

Experiential Education in the Law School Curriculum

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Foreword

We all share the common mission of providing an excellent legal education to our students. We may debate how best to accomplish that, but there is no question that experiential education has finally become not only required in law school but valued. While all of our students gain from practice-based experience in law school, for some of our law students, it is what makes it all worthwhile.

Gonzaga University School of Law was excited to host a conference on experiential learning across the curriculum and is also proud to have founded the Institute for Law Teaching and Learning in 1991. We were joined by co-sponsor Washburn University in 2008 and University of Arkansas at Little Rock, William H. Bowen School of Law in 2013. All three schools are passionate about experiential learning across the law school curriculum and joined together to present a conference to work with other schools to understand how to do this. Law professors from around the world attended to share their experiences and expertise with each other in true collaborative fashion.

ILTL recognizes that not all faculty or administrators are sold on the idea of the value of experiential learning, and part of the conference was dedicated to building that support. In the experience of the three co-directors of ILTL, this support is vital to a vibrant and effective program in experiential learning.

One often overlooked component is reflection. In the need to get students through required courses and those recommended for bar passage, it is easy to overlook that students need time to process what they have learned and to reflect on it. Faculty may be concerned about affording time for reflection or to assign reflective writing for a variety of reasons. The conference and this book provide helpful ideas to alleviate this concern.

Many of us might think about experiential learning as confined to our legal clinics or externship programs. ILTL firmly believes that this does not have to be true. The co-directors know that faculty may not understand how to incorporate experiential learning into classes that were planned and taught long before any emphasis on this existed. One session at the conference helped attendees negotiate a settlement for Mrs. Palsgraf, and another taught ten tips for incorporating experiential learning into a variety of courses. Another session focused on the process in which clinical teachers taught experiential components in four traditional first-year courses. Many professors never had a course when they were in law school about drafting any kind of document, but we need to make sure that our students today have that opportunity.

There are so many ways that experiential learning can be incorporated into numerous parts of the traditional law school curriculum. One professor presented on how he utilizes a single simulation throughout a year-long Civil Procedure course and, through that, taught client interviewing as well as the joinder of claims. Another presentation included how to use a variety of media, from a case file to videos, to teach Professional Responsibility. In some schools, legal writing has been incorporated into doctrinal classes. Attendees also learned about a school in Australia that uses online learning for practical training and simulations.

We have come a long way from the days when the only real world experience students had was in a legal clinic or part-time work. While both are still very important, we can and must do more to make sure that all of our students get the opportunity for a variety of experiences that contribute to their professional development. Gonzaga University School of Law, Washburn University School of Law, and University of Arkansas at Little Rock, William H. Bowen School of Law are proud to be a part of this effort.

Jane Korn
Dean
Gonzaga University School of Law

Introduction

When most people think of legal education, the stereotypical image that likely comes to mind is that of the Socratic method, as vividly employed by the character of Professor Kingsfield in *The Paper Chase*.¹ This archetype, however, is antiquated, and educators have recognized that this teaching method has significant shortcomings and should not be the exclusive pedagogy for educating new lawyers.² Indeed, “there were critics of this method from the start[,]” even as it was gaining prominence in American law schools.³

For example, in 1917, William Rowe published a law review article arguing that law-school-based clinical legal education was “the best way to train law students to become competent lawyers.”⁴ In 1921, the “Reed Report” funded by the Carnegie Foundation for the Advancement of Teaching identified practical skills training as one of three components essential for preparing students for the practice of law.⁵ In 1933, Judge Jerome Frank published a landmark law review article advocating for the creation of “clinical lawyer-schools” that would teach students, among other things, the work of practicing attorneys and the courts, the methods for negotiating contracts and settlements, “the nature of draftsmanship,” and “the human side of the administration of justice[.]”⁶

These calls for more practice-based education achieved some success in the 1960s and after, when the movement to add clinical education to the law school curriculum finally gained traction.⁷ Most law schools now offer, but do not require, various types of in-house clinics and externships in which students work with actual clients and learn practice skills.⁸ Law schools also have added courses in legal writing and analysis

1. *THE PAPER CHASE* (Twentieth Century Fox Film Corporation 1973).

2. See, e.g., ROY STUCKEY & OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP* (Clinical Legal Education Association 2007) (hereinafter “BEST PRACTICES FOR LEGAL EDUCATION”); WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, & LEE SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (Carnegie Foundation for the Advancement of Teaching 2007) (hereinafter cited as “EDUCATING LAWYERS”).

3. Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for This Millenium: The Third Wave*, 7 *CLIN. L. REV.* 1, 6 (2000).

4. *Id.* at 6 (citing William V. Rowe, *Legal Clinics and Better Trained Lawyers—A Necessity*, 11 *ILL. L. REV.* 591, 591 (1917)).

5. *Id.* at 7.

6. Jerome Frank, *Why Not A Clinical Lawyer-School?*, 81 *U. PENN. L. REV.* 907, 918–19 (1933).

7. Barry, *et al.*, *supra* note 3, at 12.

8. See generally, Robert R. Kuehn & David A. Santacroce, *The 2013–2014 Survey of Applied Legal Education*, *CTR. FOR THE STUDY OF APPLIED LEGAL EDUC.* 7–10, http://www.csale.org/files/Report_on2013-2014_CSALE_Survey.pdf.

and courses in which students can learn lawyering skills in simulated situations, such as classes in trial advocacy, negotiations, and interviewing and counseling.

The demand that law schools do more to prepare students for the actual practice of law, however, did not end with the addition of clinics and skills courses to the law school curriculum. In 1992, the American Bar Association (ABA) issued its MacCrate Report, which identified ten fundamental skills and four fundamental values that law schools should teach in order to prepare students to be competent professionals.⁹ In 2007, educational experts published two landmark reports—*Educating Lawyers: Preparation for the Profession of Law* and *Best Practices for Legal Education: A Vision and a Roadmap*¹⁰—that provided extensive critiques of American legal education and called for students to have more experiential learning opportunities. Notably, *Best Practices for Legal Education* articulated specific characteristics of experiential education, stating that it “integrates theory and practice by combining academic inquiry with actual experience” and uses “students’ experiences in the roles of lawyers or their observations of practicing lawyers and judges to guide their learning.”¹¹

Building on these efforts, the ABA Task Force on the Future of Legal Education issued a report and recommendations in 2014 urging law schools to place more emphasis on instruction “developing the competencies and professionalism required of people who will deliver services to clients.”¹² The report noted that “[m]uch of what the Task Force heard from recent graduates reflects a conviction that they received insufficient development of core competencies that make one an effective lawyer, particularly those relating to representation and service to clients.”¹³

Employers in the legal market also are demanding that law schools provide more opportunities for students to learn how to perform the actual work of lawyers and conduct themselves as ethical and responsible members of the legal profession. According to Professor Ann Marie Cavazos, as a result of the Great Recession that began in 2008,

9. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) (1992).

10. EDUCATING LAWYERS, *supra* note 2; BEST PRACTICES FOR LEGAL EDUCATION, *supra* note 2.

11. BEST PRACTICES FOR LEGAL EDUCATION, *supra* note 2, at 165. For additional definitions of experiential education, see, e.g., SpearIt and Stephanie Smith Ledesma, *Experiential Education as Critical Pedagogy: Enhancing the Law School Experience*, 38 NOVA L. REV. 249, 254 (2014) (Experiential education “involves ‘[l]earning from an individual’s own experiences’ or a type ‘of learning undertaken by students who are given a chance to acquire and apply knowledge, skills, and feelings in an immediate and relevant setting.’”) (internal citations omitted); Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert F. Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 J. L. & POL’Y 11, 13 n.8 (2013) (“Under our definition, experiential legal education is a broad umbrella that encompasses practice-based courses, in which the law student is in the role of attorney in either simulated or real-life settings, including simulation courses (sometimes referred to as ‘practical skills courses’) and labs and practicums attached to traditional courses, as well as in-house clinics, hybrid clinics, and externships (sometimes referred to as ‘field placements’).”).

12. ABA Task Force on the Future of Legal Education, *Report and Recommendations* 3 (2014), www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf.

13. *Id.* at 26.

[l]aw firms, corporations, and government agencies facing restrained budgets are demanding increased productivity from all personnel. Such demands have, in turn, impacted the way the legal marketplace views the traditional model of foregoing the productivity of numerous attorneys by diverting efforts toward developing and nurturing new law graduates. With time and money at a premium, consumers now expect newly hired attorneys to be able to handle real cases and do the job of lawyering from the moment they walk through the door. Employers' expectations of new hires have shifted "from patience for a reasonable lengthy post-graduate training period to a presumption that the law graduate can hit the ground running."¹⁴

Studies of law firm expectations and competency models further support this assertion, as they indicate that prospective employers expect new lawyers to have strong interpersonal and communication skills, good judgment, and problem-solving skills.¹⁵ Employers also expect new hires to possess the ability to work collaboratively, to have project-management skills, to gain proficiency in office technologies, and to have mastered fundamental practice skills in legal research, analysis, and document drafting.¹⁶

Both the ABA and several state bars have acted in response to these demands for law-school graduates to be more prepared for the practice of law. In 2014, the ABA amended its accreditation standards to mandate that law schools offer a curriculum that "requires each student to satisfactorily complete at least . . . one or more experiential course(s) totaling at least six credit hours."¹⁷ To qualify as experiential, the course must be a law clinic, field placement, or simulation course that

- (i) integrate[s] doctrine, theory, skills, and legal ethics, and engage[s] students in performance of one or more of the professional skills identified in Standard 302;
- (ii) develop[s] the concepts underlying the professional skills being taught;
- (iii) provide[s] multiple opportunities for performance; and
- (iv) provide[s] opportunities for self-evaluation.¹⁸

State licensing authorities also have made changes to their bar admission procedures to increase the focus on practice readiness. New Hampshire, for example, created

14. Ann Marie Cavazos, *Next Phase Pedagogy Reform for the Twenty-First Century Legal Education: Delivering Competent Lawyers for a Consumer-Driven Market*, 45 CONN. L. REV. 1113, 1116–17 (2013) (internal citation omitted).

15. See generally, Susan Case, *Summary of the National Conference of Bar Examiners Job Analysis Survey Results*, NAT'L CONF. BAR EXAM'RS (2013), www.ncbex.org/pdfviewer/?file=%2Fdocsdocument%2F55; Neil Hamilton, *Law Firm Competency Models & Student Professional Success: Building on a Foundation of Professional Formation/Professionalism*, 11 U. ST. THOMAS L. J. 6 (2013); LexisNexis, *White Paper: Hiring Partners Reveal New Attorney Readiness for Real World Practice* (2015), www.lexisnexis.com/documents/pdf/20150325064926_large.pdf; Susan C. Wawrose, *What Do Legal Employers Want to See in New Graduates?: Using Focus Groups to Find Out*, 39 OHIO N.U. L. REV. 505 (2013).

16. *Id.*

17. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2015–2016), Standard 303(a)(3).

18. *Id.*

the Daniel Webster Scholar Honors Program, an alternative licensing process that admits graduates of the University of New Hampshire School of Law to the bar if they successfully complete a rigorous program during their final two years of law school. The program requires the completion of simulation courses focused on practice skills, submission of student portfolios to bar examiners, certain required core courses, and at least six credit hours of clinical and/or externship experience.¹⁹ New York and Arizona have amended their licensing processes to allow law students to take the states' respective bar examinations in February, prior to graduation, if they satisfy certain experiential-learning requirements.²⁰

California appears poised to make the most sweeping change of all regarding experiential education as a condition of bar admission. In 2014, the Trustees of the State Bar of California adopted a proposal to require applicants to have completed at least 15 credit hours of practice-based experiential training prior to sitting for the California Bar.²¹ The new requirement is now pending before the California Supreme Court and state legislature, which must grant approval before it can take effect.²² Similarly, in 2015, New York amended its bar admission rules to require applicants to complete a skills competency component.²³ The new rule establishes five “pathways” to satisfy the requirement, one of which is by submitting proof that the applicant successfully completed 15 credit hours of “practice-based experiential coursework designed to foster the development of professional competencies.”²⁴

This mandate for more experiential education raises a fundamental question for law teachers: how do we design and provide these learning opportunities for our students? This book offers answers to that question. Organized into four sections, it discusses specific techniques for incorporating various forms of experiential education into the law school curriculum, ranging from discrete modules of experiential instruction to complete curriculum reform. Section I provides the foundation for making curricular changes, with chapters providing guidance on building both institutional and student support for experiential education. Section II explores the spectrum of experiential education, starting with chapters that explain experiential modules and classroom exercises that can be included in first-year and upper-level courses, moving to chapters that describe and explain immersive learning experiences such as course-long simulations and semester-in-practice programs, and culminating in chapters focusing on complete curriculum reform. Section III describes programs

19. John Burwell Garvey, “Making Law Students Client Ready” — *The Daniel Webster Scholar Honors Program: A Performance Based Variant of the Bar Exam*, NYSBA JOURNAL, Sept. 2013, at 44, 45–46.

20. Sarah Valentine, *Flourish or Founder: The New Regulatory Regime in Legal Education*, 44 J. L. & EDUC. 473, 517–21 (2015). New York also has adopted a requirement that all applicants to the New York bar must complete 50 hours of pro bono service prior to being admitted. *Id.* at 519–20.

21. *Id.* at 522–23.

22. Karen Sloan, *Practical-Skills Plan Divides Law School Association*, NAT'L L. J., Aug. 24, 2015, www.nationallawjournal.com/id=1202735530585/PracticalSkills-Plan-Divides-Law-School-Association?slreturn=20151118110108.

23. N.Y. COMP. CODES R. & REGS. tit. 22, § 520.18 (2015).

24. *Id.* at § 520.18(a)(2).

that offer experiential learning opportunities outside of the regular curriculum. Section IV concludes the book, offering online resources for experiential education and guidance on how to provide experiential education in an online format.

Thanks to the contributions of each of our chapter authors,²⁵ this book contains a wealth of information about ways to provide experiential education in the law school curriculum. There truly is something for everyone, whether you merely seek to add an experiential-learning component to an individual course, or whether you want to completely transform your law school's curriculum. We hope you find this book a compendium of useful resources, and we wish you great success in your efforts to implement these ideas in your classrooms and institutions. Your students, and the legal profession, will be the better for it.

25. Thanks also to Penny Fell for her tireless work proofreading this book multiple times.

