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CLINICAL THEORY WORKSHOP DRAFT**

**MEASURING THE IMPACTS OF
EXPERIENTIAL LEGAL EDUCATION**

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Experiential legal education has become an essential component of the law school curriculum, emphasizing "learning by doing" through practical experiences in law clinics, externships, and simulation courses. This pedagogical approach offers law students the critical skills and professional values required for effective and ethical practice. Despite its recognized importance and parallels with other professional disciplines, legal education still requires minimal experiential education compared to other professions. This reluctance may stem from skepticism about its value, even though many stakeholders, including students, recent graduates, and other legal professionals, acknowledge its significance.

This Article is the first to comprehensively examine and synthesize the research into the impacts of experiential legal education by analyzing over sixty studies. By providing such a comprehensive review, it fills a crucial gap in the literature by focusing on the impacts of experiential legal education, not just arguments in favor or against. It begins with an overview of experiential education and its theoretical foundations and then analyzes studies on experiential legal education's role in the development of professional skills and readiness for practice, enhanced professionalism and professional identity, employment outcomes, bar exam passage, and the financial impact of experiential education. The findings show widespread support among law students and recent graduates for more experiential training in law school and demonstrate the tangible benefits of experiential education in preparing students for the profession. This Article concludes by emphasizing that decisions about experiential legal education should be based on the extensive evidence of its positive impacts, rather than conjecture, anecdote, or unsubstantiated beliefs.

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INTRODUCTION

Over the past few decades, experiential legal education has emerged as an important, and necessary, part of the law school curriculum.¹ Experiential education’s learning by doing and focused reflection help law students gain the critical lawyering skills and professional values necessary “for effective, ethical, and responsible participation as members of the legal profession.”² The experiential learning in law clinics, externships, and simulation/skills courses puts students in role as lawyers representing clients. Thus, experiential education contrasts with the more predominant passive forms of legal education, such as listening to lectures or reading casebooks. This shift toward incorporating more experiential education in law schools acknowledges what other professions have long understood and embraced – hands-on, experiential learning is necessary to prepare students for the complexities of practice as a professional.³

In spite of some advances, legal education continues to lag far behind other professional schools in the amount of experiential education required of its graduates. This reluctance to require more experiential education may rest, in part, on skepticism about the value of such learning even though law students, recent graduates, and more experienced lawyers and judges consistently comment on the value of experiential training. In response to this skepticism, this Article is the first to comprehensively examine and synthesize the research into the impacts of law clinic, externship, and simulation courses, critically analyzing over sixty studies measuring the impacts of experiential legal education. By providing a comprehensive review of existing studies, this Article fills a crucial gap in the literature by focusing on the impacts of experiential legal education, not just arguments in favor or against.

Section I of the Article begins with an overview of experiential education, reviewing its theoretical bases and higher education studies that measure the value of experiential education in general. The balance of the Article then examines the studies that measure the impacts of experiential legal education. Section II reviews surveys of law students, recent graduates, practicing lawyers and judges as well as studies measuring the impact of experiential courses on the development of a law student’s professional skills and readiness for practice. Section III analyzes research on the role of experiential courses in enhancing a law student’s

¹ The American Bar Association (ABA) Accreditation Standards currently require each law student to satisfactorily complete at least “one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement.” AM. BAR ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2024-2025, Std. 303(a)(3) [hereinafter ABA STANDARDS]. The ABA Standards did not require instruction in professional skills, other than legal writing, until 2005, when Standard 302(a) was amended to require each student to receive “substantial instruction” in lawyering skills. Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICKINSON L. REV. 551, 573 (2018) [hereinafter Joy, *The Uneasy History of Experiential Education*]. Initially, substantial instruction was interpreted to equal one credit hour. *Id.* at 574. In 2014, the ABA Standards were amended to require six credit hours in experiential courses. *Id.* at 576.

² *Id.* at Std. 301(a).

³ See *infra* Part I.B.4.

professionalism, professional identity, and commitment to pro bono work. Section IV examines surveys of recent law graduates and legal employers, as well as nationwide studies of graduation data, on the role of experiential courses in aiding graduates in obtaining their first job. Section V reviews the empirical studies on the possible relationship between participation in experiential courses and bar exam passage. Section VI analyzes studies on the impact of experiential courses on law school operating costs and tuition. Section VII addresses studies measuring other impacts of experiential courses on law students, law schools, and communities. This Article concludes with two observations derived from the analysis of current studies. First, there is a need for more studies examining the link between law school teaching methods and activities and student learning, for all of legal education and not just for experiential legal education. Second, to better prepare law students for the demands of the profession, law schools and faculty should be guided by evidence and not be conjecture, anecdotes, and unsubstantiated beliefs when designing their programs of legal education.

I. THE VALUE OF EXPERIENTIAL EDUCATION

Experiential education, including experiential legal education, is a teaching approach in which faculty or others engage students in hands-on experiences and focused reflection to increase knowledge, develop skills, and clarify values.⁴ Experiential education contrasts with traditional education, which relies more heavily on passive forms of learning, such as listening to lectures or reading textbooks.⁵ In experiential education courses, students learn by doing and are better able to apply the knowledge and theories learned in the classroom to real-world situations.⁶

Experiential education has an emphasis on combining education with experience and not simply learning from experience alone. Everyone learns from experience, but experiential education involves the active involvement of others to maximize what is learned from the experience.⁷ Key to experiential education is engaging the students to reflect on what they have learned from an experience and how they would apply what they learned to their next experience.⁸ “The most critical factor for achieving powerful learning outcomes from experiential-learning programs is the inclusion of opportunities for feedback and reflection.”⁹ In law clinics, externships and simulation courses, the feedback law students receive assist them in applying what they have learned to their next lawyering experience.

⁴ *What Is Experiential Education?*, ASSOCIATION FOR EXPERIENTIAL EDUCATION, <https://www.aee.org/what-is-experiential-education> (last visited Oct. 18, 2024).

⁵ Jack Solomon, *Why Is Experiential Education Important? A Comprehensive Guide for Parents and Educators*, UNRULR, (Feb. 29, 2024), <https://www.unrulr.com/post/why-is-experiential-education-important>.

⁶ *Id.*

⁷ Peter A. Joy, *Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?*, 10 CLINICAL L. REV. 681, 712 (2004).

⁸ *Id.* at 713.

⁹ Janet Eyler, *The Power of Experiential Education*, LIBERAL EDUCATION 24, 30 (Fall 2009).

The value of experiential education is well-documented in educational research and practice in several fields,¹⁰ including law.¹¹ This section of the Article briefly discusses the theoretical bases for experiential education, focusing on the theories of four pivotal proponents. It next proceeds to discuss experiential education's key benefits, which include: development of critical thinking and problem-solving skills; enhanced professionalism and professional identity; improved employment prospects; and increased interest in learning and learning retention.

A. Theoretical Bases of Experiential Education

The theoretical bases for experiential education are rooted in several educational theories. David Kolb, a major contributor to experiential education theory, identified John Dewey, Kurt Lewin, and Jean Piaget “as the foremost intellectual ancestors of experiential learning theory.”¹² A brief discussion of each of their contributions, as well as those of Kolb, will lay the groundwork for understanding the impacts of experiential education in all disciplines, including law.

1. John Dewey's Model of Learning

Dewey's model of learning involves: “(1) observation of surrounding conditions; (2) knowledge of what has happened in similar situations in the past, a knowledge obtained partly by recollection and partly from the information, advice, and warning of those who have had a wider experience; and (3) judgment, which puts together what is observed and what is recalled to see what they signify.”¹³ Dewey's model of learning places an emphasis on “a cycle of ‘trying’ and ‘undergoing’ by becoming aware of a problem, getting an idea, trying out a response, experiencing the consequences, and either confirming or modifying previous conceptions.”¹⁴

Dewey posited that what one “has learned in the way of knowledge and skill in one situation becomes an instrument of understanding and dealing effectively with the situations which follow. This process goes on as long as life and learning continue.”¹⁵ In other words, Dewey's model is one of learning how to learn from experience. Kolb explains that there are important educational implications in the “fact that learning is a continuous process grounded in experience . . . it implies that all learning is relearning.”¹⁶

2. Kurt Lewin's Model of Learning

¹⁰ See *infra* Part I.B.

¹¹ See *infra* Parts II to VII.

¹² DAVID A. KOLB, EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT 15 (1984).

¹³ JOHN DEWEY, EXPERIENCE AND EDUCATION 29 (1938).

¹⁴ Linda H. Lewis & Carol J. Williams, *Experiential Learning: Past and Present*, 62 NEW DIRECTIONS FOR ADULT LEARNING & CONTINUING EDUC. 5, 6 (1994).

¹⁵ DEWEY, *supra* note zzz, at 44.

¹⁶ KOLB, *supra* note zzz, at 28.

Lewin is the originator of action research,¹⁷ a model of experiential learning in which participants examine and evaluate the work they do.¹⁸ Action research involves participants asking themselves a series of questions about their work: "What am I doing? What do I need to improve? How do I improve?"¹⁹ Out of this process, theories of practice emerge from which both the participants engaged in this process and others can learn how to approach their work. Action research is distinct because participants themselves, and not professional researchers, engage in the research.²⁰

Lewin's original model of learning is a four-stage cycle. The model begins with concrete experience, moves to collection of data and observations about the experience, then analysis of the data to form abstract concepts and generalization, to testing implications of the concepts in new situations.²¹ Kolb observes that Lewin's model emphasizes "*here-and-now concrete experiences* to validate and test abstract concepts. Immediate personal experience is the focal point for learning . . ."²² Another important feature is that of information feedback, as "Lewin and his followers believed that much of individual and organizational ineffectiveness could be traced ultimately to a lack of adequate feedback processes."²³ More recent advocates of action research describe the process as one of an action-reflection cycle consisting of these components: observe; reflect; act; evaluate; modify; and move in new directions.²⁴ Like Dewey's model, this is an ongoing process.

3. Jean Piaget's Model of Learning

Piaget's model of learning is grounded in cognitive development. Like the learning models of Dewey and Lewin, Piaget's model takes place in a cycle of interaction between the individual and their environment.²⁵ Piaget viewed learning as intelligent adaptation in which there is a "mutual interaction of the process of *accommodation* of concepts or schemas to experience in the world and the process of *assimilation* of events and experiences from the world into existing concepts and schemas."²⁶ Piaget believed that individuals' knowledge was not adequately acquired through memorization of information or ideas provided by teachers, but rather through adapting information and ideas to individuals' own perceptions and prior knowledge to construct new knowledge.²⁷ For Piaget, "knowledge is only truly acquired when it is used by a particular individual in the process of solving a specific problem."²⁸

¹⁷ Clem Adelman, *Kurt Lewin and the Origins of Action Research*, 1 EDUC. ACTION RSCH. 7 (1993).

¹⁸ JEAN MCNIFF & JACK WHITEHEAD, ALL YOU NEED TO KNOW ABOUT ACTION RESEARCH 7 (2006).

¹⁹ *Id.*

²⁰ *Id.* at 8.

²¹ KOLB, *supra* note zzz, at 21.

²² *Id.*

²³ *Id.* at 22.

²⁴ MCNIFF & WHITEHEAD, *supra* note zzz, at 9.

²⁵ KOLB, *supra* note zzz, at 23.

²⁶ *Id.* at 23.

²⁷ Jianing Zhang, *The Influence of Piaget in the Field of Learning Sciences*, 12 HIGHER EDUC. STUD. 162, 163 (2022).

²⁸ *Id.* at 165.

Through his work, Piaget identified four major stages of cognitive growth from birth to the age of 16. The final stage, ages 12-16 years, is known as the formal operations stage,²⁹ when the person has an active orientation towards learning that is modified by the development of reflection and abstract thinking. One is then able “to engage in hypothetical-deductive reasoning . . . develops the possible implications of his theories and proceeds to experimentally test which of these are true.”³⁰

Piaget’s contribution to experiential learning theory rests primarily on his development of the stages of cognitive development, and the final stage, starting at adolescence, informs the learning process of adults.³¹ Taken together with Dewey and Lewin, these three theories emphasize that learning is a continuous process grounded in experience.

4. David Kolb’s Model of Learning

Dewey, Lewin, and Piaget greatly influenced Kolb in the development of his model of learning. After studying their contributions and the contributions of others, Kolb identified the characteristics of experiential learning and developed this definition of learning: “Learning is the process whereby knowledge is created through the transformation of experience.”³²

Kolb’s model of experiential learning consists of two parts. The first focuses on individual learning styles and his thesis that the learning process is not the same for everyone.³³ Kolb determined that people develop learning styles “that emphasize some learning abilities over others.”³⁴ To assess individual learning styles, Kolb created the Learning Style Inventory.³⁵

The second part of Kolb’s model is his major contribution to experiential learning – his four-stage cycle of learning, like Dewey’s and Lewin’s, based on a continuous process grounded in experience.³⁶ The four components of Kolb’s cycle of learning are “having an experience (“concrete experience”), reflecting on the experience (“reflective observation”), learning from the experience (“abstract conceptualizations”) and trying out what you have learned (“active

²⁹ *Id.* at 163.

³⁰ KOLB, *supra* note zzz, 25.

³¹ *Id.*

³² KOLB, *supra* note zzz, at 38.

³³ *Id.* at 62.

³⁴ *Id.* at 76.

³⁵ A description and analysis of Kolb’s learning styles and the Learning Style Inventory are tangential to his contribution to experiential education and are not necessary for measuring the impacts of experiential education. In 2013, Alice Kolb and David Kolb produced a major revision of the original Learning Style Inventory (LSI), containing a description of the conceptual foundation of the LSI and its history, reliability studies of the LSI, and updated research concerning the LSI. *See generally* ALICE Y. KOLB & DAVID A. KOLB, THE KOLB LEARNING STYLE INVENTORY 4.0: A COMPREHENSIVE GUIDE TO THE THEORY, PSYCHOMETRICS, RESEARCH ON VALIDITY AND EDUCATIONAL APPLICATIONS (2013). In their book, the Kolbs describe the use of and research into the LSI in various disciplines, including law. *Id.* at 91-140. Eric A. DeGroff and Kathleen A. McKee have written about strategies to use the LSI in legal education as well as experiential legal education. *See* Eric A. DeGroff & Kathleen A. McKee, *Learning Like Lawyers: Addressing the Differences in Law Student Learning Styles*, 2 BYU EDUC. & L.J. 499 (2006).

³⁶ KOLB *supra* zzz, at 21-22 & 27-28.

experimentation”).”³⁷ Kolb’s four-stage cycle is commonly known as a process of experiencing, reflecting, thinking, and acting.³⁸

Kolb’s four-stage cycle of learning forms the core of all experiential education,³⁹ including experiential education in law schools. In describing Kolb’s contribution to legal education, Steven Hartwell observed that before Kolb’s cycle of learning, clinical legal education lacked a theory and “no systematic way to effect improvements.”⁴⁰ Kolb provided “a model or template for an effective pedagogy . . . [and] the Kolb theory provides a useful way of comparing the clinic field model with academic teaching.”⁴¹ John Sonsteng et al. also recognized Kolb’s role in experiential legal education, observing that he “provided a great deal of insight into the way we learn. Kolb produced a model of experiential learning (i.e., learning by experience) in practical, or practically based, environment.”⁴²

Kolb’s cycle of learning synthesizes the theories advanced by Dewey, Lewin, and Piaget, and these theories underpin experiential legal education. Dewey’s influence is found in Roy Stuckey’s et al. description of the cycle of learning in experiential learning courses: “Optimal learning from experience involves a continuous, circular four stage sequence of experience, reflection, theory, and application.”⁴³ Just as Lewin’s theory emphasizes feedback and action-reflection as critical elements of successful practice, experiential legal education is centered around student reflection, close supervision, and feedback.⁴⁴ Like Piaget’s description of adult learning where one engages in hypothetical-deductive reasoning and experimentally testing theories, experiential legal education also involves “interpreting the task or event, making generalizations, or seeing the experience in a larger context. Application enables one to plan for or make predictions about encountering the task or event a second time.”⁴⁵

Kolb’s cycle of learning is also reflected in ABA Accreditation Standard 304, which describes how experiential legal education courses must be structured. The ABA requires

³⁷ M. Wijnen-Meijer et al., *Implementing Kolb’s Experiential Learning Cycle by Linking Real Experience, Case-Based Discussion and Simulation*, 99 J. MED. EDUC. & CURRICULAR DEV. 1, 2 (2022) (italics omitted).

³⁸ Harry Cloke, *Kolb’s Experiential Learning Cycle: A Complete Guide* (July 9, 2024), GROWTH ENGINEERING, <https://www.growthengineering.co.uk/kolb-experiential-learning-theory/>.

³⁹ “Kolb Experiential Learning Theory, developed by David A. Kolb, is widely recognized and influential framework that describes how people learn through experience.” *What Is Experiential Learning?*, INSTITUTE FOR EXPERIENTIAL LEARNING, <https://experientiallearninginstitute.org/what-is-experiential-learning> (last visited).

⁴⁰ Steven Hartwell, *Six Easy Pieces*, 41 SAN DIEGO L. REV. 1011, 1012 (2004) [hereinafter Hartwell, *Six Easy Pieces*].

⁴¹ *Id.* at 1015.

⁴² John O. Sonsteng et al., *A Legal Education Renaissance: A Practical Approach for the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 405 (2007).

⁴³ ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 166 (2007).

⁴⁴ Brook Baker explains that clinical legal education “emphasizes role modeling and emulation, collaboration and mentoring, and supervision and feedback As part of providing this close supervision, clinicians are exhorted to engage in learning-mode discourse, to provide after-the-fact autopsies of student performance, and to facilitate multiple forms of reflection. . . .” Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLINICAL L. REV. 1, 8 (1999). This process of faculty providing feedback to students and encouraging them to engage in self-critique is a process that Donald Schön describes as “reflective practice” or “reflection-in-action.” DONALD A. SCHÖN, EDUCATING THE REFLECTIVE PRACTITIONER 31-36 (1987).

⁴⁵ Hartwell, *Six Easy Pieces*, *supra* note zzz, at 1013.

simulation courses, law clinics, and field placements to be primarily experiential in nature and “provide opportunities for student performance, self-evaluation, and feedback from a faculty member, or, for a field placement, a site supervisor.”⁴⁶ The ABA also requires that experiential courses “develop the concepts underlying the professional skills being taught”⁴⁷ and provide “ongoing, contemporaneous, faculty-guided reflection.”⁴⁸

B. Key Benefits of Experiential Education

There have been a number of empirical studies to determine the relationship between experiential education teaching methodology and learning outcomes in higher education.⁴⁹ One group of researchers identified 13,626 journal articles, dissertations, thesis articles, and conference proceedings about experiential learning and then focused on eighty-nine studies that had both a treatment group, who received an experiential learning activity, and control group, who received a traditional education.⁵⁰ Their meta-analysis of those studies “show that students experienced superior learning outcomes when experiential pedagogies were employed. Further, learning outcomes were almost a half standard deviation higher ($d = .43$) in classes employing experiential pedagogies versus traditional learning environments.”⁵¹ The learning outcomes they measured were cognitive development, developing personal insight, and understanding a social issue.⁵²

The researchers also found that authors of the studies have used different measures to evaluate outcomes. Some studies relied on objective measures, such as grade point averages, number of correct answers on tests, or evaluations from trained third parties⁵³ Other types of studies relied on more subjective measures, such as student self-assessment.⁵⁴

In comparing the differences between objective and subjective measures, the researchers found that students often appear to significantly underestimate their own learning outcomes.⁵⁵ Their findings are consistent with other studies that found that students may not always be able to evaluate their learning effectively or may sometimes respond the way they believe researchers want them to respond.⁵⁶ The researchers concluded, however, that “in some instances asking students to evaluate their learning outcomes may be the best, or only, means of gathering data. Such situations may certainly occur in the areas of gaining personal insight.”⁵⁷

⁴⁶ ABA STANDARDS, *supra* note 1, at Std. 304(a)(4).

⁴⁷ *Id.* at Std. 304(a)(2).

⁴⁸ *Id.* at Std. 304(a)(5).

⁴⁹ Gerald F. Burch et al., *A Meta-Analysis of the Relationship Between Experiential Learning and Learning Outcomes*, 17 DECISION SCI. J. INNOVATIVE EDUC. 239, 240 (July 2019) [hereinafter Burch et al., *A Meta-Analysis*].

⁵⁰ *Id.* at 247.

⁵¹ *Id.* at 260.

⁵² *Id.* at 243.

⁵³ *Id.* at 245.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

Previously, some of these same researchers performed a meta-analysis on experiential learning pedagogies and the effects on student learnings over a forty-year period, focusing on fifty-three studies measuring the differences in learning between students in experiential learning groups and those in traditional learning control groups.⁵⁸ They found that for students in the experiential learning groups “these [superior learning] outcomes were over an entire standard deviation higher ($d = 1.036$) from tradition [education] delivery techniques.”⁵⁹ The three learning outcomes measured were cognitive development, developing personal insight, and understanding a social issue.⁶⁰ For students in the experiential learning groups, the researchers found greater learning outcomes for personal insight and cognitive development than for understanding social issues compared to students in traditional learning groups.⁶¹

In addition to the findings of these two meta-analyzes of experiential education, other researchers have measured the impact of experiential education on various learning outcomes. The following sections review some of those studies.

1. Development of Critical Thinking and Problem-Solving Skills

Experiential education in higher education helps students develop critical thinking and how to apply knowledge to solve complex problems.⁶² Studies show that experiential education improves students’ problem-solving skills by presenting students with real-world experiences.⁶³ One study of accounting students found that those taught through experiential education techniques had greater enhanced problem-solving skills than those taught through direct instruction.⁶⁴ The study found that experiential learning enhanced students’ problem-solving ability because it “allowed students to identify, clarify, and keep focused on their problem.”⁶⁵ Another study comparing college students in classes on legislative politics with students in internships at a state legislature found they did equally well on tests. When asked to develop a strategy, however, students with the internship experiences had a “deeper, more nuanced understanding.”⁶⁶

⁵⁸ Gerald F. Burch et al., *Do Experiential Learning Pedagogies Effect Student Learning? A Meta-Analysis of 40 Years of Research*, ACAD. OF MANAGEMENT 127, 130 (Nov. 2017) [hereinafter Burch et al., *Experiential Learning Pedagogies*]. To qualify, each study had to have four characteristics: 1) a quantitative, empirical investigation of experiential learning activities and learning outcomes; 2) a treatment group who took part in experiential learning and a control group who received traditional education; 3) published in English; and 4) published since 1974, which coincided with the creation of the Association for Business Simulation and Experiential Learning (ABSEL). *Id.* at 29 “The Association for Business Simulation and Experiential Learning (ABSEL) is an organization of academics and professionals that develop and promote innovative and effective teaching methods in the disciplines of business, management, and related fields.” About ABSEL, ABSEL, <https://absel.org/sample-page> (last visited Sept. 23, 2024).

⁵⁹ Burch et al., *Experiential Learning Pedagogies*, *supra* note zzz, at 132.

⁶⁰ *Id.* at 128.

⁶¹ *Id.* at 131.

⁶² Eyler, *supra* note zzz, at 26.

⁶³ Mifta Hulaikah et al., *The Effect of Experiential Learning and Adversity Quotient on Problem Solving Ability*, 13 INT’L. J. OF INSTRUCTION 869, 874 (2019)

⁶⁴ *Id.* at 877.

⁶⁵ *Id.*

⁶⁶ Eyler, *supra* note zzz, at 27.

Based on their own experience with students, as well as a review of literature about sociology internships, researchers in another study found that experiential education helps faculty and students delve into deeper levels of understanding about the issues explored.⁶⁷ By connecting theory to practical applications, experiential education helps students acquire new knowledge and develop expertise.⁶⁸

Another study, one focusing on teaching occupational therapy, found that experiential education is effective in improving the personal and professional skills needed to be effective practitioners.⁶⁹ The researchers found that experiential learning, combined with academic study, helped students “bridge the theory-practice knowledge gap” and, along with supervisors and mentors, aided students in making connections between study and work.⁷⁰

2. Enhanced Professionalism and Professional Identity

Experiential education also assists students acquire “soft skills”, such as time management and empathy, and furthers their development of a professional identity to prepare for their career goals.⁷¹ The study of the effects of sociology internships confirmed that experiential education fosters a sense of greater personal accomplishment.⁷²

Another study of counselor education doctoral students found that intentional experiences designed to immerse doctoral students in the norms of the professional community facilitate the development of professional identity.⁷³ These experiences focused primarily on doctoral students collaborating with program faculty in teaching courses, research and submitting papers for publication, presenting papers at conferences, and service work.⁷⁴ In other words, these activities placed doctoral students in role as faculty,⁷⁵ much like experiential legal education places law students in role as lawyers.

Similar to the findings concerning the effects of sociology internships and intentional professional experiences structured for doctoral students, a systematic literature review examined

⁶⁷ Peter F. Parilla & Garry W. Hesser, *Internships and the Sociological Perspective: Applying Principles of Experiential Learning*, 26 TEACHING SOCIOLOGY 310, 312 (Oct. 1998).

⁶⁸ *Id.* at 313.

⁶⁹ Bussakorn Binson & Rachel Lev-Wiesel, *Promoting Personal Growth through Experiential Learning: The Case of Expressive Arts Therapy for Lecturers in Thailand*, 8 FRONTIERS IN PSYCHOLOGY 1, 2 (Feb. 2018).

⁷⁰ *Id.* at 9.

⁷¹ Jin Kang et al., *Experiential Learning to Teach User Experience in Higher Education in the Past 20 Years: A Scoping Review*, 4 FRONTIERS COMPUT. SCI. 1, 11 (2022) (reviewing forty-five peer reviewed studies from the prior twenty years).

⁷² Parilla & Hesser, *supra* note zzz, at 310.

⁷³ Dodie Limberg et al., *Professional Identity Development of Counselor Education Doctoral Students: A Qualitative Investigation*, 3 PROF. COUNSELOR 40, 40-41 (2013).

⁷⁴ *Id.*

⁷⁵ In reaching their findings, the researchers used a qualitative method consisting primarily of focus groups with semi-structured and open-ended questions asked in the same order to produce consistency across the groups. *Id.* at 43.

medical education and professional identity formation.⁷⁶ The study found that the formation of professional identity was an ongoing process of assimilating professional traits and that mentorship and role-modeling helped foster the development of professional identity.⁷⁷ The researchers found that socialization of students in professional identity formation is “promoted when experiencing patient care, managing clinical responsibilities, working long hours and reflecting upon experiences and clinical identities.”⁷⁸

3. Improved Employment Prospects

Students who participate in experiential education have been found to be more marketable to employers and feel more prepared for their long-term career goals.⁷⁹ This is reflected in National Association of Colleges and Employers (NACE) surveys of employers, which found that “[i]n today’s working world, ‘experiential learning is just as important as academics.’”⁸⁰

In the United Kingdom, many universities offer “sandwich degrees” in which one year is spent gaining work experience related to the subject of their degrees.⁸¹ Students participating in a sandwich degree program were found to have better job placement than students without such experience.⁸²

A study of computer science students over a twenty-year period found empirical evidence that suggests experiential education’s “superiority in fostering academic *and* workforce skills” and [t]he power of experiential learning to successfully prepare students to be work-ready cannot be overstated.”⁸³ This same study found that employers were doubtful that new computer science graduates are work-ready, which led the researchers to conclude that “adopting experiential learning as a pedagogical method is a must and not an option.”⁸⁴

4. Increased Interest in Learning and Learning Retention

⁷⁶ Shiva Sarraf-Yazdi et al., *A Scoping Review of Professional Identity Formation in Undergraduate Medical Education*, 36 J. GEN. INTERNAL MED. 3511, 3511 (2021).

⁷⁷ *Id.* at 3515.

⁷⁸ *Id.* (citations omitted).

⁷⁹ Kang et al., *supra* note zzz, at 11.

⁸⁰ Jesse Parrish et al., *Expanding the Academic Record: Revolutionizing Credentials*, NACE (Feb. 1, 2017), <https://ebiztest.nacweb.org/job-market/trends-and-predictions/expanding-the-academic-record-revolutionizing-credentials>. Gallup polls have also found that college graduates with internship experiences have improved employment opportunities after graduation. See Sean Seymour & Julie Ray, *Useful Internships Improve Grads’ Chances of Full-Time Work*, GALLUP (Nov. 20, 2014), <https://news.gallup.com/poll/179516/useful-internships-improve-grads-chances-full-time-work.aspx>; Brandon Busted & Zac Auter, *Why Colleges Should Make Internships a Requirement*, GALLUP (Nov. 27, 2017), <https://news.gallup.com/opinion/gallup/222497/why-colleges-internships-requirement.aspx>.

⁸¹ Stephen Gomez et al., *Work Placements Enhance the Academic Performance of Bioscience Undergraduates*, 56 J. VOCATIONAL EDUC. & TRAINING 373, 374 (2004).

⁸² *Id.*

⁸³ Kang et al., *supra* note zzz, at 1.

⁸⁴ *Id.*

Increasing students' interest in learning is key to achievement of higher education students.⁸⁵ Studies show that when students actively participate in the learning process, they become more interested in their education and achieve higher levels of learning.⁸⁶ Experiential education engages students more directly in the learning process and gives students more responsibility for their learning.⁸⁷ As a result, students develop "a deeper understanding of subject matter than is possible through classroom study alone."⁸⁸

An analysis of forty-five peer-reviewed articles addressing pedagogical approaches to teaching undergraduate and graduate computer sciences students found that experiential education enhanced learning outcomes,⁸⁹ including valuing the link between theory and practice.⁹⁰ Students engaged in experiential education and learning also reported greater student satisfaction with the educational process than students without experiential learning experiences.⁹¹

Another researcher's review of experiential learning literature in higher education found that teachers engaging students in experiential learning activities can increase the students' retention of knowledge, which increases students' motivation and interest in the course material.⁹² The literature review also found that experiential education facilitates students taking more responsibility for their learning, "which regulates a stronger connection between the learning involvement, practices, and reality . . . that are key roles in the learning process."⁹³

Finally, a meta-analysis of 225 studies comparing test scores and failure rates of undergraduate STEM students in traditional lecture course sections compared to students in active learning course sections found that students in active learning sections performed better.⁹⁴ Indeed, students in traditional lecture course sections are 1.5 times more likely to fail than students in active learning course sections.⁹⁵ The authors of this study concluded that "the data suggest that STEM instructors may begin to question the use of traditional lecturing in everyday practice, especially in light of recent work indicating that active learning confers disproportionate benefits for STEM students from disadvantaged backgrounds and for female students in male-dominated fields."⁹⁶

⁸⁵ Yangtao Kong, *The Role of Experiential Learning on Students' Motivation and Classroom Engagement*, 12 FRONTIERS PSYCH. 1, 1 (2021)

⁸⁶ *Id.*

⁸⁷ *Id.* at 2.

⁸⁸ Eyley, *supra* note zzz, at 26. Experiential education is also supported by data from cognitive science studies, which show that experiential learning helps students process information into their long-term memory. Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NE. U. L.J. 87, 91-92, 96 (2013). As one cognitive scientist explained, "experience helps students see deep structure" and develop higher-order thinking. *Id.* at 96.

⁸⁹ Kang, *supra* note zzz, at 1-2.

⁹⁰ *Id.* at 10.

⁹¹ *Id.* at 12, fig. 3.

⁹² *Id.* at 3.

⁹³ *Id.* at 2.

⁹⁴ Scott Freeman et al., *Active Learning Increases Student Performance in Science, Engineering, and Mathematics*, 11 PNAS 8410, 8410 (June 2014).

⁹⁵ *Id.*

⁹⁶ *Id.* at 8413.

As these studies of higher education demonstrate, experiential education has numerous benefits including the acquisition of important skills, development of professional identity, preparation for the workplace, and increased interest in learning and learning retention. These benefits have led other professional schools to embrace the value of experiential learning methods and to require much more practice-based and clinical training than the accreditation standards for law schools require.⁹⁷

Legal education currently requires only six credits in experiential courses, and no clinical requirement, equaling approximately one-fourteenth of a law student’s total education, while, for example, medical education requires one-half, or two of four years, consisting of clinical practica or clerkships.⁹⁸ The enhanced focus on experiential education compared to law is found in other professions. Similarly, social work requires 900 hours (18 of 60 credits, equaling one-third of total education) in field education courses, and architecture requires 50 of 160 credits (equaling one-third of total education) in studio courses. The following chart demonstrates how law schools compare to other professional schools.⁹⁹

Law	Medical	Veterinary	Pharmacy
6 credits in experiential courses; no clinical requirement	2 of 4 years of clinical practica or clerkships	Minimum 1 of 4 years in clinical settings	300 hours in first 3 years & 1,440 hours (36 weeks) in last year in clinical settings
1/14 of total education	1/2 of total education	1/4+ of total education	1/4+ of total education
Dentistry	Social Work	Architecture	Nursing
57% of education in actual patient care	900 hours (18 of 60 required credits) in field education courses	50 of 160 credits in studio courses (nat’l licensing board’s calculation of minimum needed for licensure)	Varies by state, e.g., California: 18 of 58 credits in clinical practice; Texas: 3 to 1 ratio of clinical to classroom hours
1/2+ of total education	1/3 of total education	1/3 of total education	1/3+ of total education

⁹⁷ ABA STANDARDS, *supra* note 1, at Std. 303(a)(3) (“A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following . . . one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement, as defined in Standard 304.”). The accreditation standards require a student to complete at least 83 credit hours. *Id.* at Std. 311(a).

⁹⁸ Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U.L. REV. 1, app. A at 43 (2014) [hereinafter Kuehn, *Pricing Clinical Legal Education*]. In 2014, the Council of the American Bar Association (ABA) Section of Legal Education and Admissions to the Bar considered expanding the experiential education requirement from six credits to fifteen credits. In comments submitted to the Council on the proposal, Richard Neumann pointed out that even with a fifteen credits requirement, law would still be far behind other professions in requiring experiential education. Letter from Richard K. Neumann, Jr., Professor of Law, Maurice A. Dean School of Law at Hofstra University, to Council of the ABA Section of Legal Education and Admissions to the Bar (Jan. 31, 2014) (on file with authors). The proposal before the ABA failed.

⁹⁹ Kuehn, *Pricing Clinical Legal Education*, *supra* note zzz, at app. A at 43.

Consistent with the studies of the benefits of experiential education at the university level in other fields, there is extensive research and findings about experiential legal education's impacts. The balance of this Article analyzes those impacts.

II. DEVELOPMENT OF PROFESSIONAL SKILLS AND PRACTICE READINESS

Competence in professional skills is an essential part of a new law graduate's readiness for the practice of law.¹⁰⁰ Empirical research on law students and practicing lawyers demonstrates the success of experiential courses in training students in professional skills and the need for legal education to provide more experiential training.

A. Law Student Surveys

Surveys have found that up to two-thirds of law students do not believe law school teaches the practical skills they need to practice law, with up to one third of third-year students feeling ill prepared to succeed in practice.¹⁰¹ Research shows that experiential courses can address this deficiency and prepare students for the skills they need to successfully transition to practice.¹⁰²

A series of national studies by the Law School Survey of Student Engagement (LSSSE) have reported the value of experiential coursework.¹⁰³ In the 2006 survey, third-year students

¹⁰⁰ ABA STANDARDS, *supra* note 1, at Std. 302(d) (requiring that a school's learning outcomes include competency in the "professional skills needed for competent and ethical participation as a member of the legal profession").

¹⁰¹ *State of the Legal Industry Survey*, LEXISNEXIS 7, 29 (2009), https://www.lexisnexis.com/documents/pdf/20100114031702_large.pdf (reporting that 65% of 3L students said they did not have enough practical business skills; 35% did not feel adequately prepared to succeed in the changing legal marketplace); *see also State of Legal Field Survey*, BARBRI (2015) (on file with authors) (finding that over 20% of 3L students believed they were unprepared or somewhat unprepared to practice law upon graduation or do not possess sufficient practice skills); Press Release, Kaplan Test Prep, *Class of 2014 Law School Grads Give Their Schools Solid Grades in Professor Quality, "Practice Ready" Training and ROI — But Job Placement Gets More "F"s than "A"s* (Aug. 19, 2014), <https://www.kaptest.com/blog/press/2014/08/19/kaplan-survey-class-of-2014-law-school-graduates-give-their-schools-solid-grades-in-professor-quality-practice-ready-training-and-roi-but-job-placement-gets-more-f/?srsltid=AfmBOoq0mAyc3VuluhDpfJEpoPil1kIQHsjTZ3JRuNlcV98-rOIIwGx6> (reporting that 65% of students gave their school an "A" or "B" grade in making them practice ready while 35% gave the school a "C" or less).. Lack of adequate training for law practice is a longstanding student complaint about their legal education. *See, e.g.,* E. Gordon Gee & Donald W. Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 BYU L. REV. 695, 941-44 (1977) (discussing findings from authors' and 1976 American Bar Foundation studies finding that students desired a more practice-oriented curriculum).

¹⁰² Some of the survey research has methodological issues, such as lack of a control group, no before-and-after measurement, possible selection bias, and undefined and overlapping terms for experiential courses.

¹⁰³ Participating schools provide LSSSE with enrolled student contact information, which LSSSE uses to contact individual students to seek their voluntary participation in the survey. Administering LSSSE, LSSSE, <https://lssse.indiana.edu/administering> (last visited Sept. 30, 2024). The 2023 LSSSE survey, which was typical of other annual surveys, "collected responses from over 13,000 law students at 75 law schools in Spring 2023. The law schools participating in LSSSE closely resemble ABA-approved law schools overall in terms of enrollment size and affiliation (public/private)." *Law School Survey of Student Engagement 2023 Annual Report*, INDIANA UNIVERSITY CENTER FOR POSTSECONDARY RESEARCH 15 (2023), <https://lssse.indiana.edu/wp-content/uploads/2023/10/Focus-on-First-Generation-Students-Final.pdf>.

who had a “clinical internship or field experience” or had performed pro bono work reported greater gains in higher order thinking skills, writing and speaking proficiency, solving real world problems, and thinking critically and analytically than students without those experiences.¹⁰⁴

A follow up LSSSE survey in 2012 found that participation in a “clinical or pro bono project as part of a course or for academic credit,” a “clinical internship or field experience,” or “volunteer or pro bono work” were associated with students’ perceptions that they are developing writing, speaking, research, and job-related skills.¹⁰⁵ The study’s authors concluded that the results “suggest that experiential education not only is accomplishing one of its primary goals of ‘develop[ing] competence’ but also helping students develop the ‘attributes of effective lawyers.’”¹⁰⁶ In contrast, summer experiences (paid or unpaid) showed no relationship between the experience and higher order learning activities or writing, speaking, research or other job-related skills.¹⁰⁷

Both LSSSE studies use the undefined terms “clinical internship” and “field experience,” rather than the more commonly used terms “law clinic” and “externship,” possibly confusing respondents. The studies also lumped together clinical and pro bono project for credit, distinctively different learning experiences, and also combined clinical internship and field experience. As a result, it is hard to align the results with the experiential course categories of law clinics and field placements and with other research on the value of those specific types of courses.¹⁰⁸

In spite of gains from experiential training, 40% of third-year students in later LSSSE surveys believed that their legal education had contributed “only some or very little to their acquisition of job- or work-related knowledge and skills.”¹⁰⁹ This gap between the measured

¹⁰⁴ *Law School Survey of Student Engagement 2006*, INDIANA UNIVERSITY CENTER FOR POSTSECONDARY RESEARCH 15 (2006) [hereinafter *LSSSE 2006*], https://lsse.indiana.edu/wp-content/uploads/2016/01/LSSSE_2006_Annual_Report.pdf.

¹⁰⁵ *Law School Survey of Student Engagement 2012*, INDIANA UNIVERSITY CENTER FOR POSTSECONDARY RESEARCH 14 (2012) [hereinafter *LSSSE 2012*], https://lsse.indiana.edu/wp-content/uploads/2016/01/LSSSE_2012_AnnualReport.pdf.

¹⁰⁶ *Id.* (quoting from ROY STUCKEY ET AL., CLINICAL LEGAL EDUCATION ASSOCIATION, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007)).

¹⁰⁷ *Id.* at 15 (noting that the disconnect between summer experiences and academic learning appeared “quite substantial”). Unlike the 2012 LSSSE results, students and law graduates in a 1984 study credited legal employment during law school as a much greater source of development of their lawyering skills than externship placements (referred to as “clinical internships”). See Donald N. Zillman & Vickie R. Gregory, *Law Student Employment and Legal Education*, 36 J. LEGAL EDUC. 390, 397-98 tbl.6 (1986).

¹⁰⁸ Later LSSSE surveys addressed this issue by asking if the student had done or planned to do “field placements or law clinics” or “pro bono work or public service.” See, e.g., *Law School Survey of Student Engagement 2021*, INDIANA UNIVERSITY CENTER FOR POSTSECONDARY RESEARCH, https://lsse.indiana.edu/wp-content/uploads/2015/12/LSSSE_US_MainSurvey_2021.pdf.

¹⁰⁹ *Law School Survey of Student Engagement 2011*, INDIANA UNIVERSITY CENTER FOR POSTSECONDARY RESEARCH 8 (2011) [hereinafter *LSSSE 2011*], https://lsse.indiana.edu/wp-content/uploads/2016/01/2011_LSSSE_Annual_Survey_Results.pdf; *Law School Survey of Student Engagement 2004*, INDIANA UNIVERSITY CENTER FOR POSTSECONDARY RESEARCH 12, <https://lsse.indiana.edu/wp-content/uploads/2016/01/LSSSE-2004-Annual-Survey-Results.pdf>.

value of experiential legal education and the training that law schools actually provide is a recurring theme of many studies on law students and newly-licensed lawyers.

Studies at individual schools have also shown the value of experiential courses in helping their students develop professional skills and prepare for legal practice. A 1995 study by Daniel Givelber et al. asked law students who had participated in the co-op program at Northeastern University how well they learned in various work settings.¹¹⁰ More than half the students rated the educational value of their three-month co-op experience 9 or 10 on a scale of 1 to 10, with over 94% believing their skills had improved as a result of the hands-on experience.¹¹¹

The authors noted that while concerns exist about the validity of asking a student to judge how well they have learned, “we lack any objective measures of the efficacy of our efforts to educate lawyers. . . . As a consequence, self reporting may be the only measure that is realistically available.”¹¹² By the second year of law school, students have had seventeen years of formal education and some legal experience by which to judge their learning.¹¹³ The authors concluded that students have considerable experience judging their classroom instruction and their evaluations of learning experiences outside the classroom also ought to be respected.¹¹⁴

A survey by Anahid Gharakhanian et al. of externship students at three California law schools sought to determine to what extent their externship experience contributed to their readiness for law practice.¹¹⁵ The survey asked externship students and their field supervisors if the student had achieved success during the placement on twenty-nine foundations the Institute for the Advancement of American Legal System (IAALS) determined new attorneys need to succeed in the legal profession.¹¹⁶ Students gave themselves a mean score of 4.5 out of 5.0, with a 4.28 on legal skills and 4.66 on professional competencies, lower scores than the supervisors had judged the same students to have performed.¹¹⁷ The supervisors high rating of the student

¹¹⁰ Daniel J. Givelber et al., *Learning through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995). The survey responses were from 532 questionnaires completed by the members of the class of 1991 upon their return to school after a three-month internship or co-op. *Id.* at 19.

¹¹¹ *Id.* at 24-25.

¹¹² *Id.* at 21. This is the same conclusion reached by researchers measuring the effects of experiential education on university and college students. *See A Meta-Analysis, supra* note zzz, at 245 (“[I]n some instances asking students to evaluate their learning outcomes may be the best, or only, means of gathering data.”).

¹¹³ *Id.*

¹¹⁴ *Id.* at 21-22. *See generally* JANET EYLER & DWIGHT E. GILES, JR., WHERE’S THE LEARNING IN SERVICE-LEARNING? 20-22 (1999) (describing methods in large scale survey of college students measuring impacts of service learning).

¹¹⁵ Anahid Gharakhanian et al., *Achieving Externship Success: An Empirical Study of the All-Important Law School Externship Experience*, 45 S. ILL. U. L.J. 165 (2020).

¹¹⁶ *Id.* at 172 (focusing on the twenty-nine foundations deemed most relevant to features of the externship experience). *See* ALLI GERKMAN & LOGAN CORNETT, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT 29 (2016) [hereinafter GERKMAN & CORNETT, THE WHOLE LAWYER AND THE CHARACTER QUOTIENT] (identifying seventy-seven foundations necessary for new lawyers in the short term).

¹¹⁷ Gharakhanian et al., *supra* note zzz, at 195. The authors note that it is typical of students in an educational environment to rate themselves less favorably than their field supervisors do. (citing Melanie Beth Marks et al., *Investigating Undergraduate Business Internships: Do Supervisor and Self-Evaluations Differ?*, 93 J. EDUC. FOR BUS. 33 (2018)).

success was regardless of the entering credentials of students at the three schools, with law school GPA playing a very limited role in success.¹¹⁸

In both the survey and narrative summaries, students overwhelmingly attributed their success in the externship to their relationship with the supervisor, followed by their motivation to work in a real-world setting and the nature of the work assignments.¹¹⁹ The survey, however, lacked a comparison group, either to the students before their exposure to the placement or to a different group of students who had not taken the externship.¹²⁰

A study by David Thomson and Stephen Daniels looked at third- and fourth-year students in both externship and law clinic courses.¹²¹ Ninety percent of those taking a law clinic thought they were adequately and appropriately trained to practice law, compared to only 66% of those who had not taken a clinic.¹²² Eighty-three percent of externship students thought they were prepared, while 41% of those who had not thought they were prepared.¹²³ The study also asked the students about their preferred learning style and found that very few (6%) preferred primarily lecture, while 51% preferred a practice-based approach with the remainder preferring both equally.¹²⁴

A number of law teachers have examined the effect of adding an experiential component to their substantive law course. Ann Hodges' non-profit organizations course added a community-based learning project where students worked with a nonprofit organization to draft organizational and operational documents.¹²⁵ At the conclusion of the course, 98% of the students agreed or strongly agreed that the project enhanced their skills and knowledge in ways that would enable them to work more effectively with nonprofits.¹²⁶ In addition to skills

¹¹⁸ *Id.* at 193, 200-01. The authors argue that this finding of success regardless of entering credentials or law school GPA argues against those who think externships should be reserved for higher-performing students. *Id.* at 209

¹¹⁹ *Id.* at 202-203

¹²⁰ An unpublished study at Notre Dame asked externship students to rate themselves before and after their placement on a scale of 1 to 5 on their perceived level of progress on the twenty competencies the law school seeks in its graduates. Robert Jones, *Lawyering Competency Self-Assessment* (2017) (unpublished memo on file with authors). Although students in the example semester thought, on average, they had improved on each of the competencies, the survey can reveal a student's and placement's strengths and weaknesses. *Id.*

¹²¹ David I. C. Thomson & Stephen Daniels, *Looking Back: A Case Study of Career Interest and Experiential Learning in Law School*, 56 WILLAMETTE L. REV. 283 (2020) [hereinafter Thomson & Daniels, *Looking Back*]; See also David I. C. Thomson & Stephen Daniels, *If You Build It, They Will Come: What Students Say about Experiential Learning*, 13 FLA. A & M U. L. REV. 203 (2018) [hereinafter Thomson & Daniels, *If You Build It*] (describing survey design). The fourth-year students were in the part-time program.

¹²² Thomson & Daniels, *Looking Back*, *supra* note zzz, at 303.

¹²³ *Id.* at 304.

¹²⁴ *Id.* at 296-97. Among students interested in business, non-business, public interest, or criminal law, those interested in criminal law had the strongest preference for experiential learning.

¹²⁵ Ann C. Hodges, *Using Experimental Education to Develop Human Resources for the Nonprofit Community: A Course Study Analysis*, 6 DREXEL L. REV. 47 (2013).

¹²⁶ *Id.* at 65, tbl.3. The class included some business school students, who rated the value of the experiential learning project less than the law students.

development, 94% of students felt they learned more in the course as a result of the project and 81% believed the project improved their ability to apply what they learned in class.¹²⁷

Michael Bloom and Bryce Pilz conducted “labs” associated with three different stand-alone first-year contracts classes.¹²⁸ While each lab differed somewhat in its focus and simulation exercises, students worked with materials to help a client accomplish a business objective, first in small groups to discuss the issues in the exercise and then sharing their recommendations in a class-wide discussion. Seventy-eight percent of students reported that the lab improved their legal knowledge and 71% reported it improved their ability to apply legal knowledge to future jobs and internships.¹²⁹

In these surveys, law students consistently report that experiential learning activities improve their skills and believed it improved their ability to apply their legal knowledge in the future. As the following section demonstrates, these findings are consistent with surveys of recent law graduates showing that experiential courses played an important role in preparing them for practice.

B. Recent Law Graduate Surveys

Recent graduates believe that law school experiential courses play an important and necessary role in preparing students for practice but that their legal education did not sufficiently prepare them upon graduation.

The most extensive research on early career lawyers are the *After the JD* surveys by the National Association of Law Placement (NALP) and American Bar Foundation.¹³⁰ The project tracked more than 4,5000 lawyers who became licensed in 2000 over the first ten years of their

¹²⁷ *Id.* The results of the same survey of graduates of the class after they had begun practice were similar to the students who had just completed the course. *Id.* at 65-67, 68 tbl.3.

¹²⁸ Michael L. Bloom & Bryce Pilz, *Incorporating Experience into First-Year Contracts*, in EXPERIENTIAL EDUCATION IN THE LAW SCHOOL CURRICULUM (Emily Grant et al. eds., 2017).

¹²⁹ *Id.* at 125-26. The strength students most commonly reported from the lab was that it “allowed students to apply doctrinal learning to practice.” *Id.* at 126. Studies in Australia and Ireland reported similar success using simulation exercises in law school courses. In the Australian study using a moot exercise with formative assessment feedback, 92% of students thought the simulation improved their advocacy skills, with 95% reporting that it increased their knowledge of the underlying law. Mary E. Keyes & Michael J. Whincop, *The Moot Reconceived: Some Theory and Evidence on Legal Skills*, 8 LEGAL EDUC. REV. 1 (1997). The Ireland study looked at the value of simulating International Court of Justice and criminal law cases. Yvonne Marie Daly & Noelle Higgins, *The Place and Efficacy of Simulations in Legal Education: A Preliminary Examination*, 3 ALL IRELAND J. TEACHING & LEARNING HIGHER EDUC. 58.1 (2011). Questionnaires completed by students after the simulation activities indicated that the simulation had given students a better understanding of the practical application of the law, provided them with legal skills they would not have acquired from traditional teaching and learning processes, and engaged them more with the course material than they would have in other learning activities. *Id.* at 58.11.

¹³⁰ Ronit Dinovitzer et al., *After the JD: First Results of a National Study of Legal Careers*, NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION & AMERICAN BAR FOUNDATION (2004), [hereinafter Dinovitzer et al., *After the JD I*], https://www.americanbarfoundation.org/wp-content/uploads/2022/12/After_JD_Phase-I_2004.pdf; Ronit Dinovitzer et al., *After the JD II: Second Results from a National Study of Legal Careers*, AMERICAN BAR FOUNDATION & NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION (2009), [hereinafter Dinovitzer et al., *After the JD II*], https://www.americanbarfoundation.org/wp-content/uploads/2022/12/After_JD_Phase-II.pdf.

practice.¹³¹ On the issue of their legal education and transition to practice, only half of respondents agreed that their law school prepared them well for their legal career.¹³² They agreed, though, that law school teaching is too theoretical and unconcerned with real-life practice and showed a desire for more practical training in law school courses.¹³³

Survey respondents rated the helpfulness of various law school experiences in their transition to practice on a scale of 1 (“not helpful at all”) to 7 (“extremely helpful”). The responses in the *After the JD I* survey showed the value of practical training after two years of practice, with clinical courses and internships rated a median score of 5, above upper-level lectures, first-year courses, and course concentrations, with a median of 4.¹³⁴ Employment, during summers and school year, were deemed the most helpful experience, with a median of 6.¹³⁵

Law clinics were rated most highly by lawyers in public interest practice, with 86% rating their experience as helpful, followed by government (80%) and solo lawyers (76%).¹³⁶ However, 59% of lawyers in law firms with 251 or more lawyers and 67% of lawyers in firms of 101-250 lawyers also rated their clinic experience as helpful in their transition to practice.¹³⁷

Rebecca Sandefur and Jeffrey Selbin reviewed data from the *After the JD I* survey and noted that some respondents may have rated experiences as “not helpful” that they never actually had.¹³⁸ They observed that the percentage of respondents who rated whether their clinical courses were helpful (84%) far exceeded the percentage of students that studies show have participated

¹³¹ Dinovitzer et al., *After the JD I*, *supra* note zzz, at 13. “AJD researchers selected a sample that would be at once representative of the national population of lawyers who were first admitted to the bar in 2000, and that could also characterize key markets for lawyers across the country.” *Id.* at 89.

¹³² Robert L. Nelson, *After the JD: The Future(s) of Lawyering: Young Lawyers Assess the Value of Law School* 9 (Feb. 12, 2011) (presentation slides on file with authors). After two years of practice, 60% agreed that law school had prepared them for practice, but after seven years that percentage dropped to 51%. *Id.* In a 2015 survey of lawyers born in 1980 or later, only 28% agreed that “law school prepared me to practice law.” Grover E. Cleveland, *Swimming Lessons for Baby Sharks: Results from the Swimming Lessons for Baby Sharks/Above the Law Millennial Survey*, ABOVE THE LAW (July 17, 2015), <https://abovethelaw.com/career-files/swimming-lessons-for-baby-sharks-results-from-the-swimming-lessons-for-baby-sharksabove-the-law-millennial-survey>. A 2014 survey of New York City lawyers after six years of practice found even more dissatisfaction — only 6.5% thought that law school prepared them well for practice and only 4% believed they received good skills training in law school. Atinuke Adediran et al., *Making the Best of a Bad Beginning: Young New York Lawyers Confronting the Great Recession* 18 (2016), available at <https://www.lsac.org/data-research/research/making-best-bad-beginning-young-new-york-lawyers-confronting-great-recession>.

¹³³ Nelson, *supra* note zzz, at 9. After both two years and seven years of practice, over 63% agreed that law school teaching is too theoretical and unconcerned with real life practice.

¹³⁴ Dinovitzer et al., *After the JD I*, *supra* note zzz. at 81 fig.11.1.

¹³⁵ *Id.* Because many respondents were hired into the same office where they had worked during law school, later employment in that same office would be expected to be extremely helpful in transitioning to practice in that office. The survey did not filter for earlier employment related to the respondent’s current position.

¹³⁶ Margaret E. Reuter & Joanne Ingham, *The Practice Value of Experiential Legal Education: An Examination of Enrollment Patterns, Course Intensity, and Career Relevance*, 22 CLINICAL L. REV. 181, 196-97 & cht.1 (2015) (sharing analysis from Nelson, *supra* note zzz).

¹³⁷ *Id.*

¹³⁸ Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 85 (2009).

in a clinic (one-third).¹³⁹ Indeed, in a national survey by the Center for the Study of Applied Legal Education (CSALE) a few years later, schools estimated that, on average, only 26-30% of students would graduate with a law clinic experience and an equal number with an externship experience.¹⁴⁰ Therefore, the ratings for clinical courses in the *After the JD I* survey included responses by some graduates with no experience rather than only graduates with clinical courses.

After grouping the experiences by the percentage of ratings that identified it as “helpful” to “extremely helpful” to address possible misreporting, Sandefur and Selbin concluded that the clear pattern from the responses is that “those law school experiences that involve the use of and training in skills that practicing lawyers use in their work are the experiences that new lawyers rate as most helpful for making the transition to practice.”¹⁴¹ They also reported that clinical training ranked high across different kinds of schools grouped according to their *U.S. News & World Report* ranking, concluding “there were not statistically significant differences in ratings: clinical education was rated highly, and it was rated highly across the board.”¹⁴²

Later NALP surveys have also revealed the benefits of experiential training in law school. In a 2010 survey of law firm associates, respondents were asked to rank the usefulness of different experiential programs in preparing them for the practice of law, from 1 (“not at all useful”) to 4 (“very useful”).¹⁴³ Legal clinics and externships/field placements rated highest on average at 3.4, with 63% of associates rating their clinic experience and 60% rating their externship “very useful.”¹⁴⁴ Skills courses rated 3.1, with 39% reporting their experience “very useful,” and pro bono work rated last at 2.2, with only 17% deeming it “very useful.”¹⁴⁵ Litigation associates felt that their experiential courses were more useful than transactional associates, but only slightly, which the survey report noted was not surprising since most experiential course offerings tended to be litigation or advocacy-focused.¹⁴⁶

¹³⁹ *Id.* at 84-85.

¹⁴⁰ David A. Santacrose & Robert R. Kuehn, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION, *Report of the 2007-2008 Survey* 10-11 (2008), https://assets-global.website-files.com/5d8cde48c96867b8ea8c6720/5da859d2990d0a932118b8b6_CSALE.07-08.Survey.Report.pdf; see also *2010 Survey of Law School Experiential Learning Opportunities and Benefits*, THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION 8 (2011) (reporting that only 30% of law firm associates reported they had participated in a clinic during law school).

¹⁴¹ Sandefur & Selbin, *supra* note zzz, at 87.

¹⁴² *Id.* at 88-89. “[N]ew lawyers were significantly more likely to say that clinical training was ‘extremely helpful’ for making the transition to practice than they were to make the same assessment of legal writing training, upper-year lecture courses, course concentrations, pro bono service, the first year curriculum and legal ethics training.” *Id.* at 88.

¹⁴³ *2010 Survey of Law School Experiential Learning Opportunities and Benefits*, THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION 26, 27 (2011) [hereinafter *NALP 2010 Survey*].

<https://www.nalp.org/uploads/2010ExperientialLearningStudy.pdf>. The survey was sent to administrators at a sample of law firms drawn from the NALP membership list, who were asked to distribute the online survey link to associates. *Id.* at 30.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 27.

NALP did a similar study of government and nonprofit lawyers in 2011, using the same 4-point scale.¹⁴⁷ Clinics were rated 3.8 in usefulness, with 83% of respondents rating that experience as “very useful” in preparing for practice, while externships/field placements were rated 3.6, with 72% reporting that experience as “very useful.”¹⁴⁸ Skills courses (3.3) and pro bono work (3.2) again lagged behind.¹⁴⁹ Litigators and regulatory lawyers were found to value clinics, externships/field placements, and skills courses about the same.¹⁵⁰

The two NALP surveys indicated that current government and nonprofit lawyers both participated more in experiential courses during law school than law firm associates and rated each of the experiential experiences as more useful in preparing for practice than the associates.¹⁵¹ Only 6% of government and nonprofit lawyers did not participate in any experiential courses or programs in law school, compared to 18% of associates without any such course.¹⁵²

Margaret Reuter and Joanne Ingham examined differences in the degree of a student’s involvement in an experiential course and found that where a student was given more responsibility in a law clinic, the value of the experience was magnified.¹⁵³ In the 2010 and 2011 NALP studies, students performing in the role of attorney as lead counsel or under a student-practice order rated their experience on average of 0.33 to 0.38 higher than graduates without that degree of responsibility, whether now in practice as a private or public lawyer.¹⁵⁴ Similarly, “full-time externships” were much more valued than low-hour externship placements.¹⁵⁵ With skills courses, private lawyers who took six or more rated those experiences on par with the most

¹⁴⁷ *2011 Survey of Law School Experiential Learning Opportunities and Benefits: Responses from Government and Nonprofit Lawyers*, THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION 26, 27 (2012) [hereinafter *NALP 2011 Survey*], <https://www.nalp.org/uploads/2011ExpLearningStudy.pdf>. Email invitations to participate in the survey were distributed to organizations and, via a Washington, DC-based listserv, to nonprofit and government lawyers. *Id.* at 32.

¹⁴⁸ *Id.* A higher percentage of government and public interest lawyers participated in at least one legal clinic or externship/field placement during law school than associates in law firms. Fifty-six percent of government and nonprofit lawyers participated in a clinic compared to just 30% of law firm associates in the 2010 survey. Similarly, 53% of government and nonprofit lawyers had taken part in an externship/field placement but only 36% of associates.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 27.

¹⁵¹ Fifty-six percent of government and nonprofit lawyers participated in a law clinic compared to just 30% of law firm associates; 53% of government and nonprofit lawyers took part in an externship/field placement but only 36% of associates; and 83% of government and nonprofit lawyers took a skills course but only 70% of associates. *Study of Experiential Learning Opportunities in Law School: A Comparison of Responses from Law Firm Associates and Public Service Lawyers*, THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION (2011) [hereinafter *NALP 2010-2011 Survey Comparison*], <https://www.nalp.org/uploads/2011Comparison.pdf>.

¹⁵² *Id.* ABA Accreditation Standards now require each law graduate to complete at least six credits of experiential coursework in a law clinic, field placement, or simulation course. *See supra* note 1.

¹⁵³ Reuter & Ingram, *supra* note zzz, at 209 & tbl.5

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 211-12 & tbl.6. The increased value was 0.48 for private lawyers and 0.27 for public lawyers. Inexplicably, two, low-hour externships were valued the same as a full-time externship by both private and public lawyers. *Id.* at 212.

intense clinic and externship experiences, although public lawyers found decreased value in more than four skills courses.¹⁵⁶

A later NALP survey asked 2020 law school graduates about their law school experiences and current employment after three years of practice.¹⁵⁷ Survey respondents graded all types of experiential courses highly in preparing them for practice, with mean scores for externship/internship/field placement of 4.5 on a scale of 1 (“not at all useful”) to 5 (“extremely useful”), 4.4 for clinics representing individual clients, 4.3 for legal practice skills or simulation courses, and 4.1 for policy or issue clinics.¹⁵⁸ In feedback on their experiential offerings, alumni often praised the benefits of experiential courses and reported they were key to developing critical lawyering skills.¹⁵⁹

The utility of the experiential courses in the 2020 alumni survey varied by the respondent’s current work setting. Those in business/corporate, government, and public prosecutor positions rated externships highest in preparing them for practice, above clinics representing individual clients.¹⁶⁰ Clinics representing individual clients were rated highest by solo practitioners, public interest/legal services, and public defenders and were rated equally with externships by alumni in law firms, with moderate differences based on firm size.¹⁶¹ Public prosecutors rated legal practice skills or simulation courses highest, followed by externships.¹⁶² An open-ended question asked respondents to list the law school courses that were most useful for their current role after three years of practice.¹⁶³ “Clinics/workshops” were listed third (by 16% of respondents) and “advocacy” courses seventh (13%), with legal research/writing (31%) and contract law/drafting (18%) rated the two most useful.¹⁶⁴

In a 2024 survey of junior law firm associates by Major, Lindsey & Africa, 45% of respondents reported that their law school did not sufficiently prepare them for their current

¹⁵⁶ *Id.* at 216-17 (rating six skills courses 3.66, two low-hour externships 3.66, and clinic working under student practice rule 3.6).

¹⁵⁷ *Study of Law School Alumni Employment & Satisfaction: Employment Outcomes Three Years After Graduation, Class of 2020*, NALP & THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION (2024), [hereinafter *NALP Class of 2020 Survey*]. Law schools were invited to participate in the survey by distributing it to their graduates; 1,415 graduates from 35 U.S. law schools participated in the survey. *Id.* at 197.

¹⁵⁸ *Id.* at 123. In the first NALP Alumni Employment and Satisfaction Survey asking about the usefulness of experiential opportunities, clinics and externships/internships/field placements were both rated 4.3 and legal practice skills/simulation courses rated 4.0. *Study of Law School Alumni Employment and Satisfaction: Employment Outcomes Three Years After Graduation (Class of 2015)*, NALP & THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION 78-79 & tbl.46 (2019) [hereinafter *NALP Class of 2015 Survey*].

¹⁵⁹ *NALP Class of 2020 Survey*, *supra* note zzz, at 121.

¹⁶⁰ *Id.* at 124.

¹⁶¹ *Id.* at 124-25. Clinics representing individual clients were judged most useful by alumni in solo practice or firms of 101-250 lawyers and least useful to those in firms of 26-20; externships were most useful to those in firms of 26-50 and 501+ and least useful to those in firms of 251-500; and skills/simulation courses were most useful to alumni in firms of 51-500 and least useful to those in firms of 11-25. *Id.* at 125. Policy or issue clinics were generally rated lowest, except lawyers in firms of 100-250 rated them the most useful experiential learning courses. *Id.*

¹⁶² *Id.* at 124.

¹⁶³ *Id.* at 113.

¹⁶⁴ *Id.* at 113-14. The report did not list externships and did not match the usefulness of the course with the lawyer’s type of legal practice.

role.¹⁶⁵ When asked what they would change about legal education, the most common responses involved more practical skills training, while others called for the third year to “take on some form of hands-on, experiential learning, such as apprenticeships, internships, and clinics, instead of the usual classroom instruction.”¹⁶⁶

The 2024 survey showing that almost half of associates believe their legal education did not sufficiently prepare them for practice is similar to the results fifteen years earlier in the 2009 *After the JD II* study. In that study, only half of newly-licensed lawyers agreed that law school adequately prepared them for their legal careers.¹⁶⁷ Similarly, in a Gallup-Access Group survey, only 35% of 2000-2015 law graduates strongly agreed that their law school prepared them well for their career, a decrease from 48% for 1980-1999 graduates.¹⁶⁸

Lack of noticeable progress by the legal academy in preparing its graduates for practice can also be seen in the results of recent NALP alumni surveys. In the class of 2015 survey, currently employed respondents rated their level of satisfaction with how their law school prepared them for business skills a 3.4 out of 5.0, legal skills 4.1, law practice management skills 2.9, and client relationship skills 3.2.¹⁶⁹ In the class of 2020 survey, business skills were rated 3.3, litigation/legal skills 3.9, law practice management skills 2.8, and business development/client relationship skills 3.1.¹⁷⁰ On each skills category, therefore, 2020 alumni rated their satisfaction with their law school skills-based preparation slightly lower than their peers from 2015.

The lack of progress by schools in preparing their recent graduates for practice is notable in light of the new six-credit experiential learning requirement first implemented by the ABA for 2019 graduates.¹⁷¹ In spite of the ABA’s increase from the “substantial instruction” in professional skills requirement at the time of the *After the JD II* and NALP 2015 alumni surveys to the current six-credit requirement,¹⁷² most recent law school graduates still do not believe their law schools sufficiently prepared them for practice, nor is there evidence that the increased experiential requirement measurably improved their practice skills.

¹⁶⁵ Major, Lindsey & Africa & Leopard Solutions, *Beyond Tradition: Gen-Z’s Approach to Big Law 7* (2024), https://www.leopardsolutions.com/wp-content/uploads/2024-Beyond-Tradition_Gen-Zs-Approach-to-Big-Law.pdf. Ninety-two percent of the respondents to the web-based survey worked at an AmLaw 200 firm, with 63% practicing for one year or less. *Id.* at 3.

¹⁶⁶ *Id.* at 7. Many respondents in practice areas other than litigation reported “they had received no substantive training during school in the work they are currently doing. Respondents also lamented a lack of ‘practical skills’ and limited or no focus on transactional lawyering.” *Id.* at 6.

¹⁶⁷ Nelson, *supra* note zzz

¹⁶⁸ GALLUP & ACCESS GROUP, *Life After Law School* 21 (2016), <https://arc.accesslex.org/cgi/viewcontent.cgi?article=1010&context=commissioned>.

¹⁶⁹ *NALP Class of 2015 Survey*, *supra* note zzz, at 64 & cht.15. A “5” equaled “extremely satisfied” and “1” equaled “extremely dissatisfied”. *Id.*

¹⁷⁰ *NALP Class of 2020 Survey*, *supra* note zzz, at 112 & cht.15. The 2020 survey added a new “transactional skills” category that was rated 3.2. *Id.*

¹⁷¹ See *supra* note 1. The new standard was adopted by the ABA in 2014 but first applied to 2019 law graduates. See Robert Kuehn, *Implementation of the ABA’s New Experiential Training Requirement: More Whimper Than Bang*, 29 CLINICAL LEGAL EDUC. NEWSLETTER (Spring 2021) [hereinafter Kuehn, *Implementation of ABA’s New Experiential Training Requirement*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3837606.

¹⁷² See *supra* note zzz explaining the history of the professional skills requirement in the ABA Standards.

This failure to better prepare graduates for the practice of law may be based on law schools not fully embracing the six-credit experiential learning requirement. An earlier study found that the initial implementation of the requirement had not resulted in a noticeable increase in experiential course opportunities for students.¹⁷³ Data reported to the ABA by law schools for the last available academic year continue to show lack of progress, on average, by schools in expanding experiential course opportunities for their students. There has been no overall increase in the number of positions available to students in law clinic or simulation courses or the number actually enrolled in externships since the adoption of the six-credit requirement in 2014. The number of clinic seats available per J.D. student in academic year 2013-2014 was 0.28 and still only 0.28 in 2022-2023; simulation seats available decreased from 1.22 per student in 2013-2014 to 1.15 in 2022-2023; and externship positions filled was unchanged from 0.27 per student in both 2013-2014 and 2022-2023.¹⁷⁴

Similarly, a comparison of the 2015 and 2020 NALP alumni surveys shows that the percentage of graduates who participated in externship and skills/simulation courses has decreased since 2015, while clinic participation increased modestly.¹⁷⁵ A 2022-2023 nationwide survey of clinical programs also found that most schools continue to fall far short of meeting their students' demand for law clinic training, with 69% of clinics reporting that student demand exceeded available slots.¹⁷⁶

¹⁷³ See Kuehn, *Implementation of ABA's New Experiential Training Requirement*, *supra* note zzz (reporting data from the first two years of the new requirement).

¹⁷⁴ ABA Required Disclosures: Compilation - All Schools Data, Am. Bar Ass'n, <https://www.abarequireddisclosures.org/requiredDisclosure> (reporting curricular offerings and JD enrollment for each school). The number of experiential course seats reported by schools as available or filled was summed and then divided by the nationwide J.D. enrollment. Schools are now only required to report the number of "seats available" to students in law clinic and simulation courses, while actual enrollment "positions filled" for externships. **ZZZ SHOULD WE SPECULATE** IN FN ABOUT WHY POST-6 ADOPTION GRADS STILL BELIEVE THEY AREN'T PREPARED OR SHOULD THAT BE LEFT TO OTHERS SINCE THE PAPER IS ABOUT EMPIRICAL EVIDENCE, NOT CONJECTURE??

If add, something like:

"A review of the data on experiential courses suggest at least four plausible explanations for why recent graduates continue to report that their schools did not adequately prepare them for the practice of law. First, the six-credit experiential requirement is still insufficient, especially in light of the demands of legal practice and what other professions have determined is needed. Second, some schools decided to count part of their existing legal research and writing courses as fulfilling the credit requirement, thus reducing its benefits. Third, even prior to the six-credit requirement, many law students were taking six or more credits in experiential courses yet still feeling unprepared. Fourth, since 2016, schools can allow paid externships and permit students to substitute school-year and summer legal work they would already be doing for experiential course credit, resulting in less additional hands-on experience than those students otherwise would have received had the paid work not been credit-earning."

¹⁷⁵ Compare NALP Class of 2015 Study of Alumni Employment & Satisfaction, *supra* note zzz, at 74 & cht.18, with NALP Class of 2020 Study of Alumni Employment & Satisfaction, *supra* note zzz, at 118 & cht.18. Participation in an externship/internship/field placement decreased from 71% to 65% and participation in legal practice skills/simulation courses decreased from 71% to 62%, while participation in law clinics following and representing individual clients throughout the course increased from 47% to 54%. *Id.* The median participation rates estimated by law schools for their law clinic and externship courses has remained largely unchanged since the 2013-14 academic year. See ROBERT R. KUEHN ET AL., CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION, 2022-23 SURVEY OF APPLIED LEGAL EDUCATION 13 (2023) [hereinafter KUEHN ET AL., 2022-23 CSALE SURVEY], <https://www.csale.org/#results>.

¹⁷⁶ *Id.* at 16, 27 (2023) (reporting also that demand for clinic and externship courses continues to increase).

Earlier surveys of law graduates also found a desire for more law clinic opportunities. In a nationwide survey of 2013 graduates by Kaplan Bar Review, 87% said the legal education system needs “to undergo significant changes to better prepare future attorneys for the changing employment landscape and legal profession.”¹⁷⁷ Ninety-seven percent favored a law school model that incorporates a clinical experience.¹⁷⁸ A law school's 2010 survey of its 2005-2007 graduates asked if their “externship, workshop or clinic” experience had helped them succeed in their work.¹⁷⁹ Over 70% said the experience had, most often explaining that it had honed their work-related skills.¹⁸⁰ Those who reported the experiential courses had not helped them succeed most often explained that it was because the externship was unrelated to the work they were currently doing.¹⁸¹ Similarly, Shelby Cecil’s 1979 survey of a law school’s recent graduates found that those who had participated in a law clinic rated their legal education as “more helpful” on eleven lawyering skills than two groups of students without clinic training.¹⁸² Cecil found the effect “quite strong,” with the clinic experience accounting for between 19% and 34% of the variation in scores among groups of former students.¹⁸³

A qualitative research study by Bryan Taylor asked criminal defense and prosecuting attorneys practicing less than three years to share their perceptions on whether their law school education provided them with the skills and values needed for practice.¹⁸⁴ The study found that while the new attorneys generally felt that law school had taught them to think like a lawyer, it failed to prepare them to practice like a lawyer.¹⁸⁵ The respondents believed their experiential courses with hands-on experiences and practical exercises were instrumental in developing skills and preparing them for their duties as attorneys, compared to didactic classes focusing more on theoretical matters.¹⁸⁶ Those who took a law clinic found them to be an invaluable learning

¹⁷⁷ Press Release, Kaplan Bar Review, Kaplan Bar Review Survey (Sept. 10, 2013), <https://www.kaptest.com/blog/press/2013/09/10/kaplan-bar-review-survey-63-of-law-school-graduates-from-the-class-of-2013-believe-that-law-school-education-can-be-condensed-to-two-years>. The online survey was of graduates who took a bar review course with Kaplan Bar Review.

¹⁷⁸ *Id.*

¹⁷⁹ HANOVER RESEARCH COUNCIL, *NYLS Alumni Career Path Survey Analysis* 16 (2010) (redacted report on file with authors). The term “workshop” was not defined but in a list of experiential courses taken by alumni, workshops were not stand-alone courses but usually a part of a listed law clinic. *Id.* at 14-15.

¹⁸⁰ *Id.* at 16-17.

¹⁸¹ *Id.* at 17.

¹⁸² Joe Shelby Cecil, *The Impact of Clinical Legal Education on Skills Training, Career Choice, and Appreciation of Ethical Issues in the Practice of Law* 55 (1980) (Ph.D. dissertation, Northwestern University) (ProQuest). Respondents, graduates of Northwestern University School of Law in 1976-1978, were asked to indicate the role of their law school training in gaining competence in the eleven skills with ratings for each summed to provide an overall helpfulness score. *Id.* at 53. Former students who participated in the clinic in their first year were compared to former students who applied to the clinic but were not selected through a lottery to participate and former students who never applied to the course. *Id.* at iv, 25.

¹⁸³ *Id.* at 54, 60.

¹⁸⁴ Bryan F. Taylor, *Through the Looking Glass: Perceptions of the Law School Learning Experience*, 61 *LOYOLA L. REV.* 275, 295 (2015). The participants, graduates of seven different law schools, were prosecutors and public and private criminal defense lawyers in Colorado. *Id.* at 293.

¹⁸⁵ *Id.* at 296.

¹⁸⁶ *Id.* at 297. These findings were in line with Taylor’s earlier pilot study of new attorneys. See Bryan F. Taylor & Mary E. Gardiner, *Closing the “Gap”: Novice Criminal Attorneys’ Perceptions on Law School Learning Experiences*, 13 *T.M. COOLEY J. PRAC. & CLINICAL L.* 397, 420 (2011) (“The third key finding was that classes

experience and trial advocacy also valuable, but identified internships, externships, and clerkships as the most valuable in preparing them for practice.¹⁸⁷

As research demonstrates, recent law graduates highly value their law school experiential courses and deemed them important in their transition to law practice. Research also shows that graduates do not believe that law school sufficiently prepares them for practice.

C. Lawyer/Judge Surveys

Surveys of lawyers and judges report widespread dissatisfaction with the practice readiness of newly-licensed lawyers and endorse the value of experiential training in law school, mirroring the opinions of recent law graduates.

One of the earliest surveys, prior to the expansion of law clinics and externships over the past five decades, asked lawyers, judges, and law faculty their attitude towards law students appearing in court under state student practice rules.¹⁸⁸ The nationwide survey reported that respondents found the predominant case method of legal education unsatisfactory and “a consistent preference for an educational system in which the case method is used as a foundation, supplemented by clinical programs according exposure to the problems of actual practice.”¹⁸⁹ Respondents believed courtroom experiences while in law school had a strong, positive impact on a student’s education, particularly in training students in interviewing and advising clients, negotiating, fact gathering, preparation of court documents, discovery techniques, and aspects of trial advocacy.¹⁹⁰ Those who had worked with and observed students in court judged that supervised students provided representation equal to or better than newly-licensed attorneys in all stages of litigation, except cross-examination.¹⁹¹ Yet, new lawyers themselves were judged less than adequate on six of the sixteen tasks, leading the study authors to conclude that law schools were not graduating students, even those with some courtroom experience, who can provide adequate representation in all stages of litigation.¹⁹²

In a more recent 1997-1999 surveys of lawyers in Minnesota, John Sonsteng and David Camarotto sought to determine how well prepared the lawyers believed they were on seventeen important legal skills after completing law school.¹⁹³ Respondents believed that fourteen of the

providing experiential learning opportunities were considered the most valuable to novice attorneys in preparing them to practice law.”).

¹⁸⁷ Taylor, *supra* note zzz, at 298-300. The scope of the terms internship and clerkship are not defined in the study, so it is not clear if “internship” referred to legal employment and “clerkships” to work in a judge’s chambers or to some other experience that was meant to differ from an externship.

¹⁸⁸ Documentary Supplement: *Student Practice as a Method of Legal Education and a Means of Providing Legal Assistance to Indigents: An Empirical Study*, 15 WM. & MARY L. REV. 363 (1973).

¹⁸⁹ *Id.* at 371-72.

¹⁹⁰ *Id.* at 374-75.

¹⁹¹ *Id.* at 402.

¹⁹² *Id.* at 403, 398 n.176.

¹⁹³ John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Job Satisfaction*, 26 WM. MITCHELL L. REV. 327 (2000). The researchers mailed the survey instrument to a random sample of attorneys selected from a list provided by the Minnesota State Bar Association and to lawyers who had taken the Legal Practicum Course at William Mitchell College of Law. *Id.* at 450-41.

skills could be learned in law school, yet on a majority of the seventeen less than half of respondents thought they had actually been well prepared by their school in those skills.¹⁹⁴ The authors concluded that “schools do not do an adequate job in training lawyers in the majority of legal practice and management skills that lawyers believe are important to their practice of law.”¹⁹⁵

The Sonsteng and Camarotto survey also asked respondents in the survey who had participated in a law practice simulation class at William Mitchell College of Law if they perceived themselves better prepared compared to other William Mitchell graduates who had not taken the course.¹⁹⁶ Some of the differences between the two groups on seventeen legal skill areas were small. But there were differences of approximately 10% on eight legal skills – on six legal skills, those who had taken the simulation course believed they were better prepared; on two, those who had not taken the simulation course believed they were better prepared than graduates who had taken the class.¹⁹⁷

Surveys asking established lawyers what new law graduates lack echo the need for and value of more experiential training. A Lexis/Nexis survey of law firm hiring partners and senior associates who supervise new attorneys found that 95% believed that recently graduated students lack key practical skills at the time of hiring.¹⁹⁸ Most attorneys in the survey believed that these practical skills “can be effectively honed through clinics, internships, clerkships, and experience in actual or simulation application to a case.”¹⁹⁹ Another survey by the *New York Law Journal* asked law firm practice chairs, hiring partners, and recruiters what law schools could do to better prepare students for practice in a firm.²⁰⁰ Respondents believed that the third year’s emphasis should change to more clinical and other practical work.²⁰¹

In a survey by Carl Circo of law firm training and development professionals about the skills entry-level transactional lawyers need, only 7% of respondents said law schools prepare

¹⁹⁴ *Id.* at 336, 337 tbl.1.

¹⁹⁵ *Id.* at 447. *See also* Sonsteng et al., *supra* note zzz, at 388-389 (reviewing Minnesota survey and other studies of lawyers and concluding that “[a] century of studies confirms that the formal legal education process does not live up to its promise to train students to practice law”)

¹⁹⁶ Sonsteng & Camarotto, *supra* note zzz, at 348-49.

¹⁹⁷ *Id.* at 350 tbl.5, 448.

¹⁹⁸ *White Paper: Hiring Partners Reveal New Attorney Readiness for Real World Practice* 1, LEXISNEXIS (2015) [hereinafter LEXISNEXIS, *White Paper*], https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf. In another survey, only 23% of practicing attorneys believed recent law graduates possess sufficient practice skills, while 71% of 3L law students believed they possessed sufficient skills. BARBRI, *State of the Legal Field Survey*, *supra* note zzz, 6 (2015). That survey also found that only 56% of practicing attorneys believe recent law graduates are prepared to practice law while 76% of 3L students believe they are prepared to practice “right now.” *Id.* at 4. A similar 2013 survey of Chicago lawyers reported that 54% did not believe new lawyers were well prepared to succeed in entry-level positions. Kathy M. Morris, *The Practice Readiness Project for Chicago-Area Law School Students* 5 (2014) (on file with authors). In a 2015 survey of professionals who develop and manage training and professional development for lawyers, only 13% agreed that law school had prepared associates to practice law. Cleveland, *supra* note zzz.

¹⁹⁹ LEXISNEXIS, *White Paper*, *supra* note zzz, at 8.

²⁰⁰ Katy Montgomery & Neda Khatamee, *What Law Firms Want in New Recruits*, N.Y. L.J. (Apr. 27, 2009) <https://www.law.com/almID/1202431018433>.

²⁰¹ *Id.*

students “well;” not a single respondent answered “very well.”²⁰² In rating the effectiveness of law school experiential learning techniques in preparing students for transactional practice, externships with law firms were rated “highly effective” or “effective” by 93% of respondents; both externships with for-profit organizations and simulation courses 83%; law clinics 78%; and externships with not-for-profit organizations 62%.²⁰³

In Erik Talley’s survey of transactional lawyers about their degree of support for efforts to mandate minimum skills/competencies training for law students, positive support for more skills training outweighed negative by four to one.²⁰⁴ Respondents also rated document drafting, professional ethics, fact development and analysis, negotiation, and client counseling as the most important skills/competencies for a new lawyer to achieve core competency in during their first two to three years of practice.²⁰⁵

Judges agree that students need more practice skills coursework. In a study by Richard Posner and Albert Yoon, federal and state court trial and appellate judges were asked about the quality of legal representation in their courts and recommended changes to the legal profession, including what change would most benefit law schools.²⁰⁶ The change that was most recommended by each judge group (federal appellate, federal district, state appellate, and state trial judges) was “more coursework on practice-oriented skills”²⁰⁷ Overall, judges preferred more practice-oriented skills coursework three to one over expansion of the core curriculum, with more affordable tuition and higher admission standards listed last of the four options.²⁰⁸

The National Conference of Bar Examiners (NCBE) did a job analysis of new lawyers in 2011 to determine the knowledge, skills, and abilities they used in their jobs.²⁰⁹ Lawyers who had been practicing one to three years rated twenty-five skills and abilities and fourteen general lawyer tasks as more important to their performance as a newly licensed lawyer than the highest

²⁰² Carl J. Circo, *Teaching Transactional Skills in Partnership with the Bar*, 9 BERKELEY BUS. L.J. 187, 211 (2012). A majority of respondents agreed that law schools should reduce the attention devoted to substantive law courses if necessary to devote more attention to teaching transactional skills addressing contract structures and key elements, deal structures, due diligence, business acumen, negotiations, and document drafting. *Id.* at 213.

²⁰³ *Id.* at 215 n.174.

²⁰⁴ Eric L. Talley, *The Berkeley Transactional Practice Project Competencies/Skills Survey* Q. 12 (Columbia Law School Working Paper 2014), <https://core.ac.uk/download/230172299.pdf>. The web-based survey instrument was directed to specialists in transactional law through overtures to law firms, general counsel, ABA committees on business law and mergers and acquisitions, and national legal practice blogs. *Id.* at slide 7.

²⁰⁵ *Id.* at Q. 13. The authors of a Harvard Law School survey of attorneys at major law firms on the importance of business-methods courses noted the value of clinics and simulations in preparing law students for practice. John C. Coates IV et al., *What Courses Should Law Students Take? Lessons from Harvard’s Big Law Survey*, 64 J. LEGAL EDUC. 443, 451 (2015).

²⁰⁶ Richard A. Posner & Albert H. Yoon, *What Judges Think of the Quality of Legal Representation*, 63 STANFORD L. REV. 317, 350 (2010).

²⁰⁷ *Id.* at 338-39 & tbl.12. Support for more experiential training was strongest among state trial judges and weakest among federal appellate judges.²⁰⁷

²⁰⁸ *Id.* at 339 tbl.12.

²⁰⁹ Steven S. Nettles & James Hellrung, *A Study of the Newly Licensed Lawyer*, APPLIED MEASUREMENT PROFESSIONALS FOR THE NATIONAL CONFERENCE OF BAR EXAMINERS 1 (2012); *see also* Susan M. Case, *The NCBE Job Analysis: A Study of the Newly Licensed Lawyer*, THE BAR EXAMINER 52 (Mar. 2013), <https://thebarexaminer.ncbex.org/wp-content/uploads/PDFs/820113testingcolumn.pdf>.

rated knowledge domain.²¹⁰ In a similar NCBE study in 2019, newly-licensed lawyers again overwhelmingly rated skills and abilities as more important to their practice.²¹¹ On a scale of 1 to 3 in importance (1=low and 3=high), newly-licensed lawyers rated eleven skills, abilities, and other characteristics at 2.7 or greater but no knowledge area received such high ratings.²¹² Lawyers with direct experience working with or supervising newly-licensed lawyers rated the importance of skills and abilities similarly, with 90% rating twenty-five skills and abilities as moderate or high in importance yet only three knowledge areas were similarly rated.²¹³

A nationwide study of new lawyers by Alli Gerkman and Logan Cornett assessed what characteristics, professional competencies, and legal skills were necessary immediately for a new lawyer's success in the short term, defined as the first year of law-related work.²¹⁴ It found that characteristics and professional competencies were more important in the short term than legal skills.²¹⁵ Also, more than five dozen workplace competencies were deemed as more necessary in the short term than knowledge of doctrinal law.²¹⁶

Qualitative studies also show the value of experiential courses in preparing law graduates for practice. An extensive study by Deborah Jones Merritt and Logan Cornett to develop an evidence-based definition of minimum competence convened fifty focus groups of new lawyers and attorneys who supervise new lawyers to gather data on the knowledge and skills new lawyers need to practice competently.²¹⁷ Focus group discussions were coded and then analyzed

²¹⁰ *Id.* at 54-56.

²¹¹ NCBE, TESTING TASK FORCE PHASE 2 REPORT: 2019 PRACTICE ANALYSIS (2020), https://nextgenbarexam.ncbex.org/themencode-pdf-viewer/?file=https://nextgenbarexam.ncbex.org/wp-content/uploads/TestingTaskForce_Phase_2_Report_031020.pdf#zoom=auto&pagemode=thumbs.

²¹² *Compare id.* at 57 tbl.C.1 with *id.* at 62 tbl.D.1. Lawyers with direct experience working with or supervising newly-licensed lawyers rated eleven skills and abilities but only one knowledge area (rules of professional responsibility) 2.7 or higher. *Id.*

²¹³ *Id.* Nine out of ten newly-licensed lawyers rated nineteen skills and abilities as of moderate or high in importance but no knowledge areas was similarly rated by so many new lawyers. *Id.*

²¹⁴ GERKMAN & CORNETT, THE WHOLE LAWYER AND THE CHARACTER QUOTIENT, *supra* note zzz. As explained by the survey's authors, "'characteristics' are foundations capturing features or qualities (such as sociability). 'Professional competencies' are skills seen as useful across vocations (such as managing meetings effectively). 'Legal skills' are those traditionally understood to be required for the specific discipline of law (such as preparing a case on appeal)." *Id.* at 22.

²¹⁵ *Id.* at 26. "It is not the granular, practical knowledge that new lawyers need to have in hand immediately; rather, it is the characteristics that will allow them to succeed and allow them to learn those practical skills over time." *Id.* at 28

²¹⁶ *Id.* at 11. "The foundations most often selected as immediately necessary included a constellation of workplace competencies: the ability to keep information confidential, punctuality, honoring commitments, integrity and trustworthiness, treating others with courtesy and respect, listening attentively and respectfully, and promptly responding to inquiries and requests." *Id.*

²¹⁷ DEBORAH JONES MERRITT & LOGAN CORNETT, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE 3 (2020) hereinafter MERRITT & CORNETT, BUILDING A BETTER BAR], https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar.pdf. The authors explained the goal of the study: "While there have been a handful of efforts to gain an empirical understanding of the skills and knowledge new lawyers use in their early years of practice, few researchers have explicitly sought to define minimum competence. The few attempts to probe minimum competence have relied on surveys, which lack the ability to delve into the nuances of new lawyers' work. Surveys do not allow new lawyers to describe their work in

to reveal the participants' judgment of the knowledge and skills that new lawyers need for minimum competence to practice law and the means of acquiring that knowledge and skill.²¹⁸ The study identified twelve interconnected "building blocks" of abilities and understandings that new lawyers must possess for minimum competence.²¹⁹ In the focus groups, new lawyers volunteered repeatedly in response to questions about how they learned necessary competencies that law clinics were "essential in preparing them for their first year of practice."²²⁰ Supervising lawyers were "equally enthusiastic about the role of clinics in developing minimum competence."²²¹

The Merritt and Cornett report also summarized the extensive prior research on the knowledge and skills new lawyers need to represent clients competently, all reporting the relative importance of skills, such as those generally addressed in experiential courses, compared to knowledge of substantive or procedural law.²²² Two of the studies were particularly relevant because they focused on the skills rated most important by newly-licensed lawyers. An early 1990s study focused on lawyers in Chicago that had been licensed within the prior five years.²²³ Respondents were asked to rate a list of skills and areas of knowledge in importance to their current position. Communication and cognitive skills ranked highest, above knowledge of substantive or procedural law, "with widespread agreement among recent graduates that they could have been trained better in law schools, particularly in many of the practical skills that they deem so important to the practice of law."²²⁴ A related survey of hiring partners in Chicago law firms similarly found that 90% of hiring partners wanted new lawyers to bring communication and research skills to their firm, with less than one-third identifying knowledge of substantive or procedural law as important.²²⁵

A qualitative study by Ashli Tomisich of lawyers practicing in rural areas who were licensed within the prior five years examined the efficacy of their legal training in preparing them for rural practice.²²⁶ The respondents each expressed frustration with the lack of practical training in law school, sharing that it limited their ability to successfully practice law.²²⁷ All also spoke positively of the experiential learning they acquired in law school, answering that their hands-on learning opportunities were "the most beneficial learning opportunity from law

detail or to explain *how* they use their skills and knowledge in that work. We designed this study to address these substantial gaps in our knowledge, build on the existing research, and develop an evidence-based definition of minimum competence." *Id.* at 3.

²¹⁸ *Id.* at 21.

²¹⁹ *Id.* at 30-31.

²²⁰ *Id.* at 68.

²²¹ *Id.* at 68-89. The report recommended new lawyers complete at least one law clinic of four credits, as well as at least four more credits of clinic or externship work. *Id.* at 75-76.

²²² *Id.* at 7-12.

²²³ Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 509 (1993).

²²⁴ *Id.* at 476.

²²⁵ *Id.* at 488-91 & tbl.11. See also MERRITT & CORNETT, BUILDING A BETTER BAR, *supra* note zzz, at 8-9 (discussing the results of the Garth and Martin studies).

²²⁶ Ashli R. Tomisich, *New Lawyers' Perceptions of Learning the Rural Practice of Law* (2023) (Ph.D. dissertation, Univ. of Wyoming) (ProQuest).

²²⁷ *Id.* at 62.

school.”²²⁸ Respondents, however, expressed frustration at the limited depth and duration of the hands-on experiences their schools provided.²²⁹

Across studies, lawyers and judges agree with the importance of experiential courses in helping recent graduates transition to law practice. Research also shows that the competencies new lawyers need to begin their careers are not the legal knowledge taught in the classroom but skills, abilities, and characteristics addressed, if at all in law school, in experiential courses.

D. Outcome Studies

A final group of studies seeks to measure the impact of experiential training on professional skills development and preparation for practice by looking at the outcome of that training. Like the surveys, these studies support the positive role experiential courses play in a law student’s professional skills development.²³⁰

In one of the earliest controlled studies on the impact of clinical education, Donald Alderman et al. gave different groups written simulation exercises intended to reflect the lawyering skills involved in client interviews.²³¹ The exercises required the respondents to choose the best way to begin an interview, revealing more information and further prompts for how to then proceed.²³² Controlling for academic performance and year in school, law students with clinical experience had a mean performance score significantly higher than students without clinical exposure, but less than the mean score for law professors and attorneys.²³³ The exercises on which law professors and attorney had the strongest consensus on the appropriate interview paths was also the most sensitive to differences across the four respondent group, leading the authors to conclude that simulation exercises were appropriate as a measure of client interview skills and of the effectiveness of clinical legal education in developing these skills.²³⁴

Alli Gerkman and Elena Harman evaluated students in the University of New Hampshire’s Daniel Webster Scholars (DWS) Honors Program in another simulated interview

²²⁸ *Id.* at 89, 101. Respondents spoke of the value of law clinics, externships and internships (i.e., employment during law school) in skills development, professional growth and identity formation, and networking.

²²⁹ *Id.* at 96.

²³⁰ A challenge in measuring the impact of participation in an experiential course is the wide variety of training in professional skills that the courses provide, contrasted to the more uniform coverage of substantive legal principles in doctrinal courses. See KUEHN ET AL., 2022-23 CSALE SURVEY, *supra* note zzz, at 6-8, 25, 29-30 (reporting over 35 distinct substantive foci in the over 1,500 law school clinics covering a variety of types of legal practice and range of academic credits). This heterogeneity of clinic experiences means participation comparisons between clinic and non-clinic students may overlook the clinic students’ varying degrees of training, or even no training, in the skills being measured.

²³¹ Donald L. Alderman et al., *The Validity of Written Simulation Exercises for Assessing Clinical Skills in Legal Education*, 41 EDUC. & PSYCH. MEASUREMENT 1115 (1981).

²³² *Id.* at 1117. The exercises dealt with a number of legal fields and were developed by clinical law professors to cover the interviewing skills of uncovering the client’s problem, dealing with client reluctance, gathering salient facts, determining client preferences, narrowing legal options, and discussing the lawyer’s role and its limitations. *Id.*

²³³ *Id.* at 1120.

²³⁴ *Id.* at 1122-23.

format.²³⁵ The program immerses law students in an experience-based curriculum beginning in their second year of law school, in return admitting them to the bar based on their performance in the program and waiving them from taking the bar examination. To judge its effectiveness, students in the final semester of the program and non-program lawyers who had graduated within the last two years were evaluated using standardized client interviews with trained actors. On an effectiveness scale of 1 to 5, the actors scored the DWS scholars an average of 3.78 out of 5, compared to non-DWS lawyers of 3.11.²³⁶ On the amount of relevant information that the interviewer learned, DWS scholars, on average, learned 89% of relevant information points compared to non-DWS lawyers' 68%.²³⁷ A qualitative analysis of discussions with groups that had participated in or interacted with the DWS program found agreement that DWS graduates are ahead of other law students in being able "hit the ground running, working with clients and taking a lead role on cases immediately."²³⁸

Stefan Krieger divided law students into three groups to evaluate the development of their legal reasoning: third-year students with a law clinic experience; third-year students without a clinic experience; and second-year students without a clinic experiences.²³⁹ The subjects were presented with a simulated consumer fraud problem and then asked to verbalize a summary of the facts and how they would assess and handle the matter.²⁴⁰ Analysis of the transcripts showed that while third-year students who had not participated in a clinic identified, on average, the highest number of total facts, clinic students had the highest mean percentage of relevant facts and thus were more proficient in focusing out irrelevant facts and focusing in on relevant facts.²⁴¹ Regarding identification of substantive rules, while third-year students with clinical experience identified a higher percentage of relevant rules, third-year students without clinic identified a larger number of relevant rules.²⁴² Furthermore, students who participated in a clinic were less likely than non-clinic counterparts to draw inferences from the facts but were more proficient in identifying client interests and in considering the next steps in the case.²⁴³ Krieger concluded that

²³⁵ Alli Gerkman & Elena Harman, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, AHEAD OF THE CURVE: TURNING LAW STUDENTS INTO LAWYERS (2015), <https://iaals.du.edu/publications/ahead-curve-turning-law-students-lawyers>.

²³⁶ *Id.* at 18. Only 3% of DWS scholars rated below 3, compared to 40% of non-DWS lawyers, with 56% of DWS scholars rating a 4 or 5 compared to 25% of non-DWS lawyers. *Id.*

²³⁷ *Id.* Fifty-one percent of DWS scholars learned all information points compared to 16% of non-DWS lawyers. *Id.* at 20. LSAT score and class rank were not significant predictors of scores on overall assessment or percentage of relevant information learned, although DWS scholars with higher LSAT scores performed better than DWS scholars with lower LSAT scores. *Id.* at 21-22.

²³⁸ *Id.* at 12-14 (relying on transcripts from focus groups conducted by Lloyd Bond and William Sullivan of the Carnegie Foundation for the Advancement of Teaching). Participating groups were New Hampshire judges; lawyer supervisors and peers of DWS alumni; DWS alumni; DWS scholars in their second and third years of law school; administrators and faculty from the school; and members of the New Hampshire Board of Bar Examiners.

²³⁹ Stefan H. Krieger, *The Effect of Clinical Education on Law Student Reasoning: An Empirical Study*, 35 WM. MITCHELL L. REV. 359 (2008). The study was a follow up to a study two years earlier on Hofstra law students that looked at the development of legal reasoning from first year through graduation. Stefan H. Krieger, *The Development of Legal Reasoning Skills in Law Students: An Empirical Study*, 56 J. LEGAL EDUC. 332 (2006) [hereinafter Krieger, *The Development of Legal Reasoning*].

²⁴⁰ *Id.* at 370, 374-75.

²⁴¹ *Id.* at 378-79.

²⁴² *Id.* at 383-84.

²⁴³ *Id.* at 386, 390, 393-94.

the study's findings on the effect of clinical education were mixed, with results suggesting both benefits and limitations from clinical education in training students for problem solving.²⁴⁴

Washington & Lee (W&L) adopted a new third-year curriculum in 2009 that required each student to enroll in at least four experiential courses, one of which had to be a law clinic or externship, in addition to enrolling in skills immersions in litigation practice and transactional practice.²⁴⁵ Compared to prior W&L students on LSSSE survey benchmarks, third-year students who took the new experiential curriculum were much more likely to solve real-world problems and acquire work-related knowledge and skills.²⁴⁶ W&L students also significantly exceeded students at peer schools on the LSSSE benchmarks, particularly on acquiring job- or work-related knowledge or skills and solving complex real-world problems.²⁴⁷

Other studies have compared the performance of law clinic students in legal proceedings with those of other advocates. Steven Zeidman compared conviction and dismissal rates on misdemeanor cases for defendants represented by clinic students with those of New York Legal Aid Society attorneys for indigent defendants.²⁴⁸ Compared to legal aid lawyers, at arraignment clinic students negotiated more pleas to reduced charges, were slightly more likely to secure a non-jail sentence, achieved somewhat higher rates of dismissals and adjournment in contemplation of dismissal, and gained a higher rate of release on recognizance in bail hearings.²⁴⁹ At the post-arraignment stage, clinic student clients were substantially more likely to plead to a reduced charge or receive a noncustodial sentence, 20% more likely to have their cases dismissed, and half as likely to receive warrants for failing to appear than client represented by legal aid attorney.²⁵⁰ The researcher concluded that on measures capable of empirical analysis, clinic students achieved more favorable results than legal aid lawyers.²⁵¹

²⁴⁴ *Id.* at 396.

²⁴⁵ James E. Moliterno, *A Way Forward for an Ailing Legal Education Model*, 17 CHAPMAN L. REV. 73, 78-80 (2013).

²⁴⁶ *Id.* at 87 (comparing 2008 and 2012 LSSSE survey responses); *LSSSE 2012*, *supra* note zzz, at 15.

²⁴⁷ William D. Henderson, *Washington & Lee is the Best Legal Education Story of 2013*, LEGAL WHITEBOARD (Jan 29, 2013), <https://lawprofessors.typepad.com/legalwhiteboard/2013/01/biggest-legal-education-story-of-2013.html>. Responses by W&L students exceeded those of students at peer schools by 27% on acquiring job- or work-related knowledge and skills and by 17% on solving complex real-world problems. *See also* James Moliterno, *Jim Moliterno Answers Questions on W&Ls 3L Program; Supplies Additional Data on W&L*, LEGAL WHITEBOARD (Feb 13, 2013), [hereinafter Moliterno, *Questions on W&Ls 3L Program*] <https://lawprofessors.typepad.com/legalwhiteboard/2013/02/jim-moliterno-answers-questions-on-wls-3l-program-supplies-additional-data-on-wl.html> (showing that W&L students had made gains on solving real-world problems by 13% between the pre- and post-revised curriculum LSSSE surveys while students at peer schools only had gains of 6% over the same time period).

²⁴⁸ Steven Zeidman, *Sacrificial Lambs or the Chosen Few? The Impact of Student Defenders on the Rights of the Accused*, 62 BROOKLYN L. REV. 853, 864-67 (1996).

²⁴⁹ *Id.* at 869-70, 871 tbl.1.1. Nearly half of defendants represented by legal aid lawyers pled guilty at their initial court appearance compared to just 27% of the clinic clients. *Id.*

²⁵⁰ *Id.* at 870, 875 tbl.2.1. Clinic students' clients also pled guilty post-arraignment less than legal aid clients (37% to 53%). *Id.*

²⁵¹ *Id.* at 919. The study author also explained why the outcomes were likely related to the ways that student lawyering differs from lawyering by assigned counsel. *Id.* at 882-919.

James Greiner and Cassandra Wolos Pattanayak examined the effect of law clinic representation on unemployment insurance claimant appeals.²⁵² Unlike most studies on the effect of legal representation, it randomized the offers of representation to address “selection effects,” but could not randomize the actual use of representation from any source.²⁵³ Greiner and Pattanayak found that law clinic offers of representation did not increase the likelihood the claimant would prevail,²⁵⁴ but did delay the proceedings by an average of sixteen days compared to those not receiving an offer.²⁵⁵ A delay of two-weeks in receiving unemployment benefits was characterized by the study authors as “nontrivial.”²⁵⁶ However, the study was unable to determine if actual use of representation by the clinic (or from some other source) increased the likelihood the claimant would prevail, although it too caused a delay in the proceeding.²⁵⁷

A similar study by Colleen Shanahan et al. of unemployment insurance hearings reviewed data on 5,000 cases and interviewed judges and representatives for workers and employers to compare the performance of clinic students with experienced lawyers.²⁵⁸ The data indicated that clinic students were using procedures similar to experienced attorneys, suggesting that students were learning through the clinic to be lawyers, although in some cases students may be overusing procedures to the detriment of their clients.²⁵⁹ In examining overall patterns of case outcomes, clinic students and attorneys had similar case outcomes, although when an employer was represented by an attorney, workers represented by an attorney won more often than workers represented by clinic students.²⁶⁰ The study authors concluded that their findings “support arguments that law school clinics are preparing students to become lawyers because they show clinical law students exercising procedural expertise in the same way as experienced lawyers.”²⁶¹

²⁵² D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?*, 121 YALE L.J. 2118 (2012).

²⁵³ *Id.* at 2127-28. Randomization of actual use of legal representation was not possible because not all claimants who were randomly assigned to the clinic and offered representation then used the clinic assistance. *Id.* at 2118.

²⁵⁴ *Id.* at 2149. Claimants who received an offer of assistance from the clinic had a weighted probability of winning of .76 compared to .72 for those who did not receive an offer, but the difference was not statistically significant. *Id.*

²⁵⁵ *Id.* at 2153-54. For a review of the study and possible explanations for its findings, see Jeffrey Selbin et al., *Service Delivery, Resource Allocation, and Access to Justice: Greiner and Pattanayak and the Research Imperative*, 122 YALE L. J. ONLINE 45 (2012), <https://www.yalelawjournal.org/forum/service-delivery-resource-allocation-and-access-to-justice-greiner-and-pattanayak-and-the-research-imperative>.

²⁵⁶ Greiner & Pattanayak, *supra* note zzz, at 2158. The study authors explained the harm from the clinic’s delayed offer of representation: “[B]ecause roughly one-third of [the clinic’s] client base consisted of claimants who were erroneously denied benefits as an initial matter and who would eventually have that erroneous denial reversed, the statistically significant delay probably meant that many of these claimants who were offered [clinic] assistance suffered the harm of having to wait longer for their benefits to begin.” *Id.* at 2125.

²⁵⁷ *Id.* at 2166-70.

²⁵⁸ Colleen F. Shanahan et al., *Measuring Law School Clinics*, 92 TUL. L. REV. 547 (2018).

²⁵⁹ *Id.* at 573-74. If the attorneys who regularly practice in these proceedings are the professional “standard of care” for unemployment cases, the authors suggest the data show that students are practicing at this standard with respect to the use of available procedures. *Id.* at 572. The authors note that because representation by a clinic combines the expertise of the student and supervisor one cannot tease out the individual work and expertise of the student. *Id.* at 573. But, they note that one also cannot separate a lawyer’s expertise from the assistance provided the lawyer by a paralegal or other attorney who aided the lawyer.

²⁶⁰ *Id.* at 582-83. & Cht.13. Against unrepresented employers, clinic students were more successful than attorney-represented workers. *Id.*

²⁶¹ *Id.* at 585.

There is a need for more empirical research on the impacts of experiential legal education on the attainment of professional skills and preparation for practice, particularly research that measures outcomes from enrollment in those courses. But those who have taken experiential courses and those who have observed the effects of those courses overwhelmingly agree the courses are crucial to ensuring students are prepared for the practice of law and that students need more experiential coursework.

III. ENHANCED PROFESSIONALISM AND PROFESSIONAL IDENTITY

A primary objective of legal education is developing a student's understanding of professionalism and development of a professional identity.²⁶² ABA Accreditation Standards require each law school's program of legal education to prepare its students "for effective, ethical, and responsible participation as members of the legal profession."²⁶³ ABA Standards require at least one course in professional responsibility that includes "substantial instruction in the rules of professional conduct, and the values and responsibilities of the legal profession and its members."²⁶⁴ Thus, professionalism includes adherence to the rules of professional conduct and to the values and responsibilities of the legal profession. The ABA Professionalism Committee stated that the essential characteristics of a professional lawyer, hence professionalism, include ethical conduct and dedication to justice and public good.²⁶⁵

The ABA Standards help to explain what is meant by the development of professional identity:

Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice.²⁶⁶

The Carnegie Foundation's study, *Educating Lawyers*, discussed professionalism in the context of the "apprenticeship of professional identity," and stated that it should encompass issues of social justice and "the virtues of integrity, consideration, civility, and other aspects of

²⁶² ABA STANDARDS, *supra* note 1, at Std. 301(a). The ABA Accreditation Standards also state that learning outcomes shall include competency in the "[e]xercise of professional and ethical responsibilities to clients and the legal system." *Id.* at Std. 302(c). In addition, the Standards state that "[a] law school shall provide substantial opportunities to students for . . . the development of a professional identity." *Id.* at Std. 303(b)(3).

²⁶³ *Id.* at Std. 301(a).

²⁶⁴ *Id.* at Std. 303(a)(1).

²⁶⁵ AM. BAR ASS'N, TEACHING AND LEARNING PROFESSIONALISM, REPORT OF THE PROFESSIONALISM COMMITTEE 7 (1996). The Committee explained that to practice professionalism means lawyers "embrace the characteristics or traits of the professional lawyer as we have defined that concept." *Id.* The Committee stated that essential characteristics of a professional lawyer, and hence professionalism, include ethical conduct and dedication to justice and public good. *Id.* at 7. The Committee noted that students' "law school experience has a profound influence on their professional values and their understanding of law and the role of lawyers in our society." *Id.* at 13.

²⁶⁶ ABA STANDARDS, *supra* note 1, at Int. 303-5.

professionalism.”²⁶⁷ The empirical studies that have examined students’ socialization into the legal profession demonstrate the success of experiential education in the development of professionalism and professional identity in law students.

A. Law Student and Graduate Studies

LSSSE surveys have consistently shown a positive correlation between experiential education and enhanced professionalism and professional identity. The 2006 survey found that “clinics may serve a valuable role in . . . inculcating in students a sense of professional responsibility.”²⁶⁸ Students participating in clinical or field experiences also reported greater gains than students without those experiences in several areas of professionalism, including “[c]ontributing to the welfare of the community” and “[u]nderstanding people of different racial and ethnic backgrounds.”²⁶⁹ The positive impact of clinical legal education on understanding people of different racial and ethnic backgrounds is particularly important, given the new ABA accreditation requirement that law schools “shall provide education to law students on bias, cross-cultural competency, and racism.”²⁷⁰

A follow up LSSSE survey in 2008 found that second- and third-year law students ranked law clinics and externships approximately equal to or better than their professional responsibility courses as contributing to their learning of legal ethics and ranked externships/internships less well than clinics.²⁷¹ Approximately 69% of upper-level students identified clinics as substantially contributing to learning legal ethics, while 62% identified professional responsibility courses and 58% identified externships/internships.²⁷² Paid legal work fared less well than professional responsibility courses, clinics, and externships/internships, while upper-level students listed doctrinal classes as contributing the least to learning legal ethics.²⁷³

According to students in the next LSSSE study in 2010, “law schools provide only moderate preparation for various ethical and professional aspects of their future legal careers,” with “only half of students reported that law school prepared them well (combining response options ‘very much’ and ‘quite a bit’) to deal with ethical dilemmas that may arise as part of law

²⁶⁷ WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 132 (2007). In defining professionalism, the ABA Professionalism Committee started by developing the following definition of a professional lawyer: “A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.”

²⁶⁸ LSSSE 2006, *supra* note zzz, at 15.

²⁶⁹ *Id.*

²⁷⁰ ABA STANDARDS, *supra* note zzz, at Std. 303(c).

²⁷¹ *Law School Survey of Student Engagement 2008*, INDIANA UNIVERSITY CENTER FOR POSTSECONDARY RESEARCH 7 (2008) [hereinafter LSSSE 2008], http://lssse.indiana.edu/wp-content/uploads/2016/01/LSSSE_Annual_Report_2008.pdf.

²⁷² The percentages are approximations by averaging the second- and third-year male and female responses. .

Women were more likely to identify clinics as substantially contributing to learning legal ethics than men. *Id.* at 8.

²⁷³ Fifty percent of 2L and 52% of 3L male students and 57% of 2L and 58% of 3L female students identified paid legal work as substantially contributing to learning legal ethics. Thirty-one percent of 2L and 3L male students and 33% of 2L and 32% of 3L female students identified doctrinal classes as contributing to learning legal ethics. *Id.* at 7.

practice.”²⁷⁴ The study found that students with law clinics or pro bono work experience “were more likely to report that their law schools provided adequate professional preparation.”²⁷⁵ Based on these findings, the study observed “that exposure to practice-based and experiential settings provide valuable opportunities for students to cultivate professional ethics.”²⁷⁶

Carol Silver et al. analyzed the 2010 LSSSE data in greater detail and concluded that its “findings suggest that clinical experience may enhance learning legal ethics,” though they observed that more research is necessary to confirm a direct relationship.²⁷⁷ They also found that students with a clinical experience reported higher gains than students without that experience across every area of professional development, including: building positive relationships with future clients; deepening the capacity for moral reasoning; preparing to handle the stress of law practice; strengthening a commitment to serving the public good; and acting with integrity in both personal and professional settings.”²⁷⁸ They concluded that “the data provide a strong endorsement of clinical legal education for purposes beyond its particular goals.”²⁷⁹

The 2012 LSSSE study examined some aspects of experiential education more closely than prior studies, looking at the relationship of experiential learning activities to higher order learning.²⁸⁰ The data collected showed that students who had a live-client clinical course were more likely to engage in ethics issues during the course, look up the ethics rules, look up the law or procedure related to the client matters, and discuss the ethics rules or ethical issues with faculty than students in skills or simulation courses and those in a field placement.²⁸¹

An earlier study by Steven Hartwell examined the effects of teaching professional responsibility courses that combined theory with experiential learning.²⁸² Hartwell created a series of out-of-class simulations in which professional responsibility students were presented with various ethical dilemmas attorneys face.²⁸³ Prior to taking the course, the law students’ moral reasoning was tested using the Defining Issues Test (DIT),²⁸⁴ which consists of six vignettes of moral dilemmas.²⁸⁵ After taking the course, students were tested again and “DIT results indicate that the experientially taught professional responsibility courses significantly and

²⁷⁴ *Law School Survey of Student Engagement 2010*, INDIANA UNIVERSITY CENTER FOR POSTSECONDARY RESEARCH 8 (2010) [hereinafter *LSSSE 2010*], https://lssse.indiana.edu/wp-content/uploads/2016/01/2010_LSSSE_Annual_Survey_Results.pdf .

²⁷⁵ Clinical participation and pro bono work corresponded to a higher degree of professional preparation in the following areas: understanding the needs of future clients; working cooperatively with colleagues as part of a legal team; serving the public good through their profession; and understanding professional values that will serve them in their legal careers. *Id.*

²⁷⁶ *Id.* at 9.

²⁷⁷ Carole Silver et al., *Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement*, 17 J. LEGAL WRITING INSTITUTE 373, 396 (2011).

²⁷⁸ *Id.* at 403 tbl.5.

²⁷⁹ *Id.* at 404.

²⁸⁰ *LSSSE 2012*, *supra* note zzz, at 13.

²⁸¹ *Id.* at 15 tbl.8.

²⁸² Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLINICAL L. REV. 505, 522 (1995).

²⁸³ *Id.* at 523.

²⁸⁴ *Id.* at 524.

²⁸⁵ *Id.* at 512.

positively influenced the level of moral reasoning of the students.”²⁸⁶ Hartwell, however, did not administer the DIT to students taking traditional professional responsibility courses, so it is unclear how much more the experiential components positively influenced the moral reasoning of students compared to students in traditional professional responsibility courses.

Northeastern University, at which second- and third-year law students alternate cooperative work placement with upper-level courses, surveyed students and conducted focus groups to examine students’ opinions concerning their co-op experiences.²⁸⁷ Northeastern found that the co-op experienced deepened students’ professional identity.²⁸⁸ Among the benefits were: “improved self-awareness for career planning through exposure to diverse practice areas” and “unexpected professional growth where students began to grasp the breath, depth and weight of actual lawyering.”²⁸⁹ A “key theme that emerged from the student focus groups was a more concrete grasp of the role of the lawyer to both clients and broader society.”²⁹⁰

A study by Thomson and Daniels of three years of law school graduating classes found that 83% of all responding students said they were exposed to the idea of professional identity in law school.²⁹¹ In terms of where students were exposed to an influential role model for professional identity, 64% of students identified externships, 40% stated clinics, and 44% responded simulation courses.²⁹² The authors maintain that exposure to an influential role model, such as in a clinic, externship, or simulation class, “is crucial for the development of professional identity.”²⁹³

Studies of recent graduates and more experienced lawyers also show the impact of experiential courses on professional identity formation. In a nationwide NALP survey of 2020 graduates, 62% reported “clinical/experiential courses as the most valuable law school resources for advancing their professional identities,” just behind 63% reporting that professors were the most valuable resource for advancing their professional identities.²⁹⁴ In the survey, 48% identified internships, 39% career development programs/resources, 27% school-related work experience, 23% doctrinal courses, and 22% pro bono opportunities as the most valuable resource for advancing their professional identities.²⁹⁵

A qualitative study by Ashli Tomisich of new lawyers in rural practice settings found that experiential learning “provided robust opportunities for professional growth and identity

²⁸⁶ *Id.* at 527.

²⁸⁷ Luke Bierman et al., *Immersive, Iterative and Integrative: Does Cooperative Placement Accelerate Law Student Professional Development?* 3 RESEARCH BULLETIN 1, 2 (Jan. 2014), available at <https://publuu.com/flip-book/684282/1522692> (last visited Oct. 11, 2024).

²⁸⁸ *Id.* at 2.

²⁸⁹ *Id.* at 3 tbl.1.

²⁹⁰ *Id.* at 7.

²⁹¹ See Thomson & Daniels, *If You Build It*, *supra* note zzz, at 234-35.

²⁹² *Id.* at 235 fig.5. Thomson and Daniels did not ask about other places where students may have been exposed to the idea of professional identity.

²⁹³ *Id.* at 235.

²⁹⁴ NALP *Class of 2020 Survey*, *supra* note zzz, at 133.

²⁹⁵ *Id.*

formation.”²⁹⁶ For example, one lawyer “spoke to her internship as informative to her professional identity” and another reflected on how working as an intern at his firm helped him cultivate his professional identity.²⁹⁷ Many of the survey respondents discussed experiential learning experiences as related to their professional development and establishing an ethical approach to conflicts.²⁹⁸

Another qualitative study, by Lawrence Hellman, examined students enrolled in an experimental law school professional responsibility course based in an elective bar-sponsored student practice program in the mid-1980s.²⁹⁹ Hellman analyzed student journal entries that asked them to identify professional responsibility problems they encountered, steps they took to resolve the problems, the relevant ethics rules, and the students’ personal resolutions of the problems.³⁰⁰ Hellman found that the students’ law office work experience enhanced “[s]tudent sensitivity to and understanding of professional responsibility issues arising in law office environments. As one student put it: ‘Through this class I obtained a greater awareness of the potential ethical problems that go on daily in a typical law office, and hopefully I will know how to deal with those situations as they arise in the future.’”³⁰¹

While studies from the last thirty years show positive correlations between experiential education and the development of professionalism and professional identity, a study from the late 1970s did not. Cecil’s study of lawyers who graduated from 1976 to 1978 sought to measure the impact of law clinic participation on the appreciation of ethical issues in the practice of law.³⁰² An analysis of the responses found no significant difference between graduates who had taken a law clinic and those who had not.³⁰³ Rather than concluding that clinical legal education had no impact on the appreciation of ethical issues, Cecil noted the problems with reaching such a conclusion – “Issues such as an appreciation of ethics are very subjective and may require a series of questions to properly measure this construct. This study employed only one question to test ethical appreciation.”³⁰⁴ Cecil also noted that his study did not seek to measure whether

²⁹⁶ Tomisich, *supra* note zzz, at 89.

²⁹⁷ *Id.* at 94, 92.

²⁹⁸ *Id.* at 109. Similar to Tomisich’s findings, a qualitative study of law students in Israel found that clinic students’ exposure to good lawyering “contributed to the formation of the students’ professional worldview” and law clinic experience aided “the formation of a socially sensitive professional identity in most participants.” Yael Efron, *What Is Learned in Clinical Learning?*, 29 CLINICAL L. REV. 259, 276 (2023).

²⁹⁹ Lawrence K. Hellman, *The Effects of Law Office Work on the Formation of Law Students’ Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 557-59 (1991). The course was called Professional Responsibility in the Legal Intern Experience and was offered from the summer of 1984 through the summer of 1986. *Id.* at 558. Seventy-one percent of students were in private law firms, 26% in government agency offices, 1% in corporate legal departments, and 1% in public interest organizations. *Id.* at 562 n.105.

³⁰⁰ *Id.* at 565-66.

³⁰¹ *Id.* 608.

³⁰² Cecil, *supra* note zzz, at 27. Lawyers were asked to indicate how their law school training factored into “the appreciation of ethical issues in the practice of law,” and could respond “‘Essential,’ ‘Helpful,’ ‘Not Helpful,’ or ‘Played No Role’ in attaining competency in this area.” *Id.* at 68.

³⁰³ *Id.*

³⁰⁴ *Id.* at 70.

“clinical training may be as effective or more effective than more common methods of teaching students the ethical standards of the profession.”³⁰⁵

B. Impact on Pro Bono Commitments

A defining feature of legal professionalism is a commitment to providing pro bono representation to those who cannot afford legal services.³⁰⁶ This commitment is found in the *ABA Model Rules of Professional Conduct*, which state, in relevant part, that “[e]very lawyer has a professional responsibility to provide legal services to those unable to pay.”³⁰⁷ ABA Accreditation Standards also require law schools to “provide substantial opportunities to students for . . . participation in pro bono legal services, including law-related public service activities.”³⁰⁸ Research into the impact of experiential education on law students’ stated commitment to doing providing pro bono legal assistance show a positive correlation, while the impact on new lawyers’ actual pro bono work is mixed.

An analysis of the 2010 LSSSE study data by Silver et al. found that students with a clinical experience reported a greater commitment to serving the public good than students without a clinical experience.³⁰⁹ The data show that having done paid legal work while in law school did not produce the same commitment to serving the public good.³¹⁰ The positive results in this LSSSE study, however, could be due to selection effect as students choosing to enroll in a clinic could be more predisposed to serving the public good than students who choose not to participate.

A study by Russell Engler asked law students what impact taking a clinical course had on their being more likely to do pro bono work after they graduate.³¹¹ Engler found that “73% of [clinic] students in legal services setting answered that the work made them ‘more likely’ to do pro bono work, compared to only 31% of the students in government settings, and 31% of the students in private settings.”³¹² Engler concluded that “data from the clinics confirmed my

³⁰⁵ *Id.* at 74. A very early study by Rita Simon also found no significant difference in responses to ethical problem situations from students who were placed during the school year in various social service or legal offices and students at control schools that did not have a placement program. Rita James Simon, *An Evaluation of the Effectiveness of Some Curriculum Innovations in Law Schools*, 2 J. APPLIED BEHAVIORAL SCI. 219, 231 (1966). Cecil pointed out a number of methodological flaws in Simon’s study, including wide variations in the methods of clinical training at the treatment schools and the non-legal focus of some placements. Cecil, *supra* note zzz, at 19-21.

³⁰⁶ SULLIVAN ET AL., *supra* note zzz, at 138.

³⁰⁷ MODEL RULES OF PRO. CONDUCT r. 6.1 (Am. Bar Ass’n 2023).

³⁰⁸ ABA STANDARDS, *supra* note 1, at Std. 303(b)(2).

³⁰⁹ Silver et al., *supra* note zzz, at 403 tbl.5.

³¹⁰ *Id.* at 403.

³¹¹ Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 137 & 137 n.132 (2001).

³¹² *Id.* at 137. Engler explains that his school’s clinical programs “meld in-house placements with externship settings, organize all such work into clinical courses, organize the courses around substantive areas or legal skills, and permit placements far beyond poverty law settings, including an occasional placement in the private, for-profit sector.” *Id.* at 136.

impression that clinical placements in poverty law might be as good or better settings for instilling a pro bono ethic than the performing of volunteer work.”³¹³

Ann Hodges surveyed law students at the end of a nonprofit organizations course as well as graduates who previously took the course, which had experiential education components.³¹⁴ The surveys showed that 70% of respondents did either pay and/or volunteer nonprofit work after taking the course, with a majority doing volunteer work.³¹⁵ Although Hodges did not compare the students who took the course with students who had not, nearly half of those who took the course stated that taking the course increased their likelihood of post-graduate community involvement in nonprofit work.³¹⁶

A study by Deborah Schmedemann of law students, new lawyers, and experienced lawyers based on surveys, focus groups, and extended interviews found that taking a law clinic course correlated with pro bono participation.³¹⁷ Schmedemann surmised that this was due, in part, because students with a law clinic experience had the opportunity to process and reflect on their clinical experiences.³¹⁸ Schmedemann does not explain how she compared those with a law clinic experience to those did not take a clinic, and only states that lawyers were asked to report the number of hours of pro bono work done for no fee or a substantially reduced fee.³¹⁹ The study also found that law-related volunteering during law school increased pro bono participation after graduation.³²⁰

A close examination of the NALP *After the JD I* longitudinal survey of early-career lawyers by Sandefur and Selbin found that clinical experiences did not contribute to greater pro bono work by new lawyers in private practice or internal counsel of non-government organizations.³²¹ Similarly, graduates with clinical experiences were not more likely to be engaged in civic or charitable organizations.³²² Sandefur and Selbin did find a strong relationship between clinical experiences and public service employment.³²³

³¹³ *Id.*

³¹⁴ Hodges, *supra* note zzz, at 14.

³¹⁵ *Id.* at 16-17. Of those who did some type of nonprofit work since taking the class, 35% did unpaid volunteer work, 22% did both paid and unpaid volunteer work, and 13% performed paid work. *Id.*

³¹⁶ *Id.* at 37.

³¹⁷ Deborah A. Schmedemann, *Priming for Pro Bono: The Impact of Law School on Pro Bono Participation*, in PRIVATE LAWYERS AND THE PUBLIC INTEREST: THE EVOLVING ROLE OF PRO BONO IN THE LEGAL PROFESSION 82 (Robert Granfield & Lynn Mather eds., 2009).

³¹⁸ *Id.* at 88.

³¹⁹ *Id.* at 78.

³²⁰ *Id.* at 88.

³²¹ Sandefur & Selbin, *supra* note zzz, at 93-94. Sandefur and Selbin analyzed some non-public data from *After the JD I* study as the report did not examine a possible correlation between clinical courses and performing pro bono work after graduation.

³²² *Id.* at 95-96.

³²³ *Id.* at 101. Qualitative studies from Australia and the United Kingdom found mixed results on whether students with law clinic experiences would be more likely to do pro bono work. The Australian study found that students who completed a clinic placement were more likely to take on a pro bono case after graduation than those who had not had a placement. Adrian Evans & Josephine Palermo, *Lawyers and Ethics in Practice: The Impact of Clinical and Ethics Curricula on Lawyers' Ethical Decision-Making*, 1 ALTERNATIVE L.J. 12, 17 (2007). In contrast, the study from the United Kingdom did not find a link between clinic experience and a strong desire to do pro bono

A correlation between clinical experiences and public service employment was also found by Sally Maresh in surveys of law clinic students.³²⁴ The surveys showed that 57% of students who did not intend to practice public interest law before taking a clinic reported they were more likely to practice public interest law after completing the clinic.³²⁵ Among the reasons students stated for changing their minds were “a realization that many of their clients needed representation through no fault of their own, a recognition that the integrity of the judicial system is dependent on equal access to representation regardless of individual resources, and that the ‘right’ to counsel is not an inalienable right.”³²⁶

The studies into the development of professional identity and professionalism underscore the critical role that experiential legal education plays among law students and recent graduates. Experiential courses engaging students in role as lawyers, especially in law clinics and externships, cultivate a deeper understanding of their ethical responsibilities to clients and a heightened commitment to public service and pro bono work.

IV. IMPROVED EMPLOYMENT PROSPECTS

Research shows law school experiential courses aid law graduates in obtaining their first job and that potential employers value entry-level job candidates with experiential coursework.

A. Lawyer Surveys

A number of NALP studies have documented the importance of law school experiential courses in hiring decisions. A 2010 survey of law firm associates asked how much, if any, of the associate’s law school experiential learning experiences were discussed in the job interview with their current employer.³²⁷ Two-thirds of respondents reported that their experiential learning was discussed, with 6% reporting that it had been discussed “extensively.”³²⁸

The more recent NALP survey of 2020 law school alumni also sought to “discern whether experiential courses were a positive factor in obtaining employment” by again asking respondents whether they discussed these courses during job interviews.³²⁹ Eighty-six percent reported discussing their law school experiential courses during interviews for their first post-

work. Ann Thanaraj, *Understanding How a Law Clinic Can Contribute towards Students’ Development of Professional Responsibility*, 23 INTERNATIONAL J. CLINICAL LEGAL EDUC. 89, 118 (2016). The study did show, however, that students had developed a greater awareness of professional responsibility and some evidence of professional identity development through having a clinic experience. *Id.* at 133.

³²⁴ Sally Maresh, *The Impact of Clinical Legal Education on the Decisions of Law Students to Practice Public Interest Law*, in EDUCATING FOR JUSTICE 160 (Jeremy Cooper & Louise C. Trubek eds., 1997).

³²⁵ *Id.* at 163.

³²⁶ *Id.* at 164.

³²⁷ NALP 2010-2011 Survey Comparison, *supra* note zzz, at 37-38.

³²⁸ See E-mail from Margaret Reuter, Visiting Professor, Indiana University Maurer School of Law, to author (June 26, 2015, 10:54 CST) (on file with authors) (includes attached NALP survey data summaries).

³²⁹ NALP Class of 2020 Survey, *supra* note zzz, at 126.

graduate job, with 25% saying they had “extensively” discussed their experiential learning.³³⁰ Those currently working in public interest/legal services, public prosecutor, and public defender positions reported the highest levels of discussions about their experiential courses while interviewing.³³¹ Graduates working in law firms of all sizes reported “moderate” discussion levels.³³² The 2010 and 2020 NALP studies did not attempt to tie discussion to an offer of employment nor compare employment offers based on the discussion level, but are suggestive of an interest of employers in the experiential training of the applicant.³³³

A 2011 NALP survey of lawyers practicing in nonprofit and government sectors asked how useful their participation in experiential learning during law school was in obtaining their first job in a nonprofit or government setting.³³⁴ Externships/field placement courses were rated most useful (3.6 out of 4.0 “very useful”), followed by law clinics (3.3), pro bono work (2.9), and skills/simulation courses (2.4).³³⁵ Seventy-percent of respondents indicated that their experiential course(s) was “very useful” in obtaining their first job.³³⁶

A survey of 2005-2007 graduates of New York Law School similarly found that experiential courses were important in starting their careers, with half reporting that their law school externship, workshop, or clinic experience helped them obtain a job after graduation.³³⁷ In a 2006 LSSSE survey, students who participated in “clinical or field experiences” reported greater gains in clarifying their career goals.³³⁸

Two Gallup surveys for AccessLex looked at the relationship between a student’s law school practical experiences and whether they had a “good job” waiting for them upon graduation. In a 2015 study of graduates from seven Southeastern law schools, those who strongly agreed that they participated in an internship or job during law school that allowed them to apply what they were learning in the classroom were 1.4 times more likely to report they had a good job upon graduation than graduates who did not have that experience.³³⁹ Those without this

³³⁰ *Id.* The NALP survey of 2020 alumni included graduates in all types of employment while the 2010 NALP survey only was sent to law firm associates.

³³¹ *Id.* at 127.

³³² *Id.*

³³³ Clinical professors who supervise students observed how indicating client work on a student’s resume can improve their marketability: “The students indicate the nature of the work on their resumes, which piques the interest of employers, who naturally want to hear how the students grappled with the messiness and complexity of a real problem.” Lisa Brodoff et al., *Does It Make a Difference? Impacts on Students, Faculty, and Clients*, in *THE NEW 1L: FIRST-YEAR LAWYERING WITH CLIENTS* 35, 40 (Eduardo R. C. Capulong et al. eds., 2015).

³³⁴ *NALP 2011 Survey*, *supra* note zzz, at 30.

³³⁵ *Id.* Some students in government and nonprofit positions are hired by the same office where they performed their externship during law school. The survey did not control for this possible influence, which may explain, in part, the high rating for externships/field placements.

³³⁶ Reuter & Ingham, *supra* note zzz, at 229.

³³⁷ *NYLS Alumni Career Path Survey Analysis*, *supra* note zzz, at 15.

³³⁸ *LSSSE 2006*, *supra* note zzz, at 15. “[C]linics may play a valuable role in stimulating learning, clarifying career goals, and inculcating in students a sense of professional responsibility.” *Id.*

³³⁹ GALLUP & ACCESS GROUP, *supra* note zzz, at 7. Sixty-two percent of those who had an internship or job during law school reported that they had a good job waiting for them upon graduation compared to 44% of those who did not have this experience. *Id.*

practical experience also were more than twice as likely to still be looking for a good job more than a year after graduating.³⁴⁰

In a later 2017 nationwide Gallup survey of those who received a law degree between 1941 and 2017, however, J.D. holders with a “co-op program, internship or practicum” experience while in law school were not more likely to have had a good job waiting upon graduation compared to those who did not have those experiences.³⁴¹ Gallup offered no explanation for why these results appeared to vary from the 2015 survey, although different lists of experiences were used in each survey and Gallup did note that the experiences had become nearly universal among more recent graduates, while much less so for graduates prior to the 1970s.³⁴²

B. Employer Surveys

Two NALP reports on the employment market highlight the importance of law clinic and externship experiences to employers. In a 2010 report on the public interest employment market, public interest employers were found to be looking for job candidates with direct experience working with low-income clients.³⁴³ According to a public defender, “previous experience in a PD’s office is always a plus for law students.”³⁴⁴ A similar report in 2012 asked public interest employers what job seekers, especially law students, should do to help land a public interest job.³⁴⁵ The employers advised students to “enroll in a clinical education program,” explaining that “public interest employers want to see applicants that have practical and effective lawyering skills, including client interviewing, motion practice, and courtroom experience.”³⁴⁶

The most recent NALP study of 2020 alumni employment noted that public interest/legal services, public defender, and public prosecutor offices “frequently screen applicants for their commitment to a type of practice, which clinics demonstrate.”³⁴⁷ A review by Robert Kuehn of advertisements for lawyer positions found that many types of employers identify law clinic experience as a positive factor in hiring.³⁴⁸ Government, legal services, district attorney, public

³⁴⁰ *Id.*

³⁴¹ GALLUP & ACCESSLEX INSTITUTE, *Examining Value, Measuring Engagement: A National Study of the Long-Term Outcomes of Law Degree* 9 (2018), https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3103297_code2407962.pdf?abstractid=3103297&mirid=1&type=2.

³⁴² *Id.* Since 2005, ABA accreditation standards have required each J.D. student to receive instruction in professional skills, such as interviewing and client counselling, trial and appellate advocacy, negotiation, alternative dispute resolution, drafting, factual investigation, and organization and management of legal work. See Joy, *The Uneasy History of Experiential Education*, *supra* note zzz, at 573.

³⁴³ NALP *Public Interest Employment Market Snapshot Report*, NALP (Dec. 1, 2010), <https://blog.psjd.org/2010/12/01/nalp-public-interest-employment-market-snapshot-report-fall-2010>.

³⁴⁴ *Id.*

³⁴⁵ NALP *Public Interest Employment Market Snapshot Report*, NALP 16 (Jan. 2012) (on file with authors).

³⁴⁶ *Id.* “Public interest employers really want job seekers to volunteer — it was the top response from employers across the board. Employers value practical experience, even if it is gained through an unpaid position.” *Id.*

³⁴⁷ NALP *Class of 2020 Survey*, *supra* note zzz, at 127.

³⁴⁸ Robert R. Kuehn, *Measuring Clinical Legal Education’s Employment Outcomes*, 2015 WIS. L. REV. 645, 660 [hereinafter Kuehn, *Measuring Clinical Legal Education’s Employment Outcomes*].

defender, and law firm positions indicated in job postings that law clinic experience was either preferred or a plus in their hiring decisions.³⁴⁹ Some employers even indicated they require law clinic experience.³⁵⁰

In a nationwide survey of 24,000 lawyers, Alli Gerkman and Logan Cornett asked which of seventeen hiring criteria would be most helpful in determining if a new graduate possessed the necessary foundational characteristics, professional competencies, and legal skills the lawyer believed were important to successfully enter the profession.³⁵¹ Three of the top six criteria related to experiential learning in law school. Legal employment was rated highest, with 88% of respondents reporting it was “somewhat helpful” or “very helpful” in determining if a candidate possesses the necessary foundations, followed by recommendations from practitioners or judges (82%), legal externship (82%), other experiential education (79%), life experience between college and law school (78%), and participation in law clinic (77%).³⁵² Only two of the ten most helpful hiring criteria related to academic experience or achievement, leading the study authors to conclude that “hiring lawyers tend to view experience *actually working* in the law as indicative of a new lawyer possessing the foundations necessary for success.”³⁵³

In the same study, experiential courses in law school were rated among the most important criteria for hiring in private practice, business in-house, government, and “other” practice settings.³⁵⁴ While legal employment ranked first among seventeen hiring criteria in helpfulness across all settings, externships ranked particularly high — 3rd most helpful in private practice hiring; 2nd for business in-house; 3rd for government; and 3rd for “other.”³⁵⁵ Experiential courses were also among the ten most helpful hiring criteria across all private practice firm sizes, again with legal employment the most helpful.³⁵⁶

Neil Hamilton surveyed law firms in Minnesota to determine the relative importance of the competencies used by the firm to evaluate its associate lawyers in the firm’s decision to hire

³⁴⁹ *Id.* at 660 n.43-45. A survey of law firm hiring partners concluded that “[l]aw schools are presented with a great opportunity to improve upon the employment prospects of their graduates by focusing on certain practical skills that law firms most desire.” LEXISNEXIS, *White Paper*, *supra* note zzz, at 1.

³⁵⁰ *Id.* at 660 n.46.

³⁵¹ ALLI GERKMAN & LOGAN CORNETT, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, FOUNDATIONS FOR PRACTICE: HIRING THE WHOLE LAWYER: EXPERIENCE MATTERS 3 [hereinafter GERKMAN & CORNETT, HIRING THE WHOLE LAWYER]. Notably, the survey did not ask about the lawyer’s current hiring practices.

³⁵² *Id.* at 7. Fifty-four percent of respondents rated legal employment “very helpful,” followed by recommendations from practitioners/judges (43%), legal externship (40%), federal court clerkship (34%), participation in law school clinic (32%), and other experiential education (32%). *Id.* at 5.

³⁵³ *Id.* Law review and journal experience were rated the least helpful of the seventeen criteria; class rank and law school attended were ranked eleventh and twelfth. *Id.*

³⁵⁴ *Id.* at 9-10. “Other” settings lumped together education, legal services/public defender, and public interest/nonprofit.

³⁵⁵ *Id.* at 10. Law clinics ranked 6th out of 17 for private practice, 7th for business in-house, 4th for government, and 6th for other. *Id.* “Other experiential education” ranked 4th for private practice, 5th for business in-house and government, and 2nd for other. *Id.*

³⁵⁶ *Id.* at 11.

a new associate.³⁵⁷ He found that firms greatly valued candidates “who can demonstrate (with evidence) effective written and oral communication skills, initiative/drive/ambition/strong work ethic, good judgment, dedication to client service/responsiveness to client, and commitment to professional development toward excellence.”³⁵⁸ Hamilton observed that a law student seeking to stand out to employers could differentiate themselves by developing these competencies through elective courses, externships, clinics, simulation courses, extracurricular activities, pro bono work and paid clerkships.³⁵⁹

Similar to the Gerkman and Cornett study, the Minnesota firms ranked a candidate’s class rank as the nineteenth most important factor out of twenty-six, and the candidate’s law school ranking as the twenty-second.³⁶⁰ Hamilton believes their low ranking was true only after an initial screen of candidates based on class and school rank, explaining that after that initial screen for a threshold level of excellence “the other competencies are important differentiating factors in the decision to hire.”³⁶¹

The relative importance in hiring decisions of a candidate’s competencies and skills compared to class rank and school reputation seems to have shifted over the last few decades. In a 1991-1992 survey of Chicago law firms with more than five partners, Bryant Garth and Joanne Martin reported that the law school attended and class rank were the two key items in hiring new associates, with specific training having very little effect.³⁶² They concluded that “students who take practical courses to be able to hit the ground running actually have no advantage in getting hired.”³⁶³

This early Chicago study on the perceived unhelpfulness of a candidate’s experience-based courses is contrary to a more recent 2015 study by the Illinois State Bar Association.³⁶⁴ It found from hearings around the state that there had been a shift in the criteria by which applicants for entry-level positions were judged by private law firms: “Those new graduates who enter the job market without practical skills (i.e., those without experience in an externship, clinic, judicial clerkship, or independent employment in the public or private sector) are at a

³⁵⁷ Neil Hamilton, *Law Firm Competency Models & Student Professional Success: Building on a Foundation of Professional Formation/Professionalism*, 11 U. ST THOMAS L.J. 6, 15 (2013) [hereinafter Hamilton, *Law Firm Competency Models*].

³⁵⁸ *Id.* at 17.

³⁵⁹ Neil Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S. C. L. REV. 547, 591 (2014).

³⁶⁰ Hamilton, *Law Firm Competency Models*, *supra* note zzz, at 16.

³⁶¹ *Id.* Hamilton explained that he came to this view after discussing the survey data with several respondents. He also observed that the ranking of knowledge of doctrinal law as the fourteenth most important factor in the hiring decision “suggests that law students may be over-emphasizing the use of a concentration to differentiate themselves in comparison with an emphasis on some of the other competencies.” *Id.* at 17.

³⁶² Garth & Martin, *supra* note zzz, at 499.

³⁶³ *Id.* at 501. They opined “that hiring partners in law firms have little expectation of legal skills beyond basic oral and written communication.” *Id.*

³⁶⁴ ILLINOIS STATE BAR ASSOCIATION, *Report and Recommendations of the Special Committee on the Impact of Current Law School Curriculum on the Future of the Practice of Law in Illinois* (2015), <http://www.isba.org/sites/default/files/committees/Impact%20of%20Current%20Law%20School%20Curriculum%20on%20the%20Future%20of%20the%20Practice%20of%20Law%20in%20Illinois.pdf>.

distinct disadvantage in attempting to enter the private sector.”³⁶⁵ Gerkmán and Cornett’s nationwide study also found that the primacy of class rank and law school attended was more firmly held by lawyers who graduated from law school before the mid-1990s, reporting that “lawyers with more than 31 years of experience were more likely than those with less experience to view the more traditional hiring criteria—class rank, law school attended, and law review experience—as helpful.”³⁶⁶

C. Nationwide Studies

Two studies have looked at nationwide data for a link between a school’s experiential courses and the employment success of its graduates. Jason Yackee sought to measure whether potential employers seemed to favor schools that made more law clinic courses available to its students.³⁶⁷ He focused on the top 100 *U.S. News* ranked school’s Law School Transparency (LST) “employment score” for the J.D. class of 2013 and ABA data on the number of positions available in law clinic courses expressed as a percent of total J.D. enrollment. Using a regression model, he found that as the number of clinic positions available rose, a school’s employment score dropped.³⁶⁸ Yackee’s model estimated that if a school increased its available positions in clinics from 28 to 44 positions for every 100 students, its LST score would drop by two percentage points (e.g., from 70% to 68%).³⁶⁹ Yackee noted that he was not claiming that the results show that clinical opportunities hurt employment outcomes as there could be a selection effect — “schools that expect to have poor employment outcomes respond by investing in clinics, while those that expect better employment outcomes avoid the expense.”³⁷⁰

³⁶⁵ *Id.* at 20; *see also id.* at 3 (observing that “the tight job market facing recent law graduates may have — at least in part — resulted from [their] inadequate training”). Studies by other state bars have also found that experiential training improves a graduate’s marketability. *See* MASS. BAR ASS’N, *Report of the Task Force on Law, The Economy and Underemployment: Beginning the Conversation* 5 (2012), <https://www.massbar.org/docs/default-source/mba-reports/massbar-beginning-the-conversation-2012-may-17.pdf?sfvrsn=9> (“[L]aw school graduates possess the highest market value and are more employable once they have gained hands-on experience and legal skills of greater demand.”); STATE BAR OF CAL., *Task Force on Admissions Regulations Reform: Phase I Final Report* 21 (2013),

https://www.calbar.ca.gov/Portals/0/documents/publicComment/2013/2013_StateBarTaskForceReportFINALAPPROVED6-11-13.pdf (reporting that enhanced skills will improve marketability and that inadequate practice-readiness has contributed to difficult job market); STATE BAR OF WIS., *Challenges Facing New Lawyers Task Force Report and Recommendations* 15 (2013), <https://www.wisbar.org/formembers/ResearchandReports/Documents/Challenges%20Facing%20New%20Lawyers%20Task%20Force%20Report.pdf> (“Offering a broader spectrum of hands on training would enhance the practical education of law students and increase their marketability.”).

³⁶⁶ GERKMAN & CORNETT, *HIRING THE WHOLE LAWYER*, *supra* note zzz, at 19.

³⁶⁷ Jason Webb Yackee, *Does Experiential Learning Improve JD Employment Outcomes*, 2015 WIS. L. REV. 601.

³⁶⁸ *Id.* at 614. Yackee’s regression model sought to control for the influence of other variables on employment by including a school’s *U.S. News* peer review score among academics and the unemployment rate in the state where the greatest number of the school’s students took the bar exam.

³⁶⁹ *Id.* Yackee obtained somewhat similar results when substituting different ways of calculating the employment score and when using “number of positions filled in law clinic courses.” *Id.* at 617-19.

³⁷⁰ *Id.* at 614.

Robert Kuehn examined Yackee’s methodological approach and showed that his choice of variables and only 2013 data drove the result.³⁷¹ When the possible effect of a school’s prestige is controlled for by using the more relevant *U.S. News* assessment score for the school by lawyers and judges, rather than Yackee’s use of its academic reputation among law school deans and select faculty members, Yackee’s model yielded both statistically insignificant positive and negative relationships between 2013 clinic available and filled slots and the LST score.³⁷² Kuehn also found that when 2014 and 2012 data were examined, and when school data was averaged over the four-year period from 2011-14, the regression models all yield statistically insignificant results for the clinic positions available and filled variables, even at the less stringent *p*-value of ≤ 0.10 level.³⁷³ Kuehn concluded that it was not realistic to model the nationwide J.D. hiring process because of the lack of information on cause and effect, uncertainty about the validity of the underlying data, variability from year-to-year, conflicting control variables, and differences among schools and their employment markets.³⁷⁴

Research on the impact of experiential coursework on employment shows that experiential learning in law school assists graduates in obtaining their first job and that employers increasingly value law clinic and externship experiences in job candidates.

V. IMPACT ON BAR PASSAGE

It has been speculated that enrollment in experiential courses may adversely affect a student’s chances of passing the bar by diverting the student away from upper-level bar-subject matter courses.³⁷⁵ Yet, with the forthcoming NextGen bar exam’s reduced number of subjects tested, enhanced focus on skills, and effort to “build[] on the success of clinical legal education,” experiential courses may actually help a student on the bar exam.³⁷⁶ Approximately one-quarter of the NextGen bar exam will consist of integrated question that will include drafting or editing a

³⁷¹ Kuehn, *Measuring Clinical Legal Education’s Employment Outcomes*, *supra* note zzz.

³⁷² *Id.* at 653-54. Kuehn concluded that “the sole statistically significant relationship from 2013 appears to be an artifice of the use of the academic peer assessment score, rather than lawyers’/judges’ assessment score, as a control variable for prestige or, alternatively, the influence of an unaddressed outlier.” *Id.* at 654.

³⁷³ *Id.* at 654-65. Using Yackee’s model, there also was no evidence that participation on law journal or on moot court and other skills competitions will improve employment outcomes for a school’s graduates. *Id.* at 655-57.

³⁷⁴ *Id.* at 663.

³⁷⁵ Erica Moeser, *President’s Page*, THE BAR EXAMINER, Dec. 2014, at 4, 5 (speculating that a drop in bar exam scores may be because “the rise of experiential learning may have crowded out time for students to take additional ‘black-letter’ courses that would have strengthened their knowledge of the law and their synthesis of what they learned during the first year.”). However, a chart tracking the growth in experiential course enrollment against national bar pass rates from 2005 to 2016 showed that during the significant rise in experiential enrollments, bar pass rates were largely steady, with experiential enrollment flat during the period when pass rates dramatically declined. See Robert R. Kuehn & David R. Moss, *A Study of the Relationship Between Law School Coursework and Bar Exam Outcomes*, 68 J. LEGAL EDUC. 623, 642 fig.1 (2019).

³⁷⁶ NATIONAL CONFERENCE OF BAR EXAMINERS, *About the NextGen Bar Exam*, <https://nextgenbarexam.ncbex.org/> (last visited July 2, 2024). The NextGen exam reduces the number of subjects tested to eight (nine in 2028 when family law is added) from the 12-14 subjects on the current Uniform Bar Exam. *Id.* Schools require six of the eight, with the remaining two (evidence & business associations) also either required or taken by most students. See *What is Law School Like: First-Year Curriculum*, THE PRINCETON REVIEW, <https://www.princetonreview.com/law-school-advice/first-year-curriculum> (last visited Sept. 21, 2024).

legal document and engaging in client counseling and/or dispute resolution.³⁷⁷ Thus, the integrated question sets will seek to replicate the types of experiences law students have in experiential courses.

In addition, a number of states have moved (or are moving) forward with alternatives to the bar exam.³⁷⁸ Some of these changes include permitting students to engage in more experiential courses and produce work portfolios that are evaluated by bar examiners rather than taking a written exam.³⁷⁹ While it is too soon to measure the possible positive impact of experiential courses on the NextGen exam or alternative licensing regimes,³⁸⁰ research on the impact of experiential courses on the current bar exam does not show a negative relationship between enrollment in law clinic or externship courses and bar passage.

The earliest published study that examined a relationship between participation in experiential courses and bar passage was a study by Katherine Austin et al. that reviewed Texas Tech law graduates' first attempt on the Texas bar exam from 2008-2014.³⁸¹ The study authors were able to access a graduate's actual score on the exam, including subcomponents, and found that students who had participated in a law clinic had a slightly lower mean bar score than non-clinic participants (723 vs. 738).³⁸² However, the mean score of clinic participants was still well above the passing score of 675, so there was no evidence that clinic participation affected bar passage.³⁸³ On the issue of the relationship between bar subject matter courses and performance on the bar exam, some courses predicted performance on the related subcomponent, while others did not.³⁸⁴

A study by Scott Johns examined the relationship between participation in an externship during law school and first-time Colorado bar exam performance from 2008-2010.³⁸⁵ The study found little to no relationship between the number of externships taken and bar passage.³⁸⁶ It did find that pass rates for externship participants were higher than non-participants across all law

³⁷⁷ *Sample NextGen Bar Exam Integrated Question Sets*, NEXTGEN BAR EXAM OF THE FUTURE, <https://nextgenbarexam.ncbex.org/integrated-question-sets> (last visited Sept. 21, 2024).

³⁷⁸ *See Jurisdictions*, LAWYER LICENSING RESOURCES, <https://lawyerlicensingresources.org/jurisdictions> (last visited July 22, 2024).

³⁷⁹ *Id.*

³⁸⁰ Robert R. Kuehn, *Whither Coursework and NextGen Bar Exam Success?*, RAISING THE BAR, Fall 2024, at 2, 3 (“Although NextGen will now seek to test an expanded range of foundational lawyering skills that many law clinic and externships cover, those courses vary so widely in their scope and depth of lawyering skills that no current research predicts how students taking those experiential courses might fare on NextGen.”).

³⁸¹ Katherine A. Austin et al., *Will I Pass the Bar Exam: Predicting Student Success Using LSAT Scores and Law School Performance*, 45 HOFSTRA L. REV. 753 (2017).

³⁸² *Id.* at 780-81. Like other studies, the Texas Tech study found that law school GPA was the strongest predictor of bar exam success. *Id.* at 766-68; *see also* LINDA F. WRIGHTMAN, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY 37 tbl.13 (1998) (finding from a nationwide study of jurisdictions and law schools that cumulative law school GPA correlated the greatest with bar exam outcomes).

³⁸³ Austin et al., *supra* note zzz, at 781.

³⁸⁴ *Id.* at 777-78. Two required first-year courses that were not tested specifically on the exam, civil procedure and legal research and writing, did strongly predict overall bar exam performance. *Id.* at 768-70.

³⁸⁵ Scott Johns, *A Statistical Exploration: Analyzing the Relationship (If Any) Between Externship Participation and Bar Exam Scores*, 42 OKLA. CITY U. L. REV. 281 (2018).

³⁸⁶ *Id.* at 292-93.

school GPA quartiles, most dramatically for the most at-risk bottom quartile students.³⁸⁷ Yet, when later controlling for other variables (e.g., law school GPA), neither externship participation nor the number of externships taken were related to bar exam scores.³⁸⁸ Johns concluded that there was no support for the claim that too much experiential learning negatively affects bar outcomes, as externship courses had no measurable impact, positive or negative, on bar exam scores.³⁸⁹

A study by Robert Kuehn and David Moss of law graduates of Washington University in St. Louis and Wayne State examined whether enrollment in elective experiential courses during law school was related to a graduate's later success on their first bar examination attempt.³⁹⁰ Reviewing ten years of bar outcome data, the study found no statistically significant relationship between the total number of experiential credits or courses a graduate took and bar passage when controlling for law school GPA.³⁹¹ There also was no relationship between participation in a law clinic or externship course and bar passage for any GPA quartile or the bottom ten percent group of graduates.³⁹² The study also found that students who graduated with lower GPAs did not migrate disproportionately towards experiential courses, contrary to some speculation that low-performing students may gravitate toward experiential courses because they judge them to be easier or graded more leniently.³⁹³

The joint study did find small positive correlations among students graduating in the bottom of the class between the number of elective bar-subject courses and bar passage.³⁹⁴ However, the correlation coefficients never exceeded 0.20, indicating that four percent or less of the total variance in bar outcomes was accounted for by differences in the number of bar-subject courses.³⁹⁵ Most other studies have also failed to find a significant relationship between enrollment in upper-level bar subject courses and bar passage.³⁹⁶

³⁸⁷ *Id.* at 294-96.

³⁸⁸ *Id.* at 302-03. Law school GPA was the strongest predictor of bar exam scores. *Id.* at 304-05.

³⁸⁹ *Id.* at 303, 305. Because there was no evidence that a student would compromise their ability to pass the bar by taking externship courses, the study's author concluded that law schools "should actively encourage students to participate in externship experiences, particularly because externships serve as guided experiences in the actual practice of law and therefore directly facilitate professional development and gaining practical expertise as a legal practitioner." *Id.* at 306.

³⁹⁰ Kuehn & Moss, *supra* note zzz.

³⁹¹ *Id.* at 638-41.

³⁹² *Id.* at 641. Regression results for law clinic participation by all graduates were significant but the results for GPA quartiles and bottom ten percent graduates were not significant, even at $p < 0.10$. *Id.* at 641 n.82.

³⁹³ *Id.* at 639; *see, e.g.,* Austin et al., *supra* note zzz, at 781 (noting that "[s]ome faculty speculate that students take the clinic courses to augment their GPA").

³⁹⁴ *Id.* at 644.

³⁹⁵ *Id.*

³⁹⁶ *See, e.g.,* Austin et al, *supra* note zzz; BOLUS, *infra* note zzz; Douglas K. Rush & Hisako Matsuo, *Does Law School Curriculum Affect Bar Examination Passage? An Empirical Analysis of Factors Related to Bar Examination Passage During the Years 2001 Through 2006 at a Midwestern Law School*, 57 J. LEGAL EDUC. 224, 233-34 (2007) (finding no relationship between the number of bar courses and bar passage for St. Louis University law graduates in the first (top), second, or fourth GPA quartiles or bottom ten percent of class); Douglas K. Rush, *Does Law School Curriculum Affect Bar Examination Passage? An Empirical Analysis of the Factors Which Were Related to Bar Examination Passage Between 2001 and 2006 at a Midwestern Law School* 156-57 (2008) (Ph.D. dissertation, St. Louis University) (ProQuest) (finding no relationship between the number of bar subject courses and passage rates

The largest study of the relationship of law school coursework to bar exam outcomes is the 2018 study by Roger Bolus for the California State Bar.³⁹⁷ The study reviewed the courses and bar outcomes for 7,500 graduates from eleven ABA-approved California law schools who sat for the 2013, 2016, and 2017 bar exams.³⁹⁸ The study did not find “participation in any of the other specialized course areas of interest (e.g., Bar preparation courses, Externships) had any statistically significant impact on [California bar exam] performance, either before or after adjustments for overall law school performance, or for particular subgroups of students, such as those with lower GPAs.”³⁹⁹ In particular, the number of units a student took in a law clinic, externship, or internship⁴⁰⁰ had no relationship when examined across all schools or when evaluated at each law school separately.⁴⁰¹ The study also found that attendance or performance in any law school course covering any of the thirteen bar-related topics was not uniquely related to performance on the bar questions covering the same content.⁴⁰²

Also, an unpublished California Western study examined law school graduates who took the 2004-2014 California bar exam.⁴⁰³ Controlling for law school GPA and other variables, students who took “clinical internships” were more likely to pass the bar exam on their first attempt.⁴⁰⁴ There was no statistically significant positive relationship between the number of internship credits and bar results unless the graduate had taken at least five, with the greatest effect at seven or eight credits.⁴⁰⁵

for Hofstra law graduates, except for the third GPA quartile, for whom, like the St. Louis University study, there was a small positive relationship); NEW YORK STATE BOARD OF BAR EXAMINERS & ACCESSLEX INSTITUTE, ANALYZING FIRST-TIME BAR PASSAGE ON THE UBE IN NEW YORK STATE, 5 (2021), <https://arc.accesslex.org/cgi/viewcontent.cgi?article=1012&context=research> (“The study finds little to no evidence that the number or types of courses taken in [bar-tested subjects] influences first- or second-time bar exam passage.”); *but see* Amy N. Farley et al., *A Deeper Look at Bar Success: The Relationship Between Law Student Success, Academic Performance, and Student Characteristics*, 16 J. EMPIRICAL L. STUDIES 605, 623-24 (2019) (finding that the number of upper-level bar subject courses was a significant predictor of bar passage).

³⁹⁷ ROGER BOLUS, CALIFORNIA STATE BAR, PERFORMANCE CHANGES ON THE CALIFORNIA BAR EXAMINATION: PART 2 (2018), <https://www.calbar.ca.gov/Portals/0/documents/admissions/Examinations/Bar-Exam-Report-Final.pdf>.

³⁹⁸ *Id.* at iii. Among the study’s findings, “[c]onsistent with previous research, we found that among all variables, an examinee’s final law school GPA demonstrated the strongest positive relationship with their CBX [California Bar Exam] Scale Scores[], followed by their first-year law school GPA, LSAT, and undergraduate GPA.” *Id.* at vi.

³⁹⁹ *Id.* at 60.

⁴⁰⁰ The survey sent to schools asked about the number of units taken in “clinical courses,” “judicial externships,” and “professional internships.” *Id.* at 72 app. The study, therefore, seemingly placed only judicial externships within its “externship” category and characterized all other types of externships as “internships.”

⁴⁰¹ *Id.* at 53-54. The report noted that results from one school “showed a statistically significant 46-point improvement in CBX TOTSCLE (p<.02) for students who took an internship over those who did not. The result was limited to the 70 students scoring in the bottom third of the class GPA distribution.” *Id.* at 54 n.34.

⁴⁰² *Id.* at ix, 49-50. The study did find that overall performance on the bar “correlated more strongly statistically with aggregate performance in all of the bar-related courses than with aggregate performance in all nonbar-related courses, suggesting that there may be some type of cumulative effect operating.” *Id.* at ix, 50-51.

⁴⁰³ E-mail from Donald Smythe, Professor of Law, California Western School of Law, to Robert Kuehn (Jan. 15, 2016, 20:32 CST) (on file with authors).

⁴⁰⁴ *Id.* At the time, the school referred to its placements outside the school as “clinical internships” rather than externships.

⁴⁰⁵ *Id.* Enrollment in some recommended bar subject courses was positively correlated with bar passage yet taking other recommended courses was not.

Repeated studies have failed to find that participation in experiential courses is related to bar exam passage and have failed to support the value of substituting bar-subject matter courses for experiential courses.

VI. EFFECT ON COSTS

Even some who acknowledge the benefits of experiential legal education are concerned that providing more experiential training could be too costly.⁴⁰⁶ While lower-enrollment experiential courses have higher instructional costs per student per credit than larger law school classes, research shows that providing more experiential training is affordable, when compared to other law school expenditures, and need not cost students more in tuition.⁴⁰⁷

A. Operating Costs

An early study by Peter DeL Swords and Frank Walwer examined 1970s ABA data on faculty salaries and teaching loads to estimate the teaching costs of fifteen clinical programs.⁴⁰⁸ They found wide size differences between clinical programs at different schools and examined both per student and per-student-credit hour costs of law clinic, externship, and simulation courses.⁴⁰⁹ They determined that the median cost per student credit hour for low enrollment law clinic courses was, not surprisingly, significantly greater than for large enrollment courses, while externship courses were cheaper per student credit than 56-student classroom, 15-student seminar, and 12-student simulation courses.⁴¹⁰ Even with the instructional cost differences, DeL Swords and Walwer demonstrated that a law school curriculum could be restructured to give every student a law clinic experience without changing the size of the faculty, although they acknowledged that “significant changes would of course need to be made in what law schools expected of a good number of their teachers.”⁴¹¹

⁴⁰⁶ See, e.g., OHIO STATE BAR ASS’N, REPORT OF THE TASK FORCE ON LEGAL EDUCATION REFORM 10 (2009) (providing the recommendations from the Subcommittee on Practical Applications in the Classroom).

⁴⁰⁷ “[T]hose who question the cost of in-house clinics usually do not compare its cost to other costs within the law school. Nor do they consider factors like the law school’s mission to prepare students for the effective and ethical practice of law, the role that in-house clinical legal education serves, or student demand for a real-life legal educational experience.” Peter A. Joy, *The Cost of Clinical Legal Education*, 32 BOSTON COLL. J. LAW & SOC. JUST. 309, 310 (2012).

⁴⁰⁸ Peter DeL Swords & Frank K. Walwer, *Cost Aspects of Clinical Education*, in CLINICAL LEGAL EDUCATION: REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS – AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 133 (1980).

⁴⁰⁹ *Id.* at 144, 152.

⁴¹⁰ *Id.* at 153, 177. The authors assumed that a law clinic teacher would teach between 14-24 students per year and field placement teacher 75, compared to 224 for a “traditional” classroom teacher. *But see* Kuehn, *Pricing Clinical Legal Education*, *supra* note zzz, at 20-21 (noting differences in teaching loads since 1980 and problems in determining today’s teaching loads and salaries).

⁴¹¹ DeL Swords & Walwer, *supra* note zzz, at 184-85.

John Kramer focused on the impact of clinical education costs on a school's overall expenditures during the period from 1978-1988.⁴¹² Using ABA annual questionnaire data, he found that clinical costs, on average, were only 3.1% of a school's total operating budget and had decreased as a percentage of overall expenditures by one-third over the ten-year period, a time of significant clinical program expansion.⁴¹³ Kramer concluded that while law clinics were undeniably more expensive to run than lecture classrooms, their impact on law school budgets may be overstated compared to other expenditures.⁴¹⁴

The ABA's 1992 MacCrate Report estimated in a footnote that providing an in-house law clinic experience to all students (rather than to the then one-fourth of students) would represent an increase approaching 10-15% of a law school's budget.⁴¹⁵ Unlike DeL Swords and Walwer, however, its estimate assumed that schools would have to provide this experience by hiring new faculty for all the additional courses, rather than reallocating existing teaching resources.⁴¹⁶

In a more recent 2009 study, David Chavkin reviewed the cost of providing law clinic experiences to his school's 200-220 students each academic year.⁴¹⁷ Considering the typical clinic teaching load of 8 students per semester and clinic faculty teaching one other two-credit course of 50 students per academic year, he determined that while the total revenue generated by a clinical teacher "might not cover all expenses of salary, fringe benefits, administrative support, and other direct and indirect expenses, they [total revenues] begin to come very close to meeting the costs of these courses."⁴¹⁸ From the costs at his school, Chavkin concluded that even if clinic courses are more expensive than large classes, they are far more financially feasible than some assert.⁴¹⁹

Cody Thornton similarly compared the instructional costs for law clinics, seminars, and lecture classes based on estimated instructor costs at his law school.⁴²⁰ Assuming a typical law clinic class size of 8 students and seminar size of 15 students, the average cost per credit per law clinic student was slightly lower than the cost per credit for seminars, although both were approximately three times more expensive than a 50-student lecture class.⁴²¹

⁴¹² John R. Kramer, *Who Will Pay the Piper or Leave the Check on the Table for the Other Guy*, 39 J. LEGAL EDUC. 655 (1989).

⁴¹³ *Id.* at 661 tbl.D, 662 tbl.E, 663.

⁴¹⁴ *Id.* at 666-67.

⁴¹⁵ SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 254 n.36 (1992).

⁴¹⁶ *Id.* The report also assumed the new faculty would only teach a total of 11 students each year. However, a recent survey found that law clinic directors on average teach 16 law clinic students, with half also teaching other non-clinic courses and summer clinics. See KUEHN ET AL., 2022-23 CSALE SURVEY, *supra* note zzz, at 24-25, 27.

⁴¹⁷ David F. Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 3 (2009).

⁴¹⁸ *Id.* at 13-14. No estimate was provided of the typical clinical faculty salary, fringe benefits, or other program costs to compare the estimated generated total revenues against.

⁴¹⁹ *Id.* at 14.

⁴²⁰ Cody Thornton, *Shared Visions of Design and Law in Professional Education*, 6 N.E. U. L.J. 21 (2013).

⁴²¹ *Id.* at 80 tbl.9-1.

Nancy Maurer and Liz Ryan Cole performed a similar analysis of the costs of externship courses.⁴²² Their analysis considered different class sizes and credits for externships, seminars, and larger classes and assumed, unrealistically for most schools, the same salary, benefits, and professional development budgets for each professor regardless of type of course.⁴²³ They determined that a part-time externship course for 35 students would cost half per credit hour than a 12-student seminar; increasing the externship to 75 students and adding four faculty colleagues to help teach would reduce the cost per credit to below that of a 20-person, three-credit class.⁴²⁴

Maurer and Ryan Cole warned that comparing relative costs using a cost-per-credit-hour calculation is incomplete as it does not account for the relative value of particular courses or the faculty-student contact hours offered by law clinics and externships and non-instructional costs of faculty scholarship or course loads.⁴²⁵ With this warning, they concluded that “unless a law school is going to argue that it is too expensive to offer a three-credit class for 20 students, not to mention a three-credit seminar for 12 students, then there is no fact-based reason to suggest that a field placement course with a manageable faculty/student ratio and a budget for travel and other support is too expensive.”⁴²⁶

Martin Katz developed a model of the costs per student credit for different types of experiential and traditional courses.⁴²⁷ His “basic model” assumed that law clinics were taught by tenure-line faculty and externships by non-tenure line instructors and that the academic year teaching loads were two courses of eight students each for law clinic faculty, three courses of thirty-three students each for externship faculty, and three and a half courses per year for “podium faculty,” as well as significant “administrative” costs for clinic fellows, outside-attorneys for clinic summer coverage, and litigation expenses for clinic courses.⁴²⁸ Without administrative cost assumptions that are not true for many clinics, Katz reported that in-house law clinics were somewhat more expensive per credit than seminars, about twice as expensive as simulation courses, and five to six times more expensive than externship courses.⁴²⁹ Externship courses were less expensive than 20-student podium courses and comparable in cost to 50-

⁴²² Nancy M. Maurer & Liz Ryan Cole, *Design, Teach and Manage: Ensuring Educational Integrity in Field Placement Courses*, 19 CLINICAL L. REV. 115 (2012).

⁴²³ *Id.* at 156-57. At most schools, the assumption that a faculty member teaching a field placement course would earn the same salary as a faculty member teaching a traditional classroom course is not true. See Robert R. Kuehn & David A. Santacrose, *An Empirical Analysis of Clinical Legal Education at Middle Age*, 71 J. LEGAL EDUC. 622, 646 (2022) (finding that law clinic and externship faculty “are paid, on average, over \$30,000 less annually than their podium colleagues at similar career milestones”).

⁴²⁴ Maurer & Cole, *supra* note zzz, at 157-58.

⁴²⁵ *Id.* at 156.

⁴²⁶ *Id.* at 158.

⁴²⁷ Martin J. Katz, *Understanding the Costs of Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING 28 (2015).

⁴²⁸ *Id.* at 40-43. The “basic model” assumed the in-house clinic had a tenure-line faculty member teaching two clinic courses per year of eight students for six credits each. Externships had a non-tenure faculty member teaching three courses per year of 33 students for three credits each. Simulation courses had a tenure-line faculty member teaching 3.5 courses/year with the simulation a 20-person, three credit class. The litigation costs for a clinic were assumed to be \$95,250 per year, which Katz concedes are not necessary for many clinics. *Id.* at 51.

⁴²⁹ *Id.* at 44 & tbl.1.

student classes.⁴³⁰ Katz also offered a number of other models, with different assumptions, including staffing clinics with non-tenure line faculty and increasing the number of credits or students in the clinic, all of which further reduce the cost per student credit.⁴³¹

Katz warned that his assumptions may not be accurate for all law schools, which is true of his basic model. A 2022-2023 nationwide survey of law clinic and externship instructors found that only 21% of full-time law clinic faculty held traditional tenure-line positions and more than half teach courses in addition to their clinic, with the majority not receiving additional compensation for the additional course.⁴³² An analysis by Robert Kuehn that instead assumed a non-tenure law clinic faculty salary revealed that the cost per credit for a clinic is slightly more than the cost of a 20-student podium class and half that of a seminar; if that person teaches 2.5 rather than 2 courses per year, the clinic cost per credit is significantly below the 20-student podium class and less than half the cost of a seminar.⁴³³ Even in a model that assumed law clinic and externship faculty were tenure-line but that podium faculty taught three courses per year as is now common at many schools, law clinic instructional costs were significantly less per student credit than seminars and externships were half as costly as clinic courses and one third as expensive as seminars.⁴³⁴

Washington and Lee (W&L) adopted a requirement in 2008 that law students in their third year must take at least four experiential courses, including at least one law clinic or externship.⁴³⁵ Expansion of the new curriculum resulted in a doubling of the number of positions available to students in law clinics, an 87% increase in externship placements, and a 63% expansion of slots in simulation courses.⁴³⁶ A leader of the new program explained that a review of the first few years of the new requirement showed that “the new curriculum is slightly less expensive than our former, traditional third-year curriculum. And it is slightly less expensive to run than our current first and second years.”⁴³⁷

B. Tuition

An analysis of W&L’s new third-year curriculum also showed that creation of the additional experiential courses did not result in tuition increases disproportionate to schools that

⁴³⁰ *Id.*

⁴³¹ *Id.* at 45-53..

⁴³² KUEHN ET AL., 2022-23 CSALE SURVEY, *supra* note zzz at 27.

⁴³³ See Robert Kuehn, *Clinical Costs: Separating Fact from Opinion*, 24 CLINICAL LEGAL EDUC. NEWSLETTER (Spring 2016) [hereinafter Kuehn, *Clinical Costs*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3355694. If the assumptions are adjusted to reflect the 2022-2023 survey results, the cost per credit for a clinic taught by a non-tenured faculty member teaching two courses each year is approximately \$1,157 and is \$925 if the faculty member teaches 2.5 courses per year. Katz’s basic model costs for a 3-credit, 20-student podium course is \$950 per credit and \$1,900 for a 3-credit, 10-student seminar. Katz, *supra* note zzz, at 44 tbl.1.

⁴³⁴ Again, using Katz’s salary figures, the cost per credit for a clinic taught by a tenure-line faculty member teaching 2.5 courses each year would be \$1,662 or \$1,385 for three courses per year. *Id.* at 45 tbl.2.

⁴³⁵ See Kuehn, *Pricing Clinical Legal Education*, *supra* note zzz, at 26-27.

⁴³⁶ *Id.* at 27.

⁴³⁷ James E. Moliterno, *Long-Overdue Medicine for What Ails Law School*, 41 LITIG. 54, 57 (2014). A professor overseeing the program explained that the new curriculum was less expensive because many of the new courses were taught by law firm lawyers at little or no cost to the school. *Id.*

did not adopt a requirement. In the five years after adoption of the requirement, W&L's tuition increased by 29%, while the median increase for all private law schools over the same time period was 27%.⁴³⁸ There was no disproportionate increase in tuition even though half of the W&L students in their third year were now taking year-long law clinics for ten credits and the remainder taking a one-semester clinic or externship for five credits.⁴³⁹

Kuehn has published three studies that also focus on the impact of expanded experiential courses on students in the form of possibly increased tuition, rather than on the school's operating costs. Using data reported to the ABA for the 2012-2013 academic year, Kuehn examined the effect on tuition of providing or requiring experiential courses.⁴⁴⁰ Using an ordinary least squares regression model and controlling for a school's public-private status, *U.S. News* ranking, and cost of living in the school's locale, the study found no statistically significant relationships between the availability of law clinic and externship courses for students and the school's listed tuition and fees.⁴⁴¹ Schools that had sufficient capacity in their existing clinic and field placement courses to provide each of their entering J.D. students with a clinic or externship experience did not charge, on average, more in tuition than schools without that existing capacity.⁴⁴² Schools that either guaranteed or required a clinic or externship experience for its students also did not, on average, charge higher tuition than schools without a requirement or guarantee.⁴⁴³ In addition, schools that had adopted a clinic or externship experience requirement or guarantee had not increased their tuition from the time its mandate or guarantee was adopted at a rate greater than the national average of schools over the same time period.⁴⁴⁴ Using net or "discounted" tuition at private schools, rather than the school's listed tuition,⁴⁴⁵ likewise did not show a relationship between course availability and net tuition, with all statistically significant relationships indicating an inverse relationship between course availability and tuition.⁴⁴⁶

⁴³⁸ Kuehn, *Pricing Clinical Legal Education*, *supra* note zzz, at 27 n.150 (relying on data reported by schools to the ABA).

⁴³⁹ *Id.* at 27.

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.* at 29 (finding no increase in tuition, and even a statistically insignificant average decrease, as opportunities to enroll in experiential courses are made more available to those students based on the ratio of positions available in experiential courses to J.D. first-year enrollment).

⁴⁴² *Id.* at 33 (finding from data schools reported to the ABA that 84% of schools were capable of providing a law clinic or externship experience to every student without adding any additional courses or instructors).

⁴⁴³ *Id.* at 31.

⁴⁴⁴ *Id.* at 33 (examining schools adopting a guarantee or mandate since 2005). The rate of tuition increase at three-quarters of the schools with a new guarantee or requirement was less than the national average of other schools; only one-eighth of schools adopting a guarantee or mandate had increased their tuition at a rate greater than the national average. *Id.*

⁴⁴⁵ *Id.* at 38 n.190. Only private schools were used to determine net tuition as most public schools charge students different amounts depending on whether they are residents or non-residents. Net tuition was estimated using grant and scholarship information in ABA 2013 Standard 509 Information Reports to first calculate a weighted median by summing the 25th, twice the 50th, and the 75th percentiles and dividing by four. A discount rate was then calculated by multiplying the weighted median times the percent of full-time students receiving grants divided by the tuition and fees for academic year. Finally, the net tuition amount was calculated by multiplying the difference between 1.0 and the discount rate times the listed tuition.

⁴⁴⁶ *Id.* at 38.

Kuehn’s analysis also did not find that the availability of more expensive law clinics was related to higher tuition. Schools with higher ratios of clinic positions available to its students or higher percentages of students who participated in a clinic before graduation did not charge, on average, statistically higher tuition than schools that provided fewer clinic opportunities for their students.⁴⁴⁷ Examining externships, schools with a greater percentage of students participating in externships placements charged less in tuition, on average, than schools with proportionately fewer of its students in externships, but the relationships were not statistically significant.⁴⁴⁸

A subsequent study by Kuehn examining course and tuition over the period from 2011-2015 supported the earlier findings.⁴⁴⁹ It again found no difference in the tuition of schools that require or guarantee a law clinic or externship experience from schools without a requirement or guarantee.⁴⁵⁰ For each of the years from 2011 to 2015, the relationship between law clinic or externship course availability and tuition (either the listed or the net tuition after discounting for financial aid to students) was either not statistically significant or inversely related.⁴⁵¹

Kuehn later reviewed updated course and discounted tuition information reported by schools for the 2022-2023 academic year and again found that the increased availability of slots or participation in experiential courses was not associated with increased net tuition.⁴⁵² Using regression models to estimate the relationship between sixteen experiential course variables and five different net tuition scenarios, sixteen of eighty regressions showed a statistically significant relationship between course availability or student participation and net tuition.⁴⁵³ Every statistically significant relationship was negative — as law clinic, field placement, or simulation course availability or student participation increased, estimated average net tuition decreased.⁴⁵⁴ Variables that included more expensive law clinic slots that were available for or actually filled by students were either inversely related to net tuition or not statistically significant.⁴⁵⁵ Schools that required their students to take a clinic before graduation did not, on average, charge more in tuition, nor did schools where a greater percentage of their students participated in a clinic.⁴⁵⁶

⁴⁴⁷ *Id.* at 35, 36 n.176.

⁴⁴⁸ *Id.* at 36.

⁴⁴⁹ Robert R. Kuehn, *Universal Clinic Legal Education: Necessary and Feasible*, 53 WASH. U. J. L. & POL’Y 89 (2017).

⁴⁵⁰ *Id.* at 97-98. It also found that schools that adopted a requirement or guarantee between 2010 and 2014 did not raise their tuition at a rate greater than the average tuition increase for ABA accredited law schools. *Id.* at 98.

⁴⁵¹ *Id.* at 99 (controlling again for public/private status, *U.S. News* ranking, and cost of living). For four of the sixteen statistical comparisons, schools that provided more clinical opportunities charged less tuition than schools offering fewer opportunities; for the other twelve, the difference was not statistically significant. *Id.*; see also Kuehn, *Clinical Costs*, *supra* note zzz (reporting that of regressions on 99 experiential course variables over the period from 2011-2015, 82% of the statistically significant relationships were inversely related to listed or discounted tuition).

⁴⁵² Robert Kuehn, *The Fallacy of “We Can’t Afford More Clinical Legal Education for Our Students,”* 32 CLINICAL LEGAL EDUC. NEWSLETTER (Spring 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4799442.

⁴⁵³ The independent variables included each ABA accredited school’s: ratio of law clinic, field placement, and simulation course slot availability and student enrollment to the number of third-year law students; whether the school requires or guarantees each student participation in a clinic or field placement before graduation; whether the school requires more than the minimum six experiential course credits; and the percentage of students that will participate in a clinic or field placement before graduation. *Id.*

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.*

⁴⁵⁶ *Id.*

Similarly, schools that required their students to graduate with more than the ABA minimum six experiential course credits did not, on average, charge more in tuition than schools that only required the minimum.⁴⁵⁷

Research on the impact of providing experiential courses on costs shows, not surprisingly that law clinics are more expensive than larger enrollment and externship courses, but that the costs of clinics are largely in line with those of the seminars that schools widely provide. The research also clearly shows that schools that provide or require more experiential courses, including law clinics, are not charging more in net tuition to their students than schools that do not provide or require these experiences.

VII. OTHER IMPACTS

Experiential courses have many other positive impacts on students, law schools, and their communities, though some of those impacts are hard to measure.

A. On Students

LSSSE studies have looked at a wide array of impacts from experiential courses in addition to the enhancement of professional skills and professionalism discussed above. In the 2006 survey, students who participated in clinical or field experiences reported greater gains in “learning effectively on one’s own” and “working effectively with others.”⁴⁵⁸ Students who participated in law clinics or pro bono activities reported greater gains in writing clearly and effectively, thinking critically and analytically, speaking clearly and effectively, and developing legal research skills than students who did not participate.⁴⁵⁹ The study concluded that the “link between effective learning and opportunities to apply concepts and skills to practical situations suggests that clinics may serve a valuable role in stimulating learning.”⁴⁶⁰

The 2010 LSSSE survey found that students with clinical participation and pro bono work felt more prepared to work cooperatively with colleagues as part of a legal team.⁴⁶¹ An article by the director of LSSSE explained that those with a clinical experience also reported being better prepared to handle the stresses of law practice and to building positive relationships with their future clients.⁴⁶²

The LSSSE 2012 survey revealed that participation in experiential learning activities “positively relates to students’ perception that their law school classes emphasize higher order learning activities . . . Higher order learning, in turn, is associated with students’ sense of acquiring a broad legal education.”⁴⁶³ The report explained that the survey’s findings suggest that

⁴⁵⁷ *Id.*

⁴⁵⁸ *LSSSE 2006*, *supra* note zzz, at 15.

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.*

⁴⁶¹ *LSSSE 2010*, *supra* note zzz, at 7.

⁴⁶² Silver et al., *supra* note zz, at 402, 403 fig.8.

⁴⁶³ *LSSSE 2012*, *supra* note zz, at 14.

law clinic and field experiences “offer students opportunities to fine-tune their thinking, to sift, sort, and analyze information in ways that will benefit them in future law practice.”⁴⁶⁴

A study by Mitu Gulati et al. of the third year of law school also found students gained from their participation in a law clinic.⁴⁶⁵ They surveyed third-year students at eleven law schools about their activities and opinions on their legal education. Over 40% of students found the third year of law school largely superfluous, with students who enrolled in clinical courses slightly less likely to find it superfluous.⁴⁶⁶ At schools with well-regarded clinical programs, students who had participated in a clinic were measurably more satisfied than students who did not, suggesting to the authors that “clinical legal education may indeed have the potential to fill much of the third-year void, if schools will only invest more in the depth, evaluation, and comparison of these programs.”⁴⁶⁷

Washington & Lee (W&L) found measurable improvements among its third-year students in most LSSSE metrics after adoption of its new experiential curriculum.⁴⁶⁸ A LSSSE survey after implementation of the new curriculum found that those third-year students showed significant gains in preparing for and engaging in their classes and in the mental activities that comprise “thinking like a lawyer” when compared with their 3L predecessors.⁴⁶⁹ Some of the biggest gains were in: putting together ideas or concepts from different courses when completing assignments or during class discussions; working with classmates outside of class to prepare class assignments; preparing two or more drafts of a paper or assignment before turning it in; and applying theories or concepts to practical problems or in new situations.⁴⁷⁰ When compared to third-year students at peer schools, W&L’s students measured higher on the LSSSE categories of intellectual experience, mental activities, writing, and educational and personal growth.⁴⁷¹

A longitudinal study by Kennon Sheldon and Lawrence Krieger on law student well-being examined students at two law schools over their three-years of study.⁴⁷² The first school offered a markedly larger number of practice skills courses to balance the students’ training in legal theory and a cocurricular requirement that furthered their professional development, while

⁴⁶⁴ *Id.*

⁴⁶⁵ Mitu Gulati et al., *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235 (2001).

⁴⁶⁶ *Id.* at 246-47. LSSSE results have confirmed the study’s finding. *LSSSE 2006*, *supra* note zzz, at 2.

⁴⁶⁷ Gulati et al., *supra* note zzz, at 262-63. The authors noted that externships also can provide the real-world client contact that the survey respondents seemed interested in but advised schools to use any financial windfall from relying on them “to invest in strong and well-integrated clinical instruction.” *Id.* at 263.

⁴⁶⁸ See *infra* note zzz; Henderson, *supra* note zzz. Henderson had access to several years of W&L’s LSSSE results.

⁴⁶⁹ *Id.* at 5. Showing positive gains from the prior LSSSE survey in 17 of 20 intellectual experience and 4 of 5 mental activities categories.

⁴⁷⁰ *Id.* See also Moliterno, *Questions on W&Ls 3L Program*, *supra* note zzz (supplying additional charts contrasting W&L students with their peers on LSSSE categories).

⁴⁷¹ Henderson, *supra* note zzz, at 6-11. Henderson concluded that “[t]here is substantial evidence that W&L, with some focused energy on the 3L curriculum, is now offering a better educational experience than its peer schools.” *Id.* at 11.

⁴⁷² Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007).

the second school placed a greater emphasis on faculty scholarship and its national ranking.⁴⁷³ Students at the first school felt their faculty were more focused on student concerns and provided more choices and meaningful rationales for mandatory rules than students at the second.⁴⁷⁴ The study found that students at the first school had better academic and bar exam performance and higher subjective well-being, controlling for other variables.⁴⁷⁵ The authors concluded that schools could enhance their students' sense of autonomy and engagement, and thereby improve their well-being and learning, by hiring faculty with more lawyering experience, offering a balance of practical skills training, or providing more training and rewards for teaching excellence.⁴⁷⁶

Two studies assessing the impact of experiential learning exercises on the development of professional skills found other positive impacts from the activities. In the Bloom and Pilz lab that incorporated experiential learning modules into a first-year contracts class, students reported that the lab activities increased their engagement with the contracts course materials and enhanced their satisfaction with the course.⁴⁷⁷ Similarly, students in Hodges' nonprofit organizations class reported that as a result of doing the community-based learning project, they had learned more in the course, had a deeper understanding and retention of the course materials, and improved their retention of the assigned readings and classroom lectures and discussions.⁴⁷⁸

B. On Law Schools

Studies show that experiential courses, law clinics in particular, are popular with law school applicants and can influence an applicant's choice of where to apply and enroll.

A 2012 study by the Law School Admissions Council (LSAC) surveyed law school applicants to determine what mattered to them in deciding where to apply to law school and then enroll.⁴⁷⁹ In choosing which law schools to apply to, clinics/internships were rated the third most important out of twenty-three factors, behind only location and employment of recent graduates.⁴⁸⁰ In a similar LSAC survey in 2005, clinics/internships also ranked third in importance among applicants, as well as in a 1998 survey.⁴⁸¹ Among admitted students,

⁴⁷³ *Id.* at 886.

⁴⁷⁴ *Id.* at 893.

⁴⁷⁵ *Id.* at 891, 893.

⁴⁷⁶ *Id.* at 894.

⁴⁷⁷ Bloom & Pilz, *supra* note zzz, at 125. Eighty percent of students reported that the lab experiences increased their engagement with the course material and 78% reported that it improved their legal knowledge. *Id.* at 125-26.

⁴⁷⁸ Hodges, *supra* note zzz, at 20. Ninety-one percent of students felt they learned more in the class as a result of the experiential learning project, 82% reported that the project deepened their understanding of the materials studied in the classroom component of the course, and 74% believed the project improved their retention of the materials in the assigned readings and classroom lectures and discussions. *Id.*

⁴⁷⁹ LSAC, LAW SCHOOL APPLICANT STUDY (DEC. 2012).

⁴⁸⁰ *Id.* at 9. Location was rated highest (with 77% of applicants rating it "4" or "5" on a scale of 1 "not important at all" to 5 "extremely important"), followed by employment of recent graduates (73%), and clinics/internships and bar success (both 68%).

⁴⁸¹ *Id.* at 10.

clinics/internships were ranked second in 2012 behind only location in choosing which school to actually attend.⁴⁸²

A survey by Thomson and Daniels of three entering classes of first-year law students similarly asked them to rate the influence of nine factors in deciding to attend their school.⁴⁸³ The school's experiential learning curriculum ranked second in importance behind only location.⁴⁸⁴ Experiential opportunities ranked second across all types of career preferences and were equally strong in importance across preference type (all within two points of the experiential importance average).⁴⁸⁵ They concluded that if a school builds a robust experiential learning program, students will come as they see value in those opportunities and apply accordingly.⁴⁸⁶

The 2017 *Before the JD* survey by Gallup for the American Association of Law Schools asked first-year law students what criteria they had used in deciding where to apply to law school. Clinics or externships were not options but “distinctive aspect of curriculum,” which encompasses much more than just experiential coursework, and was ranked 7th, again with location of school and graduate employment rate ranked first and second.⁴⁸⁷ In deciding where to actually enroll, distinctive aspect of curriculum ranked 5th, with location of school and amount of financial support offered ranked first and second.⁴⁸⁸

In addition to these measures of importance of a school's experiential curriculum in helping attract applicants, schools recognize the importance of their experiential program by heavily promoting them to prospective students through application brochures and website materials.⁴⁸⁹

⁴⁸² *Id.* at 46. In a survey of pre-law students, 74% said they wanted a practice-ready curriculum compared to only 26% who wanted it more academic focused. KAPLAN, *What Pre-Law Students Want in Law School Culture Might Be at Odds with Law School Reality* (2014), <https://www.kaptest.com/blog/press/2014/12/03/kaplan-survey-what-pre-law-students-want-in-law-school-culture-might-be-at-odds-with-law-school-reality>. Ninety-seven percent of pre-law students favored a law school model that incorporates clinical experiences for students. Press Release, Kaplan Test Prep, *What Pre-Law Students Want: Kaplan Test Prep Survey Finds that Tomorrow's Lawyers Favor a Two-Year Law Sch. Model & Want Significant Changes in Legal Educ.* (Feb. 11, 2014), <http://press.kaptest.com/press-releases/what-pre-lawstudents-want-kaplan-test-prep-survey-finds-that-tomorrows-lawyers-favor-a-two-year-law-schoolmodel-and-want-significant-changes-in-legal-education>.

⁴⁸³ See Thomson & Daniels, *If You Build It*, *supra* note zzz, at 218. The nine factors were: location; experiential; job status; cost; Experiential Advantage Program; financial aid; rank; blogs/others; and faculty scholarship.

⁴⁸⁴ *Id.* at 219. Location had a mean score of 84 out of 100, followed by experiential with 63. *Id.*

⁴⁸⁵ Thompson & Daniels, *Looking Back*, *supra* note zzz, at 294 tbl.3.

⁴⁸⁶ *Id.* at 239.

⁴⁸⁷ *Before the JD: Undergraduate Views on Law School*, GALLUP & AALS 54 fig.8.1 (2018), <https://www.aals.org/research/bjd>. Distinctive aspects of curriculum were rated by 61% of students as “extremely important” or “somewhat important,” compared to 83% for location of school and 78% for graduate employment rate and for quality of faculty. *Id.*

⁴⁸⁸ *Id.* at 57 fig.8.4. This result is similar to a fall 2022 Bloomberg survey in which 60% of law students reported that “courses offered” was “somewhat important” or “very important” in choosing their law school, ranking 4th of 10 factors (with location again ranked first). BLOOMBERG LAW, *LAW SCHOOL PREPAREDNESS 2023* 9 (2023).

⁴⁸⁹ See, e.g., GEORGETOWN LAW, J.D. ADMISSIONS, <https://www.law.georgetown.edu/admissions-aid/jd-admissions/> (last visited July 23, 2024) (“Georgetown Law’s unmatched experiential learning program can help you discover your passion”); NEW YORK UNIVERSITY LAW, *WHY NYU LAW*, <https://www.law.nyu.edu/about/whynylaw> (last visited July 23, 2024) (touting its 40 clinics and externships to potential applicants).

C. On Communities

A core value of legal education, and one of the primary goals of clinical legal education, is public service.⁴⁹⁰ Studies show that law clinics and externships have a significant positive impact on communities through the provision of free legal services to unrepresented or under-represented individuals and groups. A nationwide survey of law school clinical programs by the Center for the Study of Applied Legal Education (CSALE) found that law clinic students provided free legal assistance to over 100,000 clients during the 2018-2019 academic year, with an additional unquantified number aided by students in field placement courses.⁴⁹¹

Kuehn examined the economic value of this free law clinic legal assistance to communities.⁴⁹² Using ABA data on seats filled in law clinic courses, he estimated that approximately 22,000 clinic students provided assistance to individuals, government agencies, and non-profit organizations in 2020-2021.⁴⁹³ Using CSALE survey information on the median number of academic credits awarded and the ABA required number of hours per credit,⁴⁹⁴ he then estimated that the average clinic student worked 149 hours on the casework portion of their law clinic course. This resulted in an estimate of 3,278,000 hours of free legal assistance by clinic students during the 2020-2021 academic year.

Using an average billing rate for paralegals of \$100 per hour, Kuehn estimated that clinic students provided over \$327 million in free legal assistance in 2020-2021.⁴⁹⁵ Alternatively valuing clinic student time at the lower Bureau of Labor Statistics prevailing wage rate of \$27 for paralegals and legal assistants still yielded a value of over \$88.5 million in free assistance. No estimate was provided for donated externship time to organizations assisting underrepresented individuals or groups.

Association of American Law Schools (AALS) surveys have measured the value of all student pro bono services, which includes not just law clinics and externships but also student organization activities.⁴⁹⁶ With information from only 85 law schools (representing over 47% of

⁴⁹⁰ See *Law School Pro Bono and Public Service Hours*, ASS'N OF AM. LAW SCHOOLS, <https://aalsweb.wufoo.com/forms/w1fuc2201qpe1pe/> [hereinafter *AALS Law School Pro Bono and Public Service Hours*] (“Pro bono and public service is a core value in legal education and the legal profession.”) (last visited July 24, 2024); Marc Feldman, *On the Margins of Legal Education*, 13 N.Y.U. REV. L. & SOC. CHANGE 607, 637 (1985) (arguing that the dominant orientation of clinical activities should be serving those who are under- or unrepresented).

⁴⁹¹ ROBERT R. KUEHN ET AL., CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION, 2019-20 SURVEY OF APPLIED LEGAL EDUCATION 38 (2020) [hereinafter KUEHN ET AL., 2019-20 CSALE SURVEY], <https://www.csale.org/#results>.

⁴⁹² Robert R. Kuehn, *The Economic Value of Law Clinic Legal Assistance*, 30 CLINICAL LEGAL EDUC. ASS'N NEWSLETTER (Spring 2022) [hereinafter Kuehn, *The Economic Value*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4095337.

⁴⁹³ The ABA data are from reports that schools are required to submit annually to the ABA. See ABA, 509 REQUIRED DISCLOSURES, <https://www.abarequireddisclosures.org/Disclosure509.aspx>.

⁴⁹⁴ KUEHN ET AL., 2019-20 CSALE SURVEY, *supra* note zzz, at 31.

⁴⁹⁵ Kuehn, *The Economic Value*, *supra* note zzz.

⁴⁹⁶ 2023 AALS Law Student Pro Bono Hours Report, ASS'N OF AM. LAW SCHOOLS (2024), <https://www.aals.org/newsroom/2023-aals-law-student-pro-bono-hours-report> (last visited July 25, 2024). The

all law students), the AALS estimated that students contributed 4.07 million hours of donated legal services during academic year 2022-2023. Valuing the student time at the general rate for volunteer time of \$31.80, the AALS estimated the total value of donated student services to communities to be over \$129 million.⁴⁹⁷

While these estimates capture the economic value of the donated time of students, they do not capture the value of the benefits that individuals derive from the successful advice or assistance students provide on legal matters, some economic but much also non-economic. A number of state civil legal aid organizations have estimated the economic impact of their assistance. For example, Wisconsin legal aid organizations estimated that their assistance in 2021 provided economic impacts totaling \$105 million in costs savings to government, direct economic benefits for disadvantaged households, and direct returns to health care providers.⁴⁹⁸ A similar 2015 Florida Bar Foundation study found that the civil legal aid programs it funded provided \$264 in economic benefits such as child support, Social Security, and Veterans benefits, and an additional \$60 million in cost savings from foreclosure and domestic violence prevention.⁴⁹⁹

We know of no comparable analysis of the economic benefits to clients from law clinic representation. However, many law clinics assist clients with legal problems similar to those handled by legal aid organizations so their study methodology could be used to provide comparable estimates of the millions of dollars in economic benefits to clients from a law school's free clinic assistance.⁵⁰⁰

Clients, of course, derive benefits from representation by law students that are not necessarily measurable. As Jane Aiken and Steve Wizner observed in trying to measure the justice provided by the work of lawyers:

How do we ensure that any measure of justice captures outcomes for both trial-based advocacy and non-trial-based advocacy on behalf of clients, including negotiated outcomes? How do we quantify the role lawyers play in listening to our clients, explaining the systems in which they operate, and supporting them through often very difficult times in their lives? How do we ensure that any

AALS survey asked for the hours students contribute to the delivery of legal services to individuals or communities in need and could include "pro bono service or other law related volunteer project; a law school clinic; an unpaid internship/externship at a legal aid or public interest organization; an unpaid government internship/externship; or a practicum." *AALS Law School Pro Bono and Public Service Hours*, *supra* note zzz .

⁴⁹⁷ 2023 AALS Law Student Pro Bono Hours Report *supra* note zzz.

⁴⁹⁸ WISCONSIN TRUST ACCOUNT FOUNDATION, INC., ECONOMIC IMPACT OF CIVIL LEGAL AID IN WISCONSIN 2 (2023). This estimate does not include an additional economic multiplier impact of \$71 million.

⁴⁹⁹ FLORIDA BAR FOUNDATION, ECONOMIC IMPACTS OF CIVIL LEGAL AID ORGANIZATIONS 2 (2016).

⁵⁰⁰ The total dollar benefits of legal assistance were derived by the formula: (number of cases closed) x (percent of cases with specific outcome) x (dollars per outcome) x (duration of benefits) then + (total back awards). *Id.* at 18. the method was also explained as first quantifying the number of cases for which specific outcomes for clients were achieved and then multiplying the outcome figures by estimates of the dollar benefits or cost savings per successful outcome to derive estimates of total impacts. *Id.* at 3-4.

measure of justice includes a client's sense of the process as well as the outcome?⁵⁰¹

Aiken and Wizner noted as examples the impact of providing respectful and sympathetic listening, informal advocacy that leads to positive results without hearings, assisting clients to navigate the legal system on their own, providing clients with a sense that, win or lose, a fair process was provided, and assisting with improvements with the law and legal procedures.⁵⁰² Surveys have revealed that some clients value “relationship skills (such as caring about the client, keeping the client informed, and listening skills) as much as, or more than, technical legal skills.”⁵⁰³ Thus, the studies reviewed in this Article should not be taken as covering or measuring all of the many impacts on law students, law schools, and communities from law student participation in experiential courses.

CONCLUSION

Our analysis of over sixty studies measuring the impacts of experiential legal education offers insights into broader issues for legal education. The research demonstrates that experiential learning is not merely a supplementary component but a critical element to developing effective, ethical, and more practice-ready law graduates. Some studies do have methodological limitations,⁵⁰⁴ and there continues to be a need for more studies examining the link between teaching methods and activities in law school courses and student learning, a need that has been observed for all of legal education, not just with experiential courses.⁵⁰⁵

However, collectively the extensive studies on experiential legal education indicate that students who engage in law clinics, externships, and simulation courses not only acquire essential lawyering skills that better prepare them for the practice of law but also develop a

⁵⁰¹ Jane H. Aiken & Stephen Wizner, *Measuring Justice*, 2013 WIS. L. REV. 79.

⁵⁰² *Id.* at 83-98. A 2019 study by Logan Cornett for the Institute for the Advancement of the American Legal System highlighted some of the same impacts in focusing on what clients want and expect from their lawyers beyond just legal knowledge and effective advocacy. See LOGAN CORNETT, INST. FOR ADVANCEMENT AM. LEGAL SYS., THINK LIKE A CLIENT 17 (2019).

⁵⁰³ Neil W. Hamilton, *Connecting Prospective Law Students' Goals to the Competencies that Clients and Legal Employers Need to Achieve More Competent Graduates and Stronger Applicant Pools and Employment Outcomes*, 9 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 260, 275 (2019) (citing Marcus T. Boccaccini et al., *Client-Relations Skills in Effective Lawyering: Attitudes of Criminal Defense Attorneys and Experienced Clients*, 26 L. & PSYCHOL. REV. 97, 100-01, 111, 118-19 (2002), and Marcus T. Boccaccini & Stanley L. Brodsky, *Characteristics of the Ideal Criminal Defense Attorney from the Client's Perspective: Empirical Findings and Implications for Legal Practice*, 25 L. & PSYCHOL. REV. 81, 97-101 (2001)).

⁵⁰⁴ Some of the limitations include the lack of a control group, possible selection effect, failure to examine the students before the experiential course, undefined and overlapping terms, and significant heterogeneity in the students' experiential training.

⁵⁰⁵ See, e.g., Givelber et al., *supra* note zz, at 21 (“By and large, we lack any objective measures of the efficacy of our efforts to educate lawyers.”); Krieger, *The Development of Legal Reasoning*, *supra* note zzz, at 353 (“Unlike other disciplines, scholarship on legal education has tended to be based on the instructor's experiential recollections, philosophical theories, or psychological theories developed in other areas.”); see also Shanahan et al., *supra* note zzz, at 585 (noting that few clinics measure how well they are achieving their teaching outcomes); Selbin et al., *supra* note zzz, at 54 (“[We] lack basic information, let alone rigorous empirical data, about the impact of our work [in law clinics].”).

deeper understanding of professionalism and professional identity and usually also a stronger commitment to pro bono legal representation. Furthermore, the studies find that experiential legal education positively influences job placement outcomes while not detracting from bar exam passage rates or raising the cost of legal education for students, thus challenging the skepticism surrounding the expansion of experiential legal education.

In spite of these findings, the legal academy's limited adoption of experiential requirements compared to other professions reflects a disconnect between the perceived and actual benefits of this type of education and between what new lawyers reveal they need and what they received in law school. As our review of surveys of recent graduates demonstrates, new lawyers repeatedly and strongly have stated that their legal education did not sufficiently prepare them for the practice of law and that legal education should contain more experiential education than currently required by the ABA, including incorporating a law clinic or externship experience for all students.⁵⁰⁶ As Stuckey et al. observed, "it is only in the in-house clinics and some externships where students' decisions and actions can have real consequences and where students' values and practical wisdom can be tested and shaped before they begin law practice."⁵⁰⁷

To better prepare law students for the demands of the profession, law schools and law faculty should be guided by the extensive evidence of the value of experiential education as shown in these studies, not by conjecture, anecdotes, and unsubstantiated beliefs.⁵⁰⁸ By embracing the value of experiential training and aligning with the practices of other professional schools, law schools will better equip their graduates to meet the complex challenges of modern legal practice and to serve their clients effectively. Legal education and its accrediting body, the ABA Council of Legal Education and Admissions to the Bar, must place a greater emphasis on experiential education to prepare students better for today's practice of law and for the future.

⁵⁰⁶ See *supra* notes zzz and accompanying text.

⁵⁰⁷ Stuckey et al., *supra* note zzz, at 114.

⁵⁰⁸ David Barnhizer observed, "[T]here is a convenient assumption among law teachers that the existing model of American law school works effectively. This includes the conclusion that its methods and goals are not only appropriate and comprehensive but are being achieved. The reality is quite different." David Barnhizer, *An Essay on Strategies for Facilitating Learning* 1 (June 2006), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=906638.