

PHANTOM THREAD: RESTORING LIVE-CLIENT
INTERACTIONS TO THE FIRST-YEAR
EDUCATIONAL CONTINUUM IN THIS AGE OF
INFORMATION AND BEYOND

Derrick Howard

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Derrick Howard*

Table of Contents

I.	Introduction	599
II.	History of Fundamental Lawyering Skills Training in American Legal Education	602
III.	External and Internal Factors that Confine the Traditional Educational Continuum	616
	A. Governmental Oversight and Industry Regulation	616
	B. The Contracting Legal Marketplace	618
	C. The Traditional Law School Model's Shortcomings	622
	D. The Demands and Needs of the Contemporary Law Student	625
IV.	Restoring Live-Client Interactions to the First-Year Curriculum	629
	A. Closing the Systemic Gap in the Educational Continuum	629
	B. Advancing Holistic and Integrated Instruction of Foundational Skills and Fundamental Lawyering Skills	636
	C. Eradicating Historic Silos Through Faculty Collaboration	639
	D. Increasing Feedback, Reflection and Assessments	641

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E. Exploiting Untapped Curricular Synergies and Lost Learning Opportunities.....	644
V. Limitations to Integrating Live-Client Interactions into the First-Year Curriculum.....	649
VI. Conclusion.....	655

I. INTRODUCTION

Experiential learning was woven into the fabric of American legal education the moment English barristers, solicitors, and justices of the peace plied their trade to resolve legal conflicts and stimulate commerce in this emerging nation.¹ Thirty years ago, the American Bar Association (“ABA”) formed the “Task Force on Law Schools and the Profession: Narrowing the Gap (the “Task Force”), which explored those phantom threads when it studied the preparation of new members of the profession for the practice of law.² From 1989 to 1992, the Task Force, chaired by former ABA President Robert MacCrate, held a series of hearings and investigations and considered opinions from the legal community about perceived “gaps” in the training students received while in law school.³ The Task Force published its findings in the seminal study known as the *MacCrate Report*.

The *MacCrate Report* acknowledged what others in the legal community have recognized for more than one hundred years: Traditional American law schools have always struggled with how to balance integration of fundamental lawyering skills and professional values (collectively “fundamental lawyering skills”) into the educational process.⁴ The Task Force observed that students should engage in more

¹ See generally *infra* Part II; see also John Winthrop, ENCYCLOPEDIA OF WORLD BIOGRAPHY 339–41 (2d ed. 2004) (noting that Massachusetts Bay Colony Governor John Winthrop, who studied law before the English Inns of Court, and other prominent leaders were pivotal in rendering legal decisions in the colonies); Jason J. Kilborn, *Who’s in Charge Here?: Putting Clients in Their Place*, 37 GA. L. REV. 1, 14–15 (2002) (describing how barristers who were trained in England influenced early American legal matters as experts in “the nuances of English court procedure and the ‘science’ of law”). Indeed, within ten years of the Pilgrim’s arrival in the New World, attorneys educated in England conducted the nation’s first murder trial when John Billington was tried, convicted, and executed for shooting fellow Mayflower colonist John Newcomen in the back with a “blunderbuss.” *Learn About the History of the Jury System*, MASS.GOV., <https://www.mass.gov/info-details/learn-about-the-history-of-the-jury-system#the-early-days-of-the-jury-system-> (last visited Apr. 20, 2020) (“The jury found the defendant guilty of ‘willful murder by plain and notorious evidence . . .’”).

² See *Legal Education and Professional Development—An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS, at xi [hereinafter MACCRATE REPORT] (highlighting how the ABA decided to study legal education’s training of new attorneys).

³ See *id.* at v, xi–xii (noting Robert MacCrate chaired the Task Force and detailing information pertaining to the study).

⁴ See *id.* at 267–68. The *MacCrate Report* identified ten fundamental skills that a competent lawyer should possess upon graduation from law school: 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 *MacCrate Report* also identified four fundamental values lawyers should honor: providing competent representation; striving to promote justice, fairness, and morality; striving to improve the profession; and professional development. *Id.* at 140–41; see also Helen Pratt Mickens, *Professional*

experiential learning to close the gaps in “the linkage between the several phases of [a] lawyer[’s] education”⁵ that “starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer’s professional career.”⁶ While speaking at a conclave on Education for the Legal Profession, MacCrate described the Task Force’s vision for the educational continuum as one in which “legal educators, practicing lawyers and members of the judiciary—all members of one profession—engage[] in a common enterprise”⁷ of training themselves and future generations to become competent and ethical practitioners of the law.⁸

In 2014, the ABA mandated that law schools design their curriculum to produce practice-ready graduates⁹ who have developed mastery of “foundational skills”¹⁰ and fundamental lawyering skills. Law schools were given until the end of 2019 to evaluate their educational programs, learning outcomes, and assessment methods to

Responsibility: Bridging the Gap Between Law School and the Practice of Law, 79 MICH. B.J. 1214, 1214 (2000).

⁵ MACCRATE REPORT, *supra* note 2, at 320.

⁶ Robert MacCrate, *Foreward* to ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP, at vi (2007) (detailing key findings of the *MacCrate Report*); Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 89, 89 (1994); *see also* Joseph A. Barrette, *Self-Awareness: The Missing Piece of the Experiential Learning Puzzle*, 5 T.M. COOLEY J. PRAC. & CLINICAL L. 1, 12 (2002) (“The cognitive cannot be separated from the affective. It is the interaction of the learner within a lawyering context that allows for a meaningful experience and understanding.”).

⁷ Judith Welch Wegner, *Lawyers, Learning, and Professionalism: Meditations on a Theme*, 43 CLEV. ST. L. REV. 191, 195 (1995) (noting that members of the legal profession are involved in this education continuum to better the legal community).

⁸ *See* Keith A. Findley, Commentary, *Assessing Experiential Legal Education: A Response to Professor Yackee*, 2015 WIS. L. REV. 627, 630 (explaining that experiential education presents “a platform for hands-on learners, intertwin[ing] theory and practice in ways that the classroom alone cannot . . . explor[ing] problem solving, hypothesis testing, and strategic planning, among other pedagogical benefits”).

⁹ *See* ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014–2015, at 15 (2015) [hereinafter 2015 ABA STANDARDS]. Standard 301(a) mandates that law schools “maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.” *Id.* A law school’s failure to achieve this objective is a violation of the ABA Standards. *Id.*

¹⁰ The phrase “foundational skills” is used herein as a reference to the standard first-year curriculum introduced into American legal education by Christopher Columbus Langdell at Harvard Law School in 1870. That curriculum includes torts, property, criminal law, civil procedure, and contracts. *See History of Harvard Law School*, *infra* note 28.

conform to this requirement.¹¹ Thereafter, they must report to the ABA the “degree of student attainment of competency in the learning outcomes and . . . make appropriate changes to improve the curriculum.”¹² Essentially, the ABA’s directive, *inter alia*, compels law schools to demonstrate where the threads of experiential education lie throughout their curriculum and to assess if its faint or vibrant presence is sufficient to meet the current educational standards.¹³

In addition to compliance with stricter regulations, various external and internal factors have coalesced in the past ten years to restrain how law schools embed experiential education within their respective educational continuum. Those factors include: “runaway tuition, sky-high graduate debt and unemployment, plummeting law school applications, . . . the tectonic shift in the nature and delivery of legal services,”¹⁴ and technological advances in this Information Age¹⁵ that have forever reshaped legal education and the profession.

Part II of this Article examines the history of legal education’s tepid approach to threading experiential education throughout the curriculum and how intractable views among traditional law schools about the training students need to become effective attorneys have led to a crisis in legal education and the profession that the ABA now seeks to address. In Part III, the Article reviews several external and internal factors that compel law schools to transform the perfunctory educational continuum they have advanced since the Industrial Revolution into a collaborative system of information exchange more responsive to the learning styles and needs of contemporary and future students. Part IV of this Article explores the pedagogical benefits of doctrinal and clinical faculty collaborating to interleave client interactions into the first-year curriculum, instead of trying to do so in silos, and provides

¹¹ See 2015 ABA STANDARDS, *supra* note 9, at 24 (specifically Standard 315).

¹² *Id.*

¹³ See *infra* Part II.

¹⁴ Jay Silver, *Pedagogically Sound Cuts, Tighter (Not Looser) Accreditation Standards, and a Well-Oiled Doomsday Machine: The Responsible Way Out of the Crisis in Legal Education*, 66 RUTGERS L. REV. 353, 354 (2014).

¹⁵ See *Information Age*, HIST. OF TECH., <https://historyoftechnologyif.weebly.com/information-age.html> (last visited Oct. 29, 2019). The Information Age began in the 1970s with the introduction of the personal computer and continues to this time. *Id.*; *Information Age*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/Information%20Age> (last visited Oct. 29, 2019) (defining “Information Age” as “the modern age regarded as a time in which information has become a commodity that is quickly and widely disseminated and easily available especially through the use of computer technology”).

examples of other law schools that are already leading that effort.¹⁶ Part V highlights some considerations and challenges to the proposal provided in Part IV. Finally, the Article concludes in Part VI with observations regarding the future of law schools that fail to access all of the pedagogical tools in their arsenal to holistically prepare fledgling lawyers for the rigors, risks and rewards of the legal profession.

II. HISTORY OF FUNDAMENTAL LAWYERING SKILLS TRAINING IN AMERICAN LEGAL EDUCATION

Despite the proliferation of reports and studies of legal education over the past one hundred years,¹⁷ many law professors remain unconvinced that theoretical and practical legal knowledge are necessary components of a holistic, educational

¹⁶ See Deena R. Hurwitz, *Teaching International Law: Lessons from Clinical Education*, 104 AM. SOC'Y INT'L L. PROC. 95, 97 (2010). "Legal education needs to be responsive to both the needs of our time and recent knowledge about how learning takes place; it needs to combine the elements of legal professionalism—conceptual knowledge, skill and moral discernment—into the capacity for judgment guided by a sense of professional responsibility." *Id.* at 96 (quoting WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW 4 (2007)). In fact, several law schools have innovated their programs to include more context-based education that accelerates student exposure to conceptual foundations for practical skills. See *infra* Part IV; STUCKEY ET AL., *supra* note 6, at 104 ("Legal education would be more effective if law teachers used context-based education throughout the curriculum."); see also Elizabeth Adamo Usman, *Making Legal Education Stick: Using Cognitive Science to Foster Long-Term Learning in the Legal Writing Classroom*, 29 GEO. J. LEGAL ETHICS 355, 367 (2016) (suggesting instruction that is "both interleaved and varied, rather than focused and repetitive, is the most effective for long-term learning"). By systematically engaging in a cycle of instruction that merges the case method with experiential learning, first-year students may develop a level of competency that has traditionally been stunted or delayed while instruction is disproportionately limited to reading and analyzing case law. See Raleigh Hannah Levine, *Of Learning Civil Procedure, Practicing Civil Practice, and Studying a Civil Action: A Low-Cost Proposal to Introduce First-Year Law Students to the Neglected MacCrate Skills*, 31 SETON HALL L. REV. 479, 488–89 (2000). The key components of becoming proficient in practical lawyering skills are repetition, faculty guidance, and the opportunity to practice the skills in a variety of complex situations. Yet, first-year law students generally have these experiences withheld until they have received sufficient training to interact with clients. *Id.*; see Ralph C. Thomas, *Practical Training in Advocacy: A Proposal*, 2 TULSA L.J. 45, 54 (1965) ("[C]ompetence is gained by repetition.").

¹⁷ For example, through the 1980s the ABA conducted other studies of lawyer competence including: SPECIAL COMM. FOR STUDY OF LEGAL EDUC., ABA, LAW SCHOOLS AND PROFESSIONAL EDUCATION (1980); TASK FORCE ON PROF'L COMPETENCE, ABA, FINAL REPORT AND RECOMMENDATIONS (1983); COMM. ON CONTINUING PROF'L EDUC., AM. LAW INST. & ABA, ENHANCING COMPETENCE OF LAWYERS: THE REPORT OF THE HOUSTON CONFERENCE (1981). See Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More?*, 100 DICK. L. REV. 245, 290 (1996); see also E. Gordon Gee & Donald W. Jackson, *Current Studies of Legal Education: Findings and Recommendations*, 32 J. LEGAL EDUC. 471 (1982).

continuum.¹⁸ According to Professor Janet Weinstein, Director of the Clinical Internship Program at California Western School of Law: “[M]any faculty members do not see the need to shift from traditional pedagogy toward experiential education. Rather, they consider clinical education a threat to the successful case method. Instead of moving toward more hands-on learning, many professors believe law schools should reinforce existing theoretical models.”¹⁹ Thus, from the perspective of those who oppose integrating or increasing instruction in fundamental lawyering skills, the traditional educational continuum that has been criticized in the *MacCrate Report* and by several other authorities as deficient should remain the status quo.²⁰

What is commonly downplayed by those who advance antiquated notions of how law must be taught is the abiding presence of experiential learning, particularly simulations,²¹ as a constant thread in the history, development, and growth of legal

¹⁸ See Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NE. U. L.J. 87, 87–88 (2013) (arguing that law schools typically place an unbalanced emphasis on learning doctrine, which can create problems for students achieving mastery of fundamental lawyering skills); see also WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 6 (2007) [hereinafter CARNEGIE REPORT] (“Students need opportunities to learn about, reflect on and practice the responsibilities of legal professionals.”); Eric Mills Holmes, *Education for Competent Lawyering—Case Method in a Functional Context*, 76 COLUM. L. REV. 535, 539 (1976) (noting the traditional case method “develops only a few of the intellectual capacities which a lawyer ought to possess.”); Findley, *supra* note 8, at 633 (explaining that experiential education provides a “full and deep legal education, as a matter of sound pedagogy and intellectual rigor,” which can be particularly significant during the first year); Sheldon Krantz & Michael Millemann, *Legal Education in Transition: Trends and Their Implications*, 94 NEB. L. REV. 1, 11 (2015) (“[S]tudents need to be exposed early on to fundamental questions about what it means to be in a profession; what obligations flow from that status; how a lawyer’s personal values relate to his or her professional obligations; what types of moral, ethical and potential malpractice and criminal problems lawyers may confront; and what problems the profession faces now, and why.”).

¹⁹ Drew Coursin, Comment, *Acting Like Lawyers*, 2010 WIS. L. REV. 1461, 1497; cf., Brian Leiter, ‘Experiential’ Education Is Not the Solution to the Problems Facing Law Schools, HUFFPOST (Mar. 7, 2014), https://www.huffingtonpost.com/brian-leiter/experiential-education-law-school_b_4542103.html (“I have no doubts that some doctrinal requirements in the first year, along with the crucial legal research and writing, are essential foundations Mandatory experiential learning will force many students into courses that will have no value for their future careers.”).

²⁰ See Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 615–16 (1984) (“Law school was conceived as a wholly self-contained and terminal educational episode. Practice after graduation was either ignored as a potential source of education or viewed as an entirely different kind of education—the school of hard knocks—having no institutional affiliation or functional connection with the school of law.”).

²¹ See Gerald P. López, *Transform—Don’t Just Tinker With—Legal Education*, 23 CLINICAL L. REV. 471, 535 (2017). Tapping Reeve introduced formal moot courts as a part of the curriculum at Litchfield Law School in the late 1700s. *Id.* At many law schools, moot courts played an important role in providing students with some exposure to practice, albeit in a simulated fashion. *Id.*; see also Jeffrey D. Jackson &

education. Local apprenticeship²² training, often referred to as “reading the law,”²³ and similar experiential pedagogy,²⁴ have been an integral part of educating future lawyers at the start of their careers for centuries.²⁵ However, during the formative years of legal education, many prominent jurists, legal scholars, and practitioners, such as Sir William Blackstone, questioned if apprenticeships were a reliable way to train students for the practice of law.²⁶ The distinguished American legal scholar and

David R. Cleveland, *Legal Writing: A History from the Colonial Era to the End of the Civil War*, 19 LEGAL WRITING 191, 214–15 (2014). For example, as early as the 1830s, moot courts were integrated into the curriculum at Dickinson College in Carlisle, Pennsylvania, where students prepared briefs and argued cases. *Id.*

²² The root word—*apprendre*—means “to learn.” *Del., Lackawanna & W. R.R. v. Petrowsky*, 250 F. 554, 561 (2d Cir. 1918).

²³ See John Flood, *The Future of Legal Education: Are Apprenticeships the Answer?*, THE GUARDIAN (Jan. 22, 2014), <https://www.theguardian.com/education/2014/jan/22/apprenticeship-legal-profession-train-lawyer>. In early colonial times, apprenticeships were referred to as “articles of clerkship.” *Id.*; see also Jackson & Cleveland, *supra* note 21, at 195–96 (“In Colonial America, a person who wanted to become a lawyer had three main options for training: he (and of course, aspiring lawyers were all male at this time) could serve as an apprentice or clerk in the office of a lawyer; serve as clerk for a court of record; or learn the law on his own through reading whatever books, statutes, and reports he could find.”). The apprentice system was the bedrock of American legal education from colonial times until the early nineteenth century. *Id.* at 199.

²⁴ See Coursin, *supra* note 19, at 1470 (explaining that colonists who studied law “observed court proceedings, attended small-group lectures, and worked closely with more experienced practitioners in order to learn the nuances of English law”).

²⁵ See *id.*; see also Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 184 (2008) (indicating the apprenticeship system was the dominant teaching methodology in America for more than two hundred years before it was supplanted by the case method).

²⁶ See Christine Kexel Chabot, *Schooling the Supreme Court*, 92 DENV. U. L. REV. 217, 235 (2015) (“According to Blackstone, apprenticeship would leave a lawyer ‘uninstructed in the elements and first principles upon which the rule of practice is founded,’ such that ‘the least variation from established precedents will totally distract and bewilder him.’”); see also Stephen Skinner, *Blackstone’s Support for the Militia*, 44 AM. J. LEGAL HIST. 1, 1 (2000). Regarding apprenticeship training, Sir William Blackstone observed

[A] lawyer thus educated to the bar, in subservience to attorneys and solicitors, will find he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know: if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him

Maurice S. Pianko, *Dealing With the Problem of Unpaid Interns and Nonprofit/profit-Neutral Newsmagazines: A Legal Argument That Balances the Rights of America’s Hardworking Interns with the Needs of America’s Hardworking News Gatherers*, 41 RUTGERS L. REC. 1, 3–4 (2014).

educator, Roscoe Pound, advocated for abandonment of the apprenticeship model to achieve “a deeper and wider training of lawyers than the training in rules of thumb and in procedure which was afforded by the law office.”²⁷

Christopher Columbus Langdell, the Dean of Harvard Law School from 1870–1895, was influential in shaping modern legal education by establishing the case method and the Socratic method as the dominant pedagogies to teach legal rules and concepts to students.²⁸ Moreover, under Langdell’s leadership and innovation, Harvard Law School’s use of academics to instruct students in the law became the model for most law schools established from the Industrial Revolution to today.²⁹

²⁷ A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1963 (2012); see also Jackson & Cleveland, *supra* note 21, at 209. Conversely, Professor Asahel Stearns praised the value of practical skills exercises to the Harvard Board of Overseers in 1826, explaining “no other exercise is so powerful an excitement to industry and emulation or so strongly interests the student in their professional pursuits.” *Id.*

²⁸ See, e.g., López, *supra* note 21, at 516–17. Although Langdell is credited with ushering in the case method, that claim to fame belongs to John Norton Pomeroy, a professor at the University of New York City (now New York University). *Id.* at 539. López describes how other scholars confirm Pomeroy’s use of the case method prior to Langdell. *Id.* at 539 n.58. Harvard Law School notes on its website that Langdell should be credited with transforming “American legal education by introducing what has become the standard first-year curriculum for American law schools—including classes in contracts, property, torts, criminal law, and civil procedure.” *History of Harvard Law School*, HARVARD LAW SCH., <https://hls.harvard.edu/about/history/> (last visited Oct. 30, 2019).

²⁹ See Gregory Crespi, *Will the Income-Based Repayment Program Enable Law Schools to Continue to Provide “Harvard-Style” Legal Education?*, 67 SMU L. REV. 51, 55 (2014) (explaining that the “Harvard-style” education has been “[t]he prevailing model of legal education in the United States” from “the late-19th century and since then has been very widely replicated.”); see also Spencer, *supra* note 27, at 2063 (“[L]egal positivists . . . viewed the law as . . . a set of rules and techniques rather than a craft of interpretation and adaptation All this spelled the eclipse of traditional forms of practitioner-directed apprenticeship by academic instruction given by scholar-teachers.”) (quoting CARNEGIE REPORT, *supra* note 18, at 5). When the ABA was founded in 1878, it immediately became a strong ally of law schools’ efforts to establish their niche in American universities. Erickson, *supra* note 18, at 87–88 (“This divide matters when it comes to educating our students. Doctrinal faculty members still comprise a majority of the full-time faculty at most law schools And, through sheer numbers if nothing else, they likely still control the curriculum at most law schools.”); see also James H. Backman & Cory S. Clements, *Significant but Unheralded Growth of Large Externship Programs*, 28 BYU J. PUB. L. 145, 157 (2013) (“These clinical professors were usually paid less than the professors recruited from private law firms for regular faculty positions to teach classes using the Socratic method in large classroom settings.”). Richard E. Redding noted in 2003 that law professors who teach at the 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% had no legal practice experience. 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).

Over a relatively short period of time, widespread use of Langdell's approach to the case method at American law schools³⁰ contributed to the marginalization of clinical education,³¹ to such an extent that the ABA's Committee on Legal Education observed in 1890, "all [law schools] suffer from the want of a proper standard of true legal education, a definite plan of the entire course."³² Arthur T. Vanderbilt acknowledged the case method's deficiencies in teaching the "art of doing."³³ Vanderbilt noted that "other professional disciplines, such as medicine, engineering, and business, did not rely solely on books to prepare graduates for their future careers."³⁴ Instead, students entering those professions were more systematically exposed to practical skills.³⁵

This early recognition that the case method alone was insufficient to impart all necessary skills to new lawyers was generally ignored by law schools, despite warnings from leading educators in and outside of the legal community.³⁶ Gradually,

³⁰ See Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551, 552 (2018). In 1881, the ABA unanimously adopted a resolution that provided for a three-year course of study in law. *Id.* at 557. This resolution also served to advance formal, doctrinal instruction over experiential learning. *Id.*

³¹ See Spencer, *supra* note 27, at 1983–84.

³² *Id.* (citing WILLIAM G. HAMMOND ET AL., ABA COMM. OF LEGAL EDUC., REPORT ON THE COMMITTEE OF LEGAL EDUCATION 332–34 (1891)). The ABA Committee on Legal Education concluded its observations by stating:

The defects of the present method may be summed up, we think, in one very familiar antithesis: they do not educate, they only instruct. They aim only to heap up in the student's mind a great mass of legal "points"—rules, definitions, etc.—but they do not fashion these into a system, nor even do they give him the faculty of constructing for himself such a system He is supplied with an abundance of crude material, but not taught to use it Our law schools, as usually conducted, offer nothing. Most of them do not, in their plan of study, seem ever to recognize the need. It is fortunate for them and for their pupils alike that the training thus omitted may be supplied in the early years of practice, at least to a very considerable extent.

Id. at 1984 (citing HAMMOND ET AL., *supra*, at 330).

³³ See 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 (1993).

³⁴ See Frank J. Macchiarola & Joseph Scanlon, *Lawyers in the Public Service and the Role of Law Schools*, 19 FORDHAM URB. L.J. 695, 698 (1992).

³⁵ *Id.*

³⁶ See JOSEF REDLICH, CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS, at v–vii (1914) [hereinafter REDLICH

law schools responded to the criticism “by supplementing their curricula with practice courses in the form of legal clinics.”³⁷ Indeed, “[b]y 1951, there were twenty-eight law clinics maintained by law schools, independent legal aid societies, or public defender offices around the country.”³⁸ By the early 1970s, the growth of law clinics included nearly half of American law schools.³⁹ However, students still were not required to enroll in clinical courses or complete any credits related to developing fundamental lawyering skills.⁴⁰

In 1971, the Association of American Law Schools (“AALS”) released the *Carrington Report*, a study of the legal profession and legal education.⁴¹ The *Carrington Report* urged law schools to “break free of offerings and approaches that

REPORT]. In 1913, the ABA Committee on Legal Education commissioned the Carnegie Foundation to investigate the state of American legal education, resulting in publication of the *Redlich Report* in 1914. *Id.* at v. The *Redlich Report* was one of the first public challenges to Langdell’s claim that law was an inductive science that required the study of appellate cases. *Id.* Seven years later, the Carnegie Foundation issued a more comprehensive review of legal education that was authored by Alfred Zantzing Reed. *See* ALFRED ZANTZINGER REED, CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW (1921). Reed viewed the lack of fundamental training in lawyering skills as “a remarkable educational anomaly.” *Id.* at 281. This caused him to bemoan the end of skills training by experienced practitioners, stating: “[W]e are in a fair way of losing entirely the practical training secured under a practitioner, that was once assumed to be the only logical means of preparing students in Anglo-American law.” *Id.* at 48; *see also* Spencer, *supra* note 27, at 1963 (“[A]ll the activities of the school are necessarily conducted under artificial conditions. The hurly-burly of actual practice is systemized for the student in a manner that it never is when an authentic client begins to tell him his woes. . . . [T]his is what distinguishes the lawyer from the legal scholar, the expert practitioner from the man who knows, or who is qualified to ascertain, the law.”) (quoting ALFRED ZANTZINGER REED, CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, PRESENT-DAY LAW SCHOOLS IN THE UNITED STATES AND CANADA 215 (1928)).

³⁷ Spencer, *supra* note 27, at 2004 (citing ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, at 214–16 (1983)). Several law schools implemented other pedagogical reforms after World War II, including the introduction of elective courses, seminar courses, introductory law courses, writing programs, small group discussions, and reduced class sizes. *Id.* at 2017.

³⁸ Spencer, *supra* note 27 at 2004–05; *see* John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 330 (2007) (“Law school clinics began as a series of individual programs frequently undertaken on a volunteer basis and for which students received no credit.”).

³⁹ *See* Sonsteng et al., *supra* note 38 at 331; *see also* Joy & Kuehn, *supra* note 25, at 187–88 (detailing how through the 1960s until the late 1990s, corporate funding and governmental initiatives sparked development of clinical programs at every American law school in the form of law clinics, externships, or both).

⁴⁰ *See* ABA, STANDARDS FOR APPROVAL OF LAW SCHOOLS 7 (1973) [hereinafter 1973 ABA STANDARDS] (analyzing Standard 302(a)(iii)).

⁴¹ *See* Krantz & Millemann, *supra* note 18, at 6–7.

have nothing but longevity to commend them,”⁴² like the case method and Socratic method. Two years after the *Carrington Report* was released, Chief Justice Warren Burger lamented: “From one-third to one-half of the lawyers who appear in the serious cases are not really qualified to render fully adequate representation.”⁴³ Interestingly, while he questioned the training regimen law students experienced, Chief Justice Burger praised the use of live patients by medical schools to prepare future physicians for their profession.⁴⁴

Following closely on the heels of the *Carrington Report* and Chief Justice Burger’s statements, the ABA revised Standard 302 to suggest the importance of students being trained to acquire “professional skills.”⁴⁵ However, the ABA did not compel law schools to include more professional skills training in their curricula, and many law schools did not,⁴⁶ opting instead to assert such instruction was no more than a pleasant distraction for students from the substantive, analytical training that doctrinal courses provided.⁴⁷ This indifference toward experiential education by

⁴² *Id.* at 7.

⁴³ 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).

⁴⁴ *Id.* at 232 (noting the balanced education medical students receive). Chief Justice Burger stated:

Law schools fail to inculcate sufficiently the necessity of high standards of professional ethics, manners and etiquette as things basic to the lawyer’s function. With few exceptions, law schools also fail to provide adequate and systematic programs by which students may focus on the elementary skills of advocacy. . . . The medical profession does not try to teach surgery simply with books; more than 80 percent of all medical teaching is done by practicing physicians and surgeons. Similarly, trial advocacy must be learned from trial advocates.

Id.

⁴⁵ See 1973 ABA STANDARDS, *supra* note 40, at 7. Standard 302(a)(ii) stated “[t]he law school shall offer . . . (ii) training in professional skills, such as counseling, the drafting of legal documents and materials, and trial and appellate advocacy.” *Id.*

⁴⁶ See *id.* (highlighting that while the ABA suggested the need for professional skills, it did not compel those additional skills).

⁴⁷ See Edward J. Imwinkelried, *On Achieving Synergy in the Law School Curriculum*, 66 *NOTRE DAME L. REV.* 739, 739 (1991) (“[M]ost law faculty members dismissed the advocacy courses as ‘amusement’ for students rather than ‘serious work.’ The vast majority of law teachers were skeptical of the educational value of advocacy courses. Traditionalists assigned the advocacy courses low curricular priority, and the courses tended to be staffed by part-time teachers who were not on tenure track. In part because most of the part-time professors teaching the courses were busy practitioners with other demands on their time,

many law schools, particularly their doctrinal instructions, allowed law schools to understaff and underfund experiential education programs for decades.⁴⁸

In 1979, an ABA task force was formed to assess the role law schools played in establishing lawyer competency. That task force observed, in what is referred to as the *Cramton Report*, “[l]aw schools, have not . . . undertaken to provide such comprehensive training that individuals emerge upon graduation as fully competent ready-to-practice lawyers.”⁴⁹ The *Cramton Report* endorsed improving legal education by providing more training in fundamental lawyering skills, which had heretofore been underemphasized by traditional law schools.⁵⁰

Inexplicably, many law schools continued to oppose the development of experiential education programs despite expansion and liberalization of the *Standards and Rules of Procedure for Approval of Law Schools* (“Standards”). In 1981, the ABA amended Standard 302 to indicate that law schools must provide “adequate opportunities for instruction in professional skills.”⁵¹ Predictably, some law schools reluctantly changed their curriculum to provide students with more opportunities for professional skills training;⁵² however, whether students enrolled in such courses remained a secondary concern for many of those law schools.⁵³

In 1983, the *Final Report of the ABA Task Force on Professional Competence* found: “Law schools do well in teaching substantive law and developing analytic skills. The problems and issues in American legal education involve chiefly the teaching of other lawyering skills.”⁵⁴ The *MacCrate Report* also revealed “that

the materials used in the courses were poorly organized and conceived; the part-time professors had little time to devote to the preparation of the teaching materials.”)

⁴⁸ See *id.*

⁴⁹ Spencer, *supra* note 27, at 2006 (quoting *ABA, Report and Recommendations of the Task Force on Lawyer Competency: The Role of the Law Schools*, 1979 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO BAR 1, 11).

⁵⁰ *Id.* at 2006–07.

⁵¹ See ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (1981) (interpreting Standard 302).

⁵² See *id.* (highlighting Interpretation 4 of Standard 302 (a)(iii)); see also Roy T. Stuckey, *Education for the Practice of Law: The Times They Are A-Changin’*, 75 NEB. L. REV. 648, 682–83 (1996).

⁵³ See Edward J. Devitt & Helen Pougiales Roland, *Why Don’t Law Schools Teach Law Students How to Try Lawsuits?*, 13 WM. MITCHELL L. REV. 445, 456 (1987).

⁵⁴ Peter A. Joy, *Law Schools and the Legal Profession: A Way Forward*, 47 AKRON L. REV. 177, 183 (2014).

professional skills training accounted for only nine percent of the total instructional time available to law schools.”⁵⁵

When the *MacCrate Report* was published in 1994, it was considered a “manifesto for clinicians and the legal theory connected to clinical professors.”⁵⁶ It established credibility for clinical instruction as a core component of the educational continuum.⁵⁷ In response to the *MacCrate Report* and the controversies it raised in the legal community, law schools begrudgingly expanded their experiential education offerings to include more law clinics and externships.⁵⁸

By 1996, the ABA issued new interpretations of the *Standards* to mandate law schools provide, not just offer, professional skills training to students.⁵⁹ This was the first time in nearly one hundred years since Langdell innovated legal education that any authority obligated law schools to include such courses in their curriculum.

In 2007, the Clinical Legal Education Association established a committee to develop a “Statement of Best Practices for Legal Education” that was later issued in

⁵⁵ *Id.* Near the time the *MacCrate Report* was being prepared, “George Priest discussed ‘an increasing distance between legal practice and legal education,’ which he noted had been going on for twenty-five years. Priest . . . predicted that over the next twenty-five years ‘[t]he distance between the bar and the law school will become greater.’” *Id.* at 181 (quoting George L. Priest, *The Increasing Division Between Legal Practice and Legal Education*, 37 BUFF. L. REV. 681, 681 (1989)). In 2008, Priest’s forecasts came to fruition as both the market for legal education and the practice of law collapsed, and the chasm between doctrinal faculty and clinical faculty become more pronounced. *Id.* at 179.

⁵⁶ Bryant G. Garth, *From MacCrate to Carnegie: Very Different Movements for Curricular Reform*, 17 LEGAL WRITING 261, 265 (2011).

⁵⁷ *See id.*

⁵⁸ *See* Rodney J. Uphoff et al., *Preparing the New Law Graduate to Practice Law: A View from the Trenches*, 65 U. CIN. L. REV. 381, 383 (1997). The primary models for externship programs that were established are the clinical model and the apprenticeship model. James H. Backman, *Where Do Externships Fit? A New Paradigm Is Needed: Marshaling Law School Resources to Provide an Externship for Every Student*, 56 J. LEGAL EDUC. 615, 617–18 (2006). The clinical model produced the earliest iteration of externships that were designed more like law clinics. Over time, apprenticeship model externships have become more common due to their lower cost to establish. *Id.* at 620; *see also* Bernadette T. Feeley, *Examining the Use of For-Profit Placements in Law School Externship Programs*, 14 CLINICAL L. REV. 37, 60 (2007).

⁵⁹ *See* ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 1, 30 (1996) (highlighting the change in Standard 302). In 1996, Standard 302 stated: “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.” *Id.*; *see also* John H. Garvey, *The Business of Running a Law School*, 33 U. TOL. L. REV. 37, 39 (2001); Emily Traylor Vande Lune, Note, *Settling for Six: Should the American Bar Association Have Done More to Promote Experiential Learning in Law Schools?*, 39 J. LEGAL PROF. 305, 307 (2015).

a report entitled *Best Practices for Legal Education* (“*Best Practices*”).⁶⁰ *Best Practices* concurred with the *MacCrate Report*’s observation that legal education needed substantial improvement in the manner in which students were prepared for the practice of law.⁶¹ Specifically, *Best Practices* noted that law graduates “are not sufficiently competent to provide legal services to clients or even to perform the work expected of them in large firms.”⁶² To address this concern, *Best Practices* advocated for law schools to design their respective curricula to prepare students for practice by offering “context-based education” that would afford students the problem-solving opportunities they needed to become competent and effective legal practitioners.⁶³

In the same year that *Best Practices* was issued, the Carnegie Foundation for the Advancement of Teaching (“Carnegie Foundation”) completed an intensive field study of sixteen law schools and published its findings and recommendations in a report titled *Educating Lawyers: Preparation for the Profession of Law* (“*Carnegie Report*”).⁶⁴ Like the *MacCrate Report*, the *Carnegie Report* found “two major limitations in legal education: the absence of both (1) direct skills training, and (2) ‘effective support for developing ethical and social skills.’”⁶⁵ Notably, the *Carnegie Report* observed long-standing deficiencies in the educational continuum that stemmed from the limited training students received in fundamental lawyering skills, particularly beginning in the first year of law school.⁶⁶ The *Carnegie Report*

⁶⁰ See generally STUCKEY ET AL., *supra* note 6, at viii.

⁶¹ See *id.* at 72.

⁶² See *id.* at 19.

⁶³ See *id.* at 104–16.

⁶⁴ See generally CARNEGIE REPORT, *supra* note 18. The *Carnegie Report* was praised as providing “an outsider perspective to the discussion of legal education” unlike the more divisive *MacCrate Report*. Garth, *supra* note 56, at 266.

⁶⁵ Jennifer S. Taub, *Unpopular Contracts and Why They Matter: Burying Langdell and Enlivening Students*, 88 WASH. L. REV. 1427, 1450–51 (2013) (quoting CARNEGIE REPORT, *supra* note 18, at 6).

⁶⁶ See Davida Finger, *Introduction: Teaching in a Transformative Age: The Law School of the Future*, 10 SEATTLE J. FOR SOC. JUST. 1, 2 (2011).

At a deep, largely uncritical level, the students come to understand the law as a formal and rational system, however much its doctrines and rules may diverge from the common sense understandings of the lay person. . . . In their all-consuming first year, students are told to set aside their desire for justice. They are warned not to let their moral concerns or compassion for the people in the cases they discuss cloud their legal analyses.

also noted that the education of professionals is a complex and unique enterprise that cannot simply focus on the transmission of analytical skills.⁶⁷ To the contrary, a holistic educational continuum must also convey the specialized skills, standards, judgments, and values that define practice in the legal profession.⁶⁸

The authors of the *Carnegie Report* observed that law schools rely too heavily on the case method, which has some strengths in teaching students to “think like lawyers,” but not in teaching them the art of doing.⁶⁹ Along these lines, the *Carnegie Report* concluded that most law schools “give only casual attention to teaching students how to use legal thinking in the complexity of actual law practice” and “fail to complement the focus on skill in legal analyses with effective support for developing ethical and social skills.”⁷⁰ However, when it comes to teaching students the skillset needed to provide legal services to clients, “the task of connecting these conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions, remains outside the case-dialogue method.”⁷¹ Thus, the traditional educational continuum for students “prolong[ed] and reinforce[d] the habits of thinking like a student rather than an apprentice practitioner,”⁷² resulting in law schools graduating students who have an “underdeveloped sense of professional judgment and responsibility.”⁷³

To address the aforementioned shortcomings in legal education, the *Carnegie Report* recommended law schools revive the apprenticeship model by establishing three “apprenticeships” that could provide the format for an integrated, three-part curriculum.⁷⁴ The proposed apprenticeships included: (1) knowledge or the teaching

CARNEGIE REPORT, *supra* note 18, at 5–6.

⁶⁷ See CARNEGIE REPORT, *supra* note 18, at 4.

⁶⁸ *Id.* at 12–14.

⁶⁹ See *id.* at 6.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ Spencer, *supra* note 27, at 2013.

⁷⁴ See CARNEGIE REPORT, *supra* note 18, at 8–10. Integrating the three parts of legal education would better prepare students for the varied demands of professional legal work. See Charity Scott,

of legal doctrine and analysis, which provides the basis for professional growth; (2) practice or introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients; and (3) professionalism or exploration and assumption of the identity, values, and dispositions consonant with the fundamental purposes of the legal profession.⁷⁵

The *Carnegie Report* also recommended law schools pursue a more integrated approach to improving legal education.⁷⁶ In seven recommendations, the authors spelled out the key features of an integrated approach to providing a fuller, more effective education to future lawyers.⁷⁷ In particular, the *Carnegie Report* noted that the existing common core of legal education needed to be expanded and its basic components more closely aligned.⁷⁸ The report indicated the common core of legal education needed to be organized by an overarching aim of educating students for the full range of legal competence, including practice skills, legal analysis, and commitment to the defining values of the profession.⁷⁹ Students needed to be given substantial and concrete experiences with practice as well as opportunities to explore issues of professionalism in ways that encouraged serious reflection and engagement.⁸⁰ In critiquing the shortcomings of legal education in this century compared to the successes of medical education, the *Carnegie Report* emphasized the view that students learn more effectively when they are engaged in interactions that require knowledge and utilization of “the responsibilities inherent in the profession’s various roles.”⁸¹ These integrative efforts were likely to be most effective when faculty with different strengths, such as clinical and doctrinal faculty, as well as legal writing instructors, develop on-going, complementary relationships.⁸²

Collaborating with the Real World: Opportunities for Developing Skills and Values in Law Teaching, 9 IND. HEALTH L. REV. 409, 414–15 (2012).

⁷⁵ See CARNEGIE REPORT, *supra* note 18, at 8.

⁷⁶ See *id.* at 8–10.

⁷⁷ *Id.*

⁷⁸ *Id.* at 7.

⁷⁹ *Id.*

⁸⁰ See *id.*

⁸¹ *Id.* at 9–10.

⁸² See *id.* For some time, the ABA did not allow law schools to offer bar review courses for academic credit. 1973 ABA STANDARDS, *supra* note 40, at 7. Now that that prohibition has been lifted, law schools should consider ways to include academic success instructors and other instructors of ancillary skill

The ABA Section on Legal Education and Admissions to the Bar began a comprehensive review of the *Standards* from 2008 to 2014 that ultimately resulted in the ABA mandating that law schools integrate more professional skills training into their curricula.⁸³ Standard 304 was also revised by the ABA to recognize simulations as an approved form of experiential education.⁸⁴ Interpretation 302-1 further states that law schools may determine which “other” skills to teach, and lists a range of skills that include: “interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.”⁸⁵

The 2014 revisions marked substantial restructuring of the *Standards*. The ABA raised the experiential education credit requirement from one to six credits,⁸⁶ although there was great debate among every segment of the legal community whether the requirement should be fifteen credits or higher.⁸⁷ Another significant

courses within the modern educational continuum. See ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 17–19 (2006) (noting Standard 302, Interpretation 302-7).

⁸³ See, e.g., Margaret E. Reuter & Joanne Ingham, *The Practice Value of Experiential Legal Education: An Examination of Enrollment Patterns, Course Intensity, and Career Relevance*, 22 CLINICAL L. REV. 181, 183–84 (2015).

⁸⁴ See 2015 ABA STANDARDS, *supra* note 9, at 17 (Standard 304(a), (b)).

⁸⁵ *Id.* at 16 (Interpretation 302-1).

⁸⁶ See *id.* (Standard 303(a)(3)).

⁸⁷ See Vande Lune, *supra* note 59, at 307. Despite this change, law schools still have the lowest experiential education requirement compared to other professions. *Id.*; see also Joy, *supra* note 54, at 188–89 (“Architecture education . . . requires approximately one-third in design studio courses; medical education requires one-half of the student’s education in clinical rotations; nursing requires approximately one-third of the education in clinical practice courses; pharmacy schools require 300 hours in the first three years of study in clinical settings and 1,440 hours in the final year of school in clinical settings; masters of social work requires approximately one-third of the credit hours in field education courses; and veterinary medicine requires at least one-quarter of the education in clinical education.”). More specifically, medical schools have enhanced the role of clinical education in the teaching of their students for at least three decades. See also JAMES R. MAXEINER, EDUCATING LAWYERS NOW AND THEN: AN ESSAY COMPARING THE 2007 AND 1914 CARNEGIE FOUNDATION REPORTS ON LEGAL EDUCATION 25–26 (2007) (noting clinical training for students learning in medical schools begins in the first year and is dominant by the third year). For other comparisons of how medical education and legal education have integrated experiential education into their curriculum, see generally Claire Johnson & Bart Green, *100 Years After the Flexner Report Reflections on Its Influence on Chiropractic Education*, 24 J. CHIROPRACTIC EDUC. 145 (2010), which assesses the criticism medical schools, like law schools, have received for failing to provide students with real-life encounters; see also ASS’N OF AM. MED. COLLS., REPORT II CONTEMPORARY ISSUES IN MEDICINE: MEDICAL INFORMATICS AND POPULATION HEALTH (1998), https://pdfs.semanticscholar.org/93ae/51dcb28b2ed8778410f85b675b2c416e97b8.pdf?_ga=2

change to the *Standards* called for the establishment of “learning outcomes” that, “at a minimum, include competency” in the following areas:

- (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.⁸⁸

The ABA mandated that all law schools establish and publish those learning outcomes that reflect how the law school teaches students to be practice-ready upon graduation.⁸⁹ Interpretation 302-2 notes that, “A law school may also identify any additional learning outcomes pertinent to its program of legal education.”⁹⁰ Standard 302, as well as Interpretations 302-1 and 302-2, indicate that law schools must establish and measure other important outcomes for those who enroll in their programs of legal education, including competencies related to the practice of law.⁹¹

.21380797.725265398.1566786901-265647332.1566786901 (describing the American Association of Medical Colleges’ reforms to integrate theory to practice and advance “discovery learning”); EUGENE C. CORBETT, JR. & MICHAEL WHITCOMB, ASS’N OF AM. MED. COLLS., THE AAMC PROJECT ON THE CLINICAL EDUCATION OF MEDICAL STUDENTS: CLINICAL SKILLS EDUCATION (2004), <https://www2.kumc.edu/PDFATraining/Admin/documents/Med%20Ed%206.12.09%20The%20AAMC%20Project%20on%20the%20Clin%20Educ%20of%20Med%20Stud%20Clin%20Sk%20Edu.pdf> (detailing initiatives by a great majority of medical schools to integrate clinical content, into the first-year curriculum, including patient interactions that focus on the doctor-patient relationship and exposing first-year medical students to community-based preceptorship experiences); *What to Expect in Medical School*, PRINCETON REV., <https://www.princetonreview.com/med-school-advice/what-to-expect-in-medical-school> (last visited Oct. 21, 2019) (“[M]edical students receive classroom instruction and work in lab settings their first two years, then move into clinical environments their third and fourth years”); Richard E. Redding, *The Legal Academy Under Erasure*, 64 CATH. U. L. REV. 359, 394 (2015) (quoting Robert M. Hardaway, *Legal and Medical Education Compared: Is It Time for a Flexner Report on Legal Education?*, 59 WASH. U. L. REV. 687, 706 n.115 (1981) (“The medical student is taught how to do it right in the first place. He watches . . . He sees . . . [H]e does things not merely once . . . but literally hundreds and hundreds of times . . . And at the same time he is being taught the theory of medicine.”)).

⁸⁸ See 2015 ABA STANDARDS, *supra* note 9, at 15 (Standard 302).

⁸⁹ See *id.* at 183 app. 3 (noting the Standard 301 Guidance Memo).

⁹⁰ *Id.* at 16 (Interpretation 302-2).

⁹¹ See *id.* at 15–16 (highlighting Standard 302, Interpretations 302-1 and 302-2, which set forth the guidelines for learning outcomes).

Moreover, Standard 315 requires the dean and the faculty of each law school to evaluate the law school's program of legal education, learning outcomes, and assessment methods,⁹² and then analyze the results to determine the "degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum."⁹³ Since the 2016–2017 academic year, site teams visiting law schools have reported on the progress law schools are making in establishing learning outcomes and in developing an assessment plan.⁹⁴

III. EXTERNAL AND INTERNAL FACTORS THAT CONFINE THE TRADITIONAL EDUCATIONAL CONTINUUM

A. Governmental Oversight and Industry Regulation

The increased pressure from the ABA on law schools to improve their learning outcomes was not entirely a result of the ABA's desire to realign and standardize legal education. Some legal scholars have observed that the ABA finally became more active in this area in response to indications from the United States Department of Education that it would strip the ABA of its regulatory authority unless radical changes were made to improve deficiencies in how students were trained for the legal profession.⁹⁵ Nonetheless, by expressly mandating that law schools verify how and to what degree they achieve their purported learning outcomes, the ABA has effectively realigned the parameters of the traditional educational continuum to what it should have been when Harvard-style law schools were being established.

Various states across the country have also criticized how law schools teach fundamental lawyering skills within the educational continuum.⁹⁶ For example, in 2012, the New York Court of Appeals revised the state's rules for bar admission to

⁹² See *id.* at 24 (noting the requirement for the dean and faculty to continuously evaluate the law school program in Standard 315).

⁹³ *Id.*

⁹⁴ See Margaret Martin Barry, *Reflections on Identifying and Mapping Learning Competencies and Outcomes: What Do We Want Law Students to Learn?*, 62 N.Y.L. SCH. L. REV. 131, 140 (2018) (quoting ABA, MANAGING DIRECTOR'S GUIDANCE MEMO: STANDARDS 301, 302, 314 AND 315, at 6 (June 2015)). The ABA has kept law schools on a tight schedule that requires they demonstrate "steady work and progress toward the adoption of a full set of learning outcomes" by the end of the 2017–2018 year, and implementation of an assessment plan by the end of the 2018–2019 academic year. *Id.*; see also 2015 ABA STANDARDS, *supra* note 9, at 24 (connecting to Standard 315).

⁹⁵ See Stephanie Francis Ward, *ABA Responds to Accreditation Panel's Threat to Suspend Its Role*, ABA J. (Sept. 1, 2016), http://www.abajournal.com/magazine/article/law_school_accreditation_aba_response.

⁹⁶ See Joy, *supra* note 54, at 189.

require all applicants complete at least fifty hours of “qualifying pro bono service” prior to filing an application for admission.⁹⁷ That same year, the State Bar of California Board of Trustees (“Board of Trustees”) considered imposing a similar requirement that students receive additional practical skills training before applying for admission to the bar.⁹⁸ Other states, including Illinois and Ohio, have been “critical of law schools for not preparing students better for the practice of law” and, consequently, have enacted additional admission requirements.⁹⁹ These regulations confirm that from the perspective of states that partner in the common enterprise of preparing students for the practice of law, law schools bear responsibility for training students for the profession within a compressed amount of time, instead of permitting them to graduate unemployed and unprepared for the realities of the profession.

The Ohio State Bar Association’s Task Force on Legal Education Reform stressed the need for every law student to take part in at least one law clinic or externship.¹⁰⁰ The New York State Bar Association’s educational reform task force has even recommended that the Court of Appeals make less restrictive the New York Bar’s rule limiting the number of clinical and skills training courses that can be counted for admission to the bar to encourage practical skills training and the development of professional identity.¹⁰¹ Finally, a report from the Massachusetts Bar Association encouraged law schools to increase their clinical programs to guarantee every student the ability to participate in skills-building activities.¹⁰²

⁹⁷ Jessica Ratner, *Pro Bono or Problem: Can a Moral Obligation Effectively Bridge the ‘Justice Gap’?*, 18 LOY. PUB. INT. L. REP. 8, 9 (2012).

⁹⁸ Vande Lune, *supra* note 59, at 313–14. In October 2013, the Board of Trustees adopted a proposal from the Task Force on Admissions Regulation Reform that would require law schools provide fifteen hours of classroom instruction in professional skills or practice-based training prior to admission to the bar. *See* Cynthia Batt, *A Practice Continuum: Integrating Experiential Education into the Curriculum*, 7 ELON L. REV. 119, 125 (2015).

⁹⁹ Joy, *supra* note 54, at 189; *see also* NAT’L CONFERENCE OF BAR EXAM’RS & AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 17–19 (2019), <http://www.ncbex.org/assets/BarAdmissionGuide/NCBE-CompGuide-2019.pdf>.

¹⁰⁰ Robert R. Kuehn, *Universal Clinic Legal Education: Necessary and Feasible*, 53 WASH. U. J.L. & POL’Y 89, 94 (2017).

¹⁰¹ Vande Lune, *supra* note 59, at 314.

¹⁰² *Id.* Presently, at least nineteen law schools have accepted this challenge by publicly guaranteeing to their enrolling students an experiential learning opportunity while attending law school. *See generally* Susan L. Brooks et al., *Experience the Future: Papers from the Second National Symposium on*

B. *The Contracting Legal Marketplace*

Since at least the mid-1990s, the marketplace for the legal profession has continually contracted,¹⁰³ thereby creating an unfavorable job market for recent graduates.¹⁰⁴ According to a report prepared by Georgetown Law Center for the Study of the Legal Profession, “since the collapse in demand in 2009 (when growth hit a negative 5.1% level), demand growth in the market has remained essentially flat to slightly negative.”¹⁰⁵ Furthermore,

according to Peer Monitor data through November 2014, productivity for the market as a whole has been on an overall downward trend for the past 15 quarters. With the exception of associates, where there has been some improvement in productivity, [other law firm members have consistently remained] between 100 and 200 hours per person per year lower than in 2007.¹⁰⁶

Due to the aforementioned market constraints, many law firms are no longer willing or able to assume the responsibility of training law school graduates in a de facto “fourth” year of law school.¹⁰⁷ The economic realities of the legal profession behoove law firms to scrutinize law school curricula to confirm students they

Experiential Education in Law: Alliance for Experiential Learning in Law, 7 ELON L. REV. 1, 57–62 (2015) (discussing creative programmatic initiatives by law schools).

¹⁰³ Phillip S. Figa, *The First Thing We Do, Let's Kill All the Law Schools (With Apologies to Dick the Butcher)*, 25 COLO. LAW. 13, 13 (1996) (citing Robert L. Potts, *Too Many Lawyers, Too Few Jobs*, CHRON. HIGHER EDUC. (Feb. 2, 1996), <https://www.chronicle.com/article/Too-Many-Lawyers-Too-Few-Jobs/95624>); see also Russell G. Pearce & Pam Jenoff, *Nothing New Under the Sun: How the Legal Profession's Twenty-First Century Challenges Resemble Those of the Turn of the Twentieth Century*, 40 FORDHAM URB. L.J. 481 (2012); see generally Eli Wald, *The Great Recession and the Legal Profession*, 78 FORDHAM L. REV. 2051, 2051–52 (2010) (discussing consequences of the economic downturn on law firms).

¹⁰⁴ See Camille A. Nelson, *A Modest Response to a Simple Proposal*, BOS. B.J. (Oct. 7, 2014), <https://bostonbarjournal.com/2014/10/07/a-modest-response-to-a-simple-proposal/> (“There has been a decline in the ‘market for lawyers’ post-2008, as the US economy shifted from a period of relative expansion to one of economic stagnation, and ultimately financial crisis.”).

¹⁰⁵ GEORGETOWN LAW CTR. FOR THE STUDY OF THE LEGAL PROFESSION & THOMSON REUTERS PEER MONITOR, 2015 REPORT OF THE STATE OF THE LEGAL MARKET 3 (2015), http://www.elite.com/exchange/2015/03/pdf/2015_Georgetown_Law_Peer_Monitor_Year_in_Review_Report.pdf [hereinafter GEORGETOWN PEER MONITOR REPORT].

¹⁰⁶ *Id.* at 4.

¹⁰⁷ See John Henry Schlegel, *Walt Was Right*, 51 J. LEGAL EDUC. 599, 608 (2001).

entertain hiring are being taught fundamental lawyering skills while in law schools along a discernible educational continuum that presumably began before law school, but definitively concludes by graduation.¹⁰⁸

Furthermore, the economic realities of our global economy reveal lawyers are increasingly being removed from the value chain in the legal service process and are being replaced by specialists, opportunists, and hybrid professionals.¹⁰⁹ Clients and employers know that when alternative sources for law-related services are available “cost goes down, quality goes up, and service delivery time becomes faster.”¹¹⁰

The intrusion of other providers of legal services into areas that were previously exclusive to attorneys will continue to contract opportunities for law school graduates and require further reassessment of how law schools teach theory and practice along the educational continuum. Jordan Furlong predicts that the opening of the market for legal services will result in several unpleasant consequences, including lawyers battling multiple competitors for market share; regulatory reform that eliminates the legal profession’s monopoly over certain legal work, including trial work; firm closures for those that do not adapt to the shifting marketplace; and price drops for most services to “true commodity levels (\$0).”¹¹¹

¹⁰⁸ GEORGETOWN PEER MONITOR REPORT, *supra* note 105, at 7 (“These changes include a shift in the buying habits of business clients, a persistent softness in the market for litigation services, the increasing presence of new non-traditional competitors in the legal services sector, and a growing market segmentation that is rapidly separating high performing firms from the majority.”); *see also* Garth, *supra* note 56, at 268 (“The weak economy has added to this pressure by creating an incentive for law firms to pay more attention to the actual skills of those they hire—not simply their class ranking or the school from which they graduated.”).

¹⁰⁹ *See* William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 479 (2013).

¹¹⁰ *Id.*

¹¹¹ Jordan Furlong, *The Evolution of The Legal Services Market: Stage 3*, LAW 21 (Nov. 7, 2012), <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-3/>; *see also* Henderson, *supra* note 109, at 462–63 (“[T]he legal profession is becoming a subset of a larger legal industry that is increasingly populated by nonlawyers, technologists, and entrepreneurs. Lawyers have a so-called monopoly on advocacy work before a tribunal and client counseling on legal matters, but that is of little consolation. Virtually every other aspect of a legal problem can be broken down into its component parts, reengineered, streamlined, and turned into a legal input or legal product that is better, cheaper, and delivered much faster.”).

Some states already permit limited-license practice rules that authorize non-lawyers to provide law-related services.¹¹² These non-lawyers will likely compete against the horde of all students who join a small firm or start a solo practice when they enter the legal profession.¹¹³ Those law students, in particular, must be provided with more systematic and integrated training in fundamental lawyering skills to maintain the competitive edge that formerly existed for those who attended traditional law schools.¹¹⁴ To do so, Jordan Furlong, an analyst focusing on forecasting the outcomes of the legal job market, suggests lawyers must adapt by establishing law practices that are “mobile, virtual, highly specialized, systematized, collaborative, and project-based.”¹¹⁵ Arguably, this will either require a new skillset, acceleration of learning relevant skillsets, or an infusion of additional instruction related to the desired skillset. Based on Furlong’s observations and those of many others, simply teaching as it was done in 1870 is undoubtedly not the answer.

Richard Susskind, the author of several publications concerning the role of future lawyers in the legal service process, has theorized that law school graduates will need to be “hybrid professionals” who not only know the law but who can handle project management, outsourcing, practice management, and technology.¹¹⁶ Susskind has identified new career opportunities for lawyers, including the legal knowledge engineer; the legal technologist; the legal hybrid; the legal process analysts; the legal project manager; the online dispute resolution practitioner; the

¹¹² Debra Cassens Weiss, *In Washington State, ‘Legal Technicians’ Will Be Allowed to Help Civil Litigants*, ABA J. (June 19, 2012), http://www.abajournal.com/news/article/in_washington_state_legal_technicians_will_be_allowed_to_help_civil_litigan/.

¹¹³ Steven Chung, *The California State Bar Is Considering Allowing Non-Lawyers (and Skynet) to Practice Law*, *Above the Law* (July 3, 2019), <https://abovethelaw.com/2019/07/the-california-state-bar-is-considering-allowing-non-lawyers-and-skynet-to-practice-law/> (noting that if non-lawyers are allowed to serve as limited license practitioners they will affect solo and small firms the most “as they tend to serve the low-income/middle class market”).

¹¹⁴ Richard S. Grant & Stephanie Kimbro, *The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm*, 88 CHI.-KENT L. REV. 757, 760–63 (2013).

¹¹⁵ *Id.* at 761 (citing Furlong, *supra* note 111); see also James Goodnow, *Virtual Is the New Boutique*, *ABOVE THE LAW* (July 13, 2018), <https://abovethelaw.com/2018/07/virtual-is-the-new-boutique/>. More lawyers are establishing “legal boutiques” that focus on one or several practice specialties that the lawyers advertise to the general public. See *id.* The phrase “legal boutique” has been added to the lawyers’ lexicon and the referral practice developed by such specialty firms has actively grown alongside the larger law firms. See *id.*

¹¹⁶ See Joy, *supra* note 54, at 194.

legal management consultant; and the high-risk manager.¹¹⁷ According to the United States Bureau of Labor Statistics, the legal marketplace is also growing in the areas of financial and insurance firms, consulting firms, and health care providers, areas that require students learn about compliance issues and, particularly, how to manage client interactions in those fields.¹¹⁸

Susskind has also observed that the advent of technology will continue to contract the legal marketplace for recent graduates as traditional revenue streams shrink for law firms.¹¹⁹ For example, Susskind noted that the emerging industry known as “predictive coding”¹²⁰ will deprive practitioners of revenues that they previously monopolized.¹²¹ Other advancements in technology promise to revolutionize the provision of legal services in profound ways by the increased use of artificial intelligence and other technological innovations.¹²²

Recently, commentators observed that more skills training in the use of technology will be required to comply with changing ethical obligations now that at least thirty-one states have adopted ethical duty of technology competence rules.¹²³ In light of these advances, contemporary law students must develop the skills to understand how to utilize technology, as well as comprehension of any related ethical obligations.

To bring legal education into the Information Age, law schools must recognize that there are factors like technology and the global economy that law firms consider

¹¹⁷ *See id.*

¹¹⁸ *See Occupational Outlook Handbook: Lawyers*, U.S. BUREAU OF LABOR STATISTICS, <https://www.bls.gov/ooh/legal/lawyers.htm#tab-6> (last updated Apr. 10, 2020).

¹¹⁹ *See Joy, supra* note 54, at 179.

¹²⁰ *See Henderson, supra* note 109, at 487; *see also* Nicholas Barry, *Man Versus Machine Review: The Showdown Between Hordes of Discovery Lawyers and a Computer-Utilizing Predictive-Coding Technology*, 15 VAND. J. ENT. & TECH. L. 343, 344 (2013) (“Predictive coding describes a computer program that predicts the relevance of discovery documents based on the prior coding of a small sample of discovery documents by an attorney.”).

¹²¹ *See Henderson, supra* note 109, at 487; *see also* Nelson, *supra* note 104 (“There is no doubt that ‘traditional’ lawyering has been recalibrated. . .”).

¹²² *See Silver, supra* note 14, at 402 (“The market for legal services has evolved in ways we struggle today to understand, and it will be different tomorrow in ways we cannot begin to anticipate.”).

¹²³ *See* Robert Ambrogi, *31 States Have Adopted Ethical Duty of Technology Competence*, LAWSITES (Mar. 16, 2015), <https://www.lawsitesblog.com/2015/03/11-states-have-adopted-ethical-duty-of-technology-competence.html>.

when planning and attempting to maintain their respective law practices.¹²⁴ The Great Recession of 2008 occurred at a time of technological change that is still in the process of shrinking the domestic legal employment market.¹²⁵ Thus, if technology has broken the dam that allowed lawyers to monopolize vast forms of legal services, that breach is likely lasting.¹²⁶ Klaus Schwab foretold this outcome when he noted, “New technologies and approaches are merging the physical, digital, and biological worlds in ways that will fundamentally transform humankind. The extent to which that transformation is positive will depend on how we navigate the risks and opportunities that arise along the way.”¹²⁷

C. *The Traditional Law School Model’s Shortcomings*

For more than twenty years, it has been “alarmingly clear that legal education [has] become a house of cards.”¹²⁸ In contrast with past slumps in enrollment and revenues, the collapse of the legal job market following the Great Recession of 2008 has been, “deep, long lasting, and truly dramatic.”¹²⁹ Until very recently, law school

¹²⁴ See Garth, *supra* note 56, at 278. A shortcoming of the *MacCrate Report’s* articulation of an educational continuum on which contemporary students should be taught is that it neglects to consider the effect of globalization on the practice of law in America and how teaching in this country must continuously transform to respond to societal and technological changes. The *Carnegie Report* also fails to acknowledge the significant impact globalization might have on its teaching recommendations. Susan L. DeJarnatt & Mark C. Rahdert, *Preparing for Globalized Law Practice: The Need to Include International and Comparative Law in the Legal Writing Curriculum*, 17 LEGAL WRITING 3, 18 (2011) (“[T]he Carnegie-MacCrate proposals for reform have largely neglected globalization.”). Accordingly, the educational continuum proposed in this Article cannot be static. *Id.* Instead, the educational continuum that law schools might promote in this Information Age should continuously adjust to incorporate pedagogical approaches that are responsive to changing times and the needs of those in and outside of the legal community. *Id.*

¹²⁵ See Richard J. Yurko, *Rethinking Law School Admissions Through Accreditation: A Simple Proposal*, BOS. B.J. (Oct. 7, 2014), <https://bostonbarjournal.com/2014/10/07/rethinking-law-school-admissions-through-accreditation-a-simple-proposal/> (“Just as one example, documents at one time reviewed by law firm associates for relevance and privilege are now likely to be stored electronically and capable of being sent by a mouse click halfway around the world to be reviewed for relevance and privilege by persons trained to do so in a foreign land at a fraction of the domestic cost.”).

¹²⁶ See Henderson, *supra* note 109, at 463.

¹²⁷ Klaus Schwab, *Shaping the Fourth Industrial Revolution*, PROJECT SYNDICATE (Jan. 11, 2016), <https://www2.project-syndicate.org/commentary/fourth-industrial-revolution-human-development-by-klaus-schwab-2016-01>.

¹²⁸ Silver, *supra* note 14, at 357.

¹²⁹ Yurko, *supra* note 125; see also Batt, *supra* note 98, at 121–22 (“[T]he traditional law school curriculum has proved remarkably resilient, resisting integration with the new skills training curriculum.”).

applications had plummeted to historic lows.¹³⁰ In response, law schools have closed, attempted rebranding or mergers with other institutions, or downsized to improve profits.¹³¹ Law schools that were too far out of compliance with ABA Standards closed in rapid succession or will do so soon.¹³² Students, in turn, noticed the radical changes and took their money and burgeoning talents elsewhere.¹³³

Although law schools have been slow to acknowledge the call to change, “the inevitable contraction of law school faculties is already underway, and it will be significant.”¹³⁴ Law schools have acknowledged that they cannot continue to promote the traditional law school model as the sole structure for law schools. Some law schools have openly considered revising the apprenticeship model as a solution, as well as other radical changes to their institutional model.¹³⁵ Others in the legal

¹³⁰ See Staci Zaretsky, *Law School Enrollment Is Up for the First Time in Nearly a Decade*, ABOVE THE LAW (Dec. 14, 2018), <https://abovethelaw.com/2018/12/law-school-enrollment-is-up-for-the-first-time-in-nearly-a-decade/>. Until 2018, total enrollment in J.D. programs from 2008 to 2017 was at its lowest point since 1974. “[T]he average number of applicants at lower-ranked law schools plunged 52.3 percent between 2008 and 2016.” *Id.* Total J.D. enrollment reached 111,561 by December 2018, an increase of 1.2% from 2017. *Id.*

¹³¹ See Debra Cassens Weiss, ‘Massive Layoffs’ Predicted in Law Schools Due to Big Drop in Applicants, ABA J. (Jan. 31, 2013), http://www.abajournal.com/news/article/massive_layoffs_predicted_in_law_schools_due_to_big_drop_in_applicants; see also Stephanie Francis Ward, *Urge to Merge: Difficult Times for Law Schools Have Prompted Several to Attempt to be Acquired by Other Schools*, ABA J. (July 1, 2019), <http://www.abajournal.com/magazine/article/urge-to-merge-law-school>.

¹³² See Staci Zaretsky, *Yet Another Troubled Law School to Close Its Doors*, ABOVE THE LAW (Oct. 31, 2018), <https://abovethelaw.com/2018/10/yet-another-troubled-law-school-to-close-its-doors/>.

¹³³ See Blake D. Morant, *Benefits from Challenge: The Continual Evolution of American Legal Education*, 64 J. LEGAL EDUC. 523, 524 (2015) (“Unlike economic downturns of the past, students were no longer willing to take refuge from a stagnant economy by pursuing a law degree. Many were wary of the accumulation of a six-figure debt without the promise of a job to pay for it.”).

¹³⁴ Silver, *supra* note 14, at 412; Ashby Jones & Jennifer Smith, *Amid Falling Enrollment, Law Schools Are Cutting Faculty*, WALL ST. J. (July 15, 2013), <https://www.wsj.com/articles/SB10001424127887323664204578607810292433272> (“Law schools across the country are shedding faculty members as enrollment plunges . . . [T]he trend is growing, most noticeably among middle- and lower-tier schools, which have been hit hardest by the drop-off.”).

¹³⁵ Karen Sloan, *They’re Learning the Law Through Apprenticeships*, NAT’L L.J. (Feb. 24, 2014), <https://www.law.com/nationallawjournal/almID/1202644115326/?sreturn=20190719184833>. Indeed, a group of twelve schools are experimenting with a form of post-graduate apprenticeships. They include Boston College, California-Hastings, Colorado, Denver, Emory, Georgetown, Northeastern, Northwestern, Ohio State, University of the Pacific, Southern California, and Vanderbilt. *Id.*; see, e.g., Samuel Estreicher, *The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School*, 15 N.Y.U. J. LEGIS. & PUB. POL’Y 599 (2012). However, most American law schools continue to

community that have commented on the plight of legal education have recommended deregulating to allow law schools to develop “leaner alternatives to the one-size-fits-all model.”¹³⁶ These attempts to restructure legal education are dependent upon the precarious assumption that law schools can efficiently condense the educational continuum, including existing experiential curriculum, or disguise their curricular deficiencies without sacrificing learning outcomes.

Even if a condensed curriculum is feasible, not all law schools are able to abandon the traditional law school model, because their parent institutions rely heavily on the law school’s revenues.¹³⁷ In light of this concern, parent institutions are already changing their revenue models to better position schools for sustainability sans a traditional law school.¹³⁸ Since the late 1990s, non-J.D.¹³⁹ enrollment steadily increased before spiking forty-five percent from 2006 to 2013.¹⁴⁰ This development should concern doctrinal and clinical faculty alike, because law schools at all tiers may pursue this revenue stream with little concern for compliance with the *Standards*.¹⁴¹

structure their first-year curriculum after the traditional, “Harvard-style” model for legal education. *See* Crespi, *supra* note 29, at 55.

¹³⁶ *See* Silver, *supra* note 14, at 355; *see generally supra* Part III.B.

¹³⁷ *See* Nelson, *supra* note 104, at 138 (“[M]any law schools are not in a position to unilaterally shrink their class sizes—they are part of university systems that are interconnected in complex ways beyond the reach and purview of the ABA.”).

¹³⁸ *Id.*

¹³⁹ *Types of Law Degrees*, LAW SCH. ADMISSIONS COUNCIL, <https://www.lsac.org/applying-law-school/types-law-degrees> (last visited Nov. 20, 2019). While an individual law school’s non-J.D. degrees may differ slightly by name to similar programs elsewhere, most degrees offered through law schools fall into three general categories: Academic masters degrees for non-lawyers (such as J.M. Juris Master, M.J. Master of Jurisprudence, M.S. Master of Science or Master of Studies, M.P.S. Master of Professional Studies, M.L.S. Master of Legal Studies); Post-J.D. law degrees for practicing lawyers or foreign lawyers seeking to practice in the United States (such as LL.M. Master of Laws, M.C.L. Master of Comparative Law); and research and academic-based doctorate level degrees (such as J.S.D. Doctor of Jurisprudence, S.J.D. Doctor of Judicial Science, D.C.L. Doctor of Comparative Law).

¹⁴⁰ *See* Derek T. Muller, *2017 Law School Enrollment: JD Enrollment Flat, Nearly 1 in 7 Are Not in the JD Program*, EXCESS OF DEMOCRACY (Dec. 15, 2017), <https://excessofdemocracy.com/blog/2017/12/2017-law-school-enrollment-jd-enrollment-flat-nearly-1-in-7-are-not-in-the-jd-program>. Increasingly, law schools are turning to these programs to generate revenues as J.D. programs decline. *Id.*

¹⁴¹ *See* ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2017–2018 [hereinafter 2017–2018 ABA STANDARDS]. Standard 313 states that an ABA-approved law school may not establish a degree program other than its J.D. degree program unless the school is fully approved, and the additional degree program will not detract from a law school’s ability to maintain a sound J.D. degree

Moreover, law faculty must confront the real possibility that even they may need specialized training to comprehend emerging technologies used to teach students at various educational levels, and by law firms in the normal course of their practices. Susskind noted in *The End of Lawyers? Rethinking the Nature of Legal Services*, that regardless of what efforts doctrinal faculty may pursue to protect the status quo, that may be a lost cause: “As the dominant, face-to-face approach to teaching, educating, lecturing, instructing, and training in the law is called into question by e-lectures, the job specification of the law teacher should change, shifting from a didactic approach to a more facilitative role.”¹⁴²

D. *The Demands and Needs of the Contemporary Law Student*

For decades, supporters of the traditional law school model have denounced the increased teaching of practical skills as reducing law school from an intellectual pursuit to vocational training.¹⁴³ However, a timely question to ask those supporters is whether students should be taught skills to earn a living in this global, technologically-advanced society, or continue to focus on antiquated teaching theories that leave them book smart, but not streetwise.

Most teachers recognize intuitively or through experience that each new generation of students learn differently. Many individuals learn best by being exposed to different teaching methodologies, from instructors who employ different styles, and at a varying pace.¹⁴⁴ As Clayton M. Christensen noted, “[w]e remember

program. *Id.* at 23. Although the law school must obtain acquiescence prior to commencing such a non-J.D. program, the ABA does not formally approve any program other than J.D. programs. *Id.*

¹⁴² See RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 116 (2008).

¹⁴³ See Charles E. Clark, “*Practical*” *Legal Training an Illusion*, 3 J. LEGAL EDUC. 423, 423 (1950). The late Charles E. Clark, Second Circuit Judge, former Yale Law School Dean, and father of the Federal Rules of Civil Procedure, was a harsh critic of efforts to involve law schools in vocational training in practical legal skills. *Id.* He seemed to view clinical educators more as interlopers than valuable contributors to the legal education process or any educational continuum that might exist. *Id.*; see also Robert S. Summers, *Fuller on Legal Education*, 34 J. LEGAL EDUC. 8, 9 (1984).

¹⁴⁴ See generally Saul McLeod, *Kolb’s Learning Styles and Experiential Learning Cycle*, SIMPLY PSYCHOLOGY, <https://www.simplypsychology.org/learning-kolb.html> (last updated 2017) (highlighting a discussion about psychologist David Kolb’s learning styles); see also Suzanne M. Daly, *Effective Learning Styles of the Millennial Adult Learners in the Technical College Environment* 8–18 (Nov. 17, 2015) (unpublished seminar paper, University of Wisconsin-Platteville) (on file with University of Wisconsin-Platteville) (describing differences in the learning styles of past and present generations of adult learners); Alex Berrio Matamoros, *Answering the Call: Flipping the Classroom to Prepare Practice-Ready Attorneys*, 43 CAP. U. L. REV. 113, 139 (2015); Arlene Nicholas, *Preferred Learning Methods of*

being in school and struggling to master a concept while a friend of ours grasped it immediately. When a parent or a teacher would explain the same concept in a different way, however, we understood. We had friends who excelled in certain classes, but struggled in others.”¹⁴⁵

The current generations of students are diverse and informed consumers with power to speak from their proverbial wallets. The average age of law students is now twenty-three, placing current students squarely within the Millennial population.¹⁴⁶ Increasingly, incoming law school cohorts are a diverse group of males and females—not mainly white males—as it was when traditional law schools were conceived.¹⁴⁷ As of March 2018, the Millennials were on the verge of outnumbering the Boomers and the smaller Generation X.¹⁴⁸ Their sheer numbers will make a difference in the classroom and the workforce.

Millennials are said to be informed, experiential, engaging, and interactive.¹⁴⁹ Not surprisingly, the contemporary student has also been described as “technologically fluent,” and even “dependent” on technology.¹⁵⁰ Other commentators have noted that teaching methods that are customized and more adaptive to the contemporary student’s aptitude to receive, analyze, and apply information should maintain their active engagement in the learning process through

the Millennial Generation, 15 INT’L J. LEARNING 27 (2008) (“Cognitive scientists have collected data showing that students learn best when they are actively engaged in the material.”).

¹⁴⁵ Clayton M. Christensen et al., *How “Disruptive Innovation” Will Change the Way We Learn*, EDUC. WEEK (June 3, 2008), https://www.edweek.org/ew/articles/2008/06/04/39christensen_ep.h27.html.

¹⁴⁶ See Gregory Yang, *How Age Affects Your Law School Application*, TIPPING THE SCALES (Apr. 3, 2019), <https://tippingthescales.com/2019/04/how-age-affects-your-law-school-application>.

¹⁴⁷ See Beverly I. Moran, *Disappearing Act: The Lack of Values Training in Legal Education—A Case for Cultural Competency*, 38 S.U. L. REV. 1, 6–7 (2010) (“[T]he MacCrate Report does not discuss in depth the increasing number of female and non-white purchasers of legal services”); see also Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61 RUTGERS L. REV. 1011, 1022 (2009) (“Traditional law school curricula can be off-putting and even hostile to a diverse student body.”).

¹⁴⁸ See Richard Fry, *Millennials Projected to Overtake Baby Boomers as America’s Largest Generation*, PEW RESEARCH CTR. (Mar. 1, 2018), <https://www.pewresearch.org/fact-tank/2018/03/01/millennials-overtake-baby-boomers/> (“Millennials are expected to overtake Boomers in population in 2019 as their numbers swell to 73 million and Boomers decline to 72 million. Generation X (ages 36 to 51 in 2016) is projected to pass the Boomers in population by 2028.”).

¹⁴⁹ See, e.g., Susan K. McClellan, *Externships for Millennial Generation Law Students: Bridging the Generation Gap*, 15 CLINICAL L. REV. 255, 259–61 (2009). Most researchers and commentators place Millennial birth years between 1982 and the mid-2000s. *Id.* at 259.

¹⁵⁰ See Nicholas, *supra* note 144, at 3.

collaboration with a purpose, incorporation of technology for interactive learning, and with emotion-based content.¹⁵¹

Experiential learning is highly suitable to educate Millennial students who are touted as possibly the best workforce to come as “they combine the teamwork ethic of the Boomers with the can-do attitude of the Veterans [Traditionalists] and the technological savvy of the Xers.”¹⁵² Millennials have been described as self-reliant, independent, and tech-savvy.¹⁵³ Millennials expect communication via technology and “may be intolerant of those who are technologically challenged.”¹⁵⁴ These traits are ideally suited for group problem-solving activities that engage students in a spiral of experience.¹⁵⁵

Furthermore, the cost of law school education is too high for students to risk graduating unprepared to perform competently, particularly in light of the crushing debt many students accumulate while trying to earn a J.D.¹⁵⁶ Nearly half of students who graduated from law schools at the start of this decade did so essentially underwater, facing the prospect of earning far too little to justify, on average, seven years of crushing student loan debt.¹⁵⁷ These students cannot afford to complete three

¹⁵¹ See Daly, *supra* note 144, at 13–15.

¹⁵² Nicholas, *supra* note 144, at 5.

¹⁵³ See *id.*

¹⁵⁴ *Id.*

¹⁵⁵ See Paula Lustbader, *Construction Sites, Building Types, and Bridging Gaps: A Cognitive Theory of the Learning Progression of Law Students*, 33 WILLAMETTE L. REV. 315, 328 (1997) (stating that “[k]ey concepts of [a] Spiral Curriculum are that teaching should begin with the most fundamental principles of the areas to be taught”). These principles “should be taught in a structure (schema) and context. Gradually, understanding develops and deepens when opportunities are created for students to revisit these basic principles in increasingly complex forms Each time students revisit a concept, their understanding becomes better developed and more sophisticated.” *Id.*

¹⁵⁶ See generally ANNE McGRATH, U.S. NEWS ULTIMATE GUIDE TO LAW SCHOOLS 89–92 (2004).

¹⁵⁷ See Mark Hansen, *Employment Picture for Law Grads Looks Pretty Much the Same as a Year Ago—For Better and Worse*, ABA J. (June 1, 2013), http://www.abajournal.com/magazine/article/employment_picture_for_law_grads_looks_pretty_much_the_same_as_a_year_agofo (providing that only 54.9% of the class of 2011 graduates had obtained full-time legal positions requiring passage of a bar examination by nine months after their graduation); see also A.B.A. SEC. LEGAL EDUC., 2012 LAW GRADUATE EMPLOYMENT DATA 1, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/reports/law_grad_employment_data.authcheckdam.pdf; Press Release, Nat’l Ass’n for Law Placement, Median Private Practice Starting Salaries for the Class of 2011 Plunge as Private Practice Jobs Continue to Erode (July 12, 2012), https://www.nalp.org/classof2011_salpressrel (discussing the employment statistics for the graduating law class of 2011).

years of professional training without being exposed to the basics of client interactions or unequipped with other “vocational” tools. The proven reality is that jobs in the legal profession, particularly for new attorneys, have never been abundant.¹⁵⁸ Nancy Glazer, who founded the legal placement firm Legal Launch, LLC, testified before the Illinois State Bar Association that “the greatest challenge law school graduates face in obtaining employment is the mismatch between the skills of graduating students and the requirements of practice areas in which there is demand for new attorneys.”¹⁵⁹

If a student recognizes that the law school she hopes to attend refuses to modernize from pedagogy adopted more than one hundred years ago when all indicators point in favor of that change, why would she enroll there? Contemporary students understand that “skill comes with practice, not lectures”: a notion espoused before this generation’s parents and grandparents were born.¹⁶⁰ They understand that fact either anecdotally or first-hand as they struggle to find employment after racking up inconceivable and insurmountable debt. Accordingly, the current ABA Standards impose upon all law schools the obligation of training students to be practice-ready when they graduate from law school, not years later while learning on the job. The demands and needs of the contemporary student, increasingly Millennials and beyond, is that law schools will provide a holistic education that produces practice-ready attorneys.¹⁶¹ A program cannot have the requisite rigor if it has an inadequate skills training program and, therefore, unnecessary gaps in its educational continuum.¹⁶²

¹⁵⁸ See Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 DENV. U. L. REV. 887, 888–89 (2012) (asserting that the “change in the job market [in 2011] masks a long standing but rarely recognized reality. Law jobs, particularly for new attorneys, have never been abundant.”); see also Natalie Gomez-Velez, *Structured Discrete Task Representation to Bridge the Justice Gap: CUNY Law School’s Launchpad for Justice in Partnership with Courts and Communities*, 16 CUNY L. REV. 21, 22 (2012) (noting, “[t]he myth of abundant, high-paying legal jobs has been dispelled for the vast majority of law graduates”).

¹⁵⁹ Vande Lune, *supra* note 59, at 308.

¹⁶⁰ Thomas, *supra* note 16, at 46.

¹⁶¹ See 2017–2018 ABA STANDARDS, *supra* note 141, at 15 (requiring, under Standard 301(a), a law school to maintain a rigorous legal education program, thus preparing its students for admission to the bar upon graduation).

¹⁶² See LINDA H. EDWARDS, *THE DOCTRINE SKILLS DIVIDE: LEGAL EDUCATION’S SELF-INFLICTED WOUND* 6 (2017) (recognizing that “the artificiality of the divide is a step toward a more accurate—not a less accurate—understanding of the world”).

Inarguably, even if you were “born yesterday,” common sense or a survival instinct would deter you from wanting to graduate from a school purportedly deep in debt and without the essential skills to compete in a contracting field.¹⁶³ Indeed, since 2009, there has been substantial commentary about how many undergraduates are choosing to pursue other degrees or seek alternative careers, largely because a law degree is now perceived as a bad bet.¹⁶⁴ Yet, being underwater financially and unprepared for the contemporary practice of law is a significant fear of students attending law school in this time of rapid change and uncertainty.¹⁶⁵

IV. RESTORING LIVE-CLIENT INTERACTIONS TO THE FIRST-YEAR CURRICULUM

A. Closing the Systemic Gap in the Educational Continuum

Most first-year courses are designed to largely ignore clients and how attorneys interact with them.¹⁶⁶ In first-year courses especially, “clients are missing-in-action.”¹⁶⁷ Consistent with this view, former Maryland Law School Dean, Michael

¹⁶³ See 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-%2012-10.pdf> (providing that in a 2009 study conducted by LexisNexis, 90% of lawyers and 65% of law students surveyed stated that law schools do not teach the practical business skills needed to practice law in today’s economy).

¹⁶⁴ See, e.g., Isvari Mohan, *Put Down That Law School Application Before It’s Too Late*, BOS. GLOBE (July 19, 2016), <https://www.bostonglobe.com/business/2016/07/19/put-down-that-law-school-application-before-too-late/chsl71LbM195tjvWbbWpL/story.html>; see also J. Maureen Henderson, *Why Attending Law School Is the Worst Career Decision You’ll Ever Make*, FORBES (June 26, 2012), <https://www.forbes.com/sites/jmaureenhenderson/2012/06/26/why-attending-law-school-is-the-worst-career-decision-youll-ever-make/#1574544344d2>.

¹⁶⁵ See Charity Scott, *Mindfulness in Law: A Path to Well-Being and Balance for Lawyers and Law Students*, 60 ARIZ. L. REV. 635, 642–43 (2018) (citing DONALD A. SCHÖN, THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION 50 (1983)).

¹⁶⁶ See ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 137 (1953); see also MACCRATE REPORT, *supra* note 2, at 5 (explaining that “surveys understandably indicate that practicing lawyers believe that their law school training left them deficient in skills that they were forced to acquire after graduation”); Spencer, *supra* note 27, at 1962 n.23 (stating that “Chief Justice Burger and others have spoken, in recent years, of a serious problem of ‘incompetency’ among those lawyers trying cases before the federal courts and among the trial bar generally”).

¹⁶⁷ EDUARDO R.C. CAPULONG ET AL., THE NEW 1L: FIRST-YEAR LAWYERING WITH CLIENTS 17 (2015) (writing that “[c]lients are secondary, and largely invisible [and] [s]tudents are left to fill in these large gaps hopefully with their own experiences, but often with the stereotypes of people and organizations they bring with them to law school”). The “ABA Survey of Law School Curricula,” ranging from 2002–2010, indicated that only 31 out of 160 law schools that responded to the survey indicated that they offered elective opportunities to first-year students. See CATHERINE L. CARPENTER, ABA, SURVEY OF LAW

Kelly noted, “the narrowness of present law school goals—can perhaps best be perceived by imagining medical school training without patients.”¹⁶⁸ The lack of factual depth precludes or at least significantly limits application of the basic method lawyers use to develop a “theory of the case” as part of preparing to represent a client.¹⁶⁹

To achieve compliance with the *Standards* requires law faculty to collectively reimagine ways to shift introductory parts of the clinical experience to the first year of law school. Although there is support in many law schools for first-year students to have more clinical experiences,¹⁷⁰ there is continued concern that most first-year law students do not know enough, either in terms of substantive law or fundamental lawyering skills¹⁷¹ to risk exposing them to clients. A student’s readiness for live-client interactions may be dependent on how well they prepared to enter law school, but also what they learn upon matriculation to law school. Therefore, it is envisioned in this Article that an attempt to integrate live-client interactions into the first-year curriculum should occur as the student is introduced to foundational skills.¹⁷²

For some time it has been recognized that law clinics serve the needs of hands-on learners especially well, but the dilemma is how to capture the same benefits earlier in the law school experience, more efficiently, and cheaper.¹⁷³ Prior studies have determined that “[w]ith only a third of law students engaging in clinical work during law school,” valuable lessons derived from live-client interactions are not

SCHOOL CURRICULA: 2002–2010, at 55 (2012). Of the electives offered, professional skills were offered by eleven of the responding law schools. *See id.* at 56.

¹⁶⁸ Krantz & Millemann, *supra* note 18, at 12.

¹⁶⁹ *See id.*

¹⁷⁰ *See, e.g.,* Michael A. Millemann & Steven D. Schwinn, *Teaching Legal Research and Writing with Actual Legal Work: Extending Clinical Education Into the First Year*, 12 CLINICAL L. REV. 441, 441 (2006); *see also* Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 41–44 (2000).

¹⁷¹ *See, e.g.,* John M. Breen, *Action as the Fruit of Contemplation: A Reply to Bryce, Donnelly, Kalscheur, and Nussbaum*, 43 GONZ. L. REV. 645, 669 (2008).

¹⁷² *See* Imwinkelried, *supra* note 47, at 751–52.

¹⁷³ *See* Findley, *supra* note 8, at 630–31. Over eighty years ago, the Honorable Judge Jerome Frank pondered if it was possible to reform legal education in similar ways: “[I]t is not plain that, without giving up entirely the case-book system or the growing and valuable alliance with the so-called social sciences, the law schools should once more get in intimate contact with what clients need and what courts and lawyers actually do?” William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 468–69 (1995).

being fully diffused across all matriculants.¹⁷⁴ Recent surveys demonstrate how clinical participation improves the student's ability to understand future clients, collaborate with colleagues, serve the public good through their profession, and understand and adopt professional values.¹⁷⁵ Thus, incorporating more experiential education into the first-year curriculum should address the concern that too few students take advantage of courses that involve live-client interaction, as opposed to other forms of experiential learning that do not involve developing interpersonal skills.

Immersive, experiential content can be delivered by returning to one of the oldest forms of experiential education—simulations—as the vehicle to bridge the gap between analytical and practical knowledge and answer the demand for more robust instruction in developing professional integrity. Teaching with simulations is particularly appropriate in the first year when there may be legitimate concerns that the untrained student may render inaccurate legal advice, or otherwise not conduct himself properly in relation to the client. Well-planned and articulated simulation exercises can assist the student in concentrating on the skill being taught by controlling the variables in the problems.¹⁷⁶

Through a series of short-term assignments or a one-credit simulation course, students could be assigned to work together as “firms” to share a common interaction with a simulated or real client who presents a legal issue that relates to a doctrinal lesson previously taught in the students' foundational courses.¹⁷⁷ The proposed

¹⁷⁴ See NAT'L ASS'N FOR LAW PLACEMENT & NALP FOUND., 2010 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS 6 (2011) (indicating 30.2% of survey respondents had participated in at least one legal clinic).

¹⁷⁵ See generally *id.* (explaining that “[t]he data from this study suggest that some, if not all, of these ‘hands-on’ or simulated learning opportunities, whether required or optional, are indeed instrumental in preparing new associates for the demands of the practice of law”).

¹⁷⁶ See Margaret Moore Jackson, *From Seminar to Simulation: Wading Out to the Third Wave*, 19 J. GENDER, RACE & JUST. 127, 138 (2016) (explaining that “[t]eaching through simulation maintains the advantage of control of what will be taught and how the teaching will occur”). It is possible for structured lessons to “be built around predictable timelines in a semester, most often in less time than it would take if the pedagogy used real clients with controverted legal matters. Significantly, placing students in simulated roles allows them to interact with and use course content without the threat of real-world consequences.” *Id.*

¹⁷⁷ See Tyler Roberts, *20 Most Innovative Law Schools*, PRELAW, https://bluetoad.com/publication/?m=46781&i=439868&view=articleBrowser&article_id=2887315 (last visited May 4, 2020) (discussing how Valparaiso University Law School offered an innovative program to teach practical skills beginning in the first year). A course was offered at Valparaiso University Law School for three semesters from 2016 to 2018 that was similarly structured. See *id.* The course allowed students to rotate through simulated client interactions that related to foundational courses the students completed during their first semester

course would rely upon legal questions written by the simulated or actual client in concert with the doctrinal and clinical instructors.¹⁷⁸ This immersive learning simulation¹⁷⁹ could involve a “firm” of students who collaborate to interview a client, analyze the issue presented, and prepare a written analysis of the client’s legal matter and applicable options. This proposed exercise provides various opportunities for students to comprehend how doctrine relates to several fundamental lawyering 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.¹⁸⁰ Simulations on a smaller scale permit instructors to siphon valuable aspects of the apprenticeship model while rotating students through unique client interactions similar to medical school rotations.¹⁸¹

of law school. *See id.* In 2017, the course received recognition from *Pre-Law Magazine* as a top-twenty innovation in legal education. *Id.*

¹⁷⁸ *See* Kirsten Clement & Stephanie Roberts Hartung, *Social Justice and Legal Writing Collaborations: Promoting Student Engagement and Faculty Fulfillment*, 10 DEPAUL J. FOR SOC. JUST. 1, 3 n.15 (2017). The *Carnegie Report* and the *MacCrate Report* suggest that, “[t]he mark of professional expertise is the ability to both act and think well in uncertain situations. . . . [S]tudents need access to forms of social interaction that embody the basic understanding, skill, and meaning that, together, make up the professional activity.” *Id.* at 1, 18. By providing the student with unique fact patterns, the client presents a suitably constant reflection of reality through the unpredictability of the legal question being presented: “When students grapple with the realities of practice in clinics and externships, they simultaneously are learning or advancing many skills in new environments where facts can no longer be held constant; they must function in the midst of unpredictability.” Batt, *supra* note 98, at 127.

¹⁷⁹ *See* STEVE WEXLER ET AL., ELEARNING GUILD, IMMERSIVE LEARNING SIMULATIONS 158 (Mar. 2008), [http://cedma-europe.org/newsletter%20articles/eLearning%20Guild/360%20Report%20-%20Immersive%20Learning%20Simulations%20\(Mar%202008\).pdf](http://cedma-europe.org/newsletter%20articles/eLearning%20Guild/360%20Report%20-%20Immersive%20Learning%20Simulations%20(Mar%202008).pdf) (explaining that immersive learning simulations are instructional products that combine simulation, pedagogy, and “hard fun” to create a truly engaging and behavior-changing form of learning). Immersive learning simulations help students learn complex concepts and processes. *See generally* John M. Beckem II & Michael Watkins, *Bringing Life to Learning: Immersive Experiential Learning Simulations for Online and Blended Courses*, 16 J. ASYNCHRONOUS LEARNING NETWORKS 61 (2012).

¹⁸⁰ *See* Michael McDonnell, *Playing Beyond the Rules: A Realistic and Rhetoric-Based Approach to Researching the Law and Solving Legal Problems*, 67 UMKC L. REV. 285, 320–22 (1998) (describing ways in which students can more effectively be taught). Much of the literature on teaching legal problem solving strongly recommends the use of brainstorming and other heuristic devices to encourage student creative problem-solving. *See, e.g.*, ROGER S. HAYDOCK ET AL., *LAWYERING: PRACTICE AND PLANNING* 25–27 (1996).

¹⁸¹ *See generally* William Branch et al., *Becoming a Doctor—Critical-Incident Reports from Third-Year Medical Students*, 329 NEW ENG. J. MEDICINE 1130, 1130–32 (1993) (describing events students felt were important to their learning and that the students then described). To use a phrase from medical education literature, each student should have her own unique set of “critical-incidents” to develop problem-solving

Simulation exercises are well-regarded for their ability to provide students with opportunities to integrate theory, doctrine, practice, procedure, skills, and ethics into unstructured settings.¹⁸² Simulations are an ideal pedagogy to provide students with repeated opportunities for experience, practice, and feedback in a variety of factual settings that simultaneously promote conceptual understanding and transfer.¹⁸³

First-year students are able to develop an appreciation for their ethical and professional identity before they become jaded by the sterile analysis of case law using the case method. According to Professor Cynthia Batt, “this is the perfect time for the student to begin to use reflection to document his or her observations, strengths, and challenges as part of their professional development.”¹⁸⁴ Students who engage in live-client interactions learn to deal with clients in a manner that adds to their ethical-social development. This accelerated interaction with clients should give first-year students a heightened sense of justice and retain their desire to seek it on behalf of diverse clients.¹⁸⁵ By connecting course instruction with actual situations, schools are able to produce “full-dimensional people” who are capable of thinking through the social consequences or ethical aspects of their conclusions. This reflects the *Carnegie Report’s* observation that lawyering and professionalism may

skills. *See id.* (explaining that students write about their experiences during their small groups). The proposed rotations would theoretically resemble their medical school rotations in their variable length, narrowed scope, and focus on practical skills. *See id.* (explaining briefly how the medical student rotations were beneficial to the students).

¹⁸² *See* Katherine R. Kruse, *Legal Education and Professional Skills: Myths and Misconceptions About Theory and Practice*, 45 MCGEORGE L. REV. 7, 31–33 (2013) (stating that “[s]imulations are the simplest form of experiential learning and have the benefit of permitting instructors to isolate the particular skill or skills being taught”); *see also* Sara J. Berman, *Integrating Performance Tests into Doctrinal Courses, Skills Courses, and Institutional Benchmark Testing: A Simple Way to Enhance Student Engagement While Furthering Assessment, Bar Passage, and Other ABA Accreditation*, 42 J. LEGAL PROF. 147, 163 (2018) (discussing how “simulations have been well accepted as legitimate law school teaching method for more than four decades”); Philip Schrag, *The Serpent Strikes: Simulation in a Large First-Year Course*, 39 J. LEGAL EDUC. 555, 555 (1989) (providing that “[o]nce confined to moot court exercises and trial practice offerings, simulation is now accepted in principle, as a legitimate method of instruction in many types of courses”).

¹⁸³ *See* David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLINICAL L. REV. 191, 213–14 (2003).

¹⁸⁴ Batt, *supra* note 98, at 139.

¹⁸⁵ *See* Miriam R. Albert & Jennifer A. Gundlach, *Bridging the Gap: How Introducing Ethical Skills Exercises Will Enrich Learning in First-Year Courses*, 5 DREXEL L. REV. 165, 185 (2012) (recognizing that “[e]xposure to ethical issues in the first year will give students that much more opportunity to develop a framework for professional decision-making across doctrinal areas that includes ethical considerations as part of that professional identity”).

be incorporated in an integrative way to teach students fundamental lawyering skills and professional values.¹⁸⁶

To acquire fundamental lawyering skills, law students must perform and practice those skills.¹⁸⁷ The medical school model consists of numerous opportunities to observe and work with real patients, thus allowing medical students the ability to internalize their knowledge and apply it in a clinical setting. While engaging in the proposed simulation exercises, first-year law students would also have the opportunity to strengthen and enhance theory comprehension and retention of knowledge, applied knowledge and introductory skills development, promotion of concentrated learning of professional skills and values, and facilitation of structured practical skills training.¹⁸⁸ Furthermore, as they learn the basics of a particular fundamental lawyering skill, they will realize how it synchronizes with foundational skills.¹⁸⁹

Although the daily practice of law can be routine, lawyers in all fields must be capable of adapting to unique situations through creative problem-solving.¹⁹⁰ In line with this observation, Professor Anthony Amsterdam termed this skill development as “hypothesis formulation and testing in information acquisition.”¹⁹¹ Professor Amsterdam defined that concept as “a matter of devising methods for acquiring the information needed to make decisions when one starts with less than all of the necessary information.”¹⁹²

If the live interaction involves interviewing and analyzing a legal issue presented by a client in criminal proceedings, students will need to make judgments on what evidence to gather, what witnesses to call, whether to hire experts, and so

¹⁸⁶ See John Lande, *Developing Better Lawyers and Lawyering Practices: Introduction to the Symposium on Innovative Models of Lawyering*, 2008 J. DISP. RESOL. 1, 2.

¹⁸⁷ See JOEL ATLAS ET AL., A GUIDE TO TEACHING LAWYERING SKILLS 48 (2012).

¹⁸⁸ See, e.g., Anthony V. Alfieri, *Educating Lawyers for Community*, 2012 WIS. L. REV. 115, 135–38.

¹⁸⁹ See Batt, *supra* note 98, at 127.

¹⁹⁰ See Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLINICAL L. REV. 1, 18 (2002) (“It is, in essence, a planning methodology for sizing up situations by noting facts and assumptions, trying on different perspectives, setting objectives, identifying and comparing alternatives, evaluating consequences, and only thereafter putting forth options or making hard decisions.”).

¹⁹¹ See Angela McCaffrey, *Hamline University School of Law Clinics: Teaching Students to Become Ethical and Competent Lawyers for Twenty-Five Years*, 24 HAMLINE J. PUB. L. & POL’Y 1, 43 (2002).

¹⁹² *Id.*

on. They will make their decisions based on foundational knowledge, but will also have to confront preliminary hypotheses that may change depending on what information is gathered by interviewing the client. A high level of judgment is required to complete this basic task, resulting in a wealth of experience and strengthening of practical skills.¹⁹³ For example, live-client interactions provide students with a vibrant backstory that intrigues and connects students to the experience by humanizing it, instead of making the first year of law school unduly “intense, emotional, and disorienting.”¹⁹⁴

Maintaining the fiction of the attorney-client relationship during simulated exercises engages current students in a manner similar to that suggested by Professor Amsterdam. Based on the perceived characteristics of contemporary and future cohorts, an important pedagogical tool law schools may use includes technology and other learning activities that exploit students’ ability to play roles in virtual reality, video games, and board games.¹⁹⁵ Professions in other fields have concurred that this form of instruction fits into the contemporary student’s learning style by creating student-centered learning that is entertaining and capable of providing immediate experience.¹⁹⁶

¹⁹³ See *id.* (discussing the necessary skills a student must possess when developing in unstructured situations).

¹⁹⁴ See Batt, *supra* note 98, at 137 (describing what the first year of law school is typically like); see also William Shepard McAninch, *Experiential Learning in a Traditional Classroom*, 36 J. LEGAL EDUC. 420, 421 (1986) (stating that “experiential learning can be an effective method of learning substantive law”); Lawrence M. Grosberg, *Medical Education Again Provides a Model for Law Schools: The Standardized Patient Becomes the Standardized Client*, 51 J. LEGAL EDUC. 212, 214–15 (2001) (describing the use of actors to simulate patients in medical school more than thirty years ago).

¹⁹⁵ See Sonsteng et al., *supra* note 38, at 415 (“Video games allow players to step into new personas and explore alternatives so they can try to solve problems they have not mastered, receive immediate feedback on the consequences, and try again. The ability to explore immediately makes games more engaging than textbooks or lectures because it [which] allows students to perform before reaching a level of competency.”).

¹⁹⁶ See Daly, *supra* note 144, at 16 (discussing how integrating games with learning helps Millennials flourish in their education). Use of game theory also increases a student’s ability to connect or flow into a simulated or actual experiential activity. *Id.* Elevating the fiction of the simulated relationship to a point of believability also connects the students to the experience in a more meaningful and engaging manner. See Sonsteng et al., *supra* note 38, at 416 (describing some of the benefits of simulations when it comes to education). Students are more excited to learn when they experience a measure of accomplishment that they can understand connects to a lesson. This “flow,” or the enjoyment that comes from mastering new obstacles, invigorates student creativity and ability to solve even complex client matters. See Nathalie Martin, *Right Scholarship and the Goddesses of Commercial Law*, 34 COLUM. J. GENDER & L. 124, 137 (2016).

*B. Advancing Holistic and Integrated Instruction of
Foundational Skills and Fundamental Lawyering Skills*

Many studies and legal scholars have noted the effectiveness of the case method to teach students how to think like a lawyer.¹⁹⁷ That effectiveness cannot be easily dismissed as it is a vital, continuing part of the educational continuum that law schools have forged for many years.¹⁹⁸ Indeed, one of the principles that guides the implementation of the changes in the *Standards* is that, although the traditional education curriculum should remain at the center of law schools' J.D. programs, law schools should measure how successful their students are in mastering thinking like a lawyer and in bridging the gap between that and other lawyering skills. Once a foundation of analytical skills is established through traditional first-year courses, "the role of the skills teacher should be to assist students in identifying the legal doctrine applicable to a client's problem and to provide them sufficient time to develop alternative solutions."¹⁹⁹ Accordingly, it is envisioned that traditional foundational skills would be taught during the first semester of the first year in law school in conjunction with fundamental lawyering skills.²⁰⁰

Cognitive psychologists postulate that there are two important ways to characterize the knowledge essential for the effective performance of a task: domain knowledge and tacit knowledge.²⁰¹ Domain knowledge is considered "explicit

¹⁹⁷ See Batt, *supra* note 98, at 101 (discussing generally how the court system works and how law professors and lawyers view the law); see also Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 2191, 2194 (1993) (discussing the importance of the basic first year doctrinal curriculum to the training of practitioners).

¹⁹⁸ In fact, the case dialogue method is a unique invention of the American legal academia. The *Redlich Report* referred to it as "an entirely original creation of the American mind in the realm of law." REDLICH REPORT, *supra* note 36, at 9; see also MAXEINER, *supra* note 87, at 10. It has been described as "distinctive to American legal education and quite sharply different from the method used in the United Kingdom, continental Europe, and, indeed, most of the world." *Id.* at 10–11.

¹⁹⁹ Stefan H. Krieger, *Domain Knowledge and the Teaching of Creative Legal Problem Solving*, 11 CLINICAL L. REV. 149, 204 (2004). "[I]t is often more helpful and actually more efficient to guide students through the doctrine and then give them time on their own to devise possible solutions." *Id.* at 204 n.308.

²⁰⁰ See Sonsteng et al., *supra* note 38, at 340–41 (stating that the majority of schools require students to take legal reading and writing class); see also CARNEGIE REPORT, *supra* note 18, at 89 (cautioning legal educators that doctrinal instruction should not be the exclusive content of the beginner's curriculum); Batt, *supra* note 98, at 132 ("The Carnegie Report urged law schools to eliminate the curricular silos of legal education, referring to the segregation of doctrine, skills, and professional identity into separate worlds within the law school.").

²⁰¹ See Vimla L. Patel et al., *Expertise and Tacit Knowledge in Medicine*, in TACIT KNOWLEDGE IN PROFESSIONAL PRACTICE 1, 3 (Robert H. Sternberg & Joseph A. Horvath eds., 1999) (claiming that

knowledge of the concepts, principles and structures of thinking about the particular domain in which a problem arises.”²⁰² Tacit knowledge involves learning how to perform tasks, like the fundamental lawyering skills an attorney needs to excel in today’s competitive job market.²⁰³ Resolution of issues presented by simulated or live clients requires the use of both doctrinal and clinical knowledge. This places students in the position to weigh and assess interdependent variables in uncertain situations.²⁰⁴ This uncertainty is a significant aspect of the experience medical students face during their clinical rotations, which can be replicated by law schools during the first-year of instruction through discrete assignments interleaved with client interactions.

The experiential learning activities proposed in this Article require the law student to use foundational, abstract ideas learned during the first semester of the first year and beyond to resolve simulated and actual legal situations without the aid of a prescribed solution.²⁰⁵ Recent psychological studies have concluded that the way in which domain knowledge is organized is crucial for a student to acquire expert problem-solving skills.²⁰⁶ Expert reasoning involves accessing problem-solving

domain knowledge and tacit knowledge are two separate forms of knowledge, which are implicated by different teaching mechanisms and acquired through different experiences); *see also* Dennis J. Devine & Steve W.J. Kozlowski, *Domain-Specific Knowledge and Task Characteristics in Decision Making*, 64 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 294, 294 (1995). Similarly, the *Carnegie Report* suggests “[t]he two kinds of legal knowledge—the theoretical and the practical—are complementary and deserve a balanced application.” CARNEGIE REPORT, *supra* note 18, at 13. Understanding the interplay between these two types of knowledge is essential to comprehending how professionals learn to practice and solve problems effectively along an educational continuum. *See* MAXEINER, *supra* note 87, at 20–21 (discussing that conducting more practical training will better legal education because “[p]ractice complements theory”).

²⁰² Jennifer E. Spreng, *Spirals and Schemas: How Integrated Courses in Law Schools Create Higher-Order Thinkers and Problem Solvers*, 37 U. LA VERNE L. REV. 37, 51–52 (2015).

²⁰³ *Id.*

²⁰⁴ *See, e.g.*, Aaronson, *supra* note 190, at 31 (observing that perplexing lawyering questions involve complex factual situations which cognitive scientists consider as “ill-structured”); *see also* Ian Weinstein, *Lawyering in the State of Nature: Instinct and Automaticity in Legal Problem Solving*, 23 VT. L. REV. 1, 14 (1998).

²⁰⁵ *See* Michael T. Gibson, *A Critique of Best Practices in Legal Education: Five Things All Law Professors Should Know*, 42 U. BALT. L. REV. 1, 18 (2012) (“Before a student can determine that certain information will resolve a situation, she must decide what issues that situation presents.”).

²⁰⁶ *See* NAT’L RESEARCH COUNCIL, LEARNING AND UNDERSTANDING: IMPROVING ADVANCED STUDY OF MATHEMATICS AND SCIENCE IN U.S. HIGH SCHOOLS 118–20 (William B. Wood ed., 2002). Less important are the amount of domain knowledge amassed, the ability to apply problem-solving methods to

“scripts” or “schemas” for handling particular problems. Psychologists hypothesize that these schemas shape an expert’s knowledge of differing subject matter so the expert can achieve quick and easy access to his memory and possible problem solutions.²⁰⁷

Cognitive psychologists theorize that learning to problem-solve on an expert level is an incremental process wherein students develop the cognitive elements of perceiving, organizing, and transforming new information into meaningful concepts, then use those concepts to form judgments and solve problems.²⁰⁸ To achieve competence or become an expert, a student must first recognize similarities between a given problem and the student’s stored knowledge about past situations.²⁰⁹ Thereafter, the student must form a basis to recognize when a proposed solution is found to be inadequate, how to reformulate the problem, attempt to retrieve additional information, and try to identify other solutions.²¹⁰ Initially, when faced with a legal problem, first-year students may believe they already know what the problem is, defining it on the basis of its surface structure, whereas experts seek to reformulate the problem to reach a solution based on previous experiences.²¹¹

This research has suggested domain knowledge provides the mechanization for understanding and identifying problem structures,²¹² increased domain knowledge facilitates problem-solving by providing the solver with contextual information about the situation,²¹³ and that domain knowledge assists experts in categorizing and

that knowledge, or the capacity to discover patterns similar to that knowledge. *Id.*; Devine & Kozlowski, *supra* note 201, at 297.

²⁰⁷ EDWARDS, *supra* note 162, at 179 (“When students acquire new knowledge, they store and encode it in schematics closely tied to the environment and activity in which they learned the new knowledge.”).

²⁰⁸ See Larry O. Natt Gantt, II, *Deconstructing Thinking Like a Lawyer: Analyzing the Cognitive Components of the Analytical Mind*, 29 CAMPBELL L. REV. 413, 417 (2007); see also Vernelia R. Randall, *The Myers-Briggs Type Indicator, First Year Law Students and Performance*, 26 CUMB. L. REV. 63, 76–93 (1995–96); Robin A. Boyle et al., *Presenting a New Instructional Tool for Teaching Law-Related Courses: A Contract Activity Package for Motivated and Independent Learners*, 38 GONZ. L. REV. 1, 6 (2002–03); John Sonsteng et al., *Learning by Doing—Preparing Law Students for the Practice of Law: The Legal Practicum*, 21 WM. MITCHELL L. REV. 111, 112 (1995).

²⁰⁹ See Gantt, *supra* note 208, at 447.

²¹⁰ *Id.* at 448–50.

²¹¹ See *id.* at 465–66.

²¹² Krieger, *supra* note 199, at 169.

²¹³ *Id.* at 170.

retaining this information by placing it in context.²¹⁴ Instruction in practical skills development provides students with the ability to achieve expertise²¹⁵ by expediting the problem-solving process.²¹⁶ Several studies, for example, in the area of medical education demonstrate that students in their early years of development use their knowledge of basic science in interpreting clinical information, but their growth to expertise is predicated on the strength of their clinical instruction.²¹⁷

By playing the role of a licensed attorney, students bring their own understanding of the necessary skills to the task, and can then gauge their personal effectiveness against what is possible. Amy L. Ziegler argues that a structure that teaches skills of self-evaluation can be the “pedagogical core around which all experiential teaching activities are organized.”²¹⁸ In addition, after an effective debrief of the experience with the doctrinal and clinical instructors who choreographed the experience, students can immediately see how foundational and fundamental lawyering skills relate, discern different ways to achieve a desired outcome, and assess how different approaches could produce better results.

C. *Eradicating Historic Silos Through Faculty Collaboration*

The type of first-year client interactions that are contemplated in this Article rely on a collaborative teaching structure. Collaboration among doctrinal and clinical faculty encourages and accentuates synergies that exist when courses are designed intentionally to link fundamental lawyering skills training with prior instruction first-year students received in doctrinal courses.²¹⁹ Collaboration advances cross-

²¹⁴ *Id.*; see also Devine & Kozlowski, *supra* note 201, at 294 (distinguishing between “declarative” and “procedural” knowledge).

²¹⁵ See Krieger, *supra* note 199, at 185.

²¹⁶ See Devine & Kozlowski, *supra* note 201, at 297; Krieger, *supra* note 199, at 177; see also CARNEGIE REPORT, *supra* note 18, at 13.

²¹⁷ Krieger, *supra* note 199, at 168–69 (“The transition to the next stage seems to be initiated by the effect of practical experience. In other words, domain knowledge provides an organizing framework for development of expert schemas. “[W]ell-organized, coherent information is easier to remember than disjointed collections of facts.” (quoting Vimla L. Patel & David R. Kaufman, *Clinical Reasoning & Biomedical Knowledge*, in *ADVANCES IN INSTRUCTIONAL PSYCHOLOGY* 117 (Robert Glasser ed., 2000)).

²¹⁸ Amy L. Ziegler, *Developing a System of Evaluation in Clinical Legal Teaching*, 42 J. LEGAL EDUC. 575, 575 (1992).

²¹⁹ See CARNEGIE REPORT, *supra* note 18, at 9; Imwinkelried, *supra* note 47, at 751 (“Ideally, the interaction should be positive and synergistic—a partnership which enriches the coursework in both types of classes. More specifically, each teacher should set the stage for the other type of course and, when possible, build upon the work done in the other type of course. To achieve synergy, both types of teachers must assume a duty of cooperation to the other.”); see also Krieger, *supra* note 199, at 149 (“Basic knowledge of

functional modalities that tend to maximize the experience students receive during their doctrinal course instruction.²²⁰ Some of the advantages of cross-functional collaborations that might be realized include the opportunity to provide participants with different perspectives, and increased participant buy-in.²²¹ The *Carnegie Report* envisioned faculty working in this manner to achieve integrative results in student learning.²²²

Teaching and learning collaboratively should promote economy of scale by saving costs in time, money, and human resources typically expended to plan and offer longer client interactions in law clinics and externships.²²³ Furthermore, it is theorized that students learn more effectively when they work with a teacher, a classmate, or a more advanced student like an upper-level teaching assistant to achieve learning goals.²²⁴ This type of collaboration spurs an instructional framework for students to learn, also known as “Vygotsky scaffolding”²²⁵ or just “scaffolding.”²²⁶ Law school educators can provide scaffolding for the live-client interactions described in this Article by focusing on group rotations that students

substantive legal doctrine is a necessary prerequisite to learning effective legal practice.”); McAninch, *supra* note 194, at 426 (“The substantive impact that experiential learning will have on any given student or group of students is unpredictable. What one takes from an experience is in part a function of what one brings to it.”).

²²⁰ See *Cross Functional Collaboration in a Culture of Continuous Improvement*, KAINEXUS, <https://www.kainexus.com/employee-engagement/cross-functional-collaboration> (last visited Feb. 3, 2020).

²²¹ *Id.*

²²² CARNEGIE REPORT, *supra* note 18, at 9 (“It is the sustained dialogue among faculty with different strengths and interests united around common educational purpose that is likely to matter most.”).

²²³ See Silver, *supra* note 14, at 415 (“There is an inherent, but overlooked, tension between cost cutting and the clinical training necessary to enhance the ‘practice readiness’ that the bar and the ABA have been calling for.”).

²²⁴ See Kathleen Tarr, *Teach a Law Student to Fish: A Tutor’s Perspective on Legal Writing*, 49 U.S.F. L. REV. F. 53, 55 (2015); see also Margaret Butler, *Resource-Based Learning and Course Design: A Brief Theoretical Overview and Practical Suggestions*, 104 LAW LIBR. J. 219, 225–26 (2012).

²²⁵ See Irina Verenikina, *Scaffolding and Learning: Its Role In Nurturing New Learners*, in LEARNING AND THE LEARNER: EXPLORING LEARNING FOR NEW TIMES 163 (Peter Kell et al. eds., 2008) (explaining that Vygotsky scaffolding is part of the education concept “zone of proximal development” or ZPD). The ZPD comprises the set of skills or knowledge a student cannot master independently but can do with the help or guidance of someone else. *Id.* at 165. The concept of scaffolding is meant to convey the process by which one learner helps another learner of lesser ability or knowledge develop mastery by working together. See *id.* at 164.

²²⁶ See Batt, *supra* note 98, at 129.

experience under the guidance of the instructor, teaching assistant, and the simulated or actual client. Recognition of how the concepts overlap is relevant to defining a system for integrating more experiential education into the first-year curriculum that amplifies synergies by scaffolding doctrinal lessons and practical training regarding fundamental skills²²⁷: “Even if the goal in the classroom is just to teach doctrine, students learn doctrine better when professors use experiential teaching methods.”²²⁸

D. *Increasing Feedback, Reflection and Assessments*

The rotating, live-client interactions described in this Article might also prompt continuous formative and summative assessments that focus on supporting students in learning rather than ranking. Doctrinal instructors who collaborate in teaching or planning the proposed course may benefit from additional assessments of student performance in class or on exams.²²⁹ After the student groups complete their analysis and deliver their work product, the course instructor(s), the client, and the students, individually and as groups, should assess the experience, starting with the initial interview and ending with a critique of any work product that the students produced for the client. This process is intended to maximize feedback and reflection while increasing opportunities for critical observation by doctrinal and clinical instructors of student competency.²³⁰ Students develop mastery as they receive time-in-time feedback²³¹ and critiques from teachers and peers. Indeed, “individualized feedback in a single first-year doctrinal class can improve the quality of students’ exams in all other traditional law school classes during the first year of law school.”²³² More importantly, with more feedback, first-year students learn to reflect on their own

²²⁷ *Id.* (“Experiential education . . . surrounds the work experience with scaffolding.”).

²²⁸ Erickson, *supra* note 18, at 89.

²²⁹ See Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 J. LEGAL EDUC. 139, 140 (2017) (explaining that effective education “requires ‘frequent formative assessments that provide students with the opportunity to gauge their progress as they acquire new skills’” (quoting Herbert N. Ramo, *Moving Students from Hearing and Forgetting to Doing and Understanding: A Manual for Assessment in Law School*, 41 CAP. U. L. REV. 837, 837 (2013))).

²³⁰ See Krantz & Milleman, *supra* note 18, at 19. According to Krantz and Milleman, “[W]hen teachers and students work together collaboratively early on, it mitigates the hierarchical structure of legal education and allows professors to teach professional responsibility by modeling it.” *Id.* at 17.

²³¹ See Binder & Bergman, *supra* note 183, at 202 (providing that “time in time” feedback is an effective way to provide students with the opportunity to revise their thinking as they work on tasks and is particularly present when students work in groups). Use of the “time in time” feedback also allows observers to interrupt simulated sessions to provide immediate feedback to students. *See id.* at 212.

²³² Schwarcz & Farganis, *supra* note 229, at 143.

performances and progress, identifying their strengths and weaknesses far in advance of encountering an actual client.²³³

Simulated or real conceptual frameworks for legal situations students will confront in practice assists them to become aware of their learning strategies and how to improve them.²³⁴ This skill of reflection, or “metacognitive” thinking as the *Carnegie Report* characterizes it, is something that skilled teachers are best positioned to impart.²³⁵ The development of metacognition is typically an explicit goal of medical school practical training.²³⁶ That is, making students aware of the methods of analyzing their own performances enhances the likelihood that students will continue to learn from their professional experiences.²³⁷ When law school instructors in foundational and fundamental skills courses coordinate the experience for the student, stronger metacognitive skills may be developed.

There are already a number of examples of courses taught at progressive law schools that add some of these instructional dimensions to the first-year curriculum. For example, Harvard Law School has offered a required Problem Solving Workshop that all first-year students take during their second semester.²³⁸ The goal of the Workshop is to improve the process of students “learning to think like a

²³³ See, e.g., Symposium, *A Blueprint for Experiential Education Reform*, 7 ELON L. REV. 1, 9 (2015) (recommending that the “preferred” pedagogical focus should encourage various outcomes, including systematic reflection on the lawyering experience; the transfer of learning across contexts; targeted feedback on skills and performance; application of the Socratic method; and student reflection on “experience in ways that are focused particularly on what it means to become a professional, including ethical, intrapersonal and interpersonal dimensions”); see also Mary Dunnewold & Mary Trevor, *Escaping the Appellate Litigation Straitjacket: Incorporating an Alternative Dispute Resolution Simulation into a First-Year Legal Writing Class*, 18 J. LEGAL WRITING 209, 221 (2012) (citing the MACCRATE REPORT, *supra* note 2, at 242–43); Toni M. Fine, *Reflections on U.S. Law Curricular Reform*, 10 GERMAN L.J. 717, 739 (2009) (describing a first-year course taught at New York University School of Law that exposes students to “intensive feedback and significant opportunities for self-reflection” through client interactions); Rebecca Flanagan, *Better by Design: Implementing Meaningful Change for the Next Generation of Law Students*, 71 ME. L. REV. 104, 130 (2018) (“Success depends on the self-reflective process, which in turn, is aided by feedback from assessments.”).

²³⁴ See Flanagan, *supra* note 233, at 133.

²³⁵ See E. Scott Fruehwald, *Developing Law Students’ Professional Identities*, 37 U. LA VERNE L. REV. 1, 5–15 (2015).

²³⁶ See Cheryl B. Preston et. al., *Teaching “Thinking Like a Lawyer”: Metacognition and Law Students*, 2014 BYU L. REV. 1053, 1090–91.

²³⁷ See *id.*

²³⁸ Joseph William Singer & Todd D. Rakoff, *Problem Solving for First-Year Law Students*, 7 ELON L. REV. 413, 414 (2015).

lawyer” by putting them in the position of a lawyer giving advice to a client.²³⁹ Chicago-Kent Law School offers its first-year students opportunities to participate in the school’s in-house law firm working under faculty supervision on matters relating to criminal defense, employment discrimination, immigration, and tax law.²⁴⁰ The University of California, Irvine School of Law also has first-year students observe and conduct interviews of clients in legal aid, public defender, and public interest organizations; prepare reports of the interviews; and present the information to the partner agency’s supervising attorney in a two-semester (six credits) lawyering skills course.²⁴¹ The University of Montana School of Law offers a two-semester, first-year course called “Lawyering Fundamentals: Theory and Practice” that permits students to develop various fundamental lawyering skills, starting in the first semester.²⁴² In the spring, students are grouped as “law firms” assigned to represent clients who are referred by the Montana Legal Services Association.²⁴³ Yale Law School admits first-year students into the law school’s clinical program.²⁴⁴ This exposure gives students “substantial responsibility for providing legal assistance” to poor clients; shows them “how the law operates in practice”; uses the practice experiences to help students “understand, apply, and critique theory and practice”; has a “professional responsibility component”; and requires “substantial writing in connection with their practice.”²⁴⁵ Maryland Carey School of Law also provides clinical-type experiences to first-year students in a three-credit “legal theory and practice” course.²⁴⁶ Finally, unlike the aforementioned law schools that tailor courses for first-year students to engage in the advanced live-client interactions, the City University of New York (“CUNY”) School of Law restructured its three-year curriculum to require all of its students to complete a specific number of experiential courses.²⁴⁷

²³⁹ *See id.*

²⁴⁰ Krantz & Millemann, *supra* note 18, at 15.

²⁴¹ *Id.*

²⁴² *See id.* at 15–16.

²⁴³ *See id.*

²⁴⁴ *See id.* at 14.

²⁴⁵ Findley, *supra* note 8, at 634; Krantz & Millemann, *supra* note 18, at 15.

²⁴⁶ *See* Krantz & Millemann, *supra* note 18, at 14.

²⁴⁷ *See* Vande Lune, *supra* note 59, at 316–17. According to Vande Lune, CUNY has not experienced increased tuition because of its experiential learning requirements and actually has lower than average resident tuition for a public law school. *See id.* at 317 (noting that CUNY’s program has not raised costs

E. Exploiting Untapped Curricular Synergies and Lost Learning Opportunities

Professor Amsterdam criticized legal educators for not acknowledging that critical analysis, planning, and problem-solving constitute the “conceptual foundations for practical skills and much else.”²⁴⁸ Every classroom experience in law school should be part of a holistic educational continuum designed to integrate and amplify how theory and practice synchronize to prepare the contemporary attorney for the rigors of the practice of law.²⁴⁹ Curricular designs that are intended to exploit the synergies of faculty teaching collaboratively, such as this, allow law schools to coordinate instruction to progressively teach students how fundamental lawyering skills, professional values, and doctrine interconnect, not just in theory, but also in real-world settings and situations.²⁵⁰ This presents an intellectual bridge for first-year students to traverse in the early phases of the law school educational continuum until the students are offered a greater menu of clinical training.

Student exposure to issues that arise in diverse practice areas creates opportunities for the student to develop near and far transfer skills by testing new ideas in novel and unexpected situations.²⁵¹ Live-client interaction during the first year of law school provides opportunities for students to transfer skills in one context that have been learned in a different context.²⁵² Researchers suggest that the primary

for the school); see also *USD School of Law Experiential Advocacy Practicum*, UNIV. OF SAN DIEGO SCH. OF LAW (2019), <https://www.sandiego.edu/law/academics/curriculum/practicum.php> (explaining that University of San Diego offers a practicum in which first-year law students can enroll to practice skills common to those performed by junior attorneys).

²⁴⁸ Leary Davis, *Competence as Situationally Appropriate Conduct: An Overarching Concept for Lawyering, Leadership, and Professionalism*, 52 SANTA CLARA L. REV. 725, 743 n.61 (2012).

²⁴⁹ See Batt, *supra* note 98, at 156.

²⁵⁰ See Melissa J. Marlow, *Law Faculties: Moving Beyond Operating as Independent Contractors to Form Communities of Teachers*, 38 OHIO N.U. L. REV. 243, 251–52 (2011) (citing Jamie R. Abrams, *A Synergistic Pedagogical Approach to First-Year Teaching*, 48 DUQ. L. REV. 423, 453 (2010)).

²⁵¹ See Binder & Bergman, *supra* note 183, at 197–98 (explaining that researchers suggest that far transfer occurs as students learn to apply what they have learned to new situations); Paul Bergman & David Binder, *Taking Interviewing and Counseling Skills Seriously*, 8 T.M. COOLEY J. PRAC. & CLINICAL L. 325 (2005) (stating that near transfer occurs when students learn how to perform repetitive tasks competently, far transfer requires students to apply general principles to unique, complex and non-standardized situations); Bobette Wolski, *Why, How, and What to Practice: Integrating Skills Teaching and Learning in the Undergraduate Law Curriculum*, 52 J. LEGAL EDUC. 287, 293 (2002) (suggesting students develop skills through opportunities they have to test new ideas and to transfer their learning to new situations).

²⁵² See Flanagan, *supra* note 233, at 120–21 (providing that “[c]ritical to the success of [a] spiral curriculum is in-depth mastery of original learning; so when knowledge reappears in later courses, it can

pedagogy to accomplish transfer is by maximizing the similarity between the learning environment and the context in which the acquired skills have to be applied²⁵³. “Thus, clinical courses effectively provide skills training to the extent that they enable students to transfer the concepts, strategies and techniques they begin to use while in clinical courses to the many and varied practice settings they are almost certain to encounter after graduation.”²⁵⁴

When far transfer is accomplished, the training that students receive develops concepts that become encoded in the students’ long-term memories.²⁵⁵ This results in students being more practice-ready upon graduation, because they have a body of experiences from which they can develop further understanding of how to deal with client issues.²⁵⁶

In 1984, psychologist David Kolb defined learning as “the process whereby knowledge is created through the formation of experience.”²⁵⁷ He claimed that adults learn best when “they are actively involved, motivation is keen, there is urgency to their learning, the learner can be self-directed, and there is time for reflection.”²⁵⁸ Kolb defined a four-stage cycle to illustrate how experiential learning advances student learning. Those stages include: (1) concrete experience; (2) observation and reflection; (3) detached abstract generalization based on observation and reflection; and (4) active experimentation informed by theory that results in new concrete

be mastered at a ‘progressively higher level of learning.’” (citing Vinod K. Lohani et al., *Work in Progress-Spiral Curriculum Approach to Reformulate Engineering Curriculum*, PROCEEDINGS FRONTIERS IN EDUCATION 35TH ANNUAL CONFERENCE 1, 2 (2005), <http://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=1612007&isnumber=33854>); see also Stefano Moscato, *Teaching Foundational Clinical Lawyering Skills to First-Year Students*, 13 J. LEGAL WRITING 207, 234–35 (2007).

²⁵³ See generally Dennis G. Katz, “Transferability of Skills” and the Medical-Vocational Guidelines Under the Social Security Act, 1998 FED. CTS. L. REV. 5 (describing how the Social Security Administration defines “transferable skills”).

²⁵⁴ Binder & Bergman, *supra* note 183, at 198.

²⁵⁵ See David A. Binder et al., *A Depositions Course: Tackling the Challenge of Teaching for Professional Skills Transfer*, 13 CLINICAL L. REV. 871, 885–86 (2007); see also Rachel Arnow-Richman et al., *Integrating Transactional Skills Training into the Doctrinal Curriculum*, 18 TRANSACTIONS 439, 455 (2016).

²⁵⁶ Binder et al., *supra* note 255, at 886; see Arnow-Richman, *supra* note 255, at 456–57; see also Binder & Bergman, *supra* note 183, at 212 (stating that “[m]edical schools also promote transfer through sensitivity to the importance of sequential learning”).

²⁵⁷ Davis, *supra* note 248, at 754.

²⁵⁸ Filippa Marullo Anzalone, *It All Begins with You: Improving Law School Learning Through Professional Self-Awareness and Critical Reflection*, 24 HAMLINE L. REV. 324, 364 (2001).

experience.²⁵⁹ According to Kolb, in order to learn from experience, the learner must experience all four stages and repeat stages two and three to fully appreciate whether newly-formulated theories of action are valid.²⁶⁰ Repetition of the experience permits the student to reassess her strategies to become more effective, and to transform her abstract theories into broader and deeper, concrete experiences.²⁶¹ Kolb's experiential model holds the key to coalescence of the practical and theoretical, because it demonstrates to the instructor and student how both sources of knowledge are intertwined: "Higher levels of abstraction precede and support more complex concrete experiences that become the basis for observation and reflection that lead to new theory that adds to, refines, or substitutes for the initial theory."²⁶² Thus, experiential education teaches not only practical skills but also integrates and amplifies "methods of critical analysis, planning, and decision-making."²⁶³

Bloom's "Taxonomy of Educational Objectives" ("Taxonomy") explains the structure of human learning using a scale of six levels of increasing difficulty to demonstrate how people learn.²⁶⁴ Legal educators have applied these six levels of learning over the past few decades as a roadmap to instruct students to develop higher order thinking capacities.²⁶⁵ Bloom theorized that each level requires different

²⁵⁹ See *id.* at 364 n.233 (describing the four processes). The first stage of the Kolb theory is Concrete Experience, which provides a frame of reference for discussing the knowledge obtained. *Id.* The second stage is Observation and Reflection. *Id.* It is important for the student to explain how she or he acquired the knowledge. The third stage is called Abstract Conceptualization. *Id.* Similar to second stage in Bloom's taxonomy, comprehension, it requires students to provide evidence of comprehension in their writing. *Id.* The fourth stage of Kolb's theory is Active Experimentation. *Id.* During this process, students are required to demonstrate the ability to generalize learning to new situations and environments. *Id.* To generalize, one must derive or formulate a general concept or principle from a particular situation or experience. See *id.*

²⁶⁰ See Barrette, *supra* note 6, at 9–10.

²⁶¹ Davis, *supra* note 248, at 754–55.

²⁶² *Id.* at 754–56.

²⁶³ Findley, *supra* note 8, at 632.

²⁶⁴ See BENJAMIN S. BLOOM ET AL., TAXONOMY OF EDUCATIONAL OBJECTIVES: THE CLASSIFICATION OF EDUCATIONAL GOALS 18 (1956); see also Gibson, *supra* note 205, at 7 (discussing how the six levels of learning, from simplest to most complex, include knowledge, comprehension, application, analysis, synthesis, and evaluation); A TAXONOMY FOR LEARNING, TEACHING, AND ASSESSING: A REVISION OF BLOOM'S TAXONOMY OF EDUCATIONAL OBJECTIVES (Lorin W. Anderson et al. eds., 2001) (revising Bloom's Taxonomy); Erickson, *supra* note 18, at 95.

²⁶⁵ See Barry et al., *supra* note 170, at 43 nn.153–56. Experiential learning has been said to hone a student's "Higher Order Thinking Skills." Higher Order Thinking Skills include: evaluation, synthesis, analysis, and use of new information. See *id.* Increased integration of experiential learning into the first-year

intellectual and practical skills and must be mastered in a specific order. Therefore, the absence of certain instruction, like skills training in the first year of education, arguably impedes a law student's professional development by prematurely terminating or precluding opportunities for first-year students to integrate practical skills training into the curriculum.

For example, achieving interleaved instruction, as proposed in this Article, generally requires course coverage of different materials or utilization of different kinds of learning to achieve certain goals by the instructor. This teaching strategy has been recognized for teaching various learning outcomes, including helping students develop problem-solving skills; the ability to transfer knowledge and skills in new contexts; and enhancing long-term memory of legal doctrines and the practicality of their application in real milieus.²⁶⁶ Instead of attempting to fabricate this experience through perfunctory mock appellate experiences at the tail end of the first year or curtailing them until the student is considered a "rising 2L," more law schools should invigorate the first-year curriculum with simulated client interactions that require application of more than the initial levels of Bloom's taxonomy.²⁶⁷ Instead, many law students are restricted to comprehending doctrinal lessons at the lowest two levels of Bloom's "Taxonomy," knowledge and comprehension.²⁶⁸ At

curriculum should permit students to "foster[] a sense of professional identity[] and creat[e] the ability to learn from self-reflection and feedback." Vande Lune, *supra* note 59, at 309; *see also* Anzalone, *supra* note 258, at 324. In fact, to the extent that doctrinal professors want their students to leave law school with other higher-order proficiencies, students can best acquire these proficiencies through experiential learning methods. *See* Erickson, *supra* note 18, at 2; *see also* Jo A. Tyler & Faith Mullen, *Telling Tales in School: Storytelling for Self-Reflection and Pedagogical Improvement in Clinical Legal Education*, 18 CLINICAL L. REV. 283, 283 (2011) (explaining that "the integration of storytelling into law school clinics can help students move through the six levels of cognition identified in Bloom's taxonomy of educational objectives in order to become more practice-ready . . ."); Becky L. Jacobs, *Cultivating Purposeful Curiosity in a Clinical Setting: Extrapolating from Case to Social Justice*, 21 CLINICAL L. REV. 371, 391 (2015).

²⁶⁶ E. Scott Fruehwald, *Bringing Legal Education Reform into the First Year: A New Type of Torts Text*, 50 J. MARSHALL L. REV. 713, 724 (2017).

²⁶⁷ *Id.* at 745.

²⁶⁸ *See* Gibson, *supra* note 205, at 13. Experts state that:

[M]any students spend most of class at the lowest two levels of learning. When we discuss a case, they are trying to Know and Comprehend its facts, rules, arguments, and holding(s) (Levels 1 and 2). Implicitly expecting them to recognize patterns in our questions about the case is expecting them to jump directly to Level 5 (Synthesis). Even worse, students for whom education has been a matter of Knowing and Remembering (Level 1) probably have no clue that Level 5 exists.

neither level is the student expected to apply the knowledge or comprehension they have received to real-world situations.²⁶⁹

Collaboratively designing courses that synchronize use of Bloom's *Taxonomy* and Kolb's Cycle may provide law schools with an effective way to close the gaps in the educational continuum and to maximize the synergies of doctrinal and clinical instructors teaching together.²⁷⁰ Regardless of whether the experiential learning occurs in a simulation course, a clinic, or an externship, the student not only learns to transfer mechanical skills, but also the theoretical underpinnings of these skills.²⁷¹

Instead of integrating skills training into the first-year curriculum at the application, analysis, or synthesis levels, law schools forestall exposing students to any form of real or simulated client contact that would continue that educational cycle until moot appellate arguments or until after the student earns at least thirty credits.²⁷² As a result, most first-year students experience clients in the limited dimensions that textbooks provide, without an understanding of the practical skills

Id. at 7–8. During the knowledge level, the goal is for the student to demonstrate the ability to know and remember rote information. *See id.* The goal of the comprehension level is to teach the student to paraphrase rote information into her own words, interpreting it by making inferences, generalizations, or summaries, and extrapolating or predicting trends or tendencies by applying the information to a concrete situation. *See id.*

²⁶⁹ *See id.*; *see also* Erickson, *supra* note 18, at 95–96 (asserting that “[t]he challenge of learning to recite legal rules is significantly different than the challenge of learning to solve a problem with those rules. The former involves shallow learning of the doctrine, while the latter involves a much deeper form of learning.”).

²⁷⁰ *See* Elena J. Murphy, *A Review of Bloom's Taxonomy and Kolb's Theory of Experiential Learning: Practical Uses for Prior Learning Assessment*, 55 J. CONTINUING HIGHER EDUC. 64 (2007) (stating that “[c]olleagues have used Bloom's Taxonomy in conjunction with Kolb's theory as a useful tool for helping students move beyond superficial writing and add a depth of understanding and critical analysis to their essays”); *see also* Wolski, *supra* note 251, at 292 (confirming students “can begin Kolb's cycle at any stage but then must proceed through the stages in sequence.”).

²⁷¹ Vande Lune, *supra* note 59, at 309.

²⁷² *See* CARPENTER, *supra* note 167, at 55–56. According to the Survey of Law School Curricula, most law schools require students earn eighty-eight academic credits for graduation. *Id.* The 2018 Revised ABA Standards do not limit live-client interactions to upper-class students. ABA, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2018–2019, at 17–18 (specifically § 304). In reference to completing experiential courses that include simulation courses, law clinics, and field placements, Standard 304 states: “Each student in such a simulation, law clinic, or field placement course shall have successfully completed sufficient prerequisites or shall receive sufficient contemporaneous training to assure the quality of the student educational experience.” *Id.*

necessary to advance the underlying legal matter to its conclusion.²⁷³ When those students are finally afforded the new experience of interacting with a live client, they tend to struggle with navigating the interaction.²⁷⁴

V. LIMITATIONS TO INTEGRATING LIVE-CLIENT INTERACTIONS INTO THE FIRST-YEAR CURRICULUM

The reasons many law schools give for limiting live-client interaction during the first year of instruction are numerous, but include arguments that “it is simply infeasible to bring ‘live client’ instruction into the first-year curriculum for every entering law student” due to the “daunting amount of resources required for clinics,” ethical considerations arising from the attorney-client relationship, and liability issues, including potential conflicts of interests.²⁷⁵ However, those reasons may be subtext to obstacles to change, as opposed to insurmountable barriers to teaching doctrine and skills along with a holistic educational continuum.

In reality, the first hurdle law schools must overcome to achieve what has heretofore never been accomplished is to find the courage to advance student learning over a pursuit for national rankings.²⁷⁶ “A growing concern exists among critics of legal education that the rankings are prompting law schools to change their operations in hopes of increasing their scores.”²⁷⁷ Prominent organizations like the American Association of Law Schools, the Law School Admission Council, and the National Association for Law Placement denounce the rankings and have recommended that law school applicants disregard them.²⁷⁸ Nonetheless, despite the

²⁷³ See Robin Wellford Slocum, *An Inconvenient Truth: The Need to Educate Emotionally Competent Lawyers*, 45 CREIGHTON L. REV. 827, 841 (2012); see also Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*, 13 WIDENER L. REV. 33, 34 (2006).

²⁷⁴ See Mary Nicol Bowman & Lisa Brodoff, *Cracking Student Silos: Linking Legal Writing and Clinical Learning Through Transference*, 25 CLINICAL L. REV. 269, 274 (2019).

²⁷⁵ See Nantiya Ruan, *Student, Esquire?: The Practice of Law in the Collaborative Classroom*, 20 CLINICAL L. REV. 429, 442 (2014).

²⁷⁶ See Sonsteng et al., *supra* note 38, at 348–51 (citing Leigh Jones, *Law Schools Play the Ranking Game: Resources Used to Boost Rank; Critics Say It Hurts Schools*, NAT’L L.J., Apr. 18, 2005, at A10; see also David A. Thomas, *The Law School Rankings Are Harmful Deceptions: A Response to Those Who Praise the Rankings and Suggestions for a Better Approach to Evaluating Law Schools*, 40 HOUS. L. REV. 419, 420–421 (2003).

²⁷⁷ Sonsteng et al., *supra* note 38, at 348–49.

²⁷⁸ See BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 78 (2012) (denouncing the rankings as a catalyst for many of the issues law schools face, including deceptive reporting practices, resignations from

consensus that the rankings are unscientific and imprecise, a feeling exists that “persons familiar with law schools would categorically deny that a unitary or consensual judgment about law school quality could be made from assessing a canonical list of criteria.”²⁷⁹

Perhaps a solution to resisting unfair and misleading rankings is for a law school to seek distinction as a leader in providing contemporary and future students with an education that is best structured to prepare them for the practice of law they will enter when they are admitted to practice. For example, Chicago-Kent School of Law has launched its “1L Your Way Program” to give incoming students the option to defer a required first-year course to the second year in favor of taking either an approved, upper-level elective course or a unique first-year clinical course.²⁸⁰ Although this may not pay immediate dividends with *U.S. News & World Report*, it may inspire prospective students to consider an academically progressive law school over one that is tethered to the case method or a flawed desire for self-preservation.²⁸¹

Another barrier to the proposed curricular movement is the notion that adding experiential pedagogy to the traditional curriculum will be ineffective, too difficult and too costly. *Best Practices* suggests, “no matter how creatively a law school reallocates its resources from traditional classroom instruction into simulations, nothing substitutes for the value of the real-practice experience students gain in law

multiple deans, schools altering their admissions formula to maximize their ranking, reconfiguration of the student body, a shift away from scholarship for financially needy students to merit scholarships, etc.).

²⁷⁹ Thomas, *supra* note 276, at 427 (citing Nancy B. Rapoport, *Ratings Not Rankings: Why U.S. News & World Report Shouldn't Want to be Compared to Time and Newsweek—Or the New Yorker*, 60 OHIO ST. L.J. 1097, 1099 (1999)); *see generally* TAMANAHA, *supra* note 278, at 71–103.

²⁸⁰ *See* Michael Hunter Schwartz, *Chicago-Kent's Early Specialization 1L Program*, WHAT GREAT LAW SCHOOLS DO (July 17, 2019), <https://www.whatgreatlawschoolsdo.com/2019/07/chicago-kents-early-specialization-1l-program/>.

²⁸¹ *See* MACCRATE REPORT, *supra* note 2, at 268 (stating that replication of these efforts requires commitment from law schools to expand traditional instruction in foundational skills with innovations that will disrupt the status quo and that “[l]aw schools should strive to develop or expand instruction in all components of the Statement of Fundamental Lawyering Skills and Professional Values”); Clayton M. Christensen et al., *What Is Disruptive Innovation?*, HARV. BUS. REV. (Dec. 2015), <https://hbr.org/2015/12/what-is-disruptive-innovation> (discussing what Clayton M. Christensen and others deemed “disruptive innovations” lead to cost-savings in the production of the program or product and are often simpler to use than the original process or product); Silver, *supra* note 14, at 424 (explaining that the revised Standards represent the ABA’s attempt to authorize and encourage law schools to pursue curricular innovations that teach most relevant foundational and fundamental lawyering skills to students within a discernible, educational continuum).

school clinics and externships.”²⁸² *Best Practices* further notes “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.”²⁸³ Moreover, although the “third wave”²⁸⁴ of clinical education advises that the first-year curriculum should incorporate clinical teaching methodologies, most law curricula are not equipped for expansion of traditional clinics into the first year or to all students who request it.²⁸⁵

Fortunately, adjusting the traditional educational continuum to integrate more experiential learning does not involve replicating every facet of a legal practice or providing every student with instruction concerning all of the fundamental lawyering skills listed in the *MacCrate Report* or its progeny.²⁸⁶ To the contrary, to comply with the *Standards* and thereby adjust the role traditional law schools have filled in the common enterprise of educating future lawyers, law schools need only train students in the fundamental lawyering skills reflected in the law school’s learning outcomes.²⁸⁷

Moreover, if legal education strives to incorporate pedagogical advancements at the same pace as colleges, universities, and other graduate programs, it may be able to maximize curricular synergies systematically to improve the preparation students receive by the time they graduate. In this way, legal educators should

²⁸² See Wolski, *supra* note 251, at 292 (noting skill training curriculum “requires a substantial commitment of labor and resources, far more than is required for teaching traditional doctrinal courses.”); see also STUCKEY ET AL., *supra* note 6, at 206.

²⁸³ STUCKEY ET AL., *supra* note 6, at 114.

²⁸⁴ See Ruan, *supra* note 275, at 438–39. The first wave—the product-centered approach—relied upon “the sage on the stage” teaching style. *Id.* The second wave of clinical legal education occurred from the 1960s through the 1990s. *Id.* During those years, the process approach was the dominant teaching theory among clinicians and supported writing as a “recursive” style where students received teacher feedback to incorporate in multiple drafts. *Id.* The “third wave” of legal research and writing (“LRW”) pedagogy incorporates teaching ideas that emphasize the contextual nature of legal writing whereby “third wave” LRW teachers simulate “real world” fact patterns to provide students with meaning and context. *Id.*; see also Sonsteng et al., *supra* note 38, at 440.

²⁸⁵ Ruan, *supra* note 275, at 440.

²⁸⁶ See 1973 ABA STANDARDS, *supra* note 40, at 7 (Standard 302).

²⁸⁷ See 2015 ABA STANDARDS, *supra* note 9, at 15–16.

discover ways to accentuate the students' skills to meet the demands of this Information Age and beyond.²⁸⁸

For example, many law professors have acknowledged that a barrier to increasing experiential offerings is “providing meaningful and prompt feedback to students can be difficult and time-consuming, causing many within the legal academy either to ignore or dismiss the well-worn criticisms of the standard law school educational model.”²⁸⁹ They suggest that if a course is for a limited number of credits, it may be difficult to justify an increased amount of work that is needed to provide feedback on all assessments. Furthermore, some legal scholars have warned that too many assessments or increases in learning expectations may result in an information overload.²⁹⁰ However, law schools may alleviate this concern by progressively integrating basic aspects of the clinical experience into the first-year curriculum, particularly through the use of technology, instead of delaying them until the second or third year.²⁹¹

During Harvard's early development of its program, Professor Asahel Stearns lamented that the process of integrating instruction in foundational and fundamental lawyering skills was too daunting and time-consuming a task.²⁹² However, technology that has already found its way into schools from kindergartens to graduate schools alleviates the burden law faculty might face in offering more experiential education to contemporary and future cohorts. Notably, e-learning can be used to provide students with more interactive, collaborative, and adaptive systems that are tailored to their learning styles.²⁹³

E-learning technology can be used to link simulated or actual clients with multiple students or multiple groups of students, thereby bringing the interaction directly to the classroom without the logistical concern of corralling participants in

²⁸⁸ See Christensen et al., *supra* note 145, at 2 (explaining that “[t]he proper use of technology as a platform for learning offers a chance to modularize the system and thereby customize learning”).

²⁸⁹ Schwarcz & Farganis, *supra* note 229, at 141.

²⁹⁰ See Krieger, *supra* note 199, at 184–85.

²⁹¹ See *id.* at 194 n.244.

²⁹² See Jackson & Cleveland, *supra* note 21, at 209.

²⁹³ See Marcia Watson Wasserman, *Novel Ways to Train and Develop Associates*, LAW PRAC. MAG., July/Aug. 2018, at 42, 44–45; see also Barbara A. Bichelmeyer, *Best Practices in Adult Education and E-Learning: Leverage Points for Quality and Impact of CLE*, 40 VAL. U. L. REV. 509, 517–19 (2006).

any particular location.²⁹⁴ If Paul Maharg's predictions are accurate, online simulations will enable students to experience various aspects of legal practice without leaving the classroom, including legal transactions, operation of a legal practice, reliable assessments, and collaborative learning.²⁹⁵

Furthermore, some perceive simulations as having limited educational value, because they do not permit students to interact with the client in ways that accurately mirror the professional and ethical responsibility the student would have in real situations.²⁹⁶ Another potential limitation involves student perceptions that they must reach the same legal conclusion the professor obtained while preparing the simulation. This "gold rush mentality" purportedly undermines the ability of simulation exercises to reflect realistic legal issues students might encounter as attorneys.²⁹⁷ Given that the legal issues presented to the student by the client should be uniquely tailored to that client interaction, students should be able to grasp how licensed attorneys rely on their analytical skills to build arguments from a variety of legal authorities and compare and evaluate any potential answers with client interests and goals. Rubrics may be presented to the student after the interaction is complete to guide the student to the correct performance standard that the doctrinal and clinical instructors seek.²⁹⁸ Millennials are accustomed to using rubrics, because many universities adopted their use years ago.²⁹⁹

²⁹⁴ See Philip G. Schrag, *MOOCs and Legal Education: Valuable Innovation or Looming Disaster?*, 59 VILL. L. REV. 83, 132 (2014). A prime example can be found in the presence of massive open online courses ("MOOCs")—distance learning with interactive bells and whistles. See *id.* MOOCs can be offered to classes large enough to fill a football stadium. *Id.*

²⁹⁵ See PAUL MAHARG, *TRANSFORMING LEGAL EDUCATION: LEARNING AND TEACHING THE LAW IN THE EARLY TWENTY-FIRST CENTURY* 156–57 (2007); see also SUSSKIND, *supra* note 142, at 117.

²⁹⁶ See Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public-Interest Partnership*, 8 LEGAL COMM. & RHETORIC 191, 202 (2011) (stating that "[t]he element of being responsible for forging a solution for a person or organization that is dependent on the student's own legal skills is lacking and, ultimately, may engender apathy towards the problem").

²⁹⁷ See *id.* (recognizing that students are being asked to find the legal solution the professor created and not being asked to come up with their individual answers).

²⁹⁸ See Sandra L. Simpson, *Riding the Carousel: Making Assessment a Learning Loop Through the Continuous Use of Grading Rubrics*, 6 CANADIAN LEGAL EDUC. ANN. REV. 35, 40 (2011) (stating that rubrics allow professors to teach a large volume of students); see also Krieger, *supra* note 199, at 180 (stating that domain knowledge is crucial in the learning of rubrics and stereotypes and that information given after a clinical problem can be integrated into the clinical context).

²⁹⁹ Law schools are behind undergraduate and other graduate programs in their use of rubrics and assessments. Simpson, *supra* note 298, at 37–38 (explaining that "the K-12 educational system has been studying and changing assessment techniques, including the creation and utilization of effective

Others have expressed concern that simulations frequently lack any connection to social-justice issues critical in understanding civic professionalism and its obligation to public service. What is needed, according to the aforementioned critiques of simulations, is a client to whom the student can deliver her analysis. This “lack of realism fails to motivate students in a way that would develop their professional identity as members of a profession obligated to serve the public good.”³⁰⁰

Increased integration of fundamental lawyering skills into the first-year curriculum should soon be possible, using advanced e-learning systems that are being developed to simulate a variety of legal scenarios. Although this may not reproduce for students all aspects of the clinical experience derived from interactions with actual clients, it provides the first-year student with a safe environment to experience, reflect, learn through client interaction, and for instructors to assess student performance.³⁰¹ Moreover, first-year students would receive an early introduction to liability issues, including potential conflict of interest and unauthorized practice of law concerns, that upper-level students routinely experience in their clinical courses.³⁰²

assessment rubrics, since the Soviet’s launching of Sputnik in October of 1957 spawned new fears about decreasing dominance of the United States in the educational realm”); *see id.* at 40–41 (stating that law schools are behind undergraduate and other graduate programs in their use of rubrics and assessments and emphasizing the importance of rubrics for law school classes).

³⁰⁰ Ruan, *supra* note 296, at 203.

³⁰¹ *See* MAHARG, *supra* note 295, at 171 (positing that the virtual legal world allows students to practice in an environment close to reality, but without the danger of malpractice); *cf.* Russel G. Donaldson, Annotation, *Disciplinary Action Against Attorney for Aiding or Assisting Another Person in Unauthorized Practice of Law*, 41 A.L.R. 4th 361 (1985) (identifying cases in which attorneys faced permanent disbarment for aiding law students and others in the unauthorized practice of law).

³⁰² *See Taskforce on the Model Definition of the Practice of Law, Draft (9/18/02)*, ABA (Aug. 14, 2018), https://www.americanbar.org/groups/professional_responsibility/model_rules_judicial_disciplinary_enforcement/model_def_definition/. If actual clients are incorporated into the interaction, faculty who are or become licensed in the jurisdiction where the representation occurs can work with their students as they investigate and analyze the client’s legal issues. Ruan, *supra* note 275, at 461 (“Where ethical concerns are implicated, the Collaborative Classroom faculty can take one of two approaches to avoid UPL concerns. First, faculty can endeavor to have their students authorized to practice under the student practice rules of their jurisdiction. . . . Second, faculty can become licensed to practice law in that jurisdiction and provide the requisite supervision needed to students as nonlawyers working with them within the contours of their UPL rules. As ABA Model Rule 5.3 allows, nonlawyers associated with a licensed lawyer can engage in lawyering activities, as long as the lawyer provides ‘appropriate instruction and supervision.’”).

Now, less than ten years from witnessing artificial intelligence companies inventing technology that routinely passes the Turing Test,³⁰³ e-learning has already materialized from Maharg's prediction to reality in contemporary classrooms at the collegiate and graduate school levels.³⁰⁴ In time, these barriers to modernizing legal education will fall, allowing students to routinely experience law practice in real and simulated environments.

VI. CONCLUSION

Contemporary and future law students will benefit from a dynamic curriculum that incorporates technology, feeds off of collaboration, and responds to internal and external factors more nimbly to move students back and forth between understanding and enactment, experience and analysis, instead of a pseudo-scientific oration delivered by an academic as envisioned 141 years ago.³⁰⁵ The *Carnegie Report* acknowledges that, “[p]roviding additional classroom coverage of professionalism issues will not be an easy task.”³⁰⁶ Nonetheless, several progressive law schools offer courses that are blueprints for novel approaches to integrating more live-client interaction into the law school curriculum, particularly during the critical first year of thought and skill formation.

Moreover, innovation has its own rewards for law schools and faculty who can draw more fully on their own experiences, capitalize on untapped synergies, and learn from each other in creative settings.³⁰⁷ It is up to each law school to decide if injection of live-client interactions into the first-year curriculum has pedagogical value or if following the same path that law schools have been on for more than one hundred years will lead to increased prosperity or further decline. Empirical data and

³⁰³ See Lawrence B. Solum, *Legal Personhood for Artificial Intelligences*, 70 N.C. L. REV. 1231, 1235–36 (1992) (defining the Turing Test).

³⁰⁴ See SUSSKIND, *supra* note 142, at 117; *Communities That Develop on the Internet*, DIG. CMTYS., <http://www.creativeteachingsite.com/teach10.htm> (last visited July 18, 2019) (providing examples of technological integration into the community and its everyday use).

³⁰⁵ See Backman & Clements, *supra* note 29, at 154 (discussing Clayton Christensen's theory of Disruptive Innovation).

³⁰⁶ CARNEGIE REPORT, *supra* note 18, at 7.

³⁰⁷ See NALP FOUND. FOR LAW CAREER RESEARCH & EDUC. & AM. BAR FOUND., *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 80–82* (2004) (providing that mentors are extremely important to new law graduates); see also STUCKEY ET AL., *supra* note 6, at 211–12 (advocating for a change in legal education that calls for a balanced and integrated education).

first-hand knowledge suggest otherwise, but many in legal education have shown a remarkable ability to cling to the virtues and perceived benefits of the past.

Threads of experiential learning existed in American legal education long before Langdell advocated for near-exclusive adoption of the case method and Socratic Method. If Langdell were alive, perhaps he would agree that, “[t]he nature of scientific inquiry demands that scientists abandon theories when they are shown to be irrational or unsupportable.”³⁰⁸ Legal educators can creatively and cost-effectively innovate the traditional educational continuum to provide a holistic course of instruction that considers all viewpoints.³⁰⁹ As members of the common enterprise that prepares future lawyers to enter this venerable profession, we must have the vision to recognize those viewpoints and the courage to bring them to the surface.

³⁰⁸ Nancy Cook, *Law as Science: Revisiting Langdell's Paradigm in the 21st Century*, 88 N.D. L. REV. 21, 24 (2012). Law can be taught as a science, as Langdell foretold, but that can only occur if foundational and fundamental lawyering skills are taught in a holistic program of instruction. *See id.* at 22–23 (stating that Langdell inspired many different teaching methods).

³⁰⁹ *See* William M. Sullivan, *After Ten Years: The Carnegie Report and Contemporary Legal Education*, 14 U. ST. THOMAS L.J. 331, 344 (2018) (explaining that these “‘practical challenges’ can be answered only by what legal educators and their allies will do, now and in the future”).