thus, it is believed that “clinical education cannot and should not be relied upon to improve practical skills of law school graduates” because of the high cost attached to providing a live clinic experience to all students.¹⁹⁴ “The MacCrate Report estimated that an overall budget increase of at least 10 to 15 percent would be needed to provide a live clinic experience to all students.”¹⁹⁵

One aspect of the cost concern of clinical education is the essential need for lower student-instructor ratios than in large doctrinal courses. However, this need not be a complete barrier to clinical programs. For example, mandatory clinical education exists at Thomas Cooley and in Chile at the University of Chile and the Catholic University of Chile. Cooley is the largest U.S. law school and the two schools in Chile are two of the largest-enrollment universities in the nation. Yet, all these schools are able to administer successful clinics with mandatory programs integrated into the last two years of legal study, despite their large enrollments.¹⁹⁶

Prof. David Chavkin analyzes this perceived roadblock to clinical programs using the cost of tuition and of faculty salaries at Washington College of Law and concludes, using real numbers instead of guesses, that “clinical education is ... more financially feasible than some make it out to be, even if one cannot argue that it is unavoidably more expensive than large classes.”¹⁹⁷ Prof. Chavkin uses the tuition paid by students at Washington College of Law, where tuition is \$16,000 per semester, as an example. Assuming, as is the case for most in-house clinics, that a clinic constitutes one-half of a normal credit load and that the faculty member teaching in a clinic has a “normal” 8:1 supervision load, each clinic would generate \$64,000 in revenues per semester,¹⁹⁸ or \$128,000 per year. If the faculty member would in addition teach one academic course per year, additional revenues would be gained. For example, for a 2 credit course, which is one-seventh of a credit load, the faculty member would generate an additional \$114, 286,¹⁹⁹ for a total of \$242, 286 generated by the faculty member per year, which is sufficient to cover most of the cost of the courses.²⁰⁰

¹⁹³ David Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 Pac. McGeorge Global Bus. & Dev. L.J. 3, 13 (2009)

¹⁹⁴ Christopher T. Cuniff, *The Case for the Alternative Third Year Program*, 61 ALB. L. REV. 85, 116 (1997).

¹⁹⁵ Christopher T. Cuniff, *The Case for the Alternative Third Year Program*, 61 ALB. L. REV. 85, 116-17 (1997).

¹⁹⁶ Richard Wilson, *Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education*, 10 GERMAN L.J. 823, 834 n.49 (2009).

¹⁹⁷ David Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 Pac. McGeorge Global Bus. & Dev. L.J. 3, 14 (2009) (internal quotations omitted)

¹⁹⁸ \$16,000 tuition per semester x ½ credit load x 8 students

¹⁹⁹ \$16,000 tuition per semester x 1/7 credit load x 50 students

²⁰⁰ This analysis obviously would make clinics economically more feasible in law schools where tuition rates are higher than at Washington, while presumably it would be more difficult at lower-tuition schools, such as state-run law schools. However, state-run law schools have been the first to make clinical work mandatory, indicating that perhaps there is a different cost analysis.

If cost is truly an issue, in the face of the importance that clinical education can play in training students, law schools still can maintain “economic viability” by doing what other modern business enterprises do: downsize or re-engineer. This “could involve reducing the number of law professors, increasing teaching loads, reducing sabbaticals, eliminating non-fundamental courses, and reducing the focus on social science research.”²⁰¹ Understandably, these suggestions may be controversial, but if the concern is cost then it may be more effective for law schools to cut costs in areas that do not affect student preparation to practice the profession.

Most telling of all, as to the issue of cost, is the statement made to the authors of the Carnegie Foundation Report by administrators of the City University of New York (CUNY) when asked how they could afford to provide context-based small-class environment for first-year classes when other more affluent institutions seek the economy of large classes they responded: “We cannot afford not to do it.”²⁰² Best Practices also noted that “the law schools in the United States that appear to be the most student-centered and committed to preparing students for practice have relatively modest budgets.”²⁰³ When the focus is on student results, the answer becomes obvious.

- C. Insecurity of Position, Academic Freedom Protections, and Governance Rights of Non-Tenure Track Clinical Faculty Inhibit Their Power to Influence Change**
- D. Insufficient Regulation by ABA and Move Toward Deregulation of Law Schools' Academic Environment is Not Suited for Clinical Education**
- E. ALDA Movement Toward Deregulation of Clinic Faculty**
- F. Risks That Schools Will Shift to Externships That "Outsource" Students, Rather Than Increase Clinics and Educational Solid Field Placements**

VII. Steps Toward Curricular Reform That Includes a Required Clinical Education Course for All Law Graduates (Best Practices)

A. Hire Faculty with practice experience who are excellent teachers in the clinic as well as the classroom

B. Link clinics with non-clinical courses or add clinical component to doctrinal courses, e.g. Family Law, Civil Rights, Immigration, Indian Law, Business Law, Economic Development, Domestic Violence

²⁰¹ Christopher T. Cuniff, *The Case for the Alternative Third Year Program*, 61 ALB. L. REV. 85, 113 (1997).

²⁰² David Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 Pac. McGeorge Global Bus. & Dev. L.J. 3, 14 (2009) (citing William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* 36 (Carnegie Foundation for the Advancement of Teaching ed., Jossey-Bass 2007).)

²⁰³ Best Practices, *supra*, note , at 3 n.12

C. Work on identifying community needs for legal services and use that as guidance in thinking about potential clinical experiences for students

D. Partner with other units in the University and with community legal service providers to design multi-disciplinary clinics and respond to community needs

E. Partner with local legal service providers to develop opportunities for students to have quality educational experiences in serving clients

F. Develop fundraising plans can be focused on clinic including government grants, foundations, private donations. Again addressing community needs can help with this type of development work

G. Enhance the clinical experience with practitioners in residence who have excellent practice experiences and teaching skills.

H. Include courses that prepare students for a clinical experience.

I. Start by offering a clinical opportunity for every student who desires one (note experience of Washington University and others that offer a clinic guarantee)

J. Evaluate the educational experiences of clinic students and use the results of the evaluation to improve the experiences and also justify the need to make the experience a requirement

VIII. Conclusion

“Potential clients should be able to hire any licensed lawyer with confidence that the attorney has demonstrated at least minimal competence to practice law.”²⁰⁴

“The authors of the Carnegie Foundation’s report believe that actual experience with clients is “an essential catalyst for the full development of ethical engagement,” and “there is much to suggest that ethical engagement provides a pivotal aspect in the formation of lawyers.”²⁰⁵ “We encourage law schools to follow the lead of other professional schools and transform their programs of instruction so that the entire educational experience is focused on providing opportunities to practice solving problems under supervision in an academic environment. This is the most effective and efficient way to develop professional competence.”²⁰⁶

²⁰⁴ BEST PRACTICES, *supra*, note , at 19.

²⁰⁵ BEST PRACTICES, *supra*, note , at (citing Carnegie at 198).

²⁰⁶ *Id.* at 106.

“Developing a more balanced and integrated legal education that can address more of the needs of the legal profession than the current model seems highly desirable on its merits.”²⁰⁷

²⁰⁷ BEST PRACTICES, *supra*, note , at 211 (citing Carnegie at 261).