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# GOING BACK TO BASICS: CHANGING THE LAW SCHOOL CURRICULUM BY

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# **Going Back to Basics: Changing the Law School Curriculum by Implementing Experiential Methods in Teaching Students the Practice of Law**

J. Damian Ortiz\*

## **Introduction**

Although experiential legal education is a feature in legal education, too often it remains at the periphery of law school curricula. Professional legal education aims to initiate novice practitioners to think, to perform and to conduct themselves like professionals. The casebook method alone, however, falls short of these goals. Currently, the dominant teaching method employed by law schools, the casebook method, immerses students in legal theory and doctrine while neglecting practical skills crucial to the practice of law. Further, students' knowledge of legal theory and doctrine will be enhanced if they encounter the range of human problems, everyday obstacles and legal solutions that lawyers face when representing their clients. Therefore, experiential legal education must be a component of a professionally responsible legal education.

## **The Modern Law School**

The current focus in legal education remains the teaching of substantive case law through the Socratic Method. The Socratic Method teaches students how to extract the legal rule and apply it to a different fact pattern. This method is useful in the classroom setting. Within months of their arrival in law school, students demonstrate new capacities for understanding legal processes, for seeing both sides of legal arguments and for understanding the applications and conflicts of legal rules.

This method, however, is often employed to demonstrate the complexity of the

law without giving students a basic framework for understanding it.<sup>1</sup> This method focuses on judicial opinions, but in practice, lawyers are often called upon to instruct clients on the applications of statutes and regulations that have not yet been interpreted.<sup>2</sup> While the focus on the Socratic method may teach legal analysis, it neglects other basic skills necessary to running a law office such as “conflict checks, retainers, tickler systems, maintaining client billing, accounts, files, and confidentiality matters,” or the relationship between “law practice management and other aspects of the lawyer’s work.”<sup>3</sup> Lastly, issues including the social needs of the greater community or matters of justice involving in the practice of law may get attention in some classrooms; however, it is almost always treated as addenda not central to the core message of the ongoing discussion.

Upon graduation it is presumed that law students should have acquired several skills including the ability to problem solve, participate in legal analysis, identify legal issues, plan, direct, and participate in a factual investigation, communicate effectively, perform legal research, perform effective counseling negotiation, litigate, perform other forms of dispute resolution and most importantly have learned legal ethics.<sup>4</sup> Nonetheless, the relationship between client and attorney is often treated anecdotally and not incorporated into the curriculum in a meaningful way. As a result of the dominant use of

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<sup>1</sup> Eric Chaffe, *Deposition Techniques and the Socratic Method*, 14 *The Law Teacher* 15 (2007).

<sup>2</sup> Jonathon D. Glater, *Training Law Students for Real-Life Careers*, *New York Times* (October 31, 2007).

<sup>3</sup> New York State Judicial Institute: *Partners in Justice: A Colloquium on Developing Collaborations Among Courts, Law School Clinical Programs and the Practicing Bar -- “Introduction to Clinical Legal Education”* (2005).

<sup>4</sup> Robert MacCrate, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (1992), available at, <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html#B>.

the Socratic Method new lawyers are not fully prepared to undertake the responsibilities of practicing law.

The relatively little attention paid to direct training in professional practice effectively prolongs and reinforces the habits of thinking like a student rather than as a practitioner. The under-preparedness of newly licensed lawyers poses a real potential of harm to consumers and to themselves. In response, several studies have been conducted to examine current legal education and propose recommendations for the future.

In 2007, the Carnegie Foundation studied the curricula at sixteen private and public law schools in the United States and Canada. This study confirmed that the basic curriculum was identical. The 1L courses were taught through the Socratic Method. The 2L or 3L has a wider choice of courses, moot court and law journals for some. The advantage of this program is a rapid socialization into legal thinking. The disadvantage is that students are taught to dehumanize the human subjects of cases since the focus is on achieving the correct legal analysis rather than on the effect of the law on human beings. Thus, the study recommended that the 1L curriculum should decrease the emphasis on the Socratic Method and include teaching ethics and client-serving skills. Additionally, a more integrated approach to teaching law should be imposed. Such an integrated approach should emphasize knowledge, skills, and values necessary to successful practice as a lawyer, thereby bridging the gap between understanding and enactment. It would also help to bridge the gap if faculty members worked across the curriculum, whereby doctrinal faculty would teach lawyering skills courses and clinical faculty would also teach doctrinal courses.<sup>5</sup>

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<sup>5</sup> William M. Sullivan, Et Al., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007), available at [http://www.carnegiefoundation.org/sites/default/files/publications/elibrary\\_pdf\\_632.pdf](http://www.carnegiefoundation.org/sites/default/files/publications/elibrary_pdf_632.pdf).

While it is true that the current 2L and 3L curricula at many law schools provide opportunities to participate in clinics, it is not required. Clinics can help teach those lawyering skills that are currently excluded from many legal curricula and should therefore be mandatory. Certainly participation in legal clinics benefits those who are unable to pay for legal services, but the clinical students benefit as well. “The law school clinic is a place where students should learn not only the techniques of advocacy, but also the importance of helping individuals solve their problems, defend their rights, and achieve their goals. Students can learn from this experience that legal advocacy can make a real difference for real people, and may learn that they should become active participants in the struggle to extend the availability of legal services to the poor.”<sup>6</sup>

Currently, few law schools have programs or resources to develop the full range of skills needed for law practice to the degree of proficiency expected of practicing lawyers. If the current drawbacks in legal curriculum are examined with an open mind, significant improvements can be made in preparing students for the practice of law. While it is possible to make significant improvements to legal education, however, the overall process to becoming a lawyer in the United States will not significantly change.

### **Clinical Legal Education**

The lawyering profession began as an apprenticeship.<sup>7</sup> The profession’s roots are firmly grounded in the mentor-mentee relationship and in practicing lawyering skills. The focus of modern legal education has shifted to a case study approach, in order to train

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<sup>6</sup> Stephen Wizner, *Beyond Skills Training*, 7 *Clinical L. Rev.* 327, 328 (2001).

<sup>7</sup> See *supra*, History section.

lawyers in a more efficient manner.<sup>8</sup> Certainly, this evolution addressed many of the shortfalls of the apprenticeship method. Those shortfalls included, for example and among others, students' training being limited by the guidance provided by the supervising lawyer, unrealistic and overwhelming expectations for students to learn substantive as well as legal theory, lack of instruction provided to students due to supervising attorneys' need to attend to business, students acquiring bad habits and having them negatively reinforced, and the student not recognizing great value for their payment because she may not be entrusted with continual engagement in cases or legal processes.<sup>9</sup>

Indeed, although labeled an apprenticeship, the master rarely taught his apprentice.<sup>10</sup> The student was expected to engage in clerical and secretarial work, while paying the master for accomplishing those services, and simultaneously read literature and texts accessible from the master's library.<sup>11</sup>

While the eighteenth century apprenticeship model may seem primitive and perhaps even contemptible to some, that pedagogical model is not far from what students receive from today's apprenticeships, so-called internships or externships. Undoubtedly, some students work or volunteer at various firms or government agencies over the course of their law school experiences. And fewer still are fortunate enough to gain experience working with clients, seeing a case's progression for more than a couple of months, or

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<sup>8</sup> Christopher Columbus Langdell is often credited with creating the "revolution" in American legal education when he moved to the case study method and used the "scientific" method, distancing himself and other law professors from the trade school methods of apprentice-based legal education. Mary Beth Beazley *Better Writing, Better Thinking; Using Legal Writing Pedagogy in the "Casebook" Classroom (Without Grading Papers)*, 10 LEGWRIT 23 (2004).

<sup>9</sup> Amy M. Colton, Student Author, *Eyes to the Future, Yet Remembering the Past: Reconciling Tradition with the Future of Legal Education*, 27 U. Mich. J.L. Reform 963, 966 (1994).

<sup>10</sup> David S. Romantz., *The Truth About Cats and Dogs: Legal Writing Courses and The Law School Curriculum*, 52 UKSLR 105, 109 (2003).

<sup>11</sup> *Id.*

attending, let alone appearing, in court. Regardless, students are exposed to varying levels of legal sophistication during their work experiences. Victor Fleischer, a law professor at the University of Illinois encourages the legal community to consider a typical student who will get a job in a law firm.<sup>12</sup> A student spends perhaps ninety-five (95%) percent of the time in law school reading and discussing cases and law review articles. Once in practice, the student will go days or weeks at a time without picking up a case or a law review article. Instead, the days will be filled with drafting, reviewing, and marking up transactional documents, negotiating language with opposing counsel . . . and composing memos, emails, and letters to colleagues and clients.<sup>13</sup>

Clinical legal education eliminates many of the deficiencies of both the traditional and modern day apprenticeship models.<sup>14</sup> Instead, clinical legal education provides an environment which seeks to incorporate in one cohesive curriculum, the positive aspects of gaining practical experience with the structure and consistency of classroom, case-study methodology. In fact, every law school in the nation has recognized the importance of clinical legal education, with every school providing at least one clinic or externship experience.<sup>15</sup> This shift in legal pedagogy signifies that now is the ideal time for transitioning to incorporating clinics into the standard legal curriculum: The legal profession has a sound foundation in apprenticeship, has learned from its shortfalls, has

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<sup>12</sup> Victor Fleischer, *Deals: Bringing Corporate Transactions into the Law School Classroom*, Colum. Bus. L. Rev. 475, 480-81 (2002).

<sup>13</sup> *Id.*

<sup>14</sup> In 1921, the Carnegie Foundation for the Advancement of Teaching funded a study on legal education, commonly called the “Reed Report” after its non-lawyer author, Alfred Z. Reed. The Reed Report identified three components necessary to prepare students for the practice of law: general education, theoretical knowledge of the law, and practical skills training. Subsequently, John Bradway and Jerome Frank pioneered the cause of clinical legal education methodology in the 1920's through the 1940's, advocating an in-house clinic as an essential component of sound legal education. Yet, despite the efforts of Bradway and Frank, only a handful of law schools instituted in-house clinical courses through the first half of the 1900's. Margaret Martin Barry, Jon C. Dubin, and Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 CLINICLR 1, 8 (2000).

<sup>15</sup> *Id.*

addressed those shortfalls by providing classroom structure, has attempted to provide for the community at large as well as students by establishing clinics or clinical-like experiences. Thus, the movement to provide students with an apprenticeship-like experience can only accomplish what it seeks to provide (an apprenticeship experience without the shortfalls stemming from lack of structure) when clinics are mandated and incorporated into the curriculum. Additionally, mandating clinical legal education provides each and every student with those practical and beneficial experiences that are often only gained by a few. And if not because the evolution and integration of modern apprenticeships is calling for this mandate, clinical legal education should be mandatory because students, as consumers of their education, are craving those structured, practical experiences.

**Mandating Clinical Legal Education Provides a Much Desired Structure While Teaching Legal Essentials for Students**

Students crave structure and hands-on work in law schools. As consumers of their education, they are in a position to comment. In the September 2008 issue of *Chicago Lawyer*, several law students shared their opinions and gave advice for those considering law school. When asked what students wished they could change about law school, one student responded, “I think more practical application...It’s a lot easier to hone in and focus when I can see the real purpose. To me, getting a certain grade isn’t a purpose. That works for some folks, I guess. But [I’m motivated] when I know what the end result is going to be as opposed to just reading a railroad case in Torts from 1823... There has to



be a little bit more of an interactive way to engage these students, and help them see the practical purpose of a class.”<sup>16</sup>

There is no question that students learn better and more effectively when they are active rather than passive participants in the process.<sup>17</sup> All clinical teaching involves some form of experiential learning that can be described in a three-step process: 1) the student learns to formulate an action plan; 2) the student enacts that plan through a structured experience; and 3) the student reflects about the experience and modifies future action accordingly.<sup>18</sup> The clinical process is thus a blueprint for professional growth and introduction to the practice of law.<sup>19</sup>

Another student shared in *Chicago Lawyer*, “Two of my best experiences have been the externships I’ve had. Last summer I externed in the U.S. Attorney’s office. This spring I did an externship with Judge John W. Darrah. Now I’ve exceeded the credit hours that I can devote to those. If there is a way to increase the [number of credits allowed], because those have been some of the best learning experiences I’ve had. It’s about being able to apply what you’ve learned.”<sup>20</sup> Another student disclosed in response to the question regarding what his favorite classes were, “I liked Trial Advocacy and the reason is because it’s very practical. For me, that’s where I felt a part of the law.”<sup>21</sup>

In *The Mason Gazette*, a publication of the George Mason School of Law School, in Arlington, Virginia the experience of Jessica Roth, a law school student is examined. Jessica worked two days a week with an attorney in Fairfax County, Virginia doing

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<sup>16</sup> *Chicago Lawyer*, Vol. 31, No. 09, September 2008

<sup>17</sup> Mary Jo Eyester., *Designing and Teaching The Large Externship Clinic*, 5 *CLINICLR* 347, 401 (1999).

<sup>18</sup> Kimberly E. O’Leary, *Evaluating Clinical Law Teaching—Suggestions For Law Professors Who Have Never Used the Clinical Teaching Method*, 29 *NKYLR* 491, 494-495 (2002).

<sup>19</sup> *Id.*

<sup>20</sup> See note 10, *supra*.

<sup>21</sup> *Id.* at 71.

research, sitting in on client interviews, and going to court with her mentor through the Domestic Relations Legal Clinic. Jessica says, “I learned how to interact with clients. I was able to appear in front of a judge and actually help people get a divorce. And most importantly to me, the clinic made me realize that family law is what I want to practice when I graduate.” (Christopher Anzalone, George Mason College of Law, the Mason Gazette, Domestic Relations Legal Clinic Offers Hands-On Experience.<sup>22</sup>

At Rutgers School of Law in Newark, New Jersey, Kelly Anne Targett, was the key note speaker at the 2009 commencement. Kelly is noted for her many accomplishments during her law school career: top grades, clerkship on the New Jersey Supreme Court, member of *Law Review* and Moot Court, first place oralist in the appellate advocacy competition, semi-finalist with the appellate nationals team, summer associate position with an international law firm, Minority Student Program facilitator, Legal Research & Writing teaching assistant. However, of all her experiences and accomplishments, Kelly says her experience in the criminal section of the school’s Urban Legal Clinic was her best overall experience. “... I was on my feet in a courtroom on the very first day, and left the courthouse with two clients depending on me. It was overwhelming and at the same time exhilarating, and before the semester was finished I found myself dramatically changed by the experience. A clinic inspires the kind of learning and self-confidence that simply cannot be taught in a traditional law school classroom.” (Rutgers School of Law, Newark) Spotlight on Kelly Anne Targett.<sup>23</sup>

It’s not just student testimonials that delineate why structured, mandatory clinics are

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<sup>22</sup> Christopher Anzalone, *Domestic Relations Legal Clinic Helps Community, Offers Handson Experience*, THE MASON GAZETTE (February 25, 2005), <http://gazette.gmu.edu/articles/6530>.

<sup>23</sup> *Spotlight on Kelly Anne Targett, Class of 2009*, RUTGERS SCHOOL OF LAW NEWARK, <http://law.newark.rutgers.edu/home/kelly-anne-targett-class-2009> (last visited May 5, 2011).

beneficial. There are numerous psychological, educational and management studies on how adults, and more specifically, professionals, learn. While these studies are very complex, one major finding and similarity is that adults learn best when faced with questions that arise in real-life experiences followed by opportunities to answer and reflect upon those questions.<sup>24</sup> Donald A. Schon, a social scientist at Massachusetts Institute of Technology (M.I.T), has specifically applied learning theories to study how professionals can improve during their careers.<sup>25</sup> In his book, *The Reflective Practitioner*, Donald A. Schon advocates a process he calls “reflection-in-action,” in which a student professional learns by engaging in ongoing dialogue and discussion with an experienced professional about the experiences the student undertakes. These and other learning theories form the theoretical justification for much of clinical law teaching.<sup>26</sup>

Indeed, even without the studies, students feel that what they are lacking from the law school experience is structured guidance. When asked, “What are you looking for from your first employer after law school?” A student responded, “I think mentorship is probably the best thing they can do. No matter what you learn in school...you’re still going to get to that firm, and I think you are going to feel a little lost.” [You’re going to have a feeling like,] “Oh wow, I’m not sure if I ever really learned how to do this. Having someone there, having training and mentorship along the way, I think, really helps.”<sup>27</sup>

Certainly, a clinic, or any teaching method for that matter, cannot prepare a student for every task the student may need to accomplish. However, mandating clinics will significantly reduce that “lost” feeling, allowing for greater efficiency in the

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<sup>24</sup> Kimberly E. O’Leary, *Evaluating Clinical Law Teaching—Suggestions For Law Professors Who Have Never Used the Clinical Teaching Method*, 29 NKYLR 491, 495 (2002).

<sup>25</sup> *Id.* at 496; See also, Schon, Donald A., *The Reflective Practitioner* (1983).

<sup>26</sup> *Id.*

<sup>27</sup> See Note 10, *supra* at 73.

workplace. Further, when the legal community is aware that every student has participated in a clinic, more experienced lawyers may mentor young lawyers with a heightened level of sophistication. Instead of young professionals feeling “lost” in a wilderness of basic practicing tools, and experienced lawyers struggling to teach those basics when many are not equipped to, experienced lawyers can provide guidance as to topics such as, legal strategy or tactics, and drafting or arguing styles.

Daniel Bond, a DePaul law school graduate and former participant in the Death Penalty Clinic, said in the *Chicago Lawyer*, “From a practical perspective, I got more training writing motions and other legal skills from my time at the law clinic than my entire three years in law school. “To be honest, I don’t think there is any law school in America that has enough of a practical focus...”<sup>28</sup> Another student who graduated from DePaul’s law school and experienced the Misdemeanor Clinic stated that “he liked the clinic’s small-case style, which allows him to monitor the same case, from start to finish, throughout his several months in the program. Compared to how the prosecution and the public defenders work on sometimes 100 cases at a time; you can only imagine how much attention we were able to pay to our one case.”<sup>29</sup>

Portia Kaiser, a student at St. Louis University’s Law School and a participant in the Litigation Clinic says that the Clinic was a pivotal experience. “There will be no other time in your career where your supervising attorney’s primary goal is truly to teach you how to be an attorney in such a practical and meaningful way.” (The St. Louis University School of Law, Clinic News, Spring 2010).<sup>30</sup>

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<sup>28</sup> See Note 10, *supra* at 79

<sup>29</sup> *Id.*

<sup>30</sup> Portia Kaiser, *Student Reflections*, THE SAINT LOUIS UNIVERSITY SCHOOL OF LAW, CLINIC NEWS, 7 (Spring 2010), available at <http://law.slu.edu/academics/clinics/newsletter/newsletter.pdf>.

Urging every law student to participate in a clinical experience via placement in curriculum may seem excessive to critics. However, it is important to note how a student responded in the *Chicago Lawyer* when asked what he liked least about law school, “The unwillingness of...old-school, the old guard, to change. People still seem a little resistant to change despite the fact that some of these time-proven methods are starting to show that it’s not the best way to teach or help students learn.”<sup>31</sup> For example, Joseph Gardner, states, “Working at the fair housing legal clinic has afforded me opportunities to hone my legal writing and advocacy skills. In the time I was an intern there I drafted complaints, briefs, settlement agreements motions and other legal documents. I also had the chance to participate in court as a student with a 711 license under the supervision of the clinic’s attorneys. Such experiences have prepared me to practice law”.<sup>32</sup>

Earl Singleton is the Director of the Community Legal Clinic at Indiana University School of Law-Bloomington. Singleton’s approach is tailored to counter the pressures the students will face once they become fully engaged in their casework. Singleton states, “Most of the reservations that students have come from, 'Am I going to measure up emotionally? Am I going to be able to deal with the people?’” he further explains. “They learn the law over there (he gestures across the street to the law school building), and they learn how to do the research, how to do the writing, and how to apply the law to the facts. It’s the variable of throwing people into the mix. How do I deal with somebody who doesn’t listen? How do I deal with somebody who’s never grateful? How do I deal with telling somebody 'We lost and here are the reasons why we lost? This is

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<sup>31</sup> *Id.*

<sup>32</sup> <http://www.jmls.edu/fairhousingclinic/index.shtml>

the bad news.” (Ryan Piurek, Indiana University, Teaching and Learning, “Gaining Trust.”<sup>33</sup>

Professor James A. Tanford of the Indiana University School of Law-Bloomington believes Singleton’s Legal Community Clinic puts the law into perspective for his students. He states, “. . .when his (Singleton’s) students returned to their regular classes, they brought with them a greater understanding of law and its complexities and an increased ability to think critically about the law and its application.” (Indiana University Newsroom, (about) Earl R.C. Singleton).<sup>34</sup>

### **Mandating Clinical Education Fosters One of the Well Established Goals of the Profession –Public Service**<sup>35</sup>

Cynthia Batt begins her analysis of the benefits of clinical programs by stating, “When I was in law school, clients were rarely mentioned in class, attaining almost mythical status. I knew very little about what a lawyer did with a client. As a law student, I learned about plaintiffs and defendants, appellants and appellees, but people – who needed help from lawyers – seldom surfaced. In law school, I learned to love the elegance and fluidity of our legal system, but I saw it was separate and insulated from other social systems. I did not yet comprehend how the law piece fit into the societal puzzle. I learned how to think like a lawyer, but not how to be a lawyer.”<sup>36</sup>

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<sup>33</sup> Ryan Piurek, *Gaining Trust*, 2:2 Ind. Univ. Teaching & Learning (2006), available at [http://www.indiana.edu/~tandlpub/story.php?story\\_id=43](http://www.indiana.edu/~tandlpub/story.php?story_id=43) (last updated August 6, 2010).

<sup>34</sup> *Earl R.C. Singleton*, IU NEWS ROOM, (last modified, March 24, 2008), <http://newsinfo.iu.edu/news/page/normal/7797.html>.

<sup>35</sup> There are a wealth of articles written on the benefits and necessities of clinical legal education exposing students to public interest work. This section touches upon just a few of those benefits and argues that the benefits of exposure to public interest work should not be optional, but rather should become an integrated part of law school curricula via participation in clinics.

<sup>36</sup> Cynthia Batt, *Learning to Lawyer: Context, Clients, and Clinics*, 12 TMPPCRLR 259 (2003).

It remains undisputed that one of the primary goals of the legal profession, and as a result of law schools, is to provide services for the public interest.<sup>37</sup> Students, however, gain very little exposure to the benefits and necessity for public service work.<sup>38</sup> They forget that legal work involves real people who need real help. The clinical experience encourages students to develop an understanding of the impact the legal system has on people, the interface of that system with other systems, including health care, welfare, and education.<sup>39</sup>

It may not be enough, however, to merely encourage students to think of the profession from a public service perspective; it may very well be the duty of law schools and legal educators to instill in students the very notion of public interest that may have brought students to law school in the first place. Integrating clinical legal education into curricula impresses upon students how important it is as a professional to engage in work for the public benefit. Providing this socio-cultural context and awareness helps students to view client's problems in the context of circumstances. "Real disputes and problems are embedded in a network of cultural, social, economic, and political circumstances. Furthermore, there often are notable consequences for others, not only the immediate parties. The relevant context has personal and structural dimension."<sup>40</sup> Truly, legal professionals must integrate as part of their practice and education, "bedside manner," or more aptly, "desk-side manner."<sup>41</sup>

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<sup>37</sup> See generally, Robert MaCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 Tenn. L. Rev. 1099 (1997).

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<sup>39</sup> See Note 23, *Supra* at 260.

<sup>40</sup> Mark Neal Aaronson, Papers Presented at the UCLA/IALS Conference on "Conceptual Paradigms in Clinical Legal Education": We Ask You To Consider: Learning About Practical Judgment in Lawyering, 4 Clin. L. Rev. 247, 256-57 (Spring 1998).

<sup>41</sup> See other comparisons to medical school education in Section 4, *infra*.

Stephen Winzer describes the “awakening of social responsibility” that arises from students participating in clinics.<sup>42</sup> He articulates what students learn from representing clients in the law school clinic that they would not learn from their regular academic courses. First and foremost, they learn that many social problems, like poverty, can be seen and acted upon as legal problems. Second, they learn that legal representation is as necessary to the resolution of complex legal problems of the poor as it is to those of the affluent. Third, they learn to develop and apply legal theory through the actual representation of clients. Fourth, they learn to use the legal system to seek social change. And finally, they learn the limits of law in solving individual and social problems. Through this experience the students are required to confront social and economic injustice, and to act on the professional obligation of lawyers to engage in public service and to provide legal assistance to those who cannot afford to pay for it. These are all important intellectual and ethical lessons for law students to learn.<sup>43</sup>

These lessons are ones that no lawyer should avoid and therefore every law student should gain exposure. They are not lessons that should be left to chance or circumstance if the lawyer happens to work in that particular sector. Given that law school is becoming more expensive, and the pressure to work in the private sector exponentially mounts with student loan debt, every law student should have the opportunity to serve the public’s interest during law school. Indeed, this opportunity becomes a lawyer’s responsibility when the student begins to practice.

Finally, clinical legal education contextualizes the legal experience of elite law students. It exposes them to both the deprivation that exists in communities and the

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<sup>42</sup> Steven Winzer, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *FDMLR* 1929, 1935 (2002).

<sup>43</sup> *Id.*



enormous satisfaction to be gained from helping alleviate disadvantage. Furthermore, it undermines myths about poverty lawyering that are pervasive within the corporate legal community. Clinical law teachers can act as role models to students. They work openly towards the public good and can advise students how to tread alternative, and perhaps more satisfying, career paths.<sup>44</sup>

Professor Singleton of Indiana University Law puts it like this, “It’s important for the students to understand that not everyone can afford a lawyer, but everybody ought to have access to a lawyer,” (Ryan Piurek, Indiana University, Teaching and Learning, “Gaining Trust.”)<sup>45</sup> Clinical teaching is best placed to cultivate practical wisdom and ethical professional ideals by integrating an understanding of ethical dilemmas and ethical professional norms into a student's development as a professional and, just as significantly, as a human being. Clinical legal education is therefore ideally suited to developing the three qualities of the lawyer-statesman: commitment to pro bono activity, practical wisdom and ethical professional practice.<sup>46</sup>

### **Apprenticeship Programs**

Not every law student possesses the skills necessary to enable them to begin practicing law immediately following graduation. In an attempt to bridge the gap between the skills most law school graduates possess and the skills employers are looking for, some law schools offer apprenticeship programs. Apprenticeship programs provide more depth and breadth than most work experience available to students. For example, Golden Gate University’s program requires students to spend one semester each year during both the second and third years of law school working full time under the

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<sup>44</sup> Kirsten Edwards, *Found! The Lost Lawyer*, 70 FDMLR 37, 78 (2001).

<sup>45</sup> Piurek, *supra* note 33.

<sup>46</sup> *Id.*

supervision of a practicing attorney. Similarly, Northeastern University offers a co-op program to its law students. Every three months during the second and third years of law school, Northeastern law students alternate between working full time and taking classes full time. The College of Law at Drexel University also has a co-op program. This program provides job placements for students during two quarters of their legal education.<sup>47</sup>

One of the major drawbacks of apprenticeship programs today is the limited number of students who are eligible to participate. For instance, under the Illinois Supreme Court Rule 711, and similar state statutes, upper level law students may be licensed to practice limited law with the supervision of a licensed attorney. However, Supreme Court Rule 711 licenses are only available to students who work for the government or non-for-profit agencies that house experience attorneys. Other programs limit the number of students who can participate by requiring a minimum grade point average.<sup>48</sup> The College of Law at Drexel University imposes such a restriction.<sup>49</sup>

### **Legal Simulations: Computer Based**

While some law schools attempt to bridge the gap between legal education and practice using traditional methods, other schools have embraced advancing technology as a tool to teach students. For seven years Glasgow Graduate School of Law (“GGSL”) developed a virtual community. GGSL’s goal was to develop a model that would help the law school replicate a form of professional authenticity. Each simulated environment consists of a fictional town on the web. In addition, students learn the civic history of the

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<sup>47</sup> *Co-Op Program*, EARLE MACK SCHOOL OF LAW AT DREXEL UNIVERSITY, <http://www.earlemacklaw.drexel.edu/academics/co-op/> (last visited May 5, 2011).

<sup>48</sup> Ill. Sup. Ct. R. 711

<sup>49</sup> Ibid.

town and are also given a map and online directory of several hundred institutions, businesses, virtual student law firms and people. GGSL's virtual simulation provides a rich learning environment where students are immersed into the world of practice. The program helps students develop time management, team work, client care and resource management skills. Overall the virtual simulation aids students in the transition from student to lawyer.

The students who participate in the simulation are put into teams that make up the student firms. Each student firm starts with a unique scenario. In order to make the simulation as realistic as possible GGSL creates fictional clients and firms. The student firms make strategic choices unique to the problem they are confronted with. Each student is encouraged to take responsibility for a particular transaction and to delegate tasks to the firm members. The student firm is also required to respond to the other party's claims and deal with new information or unknowns as the transaction progresses. The firms are able to communicate via e-mail, with faculty responding as the fictional firm.

Often student firms are met with unpredictable issues. For example, student firms occasionally take routes that were not anticipated by the faculty. When these issues arise the faculty must deal with them. Because the simulations are open ended and there is no correct way to pursue a case, students are given much flexibility in their decision making. It is this flexibility that is essential to student learning.

Simulations allow a level of flexibility that could easily mean student responses drift in a direction that practitioners think is inappropriate, incompetent or unethical and therefore levels of protection need to be built into the learning design. However, these

protective barriers should be kept to a minimum. If student choice is restricted during participation in a simulation, the purpose of the simulation is defeated. For instance, protective barriers that limit the courses of action students can pursue or that direct students to choose a particular course would defeat the purpose of advancing students' legal reasoning and research skills. Aggressive restrictions would prevent students from engaging with the scenario; thus, students would not remember the process, nor would they remember the choices made during the simulation.

To enhance the authenticity of the simulation, GGSL did not run the programs in complete isolation. For instance, student firms participating in the civil court transaction simulation were also dealing with other transactions not related to civil transactions. The civil transaction firms were asked to complete the purchase and sale of a house and to wind up an intestate estate, while at the same time completing their civil transactions.

### **Simulated Practice: The City University of New York (CUNY)**

At the City University of New York (CUNY) all first year law students are required to take a two semester series of classes called lawyering seminar. The lawyering seminar has a simultaneous substantive course taught by the same instructor. The lawyering seminar classes are relatively small with no more than twenty students. The small class size encourages students to work together to solve problems and discuss their legal analysis.

The aim of CUNY's lawyering seminar is to integrate students' skills of the practice of law and the ethical demands in the profession. To make the program better resemble the practice of law, CUNY's building is set up as a series of small offices. The students are divided into "firms" where they are then assigned to represent each of the

parties involved. When the student firms receive their cases they are required to develop a strategy for the case. CUNY student firms must also write briefs and other documents necessary to their cases. For example, there is a lawyering seminar in Family Law which is accompanied by a substantive Family Law course. Then, CUNY students are led through the development of a simulated case of child education neglect under adjudication in the family court.

One of the major drawbacks of CUNY's simulation program is that it requires intense faculty involvement. At CUNY the simulated practice cases are composed of fewer than twenty students. Furthermore, each seminar is linked with a substantive course taught by the same instructor. Additionally, bi-weekly or monthly meetings between faculty and their students are required. This ensures that the students are gaining feedback to help them develop their problem solving and analytical skills.

### **Simulated Practice: New York University (NYU)**

NYU also has a simulated practice program. While NYU students are required to take the typical first year courses in contracts and torts, they are also required to do course work in the area of lawyering. The first year lawyering program consists of a series of exercises in which students are given a lawyering problem and its related concepts and vocabulary. They are guided through the process of collaboratively planning and executing a response. Finally, students participate in intensive collaborative critique of their planning and execution. In addition, students are encouraged to participate in NYU's legal clinic.

NYU's lawyering requirement serves many goals. First, the overall aim of the lawyering program is to provide every student with the opportunity to think critically

about practice as they develop legal arguments, develop facts, interview and counsel clients, negotiate a transaction or a dispute, mediate a claim and plead a motion before a simulated court. At NYU students are judged on their adherence to the program's code of ethics. It is through the experience of actually making and criticizing legal arguments, in light of precedent and exemplary cases but also under the constraints of uncertain outcomes, that beginners can grasp the fundamentals of legal reasoning.

Second, the program permits students to be introduced early to legal ethics. At NYU, students are confronted with ethical as well as technical problems in a setting that mimics a law office. The student is forced to learn to conquer the unpredictable challenges of actual practice.

### **Conclusion**

Legal education in the United States requires modification in order to provide students with the experiential and practical learning needed for the practice of law. Practical legal education is essential because it helps ensure that students are prepared for the practice of law, and teaches them to act ethically, competently, and responsibly. Programs like clinical education, externships, internships, law clerking and working part time in a law firm, help achieve this goal. These programs play a crucial role in a legal education by offering students real-world experience and bridging the gap between theory and practice. However, these programs are not mandatory and not all students participate in these programs. By making clinical, apprenticeship, and externship programs mandatory for all students, and integrating clinical methodology and goals into the core curriculum, legal educators will ensure that students are prepared as practitioners upon graduation. The ABA, AALS and law schools must work together to introduce

regulations mandating schools to provide students programs, clinics or other opportunities that will provide students the essential skills of the practice of law early in their law school careers.