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## The Status of Curricular Change During the Industry's Great Recession: Radical, or the New Norm?

PATRICK MEYER\*

### I. INTRODUCTION

After *Best Practices* and *The Carnegie Report* were published in 2007, schools found renewed conviction to incorporate practice-readiness skills into the law school curriculum.<sup>1</sup> The authors of *Best Practices* stated that their work was undertaken largely because of concern for the public,<sup>2</sup> noting that over the years a large portion of the legal community concluded that most law school graduates lacked the basic skills to practice.<sup>3</sup> Both *Best Practices* and *Carnegie* call for reducing the dependence on Socratic dialogue and the case method while infusing knowledge, skills, and values into doctrinal courses.<sup>4</sup> Although this change will not be easy to accomplish, we can draw inspiration from some law schools that have successfully modified their curriculums. I have summarized some of these successes in this article.<sup>5</sup>

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1. See ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* 8, 18-21 (2007) [hereinafter *BEST PRACTICES*]; WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW 12-14* (2007) [hereinafter *CARNEGIE REPORT*].

2. *BEST PRACTICES*, *supra* note 1, at 1.

3. See, e.g., *id.* at 2, 7-8, 18, 26-27; Henry Winthrop Ballantine, *Adapting the Case-Book to the Needs of Professional Training*, 2 AM. L. SCH. REV. 135, 136, 140 (1911); REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 1 (Am. Bar Ass'n Section of Legal Educ. and Admission to the Bar eds., 1979) [hereinafter *CRAMTON REPORT*]; LAW SCHOOLS AND PROFESSIONAL EDUCATION: REPORT AND RECOMMENDATIONS OF THE SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION 104-05 (Am. Bar Ass'n Special Comm. eds., 1980) [hereinafter *FOULIS REPORT*]; FRANCES KAHN ZEMANS & VICTOR G. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* 44 (1981); AM. BAR ASS'N, *FINAL REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON PROFESSIONAL COMPETENCE* 6, 29 (1983) [hereinafter *FINAL REPORT*]; Joan S. Howland & Nancy J. Lewis, *The Effectiveness of Law School Legal Research Training Programs*, 40 J. LEGAL EDUC. 381, 383-85 (1990); LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 4-6 (Am. Bar Ass'n. Section of Legal Educ. and Admissions to the Bar eds., 1992) [hereinafter *MACCRATE REPORT*]; BOB BERRING ET AL., *WHITE PAPER, RESEARCH SKILLS FOR LAWYERS AND LAW STUDENTS* 3 (2007) (on file with the author); Patrick Meyer, *Law Firm Legal Research Requirements For New Attorneys*, 101 LAW LIBR. J. 297, 298 (2009).

4. *BEST PRACTICES*, *supra* note 1, at viii; *CARNEGIE REPORT*, *supra* note 1, at 56-59.

5. See *infra* Part III.

This author proposes a three-part plan in order to remedy the lack of practice-readiness among new attorneys. First, the law school curriculum must continue to undergo systematic scrutiny to achieve balance between the theoretical and the practical.<sup>6</sup> Second, in addition to the American Bar Association's ("ABA") six credit experiential learning requirement (every student must take six credit hours of a simulation course, law clinic, and/or field placement),<sup>7</sup> law schools should require students to take twelve more skills credits, which could be wholly taken from existing elective skills courses that law schools have an abundance of. So every student would be required to take eighteen practice skills credits before graduating.<sup>8</sup> Finally, all states should mandate that a practice portion be added to their bar examinations.<sup>9</sup>

## II. A HISTORICAL LACK OF PRACTICE-READINESS

### A. *The Problem*

Legal academia has been warned for years—the call for law schools to provide more practical training has existed for at least the last century and a quarter.<sup>10</sup> The 1921 *Reed Report*, which was quite influential at that time, stated it was “a remarkable educational anomaly” that the law schools of that time failed to adequately train students for practice.<sup>11</sup> This brings to

6. *See infra* Part III.A.

7. *See* AM. B. ASS'N, ABA STANDARDS AND RULES OF PROCEDURES FOR APPROVAL OF LAW SCHOOLS 2015-2016 16 (STANDARD 303) (2015), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2015\\_2016\\_chapter\\_3.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_chapter_3.authcheckdam.pdf) [hereinafter ABA STANDARDS 2015-2016].

8. *See infra* Part III.B.

9. *See infra* Part III.C.

10. *E.g.*, Christopher G. Tiedeman, *Methods of Legal Education*, 1 YALE L.J. 150, 156-58 (1891) (the author concludes that the second and third years of law school should include a practical component); Ballantine, *supra* note 3, at 136 (practical training should be part of every course); Harlan F. Stone, *The Function of The American University Law School*, 36 ANNU. REP. A.B.A. 768, 771-73 (1911) (Dean Stone felt that law schools would defeat their own purpose if they ignored practical training); ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW 281 (1921) [hereinafter REED REPORT] (“The failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly.”); ESTHER LUCILE BROWN, LAWYERS AND THE PROMOTION OF JUSTICE 95-96 (1938); CRAMTON REPORT, *supra* note 3, at 1 (This influential report notes that it is unacceptable to force new attorneys to learn how to practice “at the expense of consumers.” The report also noted that consumers, law students and practitioners recognize that schools should place greater emphasis on teaching practice skills.); FOULIS REPORT, *supra* note 3, at 103-04; ZEMANS & ROSENBLUM, *supra* note 3, at 8-9; FINAL REPORT, *supra* note 3, at 6, 29 (stating that while schools do quite well at training students to think like lawyers, they do not do well in preparing students to practice and such should be a priority); MACCRATE REPORT, *supra* note 3, at 4-6; BEST PRACTICES, *supra* note 1, at 16-18 (law schools can do much better at one of their primary duties—preparing graduates for practice); CARNEGIE REPORT, *supra* note 1, at 12-14; N.Y. STATE BAR ASS'N, REPORT OF THE TASK FORCE ON THE FUTURE OF THE LEGAL PROFESSION 37 (2011), available at <https://www.nysba.org/futurereport/> [hereinafter NYSBA Report].

11. *See* REED REPORT, *supra* note 10, at 281.

mind the old statement contrasting the legal profession to chemists and doctors, who cannot enter their profession until they have actually spent time practicing their craft.<sup>12</sup> Would it be acceptable if other professions—perhaps musicians or physicists—were taught to think, but not how to perform, the essential functions of their jobs?<sup>13</sup> Medical school education is most often compared to legal education.<sup>14</sup> Doctors must finish two years of clinical instruction in medical school and must also undertake a lengthy supervised residency requirement.<sup>15</sup> The medical clinical-residency system has long been considered to be a success.<sup>16</sup> Yet there is no similar requirement of law schools in spite of the aforementioned warnings.<sup>17</sup>

The law firm apprenticeship system was the chief means of providing practice-readiness training to the profession in the early days of our country.<sup>18</sup> If the demise of the law firm apprenticeship model did not cause the modern-day skills problem, it certainly hastened it.<sup>19</sup> Control over legal training started to shift from practitioners to law schools with the establishment of Harvard Law School in 1826.<sup>20</sup> Less than half-a-century

12. See Tiedeman, *supra* note 10, at 156 (the author notes that the chemist and doctor have not discarded their textbooks, but supplement them with the laboratory and operating room).

13. Ron Kerl, *President's Message: Fundamental Lawyering Skills*, 37 *ADVOC.* 6, 7 (1994) (“What would you say to . . . educators in other fields if they said, ‘We don’t teach you to be a musician, actor, historian, physicist – but only to think like one?’” Quoting former ABA President Talbot D’Alemberte).

14. See, e.g., Robert M. Hardaway, *Legal and Medical Education Compared: Is It Time For a Flexner Report on Legal Education?*, 59 *WASH. U. L. REV.* 687 (1981) (comparing the law school issues of the early 1980s with the medical school issues in the early 1900s).

15. *Requirements for Becoming a Physician*, *AM. MED. ASS’N*, <http://www.ama-assn.org/ama/pub/education-careers/becoming-physician.page?> (last visited Oct. 24, 2015); *CARNEGIE REPORT*, *supra* note 1, at 6; Drew Coursin, Comment, *Acting Like Lawyers*, 2010 *WIS. L. REV.* 1461, 1466, 1480 (2010).

16. See Anthony Chase, *The Birth of the Modern Law School*, 23 *AM. J. LEGAL HIST.* 329, 340 (1979) (This article describes the instrumental role that Harvard President Charles Eliot had in the radical change to the structure of the American medical school curriculum. Chase states that the addition of clinical and lab instruction was historically the most important development in U.S. medical education. Eliot, who hired Langdell as the law school Dean, as explained in this article, is also credited with being the mastermind behind the breathtaking changes in legal education that occurred during Langdell’s Deanship and which are readily attributed to Langdell. Langdell’s tenure as Dean of Harvard’s law school is also treated in detail in this article.).

17. But see Catherine Ho, *Group Pushes for Practical Training for Law School*, *WASH. POST* (July 14, 2013), [http://www.washingtonpost.com/business/capitalbusiness/group-pushes-for-practical-training-for-law-students/2013/07/12/421f97a2-e8ab-11e2-a301-ea5a8116d211\\_story.html](http://www.washingtonpost.com/business/capitalbusiness/group-pushes-for-practical-training-for-law-students/2013/07/12/421f97a2-e8ab-11e2-a301-ea5a8116d211_story.html).

18. JAMES WILLARD HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* 256-57 (1950) (the apprenticeship system was the major means of legal education “almost to the end of the 19th century.”)

19. See Coursin, *supra* note 15, at 1470-71.

20. E.g., ZEMANS & ROSENBLUM, *supra* note 3, at 6 (control of legal education started to shift to law schools in 1826, with the creation of a separate law school at Harvard); *CARNEGIE REPORT*, *supra* note 1, at 4-5; Jerome Frank, *What Constitutes A Good Legal Education?*, 19 *A.B.A. J.* 723, 723 (1933).

later, Harvard introduced the case law method.<sup>21</sup> Although few doubt the brilliance (but perhaps the lack of completeness) of the Langdellian case law method,<sup>22</sup> its development was said to have been the last straw in the demise of the practical apprenticeship model in the United States.<sup>23</sup> In retrospect, the old law firm apprenticeship system did not work uniformly well; often, in lieu of lawyerly training, aspiring attorneys devoted most of their time doing copy work, serving process, and finding and retrieving law books for the attorney.<sup>24</sup> In addition, the law firm apprenticeship system was not set up to benefit the socially unconnected or the average or below average student.<sup>25</sup> Although the U.S. legal apprenticeship requirement

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21. *The Case Study Teaching Method*, HARV. L. SCH., <http://casestudies.law.harvard.edu/the-case-study-teaching-method/> (last visited Oct. 24, 2015); Hardaway, *supra* note 14, at 699.

22. *But see* Simeon E. Baldwin, *Teaching Law by Cases*, 14 HARV. L. REV. 258, 259, 261 (1900) (Baldwin opines that schools need to teach more than the case method, which alone cannot teach students the principles of practice); Albert Kocourek, *The Redlich Report and The Case Method*, 10 ILL. L. REV. 321, 322 (1915); REED REPORT, *supra* note 10, at 285-86 (the case method, although great at both providing practical training in issue spotting and teaching students how to think for themselves, does not close the gap between the theoretical law school and practice); K. N. Llewellyn, *On What Is Wrong With So-Called Legal Education*, 35 COLUM. L. REV. 651, 661 (1935); BROWN, *supra* note 10, at 70-75; HURST, *supra* note 18, at 265-71 (1950) (noting that the case method “isolated the study of law from the living context of the society,” and that it ignored practice skills training); ARTHUR E. SUTHERLAND, *THE LAW AT HARVARD, 187-90* (1967) (Sutherland reproduced an 1883 letter written by Dean Gurney, Harvard University Dean of Faculty, to Harvard University President Charles Eliot, implored him to hire a balance of practitioners and theoretical scholars for the law faculty); ZEMANS & ROSENBLUM, *supra* note 3, at 8; Roy T. Stuckey, *Education for the Practice of Law: The Times They Are A-Changin’*, 75 NEB. L. REV. 648, 668, 671-72 (1996) (The Langdellian method doesn’t teach students to think like a lawyer as much as it teaches them to think like appellate court judges); LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW 470-71* (3d. ed. 2005) (many people were reviled by the case method, including the Dean of Faculty of Harvard College, Ephraim Gurney, in 1883); CARNEGIE REPORT, *supra* note 1, at 186-88 (the case method is wonderful at developing analytical skills, but ignores important practice skills development including situational, social, and ethical).

23. *E.g.*, Frank, *supra* note 20, at 723 (urging for a renewal of the apprenticeship model that was replaced by the Langdellian method of Harvard); David Barnhisser, *The Rejection of the Practitioner in Legal Education*, 48 CLEV. B. J. 324, 325 (1977) (The Harvard model became nearly exclusive by the 1920’s, leaving the apprenticeship model all but extinct); ZEMANS & ROSENBLUM, *supra* note 3, at 6 (the establishment of the Harvard Law School was the beginning of the end for the apprenticeship system); WM. G. Hammond et. al., *Report of the Committee on Legal Education*, 13 ANNU. REP. A.B.A. 327, 329-30 (1890) (by 1890 it was noted that the average law school did not provide students with practical experience, unlike the admittedly imperfect apprenticeship system had provided). *But see* FRIEDMAN, *supra* note 22, at 464 (stating the reasons for the demise of the apprenticeship system as being student revolt and technological advances).

24. *E.g.*, FRIEDMAN, *supra* note 22, at 56; HURST, *supra* note 18, at 256; Stephen J. Ellmann, *The Clinical Year*, 53 N.Y. L. SCH. L. REV. 877, 884-85 (2009).

25. *E.g.*, HURST, *supra* note 18, at 256 (a stiff fee was often required for the privilege of apprenticing, although the lawyer may sometimes only require the manual labor of the clerk as payment); FRIEDMAN, *supra* note 22, at 56, 238 (students paid a fee to be an apprentice, and the fee could be steep); Byron D. Cooper, *The Integration of Theory, Doctrine, and Practice in Legal Education*, 1 J. ASS’N OF LEGAL WRITING DIR. 50, 52-53 (2002) (discusses this issue in the context of being mentored in one’s first legal job and not in the form of an apprenticeship opportunity).

disappeared some time ago (except for in Vermont and Delaware<sup>26</sup>), many countries have kept the apprenticeship requirement in order to produce practice-ready attorneys.<sup>27</sup>

The demise of the apprenticeship system led to a skills training void accompanied with increased pressure to produce practice-ready graduates.<sup>28</sup> However, few U.S. law schools incorporated any practice skills into their curriculum in the first half of the 1900s.<sup>29</sup> Shortly thereafter, law schools started to add clinics at an accelerated pace.<sup>30</sup> This remarkable change was in response to criticism from law firms stating that new attorneys lacked adequate practice skills.<sup>31</sup> The establishment of law clinics could be viewed as the first attempt at reviving the apprenticeship system, albeit in the law school setting and not in law firms.<sup>32</sup> Part III will cover simulation courses, a recent development offering a second firm-like experience.<sup>33</sup> These kinds

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26. VT. SUP. CT. RULES OF ADMISSION §§ 6(i)(1), 6(j) & 6(g) (2014) (Section 6(i)(1): A law school graduate who has passed the bar exam must clerk for three months in order to be admitted to practice in Vermont; Section 6(j): An applicant who does not finish a law degree may sit for the bar exam in Vermont once successfully completing a two year law office clerkship; Section 6(g): An applicant who did not attend law school may sit for the bar exam once successfully completing a four year law office clerkship); DEL. SUP. CT. RULES R. 52(a)(7)-(8) (in addition to the law degree and passing the bar exam, applicants must complete five months of full-time clerkship in order to be able to practice in Delaware).

27. *E.g.*, Richard J. Wilson, *Practical Training in Law in the Netherlands: Big Law Model or Clinical Model, and the Call of Public Interest Law*, 8 *UTRECHT L. REV.* 170 (2012) (Netherlands) (Wilson acknowledges that much of the world still utilizes an apprenticeship system); David L. Campbell, *Ontario Licensure: Expanding Your Practice to Michigan's Largest Trading Partner*, 91 *MICH. B. J.* 28, 29 (2012); Ratno Lukito, *The Training, Appointment, and Supervision of Islamic Lawyers in Indonesia*, 21 *PAC. RIM L. & POL'Y J.* 65, 69 (2012) (Indonesia); *Practicing Law in Australia*, COUNCIL OF AUSTRALIAN L. DEANS, <http://www.cald.asn.au/slia/> (last visited Oct. 24, 2015) (Australia).

28. Andrew J. Rothman, *Preparing Law School Graduates for Practices: A Blueprint for Professional Education Following the Medical Profession Example*, 51 *RUTGERS L. REV.* 875, 877 (1999).

29. *E.g.*, Margaret M. Barry et. al., *Clinical Education for This Millennium: The Third Wave*, 7 *CLINICAL L. REV.* 1, 7-10 (2000); Cooper, *supra* note 25, at 52-54.

30. *E.g.*, Frank G. Avellone, *The State of State Student Practice: Proposals for Reforming Ohio's Legal Internship Rule*, 17 *OHIO N.U. L. REV.* 13, 16-17 (1991) (law school clinics finally started developing at a fast pace in the late 1960's and took hold in the early 1970's); *see also* BROWN, *supra* note 10, at 99-100 (discussing the first legal clinic being established in 1893 by the University of Pennsylvania, the University of Denver establishing a law clinic in 1904, and then a few more schools developing law clinics within the next decade—but that very few schools had added clinics by the time Brown wrote her book in 1938).

31. *See, e.g.*, Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 *CLINICAL L. REV.* 57, 58 (2009); Marc Feldman, *On the Margins of Legal Education*, 13 *N.Y.U. REV. L. & SOC. CHANGE* 607, 610 (1985); *see also* Meyer, *supra* note 3, at 300 (a discussion of new hire legal research deficiencies).

32. Sandefur & Selbin, *supra* note 31, at 58.

33. Niki Kuckes, *Designing Law School Externships that Comply with the FLSA*, 21 *CLINICAL L. REV.* 79, 83 (2014); *see infra* Part III.4.B.

of apprenticeship experiences are vital in today's market, where firms have little time or inclination to train new associates.<sup>34</sup>

What are these elusive practice skills that critics have said for over a century have been missing from law school graduates? The revered 1992 *MacCrate Report* quantified what practitioners viewed as fundamental practice skills in the publication of a Statement of Fundamental Lawyering Skills: Problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and A.D.R. procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas.<sup>35</sup> These practice skills closely mirrored the ABA's *Cramton Report* of 1979.<sup>36</sup> The authors of the *MacCrate Report* acknowledged that law schools could use their Statement of Fundamental Lawyering Skills as a means of focusing more on the teaching of skills and values.<sup>37</sup>

ABA Standards 301(a) and 303 address practice-readiness, but they do not go far enough to ensure that graduates are adequately prepared to practice.<sup>38</sup> Standard 301(a) states: "A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession."<sup>39</sup> Moreover, Standard 303 reads:

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

(1) one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members;

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34. E.g., Richard A. Matasar, *Does the Current Economic Model of Legal Education Work for Law Schools, Law Firms (or Anyone Else)?*, 82 N.Y. ST. B.A.J. 20, 25 (2010) (a profit focus "undermines" training; firms are unwilling to train lawyers); Coursin, *supra* note 15, at 1468 (in these tough economic times, firms must focus on clients and not on training new associates); REFORMING LEGAL EDUCATION: LAW SCHOOLS AT THE CROSSROADS 2-3 (David M. Moss & Debra Moss Curtis eds. 2012) [hereinafter REFORMING LEGAL EDUCATION] (Firms are not training new hires because of its high cost. At the same time, clients are bristling at the high charges incurred at the expense of untrained lawyers).

35. MACCRATE REPORT, *supra* note 3, at 138-40.

36. CRAMTON REPORT, *supra* note 3, at 9-10.

37. MACCRATE REPORT, *supra* note 3, at 128.

38. See generally ABA STANDARDS 2015-2016, *supra* note 7.

39. AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014-2015 15 (Standard 301) (2014), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_of\\_law\\_schools\\_bookmarked.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.authcheckdam.pdf).

(2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and

(3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:

(i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;

(ii) develop the concepts underlying the professional skills being taught;

(iii) provide multiple opportunities for performance; and

(iv) provide opportunities for self-evaluation.

(b) A law school shall provide substantial opportunities to students for:

(1) law clinics or field placement(s); and

(2) student participation in pro bono legal services, including law-related public service activities.<sup>40</sup>

In practice, neither standard is direct enough to ensure that each student receives a suitable amount of skills training.<sup>41</sup> At most schools, the standards leave this critical task largely up to the students,<sup>42</sup> and that does not work well according to new practitioners.<sup>43</sup> A recent Alternative Proposal to Standard 303(a)(3) would have required fifteen units of experiential coursework in law school.<sup>44</sup> Various constituencies, including

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40. ABA STANDARDS 2015-2016, *supra* note 7, at 16 (Standard 303).

41. AM. BAR ASS'N, REPORT AND RECOMMENDATIONS AMERICAN BAR ASSOCIATION TASK FORCE ON THE FUTURE OF LEGAL EDUCATION 26 (2014), available at [http://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/report\\_and\\_recommendations\\_of\\_aba\\_task\\_force.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf) [hereinafter FUTURE RECOMMENDATIONS] (“Much of what the Task Force heard from recent graduates reflects a conviction that they received insufficient development of core competencies that make one an effective lawyer. . . .”); Ho, *supra* note 17.

42. CARNEGIE REPORT, *supra* note 1, at 88.

43. FUTURE RECOMMENDATIONS, *supra* note 41, at 26.

44. AM. BAR ASS'N SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ALTERNATIVE PROPOSAL ON STANDARD 303(A) (2013), available at <http://www.americanbar.org/>



the Clinical Legal Education Association (“CLEA”), whose one thousand plus membership note the great need to provide more practical skills training in law schools, supported this proposal.<sup>45</sup> CLEA noted that other professions require a far greater amount of supervised clinical or field placement instruction than do law schools: fifty percent for medical school; over fifty-seven percent for dental school; at least 1,740 hours for pharmacy school; and thirty percent for social work students.<sup>46</sup> The proposed fifteen credit hour requirement would have only equated to about seventeen percent of the required law school credit hours.<sup>47</sup> However, even this modest proposal failed.<sup>48</sup> In March 2014, the ABA Council instead adopted a resolution that all students must receive six credits of experiential learning before they graduate,<sup>49</sup> which became legally effective after the ABA House of Delegates August meeting.<sup>50</sup> The gap between theory and practical skills remains wide in many law schools and may continue because of the recent action of the ABA Council.<sup>51</sup>

There have been several reports published on the lack of practice skills since *Best Practices* and the *Carnegie Report*, and I will focus on five such reports here. The recently released report by the ABA “Task Force on the Future of Legal Education” acknowledges that although many law schools have made great strides, there is a need to move more toward practical teaching.<sup>52</sup> The Task Force notes that the scope of problems in legal education poses “serious threats to public confidence.”<sup>53</sup> The ABA Task Force report was published on the heels of the New York State Bar Association (“NYSBA”) “Task Force on the Future of the Legal Profession” report, which called for the development of model practice

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content/dam/aba/administrative/legal\_education\_and\_admissions\_to\_the\_bar/council\_reports\_and\_resolutions/201312\_notice\_comment\_stds\_205\_207\_303a3\_603a\_c.authcheckdam.pdf [hereinafter ALTERNATIVE PROPOSAL].

45. CLINICAL LEGAL EDUCATION ASSOCIATION, COMMENT OF CLINICAL LEGAL EDUCATION ASSOCIATION ON PROPOSED STANDARD 303 (2014), available at <http://www.cleaweb.org/Resources/Documents/2014-01-14%20CLEA%20Chapter%203%20comment.pdf> [hereinafter CLEA].

46. *Id.*

47. Fifteen credit hours divided by ninety total credit hours = 16.7%.

48. See Mary Lynch, *Council on Legal Education Maintains Tenure and 405, Adds Requirement of Six Experiential Credits and Calls for Notice and Comment on Paid Externships*, BEST PRACTICES FOR LEGAL EDUC. ALBANY L. BLOG (Mar. 16, 2014), <http://bestpracticeslegaled.albanylawblogs.org/2014/03/16/council-on-legal-education-maintains-tenure-and-405-adds-requirement-of-six-experiential-credits-and-calls-for-notice-and-comment-on-paid-externships/>.

49. *Id.*

50. AM. BAR ASS’N TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, REVISED STANDARDS AND RULES CONCURRED IN BY ABA HOUSE OF DELEGATES, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/2014\\_hod\\_standards\\_concurrence\\_announcement.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/2014_hod_standards_concurrence_announcement.authcheckdam.pdf) (last visited Oct. 24, 2015).

51. CLEA, *supra* note 45.

52. *E.g.*, FUTURE RECOMMENDATIONS, *supra* note 41, at 3.

53. *E.g., id.*

competencies and, in doing so, deferred to the ongoing work of the ALI-ABA ACLEA Critical Issues Summit.<sup>54</sup> The Summit was organized to identify and respond to the quickly changing demands of practice.<sup>55</sup> The Summit's final recommendations include a charge to law schools to ensure that their graduates are effective entry-level practitioners, which is accomplished by creating learning outcomes, designing the curriculum around those outcomes, employing contemporary learning theory in the classroom, and evaluating student performance.<sup>56</sup> Another recommendation, to which the NYSBA Task Force deferred, calls for a partnership between the bar, the bench, and law schools to create a competency continuum.<sup>57</sup> The continuum would start in law school with the creation, implementation, and assessment of practice skills outcomes and continue for at least two years of practice in the form of "transitional training programs" such as mentorships, internships, clinical experiences and the like.<sup>58</sup>

In 2015, the New York Court of Appeals appointed the Task Force on Experiential Learning and Admission to the Bar to determine if bar admissions should include a experiential learning component.<sup>59</sup> The Task Force recently concluded that there should be a skills competency requirement for admissions to the New York State Bar and that proof of fifteen credit hours of experiential courses taken in law school, six of which could be school-certified summer employment programs, could satisfy that requirement.<sup>60</sup> The public comment period has recently ended.<sup>61</sup>

The Task Force on Admissions Regulation Reform from the State Bar of California provided further specific recommendations for law schools by calling for fifteen or more units of experiential course work (an externship, clerkship or apprenticeship) taken during *or after* graduation from law school,<sup>62</sup> which has similarities to the recently struck-down Alternate

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54. *NYSBA Report*, *supra* note 10, at 40-45.

55. AM. LAW INST.-AM. BAR ASS'N & THE ASS'N FOR CONTINUING LEGAL EDUC., CRITICAL ISSUES SUMMIT, EQUIPPING OUR LAWYERS: LAW SCHOOL EDUCATION, CONTINUING LEGAL EDUCATION, AND LEGAL PRACTICE IN THE 21<sup>ST</sup> CENTURY 5 (2010), *available at* [http://www.equippingourlawyers.org/documents/final\\_report.pdf](http://www.equippingourlawyers.org/documents/final_report.pdf) [hereinafter ALI-ABA & ACLEA].

56. *Id.* at 6.

57. *Id.* at 6-7.

58. *Id.* at 7-8.

59. N.Y STATE BAR ASS'N, TASK FORCE ON EXPERIENTIAL LEARNING AND ADMISSION TO THE BAR, *Request for Comment*, at 1 (Oct. 9, 2015), *available at* <https://www.nycourts.gov/ctapps/news/nottobar/nottobar100915.pdf>.

60. *Id.* at 1-2 (Pathway 2).

61. *Id.* at 2.

62. STATE BAR OF CAL., TASK FORCE ON ADMISSIONS REGULATION REFORM: PHASE I FINAL REPORT 1 (2013), *available at* [http://www.calbar.ca.gov/Portals/0/documents/bog/bot\\_ExecDir/ADA%20Version\\_STATE\\_BAR\\_TASK\\_FORCE\\_REPORT\\_%28FINAL\\_AS\\_APPROVED\\_6\\_11\\_13%29\\_062413.pdf](http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/ADA%20Version_STATE_BAR_TASK_FORCE_REPORT_%28FINAL_AS_APPROVED_6_11_13%29_062413.pdf) [hereinafter TASK FORCE ON ADMISSIONS REGULATION REFORM].

Proposal on ABA Standard 303(a)(3).<sup>63</sup> This task force also recommended a fifty-hour pro-bono or “modest means” client commitment under the guidance of a practitioner or judicial officer.<sup>64</sup>

### B. The Urgency

Enrollment at law schools has fallen sharply, causing a reduction in faculty and staff at many institutions.<sup>65</sup> Law schools that can find the proper balance between the theoretical and the practical could capitalize greatly in this tough legal environment—one characterized by a dearth of legal jobs and out-of-control, skyrocketing student debt.<sup>66</sup>

Thousands of large-firm job opportunities have disappeared within the past few years<sup>67</sup> and many believe the problem is permanent.<sup>68</sup> The U.S.

63. ALTERNATIVE PROPOSAL, *supra* note 44; Lynch, *supra* note 47.

64. TASK FORCE ON ADMISSIONS REGULATION REFORM, *supra* note 62, at 1.

65. *E.g.*, Ashby Jones & Jennifer Smith, *Amid Falling Enrollment, Law Schools Are Cutting Faculty; Trims Send Grim Message to Elite Group Long Sheltered from Economy's Ups and Downs*, WALL ST. J. (July 15, 2013, 4:39 PM), <http://www.wsj.com/articles/SB10001424127887323664204578607810292433272>; Jennifer Smith, *Law Schools Boost Enrollment After Price Cuts; Some Institutions Trim Tuition Amid Dearth of New Students*, WALL ST. J. (Sept. 2, 2014, 11:31 AM), <http://www.wsj.com/articles/law-schools-boost-enrollment-after-price-cuts-1409671882>.

66. *See* Steven J. Harper, *Too Many Law Students; Too Few Legal Jobs*, N.Y. TIMES (Aug. 25, 2015), [http://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html?\\_r=0](http://www.nytimes.com/2015/08/25/opinion/too-many-law-students-too-few-legal-jobs.html?_r=0); Rachel J. Littman, *Training Lawyers for the Real World: Part One*, 82 N.Y. ST. B.J. 20, 24 (Sept. 2010); W. Dustin Charters, *The True Cost of A Legal Education*, 56 ADVOC. 54, 54 (Aug. 2013).

67. *E.g.*, REFORMING LEGAL EDUCATION, *supra* note 34, at 2; Noam Scheiber, *The Last Days of Big Law*, NEW REPUBLIC (July 21, 2013), <https://newrepublic.com/article/113941/big-law-firms-trouble-when-money-dries>; *Employment Patterns 1999 – 2010*, NALP.ORG (Aug 2011), <http://www.nalp.org/employmentpatterns1999-2010> (for the precipitous decline of percentages of graduates who went to work in large firms in select years from 1999 to 2010); FUTURE RECOMMENDATIONS, *supra* note 41, at 13; William D. Henderson & Rachel M. Zahorsky, *Law Job Stagnation May Have Started Before the Recession—And it be a Sign of Lasting Change*, A.B.A. J. (July 1, 2011, 9:40 AM), [http://www.abajournal.com/magazine/article/paradigm\\_shift/](http://www.abajournal.com/magazine/article/paradigm_shift/); Ross Todd, *Legal Sector Loses 1,100 Jobs in April*, AMLAW DAILY (May 7, 2010, 12:33 PM), <http://amlawdaily.typepad.com/amlawdaily/2010/05/april-jobs.html>; Kirsten A. Dauphinais, *Legal Education Reform: Skills Building, Economic Justice, and Community Engagement: Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in Its Wake*, 10 SEATTLE J. SOC. JUST. 49, 50-51 (2011); Jennifer Smith, *Citi: Lackluster 3rd Quarter Bodes Ill for Law Firm Profit Growth*, WALL ST. J. (Nov 9, 2012, 8:50 AM), <http://blogs.wsj.com/law/2012/11/09/citi-lackluster-3rd-quarter-bodes-ill-for-law-firm-profit-growth/> (there is a contracting legal services market).

68. *E.g.*, FUTURE RECOMMENDATIONS, *supra* note 41, at 1, 29 (there are far fewer jobs for graduates, with many of the underlying reasons being of a permanent or repeating nature); Scheiber, *supra* note 67; Matasar, *supra* note 34, at 23 (Matasar lays out several former economic truths, to include Big Law being able hire scores of high-priced associates to replace older attorneys lost through attrition, with enough quality attorneys left over to supply smaller firms, government agencies, and others with plenty of labor); David Barnhizer, *Redesigning the American Law School*, 2010 MICH. ST. L. REV. 249, 253-56 (2010) (Barnhizer lists “Radical changes” in the legal market, to include market saturation of clients still willing to pay for legal services vs. the higher number of attorneys looking for paying clients, and the development of more in-house law firms that perform legal work previously farmed out, as two reasons to support his assertion that the legal industry has permanently transformed. Later in the article, Barnhizer cites savings from new technology and the availability of online legal resources as two other factors in the changing legal landscape.).

Bureau of Labor Statistics (“BLS”) employment projections for 2012-2022 show that there will be 208,800 “job openings due to growth and replacement needs” for lawyers, judges and related workers in that ten-year period.<sup>69</sup> If we compare jobs per year with the most recent law school graduation numbers, using an average of 20,880 openings per year as an example, there are still well over twice as many graduates than average available jobs per year.<sup>70</sup> It is likely that there will be a lack of jobs in the immediate future, even when one considers the shrinking entering classes.<sup>71</sup> There were 37,924 1Ls enrolled in fall 2014,<sup>72</sup> and when they graduate there will still likely be about one and a half times as many of them as there are jobs.<sup>73</sup> Such will likely be the case in the years beyond 2017,<sup>74</sup> even considering the downward trend of LSAT-takers.<sup>75</sup> Using an admittedly cursory analysis that figures matriculation of ten percent, and a yearly average of 20,880 new jobs, a twenty percent decline in fall 2015 enrollment would mean a deficit of 6,425 legal jobs when they graduate in three years.<sup>76</sup> 1L enrollment would have had to drop roughly thirty-nine percent in the fall of 2015 and remain flat in subsequent years in order for

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69. U.S. Department of Labor, *Employment Projections: Occupational employment, job openings and worker characteristics*, BUREAU OF LAB. STAT. (Dec 19, 2013), [http://www.bls.gov/emp/ep\\_table\\_107.htm](http://www.bls.gov/emp/ep_table_107.htm) [hereinafter *Employment Projections*] ((Heading: “Lawyers, judges, and related workers.”) This number does allow for expected attrition).

70. See National Association for Law Placement, *Class of 2013 National Summary Report*, NALP.ORG (July 2014), <http://www.nalp.org/uploads/NatlSummaryChartClassof2013.pdf> [hereinafter NALP] (46,776 graduates in 2013). 20,880 jobs is a yearly average of the 208,880 projected jobs available from 2012-2022 (208,880 divided by 10 years). *Employment Projections*, *supra* note 69.

71. David Barnhizer, *Law Schools, Law Jobs and the “Second Wave” of Applicant Decline*, LAWNEXT (June 22, 2015), <http://lawnext.org/law-schools-law-jobs-and-the-second-wave-of-applicant-decline/>.

72. *ABA Section of Legal Education Reports 2014 Law School Enrollment Data*, AM. B. ASS’N (Dec. 16, 2014), [http://www.americanbar.org/news/abanews/aba-news-archives/2014/12/aba\\_section\\_of\\_legal.html](http://www.americanbar.org/news/abanews/aba-news-archives/2014/12/aba_section_of_legal.html).

73. Ralph D. Clifford, *What Has Happened to Law School Attrition?*, FAC. LOUNGE (Feb 2, 2013), <http://www.thefacultylounge.org/2013/02/what-has-happened-to-law-school-attrition.html> (Historic attrition percentages: An attrition rate of 10 percent is used, which is based the likelihood that pressure to stop losing tuition money will lower the attrition rate from a slightly higher recent average percentage: 37,924 1Ls in Fall 2014 x .9 = 34,132 grads in the Spring of 2017 vs. 20,880 jobs.); see, e.g., Elizabeth Olson & David Segal, *A Steep Slide in Law School Enrollment Accelerates*, N.Y. TIMES (Dec. 17, 2014, 7:04 AM), <http://dealbook.nytimes.com/2014/12/17/law-school-enrollment-falls-to-lowest-level-since-1987/>.

74. Daniel O. Bernstine, *The State of Law School Admissions: Where Are We In 2014?*, 83 B. EXAMINER 12, 18, (2014) (“the market will be slow to absorb the backlog of law graduates.”).

75. *Total LSATs Administered—Counts and Percent Increases by Admin and Year*, LSAC.ORG, <http://lsac.org/lscresources/data/lstats-administered> (last visited Oct. 25, 2015) [hereinafter *Total LSATs Administered*] (The number of LSAT takers has fallen from nearly 172,000 in 2009-10 to 101,689 in 2014-15, but has started to trend slightly upward from that low point).

76. Using the average of 20,880 available legal jobs per year, a thirty-nine percent decline from Fall, 2014 1L enrollment, and a ten percent attrition rate: 61% of 37,924 = 23,134 projected 1L enrollees for Fall 2015. 23,134 x .9 (ten percent attrition rate) = 20,820 Spring, 2018 grads vs. 20,880 projected jobs. See NALP, *supra* note 70; Clifford, *supra* note 73.

supply and projected demand to balance by the time they graduate in the spring of 2018.<sup>77</sup> With the heightened media focus on the lack of legal jobs and crushing debt loads, it is possible that enrollment will continue to decline for the next several years.

But not everyone is convinced that there will be a dearth of jobs in the future.<sup>78</sup> In fact, some professors are suggesting that, because of retirements, there will be a lawyer shortage in the next few years.<sup>79</sup> Professor Ted Seto of Loyola Law School of Los Angeles predicts that there will be a lawyer shortage by 2016.<sup>80</sup> Seto notes that in 2016 we will experience the fewest number of law school graduates since 1989 and that “demand for legal services . . . probably increases as population increases.”<sup>81</sup> Professor Paula Young predicts that there will be more legal jobs than graduates in 2017.<sup>82</sup> Professor Deborah Jones Merritt concludes that it will be 2021 before we see equilibrium.<sup>83</sup> The *National Jurist* thinks 2019 is the year.<sup>84</sup>

The often-cited spiraling cost of legal education<sup>85</sup> will place future graduates in an even more perilous environment.<sup>86</sup> In 2012, the median tuition at a private school was over \$40,000 per year, and non-resident

77. Using the average of 20,880 available legal jobs per year, a thirty-nine percent decline from Fall, 2014 1L enrollment, and a ten percent attrition rate: 61% of 37,924 = 23,134 projected 1L enrollees for Fall 2015. 23,134 x .9 (ten percent attrition rate) = 20,820 Spring, 2018 grads vs. 20,880 projected jobs. See NALP, *supra* note 70; *Total LSATs Administered*, *supra* note 75; Clifford, *supra* note 73.

78. Paul Caron, *Seto: JD Job Prospects as Predicted by JD Degrees Per Capita*, TAXPROF BLOG (June 5, 2013), [http://taxprof.typepad.com/taxprof\\_blog/2013/06/seto-.html](http://taxprof.typepad.com/taxprof_blog/2013/06/seto-.html) [hereinafter Caron, *Seto*]; Paula Marie Young, *Prediction: Full-Time Jobs will Exceed New Law Graduates for Graduating Class of 2016*, RED VELVET L. (Nov. 18, 2013, 5:40 AM), <http://the-red-velvet-lawyer.blogspot.com/2013/11/prediction-full-time-jobs-will-exceed.html>; Paul Caron, *Deborah Jones Merritt: Number of Full-Time Jobs Will Not Exceed Number of Law School Grads Until 2021*, TAXPROF BLOG (Nov. 23, 2013), [http://taxprof.typepad.com/taxprof\\_blog/2013/11/jones-merritt-.html](http://taxprof.typepad.com/taxprof_blog/2013/11/jones-merritt-.html) [hereinafter Caron, *Deborah Jones Merritt*].

79. See Caron, *Seto*, *supra* note 78; Hannah Alsgaard, *Rural Incentive Programs for Legal & Medical Professionals: A Comparative*, 59 S.D. L. REV. 585, 612 (2014) (Many rural areas already have a lawyer shortage).

80. Caron, *Seto*, *supra* note 78.

81. *Id.*

82. Young, *supra* note 78.

83. Caron, *Deborah Jones Merritt*, *supra* note 78.

84. Jack Crittenden, *More Jobs Than Grads for Class of 2016*, 17 PRELAW 16, 16 (2014).

85. E.g., William D. Henderson & Rachel M. Zahorsky, *The Law School Bubble*, 98 A.B.A. J. 30, 31-32 (2012) [hereinafter *The Law School Bubble*] (the authors report that according to the U.S. News & World Report in “2010, 85 percent of law graduates . . . boasted an average debt load of \$98,500. . . .”); Debra Cassens Weiss, *Average Debt of Private Law School Grads is \$125K; It’s Highest at These Five Schools*, A.B.A. J. (Mar. 28, 2012, 10:29 AM), [http://www.abajournal.com/news/article/average\\_debt\\_load\\_of\\_private\\_law\\_grads\\_is\\_125k\\_these\\_five\\_schools\\_lead\\_to\\_m/](http://www.abajournal.com/news/article/average_debt_load_of_private_law_grads_is_125k_these_five_schools_lead_to_m/); Brian Z. Tamanaha, *Is Law School Worth the Cost?*, 63 J. LEGAL EDUC. 173, 173 (2013); Barnhizer, *supra* note 67, at 254.

86. *The Law School Bubble*, *supra* note 85, at 31-32.

tuition was over \$33,000 per year at public schools.<sup>87</sup> By and large, tuition has risen substantially more than the rate of inflation since 1985.<sup>88</sup> Professor Brian Tamanaha notes that a new graduate would have to earn roughly \$100,000 per year in order to meet the regular repayment schedule on a \$125,000 loan, yet median starting salaries are far lower than that.<sup>89</sup> The median starting salary for 2014 graduates was \$63,000.<sup>90</sup> Tamanaha points out that the popular Income-Based Repayment Plan (“IBR”) provisions for federal student loans—which greatly cap monthly loan payments and forgive any loan amount remaining after twenty years—have two major negatives.<sup>91</sup> First, the forgiven amount is treated as taxable income, causing a massive tax hit.<sup>92</sup> Second, this twenty-year loan repayment commitment comes at a time when people expect to take on substantial family and retirement investment debt.<sup>93</sup> Additionally, the federal government may feel compelled to curtail the amount of money it is willing to lend to law students.<sup>94</sup> Finally, in his fiscal year 2016 proposed budget, President Obama has capped the total loan amount eligible for public service forgiveness via IBR at \$57,500.<sup>95</sup>

Now more than ever, law schools must assure that their graduates have the skills necessary to successfully enter into the legal marketplace. Some law schools are not taking chances that the industry will reach a quick turnaround and have begun to make serious changes.<sup>96</sup>

### C. The Resistance

Although the sundry task forces and studies undertaken over the years note or infer that one of the primary missions of law schools, if not “the”

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87. *Law School Tuition: 1985-2012*, AM. B. ASS’N, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/lstuition.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/lstuition.authcheckdam.pdf) (last visited Oct. 25, 2015).

88. *Id.*; *Historical Inflation Rates: 1914-2015*, U.S. INFLATION CALCULATOR, <http://www.usinflationcalculator.com/inflation/historical-inflation-rates/> (last visited Oct. 25, 2015); Denis Binder, *The Changing Paradigm in Public Legal Education*, 8 LOY. J. PUB. INT. L. 1, 12-13 (2006).

89. Tamanaha, *supra* note 85, at 176.

90. National Association of Law Placement, *Employment for the Class of 2014 – Selected Findings: Employment Rate of New Law Graduates Up for the First Time since 2007* 3, NALP.ORG (2015), <http://www.nalp.org/uploads/Classof2014SelectedFindings.pdf>.

91. Tamanaha, *supra* note 85, at 185-86.

92. *Id.* at 185-86.

93. *Id.* at 186.

94. *E.g.*, *The Law School Bubble*, *supra* note 85, at 32-33; Matasar, *supra* note 34, at 22-23.

95. Alessandra Lanza, *What Obama’s 2016 Budget Proposal Means for Student Borrowers*, STUDENT LOAN RANGER (Feb. 11, 2015, 10:00 AM), <http://www.usnews.com/education/blogs/student-loan-ranger/2015/02/11/what-obamas-2016-budget-proposal-means-for-student-borrowers>.

96. *See infra* Part III. A.

mission, is to properly prepare graduates for practice,<sup>97</sup> there remains some resistance to adding practice-ready skills to the curriculum.<sup>98</sup> The barriers to change include disagreement as to what constitutes preparation for practice, traditional faculty culture, concerns about academic freedom, the law school administrative structure, and the potential cost associated with adding skills courses.<sup>99</sup>

What is the purpose of law schools? According to new ABA Revised Standard 301(a), the purpose is to prepare students to practice.<sup>100</sup> To many, this means training students how to think like lawyers<sup>101</sup> by teaching analytical skills through the Langdellian case law method.<sup>102</sup> To others, it means focusing on practice skills.<sup>103</sup> The focus on the case law method

97. *E.g.*, FUTURE RECOMMENDATIONS, *supra* note 41, at 3; BEST PRACTICES, *supra* note 1, at 16; CARNEGIE REPORT, *supra* note 1, at 13; CRAMTON REPORT, *supra* note 3, at 1; ALI-ABA & ACLEA, *supra* note 55, at 5; TASK FORCE ON ADMISSIONS REGULATION REFORM, *supra* note 62, at 1; Roger C. Cramton, *The Law Schools and Lawyer Competence*, 51 N.Y. ST. B.J. 543, 575, 579 (1979) [hereinafter Cramton, *The Law Schools and Lawyer Competence*] (concern over lawyer incompetency is a long-standing matter); David M. Moss, *The Hidden Curriculum of Legal Education: Toward a Holistic Model for Reform*, 2013 J. DISP. RESOL. 19, 30 (2013) (teaching students how to relate knowledge and skills to practice should be one of the most important goals of legal education).

98. *See* Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 814 (2011); Peter Toll Hoffman, *Law Schools and the Changing Face of Practice*, 56 N.Y.L. SCH. L. REV. 203, 220-21 (2011-2012); Miriam R. Albert, *Teaching Doctrine and Skills Simultaneously*, 12 TENN. J. BUS. L. 335, 343 (2011).

99. *See generally* John C. Weistart, *The Law School Curriculum: The Process of Reform*, 1987 DUKE L.J. 317 (1987).

100. ABA STANDARDS 2015-2016, *supra* note 7, at 15 (Standard 301).

101. *E.g.*, FUTURE RECOMMENDATIONS, *supra* note 41, at 14; Mark L. Jones, *Faculty Essay on Curricular Reform and Instructional Innovation: Fundamental Dimensions of Law and Legal Education: Perspectives on Curriculum Reform, Mercer Law School's Woodruff Curriculum, and . . . "Perspectives"*, 63 MERCER L. REV. 975, 978 (2012) (analytical skills development, has long ago won out over practical instruction); Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 CLINICAL L. REV. 489, 494 (2013) (the goal of first year courses is to teach students how to think like lawyers); Hon. Annette J. Scieszinski, *Not on My Watch: One Judge's Mantra to Ensure Access to Justice*, 61 DRAKE L. REV. 817, 821 (2013) ("[t]he goal is to teach students to 'think like a lawyer.'"); Cynthia R. Farina et al., *Knowledge in the People: Rethinking "Value" in Public Rulemaking Participation*, 47 WAKE FOREST L. REV. 1185, 1194 (2012) (the goal of law schools is to teach students to think like lawyers).

102. *E.g.*, Jones, *supra* note 101, at 978 (legal academia has for some time favored analytical skills development more than practical instruction); Phyllis Goldfarb, *The Way to Carnegie: Practice, Practice, Practice,—Pedagogy, Social Justice, and Cost in Experiential Legal Education*, 32 B.C. J.L. & SOC. JUST. 279, 287 (2012) (primary classroom pedagogical goal is to teach analytical reasoning); Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn From the Science of Positive Psychology*, 9 YALE J. HEALTH POL'Y, L. & ETHICS 357, 400-01 (2009) (teaching analytical skills is rewarded in law schools); Robert B. McKay, *What Law Schools Can and Should Do (and Sometimes Do)*, 30 N.Y.L. SCH. L. REV. 491, 507 (1985) (training in analytical skills has long been considered the most important goal of law schools).

103. *E.g.*, Jones, *supra* note 101, at 978 (he views the primary mission of the law school as being to teach students how to practice); Cramton, *The Law Schools and Lawyer Competence*, *supra* note 97, at 575 (several skills valued by attorneys are not taught in law schools); Lawrence K. Hellman, *Richard E. Coulson: The Indispensable Link Between the Past and the Future of a Developing Law School*, 34 OKLA. CITY U. L. REV. 1, 4 (2009) (teaching practical skills is just as important as teaching analytical skills).

often limits comprehensive skills reform because of resistance to change from traditional theory-dominant law schools.<sup>104</sup> In these schools, newer faculty members are mentored by, and largely adopt the views and beliefs of, traditional faculty members who often place less value on skills training.<sup>105</sup> Erwin Chemerinsky, Founding Dean of the University of California, Irvine School of Law calls for an emphatic rejection of the “theory vs. skills” divide<sup>106</sup> and notes that reform cannot occur without providing students with much more practice-like experience than is currently offered.<sup>107</sup> This traditional law professor hierarchy—first in line are tenured professors, next are tenure-track professors, then clinicians, then adjunct faculty—was adopted from the larger university system some time ago.<sup>108</sup> Traditional scholars have also placed a great emphasis on publishing,<sup>109</sup> which practitioners largely see as adding little value to their work; however, it is undeniable that the process of publishing develops, focuses, and clarifies the expertise of the writer.<sup>110</sup> Further, doctrinal faculty often argue that their academic freedom would be impinged if they were required to integrate a skills component into their courses.<sup>111</sup>

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104. *E.g.*, FUTURE RECOMMENDATIONS, *supra* note 41, at 15-16 (junior faculty often take on values of experienced faculty members, who are usually legal traditionalists); Toni M. Fine, *Reflections on U.S. Law Curricular Reform*, 10 GERMAN L.J. 717, 729-30 (2009) (traditional faculty members are loathe to change and typically view skills as less important than theory).

105. *E.g.*, FUTURE RECOMMENDATIONS, *supra* note 41, at 15-16; Fine, *supra* note 104, at 730 (citing Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action and Law Faculty Hiring*, 97 COLUM. L. REV. 199, 261 (1997)).

106. Erwin Chemerinsky, *Rethinking Legal Education*, 43 HARV. C.R.-C.L. L. REV. 595, 597 (2008); *see also* Moss, *supra* note 97, at 19-20 (there is a knowledge vs. skills either-or divide and Moss quotes John Dewey as stating that it was a “false divide,” as stated in RAYMOND D. BOISVERT, JOHN DEWEY: RETHINKING OUR TIME (1998)).

107. Chemerinsky, *supra* note 106, at 597.

108. David M. Moss & Debra Moss Curtis, ESSENTIAL ELEMENTS FOR THE REFORM OF LEGAL EDUCATION in REFORMING LEGAL EDUCATION 220-23 (2012); William D. Henderson, *The Inferiority Complex of Law Schools*, NAT'L JURIST 4, 4-5 (2012) (implying that the traditional hierarchy must change).

109. *E.g.*, FUTURE RECOMMENDATIONS, *supra* note 41, at 20 (scholarship tied to tenure and financial gain); Fine, *supra* note 104, at 730 (citing James Lindgren & Allison Nagelberg, *Are Scholars Better Teachers?*, 73 CHI.-KENT L. REV. 823, 827-29 (1998)) (scholarship is generally thought of as being much more important than teaching); Deborah Jones Merritt, *Research and Teaching on Law Faculties: An Empirical Exploration*, 73 CHI.-KENT L. REV. 765, 766-67 (1998); Richard A. Matasar, *Defining our Responsibilities: Being an Academic Fiduciary*, 17 J. CONTEMP. LEGAL ISSUES 67, 109 (2008) [hereinafter Matasar, *Defining our Responsibilities*] (scholarship is difficult to justify).

110. *See* Henderson, *supra* note 108, at 5.

111. *E.g.*, Cramton, *The Law Schools and Lawyer Competence*, *supra* note 97, at 579; Eric J. Gouvin, *Teaching Business Lawyering in Law Schools: A Candid Assessment of the Challenges and Some Suggestions for Moving Ahead*, 78 UMKC L. REV. 429, 451 (2009) (the traditional argument has been that although academic freedom allows doctrinal professors the ability to add skills components to their courses, they should not be made to do so since law firms train their new hires in the appropriate skills; such is not the case anymore); Matasar, *Defining our Responsibilities*, *supra* note 109, at 111 (cries of impingement on academic freedom are often loudest when faculty members are asked to do something different); Christine Hurt, *Erasing Lines: Let the LRW Professor Without Lines Throw the*



The ABA Task Force on the Future of Legal Education calls for law schools to reassess the role of faculty in an attempt to update their focus.<sup>112</sup> In order to effectuate the type of change that the Task Force (as well as *Carnegie*) calls for, what may the legal professoriate look like in ten or fifteen years? We are likely to see more of a hierarchical balance between tenure, tenure track and non-tenure track faculty at most law schools.<sup>113</sup> In addition, more and more doctrinal faculty members will be called on to infuse a skills component to their courses.<sup>114</sup> Faculty members could be allowed adjustments to their schedule or tenure requirement in order to compensate for the additional work that would be required to infuse skills into their doctrinal courses. Perhaps publishing requirements could be loosened or replaced.<sup>115</sup> With such a faculty shift, there will likely be less of an emphasis on publishing at many schools.<sup>116</sup> Finally, traditionalists have long believed that infusing the curriculum with skills will result in trade school status, and that belief must also change.<sup>117</sup> The status argument does not stop all other professions from making practical training a key component of their formative education.<sup>118</sup>

The overall process by which today's law schools make decisions may need to change with the times.<sup>119</sup> The decision-making process of the traditional law school was developed during better times in the legal industry, when there was no pressure to make radical change.<sup>120</sup> Change could be effectuated over the course of time, as opposed to today where changes have to be made quickly in order to stay competitive.<sup>121</sup> A dedicated, well-informed, proactive Curriculum Committee is able to quickly identify necessary changes, research and craft a measured and realistic plan of action, educate faculty members, and bring the plan to a faculty vote in a timely manner.<sup>122</sup>

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*First Eraser*, 1 J. ASS'N LEGAL WRITING DIRECTORS 80, 80 (2002) (requiring professors to infuse skills into their courses is likely especially troubling in legal academia, "where academic freedom is guarded very heavily").

112. FUTURE RECOMMENDATIONS, *supra* note 41, at 28.

113. See REFORMING LEGAL EDUCATION, *supra* note 34, at 164; Henderson, *supra* note 108, at 4.

114. E.g., Cramton, *The Law Schools and Lawyer Competence*, *supra* note 97, at 576.

115. Matasar, *Defining our Responsibilities*, *supra* note 109, at 109.

116. *Id.* at 109-10.

117. E.g., Henderson, *supra* note 108, at 5; Cramton, *The Law Schools and Lawyer Competence*, *supra* note 97, at 578; CARNEGIE REPORT, *supra* note 1, at 91-93.

118. See *supra* note 46.

119. See FUTURE RECOMMENDATIONS, *supra* note 41, at 4.

120. See *id.*

121. *Id.*

122. See, e.g., Robert F. Blomquist, *Some Thoughts on Law School Curriculum Reform: Scaling the Mountainside*, 29 VAL. U. L. REV. 641, 645-46 (1995) (discussing his experiences chairing a curriculum committee, where he educated the committee on curricular reform, involved faculty in the process, finalized proposals for faculty approval, and brought fourth change in a timely manner).

The cost of skills courses in general (if not taught by adjunct professors), and clinical education in particular, can be higher than the cost of doctrinal courses because of their labor-intensive nature, which limits the number of students that skills faculty members are able to supervise.<sup>123</sup> Therefore, as discussed below, schools can spread the burden of the most time-consuming skills requirements among skills courses, clinics, simulation courses, and externships.<sup>124</sup>

### III. SOLUTIONS

There are three things that must be accomplished in order to address the lack of practice-readiness among new attorneys. First, law schools must identify the proper balance of doctrine and skills throughout all three years of law school, by way of a systematic review of the curriculum. Second, in addition to the ABA's six credit experiential learning requirement (every student must take six credit hours of a simulation course, law clinic, and/or field placement),<sup>125</sup> law schools should require students to take twelve more skills credits, which could be wholly taken from existing elective skills courses that law schools have an abundance of. So every student would be required to take eighteen practice skills credits before graduating. Finally, all states should mandate a practice portion to their bar examinations.

#### A. Systematic Curricular Development

##### 1. For the Brave: Curriculum Mapping

The ABA Task Force for the Future of Legal Education included an insightful and succinct description of the values attributed to a law school education.<sup>126</sup> The Task Force articulated that the private value of a law school education establishes a responsibility to the public.<sup>127</sup> That should logically lead one to conclude that the inclusion of ample practice skills components into the curriculum is necessary in order to better prepare graduates to represent the public. Further, the authors of the *Carnegie Report* felt strongly that the time to combine theory and practical experience had arrived.<sup>128</sup> And many schools *have* added a host of electives over the

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123. See Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 309, 321 (2012); Chemerinsky, *supra* note 106, at 597 (clinical education is expensive because of the intense faculty supervision required); Roger J. Dennis, *Building a New Law School: A Story from the Trenches*, 61 RUTGERS L. REV. 1079, 1086-87 (2009) (typically, a clinician supervises 8 to 12 students per year).

124. See *infra* Part III.

125. ABA STANDARDS 2015-2016, *supra* note 7, at 16 (Standard 303).

126. See FUTURE RECOMMENDATIONS, *supra* note 41, at 6-8.

127. *Id.* at 6-7.

128. CARNEGIE REPORT, *supra* note 1, at 12.

past several years.<sup>129</sup> However, have they done so in a cohesive fashion? Even a substantial amount of elective courses falls short of the mark if not properly integrated into the curriculum.<sup>130</sup> Traditionally, many schools added courses to an already large course list without considering how these additions fit into an overall curricular strategy that takes into account desired skills, behaviors, and outcome measures.<sup>131</sup> It is often a pure technical exercise.<sup>132</sup>

A plan must be developed and implemented to cohesively and systematically infuse skills into the curriculum.<sup>133</sup> This may be accomplished by employing what is referred to as an “integrated approach,”<sup>134</sup> where consistency is achieved within each course and between courses by tying each to overall curricular outcome measures.<sup>135</sup> This integrated approach is not new,<sup>136</sup> and the concept is simple enough to understand. Professor Byron Cooper notes that skills integration may be accomplished in three ways: “within a course, through coordinated courses, or across structured course sequencing,”<sup>137</sup> all of which provide much more cohesiveness as opposed to simply adding additional skills courses with no plan as to how they fit into the curriculum or relate to other courses. Examples of coordinated courses include Writing Across the Curriculum programs, and legal writing faculty who team with doctrinal professors to provide coordinated, subject specific assignments.<sup>138</sup> Examples of course sequencing include capstone courses or a progression of courses that build on what is learned in prior courses.<sup>139</sup> This is in line with *Best Practices*, which states that the curriculum should be organized to provide experiences that develop progressively deeper knowledge, skills, and values.<sup>140</sup>

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129. *Id.* at 194 (“The gradual reduction over the years in the number of required courses has opened up lots of elective space.”).

130. *E.g.*, Cooper, *supra* note 25, at 54; CARNEGIE REPORT, *supra* note 1, at 194 (“In most schools, curriculum lacks clear shape or purpose.”); REFORMING LEGAL EDUCATION, *supra* note 34, at 223.

131. REFORMING LEGAL EDUCATION, *supra* note 34, at 223.

132. *Id.*

133. *See id.*

134. *E.g.*, Cooper, *supra* note 25. (Cooper provides a succinct and cogent discussion about integrating practice with theory); CARNEGIE REPORT, *supra* note 1, at 194; CRAMTON REPORT, *supra* note 3, at 3-4.

135. *E.g.*, BEST PRACTICES, *supra* note 1, at 93.

136. *See generally supra* note 10 and accompanying text.

137. Cooper, *supra* note 25, at 54.

138. *E.g.*, *id.* at 53.

139. *E.g.*, *id.* at 54-55.

140. BEST PRACTICES, *supra* note 1, at 94.

Before an integrated curriculum may be properly established, a comprehensive assessment of the curriculum must be completed.<sup>141</sup> The school's overall objectives, based on the mission statement and the applicable ABA standards, must be determined.<sup>142</sup> The assessment must identify outcomes for each course, develop a means of regularly assessing those outcomes, determine if the outcomes are being met for each course, and result in appropriate changes being made.<sup>143</sup> It is wise to include stakeholders, such as alumni and the practicing bar and bench, in the identification of objectives.<sup>144</sup> This process has become critical with the requirements that have been added to the Revised ABA Standards, which add learning outcomes (Revised Standard 302<sup>145</sup>), assessment (Revised Standard 314<sup>146</sup>), and evaluation of the same (Revised Standard 315<sup>147</sup>).

There have been several articles detailing how to assess the curriculum, and I will briefly detail two law schools that have gone as far as conducting a full curriculum mapping project: Nova Southeastern University Shepard Broad Law Center and Charlotte School of Law.

At Nova Southeastern University Shepard Broad Law Center, data collection in support of "curriculum mapping" involved three stages: (1) the creation and administration of a curriculum survey to recent graduates,<sup>148</sup> (2) the same for faculty members,<sup>149</sup> and (3) the curriculum mapping process.<sup>150</sup>

The student survey is critical to the process; gauging students' perceptions of the curriculum, as delivered and experienced, is vital.<sup>151</sup> Questions centered on their comfort with sundry aspects of the curriculum (such as the use of technology, learning environment, etc.) and whether they felt they were adequately prepared for practice (and for the bar exam).<sup>152</sup> The student survey was piloted and modified before being sent to the whole

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141. Janet W. Fisher, *Putting Students at the Center of Legal Education: How an Emphasis on Outcomes Measures in the ABA Standards for Approval of Law Schools Might Transform the Educational Experience of Law Students*, 35 S. ILL. U. L.J. 225, 229 (2011).

142. *E.g.*, *id.* (citing GREGORY S. MUNRO, *OUTCOMES ASSESSMENT FOR LAW SCHOOLS* 50 (2000), available at <http://lawteaching.org/publications/books/outcomesassessment/munro-gregory-outcomesassessment2000.pdf>).

143. *See id.* at 230.

144. *Id.* (citing MUNRO, *supra* note 142, at 94).

145. AM. BAR ASS'N, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR: REVISED STANDARDS FOR APPROVAL OF LAW SCHOOL AUGUST 2014 14 (Standard 302) (2014).

146. *Id.* at 22-23 (Standard 314).

147. *Id.* at 23 (Standard 315).

148. Debra Moss Curtis & Dr. David M. Moss, *Curriculum Mapping: Bringing Evidence-Based Frameworks to Legal Education*, 34 NOVA L. REV. 473, 488 (2010) [hereinafter *Curriculum Mapping*].

149. *Id.*

150. *Id.* at 493-96.

151. *Id.* at 489.

152. *Id.*

group.<sup>153</sup> Results showed that their students were mostly (or at least moderately) satisfied with all aspects of their educational experience, suggesting that, from their perspective, a wholesale curricular change was not necessary.<sup>154</sup>

The faculty survey was also piloted before being administered to the group,<sup>155</sup> and was designed to elicit faculty “knowledge, attitudes, and behaviors regarding issues underpinning the design and implementation of the curriculum,” as well as their vision for the law school and the level of importance they attributed to its mission.<sup>156</sup> As with the student survey results, the faculty results indicated a general satisfaction with the curriculum, which suggested that a wholesale curricular change was not advisable.<sup>157</sup>

The third and most time-consuming stage at Nova Southeastern involved faculty comparing syllabi to what was actually taught—first at an individual level and then within horizontal subject areas (*e.g.*, all contracts sections), and making appropriate changes.<sup>158</sup> This process led to robust discussion and a greater understanding of the purpose of the curriculum.<sup>159</sup> Professor Curtis notes that “vertical discussion” can also be undertaken (*e.g.*, all courses that teach a common component, such as Contracts, Sales, UCC, and Remedies).<sup>160</sup> To properly test the process, certain faculty members piloted this step before releasing it to the whole faculty.<sup>161</sup> Professor Curtis noted three major concerns with the process after the whole faculty was given a presentation on the process: (1) junior faculty and faculty under renewable contracts were concerned that divulging their teaching methods would be used against them in the tenure or renewal process (this could be ameliorated to a large degree by getting faculty to focus on data and not on each other);<sup>162</sup> (2) the process would take too much time to undertake (it does take more time the very first few years);<sup>163</sup> and (3) the fact that (at least at that time) all mapping software was geared toward K-12, which required the school to create its own mapping process.<sup>164</sup> Additional concerns were identified at other parts of the curricular mapping process—many faculty members may not have clearly articulable goals,

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153. *Curriculum Mapping*, *supra* note 148, at 489.

154. *Id.* at 491.

155. *Id.*

156. *Id.* at 492.

157. *Id.*

158. *Curriculum Mapping*, *supra* note 148, at 493.

159. *Id.* at 494.

160. *Id.* at 495.

161. *Id.* at 494.

162. *Id.* at 502-03.

163. *Curriculum Mapping*, *supra* note 148, at 503.

164. *Id.* at 504.

may not want to participate in the process, or may have differing vocabulary for the same subject matter.<sup>165</sup>

The curriculum mapping process at Charlotte School of Law took roughly four years to complete.<sup>166</sup> An initial step was a thorough review of the literature on educational reform, which focuses on outcomes-based education.<sup>167</sup> There was particular interest in an article by Professor Greg Munro and the Institute for Law School Teaching titled *Outcomes Assessment for Law Schools*.<sup>168</sup> Professor Cynthia F. Adcock of Charlotte School of Law, then Chair of the school's Professional Readiness Team<sup>169</sup> (their Curriculum Committee), identified six characteristics to an outcomes-based curriculum from the Munro work, which she shared with the other faculty members:

1. A coherent whole;
2. A focus on the mission and outcomes;
3. Provides for incremental and developmental formation of student abilities;
4. Is the result of faculty coordination;
5. Is required for all students . . . and
6. Provides for valid assessment and continual feedback to faculty and students.<sup>170</sup>

The real work started with a faculty retreat where faculty members were updated on the current literature on the effectiveness of legal education, worked on a better definition of "practice-ready," and started a list of student outcomes.<sup>171</sup> First-year faculty members were asked what skills-based components they believed they were teaching in their courses.<sup>172</sup> Chapter Two of *Best Practices* was used as their guide to institutional goal setting.<sup>173</sup> Chapter Two elaborates the following points: (1) commit to preparing students to practice; (2) have clearly-articulated institutional goals stated in terms of desired outcomes; (3) have clearly-articulated goals for each course, stated in terms of desired outcomes; and (4) strive to develop effective, responsible practitioners.<sup>174</sup> Next, faculty members met in small groups and articulated outcomes that reflected the components of the

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165. *Id.* at 493.

166. REFORMING LEGAL EDUCATION, *supra* note 34, at 162-63.

167. *Id.* at 142-44.

168. MUNRO, *supra* note 142; REFORMING LEGAL EDUCATION, *supra* note 34, at 144.

169. REFORMING LEGAL EDUCATION, *supra* note 34, at 148.

170. *Id.* at 144.

171. *Id.* at 142-44.

172. *Id.* at 143.

173. *Id.* at 145; BEST PRACTICES, *supra* note 1, at 39.

174. BEST PRACTICES, *supra* note 1, at 39, 90-91.

institution's mission statement.<sup>175</sup> The faculty as a whole then discussed the small group findings, agreed on a list of outcomes, and articulated a better definition for practice-ready: "Practice-ready means we graduate students who can thrive in a professional setting as a result of a comprehensive focus on analytical legal reasoning, skills development, and professional and ethical considerations across the curriculum."<sup>176</sup> After the retreat, the list of outcomes was organized into ten sets of "essential knowledge, skills, and values" and redistributed for comment and an eventual vote.<sup>177</sup>

Next, curriculum mapping was used to identify institutional outcomes.<sup>178</sup> To establish the assessment framework, the group again turned to *Best Practices*.<sup>179</sup> The professors divided into groups by teaching topics in order to determine at what point(s) in the law school curriculum the previously agreed-upon outcomes would be introduced, practiced, and refined.<sup>180</sup> After subsequent revisions of the ten key elements previously gleaned from the faculty retreat, there remained a list of five categories: foundational knowledge, cognitive skills, communication skills, relational skills, and professional skills.<sup>181</sup> Faculty members were again placed into groups, assigned one of the five categories, and asked to identify essential ability sets (or assessment benchmarks) for their category.<sup>182</sup> With the framework in place, the mapping process continued in four phases: plotting the framework, filling curriculum gaps, assessing progress made, and implementing resultant identified changes, and finalizing the curriculum map using team leaders.<sup>183</sup>

Professor Adcock noted a few challenges, not the least of which is a lack of resources that would speed the process and allow for the purchase of helpful tools and worksheets.<sup>184</sup> She found the path was not always linear, with faculty having to constantly be re-educated about the need for curricular reform.<sup>185</sup> In addition, Professor Adcock found that a faculty member with a reduced teaching load or an administrator should lead the curriculum mapping process because of its time demands.<sup>186</sup> Adcock acknowledges that the greatest challenge at most schools will be changing

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175. REFORMING LEGAL EDUCATION, *supra* note 34, at 145.

176. *Id.*

177. *Id.*

178. *Id.* at 147.

179. *Id.* (quoting BEST PRACTICES, *supra* note 1, at 93-94).

180. REFORMING LEGAL EDUCATION, *supra* note 34, at 147 (quoting BEST PRACTICES, *supra* note 1, at 93-94).

181. *Id.* at 147-48.

182. *Id.* at 149.

183. *Id.* at 150.

184. *Id.* at 164.

185. REFORMING LEGAL EDUCATION, *supra* note 34, at 163-64.

186. *Id.* at 164.

the faculty thought process from input-based to outcome based,<sup>187</sup> which will require a rethinking of academic freedom, status, and tenure.<sup>188</sup>

## 2. For the Ambitious: Course Sequencing

Other schools have undertaken a lengthy process that stopped short of a full-on and extremely time-consuming curriculum-mapping project. For instance, the law school in which I work, the University of Detroit Mercy School of Law ("UDM"), has utilized course sequencing. In the past at UDM, the Curriculum Committee has asked faculty members to collaborate according to subjects taught in order to identify unnecessary overlaps or omissions in course coverage throughout subject sequences.<sup>189</sup> Although identifying outcomes was not the principal purpose of the sequencing efforts, it was an unavoidable part of the process.<sup>190</sup> Many of the skills requirements at UDM can be traced to efforts to integrate theory and practice. UDM boasts several highly regarded clinics,<sup>191</sup> and the mandatory clinical requirement<sup>192</sup> was a result of course sequencing efforts.<sup>193</sup>

In 1995, UDM modified its first-year legal writing and research course to comply with modern law firm skills requirements, as outlined in the *MacCrate Report*.<sup>194</sup> The revamped two-course sequence (five credits), titled "Applied Legal Theory and Analysis" ("ALTA"), requires students to attain a thorough understanding of difficult doctrinal material before drafting common practice documents.<sup>195</sup> The assumption is that skills tasks must be performed at the time one learns doctrine and must consist of writing assignments beyond the traditional memos and appellate briefs.<sup>196</sup> The ALTA faculty members have made the sequencing of assignments

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187. *Id.*

188. *Id.*

189. Interview with Professor Cristina Lockwood, former Co-Chair of Univ. of Detroit Mercy School of Law Curriculum Committee (Apr. 23, 2014).

190. *Id.*

191. *Clinics*, DETROIT MERCY L., <http://www.law.udmercy.edu/index.php/academics1/clinics> (last visited Oct. 25, 2015).

192. *Id.*

193. Interview with Professor Christina Lockwood, former Co-Chair of Univ. of Detroit Mercy School of Law Curriculum Committee Law (Dec. 3, 2015).

194. Univ. of Detroit Mercy Sch. of Law, Faculty Meeting Minutes (Feb. 15, 1995) (on file with the *Ohio Northern University Law Review*); see MACCRATE REPORT, *supra* note 3, at 138.

195. *Applied Legal Theory and Analysis (1080)*, DETROIT MERCY L., <http://www.law.udmercy.edu/udm/index.php/academics1/academics-1/item/applied-legal-theory-and-analysis> (last visited Oct. 25, 2015).

196. Pamela Lysaght et al., *Integrating Theory With Practice at University of Detroit Mercy*, 77 MICH. B.J. 684, 684 (1998).



easier by choosing to focus on contracts law.<sup>197</sup> ALTA also emphasizes and assesses an attorney's ethical obligations during the course.<sup>198</sup>

UDM implemented "Writing Across the Curriculum" and "Ethics Across the Curriculum" requirements,<sup>199</sup> in an effort to integrate theory and practice. The Writing Across the Curriculum requirement involves teaching students how to write like lawyers,<sup>200</sup> and is mandatory in all upper level required courses.<sup>201</sup> This requirement has a wide breadth and includes research, analysis, clear writing, and the proper use of citation format.<sup>202</sup> At UDM, required upper level courses must contain this practical writing component, worth at least fifteen percent of the final grade.<sup>203</sup> This approach requires a mastery of doctrinal issues, which gives students a better chance of understanding and retaining the material.<sup>204</sup> Assignments are at least partially based on the documents that practitioners typically draft in those areas of law.<sup>205</sup> For instance, in Evidence, the professor may assign a motion in limine with a brief, an appellate brief, or a proposed evidence rule analysis.<sup>206</sup>

UDM also has a three-credit simulation course requirement via their Law Firm Program.<sup>207</sup> Students may satisfy this requirement by choosing from a special list of simulation skills courses, which are taught by experienced practitioners and designed to give students typical first-year assignments and feedback.<sup>208</sup> Most courses have a capped enrollment of fifteen to twenty students to ensure ample opportunities for feedback.<sup>209</sup> Students also have access to a wide array of externships with each placement generally requiring between 120 and 180 hours of work.<sup>210</sup>

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197. *Id.*

198. *Id.*

199. UNIV. OF DETROIT MERCY SCH. OF LAW, STUDENT HANDBOOK: UNIVERSITY OF DETROIT MERCY SCHOOL OF LAW FALL 2015 14, 15 (2015), available at <http://www.law.udmercy.edu/images/Formatted%20Student%20Handbook%20Web%202015.pdf> [hereinafter STUDENT HANDBOOK].

200. *Id.* at 14 (the farthest right column in the tables shows typical types of legal documents required).

201. *Id.*

202. See, e.g., Pamela Lysaght & Cristina D. Lockwood, *Writing-Across-the-Law-School Curriculum: Theoretical Justifications, Curricular Implication*, 2 J. ASS'N LEGAL WRITING DIRECTORS 73, 73-74 (2004).

203. STUDENT HANDBOOK, *supra* note 199, at 15.

204. Lysaght & Lockwood, *supra* note 202, at 100-01.

205. STUDENT HANDBOOK, *supra* note 199, at 14 (farthest column to the right).

206. *Id.* (farthest column to the right).

207. *Law Firm Program*, DETROIT MERCY L., <http://www.law.udmercy.edu/index.php/academics1/law-firm-program> (last visited Oct. 25, 2015).

208. *Id.*

209. *Id.*

210. *Externships*, DETROIT MERCY L., <http://www.law.udmercy.edu/index.php/academics1/externships> (last visited Oct. 25, 2015).

There will be challenges encountered throughout the curricular reform process, not the least of which will be finding agreeable times for faculty members within a subject cluster (all professors whose courses include a particular subject, such as contracts: Contracts, Sales, UCC, Remedies, etc.) to meet. Likewise, there will probably be disagreement among the cluster faculty members as to what prerequisites, if any, should be required for upper-level courses. In addition, faculty must expend considerable effort to continually evaluate and change the curriculum so that the desired outcomes are met.<sup>211</sup>

### 3. Skills-Based Curricular Changes at Other Schools

Several schools in addition to UDM have worked hard to integrate practice skills into their curriculum, with a handful doing so long before the recommendations of the *Carnegie Report*.<sup>212</sup> What follows is a sampling of such efforts. However, not every skills reform from each listed school is detailed.

Some law schools have reformed the first year curriculum. Harvard Law School requires that their 1Ls take international and comparative law, legislation and regulation, and a problem solving workshop where there are sundry discussions of issues relevant to the jobs of attorneys.<sup>213</sup> Dean Chemerinsky of the University of California Irvine School of Law favors the infusion of legal skills starting with the first semester legal writing course, with classes built around events more likely to occur in the early years of practice, such as arguing a motion to dismiss or a motion for summary judgment.<sup>214</sup> All first-year students perform supervised intake interviews with live clients, are assigned a lawyer mentor, and have a chance to perform pro bono work during their first year.<sup>215</sup> At the beginning of the second semester, Chemerinsky encourages his first-year faculty to infuse skills components into each course, such as contract drafting, negotiation, or trial practice.<sup>216</sup> Dean Chemerinsky's ambitions do not stop after the first year.<sup>217</sup> He has had success infusing practical components

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211. *Curriculum Mapping*, *supra* note 148, at 474.

212. *CARNEGIE REPORT*, *supra* note 1, at 194-95.

213. *J.D. Program*, HARV. L. SCH., <http://www.law.harvard.edu/academics/degrees/jd/index.html> (last visited Oct. 25, 2015).

214. Chemerinsky, *supra* note 106, at 597.

215. *Training for the Practice of Law*, UNIV. OF CAL. IRVINE SCH. OF L., <http://www.law.uci.edu/academics/curriculum.html> (last visited Oct. 25, 2015).

216. Chemerinsky, *supra* note 106, at 597.

217. *Id.*

into upper-level courses,<sup>218</sup> and requires students to have a clinical or similar experience.<sup>219</sup>

The Legal Skills Program at the University of Baltimore School of Law covers the whole first year.<sup>220</sup> The first semester involves the integration of doctrine from one first-year substantive course into the legal research and writing course.<sup>221</sup> In the second semester, students take Introduction to Advocacy, where they hone practical skills by working on a simulated lawsuit and receiving advanced writing and argumentation training in the form of a moot court preparation and competition.<sup>222</sup> For the upper-level student, the school has a comprehensive number of sequenced offerings, from simulation courses to clinical and externship opportunities.<sup>223</sup> The school has twelve clinics<sup>224</sup> and a full array of externship opportunities.<sup>225</sup> The University of Baltimore School of Law has a unique Clinical Writing Program where students participate in interactive seminars about letter-writing and drafting court documents.<sup>226</sup>

Like the University of Baltimore, the City University of New York (“CUNY”) School of Law incorporates skills courses throughout each year of law school.<sup>227</sup> In both semesters of their first year, each student must take a Lawyering Seminar course, which incorporates practical lawyering aspects and simulations into the legal writing process.<sup>228</sup> There is another Lawyering Seminar course requirement in the second year that expands on these first year experiences and also includes simulations, mediations, arbitrations, and mock trials.<sup>229</sup> In the third year, there is a requirement for either a clinical experience or a concentration (field placement), totaling twelve to sixteen credit hours.<sup>230</sup> CUNY also has a Writing Across the Law School Curriculum component.<sup>231</sup>

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218. *Id.*

219. *Id.* at 596.

220. *Legal Skills Program*, UNIV. OF BALT. SCH. OF L., <http://law.ubalt.edu/academics/jd-program/legalskills/> (last visited Oct. 25, 2015).

221. *Id.*

222. *Id.*

223. *J.D. Program*, UNIV. OF BALT. SCH. OF L., <http://law.ubalt.edu/academics/jd-program/> (last visited Oct. 25, 2015).

224. *Clinical Law Program*, UNIV. OF BALT. SCH. OF L., <http://law.ubalt.edu/clinics/index.cfm> (last visited Oct. 25, 2015).

225. *Externships*, UNIV. OF BALT. SCH. OF L., <http://law.ubalt.edu/clinics/externships/> (last visited Oct. 25, 2015).

226. *Clinical Law Program*, *supra* note 224.

227. *Curriculum & Course Descriptions*, CUNY SCH. OF L., <http://www.law.cuny.edu/academics/courses.html> (last visited Oct. 25, 2015).

228. *Id.*

229. *Id.*

230. *Id.*

231. *Legal Writing Center*, CUNY SCH. OF L., <http://www.law.cuny.edu/legal-writing.html> (last visited Oct. 25, 2015).

Ohio Northern University College of Law requires ten credit hours of skills courses.<sup>232</sup> To qualify, a skills course must offer several assessments of written work or practice-like simulation exercises.<sup>233</sup>

Similarly, in its six-lawyering skills courses, Liberty University School of Law requires work on a simulated lawsuit and on a transaction.<sup>234</sup> Students are required to take a litigation sequence or a planning sequence.<sup>235</sup> In the litigation sequence, students will gain experience in every phase of trying a lawsuit—from client interviewing to final verdict or appeal.<sup>236</sup> In the planning sequence, students draft contracts, advisory letters, and agreements, and experience mediation and counseling.<sup>237</sup> Remarkably, the emphasis on teaching lawyering skills is found all throughout the curriculum.<sup>238</sup>

The University of Richmond School of Law requires two years of lawyering skills courses,<sup>239</sup> totaling nine credit hours.<sup>240</sup> Five credits are taken in the first-year curriculum, in two courses that presumably amount to the traditional 1L legal writing course, along with components of negotiation, oral advocacy, and counseling.<sup>241</sup> The other four credits cover trial and appellate advocacy (Lawyering Skills III) and one course from a selection of skills courses, including several drafting courses, business planning, IP litigation, and environmental law (Lawyering Skills IV).<sup>242</sup>

Vermont Law School has a four semester, hands-on Experiential Advocacy Program for 2L and 3L students, which mimics a law office environment and where students complete many lawyerly tasks through given problems and simulations.<sup>243</sup> Students who complete the elective program are awarded an Experiential Advocacy Program Certificate.<sup>244</sup>

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232. *Upper-Division & Graduation Requirements*, OHIO N.U. PETTIT COLL. OF L., [http://law.onu.edu/academics/upper\\_level\\_experience](http://law.onu.edu/academics/upper_level_experience) (last visited Oct. 25, 2015).

233. *Id.*

234. *Course Descriptions*, LIBERTY UNIV. SCH. OF L., <http://www.liberty.edu/law/course-descriptions/> (last visited Nov. 17, 2015).

235. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. *Clinics & Lawyering Skills*, UNIV. OF RICH. SCH. OF L., <http://law.richmond.edu/academics/clinics-skills/index.html> (last visited Nov. 17, 2015).

240. *Curriculum: Courses & J.D. Requirements*, UNIV. OF RICH. SCH. OF L., <http://law.richmond.edu/academics/curriculum/index.html> (last visited Nov. 17, 2015).

241. *Id.*

242. *Id.*

243. *Experiential Advocacy Program*, VT. L. SCH., [http://www.vermontlaw.edu/Academics/General\\_Practice\\_Program.htm](http://www.vermontlaw.edu/Academics/General_Practice_Program.htm) (last visited Oct. 25, 2015).

244. *Id.*

Gonzaga University School of Law requires new Accelerated J.D. program students to take twelve experiential learning credits.<sup>245</sup> Requirements are met through either the law clinics or via externships.<sup>246</sup>

Elon University School of Law has recently created a seven-trimester program to replace the traditional six-semester offering.<sup>247</sup> In their second trimester of school, students are required to have a full-time legal job and take a course in the relevant practice area.<sup>248</sup> Experiential training constitutes twenty percent of the new curriculum,<sup>249</sup> which includes skills training in the first year.<sup>250</sup> Dean Luke Bierman, noting that the infusion of skills training at Elon was a necessary result of fewer opportunities for training on the job, stated, “schools need to step up and offer alternatives to provide students with practical training.”<sup>251</sup>

#### 4. Theoretical Changes

In addition to what law schools have done, legal scholars have proposed ambitious changes in order to infuse meaningful skills reforms into the curriculum. For instance, Professor Stephen Ellmann suggests the creation of “The Clinical Year,” which he describes in detail in his article by the same name<sup>252</sup> and which is modeled on the clinical experience in medical school.<sup>253</sup> Ellmann contends that this intense immersion experience will provide the necessary preparation for practice.<sup>254</sup> Ellmann suggests that small groups of students should complete three clinical rotations (in legal settings outside of the law school) during an entire school year, each rotation lasting approximately eight weeks and worth six credits apiece.<sup>255</sup> Each rotation would be preceded by an intensive, two-credit skills and substantive law component.<sup>256</sup>

Professor Margaret Martin Barry posits a model curriculum that involves infusing the first two years with practice skills and designating the

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245. *Gonzaga University Law School Announces Two-Year, Accelerated Degree Program*, GONZ. UNIV. SCH. OF L., <http://news.gonzaga.edu/2013/gonzaga-university-law-school> (last visited Oct. 3, 2015).

246. *Id.*

247. Mike Stetz, *Elon’s Bold Move*, 24 NAT’L JURIST 8, 8 (2015).

248. *Id.*

249. *Id.*

250. *Experiences*, ELON L., <https://www.elon.edu/e/law/academics/experiences/index.html> (last visited Oct. 25, 2015).

251. Stetz, *supra* note 247, at 8.

252. *See generally* Ellmann, *supra* note 24.

253. *Id.* at 878.

254. *Id.*

255. *Id.* at 881.

256. *Id.*

third year as a practice year.<sup>257</sup> Barry lobbies for legal writing assignments to be coordinated with the first-year courses.<sup>258</sup> In the second year of her curriculum, she includes “interviewing, counseling, storytelling, cultural awareness, dispute resolution, and written and oral argument,” which would be “taught through the use of simulations, role-plays, and other active learning techniques.”<sup>259</sup> Barry suggests the first semester of the third year should consist of either a clinical or externship experience, or a combination of the two, with the last semester being either a continuation of the first or consisting of another clinical or externship experience.<sup>260</sup>

Professor Drew Coursin proposes a Legal Rotations Model, which is also inspired by the medical school educational model.<sup>261</sup> Early on, students would be introduced to lawyering practices while still receiving the traditional law school theory and analysis development.<sup>262</sup> New students would be introduced to a practitioner-mentor on the first day of school, and each 1L course would be infused with some form of skills training.<sup>263</sup> During their 1L year students would participate in skills workshops,<sup>264</sup> and many skills-based assignments would partially determine their final grades.<sup>265</sup> The 2L year would introduce in-house legal rotations that are part clinical and part simulation in nature, preceded by an introductory subject-specific orientation.<sup>266</sup> The third year would be comprised of either advanced rotations (in-house or clinical externship) or an off-campus residency, the latter of which may resemble the old apprenticeship model.<sup>267</sup>

Much work needs to be done in order to find the correct balance between practice skills and theory in legal academia.<sup>268</sup> Schools can learn from the experiences and successes of several law schools that have infused practice skills into their curriculum, and from scholars such as Professors Ellmann, Barry, and Coursin. My three-part solution builds on these successes and writings. Since evidence strongly points to the need to infuse

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257. Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & SOC. JUST. 247, 267-68, 270, 272 (2012).

258. *Id.* at 269.

259. *Id.* at 270.

260. *Id.* at 272.

261. Coursin, *supra* note 15, at 1481.

262. *Id.* at 1481-82.

263. *Id.* at 1482-84.

264. *Id.* at 1485.

265. *Id.* at 1486.

266. Coursin, *supra* note 15, at 1487-89.

267. *Id.* at 1495-96.

268. See FUTURE RECOMMENDATIONS, *supra* note 41, at 3 (“The calls for more attention to skills training, experiential learning, and the development of practice-related competencies have been heard and many law schools have expanded practice-preparation opportunities for students. Yet, there is need to do much more.”).

skills training throughout the whole curriculum, practice skills training should be part of each semester of school.<sup>269</sup>

### *B. Practice-Ready Courses*

The *Carnegie Report* was particularly concerned with merging doctrine with practice skills in the law school curriculum.<sup>270</sup> The second part of my solution addresses this concern. In addition to the ABA's six credit experiential learning requirement (every student must take six credit hours of a simulation course, law clinic, and/or field placement),<sup>271</sup> law schools should require students to take twelve more skills credits, which could be wholly taken from existing elective skills courses that law schools have an abundance of. So every student would be required to take eighteen practice skills credits before graduating. In fact, the State Bar of California's Task Force on Admissions Regulation Reform noted as much in its discussion about its proposed fifteen credit hours of skills coursework (the fifteen credit requirement could be satisfied by taking a mix of externships, clerkships, apprenticeships, or skills courses).<sup>272</sup>

What should count as a skills course? We can start by identifying critical practice skills. For that, we can turn to the Statement of Fundamental Lawyering Skills listed in the *MacCrate Report*.<sup>273</sup> Not only is the list one of the centerpieces of this historic work, but also the *Critical Issues Summit* relies on *MacCrate's* Fundamental Lawyering Skills list, as well as the *Model Rules of Professional Conduct*, for identifying core competencies.<sup>274</sup> The list of Fundamental Lawyering Skills is repeated here for convenience: Problem Solving, Legal Analysis and Reasoning, Legal Research, Factual Investigation, Communication, Counseling, Negotiation, Litigation, and Alternative Dispute Resolution Procedures, Organization and Management of Legal Work, and Recognizing and Resolving Ethical Dilemmas.<sup>275</sup> The competencies discussed in the *Model Rules of Professional Conduct* include advocacy, diligence, providing proper communications to clients, confidentiality, recognizing conflicts of interest, advising, and the like.<sup>276</sup> The State Bar of California's Task Force on Admissions Regulation Reform expanded on those skills by adding:

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269. BEST PRACTICES, *supra* note 1, at 97-100.

270. CARNEGIE REPORT, *supra* note 1, at 12.

271. ABA STANDARDS 2015-2016, *supra* note 7, at 16 (Standard 303).

272. *Task Force on Admissions Regulation Reform*, *supra* note 62, at 16, 24-25.

273. MACCRATE REPORT, *supra* note 3, at 138-41.

274. ALI-ABA & ACLEA, *supra* note 55, at 6-7.

275. MACCRATE REPORT, *supra* note 3, at 138-41.

276. See *Model Rules of Professional Conduct: Table of Contents*, AM. B. ASS'N, [http://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_table\\_of\\_contents.html](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html) (last visited Oct. 25, 2015).

Witness Interviewing, Law Practice Management or Law Office Technology, Project Management, Budgeting, Practical Writing (such as contract drafting or pleading drafting), Trial Practice, Pre-trial Preparation, and Court Organization and Administration.<sup>277</sup>

Schools will be able to articulate which skills to stress from their curriculum review process.<sup>278</sup> As an example of what courses would meet the skills requirements listed above, we can start with the following elective skills courses offered at UDM as an example: Accounting for Lawyers, Alternative Dispute Resolution, Civil Trial Practice, Counseling and Negotiations, Real Estate Transactions, Advanced Advocacy, Advanced Legal Research, and Litigation Technology.<sup>279</sup> We can add any clinics that a school offers, such as the following clinics at UDM: Criminal Trial Clinic, Immigration Law Clinic, Veterans Law Clinic, Intellectual Property Clinic, Juvenile Law Appellate Clinic, and State Appellate Defender's Office Criminal Advocacy Clinic.<sup>280</sup> We should include simulation courses, such as the twenty-three listed simulation courses (LFP courses) at UDM.<sup>281</sup> We should also count externship opportunities.<sup>282</sup>

Because schools like UDM already offer a wide array of skills courses,<sup>283</sup> additional costs associated with requiring eighteen credits of skills courses can be minimized or eliminated by imposing baseline workload requirements and by capping enrollment in qualifying courses. In that way, the professorial workload amongst qualifying skills courses is more uniform. Teaching Assistants, librarians, and/or a few adjunct professors may handle additional work. Students would not necessarily miss out on taking an elective course in an area that interests them; it is likely that several subject areas are already offered or stressed in existing skills courses.<sup>284</sup>

Eighteen credit hours should be viewed as merely the floor for entry into practice with base-level competence. This number closely mirrors what practitioners call for,<sup>285</sup> and would still be dwarfed by much higher

277. *Id.*; *Task Force on Admissions Regulation Reform*, *supra* note 62, at 24.

278. *See, e.g.*, Earl Martin & Gerald Hess, *Developing a Skills & Professionalism Curriculum—Process and Product*, 41 U. TOL. L. REV. 327, 336 (2010).

279. *Course Listings*, U. DET. MERCY, <http://www.law.udmercy.edu/index.php/academics1/academics-1> (last visited Oct. 25, 2015) [hereinafter *Course Listings*, U. DET. MERCY].

280. *Course Listings - 5000 Series (Clinics)*, U. DET. MERCY, <http://www.law.udmercy.edu/index.php/academics1/academics-1/category/courses-starting-with-5000> (last visited Oct. 25, 2015).

281. *Course Listings - 7000 Series (Simulation Courses)*, U. DET. MERCY, <http://www.law.udmercy.edu/index.php/academics1/academics-1/category/courses-starting-with-7000> (last visited Oct. 25, 2015).

282. *Externship Opportunities*, U. DET. MERCY, <http://www.law.udmercy.edu/index.php/academics1/externships/15-academics/188-externship-offerings> (last visited Oct. 25, 2015).

283. *Course Listings*, U. DET. MERCY, *supra* note 279.

284. *See, e.g., id.*

285. *See supra* notes 43-46, 60-62 and accompanying text.



percentages of required clinical or field placements in other professions.<sup>286</sup> Requiring eighteen credit hours of skills courses strikes a balance between requiring a whole year of skills training (such as what Professors Ellmann, Barry, and Coursin, propose<sup>287</sup>), and the failure of law schools to produce practice-ready graduates with a much smaller experiential learning requirement of three (and now six) credit hours.<sup>288</sup> This requirement has additional meaning given the changing law firm setting: Gone are the days when firms had the luxury of training new hires,<sup>289</sup> and many students simply will not take an appropriate amount of skills courses if left to their own volition.<sup>290</sup> Eighteen credit hours would provide students with the minimum amount of exposure to basic and varied practice skills and situations.<sup>291</sup> Each school would retain control of the courses used to satisfy the eighteen-credit hour requirement through the curricular analysis process discussed above (keeping in mind that the six credit ADA experiential learning requirement must be satisfied by a simulation course, clinic and/or field placement<sup>292</sup>). Schools must have this discretion; the burdens associated with administering a set curriculum would be too onerous on schools that may not already have a particular course or clinic in place or lack the appropriate staff. Giving each school the discretion to determine which courses would satisfy such a requirement allows them to choose existing skills courses, thus eliminating the harshest of administrative burdens and costs.<sup>293</sup>

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286. CLEA, *supra* note 45. (the lowest percentage, for social work, still requires 30% clinical or field placement instruction).

287. Ellmann, *supra* note 24, at 878, 881; Barry, *supra* note 257, at 272; Coursin, *supra* note 15, at 1495.

288. See *supra* note 3 and accompanying text.

289. See Matasar, *supra* note 34, at 24-25; Coursin, *supra* note 15, at 1468; REFORMING LEGAL EDUCATION, *supra* note 34, at 2-3.

290. Ho, *supra* note 17 (acknowledging as much); Harriet N. Katz, *Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools*, 59 MERCER L. REV. 909, 936 (2008) (Students may not take skills courses because of a lack of confidence in their abilities, scheduling issues, or because they are not aware of the value skills courses provide); CARNEGIE REPORT, *supra* note 1, at 88 (“In most schools, this leaves direct preparation for practice entirely up to student initiative. Too often, the complex business of learning to practice is largely deferred until after entry into licensed professional status.”).

291. See ALTERNATIVE PROPOSAL *supra* note 44, at Standard 303(a)(3); TASK FORCE ON ADMISSIONS REGULATION REFORM, *supra* note 62, at 1; CLEA, *supra* note 45, at 2.

292. See ABA STANDARDS 2015-2016, *supra* note 7, at 16 (Standard 303).

293. THE CURRICULUM COMM. OF THE AM. BAR ASS’N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010 75-76,78 (Catherine L. Carpenter et al. eds., 2012) [hereinafter A SURVEY OF LAW SCHOOL CURRICULA] (Schools have many existing skills courses that they could choose from. In 2010, the vast majority of schools offered seven or more skills courses, with over half offering over ten such courses, an average of three in-house clinics, and ninety percent of schools also offered at least one drafting course.).

Although there is no one curriculum to strive for, student participation in a clinic would be an ideal skill experience.<sup>294</sup> A clinical experience gives students a chance to represent clients, and nearly all law schools have at least one in-house clinic, with the average number of clinics being three per school in 2010.<sup>295</sup> Despite the critical role that law clinics play in the development of practice-ready skills, a combination of clinical staffing constraints,<sup>296</sup> relatively high costs associated with clinics,<sup>297</sup> and the need to add other types of practice-ready experiences makes it beneficial to allow for additional components of practical instruction to any requirement. Simulation courses offer practice-like assignments that, like clinics, are tightly supervised by experts.<sup>298</sup> Like in-house clinical opportunities, externship opportunities are widely available in nearly all law schools<sup>299</sup> and provide yet another practice experience.<sup>300</sup> Remaining credits would be chosen from a list of existing skills courses that focus on the *MacCrate Report's* list of Fundamental Lawyering Skills and the other skills mentioned above,<sup>301</sup> which are already taught in skills courses offered in law schools.<sup>302</sup> Some schools may satisfy all eighteen credits (the six credit ABA requirement and my call for twelve additional skills credits) entirely through clinics, simulation courses, and externships. Others may require more than eighteen credit hours of experiential learning. Allowing schools the flexibility to determine which courses satisfy the eighteen credit hours is

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294. Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 279, 292-93 (2012) [hereinafter *Back to the Future of Clinical Legal Education*].

295. A SURVEY OF LAW SCHOOL CURRICULA, *supra* note 293, at 76.

296. *E.g.*, Joy, *supra* note 123, at 322; Chernerinsky, *supra* note 106, at 597 (clinical education is expensive because of the intense faculty supervision required); Dennis, *supra* note 123, at 1086-87 (typically, a clinician supervises 8 to 12 students per year).

297. *E.g.*, Joy, *supra* note 123, at 309 (small class size that is demanded by intense supervision is seen as being more costly than a large lecture course); *Back to the Future of Clinical Legal Education*, *supra* note 294, at 305-06 (“[T]he cruel dilemma of the moment is that the same economic conditions that make clinical education increasingly difficult for law schools to afford make clinical education increasingly necessary for law schools to offer.”); Ann Marie Cavazos, *Demands of the Marketplace Require Practical Skills: A Necessity for Emerging Practitioners, and Its Clinical Impact on Society – A Paradigm for Change*, 37 J. LEGIS. 1, 34-36 (2011) (the cost of clinical education has been a constant concern); Sharon L. Beckman & Paul R. Tremblay, *Foreward: The Way to Carnegie*, 32 B.C. J.L. & SOC. JUST. 215, 219 (2012) (the high costs of providing clinical education has been a persistent complaint); Anthony G. Amsterdam, *Clinical Legal Education – A 21<sup>st</sup> Century Perspective*, 34 J. LEGAL EDUC. 612, 617-18 (1984); CRAMTON REPORT, *supra* note 3, at 23 (clinical programs cost three to four times more than the cost of large classes).

298. See Cynthia Batt, *A Practice Continuum: Integrating Experiential Education into the Curriculum*, 7 ELON L. REV. 119, 142-44 (for a general discussion on simulation courses).

299. A SURVEY OF LAW SCHOOL CURRICULA, *supra* note 293, at 77.

300. Katz, *supra* note 290, at 920 (Clinics and externships develop professional identity).

301. MACCRATE REPORT, *supra* note 3, at 138-41; TASK FORCE ON ADMISSIONS REGULATION REFORM, *supra* note 62, at 24.

302. For a typical law school skills-based course list, see *Upper Level Legal Methods*, RW U. L., <http://law.rwu.edu/courses/legal-methods> (last visited Oct. 25, 2015). These courses are a partial list that satisfies their required two upper-level skills courses (in the form of a Legal Methods requirement).

key because each school is likely to find differences between the curriculum review process and the unique characteristics of its legal market area.<sup>303</sup> This individual approach allows for the probability that each school's mix of skills courses will likely differ to some degree. For instance, one institution may identify business knowledge as a missing core practice skill. Yet it is possible that another school may already provide adequate skills training in business knowledge.

There is yet more flexibility to be had. An adequately skills-infused doctrinal course should count toward the eighteen-credit experiential learning requirement. There are already doctrinal courses that have an integrated skills component, and several existed since before the *MacCrate Report*.<sup>304</sup> I can immediately identify three doctrinal courses that I took over twenty years ago that had a significant skills component therein.<sup>305</sup> Doctrinal faculty who add a skills component to their course will be free to choose which of the aforementioned competencies to add. The skills component should not be so burdensome as to detract from the primary role of imparting students with theory, and it should not take up an inordinate amount of course time. Perhaps a skills component can be satisfied by a Writing Across the Curriculum requirement. In Contracts, students could be asked to find sample contracts on point with an issue and then draft a contract using the samples as a guide. In Torts, faculty members could assign students as counsel to a case and require them to draft a memo, complaint, or opinion letter as to potential liability. Students could be required to identify and fill out documents for the procedural steps necessary to try a case in Civil Procedure, testing student knowledge on notice, service of process, jurisdiction, venue, sufficiency of pleadings, joinder, the Erie Doctrine, discovery, motions, etc. Perhaps a team of two students could determine timelines for filing documents, choose a jurisdiction, and produce all necessary documents up to a certain point in the process, etc.

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303. See generally Patricia Mell, *Law Schools and Their Disciples*, 79 MICH. B.J. 1392, 1394 (2000) (Acknowledging that nearly all schools offer a blend of skills courses and specialty programs, the author implies that each school needs the flexibility to offer skills courses that address the needs of their legal community); ABA STANDARDS 2015-2016, *supra* note 7, at 16 (Standard 303(A)(3)) (The ABA standards offer some flexibility in meeting their six credit experiential learning requirement in that it can be satisfied by a clinic, simulation course or field placement); TASK FORCE ON ADMISSIONS REGULATION REFORM, *supra* note 62, at 24-25 (This recommendation also acknowledges the need for flexibility). FUTURE RECOMMENDATIONS, *supra* note 41, at 23-24 (This ABA Task Force report recognizes the need for more heterogeneity amongst law schools).

304. MACCRATE REPORT, *supra* note 3, at 239-40. For more recent calls for integrating doctrinal courses with a skills component, see REFORMING LEGAL EDUCATION, *supra* note 34, at 141-42; CARNEGIE REPORT, *supra* note 1, at 194-98.

305. In Property I during the fall of 1993, we analyzed a statute and then wrote a new statute; in Civil Procedure II, we drafted a class action complaint; I took Property II and we also had a substantial skills requirement therein.

The integration of skills into doctrinal courses poses a unique question. How much of a skills component needs to be added to a doctrinal course in order for it to count toward the remaining twelve credits (remember there is a six credit ABA experiential earning requirement)? At a minimum, a qualifying doctrinal course should have one substantial skills component. Absent an ABA rule, perhaps the answer is to devote three weeks for skills in a doctrinal course, which would count as one experiential learning credit. This does not mean that three whole weeks of classes would need to be devoted to skills training; rather, much of the work would take the form of one or more out-of-class assignments. If there was a uniform requirement among law schools for eighteen skills credits, then allowing some of those credits to be satisfied from integrated courses would be a good way to help balance the whole curriculum with a better combination of theory and skills training.

Schools must be given flexibility to determine which skills to add to each doctrinal course, how much of the course will be devoted to the skills portion, and how many skills credits to assign for such an integrated course.<sup>306</sup> Such flexibility is exactly what the State Bar of California Task Force made it a point to suggest.<sup>307</sup> However, there would need to be a consistent rule that is applied to all integrated courses at each school.

As already mentioned, I believe extra costs associated with an eighteen credit hour skills requirement can be greatly minimized or avoided for pure skills courses because schools already have an abundance of them. But doctrinal professors who add a skills component to their courses are more likely to need help grading the work because of large class sizes. However, extra costs can be somewhat contained in this situation by the use of Teaching Assistants, librarians, and/or by hiring a few adjunct professors. To encourage faculty members to integrate their doctrinal courses, the school could offer incentives. Additionally, the thought of adding practice skills to doctrinal courses should be a popular idea among midsize and large law firms. Perhaps some of those firms would be willing to help underwrite the extra cost associated with this endeavor. Finally, as briefly mentioned below, having fewer bar-tested subjects would allow law schools the chance to repurpose faculty to help contain the costs of integrating skills into doctrinal courses.

Moreover, I do not see a large increase of work for law school administrators. Administrators can give qualifying skills courses an

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306. See *supra* note 303.

307. TASK FORCE ON ADMISSIONS REGULATION REFORM, *supra* note 62, at 25.

electronic attribute, which will make tracking compliance a relative easy affair.<sup>308</sup>

### C. Mandatory Skills Component on Bar Exam

In 1983, the ABA Task Force for Professional Competence concluded that the ABA should support the creation of a skills component to the bar examination.<sup>309</sup> The Task Force noted that the bar exam merely replicated the traditional law school testing experience and did not guarantee that students were practice-ready.<sup>310</sup> Over the years, practice-minded academics, judges, and members of the National Conference of Bar Examiners (“NCBE”) have called for the testing of lawyering skills on state bar exams.<sup>311</sup> My third solution furthers the Task Force recommendation of skills testing on bar exams. In doing so, the profession would be more aligned with the medical profession, which requires the passage of a three-step licensure examination before being allowed to practice medicine unsupervised and which, in part, requires the demonstration of skills competency.<sup>312</sup> Completing the three steps is typically a multi-year process, starting before the third year in medical school and ending sometime after the first year of residency.<sup>313</sup> The ABA Task Force on the Future of Legal Education recently became yet another proponent of bar exam change, concluding that there should be fewer doctrinal subjects tested on bar exams and there should be more skills testing.<sup>314</sup>

Why does every person who takes the bar exam have to show proficiency in understanding sundry, largely obtuse, theoretical questions in order to be admitted to practice law, when few will encounter a fraction of those issues in practice?<sup>315</sup> The bar exam is largely irrelevant to the practice

308. Interview with Loretta Lewins-Peck, Registrar, in Detroit, Mich. (Mar. 31, 2014).

309. FINAL REPORT, *supra* note 3, at 13-14, 30.

310. *Id.* at 7.

311. See Diane K. Minnich, *Performance Testing—A Better Bar Exam?*, 40 *ADVOC.* 8, 8 (1997) (Idaho judge Hon. J. William Hart stated, “[a]dding the performance test to the Idaho bar exam will more effectively test an applicant’s ability to practice law in an ethical and professional manner.”); see also Kenneth F. Seibel, *The Changing Face of the Ohio Bar Exam*, *OHIO L.*, at 16, 36 (May-June 2000) (“[T]he work of an attorney involves much more than what can be assessed using only essay and multiple-choice questions.”); Erica Moeser, *President’s Page*, *B. EXAMINER* 4, 5 (2006); Steven M. Barkan, *Should Legal Research be Included on the Bar Exam? An Exploration of the Question*, 99 *L. LIBR. J.* 403, 403 (2007); Steven M. Barkan et al., *Testing for Research Competency on the Bar Exam: The Next Steps*, 28 *LEGAL REFERENCE SERVICES Q.* 281, 282 (2009) (“[O]ne best practice is to sample as broad an array of the skills and knowledge needed in practice as is practical . . .”).

312. *FAQs: Questions about USMLE*, USMLE, <http://www.usmle.org/frequently-asked-questions/> (last visited Oct. 26, 2015); *Step 2 CK*, USMLE, <http://www.usmle.org/step-2-ck/> (last visited Oct. 26, 2015).

313. See *FAQs*, *supra* note 312.

314. TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, *supra* note 40, at 33.

315. See James S. Hardy, *Lowering the Bar: Why We Should Test Skills, Not Abstracts*, 38 *COLO. LAW.* 93, 93, 95 (Nov. 2009).

of law.<sup>316</sup> Instead, the bar exam “reinforces the narrow range of skills emphasized in most law schools” and is largely a test of memory capacity.<sup>317</sup> By focusing on having fewer bar-tested subjects, bar examiners would still be able to test what remains relevant while also allowing law schools the chance to repurpose faculty. Refocusing could help effectuate my first solution of infusing practice skills with doctrinal courses, which would help contain costs.

Testing legal skills competencies would not be difficult. A good exam already exists in the form of the Multistate Performance Test (“MPT”), which is developed by the NCBE.<sup>318</sup> Testing for lawyering skills competency could be accomplished by requiring all states that do not have a performance test to utilize the MPT.<sup>319</sup> The majority of states already require the MPT portion on their bar exams.<sup>320</sup> The MPT requires examinees to:

- (1) sort detailed factual materials and separate relevant from irrelevant facts; (2) analyze statutory, case, and administrative materials for applicable principles of law; (3) apply the relevant law to the relevant facts in a manner likely to resolve a client’s problem; (4) identify and resolve ethical dilemmas, when present; (5) communicate effectively in writing; and (6) complete a lawyering task within time constraints.<sup>321</sup>

Examinees may be required to write a will, a memorandum, a brief, a client letter, a closing argument, or similar documents typically drafted in practice.<sup>322</sup> If examinees were certain that one or more of these vital practice skills would be tested, the chances of developing basic competence before the exam would be great.

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316. *Id.* at 95 (“There is simply no correlation between one’s performance on the bar exam and one’s performance as an attorney.”).

317. J. Kirkland Grant, *The Bar Examination: An Anachronism of Gatekeeper to the Profession?*, 70 N.Y. St. B.J. 12, 14 (1998); see Mary A. Lynch & Kim Diana Connolly, *Is it Time for Real Reform?*, 85 N.Y. St. B. A. J. 31, 32-33 (2013).

318. *Preparing for the MPT*, NCBE, <http://www.ncbex.org/exams/mpt/preparing/> (last visited Nov. 25, 2015); Seibel, *supra* note 311.

319. Ben Bratman, *Improving the Performance of the Performance Test: The Key to Meaningful Bar Exam Reform*, 83 UMKC L. Rev. 565, 568-71 (2015) (implying that all jurisdictions should use the MPT).

320. *Jurisdictions Administering the MPT*, NCBE, <http://www.ncbex.org/exams/mpt#jurisdictions-map-view> (last visited Nov. 25, 2015).

321. *Preparing for the MPT*, *supra* note 318.

322. *Id.*

The Multistate Bar Examination (“MBE”), like all multiple choice exams, is said to be an “extremely narrow measure[] of intelligence.”<sup>323</sup> The Multistate Essay Examination (“MEE”) allows for deeper analysis than does the MBE.<sup>324</sup> The MEE tests a much broader level of understanding than does the MBE. The MEE not only tests issue spotting, but also the ability to articulate, organize, and present knowledge under time constraints.<sup>325</sup> However, given shorter time allotments, far fewer subjects can be tested on the MEE than can be on the MBE.<sup>326</sup> In addition, neither the MBE nor MEE directly test practice skills: of course there are no multiple-choice exams in practice, nor are practicing attorneys required to write on every possible issue associated with a fact pattern.<sup>327</sup>

The skills tested by the MPT actually mirror practice skills.<sup>328</sup> For example, the time management skills required for the MPT,<sup>329</sup> as well as the documents produced on the MPT,<sup>330</sup> are similar to what is required in practice. On the MPT, one must first sort through the relevant and irrelevant facts before applying the law to the facts and creating a document.<sup>331</sup> This mirrors many initial client interviews in practice, where it is the job of the attorney to find the relevant facts among the many facts given by the layperson. This complexity makes the MPT a superior practice-ready test as compared to the MEE and MBE.

The skill of reading and analyzing primary authority and extracting the correct rule of law to produce a document is a very real practice task that is tested on the MPT, whereas the MBE and MEE do not test analysis at this level of complexity.<sup>332</sup> Additionally, MPT takers must do this quickly so that they may draft the required document in the allotted exam time.<sup>333</sup> Contrast these extreme time constraints to the law student who has a few days to analyze the cases assigned for his or her next class, and one can see

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323. Maureen Straub Kordesh, *Reinterpreting ABA Standard 302(f) in Light of the Multistate Performance Test*, 30 U. MEM. L. REV. 299, 306-07 (2000).

324. *Id.* at 307.

325. *Id.*

326. *Id.* at 309.

327. *Id.* at 309-10.

328. *Id.* at 310-18; See Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrater Report into a Doctrinal Course*, 3 NEV. L.J. 32, 40-42 (2002).

329. Kordesh, *supra* note 323, at 311-12; Grant, *supra* note 317, at 17.

330. Noble-Allgire, *supra* note 328, at 40; Kordesh, *supra* note 323, at 317-18; Jason B. Wesoky, *Raising the Bar: Eliminating the Guesswork to Measure the Substance*, 38 COLO. LAW. 93, 96 (Nov. 2009); Grant, *supra* note 317, at 17.

331. *E.g.*, Grant, *supra* note 317, at 17; See Suzanne Darrow-Kleinhaus, *Incorporating Bar Passage Strategies into Routine Teaching Practices*, 37 Gonz. L. Rev. 17, 19 (2002); Seibel, *supra* note 311, at 36.

332. Kordesh, *supra* note 323, at 315, 318.

333. Darrow-Kleinhaus, *supra* note 331, at 26.

how infusing practice-like time management skills into the curriculum would help practice-readiness.<sup>334</sup> Additionally, a student's analysis of the day's reading assignment may culminate in a case brief or book briefing, but not with the production of a practice document.

MPT takers are forced to learn how to prepare a variety of practice documents before the exam is administered, as it is not known which document they will have to produce on the MPT.<sup>335</sup> This is a skill that is not easily replicated in law school, where few schools have more than the six-credit ABA-mandated experiential learning requirement,<sup>336</sup> and students will often not take skills course electives.<sup>337</sup> Therefore, students typically receive limited document drafting experience.<sup>338</sup>

In the practice of law, it is important to follow very specific directions, whether in crafting court documents, adhering to client requests, etc.<sup>339</sup> The stakes are high. Not doing so could result in having a court filing rejected or the attorney facing termination or disciplinary action for not following client requests. The MPT includes explicit directions for document formatting and so on.<sup>340</sup> If the directions are not followed, the MPT taker loses points. The directions on the MPT are more complex than the instructions on the MBE and MEE.<sup>341</sup> Students who are studying for the MPT get a chance to improve on skills such as attention-to-detail—a skill professors realize students often lack.<sup>342</sup>

States could further emphasize practice skills by administering the practice exam at a time other than when the MBE and MEE are tested, bringing legal licensure more in line with the multiple-exam format akin to medical practice entry.<sup>343</sup> Having a separate skills exam would direct focus and ensure proper preparation for basic practice skills.

Adding the MPT to every state bar exam would send a strong message to law schools that they need to prepare their students for this practical test,

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334. See Kordesh, *supra* note 323, at 312 (Generous deadlines are given in law school courses).

335. See, e.g., *id.* at 317 (do not know what type of document will have to be produced); Darrow-Kleinhaus, *supra* note 331, at 28-29 (providing examples of documents that MPT test takers have been required to produce).

336. See Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. 1 (2014-2015), (Only eighteen percent of law schools require a clinic); *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. 1, 59-61 (2015); see also *supra* note 290.

337. See *supra* note 290.

338. A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 2018 (2012).

339. See Lorenzo A. Trujillo, *Law School: The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 U. COLO. L. REV. 69, 85-86 (2007).

340. Kordesh, *supra* note 323, at 318; Noble-Allgire, *supra* note 328, at 41-42.

341. Kordesh, *supra* note 323, at 318.

342. See Darrow-Kleinhaus, *supra* note 331, at 19.

343. See Trujillo, *supra* note 339, at 99.



which will likely cause curricular revision that would greatly complement doctrine. It is by combining doctrine with practical hands-on application that a superior understanding is achieved.<sup>344</sup>

#### IV. CONCLUSION

Now more than ever, law schools must ensure they have a balanced curriculum or face stark consequences. Law schools must ensure that each of their students is competent in the practice skills, such as those listed in the *MacCrate Report's* Fundamental Lawyering Skills.<sup>345</sup> Law schools should address practice skills in each year of law school, and identify weaknesses through the curricular review process to guarantee that additional skills courses are implemented in a well thought-out, systematic way. To further ready our graduates for practice, students should be required to complete at least eighteen credits of practice-ready, hands-on coursework, including the six credit ABA experiential requirement plus twelve other credits of experiential learning. Finally, each state should mandate the passage of the full MPT exam before granting a license to practice law.

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344. See BEST PRACTICES, *supra* note 1, at 71-73; CARNEGIE REPORT, *supra* note 1, at 12.

345. MACCRATE REPORT, *supra* note 3, at 138-40.