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The Socratic Method

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Chapter 5

IMPLEMENTING EFFECTIVE EDUCATION IN SPECIFIC CONTEXTS

A. THE SOCRATIC METHOD

By Elizabeth G. Porter¹

1. Introduction

The Socratic method, one of Langdell's most well-entrenched reforms to legal education, remains the law's signature pedagogical technique.² Although the term means different things to different people, its essence in the law school classroom is student analysis of cases led by a teacher, who calls on students to articulate gradually deeper understandings of a legal doctrine or theory.³ Socratic learning requires students to think on the spot, answer precisely, and take intellectual risks. For over a decade now, the Socratic method has been out of fashion among those who write about legal pedagogy.⁴ In addition, the method's critics describe what they view as the alienation and humiliation of students, an inattention to legal theory and professionalism, and a lack of clear learning outcomes.⁵ Indeed, both BEST PRACTICES FOR LEGAL EDUCATION and EDUCATING LAWYERS criticized or downplayed the value of the

¹ Readers for this section were Phyllis Goldfarb and David Herring.

² See Bruce A. Kimball & Blake Brown, "The Highest Ability in the Nation": Langdell on Wall Street, 1855-1870, 29 LAW & SOC. INQUIRY 39 (2004) (characterizing Langdell as "arguably the most influential figure in the history of legal education in the United States" and describing his many legal reforms, including "the admission requirement of a bachelor's degree, the graded and sequential curriculum, the hurdle of annual examinations for continuation and graduation, the independent career track for faculty members, the transformation of the library . . . into a scholarly resource, and the inductive pedagogy of teaching from cases"); see also WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 47 (2007) (describing case dialogue method as law's "signature pedagogy" and noting that "[t]he legal case method, in all its variations, has dominated the first year of most legal education through much of the past century") [hereinafter CARNEGIE REPORT]; Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 28 (1996) (summarizing survey finding that at least 98% of law teachers use the Socratic method in their first year classes) [hereinafter Friedland, *How We Teach*].

³ See ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) [hereinafter BEST PRACTICES], text at note 623 (quoting Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249, 261-64 (1997)).

⁴ See, e.g., Judith Welch Wegner, *Reframing Legal Education's "Wicked Problems,"* 61 RUTGERS L. REV. 867, 882 (2009) (observing that "the 'Socratic method' has been cast as a 'bête noir' within legal education").

⁵ See, e.g., BEST PRACTICES, text at note 630.

Socratic method. BEST PRACTICES concluded that the Socratic method should be “used sparingly.”⁶

These critiques undervalue the Socratic method. As the CARNEGIE REPORT acknowledged, the Socratic method is an easily scalable, effective, deeply engaging way to achieve active student learning, particularly but not only in larger doctrinal classes.⁷ Similarly, BEST PRACTICES recognized that “[t]ailored and applied flexibly, the case method . . . can provide a logical, overall methodology for approaching and thinking about all sorts of situations.”⁸ Those positive findings remain true. The Socratic method gives students a strong incentive to prepare well for class every day, and during class it forces both students and the teacher to focus intensely, to listen to others, and to express their ideas in a cogent, persuasive, and professional manner. These qualities — thorough preparation, focus, listening skills, cogent analysis, and good judgment — are fundamental to successful lawyering. Finally, contrary to its reputation, the Socratic method is also a wonderful way to create a sense of community and shared learning purpose among students, even in a large class.

These attributes of Socratic teaching look even stronger in comparison with the most commonly used alternative — lectures, perhaps punctuated by text-heavy PowerPoint slides.⁹ Indeed, while the method has fallen from favor in law schools, cutting-edge colleges are now seeking to expand Socratic-type interactive teaching in order to raise the level of engagement among students.¹⁰ In recognition of the continuing centrality and vitality of the Socratic method, this section therefore focuses on best practices for optimizing the effectiveness of this active learning style.

The basics of the Socratic method are well described elsewhere (and will have been experienced by almost all readers of this volume).¹¹ Therefore, this section will not describe the methodology in detail. Instead, it will situate the Socratic method within a framework describing the level of active learning of the most frequently used pedagogical techniques in the non-clinical law school classroom. Then it will focus on three fundamental tools for creating and maintaining a successful course that uses the Socratic method for active learning.

⁶ *Id.* at 206.

⁷ CARNEGIE REPORT at 74-75 (finding that “[t]he case-dialogue method is a potent form of learning-by-doing. . . . It encourages, at least for skillful teachers, the use of all the basic features of cognitive apprenticeship. It seems well suited to train students in the analytical thinking required for success in law school and legal practice.”).

⁸ BEST PRACTICES, text at note 626.

⁹ *See, e.g.*, Friedland, *How We Teach*, at 29 (stating that 419 out of 445 survey respondents lecture at some point during upper-level courses, and sixteen percent “used lecture most of the time in upper-level courses”).

¹⁰ *See* Graeme Wood, *The Future of College?*, THE ATLANTIC (Aug. 13, 2014), <http://www.theatlantic.com/features/archive/2014/08/the-future-of-college/375071>, *archived at* <http://perma.cc/4QD6-HDKV> (describing participating in a sample class for the new online-based college, the Minerva Project, where the teacher “led the class like a benevolent dictator,” subjecting students to pop-quizzes and cold calls — “a continuous period of forced engagement”); *see also* Scott Freeman et al., *Active Learning Increases Student Performance in Science, Engineering, and Mathematics*, Proceedings of the National Academy of Sciences, June 10, 2014 (meta-analysis of over 200 studies of active learning finding an average 6% gain in student performance in undergraduate STEM courses using forms of active learning in comparison with straight lecture).

¹¹ *See, e.g.*, BEST PRACTICES, text at notes 622-651.

2. The Socratic Method and Active Learning: Rates of Perceived (Mental) Exertion

Participants in physical activity are often asked to assess their activities according to a scale that rates perceived physical exertion (the “RPE scale”).¹² The scales vary — some are from 1-10, some from 1-20, etc. — but the principle remains the same: At the lower end of the scale, participants are not exerting themselves very much; in the middle ranges they are pushing themselves and making fitness improvements; and at the very top of the scale, participants are working to the point of immediate exhaustion.¹³ Although the RPE scale is subjective, it nevertheless provides a simple but relatively accurate measure of the effort of an exercise participant to optimize performance goals without overdoing it. This rating system can be adapted to allow instructors to easily assess the level of active learning in their law school classroom. For simplicity, this discussion uses a 1-4 scale to measure students’ Rate of Perceived (Mental) Exertion.

a. Passive Learning — Lecture

A rating of 1 on the RPE scale indicates minimal exertion. Physically, this would correspond to sitting passively in a chair or walking a short distance very slowly. In the law school classroom the “1” is a lecture, combined with passive absorption of Power Point slides. In courses where students are only expected to participate on certain days — the so-called “panel” participation or “expert” system — students who are not on that day’s panel may be exerting themselves only at a level 1. In the modern law school classroom, students who are asked to push themselves only to level 1 may opt instead to check email or shop for shoes. They will defer studying until before exams, using their time to prepare for courses where a thorough knowledge of the material will matter the next day.

b. Moderate Learning — Soft Socratic/Partial Lecture

A rating of 2 indicates some mental exertion — a moderate challenge. Physically, this might involve brisk walking or a very light jog, during which the participant could still carry on an easy conversation. In the law school classroom, a level 2 corresponds to a soft Socratic environment, where occasionally the teacher calls on students but typically she takes volunteers, and where the stakes to answering correctly are perceived by students as relatively low. Another example of Level 2 is what may be termed a “false Socratic” class, where the teacher uses the Socratic method to elicit the facts of the case but then has a pattern of lecturing on the significance of the facts

¹² In the context of physical activity, the perceived exertion scale was first described by Gunnar Borg, and is sometimes referred to as the “Borg Scale.” See generally GUNNAR BORG, BORG’S PERCEIVED EXERTION AND PAIN SCALES (1998).

¹³ See, e.g., Perceived Exertion (Borg Rating of Perceived Exertion Scale), CENTERS FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/physicalactivity/everyone/measuring/exertion.html>, archived at <http://perma.cc/AZ3K-GKJV> (describing a scale from 6-20, where 6 is “no exertion at all” and 20 is “maximal exertion”); Rated Perceived Exertion (RPE) Scale, CLEVELAND CLINIC, <http://my.clevelandclinic.org/heart/prevention/exercise/rpe-scale.aspx>, archived at <http://perma.cc/DZ8A-XRPV> (using a 0-10 scale, with 0 being “nothing at all,” 7 being “very heavy,” and 10 “very, very heavy”).

to the holding of the case and the broader legal doctrine. In this type of class, focused students who are fearlessly enjoying law school may learn extremely well, but students who are unenthusiastic or apprehensive about course material, or are unable to resist the lure of the Internet, may stop engaging during class and lose many of the benefits of active classroom learning.

c. Active Learning — The Socratic Method

The heartland of the Socratic method is level 3. In the realm of physical exertion, level 3 involves strenuous and uncomfortable exercise, such as a fast jog or heavy weight lifting, to the point where participants tire quickly and cannot maintain a conversation. Physically this level of exertion is uncomfortable, but it will pay off with enhanced fitness and — more immediately — with endorphins. Analogously, in a successful Socratic course the vast majority of students will spend a significant portion of each class thinking and processing information at this intense, slightly overwhelming, level. At the end of class they will feel a well-earned sense of accomplishment. Explaining the active Socratic method to students in advance can help ensure that the stress created by this rapid learning pace remains manageable and consistent with the goal of humanizing legal education.¹⁴ Other forms of Level 3 learning include writing exercises or group work that involves creation of a deliverable, such as a document or a presentation.

d. The Sprint — Exams

The top of the RPE scale is for very hard exercise that can only be sustained for a short time — performance that causes severe stress and discomfort. In the educational realm, this is the equivalent of an exam, which involves a high degree of stress. Students cannot successfully maintain this level of learning on a daily basis in class. However, occasional “sprint” moments, such as timed in-class writing assignments or practice exams, can be powerful learning tools.

3. Achieving Level 3: The Successful Socratic Class

This section focuses on three primary ways to optimize the Socratic method in order to achieve the most productive learning — and the most satisfied students. The goal is to maintain students at a level three on the RPE scale, without either slowing down to the pace of a lecture or — more unusually — pressing students to the point where they feel the tension associated with an exam. The essential ingredients to maintaining this balance are organization, respect, and high expectations.

a. Establish and Maintain a Classroom Community

Many of the criticisms of the Socratic method center on the concept of the teacher as a disdainful figure who lords his superior knowledge over students.¹⁵ Indeed, BEST PRACTICES lists as a best practice, “Do not intentionally humiliate or embarrass

¹⁴ See Chapter 4, Section B, Subsection 1, *Humanizing the Delivery of Legal Education*, above.

¹⁵ See, e.g., Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a*

students” — a remarkably low bar that demonstrates the deep skepticism that many scholars of legal pedagogy have of the Socratic method.¹⁶ In practice, most law school instructors care about student evaluations and, therefore, have more than ample incentive to avoid disrespecting students.¹⁷ But even if a few instructors are disrespectful, the principle of refraining from intentional harm is unhelpful to most teachers as a best practice. A vast divide exists between not humiliating students and creating an exhilarating classroom environment using the Socratic method. The easiest way to bridge that gap is to consciously create a sense of camaraderie and respect among the students and between the students and the teacher. While fostering a sense of community will likely enhance all forms of learning — just as humiliating students is likely to ruin most classes — it is particularly helpful to Socratic classes, where the key to learning is getting students to trust that their own contributions as well as those of their peers — and not only the words of their teacher — are significant and helpful. A successful Socratic community is collegial and risk-taking.

There are three key requirements for creating such a community. The first is a high level of organization and class management by the teacher (discussed in more detail in Section b, below). The students should have a clear sense — from the syllabus, from the teacher’s explanation, and from the class itself — of the teacher’s expectations of students and the benefits that will accrue from enthusiastic participation in a course. Each class should reinforce those expectations and demonstrate those benefits. If a class’s ostensibly Socratic format declines into mostly lectures, students will lower their preparation for class accordingly; if the only learning goal is “coverage,” student motivation will wane. Similarly, if the teacher allows certain students to derail a class by repeatedly asking tangential questions — a sign that the teacher lacks clear goals for the lesson — students will lessen their commitment. Behind many failed Socratic classes lies inadequate organization. At the same time, too much organization will kill the spontaneity of the class. Classroom discussion “should be collaborative and open-ended, alive with serendipity and the energy of imminent discovery — a model . . . of how to think *together*.”¹⁸

Culture of Competition and Conformity, 60 VAND. L. REV. 515, 520 (2007) (describing “the primary way students learn — in class through questioning by professors in the presence of peers, when students perceive they have either won or lost the interaction”); DEBORAH RHODE, IN THE INTEREST OF JUSTICE 197 (2000) (“Under conventional Socratic approaches, the professor controls the dialogue, invites the student to ‘guess what I’m thinking,’ and then inevitably finds the response lacking. The result is a climate in which ‘never is heard an encouraging word and . . . thoughts remain cloudy all day.’”).

¹⁶ As one commentator has noted, however, “much of the harm attributed to Socratic dialogue is misguided and is in fact a critique of bad teaching technique rather than any flaw intrinsic in Socratic dialogue.” Gary Shaw, *A Heretical View of Teaching: A Contrarian Looks at Teaching, the Carnegie Report, and Best Practices*, 28 TOURO L. REV. 1239, 1242 (2012) [hereinafter Shaw, *Heretical View*].

¹⁷ This is not to say that student evaluations are unimpeachable measures of teaching quality. See, e.g., Maria Pabon Lopez & Kevin R. Johnson, *Presumed Incompetent: Important Lessons for University Leaders on the Professional Lives of Women Faculty of Color*, 29 BERKELEY J. GENDER L. & JUST. 388, 390 (2014) (arguing that “[b]lind reliance on student teaching evaluations will have disparate impacts on faculty of color and women”).

¹⁸ See WILLIAM DERESIEWICZ, EXCELLENT SHEEP: THE MISEDUCATION OF THE AMERICAN ELITE AND THE WAY TO A MEANINGFUL LIFE 176 (2014).

The second key to community formation is — ironically — seeing students as individuals. This does not require a heart-to-heart with each student outside of class, nor does it require inviting students over for a gourmet dinner. It simply requires teaching in a way that shows awareness that students have complex identities — that while they might be novices at law, they have other life experiences and knowledge that can be enormously valuable to a class discussion and to legal practice. One way to quickly begin this process is to learn students' names immediately, and to find out a bit about their background, legal interests, and their passions outside of the law, and incorporate that knowledge into the questioning.¹⁹ If a case takes place in Nebraska, call on the Nebraskan. Ask hunting enthusiasts about hunting, and journalists about the newspaper case. Usually it's not a question of expertise; it's just a message to students that the teacher knows them and respects their insights and experiences.

Getting to know students takes much less time than it might seem, even in large classes, but it does require a genuine commitment to mentoring, and mentors will create relationships with students that extend beyond the classroom and even beyond law school. Meanwhile, inside the classroom, a focus on students as individuals can also help teachers to work with the few students who are most reluctant to participate in class. Similarly, the strong focus on collegiality can preempt personal conflicts that might otherwise arise between students during discussion of controversial topics.

The final ingredient for a successful class is the teacher's full presence during class. If the teacher is honestly enjoying the class (which is difficult to do without thorough preparation), the students will, too.

The benefits that flow from a happy and functioning Socratic community are more than worth the time and effort required to create it. Within the safety of such an environment, almost all students will be willing to speak out not only to answer factual questions, but also to risk analyzing difficult or controversial hypotheticals. To be sure, many students will remain nervous when called on, but they will emerge from those difficult moments with a sense of accomplishment (even, ironically, if they give an incorrect answer). In a highly functioning classroom community, professionalism will be an integral aspect of the learning process: Students will be respectful of each other and of the teacher — listening, declining to monopolize, and engaging respectfully in disagreement.

b. Choreograph the Class

In order to keep students learning at a rapid and slightly uncomfortable pace (an RPE of 3 for as much of each class as is reasonably possible) — and to overcome natural resistance to this intensity — Socratic classes require tight choreography. The term choreography conveys preparation of content, theme, and structure. A traditional criticism of the Socratic method is that students will be intimidated to the point that they will be unable to process basic information about a subject, never mind advanced

¹⁹ See BEST PRACTICES, text at note 657 (quoting GERALD F. HESS & STEVEN I. FRIEDLAND, TECHNIQUES FOR TEACHING LAW 199 (1999) for the proposition that “the single most important step that a teacher can take to improve the classroom environment is to learn students' names”).

concepts.²⁰ Feminists have argued that women in particular suffer from such alienation.²¹ In much contemporary use of the Socratic method, the real danger lies in the other direction. If teachers have only superficially organized their classes — for example, by skimming the cases or re-reading their lecture notes from past years but not taking the time to establish detailed learning goals or compile relevant hypotheticals — the Socratic dialogue peters out after a few moments, dissolving into lecture (on the one hand) or spinning off into untethered discussion (on the other). The myth of the Socratic method is terror; the true danger is tedium.

To maintain a high learning pace using the Socratic method alone or in combination with other pedagogical techniques, it is helpful to map out classes with a fairly high degree of specificity, while allowing room for variation based on what emerges during class. The teacher should prepare more hypotheticals than will be used, so that if one does not seem effective, it is easy to move on. For all but the most seasoned teachers, formality also helps. Set a warm but no-nonsense tone: this is a separate space dedicated to intense focus on clear and relevant goals. Each person will have her own preference as to design, but as an example, a 110-minute class might follow this approximate pattern:

Warm-up, at RPE 1-2: Review “top 5” concepts from the previous class (10-15 min.). This review may be a straightforward summary using Power Point, it may involve small group exercises (for example, students may spend 5-10 min. on a joinder problem), or it may be a Socratic review using hypotheticals. A short written quiz is even more effective. The warm-up provides both students and the teacher an easy way to assess whether students have been following the material. It’s also helpful to reach back several days or weeks into the material, to reinforce earlier learning and to help forge connections between what students might otherwise view as discrete, unrelated topics.

Setting the goal(s), at RPE 2 (5 min.): Call on students to identify primary learning goals for the day’s class. Try to get the students to describe the essence of the material they read for that class in general terms but with a fair degree of specificity — e.g., not simply “supplemental jurisdiction” but “the way that § 1367(b) affects joinder of supplemental claims in diversity suits.” Where feasible, ask the students to connect this theme to the “Top 5” of the previous class.

Learning the concept, at RPE 3 (60 min., not including a 10-min. break): Use Socratic method to analyze new course material. Where appropriate, use PowerPoint or a whiteboard for visual supplements — diagrams, images, etc., that will assist students in understanding each case. Test learning with simple (one-step) hypotheticals. Use PowerPoint slides for hypotheticals, providing a

²⁰ See BEST PRACTICES, text at note 630.

²¹ See Carrie Menkel-Meadow, *Women’s Ways of Knowing Law: Feminist Legal Epistemology, Pedagogy, and Jurisprudence*, in NANCY GOLDBERGER ET AL., KNOWLEDGE, DIFFERENCE, AND POWER: ESSAYS INSPIRED BY WOMEN’S WAYS OF KNOWING 57 (1996) (discussing alienation in traditional large Socratic classrooms and offering insights about pedagogical approaches with insights from feminist theory). A focus on community and mentorship rather than hierarchy in Socratic classes should alleviate many of these concerns.

minute of reading and thought before asking for student responses. For example, if the material teaches battery, ask a series of hypotheticals aimed at uncovering the basic elements of a battery claim. Then use two-step hypotheticals to get students to understand more complex issues, such as transferred intent, the purposes of compensating battery victims in tort, or the relationship between battery and assault.

Advanced practice (RPE 2-3) (remaining time, up to 20 min.): Time permitting, finish the class with a series of more complex hypotheticals — ideally hypotheticals that bring out two or more issues from that day and/or from previous classes (RPE 3). Just as with the warm-up, use questions on current material to reinforce past material, or ask some questions that focus solely on past material. Other options: individual writing exercises (RPE 3), or small group discussion of a problem (RPE 2).²²

Conclusion (1 min.) (RPE 1): Conclude by reiterating the major themes of the class (connecting them, if possible, to insightful student comments) and briefly stating how they relate to the next class.

Note, however, that both the substance and the structure of classes can and should change over time, as students become more advanced, and thus, more quickly able to enter a legal discussion at a deeper level. Notwithstanding the doctrinal nature of the examples, the Socratic method can be effective in addressing the social, political, and access to justice context of cases or other material. The call-and-response nature of this pedagogy is flexible with regard to content. Regardless of content, classes should be organized to keep students learning at a fast — indeed, slightly uncomfortable — pace. As one commentator explains in his recent defense of the Socratic method:

What is crucial to realize is that as students master the skills, good faculty continue to push them to new limits. The depth to which one explores a case with first week law students, as well as the emphasis the teacher puts on various aspects of the case, must inevitably differ from the depth and emphasis that the teacher concentrates on later in the semester, as well as the progression through the entire first year. As students' mastery of legal analysis improves, faculty start reaching for more complex analyses of the law as well as introducing new skill sets. To characterize the Socratic dialogue as repeatedly leading students through a highly routinized set of analytical rules and distinctions either describes a poor teacher or misdescribes the process of learning that takes place under Socratic Method. Not only is there nothing in

²² The results of some small scale empirical studies suggest that integrating writing exercises into traditional first year classes may enhance the learning of analytical skills. See David J. Herring & Collin Lynch, *Teaching Skills of Legal Analysis: Does the Emperor Have Any Clothes?*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 85 (2012); David J. Herring & Collin Lynch, *Enhancing Traditional Law Teaching to Produce Measurable Gains*, 19 LEGAL WRITING: J. LEGAL WRITING INST. (forthcoming) (U. of Pittsburgh Legal Studies Research Paper No. 2012-16, 2012), available at <http://ssrn.com/abstract=2084345>, archived at <http://perma.cc/L573-8X2S>; David J. Herring & Collin Lynch, *Measuring Law Student Learning Outcomes: 2013 Lawyering Course* (January 23, 2014) (UNM School of Law Research Paper No. 2014-09), available at SSRN: <http://ssrn.com/abstract=2387855>, archived at <http://perma.cc/Z69Y-JXMG> or <http://dx.doi.org/10.2139/ssrn.2387855>, archived at <http://perma.cc/4QK2-978C>.

the Socratic dialogue that requires routinization, the need for thoughtful faculty to monitor and recognize their students' progress precludes such a routinization.²³

c. Involve all Students

Some skeptics of the Socratic method express concern that students other than the poor victim being called on by the teacher will be sitting passively, bathed in relief at having escaped notice, and not listening to the contribution of their classmates.²⁴ But that problem is easily solved by involving many people in each dialogue, as Langdell himself appears to have done.²⁵ In fact, one of the great advantages of a Socratic class is regular and universal (or near-universal) participation.

To involve as many students as possible, try calling on two students together. For example, ask one student to state the facts from the plaintiff's viewpoint, and another to state them from the viewpoint of the defendant. Perhaps a different student can be the judge. Ask someone else to represent the viewpoint of the physician witness. When students are prepared, many cases can become instant role-plays within the broad confines of Socratic questioning, and students gain a lot from having to answer from a point of view other than the one with which they first identify. For very complex cases, or those with significant embedded cases, call on multiple students and allow them to consult briefly if necessary on key points. Consistently ask students to respond to each other's comments. When a student is imperfectly prepared or seems overly flustered, move on to others. But if a student merely gives an incorrect response, but seems prepared, think out loud with the student or ask others to give the student a hint to clarify the answer. Or even let the student "ask the audience," in the style of *Who Wants to Be a Millionaire*. A helpful goal is to get more than half the class to participate on a given day.

Two final notes. First, many law schools now podcast their courses, and not all classroom microphones pick up student comments. If the course truly depends on student input, this is a big disadvantage for those who wish to review the podcast. It can be fixed by the somewhat awkward device of repeating important student questions or comments. Second, it is important to use the Socratic class to give real and valuable feedback to students about the wisdom of their responses. Be positive and encouraging, but honest. Sometimes there are many right answers — but not always. If students do not feel that they can use class time to discern better answers from worse ones — if anything goes — they will lose faith in the integrity of the process.

²³ Shaw, *Heretical View*, at 1262.

²⁴ See Paul L. Caron & Rafael Gely, *Taking Back the Law School Classroom: Using Technology to Foster Active Student Learning*, J. LEGAL EDUC. 551, 554-55 (2004) ("Under the Socratic method, the typical classroom interaction is a one-on-one dialog between the teacher and one student. Except for the student who happens to be sitting on the hot seat, no one else actively participates in the dialog.").

²⁵ See BEST PRACTICES, text at note 623 (quoting Langdell calling on one student, and then asking another student to agree or disagree with the first student's response).

4. Conclusion

Law schools are in an era of pedagogical reform. As one scholar has noted, “[h]ere we are, at the beginning of the twenty-first century, using a model of legal education that was developed in the latter part of the nineteenth.”²⁶ The two volumes of *BEST PRACTICES* are an attempt to bring legal pedagogy into the twenty-first century, recognizing the huge transformations in our legal structures and in the tasks that lawyers are required to perform. Pedagogical diversity serves important values. Yet law teachers should not be too quick to sideline the Socratic method, which has proven resilient and can be adapted to achieve a range of learning goals. And the most common alternative to the Socratic classroom — lecture — does not develop the skills law students today need. In tandem with other forms of now-mainstream law school learning, including the common forms of experiential courses — theory and practice simulation skills courses, clinics, and externships — the Socratic method remains a valuable element of the law teacher’s toolbox.

²⁶ Edward Rubin, *What’s Wrong With Langdell’s Method, and What To Do About It*, 60 *VAND. L. REV.* 609, 610 (2007).

B. ANALYSIS, RESEARCH, AND COMMUNICATION IN SKILLS-FOCUSED COURSES

By Ruth Anne Robbins, Amy Sloan & Kristen K. Tiscione¹

1. Introduction

Since the *CARNEGIE REPORT* and *BEST PRACTICES FOR LEGAL EDUCATION* were published, a new focus has emerged on building students' traditional foundational skills through increased opportunities for experiential education, including legal research and writing instruction.² In recommending that apprenticeships in intellectual development, practical skills, and professional identity and purpose be integrated in legal education,³ the *CARNEGIE REPORT* recognized that legal writing courses are particularly well-suited to teaching the first two apprenticeships.⁴

In recent years, scholars have explored how skills-focused courses such as first-year legal analysis, research, and writing develop the third apprenticeship as well, that of professional identity and purpose.⁵ Although the *CARNEGIE REPORT* explored legal writing pedagogy in some detail,⁶ *BEST PRACTICES* devoted little attention to how foundational analytical, research, and writing skills are or should be taught with specificity.⁷ That gap provided the impetus for more extended treatment here. This section identifies some "better practices" being used and urges adoption of best practices.

In skills-focused courses, legal analysis, research, and writing should be taught as a fluid and recursive process in a client-centered context, giving students the

¹ Readers for this section were Linda L. Berger, Charles R. Calleros, Kenneth D. Chestek, Linda H. Edwards, Ellie Margolis, Carol McCrehan Parker, Louis R. Sirico, and Michael R. Smith.

² The *Glossary for Experiential Legal Education* developed by the Alliance for Experiential Learning in Law includes in its definition of experiential education clinics, externships, co-ops, internships, labs, practicum courses, modules in doctrinal courses, and simulation or skills-focused courses (including legal research and writing courses). Cynthia F. Adcock, et al., Working Grp. On Vocabulary, Alliance for Experiential Learning in Law, *A Glossary for Experiential Education in Law Schools, in Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 *ELON L. REV.* ___, Part II __ (forthcoming 2015). The Alliance was founded in 2011 at Northeastern University School of Law to develop a shared vision and vocabulary of experiential education in law. The Alliance includes almost 100 law schools and has organized two national conferences. See www.northeastern.edu/law/experience/leadership/alliance.html.

³ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW* 13 (2007) [hereinafter *CARNEGIE REPORT*] ("We propose an integration of student learning of theoretical and practical legal knowledge and professional identity").

⁴ *Id.* at 110.

⁵ See, e.g., Shelley Kierstead & Erika Abner, *Text Work as Identity Work for Legal Writers: How Writing Texts Contribute to the Construction of a Professional Identity*, 9 *LEGAL COMM. & RHETORIC: JALWD* 327 (2012); Carole Silver, Amy Garver & Lindsay Watkins, *Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement*, 17 *LEGAL WRITING* 373 (2011).

⁶ *THE CARNEGIE REPORT*, at 104-11.

⁷ ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007) [hereinafter *BEST PRACTICES*], text at notes 145-220 (2007).

opportunity to write, reflect, and revise. To build and retain fundamental skills, law students should have at least one significant writing experience each semester of law school.⁸ It could be practice-related or “instrumental” writing, “writing to learn” exercises,⁹ or other forms. Although the ABA requires two rigorous writing courses in the J.D. curriculum,¹⁰ many schools require that only one be practice-related.¹¹ Some schools have addressed the inadequacy of the ABA requirements by expanding their legal writing programs from two to three or four semesters.¹²

The best practice is also to offer or require advanced, upper-level courses in analysis, research, and writing. For maximum effectiveness, all foundational writing, research, and analysis courses taught in the first year should be taught in small classes by full-time law teachers with practice experience and equal status.¹³ A true integration of theory and practice in legal education, as envisioned by the CARNEGIE REPORT, cannot occur until research and writing are taught across the curriculum and all law teachers are treated equally.

2. Innovations in Teaching Analysis and Synthesis Effectively

Legal analysis is a process. To describe it only as “thinking like a lawyer” can lead students to believe that legal analysis is nothing more than rules of law and syllogistic reasoning. In practice, legal analysis includes a duty to focus on the client as well as the law, its structure, and interpretive tools. In an experiential course, legal analysis begins with an understanding of the client’s problem or question and desired outcome,

⁸ See, e.g., Sherri Lee Keene, *One Small Step for Legal Writing, One Giant Leap for Legal Education: Making the Case for More Writing Opportunities in the “Practice-Ready” Law School Curriculum*, 65 MERCER L. REV. 1 (2013) [hereinafter Keene, *One Small Step*]; Carol McCrehan Parker, *Writing Throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 NEB. L. REV. 561, 563 (1997) [hereinafter Parker, *Writing Throughout*]; Kristen K. Tiscione, *A Writing Revolution: Using Legal Writing’s “Hobble” to Solve Legal Education’s Problem*, 42 CAP. U. L. REV. 143 (2014) [hereinafter Tiscione, *Writing Revolution*].

⁹ Such exercises call on students to use writing “to explore the nuances of law and fact and reflect on the social policies underlying legal issues.” Parker, *Writing Throughout*, at 562.

¹⁰ ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. 2014-15 Standard 303(a)(2) (2014), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf, archived at <http://perma.cc/V25F-AJBN>.

¹¹ The top law schools according to U.S. NEWS AND WORLD REPORT, for example, have an upper class writing requirement of roughly thirty pages that can be exclusively scholarly writing. See Tiscione, *Writing Revolution*, at 150; ALWD/LEGAL WRITING INST., REPORT OF THE ANNUAL LEGAL WRITING SURVEY 27 (2014) [hereinafter 2014 SURVEY], available at <http://www.lwionline.org/surveys.html>, archived at <http://perma.cc/3DXQ-SCRT>. See also Harriet N. Katz, *Fulfilling “Skills” and “Writing” Requirements in Externship*, 21 CLINICAL L. REV. 53 (2014) (advocating that law schools embrace externship writing as one of the ways students can have a practice-focused rigorous writing experience).

¹² Seattle University School of Law, for example, requires three semesters of legal research and writing, and The John Marshall Law School requires four, one of which must be a drafting course. See John Marshall Law Sch., *Lawyering Skills Program*, <http://www.jmls.edu/academics/lawyering-skills/>, archived at <http://perma.cc/S6MX-FUXQ>; see also *A Third Semester of Legal Writing*, SECOND DRAFT (Legal Writing Inst.), May 2002, available at <http://www.lwionline.org/publications/seconddraft/may02.pdf>, archived at <http://perma.cc/YME6-3VZ4>.

¹³ SOURCEBOOK ON LEGAL WRITING PROGRAMS 87-98 (Eric B. Easton ed., 2006) [hereinafter SOURCEBOOK ON LEGAL WRITING PROGRAMS].

whether that outcome is achievable or otherwise. To understand the resulting legal issues, a lawyer then identifies, locates, and engages in a close reading¹⁴ of the legal and non-legal sources that will help construct the best answer for the client (or the most persuasive argument about the best answer).

Legal analysis merges the relevant legal rules with the determinative facts — or arguably determinative facts — of the client’s situation. It is normally organized based on the applicable rules of law and their own internal organization. The easiest rules to structure are those based on elements that may be conjunctive (this **and** that) or disjunctive (this **or** that), or both. Rules might also be aggregative (a flexible standard, such as reasonableness, that requires the balancing of different relevant factors), or they might use a combination of these structures. Most rules use a combination, as it is the rare element test that does not also require some factor balancing to help define or parse the nuances of key terms.

a. Use Writing to Teach Analytical Skills in Doctrinally-Focused and Skills-Focused Courses

Writing and learning activities work well in both doctrinally-focused and skills-focused courses; they improve class discussion, give the teacher a sense of the students’ understanding of the material, and help students prepare to write final exams.¹⁵ At this point, it is clear that a best practice is to use writing and learning activities to teach analytical skills.¹⁶

In legal writing courses, writing assignments should expose students to a variety of documents — litigation and transactional — typically used in law practice. And, because law students often practice statutory or regulatory interpretation for the first time in a legal writing classroom, those practice documents should introduce the basic structure of statutes, the standard tools for interpreting them, and the inherent ambiguity of language.¹⁷ Sources of law; state and federal judicial structures; and the concepts of precedent, *stare decisis*, and mandatory and persuasive authority should also be taught so students can synthesize cases from a given jurisdiction, articulate specific and reasonable rules of law, and effectively apply those rules to the facts of a client’s problem or question.

¹⁴ For teaching critical reading skills, see Leah M. Christensen, *Show Me, Don’t Tell Me! Teaching Case Analysis by “Thinking Aloud,”* 15 PERSP. 142 (2007), available at <http://info.legalsolutions.thomsonreuters.com/pdf/perspec/2007-winter/2007-winter-7.pdf>, archived at <http://perma.cc/UK83-6D4E>; RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* (2005).

¹⁵ See, e.g., Parker, *Writing Throughout*, at 577.

¹⁶ Interactive learning activities that incorporate writing include “think-pair-share” exercises, concept mapping, collaborative learning groups, case studies, asking students to summarize a lecture and then read a few summaries aloud, and asking students to bring a chart with the elements and key facts of a group of related cases to synthesize a rule in class. See, e.g., Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NE. UNIV. L.J. 87 (2013).

¹⁷ See, e.g., WILLIAM N. ESKRIDGE JR., PHILIP P. FRICKEY & ELIZABETH GARRETT, *LEGISLATION AND STATUTORY INTERPRETATION* (West 2000); Karl Llewellyn, *Remarks on the Theory of Appellate Decisions and the Rules or Canons about How Statutes Are to Be Construed*, 3 VAND. L. REV. 395 (1950).

b. Combine Theory and Practice in Teaching All Forms of Legal Reasoning

Legal analysis draws on multiple forms of reasoning. In doctrinally-focused courses, the analytical process tends to be deconstructive. To construct good legal reasoning, students should learn the theory and structure of legal reasoning in both doctrinally-focused and skills-focused courses. Understandably, students crave samples of good legal analysis, which they often strive to imitate. Samples demonstrate organizational approaches and encourage students to identify for themselves useful techniques.¹⁸ Used alone, samples can stifle learning and inhibit creativity. If students are familiar with the theory behind legal reasoning, they are more likely to transfer their newly acquired skills from one situation to the next.

These are the major forms of legal reasoning that law students should learn about in the first year:

Rule-Based Reasoning —

Induction — Induction moves from the specific to the general — accumulating a series of specific observations to form a general rule. The process resembles what we think of as the scientific method. Induction is used to synthesize rules of law in a given jurisdiction.¹⁹

Deduction — Because the law is composed of a set of rules, deduction is the sine qua non of legal analysis. It moves from the general to the specific — applying general rules of law to the client's problem to predict or argue for a specific outcome. Deductive reasoning in the law is modeled on the categorical syllogism — composed of a major premise, a minor premise, and a conclusion — where the rule of law represents the major premise, and the facts of the case represent the minor premise.²⁰ Unlike in formal logic, the premises and conclusion in legal reasoning are rarely indisputably true. However, if the premises are reasonable and the logic valid, the conclusion will have the same persuasive force as that in a categorical syllogism. Various acronyms have been created to help students construct sound deductive structures in their legal writing.²¹ Without more, these acronyms can lead students to believe effective

¹⁸ See, e.g., Patricia Grande Montana, *Meeting Students' Demand for Models of Good Legal Writing*, 18 PERSP. 154 (2010); Terrill Pollman, *The Sincerest Form of Flattery: Examples and Model-Based Learning in the Law School Classroom*, 64 J. LEGAL EDUC. 298 (2014); Judith B. Tracy, "I See and I Remember; I Do and Understand": *Teaching Fundamental Structure in Legal Writing through the Use of Samples*, 21 TOURO L. REV. 297, 307-08 (2005).

¹⁹ See, e.g., RUGGERO J. ALDISERT, LOGIC FOR LAWYERS: A GUIDE TO CLEAR LEGAL THINKING 50, 91 (3d ed. 1997) [hereinafter LOGIC FOR LAWYERS]; EDWARD P.J. CORBETT & ROBERT J. CONNORS, CLASSICAL RHETORIC FOR THE MODERN STUDENT 68 (4th ed. 1999); Jane Kent Gionfriddo, *Thinking Like A Lawyer: The Heuristics of Case Synthesis*, 40 TEX. TECH. L. REV. 1, 4-7 (2007).

²⁰ See, e.g., ALDISERT, LOGIC FOR LAWYERS, at 45, 53-88; CORBETT ET AL., CLASSICAL RHETORIC, at 48; JAMES A. GARDNER, LEGAL ARGUMENT: THE STRUCTURE AND LANGUAGE OF EFFECTIVE ADVOCACY 6 (2d ed. 2007) [hereinafter LEGAL ARGUMENT].

²¹ See, e.g., Tracy Turner, *Finding Consensus in Legal Writing Discourse Regarding Organizational*

analysis is equivalent to arranging sentences in a set order. Care must be taken to ensure students understand how deduction works and that creativity in deductive reasoning lies in forming and applying the premises, not arranging them.

Analogical Reasoning — Analogical reasoning is often considered a form of induction, where the accumulated similarities (or differences) between two situations or cases are considered sufficient to treat them similarly (or differently).²² This is the essence of *stare decisis*. Analogical reasoning often occurs at the point in deduction when a rule of law is applied to the facts. To assess its strength in legal analysis, an analogy must include sufficient information about the cited authority, including its holding, the court's reasoning, and significant facts.

Policy-Based Reasoning — Policy-based reasoning focuses on the outcome most likely to encourage desirable behavior and considers the impact of decision-making on future cases and society as a whole.²³ Policy arguments are derived from a wide range of disciplines, including sociology, economics, and political science.²⁴ Students are often introduced to these in their first persuasive writing assignment.²⁵

Narrative Reasoning — Narrative reasoning weaves the key elements of a story — setting, character, conflict, resolution, organization, and point-of-view — into legal arguments to make them more persuasive.²⁶ Story-telling expands the focus of analysis to include the client and the client's goals.²⁷

Structure: A Review and Analysis of the Use of IRAC and Its Progenies, 9 LEGAL COMM. & RHETORIC: JALWD 351 (2012).

²² See, e.g., ALDISERT, *LOGIC FOR LAWYERS*, at 51, 93; STEVEN J. BURTON, *AN INTRODUCTION TO LAW AND LEGAL REASONING* 25-40 (3d ed. 2007); CORBETT ET AL., *CLASSICAL RHETORIC*, at 104; GARDNER, *LEGAL ARGUMENT*, at 7. For exercises on teaching analogy, see Maureen J. Arrigo, *Analogization: Lost Art or Teachable Skill?* 1 PERSP. 36 (1993); Jane Kent Gionfriddo, *Using Fruit to Teach Analogy*, SECOND DRAFT (Legal Writing Inst.), Nov. 1997, at 4, available at <http://www.lwionline.org/publications/seconddraft/nov97.pdf>, archived at <http://perma.cc/LF9L-53HK>.

²³ See, e.g., Linda H. Edwards, *The Convergence of Analogical and Dialectic Imaginations in Legal Discourse*, 20 LEGAL STUD. FORUM 1, 10 (1996).

²⁴ *Id.*; see also Ellie Margolis, *Beyond Brandeis: Exploring the Uses of Non-legal Materials in Appellate Briefs*, 34 U.S.F. L. REV. 197 (2000).

²⁵ See Ellie Margolis, *Closing the Floodgates: Making Persuasive Policy Arguments in Appellate Briefs*, 62 MONT. L. REV. 59 (2001).

²⁶ See, e.g., Christy H. DeSanctis, *Narrative Reasoning and Analogy: The Untold Story*, 9 LEGAL COMM. & RHETORIC: JALWD 149 (2012).

²⁷ See, e.g., Kenneth D. Chestek, *The Plot Thickens: The Appellate Brief as Story*, 14 LEGAL WRITING 127 (2008); Brian Foley & Ruth Anne Robbins, *Fiction 101: A Primer for Lawyers on How to Use Fiction Writing Techniques to Write Persuasive Facts Sections*, 32 RUTGERS L.J. 459 (2001). Dozens of articles have been written in the sub-field of Applied Legal Storytelling. See, e.g., J. Christopher Rideout, *A Twice-Told Tale: Plausibility and Narrative Coherence in Judicial Storytelling*, 10 LEGAL COMM. & RHETORIC: JALWD 67 (2013). A more complete bibliography of Applied Legal Storytelling scholarship will be published as J. Christopher Rideout, *Applied Legal Storytelling: A Bibliography*, 12 LEG. COMM. & RHETORIC: JALWD (forthcoming 2015) and will be available on the Legal Writing Institute website at <http://lwionline.org/AppliedLegalStorytellingBibliography.html>, archived at <http://perma.cc/V4PL-BV99>.

Narrative reasoning is used primarily in persuasive writing but arguably in predictive writing as well to explain how legal rules were created and applied in past cases and to create convincing analogies.²⁸ Both narrative and policy-based reasoning may be used to challenge the rule of law (major premise) in rule-based reasoning.

Inferential Reasoning — Inferential reasoning uses legal or non-legal facts known to be accurate to reach factual or legal conclusions.²⁹ Inferences may be made at any step in a deductive or inductive chain of reasoning. For example, a rule of law may not be stated directly but may follow from cited authority, and circumstantial evidence may be used to infer a defendant’s liability or guilt.³⁰ Legal writing courses historically spend very little time expressly teaching this type of reasoning, but the best practice is to introduce it explicitly in the first-year.³¹

c. Teach Factual as Well as Legal Analysis

Like inferential reasoning, factual analysis is often neglected but should be taught explicitly.³² For example, first-year persuasive writing exercises often ask students to argue issues of “pure law,” which eliminate the client as the central focus of advocacy. A better practice is to develop factually rich client problems and simulations that teach students to recognize the dispositive or “trigger” facts in precedential cases and identify which of the client’s facts are outcome-determinative.³³ Students should be aware that their thinking may morph as they develop a deeper understanding of the legal rules and their use in analogous situations.

3. Innovation in Teaching Research and Information Literacy Effectively

Instruction in legal research has undergone a major transformation. Research was originally taught as “legal bibliography” focused on the mechanical steps involved in using various research sources.

As research instruction became more sophisticated, two different instructional approaches emerged, both organized around sources of legal information. One

²⁸ See, e.g., Christy H. DeSanctis, *Narrative Reasoning and Analogy: The Untold Story*, 9 LEGAL COMM. & RHETORIC: JALWD 149 (2012); see also Stephen Paskey, *The Law is Made of Stories: Erasing the False Dichotomy between Stories and Legal Rules*, 11 LEG. COMM. & RHETORIC: JALWD 51 (2014).

²⁹ See ALDISERT, LOGIC FOR LAWYERS, at 26; GARDNER, LEGAL ARGUMENT, at 50.

³⁰ See, e.g., Albert J. Moore, *Inferential Streams: The Articulation and Illustration of the Advocate’s Evidentiary Intuitions*, 34 UCLA L. REV. 611 (1987).

³¹ For legal writing texts that address inferential reasoning, see LINDA H. EDWARDS, LEGAL WRITING AND ANALYSIS 60 (3d ed. 2011); RICHARD K. NEUMANN, JR., & KRISTEN KONRAD TISCIONE, LEGAL REASONING AND LEGAL WRITING 136 (7th ed. 2013) [hereinafter LEGAL REASONING].

³² William Twining, *Taking Facts Seriously — Again*, 55 J. LEGAL EDUC. 360, 363 (2005).

³³ See NEUMANN, LEGAL REASONING, at 135. For a related text, see STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., ESSENTIAL LAWYERING SKILLS, INTERVIEWING, COUNSELING, NEGOTIATION AND PERSUASIVE FACT ANALYSIS (4th ed. 2011).

approach focuses on the structure of the legal system. It introduces students to sources of primary authority and methods of locating those sources and then to traditional legal secondary sources.³⁴ The other approach is process-oriented. Students learn about various sources in a sequence that mimics a typical first-year research assignment, starting with secondary sources and proceeding through various primary sources.³⁵

These approaches worked well when different types of authority were available through discrete sources. Researchers had to select a source of information as the first step in locating content (a source-driven approach).³⁶ In a print environment in which cases are published in individual reporters and statutes are published by jurisdiction in individual sets of code books, a curriculum organized around sources of information made sense. Even as electronic research became more prevalent, Westlaw, Lexis, and other providers organized their content into databases that dovetailed with the traditional print sources. As information technology changes research methods, however, pedagogical approaches to teaching research must evolve.

a. Research Instruction Must Keep Pace with Developing Research Technologies

Changes in the quantity and organization of information have made it difficult to organize research instruction around sources of information. Information is no longer a scarce resource available from a limited number of outlets. Students are now awash in ever-increasing amounts of information and must sort through content that is readily available from multiple outlets. Additionally, students can and do search for content without first selecting a source (a content-driven approach).³⁷ WestlawNext, Lexis Advance, Bloomberg Law, and the ubiquitous Google allow students to specify the content they seek before selecting a source of information.

Research instruction must be reoriented around a flexible search process that can be adapted to different types of research instead of individual sources of information.³⁸ This is not to suggest that the source of information is irrelevant. The hierarchy of authority still determines the relative weight of any particular document. But because primary authorities can be accessed in multiple ways and because students have access to a growing universe of non-traditional secondary sources, research instruction can no longer revolve primarily around sources of information.³⁹

³⁴ See, e.g., STEVEN M. BARKAN, ROY M. MERSKY & DONALD J. DUNN, *FUNDAMENTALS OF LEGAL RESEARCH* (9th ed. 2009).

³⁵ See, e.g., CHRISTINA L. KUNZ ET AL., *THE PROCESS OF LEGAL RESEARCH* (7th ed. 2008); LAUREL CURRIE OATES & ANNE ENQUIST, *JUST RESEARCH* (3d ed. 2011); MARK C. OSBECK, *IMPECCABLE RESEARCH: A CONCISE GUIDE TO MASTERING LEGAL RESEARCH SKILLS* (2010).

³⁶ AMY SLOAN, *BASIC LEGAL RESEARCH* (5th ed. 2012) (coining the term “source-driven” research process).

³⁷ *Id.* (coining the term “content-driven”).

³⁸ Ellie Margolis & Kristen E. Murray, *Say Goodbye to the Books: Information Literacy as the New Legal Research Paradigm*, 38 U. DAYTON L. REV. 117, 125 (2012) [hereinafter Margolis & Murray, *Say Goodbye*].

³⁹ As the information landscape continues to change, research instruction will continue to evolve. See,

b. Students Must Learn a Flexible Search Process

To research effectively, students must internalize a flexible process that they can adapt to different research needs. If students are instructed to follow a rigid, linear process with set beginning and ending points, they will not learn skills they can use in new settings and will likely ignore their instruction when they conduct research on their own.

Instead, students should be introduced to a thought process that will help them narrow a wide field of information to the subset of information necessary to solve a client's problem. This narrowing process involves three steps: (1) conducting pre-search analysis to focus the research process; (2) searching for information using a variety of search techniques; and (3) conducting post-search evaluation and filtering to narrow the search results according to criteria likely to identify the most useful information.

Conduct pre-search analysis — Pre-search analysis involves using the available information to limit the scope of the research. Criteria such as jurisdiction and type of authority, if known, can be used to focus the scope of a research project before searching for content. For example, if a student needs to locate a specific state statute, the scope of the research should first be limited to the relevant state's statutes. If the student knows the jurisdiction but not the type of authority, the scope of the search can be similarly limited. Effective pre-search analysis requires a student to know the hierarchy of authority and relationships among sources of information.

Search for content — After engaging in pre-search analysis, a student must search for content. Students should be familiar with the range of search techniques available on most research platforms. Many students gravitate toward word searching because that is a common way to look for information in daily life. Students should be familiar with both natural language and Boolean word search techniques. Further, although all concepts must ultimately be expressed with words, searching according to individual words in a document can retrieve too much (or too much irrelevant) content to be useful. Therefore, students need to learn not only word search techniques but also other search techniques (e.g., subject searching with index headings or headnotes).

Evaluate and filter — Once a student has located content, that content must be evaluated and filtered to target the most relevant subset of information. Again, criteria such as jurisdiction and type of authority become important. Document-specific criteria, such as key words in a document, may also be used. As the field narrows, students should gain insight about the law applicable to the problem, which they can then use to revise the initial pre-search analysis, search technique, or both. Students should be taught they will likely have to repeat these steps in an iterative process to complete the research task successfully.

e.g., RAVEL, www.ravellaw.com, archived at <http://perma.cc/AX75-E234> (using visual mapping to display the results of case research).

This flexible approach instructs students on many of the same concepts taught in a source-driven approach, including the hierarchy of legal authority, the relationships among sources, and the types of search techniques available. The difference is that these concepts are integrated into a flexible research process, not a linear process that requires use of specific sources in a defined order.

c. Effective Research Instruction Must Build a Foundation in the First Year and Continue in the Upper-Level Curriculum

As the amount of information available to us and the methods of locating it proliferate, defining the appropriate scope of research instruction becomes difficult. Students are unlikely to be able to learn everything they need to know about research in the first year, and even if they are, they need to reinforce their research and writing skills in the upper-level curriculum. Further, although much legal information is available electronically, print research continues to have a role in the curriculum.

i. The First-Year Curriculum Must Cover the Fundamental Research Process and the Sources of Law

In the first-year curriculum, students should gain facility with the flexible research process described above. As with effective legal analysis, effective research requires that students understand the hierarchy of authority and relationships among various sources of law. Inability to evaluate source material effectively is an identified weakness for so-called digital natives.⁴⁰ Their facility with electronic searching can mask shallow understanding of the weight of source material.⁴¹

Students must be familiar with the structure of the legal system, including the relationships among constitutional provisions, statutes, cases, and secondary sources. Additionally, they should learn how to assess whether the information they find is current by using citators and other updating tools. They should be familiar with traditional secondary sources, including legal encyclopedias, A.L.R. Annotations, legal periodicals, and treatises, as well as non-traditional secondary sources, such as commentary posted on law firm web sites. Students will independently turn to general search engines such as Google and general sources such as Wikipedia. A sound research curriculum engages students with all of these sources and provides a context for students to evaluate the strengths and weaknesses of each. Effective teaching techniques for first-year students include showing or asking that students locate examples of different types of information and assess the content and authoritative value of each. This process can be repeated any time students are asked to conduct research.

⁴⁰ Margolis & Murray, *Say Goodbye*, at 131.

⁴¹ See, e.g., Simon Canick, *Infusing Technology Skills into the Law School Curriculum*, 42 CAP. U. L. REV. 663 (2014) [hereinafter *Infusing*]; Aliza B. Kaplan & Kathleen Darvil, *Think (and Practice) Like a Lawyer: Legal Research for the New Millennials*, 8 LEGAL COMM. & RHETORIC: JALWD 153 (2011) [hereinafter *New Millennials*].

To research effectively, students must also gain experience with multiple search techniques, including word searching and subject searching. Lexis and Westlaw remain important vehicles for electronic research, and students should be familiar with West's Key Number system. Students must also gain facility with other platforms, which may include Bloomberg Law, FastCase, Case Maker, and free services such as Findlaw, the Legal Information Institute, Google Scholar, and government websites.

Electronic research will likely be the focus of instruction, both because much legal information is available electronically and because law libraries have reduced and continue to reduce their print holdings. Nevertheless, students need some exposure to print research for three reasons. First, not everything is online. Second, the layout of some information online is still based on the print version of the information, especially with legal secondary sources. Students need to learn basic citation formats, and citation rules are still largely driven by the print format of information. Thus, students need to know the basic "index → main text → pocket part" process for print research. Third, the cognitive processes involved in print research are different from those involved with online research. Knowing different ways of approaching research problems will help students become effective researchers.⁴²

First-year students should have multiple opportunities to practice conducting research in settings in which they both work independently and receive feedback as they work. They should also learn techniques for organizing their search results. The best practice is to teach research across the curriculum, in doctrinally-focused and skills-focused courses, in much the same way analysis should be taught using writing across the curriculum.

ii. The Upper-Level Curriculum Should Introduce New Concepts and Reinforce Fundamental Skills

Although students need to learn research fundamentals in their first year, first-year instruction is not sufficient by itself. In addition to learning about the sources identified above, students need to learn to research legislative history, administrative materials, foreign and international materials, and, if appropriate, sources unique to the jurisdiction where they attend law school. Few law schools devote sufficient credit hours to legal research to cover all of this in the first year. It can be difficult for first-year students to complete assignments with sufficient complexity to involve these types of sources while they are learning the fundamentals of written analysis. Further, if students learn about research only in their first year, they may not retain their skills without reinforcement.⁴³

Research instruction can be incorporated into the upper-level curriculum in several ways. One way is through advanced research courses, which are often electives because law schools do not have enough teachers to require or offer them to all

⁴² Stefan H. Krieger & Katrina F. Kuh, *Accessing Law: An Empirical Study Exploring the Influence of Legal Research Medium*, 16 VAND. J. ENT. & TECH. L. (2014).

⁴³ Brooke J. Bowman, *Researching Across the Curriculum: The Road Must Continue Beyond the First Year*, 61 OKLA. L. REV. 503 (2009); Canick, *Infusing*; Kaplan & Darvil, *New Millennials*, at 159 n.42.

students. Like writing, though, research can be incorporated into other upper-level courses in a variety of ways. For example, research instruction could be required in an upper-level seminar or other writing course, or as part of law journal participation, clinical coursework, or doctrinally-focused courses. While virtually any doctrinal course lends itself to research instruction, the following subject areas are especially well-suited as vehicles for teaching upper-level students some types of research rarely covered in the first year: administrative law, international law, intellectual property, mass media or telecommunications, tax, employment, and labor law.

Law school librarians are natural partners to assist law teachers in providing this additional research instruction. Librarians may teach research to first-year and upper-level students in research courses. They may also be available to provide instruction to journal members and clinic students. Additionally, librarians can assist teachers who want to integrate a research component into a doctrinally-focused course, either by helping the teacher develop course materials or potentially team-teaching research components of the curriculum. Many teachers of specialized upper-level courses research and write in the field and may be uniquely qualified to teach students about how to conduct research in the subject area.

Peer instructors are another possibility. Although students generally lack the expertise to instruct first-year students, some upper-level students could be trained to provide targeted instruction to peers in the context of doctrinal courses or even under the auspices of a law school writing center.

Although vendor representatives are often very knowledgeable about various research products, having vendor representatives play a significant instructional role is a questionable practice. The representatives' sales mission often varies from the pedagogical goals of law school classes. Further, the law teacher may not appear vendor neutral if representatives from only selected services participate in instructing the class.

For students to benefit maximally from research instruction, it must factor into their grades. For example, students can complete graded research projects in the subject area. Or defined topics within a course can be covered with material students locate through research in lieu of casebook material. Students' mastery of research sources relevant to the subject area could also be assessed on an exam.

Although students are unlikely to receive research instruction in all of these contexts, law schools should strive to provide a range of opportunities for students to learn about and practice their research skills.

4. Innovation in Teaching Legal Writing and Oral Communication

Client-centered legal writing and oral communication are an extension of the analytical process. A lawyer must convey information, advice, and argument effectively. To be effective orally and in writing, students must understand the needs of the legal audience in a variety of contexts and adjust the organization, style, and delivery of their analysis accordingly.

a. Shift the Focus from Document Types to the Role of a Lawyer

The typical legal analysis, research, and writing course tends to concentrate on preparing legal memoranda and briefs more than on the role that these and other documents play in lawyering. But the best practice is to teach students how these and other conventions of legal writing function in the context of representing a client.⁴⁴ Focusing students on the client and on their own role helps students understand the importance of investigating and reasoning with specific facts and developing empathy and better professional judgment.⁴⁵

b. Keep Pace with Matriculating Students and the Evolving Practice of Law

Law teachers must keep pace with changes in matriculating students and the practice of law. Students come to law school with a wide disparity in preparation and many of them grew up with ubiquitous digital technology and the internet. Despite their many and unique talents, some students may have insufficient research, critical thinking, writing, interpersonal, and professional skills.⁴⁶ Scholarship on the best practices for understanding and teaching millennial generation students is rapidly growing.⁴⁷

Skills must also be taught in light of changes in the practice of law due to rapidly developing technologies and a fluctuating legal economy. Course content should reflect the growing use of digital communication and counseling, such as email, text messaging, Twitter, attorney-client interfaces, predictive models, and even social

⁴⁴ As of the date this book went to print, the only legal writing textbook to mention the word client in its title is RUTH ANNE ROBBINS, STEVE JOHANSEN & KEN CHESTEK, *YOUR CLIENT'S STORY: PERSUASIVE LEGAL WRITING* (2013).

⁴⁵ See, e.g., Ian Gallacher, *Thinking Like Non-Lawyers: Why Empathy Is a Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance*, 8 *LEGAL COMM. & RHETORIC: JALWD* 110 (2011); Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the "Heart" of Legal Writing*, 87 *NEB. L. REV.* 1 (2008). Other issues such as moral concerns and social justice can and should be part of legal education. See, e.g., Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public Interest Partnership*, 8 *LEGAL COMM. & RHETORIC: JALWD* 191 (2011); Pamela Edwards & Sheila Vance, *Teaching Social Justice Through Legal Writing*, 7 *LEGAL WRITING* 63 (2001); THE CARNEGIE REPORT, at 142-44.

⁴⁶ See, e.g., Michelle Goodwin, *Law Professors See the Damage Done by "No Child Left Behind,"* *CHRON. HIGHER EDUC.* (Mar. 12, 2013), <http://chronicle.com/blogs/conversation/2013/03/12/law-professors-see-the-damage-done-by-no-child-left-behind/>, archived at <http://perma.cc/XR45-7NHT>; Margolis & Murray, *Say Goodbye*; Brittany Stringfellow Otey, *Millennials, Technology, and Professional Responsibility: Training A New Generation in Technological Professionalism*, 37 *J. LEGAL PROF.* 199 (2013); Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student & Legal Education Reform*, 48 *VAL. U. L. REV.* 41 (2013).

⁴⁷ See, e.g., Shalini Jandial George, *Teaching the Smartphone Generation: How Cognitive Science Can Improve Learning in Law School*, 66 *MAINE L. REV.* 163 (2013); Lindsey P. Gustafson, *Texting and The Friction of Writing*, 19 *LEGAL WRITING* 161 (2014); M.H. Sam Jacobson, *Paying Attention or Fatally Distracted? Concentration, Memory, and Multi-Tasking in a Multi-Media World*, 16 *LEGAL WRITING* 419 (2010).

media.⁴⁸ A shift in focus from document types to client counseling will make it possible to incorporate these new forms of communication seamlessly into existing curricula. Skills teaching must also reflect the reality that employment prospects for many law students have shifted from corporate law firms to a more diverse range of opportunities, including small or solo practices, public service, and law-related jobs that do not require a J.D. degree.

c. Develop a Comprehensive Curriculum that Gives Students the Opportunity to Write Each Semester of Law School

Students should have multiple opportunities to reinforce and hone their analytical, research, and client-centered writing skills beyond those provided by the required writing courses. The best practice is for students to have at least one significant writing experience each semester of law school and for all law teachers to use writing to teach. Some schools have merged their first-year research and writing course with a doctrinally-focused course such as Torts.⁴⁹ In the absence of such a merger, the best practice is to have first-year teachers coordinate assignments so students understand the relationship between their doctrinally-focused and skills-focused courses.

i. Best Practices for the Required First-Year Course

Best practices include using several short, diverse assignments throughout each semester, in addition to any larger project. Varying the assignments gives students more experience researching, writing, reflecting, and revising. Students should be encouraged to work together, whether in a structured or informal manner,⁵⁰ should have opportunities to respond to their classmates' work,⁵¹ and speak in the classroom to develop professional skills. Whenever possible, legal writing teachers should raise students' awareness of related ethical issues and encourage them to anticipate how to resolve them in practice.

A perennial debate among law teachers is whether a particular law school's first-year legal writing curriculum should be uniform. The best practice is to identify common teaching goals and collaborate on how to achieve them rather than to require a programmatic syllabus or assignments. Newer law teachers may need or appreciate

⁴⁸ See, e.g., Dionne Anthon, Anna Hemingway & Amanda Smith, *A Technological Trifecta: Using Videos, Playlists, and Facebook in Law School Classes to Reach Today's Students*, 40 RUTGERS COMP. & TECH L.J. 1 (2014); DAVID I.C. THOMSON, *LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE* (2009).

⁴⁹ See Celeste M. Hammond, *Integrating Doctrine and Skills in First-Year Courses: A Transactional Attorney's Perspective*, 17 LEGAL WRITING 409 (2011); Susan J. Hankin, *Bridging Gaps and Blurring Lines: Integrating Analysis, Writing, Doctrine, and Theory*, 17 LEGAL WRITING 325 (2011).

⁵⁰ For articles on a structured approach, see Melissa H. Weresh, *Uncommon Results: The Power of Team-Based Learning in the Legal Writing Classroom*, 19 LEGAL WRITING 49 (2014); Sophie M. Sparrow & Margaret Sova McCabe, *Team-Based Learning in Law*, 18 LEGAL WRITING 49, 153 (2012). For an excellent book on the topic, see EILEEN SCALLEN, SOPHIE SPARROW & CLIFF ZIMMERMAN, *WORKING TOGETHER IN LAW: TEAMWORK AND SMALL GROUP SKILLS FOR LEGAL PROFESSIONALS* (2014).

⁵¹ See, e.g., Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 LEGAL WRITING 1 (2003); Patricia Grande Montana, *Peer Review Across the Curriculum*, 91 OR. L. REV. 783 (2013).

a shared syllabus, but experienced law teachers of legal writing courses should make independent textbook and syllabus decisions. There are many available options to balance autonomy in teaching with having shared learning and teaching goals.

- ***Introduce the Context of Client Counseling in the First Semester***

The first semester of a year-long course introduces students to the basics of legal research and analysis. Often referred to as the “intra-office memo semester” because the major project usually requires students to conduct original research and write an intra-office memorandum of law, law teachers should conceive of this semester in terms of its ultimate goal: teaching students that legal research and forms of predictive analysis make client counseling possible. So re-conceived, students will better understand the connection between legal memoranda and other assignments that a law teacher might incorporate or substitute, such as a client letter or email memo. Students will also understand better the connection between these assignments and related classroom exercises, such as “client interviews” or “meetings with supervising attorneys.”⁵²

Although rhetorical theory is rich and vast, students develop better analytical, oral, and writing skills when informed by classical and modern theories of persuasion.⁵³ Law teachers should at least introduce students to the classic modes of appeal — *logos*, *ethos*, and *pathos* — and the indeterminacy of law early in the first year.⁵⁴ Upper-level courses should give students the opportunity to further explore rhetorical theory and its relation to law practice.

- ***Focus the Second (or a Third) Semester on Client Advocacy***

The second (and any third) semester of an introductory course should reinforce the lessons of the first and introduce students to the lawyer’s role as client advocate. Students often research and write a trial or appellate brief, or both, and give a related oral argument. Whether the assignment is a trial or appellate brief, it should give students a factually rich problem with legal issues that foster, not overwhelm, their developing analytical skills.⁵⁵

⁵² See Anthony Niedwiecki, *Partner Briefings: Bridging the Gap Between Oral and Written Skills*, SCRIVENER (Newsletter of American Society of Writers on Legal Subjects) (Winter 2002); Sarah E. Ricks, *Some Strategies to Teach Reluctant Talkers to Talk about Law*, 54 J. LEGAL EDUC. 570 (2004). The trend in assignments shows a steady increase in the past few years in client letters, oral reports to a “senior partner,” and other speaking skills. 2014 SURVEY, above at 15.

⁵³ See, e.g., Barbara P. Blumenfeld, *Rhetoric, Referential Communication, and the Novice Writer*, 9 LEGAL COMM. & RHETORIC: JALWD 207 (2012); Linda L. Berger, *Studying and Teaching “Law as Rhetoric”: A Place to Stand*, 16 LEGAL WRITING 3 (2010).

⁵⁴ See, e.g., Michael Frost, *Introduction to Classical Rhetoric*, 8 S. CAL. INTERDISC. L.J. 613 (1999). Several textbooks use rhetorical theory either implicitly or explicitly to teach legal writing. See, e.g., ALDISERT, *LOGIC FOR LAWYERS*; CHARLES R. CALLEROS, *LEGAL METHOD AND LEGAL WRITING* (7th ed. 2014); MICHAEL D. MURRAY & CHRISTY H. DESANCTIS, *LEGAL WRITING AND ANALYSIS* (2009); EDWARDS, *LEGAL WRITING AND ANALYSIS*, at ch. 5; HELENE S. SHAPO ET AL., *WRITING AND ANALYSIS IN THE LAW* (6th ed. 2013); KRISTEN KONRAD TISCIONE, *RHETORIC FOR LEGAL WRITERS* (2009).

⁵⁵ For articles on cognitive overload, see George, *Teaching the Smartphone Generation* at 47; Stefan H. Krieger, *Domain Knowledge and the Teaching of Creative Legal Problem Solving*, 11 CLINICAL L. REV. 149 (2004).

The discipline and pedagogy of legal writing have moved beyond litigation to include broader instruction in interdisciplinary studies of persuasion or rhetoric; international and comparative law; transactional and legislative drafting; and negotiation, mediation, and alternative dispute methods.⁵⁶ Related assignments can be incorporated in a first-year or upper-level course.⁵⁷ A 2010 report published by the ABA included “expanded course coverage to include skills beyond traditional advocacy” among one of the four notable changes in the first year curriculum in the past decade.⁵⁸

ii. The Best Practice for Upper Level Courses Is to Focus on Client Counseling and Advocacy in a Variety of Contexts

Students need more than two semesters to become good legal writers. Law schools must offer sufficient opportunities — in doctrinally-focused courses, skills-focused courses, or other experiential education — for students to write during all three years of law school. The best practice would be to require six semesters of writing, although the authors are unaware of any law school with such a requirement.⁵⁹ Students could choose to hone their skills either horizontally (e.g., drafting pleadings or transactional documents) or vertically (e.g., exploring rhetorical theory or applied persuasive strategies in depth).⁶⁰ Courses designed to develop skills vertically should draw on the discipline and pedagogy of persuasion, including more skillful use of frames (such as master stories, metaphors, and categories), priming, managing adverse material, the use of literary allusion, and oral argument.⁶¹ Law teachers should also strive to

⁵⁶ See, e.g., Susan L. DeJarnatt & Mark C. Rahdert, *Preparing for Globalized Law Practice: The Need to Include International and Comparative Law in the Legal Writing Curriculum*, 18 LEGAL WRITING 3 (2012); Mary Dunnewold & Mary Trevor, *Escaping the Appellate Litigation Straitjacket: Incorporating an Alternative Dispute Resolution Simulation into a First-Year Legal Writing Class*, 18 LEGAL WRITING 209 (2012).

⁵⁷ For a discussion of horizontal and vertical approaches, see Michael R. Smith, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. LEGAL EDUC. 119 (2004); see also Louis R. Sirico, Jr., *Advanced Legal Writing Courses: Comparing Approaches*, 5 PERSP. 63 (1997).

⁵⁸ *Executive Summary of A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010*, at 13, 15 (Catherine L. Carpenter ed., 2012). The same article also noted as positive the increase in credits in legal writing courses.

⁵⁹ Chicago-Kent requires five semesters. See Legal Research and Writing Program, CHICAGO-KENT COLLEGE OF LAW <http://www.kentlaw.iit.edu/academics/jd-program/legal-research-and-writing-program>, archived at <http://perma.cc/FJ4G-JZQ7>.

⁶⁰ The “vertical” and “horizontal” phrasing comes from Michael R. Smith’s, *Alternative Substantive Approaches to Advanced Legal Writing Courses*, 54 J. LEG. EDUC. 119 (2004).

⁶¹ See, e.g., Michael J. Higdon, *Something Judicious This Way Comes . . . The Use of Foreshadowing as a Persuasive Device in Judicial Narrative*, 44 U. RICHMOND L. REV. 1213 (2010); Kathryn Stanchi, *The Power of Priming in Legal Advocacy: Using the Science of First Impressions to Persuade the Reader*, 89 OR. L. REV. 305 (2010) (on cognitive and affective priming); Linda L. Berger, *The Lady or the Tiger? A Field Guide to Metaphor and Narrative*, 50 WASHBURN L. REV. 275 (2011); Barbara Gotthelf, *A Lawyer’s Guide to Um*, 11 LEGAL COMM. & RHETORIC: JALWD 1 (2014); Michael J. Higdon, *Oral Argument and Impression Management: Harnessing the Power of Nonverbal Persuasion for a Judicial Audience*, 57 KAN. L. REV. 631 (2009).

incorporate into their teaching discussions of professional ethics and obligations,⁶² practice norms, and the notion that persuasion includes the ways in which audiences read and perceive legal writing.⁶³ The focus of upper-level courses should be as much on developing students' "reflective capacities" and professionalism as on their mastering course content.⁶⁴

d. Use a Variety of Teaching Methods and Routinely Assess Their Efficacy

To reach all types of learners, law teachers should employ multiple teaching methods, ranging from lecture to role-playing to modeling.⁶⁵ However, the hallmark of a strong legal research and writing course and the signature pedagogy is the individualized feedback that students receive in the form of written comments on their drafts, conferences, live critiques, or a combination thereof; and an opportunity to incorporate that feedback into subsequent drafts. Comments should reflect the expectations of a typical legal reader, respond specifically to the text, and suggest rather than prescribe ways to improve the analysis.⁶⁶ Law teachers should be forthcoming with students, guiding them towards understanding but recognizing their status as novice legal writers.⁶⁷ The ABA recognizes the importance of individualized feedback and subsequent revisions and includes these as key elements of any rigorous writing course required under Standard 303.⁶⁸ The best practice is for law teachers,

⁶² See, e.g., Frances DeLaurentis, *When Ethical Worlds Collide: Teaching Novice Legal Writers to Balance the Duties of Zealous Advocacy and Candor to the Tribunal*, 7 DREXEL L. REV. 1 (2014); Steven J. Johansen, *Was Colonel Sanders a Terrorist? An Essay on the Ethical Limits of Applied Legal Storytelling*, 7 LEGAL COMM. & RHETORIC: JALWD 63 (2010); MELISSA H. WERESH, LEGAL WRITING: ETHICAL AND PROFESSIONAL CONSIDERATIONS (2d ed. 2009).

⁶³ We include here the notion that all aspects of persuasive writing are part of advocacy, including the document itself. For materials on innovative document design and other forms of visual rhetoric, see MATTHEW BUTTERICK, *TYPOGRAPHY FOR LAWYERS* (2011); Lucille A. Jewel, *Through a Glass Darkly: Using Brain Science and Visual Rhetoric to Gain a Professional Perspective on Visual Advocacy*, 19 S. CAL. INTERDISC. L.J. 237 (2010); Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic and Layout Design into the Text of Legal Writing Documents*, 2 LEGAL COMM. & RHETORIC: JALWD 108 (2004).

⁶⁴ Keene, *One Small Step*, at 3.

⁶⁵ For articles on an array of teaching materials and methods, see PERSPECTIVES: TEACHING LEGAL RESEARCH AND WRITING, available at <http://info.legalsolutions.thomsonreuters.com/signup/newsletters/perspectives/>, archived at <http://perma.cc/X479-FFWS>.

⁶⁶ See, e.g., SOURCEBOOK ON LEGAL WRITING PROGRAMS, at 54-59; Elizabeth M. Bloom, *A Law School Game Changer: (Trans)Formative Feedback*, available at <http://ssrn.com/abstract=2437060>, archived at <http://perma.cc/L3JX-3T7K>. For additional articles on commenting, see The Legal Writing Institute, *The Art of Critiquing Written Work*, 1 MONOGRAPH SERIES, http://www.lwionline.org/monograph_volume_one.html, archived at <http://perma.cc/D3TC-H2MM>; Providing Effective Feedback, SECOND DRAFT (Legal Writing Inst.), Fall 2007, available at <http://www.lwionline.org/publications/seconddraft/aug07.pdf>, archived at <http://perma.cc/XZ9M-ASBE>.

⁶⁷ Joseph M. Williams, *On the Maturing of Legal Writers: Two Models of Growth and Development*, 1 LEGAL WRITING 111 (1999).

⁶⁸ Interpretation 303-2 provides, "Factors to be considered in evaluating the rigor of a writing experience include the number and nature of writing projects assigned to students, the form and extent of individualized assessment of a student's written products, and the number of drafts that a student must produce for any writing experience."

not teaching assistants, to provide feedback. Classes too large for law teachers to provide individualized feedback should be reduced. Where class size makes individualized teacher feedback prohibitive, student assistants must be trained in composition theory, commenting techniques, and conference strategies.

Every student should have at least one individual conference per semester on a larger writing assignment,⁶⁹ and the best practice is to include several.⁷⁰ Conferences allow students to ask questions and explore prior, written comments; they should come to conferences prepared to ask questions about their research and writing process and the substance of the comments.⁷¹ “Live critiques” provide feedback with the benefit of very little “dead time” between submission and feedback⁷² but require sufficient time to allow students to process it. Recording live critiques allows students to listen to feedback without having to take notes at the same time. Students should leave either type of conference with a plan for improving their draft. In addition, the best practice is for the school to provide additional writing instruction outside the classroom, such as writing centers specifically for law students⁷³ and writing tutors or mentors as part of an academic support program.⁷⁴

ABA Standard 314 now requires law schools to use assessment methods to improve student learning.⁷⁵ Formative and summative assessments are already a major component of writing instruction. Most legal research and writing courses are now graded (either on a series of assignments or a take-home exam),⁷⁶ and the grade is incorporated into the student’s GPA. Grading rubrics help students to understand the goals of each assignment and teachers to grade fairly and consistently.⁷⁷ New ABA

⁶⁹ SOURCEBOOK ON LEGAL WRITING PROGRAMS, at 61.

⁷⁰ See, e.g., Jennifer L. North, *How the Mini-Conference Transformed the Wallflower*, 21 PERSP. 94 (2013); Robin Slocum, *The Law School Student–Faculty Conference: Towards a Transformative Learning Experience*, 45 S. TEX. L. REV. 255 (2004).

⁷¹ SOURCEBOOK ON LEGAL WRITING PROGRAMS, at 60.

⁷² See, e.g., Anna P. Hemingway, *Accomplishing Your Scholarly Agenda Maximizing Students’ Learning*, 50 DUQ. L. REV. 545 (2012); Alison E. Julien, *Brutal Choices in Curricular Design . . . Going Live: The Pros and Cons of Live Critiquing*, 20 PERSP. 526 (2011).

⁷³ See, e.g., Kristen E. Murray, *Peer Tutoring and the Law School Writing Center*, 17 LEGAL WRITING 161 (2011); Susan R. Dailey, *Linking Technology to Pedagogy in an Online Writing Center*, 10 LEGAL WRITING 181 (2004).

⁷⁴ Dionne Koller, *Legal Writing and Academic Support: Timing Is Everything*, 53 CLEV. ST. L. REV. 51 (2005-06); Cheryl E. Zuckerman, *Mentoring Matters: Teaching Law Students the Value of the Mentoring Relationship*, 20 PERSP. 126 (2012).

⁷⁵ Standard 314 requires every accredited law school “to utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.” Standard 315 requires the dean and faculty to conduct an “ongoing evaluation of the law school’s academic program, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.” The new Standard 301(b) requires law schools to “establish and publish learning outcomes” designed to achieve the objectives of a rigorous program of legal education set out in Standard 301(a).

⁷⁶ 2014 SURVEY, at 12.

⁷⁷ See, e.g., Jessica Clark & Christy DeSanctis, *Toward a Unified Grading Vocabulary: Using Rubrics in Legal Writing Courses*, 3 J. LEGAL EDUC. 3 (2013); Beverly Petersen Jennison, *Saving the LRW Professor:*

Standard 315 requires law teachers to go further and assess the effectiveness of their teaching by measuring students' learning outcomes.⁷⁸ Measuring learning outcomes shifts the focus from what teachers teach to what students learn; best practices include assessing the extent to which students take responsibility for their learning and having students assess their own learning.⁷⁹ The ABA Sourcebook on Legal Writing Programs suggests measuring the extent to which students develop an understanding of audience, purpose, process, and the levels of learning and skills needed to produce a variety of legal documents.⁸⁰

5. Conclusion

As law schools develop their growing role in preparing students for practice, the teaching of legal analysis, research, and communication skills becomes ever more salient, as does the importance of integrating the teaching of those skills across the curriculum and within practice contexts. Law schools must continue to support the development of pedagogies to teach those skills effectively that are grounded in learning theory and empirical research.

Using Rubrics in the Teaching of Legal Writing to Assist in Grading Writing Assignments, 80 U.M.K.C. L. REV. 353 (2011); Sophie M. Sparrow, *Describing the Ball: Improving Teaching by Using Rubrics — Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1.

⁷⁸ Standard 315 requires the dean and law school faculty to conduct an “ongoing evaluation of the law school’s academic program, learning outcomes, and assessment methods.”

⁷⁹ Cassandra L. Hill, *The Elephant in the Law School Assessment Room: The Role of Student Responsibility and Motivating Our Students to Learn*, 56 HOWARD L. J. 447 (2013); Steve Johansen, *What Were You Thinking: Using Annotated Portfolios to Improve Student Assessment*, 4 LEGAL WRITING 123 (1998).

⁸⁰ SOURCEBOOK ON LEGAL WRITING PROGRAMS, at 18. For a detailed discussion of assessment at the course and institutional level, see Chapter 4, Section D, *Outcomes Assessment for Improving Student Learning*, above, and Chapter 7, Section A, *An Institutional Culture of Assessment for Student Learning*, below.

C. USE OF TECHNOLOGY IN TEACHING

By Michele Pistone and Warren Binford

1. Introduction

When BEST PRACTICES FOR LEGAL EDUCATION was published in 2007, the authors recognized that technology may play a larger role in the future of law schools, and predicted at least “some components of legal education will be transformed by it.”¹ Since then, as new technologies such as smartphones, tablets, social media, and apps have proliferated and become dominant in daily living, the conditions for the fulfillment of this prediction continue to ripen.

Educators are coming to understand that these new technologies are not simply passive tools to be added to the traditional classroom without other pedagogical changes.² Rather, today’s technological innovations are actively and dramatically altering the way our students think, learn, communicate, and interact, as well as how law is practiced.³ Legal educators committed to best practices are challenged to adapt quickly and with discernment both to a vastly expanded tool box of pedagogical resources, and to the needs of a rapidly changing population of learners.

This chapter identifies and discusses technologies that have begun to gain traction within legal education in recent years, as well as others that are still emerging. Legal educators should recognize that many of these technologies are well suited to help implement best practices in scientifically-supported teaching methods such as active learning, collaboration, problem solving, and regular assessment and feedback.⁴ Above all, law teachers and administrators should become familiar with the growing pool of modern educational technologies, and ensure that law school faculty members are provided with the professional development and support needed to adapt their teaching and course design to incorporate modern technologies in meaningful and relevant ways.⁵

¹ ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007), text at note 523 [hereinafter BEST PRACTICES].

² For example, in order for a SmartBoard to perform beyond a traditional blackboard or whiteboard, an educator must understand the SmartBoard’s many functions, and how to use them. Then the educator must engage those functions actively and intentionally in a pedagogically effective manner. Derek Glover & David Miller, *Optimising the Use of Interactive Whiteboards: An Application of Developmental Work Research (DWR) in the United Kingdom*, 35 PROFESSIONAL DEVELOPMENT IN EDUCATION, no. 3, 2009, at 469; Steve Kennenwell, Howard Tanner, Sonia Jones & Gary Beauchamp, *Analysing the Use of Interactive Technology to Implement Interactive Teaching*, 24 JOURNAL OF COMPUTER ASSISTED LEARNING, no. 1, 2008, at 61.

³ AL GORE, THE FUTURE: SIX DRIVERS OF GLOBAL CHANGE 44 (2013); Matt Richtel, *Technology Changing How Students Learn, Teachers Say*, THE NEW YORK TIMES, Nov. 1, 2012; Sherry Turkle, *How Computers Change the Way We Think*, THE CHRONICLE OF HIGHER EDUCATION, Jan. 30, 2004, at B26; Gary Small & Gigi Vorgan, *Your iBrain: How Technology Changes the Way We Think*, SCIENTIFIC AMERICAN, <http://www.scientificamerican.com/article/your-ibrain/>, archived at <http://perma.cc/WG8V-N4ZM>. See Chapter 6, Section I, *Technology in the Profession*, below. But see Daniel T. Willingham, *Have Technology and Multitasking Rewired How Students Learn?* 42 AMERICAN EDUCATOR 23 (Summer 2010).

⁴ HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL (John D. Bransford et al., eds. 2000). See, e.g., Chapter Nine, *Technology to Support Learning*.

⁵ Michele R. Pistone & John J. Hoeffner, *No Path but One: Law School Survival in an Age of Disruptive*

2. Emerging Technologies in Legal Education

Law school teachers as a whole have seldom been recognized as technology innovators, but the fact is that legal educators have been adapting to the digital age in recent years. Walk into almost any law school in the United States and a visitor can find course websites, Internet research, digital communications (email, texts, messaging, social media, and more), ebooks, visual aids, electronic billboards and streaming, and the widespread utilization of laptops, tablets, and smartphones. Many law schools are offering distance learning both in the form of remote externships and through online coursework.⁶ Law school clinics are increasingly acquiring practice management software⁷ and converting themselves into “paperless” offices, while others are operating “virtually” (without dedicated office space).⁸ A number of legal educators are conducting assessments online, others are recording and posting their lectures on the Internet for students to review outside of the classroom, and still more are digitally recording students in both live and simulated settings and providing detailed feedback.⁹

a. Customizing Digital Texts

As law schools and legal educators integrate educational technologies into their programs of study, an increasing number of resources are available to support them. It is easier than ever for legal educators to modernize the delivery of their curriculum in formats that are familiar to a generation of students increasingly comprised of

Technology, 59 WAYNE L. REV. 193, 234-36 (2013) (listing materials that would familiarize legal educators with the educational and disruptive effects of new technologies).

⁶ See, e.g., *University of Connecticut School of Law Academic Courses*, UNIVERSITY OF CONNECTICUT SCHOOL OF LAW, http://www.law.uconn.edu/sites/default/files/content-page/Fall-2014-Distance-and-Online-Courses-Spring-03242014_0.pdf, archived at <http://perma.cc/DK7C-N69E>; *University of Oregon School of Law Juris Doctorate Academic Requirements*, UNIVERSITY OF OREGON SCHOOL OF LAW, <http://law.uoregon.edu/academic-requirements/>, archived at <http://perma.cc/G3G4-VJ53>; *University of Wisconsin Law School Externship Program*, UNIVERSITY OF WISCONSIN LAW SCHOOL, <http://www.law.wisc.edu/academics/externships>, archived at <http://perma.cc/T6WW-ZNZQ>; *Externships at Cooley*, THOMAS M. COOLEY LAW SCHOOL, <http://www.cooley.edu/clinics/externships.html>, archived at <http://perma.cc/9546-SUBF>.

⁷ See, e.g., *Technologies Used within Clinics*, HARVARD LAW SCHOOL, <http://www.law.harvard.edu/about/administration/its/clinics/technology.html>, archived at <http://perma.cc/EP9U-JH8Y>.

⁸ See, e.g., *Eric Englund Biography*, UNIVERSITY OF WISCONSIN LAW SCHOOL, <http://law.wisc.edu/profiles/ericenglund@charter.net>, archived at <http://perma.cc/W7NT-M5TR> (operates a paperless Law and Entrepreneurship Clinic); *Innocence Clinic*, UNIVERSITY OF MIAMI SCHOOL OF LAW, <http://law.miami.edu/clinics/innocence>, archived at <http://perma.cc/Y4R9-Z6GV> (the entire clinic is now paperless); *TALIAS Program*, NORTH CAROLINA CENTRAL UNIVERSITY SCHOOL OF LAW, <http://www.talias.net/about>, archived at <http://perma.cc/7BTX-G6CX> (TALIAS partners with Legal Aid North Carolina to improve access through virtual technology to legal services for residents in underserved communities); Sally Gill, Lecturer in Law and Senior Supervising Solicitor (Legal Advice Centre), University of Greenwich, U.K., and Margaret Dowie-Whybrow, Senior Lecturer in Law, University of Greenwich, U.K., 12th International Journal of Clinical Legal Education Conference: Clinic without Borders (July 16, 2014).

⁹ Even commercial legal education companies such as BarBri and Kaplan are modernizing. Both have developed adaptive learning software programs and apps that help with high-stakes test preparation (the LSAT and the bar exam) as well as study aids for bar courses. *BarBri AMP*, BARBRI, <http://www.barbriamp.com>, archived at <http://perma.cc/EGC8-2PG6>; *LSAT Advantage on Demand*, KAPLAN, <http://www.kaptest.com/lsat/lsat-prep-course/online-lsat-prep/lsat-on-demand>, archived at <http://perma.cc/H7DH-ZNEY>.

“digital natives.”¹⁰ Today almost every law school in the country is a member of the center for Computer-Assisted Legal Instruction (“CALI”),¹¹ which hosts almost 1,000 interactive tutorials in over 35 law subjects.¹² Westlaw offers links to the CALI tutorials online so that law teachers can provide their students easy access to these materials through TWEN (Westlaw’s online course management program).¹³ Legal educators can monitor their students’ progress on the CALI website.

In addition to the online tutorials, CALI hosts an annual conference focused on transforming legal education through technology and innovation,¹⁴ and CALI’s publishing initiative, eLangdell Press, offers ebooks in a variety of law school subjects in multiple formats under a Creative Commons license.¹⁵ CALI’s eLangdell ebooks can be read online, printed, or downloaded to laptops, tablets, smartphones, and ereader devices. Legal educators can customize an ebook simply by downloading the Microsoft version of the ebook and making relevant edits to the original version, eliminating as much or as little as the teacher deems appropriate to the course design. The modified ebook is then distributed to the students in its customized form. The eLangdell ebooks can also be used more interactively by students as a note-taking template, which may help to increase their retention.¹⁶

Like CALI, the H2O Project at Harvard University’s Berkman Center for Internet & Society is utilizing a Creative Commons license to encourage legal educators to pool knowledge and resources, and in the process make legal knowledge more affordable, accessible, and adaptable.¹⁷ The H2O project uses a web-based platform that also allows teachers to customize and create a unique collection of teaching materials for their classes.¹⁸ It is based on an open-source, crowd-sourcing model, and the materials can be widely accessed, adapted, and remixed according to the preferences of individual teachers who want to customize materials to meet the educational needs of their particular students.

¹⁰ The phrase “digital natives” was originally coined by U.S. author Marc Prensky to describe the generation of students born into digital technology and the Internet. Marc Prensky, *Digital Natives, Digital Immigrants Part 1*, 9 ON THE HORIZON, no. 5, 2001, at 1.

¹¹ CALI was founded by the University of Minnesota Law School and Harvard Law School in 1982. *About CALI*, CALI, <http://www.cali.org/content/about-cali>, archived at <http://perma.cc/PK2X-CTYE>.

¹² *Id.*

¹³ See generally, *Professor’s Quick Guide to TWEN*, WESTLAW (2008), <http://lscontent.westlaw.com/images/banner/SurvivalGuide/PDF08/08ProfQuickGuidetoTWEN.pdf>, archived at <http://perma.cc/NM6S-MNE8>.

¹⁴ *CALI Conference for Law School Computing*, CALI, <http://www.cali.org/CALI-Conference>, archived at <http://perma.cc/WAE8-S6J5>.

¹⁵ *CALI About eLangdell Permissions & Creative Commons*, CALI, <http://www.cali.org/elangdell/permissions>, archived at <http://perma.cc/F9L9-GEH6>.

¹⁶ Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1 (2003).

¹⁷ *Welcome to H2O*, H2O, <http://h2o.law.harvard.edu> (this site is hosted in collaboration with Harvard University), archived at <http://perma.cc/E2GN-4U6D>.

¹⁸ *Berkman Center for Internet and Society*, H2O, <http://cyber.law.harvard.edu/research/h2o>, archived at <http://perma.cc/A45X-S5KM>.

The innovations of the H2O Project, CALI, and even the commercial textbook publishers are reinventing the legal casebook. In addition to allowing for an endless combination of teaching materials, the technology also makes it possible for students to read collaboratively (by sharing questions, edits, and annotations to their readings) with classmates and others who are using the site, which can serve to improve learning outcomes.¹⁹ The consolidation and digitization of course content promises to allow legal educators to customize and enrich their courses, increase student interaction with course content,²⁰ and facilitate collaboration among students, all while bringing costs down.

b. Recording, Flipping, and Blending

In addition to online customizable digital textbooks, resources are increasingly becoming available to help teachers blend online and in-class instruction. One group of legal educators recently created LegalED,²¹ an online network and database of educational materials for the study of law and legal systems. Both LegalED and CALI are producing video content and making these recordings available for law school students and faculty.²² These digital recordings can be used either to supplement content delivery in the classroom using more traditional teaching methods or to “flip the classroom.”

Flipped learning involves blending some elements of online instruction with traditional face-to-face instruction. In typical flipped learning settings, instruction in foundational or background information is delivered online through short recordings. By migrating some instruction to the web, flipped learning frees face-to-face class time for active learning, including Socratic dialogue, drafting exercises, problem solving, simulations, small group discussion, and role plays.²³

¹⁹ *H2O User Guide*, H2O, <http://h2o.law.harvard.edu/blog/files/2013/08/H2O—%C2%A0User-Guide-v-1.2-2013.08.22.pdf>, archived at <http://perma.cc/KM4S-WSNK>. Commercial legal education publishers are also adapting law school textbooks in similar ways. W. Warren H. Binford, *Envisioning a Twenty-First Century Legal Education*, 43 WASH. U. J.L. & POL'Y 161-64 (2013) [hereinafter Binford, *Envisioning*]. Some commercial publishers have created programs that facilitate online collaboration among students. One example is LexisNexis Social Studies, a Facebook app that helps students participate in online study groups, as well as share and edit documents. *Lexis® Social Studies*, FACEBOOK, <https://www.youtube.com/watch?v=-9ybr5YZigc>.

²⁰ Research on best practices in multimedia instruction is discussed in Roxana Moreno, *Learning in High-Tech and Multimedia Environments*, 15 CURRENT DIRECTIONS IN PSYCHOL. SCIENCE, no. 2, 2006, at 63.

²¹ The LegalED website hosts a collection of educational videos, each on a discrete topic, to be used in legal education. LEGALEd, <http://legaledweb.com>, archived at <http://perma.cc/473J-SJWU>. The University of Utah's thefirstyear.org is a similar online repository for video content on subjects typically taught in the first year of law school. THE FIRST YEAR, <http://thefirstyear.org>, archived at <http://perma.cc/37K7-NF9E>.

²² To learn about the impact that online digital tutorials are having on education, see Michael Noer, *One Man, One Computer; 10 Million Students: How Khan Academy Is Reinventing Education*, FORBES (Nov. 02, 2012, 10:00 AM), <http://www.forbes.com/sites/%20michaelnoer/2012/11/02/one-man-one-computer-10-million-students-how-khan-academy-is-reinventing-education/>, archived at <http://perma.cc/JV97-DZED>.

²³ See Michele R. Pistone, *Flipping the Law School Classroom*, LEGALEd WEB (Feb. 21, 2014), <http://legaledweb.com/blog/2013/8/27/flipping-the-law-school-classroom?rq=pistone>, archived at <http://perma.cc/VS6E-TSQD>; Michele R. Pistone, *How Can Flipped Learning Be Used in Legal Education?*, LEGALEd WEB (Feb. 21, 2014), <http://legaledweb.com/online-learning/>, archived at <http://perma.cc/7GF5->

Several models are available to blend online and in-class instruction, and many educators are currently experimenting to determine their efficacy in the law school setting. A Department of Education meta-analysis of online learning in other areas of higher education found that a method of instruction that combines both online and face-to-face instruction was more effective than either online or face-to-face instruction alone.²⁴

In addition to the greater teaching efficacy shown in the U.S. Department of Education meta-analysis, another advantage of blended learning is that, as with the Creative Commons licensing approach of eLangdell, LegalED, and H2O, the model is built around a pooling of national and international resources, which can reduce the cost of legal education, while increasing the amount of instructional time available for applied learning opportunities such as simulations, problem solving, and clinical experiences — all of which are more effective for content mastery and retention than more passive teaching methods such as lecture or passive reading, according to research.²⁵

NQEP. For a discussion of flipped learning and other ways to blend online and in-class instruction in K-12 education, see generally, Clayton Christensen et al., *Is K-12 Blended Learning Disruptive: An Introduction to the Theory of Hybrids*, <http://www.christenseninstitute.org/publications/hybrids/>, archived at <http://perma.cc/RF8F-9VP3>; JONATHAN BERGMANN & AARON SAMS, *FLIP YOUR CLASSROOM: REACH EVERY STUDENT IN EVERY CLASS EVERY DAY* (ISTE/ASCD, 2012). To see how K-12 teachers are flipping their classrooms, visit the Flipped Learning Network website: <http://flippedlearning.org/site/default.aspx?PageID=1>, archived at <http://perma.cc/HRD3-37NM>. If used in law schools, flipped learning would not be characterized as “distance education” under the ABA accreditation standards if “two-thirds of the course instruction consists of regular classroom instruction.” ABA, *Program of Legal Education*, ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 2014-2015, 27 (2014) http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf, archived at <http://perma.cc/TQ4H-RFDS>. That means videos can be assigned for up to one-third of the time allocated for regular classroom instruction (including first year courses) without being characterized as distance education. Using online videos in this way (as a substitute for up to one-third of classroom teaching) would also be consistent with New York State Rule of Court 520.3. Subsection (c)(6) prohibits credits for courses offered principally by asynchronous means, where the teacher and students are separated by time and place. *Part 520 — Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law*, COURT OF APPEALS FOR THE STATE OF NEW YORK, <http://www.nycourts.gov/ctapps/520rules10.htm#3>, archived at <http://perma.cc/W4VG-6BTB>.

²⁴ Barbara Mean et al., *Evaluation of Evidence-Based Practices in Online Learning: A Meta-Analysis and Review of Online Learning Studies*, U.S. DEP’T OF EDUC. (Sept. 2010) [hereinafter 2010 U.S. Dep’t of Ed. Study], <http://www2.ed.gov/rschstat/eval/tech/evidence-based-practices/finalreport.pdf>, archived at <http://perma.cc/ES78-54RY>.

²⁵ Scott Freeman et al., *Active Learning Increases Student Performance in Science, Engineering and Mathematics*, PROC. NAT’L. ACAD. OF SCI. 2014; published ahead of print May 12, 2014, available at <http://www.pnas.org/content/early/2014/05/08/1319030111.abstract> (analyzed 225 studies and concluded that active learning is the preferred, empirically validated teaching practice). In the law school setting, see Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. DET. MERCY L. REV. 1 (2003).

c. Assessment, Feedback, and Interactive Software

Another area in which technology can enable legal educators to achieve best practices is through assisting teachers in providing students with assessment and feedback throughout the semester.²⁶ Historically, legal education has been framed around a high-stakes testing model in which students are assessed once, at the end of the semester, through a final examination. Much of each student's grade is based on his or her performance on that single examination. In that environment, the teacher customarily conducts a series of classes using either lectures or the Socratic method that meet regularly over the course of a semester. Other than through the public engagement of students in class, which carries its own pedagogical advantages and disadvantages,²⁷ the teacher typically does not have the opportunity to assess student knowledge or understanding over the course of the semester.²⁸ Moreover, students are not provided critical feedback at regular intervals.

Recent pedagogical research affirms the importance of assessing learners on a regular basis to keep them engaged, reinforce knowledge, and identify opportunities for remediation.²⁹ Fortunately, new educational technologies allow legal educators to assess students on a much more regular basis and to do so much more efficiently. Assessment tools are available through online course management programs, as well as interactive textbooks.³⁰ Today's technology allows a teacher to simply adopt a pre-existing assessment, customize it, or design her or his own. Although current assessment programs for large groups are largely formatted for multiple choice, true or false, or short answers, software is being advanced that can conduct an intelligent

²⁶ For more on assessment, see Chapter 2, Section A, *Assessment Plans that Support Student Learning*, above; Chapter 4, Section D, *Outcomes Assessment for Improving Student Learning*, above; and Chapter 7, *Creating an Institutional Culture of Assessment*, below.

²⁷ See Chapter 4, Section B.1, *Humanizing the Delivery of Legal Education*, above; Chapter 5, Section A, *The Socratic Method*, above; Benjamin V. Madison III, *The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students*, 85 U. DET. MERCY L. REV. 293 (2008) (reviews findings in legal education that demonstrate ways people learn, and answers common objections to a departure from the Socratic approach); WILLIAM M. SULLIVAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 186* (2007) [hereinafter *THE CARNEGIE REPORT*].

²⁸ Due to the large number of students in many law school classes, assessments historically were time consuming (especially for the teacher), and so were largely avoided.

²⁹ Henry L. Roediger III, Adam L. Putnam & Megan A. Smith, *Ten Benefits of Testing and Their Applications to Educational Practice*, 55 *PSYCHOLOGY OF LEARNING AND MOTIVATION* 1 (2011); John Dunlosky, et al., *Improving Students' Learning with Effective Learning Techniques: Promising Directions from Cognitive and Educational Psychology*, 14 *PSYCHOLOGICAL SCIENCE IN THE PUBLIC INTEREST*, no. 1, 2013, at 4, 29 (2013). See Chapter 2, Section A, *Assessment Plans that Support Student Learning*, above; Chapter 4, Section D, *Outcomes Assessment for Improving Student Learning*, above; Chapter 7, *Creating an Institutional Culture of Assessment*, below.

³⁰ Apple's iBooks and interactive textbooks for iPad feature content created by McGraw-Hill, Pearson Education and Houghton Mifflin Harcourt. *iPad in Education*, APPLE, <https://www.apple.com/education/ipad/ibooks-textbooks>, archived at <https://perma.cc/2VXS-CBHH>. See also *Oklahoma State University Inst. For Teaching & Learning Excellence*, OKLAHOMA STATE UNIVERSITY, http://itle.okstate.edu/fd/online_teaching/assessment.html, archived at <http://perma.cc/P3SC-C6LQ> (recommends alternatives to traditional student assessment through quizzes, surveys, dropbox, discussion board, and LiveRoom transcripts).

analysis of essay answers.³¹ Pedagogical research coupled with the efficiencies offered by current assessment technologies ensure that high-stakes testing as the sole form of assessment will become less common in the coming years.

Indeed, some of the most recently developed assessment tools do far more than simply test learners. They actually identify gaps and patterns in student knowledge and provide individualized remediation in those areas where the student is struggling. For example, a significant number of law schools have acquired Core Grammar for Lawyers in their legal research and writing courses. The online program assesses individual student knowledge of basic grammar and punctuation. If a student demonstrates competence, nothing more is done. However, if a student is lacking in any area, the program provides interactive, online tutorials, and continues to engage and assess the student's knowledge and understanding until the student demonstrates competency in a subsequent assessment. By migrating remediation out of the classroom,³² legal writing faculty members are able to focus class time on more advanced knowledge and skills specific to law practice.

Interactive programs are not limited to remediation. BarBri,³³ Kaplan,³⁴ and Lexis³⁵ have also released adaptive learning software in the past few years. All of these programs track individual students' answers to questions and then use algorithms to adapt the content to meet the particular learning needs of each student. The design of some of these programs, such as BarBri's AMP, is based on the most current pedagogical research on how people learn, and so combine regular engagement with assessment and content delivery to maximize learner success on an individualized basis.

Unfortunately, legal educators have not yet embraced adaptive learning technologies, and so a limited number of programs are available for the law school setting. But it is clear that these programs offer significant efficiencies for content delivery, assessment, and individualization, and are especially critical for remediation purposes. Thus, it is important for legal educators to provide leadership in their development. In the meanwhile, the efficiencies provided through customizable textbooks, digital recordings, and online assessments, all of which are currently available, ensure that legal educators can continue to move towards the implementation of best teaching practices even in light of the limited number of adaptive learning programs that are available in the law school setting.

³¹ Greg Toppo, *Computer Scoring of Essays Shows Promise, Analysis Shows*, USA TODAY (Apr. 23, 2012, 10:47 PM), <http://usatoday30.usatoday.com/news/education/story/2012-04-23/essay-scoring-computer-software/54493662/1>, archived at <http://perma.cc/P6KQ-ELCV>.

³² Binford, *Envisioning*, at 180 (other graduate programs are also using these technologies to move remediation out of the classroom).

³³ BARBRI AMP, BARBRI, <http://www.barbri.com/bar-review-course/>, archived at <http://perma.cc/3U6E-SDT5>.

³⁴ KAPLAN LSAT prep, KAPLAN, <http://www.kaptest.com/lsat>, archived at <http://perma.cc/E7ZL-976K>.

³⁵ Lexis-Nexis Interactive Citation Workstation, LEXIS-NEXIS, http://www.lexisnexis.com/documents/pdf/20110118091338_large.pdf, archived at <http://perma.cc/F55R-PUZG> (tests a student's proficiency with the Bluebook form of legal citation through online assessments).

d. Law Practice Resources

As more law schools increase their commitment to prepare “practice-ready” graduates, legal educators are compelled to familiarize themselves with the technologies being integrated into modern legal practice and ensure that students are oriented to them through the law school curriculum.³⁶ Teaching students about legal practice technologies is considered in greater depth in this book.³⁷ For the purposes of this section, it is sufficient to note that some of these new technologies — such as law practice management software and utilities to create legal forms — are already being utilized in law school clinical settings.³⁸ For example, CALI is promoting the expanded use of its forms creation program (“A2J Author”) in law school clinics.³⁹ When clinical students are tasked with using A2J Author to develop questionnaires, they are applying their knowledge of the relevant law and of the client population in a real-life situation. Essentially, the initiative focuses on student-created “apps” that provide “useful legal work” to both law students and the public while engaging students in applied learning tasks.⁴⁰ Ideally, the law students will develop core skills and analyze and apply acquired knowledge while providing lower-income individuals with better access to justice.⁴¹

e. Online Instruction: Syncing, Asyncing, and MOOCing

One of the most widely discussed and controversial technological innovations in higher education today is online instruction. To some, online education promises to democratize and globalize education on a universal scale. To others, online education threatens to marginalize, if not negate, the most powerful aspect of education: human interaction.⁴² Regardless of one’s views on the value of online education and its role in

³⁶ The potential impact of disruptive technology on an industry is discussed in depth in CLAYTON M. CHRISTENSEN, *THE INNOVATOR’S DILEMMA* (1997). The impact that disruptive technologies are having and will continue to have in the legal industry is envisioned in RICHARD SUSSKIND, *TOMORROW’S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013).

³⁷ See Chapter 6, Section I, *Technology in the Profession*, below.

³⁸ See, e.g., Brittany Stringfellow Otey, *Millennials, Technology, and Professional Responsibility: Training a New Generation in Technological Professionalism*, 37 J. LEGAL PROF. 199 (2013).

³⁹ Access to Justice Author (A2J Author) is a computer program designed to assist lawyers in creating self-help legal resources for unrepresented individuals. Lawyers, including clinic students and legal aid organizations, use the computer template to create a step-by-step online questionnaire that collects relevant client information and then processes the information to complete legal forms. Once the questionnaires are developed, they are then made available online for unrepresented individuals to use, pro se, in filling out relevant legal forms. See *Apps for Justice Wins Future Ed Contest*, IIT CHICAGO-KENT COLLEGE OF LAW (Apr. 20, 2011) <http://www.kentlaw.iit.edu/news/2011/apps-for-justice-wins-future-ed-contest>, archived at <http://perma.cc/MK8L-X7U7>.

⁴⁰ See Ron Staudt, *Thought Leaders Series: Apps 4 Justice*, COLLEGE OF LAW PRACTICE MANAGEMENT (Jan. 23, 2012), <http://collegeofpm.org/thought-leaders-series-apps-4-justice/>, archived at <http://perma.cc/96YE-A8M6>.

⁴¹ See *id.*

⁴² Cheris Kramarae, *Technology, Policy, Gender, and Cyberspace*, 4 DUKE J. GENDER L. & POL’Y 149, 154 (1997).

higher education, the fact remains that it is rapidly expanding across the country and around the world.

Although online courses are not as widely available in legal education as other graduate programs,⁴³ today they are offered at a wide variety of law schools. Some law schools have offered coursework online for a decade or more, while others are just venturing into the virtual format. A number of law schools are moving just a portion of one course online, while other law schools are offering entire degree programs primarily online,⁴⁴ including the J.D.⁴⁵ More online courses and programs are being added every year. Indeed, several law schools across the United States are working toward creating course sharing for online J.D. courses. The Blue Paper report by the Working Group for Distance Learning in Legal Education details some of the first steps in this regard.⁴⁶

Online coursework can take many forms: synchronous, asynchronous, massive open online courses (“MOOCs”), and blended courses combining both online and face-to-face instruction. The synchronous model of online education resembles traditional classroom instruction. Under a synchronous model, all the participants in the course, including all students and the teacher, participate in the course at the same time, albeit from different locations. Thus, the participants are together in time, but not space. The asynchronous learning model separates participants in time and space. Teachers record their presentations and students watch them from anywhere in the world on the schedule that works best for them individually. Indeed, the asynchronous model supports a geographically dispersed student body, for it does not place students in faraway time zones at a disadvantage. It also enables non-traditional students such as parents and students with substantial work obligations to pursue legal education since they can complete coursework at night and on weekends. Asynchronous online education also allows students to review the materials as often as they need to for mastery. MOOCs are based on the asynchronous learning model, but allow large numbers of students simultaneously to take the course online.⁴⁷

⁴³ Binford, *Envisioning*, at 177.

⁴⁴ For example, graduate tax law programs at Alabama, Georgetown, NYU, and Boston University, all offer an online degree option. In 2012, Washington University Law School in St. Louis started a fully online master’s degree program in U.S. law. Steve Kolowich, *Washington U. Law School to Offer Fully Online Degree*, INSIDE HIGHER ED (May 8, 2012), <http://www.insidehighered.com/news/2012/05/08/washington-u-law-school-offer-fully-online-degree>, archived at <http://perma.cc/K8GZ-5M3A>. Florida Coastal College of Law has offered an online LLM degree since 2010, while New York University Law School and Loyola University of Chicago School of Law offer fully online programs that target specific areas of U.S. law. *Id.* For example, Loyola University of Chicago School of Law offers an exclusively online Masters of Jurisprudence in Health Law. *MJ in Health Law*, BEAZLEY INSTITUTE FOR HEALTH LAW AND POLICY, <http://luc.edu/law/centers/healthlaw/degrees/info/mj.html>, archived at <http://perma.cc/D3NF-FX6T>.

⁴⁵ *ABA Approves Variance Allowing William Mitchell to Offer Hybrid On-Campus/Online J.D. Program*, WILLIAM MITCHELL COLLEGE OF LAW, <http://web.wmitchell.edu/news/2013/12/william-mitchell-to-offer-first-aba-accredited-hybrid-on-campus-online-j-d-program/>, archived at <http://perma.cc/3LTQ-BR4Q>.

⁴⁶ The Working Group for Distance Learning in Legal Education, *A Summary of Delivery Models, Regulatory Issues, and Recommended Practices*, HARVARD LAW SCHOOL, http://www.law.harvard.edu/programs/plp/pdf/Distance_Learning_in_Legal_Ed.pdf, archived at <http://perma.cc/DA5E-BAAQ>.

⁴⁷ Philip G. Schrag, *MOOCs and Legal Education: Valuable Innovation or Looming Disaster?*, 59 VILL. L. REV. 83 (2014); Karen Sloan, *Massive, Free Online Classes Catch on With Law Schools*, NAT’L L.J. (Sept

Notwithstanding numerous studies demonstrating the efficacy of online courses,⁴⁸ some educators continue to question their value. It has been noted, for example, that MOOCs often experience higher rates of failure and lower rates of completion than traditional face-to-face courses.⁴⁹ The assertion is accurate but, by itself, not very meaningful given that MOOCs are often offered for free or for very little cost, and are taken for reasons other than to gain academic credit. It is true, however, that online instruction is better suited for some types of courses than for others, and that as technology continues to improve, more and more courses are expected to migrate fully or partially online.

f. Games and Simulations

Two of the technological innovations that offer substantial potential for legal education are interactive educational games and online legal simulations. Pedagogical research shows that playing games is a highly effective learning method,⁵⁰ and digital natives are especially comfortable gaming online.⁵¹ Although a few law school learning apps, such as “Contracts are a Beach!,” “Evidence Challenge,” and “Law Dojo” have been recently developed for law students, the fact remains that, despite their efficacy, not enough legal educators are advocating for the development of interactive educational games for legal education.⁵² Legal simulation apps for use in law schools are even rarer.⁵³ Legal educators should advocate for and lead in developing new interactive educational games and legal simulation apps, especially since these

10, 2013). Examples include Case Western Reserve Professor Michael Scharf’s course on international criminal law; Harvard University Professor William Fisher’s course on copyright law; Yale University Professor Akhil Amar’s course on constitutional law; a course by Northwestern University Professors Esther Barron and Steve Reed on law and entrepreneurship; a course on environmental law by University of North Carolina Professor Don Hornstein; and a course on acquisition agreements by Drexel Law School Professor Karl Okamoto. As has been the case in other MOOCs, Professor Okamoto’s course includes supplemental assignments mediated through technology, combining “online lectures with four interactive simulations allowing students to submit videos of themselves counseling hypothetical business clients.”

⁴⁸ See, e.g., 2010 U.S. Dep’t of Ed. Study.

⁴⁹ Diyi Yang et al., “Turn On, Tune In, Drop Out”: *Anticipating Student Dropouts in Massive Open Online Courses*, STANFORD UNIVERSITY, <http://lytics.stanford.edu/datadriveneducation/papers/yangetal.pdf>, archived at <http://perma.cc/UXH7-32PN>; but see *Engagement and Distance at the HILT*, HARVARD MAGAZINE, Sept.-Oct. 2014, <http://harvardmagazine.com/2014/09/hilt-conference-addresses-engagement-and-distance>, archived at <http://perma.cc/5PF5-AW8L>.

⁵⁰ Francesco Bellotti, et al., *Game-Based Learning for 21st Century Transferable Skills: Challenges and Opportunities*, 17 EDUC. TECH. & SOC’Y 1 (2014).

⁵¹ Marc Prensky, *Digital Game-Based Learning*, 1 ACM COMPUTERS IN ENTERTAINMENT 21 (2003); Richard Van Eck, *Digital Game-Based Learning: It’s Not Just the Digital Natives Who Are Restless*, 41 EDUCAUSE REV., no. 2, 2006, at 1; MARC PRENSKY, DON’T BOTHER ME, MOM, I’M LEARNING! HOW COMPUTER AND VIDEO GAMES ARE PREPARING YOUR KIDS FOR 21ST CENTURY SUCCESS AND HOW YOU CAN HELP (2006).

⁵² Other apps that have been developed and are currently available to law school students include digital flashcards, audio lectures, quick guides, self-assessments, subject reviews, law dictionaries, citation formatting, and access to laws, rules, research databases, and legislative activities. Prices range from free to \$54.99. Bar and MPRE preparation apps are also available. A full bar preparation app for New York or California costs \$999.

⁵³ Most legal simulation apps are geared toward middle and high school students. See, e.g., iCIVICS, <https://www.icivics.org>, archived at <https://perma.cc/TNY7-6FHP>.

innovations have proven to be effective pedagogically and are familiar and accessible to current and incoming generations of law students.

3. Conclusion

The rapid development and deployment of educational technologies makes the early 21st century an exciting era for legal educators. Affordable and accessible teaching resources are available in greater variety than at any time in recent history, allowing law teachers to adapt, enhance, and customize their course design to meet the needs of their particular students using technologies that are familiar to today's law students. Writing about the inevitability of technology's advance on higher education, Clay Christensen has stated that it would be preferable for current educators to act proactively now to manage that advance, because they are the most well-positioned to preserve the best that higher education offers.⁵⁴ Maintaining the best parts of the past while managing change is a worthy goal, but the goal is likely to prove elusive unless a critical mass of legal educators immerse themselves in the technologies and usages noted above.

In the end, the ultimate best practice regarding the use of technology for legal education is to welcome new approaches while being rigorous in measuring learning outcomes under these new approaches. The next decade will see a growing number of administrators encouraging and rewarding innovation in legal education, and a growing number of law teachers engaging deeply with technologies that advance our students' learning outcomes more efficiently and effectively.

⁵⁴ Clayton Christensen & Henry Eyring, *How to Save the Traditional University, from the Inside Out*, CHRONICLE OF HIGHER EDUCATION (July 2011).

D. LAW LIBRARIES AND LEGAL EDUCATION

By Jonathan Franklin¹

1. Introduction

Academic law libraries are in the midst of radical change, probably more so than at any time in the past 100 years.² Two factors are converging that make business as usual no longer viable for academic law libraries: transition of legal resources from print to digital formats and economic changes in legal education. BEST PRACTICES FOR LEGAL EDUCATION³ did not address the role of law libraries in the delivery of legal education. The changes facing law schools suggest now is the time to articulate how libraries can best contribute to the endeavor. How can best practices for law libraries be reconstructed to allocate resources and expertise to support the education mission?

2. The Current State of Affairs

Academic law libraries are central to law school life, providing print and digital collections, study spaces, and library services. Study spaces have become both more and less important. With the growth of digital resources, more legal research can be done at home, at a café, or at the law library. At the same time, legal education has changed to involve more mandatory group assignments along with study groups. Whether supporting a traditional 1L study group or an advanced negotiation project, the library has become a hub for these activities, leading to the need for more group study spaces, technologies that facilitate group editing, and even video recording equipment for lawyering skills projects. While academic law libraries have traditionally emphasized their collection size and study spaces, the most important function of a 21st century academic law library is the services it offers to its patrons.

a. Teaching

As schools increase curricular emphasis on preparation for practice, law libraries become more central. Librarians teach courses and classes on legal research, create student-oriented research guides and pathfinders, support former students in their new work environments, and offer new services to meet student needs.⁴ In law schools that expand by offering LL.M. and Ph.D. programs, librarians teach students from countries with a civil law legal system about the common law legal system and offer specialized legal research in areas including tax, intellectual property, and international law. Librarians may offer special training sessions and courses for law journal

¹ The reader for this section was Ann DeVeaux.

² Julian Aiken, Femi Cadmus & Fred Shapiro, *Not Your Parents' Law Library: A Tale of Two Academic Law Libraries*, 16 GREEN BAG 2d 13, 15 (2012).

³ ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) [hereinafter BEST PRACTICES].

⁴ See generally, Leslie A. Street & Amanda M. Runyon, *Finding the Middle Ground in Collection Development: How Academic Law Libraries Can Shape Their Collections in Response to the Call for More Practice-Oriented Legal Education*, 102 LAW LIBR. J. 399 (2010).

members to support their work in publishing legal scholarship. For other students with more specific research needs, librarians may meet one-on-one with them to help them devise research strategies. Librarians are also experts at technology and are able to train faculty, research assistants, and other students in citation formatting, citation management, research logging, and applications that make the students more efficient in law school and beyond.

b. Scholarship

In addition to teaching and training, the law library plays a central role in both the creation and marketing of scholarship, from initial research assistance and the training of research assistants, to in-depth research and the procurement of obscure resources. Librarians promote new scholarship beyond the institution in blog posts, submissions, and postings to the Social Science Research Network (SSRN), and institutional repositories. Although libraries have always facilitated scholarship, libraries are now, more than ever before, partners in this enterprise through the use of technology and other resources.

3. Identifying Future Best Practices

Academic law libraries have met and are continuing to meet existing challenges, notably the transition from walls of reporters and citators to exclusively online case access, the move from comprehensive collections to highly selective collections, the migration from print to online catalogs, and the education of a generation of students who are sometimes overconfident in their legal research abilities due to their experience with Google. New challenges on the horizon will disrupt law schools, and therefore, law libraries, even more in the next decade. These challenges include shrinking budgets, a migration away from purchasing books and towards licensing databases, rapid changes in user expectations, and transition in the needs of the faculty and students.⁵

a. Rethinking Allocation of Resources

Just as the size of a library's print collection is no longer a surrogate for the overall quality of the library, an academic law library should not be assessed by reviewing a checklist of services it offers. As law schools' missions increasingly diverge due to institution-specific survival strategies, their libraries must react and dedicate resources to meet the institution's new directions with limited resources, rather than implementing a laundry list of unneeded or unused services. Thus, a staffing model for a large student-centric law library would offer different services than one for a smaller scholarship-centric law library. Even small differences in the orientation of the law school can make a large difference to its library's service and staffing preferences. For example, a library's staffing would vary depending on whether the school has a robust tradition of hiring law students as faculty research assistants or whether it has

⁵ *But see* Michael Whiteman, *Book-Burning in the Twenty-First Century: ABA Standard 606 and the Future of Academic Law Libraries as the Smoke Clears*, 106 *LAW LIBR. J.* 11 (2014).

traditionally relied on the library for research and the law students for drafting and editing.

Unlike the rest of the law school, which spends almost all of its money on salaries and benefits, the library has collection expenses, including the acquisition and licensing of legal materials. In the past, preservation of legal materials for future generations of legal scholars and students was central to the library's mission.⁶ It is unclear if that part of libraries' mission is sustainable beyond some federal and state materials for the state where the library is located. The "just-in-case" model has given way to a "just-in-time" model of acquisition: instead of buying materials for the future, libraries are more often trying to buy and license materials for current users. While more short-sighted and leading to less collection continuity over time, this method may be likely the only way to address the convergence of shrinking budgets and acquisition costs that are outpacing inflation. The opportunities here are to present specific faculty members with customized lists of relevant resources buried deep in databases that they had no idea might be relevant to their research. This service of unearthing useful content has the potential to grow as long as scholarship is a focus for the institution.

Almost all digital databases are now licensed rather than purchased. This means that if a library has to stop paying for a database, its patrons will lose access to all the content in it. While this might seem trivial, it has deeper implications. Licensing can be done more effectively at the consortium level, so academic law libraries may eventually select what they want for the year from a menu of databases and leave the licensing and negotiation to a third party. This outsourcing of licensing will save on salary and benefits, but at a cost — the loss of librarians' encyclopedic knowledge of what materials are and have been available in a particular topic area.

On the positive side, as the portion of the acquisitions budget dedicated to licensing increases, the institution can become more nimble in response to changing patron needs. If the law school's international commercial arbitration scholar retires and is not replaced, the library can stop subscribing to the obscure and expensive international commercial arbitration database, knowing it can restart the subscription when needed. Formerly, librarians experienced a sense of loss when cancelling a title, knowing they would never be able to acquire that content again. This is no longer necessarily the case with licensed content.

Other than new classification schemes, such as the Dewey Decimal System and the Library of Congress Classification, nothing in the past 100 years has caused as much change in libraries as increasing computerization over the past twenty years. Entire workflows have changed and formerly necessary jobs have vanished. More generally, procedures that were done by rote year after year have been replaced with operating systems, word processors, and integrated library systems that change on an annual or monthly basis. Computerization has put a premium on adaptability. This, in turn, has led to the need for a more highly skilled and paid cohort of library staff instead of

⁶ This is not meant to suggest that libraries should give up their preservation function. Libraries need to continue to work in that area, whether to prevent link rot from wiping out the utility of citations in our journals or to store state or federal materials that might disappear without preservation efforts. Even if such efforts decrease relative to the past, that does not mean they should be entirely abandoned.

relying on a cadre of student workers to do rote work on a daily basis.

Along with the automation of some parts of libraries, online access has decreased the importance of large print sets, whether primary case law, statutes, and regulations, or secondary materials, such as law reviews. This trend towards monographs has increased the need for staffing in acquisitions while decreasing the need for students to file the traditional transfer binders, pocket parts, and reporter supplements. In addition, Amazon and other used book vendors have made it possible to acquire older monographs that would previously have been deemed impossible to find, further increasing the need for an agile acquisitions department.

b. Reorganizing Services

Based on all the changes discussed above, how should the academic law library of the future be organized? Do traditional distinctions make sense going forward? Should librarians structure the library as it has been structured, dividing libraries into a technical services department that orders and processes the books, a circulation department that shelves and circulates print materials, and a reference department that responds to content-specific questions? Is this still the best way to meet future needs? To answer these questions, it is best to start to think of the library as an aggregation of functions.

There is a new emphasis on outcome measures throughout legal education.⁷ Outcome measures look at what the student gained between the start and end of law school, attempting to quantify how the exiting student has been prepared for work in the legal profession. Law libraries will also undoubtedly be pressed to identify and track outcomes to demonstrate how and where they add value. If libraries cannot statistically tie library use to increased scholarly productivity, the teaching enterprise, and/or increased bar passage rates, they will need to find other ways to provide value to the institution. Benchmarking and other externally focused measures will become increasingly important as financial pressures increase. Schools should rethink some of the structure and role of law libraries and gather the data necessary to support the changes that are inevitable.

i. Services and Administrative Issues

Due to the changing nature of law schools, there is no longer only one “right” way to organize a library. Structural questions may well vary from school to school. Nonetheless, several common directions are emerging:

- Schools should rethink the relationship between the library and the information technology/computing department. Should these programs be merged or further separated? Where can they complement each other?
- Libraries should assist law school fundraising and advancement efforts. Library personnel can research potential donors and track alumni to improve the currency and quality of the information available to the fundraising team.

⁷ See generally, WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

- Law Libraries can and should coordinate more effectively with the university library. ABA Standards require law library independence from main campus libraries and a reporting structure that at least nominally goes through the law school dean.⁸ How should law libraries rethink their relationships with their main campus libraries? Libraries may need to become even more efficient than they currently are, dropping services they offer that are not absolutely essential. Outsourcing the copy cataloging, stamping, and label printing routine to the main campus library and paying it for an extra employee or two, if necessary, would free up room in the budget to redeploy existing staff to new, more specialized tasks or to add another reference librarian in the law library. The law library should also consider the benefits and drawbacks of coordinating with the main campus library by using a single catalog and/or digital repository instead of going it alone and paying a second fee to the software provider. Although the law library might lose total control, including interface design, law library branding, and methods of pushing data exclusively to law school patrons, the cost savings and on-campus expertise outside the law library might outweigh those drawbacks. With the potential savings in some areas, law libraries would in turn gain the flexibility to provide services that the law school expects but that the main campus does not and cannot provide.
- As law schools look towards additional revenue sources, including distance education, undergraduate education, and post-J.D. education, law libraries will be stretched further than ever. Standalone academic law libraries will be expected to have print monographs that meet the needs of undergraduates with a limited knowledge of civics all the way through materials needed for doctoral dissertations. Staff will need to focus more on meeting the needs of an increasingly diverse student body and an unpredictable faculty, rather than tailoring their collection and services to solely a faculty and J.D.-based population.
- An additional challenge for public universities is how to balance their public mission with decreased funding from state legislatures.⁹ Should academic law libraries associated with public institutions continue to serve the public to the extent they have in the past? How central should that service be as resources tighten and the demands of faculty and students increase? Again, there is no broad answer. The question must be debated on a case-by-case basis as competing interests force the library to stop providing some services in order to either add new tasks or spend more resources on existing needs.
- Libraries should reexamine whether to continue to separate reference and circulation departments. As print acquisition, print circulation, and the need for re-shelving decrease, should the two departments be merged, creating a single point of service? Will a single point of service improve use of the

⁸ ABA Standards and Rules of Procedure for Approval of Law Schools, Standard 602, STANDARDS, http://www.americanbar.org/groups/legal_education/resources/standards.html, archived at <http://perma.cc/BDT2-VQFS> [hereinafter ABA Standards].

⁹ Connie Lenz, *The Public Mission of the Public Law School Library*, 105 LAW LIBR. J. 31 (2013).

library by simplifying the point of contact and doing more of the delegation invisibly after the question is received? This model of “customer relationship management” has been successful in business and should be considered in other service-oriented areas of the law school.

ii. Contributions to Teaching

Law libraries can and should shift resources to further more directly the teaching mission of law schools in the following ways.

Location: Law schools should embed librarians on faculty and student floors. Architecture and habits can split groups apart or they can bring them together. Librarians should relocate to faculty and student areas to better serve the primary populations they want to reach. Even having a laptop on a table in the student café during the lunch hour would be a significant step towards breaking walls between law school functions and spaces.

Direct Teaching: As discussed above, the expansion of law schools into undergraduate, graduate non-J.D., and distance education will increase the law school’s need for librarians to assist the teaching endeavor. Librarians can teach at numerous levels, from basic civics for undergraduates to high-level specialized legal research for LL.M.s and Ph.D.s.

“Shadow” Curriculum: To accompany the law school curriculum, a library should develop a parallel curriculum with a focus on teaching students various types of fluency with legal materials. Library staff should develop special materials to correlate with the different roles that law students inhabit, such as first-year students learning the language of the law; more advanced students; journal staff and editors; summer associates; students in skills competitions; clinic and externship students; and faculty research assistants. The library staff can teach about legal resources and their specialized use in each of these activities and roles.¹⁰

Liaison Program for Faculty and Students: Some libraries have set up liaison programs so that a single librarian is the primary point of contact for a group of faculty members. The liaison model may serve the faculty better because the liaison librarian knows what projects his or her faculty members are working on and can provide them with more in-depth subject matter knowledge, more relevant current awareness items, and a stronger sense of how each faculty member wants to receive his or her memos, news items, and printouts. A downside of liaison programs for faculty is that the faculty members can become dependent on their liaison, which can cause problems when that person is unavailable. Libraries should consider the benefits and drawbacks of creating liaison programs for students as well. Of course, any student could ask a question at any time, but if each student had a dedicated

¹⁰ See Christopher Knott, *Libraries as Service Institutions: Meeting Patron Needs in a Changing Environment*, in *HOW TO MANAGE A LAW SCHOOL LIBRARY: LEADING LIBRARIANS ON UPDATING RESOURCES, MANAGING BUDGETS, AND MEETING EXPECTATIONS* 88-89 (2008).

librarian who they could consult and work with over time, it might provide a better service to the students as well as creating an even stronger bond between the students and the library.

Distance Education Support: Law librarians can provide an additional point of connection to distance education students by providing them with both access to print and digital legal information and a non-judgmental sounding board for more general questions beyond strict research. These distance education students will likely require different training and more in-depth assistance in certain areas and cannot just drop in to ask a question. Reference services might also be needed for additional hours to support after-work programs and distance education programs that span multiple time zones.

Study Space: For the near future, law students will need a physical place to study and collaborate. It makes sense for the study and collaborative spaces to remain within the library. Libraries have often maintained the space in the building that is accessible to students for the longest hours. Even though studying has become less and less associated with the library's physical collections, the law school gains from having a supervised space for law students and others to study. The library may not need staffing when open late on evenings and early on weekends beyond what public safety requires, but the library as a place to study has a resonance with students, and the law school would not save any money by staffing the study spaces outside the library. Although many law students associate the library with studying, if permanent staff availability during all hours the library is open becomes a luxury, rather than a necessity, key cards or other access methods could be provided to law students to provide a safe place to study even when the library is not staffed. The library can remain a safe place for law students to study and collaborate, even if it is staffed for fewer hours per week than before.

Curriculum Development: Libraries do not exist in isolation. Whether through interlibrary loan, shared bibliographic utilities, or even multi-campus delivery services, libraries improve services to patrons by collaborating with other libraries. Law libraries should expand the collaboration particularly to assist with the explosion of curriculum reform efforts going on across the country. Instead of having faculty and reference librarians at each school independently compile surveys of how other law schools are addressing the need for increased experiential education and other curricular reform initiatives, they should share that compilation of information, and facilitate on-going reform efforts.

Interdisciplinary Collaboration: Law librarians should collaborate with subject specialists and librarians from across the campus in teaching law students about research resources relevant to the increasingly interdisciplinary law school curriculum. Conversely, law librarians could do the same for other parts of the institution, perhaps even stimulating increased student interest and curiosity about attending law school.

Needs Assessment: Law libraries should actively and routinely conduct needs assessments by reaching out to the student and faculty populations through surveys, focus groups, and one-on-one meetings. Knowledge of what the institution wants from its library will help further the institution's goals while also informing the library what tasks and services can be altered.

4. Conclusion

In an era of such rapid change, it is hard to say that anything “should” or “should not” be done. Law schools and the libraries within them need to retain their focus on their traditional goals while investigating new ways to achieve them. Just as law schools will continue to provide an excellent education for those entering legal services professions, the libraries within them will continue to excel at serving the faculty and students as their needs continue to evolve. With agility, a service orientation, and a judicious use of limited resources, libraries will remain central to law schools and the education mission for the foreseeable future.

E. CROSS-BORDER TEACHING AND COLLABORATION

By **Kimberly D. Ambrose, William H. D. Fernholz, Catherine F. Klein, Dana Raigrodski, Stephen A. Rosenbaum & Leah Wortham¹**

1. Introduction

Since the publication of *BEST PRACTICES FOR LEGAL EDUCATION*,² the globalization of both legal education and law practice has exploded. Today's lawyers increasingly serve border-crossing clients or clients who present with transnational legal issues. As law schools expand their international programs, and enroll increasing numbers of non-U.S. law students, law students transcend cultural and legal borders. As a result, they deepen their understanding of — and sharpen their critical perspective on — their own national systems. Similarly, U.S. law teachers are increasingly called to engage in border-crossing teaching and other academic pursuits.

BEST PRACTICES did not address these issues. This section's primary aim is to identify best practices for law teachers engaged with non-U.S. or “international” learners³ who study or train in a U.S.-style learning environment, either in the United States or abroad.⁴ This section also addresses collaboration of U.S. law teachers with their counterparts abroad in such areas as developing innovative teaching and clinical legal education, training and research. It identifies eight guiding principles that cut across types of international learning and then applies these principles to three specific contexts: 1) teaching international students in U.S. law school settings; 2) integrating international students in U.S.-based clinics; and 3) collaborating in legal education and reform efforts with law teachers abroad.⁵

2. Cross-Cutting Principles

Eight important guiding principles apply across all cross-border teaching contexts:

¹ Readers for this section were Elizabeth Baldwin, Jeff Giddings, Carole Silver, and Richard J. Wilson.

² ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007) [hereinafter *BEST PRACTICES*].

³ This section uses the term “international” students to refer to law students who come to the U.S. for a graduate degree (typically LL.M. or J.S.D./Ph.D.) after university education outside the United States. For many such students, English is their second language. Similarly, legal academics who mostly studied, trained, and teach abroad are referred to as “international” teachers or academics.

⁴ Cross-border aspects of U.S. legal education take many forms, including summer study programs abroad; academic credit for study at a non-U.S. law school; LL.M. degrees for students with initial degrees in law from outside the United States; J.D. degrees for students who have lived abroad including those with university degrees from other countries; doctrinal courses on international, comparative, and transnational topics, and integration of those perspectives in traditional courses; international journals and moot court competitions; clinical education programs with international dimensions; and teachers and students working with counterparts abroad on legal education reform efforts.

⁵ The specific areas of focus were selected based on the authors' experience with growing trends and teaching opportunities for U.S. law teachers. The recommended practices, however, have broad application to other models of cross-border collaboration.

Develop intercultural effectiveness.

Teachers and administrators must develop their own intercultural effectiveness,⁶ as well as the effectiveness of the lawyers and law students they are educating and training.⁷ Cross-cultural education requires effective, culturally appropriate communication.⁸

Teachers and administrators must acknowledge assumptions that impede learning and communication.

International students may misunderstand U.S. legal principles or culture, and U.S. students working cross-culturally may bring their own misunderstandings. Likewise, teachers must be aware of their own assumptions. Before traveling, teachers should seek information regarding the host country's law and legal systems, the role of lawyers and other legal professionals in its legal system, and its history, literary works, or film, which can help both them and their students understand the host cultures and recognize false or misleading assumptions.

Teachers should "design backward" by defining the outcome desired by the learner.⁹

Teachers designing courses or programs for international lawyers, students, or academic counterparts must take into account the ways these learners are likely to use the training in future practice or legal education contexts, which may be different from those in the U.S.

⁶ See, e.g., Chapter 6, Section E, *Intercultural Effectiveness*, below; Susan Bryant, *The Five Habits of Cross-Cultural Lawyering*, 8 CLINICAL L. REV. 33 (2001); Nancy E. Dowd, Kenneth B. Nunn & Jane E. Pendergast, *Diversity Matters: Race, Gender, and Ethnicity in Legal Education*, 15 U. FLA. J. L. & PUB. POL'Y 11, 40 (2003); Patricia A. Massey & Stephen A. Rosenbaum, *Disability Matters: Toward a Law School Clinical Model for Serving Youth with Special Education Needs*, 11 CLINICAL L. REV. 271, 285-94 (2005); Michael Perlin, *Half-Wracked Prejudice Leaped Forth: Sanism, Pretextuality, and Why and How Mental Disability Law Developed as It Did*, 10 J. CONTEMP. LEGAL ISSUES 3 (1999). While useful in consciousness-raising for the teacher and student, these articles focus on intercultural effectiveness as applied to a typical J.D. program setting.

⁷ The most recent Carnegie Foundation report uses the French term, "formation," when referring to the intensive socialization, professionalization, and values-shaping that law students undergo, i.e., the "apprenticeship" of professionalism and purpose. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 84, 128-29, 185-86 (2007).

⁸ Sometimes the broader term, "cultural fluency," is used to discuss the same concept. See, generally, MICHELLE LEBARON, *BRIDGING CULTURAL CONFLICTS: A NEW APPROACH FOR A CHANGING WORLD* (2003).

⁹ See, generally, JOHN BIGGS & CATHERINE TANG, *TEACHING FOR QUALITY LEARNING AT UNIVERSITY* 13-14 (4th ed. 2011) (advocating "constructive alignment," which, like backward design, focuses on learning objectives); *Teaching Teaching and Understanding Understanding* (19-minute video explaining the basics of John Biggs' work), available at <http://www.daimi.au.dk/~brabrand/short-film/script.html>, archived at <http://perma.cc/L97N-YAG3>.

*Law teachers should approach cross-cultural work as an opportunity for all involved to learn from each other.*¹⁰

Teachers are not endowed by citizenship with the authority to tell others “how to do it right.” One can provide information on “how we do it in America,” but should not assume that is “the answer” for how things should be done elsewhere. Teachers should maximize the opportunities for cross-cultural dialogue and find opportunities for international students or visiting academics to provide learning opportunities by sharing perspectives from their home countries.¹¹

Teachers and students rediscover the culture, law, and legal system of their home countries when they “see it from the outside.”

Cross-cultural legal dialogue helps both the teacher and student critically examine their own culture and legal system.

Effective collaboration should recognize the comparative advantage of the participants.

As teachers plan their courses and programs, they should be mindful of the prior experience and education of their students. U.S. collaborators must recognize the expertise of their colleagues educated outside the United States and validate it.

Programs in which teachers or students move to an unfamiliar culture should provide support for their comfort, safety, and mental well-being.

Teachers and administrators need to consider cultural assumptions that could result in student misunderstanding and frustration, both inside and outside the classroom. Hosting international visitors cannot be limited to just “the academic program.” Hosts must consider the visitors’ housing, transportation, access to food, and other services and support.

¹⁰ Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 CLINICAL L. REV. 601, 675-76 (2006) [hereinafter Wortham, *Aiding*]. For a candid exchange on perceived and real inequities in cross-border relationships between legal academics, see Daniel Bonilla, *Legal Clinics in the Global North and South: Between Equality and Subordination — An Essay*, 16 YALE HUM. RTS & DEV. L.J. 1 (2013); James J. Silk, *From Empire to Empathy? Clinical Collaborations Between the Global North and the Global South — An Essay in Conversation with Daniel Bonilla*, 16 YALE HUM. RIGHTS & DEV. L.J. 41 (2013).

¹¹ On the importance of developing intercultural effectiveness in a non-U.S. legal educational context, see, e.g., Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide Between Civil and Common Law Cultures and Its Implications for Clinical Education*, 15 CLINICAL L. REV. 131 (2008); Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 14 CLINICAL L. REV. 465, 496-97 (2008); Jill J. Ramsfield, *Is “Logic” Culturally Based? A Contrastive, International Approach to the U.S. Law Classroom*, 47 J. LEGAL EDUC. 157 (1997).

*Collaboration over time is more effective than a single short visit or short-term relationship.*¹²

Effective collaboration requires trust, respect, and mutual understanding, which only can be gained over time. The most effective cross-national collaborations occur when all parties take the time to know each other beyond the specific professional task at hand. Long-term collaborations in teaching, student exchange, and research and writing generally entail more than “strictly professional” exchanges, but also require attention to developing relationships.

3. Working with International Students in U.S. Law Schools

The number and size of graduate-level law programs have grown immensely in the past decade, particularly those serving students previously educated in other countries.¹³ The increased enrollment of foreign-educated LL.M. candidates in U.S. law schools requires law teachers to reconsider their methods of teaching.

Most international students are similar to one another in that they speak English as a second language, have law degrees from their home countries, and chose to leave those countries to continue their legal education. But paradoxically, international students are most similar to one another in their diversity. First, international students vary in legal culture. As a result, foundational U.S. legal concepts may have no analogue in their home country. Alternately, international students may adopt false assumptions about U.S. law based on concepts from their own legal culture. Second, students vary widely in their prior legal experience. Finally, nations have divergent methods of legal education.¹⁴

As a result, international students expect many different things from U.S. law schools and teachers. The recommendations below aim to assist law teachers in addressing this diversity, primarily by being mindful of several of the following cross-cutting principles described above, particularly awareness of assumptions, backward design, the potential for mutual learning, the comparative advantage in knowledge, and mutual trust, respect, and understanding, built over time.

¹² Wortham, *Aiding*, at 676-678.

¹³ Carole Silver, *Internationalizing U.S. Legal Education: A Report on the Education of Transnational Lawyers*, 14 *CARDOZO J. INT'L & COMP. L.* 143 (2006) [hereinafter Silver, *Internationalizing*]; Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 *FORDHAM INT'L L.J.* 1039 (2002).

¹⁴ For practical, culturally appropriate perspectives on how to approach teaching of international students, particularly those for whom English is a second language, see, e.g., Julie M. Spanbauer, *Lost in Translation in the Law School Classroom: Assessing Required Coursework in LL.M. Programs for International Students*, 35 *INT'L J. LEGAL INFO.* 396 (2007); Carole Silver, *States Side Story: Career Paths of International LL.M. Students, or “I Like to Be in America,”* 80 *FORDHAM L. REV.* 2383 (2012); Silver, *Internationalizing*; Mark E. Wojcik & Diane Penneys Edelman, *Overcoming Challenges in the Global Classroom: Teaching Legal Research and Writing to International Law Students and Law Graduates*, 3 *LEGAL WRITING: J. LEGAL WRITING INST.* 127 (1997); Robin Nilon, *The Calculus of Plagiarism: Toward a Contrastive Approach to Teaching Chinese Lawyers*, 2 *S.C. J. INT'L. L. & BUS.* 1 (2005-2006); Marian Dent, *Designing an LL.M. Curriculum for Non-Western-Trained Lawyers*, 13 *PERSP. TEACHING LEGAL RES. & WRITING* 87 (2005); Elizabeth L. Inglehart, *Teaching U.S. Legal Research Skills to International LL.M. Students: What and How*, 15 *PERSP. TEACHING LEGAL RES. & WRITING* 180 (2007).

a. LL.M.-Specific Curriculum

International students have not experienced a U.S. undergraduate education nor the first-year J.D. curriculum. In order to understand their classes, international students need knowledge of, and training in: (1) common law methods, (2) institutions of United States governance, and (3) judicial procedure.

Most crucially, these students need to learn the skills of U.S.-style critical thinking and writing within an experiential context. LL.M.-specific legal analysis, research and writing courses are crucial to an effective LL.M. program curriculum. The “IRAC”¹⁵ format of the traditional legal memorandum has been a successful model for learning these skills. Many international LL.M. students already have years of practical legal experience. Their prior experience may help them and their peers integrate theory, doctrine, and practice through complex and challenging writing assignments.¹⁶

b. Learning Environment¹⁷

Law teachers must balance being inclusive and respectful of students’ learning styles while at the same time challenging students to leave their comfort zone. Many international students may be reluctant to speak in class. It is, therefore, crucial to create a safe environment to encourage international student participation. From the first class, the teacher should incorporate research about growth mindset,¹⁸ which suggests teachers should reassure students that mistakes are inherent to the learning process. Students learn only if they are aware of their mistakes and understand how to correct them. This is most likely to occur when student-faculty contact is frequent and teachers provide individualized feedback and support.

International students may be more comfortable speaking to one another, or may be willing to speak up in class if given an opportunity to formulate their answer in advance. Several approaches are possible:

- (1) Students take a minute to write an answer, then read or paraphrase their answers to the class;
- (2) Think, pair, share: Students formulate a response, then share it with their neighbor;
- (3) Students work in ad-hoc groups on in-class assignments;
- (4) Students collaborate in teams on longer-term assignments;¹⁹
- (5) Peer-teaching: Students take the place of the teacher and challenge each other’s ideas.

¹⁵ Issue-Rule-Analysis-Conclusion. *See, e.g.*, Courtney Lee & Tim Nacarrato, *Legal Skills for Law School & Legal Practice 4-6* (Univ. of the Pacific, McGeorge Schl. of Law, n.d.), available at <http://www.mcgeorge.edu/Documents/week1LegalSkills.pdf>, *archived at* <http://perma.cc/97AD-Q4MV>.

¹⁶ BEST PRACTICES.

¹⁷ *Id.*, text at notes 353.

¹⁸ *See, e.g.*, CAROL S. DWECK, *SELF-THEORIES* (2000).

¹⁹ BEST PRACTICES, text at notes 321-323 (reviewing Hess Components).

Many students come from cultures where there is a clear hierarchy between teacher and students. In order to foster respect and inclusion, the teacher should emphasize that education in the U.S. is a mutual enterprise where both teacher and student are learning and may contribute to each others' education.²⁰ Students should understand that it is acceptable for them to ask questions and to challenge the teacher and one another.

International students offer an extraordinary comparative law perspective. Teachers should encourage, and at times require, that students share their comparative perspective on specific subjects and evaluate U.S. law in that light. Such evaluative assignments are at the apex of Bloom's taxonomy of learning²¹ and enhance students' feelings of inclusion.²²

Teachers should be careful not to judge the intellectual sophistication of individual students based on their English-language skills. Teachers need to set high goals — assuming the students' intellectual sophistication — and then provide the time and feedback needed to reveal that sophistication.²³ Faculty should strive to balance academic and language support with progressively heightened grading expectations. They should set narrow, challenging, and well-defined mastery learning goals rather than grade goals.²⁴

c. Effective Teaching and Assessment Methods for International Students

Make everything permanent.

Because of the challenges of learning in a second language, international students thrive when they are able to review material multiple times. Teachers should use methods and distribute materials that allow students to continue learning after class. This will alleviate students' tendency to take notes without actively listening. Teachers may record their lectures or write short class introductions and post those to a course website. They should also post their Power Point slides, model answers, and handouts.

*Employ multiple methods of instruction, including discussion.*²⁵

International students accustomed to less confrontational interpersonal communications may view the Socratic method as overly-aggressive and intimidating. Moreover, many of these students come to the United States accustomed to passive learning through lectures. As a result, it may be challenging for teachers to maintain an engaging classroom and open discussion. While slides, handouts, and structured

²⁰ *Id.*

²¹ See RAYMOND J. WLODKOWSKI, ENHANCING ADULT MOTIVATION TO LEARN: A COMPREHENSIVE GUIDE FOR TEACHING ALL ADULTS 154-55 (3d ed. 2008).

²² BEST PRACTICES, text at notes 372-381.

²³ *Id.*, text at note 342.

²⁴ *Id.*, text at note 350.

²⁵ *Id.*, text at notes 420-422.

lectures help students overcome language and comprehension issues, these tools can discourage active listening and engagement.

Class discussion may be better suited to the educational needs of LL.M. students or other graduate law students, though the teacher may run the risk of unintentionally favoring those students most proficient in English.²⁶ Discussion reinforces an atmosphere of mutual learning suitable to more seasoned students. Teachers must guide the discussion and beware of tendency toward silence that may be exhibited by habitually passive learners.²⁷ To improve classroom discussion participation, teachers should use planned open-ended questions, and consider circulating reflection questions in advance of class.

Teachers may also use group exercises, assigned student presentations, and periodic written assignments. Collaborative exercises, including peer feedback, promote active learning and intercultural effectiveness.²⁸ Faculty should establish clear rules for permissible collaboration to avoid ethical lapses, especially because expectations in U.S. law schools may differ from those in prior educational settings.

Context-based learning and problem solving can be particularly effective with international students.²⁹ Especially in mixed J.D.-LL.M. classes, international students provide a resource for faculty to enrich the classroom with diverse examples from legal practice.

Use constructive assessments.

Because LL.M. students are less likely to be familiar with U.S. legal and academic culture, properly conceived assessments — which alert the students to what skills are (and are not) being assessed — are particularly important.³⁰ Teachers should expressly tie learning goals to assessment criteria.³¹ Teachers should gradually increase the difficulty of assignments assessed throughout the semester, and explain the heightened expectations to the students. Criteria-referenced assessments³² help teachers see beyond language issues and help students stay motivated despite language difficulties.

4. Incorporating International Students into U.S. Clinical Law Programs

Many international students (including those already teaching or practicing law in their home country) come to the United States specifically to observe and participate in experiential learning. Incorporating these students into a U.S.-based clinical law

²⁶ *Id.*, text at notes 642-658.

²⁷ *Id.*, text at note 658.

²⁸ *Compare id.*, text at notes 364-371.

²⁹ *Id.*, text at notes 455-474.

³⁰ *Id.*, text at notes 766-771.

³¹ *Id.*, text at notes 730-735.

³² *Id.*, text at notes 718-729.

program is an “emerging practice” that can create a rich learning environment for all students to learn the skills needed to communicate and work in a changing world.³³ As clinical legal education spreads globally, international academics pursuing a law degree in the U.S. can also learn about a model of clinical legal education that may inform the development of clinical programs suited to their own countries.³⁴ The following recommendations provide guidance, consistent with the cross-cutting principles, for U.S. clinical law programs that offer or seek to offer clinical opportunities to international students.

Design backwards by assessing and acknowledging students’ goals and background knowledge and skills.

In determining clinic placement and design for international students, and consistent with the above design principle, clinic faculty must consider the knowledge, skills, and values international students will need to achieve their goals. International students may be preparing to practice law in the United States or they may be returning to their home countries to practice law, teach, or work in government or court systems. International students and clinical faculty should consider what different clinics offer in terms of transferrable skills, and for students who wish to enter academia in their home countries, what transferrable teaching methods will be modeled. The teacher should discuss goals with the students to find out the students’ own goals.

Because clinic students generally work on real cases, the ability to meet ethical standards of attorney competence under supervision is required. While international students may lack familiarity with U.S. legal systems and culture, they may have extensive experience working in their home countries; this can enhance their ability to practice in a clinical setting and offset their lack of substantive knowledge. When placing international students in clinics, faculty should be familiar with the students’ legal cultural background.

³³ For a general discussion of the importance of promoting interaction between international and U.S. law students to prepare U.S. graduates to work in a global environment, see Carole Silver, *Getting Real About Globalization and Legal Education: Potential and Perspectives for the U.S.*, 24 STAN. L. & POL’Y REV. 457 (2013) [hereinafter Silver, *Getting Real*].

³⁴ For a detailed account of the development of the legal clinical education movements in Africa, Asia, Latin America, and Europe, see Jeff Giddings, Roger Burrridge, Shelley A.M. Gavigan & Catherine F. Klein, *The First Wave of Modern Clinical Education: The United States, Britain, Canada, and Australia*, in THE GLOBAL CLINICAL MOVEMENT 3-22 (Frank S. Bloch, ed. 2011); David McQuoid-Mason, Ernest Ojukwu & George Mukundi Wachira, *Clinical Legal Education in Africa: Legal Education and Community Service*, *id.* at 23-36; Bruce A. Lasky & M.R.K. Prasad, *The Clinical Movement in Southeast Asia and India: A Comparative Perspective and Lessons to Be Learned*, *id.* at 37-52; Mariana Berbec-Rostas, Arkady Gutnikov & Barbara Namyslowska-Gabrysiak, *Clinical Legal Education in Central and Eastern Europe: Selected Case Studies*, *id.* at 53-69; Erika Castro-Buitrago, Nicolás Espejo-Yaksic, Mariela Puga & Marta Villarreal, *Clinical Legal Education in Latin America: Toward Public Interest*, *id.* 69-86; Cai Yanmin & Jay Pottenger, Jr., *The “Chinese Characteristics” of Clinical Legal Education*, *id.* at 87-104. See also T.O. Ojienda & M. Oduor, *Reflections on the Implementation of Clinical Legal Education in Moi University, Kenya*, 2 INT’L J. CLINICAL LEGAL EDUC. 49 (2002); Tan Cheng Han, *Change and Yet Continuity — What Next After 50 Years of Legal Education in Singapore?*, SING. J. LEGAL STUD. 201 (2007); B.B. Pande, *Moral and Ethical Issues Confronting Students’ Legal Aid Clinics in the Outreach of Legal Services to the Resource-less and the Poor*, 1 J. NAT’L L. UNIV., DELHI 34 (2013).

Some of the core skills students develop in clinics include oral advocacy, interviewing and counseling, and writing in English. Different types of clinics may emphasize certain skills over others. For example, a post-conviction advocacy clinic may require intensive brief writing with strict deadlines. A domestic violence clinic may require intense, time-sensitive client interviewing and counseling. Prior to matching a student with a particular clinic, it is helpful to understand her initial level of comfort communicating in English, while recognizing that her skills can improve over time.

Maximize opportunities for inclusion and challenge.

As mentioned above, it is important to create a safe and inclusive learning environment when working with international students, which also challenges them. For clinic students, this means choosing a clinic where they can actively participate. Litigation clinics where students practice under local practice rules may not be suitable for LL.M. students who do not meet eligibility requirements. A preferred clinical opportunity would allow the student maximum participation — such as a tribal court clinic which might have more flexible rules for admission to practice, a transactional clinic where international LL.M. students might be on equal footing with their J.D. classmates, or possibly an immigration clinic where the international students could share cultural knowledge and experience.

In order to create an inclusive learning environment, clinicians must understand and appreciate the benefits of adding an international student perspective to their clinic and must possess (or be willing to develop) intercultural effectiveness, as indicated in the principles above. Clinical supervisors should be prepared to provide additional support where needed, which can mean spending more time — particularly up front — to ensure that the international student has the cultural contextual background to do clinic work.

Assign students to work in teams.

Teaming international students with U.S. students in a clinic can be a beneficial experience for both, but requires thought and support from the clinical supervisor. U.S. law students who have cross-cultural experience working or studying abroad may be most comfortable working with international students — but it is important not to make assumptions. Clinic supervisors should prepare students for cross-cultural team experiences by facilitating conversations about goals and expectations as well as troubleshooting issues that may come up around workload, division of labor, and communication.³⁵ During regular supervision meetings, the supervisor may need to encourage meaningful participation by international students who may defer to teammates they perceive to be more familiar with the context.³⁶

³⁵ See, e.g., Barbara Glesner Fines, Margaret Sova McCabe & Sophie Sparrow, Using Team Based Learning to Teach Collaborative Practice Skills (Instit. for L. Teaching and Learning Summer Conf., June 17-18, 2010), available at <http://lawteaching.org/conferences/2010/handouts/plenary-UsingTeamBasedLearning.pdf>, archived at <http://perma.cc/MHL9-WCGM>; Janet Weinstein, Linda Morton, Howard Taras & Vivian Reznik, *Teaching Teamwork to Law Students*, 63 J. LEGAL EDUC. 36 (2013).

³⁶ For a discussion of the benefits and challenges of assigning international and U.S. law students to work

Consider cultural values in assignment of cases, supervision, and reflection.

Certain cultural values may also affect an international student's comfort or ability to work on certain types of cases. For example, a female Muslim student might be uncomfortable representing a male criminal defendant. A student from certain sub-Saharan African or Muslim countries might be reluctant to do advocacy on behalf of LGBT youth. To ensure ethical practice and meaningful participation by international students, clinic supervisors must provide them with the opportunity to discuss their concerns at the beginning and throughout their clinic work in a non-judgmental environment. This dialogue should address assumptions the student may have about the client, the lawyer's role, and the nature of the legal work. And, as discussed in the above principles, the supervisor should also seek an understanding of the student's cultural perspective and acknowledge the supervisor's own assumptions. Sometimes a "try it and see" approach — where the international student is allowed to take a secondary role on a case by working behind the scenes or by observing teammates — can provide a rich learning experience for all. Supervisors should also seek opportunities early on to build on students' strengths and instill confidence through structured reflection — including writing and/or conversation. For example, in order to address a student's apprehension about interviewing a client, a teacher could encourage the student to reflect upon how her own experiences in the U.S. interacting with different people in unfamiliar settings can prepare her for how a client might feel during an interview. This reflection allows students, clients and the clinician to benefit from the global perspective that an international student brings.

5. Border-Crossing Collaboration among Academics

Transnational activities and awareness encompass more than acknowledging the increased enrollment of international students attending law schools in the United States. Through initiatives such as the Fulbright program, established in 1946,³⁷ and the enthusiasm of the Law and Development Movement (LDM) from the 1950s to the 1970s,³⁸ U.S. teachers and their counterparts have been crossing borders for many years. The collapse of the Soviet Union, Latin American military dictatorships and one-party states in Africa and Asia spawned a new wave of international efforts to reform legal institutions in Central and Eastern Europe,³⁹ developing countries,⁴⁰

in teams, see Silver, *Getting Real* at 488-91 (drawing on examples from outside of the law school context).

³⁷ For a brief history of the Fulbright program, see <http://us.fulbrightonline.org/history>, archived at <http://perma.cc/9S3Y-56EC>.

³⁸ For a critique of LDM, including recent "revisionist views" of the Movement, and its relationship to more recent endeavors in legal education reform abroad, see Wortham, *Aiding*, at 632-43; Richard J. Wilson, *Beyond Legal Imperialism: US Clinical Education and the New Law and Development*, in *THE GLOBAL CLINICAL MOVEMENT*, at 135-50.

³⁹ See, e.g., Wortham, *Aiding*, at 615.

⁴⁰ See, e.g., Jane Aiken, *Lessons from Nepal: Partnership, Privilege, and Potential*, 2 *WASH. U. GLOBAL STUD. L. REV.* 391 (2003); Thomas F. Geraghty & Emmanuel K. Quensah, *African Legal Education: A Missed Opportunity and Suggestions for Change: A Call for Renewed Attention to Neglected Means of Securing Human Rights and Legal Predictability*, 5 *LOY. U. CHI. INT'L L. REV.* 87 (2007); Haider Ala Hamoudi, *Toward a Rule of Law Society in Iraq: Introducing Clinical Legal Education in Iraqi Law Schools*, 23 *BERKELEY J. INT'L L.* 112 (2005); Catherine F. Klein & Ved Kumari, *Justice Education and the*

and other parts of the world. Access to information through the Internet and personal and professional contact through organizations and conferences⁴¹ have increased the transnational flow of best practices in teaching and learning. International governmental entities like the European Union and United Nations Development Programme, along with a host of non-governmental and national donor agencies and foundations,⁴² have promoted and funded legal education reform projects, training, consulting, and other forms of collaborative exchange.

In addition to general information about curriculum design, colleagues abroad often find it useful to have a framework of items to be considered in designing new program initiatives, *e.g.*, a clinical program, a legal ethics course, or in employing interactive teaching methods in the classroom. Academics should offer information on U.S. models as options from which to choose, rather than promote them as the ideal.⁴³

U.S. teachers should talk with their international counterparts and, where appropriate, with students, about their career goals. In most countries, the study of law is pursued as an undergraduate degree, which may be seen as a form of general education, and it is useful to understand the range of aspirations that a law program's students may have.

Evaluation Process: Crossing Borders, 28 WASH. U. J. L. & POL'Y 195 (2008); GLOBAL LEGAL EDUCATION APPROACHES: SPECIAL REFERENCE TO THE MIDDLE EAST (Mutaz M. Qafisheh & Stephen A. Rosenbaum, eds. 2015); Lisa Radtke Bliss, *Lessons Learned Teaching Clinical Legal Education in Thailand*, 63 J. LEGAL EDUC. 524 (2014); Stephen A. Rosenbaum, *The Legal Clinic is More Than a Sign on the Door: Transforming Law School Education in Revolutionary Egypt*, 5 BERKELEY J. MIDDLE E. & ISLAMIC L. 39 (2012).

⁴¹ See, *e.g.*, Global Alliance for Justice Education (GAJE) Worldwide Conferences, <http://www.gaje.org/conferences/past-conferences/>, archived at <http://perma.cc/3WDC-35SZ>; International Association of Legal Ethics (IAOLE), <http://www.stanford.edu/group/lawlibrary/cgi-bin/iaole/wordpress/>, archived at <http://perma.cc/VUX8-LBUN>; IAOLE grew from the six International Legal Ethics Conferences (ILEC) with the most recent being in London in 2014, <http://www.city.ac.uk/international-legal-ethics-conference>, archived at <http://perma.cc/QD2X-9QX5>; annual International Journal of Clinical Legal Education Conferences, http://www.numyspace.co.uk/~unn_mlif1/school_of_law/IJCLE, archived at <http://perma.cc/9249-PZCH>.

⁴² For an historical and organizational background on one of the foremost international organizations devoted to international legal educational innovation and reform, see Edward Santow & George Mukundi Wachira, *The Global Alliance for Justice Education*, in *THE GLOBAL CLINICAL MOVEMENT*, at 371. For a description of other international legal education reform activities and resources, see, *e.g.*, American Bar Association (ABA) Rule of Law Initiative (<http://www.americanbar.org>); Open Society Justice Initiative, Clinical Legal Education Training Materials (http://www.soros.org/initiatives/justice/articles_publications/publications/clinic_20070206, archived at <http://perma.cc/D9JG-UB5Z>); and Bridges Across Borders Southeast Asia (<http://www.babsea.org>, archived at <http://perma.cc/WD9U-JDD8>). The ABA Central and Eurasian Law Initiative (CEELI) and Columbia University's Public Interest Law Initiative (PILI) were among the first promoters of clinical legal education in the Global South, followed by the World Bank, Inter-American Development Bank, and other international financial institutions. Wortham, *Aiding*, at 618-19. The Ford Foundation supported a premier Central European clinical collaboration between a U.S. and Polish university, and — in partnership with CEELI, PILI, and the Soros organizations — aided the development of clinical programs and materials in Russia. *Id.* at 619-23 & 631-32.

⁴³ See *e.g.*, Philip G. Schrag, *Constructing a Clinic*, 3 CLINICAL L. REV. 175, 245 (1996); Leah Wortham, *Teaching Professional Responsibility in Legal Clinics Around the World*, *KLINIKA*, Fall 1999, at 195, available at <http://www.fupp.org.pl/down/Klinika-2-2000.pdf>, archived at <http://perma.cc/4FQC-HH83>; *THE NEW LAW SCHOOL: REEXAMINING GOALS, ORGANIZATION & METHODS FOR A CHANGING WORLD* (Daniela Ikawa & Leah Wortham, eds. 2010), available at <http://www.pilnet.org/public-interest-law-resources/34-the-new-law-school-reexamining-goals-organization-and.html>, archived at <http://perma.cc/9C5M-KKGL>.

One may find that students, practitioners, and law teachers are thinking not only of educating students for things as they are in the home country's legal system, but also have aspirations for ways they think that system should change. The conscientious consultant who travels abroad should read as much as possible about the country being visited, and be ready to ask questions about such things as the licensing of lawyers, role of the judiciary, informal systems of justice, legal literacy, and venues for community legal education.

Often, ideas about legal education are best illustrated by working on a joint project with law faculty abroad. A visiting teacher may collaborate with international colleagues to adapt a teaching method to a local context by co-creating a class simulation, problem set, or new syllabus.⁴⁴ Moreover, aiding time-starved academics abroad with something concrete they can use to enrich their teaching is more useful than simply sharing ideas that may be misunderstood and are not easily adapted or implemented if offered only in a general discussion.

Effective cross-border collaboration requires assessing one's comparative advantage. While a teacher from the United States may be able to easily and quickly construct a simulation or class problem, she will need a local teacher's knowledge of a realistic scenario, applicable law, and assessment of what is most important for students to learn. Materials developed in this way also can provide materials for teacher trainings. A role play, problem set, or other exercise based on an example from a country with similar laws and conditions is likely to be more effective in illustrating a teaching technique than one taken directly from U.S. course materials.

Trust, respect, and mutual understanding take time to develop. Thus, one-shot visits or short-term relationships are rarely of lasting value.⁴⁵ Likewise, experience teaches that once a relationship is established, much work can be done efficiently using email and Skype, but these communication modes also can generate considerable inefficiency and misunderstanding when the parties have not had previous face-to-face contact.

Study tours that bring academic partners to the country with the established educational model — *e.g.*, to the country with the existing clinical or interactive teaching program — often are more valuable than a lecture or brief training-of-trainers on best practices. In an on-site visit, the foreign teacher can attend class, observe students in court or interacting with their clients, speak with administrative staff, or talk with students about their perceptions. As adult learners, visitors can focus on what they most want to learn. Seeing it “for oneself” reduces distortions of miscommunication and assumptions. As time and resources permit, a guest can visit multiple schools or even participate in short-term co-teaching in a classroom, workshop or clinical setting. Visitors need sufficient time to reflect upon what they are

⁴⁴ Interactive teaching is often alluded to by teachers in the Global South as a huge challenge they face in large-sized classes. For a border-crossing collaborative experiment, see Lisa Radtke Bliss & Supamas Chinvinijkul, *Preparing Law Students for Global Practice: An Innovative Model for Teaching Lawyering Skills and Social Justice in a Large Enrolment Class*, 1 *ASIAN J. LEGAL EDUC.* 1 (2014).

⁴⁵ On the limitations and possibilities inherent in a short-term visit, see Stephen A. Rosenbaum, *Clinique ToGo: Changing Legal Practice in One African Nation in Six Days*, 17 *INT'L J. CLINICAL LEGAL EDUC.* 59 (2012).

seeing. Hosts should build in time to answer questions and exchange observations if the visitor wants to do so. It can be useful for visitors to come in pairs or small groups so they can discuss home country application with someone who also knows that context well.

Prior to a visit, it is useful to ask the visitors their goals for the visit and to offer them a range of options and a tentative schedule, but not one so full that it fails to allow for additional possibilities that may develop. Schedulers should be mindful of the system overload and exhaustion that comes from absorbing a lot of new information or communicating in a second language.

Whereas teachers are busy in the United States, those abroad may have even more responsibilities, including additional employment. (This is especially the case where the professoriate is poorly compensated or where only a few faculty members undertake innovative activities). A visit away from the home country can allow teachers the “gift of time,” with fewer demands and distractions. Overseas law schools may lack the library resources and helpful librarians taken for granted in the United States.⁴⁶ One useful aspect of the visit can be access to materials the teacher needs for course development, or for research for academic advancement in her country.

The goal is not to replicate U.S. legal educational practices — such as interactive teaching, service learning or law school clinics — in another country, or assume that “the American way” is the *only* way.⁴⁷ For example, clinics in countries that lack a student practice rule or opportunities for court appearances, or confront local bar opposition, have developed alternative learning and client service models. Similarly, expanded moot competitions, Street Law⁴⁸ or awareness-raising, shadowing lawyers, and off-site externships also come under the rubric of “clinical” reforms.⁴⁹ The essence of the second principle noted above is recognizing and challenging one’s assumptions. Teachers collaborating in the development of new legal educational ventures should learn as much as possible about the local context, perhaps visiting classes, courts, communities and other venues to enhance contextual understanding.

⁴⁶ *Id.* at 63, n. 17, nn. 104-06 and accompanying text; Hikmahanto Juwana, *Legal Education Reform in Indonesia*, 1 *ASIAN J. COMP. L.* 1, 7-8 (2006).

⁴⁷ Wortham, *Aiding*, at 674-75.

⁴⁸ See generally, Richard Grimes et al., *Street Law and Social Justice Education*, in *THE GLOBAL CLINICAL MOVEMENT*, at 225; LEE P. ARBETMAN & EDWARD L. O’BRIEN, *STREET LAW: A COURSE IN PRACTICAL LAW* (8th ed. 2010). “Street Law” is a registered trademark. The terms “community legal education” or “public legal education” are often used to describe the same instructional model designed for lay and activist audiences. *Id.* at ii.

⁴⁹ For broad definitions of applied or clinical education, see, e.g., DAVID A. SANTACROCE & ROBERT R. KUEHN CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., *THE 2010-11 SURVEY OF APPLIED LEGAL EDUCATION* (2012), available at <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf>, archived at <http://perma.cc/UC6G-NHZF>, (stating that “applied legal education” includes live-client clinics under supervision of faculty member who is also a licensed attorney as well as “off-site” field placement programs in which students are simultaneously taught and supervised by law school faculty and practicing lawyers); Cynthia F. Adcock, et al., Working Grp. on Vocabulary, Alliance for Experiential Learning in Law, *A Glossary for Experiential Education in Law Schools*, in *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 *ELON L. REV.* ___, PART II ___, (forthcoming 2015); JEFF GIDDINGS, *PROMOTING JUSTICE THROUGH CLINICAL LEGAL EDUCATION* 3-114 (2013). For examples of clinical models developed in countries without student practice rules, see Wortham, *Aiding*, at 674-75.

As embodied in the cross-cutting principles, one must remember all the small things that help someone to be comfortable and enjoy the visit, *e.g.*, locating housing that is safe, affordable, and convenient, explaining how to use public transportation and make a phone call and providing opportunities for professional and social interaction. Whether teaching international students at U.S.-based institutions or collaborating with colleagues abroad, border-crossing activities will add to one's professional (and personal) development and enrich the educational process for all participants.

6. Conclusion

Cross-border teaching and collaboration have become increasingly important contexts in which law teachers must seek to implement effective education. The suggestions in this section draw on fundamental principles of teaching and learning theory, while recognizing the importance of attending to cultural differences.

F. EXPERIENTIAL EDUCATION

1. INCORPORATING EXPERIENTIAL EDUCATION THROUGHOUT THE CURRICULUM

By Deborah Maranville with Cynthia Batt, Lisa Radtke
Bliss & Carolyn Wilkes Kaas¹

a. Introduction

In discussing experiential education, BEST PRACTICES FOR LEGAL EDUCATION focused primarily on the three traditional types of separate experiential courses: in-house clinics, externships, and simulations, and treated them in a separate chapter.² These courses were defined as those where “experience is a significant or primary method of instruction”³ rather than a secondary method, and where “students must perform complex skills in order to gain expertise.”⁴ Arguably, this separate treatment reinforced what has too often been a divide between doctrinally-focused⁵ teaching and practice-focused teaching.

BEST PRACTICES recognized that “experiential education can be employed as an adjunct to traditional methodologies regardless of class size”⁶ through methods such as incorporating simulation exercises into doctrinally-focused courses. It did so, however, only as part of its discussion of best practices for legal education generally. This section builds on BEST PRACTICES by emphasizing the need to incorporate experiential education throughout the curriculum in order to maximize its educational impact. The term “experiential education” is, therefore, used to encompass both separate experiential courses and what will be termed “experiential modules.” Because a key distinction in experiential education is between simulated and real experiences, the term “clinical legal education” will be restricted to separate courses involving real experiences — law clinics, externships and offerings using alternative models, often termed “hybrids.”⁷ The term “law clinics” will be used to include both traditional

¹ Readers for this section were Rocky Cabagnet, Robert D. Dinerstein, Russell Engler, Katherine Kruse, Howard Katz, Isabel Raskin, Margaret Reuter, Alexander Scherr, and Ian S. Weinstein.

² ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007), Chapter Five, text at notes 537-621 [hereinafter BEST PRACTICES].

³ *Id.*, text at notes 541-42.

⁴ *Id.*, text at note 544 (quoting the CARNEGIE REPORT).

⁵ The term “doctrinally-focused” is used here for the courses that have historically made up the bulk of the law school curriculum, sometimes also referred to as classroom or podium courses. None of these terms fully captures the nature of these courses, or their differences (or not) from more practice-oriented courses. As one reader noted, “It is interesting how inadequate our descriptions for non-clinical courses are. ‘Doctrinal’ doesn’t seem to capture what happens in a classroom in which through a combination of Socratic and other Q & A methods students explore doctrine, policy, theory and other analytical issues.” Comment from Robert Dinerstein, on file with authors.

⁶ BEST PRACTICES, text at note 541 (citing William Shepard McAninch, *Experiential Learning in a Traditional Classroom*, 36 J. LEGAL EDUC. 420 (1986)).

⁷ BEST PRACTICES identified all three as “clinical.” See text at note 542.

in-house clinics taught by full-time faculty,⁸ and other structures that provide a similar level of intensive, integrated teaching and supervision.⁹

As BEST PRACTICES suggested, it is helpful to distinguish “experiential learning” and “experiential education.”¹⁰ Both happen in law school, and in life; both are important. Experiential learning is simply a primary way that people learn on their own, whereas experiential education involves active and purposeful design and teaching. A focus on experiential **education** directs law schools and individual legal educators to their role in ensuring that maximum learning takes place beyond raw experience. The way in which each teacher integrates experiential education methods will often determine how far the students develop as lawyers in response to those methods. The way in which a law school designs and delivers a coherent array of courses to allow a student to progress from novice to (reasonably) competent professional in three short years will, more and more, define its efficacy, reputation, and leadership as a provider of legal education.

b. Best Practices for Experiential Education

As experiential education proliferates, law schools will design approaches suited to their individual missions and circumstances. No “one size fits all” strategy will suffice and the current period of creativity will no doubt continue to bring forth new methods and structures. Legal education urgently needs empirical research on what methods will best promote deep learning that transfers to practice. At the same time, enough experience has accumulated to identify five general “best practices” discussed below:

- Incorporating experiential education widely throughout the curriculum
- Providing a range of experiential course types and making them available to all students
- Ensuring that experiential courses add value to students’ experience
- Requiring real supervised practice experience — preferably one law clinic and one externship — for all students
- Developing a common vocabulary and evaluative criteria for experiential education

i. Incorporating Experiential Education Widely Throughout the Curriculum

Experiential education furthers the mission of legal education to create competent and professional lawyers in at least three important ways. First, the active learning inherent in experiential education engages students so that they are motivated to be

⁸ See Chapter 5, Section F, Subsection 2, *Delivering Effective Education in In-House Law Clinics*, below.

⁹ See Chapter 5, Section F, Subsection 4, *Effective Education in Alternative Clinical Models*, below.

¹⁰ BEST PRACTICES, text at note 539 (citing James Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 78 (1996)).

learners.¹¹ Second, if law schools integrate a practice context throughout the curriculum, the active learning has a common focus on role and performance as lawyers — the contexts for lawyers’ work — which should facilitate transfer of learning to practice.¹² Third, when teachers put students in role and ask them to perform lawyer tasks, students have opportunities to engage in the core lawyer skill of problem-solving, as well as the individual skills, such as interviewing, counseling, and negotiating, needed to solve problems.¹³

In order to achieve these benefits, it is a best practice to incorporate experiential education widely throughout the law school curriculum, beyond the courses that teach the theory and practice of skills such as interviewing and counseling, negotiation, and trial advocacy, using a simulation methodology, and beyond clinical legal education courses, such as the archetypal in-house clinics and externships. Two caveats. This does not mean that every course must, or should, be primarily experientially focused, or even that each course should incorporate an experiential module.¹⁴ It does, however, mean that all students should encounter multiple experiential opportunities in their doctrinally-focused courses that allow them to apply the doctrinal concepts, analytical skills, and policy and theoretical perspectives in a practice context.¹⁵ Nor does this suggest that sprinkling a few experiential modules into doctrinally focused courses is a substitute for separate experiential courses that provide students with opportunities for intense, deep and rigorous treatment of the most significant complex lawyering skills.

Experiential education can be infused into existing courses that are primarily focused on doctrine, or incorporated into the curriculum by creating new course structures. Both approaches should be extended to first year, as well as to upper division courses. The key is that each school must develop “a coherent agenda for instruction in the fundamental lawyering skills and values.”¹⁶

(a) Experiential Modules

Individual teachers can incorporate experiential education into doctrinally-focused courses through at least three formats: required observation and reflection,¹⁷

¹¹ BEST PRACTICES, text at notes 388-96; Chapter 4, Section A, *A Review of Teaching and Learning Theory*, above.

¹² See Chapter 4, Section C, *Transfer of Learning*, above.

¹³ See Chapter 6, Sections C, *The Relational Skills of the Law*, and G *Problem-Solving and Conflict Resolution*, below.

¹⁴ As David A. Kolb’s work on learning styles and experiential learning suggests, students with all learning styles profit from exposure to a mix of concrete experience and abstract conceptualization, accompanied by opportunities to both reflect on new experiences and actively experiment, trying out what they have learned. EXPERIENTIAL LEARNING: EXPERIENCE AS A SOURCE OF LEARNING AND DEVELOPMENT (1984). And variety is beneficial for its own sake. The challenge is to achieve the most effective balance.

¹⁵ Curriculum mapping is one strategy for achieving that goal. See Chapter 2, Section B, *Curriculum Mapping as a Tool for Improvement*, above.

¹⁶ J.P. “Sandy” Ogilvy, *Guidelines for the Self Evaluation of Legal Education Clinics and Clinical Programs*, 15 T.M. COOLEY J. PRACT. & CLINICAL L. 1, 4 (2014).

¹⁷ Some commentators argue that that experiential education in law presupposes having the student

simulation exercises, or assignments in which students engage in real legal work as part of the course. In the first year, students typically do not have the opportunity to work outside the law school; in this case, observation assignments are of special benefit. At schools where students have greater opportunity to engage in experiential learning, especially outside the law school, the need for observation assignments after the first year may abate. Nonetheless, upper division teachers have effectively used observation assignments in a range of courses, such as family or juvenile law, by requiring students to observe and reflect on the operation of specialized courts.

Many teachers who are willing to try something new have experimented and written about their efforts to integrate experiential education into their doctrinally-focused classrooms using simulation exercises.¹⁸ In addition, reflecting the surge of interest in experiential education, major law school publishers now offer textbooks that include experiential exercises, typically providing built-in opportunities to address both professional skills and values.¹⁹

The recommendations for simulation courses in the experiential chapter in *BEST PRACTICES*²⁰ are relevant to using simulation exercises in individual courses. Especially important are the admonitions to articulate appropriate educational goals,²¹ “ensur[e] that the simulation is appropriate for the participants and its purposes and instructions are clear,”²² and “balance detail, complexity, and usefulness.”²³ Thoughtful preparation and design, and organized implementation, are crucial to effective use of simulations in a large class.

When students are being asked to perform a task involving specialized skills, such as an interview or a negotiation, in order to provide context for how lawyers use the legal rules covered in the course, the teacher needs to have a basic familiarity with those skills and ensure that students understand that they have not learned how to perform the task skillfully simply by performing the task once. This may be especially

performing one of the many roles of the lawyer and not merely commenting on that role as performed by others. While that argument has weight, the value of observation as concrete experience and of guided reflection as value-added education justifies a broader view.

¹⁸ *E.g.*, Miriam R. Alberta & Jennifer A. Gundlach, *Bridging the Gap: How Introducing Ethical Skills Exercises Will Enrich Learning in First-Year Courses*, 5 DREXEL L. REV. 165 (2012); Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NE. U. L.J. 89 (2013) [hereinafter Erickson, *Experiential Education*]; Martin J. Katz, *Facilitating Better Law Teaching — Now*, 62 EMORY L.J. 823, 837-38 (2013); Heather, M. Field, *Experiential Learning in a Lecture Class: Exposing Students to the Skill of Giving Useful Tax Advice*, 9 PITT. TAX REV. 43 (2012); Paula Schaefer, *A Primer on Professionalism for Doctrinal Professors*, 81 TENN. L. REV. 277 (2014).

¹⁹ LexisNexis, *SKILLS & VALUES SERIES CATEGORY*, <http://www.lexisnexis.com/store/catalog/catalog.jsp?pageName=catalogProducts&catId=cat80002&id=cat80154>, archived at <http://perma.cc/6YXG-KUUV>; Carolina Press, *CONTEXT & PRACTICE SERIES*, <http://www.cap-press.com/p/CAP>, archived at <http://perma.cc/DBY8-67A4>; West Academic Publishing, *Developing Professional Skills Series*, *Bridge to Practice Series*, and *Experiencing Series*, *THREE NEW SKILLS SERIES FOR LEGAL TRAINING*, <http://www.westacademic.com/skills/>, archived at <http://perma.cc/EW6G-Y9N3>.

²⁰ *BEST PRACTICES*, text at notes 574-94.

²¹ *Id.*, text at notes 595-96.

²² *Id.*, text at notes 585-91.

²³ *Id.*, text at notes 595-96.

pertinent for first-year students. In an upper division course, some students in the course may already have been enrolled in a course designed to teach the skills pertinent to the task performed in the exercise, and the teacher may wish to draw on such students' knowledge in debriefing the exercise. It will be useful to ask colleagues teaching relevant skills simulation courses about the conceptual frameworks they use, and obtain any rubrics or handouts they have developed that identify the characteristics of competent skill performance.

The teacher's focus in debriefing the simulation through feedback and discussion will be different in a course focused primarily on doctrine, as opposed to a skills course or a law clinic with broader teaching goals. While the teacher may focus primarily on confirming or correcting understandings of the substantive law or the analytical processes that surface in the simulation, students will appreciate a limited amount of constructive feedback on the skill — interviewing, negotiation, oral argument, etc. — that provides the learning context. Teachers will therefore want to be sure that they understand how to provide effective feedback.²⁴

One commentator suggests the following steps for incorporating experiential exercises into the law school classroom. First, the teacher should identify learning objectives for the course as a whole. Such objectives serve as a foundation for incorporating experiential education into the course.²⁵ Second, the teacher should determine how to assess whether students are meeting the learning objectives.²⁶ Finally, the teacher should create learning activities that support and are closely tied to the objectives and assessments for the course.²⁷

Incorporating experiential education into doctrinally-focused courses through real-life writing projects, field experiences, or observations, or through coordinated externship placements, as opposed to simulations, may require coordination with outside organizations or with other programs in the law school. Two crucial considerations for teachers are the need to comply with professional responsibility obligations — avoiding unauthorized practice of law or malpractice — and to ensure adequate supervision and feedback. Although some teachers will not wish to take on this level of responsibility, others have successfully negotiated the challenges and found such efforts to be very rewarding.²⁸

²⁴ BEST PRACTICES provides guidelines for effective critique. *See* text at note 567. *See also* PAUL J. ZWIER, SUPERVISORY AND LEADERSHIP SKILLS IN THE MODERN LAW PRACTICE 51-74 (2006).

²⁵ Erickson, *Experiential Education* at 99.

²⁶ *Id.*

²⁷ *Id.* at 102.

²⁸ *See, e.g.*, Mary Pat Treuthart, *Weaving a Tapestry: Providing Context through Service-Learning*, 38 GONZ. L. REV. 215 (2003); Laurie Morin & Susan Waysdorf, *The Service-Learning Model in the Law School Curriculum*, 56 N.Y.L. SCH. L. REV. 561 (2011-2012); Jennifer Rosen Valverde, *Hindsight Is 20/20: Finding Teachable Moments in the Extraordinary and Applying Them to the Ordinary*, 20 CLINICAL L. REV. 267 (2013).

(b) **New Course Structures: Labs, Practicums,
Integrated Externships**

Another approach to infusing experiential education throughout the curriculum is to create new course structures, and considerable experimentation is taking place in this arena. Two common structures are the lab course and the practicum.²⁹

Modeled after the labs commonly required for undergraduate science courses, the lab course provides an opportunity for students to apply the concepts learned in a non-experiential course. Typically, this application occurs through a series of in-role, practice-oriented simulation exercises, although the application of concepts might also be accomplished through real life service to clients.³⁰ Often, the lab is a one or two-credit stand-alone course available either to all or only a subset of students in the doctrinally-focused course. The teacher may be the one handling the doctrinal course, a clinical teacher, or a practitioner. The lab course structure seems particularly valuable in two situations. First, if many of a school's faculty members lack enough practice experience to feel comfortable incorporating experiential modules into their courses, the lab course structure provides a suitable alternative. Second, depending on the orientation of a school's faculty, a school might find the lab course structure a useful one for linking experiential and doctrinal learning on a scale that can serve an entire student body.³¹

The practicum structure operates much like a lab, but incorporates the experiential education as an integral part of the doctrinally-focused course, rather than as a course offered separately for credit. It goes beyond the single experiential module, or a set of them, by weaving experiential education more intensively into the course.³² An advantage of the practicum structure is that in a single class, it breaks down the doctrine-practice divide, thus explicitly modeling the interconnection between the two.

A third, less well-developed structure is what might be termed the integrated

²⁹ Usage for these terms has not yet coalesced around widely accepted, consistent definitions. For the purpose of this discussion, this section builds on definitions proposed by the Alliance for Experiential Learning in Law's Vocabulary working group. Cynthia F. Adcock, et al., Working Grp. On Vocabulary, Alliance for Experiential Learning in Law, *A Glossary for Experiential Education in Law Schools, in Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. ___, PART II ___ (forthcoming 2015) [hereinafter Adcock, et al., *Glossary*]. Convened in 2011, the Alliance has sponsored conferences at Northeastern University Law School and Elon University Law School, and organized working groups on a variety of topics. <http://www.northeastern.edu/law/experience/leadership/alliance.html>, archived at <http://perma.cc/FT7X-PM3S>.

³⁰ A structure using real life experiences is sometimes termed a "component clinic" or a "mini-clinic." John B. Mitchell, Betsy R. Hollingsworth, Patricia Hall Clark & Raven Lidman, *And Then Suddenly Seattle University Was on Its Way to a Parallel, Integrative Curriculum*, 2 CLINICAL L. REV. 1, 7 (1995).

³¹ For instance, Gonzaga has done this for their first-year students. See SKILLS LABS, <https://www.law.gonzaga.edu/academics/curriculum/skills-labs/>, archived at <https://perma.cc/U8N4-5LRB>, and Hamline has developed a set of skills labs aimed at second-year students. See SKILLS LABS, <http://www.hamline.edu/law/experiential-learning/labs/>, archived at <http://perma.cc/BGA3-RRLL>.

³² See, e.g., Georgetown's extensive set of practicum courses. See PRACTICUM COURSES, <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/practicum/index.cfm>, archived at <http://perma.cc/DB2W-MK4S>.

externship. All or some of the students enrolled in a doctrinally-focused course are simultaneously enrolled in an externship placement in the subject area. The classroom reflection about the externship experience is focused at least in part around ethical or practice issues that are addressed in the non-experiential course. The key to success for such a structure is to maintain the critical educational characteristics of an effective externship.³³

(c) **Experiential Education in the First-Year Curriculum**

Because the first-year curriculum is often treated as unique, it merits additional observations. The American Bar Association law school accreditation standards require “substantial instruction in . . . (2) legal analysis and reasoning, legal research . . . [and] (3) writing in a legal context, including at least one rigorous writing experience in the first year.”³⁴ The typical first-year legal analysis, research and writing course ensures that first-year students will encounter at least one course with a significant component of experiential education, because most legal writing courses are taught using experiential pedagogy.³⁵ Some legal writing programs have even found ways to give first-year students a taste of real lawyering experience by assigning writing projects on real issues proposed by non-profit legal providers.³⁶

Depending on the school, the legal writing course may be focused solely on legal writing, or may also include exposure to some other skills. In schools with strong legal writing programs, perceptive students often recognize how important that course is, both for teaching analytical skills and for providing exposure to practice. Too often, however, that appreciation is undercut by insufficient credits for the course offering, credit/no credit assessment, or a lower status for legal writing faculty.

First year students may experience a dichotomy between their doctrinally-focused courses and the more explicitly practice-oriented experiential legal writing course, especially if teachers of the traditional doctrinal courses have been slow to embrace experiential education. Three reasons persist for incorporating experiential education into the other first year courses. First, experiential education can provide context for students’ doctrinal learning. Second, providing students with a taste of what lawyers actually do can help students maintain a connection to their reasons for attending law

³³ See Chapter 5, Section F, Subsection 3, *Delivering Effective Education in Externship Programs*, below.

³⁴ ABA Standards and Rules of Procedure for Approval of Law Schools, Standard 302(a), STANDARDS, http://www.americanbar.org/groups/legal_education/resources/standards.html, archived at <http://perma.cc/R6AX-3QES> [hereinafter ABA Standards].

³⁵ See Chapter 5, Section B, *Analysis, Research, and Communication in Skills-focused Courses*, above.

³⁶ See, e.g., Northeastern University Law School’s Legal Skills in Social Context program, LEGAL SKILLS IN SOCIAL CONTEXT, <http://www.northeastern.edu/law/experience/lssc/index.html>, archived at <http://perma.cc/838E-F537>; Seattle University Law School’s legal writing-clinic collaboration, Sara K. Rankin, Lisa Brodoff & Mary Nicol Bowman, *We Have a Dream: Integrating Skills Courses and Public Interest Work in the First Year of Law School (And Beyond)*, 17 CHAP. L. REV. 89 (2013); Mary Nicol Bowman, *Engaging First-Year Law Students through Pro Bono Collaborations in Legal Writing*, 62 J. LEGAL EDUC. 586 (2013).

school and retain their passion during the often demoralizing first year.³⁷ Third, in an increasingly specialized legal market, students need to begin early the process of understanding how lawyers use doctrine, what skills they must exercise, and what practice contexts might best fit their interests, values, personalities and skills.

Incorporating additional experiential education into the first year can be done through either individual teacher initiative or law school-wide curricular reform, such as creating lab courses. Numerous models are now available for efforts of both types, as discussed below.

For a limited, but often very worthwhile initial exposure, individual teachers can assign students to observe and reflect on a relevant activity: observe legal proceedings in state or federal court to better understand civil procedure, tour a jail or observe a criminal calendar for criminal law, or observe a housing court for property.³⁸ For more robust experiential education, teachers can incorporate an experiential module that asks students to perform a lawyering task in role. For first-year courses, suitable tasks include interviewing a client, negotiating a contract or plea bargain, drafting a contract or pleading, and arguing a motion or appeal.³⁹

At the institutional level, several schools have instituted school-wide court observation programs.⁴⁰ At least one has created “skills labs” in which “students are assigned a series of simulation exercises designed to teach technical skills . . . using the substantive law being taught concurrently in a set of doctrinal courses.”⁴¹ More unusually, even law clinics can be made available to first-year students. Operating in a state with a student practice rule that authorizes practice by second semester 1Ls, Yale allows first-year, second-semester students to enroll in law school clinics. The University of the District of Columbia provides law clinics for first-year students, although the District of Columbia student practice rule does not permit them to enter appearances in Superior Court cases until their second year.

ii. Providing a Range of Experiential Course Types and Making Them Available to All Students

Legal education currently makes use of a wide range of separate, experientially-focused course structures for providing students with experiential education. Legal educators have long recognized that experiential opportunities with different

³⁷ Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum through Experiential Learning*, 51 J. LEGAL EDUC. 51 (2001) [hereinafter Maranville, *Infusing Passion and Context*].

³⁸ *Id.* at 62-63.

³⁹ As noted above, the major legal publishers all now offer series that incorporate simulation exercises, and these include volumes to accompany at least some of the typical first year courses.

⁴⁰ See Drake Law School, *Law Students Observe Vehicular Homicide Case Inside and Out*, <http://news.drake.edu/2010/02/22/law-students-observe-vehicular-homicide-case-inside-and-out>, archived at <http://perma.cc/TCQ7-MLY8>; Touro Law School, *COLLABORATIVE COURT PROGRAMS*, <http://www.tourolaw.edu/Academics/?pageid=68#.VAoF0WNSpqw>, archived at <http://perma.cc/VLE4-WHUN>; Southwestern University Law School, *SCALE Curriculum*, <http://www.swlaw.edu/academics/jd/scale/curriculum>, archived at <http://perma.cc/5VYC-CPSN>.

⁴¹ Gonzaga Law School, *SKILLS LABS*, <https://www.law.gonzaga.edu/academics/curriculum/skills-labs/>, archived at <https://perma.cc/92FW-GR8W>.

characteristics bring distinct, complementary strengths and weaknesses. With the widespread availability of multiple types of experiential courses, legal education has reached a point where it is a best practice to provide opportunities within each of those major types and to inform students about the distinct benefits of each.

Understanding the differences among practice opportunities is especially important in light of ABA Standard 303(a)(3) which imposes a practice-based experiential course requirement.⁴² To qualify as experiential for this purpose, a course must add value to the raw experience potentially obtained through jobs and volunteer opportunities in four ways: integrating doctrine, theory, skills, and legal ethics, and engaging students in the performance of skills; instructing in the concepts underlying those skills; providing multiple opportunities for performance and instructor feedback; and providing opportunities for self-evaluation.⁴³ These efforts provide what is often referred to as “scaffolding” in the education literature: students initially are supported by the teacher as they attempt to put their learning into practice. Over time, the student can operate with less scaffolding, and then on his or her own.

ABA Standards 303, 304, and 305 adopt the common typology of subcategories within experiential courses — simulation courses, law clinics, and externships — and provide that a course of each type qualifies as experiential so long as it adds value in the ways specified. These three types of experiential courses are structured in distinct ways, and, as a result, law teachers have developed different, though overlapping, strategies, for adding value in them. As the discussion below demonstrates, each type may excel at satisfying some of the requirements, and at meeting other educational goals, more than others. Thus, simulation courses, law clinics, and externships each make important, but different, contributions to a student’s education. As law schools continue to develop variations on these traditional models, it will be important to recognize their distinct contributions.

Of course, the programs that law schools offer within each of these experiential education types are not uniform in either approach or structure. Law clinics vary widely in subject matter and case or matter size and type. Among other impacts, these differences affect the role, defined by one commentator as mentee, second chair, or first chair,⁴⁴ and level of responsibility students can assume on cases or matters. Externship placements vary significantly as to the type of work, student role, and intensity of supervision provided by the field supervisor. Both law clinics’ and externship programs’ operations are anything but standardized in extent, content, and structure of their classroom components, and the type and level of engagement by teachers. Theory and practice simulation skills courses focus on different skills, and have student-teacher ratios that allow for different levels of feedback. The following discussion assumes high-quality offerings that are appropriately supported by the law

⁴² See ABA Standards.

⁴³ The language of the standard is: i. “integrate doctrine, theory, skills, and legal ethics, and engage students in performance of [an identified] skill; ii. develop the concepts underlying the . . . skill; iii. provide multiple opportunities for performance that are assessed by the instructor,” and iv. “provide opportunities for self-evaluation.” *Id.*

⁴⁴ For a discussion and full definitions of these roles, see Susan L. Brooks, *Meeting the Professional Identity Challenge*, 41 *BALT. L. REV.* 395, 403, 413 (2012).

school and operated to add value in accordance with the best practices described in later sections.

(a) **Three Structural Differences among Experiential Courses and Their Implications**

Experiential courses differ on three primary structural dimensions: first, whether they involve simulated or real practice experience; second, whether the experience takes place in a setting that was created primarily for educational purposes, or a setting that exists for other purposes, ordinarily to provide a service to the public; and finally, whether the supervision structure is “integrated” — provided by one individual who is responsible for both supervision of the simulated or real lawyering work and reflection on that work — or dual — involving two individuals, one of whom is an educator and one of whom works in the selected setting. Table 1 below illustrates how these structures differentiate theory and practice simulation skills courses, law clinics, and externships.

Each of these structural characteristics has implications for the educational experience.

Table 1

Three Structural Differences Among Experiential Courses

	<i>Simulation Skills Courses</i>	<i>Law Clinics</i>	<i>Externships</i>
1. <i>Simulated v. Real Practice Experience</i>	<i>Simulated</i>	<i>Real</i>	<i>Real</i>
2. <i>Setting: Created Primarily for Educational or Delivery of Services Purposes?</i>	<i>Educational</i>	<i>Educational</i>	<i>Delivery of Services</i>
3. <i>Integrated v. Dual Supervision</i>	<i>Varies</i>	<i>Integrated</i>	<i>Dual</i>

• ***Real vs. Simulated***

Simulated experiences give the teacher more control over what the students will learn. They allow the instructor to focus on a single skill, or a designated set of skills. In some contexts, they can follow the trajectory of a legal matter from start to finish. In addition, the instructor can build in specific issues or particular sub-skills. Although students must perform the skills in role, and in a complex simulation do so in a context

that has many of the characteristics of real life, students do not experience a lawyer's weighty responsibility for the consequences of his or her work, or for a client. Real experiences, on the other hand, typically provide some level of authentic role assumption, giving students experience with the real consequences of their work, sometimes even placing the student in a "first-chair" role. Real experiences typically present the student with more complexity, indeterminacy, and uncertainty than can be incorporated into simulations. Because the students encounter the full richness of real life, they are more likely to face situations that require them to address questions of professional identity, access to justice, and relational and intercultural awareness. See Table 2 below.

Table 2
Implications of Real Versus Simulated Experiences

What Simulated Experiences Do More Efficiently than Real Experiences
<ol style="list-style-type: none"> 1. Allow the teacher to focus on a designated skill or set of skills 2. Allow predictable instructor control over issues students will encounter 3. Allow students to make mistakes and experience their consequences without any need for teacher to intervene to protect a client's interests 4. Expose students to sophisticated, complex issues without the need to protect client interests
What Real Experiences Can Do that Simulations Cannot
<ol style="list-style-type: none"> 1. Allow students to experience the real consequences of assuming significant or primary ("first-chair") responsibility for a real client/matter
What Real Experiences Usually Do Better than Simulations
<ol style="list-style-type: none"> 1. Provide significant experience with complexity, indeterminacy, and uncertainty not controlled by the teacher 2. Integrate professional identity awareness and commitment 3. Integrate access to justice and social justice awareness and commitment 4. Integrate intercultural awareness, skills, and commitment 5. Integrate relational awareness, skills, and commitment

- ***Created for Educational or Delivery of Services Purposes***

Though varied, settings created primarily for educational purposes can be intentionally designed, choosing cases or matters on the basis of their suitability for students, and designing the practice setting with students in mind. In law clinics, that

focus often leads to an educational setting characterized by “slow-motion practice” — small caseloads on which students can be asked to evaluate their options and make intentional choices at every step. Or the setting might focus on conscious strategies for providing high quality, high volume legal services. An education-focused setting can also be staffed with the students’ experience in mind, choosing teachers or supervising attorneys who have formal education in clinical pedagogy, and personalities suited to mentoring students. If those teachers are not overloaded with other duties, they can provide formal teaching, intensive mentoring, and close oversight of the students.

In a setting created primarily for service purposes, the education of the students will necessarily be an add-on to the primary mission. This mission may be providing legal services to a low-income community, representing a government or business entity, working in judicial chambers or for a legislature, providing mediation services, or offering legal services for pay. Students will, therefore, have the important benefit of being exposed to that primary mission and the structures, and constraints that accompany it, and discovering what it means to perform legal work in that setting. *See* Table 3 below.

Table 3

Implications of Settings Created Primarily for Educational or Delivery of Services

What Settings Created Primarily for Education Typically Provide
<ol style="list-style-type: none"> 1. Primary focus on students’ educational experience and specific educational outcomes 2. Explicit pedagogy provided by professional educators 3. Opportunity for teacher to tailor work performed to meet educational goals by choosing nature of legal work, specific cases or matters, and work assigned to students
What Settings Created Primarily for Delivery of Service Typically Provide
<ol style="list-style-type: none"> 1. Exposure to setting’s mission 2. Exposure to conditions and pressures of practice and how attorneys function in light of them 3. Exposure to settings, <i>e.g.</i>, judicial chambers, or legislature; roles, <i>e.g.</i> in-house counsel or judge and law clerk; and cultures that cannot be replicated by the law school

• ***Integrated vs. Dual Supervision***

In the integrated supervision model, a single supervisor, or a group of supervisors working together, is responsible for overseeing a group of students who perform legal work, and reflect on that work. Typically, the supervisor works with a cohort of students, creating potential for students to work in teams and share ideas through rounds and other teaching strategies. Focused primarily on the student’s experience and development, the supervisor teaches the student in the classroom and, integrating theory, doctrine, and practice, helps the student prepare the work, and is present for

any public performances. Under the integrated supervision model, the supervisor is, therefore, able to provide intensive support and detailed and repeated feedback on the student's strategies and performances. Because the supervisor observes the student's encounters with the legal system and the behavior of opposing attorneys, judges, and other related parties, this structure also provides ready opportunities to discuss and critique the accepted norms for "how things are done." The supervisor can engage in these discussions while the student's experience and observations are fresh, and point out actions and implications the student may have overlooked. At the same time, the structure means that the supervisor guided the decisions leading up to the performance and may be invested in them. As a result, the supervisor may not be in a good position to provide a detached critique of those strategies.

Under the dual supervision model, the student benefits from two perspectives on both the work performed, and the integration of theory, practice, and doctrine. Because direct supervision of legal work is provided by a field supervisor whose primary obligation is to the mission of the placement organization, not to the student's education, this model provides an opportunity to foster student self-reliance and independence. Not ordinarily observing the student's legal work, the faculty supervisor can maintain a critical distance from case strategies. At the same time, needing to rely on the student's recounting of experience for the material on which to base a detached critique, the faculty supervisor's field of vision may be limited. *See* Table 4 below.

Table 4
Implications of Integrated v. Dual Supervision

What Integrated Supervision Typically Does Better than Dual Supervision
<ol style="list-style-type: none"> 1. Provides intensive supervision and scaffolding for student work 2. Holistically integrates theory, doctrine, fieldwork, feedback, and reflection from a single supervisor 3. Provides immediate or near-in-time guidance and feedback on multiple performances based on direct knowledge of matter and/or direct observation of student's actions by the teacher 4. Fosters collaborative learning with cohort of peers 5. Fosters detached critique of practice norms
What Dual Supervision Typically Does Better Than Integrated Supervision
<ol style="list-style-type: none"> 1. Permits two perspectives on actual work performed by student 2. Permits two perspectives on integration of theory, doctrine, and practice 3. Fosters student self-reliance and independence, because field supervisor's primary obligation is to mission of placement organization

(b) **Distinguishing Simulation Courses, Clinics, and Externships in Light of Three Structural Differences and Their Implications**

How do these structural differences and their implications manifest in the traditional experiential courses — theory and practice simulation skills courses, clinics and externships?

• *Theory and Practice Skills Simulation Courses*

The fundamental structural characteristics of theory and practice skills simulation courses are that they do not involve real situations and they take place in a setting created for educational purposes. The supervision structure may have some aspects of both integrated and dual supervision, depending on how the course is structured and whether practitioners are involved in teaching it. The educational setting allows the course to focus on one or more discrete skill sets, such as interviewing and counseling, negotiation, or trial advocacy. As a result, if offered for an appropriate number of credits, skills-focused simulation courses can drill down deeply in a particular skill. The teacher can spend time on both the underlying conceptual framework⁴⁵ and repeated individual student practice of different aspects of the skill. The instructor has no need to protect the interests of a client, so can allow the students to make mistakes and experience the consequences. In addition, students can observe others — guest attorneys or peers — perform the skill and receive the teacher's specific, individualized feedback. In addition, simulations can build in predictable exposure to chosen issues. The disadvantages of theory and practice skills simulation courses likewise inhere in their structure, primarily the simulated nature of the experience. For most students, simulations are not as engaging as real life, although some students become highly engaged and motivated by moot court and other simulation competitions. Simulation courses do not present students with the full complexity and ambiguity of real life that is so important for fully integrating knowledge, skills, and values. Nor do students have the responsibility for real-world clients that is so important for professional identity formation and can foster a commitment to addressing access to justice issues through their service to the community, or offer the challenges of interacting inter-culturally within the full range of difference presented by client populations.⁴⁶

• *Law Clinics and Externships*

Law clinics and externships both provide students with real-life experience, most often with real clients and real cases or matters.⁴⁷ Both expose students to real law practice, and allow them to engage in lawyering tasks that have an impact on that

⁴⁵ See ABA Standard 303(a)(3)(ii).

⁴⁶ Students will, of course, deal with intercultural issues as they interact with law school classmates in simulation courses, but at many schools, the range of diversity present will not reflect the real world. If the school recruits actors to play clients and witnesses in simulations, it may be possible to increase intercultural interactions, depending on the demographical characteristics of the pool of actors.

⁴⁷ Although most law clinics and externships place students in the lawyer role with a client, either individual, group, or entity, it is also true that some law clinics and externship students do not have cases; they may be working on policy projects or in judicial chambers, mediation offices, legislative offices, or other

practice. Both expose students to the task and discipline of reflection and reflective practice.⁴⁸ At the same time, law clinics and externships differ on the other two structural dimensions: integrated versus dual supervision and work in practices created primarily for educational needs versus practices created primarily to provide a service.

In a law clinic, the teacher both directly supervises and provides feedback on the students' lawyering work, and structures opportunities for reflection on that work, with a workload selected in large part to foster student learning. In an externship, by contrast, the student works in a practice created to respond to client or institutional needs and has two supervisors: a practitioner supervisor whose workload responds to the needs of the outside practice, and a faculty supervisor who ensures that students meet the learning goals for the course.

Law clinics provide the motivation that comes with handling real matters, but in the typically more controlled environment of a practice created for educational purposes. Externships also provide the motivation that comes with handling real matters, but in the less controlled environment of practice settings of the kinds in which students are more likely to work upon graduation. The structural differences between law clinics and externships, as well as differences within each type, have implications for how effectively they can provide valuable learning experiences. These types of courses, and their variations, can integrate knowledge, skills, and values as students encounter critical, emotional, and value-laden issues concerning access to justice, intercultural awareness, relationships, and development of personal identity.

Law schools should offer all three of the traditional experiential course structures: theory and practice skills simulation courses, law clinics, and externships, or newer structures that may be developed to provide comparable benefits. They should offer theory and practice skills simulation courses on the most important skills needed by the school's graduates to provide students with in-depth conceptual frameworks and opportunities for repeated practice of the skills. Law schools should offer law clinics, even if they cannot yet offer one for every student, because their integrated supervision model provides an opportunity for intensive instruction, mentoring, and supervision.⁴⁹ At the same time, law schools should offer externship opportunities, giving students the chance to work in practice settings that cannot be replicated in law clinics alongside lawyers in active, non-academic practices, with the opportunity for mentoring and supervision of the lawyering work from the field supervisor and guided reflection from the externship teacher for all externships.

non-client based settings. The word "matters" is intended to capture the full range of real world work that is not centered on clients or cases.

⁴⁸ ABA Standard 305(e)(7) requires "opportunities for reflection" in all externships, although for externships earning less than three credit hours, the reflection need not be provided contemporaneously.

⁴⁹ In addition to the educational benefits, most law clinics also provide public service, which is an important part of many schools' missions, and help inculcate public service values.

iii. **Ensuring that Experiential Courses Add Value to Student Experience⁵⁰**

As they engage in the best practice of offering a range of experiential course structures, law schools must also ensure that the courses add value to the student experience. Teachers of all experiential courses add value in two ways: by structuring the experience in advance and by the actions they take during the course.

In advance of the course, all experiential teachers choose the subject matter for the legal work that students will perform, design the syllabus, and prepare for the course's classroom sessions. Their other tasks will vary. Simulation course teachers will choose or create the simulations students will work on and may recruit practitioners to assist with the course. Law clinic teachers choose the cases or matters for the clinic and may design simulations to prepare students for their legal work. Externship teachers vet placements and field supervisors, train the field supervisors, and match students with placements.

Teachers provide value during an experiential course in any of four primary ways: offering in-depth conceptual frameworks for individual skills, providing intensive supervision of student preparation and performance of work, giving specific feedback on simulated or real performances, and structuring opportunities for broader student reflection. During the experience, the teacher will choose from these options the ones that suit the structure of the course, with reflection being a priority in all types of experiential courses. *See* Table 5 below.

⁵⁰ Students also benefit from the growth of experiential education, when teachers of all three types of courses theorize and critique practice by contributing to the scholarship of skills and the scholarship of teaching.

Table 5
Adding Value to Experience

Primary Ways Teachers Provide Value by Structuring an Experiential Education Offering
<ol style="list-style-type: none"> 1. Choose subject matter for legal work of law clinic, externship, or simulation 2. Choose cases or matters for clinic, or create simulations 3. Vet placements and field supervisors, or recruit practitioners to assist with simulation course 4. Train field supervisors for externships 5. Match students with externship placements 6. Prepare activities for class sessions
Primary Ways Teachers Provide Value During an Experiential Education Offering
<ol style="list-style-type: none"> 1. Provide in-depth conceptual frameworks for individual skills 2. Provide intensive supervision of student preparation and performance of work 3. Provide specific feedback and debriefing on student performances, simulated or real 4. Provide opportunities for student reflection and systemic critique apart from feedback on performances 5. Integrate conceptual frameworks, supervision, feedback, and reflection

In order for teachers to add value to experiential courses, law schools must support their experiential courses sufficiently to realize their distinctive benefits. This requires both attention to the courses and attention to the teachers. Theory and practice skills simulation courses require high enough credit allocations and low enough student-faculty ratios to allow students to practice the skill repeatedly, and staffing by teachers whose other duties allow them time to provide detailed feedback. As discussed in more detail in the separate section on in-house clinics, below, for clinics, this requires adequate staffing and support for clinical law practices. For clinic teachers, it requires balanced course loads and realistic expectations for service and scholarship so that teachers have time to provide the intensive support, feedback, and reflection that are the hallmarks of the in-house law clinic. As discussed in more detail in the separate section on externships, for externship courses, this requires adequate staffing and support for the complex administrative demands of the course and realistic expectations for enrollment. For externship teachers, it requires externship courses taught by teachers, and balanced course loads.

iv. **Requiring Real Supervised Practice Experiences for All Students**

Given the significant strengths of clinical education, it is insufficient to provide only simulated experiences, or to provide a mix of simulated and real experiences without making real experiences an integral, required part of the curriculum. It is currently a best practice to require at least one clinical education experience; in fact, most schools “either already have or are easily capable of providing the course capacity” to do so.⁵¹ It is an emerging best practice to provide more than one clinical experience to students. Given the distinct strengths of each, students ideally should have the opportunity to take both a law clinic and an externship, and of course, both will qualify as “experiential” under ABA Standard 303(a) and will satisfy the pending competency requirements for California Bar admission.⁵²

How a given school should implement a requirement of clinical legal education for all students will depend on three interrelated factors. These are the same factors that should influence the learning objectives for the entire curriculum: the law school’s mission, the student body and the potential job market, and the school’s location. A well-defined mission will presumably affect the characteristics and interests of the students that a law school enrolls and where they ultimately practice, including their pro bono service. The clinical education opportunities that each school provides should prepare students for the practice contexts they will encounter on graduation and the skills they will need to master, and to the extent consistent with pedagogical goals, respond to the legal needs of the community. The location of the law school will affect the types of clinical education opportunities that can be provided. For instance, a school located in a smaller town in a rural state may have fewer potential part-time externship placements, and may need to develop more law clinics or consider a semester-in-practice option.

These two recommendations — that it is a best practice to provide at least one supervised practice opportunity to all students, and an emerging best practice to provide two — prompt at least five implementation questions. First, what is the appropriate mix of law clinic and externship experiences? Second, must the supervised practice opportunity be offered for a minimum number of credits in order to qualify as a best practice? Third, conversely, should law schools limit the number of clinical education credits a student may take? Fourth, how does a school with an evening or part-time program make these options available to part-time and evening students? Finally, how do cost considerations come into play? While the current state of knowledge does not provide firm answers to these questions, it is possible to recommend “better practices.”

⁵¹ Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. (forthcoming 2015) [hereinafter Kuehn, *Pricing*].

⁵² See, e.g., Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert F. Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL’Y 11, 15 (2013).

(a) **Mix of Law Clinic and Externship Experiences**

As discussed above, law clinics can provide a carefully scaffolded educational experience in which students have progressive levels of responsibility and externships can expose students to the realities of practice in a diverse array of settings with the benefits offered by dual supervision, and more scaffolding than is typically available in a job or volunteer opportunity. As law schools choose what mix to offer, and students choose what mix to take, they should be guided by educational considerations and a clear understanding of the differences in pedagogy and opportunity between them. Both schools and students must understand the distinctions and the tradeoffs in each model.

Instead, however, some schools seem to be reacting to the push to emphasize supervised practice experiential education by adding programs without sufficient thought to designing an overall curriculum that helps students progressively develop their knowledge, skills, and values. Sometimes, that means establishing externships with little structure or support, rather than law clinics, perceiving them as infinitely scalable with little added expense. Other times, it means creating a law clinic using as supervisors outside lawyers who may not have the training or time to develop expertise in experiential pedagogy and minimal integration into the law school. These are mistakes, given that law clinics with their unitary supervision model, and externships with their dual supervision model, make different contributions to students' learning and require careful planning and execution for success.

Law schools may not currently have sufficiently robust clinical education programs that can provide both a law clinic and an externship opportunity to every student. However, given the demand for graduates who have more skills, law schools are recognizing the need to expand their clinical education programs. Students are best served by programs that offer a mix of experiences, including both law clinics and externships. The exact mix of offerings will turn on many factors, including the school's mission and setting and the strengths and goals of its students. If resources do not permit as robust an array as might be ideal, schools should consider how the developing models of more intensive externships, hybrid clinics and other formats can offer students the benefits of these diverse forms of experiential education. Although program design will vary, it is unlikely that offering only a single type of experience will ever be ideal. As the discussion of sequencing below demonstrates, the various kinds of offerings can fit together to form a coherent program of experiential education.

(b) **Minimum Credits**

A law clinic or externship should be offered for enough credits to provide students with sufficient experience to generate meaningful reflection and learning. Because local conditions vary on multiple dimensions, it is not realistic to specify a best practice for minimum credits for individual clinical education opportunities. For instance, some law clinics separate the credit hours students earn for the classroom component or seminar of the clinic and the credit hours for "fieldwork" hours students earn doing work on clinic cases or matters. Nevertheless, the average combined credits per semester for law clinics is five to seven and that number

provides a useful guide.⁵³ Smaller credit externships have long been common in the externship setting and they can be especially valuable for students who want to explore different types of work and practice settings,⁵⁴ but they will provide very different opportunities and benefits than a higher credit experience.

(c) Lifting Caps on Clinical Education Credits

As the focus of legal education changes, it is an emerging best practice to lift limits on clinical education credits significantly, or even entirely. Those limits were historically driven by ABA law school accreditation requirements⁵⁵ and some state bar admission requirements, but the requirements are rapidly changing to set a minimum number of professional skills credits and significantly loosen the maximum.⁵⁶ Law schools should do the same.

(d) Clinical Courses for All Students

Providing clinical courses for evening and part-time students presents special challenges. Evening students are typically limited in their availability to attend court during normal daytime business hours. Part-time students may lack the ability to work at the intensive pace some legal matters require. Creative options, such as evening clinics and on-site externships, are available.⁵⁷

(e) Cost

Some will object to providing clinical education for all students on grounds of cost. Done well, law clinics, and to a lesser extent, externships, require a low student-faculty ratio. The same is true, however, of long established offerings like seminars. In light of two other considerations, the idea that providing clinical legal education — law clinics or externships — to all students is cost prohibitive seems tenuous. Tuition levels at the many schools that already operate in accordance with this best practice

⁵³ David Santacrose & Robert Kuehn, Center for the Study of Applied legal Education: The 2013-14 Survey of Applied Legal Education, *available at* [http://www.csale.org/files/Report on 2013-14_CSALESurvey.pdf](http://www.csale.org/files/Report%20on%202013-14_CSALESurvey.pdf), *archived at* <http://perma.cc/XEM3-8UJY>.

⁵⁴ A recent survey found that lawyers valued both two low-credit externships and one full-time externship far better than one low-credit externship. Margaret Reuter & Joanne M. Ingham, *Experiential Education and Our Divided Campuses*, 22 CLINICAL L. REV. (forthcoming Fall 2015).

⁵⁵ ABA Standard 311(b) requires that students complete at least 64 credit hours in courses with “attendance in regularly scheduled classroom sessions or direct faculty instruction.” Interpretation 311(2)(a) specifies that “credit hours may include . . . participation in a simulation course, or law clinic.” Subsection (b), however, specifies that “the credit hours shall not include field placements.” *Id.*

⁵⁶ See Linda Morton, *California’s New State Bar Pre-Admission Requirements: 15 Units of Experiential Education and 50 Hours of Pro Bono* and Steve Ellmann, *Three Innovations in Bar Admission Rules: New York (Twice) and Arizona*, PRESENTER HANDOUTS: PLENARY 4: THE DEVELOPING LANDSCAPE OF CHANGE, http://www.elon.edu/docs/e-web/law/aell_symposium/Katherine_Kruse_handout.pdf, *archived at* <http://perma.cc/366P-DX7R>.

⁵⁷ See, e.g., David F. Chavkin, *Clinic Under the Stars: Giving Part-Time Students their Due*, 13 CLINICAL L. REV. 719 (2007); Chapter 5, Section F, Subsection 3, *Delivering Effective Education in Externship Programs*, below.

are no higher than the levels at schools that do not.⁵⁸ In addition, law clinics often bring in private donations or grant funding unlikely to be available for other offerings, thus, lowering net cost to the law school.

As with any law school curriculum offering, cost is only one piece of the equation, which includes value, cost, and potential for securing revenue to offset some of the costs of the curricular offering. The cost of clinical education varies along multiple dimensions — faculty-student ratios, staffing models, and salary levels. On each dimension, it may be tempting for law schools to cut corners.⁵⁹ That temptation must be resisted in order to assure that students receive the desired and critical educational benefits from clinical education.

v. Considering Whether and, If So, How to Sequence the Experiential Curriculum

How to integrate and how to sequence the curriculum as a whole are key questions for legal education, and those questions are likewise critical for designing an experiential curriculum.⁶⁰ An earlier section of this volume advocated integrating experiential opportunities into the curriculum as a whole, connecting different offerings, and considering whether particular sequences makes sense.⁶¹ As explained there, law schools face the question whether to follow a layer cake⁶² or marble cake⁶³ vision for integrating simulation courses, law clinics, and externships into the curriculum. Educators responsible for separate experientially-focused theory and practice skills simulation, law clinic, and externship courses face two related, specific aspects of this concern. It is a best practice for a law school to consider these questions in designing its curriculum.

First, should law schools offer, and should students take, simulated and real experiences in a specific sequence? Understandably, simulation is widely viewed as a logical precursor to real experiences. Indeed, most law clinics moot students frequently, before each major performance, such as an oral argument, and often before smaller ones, such as a phone call to an opposing attorney. In keeping with the layer cake model, some schools, therefore, require all students to participate in a relevant skills theory and practice simulation courses in their second year, or make such a course a pre- or co-requisite for participating in a law clinic or an externship. On the other hand, students may take a simulation-focused course more seriously

⁵⁸ Kuehn, *Pricing*, at 30-33.

⁵⁹ See Chapter 8, Section B, *Faculty Status and Institutional Effectiveness*, below.

⁶⁰ Cynthia Batt, *A Practice Continuum: Integrating Experiential Education into the Curriculum*, 7 ELON L. REV. (forthcoming 2015).

⁶¹ See Chapter 3, Section B, *Pathways, Integrating and Sequencing the Curriculum* (defining “integrate the curriculum” as “connect the individual courses that a student takes, both those taken concurrently and across the years the student is enrolled in law school” and sequence the curriculum as “structure offerings from introductory to intermediate to advanced”).

⁶² The experiential layer cake model adds simulations first and follows later with real experiences, deferring real experiences until the third year.

⁶³ The experiential marble cake model incorporates both simulation and real experiences early and returns to them throughout law school in increasingly complex forms.

after a real experience that makes evident the importance of the skill. The marble cake model might suggest that an initial basic introduction to the skill could be followed by a lower-stakes real opportunity to practice, a more complete introduction in a theory and practice simulation skills course, and another opportunity to practice the skill in real life.

Second, should law schools require, or students choose, enrolling in a law clinic before an externship, or vice versa? If a law school makes more than two experiences available, should it require, or should the student choose, a particular sequence? The question how to sequence law clinics and externships has taken on more salience in recent years as more schools have the capacity to provide at least some of their students with both experiences. The preferred sequence most likely will vary with a student's goals and skill level, and the nature of the externship. For instance, externships in which students will mostly perform legal research, such as judicial externships, can be an excellent early experiential opportunity for a student wishing to hone writing skills, or to observe courtroom proceedings. Along with a theory and practice skills simulation trial advocacy course, intensively scaffolded litigation clinics in which students function as first chair on cases can provide an excellent foundation for an externship, such as a criminal prosecution or criminal defense placement, in which the student will carry a calendar or caseload in a first chair role. A series of smaller credit externships could expose a student who is undecided on a direction to several practice settings and perhaps identify a preferred focus for a later law clinic experience. A student with weaker skills will likely benefit from the more intensive scaffolding of a law clinic, before moving into the less supported externship setting. At the same time, in a state with a student practice rule limiting court appearances to third-year students, a very strong student could make the most of a law clinic's first chair opportunities to perform an appellate argument, or another task, that would not likely be available through an externship.

While insufficient experience is available to recommend either a best practice for sequencing, or a best process for developing a sequence, a thoughtful, multi-stage process will be needed in order to identify and implement a useful sequence.⁶⁴

vi. Developing a Common Vocabulary and Evaluative Criteria for Experiential Education

A final best practice for experiential education is to establish a common vocabulary and common evaluative criteria for experiential offerings.

⁶⁴ Such a process might include:

1. Reviewing content and learning outcomes of current offerings;
2. Reviewing student experience through interviews, transcript analysis, surveys, and employment outcomes;
3. Developing a list of sequencing options to explore;
4. Vetting practical considerations such a scheduling other aspects of the curriculum;
5. Choosing and implementing preferred options;
6. Creating pathways or another academic advising system to maximize benefits; and
7. Assessing results and modifying sequence as indicated.

(a) **Why Legal Education Needs Both a Common Experiential Education Vocabulary and Common Evaluative Criteria**

One of the challenges for prospective students in comparing law schools, accreditors in evaluating them, legal employers in assessing prospective hires, and law schools engaging in self-assessment and redesign is the increasing proliferation and inconsistency in terminology for experiential education offerings. Institutions use different terms when referring to the same types of learning experiences, and use the same terms — such as “practicum” or even “clinic” — inconsistently. An individual law school may even lack consistency in using different terms, creating confusion within the institution, among students, faculty, and staff. It would be a best practice for experiential education to establish a reasonably consistent vocabulary in keeping with commonly understood usage, along with a common set of evaluative criteria that would enable interested parties to “look under the hood” of experiential offerings, however they are labeled.

A common vocabulary can prevent misunderstandings in which different parties mistakenly assume that they are both talking about a course or learning experience that has certain characteristics. Students, especially, will be misled if schools are opaque or overstate the depth and breadth of their experiential offerings or adopt confusing course titles. It is important for schools to clearly communicate the nature and extent of their experiential offerings, and for students to be able to compare the benefits inherent in each.

A common vocabulary takes on great practical significance in light of the ABA’s adoption of a standard requiring that each student complete six semester credits of practice-based experiential courses,⁶⁵ as well as pending state bar requirements that are more expansive.⁶⁶ Both students and law schools will need to know which courses will satisfy those requirements, and law schools need to avoid the administrative nightmare that will result if jurisdictions use inconsistent definitions.

A consistent experiential education vocabulary also has the potential to mitigate the silos that tend to characterize legal education. If such an effort creates terminology that highlights the connections among different aspects of the curriculum and that links those pieces of the curriculum under an overarching concept — an “umbrella” — legal educators can think about the curriculum more holistically.

A common vocabulary, however, is insufficient, even though the short-hand it provides is important. Focusing only on vocabulary presents the risk that discussions will be about semantics, rather than about analyzing the experiences offered by different courses. To use the language of critical theorists, a category can too easily be

⁶⁵ ABA Standard 303(a)(3).

⁶⁶ For summaries of the California, New York, and Arizona requirements, see Linda Morton, *California’s New State Bar Pre-Admission Requirements: 15 Units of Experiential Education and 50 Hours of Pro Bono* and Steve Ellmann, *Three Innovations in Bar Admission Rules: New York (Twice) and Arizona*, PRESENTER HANDOUTS: PLENARY 4: THE DEVELOPING LANDSCAPE OF CHANGE, http://www.elon.edu/docs/e-web/law/aell_symposium/Katherine_Kruse_handout.pdf, archived at <http://perma.cc/L2KN-ZDD8>.

“reified,” turned into a thing with a defined essence that encourages back and forth ‘tis too, ‘tis not assertions, rather than conversation. Labels can too easily embed, and mask, value judgments that are more usefully brought into the open for discussion. To underpin a common vocabulary common evaluative criteria — such as those provided in Tables 1-5 above — are, therefore, needed. Such criteria are a predicate for understanding what factors are most significant in differentiating offerings and contributing to their distinct strengths.

The benefit to legal education and its consumers in being able to easily understand and compare programs across and within schools is worth the cost of developing a common vocabulary and consistent with law schools’ duty to be transparent about what kind of education is being offered.⁶⁷ Identifying common criteria to support such a vocabulary is similarly important.

(b) **Why Creating a Common Vocabulary and Common Evaluative Criteria is Challenging**

Developing and adopting a common vocabulary and common evaluative criteria are, of course, easier said than done. At least three factors create barriers to such an effort.

First, in the absence of a common vocabulary, schools have developed their own usages. Students, alumni, faculty, and clients are familiar with local terminology. Thus, schools have an investment in it and may be reluctant to change, especially if doing so may suggest that their programs are less robust than previously appeared. Because law clinic offerings are an important factor to prospective students and U.S. News rates clinical programs, law schools have had an incentive to stretch the label “law clinic” to include offerings that might not be viewed as such under a new and more precise definition⁶⁸

Second, because experiential offerings vary along multiple dimensions, creating a common vocabulary risks both overlooking important dimensions and freezing categories in a manner that discourages experimentation. Among the varying dimensions are who teaches classroom offerings or supervises real practice opportunities, what the nature of the experience is, and where it takes place. Two recent articles highlight this complexity. One focused on roles students should experience and competencies they should develop. It identified three different roles that students may assume in an experiential curriculum, distinguishing simulated practice, the mentee role, and the first-chair role.⁶⁹ Another article that addressed only experiential courses involving real lawyering unpacked the traditional terminology for supervised practice experiences, specifically the divide between law clinics and externships. That article differentiated experiences along a

⁶⁷ ABA Standard 509 mandates disclosure of specified information and section (a) requires that all information provided must be “complete, accurate and not misleading to a reasonable law school student or applicant.”

⁶⁸ See Chapter 5, Section F, Subsection 2 and 4, *Delivering Effective Education in In-House Law Clinics* and *Ensuring Effective Education in Alternative Clinical Models*, below.

⁶⁹ Susan L. Brooks, *Meeting the Professional Identity Challenge*, 41 *BALT. L. REV.* 395, 403, 413 (2012).

straightforward “Why, Who, What, Where, When, How” framework.⁷⁰ The framework suggested that any set of definitions for real experiential offerings must incorporate six dimensions, a complex task in and of itself. But within that six-category framework resided additional complexity in a checklist of considerations encompassing almost three pages. Given this complexity, identifying which criteria are most important for evaluating experiential offerings poses challenges.

Finally, any set of definitions, or evaluative criteria, implicitly brings with it judgments about the value of different structures for experiential education, and those judgments may feel threatening to educators who have deep intellectual and emotional investments in particular approaches. In an era of widespread budget cutbacks, if alternative structures appear to neglect educational values in order to reduce costs, such educators may fear that validating alternative structures will undermine their carefully nurtured programs. For many years, this dynamic has been a not-so-hidden undercurrent in discussions of the respective merits of law clinics and externships, the two most commonly recognized structures for supervised practice, but it extends beyond that question.

(c) **Moving Towards a Common Vocabulary or
Evaluative Criteria**

As this section is written, the most comprehensive effort to develop a common vocabulary for experiential legal education has emerged from the Alliance for Experiential Learning’s⁷¹ “Vocabulary Working Group” convened to address the problem of definitions. The product of that work is a Glossary,⁷² but as of the date this section is written, that effort has not yet been fully vetted. Thus, the best practice for a common vocabulary urged in this section is support for the effort to develop one, rather than any specific definitions.

Drawing on the work of many others,⁷³ the previous discussion has attempted to identify some of the salient evaluative criteria, and a common vocabulary will need to wrestle with those criteria. In addition to the distinction between experiential modules and experiential courses, definitions must address the distinguishing characteristics of experiential courses set out in Tables 1-4, above.

⁷⁰ Deborah Maranville, Mary Lynch, Susan Kay, Phyllis Goldfarb & Russell Engler, *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517 (2011-2012) [hereinafter Maranville, et al., *Re-vision Quest*].

⁷¹ Convened in 2011, the Alliance has sponsored conferences at Northeastern University Law School and Elon University Law School, and organized working groups on a variety of topics. <http://www.northeastern.edu/law/experience/leadership/alliance.html>, archived at <http://perma.cc/6TZZ-2VCT>.

⁷² Adcock, et. al., *Glossary*.

⁷³ Of particular note are *id.*; Katherine Kruse & Stephen Ellman, Working Grp. on Cost and Sustainability, Alliance for Experiential Learning in Law, *Measuring the Values and Costs of Experiential Education*, in *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. __, Part III, at __ (forthcoming 2015); Maranville, et al., *Re-vision Quest*.

c. Conclusion

The subsections below consider clinical legal education in more detail.⁷⁴ In light of the description above of the defining characteristics of the two major forms of clinical legal education, law clinics and externships, and how teachers of each add value to raw experience, these subsections summarize the defining best practices of in-house clinics, and the best practices emerging from the sustained attention given to externship pedagogy over the last decade. The final subsection discusses considerations relevant to alternative clinical models.

⁷⁴ Simulation courses are not discussed separately, because the treatment in *BEST PRACTICES*, text at notes 574-603, is thorough and does not require updating.

2. DELIVERING EFFECTIVE EDUCATION IN IN-HOUSE CLINICS

By Lisa Radtke Bliss & Donald C. Peters¹

a. Introduction

In-house law clinics² have long been recognized as a key form of experiential education. They offer an educational setting in which students holistically integrate all of the elements of legal education. Through clinics, law schools can impart the education and training that the legal profession expects law graduates to have. They provide an environment in which students explore the meaning and application of law, ethics, and professional identity in real life under the close supervision of a faculty member who is simultaneously working on or overseeing the legal matter that provides the educational experience. Allowing students to practice problem-solving, especially in actual cases in an academic environment, is the most effective and efficient way to help them develop professional competence.³ Accordingly, because law clinics are an important place where this happens, it remains a best practice for law schools to include law clinics as part of the experiential education curriculum.

BEST PRACTICES FOR LEGAL EDUCATION identified best practices generally applicable to all experiential courses.⁴ It also recommended best practices for different types of experiential courses, including in-house clinics.⁵ The best practices articulated for in-house clinics remain relevant to the design and implementation of in-house law clinics today, and provide a solid foundation on which to construct a law school clinic.⁶

¹ Readers for this section were Warren Binford, Sylvia Caley, Andrea Curcio, Robert Dinerstein, Stephen Ellman, Phyllis Goldfarb, Carolyn Grose, Howard Katz, Katherine Kruse, Wallace Mlyniec, Margaret Reuter, Alexander Scherr, Emily Suski, and Ian Weinstein.

² This section uses the term “in-house law clinics” to refer to the prototypical model of clinics — those that are operated by the law school in space that is either inside the law school building or in the community and which include features that align with the newly adopted definition set forth in ABA Standard 304(b). Standard 304 limits the definition of clinics to those that advise or represent a client. The authors suggest that this standard is too narrow and the definition of clinic should be revised to include representation of clients or the performance of other professional roles such as serving as third-party neutrals or performing project-based work for community partners. In order to avoid running afoul of ABA Standard 309, law schools should ensure that they are using the term “clinic” for courses that incorporate the elements of clinical courses as described in Standard 304(b).

³ ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP, text at notes 466-70 (2007) [hereinafter BEST PRACTICES].

⁴ BEST PRACTICES, text at notes 537-78.

⁵ *Id.*, text at notes 605-18.

⁶ Those practices include achieving clearly articulated goals; overseeing and improving student work in advance or recording student performances; balancing student autonomy with client protection; including a clinic seminar; and responding to the legal needs of the community in which the clinic is located. *See* BEST PRACTICES, text at notes 604-18. *See also* J.P. Ogilvy, *Guidelines for the Self Evaluation of Legal Education Clinics and Clinical Programs*, 15 THOMAS T. COOLEY J. PRACT. AND CLIN. LAW 1, 33-134 (2014) [hereinafter Ogilvy, *Guidelines for Self-Evaluation*] (discussing guidelines for development and operation of live-client clinics).

This section builds on those principles in several ways. First, it reviews the context in which clinics present as a choice among burgeoning experiential education models. It addresses how clinics contribute to student learning and development so that institutions understand the particular advantages that the in-house law clinic model offers to students, clients, and the institutions themselves. The section explores the essential characteristics of in-house law clinics and expands on the understanding of how legal education through in-house clinics meets multiple objectives for legal education. Those essential characteristics provide a specialized context for student learning and include the intensive supervision students receive, the structures used to deliver the clinical learning experience, the use of developed clinical teaching methodologies, and a forum ideally suited for teaching particular topics that are most effectively taught in context. BEST PRACTICES highlighted the importance of providing students with clearly articulated learning objectives and assessment criteria⁷ and of using clinic courses to achieve clearly articulated educational goals more effectively and efficiently than other methods of instruction could achieve.⁸ Although learning objectives vary among clinics based upon the clinic mission and design, common learning objectives exist across clinics, and this section identifies the range of those common objectives. Finally, this section explores the value that in-house law clinics add to their institutions and their communities, and identifies practices for maximizing the value of clinics and promoting the effectiveness of law school clinical programs.

b. In-House Law Clinics Today

Designed to help students develop professionally while also serving legal needs of the communities in which they are situated, in-house law clinics today address a wide range of legal subject matters. Clinics have long reflected and embraced the multifaceted nature of law practice. While early clinics focused on legal matters that involved litigation, by the time BEST PRACTICES was published in 2007, many law schools recognized that effective preparation of students for practice required in-house law clinics to reflect other areas of practice, especially through transactional work in affordable housing and community economic development clinics, and alternatives to litigation through mediation clinics. Law schools also developed legislative or policy clinics focused on project-based work in contexts that often, but not always, involved representing clients.⁹

Since BEST PRACTICES was published, law schools have continued to expand the availability of in-house law clinics in response to calls for more experiential education, market forces that are clamoring for more practical training of law students prior to graduation, and the enhanced understanding of what lawyers in practice actually do and how clinics can effectively prepare students for that work. Development of new clinic areas is driven by a range of external forces, including changes in legal practice,

⁷ BEST PRACTICES, text at note 549.

⁸ *Id.*, text at note 605.

⁹ Strictly speaking, some clinics by design do not represent “clients.” Although this section enumerates real clients as one of the defining characteristics of in-house law clinics, it is not meant to exclude clinics in which students engage in other types of legal work such as mediation or policy work.

client populations, and community needs.¹⁰ Other factors leading law schools to explore new clinic areas may also include increased awareness of longstanding injustices,¹¹ new sources of funding,¹² and schools' efforts to round out their clinical offerings so as to provide a wider range of clinic choices for students. These influences have resulted in new clinics, particularly in areas of focused representation or advocacy,¹³ such as medical-legal collaboration, veteran's issues, entrepreneurship, bankruptcy, small businesses, human rights, and alternative dispute resolution. Law schools — recognizing both the need for and student interest in experiential education that reflects a range of lawyering activities — have begun to develop clinics focusing on non-litigation practices, including transactional work, international work, and non-representational or project-based work.¹⁴ These newer models expand the learning opportunities available to clinic students by providing additional choices that better reflect the breadth of work that lawyers perform. Regardless of differences in clinic models, a common clinical pedagogy is well developed. The core of that methodology is the interaction between students' experiences and the clinical educator's structured intellectual inquiry designed to help students learn from those experiences.

A defining feature of the in-house law clinic is the intensive faculty supervision and integrated student learning that happens through this education model. Because in-house clinics are typically taught by educators whose primary professional focus is teaching and learning, students of in-house clinics receive consistent, intense, and structured supervision.

c. How In-House Clinics Contribute to Student Learning and Development

What is it about the in-house law clinic learning experience that is so important to student learning? Students go to law school predominantly in order to become lawyers. Clinics offer them the opportunity to understand what being a lawyer and practicing law is all about. The clinic structure allows students to draw upon and further develop their substantive knowledge, doctrinal reasoning, lawyering skills,

¹⁰ Changes in client populations and community needs give rise to clinics targeting traditionally underserved populations, such as Native Americans; growing populations such as veterans, whose numbers have burgeoned in the wake of the wars in Iraq and Afghanistan; as well as clinics targeting newly important issues, such as foreclosure, bankruptcy, and other consumer clinics in the wake of the Great Recession.

¹¹ DNA evidence has increased awareness of wrongful convictions and led to the creation of Innocence Project clinics. Movements to address over-criminalization and racial disparities have led to clinics focused on those issues.

¹² New sources of funding have also contributed to development of clinics. For example, various foundations have awarded grants to clinics focused on child advocacy, entrepreneurship and small business, and medical-legal partnerships.

¹³ Clinics have many incentives to specialize, including the availability of funding to address topical legal issues, serve identified vulnerable populations, or complement a school's strength in a particular area (*e.g.*, a school with a strong health law program or a health certificate program may add an in-house health law clinic).

¹⁴ By design, clinic models that engage in non-representational or project-based legal work do not represent "clients." These clinics can provide highly valuable learning experiences.

ethical engagement, and professional identity.¹⁵ Clinics effectively teach students how to prepare for their roles as lawyers by allowing them to assume responsibility for clients and legal matters while working under the supervision of law faculty employed by the school. The clinic educational experience is strengthened through the learning that occurs in the clinic seminar, during case rounds discussions, during students' work on behalf of clients, and during supervisory meetings with the clinic teacher. Several defining features of clinics result in a distinctive educational opportunity that is not found elsewhere in the curriculum. First, clinic students will assume substantial responsibility for real legal work. And, they will assume the role of a lawyer in performing that work. The integrated supervision¹⁶ structure found in clinics, in which the clinical supervisor and teacher is the person working directly on the legal matter together with the student, contributes to a learning experience for students that is closely supervised and tailored to meet student needs. Clinics incorporate well-developed clinical teaching methodologies and teach through structures such as the clinic seminar and case rounds, which provide grounding for student learning.

i. Distinguishing Features of In-House Law Clinics

Implicit in BEST PRACTICES' discussion of law clinics was the recognition that high quality law clinics are distinguished by the combination of four features: students handling real legal matters for real people, acting in role, under the supervision of professional teachers hired by the law school with adequate time and expertise to engage in intensive supervision, using a well-developed pedagogy.

(a) In-House Clinics Handle Real Legal Matters for Real People

A guiding principle of in-house law clinics is educating students through serving real clients¹⁷ with real legal needs and problems in a setting expressly designed for educational purposes. Providing legal services to real clients is the reason that in-house law clinics exist both as an opportunity for law students to learn what it means to practice law and as an opportunity for those who need legal help to obtain it.

No clinical methodology rivals in importance the role of clients and [students'] work within the attorney client relationship . . . “[T]he [clinical] model is based on a deeply contextualized understanding of who clients are and why they are significant. Students no longer see clients as abstract people with predetermined traits; rather they see clients as unique individuals with

¹⁵ BEST PRACTICES, text at notes 609-10 (citing CARNEGIE REPORT 142-43 (2006)). Clinic courses are ideally suited to help students develop their ethical and professional responsibility. See Chapter 6, Section A, Subsection 3, *Learning Professional Responsibility*, below.

¹⁶ See *Integrated vs. Dual Supervision* in Chapter 5, Section F, Subsection 1, *Incorporating Experiential Education throughout the Curriculum*, above.

¹⁷ Although some clinics do not represent “clients,” but handle other legal matters, this section uses “client” as a defining characteristic because it is part of the ABA Standard 304 definition of a clinical course and because that is the predominant model of in-house law clinic. “Clients” can refer to individuals or organizations.

particular characteristics, situated within the real world.”¹⁸

In representing real clients, and addressing their needs in real legal matters, students see how law is made and applied, and how facts can affect outcomes.¹⁹ Such insights contribute to students’ understanding of the ways that law “in action” differs from law “on the books.”²⁰

Although one of the benefits of clinics is the representation of real clients, this distinguishing feature also presents challenges to both the student and the teacher. Real life can be messy and unpredictable. Educators cannot control real life legal problems or the behavior of the people involved in those problems. The unpredictability of working in real life and the dynamic nature of working in law require clinical educators to help students respond in real time to real life situations, sometimes when there are time pressures involved. Law students are still developing their knowledge and understanding of how the law works in reality, and often have difficulty accepting uncertainty.²¹ Students must confront the “open-endedness” of law practice, and they often struggle with trying to figure out what the facts are, which ones matter, how to find them, and what their ever-shifting meaning is.²² In real cases, students and the clinical educator must together address matters in which uncertainty, ambiguity, and the fluid nature of problem-solving in real matters are ever present. The clinical educator must have the skills to be able to help the student extract the lessons learned from her experiences working in unpredictable and changing circumstances.

Dealing with real life and real clients also forces students to confront the unfamiliar. Many, if not most, clinics serve low-income clients. Clinic clients may present with characteristics with which law students do not identify. For many students, their clinic client may be the first person of limited means they have encountered. Clinic students learn intimate details about real clients’ lives, and may even visit the clients’ homes. Students also meet clients at a time when clients’ lives are in crisis, possibly as the result of an encounter with the criminal justice or social services systems. Through the intimacy of directly interacting with a real person with whom they are engaged in a lawyer-client relationship, students, thus, come to understand in a powerful way the impact of race and poverty, and the impact of laws, the legal system, and public benefits on impoverished families. Students are also frequently forced to confront their own judgments, perceptions, and stereotypes about clients and the justice system. The clinic model of serving real people in a supported educational context makes this possible.

¹⁸ DEBORAH EPSTEIN, JANE H. AIKEN & WALLACE J. MILYNEC, *THE CLINIC SEMINAR* 26 (2014) [hereinafter EPSTEIN ET AL., *CLINIC SEMINAR*] (quoting Anne Shalleck, *Constructions of the Client in Legal Education*, 45 *STAN. L. REV.* 1731 (1992-1993)).

¹⁹ SUSAN BRYANT, ELLIOTT S. MILSTEIN & ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 17 (2014) [hereinafter BRYANT ET AL., *CLINICAL PEDAGOGY*].

²⁰ *Id.*

²¹ Anne Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 *N.Y.U. REV. L. & SOC. CHANGE* 109, 160 (1994) [hereinafter Shalleck, *Clinical Contexts*].

²² *Id.*

(b) **In-House Clinic Students Assume the Role of Lawyer**

The expectation that students will assume the role of a lawyer in the context of real cases and projects is a fundamental aspect of learning in in-house law clinics. Students in most clinics assume the role of a lawyer, having full ownership of their cases and engaging in real lawyering tasks, under faculty supervision. This pedagogical approach teaches students responsibility for legal work done on behalf of clients. It requires students to shift their identity from student to professional. Students in clinics face decisions lawyers must make and issues lawyers must confront in practice. The clinical educator is there to guide them.

By design, in-house clinics generally focus on allowing the student primary responsibility, or as much responsibility as is reasonable given the type of clinic and the complexity of the legal work undertaken. Through the clinic experience, students will understand what it feels like to be responsible for a client in a legal matter. This design helps students develop not only the capacity to act on behalf of another, “but to make complex judgments that have enormous consequences for people’s lives.”²³ Especially in “small case” clinics where students occupy the first-chair role, students are involved in all aspects of a case: interviewing, legal counseling, strategic decision-making, developing case theory, case planning, and conducting hearings or trials.²⁴ Project-based clinics may offer similar opportunities, as clinic students may be fully responsible for the investigation, research, and presentation of projects. Other clinics that work on more complex litigation permit students to understand the law on a larger scale, and to experience the work of a lawyer within a collaborative enterprise. By trading off the higher level of autonomy and responsibility students have when working on smaller matters, clinics that handle more complex cases allow students to learn about legal work involving multiple parties, and extended research, investigation, and discovery. Regardless of the type of legal matter addressed, clinics are designed to provide significant student practice experience. The extent of a student’s role assumption may differ depending upon the type of clinic, its learning objectives, and other factors.²⁵ Nevertheless, the clinical educator’s goal is to foster the student’s development of competence. In some cases, a student masters or approaches mastery in multiple areas of knowledge and skills. By performing more tasks, reflecting upon their experiences, applying what they have learned, and assuming higher levels of responsibility, the student becomes more and more confident, skilled and independent. As the clinic experience progresses, the student becomes more and more confident, skilled, and independent.

Students in clinics study and analyze the lawyer-client relationship because it is central to the lawyer’s role, and clinics serve as a place for students to learn firsthand the complexities of working with real clients. Assuming responsibility for a case and

²³ Email from Wally Mlyniec to Lawclinic listserv, March 17, 2010 (on file with author) [hereinafter Mlyniec Lawclinic email].

²⁴ *Id.*

²⁵ In some states, the level of responsibility or tasks a student may take on are defined or limited by the state’s student practice rule.

client means that the student forms a relationship with the client. It is the student with whom the client interacts. The lawyer-client relationship in clinics offers students not only the opportunity to learn how to work with a client, but also a context in which to examine with the clinical educator the prevalent models of the lawyer-client relationship and how those models may or may not affect students' own behavior.²⁶ "In constructing a relationship with their client, students can experience the possibilities for, as well as the limits to, the choices they can make in that relationship."²⁷

In-house law clinics present especially rich opportunities for students to develop a professional identity,²⁸ because students are forced to make decisions about what to do while they are engaged in the practice of law. A clinical course allows students to begin that process in a supervised educational environment that is both challenging and supportive.²⁹ As students assume a professional role and begin to understand what the profession expects of them, they also learn that they have many opportunities to decide for themselves how they want to behave as lawyers.³⁰ Students learn important lessons about the lawyer's role in clinics by inhabiting that role.³¹ They are thus able to analyze the experiences and behaviors they exhibit while in role and form a sense of themselves as professionals, identifying both who they are and who they want to be.

(c) **In-House Clinic Students Are Supervised by Law School Faculty Who Have Time to Teach and Expertise in Clinical Pedagogy**

Perhaps the most significant distinguishing feature of clinics that makes them such an effective model for student learning is the intensive nature of faculty supervision. In clinics, faculty supervision is integrated with the legal work: the clinical educator is the supervisor of the student and directly oversees the legal work being performed.³² The educator and student work together on the same case(s) or matter(s) throughout the course. Thus, the educator has intimate knowledge of the legal work being performed by the student. This prototypical in-house clinic supervision model also contemplates that the clinical educator is employed by the law school to teach, and is, therefore, free from other law practice obligations. The nature of the educator's involvement in all aspects of the student learning experience places the clinical educator and student in a relationship in which both are in near-constant dialogue about the legal work. This relationship is created during supervision.

²⁶ Shalleck, *Clinical Contexts*, 109, 170-71.

²⁷ Shalleck, *Clinical Contexts*, at 109, 170-71.

²⁸ See Chapter 6, Section A, Subsection 3, *Learning Professional Responsibility*, below.

²⁹ BRYANT, ET AL., CLINICAL PEDAGOGY, at 14.

³⁰ *Id.* at 15.

³¹ *Id.*

³² It is this close level of supervision that necessitates a low student-faculty ratio in clinics.

Law school clinics operating in accordance with best practices employ a supervision model in which the student and educator have time allocated to planning lawyering activities, to the student performing them, and to discussing and reflecting upon those experiences. Students have the chance to practice the same or related activities on multiple occasions and receive focused feedback from the educator who observes the skills being performed,³³ each time incorporating lessons learned from the previous experience. This repetition, planning, performance, and reflection helps students internalize lessons and allows for transfer of learning to new situations. Educator feedback happens most extensively during supervision. It is supplemented and reinforced by peer feedback during the clinic experience. Clinical educators seek to maximize the potential of student learning from feedback, so they train students to give and receive it.³⁴

(1) **Students' Lawyering Experiences Are Integrated into the Learning Process**

As in-house clinic students learn from experiences working with real people in real life matters, those experiences, and the exploration of their meaning, are integrated into supervision. Clinical educators are able to help students make explicit connections between their legal work and their classroom experiences based on firsthand knowledge of events. Because of the educator's pervasive, integrated involvement in the clinical endeavor — in the clinic seminar, the client representation, and the supervision — clinical educators have the opportunity to help students synthesize experiences and translate their meaning. In an in-house law clinic, the educator relies primarily on her own observation, rather than on the student's reporting of her work experience. This direct involvement means that the educator's understanding of an event is not filtered through the student's reporting of it. The educator also brings his own experience and understanding of the matter and may ask targeted questions of the student based on his own knowledge.

Because of the time that a clinical educator spends with his students, and his shared involvement in the legal matters, the educator can often either observe a student's performance or talk about it immediately after it occurs. His proximity to and shared involvement in the legal work enables the educator to do intensive observation and teaching, in real time, about the student's performance in the legal matter being undertaken. For example, the clinical educator works directly with the student to plan how to write a brief or other document in a matter they both know and understand. The student prepares the document, and the clinical educator is there to review it and provide close-in-time feedback. The two continue to work together in the shared enterprise until the product is complete. The continuous cycle of planning, doing, and receiving feedback and then revisiting the skills performed and applying knowledge from previous efforts enables clinic students to achieve deep learning, and in some cases mastery, of certain skills.

³³ In many cases, students also receive peer feedback, most typically in the seminar and rounds contexts.

³⁴ BEST PRACTICES addressed the importance of teaching how to give and receive feedback. *See* BEST PRACTICES, text at notes 563-68.

Clinical educators and their students have a shared understanding of the matters on which the student is working. Thus, the educator has the opportunity in supervision to facilitate student learning of points of law, methods of practice, and elements of the legal practice.³⁵ Through supervision interactions, an educator can assess students' ability to draw upon concepts they have learned in the classroom and their ability to act on behalf of clients in light of their understanding.³⁶ Clinical educators are also able to take advantage of their integrated knowledge of the students' work and experiences and use inquiry-based feedback regarding the actions they observe.³⁷ This feedback can be done effectively in supervision as well as in the classroom or rounds context. Doing so in team or group settings invites students and teammate-observers to assess the effectiveness of students' choices of actions and compare those choices to action theories. It also encourages discussions about whether behaviors coincided with theories selected, and efforts to identify appropriate generalizations for similar, future situations regarding theories, actions, and useful revisions of either or both.³⁸

(2) Learning Is Tailored to the Student

Because they work closely with students as students plan and make decisions about actions needed to discharge their duties to clients and act on those decisions, clinical supervisors gain knowledge of their students that permits them to engage deeply with students on multiple levels.³⁹ As a result, their supervision may be adapted to changing circumstances and student development. In working with the student, the educator may determine the appropriate level of student responsibility and autonomy given the complexity of a given task and any attendant risks to the client. Clinical educators understand that students are continually learning and processing information, and developing their abilities to perform tasks and think in more sophisticated ways. The prototypical clinic model intentionally gives students as much case or project responsibility as they can manage with intensive scaffolding and supervision. Over time, the shared goals of the educator and the student are for the student to continue to gain knowledge and skill, become confident, learn from experience, demonstrate increased reflectiveness about his actions and their meaning, and take more and more responsibility for both the legal matter and the student's own learning. As the student's skills develop, she learns to plan tasks, solve problems, and approach legal work with a sense of growing independence and confidence. Students' capacities for understanding develop with each new experience in a clinic. At the same

³⁵ Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 339 (1982).

³⁶ Shalleck, *Clinical Contexts*, 109, 147.

³⁷ Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284, 286 (1981) (suggesting abilities to generalize from experience to improve future performances is enhanced by articulating why actions were chosen and reflecting on their effects).

³⁸ Don Peters, *Mapping, Modeling, and Critiquing: Facilitating Learning Negotiation, Mediation, Interviewing, and Counseling*, 48 FLA. L. REV. 875, 919-25 (1996) [hereinafter Peters, *Mapping*] (suggesting that frequent invitations to self-critique afford students practice identifying and understanding actions, provide potential face-saving and positive feedback opportunities when ineffective behavior is owned, and remind observers to balance positive and constructively critical interpretations).

³⁹ Bryant et al., *Clinical Pedagogy*, at 173.

time that they are mastering some skills, they are simultaneously faced with the knowledge that they have much more to learn.⁴⁰

As the result of their integrated, comprehensive knowledge of individual students' legal work and classroom experiences, clinical educators are able to make necessary adjustments, and choose supervision interventions appropriate to individual students.⁴¹ By consistently focusing on purposeful behavior driven by a theory of action, clinical educators can challenge their students in supervision to do the difficult work of determining why they do what they do. In their role as educators, clinicians focus on individual and small group student learning from experience by fully debriefing all activities related to the client's matter, providing additional support, ensuring feedback for performances, such as initial client interviews and routine investigation encounters, and practicing actions designed to help students develop effective collaboration skills.⁴²

Because clinical educators bring comprehensive yet individualized insights regarding students' classroom and work experiences, they are able to adapt supervisory interactions, taking into account students' developmental stages and what predictably best facilitates their learning.⁴³ This quality enhances clinic supervisors' ability to share detailed suggestions and explanations when needed because students lack relevant experience and feel high levels of performance anxiety.⁴⁴ In supervision, the educator's insights make it easy to engage students in conversations that explore objectives and options for client representation, as appropriate in light of student and case needs. During these explorations, clinic supervisors emphasize student responsibility for making decisions while ensuring that students also engage in conversations about underlying assumptions and client-centered and social justice implications.⁴⁵ Supervision is an intimate context in which the educator and student may explore student reactions and ideas about such concepts as social justice, race, class, and poverty. Because of their role as educators, clinical teachers have heightened opportunities to convene and facilitate these important conversations

⁴⁰ *Id.* at 180.

⁴¹ Peters, *Mapping*, at 892 (arguing students need to recognize where they are in order to determine where they need to travel to develop skill competencies).

⁴² Susan Bryant, *Collaboration in Law Practice: A Satisfying and Productive Process for a Diverse Profession*, 17 VT. L. REV. 459, 461 (1993) (arguing teaming exposes students to their differences, giving them time and methods for exploring them, and practice resolving conflicts that arise from these differences); David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLINICAL L. REV. 199, 215, 219 (1994) (noting advantages of providing mutual support, reducing performance anxiety, and concluding overall impact on clients was beneficial).

⁴³ Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 61 (1995) (suggesting a context-sensitive approach to supervision looking at student abilities, client needs, and case types).

⁴⁴ Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301, 303-12 (1986) (recommending adapting supervisory interactions to contextual necessities presented by time, student experience, and student and client needs).

⁴⁵ Shalleck, *Clinical Contexts* 109, 178-79 (recommending viewing supervision as a process in which teachers constantly identify aspects of law, lawyering, and legal systems that underlie understanding what competent, professional practice means).

before practice experiences as well as after practice experiences, and to hold both regular supervisory meetings and additional supervision sessions when circumstances warrant in order to meet the needs of the student.⁴⁶

(3) **In-House Clinic Students Communicate Frequently with Their Faculty Supervisors**

The accessibility of the clinical educator is an important feature of clinics. Clinical educators meet with students in person during regular supervision meetings, in addition to their presence at case and project or court events, the clinic seminar, and rounds. Clinical educators are also present while students perform legal work, working near students or readily accessible to students who need guidance, review and approval of their written work, or answers to questions. During regular, formal supervision meetings, educators assess student progress and work with students to identify and plan future goals and tasks for both the development of the legal matters and the student's own learning progress. While students have formal meetings scheduled with their clinical supervisors, it is not uncommon for students to visit the clinical educator's office multiple times in a day and week to ask questions and report immediately on case developments. Through this close and regular contact, clinic teachers often are the educators with whom students form the closest relationships.⁴⁷ Often, if a student is having problems, whether they are related to school or not, the clinical educator is the first to know. Access to the clinical educator is a defining feature of in-house clinics. Thus, it is a best practice to ensure that students have such access.

(4) **In-House Clinical Faculty's Primary Professional Commitment Is Teaching**

Another distinguishing feature of in-house clinics is the role of clinical faculty as law school teachers. Clinical educators, as employees of the law school, provide the necessary supervision to enable students to handle real legal matters. This educational model facilitates clinical educators' ability to focus on and deploy clinical pedagogy to achieve desired learning goals for their students. As educators and supervisors, in-house clinical teachers learn, study, and develop clinical pedagogy and then apply it directly to student learning. As educators with expertise in student learning, they effectively supervise student practice before, during, and after

⁴⁶ Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLINICAL L. REV. 611, 620-23 (2004) (noting that lack of time, motivation, and understanding of supervisory dynamics and educational objectives are common barriers to optimally effective learning in externship settings).

⁴⁷ Because they have such frequent contact with students and directly observe their skills, in-house clinic teachers have specialized knowledge of student strengths and abilities. Accordingly, they are frequently called upon to write employment recommendation letters or otherwise recommend students for law practice jobs and clerkships. Because of their deep knowledge of the student and their closeness to law practice, clinic teachers are able to write letters that include details and specifics about the student that relate directly to the employer's needs and interests, and are able to make predictions about a student's potential for success in a given environment. In addition, due to their specialized knowledge of students' skills, clinic teachers are often contacted by members of the bench and bar when jobs are available and asked to invite their students to apply for such positions.

significant practice events. Because their professional commitment is to the educational process,⁴⁸ clinical educators have greater detachment from and opportunities to assess the dominant norms of legal practice in their community. Their position as academics who study both the theory and the practice of law gives in-house clinical educators opportunities to develop and implement best practices for high quality clinical legal education.⁴⁹ These efforts flow across and throughout the pedagogical modes of effective, actual experience-based learning in law clinics: supervision, seminar and case rounds.⁵⁰

Employed by the law school to function and serve as teachers, in-house clinical educators do not hold positions in practice where they simultaneously work for other employers. Their time is dedicated to teaching without the demands of another employer. As educators, their primary professional duty is to educate students and to be available to students as they perform legal work in the clinic. This teaching focus offers learning advantages for students as expressed above. Accordingly, including the in-house clinic model as a part of the law school curriculum remains a best practice for legal education.

(d) **In-House Clinics Incorporate a Well-Developed Pedagogy**

In-house clinics draw upon multiple, well-developed teaching methodologies. While student learning is derived from the legal work and discussed in supervision, clinical educators also employ various techniques and structures for learning through the clinic seminar and rounds. The use of these methodologies and structures provide special learning opportunities to contextually address topics that may not be as fully integrated elsewhere in the curriculum.

(1) **Structures: The Clinic Seminar and Rounds**

It remains a best practice to include a classroom component that helps accomplish the educational goals of clinical courses. In addition to the learning that occurs through supervision and client work, a clinic seminar reinforces and advances the shared learning experience of students enrolled in a clinic.⁵¹ Clinic courses or seminars differ, but nearly all focus on concepts such as client-centered lawyering, theory-driven lawyering, and social justice practice.⁵² Clinic seminar classes provide the structure for such learning through clinic seminars that are tailored to meet the

⁴⁸ Although their careers are focused on educating students, clinical educators also have a professional duty to clinic clients under the rules of professional conduct.

⁴⁹ Through their work, clinical teachers may engage in scholarship about teaching, learning and practice, and may design exercises, handbooks, and manuals for use by practitioners, adjuncts, and externship field supervisors.

⁵⁰ Susan Bryant & Elliott S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?* 14 CLINICAL L. REV. 195, 197 (2007) [hereinafter Bryant & Milstein, *Rounds*] (suggesting that in-house clinical teachers primarily use supervision, seminar, and rounds as their primary pedagogical modes).

⁵¹ BEST PRACTICES, text at notes 615-16.

⁵² Bryant & Milstein, *Rounds*, 195, 202.

learning objectives of the course. Seminars include case rounds,⁵³ which are also group settings used as a vehicle for examining critical incidents in cases and themes that arise through clinic experiences, as well as targeted lawyering issues that the educators may want to incorporate, such as professional ethics, issues of difference, challenging assumptions, issues of systems change, and lawyering performance.⁵⁴

Clinical educators should design both the clinical seminar and rounds to meet the particular needs of students and to respond to issues that arise out of the legal work being done in the clinic. Clinical educators must determine which topics are most important to address in the seminar or to focus on in rounds. They may teach case theory, problem identification and problem solving, client interviewing and counseling, fact investigation, communication and assumptions, storytelling, collaboration, negotiation, writing, establishing professional boundaries, ethics, system change, and justice, among many others.⁵⁵ While each clinic must design a curriculum that achieves its mission, all clinics can teach students core concepts of lawyering. Most clinics incorporate case rounds — peer conversations among clinic students about their clinical experiences, guided and facilitated by the clinical educator.⁵⁶ Although conversations in supervision use the same case experiences as those studied in rounds, supervision is focused more narrowly on the learning of the individual student or team of students and the needs of the case.⁵⁷ One benefit to group discussion of case experiences using the rounds format is that peer conversations occur among students that are part of the same “firm.” Thus, rules of confidentiality permit students working in the same clinic⁵⁸ to freely share facts of cases and client experiences and benefit from other perspectives in analyzing and diagnosing problems, and generating solutions.

Case rounds serve as ideal contexts for educators to give special attention to core concepts of lawyering. Both rounds and other clinic seminar topics and experiences provide group learning settings in which clinic students integrate their legal work experiences with legal doctrine, lawyering ideals, self-awareness, professional identity, and more. In seminar and rounds, students learn from others’ perspectives and peer feedback. Clinical educators also use simulations, role plays, team and small

⁵³ Rounds have been identified as a “signature pedagogy” in in-house clinics. Bryant & Milstein, *Rounds*, 195, 201, n.17. Some clinics separate the seminar from “rounds,” but each are integral parts of the clinic learning experience.

⁵⁴ These targeted lawyering rounds topics are found in Chapter 20, *Targeted Lawyering Rounds*, EPSTEIN ET AL. CLINIC SEMINAR, 761-67.

⁵⁵ See generally EPSTEIN ET AL. CLINIC SEMINAR; BRYANT ET AL, CLINICAL PEDAGOGY.

⁵⁶ See generally Bryant & Milstein, *Rounds*, 195.

⁵⁷ *Id.* at 201.

⁵⁸ Most clinical programs view students working in the same program as members working for and under the auspices of the same clinic “law firm.” Accordingly, lawyer rules of confidentiality permit clinic students working in the same clinic (and students working in other clinics that are considered to be members of the same “firm”) to share and discuss the facts of their cases. Where a clinical program’s physical structure encourages students enrolled in different clinics to share the same workspace, clinic students may benefit from opportunities for informal group learning through collegial conversations about their work. Assuming the clinics operate as one “law firm,” such conversations are protected communications for purposes of confidentiality and privilege.

group work, and other teaching techniques to aid students in mastering the law and skills necessary to do the work in the clinic. Rounds conversations may focus on specific legal work experiences or more broadly on themes or experiences that students share in common. Thus, case rounds provide a context in which full and frank disclosure of details related to client representation can be shared among all students in a given clinic. Rounds may serve as a vehicle in which clinic students learn from and engage deeply with problems presented by all cases, even if those students are not directly involved in the matters under discussion. Thus, even though students in a clinic may be working on different legal issues, all students benefit from hearing about and studying the clinical experiences of their peers. Rounds may also be used to conduct moot hearings, negotiations, and other matters to aid in student preparation for real events.

Depending upon the structure, rounds themselves may serve as a collaborative and sometimes student-directed learning opportunity. Although rounds may become a student-directed and peer-focused conversation, it is a best practice for a clinical educator to plan a structure for rounds and to plan topics that may be addressed in rounds. Conversations among peers in rounds often trigger reflection and almost always shape and improve the lessons to be drawn from the reflection.⁵⁹ Clinical educators' comprehensive perspectives allow them to facilitate maximum use of collaborative learning in rounds to help students learn from peer experiences, and enable students to encounter how honest, supportive, collegial dialogue enhances coping with the stresses of law practice.⁶⁰

(2) Clinical Teaching Methodologies

Within the structures just described, in-house clinics use three primary teaching methodologies. Clinics help students learn about law and law practice through the use of exercises, role plays and simulations, the use of reflection, and by providing students with multiple opportunities for performance and feedback.

Clinic teachers frequently employ active learning methods such as exercises, role plays, and simulations to teach students to apply the substantive and procedural rules needed to perform their legal work competently.⁶¹ Other methods used to pursue these pedagogical objectives typically include assigned readings, lectures, discussions, live and taped demonstrations, role plays, and simulations, along with buzz-groups,

⁵⁹ "An important aspect of reflection involves surfacing tacit norms or assumptions that underlie a judgment made to take a case in a particular direction. Those norms or assumptions often remain hidden until someone in the group articulates a different approach or the teacher brings client perspectives into the mix. New ideas and points of view generate surprise, causing the student to wonder why somebody else sees it differently. Rounds conversations encourage reflection because even if the individual student [identifies] no surprises, his or her classmates often do. Through this collective process, students can identify and evaluate the strategies or theories that were implicit in a pattern of behavior or the feeling for a situation that has led them to adopt a particular action." BRYANT ET AL., *CLINICAL PEDAGOGY* 120.

⁶⁰ Bryant & Milstein, *Rounds*, 195, 196.

⁶¹ *E.g.*, Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 ARIZ. ST. L.J. 277, 283-86 (describing use of role plays to teach local law and procedure to students in an in-house family law clinic).

quick writes, and think-pair-share techniques that invite full student participation.⁶² Effective clinic seminar classes combine these approaches to encourage students to develop understandings of core concepts, rather than simply acquiring information about their existence.⁶³ Through these methods, students are able to develop and practice skills both before and while they are engaging with real clients.

Clinical legal education emphasizes the importance of being continually self-reflective and critically analytical about one's own experiences.⁶⁴ Thus, another methodology employed by in-house clinic teachers is reflection. Reflection involves stepping back and reflecting on both the cognitive and affective aspects of an action or event.⁶⁵ According to BEST PRACTICES, the ability to engage in self-reflection and to demonstrate lifelong learning skills is a primary attribute of effective lawyers.⁶⁶ Lifelong learning skills are created through awareness and self-reflection.⁶⁷ Reflection is an essential component of clinical instruction, and it is a best practice for clinical teachers to incorporate formal and informal opportunities for reflection throughout the clinic experience.⁶⁸ Reflection can be structured into the clinic course in a number of ways to facilitate the transfer of learning.⁶⁹ "Good clinical instruction encourages students to reflect after critical moments in a case, with an objective inquiry into how well decisions were made [and actions performed,] whether the preferred outcome was achieved, and how similar [actions or] decision making could be improved in the future."⁷⁰ In in-house law clinics, reflection can be spontaneous, in written form, as in journals or reflective essays, or in the form of conversations during supervision, debriefing meetings, seminar, or rounds. During supervision, the clinical educator can guide the student's reflection or allow the student to determine the nature of the topics to be reflected upon. Through targeted questioning, the clinical educator can engage the student in examining experiences and identifying their meaning. When clinic students reflect on their actions in rounds conversations, they benefit from a broader experience base and the multiple viewpoints of their peers, which yield additional insights.⁷¹

⁶² *E.g.*, Bryant & Milstein, *Rounds* 195, 201, n.17.

⁶³ Wallace J. Mlyniec, *Where To Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 *CLINICAL L. REV.* 505, 561 (2012). See GRANT P. WIGGINS & J. MCTIGHE, *UNDERSTANDING BY DESIGN* 35, 39 (2d ed., 2005); Peter Toll Hoffman, *Clinical Course Design and the Supervisory Process*, 1982 *ARIZ. ST. L.J.* 277, 291.

⁶⁴ BEST PRACTICES, text at notes 555-56.

⁶⁵ BEST PRACTICES, text at notes 544-45.

⁶⁶ BEST PRACTICES, text at notes 167-74.

⁶⁷ BEST PRACTICES, text at notes 169-73.

⁶⁸ The importance of reflection is echoed in the ABA Standard governing experiential courses, 303(a)(3)(i)-(iv), requiring that law schools offer at least six credit hours of experiential courses that, among other requirements, "provide opportunities for self-evaluation," and the ABA Standard governing law clinics, 304(b)(iii), which mandates "opportunities for performance, feedback from a faculty member, and self-evaluation."

⁶⁹ BRYANT ET AL., *CLINICAL PEDAGOGY* 216.

⁷⁰ *Id.* at 235.

⁷¹ *Id.* at 120.

Finally, in-house clinics promote learning for transfer by providing students with multiple opportunities for performance and feedback. Many clinics begin by using simulations to prepare students for their work with real clients. Thus, students in clinics have the opportunity to perform and obtain feedback on both simulated and real performances. Such feedback may include peer feedback, supervisor feedback, and self-assessment. This repetition allows the student to reflect on prior performances and apply lessons learned to subsequent performances, thus facilitating transfer of learning.

(3) **In-House Clinics Provide a Setting Ideally Suited for Teaching Particular Topics that Are Most Successfully Taught When They Are Fully Examined in Context**

Apart from learning new substantive law, reinforcing students' understanding of doctrine learned in other courses, and the practical application of law in real contexts, clinics provide special learning opportunities solely by virtue of their context. Doctrine, practice, and professional responsibility all come together in clinics. Thus, they serve as a professional laboratory for the practice of law where students come to concretely understand their development of professional identity. Clinics provide a context in which teachers and students together examine the law in a larger societal context and address race, class, poverty, and access to justice. In the clinic environment, clinic teachers invite students to explore their own moral and ethical development and professional identity in the context of their clinic experiences.

In-house clinical educators have a special vantage point from which to help students identify and resolve ethical dilemmas,⁷² to build cross-cultural competence,⁷³ and to identify systemic issues in the justice system that lawyers are in a position to address. It is a best practice for clinical educators to help students learn in the clinic seminar to identify and resolve ethical dilemmas that may arise, build cross-cultural competence, understand justice⁷⁴ concepts, and form a professional identity. This learning can be achieved through the use of reflection, role plays, and simulations, as well as other techniques. Students can apply what they have learned in class to real encounters with clients and others, and more deeply explore their performances and their meaning during supervision.

⁷² Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807, 831 (2007).

⁷³ Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 35-37 (2001).

⁷⁴ Although teaching social justice is a mission of many clinics, teaching about justice does not have to mean "social justice." It is an appropriate goal for any type of clinic to include justice concepts. *See, e.g.*, Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 331, 331-33 (2012) (explaining the role of social justice in clinics); Robert Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLE. ST. L. REV. 469, 471-74 (1992) (defining the role of clinics as "a force for justice").

In addition to the universally applicable topics such as ethics, professionalism, and cross-cultural awareness,⁷⁵ it is a best practice to consider incorporating into the clinic seminar other topics that may be specifically related to the work of the clinic. For example, clinical educators may choose to include, where appropriate, classes on topics such as secondary and vicarious trauma, how to provide trauma-informed services,⁷⁶ how technology may be used in serving clients effectively, core financial and business concepts, and other concepts that may affect a lawyer's ability to serve clients appropriately in a given context.

Clinical educators have precious opportunities to facilitate their students' learning of empathy skills, and it is a best practice for them to take advantage of such opportunities. Clinical educators can both teach and demonstrate non-judgmental understandings of client perspectives and emotions, including those that flow from past and current interactions with legal systems.⁷⁷ This allows clinics to educate future lawyers who excel at empathizing with clients and helping clients empathize with others, essential tasks in many contexts that cannot be computerized, automated, or outsourced.⁷⁸

ii. Learning Objectives and Assessment in In-House Law Clinics

As with all courses, in designing a clinical course, it is a best practice to establish the learning objectives. In-house law clinics are necessarily creatures of the environment in which they are created. Thus, a law school clinic at a school based in a rural or suburban area, for example, may have a different focus and different student learning objectives from those of one located in an urban or capital city. Likewise, the focus of clinics within schools and from school to school may differ depending upon faculty expertise in a particular area, a school's overall expertise in an area of law (*e.g.*, health law or immigration) and the needs of the surrounding community. The design and type of clinics a school offers are also influenced by faculty and student interest. In some cases, donors may offer funding for clinics that address a need of a particular population. Clinical educators make intentional choices about the legal subject matter and types of matters handled by in-house law clinics, and make choices about levels of student responsibility and autonomy. For example, clinic teachers may intentionally select less complex cases in which the student is able to assume primary responsibility. Conversely, clinics may elect to handle larger, more sophisticated legal work in which students provide a more supporting role, but which importantly allow students to gain appreciation for the impact and complexity of large

⁷⁵ See Chapter 6, Section F, *Social Justice Across the Curriculum*, below.

⁷⁶ See The National Center for Trauma Informed Care (NCTIC) at <http://www.nasmhpd.org/TA/nctic.aspx>, archived at <http://perma.cc/VRD9-EPCE>.

⁷⁷ Philip M. Gentry, *Clients Don't Take Sabbaticals: The Indispensable In-House Clinic and the Teaching of Empathy*, 7 *CLINICAL L. REV.* 273, 283-84 (2000) (arguing in-house clinics best suited for teaching and learning empathy).

⁷⁸ See RICHARD SUSSKIND, *THE END OF LAWYERS?* 89-90, 278 (rev. ed., 2010) (explaining that tasks requiring mutual understanding and trust cannot be outsourced, computerized, or automated).

scale litigation or other work. These choices affect the overall objectives and outcomes of a clinical course.

According to BEST PRACTICES, teachers of experiential courses should “[p]rovide students with clear and explicit statements about learning objectives and assessment criteria.”⁷⁹ What factors might influence the identification of learning objectives for in-house clinics? First, clinical educators may tailor learning objectives to the type of legal work students perform. Learning objectives for a particular clinic may be constrained by the number of allocated credit hours. Low credit hours or other factors may limit the depth of learning that can be accomplished in a given clinic experience. However, regardless of the type of clinic and its overall mission, broad-based goals exist from which educators can select according to specific needs, goals, and interests. Clinical educators possess opportunities and obligations to help students understand the demands and methods of acting in the role of an attorney. Students must learn to develop and improve their understandings of the skills required for planning, implementing, and evaluating their actions in the unstructured, uncertain situations that law practice inevitably brings; learning from such experience; and interacting collaboratively.⁸⁰ In addition to setting their own learning objectives, it is a best practice for clinic teachers to provide students with the opportunity to identify their own learning objectives for the clinic experience.

Clinical scholars have synthesized historical lists of clinical goals⁸¹ into the following goals to aid clinical educators in formulating or revising goals that work for their students:

Goal One: Develop a Professional Identity and Practice with a Purpose

- Integrate Personal and Professional Identities
- Connect with and Serve Clients while Respecting Dual Loyalty to the Profession
- Exercise Responsibility, Responsibly
- Develop a Personal Commitment to Achieving Justice and Providing Access

Goal Two: Increase Understanding of How Law, the Legal System, and Other Institutions Function in the Lives of People, Particularly the Most Marginalized

- Learn Law as an Interpretive Project
- Understand the Importance of Malleability of Facts
- Develop and Use Critical Insights about How Law Functions
- See Clients and Problems in Context

⁷⁹ BEST PRACTICES, text at note 549.

⁸⁰ These are among the nine principal goals of in-house clinics articulated in a 1991 report by the Association of American Law Schools. See *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511-16 (1992).

⁸¹ BRYANT ET AL., CLINICAL PEDAGOGY at 30, n.1.

Goal Three: Improve Capacities to Manage Uncertainty, Exercise Judgment, and Take Action

- Law and Facts
- Problem Solving
- Client Relationships
- Skills

Goal Four: Develop New Modes of Thinking Like a Lawyer

- Role-Based Legal Analysis
- Narrative Reasoning
- Ends-Means Thinking
- Using and Building Theory Through Contextual Thinking
- Critical Thinking
- Creative Thinking

Goal Five: Build Lifelong Commitment and Skills to Learn in Professional Settings

- Learn through Reflection
- Use Models Critically
- Engage Peers for Collaborative Learning
- Metacognition: Learning About Learning

Goal Six: Develop Skills Associated with the Human Dimensions of Practice

- Understanding the Perspective of Another
- Interpersonal Interactions
- Self-Knowledge and Self-Regulation

Goal Seven: Build Lawyering Skills

- Identify and Name Skills
- Integrate Cognitive, Normative, Behavioral, and Affective Dimensions of Learning
- Learn Skills as a Part of a Lawyering Process to Promote Transfer
- Select Skills to Focus Learning⁸²

Some of these goals for learning in clinics may conceivably be achieved through other forms of experiential education. Because clinics may be designed with these goals in mind and generally permit students to occupy roles of direct responsibility for clients, these goals are most likely to be achieved in clinics, and the methods for achieving them through clinics are distinctive.

The nature of clinical pedagogy necessarily incorporates the inclusion of formative assessments throughout the term. Providing regular formal and informal feedback is

⁸² BRYANT ET AL., CLINICAL PEDAGOGY, at 13-31

a hallmark of clinical teaching and a best practice.⁸³ Typically, clinical teachers engage in both formative and summative assessment of students, whether or not a clinical course is graded or ungraded.⁸⁴ Clinical teachers have long employed various methods of assessment including providing comments on written legal work and reflections, using rubrics, video review, portfolios and, importantly, self-assessment to enhance student learning and to help students develop lifelong learning skills. It is a best practice for clinical educators to hold a mid-semester review of the students' performance. Student self-assessment should include assessment of whether the student is achieving the objectives he designed for himself. In addition to ensuring that clinics follow best practices with regard to student assessment, it is a best practice for law schools to periodically evaluate their clinical programs and individual clinics.⁸⁵

d. The Value of In-House Law School Clinics and Their Faculty to the Larger Profession

In addition to the specialized learning opportunities that clinics offer to students, they offer particular advantages to the legal institution, the community, and society. Thus, continued support for and development of in-house law clinics inures to the benefit of law schools. In-house law clinical educators have one foot in practice as practicing lawyers and one foot in the academy. Many of them work with students in courts, in administrative agencies, and in communities, working with community members and groups, giving them firsthand knowledge of how law is applied in real life. In-house law clinical educators have special expertise, both in clinical pedagogy and in the subject matter in which they teach and practice. This expertise is beneficial to the law schools in which they serve and to the community. The work of clinical educators can complement and bring to life the scholarly pursuits of their doctrinally and theoretically-focused colleagues. Through their work, clinical educators have the opportunity to shape and influence tomorrow's lawyers and impact the lives of clients.

i. In-House Law Clinics Achieve Positive Changes that Benefit Marginalized Groups, the Community, and the Law

Because clinics are designed to educate students through handling real legal matters, in-house law clinics not only prepare students to become lawyers, but they achieve important goals for clients and for their communities. For example, clinic students have represented countless criminal defendants and, thus, alleviated some of the burdens on the criminal justice system. Clinic students have also obtained exonerations of individuals wrongly convicted of crimes through various clinic Innocence Projects. Clinic students have helped countless clients in other matters,

⁸³ See generally BEST PRACTICES, text at notes 680–792; Ogilvy, *Guidelines for Self-Evaluation* at 16–17.

⁸⁴ While some school clinics are ungraded, one commentator has noted that “[g]rades are the currency in law school. Grades in clinical courses signal to students and other faculty that the course has, at least, the same value as other courses and seminars.” Ogilvy, *Guidelines for Self-Evaluation* at 17.

⁸⁵ Ogilvy, *Guidelines for Self-Evaluation* at 18–19.

such as obtaining health and other public benefits, addressing housing problems, receiving free and appropriate education, preparing wills and advance directives, protecting the environment, obtaining asylum, discharging debts in bankruptcy, and seeking protection from domestic violence. Clinic students have also written amicus briefs and policy papers, and advocated for legislation in areas of law that benefit vulnerable populations, the public at large, and the justice system. While students learned important lessons as the result of their work on these matters, clients received legal services at no cost from students eager to provide help, and communities and marginalized populations benefitted from law school clinics' work. Learning in law school clinics also helps to instill an ethic of pro bono service in many clinic students. Thus, in-house clinics contribute positively to the profession and to society.

ii. Providing a Critical Perspective: Clinical Educators are a Critical Link Between the Academy and Practice

As academic lawyers, clinical educators strive to expose students to those parts of the lawyering process that are likely to be invisible to them or at least difficult to observe in practice.⁸⁶ Their position as both academics and practicing lawyers gives them a perspective that allows them to simultaneously work within the legal system and evaluate it. Their knowledge of student classroom and casework, combined with their freedom from other allegiances, allows them to perform these functions by stepping back from immediate client representation demands to have frequent critical conversations with students. These discussions explore fairness, accessibility, and justness of these systems, and how students might respond to the problems they perceive and experience.⁸⁷

Clinical educators “design and teach courses that demonstrate the complexity of law and lawyering. . . .”⁸⁸ “In doing so, [clinical educators] have . . . developed lawyering theories [and practices] that are sometimes different from what could have been learned only by observing or emulating practitioners.”⁸⁹ For example, the concept of client-centered lawyering was developed by clinical educators who observed lawyers reflexively imposing decisions upon their clients.⁹⁰ Clinical educators advocated for a more “client-centered” approach through teaching, practice and scholarship. Clinical educators have also developed other theories about practice models for representing poor and marginalized clients, including theories of law and community and law and organizing.⁹¹ Because clinical educators are a part of the actual lawyering process together with students, they are able to perform

⁸⁶ Mlyniec, Lawclinic email.

⁸⁷ Margaret Martin Berry, Jon C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 55 (2000).

⁸⁸ Mlyniec, Lawclinic email.

⁸⁹ *Id.*

⁹⁰ BRYANT ET AL., CLINICAL PEDAGOGY at 38.

⁹¹ *Id.*

simultaneously as lawyers, scholars, educators, and professional innovators.⁹² In their role as academics, clinical educators can carefully design clinics that offer learning experiences that pursue specific, articulated, context-appropriate objectives.⁹³ As members of the academy they can simultaneously teach and examine the role of lawyers, and help students identify ways in which the legal system does or does not support justice ideals. It is a best practice for clinical educators to aid students in examining the role of lawyers and to facilitate student reflection on how the legal system functions.

iii. In-House Law Clinics Are Visible Evidence of a Law School's Service Mission

Many law schools' missions include serving and engaging with the communities in which they are located. In-house clinics that provide direct legal services are perhaps the best expression of those missions. For many universities, law school clinics are tangible examples of community service, engagement, and collaboration. Hosting clinics inside or near the law school concretely acknowledges the importance of the legal profession's commitment to providing legal services to citizens who cannot afford to pay for them, a fundamental component of access to justice. It also supports the legal profession's fulfillment of its responsibility to enhance the capacity of law and legal institutions to provide justice.⁹⁴ Thus, a law school's clinical program sends important messages to law faculty, students, and members of the community. A law school that prominently features its in-house clinics and their focus on justice through signage, public relations, and other promotional materials, manifests the law school's commitment to service and justice ideals. In-house clinics that serve nearby individual or organizational clients benefit the communities in which they are located. Finally, law school clinics also model the professional ethic of pro bono and public service for the law school and the greater legal community.

e. Maximizing the Value of In-House Clinical Programs

It is a best practice for law schools to ensure that the key defining features of in-house law clinics, which make them so valuable to students, remain part of the law school curriculum. This section identifies ways in which in-house law clinics can continue to deliver high-quality learning for students in accordance with best practices.

⁹² Mlyniec, Lawclinic email.

⁹³ Another earlier Best Practice recommendation for in-house clinics was that they pursue clearly articulated educational goals that can be achieved in this context more effectively and efficiently than in other contexts. BEST PRACTICES, text at notes 605–14.

⁹⁴ The MACCRATE REPORT lists this as one of the fundamental values of the legal profession. LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 213 (1992).

i. Sufficiently Staff In-House Clinics to Allow for Effective Supervision

Students benefit from the structured learning clinics offer when the clinics are sufficiently staffed to allow for the specialized attention that regular contact with clinical educators provides. An appropriate student-faculty ratio is necessary to allow clinic faculty to competently supervise student legal work on behalf of real clients.⁹⁵ It is a best practice for a clinical educator who is supervising students in a clinic to supervise no more than eight students per term.⁹⁶ The need to adjust this ratio downward depends on several factors, including the number of credit hours allocated to the clinic and the complexity of the legal matters. Other aspects of the clinical educator's overall workload should also influence this ratio. For example, schools should consider whether the educator is also concurrently teaching other classes, or has administrative, scholarship, or other responsibilities that may take time away from that needed to supervise students effectively and ensure clients are competently represented. Where a clinical educator has such additional responsibilities, it may be appropriate to reduce the number of students being supervised.

Faculty supervisors in clinics may hold a variety of faculty positions as full-time faculty, faculty fellows, supervising attorneys, visiting assistant professors, practitioners in residence, or, in some cases, adjunct faculty. Regardless of the title or status⁹⁷ of the supervisor, the primary benefit to clinic students is the presence of a supervisor trained in clinical pedagogy who works closely with the students.⁹⁸ The employment of limited-term supervisors such as fellows may allow law schools both to increase the number of students who can participate in clinics and support clinical faculty who have administrative, scholarship, or professional engagement requirements to satisfy. It is a best practice for clinical faculty to adequately train and supervise faculty fellows or supervising attorneys who teach and supervise student work in clinics and to ensure that they are educated in clinical pedagogy to make certain that the clinic is meeting its objectives for student learning.

⁹⁵ BEST PRACTICES, text at notes 613–14.

⁹⁶ This number also represents the average number of students that clinicians supervise in clinics across the country, as determined through the most recent CSALE Survey, found at www.csale.org, archived at <http://perma.cc/D43H-46K8>. This ratio has held constant over time, going back to the late 1980s and the ABA Report on the Future of the In-House Clinic.

⁹⁷ The status of clinical faculty differs across and within institutions. While this section does not directly address the question of status, given the importance of the work that clinic students engage in and the benefits of supervision that clinical teachers provide, tenure or some form of security of position for clinical teachers is vital. For a comprehensive discussion of clinical faculty status, see Bryan Adamson, et al., *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353 (2012). See also Chapter 8, Section B, *Faculty Status and Institutional Effectiveness*, below.

⁹⁸ ABA Standard 304(b) recognizes the importance of the teacher's role in giving supervision and feedback in clinical courses. Standard 304(b) provides: "A clinical course provides substantial lawyering experience, involving one or more actual clients, and that includes: (1) advising or representing a client; (2) direct supervision of the student's performance by a faculty member; (3) multiple opportunities for performance, feedback from a faculty member, and self-evaluation; and (4) a classroom instructional component."

The effectiveness of supervision depends not only on low student-faculty ratios and sufficient staffing, but also on clinical faculty's overall course loads, scholarly expectations and service responsibilities. These obligations must be clearly defined in job descriptions and promotion guidelines that are consistent with the special demands of clinical teaching, which requires more time and more intensive student contact, as well as legal and ethical responsibilities to clients. The balance should assure longevity and job satisfaction for clinical educators, and permit them to model work-life balance for their students.

ii. Model Law Office Management

In addition to teaching students fundamental practice skills, it remains a best practice for law school clinics to serve as a model of law office management.⁹⁹ Learning office management skills may be especially important for students who intend to engage in solo or small-firm practice, and are relevant not only to management of a practice, but sustaining one.¹⁰⁰ Clinics that incorporate office management practices as a learning goal may serve an important function by teaching students the best practices for law practice, operations and efficiencies, and to understand the underlying ethical, professional, and pragmatic reasons for management choices. For example, clinics teach students about conflicts of interest in a practical way, including how to discover them, how to avoid them, and how to resolve them when once discovered. Some clinics teach students about billing practices and how to bill lawyer time, and how to develop clients. Indeed, some clinics even collect attorney's fees, generally from adverse parties. Part of a holistic development of professional identity includes student learning of the ethical, effective accounting for and communication of time and costs.¹⁰¹ Within a clinic, this learning is most robust.¹⁰² These aspects of law practice are not necessarily taught elsewhere in the curriculum, although some schools offer courses on law practice management.¹⁰³ In addition to the other pedagogical goals of clinics, the immersion in a "model" law firm is designed to demonstrate firm operations for students and aid them in their professional development. Because clinics are an academic enterprise, some may not fully replicate all of the realities of law firm management such as client development and collecting billings. The section below identifies best practices for administering and managing clinical legal education programs.

⁹⁹ See BEST PRACTICES, text at notes 613–14.

¹⁰⁰ BRYANT ET AL., CLINICAL PEDAGOGY at 92.

¹⁰¹ *Id.*

¹⁰² *Id.*; see also Chapter 6, Section A, Subsection 3, *Learning Professional Responsibility*, below.

¹⁰³ ABA Survey of Law School Curricula, 2002–2010 (17 schools added a course on law practice management during the survey period); see, e.g., "Law Practice Management" courses at IIT Chicago-Kent College of Law, <http://www.kentlaw.iit.edu/courses/jd-courses/jd-elective-courses/law-practice-management>, archived at <http://perma.cc/Y4AE-N672>, Colorado Law, <http://lawweb.colorado.edu/courses/courseSection.jsp?id=LAWS7609>, archived at <http://perma.cc/TF2E-494V>, and Illinois Law, <http://www.law.illinois.edu/academics/course/389>, archived at <http://perma.cc/R4DV-RFVG>.

(a) **Ensure a Positive Client Experience**

Although in-house law clinics are primarily an educational endeavor, the benefit of clinical legal education cannot be fully realized without the client. Thus, it is a best practice for all clinics within a school to examine the quality of the client experience. How are clients referred? How is intake performed? What is the client experience at initial contact? What is the client experience upon coming into the clinic space? How are clients greeted? Where do they go? Do students, faculty, and staff — regardless of their individual clinic affiliation — recognize that clients are all clients of the institution’s clinical program and treat them respectfully? Or rather, do faculty, staff and students only “see” clients who are on site to visit their particular program? Are transitions from one student or team to another handled in a way that recognizes the client’s needs and the difficulty the client may have in changing student representation if the matter is one that continues beyond the term of the clinic? It is a best practice for clinics to envision the clinic experience from the client’s perspective and strive to make client visits to all clinics an easily navigable, welcoming experience.

(b) **Model Teamwork and a Collegial Environment, and Embrace Different Styles of Practice**

It remains a best practice for law school clinical programs to serve as good models for law practice.¹⁰⁴ Law school clinical programs should not only teach but also model teamwork. Law clinic practices model for students how lawyers collaborate or simply bounce ideas off of one another. Establishing a collegial work environment is healthy for educators as well as good modeling for students. In addition, because their work habits are often observed by students, clinical educators are in a special position to model work-life balance for students, and, thus, help students to form ideas about the importance of and how to achieve that balance in their own professional lives.

Not every clinic or clinical educator is the same, nor is every law firm or lawyer. Clinic educators should encourage students to observe the similarities and differences in approaches to practice that their clinical teachers pursue. An important message for students is that there are different ways to do things correctly and there may be a range of ethically appropriate approaches to practice. At the same time, clinical educators should avoid unintentionally sending mixed messages by adopting differences in practice that may confuse students. Thus, it is a best practice for clinical educators to be transparent about their different approaches and help students identify styles or approaches to practice that suit them as individuals, so students can develop their own professional identities.

¹⁰⁴ See BEST PRACTICES, text at notes 613–14. To serve as good models, clinical programs should define their mission. Clinical programs may adopt a shared mission statement, as well as mission statements for individual clinics. Bringing all clinicians from the same institution together to explore their joint and individual missions serves to reinforce the purpose of clinical education for the institution, allows teachers and staff from the clinics to see areas in which their goals overlap or complement one another, and areas in which their individual clinics may be different. This exercise will help all of the stakeholders refine their understanding of their shared purpose and by extension allow them to communicate it explicitly and implicitly to students.

(c) **Administer Clinical Programs Effectively**

Assuming it is ethically permissible and otherwise feasible to do so, clinical programs with more than one clinic sharing the same space can reinforce student learning by fostering reflection on how law firms operate. For example, schools with more than one clinic generally act as a single law firm with different practice groups. Clinical programs may adopt joint policies and procedures relating to client representation and office practice that cut across all clinics, regardless of the nature of the clinic's practice. This approach helps students understand the need for policies and procedures to follow in law offices. It will also help students who learn in different clinics and from different clinical educators to understand that although individual lawyers within a firm may practice independently, certain aspects of law practice within a firm or other legal office environment (even a small one) are necessarily standardized. Clinical educators should be transparent about how the clinical "firm" operates and why, so that students learn lessons about how law offices are managed that may serve them in their future careers.

(1) **Pedagogical Benefits of Common Standards**

While it is not necessary for clinics within a law school program to operate in the same way, establishing some common standards among clinics allows students enrolled in different clinics to reinforce one another's learning, particularly when they share common workspace. Students working together in space shared by different clinics will share ideas and teach one another. Some common standards among clinics may be important to eliminate confusion, and to reinforce common pedagogical goals. Adopting common standards requires cooperation among clinical educators and consensus on how standards might bolster the learning objectives of each clinic. For example, a law school with several clinics may use the same case management system to emulate how a law firm works. If clinics at a school do not use the same system, students should understand the reasons behind this choice. Failure to communicate to students about intentional firm design choices leaves it up to students to guess, and they may make incorrect assumptions about such choices. It is important for clinic students to have a clear understanding of their role as students working on real matters and the legal limits of that role. Accordingly, different clinics within a school may consider referring to clinic law students using the same term, whether that term is reached by agreement or is required by the state's student practice rule (*e.g.*, "law student intern," "certified legal intern"). This uniform approach reinforces student learning and helps avoid confusion that may result when students from different clinics work together in a shared space.

Another benefit to creating some standard practices is that clinical faculty may elect to share the load of teaching introductory topics to students in a combined clinic "orientation" or "boot camp." Some clinical programs adopt this approach. They hold shared class sessions to address foundational concepts such as fundamentals of the lawyer-client relationship, the obligation of confidentiality, concepts of teamwork and collaboration, and the limits of student authority. Such classes can also address office procedures and operations where those are common among clinics. Joint teaching may lead to other creative collaborations and a sense of camaraderie among clinics for students, faculty and staff. Such collaborations can inspire clinical educators and

improve their teaching, and also create new opportunities for cross-pollination and cross-referrals among clinics.

(2) Modeling Administration

In some schools, individual clinics have different sources of funding and staffing, including differences in status among the clinical teachers. Nevertheless, it is a best practice for clinical programs to avoid balkanization and to seek ways to promote coherence and cooperation among different programs and the educators who staff them. It is a best practice for law schools to support clinical programs so that the programs are managed effectively, are able to provide a high level of service to each of the constituencies served by the program, and can render services competently and ethically.¹⁰⁵ To accomplish these goals, it is a best practice for schools to identify a person, ideally a faculty member, to serve as “managing director of clinics,”¹⁰⁶ responsible for duties similar to those handled by a law firm managing partner. Although each program’s needs are different, aspects of this role can include serving as “ethics counsel,” ensuring adequate and continuing malpractice insurance coverage, overseeing conflicts management, human resources issues, and other operations. The managing director should encourage cooperation and camaraderie among clinical faculty, staff, and students. When the person serving in this role is an educator, it is a best practice to organize periodic meetings of clinical faculty, structured to meet the needs of the participants. Some clinical programs employ a model in which different faculty take turns leading discussions on matters of pedagogy and supervision. Such meetings can promote the professional development of clinical faculty and enhance their work as both educators and scholars. The managing director should also convene regular meetings among clinic faculty and staff. A well-functioning office requires regular communication, in both formal and informal contexts, to ensure staff satisfaction and professional development and cooperation among faculty, staff, and students. All who are engaged in the important enterprise of educating students and serving clients should enjoy a shared sense of community and purpose.

f. Conclusion

In-house law clinics have a long history of providing high quality experiential education to law students and important public service. They provide a unique learning environment for teaching substantive doctrine and preparing students for the profession of law. That environment is transformative because of the deep engagement, learning, and level of responsibility that most clinics enable students to undertake. The combination of working closely with a faculty supervisor and peers for real clients

¹⁰⁵ Ogilvy, *Guidelines for Self-Evaluation* at 14–15.

¹⁰⁶ Some clinics may use the term “Director of Clinics” or other designation. Regardless of the title, the limits of the person’s responsibilities with regard to office operations, client and student responsibilities in the event the supervising faculty member is unavailable, and other matters should be clearly delineated. For an exploration of the role of clinic directors, see generally Binny Miller, *Herding Cats: Role Ambiguity, Governance, and Law School Clinical Programs*, 41 U. BALT. L. REV. 523 (2011-2012).

motivates students to learn and develop their competence.¹⁰⁷ Law schools should, therefore, support and increase their in-house law clinic offerings in order to respond to demands that law schools teach students knowledge, skills, and values that can be transferred to the actual practice of law. While other forms of experiential education provide important opportunities for student development, some aspects and depth of learning can only occur in the in-house law clinic context. Therefore, institutions should maintain a strong commitment to in-house law clinics. Clinics are the quintessential place in the curriculum where students integrate the knowledge, skills, and values they have acquired through other courses and apply them to real situations with close supervision by faculty while acting in the role of lawyer. Thus, in-house law clinics remain a best practice, and law schools should offer them to all students.

¹⁰⁷ Shalleck, *Clinical Contexts* at 109, 158.

3. DELIVERING EFFECTIVE EDUCATION IN EXTERNSHIP PROGRAMS

By Carolyn Wilkes Kaas with Cynthia Batt, Dena Bauman, & Daniel Schaffzin¹

a. Introduction

As calls for practice-ready graduates have intensified, so too has the growth of externship programs across the law school landscape; arguably, during the last decade, no other area of the law school curriculum has experienced a comparable range and depth of change. In this expansive era of experiential legal education, offering externship courses to students has emerged as a best practice in the education of future lawyers. The American Bar Association has come to recognize externships as an essential part of the curriculum.² Seizing on the valuable prospects for collaboration between law schools and the legal community, externships present students with the distinctive opportunity to learn through immersion in real life settings whose primary purpose is to provide legal services.

When the pedagogy is employed most effectively, the externship teacher and the field placement supervisor work together to ensure that student learning is maximized through ongoing feedback and guided reflection.³ The result is a rich blend of academic and ecological⁴ experiences, one that exposes the student to the ever-present mix of case-related questions, client and workplace relationships, professionalism and ethical challenges, and work-life balance realities that characterizes day-to-day legal practice.⁵

In light of the difficulties, time, and effort that it takes for experienced faculty to assure excellent externship pedagogy, law schools need to exercise great care in how they build and implement externship courses. A clear statement of the necessary features and range of acceptable choices within externship courses is essential in order

¹ Readers for this section were Liz Ryan Cole, Margaret Reuter, Alexander Scherr, and Ian Weinstein.

² See ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS [hereinafter ABA Standards] available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf, archived at <http://perma.cc/M88S-C6GH>. As recently amended, ABA Standard 303(a) calls for every law school curriculum to require each student to complete one or more experiential courses, defined to include field placements, law clinics, or simulation courses, totaling at least six credit hours. ABA Standard 303(b) requires law schools to provide students with “substantial opportunities” for law clinics or field placements.

³ See ABA Standard 305(e), which requires, among other components, that field placement programs include “clearly articulated” methods of evaluating student performance “involving both a faculty member and the site supervisor” as well as “opportunities for student reflection on their field placement experience.”

⁴ Robert J. Condlin, *Learning from Colleagues: A Case Study in the Relationship Between “Academic” and “Ecological” Clinical Legal Education*, 3 CLINICAL L. REV. 337 (1997) [hereinafter Condlin, *Learning from Colleagues*].

⁵ Nancy M. Maurer & Liz Ryan Cole, *Design, Teach and Manage: Ensuring Educational Integrity in Field Placement Courses*, 19 CLINICAL L. REV. 115 (2013) [hereinafter Maurer & Cole, *Design, Teach and Manage*]; Cynthia Baker & Robert Lancaster, *Under Pressure: Rethinking Externships in a Bleak Economy*, 17 CLINICAL L. REV. 71 (2010) [hereinafter Baker & Lancaster, *Under Pressure*].

to ensure that law schools devote the necessary attention and resources to design, staff, and deliver these learning opportunities. BEST PRACTICES FOR LEGAL EDUCATION identified externships as one of the core methods of experiential education and articulated the central characteristic of a solid externship program: sufficient faculty involvement with both students and field supervisors to assure that challenging learning goals are set and met.⁶ The recent growth and current pressures on externship courses call for a closer look at several of the most important attributes of externships, and create a need to articulate in more detail additional best practices for assuring that externships continue as an indispensable part of an array of clinical opportunities for students.

b. Defining the Characteristics of Externships

Four essential characteristics of externship courses maximize student experience and realization of learning objectives. Some are shared with law clinics, others are unique to externships. It is a best practice to carefully implement and continuously hone these characteristics, in both individual externship courses as well as the overall externship program.⁷

i. Immersion in Real Practice

Externship courses immerse students in real life legal practice, that is, in practice settings created primarily for delivery of legal services rather than for educational purposes. When students move out of the law school for practice experience, they learn how practicing lawyers and judges handle facts and law, and integrate theory and skill, in real life and in real time, in the presence of pressures and sometimes chaos. They face the sometimes-tough choices and conditions that they will encounter in their post-graduate practice reality, in an environment that is not student-centered.⁸

Externship experiences do not all offer the same level of engagement. These courses provide students opportunities that range from observing lawyers and judges — and clients — in action, to assisting practitioners on discrete legal tasks, to engaging in practice with supervised full role assumption.⁹ The actual range of opportunities afforded each externship student will vary based on the design and requirements set by the law school; the needs of the placement and/or the willingness

⁶ ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP, text at notes 619-22 (2007) [hereinafter BEST PRACTICES].

⁷ Schools differ with how many courses they offer and what they call each externship course, but often, when there are several courses, they are coordinated, and sometimes administered, as a “program.”

⁸ Externship pedagogy celebrates and harnesses the wisdom in ecological learning and rejects an anti-practitioner bias. On the other hand, externship design also acknowledges that the world of practice sometimes includes “unworthy exemplars” and must avoid the problem of students experiencing those exemplars in an “unexpurgated and uninterpreted form.” Conclin, *Learning from Colleagues*, at 343-44. See also Cynthia Batt, *A Practice Continuum: Integrating Experiential Education into the Curriculum*, 7 ELON L. REV. (forthcoming 2015) [hereinafter Batt, *A Practice Continuum*].

⁹ Because student practice rules vary from state to state, both the timing and depth of the role assumption opportunity have to follow that regulation.

of the supervisor; and the learning goals and stage of development of the student.¹⁰ One student may encounter only a part of this range while another may experience the full range within a single semester.

Students witness how the best lawyers adapt to the sometimes less-than-ideal situations present in real life, and thus learn to develop adaptability for themselves. The type of support or “scaffolding” that exists in externships is akin to a bridge from the solid ground of law school to the more rocky terrain of practice.¹¹ Often the only student at their placements, externs must function with a high degree of self-sufficiency in the face of some discomfort: without fellow students at their sides and with the faculty member more removed, awaiting them back at the law school where they will return to examine what they just experienced.

ii. Dual Supervision

The second defining characteristic of externships is dual supervision: a teaching partnership between the faculty member, who is not responsible for the casework, and the field supervisor, who is. This feature is the one that most differentiates externships from law clinics and other courses in the law school. Dual supervision is an immutable feature of externships because no matter what other design choices are made, the law school is always entrusting a core teaching function to the practitioner in the field. At some schools, the nature of the dual supervision is more divided and independent, while at others, it is more collaborative and the shared nature of the partnership is more salient. This latter shared supervision model takes more time and expertise on the part of the faculty member, and a deeper commitment from the field supervisor.

In externships, the field supervisor is ultimately responsible for the professional work and so must assign work to the student, assess performance, provide feedback, and evaluate the student’s overall professional development throughout the duration of the externship.¹² The responsibilities of the faculty member teaching the externship course are basically two: to hold the field supervisor accountable for his teaching in the field, and to provide the academic rigor and structure for the student to reflect, digest, and, integrate what was learned.¹³

¹⁰ For a typology of student experiences depending on level of role assumption, see, e.g., Susan L. Brooks, *Meeting the Professional Identity Challenge*, 41 *BALT. L. REV.* 395 (2012). Externships that are more observational or supportive serve as an excellent entrée to the practice world; externships that call for full role assumption ideally function as a capstone. Other commentators also recognize that externships can be configured as a continuum with early experiences limited to observation, reflection, and short discrete assignments; later externships progress to full role assumption. See, e.g., Batt, *A Practice Continuum*.

¹¹ Rebecca Rosenfeld, *The Examined Externship Is Worth Doing: Critical Self-Reflection and Externship Pedagogy*, 21 *CLINICAL L. REV.* 127, 130 (2014) [hereinafter Rosenfeld, *The Examined Externship*].

¹² For a discussion of recommended guidelines for fieldwork supervisors, see, e.g., “Role of the Fieldwork Supervisor” in J.P. Ogilvy, *Guidelines for the Self Evaluation of Legal Education Clinics and Clinical Programs*, 15 *THOMAS R. COOLEY J. PRACT. AND CLIN. LAW* 1, 155-57 (2014) [hereinafter Ogilvy, *Guidelines for Self-Evaluation*].

¹³ For a discussion of recommended guidelines for faculty supervisors, see, e.g., “Role of the Faculty Supervisor” in Ogilvy, *Guidelines for Self Evaluation*, at 151-55.

The full potential of externships is realized when the field supervisor and the teacher, backed by their respective institutions, put in the time and energy necessary to achieve the pedagogical objectives. By entrusting the field supervision to practitioners, law schools give students a chance both to be embedded in practice, and then to step back from it in order to critique objectively. Students have an opportunity, and a faculty guide, to analyze their own and their supervisor's performances candidly, identifying what elements should be replicated and which are challenges to be addressed. They critique both the systemic and the individual effectiveness of the lawyers and the legal institutions they encounter.¹⁴ When the field supervisor and the teacher perform their respective jobs in accordance with best practices, the novice student will learn explicitly what is implicit in real practice settings: that legal theory, doctrine, skills, and professional values are inextricably woven together.¹⁵

iii. Guided Reflection

The faculty member is charged with the design and implementation of the third essential feature, guided reflection. This assures that students will examine the raw experience to permit the full educational value to emerge. Guided reflection has two goals: to enhance the learning at the site in real time, and to instill in students a pattern of reflective practice that will encourage life-long learning and continual professional growth throughout their careers. Students certainly engage in reflection on their own performance in the moment, and often are joined in that process by their field supervisors. For three reasons, however, most of the responsibility to structure the reflection process falls to the faculty member, and not the field supervisor. First is the field supervisor's multiple other time commitments and necessary emphasis on case work competence and outcome; second is the faculty member's greater familiarity and expertise with clinical and externship pedagogy¹⁶ and teaching techniques; and third is the potential for critique presented by the distance between the faculty member and the case decisions made in the practice setting.¹⁷

iv. Self-Determination and Self-Reliance

The fourth essential characteristic of externships is the high degree of student self-determination and self-reliance involved. In addition to the goals selected by the teacher, it is a best practice for externship teachers to require students to identify their own individualized learning goals for the externship experience.¹⁸ Students may

¹⁴ See Condlin, *Learning from Colleagues*; Robert J. Condlin, *Tastes Great, Less Filling: The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45 (1986).

¹⁵ Batt, *A Practice Continuum*.

¹⁶ Externship teachers adopt many of the same perspectives and tools as do in-house clinicians, adapt others, harken back to some techniques found in the apprentice approach, and also create methodologies unique to the modern model of externship teaching. The externship community is both a vibrant part of the clinical legal education academy and also has a recent history of holding special externship teaching conferences every other year.

¹⁷ See Condlin, *Learning from Colleagues*.

¹⁸ For a discussion of the responsibilities of students in externships, see, e.g., "Student Extern

be proactive in achieving their goals by how they identify their placement site preference,¹⁹ exercise the choice they sometimes have in the type of assignments, and even bear the responsibility for assuring they receive feedback and supervision from their fieldwork supervisors. By shifting to the student some of the responsibility for the quality and assessment of their own work and development, externship courses enhance the transfer of professional work skills so that students are prepared to function effectively in the world of practice post-graduation. It is, therefore, a best practice to make explicit this learning goal and consciously build student capacity and durability for sustainable reflection and work habits.

c. Delivering on the Potential of Externships

As indicated earlier, it is an emerging best practice to assure that students can take at least one law clinic and one externship course.²⁰ Students will benefit most if they have at least one closely supervised, intensely “scaffolded” practice experience *and* at least one that requires independent performance even in the face of the pressures and conditions of practice — the bridge to practice. Externship courses must meet the standards below in order to deliver to students the promise of what externships can and should offer.

i. Externships Must Be Clinical Legal Education Courses that are Taught

All elements of the law school curriculum, including externship courses, must meet rigorous and explicit standards. At a minimum, externships should meet the newly revised standards for any experiential course;²¹ they are courses for credit, and as such, they must be taught, not simply administered.²² Moreover, they are a form of clinical legal education, which are experiential courses that involve real life learning opportunities.²³ To consider them anything else leaves these courses vulnerable to erosion of the core practices necessary to assure their integrity as courses worthy of credit. They are an intended vehicle for neither job creation nor alumni connection.²⁴

Responsibilities” in Gilvy, *Guidelines for Self Evaluation*, at 157-60.

¹⁹ At some schools, students find their own placements; in all cases, however, they at least express their preferences for the type of placement experience they are seeking.

²⁰ See, Chapter 5 Section F, Subsection 1, *Incorporating Experiential Education Throughout the Curriculum*, above.

²¹ In order for an externship, or field placement, to satisfy the definition of an experiential course under the 2014 ABA Revised Standards, and, therefore, count as part of the requirement of six experiential credits, the externship must be primarily experiential and meet four criteria: integrate doctrine, theory, skills, and legal ethics and engage students in one or more professional skills; develop the concepts underlying the professional skills being taught; provide multiple opportunities for performance; and provide opportunities for self-evaluation. ABA Standard 303(a)(3) (2014). Externship teachers will need to review their course design features to determine if they meet the new Standard. In addition, they must continue to meet the requirements of Standard 305(e) specific to field placements.

²² There are some inevitable administrative duties involved in teaching an externship course, but the clinical educator should still be viewed as the “teacher” of externship courses, not the administrator.

²³ See, e.g., Batt, *A Practice Continuum*.

²⁴ Both job creation and alumni connection can be strong potential secondary benefits of externship but

It is, therefore, a best practice for schools to categorize these courses within the curriculum as a necessary part of the array of clinical courses.

(a) **Teachers, Not Administrators**

It is the teacher who provides the value that sets an externship course apart from a volunteer opportunity or paid job. She is in charge of the overall educational quality of the externship experience, through setting the goals for the course; approving which entities and supervisors will serve as field placements; monitoring and at times helping to improve the quality of the lawyering and supervision; teaching the classroom component or otherwise meeting with the student; and guiding the student's learning from the experience through readings, assignments, and discussion, as described below.

To what extent, if any, should individuals without faculty status be involved in teaching externship classes? This question provokes controversy²⁵ in many quarters. This discussion uses the term "teacher" to refer to any person assigned to teach and administer the externship course or program. However, those who teach externships may hold a wide variety of positions and job titles. In externships across the U.S., teachers include full-time faculty members,²⁶ externship "directors,"²⁷ administrators with other job functions such as career development, and adjunct faculty; programs can include various combinations of these individuals. Some sets of job responsibilities, as reflected by those titles, are more likely to lead to successful teaching than others. One commentator has recommended that in order to improve student learning, "[f]ull time faculty with clinical or experiential teaching experience or knowledge should be the primary pool from which externship teachers are drawn."²⁸

Currently, law schools employ a variety of structural designs, generally falling into one of three categories: freestanding programs; locating the program within a clinic or experiential department; or locating it within the career services office or other administrative office. Regardless of where the office is physically placed within the law school, however,²⁹ externships should be categorized organizationally as courses (and collectively, programs) that are part of the overall clinical legal education

neither should be the primary purpose or design feature.

²⁵ Baker & Lancaster, *Under Pressure*, at 71.

²⁶ Full-time teachers may be tenured/tenure track or contract (short-term or long-term) faculty. They may have as their sole teaching assignment the teaching of externships or may have other duties in doctrinally-focused, simulation, or other clinical courses.

²⁷ An externship director is a person hired to oversee the set of externship courses that are treated as a program and, often, to teach one or more of the externship courses. The person may be hired as an administrator, rather than as someone with faculty status, or could be a faculty member who is given additional administrative responsibilities to oversee the program.

²⁸ Rosenfeld, *The Examined Externship*, at 166.

²⁹ Depending on space and clinic layout, the externship program may not be able to be physically located within the same space as one or more of the law clinics due to confidentiality concerns in the clinics. Physical location, however, is not dispositive of whether the program is part of the clinical legal education offerings.

program. It is a best practice to organize both the courses and the faculty structure to accomplish this.

It is a best practice to consider the person assigned to teach the externship course or direct the program as part of the clinical teaching faculty.³⁰ He may inevitably have some additional administrative duties inherent in this unusual form of teaching, but the primary function is to teach.³¹ The teacher also must have a high degree of credibility with the field supervisors. One reason he should be part of the teaching faculty is that externship teachers are particularly vulnerable to complaints from field supervisors and students. These individuals have a heightened need to have the protection and independence necessary to perform the tasks of selection and retention of field supervisors and monitoring of the quality of the field supervision. These aspects of externship design and teaching often require difficult choices — such as whether to “fire” a supervisor — that must be based on educational integrity, free from interference based on considerations of the field supervisor’s ability to hire, his reputation as a practitioner, or at times, his status as an influential alumnus or law school supporter. Externship teachers also require sufficient support and time to steep themselves in the theory and methods of clinical pedagogy. It is, therefore, a best practice to assure that everyone teaching externships has the necessary expertise, time, and protection to perform the teaching tasks well, and the requisite status and recognition of the importance of this teaching endeavor.³²

(b) Teachers and Scholars

Law schools should evaluate the benefits to the profession, the academy, and the law school itself of considering externship faculty as scholars. Externship teachers are not always given the opportunity to commit time and energy to the scholarship endeavor;³³ this is especially likely if they are considered administrators rather than faculty members.

Externship educators work closely with students; by helping them learn how to practice ethically, externship teachers necessarily must theorize practice. The potential for contributions to the body of scholarship on pedagogy and on the elements of practice are enormous. Externship teachers also are in close proximity to practice and yet are separate from it. They know what is happening in the world of lawyers, yet they retain an academic objectivity. Like their in-house clinic colleagues,

³⁰ At times, one person may be categorized solely as an administrator, overseeing an array of teachers. This is not the best model. First, there are teaching duties entwined with administrative-like duties, such as “selection” of placements, which take significant judgment and experience. Second, an administrator who does not also actually teach will likely “oversee” a program without a full appreciation of the challenge of this form of teaching.

³¹ Maurer & Cole, *Design, Teach and Manage*, at 115.

³² See Chapter 8, Section B, *Faculty Status and Institutional Effectiveness*, below.

³³ It is time consuming to fulfill all the obligations of externship teaching: developing and maintaining the contacts in the profession necessary to provide students with an array of excellent placements and overseeing the quality of the field supervision. Many externship teachers have large numbers of students in their courses, requiring a significant commitment of time to provide the necessary level of engagement with students, in the classroom, in the field, and reviewing written and reflective work.

externship teachers are in an ideal place to produce scholarship that provides either descriptive empirical data on practice, incisive critique of practice, and/or prescriptive, theoretical recommendations for improvements in the practice of law. Given the rich scholarship opportunities that result from this vantage point, law schools should decide carefully how externship teachers contribute best to the mission of the law school: as teachers or as teacher/scholars.³⁴

(c) **Teachers: The Special Relationship with Career Development Offices**

Placing externship programs in career development offices or assigning career development administrators to teach the externship courses presents special and complicated concerns.

Law schools that house their externship programs in their career development office raise significant concerns regarding the mission and expectations for externships and potentially send problematic “mixed messages” to students and the legal community. Given increasing scrutiny of post-graduate employment outcomes, law schools are under intense pressure to demonstrate that their graduates are obtaining high-quality positions, and most of that pressure is focused on the career development office. That environment can undermine the educational focus of the externship program.

Career development professionals pride themselves, rightly, on the guidance they regularly provide to students. However, because the career development office is an administrative department within the law school, it does not have the same independence of action afforded to the curricular domain governed by law school faculty. The student’s expectations for the externship may be shaped by the law school’s choice of structure. If the career development office is overseeing the externship program, students may envision the externship as a semester-long audition for a job, and therefore placement goals can supersede learning goals. Students might be unwilling to take risks, either in the selection of a placement or while at the site, and might avoid seeking out challenges to develop new skills, focusing instead on assignments they perceive as likely to impress, regardless of the educational benefit.

While preparation for a career is a welcome and appropriate aspect of the externship experience, it is best served by maximizing the educational value at the placement. Many field supervisors provide superb education to students semester after semester, but rarely, if ever, are able to hire them. Students benefit greatly from this type of placement, and are more likely to see that benefit when they are expressly engaged in clinical legal education rather than involved in what their law school views as a career development endeavor. Although the benefit of extensive coordination and sharing of information between externship programs and the career development office is necessary and obvious, it is a serious mistake to categorize the externship

³⁴ If scholarship duties are available to, and/or required of, externship teachers, then the teaching workload, directorship duties, and other obligations must be assigned or adjusted equitably. See Chapter 8, Section B, *Faculty Status and Institutional Effectiveness*, below.

program as a “service” of the career development office, rather than as a clinical course.³⁵

Assuming the externship program is properly identified as part of the clinical legal education program, many career development administrators, nonetheless, offer valuable skills that translate well to externship teaching. Some may have had prior careers as attorneys that included supervision and mentoring of students and young attorneys. In their current jobs, they often guide students to develop skills of self-assessment and self-direction, and help them shape their professional identities in preparing for their post-graduate careers.³⁶ The danger is that career service administrators may lack the time to run a high-quality externship program or teach a sophisticated externship course, given their other critical and time-consuming responsibilities.³⁷ Both administering a career office and teaching an externship course well are important tasks and each requires substantial investments of time. Situations arise that may create a conflict of interest between meeting the educational priorities for students and developing career placement connections for the institution. A school must evaluate seriously whether assigning the externship teaching role to a career development administrator will further the best interests of its students, given the individual’s competing duties and time constraints.

Having career service administrators teach externship classes can provide synergy between the externship program and the career office. But this will be true only if the school treats the administrators as part-time members of the clinical teaching faculty and ensures that its externship courses and teachers are held to the same pedagogical goals and standards as the rest of the law school’s curriculum and faculty. Best practices require that, as members of the clinical teaching faculty, these teachers have the necessary time to develop expertise in clinical pedagogy through attendance at appropriate conferences and participation in the faculty as clinical teachers. Best practices also require that they be accorded faculty status and protection against interference in their teaching role.

ii. Goals and Learning Outcomes for Externships

BEST PRACTICES stated “law teachers have had a surprisingly difficult time articulating the educational goals of externship courses.”³⁸ Many question whether that statement was true in 2007, as the well-developed scholarship on externship

³⁵ Often a placement setting is also the site of paid or volunteer jobs for students during the summers and/or school years, and where this occurs, everyone, from students to lawyers at the site, should know how the externship course differs from and adds value to the experience of simply working at the placement. Other programming overlap should also be explored, such as professionalism and networking education.

³⁶ Many senior career service professionals have had prior careers as practicing attorneys and understand through personal experience both the skills needed for practice and the importance of professionalism. In addition, they have significant connections to employers and alumni and arguably are well placed to obtain critical feedback on the outcomes needed for success after law school.

³⁷ Of course, the issue of having sufficient time is not limited to career development administrators. There are many other ways that externship teachers may have unrealistic workloads, to the detriment of their teaching.

³⁸ BEST PRACTICES, text at notes 619-20.

design had already focused on the importance of identifying pedagogical objectives.³⁹ BEST PRACTICES also challenged externship teachers “to demonstrate why the teaching and learning that occurs in placement settings should be learned during law school rather than in the first year of practice.”⁴⁰ The externship teaching community has responded to the challenges put forth in BEST PRACTICES, continuing to better articulate goals and improve externship methodologies to meet those goals.⁴¹ Because the newly revised ABA Standards now require all courses to articulate learning outcomes, going forward it will be a best practice to recast the goals in terms of outcomes, *i.e.*, what students will know and do.⁴²

Not surprisingly, given that both offer students rich opportunities to learn from performing legal tasks in real life lawyering settings, many of the primary learning outcomes for externship courses are identical to those for law clinics. What differs most is the “who” and “how” of making the lessons visible. The following is an in-depth articulation of the full range of possible goals for externship students.

(a) Structuring the Experience Around Goals

Externship students learn in real practice settings because they are engaged in tasks that range from observation to full role assumption, depending on a carefully-considered set of curricular and student objectives and on the particular opportunities at the placement. Student fieldwork serves as the “text” for learning. Raw experience is combined with feedback in the field and faculty-structured opportunities for reflection in and out of the classroom. Using a variety of reflection techniques, students distill their understanding of their experiences and prepare to carry the reflection habits forward into practice.⁴³ Immersed as they are in real practice, externship students can, and should, also readily envision and experiment with who they want to become as lawyers. It is a best practice to articulate both institutional learning goals and individual learning goals for the student, to communicate those goals to the field supervisor, and to take steps to assure that the supervisor structures the field experience and assigns tasks in alignment with those goals.

In identifying the institution’s learning goals for students in externships, law

³⁹ See, *e.g.*, a small sample of the externship scholarship that was available in 2007: Harriet N. Katz, *Reconsidering Collaboration and Modeling: Enriching Clinical Pedagogy*, 41 GONZ. L. REV. 315 (2005-06) [hereinafter Katz, *Reconsidering Collaboration*]; Alexis Anderson, Arlene Kanter & Cindy Slane, *Ethics in Externship: Confidentiality, Conflicts, and Competence Issues in the Field and in the Classroom*, 10 CLINICAL L. REV. 473 (2004); Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLINICAL L. REV. 347 (1999) [hereinafter Eyster, *Large Externship Clinic*]; Linda Smith, *Designing an Extern Program*, 5 CLINICAL L. REV. 527 (1999); Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems, and Possibilities*, 2 CLINICAL L. REV. 413 (1996).

⁴⁰ BEST PRACTICES, text at note 621.

⁴¹ The articles cited in this section are evidence of the work done to develop externship pedagogy.

⁴² ABA Standards 305(e)(1) and 305 (f) have long required field placement programs to set and communicate goals. The Standards now require law schools to recast goals in terms of learning outcomes. ABA Standard 301.

⁴³ Peter Jaszi, Ann Shalleck, Marlana Valdez & Susan Carle, *Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University*, 5 CLINICAL L. REV. 403 (1998-1999).

schools face a fundamental choice that will impact the range of opportunities open to students. Each school must decide whether it will approve externship placements in all types of practice settings or only some practice settings, such as public interest placements or practice settings relevant to the school's areas of doctrinal strength or reputation. The range of opportunities is broad and can include not only traditional judicial, legislative, governmental, and other non-profit and public interest placements, but also private sector placements, from in-house counsel work to firm practice. Choosing a broad range of externship settings means that a school can provide learning opportunities that are not offered, or perhaps cannot be duplicated, in the law school's in-house clinics.⁴⁴

Beyond this initial choice between targeted or wide-open externship placements, the learning goals for externship courses will vary on other dimensions from school to school and even within schools: the primary emphasis may be on contextualizing and deepening doctrinal knowledge, enhancing particular lawyering skills, providing lessons in professionalism and building a professional identity, or a combination of one or more of these purposes.

(b) **Articulating and Assessing Goals Common to All Externships**

Law schools do not, and need not, have the same institutional learning goals for all the students enrolled in their externship courses.⁴⁵ Appreciating the very wide range of possible educational emphases, the teacher must inevitably make choices about which should be the explicit outcomes for her course. Nevertheless, certain commonalities flow from the distinctive structural characteristics of externships, and thus, certain goals and learning outcomes are appropriate in all externships, regardless of the type of placements. It is a best practice to both articulate and assess goals.

- ***Professionalism, Professional Identity, and Ethics***

BEST PRACTICES strongly recommended a more explicit emphasis on professionalism and ethics learning opportunities in externships. That volume also recognized that externships necessarily provide excellent opportunities to study and learn about the functioning of the legal system and its capacities and limitations.⁴⁶ Justice, or lack thereof; the rule of law or lack thereof; and the “interaction of legal analysis and human behavior”⁴⁷ whether positive or negative, surround externship students on a daily basis.

The following are learning outcomes in the professionalism sphere that should

⁴⁴ Certain externship settings such as judicial chambers and governmental entities cannot be created in an in-house clinic.

⁴⁵ See Kelly S. Terry, *Embedding Assessment Principles in Externships*, 20 CLINICAL L. REV. 467, 485 (2014) [hereinafter Terry, *Embedding Assessment Principles*]. ABA Standard 305 requires articulated goals but does not prescribe which ones. The standard does require them to be made known to both students and field supervisors.

⁴⁶ BEST PRACTICES, text at notes 619-21.

⁴⁷ *Id.*, text at note 621.

apply to all externship students, and should, therefore, be made explicit to all students. Students will:

- Articulate the concept of professional identity and develop their own facets of professional identity;⁴⁸
- Exercise responsibility, responsibly;⁴⁹ and
- Perform ethically with attentiveness to all relevant rules of professional conduct and self-awareness.

Other possible professionalism-related goals might include:

- Practice with purpose;⁵⁰
- Integrate personal and professional identities;⁵¹
- Connect with and serve clients while respecting dual loyalty to the profession;⁵²
- Recognize and articulate the elements of competent practice, and how knowledge, skill, and values are woven together in service of a client or a cause;⁵³
- Identify the fundamental values of the legal profession and recognize the presence or absence of those values in practice situations; or
- Articulate the role of lawyers and identify changes to the profession that are occurring in the particular setting.⁵⁴

These learning outcomes are potentially available any time a student volunteers or works in a legal setting. However, without a structure that requires objective, guided reflection, the student functioning alone, nervously focused on his own performance, may reach conclusions that are neither the ones the school hopes for, nor ones from which the student will benefit. In a setting designed to benefit the workplace and not the student, the supervisor may be too busy or too invested in the case to participate in reflection. Most importantly, when the student is a volunteer or an employee, the supervisor has not taken on the obligation to provide feedback or reflection opportunities. It is the presence of an externship faculty member, aware and skilled, that can assure the teaching moments that turn raw experience into education will be

⁴⁸ Terry, *Embedding Assessment Principles*, at 488.

⁴⁹ *Id.*

⁵⁰ SUSAN BRYANT, ELLIOT S. MILSTEIN & ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 14 (2014) [hereinafter BRYANT, ET AL., *TRANSFORMING EDUCATION*]. These authors have articulated the most recent complete set of goals for clinical education, many of which are equally applicable in in-house law clinics and externship courses.

⁵¹ *Id.* at 15.

⁵² *Id.* at 16.

⁵³ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007) [hereinafter *CARNEGIE REPORT*].

⁵⁴ For example, students can be assigned to catalog the aspects of practice that are in the midst of change, such as the impact of technology, the rise of alternative dispute resolution, and other transformations, even as they are newly entering the profession. Field supervisors undoubtedly have strong opinions that they are eager to discuss regarding what is taking place in their corners of the practice of law.

identified, whether by teacher, supervisor, or the student herself, or most likely and in the best case, from the alchemy that results from the combination of all three.

- ***Learning How to Learn, Think, and Make Choices for the Future***

Because they embed students in real practice, all externships offer significant educational opportunities around learning how to learn, understanding basic and common lawyering modes, and how to chart a path for their own development as self-reliant professionals. Several goals should be transformed into explicit learning outcomes for all externship students. Students will:

- Build lifelong commitment and the skills to learn in professional settings, including learning about learning;⁵⁵
- Engage in effective self-reflection that fosters learning from experience⁵⁶ and transferring those lessons to more complex problems and to other settings;
- Recognize and articulate the elements of problem-solving in the practice situation and display those elements in their legal work;⁵⁷
- Develop broad modes of “thinking like a lawyer” using:
 - role-based legal analysis
 - narrative reasoning
 - ends-means thinking
 - using and building theory through contextual thinking
 - critical thinking
 - creative thinking;⁵⁸
- Improve capacities to manage uncertainty, exercise judgment, and take action, especially within the moving parts and unpredictability of real life.⁵⁹

Other possible outcomes include students’ ability to:

- Seek and receive timely and effective feedback and supervision, in order to improve future work product;
- Engage peers for collaborative learning;⁶⁰
- Develop skills associated with the human dimensions of practice:
 - understanding the perspective of another
 - interpersonal interactions
 - self-knowledge and self-regulation⁶¹

⁵⁵ BRYANT, ET AL., TRANSFORMING EDUCATION at 23-25.

⁵⁶ Terry, *Embedding Assessment Principles*, at 488.

⁵⁷ BEST PRACTICES, text at notes 553-56.

⁵⁸ BRYANT, ET AL., TRANSFORMING EDUCATION at 21-23.

⁵⁹ *Id.* at 19-21.

⁶⁰ *Id.* at 24.

⁶¹ *Id.* at 25-26.

- communication and intercultural effectiveness.

(c) **Articulating Student and Placement Specific Learning Goals**

In addition to the learning goals that should be common to all externships, each externship program and teacher will have other specific learning goals. Moreover, each placement will be able to offer experiences suited to some goals, but not others. It is a best practice for teachers to select additional learning outcomes suited to the course, the student, and the placement. Furthermore, it is also a best practice for externship teachers to guide students in setting and pursuing some individual goals, personal to their experience and career goals. This practice furthers the self-determination and self-reliance feature of externships.

Common goals for externship teachers to consider, depending on the placement opportunities and the student's level of development, are that the student will be able to:

- Identify and build selected and focused lawyering skills and doctrine particular to the placement type, as part of a lawyering process to promote transfer;⁶²
- Articulate the meaning of equal access to justice and the lawyer's duty to promote it, and ways to further access to justice during their own careers;⁶³
- Increase understanding of how law, the legal system, and other social and economic institutions function in the lives of people, particularly the most marginalized:
 - understand the importance of malleability of facts;
 - develop and use critical insights about how law functions;
 - see clients and problems in context;⁶⁴
- Work effectively with professionals from other disciplines as expected in the particular area of practice;
- Articulate the principles and components of effective and ethical law office management;
- Develop appreciation for which practice types and venues will suit them;
- Recognize the significance of work-life balance and identify strategies for achieving it.

(d) **Assessing Progress on Goals**

Whatever goals and outcomes are set, the teacher and the school will not know to what extent the student has met her goals without effective assessment. First, it is a

⁶² *Id.* at 27-29.

⁶³ Terry, *Embedding Assessment Principles*, at 488.

⁶⁴ BRYANT ET AL., *TRANSFORMING EDUCATION* at 17-19.

best practice for externship teachers to develop and use meaningful student self-assessment tools. This provides important information to the field supervisor and the teacher as well as helping to develop students' self-reliance and future self-assessment skills. Second, it is a best practice for externship teachers to provide training and to develop materials to assist field supervisors in discharging their obligation to provide task-specific feedback and overall periodic evaluation in the field. Finally, externship teachers should also provide direct assessment, particularly on reflection skills. It is a best practice for an educator to develop and select assessment tools designed to measure students' performance and progress in synthesizing the experiences from the field. It is also a best practice to combine both formative feedback and summative evaluation methods.⁶⁵ Developing rubrics to identify the specific components of each goal permits the students to know what is expected of them and to see how the teacher thinks they have progressed, according to established criteria. This is true whether the teacher is assessing the reflective journals, the classroom contribution, essays on selected topics, the quality of the work produced at the site,⁶⁶ student self-evaluation, meetings with and without the field supervisor, final reflective essays, or any other tools the teacher has developed to assess progress and integration.⁶⁷

iii. The Design and Implementation of the Externship Course

Designing and implementing the externship course requires attention to choice of field placements, developing good field supervisors, and providing classroom and other opportunities for reflection.

(a) Inculcating a Commitment to Effective Field Supervision

Effective supervision in the field placement setting remains the lynchpin of the student externship experience.⁶⁸ At the heart of externship design is the dual supervision by faculty and field supervisors. Regardless of how the program is otherwise structured, the success of every externship course turns on the school entrusting to practicing lawyers and judges⁶⁹ the primary modeling of lawyering behavior and providing feedback on student performance. It is a best practice for

⁶⁵ See Chapter 4, Section D, *Outcomes Assessment for Improving Student Learning* for definitions and additional discussion of formative and summative assessment.

⁶⁶ Work product cannot always be assessed by faculty; because of confidentiality or other privacy reasons dictated by the site, the material may not be available to faculty members or anyone else outside of the placement.

⁶⁷ For a thorough exploration of assessment design in externships, see Terry, *Embedding Assessment Principles*, at 489-506.

⁶⁸ Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLINICAL L. REV. 611, 611-12 (2004)[hereinafter Blanco and Buhai, *Externship Field Supervision*]; Bernadette T. Feeley, *Training Field Supervisors to Be Efficient and Effective Critics of Student Writing*, 15 CLINICAL L. REV. 211, 211 (2009).

⁶⁹ This "trust" is all the more remarkable when considering that most field supervisors are neither

externship teachers to work with field supervisors to assure that students receive high quality supervision of their legal work despite the fact that the teacher is not present to witness the students' performances.

In the field placement, the supervisor's emphasis on achieving student educational goals often (and understandably) ranks in precedence behind loyalty to the work of the host court or law office.⁷⁰ The law school must acknowledge the need for excellent client representation, and seek out and cultivate those supervisors who understand that their own practice benefits when they supervise less experienced, but highly motivated, students. This group of supervisors, with law school support, will promote the need to prioritize the ideals of careful direction, targeted feedback, and student self-reflection that form the core of externship pedagogy.⁷¹ The methods by which the law school inspires supervisors to embrace the pedagogical objectives at play — and the willingness of the supervisor to honor and collaborate with school and student to achieve those objectives — are central factors in ensuring maximal student learning in any externship course.⁷² This is true whether the school utilizes a faculty-led approach to identifying, securing, and approving externship placements or one that allows the student to select the placement subject to ultimate approval by the teacher.⁷³

BEST PRACTICES articulated a comprehensive set of standards and expectations to be communicated by the teacher to supervisors for the purpose of “assur[ing] that the supervision provided by field supervision attorneys, clerks, and judges is consistent with educational objectives.”⁷⁴ Far more than just a host of the student practice opportunity,⁷⁵ the field supervisor must understand his role as that of a principal caretaker of and advocate for the extern. On a day-to-day basis, the consummate

compensated for their efforts nor accorded adjunct faculty or other contractual status against which to hold them formally accountable.

⁷⁰ Katz, *Reconsidering Collaboration*, at 327-328; Blanco & Buhai, *Externship Field Supervision*, at 612.

⁷¹ Blanco & Buhai, *Externship Field Supervision*, at 612; ABA Standards, Standard 305(e)(4) (calling for field placement programs to include “a method for selecting, training, evaluating, and communicating with field supervisors”).

⁷² *Id.* See generally J.P. Ogilvy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, 38 GONZ. L. REV. 155, 166-71 (2003) [hereinafter Ogilvy, *Guidelines*] (setting forth guidelines for the role and law school oversight of field supervisors).

⁷³ The manner in which students are matched with field placements differs from school to school. In many programs, faculty drive the matching process, asserting varying degrees of control in the identification and approval of potential field placements, the assignment and selection of students for placements based on an application or interviewing process, and the counseling of students about how and why they might seek certain placements. Other programs allow the student to drive the placement process, with faculty reserving only the right to approve the externship once it has been secured. In deference to the many factors that impact programmatic approaches, this section stops short of prescribing preferred practices for cultivating externship hosts and matching students with placements. Whether the placement process is faculty-driven or deferential to the student, communicating to the placement the program's goals and expectations for supervision is vital and is the focus in this portion of the section.

⁷⁴ BEST PRACTICES, text at notes 620-21. These standards and expectations require the teacher to communicate with both the student and the field supervisor regarding objectives, the assignment of work, the review of student work, and the provision of constructive evaluation.

⁷⁵ Maurer & Cole, *Design, Teach and Manage*, at 123 (“for every field placement course, . . . the focus

supervisor must commit to ensuring that the student is assigned appropriate legal work,⁷⁶ while also providing adequate workplace support and instruction for the student,⁷⁷ and serving as a mentor and facilitating reflection by the student. The supervisor must also grasp her place as chief liaison in communicating about the student with both the faculty supervisor and to others within the field placement setting. When the supervisor chooses not to accept, becomes frustrated by, or simply does not possess the natural skill set or inclination to carry out the educational and oversight responsibilities at play, the educational promise of the externship experience is in peril.⁷⁸

While most schools accept the fundamental importance of the field supervisor role, no similar consensus exists as to the “best” way for law schools to nurture supervisors to adopt the educational mission and mentorship responsibilities of the externship setting. In fostering communication with supervisors, law schools utilize an array of resources that are both proactive in promoting externship pedagogy and responsive to the discrete issues that present when dealing with individual supervisors. The most successful means of preparing and interacting with supervisors take into account that even the most respected and well-intentioned lawyers are not intrinsically equipped to provide the substantive feedback and guidance necessary for optimal student learning in the field placement context.⁷⁹ Teachers must also ferret out and address the tensions that present when supervisors challenge pedagogical aims or otherwise, knowingly or not, engage in behaviors that can undermine the externship experience.⁸⁰

Communication between school and field supervisors will necessarily be affected by the available resources, but externship teachers and program directors should oversee and support field supervisors by using communications⁸¹ that include some or all of the following:

- At the time the field placement is formalized, ideally before the start of the externship term, teachers should provide information and training to field

must be on education — on advancing educational benefits for students, not merely offering opportunities for practice”).

⁷⁶ See BEST PRACTICES, text at notes 620-21.

⁷⁷ The supervisor is the default point of contact for ensuring that the extern has access to and knows how to get what she needs in terms of adequate work space, use of and support for office technology, and instruction regarding inter-office communications and policies. See Blanco & Buhai, *Externship Field Supervision*, at 640-41.

⁷⁸ *Id.* at 619-25 (detailing the common barriers to effective supervision, including the uninvested supervisor, the supervisor who fails to understand supervisory dynamics and relationships, the supervisor who lacks sufficient time or motivation, and the supervisor who fails to identify the method of teaching that best corresponds with a particular student’s learning style).

⁷⁹ Liz Ryan Cole, *Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers*, 19 N.M. L. REV. 163, 164 (1989); Bernadette T. Feeley, *Training Field Supervisors to Be Efficient and Effective Critics of Student Writing*, 15 CLINICAL L. REV. 211, 211 (Spring 2009).

⁸⁰ See generally Nancy M. Maurer & Robert F. Seibel, *Addressing Problems of Power and Supervision in Field Placements*, 17 CLINICAL L. REV. 145, 146-47 (Fall 2010) (exploring the role that power dynamics at play in the workplace can have on the supervisor-student relationship and the extern learning opportunity).

⁸¹ Ogilvy, *Guidelines*, at 167-69; Blanco & Buhai, *Externship Field Supervision*, at 640-41.

supervisors about program goals and techniques in supervision and feedback. This may be done by offering formal training sessions, circulating written handbooks and resource materials, or obtaining supervisor agreements.⁸²

- Teachers must implement consistent checks to ensure a high quality educational experience and to “impress upon students and fieldwork supervisors alike that the [school] is open to help resolve any problems that arise during the course of the placement experience”⁸³ These checks should include monitoring the student work and supervision in field placement through a combination of site visits, student and supervisor evaluation tools, general supervisor outreach by phone call or e-mail, and careful review of student timesheets and journals.⁸⁴
- At the conclusion of the externship, teachers should solicit student feedback on both placement and field supervisor by means of a formalized evaluation tool, and formally seek insight from the field supervisor regarding all aspects of externship partnership.⁸⁵

Fostering effective and inspired field supervision is the most challenging and one of the most time intensive aspects of externship program development, and teaching.⁸⁶ Because of the indispensable part that field supervisors play in the externship learning process, law schools must continue to devote appropriate resources to the endeavor, so that externship teachers can invest the necessary time to think creatively about partnering with and training those who guide and teach students in the field placement setting.⁸⁷

(b) Recognizing the Importance of Student Reflection on the Externship Experience

It is a best practice for externship courses to include a planned program requiring student reflection. Reflection is a necessary tool as it “helps to build the skills, values, and models of critical thinking required to frame and solve complex problems.”⁸⁸ Guided reflection serves multiple goals. It supports quality law school oversight of the

⁸² See Cole, *Training the Mentor*, at 165-70; Blanco & Buhai, *Externship Field Supervision* (regarding supervisor training approaches and standards utilized by the Greater Los Angeles Consortium on Externships). Regardless of the communication methods used, the law school should designate an internal contact person who is available to supervisors who desire more training material. Ogilvy, *Guidelines*, at 168.

⁸³ Ogilvy, *Guidelines*, at 149.

⁸⁴ The choice and effectiveness of ongoing externship monitoring will differ based upon the student work being conducted, program size, and other factors.

⁸⁵ Separate from the solicitation of supervisor feedback, the law school should take steps to recognize and communicate appreciation to supervisors. Ogilvy, *Guidelines*, at 151.

⁸⁶ Supervisor development and training aspect is part of the teaching endeavor performed by faculty. Blanco & Buhai, *Externship Field Supervision*, at 612-13. Teachers must have credibility with supervisors in order to be successful at this task.

⁸⁷ For a discussion of the obligations of fieldwork supervisor, see “Fieldwork Supervisor” in Ogilvy, *Guidelines for Self-Evaluation*, at 155-57.

⁸⁸ Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLINICAL L. REV. 317, 320 (2014) [hereinafter Casey, *Reflective Practice*].

externship by providing the externship teacher a window through which to observe the quality of the fieldwork experience.⁸⁹ More importantly, reflection is a pathway to achieving many of those learning outcomes students and faculty have selected. Through reflection, students develop their professional identity, improve their professionalism, intensify their ethical sensitivity and self-awareness, and develop their problem-solving skills, and the teacher can assess student progress.⁹⁰ Finally, honing reflective skills facilitates students' ability to learn from experience over time, in order to gain insights from their successes and challenges.

The best practitioners in various professions develop their skills through continual reflection about the “uncertainties, complexity, and value conflicts that confront them in practice situations.”⁹¹ Guided reflection in externships should include analysis of lawyering performances observed by the student to “provide the new lawyer with insights into what choices were available, what internal and external factors affected the decision making process, and what societal forces affected the context of the representation.”⁹² The process for reflection should be designed to add to the law student's insights and understanding of the way in which law is and should be practiced.

It is a best practice for law schools to provide enough support to enable their externship teachers to foster meaningful reflection by all externship students. Productive shared reflection depends upon a relationship between the externship teacher and student sufficiently close that students will feel comfortable sharing their reflections on sensitive matters. This, in turn, requires that the externship teacher teach a reasonable number of students and not be unduly distracted from the teaching obligations by other duties.

• ***Guided Reflection Techniques that Enhance Student Learning***

Externships' dual supervision model creates both special challenges and potential advantages in the effort to foster thoughtful student reflection. At externship placements, students are often exposed to challenging realities: busy courts, overwhelmed administrative agencies, angry clients, and practitioners functioning

⁸⁹ For example, student reflections contain important data on interactions with the supervisor and co-workers, nature and quality of assignments, student engagement, and receipt of feedback from the supervisor.

⁹⁰ With regard to problem solving, Ogilvy specifically addressed the value of journals and the reflective process for externship students to work through problems that they observe or are assigned in practice, as well as personal struggles to understand and fit into various practice settings. “Journals can be a place for learners to engage in active problem-solving by putting into concrete form an expression of a problem to be solved; by articulating sub-problems; by sorting through the often chaotic circumstances surrounding a problem to clarify issues and obstacles; by identifying emotional baggage that is interfering with a solution to the problem; and by brainstorming, analyzing, and evaluating solutions.” J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*. 3 CLINICAL L. REV. 55, 73 (1996) [hereinafter Ogilvy, *The Use of Journals*].

⁹¹ *Id.* at 75 (citing DONALD SCHÖN, *THE REFLECTIVE PRACTITIONER: HOW PRACTITIONERS THINK IN ACTION* (1984)).

⁹² Casey, *Reflective Practice*, at 319.

under crushing caseloads.⁹³

Under the dual supervision model, a field supervisor employed by the organization hosting the externship student provides the direct supervision of the student's legal work. Only the field supervisor is fully familiar with the student's cases or projects, any confidential client information the student may encounter, and the student's work product and performances. Any guiding of reflection in the field is, therefore, the purview of the field supervisor.

Externship teachers' role in reflection is to teach both students and supervisors techniques for reflection in the field, and also provide opportunities for reflective practice outside of the field setting. Externship teachers must do this without access to confidential client information, and without having been present during the student's time on site. Lacking a confidential relationship with the client, neither the teacher nor the other students in the externship course may ethically know all that an individual student does through her work at the placement. Externship teachers are constrained by this structure when deciding how to achieve the course goals.

At the same time this structure constrains, it also frees the externship teacher to create vehicles for students to engage in critical analysis of their observations of practice, their own assessments of their professional development, and their understanding of the impact of the law and the legal system. The focus of reflection guided by the externship teacher is unlikely to involve questions of case strategy or detailed analysis of the quality of the student's performances. Rather, the teacher provides the opportunity for the student to reflect critically and confidentially on the choices and challenges encountered in the externship site workplace, and to critique the office's work removed from the often powerful presence of the direct supervisor, without fear that critique will offend.

The most common guided reflection technique employed by externship teachers is the written journal. Reflection in a journal may be free-form, or guided by prompts or questions posed by the teacher. It is therefore a best practice to assign journals frequently and regularly, such as at least every other week, and for the teacher to provide timely response and feedback, creating a continuing and iterative dialogue throughout the experience.⁹⁴

A significant challenge confronting externship faculty in promoting reflective

⁹³ Donald Schön said, "In practice we repeatedly encounter the problematic situation, the messy situation — the situation that cannot be separated from its political, economic, geographic, physical, and technological context. We also deal repeatedly with unique cases, those in which the professional must look at what is happening exactly here. And we deal inevitably with conflict situations as well, those in which goals as well as means are up for debate." Donald A. Schön, *Educating the Reflective Legal Practitioner*, 2 *CLINICAL L. REV.* 231, 241 (1995).

⁹⁴ Ogilvy, *The Use of Journals*; Eyster, *Large Externship Clinic*; Harriet N. Katz, *Personal Journals in Law School Externship Programs: Improving Pedagogy*. 1 *T.M. COOLEY J. PRAC. & CLINICAL L.* 7 (1997); Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 *J. LEG. EDUC.* 240 (2009). All of these articles emphasize reflection, particularly through journal writing, as a way of promoting active learning by engaging the student in a critical analysis of the field work experience and the insights and learning derived from that experience.

practice is student resistance.⁹⁵ Students may not understand or feel comfortable with the purpose or process of reflection. They may devalue it for not conveying substantive knowledge, and perceive it as taking up valuable space and energy that some students would rather devote to their “real life” hands-on practical work. This discomfort can be addressed by explicitly teaching reflection and the purpose it will serve in the future, and by providing exemplars of high quality student reflections. One scholar has offered a helpful five-stage model that begins with a concrete, descriptive base level of reflection and progresses to more abstract, complex, and contextual levels of reflection.⁹⁶

Guiding good student reflection in externships is a particularly challenging endeavor to do successfully and meaningfully, because the teacher does not have direct knowledge of the daily activities in the field. Accordingly, it is a best practice for schools to assign externship teaching only to individuals with sufficient talent, interest, and training in clinical methods to be up to the task.⁹⁷ This is not a job for neophytes or people with too many other tasks expected of them.

- ***Seminars that Promote Learning Goals***

The most common practice in externship pedagogy is to provide a companion seminar⁹⁸ in order to maximize educational goals. While a classroom experience is not expressly required by the ABA in Standard 305,⁹⁹ revised Standard 303, defining an experiential course, requires explicit skill instruction in each such course, and creates a further incentive to provide a classroom experience,¹⁰⁰ as that is an effective and most efficient way to provide instruction on concepts underlying the skills that are part of the practice areas relevant to the placements. The focus on skills should not detract from the omnipresent professional identity topics, however, or other rich classroom learning opportunities to be culled from student experiences.

An externship seminar provides four primary benefits; as an opportunity to: (1) reflect on and critique the experience in the field, with fellow student and teacher

⁹⁵ Ogilvy, *The Use of Journals*, at 86-92.

⁹⁶ The goals are to “build a professional context for the student and to integrate reflective practice as a professional value,” and help students understand the purpose it will serve in their future. Casey, *Reflective Practice*, at 321.

⁹⁷ Accord, Rosenfeld, *The Examined Externship* at 166.

⁹⁸ As of 2013, data showed that 84% of externship programs included a classroom component. David Santacroe & Robert Kuehn, *Center for the Study of Applied Legal Education: The 2013-14 Survey of Applied Legal Education*, http://www.csale.org/files/2013-14_CSALe_Survey_All_Parts.pdf, archived at <http://perma.cc/XEM3-8UJY>. Although some of the time in the classroom early in the semester can be devoted to orientation and other topics for preparing the students for their placements, the seminar component is generally understood to be something more substantial as the semester and the experiences progress. The classroom may be virtual when externship students are engaged in externships in sites far from the law school, such as in semester-in-practice settings.

⁹⁹ Standard 305(e)(7) requires a means of reflecting on experiences, either through classroom or regularly scheduled tutorials, and it must be contemporaneous if the student earns over three credits.

¹⁰⁰ Standard 303. Contrast new Standard 304, which defines both “simulation” and “clinic” courses. Both definitions require “direct supervision of the student’s performance by the faculty member”; “opportunities for performance, feedback from a faculty member, and self-evaluation”; and finally, “a classroom instructional component.”

participation;¹⁰¹ (2) establish a sense of community for students who are often out in placements by themselves; (3) create a place for students to learn from each other about law practice, including about placement settings very different from their own; and (4) deliver knowledge and information and classroom experiences, such as role-play and other simulated skills exercises, which will support and assist students in their tasks and performances in the field.

An alternative to a seminar adopted by some schools is a system of one-on-one tutorials in which a teacher meets with externship students individually to process and reflect¹⁰² on the externship experiences. It is a best practice to have student-teacher contact for the equivalent of at least one semester credit, or roughly fourteen contact hours. For a program of any size, then, a well-done, serious tutorial will be a high-cost alternative that also loses the benefit of peer interaction. If the student and teachers meet infrequently,¹⁰³ such as only once or twice per term, that practice is not a sufficient alternative to a classroom, even if journals are assigned and read.

If a school adopts the more common method of requiring a companion seminar, then it should follow best practices for seminars. Teachers should set learning goals and outcomes for the classroom portion of the externship, distinct from the goals for the field work. The classroom provides an exceptional opportunity to structure simulation exercises to enhance skill performances in the field. It also gives a rare chance to use the raw material from the field¹⁰⁴ in order to provide context for selected learning outcomes, such as the study of bias, intercultural effectiveness, or social justice. The teacher can choose the topic, assign readings,¹⁰⁵ and then structure the discussion or exercises to help students develop real-life examples from among their varied field experiences.

The classroom should be a site for enhanced reflection on topics that arise naturally from the casework.¹⁰⁶ Common techniques for promoting that reflection include asking students to share personal reflections in class about their field experiences, inviting responses from peers that extend the critical analysis of the experience, and prompting other students to reflect on an aspect of practice that they

¹⁰¹ “The externship teacher fits into this picture as a maker of meaning . . .” Rosenfeld, *The Examined Externship*, at 130. The academic components must amplify the lessons of the fieldwork learned in an environment of flexibility and unpredictability. *Id.* at 132.

¹⁰² Unless the numbers of students are small, there is a significant inefficiency in multiple one-on-one meetings. If the way a teacher resolves this tension is to have many fewer meetings per student, then this is not a best practice.

¹⁰³ “Meeting” can include virtual sessions using technology. The point is to permit contemporaneous and spontaneous dialogue whether in person or otherwise.

¹⁰⁴ It is also a best practice to develop policies to assure that confidential material is not revealed in class.

¹⁰⁵ For example, J.P. OGLIVY, LEAH WORTHAM, LISA LERMAN & ALEXIS ANDERSON, *LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS* (2d ed. 2007) (Third edition forthcoming 2015).

¹⁰⁶ Of necessity, this scrutiny must uncover and differentiate excellent and poor practice, whether in the domain of knowledge, skills, or values. “[E]xamples of lawyering rang[e] from exemplary to dastardly . . . Students may be bruised by their supervisors’ raw egos or inspired by their wisdom. Externship students and their teachers step onto this rocky road together.” Rosenfeld, *The Examined Externship*, at 130.

might not otherwise have considered.¹⁰⁷ Whether the students are in similar or diverse types of placements, teachers can structure opportunities through rounds, small group discussion, or by providing time for open topic exploration.¹⁰⁸

Externship teachers sometimes face student resistance to spending time on reflection in the classroom and with other guided reflection exercises, such as journals. Often, the “fix” is to educate students transparently about how the teacher’s goals and methods for the classroom can enhance the student’s experience at the site. Teachers should then continually seek feedback on which activities students believe actually improve or enrich their experience and seek to use the time for activities and lessons that are not available in other classes or at the site itself. If the teacher cannot articulate how the classroom will add value to the richness of the experiences, or if the majority of the students do not find that it does, then it should be “back to the drawing board” for the teacher.

iv. Special Student Populations, Placements, and Externship Structures

Externship placements for part-time students with full-time day jobs, placements with for-profit entities, and the variations in intensity and location of externships are all prompting different responses. The following pages, therefore, examine trends and concerns around each.

(a) Meeting Needs of Evening (Part-Time) Students

Externship teachers at schools with part-time evening enrollment face the challenge of designing and teaching externships for evening students who work full-time in day jobs.¹⁰⁹ More focus on the needs of this important segment of the student body is overdue.¹¹⁰ With the ABA now requiring at least six credit hours of skills

¹⁰⁷ “Sharing journal entries can promote a collaborative learning community by offering students models from which they can learn and by promoting a dialogue and discussion about the shared materials.” Ogilvy, *The Use of Journals*, at 93.

¹⁰⁸ Classroom experiences tend to be one or two semester credits, either graded or not. One survey showed that one-credit seminars are more common when students are in diverse placements, but are grouped together for class; the emphasis is on professionalism and professional identity, other common themes, and cross-placement learning. When the students in class were in similar placement sites, two credit seminars were often used. In that case, the topics tended to address the doctrinal, ethical, and procedural subject matter at the site, as well as the professionalism and reflection topics. See Justine Dunlap and Carolyn Kaas, unpublished presentation for “Externships VI” conference (on file with the authors). With the incentive to explore skills provided by the recent ABA standards revisions, teachers will likely continue to focus on common subject matter when students are in similar placements, and will need the additional time of a two-credit seminar, depending on what related courses exist at the school. When the pedagogical purpose is to explore identity and professionalism goals across different placements, then more universal skills and themes will fit better, and a one-credit seminar may be sufficient.

¹⁰⁹ ABA Standard 312 now requires that law schools provide all students with “reasonably comparable opportunities” in its educational programs.

¹¹⁰ For a useful historical overview of part-time legal education and evaluation, and the development of a clinic for part-time students at American University Washington College of Law, see David F. Chavkin, *Enriching Clinical Education: Clinic under the Stars: Giving Part-Time Students Their Due*, 13 CLINICAL

courses,¹¹¹ and more schools adopting mandatory clinical legal education, schools must continue to explore ways to match students with meaningful supervised legal work that can be performed in the evening or on weekends.

For an evening externship to be viable, teachers must overcome multiple challenges including complicated schedule conflicts between students and supervisors, identifying appropriate placements and supervisors who are willing to be available in evening hours, and arranging for appropriate credit options.¹¹² Externships for evening students can be designed in collaboration with other curricular offerings, such as pro bono programs, clinics, and classes on doctrinal subjects, especially professional responsibility. In communities large enough to have night courts or legal professionals otherwise available evenings or weekends, the solutions may include options such as placing students with a prosecutor's office to handle weekend arraignments or applications for search warrants, or with public interest organizations that meet with clients after the traditional work day. In other communities where realistic evening or weekend options do not exist, the challenge is greater, but creative possibilities can be found. For instance, a school could create "externships on site" at the law school. Instead of the students working in the field, willing field supervisors might bring discrete legal work, perhaps transactional or appellate work with fewer day-time hours required, to the students in the evening.¹¹³ Schools might also offer lower credit options for field work that complements a class, such as administrative law, tax, or alternative dispute resolution. Or schools could develop higher credit programs, permitting part time students to focus more of their limited time and energy on their evening clinical program, perhaps an evening "semester in practice."¹¹⁴

Students who work full-time at law firms, government offices, or corporate entities that also have law departments occasionally seek permission to extern at a current place of work. This is a controversial option. Students may feel pressure that undermines their ability to fully seek out learning new skills and knowledge because the essential relationship is based on the on-going employment. It could, however, allow students to build positively upon their previous relationship at the organization. If pursued, schools must ensure the educational integrity of the experience for the student, planning safeguards carefully.¹¹⁵ The student would require flexibility and

L. REV. 719 (2007). See also J.P. Oglivy & Sudeb Basu, *Externship Demographics Across Two Decades with Lessons for Future Surveys*, 19 CLINICAL L. REV. 1 (2012) (a brief discussion of externship programs for part-time students).

¹¹¹ Revised ABA Standard 303(a)(3).

¹¹² It is the placement and not the seminar or other assignments that cause the challenge. Students, even those who work full-time, are able to attend and participate in evening seminars and/or meet individually with the externship teacher.

¹¹³ However, externship placements that are not primarily field-based run the risk that students will lose the critical exposure to actual practice in context.

¹¹⁴ It may well turn out that at some schools, the design of new evening law clinics may serve these students better than evening externships.

¹¹⁵ These include placing the student in a different department and with a different supervisor and "chain of command," articulating new and advanced learning goals and carefully separating paid work from the unpaid work performed as an extern.

cooperation of the employer to both free up time for the educational endeavor and permit the student to engage with a new type of work for the entity.

(b) **Expanding Types of Placement: Private For-Profit**

Historically, placements for law school externships have been in the non-profit or public sector, and these can certainly be appropriate and fruitful sites.¹¹⁶ Along with skills and substantive learning, those placements provide an obvious platform to educate students about social justice issues including access to justice, and the role of government lawyers, the judiciary, and/or civil society.

At some schools, externship programs have always included private sector placements, in both corporate law departments and private law firms, and this practice is now becoming more widely adopted. Externships in the private sector are considered by some to be controversial for three reasons.¹¹⁷ First, many schools have set one overarching goal for all clinical courses: to expand service to the underserved. Private sector externships do not contribute to that goal. Second, in some firms, pressures to bill could undercut the commitment of the supervisors to engage students in a full range of legal assignments with educational value. Finally, some fear that private sector externships could threaten the availability of paid positions for students and even recent graduates at these same sites. On the other hand, these placements can help students prepare for the private sector work that provides the most jobs for new graduates; they add significantly to the subject matter and type of skills available for students to learn through clinical legal education; and they allow law schools and law firms to collaborate on attorney professional development.

No consensus exists on the appropriateness of for-profit placements, and each law school will answer the question based on its own circumstances, including the needs and desires of the students, other clinical opportunities available, and other options for students to take advantage of learning opportunities in the private sector. The schools that choose to offer these placements, however, must be as careful to protect the educational value for students as they are with externships in the non-profit and public sectors.¹¹⁸

Any school that decides to offer placements with for-profit organizations must navigate two regulatory constraints and appreciate the concerns behind those

¹¹⁶ Although these placements can be sites of very rich learning, some of these sites present problems of their own, for which teachers must remain vigilant. Underfunded and understaffed non-profit or public sector sites can be so pressured that busy supervisors have little or no time to supervise a student.

¹¹⁷ Some schools permit corporate law department placements but not private law firms.

¹¹⁸ For an extensive overview of this topic, see Bernadette T. Feeley, *Guiding Law Students through For-Profit Field Placements*, 19 CLINICAL L. REV. 57 (2012); Bernadette T. Feeley, *Examining the Use of For-Profit Placements in Law School Externship Programs*, 14 CLINICAL L. REV. 37 (2007). See also Emma Lloyd Best, *Satisfying Experiential Education Requirements through Expanding Externships in For-Profit Placements*, 21 CLINICAL L. REV. 1 (2014). If schools choose to offer for-profit placements, many limit them to fields of law not available in a government or public service organizations, and all should prohibit the practitioner from billing the client for the student's time or the practitioner's time spent working with the student.

constraints. First, the Fair Labor Standards Act of 1939 requires that employees be paid a minimum wage, but some, including students in qualifying unpaid internships, are excluded from this requirement.¹¹⁹ Guidance from the Department of Labor emphasizes that in order to qualify for the exclusion, the nature of the experience must be educational and for the primary benefit of the student and not the employer. Six criteria for internship placements are set out to help determine whether the experience is primarily for the student's benefit.¹²⁰ This requirement makes it especially important that for-profit placements be designed and implemented with clear educational goals. These Department of Labor guidelines provide leverage for teachers in assuring that private sector field supervisors cannot and do not put the needs of the private entity over the educational goals of the student.¹²¹

In addition, ABA Standard 305(3) prohibits a student from earning credit for any paid job.¹²² While this standard has generated controversy, it has garnered significant support from the externship teaching community. Paying students in externships would do little to offset overall student debt, but could undermine the educational purpose of the externship by converting the relationship between student and field supervisor to a conventional employment one, and would therefore dilute the teacher's ability to assure that the pedagogical goals take precedence.

(c) **Recognizing the Varying Intensity and Location of Placements**

Externship courses are offered for varying numbers of credits, based on the number of hours per week and weeks per term that the student spends at the placement. Credits typically range from three to twelve semester credits, representing approximately nine hours per week up to full-time, forty-plus hour per week placements.¹²³ It is a best practice to ensure that students earn a fair number of

¹¹⁹ This requirement applies to all externship placements, not only placements with for-profit entities. Private sector placements seem particularly likely to draw scrutiny.

¹²⁰ U.S. DEPARTMENT OF LABOR, FACT SHEET #71: INTERNSHIP PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT (April 2010), available at <http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>, archived at <http://perma.cc/A6YK-5J9V>. See Niki Kuckes, *Designing Law School Externships that Comply with the FLSA*, 21 CLINICAL L. REV. 79 (2014).

¹²¹ The danger of putting agency need over student need is not confined to the private sector, of course. It is the faculty member's responsibility to make sure public sector supervisors also do not consider students simply free labor to perform menial, routine tasks with little or no learning value.

¹²² ABA Standard 305, Interpretation 305-2. This interpretation was the subject of intense debate in 2014–15 when the ABA Standards Review Committee recommended changing the rule (formerly Interpretation 305-3) to permit paid externships. At least one proponent cited the Department of Labor rules as a reason. The externship teaching community successfully persuaded the Council on Legal Education and Admission to the Bar ("Council") to reject the SRC's recommendation on the grounds that permitting paid externships would undermine the teacher's ability to assure that the extern's education remains a primary objective; once an extern is also an employee, the supervisor would be free to give greatest priority to the firm or company's needs. At the time of this publication, the Council was reconsidering this interpretation a second time.

¹²³ Schools may specify the number of credits for externships in advance, as with other courses, or allow students to individualize the intensity of their externship experience, choosing from a range of credits.

credits for the work and time committed.¹²⁴

The intensity of the experience affects the nature of the assignments and the responsibility students will experience. In a higher credit externship, the students spend more time at the placement, and thus are able to complete tasks more quickly, developing both competency and confidence sooner in the semester. Students build credibility with the field supervisors and are able to take on cases and projects of greater complexity and with more independence, more like a beginning lawyer. Students who enroll for fewer credits are more likely to be in an observational or supporting role, assigned discrete tasks but often not be able to take on full responsibility for projects.

- *Semester-in-Practice Courses*

Every credit a student earns in law school is important. When a school offers, and a student selects, an externship option in the form of semester-in-practice, this heightens the stakes and risks for the student, placement, and school. A semester-in-practice externship offers full immersion in practice, and thus, provides an experience closest to post-graduate practice, yet with on-going connection, support, and guided reflection from the law school teacher. The experience can be transformative for the student, and can serve as the ultimate bridge to practice. Because the student is committing one-sixth of his total law school credits and tuition dollars, however, the school must take extra care to ensure that educational goals are articulated and sufficient faculty involvement ensures educational value commensurate with the credit awarded.¹²⁵

A disturbing recent trend seems to be allowing or requiring semester-in-practice candidates to find their own placements. Students are neither in the best place to know who will be a good supervisor and role model, nor to negotiate an effective semester-in-practice learning experience. It is, therefore, a best practice for faculty to take more time and care in designing, establishing, approving, and monitoring the full-time placement, not less.

Advantages for the student make full-semester opportunities attractive and worthwhile, if the resources are present for careful and effective externship teaching. These advantages include intense exposure to a practice area and sector; more responsibility and more complicated assignments; and a heightened ability to observe workplace challenges and behaviors. At the same time, ensuring a worthwhile experience places significant demands on the teacher, student, and field supervisor. Vetting the supervisor is crucial, including the supervisor's time in practice, experience in supervising externs, and ability to commit to providing a meaningful

¹²⁴ ABA Standard 310(b)(2) requires at least two hours of student work per week per credit for all "out of class" academic activities including field placements; Standard 305(b) simply states that the credit must be "commensurate with the time and effort required and the anticipated quality of the educational experience of the student." The norm seems to be more than the Standards would require, approximately 50-60 hours of field work per credit per semester. Programs that require students to work 4 or 5 hours per week per credit run the risk of making it impossible for a student in semester-in-practice programs to work enough hours to earn sufficient credits for a full semester of academic work, as they would have to work more than 40 hours per week for the entire semester.

¹²⁵ See Liz Ryan Cole, *Lessons from a Semester in Practice*, 1 CLINICAL L. REV 173 (1994-1995).

experience for the student for the full semester.¹²⁶ The externship teacher should screen students to ensure they are up to the challenge of the responsibilities associated with a full-time placement. Substantive course pre-requisites may be necessary for students to be fully prepared for the immersion experience. Professional Responsibility should either be a separate pre-requisite course, or be integrated into the semester-in-practice course design.

Many semester-in-practice programs are designed to permit students to travel far from the law school for their immersion experience, including to international placements, taking advantage of learning opportunities not available at the law school or even in local practice settings.¹²⁷ A remote location may transform the classroom part of the experience into distance learning, creating additional responsibilities and challenges for the faculty member.¹²⁸

- *Distance Learning for Remote Externships*

Distant placements offer exciting opportunities as well as challenges for structuring the guided reflection aspects of the externship, especially the seminar. Increasingly, externship teachers are drawing on distance learning technologies to respond to these challenges. Using distance learning formats requires teacher and student familiarity with new technologies. Teachers must be creative in designing these courses, but the guided reflection techniques developed for externships generally — discussion formats, reflective journals, and frequent feedback from the faculty member — can be readily incorporated into distance learning formats.

Remote externships and distance learning classrooms offer an important side benefit. More and more frequently, attorneys themselves are working remotely in meetings and communications with clients, colleagues, the court, etc. On-line structures offer students an opportunity to experience and model professional behaviors in interactions mediated by technology.

Given the ever-accelerating speed of technological change, deciding what system or systems to use and how can be complicated and requires frequent updating. Technology is not a “magic pill” and must be carefully implemented to support the

¹²⁶ Basic principles regarding program design are similar to other externships, but their importance is heightened: it is critical to have a detailed learning plan that establishes the goals for the semester, what strategies will be employed, measuring progress with detailed feedback, and a regular process of engagement with the faculty, supervisor, and student. A clear memorandum of understanding setting forth the responsibilities of the field supervisor is a best practice.

¹²⁷ For example, increasingly, law schools have opened or are considering opening a semester-in-practice in Washington, D.C. This location offers students an unparalleled opportunity to extern in the seat of the federal government as well as with national advocacy groups. Students may also choose to seek placements in the locations in which they would like to practice, either in a domestic center for specialized work, such as Los Angeles and New York, or abroad.

¹²⁸ Several law schools have long funded faculty visits to the remote sites at least once per semester to assure the quality of the experience. Other schools are experimenting with harnessing the power of technology to maintain relationships and monitor the quality and compliance. It is an open question whether technology can provide an adequate substitute for either face-to-face personal coaching or making personal interventions sensitively when problems are present.

educational goals of the institution, teachers, individual students, and the entire class.¹²⁹

d. Conclusion

Externship courses and programs have a distinct role to play in the law school curriculum. They offer students immersion in the complexities and challenges of law settings situated in the real world. Dual supervision permits students to encounter and work alongside skilled practitioners in context, with the support of an involved faculty member who provides a platform for critical assessment of the world of practice and reflection on the student's own professional development.

Law schools must not view externship courses as a substitute for law clinics, and neither should they deliver unsupported, unstructured, and thus, undermined, externships. Instead, the best practices are for every law school to offer externships as an integral part of clinical legal education, to provide them to every student, and to assure that the externship courses are robust, well-designed, and well-supported.

¹²⁹ Remote externships and distance learning classrooms offer an important side benefit. More and more frequently, attorneys themselves are working remotely in meetings and communications with clients, colleagues, the court, etc. On-line platforms offer students an opportunity to experience and model professional behaviors in interactions mediated by technology.

4. ENSURING EFFECTIVE EDUCATION IN ALTERNATIVE CLINICAL MODELS

By Deborah Maranville¹

a. Introduction

BEST PRACTICES FOR LEGAL EDUCATION² organized its discussion of experiential courses around the “simulation-based courses, in-house clinics, and externships” typology without specifically defining what structures fall within each category or discussing the variations. The discussion of in-house clinics focused on fundamental principles for effective teaching and supervision and the need for appropriate facilities and office support. It only implicitly addressed the range of issues presented by alternative structures for clinics and did not address alternative externship structures or variations that combine features of both.

b. The Fundamental Best Practices for Experiential Course Variations

Experiential offerings can vary as to important structural characteristics. The decisions a law school makes on what arrangement to use as to any one characteristic will affect others, as well as the overall quality of the experience. Law schools have adopted many of the possible structural variations and experienced clinicians have an intuitive understanding of the strengths and challenges different variations present, although only limited assistance is available from scholarly and practical investigations of these questions.³ Without an understanding of which dimensions matter and how they interact, legal educators can too easily lose sight of the big picture.

Two fundamental best practices for evaluating how to structure experiential offerings that do not fit the well-established in-house clinic or externship model can be identified. These are to ensure that, first, students learn enough to justify the tuition the students pay and, second, the law school contributes enough to justify the law school receiving the tuition paid by the student.

The following discussion builds on Tables 1-5 and the accompanying discussion in the experiential subsection,⁴ and the more extended discussion in the sections on

¹ Readers for this section were Susan Brooks, Russell Engler, Katherine Kruse, and Mary Helen McNeal.

² ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP, Chapter 5, text at notes 537-621 (2007) [hereinafter BEST PRACTICES].

³ For more detail on design factors for experiential courses, see Deborah Maranville, Mary Lynch, Susan Kay, Phyllis Goldfarb, & Russell Engler, *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517 (2011-2012) [hereinafter Maranville, et al., *Re-vision Quest*].

⁴ Chapter 5, Section F, Subsection 1, *Incorporating Experiential Education throughout the Curriculum*, above. Many of these criteria are also found in the ABA Accreditation Standards. In order to satisfy Standard 303(a)(3)'s requirement that each student complete six credit hours of experiential courses, law schools are required to offer “primarily experiential” simulation, law clinic, or externship courses that exhibit four characteristics: “[i]ntegrate doctrine, theory, skills, and legal ethics, and engage students in

in-house clinics and externships.⁵ Those sections identify the educational value-added contributed to raw experience by well-designed in-house clinics and externships. In evaluating whether a real-practice experiential offering provides a serious, value-added experiential education opportunity, it is helpful to identify what role different structural characteristics play in contributing to the educational value of in-house clinics and externships described in the previous sections and to consider the likely effects of variations from the traditional designs.

c. Key Structural Characteristics of Real Practice Experiential Offerings

Clinical legal education has always offered a wider range of models for real practice experiential courses than is suggested by the “in-house clinics and externships” typology,⁶ and by the best-practices prototypical versions of those experiential models described in the preceding sections. Experiential opportunities that vary from the models described in the previous sections typically vary on one or more of three important dimensions: Who is the teacher? What is the driving rationale behind the offering (typically a trade-off between educational and service focus)? And how do the law school and any external partners support the educational aspects of the offering? A fourth dimension — where the offering takes place — is ordinarily not significant for educational quality, except to the extent that it implies differences regarding the first three dimensions. Location may have independent educational significance in two situations: (1) if the offering is so distant from the law school that it affects students’ other educational activities because students must spend hours commuting to and from the place where the experiential offering operates, or (2) with “semester-in-practice” offerings at remote, often international, locations where effective faculty oversight is challenging.

Who: The Teacher/Supervisor. One significant way in which real-practice experiential offerings often vary is in who teaches the students and who supervises their legal work. These are important questions, because who the teacher or supervisor is may affect the quality of the students’ experience in two ways: How much expertise and skill does the teacher/supervisor have in clinical teaching methodology and supervision? How much time does the teacher/supervisor have to devote to the students?

Expertise and skill will often, though not always, accompany greater specialization: full-time, professional teachers will often have more time and oppor-

performance of [identified] professional skills, . . . (ii) develop the concepts underlying the professional skills, . . . (iii) provide multiple opportunities for performance and (iv) provide opportunities for self-evaluation.”

⁵ Chapter 5, Section F, Subsection 2, *Delivering Effective Education in In-House Clinics* and Subsection 3, *Delivering Effective Education in Externship Programs*, above.

⁶ See Working Grp. on Vocabulary, Alliance for Experiential Learning in Law, *A Glossary for Experiential Education in Law Schools*, in *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. (forthcoming 2015); Cynthia F. Adecock, et. al., *A Glossary for Experiential Education in Law Schools*, available at <http://ssrn.com/abstract=2532208>, archived at <http://perma.cc/CZ29-69DR>.

tunity to develop a familiarity with clinical teaching methodology than part-time faculty, attorneys employed by outside agencies, or volunteers. But this factor, of course, depends on the interests, temperament, and institutional support available to the individual, and whether he has the opportunity to teach an offering over a long enough period of time and to otherwise develop his expertise.

Time available to devote to teaching and supervision depends on what other professional obligations make demands on the individual's time. These may be other courses or administrative duties for a member of the faculty, work obligations owed to a non-law school employer or clients for a part-time faculty member or external supervisor. Typically, a practitioner will have less time to devote to teaching or supervising the experiential offering than a full-time faculty member. But this may not be true if the full-time teacher has very heavy teaching, administrative, or service obligations, or if a teacher not primarily employed by the law school is teaching full-time for the duration of the offering. She may teach the offering regularly, or not. He may be paid a salary — either significant or nominal.⁷ She may have a significant workload in addition to teaching the offering, or not. Each of these characteristics affects both how much time the teacher can devote to the immediate teaching enterprise — planning the course and supervising students — and how much time, interest, and incentive the teacher has for learning about and developing expertise in clinical or externship pedagogy.

Time and expertise may present trade-offs that depend on the situation. For instance, a more junior teacher/supervisor might have fewer obligations, as well as a freshness and a connection to students that come from closeness in age that make up for less expertise. Or that junior teacher may be on a unitary tenure track with demanding writing obligations that limit time available for supervision. A teacher hired in a national search may be well steeped in clinical pedagogy, but have to adjust to practice in a new jurisdiction and local practice norms, or the reverse. An expert senior teacher/supervisor may be distracted by multiple obligations or have arrived at a stage in life where he is happily returning to a primary focus on teaching after having achieved recognition and success in other arenas.

What: A Primary Focus on Education or Providing Legal Service. A second important way in which real-practice experiential offerings vary is whether they are driven primarily by a focus on education or an effort to deliver legal services, typically to address an important access to justice gap. This is often a function of funding. Offerings funded internally by the law school will typically be focused primarily on educating the students, with service an important, but secondary concern. Likewise, experiential offerings funded with external grant funding are typically driven by service concerns

⁷ On occasion, law schools use supervisors who might be termed “volunteers,” most often retired attorneys.

and the funder may well demand that the offering take on a significant volume of cases, thus necessarily taking the focus at least somewhat away from student education.

How: Contributions by the Law School or Community Partner. In addition to funding in-house clinics internally, a law school can partner with an external organization to create a clinical offering. The contributions of either the law school or any community partner to an experiential offering can vary significantly both financially and in non-monetary ways.

A central question is whether personnel from the community partner or the law school is a part of the attorney-client relationship and has the responsibility for handling the cases when the clinic is not in operation and students are not available. If law school personnel undertake case coverage responsibilities when the clinic is not in session, the law school must staff and operate a law office removing one of the potential advantages of a collaboration.

Community partners typically provide the supply of cases and they often provide space and office supplies, or allow their attorneys to teach or supervise students. The extent of their potential contribution is often limited by budgetary and workload factors. Some potential community partners operate on sufficiently limited budgets that they are not able to make significant uncompensated contributions to students' experiential education where they will not receive equivalent benefits in the form of useful work product. Yet law students typically cannot produce work product that outweighs the value of the time spent in supervision until they receive a significant amount of training. Although many attorneys enjoy supervising student legal work and teaching in the classroom, their workload may make spending significant time on these tasks challenging. On the other hand, some organizations have extra space they are happy to offer for use by the supervisor and students in an experiential offering.

The law school can make direct financial contributions to a partner organization to cover overhead costs for space and supplies or buy out the external supervisor's time. The school can fund attendance by personnel from the community organizations at national or regional conferences for clinical teachers. Or the law school can make in-kind contributions by providing space or self-insurance for malpractice. Alternatively, the law school can contribute indirectly by providing expertise to help launch or oversee an experiential opportunity. For instance, teaching clinical pedagogy to personnel from partner organizations can be an accepted aspect of the job description of a full-time clinical teacher/clinic director.

Occasionally a community partner may contribute significant supervisory time, perhaps by offering select employees the opportunity to work with students in an experiential partnership as a break from the ordinary caseload. In that circumstance, the provider may be willing to absorb the cost of their employee's salary without a buy-out from the law school, viewing it as a perk to offer to a valued employee. Typically, however, that means that the

individual teaches for a limited time period, with minimal opportunity to develop expertise around clinical teaching.

An extraordinarily gifted and devoted external supervisor — especially one with training in clinical pedagogy, or experience teaching in other contexts — can sometimes create a high-quality experiential offering, even in the absence of significant support from the law school or the external organization. But for the individual — and their organization — this involves a big investment of time on top of what is ordinarily already an intense workload. Thus, it is typically difficult both to sustain such offerings and to maintain their quality, absent a fair financial contribution by the law school.

d. Common Structural Variations for Real Practice Experiential Offerings

By varying the three structural factors identified above — teacher; educational, or service focus; and law school or community partner contributions — law schools can, and do, create experiential offerings with differing educational benefits.⁸ Seven common variations and their implications are:

- **Grant Funded In-House Clinics.** Some departures from the intensively supervised, student-focused, in-house clinic model above are driven by the demands of external funders. External organizations such as the IRS, Area Agencies on Aging, Office of Violence Against Women (VAWA) typically fund law school clinics in order to address a need for services, not because they are devoted to legal education. Thus, grant renewal may be dependent on completing a high volume of cases. Such grant-funded offerings otherwise look like the traditional in-house clinic — located at the law school and taught by a full-time employee of the law school (whether faculty member, staff attorney, or faculty member). Because they focus heavily on client service, however, they may depart from the traditional in-house clinic model characterized by small caseloads and intensive supervision of students handling cases in the role of first chair.
- **Faculty Taught and Coordinated Clinics with Additional Supervision by Individual Volunteer Attorneys or Teams of Volunteers.** A model adopted by some clinics draws on either individual volunteers or teams of volunteer attorneys both to provide specialized substantive expertise that a single faculty member may lack, and to provide additional supervision resources. This variation has gained traction particularly in the transactional area where multiple, specialized subject matter expertise may be needed.⁹ In those offerings, the volunteer teams may be composed of specialists in areas such as

⁸ When the offering involves a cohort of students performing legal work in one location — whether at the law school or elsewhere — the offering is most often referred to as a clinic. But that label does not necessarily bring with it the intensive supervision that characterizes the dominant image of an in-house clinic described in the subsection on law clinics, *Delivering Effective Education in In-House Law Clinics*, Chapter 5, Section F, Subsection 2, above.

⁹ See, e.g., the University of Washington's Entrepreneurial Law Clinic, <http://www.law.washington.edu/Clinics/Entrepreneurial/Default.aspx>, archived at <http://perma.cc/4JAL-3ZZN>.

corporate, tax, or intellectual property, and work with student teams on discrete projects. A faculty member provides additional supervision and the “glue” to hold the effort together, and teaches the classroom sessions, perhaps with selected volunteer attorneys as guests. Such efforts are typically created primarily for educational purposes. With sufficient faculty resources to support the effort, this model may provide an intensively supervised educational experience for students similar to the more traditional in-house clinic.

- **Off-Site, Faculty-Taught and -Supervised Community Partnership Clinics.** Some experiential offerings — often termed “external clinics” — are created and operated primarily for educational purposes, using a model of intensive supervision by a full-time faculty member, but operate out of the offices of an external community partner. The educational benefit of such an experience to students will be indistinguishable from a traditional in-house clinic. For the law school, however, such a partnership has the benefit of providing a stream of cases for the clinic without the need to set up an entire law office. In some cases, the arrangement may also allow the faculty member to return unfinished cases to the community partner when the clinic term ends, thus, relieving the faculty member from case coverage duties when the clinic is not operating.¹⁰
- **Off-Site, Faculty-Taught, Practitioner-Supervised Community Partnership Clinics.** In another variation, the offering divides teaching between a full-time faculty member who teaches the classroom component and one or more practitioner supervisors.¹¹ The arrangement may be one in which the faculty member teaches a specialized class small enough that case supervision can be provided by one individual. Or the class may be general in nature, focused perhaps on “the lawyering process”¹² and large enough that students are placed with several different organizations. This “dual” supervision model, of course, is a defining characteristic of externships. But in this arrangement, the clinic label is often applied because the practitioner supervises a cohort of students, as in the traditional in-house clinic, and is significantly, perhaps exclusively, focused on the educational enterprise for the term of the clinic. Often the arrangement with the practitioner-supervisor(s) is one with a greater emphasis on student education and supervisor familiarity with clinical pedagogy than characterizes the prototypical externship. The offering may, therefore, provide the intensive supervision characteristic of the traditional in-house clinic, but without the ability to connect classroom, rounds, and supervision as seamlessly as happens in unitary supervision in in-house

¹⁰ In the Alliance Glossary, both these types of external clinics and in-house clinics are grouped together under the heading of “Law Clinics,” recognizing that the similarities in the student experience outweigh the structural difference.

¹¹ This arrangement is often termed a “hybrid” clinic, but that term is also sometimes used for other variations.

¹² The Lawyering Process clinic offered by clinical education pioneer Gary Bellow at Harvard followed this model, using as supervisors experienced attorneys earning LL.M. degrees — *i.e.*, “clinical fellows” in current terminology — who were placed with community organizations and supervised a cohort of students.

clinics, where the same faculty member is doing both the teaching and the supervision.

- **Practitioner-Supervised and -Taught Community Partnership Clinics.** In another variation, both the classroom teaching and the case supervision are handled by a practitioner. Depending on the law school's arrangement with the community partner, the focus may be primarily on education¹³ or primarily on service, and the practitioner may or may not have the time and support to focus significantly on supervision, and to develop expertise around clinical pedagogy.
- **Enhanced Externships.** In some externships, the faculty supervisor takes on a more intensive supervisory role than usual by consulting on some or all of the cases and attaching the externship to a higher-credit course, perhaps including a strong substantive focus. The result may be something half-way in between an externship and an in-house clinic, but without a cohort of students supervised by one external supervisor. A variety of local conditions may drive such arrangements.
- **Field Placements Incorporated into a Law School Course.**¹⁴ Field placements may be attached to an existing or newly developed law school course. The course may draw upon student experiences in the field to shed light on the subject matter or problems addressed in the course. The faculty member may arrange the placements, or function in the role of an externship faculty teacher.

Not exhaustive, this list nonetheless gives some flavor of the possibilities and the tradeoffs inherent in different structures.

e. Best Practices for Variations on Traditional In-House Clinic and Externship Models

Given the two general best practices for experiential course variations articulated above — ensure tuition value to students and fair law school contributions — the challenge then becomes to articulate additional, specific best practices for achieving the general best practices goals.

Ideally, before sponsoring an experiential offering, law schools engage in the following three specific best practices to ensure value to students and fair law school contributions:

- Consider what the proposed or potential structure(s) of the course will provide in the way of integration of doctrine, theory, skills, values, and legal ethics, instruction on conceptual frameworks, opportunities to practice skills

¹³ To ensure an education-focused effort, the law school and the organization often enter a Memorandum of Understanding or similar agreement that frees the supervisor of other duties and designates pedagogical goals for the clinic. The law school may designate the practitioner an adjunct faculty member and buy out some of her time, so she can focus on the students.

¹⁴ This model resonates with a well-developed undergraduate education approach known as service learning. Some law schools have developed such offerings under the terminology of “practicums” or “labs.”

and receive feedback, and occasions for self-evaluation and reflection.¹⁵

- Identify specific and achievable course learning objectives in light of the resources available to support the offering.
- Include as part of the law school's contribution to the offering, a plan for
 - providing professional development support and oversight to the teacher/supervisor, as needed; and
 - periodically reviewing the structure of the course and its educational benefits to ensure that students receive sufficient value.

Life is not ideal, however, and law schools often adopt variations on experiential education models based on opportunities rather than because they make considered decisions that a proposed structure will provide specific educational benefits. For instance, a faculty member wants help with an existing volunteer effort. Funding for a project unexpectedly becomes available from a grant source. A community organization suggests a partnership to address an unmet legal need. A lawyer in the community wants to work with students. In such cases, it is especially important for the law school to mentor and monitor — provide expertise as the project is developed and engage in ongoing assessment to ensure that the experiential offering is meeting student learning needs and goals.

f. Conclusion

As law schools pursue a variety of creative structures for experiential offerings involving real supervised practice, the key challenges will be to understand what value students receive and achieve sufficiently high quality education in each offering.

¹⁵ These are, of course, the criteria for courses that will satisfy the six semester-credit experiential course requirement under ABA Standard 303(a)(3).