Preparing the Practice-Ready Lawyer: The Fundamentals of Law Practice Course at Georgia State University College of Law

Draft as of June 15, 2010

To Appear in Maryland Law Review (2010)
Symposium: The Profession and the Academy: Addressing Major Changes in Law Practice

Charlotte S. Alexander

Table of Contents

I. Introduction ............................................................................................................................. 1

II. The Fundamentals of Law Practice Course at Georgia State University College of Law... 3
    a. Course Design and Content ................................................................................................. 3
    b. Acting Like Lawyers ............................................................................................................ 7
    c. Insights from the Course .................................................................................................... 10

III. The Modern-Day Law School Curriculum ........................................................................ 12

I. Introduction

The economic crisis of the latter part of this decade has eliminated record-breaking numbers of first year associate positions at large firms, causing new law school graduates who might otherwise have been hired by “Big Law” to consider solo or small firm practice. Even those new graduates who are hired by large law firms receive less training, mentoring, and guidance than did their pre-crisis counterparts, and are expected to be practice-ready from their first day on the job. The legal profession in recent years has therefore become one where

1 Harvard Law School Post-Graduate Research Fellow; adjunct professor, Emory University School of Law and Georgia State University College of Law; Deputy Director, National Institute for Teaching Ethics and Professionalism. B.A. 1996, Columbia University; J.D. 2005, Harvard Law School. Thanks to Joe Hoffman for his valuable research assistance.


3 See, e.g., Bill Henderson, Models of Practice: Past, Present, and Future, Spring 2010 Workshop of the National Institute for Teaching Ethics & Professionalism (March 19, 2010) available at
increasing numbers of attorneys are effectively on their own, whether they are new associates at large law firms or solo practitioners hanging out a shingle for the first time.

Law schools can respond to this trend by offering courses designed to provide students with the knowledge, skills, and professional qualities they will need to be practice-ready upon graduation. Some law schools have offered this type of course, often called some variation of “Law Practice Management,” for decades; others have recently added such a course to their curricula. Though these courses typically target students who plan to enter solo or small firm practice, where they will have no built-in training or mentoring apparatus, they also have potential to fill the training deficit created by law firms’ de-emphasis of associate development. These courses also respond to well-known critiques of legal education raised by the Carnegie

http://webdb.gsu.edu/dmg/mediaplayer/mediaplayer.cfm?file=law/lawcde/NIFTEP_SP10/NIFTEP_SP10_BillHenderson.mov, last visited April 16, 2010 (noting that law firms have begun to move away from the “Cravath system,” in which highly credentialed new associates received intensive in-house training); Bill Henderson, Part II: How Most Law Firms Misapply the “Cravath System,” Legal Profession Blog (July 29, 2008) available at http://lawprofessors.typepad.com/legal_profession/2008/07/part-ii-how-mos.html, last visited April 16, 2010; Roy Stuckey et al., Best Practices for Legal Education: A Vision and a Road Map 13 (Clinical Legal Education Association) (2007) (“Some students are prepared for the jobs that await them, especially the top students who are hired by appellate judges or by large law firms, government agencies, and corporations that have the resources and patience to complete their education and training, although even these employers are increasingly forcing their new hires to sink or swim.”) (emphasis added). Joyce S. Sterling and Nancy Reichman suggest other variations on this theme. Joyce S. Sterling & Nancy Reichman, So, You Want to Be a Lawyer? The Quest for Professional Status in a Changing Legal World, 78 FORDHAM L. REV. 2289, 2294 (2010) (“As beginning salaries have increased for new lawyers, seasoned partners have become reluctant to devote their limited time to socialization and training, feeling that these lawyers can ‘sink or swim’ on their own.”); id. at 2309 (“With less work to go around, lawyers who remain [in big firms] are provided with few opportunities to create new lawyering skills. . . .”).

A recent, non-exhaustive internet search of law schools’ course catalogs and law review articles on the subject turned up courses of this sort that are presently or were recently offered at Atlanta’s John Marshall Law School (Law Office Management), Barry University College of Law (Law Office Practice), Campbell University School of Law (Law Practice and Management), Chicago-Kent College of Law (“Opening and Managing a Law Office”), the City University of New York (“Small Firm Practice”), Duke University (“The Law Firm”), Nova Southeastern University Law Center (“Law Office Management Workshop”), Pace University College of Law (“Law Practice Management”), Suffolk University Law School (“Law Practice Management”), the University of Illinois College of Law (“Law Office Management”), the University of Maryland School of Law (“Law Practice Management”), the University of Missouri (Kansas City) School of Law (“Entrepreneurial Lawyering: Solo and Small Firm Practice”), the University of North Carolina School of Law (“The Law Firm”), the University of St. Thomas School of Law (“Small Office Law Practice”), and the University of Washington School of Law (“Solo and Small Firm Practice”). See also R. Lisle Baker, Enhancing Professional Competence and Legal Excellence Through Teaching Law Practice Management, 40 J. Legal Educ. 375 (1990) (describing course at Suffolk University Law School); John M. Conley, How Bad Is It Out There? Teaching and Learning About the State of the Legal Profession in North Carolina, 82 N.C.L. Rev. 1943 (2004) (describing courses at Duke and University of North Carolina).

The impact of the economic crisis is not limited to newly-graduated lawyers. Experienced attorneys have also lost their jobs in large numbers in a variety of practice settings, and many are likely now entering solo and small firm practice. Because these attorneys do not have access to a “Law Practice Management” law school course, it appears that they may be turning instead to their local bar associations for guidance. Anecdotally, bar association officials around the country report an increase in the number of requests from lawyers for assistance on basic questions of ethical practice and law office management. They also report an increase in disciplinary proceedings against solo and small firm practitioners. This perhaps signals a need for targeted continuing legal education offerings that do for experienced practitioners in transition what these law school courses seek to do for graduating law school students.
Report, which observed that while law schools do an excellent job of preparing graduates to think like lawyers, they offer little practice-based learning and fail to encourage the development of students’ professional judgment\(^6\) or to guide the formation of their professional identities.\(^7\)

These law school courses seek to produce practice-ready lawyers by providing instruction in three main areas: they give students practice skills such as client interviewing and counseling; they expose students to the management side of practicing law, including developing a business plan, attracting and retaining clients, and working with and supervising staff; and they allow students to wrestle with real world, every day ethical dilemmas such as how to keep time and set fees fairly. Many courses also provide students an opportunity to reflect on their own image of what it is to be a lawyer and to begin to form their own professional identities. This essay profiles one such course, Fundamentals of Law Practice at Georgia State University College of Law, and situates it within the larger debate over the proper shape and content of the modern-day law school curriculum.

II. The Fundamentals of Law Practice Course at Georgia State University College of Law

   a. Course Design and Content

   Offered for the first time in Spring 2010, the Fundamentals of Law Practice course at Georgia State University College of Law combines instruction in skills, law practice management, and ethical decision-making, while also giving students a structured framework within which to develop and reflect on their own professional identities as lawyers. The inaugural class, a three-credit course, consisted of fourteen students, all of whom were required to apply for admission, and was co-taught by two instructors.\(^8\)

   Rather than a pre-set series of instructor lectures, the course began with a field work component in which students were paired with attorneys in solo practice or small firms.

---

\(^6\) For a complete discussion of the Carnegie Report’s conclusions about law schools’ failure to encourage development of students’ professional judgment, see Clark D. Cunningham and Charlotte Alexander, Developing Professional Judgment: Law School Innovations in Response to the Carnegie Foundation’s Critique of American Legal Education, in Michael Robertson et al., The Ethics Project in Legal Education (Routledge-Cavendish) (forthcoming 2010).


\(^8\) The co-instructors were the author, Charlotte Alexander, and Clark D. Cunningham, W. Lee Burge Professor of Law & Ethics at Georgia State University College of Law.
Students’ field work was designed to expose them in real time to the realities of solo and small firm practice and to link them with professional exemplars on whom they could model their own identity development. The field work component also served a purpose internal to the course: it required the students themselves to begin to identify which skills, practice management tools, and ethical decision-making abilities they would need to be practice-ready upon graduation, thereby providing the raw material from which the rest of the course would be drawn.

To prepare for their field work, students were assigned excerpts from Michael J. Kelly’s two collections of profiles of lawyers in various practice settings, Lives of Lawyers: Journeys in the Organizations of Practice and Lives of Lawyers Revisited: Transformation and Resilience in the Organizations of Practice. Students also practiced interviewing and note-taking skills by interviewing a panel of practitioners during class and writing a short report on the information they gathered. In these reports and in their field work, students were encouraged to adopt Kelly’s value-neutral ethnographic approach, “to understand, to listen thoughtfully and to some degree respectfully, not to be an investigative reporter or a scholar burrowing into the myriad small hypocrisies that hover around almost all forms of organizational life.” The goal was to use students’ observations of the realities of solo and small firm practice as the course’s text.

Students then began their field work, which spanned seven weeks of the semester. To the greatest extent possible, students were matched with attorneys who practice in the subject area the students saw themselves entering. These included family law, workers’ compensation, general business and transactional law, intellectual property, immigration law, criminal defense, personal injury, community and homeowner association law, environmental law, and bankruptcy law. Field placement attorneys were recruited through a local bar association’s small firm and solo practice section, as well as through the law school alumni network. Students and attorneys signed a field placement agreement that outlined both parties’ responsibilities and, if the students were to be exposed to any attorney-client interaction, they signed a confidentiality agreement as well.

Each student began his or her field work with an in-person interview of the attorney, followed by an observation of the attorney at work. Students’ observations ranged from sitting in on initial intake interviews and follow-up client meetings, accompanying attorneys to court hearings and mediations, and observing depositions. Students observed their attorneys giving

---


10 Kelly (2007), supra note ___ at 8. Kelly compares his approach to that of documentary filmmaker Frederick Wiseman, whose films adopted what has been called the “observational mode.” Id. at 335. Following Wiseman, Kelly asked his subjects questions like, “What’s going on in the practice these days?” “How is the organization doing?” “What do you like about this practice and what about it annoys you?” Id. at 336. His “main line of questioning was to get people to describe how law practice works for them and what they think about issues that face the organization in which they are located.” Id. The courses at Duke and the University of North Carolina described by John Conley also incorporated “lengthy, in-class ethnographic interviews with a substantial number of lawyer-informants chosen to represent the wide range of settings in which lawyers practice.” Conley, supra note ___ at 1947; see also Baker, supra note ___ at 378 (advocating that students interview practicing attorneys “to find someone who has done it before, ask how, and then adapt what [they] learn”).
bad news to clients, making strategic decisions about how to present their clients’ case to the
court, and counseling their clients about whether to accept an offer of settlement. Students also
observed attorneys at work in their offices. Several students sat in on file review and case
planning sessions in which attorneys and their support staff reviewed the status of their cases,
discussing pending deadlines and the division of labor on each case. Other students sat with
their attorneys while the attorneys generated bills and observed the attorneys’ exercise of billing
judgment. Finally, some students accompanied their attorneys to bar association section events,
meeting other attorneys in the legal community and observing the ways in which their attorneys
developed and maintained a network of professional colleagues.

This field work experience culminated in a written report by each student, 11 which
accounted for forty percent of their grade and sought to answer the following questions:

- In metro Atlanta in 2010 what is it like to be a solo practitioner or a member of a small
  firm?
- What is it like to start a small firm or solo practice?
- What knowledge, skills, and professional qualities should a law student aim to acquire to
  prepare for entry into small firm or solo practice?
- How can law school better assist law students to acquire such knowledge, skills and
  professional qualities?

Students’ experience of interviewing their field work attorneys, recording the information
gathered, and synthesizing it into a written report was both an exercise in skills development and
professional identity formation. One the one hand, the field work assignment mimicked the sort
of factual investigation that attorneys are frequently required to perform. Students were required
to plan their investigation, to memorialize and organize the information they gathered in an
accessible form, and to evaluate the information gained through their field work experience. 12
On the other hand, the field work component exposed students to professional exemplars,
providing them with an opportunity for reflection on what constitutes a lawyer’s professional
identity. In the language of the Carnegie Report, students were learning through an
“apprenticeship of identity and purpose,” in which they could reflect on the “skills and
inclinations, along with the ethical standards, social roles, and responsibilities that mark the
professional.” 13 By observing attorneys counseling clients, interacting with judges, and

11 Each student’s report was subject to review and approval by his or her field work attorney before it was handed in
to the instructors, and was not shared with anyone outside the class without the field work attorney’s permission.
12 MacCrate Report at Skill § 4 (listing skills associated with factual investigation as core lawyering skills); see also
Shultz & Zedeck, supra note ___ at 26 (listing questioning and interviewing as factors that contribute to attorney
effectiveness).
13 Sullivan, et al., supra note ___ at 28.
networking with their colleagues, students had the opportunity to reflect on what it means to be a lawyer.\textsuperscript{14}

The students themselves identified both the professional identity and skill-building aspects of the field work requirement. One student reflected on what he saw as the key to his field work attorney’s professional identity: not court victories or large fee awards, but rather the attorney’s ability to interact well with his clients. According to the student, over the course of a tough divorce negotiation, the lawyer engaged his

\dots clients in almost therapeutic conversations \dots explain[ing] legal consequences of various proposals while, at the same time, negotiating a veritable minefield of emotion. Both attorneys and the mediator were very skillful in their abilities to support and advocate for their clients, while at the same time encouraging progress toward resolution of the case.\textsuperscript{15}

The student concluded that the characteristics he “observed have not been the focus of any of my coursework” and that “observation and practice would be the only real way to develop them.”\textsuperscript{16}

A second student was struck by his field work attorney’s use of the pronoun “we” to refer to the attorney and his client. Though the student was initially confused by the use of “we,” once he “realized that [the attorney] was referring to clients using the pronoun ‘we’ \dots the conversation came into focus.”\textsuperscript{17} This realization led the student “to think about the attorney-client relationship” – the attorney’s behavior as a professional in relation to his client – “in a somewhat different light.”\textsuperscript{18}

With respect to skills development, the same student commented that his field work project taxed the note-taking methods he had developed in law school, in which he sought essentially to transcribe his professors’ lectures. While conducting his field work, he was required to be “an active listener in a small group [and in a] one on one situation.”\textsuperscript{19} As the student commented:

I usually try to engage the speaker non-verbally by making eye contact and nodding my head if I understand, and this can make comprehensive note-taking very difficult. I often found myself playing catch up after a point of conversation had already been covered. The other primary difficulty arises out of my tendency to take comprehensive notes, a function of the obsessive compulsive plenary note-

\textsuperscript{14} In a course evaluation, students gave the field work component of the course very high marks. All but one listed the field work experience as the thing they liked best about the class, and a majority listed field work as being “very educational.”

\textsuperscript{15} Bryant Rogowski, \textit{Field Report} at 11, March 22, 2010 (on file with author).

\textsuperscript{16} \textit{Id.}

\textsuperscript{17} Eli Bennett, \textit{Writing Assignment 7} at 5, March 22, 2010 (on file with author).

\textsuperscript{18} \textit{Id.}

\textsuperscript{19} \textit{Id.} at 6-7.
taking behavior that I developed in law school. . . Note-taking and interviewing skills are important to all aspects of a lawyer’s life, and this observation exercise taught me quite a bit about how to practice these skills more effectively.\(^{20}\)

These and other real-world lessons from students’ field work reports then influenced the design of the rest of the course. The final seven weeks focused on a set of topics drawn from the students’ own assessments of the skills, practice management tools, and ethical decision-making abilities they would need to be practice-ready upon graduation.\(^ {21}\) The remainder of the course was structured not only to give students substantive information on each of these topics, but also, through a combination of teaching techniques and course requirements, to force students to take on the professional identity of attorneys and act like, rather than merely think like, lawyers.\(^ {22}\)

b. Acting Like Lawyers

As much as possible for a non-clinical course, the class attempted to place students in role as attorneys, to create an authentic experiential learning environment for students that replicated the high stakes and deadline pressures of law practice.\(^ {23}\) The course did so by using five strategies: instituting a timekeeping requirement; using case management software; assigning frequent, graded projects with relatively short deadlines; requiring student presentations; and conducting a simulated client intake. These requirements were designed to encourage the students both to develop lawyering skills and to take on a lawyer’s professional identity: to be organized, self-disciplined, and motivated.

\(^{20}\) Id.

\(^{21}\) These topics were: intake procedures, conflict checking, file management, engagement letters and fee arrangements, trust accounting and billing practices, choosing and staying current in a practice area, drafting a business plan and choosing a business form, staffing and setting up a solo or small plan, networking strategies and learning a local legal culture, advertising and marketing, malpractice insurance, and the logistics of court appearances.

\(^{22}\) See Baker, supra note ___ at 376 (“Thinking like a lawyer is worthwhile, but in the meantime practicing lawyers have pressing work to do – whether counseling clients, advocating causes, negotiating agreements, drafting documents, preparing cases, finding and organizing evidence, deposing witnesses, or undertaking research. Even though the work requires considerable thought, its emphasis on action makes it useful to call it ‘acting like a lawyer.’”); see also SULLIVAN, ET AL., supra note ___ at 7 (noting that legal education “emphasize[s] legal knowledge and reasoning at the expense of attention to practice skills, while the relations of legal activity to morality and public responsibility receive[] even less direct attention in the curriculum”).

\(^{23}\) See James E. Moliterno, An Analysis of Teaching Ethics in Law Schools: Replacing the Lost Benefits of the Apprentice System in the Academic Atmosphere, 60 U. Cin. L. Rev. 83, 114 (1991) (“Role-sensitive activities not only provide significant learning about the data that gives meaning to many standards governing lawyer behavior, but they also hold out the greatest hope for replicating the best aspects of the apprenticeship system . . . .”); see also Karen Barton, Patricia McKellar & Paul Maharg, 14 Clinical L. Rev. 143, 145 (2007) (“One theme running through the many contemporary versions of experiential learning is that of ‘authenticity’ - the correspondence, in some way or other, of learning to the world of practice that exists outside of teaching institutions.”).
Though most attorneys would likely agree that these basic professional qualities are essential to a successful law practice, they receive little explicit attention in law schools.  In fact, as one student observed in his field work report, the traditional model of legal education may encourage students to develop the opposite set of habits:

Unlike many other educational experiences, law school is almost exclusively focused on end results. Very few classes are graded based on more than a final exam . . . Overall, the entire system leads to focus and planning for distant and singular events. There is no need to develop skills around regular recordkeeping and follow up. Instead, students tend to become rather insular as they develop whatever personal system will help them to best regurgitate and utilize what is taught in class . . . when final exams come around . . . I think these are habits which have to be broken in order to be successful in practice. Regular maintenance of files, recording of time, and follow up with clients is absolutely vital to success. Clients cannot be put off “until finals.”

The five strategies used in the course were designed to encourage students to develop better habits, which they could then carry into practice.

First, throughout the course, students were required to keep records of the time they spent on coursework and turn them in each week. If students did not meet their weekly time-reporting deadlines, they were asked to provide an explanation of the sort that would satisfy a client. With respect to the time they recorded, students were instructed that falsification of their time sheets or “padding” of their hours could lead to failing course grade, a referral to the school honor board, and a report as part of the character and fitness review for bar admission. The timekeeping requirement sparked extended class discussion about the ethics and logistics of timekeeping.

---

24 To the extent that they appear at all, organizational skills are mentioned only indirectly in the MacCrate Report’s list of skills, under the heading of “efficient management.” MacCrate Report at Skill § 9. The Shultz and Zedeck report lists “organizing and managing one’s own work” as an effectiveness factor. Shultz & Zedeck, supra note __ at 26.

25 Rogowski, supra note __ at 8. Another student made similar observations, even going so far as to recommend that law school classes include “projects and assignments designed to force a student to handle multiple deadlines of simple assignments each week over a wide variety of time frames and communication methods which are essentially designed to make students miss deadlines.” Jonathan Call, Being a Solo Practitioner in Atlanta at 11-12, March 22, 2010 (on file with author). According to the student, this system would “force the students to create a system of tracking such assignments and deadlines now before they get in the real world and the missed deadlines result in lost cases and malpractice lawsuits.” Id. Similarly, a student suggested that, in order to teach professionalism, “a professor might require students to maintain a certain dress standard, or have a professional notebook that is reviewed by peers weekly, so that students are mindful of how they present themselves to others.” Lisa Cupid, Starting a Solo Practice at 12, March 22, 2010 (on file with author).

26 Students were assured, however, that the instructors would understand if they could not always complete every assignment each week: “[I]f on an occasion you have not done one or more assigned readings for a class, do not report that you have done so. (An explanation for incomplete class preparation is welcome but not required; we were once law students ourselves, you know.).”
(How detailed a description to record? What increments to use? How to avoid double-billing?), a task that combines knowledge, skill, and professional qualities that the students acknowledged they would need in nearly any private practice setting. The requirement also encouraged students to reflect on their own time management practices. In addition, the weekly time reporting requirement gave students an ongoing deadline to meet throughout the semester which they could not, in the student’s words, “put off until finals.”

Second, students were required to use a web-based case management software program called Clio to keep their time, upload their written assignments for instructor review, make to-do and task lists for themselves, calendar important dates, and share documents with classmates during group work. Because Clio was designed for solo and small firm practitioners, it is possible that students may use the program in their own practices after graduation. Even if students do not use Clio itself, because it shares many of the basic characteristics of other case management software programs, students’ familiarity with Clio would translate to other software packages. Students’ use of Clio allowed them to experiment with different methods of organizing and tracking their work. It also exposed them to the ways that technology can aid in efficient and effective law practice management.

Third, students were required to complete frequent writing assignments with relatively short deadlines. These assignments, along with students’ time records, made up a “portfolio” for each student, which accounted for thirty percent of the students’ final grade. These assignments’ frequency and relatively short turn-around times were designed to mimic the crush of time-sensitive, high-stakes work faced by practicing lawyers. Students were required to prioritize and budget their time effectively in order to do quality work and turn in these assignments on time. In addition, because the students’ assignments, along with the timeliness and quality of their time records, contributed to the portfolio portion of the students’ final grade,

---

27 The Law Practice Management course at Suffolk University Law School also requires students to maintain time logs. See Law Practice Management I (Spring 2008) syllabus at pp. 6-7, on file with author. See also Baker, supra note ___ at 378 (describing a time keeping requirement as a way to “imitate good practice habits: [students] keep logs of the time they spend on the course (in and out of class) and submit periodic ‘invoices’ for it).  
28 See http://www.goclio.com/about.html, last visited June 14, 2010 (“Clio includes a full suite of practice management tools targeted specifically at the administrative needs of sole practitioners and small firms. Clio is a single resource that eliminates the need for multiple specialized applications by incorporating the principal talents of each. Web-based, secure, and easy-to-use, Clio seeks to overcome many of the technical hurdles offered by conventional practice management solutions. Spend your valuable time building your practice, let Clio handle the rest.”).  
29 Midway through the semester, the instructors gave students a provisional portfolio grade to give them an indication of their performance up until that point in the class. Unlike summative final exams, this type of formative assessment was designed to allow students to correct deficiencies and improve their performance by the end of semester. See Sullivan, et al., supra note ___ at 171 (“[W]e believe that assessment should be understood as a coordinated set of formative practices that, by providing important information about the students’ progress in learning to both students and faculty, can strengthen law schools’ capacity to develop competent and responsible lawyers.”); Stuckey, supra note ___ at 190-93. The course at the University of Missouri (Kansas City) School of Law also adopts a “portfolio” grading approach, while the course at Nova Southeastern University Law Center similarly requires that students comply with standing weekly assignments. See Entrepreneurial Lawyering: Solo and Small Firm Practice (Law #638R) (Summer 2009) syllabus at p. 2, on file with author; Law Office Management Workshop (Fall 2009) syllabus at p. 1, on file with author.
everything in the course, in effect, “counted.” As in practice, in which all client work “counts,” students who neglected their ongoing responsibilities suffered the negative consequences in their portfolio grades.

Fourth, each student was required to research a particular substantive topic (retainers and engagement letters, for example) and give a short presentation to the class. This assignment made up the final thirty percent of the students’ grade, and students were assessed based on their creativity and initiative in seeking out information and finding resources, as well as the quality of the presentation. The assignment was designed not only as a way for students to share substantive presentations with their classmates, but also to familiarize students with the resources they might consult and the steps they might take if they were starting their own practice and seeking to educate themselves on the skills, practice management tools, and ethical decision-making abilities they might need.30

Fifth, and finally, students were required to participate in a simulated client intake process, in which they conducted a conflict check, interviewed a potential client, took notes, reviewed the client’s documents, decided on a fee structure, wrote an intake memo and engagement letter, kept their time, and generated a bill using Clio. This simulation brought together many other strands of the course: the timekeeping requirement, the substantive instruction on topics such as engagement letters, and the modeling of attorney-client interaction that the students observed during their field work. It also allowed students, in role as attorneys, to continue to practice their interviewing and note-taking skills, as well as to learn how to communicate simply, clearly, and effectively with clients, both orally and in writing, a core professional quality necessary for good lawyering.31

c. Insights from the Course

One of the most striking aspects of the first offering of Fundamentals of Law Practice has been the course’s ability to encourage student reflection on issues of professional identity. The course was designed both to provide students instruction in “hard” lawyering skills through simulations and to guide them through a process of observing professional exemplars and reflecting on their own identity development – engaging in what the Carnegie Report calls the “apprenticeship of identity and purpose.” The success of this second aspect of the course has been a welcome surprise.

30 Students received feedback on their presentations not only from the instructors, but also from their classmates in the form of anonymous evaluations. They were then given the opportunity to give a short follow up presentation during the last two class meetings, incorporating the guidance they received. This structure draws on both formative assessment techniques and concept of the 360-degree performance evaluation. John E. Montgomery, Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students, 39 U. Tol. L. Rev. 323, 352 n.175 (2008) (describing the 360 degree performance evaluation as “an evaluation and feedback process commonly used in business where all people both reporting to and supervising an individual provide feedback on performance and abilities”).

31 See MacCrate Report, Skill § 5 (discussing interviewing and counseling skills); see also Baker, supra note __ at 378 (describing teaching students to “imitate good practice habits: . . . they draft model operational documents, such as client engagement letters that set forth the work that is to be done and the basis of fees”).
The extent to which students have engaged in a process of reflecting on their own “identity and purpose” as developing lawyers is revealed by comments in their field work reports and course evaluations. For example, one student concluded his report with the following observations:

My last day in the office was a Saturday, and I sat in on [a client meeting] . . .
This Saturday really drove home for me how different life at a small law firm can be. There was such a feeling of freedom and genuineness; all images of the faceless machine that I often picture when thinking of big firm life vanished. I saw a new vision for what being a practicing lawyer can be. [The field work attorneys] were serving their clients on a Saturday, not because they had to, but because they wanted to.  

This student’s “new vision” of life as a practicing attorney was echoed by another student’s anonymous course evaluation:

I enjoyed getting to interview and write about one of the first . . . solo practitioners who really opened up to me about what solo practice is really like. For me, that was one of the earth-shattering moments when I realized that this dream of mine to practice solo is truly possible, and that feeling has been growing in me as a result of this class ever since.

This sort of deep reflection on professional identity might not be surprising in a clinical setting or an externship, where students work closely and at length with practitioners who role-model professional behavior. Indeed, the Carnegie Report singles out “well designed experiences of pro bono and service work, of good externships, and especially of clinical courses” as sites where students “encounter appealing representations of professional ideals, connected in a powerful way with engaging models of ethical commitment within the profession, and reflect on their emerging professional identity in relation to those ideals and models.” The fact that students could engage in a similar process of reflecting “on their emerging professional identity” as a result of a field work experience in a non-clinical, simulation-based course like Fundamentals of Law Practice is an exciting and promising discovery.

33 See, e.g., Bridget McCormack, Teaching Professionalism, 75 Tenn. L. Rev. 251, 260 (2008) (“In clinical courses, students ride with faculty members as they drive to court or to meet with clients. They are present in courthouse hallways when other lawyers or judges pull their supervising attorneys aside for conversation, and sometimes the students themselves are involved in those conversations. . . The clinical setting emphasizes professionalism not only through students’ increased exposure to the interactions among other professionals, but also through the intimacy that characterizes their relationships with clinical faculty.”); see also Peter A. Joy, The Ethics of Law School Clinic Students as Student-Lawyers, 45 S. Tex. L. Rev. 815, 838 (2004) (identifying “clinic faculty [as] important role models for clinical students” who shape students’ professional identities).
34 SULLIVAN, ET AL., supra note ___ at 135, 146-47.
A second insight also comes from the world of clinical scholarship. As might be expected, the intensity and high-stakes nature of the course met with some resistance by the students. For example, one student noted on his or her anonymous course evaluation that, with “so many little deadlines, it has been tough to keep up with everything.” However, there is evidence from the clinical setting that suggests that this sort of intense practice-based experience can allow instructors to identify and remedy problematic student behavior before students carry those behaviors into practice. For example, Antoinette Sedillo Lopez relates in her article on teaching professional responsibility in a law school clinic stories of students with substance abuse issues and problems identifying and respecting professional boundaries. Only in the high-stakes, intense environment of the clinic did the students’ issues emerge, allowing counseling and correction before the students graduated to the even higher-stakes environment of law practice. The timekeeping requirement and frequent, relatively short deadlines of the Fundamentals of Law Practice course have provided a similar opportunity, in a non-clinical setting, for early detection of potential problems and constructive feedback and remediation.

III. The Modern-Day Law School Curriculum

While law schools have long come under fire for their failure to produce practice-ready graduates, critiques such as those voiced in the Carnegie Reports have taken on new relevance in light of the changes in the legal profession caused by the current economic crisis. New lawyers are increasingly on their own, regardless of practice setting: many are starting their own solo practices or small firms, and large law firms have shifted their associate training dollars to other priorities. Courses such as Fundamentals of Law Practice and its counterparts at law schools around the country offer a partial solution, providing practical instruction in lawyering skills, practice management techniques, and ethical decision-making, and guiding the formation of law

35 The student went on to acknowledge, however, that “I realize this is what it’s like in practice.” Another student made similar comments, noting that “the professors are very demanding,” but concluding, “I really do believe that EVERY law student should be required to take this course.” Professor Baker reports similar results. Baker, supra note _ at 379 (reporting that students in his Law Practice Management course “find the work arduous but empowering”).

36 Antoinette Sedillo Lopez, Teaching a Professional Responsibility Course: Lessons Learned from the Clinic, 26 J. Legal Prof. 149, 153-54, 155-56 (2002) (describing a student who developed an inappropriately close relationship with a client and a student who struggled with alcoholism).

37 The experience of the medical profession also reveals links between unprofessional behavior during medical school and subsequent problems during practice. For example, a study of physicians who were disciplined for unethical or unprofessional behavior by their state licensing boards revealed that the disciplined physicians were “three times as likely to have displayed unprofessional behavior in medical school than were control students.” Maxine A. Papadakis et al., Disciplinary Action by Medical Boards and Prior Behavior in Medical School, 353 NEW ENGLAND JOURNAL OF MEDICINE 2673 (December 22, 2005), available at http://content.nejm.org/cgi/content/full/353/25/2673, last visited June 15, 2010. The types of unprofessional behavior in which the physicians engaged as students are the same sorts of behavior that might be identified – and remediated – in a law school setting in a simulation-based course such as Fundamentals of Law Practice: unreliable attendance, lack of follow-up, failure to accept constructive criticism, argumentativeness, poor relationships with team members, lack of motivation or enthusiasm, and passivity.
students’ professional identities. However, if law schools are truly to prepare their graduates for practice, this type of course should be only one offering on a much larger menu of experiential instruction.

Law schools might offer a program of layered, practical, experiential instruction that complements the substantive instruction offered by traditional classroom courses. The first layer could be a simulation-based course like Fundamentals of Law Practice, in which students begin to learn skills, practice management, and ethical decision-making in a simulated setting. The stakes for the students in such a course are high, but they are not yet representing live clients; the stakes for, and risks to, third parties are therefore minimized. The Fundamental Lawyering Skills class at Fordham University School of Law is an additional example of such a first-layer course. All students who wish to enroll in a live client clinic are required to take the course, which provides simulation- and role play-based instruction in fact analysis, interviewing, counseling, negotiation, case theory and planning. Harvard Law School has recently begun offering a similar course for 1Ls, the Problem Solving Workshop, which “presents cases that begin with the initial contact between lawyer and client” rather than appeals court decision. The course “supplement[s] the technical skills students learn in regular courses with an emphasis on common sense, judgment, even wisdom.”

The second layer of instruction might come in the form of externship placements in a variety of practice settings, complemented by structured reflection guided by law school instructors. Here, students would take the lessons learned in their simulation-based course and put them into practice in a real-life setting. Their introduction to real life would be gradual, however, as they would be closely supervised by their externship supervisor and subject to evaluation and feedback by their law school instructor as well. Moreover, because law students in most externship programs are assigned to discrete projects, and do not act as primary case handlers, the risk to clients and other third parties is again minimized. Though many, if not most, law schools offer externship programs, the Mentor Externship Program at the University of

---

38 See SULLIVAN ET AL., supra note ___ at 158-59 (characterizing “simulated practice” as “an important site for developing skills and understandings essential for practice” and “teaching the ethical demands of practice”); Moliterno, supra note ___ at 122-34 (advocating that law schools adopt a simulation-based comprehensive skills development program).

39 The practice of using simulation as novice law students’ first exposure to client representation, rather than thrusting them into a live client clinic setting, begins to address the critique that many forms of clinical legal education tends to use low-income, vulnerable client populations as guinea pigs for the learning experiences of inexperienced, yet privileged, law students. See, e.g., Stephen Wizner & Jane Aiken, Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice, 73 Fordham L. Rev. 997, 1007 (2004) (summarizing this critique with the questions, “Why should clients serve as guinea pigs for students who, if permitted to take primary responsibility, may provide inferior legal services? What is the virtue of treating clients as fodder for voyeuristic analysis?”).


42 Id.
St. Thomas School of Law provides an example of a comprehensive program that emphasizes structure, quality control, and feedback:

Each year of law study, students are paired with a respected lawyer or judge in the community. Mentors introduce students to a range of legal tasks and activities such as depositions, client meetings or appellate arguments. Beyond introducing students to foundational lawyering responsibilities, mentors share the traditions, ideals and skills necessary for a successful law career. Mentors also help students understand professionalism in ways that traditional classroom lecture cannot capture.43

The third layer of instruction could be the live client legal clinic. The Carnegie Report singles out legal clinics as “key settings in which students learn to integrate not only knowledge and skill, but the cognitive, practical, and ethical-social facets of lawyering as well.”44 Examples of such clinics abound, though few law schools make participation in a clinical program a requirement for graduation. In a live client clinic, students take direct responsibility for a client’s case, experiencing in real time what it is to “act like a lawyer.” Clinics, though subject to their own set of critiques,45 could provide a capstone experience for law students who have already completed a simulation-based course and an externship, exposing them to the realities of practice with stakes that are high not only for themselves but also for their clients. The new experiential third year program at Washington & Lee University School of Law provides a model for how this clinical third layer might function. Designed to produce “future lawyers that will be ready for practice from day one,” the third year curriculum “is entirely based on learning through engagement - combining practicum courses, practice simulations, client interactions, the formation of professional identity and the cultivation of practice skills.”46 Legal clinics figure heavily in the new third year as a setting in which students will “with guidance and supervision, engage in the craft of lawyering.”47

The fourth, and final, layer of instruction might happen outside the law school’s doors, after graduation. At least two law schools, the City University of New York (CUNY) School of Law and the University of Maryland School of Law, presently offer a support system – either sponsored directly by the law school, in CUNY’s case, or associated more loosely with the law

44 SULLIVAN ET AL., supra note ___ at 160.
45 See, e.g., Moliterno, supra note ___ at 96, 122-34 (cautioning about the monetary costs of live client clinics and the limits of the legal clinic as a site for instruction in legal ethics); Steven Hartwell, Moral Development, Ethical Conduct, and Clinical Education, 35 N.Y.L. Sch. L. Rev. 131, 147-49 (1990) (same); Wizner & Aiken, supra note ___ at 1007 (voicing a critique of clinics’ use of vulnerable client populations as the subjects for law student learning).
school, in the case of Maryland – for graduates who have entered solo or small firm practice.48 These support programs link graduates with others in the same practice areas, provide case referrals, and offer instruction on basic business skills. The program at CUNY also offers an “incubator” for a small number of graduates newly entering solo practice, providing low-rent office space and some startup financial support for a period of eighteen months.49 In some ways, these programs act as professional “finishing schools” for law school graduates, resembling the practice-based post-graduate programs of legal education in place in other countries. In Scotland, for example, after students complete an undergraduate degree in law, they are required to complete three years of additional training, which includes a closely supervised and monitored traineeship with a practicing attorney.50 Only after completing this traineeship may students apply for certification to enter the legal profession. Whether this fourth layer of experiential learning takes place in practitioner offices, as in Scotland, or in law school-sponsored support or incubator programs, as at CUNY and the University of Maryland, it would appear to be a way to ensure that new lawyers are practice-ready, whether they are hanging out their own shingle or taking an associate position at a large law firm.

The economic crisis of the latter part of this decade has given new meaning to long-standing critiques of American legal education. If law schools teach only how to think like, and not to act like, lawyers, then the legal academy is surely failing its students, who, today more than ever, will be required to think and act as lawyers from the moment they join the bar. Courses like Fundamentals of Law Practice at law schools around the country are a first step in the right direction. To prepare practice-ready lawyers, however, law schools should reexamine the basic shape and content of their curricula and develop a robust system of experiential legal education, beginning with simulation-based courses, progressing through externships and clinics, and culminating with ongoing training and support programs for new lawyers after they graduate. By implementing a variety of layered strategies that complement traditional substantive classroom instruction, the legal academy will be able to ensure that its graduates have developed both the skills and the professional qualities they need to be truly practice-ready.