I should say from the outset that I am not a clinical professor. I was not hired to be in the clinical setting. I am—engage air quotes here—a “doctrinal” professor, which is a sometimes-vilified term that carries the unspoken accusation of being book-driven or theorist with little-to-no practical application. I teach a variety of courses, including bankruptcy, contracts, forensic medicine, and forensic evidence. Admittedly, it can be a frenetic mixture, but I am self-diagnosed with legal Attention Deficit Disorder (ADD), so I tend to do a lot of different activities to keep myself busy. There is no need to figure out why I teach both transactional and science/criminal courses.

In some ways, it is odd that I am not a clinical professor. I loved practicing law; I was just poorly suited to do so in the confines of a big law firm. I preferred the constant heat of trial instead of drafting memorandums that eighteen people had to read before they finally landed in the lap of a client, bearing little to no resemblance to what I had originally written. Ironically, now I write articles that only about eighteen people read.

My philosophy in teaching has been that students need context, but they also need application to better apply substantive law courses to their areas of practice. In all of my courses, I attempt to incorporate various practical components: drafting contracts, writing memorandums (oh, irony), interviewing and counseling, negotiating, examining real expert witnesses, and billing time. None of this, however, comes close to the reality of what it means to actually represent a client.

Last year when my institution offered a teaching and innovation grant, I decided to pull the trigger on an idea that I had been bouncing for some time: creating a low-cost, budget-friendly bankruptcy as-
istance clinic. I ultimately named the concept Bankruptcy Assistance and Practice Program ("BAPP"). By "low-cost" and "budget-friendly," I mean that we did not have to hire a clinical professor to represent clients and instead utilized outside mentor attorneys to satisfy the attorney of record component. In essence, this became a small business along the lines of a "lean startup." Indeed, having read The Lean Startup shortly before developing the BAPP, I created the BAPP as a legal startup that could be modeled on the same philosophy: begin with a "modest offering and build on the aspects of it that prove valuable."

I fully expected to get things wrong, encounter bumps in the road, and (at some point) want to throw in the towel. What mattered was the ability to remain flexible, learn from things that did not work, and repeat what did. The BAPP needed to be efficient and sustainable. Even going into it with my eyes open, however, did not prepare me for the complexities, nuances, and hurdles associated with throwing students into the deep end of a pool of live-client representation. At times, I felt like I was back in the throes of my firm workweeks, complete with cold sweats in the middle of the night. To jump right to the ending, our minimum viable product (MVP) survived (as did our students, clients, and mentor attorneys) and even succeeded. Like any entrepreneur who needs a break between startups, I decided to come up for air, document the journey, and provide a roadmap for others looking to implement programs like this at their institutions.

While the BAPP focused on consumer bankruptcies, the model is by no means exclusive to bankruptcy. In fact, the model is transferable across a wide variety of practice areas, including criminal law, immigration, and veterans' assistance, just to name a few. In this article, I discuss how to develop a lean legal clinic—or whatever label you end up giving it. First, I beat the dead horse by giving an overview of the criti-

1 For institutional reasons, we avoided the use of the word "clinic," and over the course of the last few years, it has been branded in various ways: practicum, quasi-clinic, blended, and—of course, the law school buzz word—experiential. At a certain point, its first title, Bankruptcy Litigation, Negotiation and Practice, proved bland and drawn out (and "BLNP" just was not catchy), so it finally found the name Bankruptcy Assistance and Practice Program ("BAPP").


3 Ted Greenwald, Upstart Eric Ries Has the Stage and the Crowd Is Going Wild, WIRED (May 18, 2012), http://www.wired.com/2012/05/ff_gururies/.
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cisms of legal education. I then cover my initial research and the mechanics of starting a lean clinic. Third, I describe learning outcomes and objectives (always a crowd favorite). Fourth, I discuss the things that kept me awake at night. Fifth, I focus on utilizing teachable moments, especially issues involving professional responsibility. Finally, I do a retrospective and discuss what worked, what I would do differently, and whether I would be crazy enough to try this all again.

I. INTRODUCTION: WE CAN DO BETTER

The legal practice is facing an uphill battle. We simply do not have enough jobs to employ our graduates.4 Clients are unwilling to pay for the steep learning curve between class and practice, and as a result, firms hire fewer lawyers and instead staff cases more leanly.5 Law firms cannot afford the expense of training absent passing that cost off to the client, but they can afford to be choosy when it comes to new hires.6

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4 While hiring is ramping back up, the numbers are still significantly lower than what they were five years ago. For several law firms, the 2014 summer class is half the size of the summer class from five years ago, including DLA Piper, the world’s largest law firm by head count and revenue. Jennifer Smith, Big Law Firms Resume Hiring, WALL ST. J. (June 23, 2014), http://online.wsj.com/articles/big-law-firms-resume-hiring-1403477513. Many firms were and still are pinching pennies and holding off on hiring as many newly minted lawyers as they once did pre-nose dive. Stephen T. Watson, A ‘Buyers’ Market’ for Law Firms Seeking to Hire, BUFFALO NEWS (Mar. 3, 2013, 8:57 AM), http://www.buffalonews.com/apps/pbcs.dll/article?avis=BN&date=20130303&category=BUSINESS&openr=130309740&Ref=AR&template=printart.

5 Many firms are receiving pushback from clients regarding charged fees, and in response, work like document review that novice lawyers once did is now being outsourced to independent vendors who can do it at a cheaper cost in less time. Smith, supra note 4. Firms also made moves to change staffing practices. Lawyers and staff no longer needed to be full-time, and independent paralegals working off-site were more and more common. Edward Poll, Get Down to Business: Strategies to Manage in a Down Economy, 5 L. TRENDS & NEWS PRAC. AREA NEWS. (ABA Gen. Practice, Solo, & Small Firm Div., Chicago, Ill.), no. 2, 2009, at 26, 27–28, available at http://www.americanbar.org/content/dam/aba/publishing/law_trends_news_practice_area_newsletter/09_winter.authcheckdam.pdf. Firms are also less inclined to hire first-year associates to do the client work. Ethan Bronner, Law School’s Applications Fall as Costs Rise and Jobs Are Cut, N.Y. TIMES, Jan. 31, 2013, at A1, available at http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html?pagewanted=all&_r=0.

6 “It’s still very much a buyer’s market,” says one assistant dean for career services at the University of Alabama School of Law. Smith, supra note 4. Since the majority of the American legal market is comprised of small firms and solo practitioners, there is no surprise that the economic downfall affected the legal market as it did. The reduced number of clients and slower payments only contributed the disparaging salaries and
Thus, not surprisingly, employers are expecting law schools to produce graduates who can “hit the ground running,” saving them time, money, and manpower in training. A good return on investment will contribute to the productivity pool sooner and lower employer expenditures by accomplishing tasks effectively and efficiently. As a result, law schools are facing intensifying pressure to do more with less. This development has increased the demand on law schools to graduate “practice-ready” lawyers. In reality, however, a truly practice-ready graduate is more like a rainbow unicorn—a mere figment of the imagination.

Once taken for granted, employment outcomes are now at the forefront of legal education. There are more outlets tracking employment data, and anecdotal evidence seems to indicate that both recent graduates and prospective law students pay close attention to the opportunities offered to the new law graduates. Poll, supra note 5, at 27–29. Salaries offered to law graduates sunk so low they fell below minimum wage. One Boston law firm advertised for a legal position paying $10,000, and the firm still received thirty-two job applications. Martha Neil, Boston Law Firm Got 32 Applicants for Attorney Job Paying $10,000 a Year, Partner Says, A.B.A. J. News (May 31, 2012, 5:35 PM), http://www.abajournal.com/news/article/boston_law_firm_got_32_applicants_for_attorney_job_paying_10000_a_year_part/.


9 As a result of the decline in legal employment and on-the-job training opportunities, law schools are finding innovative ways to address employability. Many schools have stopped fighting the market and have instead started asking, “What does the market need?” Through collaboration with law firms and alternative legal service providers at round table discussions, schools are road mapping how best to revamp the law school curriculum. Connie Brenton, Law Schools Implement Corporate Product Development Methodologies to Produce ‘Practice Ready’ Lawyers, INSIDE COUNS. (Jan. 1, 2014), http://www.insidecounsel.com/2014/01/01/law-schools-implement-corporate-product-development.

Colorado Law has launched a summer boot camp designed to supplement the doctrinal teachings and addresses the needs of the technology-drenched industry lawyers now face. Id. The program focuses on business fundamentals, the technology industry, the practical legal skills required by technology companies, and the use of process and technology to deliver legal services efficiently. Id. After the boot camp, students then gain practical experience in a technology company for ten weeks to seven months to gain the industry experience. Id.

10 Law School Transparency, a non-profit organization, has been documenting employment statistics in efforts to hold law schools and the ABA accountable for their actions. L. SCH. TRANSPARENCY, http://www.lawschooltransparency.com/ (last visited Oct. 16, 2014).
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Indeed, some students have gone so far as to sue their law schools over various representations related to employment data. The cases have attracted media attention, and at least one has found its way to a federal court of appeals.

How could this be? For one 2007 graduate, who passed the Utah Bar on his first try but was forced to accept a job in the phone book industry, the decision was simple. He, along with several others, was unable to secure jobs in the legal field as the school’s statistics—which they relied on—suggested. Though nothing is a bulletproof guarantee of career prospects, the average $126,000 investment and three

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11 Twelve graduates from Cooley Law School asserted that their alma mater misrepresented employment data, advertising higher salaries and higher employment rates for their graduates in the legal field than what the market offered. MacDonald v. Thomas M. Cooley Law Sch., 724 F.3d 654, 657 (6th Cir. 2013) (affirming lower court’s holding that Michigan Consumer Protection Act, on which graduates based their claim, does not apply to graduates’ purchase of legal education and the law school was not liable for fraudulent misrepresentations or fraudulent concealment because graduates did not reasonably rely on the employment and salary statistics).


14 Lauren Ingeno, No Jobs, No Refund, Inside Higher Ed (July 31, 2013), http://www.insidehighered.com/news/2013/07/31/court-dismisses-lawsuit-claiming-law-school-misrepresented-employment-data#sthash.257s4VD4.dpbs. When collecting employment data from its most recent graduates, the law school’s statistics did not differentiate jobs requiring a Juris Doctor from those that did not, nor did it distinguish part-time employment from full-time. Id.

15 Id.

years of blood, sweat, and tears ought to provide more than a job in the phone book industry.

According to the American Bar Association, a mere 57% of the 2013 law graduates found long-term, full-time jobs requiring a law degree nine months past graduation.\textsuperscript{17} The number is only slightly better than the 55% recorded for the Class of 2012.\textsuperscript{18} The legal job market shed 1,200 jobs in a single month, April, 2014, fairing worse than the national economy.\textsuperscript{19} Given the circumstances, it seems like more students may demand refunds (rather than returns) on their investment.

A. Past Practices

The current criticisms are by no means the first criticisms of legal education. For decades now, educators and practitioners have criticized the United States’ approach to legal education.\textsuperscript{20} The legal com-

\begin{itemize}
  \item \textsuperscript{17} 2013 Law Graduate Employment Data, A.B.A. Sec. Legal Educ. & Admission to B., http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2013_law_graduate_employment_data.authcheckdam.pdf (last visited Dec. 21, 2014). “Long-term” refers to a position that does not have a definite or indefinite period of work less than one year. Id.
  \item \textsuperscript{20} See generally Katherine R. Kruse, Getting Real About Legal Realism, New Legal Realism and Clinical Education, 56 N.Y.L. SCH. L. REV. 295 (2011/12).
\end{itemize}
munity has been itching for reform, starting with Jerome Frank in the early 1930s. Frank and other American Legal Realists critiqued the legal education system for its narrow-minded approach, specifically the appellate case method and its failure to comprehensively prepare law students for practice.

Instead, Frank suggested “clinical-lawyer schools,” a recipe that intertwines theory and practice. This is, perhaps, best analogized to the teaching hospital. The idea behind clinical-lawyer schools was for law students to represent an array of clients in a practice setting with supervising attorneys. Even then, the traditional doctrinal approach—utilizing appellate cases—was considered to be too neat, too tidy, and too routine. It failed to expose law students to the entire process.

Students were, and still are, missing out on the practice of establishing the client’s priorities, arguing, pleading, hearing verdicts, and discussing the decision to appeal. More importantly, Frank recognized the failure to train students to appreciate “the human side of administrative justice” and to assess the complexity of a client’s situation. Ultimately, the doctrinal approach neglects to shine a light on the realities of being a lawyer—the facts are blurry, the terrain shifts, and the process of adopting a particular approach needs to be tailored to the client’s priorities and circumstances. Unfortunately for all law students, Frank’s soufflé never rose.

23 Kruse, supra note 20, at 300.
24 Id. at 301.
25 Id. at 305–06.
26 Frank, Why Not a Clinical-Lawyer School?, supra note 21, at 916.
27 Id. at 918–19. When referring to the “human side of administrative justice,” Frank wanted students to see how: (1) the juries decided cases based on the effect of specific jury instructions; (2) the facts turn on faulty memory; and (3) the mood of the presiding judge, the ability to negotiate, and draftsmanship all alter the outcome of a case.
Yet, the underlying concept still continues to bubble to the surface in spurts. When the clinical legal education movement rose in the 1960s, supporters moved to incorporate social justice and lawyering skills into education.\textsuperscript{29} However, they failed to discuss how this might be accomplished.\textsuperscript{30} The concept surfaced once more in the 1970s and 1980s with the same push for law schools to expose students to the multi-dimensional roles of lawyers and the sophisticated thinking that extends beyond I-R-A-C.\textsuperscript{31} The U.S. Department of Education even stepped in and financially contributed to the efforts.\textsuperscript{32} It poured over $87 million into law schools for in-house clinical programs from 1978 until 1997.\textsuperscript{33}

In 1992, the clinical legal education movement intensified with the publication of the MacCrate Report and again with the Carnegie Report in 2007.\textsuperscript{34} Both echo Frank’s belief that graduates from law school are ill-equipped for legal practice.\textsuperscript{35} The MacCrate Report addresses the common notion that law schools teach students how to “think like a lawyer” but miss the mark in training them to act like a lawyer.\textsuperscript{36} The Carnegie Report attributes the failure to the “fairly standard pattern” that all law schools still fiercely embrace—applying the

\textsuperscript{29} Kruse, \textit{supra} note 20, at 297.

\textsuperscript{30} Id.


\textsuperscript{33} Id.


\textsuperscript{35} Id. at 2.

\textsuperscript{36} Id. at 1 (“When the Council of the ABA Section of Legal Education and Admissions to the Bar formed the MacCrate Task Force on “Law Schools and the Profession: Narrowing the Gap” almost twenty-five years ago, there was a general perception that there was a ‘gap between the teaching and practice segments of the profession.’”).

The goal of preparing law students to be good lawyers includes: “how to think like a lawyer; how to argue, negotiate and write effectively; how to write to learn; how to research; and how to be mindful of ethical issues.” Emily Hughes, \textit{Taking First-Year Students to Court: Disorienting Moments as Catalysts for Change}, 28 WASH. U. J.L. & POL’y 11, 13 (2008). Sometimes, though, even that is not enough. One senior attorney experienced the dismay of dead silence when he asked three smartly dressed individuals sitting at the firm’s conference table, “What steps would you need to take to accomplish a merger?” The sad part? These three individuals were three young associates who were hired to handle corporate transactions and were billing $300 an hour for their work. Segal, \textit{supra} note 22.
Socratic method and case-dialogue to appellate court cases.\textsuperscript{37} Such an approach provides rapid socialization into thinking like a lawyer,\textsuperscript{38} but as the study notes, is of limited use.\textsuperscript{39}

Despite taking contracts and trial advocacy courses, “[graduates] can’t draft a contract, they can’t write, they’ve never seen a summons, the professors have never been inside a courtroom.”\textsuperscript{40} What happens if every course offered every year mimics the same style of teaching? The result is every student adopts this formalized, cookie-cutter approach and begins to robotically apply it to all situations regardless of whether it is appropriate.

Moreover, the doctrinal approach assesses situations from an arm’s length away, spoon-feeding law students a sequence of facts,\textsuperscript{41} thereby missing out on the “rich complexity of actual situations.”\textsuperscript{42} The MacCrate Report, like many of its predecessors, points to skills and practice-based programs as the secret ingredient.\textsuperscript{43} The MacCrate Report encourages law schools to simulate the pressures and environment of a practice setting with live clients.\textsuperscript{44}

What does live client interaction offer? The bulk of law school curriculums focus on doctrinal teachings and lack application, but in actuality, application can reinforce doctrinal learning.\textsuperscript{45} Further, as the MacCrate Report suggests, skills education is a three-part concoction.\textsuperscript{46} Live client interactions are one part concept development, one part performance, and a heavy splash of critical analysis with meaningful feedback to top it off.\textsuperscript{47} The result yields a perfect blend of commu-

\textsuperscript{37} W ILLIAM M. S ULLIVAN ET AL., ED UCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 4 (2007) [hereinafter C ARNEGIE REPORT].

\textsuperscript{38} Id. at 4–5.

\textsuperscript{39} Id. at 5–6.

\textsuperscript{40} ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 4 (1992) [hereinafter MACCRATE REPORT] (internal quotation marks omitted).

\textsuperscript{41} C ARNEGIE REPORT, supra note 37, at 6.

\textsuperscript{42} Id.

\textsuperscript{43} MACCRATE REPORT, supra note 40, at 234.

\textsuperscript{44} Id. Simulations of real practice experience provide students with the pressure of moral decisions imposed by the competition and encourage them to strive for efficacy of a legal environment. Some literature has found simulation supplemented with other methods to be an effective way to teach legal ethics. Robert P. Burns, Teaching the Basic Ethics Class Through Simulation: The Northwestern Program in Advocacy and Professionalism, 58 LAW & CONTEMP. PROBS. 37, 49 (1995).

\textsuperscript{45} CAVAZOS, supra note 7, at 9.

\textsuperscript{46} MACCRATE REPORT, supra note 40, at 243.

\textsuperscript{47} Id.
communication, fact-gathering, problem-solving, and counseling. More importantly, live client interaction creates the environment and fodder for the much-needed discussion on ethics and social consequences, an essential part of a lawyer’s decision-making process.

If the reports are on point, why are critics—years after its publication—still asking why law schools are not producing graduates with practical skills? Medical schools are. Pharmacy and medical school programs provide multiple opportunities for students to develop a full range of skills under the safety net of practiced professionals. They start the doctor-patient interactions early on in medical school and continuously reinforce effective approaches and behaviors while rectifying unproductive ones during residency. In residency, attending physicians are required to shepherd the interns or other residents, gauging their skills, interest, and understanding amongst other things.

If they and other professional programs can do it, so can we. We will just add that to the curriculum, right? In reality, creating a new

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48 Id. A survey of practicing lawyers conducted in 2013 demonstrated that law schools most need to enhance students’ communication skills, specifically the ability to convey complex information clearly, listen effectively and express cogent conclusions. Kathy Morris, The Survey Says: Law Schools Need New Focus on Litigation Skills, Am. INNS OF CT. (May/June 2014), http://home.innsofcourt.org/for-members/current-members/the-bencher/recent-bencher-articles/mayjune-2014/the-survey-says-law-schools-need-new-focus-on-litigation-skills.aspx. Next, lawyers asked that law schools beef up students’ client service skill with regards to more efficiency in managing projects. Id. Finally, lawyers pointed to a need for teaching students the corporate skill of understanding financial documents and the problem-solving skill of posing practical solutions. Id.

49 CARNEGIE REPORT, supra note 37, at 6.

50 Cavazos, supra note 7, at 11.

51 Id. at 10. In the United States, medical students must complete a pre-clinical and a clinical component as part of their medical school education. Requirements for Becoming a Physician, Am. Med. Ass’n, http://www.ama-assn.org/ama/pub/education-careers/becoming-physician.page? (last visited Oct. 28, 2014). After receiving their M.D., graduates are further required to undergo three to seven years of professional training under senior physician educators, with the length depending on the graduate’s selected medical specialty. Id.

52 Cavazos, supra note 7, at 10.

53 Id.

54 On June 13, 2014, Elon Law held the Second National Symposium on Experiential Education in Law. Philip Craft, National Symposium Advances Experiential Education in Law, ELON U. (June 16, 2014, 7:20 AM), http://www.elon.edu/e-net/Article/96062. This symposium sought to discuss the need for innovative approaches to help law students learn and gain practical skills. Id. To enrich the discussion, the symposium invited a panel of professors from different disciplines—pediatrics, engineering, behavioral medicine and business. Id. The panel of professors agreed that faculty-
product requires more than just adding extra liquid to the base. It requires a revamping of the recipe and an assessment of the cooks in the kitchen. The Carnegie Report points to systematic transformation by adopting an integrated curriculum.\textsuperscript{55}

B. Achieving Systematic Transformation?

What exactly is a systematic transformation? The curriculum aims to shape the whole lawyer.\textsuperscript{56} It means changing the focus of law school and changing how we evaluate the students. Why is it necessary?

We are all familiar with the jokes about lawyers and their questionable morals. How do you tell a lawyer is lying? \textit{His lips are moving!} Some critics go as far to say that “[a]ttending law school [under the current approach] arrests the moral development of many if not most students, a halt that would not occur if these same students had attended a different graduate program.”\textsuperscript{57} What instinctively seems harsh has an underlying truth to it. Today, we still hold tight to the “top-ten-percent paradigm” and grade curves, but such concepts only create tension and competition,\textsuperscript{58} driving students to adopt “the ends justify the means” mentality. A transformation is long overdue. We can do better. We need to address the whole lawyer, including ethics and social responsibility.
With the whole lawyer in mind, the Carnegie Report discards summative assessments, which only encourage filtering and ranking students.\(^59\) The proposed curriculum folds ethical responsibility and social consequences—concepts stunted under the current approach—into the stale mix of legal doctrine and then, infuses practice.\(^60\) To support this new attitude, we need to support the students’ learning process and implement constructive assessment.\(^61\)

What else goes into a systematic transformation? The MacCrate Report suggests that law schools employ permanent faculty dedicated to supporting skills-education full-time.\(^62\) This suggestion seems valid, but in light of the current economy, this may not be a viable option. The cost of experiential education programs is heavily to blame for rising tuition rates.\(^63\) Experiential education programs are resource heavy and require low student-to-faculty ratios.\(^64\)

As an alternative, the MacCrate Report suggests that law schools identify, retain, and reward existing faculty who are qualified to teach skills education and who can further the ultimate goal.\(^65\) In other words, use what you already have! The idea behind this alternative is to have current, full-time faculty incorporate skills components into their courses or create separate courses that capitalize on these faculty

\(^{59}\) Carnegie Report, supra note 37, at 7.
\(^{60}\) Id. at 7–8. Jack Mezirow, an adult learning theorist, believes there are three stages that students must experience before really learning from an encounter: disorientation, exploration and reflection, and reorientation. Hughes, supra note 36, at 16. Specifically, a student must have the opportunity to first have a disorienting experience, and then reflect and digest the information to put the disorienting moment in perspective. Accordingly, creating the proper environment is crucial. Exposure to a real legal encounter—say a courtroom experience—followed by a clinic discussion is the ideal environment to promote the interplay of the disorienting moment and the interplay of social justice and a legal doctrine like criminal law.

\(^{61}\) Stuckey et al., supra note 57, at 129.

\(^{62}\) MacCrate Report, supra note 40, at 265. In a study based on skilled practitioners and a group of nursing students, mentors described themselves as offering educational support to assess and give feedback on students’ progress while acting as facilitators. Mary Neary, Supporting Students’ Learning and Professional Development Through the Process of Continuous Assessment and Mentorship, 20 Nurse Ed. Today 463, 466 (2000). A good mentor was described as “utiliz[ing] every opening to create and maximize learning opportunities.” Id. at 468.

\(^{63}\) Joy, supra note 32, at 315.


\(^{65}\) MacCrate Report, supra note 40, at 245.
members’ skills. Today, schools are taking experiential education beyond clinics for a cost-effective alternative like negotiations, mediation, and drafting.66

For doctrinal faculty to instill this new attitude in learning and teaching, they too must observe and participate in the clinical and lawyering courses.67 Local practicing lawyers and judges should likewise be involved with the curriculum. “[L]aw schools should continue to make appropriate use of skilled and experienced practicing lawyers and judges with guidance, structure, supervision, and evaluation of these adjunct faculty by full-time teachers.”68

Although these low-cost alternatives are good on the budget, they still fall short of offering the full range of benefits of an in-house clinic.69 In-house clinics afford students “first-chair” experience. The students do not just stand in as lawyers in a clinic case. They are the lawyers. The clinics could not function without the students. The clients’ and clinic’s reliance on the student lawyers creates the pressure and environment that build real lawyers.

Armed with more recommendations and observations than ever before, law schools should be producing effective law graduates that meet the legal community’s needs. Yet seven years after the Carnegie Report and twenty-two years after the MacCrate Report, the legal community is still itching for reform. The community is still asking for graduates who possess confidence and sound judgment, which only comes with practice and experience.70

Sadly, millennials graduating from law school today, like the law students graduating in the 1930s, are accustomed to neatly packaged facts with pretty bows labeled “Fee Simple” and “Intentional Infliction of Emotional Distress.”71 Rather than meeting the needs of the legal community with graduates who think on multiple facets, we have been slow to respond to the changing legal market and the evolving practice of law.

Better late than never, the American Bar Association (ABA) has decided to throw its own hat into the ring of reform. On August 11,
2014, the ABA passed several changes to its accreditation standards for law schools, requiring schools to give students more of the practical skills training for which the legal community has been clamoring.72 The biggest change beefed up the “experiential learning” requirement, upping the number of credits students must receive from clinics, externships and the like from a paltry single hour to a respectable six.73 By requiring what is typically two full classes worth of credits to come from skills-based opportunities, whether in the form of a clinic like the BAPP, externship, or other practical simulation, the ABA has made clear its support for such opportunities.74 A one-credit requirement may be seen as yet another checkmark to the list-loving law student, requiring little more than a toe dipped into the water. A minimum of six credits, however, is more likely to garner their concern, hold their interest, and result in measurable achievement by plunging them into the deep end.

“Practice Ready” has become the new mantra, slipping out of the lips of lawyers and law schools alike ever since employment numbers dropped in the legal field, but is there really such a thing as a “practice ready” law graduate? One professor from the University of Maryland Fancis King Carey School of Law not only answers in the negative but also believes that that concept is a “millennialist fantasy.”75 Professor Robert Condlin brings a good point to the table: producing more “practice ready” graduates simply does not change the number of jobs in the legal field.76 As a result, “the proposal for practice-ready graduates is actually a non sequitur to present troubles.”77 Transformation is hard to accomplish in this economy, so what we are left with is a conundrum. The market demands practice-ready lawyers more than ever because of the constricted economy, but law schools are hard-pressed to undergo the necessary transformations to supply these lawyers because of the constricted economy.

73 Id.
74 See id.
76 Id. at 4.
The result leaves us with an overstocked legal market, fewer demands for a legal education, and budget cuts for law schools on the horizon.\textsuperscript{78} Thus, despite all the waves caused by critics pressing for more clinics and better graduates, the criticism has in many respects remained just that—criticism. Few have stepped up to the plate and proposed solutions appropriate for the present economy. Experiential education is costly because it is “labor-intensive” and requires supervised practical teachings.\textsuperscript{79} Yet law schools cannot afford not to transform. We can do better.

II. THE 30,000-FOOT VIEW: INITIAL RESEARCH AND ANGEL INVESTMENT

In an effort to bring the realities of legal education and legal employment into alignment, Georgia State University College of Law created teaching innovation grants. These grants were designed to augment traditional clinical programs by “introducing novel simulation or experiential components” into existing or new courses.\textsuperscript{80} The grant process required a detailed proposal that included “specific teaching and learning goals.”\textsuperscript{81} It also required the proposal to demonstrate that the course—whether new or a redesigned existing course—integrated skills, professional values, and experiential components.\textsuperscript{82} The proposal also needed to set outcomes and objectives for the program—my favorite things!

A Research: “Think Big. Start Small. Scale Fast.”\textsuperscript{84}

Taking a cue from the start-up world, I started my research by asking the right questions. I knew I was well past the question of “Can

\textsuperscript{78} Joy, supra note 8, at 20.


\textsuperscript{80} Call for Proposals: Teaching Innovation Grants, GA. ST. U. (Mar. 5, 2014), http://law.gsu.edu/2014/03/05/call-proposals-teaching-innovation-grants/.

\textsuperscript{81} Id.

\textsuperscript{82} Id.

\textsuperscript{83} Id.

\textsuperscript{84} Eric Ries, Open Innovation in DC, STARTUP LESSONS LEARNED (June 14, 2011), http://www.startuplessonslearned.com/2011/06/open-innovation-in-dc.html. Eric Ries is the author of The Lean Startup, amongst other good reads, and the creator of Lean Startup methodology. Eric Ries, About the Author, STARTUP LESSONS LEARNED (Oct. 4, 2008), http://www.startuplessonslearned.com/2008/10/about-author.html. He is recognized for his savvy business skills. Id. In 2007, he was named Best Young Entrepreneurs of Tech by Businessweek, and in 2009, he was honored with a TechFellow award in Engineering Leadership. Id. As if that was not impressive enough, Ries
this clinic be built?” Rather, the questions were “Should it be built?” and “Can we build a sustainable offering around this set of services?”

Under the Lean Startup’s methodology, the goal is to create and manage a startup and to get a desired service or product out to market faster.85 This is not unlike what the BAPP needed to do. I received the teaching innovation grant to develop the clinic over the summer of 2013.

If we count the days from when I started actually “building” the clinic in mid-June 2013 (after grading exams and papers and teaching a course in our summer abroad program in Austria) to its launch in mid-August 2013, it would be about 63 days. Nothing of biblical proportions, but I would not recommend taking a clinic online in a two-month window. Some might even call that irresponsible. The one thing I did do in advance of diving into the mechanics of building a clinic was to assemble the research.

Too many legal clinics—like failed startups—begin with an idea for a service that the community needs, and they then spend months—sometimes years—perfecting that idea with very few clients coming through the doors.86 Too much research can be a bad thing, but research is what academics do best. You need only take a look at some of those faculty offices that have tunnels of papers leading to an open seat at a desk.

Still, I began with researching what programs our school offered. I spoke with my colleagues who ran our in-house clinics (Low-income Taxpayer, Health Law Partnership, and Investor Advocacy) and our externship program. I also spoke with colleagues who incorporated experiential components like capstone courses, law practice courses, etc. After doing the “backyard” research, I started examining what was on the other side of the fence: programs at other schools.

followed up 2010 with a spot as Entrepreneur-in-Residence at Harvard Business School. Id.


86 Ninety percent of technology startups fail. Samantha M. Kelly, Why 90% of Startups Fail, MASHABLE (Feb. 4, 2013), http://mashable.com/2013/02/04/why-startups-fail/. “The successful startups seem to be flexible enough to shift with changes in the tech climate,” an Allmand Law spokesperson told Mashable. Id. “Whereas with the failed startups, some fail due to a lack of vision and others have terrible timing. Ultimately, there is a lack of foresight which might have saved their companies.” Id.
To borrow again from the technology world, I use the term “agile development.” Like agile software development, my approach to research for this program was based on iterative and incremental development. The research had to follow just that. In short, the requirements, goals, and solutions of the BAPP evolved through collaboration between self-organizing, cross-functional colleagues both on my faculty, other faculties, and in the local legal community. This formula of adaptive planning and evolutionary development allowed for rapid and flexible responses to building a clinic on a shoestring budget.

B. Identifying a Market Need

Bankruptcy law is an excellent tool for condensing the life cycle of a case into one semester. Although the economy is improving, there are still many individuals who—for a variety of reasons—need to file for bankruptcy and cannot afford the cost of a lawyer to help them through the process. Most consumer bankruptcy cases come in two forms—Chapter 7 and Chapter 13. A Chapter 7 case takes on average three to five months from start to finish, depending on the complexity of the process. A Chapter 13 case, on the other hand, takes three to five years, depending on the debtor’s income, since the goal is to pay back creditors a percentage of the debt owed. Chapter 7 cases do well in the pro bono context because they get through the system quickly. Most attorneys will not take on a pro bono Chapter

87 “Agile Development” is an all-encompassing “term for several iterative and incremental software development methodologies.” Agile Development 101, VERSIONONE, http://www.versionone.com/Agile101/Agile-Development-Overview/ (last visited Aug. 9, 2014). Agile methods vary in their specific approach, yet they share common features and goals. Id. For one, they all incorporate iteration and continuous feedback. Id. Second, “[t]hey all involve continuous planning, continuous testing, continuous integration, and other forms of continuous evolution.” Id. Third, they are all “inherently adaptable.” Id. Agile methods aim to encourage collaboration and quick and effective decision-making. Id.

88 Without the support of, and feedback from, the local legal community from the inception of this project (including the Teaching Innovation Grant proposal), the BAPP simply would not have been possible.

89 Some individuals file Chapter 11 cases as well, but those tend to be higher-income individuals who exceed statutory debt limits and income requirements.


91 Id.

13 case because of the ongoing administrative requirements, along with it being a more expensive and time-consuming process.\textsuperscript{93} I considered whether to try some arm twisting and get a few takers for Chapter 13 cases, but for those reasons it quickly—and fortunately—became apparent that our infrastructure could not support Chapter 13 cases. As a result, I limited our scope to Chapter 7 cases.

The question then became, “Who would be our market?” Some initial conversations with our local bankruptcy bar and bench alerted me to the issue of \textit{pro se} debtors. \textit{Pro se} debtors are not an uncommon feature in bankruptcy courts around the country.\textsuperscript{94} While corporations and partnerships must have an attorney to file a bankruptcy case, individual debtors are permitted to go at it alone.\textsuperscript{95} The likelihood of success, however, is significantly reduced in both Chapter 7 and Chapter 13 cases if a debtor represents him or herself.\textsuperscript{96} Indeed, bankruptcy is a very technical beast, and the Bankruptcy Code expects precision and exacts punishment for the slightest inattention to detail.

In 2011, \textit{pro se} filing rates doubled those of regular filings.\textsuperscript{97} The Northern District of Georgia has a particularly high rate of \textit{pro se} debtors.\textsuperscript{98} As a nation, the increasing rate of \textit{pro se} debtors is likely due to federal reforms of the Bankruptcy Code, the state of the overall economy, and the greater prevalence and ease of access to Internet resources.\textsuperscript{99} The spike in the Northern District of Georgia, though, correlates with the high foreclosure crisis that area experienced.\textsuperscript{100} Chapter 7 filings are form heavy with little need for litigation—or an attorney. Thus, an unrepresented individual can complete the entire process in ninety days so long as he has easy access to the Internet. Moreover, Georgia does not have judicial foreclosures, and in the wake of the Great Recession, the number of foreclosures has been incredibly

\begin{footnotesize}
\textsuperscript{93} Id.
\textsuperscript{94} \textit{By the Numbers—Pro Se Filers in the Bankruptcy Courts}, U.S. Cts., http://www.uscourts.gov/News/TheThirdBranch/11-10-01/By_the_Numbers—Pro_Se_Filers_in_the_Bankruptcy_Courts.aspx (last visited Sept. 20, 2014).
\textsuperscript{95} Id.
\textsuperscript{97} \textit{See id.}
\textsuperscript{99} \textit{Id.}
\textsuperscript{100} \textit{Id.}
\end{footnotesize}
Implementing Experiential Education

high, which has produced a number of last-minute bankruptcy filings near the first Tuesday of every month.  

Consequently, a high rate of pro se debtors also brings a high error rate. The financial information required can be difficult for the debtor to compile, and the petition itself can be daunting. Pro se debtors run a serious risk of having their cases dismissed and/or having their rights affected if the financial information is incomplete or incorrect. A high volume of pro se debtors quickly becomes burdensome to an already hectic bankruptcy district: resources are devoted to assist these debtors, busy calendars take longer to get through, and most trials in the bankruptcy court involve a pro se debtor.

C. Sourcing Clients

Finding a need to fill is an important part of the process, but another challenge with developing any sort of live client course is the need for a steady stream of clients. “Steady stream” is the non-existent happy medium of just the right amount of clients for students. Inevitably, you will find that you either have a feast or a famine with respect to clients, and you have to be prepared to turn them away.

You also need to be prepared to get creative, so you are not spending enormous amounts of time on collecting and cross-examining potential clients. Inevitably for us, partnering with some local legal aid organizations became the easy answer. One of those happened to be Atlanta Volunteer Lawyers Foundation (AVLF), and the other was Atlanta Legal Aid.

They already had a system in place for screening potential bankruptcy clients. They referred potential clients to law firms that accept

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102 One pro se debtor described the vast difference of filing with an attorney versus on his own as follows: “Last time, when I had an attorney, it was a lot easier. It was a breeze . . . . The second time, I was in court at least ten times trying to figure out the right legal paperwork. They know me now.” Paris Achen, More Litigants Acting as Their Own Attorneys, COLUMBIAN (Apr. 6, 2014), http://www.columbian.com/news/2014/apr/06/more-litigants-acting-as-their-own-attorneys/.
103 Filing for Bankruptcy Without an Attorney, supra note 95.
104 With inadequate resources to help guide the masses through the labyrinthine judicial system, the pro se cases are congesting the courts, taking twice as long to be resolved. Achen, supra note 102. Superior Court Judge David Gregerson stated that the pro se debtors trend is “one of the biggest issues in the court system in the past 20 years.” Id.
pro bono or low fee cases. We were able to capitalize on the screening information they already collected and use it as our initial intake device.

They were also very helpful in assessing the initial income determinations. During our conversations with Atlanta Legal Aid, they suggested that, while a fee waiver can be obtained in a Chapter 7 bankruptcy case if the debtor is 150% above the poverty level, we should raise our ceiling to 200% above the poverty level to attract more complex cases for our students’ benefit.

A downside of Chapter 7 bankruptcy cases is that many of them are “no asset” cases.105 The proliferation of no asset cases during the recession and the tail end of the recession yields the same result—still having no assets. Many of the bankruptcy cases are very simplistic in nature. Although much of what we proposed to do with this clinic was to expose students to client interaction and counseling with other members of the bar, we also wanted to get some complex legal issues. The idea was to have students discuss them during case rounds and hopefully file some motions in court and perhaps even have the chance to argue them.

D. Student Selection

Many clinical programs around the country use an application process to select students for their programs. This thought occurred to me at the beginning, but with a brand new program, I did not want to limit it to applications. Instead, I simply required students to have already taken a basic bankruptcy course. However, the problem with offering a new course is that some students who would be interested in the practical aspects of it have not yet taken a basic bankruptcy course. Moreover, we have an evening program, and due to the way their schedules are structured, some of our part-time students may not have yet had the opportunity to take basic bankruptcy. So for the pilot year of the course, I loosened the restrictions some and required that stu-

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105 Typically, under Chapter 7 bankruptcy, all of a debtor’s nonexempt assets are sold to pay off creditors. What Is a Chapter 7 No-Asset Bankruptcy Case?, NOLO, http://www.nolo.com/legal-encyclopedia/what-is-chapter-7-no-asset-bankruptcy-case.html (last visited Oct. 30, 2014). Exempt assets vary by state and federal law, allowing debtors to keep a certain amount of property. Id. If a debtor can exempt all of his assets, then this is called a “no asset case.” Id. As the term may suggest, a Chapter 7 “no asset case” simply means that the debtor does not own any nonexempt assets that can be sold to pay creditors. Id.
dents either take an Article 9 course or a basic bankruptcy course. With those parameters in place, it was easier to thin the herd of students that would be eligible for this program. It became clear, however, on the day the students registered for the class that they were hungry for courses like this. The registration closed for this class in two minutes.

Another issue to consider when setting up a course like this is how many students to have in a class. When I spoke with many of our faculty members who either taught in the clinical context or have other types of courses that involve live client representation, I found that many of them suggested no more than eight students per instructor. Unfortunately, I am not very good at taking such advice, and I allowed the class size to swell to sixteen students. This sounded completely doable since I was accustomed to teaching classes with fifty to seventy students. More on this later, but suffice it to say that supervising sixteen students with real clients is ridiculous. And I have a new level of appreciation for the time commitment required of clinical professors.

III. SELECTING A PROGRAM FORMAT: THE MINIMAL Viable PRODUCT

In startups, the most critical component in developing a minimal viable product (MVP) is to begin the process of learning as quickly as possible.\footnote{Minimal viable product is described by some as a “version of a new product which allows a team to collect the maximum amount of validated learning about a customer with the least effort.” Ash Maurya, \textit{Minimal Viable Product}, \textsc{Prac. Trumps Theory}, http://practicetrumpstheory.com/minimum-viable-product/ (last visited Sept. 3, 2014). Others have pared the term down to “the smallest thing you can build that delivers customer value.” \textit{Id.}} Of course, a roomful of over-achieving Type-A lawyers will cringe at the label of “minimally viable” anything. But by determining what our MVP would look like and how it would function, the real work could then be focused on “tuning the engine.”\footnote{\textit{Id.}} Thus, I needed to determine the vehicle for delivering legal services.

A. \textit{The Many Fashions of Experiential Education}

There are a variety of models that schools—including my own—utilize to promote experiential opportunities for students. The term “experiential learning” has become the term \textit{du jour} in legal educa-
“Experiential education” carries as many definitions as it does qualifications. For some, it recognizes that the doctrinal/Socratic model of teaching students to “think like lawyers” lacks context and application in the real world. As discussed previously, law schools have now been tasked with the obligation to prepare students for the practice of law. Some schools have taken this notion to heart, as I believe ours has. Although we recognize we will not churn out students with the abilities of a veteran practitioner, we can at least get them to the point where they can take off the training wheels.

The familiar approach to student legal work is traditionally housed in three distinct compartments: clinics, externships, and pro bono extracurriculars. Law school clinics are in-house clinics usually helmed by faculty who are licensed and experienced with that type of work. Clinical faculty members supervise the students directly and, if the representation requires, serve as the attorney of record for court filings and appearances.

Externships, on the other hand, diffuse the supervision by placing students in the legal community outside of the law school. Externships allow students to gain practical legal experience by working with local, national, and international corporations, government agencies, public interest organizations, and the judiciary for academic credit. Often, clinics and externships are supplemented by a corresponding academic course. Most state bar rules prohibit law firms, of any size, including solo practitioners, from being externship placement sites. The last traditional experiential component consists of pro bono service that students perform over the course of their academic careers. Many schools provide for pro bono recognition at graduation.

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111 *Id.*
B. Finding the Right Fit

Since this course would be offering credit, we did not fit squarely in the realm of pro bono activities that students often perform for no credit. The BAPP also did not fit neatly within the clinical scheme, considering (a) it would take a substantial sum to get a “clinic” up and running; and (b) I am not licensed in Georgia, and Georgia does not have reciprocity with California or Florida, where I am barred. And we certainly did not meet the externship definition of “government agencies, nonprofit organizations and judges’ offices.” This left the BAPP in the netherworld of being less than a clinic but something more than a simulation course. Live clients are a hassle.

The viable vehicle to which I attached early on was not some radical revolution that came to me in a dream. If such things were a regular occurrence, I would be selling some excellent screenplays. I needed a design that worked best with the resources we had—which basically consisted of a naïve faculty member who knew enough about consumer bankruptcy to be dangerous. I found that some programs had adjunct faculty members recruiting other attorneys in the area to work on cases with students. Other schools partnered with Legal Aid or other pro bono legal service organizations. I investigated a number of different designs, including one where I briefly entertained taking the Georgia Bar last year. Fortunately, bar results do not come until October, and we needed to file petitions in August. Dodged that bullet.

Ultimately, the design we adopted was one that utilized mentor attorneys in private practice. Working in two-person teams, students would be placed with mentor attorneys who would serve as the attorney of record in the matter. Students would be responsible for cases from the pre-filing interview through the discharge (or as close to it as we could fit in one semester). If the semester ended before the discharge, the mentor attorney would remain on the case. This model has been used successfully in several other law schools. The University of Miami School of Law’s Bankruptcy Assistance Clinic was kind enough to provide me with its syllabus, and its director, Patricia Redmond,112 served as a constant sounding board and advisor.

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112 Patricia Redmond has taught—and continues to teach—me just about everything I know about bankruptcy since I was her student at the University of Miami School of Law.
With that part “solved,” there were still other design features that needed attention: the classroom component, the number of students, client and mentor recruitment, and bankruptcy court approval.

C. Syllabus

A prime feature that I built into the program was a classroom component. Early on, I envisioned one class per week meeting for two hours in the evening. The next hurdle to face was how to design the class itself. Because of the nature of how bankruptcy cases proceed, I first thought about designing the classroom component to capture various issues that occur over the lifespan of the bankruptcy case.

The first place to start would be the Chapter 7 petition. It is the most logical place to begin; it is where most law students leave the textbook behind and run into the practice field. In a Chapter 7 bankruptcy, the person must put the universe of his or her financial information into the bankruptcy schedule, including all of his or her assets and all of his or her liabilities. Thus, devoting one class to the petition seemed like a reasonable place to start. But then, how should the other areas of bankruptcy law be divided? I was also concerned about either covering too much material or not covering enough topics in depth for the students.

The first iteration of the syllabus contained big-picture concepts, such as exempt property, liens, and loans. In a Chapter 7 bankruptcy, an individual can keep certain exempt property. Many liens, on the other hand, actually survive a Chapter 7 bankruptcy, such as a real estate mortgage or a security interest in a car. There are also other components to an individual bankruptcy case that the students would need to know, such as claims that might be exempted from discharge—child support, income taxes, property taxes, and of course student loans. Then there are the nuances of bankruptcy cases—the things that they do not teach you in a textbook and the things you cannot read in the statute. Those include practice pointers, professionalism, and client interviewing and counseling among other things.


\footnote{11 U.S.C. § 522(b) (2012).}

When I distilled all of the “big-picture concepts” into the syllabus, I felt as though it would take me a full year’s worth of classes to teach all of the material. Moreover, I felt like a fish out of water. In practice, I had three types of clients. The first type was white-collar clients. They paid our firm a lot of money to stay out of jail. Then I had corporate bankruptcy clients. They paid our firm a lot of money to make sure that they did not have to pay other people a lot of money. Last, I had death row clients. I represented them pro bono, but they still send Christmas cards every year. This, of course, in no way, shape, or form prepared me—let alone qualified me—to teach the practice of consumer bankruptcy. Admittedly, this was one of those treacherous times where I had to be talked off a ledge by more than a few confidants, since I felt wholly unqualified to develop a real practice-skills-oriented bankruptcy syllabus on my own. I realized I truly needed to consult consumer bankruptcy attorneys on how to best structure the course to include both the practice and substantive big-ticket items.

Once I quelled the anxiety-breeding monster in my head (and I would have to do this regularly), I was able to—after multiple discussions with various bankruptcy attorneys—come up with a formula that seemed to work best for the course. In fact, the model we ultimately went with was based off of a retired bankruptcy judge’s suggestion, which took the syllabus and the substance of the course to the next level. Instead of devoting various classes to particular code sections, the syllabus covered certain topics that students were most likely to encounter in a bankruptcy case. For example, one class covered everything that could happen to a car in bankruptcy, such as reaffirmations and redemptions. Another class discussed the house in bankruptcy, including liens, motions for relief from stay, foreclosures, and loan modification programs. Other classes focused on working with taxes, student loans, and bankruptcy trustees and featured a panel of Chapter 7 and Chapter 13 bankruptcy trustees.

The classroom component also tapped into our local bankruptcy judges, so they could discuss with the students proper court appearance, professionalism, and demeanor before the court. The syllabus also included mock client interviewing and counseling for the first class. Then, towards the end of the semester, I included a mock negotiation and mediation session with certified mediators who worked with the students to put together a deal for their clients (debtor, creditor bank, and Chapter 7 trustee).
I specifically wanted to cover ethics and professional responsibility in bankruptcy cases. Accordingly, an entire class was devoted to the special ethical rules that apply to bankruptcy cases. Many practicing attorneys outside of bankruptcy may not know that, in addition to the state bar rules regulating professional responsibility, there is also another layer of heightened ethical obligations that attorneys must comply with in a bankruptcy case. These are above and beyond the ethical obligations that attorneys must follow in any given case. A syllabus does not make a clinic. Another thing that I needed to think about was learning objectives and outcomes.

IV. LEARNING OBJECTIVES AND OUTCOMES

This is an admitted weakness of mine. The source for this weakness is probably a multitude of factors: I do not want to be so married to outcomes that I ignore the idiosyncrasies of the class and its students; I have a severe aversion to overpromising and under-delivering; students lack appreciation for learning outcomes; and—the worst beast of all—weariness. To get past my own mental block over the subject, it helped to speak with colleagues whose wheelhouses included real assessments and thought over learning outcomes. Moreover, since the proposal to even get the teaching innovation grant required learning outcomes and objectives, I needed to more fully appreciate the application and utility of them.

A. The New Standard

The fluctuating job market is no secret, but now, rather than demanding more lawyers, it is demanding more of lawyers. At a minimum, the legal profession’s recent call for more clinical and experiential legal education has shifted the dynamic and curriculum in schools (or at least their awareness). I hope—but remain skeptical over whether—it has also incited the need for change within the profession, such as propelling mentoring programs to work with recent graduates.


118 Id. at 1015 (noting calls to “examine the commitment of the bar to mentoring and developing young lawyers”).
Unlike before, when law schools were only responsible to the students and peers, the age of consumerism and the weak market has spawned more stakeholders. Non-educational government agencies like the Internal Revenue Service, the Environmental Protection Agency, the Federal Bureau of Investigation, the Justice Department, and the general public are all pushing for accountability. As a consequence, law schools must adapt to the market. It must churn out a new type of graduate equipped with well, more.

For years, the legal community has used bar passage rates and employment statistics to assess the efficacy of law schools. In October 2007, however, the ABA bucked the trend when it tasked its Special Committee to determine if the efficacy of law schools could be assessed by outcome-based measures instead. The result proved to be a game changer. After a year of studies, the ABA instructed schools to realign their focus to outputs rather than inputs.

Standard 302. LEARNING OUTCOMES

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:
(a) Knowledge and understanding of substantive and procedural law;
(b) Legal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context;
(c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
(d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

What exactly does the ABA mean by outputs? The ABA determined that they needed new accreditation standards geared towards outcome learning measures. The aim is no longer to check off specific courses from a list but rather to assess the students’ knowledge

119 STUCKEY ET AL., supra note 57, at 36.
121 Lynch, supra note 117, at 981.
122 Id.
and overall understanding as it applies to the actual legal practice. The benchmark is set at "what a typical student should be able to do rather than what the weakest students can do."

B. The Pushback

While some professors recognize that learning outcomes have the potential to transform legal education, groups like the Association of American Law Schools fear that learning outcomes will undercut the existing framework. These groups that believe learning outcomes will "undermine the legal academy’s scholarly and theoretical underpinnings" misunderstand the nature of learning outcomes. To clarify, a movement towards learning outcomes does not diminish the value of theory or analytical teaching but instead serves to assess the material. In actuality, it can enhance the existing framework.

The fear behind learning outcomes may actually lie in job security. Allegedly, this new approach will stymie academic freedom, punish professors for students’ failure to meet outcomes, and simultaneously eliminate tenure. Yes, not all subjects are transferable to learning outcomes and may pose a challenge. Yes, learning outcomes will change the way a professor conducts a course. But it will only do so to the extent that the professor’s existing approach is ineffective in relaying information and teaching skills. The professor still controls the content, the teaching method, and the assessment method. The difference? The result.

125 STUCKEY ET AL., supra note 57, at 46.
126 Id.
129 Lynch, supra note 117, at 983.
130 Id. at 986.
131 Students who know they will have to apply the newly taught content are motivated to understand the material. They provide a deeper analysis, further ensuring a better understanding of the traditional doctrinal teachings. Id. at 1002.
132 Id. at 983, 995.
133 See Curcio et al., supra note 124, at 18.
If anything, this should get the academic juices flowing. It should encourage more collaboration and innovation across the institution. Moreover, it creates a sense of accountability, ensuring quality amongst the faculty.

C. Collaboration

Learning outcomes can help schools transition towards collaboration. As I discovered from conversations with colleagues, rather than having individual professors shape individual courses, learning outcomes create collective benchmarks that increase disclosure of course and law school objectives. But as it currently stands, the same course taught by two different professors can vary drastically in content, tested material, and approach. Thus, there are no collective assessments to evaluate how well students are learning the material in comparison to a student in an identical subject class.

Further, incoming students are blind to what the professor is looking for when it comes to end-of-semester exams. Students are not given a basis for what to expect by the end of the course let alone a method of how to monitor and survey their acquired knowledge and understanding. Learning outcomes, though, encourage schools to collaborate and offer the guidance and support students need to learn effectively.

D. Transparency and Assessment

How can guidance be provided in such a setting? Assessments. Other than being a dirty word, assessments are the byproduct of learning outcomes. In most courses, we assess students’ knowledge and understanding through a single, cumulative, three-hour exam. We ask students to apply memorized doctrines to a hypothetical fact pattern. Then we grade them on an isolated performance at the end of the semester. The Dean of Harvard Law, Christopher Langdell, first adopted this approach in the 1870s, and law schools still dogmatically adhere to this antiquated approach over a century later.

\[135\] Id. at 951.
\[136\] Id.
\[137\] Id. at 958–59.
\[138\] Id. at 969.
\[139\] STUCKEY ET AL., supra note 57, at 236.
Assessments in the educational setting are intended to determine if the student has acquired a predetermined set of information and/or skill. It should foster learning and should offer students guidance for curricular change. Yet the Langdell approach does little more than sort out which students know the bar material well enough to pass a semester exam at that very moment. It is disconnected from how well a given student will do in practice. Furthermore, students lack a gauge for whether they understand the material before being tested on it at the end of the semester. As a result, students complain about the process’ minimal feedback throughout the semester.

Learning outcomes and the associated assessments, on the other hand, can help students self-evaluate the most appropriate approach to apply to any given circumstance. One way to encourage purposeful teaching aimed at learning is to use rubrics. Rubrics tell students what matters; they also give students notice as to what performance a professor seeks. Rubrics and mid-semester feedback also help to determine when things are not working and when a pivot or change is needed.

Similarly, surveys can be used as an effective assessment tool for measuring learning outcomes. Survey responses are reflective of the students’ true experience rather than what they perceive to be socially desirable answers. Accordingly, responses can be used pre- and post-course to help professors develop and adjust their teaching methods, as well as to gauge the students’ grasp of the material.

The very act of taking a survey—asking important questions related to the learning outcomes—can also be used to encourage learning outcomes. Taking a survey has been shown to prompt students

140 Id. at 235.
141 Id. at 237.
142 Id.
143 Friedland, supra note 134, at 967.
144 Id. at 969, 976.
145 Surveys gauge the attitudes and self-reported behaviors that professors may not otherwise notice. One benefit of a survey is that it conveys the importance of the students’ opinion and role. Further, they can cover a broad array of subjects within a short period of time and can cover areas that might be difficult or costly to directly assess, like development. On the other hand, survey responses can vary depending on the precision of the words. Absent a mandate, response rates can vary. If they are low, the collective impression will be skewed.
146 Curcio et al., supra note 124, at 35.
147 Id. at 47.
148 Id. at 49.
to think more carefully about the specified learning objective and its role in the students’ exchanges with clients.\textsuperscript{149}

Requiring better labeling in the syllabi, course catalogs, and school websites can establish transparency in expected learning outcomes, as well as help accomplish compliance.\textsuperscript{150} By providing details on what methodology will be used and what skills or knowledge the students will gain through the class, the students are better equipped for course selection.\textsuperscript{151} Students can choose courses that are taught in a method that is more suitable for his or her learning style. This also allows students to choose courses that fill the gap of existing knowledge and skills.

E. Accountability and Innovation

In building the BAPP, I soon realized that establishing learning outcomes creates accountability. First, it forced me to reassess the efficacy of my selected teaching methods (not only with the BAPP but also with other classes). Currently, most law professors in the United States use a limited range of methods, relying heavily on the case method.\textsuperscript{152} Each method may be appropriate for one purpose but not another. If the new standard is to meet the learning objectives, professors will be pressed to be innovative and thoughtful about selecting an appropriate method to achieve distinct objectives.\textsuperscript{153}

Second, learning outcomes force students to contribute to the classroom exchange and to think outside of the box, a skill on which real practice heavily relies. Learning outcomes hold students accountable for their own learning.\textsuperscript{154} Under the case method, the focus is on the teacher, who guides the discussion and deconstructs the student’s argument. This allows the majority of students to passively observe.

In contrast, learning outcomes encourage engaged learning, which has been shown to augment student learning.\textsuperscript{155} The environment allows the professor to offer guidance and propose real life challenges, pushing the students to work through concepts.\textsuperscript{156} For

\textsuperscript{149} Id.
\textsuperscript{150} Friedland, supra note 134, at 967.
\textsuperscript{151} Id. at 967–68.
\textsuperscript{152} STUCKEY ET AL., supra note 57, at 207.
\textsuperscript{153} Id. at 132.
\textsuperscript{154} Id. at 235.
\textsuperscript{155} Friedland, supra note 134, at 971–72.
\textsuperscript{156} Friedland, supra note 127.
example, Professor Steven Friedland wrapped his Advanced Evidence course in the cloak of a mock trial, and he engaged students in trial skills all while accomplishing learning outcomes. 157 “Some of the students were hesitant about leaving the comfort of the classroom for the courtroom,” but the satisfaction on their faces reflected a sense of accomplishment. 158

For its part, the ABA immersed itself in drafting the new Standards. It is no longer a conversation of if learning outcomes will happen but rather when. The energy of those who are pushing back against learning outcomes would be better spent on brainstorming innovative teaching styles because, ready or not, here it comes!

F. Purpose and Goals with the BAPP

Embracing learning outcomes, I shaped the BAPP so students have direct responsibility for the clients’ cases under the supervision of mentors and would handle all aspects of client representation from the initial interview and evaluation of a potential case through discharge. The BAPP’s primary goals focused on teaching fundamental lawyering skills including: (1) client interviewing and counseling; (2) cooperative interaction with peers, supervisors, and support staff; (3) investigative and analytical skills; (4) preparing and responding to pleadings, motions, written discovery demands, and other legal documents; (5) negotiation skills; and (6) advocacy skills. In addition, I wanted the BAPP to instill high standards of ethics and professional responsibility and promote effective work habits appropriate for a practicing attorney, such as taking ownership of cases, timeliness, and professionalism of work product and demeanor.

While the goal was never to churn out future consumer bankruptcy attorneys, I did want to enhance students’ understanding of bankruptcy law and its transactional, negotiation, and litigation components. Finally, I wanted the BAPP to provide high quality, professional, and zealous representation of our clients and foster students’ ability to engage in self-reflection and introspective professional development.

Additionally, the BAPP sought to promote debtor education and financial literacy through community outreach programs designed to educate individuals on how to avoid home foreclosure schemes and

157 Id.
158 Id.
similar problems. Throughout the semester, every student was required to participate in preparing and presenting community educational programs with lawyers from Atlanta Legal Aid. We held these programs once a month and advertised them at senior centers, homeless shelters, libraries, and other public spaces.

V. GETTING THE BUY-IN

Whether you are doing something small or something grand, it is key to the notion of a startup to create strong buy-in among the relevant others. The BAPP clearly needed buy-in from a cast of characters, including mentor attorneys, guest lecturers, bankruptcy judges, and our school administrators. In presenting this program, it was important to assess where I was in the process and to make sure that I had not overlooked anything obvious.

This can be daunting when setting up something new, because oftentimes you do not know that you need to know something. The other thing that was vital from the buy-in process was listening to feedback carefully and trying to incorporate suggestions into the program. I took a look at what had already gone out in terms of communications about the clinic. Some of those included one-on-one talks; others focused more on meetings and e-mails. I needed to evaluate, from that perspective, how much buy-in would be needed.

The first thing I needed for buy-in from any relevant group was to make sure that the idea was crystal clear. I needed to break it down into an elevator pitch that was about ninety seconds long. I also needed to know if there were any other pro bono bankruptcy clinics in our community. My initial research told me that some of the legal aid organizations take the occasional bankruptcy case, but that was by no means a common practice. I also needed to know what the most common questions or criticisms of the program might be. Although I am a big fan of PowerPoint, I decided that what I really wanted was to just have an open and honest conversation with the various people who would be contributing to and/or impacted by our clinical program.
A. Mentors and Lecturers

A critical component to our startup was mentor attorneys.\textsuperscript{159} Given the model that I ultimately decided to use, mentor attorneys were the key to the entire program. This enabled us to get around the fact that I am not a member of the Georgia bar and could not sign as the attorney of record on any of the cases. This also alleviated the problem of what to do once the semester ended and students either went on to other classes or graduated. In fact, I was asking a lot of the attorneys to serve as the attorney-of-record, mentor the students, and remain the attorney on the case even after the semester ended. I knew that this was a tall order.

The other issue that surfaced was my lack of a well-rooted network in the consumer bankruptcy arena. My background was in corporate bankruptcies. Therefore, I had to rely upon the knowledge, insight, and recommendations of others in the consumer bankruptcy world to identify possible mentor attorneys and to vet them accordingly.

Once I started down the road of recruiting mentor attorneys, I thought I would find it to be a much more difficult process. Number one, I was asking attorneys to serve as pro bono counsel during a time when consumer bankruptcy filings were falling. Number two, I was also asking them to supervise and let students work on cases when they were the attorney of record and to give the students a long enough leash to really understand what it was like to practice. Initially, I thought I could recruit mentor attorneys from larger law firms—mid-level or senior associates—who might want some additional experience with handling a case and working with students. It seemed like a natural connection, especially since, as an associate in a big firm myself, I had worked on death penalty cases and as a public defender in a pro bono capacity.

Unfortunately, this presented a problem. Under the Bankruptcy Code, a firm or individual attorney who does consumer bankruptcy work must register online as a “debt relief agency.”\textsuperscript{160} Any large firm

\textsuperscript{159} Mentor attorneys are a readily available and cost-conscience resource. See James Backman, Externships and New Lawyer Mentoring: The Practicing Lawyer’s Role in Educating New Lawyers, 24 BYU J. PUB. L. 65, 65-66 (2009).

\textsuperscript{160} 11 U.S.C. § 528(a)(4) (2012). The rule requires advertisements to clearly and conspicuously use the following statement in such advertisement: “We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code,” or a substantially similar statement. \textit{Id.}
that represented banks or other creditors would have a problem with this. Suffice it to say, a bank probably would not like to see that the law firm it paid a decent chunk of change to represent it was suddenly listed as a debt relief agency on the firm’s website. Moreover, the process of running an individual case through a large firm’s conflict database seemed like a headache within the universe of potential conflicts.\footnote{As a side note, further research into this issue gave me an understanding that the provision of the bankruptcy code requiring the posting of the “debt relief agency” disclaimer at a minimum implies that the attorney will receive compensation. So there is probably a way to get around the requirement, but in terms of setting up a clinic rather quickly, I could not exactly wait for a case to make the issue ripe, nor could I go into the bankruptcy court and ask for an advisory opinion on the matter.}

Fortunately, there were several groups that I initially reached out to in the metro Atlanta area that were incredibly helpful not only in spreading the word about our legal startup, but also in identifying attorneys who might be willing to serve as mentors. These groups were an invaluable resource. The ability to connect with members of the bar and various groups with the requisite practice areas was a huge addition to our bankruptcy program.

For example, the Metro Atlanta Consumer Bankruptcy Attorney Group (MACBAG) is a group specifically designed for those who practice in the consumer bankruptcy field on the creditor side and on the debtor side. MACBAG was able to refer a number of excellent attorneys to our program. Another group, the International Women’s Restructuring and Insolvency Conference (IWIRC), was also an exceptional and proactive resource. I should not have been as surprised as I was at how many attorneys were not only genuinely excited about our program but also really wanted to serve as mentors to our students.

I also reached out to the Office of the United States Trustee, which serves as the watchdog for the bankruptcy system. I figured that the U.S. Trustee’s Office would have both a working knowledge of local consumer bankruptcy attorneys and be able to recommend the best ones to serve as mentors in our program. This served the dual purpose of also meeting with the U.S. Trustee’s Office in order to let them know about the program and that students would be appearing in court and attending the first meeting of creditors under 11 U.S.C. § 341. Additionally, since the U.S. Trustee’s Office had direct contact
with the panel of Chapter 7 trustees, they were able to introduce the BAPP to that constituency.

Once I had assembled a working list of potential mentor attorneys, I went about the task of contacting them, explaining our program to them, and vetting them. After my first few mentor meetings, it occurred to me that I needed to implement an orientation for these mentor attorneys. The purpose was not to orient mentors to something that they were already the experts in (consumer bankruptcy law) but rather to highlight some of the more intricate and nuanced aspects of mentoring students.

In particular, I knew that I might have to cover working with millennials. We have a faculty member who often discusses the ways we have had to change our teaching styles not only because of the different way millennial students learn but also because of the sheer number of distractions in the classroom to which students are now exposed.162 I thought the orientation might be a good opportunity to share some of this insight with our mentor attorneys.

Upon speaking with the mentor attorneys (before we even had cases or even a fully flushed out program), I was most surprised by their enthusiasm for working with the students and their interest in developing the next generation of lawyers. I expected many questions related to things that would happen at the end of the semester in terms of the attorney staying on the case or questions about other routine case matters, but the questions were few. Either I am a really good sales person—hardly—or the mentor attorneys had faith in both their ability to work with the students and our students’ ability to work with them.

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“Researchers say the lure of these technologies, while it affects adults too, is particularly powerful for young people. The risk, they say, is that developing brains can become more easily habituated than adult brains to constantly switching tasks—and less able to sustain attention.” Id.
B. Judicial

Another constituency I needed buy-in from was the bankruptcy judges, since this startup proposed to put debtors in the hands of students. The Northern District of Georgia has a very active and collegial bankruptcy bench, most of whom I had experience working with in one capacity or another. When I requested a meeting with all of the judges, it was like having lunch with the brains of the bankruptcy operation rather than an epic Game of Thrones-esque moment of judgment.\footnote{Game of Thrones was originally a book written by George R. R. Martin, but has quickly turned into a must-see television show featured exclusively on HBO. The premise entails nine noble families who battle to the death for control of the mythical land of Westeros. The television drama, studded with political overthrow and sexual intrigue, has won one Golden Globe. See Game of Thrones, IMBD, http://www.imdb.com/title/tt0944947/ (last visited Aug. 9, 2014).} Okay, it was still daunting presenting an early stage startup to a group of individuals who effectively had the ability to kill it before it ever got off the ground. The judges, however, were incredibly supportive of the idea.

First and foremost, the judges bear the brunt of pro se debtor cases. They are the ones who see the rampant errors that occur in pro se cases. By taking just a few of those pro se cases, the judges saw this as more than just a learning experience for our students. We truly could do some good in the bankruptcy system, improve efficiency in our cases, avoid harmful errors that might later deprive debtors of certain rights, and instill a new generation of lawyers with pride for public service work.

While the verbal approval of the startup clinic was a relief, an official approval was mandatory. I knew that bankruptcy clinics at other law schools had required approval from the district court due to a particular local rule regarding student practice.\footnote{Pursuant to Local Rule 6 of the Southern District of Florida Special Rules Governing Admission and Practice of Attorneys, any law school clinic credited for school credit must be certified by the district court and must not conflict with the court’s schedules, amongst other requirements. S.D. F.LA. R. 6, available at http://www.flsd.uscourts.gov/wp-content/uploads/2013/11/FLSDDecember2013LocalRules.pdf.} I also knew that our externship program had a practice of certifying students who intended to appear in court (through local prosecution and public defender placements) under the Third-Year Practice Act in Georgia. This certification was simple; the Dean needed to certify that the enrolled students had met the credit hour and good standing requirements. We
used a similar certification for the students who externed at the United States Attorney’s Office.

The Northern District of Georgia did not have a stand-alone student practice rule, so one of the bankruptcy judges acted as the BAPP’s shepherd and received approval from the district court to enter an order regarding the bankruptcy clinic and the students who would be practicing in it. Of course, this meant that I needed to quickly come up with language for the order in the absence of an explicit third-year practice rule. I combined the relevant language that other clinical programs utilized in contemplation of students appearing in court and incorporated the Georgia Supreme Court Rules that did govern student practice. The bankruptcy judges then signed off on a standing order—accompanied by the student certification from the Dean. The entry of that order legitimized the BAPP’s status.

C. Institutional

From an institutional perspective, suggesting a new course—setting aside the live client component—can be met with skepticism, depending on the number of students you are intending to enroll and how much time this will take away from your current teaching load. In recent years, there has been more widespread discussion/debate/criticism of the so-called “Law and” classes and more of a push for substantive bar-related and skills building courses. While I might even consider auditing a course titled “Law and Reality TV,” I do think that these courses serve a purpose by giving students the occasional diversion from the rigors of law school coursework. While the number and existence of “Law and” courses in a curriculum is better saved for someone else’s article, I am fortunate to be at an institution that prizes the development and innovation of new courses that bring more hard skills that students need in practice.

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165 One hot craze is The Law and Harry Potter. Although some may think a book with this underlying concept is a concoction brewed up by fanatics, The Law and Harry Potter is actually a compilation of papers edited by Jeffrey E. Thomas, Associate Dean and Professor of Law at the University of Missouri-Kansas City School of Law and Franklin G. Snyder, Professor of Law at Texas Wesleyan University School of Law. Douglas C. Kane, Reviews: The Law and Harry Potter, MYTHOPOEIC SOC’Y, http://www.mythsoc.org/reviews/harry-potter-law/ (last visited Aug. 9, 2014). The book spans various topics with a focus on (1) Legal Traditions and Institutions, (2) Crimes and Punishment, (3) Harry Potter and Identity, (4) The Wizard Economy, and (5) Harry Potter as an Archetype. Id.
The hurdle that some may face for buy-in on an institutional level was not really one for me. Still, I did need to have actionable metrics—back to those learning objectives and outcomes—to demonstrate the sustainability and utility of the course. I eventually unearthed them.

D. The Students

The buy-in from the students was, in my experience, an easy get. The good news is that many students are hungry for opportunities that let them get hands-on experience with client work. For some institutions with robust clinical offerings, it might be more difficult to introduce a new and untested program. In my case, our students responded quickly with interest. The thing to remember is that buy-in from students is on a continuum. You will need their buy-in on the day they register, and you will need it throughout the semester because word about the clinic experience travels—for better or worse.

I think part of the attraction to the program was the structure itself. Not only would students be effectively running their own cases, but they also would have the opportunity to see that through the lens of veteran practitioners. One suggestion that I received early on was to give each student team two mentors—one for each case—rather than assigning students to one mentor for both of their cases. This had the dual benefit of easing the burden on mentor attorneys and allowing students to experience two different styles of lawyering and case management. Students enjoyed getting to see the various approaches to similar problems, and we were able to discuss that later in case rounds.

Students really need structure, especially when much of the work is taking place outside the classroom and beyond my own control. After speaking with several of my clinical colleagues, looking at the material in the syllabus, and considering just what I was asking students to do, I knew the program needed a “how-to” manual and a day-long boot camp orientation to introduce them to and walk them through the basics of a bankruptcy case. Rather than roll the dice on whether the students would actually come for a full-day orientation before the start of classes, I had them sign a contract agreeing to do just that. Failure to attend the orientation would result in being dropped from the course. Problem solved. It established from the get-go that while they were getting an awesome opportunity, it also came with great responsibility.
E. The Clients

The buy-in from clients was a relative unknown. From my experience in pro bono criminal work, I know that most clients are grateful for any assistance. There will always be a few outliers—I was once fired in open court when a client was unhappy with a reduced sentence from the life in prison he was facing—but on the whole, the reaction of clients to pro bono assistance has been mostly positive.

Bankruptcy did not prove to be any different. Clients were thrilled to have an attorney working on their case and even more so to have the benefit of two additional students. I considered whether we would need an engagement letter between the program and client. I did not, however, want to step on the toes of mentors who would want clients to also sign their own engagement letter. Instead, I created two items: (1) a client acknowledgement letter whereby the client agreed that there were students working on the case with the mentor attorney and that the students could discuss the case in case rounds in the course and (2) a client consent form that was filed with the bankruptcy court.166

The difficult part with the clients came not in the premise of students running their cases; instead, the difficulty came in obtaining all of the financial information from them. The Bankruptcy Code requires that debtors disclose the full extent of their financial affairs on their bankruptcy petitions.167 Beyond the routine assets and liabilities, this includes bank account information, tax filings, mortgages, loans, liens, etc.168 For many debtors, the amount of financial information required to file for bankruptcy can be overwhelming.169 Debtors stop opening bills, discard statements and receipts, and do not track their expenses. I had heard stories from other consumer bankruptcy attor-

166 This form was one suggested by the bankruptcy court. It allowed bankruptcy judges to know which cases were being run through the BAPP so that, in the event that students appeared in court, the judge would not be surprised. It also gave the judges the ability to make sure that contested matters were given more attention (i.e., questions from the bench) for the students’ benefit.
168 Id.
ney about clients who had come to their first meeting with a paper bag filled with bills and receipts going back many years.

To add to the anxiety, for many debtors, this is their first interaction with the legal system. Couple that with the fear of financial disarray, and you have a recipe for stress and avoidance. Other bankruptcy clinicians had warned me that if clients do not come to the first meeting with all of the necessary information to fill out their bankruptcy schedules, then they might never bring that information—and hence never file. Alternatively, it might take so long to collect that information that the case gets filed too late in the semester for a student to really take it from start to finish.

As a result, from day one, we required clients to have all financial information required to file their petitions and to bring it with them to their first meeting with the students and mentor attorney. If a client failed to do that, then they would have one week to come back with that information or we would send them a non-engagement letter and give them the numbers for Legal Aid or AVLF. While this low-tolerance policy might seem harsh, it needed to be in place in order for the program to work in the confines of a semester. And our clients (with the exception of one) were on board with this.

V. THE MECHANICS

Consumer bankruptcies can be volume businesses with little interaction between attorney and client. High-volume bankruptcy firms offer little access to an attorney. Clients meet with a paralegal who takes down the relevant financial information and inputs it into the computer program—most consumer bankruptcy attorneys use software called “Best Case.” After that, the client may meet with an attorney to sign the bankruptcy petition, or the client may not even meet the attorney until the 341 meeting of creditors, where the client answers some questions for the bankruptcy trustee. These so-called bankruptcy “mills”170 were the likely stop for our debtors—if they did not go the pro se route—due to the volume pricing for a Chapter 7 case. I knew we could provide them with better one-on-one contact at the very least.

170 “Bankruptcy mills” is a generic term to describe pricey bankruptcy law firms that provide low quality legal services. Baran Bulkat, How to Avoid a Bankruptcy Mill, NOLO, http://www.nolo.com/legal-encyclopedia/how-avoid-bankruptcy-mill.html (last visited Aug. 9, 2014). These mills tend to rely heavily on aggressive advertising and hook the clients with retainer agreements, locking the clients into a deal prior to really discussing the clients’ individual situations. Id.
but just as with any startup, process and flow matter to students, mentors, and clients.

A. Putting Pen to Paper: Crafting a Manual

Manuals can come in all shapes and sizes. They can focus on the internal workings of a business. They can bring in the wider universe of law to put things in practice. They may also be a combination of both. Regardless of how the information is put together, clinics need a manual. This is especially true because students are slaves to the casebook. They need to see a thing in print in order to absorb its validity.

When crafting a manual, I did not need to reinvent the wheel. The University of Miami bankruptcy clinic shared its manual with me, as did our own in-house clinical programs—Investor Advocacy, Tax, and HeLP. This helped me put our manual together in a cohesive fashion and determine what information to include. I treated it like a “how to” guide for our students. It did not explain the bankruptcy process for them. It did, however, give them a roadmap for how we would run things—sort of like a law firm. It delivered the information students would need for internal and external purposes along with processes for case management, supervision meetings, etc.

I designed the manual to describe all of the BAPP’s policies and procedures and organized it in two main parts. In the first part, the students were given information about the course components, student responsibilities, and a high-level discussion of the major documents students are responsible for maintaining related to their cases. The second part, “BAPP Office Management,” described the specific procedures and policies under which our law office operated, including intake and referral procedures.

The manual also contained several appendices, which provided examples of documents and forms used by the BAPP, though students were advised to always ensure that documents are current—again, as part of learning as you do things, you have to change your internal documents given the practical realities of what you are doing. At the end of the manual, I included a form that the students had to sign and turn in certifying that they read it from cover to cover. All students signed it, and it was relatively easy to identify who in fact had not read all of the information.
In addition to the student manual, I also crafted a mentor attorney manual. Our externship program had very useful information for site supervisors, so I used that as my starting point. The mentor attorney handbook gave a description of the program including its history and structure. It also highlighted the goals of the program, including community involvement and practical experience. It then went on to describe the mentorship process, such as procedural matters and how cases are assigned.

The manual also included a list of the documentation that clients would be responsible for bringing to the first meeting. I reminded the mentor attorneys that if the client failed to bring in the requisite materials, they needed to advise the client they had one week to produce the materials or they could not be part of our program. The mentor attorney handbook also had a timeline for the process: from the receipt of the email that assigned a client and students, to the meeting with students directly prior to the client interview, to case discharge or the end of the semester, whichever came first. The manual included every step of the mentoring process so that the mentor attorney could get an idea for how much time would be involved. Last, the mentor attorney handbook contained the program requirements for students and an attachment for the student evaluation forms the attorneys would fill out.

B. Boot Camp—For Mentors and Students

After my due diligence of speaking with as many clinical professors as possible (both in my own institution and outside), I found a variety of practices in terms of preparing students for the program. Some clinics required orientation before classes started while others devoted the first few classes or weeks to orientation and program overviews. Given the ambitious nature of the syllabus and realizing that we needed to get cases going as soon as possible, I decided to hold a full-day orientation for the students followed by an evening orientation session—about ninety minutes—for the mentor attorneys.

For students, attendance was mandatory regardless of their level of experience with bankruptcy cases. It served as an icebreaker and a good way to get them back into the swing of things after summer break. For mentors, it was strongly recommended, but not required. I advise having both of these sessions. The orientations served as vehicles to humanize our project, introduce attendees to the cast of characters, and answer any questions or concerns.
1. Students

The student orientation session was a day-long boot camp on the practice of bankruptcy. Since it was mid-August and I had been living and breathing this clinic for a couple of months, I knew enough to call in experts to present the material. I recruited practitioners to cover the following: (1) bankruptcy cases start-to-finish; (2) software and case management; (3) U.S. Trustee’s Office functions; (4) client confidentiality; (5) intake and fee waiver processes; (6) credit counseling procedures;\footnote{This is required by 11 U.S.C. § 109(h) (2012).} and (7) cultural competency. While the first five are a little more self-explanatory, the cultural competency training was an important fixture for the orientation.\footnote{See Cynthia M. Ward & Nelson P. Miller, The Role of Law Schools in Shaping Culturally Competent Lawyers, Mich. B. J., Jan. 2010, at 16, available at https://www.michbar.org/journal/pdf/pdf1article1619.pdf.}

In the cultural competency segment, we explored various topics that the students would likely run across, even if they did not encounter them until down the road in their own practices. Essentially, I wanted students to be able to understand their client’s worldview and the resulting values and goals, to which they may be unaccustomed. Pro bono bankruptcy clients are at—what may likely be—the lowest point in their lives. They come from all walks of life. We focused on exposing students not only to clients who were incredibly poor but also to those who do not fit our stereotypes of a debtor—such as a college graduate.

In addition, there is a large amount of trust-building that goes on in the initial meeting, and because we are tasked with getting some very personal—albeit financial—information from our clients, students needed to be able to establish a rapport with their clients early. The last thing you want is a client who is afraid to tell you about some assets, and then the bankruptcy trustee finds out about them later. To achieve this, the students needed to be aware of how the client viewed his or her situation and respect that the client made choices in the past—even ones that the student disagrees with now. It is important to remind students that we each bring our background and experiences to bear in a given situation, but we should not substitute that for the legal advice that a client is seeking.

171 This is required by 11 U.S.C. § 109(h) (2012).
2. Mentors

A local firm, McKenna Long & Aldrich, had long been a patron of the BAPP, and attorneys in its bankruptcy department served as sounding boards, advisors, and guest lecturers. When they volunteered to let us have a cocktail party for the mentors at their offices, I gladly accepted the offer—especially since our campus does not permit alcohol and it seemed like convincing a room full of people to trust someone who has never worked on a consumer case would require a little food and sparkle. I explained to the mentors that the BAPP’s goal was to provide law students with practical experience representing clients. Ideally, we wanted students to see the case proceed to discharge by the end of the semester, if possible.

I encouraged mentor attorneys to invite law students to attend hearings unrelated to the assigned pro bono matter in order to benefit the students’ overall education in the bankruptcy arena. In addition to the educational component, each student’s experience through the program fosters the development of that student’s professional network within the bankruptcy community. Side note: it is good business to hold a dinner at the end of the semester to thank the mentor attorneys, guest lecturers, and bankruptcy judges for being so involved and generous with their time. We had the students all share a few words about their experiences in the BAPP as well, which made the evening more special.

C. Running a Case

While some may think of bankruptcy as an automated process (see prior discussion on bankruptcy mills), there are a lot of moving parts in a bankruptcy case. We require our students to take a litigation course, which familiarizes them with the process of a case, but in bankruptcy, things are different. There is not just a plaintiff and defendant—there is a debtor, creditors, a trustee, and a judge. While technology has streamlined the preparation of a bankruptcy petition by creating a platform for inputting financial information and generating the required calculations, it was valuable for the students to learn how to put together a petition without automation. What may seem like just numbers matters greatly in determining the assets that a...
debtor may exempt from the bankruptcy estate and also the debtor’s ability to “strip off” certain liens.\footnote{In In re McNeal, the Eleventh Circuit Court of Appeals unanimously found that the United States Supreme Court’s holding in Dewsnup v. Timm, barring Chapter 7 debtors from stripping a creditor’s partially secured claim down to the value of the collateral securing it, did not apply to a junior lien (i.e., second mortgage) when the collateral was of insufficient value. Christopher Combest, \textit{Lien “Strip Down” vs. Lien “Strip Off”: Dewsnup v. Timm Is Still the Law—Isn’t It?}, A.B.A., http://www.americanbar.org/publications/blt/2013/05/keeping_current_combest.html (last visited Aug. 9, 2014). As a result, debtors in the Eleventh Circuit may “strip off” the second mortgage and the bankruptcy court may convert it into unsecured debt, ordering the lender to remove the lien from the property. \textit{Id.}}

I had to remind our mentor attorneys that what seems like second nature to them is foreign to most of our students. The students must be the ones to ask the client questions during the initial interview in order to assemble the financial information and put together the bankruptcy petition. Once the case itself is filed, the court assigns a trustee to the case and sets the meeting of creditors. In the average bankruptcy case, the attorney will not meet with the client between the filing of the petition and the 341 meeting of creditors, but in our cases, we added that additional step to give the students more experience in preparing a client for the meeting with the trustee. For many Chapter 7 consumer bankruptcy cases, this meeting of creditors is in effect the end of the road. The debtor proceeds to discharge without many hiccups.

This was the process for about half of our cases in the BAPP. Our partnership with Atlanta Legal Aid and AVLF, however, allowed us a little wiggle room in case selection. We were able to identify cases that had more complex issues for students to tackle, including adversary proceedings and some motion practices. Whether relatively simple or far more complex, the students embraced their cases and their clients.

On the easier end of the case spectrum, we accepted a few “peace of mind” bankruptcies. Those usually consist of a judgment-proof debtor who lacks any non-exempt assets for the trustee to sell and is technically beyond the reach of creditors. While that individual would not need to file bankruptcy, it does stop the harassment from creditors.

One example was an elderly blind woman who we took on as a client. Our students met with her at her apartment because she was afraid to leave her house. When the 341 meeting of creditors oc-
curred, the students picked her up and took her to the bankruptcy court. Cases like this one do not pose so much of an intellectual challenge for students, but they do teach them about people management. The students had to quell the client’s anxieties and guide her through the process step-by-step. Just the process of reading the entire bankruptcy petition to her because she was blind was a useful exercise. I would later receive a note from this client informing me that her student lawyers deserved an A+ in the class.

On the more complex end of the spectrum was a debtor who had a one-fourth interest in an inherited house in Florida that the trustee would be able to sell. After a lot of research and multiple consultations with the debtor, we ultimately decided that bankruptcy was not the best answer because of the family property. Students also had the opportunity to take advantage of a recent Eleventh Circuit decision that permitted stripping off—a fancy bankruptcy term for basically getting rid of—a wholly unsecured second mortgage.174 No other circuit in the country permits this practice, but with a favorable (if unpublished) opinion, we were able to strip off several second mortgages.

Some cases present certain challenges for students in what I like to call “welcome to the practice of law.” In one of those cases, the students had worked diligently to prepare the bankruptcy petition, filed it, and met with the client several times. On the eve of the 341 meeting, the client was arrested. There was a last minute scramble to reschedule, but it was a good learning experience for the students as to the lesson that “anything can happen.”

In another case, the mentor attorney had a last-minute family emergency, so when the students and the client showed up at the law office, the meeting went on as planned—with me on the speaker phone—collecting the facts and discussing the financial information (and avoiding any legal advice that might lend itself to the unauthorized practice of law). In another case, we had to have a “come to Jesus” moment with a client who did not want to give up a car that she could not afford. Yet, another case exposed students to a rather difficult personality with an incredibly checkered past. All of these gave the students real experiences that teach them about flexibility, judgment skills, and getting things done on unanticipated deadlines—things that are difficult to create in the standard law school class.

174 In re McNeal, 477 F. App’x 562 (11th Cir. 2012).
In order to manage the cases, we employed a cloud-based file management system. There are several on the market, and many of them are free to law school clinics. The BAPP used Clio for electronic case management. I required each student to use Clio for case management, calendaring, and tracking hours. I also required students to upload case plans, supervision meeting agendas, and any case-related documents that they worked on to Clio for review and grading purposes. I added restrictions as to how students could access Clio (i.e., use of an unsecured network was not permitted).

While some students probably viewed the use of Clio as tedious, it took the place of reflective journals. I debated for some time over whether I would require the students to use reflective journals as part of their grade. Some of my colleagues and other clinics adhere to the use of journals. For me, journals seemed like an exercise that caused students to exaggerate or manufacture things to fill blank spaces. I wanted the students to do things that they would see in practice, and that included case plans and tracking hours. From my perspective (and admittedly, it may not be the right perspective), the journals did not add much to the learning outcomes. Moreover, the supervision meeting agendas did require students to include somewhat reflective notes about how they thought the case was going and if they would do anything differently from what the mentor attorney had advised and discussed with them.

D. Student Supervision and Managing Expectations

Perhaps the component that I underestimated the most was student supervision. By underestimated, I mean that I did not envision how many hours I would spend on this with the students. Believe me, this is not a negative commentary on student supervision, but rather a reflection of my type-A personality that led me to attend nearly every single 341 meeting—even though students and mentors had them obviously covered—and the pure enjoyment I got from discussing case strategy with students. By the end of the semester, I felt like I was a chicken running around with its head cut off, running back and forth to the bankruptcy court.

I required students to meet every other week in their assigned teams to discuss cases and strategy. We also would have case rounds the last Tuesday of the month and spend the entire class discussing each other’s cases. This groupthink environment really made the class feel like a functioning law firm. Students were able to share ideas,
strategies, and stories. They learned from each other and looked out for each other. They traded tips and hints about trustees, judges, and mentors. By the end of the semester, I just sat back and listened to the students discuss their cases like a group of lawyers. It renewed my belief in the power of practice.

Another piece of advice I received early on was the need to manage expectations. From the orientation to our end-of-semester dinner, I reminded the students that since the BAPP was a startup in its infancy, there would be bumps in the road that we would not anticipate. I asked for their patience and received far more than that. The students were incredibly tolerant of the warts and imperfections that came along with the territory. There was one student (there is always one) who wanted to make a mountain out of every molehill, but the obligatory conversation about professionalism quickly calmed her down.

One of the best ways to manage expectations with the students is to keep the lines of communication open and the operation transparent. I suffered from no delusions of grandeur that the BAPP would be perfect in execution, and in the early stages, I probably over-communicated the possibility of pitfalls and problems. Yes, this requires more work and more thought, but it is incredibly important when you have sixteen students who are just learning how to work together and with others. It created a level of trust and an implicit understanding that we were in this thing together.

I frequently checked in with students and mentors. This allowed me to be more flexible when I ran across things that did not work because I could make a real-time decision rather than one caused primarily by hindsight. Plus, it helped me avoid the dreaded self-loathing that would ensue if I overpromised and under-delivered. I believe that most of us in the legal academy are unaccustomed to mediocrity, and while I was not aiming to just be average with the BAPP’s first outing, I also needed realistic and achievable expectations. Starting out small and then gradually pushing the bar higher helped maintain an even pace and brought students the confidence from the program they needed. Perfection does not win the day, but being able to learn from mistakes and missteps is critical. As they say in the startup world, walk before you can run.
VI. PIVOTING: LESSONS LEARNED AND TEACHABLE MOMENTS

There are times in every lawyer’s life—I think—where you wake up in the middle of the night in a cold sweat worried that you just messed up in a major way. Welcome to my summer of putting together a lean legal clinic. There were many times when I woke up thinking I was either insane, on the brink of insanity, or already in the insane asylum. From a personal standpoint, I like things with structure. Mess with my structure and you mess with my psyche. A couple of weeks of sleepless nights and it was clear that I needed to adopt a different outlook. Constantly worrying about leading students into the wilds of practice would not be doing anyone a favor. Enter the pivot.

One of the freshest buzzwords from the lean startup movement is the “pivot.” It describes shrewd startups that change direction quickly but stay grounded in what they have learned. Although law school clinics are not profit-generating businesses, I think the term applies to any business—and that is really what a law school clinic is. Pivoting can describe a change of the grandest or smallest of proportions. The pivot works because it is housed in what you have previously learned. Capitalizing on information (“data points” in the lean startup vernacular) and methods that have worked in the past, the pivot allows a business to be flexible and move in a direction that simply works better, costs less, and gets products or services to customers faster. The alternative, impulsively leaping with no direction, is likely to lead to more sleepless nights (also known as a death spiral). With every new dilemma, I took a page from our other clinics or used what had already worked in the BAPP to change directions based on deliberation and intention rather than fear and impulsivity.

A. Malpractice Insurance

I thought that my plan was oh-so-clever. Simply require mentor attorneys to confirm that their malpractice insurance covered students. In my view, a standard policy that covered office employees and interns would suffice per Georgia Supreme Court Rule 96. Not so fast.


176 Rule 96 states that “[a] licensed practicing attorney as described in Rule 91, who is supervising law students under this Rule, shall ensure that at all times the student is
As my luck would have it, our faculty has some outstanding ethicists on board, and they quickly advised me that it might just be a good idea to obtain another layer of malpractice insurance, since the school did not have an umbrella policy and our clinics each had their own policy. I should have seen it coming, but I did not. This suggestion came about a month before classes started, so I started making calls to get insurance coverage as quickly as possible. After what might be likened to a certain level of harassment and desperate pleas for expediency, coverage kicked in the day before the orientation. Lesson learned.

B. Fee Waivers Are Not Absolute

It cost $306 to file a Chapter 7 bankruptcy petition. I operated on the premise that because we were taking pro bono clients who met the Legal Aid requirements, we would be able to apply for a waiver of that fee. Debtors qualify for fee waivers in Chapter 7 cases—not Chapter 13s—if the combined family income was less than 150% of the official poverty line. We instructed mentor attorneys to apply for fee waivers with the handy Form B. Then I realized that the Legal Aid

covered by an adequate amount of malpractice insurance.” Ga. Sup. Ct. R. 96. Mentor-attorneys and third-year students in the GSU Bankruptcy Practice Program fall under Rule 91, which states that “[a]n authorized third-year law student, when under the supervision of the Attorney General, a district attorney, a solicitor general of a state court, a solicitor of a municipal court, a public defender, or a licensed practicing attorney who works or volunteers for a court or for a not-for-profit organization which provides free legal representation to indigent persons or children may assist in proceedings within this state as if admitted and licensed to practice law in this state.” Ga. Sup. Ct. R. 91 (emphasis added).


179 Under Chapter 7, one may apply for a waiver with Form 3B so long as he or she meets a list of criteria. He or she must be an individual unable to pay the filing fee in installments over 120 days and have a combined family income less than the 150% of the federal poverty level. Kathleen Michon, Application for Waiver of Chapter 7 Filing Fee, NOLO, http://www.nolo.com/legal-encyclopedia/application-waiver-chapter-7-filing-fee.html (last visited Aug. 9, 2014).
entry point is 200% of the official poverty line. This created the specter of a denial of a fee waiver for those who fell between 150% and 200% of the poverty line.

In the event that we were denied fee waivers, we needed to figure out how to make payments. Bankruptcy courts accept credit cards, but we did not have a BAPP card. The solution—inartful at best—was to either put it on my own credit card or have the mentor attorney pay it and then get reimbursed at a later date. I am still searching for a better solution, but going through institution accounts can be a painstaking process.

C. Legal Coordinator

Human cloning is a long way off. Somewhere in mid-July it became apparent that there was no way I could do everything that needed to be done—let alone keep track of it. Other clinics had assistants and coordinators that helped with the ridiculous amount of administrative tasks. I could not exactly thrust the operations of a tiny law firm upon my faculty assistant, so I started the hunt for a legal coordinator. One person with whom I spoke suggested that I recruit a recent graduate who was in the twilight zone of waiting for bar exam results to help with client and mentor communications and running the organizational arm of our startup.

This was perhaps the best decision I made. One of my best bankruptcy students was willing and able to act as our legal coordinator. He was our left—and right—arm; he really put the clinic together. The unfortunate part was that a bankruptcy judge quickly scooped his talents up near the end of the semester. The result? I was in the hunt for a legal coordinator on short notice. Fortunately, the legal coordinator created transition documents and had a very detailed process in place so that the new legal coordinator could take over in a seamless fashion.

D. Fundraising

Malpractice insurance is not cheap, although it is far less expensive than what I anticipated, given that students would be taking on bankruptcy cases, which are not immune from attorney malpractice claims. Likewise, filing fees and legal coordinators require funds. I

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did not really have a budget to work with for the BAPP. This was supposed to be a class, and I morphed it beyond its boundaries into a clinic—figuring I could ask for forgiveness later. Needless to say, I needed a crash course in fundraising. Mercifully, I did not have to wear out my welcome—at least I hope I did not. The bankruptcy bar is an incredibly collegial and philanthropic sort, so when I approached several organizations for some sponsorship dollars, they were incredibly generous. I also started exploring avenues for grant funding. All told, we went through the first year with about $11,000 in the bank and used about one-third of those funds on filing fees, student programming, and our year-end dinner.

E. Teachable Moments (for Me and the Students)

1. Mentor Issues

The mentor attorney model is great for a number of reasons: it saves on overhead, exposes students to different styles of practice, and energizes the bar—and in particular your institution’s alumni—to get involved in public service. It also, however, brings quality control issues with it. While I vetted and spoke with each and every mentor attorney, that did not mean that I did not have to have ongoing conversations with attorneys about their obligations, responsibilities, etc. One mentor dropped off the radar, another mentor canceled multiple meetings, and another mentor got angry over the slow reimbursement of a filing fee. All of these required phone calls and relationship management. Plus, if we were going to keep the program going, I needed to be able to tap the same well for future cases and delicately release the mentors who just did not work out.

The vast majority of mentor issues that I had to address came to me through the students. They would let me know of an issue and then together we would discuss how to best handle it. In some cases, the attorney fell off the radar, and the students wanted to reach out to the attorney one more time and copy me on the e-mail. This usually worked. Other times, I needed to make a phone call and have a lengthy discussion about how students depended on the mentor attorney to set the example and therefore the mentor attorney needed to do that. I did not want to scold, but in some cases, I had no other choice.
2. Ethics and Professional Responsibility

One of the goals of experiential learning and clinical programs is to instill professionalism and engage in a wider discussion of professional responsibility. I think students are accustomed to reading ethics cases that are egregious, but they often are not exposed to the close calls that we encounter regularly in practice. As part of our orientation, I made certain that students knew that we had an open door policy and could discuss ethical issues and questions. This created a “safe” environment early on where students could bring these issues to light in class and we could discuss it as a group.

Some were practical issues: is it okay to counsel a client to close an account at one bank and open up another one at a different bank to avoid a setoff? The answer is yes—it is a fairly standard practice. Some issues required far more thought and consideration. To discharge a student loan—other than the fact that it is nearly impossible—requires the debtor to demonstrate, among other things, that they made a good faith effort to pay those loans.181 One of our mentor attorneys actually told two students working on a case involving a substantial student loan debt that they should “make up” an obviously lacking good faith prong. This spawned a discussion about Rule 11, a duty to report, and other real life ethical issues that come up more often in practice than students’ likely think. It also served as a great example for the students that their instincts were right: it is wrong, they needed to tell me about it, and we could discuss appropriate remedies—me “firing” the mentor attorney.

181 Brunner v. N.Y. State Higher Educ. Servs. Corp., 831 F.2d 395 (2d Cir. 1987) (finding that a debt may be discharged under “undue hardship” only if the Chapter 7 debtor can show, amongst other things, that her current inability to find work would extend for a significant portion of her student loan repayment period and that she has made a good-faith attempt to repay her student loans). Absent a clear definition of what constituted “undue hardship,” many states, including Georgia, have been left to interpret the meaning through what is now called the Brunner test, which consists of three prongs: (1) the borrower could not maintain a minimal standard of living if he were forced to repay the student loans; (2) additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) the borrower has made good faith efforts to repay the loans. Scott Riddle, Student Loan Discharge—The Brunner Test, GA. BANKR. LAW. NETWORK (Jan. 9, 2014), http://www.gabankruptcylawyersnetwork.com/2014/01/student-loan-discharge-the-brunner-test/.
3. Other Lessons Learned

Traffic and transportation matter significantly to debtors, mentors, and students. While Atlanta is a large metropolitan area, public transportation can be spotty, and getting debtors to a mentor attorney’s offices—some of whom were far flung—proved to be difficult. After feedback from students, we began to assign mentors and clients based on geography and transportation concerns (in addition to which students were ready for a second case, a complex case, etc.).

Another lesson learned related to allocating the time investment required from students. At the beginning of the semester, they were required to have six hours per week of fieldwork. It quickly became apparent that the ebb and flow of actual work did not mesh well with a strict six-hour policy. Some weeks required eight hours, whereas some weeks required two. Instead, it became a semester target for total hours rather than a weekly requirement.

In keeping pace with real law firm practices, I initially required students to e-mail the legal coordinator to open up a case file so that they could track time and add their case files, etc. This is good in concept. In general practice at many law firms where a partner or manager opens up a matter number in the case management system, this occurs all the time. However, bankruptcies often require fast work for debtors who need to file sooner rather than later. Thus, it eventually made more sense to let students create their own matter numbers and calendar entries so they could immediately begin tracking time.

4. No Good Deed Goes Unpunished

Success breeds excitement. The first semester of the program was—by most accounts—very successful. We served seventeen clients—one was a joint filing of a husband and wife—with each student team handling two cases. Part of our mission was to introduce students to the bench and bar. Every week I would send out an e-mail of local bankruptcy events that the students could attend. Students had a wide variety of networking opportunities in the bankruptcy area. They attended monthly meetings of several groups, including: The Metro-Atlanta Consumer Bankruptcy Attorney Group (MACBAG), Turnaround Management Association (TMA), and the International Women’s Insolvency and Restructuring Conference (IWIRC). Additionally, students were able to attend—at little or no charge—bankruptcy-related conferences in and around the Atlanta area, such as the National Conference of Bankruptcy Judges, the Southeastern Bankruptcy Legal In-
stitute, the Georgia Bar Bankruptcy Retreat, the Atlanta Bar Association Bankruptcy Section, and the American Bankruptcy Institute.

Many students took those opportunities to network with other lawyers and judges. As the first semester drew to a close, the students requested a second semester of the BAPP, complete with more mentors and more cases. Unable to say no to my “kids” (one semester in the trenches and we had bonded), I agreed to take on another semester—in addition to the two other courses I was teaching. Had I thought this through in advance instead of blindly saying yes, I probably should have really thought about the time investment. Nonetheless, come spring, we went in with ten holdovers from the first semester and took on fifteen more cases.

VI. CONCLUSION: AN OPEN SOURCE TEMPLATE

At its heart, a startup is the reagent that converts ideas into products and services. A lean legal clinic is no different. As clients and students interact with our services, they generate evidence about what we did right, what we did wrong—or less right—and how we can make it better. There are subjective components (the likes vs. the non-likes) and objective components (how many students found it valuable). In a way, experiential learning is an experimental laboratory. We learn as we do. Each case is another experiment—a product of our research and investigation. In fact, if I had my way, I would drop the word “clinic” altogether and just call the universe of experiential offerings a “Legal Practice Laboratory,” but I do not get paid to decide on nomenclature.

Once we understand—and accept—the experimental nature of what we do, we can then actually build a sustainable clinic as our outcome. One can hypothesize and strategize ad nauseum, but there must be a next step. It is important to identify—and revisit often—where you are in your process. Legal clinics should follow the same three-step process that a lean startup follows: build, measure, and learn. As lawyers, we are trained to build. Build relationships, build cases, build transactions, and build billable hours. But we are not necessarily trained to measure and learn or pivot once we complete the building process.

On the other hand, entrepreneurs obsess over data and metrics and can get lost in the weeds—just like any good lawyer or academic trapped in the rabbit hole of research. The lean methodology builds
more efficient legal clinics because it allows clinics to get by on a shoestring budget and to recognize when they need to pivot—or recalibrate—in order to improve services, objectives, and outcomes—to clients, students, and the legal community. But just as with lean startups, the planning really works in reverse order, which will be a challenge until you determine the learning objectives and outcomes. In other words, figure out where you want to end up so that you can streamline the startup process.

I hope that this article was helpful. The model of a lean legal clinic is exportable beyond the area of bankruptcy. I would love to roll out “legal labs” in criminal defense, intellectual property, and small business services, but there are not enough hours in the day. We are entering a new age of legal education. We need to rethink what our product is, how we offer it, and what we can do to make it better. Starting a legal clinic should be exciting. It should invigorate students, faculty, and the wider community. Things that engage us and pique our curiosities motivate us. Use this model; it is partly a template and partly “lessons learned.” I share it because—other than the need for a cathartic release after a year of chaos—it is not perfect. Others can adapt it and improve upon it. This is universal access to a fluid blueprint, and collaboration is invited. We can innovate and transform legal education.