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Cover Page Footnote

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WHEN EXPERIENTIAL LEARNING TAKES CENTER STAGE – NOT YET

WES PORTER

While experiential learning for decades has been part of the law school experience, it was not the part traditionally portrayed as integral to a student's path to becoming an attorney. Law schools today, however, appear to celebrate and even extoll experiential learning and the once isolated pockets of law schools which brought it into the mainstream. Unfortunately, closer inspection reveals that the experiential learning movement in law school may be more marketing and spin than an honest shift in pedagogy, curriculum and culture. The next step for experiential learning may be the most difficult: progressing beyond the marketing doublespeak and pulling the beneficial elements of experiential learning across the curriculum.

Experiential learning has ascended to the level of a movement in higher education. The experiential learning movement is really about better teaching methods and dramatically improving the student's learning experience.¹ Other disciplines, including professional schools, prominently feature experiential learning throughout the curriculum. Experiential elements are a core part of the path to a degree and a career in many professional disciplines outside of the law.² In other professional schools, experiential learning elements are engrained as part of not only the curriculum but the culture of the profession and education. The pedagogy and curriculum of other professional schools, along with significant empirical evidence, supports the correlation between experiential learning and improved learning and retention. Professional students clamor for more experiential learning opportunities: more practical application, connection to the profession, integrated curriculum, transferable skills, and assessment and feedback.

The virtues and benefits of experiential learning have infiltrated legal education. But the modern history of legal education is rooted elsewhere. Law school traditionally focuses on reading, listening to lectures, and "thinking like a lawyer." The historical portrayal and

¹ Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NORTHEASTERN U. L. J. 87 (2013) (discussing how experiential learning means better teaching and not reserved for skills courses).

² Students must complete simulations, practica, employment and externship opportunities, and the supervised work of a professional.

image of law school remains married to the academic hazing portrayed in the *The Paper Chase*, mind-numbing reading assignments of appellate cases, and the single-shot assessment of anonymous final exams. The tradition of legal education does not always neatly intersect with the proliferation of experiential learning across the curriculum. Despite the story told by the marketing efforts in legal education, law schools struggle to integrate the innovative possibilities brought forward by the experiential learning movement throughout their curriculum and culture.

In Section I, this article introduces the well-covered precursor to the current “experiential learning movement”: the confluence of the legal profession’s choices and industry change brought on by economic conditions. Section II next argues how law school marketing capitalized on the leaders of the experiential learning movement, while our culture in law school keeps them tucked away. Section III pays homage to the isolated, non-traditional pockets of legal education which brought us experiential learning: the legal clinics, simulation courses, and externship and pro bono programs. This discussion includes a profile of some of experiential learning’s key elements that can be further incorporated throughout the curriculum, pedagogy, and culture. Section IV describes the most difficult step for the experiential learning movement in legal education that remains: administrators instituting real change and offering consumer information past the marketing spin.

I.

PRECURSORS TO THE EXPERIENTIAL LEARNING MOVEMENT

The concept that law school teaches lawyers to think like lawyers but does not teach them how to perform actual legal services, has drawn widespread criticism, in large part, due to current economic realities. Both the criticism and the economic realities seem to have led us to the experiential learning movement. Yet, for many schools, embracing experiential learning has meant just touting existing experiential learning components of their offerings in their marketing campaigns. To truly respond to the criticism and current economic realities, experiential learning needs to be woven throughout the law school curriculum.

Early decisions in the profession. For ages, the legal profession accepted, if not decided, that experiencing the skills and values of lawyering could be relegated to post-bar exam and the early years of practice. The firms, public offices, and senior attorneys within the bar

purportedly “trained” the wave of new lawyers on an ad hoc basis. Some attorneys, of course, were well-trained in the skills and values of lawyering after law school and during practice. Some attorneys did learn by doing in practice or, better stated, enjoyed a flexible employment situation which allowed them to make mistakes and develop on the job. Far too many practicing lawyers, however, did not receive the proper foundational training, skills and values of the profession – at least, when they could have benefitted from them the most.

For two reasons, the legal profession can no longer afford to wait until the first years of practice to expose its attorneys to the experience of practicing law. First, legal education is in the midst of a sustained attack. The blogosphere, companies, the legal profession, and even the President have criticized and assailed our teaching methods, content and the value of the degree. Second, related to the first, the economy, legal employment opportunities, and the changing landscape of the legal services industry demand a new iteration of legal education. Even if leaders in legal education could ignore the noise of outside criticism, the data on prospective student, employment outcomes, and student assessment cannot be ignored. New attorneys are having difficulty finding jobs, many clients in large law firms are refusing to pay for time spent on their matter by first or second-year lawyers due to their lack of legal know-how (“Why should we pay for you to train your new lawyers?” they ask), and recent law graduates are often not trained enough in any particular area of the law to feel comfortable hanging their own shingles and practicing law on their own.

Economy’s impact on the legal services industry. The prolonged recession, changing legal services industry, and consistently questioned “value” of a legal education caused society to peer behind the curtains of legal education. The focus of the inquiry into legal education landed squarely on our efforts to train students for practice and the skills and values necessary for new attorneys. The dynamic nature and hard financial times in the profession highlighted the importance of experiential learning in legal education.

The down economy and its effect on the legal jobs data directly correlates to the declining enrollment at law schools across the country. The top, and arguably most informed students, in particular choose other post-graduate career paths. The value proposition for a legal education can no longer rest on traditional, stale pedagogy. Most critically, the economy and the current state of the legal services market has caused nearly everyone involved in legal education to pay attention to best practices in teaching.

One could argue that the studies, reports, and incessant criticism of legal education were not enough. Yet, economic crisis was necessary, on some level, to refocus our efforts and redefine our role in the profession. The economy caused law schools to recognize the value of experiential learning. But it is unknown to prospective students which law school is truly doing what.

Why then should we continue to relegate training of the skills and values of lawyering to after the bar exam and during practice? The outside world is calling for us to change dramatically at the same time when such change could truly benefit our students. Importantly, state bar associations and the American Bar Association will soon require skills training as part of legal education – to be followed by continuing legal education requirements for skills likely provided, at least in part, by law schools. The shift to integrating experiential learning throughout legal education seems obvious and inevitable.

The Irony of the Leaders' Status in Law Schools. Clinicians, externship coordinators and faculty teaching simulation courses historically were treated differently than doctrinal faculty. These leaders of experiential learning were given different titles, different pay scales, and different rights in faculty governance, job security, and promotion. The irony is, experiential learning takes center stage in legal education as too many institutions continue to treat the leaders of the movement as second-class citizenry. One might expect that the tables have turned now that experiential learning has moved front and center; not so, or at least not yet.

Despite the new focus on experiential learning, many law professors would have to admit that the legal clinicians (typically not tenured/tenure-track professors), skills professors, legal writing professors, and externship and pro bono coordinators have been, and still remain, second-class citizens within too many institutions. Law professors are respected more for their prolific law review articles than their teaching abilities or integration of experiential learning. While “experiential learning” has become the overnight, go-to buzzword in legal education, legal clinic instructors, skills professors, legal writing professors, and externship and pro bono coordinators should take a step back and assess how far within the experiential movement they actually have been elevated.

The situation persists at some law schools. Some law schools still praise the work, teaching methods, and even the students' learning experience in clinics, externships, and simulation courses while treating the faculty and practicing attorneys leading those programs differently than doctrinal faculty. This is a choice made by the institution that largely goes unknown to the outside world and prospective

students. To assess how an institution values experiential learning, we must revisit how it treats the leaders of the movement.

To effectively implement the key elements of experiential learning, as listed below, the law faculty must learn from, even be led by, those colleagues tucked away in the isolated parts of the law school. To reinvent legal education in a meaningful way, law schools must elevate, and even learn from, the second-class citizens on the faculty: clinicians, skills professors, and externship and pro bono coordinators.³

The experiential learning movement only truly takes center stage when we start preaching beyond the choir. It only progresses to the next level when law schools tell prospective students what choices each has made in its curriculum, pedagogy, and culture, as opposed to what they want to hear.

II.

MARKETING CLAIMS OUTPACE REALITY

While it crept in law school years ago, legal education now proudly touts experiential learning. The overnight migration of experiential learning into the curriculum may be more of a lawyering mirage. The current exuberance begs the question, how much of has law school actually changed?

At many law schools, however, nothing has changed except the marketing and spin. Law schools must provide a more clearly defined picture of the curriculum choices schools make and the learning experience prospective students can expect. Today, too many law schools are saying what they believe prospective students want to hear, that is, “we offer experiential learning.” A prospective student cannot separate true experiential learning change from empty marketing claims.

Experiential learning is “All Natural.” “Experiential learning” may be the “all natural” moniker of legal education. While a celebrated concept and practice, the varied meanings of the term “experiential learning” make it similarly near meaningless to our consumers, prospective students. Yet, on the websites and in the promotional material, law schools know the term itself followed by any variation of law school descriptions attracts students. Related to experiential learning, other labels and terms regularly surface in law school mar-

³ Wes Reber Porter, *Law Schools’ Untapped Resources: Using Advocacy Professors to Achieve Real Change in Legal Education*, (July 16, 2013), in *EDUCATING TOMORROW’S LAWYERS®* (featured guest posts), at <http://online.iaals.du.edu/2013/07/16/advocacy-professors-can-help-law-schools-achieve-real-change/>.

keting: “learn by doing,” “hit the ground running,” “and “practice-ready.”

By whatever definition, most agree that experiential learning includes the student’s work in clinics, simulation courses, externships, and pro bono opportunities. Nearly every law school had clinics and simulation courses as of the last decade or two. Similarly, nearly every law school also added externship and pro bono opportunities. Today, virtually all law schools offer several if not all of the above early pioneers of experiential learning. So, understanding the historical roots of experiential learning, if legal education long ago introduced these now commonly recited elements of experiential learning, then why is it only now embraced and celebrated in the law school marketing?

To read the propaganda, it would appear that all law schools got the message and responded swiftly. But this may be just another case of an industry telling its consumers what they want to hear. Within the walls of law schools, some administrators and law faculty are not yet convinced. Experiential learning has value in its isolated pockets, but further encroachment into the traditional law school pedagogy and curriculum creates the risk that the legal profession is supported by a trade school.

Further, experiential learning is not as universally accepted as it might appear. More than a few law faculty members in every school still prefer traditional teaching methods and assessment in law school. There are reasonable arguments supporting the traditionalist approach, Socratic method, and predominant use of appellate cases. After all, traditional legal education worked for many successful lawyers during *their* law school experience, including most law faculty.

Law schools today know that the term “experiential learning” connotes freshness and innovation. In fact, other related law school marketing favorites have derived from the experiential learning movement: “innovative teaching,” “curriculum reform,” “new courses,” and “integrating doctrine and practice.” Law schools know innovation itself is marketable to prospective students as well. Innovation also pleases alumni, and, to a lesser extent, employers, who endured a professional education in need on remodeling. It used to be that marketing sacrament to never say “new” for concern over implicitly conveying problems with the old. These claims are unverified and often vaguely connected to the law school’s curriculum, pedagogy, and culture.

But the experiential learning movement, to date, does not truly represent innovation in most instances. Within most law schools, dissenters abound. Many faculty members have not changed anything in

their teaching in decades. The experiential learning movement sits separately from where they see their role as an educator.

Yes, most schools have legal clinics, simulation courses, and externship and pro bono opportunities. Thus, most schools offer some forms of experiential learning. And so law schools can woo prospective students with the allure of experiential learning. The problem is that they are doing so without much real change to their respective curriculum, pedagogy, or culture. The overnight sensation of experiential learning, therefore, may be more of a marketing mirage. How much of has law school actually changed? How can a prospective student separate experiential learning fact from fiction?

Despite the long-standing experiential learning opportunities, and the marketing spin that law schools are putting on them these days, experiential learning offerings have not been prioritized in legal education. Many of these offerings are not required. Legal research and writing, as well, has been offered in law schools, but typically in the form of one course offered in the first year – separate and apart from the remainder of the law school curriculum – despite the fact that much of what practicing lawyers do is research and write for their clients. In short, much of the curriculum, pedagogy, and culture of legal education continues as it was before the experiential learning movement. Most law schools remain fueled by canned lectures, an abundance of appellate cases, one-directional class discussions, and single-assessment exams. Too many students continue to matriculate without the fundamental connections to practice, lawyering skills and values.

Cynically, the traditional approach to law teaching may create less work for the professor. It may mean less class preparation time, less time creating alternative modes of assessment and exercises, and less time offering feedback throughout the term (and outside of final exams). While law faculties also have comparable scholarship and service obligations at most accredited law schools, it is difficult to imagine that most professors would shift their teaching methods and sign on for more work. The complexion and expectations of the law teaching position have not changed much during the experiential learning movement. The administrative challenge of making large-scale curricular, pedagogical, and cultural change within a law school is far more difficult than claiming leadership in the field by pointing to the clinics, externships, and skills offerings.

To effectively implement the key elements of experiential learning, as listed below, the law faculty must learn from, even be led by, those colleagues tucked away in the isolated parts of the law school. To reinvent legal education in a meaningful way, law schools

must elevate, and even learn from, the second-class citizens on the faculty: clinicians, skills professors, and externship and pro bono coordinators.⁴ Even though subtle curricular changes took us decades to accomplish, hierarchal changes in the culture of legal education may be more stubborn.

III. TRAILBLAZERS OF THE EXPERIENTIAL LEARNING MOVEMENT

While some law schools today describe it as if they discovered something others have yet to find, alternative pedagogy is not new in legal education. Practical training, instead of an integral part of legal education from the outset, evolved into another popular marketing term under the umbrella of experiential learning. But experiential learning is decidedly not new.

The leaders in the bar conceived of clinical work as part of the law school experience a century ago.⁵ Several law schools claim the nation's earliest legal clinic such as Duke University and Northwestern University. More importantly, very early in the history of legal education, the legal profession envisioned practical training as part of the educational experience in law school.⁶ What is new is the public focus on experiential learning, the internal and external pressures toward more experiential learning, and some law schools' movement toward incorporating more experiential learning into their curriculum.

The momentum of the continuing conversation about experiential learning in legal education is promising. More law faculty members have been introducing some skills and values into their doctrinal subjects in the law school curriculum. Others have added value to their course offerings through additional exercises, writing assignments, oral presentations, and connections to practice, as well as for increased opportunities for assessment, professor feedback and student reflection.

The legal profession now boasts organizations and alliances devoted to experiential learning.⁷ We have websites and online platforms devoted to collaboration and discussion about elements of

⁴ *Supra*, note 3.

⁵ STEVE SHEPPARD, *THE HISTORY OF LEGAL EDUCATION IN THE UNITED STATES: COMMENTARIES AND PRIMARY SOURCES*, 876-78 (Lawbook Exchange Ltd. 2007).

⁶ NEW YORK STATE JUDICIAL INSTITUTE, *Introduction to Clinical Legal Education* (May 2005).

⁷ EDUCATING TOMORROW'S LAWYERS, at <http://educatingtomorrowlawyers.du.edu/>; see also THE ALLIANCE OF EXPERIENTIAL LEARNING, at <http://www.northeastern.edu/law/>

teaching that best serves students.⁸ Professors are authoring books, articles, essays and blogs on the topic of experiential learning and best practices. This journal will host the important conversations of the day related to the elements of experiential learning and how best to carry it forward elsewhere within a student's law school experience.

The trailblazers of the experiential learning movement are the legal clinicians, skills professors including legal research and writing, and externship and pro bono coordinators. Studying their work sheds light on what it means to truly integrate experiential learning into all facets of law school curriculum.

a. Clinicians

The pioneers of experiential learning begin with legal clinicians. To those outside of legal education, the clinical teaching model represents an obvious effective teaching technique. Students supervised by faculty and staff take on actual clients in need of legal assistance. Clinics emerged out of a need to help downtrodden in our community, but they quickly separated as the vehicle law students use to reinforce their learning and experience lawyering. Yet, marrying lawyers in training with the sectors of our population in need of assistance from lawyers remains a challenge to this day. Clinics also allow students to appreciate the law from different perspective. By starting with the problem of client, supervised students explore possible legal and other remedies and plan to achieve favorable resolution.

Thanks to these true innovators and reformists in the first clinics and other isolated pockets of academia, law schools have long embraced experiential learning. Early clinicians introduced the law student to problem-centric learning, live-clients, and their pivotal role as attorney-mentors. Founders of the first clinics bravely led law students out of the classroom to the conference room and courtroom. The clinical setting provides students the opportunity to have a "live client," research problems and disputes within a specialty area of practice, and a faculty supervisor to serve as mentor, instructor, and guide. Many elements of experiential learning that originated in the legal clinics are ripe for further implementation.

experience/leadership/alliance.html and its national symposium, at http://www.elon.edu/e-web/law/aell_symposium/aboutaell.xhtml.

⁸ See e.g., BEST PRACTICES IN LEGAL EDUCATION BLOG, at <http://bestpracticeslegaled.albanylawblogs.org/> and LEGALEDWEB (a platform to assist professors in flipping their classroom and enhance class meeting with experiential learning), at <http://legaledweb.com/>.

b. Simulation Courses Including Legal Writing

Simulation courses too have a long history in law school. Legal writing instructors and skills professors have occupied their own isolated pocket of the law school for several decades. Legal education has required or offered courses in legal writing, trial and appellate advocacy, and a few other tangible skills that translate most widely in the legal profession. Students enjoy “learning by doing” in simulation courses and as the necessary departure from traditional legal education.

Many of the simulation courses, like clinics, employ the problem method and allow students to research and present resolutions to legal issues. The beauty of the simulation is students can confront issues typically reserved for attorneys with more experience in practice. The simulation can skip around a legal matter without the delays or tediousness of some aspects of practice. If done right, the simulation can confront other skills and values of the legal profession such as corresponding with opposing counsel, negotiation, client counseling, letter writing, managing client expectations, time management, and more.

Skills professors and legal writing instructors have much to add to the experiential learning movement. Many of the key elements of experiential learning ready to implement more widely not the curriculum and culture of law school rest with these leaders. These professors have countless ideas to integrate more exercises, skills training, assessment, and feedback into the doctrinal curriculum. Skills professors, like clinicians, present law school administrators with a similar challenge – how do we allow skills professors to lead others on the faculty less involved with experiential learning?

c. Externship and Pro Bono Coordinators

Externship and pro bono opportunities have evolved into a similarly central role in a student’s path into the profession. For many students matriculating straight from undergraduate studies, an externship may be their first experience in an office setting and professional workplace. Externship coordinators assist students in finding externship opportunities that contribute to the student’s development, resume, and experience. Externship coordinators pedagogical role is far more significant. They train students about the externship relationship, oversee the sponsoring employers and supervisors, host regular seminars to share student experiences and reflection, and collect feedback from the employer.

Like in the other isolated pockets, externship and pro bono coordinators take on wide and varied forms within legal education. Some

coordinators are staff members, instead of faculty, teach other courses, or a collateral duty of a full-time faculty person.

IV.

KEY PRINCIPLES OF EXPERIENTIAL LEARNING TO WEAVE THROUGHOUT LAW SCHOOL CURRICULUM

The critical elements of experiential learning must percolate throughout the law school curriculum, pedagogy, and culture for the experiential learning movement to have truly impacted legal education. Learning from the above, there appear to be several key elements in experiential learning: (1) problem-centric teaching and self-learning; (2) live client interaction; (3) supervisor modeling and teaching; (4) skills training; (5) more writing and oral presentations; (6) peer observation (evaluation); (7) increased assessment points; (8) feedback from a lawyer and constructive critique; (9) reflection and journaling; and (10) connections to practice, professional identity and development, and values.

Problem-centric teaching and self-learning. Traditional law school is a tour through the doctrine deemed essential by the profession and bar. The doctrinal topic dictates the cases, lecture and class discussion. Legal clinics often have a narrow substantive focus, such as the Women's Employment Rights Clinic, the Environmental Law and Justice Clinic and Veterans' Benefits Clinics. In a legal clinic setting, however, the client and the problem or matter takes precedence to coverage of the substantive, doctrinal law. Students in a clinic learn the problem and desired outcome from a client and only then go research the substantive law for strategic options available to them.

The problem method itself enjoys some support as effective teaching in legal education.⁹ The problem-centric element of experiential learning fosters the student's self-learning and greater appreciation of the entirety of representation. They not only learn and retain the substance but students learn the process to find information and offer advice within the field. Part of any doctrinal course could shift, even in part, from "coverage" to problem-solving. With problem solving, students can confront issues of professional identity and development, ethics, and values.

Live client interactions. It is critical to connect a professional school setting to the inevitable context of practice. Students benefit from seeing themselves, or seeing their future selves, as professionals

⁹ Myron Moskowitz, *From Case Method to Problem Method: The Evolution of a Teacher*, 48 ST. LOUIS U. L. J. 1205 (2004) (describing the merits of the problem method, as compared to the much favored case method).

serving in the many roles of an attorney. Meeting with a live client immediately infuses import into any professional educational environment. The questions a non-lawyer client asks, the issues important to the client, and the misapprehensions about the process and range of outcomes can be eye-opening for the student in a legal clinic. Most importantly, for many students, they are reminded of the lawyer's larger role as it relates to a client with a legal problem or dispute.

Supervisor, attorney, model, mentor, etc. Law students need role models within the profession. Law students need to learn and develop professionally by staring at someone in the profession. It is beneficial to students to understand some the lawyering skills they will need in action.

The legal clinician models, teaches, counsels and debriefs, as well as serves in countless other functions to benefit students.¹⁰ Externship coordinators too model behavior and interaction within the profession. Students appreciate the situational decision-making and internal discussions inherent to practice. Students can learn other skills and values from carefully watching an attorney in practice. Skills professor can model and demonstrate skills in class or on video for students to mirror in their own presentations. We can implement the supervisor and role model dynamic of experiential learning more widely in the curriculum.

Skills training. Like their clinical colleagues, doctrinal law professors can demonstrate and train skills required in the profession and weave it carefully with the doctrine. Skills like interviewing, questioning, presenting, arguing, counseling can be effectively modeled for the students as part of a class. With more exercises, assignments, and increased assessment points, the professor has more opportunities available to model a supervisor in the profession. Students greatly benefit from particularized feedback on their written work product or presentation.

Increased assessment points. These key elements are related. By adding **more writing and oral presentations**, the professor has increased assessment points and can provide **particularized feedback** from a lawyer and constructive critique. Why wait for practice and a young lawyer's first supervisor to communicate expectations and critique? In traditional legal education, the professor may provide feedback after final exams and grading, when students are least likely to learn and develop from it. In experiential learning, regular assess-

¹⁰ Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education Through a Relationship-Centered Experiential Curriculum*, 41 BALTIMORE L. REV. 395 (2012).

ment is pulled across the term. Students develop professionally during these clinics and courses because they have the chance to incorporate feedback and improve.

Regular assessment, most easily offered in written assignments and presentations, should be more widely incorporated into the law school curriculum. Increasing the assessment points allows students to receive particularized feedback from an attorney on *their* work throughout the term. While traditional legal education leaves a percentage of students behind, enhanced assessment vehicles also allow the professor to devote energy and attention to struggling students.

Peer observation (and evaluation). As important as it is to “learn by doing,” it is equally important to learn by seeing. Common to simulation courses is peer observation. Many students can recognize teachings in the performance of others more readily than themselves. Peer observation can evolve into peer evaluation wherein the program or the specific class collaborates in its own collective professional development process.

Reflection and journaling. Externships and some clinical opportunities require reflection and journaling. A retrospective eye towards events and decisions in practice can be extremely valuable. Students often need to disconnect from their work and reflect upon it to appreciate important teachings. Any course can require or incorporate reflection along these lines.

The critical elements of experiential learning must percolate throughout the law school curriculum, pedagogy, and culture for the experiential learning movement to have truly impacted legal education. Simply telling prospective students what they want to hear, that is, “we offer experiential learning,” and pointing to long-existing experiential learning components – oftentimes not required or even counted toward graduation – is not enough.

How will we know when we’ve truly embraced experiential learning across the law school curriculums? The answer to these questions will be “Yes.”

- Does the law school really feature experiential learning on the level claimed in their marketing materials?
- Has the law school instituted experiential learning elements into the curriculum aside from the clinics, simulation courses, and externship and pro bono opportunities?
- Has the law school incorporated experiential learning in the 1L year? In doctrinal courses?
- Are law schools led by those who truly embrace, teach and preach experiential learning?

- Are available/required law school coursework inclusive of experiential learning?
- Does the law faculty have significant experience practicing law in the area they are teaching?
- Do law schools require experiential learning credits for graduation?
- Do they require specific aspects of experiential learning such as a “live client,” simulation courses, pro bono work or externship in a law office outside of law school?