

PORTALS TO PRACTICE: A MULTIDIMENSIONAL APPROACH TO INTEGRATING EXPERIENTIAL EDUCATION INTO THE TRADITIONAL LAW SCHOOL CURRICULUM

MYRA E. BERMAN*

I. INTRODUCTION

In 1996, in response to the MacCrate Report¹ and the impetus it gave law schools to change legal education, our profession recognized that “[T]he Times They Are A-Changin’.”² In 2007, primarily in response to the publication of Best Practices³ and The Carnegie Report,⁴ the times were again changing.⁵ Since then, the profession has been in a transformative phase, however, the impetus has not been solely due to the ideas and proposals of academics and practitioners; at present, external circumstances have led to a far more revo-

* Associate Dean for Experiential Learning and Associate Professor of Law, Touro College Jacob D. Fuchsberg Law Center. This article describes the work of Touro’s Strategic Planning Committee, chaired by Professor Deseriee Kennedy and driven by the creativity and commitment of Dean Patricia E. Salkin.

¹ ROBERT MACCRATE ET AL., AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION. American Bar Association, Section of Legal Education and Admission to the Bar, July 1992, available at <http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html> (last visited Sept. 10, 2014). For the remainder of this article, the abbreviated term, “MACCRATE REPORT” will be used to refer to this publication.

² Roy T. Stuckey, *Education for the Practice of Law: The Times They Are A-Changin’*, 75 NEB. L. REV. 648, 652-663 (1996); this article provides a thorough history of reform movements in legal education, focusing on the impact of the Council on Legal Education for Professional Responsibility, the MacCrate Report, and changes, over the course of decades, in the ABA standards for accreditation.

³ ROY T. STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP (Clinical Legal Education Association (2007)). For the remainder of this article, the abbreviated term, “Best Practices” will be used to refer to this publication.

⁴ WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, The Carnegie Foundation for the Advancement of Teaching, 2007. For the remainder of this article, the abbreviated term “Carnegie Report” will be used to refer to this publication.

⁵ BEST PRACTICES, *supra* note 3; *see also*, www.csale.org (last visited Dec. 12, 2014) (at approximately the same time as the publication of BEST PRACTICES, The Center for the Study of Applied Legal Education was established, providing legal educators with invaluable data related to clinics and externships, the core of experiential learning until recently).

lutionary change than after MacCrate or even Best Practices and the Carnegie Report. The cost of legal education, the reluctance and often the incapability of law firms to bear the cost of training new attorneys in basic lawyering skills, costs which they must pass on to their already overburdened clients due to increasing costs of litigation, the new technologies and the concomitant need for different kinds of lawyers with skills unfamiliar to the academy, the glut on the market of lawyers, except in the public interest areas where they are most needed – these factors have combined to create the perfect storm for thrusting experiential education to the forefront of the law school agenda and for altering the way law schools train future lawyers.⁶ And with two major national organizations focusing on this type of professional education, Educating Tomorrow's Lawyers⁷ and the Alliance for Experiential Learning in Law,⁸ we can state definitively that experientially-based legal education is here to stay.⁹ What we cannot say, with any degree of certainty, is whether the infusion of discrete experiential courses will significantly change the traditional law school curriculum, the core of what we define as a legal education.

⁶ The debate about the role and responsibility of law schools to offer experiential legal education has not been limited to the academy. Within the legal academy and in daily publications like the NY TIMES to the most widely-read chronicle on higher education in the United States to the posts and comments of the business community on the WALL STREET JOURNAL, the issue has been discussed. See, e.g., Katherine Mangan, *Law Schools Could Take a Hint from Medical Schools on Curriculum Reform*, CHRONICLE OF HIGHER EDUCATION, June 20, 2010; WALL STREET JOURNAL BLOG, *Who Should Foot the Bill for the Worthless Young Associates?*, <http://logs.wsl.com/law/2010/04/13> (last visited Sept. 10, 2014); Ashby Jones and Joseph Palazzolo, *What's a First-Year Lawyer Worth?*, WALL ST. J., Oct. 17, 2011; David Segal, *What They Don't Teach Law Students: Lawyering*, NEW YORK TIMES, Nov. 20, 2011; from within the academy, the economic issues leading to the unsustainability of law schools as they currently exist are fully described by BRIAN TAMANAHA in *FAILING LAW SCHOOLS* (2012) and some solutions are presented in RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013).

⁷ The Carnegie Institute's EDUCATING TOMORROW'S LAWYERS is a consortium of law schools working together to assure that legal education is designed to produce graduates who are practice-ready; for a full description of ETL's mission and objectives, see www.educatingtomorrowlawyers.org (last visited Sept. 10, 2014).

⁸ The Alliance was created at Northeastern University Law School which hosted its first annual symposium in 2011. The Alliance has grown to have representatives from over one hundred law schools and practitioners from legal service organizations, joined together to promote new approaches to legal education and curricular reform; for additional information, see <http://www.northeastern.edu/law/experience/leadership/alliance.html> (last visited Sept. 10, 2014).

⁹ For excellent summaries and discussions of the background of the current reform movements, see Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949 (2012); see also David Thomson, *Defining Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING, 1 (2014).

II. CURRENT STATE OF CURRICULAR REFORM IN U.S. LAW SCHOOLS

In the 1990's, subsequent to the publication of the MacCrate Report, there was a proliferation of clinics, the primary vehicle through which lawyering skills were being taught and practiced during the law school years.¹⁰ During the first decade of the 21st century, we saw the continued expansion of clinics and externships and the development of simulation and other types of hybrid courses, those that integrate doctrine and practice.¹¹ And that continues today, with a majority of law schools engaging in some degree of curricula reform or reconfiguration to ensure that students are practice-ready.¹² Many of these changes are geared towards making room in the curriculum for additional experiential courses. What we have not yet seen is curricular reform that transcends the traditional progression from doctrinal coursework to simulated work, to live-client work, not as a conceptual framework for an entire law school program. No law school, for instance, has decided to replace some of the first-year required doctrinal courses with professional development or skills development courses.¹³ But this idea and others equally radical have been mentioned as possibilities for the future: delay Contracts or Property until the 2L year of law school and replace it with Interviewing, Negotiation and Counseling or even with an externship, for instance, in an area being covered by a doctrinal course, or in one notable case, replace a first-year elective with a clinic.¹⁴ Whether we want to re-invent legal education or whether we want to work mostly within the established structures has become the primary issue – not

¹⁰ See Stuckey, *Education for the Practice of Law*, 652; see also the *Timeline* of the NATIONAL ARCHIVE OF CLINICAL LEGAL EDUCATION, <http://lib.law.cua.edu/nacle/timeline.html> (last visited Dec. 14, 2014). The clinical education movement, which began in the 1960's continued to grow through the early 1990's at least partly due to the recognition received by both the American Association of Law Schools and the American Bar Association, but it was the 1990's that saw the greatest proliferation of clinics, largely as a result of the MacCrate Report and its emphasis on teaching not only knowledge but also skills and professional values. The Clinical Legal Education Association, see www.cleaweb.org, was established shortly before the MACCRATE REPORT was published, in 1991.

¹¹ BEST PRACTICES, p 121-122.

¹² Myra Berman, Christine Cerniglia Brown, Christine Cimini, Roberto Corrada, Kate Kruse, *Creative Initiatives*, ___ ELON U. L. REV. ___ (forthcoming 2014).

¹³ This was first discussed, quite informally, at the 2013 ETL conference, by a small group of academicians, practitioners and judges. To date, there has been nothing in print to suggest these types of curricular options.

¹⁴ See <http://www.law.yale.edu/academics/clinicalopportunities.htm>; at Yale Law School, first year students have the opportunity to participate in a general legal services clinic, permitted by Connecticut's practice order.

whether or not we ought to devote academic hours to train our students to become profession-ready. That seems to be an accepted objective at most law schools.¹⁵ The current discussion is how law schools can create a balance in the curriculum, how we can either avoid becoming trade schools or instead become extremely good trade schools,¹⁶ how we can define ourselves and formulate our curriculums as other professional graduate schools do,¹⁷ with an equal emphasis on theory and practice, doctrine and process, and knowledge, skills and values.

There are options for achieving this curricular balance in order to train our students to become lawyers. Yet despite many initiatives over the past five years, most law schools have elected to redefine or restructure the traditional curriculum by simply adding experiential components or courses to their offerings, so that the 1L year remains as the year of learning doctrine with a sprinkling of simulated practice units attached to the typical foundational courses; the 2L year continues to develop one's knowledge of the law through electives but also incorporates practical learning experiences, primarily in the form of full-semester practicums associated with courses, simulations or hybrid courses; and the 3L year becomes the experiential year, with students engaged in clinics, externships, semesters-in-practice and other forms of such programming.¹⁸ There are, of course, exceptions,

¹⁵ See *Creative Initiatives*, *supra* note 12. A majority of American law schools have as part of their curricular offerings some types of practice-readiness programs or courses.

¹⁶ BEST PRACTICES, p. 13.

¹⁷ See CARNEGIE REPORT, p. 79-81; *see also*, <https://www.aamc.org/download/68806/data/road-doctor.pdf> (last visited December 12, 2014). While all of the professions seek to incorporate elements of practical training into their curricula, they maintain different methods and structures for this incorporation. The American Association of Medical Colleges reports that the vast majority of medical school curricula begin with two full years of knowledge and skills training, primarily in the classroom, before experiential-based learning, in the field, is initiated, except for a minority of medical schools where problem-based learning is used from the first year onward; *see also* http://journals.lww.com/academicmedicine/Fulltext/2010/02000/Calls_for_Reform_of_Medical_Education_by_the.18.aspx (last visited December 12, 2014). This article summarizes the results of the Carnegie Foundation's EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY (2010), stating that the Flexner method, initiated a century earlier, remains an appropriate method of education, with a university-based medical school providing two years of classroom/laboratory instruction followed by two years of clinical experience in a teaching hospital. Thus, while law schools are often unfavorably compared with medical schools, in terms of the experiential opportunities we offer, the reality is that legal education has progressed well beyond the medical school model in terms of infusing practice-readiness into the curriculum.

¹⁸ See *Creative Initiatives*, *supra* note 12.

some quite notable,¹⁹ but the majority of law schools are still adhering to this basic structure for the delivery of a legal education.

This structure for curricular reform, despite the new emphasis on experiential education, which retains either an exclusively or primarily doctrinal focus within the first year, is conceived as a horizontal continuum of knowledge, skills, values from the 1L through the 3L years.²⁰ Each year of the law school curriculum often has a discrete objective, either to teach the foundational knowledge required of lawyers, or to integrate knowledge of the law with the development of skills required for its practice, or to provide students with diverse types of apprenticeships so that they can engage in the practice of law under close faculty or practitioner supervision. This represents significant progress in the movement towards accepting experiential education as the primary methodology for teaching law to our students. But does this level of progress go far enough towards training law students for the modern practice of law? While it may partially achieve the objectives set forth in Best Practices and The Carnegie Report for an integrative and coherent curriculum, will it transform our students into “learners in worlds that transcend the classroom” by focusing on experiential education as the bulwark of the curriculum and the primary method of instruction?²¹

Best Practices and The Carnegie Report acknowledge that the Socratic case method, the “scientific” method of training a law student to think like a lawyer, continues to dominate first-year instruction in doctrinal courses; both also state that legal analysis and knowledge of doctrine are essential competencies that should be taught throughout the years of law school, though perhaps with a reduced emphasis on the case method.²² Given the message from both works, that the

¹⁹ See John Burwell Garvey, *Making Law Students Client-Ready: The Daniel Webster Scholar Honors Program, A Performance-Based Variant of the Bar Exam*, NYSBA JOURNAL, Sept. 2013, 44-50; see also www.law.du.edu/index.php/experiential-advantage (last visited Dec. 12, 2014) for the Experiential Advantage program, specifically the first-year curricular offerings which include the Carnegie Integrated Courses.

²⁰ Earl Martin and Gerald Hess, *Developing a Skills and Professionalism Curriculum – Process and Product*, 41 U. OF TOLEDO L. REV. 327 (Winter 2010); this article describes the strategic planning process of 2009 at Gonzaga, where the faculty, well before it became “trendy” to do so, created a curriculum that was saturated with experiential education, but virtually all of those offerings occurred in the 2L and 3L years of the law school education; see also Roger J. Dennis, *Symposium 2009: A Legal Education Prospectus: Law Schools & Emerging Frontiers: Building a New Law School: A Story from the Trenches*, 61 RUTGERS L. REV. 1079, 1084 (stating that despite the new emphasis on experiential education the first year curriculum remains the same, to “preserve the benefits of a traditional legal education”).

²¹ Robert Dinerstein, *Experiential Legal Education: New Wine and New Bottles*, 44 AMERICAN BAR ASS’N J. 2 (January 17, 2013).

²² See, CARNEGIE REPORT, p. 3; BEST PRACTICES, vii.

teaching of knowledge, skills and values should be fully integrated components of law school education, it becomes clear that the first-year curriculum, as presently designed and taught, “gives students a skewed and inaccurate vision of the legal profession and their roles in it.”²³ In “the academic world of law. . .knowledge, know-how and ethical judgment” remain separate and discrete subjects to be taught to students during different phases of their education.²⁴ If we are to achieve the goal of preparing students for actual professional work, “to think, to perform, and to conduct themselves as professionals,” then we ought not begin the student’s education on a horizontal continuum that deals solely or even primarily with cognitive skills development, for that will not be a realistic introduction to the world of a legal professional.²⁵

In promoting a shift from an academy with a scientific type of program that focuses predominantly on academic inquiry to a professional institution where we train lawyers, the Carnegie Report suggests that educators view law school education as apprenticeships, mapping their curriculums and methods of instruction accordingly.²⁶ The three apprenticeships, that form the basis of legal education, are cognitive or intellectual (roughly corresponding with legal analysis and correlating with doctrinal course offerings), practical (skills development, focused on learning how and when to intervene in contextual situations, and taught in simulation courses or clinics) and ethical-social (providing learning opportunities for students to develop professional identities, best taught through simulation and participation in lawyering activities).²⁷ For an adequate and proper legal education, these three apprenticeships must be balanced; and, to achieve this balance, law schools will need to do more than just “shuffle” existing curriculums.²⁸ By continuing to separate these skills and values, these apprenticeships, based upon the traditional three-year program of legal education, we deconstruct the practice of law into an artificial set of distinct and disparate parts; these “segregated domains” ought to be reconnected, ought to function in a holistic, unified, and integrative way as we redesign our programs.²⁹

In recent years, law schools have made significant progress in reforming their upper level curriculum to better reflect the merging of

²³ BEST PRACTICES, p. 16; CARNEGIE REPORT, p. 147.

²⁴ CARNEGIE REPORT, p. 81.

²⁵ CARNEGIE REPORT, p. 82; BEST PRACTICES, p. 14.

²⁶ CARNEGIE REPORT, p. 27.

²⁷ CARNEGIE REPORT, p. 13-14, p. 27-29.

²⁸ CARNEGIE REPORT, p. 147.

²⁹ BEST PRACTICES, p. 73.

the three apprenticeships in order to graduate competent and ethical lawyers. The focus, however, has not been on the first year.³⁰ Yet without the infusion of the practical and ethical apprenticeships into the first year curriculum, there will be not only a failure to provide students with a fully integrative legal education, but there will also be a disconnect with the remaining two years of law school.³¹ “The first year experience as a whole, without conscious and systematic efforts at counterbalance, tips the scales, as Llewellyn put it, away from cultivating the humanity of the student and toward the student’s re-engineering into a ‘legal machine.’”³²

The questions, then, for legal educators engaging in strategic planning who want to redesign their curriculums to achieve the alternative vision of Best Practices, of an integrated and coordinated program of teaching knowledge, skills and values in a balanced way, throughout the three years of law school, is not only what to incorporate or change in their curriculum but where to put these changes. What is the proper timing for experiential education? When should it occur during a student’s education? And, how should these contextual learning opportunities be configured within the larger curriculum?³³

III.

THE PORTALS TO PRACTICE

At Touro Law Center, we decided to move further towards creating an experiential law school curriculum, for all of our students rather than just some, for all three years rather than just the upper level years. The curriculum would be structured to promote the objectives of our mission: to produce practice-ready professionals who are committed to social justice. To that end, we designed a five-year strategic plan, entitled “Portals to Practice” which will provide students with an education that integrates the core competencies, from their first semester through graduation – and beyond.³⁴ We chose the

³⁰ One of the most progressive and innovative first-year reforms continues to be developed through the Legal Writing Institute at University of Seattle Law School, particularly in the work of Sara Rankin, Lisa Brodoff, and Mary Bowman. For a sampling of how to coordinate first-year skills courses with both doctrinal and clinical programs, see Sara Rankin, et. al., *We Have a Dream: Integrating Skills Courses and Public Interest Work in the First Year of Law School (And Beyond)*, 17 CHAP. L. REV. 89 (2013).

³¹ CARNEGIE REPORT, p. 77-78.

³² BEST PRACTICES, p. 17; see also CARNEGIE REPORT, p. 77-78.

³³ Deborah Maranville, et. al., *Clinical Theory Workshop: Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517, 530 (2011/2012).

³⁴ The Strategic Plan goes well beyond experiential education within the law school portals, including the development of pre-law access programs, a post-graduate incubator program, the development of centers and institutes in areas where students will have

word “portal” because it represents not a two-dimensional gate, entry, or path to the profession, as reflected in a three-year traditional curriculum, but rather a twenty-first century modern and multidimensional approach to legal education, to guiding our students towards becoming competent and ethical, practice-ready members of the legal profession – as it presently exists and as it evolves in the foreseeable future. During their years in law school, students will experience programs or courses of instruction that incorporate, to varying degrees, the MacCrate, Shultz and Zedeck, and Best Practice competencies. (See Appendix A.) What the portals do, that many other innovative legal education programs do not do, is redesign the curriculum, particularly the first year, to reflect a new balancing of the guiding triumvirate of doctrine, skills, and values.

What follows is a snapshot of how the law school portals for each year of law school alter the traditional balancing of knowledge, skills and values.

*A. The First Portal: Introduction to Law and Lawyering -
Integrative Offerings to Learn Doctrine, Develop
Basic Skills, Perform Legal Tasks*

The objective of the first law school portal is to provide students with opportunities to learn doctrine through traditional first-year classes; to engage in legal analysis in multiple and diverse ways (i.e. to think, speak and write like lawyers – but not limited to classroom activities); to introduce students to basic lawyering skills; to infuse professional values into all of the foundational courses and other first-year programs; to provide students with practice opportunities not only through simulation activities but also through contact with unrepresented litigants. To achieve this, we have created, reformed, or expanded several curricular, co-curricular and extra-curricular programs, using all of the resources available to us: alumni practitioners, the courts and judges with whom we share a campus, our Public Advocacy Center (a group of not-for-profit organizations housed in the law school that engages our students with advocacy services, research and even client contacts), and of course our faculty. What follows are the highlights of our first-year program, not including the types of innovative courses we offer but that are also offered at many other law schools (e.g. simulation activities attached to the required

increased job opportunities (and concentrations that are attached to those centers and institutes). This paper describes only those components of the Portals to Practice Strategic Plan that deal directly with curricular and co-curricular initiatives and reforms during the three years of law school focusing extensively on the first year.

first-year courses or lawyering skills infused into our legal process program).

1. *The Courthouse Curriculum – An Approach to the Multidimensional Portals: The First-Year Programs*

This type of integrative curriculum may not be physically replicable at some law schools, but it is conceptually replicable and valuable for its commitment to expanding legal education beyond the walls of the academy – and not just in terms of 3L clinics and externships.

Touro Law Center is situated on a courthouse campus, a small plot of land where one can walk the triangle in just a few minutes – from the law school to the federal courthouse to the state courthouse. In 2006, prior to the widespread infusion of experiential learning into legal education, Touro Law created and implemented a court observation program. The primary objective of this program was to operationalize MacCrate’s “common enterprise,” of practitioners working together to educate future lawyers by focusing on professionalism and skills development.³⁵ Given our courthouse location, Touro Law was in a position to create such a joint undertaking, not only with the bar, as MacCrate and the ABA had suggested, but also with the bench. Nearly nine years ago, we began to develop collaborative relationships with our neighbors for the purpose of initiating what would ultimately be a comprehensive program of instruction that included this third “player” in the common enterprise of legal education – the courts. From the first semester through the final semester, a Touro Law student has the opportunity to learn practice skills at the primary institution associated with the legal profession.

The first year of the courthouse curriculum includes the 1L court observation program and the 1L Pro Bono Project, which together include exposure to core courtroom and client competencies – all as a required part of the first-year of legal studies.

a. *The Court Observation Program*³⁶

In this unique program, students become familiar with the courthouses, both federal and state, and the role of the lawyers within those buildings, guided on this journey by a faculty-practitioner and by the courthouse judges. The students observe arraignments and confer-

³⁵ MACCRATE REPORT, p. 3.

³⁶ See Karen Dybis, NATIONAL JURIST, *PreLaw Magazine*, Ten Most Innovative Law Schools (Winter 2009); available at <http://nxtbook.com/nxtbooks/cypress/prelaw-winter-09> (last visited 12/13/2014).

ences, and frequently participate in federal court jury selection. While students discuss the substance and process they observe, the primary goal of this particular program is to introduce students to professional roles and values, from multiple perspectives.

All incoming students must attend two full morning court sessions, one at the federal courthouse and one at the state courthouse. They attend in groups of approximately twenty, accompanied by a program director, a well-known and highly respected regional practitioner. In addition to Q & A sessions during the observation, conducted primarily by judges with input from attorneys who are present, the students are later debriefed by the director. The program objectives are: (1) to introduce students to courtroom dynamics and processes; (2) to demonstrate to students elements of attorney effectiveness; (3) to establish collaborative relationships among the law center, the bench and the bar; (4) to begin the process of assessing the quality of justice dispensed in our courts; (5) to infuse the law school curriculum with practical educational experiences. Clearly, these are ambitious goals for a program that places students in a courtroom for 3-4 hours on two separate occasions during the academic year, but when combined with the discussions with judges and attorneys, the debriefings by the director, and the lunches/dinners with members of the judiciary and the bar that we added to the program requirements, we did, in varying degrees, achieve the objectives.³⁷

Our objectives are not limited to those identified above. We also seek to facilitate familiarity for the students with the courthouses, initiate them into the non-legal aspects of lawyering directly related to professionalism, motivate them to think about their career paths and provide them with information, from practitioners, so that they can make educated choices, and begin a discussion on justice based more on a real courtroom than on portrayals seen through either the lens of the media or the lens of the courts themselves, in the appellate opinions most students are studying during their first year of law school.

Specifically, students are introduced to the environment of the courthouse and to courtroom procedures. In the state courthouse, they are escorted through the different “Parts” that reflect the structure and hierarchy of the civil and criminal court system. They receive behind-the-scenes glances at courtroom dynamics which gives them a

³⁷ Michelle Zeitler, *FIRST-YEAR LAW STUDENTS IN THE COURTROOM: AN EXPERIMENT IN PRACTICAL LEGAL EDUCATION AT THE TOURO LAW CENTER*, September 2009, available at www.courtinnovation.org/research/first-year-law-students-courtroom (last visited June 10, 2014). This study provides a detailed description and assessment of the 1L Court Observation Program, over the course of three academic years, based upon student, faculty and stakeholder survey results.

sense of belonging (or wanting to belong) to a special group, the legal profession. The players themselves, the judges, attorneys, law clerks, court officers and litigants, speak with the students and define their respective roles; and, during the course of their observation, students see, firsthand, how these individuals perform in those roles. All of these activities, when combined, provide students with an exciting, interesting, and useful introduction to the workings of the court and of the lawyers who practice within them. While they are in the courtroom, students are observing not only the proceedings but also the demeanor of attorneys and the level of professionalism displayed by members of the bar as they make their appearances. They focus on preparation, attire, manner of speech, collegiality, civility, and other non-legal but extremely valuable lessons about lawyers. Much of what they observe about professional behavior is then reflected upon during the debriefing sessions.

b. The Required First-Year Pro Bono Project

This began as an extension of the court observation program, solely because it utilizes the time slots that are reserved for that program's required activities. It has, however, evolved into an extraordinary opportunity for students to become involved in the actual practice of law, having contact with real clients and performing basic law-related tasks. Prior to engaging in intake interviews, document collection, and fact-gathering, students learn the basics of professional responsibility,³⁸ as well as the substance and procedures involved in specific fields of practice. This year we added to our matrimonial work (on uncontested divorces) an opportunity to work with an attorney on summary proceedings in landlord-tenant courts. Students receive six hours of classroom training that is directly related to the type of law they will be exposed to when dealing with the litigants. They also experience, initially at the law school,³⁹ and then firsthand, that access to justice depends, far too significantly, on characteristics like income level, race and culture. Our students learn the value of pro bono work while simultaneously providing assistance to many of the under- and unrepresented clients we frequently encounter in our courts. Since

³⁸ As part of the Portals to Practice strategic plan, a two-credit required course in Professional Responsibility was added to the first-year curriculum; as part of the Pro Bono Project, two additional hours of training, specific to attorney-client relations, is also required.

³⁹ Prior to the contact with litigants, the students participate in a Poverty Simulation activity, a three-hour exercise offered by New York State's Office of Court Administration to demonstrate the kinds of problems, not only legal but social and cultural that members of our communities often encounter when they attempt to negotiate the court system without assistance.

New York's practice order does not extend to first-year students, our 1Ls may not appear on the record or deal directly with legal issues, but they certainly can engage in some of the tasks routinely performed in court and at law firms by non-lawyer assistants or advocates. This program has been implemented not only with the approbation but also with the assistance of the New York State Office of Court Administration.⁴⁰

We have several goals to achieve over the next four years. For instance, we intend to expand the practice areas for the 1L project to include bankruptcy intake work (where 1L students will partner with 3L clinic students, working on intakes and document gathering), advocacy for victims of domestic violence (where students will work directly with attorneys in one of our PAC agencies, assisting them in fact-gathering for the filing of petitions for Orders of Protection), and consumer debt (where students will work directly with a volunteer alumni attorney, in the courthouse, using a model similar to what we have established for landlord-tenant court.

Whenever appropriate, we will be involving our first year doctrinal faculty in this process because there are numerous ways in which what the students are doing in the Pro Bono Project can be integrated into their classroom learning. For instance, in the uncontested divorce project, students use software that generates pleadings, affidavits, waivers, orders and judgments. All of these documents, created as a result of student data input, are applications of material learned in the Federal Civil Procedure course. Our required four-credit Property course contains a unit on landlord-tenant law; there is no doubt that students involved in the landlord-tenant pro bono project will have a deeper understanding of and appreciation for the significance of the cases they study in their doctrinal course; the hope is that they will bring the applied learning, that occurs outside the classroom, into the classroom – and vice versa.

As an extension of the law school's focus on experiential education and specifically on the value of pro bono service, Touro Law encourages its student organizations to engage in pro bono projects, most frequently under the supervision of either a PAC agency attorney or our own staff attorney who works out of the PAC. Our PAC attorney and our admitted faculty frequently supervise first-year students who have opted to become active with a particular student group, one that may be working on pro bono projects. Again, we

⁴⁰ Judge Fern Fisher, Deputy Chief Administrative Judge for the New York City Courts and the judge presiding over all of the state's access to justice programs, has worked closely with Touro Law to develop and implement this program. Her staff has been, and remains, integral to the implementation of our first-year access to justice programs.

attempt to match students with their areas of interest, even with respect to these extra-curricular activities. A first-year student interested in immigration law, who obviously cannot participate in the immigration clinic or externship, can join the Iraqi Refugee Assistance Program Project and write a brief, similar to the brief they are writing for their Legal Process class, and gather information from Afghans or Iraqis seeking asylum under special administrative visas (usually by Skype since the applicants are overseas), all under the close supervision of an attorney.⁴¹ Like the more structured curricular 1L Pro Bono Project, these activities provide students with invaluable experience and with sufficient exposure to the law and lawyering so that they are already beginning to form their professional identities by the end of their first semester in law school.

The Court Observation Program and the 1L Pro Bono Project combine to provide students with a substantial introduction to legal practice and professionalism. When viewed in the context of the first-year curriculum, these required programs, along with the Legal Process courses and a required Legal Foundations course (both focused on the development of analytical skills) are a significant portion of classroom and out-of-classroom activities during their first year of law school.

2. *Practice Partners*

As an additional method of bringing the student to law practice and bringing law practice to the student, from the moment they begin their legal education, Touro Law has established a Practice Partners program where every incoming student is matched with a member of the bar, usually but not necessarily an alumnus of the law school, in an area of practice that is of interest to the student. Practice Partners agree to be available to the student for their entire law school career and to encourage the student to shadow them during all six semesters of their legal education. We anticipate that this program will enhance the number and type of summer job opportunities available to our rising 2L students, either at the firm of their practice partner, or through networking done on their behalf by their partner.

This, then, represents the core of the first portal, clearly not merely the required foundation courses, but a nearly equal balance between basic coursework that delivers knowledge and opportunities

⁴¹ Victor Ramos, *Law Students Lend Hand to Refugee Applicants*, NEWSDAY, April 13, 2014, available at <http://www.newday.com/long-island/suffolk/law-students-lend-hand-to-refugee-applicants-1.7694939>.

for professional development of skills and values through experiential learning programs.

B. The Second Portal: Integrating Practice into Courses – Simulation and Beyond (Experiential Offerings to Continue Learning Doctrine, Developing Skills, and Performing Increasingly Complex Legal Tasks)

The second portal utilizes many of the creative initiatives adopted at law schools around the country⁴² but since the first portal has already introduced students to basic skills and practice, the simulations, hybrid courses, professional labs, and externship opportunities exist in a different, more highly developed context.

1. The Courthouse Curriculum – The Integrative Programs

The court programs of the second portal focus on the development of intermediate-level lawyering skills specific to practice areas not necessarily taught as discrete courses in the law school. A series of court-practice courses, incorporating both civil and criminal litigation and using hybrid pedagogical methods, combine doctrinal knowledge with professional values (acquired in these courses mostly through observation of the lawyering process and structured reflection about it), and with ongoing skills development, basically picking up where the 1L experiential learning activities ended. The courthouse curriculum is predicated on an assumption that students in the second portal have already developed basic interviewing and fact-gathering skills, have been introduced to cultural competency issues, understand how difficult the court system can be for some clients to negotiate, and have a sense of how a competent and ethical attorney ought to conduct herself.

The third portal, the apprenticeship year, will take students into the courtroom on a regular basis, most frequently when they enroll in the required clinic. The question that arises is how experiential learning from within the courts can be transfused into an integrative second portal, where hybrid and simulation courses as well as labs and field placement programs are the cornerstone of the curriculum; where knowledge, skills and values are integrated into single courses. Unlike the first portal, where Professional Responsibility is a discrete course that teaches legal ethics and Torts is also a discrete course that teaches knowledge and (depending upon the methods used) analytical skills, the second portal contains individual courses that in themselves

⁴² *Creative Initiatives*, *supra* note 12; these types of courses/programs of instruction are described in depth in BEST PRACTICES.

integrate the competencies. A curriculum that is predicated on using the courthouse as an education laboratory, needs such a course, a course that not only integrates within its design doctrine and practice but that also provides a structural and substantive link between the introduction to experiential education and its culmination. To that end, Touro Law introduced a series of American Trial Courts (ATC) courses, each focused on different types of practice within the courthouses and each a fusion of theory and practice, of doctrinal and experiential learning. Students rotate through parts of the courts, learning to apply much of the substantive knowledge they acquired in their first-year classes to the active practice of that law, but they also recognize that they will be required, as professionals, to learn new law on a regular basis if they are to advocate effectively for their clients.

Presently, there are four ATC courses offered within the second portal. They are all introductions to court practice: (1) Theory and Practice in the Federal Courts includes rotations through the United States Bankruptcy Court and the United States District Court, both in the Eastern District of New York; (2 and 3) Introduction to New York State Court Practice I and II includes rotations through parts of the Family Court; the Supreme Court (a trial level court in NY) which handles matrimonial and civil cases, mostly negligence, the Commercial Division; the District Court which deals with misdemeanors as well as felonies in the problem-solving courts (e.g. Drug Court, Mental Health Court, Human Trafficking Court, Veterans Court) and specialized parts (Domestic Violence crimes and the Suffolk Felony Youth Part), Landlord-Tenant Court; the County Court which handles all felonies; and (3) The Justice Courts, which in NY are the town and village courts in particular geographic areas of Nassau and Suffolk counties, handling all cases except felonies; this course is geared towards part-time evening students as many of these courts sit on evenings and weekends.

All of these courses are similarly designed and structured, with classrooms in the courthouse. During each weekly integrative seminar session, students move from classroom to courtroom to chambers, observing, studying and discussing how to synthesize the doctrine they have learned in the classroom with the experiential education they are acquiring in the courtroom.⁴³ The students are never passive observers. During courtroom sessions, the judges frequently address the class and engage in discussions with students about whatever pro-

⁴³ For a sample of the interconnections between the observations, conversations with judges and attorneys, and the seminars, *see* Appendix B, an overview of the scheduled sessions during the district court rotation.

ceeding is occurring, even when litigants are present. For example, after a plea allocution or a sentencing hearing, the judge, prosecutor and defense attorney address the class, in chambers, to explain the various dispositions available and why one may have been more appropriate in this case than another. The vast majority of proceedings ATC students observe represent the daily work of the courts, conferences, calendar calls, pre-trial matters so students quickly see the rather un-glamorous but very real work of attorneys.

Towards the end of each rotation, generally three times during the semester, students are assigned to fictional law firms and given case files (redacted “real” case files) with tasks that place them in the roles of attorneys. In consultation with their colleagues and the instructor (i.e. the senior partner), students select a case for which they prepare, submit papers, and engage in oral argument before sitting judges, usually those they have already observed.⁴⁴ They receive feedback on their performances and submissions, not only from their instructor, a member of the faculty, but also from the judge, the law clerk, and any practicing attorney who happens to be present in the courtroom during the student’s presentation. The assignments vary (e.g. omnibus motions to suppress evidence, orders to show cause, petitions and cross-petitions for diverse family court proceedings, defense attorney DWI applications, letter motions on discovery issues, pendente lite motions, motions to dismiss) but always correspond with what the students are learning in both the courtroom and the classroom.

All of these course components coalesce into an integrated experiential learning course, a hybrid type of course using simulations based on real case materials and documents in real courtrooms. Unlike the Court Observation Program and the 1L Pro Bono Project, both limited in that they focus more on professionalism, basic skills, and on the non-legal aspects of lawyering, the ATC courses provide students with a fully integrated exposure to the practice of law, giving them the opportunity to develop competencies in problem-solving, legal research, litigation procedures, both oral and written, organizing and managing legal work, recognizing ethical issues and trying to find resolutions, and working collaboratively and cooperatively even with adversaries.

⁴⁴ Students are encouraged to collaborate with peers and to seek advice from alumni practitioners, just as they would be doing as junior associates at a law firm.

2. *The Practice Modules*

Touro Law offers traditional doctrinal courses taken as co-requisites with an experiential course that we call a practice module. These comprehensive experiential components, each carrying independent academic credit, are attached to classes including Criminal Procedure, Business Organizations, Family Law, Trusts and Estates, and Environmental Law. Throughout the semester, students play the role of attorneys, usually dealing with an ongoing, complex problem in which they simulate the work that real lawyers would do with clients, in the particular area covered by the module. Generally, full-time faculty teach the doctrinal course while practitioner-adjuncts teach the two-credit experiential component. Collaboration between the faculty and the practitioner is an essential aspect of this type of learning opportunity in order to provide our students with a fully integrative program of instruction.

3. *Legal or Professional Labs*

Touro Law has recently introduced into the curriculum legal or professional labs, an optional one-credit addition to selected electives. This is a field placement experience, directly related to the coursework, of approximately five hours per week over a fourteen week semester. Students gain hands on experience at the placement but they are also required to connect the work done in the field with the doctrinal learning that occurs in the classroom. To date, such professional labs have been introduced for electives in our new concentrations in Land Use & Sustainable Development Law, and Aging and Longevity Law. Generally, these labs are followed by more extensive externships at the private firm or government office where the student had been placed during the lab. The labs are an intermediate step, following the 1L pro bono project(s), towards professional development.

4. *The Solo & Small Practice Concentration*⁴⁵

In response to nationwide trends that show an increase in the number of recent law school graduates that “hang a shingle,”⁴⁶ and Touro statistics that indicate nearly one-third of our graduates enter either solo or small practice settings, intending to start their own

⁴⁵ The proposal for this concentration was prepared by Touro Law Center Professors Meredith Miller and Lynne Kramer. Much of the information in this section is drawn directly from their proposal (on file with the author).

⁴⁶ Anika Anand, *Law Grads Going Solo and Loving It*, MSNBC (June 20, 2011), http://www.nbcnews.com/id/43442917/ns/business_careers/t/law-grads-going-solo-loving-it-USLLFKXGfN4 (visited Dec. 12, 2014).

firms, shortly after graduation, Touro Law approved this new concentration area for its students. The proposed new courses focus on bridging the gap between pure practice courses and pure doctrinal courses, so that students could learn competencies in a multi-faceted way, with knowledge and skills merged together in one course, similar to the way the courthouse curriculum and the portals are generally structured. The intention of this concentration is to provide students with the opportunity “to put doctrine to practice, build confidence, forge a professional identity, and gain valuable knowledge concerning the business of operating a law practice. The focus in the proposed courses is on the “practice-oriented instruction that begins with and deepens doctrinal knowledge.”⁴⁷ In addition to Law Practice Management, the ATC courses described above, the traditional skills development courses, this concentration will add a survey of transactional law practice and a course entitled “Law By the Numbers,” which will teach future practitioners not only how to understand financial statements, investment reports, net worth statements, support and maintenance calculations but how to read these documents with the purpose of appropriately counseling a client about them. Additionally, there will be an Ethics course specific to solo practice. We expect that students will enroll in electives, externships, and – in their apprenticeship year – in clinics, based upon the area(s) in which they elect to practice.

5. *Externships*

Virtually all law schools offer externship opportunities to students. Touro Law’s externships are available to students from the summer following their first year through their final semester. The externships afford students additional experience in observing and participating in, to varying degrees, the practice of law. Students gain knowledge and skills from the work they do outside the law school, a benchmark of the portal philosophy.

C. The Third Portal: The Apprentice Year (The Capstone Experiential Learning Opportunity: Using Doctrine, Skills, and Values to Serve Clients and Prepare for Practice)

In this final law school portal, the practice-ready programs and the objectives that drive them, culminate in a year devoted to the full integration of the practice-oriented legal education offered at Touro, yet they retain the nearly equal balance of knowledge, skills and values development. The commitment to social justice, to pro bono

⁴⁷ Meredith Miller, Curriculum Proposal Overview, presented to the Touro Law Center faculty, May 7, 2014 (on file with the author).

service, and to client-readiness is reflected in the selection of our clinics as the apprenticeship requirement for all students. All law schools now offer clinics to their students, and some law schools have adopted apprenticeship years,⁴⁸ but few law schools have experiential programming that make the clinics a culminating event rather than an independent educational component of a law school education.

All of our clinics provide our students with immersive experiences, working with real clients on real problems, in extremely significant areas that reflect the realities of life in our particular Long Island community. We offer our students direct apprenticeships, under the close supervision of faculty-practitioners, with clients in financial distress or facing economic exigencies, clients and public servants involved with the criminal justice system, and clients who are part of our most vulnerable populations including the elderly, immigrants, veterans, and families in crisis. One of our current clinics is a “pop-up” clinic,⁴⁹ created immediately after Hurricane Sandy. This clinic has become the regional leader in assisting families in need as a result of the superstorm and has evolved along with the issues faced by the storm’s victims. Clinic students are presently engaging in federal litigation, participating fully in mediation and federal court practice with entities like FEMA and other major insurance companies and defense firms. Students are learning not only litigation but also alternative dispute resolution, hands on, in real life situations, often involving learning new areas of law, such as Insurance Law, Construction Law, and Contract Law. As in the first portal, even in this “practice” portal, students must continue to focus on enhancing not only skills but also knowledge, in relatively equal parts.

IV.

CONCLUSION

As can be seen by the description of three of our portals to practice, rather than a horizontal continuum of progress towards practice-ready professionals, Touro is committed to offering its students a multidimensional apprenticeship-based education that integrates the core competencies, from the students’ first semester through graduation – and beyond. These portals infuse contextual and experiential education into all facets of the law school curriculum and at all stages of the student’s professional development. By organizing our offerings into

⁴⁸ See *Creative Initiatives*, *supra* note 12.

⁴⁹ Stefan Krieger, Theo Liebmann, and Serge Martinez explained the concept and structure of legal pop-up clinics during their presentation of “Pop-Up Clinics: Going Back to Our Roots to Enhance Our Clinical Teaching” at the 2014 AALS Conference on Clinical Legal Education, April 28, 2014.

portals, each of which must contain a fairly equal proportion of knowledge, skills and values, for each level of law school education, we can coordinate our programs with our mission: to produce practice-ready graduates who are committed to social justice. The portals for each year coalesce to form a circle of learning during the law school years, and this is best demonstrated by the unique courthouse curriculum developed at Touro Law.

What is the next step in the movement towards a legal education that emphasizes experiential learning? We have reached a point where we can state that most law schools have, to some degree, added experiential education, as defined in our new lexicon, into their curriculum. Law schools have created programs that change how and when the core competencies are taught. If law schools continue to focus curricular reform on infusing innovative and pervasive experiential offerings into their courses of instruction, we will be moving towards the integrative vision of a legal education that produces competent and ethical professionals.

APPENDIX A
LEGAL EDUCATION OUTCOMES

MacCrate*	Best Practices† (Adapted from Law Society of England and Wales)	Shultz and Zedeck‡ (Characteristics of Lawyer Effectiveness)
<p><u>Skills</u></p> <ol style="list-style-type: none"> 1. Problem-solving 2. Legal analysis 3. Legal research 4. Factual investigation 5. Communication 6. Counseling 7. Negotiation 8. Advice re: litigation or ADR 9. Management of legal work 10. Recognizing and resolving ethical dilemmas <p><u>Values</u></p> <ol style="list-style-type: none"> 1. Competent representation 2. Striving to promote justice, fairness, and morality 3. Striving to improve a self-governing profession 4. Professional self-development 	<ol style="list-style-type: none"> 1. Demonstrate appropriate behavior and integrity in a range of situations 2. Demonstrate capacity to deal sensitively and effectively with clients, colleagues and others from a range of social, economic and ethnic backgrounds 3. Communicate effectively 4. Recognize clients' financial and personal constraints and priorities 5. Effectively approach problem-solving 6. Effectively use current technologies and strategies to store, retrieve and analyze information and to undertake factual and legal research 7. Demonstrate an appreciation of the commercial environment of legal practice 8. Recognize and resolve ethical dilemmas 9. Use risk management skills 10. Recognize personal and professional strengths and weaknesses, to identify the limits of personal knowledge and skills; develop strategies to enhance personal performance 11. Manage personal workload; manage efficiently and concurrently a number of client matters 12. Work as part of a team 	<ol style="list-style-type: none"> 1. Problem-solving 2. Practical judgment 3. Passion and engagement 4. Analysis and reasoning 5. Creativity/Innovation 6. Integrity/honesty 7. Writing 8. Community involvement and service 9. Building client relationships and providing advice and counsel 10. Organizing and managing work 11. Fact-finding 12. Self-development 13. Researching the law 14. Speaking 15. Ability to see the world through the eyes of others 16. Strategic planning 17. Networking and business development 18. Stress management 19. Listening 20. Influencing and advocating 21. Questioning and interviewing 22. Negotiation skills 23. Diligence 24. Organizing and managing others 25. Evaluation, development, mentoring 26. Developing relationships

* THE MACCRATE REPORT, p. 138-141.

† BEST PRACTICES, p. 39-40.

‡ Shultz and Zedeck, *Lawyering Effectiveness Factors*, http://www.albanylaw.edu/media/user/faculty_scholarship/wkshops/Presentation_Materials/Lawyering_Effectiveness.pdf (last visited Dec. 12, 2014).

APPENDIX B

ATC: INTRODUCTION TO NEW YORK STATE COURT PRACTICE I
SAMPLE SYLLABUS: DISTRICT COURT ROTATION*Seminar #1 At the Courthouse*

Introduction to the New York State Unified Court System:

Chief Administrative Judge of the County

Readings:

- Familiarize yourself with the site for the NY State Unified Court System: www.nycourts.gov
- Familiarize yourself with the website for the District Court http://www.nycourts.gov/courts/10jd/suffolk/dist/DC_FAQ.shtml
- Weinstein, Jack B. "The Role of Judges in a Government Of, By and For the People." 30 *Cardozo L. Rev.* 1 (Sept. 2008)

Observation: Arraignments – D-11 (Judge Toomey)

Seminar #2 The District Court – Arraignments & Beyond

From the Bar: Marc Gann, Esq., Defense Attorney, Former Assistant District Attorney, President of the Nassau County Bar Association

Readings:

- Criminal Law & Practice, NYSBA Practice Manual, pp. 1-30
- Lawrence K. Marks, Editor-in-Chief, "Preliminary Proceedings in Local Criminal Courts," 7 *N.Y. Prac.*, Chapter 3; "Bail & Recognizance," Chapter 4 [available on Westlaw]
- Read one of the following law review articles:
 - Byrne, Mari. "Baseless Pleas: A Mockery of Justice." 78 *Fordham L. Rev.* 2961 (May 2010)
 - Jacobs, James, et. al. "The Expanding Scope, Use and Availability of Criminal Records." 11 *N.Y.U. J. Legis. & Pub. Pol'y* 177 (2007-2008)
 - "Speechless: The Silencing of Criminal Defendants." 80 *N.Y.U. L. Rev.* 1449 (Nov. 2005)
 - Holland, Brooks. "Holistic Advocacy: An Important But Limited Constitutional Role." 30 *N.Y.U. Rev. L. & Soc. Change* 637 (2006)

Observation – Prisoner Part D-42 (Judge Henry)

Seminar #3 The Problem-Solving Courts – Drug Court

From the Bench: Judge Madeline Fitzgibbon, Supervising Judge of the Suffolk County District Court

From the Bar: Lois Roman, Esq., Assistant District Attorney, Drug Court

From the Courthouse: Ed Giallella, Drug Treatment Court Coordinator

Readings:

- "New York's Problem-Solving Courts Provide Meaningful Alternatives to Traditional Remedies." Center for Court Innovation http://www.courtinnovation.org/_uploads/documents/NYProblemSolvingCourts.pdf

- Kathryn Sammon, “Therapeutic Jurisprudence: An Examination of Problem-Solving Justice in New York,” 23 St. John’s J. Legal Comment 923 (Fall 2008)
- John S. Goldkamp, “The Drug Court Response: Issues and Implications for Justice Change,” 63 Alb. L. Rev. 923 (2000)
- Alan Feuer, “Out of Jail, Into Temptation: A Day in a Life,” N.Y. Times, Feb. 28, 2002 (handout)

Observation – (Drug Court, Judge Iliou; Mental Health Court, Judge Fitzgibbon)

Seminar #4 The Omnibus Motion

Hon. Mark Cohen, Supreme Court Justice, Adjunct Professor and former Assistant District Attorney

Readings:

- People v. Molineux, 168 N.Y. 264 (1901)
- People v. Sandoval, 34 N.Y.2d 371 (1976)
- United States v. Wade, 388 U.S. 218 (1967)
- People v. Brisco, 99 N.Y.2d 596 (2005)
- Miranda v. Arizona, 384 U.S. 436 (1966)
- People v. Huntley, 15 N.Y.2d 72 (1965)
- Mapp v. Ohio, 367 U.S. 643 (1961) and Dunaway v. New York, 442 U.S. 200 (1979)

Observation –All-Purpose Trial Part (Judge Murphy)

Seminar #5 The District Court –The All-Purpose Trial Parts

From the Bench: Judge Glenn A. Murphy

From the Bar: Ed Heilig, Esq., Division Chief, Suffolk County District Attorney’s Office

Readings:

- Criminal Law & Practice, pp. 30-62; 69-74
- NY Penal Law, Selected Provisions (based on court’s docket on observation day)
- NY Vehicle & Traffic Law, Selected Provisions (based on court’s docket)

Student Appearances before District Court Judge Richard Horowitz
(Bail Hearings; Oral Arguments on Written Submissions: DWI Applications, Omnibus Motions, Motions to Dismiss)