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FACILITATING BETTER LAW TEACHING—NOW

*Martin J. Katz**

INTRODUCTION

This Essay is about solutions—real solutions that law schools can deploy right now to improve the education we provide. And it is about how to overcome obstacles to implementing those solutions right now. This is how change happens.

We have all heard a great deal about the problems facing legal education (and the legal profession more generally). Pundits have gone on for years about how law graduates are ill prepared for practice.¹ More recently, there has been a seemingly endless barrage of commentary about the difficulty recent law graduates face in finding jobs.²

* Dean and Professor of Law, University of Denver Sturm College of Law. The author is a founder and serves on the executive board of the Educating Tomorrow's Lawyers project. Thank you to Bill Sullivan, Rebecca Love Kourlis, Fred Cheever, Alan Chen, Roberto Corrada, Laura Rovner, Catherine Smith, David Thomson, and Kenneth Margolis for their ideas regarding this Essay. And thank you to Diane Burkhardt and Jessica Neumann for their research assistance. Any errors are solely mine.

¹ See, e.g., Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & SOC. JUST. 247 (2012); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Robert M. Lloyd, Essay, *Hard Law Firms and Soft Law Schools*, 83 N.C. L. REV. 667 (2005); see also Lincoln Caplan, Editorial, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 15, 2012, at SR10 (“[Law schools’] missions have become muddled, with a widening gap between their lofty claims about the profession’s civic responsibility and their failure to train lawyers for public service or provide them with sufficient preparation for practical work.”); Ashby Jones & Joseph Palazzolo, *What’s a First-Year Lawyer Worth?*, WALL ST. J., Oct. 17, 2011, at B1 (“[T]here is still a gulf between a newly minted lawyer and one who can provide value to a client.”); David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1 (“The fundamental issue is that law schools are producing people who are not capable of being counselors.” (internal quotation marks omitted)).

² See, e.g., BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 114–18 (2012); Amir Efrati, *Hard Case: Job Market Wanes for U.S. Lawyers*, WALL ST. J., Sept. 24, 2007, at A1; Ashley Post, *2011 Law School Grads Face Worst Job Market in 18 Years*, INSIDE COUNS. (June 11, 2012), <http://www.insidecounsel.com/2012/06/11/2011-law-school-grads-face-worst-job-market-in-18> (“[T]he employment rate for 2011 law school graduates is 85.6 percent, the lowest rate since 1994, when it was 84.7 percent. Additionally, less than half of these grads have attained jobs in private practice.”); see also *A Less Gilded Future: Law Firms*, ECONOMIST, May 7, 2011, at 74, 74 (“After a dozen years of growth, employment in America’s law industry, the world’s biggest, has declined for the past three years”); Jack Crittenden & Karen Dybis, *Who Is Hiring Now*, NAT’L JURIST, Sept. 2010, at 26, 26 (“Full-time hiring for the class of 2009 was also down—88.3 percent of graduates had found employment within nine months of graduation. . . . And many expect the numbers for the class of 2010 to be even worse.”); James G. Leipold, *The Changing Legal Employment Market for New Law School Graduates*, B. EXAMINER, Nov. 2010, at 6, 6 (“[M]embers of the law school graduating classes of 2009

Often these commentators suggest extreme remedies (such as closing down all United States law schools or completely deregulating law practice so that anyone can offer legal services).³ Others suggest less extreme, but unrealistic remedies (such as forcing law faculties to change how they teach, stopping them from writing so that they can teach more, or doing away with faculty governance so that they have no say over these matters).⁴

My goal here is not to debate the many criticisms that have been leveled at legal education. While these criticisms may be overstated at times,⁵ I will start

and 2010 have faced the worst entry-level legal employment market in 50 years, and perhaps ever, and the market for classes of 2011 and those that will follow is likely forever changed.”)

³ See, e.g., CLIFFORD WINSTON ET AL., *FIRST THING WE DO, LET’S DEREGULATE ALL THE LAWYERS* (2011); Clifford Winston & Robert W. Crandall, *Time to Deregulate the Practice of Law*, WALL ST. J., Aug. 22, 2011, at A13 (arguing that entry into the practice of law should be deregulated); Paul Campos, *And the New York Times Said Law Is Dead*, INSIDE L. SCH. SCAM (June 1, 2012, 8:17 AM), <http://insidethelawchoolscam.blogspot.com/2012/06/and-new-york-times-said-law-is-dead.html> (arguing that a large number of law schools should close).

⁴ See Brent E. Newton, *The Ninety-Five Theses: Systemic Reforms of American Legal Education and Licensure*, 64 S.C. L. REV. 55, 91–100 (2012) (proposing mandatory changes to law school curriculum, and suggesting that academic freedom should not extend to pedagogy); *id.* at 125–33 (criticizing scholarship done by law professors and urging the ABA to remove scholarship requirements for law faculties); *id.* at 73 (arguing that the faculty governance model at law schools “will need to change to one analogous to the ‘corporate’ model—a powerful executive who, while not omnipotent, does not require the consensus of, or even the concurrence of a majority of, faculty members with respect to significant administrative matters such as hiring decisions, curriculum reform, and the like”). Mr. Newton noted that “altering the model of faculty governance at law schools is far easier said than done.” *Id.* at 73; see also Brent E. Newton, *Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy*, 62 S.C. L. REV. 105, 113 (2010) (noting that law schools primarily hire “impractical professors whose chief mission is to produce theoretical legal scholarship”).

⁵ For example, many of the critics assume that all law schools are the same and that none have embraced experiential learning. See *supra* note 1. This is demonstrably false. See, e.g., Karen Sloan, *ABA: Law Schools Getting the Message on Practical Skills*, NAT’L L.J. (July 5, 2012), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202561943191&slreturn=20120801205023>.

Many of the critics of law graduates’ job prospects claim that the only jobs that would justify going to law school are jobs that (1) require a J.D., (2) are full-time, and (3) are permanent (in the sense of having an expectation that the job will last more than a year). See Joe Palazzolo, *Law Grads Face Brutal Job Market*, WALL ST. J., June 25, 2012, at A1. This seems like an unduly narrow definition of good jobs. Few of our highest earning graduates from Denver Law are in jobs that would count under that definition. And when one compares the supposedly terrible unemployment rate among law graduates to general unemployment rates, it seems clear that J.D.s help graduates get jobs, whether they fit within this narrow definition or not. Compare Karen Sloan, *A Dismal Job Market for Law Grads Got Even Worse for Class of 2011*, NAT’L L.J. (June 7, 2012), <http://www.law.com/jsp/nlj/PubArticlePrinterFriendlyNLJ.jsp?id=1202558291685> (noting that employment rate for recent law graduates is 85.6% nine months after graduation), with Lauren Weber & Melissa Korn, *College Graduates, Expect a Lengthy Job Hunt*, WALL ST. J. (May 13, 2012), <http://online.wsj.com/article/SB10001424052702304451104577389910993770838.html> (“Only 49% of college graduates from the classes of 2009 to 2011 had found a full-time job within a year of finishing school . . .”).

from the premise—which I believe is hard to debate—that most law schools could do a better job than they currently do to prepare their graduates to practice law and to get jobs.

I will start by discussing a potential solution to these problems that is non-extreme, well researched, and relatively well accepted within the legal academy: the recommendations contained in the 2007 Carnegie Foundation report on legal education, titled *Educating Lawyers* (Carnegie Report).⁶ I will then explore why the Carnegie Report recommendations are still far from fully implemented in most U.S. law schools. Finally, I will recommend a set of realistic strategies for law schools to more fully implement the Carnegie Report's recommendations, and introduce a nationwide initiative called Educating Tomorrow's Lawyers that is designed to facilitate this process.

I. THE CARNEGIE SOLUTION

Most critics of legal education focus on two basic problems in American law schools. First, they charge, law schools do not adequately prepare graduates for legal practice.⁷ Law schools might do a decent job of teaching their students how to read and analyze appellate cases, most critics concede.⁸ But this is only a small part of the skill set required to be a lawyer, and the critics claim that law schools do not do a very good job of teaching the remainder of that skill set.⁹ That is, law schools do not prepare practice-ready lawyers.

A second, and related, criticism is that law graduates have had an increasingly hard time finding good jobs.¹⁰ Some of this may be related to the

⁶ WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT].

There are several other excellent works on experiential legal education that arrive at similar conclusions to those in the Carnegie Report. *See, e.g.*, ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007) (incorporating elements of the 2005 draft of the Carnegie Report); ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992) (identifying a number of reforms that would prepare law school graduates to practice law in what was known as the *McCrate Report*). In this Essay, I will tend to refer to the Carnegie Report, largely because of its recent vintage, its breadth, and its positive reception in the legal academy and legal practice. Indicia on the widespread acceptance of these works, particularly the Carnegie Report, are discussed *infra* in note 19, but all of these works are excellent reading.

⁷ *See supra* note 1.

⁸ *See, e.g.*, Barry, *supra* note 1, at 249–51.

⁹ *See, e.g., id.* at 250–51.

¹⁰ *See supra* note 2. The debate about law school placement has been compounded by questions about the accuracy and transparency of schools' reporting of placement data. *See* Robert Morse, *U.S. News Challenges*

recent recession and may ease as the economy recovers. Other parts of this problem may be the result of a “new normal,” in which there are competitive forces impacting law practice that will not change even after the economy recovers.¹¹ However, for purposes of this Essay, I will assume that at least part of the problem lies in the realm of legal education. Specifically, law schools could do a better job of preparing their graduates to compete for high-quality legal jobs if we did a better job of preparing practice-ready lawyers.¹²

ABA on Law School Employment Data Standards, U.S. NEWS & WORLD REP. (Jan. 13, 2011), <http://www.usnews.com/education/blogs/college-rankings-blog/2011/01/13/us-news-challenges-aba-on-law-school-employment-data-standards>. We have taken steps at Denver Law to address these issues. See Rachel M. Zahorsky, *U of Denver's Law School Takes an Extra Step Toward Transparency for Its Graduate Employment Data*, A.B.A. J. (July 1, 2012, 2:00 AM), http://www.abajournal.com/magazine/article/u_of_denvers_law_school_takes_an_extra_step_toward_transparency_for_its_gra/. But the broader question, which I will address in this Essay, goes to the substance of schools' reports. Whatever the exact dimensions of the reporting problem, it is clear that recent law graduates are having a harder time finding jobs than they have in the past and, more important for my purposes, that law schools can do a better job of preparing our graduates to compete for jobs.

A third major criticism of law schools has been their cost. This Essay does not address the cost issue directly. However, in discussing the ways of addressing ways to make graduates more practice-ready and able to compete for jobs, this Essay will discuss the cost of various initiatives with an eye toward avoiding significant increases in the cost of attending law school.

¹¹ See, e.g., RICHARD SUSSKIND, *THE END OF LAWYERS? RETHINKING THE NATURE OF LEGAL SERVICES* 27 (2008) (“[A] pair of related forces will fundamentally transform legal service in the coming decade and beyond. The first . . . will be a market demand for increasing *commoditization* of legal services, while the second will be widespread uptake of *information technology* (IT).”); Alex M. Johnson, Jr., *Think like a Lawyer, Work like a Machine: The Dissonance Between Law School and Law Practice*, 64 S. CAL. L. REV. 1231, 1232 (1991) (noting that law practice has increasingly moved “toward commercialization” with an emphasis on “money and profit rather than on service and justice”); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 899–900 (1999) (“The market for lawyers’ services has become intensely competitive. . . . Clients insist on getting good work at low hourly rates. They also insist that lawyers minimize the amount of time that they devote to each file to hold down costs.” (footnotes omitted)); Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 603 (2010) (explaining that the “natural tensions” of the traditional law firm model “were becoming unsustainable even before the economic troubles hit”); David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1 (“[W]ith corporations scrutinizing their legal expenses as never before, more entry-level legal work is now outsourced to contract temporary employees, both in the United States and in countries like India. It’s common to hear lawyers fret about the sort of tectonic shift that crushed the domestic steel industry decades ago.”). The phrase the “new normal” seems to have been coined in ROGER MCNAMEE WITH DAVID DIAMOND, *THE NEW NORMAL: GREAT OPPORTUNITIES IN A TIME OF GREAT RISK* (2004); it has been applied to the legal services industry by Paul Lippe. See Paul Lippe, *Is Your Firm or Legal Department ‘Old Normal’ or ‘New Normal’? See Our Checklist*, AM B. ASS’N L. REBELS (Apr. 24, 2012, 8:30 AM), http://www.abajournal.com/legalrebels/article/is_your_firm_or_legal_department_old_normal_or_new_normal_see_our_checklist/.

¹² A significant part of the problem relates to firms’ role in training lawyers. Traditionally, law schools did not need to worry that much about training lawyers for practice since legal employers—particularly law firms—tended to do this type of training. Of course, the cost of any activity at law firms gets passed on to clients. But at the time, when lawyer mobility and client mobility were minor factors, it made sense for firms,

What might surprise many outside of the legal academy is that there is a potential set of solutions to these problems that is close-at-hand: the recommendations of the Carnegie Report.¹³ The authors of that report compared legal education to other forms of professional education, to the elements of the practice of law, and to adult learning theory, and reached two basic conclusions.¹⁴ First, the report concluded that American law schools do a relatively good job of teaching students about legal doctrine and how to determine that doctrine and its limits.¹⁵ But, the Carnegie Report concluded, law schools have traditionally not done a very good job of teaching the skills for deploying that doctrine in the service of real clients or the professional identity required to understand the role of a lawyer.¹⁶ Accordingly, the Carnegie Report recommended a fairly straightforward prescription: Law schools should offer more experiential learning opportunities that integrate three key “apprenticeships”: doctrine, practical skills, and professional identity formation.¹⁷

These recommendations seem tailor-made to the problems critics have noted in modern law schools. If we provide more experiential learning opportunities to law students, and these experiences include all three apprenticeships (doctrine, skills training, and professional identity formation),

clients, and attorneys to jointly take on the burden of training new attorneys for practice. See Erwin Chemerinsky, Essay, *The Ideal Law School for the 21st Century*, 1 U.C. IRVINE L. REV. 1, 1–13 (2011) (“But as many reports have noted, law schools are far less successful in preparing students for the practice of law. There are many reasons for this. I believe that elite law schools have long eschewed this as a primary objective. Long ago, they adopted the mantra that they teach students to think like lawyers and leave practical training for after graduation.” (footnote omitted)). However, these mobility factors are no longer minor, and as a result, it no longer makes much sense for clients to subsidize attorney training at firms. This creates a significant opportunity for law schools that are willing to provide more practical training. See Tierney Plumb, *A Law School-Run Law Firm*, NAT’L JURIST, Feb. 2012, at 22, 23 (“Many law firms are no longer willing to finance the training of entry-level attorneys, so more students are depending on their own law schools to give them the practical skills the market needs.”).

¹³ CARNEGIE REPORT, *supra* note 6, at 22.

¹⁴ *Id.*

¹⁵ *Id.* at 2 (“[B]y the end of their first year, most [law students] have developed a clear ability to reason and argue in ways distinctive to the American legal profession.”).

¹⁶ *Id.* at 22 (“In legal education, . . . the primary emphasis on learning to think like a lawyer is so heavy that schoolwide concern for learning to perform like one is *not* the norm.”); see also STUCKEY ET AL., *supra* note 6, at 1 (“Since the 1970’s, numerous groups of leaders of the legal profession and groups of distinguished lawyers, judges, and academics . . . have universally concluded that most law school graduates lack the minimum competencies required to provide effective and responsible legal services.”).

¹⁷ CARNEGIE REPORT, *supra* note 6, at 26 (“Research suggests that learning happens best when an expert is able to model performance in such a way that the learner can imitate the performance while the expert provides feedback to guide the learner in making the activity his or her own.”). See *id.* at 27–29 for a detailed explanation of the three apprenticeships.

then law students will spend more time standing in the shoes of lawyers while they are in school. And if law schools provide high-quality supervision from skilled teachers and mentors, law students will learn from these experiences how to be good lawyers. Such students will be far more likely to emerge from law school ready to practice law and ready to compete for good legal jobs.¹⁸

It might also surprise those outside the legal academy how well accepted the Carnegie Report is within the legal academy. It has been cited with approval by hundreds of legal academics.¹⁹ That is not to say that the report is universally accepted. But fortunately, that is not a requirement for solutions. And notably, very few academics have criticized the report's research or conclusions.²⁰ In short, the Carnegie Report enjoys a large degree of support

¹⁸ In this Essay, I do not try to make any empirical claims about the efficacy of this type of experiential education. Within education literature, "several well-controlled studies have now shown that students demonstrate more learning, better conceptual understanding, superior class attendance, greater persistence, and increased engagement when collaborative or interactive teaching methods are used compared to when traditional lecturing is employed." See George M. Slavich & Philip G. Zimbardo, *Transformational Teaching: Theoretical Underpinnings, Basic Principles, and Core Methods*, 24 EDUC. PSYCHOL. REV. 569, 570 (2012); see also SUSAN A. AMBOSE ET AL., HOW LEARNING WORKS: 7 RESEARCH-BASED PRINCIPLES FOR SMART TEACHING 5 (2010) ("Students must develop not only the component skills and knowledge necessary to perform complex tasks, they must also practice combining and integrating them to develop greater fluency and automaticity. Finally, students must learn when and how to apply the skills and knowledge they learn."). Within legal education, we have good evidence on student satisfaction and engagement. See, e.g., Bill Henderson, *Washington & Lee Is Biggest Legal Education Story of 2013*, LEGAL WHITEBOARD (Jan. 29, 2013), <http://lawprofessors.typepad.com/legalwhiteboard/2013/01/biggest-legal-education-story-of-2013.html>. And we have anecdotal evidence that this type of education is effective at creating good lawyers. See *infra* note 103. However, a great deal of work remains to be done on assessment.

¹⁹ A search in Westlaw yielded over 400 law review articles citing the Carnegie Report, almost all favorably. See, e.g., Lauren Carasik, *Renaissance or Retrenchment: Legal Education at a Crossroads*, 44 IND. L. REV. 735, 736 (2011); James R. Faulconbridge & Daniel Muzio, *Legal Education, Globalization, and Cultures of Professional Practice*, 22 GEO. J. LEGAL ETHICS 1335, 1336 (2009); Peter Toll Hoffman, *Law Schools and the Changing Face of Practice*, 56 N.Y.L. SCH. L. REV. 203, 215 (2011–2012); Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 309, 323–25 (2012); Mary A. Lynch, *An Evaluation of Ten Concerns About Using Outcomes in Legal Education*, 38 WM. MITCHELL L. REV. 976, 977 (2012); Sara K. Rankin, *Tired of Talking: A Call for Clear Strategies for Legal Education Reform: Moving Beyond the Discussion of Good Ideas to the Real Transformation of Law Schools*, 10 SEATTLE J. FOR SOC. JUST. 11, 13–14 (2011); Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 J. LEG. EDUC. 240, 241–43 (2009).

²⁰ There have been some critics of the Carnegie Report, but very few who question its core prescription for more integrated experiential education. See, e.g., Michelle J. Anderson, *Legal Education Reform, Diversity, and Access to Justice*, 61 RUTGERS L. REV. 1011, 1022 (2009) ("Despite its engagement with values and professional ethics, the Carnegie Report did not analyze the values or professional ethics of the profession itself."); Leonard J. Long, *Resisting Anti-Intellectualism and Promoting Legal Literacy*, 34 S. ILL. U. L.J. 1, 13 (2009) (observing that the report "damns formal knowledge with faint praise"); Lisa T. McElroy et al., *The Carnegie Report and Legal Writing: Does the Report Go Far Enough?*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 279, 282–87 (2011) (describing and citing several criticisms, including the report's failure to embrace a "pluralistic approach to legal education that would recognize other pedagogies," its support for the

within the academy—the group of people who are in a position to implement its recommendations.

Yet, surprisingly, American law schools have been slow to implement the recommendations of the Carnegie Report in a broad way. There has been progress. For example, most law schools have increased their clinical opportunities over the last eight years.²¹ Others have increased the number of field placements.²² And others have increased their “skills” offerings, such as trial advocacy.²³ However, six years after the publication of the Carnegie Report, only a handful of schools appear to have embraced a curriculum that either requires or permits at least a significant portion of students’ law school careers to be allocated to experiential education.²⁴

The next Part explores the most obvious ways to implement Carnegie-style education in law school curriculum. The following Part then sets out some ways in which law schools can accelerate this implementation, with an eye toward overcoming some of the impediments that have prevented a full-scale implementation of the report’s recommendations to date.

II. IMPLEMENTING CARNEGIE IN LAW SCHOOL CURRICULA

As discussed above, the Carnegie Report prescription for creating practice-ready lawyers is to provide more experiential education that integrates the

Socratic method, its failure to consider the lack of diversity in the legal profession, its lack of suggestions for enhancing the report’s effectiveness, and its failure to question the hierarchies within law school faculties).

The main critiques of the Carnegie Report have focused on either (1) the potential cost to provide the amount of hands-on, experiential learning and simulation necessary to effect genuinely integrated education, and (2) the predicted hesitancy of law faculty to teach in this way. This Essay addresses those two critiques. A less widespread critique is that, if more faculty members focus on experiential learning, there will be less focus on faculty scholarship. This is a false dichotomy, at least at Denver Law, where approximately 90% of our best teachers are also our best scholars. *See infra* note 70.

²¹ See ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA: 2002–2010, at 15 (Catherine L. Carpenter ed., 2012).

²² *See id.*

²³ *See id.*

²⁴ Washington & Lee requires an entirely experiential third year. *Third-Year Externship Program*, WASH. & LEE U. SCH. L., <http://law.wlu.edu/clinics/page.asp?pageid=1382> (last visited Feb. 28, 2013). The University of Denver Sturm College of Law’s strategic plan calls for students to have the option of spending at least one-third of their law school careers doing integrated experiential learning by 2015. *See The Future of Legal Education for the Future of Legal Practice: Strategic Plan 2010–2015*, DENVER L. STRATEGIC PLAN 6, <http://denverlawplan.com/3dissuestategicplan/index.html> (last visited Mar. 20, 2013) [hereinafter *Denver Strategic Plan*]. At the time of publication of this Essay, we are ahead of schedule with our strategic plan and currently all students who matriculate at Denver Law in the fall of 2013 or later will have the option of spending a full year of their law school career in real or simulated experiential learning opportunities.

teaching of doctrine, skills, and professional identity.²⁵ Fundamentally, there are three curricular paths by which law schools can implement this prescription:

- Clinics, in which students directly represent actual clients under the supervision of faculty members;²⁶
- Externships²⁷ or field placements, in which students work with practicing lawyers on real legal problems (and sometimes engage in direct representation of clients under the supervision of those lawyers, depending on the state's student practice laws);²⁸ and
- Course simulations, in which students play the role of lawyers in simulated legal problems.²⁹ These simulations may be small-scale, occupying only a few class periods or even a portion of a class period, or large-scale, with the whole course being a simulation. Many legal writing courses include simulations.³⁰

Each method has benefits and limits.

Clinics provide excellent experiential learning opportunities. Students in clinics have real clients with real legal problems and are supervised in their representation by expert teachers/practitioners. It is hard to imagine a better way in which students can act as real lawyers while they are still in law school.³¹ But there are two downsides to clinics.

First, clinics are extremely expensive.³² They are generally taught in student ratios of 8–1 or lower, thus making them expensive in terms of faculty

²⁵ See CARNEGIE REPORT, *supra* note 6, at 26.

²⁶ See Barry, *supra* note 1, at 252 (“Clinics aim to relate substantive law to professional competencies like client interviewing and counseling . . .”).

²⁷ Some schools call these “internships.” There appears to be no difference between externships and internships. Both are forms of field placements.

²⁸ See Barry, *supra* note 1, at 253 (providing examples of types of externships).

²⁹ See Joy, *supra* note 19, at 320.

³⁰ Kirsten A. Dauphinais, *Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in Its Wake*, 10 SEATTLE J. FOR SOC. JUST. 49, 101–02 (2011). Some proponents of legal education discuss legal writing courses as a distinct area of experiential learning.

³¹ See Carasik, *supra* note 19, at 791.

³² See Ian Urbina, *School Law Clinics Face a Backlash*, N.Y. TIMES, Apr. 4, 2010, at A12. For primarily this reason, it appears that only a handful of U.S. law schools currently require clinical experiences for all students. Some schools that require clinic participation include the University of California, Irvine and the University of New Mexico. Some schools promise to provide a clinic experience to every student who wants it, such as the University of Montana. Because some schools include field placements within their clinics, it is difficult to know which schools require in-house clinics for every student.

cost.³³ Clinics also often involve significant litigation costs. This is particularly true of more complex clinics, such as those that litigate in federal courts. Litigation costs in such cases can easily exceed \$100,000. And while some clinics stick to simpler, state court cases, such cases may not teach students about the types of complex cases they may encounter in practice. Moreover, if clinics are taught by tenure-track faculty (which is increasingly the case),³⁴ the school must often pay non-faculty lawyers to provide case coverage during the summers so that the clinicians can satisfy their writing obligations (since real cases, of course, do not adhere to an academic calendar).³⁵ The costs of such “summer coverage” can be substantial.³⁶

³³ See Joy, *supra* note 19, at 309 n.1. The 8–1 ratio also limits the number of opportunities for students to participate in clinics. If it were not for the expense of adding new clinical faculty, as well as the other expenses involved in running clinics, this problem might be solved by expanding the number of faculty who teach in clinics. But as I discuss below, *see infra* note 49, the expense of doing so makes it difficult to provide more clinical opportunities in this way.

³⁴ Historically, clinicians did not have tenure. Increasingly, they do. See BRYAN L. ADAMSON ET AL., ASS’N OF AM. LAW SCH., REPORT AND RECOMMENDATIONS ON THE STATUS OF CLINICAL FACULTY IN THE LEGAL ACADEMY 16–17 (2010) [hereinafter CLINICAL REPORT] (noting that 27% of clinical faculty members at American law schools are on the tenure track).

³⁵ There are arguments for and against tenure for clinicians. Those who favor tenure for clinicians have often argued that having clinics taught by non-tenure-track faculty sends the message to students that clinics are staffed by “second class” faculty, and thus are somehow less valuable than more traditional curriculum that is staffed by the school’s elite faculty. See, e.g., Bryan L. Adamson et al., *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353 (2012) (identifying four core principles to guide decisions about clinical faculty appointments and recommending that full-time clinical faculty be appointed to a “unitary tenure track”); *see also* CLINICAL REPORT, *supra* note 34, at 25–27. Those who favor non-tenure-track clinicians have argued that clinicians’ jobs are more practice oriented than those of classroom professors, and may be less likely to benefit from the type of scholarly activity that is generally required of tenure-track faculty. See, e.g., Adamson et al., *supra*, at 398. The merit of having clinicians on a tenure track is not relevant to this Essay. My point is only that (1) clinicians are increasingly on a tenure track; (2) tenure-track clinicians, whose jobs require writing, generally require time away from their dockets to write successfully; and (3) providing such docket relief is costly.

It is worth noting that a similar situation is playing out on legal writing faculties, another mainstay of experiential learning. See Susan P. Liemer & Hollee S. Temple, *Did Your Legal Writing Professor Go to Harvard?: The Credentials of Legal Writing Faculty at Hiring Time*, 46 U. LOUISVILLE L. REV. 383, 385 (2008) (“[I]t is no secret that most law school faculties in the United States have well-defined hierarchies and that legal writing professors often are relegated to low positions within those hierarchies.” (footnote omitted)); Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS’N LEGAL WRITING DIRECTORS 12, 14–16 (2002).

³⁶ Summer coverage tends to be provided either by lawyers outside of the school, who work on the cases at hourly rates, or by “fellows,” full-time law school employees who are clinicians-in-training during the academic year and provide case coverage during the summers. See Adamson et al., *supra* note 35, at 407 (noting that law schools hire attorneys or law student interns during the summer).

Additionally, the pedagogy of a clinic is limited by the parameters of its clients' legal matters. The issues that can be covered and taught are generally limited to those that come up in the course of the clients' matters.

Externships and field placements also have the potential to provide valuable legal experience to law students. In field placements, students provide assistance to practitioners, getting mentoring and experience. The experience can be extremely valuable, with students performing substantive legal work and receiving high-quality supervision and feedback. Some schools have even started to experiment with clinic-like experiences in field placements, in which students can engage in direct client representation under their state's student practice laws.³⁷ Unfortunately, not all externships fit this ideal.³⁸ Some may involve little more than making coffee and copies. So a big challenge with externships is quality control.

Because externships rely on volunteer practitioners for supervision and mentoring (with the practitioners getting the benefit of the students' labor), they are much less costly than clinics.³⁹ However, there are still costs. The best field placements involve a significant educational component, generally done by law school professors who supervise the externship program.⁴⁰ And externship faculty must also monitor the quality of the externships, including doing site visits to the places where externs are employed.⁴¹ Moreover, if a school is not located near a significant legal market, field placements can involve substantial travel costs (generally borne by the students). But even

³⁷ See, e.g., *Externship Program*, EMORY L., <http://www.law.emory.edu/academics/academic-programs/externship-program.html> (last visited Mar. 20, 2013). Denver Law is also experimenting with this model.

³⁸ See Joy, *supra* note 19, at 322 (noting that "[m]any externship programs only offer a small percentage of first-chair experiences" (internal quotation marks omitted)).

³⁹ See *id.* at 321.

⁴⁰ See *id.* (noting that a classroom component is generally taught by a full-time or part-time faculty member).

⁴¹ ABA Standard 305(e)(5) states: "A field placement program shall include . . . periodic on-site visits or their equivalent by a faculty member if the field placement program awards four or more academic credits (or equivalent) for field work in any academic term or if on-site visits or their equivalent are otherwise necessary and appropriate . . ." SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2012–2013, at 24 (2012). Additionally, there are limits on the number of externship hours students can count toward the law degree. Standard 304(b) states:

A law school shall require, as a condition for graduation, successful completion of a course of study in residence of not fewer than 58,000 minutes of instruction time, except as otherwise provided. At least 45,000 of these minutes shall be by attendance in regularly scheduled class sessions at the law school.

Id. at 22.

with all of these costs, externships, if they are done well, provide an effective and efficient way to provide Carnegie-style, experiential legal education.

Course simulations provide a third valuable way to provide experiential legal education. As the label suggests, course simulations involve simulated problems that students, playing the role of lawyers, work through and solve under the supervision of experienced professors and practitioners. Such simulations have significant advantages. They can be tailored to student learning in ways that real cases in a clinic cannot. Teachers can omit the months of wait time between significant events in a case. And they can create facts that might not exist in a real case, allowing students to explore legal and ethical issues that might not arise in a particular case. A good analogy is the flight simulator. In a simulator, if you are teaching landings, you can go straight to the landing—without the hours it might take to get to the landing phase of a flight. And if you want to teach about how to deal with an engine fire on takeoff, you can do so in a simulator without risking lives.

There are some potential pitfalls in doing simulations. Most notably, not every professor has the type of training that prepares them to do good simulations (and there is a vast difference between good simulations and bad ones). The deficiency can come from a lack of practice experience⁴² or a lack of training in how to do classroom simulations. However, these problems can easily be overcome, a topic I will discuss at more length below.

An additional pitfall in simulations involves the messages that law schools sometimes inadvertently send their students about them. At many schools, simulations tend to live at the periphery, outside of the primary curriculum and taught by non-regular faculty. For example, many schools provide course simulations only in their trial advocacy programs, which are often taught by adjuncts or non-regular faculty (or, as some have put it, “outsourced”). While these may be excellent programs, students often believe that these opportunities are less valuable than more traditional classroom activities.

A related problem with this type of simulation course involves integration. While trial advocacy programs do in fact involve doctrine (they involve cases that have a substantive legal component), they are often focused more on skills. Sometimes, but not always, they involve small issues of professional

⁴² See Susan B. Apel, *No More Casebooks: Using Simulation-Based Learning to Educate Future Family Law Practitioners*, 49 FAM. CT. REV. 700, 705 (2011) (noting among the limitations of simulation-based learning that law schools must be willing to hire professors with extensive practice experience).

identity. In this sense, they are not full integrations of doctrine, skills, and professional identity. Moreover, to the extent that these simulations are done outside of the “main curriculum,” the curriculum itself cannot be seen as integrated. In such a curriculum, students learn doctrine in the main curriculum and skills (and possibly professional identity) in a separate curriculum.⁴³

III. FACILITATING INNOVATION

Recognizing the benefits and pitfalls of these three types of curricula (clinics, externships, and simulations) provides insights into how we can facilitate the implementation of the Carnegie Report’s recommendations in our law schools. In this Part, I first focus on facilitating innovation at the level of an individual law school. This discussion is informed by my experience at one particular school, the University of Denver Sturm College of Law (Denver Law), but it emphasizes the parts of our experience that should be applicable to other law schools. I will then focus on facilitating innovation at a national level and the Educating Tomorrow’s Lawyers project, which is designed to do so.

A. *Facilitating Innovation at the Law School Level*

In 2009, the faculty at Denver Law engaged in an intensive strategic planning process.⁴⁴ In this process, it became apparent to the faculty that (1) in the coming years, we would increasingly be called upon to provide more value to our students, particularly in the sense of helping them maximize their chances of finding good legal jobs; and (2) a key way in which we could do so was to adopt the recommendations of the Carnegie Report, with the goal of producing more practice-ready lawyers (our Modern Learning Initiative).⁴⁵ The upshot was a commitment to significantly increase our students’ opportunities to participate in integrated, experiential learning to the point where, if they

⁴³ An additional challenge for those teaching simulations is to create the type of uncertainty and unpredictability that inheres in live client situations. For this reason, professors often try to create “ill-structured” simulations that provide this type of realism. Whether simulations can recreate the pressure of having a real client depending on the lawyer is also a potential issue.

⁴⁴ See *Denver Strategic Plan*, *supra* note 24, at 2.

⁴⁵ *Id.* at 5. A second key part of the plan is to adopt specialization tracks that allow our students to gain and demonstrate substantive expertise in five areas (1) in which the school has or can easily build strength, and (2) that we believe will yield good employment opportunities for our students in the coming years (our Specialization Initiative). See *id.* We also made a commitment to diversity and inclusiveness, which has yielded significant progress. See Catherine E. Smith, *Seven Principles: Increasing Access to Law School Among Students of Color*, 96 IOWA L. REV. 1677 (2011).

chose, they could spend at least one full academic year doing such experiential learning.

But in 2009, we did not have the capacity to offer that magnitude of experiential learning opportunities. The question, therefore, became: How could we substantially increase the number of integrated, experiential learning opportunities we provided to our students?

1. A Focus on Course Simulation

Our approach at Denver Law was to expand all three types of experiential learning opportunities: clinics, externships, and course simulations.⁴⁶ However, for reasons I explain in this section, the most promising of those expansions in terms of being replicable at other law schools is likely to be in the area of course simulations.

Through a fortunate set of circumstances, Denver Law was able to expand its clinics. Specifically, our university had provided ten new tenure-track faculty lines to support our strategic plan. So we were able to allocate five of those new lines to our clinic (and also were able to add budget for litigation costs and summer coverage for those five new lines).⁴⁷

At a student–faculty ratio of 8–1, those five new lines will provide forty new clinical opportunities to students per semester, or eighty per year.⁴⁸ Because our clinics are generally equivalent to two courses (six credit hours), for purposes of adding experiential course capacity, these five lines should effectively add the equivalent of 160 class seats in experiential learning per year.⁴⁹ That is significant. But standing alone, it is not going to close our

⁴⁶ See *Denver Strategic Plan*, *supra* note 24, at 6.

⁴⁷ One of the lines was arguably a line that we hired in anticipation of a potential retirement. But the plan was to hire five new clinicians, irrespective of that retirement.

⁴⁸ We had the choice of adding new one-semester clinics, which would have provided eighty seats per year, or two-semester clinics, which would have provided forty seats per year. We chose a mix. However, it is worth noting that there were two issues at play in this decision: If we were looking to maximize the number of students who could participate in our clinic, we would have added the new lines to one-semester clinics. That way, each semester, forty new seats would be open in the clinic. However, if we were looking to provide full-year experiential learning opportunities to all third years, the distribution would not matter. Either way, there would be eighty new clinic seats open over the course of the year. Whether different students filled these seats in the fall and spring would not matter; we would have provided the same experiential learning capacity, merely distributed differently. Although these resource allocation issues were considered, our focus in deciding between adding one- or two-semester clinics was primarily pedagogical.

⁴⁹ Of course, it is the same student in each of the “two courses” that form the six-credit clinic. So if we are looking at adding seats to the clinic (which is important), adding these new lines provides eighty new seats

experiential learning gap. Additionally, it is rare to have this level of resources for clinic expansion. So this way of adding experiential learning capacity is not likely to be replicable at many schools.

We also looked at the possibility of adding experiential learning capacity in our Externship Program. That did not make much sense for us, as we already were placing more than 400 students per year in externships. Accordingly, our plan focused more on ensuring quality in our extern placements and less on increasing the number of placements.

This is likely typical for many law schools. Because externships are an extremely cost-efficient method of providing experiential education,⁵⁰ most schools have already expanded their externship programs as broadly as they can. At this point, for most schools, the primary limits on externship capacity are (1) the capacity of their local legal community to absorb externs, (2) the willingness of students to pay tuition and provide free labor, and (3) the capacity of the school to control quality and provide a meaningful educational component to externships.

While we did not expand the number of traditional externships we offer, we piloted and have now adopted a special type of externship called the Semester-in-Practice (SIP) Program. The typical externship is three or four credits,⁵¹ or the equivalent of one class. Traditional externship students tend to do their externship as a small part of a larger course schedule (usually one of four or five courses), and do not have time to immerse themselves in their externship. The Semester-in-Practice is fourteen credits (eleven field credits and a three credit seminar).⁵² Thus, students in this program have the externship as their only class during the semester. This permits a much more in-depth experience.

in the clinic. However, because our goal is to provide every student with a full year's worth of experiential education, we also need to increase the number of hours available to each student. The fact that a clinic provides six, rather than three, credit hours helps to accomplish this goal—creating 160 three-hour opportunities.

⁵⁰ See *supra* Part II.

⁵¹ See, e.g., UNIV. OF DENVER STURM COLL. OF LAW, LEGAL EXTERNSHIP PROGRAM HANDBOOK 6, available at www.law.du.edu/documents/legal-externship-program/ExternshipHandbook.pdf; *Externship Program*, EMORY L., <http://www.law.emory.edu/academics/academic-programs/externship-program.html> (last visited Mar. 20, 2013).

⁵² See *Experiential Learning*, STURM C. L., <http://www.law.du.edu/index.php/academics/experiential-learning> (last visited Mar. 20, 2013).

It also allows for placements that might be geographically distant from our school, such as in another city or even another country.⁵³

Finally, an incidental benefit of the Semester-in-Practice Program was to increase our experiential learning capacity. We plan to regularly offer forty Semester-in-Practice positions per year. Because each of these positions is equivalent in credits to four regular externships, they effectively increase the number of externship hours for each of those positions by 300% (the equivalent of adding 120 new placements).⁵⁴

Having increased our clinical and externship capacities as much as feasible, we next turned our attention to course simulations. We already offered a handful of simulation courses, even beyond trial advocacy. Some of these courses involved small-scale simulations that were included in more traditional courses. For example, in my employment discrimination class, I do a two-week simulation of litigation strategy and discovery in a sexual harassment case (based on the fact scenario in the movie *Disclosure*),⁵⁵ with the students playing the roles of the legal teams for the plaintiff and defendant.

But some of our courses involved full-course simulations. For example, Professor Roberto Corrada teaches a labor law class in which the students can unionize and then engage in collective bargaining with him over the terms of the class—including the format and curve of the exam.⁵⁶ (This is not for faint-hearted teachers.) Instead of teaching labor law using casebooks, lectures, or Socratic dialogue, the students are immersed into a large-scale, unstructured problem, which they explore and solve in ways lawyers do. Similarly, Professor David Thomson teaches a discovery course in which the entire course revolves around a case that has been filed.⁵⁷ Again, there is no

⁵³ Although Denver Law is fortunate enough to be only ten minutes from downtown Denver, location away from major legal markets is often a significant limiting factor for law school externship programs.

⁵⁴ This assumes that we expended forty existing externships to SIPs. For each of the forty converted externships, we will have provided the equivalent of three new standard externships.

⁵⁵ *DISCLOSURE* (Warner Brothers Pictures 1994). The movie is based on the book by Michael Crichton. MICHAEL CRICHTON, *DISCLOSURE* (1993).

⁵⁶ See Roberto L. Corrada, Development, *A Simulation of Union Organizing in a Labor Law Class*, 46 J. LEGAL EDUC. 445 (1996). For commentaries about Professor Corrada's class, see Mark Clayton, *Students in 'Oppressive' Law Class Learn to Negotiate—Fast*, CHRISTIAN SCI. MONITOR, Dec. 4, 2001, at 15; *U. of Denver Students Form Union in Course on Labor Law*, CHRON. HIGHER EDUC. (D.C.), Feb. 9, 2001, at 10 (describing Corrada model for labor law); see also MARY TAYLOR HUBER & PAT HUTCHINGS, CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, *THE ADVANCEMENT OF LEARNING: BUILDING THE TEACHING COMMONS* 21, 62–63 (2005).

⁵⁷ See DAVID I. C. THOMSON, *LAW SCHOOL 2.0: LEGAL EDUCATION FOR A DIGITAL AGE* 100–01 (2009). For commentary on Professor Thomson's class, see Beth A. Tomerlin, *The Practicality of Practicum*:

traditional textbook or traditional teaching.⁵⁸ The students write, serve, and respond to interrogatories and discovery requests, conduct depositions with court reporters, and file and respond to discovery motions—exactly the way that lawyers do.⁵⁹

Another exciting variation on course simulation has been “capstone” type courses. These are courses that are offered in our subject matter specialty areas, designed to permit students to apply the knowledge they have gained in a series of specialty courses. For example, Professors Sam Kamin and Justin Marceau developed a constitutional rights and remedies capstone course, in which students litigate a complex constitutional case from client interviews through appeal, guided by a team of nationally recognized practitioners who partner with the two professors. All of these courses integrate all three of the Carnegie apprenticeships.

Given the cost of expanding clinics and some of the limits that schools have encountered in expanding externship capacity, we saw significant opportunities if we could expand the course simulations we offered. So we asked ourselves, how can we encourage more professors to teach using simulations?

2. *Incentivizing Innovation: Time, Money, Love, and Support*

An extremely interesting thing that became apparent in our strategic planning process was the number of faculty members who were intrigued by the idea of experiential learning—and course simulations in particular—but who were not yet doing this type of teaching. A substantial number of faculty members indicated that, although they were not currently doing course simulations, this type of teaching looked fun, and they could see the benefits that this type of teaching would have for our students. So the issue became how to get this group off of the fence and teaching using course simulations.

Thinking and Acting like a Lawyer, One Class at a Time, DOCKET (Feb. 2012), http://denbar.org/docket/doc_articles.cfm?ArticleID=7445.

⁵⁸ Recently, some publishers have started putting out textbooks that are designed to assist in the teaching of simulation courses. *See, e.g.*, DAVID I. C. THOMSON, *SKILLS & VALUES: DISCOVERY PRACTICE* (2010). However, in such courses the textbook is both nontraditional and not used in traditional ways.

⁵⁹ *See* THOMSON, *supra* note 57, at 100–01.

The preferred way to induce faculty members to act in a particular way, particularly when they are on the fence, is to offer them incentives.⁶⁰ And as a general matter, faculty members prefer two types of incentives: money or time (that is, time off of their regular teaching load to compensate for the added work of creating and teaching simulations for the first time).⁶¹ So we offered both. We solicited proposals to develop new full-course simulations that met certain guidelines for quality and for assessment. Those whose proposals were accepted received stipends (money), course relief (time), or both.

Another significant commodity among law faculty is love—that is, respect and appreciation. The stipends and time off discussed above not only provided material benefit, they communicated respect and appreciation for efforts in creating and teaching course simulations. In addition, in my annual evaluations for merit raises and bonuses, I count course simulations as a significant factor in my evaluation of a faculty member's teaching.

And while the dean's respect and appreciation are important, colleagues' respect and appreciation also matter. So we regularly invite faculty members who are doing innovative things in their classrooms to give presentations to their colleagues. This not only spreads knowledge, it provides a venue for us to demonstrate the value we place on this type of teaching.

Notably, we also heard from faculty members that there was another reason that they were hesitant to try course simulations: fear. Faculty members who might try simulations would be charting unknown territory. Not only would this mean that they might need to invest significant amounts of time developing new materials, they would need to learn new techniques. And if anything went wrong, or not as smoothly as they might hope, where could they turn for assistance?⁶² The faculty presentations discussed above would help with know-how, as would bringing in outside speakers on course simulation, or

⁶⁰ See, e.g., Apel, *supra* note 42 (noting the difficulties of encouraging professors to implement simulation-based learning).

⁶¹ See *id.* (describing the work that planning a simulation entails).

⁶² Another concern that faculty members had about venturing into experiential learning has to do with student evaluations. If, as a result of experimentation, a professor's student evaluations get worse, this can have serious negative consequences, both in terms of merit reviews and in terms of tenure and promotion. So the stakes are high. At Denver Law, I have tried to address this by making adjustments on merit reviews for faculty members who take on new experiential learning activities in their classes. And our Promotion and Tenure Committee also takes into account classroom innovations that might lead to temporary dips in student approval ratings.

even learning theory.⁶³ But it is also important to have faculty members who have done this type of teaching make themselves available for mentoring and consulting for those who are wading into these waters for the first time.

In fact, we had an excellent first-hand demonstration of just how valuable such support and mentoring could be in expanding course simulation opportunities for our students. Professor Corrada spent many years developing his experiential labor law class discussed above.⁶⁴ Yet another Denver Law professor, Rachel Arnow-Richman, was able to take Professor Corrada's materials—and a healthy dose of advice from him, based on his experience teaching the class—and offer a very similar class herself. The students in Professor Arnow-Richman's class gave it uniformly positive reviews, often a challenge in first-time complex course simulations. In other words, wheels do not need to be reinvented. Knowledge about experiential learning is extremely transferrable, which permits significant leverage where faculty members are willing to share their work and their wisdom in this area.

3. *Supporting Innovation: Leadership and Communication*

Leadership is important in an initiative like this. Accordingly, I appointed a Chair of Modern Learning.⁶⁵ Other schools have created an associate dean position for leadership in experiential learning, instead of a chairperson,⁶⁶ but

⁶³ For example, we heard from some instructors from the National Institute for Trial Advocacy (NITA), who specialize in developing legal problem simulations. See *Law Schools*, NAT'L INST. FOR TRIAL ADVOC., <http://www.nita.org/LawSchools> (last visited Mar. 20, 2013).

⁶⁴ See *supra* note 56 and accompanying text.

⁶⁵ Professor Corrada is the inaugural chair. See *Roberto Corrada Faculty Profile*, STURM C. L., <http://www.law.du.edu/index.php/profile/roberto-corrada> (last visited Feb. 28, 2013). The chair was recently endowed and named the Mulligan Bursleson Chair of Modern Learning. See Press Release, Univ. of Denver, Gifts Lift Denver Law's Commitment to Developing Client-Ready Graduates (Dec. 10, 2012), available at <http://www.law.du.edu/documents/news/lawgiftfinal.pdf>. The endowment provides a substantial budget that the chair can use to advance experiential learning initiatives. However, the initiatives described in the text required little in the way of budgetary support.

⁶⁶ For example, Northeastern has an Associate Dean for Experiential Education (Professor Luke Bierman). See *Luke Bierman*, NORTHEASTERN U. SCH. L., <http://www.northeastern.edu/law/academics/faculty/directory/bierman.html> (last visited May 10, 2013). Other law schools that currently appear to have either deans or directors of experiential learning are: Case Western Reserve School of Law; Charlotte School of Law; Drexel (Earle Mack School of Law); Loyola University Chicago School of Law; Loyola University New Orleans College of Law; Loyola Law School Los Angeles; Hofstra Law; Notre Dame School of Law; Suffolk University Law School; UC Hastings College of Law; University of Colorado Law School; Vermont Law School; New York Law School; American University, Washington College of Law; Syracuse University College of Law; Southern Illinois University School of Law; and Hamline University Law School. See *Kenneth R. Margolis*, CASE W. RES. U. SCH. L., <http://law.case.edu/OurSchool/FacultyStaff/MeetOurFaculty/FacultyDetail.aspx?id=134> (last visited May 10, 2013); *Cindy Adcock*, CHARLOTTE SCH. L., <http://www>

the concept is the same. The appointment of a leader in this area sends a strong signal to the faculty on the importance of this type of teaching. And the person in this position can coordinate many of the activities discussed above. For example, such a leader can request proposals for experiential course development, and also help select proposals for awards of stipends and course relief. He or she can help arrange forums for presenting and discussing faculty members' work in this area. He or she can either provide or coordinate mentoring and support from other faculty members (or even outside of the faculty).

At Denver Law, our Modern Learning Chair has engaged in three additional activities that have proven extremely valuable.⁶⁷

First, he has convened the Modern Learning Committee. This committee includes the directors of each area of the law school that does experiential learning, including our Clinic Director, Externship Director, Lawyering Process Director, and Advocacy Director, a handful of adjuncts that use course simulations, as well as those professors that received stipends for course development in the last year. This committee hears reports and provides feedback on experiential learning in each of these departments, allowing for the transmission of valuable knowledge across traditional department lines.

charlottelaw.edu/about/cindy-adcock (last visited May 10, 2013); *Susan L. Brooks*, DREXEL U. EARLE MACK SCH. L., <http://earlemacklaw.drexel.edu/faculty/FacultyProfiles/Susan%20Brooks/> (last visited May 10, 2013); *Josie Gough*, LOY. U. CHI. SCH. L., <http://www.luc.edu/law/faculty/gough.html> (last visited May 10, 2013); *Christine Cerniglia Brown*, LOY. U. NEW ORLEANS SCH. L., <http://law.loyno.edu/bio/christine-elise-cerniglia-brown> (last visited May 10, 2013); *Faculty & Administration*, LOY. L.A. L. SCH., <http://www.lls.edu/aboutus/facultyadministration/> (last visited May 10, 2013); *Jennifer A. Gundlach*, MAURICE A. DEANE SCH. L., <http://law.hofstra.edu/directory/faculty/fulltime/gundlach/index.html> (last visited May 10, 2013); *Robert Jones*, NOTRE DAME L. SCH., <https://law.nd.edu/directory/robert-jones/> (last visited May 10, 2013); *Faculty Profile*, SUFFOLK U. L. SCH., <http://www.law.suffolk.edu/faculty/directories/faculty.cfm?InstructorID=45> (last visited May 10, 2013); *Nancy Stuart, Clinical Professor of Law, and Associate Dean of Experimental Programs*, HASTINGS C. L., <http://www.uchastings.edu/academics/faculty/facultybios/stuart/index.php> (last visited May 10, 2013); *Marianne Wesson*, COLO. L., <http://lawweb.colorado.edu/profiles/profile.jsp?id=63> (last visited May 10, 2013); *Margaret Martin Barry*, VT. L. SCH., http://www.vermontlaw.edu/Our_Faculty/Faculty_Directory/Margaret_Martin_Barry.htm (last visited May 10, 2013); *Stephen J. Ellmann*, N.Y. L. SCH., http://www.nyls.edu/faculty/faculty_profiles/stephen_j_ellmann (last visited May 10, 2013); *Avis Sanders*, AM. U. WASH. C. L., <http://www.wcl.american.edu/faculty/sanders/> (last visited May 10, 2013); *Deborah S. Kenn*, SYRACUSE U. C. L., <http://www.law.syr.edu/deans-faculty-staff/profile.aspx?fac=73> (last visited May 10, 2013); *John Erbes*, S. ILL. U. SCH. L., http://www.law.siu.edu/Faculty_staff/Erbes/index.php (last visited May 10, 2013); *Cathryn Deal*, HAMLINE U. SCH. L., <http://law.hamline.edu/cathryn-deal.html> (last visited May 10, 2013).

⁶⁷ See *Experiential Learning*, *supra* note 52.

Second, along with the Modern Learning Committee, the chair arranges educational programming for the faculty. Such programming has included presentations and brown bag discussions. The programming now also includes a distinguished lecturer on experiential learning each year.⁶⁸

Finally, the Modern Learning Chair has reached out to the local legal community to explore opportunities to partner on experiential learning. These partnerships have included recruiting adjuncts who teach course simulations, supporting other adjuncts who are interested in trying this type of teaching, and pairing practitioners with full-time professors—a particularly successful model for teaching course simulations.

4. *The Role of Faculty Buy-In*

All of the methods for facilitating innovation at the law school level discussed above are likely to be effective in and of themselves. But they are likely to be more effective if there is significant faculty buy-in.

There are, of course, numerous ways to get faculty buy-in. At Denver Law, we built buy-in through our strategic planning process. A committee of elected faculty members, along with the dean, led the planning process—both research and drafting. That committee sought regular input from the rest of the faculty, as well as the other key stakeholders, including informal and formal discussions and brainstorming sessions. The faculty was therefore deeply engaged in the research for the plan, which demonstrated both the need for and the opportunities that would accrue from this type of innovation and reform. At the end of the process, the faculty voted to adopt our strategic plan by an overwhelming margin.⁶⁹ So it became our plan as a faculty, as opposed to a top-down dean's plan or a plan that was seen as coming from a small part of the faculty.

The other positive by-product of this process was that it provided a forum for the open airing and discussion of potential objections to the plan. These discussions helped our faculty recognize that few objections were in fact deal killers. In fact, in most cases concerns could be accommodated within the plan.

⁶⁸ Our inaugural distinguished lecturer was Bill Sullivan, the lead author of the Carnegie Report. *See* CARNEGIE REPORT, *supra* note 6. The same year, we also hosted a parallel distinguished lecturer in our scholarship development program, who also happens to be a national leader in experiential learning: Jane Aiken, from Georgetown Law Center. *See Jane H. Aiken*, GEORGETOWN L., <http://www.law.georgetown.edu/faculty/aiken-jane-h.cfm#> (last visited Feb. 28, 2013).

⁶⁹ The vote was 39–3, virtually unanimous by academic standards.

For example, a common objection to plans that focus on curricular change is that such plans are not compatible with a high level of scholarly activity. In our discussions, it became apparent (once again) that the teaching–scholarship dichotomy is a false one. It turned out that many of our teachers who were best at experiential learning were also our best scholars.⁷⁰ And by embedding parts of our experiential learning plan within our centers of subject-matter specialization, we were able to build scholarly synergies alongside our experiential learning efforts.

B. Facilitating Innovation on a National Level

In 2010, a group of professors and legal reformers at the Institute for the Advancement of the American Legal System (IAALS)⁷¹ started to ask the next question: How can law schools facilitate this type of innovation not just at one or two particular schools, but at law schools across the country? In response, we started the Educating Tomorrow’s Lawyers initiative (ETL). The director is Bill Sullivan, the lead author of the Carnegie Report.⁷²

ETL is designed to work at two levels: facilitating innovation among individual law professors and facilitating innovation among law schools.⁷³

1. Supporting Law Professors Nationwide

Our working hypothesis was that, just as we saw at Denver Law, there were likely a large number of faculty members at schools across the country who might be on the fence—faculty who, given the right conditions, might start using experiential learning techniques in their classrooms. There seemed to be great potential to facilitate change at this level. Professors have a great deal of

⁷⁰ To give just a few examples, Professors Sam Kamin and Justin Marceau, who teach our constitutional rights and remedies capstone, and Professor Rachel Arnow-Richman, who adopted Professor Corrada’s labor law simulation, are some of our faculty’s most prolific and nationally respected scholars. Many of our best scholars are now teaching using experiential simulation and finding it both enjoyable and complementary of their scholarship.

⁷¹ IAALS is a national, independent, nonpartisan research center dedicated to continuous improvement of the process and culture of the civil justice system. *What We Do*, INST. FOR ADVANCEMENT AM. LEGAL SYS., <http://iaals.du.edu/about-the-institute/what-we-do/> (last visited Feb. 28, 2013). It leverages “empirical and legal research, innovative solutions, broad-based collaboration, communications and ongoing measurement in strategically selected, high-impact areas” to advance a more accessible, efficient, and accountable civil justice system. *Id.* IAALS is located at the University of Denver. *Id.* It partners with the Sturm College of Law on various projects, but it is fully independent from the law school. *See id.*

⁷² *See About ETL*, EDUCATING TOMORROW’S LAWYERS, <http://educatingtomorrowlawyers.du.edu/about-etl/> (last visited Feb. 28, 2012).

⁷³ *See id.*

autonomy in their classrooms. So by helping and encouraging professors who were on the fence, we might be able to change legal education from the ground up.

Accordingly, we set out to encourage innovation in experiential education by individual professors, and also to start a nationwide conversation about the use of experiential learning techniques in law schools. To that end, we sought to provide several of the same elements we used at Denver Law to facilitate innovation in experiential education: support, love (respect and appreciation), a bit of money, leadership, and large-scale information flow.

The centerpiece of ETL is a free, robust, and highly interactive web site.⁷⁴ The site contains an ever-growing series of course modules, or portfolios, which provide excellent examples of experiential learning courses for professors who might be considering similar innovations.⁷⁵ The portfolios are rich, including not just syllabi, course descriptions, and course materials, but also explanations from the professor about why they made certain choices and even videos of the class in action.⁷⁶ Commentaries from the professors who designed these courses provide insight into how to construct similar courses as well as pitfalls that can be avoided. Those who visit the site have the full benefit of the posting professor's experience—an invaluable form of support.⁷⁷

Any professor in the country can submit a Carnegie-style experiential learning course to be posted on the web site. Professors whose courses are accepted for the web site become ETL Fellows (receiving respect and appreciation), in addition to receiving a small sum of money in the form of a stipend. ETL's full-time staff works with the professor to create the online module about the course, including doing video interviews of the professor and videotaping the classroom. By posting their courses, these professors can receive feedback (either on the site or offline) on how they can improve those

⁷⁴ EDUCATING TOMORROW'S LAWS., <http://educatingtomorrowslawyers.du.edu/> (last visited Feb. 28, 2013).

⁷⁵ *Course Portfolios*, EDUCATING TOMORROW'S LAWS., <http://educatingtomorrowslawyers.du.edu/course-portfolios/> (last visited Feb. 28, 2013).

⁷⁶ This feature alone significantly distinguishes the ETL site from several well-intentioned sites that merely list course titles and sometimes provide syllabi. *See, e.g., Committee on Curriculum*, ASS'N AM. L. SCHS., http://www.aals.org/services_curriculum_committee_innovations.php (last visited Sept. 20, 2012). Such sites are helpful and are likely all that can be done by those with other jobs to do and with no dedicated staff. ETL has a dedicated staff, and is thus able to put together and maintain a much more robust set of resources.

⁷⁷ *See, e.g., White Collar Crime in Practice*, EDUCATING TOMORROW'S LAWS., <http://educatingtomorrowslawyers.du.edu/course-portfolios/detail/white-collar-crime-in-practice> (last visited Sept. 21, 2012).

courses or future courses they might design. Fellows are also expected to make themselves available to discuss their courses and provide support for professors who are considering, designing, or implementing innovations of their own.

ETL will soon launch a Visiting Fellows program and an annual Fellows Workshop. Schools that are interested can host an ETL Fellow from another school to speak to their faculties, or to visit classes and help facilitate experiential learning on site. Alternatively, professors who are interested in learning more about this type of teaching can attend the annual Fellows Workshop. These fora will provide excellent opportunities for the transmission of know-how and experience in this type of teaching.

The ETL web site also provides a resource center,⁷⁸ a one-stop source of information and resources on experiential learning, as well as events, all with web links. The resources are categorized for easy retrieval. For example, there are categories for designing simulations, using technology, learning theory and applications, grading rubrics, and assessment.⁷⁹ The resources will soon be searchable as well (as will the course portfolios). Professors who are contemplating or implementing experiential learning in their classroom find these resources, along with the course modules, to be invaluable.

The web site also encourages discussion and debate about experiential learning, with regular blogs from leaders in legal education and practice,⁸⁰ a news section,⁸¹ and a set of video interviews with practitioners, legal employers, and clients (“Voices from the Field”) discussing the need for innovation in legal education and the benefits of Carnegie-style experiential education.⁸²

In addition to facilitating information flow on Carnegie-style innovation through its web site, ETL facilitates information flow through a series of annual expert conferences designed to address cutting-edge topics in

⁷⁸ *Resources*, EDUCATING TOMORROW’S LAWS., <http://educatingtomorrowlawyers.du.edu/resources/> (last visited Sept. 20, 2012).

⁷⁹ *Id.*

⁸⁰ *IAALS Online*, EDUCATING TOMORROW’S LAWS., <http://educatingtomorrowlawyers.du.edu/blog/> (last visited Sept. 20, 2012).

⁸¹ *News*, EDUCATING TOMORROW’S LAWS., <http://educatingtomorrowlawyers.du.edu/news/> (last visited Sept. 20, 2012).

⁸² *Voices from the Field*, EDUCATING TOMORROW’S LAWS., <http://educatingtomorrowlawyers.du.edu/voices/> (last visited Sept. 20, 2012).

experiential learning.⁸³ For example, the first conference, in the fall of 2012, addressed the issue of how to teach professional identity (generally thought to be the most challenging of the three apprenticeships) and how to assess the teaching of professional identity.⁸⁴ Participants worked through a set of exercises designed to collaboratively develop new techniques for this type of teaching—techniques that, once disseminated, can be used by faculty across the country in their classrooms. ETL recently released a report on the conference designed to disseminate the ideas discussed at the first conference and start the discussion of ideas for the second conference.⁸⁵

Although ETL is still in its early stages, we are beginning to see evidence that this strategy is working. For example, ETL Fellow Jay Finkelstein, who created a module detailing an experiential course in International Transactions that he teaches with Daniel Bradlow,⁸⁶ reports that this course is now in use at eight schools.

2. *Supporting Innovation at the Law School Level (and Beyond)*

In addition to facilitating innovation in experiential learning by individual professors, ETL seeks to facilitate innovation at the level of law schools. The concept is to provide a forum for law schools that are already committed to experiential education to interact, and to use those schools that have achieved some success in implementing experiential education as models for those that may not be as far along.

To that end, we formed a consortium of schools that have demonstrated a significant institutional commitment to legal education reform consistent with the Carnegie Report.⁸⁷ Schools' institutional commitment may take the form of a strategic plan, curriculum committee plan, or other administrative or faculty

⁸³ *Events*, EDUCATING TOMORROW'S LAWS., <http://educatingtomorrowslawyers.du.edu/events/> (last visited Sept. 20, 2012).

⁸⁴ *The Development of Professional Identity in Legal Education: Rethinking Learning and Assessment*, EDUCATING TOMORROW'S LAWS., <http://educatingtomorrowslawyers.du.edu/events/the-development-of-professional-identity-in-legal-education-rethinking-lear/> (last visited Sept. 20, 2012).

⁸⁵ ROBERT L. CORRADA & DAVID THOMSON, EDUCATING TOMORROW'S LAWYERS: REPORT ON THE 2012 CONFERENCE AND INTRODUCTION TO THE 2013 CONFERENCE (2013), *available at* http://educatingtomorrowslawyers.du.edu/images/wygwam/events/Report_on_the_2012_Conference.pdf.

⁸⁶ *Course Portfolios: International Business Negotiations*, EDUCATING TOMORROW'S LAWS., <http://educatingtomorrowslawyers.du.edu/course-portfolios/detail/international-business-negotiations> (last visited May 10, 2013).

⁸⁷ *See About Our Consortium*, EDUCATING TOMORROW'S LAWS., <http://educatingtomorrowslawyers.du.edu/about-etl/about-our-consortium/> (last visited May 30, 2013).

directive.⁸⁸ These schools generally offer a number of courses that implement the Carnegie approach to legal education and weave those courses into a larger curricular framework that focuses on student-centered teaching.⁸⁹ While clinics and trial advocacy courses are important in experiential learning, the consortium schools' curricula go well beyond these basics, generally including widespread use of course simulations and other forms of experiential learning that combine all three Carnegie apprenticeships.

The consortium is designed to facilitate high-level dialogue on experiential learning. Consortium schools send delegations to the annual ETL conferences, and because these schools are already actively engaged in Carnegie-style innovation, they are able to skip past the basics that form the bulk of many conferences—including the question of whether experiential education is a good idea. Because the discussion starts at the expert level, these conferences are more likely to produce significant advances in experiential learning.⁹⁰

The consortium schools are also expected to serve as examples for schools that are interested in adopting institutional commitments to experiential learning. These schools explain their work in experiential learning on the ETL web site. They share their strategic plans and curricular plans,⁹¹ as well as their experiences in implementing those plans, with faculty at other schools that are trying to implement change at their institutions.⁹²

The ETL consortium started with fifteen schools and has now grown to twenty-eight schools.⁹³ Notably, these schools represent a broad cross section of American legal education: large and small schools, public and private schools, urban and rural schools.⁹⁴ And they include schools all across the *U.S.*

⁸⁸ See *Consortium Member Criteria*, EDUCATING TOMORROW'S LAWS., <http://educatingtomorrowlawyers.du.edu/about-etl/about-our-consortium/consortium-member-criteria/> (last visited Dec. 20, 2012).

⁸⁹ See, e.g., *Consortium School Information: Stanford Law School*, EDUCATING TOMORROW'S LAWS., <http://educatingtomorrowlawyers.du.edu/schools/detail/stanford-law-school> (last visited Sept. 20, 2012).

⁹⁰ See Rankin, *supra* note 19, at 13–14.

⁹¹ *Strategic Plans*, EDUCATING TOMORROW'S LAWS., <http://educatingtomorrowlawyers.du.edu/resources/strategic-plan/> (last visited Sept. 20, 2012).

⁹² Consortium schools contribute a small amount of funding to ETL. The current contribution requirement is \$5,000 per year—roughly the amount that the school would spend buying a table at one or two community fundraising events. These funds represent only a small part of ETL's total budget (which is primarily supported by the Chancellor at the University of Denver and by gift funding). But that is not the point of the contributions; rather, consortium school contributions show support for the enterprise—skin in the game.

⁹³ *About Our Consortium*, *supra* note 87.

⁹⁴ See *id.*

News & World Report ranking tiers.⁹⁵ This demonstrates that Carnegie-style innovation in legal education is not—and need not be—limited to any particular type of school. It is something that can work for virtually any type of school. For this reason, we anticipate that the consortium will continue to grow as more schools become committed to and engaged in Carnegie-style experiential legal education.⁹⁶

In addition to the consortium, ETL facilitates innovation at the law school level by providing information on what law schools across the country are doing to implement the Carnegie Report. To that end, ETL has conducted a survey of 195 U.S. and Canadian law schools to measure the level of Carnegie-style innovations at those schools—and changes in those levels. As of October 2011, 118 (60.5%) law schools had responded, representing a broad cross section of schools.⁹⁷ Two of the survey authors, Stephen Daniels and Bill

⁹⁵ *See id.*

⁹⁶ The exclusionary aspect of the ETL consortium model has given rise to some concern by those with more egalitarian or inclusive views. Schools cannot join the consortium at will. Rather, membership is limited to schools that have demonstrated a significant institutional commitment to experiential learning along the lines suggested in the Carnegie Report. Accordingly, the consortium does not work for all schools. Many schools are not interested in making a significant commitment to Carnegie-style experiential learning, others may have pockets of interest but no institutional commitment to doing so, and others may have more widespread interest but have not yet taken significant steps down that path. Our hope is that more and more schools will qualify for the consortium. But at this point, not all schools qualify.

The stakes are relatively low. Participation in ETL does not require consortium membership. Any professor at any school—consortium member or not—can submit courses for inclusion on the ETL web site. Anyone can use the web site, including making full use of the course modules, or even submitting blog posts. The only activity that is limited to consortium members is participation in the annual conference—and even here, participation is open to ETL Fellows from non-consortium schools. So professors who are committed to Carnegie-style teaching who happen to be at schools that are less committed are not excluded in any way.

The goal is not to be exclusionary for its own sake. The point of exclusion is twofold. First, limiting membership creates a leadership model that recognizes schools that have taken important and meaningful steps to implement innovation consistent with the Carnegie Report. If membership were open to schools that had not taken such steps, it would not be meaningful. Second, limiting membership creates opportunities for the type of high-level expert discussion that we see at ETL conferences. We can skip the discussion about whether experiential education is a good idea, or about the basics of doing experiential education, and thereby move the conversation further along. *See supra* note 88.

That is not to say that there is not an important role for a more open conversation. Fortunately, Northeastern University School of Law has started an excellent working group, called the Alliance for Experiential Learning in Law (Alliance), which meets that need—and which also hosts an excellent annual conference. *See Alliance for Experimental Learning in Law*, NORTHEASTERN U. SCH. L., <http://www.northeastern.edu/law/academics/institutes/alliance-exp-learning.html> (last visited Sept. 20, 2012). Notably, many of the ETL consortium schools are part of the Alliance, and many Alliance schools (including Northeastern) are also members of the ETL consortium. *Compare id.*, with *About Our Consortium*, *supra* note 87.

⁹⁷ *See* Stephen Daniels et al., *Analyzing Carnegie's Reach: The Contingent Nature of Innovation*, 62 J. LEGAL EDUC. (forthcoming 2013) (manuscript at 5) (on file with author).

Sullivan, make regular blog posts discussing the survey findings.⁹⁸ The findings are encouraging, suggesting that more and more schools are embracing Carnegie-style innovations.⁹⁹

Finally, ETL seeks to expand the discussion about innovation in legal education beyond law professors and law schools. After all, many of the primary stakeholders in legal education do not reside in law schools. To this end, ETL has put together a broad-based advisory board, which includes members of the academy, members of the bench and bar, commentators, those who regularly hire lawyers, and those who regularly train lawyers.¹⁰⁰ ETL will likely add law student members from the ABA Law Student Division.¹⁰¹ The advisory committee meets twice annually to discuss the ETL initiatives, as well as the more general question of how best to train new lawyers to the highest standards of competence and professionalism. The discussion and the ideas that come from that discussion are invaluable.

CONCLUSION

There are many ideas for how legal education should be reformed and many calls for change. The good news is that we already have the benefit of a series of well-researched, well-supported, and broadly accepted prescriptions for reform in the Carnegie Report.¹⁰² These prescriptions are already being implemented in law schools across the country and yielding tangible results.¹⁰³ If law professors and law schools can expand the integrated experiential learning opportunities they provide their students, they will likely produce better law graduates and better lawyers.

Our professors and our schools face some constraints on this type of teaching, including cost and learning curves. But with the right forms of

⁹⁸ *IAALS Online*, *supra* note 80.

⁹⁹ See Daniels et al., *supra* note 97; Stephen Daniels, *Areas of Innovation at the ETL Consortium Schools: The Incentive Structure*, IAALS ONLINE (July 19, 2012), <http://online.iaals.du.edu/2012/07/19/areas-of-innovation-at-the-etl-consortium-schools-the-incentive>.

¹⁰⁰ *ETL Advisory Committee*, EDUCATING TOMORROW'S LAWS., <http://educatingtomorrowlawyers.du.edu/about-etl/etl-advisory-committee/> (last visited Sept. 20, 2012).

¹⁰¹ We have been working with other law student groups that are dedicated to law school reform along the lines proposed by the Carnegie Report.

¹⁰² See CARNEGIE REPORT, *supra* note 6, at 22.

¹⁰³ For example, I have heard from numerous employers how impressed they are with our students who have participated in our experiential learning curriculum. However, as noted above, *see supra* note 18, a great deal of work remains to be done to assess the systematic effects of experiential education on the quality of new lawyers.

support, individual professors and individual law schools can implement these prescriptions. This Essay has attempted to provide a roadmap for how we can provide support for these important innovations. If it works (and it seems to be working), we can improve legal education in significant ways. Now.