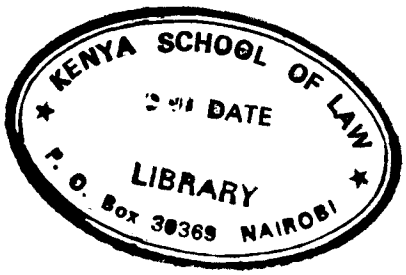
New York State Judicial Institute

Partners in Justice:
A Colloquium on Developing Collaborations Among Courts, Law School Clinical Programs and the Practicing Bar



Introduction to Clinical Legal Education

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The following text and footnotes are excerpted from:

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

I. *History of Clinical Legal Education*

A. *The Birth of the Modern Law School and the First Wave of Clinical Legal Education*

The first wave of clinical legal education in the United States began in the early part of the twentieth century, shortly after the casebook method emerged in the late 1890's as a popular route to preparing for a career in law.[1] The casebook method's emphases on appellate judicial decisions and the Socratic method as the means to teach the skill of legal analysis were a departure from the three prevailing methods of American legal education in the nineteenth century: the applied skills training method inherent in the apprenticeship system; the general education approach of the prevailing European legal educational model, which was adopted by some colleges and universities in the United States; and an analytical and systematized approach to the law as interconnected rational principles, taught primarily through lectures at proprietary law schools.[2] The single focus on legal analysis in the casebook method became "the objective" and "the structure" of early legal education in the United States and represented early legal educators'

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[1] Although Christopher Columbus Langdell did not originate the casebook method, he is usually credited with it since he steadfastly promoted its use while he was dean of Harvard Law School from 1870-95. See Joel Seligman, The High Citadel: The Influence of Harvard Law School 32-42 (1978). John Norton Pomeroy, a professor of the University of New York City (now known as New York University), used a case method of instruction several years before Langdell introduced this method of instruction at Harvard. See, e.g., Robert Stevens, Law School: Legal Education in America from the 1850s to the 1980s 52 n.14 (1983); Anthony Chase, The Birth of the Modern Law School, 23 Am. J. Legal Hist. 329, 333 n.18 (1979).

[2] See Charles R. McManis, The History of First Century American Legal Education: A Revisionist Perspective, 59 Wash. U. L.Q. 597, 617-18 (1981). The proprietary law school model - exemplified by the most famous proprietary law school, the Litchfield Law School - emerged out of the apprenticeship system, starting at the end of the eighteenth century. See Stevens, supra note 1, at 4. The first college to create a "professor of law" was William and Mary in 1779, and several other colleges followed suit by teaching law as a scholarly field. Id. at 4-5. From the late eighteenth century until the early nineteenth century, law taught in United States colleges was based on the European model and stressed a general education. "[L]egal education in the civil law world is, at bottom, general education, not professional education .... Law is merely one of the curricula available to undergraduate students .... [T]he professional side is taken care of after the university." John Henry Merryman, Legal Education There and Here: A Comparison, 27 Stan. L. Rev. 859, 865-66 (1975).

"narrow view of legal education."[3] Even though the casebook method was growing to become the dominant pedagogy in law schools, there were critics of this method from the start.

While the casebook method was gaining wide acceptance, law students at several law schools in the late 1890's and early 1900's established volunteer, non-credit "legal dispensaries" or legal aid bureaus to provide hands-on opportunities to learn and practice lawyering skills and legal analysis, and also to serve a social justice mission by providing legal assistance to those unable to hire attorneys.[4] As early as 1917, one commentator - William Rowe - published a law review article advocating law school based clinical legal education as the best way to train law students to become competent lawyers.[5] Prior to writing this groundbreaking law review article, Rowe was the proponent of a resolution adopted by the New York State Bar Association in 1916 that provided: "every law school shall make earnest clinical work, through legal aid societies or other agencies, a part of its curriculum for its full course."[6]

In his 1917 article, Rowe discussed law student volunteer affiliations with legal aid efforts, and he argued that these arrangements should be formalized and transformed into a feature of the law school curriculum with faculty involvement. The law schools, he observed, were lagging behind medicine, architecture, engineering, and other disciplines in providing such clinical experiences to students.[7] Most law schools offered only a two-year course of instruction at the time that Rowe was writing, and he foreshadowed some efforts to integrate clinical education throughout a student's law school experience when he wrote: "One year of the clinic is not enough. Indeed, eventually, the clinic may be made a principal medium of instruction in all years for all subjects. That will be the natural and logical development."[8] Rowe advocated a system of clinical legal education in which students would take their clinic cases "to the classroom of the professor dealing with the subject under which the case logically falls. The clinic thus becomes a

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[3] McManis, supra note 2, at 597.

[4] These volunteer legal aid bureaus were established by law students at schools such as Cincinnati, University of Denver, George Washington, Harvard, Minnesota, Northwestern, University of Pennsylvania, University of Tennessee, and Yale in the 1890's and early 1900's. See John S. Bradway, The Nature of a Legal Aid Clinic, 3 S. Cal. L. Rev. 173, 174 (1930); Robert MacCrate, Educating a Changing Profession: From Clinic to Continuum, 64 Tenn. L. Rev. 1099, 1102-03 (1997); William V. Rowe, Legal Clinics and Better Trained Lawyers - A Necessity, 11 Ill. L. Rev. 591, 591 (1917).

[5] See Rowe, supra note 4, at 591.

[6] Id. at 595 (emphasis in original).

[7] See id. at 591-96.

[8] See id. at 596, 606 (emphasis in original).

'case book' - not, however, of dead letters descriptive of past controversies, but always of living issues in the throbbing life of the day, the life the student is now living."[9]

The type of clinical legal education that Rowe promoted most closely resembles a modern externship or perhaps hybrid clinic, in which students are placed with an off-site legal aid office, prosecutor, or public defender, combined with "general classroom work, with 'demonstrations' of current clinical problems, as well as individual instruction and guidance in each case in hand."[10] Rowe also anticipated that the clinic would be overseen by a faculty member "fully prepared to devote himself permanently to the work, [and] who can, with his assistants, agreeably to all concerned, associate himself, if necessary for temporary purposes, as counsel or otherwise, with any lawyer whose office or business may become connected with the clinic."[11]

In 1921, the Carnegie Foundation for the Advancement of Teaching funded a study on legal education, commonly called the "Reed Report" after its nonlawyer author, Alfred Z. Reed.[12] The Reed Report identified three components necessary to prepare students for the practice of law: general education, theoretical knowledge of the law, and practical skills training.[13] The emphasis on legal analysis in the casebook method fulfilled only one of these three objectives by providing students with a theoretical knowledge of the law. To satisfy the requirement of a general education component, the Reed Report called for at least two years of pre-law college training - a proposal the ABA promoted, starting in 1921.[14] At that time, not a single state required a university-based law school degree as a precondition for admission to the bar, proprietary law schools were still prevalent, and apprenticeships still provided the basic legal training for many entering the legal profession.[15] In the midst of this highly unregulated climate for entry to the legal profession, the Reed Report's recommendation of practical skills training was not vigorously pursued by law schools.

In the wake of Rowe's early efforts to integrate clinical education into the law school curriculum, and the Reed Report's call for practical skills training, John Bradway and Jerome Frank pioneered the cause of clinical legal education methodology in the 1920's through the

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[9] Id. at 606-07.

[10] Id. at 611 (emphasis in the original).

[11] Id. at 614.

[12] Alfred Z. Reed, Training for the Public Profession of the Law (1921).

[13] See id. at 276.

[14] See Stevens, supra note 1, at 172.

[15] See id.

1940's, advocating an in-house clinic as an essential component of sound legal education.[16] Yet, despite the efforts of Bradway and Frank, only a handful of law schools instituted in-house clinical courses through the first half of the 1900's.[17]

The dearth of clinical legal education programs in the first half of the twentieth century reflects several conditions that law schools faced in that era. First, law schools were distinguishing themselves from apprenticeships, and clinical legal education efforts to create "model law offices" as part of law school education did not further this market differentiation. Second, law schools of this era were terribly underfunded and clinical legal education courses with intensive faculty supervision were not as economical as large classes employing the casebook Socratic method.[18] Third, law school teachers of this era disagreed about the value - and feasibility - of teaching lawyering skills other than legal analysis.[19] For example, a 1944 Report of the Association of American Law Schools (AALS) Curriculum Committee, primarily authored by Karl Llewellyn, noted that the "current case-instruction is somehow failing to do the job of producing reliable professional competence on the by-product side in half or more of our end-product, our graduates."[20] Fourth, the period from the 1920's to the 1940's was marked by ABA

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[16] See generally John S. Bradway, The Beginning of the Legal Clinic of the University of Southern California, 2 S. Cal. L. Rev. 252 (1929) [hereinafter "The Beginning"]; Bradway, supra note 4; John S. Bradway, The Legal Aid Clinic as an Educational Device, 7 Am. L. Sch. Rev. 1153 (1934); John S. Bradway, Legal Aid Clinic as a Law School Course, 3 S. Cal. L. Rev. 320 (1930); John S. Bradway, Legal Aid Clinics in Less Thickly Populated Communities, 30 Mich. L. Rev. 905 (1932); John S. Bradway, The Objectives of Legal Aid Clinic Work, 24 Wash. U. L.Q. 173 (1939); Jerome Frank, A Plea for Lawyer-Schools, 56 Yale L.J. 1303 (1947); Jerome Frank, Why Not a Clinical-Lawyer School?, 81 U. Pa. L. Rev. 907 (1933).

[17] The University of Southern California, through the efforts of Bradway, established an experimental six-week clinical course as early as 1928. See Bradway, The Beginning, supra note 16, at 253. When Bradway left to teach at Duke, Duke established the first full-fledged in-house clinical program in 1931. See Bradway, Legal Aid Clinics in Less Thickly Populated Communities, supra note 16, at 906. In 1947, the University of Tennessee School of Law became the second law school in the country with an ongoing in-house clinical program. By the late 1950's, there were in-house clinical programs in a small number of law schools. See Douglas A. Blaze, Deja Vu All Over Again: Reflections on Fifty Years of Clinical Education, 64 Tenn. L. Rev. 939 (1997).

[18] See Stevens, supra note 1, at 214; McManis, supra note 2, at 650.

[19] See Stevens, supra note 1, at 214.

[20] AALS Proceedings 168 (1944), quoted in Stevens, supra note 1, at 214 (emphasis in original). A subsequent 1947 AALS Committee on Teaching and Examination Methods identified the following skills as implicit in the phrase "thinking like a lawyer": "the ability to determine the

and AALS efforts to create and raise standards for law schools, and none of these standards focused on encouraging or requiring clinical legal education experiences.[21] These four factors combined not only to limit the number of clinical programs but also to stunt the growth of clinical pedagogy by limiting the number of law faculty teaching clinical courses.

By 1951, the value of "legal aid clinics" affiliated with or operated by law schools had become "[o]ne of the current controversies in legal education . . . ."[22] Robert Storey, then the Dean of Southern Methodist University School of Law, summed up the feeling of some legal educators when he lauded the "clinical method" for exposing "the student to actual problems confronting him with actual people who are in actual trouble"[23] and for furthering "equality of justice" by helping to set up "an adequate system of legal aid offices."[24] Yet, in spite of Dean Storey and others who promoted clinical legal education in the 1950's, clinical legal education was in a holding pattern.

In the 1950's, there was no single vision of clinical legal education and the concept of a law school "legal aid clinic" encompassed any "law school sponsored program for law student work on legal aid cases."[25] A 1951 study of clinical programs identified twenty-eight clinics run by law schools, independent legal societies, or public defender offices.[26] At five schools, a clinical legal education experience was mandated, but most schools offered clinics as electives or extra-

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holding of a case (legal analysis); the ability to form principles from the study of the holdings of a case (legal synthesis); the handling of complex fact situations (legal diagnosis); the ability to interpret statutes and regulations; and the ability to apply legal principles to the solving of problems (legal solution)." Id. at 227 n. 70, citing AALS Handbook 76-79 (1947).

[21] Most of the standards focused on requiring pre-legal college experience for all prospective law students, lengthening law school to at least three years of full-time study or four years of part-time study, requiring more full-time law faculty, creating standards for law libraries, and increasing the number of states requiring legal training in ABA approved schools as a precondition for admission to the bar. See Stevens, supra note 1, at 172-80.

[22] Quintin Johnstone, Law School Clinics, 3 J. Legal Educ. 535, 535 (1951).

[23] Robert G. Storey, Law School Legal Aid Clinics: Foreword, 3 J. Legal Educ. 533, 533 (1951).

[24] Id. at 534.

[25] Johnstone, supra note 22, at 535.

[26] See id. at 535. In 1951, Johnstone observed that most of the 28 clinics were started after 1947, but he did not provide complete data on the starting dates of particular schools. Id. at 541.

curricular activities.[27] The work assigned to students varied among programs, but typically included client and witness interviews, drafting pleadings, and preparation of legal documents.[28] Some programs gave students the opportunity to negotiate matters with clients' creditors, and at least nine law school clinics provided opportunities for trials and other court appearances.[29] Most clinics attempted to have students work on cases from beginning to end.[30] Student supervision was cited as a "major problem," and the task of supervision was often delegated to experienced students, who supervised less experienced students.[31] At ten of the twenty-eight law schools with some form of clinical program in 1951, students did not earn any academic credit for their work. At four schools, clinic credit was available as part of a student's credits for a general course on legal practice. At the remaining fourteen schools, students only earned between one and three hours of credit for clinic work.[32]

By the end of the 1950's, thirty-five law schools reported "some form of legal aid clinic."[33] In thirteen of these law schools, legal aid clinics were located inside the schools.[34] In a few law schools, all or most law students were required to do some legal aid work.[35] In fifteen law

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[27] See id. at 541-42.

[28] See id. at 542.

[29] See id. at 543.

[30] See id. at 543.

[31] See id. at 544.

[32] See id. at 546.

[33] AALS Proceedings 121, 121 (1959)

[34] See id. at 122.

[35] The 1959 Report of the AALS Committee on Legal Aid Clinics stated that legal aid clinic work was required at Ohio State University College of Law and at Franklin University School of Law, located in Columbus, Ohio. See id. at 121-22. At Northwestern University School of Law, legal aid work or work in an attorney's office was a graduation prerequisite for all students not on the Publications Board. The University of Minnesota Law School required legal aid work in a mandatory third year procedure course, and the University of Maryland School of Law permitted students to substitute legal aid clinic work for a required "practice court" course. See id. at 121-22. A prior survey, conducted by The National Legal Aid Association (NLAA) and the American Law Student Association (ALSA) in 1956 and sent to all AALS member law schools, identified law schools at Creighton University, Drake University, Northwestern University, Ohio State University, and Williamette University as requiring a legal aid clinic as a prerequisite for graduation. See Junius L. Allison, The Legal Aid Clinic: A Research Subject, 2

schools, students were able to earn limited academic credit for clinic work.[36] In only five law schools, supervising faculty were able to receive teaching credit for their clinical courses.[37]

Although the number of clinical legal education programs increased slightly from the late 1940's to the early 1950's, the late 1950's ended on a note of relative stagnation for the nascent clinical legal education movement. There were several different models of clinical programs, and no generally accepted definition or description. Schools defined "clinical" programs to include both credit-earning and non-credit-earning real-life experiences for law students either in programs located within the law school or offsite at legal aid or public defender offices. The level of faculty involvement and supervision varied greatly, and clinical experiences existed on the fringes of the law school curriculum.

The limited growth of clinical programs during this decade may reflect the fact that clinical instruction was only one of several experiments under way to address perceived deficiencies of

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Student Lawyer J. 19 (Dec. 1956). Franklin University School of Law would not have participated in this survey because it was not an AALS member. See AALS Proceedings, supra note 32, at 121 n.6. The NLAA/ALSA survey identified 31 AALS member law schools with either elective or required clinic courses or extra-curricular activities. See Allison, supra, at 20.

[36] See AALS Proceedings, supra note 33, at 122.

[37] Those five law schools were Duke University School of Law, which discontinued the practice in September of 1959, Indiana University School of Law at Indianapolis, Southern Methodist University School of Law, University of Tennessee, and University of Texas School of Law. Id. at 122 n.8. Citing this same source, Professor Douglas Blaze identified these five law schools as the only law schools in the late 1950's with established "in-house clinical programs." Blaze, supra note 17, at 941 n.14. For the purposes of his article, Blaze defined in-house clinical programs as "a for-credit curricular offering in which law students represent 'real clients' in 'real situations' under faculty supervision." Id. at 939-40 n.2. In a telephone interview, Blaze explained that his term "for-credit curricular offering" envisions academic credit for students and teaching credit for faculty. Telephone conversation with Prof. Douglas A. Blaze (June 27, 2000). In 1956, data on clinical programs was collected in the "Report of the Committee on Legal Aid Clinics," published as part of the proceedings of the 1957 Annual Meeting of the AALS. See AALS Proceedings 200-18 (1957). Fifty-four law schools reported that they had never had "a legal aid clinic or bureau" at their schools, and two law schools, University of California-Berkeley and University of California-Hastings, replied that they previously had one but no longer maintained a clinic. See id. at 202. Thirty-four law schools reported "some form of legal aid clinic in their school," though the affirmative responses appear to include schools with credit-earning clinical experiences for students either at clinics located within the law school or placed with legal aid or public defender offices as well as purely volunteer student activities. Id. at 210-11. Unfortunately, the data does not draw any distinctions between these different types of real-life experiences.

the casebook method. Some of the other "experiments" included simulated trial practice courses, legal research and writing courses, drafting courses, and subject matter seminars based on simulated problems.[38] Notwithstanding these "experiments" – many of which are now standard fare in virtually all law schools – the 1960's witnessed continued complaints by law students and some law faculty about large classes, the dominance of the casebook method, and the lack of writing opportunities.[39] Of all the curricular experiments since the introduction of the casebook method in the late nineteenth century, "the concept of clinical legal education was to prove the most important."[40] In fact, clinical legal education is "so often called the most significant change in how law was taught since the invention of the case method that it now sounds trite."[41]

B. *The Maturing of the Modern Law School and the Second Wave of Clinical Legal Education*

During the second wave of clinical legal education - a period spanning from the 1960's through the late 1990's - clinical legal education solidified and expanded its foothold in the academy. The factors that contributed to this transformation included demands for social relevance in law school, the development of clinical teaching methodology, the emergence of external funding to start and expand clinical programs, and an increase in the number of faculty capable of and interested in teaching clinical courses. Perhaps the most powerful of these factors was the zeitgeist of the 60's, which produced "student demands for relevance."[42] In reflecting on the growth and direction of clinical legal education, Professor Dean Hill Rivkin has noted: "It was the societal legacy of the sixties . . . that most shaped clinical legal education. The fervor of the sixties penetrated law schools quite passionately."[43]

(1) *The Social Justice Dimension Of Clinical Legal Education*

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[38] See Johnstone, supra note 22, at 548-52.

[39] See, e.g., Stevens, supra note 1, at 211.

[40] Id. at 215.

[41] Philip G. Schrag & Michael Meltsner, Reflections on Clinical Legal Education 5 (1998).

[42] Charles E. Ares, Legal Education and the Problem of the Poor, 17 J. Legal Educ. 307, 310 (1965). As Professors Philip Schrag and Michael Meltsner conclude, "Clinical legal education was born in the social ferment of the 1960s." Schrag & Meltsner, supra note 41, at 1.

[43] Symposium: Clinical Legal Education and the Legal Profession, 29 Clev. St. L. Rev. 1 (1980); Symposium: Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future, 36 Cath. U. L. Rev. 337, 340 (1987) (remarks of Dean Hill Rivkin).

The earliest forms of clinical legal education embraced the dual goals of hands-on training in lawyering skills and provision of access to justice for traditionally unrepresented clients. Initially, the legal realism movement of the 1920's and 1930's provided support for the goal of teaching lawyering skills and professional values in law school legal aid dispensaries. Legal realists like Llewellyn and Frank advanced the view that students must learn about law as a means to an end rather than as an end itself. Thus, it is no surprise that Llewellyn and Frank were early advocates of clinical legal education.

In 1965, a proponent of clinical experiences in law school noted the demands for relevance in legal education and "a desire on the part of a significant number of law students to help make the law serve the needs of the poor."[44] This sentiment, present since the earliest law student volunteer "legal aid dispensaries," blossomed in the design of most clinical programs during the 1960's-70's. These clinical programs provided representation to indigent clients with a myriad of legal problems. Many of these programs also responded to the call of Professor Arthur Kinoy to "tak[e] on major cases and situations involving the relationship of the processes of the law to the fundamental problems of contemporary society . . . [so as to] provide a fascinating teaching tool for probing into the most fundamental theoretical, substantive, and conceptual problems, all within the context of the throbbing excitement of reality."[45]

In building upon the earlier clinical programs, clinical faculty during the second wave expanded clinics to demystify law for students and to represent client communities with claims that thrust clinical programs into the civil rights, consumer rights, environmental rights, and poverty rights movements. During this same period, the Critical Legal Studies (CLS) movement grew out of the earlier legal realism movement in legal education.[46] While clinical teachers were working with law students to use the law as an instrument for social justice and change, proponents of CLS were using the classroom to demystify the law and to teach students that "political conviction plays an important role in adjudication and that the shape of the law at any time reflects ideology and power as well as what is wrongly called 'logic.' "[47] However, unlike some CLS adherents whose critique of law and the legal system leads them to skepticism or nihilism, clinical faculty struggled to maximize law's potential for remedying injustice and inequity.[48]

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[44] Ares, supra note 42, at 310.

[45] Arthur Kinoy, The Present Crisis in Legal Education, 24 Rutgers L. Rev. 1, 7 (1969).

[46] "[C]ritical legal studies resembles the older movement of American legal realism, and it is too early to decide whether it is more than an anachronistic attempt to make that dated movement reflower." Ronald Dworkin, Law's Empire 272 (1986).

[47] Id. at 271-72.

[48] See id.

Professor Martin Guggenheim points out that this focus on social justice is important "not only because of its effect upon clients but also because of its effect upon students."[49] Clinical courses expose students not only to lawyering skills but also the essential values of the legal profession: provision of competent representation; promotion of justice, fairness, and morality; continuing improvement of the profession; and professional self-development.[50] These professional values are taught and at the same time thousands of clients receive access to justice through clinical programs. In this way, clinical programs meld legal theory with lawyering skills, and students learn lawyering values by providing legal assistance to clients who would otherwise lack access to justice. As Professors Philip Schrag and Michael Meltsner observed:

> [H]undreds of thousands of low-income clients have been well served by clinic students. Although this magnitude of assistance is very low compared to the need of indigent people for legal services, in most cases the value of the service to clients has been incomparable: avoiding homelessness, avoiding or reducing time in prison, obtaining disability benefits, securing the right to remain in the United States, obtaining safety from a threatening spouse.[51]

The social justice dimension of the practice of law and other professional values can find expression in other parts of the curriculum as well. Yet, too few traditional courses explored social justice issues in the latter part of the twentieth century, and those that did rarely explored the relationship between lawyers' pro bono responsibility and their obligation to improve the legal system. Rarer yet were law schools in which the curriculum as a whole reinforced these professional values.[52] In these respects, law school curricula even at the start of the twenty-first

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[49] Martin Guggenheim, Fee Generating Clinics: Can We Bear the Costs?, 1 Clin. L. Rev. 677, 683 (1995). Professor Guggenheim critiques the move away from representing indigent clients reflected in the fee-generating clinics of Chicago-Kent College of Law. See id. At Chicago-Kent College of Law, the law school's clinical legal education program primarily relies on clinical faculty bringing in fees that are at least 150 percent above their salaries. See Gary Laser, Significant Curricular Developments: The MacCrate Report and Beyond, 1 Clin. L. Rev. 425, 437-42 (1994); Richard A. Matasar, The MacCrate Report from the Dean's Perspective, 1 Clin. L. Rev. 457, 488-91 (1994).

[50] See American Bar Association Section on Legal Education and Admissions to the Bar, Legal Education and Professional Development - An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap 207-21 (1992) [hereinafter MacCrate Report]. This ABA report is known as the MacCrate Report in recognition of Robert MacCrate, Chair of the Task Force that produced the report.

[51] Schrag & Melstner, supra note 41, at 313.

[52] There are some exceptions. For example, the David A. Clarke School of Law in the District of Columbia (DCSL) is explicitly dedicated to public service and graphically demonstrates

century generally fell short of the ABA Standard that law schools "should encourage and provide opportunities for student participation in pro bono activities."[53]

The approach many lawyers continue to take toward their professional duties reflects the general lack of emphasis on social justice and public service in their law school experience. The legal profession perpetually struggled with its obligation to respond to the unmet need for legal representation throughout the twentieth century. Some called for mandatory pro bono service while others objected to it as forced labor or because they simply were afraid that the time demands would be too onerous. The pro bono debate was replayed for several years, with the most recent ABA iteration coming in the form of its Ethics 2000 recommendation that the matter required further study.[54] Current competitive demands, evidenced in part by the high salaries paid

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this commitment by requiring all entering law students to take a two-week Law and Justice seminar prior to the beginning of their first semester. The course is designed to build bonds among the students and to teach basic legal concepts about and strategies for achieving justice. The course introduces students to DCSL's Community Service Program, which requires forty hours of community service by each student to be completed by April of the first academic year. Each student is assigned to a faculty advisor whose role includes organizing and supervising the community service activity of each advisee. The community service need not be law-related, and students can satisfy the requirement by performing tasks such as training for and acting as testers for the Fair Housing Council of Greater Washington's redlining investigations. While the Law and Justice course itself is a one-credit course, the service project is not tied to a grade or directly to a credit. It is an obligation tied to the process of preparing to enter the profession, and is an attempt by the school to orient students to their professional obligation to assure access to justice, and even more broadly, service to community. Interviews with DCSL Dean Catherine Shelton Broderick (Oct. 20 and 28, 1999). See also CUNY School of Law Brochure 6 (2000) [hereinafter CUNY Brochure] (defining City University of New York Law School's mission as "training students for public service," and its motto as "Law in the Service of Human Needs") (on file with authors).

[53] Section of Legal Educ. and Admissions to the Bar, American Bar Ass'n, Standards for Approval of Law Schools, Standard 302(e) (1999) [hereinafter "ABA Standards"]. The ABA Section of Legal Education and Admissions to the Bar rejected a recent attempt to weaken Standard 302(e)'s language to provide merely that "instruction in the value of pro bono service is recognized to be central to the preparation of new members of the profession." American Bar Association Section of Legal Education and Admissions to the Bar, Final Commentary on Changes in Chapters Three and Four of the Standards for Approval of Law Schools, 1998-1999, 30 Syllabus 8, 9 (Summer 1999).

[54] Margaret Colgate Love, Update on Ethics 2000 Project and Summary of Recommendations to Date, at item 29 "Mandatory Pro Bono Service," (Revised June 15, 2000) <http://www.abanet.org/cpr/mlove061400.html>. See Margaret Martin Barry, Accessing Justice: Are Pro Se Clinics A Reasonable Response to the Lack of Pro Bono Legal Services and Should

by many large law firms, suggest that mandatory pro bono service will lose even more ground as existing pro bono service, such as it is, gives way to the pressure to increase billing.[55]

As we enter the third wave of clinical legal education, law school clinics continue to play an important role in making access to justice a reality for many low-income people. They do so not only by exposing law students to the legal problems that the poor face but also by allowing students to experience what amounts to a "tactile" connection with the obligation to find substantive and creative ways to respond to unmet legal needs. The result should, at a minimum, lead to greater commitment by clinic graduates to work toward a resolution of the legal services problem. The goal of educating students to this responsibility for assuring access to justice is best met if such education permeates the curriculum. Each law school course should raise issues of access to justice, with clinical courses exposing students to the reality of how these issues play out in the lives of indigent clients and the systems currently used to address their needs. If law schools are truly committed to professional values, then these values must be discussed in every class and not simply relegated to clinical courses.

(2) *The Development of Clinical Teaching Methodology*

While student demands for relevance in the law school curriculum and the social ferment of the 1960's played an important role in spurring the growth of clinical programs, it was the development of a clinical teaching methodology that was critical in solidifying the place of clinical legal education in the law school curriculum during the period running from the 1970's through the present.

Clinical scholarship started to burgeon in the second wave of clinical legal education during the 1970's and early 1980's. The clinical scholarship of this era broke new ground by exploring lawyering skills and clinical teaching methodology, thereby moving the dialogue far beyond the earlier scholarship of Bradway, Frank, and others who primarily focused on the general concept of using real cases to teach law students. Until the mid-1970's, there was no common understanding of what was meant by clinical legal education and no serious effort to

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Law School Clinics Conduct Them?, 67 Fordham L. Rev. 1879, 1884-88 (1999) (questioning whether requiring pro bono service - as opposed to support for legal services - is the best approach to meeting the service obligation).

[55] "Many of the nation's biggest law firms - inundated with more business than they can often handle and pressing lawyers to raise their billable hours to pay escalating salaries - have cut back on pro bono work so sharply that they fall far below professional guidelines for representing people who cannot afford to pay. The roughly 50,000 lawyers at the nation's 100 highest-grossing firms spent an average of just eight minutes a day on pro bono cases in 1999 ... [or] about 36 hours a year, down significantly from 56 hours in 1992 ...." Greg Winter, Legal Firms Cutting Back on Free Services to Poor, N.Y. Times, Aug. 17, 2000, at A1; see also Mark Hansen, Trickle-away Economics?, A.B.A. J., July 2000, at 20.

construct a vocabulary for discourse. As Professor Gary Bellow observed, the term clinical legal education applied "to any law-related activities in which students engage outside the classroom, as well as a number of traditional law school activities, i.e., legal research, moot court, even appellate case analysis."[56] Without a commonly understood pedagogy, clinical legal education was too amorphous to take firm root and spread to every law school.

In the 1970's and 1980's, Bellow and others started to construct a "common vocabulary of discourse on educational issues."[57] By focusing on clinical education as a method, clinicians began to explore what clinical teachers were and should be doing, how clinical teaching methodology could be infused throughout the law school curriculum, and what the purposes and goals of clinical teaching should be.[58] Important early examples of clinical scholarship focused on clinical methodology, what it meant for students to assume and perform the lawyer's role in the legal system, how to identify and teach the elements of various lawyering skills, how to develop and explain theories of lawyering, how to refine and improve the supervisory process, and how to incorporate experiential learning theory into clinical law teaching.[59]

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[56] Gary Bellow, On Teaching the Teachers: Some Preliminary Reflections on Clinical Methodology, in Council on Legal Education for Professional Responsibility, Clinical Education for the Law Student: Legal Education in a Service Setting 374, 375 (1973).

[57] Id.

[58] See id. at 377-78.

[59] A non-exhaustive list of some of the important early works from the 1970's through 1985 includes: Gary Bellow & Bea Moulton, The Lawyering Process: Materials for Clinical Instruction in Advocacy (1978); David A. Binder & Susan A. Price, Legal Interviewing and Counseling: A Client-Centered Approach (1977); Clinical Education for the Law Student, supra note 56; Jane Aiken, David A. Koplow, Lisa G. Lerman, J. P. Ogilvy & Philip G. Schrag, The Learning Contract in Legal Education, 44 Md. L. Rev. 1047 (1985); Anthony G. Amsterdam, Clinical Legal Education - A 21st Century Experience, 34 J. Legal Educ. 612 (1984); John L. Barkai, A New Model for Legal Communication: Sensory Experience and Representational Systems, 29 Clev. St. L. Rev. 575 (1980); David Barnhizer, The Clinical Method of Legal Instruction: Its Theory and Implementation, 30 J. Legal Educ. 67 (1979); Frank Bloch, The Andragogical Basis of Clinical Legal Education, 35 Vand. L. Rev. 321 (1982); Edgar S. Cahn, Clinical Legal Education from a Systems Perspective, 29 Clev. St. L. Rev. 451 (1980); Robert Condlin, Clinical Education in the Seventies: An Appraisal of the Decade, 33 J. Legal Educ. 604 (1983); Robert Condlin, Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction, 40 Md. L. Rev. 233 (1981); Peter Toll Hoffman, Clinical Course Design and the Supervisory Process, 1982 Ariz. St. L.J. 277 (1982); Kenneth R. Kreiling, Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience through Properly Structured Clinical Supervision, 40 Md. L. Rev. 284 (1981); Michael Meltsner & Philip G. Schrag, Report from a CLEPR Colony, 76 Colum L. Rev. 581 (1976); Michael Meltsner & Philip

Clinical scholars explained that the primary goal of clinical legal education should be to teach students how to learn from experience.[60] Clinical faculty began to focus on how they could "learn from their experiences as lawyer-teachers and as lawyer-scholars."[61] They began to work with their students to explore the theoretical underpinnings and practical dimensions of lawyering skills and professional values. To help students develop the skill of self-reflection, clinical faculty critiqued them and encouraged them to employ self-critique, "a process described by Donald Schon as 'reflective practice' or 'reflection in action.'"[62] As a result, by the late 1980's, there was general agreement with the observations in the Report of the Committee on the Future of the In-House Clinic that:

> Clinical education is first and foremost a method of teaching. Among the principal aspects of that method are these features: students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problems in role; the students are required to interact with others in attempts to identify and solve the problems; and, perhaps most critically, the student performance is subjected to intensive critical review.[63]

Equipped with a "common vocabulary" and a generally accepted definition of a methodology, scholarship about clinical teaching blossomed in the latter part of the 1980's and throughout the 1990's. During this period, and in large part because of this scholarship, clinical legal education gained a more permanent place in law schools. The emergence of a critical mass of teachers interested in thinking and writing about clinical methodology also led to the founding in 1994 of the *Clinical Law Review* under the auspices of the Clinical Legal Education Association (CLEA), the AALS, and New York University School of Law (serving as the host school).

Building upon the theoretical bases explored by clinical scholarship and the social justice and skills bases of client representation, clinical programs are thriving and moving forward into

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G. Schrag, Scenes from a Clinic, 127 U. Pa. L. Rev. 1 (1978); Carrie Menkel-Meadow, The Legacy of Clinical Education: Theories about Lawyering, 29 Clev. St. L. Rev. 555 (1980).

[60] See generally Kreiling, supra note 59.

[61] Peter A. Joy, Clinical Scholarship: Improving the Practice of Law, 2 Clin. L. Rev. 385, 393 (1996).

[62] Donald A. Schon, Educating the Reflective Practitioner 31-36 (1987).

[63] Report of the Committee on the Future of the In-House Clinic, 42 J. Legal Educ. 508, 511 (1992). The Report was completed in 1990, and it was circulated widely to clinical teachers. Based on comments received, several minor clarifications and corrections were made in 1991, and that is the version that was published in 1992. See id. at 508-10.

the future. Still, clinical programs continue to face some questions about their financial viability that have persisted since the emergence of clinical legal education. . . .

II. *Defining and Refining the Role of Clinical Studies in the Law School Curriculum*

As we enter the new millennium, the movement beyond the casebook method to the wider integration of clinical methodology throughout the curriculum stands on a solid intellectual foundation. Yet, although clinical legal education is a permanent feature in legal education, too often clinical teaching and clinical programs remain at the periphery of law school curricula.

As the legal academy sought to establish its academic credentials through the casebook method, it turned a cold shoulder on the profession it exists to perpetuate. The analysis of legal doctrine as presented in appellate decisions digested in casebooks, which continues to frame most classroom discourse, limits the type of intelligence prospective lawyers develop. Much of the doctrine so laboriously dissected will change before the student passes the bar or will be of marginal consequence in practice.[64]

The real value of the casebook approach and the justification for its dominance in legal education lies in its efficiency in illustrating the contours of doctrinal development, which in turn provides the principles used in teaching the process of legal thinking.[65] However, the attempt to

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[64] See Amsterdam, supra note 59, at 618.

[65] "What unites the law teachers who use [the casebook] method is no longer a belief in the end product, a series of 'scientifically derived' principles, but a belief that the process of 'Socratic dialogue' (even if now somewhat distorted) teaches a way of thinking that is peculiarly what lawyers do." Carrie Menkel-Meadow, Narrowing the Gap by Narrowing the Field: What's Missing From the MacCrate Report-Of Skills, Legal Science and Being a Human Being, 69 Wash. L. Rev. 593, 600 (1994). Professor Janeen Kerper observes that the concept of "thinking like a lawyer" teaches students to ignore the context in which problems arise and must be solved, allowing only a narrow focus on what a court driven by legal doctrine could do. For Kerper, if the first year of law school is intended to teach students how to think like lawyers, then someone ought to be asking how lawyers think and how they should think. Thinking like appellate judges is not the answer. See Janeen Kerper, Creative Problem Solving vs. The Casebook Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf, 34 Cal. W. L. Rev. 351, 358-59 (1998).

Chief Justice William Rehnquist observed that it is impossible for law schools to introduce students to the many fields of law they may encounter, but the instruction in critical thinking as taught prepares the student to deal successfully with variety and change in substantive law. See William H. Rehnquist, Remarks Made at Temple University School of Law Centennial and Convocation, Philadelphia, Pennsylvania, April 2, 1996, 69 Temp. L. Rev. 645, 651-53 (1996). Rehnquist noted that course "specialization is much more in vogue" as a result of law schools recognizing the illusion of a standard regimen of substantive preparation. Id. at 651.

make law accessible, or pure, by reducing it to an abstraction has created a gap in the instruction students receive. The course of instruction typically preempts any discussion of how lawyers operate within the legal system and any serious examination of the role lawyers should play in solving problems.[66] The result, with too few exceptions, is a profession that is damned by the public and depressing for its members.[67] The dichotomy between doctrinal analysis and theoretical considerations on the one hand and practice on the other is unfortunate, since each has an important role to play in a sound legal education.[68]

Doctrine, theory, and skills cannot be appreciated if they are introduced without engaging the pathos of the human issues that the lawyer encounters when representing clients.[69] So little

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[66] Professor Richard Neumann observed that:

> Effective lawyers do not practice law. They solve problems, using the law as one among many professional tools. "Thinking like a lawyer" is not the same thing as "solving problems like a professional." "Thinking like a lawyer" is a label used by doctrinal teachers for a collection of textual interpretation skills and heightened forms of skepticism.

Richard K. Neumann, Jr., Donald Schon, The Reflective Practitioner, and the Comparative Failures of Legal Education, 6 Clin. L. Rev. 401, 404 (2000).

[67] See Lawrence S. Krieger, What We're Not Telling Law Students - and Lawyers - That They Really Need to Know: Some Thoughts-In-Action Toward Revitalizing the Profession From Its Roots, 13 J.L. & Health 1, 4 (1998- 1999). "[S]tudies confirm the common experience of student distress during law school, the negative public perception of lawyers, and simple observation of attorney behavior: lawyers as a group tend to be stressed and relatively unhappy people." Id.

[68] See Kerper, supra note 65, at 371 (pointing out that the "doctrine-versus-other-skills dichotomy undermines the integration of capacities that occurs when one practices law successfully).

[69] Judge Harry T. Edwards has argued that the academy is theorizing itself into irrelevance and needs to return to the nuts and bolts of teaching and writing about doctrine. See Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34 (1992) (discussing the damage to legal education caused by a shift away from teaching the capacity to use doctrine). Judge Edwards points out that many previous commentators have observed that legal education is suffering from a surfeit of theory and inattention to legal doctrine. See id. at 34 n.2, 41 nn.13-14. Professor Paul Reingold argues that doctrine and theory are both important, and that clinical programs bring balance to the dichotomy by creating a context in which the need for each, and more, are brought into focus by the demands of practice. See Paul D. Reingold, Harry Edwards Nostalgia, 91 Mich. L. Rev. 1998, 1999 n.3 (1993) (critiquing Judge Edwards). See also Barbara Bennett Woodhouse, Mad Midwifery: Bringing Theory, Doctrine, and Practice to Life, 91 Mich. L. Rev. 1977 (1993) (also critiquing Judge Edwards and making the point that doctrine and theory can coexist if a clinical context can be created). Professor

attempt has been made to reflect this relationship that the goals of the legal academy have been called into question. Professor Richard Neumann puts it this way:

> Because it does not expect itself to produce practitioners, legal education is in some ways closer to graduate liberal arts education than it is to professional education as other professions define it. . . . It would be unthinkable to graduate physicians with no clinical clerkships or architects with no experience in a design studio.[70]

As Professor Anthony Amsterdam points out, such criticism - although certainly valid – conceals an even more fundamental critique. Employing a literary device of looking back from a twenty-first century perspective (a process of pure speculation when Amsterdam wrote in 1984), he said that twentieth century legal education

> was too narrow because it failed to develop in students ways of thinking within and about the role of lawyers--methods of critical analysis, planning, and decision-making which are not themselves practical skills but rather the conceptual foundations for practical skills and for much else, just as case reading and doctrinal analysis are foundations for practical skills and for much else.[71]

Amsterdam thereby brought into focus a perspective that has informed much of the discussion ever since. The central task of a law school teacher, as he recognized, is to engage students in understanding the demands of the role they are seeking to undertake, instead of creating a chasm between education and professional application.[72]

For example, breaking doctrine into categories such as torts, civil procedure, property and so on, provides a useful ordering system for learning new material. However, teaching law without giving students a feel for the confluence of these categories in addressing client interests

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Reingold teaches clinical courses, while Professor Woodhouse describes the use of clinical methodology through classroom simulations. See also Menkel-Meadow, supra note 65 (criticizing the MacCrate Report as setting up a standard for skills training that is as limiting as the current doctrinal approach, and arguing for a greater focus on the human aspects of lawyering - which may be omitted in either a skills or doctrinal approach).

[70] See Neumann, supra note 66, at 426.

[71] Amsterdam, supra note 59, at 612.

[72] Professor Woodhouse puts it this way: "the disease of disjunction between legal education and the profession is not caused by too much theory or too little doctrine and practice, but by too little attention to their essential interplay in a complex and interconnected world." Woodhouse, supra note 69, at 1997.

instills a fractured understanding of how to approach legal problems that is hard to overcome.[73] As Amsterdam points out, a basic failure of the current system of legal education is the assumption that preparation for the profession is achieved by teaching students "a self-contained body of instruction in the law."[74] Little attention is paid to synthesis, either of bodies of substantive law or lawyering techniques that might help the student understand how the law lives and the lawyer's role in bringing it to life. Law schools generally do not do a good job of teaching students how to gather and digest facts that are not neatly packaged; identify the range of solutions, legal and non-legal, that might apply; determine what the limitations of a given forum might be and determine how best to work within that forum; counsel a client; and negotiate with an opponent.[75] The occasional exposure to these skills in what are isolated and generally optional courses does not achieve the integrated learning experience that students need. Lawyers, and thus law students, must learn to "solve problems, synthetically and creatively, as well as analytically."[76] Yet law schools typically assign the highest, and almost exclusive, priority to analyzing substantive law.[77]

Although some legal educators have sought to broaden the relatively narrow focus of the casebook method, law schools have resisted serious application or even investigation of the broader conceptual foundations that Amsterdam described.[78] This is not surprising given the premium that law faculty generally place on scholarship focusing on theoretical and doctrinal

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[73] The habit of approaching law in this way, like the reflex of a martial artist, should be taught throughout the educational process so that the approach is fluid.

[74] Amsterdam, supra note 59, at 612-13.

[75] See generally David A. Binder & Susan C. Price, Legal Interviewing and Counseling: A Client-Centered Approach (1977).

[76] Menkel-Meadow, supra note 65, at 616.

[77] Furthermore, students must learn at some point to consider the role of the basics of running a law office, such as conflict checks, retainers, tickler systems, and maintaining client accounts, files, and confidentiality. To be deemed ready to embark upon the practice of law, a student should understand the relationship between those facets of law practice management and other aspects of the lawyer's work.

[78] See, e.g., Woodhouse, supra note 69, Reingold, supra note 69, and Kerper, supra note 65 (discussing the limitations of the standard reliance on the casebook method and suggesting alternatives). See also Jennifer L. Rosato, All I Ever Needed to Know About Teaching Law School I Learned Teaching Kindergarten: Introducing Gaming Techniques into the Law School Classroom, 45 J. Legal Educ. 568 (1995) (discussing the use of games to vary teaching methods and thereby achieve prompt and better understanding of professional skills and values).

analysis.[79] In the typical law school classroom, the world of practice is often regarded with suspicion and sometimes even disdain.[80] This is so, despite severe criticism decades ago,[81] recommendations from the practicing bar[82] and the judiciary[83] to better prepare students for the

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[79] "Because a significant number of law professors never practiced law, or did so briefly in a large firm with minimal client contact, few law professors are familiar with or interested in the interpersonal aspects of lawyering." Rodney J. Uphoff, James J. Clark & Edward C. Monahan, Preparing the New Law Graduate to Practice Law: A View From the Trenches, 65 U. Cin. L. Rev. 381, 397 (1997). "Only law schools (among all graduate schools) hire teachers whose primary interest is increasingly in theory to train students who, with very few exceptions, will spend their lives in practice." Reingold, supra note 69, at 2001."In elite institutions today, time spent on developing pedagogy is fast becoming the professor's pro bono work - something extra, done for love, and in the face of formidable institutional disincentives." Woodhouse, supra note 69, at 1993.

[80] One recent graduate observed that for three years he had heard, "It's not a trade school, we don't teach you to be lawyers, we teach you theory, how to think logically, you want to be an attorney, you do that when you clerk, you do that when you get out." Uphoff et al., supra note 79, at 392 (quoting a new attorney who was participating in the authors' study of the Kentucky public defender's New Attorney Training Program, a part of the authors' examination of the gap between theory and practice). See also id. at 381 n.3, listing several articles describing the academy's anti-practice attitude and failure to prepare students for the profession. See also Edwards, supra note 69, at 69.

[81] The Carnegie Commission Report in 1972, the Carrington Report for the AALS in 1971 and the Crampton Report in 1979 concluded that American legal education offers at best a two-year program, with the third year offering nothing to improve lawyering competency. See Arthur B. LaFrance, Clinical Education in the Year 2010, 37 J. Legal Educ. 352, 359-60 (1987).

[82] The MacCrate Report chides law schools to do more than qualify graduates to pass a bar examination. The report's well-known list of lawyering competencies, while largely ignored by the academy, has been lauded as a guide for legal educators although some have criticized it as incomplete. See MacCrate Report, supra note 50, at 261-62.

[83] Judge Harry T. Edwards has been both eloquent and prolific in his indictment of legal education. His view is that, if law schools continue to stray from their primary mission of professional scholarship and training, the disjunction between legal education and the profession will grow and society will suffer. See Edwards, supra note 69; Harry T. Edwards, The Growing Disjunction Between Legal Education and the Profession: A Postscript, 91 Mich. L. Rev. 2191 (1993) (Judge Edwards' contribution to a symposium that resulted from the overwhelming interest in his previous article); Harry T. Edwards, Another "Postscript" to "The Growing Disjunction Between Legal Education and the Profession," 69 Wash. L. Rev. 561 (1994); Harry T. Edwards, A New Vision for the Legal Profession, 72 N.Y.U. L. Rev. 567 (1997).

profession,[84] and even market indicia of a preference for teaching a broader range of skills.[85] That such criticism has not led to significant changes is due in part to a fundamental sense among those in practice, the judiciary and the academy that their professional careers developed from and are legitimized by the very same educational approach that is being challenged.[86] Furthermore, the strategy of focusing almost exclusively on analytical skills as taught through the casebook method works well for the first step a law graduate must take - the bar examination - and it is consistent with the ABA's accreditation requirement that schools should establish programs that qualify their graduates for admission to the bar.[87] What this strategy overlooks is the ABA requirement that students be prepared for participation in the legal profession.[88] Bar examiners are recognizing

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[84] See Andrew J. Rothman, Preparing Law School Graduates for Practice: A Blueprint for Professional Education Following the Medical Profession Example, 51 Rutgers L. Rev. 875, 879 (1999) (discussing criticism of law school curricula).

[85] See Lori Tripoli, Filling Law Firm Needs...Second-Drawer Schools Create Topnotch Litigation Training, 12:4 Inside Litig. 1 (1998) (discussing the premium employers place on experiential learning, and referencing several law school skills training and clinical programs).

[86] If this were not the case, then it is hard to explain why the ABA, as the law school accrediting agency, is not more active in demanding change. Granted, its Council of the Section of Legal Education and Admissions to the Bar is dominated by academics. The Council has only recently become the ultimate authority in law school accreditation standards and evaluation. Prior to 1999, the ABA House of Delegates had final authority on accreditation and standards matters. The ABA Standards Review and Accreditation Committees also play an active role in the development of standards and law school accreditation, though their findings and recommendations are subject to the Council's actions. Despite this strong connection between the practicing bar and the academy, little had or has been done to establish standards that respond to the criticism leveled against law schools.

[87] See ABA Standards, supra note 53, at Standard 301(a) and accompanying text. Professor Beverly Moran describes the bar examination's emphasis on substantive law as antithetical to the development of the many other skills needed for law practice, and concludes that the "bar examinations work to make students less prepared for practice by emphasizing bar exam subjects in place of clinical skills." Beverly Moran, The Wisconsin Diploma Privilege: Try It, You'll Like It, 2000 Wis. L. Rev. 645, 651 (2000) (arguing that some states should reconsider the movement away from the diploma privilege while others should revise their bar examinations since they have a disparate impact on minority applicants and do not achieve the goals of 1) ensuring a qualified bar, 2) identifying those who have insufficient skills to practice law and 3) ensuring a hard-working student body).

[88] ABA Standard 301 was revised in 1997. Previously, the standard was satisfied if a school had an educational program designed to qualify graduates for admission to the bar and prepare them for their participation in the profession. The language was revised to "focus on the

that these two objectives should not be in conflict. There is significant movement toward testing more of the skills that lawyers should possess prior to entry to the bar. However, development of more competent professional education will be hampered until the apparent trend towards more professionally relevant testing is refined.[89]

In the new millennium, law school clinics cannot continue to be the repository for the many aspects of lawyering that are excluded from substantive law courses taught with the casebook method. The aim, already expressed by some, should be to incorporate clinical teaching methodology into nonclinical courses to teach lessons that will be further developed and reinforced by in-house clinic and externship experiences.[90]

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results of an educational program rather than merely its design." Final Commentary on Changes in Chapters Three and Four of the Standards for Approval of Law Schools, 1998-1999, Syllabus, ABA Sec. of Legal Education and Admissions to the Bar, Vol. XXX, No. 3 (Summer 1999), at 8. Furthermore, Standards 302(a)(1) and 302(a)(2) were consolidated to eliminate what was described as "the vague concept of the core curriculum" in order to focus on "the results of an educational program." Id. It is not clear what the ABA means by this. Although the ABA did not follow the recommendation of the American Law Deans Association (ALDA) to eliminate the Standard 302(d) requirement that schools "offer live-client or other real-life practice experiences," the ABA also did not require that such experiences be made available to all students - apparently because compliance with such a requirement would be too costly. Id. at 8-9. As discussed in Part I(B), supra, making such programs available to all students is largely a matter of priority. If such experiences are viewed as important to achieving the educational mission, then schools can begin to determine how to reshape their curricula, and their finances, to accomplish this objective.

[89] In recent years there has been a trend towards practice-oriented questions on bar exams through the use of the Multistate Performance Test (MPT). The MPT has been adopted in 24 states. Indiana and Minnesota will begin using the MPT in February 2001, and New York, Ohio, and Pennsylvania will begin in July 2001. The MPT is pending in Delaware, and pending court approval in Idaho. The MPT is used to evaluate an applicant's use of lawyering skills in various practical settings. Each state has a policy to determine the level of competence exhibited by the applicant and the amount of credit allocated to the MPT. See National Conference of Bar Examiners, The MPT (last modified June 16, 2000), http://www.ncbex.org/Tests/mpt.htm. Despite the increasing use of the MPT, the practice-oriented questions are not all that distinguishable from other bar questions. See id.

[90] See Mary Jo Eyster, Designing and Teaching the Large Externship Clinic, 5 Clin. L. Rev. 347, 348-52 (1999) (discussing the role an externship program can play and distinguishing it from an in-house clinic). See also Nira Hativa, Teaching Large Law Classes Well: An Outsider's View, 50 J. Legal Educ. 95 (2000)(doctor of mathematics education who looked at Tel Aviv and Stanford law schools expresses the view that law school teaching, particularly in large classes, would benefit from attention to clarity, organization, engaging students through the use of simulations, role plays and problem-solving activities, and from fostering a positive classroom

The clinical method allows students to confront the uncertainties and challenges of problem solving for clients in fora that often challenge precepts regarding the rule of law and justice.[91] To say that the process of learning law in such a textured manner should be relegated to a certain course or set of courses ignores what educational theorists have been saying for years: that the best learning takes place when the broad range of abilities we possess is engaged.[92] According to Professor Barbara Woodhouse, "[p]erhaps one of the most serious failings in contemporary legal education is that all too many students graduate with a vast doctrinal base of knowledge sealed within a context that is not translatable into practice."[93]

In the past twenty years, law schools have started to develop new models and approaches for integration of clinical methodology throughout the law school curriculum. These models – which should continue to evolve in the new millennium – represent significant strides in the directions that Professor Amsterdam advocated. . . .

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climate).

[91] See supra notes 57-63 and accompanying text (describing the clinical method as using experience to teach problem solving).

[92] See Thomas Armstrong, Multiple Intelligences In the Classroom 2-3 (1994). Armstrong describes Howard Gardner's seven intelligences: linguistic intelligence ("the capacity to use words effectively, whether orally or in writing"), logical-mathematical intelligence ("the capacity to use numbers effectively"), spatial intelligence ("the ability to perceive the visual-spatial world accurately and to perform transformations upon those perceptions"), bodily-kinesthetic intelligence ("expertise in using one's whole body to express ideas and feelings"), musical intelligence ("the capacity to perceive, discriminate, transform, and express musical forms"), interpersonal intelligence ("the ability to perceive and make distinctions in the moods, intentions, motivations, and feelings of other people"), and intrapersonal intelligence ("self-knowledge and the ability to act adaptively on the basis of that knowledge"). Armstrong also discusses Benjamin S. Bloom's "Taxonomy." There are six levels of educational objectives in Bloom's Taxonomy: knowledge, comprehension, application, analysis, synthesis, and evaluation. "[I]ts six levels of complexity have been used over the past four decades as a gauge by which educators can ensure that instruction stimulates and develops students' higher order thinking capacities." Id. at 153-56.

[93] John B. Mitchell, Betsy R. Hollingsworth, Patricia Clark & Raven Lidman, And Then Suddenly Seattle University Was on its Way to a Parallel, Integrative Curriculum, 2 Clin. L. Rev. 1, 21 (1995).