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## Practice Makes Perfect: New Practitioners' Perspectives on Trends in Legal Education

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Practice Makes Perfect:  
New Practitioners' Perspectives on Trends  
in Legal Education

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Washington University School of Law's celebration of 150 years presents a unique opportunity for reflection on the current state of legal education in the United States. As recent law school alumni and fledgling practitioners, we offer a perspective on the efficacy and shortcomings of recent modal changes in legal training. Inescapably, our views are colored by our personal experiences as students at Washington University; we do not suppose our own experiences can be generalized to the entire academy. Nonetheless, in this short reflection, we consider our experiences as recent graduates shaped by emerging trends in legal education.

Our commentary is meant to offer a viewpoint often absent from the most fervent debates about pedagogical changes and needed reforms in legal education: one that is situated somewhere between a student's immediate exposure but limited perspective, and the established practitioner's measured but distant analysis.

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## A CHANGING LEGAL EDUCATION FOR A CHANGING WORLD

Recent innovations in legal education have championed clinical education and legal practice training,<sup>1</sup> often referred to generally as experiential learning.<sup>2</sup> These changes have been positive for the student experience<sup>3</sup> and have furthered the Law School's goal of preparing capable, ethical, practice-ready attorneys. Our own positive experiences with experiential learning courses—including clinical experiences in judges' chambers, criminal courtrooms, and a state legislature, plus a wide variety of courses dedicated to development of applied litigation skills, including legal writing courses, seminars, law journal and law teaching experiences—contributed heavily to our overall view of law school as a practical, varied, and ultimately valuable training ground for our careers as advocates.

A focus on experiential learning, however, goes beyond technical skill-building—it represents a shift that has served to make law school a more egalitarian experience.<sup>4</sup> It offers a meaningful response

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1. See *Managing Director's Guidance Memo: Standards 303(a)(3), 303(b), and 304, March 2015*, ABA SECTION LEGAL EDUC. & ADMISSIONS TO BAR, [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_standards\\_303\\_304\\_experiential\\_course\\_requirement\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_standards_303_304_experiential_course_requirement_authcheckdam.pdf).

2. Washington University, in particular, has been a leader in this regard: it boasts one of the top clinical education programs in the country and enjoys a faculty rife with experts in experiential education. This publication has long been at the fore of championing scholarship on developments and advancements in clinical education and legal education more broadly. See, e.g., Karen Tokarz, Nancy L. Cook, Susan Brooks & Brenda Bratton Blom, *Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL'Y 359, 401 (2008); Brenda V. Smith, *Stories of Teaching Race, Gender, and Class: A Narrative*, 51 WASH. U. J.L. & POL'Y 11 (2016); see generally Karen Tokarz & Annette Ruth Appell, *New Directions in ADR and Clinical Legal Education: Introduction*, 34 WASH. U. J.L. & POL'Y 1 (2010); Karen Tokarz & Rebecca Hollander-Blumoff, *New Directions in Negotiation and ADR: Introduction*, 39 WASH. U. J.L. & POL'Y 1 (2012); Karen Tokarz & Geetha Rao Sant, *New Directions in Community Lawyering, Social Entrepreneurship, and Dispute Resolution: Introduction*, 48 WASH. U. J.L. & POL'Y 1 (2015).

3. See Spearlt & Stephanie Smith Ledesma, *Experiential Education as Critical Pedagogy: Enhancing the Law School Experience*, 38 NOVA L. REV. 249, 251 (2014) (arguing that "[a]lthough advocates of experiential education typically emphasize the needs of the profession and student marketability, critical pedagogy reveals more at stake for students—including experiencing greater agency, autonomy, and hopefully, greater justice.").

4. See, e.g., Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public-Interest Partnership*, 8 LEGAL COMM. & RHETORIC: JALWD 191, 215 (2011) ("Partnering with nonprofits dedicated to advancing the rights of underrepresented populations

to Duncan Kennedy's seminal criticism of law school's "[t]rade-school mentality, [] endless attention to trees at the expense of forests, [and] alternating grimness and chumminess of focus on the limited task at hand[.]"<sup>5</sup> Moreover, the unique political moment at which Washington University celebrates its sesquicentennial highlights the importance of equipping attorneys for roles as advocates, citizens, and leaders in society at large—not just within the strictures of the courtroom, the boardroom, or the academy. At a time when public skepticism abounds, trust in the courts and the rule of law is diminishing, and the specter of fake news looms large,<sup>6</sup> those with the tools to analyze complex issues, evaluate facts, and meaningfully solve real problems will be in increasingly higher demand.

As we write, for example, mass confusion abounds as the executive publicly spars with the judiciary<sup>7</sup> over the constitutionality of President Trump's Executive Order signed January 27, 2017, banning travel from seven Muslim-majority countries.<sup>8</sup> Since the

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brings awareness to first-year law students of their professional responsibility to the public: a key component of lawyers' professional values.").

5. Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 596 (1982). Kennedy explains that traditional pedagogy was problematic because it relied on legal reasoning, taught reasoning through unconnected legal problems, and taught skills in isolation of actual practice. Experiential learning addresses all three problems. *Id.*

6. See, e.g., *Fed. Trade Comm'n v. LeadClick Media, LLC*, 838 F.3d 158, 163–64 (2d Cir. 2016) (addressing the function and prevalence of fake news websites); see generally Amanda Taub, *The Real Story About Fake News Is Partisanship*, N.Y. TIMES (Jan. 11, 2017), <https://www.nytimes.com/2017/01/11/upshot/the-real-story-about-fake-news-is-partisanship.html> (explaining that "[p]artisan refraction has fueled the rise of fake news, according to researchers who study the phenomenon," and citing experts' concerns that "this growing national divide will be a feedback loop in which the public's bias encourages extremism among politicians, undermining public faith in government institutions and their ability to function.").

7. See Reena Flores, *Trump Tweets on "So-Called Judge" After Travel Ban Stay*, CBS NEWS (Feb. 4, 2017, 8:55 PM), <http://www.cbsnews.com/news/trump-tweets-on-so-called-judge-after-travel-ban-stay/>; Matt Zapotosky et al., *Former Top Diplomats, Tech Giants Blast Immigration Order as Court Showdown Looms*, WASH. POST (Feb. 6, 2017), [https://www.washingtonpost.com/politics/trump-administration-appeals-to-restore-travel-ban-says-earlier-ruling-was-second-guessing-the-president/2017/02/05/6fcd5a-eb4c-11e6-80c2-30e57e57e05d\\_story.html?utm\\_term=.ad4945ebfd40](https://www.washingtonpost.com/politics/trump-administration-appeals-to-restore-travel-ban-says-earlier-ruling-was-second-guessing-the-president/2017/02/05/6fcd5a-eb4c-11e6-80c2-30e57e57e05d_story.html?utm_term=.ad4945ebfd40).

8. *Fact Sheet: Protecting the Nation from Terrorist Entry to the United States*, DEP'T OF HOMELAND SEC. (Jan. 29, 2017), <https://www.dhs.gov/news/2017/01/29/protecting-nation-foreign-terrorist-entry-united-states> (discussing the ninety-day travel ban for travelers with passports from Iraq, Syria, Sudan, Iran, Somalia, and Yemen).

Order was signed, lawyers have experienced a rare<sup>9</sup> moment in the sun after descending en masse to airports around the country to offer services to those detained, and swiftly challenging the Order in federal courts. Lawyers with the skills to critically engage with the world have taken on renewed importance as bedrock principles of our democracy are increasingly at risk. Political insecurity has shined a light on the legal profession's incredible diversity and versatility—and the importance of its being flexible, nimbly able to respond to changing circumstances, and ready to answer the call when the rule of law is at stake.

Lawyers are well-positioned to respond in this way because they often play a similar role on behalf of their own clients—at scales both large and small. But there is another compelling reason that lawyers are at the fore: law schools' longstanding commitment to teaching and modeling a “respect for dialogue, for hearing both or all sides, for refraining from judgment until one has truly listened, or as it is more often called, for legal process, and for the reasoned debate which follows . . . which carries with it the irreducible equality of human worth.”<sup>10</sup> Legal training must continue to cultivate these abilities in aspiring attorneys, and law schools should continue the trend toward innovative and critical teaching methods that accomplish that goal.

#### LEARNING TO “THINK LIKE A LAWYER”

There is a common refrain throughout the first year—“think like a lawyer.”<sup>11</sup> This trope generally refers to the process of reading cases

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9. Colin Croft, *Reconceptualizing American Legal Professionalism: A Proposal for Deliberate Moral Community*, 67 N.Y.U. L. REV. 1256, 1256 (1992) (describing the “lack of enthusiasm for the legal profession” and the “tenaciously negative perception of legal practice”).

10. Robin West, *Towards the Study of Legislated Constitution*, 72 OHIO ST. L.J. 1342, 1342 (2011).

11. As one author describes:

The oft-mentioned ability to “think like a lawyer” supposedly developed during legal education piques the curiosity of the layman and neophyte law student alike. Why does a lawyer “think” any differently than the rest of society? Why should she? In one respect, this lawyer's thought process refers to an analytical technique or frame of mind, characterized by the ability to sift efficiently through pages of information to discern relevant key facts, and to master the ability to extract a relevant governing rule of law from a case or statute and apply it to the case at hand. These are valuable skills,

and learning to analyze fact patterns so as to deduce the legal rule.<sup>12</sup> But as others have observed, there is something more at work: the phrase also refers to training students to become more “objective” (read: dispassionate), and to be systematic and “disciplined” in that approach.<sup>13</sup> As Robin West points out, in teaching students to “think like a lawyer,” traditional legal education emphasizes that “[t]he law . . . is what the judges do in . . . cases, and not simply the rules that they accurately or inaccurately, artfully or inartfully, apply.”<sup>14</sup> West assails law school’s “pedagogical focus on adjudication,” and argues that law schools fail to “teach that the law might be reflected in—much less constituted by—those political actions taken by other institutional actors.”<sup>15</sup> As new practitioners, we are often struck by how limiting this approach can be when counseling clients and attempting to reason creatively toward solutions.

Law faculty unsurprisingly play an outsized role in how these messages are delivered to and received by students. Law professors must strive to avoid condescension and encourage critical questions about the law as applied to the real world. Law teaching that is content with examining the law in a doctrinal vacuum, and apart from social, economic, and political realities, teaches that the law is something that exists separate and apart from the world in which we live. But law teaching that takes experiential learning seriously—and as equal to traditional doctrinal course work—is not just “skills training,” but a laboratory in which to observe at work the theories, ideologies, and hierarchies underpinning our legal system.

While the proliferation of more holistic, practice-based learning is a positive step for American legal education, its implementation must

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and to the extent they are practiced predominantly by lawyers they may justifiably be called “thinking like a lawyer” rather than something else.

Croft, *supra* note 9, at 1137–38.

12. *Id.*

13. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 188 (The Carnegie Found. for the Advancement of Teaching ed., 2007) (“Both of these drawbacks—lack of attention to practice and the weakness of concern with professional responsibility—are the unintended consequences of reliance on a single, heavily academic pedagogy to provide the crucial initiation into legal education.”).

14. West, *supra* note 10, at 1345.

15. *Id.*

be further refined to emphasize the critical and philosophical learning opportunities presented in the field. Just as the law school emphasizes proficiency in some subjects of the law—civil procedure, torts, and property to name a few—so too must the law school require that students are prepared to address the complex and intersecting issues that will confront them in practice. While select doctrinal courses are taught from a problem-based perspective, clinical education courses are unquestionably effective at meeting this goal and are critical to the task of teaching students to “think (and act) like a lawyer.” Guaranteed (and perhaps even mandatory) clinical education is a crucial ingredient for law schools to ensure the development of competent, ethical practitioners.

Additionally, while the traditional first-year curriculum remains the bedrock of legal education,<sup>16</sup> there is a growing recognition that flexibility in the first-year curriculum,<sup>17</sup> as well as an early and meaningful focus on developing practical skills, will produce more capable and “practice-ready” attorneys.<sup>18</sup> Although Washington University does not offer first-year electives, many law schools do so, including most top 20 law schools, ranging from international courses, regulatory courses, to critical jurisprudence and lawyering skills courses. As new practitioners who are regularly expected to churn out memos, quickly identify issues, provide summaries of controlling law, and give opinions about the viability of arguments, the continued integration of these vital theoretical and practical skills into the first-year curriculum is a logical and important initiative. At a minimum, giving students some choice about whether to pursue

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16. See, e.g., Leslie Bender, *Hidden Messages in the Required First-Year Law School Curriculum*, 40 CLEV. ST. L. REV. 387 (1992) (“Law school curricula have changed significantly in the last decade, adding more variety, more interdisciplinary courses, more clinical experiences, more theory and skills-oriented courses, but most of these changes have been in upper-level elective choices or elective clinical programs.”).

17. See, e.g., Ethan J. Leib, *Adding Legislation Courses to the First-Year Curriculum*, 58 J. LEGAL EDUC. 166, 170 (2008) (“For a long time, the standard first-year curriculum has been badly out of synch with what lawyers actually do.”).

18. See, e.g., Robert R. Kuehn, *Measuring Clinical Legal Education’s Employment Outcomes* (Aug. 14, 2015). 2015 WISC. L. REV. 645. Washington University provides an excellent model: its required Legal Practice course, a two-part skills-intensive course focused on writing and advocacy, is a course taught by full-time faculty where students are broken into smaller sections for the more individualized attention. In addition, a short course in negotiation has been required for all first-year students during the January term since 2011.

elective courses in the first year is a logical and crucial step forward.

Moreover, as students advance to the second and third year, all courses are not created equal when it comes to development of the critical abilities shared by thoughtful, effective, client-centered, and reflective advocates. Although not a regular part of the required curriculum, advanced courses in constitutional law (especially those with a focus on the First Amendment, Fourteenth Amendment, and other touchstones of rights jurisprudence), critical jurisprudence, critical race and gender theory, legal philosophy, and even federal courts and federal jurisdiction often provide powerful tools to help aspiring attorneys better understand and confront discrimination and bias in the profession and in the law. Just as the profession is increasingly mandating bias training for lawyers, judges, court staff—and, even, juries—so do law students need this exposure. From these and similar course offerings, law students gain exposure to the policy decisions and political realities that exist in our profession and undergird our system of justice.

Finally, as Kennedy also promotes,<sup>19</sup> the law school itself can encourage critical engagement by being open and receptive to student activism. Whether radical or mainstream, serious-minded student initiatives should be accorded respect and consideration by faculty and administration.<sup>20</sup>

Creating space for questions and critical inquiry, as well as student initiative, ensures that new lawyers enter the world of practice with an aspirational view of the law and lawyering. Encouraging lawyers to see the law as malleable and connected to the real world—through community education, legislative advocacy, media advocacy, and other forms of community lawyering—is pivotal, not only to encouraging creativity in lawyering, but to allowing new lawyers to develop the always-questioning attitude of the most effective advocates.

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19. Kennedy, *supra* note 5, at 612.

20. In the authors' own experience, a faculty and administration ultimately receptive to student-led efforts—to increase public interest funding, and update academic credit given for experiential undertakings—generated one of the most meaningful and memorable endeavors of our academic careers, which served as an important lesson in both advocacy and realpolitik.



## LEARNING TO THINK LIKE A CLIENT

As law students, clinical opportunities became available to us as soon as we finished the first year curriculum.<sup>21</sup> We took advantage of a variety of clinical opportunities that led us into judges' chambers, classrooms of area high schools, jails, and courtrooms. In our experience, the opportunity to work with clients and client communities was transformative. The black letter law from the pages of our case books took on new meaning as we struggled to apply it to the facts of real life. Rules broke down. Static propositions learned in classrooms became fluid and the law became a living, breathing tool used to solve real problems. Moreover, our experiences imparted the importance of working alongside clients as self-directed and self-determinative entities.

To give but a few examples, our clinical experiences were as varied as assisting in the development of a pre-trial diversion program, evaluating legislative reform efforts, and participating in indigent criminal defense. In that latter capacity, one representative undertaking included conveying options to criminal defendants who, in truth, possessed few. Our task—to nonetheless make a full assessment of the options available to our clients, and to guide them through their own decision-making with caution, patience, and compassion—was an exercise in managing expectations, conveying difficult information with sensitivity, negotiating with power, and other attributes equally well-suited to the world of high-stakes civil litigation. Even as we entered practices wholly different from our experiential work, we drew on these and other skills honed in the clinical setting.

Rather than understanding clients as the barest generalities of their identities, law students engaged in clinical work are often uniquely

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21. In addition to a highly-ranked clinical program led by a renowned clinical faculty, Washington University School of Law guarantees students the opportunity to partake in a clinic. Over eighty percent of law students avail themselves of this opportunity. *Clinical Programs*, WASHULAW, <http://apply.law.wustl.edu/clinical-programs> (last visited Feb. 16, 2017). Washington University is incredibly fortunate to be located in St. Louis, a city with myriad opportunities for growth and creative problem-solving and where practitioners have a long-standing commitment to opening doors to future lawyers, mentoring and teaching by example.

positioned to delve deeper into clients' life situations, and further, into the underlying systemic problems that often precipitate legal issues. A truly comprehensive clinical education program, then, must not merely provide opportunities to observe and shadow lawyers in practice, but also bears responsibility for instilling skills in understanding and interacting with clients. In order for the lessons from clinical education to be elucidated and given meaning for students, they must have an opportunity to share and examine their experiences. Some of our own most significant law school learning happened in a small seminar room, listening to colleagues debrief about challenges and successes of each week in clinic. One of the reasons that Washington University's clinical program has been successful is its investment in full-time faculty members specializing in clinical and practical teaching, who are expert at facilitating such exchanges. While tightening budgets and limited resources make clinical programs vulnerable to cost-cutting,<sup>22</sup> a clinical experience is only as successful as the faculty who lead it.

#### LEARNING TO THINK LIKE AN ADVOCATE

As new practitioners, we are consistently impressed by the great disparity between what law partners *think* recent law school graduates were taught to do in law school and the knowledge with which graduates actually leave law school. Aside from clinical education itself, opportunities such as negotiation and dispute resolution courses, law journal, moot court, and mock trial present practical, skills-based training that can be defining for a newly-minted lawyer, yet often goes missing from an otherwise "comprehensive" law school experience. These opportunities should be championed, and moreover, they should not be relegated to the status of "extra-curriculars," but should be recognized for what they are: vital components of comprehensive legal education and training. Accordingly, they should be awarded with appropriate academic credit—and otherwise incorporated into the formal law school curriculum—where appropriate.

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22. See, e.g., Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 309 (2012).

In our own experience, learning oral advocacy skills by preparing for moot court and trial competitions, under the tutelage of an Assistant U.S. Attorney, a prominent local judge, and other superb practitioners, prepared us for the practical realities of work as litigation associates. Importantly, these experiences were not limited to a surgical academic analysis of legal issues. Instead, they often invited us to understand the emotional and practical implications of hypothetical clients, and encouraged us to leverage these implications in our advocacy. They gave us confidence not only in the finer points of divining a case rule, but in the more broadly applicable lawyering skills of public speaking, persuasive writing and presentation, and empathy towards a client's plight.

Lawyering skills education can be taken one step further through programs that do not simply teach advocacy for advocacy's sake, but instead offer training in "systemic advocacy that aims to educate a segment of the community about its rights in a particular legal context to advance the empowerment of that community."<sup>23</sup> Put differently, advocacy programs that both provide hands-on training and meet community legal needs should be afforded prominence. The Marshall Brennan Constitutional Literacy Project,<sup>24</sup> an initiative undertaken by now-Congressman Jamin Raskin of Maryland that places law students in traditionally under-resourced high schools to impart principles of constitutional law, is one prime example (among many<sup>25</sup>) of such a program. Raskin explains the unique contribution of the program—and other programs like it—to legal pedagogy:

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23. Margaret Martin Barry et al., *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLINICAL L. REV. 401, 404–05 (2012). Barry et al. explain: "Community empowerment can result from the following activities: encourag[ing] planning on the basis of legal rights and obligations; mobiliz[ing] individuals and groups to pursue their rights; facilitat[ing] and strengthening community organizations; foster[ing] self-help activities for which lawyers will not be necessary; and demystifying the law." *Id.* (internal footnotes and quotation marks omitted).

24. See generally Jamin B. Raskin, *The Marshall-Brennan Constitutional Literacy Project: American Legal Education's Ambitious Experiment in Democratic Constitutionalism*, 90 DENV. U. L. REV. 833, 863–70 (2013).

25. For two other such examples, see Adam Miller, *Street Law Uses Legal Education to Empower Underprivileged Youth*, 13 PUB. INT. L. REP. 38 (2008), and MICH. LAW, <https://www.law.umich.edu/journalsandorgs/Pages/FAIT.aspx> (last visited Feb. 27, 2017).

[T]he Marshall-Brennan project insists that . . . law students can master constitutional law by constantly translating and explaining the relevant concepts and terms to young people, bringing them closer to people in the broader community . . . law schools as places of learning and civilization can promote direct service in the community, especially teaching the law to non-lawyers, which is an obligation of professional social responsibility[.]<sup>26</sup>

Participation in community-based opportunities like Raskin's creative program gives aspiring attorneys unique opportunities for growth and self-driven skill development. At the same time, it inculcates a core value of experiential learning: that legal training carries with it a responsibility to use those skills as an advocate for the most vulnerable members of our community.

#### CONCLUSION

Law schools must continue to foster and promote creative approaches to legal education that emphasize their own unique ability—and that of their students—to contribute to community growth. Most importantly, law schools must develop and expand programs, teaching, and courses of study that encourage critical interaction with the law. Law school students who take advantage of these innovations in legal education undoubtedly will find themselves uniquely equipped to critically engage with the law and impact the law in every area of practice.

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26. Raskin, *supra* note 24.