

## THE CLINICAL YEAR BEGINS

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*Law school clinics are inspired by medical school clinical education, but usually operate quite differently from their medical school counterparts. The Clinical Year, which this Article discusses, borrows more completely from medical education by immersing students in a full-year, 24-credit course in which students work full-time in three different law office placements, under the guidance of full-time faculty and of adjunct faculty members at each placement. This Article first outlines how such a course works, and demonstrates that it can be offered under the rules that now govern legal education. Then the Article argues that despite the Clinical Year's differences from many in-house clinics, this course has its own distinctive educational value, as an intensive apprenticeship experience that is simultaneously a continuation of academic study. The Clinical Year, in short, should become part of legal education's experiential toolkit.*

Should the third year of law school exist?<sup>1</sup> At a time of acute

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\* Professor of Law and Director of the Office of Clinical and Experiential Learning at New York Law School. I want to thank the many colleagues who have helped me to think about and implement the Clinical Year idea. It is no exaggeration to say that these colleagues include the full New York Law School faculty, which considered this proposal at two faculty meetings, as well as the members of the 2012-13 Curriculum Committee, chaired by Jethro K. Lieberman, which vetted the proposal before presenting it to the faculty. New York Law School's Dean, Anthony Crowell, not only supported the idea but played a crucial part in arranging with two different offices of New York's city government to site rotations with them. I'm also grateful to former Dean Richard Matasar, Deborah Archer, Frank Bress, Carol Buckler, Teresa Delcorso, Victoria Eastus, Lawrence Grosberg, Mariana Hogan, Gerald Korngold, Richard Marsico and Oral Hope, all of whom have provided feedback and support. Thanks also to the participants in workshops at which I've presented this idea, including Faculty Presentation Day at New York Law School on April 2, 2008; a panel discussion at the University of Washington School of Law conference on "Legal Education at the Crossroads: Ideas to Accomplishment: Sharing New Ideas for Integrated Curriculum," on September 6, 2008; and the Curriculum Work Group at the Second Annual Conference of the Task Force to Expand Access to Civil Legal Services in New York, on "Access to Justice: The Role of New York's Law Schools, Continuing the Conversation – The Role of Law Schools in Helping Meet the Essential Civil Legal Needs of Low-Income New Yorkers," held at New York Law School on May 16, 2013. This essay is an updated and extensively revised version of an earlier article, which appeared as *The Clinical Year*, 53 N.Y.L. SCH. L. REV. 877 (2008/09), and I thank the *New York Law School Law Review* both for its editing at that time and for its permission to revise the piece for publication here. I'm also grateful to Joy Radice for her thoughtful editing of intermediate drafts of this piece.

<sup>1</sup> Although I will speak throughout this Article about the "third year," students who go to law school in the evenings take four years to complete their studies. The learning needs of day and evening students are fundamentally similar, though it is not a simple

concern over the cost of legal education and the far from perfect job prospects of those who graduate from law school, the answer certainly is no longer obvious.<sup>2</sup> What is obvious, however, is that there should not be a third year of law school unless that third year makes an important difference in students' preparation for the work they are about to undertake.

In this Article, I begin by describing in Part I what that difference should be, as a general matter – namely, the better teaching of lawyering skills and values. Then in Part II I describe a new class at New York Law School, the “Clinical Year,” which seeks to accomplish that teaching by borrowing from the medical school idea of clinical rotations. The Clinical Year, as I'll explain in some detail, places students in a series of three full-time rotations in different legal settings over the course of their third year, through which students earn the great majority of their third-year credits. It might be thought that such a course cannot be squared with the restrictions placed by the ABA and others on experiential education, and so I will also address exactly how the course does fit within these constraints. I happily confess to a special interest in this course – I proposed it, and taught it in its pilot year, together with five adjunct faculty colleagues at the rotation sites. Finally I will explain in Part III why I believe the course offers special promise as an answer to the question of why the third year of law school remains valuable – broadly, because this course provides students with a deeper immersion in the world of practice than most law school courses, even experiential courses, can offer, and at the same time provides students with substantial and valuable academic guidance within this immersion, guidance that a year of practice out in the world would not likely supply.

## I. THE DIFFERENCE THE THIRD YEAR CAN MAKE

What is the difference that the third year of law school can make? There is a great deal to be learned about the law, and learning more, in more courses, *is* of value. But it is surely rare that students who simply accumulate a diverse range of law school classroom courses actually acquire deep enough knowledge of any field to be ready to practice it. The strongest justification for law school classroom study is

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matter to provide evening students with the same experiential learning opportunities as day students receive (because, among other reasons, most courts are not open in the evenings).

<sup>2</sup> See generally Samuel Estreicher, *The Roosevelt-Cardozo Way: The Case for Bar Eligibility After Two Years of Law School*, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 599 (2012); Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235 (2001).

not that it imparts expertise in legal doctrine but that it trains students in the process of “thinking like a lawyer.” For that goal, important as it is, the case for a third year of classroom study is weak. If students have not mastered the fundamental techniques of legal reasoning in two years of classroom study, a third year of the same kind of experience seems unlikely to solve their difficulties – although sustained interventions over the full course of law school may.<sup>3</sup> If students have mastered these techniques, mastering them some more seems unlikely to be the best use of their time. If the point is simply to give students the chance to absorb more legal rules on which they will be tested on the bar exam, it must be asked whether law school – as opposed to bar review courses – is really what is needed. (It is also fair to ask what the value of the bar exam is, at least to the extent that this exam amounts to a test of the students’ possession of limited and soon-to-be-forgotten knowledge of one field after another).<sup>4</sup>

One possible response is that the remaining year is needed to teach students intellectual skills that go beyond those most immediately seen as part of legal reasoning. Thus Bruce Ackerman argues that “[t]oday’s law school casebooks highlight opinions that display new patterns of legal argument based on economics and statistics as well as psychology and other social sciences.”<sup>5</sup> Understanding the contours of economic, statistical and social scientific argument is surely valuable, and in fact can shade into skills and experiential education,<sup>6</sup>

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<sup>3</sup> Students who are having difficulty mastering legal reasoning surely need intervention long before the third year. New York Law School’s program has begun such intervention as early as the second semester of law school with a special course, Principles of Legal Analysis (which we are now moving to the third semester), and continues with a guided curriculum, the Comprehensive Curriculum Program, for the upper years. See New York Law School, *Academics – Comprehensive Curriculum Program*, [http://www.nyls.edu/academics/j\\_d\\_course\\_of\\_study/comprehensive\\_curriculum\\_program/](http://www.nyls.edu/academics/j_d_course_of_study/comprehensive_curriculum_program/) (last visited Dec. 23, 2014). Undoubtedly the educational effort required to enable students to acquire these skills is, for those students who need it, itself a strong justification for the third year of law school.

<sup>4</sup> For recommendations that the bar exam test fewer doctrinal subjects, and place more emphasis on other areas such as access to justice or lawyering skills, see MASSACHUSETTS ACCESS TO JUSTICE COMMISSION, ADDITION OF “ACCESS TO JUSTICE” TOPIC TO THE MASSACHUSETTS BAR EXAMINATION (adopted June 6, 2013), available at <http://www.massaccesstojustice.org/resources/amendment-bbe-rules-proposal.pdf>; AMERICAN BAR ASSOCIATION, TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, REPORT AND RECOMMENDATIONS 33 (Jan. 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).

<sup>5</sup> Bruce Ackerman, Opinion, *Why Legal Education Should Last for Three Years*, WASH. POST, Sept. 6, 2013, available at [http://www.washingtonpost.com/opinions/why-legal-education-should-last-for-three-years/2013/09/06/55d80c06-1025-11e3-8cdd-bcdc09410972\\_story.html#](http://www.washingtonpost.com/opinions/why-legal-education-should-last-for-three-years/2013/09/06/55d80c06-1025-11e3-8cdd-bcdc09410972_story.html#).

<sup>6</sup> As illustrated in John Schwartz, *This Is Law School? Socrates Takes a Back Seat to Business and Tech*, N.Y. TIMES, Aug. 1, 2014, <http://www.nytimes.com/2014/08/03/educa>

but I do not think that these domains are yet at the core of what most lawyers do.

What most lawyers do is practice law,<sup>7</sup> and at the core of this undertaking are more familiar professional skills. Legal reasoning and legal writing are important components of professional skill, and teaching those skills is an important reason for classroom legal instruction. But there are other core components, involving skills of action and of interpersonal engagement: interviewing, counseling, advocacy, negotiation, problem-solving, strategizing, practice management, and the like.<sup>8</sup> For many or most law students, I suggest – as most experiential teachers would probably agree – that the critical test of whether a third year of law school is not only of value but of value equal to its cost will lie in whether or not that third year helps them to acquire these core skills of the profession they are about to enter.

For law school to make a difference in this regard requires more than allocating a course or two to “skills study” in the third year. The point of having a third year, after all, is to enable students to have a richer program of study throughout their three years of school, not just to offer certain otherwise absent opportunities during the final year. Accordingly, students need to begin studying legal skills right away. At New York Law School, where I teach, we recently created a two-semester, eight-credit course on “Legal Practice” that all first-year students take. It combines extensive training in legal writing with an introduction to interviewing, counseling, negotiation and oral advocacy.<sup>9</sup>

Students also need to study legal skills in depth, and systemati-

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tion/edlife/socrates-takes-a-back-seat-to-business-and-tech.html?\_r=0.

<sup>7</sup> Most law graduates do practice law, it appears, but not all. Michael Simkovic and Frank McIntyre analyze census data “suggest[ing] that about three of five law school graduates work as lawyers.” Michael Simkovic & Frank McIntyre, *The Economic Value of a Law Degree*, 43 J. LEGAL STUD. 249, 252 n.2 (2014). We do not know as much as we need to about the paths students take to law school, and after it, see Steven Davidoff Solomon, *Debating, Yet Again, the Worth of Law School*, N.Y. TIMES, July 18, 2013, 11:44 am, [http://dealbook.nytimes.com/2013/07/18/debating-yet-again-the-worth-of-law-school/?\\_php=true&\\_type=blogs&\\_r=0](http://dealbook.nytimes.com/2013/07/18/debating-yet-again-the-worth-of-law-school/?_php=true&_type=blogs&_r=0). Certainly we should think carefully about whether we can better prepare people for non-law careers. But it seems plausible to think that for many or most law graduates who do not practice, the skills that are part of law practice are nevertheless a part of what enables them to do other kinds of work.

<sup>8</sup> Though the list in text has intuitive force, it is no small task to demonstrate empirically what the core skills of law practice are. For one formidable analysis of this issue, see Marjorie Maguire Shultz & Sheldon Zedeck, *Final Report – Identification, Development and Validation of Predictors for Successful Lawyering* (2008), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1353554](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1353554).

<sup>9</sup> See New York Law School, *Academics – Legal Practice I*, [http://www.nyls.edu/academics/j\\_d\\_course\\_of\\_study/curriculum/course-detail/?course=862](http://www.nyls.edu/academics/j_d_course_of_study/curriculum/course-detail/?course=862), and New York Law School, *Academics – Legal Practice II*, [http://www.nyls.edu/academics/j\\_d\\_course\\_of\\_study/curriculum/course-detail/?course=863](http://www.nyls.edu/academics/j_d_course_of_study/curriculum/course-detail/?course=863) (both last visited Feb. 1, 2015).

cally. The American Bar Association's House of Delegates in August 2014 approved a new accreditation requirement that every student receive six credits of experiential training in law school, but this proposal, despite being aimed in the right direction, strikes me as far from adequate to insure effective experiential education for all students.<sup>10</sup> Skills are no easier to learn than doctrine, and so students need a series of skills courses that build on each other, giving students general familiarity with a range of skills and also the opportunity to apply some of those skills in intensive and real contexts.

Moreover, students need more than just courses, however well-designed; they also need the efforts of those, both teachers and administrators, who help them to meet practicing lawyers, to learn about the lives those lawyers lead, and to understand how to present themselves to the world of practice.<sup>11</sup> These efforts are not just about helping students with their job search, important as that is. They are also part of preparing students for their future; those students who discover for themselves what they value in the life of the law will be the most likely to meet its challenges with optimism and resourcefulness. Law school, the *Carnegie Report* teaches us, is a form of apprenticeship in professionalism,<sup>12</sup> and everything we can do to help our students understand their years here as a professional experience will help them.

The apprenticeship in professionalism is also, crucially, an apprenticeship in values. "For better or for worse, the law school years constitute a powerful moral apprenticeship, whether or not this is intentional."<sup>13</sup> The profession's values, in truth, are complex and the choice of ethical action is by no means always simple, so education in

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<sup>10</sup> See AMERICAN BAR ASSOCIATION, 2014-2015 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (August 2014), Standard 303(a)(3), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_chapter3.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf) (last visited Dec. 10, 2014) [hereinafter "ABA REVISED STANDARDS"].

<sup>11</sup> Externships can play a crucial part in this process; other programs also can be valuable. New York Law School's Center for Real Estate Studies (CRES), for example, offers the "CRES Associates Program: 'A Professional Pathway in Real Estate,'" which combines classroom study, networking with real estate lawyers, and at least one transactional skills course. New York Law School, *Academics – Center for Real Estate Studies – Associates Program*, [http://www.nyls.edu/center-for-real-estate-studies/affiliated-students/cres\\_asociates\\_program/](http://www.nyls.edu/center-for-real-estate-studies/affiliated-students/cres_asociates_program/) (last visited Aug. 4, 2014). At the same time, the school's Office of Career Planning offers an array of programs aimed at enabling current students to meet lawyers already in practice, see New York Law School, *Career Planning – Meeting Lawyers*, [http://www.nyls.edu/career\\_planning/for-students/meeting-lawyers/](http://www.nyls.edu/career_planning/for-students/meeting-lawyers/) (last visited Aug. 4, 2014).

<sup>12</sup> WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW *passim* (Carnegie Foundation for the Advancement of Teaching 2007) (hereinafter "CARNEGIE REPORT").

<sup>13</sup> *Id.* at 139.

the values of the profession should not be a form of indoctrination. But law schools can give students the chance to encounter some of the ethical challenges of daily practice. Part of that exposure can take place in classroom study and discussion. Few settings will illuminate practice more clearly, however, than those in which the students must actually perform professional work and experience the challenges of ethical practice in action, with the guidance of a supervisor to sustain them.

Law schools can also expose students to broader questions of the role and responsibility each lawyer may have to ensure access to justice.<sup>14</sup> Students may encounter these questions as they represent clients who otherwise would have gone unrepresented. Such work is a core part of most schools' clinical programs, and it offers educational benefits while it also directly affords access to justice for the clients. But students can encounter these issues in other experiential contexts as well. Students who work in prosecution clinics, for example, will very likely be prosecuting men and women of limited means, and students in these roles should come to grips with the responsibilities that come with wielding the power of the state. Students who serve as externs in private law firms similarly can address questions of the fairness of the roles they are playing.

We do not yet fully know the best ways to provide the professional education our students need. We do have many of the component parts – both classroom courses and a range of skills opportunities. The skills training opportunities at New York Law School, for example, have included – in addition to the first-year Legal Practice course – clinics, externships, project-based learning classes, simulation courses, skills competition teams, and practical writing courses.<sup>15</sup> I am sure that a comprehensive skills curriculum will need this range of different offerings, to provide opportunities for students with differing interests, learning styles and available time.

Here, however, I want to focus on just one of our new clinics, the Clinical Year, a course we offered for the first time in the 2013-14 academic year. For the reasons I will lay out, I believe it is an important addition to the toolkit of programs with which law schools can prepare their students to enter the world of practice. It is also, as we'll see, a direct response to the question of what to do with the third year,

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<sup>14</sup> See MODEL RULES OF PROF'L CONDUCT, Preamble (2013) ("A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance."); *id.* R. 6.1 ("Voluntary Pro Bono Publico Service").

<sup>15</sup> For information on all of these, see New York Law School, *Academics – Clinics, Externships and Experiential Learning*, [http://www.nyls.edu/academics/office\\_of\\_clinical\\_and\\_experiential\\_learning/](http://www.nyls.edu/academics/office_of_clinical_and_experiential_learning/) (last visited Dec. 23, 2014).

for it is in fact a single course that will by itself account for the vast majority of that year's credits. It speaks directly, therefore, to the need for skills study that is not episodic but systematic; for opportunities for students to encounter the actual world of practice and to shape their own sense of professional identity; and for students' encounter with the unmet needs and underserved people so much a part of the reality of our legal system today.

## II. THE MECHANICS OF THE CLINICAL YEAR

After considerable faculty discussion, we initiated this course on a pilot basis, with just two students, in the 2013-4 academic year.<sup>16</sup> The program's details may well change with the benefit of this experience (and I'll discuss some possible modifications below), but my main objective will be to describe the original conception of the course. I'll focus first on describing how the course was structured, and then on explaining how it fits with currently binding regulations governing legal education.

### A. *The Course Components*

The basic plan is straightforward: third-year students will rotate through three full-time placements in the course of the academic year. In the pilot run of the course, since the two students rotated together, the result was that each placement had students for only one-third of the academic year. With more students in the course, we would divide them into three groups, rotating in sequence so that each of the three rotation sites will always have students there. That sequence would enable the rotation sites to plan on having student colleagues throughout the year, and to count on the students arriving for the second and third rotations with increasing levels of experience. Each rotation was scheduled to last for nine weeks, and to be preceded by a one-week, one-credit intensive preparation course.<sup>17</sup> Thus the full program was designed to last thirty weeks, slightly longer than the 28 weeks that make up two semesters.<sup>18</sup>

This single course is, essentially, the students' full-time occupa-

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<sup>16</sup> Two students, Erin Phillips and Samantha Schonfeld, took the brave step of becoming the first people to take the course; I learned a lot from them and thank them for their many insights.

<sup>17</sup> In practice, for a number of reasons, the rotations were not quite of equal length, and the "pre-placement" preparation classes in one rotation were partly concurrent with the rotation itself.

<sup>18</sup> To make room for the three rotations, we started the course approximately a week before most other upper-year classes began, and also went slightly into the fall exam period. The early start worked well, but in the future I will be careful not to impinge on exam periods, which of course are a particularly stressful moment for students.

tion for the entire school year. They earn 24 credits, enough to qualify as full-time students under our rules but not quite a typical full year's credits (which would be approximately 28 in each of the second and third years). Because New York Law School has an evening division as well as a day division, Clinical Year students – whose rotation responsibilities fill their regular working days – can still take additional courses in the evening. Especially because the Clinical Year students must be in their third year of law school, one way they can make use of these remaining credits is to take courses relevant to preparation for the bar exam.<sup>19</sup> If they want to earn any credits beyond the Clinical Year's 24 credits, the students are essentially in the same position as evening division students typically are: they have a full-time day-time responsibility, namely the Clinical Year, and they meet additional responsibilities in the evening.

The rotation sites gave the students an opportunity to experience a range of different types of practice – different in terms of the clients the students served, the skills they employed and developed, and the institutional settings where they worked. Their first rotation was at the Civil Division of The Legal Aid Society, where they worked on unemployment and health insurance issues on behalf of approximately 12 clients, did research on the effects of the Affordable Care Act, and helped to staff Legal Aid's "Access to Benefits" telephone helpline, through which they did intake for about 55 callers on a range of benefits-related issues.<sup>20</sup> From there they went to the Division of Legal Counsel in the New York City Law Department. The Division is not primarily a litigation unit but works on an extremely wide range of the legal matters the city confronts; the students' work there included research, legislative drafting, brief-writing and responding to freedom of information requests. Their third and final rotation was with the New York City Department of Health and Mental Hygiene, where they represented the Department in 47 restaurant health code enforcement cases in the city's administrative tribunal, and each also wrote an administrative appeal brief.<sup>21</sup> Overall, the three placements gave the stu-

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<sup>19</sup> Even with the opportunity to take courses in the evening, the Clinical Year students are clearly not able to take as many bar-related courses as their 3L classmates. With that in mind, the faculty's approval of the pilot run of the Clinical Year included the direction that students should only be admitted to the course with the approval of the Associate Dean for Academic Affairs "after consideration of the student's overall course of study at the School." New York Law School, *Minutes of the Regular Meeting of the Faculty* (meeting of Monday, March 11, 2013) (on file with the author).

<sup>20</sup> E-mail from Katherine Greenberg, The Legal Aid Society, to Stephen Ellmann and Michelle Weller, New York Law School (July 23, 2014, 3:22 PM); e-mail from Katherine Greenberg to Stephen Ellmann (August 6, 2014, 11:09 AM) (both on file with the author).

<sup>21</sup> E-mail from Corinne Schiff, NYC Department of Health and Mental Hygiene, to Michelle Weller with copy to Stephen Ellmann, New York Law School (July 23, 2014, 7:44

dents the opportunity to do interviewing, counseling, administrative hearings and appeals, and extensive legal research and writing of various sorts – in multiple substantive areas of law and on behalf of two different city agencies and a leading not-for-profit serving low-income clients.

These rotations were not simply *work* at interesting law offices away from New York Law School. As already mentioned, we planned for each placement to be introduced with an intensive week of classes based at the school – 14 hours of class, to be precise – to prepare the students for their upcoming rotation. As the in-house professor in the course, I was responsible for these weeks, though I by no means taught them alone; the Legal Aid rotation faculty joined me in the first preparation week, and New York Law School’s Dean, Anthony Crowell, a veteran of New York City government, led most of the sessions introducing the Division of Legal Counsel rotation.<sup>22</sup> Then, at the placement site, the rotation faculty were responsible for an additional classroom component – usually 80 minutes of class each week.

In other words, the placements are both an immersion in practice and an academic experience. One crucial part of this academic experience is that at each rotation New York Law School appointed an attorney or attorneys with responsibility for the students’ work to serve as adjunct professors of law.<sup>23</sup> The supervisors are, as a result, both supervisors and teachers. They supervised the students’ actual work in their offices, directly or indirectly, and they planned the in-placement class curriculum and taught or took part in the in-placement classes each week.<sup>24</sup> These classes, in turn, were an opportunity for the students to learn about the agencies’ objectives and issues, and to acquire

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PM) (on file with author).

<sup>22</sup> In addition, Stuart Klein, New York Law School’s Vice President and Chief Financial Officer and another New York City government veteran, taught a session on the city budget, while Professor Camille Broussard, Director of New York Law School’s Mendik Library, taught a session on researching New York City law. I thank both of them, and Dean Crowell.

<sup>23</sup> I am very grateful to each of these conscientious and talented colleagues for joining in the creation of this new approach to legal education. They are Katherine Greenberg, Carol Santangelo and Liliana Vaamonde at The Legal Aid Society; Stephen Louis at the Division of Legal Counsel; and Corinne Schiff at the Department of Health and Mental Hygiene, as well as her colleague Jeffrey Blank, who worked closely with the students though not (this time) as an adjunct faculty member. I’m also grateful to others at each of these agencies who supported this initiative: Steven Banks and Adriene Holder at The Legal Aid Society, Stuart Smith of the New York City Law Department, and Thomas Merrill at the Department of Health and Mental Hygiene.

<sup>24</sup> The adjunct faculty did step aside on one occasion, when (as part of the third rotation), the students took the NYC Health Academy’s multi-day “Food Protection Course,” to help prepare them for the work they would do in enforcing the city’s restaurant food protection rules.

the legal knowledge they needed for their assignments. In one rotation's seminar they also practiced interpersonal skills they would need for the placement, and in two they wrote short papers on issues related to the office's work.

The adjunct faculty members bring their own rich experience to the course, and we have helped them to add academic perspectives as well. Most took part in our summer program of clinical teacher training, "Clinical Teaching 101," which met for 2 hours every Monday evening for six weeks in the summer of 2013 to discuss the challenges of classroom clinical teaching, clinical case supervision, and grading.<sup>25</sup> Then, in the course of the academic year, one of my ongoing Clinical Year responsibilities was to maintain contact with the rotation faculty. I also remained in touch with the students in the course through journal entries they wrote to describe for me (and for themselves) what they were learning, through visits to a number of the in-placement classes for each rotation, and in other ways.

### *B. The Clinical Year and the Regulations Governing Legal Education*

It is safe to say that the current legal education rules and standards were not written with the idea of a full-year immersion in practice in mind – and so it is important to look at these rules to see that in fact the Clinical Year does fit within them. Although legal education rules and standards are in flux, there are currently at least three sets of rules directly relevant to the Clinical Year: the American Bar Association's accreditation standards for law schools,<sup>26</sup> the New York Court of Appeals' rules governing eligibility for admission to the New York bar,<sup>27</sup> and the internal rules established by New York Law School it-

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<sup>25</sup> The sessions were video-recorded and made available for all the participants to watch. The participants in Clinical Teaching 101 included not only new Clinical Year adjuncts but also new clinical teachers from many of our other new clinics, some of whom were adjunct faculty and some of whom were full-time faculty making the transition from other forms of instruction to clinical teaching. Several members of the school's existing clinical faculty led the sessions and others sat in to lend their experience to the discussions.

<sup>26</sup> ABA REVISED STANDARDS, *supra* note 10.

<sup>27</sup> RULES OF THE COURT OF APPEALS FOR THE ADMISSION OF ATTORNEYS AND COUNSELORS-AT-LAW, N.Y. COMP. CODES R. & REGS. tit. 22, § 520.3 (2013), available at <http://www.nycourts.gov/ctapps/520rules10.htm> [hereinafter "NY RULES"]. New York's rules are of obvious importance to the graduates of New York Law School, but also affect many other schools whose graduates wish to take the New York bar.

Some of our students, of course, go on to seek admission to bars in other states besides New York. I do not know of any states with requirements imposing greater limits on clinical credits than the ABA's. Among New York's neighbors, for example, Connecticut does not appear to impose any limit on such credits, see CONNECTICUT BAR EXAMINING COMMITTEE, REGULATIONS OF THE CONNECTICUT BAR EXAMINING COMMITTEE art. II (Law Study), available at <http://www.jud.ct.gov/cbec/regs.htm> (last visited Aug. 2, 2014).

self. The last of these, of course, were within the school's authority to modify, as we did, but any school desiring to develop a course like the Clinical Year needs to do more than modify its own rules, so I focus next on how this course meets the rules that outside authorities have established. Fortunately, the requirements of the ABA and of New York State are now largely identical, and so I will deal with them together, with a primary focus on the ABA.<sup>28</sup>

Standard 311(b) of the ABA Accreditation Standards, adopted by the ABA in August 2014, provides that:

A law school shall require, as a condition for graduation, successful completion of a course of study of not fewer than 83 credit hours. At least 64 of these credit hours shall be in courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction.<sup>29</sup>

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New Jersey appears to require only graduation from an ABA-approved law school, *see* NEW JERSEY COURT RULES R. 1:24-2 (Bar Examinations; Qualifications for Admission to Examination), *available at* <http://www.judiciary.state.nj.us/rules/r1-24.htm> (last visited Aug. 2, 2014). Pennsylvania also will administer the bar exam to graduates of any accredited U.S. law school, *see* PENNSYLVANIA BOARD OF LAW EXAMINERS, PENNSYLVANIA BAR ADMISSION RULES R. 203(2)(i) (Dec. 2013), *available at* <http://www.pabarexam.org/pdf/rules.pdf>.

It goes without saying that students must comply with the rules of the states where they intend to practice, whatever they may be. As states consider enhancing their skills education requirements, however, it seems quite likely that other states will, like New York, adopt admission rules that are more hospitable to classes like the Clinical Year than the ABA Standards until recently were – or even more insistent on experiential education than the current ABA Standards, as in the case of California, *see infra* note 65. It is worth emphasizing that the New York rules discussed in text embody recent changes that increased the flexibility law schools have to offer their students skills instruction, notably by allowing students to earn up to 30 credits, of the 83 the state requires, in “law school clinical courses, field placement programs, and externships, including classroom components,” *see* NY RULES, *supra*, § 520.3(c)(4). Prior to April 1, 2012 the state had only permitted students to take a maximum of 20 credits, out of the 80 then required, in “courses related to legal training or clinical courses.” *See* NEW YORK STATE BOARD OF LAW EXAMINERS, ARCHIVED RULES (prior to April 1, 2012), § 520.3(c)(1)(i), *available at* <http://www.nybarexam.org/Rules/3203-6archive.htm> (last visited Aug. 2, 2014).

The New York 30-credit limit, which does not have a direct parallel in the ABA Standards, should not cause Clinical Year students significant problems. As noted in the text below, *see infra* text following note 30, New York Law School requires 86 credits for graduation, and so we can permit our students to take up to 33 credit hours of clinics and externships without violating this provision. The Clinical Year's 24 credits fall well within this limit.

<sup>28</sup> The discussion that follows is drawn in part from a memo I prepared for the Curriculum Committee and the faculty during consideration of the Clinical Year proposal.

<sup>29</sup> ABA REVISED STANDARDS, *supra* note 10, Standard 311(b). In stating these requirements in terms of credit hours, the Revised Standards removed the complexities required by the previous iteration of the Standards, which expressed these requirements in terms of classroom minutes (and specified numbers of minutes that did not perfectly map onto credit hour calculations). In addition, the revised rules remove the requirement, whose exact meaning was not defined, that the students' credits make up a “course of study in residence.” Though the earlier requirements were in place during the 2013-14 pilot run of

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New York State's Rule 520.3(c)(1)(ii) is very similar; it requires that "a minimum of 64 of the required 83 credit hours must be earned by attendance in regularly scheduled classroom courses at the law school."<sup>30</sup>

New York Law School requires 86 credits for graduation (three more than the ABA and New York mandate). If a student takes the Clinical Year, she will earn 24 credits; to graduate, she must have 62 additional credits. If all 62 of those additional credits are earned in courses with "regularly scheduled classroom sessions" or (as New York puts it) in "regularly scheduled classroom courses," the student would be two credits short of the number of such credits required by the ABA and by New York – unless some of the Clinical Year credits count towards the "regularly scheduled class sessions" requirement. One solution would be for the student to take an additional two credits of classroom course work, and our rules permit students to do this.<sup>31</sup>

This step would not be necessary if the Clinical Year counted, for purposes of the ABA Standards and New York Rules, as a "clinic," because credits earned in clinics count as classroom credits.<sup>32</sup> Under Standard 304(b) of the Revised Standards, a "clinic" is a course satisfying the following requirements:

- A clinical course provides substantial lawyering experience that (1) involves one or more actual clients, and (2) includes the following:
- (i) advising or representing a client;
  - (ii) direct supervision of the student's performance by a faculty member;
  - (iii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
  - (iv) a classroom instructional component.<sup>33</sup>

This new definition conspicuously does *not* require that the student's casework be supervised by a member of the full-time faculty, as Interpretation 304-3(e) of the previous Standards did.<sup>34</sup> Again, New York is similar; it too accepts as clinics those courses in which "the clinical

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the Clinical Year, I will focus here primarily on the Standards as they now stand.

<sup>30</sup> NY RULES, *supra* note 27, § 520.3(c)(1)(ii).

<sup>31</sup> Students are permitted to take up to 16 credits each semester without special permission; a normal load would be approximately 14, so students can exceed that load by 2 credits in any upper-year semester or semesters (and without additional charge).

<sup>32</sup> ABA REVISED STANDARDS, *supra* note 10, Interpretation 311-2(a)(2); NY RULES, *supra* note 27, § 520.3(c)(2).

<sup>33</sup> ABA REVISED STANDARDS, *supra* note 10, Standard 304(b).

<sup>34</sup> See ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 2013-2014, Interpretation 304-3(e), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2013\\_2014\\_standards\\_chapter3.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf) [hereinafter ABA STANDARDS 2013-2014].

work is conducted under the direct supervision of a member of the law school faculty,” while also requiring an adequate classroom component and “time and effort required and anticipated educational benefit [that] are commensurate with the credit awarded.”<sup>35</sup>

Under these provisions, the Clinical Year can be a “clinic.” Clearly it can be structured to satisfy the first, third and fourth of Standard 304(b)’s requirements, and the similar elements of the New York rules. The only apparent question about the Clinical Year under both sets of rules seems to be whether the adjunct faculty members will be providing “direct supervision of the student’s performance.” Different rotation offices will have different supervision systems, and in some offices an adjunct faculty member who is the head of the office may exercise overall supervision while the immediate supervision of the students’ work is partially, or even entirely, the responsibility of others. As a general proposition, I would argue that many such arrangements constitute “direct supervision of the student’s performance” – not necessarily each detail of the performance, but the performance as a whole – “by a faculty member.” But the design of the supervision system will no doubt be important to achieving compliance with Standard 304(b) in the future.

Even if the Clinical Year does not count as a “clinic,” however, it should not be necessary for the student I’ve imagined – who has compiled 62 classroom credits plus the 24 Clinical Year credits – to take an additional classroom course in order to meet the ABA and New York classroom credits requirements. If the Clinical Year is not a clinic, then it certainly can be structured to count as a fieldwork course.<sup>36</sup> Credits students earn for their casework in such courses do not count as classroom credits under either the ABA or the New York rules.<sup>37</sup> But credits students earn in classroom study accompanying fieldwork placements *do* count as classroom credits.<sup>38</sup> In the pilot run of the Clinical Year, three of its credits were to be earned in class sessions at the law school, during the one-week, one-credit intensive classes that introduce each of the three rotations. These credits should not be seen as field placement credits but rather as classroom credits, and with

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<sup>35</sup> NY RULES, *supra* note 27, § 520.3(c)(2)(i)-(iii).

<sup>36</sup> As defined in ABA REVISED STANDARDS, *supra* note 10, Standard 305, and as identified in NY RULES, *supra* note 27, § 520.3(c)(3).

<sup>37</sup> ABA REVISED STANDARDS, *supra* note 10, Interpretation 311-2(b)(1); NY RULES, *supra* note 27, § 520.3(c)(3).

<sup>38</sup> New York’s rules make this explicit, *id.* The point is not spelled out in the ABA REVISED STANDARDS, *supra* note 10, but is implicit in Interpretation 311-2(b)(1)’s exclusion of “credit hours earned through field placements and *other study outside of the classroom*” (emphasis added); obviously study in a classroom seminar accompanying a field placement is *not* “study outside of the classroom.”

them the students have the necessary classroom credits.<sup>39</sup> In addition, as mentioned earlier, each of the rotations includes its own classroom component, of sufficient length to add a total of three more credits' worth of classroom sessions.<sup>40</sup> The ABA Standards formerly required that classroom courses take place "at the law school,"<sup>41</sup> but happily this requirement has now been dropped. If New York's rules retain this requirement (a debatable point<sup>42</sup>), then I would argue that the rotation classroom sessions – at least if they take place at the rotations' main New York City workplaces (all located within walking distance of New York Law School) – should also count as classes "at the law school." If they don't, however, the solution is no more than inconvenient – to have the rotation classroom sessions meet at the law school, as in fact many of them did during the pilot run of the course.

To make it clear that students are in fact earning classroom credits as part of the Clinical Year, the course as approved by our faculty is actually made up of *nine* component courses. Each rotation includes a one-credit pre-rotation classroom week; six credits of supervised work on legal matters at the law office that is the rotation site; and one additional credit for the seminar that meets during the rotation itself. As set out in our catalog, the Clinical Year course consists of the following parts (credit numbers for each part are in parentheses):

Fall

CLC 601: Pre-Placement Seminar # 1 (1)

CLC 602: In-Placement Seminar # 1 (1)

CLC 603: Placement # 1 (6)

CLC 604: Pre-Placement Seminar # 2 (1)

CLC 605: Placement # 2 (3)

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<sup>39</sup> This analysis explicitly assumes that all of the student's 62 non-Clinical Year credits were earned in classroom courses. That will not always be true, of course, since students may earn non-classroom credits for other activities, such as membership on law review or moot court. It may be necessary for students who have earned credits of these sorts to take additional classroom credits to ensure they meet the ABA and New York requirements.

<sup>40</sup> To meet the former standards, we planned that the rotation seminar class would ordinarily meet for 80 minutes during each of the nine weeks of the rotation, for a total of 720 minutes, or slightly more than the equivalent of 14 50-minute classes. The new Standards envision 15 weeks of class – with one week potentially allotted to exams – so it is possible that the exact number of minutes will need to be slightly adjusted. See ABA REVISED STANDARDS, *supra* note 10, Standard 310(b) and Interpretation 310-1.

<sup>41</sup> ABA STANDARDS 2013-2014, *supra* note 34, Standard 304(b).

<sup>42</sup> NY RULES, *supra* note 27, § 520.3(c)(1)(ii) provides that "a minimum of 64 of the required 83 credit hours must be earned by attendance in regularly scheduled classroom courses at the law school," but *id.* § 520.3(c)(3), which authorizes counting "credit separately awarded for the classroom instructional component of a field placement program or externship taught by a member of the law school faculty" towards the 64-credit requirement, does not contain a specification that the field placement classroom component must take place at the law school.

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Spring

CLC 605: Placement # 2 (3)

CLC 606: In-Placement Seminar # 2 (1)

CLC 607: Pre-Placement Seminar # 3 (1)

CLC 608: In-Placement Seminar # 3 (1)

CLC 609: Placement # 3 (6)<sup>43</sup>

With this structure made explicit, it is evident that the Clinical Year does fit within the curriculum requirements of both the ABA and New York State. If this course is a valuable component of law school programs, the rules might usefully be adjusted, where necessary, to reduce the complexities of fitting the course into them. But the case for making those adjustments depends on the value of the course, and I turn to that question next.

### III. THE VALUE OF THE CLINICAL YEAR: EDUCATION THROUGH IMMERSION AND APPRENTICESHIP

If the program is workable, what does it accomplish? The answer is that it offers a deeper immersion into some aspects of the world of practice than most in-house law school clinics or externships can provide, as well as an approach to that world that is, in some important ways, more academic than the experiences many externships (to say nothing of most on-the-job experiences) are structured to offer. This is not an argument that the Clinical Year is better than clinics or externships; rather, this new program has distinctive virtues that should make it another valuable element for law school curricula.

The depth of the immersion in the Clinical Year comes from the sheer extent of the work – a full school year – and from the variety of settings in which each student is placed. At the same time, this immersion is in the “real world” of practice, rather than in the special environment of an in-house clinic. In-house clinics rarely, if ever, can replicate the full range of practice demands, for several reasons. Notably, clinics frequently have limited caseloads as a matter of pedagogical design; there is much to be said for that approach, but law offices outside law school generally cannot limit their work as in-house clinics can. Moreover, in-house clinics cannot replicate the tasks or environment of at least certain offices, such as prosecutors’ offices or other governmental law offices – both because the institutional infrastructure of such offices is extensive and because these offices likely would

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<sup>43</sup> See New York Law School, *Academics – Clinical Year*, [http://www.nyls.edu/academics/j\\_d\\_course\\_of\\_study/curriculum/course-detail/?course=659](http://www.nyls.edu/academics/j_d_course_of_study/curriculum/course-detail/?course=659) (last visited Dec. 21, 2014). Readers may notice that the single credit for the “In-Placement Seminar # 2” is assigned to the spring semester. In fact this classroom component met in the fall and spring semesters, since the second rotation extended over both, but credit balance and simplicity both called for assigning the credit to the spring semester.

not be prepared to hand off cases to an outside entity such as a law school.<sup>44</sup>

The Clinical Year is, plainly, a form of apprenticeship. The *Carnegie Report* emphasizes that professional education is always an apprenticeship in a sense – an apprenticeship in the technical knowledge, applied skills, and fundamental values of the profession for which the student is training.<sup>45</sup> Calling the Clinical Year a form of apprenticeship, however, invokes a complex history. “Apprenticeship,” pure and simple, was once the central path to becoming a lawyer in the United States. Moreover, apprenticeship still plays an important role in lawyers’ training in some common-law countries. One might think, indeed, that the best way to learn about the realities of practice is in a pure law office apprenticeship. But in the United States, as the *Carnegie Report* recounts, apprenticeship was replaced long ago by law school training.<sup>46</sup> Education in law school was viewed as more meaningful and more intellectual than apprenticeship training, which came to be viewed as exploitative drudgery instead of true preparation for a professional career. No doubt the relative inaccessi-

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<sup>44</sup> In addition, clinics almost never face the pressures of private practice economics, or those of in-house corporate law offices. In principle, it would be easy to locate Clinical Year rotations in these settings, but a combination of ABA accreditation requirements and federal law in place for many years make doing so difficult.

The accreditation standards prohibited granting credit for work for which students are paid. See ABA 2013-2014 STANDARDS, *supra* note 34, Standard 305, Interpretation 305-3 (barring law schools from “grant[ing] credit to a student for participation in a field placement program for which the student receives compensation”). After considerable controversy, the revised standards retained this rule, see ABA REVISED STANDARDS, *supra* note 10, Standard 305, Interpretation 305-2 – but the ABA House of Delegates referred this provision back to the ABA Section of Legal Education and Admissions to the Bar for reconsideration. See Nicole Israel, *Law Student Division Wins Temporary Victory Against Ban on Paid Externships*, STUDENT LAW., Oct. 2014, at 31.

The federal law constraint is embodied in the Department of Labor’s strict interpretation of the Fair Labor Standards Act of 1938, 29 U.S.C. §§ 201-19 (2012 & Supp. 2013), which on the Department’s reading substantially restricts unpaid internships at private law firms unless the interns work solely on *pro bono* matters. See Letter from M. Patricia Smith, Solicitor of Labor, to Laurel G. Bellows, Immediate Past President, American Bar Association, Sept. 13, 2013, available at [http://www.americanbar.org/content/dam/aba/images/news/PDF/MPS\\_Letter\\_reFLSA\\_091213.pdf](http://www.americanbar.org/content/dam/aba/images/news/PDF/MPS_Letter_reFLSA_091213.pdf); WAGE & HOUR DIV., U.S. DEP’T OF LABOR, FACT SHEET # 71: INTERNSHIP PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT (April 2010), available at <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>.

There are important reasons to prohibit unpaid internships at private firms, but there is also an important cost, since the net result is to limit the degree to which law schools can integrate student experience in the regular work of private law practice into their educational programs. This is a dismaying outcome, I believe, since the “regular work of private law practice” is precisely what many or most law students will do after they graduate. Legal education that does not help students to encounter the distinctive skills and ethical values of life in private practice is, to that extent, incomplete.

<sup>45</sup> See *CARNEGIE REPORT*, *supra* note 12, at 27-29.

<sup>46</sup> See *id.* at 4-5.

bility of formal law school education also served the objectives of those who wanted to make the bar a professional elite. While the rise of clinical legal education in law schools has reflected a recognition that law is more than Langdellian legal science – as well as a commitment to providing legal service to clients who are not privileged and powerful – clinicians themselves have emphasized the importance of instruction in *skills* by full-time law school faculty.

Because adjunct faculty members are integral to the Clinical Year, as the supervisors of the rotation sites and the shapers of the rotation classroom components, it is important for us to assess whether reliance on these faculty members in some way undercuts the value of the Clinical Year apprenticeship. In the following pages I will look closely at this potential critique, and will argue that while adjunct and full-time clinical faculty are not fungible, nevertheless this critique is not well-taken. Then I will turn from this critique to discuss in more detail the special contributions that this course can make.

#### A. *The Role of Adjunct Faculty in the Clinical Year*

Does the Clinical Year's reliance on adjunct faculty members rather than full-time faculty, both to directly or indirectly supervise the students' rotation work and to create the rotation seminar component, call the quality of its education into serious question? I agree that full-time faculty clinicians have a crucial role to play in skills education. They are, at their best, experts in teaching students about practice, or perhaps more precisely in guiding students' entry into the work of lawyers – a difficult and valuable enterprise. Perhaps just as important, full-time faculty clinicians (along with some colleagues, such as professional responsibility scholars) are the people who apply academic scrutiny to practice and to its skills and ethics. Academic scrutiny is an important part of the way we collectively come to understand our world, and it would be a great mistake for us not to employ this resource as part of our effort to understand law practice. We need full-time clinicians, in short, both for their teaching and for their reflective insights. All that said, in principle it seems perfectly plausible to hold that *both* full-time and adjunct professors can play important roles in skills education.

Still, we should consider whether there might be reasons to mistrust the potential role of law office supervisors, who play a central role in the Clinical Year, at this stage in a law student's transition to professional practice. It is somewhat perplexing to think that learning from actual law practice could be educationally deficient, since lawyers in the United States currently must be learning most of what they know about how to practice from their experiences "on the job." Law

schools, after all, offer only limited practice instruction, and the lawyer's life on the job will be approximately ten times as long as his or her time in law school. It is noteworthy, too, that lawyers tend to describe their actual jobs during law school as the place where they learned the most about practice.<sup>47</sup> Surely one reason they learn from those jobs is that other, more senior attorneys are teaching them. Nevertheless, it is possible that practicing lawyers typically do not teach well; after all, they are not trained in teaching. Law school professors, it must be said, generally do not have formal training in teaching either, but professors do spend a good deal of time learning to teach, since that is a central part of their job, and skills professors treat pedagogy as a particularly important concern. Moreover, the very fact that placement law offices offer immersion in the "real world" reflects that these offices are not set up as teaching institutions, while clinics and other law school programs are.

The Clinical Year is designed to bridge whatever gap there may be between practitioners and professors by relying on practitioners who become, not just in name but in substance, adjunct members of the faculty.<sup>48</sup> But it remains important to confront directly the concern that reliance on practicing lawyers to serve as educators is unwise. To get beyond the kinds of broad assertions back and forth that I sketched in the previous paragraph, I will look closely at three possible objections to the quality of education "on the job," all of them bearing on potentially critical aspects of the experiential education process: that the quality of practice may be weak, that students may not have the opportunity to "own" their cases, and that opportunities for students to learn by reflection may be limited.

### 1. *Quality of Practice*

The first concern is that practicing lawyers may not practice well. To a significant extent, law school skills education probably grew out of a sense that this charge was, in fact, true, and that law school clinics should serve as a laboratory for the development of better ways to

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<sup>47</sup> According to a study cited by the *Carnegie Report*, "[t]he most useful experiences for making the transition to practice, according to [recent law graduates], were real work experiences, either in the summer or during the academic year, followed by legal writing and clinical courses." CARNEGIE REPORT, *supra* note 12, at 76 (citing RONIT DINOVIETZ, BRYANT G. GARTH, RICHARD SANDER, JOYCE STERLING, & GITA Z. WILDER, AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 81 (2004)). For further careful analysis of the *After the J.D.* findings, see Rebecca Sandefur & Jeff Selbin, *The Clinic Effect*, 16 CLIN. L. REV. 57 (2009). Sandefur and Selbin note, importantly, that "some new lawyers may have rated experiences that they did not have, while others did not rate experiences that they probably did have" – an observation casting some doubt on the force of the survey results. *Id.* at 84.

<sup>48</sup> See *supra* notes 23-25 and accompanying text.

practice. There is surely still a great deal to criticize in American law practice, and academics – standing one step removed from the fray, as they do – play an important part in articulating what is wrong and what can be improved.

But this contribution, important as it is, should not be exaggerated beyond its true dimensions. Law school clinicians are probably not, by and large, the most experienced of practicing lawyers. To the extent – incomplete but meaningful – that practice does make perfect, therefore, many of the most perfect lawyers must be the ones who have spent their lives in full-time practice.

One might respond that what practicing lawyers are “perfect” at is often the provision of services under fundamentally unacceptable conditions that unfortunately are part of the real world of practice. No amount of skill makes it possible to provide good legal service to the clients making up an impossibly large caseload. There is force to this, certainly, and it is important not to place students in settings where responsible practice is impossible, just as it is important to have adjunct faculty supervisors at each rotation who do practice thoughtfully and well.

But substantial caseloads, far larger than those in many clinics, are part of almost every non-academic law office, and good practitioners are those who have learned to provide good services in those settings. We should recall, in addition, that the dominant direction of the clinical movement’s practice reforms – the call for, and analysis of, methods of “client-centered” practice, practice that rejects domination of clients and emphasizes emotionally sensitive support of client choice – has now been a part of legal education for a generation. Many of the students who studied client-centered lawyering in law school are now in practice, and perhaps have found ways to bring what they learned into what they do, or in other words to be client-centered under the constraints characteristic of ordinary law practice rather than in the special setting of clinics.<sup>49</sup> In the pilot run of the Clinical Year, for example, the students’ experience with representation of individual clients came in the first rotation, at The Legal Aid Society of New York, whose practice is infused with commitment to client self-determination – and both students emerged from this rotation feeling that they had learned about the value of empathy. There

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<sup>49</sup> For an exploration of the likely contours of interviewing and counseling as expert, client-centered lawyers would address these tasks, see STEPHEN ELLMANN, ROBERT D. DINERSTEIN, ISABELLE R. GUNNING, KATHERINE R. KRUSE, & ANN C. SHALLECK, *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* 346-86 (2009) (chapter 9, on “Fast Talking: Lawyering Expertise and Its Impact on Interviewing and Counseling”).

is reason to believe, in short, that practicing lawyers can offer students not just experience but also wisdom and inspiration.

## 2. *Opportunities for Students to Learn From “Ownership” of Their Cases*

The second objection we should consider is the possibility that Clinical Year placements will put less emphasis than many clinics do on the students' duty to figure out for themselves the tasks of representation. An important theme of many, though not all, law school clinics is that students learn the core professional values of law practice, including responsibility to clients and commitment to combating injustice, by taking responsibility themselves – finding, for themselves, the answers to the questions the matter poses, and making, for themselves, the judgment calls it requires – all with the careful guidance and feedback of a supervisor.<sup>50</sup>

“Ownership” has at least two strands, though they are very much interrelated. One form of ownership is the experience of being, and feeling, responsible for a matter; a second is the right, and duty, to make the decisions about how the matter will be handled. Undoubtedly the duty to make decisions helps generate the experience of feeling responsible, but the two are not simply identical, and we should consider the impact of the Clinical Year on each. As to the experience of feeling responsible, we naturally assume that a student who is in charge of a case, rather than just assisting others on it, will be more likely to feel responsible for it. Moreover, students at placement sites may be more likely to work as assistants on other lawyers' cases than to have their own cases as conventional clinic students would. Just how likely this is, however, is not clear. Many busy law offices may be happy to assign students their own matters to handle, and a number of in-house clinics undertake large and long-running cases over which no individual student has complete ownership. If there is a difference in the degree of assigned responsibility at student placement sites, moreover, there is at least some reason to wonder whether the result is that the placement students do not *experience* a sense of responsibility for

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<sup>50</sup> Clinics could be designed to provide even more student ownership than this. A student-run clinic, in which students set the policies for accepting cases and the standards for handling them, perhaps with a limited degree of input from a faculty member, provides more student ownership than a clinic in which the policies are set by the faculty, however fully the students own the individual cases. In other words, the latter level of “ownership,” which is probably broadly characteristic of in-house clinics in the United States, already reflects a compromise between insuring effective client service and entrusting ownership of clinic affairs to students. For a description of a largely though not entirely student-run clinic, see Donald Nicolson, *Legal Education or Community Service? The Extra-Curricular Student Law Clinic*, 3 WEB J. CURRENT LEGAL ISSUES (2006), <http://www.bailii.org/uk/other/journals/WebJCLI/2006/issue3/nicolson3.html>.

the matters to which they contribute. I suspect that students typically feel a great deal of concern that their parts of the larger matters not be the ones that go wrong.

In short, students likely feel the pressure of responsibility, and its positive impact on their learning, in a range of different contexts. The pilot run of the course reflected many of these possibilities. At the Department of Health and Mental Hygiene (the third rotation), the Clinical Year students actually handled the representation of the Department in many, quite quick restaurant health code cases before a New York City administrative tribunal, and both felt they benefited from the experience. At The Legal Aid Society (the first rotation), while the students each handled at least one hearing and prepared for it at length, they also spent approximately three hours each week staffing a telephone helpline.<sup>51</sup> They normally handled the helpline intake calls on their own, but with the aid of question protocols, and with a supervisor near at hand if problems arose; my sense was that they took this work very seriously. Finally, at the Division of Legal Counsel (the second rotation), the bulk of the students' work was on specific tasks assigned by supervising lawyers. Each of the students reported learning important skills at this rotation, even though it was perhaps the one in which they had the least solo responsibility; one felt she improved in both legal research and writing, the other that she "learned how to solve problems."

The second aspect of ownership, the right to make the decisions about what to do, is also an important dimension of the student's experience. Clinical teachers have emphasized the pedagogical value of letting students learn from making decisions and from encountering the consequences of mistakes – while at the same time the faculty remain prepared to intervene to head off real damage to clients.<sup>52</sup> If practicing lawyers working as adjunct faculty tend to be more directive than full-time clinicians, the result might be that students lose some part of this right to make decisions. Just how directive any given clinician is, however, surely depends on that teacher's individual judgment, especially since, as the veteran clinician Wallace J. Mlyniec has observed,

all teaching is directive and it should be. That is why teachers exist. . . . Clinical teachers are always 'directing' a student in an exploration that leads to new knowledge or a solution to a

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<sup>51</sup> E-mail from Katherine Greenberg, The Legal Aid Society, to Stephen Ellmann (Aug. 6, 2014, 11:09 AM) (on file with author).

<sup>52</sup> For a classic implementation of the principle of student decisionmaking, see Jane Aiken, David A. Kaplow, Lisa G. Lerman, J.P. "Sandy" Ogilvy, & Philip G. Schrag, *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 (1985).

problem.<sup>53</sup>

Whether practicing lawyers actually are, overall, more directive than clinicians, and so give the students they supervise less room to make their own decisions, is therefore open to doubt – especially when those practicing lawyers think of their role not just as supervision but also as education. But *if* practicing lawyers are more directive than full-time clinicians, it is important to remind ourselves again that learning proceeds by many paths, and there is surely much to be learned from work-under-direction.

Medical school rotations offer striking lessons on this score. Medical education is a long process, beginning with pre-med coursework in college, continuing with primarily classroom work in the first two years of medical school, then turning emphatically to rotations in the third and to a somewhat lesser extent the fourth years of medical school, and then incorporating years of additional, formal training after graduation.<sup>54</sup> In this overall picture, it is noteworthy that medical students in their first year of rotations are under very close supervision; there may be variations, of course,<sup>55</sup> but I've been told, for example, that a student may take a patient history, but that history will be re-taken by a fully qualified physician.<sup>56</sup> In due course, these carefully supervised students will become physicians wielding profound responsibility (though still, in their years of residency training, under supervision) – but the first year or years of practice education proceed more incrementally. Lawyers' formal education is far quicker than doctors' training, and so there is certainly good reason for clinical legal educators to entrust their students with great responsibility over cases at a stage when future doctors perform only more confined tasks. But this approach is not the only reasonable response to the fact that law school is so brief – and “brief,” compared to medical school, is certainly the right word, ironic as it may be at a time of thoughtful calls to make law school briefer. It is surely also plausible to say that it might make sense to engage law students in a clinical education that is, like the first year of medical clinical training, both intense and preliminary, as the preparation for the more independent learning that will follow.

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<sup>53</sup> Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 505, 518 (2012).

<sup>54</sup> See CARNEGIE REPORT, *supra* note 12, at 192; Telephone Interviews with W. Peter Metz, M.D., Professor of Clinical Psychiatry and Pediatrics and then-Director of Child and Adolescent Psychiatry Residency Program, University of Massachusetts Medical School (July 7 & 14, 2008) [hereinafter Metz Interviews].

<sup>55</sup> Medical education, like legal education, is in flux. See Denise Grady, *The Drawn-Out Medical Degree*, N.Y. TIMES, Aug. 3, 2014, at ED21, available at <http://nyti.ms/1m6TX5m>.

<sup>56</sup> Metz Interviews, *supra* note 54.

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### 3. *Opportunities for Reflective Learning*

The third problem with pure law office apprenticeship is that it may not be reflective enough. Reflection may well play a substantial part in the process by which students start along the road to acquiring practice skill. In that enterprise, it may be thought, what is most important is not that students master a large number of specific steps. An expert practitioner will certainly know these, but that knowledge will have been accumulated over many years. At the start, for instance in their first clinic in the third year of law school, students do not have time to learn all these steps. What they can learn is how to reflect on their own learning, so that they can continue to learn effectively once they are out in practice. This skill of reflection, or “metacognitive” thinking as the *Carnegie Report* characterizes it,<sup>57</sup> may be something that skilled teachers, in an academic setting, are best positioned to impart.

Like the concern about whether practicing lawyers practice correctly, however, the anxiety about whether they can teach reflection should not be overstated. “Metacognition” is an imposing word, but its practical meaning may be quite straightforward. Students probably do not need a psychoanalytic understanding of their inner lives in order to make progress in learning how to practice law; what they need, more likely, is a set of practical steps to guide their own learning. They need, perhaps, to know that in a new work situation they should ask for guidance from all the available players, that they need to be careful not to jump too quickly to conclusions, or that they sometimes tend to get discouraged too easily. These insights are metacognitive in a modest sense – but because they are quite readily stated and imparted, they seem well within the reach of nonprofessional teachers’ instruction.

Still, practicing lawyers may well be, as a group, less reflective than academic lawyers. Surely both groups’ members fall at various places on a “reflectiveness” spectrum, but academics, after all, make a specialty of stepping back to think about what they are doing. As a result, practicing lawyers may not be as good at guiding students towards reflection as academics are. Many different mechanisms contribute to learning, however, and reflection is only one of them. We need not doubt the value of reflection to acknowledge that students will also learn by other paths, such as the habituation that sheer repetition can foster or the modeling that a mentor may inspire.<sup>58</sup>

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<sup>57</sup> CARNEGIE REPORT, *supra* note 12, at 173.

<sup>58</sup> *Cf. id.* at 26 (identifying expert modeling, along with novice performance and expert feedback, as integral to learning); see generally Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185 (1989).

We should also note a form of learning that the Clinical Year embodies especially strongly: peer learning. The two students in the pilot run of the course rotated through the three placements together. That meant they were full-time colleagues, in a new and challenging series of experiences, for an entire academic year. I had not anticipated how educationally significant this element of the course would be, but thanks to this year's students I understand it better now. The paths by which student team members sustain and teach each other may not fall smoothly into categories such as reflection or direction, but they can be very important.

All that said, I am inclined to draw from the experience of the first Clinical Year a lesson for fostering reflection better. Through most of the year, the students wrote weekly journal entries about their experiences at the rotations, and I responded periodically with questions that were mainly aimed at raising issues and perspectives for them to consider. An e-mail dialogue, however, is not the most effective way to have such a conversation. For that purpose, I've realized that probably I, as the in-house faculty member responsible for the course, should teach a regular class (in addition to, and separate from, the adjunct faculty members' class) through each rotation, so that the students and I can focus on stepping back from their daily experiences to reflect on what they are doing and learning.

### *B. The Pedagogical Contribution of the Clinical Year*

While the Clinical Year's design undoubtedly can be refined, the upshot of this discussion of possible pedagogic objections to the Clinical Year, I believe, is a confirmation that the Clinical Year is a distinctly academic immersion in practice. This fusion is integral to its design. If we compare the Clinical Year with a possible alternative, in which students finish law school in two years and then simply enter the legal work force in their third year, there are two particularly salient, academic differences. As we will see, these differences also highlight the special contribution the Clinical Year may make, as compared to other – and valuable – immersion-in-practice programs that legal educators have developed.

First, the Clinical Year offers a series of different placements, giving students experience of a variety of skills and of a variety of substantive law fields and practice environments. Actual jobs can rarely offer this range of experience. In addition, of course, actual jobs do not normally allow students to try out work before committing to it.

The rotation aspect of the Clinical Year also marks an important difference between this program and other immersion courses that utilize only a single placement setting. There are now a number of

schools offering semester-in-practice options, but most or all of these, I would assume, put students in only a single placement for the full semester.<sup>59</sup> Broadly speaking, there is much common ground between semester-long immersions and the Clinical Year, but a placement in a single law office, at least unless that placement actually comprises various sub-placements along the way, by definition cannot give students the opportunity to explore a variety of legal settings. In addition, the Clinical Year lasts for a full year, and the sheer length of the immersion will contribute to its impact. As of this writing, I know of only one other year-long immersion course, the “Lawyers for America” program at Hastings, and while that program is a very interesting one, it too places students in only one setting.<sup>60</sup> “Rotation” is not essential for everyone, and no doubt some students will prefer a longer immersion in just a single setting that particularly interests them. In other words, I don’t mean to say that the Clinical Year is somehow the “best” model of clinical legal education or of long-running placement experiences. Nevertheless, for many students the rotations through the year may provide a specially valuable experience, both varied and sustained.

Second, the Clinical Year offers students instruction for and about the experiences they are having. Certainly some law offices – though not all – offer formal training to their new lawyers, but it seems unlikely that many can place the same emphasis on education as the Clinical Year builds in, with its combination of in-school in-

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<sup>59</sup> For example, Drexel has for several years operated a very interesting program, offering a semester-long “co-op” placement to upper-year students. See Drexel University, Thomas R. Kline School of Law, *How Does Co-op Work?*, <http://www.earlemacklaw.drexel.edu/academics/co-op/> (last visited Dec. 21, 2014). A recent survey lists 23 schools with semester-in-practice programs, and there may be others. See Myra Berman, Christine Cerniglia Brown, Christine Cimini, Roberto Corrada, & Katherine Kruse, Working Group for Creative Initiatives, Alliance for Experiential Learning in Law, *Creative Initiatives at U.S. Law Schools*, in *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 *ELON L. REV.* —, — (forthcoming 2015) [hereinafter “*Creative Initiatives Report*”].

<sup>60</sup> The Lawyers for America (“LFA”) website explains that LfA 3L Fellows work at a partner law office essentially full time and attend a classroom component at their law schools. Our Fellows are supervised by faculty and by the attorneys at the partner sites. After nine months of work with one of our partners, and after graduation, Fellows have a three-month break to take the bar exam and enjoy a vacation before returning to their fellowship placement for a full year. University of California Hastings College of the Law, *About Lawyers for America*, <http://www.uchastings.edu/academics/clinical-programs/lawyers-for-america/index.php> (last visited Aug. 3, 2014).

The *Creative Initiatives Report*, *supra* note 59, also cites a number of other “experiential third year” and similar programs. Each of these programs, like the Clinical Year, seeks to expand substantially the role of experiential education, and each offers a novel approach to doing so, but they do not appear to feature a full-year immersion as complete or uninterrupted as the Clinical Year’s.

struction and the central role at each placement of instructors who are part of the school's faculty.

On this score, the Clinical Year also differs to some extent from another valuable program with which it otherwise has much in common: Northeastern's co-ops, four ten- to eleven-week periods in full-time practice that Northeastern students undertake, interspersed between periods of academic study in their second and third years of law school. The Northeastern model, though it embraces the co-ops as a source of knowledge, still separates these periods of full-time practice experience from the coursework of the school. Undoubtedly the two forms of student study cross-fertilize, but while the school provides "extensive guidance and administrative support" for the co-ops, the students choose their own placements, the school "does not exercise any control over the actual content of the student's work experience," and the students receive no academic credit for the experiences.<sup>61</sup> There is value to self-guided learning, and value as well to immersion experiences spaced through the course of two full years of law school.<sup>62</sup> But even if we cannot be absolutely certain what teaching adds to experience, surely we should expect that in principle teaching does enhance learning.<sup>63</sup> Practice alone does not make perfect, the

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<sup>61</sup> Daniel Givelber, Brook K. Baker, John McDevitt, & Robyn Miliano, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1, 7, 46 (1995) (describing the Northeastern program, and developing a theory of "ecological learning" to explain the benefits they perceive students getting from unmediated experience in practice). See also Northeastern University School of Law, *Co-op: The incomparable co-op: Four full-time work experiences. Countless opportunities.*, <http://www.northeastern.edu/law/experience/co-op/index.html> (last visited Aug. 3, 2014). I should note that while students do not receive credit for the co-ops, they do receive "performance evaluations" from the co-op employer, and these go into "each student's permanent academic record." Northeastern University School of Law, *Plan Your Co-ops*, <http://www.northeastern.edu/law/experience/co-op/plan/index.html> (last visited Aug. 4, 2014).

For a thoughtful reflection on the challenges of learning from practice, in part responding to the Northeastern scholars' insights, see Robert J. Condlin, *Learning from Colleagues: A Case Study in the Relationship Between "Academic" and "Ecological" Clinical Legal Education*, 3 CLIN. L. REV. 337 (1997).

<sup>62</sup> William Henderson, Rebecca Sandefur and Luke Bierman have been carrying out an empirical study of the impact of Northeastern's program, and have data indicating that 92 percent of Northeastern Law students who completed four co-ops indicated that a co-op experience altered their career plans, including influencing their choice of law school courses.

William Henderson at *Elon Law shares new research on value of experiential learning for students*, ELON UNIVERSITY, [http://www.elon.edu/e-net/Article/96060?s=/law/news/enet\\_navigation](http://www.elon.edu/e-net/Article/96060?s=/law/news/enet_navigation) (last visited Aug. 3, 2014).

<sup>63</sup> The Northeastern scholars seem to agree that this may be so, in Givelber et al., *supra* note 61, at 46. Cf. Brook K. Baker, *Practice-Based Learning: Emphasizing Practice and Offering Critical Perspectives on the Dangers of "Co-op"tation*, 56 N.Y.L. SCH. L. REV. 619, 657 (2011/12) (Baker, one of Givelber's co-authors, maintaining the value of education through immersion in practice but also urging that "in order to reduce the dangers of 'co-op'tation, we should encourage our students to maintain a critical perspective on their

study of expertise suggests; guidance is needed as well.<sup>64</sup> The Clinical Year, which combines immersion with teaching, can make a special contribution to what students learn.<sup>65</sup>

Indeed, the classroom component of the Clinical Year is potentially quite comparable to the kind of instruction provided in other clinics and externships. Structuring this component is, to be sure, an area where it's been possible to learn from the experience of the first, pilot run of the course. As I've already mentioned, I now think that an ongoing classroom component focused on reflecting on the students' rotation experiences will strengthen the course; this element will surely resemble the seminars that accompany many externships. At the same time, the in-rotation classes face the challenges that clinic classes typically face: the range of skills that might be practiced, the body of substantive law that might be studied, and the case events that might be discussed pose a daunting potential agenda. If we run the course with enough students so that each rotation site always has students there, then the students arriving at each rotation will be progressively more experienced as the year goes on, and that will allow each rotation's classroom agenda to evolve to take advantage of the students' growing understanding and skill. It will be important for the rotation teachers and me to continue to think about the best way to shape these class sessions, but the basic course framework provides

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process of acculturation, *before, during, and after* their practice-based experiences”).

<sup>64</sup> The psychologist K. Anders Ericsson has observed that, “First and foremost, extensive experience of activities in a domain is necessary to reach very high levels of performance. Extensive experience in a domain does not, however, invariably lead to expert levels of achievement.” K. Anders Ericsson, *The Influence of Experience and Deliberate Practice on the Development of Superior Expert Performance*, in *THE CAMBRIDGE HANDBOOK OF EXPERTISE AND EXPERT PERFORMANCE* 683, 683 (K. Anders Ericsson et al., eds., 2006). Instead, it appears we need “deliberate practice” – “the opportunity to find suitable training tasks that the performer can master sequentially – typically the design of training tasks and monitoring of the attained performance is done by a teacher or a coach.” *Id.* at 692. (But the debate over the relative contributions of talent and practice continues. See Benedict Carey, *How Do You Get to Carnegie Hall? Talent*, N.Y. TIMES, July 14, 2014, [http://www.nytimes.com/2014/07/15/science/which-matters-more-talent-or-practice.html?\\_r=0](http://www.nytimes.com/2014/07/15/science/which-matters-more-talent-or-practice.html?_r=0).)

<sup>65</sup> A report by a California Bar Task Force urged California to require each bar applicant either to complete “15 units of practice-based, experiential course work that is designed to develop law practice competencies,” or, instead of some or all of that work, to “participate in a Bar-approved externship, clerkship or apprenticeship at any time during or following completion of law school.” STATE BAR OF CALIFORNIA, TASK FORCE ON ADMISSIONS REGULATION REFORM: PHASE 1 FINAL REPORT 1 (June 24, 2013), [http://www.calbar.ca.gov/Portals/0/documents/bog/bot\\_ExecDir/ADA%20Version\\_STATE\\_BAR\\_TASK\\_FORCE\\_REPORT\\_\(FINAL\\_AS\\_APPROVED\\_6\\_11\\_13\)\\_062413.pdf](http://www.calbar.ca.gov/Portals/0/documents/bog/bot_ExecDir/ADA%20Version_STATE_BAR_TASK_FORCE_REPORT_(FINAL_AS_APPROVED_6_11_13)_062413.pdf). The report rightly observes that “[b]ecause effectiveness of these [Bar-approved placement] programs depends on continuing, active engagement and oversight by a supervisor or instructor, certification standards must be developed to ensure quality and accountability.” *Id.* at 19. Practitioners certainly can play these roles; the Clinical Year provides a structure for bringing them into the educational process.

multiple opportunities for wide-ranging and academic study of the lawyering roles and challenges at each rotation.

*C. Connecting Law Schools to the Profession  
and the Profession's Obligations*

All of this is to say that when we consider the likely moment-by-moment experiences students will have in their rotations, we have good reason to expect that students will learn a great deal from them. But it is important to look at the program not only in detail but in full. In multiple ways, this program aims to bridge the gap between practice and academia, a gap that has troubled both lawyers and law teachers. Bridging this gap has been a prominent goal of legal education reform.<sup>66</sup> The Clinical Year reaches over this gap by moving students out into practice – and by moving the academy into practice with them. The (almost) all-encompassing character of the program is integral to it, for the course seeks to engage students in a learning environment as demanding and gripping as medical school rotations can be. My hope is that these rigorous experiences in the real world will inspire students to shine, and that as the students rise to meet the challenges of the rotations they will gain a uniquely comprehensive introduction to the world of practice, and a wide introductory experience in the skills necessary for working in that world. This program will provide students with a credential – a year of on-the-job training – that I hope will have unmistakable value in the hiring market, and with a range of networking opportunities over the course of their year.

The Clinical Year crosses the gap between law practice and law school in another sense as well. Broadly speaking, clinical legal education aims to bridge this gap by making lawyering skills a subject of law school instruction. But a comparison with medical education suggests that this strategy is incomplete. Medical education is, of course, supported by far greater resources than society has chosen to devote to the training of lawyers – and probably with good reason, given the tremendous complexity and expense of modern medicine. But the many financial resources supporting medical education are not all that supports it. A remarkably large number of regular, practicing physicians are involved in educating future doctors – not just as clinical professors at medical schools, but also as volunteers. Medical schools reported having 137,353 “volunteer clinical faculty” in 2000-01!<sup>67</sup> The

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<sup>66</sup> See, e.g., ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) (1992) (commonly known as the “MacCrate Report”).

<sup>67</sup> DONALD NUTTER & MICHAEL WHITCOMB, THE AAMC PROJECT ON THE CLINICAL

Clinical Year similarly hopes to bring practicing lawyers firmly into the process of education – and our happy experience so far is that lawyers, like the doctors volunteering at medical schools, do not seek hefty financial compensation for doing so.

Finally, the Clinical Year contributes to bridging this longstanding gap in one other way – it helps to respond to the profession’s duty to foster access to justice. Each of the three rotations in which the pilot year’s students worked called on the students to provide services either to the public (through the governmental law offices at which they were placed in two of the rotations), or to people, often in acute need, who otherwise would not have had access to legal services (at The Legal Aid Society). The students contributed an academic year’s worth of working time to meeting these public and individual needs. They also spent that year absorbing the experience of providing such services. I cannot doubt that that process will affect the choices they make for their future work as lawyers.

In principle, moreover, it should be possible to scale up these benefits – and the Clinical Year itself – to additional students. If three groups of students are rotating through the placement sites, then each site will always have students there, and that should make the program fit into the work agenda of the placement offices even more fruitfully than it already has. To be sure, each rotation is limited in how many students it can take, but if more students sought to take the course it would also be possible to create other rotation sites.

The main challenge, in fact, might be in delivering the in-school component to each of the rotating groups of students. To do that it might be necessary to shape classroom plans that would speak to the needs of multiple groups of students at once, or to recruit additional faculty to play a part in preparing students for their placements or reflecting with them on their experiences. These tasks could become quite complex, especially if the rotation sites became diverse and disconnected. But there may be synergies as well. The fact that the students are all engaged in the rotation process may build common ground between the different rotating groups, and make it easier for individual faculty members to offer instruction and for the students to

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EDUCATION OF MEDICAL STUDENTS 1, 13 (n.d.), <https://www.aamc.org/download/68522/data/clinicalskillsnutter.pdf> (last visited Feb. 1, 2015). There were also 85,902 full-time clinical faculty in medical schools. *Id.* at 11. The Association of American Medical Colleges (AAMC) report comments that “[s]ince the schools had only 16,561 third-year students, medical schools had, on average, 5.2 clinical faculty members for every medical student rotating through the required clerkships.” *Id.* It is clear from the AAMC report that medical clinical education has its own problems, but it is also clear that law schools will never have clinical faculties of comparable size. They may, however, be able to expand their clinical teaching by involving more members of the practicing bar.

teach each other across the different rotations. These, in any event, are challenges I would welcome.

In all of this, the Clinical Year intersects with two relatively new programs, spearheaded by Chief Judge Jonathan Lippmann of the New York Court of Appeals, that are also meant to help provide access to justice. I discuss these here while recognizing that New York is only a single state, for two reasons: First, New York's influence on legal education outside its borders may be significant, because many law students from non-New York schools seek admission in New York and must satisfy New York's admission rules. Second, we live in a moment when individual states seem to be actively rethinking the contours of legal training, and so there's reason to expect that new initiatives – like New York's, or not like it – may continue to emerge. In this context, the question of whether the Clinical Year, itself a new initiative, can complement other such efforts is worth attention.

The first of the New York initiatives requires every applicant for admission to the New York bar to perform 50 hours of pro bono work.<sup>68</sup> Under this program's definition of pro bono, all of the students' Clinical Year work qualifies,<sup>69</sup> and so students taking this course will easily (indeed, almost immediately) satisfy this admission requirement.

The second is the Pro Bono Scholars Program. This new initiative will be implemented for the first time in the 2014-15 school year. Students taking part in this program finish their first semester of their third year, and then take the months of January and February to study for and take the February bar exam.<sup>70</sup> After that, they go to 12-week, full-time (“approximately 45 hours of work per week”) placements – with an accompanying class to guide their learning along the way.<sup>71</sup> Under this program's definition of pro bono, which requires the representation of individual clients in need,<sup>72</sup> only the Clinical Year's rotation at The Legal Aid Society would have qualified. But even The Legal Aid rotation, as it was implemented in the Clinical Year's first run, would not have qualified fully, because the rotation lasted only

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<sup>68</sup> NY RULES, *supra* note 27, § 520.16.

<sup>69</sup> *Id.*, § 520.16(b) (defining “pro bono service” to include, *inter alia*, “assist[ing] in the provision of legal services without charge for . . . persons of limited means” and “assist[ing] in the provision of legal assistance in public service for a judicial, legislative, executive or other governmental entity”).

<sup>70</sup> PRO BONO SCHOLARS PROGRAM – A LEGAL EDUCATION INITIATIVE – PROGRAM GUIDE at 2, available at <http://www.nycourts.gov/attorneys/probonoscholars/ProBono-Scholars-Program-Guide-2014.pdf> (last visited Dec. 21, 2014) [hereinafter “PRO BONO SCHOLARS PROGRAM GUIDE”].

<sup>71</sup> *Id.* The *Pro Bono Scholars Program Guide* adds that “Time spent in classes or seminars will count toward the total number of hours required.”

<sup>72</sup> *Id.* at 3-4.

nine weeks, whereas the Pro Bono Scholars Program placements last twelve full weeks. In addition, of course, because The Legal Aid Society was the first rotation in the Clinical Year pilot, it took place in the fall semester, and so it would not have met the Pro Bono Scholars Program requirement that the pro bono placement take place from March through May of the spring semester.<sup>73</sup> Nor would the schedule have meshed in other respects, because the Clinical Year pilot had the students in rotations through the full school year, while the Pro Bono Scholars Program takes them out of school to focus on the bar exam for the full months of January and February. In addition, the Clinical Year ends with the rest of spring semester classes, while the Pro Bono Scholars Program continues well past that date to the end of May.

Nevertheless, the Pro Bono Scholars Program and the Clinical Year are obviously similar in their incorporation of full-time placements, with an accompanying class, into the law school curriculum. These two programs ought to be able to fit together, and I am hopeful that next year (2015-16) we will be able to accomplish this, and without losing the Clinical Year's unique feature of a rotation through three different law practice settings in the course of a year. Ideally it should be possible for students who are part of the Pro Bono Scholars Program, and for students who are *not* part of this program, both to take part in the Clinical Year. The key adjustment, I believe, will be to put the first two rotations for all students in the fall semester; then both groups of students can do their third rotation in the spring semester.<sup>74</sup> This is not a small adjustment,<sup>75</sup> but with it these two pro-

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<sup>73</sup> The *Pro Bono Scholars Program Guide* spells out that “any pro bono work, clinical experience or classroom studies that you completed before your final semester of law school will not count” for the program. *Id.* at 1 (extra capitalization removed).

<sup>74</sup> More precisely, Pro Bono Scholars would join their twelve-week *pro bono* placement in March after taking the February bar exam; that placement and its accompanying classroom component will be their third rotation. Meanwhile I envision that students who are not Pro Bono Scholars would begin their third rotation, at the Legal Aid Society, in January and would proceed through that rotation just as in their fall rotations. But in early March that rotation, as such, would be complete; then, while continuing at Legal Aid as their placement, they would join the Pro Bono Scholars' classroom component and continue there until the end of regular classes.

<sup>75</sup> To put the first two rotations in the fall, we will need to shorten their length. A principal way to do that will likely be to cut the pre-placement seminar, either entirely or at least in large part. That will save approximately a week in each placement, but the classroom credit that the pre-placement seminar would have earned will still be earned, primarily through the reflection seminar that I will lead alongside each rotation. *See supra* text following note 58. This approach sacrifices or at least cuts back the pre-placement seminar's opportunity to prepare students for the placement they're about to enter. The placement itself, however, will be well-positioned to do introductory training for each new group of students, and it's quite possible that that placement-based introductory training will be better tailored to the students' upcoming experience than a comparable number of hours spent before the students actually reach the placement site. (My sense is that the

grams' natural affinity could be made real.

#### CONCLUSION

The Clinical Year has now had a pilot run, in the 2013-14 school year. The faculty and the students who took the course were very pleased with it. Nevertheless the course has not run in 2014-15; only two students signed up for it, and one withdrew to join the Pro Bono Scholars Program. I hope that by linking the Clinical Year with the Pro Bono Scholars Program, and by doing everything possible to raise its visibility among students, we can build the enrollment for next year, 2015-16.

We have a great deal to learn from seeing the program in action, and it will be very important to evaluate the course's operation as effectively as possible. Effective evaluation is important throughout law school, as the new accreditation standards attest,<sup>76</sup> but there is, inevitably, a special responsibility to assess carefully whether new programs really do make the difference they aspire to make. There are several possible forms of evaluation here. One, the most familiar, would be faculty evaluations, including but not limited to grades: do students in fact acquire the skills and understanding they will need for their future work? Another, also familiar in part, would be student assessments, and ultimately graduates' appraisals, of what they have learned and of whether the program has helped them to start their careers. Still another, desirable but perhaps far more difficult to fashion, would be objective measures of impact over time: do students from the program have more success than others in getting the jobs they want, and do employers tell the students and the school that participation in this program is a valuable credential? Evaluation tools that both assess learning as it takes place, and gauge its impact over time, would provide a powerful resource for further shaping the Clinical Year, and other programs, to provide the training students need. In the pilot run of the course, much of the assessment took place simply in discussion, in or out of class; there is more to be done to insure that this program's value is measured as well as possible the next time.

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students themselves, having taken the Clinical Year for the opportunity to learn from full-time experience, felt the pre-placement seminar had an overly academic air.)

In addition, since the Clinical Year would now have two intersecting, but not identical, tracks (one for the students who are part of the Pro Bono Scholars Program, one for those who aren't), credits would need to be readjusted and allocated to reflect the different paths students are following.

<sup>76</sup> See ABA REVISED STANDARDS, *supra* note 10, Standards 302 ("Learning Outcomes"), 314 ("Assessment of Student Learning"), & 315 ("Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods").

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For now, I can say that the Clinical Year responds to the widespread perception that law schools need to become more truly schools for lawyers – schools focused on imparting to students the intellectual and practical skills they need, and the engagement with professional values that can make their employment of those skills meaningful. The Clinical Year also offers a response to the sense that the third year of law school may be superfluous. The answer the Clinical Year suggests to each of these concerns is fundamentally the same: law schools *can* provide students with training that will help them make their way in the world. If schools can do that, then it makes sense for students to continue to invest the substantial sums required for a third year of law school.<sup>77</sup> The Clinical Year aims to provide this training by reviving the idea of learning through apprenticeship, but shaping the apprenticeship experience as simultaneously a continuation of academic study. My hope is that the result will both enhance law schools' ability to prepare their students for the practice of law, and confirm for students the value of what the schools do.

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<sup>77</sup> And this is so even though most of the students' third year would be spent doing legal work in the three rotations, both because the Clinical Year adds educational structure and educators' input to that work, and because the value of this course as part of students' preparation for the profession rests on the full body of other coursework that the school provides.

