

# THE AMERICAN BAR ASSOCIATION'S NEW MANDATES FOR TEACHING PROFESSIONAL SKILLS AND VALUES: IMPACT, HUMAN RESOURCES, NEW ROLES FOR CLINICAL TEACHERS, AND VIRTUAL WORLDS

*Roy Stuckey\**

## INTRODUCTION

The accreditation standards for law schools were amended on August 12, 2014, to require law schools to establish and publish learning outcomes that are designed to achieve the schools' educational objectives, which must include competence in the professional skills needed for competent and ethical participation as a member of the legal profession.<sup>1</sup>

Law schools must require students to satisfactorily complete "one or more experiential course(s) totaling at least six credit hours."<sup>2</sup> Among other requirements, such courses must provide multiple opportunities for student performances and, with the exception of field placement programs, must include feedback about those performances from faculty.<sup>3</sup>

The new requirements will be applied to law schools during American Bar Association ("ABA") site inspections beginning with the 2016–2017 academic year.<sup>4</sup> "[C]ompliance will be assessed

---

\* Professor Emeritus Roy Stuckey taught in-house clinical courses, externships, and simulation-based skills courses, as well as doctrinal courses at the University of South Carolina School of Law and as a visitor at six other law schools. He was a member of the MacCrate Task Force and the Council of the ABA Section of Legal Education and Admissions to the Bar. He is the principal author of ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION (2007).

1. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. 2015–2016 Standard 301, 302(d) (AM. BAR ASS'N 2015). The Council of the ABA Section of Legal Education and Admissions to the Bar is the body that is granted the authority to accredit law schools by the United States Department of Education. In order to be accredited, a law school must comply with ABA standards.

2. *Id.* Standard 303(a)(3).

3. *Id.* Standard 303(a)(3), 304(a)(ii).

4. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, TRANSITION TO AND IMPLEMENTATION OF THE NEW STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2 (2014). [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_a](http://www.americanbar.org/content/dam/aba/administrative/legal_education_a)

based upon evaluating the seriousness of the school's efforts to establish and assess student learning outcomes."<sup>5</sup> Factors for consideration include:

[W]hether a school has demonstrated faculty engagement in the identification of the student learning outcomes it seeks for its graduates; whether the school is working effectively to identify how the school's curriculum encompasses the identified outcomes, and to integrate teaching and assessment of those outcomes into its curriculum; and whether the school has identified when and how students receive feedback on their development of the identified outcomes.<sup>6</sup>

This Article focuses on the mandates related to teaching professional skills and values. It considers whether the new requirements will have any impact on improving the skills and values of law school graduates, and it proposes a way to create competent, affordable teachers of skills and values. It also encourages law schools to develop simulation-based courses that incorporate virtual worlds.

#### I. WILL THE NEW MANDATES HAVE ANY IMPACT?

The new ABA mandates are an important development, and they should have a positive impact on legal education in the long run. I do not think, however, that the mandates will have an immediate and profound impact on legal education. I have two primary reasons for being skeptical.

First, six credit hours of experiential education will not have a significant impact on the professional competence of law school graduates. It would take at least fifteen credit hours after the first year of law school to produce the desired results. Requiring fifteen credit hours of experiential coursework in the final two years of law school would bring legal education more in line with other professional education.<sup>7</sup> Unfortunately, the ABA rejected the recommendation of the Clinical Legal Education Association to require fifteen credit hours.<sup>8</sup>

---

nd\_admissions\_to\_the\_bar/governancedocuments/2014\_august\_transition\_and\_implementation\_of\_new\_aba\_standards\_and\_rules.authcheckdam.pdf.

5. *Id.*

6. *Id.*

7. See Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. 1, 43 app. (2014) (including a chart showing that seven fields of professional education require one-quarter to half of instruction be practice-based and clinical, whereas legal education only requires 1/14 of credits to be taken in practice-based courses with no clinical requirement).

8. See CLINICAL LEGAL EDUC. ASS'N, CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA) COMMENT ON DRAFT STANDARD 303(A)(3) & PROPOSAL FOR AMENDMENT TO EXISTING STANDARD 302(A)(4) TO REQUIRE 15 CREDITS IN EXPERIENTIAL COURSES 1 (2013), <http://www.cleaweb.org/Resources/Documents>

Although the ABA mandates do not require enough credit hours to make a difference, state bar admission regulators can impose stricter requirements. The New York Court of Appeals, following the recommendation of its Task Force on Experiential Learning and Admission to the Bar, amended its rules for admission to practice in December, 2015, to require every applicant to “demonstrate that the applicant possesses the skills and values necessary to provide effective, ethical and responsible legal services.”<sup>9</sup> The rule provides five pathways for accomplishing this. One of them is the successful completion of “15 credit hours . . . of practice-based experiential coursework designed to foster the development of professional competence.”<sup>10</sup> Also, the State Bar of California has recommended that law schools be required to provide fifteen units of practice-based experiential coursework.<sup>11</sup> Although these rules would only directly affect New York and California law schools, they are likely to have an impact on law schools in many other states whose graduates want to practice in New York or California.

The potential impact of the ABA mandates is also weakened by the absence of a requirement for law schools to organize their programs of instruction to help students develop their professional skills and values in a structured, coordinated curriculum. In the book *Best Practices for Legal Education*, my coauthors and I encourage law schools to organize their programs of instruction to strive to achieve congruence; to progressively develop knowledge, skills, and values; to integrate the teaching of theory, doctrine, and practice; and to teach professionalism pervasively throughout all three years of law school.<sup>12</sup> The ABA mandates simply give schools a list of skills and values that they can choose to teach, or not.<sup>13</sup>

/2013-01-07%20CLEA%2015%20credits.pdf; Mary Lynch, *Council on Legal Education Maintains Tenure and 405, Adds Requirement of Six Experiential Credits and Calls for Notice and Comment on Paid Externships*, PLACE TO DISCUSS BEST PRACTICES FOR LEGAL EDUC. (Mar. 16, 2014), <http://bestpracticeslegaled.albanylawblogs.org/2014/03/16/council-on-legal-education-maintains-tenure-and-405-adds-requirement-of-six-experiential-credits-and-calls-for-notice-and-comment-on-paid-externships/>.

9. RULES OF THE COURT OF APPEALS FOR THE ADMISSION OF ATT'YS AND COUNSELORS AT LAW § 520.18(a) (N.Y. COURT OF APPEALS 2015).

10. *Id.* § 520.18(a)(2).

11. TASK FORCE ON ADMISSIONS REGULATION REFORM, STATE BAR OF CAL., PHASE II FINAL REPORT 1 (2014), <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000012730.pdf>.

12. ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION 93–104 (2007).

13. See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. 2015–2016 Standard 302 (AM. BAR ASS'N 2015) (“A law school shall establish learning outcomes that shall, at a minimum, include competency in the following: . . . (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation

Consequently, I do not expect many schools to respond to the ABA mandates with the comprehensive curriculum reforms they should make, at least not any time soon. We will most likely just see some additional sections of existing skills courses and field placement programs at most law schools. I hope I am wrong.

The second reason for my skepticism about the short-term impact of the new ABA mandates is that, although the ABA requires law schools to seek to develop competence, it will be impossible for law schools or the ABA to measure the effectiveness of their programs of instruction. They do not know how to define competence. They do not know what new lawyers do or need to know, and they do not know how to measure the competence of lawyers. This is going to be an interesting issue to follow once the ABA site inspection teams start asking schools to demonstrate their success in developing competence.

ABA Standard 315 requires the dean and the faculty of a law school to "conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and [to] use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum."<sup>14</sup> In the initial phases of implementation of the institutional effectiveness standard set forth in Standard 315, compliance will be assessed based on the seriousness of the law school's efforts to engage in an ongoing process of gathering information about its students' progress toward achieving identified outcomes and whether it is using the information gathered to regularly review, assess, and adapt its academic program.<sup>15</sup>

Figuring out what needs to be taught and defining and measuring competence are important issues that each law school should be trying to answer. Most law schools cannot afford to waste time and resources pursuing educational objectives that will not help their students succeed in the legal profession. It is important that they focus on achieving the most important learning objectives for their students in light of the careers their students are likely to have.

It is especially important for the average or below average students at the typical law school to be as prepared as possible for

---

as a member of the legal profession."). Interpretation 302-1 of the ABA Standards says that "other professional skills . . . may include skills such as interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation." *Id.* Standard 302-1.

14. *Id.* Standard 315.

15. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, *supra* note 4, at 2.

law practice because they are less likely to possess highly developed self-regulated learning skills than students at the top of the class or at elite law schools.

Self-regulated learners are motivated to teach themselves—that is, to learn what they need to know. They are aware of the knowledge and skills they possess or lack, and they use appropriate strategies to actively implement or acquire them.<sup>16</sup> It is disappointing that the ABA did not include self-regulated learning among the skills that law schools should be teaching.<sup>17</sup> It is difficult to practice law effectively if one is not a self-regulated learner, especially when one is just beginning law practice. “Self-reflection and lifelong learning skills” are the first of the attributes of effective, responsible lawyers that *Best Practices for Legal Education* urges law schools to develop in their students.<sup>18</sup> Many others have also stressed the importance of helping law students develop their self-regulated learning skills.<sup>19</sup>

As Nancy Rapoport wrote:

It’s possible to send the graduates of elite law schools out into the world hoping that they figure out how to be lawyers later, although it’s not a good idea. At any rate, many of the elite school graduates will work in jobs that provide some supervision of their work product. But it’s criminal to send the graduates of modal schools out into the world—where they’re more likely to work in smaller firms or as solo practitioners—until we’ve given them the skill sets necessary to avoid malpractice.<sup>20</sup>

The National Conference of Bar Examiners (“NCBE”) understands the importance of knowing what lawyers do and its relation to assessing competence. NCBE President Erica Moeser made the following comments in 2011 regarding possible changes to the bar examination:

16. Michael Hunter Schwartz, *Teaching Law Students to Be Self-Regulated Learners*, 2003 MICH. ST. U. DCL L. REV. 447, 453.

17. The ABA standards include “self-evaluation” among the list of “other professional skills” in Interpretation 302-1, but self-regulated learning is more than that. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015–2016 Standard 302-1.

18. STUCKEY AND OTHERS, *supra* note 12, at 48–49.

19. See MICHAEL HUNTER SCHWARTZ, *EXPERT LEARNING FOR LAW STUDENTS* (2d ed. 2008); MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD F. HESS, *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* (2009); MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD F. HESS, *WHAT THE BEST LAW TEACHERS DO* (2013); Schwartz, *supra* note 16, at 451.

20. Nancy B. Rapoport, *Changing the Modal Law School: Rethinking U.S. Legal Education in (Most) Schools*, 116 PENN ST. L. REV. 1119, 1145 (2012).

We are dedicating resources to having an outside vendor conduct a content validity study. The first step in the process is a job analysis—a major undertaking that will ask “What do lawyers do?” That inquiry will necessarily flow into “What do lawyers need to know in order to do whatever it is they do?” Ultimately, we will ask “Are we evaluating lawyers in ways that are relevant to entry into the profession of law?”

Since we focus the bar examination as an assessment of the entry-level practitioner, NCBE’s job analysis will undertake to determine how new lawyers spend their time in those early years—and then consider what knowledge, skills—and yes, values—are essential.<sup>21</sup>

The answers to the NCBE’s inquiry will differ among practice settings, of course. Hopefully, the results will help law schools understand where they need to be focusing their resources. Nevertheless, each law school’s circumstances are different; therefore, each law school should be seeking its own solutions to the issues that the NCBE is investigating.

Despite my skepticism about their short-term impact, the ABA mandates are a positive development. Law schools are being forced to examine their missions and to think more carefully about their educational objectives than ever before. This is a very good thing that would not be happening at some schools without ABA pressure. Also, students will benefit from the additional instruction in professional skills and values. They may not achieve competency, but at least they will know something about professional skills and values that they otherwise would not have known.

I am hopeful law schools will realize that six credit hours is not enough once they set their learning objectives and begin to consider how to achieve them. Some schools will take the challenge seriously and go far beyond the ABA’s mandates. In fact, quite a few law schools were doing so before the ABA told them they had to strive to develop competence.<sup>22</sup> Models will evolve. Success stories will encourage competition among schools that compete for students and job placements. The new generation of law teachers will have quite different experiences in their careers than I had in mine. Their students will be better for it.

## II. HUMAN RESOURCES: HOW CAN LAW SCHOOLS CREATE COMPETENT AND AFFORDABLE TEACHERS OF SKILLS AND VALUES?

It is clear that most law schools will need to devote more human resources to teaching skills and values if they want their students to be prepared to enter the legal profession. This is true whether a school is responding to ABA or state bar mandates or just realizes

---

21. Erica Moeser, *President’s Page*, BAR EXAMINER, June 2011, at 4, 4.

22. Some of these schools are named in Kuehn, *supra* note 7, at 25–27.

that it is the right thing to do. Students cannot develop professional skills unless they have opportunities to receive instruction about skills, to perform them multiple times, and to receive feedback on their performances. ABA Standard 304(a) requires that the feedback come from a faculty member.<sup>23</sup>

My working assumption is that most schools will be expanding their simulation-based courses and externships, but they will not be expanding their in-house clinics.<sup>24</sup>

Simulation-based courses are the most effective tool for providing introductory skills instruction.<sup>25</sup> They provide pedagogical structure to help students understand and improve on their performances of the skills being taught. The report of the Alliance for Experiential Learning in Law Working Group on Cost and Sustainability, prepared by Stephen Ellmann and Katherine R. Kruse, notes:

Lawyering skills literature articulates the frameworks, structures, and underlying value commitments implicit in a wide range of professional skills, permitting explicit instruction in the theory and practice of lawyering tasks once considered intuitive and unteachable, such as client interviewing, client counseling, . . . problem solving, advocacy, and cross-cultural awareness.<sup>26</sup>

By way of example, consider the commonly offered course Interviewing, Counseling, and Negotiating (“ICN”). For that course to meet the ABA’s requirements, it must offer multiple opportunities for performance under faculty supervision and with faculty feedback. If we want students to conduct complete interviewing, counseling, and negotiation sessions, a large proportion of the performances and feedback must take place outside of class time.

23. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. 2015–2016 Standard 304(a) (AM. BAR ASS’N 2015). It is curious that the ABA apparently dismissed the potential value of feedback from people other than faculty, such as peers and standardized clients, especially for formative evaluations. See Karen Barton et al., *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 CLINICAL L. REV. 1 (2006) (arguing in favor of the validity and reliability of assessments by standardized clients).

24. *But see* Kuehn, *supra* note 7, at 32 (analyzing data and concluding that 84% of law schools can afford to offer an in-house clinical experience to every student). I agree with Kuehn that every law school can afford to offer at least one in-house clinical experience for all students and the reason that few do is a matter of will, not costs. However, I do not expect that to happen.

25. For a more complete discussion of appropriate educational goals for simulation-based courses, see STUCKEY AND OTHERS, *supra* note 12, at 180–84.

26. Alliance for Experiential Learning in Law, *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. 1, 25–26 (2015).

Assume there are 250 students enrolled in ICN courses at a school and they perform one interview, one counseling session, and one negotiation under faculty supervision outside of class. Each session will probably take about one hour to conduct the performance and receive feedback. If so, this will take 750 hours of faculty time during the semester, the equivalent of 93.75 eight-hour days. That is a lot of time, and I question whether one opportunity to perform each of these skills with formative feedback would accomplish very much. If students perform each skill twice, it would take 187.5 days of faculty time. And how would one evaluate how well they learned the skills? Perhaps by having the students perform again and receive summative assessments.<sup>27</sup>

The human resources issue is compounded if a school wants to offer simulation-based instruction in other professional skills or advanced skills courses.

So, where are the teachers coming from? We know where they are not coming from. Law schools are not going to hire enough additional full-time instructors to teach the number of simulation-based courses they need to offer. Most law schools face shrinking resources and cannot afford to hire more full-time faculty.

It is even less likely that existing doctrinal faculty are going to be converted into professional skills teachers, or even embrace the transition to outcome-based learning, because it would be against their perceived best interests. William Henderson made the following observation:

Law schools are ill-equipped to teach many of these critical competencies . . . . This retooling challenge entails both new substantive knowledge and unfamiliar teaching methods. Regarding the latter, most of these skills and competencies require experiential teaching—i.e., learning by doing.

Here is the brutal truth: the resources to pay for this retooling are going to have to come at the expense of traditional scholarship. Time is our primary asset; this is a painful tradeoff because scholarship is the most enjoyable part of the job for many law professors. Further, unlike prolific scholarly writing, retooling curriculum does not enhance one's prospects

---

27. I am well aware that the approach I have outlined is only one of many ways to organize introductory professional skills instruction, and it is not even the best model. I simply present it to illustrate that simulation-based courses can be very time intensive if developing competence is a goal. No matter what approach is used, however, most schools are going to need more teachers to give all students multiple opportunities to perform with faculty supervision and feedback.

of getting a lateral appointment, so many law professors will not come to this party willingly.<sup>28</sup>

The best alternative for most law schools will be to hire practicing or retired judges and lawyers to teach simulation-based professional skills courses. They know how to practice law, and they understand professional values. Practicing lawyers bring credibility: they use the skills they would be teaching; they know the realities of dealing with clients, opposing attorneys, and judges; and they understand the importance of professional values to success in the legal profession. And they are the most affordable option.

This option creates a number of problems, which I will discuss a little later.

Before I do that, let me discuss field placement courses (also known as externships). Some schools will undoubtedly think they can meet the ABA's mandates for skills and values instruction through their field placement courses.

Field placement courses are underappreciated by law schools for their potential impact on students' professional values and identities. They can also serve other useful educational purposes more effectively and efficiently than other teaching methods.<sup>29</sup> I would like to see law schools more purposely focus on the potential of field placement courses for teaching professionalism.

It would be a mistake, however, to try to use field placement courses to provide introductory instruction in professional skills. For one thing, most field placement courses would have difficulty meeting the ABA mandate for experiential courses to "develop the concepts underlying the professional skills being taught."<sup>30</sup> Also, field placement courses do not commonly give students many (or sometimes any) opportunities to perform the skills on the ABA's list under the supervision of faculty or to receive feedback from faculty about their performances, even if we assume that the ABA will consider field placement supervisors to be "faculty."

The problems with using judges and lawyers to teach professional skills and values, in either simulation-based courses or field placement courses, boil down to one thing: they are not professional teachers. They are not familiar with the textbooks. They have no experience with developing syllabi, lesson plans, simulations, or rubrics. They have no experience with observing student performances and providing skilled feedback.

28. William Henderson, *The Hard Business Problems Facing U.S. Law Faculty*, NAT'L L.J.'S L. SCH. REV. (Oct. 31, 2011), <http://legaltimes.typepad.com/lawschoolreview/2011/10/index.html>.

29. For a discussion of appropriate educational goals for field placement courses, see STUCKEY AND OTHERS, *supra* note 12, at 198–200, 279–80.

30. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCH. 2015–2016 Standard 303(a)(3)(ii) (AM. BAR ASS'N 2015).

This problem can be addressed by devoting adequate resources to train, guide, monitor, and evaluate lawyers and judges who are hired to teach skills and values courses.

This raises another resource issue: where are the faculty trainers coming from?

### III. NEW ROLES FOR CLINICAL TEACHERS AS TEACHERS OF TEACHERS

I propose that law schools divert some of their best and most experienced skills and values teachers from their regular course assignments and ask them, at least temporarily, to help lawyers and judges become competent skills and values teachers. That is, their primary role would be as teachers of teachers, rather than teachers of students.

This would include not only teachers of simulation-based courses but also teachers of in-house clinical courses who would work to improve the focus and quality of field placement courses, including the articulation of clear and achievable learning outcomes and the development of valid and reliable assessment methods.

These teachers of teachers could help develop syllabi and lesson plans. They could provide materials and instruction about effective classroom and one-on-one teaching. They could coteach some classes and observe some one-on-one meetings and provide feedback to the judges and lawyers. They could help develop assessment protocols for assigning grades or providing formative evaluations. They could fill in as teachers when scheduling conflicts arise due to professional obligations.

I am aware that many skills and values teachers would not want to become these teachers of teachers, and some would not be very good at it. Different skills sets are involved in teaching adults how to teach as opposed to teaching students how to practice law.

While many of these reassignments might be temporary, there will be a continuing need for faculty in these roles because of the turnover of practitioner-teachers. There may, however, be some faculty members who will decide to continue working in this capacity on a long-term or permanent basis.

My proposal is not altogether original. After the Second National Symposium on Experiential Education in Law, the report of the Working Group on Cost and Sustainability discussed the potential value that practitioners could bring to skills and values instruction as adjunct faculty members, but it also noted the potential educational costs:

The more a program relies on adjuncts, or non-faculty members, the more full-time faculty members must take on training, mentoring, and supervision roles for these other instructors. Even with this safeguard in place, it seems likely that practitioner-faculty, though they may bring many benefits in terms of areas of expertise and ability to expose students to

real practice settings, will not be as skilled in teaching as full-time faculty become over time. Designing a program that takes these considerations into account requires care, but the possibilities of programs embracing the expertise that practicing lawyers offer make the effort potentially well worth undertaking.<sup>31</sup>

I am aware that my proposal to divert some faculty members from teaching students and replace them with practitioner teachers will not be popular with many of those who might be affected. As Paul Campos argued, “The expenses associated with clinical legal education can be reduced through greater use of well-designed externship programs, which allow students to obtain many of the same benefits at a radically reduced cost.”<sup>32</sup> This suggestion drew the following response from Scott Fruehwald in the Legal Skills Prof Blog on August 2, 2012:

I disagree with Campos’s proposal that law schools cut down on clinics in favor of externships. I believe that law students get their best training in law clinics where they are supervised by expert teachers of clinical skills. I do not trust externships. The attorneys that provide the externships do not know anything about teaching law students. (Teaching is a skill that needs to be developed.) In general, I think that law students need more practical training with teachers that are trained in providing practical training.<sup>33</sup>

I expect that a lot of clinical teachers agree with Fruehwald. I agree that experienced in-house clinical teachers should be better teachers than practitioners.

Fruehwald, however, overlooks the fact that there are some very worthwhile educational objectives that can be achieved by field placement courses without relying on the supervising attorneys being skilled teachers. These include, for example, reflecting on experiences via journals and classroom discussion, learning what lawyers do, and experiencing the work environments of lawyers. Students can also read materials and participate in guided classroom discussions about how to learn from practice, professional identity, professionalism, the legal process, client relations, and law practice economics and management—all informed by the students’ experiences in their externships. I am not going to get into a debate

31. Alliance for Experiential Learning in Law, *supra* note 26, at 36.

32. Paul Campos, *The Crisis of the American Law School*, 46 U. MICH. J.L. REFORM 177, 217 (2012).

33. Scott Fruehwald, *An Inconvenient Truth: The Crisis of the American Law School* by Paul Campos, LEGAL SKILLS PROF BLOG (Aug. 2, 2012) (citation omitted), [http://lawprofessors.typepad.com/legal\\_skills/2012/08/an-inconvenient-truth-the-crisis-of-the-american-law-school-by-paul-campos.html](http://lawprofessors.typepad.com/legal_skills/2012/08/an-inconvenient-truth-the-crisis-of-the-american-law-school-by-paul-campos.html).

in this paper as to whether these are “many of the same benefits” of in-house clinics as claimed by Campos.<sup>34</sup>

My proposal responds to Fruehwald’s concerns by calling on law schools to devote the necessary resources to help judges and lawyers become skilled enough to teach simulation-based and field placement courses.

Fruehwald does not propose any other alternative. As much as we might wish that it would happen, it is not realistic to expect most law schools to expand their in-house clinical programs significantly. If we want to give all students multiple opportunities to get involved in the real worlds of law practice in structured academic settings, field placement courses are the only practical option for many schools.

#### IV. IT IS TIME TO INCORPORATE VIRTUAL WORLDS INTO U.S. LEGAL EDUCATION.

I hope that one impact of the ABA mandate to establish and publish competency-related outcomes will be a move to establish courses that are built around virtual law firms. It is a method of instruction that is too promising to ignore.

In *Best Practices for Legal Education*, we promoted this idea for the third-year curriculum:

Most courses could be organized as simulated law firms in which students work individually and in groups to resolve legal problems. For example, one course might be organized as a general practice firm, while others might be organized, for example as a corporate firm, a family law firm, a criminal defense firm, or prosecutor’s office.<sup>35</sup>

Courses organized around virtual law firms have been slow to develop in the United States, but they are spreading in Commonwealth countries. To my knowledge, the first one began in 2000 at the Glasgow School of Graduate Law at the University of Strathclyde in Scotland,<sup>36</sup> then some programs were started in England and Wales before the concept migrated to Hong Kong and Australia.<sup>37</sup> These are programs that take place after students

---

34. Campos, *supra* note 32, at 217. For a discussion of appropriate educational goals for in-house clinical courses, see STUCKEY AND OTHERS., *supra* note 12, at 189–93.

35. STUCKEY AND OTHERS, *supra* note 12, at 280 (footnote omitted).

36. See Iain Macdonald, *Eight Brilliant Ideas*, STRATHCLYDE PEOPLE, Spring 2005, at 18, 22 (Scot.), <https://www.strath.ac.uk/media/ps/alumni/strathclydepeople/spring2005.pdf>.

37. Wilson W S Chow & Firew Tiba, *Professional Legal Education Reviews: Too Many What’s, Too Few How’s*, 4 EUR. J. L. & TECH., no. 1, 2013, at 1, 11–12 (U.K.), <http://ejlt.org/article/view/183/281>.

receive their four-year undergraduate degree in law and before they begin law practice.<sup>38</sup>

The details of the programs differ somewhat, but the basic idea is that students are assigned to “law firms” where they work (in context and in role) on various projects individually and in groups.<sup>39</sup> The goals of the programs are primarily to develop professional skills and values, but they also teach or reinforce substantive and procedural law.<sup>40</sup>

The largest and most sophisticated use of virtual worlds, to date, is at Australia National University’s Legal Workshop in Canberra (“Legal Workshop”). Begun in 2010, an eighteen-week simulated transactional learning course is taught almost entirely online to accommodate over 2500 students a year who live all over Australia and most of whom work full-time or part-time.<sup>41</sup> The extensive use of the Internet also allows the practitioners who are involved in the program the flexibility to participate when their schedules permit.

The students interact, either in person or electronically, with standardized clients,<sup>42</sup> each other (including students in other law firms), and lawyers who are supervising and evaluating their work as “senior partners” or mentors.<sup>43</sup> Practicing lawyers may even be hired to serve as “associates” to whom the students can go for advice and assistance.<sup>44</sup>

The use of practitioners in the Legal Workshop and the integrative nature of the program was described as follows:

Experienced legal practitioners are employed as practitioner teachers to mentor and support the student teams. These practitioner teachers provide two functions. Firstly, one group of practitioner teachers provide ongoing feed forward and feedback on all tasks by behaving as the Associates and Senior Partners and clients that the teams encounter in the simulated environment (aka subject mentors). Secondly, another group of practitioner teachers (aka practice mentors) directly mentor students throughout the course on matters pertinent to developing their professional identity, including professionalism, team work, client-focused service, and practice management skills such as file and risk management.

---

38. See Anneka Ferguson, *Creating Practice Ready, Well and Professional Law Graduates*, 8 J. LEARNING DESIGN, no. 2, 2015, at 22, 23 (Austl.), <https://www.jld.edu.au/article/view/240/218>.

39. See Macdonald, *supra* note 36, at 22.

40. See Ferguson, *supra* note 38, at 24.

41. *Id.* at 23, 29.

42. *Id.* at 24–25.

43. *Id.* at 25–26.

44. *Id.*

Furthermore, the PPC [the online learning and simulated practice environment entitled the Professional Practice Core] is designed to actively engage students in a messy learning process whereby they must discern the nature of their tasks, locate the resources to assist them in resolving the task, and consider that there may not be just one answer to the task provided in order to meet a clients' needs. This also facilitates the embedding of issues pertinent to ethical professional practice, conflict, well-being, and mental health issues in real time. It also allows students to explore connections between professionalism and well-being in a safe environment in preparation for the realities of practice that they will soon encounter.

Arguably, this course structure helps to create the students' connections with each other and the profession. The structure also provides the engaging activities that students indicate they would like to experience through law school. For example, students are facilitated to make connections between:

- the theory of the law (as taught at the LLB/JD level) and the practice of law;
- their fellow students, mentors, "simulated" clients, associates and senior partners; and
- themselves and a number of legal practitioners who are already working in the profession.

It is aimed that through this engagement students are able to shape and take control of their own educational/professional development goals in a more satisfying manner.<sup>45</sup>

The subjects covered in the Legal Workshop include the skills areas of civil litigation, commercial, corporate, and property practice.<sup>46</sup> Trust and accounting, ethics and professional responsibility, and practice management are integrated into the simulated transactions to provide the context for learning about these areas.<sup>47</sup>

The program appears to be succeeding:

Staff have achieved very fine results not just in learning gains, but in professionalism, the development of legal skills, and the maintenance of student well-being at a time when many law programmes, as you know, present students with real problems in terms of mental health, loss of enthusiasm and

---

45. *Id.* (citations omitted).

46. Elizabeth Seul-gi Lee & Anneka Ferguson, *The Development of the Virtual Educational Space: How Transactional Online Teaching Can Prepare Today's Law Graduates for Today's Virtual Age*, 6 EUR. J. L. & TECH., no. 1, 2015, at 1, 10 (U.K.), <http://ejlt.org/article/view/398/543>.

47. *Id.* at 10–11.

commitment, raised levels of anxiety and depression and so on.<sup>48</sup>

### CONCLUSION

The new ABA mandates will not have an immediate, profound impact on the preparation of law students to enter the legal profession. They might, however, lead to changes that will eventually make a positive difference in the preparation of students for law practice.

For reforms to succeed, however, experiential educators as well as nonexperiential educators must be willing to explore new options. As Eli Wald and Russell Pearce observed, “Reforming legal education, therefore, requires more than curricular and institutional changes. It also necessitates a corresponding reimagining of the role of law professors and their duties to students and the legal profession.”<sup>49</sup>

Law schools will not improve significantly unless they find ways to increase the number of competent teachers who are involved in providing instruction in professional skills and values. This Article proposes one way to help practicing lawyers and judges become competent teachers, and it argues that using virtual worlds in which to educate students about the practice of law could be successful, exciting, and cost efficient.

---

48. E-mail from Paul Maharg to the author (October 21, 2015) (on file with author). For more information about the Legal Workshop, see Ferguson, *supra* note 38, at 22–23; Lee & Ferguson, *supra* note 46, at 6–11. For more information about the practices and theories involved with using virtual firms and communities, see Karen Barton et al., *Authentic Fictions: Simulation, Professionalism and Legal Learning*, 14 *CLINICAL L. REV.* 143, 163–65 (2007).

49. Eli Wald & Russell G. Pearce, *Making Good Lawyers*, 9 *U. ST. THOMAS L.J.* 403, 429 (2011).

\*\*\*