A PRACTICE CONTINUUM: INTEGRATING EXPERIENTIAL EDUCATION INTO THE CURRICULUM

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ABSTRACT
Legal education has been inundated in the last decade by criticism that many graduates are unable to function competently in today’s practice venues. Although the term “practice-ready” is at best elusive and at worst impossible, law schools continue to grapple with the most fundamental question: how to educate law students so that they can enter the legal market as competent, ethical lawyers. Some argue the traditional law school curriculum teaches law students how to find the law and analyze the law. Others state that it exposes students to legal skills and may provide opportunities for immersion in real practice. However, what the traditional law school curriculum generally does not do is integrate doctrine, skills, and practice in a way that allows students to understand their simultaneous integration to serve clients’ needs.

Drawing on the lessons laid out in two major reports on the state of legal education—Best Practices for Legal Education and the Carnegie Report—this article addresses integration by infusing experiential education throughout the “traditional” curriculum. The Article proposes a continuum of legal education

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focused on practice: a system where a student’s experience begins with the traditional doctrinal classroom but his or her role can be expanded beyond that of a passive listener, moves to simulation courses where the student first begins to put his or her doctrinal knowledge into practice, and culminates in an immersion into real practice through an externship or field placement, where the student’s role emulates the role of the practicing attorney as closely as possible. Ultimately, the Article recommends a set of best practices specific to the practice continuum, while acknowledging the challenges involved in shifting the legal academy’s inertia towards a more experientially integrated curriculum.

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I. INTRODUCTION

Legal education continues to struggle with the basic question of how best to educate law students for the professional lives they will face post-graduation. Although this struggle is by no means new,1 recent catalysts have intensified the discussion. In 2007, The Carnegie Report and Best Practices both argued that legal education needed to focus more attention on preparing students to do what lawyers need to do in practice.2 Far more than a call for more skills courses, both publications asked legal educators to consider how to effectively teach stu-

1 In 1933, in a report to the Alumni Advisory Board of the University of Chicago Law School, Jerome Frank bemoaned Langdell’s casebook approach to legal education and envisioned a law school in which students saw the insides of courtrooms and law offices and practiced law under the supervision of faculty. Jerome Frank, Why Not a Clinical Lawyer-School?, 81 U. Pa. L. REV. 907, 913 (1933).

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Dentists to integrate and apply the knowledge, skills, and values learned in law school to solve legal problems.3

The economic crisis of 2008–2009 and its ongoing effects irretrievably altered the terrain for both legal educators and legal practitioners.4 For legal practitioners, the recession meant less business, reduced income, fewer jobs, reduced mobility, and less time and resources to invest in training new hires.5 These changes point to a “job market that places a greater premium on graduates with practical legal skills.”6 Simultaneously, law schools were confronted by graduates burdened by heavy debt and a constrained market for entry-level jobs. Current students had few opportunities for summer and part-time employment. At many law schools, enrollment began to plummet.7 Adding to the clamor, members of the bar and the bench demanded better-trained, more practice-ready graduates.8 It is not surprising that when law schools looked within, they focused on the already existing experiential aspects of the curriculum that are most obviously associated with practice skills and the most responsive to the demands hurled at legal education.9 Many schools engaged in curricular reform and emphasized experiential education.10 “Nonetheless, the traditional law school

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3 See generally Carnegie Report, supra note 2; Stuckey et al., supra note 2.
5 Id. at 603–08.
6 Id. at 605.
7 Id. at 609 (discussing the sharp decline in applications to law school). On December 17, 2013, the Wall Street Journal reported that “[f]irst-year enrollment at U.S. law schools plunged this year to levels not seen since the 1970s as students steered away from a career that has left many recent graduates loaded with debt and struggling to find work.” Jennifer Smith, U.S. Law School Enrollments Fall, WALL ST. J. (Dec. 17, 2013, 7:41 PM), http://online.wsj.com/news/articles/SB1000142405270230485810457926479376317914.
9 Id.
10 In May 2009, the Institute of Law Teaching and Learning conducted a survey of curricular reform. Sixty-two schools reported adopting curricular reform or were engaged in the process of curricular reform. Chart of Legal Education Reform, INST. L. TEACHING & LEARNING, http://lawteaching.org/publications/ILTLC200905.pdf. Citing the ABA’s Survey of Law School Curricula 2002–2010, Dean Martin J. Katz of the University of Denver Sturm College of Law also noted that many law schools had increased their clinical offerings while others had increased field placement opportunities and still others had expanded the number of skills courses. Martin J. Katz, Facilitating Better Law Teaching—Now, 62 EMORY L.J. 827, 829 (citing ABA Section of Legal Educ. & Admissions to the Bar, A Survey of Law School Curricula: 2002—2010 15 (Catherine L. Carpenter ed., 2012)). Nonetheless, only a handful of
curriculum has proved remarkably resilient, resisting integration with
the new skills training curriculum . . . ”11

Over eighty years ago, Judge Jerome Frank asked: “[I]s it 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?”12

This article answers that question with one model for integrating
experiential education throughout an apparently traditional law
school curriculum, utilizing available resources to provide graduates
with the theoretical understanding, the practical skills, the professional
values, and the ability to put them together in order to serve a client.
Although experiential education may be used in different ways and in
different proportions as students move through the curriculum, one
concept is constant. From day one through graduation, the goal is to
provide students with educational experiences that will make explicit
the connection between theory, skills, and values so that students un-
derstand the professional context of what they are learning.

Part II explores the meaning and purposes of experiential educa-
tion within the context of legal education. Part III discusses the neces-
sity of introducing students to legal practice as an integral part of legal
education and describes the practice continuum as an effective strat-
egy based on the traditional law school curricular structure. Part IV
discusses some of the challenges posed by implementation of the prac-
tice continuum, and Part V offers some conclusory thoughts.

II. EXPERIENTIAL EDUCATION: IS IT A NOUN OR A VERB?

Strictly speaking, “education” is a noun. But, the noun-verb dis-
tinction is not just about grammar. It determines experiential educa-
tion’s range and purpose within legal education and particular law
schools. Used as a noun, experiential education can become another
category of courses within the law school curriculum; it can also be a
silo that separates those courses from other, more traditional courses

11 Thies, supra note 4, at 611. While Mr. Thies’ essay was written in 2009, this state-
ment continues to be viable.
12 Frank, supra note 1, at 913.
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in the eyes of both students and faculty. As a verb, experiential education is teaching that actively engages students in the subject matter they are studying.\(^\text{13}\) As a way of teaching, experiential education can be used to enhance learning in any course. Although different teachers may use it in different ways for different purposes, it is accessible to every teacher who wants to incorporate it into her teaching. To the extent that law schools accept that an essential part of their mission is to graduate competent individuals who, if they choose, can practice law competently, experiential education offers an expanded repertoire of methods to achieve that mission. Understanding experiential education as both a collective noun and as a verb describing active engagement of our students is essential to rethinking our curriculum.

A. As a Noun

Legal educators do not always identify experiential education in the same way. In some cases, the label of “experiential education” is used to restructure and re-label the old curriculum. It allows schools to gather under one new tent courses that were previously characterized as clinical education, skills courses, or trial advocacy simulations.\(^\text{14}\) Clinics, externships, field placements, and simulations of all types fall within this category.\(^\text{15}\) Some institutions may add pro bono work to the mix while others include extracurricular or co-curricular activities such as trial teams and moot court.\(^\text{16}\) A few institutions include Legal Writing and Research.\(^\text{17}\) From this vantage point, experiential education is more of a collective noun, and grouping these courses together may permit greater visibility and coordination without necessarily expanding experiential offerings.

Somewhat unclear is the determinant principle by which courses are labeled as experiential. Although clinics, externships, and simulations are the most common elements of the collective noun, they differ


\(^{15}\) Memorandum from the ABA Section of Legal Educ. & Admissions to the Bar 10–11 (Dec. 13, 2013), available at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201312_notice_comment_stds_205_207_303a3_603a_c_authcheckdam.pdf.

\(^{16}\) See Stuckey et al., supra note 2, at 165–206.

\(^{17}\) Id. at 148.
with regard to objectives, pedagogy, and assessment. Complicating the taxonomy even further, the same teaching and learning strategies associated with clinical and skills education are now being imported into doctrinal classrooms, albeit for different objectives. Experiential education in law schools often is considered the vehicle by which students are transformed into practitioners through the acquisition of lawyering skills. Unfortunately, skills training also lacks efficacy as a defining principle for experiential education because it is both under- and over-inclusive. Many externship courses do not concentrate on teaching skills.\textsuperscript{18} Most clinics do teach or refine skills, but that is not the only objective of clinics. While the enhancement of lawyering skills is omnipresent in clinics, the student’s immersion in practice is generally its most salient characteristic, providing an authentic opportunity to integrate “all of the elements of legal education, as students draw on and develop their doctrinal reasoning, lawyering skills, and ethical engagement.”\textsuperscript{19} Although rarely included within the umbrella term of “experiential education,” legal research and writing programs are entirely centered on teaching and developing essential lawyering skills. Many doctrinal teachers would argue that they also teach important skills, such as legal analysis or statutory construction. Other doctrinal teachers include experiential exercises that allow students to apply the doctrinal knowledge learned in problem-solving situations.

In \textit{Best Practices for Legal Education}, Professor Stuckey used experiential education as both a noun and a verb by defining the collective noun, the courses, in terms of the verb, the intentional use of a particular methodology that teaches through the use of experience.\textsuperscript{20} As a noun, Professor Stuckey defined experiential courses as those that “rely on experiential education as a significant or primary method of instruction . . . as opposed to courses in which experiential education is a valuable but secondary method of instruction.”\textsuperscript{21} In law school courses, this involves using students’ experiences in the roles of lawyers or their observations of practicing lawyers and judges to guide their

\textsuperscript{18} Externships can be designed to further career development choices, expose students to different practice venues, enhance professionalism, and teach or improve skills. For example, field placement clinics located in prosecutorial or public defender offices often are designed to hone trial skills.

\textsuperscript{19} \textit{Carnegie Report}, \textit{supra} note 2, at 121.

\textsuperscript{20} See generally \textit{Stuckey et al.}, \textit{supra} note 2, at 165–206.

\textsuperscript{21} \textit{Id.} at 165.
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learning. While somewhat circular, this definition’s emphasis on experiential methodology as primary or significant explains why doctrinal courses are not included within the collective noun. More troubling, however, is the exclusion of legal writing and research courses from the experiential course mix, as students are generally writing and researching as simulated lawyers.

The recent trend to identify and group traditional experiential courses under the auspices of newly appointed associate deans or directors of experiential education (or learning) may have value ancillary to curricular reform. Law schools are caught between a smaller applicant pool on the front end and diminished job prospects for their graduates on the back end. Reorganizing the curriculum so as to highlight those areas of the curriculum that are visibly tied to practice makes the law school more competitive by addressing their constituents’ concerns. Prospective students are assured that they will be educated to enter the profession with the requisite skills, knowledge, and values to find employment, practice competently, and have a satisfying and productive career. The practicing bar, including alumni, demands “practice-ready” graduates who can function as lawyers, absent the close supervision and nurturing that was provided to new lawyers in the days when the market for the delivery of legal services was both more robust and less demanding.

B. As a Verb

Experiential education, as a verb, shifts the focus from specific courses to what teachers do in their courses to engage their students and prepare them for their future professional roles. Experiential education, as a methodology, is something legal educators do intentionally to engage our students and to teach them how to become

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22 Id. Examples are a Family Law course in which students are required to visit family court or a role play in an Evidence course to illustrate the principles of impeachment or hearsay evidence. Id. at 165–66. A variant of this is an exercise that puts students in the role of their clients. My colleague at Stetson University College of Law, Professor James Fox, has students in his Poverty Law class live on food stamps for a week to understand the challenge and stress faced by many in our society.

23 Thies, supra note 4, at 611.

24 Hayes, supra note 8, at 14 (“Despite the undercurrent of change sweeping schools throughout the country, most modifications are being done in isolation from one another, and, according to Stuckey, are based on competition. He says while schools are operating in ‘good faith,’ they are implementing reforms in an attempt to distinguish themselves from one another.”) Similarly, Dean Garth at Southwestern Law School notes, “[e]very school wants to be seen as being on the cutting edge.” Id.
competent, ethical lawyers. We seek to integrate academic inquiry, professional values, and actual experience to create lawyers ready to seamlessly combine their knowledge, skills, and judgment to resolve a client’s problem.\textsuperscript{25} We also want to inculcate a method by which students, who become lawyers, can learn from their experience and achieve higher levels of mastery throughout their careers.\textsuperscript{26} To the extent that law school faculties buy into these goals, experiential education lays the foundation for professional practice by providing students with both the experience and the teaching of doctrine, values, and skills simultaneously.

Experiential education engages students because it is active learning. Students learn better and retain what they have learned longer when they do something with the material beyond sitting and listening.\textsuperscript{27} The more students are engaged, the more they learn, and the happier they are. Most law schools introduce and develop basic practice skills (interviewing, counseling, negotiation, trial advocacy, etc.) through simulation courses in which students are introduced to the theory behind the skills and then systematically practice the skills through a series of problems that increase in difficulty throughout the

\textsuperscript{25} “Experiential education integrates theory and practice by combining academic inquiry with actual experience.” Stuckey et al., supra note 2, at 165. One of the basic principles of the Carnegie Report is that the integration of educational pedagogies shape the way students think and act as professionals. “The core idea is at once simple and profound: the ensemble effect of professional schools’ various educational practices is greater than the sum of the particular pedagogies taken in isolation. . . . [L]aw schools shape the minds and hearts of their graduates in enduring ways. This is . . . especially salient in the development of professional purpose and identity.” Carnegie Report, supra note 2, at 129.

\textsuperscript{26} Susan Bryant, Elliott S. Milstein & Ann C. Shalleck, Transforming the Education of Lawyers: The Theory and Practice of Clinical Pedagogy 23 (2014) (“Because lawyers must learn how to adapt to new situations, improve their performances, develop new lawyering skills, understand clients and the world surrounding a legal matter, analyze institutions, and solve client problems, knowing how to learn is essential to their success.”); Stuckey et al., supra note 2, at 172 (“Developing lifelong learning skills may be the most important goal of legal education.”).

\textsuperscript{27} Michael Hunter Schwartz et al., Teaching Law by Design: Engaging Students from the Syllabus to the Final Exam 5 (2009). Active learning encompasses activities such as “writing about . . . concepts, discussing them with [peers, and] figuring out how they relate to each other and to what [students] already know.” Id. In this sense, the Socratic Method is also active learning for the students who are actively engaged. See also Alice Y. Kolb & David A. Kolb, Learning Styles and Learning Spaces: Enhancing Experiential Learning in Higher Education, 4 Acad. of Mgmt. Learning & Educ. 193, 208 (2005) (pointing out that “action may be the most important part” of the learning process).
semester.28 Simulations concentrate on the skill being taught by controlling the variables in the problems.29 Students develop mastery as they receive feedback and critique from teachers and peers. More importantly, students learn to reflect on their own performances and progress, identifying their strengths and challenges. As they learn the basics of a particular skill, they also develop habits and values of professionalism that will deepen their commitment to excellence and professional growth throughout their careers.

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. As in real practice, they also are interweaving the theoretical knowledge they learned in doctrinal classes. Students in a public defender clinic have the opportunity to interview clients and witnesses and go into court to use those facts and the law under the conditions of real-life practice. In addition to using the skills they first learned in several skills courses, including legal research and writing, they are also applying what they have learned in Criminal Law, Criminal Procedure, Evidence, and Professional Responsibility.

Increasingly, experiential education is finding its way into doctrinal classes as a means of engaging students to deepen their understanding of the theoretical concepts and to give practical context to abstract ideas. Simultaneously, the context of a simulation can provide a professional context that will enhance understanding and transfer from the classroom to actual practice. “The precise context in which learning takes place is critical because it gives meaning and structure to what is learned and affects how and where it is embedded in the learner’s cognitive structure.”30 The same interviewing role-play that is

28 The problem focus of simulations tends to increase students’ motivation to learn in at least three different ways. First, students are active. When learning involves active, rather than passive, participation and the motivation to learn increase. The end result is more extensive and effective learning. Second, by providing real world context, simulations bring home to the student the relevancy of what is to be learned. When students perceive relevancy, they generally become more interested. Third, they are different. When virtually all learning is done in a single mode, the change to a different mode will stimulate learning.


29 Id.

30 Id. at 434.
used to teach client communication skills can be used in a Professional Responsibility class to teach the formation of attorney-client relationships or the exceptions to the duty of confidentiality. Similarly, an exercise in contract drafting can be used in a Legal Research and Writing class to teach drafting and in a Contracts class to teach the basic elements of offer, acceptance, and consideration.31

**The Distinction Between Experiential Learning and Experiential Education**

Experiential learning happens anywhere; students learn a great deal from what they observe of legal practice outside of law school.32 Although learning from experience is something everyone does, it also is random and without design or intent.33 Experiential education, on the other hand, is designed with specific learning objectives that students are expected to achieve.34 Two other factors distinguish experiential learning from experiential education. First, while students learn from many law-related experiences, the learning is ancillary to the primary goals of the experience. Whatever the primary objective might be, it is not the student’s professional development. With paid employment, for example, the primary objective is the benefit that accrues to the employer. While many employers do want their law students to have a positive experience, they expect that the students are there to serve the employers’ interests.

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32 See Glossary, supra note 13, at 15 (“Experiential Education is an active method of teaching that integrates theory and practice by combining academic inquiry with actual experience. It encompasses many methodologies in which educators purposefully engage with learners in direct experience and focused reflection in order to increase knowledge, develop skills, clarify values, and develop people’s capacity to contribute to their communities.”).


34 Stuckey et al., supra note 2, at 165.
Absent compensation, a similar work experience might be used as the basis for a clinic or externship where the emphasis would be on the student’s education and professional development. Specific goals might be identified, which could include an enhanced understanding of applications of doctrinal law, professional development with reference to self-assessment and supervision, and development of professional writing skills in a practice environment. Although the part-time employed student and the clinic student may do similar work, the purpose and educational expectations are very different. Experiential education, in the form of a clinic or externship, surrounds the work experience with scaffolding in the form of a class that includes analyses of theory and procedure relating to the practice experience, reflective exercises designed to maximize student professional development, and collaboration between the student, supervisor, and teacher to sharpen the student’s lawyering skills.35

Pro bono work also provides another example of valuable experiential learning. The primary objective is the giving of service without expectation of compensation to people in need of legal or other types of assistance. The student may gain professional development, but education is not the primary purpose.

Another significant difference between experiential learning and education is the purpose and import of supervision and reflection as teaching strategies. A student’s experiential learning outside of school, whether in volunteer or paid work opportunities or pro bono service, can be important and valuable. But such work will rarely be augmented with the intentionally designed supervision and inquiry that probe the relationships between theory, skills, and values and that promote the practical judgment essential to good lawyering.36 Similarly, outside of the law school environment, students rarely will be taught to use their immediate experiences as the basis for reflection; the reflection can then be transformed into concepts, which in turn

35 Skills instruction of a very different kind may be illustrative. Driver education has evolved over the years from the era of parents or other experienced drivers taking the novice out for her first drive and instructing her on mechanics and skills from the passenger seat to the modern method of teaching driving as part of the high school curriculum, which generally includes a combination of classroom instruction, multimedia presentations, simulation, and actual driving experience. The skill of driving is taught in conjunction with the rules of the road, the law governing the operation of motor vehicles, and the attempt to inculcate values of responsibility and duty.

36 CARNEGIE REPORT, supra note 2, at 7–10.
deepen students’ understanding of the law within the context of practice and skill application.\(^{37}\)

If the goal of legal education is to transition students into professionals capable of practice, then experiential education can help law schools succeed in that endeavor. Experiential education, used as a collective noun, will allow schools to identify curricular opportunities for students and promote them to address students’ educational and professional needs. Experiential education, used as a verb, emphasizes a method of teaching that can create new curricular opportunities to enhance our graduates’ readiness to perform as professionals.

- *Practice! Practice! Practice! — The Value of Sequencing Experiential Education in the Curriculum*

According to the recently revised American Bar Association ("ABA") Standard 301(a), every law school "shall 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."\(^{38}\) In order to achieve this objective, law schools must offer programs of study that will foster competent and committed professionals.\(^{39}\)

In practice, competence is the ability to resolve problems, using legal knowledge and skills and sound professional judgment. The core function of a practicing lawyer is to help people and institutions resolve legal problems. The central goal of legal education, therefore, should be to teach students how to resolve legal problems.\(^{40}\)

“Problem-solving is ‘the process by which one starts with a factual situation presenting a problem or an opportunity and figures out the ways in which the problem might be solved or the opportunity real-
Experiential education can introduce students to real practice situations, involving problem-solving, from their very first year in law school. Professor James E. Moliterno urged law schools to expand opportunities for experiential education in which students are urged to make the transition from student to lawyer. Students continue to learn law, but now do so as lawyers do, with a client’s need as the driver, rather than as students do, with a three-hour exam as the driver. In such circumstances, students transition to the thought process of lawyer-problem-solver and away from learning for no more reason than acquiring knowledge.

By sequentially structuring the experiential opportunities throughout the curriculum, the student can participate in increasingly deeper and more challenging practice situations so that by the third year, the student is ready for an immersive experience, such as a clinic, which will mirror the most important aspect of practice by mandating actual responsibility for a client. For the student to be able to effectively maximize the value of a complex practice experience, certain elements must be present in every experiential class exercise. First, students must assume the role of the lawyer so as to learn the theory, the skill, or the value contextually. In this way the educational experience introduces and furthers professionalism and readiness to practice. Second, the educational goals of each experience have to be clearly delineated by the teacher for the students, whether it is one of many activities in an experiential course or a single experience in a


42 CARNEGIE REPORT, supra note 2, at 81 (“Professional activities typically blend and mix what the academic treatment of law works hard, for legitimate intellectual reasons, to keep separate: knowledge, know-how, and ethical judgment.”).


44 As the student progresses through law school, he or she will be guided through increasingly challenging experiences where role assumption will necessitate greater responsibility for the client. Simultaneously, this responsibility will be accompanied by greater unpredictability and uncertainty as the variables with which he or she has to deal multiply in authentic practice situations.

45 See Susan L. Brooks, Meeting the Professional Identity Challenge in Legal Education Through a Relationship-Centered Experiential Curriculum, 41 U. BALTIMORE L. REV. 395, 403 (2012) (describing a continuum of “increasing levels of responsibility . . . toward the assumption of the full role of attorney”).
doctrinal course. Pedagogical objectives focus attention on the appropriate task, thereby guiding feedback and assessment.\textsuperscript{46} Third, every exercise should provide guided opportunities for reflection and self-evaluation.\textsuperscript{47} The practice of law is always evolving, and lawyers who understand how to learn from their experience will evolve most easily. Having multiple opportunities in law school to develop and internalize an individual methodology of learning from experience prepares students for a post-graduate world where continuous professional development is a requirement for practice.\textsuperscript{48}

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.\textsuperscript{49} Reflecting the realities of practice where lawyers are expected to incorporate theory, skills, and professional values simultaneously to resolve clients’ problems, The Carnegie Report advised that law schools integrate the teaching of doctrine, skills, and values so as to be “linked so seamlessly that each contributes to the strength of the others, crossing boundaries to infuse each other.”\textsuperscript{50}

Experiential education can serve as an appropriate vehicle on the road to an integrated curriculum in several ways that have the potential to reach every student. First, the infusion of every doctrinal course with some elements of experiential education emphasizes that theory is intended for use, that it has practical import. Second, students are engaged, so learning deepens. Third, students are introduced to practice skills in doctrinal classes, although this is not skills education in the sense that students develop even a novice’s level of mastery. In first-year classes, the primary objective is to ensure conceptual understanding of the doctrine—contextualizing it by showing how it might emerge in a practice setting. Secondary goals are to forge the connection with practice by putting the student in the simulated role of a lawyer, introducing a lawyering skill, and beginning development of

\textsuperscript{46} SCHWARTZ ET AL., supra note 27, at 38–42 (discussing course design).

\textsuperscript{47} See generally Donald A. Schon, Educating the Reflective Legal Practitioner, 2 CLINICAL L. REV. 231 (1995) (describing how reflection fits into the learning processes of professionals).

\textsuperscript{48} The proliferation of technology and the rise of social media are examples of changes outside of traditional legal parameters that significantly changed the practice of law and the management of law offices.

\textsuperscript{49} CARNEGIE REPORT, supra note 2, at 12–14.

\textsuperscript{50} Id. at 191.
legal problem identification and resolution.\textsuperscript{51} By integrating experiential education across doctrinal lines, students develop a common foundation for problem solving and learning that can be replicated later in the curriculum and in practice.\textsuperscript{52}

The practice continuum described below is one attempt to integrate experiential education throughout the curriculum. It is designed to work within a traditional law school curriculum, compatible with already existing courses.

III. A Practice Continuum for Experiential Education in the Law School Curriculum

This practice continuum is a vertical approach to integrating experiential education throughout law school to ensure that all students have progressively more challenging opportunities to engage in authentic practice situations.\textsuperscript{53} The term “vertical” is used to suggest that the continuum develops over the course of a student’s legal education, beginning in the 1L year with exposure to relatively simple experiences designed to achieve limited goals. As students move through the second and third years of law school, the experiential opportunities become more and more complex and multi-layered.

\textsuperscript{51} Lawyering skills include, but are not limited to, interviewing, counseling, negotiation, trial advocacy, and drafting. For a comprehensive list of lawyering skills, beginning with problem solving, see ABA Section of Legal Educ. & 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 138-40 (1992) [hereinafter MacCrate Report]. See also ABA Standards, supra note 38, Standard 302(a) (listing numerous skills requirements for law schools to include in their curricula).

\textsuperscript{52} The suggestion of a continuum is not new. See Stuckey et al., supra note 2, at 205 (describing and endorsing the continuum of education laid out in the Carnegie Report’s 2006 draft). See generally Brooks, supra note 45.

\textsuperscript{53} Carnegie Report, supra note 2, at 192. The practice continuum is somewhat analogous to changes in medical education:

Clinical training now begins in the first year of medical school and is dominant by the third year. The teaching of basic science is still essential, but the modes of teaching science have shifted in many medical schools, with greater emphasis on teaching science as it informs and will be used in the practice of medicine. This does not mean that medical education is consumed with teaching mere techniques. A great deal of both foundational and cutting-edge knowledge is imparted at every stage in the process. The difference is the growing recognition that medical science is best taught in the context of medical practice, with integral connections between the fundamental knowledge base and the complex skills of professional practice.

Id.
On this continuum, experiential education is designed to encourage student development on four dimensions: problem solving; professional judgment, including responsibility for the client; learning how to learn from experience; and integrating knowledge, skill and judgment as professionals do in practice. These four dimensions are present throughout the practice continuum.

- **Problem Solving**

  In *Best Practices*, Professor Stuckey noted that competence in the practice of law is the ability to resolve legal problems effectively and responsibly. Problem-solving ability is acquired through time, repetition, an understanding of consequences, and analysis of which strategies worked well and which did not. It also requires the experience of identifying and solving problems. “In every other human endeavor, expertise in problem-solving is acquired by solving problems. There may be better and worse ways to learn to solve problems, but there appears to be no substitute for context.” The continuum is based on the inclusion of context-based practice problems infused throughout the curriculum from first year through graduation.

- **Professional or Practical Judgment**

  Through the use of these problems, students develop practical judgment by assuming the role of the lawyer in simulated exercises during the early part of their legal education and then in real practice externships and clinics where they experience the realities of practice with increasing responsibilities for clients and cases. The continuum begins with simple simulated practice problems with a limited number of variables and progresses to more challenging simulations with more variables, requiring complex skills and several stages. “[S]imulated experience can give students experiences where they can be guided by their personal values and their capability to react to fluid situations.” Practical judgment is honed when students move from the classroom to actual practice with the multiplicity of variables, including the fluid-

54 *Stuckey et al.*, *supra* note 2, at 104.


56 Id. at 386–87.

57 *Stuckey et al.*, *supra* note 2, at 111.
ity of facts, the unpredictability of human nature, and the recognition of real consequences to others as a result of the lawyers’ actions.\textsuperscript{58}

- **Learning from Experience**

  Experiential education offers students practice in learning from experience; more importantly, it offers a methodology for continued learning from experience that will serve the lawyer post-graduation to encourage self-assessment and individual professional growth. Every problem and exercise should incorporate reflection and feedback in some form.\textsuperscript{59} While the content may focus on the understanding of legal theory or the performance of a skill, the practice of self-assessment inculcates the habit of identifying the lawyer’s individual challenges and strengths so that the former can be addressed and corrected while the latter can be replicated and celebrated.

- **Integration of Theory, Skills, and Professional Judgment**

  Unlike the traditional law school curriculum, practice demands the integration of legal theory, practice skills, and professional judgment within the context of solving legal problems.\textsuperscript{60} Throughout the continuum, the primary focus may shift from theory to skills to judgment but not to the exclusion of the other two elements. An appreciation of the integration of these three elements should be explicitly and implicitly made available to students.

  The continuum is divided into three stages, somewhat paralleling the three years of a traditional law school education. At different points in the curriculum, experiential education reflects a changing balance between theory and practice skills. As described above, in foundational doctrinal courses, theory is primary, although students

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\textsuperscript{58} Id. Exposure to law practice may be the only way whereby students can really begin to understand the written and unwritten standards of law practice and the degree to which those standards are followed. Students need to observe and experience the demands, constraints, and methods of analyzing and dealing with unstructured situations in which the issues have not been identified in advance. Id. Maranville and others advocate for real practice from the first year. See Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum Through Experiential Learning*, 51 J. LEGAL EDUC. 51, 58 (2001). Variation of real world exposure is Prof. Fox’s food stamp exercise. See supra note 22.


\textsuperscript{60} CARNEGIE REPORT, supra note 2, at 12–14, 191.
often will be given the opportunity, through experiential education, to assume the role of lawyers for the purpose of providing context to the legal analysis and doctrine. In the second year, when many students will enroll in traditional “skills” courses, the balance will shift to an emphasis on practice skills, with theory and professional values providing contextual grist within the predominantly experiential course. In the final stage of the continuum, students transition into practitioners, immersed in the real world of practice in clinics and field placements. In the real world environment, the needs of the client and the workplace will impact the balance between theory, skills, and values. At this level, student lawyers apply their problem-solving methodologies to complex situations with many variables. Their reflective skills, honed since they entered law school, allow them to assess their capabilities, diagnose problems, and plan for growth.

A practice continuum uses experiential education to introduce students to real practice situations and deepen their connection to the practice of law throughout law school. In the early days of law school, students meet practitioners, observe lawyers, and begin to act like lawyers by assuming that role in simulations embedded in their doctrinal classes. By the time students prepare to graduate and move onto the bar examination, they have accumulated many experiences in which they learned skills and solved problems in role through simulation, observed lawyers and judges in different venues, and immersed themselves as student lawyers in court and with clients. At this transitional stage of their legal education, students are performing the same tasks as practitioners, providing representation to clients in and out of court. Under the supervision of faculty and practitioners, students bridge the worlds between the study of law and the profession of law.

Throughout the continuum, institutional and faculty commitment should be directed toward providing every student with increasingly deeper penetration into the practicing world as a requirement of the curriculum.61 As students grapple with increasingly more challenging problems of professional practice, legal theory, the acquisition of skills, and the importance of professional ethics and values become compelling motivators. While it is certainly true that not every student will choose to practice at all or at some point in his or her career, it is

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61 While requiring experiential education courses for graduation may be helpful, the underlying objective is to encourage law schools to insure that practice-focused experiential education is infused into the curriculum.
reasonable to expect that graduates of a law school should be competent, if not necessarily committed, to practice law. 62

- Early Days—An Introduction to Practice

The first year of law school traditionally is dedicated to developing the students’ knowledge of law, including legal analysis, reasoning, and writing. 63 Law in specific substantive areas such as Civil Procedure, Constitutional Law, Criminal Law, and Contracts is typically taught in the first year as a foundation for learning other areas of law. Perhaps more important, the methodology used to teach these courses is designed to teach how law is created, how the court system works, and how lawyers (and particularly, law professors) think about the law. 64 The first year of law school is intense, emotional, and disorienting.

Experiential education used in 1L and other doctrinal classes links the study of appellate cases back to the practice of law, while simultaneously engaging the student to understand the principles of law in the cases. 65 Particularly in the first year, the primary purpose of experiential education is not the teaching of skills, such as interviewing, counseling, negotiation, etc. Nonetheless, introduction of those skills can connect the theory to the practice of law and help students answer the question, “Why is this important for me to learn?” Imagine a role play.

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62 Competence is not expertise or mastery. See MODEL RULES OF PROF’L CONDUCT R. 1.1 cmt. 2 (2013) (explaining that, with study or association with a lawyer of “established competence,” a novice lawyer may be “as competent as a practitioner with long experience”).

63 The first year of law school traditionally focuses on doctrinal subjects and legal research and writing. The Carnegie Report identified this early focus as the first apprenticeship, identified as intellectual or cognitive. It “focuses the student on the knowledge and way of thinking of the profession. Of the three, it is most at home in the university context because it embodies that institution’s great investment in quality of analytical reasoning, argument, and research. In professional schools, the intellectual training is focused on the academic knowledge base of the domain, including the habits of mind that the faculty judge most important to the profession.” CARNEGIE REPORT, supra note 2, at 28. It is noteworthy that the Carnegie Report identified this as legal education’s signature pedagogy. “[A] signature pedagogy is a key educational practice by which a given field creates a common frame through which it can induct new members. . . . For their part, law schools use case-dialogue teaching almost exclusively in the first phase of doctrinal instruction.” Id. at 50.

64 Id. at 11 (noting that C. C. Langdell’s revolutionary teaching method “enabled students to analyze and research judicial decision making, thereby learning how to ‘think like a judge’ ”).

65 It is anticipated that the experiential educational strategies used in upper class courses would be more complex and challenging than those used in first-year classes.
in which students serve as Mrs. Palsgraf’s original lawyer in the initial interview or attempt to counsel the client regarding perjured testimony in *Nix v. Whiteside.* The initial interview of Mrs. Palsgraf can demonstrate the importance of careful interviewing to identify the facts that would lead to a finding of foreseeability or proximate cause, giving factual context to the legal doctrines. Counseling the client in *Nix* highlights the ethical difficulty when a lawyer’s duty to the tribunal conflicts with loyalty to the client, as well as provides a more contextualized understanding of the Sixth Amendment’s guarantee of the right to counsel. Similarly, exercises can be constructed around discovery requests, standing issues, and jurisdictional questions.

Experiential education at this level provides context for the learning of doctrine. “Context helps students understand what they are learning, provides anchor points so they can recall what they learn, and shows them how to transfer what they learn in the classroom to lawyers’ tasks in practice.” Professor Maranville suggests that students may store and retrieve information differently if they understand that they will need it beyond the final exam to use in practice.

In addition, effective teaching strategies include assignments that take place in and outside the classroom. Practitioners can be invited to join the class to share experiences or share expertise. Off-campus activities can be assigned to augment reading and classroom work. Students in Civil Procedure or Criminal Law might be afforded opportunities to observe court proceedings and then debriefed. Students in a Business Ethics course might be assigned a paper based on interviews with business lawyers about common ethical issues.

The first year also offers opportunities for crossover work between legal research and writing and doctrinal classes. Students could interview a client charged with theft, obtain the facts from the interview with the client, compare those facts with other documents provided in a small case file, and then write a short memorandum based on research about the application of the elements of the crime to the facts of the case.

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67 Maranville, *supra* note 58, at 52.
68 *Id.* at 56; *see also* Stuckey et al., *supra* note 2, at 141–57 (encouraging the use of context-based education).
69 This is not traditional experiential education. Faculty will need to work with outside speakers to maximize opportunities for student engagement.
Experiential education at this end of the continuum should include several important features. The experience should be structured or guided so that the purpose is clear to students. It should connect both the student and the law to practice, ideally by putting the student in the lawyer’s role, using the law in some way that a lawyer might. Finally, 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.

- **The Upper Level Curriculum—Extending the Connection to Practice**

As students enter the middle of the continuum, they have developed some mastery of legal analysis and understand the fundamentals of research and writing. In the first year, the practice continuum provided practice context for students’ doctrinal comprehension and introduced them to role assumption and reflective techniques. The middle portion of the continuum builds upon those experiences and expands on them by increasing the complexity of the problems, adding performance of lawyering skills to legal analysis, and requiring students to think more about how to resolve a client’s legal problems.

- **Doctrinal Courses**

Many of the same experiential strategies that were used in the first year can be incorporated into higher-level courses. However, at this level, the exercises should be increasingly multi-dimensional, involving the interplay of several concepts and more complicated facts, thereby more closely emulating real practice. Generally, students should be in role, engaged as lawyers solving problems with and for their clients. Problem sets can be developed so that students experience, under controlled circumstances, a history of representation with their hypothetical clients and an understanding of the practice area and the important doctrinal law. In a Business Entities course, students might represent a hypothetical family through several distinct stages: starting a business, incorporating that business, detecting fraud as corporate counsel, counseling the client about compliance, and dissolving the

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70 Students should also understand the limitations of the exercise. They should not expect that the Palsgraf interview, for example, will provide expertise in legal interviewing.

71 See *Carnegie Report*, supra note 2, at 27–28 (breaking the professional education continuum into three “apprenticeships” and explaining the differences among them).
Depending upon the complexity of the problems, they will use several skills (drafting, interviewing, counseling, and negotiation) and encounter many embedded ethical issues. Although these doctrinal courses use experiential education in the form of simulations, the simulations are designed to engage students and supplement traditional teaching methods.

- **Doctrinal Courses: Labs, Tethers, and Integration**

  Creative course design can link doctrinal courses to experiential opportunities in a variety of ways. One- or two-credit labs can be affixed to a doctrinal course to provide interested students with opportunities to apply their burgeoning doctrinal knowledge to problem-solving situations. Depending on the objectives, the lab can be mandatory or optional, with traditional grading for the doctrinal course and separate grading for the lab. These labs can be small sections working on skills such as drafting, advocacy, interviewing, counseling, or negotiation. Problems are designed to incorporate the theory from the doctrinal class applied in practice-based exercises. Students, in role, work through the simulated problems to learn the skills common to the practice area. Adjunct professors who are experienced practitioners usually teach small sections.

  Another variation is to use the lab as a very limited field placement related to the doctrinal course. This offers students the opportunity to observe and work in actual practice venues but may present logistical issues depending on the size of the class and the availability of placement sites. As with all field placement courses, care and collaboration are needed to ensure that students receive assignments and supervision appropriately tailored to the students’ level of professional development. The assignments should link the doctrinal material to real cases and, to the extent possible, put students in role by emulating the work that would be expected of new lawyers.

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73 For an example of professional ethics coursework designed to be analyzed in the context of traditional first- and second-year doctrinal material, see Deborah L. Rhode, Professional Responsibility: Ethics by the Pervasive Method 427–812 (2d ed. 1998).
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Tethered courses link related courses, often a doctrinal course, such as Evidence, and a simulated skills course, such as Trial Advocacy. The courses are taught separately but have the same student population. Most important, the presentation of doctrinal material and the assignment of the simulated skills exercises are coordinated so that students have the theoretical foundation that they need in order to develop and competently apply their advocacy skills. Other examples might link a Business Entities course with a Drafting course, a Family Law course with a course in Mediation, or an Advanced Constitutional Law course with an Appellate Advocacy course.

Integrated programs link the work of several courses to present an overview of an area of practice. One integrated transactional practice program links two doctrinal courses, Trust and Estates and Professional Responsibility, with simulated skills courses, such as Interviewing, Counseling, Drafting, and Negotiation. Similarly, an integrated trial practice program joins Trial Advocacy, Advanced Civil Procedure, and Evidence.

Linking doctrinal courses with practice labs and simulated skills courses achieves the same learning objectives discussed earlier. The crossover of theory and skills development deepens the learning in both venues and the fundamental understanding that skills and theory must be used together is an implicit part of the course design. The collaboration between faculty members should be seamless so that the presentation of theory and introduction of skills is coordinated. Exercises should be practice-based with students in role. Students’ skills in reflection should be extended so that they are expected to consider the interplay between theory and application and their own growing facility to use both in service of their simulated clients.

74 E.g., Roberta Flowers, Evidence: Fall Semester 2013 (unpublished syllabus) (on file with author) (describing tethered Evidence and Trial Advocacy courses at Stetson University College of Law and stating several course goals, including “reinfor[cing a] skill-based application of evidentiary law”).
77 The benefit of linked courses is that the pie is expanded, and doctrinal courses can expand their coverage.
Simulation Courses

As has been discussed, simulation exercises can be used in many classes to teach doctrine, problem solving, and professionalism, in addition to introducing students to practice, role assumption, and a methodology of professional development, using reflection and self-assessment as the fundamental tools. Simulation courses, however, have been the primary means by which complex practice skills been taught to law students for decades.78

Generally, a simulation course is the student’s first exposure to a course driven predominantly by experiential education. Falling in the middle of the practice continuum, students will have experienced many of the methodologies in their earlier classes. Their familiarity with role assumption, problem solving, and reflective learning will provide a foundation for learning more complex professional skills. Simulation is one of three pedagogies, sharing a fundamental commitment to experiential education as the primary method of teaching and learning so that students transition into competent and ethical practitioners.79 Although the course objectives, supervision techniques, and expectations about role assumption and reflection may vary, experiential education courses intend to deepen the student’s involvement with practice by having them do what lawyers do.80 This process will extend approximately from the middle of a student’s second year through graduation. At this point forward on the continuum, courses may resemble familiar academic classes less and less as they begin to resemble practice venues more and more.

Simulation courses teach lawyering skills by putting students in hypothetical role-play situations to assume the role of lawyers and perform certain tasks. Skills commonly taught in this manner include, but are not limited to, interviewing, counseling, fact investigation, negotia-

78 STUCKEY ET AL., supra note 2, at 165–66.
79 Simulation, externship, and clinic courses were once historically grouped under the term “clinical legal education.” In recent years, widespread acceptance of the term “experiential education” has permitted a more nuanced taxonomy based on the fact that both clinic and field placement courses are based in real practice venues. Although simulation, externship, and clinical courses are all considered experiential education courses, only externships and clinics are generally viewed as clinical education courses. Glossary, supra note 13, at 20–23.
80 STUCKEY ET AL., supra note 2, at 170 (“There is no more effective way to help students understand what it is like to be a lawyer than to have them . . . perform the tasks that lawyers perform or observe practicing lawyers at work.”).
tion, mediation, and advocacy on both the trial and appellate levels. By controlling variables, particularly facts, for complexity and relevance, students in simulation courses can focus their attention on learning the fundamentals of each skill and how each skill relates to the overall task of solving legal problems. Simulated courses offer students the opportunity to practice skills in increasingly more complex scenarios. The exercises may or may not be related to each other in terms of the facts or legal problem. Alternately, one case file may provide multiple simulated exercises and provide a unifying thread throughout the semester. Still another variation is to pull all of the problems from a particular practice area. A Mediation course might be based on family law issues. An Interviewing, Counseling, and Negotiation course could use transactional practice or dispute resolution as its frame.

Although a specific lawyering skill might be highlighted in a particular course, it is rarely taught in isolation of other skills. As with most courses, the educational objectives of simulation courses in the middle of the practice continuum are multi-layered. For example, law school interviewing and counseling courses currently provide students with their first lawyer-client interaction. The acquisition of interviewing and counseling techniques will be accompanied by the development of interpersonal and communication skills. The interviewing techniques will be used to identify the client’s legal problem while the counseling techniques will be used to facilitate the client’s choice of solutions. Early in the course, students will apply their knowledge of ethics from Professional Responsibility to control when and which fiduciary duties are triggered by the formation of the attorney-client relationship. Later in the course, students might grapple with other ethical issues. In this way, knowledge, skill, professional values, and practical judgment are all harnessed in service of the hypothetical client. Behind all of this is still another layer of skill development that also needs repetition: students need to develop the skill of learning from their own experience. By developing a methodology of self-mentoring, students can enhance their professional development

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81 With a practice continuum, students will have participated in simple practice-based exercises in their first year of law school. They will have a rudimentary understanding of role assumption on which simulation courses can build and expand. This is analogous to doctrinal courses in the upper-class curriculum, which build upon the analytical foundation established in courses during the first year.
throughout their careers by intentionally learning from their own experiences.82

While simulation exercises and courses have proliferated in law school, the basic pedagogical elements remain constant. First, the simulation exercises should be constructed and chosen to serve articulated objectives. Second, the skills should be put in context and anchored in relevant theory.83 Third, performance expectations should be clarified as objectively as possible so that feedback can be provided and students can assess their progress. Fourth, students are introduced to the clinical methodology of reflective practice: Plan, Act, Reflect and Integrate.84 Students plan what they will do with regard to a specific performance (e.g., opening statement, drafting an agreement, conducting an interview). As the methodology is introduced, planning should identify the goals to be achieved, the actions to accomplish the goal, and why these actions are expected to be successful. As students or novices develop mastery, the planning stage may become more intuitive. Action is the equivalent of performing the task. Reflection involves both assessments of the planning and the execution, as well as observations or insights that may not have been considered earlier. Integration is the process by which reflections are incorporated into future planning.85

Finally, it is extremely important that neither students nor faculty expect that a single skills-based simulation course will produce mastery in any lawyering skill.86 More realistically, students should expect that their simulation courses would extend their earlier introductory experiences with practice so that they have a more nuanced view of practice as requiring the simultaneous application of knowledge, skills, and

82 The importance of learning from experience has been stressed repeatedly. See, e.g., STUCKEY ET AL., supra note 2; CARNEGIE REPORT, supra note 2; Maranville, supra note 58; see also Steven Hartwell, Six Easy Pieces: Teaching Experientially, 41 SAN DIEGO L. REV. 1011 (2004).

83 See supra text accompanying notes 60–62.

84 See STUCKEY ET AL., supra note 2, at 93. For more detail about the self-reflective learning process, see MICHAEL HUNTER SCHWARTZ, EXPERT LEARNING FOR LAW STUDENTS 30–33 (2d ed. 2008).

85 See Timothy Casey, Reflective Practice in Legal Education: The Stages of Reflection, 20 CLINICAL L. REV. 317, 350 (2014) (noting that while the reflective “process involves retrospective examination of decisions (a de-coupling of thought and action), . . . the goal is to develop the capacity of the new lawyer to think in action”).

86 STUCKEY ET AL., supra note 2, at 183 (cautioning care in articulating the educational objectives of simulation courses so as to not misrepresent and promise more than can be delivered).
professional judgment. As students exercise their skills in different and more challenging situations, their competence will grow. As students continue through the middle of the practice continuum, the development of their burgeoning lawyering skills, conducted in role, also fosters their professional identity to see themselves as lawyers who strive for mastery over the course of a career.

- Transitioning from the Classroom into Practice

The final stage of the continuum concentrates on continuing the integration of the student’s knowledge, skills, and professional identity by transitioning the learning process into real practice environments. All of the experiential education at this stage of the practice continuum requires the student to be immersed in actual practice where the student will be engaged in tasks that lawyers perform as part of their professional duties. As students move through this final stage, they assume the lawyer’s role and, progressively, the lawyer’s responsibility for the client’s representation and the consequences that flow from that representation.

Responsibility for clients and accountability for one’s own actions are at the center of clinical experiences. . . . [I]t is through this experience of lived responsibility that the student comes to grasp that legal work is meaningful in the ethical, as well as cognitive, sense. . . . Taking the role of the lawyer in real cases makes visible the ways in which the lawyer’s decisions and actions contribute to the larger functioning of the legal order.88

Field placement courses or externships and clinics both provide the opportunity for “lived responsibility.” At this final end of the continuum, there should be a clear expectation that externship students will be doing work that is authentic and a part of the real work of the office in which the student is placed. Although the student may or may not have full responsibility for an entire case matter or client representation, the work assignments should have sufficient significance so that the student feels accountable for the end result.89 A clinic, re-

87 CARNEGIE REPORT, supra note 2, at 116–17 (“In learning lawyering skills, rules and procedures are essential scaffolds that enable beginners to gain a basic grasp on how to function in a variety of practice situations.”).
88 CARNEGIE REPORT, supra note 2, at 121.
89 Judicial externships, to which students may have access during their second year, generally do provide this sense of responsibility and accountability. Students readily see the impact of their research and draft memoranda on the final judicial outcome and their contribution to the development of the law.
Regardless of whether it is located on-campus or off, should focus on the availability of work that fosters a sense of professional responsibility for the outcomes and a deep understanding of the impact of law on individuals and society. Ideally, experiential education at this end of the continuum is intended to have a transformative effect. As students integrate knowledge, skills, and professional values and identity, they function more as lawyers than students.

- **Externships/Field Placement Courses**

Externships or field placement courses have diversified enormously over the past decade, and due to the economic cyclone enveloping legal education,90 are often on the front lines of practice issues.91 The traditional externship or field placement model awards credit for law-related work in legal offices outside of the law school. Supervision is generally shared by the law school and the sponsoring placement office, with law school faculty primarily responsible for establishing educational objectives, maintaining the academic integrity of the course, and providing oversight for the student, while placement personnel supervise the student’s actual work product, sometimes in various types of collaboration with law school faculty. Students are placed individually based on their interests and career goals. In some schools, students find their own placements, which are then vetted by the law school to conform to institutional criteria and the ABA Standards.92 In other schools, students are provided with a menu of approved placements, and choose through a variety of registration mechanisms, which may include counseling as a mandatory or optional part of the process.93 Many schools augment the fieldwork with a classroom component designed to encourage collaborative learning, foster reflection and learning from experience, and contextualize the observations and

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90 This is has been the subject of discussion and presentations, including mine, at conferences for the past two years. See Meredith Hobbs, Experiential Learning Gets Official at GSU Law School, DAILY REP. (Dec. 9, 2013), http://www.dailyreportonline.com/id=120231267405/Experiential+Learning+Gets+Official+at+GSU+Law+School%3Fmcode=0&curindex=0&curpage=ALL#.

91 See generally STUCKEY ET AL., supra note 2, 165–205. The development of field placement courses, including the expanding range, practices, and external and internal issues, mandated fuller and deeper treatment.


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insights from individual practice venues to identify broader issues and concerns that confront the legal profession.94

The chameleon-like ability of field placement courses to serve different academic objectives and take different forms is both a curse and a blessing. Flexibility allows programs to readily adapt to changing needs of both students and the practicing bar. On the other hand, the variation in form and function raises questions for administrators and doctrinal faculty who cannot easily discern either the pedagogy or academic rigor that distinguish field placements from volunteer or paid work.

Today’s range of field placement courses can include mentoring programs, traditional externships, cooperative education, and field placement clinics. Students can be placed in litigation or transactional settings and in public interest or private practice settings. They can be placed with judges, practicing lawyers, or legislators and other policymakers. Students can opt for dispute resolution venues that range from the traditional court system to mediation programs that include court-annexed, community, and private alternatives. Within this huge map of opportunity, students will have many prospects to experience practice, ranging from pure observation on one end to serving as the legal representative on the other. Within the larger legal education continuum of practice, field placement courses can be configured as a continuum within a continuum, with early field placement experiences limited to observation, reflection, and short discrete assignments.95 Students might progress to field placements where they perform work that a lawyer would do without assuming the entirety of responsibility for the representation. Finally, in field placement clinics, students, under appropriate supervision, function as lawyers, representing clients to resolve legal issues through litigation, negotiation, mediation, or drafting documents.96 Within an individual law school, different field placement models may exist. Additionally, credit hours can vary depending on the objectives of each field placement course, the tasks students are expected to perform, and the needs of the affected constituents: students, institution, placement offices, etc.

95 See supra Part II.
96 Brooks, supra note 45, at 429 (describing the “first-chair role” of students engaged in “supervised law practice”).
The signature characteristic of all field placement courses is its most obvious: students are embedded in the real practice of law. Being in the workplace with opportunities to observe real lawyers at work, to contribute to the work, and to actually do the work that lawyers are doing affords experiential opportunities to understand the melding of knowledge and skill, the importance of professional identity, and the connection between experiential learning and career professional development. In field placement courses, the real life experience of practice provides the “text” for student learning as translated through multiple layers of supervision, the students’ assignments, and the teaching methodologies, including reflection.

Multiple levels of supervision is another common characteristic of field placement courses. Typically, law school teachers assume responsibility for teaching the classroom component, the extraction of the “text” through reflective techniques so that issues of professionalism, ethics, and professional development can be examined in terms of individual student growth, the practice of law in specific offices or practice areas, and the legal profession as a whole. Reflection can include in-class techniques that supplement individual written reflection by individual students. Supervision of the student’s actual work is usually provided by the on-site supervising attorney, who is generally a full-time lawyer employed by the placement. Although client confidentiality and office integrity are preserved, supervision becomes an important part of the coursework. Students learn to recognize good supervision and feedback from substandard, how to obtain it, and eventually, how to provide it. As learning progresses, students also integrate their professional ethical duties and rights, as delineated in the Rules of Professional Conduct governing supervisory and subordinate lawyers.

It should be noted that full role assumption is not always essential in every field placement experience, depending on the experience’s

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97 Peter Jaszi et al., Experience As Text: The History of Externship Pedagogy at the Washington College of Law, American University, 5 CLINICAL L. REV. 403, 404 (1999).
98 With the advent of appropriate, accessible technology, the classroom component can take different forms: the class gathered together physically in one location, online at the same time, or ongoing online discussions.
99 Some schools recognize the supervisory role as teaching by acknowledging these individuals as adjunct professors or lecturers.
educational objectives and where it falls on the continuum of practice. Field placement experiences at the beginning of the continuum may be designed to provide context for the legal doctrine or to provide exposure to the legal system in operation. Later, in the middle of the continuum, an externship or field placement course focusing on developing professional identity and exposing students to a particular area of practice might concentrate on observation, reflection, and the performance of supportive tasks. In labs and lower credit courses, time constraints may mandate a broad approach where observations of real life are converted into in-role hypotheticals that are explored in class. However, where time and opportunity allow students to engage in supervised tasks requiring role assumption, the students’ understanding of both the complexity of practice and their own competence to practice will be enhanced.101

Similarly, acquisition of a wide array of lawyering skills may not always play a central role in externship course objectives. The legal offices in which students are placed may not have the resources to provide repeated opportunities to interview or counsel clients, speak in court, negotiate an issue, or mediate as a neutral. Nonetheless, most externship courses will provide opportunities for observing good and bad practice, which can be processed in class through reflection. Thus, students should be assigned to work with lawyers and judges who will ensure that students are given assignments that are substantial and authentic in the sense that they relate to the real work of the office.102 Research and writing assignments are particularly valuable in that they put the skills introduced during the student’s first year into a practical context. Supervisors and faculty can further the practical application by adding a layer of assessment based on the work’s contribution to the work of the office or the resolution of an issue.

- **In-House, Direct Service, or Live-Client Clinics**

For decades, the traditional in-house clinic was considered the gold standard of clinical education. Replicating to some extent the model of a small law firm, clinicians and students provide direct repre-

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101 See Brooks, supra note 45, at 426.
102 See Stuckey et al., supra note 2, at 149.
103 In creating the taxonomy of experiential legal education based on affinity to practice, it has been difficult to position the in-house clinic and the hybrid or field placement clinic. The in-house clinic came first and created the model on which the field placement clinic is closely based. However, this article’s taxonomy is based on affinity
sentation to real clients with legal issues. Students, properly certified according to state rules, serve as the primary legal representative, while the clinician acts as senior "partner" and supervisor of the clinic’s work. Students take the lead in communications with the client and assume professional responsibility for the client matter. Today’s range of clinics is far-reaching, including those focused on specific lawyering activity, such as litigation, transactional work, dispute resolution, community organizing, policy change, legislative advocacy, or appellate advocacy. Other clinics focus on specific legal problems or particular populations, such as elder law, juvenile justice, victims of domestic violence, lesbian, gay, bisexual, or transgender individuals, immigrants, veterans, nonprofit organizations, small businesses, and others.

The core characteristic of a clinic is that students participate as lawyers representing real clients. With the scaffolding created by prior practice-focused experiential education, the clinic becomes the opportunity for students to pull together all of the knowledge, skills, and values to take responsibility for representing a client. The experience of accepting and providing representation of a client is in itself an integrative experience. Clinics can be a key setting for integrating all the elements of legal education, as students draw on and develop their doctrinal reasoning, lawyering skills, and ethical engagement.

This student responsibility for the client representation also creates an immersive practice experience. The student goes beyond merely observing practice, applying client skills, and expanding his or her understanding of legal theory and analysis. Although the student may lack mastery and is supported by an educational framework, the student is practicing law as lawyers practice in offices across the country.

to real practice. Field placement clinics offer students the opportunity to represent clients while immersed in real practice settings.

104 All states have some form of rule governing student practice, whether located in the state’s statutes, bar rules, or local court rules. See, e.g., Student Practice Rules, Geo. U. L. Ctr., http://www.law.georgetown.edu/library/research/guides/StudentPractice.cfm (last visited Jan. 24, 2014).


106 Id.

107 Clients can be individuals, organizations, agencies, governmental entities or the “people” of a particular jurisdiction. The work can involve litigation or other methods of dispute resolution, transactional work, or policy development at a variety of levels.

108 CARNEGIE REPORT, supra note 2, at 121.
One significant indication of support for the student lawyer is the simple fact that the clinic is an educational unit of the law school. Clinicians, as faculty, are wholly employed by the law school and committed to the educational mission of teaching students to be competent and ethical lawyers. While fiduciary duties to clients are always primary, other factors may be controlled so as to enhance the educational mission in ways that would not be duplicated outside of the law school. Student needs and level of proficiency often mediate the selection of specific cases for student work, as well as the number of cases active on the clinic docket at any given time. Most clinics are relatively low-volume service providers as compared to public interest legal providers. This may be a necessary trade-off as clinical faculty are expected to spend much of their time in one-on-one supervision where the goal is not just the correction of error but the enhancement of professional performance. Clinical supervision, including exploration of the student’s personal and professional development, is designed to support the student’s role as the legal representative, providing a resource when needed to identify points of decision in the case strategy and alternatives. Barring harm to the client, supervisors will strive to maintain student autonomy within the representation.

Additional support measures are the classroom component and the use of case rounds. The classroom can be used in many ways depending on the clinic’s educational objectives and the teacher’s individual teaching philosophy. It can be a forum to provide legal doctrine and procedure relevant to the practice area, explore ethical issues, or moot the performance of skills before meeting with a client, going into court, or beginning a negotiation. It is also the appropriate

109 While most clinics are an educational unit within the law school with cases “owned” by the school and liability insurance provided through the school, some clinics are independently incorporated. Nonetheless, even those organizations see the educational mission of the clinic as one of their primary objectives.


111 See STUCKEY ET AL., supra note 2, at 143. The time and attention clinical faculty have to engage students in a deep understanding of their clients and cases is one of the benefits of learning practice in a clinic. However, clinicians’ hard-fought battle to achieve faculty status in most schools has been accompanied by increased duties with regard to service and scholarship. Future study will be necessary to demonstrate whether clinical teaching has changed as a consequence.

forum for students to collaborate and use “case rounds” to test their lawyering theories and benefit from their colleagues’ input.\textsuperscript{113}

The use of reflective practice techniques, first introduced at the beginning of both the continuum and law school, continues to inculcate a methodology of thoughtful observation and self-assessment to enhance professional development. Students may reflect in writing, in class, and in supervisory sessions. At this far end of the continuum, the practice of reflection to assess learning, monitor performance, and make appropriate changes should be embedded as a part of the student’s professional practice.

The student’s complete assumption of the lawyer’s role is implicit in the discussion above. All of the experiential exercises earlier in the continuum culminate in the clinic experience, where students actually serve as the lawyer. In terms of the practice continuum, this is the point where the transition from school to practice is complete.

Watching lawyers and judges in practice helps students understand these things, but students must practice law themselves before they can evaluate how far they have to go before they will be effective, responsible lawyers. Only in real-life contexts can students learn how they measure up to the requirements and expectations of the legal profession.\textsuperscript{114}

Clearly, the student’s education is not yet complete, but the emphasis shifts from one of preparation to practice to improvement of practice. There is a subtle shift from the student role to that of the practitioner seeking professional development and continuing education.

\textsuperscript{113} Borrowed from medical education, case rounds is a teaching strategy that involves each student in the clinic reporting on the status of their cases, the development of legal issues, and the analysis of fact in order that their colleagues can ask questions and offer suggestions or critique. It fosters collaboration and shared learning. “For centuries, a cornerstone of [medical] clinical education has been for . . . students and junior physicians to make rounds on hospitalized patients with more experienced and professionally senior individuals.” Helen H. Kang, \textit{Use of Role Play and Interview Modes in Law Clinic Case Rounds to Teach Essential Legal Skills and to Maximize Meaningful Participation}, 19 Clinical L. Rev. 207, 210–11 (2012). At their most basic level, law clinic rounds, like their medical counterparts, are discussions between students and professors about real cases and their progressions. In law clinic rounds, some—even perhaps most—professors would say that the students are at the center, describing rounds as “a [teacher-]facilitated peer conversation among clinic students that is focused on their fieldwork.” \textit{Id.}

\textsuperscript{114} \textit{See} STUCKEY ET AL., supra note 2, at 142–43.
• The Hybrid or Field Placement Clinic115

Field placement clinics hold the position at the end point of our practice continuum, representing the student’s deepest penetration of practice through experiential education. Although field placement clinics are not a new phenomenon, their recent growth and the attention focused upon them are noteworthy.116 The field placement clinic is structured on the model of the in-house clinic and incorporates many of its signature features. Students engage in direct representation of clients, with analogous role assumption of responsibility and accountability. As discussed with regard to the in-house clinic, students charged in this way use the opportunity to understand that knowledge, skills, and values do not exist in isolation. In practice, they are used simultaneously.

The critical difference is that the hybrid clinic is a part of the practice venue, located in the offices of community legal services providers. While the in-house clinic becomes a small law firm within the law school, hybrid clinics are honing novice student practitioners within functioning legal offices. Common examples of clinics embedded in the community include the following: prosecution, criminal defense, legal services, elder law, nonprofit organizations, city and local government, dispute resolution, and legislation and policy.117

This is more than geography; indeed, location does deepen the immersion in practice. Students fully participate in the legal work of their offices alongside other lawyers doing the same type of professional work subject to similar expectations. As they pursue their work, they interact as lawyers with colleagues, clients, opposing counsel, judges, and court personnel with increasing independence. Working in this way, transitioning from school to practice, students also forge their professional identities in new ways. By actively engaging as professionals with professionals in real practice settings, their identification with law becomes an integral part of their personalities. Although the formation of professional identity develops throughout legal edu-

115 A hybrid or field placement clinic may also be known as an external clinic, externship clinic, or community partnership clinic. Glossary, supra note 13.
117 The array of possible hybrid clinics is dependent upon the availability of law offices situated to support such clinics.
cation, the hybrid clinic, with its unfettered access to all kinds of lawyering, presents unique supervisory challenges in consolidating the fundamental belief “that law is a vital and significant social institution worth devoting one’s professional life to.”

The supervisory model in hybrid clinics differs significantly from that in in-house clinics. In contrast to the in-house clinic where supervision of both case work and student professional development is consolidated, field placement clinics bifurcate the process, with supervision of case work assumed by the placement, while the law school retains a supervisory role with regard to the student’s professional development. The law school is also charged with oversight to ensure adherence to institutional standards and objectives. Supervision from law school full-time faculty is complicated by the reality that they are not privy to confidential or privileged client information.

Supervision in hybrid clinics becomes a collaborative, multi-layered process between the law school and the law office. Supervisors provide assignments, guidance, and feedback to the students about their representation. Often these same supervisors also serve as adjunct faculty, appointed by the school to teach the classroom component and provide quality supervision. Note that at this point on the practice continuum, students are encouraged to take an active role in the supervisory process, seeking out work, feedback, and perspective on the practice of law and the legal profession. Perhaps for the first time, students experience a working environment where they are treated as colleagues by co-workers who provide mentoring and various levels of expertise.

Reflective writing, used by the law school full-time faculty, is a useful tool to guide students as they navigate unfamiliar territory. If

118 Carnegie Report, supra note 2, at 144. Note that the Carnegie Report also suggests a continuum of active learning and integration of the apprenticeships of practice and professional identity. Id. at 158–61.

119 ABA Standard 305 governs field placement clinics in exactly the same way externships are governed. See ABA STAND. & R. P. APPROV. L. SCH. 2013–2014 305, Interpretation 305-1.

120 Some schools and placements arrange for faculty to be appointed as “special” members of the office, thereby enabling them to have access to confidential information as a member of the “firm.”

121 The concept of the practitioner-teacher has deep roots in professional education. See Katz, supra note 59; Harriet N. Katz & Alexander Scherr, Toward a New World of Externships: Introduction to Papers from Externships 4 and 5, 17 CLINICAL L. REV. 1, 7 (2010) (“Students’ concerns about their emerging careers have likely always affected their in-
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they have traveled through the practice continuum, students have developed skill in observation, insight, and self-assessment. At this point in the continuum, reflective writing coupled with student-faculty dialogue can focus attention on professional development and navigating the professional landscape. Reflective writing also provides a window for faculty to engage in a diagnostic process to assess the clinic’s success in meeting pedagogical objectives and plan for improvement.

As the transition from law school to practice progresses, the role of the law school may become somewhat less visible but nonetheless significant. The decision to award credit requires the integrity to ensure educational value. Responsibility for setting course objectives, quality, and content of teaching in the classroom and in the field lies squarely with the law school faculty. Collaborating with the field placement translates into mentoring colleagues in the field to provide quality supervision and feedback. At the very least, this means articulating the educational standards, providing the tools to successfully achieve the goals, and developing relationships based on a shared commitment to the next generation of lawyers.123

IV. DEVELOPING BEST PRACTICES FOR THE CONTINUUM OF PRACTICE

Professor Stuckey began Best Practices for Legal Education by asserting that a statement of best practices would allow law schools to compare their current practices to help evaluate the quality of the school’s program of instruction and generate ideas for improving it.124 This short list of essential elements is offered with the same hope that educators will consider them in evaluating how experiential education is used at their law schools and how it can be improved.

...
Sequencing and progression are essential concepts for successful construction of the continuum. Each stage of the continuum should be infused with experiential education that is carefully designed to foster the goal of increasing the law school’s mission of graduating competent practitioners. In order to succeed in this goal, law schools need to address the holistic nature of practice, the importance of the lawyer’s role as a problem-solver, professional identity, authenticity, and role assumption.

Each experience should emphasize the holistic relationship between knowledge, skills, and professional judgment, mirroring the reality that in practice they are inseparable. However, the emphasis is expected to vary depending upon the student’s progression on the continuum. In the first year, for example, the emphasis is on the acquisition of theory and knowledge of core areas of the law. Experiential education should be designed to provide context so that students understand why these areas of the law are important and how they affect the lives of future clients. Later in the continuum, the emphasis will shift from knowledge to skills or professional judgment without losing the essential understanding that all three elements are always present, even if one is temporarily in the background. As students move into the actual practice arenas of field placements and clinics, they are primed to understand and engage the synergistic relationships among knowledge, skills, and professional judgment to solve legal problems. They are also ready to appreciate the ways in which external factors will affect the relationship.

Law teachers need to be explicit in helping students deconstruct these experiences to emphasize that knowledge, skills, and professional judgment are the tools a lawyer uses to solve a client’s problems. Although students have varying degrees of problem-solving experience and sophistication, most students will need help in deconstructing the problem-solving process so that they can work with clients effectively. Competence in problem solving is built through sequencing and progression, starting with simple hypotheticals in the

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125 See Carnegie Report, supra note 2, at 191.
126 Id. at 191–92.
127 See Stuckey et al., supra note 2, at 141–57.
128 Mark Neal Aaronson, Thinking Like a Fox: Four Overlapping Domains of Good Lawyering, 9 Clinical L. Rev. 1, 9 (2002).
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first year where the doctrine may be complex but the application relatively straightforward. As the student progresses through the continuum, the problems the student faces will be increasingly complex, culminating in real practice situations where real clients have multiple legal issues with many choices, each carrying legal and non-legal consequences. It is the educators’ responsibility to ensure that experiential education is designed to enhance problem-solving competence by explicitly highlighting the problem-solving strategies through feedback and guided reflection.

In order to connect with practice, experiential education has to be authentic. In other words, the problems to be solved must be rooted in real practice. Hypothetical problems used in doctrinal and skills classes should lay a foundation and anticipate the more complex problems students will encounter in the latter part of the continuum and when they enter practice as licensed attorneys. Role assumption is an integral part of authenticity. The students’ ability to solve legal problems and develop professional judgment will grow only if exercised through experiences where they are expected to act as lawyers, developing their expertise as they progress through law school.\(^{129}\) In the early days of law school, the problems students confront in doctrinal and legal writing and research courses, will ask them to answer two questions which will define their professional lives: First, how does this legal doctrine or skill affect my client’s situation? Second, how do I use it to better understand my client’s issue and help resolve the issue? As students move towards graduation, they should be afforded opportunities to engage in real practice, first as observers in the courts and in venues where legal services are delivered to real clients and then in roles of increasing responsibility where they are given assignments with increasingly greater challenge. Finally, they should transition to the role of novice lawyers in field placement and in-house clinics where they have direct responsibility for the provision of legal services.

\(^{129}\) Carnegie Report, supra note 2, at 135. Although the attainment of expertise as a lawyer may not be a realistic educational objective, growth in problem solving, learning how to learn from experience, and basic proficiency in knowledge of the law, practice skills, and professionalism are reasonable expectations. “Knowing the end is an essential step toward figuring out the best means for getting to it. If the final aim of legal education is to foster the development of legal expertise and sound professional judgment, then educators’ awareness of the basic contours of the path from novice to expert, along with appropriate steps along the way, are very important.” Id. at 116. The burden to ensure this professional development is clearly situated within the law school.
Supervision as a teaching method has long been axiomatic in clinical pedagogy. \textsuperscript{130} While it is certainly true that anyone can learn something from any experience, a teacher’s role is to make the learning deeper, more meaningful, and retained longer by intentionally using experiential education to achieve identified objectives. The teacher’s involvement goes beyond adding value; it is the essential element for ensuring that experiential education will contribute to creating competent, practice-ready lawyers.

The value of faculty supervision is maximized when experiential education is used intentionally. Regardless of the point on the continuum of practice, every teacher will have to ask certain questions when he or she employs experiential education. When a teacher designs or chooses a particular simulated exercise or other structured opportunity to learn from experience, he or she should be clear about what he or she wants to achieve. How does this exercise illustrate the importance of the doctrine in real life? What practice skills will be introduced or developed? What will students learn about the lawyer’s role, professional judgment, and/or values? How will this learning be processed? Will the students’ performance be observed? What feedback or critique will be given to individual students or to a class? How will students be encouraged to engage in learning from their own experience through reflection? How will the success of the experience with regard to individual student learning and the efficacy of the exercise in terms of specified goals be evaluated?

Faculty are also necessary to make the implicit explicit so that it can be explored, examined, and incorporated into the burgeoning lawyer’s repertoire of understanding about the law, the legal system, the world of practice, and his or her growing competence to function in the lawyer’s role. Assuming that the experiential assignment has incorporated authentic practice situations and role assumption, \textsuperscript{131} faculty will need to bring to the surface underlying issues such as prob-


\textsuperscript{131} The methodology will vary depending on whether the assignment occurs as a simulation or observation and whether it occurs in a real practice, doctrinal, or skills course.
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The process by which students are engaged and faculty members teach through supervision can take many forms, from class discussions to one-on-one feedback sessions to written, guided reflection papers. The choices will depend on many factors, including the interaction of objectives, the available time, the personality, and the students’ stage of the continuum, to name a few. It should also be noted that the process of teaching through supervising experiential education is a collaborative process in which students are far more likely to see their teachers as expert colleagues who are facilitating the students’ learning. Students and faculty are both actively engaged in the shared goal of furthering the students’ professional development.

- The Centrality of Experiential Education as a Part of the Curriculum

Institutional and faculty commitment\textsuperscript{132} are both essential to implement the continuum so that students receive the professional education that prepares them for their role as licensed attorneys. The success of the continuum rests on the interaction of several factors. First, experiential education throughout the continuum is contextually based on practice and role assumption.\textsuperscript{133} Second, the continuum reflects the combined principles of repetition and progression. Students will have repeated opportunities through their three years of law school to solve problems, communicate with clients, and perform other activities as lawyers. As they move through their three years of law school, these opportunities will become more challenging by integrating more skills, more legal issues, and more non-legal variables. Third, as students transition out of law school and into practice, they should have several deep immersion experiences where they are placed in a practice environment and where they can engage in the

\textsuperscript{132} Institutional commitment is often decanally directed and inspired. This is important, as it will involve the institutional mission regarding educational objectives. It also encourages integration of the non-academic aspects of the law school that augment the curriculum. However, the infusion of experiential education into the curriculum will depend upon faculty commitment, as faculty will expect to set standards regarding experiential education and individual teachers will need to revise individual courses to include experiential elements. For this initiative to be successful, the faculty culture may need tweaking to encourage collaboration, innovation, and change.

\textsuperscript{133} \textit{Stuckey et al.}, \textit{supra} note 2, at 141–57.
work that lawyers do as lawyers.\textsuperscript{134} Fourth, law schools must commit to experiential education as an integral part of the curriculum, affording every student the educational benefit of professional development to achieve the competence expected of new lawyers. It is entirely feasible that a law school will require for graduation a specified configuration of completed experiential exercises and courses that demonstrate a basic level of competency with problem-solving strategies, lawyering skills, attorney-client relations, drafting, mediation, negotiation, etc. While each school’s configuration may vary, most will be aimed at creating competent professionals who are practice-ready.\textsuperscript{135}

There is considerable demand within the profession for law schools to more effectively employ experiential education so that students are ready to accept the responsibilities of practicing professionals. ABA Standard 303\textsuperscript{136} now requires that students complete at least six credits of experiential education, defined as a clinic, a field placement, or a simulation course, and ABA Standard 304 provides new definitions of clinical and simulation courses.\textsuperscript{137} With regard to experiential education, schools are specifically mandated to integrate doctrine, theory, skills, and legal ethics, and engage students in the performance of professional skills, develop the concepts underlying the skills, provide multiple opportunities for performance, and self-reflection.\textsuperscript{138}

There also has been action at the state bar level to demand increases in the exposure to practice for bar applicants. The New York Bar is now requiring fifty hours of pro bono service prior to admission.\textsuperscript{139} The Supreme Court of California is working on implementing

\textsuperscript{134} Ensuring that each student has immersion experiences will create logistical issues that may prove challenging for law schools to resolve. These issues include the availability of practice areas that correspond to student interest, the difficulty of placing low performing students, availability of placements, relationship between experiential education and hiring, cultural assumptions regarding student autonomy regarding course selection, etc.

\textsuperscript{135} Several schools are already moving forward. See Schools Requiring Experiential Courses, ALB. L. SCH., http://www.albanylaw.edu/celt/reform/Pages/Schools-Requiring-Experiential-Courses.aspx (last visited Jan. 24, 2014) (listing a number of American law schools with experiential course requirements).


\textsuperscript{137} Id. 304.

\textsuperscript{138} Id. 303.

\textsuperscript{139} See ABA STANDING COMM. ON PRO BONO & PUB. SERV., NEW YORK’S 50-HOUR PREADMISSION PRO BONO RULE: WEIGHING THE POTENTIAL PROS AND CONS (2013), available at http://www.americanbar.org/content/dam/aba/administrative/probono_public
a new requirement of fifteen credits of professional skills training prior to admission.\textsuperscript{140} Regardless of the specifics, the underlying message is clear and compelling: law schools can do a better job of educating graduates by using experiential education deliberately to increase their readiness to practice competently.\textsuperscript{141} 

V. Implementation: Challenges & Issues

The continuum of practice described above will have to be adapted for each school’s needs. Over time, the continuum will also have to be periodically reconfigured to accommodate emerging issues in legal education and practice.

- Implementation of the Continuum of Practice: The Challenge of Curricular Reform

The hope and dream of curricular reform is a future generation of lawyers who are competent, ethical practitioners, proud to be a member of a profession that is respected for its service to its clients, society, and the pursuit of justice. In contrast to the dream, the reality of curricular reform is harsh. It is demanding, often unrewarding, tedious, and time consuming. A conceptual vision must be developed to serve as the frame. Curricular reform is hard work, and most of that work will have to be done by faculty. A realistic timeline is essential to educate institutions and faculty about the benefits of infusing curricula with experiential education designed to create a continuum of practice. The first challenge is to raise faculty interest in experiential edu-


\textsuperscript{141} Other professions require much more experiential education than is required in legal education. In a comment on draft Standard 303(a)(3) and the proposal to require 15 credits in experiential courses, the Clinical Legal Education Association compared the requirements of other professions. Medicine requires one-half of each student’s medical education be spent in clinical rotations, and dental students spend over fifty-seven percent of their time in actual patient care over a four-year course of study. Comment on Draft Standard 303(a)(3) & Proposal for Amendment to Existing Standard 302(a)(4) to Require 15 Credits in Experiential Courses, CLINICAL LEGAL EDUC. ASSOC. 3 (July 1, 2013), http://www.cleaweb.org/Resources/Documents/2013-01-07%20CLEA%2015%20credits.pdf [hereinafter Comment].
cation by emphasizing its accessibility and usefulness for teaching their classes. An initial step might be to explore the extent to which faculty are already using experiential education in their classes. Further, all of this takes place within an institution that is remarkably resistant to change and innovation.

- Integrating Experiential Learning Outside of the Curriculum: The Value of Scaffolding

Even in the current economy, some students are still getting paid part-time jobs.\textsuperscript{142} Other students are doing legal and non-legal pro bono work or participating in extra- or co-curricular competitions for which they invest considerable time and energy. As was discussed earlier in this article, experiential learning happens all the time and students will learn from all of these experiences. But, will they acquire learning that enhances their future competence as lawyers? Law school educators can provide scaffolding for each of these activities that uses the experience to further the continuum.

For example, pro bono programs can be developed by law schools to put students in communities undermined by natural catastrophe. Such programs were created in the aftermath of Hurricane Katrina and the Tuscaloosa tornado.\textsuperscript{143} Students helped claimants apply for various kinds of benefits and relief.\textsuperscript{144} They also helped restore records and contributed to non-legal efforts to rebuild the community.\textsuperscript{145} Supervised by staff and faculty, students had a chance to learn the law about benefits and insurance while they simultaneously learned to in-


\textsuperscript{144} See Behre, supra note 143, at 27.

\textsuperscript{145} See Quigley, supra note 143, at 7.
terview and investigate facts.\textsuperscript{146} Simultaneously, through supervision and example, they learned values beginning with public service and continuing through various fiduciary duties owed a client.\textsuperscript{147} But they also had opportunities to learn the value of a lawyer in times of crisis and need.\textsuperscript{148} Some of those students would have learned all of this on their own, but most benefited from having a teacher guide them through the process of delivering service and reflecting on the value of it through the prism of professionalism.

Similarly, pro bono programs, which serve as matchmakers between volunteer students and organizations in need, might consider similar scaffolding to ensure that students understand their limitations and duties, can provide real assistance, and can learn from experience through reflection and supervision. Engaging supervisors at the placement organizations can enrich the student experience without diminishing the service provided to recipients. As a happy byproduct, students arguably will be motivated to volunteer again.

Paid employment establishes an employer-employee relationship between students and the firms or lawyers who hire them. ABA rules currently prohibit students from simultaneously earning credit while being paid for the same work.\textsuperscript{149} Nonetheless, at the beginning of every semester and summer session, law schools could offer a volunteer or one-credit boot camp to ready students for the work experience, emphasizing professionalism, relating well in an office environment, how to obtain good supervision and assignments, and how to inculcate the ability to learn from your experience through reflection and self-assessment.\textsuperscript{150}

Moot court, trial, and other competition teams already integrate the simultaneous application of doctrinal theory, fact, and skill in advocacy, negotiation, or client interaction. Most teams develop collaborative skills. Many, if not most, coaches instill high standards of professionalism and civility in their students. By consciously employing clinical methods of reflection and assessment, coaches increase the

\textsuperscript{146} See Finger et al., supra note 143, at 215.
\textsuperscript{147} Id. at 216–25.
\textsuperscript{148} Id. at 222.
\textsuperscript{149} ABA STAND. & R. P. APPROV. L. SCH. 2013–2014 305, Interpretation 305-3.
\textsuperscript{150} Some schools offer Law Practice courses that focus on technology, marketing, accounting, and other issues pertinent to the ethical management of a law office.
likelihood that students will take the lessons learned and extend them to other venues in their careers.151

- Changing Student Demographics

  The continuum of practice is based on the conviction that every student who graduates and is eligible for licensure should have an entry-level readiness to practice.152 The continuum provides this by putting students in a series of increasingly challenging experiential situations where they are required to use legal knowledge and skills to solve problems as lawyers. Yet a few students have no intention of practicing law. These students may not want the exposure to practice that the continuum infuses into the curriculum. Are law schools prepared to insist that graduates who will be licensed to practice have a basic competency regardless of their career intentions?153

  The efficacy of the continuum rests on the sequencing of experiential education, culminating in the deep immersion in practice of a field placement or in-house clinic. The availability of externship and clinic slots is limited at many schools, resulting in fierce competition among students.154 Few, if any, schools can guarantee that every student will be placed in his or her first choice. The placement issue is complicated by the needs of students with low grade point averages or other academic issues, for whom work experience, in the form of an externship or clinic, is the crucial factor in determining initial employability. Will law schools accept the responsibility to ensure experiential education for every student or figure out equitable ways to prioritize opportunities?

  The regulatory bodies that govern legal education and license students are already proposing increased credits dedicated to experiential education.155

151 While it may be urban myth, there is the iconic story of the two trial team students who were reflecting on the value of competition experience. One said, “I learned I like winning.” The other said, “I learned the right way to argue in front of a court.”

152 While the specifics of “practice-readiness” are beyond the scope of this article, the Carnegie Report and Best Practices both spoke of the goal of graduating individuals who were competent to practice and solve legal problems.

153 The gatekeeper function for the profession may appear contrary to a consumer-friendly and student-centered approach to education. The conflict, however, is illusionary. Only by adequately preparing students to function as lawyers can law schools increase the likelihood that they can get hired, provide clients with reputable legal representation, and have satisfying careers.

education.\textsuperscript{155} Theoretically, this should increase the opportunities for students to experience supervised practice situations in the role of lawyers. However, these represent quantitative change rather than a qualitative refocusing of the curriculum. Additional credits do not ensure the sequencing of experiential education so that a student’s competence is furthered as he or she progresses through law school. On the other hand, several schools have or are engaged in significant curricular reform designed to incorporate experiential education to increase practice-readiness.\textsuperscript{156}

VI. CONCLUSION

The economic downturn motivated legal practitioners and educators to think hard about what is important for lawyers to know, do, and value as they continue to represent individuals and entities with legal problems. When the economic dust settles, however, one truth will remain: law schools are expected to educate students to become practitioners who can competently solve legal issues. Law schools, like medical schools, may be part of the university, and law students, like medical students, are expected to graduate and provide services to the public.

The practice continuum proposed in this article focuses legal education on the end game of practice. It provides a platform for introducing and continually focusing students to the fundamental touch points of practice: problem solving; professional judgment by repeatedly assuming the role of the lawyer; the ability to learn from experience; and the integration of theory, skills, and professional judgment in order to perform the lawyer’s duties.

As proposed here, the practice continuum requires intentional, sequenced use of experiential education with three goals in mind. First, experiential education is a means of engaging students so that they will invest more of themselves in their educations with the hopeful expectation that the returns will be greater both for them and their future clients. Second, experiential education serves as a supportive

\textsuperscript{155} See Comment, supra note 141, at 3.  
pedagogy in doctrinal classes to give practice context to the doctrine. Offer, acceptance, and consideration mean more when students have to draft a contract that has import to a client, even if that client is completely imaginary. Finally, experiential education becomes a primary pedagogy as students move into simulated practice situations in order to learn skills and are eventually immersed in real practice environments that serve as bridges between law school and practice.

This practice continuum does not demand a complete overhaul or reorganization of the curriculum. It can work within the traditional law school curriculum by the gradual or immediate infusion of purposeful experiential education. Furthermore, there are other paths to achieve similar results with regard to the touch points discussed above.

The end game should surely be students’ future careers. Over the course of those careers, much will change. In ways that even the best of legal faculty cannot now predict, today’s students will confront change in the law, areas of practice, technology, and communication, to name a few. It behooves law schools to consider alternatives and to innovate with regard to educational methodology so as to continuously improve and enhance the quality and preparation of the lawyers they graduate.