1996

Development of a Criminal Law Clinic: A Blended Approach

Norman Fell
Thomas M. Cooley Law School

Follow this and additional works at: https://engagedscholarship.csuohio.edu/clevstlrev

Part of the Criminal Law Commons, and the Legal Education Commons

How does access to this work benefit you? Let us know!

Recommended Citation

This Article is brought to you for free and open access by the Law Journals at EngagedScholarship@CSU. It has been accepted for inclusion in Cleveland State Law Review by an authorized editor of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.
I. **INTRODUCTION** .............................................. 275
II. **HISTORICAL PERSPECTIVE OF PRACTICAL LEGAL EDUCATION** .............................................. 277
III. **CHANGE IN TEACHING FOCUS** .............................................. 278
IV. **NEED FURTHER DEVELOPMENT** .............................................. 280
V. **SKILLS AND VALUES AND THE ART OF LAWYERING** .............................................. 282
VI. **INTERN CLINICS** .............................................. 284
VII. **EXTERN CLINICS** .............................................. 286
VIII. **MODEL OVERVIEW** .............................................. 291
IX. **PUTTING IT TOGETHER** .............................................. 293
X. **MAKING IT WORK** .............................................. 297
XI. **CONCLUSION** .............................................. 301

I. **INTRODUCTION**

Traditionally law schools have viewed the study of law as an academic science with the development of theoretical skills and methodology being the objective of a legal education. In furtherance of this objective, students were given a course of study rooted in case analysis and well grounded in substantive legal doctrine. There are legal educators who believe that a curriculum teaching the traditional model is the school's exclusive role and that the professional skills and values associated with the practice of law are more properly acquired by the emerging lawyer in post-graduation settings. However, the times are changing.

Within the legal community there has been increased attention focused on the profession's ability to produce ethical and competent lawyers and on the law school's traditional role in the professional development of its students. This is perhaps due to the vast increase in the numbers of persons entering the legal profession, the inability or unwillingness of law firms to devote

---

1Norman Fell is an Associate Professor of Law at Thomas M. Cooley Law School, and is the Director of the School's Elderlaw and Criminal Defense Clinics. B.S. Wayne State University in 1965; J.D. Wayne State University in 1968.

significant resources to training their new lawyers, detailed media scrutiny of
attorney performance, and the generally poor public perception of legal
practitioners. A result of this attention is the recognition by many academics and
the practicing bar that the law schools have a responsibility to broaden their
curriculums to offer their students an education that includes the fundamental
competencies required of the practicing lawyer.3

This recognition has resulted in a tremendous impact on legal education.
Law schools are changing the way they educate their students. Curriculums
dedicated to the scholarly examination of legal premises and theoretical
doctrine are being expanded to include an education that encompasses basic
lawyering skills and values. Whereas in the 1960s there were few law schools
offering skill development courses for credit, by the 1980s practical professional
development was a part of the curriculum of nearly all law schools and in the
1990s the great majority of schools are offering a variety of skills courses over
the entire three year curriculum.4 The objective being to provide a balanced
and comprehensive professional education that will prepare the law student
for entry into the world of legal practice and lay a foundation for the emerging
lawyer's development as a professionally and socially responsible lawyer.

As curriculums evolve to encompass an expanded educational scope, law
schools are faced with the task of examination of their teaching methodology
in order to establish delivery systems that can effectively and economically
integrate the practice skills with traditional legal education. Being convinced
that a successful skills development program must include the students
experiencing the practice of law in a structured educational context, I began a
criminal law externship clinic in 1994.5 The intention was to create a model that
could serve as a basis for expanding student opportunities to engage in
live-client interaction. The purpose of this paper is to describe that model in
the context of its place in the development of practical legal education.
Hopefully, it will assist non-clinical faculty to better understand clinical
education and the role of clinical faculty in the developing educational
continuum and to offer clinical educators an example from which programs
can be developed to expand clinical opportunities for their law students.

3American Bar Association Section of Legal Education and Admission to the Bar,
Legal Education and Professional Development-An Educational Continuum, Report of
Education: The Need For Reflection And Horse Sense, 44 J. LEGAL EDUC. 548, 549 (1994).

4MacCrate Report, supra note 2 at 237; Clinical Legal Education: Report of the
Association of American Law Schools-American Bar Association Committee on
Guidelines For Clinical Education, 7 (1980) [hereinafter Guildlines for Clinical
Education].

5The Criminal Defense Clinic was established at T.M. Cooley Law School as an
elective course in the spring of 1994 and has been offered in each of the three yearly
terms to present. For a description of the Clinic's operation and structure see section
VIII, infra.
II. HISTORICAL PERSPECTIVE OF PRACTICAL LEGAL EDUCATION

It is not the implementation of a new idea that marks its success but rather its profound evolution as it interacts with the existing structure, meets the dynamics of use, and adapts to the change of circumstance. So it is with the innovation of practical legal education into the law school curriculum. The concept is not new. As early as the 1930s and 1940s there were those who recognized the value of preparing law students for the realities they would face in the actual practice of law.6 However, in the face of the firmly implanted and almost universally accepted tradition that a scholarly education was the proper role of the law school, little movement took place in that direction until the late 1960s. It is to that time that the birth of today's practical legal education can be traced. It was an era of heightened social conscience where the government had announced its "war on poverty" and where both private and governmental organizations were formed and funded to address the needs of the underclass.7 It was in that national climate that the Ford Foundation created the Council On Legal Education for Professional Responsibility (CLEPR). CLEPR offered grants to legal educational institutions to establish legal clinics in law schools for the purpose of providing legal services to those who could not afford it.8 The 1970s through the early 1990s was a time of continuing national economic vitality. "Soft money" was available from a variety of governmental and private organizations for the funding of law school clinics which addressed special, but not necessarily poverty law based, needs. In line with the consciousness of the times and the soft money assistance many law schools took advantage of opportunity.9 Certainly one of the most important catalysts for change in law school education was the introduction, in significant numbers, of these clinical programs into the law school world. It was from the CLEPR program and other such "soft money" programs that sprang the proliferation of law school clinics which are now included in practically all law school skill development curriculums. It was from the clinics themselves that sprang the various non-clinical practical skills courses that are now being offered in nearly all accredited law schools.


7 Guidelines for Clinical Education, supra note 4, at 7; MacCrate Report, supra note 3, at 50.

8 Laser, supra note 5, at 274.

9 For a breakdown of resource allocation for law school clinics, see MacCrate Report, supra note 2, at 248-54.
III. CHANGE IN TEACHING FOCUS

Although it may not have been foreseen, the introduction of clinical law into the traditional legal education model created a profound and irrevocable change in how law schools teach law. A most significant effect was the impact of the clinical educator. A different type of teacher came into the legal education community. In line with the CLEPR funding purposes, the early clinics were mostly in-house live client poverty law programs. Implementation and running these programs required a familiarity with poverty law—someone who had been there and done that. Many came from legal services programs. These early clinicians were lawyers-become-teachers and they viewed legal education from a practical perspective. Themselves the product of the traditional law school curriculum, they were acutely aware of how ill-prepared the students were to engage the real world practice of law. Faced with the need to get the students up to snuff in their ability to handle the clinic caseload, they designed the clinical programs to encompass the teaching of a variety of practical skills. They introduced their students to subjects such as interviewing, counseling, negotiation, pretrial and trial practice which were otherwise ignored in the law school's curriculum. Although the various clinics were not uniform in methodology, there were basic common elements. A contemporaneous classroom component of the clinical program was a central teaching vehicle in most of all the live client in-house clinics. True to the concept of learning by doing and the urgency in preparation of the students to put that learning to use, the clinic classroom was distinctly different from the lecture and casebook analysis methodology generally found in the traditional classroom. Although some lecture on the law, rules and procedures directly applicable to the clinic caseload subject matter was necessary, it was generally secondary. The main classroom educational delivery systems were simulations, role play, mock court hearings, skill exercises and case-round discussion. Outside the classroom it was usual for the teacher to meet with the students individually or in small teams in periodic supervisory or tutorial sessions to reinforce the classroom lessons and to prepare, facilitate, evaluate and reflect upon the student's live case performance.

The methodology introduced in clinical education focused on experiential learning with the corollary development of specific practical lawyering skills. Teaching was conducted with small student groups and involved a close personal student/teacher dynamic. It was a far cry from the standard legal education model and was initially viewed by the law schools as of marginal

---


11 Id.

12 For a graphic description of clinical supervisory teaching dynamics, see Guidelines For Clinical Education, supra note 4, at 67-8, quoting Alfred Conrad, Letter from the Law Clinic, 26 J. LEGAL EDUC. 194, 195 (1974) and Peter Hoffman, Memorandum to Nebraska Clinical Review Committee 8-9 (March 1, 1977).
value to the school's educational goals. Generally politically left of center, primarily practitioners not educators or scholars, these early clinicians and their practice-oriented programs were not an easy mix with the established academic community. The clinicians, teaching non-traditional subjects by non-traditional methods, were viewed more as tradesmen than academics and were generally regulated to second-class status as members of the law school faculty. The traditional curriculum and the clinic programs may have existed under the same structural roof, but they were distinct separate entities.

Partially in reaction to the law school's marginalization of themselves and their programs and more primarily due to the dynamics of clinical law itself, these new members of the legal education community were propelled to introspectively examine the educational viability of what they were doing. The clinical educators, charged with running in-house clinics, were faced with a dual purpose. They were required to deliver competent legal service and to provide a sound educational experience for the students. In order to accomplish these purposes the clinical program had to maintain a law office, educate students in the fundamental lawyering skills, supervise and oversee the students' caseload, prepare students for performance, and provide the students the opportunity to reflect upon, evaluate, and internalize their experience.

As the clinicians engineered their programs in an attempt to efficiently and effectively accomplish these functions, it became apparent that sound pedagogical structures were essential to efficiently ready the students for the real world experience and to effectively maximize the experience's educational value. It also became apparent that there was not a substantial body of knowledge accumulated upon which they could draw to structure their practical skills programs. As they tinkered with the design and content of their programs, the clinicians became more aware of themselves as educators and of their unique position to fill a void in the traditional model of legal education. The result was a shift of perspective. The lawyer/teacher became the teacher/lawyer. What lawyers do and how to teach it was examined from an empirical view. From this examination, there emerged from the clinical education movement a rich and diverse literature on the clinical process, the lawyering process and skills development as an integrated component of legal education.\textsuperscript{13}

As clinical pedagogy became established, the effects of including practical skills in the educational mix became apparent. Students were introduced to a different way of learning the law—by doing. In the traditional classroom they were called upon to perform from casebook analysis. They were familiar with the role and in that context they assimilated legal doctrine and the analytical process in learning to "think like a lawyer." In the clinical setting, they were handed another person's problems and given the responsibility to address

\textsuperscript{13}See, e.g., Lasher, \textit{supra} note 5 at 245 n.8; McDiarmid, \textit{supra} note 8, at 249 n32; Guidelines For Clinical Education, \textit{supra} note 3, 48 n.18 (citing numerous examples of leading applied clinical scholarship).
those problems as a professional. They needed to learn to "do like a lawyer." The role change was significant. For the first time to many students, came the realization that what they were doing was more than just about them. In the classroom they were the sole recipients of the impact of their performance. In the clinic the student's performance directly impacted on lives other than their own. Taking on live-client representation brought home the realization of the responsibilities and power that accompany the practice of law. The intensity, drama, and pace of live-client representation proved to have a highly emotional and exhilarating impact on the students resulting in a strong impetus to learn. This high degree of motivation was aptly demonstrated in the clinic students' determination to master the law and legal procedure and their willingness to put in long hours in preparation often far beyond the time required by course minimums. The clinical students' enthusiasm spilled over to the academic classroom area. Other students were drawn to the clinics and many academic faculty took interest. Student demand for the inclusion of skill development as part of their education grew. Schools uniformity expanded their curriculums to include skill courses and many non-clinical faculty found that integrating the practical lawyering methodology, pioneered in the clinics, into their standard course structure was stimulating to both the students and themselves.

While the marginalization of clinical faculty and their programs is still a fact in a number law schools, there is no question that they have gained a place in the educational structure and their contributions to legal education and the profession is substantial. As was stated in the recent ABA Task Force Report: "[t]heir role in the curricular mix of courses is vital. Much of the research leading to the knowledge about lawyering, the legal profession and its institutions is found in the work of clinicians, and many are recognized to be among the most dedicated and talented teachers in law schools." They introduced a different perspective on legal education and began a process in which the entire educational program of law school has been put under a microscope. "This has resulted in a number of thoughtful studies by the American Bar Association and the American Association of Law Schools as well as important scholarship by both clinical and traditional faculty on the question of how sound professional education ought to look."

IV. NEED FURTHER DEVELOPMENT

Not withstanding the positive impact of the legal education community's inclusion of skills training and clinical opportunities in their programs, most

14 See, e.g., Harry S. Subin, Clinical Pedagogy- The Educational Program of the New York University School of Law Criminal Law Clinic, Guidelines For Clinical Education, supra note 3, at 259.

Homer La Rue, Message From the Chair, Newsletter (Association of American Law Schools Section on Clinical Education, Omaha, Ne.), May 1996, at 2.

MacCrate Report, supra note 2, at 238.

Laser, supra note 5, at 276.
of today's graduating law students still do not receive sufficient practical legal education to equip them with a foundational basis for dealing with the reality of legal practice. In a recent comprehensive report (often referred to as the MacCrate Report) issued by the American Bar Association's Task Force on Law Schools and the Profession was an "in-depth study of the full range of professional skills and values necessary for a lawyer to assume professional responsibility for handling a legal matter." The Task Force tapped into the pulse of the question by including input from the full spectrum of the legal community. It considered historical and present data on the profession and the state of legal education, previous and recent empirical studies of what lawyers do, theoretical articles, academic literature, and the written and oral statements of recent graduates, their employers, practicing lawyers, judges and traditional and clinical law professors. The conclusion reached was that lawyers generally, and especially beginning lawyers, are inadequately prepared to handle the necessary lawyering tasks required of the professionally competent and socially responsible attorney. Greater instruction is needed in fundamental lawyering skills and professional values, primarily although not exclusively, through instruction in law schools by full time faculty. While recognizing that the law schools alone could not reasonably be expected to shoulder the entire task of turning students into full-fledged lawyers, the import of the Report was none-the-less a clear message to the legal education community. Professional development occurs in a continuum that reaches its most formative and intensive stage during the law school experience and continues throughout a lawyer's professional life. Law schools have the responsibility to provide their students a practical legal education that will provide the emerging lawyer a strong structural foundation in skills and values upon which to base his or her continuing career development. In considering the role and direction of legal education, the report envisioned a law school education that included a strong focus on skills training, derived primarily from what practicing lawyers actually do. It concluded that law school clinics provide "an invaluable contribution to the entire educational enterprise" and "are a key component in the development and advancement of skills and values throughout the profession."

Even many of those who accept the conceptual envisionment in the report, view the MacCrate Report with a skeptical eye. It is not the need or value of practical legal education that is questioned, but more the law schools' ability to incorporate the intensive curricular adjustment necessary to make it

18MacCrate Report, supra note 2, at xi.
19Rose, supra note 1, at 550-1, citing Costonis, supra note 1, at 170-187.
20MacCrate Report, supra note 2, at 3.
21Rose, supra note 1, at 551.
22MacCrate, supra note 2, at 238.
effective. It comes down to time and money. Given a five year curriculum and an abundance of resources, law schools could very adequately provide all their students an education well grounded in substantive legal doctrine, legal method, and the techniques of legal research which also includes a strong foundation in practice skills and values. This not being viable to most schools, there is a need to empirically examine what practical legal education is and to look at how it can be effectively delivered within the parameters available to the educational institution.

V. SKILLS AND VALUES AND THE ART OF LAWYERING

In a second section of the Report, the ABA Task Force made a significant contribution in the examination of practical legal education by identifying lawyering functions central to the roles of lawyers in practice which they published in their "Statement of the Fundamental Professional Skills and Values" (SSV). The ten fundamental lawyering skills identified in the SSV are:

1. Problem Solving
2. Legal Analysis and Reasoning
3. Legal Research
4. Factual Investigation
5. Communication
6. Counseling
7. Negotiation
8. Litigation and Alternative Dispute-Resolution Procedures
9. Organization and Management of Legal Work
10. Recognizing and Resolving Ethical Dilemmas.

The four fundamental lawyering values identified in the SSV are:

1. Provision of Competent Representation
2. Striving to promote justice, Fairness, and Morality
3. Striving to improve the profession
4. Professional Development

The SSV is an important comprehensive guide which every well trained lawyer should be familiar with prior to assuming the full responsibilities of a member of the legal profession. However, knowledge of the law and SSVs alone is insufficient to enable the emerging lawyer to perform as a competent and socially responsible practitioner. Equally important is an additional body of knowledge which lawyers use when applying legal doctrine, skills, and values in the real world of practice. That body of knowledge is what has been termed "the art of lawyering." It comes into play where the facts and the application

23 Rose, supra note 1, at 551, citing Wallace Lor, Introduction: The MacCrate Report-Heuristic or Prescriptive?, 69 WASH L. REV 505 (1994); see also, Costonis, supra note 1, at 172.

24 MacCrate Report, supra note 2, at 138-141.

25 The phrase "the art of lawyering" was coined by Gary Laser and is extensively described and discussed in his article, Laser, supra note 5, at 250-68.
of the law do not present themselves as well-formed structures and where and the entire circumstance may be subject to the dynamic variance of human interaction.

In designing a curriculum that will effectively provide a practical legal education, it is crucial to understand the interplay between the development of the skills and values presented in the SSV and the development of the learning experience that comprises the "art of lawyering." While skills training and the "art of lawyering" are inextricably bound in application they involve separate areas of professional development and are amenable to distinct pedagogical approaches. Effective teaching of the SSVs, ordinarily involves three components: 1) the development of concepts and theories underlying the skills and values being taught; 2) the opportunity for students to perform lawyering tasks with appropriate feedback; and 3) reflective evaluation of the student's performance by a qualified assessor.26 In regard to the first component, there has emerged, along with the growth of practical legal education, a wealth of excellent and diverse publications and texts on the subject of what lawyers do and how they do it.27 These materials have become the standard texts used by skills teachers to develop the theories and concepts underlying the particular skills and values and are commonly being taught to the students by lecture, assigned reading, discussion and dialog. The second and third components are well accomplished through simulation, role play and other skill exercises.28 They are amenable to being taught in a classroom setting and have been the prominent methodology in the classroom component of most live-client clinics and other skills courses.29 Learning and training in basic lawyering skills and values is foundational in skill development and readies the student for the next step, the art of application.

Donald Schon's work on professional knowledge and education was influential in conceptualizing the term "art of lawyering."30 He speaks of the art of professional practice in the following way:

Inherent in the practice of the professional we recognize as unusually competent is a core of artistry.

Artistry is an exercise of intelligence, a kind of knowing, though different in crucial respects from our standard model of professional knowledge. It is not inherently mysterious; it is rigorous in its own terms; and we can learn a great deal about it ... by carefully studying the performance of unusually competent performers.

26 MacCrate Report, supra note 2, at 243.
27 See supra note 11.
28 See infra part VIII.
29 McDiarmid, supra note 9, at 247-8.
In the terrain of professional practice, applied science and research-based technique occupy a critically important though limited territory, bounded on several sides by artistry. There are an art of framing, an art of implementation, and an art of improvisation—all necessary to mediate in the use in practice of applied science and technique.31

The "art of lawyering" is learned by doing. It cannot be taught in the classroom. It is often said that experience is the best teacher.32 In some areas of learning it is the only teacher. The art of lawyering is the practitioner's contextual application of the lawyering skills and values. It is called upon by the lawyer to improvise and reflexively react to the nuances and interpersonal dynamics of live-case action. It can be observed, prepared for and practiced, coached but not taught, and goes beyond what can be achieved in simulated settings. It is a "knowing-in action" that taps upon each individual's storehouse of personal and professional knowledge and establishes his or her unique pattern of applying that knowledge in the legal arena.33

When properly guided, evaluated, and reflected upon the power of experiential learning is the strongest of learning tools. An educational program designed to effectively deliver a practical legal education must include the opportunity for its students to meaningfully experience the "art of lawyering" under the guidance of a skilled assessor. It is here that the live-client clinic plays its unique an essential role in educating law students before they undertake fully their responsibilities as members of the legal profession. It is from a perspective that includes both skills training and live-client experience that law school educators should examine their existing programs and view future curriculum design.

VI. INTERN CLINICS

In evaluating skill delivery systems from the pedagogical perspective, the in-house live client clinic is considered by many to be the epitome of practical legal education. In this traditional model the student is placed to work in a law office that is created, maintained and supported by the educational institution. The salient feature is that both the size, nature and content of the caseload and the student's interaction with the legal process is under the control of the clinical professor. The direct control of all the experiential and developmental components of the program lends itself to the integration of traditional legal analysis, with practical skill development and the art of actual application. This provides the teacher a complete overview and control of the educational process with the ability to monitor and evaluate the student's actions and to

31 Id. at 13.
32 McDiarmid, supra note 9, at 247 n.29.
33 Schon, supra note 29, at 23.
tailor the experience to meet the particular needs and skills of the individual student.

Typically, the very thing that lends an object its strength is also the root of its weakness. While the in-house clinic is the premier of clinical programs in providing the student the most comprehensive of learning experiences, it requires a significant dedication of resources. The primarily factor being the intense faculty input. The average ratio is eight to ten students to one faculty member. One of the reasons for the low teacher to student ratio is the teacher’s direct involvement in preparing, facilitating, and evaluating the students’ participation in the live client experience. Another is providing the students with a fundamental education in the substantive law practiced in the clinic and in the basic lawyering skills necessary for even an elementary entry into the legal arena. In addition, the in-house clinic, whose primary purpose is to provide a functional experience within the academic environment, also operates as a law firm. Management systems, staffing, file control, physical equipment and plant and all the other accouterments of a law office must be maintained. During the 1970s an 1980s when a significant source of clinical financial support was outside funding and school enrollment was expanding, the law schools were willing to absorb the high resource dedication required by in-house live client clinical programs. But even under these circumstances, resource allocation within most schools allowed their clinics to enroll only a limited number of their student body in these programs. With the 1990s came a change in the national climate. Governmental priorities, policies, and both public and private budgetary belt tightening has resulted in "soft money" funding for clinical education being dramatically reduced or drying up altogether. At the same time law schools have been experiencing significant declines in enrollment. It is hardly a time that expansion of the traditional in-house live client method of delivering a practical legal education holds much attraction to school administrators. To the contrary, faced with having to pick up the full clinic tab and reduced tuition revenues, one of the most obvious places for the law school to take in a notch or two is the resource heavy clinical program. Faced with the demand for expansion of practical legal education and considering recourse allocation limitations, modification of present programs and alternative methods of delivering practical legal education merit attention.

34 MacCrate, supra note 2, at 250; see also, Guidelines For Clinical Education, supra note 3, at 82.


VII. EXTERN CLINICS

Extemship clinics offer another method of providing live client experience in a practical legal education program. A clinical externship program permits students to receive course credit by participation in certain lawyering activities away from the law school, in a field placement. Unlike internships where the student is placed in a law office that is created, maintained and supported by the educational institution, the students in an externship program have their lawyering experience in a legal setting external to and independent of the school. The student’s caseload and interaction with the legal process are under the control and supervision of the field supervisor, generally a practicing attorney with the firm or organization in which the student is placed.

The separation of the educational institution from the law office and case functions has an immensely attractive and practical affect. It eliminates the expense to the school of maintaining a law office and it frees the clinical educator from the considerable time and energy required by office administration, direct case supervision and caseload responsibilities. This in turn allows the externship program to maintain higher teaching loads and accommodate significantly more students at lower costs than possible with in-house clinics. The large disparity in the types of externship programs, the programs’ various structures and the clinicians’ differing non-clinical teaching responsibilities, make it difficult to establish consistency in profiling teaching loads in today’s externship programs. However, based upon a review of the collected data and personal experience in clinical application, it would be safe to say that a full-time clinical teacher could maintain an effective extern program containing a strong educational component with 24 to 36 students. This a more than triple the student/faculty ratios currently attributed to in-house clinics.

Due in part to its promise of serving more students for less dollars, the externship model of clinical education has become quite prevalent in legal education. Over 80% of today’s law schools have at least one such program. In addition to the economic benefit, there are other distinctly valuable educational advantages in the development of professional skills offered by out-of-house clinics that in many instances may not be available through in-house clinics.


38 See a description of the T.M. Cooley program, infra, Part VIII.

39 Seibel & Morton, supra note 36, at 422.

One such benefit is in program flexibility. With the increased trend toward specialization in law practice, externships offer an economically feasible way for the school to respond to a variety of student and faculty legal field interests. A school's clinical program could offer a variety of extern experiences such as Criminal Defense, Prosecution, Civil Poverty Law, Domestic Relations, Appellate Practice, Environmental Law, Indian Rights, and Non-Profit Corporation Law. The opportunities being limited only by placement availability, existing expertise in the faculty and an expressed interest of students. The range of contemporaneous experiences a school can make available through externships far surpasses the staffing capabilities of even the most expansive of in-house clinics.

Removing the law office and the lawyering experience from the school offers a direct learning benefit to the students. Legal education promotes the concept that education in the law is a self-learning process. Part of the art of teaching law is shifting control of the learning agenda from the teacher to the student. The field placement's independence from the school has a feel of the real world unlike other educational experiences and fosters the student's feeling of independence and self-reliance. Experience has shown that law students are often ready to assume a greater control of their learning agenda in externships than in traditional classes and even in-house clinics. This forum provides the best opportunities for faculty and students to experiment with the reallocation of that control. Externships are an excellent means of cementing-in the self-learning process initiated earlier and promoted throughout the student's law school education.

Another benefit of externships is the student's direct involvement with the legal community. Student's often choose a particular externship program because they can be placed with an office or organization that focuses in an area of law they wish to pursue. This provides them an opportunity to gain substantive as well as practical knowledge in a specialized area of law to an extent that might not be otherwise available in the law school curriculum. It also makes the students players in the specific legal community in which they may choose to practice after graduation. The knowledge of the territory and the exposure gained during this time may ease their entry into practice and give them a substantial leg-up in the job market. Externship programs offer a unique avenue for collaboration between the practicing bar and the law schools in the education, training, and entry into the legal profession of future lawyers—a "common enterprise" strongly urged in the ABA's Task Force Report.

Another important benefit is in student supervision. The freedom of the faculty supervisor to maintain a distance from the work product often leads to more global supervisory discussions then when the minutiae of case detail is involved. It allows the clinician a greater ability to concentrate on the

---

41Seible & Morton, supra note 36, at 418.

42MacCrate Report, supra note 2, at 3.
educational and reflective ramifications of the student's live case experiences. Also, students not working directly with a faculty supervisor on the cases often feel freer to express their performance anxieties, provide critical analysis on case decisions and performance of their field supervisors, and discuss other aspects of the legal process they dislike or challenge. Further the field supervisors who choose to engage in the program are usually eager to take on the mentor role. They are often excellent attorneys, good role models and master practitioners able to convey practice lessons (particularly in the "art of lawyering") to the student at a greater depth than the in-house clinical supervisor. In placing students with practicing attorneys in this apprentice type of relationship the students can gain valuable experience in the professional skills that in many instances may only be learned by the guided hand of one who is already there and immersed in the field. The dual supervisory components of practitioner and clinical educator can be one of the strongest benefits of the externship program.

Despite their benefits and popularity field placement programs pose particular challenges and need be approached with caution. Live-case experience is a powerful learning tool. Placing the student in an apprenticeship type relationship may give the student a stimulating and meaningful learning experience. But having the student engage in a live-client experience does not assure that the experience will result in the student's developing qualities that will make him or her a reflective socially and professionally competent lawyer. The separation of the experience from the academic setting has long been a legitimate concern among legal educators and is the primary reason that externships have been devalued, even among those who believe in the importance of experiential learning.43 Law schools are in the business of teaching law. It is a shirking of their obligations to merely provide a student an opportunity to get lawyering experience. It is ultimately the law school's responsibility to assure that the experience has educational focus in the development of professional skills. As Gary Laser and Andrew Watson point out in their articles on the legal profession and education this responsibility is not one to be delegated:44

Because law students do not habitually conceptualize their future roles as lawyers-professionals, those who teach them how to behave as lawyers become extremely important in the ultimate shaping process. It thus boarders on irresponsibility to leave the professionalizing process to the random adventitious experiences of post [or interim]-law school encounters. It is critical then that legal educators avoid reinforcement of inappropriate behavior and avidly grasp every opportunity to reinforce positively those behaviors which are vital to effective and appropriate professional practice.45

43 Seibel & Morton, supra note 36, at 417.
44 See Laser, supra note 5, at 273-4.
45 Andrew S. Watson, Lawyers and Professionalism: A Further Psychiatric Perspective
It must not be entrusted to chance or the casual teaching which comes from practitioners whose major interest lays elsewhere. I do not mean to depreciate the concern of the practice bar; indeed I trust that I have made it obvious that their assistance is valuable and that they have much more to contribute than they have ever been asked to provide. But I do believe that this concern must be focused by those who devote their life primarily to teaching the overall range of concerns.\textsuperscript{46}

The point is well taken. Field supervisors will vary in their aptitude and attitude. While the field supervisor may be an excellent lawyer, a concerned mentor and a fine role model he or she cannot be expected to have the skills, perspective, time or inclination to ensure the educational viability of the student’s experience. The expediencies of actual law practice, the short cuts, the tricks of the trade, and the characteristics of the advocacy system of law can often cause those immersed in the action to lose sight of the doctrinal, social and moral underpinnings of the law. The field placement attorneys’ main focus is in attending to their cases. The educational ramifications to the extern of what occurs in the work place is not their primary concern. Unguided or ill-guided experience, particularly at the formative stages of career development, can set in unproductive and undesirable patterns of behavior that can mark the emerging lawyer’s professional personality throughout his career.

The power of a professional identity to affect future practice should not be underestimated, for once a professional identity is formed, the lawyer will most likely pattern her professional behavior on the model she has internalized, rather than the a less desirable model to which she may have be exposed in the real world of practice.\textsuperscript{47}

Because of the variety of application, particular adaptations, and ease of implementation, many externships have developed without apparent substantial educational structure. This has led those who review such programs to focus on those instances and distrust the extern concept as a primary mode of clinical education. One commentator noted:

Too many externship programs are not well supervised by the law schools, and the students do not subject their lawyering experiences to the reflective learning process. Externship supervisors are often selected without careful screening and without the law schools explicitly informing the externship supervisors of the particular goals of the program. There is often very little interaction between the


\textsuperscript{47} Laser, \textit{supra} note 5, at 273.
These concerns were apparently shared by the American Bar Association (ABA) in their adoption of Revised Interpretation 2 of Accreditations Standard 306(c) which imposes specific regulations governing the content, structure, teaching, and review of field placement programs. In particular, requirements that a full-time faculty member conduct a periodic program review and maintain open communication with the field placement and the student, a preference for on-site visits during the course of each placement, and a preference for a contemporaneous classroom component. In addition for programs awarding more than six hours credit there is a required classroom component, a written appraisal of the program every three years, and a documented on-site visit to the placement by a full-time faculty member.

The ABA regulatory specifications have been criticized as not being based on empirical data and as an unnecessary exercise of micro-management by the ABA. Based on data from a recent national survey on content and methodology of externship programs it is argued that the specific requirements respond "to a perception of serious academic weakness that is greatly exaggerated, and address that supposed problem in ways that will undermine the valuable pedagogical flexibility that characterizes externship programs." The variants of externship applications require a flexibility in their internal structure and programming and may require some variance in ABA standards. None-the-less, it is essential that in all clinics the live-case experience be complimented by a structured educational component that gives the student the opportunity to see what they do in practice in a theoretical and principled context. It is the role of the educational institution to use the student's lawyering experiences as a basis of teaching the student to reflect, analyze and evaluate upon their experience. To instill in the student the concept that lawyering is a continuous learning process and that the lawyering experiences are the basis for that learning. When the experience is reviewed, reflected upon and evaluated in the context of appropriate skill and value considerations, it can be used to establish a reflective self-learning pattern that can accompany a lawyer throughout his or her career. Donald Schon refers to this concept as "reflection-in-action." It is this self-reflective quality that is clinical education's special gift to the

48 Id. at 280.
49 ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, Standard 306(c), Interpretation 2 (1993) [hereinafter ABA Standards].
50 Id. sec. (e)(2), (e)(3), (e)(5).
51 Id. sec. (h).
52 Seibel & Morton, supra note 36, at 441.
53 See Schon, supra note 29, at 26-40 for discussion of reflection as an integral part of professional development; See also Laser, supra note 5, at 255-64 (discussing and applying the reflective practicum to law school education).
emerging lawyer and it can be accomplished in a well structured externship program. In that regard, the ABA Standards are not prohibitive in the formation of a viable externship model. To the contrary, they can be useful as a focal point in structuring the course components.54

VIII. MODEL OVERVIEW

The following sections of this paper describe and discuss The Criminal Defense Clinical Externship program started at T.M. Cooley Law School. Professional skills education is best delivered in a learning continuum. This program is designed to build upon basic skills simulation courses with a live-client experience that blends the advantages of externships with the comprehensive academic oversight of in-house clinics.55 It is adapted to the particular characteristics, circumstances, and educational objectives of our institution and is being used as a model for further expansion of the school's clinical offerings. Others planning to initiate such programs or modify existing programs may find the model useful in adaptation to the circumstances of their own institutions.

Course objectives: The Criminal Defense Clinical Externship is designed to enable students to integrate theoretical and substantive knowledge of the law with the development of professional skills through their participation in the practice of law. It seeks to provide an opportunity for the students to: (1) have meaningful live-case experiences in an out-of-school setting; (2) use the experiences to maximize their development in the performance of the skills and values that mark a competent and socially responsible practitioner and; (3) learn to examine their interactions with the legal process in a manner that will ingrain in them a pattern of reflective self-learning.

Course description: The criminal law clinic is a two hour elective course. It is structured on an externship model with an out-of-school field placement and

54 The ABA's Revised Interpretation 2 of Accreditations Standard 305-2(d) program evaluation factors are:

(d) In field placement programs, as the number of students involved or the number of credits awarded increase, the level of instructional resources devoted to the program should also increase. The School and the Accreditation Committee shall evaluate programs in the light of the following factors:

(1) adequacy of instructional resources,
(2) classroom component,
(3) prerequisites for student participation,
(4) number of students participating,
(5) amount of credit awarded to each student,
(6) evaluation of student academic achievement,
(7) qualifications and training of field instructors,
(8) evaluation of field instructors, and
(9) visits to field placements.

55 See, e.g., Moliterno, supra note 34, at 77 (envisioning the combination of simulations and externships in a single coordinated program to be the future of professional skills education).
a contemporaneous classroom component. It is graded pass/fail. Eight to ten students are accepted in the program each term and all do their field placement with one public defender’s office located within an hour’s drive from the school. The clinic program is supervised and the classroom component taught by a full-time clinical professor.

**Field placement:** The defender’s office has twelve full-time attorneys who represent indigent persons charged with criminal offenses. Its caseload includes misdemeanor, felony, and juvenile matters and representation is provided clients from initial arraignment to ultimate disposition of cases. The public defender attorneys appear in district, circuit and probate courts throughout the county. The students are enrolled as volunteer employees of the public defender office in the capacity of legal assistants and are responsible to follow the rules, regulations, policies and conditions of the office. They are authorized to participate in client representation pursuant to a state court administrative rule. Each student works with and is supervised by a deputy public defender who is in control and responsible for the assignment of work tasks, the degree and nature of student involvement in the tasks, and the direct supervision of the student’s work performance. The specifics and scope of the particular experiences varies among students depending upon their supervisor’s caseload and need, however, all the students perform a variety of functions. Those functions include: interviewing clients and witnesses, case planning and investigation, legal research and writing, pleading and motion preparation, and negotiation and plea bargaining. All students appear in court and participate in a range of hearings including arraignments, preliminary examinations, motions, pretrial hearings, trials and sentencings. Neither the students, the clinic, nor the school are attorney of record on any case in which the students are involved and the students do not represent any client in their own name nor in the name of the school or the clinic. The students are required to spend a minimum of eight hours a week in either one-half or full day blocks for thirteen weeks of the term at the placement.56

**Classroom component:** There is a weekly two hour seminar-type class held at the school. It is formatted to facilitate group discussion and focuses on the field placement activities. The classroom is primarily intended to be a preparation, enhancement and complement to the students’ live client case experience. It provides an opportunity for the students to examine, discuss, and reflect upon their particular experiences, observations and interactions with the criminal justice system as well as providing guidance in: skill performance, moral and ethical considerations, and substantive and procedural criminal law issues. The class also functions as a focal point to observe and evaluate student progress in obtaining the educational goals of the program.

---

56 This minimum time requirement allocates four hours of weekly field work per unit of credit. *See Cf.,* Seibel & Morton, *supra* note 36 at 428 (reporting survey data indicating that the vast majority of externships allocate between three and five hours of weekly field work per unit of credit).
**Educational Objectives:** The clinic course's goals are to provide and educational experience in which each student will:

1. develop ability in the art of lawyering through live-case experience;
2. enhance the performance of specific lawyering skills essential to effective live-client representation, including: interviewing and counseling, case theory development, case planning and investigation, legal research and writing, motion preparation and practice, negotiation techniques, and trial preparation and practice;
3. establish a pattern of reflective self-learning through critical evaluation of their interaction with the legal process;
4. understand the moral and ethical considerations that accompany the practice of law;
5. gain knowledge in the procedural and substantive areas of criminal law, as practiced; and,
6. have an appreciation for the public service sector of the legal profession.

**Evaluation of Student Achievement:** The students keep a journal throughout the term which contains a time record and a chronological description of their field placement activities. They also enter into the journal a copy of written material prepared by them, and a weekly memorandum. The weekly entries are reviewed and selected material is discussed in group session during each class at the school. The field supervisors are supplied an evaluation form which they submit to the professor for periodic evaluations of student performance. The entire journal as well as the student's classroom conduct and participation is individually reviewed and evaluated by the professor at least two times during the term.

**IX. PUTTING IT TOGETHER**

In clinical education, the live-case contact is the foundation upon which the educational experience rests. In externships where the experiential component of the program is separated from the school, it is essential that the field placement be amenable to supplying the student with lawyering experiences that coincide with the clinic's educational goals. The educator, in turn, must be able to use those experiences in furtherance of his/her pedagogical objectives. The selection, preparation and oversight of the field placement office, the classroom and the students are essential to the building of a strong structurally viable externship program.57

---

57 But cf., Id., at 429, 444 (describing Cornell's and California Western's programs as examples of successful use of other methods of academic oversight where direct placement visitation and/or a contemporaneous classroom component is not feasible); See also Motley, supra note 39 (describing in detail California Western's out-of-house clinic).
Field Placement: Selection of the public defender’s office had several significant advantages. First is the nature of legal experience available. Criminal law is an excellent area for clinical experience. The cases move rapidly through the legal process, and the students can be involved with a good number and variety during the course of one semester. Criminal actions move in distinct stages of in-court case progression, each providing an experiential opportunity, and there are frequent trials. Because the cases have a quick turn around, the students are able to see most of them from beginning to end. This makes the results of a student’s work almost immediately apparent. In addition, the criminal justice system is extremely fruitful in ethical, moral and social issues and perhaps more than any other area of law tests the theoretical model of professional responsibility against actual practices. This provides a rich basis for the students to experience, examine and define their own professional and personal values in the context of the law’s real life dynamics.

Second, the size and structure of the field placement organization was important. The public defender’s office was large enough to accommodate the entire clinic class of eight to ten students at one placement. While it serviced several courts, its office administration and activities were centralized. It conducted office meetings on a regular basis. It had an office manager available to schedule, coordinate and oversee student activities and who was able to act as liaison between the students, the field supervisors and the faculty supervisor. These placement characteristics allowed the students to have a commonality of experience, be familiar with each other’s work, and form a cohesive group bond. They allowed the school to have a communication loop with the office administrators, field supervisors, and the students. The stratified administrative structure for handling the students’ interactions at the field placement was a good example of real world office management. The centralization of the students’ activities also accommodated a classroom focus, syllabus consistency and it provided a familiarity of persons, places and things which stimulated class discussion and participation.

A third selection consideration was the placement’s location. The public defender’s office and the courts it served were little more than an hour’s distance from the school. This made direct faculty oversight practical and a regular contemporaneous classroom component available. In addition, the proximity of the field placement and the school served an important fundamental purpose. It allowed the students freedom to experience the real world of legal practice free of the academic atmosphere, and yet maintain an educational perspective by continued involvement with the school.

A final consideration in selection of the field placement is faculty compatibility. To understand what their students are experiencing in the field, the teacher needs to have been there. A familiarity with the placement’s specific

58 See discussion of placement preparation and oversight infra part X.

59 See, e.g., Elliot S. Milstein, The Design of the American University Criminal Justice Clinic, Guidelines For Clinical Education, supra note 3, at 238, 239.
area of law and experience in how the law is practiced are essential teacher criteria. As was said of Professor Harold H. Hill, "you got to know the territory!"\textsuperscript{60}

\textit{Selection of Classroom Focus:} Because the student’s interaction with the legal system is separated from direct school oversight, it is essential that there be an academic structure which gives the experience its shape, form and substance. Critical to maximizing the educational value of the externship is the integration of the field placement and academic components of the program. This is the primary role of the classroom. The class syllabus was designed with four specific purposes—all of which were centered on the students’ live-case interaction: to prepare students for the experience, to facilitate the experience, to evaluate and reflect upon the experience, and to develop a pattern of self-learning.\textsuperscript{61} To make the most effective and efficient use of the limited classtime, class structure required a focus on its designated purposes and excluded that which was not necessary to accomplish its goals.

It was not the purpose of the externship to train students in the wide variety of professional skills. That could be accomplished elsewhere in the curriculum. Skills training being taught in a class separate from the classroom component of the clinic is logical and offers several advantages. As was discussed earlier, skills training and the "art of lawyering" are inextricably bound in application, however, they involve separate areas of professional development and are amenable to distinct pedagogical approaches.\textsuperscript{62}

Basic lawyering skills are taught primarily by implementing theoretical models through simulation centered exercises. Simulations are an important teaching technique with unique characteristics that have their own place in the practical education continuum. They offer a broad scope of skills coverage, some of which the student may not encounter in a particular clinical experience. There is a uniformity of experience which is important for planning, a depth of focus and an ability to concentrate on specific skill drills. They allow the student and the teacher to experiment with different styles and techniques without fear of consequences. Problems can be simplified with an orderly progression to the more complex. Simulation performance is amenable to interruption, repetition, and immediate critique. It can be videotaped for delayed, intense, and repeated review.\textsuperscript{63}

Simulations provide valuable training because they give the students a degree of competence and confidence in performing the basic lawyering skills\textsuperscript{64} in the clinic class they are useful in specific substantive law applications and case related preparations. But in regard to being a contemporaneous

\textsuperscript{60}Meredith Willson & Franklin Lacey, \textit{The Music Man}, Act I Scene I (1958).

\textsuperscript{61}See discussion infra Part X.

\textsuperscript{62}See supra part V.

\textsuperscript{63}E.g. Laser, supra note 5, at 265.

\textsuperscript{64}Milstein, supra note 58, at 246.
component of live-client clinics, broad based skills training by simulations is
an inefficient use of clinical classtime and is best utilized in classes independent
of the clinic. The energy and time to set-up, play out, and review simulated
performance is substantial. Further, while students are in the process of doing
real cases, they tend to view simulations as unreal and contrived. This results
in decreased motivation and therefore decreased learning value.

Clinic classtime is precious and is better focused on the unique features and
learning potential of the live-client experience. The time for skills training is
before the student enters the clinical phase of his or her practical legal
education. This is particularly true for externships where the students having
a foundational basis in lawyering skills before entering the legal arena is
essential to their ability to act independently.

Separation of the skills training course from the clinic also provides an
economy in scale. Often these courses are taught in large sections by regular
faculty with the class breaking into small work groups overseen by adjunct
teachers, who generally are practicing attorneys. This accommodates more
students and reduces costs with a higher student-teacher ratio. Our school, as
does most others, has substantial skills training courses already in the
curriculum. They are readily available as clinical prerequisites. Using the clinic
course to teach skills is a duplication of effort and because of the clinic class's
multiple purposes, often results in a watered down version of the training
intensity offered by independent skills courses. An added factor is that having
the students enter the clinic well versed and practiced in the lawyering skills
frees substantial time for clinical educator to engage more students and to focus
on the clinic's unique job, educating students in the "art of lawyering."

It also was not a purpose of the externship class to teach substantive law and
procedure although there was a strong temptation to do so. A marked
characteristic of beginning clinical students is their inability to use what they
know. The facts and circumstances of live-case action often do not come in
contextual order nor are they as descriptively packaged as classroom problems.
This causes even the brightest students to dramatically stumble when
attempting to apply substantive laws, rules, and procedures in actually
working the case. It's not that they don't know it. They just don't know that
they know it. The student's lack of ability to generalize their substantive
learning leads to the temptation to spend clinic time in review of legal doctrine,
evidence and procedure. The temptation should be resisted. First, the standard
curriculum has given the students the necessary tools to recognize issues and
to find, research, and analyze the law. It is the student's responsibility to use
those tools. Secondly, there is no reason to believe the clinical teacher is more
capable of conveying the material more effectively than the classroom teacher
has already done. Thirdly, because limited clinic class time is better employed
addressing the function for which it is best suited—developing the students'
ability to apply the law in the context of their particular case experiences.65

65See, e.g., Subin, supra note 13, at 262.
Experience has shown that when the students realize their performance depends on their understanding of the law and that it is their responsibility to get it on their own, they call upon their storehouse knowledge and devote themselves to preparation. Guidance that they can trust their knowledge, not teaching, is the push they need.

Selection of Students: Students can receive substantial benefits from inclusion of practical skills programming early in the school’s curriculum and practical experience has value at various stages of the students’ education. The externship model, however, requires an educational maturity that gives the students the functional capability to act with a degree of independence in the out-of-school legal setting. It also demands the open time to accommodate the placement work schedule. In addition, the live-client experience is intense and exciting for the students which often results in their committing considerably more time and energy in placement activities than required by course minimums—sometimes at the expense of other areas of study. For these reasons the clinic was limited to third year students who were in good academic standing and had schedule flexibility. They had to have completed their required basic academic courses and were required to have taken the foundational courses in pretrial and litigation skills offered at the school. Those students who had an expressed interest in criminal law, taken elective classes in that area, or had previous experience in criminal justice were given preference. Applications designed to illicit pertinent information were distributed and posted. Since there were about ten applicants for each available slot, selectivity was an option.

X. Making it Work

Placement: Selection of the field placement is only one side of the coin. They have to want the program. Current national economics supply a foot in the door. A characteristic common to both public and private organizations in today’s work world is downsizing. Budgetary constraints are causing staff reductions or hiring freezes, generally without a corollary reduction in work load. The clinic is able to provide a group of eager, dedicated, reliable volunteers who are educated in the law, trained in lawyering skills, have a high degree of accountability and are supported with a structured school program. By demonstrating that the use of extern students will assist with the organization’s workload without significant resource commitment, the program is sold. The fact of the matter is that externships work because they are based on a symbiotic relationship. The school needs a placement for its students to experience significant legal work and the placement needs persons capable of getting the work done. A viable program requires each entity to receive its expected benefit while assuring the other receives theirs. A team approach is essential.

It is incumbent upon the clinical program developer to assure the team structure. It starts with preparation of the field placement and carries on through program oversight. A good working agreement is based upon each party’s awareness of the other’s position and expectations. Having obtained a good understanding of the public defender’s office, the next step was to provide them an understanding of the clinic program. In an initial meeting with the public defender and his office manager they were given an information
packet. It contained information about the school and its mission, an overview of the clinical program and its objectives, criteria for student selection, a description of the clinic class and its educational objectives, and forms formatted for periodic evaluation of student performance. That meeting resulted in establishing the basic placement supervisory structure, the roles of the field and clinical supervisors and the communication loop for all involved. An information packet was distributed to each attorney and staff member. A presentation was made at a full staff meeting describing and discussing the externship program, what could be expected of the externs and what was expected of the field supervisors in regard to the students’ live-case experience, work supervision and evaluation process.

During the course of the semester the first and last clinic classes were scheduled at the placement office and held to coincide with placement office staff meetings allowing for a mix of all persons involved in the program. The first meeting proved to be an excellent way to orientate both the field supervisors and the students to the program. The last meeting served well to discuss, in hindsight, what was working and what parts of the program needed attention. An interim placement visit was scheduled to coincide with the field placement’s submission of mid-term student evaluations and regular telephone contact was maintained with the office manager and with individual supervising attorneys as needed. Field supervisors were invited to the school and participated in the classroom component and guest lectured to larger groups of students.

Familiarity of the people and the organization of the two entities cemented the team concept and proved valuable in many aspects. Knowing the field placement and them knowing the clinic was a basis for structuring, accessing and adapting compatibility of the placement and educational purposes. It maintained open lines of communication for problem identification and solving. It allowed the clinical faculty to select and prepare students so they could fit into the placement team and be ready to go to work with minimal starting downtime. It enabled the teacher to contextually understand the students’ field experiences and to adapt and use the classroom to maximize the value of both the placement performance and the students’ educational experience. It maintained an awareness in the placement that the externs are students involved in an educational process.

Students: The most common and easily discernable characteristic of the entering clinical student is uncertainty of role. They know they are students, but are being called upon to act as attorneys. Even those well steeped in practical skills preparation are faced with the leap from addressing neatly packaged facts and circumstances to being an active player in the rolling variants of live case representation. Generally these students can give lip-service to lawyering fundamentals but they are not quite sure what lawyers actually do and they are clueless as to how they do it. They initially view

66See supra part IX.
themselves more as law clerks than as advocates. The expectation that they take
on the lawyer role creates confusion and confusion creates anxiety. In the
beginning, the clinic program identifies the specifics of the students’ clinical
and work environments and addresses the role of the lawyer as an advocate
on a fundamental level. The objective being to reduce the period of confusion
and channel the anxiety into the development of an advocate’s prospective.

The preparation of the students for the placement experience begins before
the start of the term at an organizational meeting. The meeting serves as an
orientation to the program. The defense lawyer’s role in the criminal justice
system is discussed and the whats, whys and hows of a public defender’s office
are outlined. It is here that the students begin the process of developing a group
identity by working together to establish the logistics of scheduling placement,
school and class times. They are provided written material in a file. It outlines
the clinic operation from its educational objectives through performance
expectations. The file also contains a manual on the public defender’s office
which describes: the office organization and policies; the nature, scope and
extent of the workload; a personal directory; job description and other office
information. A file section lists the courts served, a map of their locations, and
the names of the judges, the clerks and the secretaries. It describes the
prosecutorial and police agencies they will be in contact with. A glossary of
commonly used terms, some of which are general criminal law jargon and
others that are local, is included. A listing of major state and federal cases
shaping the law used in the jurisdiction is also in the file. In addition selected
commercial videos depicting the criminal law process and the public
defender’s role were assigned for viewing. The students were expected to
review the material over break and encouraged to visit the placement office
and observe the courts they would be working in. Frontloading this
information prior to the beginning of the new term was easily accepted by the
students and effective. When they first walked into the placement they knew
names, places, and how things operated. Their savvy impressed all those they
came in contact with. It markedly eased their entry into the workplace and
proved to be a stabilizing factor for the students.

Classroom: The preparation process continues in the first class meeting. It is
an all-day session and is conducted on site at the public defender’s office. The
first part of the day is a discussion/lecture supplementing the earlier
orientation and going into the specifics of the criminal law process as practiced
in that jurisdiction. During the lunchtime the students meet with the staff and
field supervisors as a group informally. The last part of the day is turned over
to the office manager. She educates the students to office procedure and
systems, file and record maintenance and works out supervisory/extern
pairing and scheduling. The students then meet with their field supervisors,
are introduced to their specific work sites and given their first case assignments.
The students are now externs.

The remaining classes, except for the last, are at the school. They meet in a
conference room and are conducted in seminar style. The beginning classes are
heavily loaded with specific substantive law and procedure which all the
externs will encounter irrespective of their particular placement activities. This
requires some lecture, role play and simulation teaching techniques.
The primary teaching mode is group discussion centering on the externs' interaction with the legal process. They keep a journal throughout the term. The journal contains a time record and a chronological description of their field placement activities. This record is formatted to describe the externs' actions since the last class and to include their anticipated next action. The externs also prepare and enter into the journal a weekly memorandum describing and evaluating: one of their own lawyering experiences, the performance of another member of the legal profession, or an aspect of the legal process they observed during their placement activity. The memorandum is formatted to an adaptation of a critiquing technique developed by the National Institute for Trial Advocacy (NITA). These journal entries are the primary means of bringing pertinent placement activities to the classroom. In essence the students' live-case experiences are the course text.

In the early classes the teacher plays a strong interactive role in the critique and the discussion process. It is important to build the group in an evaluative methodology that examines their field experiences and observations in the context of sound performance and value models. The classroom process follows the NITA format used in the student memorandum which follows a four step approach in progressional analysis. It starts with a point of discussion. The student identifies one specific topic and precisely "headlines" the issue or problem. In the second step, the student reviews the facts and circumstances pertinent to the topic "playing back" what occurred in specific detail quoting actual language used when possible. The next step is an analysis of the actions described with the student providing the "rationale" behind the event. Why did he or she or the performer do what they did? Was it successful? Why or why not? Was it appropriate to accomplish the purpose? The fourth level is the student's "prescription" on how to do it better, to improve the performance or fix the problem. At this level the student uses role play and simulation to demonstrate a better way. The other students then join in using the forth level technique as the format for the discussion. The teacher functions as a guide to topics and issues raising implications corollary or implicit to the topics raised in discussion. As the term progresses the teacher's role diminishes. The externs become accustomed to peer review and the methodology becomes incorporated in the group dynamic. In the latter portion of the term, the class sessions are mainly self-generating discussions with many of the students engaging in self-critique as part of the process. In many ways the classes mirror real life experiences. They are dynamic and the content ebbs, flows and takes direction varying on the particular circumstances encountered in the work place. This type of teaching is not for all faculty. It takes a teacher adept with interpersonal relationships, an understanding of what the students are experiencing in the field and an ability to infuse structured skill models in a

67 NITA offers an Advocacy Teacher Training program designed specifically for law professors interested in developing effective methods of performance critique and review.

https://engagedscholarship.csuohio.edu/clevstlrev/vol44/iss3/4
non-structured class format. For those who are so suited, the teaching experience is exhilarating.

XI. CONCLUSION

The development of professional skills and values is now a part of law school education. As curriculums evolve to encompass an expanded educational scope, practical skills programing is evolving to more effectively deliver a comprehensive and economical foundation for the students' experiential learning. Within the practical skills community there has long been critical comparisons between the merits of the educational experience provided by simulation courses, in-house clinics and externships. What is emerging is a combination of methodologies in a single coordinated program of professional development.68

While each school's program methodology will certainly vary depending on their own particular characteristics, the common objective is to lay a foundation for the law student's entry into the world of legal practice as a professionally and socially competent lawyer. This is best accomplished in a blended educational continuum that includes skills training and experiential learning in a structured educational context.

68 See, Moliterno, supra note 34, at 77.