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Incorporating Experiential Education Throughout the Curriculum

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F. EXPERIENTIAL EDUCATION

1. INCORPORATING EXPERIENTIAL EDUCATION THROUGHOUT THE CURRICULUM

By Deborah Maranville with Cynthia Batt, Lisa Radtke
Bliss & Carolyn Wilkes Kaas¹

a. Introduction

In discussing experiential education, BEST PRACTICES FOR LEGAL EDUCATION focused primarily on the three traditional types of separate experiential courses: in-house clinics, externships, and simulations, and treated them in a separate chapter.² These courses were defined as those where “experience is a significant or primary method of instruction”³ rather than a secondary method, and where “students must perform complex skills in order to gain expertise.”⁴ Arguably, this separate treatment reinforced what has too often been a divide between doctrinally-focused⁵ teaching and practice-focused teaching.

BEST PRACTICES recognized that “experiential education can be employed as an adjunct to traditional methodologies regardless of class size”⁶ through methods such as incorporating simulation exercises into doctrinally-focused courses. It did so, however, only as part of its discussion of best practices for legal education generally. This section builds on BEST PRACTICES by emphasizing the need to incorporate experiential education throughout the curriculum in order to maximize its educational impact. The term “experiential education” is, therefore, used to encompass both separate experiential courses and what will be termed “experiential modules.” Because a key distinction in experiential education is between simulated and real experiences, the term “clinical legal education” will be restricted to separate courses involving real experiences — law clinics, externships and offerings using alternative models, often termed “hybrids.”⁷ The term “law clinics” will be used to include both traditional

¹ Readers for this section were Rocky Cabagnet, Robert D. Dinerstein, Russell Engler, Katherine Kruse, Howard Katz, Isabel Raskin, Margaret Reuter, Alexander Scherr, and Ian S. Weinstein.

² ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007), Chapter Five, text at notes 537-621 [hereinafter BEST PRACTICES].

³ *Id.*, text at notes 541-42.

⁴ *Id.*, text at note 544 (quoting the CARNEGIE REPORT).

⁵ The term “doctrinally-focused” is used here for the courses that have historically made up the bulk of the law school curriculum, sometimes also referred to as classroom or podium courses. None of these terms fully captures the nature of these courses, or their differences (or not) from more practice-oriented courses. As one reader noted, “It is interesting how inadequate our descriptions for non-clinical courses are. ‘Doctrinal’ doesn’t seem to capture what happens in a classroom in which through a combination of Socratic and other Q & A methods students explore doctrine, policy, theory and other analytical issues.” Comment from Robert Dinerstein, on file with authors.

⁶ BEST PRACTICES, text at note 541 (citing William Shepard McAninch, *Experiential Learning in a Traditional Classroom*, 36 J. LEGAL EDUC. 420 (1986)).

⁷ BEST PRACTICES identified all three as “clinical.” See text at note 542.

in-house clinics taught by full-time faculty,⁸ and other structures that provide a similar level of intensive, integrated teaching and supervision.⁹

As BEST PRACTICES suggested, it is helpful to distinguish “experiential learning” and “experiential education.”¹⁰ Both happen in law school, and in life; both are important. Experiential learning is simply a primary way that people learn on their own, whereas experiential education involves active and purposeful design and teaching. A focus on experiential **education** directs law schools and individual legal educators to their role in ensuring that maximum learning takes place beyond raw experience. The way in which each teacher integrates experiential education methods will often determine how far the students develop as lawyers in response to those methods. The way in which a law school designs and delivers a coherent array of courses to allow a student to progress from novice to (reasonably) competent professional in three short years will, more and more, define its efficacy, reputation, and leadership as a provider of legal education.

b. Best Practices for Experiential Education

As experiential education proliferates, law schools will design approaches suited to their individual missions and circumstances. No “one size fits all” strategy will suffice and the current period of creativity will no doubt continue to bring forth new methods and structures. Legal education urgently needs empirical research on what methods will best promote deep learning that transfers to practice. At the same time, enough experience has accumulated to identify five general “best practices” discussed below:

- Incorporating experiential education widely throughout the curriculum
- Providing a range of experiential course types and making them available to all students
- Ensuring that experiential courses add value to students’ experience
- Requiring real supervised practice experience — preferably one law clinic and one externship — for all students
- Developing a common vocabulary and evaluative criteria for experiential education

i. Incorporating Experiential Education Widely Throughout the Curriculum

Experiential education furthers the mission of legal education to create competent and professional lawyers in at least three important ways. First, the active learning inherent in experiential education engages students so that they are motivated to be

⁸ See Chapter 5, Section F, Subsection 2, *Delivering Effective Education in In-House Law Clinics*, below.

⁹ See Chapter 5, Section F, Subsection 4, *Effective Education in Alternative Clinical Models*, below.

¹⁰ BEST PRACTICES, text at note 539 (citing James Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 78 (1996)).

learners.¹¹ Second, if law schools integrate a practice context throughout the curriculum, the active learning has a common focus on role and performance as lawyers — the contexts for lawyers’ work — which should facilitate transfer of learning to practice.¹² Third, when teachers put students in role and ask them to perform lawyer tasks, students have opportunities to engage in the core lawyer skill of problem-solving, as well as the individual skills, such as interviewing, counseling, and negotiating, needed to solve problems.¹³

In order to achieve these benefits, it is a best practice to incorporate experiential education widely throughout the law school curriculum, beyond the courses that teach the theory and practice of skills such as interviewing and counseling, negotiation, and trial advocacy, using a simulation methodology, and beyond clinical legal education courses, such as the archetypal in-house clinics and externships. Two caveats. This does not mean that every course must, or should, be primarily experientially focused, or even that each course should incorporate an experiential module.¹⁴ It does, however, mean that all students should encounter multiple experiential opportunities in their doctrinally-focused courses that allow them to apply the doctrinal concepts, analytical skills, and policy and theoretical perspectives in a practice context.¹⁵ Nor does this suggest that sprinkling a few experiential modules into doctrinally focused courses is a substitute for separate experiential courses that provide students with opportunities for intense, deep and rigorous treatment of the most significant complex lawyering skills.

Experiential education can be infused into existing courses that are primarily focused on doctrine, or incorporated into the curriculum by creating new course structures. Both approaches should be extended to first year, as well as to upper division courses. The key is that each school must develop “a coherent agenda for instruction in the fundamental lawyering skills and values.”¹⁶

(a) **Experiential Modules**

Individual teachers can incorporate experiential education into doctrinally-focused courses through at least three formats: required observation and reflection,¹⁷

¹¹ BEST PRACTICES, text at notes 388-96; Chapter 4, Section A, *A Review of Teaching and Learning Theory*, above.

¹² See Chapter 4, Section C, *Transfer of Learning*, above.

¹³ See Chapter 6, Sections C, *The Relational Skills of the Law*, and G *Problem-Solving and Conflict Resolution*, below.

¹⁴ As David A. Kolb’s work on learning styles and experiential learning suggests, students with all learning styles profit from exposure to a mix of concrete experience and abstract conceptualization, accompanied by opportunities to both reflect on new experiences and actively experiment, trying out what they have learned. EXPERIENTIAL LEARNING: EXPERIENCE AS A SOURCE OF LEARNING AND DEVELOPMENT (1984). And variety is beneficial for its own sake. The challenge is to achieve the most effective balance.

¹⁵ Curriculum mapping is one strategy for achieving that goal. See Chapter 2, Section B, *Curriculum Mapping as a Tool for Improvement*, above.

¹⁶ J.P. “Sandy” Ogilvy, *Guidelines for the Self Evaluation of Legal Education Clinics and Clinical Programs*, 15 T.M. COOLEY J. PRACT. & CLINICAL L. 1, 4 (2014).

¹⁷ Some commentators argue that that experiential education in law presupposes having the student

simulation exercises, or assignments in which students engage in real legal work as part of the course. In the first year, students typically do not have the opportunity to work outside the law school; in this case, observation assignments are of special benefit. At schools where students have greater opportunity to engage in experiential learning, especially outside the law school, the need for observation assignments after the first year may abate. Nonetheless, upper division teachers have effectively used observation assignments in a range of courses, such as family or juvenile law, by requiring students to observe and reflect on the operation of specialized courts.

Many teachers who are willing to try something new have experimented and written about their efforts to integrate experiential education into their doctrinally-focused classrooms using simulation exercises.¹⁸ In addition, reflecting the surge of interest in experiential education, major law school publishers now offer textbooks that include experiential exercises, typically providing built-in opportunities to address both professional skills and values.¹⁹

The recommendations for simulation courses in the experiential chapter in *BEST PRACTICES*²⁰ are relevant to using simulation exercises in individual courses. Especially important are the admonitions to articulate appropriate educational goals,²¹ “ensur[e] that the simulation is appropriate for the participants and its purposes and instructions are clear,”²² and “balance detail, complexity, and usefulness.”²³ Thoughtful preparation and design, and organized implementation, are crucial to effective use of simulations in a large class.

When students are being asked to perform a task involving specialized skills, such as an interview or a negotiation, in order to provide context for how lawyers use the legal rules covered in the course, the teacher needs to have a basic familiarity with those skills and ensure that students understand that they have not learned how to perform the task skillfully simply by performing the task once. This may be especially

performing one of the many roles of the lawyer and not merely commenting on that role as performed by others. While that argument has weight, the value of observation as concrete experience and of guided reflection as value-added education justifies a broader view.

¹⁸ *E.g.*, Miriam R. Alberta & Jennifer A. Gundlach, *Bridging the Gap: How Introducing Ethical Skills Exercises Will Enrich Learning in First-Year Courses*, 5 DREXEL L. REV. 165 (2012); Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NE. U. L.J. 89 (2013) [hereinafter Erickson, *Experiential Education*]; Martin J. Katz, *Facilitating Better Law Teaching — Now*, 62 EMORY L.J. 823, 837-38 (2013); Heather, M. Field, *Experiential Learning in a Lecture Class: Exposing Students to the Skill of Giving Useful Tax Advice*, 9 PITT. TAX REV. 43 (2012); Paula Schaefer, *A Primer on Professionalism for Doctrinal Professors*, 81 TENN. L. REV. 277 (2014).

¹⁹ LexisNexis, *SKILLS & VALUES SERIES CATEGORY*, <http://www.lexisnexis.com/store/catalog/catalog.jsp?pageName=catalogProducts&catId=cat80002&id=cat80154>, archived at <http://perma.cc/6YXG-KUUV>; Carolina Press, *CONTEXT & PRACTICE SERIES*, <http://www.cap-press.com/p/CAP>, archived at <http://perma.cc/DBY8-67A4>; West Academic Publishing, *Developing Professional Skills Series*, *Bridge to Practice Series*, and *Experiencing Series*, *THREE NEW SKILLS SERIES FOR LEGAL TRAINING*, <http://www.westacademic.com/skills/>, archived at <http://perma.cc/EW6G-Y9N3>.

²⁰ *BEST PRACTICES*, text at notes 574-94.

²¹ *Id.*, text at notes 595-96.

²² *Id.*, text at notes 585-91.

²³ *Id.*, text at notes 595-96.

pertinent for first-year students. In an upper division course, some students in the course may already have been enrolled in a course designed to teach the skills pertinent to the task performed in the exercise, and the teacher may wish to draw on such students' knowledge in debriefing the exercise. It will be useful to ask colleagues teaching relevant skills simulation courses about the conceptual frameworks they use, and obtain any rubrics or handouts they have developed that identify the characteristics of competent skill performance.

The teacher's focus in debriefing the simulation through feedback and discussion will be different in a course focused primarily on doctrine, as opposed to a skills course or a law clinic with broader teaching goals. While the teacher may focus primarily on confirming or correcting understandings of the substantive law or the analytical processes that surface in the simulation, students will appreciate a limited amount of constructive feedback on the skill — interviewing, negotiation, oral argument, etc. — that provides the learning context. Teachers will therefore want to be sure that they understand how to provide effective feedback.²⁴

One commentator suggests the following steps for incorporating experiential exercises into the law school classroom. First, the teacher should identify learning objectives for the course as a whole. Such objectives serve as a foundation for incorporating experiential education into the course.²⁵ Second, the teacher should determine how to assess whether students are meeting the learning objectives.²⁶ Finally, the teacher should create learning activities that support and are closely tied to the objectives and assessments for the course.²⁷

Incorporating experiential education into doctrinally-focused courses through real-life writing projects, field experiences, or observations, or through coordinated externship placements, as opposed to simulations, may require coordination with outside organizations or with other programs in the law school. Two crucial considerations for teachers are the need to comply with professional responsibility obligations — avoiding unauthorized practice of law or malpractice — and to ensure adequate supervision and feedback. Although some teachers will not wish to take on this level of responsibility, others have successfully negotiated the challenges and found such efforts to be very rewarding.²⁸

²⁴ BEST PRACTICES provides guidelines for effective critique. *See* text at note 567. *See also* PAUL J. ZWIER, SUPERVISORY AND LEADERSHIP SKILLS IN THE MODERN LAW PRACTICE 51-74 (2006).

²⁵ Erickson, *Experiential Education* at 99.

²⁶ *Id.*

²⁷ *Id.* at 102.

²⁸ *See, e.g.*, Mary Pat Treuthart, *Weaving a Tapestry: Providing Context through Service-Learning*, 38 GONZ. L. REV. 215 (2003); Laurie Morin & Susan Waysdorf, *The Service-Learning Model in the Law School Curriculum*, 56 N.Y.L. SCH. L. REV. 561 (2011-2012); Jennifer Rosen Valverde, *Hindsight Is 20/20: Finding Teachable Moments in the Extraordinary and Applying Them to the Ordinary*, 20 CLINICAL L. REV. 267 (2013).

(b) **New Course Structures: Labs, Practicums,
Integrated Externships**

Another approach to infusing experiential education throughout the curriculum is to create new course structures, and considerable experimentation is taking place in this arena. Two common structures are the lab course and the practicum.²⁹

Modeled after the labs commonly required for undergraduate science courses, the lab course provides an opportunity for students to apply the concepts learned in a non-experiential course. Typically, this application occurs through a series of in-role, practice-oriented simulation exercises, although the application of concepts might also be accomplished through real life service to clients.³⁰ Often, the lab is a one or two-credit stand-alone course available either to all or only a subset of students in the doctrinally-focused course. The teacher may be the one handling the doctrinal course, a clinical teacher, or a practitioner. The lab course structure seems particularly valuable in two situations. First, if many of a school's faculty members lack enough practice experience to feel comfortable incorporating experiential modules into their courses, the lab course structure provides a suitable alternative. Second, depending on the orientation of a school's faculty, a school might find the lab course structure a useful one for linking experiential and doctrinal learning on a scale that can serve an entire student body.³¹

The practicum structure operates much like a lab, but incorporates the experiential education as an integral part of the doctrinally-focused course, rather than as a course offered separately for credit. It goes beyond the single experiential module, or a set of them, by weaving experiential education more intensively into the course.³² An advantage of the practicum structure is that in a single class, it breaks down the doctrine-practice divide, thus explicitly modeling the interconnection between the two.

A third, less well-developed structure is what might be termed the integrated

²⁹ Usage for these terms has not yet coalesced around widely accepted, consistent definitions. For the purpose of this discussion, this section builds on definitions proposed by the Alliance for Experiential Learning in Law's Vocabulary working group. Cynthia F. Adcock, et al., Working Grp. On Vocabulary, Alliance for Experiential Learning in Law, *A Glossary for Experiential Education in Law Schools, in Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. ___, PART II ___ (forthcoming 2015) [hereinafter Adcock, et al., *Glossary*]. Convened in 2011, the Alliance has sponsored conferences at Northeastern University Law School and Elon University Law School, and organized working groups on a variety of topics. <http://www.northeastern.edu/law/experience/leadership/alliance.html>, archived at <http://perma.cc/FT7X-PM3S>.

³⁰ A structure using real life experiences is sometimes termed a "component clinic" or a "mini-clinic." John B. Mitchell, Betsy R. Hollingsworth, Patricia Hall Clark & Raven Lidman, *And Then Suddenly Seattle University Was on Its Way to a Parallel, Integrative Curriculum*, 2 CLINICAL L. REV. 1, 7 (1995).

³¹ For instance, Gonzaga has done this for their first-year students. See SKILLS LABS, <https://www.law.gonzaga.edu/academics/curriculum/skills-labs/>, archived at <https://perma.cc/U8N4-5LRB>, and Hamline has developed a set of skills labs aimed at second-year students. See SKILLS LABS, <http://www.hamline.edu/law/experiential-learning/labs/>, archived at <http://perma.cc/BGA3-RRLL>.

³² See, e.g., Georgetown's extensive set of practicum courses. See PRACTICUM COURSES, <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/practicum/index.cfm>, archived at <http://perma.cc/DB2W-MK4S>.

externship. All or some of the students enrolled in a doctrinally-focused course are simultaneously enrolled in an externship placement in the subject area. The classroom reflection about the externship experience is focused at least in part around ethical or practice issues that are addressed in the non-experiential course. The key to success for such a structure is to maintain the critical educational characteristics of an effective externship.³³

(c) **Experiential Education in the First-Year Curriculum**

Because the first-year curriculum is often treated as unique, it merits additional observations. The American Bar Association law school accreditation standards require “substantial instruction in . . . (2) legal analysis and reasoning, legal research . . . [and] (3) writing in a legal context, including at least one rigorous writing experience in the first year.”³⁴ The typical first-year legal analysis, research and writing course ensures that first-year students will encounter at least one course with a significant component of experiential education, because most legal writing courses are taught using experiential pedagogy.³⁵ Some legal writing programs have even found ways to give first-year students a taste of real lawyering experience by assigning writing projects on real issues proposed by non-profit legal providers.³⁶

Depending on the school, the legal writing course may be focused solely on legal writing, or may also include exposure to some other skills. In schools with strong legal writing programs, perceptive students often recognize how important that course is, both for teaching analytical skills and for providing exposure to practice. Too often, however, that appreciation is undercut by insufficient credits for the course offering, credit/no credit assessment, or a lower status for legal writing faculty.

First year students may experience a dichotomy between their doctrinally-focused courses and the more explicitly practice-oriented experiential legal writing course, especially if teachers of the traditional doctrinal courses have been slow to embrace experiential education. Three reasons persist for incorporating experiential education into the other first year courses. First, experiential education can provide context for students’ doctrinal learning. Second, providing students with a taste of what lawyers actually do can help students maintain a connection to their reasons for attending law

³³ See Chapter 5, Section F, Subsection 3, *Delivering Effective Education in Externship Programs*, below.

³⁴ ABA Standards and Rules of Procedure for Approval of Law Schools, Standard 302(a), STANDARDS, http://www.americanbar.org/groups/legal_education/resources/standards.html, archived at <http://perma.cc/R6AX-3QES> [hereinafter ABA Standards].

³⁵ See Chapter 5, Section B, *Analysis, Research, and Communication in Skills-focused Courses*, above.

³⁶ See, e.g., Northeastern University Law School’s Legal Skills in Social Context program, LEGAL SKILLS IN SOCIAL CONTEXT, <http://www.northeastern.edu/law/experience/lssc/index.html>, archived at <http://perma.cc/838E-F537>; Seattle University Law School’s legal writing-clinic collaboration, Sara K. Rankin, Lisa Brodoff & Mary Nicol Bowman, *We Have a Dream: Integrating Skills Courses and Public Interest Work in the First Year of Law School (And Beyond)*, 17 CHAP. L. REV. 89 (2013); Mary Nicol Bowman, *Engaging First-Year Law Students through Pro Bono Collaborations in Legal Writing*, 62 J. LEGAL EDUC. 586 (2013).

school and retain their passion during the often demoralizing first year.³⁷ Third, in an increasingly specialized legal market, students need to begin early the process of understanding how lawyers use doctrine, what skills they must exercise, and what practice contexts might best fit their interests, values, personalities and skills.

Incorporating additional experiential education into the first year can be done through either individual teacher initiative or law school-wide curricular reform, such as creating lab courses. Numerous models are now available for efforts of both types, as discussed below.

For a limited, but often very worthwhile initial exposure, individual teachers can assign students to observe and reflect on a relevant activity: observe legal proceedings in state or federal court to better understand civil procedure, tour a jail or observe a criminal calendar for criminal law, or observe a housing court for property.³⁸ For more robust experiential education, teachers can incorporate an experiential module that asks students to perform a lawyering task in role. For first-year courses, suitable tasks include interviewing a client, negotiating a contract or plea bargain, drafting a contract or pleading, and arguing a motion or appeal.³⁹

At the institutional level, several schools have instituted school-wide court observation programs.⁴⁰ At least one has created “skills labs” in which “students are assigned a series of simulation exercises designed to teach technical skills . . . using the substantive law being taught concurrently in a set of doctrinal courses.”⁴¹ More unusually, even law clinics can be made available to first-year students. Operating in a state with a student practice rule that authorizes practice by second semester 1Ls, Yale allows first-year, second-semester students to enroll in law school clinics. The University of the District of Columbia provides law clinics for first-year students, although the District of Columbia student practice rule does not permit them to enter appearances in Superior Court cases until their second year.

ii. Providing a Range of Experiential Course Types and Making Them Available to All Students

Legal education currently makes use of a wide range of separate, experientially-focused course structures for providing students with experiential education. Legal educators have long recognized that experiential opportunities with different

³⁷ Deborah Maranville, *Infusing Passion and Context into the Traditional Law Curriculum through Experiential Learning*, 51 J. LEGAL EDUC. 51 (2001) [hereinafter Maranville, *Infusing Passion and Context*].

³⁸ *Id.* at 62-63.

³⁹ As noted above, the major legal publishers all now offer series that incorporate simulation exercises, and these include volumes to accompany at least some of the typical first year courses.

⁴⁰ See Drake Law School, *Law Students Observe Vehicular Homicide Case Inside and Out*, <http://news.drake.edu/2010/02/22/law-students-observe-vehicular-homicide-case-inside-and-out>, archived at <http://perma.cc/TCQ7-MLY8>; Touro Law School, *COLLABORATIVE COURT PROGRAMS*, <http://www.tourolaw.edu/Academics/?pageid=68#.VAoF0WNSpqw>, archived at <http://perma.cc/VLE4-WHUN>; Southwestern University Law School, *SCALE Curriculum*, <http://www.swlaw.edu/academics/jd/scale/curriculum>, archived at <http://perma.cc/5VYC-CPSN>.

⁴¹ Gonzaga Law School, *SKILLS LABS*, <https://www.law.gonzaga.edu/academics/curriculum/skills-labs/>, archived at <https://perma.cc/92FW-GR8W>.

characteristics bring distinct, complementary strengths and weaknesses. With the widespread availability of multiple types of experiential courses, legal education has reached a point where it is a best practice to provide opportunities within each of those major types and to inform students about the distinct benefits of each.

Understanding the differences among practice opportunities is especially important in light of ABA Standard 303(a)(3) which imposes a practice-based experiential course requirement.⁴² To qualify as experiential for this purpose, a course must add value to the raw experience potentially obtained through jobs and volunteer opportunities in four ways: integrating doctrine, theory, skills, and legal ethics, and engaging students in the performance of skills; instructing in the concepts underlying those skills; providing multiple opportunities for performance and instructor feedback; and providing opportunities for self-evaluation.⁴³ These efforts provide what is often referred to as “scaffolding” in the education literature: students initially are supported by the teacher as they attempt to put their learning into practice. Over time, the student can operate with less scaffolding, and then on his or her own.

ABA Standards 303, 304, and 305 adopt the common typology of subcategories within experiential courses — simulation courses, law clinics, and externships — and provide that a course of each type qualifies as experiential so long as it adds value in the ways specified. These three types of experiential courses are structured in distinct ways, and, as a result, law teachers have developed different, though overlapping, strategies, for adding value in them. As the discussion below demonstrates, each type may excel at satisfying some of the requirements, and at meeting other educational goals, more than others. Thus, simulation courses, law clinics, and externships each make important, but different, contributions to a student’s education. As law schools continue to develop variations on these traditional models, it will be important to recognize their distinct contributions.

Of course, the programs that law schools offer within each of these experiential education types are not uniform in either approach or structure. Law clinics vary widely in subject matter and case or matter size and type. Among other impacts, these differences affect the role, defined by one commentator as mentee, second chair, or first chair,⁴⁴ and level of responsibility students can assume on cases or matters. Externship placements vary significantly as to the type of work, student role, and intensity of supervision provided by the field supervisor. Both law clinics’ and externship programs’ operations are anything but standardized in extent, content, and structure of their classroom components, and the type and level of engagement by teachers. Theory and practice simulation skills courses focus on different skills, and have student-teacher ratios that allow for different levels of feedback. The following discussion assumes high-quality offerings that are appropriately supported by the law

⁴² See ABA Standards.

⁴³ The language of the standard is: i. “integrate doctrine, theory, skills, and legal ethics, and engage students in performance of [an identified] skill; ii. develop the concepts underlying the . . . skill; iii. provide multiple opportunities for performance that are assessed by the instructor,” and iv. “provide opportunities for self-evaluation.” *Id.*

⁴⁴ For a discussion and full definitions of these roles, see Susan L. Brooks, *Meeting the Professional Identity Challenge*, 41 *BALT. L. REV.* 395, 403, 413 (2012).

school and operated to add value in accordance with the best practices described in later sections.

(a) **Three Structural Differences among Experiential Courses and Their Implications**

Experiential courses differ on three primary structural dimensions: first, whether they involve simulated or real practice experience; second, whether the experience takes place in a setting that was created primarily for educational purposes, or a setting that exists for other purposes, ordinarily to provide a service to the public; and finally, whether the supervision structure is “integrated” — provided by one individual who is responsible for both supervision of the simulated or real lawyering work and reflection on that work — or dual — involving two individuals, one of whom is an educator and one of whom works in the selected setting. Table 1 below illustrates how these structures differentiate theory and practice simulation skills courses, law clinics, and externships.

Each of these structural characteristics has implications for the educational experience.

Table 1

Three Structural Differences Among Experiential Courses

| | <i>Simulation Skills Courses</i> | <i>Law Clinics</i> | <i>Externships</i> |
|--|----------------------------------|--------------------|-----------------------------|
| 1. Simulated v. Real Practice Experience | <i>Simulated</i> | <i>Real</i> | <i>Real</i> |
| 2. Setting: Created Primarily for Educational or Delivery of Services Purposes? | <i>Educational</i> | <i>Educational</i> | <i>Delivery of Services</i> |
| 3. Integrated v. Dual Supervision | <i>Varies</i> | <i>Integrated</i> | <i>Dual</i> |

• ***Real vs. Simulated***

Simulated experiences give the teacher more control over what the students will learn. They allow the instructor to focus on a single skill, or a designated set of skills. In some contexts, they can follow the trajectory of a legal matter from start to finish. In addition, the instructor can build in specific issues or particular sub-skills. Although students must perform the skills in role, and in a complex simulation do so in a context

that has many of the characteristics of real life, students do not experience a lawyer's weighty responsibility for the consequences of his or her work, or for a client. Real experiences, on the other hand, typically provide some level of authentic role assumption, giving students experience with the real consequences of their work, sometimes even placing the student in a "first-chair" role. Real experiences typically present the student with more complexity, indeterminacy, and uncertainty than can be incorporated into simulations. Because the students encounter the full richness of real life, they are more likely to face situations that require them to address questions of professional identity, access to justice, and relational and intercultural awareness. See Table 2 below.

Table 2
Implications of Real Versus Simulated Experiences

| What Simulated Experiences Do More Efficiently than Real Experiences |
|---|
| <ol style="list-style-type: none"> 1. Allow the teacher to focus on a designated skill or set of skills 2. Allow predictable instructor control over issues students will encounter 3. Allow students to make mistakes and experience their consequences without any need for teacher to intervene to protect a client's interests 4. Expose students to sophisticated, complex issues without the need to protect client interests |
| What Real Experiences Can Do that Simulations Cannot |
| <ol style="list-style-type: none"> 1. Allow students to experience the real consequences of assuming significant or primary ("first-chair") responsibility for a real client/matter |
| What Real Experiences Usually Do Better than Simulations |
| <ol style="list-style-type: none"> 1. Provide significant experience with complexity, indeterminacy, and uncertainty not controlled by the teacher 2. Integrate professional identity awareness and commitment 3. Integrate access to justice and social justice awareness and commitment 4. Integrate intercultural awareness, skills, and commitment 5. Integrate relational awareness, skills, and commitment |

- ***Created for Educational or Delivery of Services Purposes***

Though varied, settings created primarily for educational purposes can be intentionally designed, choosing cases or matters on the basis of their suitability for students, and designing the practice setting with students in mind. In law clinics, that

focus often leads to an educational setting characterized by “slow-motion practice” — small caseloads on which students can be asked to evaluate their options and make intentional choices at every step. Or the setting might focus on conscious strategies for providing high quality, high volume legal services. An education-focused setting can also be staffed with the students’ experience in mind, choosing teachers or supervising attorneys who have formal education in clinical pedagogy, and personalities suited to mentoring students. If those teachers are not overloaded with other duties, they can provide formal teaching, intensive mentoring, and close oversight of the students.

In a setting created primarily for service purposes, the education of the students will necessarily be an add-on to the primary mission. This mission may be providing legal services to a low-income community, representing a government or business entity, working in judicial chambers or for a legislature, providing mediation services, or offering legal services for pay. Students will, therefore, have the important benefit of being exposed to that primary mission and the structures, and constraints that accompany it, and discovering what it means to perform legal work in that setting. *See* Table 3 below.

Table 3

Implications of Settings Created Primarily for Educational or Delivery of Services

| What Settings Created Primarily for Education Typically Provide |
|--|
| <ol style="list-style-type: none"> 1. Primary focus on students’ educational experience and specific educational outcomes 2. Explicit pedagogy provided by professional educators 3. Opportunity for teacher to tailor work performed to meet educational goals by choosing nature of legal work, specific cases or matters, and work assigned to students |
| What Settings Created Primarily for Delivery of Service Typically Provide |
| <ol style="list-style-type: none"> 1. Exposure to setting’s mission 2. Exposure to conditions and pressures of practice and how attorneys function in light of them 3. Exposure to settings, <i>e.g.</i>, judicial chambers, or legislature; roles, <i>e.g.</i> in-house counsel or judge and law clerk; and cultures that cannot be replicated by the law school |

• ***Integrated vs. Dual Supervision***

In the integrated supervision model, a single supervisor, or a group of supervisors working together, is responsible for overseeing a group of students who perform legal work, and reflect on that work. Typically, the supervisor works with a cohort of students, creating potential for students to work in teams and share ideas through rounds and other teaching strategies. Focused primarily on the student’s experience and development, the supervisor teaches the student in the classroom and, integrating theory, doctrine, and practice, helps the student prepare the work, and is present for

any public performances. Under the integrated supervision model, the supervisor is, therefore, able to provide intensive support and detailed and repeated feedback on the student's strategies and performances. Because the supervisor observes the student's encounters with the legal system and the behavior of opposing attorneys, judges, and other related parties, this structure also provides ready opportunities to discuss and critique the accepted norms for "how things are done." The supervisor can engage in these discussions while the student's experience and observations are fresh, and point out actions and implications the student may have overlooked. At the same time, the structure means that the supervisor guided the decisions leading up to the performance and may be invested in them. As a result, the supervisor may not be in a good position to provide a detached critique of those strategies.

Under the dual supervision model, the student benefits from two perspectives on both the work performed, and the integration of theory, practice, and doctrine. Because direct supervision of legal work is provided by a field supervisor whose primary obligation is to the mission of the placement organization, not to the student's education, this model provides an opportunity to foster student self-reliance and independence. Not ordinarily observing the student's legal work, the faculty supervisor can maintain a critical distance from case strategies. At the same time, needing to rely on the student's recounting of experience for the material on which to base a detached critique, the faculty supervisor's field of vision may be limited. *See* Table 4 below.

Table 4
Implications of Integrated v. Dual Supervision

| What Integrated Supervision Typically Does Better than Dual Supervision |
|---|
| <ol style="list-style-type: none"> 1. Provides intensive supervision and scaffolding for student work 2. Holistically integrates theory, doctrine, fieldwork, feedback, and reflection from a single supervisor 3. Provides immediate or near-in-time guidance and feedback on multiple performances based on direct knowledge of matter and/or direct observation of student's actions by the teacher 4. Fosters collaborative learning with cohort of peers 5. Fosters detached critique of practice norms |
| What Dual Supervision Typically Does Better Than Integrated Supervision |
| <ol style="list-style-type: none"> 1. Permits two perspectives on actual work performed by student 2. Permits two perspectives on integration of theory, doctrine, and practice 3. Fosters student self-reliance and independence, because field supervisor's primary obligation is to mission of placement organization |

(b) **Distinguishing Simulation Courses, Clinics, and Externships in Light of Three Structural Differences and Their Implications**

How do these structural differences and their implications manifest in the traditional experiential courses — theory and practice simulation skills courses, clinics and externships?

• ***Theory and Practice Skills Simulation Courses***

The fundamental structural characteristics of theory and practice skills simulation courses are that they do not involve real situations and they take place in a setting created for educational purposes. The supervision structure may have some aspects of both integrated and dual supervision, depending on how the course is structured and whether practitioners are involved in teaching it. The educational setting allows the course to focus on one or more discrete skill sets, such as interviewing and counseling, negotiation, or trial advocacy. As a result, if offered for an appropriate number of credits, skills-focused simulation courses can drill down deeply in a particular skill. The teacher can spend time on both the underlying conceptual framework⁴⁵ and repeated individual student practice of different aspects of the skill. The instructor has no need to protect the interests of a client, so can allow the students to make mistakes and experience the consequences. In addition, students can observe others — guest attorneys or peers — perform the skill and receive the teacher's specific, individualized feedback. In addition, simulations can build in predictable exposure to chosen issues. The disadvantages of theory and practice skills simulation courses likewise inhere in their structure, primarily the simulated nature of the experience. For most students, simulations are not as engaging as real life, although some students become highly engaged and motivated by moot court and other simulation competitions. Simulation courses do not present students with the full complexity and ambiguity of real life that is so important for fully integrating knowledge, skills, and values. Nor do students have the responsibility for real-world clients that is so important for professional identity formation and can foster a commitment to addressing access to justice issues through their service to the community, or offer the challenges of interacting inter-culturally within the full range of difference presented by client populations.⁴⁶

• ***Law Clinics and Externships***

Law clinics and externships both provide students with real-life experience, most often with real clients and real cases or matters.⁴⁷ Both expose students to real law practice, and allow them to engage in lawyering tasks that have an impact on that

⁴⁵ See ABA Standard 303(a)(3)(ii).

⁴⁶ Students will, of course, deal with intercultural issues as they interact with law school classmates in simulation courses, but at many schools, the range of diversity present will not reflect the real world. If the school recruits actors to play clients and witnesses in simulations, it may be possible to increase intercultural interactions, depending on the demographical characteristics of the pool of actors.

⁴⁷ Although most law clinics and externships place students in the lawyer role with a client, either individual, group, or entity, it is also true that some law clinics and externship students do not have cases; they may be working on policy projects or in judicial chambers, mediation offices, legislative offices, or other

practice. Both expose students to the task and discipline of reflection and reflective practice.⁴⁸ At the same time, law clinics and externships differ on the other two structural dimensions: integrated versus dual supervision and work in practices created primarily for educational needs versus practices created primarily to provide a service.

In a law clinic, the teacher both directly supervises and provides feedback on the students' lawyering work, and structures opportunities for reflection on that work, with a workload selected in large part to foster student learning. In an externship, by contrast, the student works in a practice created to respond to client or institutional needs and has two supervisors: a practitioner supervisor whose workload responds to the needs of the outside practice, and a faculty supervisor who ensures that students meet the learning goals for the course.

Law clinics provide the motivation that comes with handling real matters, but in the typically more controlled environment of a practice created for educational purposes. Externships also provide the motivation that comes with handling real matters, but in the less controlled environment of practice settings of the kinds in which students are more likely to work upon graduation. The structural differences between law clinics and externships, as well as differences within each type, have implications for how effectively they can provide valuable learning experiences. These types of courses, and their variations, can integrate knowledge, skills, and values as students encounter critical, emotional, and value-laden issues concerning access to justice, intercultural awareness, relationships, and development of personal identity.

Law schools should offer all three of the traditional experiential course structures: theory and practice skills simulation courses, law clinics, and externships, or newer structures that may be developed to provide comparable benefits. They should offer theory and practice skills simulation courses on the most important skills needed by the school's graduates to provide students with in-depth conceptual frameworks and opportunities for repeated practice of the skills. Law schools should offer law clinics, even if they cannot yet offer one for every student, because their integrated supervision model provides an opportunity for intensive instruction, mentoring, and supervision.⁴⁹ At the same time, law schools should offer externship opportunities, giving students the chance to work in practice settings that cannot be replicated in law clinics alongside lawyers in active, non-academic practices, with the opportunity for mentoring and supervision of the lawyering work from the field supervisor and guided reflection from the externship teacher for all externships.

non-client based settings. The word "matters" is intended to capture the full range of real world work that is not centered on clients or cases.

⁴⁸ ABA Standard 305(e)(7) requires "opportunities for reflection" in all externships, although for externships earning less than three credit hours, the reflection need not be provided contemporaneously.

⁴⁹ In addition to the educational benefits, most law clinics also provide public service, which is an important part of many schools' missions, and help inculcate public service values.

iii. Ensuring that Experiential Courses Add Value to Student Experience⁵⁰

As they engage in the best practice of offering a range of experiential course structures, law schools must also ensure that the courses add value to the student experience. Teachers of all experiential courses add value in two ways: by structuring the experience in advance and by the actions they take during the course.

In advance of the course, all experiential teachers choose the subject matter for the legal work that students will perform, design the syllabus, and prepare for the course's classroom sessions. Their other tasks will vary. Simulation course teachers will choose or create the simulations students will work on and may recruit practitioners to assist with the course. Law clinic teachers choose the cases or matters for the clinic and may design simulations to prepare students for their legal work. Externship teachers vet placements and field supervisors, train the field supervisors, and match students with placements.

Teachers provide value during an experiential course in any of four primary ways: offering in-depth conceptual frameworks for individual skills, providing intensive supervision of student preparation and performance of work, giving specific feedback on simulated or real performances, and structuring opportunities for broader student reflection. During the experience, the teacher will choose from these options the ones that suit the structure of the course, with reflection being a priority in all types of experiential courses. *See* Table 5 below.

⁵⁰ Students also benefit from the growth of experiential education, when teachers of all three types of courses theorize and critique practice by contributing to the scholarship of skills and the scholarship of teaching.

Table 5
Adding Value to Experience

| Primary Ways Teachers Provide Value by Structuring an Experiential Education Offering |
|---|
| <ol style="list-style-type: none"> 1. Choose subject matter for legal work of law clinic, externship, or simulation 2. Choose cases or matters for clinic, or create simulations 3. Vet placements and field supervisors, or recruit practitioners to assist with simulation course 4. Train field supervisors for externships 5. Match students with externship placements 6. Prepare activities for class sessions |
| Primary Ways Teachers Provide Value During an Experiential Education Offering |
| <ol style="list-style-type: none"> 1. Provide in-depth conceptual frameworks for individual skills 2. Provide intensive supervision of student preparation and performance of work 3. Provide specific feedback and debriefing on student performances, simulated or real 4. Provide opportunities for student reflection and systemic critique apart from feedback on performances 5. Integrate conceptual frameworks, supervision, feedback, and reflection |

In order for teachers to add value to experiential courses, law schools must support their experiential courses sufficiently to realize their distinctive benefits. This requires both attention to the courses and attention to the teachers. Theory and practice skills simulation courses require high enough credit allocations and low enough student-faculty ratios to allow students to practice the skill repeatedly, and staffing by teachers whose other duties allow them time to provide detailed feedback. As discussed in more detail in the separate section on in-house clinics, below, for clinics, this requires adequate staffing and support for clinical law practices. For clinic teachers, it requires balanced course loads and realistic expectations for service and scholarship so that teachers have time to provide the intensive support, feedback, and reflection that are the hallmarks of the in-house law clinic. As discussed in more detail in the separate section on externships, for externship courses, this requires adequate staffing and support for the complex administrative demands of the course and realistic expectations for enrollment. For externship teachers, it requires externship courses taught by teachers, and balanced course loads.

iv. **Requiring Real Supervised Practice Experiences for All Students**

Given the significant strengths of clinical education, it is insufficient to provide only simulated experiences, or to provide a mix of simulated and real experiences without making real experiences an integral, required part of the curriculum. It is currently a best practice to require at least one clinical education experience; in fact, most schools “either already have or are easily capable of providing the course capacity” to do so.⁵¹ It is an emerging best practice to provide more than one clinical experience to students. Given the distinct strengths of each, students ideally should have the opportunity to take both a law clinic and an externship, and of course, both will qualify as “experiential” under ABA Standard 303(a) and will satisfy the pending competency requirements for California Bar admission.⁵²

How a given school should implement a requirement of clinical legal education for all students will depend on three interrelated factors. These are the same factors that should influence the learning objectives for the entire curriculum: the law school’s mission, the student body and the potential job market, and the school’s location. A well-defined mission will presumably affect the characteristics and interests of the students that a law school enrolls and where they ultimately practice, including their pro bono service. The clinical education opportunities that each school provides should prepare students for the practice contexts they will encounter on graduation and the skills they will need to master, and to the extent consistent with pedagogical goals, respond to the legal needs of the community. The location of the law school will affect the types of clinical education opportunities that can be provided. For instance, a school located in a smaller town in a rural state may have fewer potential part-time externship placements, and may need to develop more law clinics or consider a semester-in-practice option.

These two recommendations — that it is a best practice to provide at least one supervised practice opportunity to all students, and an emerging best practice to provide two — prompt at least five implementation questions. First, what is the appropriate mix of law clinic and externship experiences? Second, must the supervised practice opportunity be offered for a minimum number of credits in order to qualify as a best practice? Third, conversely, should law schools limit the number of clinical education credits a student may take? Fourth, how does a school with an evening or part-time program make these options available to part-time and evening students? Finally, how do cost considerations come into play? While the current state of knowledge does not provide firm answers to these questions, it is possible to recommend “better practices.”

⁵¹ Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. (forthcoming 2015) [hereinafter Kuehn, *Pricing*].

⁵² See, e.g., Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert F. Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL’Y 11, 15 (2013).

(a) **Mix of Law Clinic and Externship Experiences**

As discussed above, law clinics can provide a carefully scaffolded educational experience in which students have progressive levels of responsibility and externships can expose students to the realities of practice in a diverse array of settings with the benefits offered by dual supervision, and more scaffolding than is typically available in a job or volunteer opportunity. As law schools choose what mix to offer, and students choose what mix to take, they should be guided by educational considerations and a clear understanding of the differences in pedagogy and opportunity between them. Both schools and students must understand the distinctions and the tradeoffs in each model.

Instead, however, some schools seem to be reacting to the push to emphasize supervised practice experiential education by adding programs without sufficient thought to designing an overall curriculum that helps students progressively develop their knowledge, skills, and values. Sometimes, that means establishing externships with little structure or support, rather than law clinics, perceiving them as infinitely scalable with little added expense. Other times, it means creating a law clinic using as supervisors outside lawyers who may not have the training or time to develop expertise in experiential pedagogy and minimal integration into the law school. These are mistakes, given that law clinics with their unitary supervision model, and externships with their dual supervision model, make different contributions to students' learning and require careful planning and execution for success.

Law schools may not currently have sufficiently robust clinical education programs that can provide both a law clinic and an externship opportunity to every student. However, given the demand for graduates who have more skills, law schools are recognizing the need to expand their clinical education programs. Students are best served by programs that offer a mix of experiences, including both law clinics and externships. The exact mix of offerings will turn on many factors, including the school's mission and setting and the strengths and goals of its students. If resources do not permit as robust an array as might be ideal, schools should consider how the developing models of more intensive externships, hybrid clinics and other formats can offer students the benefits of these diverse forms of experiential education. Although program design will vary, it is unlikely that offering only a single type of experience will ever be ideal. As the discussion of sequencing below demonstrates, the various kinds of offerings can fit together to form a coherent program of experiential education.

(b) **Minimum Credits**

A law clinic or externship should be offered for enough credits to provide students with sufficient experience to generate meaningful reflection and learning. Because local conditions vary on multiple dimensions, it is not realistic to specify a best practice for minimum credits for individual clinical education opportunities. For instance, some law clinics separate the credit hours students earn for the classroom component or seminar of the clinic and the credit hours for "fieldwork" hours students earn doing work on clinic cases or matters. Nevertheless, the average combined credits per semester for law clinics is five to seven and that number

provides a useful guide.⁵³ Smaller credit externships have long been common in the externship setting and they can be especially valuable for students who want to explore different types of work and practice settings,⁵⁴ but they will provide very different opportunities and benefits than a higher credit experience.

(c) Lifting Caps on Clinical Education Credits

As the focus of legal education changes, it is an emerging best practice to lift limits on clinical education credits significantly, or even entirely. Those limits were historically driven by ABA law school accreditation requirements⁵⁵ and some state bar admission requirements, but the requirements are rapidly changing to set a minimum number of professional skills credits and significantly loosen the maximum.⁵⁶ Law schools should do the same.

(d) Clinical Courses for All Students

Providing clinical courses for evening and part-time students presents special challenges. Evening students are typically limited in their availability to attend court during normal daytime business hours. Part-time students may lack the ability to work at the intensive pace some legal matters require. Creative options, such as evening clinics and on-site externships, are available.⁵⁷

(e) Cost

Some will object to providing clinical education for all students on grounds of cost. Done well, law clinics, and to a lesser extent, externships, require a low student-faculty ratio. The same is true, however, of long established offerings like seminars. In light of two other considerations, the idea that providing clinical legal education — law clinics or externships — to all students is cost prohibitive seems tenuous. Tuition levels at the many schools that already operate in accordance with this best practice

⁵³ David Santacrose & Robert Kuehn, Center for the Study of Applied legal Education: The 2013-14 Survey of Applied Legal Education, *available at* http://www.csale.org/files/Report_on_2013-14_CSALESurvey.pdf, *archived at* <http://perma.cc/XEM3-8UJY>.

⁵⁴ A recent survey found that lawyers valued both two low-credit externships and one full-time externship far better than one low-credit externship. Margaret Reuter & Joanne M. Ingham, *Experiential Education and Our Divided Campuses*, 22 *CLINICAL L. REV.* (forthcoming Fall 2015).

⁵⁵ ABA Standard 311(b) requires that students complete at least 64 credit hours in courses with “attendance in regularly scheduled classroom sessions or direct faculty instruction.” Interpretation 311(2)(a) specifies that “credit hours may include . . . participation in a simulation course, or law clinic.” Subsection (b), however, specifies that “the credit hours shall not include field placements.” *Id.*

⁵⁶ See Linda Morton, *California’s New State Bar Pre-Admission Requirements: 15 Units of Experiential Education and 50 Hours of Pro Bono* and Steve Ellmann, *Three Innovations in Bar Admission Rules: New York (Twice) and Arizona*, PRESENTER HANDOUTS: PLENARY 4: THE DEVELOPING LANDSCAPE OF CHANGE, http://www.elon.edu/docs/e-web/law/aell_symposium/Katherine_Kruse_handout.pdf, *archived at* <http://perma.cc/366P-DX7R>.

⁵⁷ See, e.g., David F. Chavkin, *Clinic Under the Stars: Giving Part-Time Students their Due*, 13 *CLINICAL L. REV.* 719 (2007); Chapter 5, Section F, Subsection 3, *Delivering Effective Education in Externship Programs*, below.

are no higher than the levels at schools that do not.⁵⁸ In addition, law clinics often bring in private donations or grant funding unlikely to be available for other offerings, thus, lowering net cost to the law school.

As with any law school curriculum offering, cost is only one piece of the equation, which includes value, cost, and potential for securing revenue to offset some of the costs of the curricular offering. The cost of clinical education varies along multiple dimensions — faculty-student ratios, staffing models, and salary levels. On each dimension, it may be tempting for law schools to cut corners.⁵⁹ That temptation must be resisted in order to assure that students receive the desired and critical educational benefits from clinical education.

v. Considering Whether and, If So, How to Sequence the Experiential Curriculum

How to integrate and how to sequence the curriculum as a whole are key questions for legal education, and those questions are likewise critical for designing an experiential curriculum.⁶⁰ An earlier section of this volume advocated integrating experiential opportunities into the curriculum as a whole, connecting different offerings, and considering whether particular sequences makes sense.⁶¹ As explained there, law schools face the question whether to follow a layer cake⁶² or marble cake⁶³ vision for integrating simulation courses, law clinics, and externships into the curriculum. Educators responsible for separate experientially-focused theory and practice skills simulation, law clinic, and externship courses face two related, specific aspects of this concern. It is a best practice for a law school to consider these questions in designing its curriculum.

First, should law schools offer, and should students take, simulated and real experiences in a specific sequence? Understandably, simulation is widely viewed as a logical precursor to real experiences. Indeed, most law clinics moot students frequently, before each major performance, such as an oral argument, and often before smaller ones, such as a phone call to an opposing attorney. In keeping with the layer cake model, some schools, therefore, require all students to participate in a relevant skills theory and practice simulation courses in their second year, or make such a course a pre- or co-requisite for participating in a law clinic or an externship. On the other hand, students may take a simulation-focused course more seriously

⁵⁸ Kuehn, *Pricing*, at 30-33.

⁵⁹ See Chapter 8, Section B, *Faculty Status and Institutional Effectiveness*, below.

⁶⁰ Cynthia Batt, *A Practice Continuum: Integrating Experiential Education into the Curriculum*, 7 ELON L. REV. (forthcoming 2015).

⁶¹ See Chapter 3, Section B, *Pathways, Integrating and Sequencing the Curriculum* (defining “integrate the curriculum” as “connect the individual courses that a student takes, both those taken concurrently and across the years the student is enrolled in law school” and sequence the curriculum as “structure offerings from introductory to intermediate to advanced”).

⁶² The experiential layer cake model adds simulations first and follows later with real experiences, deferring real experiences until the third year.

⁶³ The experiential marble cake model incorporates both simulation and real experiences early and returns to them throughout law school in increasingly complex forms.

after a real experience that makes evident the importance of the skill. The marble cake model might suggest that an initial basic introduction to the skill could be followed by a lower-stakes real opportunity to practice, a more complete introduction in a theory and practice simulation skills course, and another opportunity to practice the skill in real life.

Second, should law schools require, or students choose, enrolling in a law clinic before an externship, or vice versa? If a law school makes more than two experiences available, should it require, or should the student choose, a particular sequence? The question how to sequence law clinics and externships has taken on more salience in recent years as more schools have the capacity to provide at least some of their students with both experiences. The preferred sequence most likely will vary with a student's goals and skill level, and the nature of the externship. For instance, externships in which students will mostly perform legal research, such as judicial externships, can be an excellent early experiential opportunity for a student wishing to hone writing skills, or to observe courtroom proceedings. Along with a theory and practice skills simulation trial advocacy course, intensively scaffolded litigation clinics in which students function as first chair on cases can provide an excellent foundation for an externship, such as a criminal prosecution or criminal defense placement, in which the student will carry a calendar or caseload in a first chair role. A series of smaller credit externships could expose a student who is undecided on a direction to several practice settings and perhaps identify a preferred focus for a later law clinic experience. A student with weaker skills will likely benefit from the more intensive scaffolding of a law clinic, before moving into the less supported externship setting. At the same time, in a state with a student practice rule limiting court appearances to third-year students, a very strong student could make the most of a law clinic's first chair opportunities to perform an appellate argument, or another task, that would not likely be available through an externship.

While insufficient experience is available to recommend either a best practice for sequencing, or a best process for developing a sequence, a thoughtful, multi-stage process will be needed in order to identify and implement a useful sequence.⁶⁴

vi. Developing a Common Vocabulary and Evaluative Criteria for Experiential Education

A final best practice for experiential education is to establish a common vocabulary and common evaluative criteria for experiential offerings.

⁶⁴ Such a process might include:

1. Reviewing content and learning outcomes of current offerings;
2. Reviewing student experience through interviews, transcript analysis, surveys, and employment outcomes;
3. Developing a list of sequencing options to explore;
4. Vetting practical considerations such a scheduling other aspects of the curriculum;
5. Choosing and implementing preferred options;
6. Creating pathways or another academic advising system to maximize benefits; and
7. Assessing results and modifying sequence as indicated.

(a) **Why Legal Education Needs Both a Common Experiential Education Vocabulary and Common Evaluative Criteria**

One of the challenges for prospective students in comparing law schools, accreditors in evaluating them, legal employers in assessing prospective hires, and law schools engaging in self-assessment and redesign is the increasing proliferation and inconsistency in terminology for experiential education offerings. Institutions use different terms when referring to the same types of learning experiences, and use the same terms — such as “practicum” or even “clinic” — inconsistently. An individual law school may even lack consistency in using different terms, creating confusion within the institution, among students, faculty, and staff. It would be a best practice for experiential education to establish a reasonably consistent vocabulary in keeping with commonly understood usage, along with a common set of evaluative criteria that would enable interested parties to “look under the hood” of experiential offerings, however they are labeled.

A common vocabulary can prevent misunderstandings in which different parties mistakenly assume that they are both talking about a course or learning experience that has certain characteristics. Students, especially, will be misled if schools are opaque or overstate the depth and breadth of their experiential offerings or adopt confusing course titles. It is important for schools to clearly communicate the nature and extent of their experiential offerings, and for students to be able to compare the benefits inherent in each.

A common vocabulary takes on great practical significance in light of the ABA’s adoption of a standard requiring that each student complete six semester credits of practice-based experiential courses,⁶⁵ as well as pending state bar requirements that are more expansive.⁶⁶ Both students and law schools will need to know which courses will satisfy those requirements, and law schools need to avoid the administrative nightmare that will result if jurisdictions use inconsistent definitions.

A consistent experiential education vocabulary also has the potential to mitigate the silos that tend to characterize legal education. If such an effort creates terminology that highlights the connections among different aspects of the curriculum and that links those pieces of the curriculum under an overarching concept — an “umbrella” — legal educators can think about the curriculum more holistically.

A common vocabulary, however, is insufficient, even though the short-hand it provides is important. Focusing only on vocabulary presents the risk that discussions will be about semantics, rather than about analyzing the experiences offered by different courses. To use the language of critical theorists, a category can too easily be

⁶⁵ ABA Standard 303(a)(3).

⁶⁶ For summaries of the California, New York, and Arizona requirements, see Linda Morton, *California’s New State Bar Pre-Admission Requirements: 15 Units of Experiential Education and 50 Hours of Pro Bono* and Steve Ellmann, *Three Innovations in Bar Admission Rules: New York (Twice) and Arizona*, PRESENTER HANDOUTS: PLENARY 4: THE DEVELOPING LANDSCAPE OF CHANGE, http://www.elon.edu/docs/e-web/law/aell_symposium/Katherine_Kruse_handout.pdf, archived at <http://perma.cc/L2KN-ZDD8>.

“reified,” turned into a thing with a defined essence that encourages back and forth ‘tis too, ‘tis not assertions, rather than conversation. Labels can too easily embed, and mask, value judgments that are more usefully brought into the open for discussion. To underpin a common vocabulary common evaluative criteria — such as those provided in Tables 1-5 above — are, therefore, needed. Such criteria are a predicate for understanding what factors are most significant in differentiating offerings and contributing to their distinct strengths.

The benefit to legal education and its consumers in being able to easily understand and compare programs across and within schools is worth the cost of developing a common vocabulary and consistent with law schools’ duty to be transparent about what kind of education is being offered.⁶⁷ Identifying common criteria to support such a vocabulary is similarly important.

(b) **Why Creating a Common Vocabulary and Common Evaluative Criteria is Challenging**

Developing and adopting a common vocabulary and common evaluative criteria are, of course, easier said than done. At least three factors create barriers to such an effort.

First, in the absence of a common vocabulary, schools have developed their own usages. Students, alumni, faculty, and clients are familiar with local terminology. Thus, schools have an investment in it and may be reluctant to change, especially if doing so may suggest that their programs are less robust than previously appeared. Because law clinic offerings are an important factor to prospective students and U.S. News rates clinical programs, law schools have had an incentive to stretch the label “law clinic” to include offerings that might not be viewed as such under a new and more precise definition⁶⁸

Second, because experiential offerings vary along multiple dimensions, creating a common vocabulary risks both overlooking important dimensions and freezing categories in a manner that discourages experimentation. Among the varying dimensions are who teaches classroom offerings or supervises real practice opportunities, what the nature of the experience is, and where it takes place. Two recent articles highlight this complexity. One focused on roles students should experience and competencies they should develop. It identified three different roles that students may assume in an experiential curriculum, distinguishing simulated practice, the mentee role, and the first-chair role.⁶⁹ Another article that addressed only experiential courses involving real lawyering unpacked the traditional terminology for supervised practice experiences, specifically the divide between law clinics and externships. That article differentiated experiences along a

⁶⁷ ABA Standard 509 mandates disclosure of specified information and section (a) requires that all information provided must be “complete, accurate and not misleading to a reasonable law school student or applicant.”

⁶⁸ See Chapter 5, Section F, Subsection 2 and 4, *Delivering Effective Education in In-House Law Clinics* and *Ensuring Effective Education in Alternative Clinical Models*, below.

⁶⁹ Susan L. Brooks, *Meeting the Professional Identity Challenge*, 41 *BALT. L. REV.* 395, 403, 413 (2012).

straightforward “Why, Who, What, Where, When, How” framework.⁷⁰ The framework suggested that any set of definitions for real experiential offerings must incorporate six dimensions, a complex task in and of itself. But within that six-category framework resided additional complexity in a checklist of considerations encompassing almost three pages. Given this complexity, identifying which criteria are most important for evaluating experiential offerings poses challenges.

Finally, any set of definitions, or evaluative criteria, implicitly brings with it judgments about the value of different structures for experiential education, and those judgments may feel threatening to educators who have deep intellectual and emotional investments in particular approaches. In an era of widespread budget cutbacks, if alternative structures appear to neglect educational values in order to reduce costs, such educators may fear that validating alternative structures will undermine their carefully nurtured programs. For many years, this dynamic has been a not-so-hidden undercurrent in discussions of the respective merits of law clinics and externships, the two most commonly recognized structures for supervised practice, but it extends beyond that question.

(c) **Moving Towards a Common Vocabulary or
Evaluative Criteria**

As this section is written, the most comprehensive effort to develop a common vocabulary for experiential legal education has emerged from the Alliance for Experiential Learning’s⁷¹ “Vocabulary Working Group” convened to address the problem of definitions. The product of that work is a Glossary,⁷² but as of the date this section is written, that effort has not yet been fully vetted. Thus, the best practice for a common vocabulary urged in this section is support for the effort to develop one, rather than any specific definitions.

Drawing on the work of many others,⁷³ the previous discussion has attempted to identify some of the salient evaluative criteria, and a common vocabulary will need to wrestle with those criteria. In addition to the distinction between experiential modules and experiential courses, definitions must address the distinguishing characteristics of experiential courses set out in Tables 1-4, above.

⁷⁰ Deborah Maranville, Mary Lynch, Susan Kay, Phyllis Goldfarb & Russell Engler, *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517 (2011-2012) [hereinafter Maranville, et al., *Re-vision Quest*].

⁷¹ Convened in 2011, the Alliance has sponsored conferences at Northeastern University Law School and Elon University Law School, and organized working groups on a variety of topics. <http://www.northeastern.edu/law/experience/leadership/alliance.html>, archived at <http://perma.cc/6TZZ-2VCT>.

⁷² Adcock, et. al., *Glossary*.

⁷³ Of particular note are *id.*; Katherine Kruse & Stephen Ellman, Working Grp. on Cost and Sustainability, Alliance for Experiential Learning in Law, *Measuring the Values and Costs of Experiential Education*, in *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. __, Part III, at __ (forthcoming 2015); Maranville, et al., *Re-vision Quest*.

c. Conclusion

The subsections below consider clinical legal education in more detail.⁷⁴ In light of the description above of the defining characteristics of the two major forms of clinical legal education, law clinics and externships, and how teachers of each add value to raw experience, these subsections summarize the defining best practices of in-house clinics, and the best practices emerging from the sustained attention given to externship pedagogy over the last decade. The final subsection discusses considerations relevant to alternative clinical models.

⁷⁴ Simulation courses are not discussed separately, because the treatment in *BEST PRACTICES*, text at notes 574-603, is thorough and does not require updating.