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The Uneasy History of Experiential Education in U.S. Law Schools

Peter A. Joy*

This article explores the history of legal education, particularly the rise of experiential learning and its importance. In the early years of legal education in the United States, law schools devalued the development of practical skills in students, and many legal educators viewed practical experience in prospective faculty as a “taint.” This article begins with a brief history of these early years and how legal education subsequently evolved with greater involvement of the American Bar Association (ABA). With involvement of the ABA came a call for greater uniformity in legal education and guidelines to help law schools establish criteria for admissions and curricula. This article also discusses the influence of the ABA Standards, particularly Standard 302, in legal education. In the latter half of the 20th century, it became clear that a legal education without any professional development or practical training was deficient. A new ABA task force dedicated to “narrowing the gap” between practitioners and professors published the MacCrate Report, detailing the skills and values law students should develop before entering the profession. Lastly, although the ABA Standards have done a great deal in fixing these deficiencies, there is still more that law schools must do on their own. This article concludes by providing suggestions for how law schools can improve legal education in three ways: 1) by making essential lawyering skills and professional values part of the core curriculum and coordinating the teaching of these lawyering skills and values through a combination of simulation, clinic, and externship courses; 2) by providing every law student with a real-life practice experience in which each student is able to assume the role

* Henry Hitchcock Professor of Law, Washington University in St. Louis School of Law. This article builds upon some ideas I have explored previously. See Peter A. Joy, *Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?*, 10 CLINICAL L. REV. 681 (2004); Peter A. Joy, *Law Schools and the Legal Profession: A Way Forward*, 47 AKRON L. REV. 177 (2014). I thank Laurel Terry for suggesting that I write this article, and for her very helpful suggestions to an initial draft.

of a lawyer; and 3) by developing their curricula to respond to legal needs for today and the future.

Experiential education in U.S. law schools has an uneasy history. Until the turn of the 20th century, most people became lawyers through “only on-the-job legal education,”¹ which was primarily through an apprenticeship with an experienced lawyer.² At its best, the apprentice training involved “close supervision of a student by his principal in real-life encounters,” but, in reality, “few apprenticeships worked out that way.”³ Even the best law offices rarely had sufficiently diverse practices to offer good, comprehensive training, and as the country matured, there was mounting pressure to improve legal training and to raise the standards of the legal profession.⁴

Aiming to improve the quality of legal education, universities increasingly began to offer law as a course of academic study starting in the 1870s.⁵ By the 1890s, law schools increasingly adopted the casebook method, which Harvard Law School appropriated and promoted,⁶ as a popular method for preparing students for a career in law.⁷ University administrators favored the casebook method as

1. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s*, 24 (1983).

2. American legal education through the nineteenth century was primarily conducted through applied skills training in the apprenticeship system, though some combined on-the-job training either with lectures at proprietary law schools or with a general education approach to law at universities and colleges. See Charles R. McManis, *The History of First Century American Legal Education: A Revisionist Perspective*, 59 WASH. U. L.Q. 597, 617–18 (1981).

3. STEVENS, *supra* note 1, at 24.

4. *Id.*

5. *Id.* at 36. After the American Revolution, there were a number of private proprietary law schools established, such as the Litchfield Law School founded in Connecticut in 1784. *Id.* at 3. From the 1820s to 1840, 12 colleges or universities had affiliated with or developed professional law schools. ALFRED Z. REED, *TRAINING FOR THE PUBLIC PROFESSION OF THE LAW*, 152 (1921). Among these was a law school in Carlisle, Pennsylvania, connected with Dickinson College. *Id.* It was not until the 1870s, however, that law started to be fully accepted as a field of university study. STEVENS, *supra* note 1, at 36.

6. In spite of popular belief, Christopher Columbus Langdell did not originate the casebook method. He did, however, successfully promote its use while he was dean of Harvard Law School from 1870–95. See JOEL SELIGMAN, *THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL* 32–42 (1978). Several years before Langdell introduced the casebook method at Harvard, John Norton Pomeroy, a professor of the University of New York City (now New York University), used a case method of instruction. See, e.g., STEVENS, *supra* note 1, at 52 n.14 (describing how other scholars confirm Pomeroy’s use of the case method prior to Langdell).

7. At first, only some elite law schools adopted the casebook method championed by Langdell, but other law schools throughout the country soon followed.

well, in part because it allowed a faculty member to teach a relatively large number of students, which enabled universities to provide a legal education to students at a relatively low cost.⁸

Just as Harvard advanced the casebook method as the structure for learning law, Harvard also certainly signaled a shift in who taught law by redefining the qualifications needed to become a law teacher. In 1873, Harvard Law School appointed James Barr Ames, who was a recent graduate, as an assistant professor of law. Christopher Columbus Langdell, Dean of Harvard Law School, urged Ames's appointment, stating: "What qualifies a person, therefore, to teach law, is not experience in the work of a lawyer's office, not experience in dealing with men, not experience in the trial or argument of cases, not experience, in short, in using law, but experience in learning law."⁹ Until Ames's appointment, law was either taught by practicing lawyers and judges for a few hours a week, or, alternatively, by some lawyers and judges who left practice after having substantial practice experience to become law teachers.¹⁰ Ames proved popular with his students, and the president of Harvard, Charles William Eliot, predicted that over time, more law professors would be those "who had never been on the bench or at the bar."¹¹

By 1894, Eliot's prediction had largely come true at Harvard, where all eight of the full-time law professors had chosen law teaching over practice, and many other Harvard Law School graduates were teaching elsewhere.¹² In 1901, "Ames estimated that 'about

See STEVENS, *supra* note 1, at 60–63. "By the beginning of the twentieth century, then, the case method, although far from unanimously approved, was recognized as *the* innovation in legal education." *Id.* at 63.

8. *Id.* Tuition, and tuition hikes, at least in modern times, have less to do with the costs of providing an education and often more to do with a perception of quality, and resulting supply and demand. Henry E. Riggs, *The Price of Perception*, N.Y. TIMES (Apr. 13, 2011), <http://www.nytimes.com/2011/04/17/education/edlife/edl-17notebook-t.html>. Henry Riggs, President Emeritus of Harvey Mudd College, maintained that higher education tuition is a "marketing, not a cost accounting, decision." *Id.* According to Riggs, universities price tuition at or slightly above the best in an effort to signal higher quality, and "[w]annabes price themselves accordingly." *Id.* Applying Riggs's analysis of university tuition pricing to law schools, Brian Tamanaha agrees with Riggs and maintains: "Law schools have raised their tuition to obscene levels because they can." BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 130 (2012).

9. SELIGMAN, *supra* note 6, at 37 (quoting Christopher Langdell).

10. STEVENS, *supra* note 1, at 38.

11. *Id.* (citing material in ARTHUR SUTHERLAND, *THE LAW AT HARVARD*, 184 (1967)).

12. BRUCE A. KIMBALL, *THE "TRUE PROFESSIONAL IDEAL" IN AMERICA* 290 (Rowman & Littlefield 1995) (1992).

one-fourth of the law professors of this country give themselves wholly to the duties of their professorships.’”¹³

Eliot’s prediction of a law professoriate with little to no practice experience has essentially come to fruition in the United States. A study published in 2003 found that new law professors at “top 25 schools” had an average of 1.4 years of legal practice experience, new law professors at all other schools had 3.8 years of practice experience, and approximately 15 percent had no legal practice experience.¹⁴ Indeed, current law professors at Harvard and elsewhere often advise law students thinking of entering into law teaching against gaining law practice experience for fear that “a taint” may attach to these aspiring law professors.¹⁵

Undoubtedly, both the casebook method, which focuses on analyzing appellate decisions, and law professors, with little or no practice experience, created conditions in which, from the inception of university-based legal education in the late 1800s, law schools devalued experiential education. As a result, law schools did not typically require any experiential education, such as simulation courses, in-house clinical courses, or externships¹⁶ until 2010, which

13. *Id.* (quoting JAMES B. AMES, *The Vocation of the Law Professor*, in LECTURES ON LEGAL HISTORY AND MISCELLANEOUS LEGAL ESSAYS 360, 360–62 (1913)). In 1929, one lawyer stated that law teaching was “becoming a cloistered profession, closed to the active practitioner who is frequently regarded with suspicion if not contempt.” Edward T. Lee, *In Re The Section of Legal Education and The American Bar Association: Is the Association to Be Controlled by a Bloc?* 14 (1929) (on file with author).

14. Richard E. Redding, “Where Did You Go to Law School?” *Gatekeeping for the Professoriate and Its Implications for Legal Education*, 53 J. LEGAL EDUC. 594, 601 tbl. 3 (2003).

15. *See, e.g.*, David P. Bryden, *Scholarship About Scholarship*, 63 U. COLO. L. REV. 641, 642–43 (1992) (reporting that a graduate of Harvard Law School with Supreme Court clerk experience stated that several Harvard faculty advised against gaining practice experience because it would give her “a taint”); Patrick J. Schlitz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 762 n.225 (1998) (citing Bryden, *supra*, at 642–43) (stating that it is the experience of many that “the Harvard faculty are not alone in considering practical experience as giving a hopeful academic ‘a taint’”).

16. Simulation courses put students in role as lawyers using a simulated case file or part of a case file to perform one or more lawyering tasks on behalf of a client. *See, e.g.*, Paul S. Ferber, *Adult Learning Theory and Simulations – Designing Simulations to Educate Lawyers*, 9 CLINICAL L. REV. 417, 418–19 (2002) (describing simulation pedagogy). An in-house clinic is a law office, usually inside the law school, in which students supervised by faculty provide legal services to actual clients. Elliott S. Milstein, *Clinical Legal Education in the United States: In-house Clinics, Externships, and Simulations*, 51 J. LEGAL EDUC. 375, 376 (2001). An externship is a placement external to the law school with a governmental or nongovernmental office in which the student assists in the provision of legal services. *Id.* Externships are also known as field placements. Today, the American

was when the American Bar Association (ABA) began requiring law schools to provide each law student with minimal experiential education of at least one credit.¹⁷ Even with the current experiential education requirement of one or more courses totaling at least six credit hours,¹⁸ which was adopted in 2014,¹⁹ legal education is distinct from other types of professional education that typically requires one quarter to one half of required credits through experiential education.²⁰

The de-emphasis on experiential education in U.S. law schools is a curious phenomenon, especially when coupled with the lack of a practice requirement or clerkship before one is fully qualified to practice law, as is found in other common law countries such as Australia, Canada, or the United Kingdom.²¹ The historical de-emphasis on experiential education in U.S. law schools raises two questions this article seeks to answer: First, how did legal education in the U.S. develop from primarily an apprenticeship education to a law school based education with minimal experiential education required? Second, how have the experiential education requirements in U.S. law schools evolved?

This article begins in Part I by analyzing the history of ABA involvement in legal education leading up to the first mention of experiential education in ABA accreditation standards. Next, Part II traces the development of the experiential education requirement in the ABA accreditation standards, paying particular attention to how the experiential education requirement has evolved from something law schools should offer to something law schools

Bar Association (ABA) defines simulation courses, law clinics, and field placements, for accreditation purposes, as courses. *See* AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017–2018, Standards 303(a) and 304 [hereinafter 2017–2018 ABA STANDARDS].

17. *See infra* notes 137–39 and accompanying text.

18. “A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following . . . one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, law clinic, or a field placement.” 2017–2018 ABA STANDARDS, *supra* note 16, at Standard 303(a)(3).

19. *See infra* notes 151–52 and accompanying text.

20. *See, e.g.*, Peter A. Joy, *Law Schools and the Legal Profession: A Way Forward*, 47 AKRON L. REV. 117, 196 (2014) (discussing the more extensive experiential education requirements for other professional schools such as architecture, medical, pharmacy, social work, education, and veterinary schools).

21. *See, e.g.*, Daniel R. Hansen, Note, *Do We Need the Bar Examination? A Critical Evaluation of The Justifications for the Bar Examination and Proposed Alternatives*, 45 CASE W. RES. L. REV. 1191, 1222–28 (1995) (describing the practice requirement before one becomes fully qualified to practice law in Australia, Canada, and the United Kingdom).

must require. Finally, this article concludes with some suggestions for the future of experiential education in law schools.

I. A BRIEF HISTORY OF THE ABA INVOLVEMENT IN LEGAL EDUCATION

In 1878, around the same time that law schools were gaining hold in the United States, the ABA was founded.²² One of the first seven committees in the ABA Constitution was the Committee on Legal Education and Admissions to the Bar (“Committee”).²³ At the first ABA Annual Meeting, the ABA charged the Committee with recommending “some plan for assimilating throughout the Union, the requirements for candidates for admission to the bar” by the second Annual Meeting.²⁴ At the second Annual Meeting, the Committee recommended mandatory instruction in 13 fields of law²⁵ and completion of a course of law study for three years as qualifications for examination to be admitted to the bar.²⁶ After debate on these and other recommendations, the ABA tabled these resolutions.²⁷ Nothing in the recommended course of study addressed lawyering skills and experiential education.²⁸

22. EDSON R. SUNDERLAND, HISTORY OF THE AMERICAN BAR ASSOCIATION AND ITS WORK 3–6 (1953).

23. *Id.* at 7.

24. 1 ANN. REP. A.B.A. 26 (1878).

25. In its 1878 report, the Committee recommended instruction in at least the following areas:

I. Moral and Political Philosophy.

II. The Elementary and Constitutional Principles of the Municipal Law of England; and herein: —

1st. Of the Feudal Law.

2d. The Institutes of the Municipal Law generally;

3d. The origin and progress of the Common Law.

III. The Law of Real Rights and Real Remedies.

IV. The Law of Personal Rights and Personal Remedies.

V. The Law of Equity.

VI. The Lex Mercatoria.

VII. The Law of Crimes and their Punishments.

VIII. The Law of Nations.

IX. The Admiralty and Maritime Law.

X. The Civil and Roman Law.

XI. The Constitution and Laws of the United States of America, and herein the jurisdiction and practice of the Courts of the United States.

XII. Comparative Jurisprudence; and the Constitution and Laws of the Several States of the Union.

XIII. Political Economy.

2 ANN. REP. A.B.A. 235–36 (1879).

26. *See id.* at 236.

27. *See id.* at 14–15.

28. *See supra* note 25.

The following year, the Committee amended and resubmitted its proposals, adding recommendations calling for reciprocity of admission for lawyers who had practiced at least three years in any state, state financial support for law schools, and the requirement of a law school diploma for admission to practice law.²⁹ The ABA tabled the resolutions calling for reciprocity of admission, the prescribed course of study, and the requirement for a course of study consisting of three years.³⁰ After amending the original proposal, the ABA adopted a resolution recommending that states should financially support law schools.³¹

The Committee once again amended and resubmitted the tabled resolutions at the fourth ABA Annual Meeting in 1881, and the ABA unanimously passed all three resolutions submitted by the Committee.³² The adopted resolutions provided for a three-year course of study in law “under an adequate number of professors,” that graduation from the three-year course of study and passage of a bar examination “ought to entitle the recipient to admission to the Bar as an attorney-at-law,” and “time spent in any chartered and properly conducted law school, ought to be counted in any state as equivalent to the same time spent in an attorney’s office in such state, in computing the period of study prescribed for applicants for admission to the Bar.”³³ By equating the time spent in law school classrooms with the time required in law office practice apprenticeships, the ABA resolution served to advance law school education over apprenticeship training.

The ABA’s interest in standards for entrance into the legal profession was directly related to the general attack on the legal profession that had occurred primarily from 1836–1870.³⁴ During this time, there was a movement in many states “admitting every one freely [to the practice of law] irrespective of education and pro-

29. See 3 ANN. REP. A.B.A. 13–14 (1890).

30. See *id.* at 14–40.

31. The minutes of the general proceedings do not restate the resolution as amended, though the minutes provide a copy of the original resolution, the amendment, and a record of the vote on the amended resolution. See *id.* at 13, 40, 44. By piecing the action together, the resulting resolution stated: that the several states and local Bar Associations be respectfully requested to recommend and further the maintenance of schools of law. See *id.*

32. See 4 ABA REPORTS 28–30 (1881).

33. *Id.* at 28.

34. Roscoe Pound describes this as “The Era of Decadence,” which he characterized as “The Breakdown of Organization, Education and Professional Training.” ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 223 (1953).

fessional training.”³⁵ Some states, such as Maine, New Hampshire, and Wisconsin, abolished all educational requirements in the 1840s.³⁶ In 1850, Michigan adopted a constitutional provision granting litigants the right to choose anyone to represent them, and Indiana adopted a constitutional amendment granting any person of “good moral character” the right to practice law in 1850.³⁷ Opening the practice of law to all served to deprofessionalize the practice of law, and directly threatened the social and economic standing of lawyers.³⁸ The ABA responded by imposing educational requirements that made entrance into the legal profession more time-consuming and costly, which in turn shored up the status of lawyers by restricting entrance to the legal profession.³⁹

Noticeably, the ABA’s project to tighten bar admission standards began to bear fruit in the 1880s. The leadership of the ABA continued to push states to require three years of law school, bar examinations, and a required apprenticeship, at least part of which could be replaced by law school.⁴⁰ The ABA made progress with these goals, and 29 of 39 states required some period of formal study or apprenticeship by 1890.⁴¹ From 1870 to 1890, states also began adopting the committee system for examining bar applicants, and written bar examinations started to become the norm.⁴²

The ABA had established its first section in 1893, which was the Section of Legal Education (“Section”),⁴³ and the ABA continued to focus its efforts on requiring formal legal education for admission to the bar into the early 1900s.⁴⁴ In 1900, the Section invited delegates from 35 law schools to a meeting, and the dele-

35. *Id.* at 225.

36. *See id.* at 231.

37. *Id.* at 225–26.

38. *See id.* at 232–33.

39. Requiring at least part of legal training to take place in law school was part of the effort to raise standards to make lawyers more competent and membership in the legal profession more exclusive. *See* STEVENS, *supra* note 1, at 24. These new requirements had the effect of excluding many immigrants and their children from admission to law schools. RICHARD L. ABEL, *AMERICAN LAWYERS*, 85 (1989). These barriers were added to those that many universities already had in place to discriminate against religious and ethnic minorities. *Id.* Some law schools continued to refuse admission of persons of color or women well into the latter half of the 20th century. *Id.* at 90, 100–01.

40. STEVENS, *supra* note 1, at 25.

41. *Id.*

42. *Id.*

43. SUNDERLAND, *supra* note 22, at 74. There is a book about the Section of Legal Education and Admissions to the Bar. SUSAN K. BOYD, *THE ABA’S FIRST SECTION: ASSURING A QUALIFIED BAR* (1993).

44. STEVENS, *supra* note 1, at 96–100.

gates formed the Association of American Law Schools (AALS).⁴⁵ By doing so, the ABA formed an alliance with law schools and law professors. To become a member of the AALS, a law school was required to restrict admission to students with a high school or equivalent education, require ten hours of instruction per week for at least two years (later raised to three years in 1905), graduate students only after they passed an examination, and have a library containing the reports of the state where the school was located and reports of the U.S. Supreme Court.⁴⁶ Although these AALS membership requirements were not required by the ABA or designed pursuant to any type of accreditation standards, the membership requirements encouraged greater conformity among law schools striving to belong to the AALS and essentially served an accreditation function.⁴⁷

During the early 20th century, some in the ABA were clearly having doubts about whether a law school education without any experiential or practical experience requirements should be the principal pathway to becoming a lawyer. At the 1909 ABA Annual Meeting, a member of the New York Board of Bar Examiners stated that “his state had made a ‘grievous error’ in allowing students to take the bar examination without serving sometime in a clerkship.”⁴⁸ This concern was shared by others, and in 1910, the Section recommended that students complete a mandatory one-year clerkship after finishing three years of law school.⁴⁹ The Section asked the AALS in 1910 and in 1913 to support this resolution, and the AALS declined.⁵⁰ Speaking against the resolution, one law school dean stated:

If the law schools do not teach the general principles of practice, that is the fault of the law schools. The student should not be penalized by another year’s postponement of his getting out in to the real world, besides which, anyone who has had a personal experience knows that more practice work can be taught in a law

45. Warren A. Seavey, *The Association of American Law Schools in Retrospect*, 3 J. LEGAL EDUC. 153, 157 (1950).

46. *Id.* at 157–58.

47. The AALS has viewed its membership requirements as serving an accreditation function. Harry First, *Competition in the Legal Education Industry (I)*, 53 N.Y.U. L. REV. 311, 329 n.93 (1978). The AALS even applied for recognition as an accrediting agency in 1969, but its request was denied. *Id.*

48. STEVENS, *supra* note 1, at 119–120. In some jurisdictions, such as New York, the period of apprenticeship was called a clerkship.

49. *Id.* at 120.

50. *Id.*

school in one winter than can be picked up by the ordinary law student in a law office in two or three years.⁵¹

As this dean's remark indicates, at least some legal academics of that era thought very little of law office practice experience.

As a result of a law school curriculum focused primarily on the casebook method and law schools in turn devaluing law practice experience for law faculty, a chasm developed between law schools and the legal profession. Some critics of this chasm started to speak out, calling for some practical training. Commenting on law school education in 1917, William Rowe, an early proponent of clinical legal education, noted how law schools "lagged behind all other professions . . . in this matter of providing systematic and experienced clinical and practical instruction"⁵² In 1921, a Carnegie Foundation for the Advancement of Teaching-funded study of legal education echoed the need for practical skills training in law schools by stating: "The failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly."⁵³ In spite of these calls for more experiential legal education, legal education became entrenched in a decidedly non-experiential mode with few exceptions until the latter half of the 20th century.⁵⁴

In 1917, the same year that Rowe voiced his critique of law schools, the ABA created the Council of Legal Education and Admission to the Bar ("Council"), and repealed the bylaw which had established the Committee of Legal Education and Admission to the Bar.⁵⁵ That same year, and before it was abolished, the Committee recommended rules for admission to the bar, which included the requirement of graduation from a law school.⁵⁶ The ABA

51. Lucien Hugh Alexander, *Standards for Admission to the Bar*, 3 AM. L. SCH. REV. 462, 477 (1914).

52. William V. Rowe, *Legal Clinics and Better Trained Lawyers— A Necessity*, 9 ILL. L. REV. 591, 596 (1917).

53. REED, *supra* note 5, at 281.

54. See *infra* notes 64–65 and accompanying text.

55. 40 ANN. REP. A.B.A. 90–95 (1917); see also SUNDERLAND, *supra* note 22, at 143–44. All of the persons who had been on the Committee were appointed to the Council. *Id.* at 144.

56. The proposal stated:

Every applicant should be required to have successfully completed the prescribed course of instruction and passed the examinations of a law school, approved by the board, which requires for the completion of its course not less than three years of resident attendance during the day time, or not less than four years of resident attendance if a substantial part or all of the exercises of the school are in the evening.

40 ANN. REP. A.B.A., *supra* note 55, at 50. The proposal also required U.S. citizenship and citizenship in the state where the person intended to practice, charac-

delayed consideration of the recommended admission rules until the next ABA meeting.⁵⁷ At the 1918 Annual Meeting, the Council of Legal Education presented rules for admission to practice, including the requirement of a bar examination.⁵⁸ The Council also proposed that law schools require at least two years of college for applicants to be recognized as “first class” law schools.⁵⁹ The ABA delegates voted to adopt both the law school entrance requirement of at least two years of college and the requirement of a bar examination for admission to practice.⁶⁰

The ABA resumed its push for standards for law schools at the ABA Annual Meeting in 1921, which was when the ABA adopted a Council resolution containing four standards for law schools: at least two years of college study for admission, three years of full-time or four years of part-time study, an adequate law library, and sufficient full-time faculty to “ensure actual personal acquaintance and influence with the whole student body.”⁶¹ None of these standards addressed the content of the curriculum, and, therefore, none of the original standards mentioned experiential education as being necessary for a sound legal education.

In order to determine if law schools were complying with the standards, the ABA adopted a rule in 1926 requiring the Council to inspect law schools, which included a personal visit to the law

ter and fitness examinations, various requirements for bar examiners, reciprocity for admissions to practice in other states, comity for reciprocal admissions, and other matters regulating technical aspects of bar admissions. *See id.* at 49–50.

57. *Id.* at 90–95.

58. *See* 41 ANN. REP. ABA 72–75 (1918). The proposal that law schools require at least two years of college for applicants essentially functioned as the first accreditation standard.

59. *Id.*

60. *Id.*

61. The ABA adopted the following resolution:

(1) The American Bar Association is of the opinion that every candidate for admission to the Bar shall give evidence of graduation from a law school complying with the following standards:

(a) It shall require as a condition of admission at least two years of study in a college.

(b) It shall require its students to pursue a course of three years' duration if they devote substantially all of their working time to their studies, and a longer course, equivalent in the number of working hours, if they devote only a part of their working time to their studies.

(c) It shall supply an adequate library available for the use of the students.

(d) It shall have among its teachers a sufficient number giving their entire time to the school to insure actual personal acquaintance and influence upon the whole student body.

44 ANN. REP. A.B.A. 38–47 (1921).

school by a representative of the Council.⁶² By 1930, the Council approved 67 of 80 full-time law schools and only seven of 98 part-time schools.⁶³

Although the ABA did not require law schools to offer any experiential education, this type of education existed. Law students at several law schools in the late 1890s and early 1900s established volunteer “legal dispensaries” or legal aid bureaus, which provided actual practice experience.⁶⁴ In addition to Rowe, early proponents for practical skills training as part of the law school curriculum included John Bradway, Jerome Frank, and Karl Llewellyn, who were active in this area from the 1920s through the 1940s. Bradway pioneered law school clinics at the University of Southern California in 1929 and went on to do the same at Duke University starting in 1931.⁶⁵ Jerome Frank famously advocated for “clinical law schools.”⁶⁶ Llewellyn was the primary author of a report for the AALS that stated the “current case-instruction is somehow failing to do the job of producing reliable professional competence on the by-product side in half or more of our end-product, our graduates.”⁶⁷

In spite of these isolated efforts to develop experiential education and the existing critiques of the casebook method, by the late

62. See SUNDERLAND, *supra* note 22, at 146–47. The initial recommendation for the Council to inspect law schools came in 1917, the same year the ABA created the Council, but the Council lacked the funding to conduct the law school inspections. BOYD, *supra* note 43, at 22.

63. SUNDERLAND, *supra* note 22, at 147.

64. In the 1890s and early 1900s, law students established volunteer legal aid bureaus at law schools such as Cincinnati, University of Denver, George Washington, Harvard, Minnesota, Northwestern, University of Pennsylvania, University of Tennessee, and Yale. See John S. Bradway, *The Nature of the Legal Aid Clinic*, 3 S. CAL. L. REV. 173, 174 (1930); Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099, 1102–03 (1997); Rowe, *supra* note 52, at 591.

65. John M. Lindsey, *John Saeger Bradway—The Tireless Pioneer of Clinical Education*, 4 OKLA. CITY U. L. REV. 1, 2 (1979). Bradway also wrote several important early law review articles about clinical legal education. See generally John S. Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252 (1929); John S. Bradway, *The Legal Aid Clinic as an Educational Device*, 7 AM. L. SCH. REV. 1153 (1934); John S. Bradway, *Legal Aid Clinic as a Law School Course*, 3 S. CAL. L. REV. 320 (1930); John S. Bradway, *Legal Aid Clinics in Less Thickly Populated Communities*, 30 MICH. L. REV. 905 (1932); Bradway, *supra* note 64; John S. Bradway, *The Objectives of Legal Aid Clinic Work*, 24 WASH. U. L. Q. 173 (1939).

66. Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); Jerome Frank, *Why Not a Clinical-Lawyer School?*, 81 U. PA. L. REV. 907 (1933).

67. AALS Proceedings 168 (1944), *quoted in* Stevens, *supra* note 1, at 214.

1950s, only a small number of law schools had clinical programs,⁶⁸ though some law schools experimented with lawyering skills training primarily through student activities and simulation courses focusing on various lawyering skills. At many law schools, moot courts played an important role in providing law students with some exposure to practice, albeit in a simulated fashion. For example, as early as the 1890s, moot courts were important at Dickinson School of Law, where two evenings a week, students prepared briefs and argued cases.⁶⁹ In addition to moot courts, some schools had simulation courses such as trial practice, drafting, or counseling seminars.⁷⁰

The ABA continued a very minimalist approach toward creating standards for the first part of the 20th century, and law schools were largely left to define their curricula as they saw fit. The four standards adopted in 1921 remained in effect, and, in 1929, the ABA added a fifth standard that provided: “Law schools shall not be operated as commercial enterprises, and the compensation of any officer or member of its teaching staff shall not be depend on the number of students or on the fees received.”⁷¹ In 1938, the ABA added a sixth standard, which required that an ABA-approved law school “possesses reasonably adequate facilities and maintains a sound educational policy.”⁷² Eventually, in 1950, the standard that had previously required two years of acceptable col-

68. Quintin Johnstone identified 28 clinics run by law schools, independent legal societies, or public defender offices. Quintin Johnstone, *Law School Clinics*, 3 J. LEGAL EDUC. 535, 535 (1951).

69. Editorial, *About the Moot Court*, 1 FORUM 121, 121 (1897) (describing the important role of the moot court at The Dickinson School of Law).

70. Johnstone, *supra* note 68, at 548–52.

71. ALFRED Z. REED, REVIEW OF LEGAL EDUCATION IN THE UNITED STATES AND CANADA FOR THE YEAR 1930 63 n.2 (1931). The standard preventing for-profit law schools from being accredited was repealed after the U.S. Justice Department successfully sued the ABA for antitrust violations. Press Release, Dep’t of Justice, Justice Department and American Bar Association Resolve Charges that the ABA’s Process for Accrediting Law Schools Was Misused (June 27, 1995), https://www.justice.gov/archive/atr/public/press_releases/1995/0257.htm. In 1996, the District Court for the District of Columbia entered an order prohibiting the ABA from “adopting or enforcing any Standard, Interpretation or Rule, or taking any action that has the purpose or effect of prohibiting a law school from . . . being an institution organized as a for-profit entity.” *United States v. Am. Bar Ass’n*, 934 F. Supp. 435, 436 (D.D.C. 1996).

72. 63 ANN. REP. A.B.A. 161–63 (1938). In its entirety, the new standard provided: “It shall be a school which in the judgment of the Council of Legal Education and Admissions to the Bar possesses reasonably adequate facilities and maintains a sound educational policy; provided, however, that any decision by the Council in these respects shall be subject to review by the House of Delegates on petition of any school adversely affected.” *Id.*

lege work for admission to law school was changed to require at least three years of acceptable college work.⁷³

By 1940, the ABA started publishing factors related to the standards to assist the Council and law schools to determine if a law school met the minimum requirements of the standards.⁷⁴ Initially, the ABA published a list of 15 factors, and two of the factors addressed teaching methods and the curriculum. The factor addressing teaching methods stated that the ABA

does not desire to require any one method of presentation of legal materials . . . [though] it may be said that teaching in approved schools is based fundamentally but not exclusively on the case method, and participation by the students in classroom discussion is a usual and desirable method of stimulating interest and work.⁷⁵

73. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION: FACTORS BEARING ON THE APPROVAL OF LAW SCHOOLS 1-2, 2 n.1 (1969) [hereinafter 1969 ABA STANDARDS AND FACTORS].

74. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR AMERICAN BAR, STANDARDS OF THE AMERICAN BAR ASSOCIATION FOR LEGAL EDUCATION: FACTORS BEARING ON THE APPROVAL OF LAW SCHOOLS BY THE AMERICAN BAR ASSOCIATION 2-3 (1940). The Council of Legal Education and Admissions to the Bar explained:

In order to fulfill adequately its responsibilities the Council has made a careful reappraisal of the factors to be taken into consideration in approving law schools, and for its own guidance and that of schools applying for approval, it has listed these factors with some explanation where that is needed. The Standards set forth certain minimum requirements which must be met in all cases. In addition, the Council has set forth some requirements which it regards as essential. A school which meets these requirements will then be judged in reference to the picture which it presents as a whole. The general component parts of the picture are grouped in the following outline under these headings:

1. Connection with a recognized university.
2. Financial condition of the school.
3. Physical plant.
4. Library content and administration.
5. Admission requirements.
6. Administrative and teaching personnel.
7. Teaching methods.
8. Curriculum.
9. Scholarship standards.
10. Degree requirements.
11. Availability and completeness of records.
12. Quality and characteristics of student body.
13. Additional means and methods of law training.
14. Bar examination success of graduates.
15. Administrative policies.

Id.

75. *Id.* at 10.

The curriculum factor stated that the ABA “makes no attempt to dictate the law school curriculum,” and limited its terms to requiring a three-year program of full-time study or its equivalent for part-time study, the number of weeks of study, and minimum course loads.⁷⁶

A third new factor, under the heading “Additional Means and Methods of Law Training,” stated that in addition to the regular courses in the curriculum, some schools “make a definite effort to bring their students into contact with practicing lawyers during the period of their law school course.”⁷⁷ The factor stated: “What a school does along these lines may be an important indication as to its progressiveness,” and it listed the following activities to be inquired into: 1) law review, 2) legal aid clinic, 3) law clubs, 4) student bar association, 5) student briefing service, 6) part-time law clerk service to judiciary, 7) sponsorship or apprenticeship system, and 8) tutorial system.⁷⁸

As the list demonstrates, experiential learning opportunities were among the outside of the classroom “additional means of law training” identified in the new factor bearing on the approval of law schools. For example, the “Legal Aid Clinic,” was a reference to what are now considered in-house and externship clinical programs,⁷⁹ and “Part-time law clerk service to judiciary” most likely refers to what is similar to a judicial externship program.

By 1969, the list of factors bearing on the approval of law schools had grown to 20.⁸⁰ Three of the factors not in place in 1940 addressed the following procedural issues: mergers of law schools and law schools opening new divisions, such as a new graduate degree;⁸¹ securing ABA-approval;⁸² and removal from the list of approved law schools.⁸³ Another newer factor was the need for legal education in the community, which was expressed as “whether a genuine need exists for the educational opportunities offered by the applicant law school.”⁸⁴ The final newer factor stressed the desira-

76. *Id.* at 10–11.

77. *Id.* at 14.

78. *Id.*

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

80. 1969 ABA STANDARDS AND FACTORS, *supra* note 73, at 3–4.

81. *Id.* at 19.

82. *Id.* at 19–20.

83. *Id.* at 21.

84. *Id.* at 19. The ABA explained: “It has no desire to encourage new law schools, or the addition of new part-time or full-time programs by existing law schools, where present facilities are already adequate to meet the needs of the foreseeable future.” *Id.*

bility of exceeding the minimum requirements set forth in the Standards and Factors.⁸⁵ Thus, none of the newer factors addressed experiential education.

From 1971 to 1973, the Council of the Section of Legal Education and Admissions to the Bar focused more attention on developing law school accreditation standards.⁸⁶ It prepared drafts of new proposed standards, held public hearings on the proposed standards, and the ABA House of Delegates adopted a number of more detailed standards at the 1973 ABA Mid-Year Meeting.⁸⁷ During this 1973 meeting, the ABA adopted a new numbering system for its 52 standards, which were more than eight times the number of standards that had been in place since 1938.⁸⁸

The 1973 ABA Standards paid much more attention to the educational program in law schools,⁸⁹ and, for the first time, explicitly mentioned "professional skills."⁹⁰ The ABA revised Standard 302(a)(iii) to state: "The law school shall offer . . . (iii) training in professional skills, such as counseling, the drafting of legal documents and materials, and trial and appellate advocacy."⁹¹

Attention to professional skills in the ABA Standards came on the heels of law schools offering more lawyering skills and clinical courses after the "realization that there were important skills other than those inculcated by the case method."⁹² So, on the one-hundredth anniversary of Harvard hiring its first full-time professor

85. *Id.* at 20–21.

86. See Henry Ramsey, Jr., *The History, Organization, and Accomplishments of the American Bar Association Accreditation Process*, 30 WAKE FOREST L. REV. 267, 268 (1995). A drafting committee began working on the new standards in 1969, and the ABA distributed a first draft of the standards to deans, chief justices, bar examiners, and members of the Section in 1971. See *id.*

87. *Id.*

88. See generally, AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, APPROVAL OF LAW SCHOOLS: AMERICAN BAR ASSOCIATION STANDARDS AND RULES OF PROCEDURE (1973) [hereinafter 1973 ABA STANDARDS].

89. The 1973 ABA Standards included seven standards addressing issues of the educational program. *Id.* at Standards 301–307.

90. The new standard stated, in pertinent part:

(a) The law school shall offer:

- (i) instruction in those subjects generally regarded as the core of the law school curriculum,
- (ii) Training in professional skills, such as counseling, the drafting of legal documents and materials, and trial and appellate advocacy,
- (iii) and provide and require for all student candidates for a professional degree, instruction in the duties and responsibilities of the legal profession.

Id. at Standard 302.

91. *Id.* at Standard 302(a)(iii).

92. STEVENS, *supra* note 1, at 212.

with little practice experience, the ABA was stepping in to tell law schools that they should offer law students courses in lawyering skills. The next part of this article will examine how the ABA Standards evolved from the first mention of lawyering skills into the current experiential course requirement.

II. EVOLUTION OF THE EXPERIENTIAL EDUCATION REQUIREMENT IN U.S. LAW SCHOOLS

A. *Including Experiential Courses in the Curriculum*

The march from first mentioning professional skills as part of the law school curriculum to requiring experiential education was a long journey, and came after critical examinations of legal education both at a number of law schools and by the legal profession. Robert Stevens, a historian of legal education in the United States, reports that by the late 1960s “[c]oncern with skills training was evident among an increasing number of schools.”⁹³ In 1973, former Chief Justice Warren Burger famously observed that “from one-third to one-half of the lawyers who appear in the serious cases are not really qualified to render fully adequate representation.”⁹⁴ Burger noted that the “medical profession does not try to teach surgery simply with books.”⁹⁵ He called for law schools to expand their curricula to provide more lawyering skills training, stating: “The law school . . . is where the groundwork must be laid.”⁹⁶ Coinciding with the publication of Burger’s remarks in 1973, the ABA revised the Standards to include references to professional skills in Standard 302(a)(iii),⁹⁷ and, for the first time, the ABA Standards also explicitly mentioned “clinical work.”⁹⁸

93. *Id.* at 213.

94. Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 *FORDHAM L. REV.* 227, 234 (1973).

95. *Id.* at 232.

96. *Id.* at 233.

97. The revised Standard 302(a)(iii) stated: “The law school shall offer . . . (iii) training in professional skills, such as counseling, the drafting of legal documents and materials, and trial and appellate advocacy.” 1973 ABA STANDARDS, *supra* note 88, at Standard 302(a)(iii).

98. The new ABA Standard stated:

(b) The scholastic achievement of students shall be evaluated from the inception of their studies. As part of the testing of scholastic achievement, a written examination of suitable length and complexity shall be required in every course for which credit is given, *except clinical work*, courses involving extensive written work such as moot court, practice court, legal writing and drafting, and seminars and individual research projects.

Id. at Standard 304(b) (emphasis supplied).

The references to professional skills and clinical work did not change in the Standards for several years, but, in 1978, the ABA published interpretations of the Standards for the first time.⁹⁹ Regarding training in professional skills, one interpretation provided “that a law student requesting enrollment in an advocacy course” need not be guaranteed enrollment, but “merely that the law school shall offer training in the professional skills.”¹⁰⁰ Another interpretation provided that the decision over which professional skills a law school offered “is left to the individual schools.”¹⁰¹

In 1981, there was a slight change in the standard relating to professional skills. Instead of stating, as Standard 302 had starting in 1973, that “[t]he law school shall offer . . . (iii) Training in professional skills, such as counseling, the drafting of legal documents and materials, and trial and appellate advocacy,”¹⁰² Standard 302 was changed to state: “The law school shall . . . (iii) offer instruction in professional skills.”¹⁰³ Thus, the revised standard removed reference to any particular lawyering skills as examples.

The revised Standards in 1981 also included two new interpretations. The first, dated May 1980, stated: “A law school’s failure to offer adequate training in professional skills, whether through clinics or otherwise, violates Standard 302(a)(iii).”¹⁰⁴ This signaled that law schools failing to offer sufficient professional skills courses would be out of compliance with the ABA Standards. The second new interpretation, adopted in August 1981, encouraged law schools “to be creative in developing programs of instruction in skills,” and noted that “[t]houghtful professional studies have urged that trial and appellate advocacy, counseling, interviewing, negotiating, and drafting be included in such programs.”¹⁰⁵

99. See Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Deans of ABA Approved Law Schools (Feb. 1, 1978), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/1978_standards.authcheckdam.pdf.

100. *Id.* at 10.

101. Interpretation 2 of 302(a)(ii) provided, in pertinent part: “This section requires training in professional skills. To which of the many professional skills the curriculum with give special attention is left to the individual schools. Therefore, it is incorrect to say that this Standard requires an approved school to offer a course in Trial Practice.” *Id.* at 10.

102. 1973 ABA STANDARDS, *supra* note 88, at Standard 302(a)(ii).

103. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR THE APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, Standard 302(a)(iii) (Aug. 1981) [hereinafter 1981 ABA STANDARDS].

104. *Id.* at Interpretation 2 of 302(a)(iii).

105. The two new interpretations provided, in their entirety:

The “thoughtful professional studies” alluded to in this 1981 interpretation were most likely those conducted by some courts and the ABA. For example, in 1975, the Second Circuit formed a committee that found “a lack of competency in trial advocacy in the Federal Courts,” and the committee recommended that law schools teach trial skills.¹⁰⁶ A committee of the United States Judicial Conference reached similar findings and conclusions in 1979.¹⁰⁷ In 1979, an ABA task force on lawyer competency chimed in, recommending that law schools “should provide all students instruction in such fundamental skills as: oral communication, interviewing, counseling, and negotiation. Law Schools should also offer instruction in litigation skills to all students desiring it.”¹⁰⁸

In the face of these reports, and in light of the ABA’s more detailed regulation of the content of law school curricula, law schools expanded their experiential education offerings through more simulations, clinics, and externships. In a 1974–1975 survey, 109 law schools reported offering 834 courses.¹⁰⁹ Fifteen years later, in 1990, a survey of 119 law schools found 1,763 courses.¹¹⁰ While the number of courses offered by 1990 appears impressive, data from an ABA questionnaire in 1990–1991 showed “that professional skills training occupies only nine (9%) percent of the total

Interpretation of 302(a)(iii): A law school’s failure to offer adequate training in professional skills, whether through clinics or otherwise, violates Standards 302(a)(iii). May, 1980.

Interpretation of Standard 302(a)(iii): Such instruction need not be limited to any specific skill or list of skills. Each law school is encouraged to be creative in developing programs of instruction in skills related to the various responsibilities which lawyers are called upon to meet, utilizing the strengths and resources available to the law school.

Thoughtful professional studies have urged that trial and appellate advocacy, counseling, interviewing, negotiation, and drafting be included in such programs. August, 1981.

Id. at Interpretation 2 of 302(a)(iii).

106. Final Report of the Advisory Committee on Proposed Rules for Admission to Practice, 67 F.R.D. 161, 164, 167–78 (1975).

107. *See generally* Final Report of the Committee to Consider Standards for Admission to Practice in the Federal Courts to the Judicial Conference of the United States, 83 F.R.D. 215 (1979).

108. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 3–4 (1979).

109. AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 238 (1992) [hereinafter the MACCRATE REPORT] (citing the 1974–1975 and 1990–1991 surveys).

110. *Id.*

instructional time available to law schools.”¹¹¹ So, while the 1981 ABA Standards had an impact, legal education was still primarily non-experiential.

B. Mandating Law Schools to Require Experiential Education for All Students

From 1981 to 1996, the ABA did not make any changes to the ABA Standards with respect to experiential education, but the Council of the Section of Legal Education and Admissions to the Bar established in 1989 the Task Force on Law Schools and the Profession: Narrowing the Gap.¹¹² As the Task Force’s name implied, there was a sense of a “gap between the teaching and practice segments of the profession,”¹¹³ and the work of the Task Force was to examine that perception and the respective roles of law school and the legal profession in preparing lawyers for the practice of law.

The Task Force surveyed the state of legal education in U.S. law schools as well as recent law graduates and legal employers,¹¹⁴ and it published its report, known as the MacCrate Report, in 1992. In the MacCrate Report, the Task Force developed and published a set of ten fundamental lawyering skills and four professional values,¹¹⁵ which law students would be encouraged to develop both “in law school courses, extra-curricular activities, and part-time and summer employment,” and after law school “in postgraduate education, continuing legal education, judicial clerkships, and legal practice.”¹¹⁶ The MacCrate Report also recommended that “[l]aw schools should be encouraged to develop or expand” their lawyering skills offerings and “should stress in their teaching that examination of the ‘fundamental values of the profession’ is as important in preparing for professional practice as acquisition of substantive knowledge.”¹¹⁷

Importantly, the MacCrate Report urged changes to the ABA Standards, including amending Standard 301 to require that the law

111. *Id.* at 241.

112. *Id.* at xi.

113. *Id.* at 5.

114. *Id.* at xi–xii.

115. The ten fundamental lawyering skills are: problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas. *Id.* at 138–40. The four fundamental values of the profession are: provision of competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; and professional self-development. *Id.* at 140–41.

116. *Id.* at 127.

117. *Id.* at 332.

school's program of legal education would not only prepare "graduates for admission to the bar," but also "prepare them to participate effectively in the legal profession."¹¹⁸ The MacCrate Report also recommended changes to Standard 302 to clarify its reference to professional skills.¹¹⁹

The MacCrate Report spurred a nationwide conversation about legal education among members of the legal profession.¹²⁰ This conversation included 25 state-wide meetings, called "conclaves," which were held between 1992 and the early part of 1997, consisting of judges, practicing lawyers, and legal academics.¹²¹ In addition to the conclaves, there were numerous conferences, law review articles, and individual law school faculty discussions about the MacCrate Report and law school curricula.¹²²

Some, especially some law school deans, were critical of the MacCrate Report.¹²³ Fourteen deans signed a letter opposing the use of the ABA Standards and the accreditation process to advance implementation of the MacCrate Report.¹²⁴ The deans specifically opposed "using the accreditation process to push skills training and clinical legal education."¹²⁵

In spite of this opposition, the MacCrate Report prompted changes to the ABA Standards that incorporated the MacCrate Re-

118. *Id.* at 330. The recommendation stated:

Standard 301(a) regarding a law school's educational program should be amended to clarify its reference to qualifying 'graduates for admission to the bar' by adding: ". . . and to prepare them to participate effectively in the legal profession." This would affirm that education in lawyering skills and professional values is central to the mission of law schools and recognize the current stature of skills and values instruction.

Id.

119. MACCRATE REPORT, *supra* note 109. The recommendation stated: In light of developments in skills instruction and the Task Force's Statement of Skills and Values, the interaction between core subjects, treated in Standard 302(a)(i), and professional skills, treated in Standard 302(a)(iii), should be revisited and clarified. The interpretation of Standard 302(a)(iii) should expressly recognize that students who expect to enter practice in a relatively unsupervised practice setting have a special need for opportunities to obtain skills instruction.

Id.

120. See Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 116–17 (2001).

121. William R. Rakes, *Conclaves on Legal Education: Catalyst for Improvement of the Profession*, 72 NOTRE DAME L. REV. 1119, 1129 n.38 (1997).

122. See Engler, *supra* note 120, at 116–24.

123. *Id.*

124. *Id.* at 118.

125. *Id.*

port's recommendations concerning Standards 301 and 302.¹²⁶ With regard to Standard 301, the mission of law schools in Standard 301(a) was changed in 1993 from: "The law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar,"¹²⁷ to "A law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar and to prepare them to participate effectively in the legal profession."¹²⁸ Robert MacCrate, who chaired the Task Force that produced the MacCrate Report, stated that adopting this change to Standard 301 was "affirming that education in lawyering skills and professional values is central to the mission of law schools and recognizing the current stature of skills and values instruction."¹²⁹

The MacCrate Report inspired conversations and additional changes to the Standards. In 1996, Standard 302 was changed significantly when it was amended to require that: "A law school shall offer to all students . . . adequate opportunities for instruction in professional skills."¹³⁰ Standard 302 was also amended to add the following: "A law school shall offer live-client or other real-life practice experiences. This might be accomplished through clinics or externships. A law school need not offer this experience to all students."¹³¹ The prior version of Standard 302 addressing professional skills had required that law schools have professional skills courses but had not required that all students would have adequate opportunities to enroll in these courses.¹³² As a result, these two changes in the ABA Standards specified that law schools had to make sufficient opportunities for experiential education for all stu-

126. Mary Lu Bilek, et al., *Twenty Years after the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary*, 3 (2013), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/june2013councilmeeting/2013_open_session_e_report_prof_educ_continuum_committee.authcheckdam.pdf. See *supra* notes 118–19 and accompanying text for the specific recommendations of the MacCrate Report.

127. 1981 ABA STANDARDS, *supra* note 103, at Standard 301(a).

128. AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, Standard 301(a) (1993) [hereinafter 1993 ABA STANDARDS].

129. Robert MacCrate, *Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development*, 10 CLINICAL L. REV. 805, 819 (2004).

130. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, Standard 302(a)(4) (1996) [hereinafter 1996 ABA STANDARDS].

131. *Id.* at Standard 302(d).

132. See *supra* notes 101–02 and accompanying text.

dents, and law schools had to offer clinics, externships, or both. Because Standard 302 separately required law schools to offer to all students “at least one rigorous writing experience,”¹³³ Standard 302 made it clear that law schools had to offer all law students professional skills instruction beyond one required writing course.

These changes were steps forward toward promoting experiential education for all law students. They fell short, however, by not requiring law schools to ensure that every student had experiential courses beyond the required writing course specified in Standard 302.

This changed in 2005 when Standard 302(a) was amended from a standard requiring that a law school “shall offer” instruction in professional skills to a standard stating: “A law school *shall require* that each student receive substantial instruction in . . . other professional skills generally regarded as necessary for effective and responsible participation in the legal profession.”¹³⁴ An interpretation explained that “other professional skills” included lawyering activities such as interviewing and client counseling, trial and appellate advocacy, negotiation, alternative dispute resolution, drafting, factual investigation, and organization and management of legal work.¹³⁵ Thus, 2005 marked the first time that ABA-approved law schools had to require experiential education beyond legal writing for every graduate.

Interpretation 302-3 defined how a school could satisfy the requirement by stating:

A school may satisfy this requirement for substantial instruction in professional skills in various ways, including, for example, requiring students to take one or more courses having substantial professional skills components. To be “substantial,” instruction in professional skills must engage each student in skills performances that are assessed by the instructor.¹³⁶

At first reading, Standard 302 and Interpretation 302-2 appeared to require law schools to ensure that every graduate had meaningful experiential education in lawyering skills while in law school. A literal reading of “substantial” was not what occurred in reality among some law school administrators and faculty. In 2010,

133. 1996 ABA STANDARDS, *supra* note 130, at Standard 302(a)(3).

134. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 302(a)(4) (2005–2006) [hereinafter 2005–2006 ABA STANDARDS] (emphasis added).

135. *Id.* at Interpretation 302-2.

136. *Id.* at Interpretation 302-3.

responding to the difficulty that some law schools were still having in their attempts to comply with Standard 302(a)(4) five years after it was adopted, the ABA Consultant on Legal Education issued a guidance memorandum that “substantial” equaled one credit.¹³⁷ The 2010 ABA Consultant on Legal Education Memorandum explained that “substantial instruction” in professional skills may be accomplished by requiring at least one credit hour of skills training where “instruction in (other) professional skills must engage *each* student in skills *performances* that are *assessed* by the instructor.”¹³⁸ The ABA Standards at the time required 83 credits of instruction for a law degree.¹³⁹ By interpreting “substantial” to mean only one credit of lawyering skills instruction, this interpretation meant that a law school had to require only 1.2 percent of law school instruction in these other lawyering skills (which did not include at least one legal writing course).

It is no wonder that even following the 2005 amendment to Standard 302, members of the practicing bar, clients, and law students believe that new law graduates are ill-equipped to practice law. A 2009 study found that 90 percent of lawyers and 65 percent of law students surveyed stated that law schools “do not teach the practical business skills needed to practice law in today’s economy.”¹⁴⁰ A 2010 survey by the American Lawyer found that 47 percent of law firms had clients who would not permit first-year or second-year associates to work on their cases.¹⁴¹ The general counsel of a technology company has explained that law schools are producing “lawyers in the sense that they have law degrees, but they aren’t ready to be a provider of services.”¹⁴²

Given the dissatisfaction with how law schools are preparing students for the practice of law, some state bar regulators have started looking at whether they should supplement the ABA Standards and require more from prospective lawyers while they are in law school. For example, New York’s high court adopted, as part of

137. AMERICAN BAR ASSOCIATION CONSULTANT ON LEGAL EDUCATION, *Consultant’s Memo* 3, Standard 302(a), Standard 304, Standard 504, Standard 509 (Mar. 2010), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf.

138. *Id.*

139. 2005–2006 ABA STANDARDS, *supra* note 134, at Interpretation 304-4.

140. LEXISNEXIS, *State of the Legal Industry Survey 7* (2009), <http://www.managingpartnerforum.org/tasks/sites/mpf/assets/image/MPF%20-%20WEBSITE%20-%20WHITE%20PAPER%20-%20LN%20State%20of%20the%20Profession%20-%20201-12-10.pdf>.

141. David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 19, 2011, at A1.

142. *Id.* (quoting Jeffrey W. Carr, General Counsel of FMC Technologies).

its rules for admission, a requirement that “on or after January 1, 2015, . . . [every applicant] shall complete at least 50 hours of qualifying pro bono service prior to filing an application for admission.”¹⁴³ In 2012, the State Bar of California Board of Trustees appointed the Task Force on Admissions Regulation Reform (TFARR) to consider whether there should be a pre-admission practical skills training requirement.¹⁴⁴ TFARR concluded: “[A] new set of training requirements focusing on competency and professionalism should be adopted in California in order to better prepare new lawyers for successful transition into law practice, and many of these new requirements ought to take effect pre-admission, prior to the granting of law license.”¹⁴⁵ In October 2013, the Board of Trustees adopted a TFARR proposal that would require 15 hours of law school classroom professional skills or practice-based training prior to bar admission.¹⁴⁶ Other states have also been “critical of law schools for not preparing students better for the practice of law,”¹⁴⁷ and some have additional admission requirements.¹⁴⁸

During this period, when legal education was being scrutinized by clients, regulators, and the practicing bar, the ABA Council of the Section of the Legal Education and Admissions to the Bar began a comprehensive review of the ABA Standards that lasted from 2008 to 2014.¹⁴⁹ The Council circulated two proposals concerning

143. STATE OF NEW YORK, RULES OF THE COURT OF APPEALS FOR ADMISSION OF ATTORNEYS AND COUNSELORS AT LAW, § 520.16 (2012).

144. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2005–2006 ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, *Excerpts from State Bar of California Committee Agenda Admissions & Education Committee*, May 2016, at 1, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/August2016CouncilOpenSessionMinutes/2016_california_bar_admissions_requirements.authcheckdam.pdf.

145. *Id.*

146. *Id.* at 1–2. The proposal was later revised to require six credits of experiential courses to be consistent with ABA Standards adopted in 2014. *Id.* at 2–3.

147. Joy, *supra* note 20, at 189. In 2009, the Ohio State Bar Association Task Force on Legal Education issued a report, and, in 2013, the Illinois State Bar Association Special Committee on the Impact of Law School Debt on the Delivery of Legal Services issued a report. *See id.* at 189–93.

148. In addition to graduating from an ABA-approved law school and passing the bar exam, several states have pre-admission requirements or requirements that must be fulfilled with one year of bar admission. *See* NATIONAL CONFERENCE OF BAR EXAMINERS AND AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *Comprehensive Guide to Bar Admission Requirements* 17–19 (2017).

149. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *2008–2014 Comprehensive Review Archive*, https://www.americanbar.org/groups/legal_education/committees/standards_review/comp_review_archive.html.

the experiential skills requirement for comments—the first proposal would have increased the professional skills requirement from one credit to six credits, and the second would have increased the professional skills requirement from one credit to 15 credits.¹⁵⁰

At the ABA Council meeting in March 2014, the Council approved the first proposal, thereby requiring six credits in an experiential course or courses.¹⁵¹ As revised and renumbered, Standard 303(a)(3) stated:

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: . . . (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:

(i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more professional skills identified in Standard 302;

(ii) develop the concepts underlying the professional skills being taught;

(iii) provide multiple opportunities for performance; and

(iv) provide opportunities for self-evaluation.¹⁵²

The professional skills in Standard 302 that Standard 303(a)(3)(i) refers to are up to each law school to determine,¹⁵³ but those skills have to be professional skills other than those specifically required by Standard 302, which are: “(a) Knowledge and understanding of substantive procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper profes-

150. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *Explanation of Changes*, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201408_explanation_changes.authcheckdam.pdf.

151. *Id.*

152. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, 2014–2015 ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 303(a)(3) [hereinafter 2014–2015 ABA STANDARDS].

153. Standard 302 states: “A law school shall establish learning outcomes that shall, at a minimum, include competency in the following . . . (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.” *Id.* at Standard 302(d). Interpretation 302-1 explains: “For the purposes of Standard 302(d), other professional skills are determined by the law school and may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.” *Id.* at Interpretation 302-1.

sional and ethical responsibilities to clients and the legal system.”¹⁵⁴ Revised Standard 304 defined simulation courses and law clinics that can satisfy Standard 303.¹⁵⁵ In order to count, the course must include: direct supervision of the student by a faculty member, opportunities for performance, feedback from a faculty member and self-evaluation by the student, and a classroom component.¹⁵⁶ In 2010, the definition and requirements for field placements in Standard 303 were relocated to Standard 305.¹⁵⁷

154. *Id.* at Standard 302.

155. *Id.* at Standard 304.

156. Standard 304 defined simulation courses and law clinics as follows:

(a) A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following:

- (i) direct supervision of the student’s performance by the faculty member;
- (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
- (iii) a classroom instructional component.

(b) A law clinic provides substantial experience not involving an actual client, that (1) involves advising or representing one or more actual clients, and (2) includes the following:

- (i) advising or representing a client;
- (ii) direct supervision of the student’s performance by a faculty member;
- (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
- (iii) a classroom instructional component.

Id.

157. *Id.* at Standard 305. The definition of a field placement has since been placed within Standard 304, and is now Standard 304(c). AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS FOR APPROVAL OF LAW SCHOOLS 2017–2018, Standard 304(c) (2017) [hereinafter 2017–2018 ABA STANDARDS]. Today, Standard 304(c) defines a field placement as follows:

A field placement course provides substantial lawyering experience that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside experience that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise, and (2) includes the following:

- (i) direct supervision of the student’s performance by a faculty member or site supervisor;
- (ii) opportunities for performance, feedback from either a faculty member or a site supervisor, and self-evaluation;
- (iii) a written understanding among the student, faculty member, and a person in authority at the field placement that describes both (A) the substantial lawyering experience and opportunities for performance,

In March 2015, the Managing Director for the Section of Legal Education and Admissions to the Bar issued a Guidance Memo that discussed Standard 303(a).¹⁵⁸ This memo notes that the Standard now requires a minimum number of six credits rather than requiring “substantial instruction,”¹⁵⁹ which had previously been interpreted to mean only one credit.¹⁶⁰ The Guidance Memo also makes it clear that “[i]nserting skills components in otherwise doctrinal courses will not satisfy Standard 303(a)(3),” because the resulting course would not be “primarily experiential in nature,” as required by the standard.¹⁶¹

feedback and self-evaluation; and (B) the respective roles of faculty and any site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student’s academic performance;

(iv) a method for selecting, training, evaluating and communicating with site supervisors, including regular contact between the faculty and site supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience. When appropriate, a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program;

(v) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and

(vi) evaluation of each student’s educational achievement by a faculty member.; and

(vii) sufficient control of the student experience to ensure that the requirements of the

Standard are met. The law school must maintain records to document the steps taken to ensure compliance with the Standard, which shall include, but is not necessarily limited to, the written understandings described in Standard 304(c)(iii).

Id.

158. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *Managing Director’s Guidance Memo Standards 303(a)(3), 303(b), and 304* (Mar. 2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_standards_303_304_experiential_course_requirement_authcheckdam.pdf [hereinafter *Managing Director’s Guidance Memo Standards 303(a)(3), 303(b), and 304*]. In 2013, the position of Consultant on Legal Education was changed to the title of Managing Director of Accreditation and Legal Education to “reflect[] the increasing importance and scope of the section’s regulatory role.” AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, *Barry Currier Named Managing Director of Accreditation & Legal Education* (2013), https://www.americanbar.org/publications/syllabus_home/volume_44_2012-2013/spring_2013/barry-currier-named-managing-director-of-accreditation-and-legal.html.

159. *Id.* at 2.

160. *See supra* notes 137–38 and accompanying text.

161. *Managing Director’s Guidance Memo Standards 303(a)(3), 303(b), and 304*, *supra* note 158, at 4.

The Guidance Memo also explains that a mock trial, moot court, or similar activity will only count as experiential if it also meets all of the requirements in Standard 303(1)(3), which means that a series of required faculty-supervised practices alone would not be sufficient because this activity would lack the other requirements, including a classroom component.¹⁶² Similarly, a course that requires a traditional scholarly paper would not qualify as a simulation course because “the intent in including simulation courses within the experiential course definition is to ensure that a simulation course provides experiences similar to those that a student would be encountering in a clinic or field placement.”¹⁶³ To qualify as experiential, a paper course “must provide ‘substantial experience . . . reasonably similar to the experience of a lawyer advising or representing a client a client or engaging in other lawyering tasks.’ A scholarly paper is not ‘reasonably similar’ to a typical experience of a lawyer advising or representing a client.”¹⁶⁴

The Guidance Memo’s detailed explanation of the experiential education requirement is likely designed to serve two purposes. First, it provides clear and explicit guidance about the number of credits and the content of courses that would or would not meet the requirement. Second, the explicit guidance will likely prevent some law schools from designating courses as meeting the requirement when, in fact, they do not.

It is unfortunate that this type of very explicit requirement and explanation is necessary, but it recognizes that there is still resistance among some law schools to ensuring that every student receives more than very minimal experiential education. As discussed previously, when the ABA Standards required law schools to provide “substantial instruction” in professional skills, the standard was interpreted to require only one credit of professional skills instruction.¹⁶⁵ The current approach specifies the number of credits and the content of what counts as experiential courses. The six-credit requirement also addresses the issue of inadequate enrollment availability for students wishing to participate in experiential education courses, as seen under earlier standards.

Still, when it comes to law clinic or externship availability for law students, the ABA Standards are less definite. Standard 304(b) simply requires law schools to “provide substantial opportunities to

162. *Id.* at 4–5.

163. *Id.* at 5.

164. *Id.*

165. *See supra* notes 137–39 and accompanying text.

students for . . . law clinics or field placement(s),”¹⁶⁶ which “has allowed five accredited schools to provide their students with no opportunities to enroll in any law clinic and one school to provide positions in clinic and externship courses for only ten percent of its students.”¹⁶⁷

III. CONCLUSION: SUGGESTIONS FOR THE FUTURE OF EXPERIENTIAL EDUCATION

The current standard that ABA-accredited law schools require every student to have at least six credits of experiential courses, defined as simulation, law clinic, or externship courses, is a modest step toward meaningful experiential education, but it is not enough. Law schools still have to address three unmet needs for better preparing law students to become lawyers.

First, law schools have to recognize that essential lawyering skills and professional values must be part of the core curriculum. Once law faculties embrace this as a foundational principle, then they should embark on structuring the curriculum in the best way to ensure that students not only receive instruction in substantive law and doctrinal analysis, but also essential lawyering skills and professional values.¹⁶⁸ In doing so, law faculties should also consider the best way to coordinate the teaching of these lawyering skills and values through a combination of simulation, clinic, and externship courses.

Second, law schools have to provide every law student with a real-life practice experience in which each student is able to assume the role of a lawyer, which is important for the development of lawyering skills and professional values.¹⁶⁹ In 2007, a Carnegie

166. 2014–2015 ABA STANDARDS, *supra* note 152, at Standard 304(b).

167. Robert R. Kuehn, *Universal Clinic Legal Education: Necessary and Feasible*, 53 WASH. U. J.L. & POL'Y 89, 90 (2017). Robert Kuehn drew this conclusion after reviewing data on reports that ABA-approved law schools submitted to the ABA in 2015. *Id.*

168. See MACCRATE REPORT, *supra* note 109 for a list of essential lawyering skills and professional values stated in the MacCrate Report.

169. Only by being in the role of a lawyer in a clinic or a well-structured externship is a law student able to develop professional judgment by “applying legal doctrine, skills, and values in the real world of practice.” Gary S. Laser, *Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI.-KENT L. REV. 243, 250 (1992). Law students may be in role as student lawyers under the authority of the jurisdiction’s student practice rule, which permits the student to take primary responsibility for client representation, including appearing before tribunals on the client’s behalf. See Peter A. Joy, *The Ethics of Law School Clinic Students as Student-Lawyers*, 45 S. TEX. L. REV. 815, 816 (2004). Not every externship is structured so that law

Foundation study, *Educating Lawyers*,¹⁷⁰ emphasized “the value of clinical education as a site for developing not only intellectual understanding and complex skills of practice but also the dispositions crucial for legal professionalism.”¹⁷¹ That same year, Roy Stuckey and others published *Best Practices for Legal Education*,¹⁷² which noted that “it is only in the in-house clinics and some externships where students’ decisions and actions can have real consequences and where students’ values and practical wisdom can be tested and shaped before they begin law practice.”¹⁷³

The current ABA Standard, which treats simulations, clinics, and externships the same in terms of meeting the six credits of experiential course requirement,¹⁷⁴ fails to recognize that each type of course provides students with different types of learning experiences. Only through clinics and externships structured so that law students have primary responsibility for client representation can students grapple with the real-life demands they are going to face as practitioners.¹⁷⁵ Under the current ABA Standards, a law student is able to graduate without ever having interacted with a client.

Although not required by the ABA Standards, 40 law schools do require each student to complete a law clinic or externship course prior to graduation, and 26 additional law schools guarantee each student who wants to take a law clinic or externship course that the student will be able to do so prior to graduation.¹⁷⁶ While

students will have primary—“first chair”—responsibility for client representation. *Id.* at 817 n.6.

170. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

171. *Id.* at 120.

172. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

173. *Id.* at 114.

174. 2017–2018 ABA STANDARDS, *supra* note 157, at Standard 303(a)(3).

175. Some high credit, carefully designed simulation courses come close to replicating a real life practice experience. For example, University of Wisconsin Law School has developed a lawyering skills course that meets for three hours each afternoon and seeks to expose students to issues that lawyers encounter in practice—*Lawyering Skills Course*, University of Wisconsin Law School, <https://perma.cc/HMGV-KQ7T>. The law school states that assignments are designed to “help students learn how to identify and evaluate a client’s legal problems, devise workable solutions, and translate solutions into actions on behalf of clients.” *Id.* I thank Professor Gretchen Viney, Director of Lawyer Skills Program at the University of Wisconsin Law School for bringing this simulation course to my attention.

176. R. Kuehn, *Required or Guaranteed Clinical Experience* (Oct. 2017) (unpublished list) (on file with author). Penn State Dickinson began to require a law clinic or externship in 2015. *Id.* The number of schools requiring a law clinic or externship or guaranteeing a law clinic or externship has been increasing. In May 2016, Robert Kuehn found that 37 law schools required a law clinic or externship,

opponents to clinical legal education often claim it is too costly,¹⁷⁷ tuition at law schools adopting “a clinical requirement or guarantee between 2010 and 2014 show[s] no evidence that these schools raised their tuition as a result of the new educational opportunities.”¹⁷⁸ If these 66 law schools have the means either to require or guarantee a real life lawyering experience to every graduate without affecting the tuition they charge, the remaining law schools have the means to do so as well.

Third, law schools have to develop their curricula to respond to legal needs for today and the future. Even those law schools that require or guarantee a law clinic or externship experience for every student have to be forward-looking in developing their curricula. This involves communicating with legal employers about the new skills lawyers must have. For example, every law school should have courses on new legal technologies, such as e-discovery and online dispute resolution (ODR), which are in use today. But law schools will have to do more. In *Tomorrow's Lawyers*,¹⁷⁹ Richard Susskind predicts that the shrinking demand for traditional lawyers will continue, and that lawyers will have to be able to assume new roles in the future,¹⁸⁰ including: legal knowledge engineers,¹⁸¹ legal technologists,¹⁸² legal process analysts,¹⁸³ legal project managers,¹⁸⁴ legal management consultants,¹⁸⁵ and legal risk managers.¹⁸⁶ Law

and another 19 law schools guaranteed each student the opportunity to take a law clinic or externship. Kuehn, *supra* note 167, at 96–97.

177. The cost criticism usually focuses on law clinics, or in-house clinical legal education. See Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C.J.L. & SOC. JUST. 309, 309–10 (2012). Law schools have several costly enterprises, and no one has devised a reliable method to compare the cost of in-house clinics with other law school expenses. *Id.* at 328–29. If a cost comparison is done, it “must take into consideration other law school expenses and the overall objectives of legal education.” *Id.* at 329.

178. Kuehn, *supra* note 167, at 98.

179. RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013).

180. See *id.* at 109.

181. Legal knowledge engineers will be able to “organize and model huge quantities of complex legal materials and processes.” *Id.* at 111.

182. Legal technologists will be “experienced and skilled individuals who can bridge the gap between law and technology.” *Id.* at 112.

183. Legal process analysts will be “individuals who could undertake reliable, insightful, rigorous, informed analysis of their [law firm or in-house legal department] central legal processes.” *Id.* at 114.

184. Legal project managers will allocate work to appropriate providers and ensure that the providers complete their work on time and within budget. *Id.* at 115.

185. Legal management consultants will be engaged in “strategy consulting . . . and operational or management consulting (for example, on recruitment, selec-

schools should be actively developing their curricula to train these lawyers of tomorrow.

Legal employers, clients, and law students expect that graduating law school should prepare students for the practice of law.¹⁸⁷ The days when most legal employers provided good training and mentoring to new lawyers are long gone,¹⁸⁸ and law schools need to prepare students better for the practice of law.

Law schools have the means to better prepare graduates for the practice of law through restructuring their curricula, requiring well-structured law clinics and externships, and developing new courses to respond to the demands of a changing legal environment. The time is long overdue for more law schools to become proactive in adopting a true and substantial commitment to experiential education and to a curriculum that prepares graduates for the practice of law today and tomorrow. The uneasy history of experiential education in law schools suggests that these changes will likely come slowly at most law schools, however.

tion of law firms, panel management, financial control, internal communications, and document management)." *Id.* at 117.

186. Legal risk managers will be individuals whose "focus will be on anticipating the needs of those they advise, on containing and preempting legal problems." *Id.* at 118.

187. *See supra* notes 140–42 and accompanying text. *See also* John Henry Schlegel, *Walt Was Right*, 51 J. LEGAL EDUC. 599, 608 (2001).

188. Schlegel, *supra* note 187, at 608.
