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## Assessing the Experiential (R)Evolution

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# VILLANOVA LAW REVIEW

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## Articles

### ASSESSING THE EXPERIENTIAL (R)EVOLUTION

ALLISON KORN\* & LAILA L. HLASS\*\*

#### ABSTRACT

For more than a century, law schools have resisted substantial reforms relating to experiential education. Yet, in 2014, the ABA mandated a six-credit experiential course graduation requirement for law schools, alongside a packet of experiential curriculum amendments. Proponents of experiential education had hoped for a fifteen-credit mandate, aligning law schools with other professional schools that require one-quarter to one-third skills training. Still, six credits is significant, potentially marking a striking shift in the direction of legal education. To date, no one—including the ABA—has broadly evaluated the post-mandate legal education experiential landscape. It is particularly urgent to consider recent shifts in legal education as law schools grapple with new paths forward in the backdrop of a global pandemic and calls to meaningfully address systemic racism in legal education.

In 2018–2019, the first classes of law students graduated under the revised ABA Standards, and the authors conducted a national survey of ABA-accredited law schools, receiving responses from 126 institutions. Data collected from this survey informed our study, which is the first systematic, empirical investigation into the experiential landscape shift since the revised Standards were adopted. Our analysis reveals a proliferation of deans and directors of experiential education, continued growth in experiential curricula, including among experiential courses in the first-year curriculum, and experimentation with new pedagogical approaches. Hybrid experiential courses termed “labs” and “practicums” have expanded

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as well. These trends of expansion and experimentation suggest law schools individually and collectively should enter into a period of assessment. Institutions should take stock of their existing programming to ensure they have engaged in responsive and responsible growth. These assessments should also consider whether the institutions have promoted sustainability for and diversity within their experiential faculty, programs, deans, and directors. Particularly, in the context of looming financial concerns, an ever-changing legal market, and an evolving profile of law students, schools should resist efforts to shortchange experiential programs; overstretch experiential deans, directors, and faculty; give short shrift to diversity and equity concerns; and relax rigorous standards for experiential education.

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## INTRODUCTION

AMERICAN law schools have an “uneasy history” when it comes to experiential education.<sup>1</sup> While apprenticeships were the pathway towards legal careers until the turn of the twentieth century, law schools largely embraced the casebook method by the 1890s, using lecture and appellate case-focused textbooks and largely eschewing experiential pedagogy.<sup>2</sup> In 1933, in contrast to the dominant ideology within legal education, legal scholar Jerome Frank famously asked, “*Why Not a Clinical Lawyer-School?*”<sup>3</sup> For more than a century, law schools did not generally mandate any experiential education, comprised of law clinic, externship (formally termed “field placement”), and simulation courses. In fact, it was not until 1973 that the ABA required law schools to offer *any* experiential training within the curriculum.<sup>4</sup> Even then, the ABA referred to courses resembling today’s model of experiential education as “professional skills” courses, and did not require students to take a single experiential course or credit.

For decades, proponents of experiential education have advocated for a seismic shift in legal education towards an integration and elevation of experiential pedagogy. The ABA and most law schools have long resisted such changes, despite numerous reports, studies, and books detailing shortcomings within legal education with respect to graduating “practice-ready” students.<sup>5</sup> Law schools notably have been out of sync with other professional schools that require at least one-quarter and up to one-

1. See generally Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551, 552 (2018).

2. Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183, 184–86 (2008).

3. Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933).

4. Joy, *supra* note 1, at 568 (citing Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Deans of ABA Approved Law Schools (Feb. 1, 1978)), [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/stanardsarchive/1978\\_standards.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/stanardsarchive/1978_standards.authcheckdam.pdf) [permalink unavailable].

5. See, e.g., ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007), [https://www.cleaweb.org/Resources/Documents/best\\_practices-full.pdf](https://www.cleaweb.org/Resources/Documents/best_practices-full.pdf) [<https://perma.cc/C8ZE-S3ZE>]; WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007); E Eugene Clark, *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, (Illinois: American Bar Association 1992), 4 LEGAL EDUC. REV. 201 (1993) [hereinafter *MacCrate Report*]. Despite overwhelming studies pointing toward a need for students to gain more lawyering skills for practice, there was some resistance regarding the shift. See Brian Leiter, *Experiential Education Is Not the Solution to the Problems Facing Law Schools*, HUFFPOST (Jan. 5, 2014, 4:05 PM), [https://www.huffpost.com/entry/experiential-education-law-school\\_b\\_4542103](https://www.huffpost.com/entry/experiential-education-law-school_b_4542103) [<https://perma.cc/E5RH-VJCN>]. However, there are some notable exceptions to this resistance, including law schools that require a clinical course to graduate. See, e.g., Erwin Chermirinsky, *The Ideal Law School for the 21st Century*, 1 UC IRVINE L. REV. 1, 8, 15–16 (describing the clinic requirement at UCI and how clinics should be the “centerpiece of the law school”).

half of skills training before graduation.<sup>6</sup> The experiential mandate came in a moment of economic crisis for law schools, spurned by a collapsing job market and plummeting law school applicants,<sup>7</sup> as well as scathing censure from the private bar and national publications.<sup>8</sup>

While educators debated proposals from a three-credit to fifteen-credit experiential requirement,<sup>9</sup> the ABA ultimately approved a six-credit mandate in 2014.<sup>10</sup> This represented a six-fold increase of the prior Standard.<sup>11</sup> In December 2015, the New York Court of Appeals adopted a rule creating the New York Skills Competency and Professional Values Requirement in effect for bar candidates who began their legal studies in August 2016; this rule included five methods to satisfy the requirement, including the completion of fifteen experiential credits.<sup>12</sup> This move remains nationally significant for legal education, as New York is the state with the highest number of active attorneys in residence.<sup>13</sup>

Law schools have grappled with what these experiential reforms could and should mean. The 2015 American Association of Law Schools Annual Conference on Clinical Education declared a “new normal” within legal education, marked by “[p]roposals to eliminate the third year, to revamp the traditional curriculum, to graduate ‘practice-ready’ lawyers, and to permit students to take the bar early.”<sup>14</sup> Advocates of externships, in a

6. Robert Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. 1, 43 (2014).

7. Christine Cerniglia Brown, *Is Experiential Education Simply a Trend in Law School or Is It Time for Legal Education to Take Flight?*, 60 FED. LAW. 42, 43 (2013).

8. Robert Hornstein, *The Role and Value of a Shadow Program in the Law School Curriculum*, 31 MISS. C. L. REV. 405, 408 (2013).

9. See CLINICAL LEGAL EDUC. ASS'N, COMMENT OF CLINICAL LEGAL EDUCATION ASSOCIATION ON PROPOSED STANDARD 303 (Jan. 30, 2014), <https://www.cleaweb.org/Resources/Documents/2014-01-14%20CLEA%20Chapter%203%20comment.pdf> [<https://perma.cc/PJJ2-E59V>].

10. Previously, the requirement was only one hour, but the Clinical Legal Education Association had advocated for a broader requirement of fifteen hours. Clinical Legal Education Association, *CLEA Committee Reports*, CLEA NEWSL., Spring 2014, at 1, 4, <https://www.cleaweb.org/Resources/Documents/CLEA%20NewsLetter%20Spring%202014.pdf> [<https://perma.cc/B9ES-QVAG>].

11. CLINICAL LEGAL EDUC. ASS'N, COMMENT TO ABA TASK FORCE ON THE FUTURE OF LEGAL EDUCATION (June 19, 2013), <https://www.cleaweb.org/Resources/Documents/CLEA%20COMMENT%20TO%20ABA%20TASK%20FORCE.pdf> [<https://perma.cc/H5TJ-99LP>].

12. Notice from New York Court of Appeals to New York Bar (Dec. 16, 2015), <http://www.courts.state.ny.us/ctapps/news/nottobar/nottobar121615.pdf> [<https://perma.cc/KN5Q-6V42>].

13. *New ABA Data Reveals Rise in Number of U.S. Lawyers, 15 Percent Increase Since 2008*, AM. B. ASS'N (May 11, 2008), [https://www.americanbar.org/news/abanews/aba-news-archives/2018/05/new\\_aba\\_data\\_reveals/](https://www.americanbar.org/news/abanews/aba-news-archives/2018/05/new_aba_data_reveals/) [<https://perma.cc/588T-JA32>] (“Among other findings from the report, the top five areas with the largest number of active attorneys in residence are New York (177,035), California (170,044), Texas (90,485), Florida (78,244) and Illinois (63,422).”).

14. *Leading the New Normal: Clinical Education at the Forefront of Change*, ASS'N AM. L. SCH., (May 4–7, 2015), <https://memberaccess.aals.org/eweb/DynamicPage>

2014 conference, focused “on the role of field placements in reforming legal education.”<sup>15</sup> Even before the six-credit requirement was realized, law schools across the country engaged in structural and curricular changes; after its adoption, more law schools added to this evolution.<sup>16</sup> Many introduced clinic requirements or guarantees for their students. One school experimented with an experiential third year.<sup>17</sup> And many more embraced semesters-in-practice and new “hybrid” courses, some called labs and practicums.<sup>18</sup> To date, no one—including the ABA—has broadly evaluated the post-mandate experiential legal education landscape. It is particularly urgent to consider recent shifts in legal education as law schools grapple with new paths forward in the backdrop of a global pandemic<sup>19</sup> and calls to meaningfully address systemic racism in legal education.<sup>20</sup>

Newly appointed in our positions as Assistant Dean for Experiential Education and Director of Experiential Learning, we have been confronted with a swath of similar challenges and questions: How should we refer to innovative new experiential courses that differ from our tradi-

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.aspx?Site=AALS&WebKey=741149b2-a0f1-4c9d-822e-aaab7fbd2fef [https://perma.cc/M5G7-S6QK].

15. Call for Proposals: Externships 7, Scaling New Heights: Field Placements and the Reform of Legal Education (Oct. 18, 2013), <https://westallen.typepad.com/files/externships-7—call-for-proposals.pages.pdf> [https://perma.cc/MTJ5-5WVV].

16. See Sheldon Krantz & Michael Millemann, *Legal Education in Transition: Trends and Their Implications*, 94 NEB. L. REV. 1, 2 (2015).

17. Washington and Lee experimented with an experiential third year that they have replaced with an eighteen experiential credit graduation requirement. BENJAMIN BARTON, FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND 185 (2019). However, some schools still have experiential third-year possibilities. See *Third Year in Practice*, DEPAUL COLL. L., <https://law.depaul.edu/academics/experiential-learning/third-year-practice/Pages/default.aspx> [https://perma.cc/AHE5-N7A2] (last visited Aug. 23, 2020); *Third Year Anywhere*, WASHBURN UNIV. SCH. L., <https://washburnlaw.edu/admissions/thirdyearanywhere/index.html> [https://perma.cc/22CC-4H8K] (last visited Aug. 23, 2020). Meanwhile, Northeastern Law School follows a co-op model where students alternate semesters between fully in field placements and then fully in-school courses. See *The Leader in Experiential Education*, NORTHEASTERN UNIV. SCH. L., <https://www.northeastern.edu/law/experience/index.html> [https://perma.cc/UMQ5-UKAV] (last visited Aug. 23, 2020).

18. Katherine R. Kruse et al., *Client Problem Solving: Where ADR and Lawyering Skills Meet*, 7 ELON L. REV. 225, 225 (2015).

19. See Karen Sloan, *Law School Applications are Down. Will COVID-19 Spur a Late Comeback?*, LAW.COM (June 3, 2020, 1:22 PM), <https://www.law.com/2020/06/03/law-school-applications-are-down-will-covid-19-spur-a-late-comeback/> [https://perma.cc/H72C-WFB4]; Richard Vedder, *Is a Law School Meltdown Coming?*, FORBES (June 8, 2020, 9:00 AM), <https://www.forbes.com/sites/richardvedder/2020/06/08/is-a-law-school-meltdown-coming/#e162c663b364> [https://perma.cc/SVA8-Q23H].

20. See Danielle M. Conway et al., *Law Deans Antiracist Clearinghouse Project*, ASS’N AM. L. SCHS., <https://www.aals.org/antiracist-clearinghouse/> [https://perma.cc/BXX7-Q8HN] (last visited July 26, 2020).

tional law clinic, externship, and simulation courses? How should we determine where and how to expand within our experiential programs? How can we create consistency across approval and assessment of experiential courses? How should we train faculty new to experiential education who hope to teach experiential courses? What is the best means of oversight over new experiential courses to ensure they meet experiential requirements? How can we improve recruitment, appointment, and retention processes for clinical and externship faculty? Beyond these internal questions, we also grew curious about how our counterparts across the country grapple with similar challenges.

In Spring 2018, we developed a survey entitled “Emerging Models of Experiential Courses” to surface trends regarding new experiential administrative positions, modified processes for approving experiential courses, the ability and requirements for first-year students to take experiential courses, and changes in the upper-level curriculum. We also inquired about “new” experiential course types, specifically, labs and practicums,<sup>21</sup> which are not explicitly defined by the revised Standards. One hundred twenty-six law schools responded to our survey during Fall/Winter 2018.

Although the revised ABA Standards went into effect for the graduating class of 2019, no one has broadly examined their impact. Most scholarship regarding recent changes in experiential education has used a theoretical or case studies lens to study changes, with little empirical analysis to truly illuminate any shifts at a national level.<sup>22</sup> This is the first systematic empirical investigation into the experiential landscape shift since the 2014 experiential mandate.

This Article proceeds in three parts. In Part I, we detail the experiential education reforms that catalyzed changes at law schools nationally, and we describe the methodology of our survey. In Part II, we publish our findings, including trends relating to experiential education administration, assessment, and curricular changes. We found many respondent law schools have created a dean for experiential education position,<sup>23</sup> and

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21. Note there is disagreement about what the terms labs and practicums mean. See ASS’N OF AM. LAW SCHS., SECTION ON CLINICAL LEGAL EDUCATION GLOSSARY FOR EXPERIENTIAL EDUCATION [hereinafter AALS GLOSSARY], <https://www.aals.org/wp-content/uploads/2017/05/AALS-policy-Vocabulary-list-FINAL.pdf> [<https://perma.cc/V47Z-8G5L>] (last visited Mar. 3, 2020). But, in order to be experiential for ABA purposes, these courses must qualify as either a clinic, field placement, or simulation. *Id.*

22. See, e.g., Emma Lloyd Best, *Satisfying Experiential Education Requirements Through Expanding Externships in For-Profit Placements*, 21 CLINICAL L. REV. 1 (2014); Karen A. Jordan, *Enhancing Externships to Meet Expectations for Experiential Education*, 23 CLINICAL L. REV. 339 (2016). But see Margaret E. Reuter & Joanne Ingham, *The Practice Value of Experiential Legal Education: An Examination of Enrollment Patterns, Course Intensity, and Career Relevance*, 22 CLINICAL L. REV. 181 (2015).

23. We use the term “deans of experiential education” to encompass roles with oversight responsibility over all experiential programming. Prior to broad-based expansion of experiential curricula—and before the six-credit experiential course graduation requirement—many law schools had designated roles with over-



nearly half appointed two or more individuals with experiential oversight responsibilities. Most law schools have adapted their curricula to respond to the experiential mandate, and these changes overwhelmingly apply to upper level courses. That said, a significant number of law schools also have introduced experiential coursework into the first-year curriculum. Finally, we found that meaningful numbers of schools are using the terms practicums and labs to describe new experiential courses.

In Part III, building upon these findings, we share insights regarding the future direction for experiential legal education. Ultimately, our research supports the need for a reckoning with the expansion of experiential administrators, faculty, and courses. We conclude that law schools should collectively develop and implement best practices for ensuring program sustainability. First, schools must define the boundaries of experiential dean and director roles, and ensure appropriate teaching loads, administrative support, and security of employment for deans and directors. As dean and director roles can be quite broad, schools should consider if the scope of duties have grown alongside program expansion in ways that are unsustainable long-term. Needed support may take different forms, such as additional compensation, appointing a deputy, appointing directors of distinct programs, course relief, and teaching support in the form of additional faculty and staff. Secondly, institutions should implement sustainable practices to expand and support experiential faculty, with a focus on including and valuing underrepresented clinicians of color.<sup>24</sup> Similar assessments of teaching load, administrative support, service, and other non-teaching obligations should be implemented to ensure clinicians who may be part of expanding programs have appropriate support to succeed with their charges. Thirdly, schools must develop practices to ensure rigor in the process for approving and assessing experien-

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sight responsibility for clinics only. Center for the Study of Applied Legal Education (CSALE) data indicates that the number of law schools that have appointed such an individual has decreased, from 56% of respondents in 2007–2008 to 31% in 2016–2017. See DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR STUDY OF APPLIED LEGAL EDUC., REPORT ON THE 2007–2008 SURVEY 6 (2008), [https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5da859d2990d0a932118b8b6\\_CSALE.07-08.Survey.Report.pdf](https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5da859d2990d0a932118b8b6_CSALE.07-08.Survey.Report.pdf) [https://perma.cc/57LJ-5CGR]; ROBERT R. KUEHN & DAVID A. SANTACROCE, CTR. FOR STUDY OF APPLIED LEGAL EDUC., THE 2016–2017 SURVEY OF APPLIED LEGAL EDUCATION 6 (2017) [hereinafter CSALE 2016–2017 SURVEY], [https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5da859d8ad42af693e72957d\\_Report\\_on\\_2016-17\\_CSALE\\_Survey.pdf](https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5da859d8ad42af693e72957d_Report_on_2016-17_CSALE_Survey.pdf) [https://perma.cc/9LLA-2YVZ]. CSALE presumes that this drop has occurred as people move into positions overseeing all clinical—or experiential—courses. CSALE 2016–2017 SURVEY, *supra*, at 6.

24. It is particularly important to focus on improving hiring and retention of Black, Latinx, and Indigenous faculty, whose representation in clinical faculty has been largely stagnant in the last twenty years. CLEA Committee for Faculty Equity and Inclusion, *The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty*, 26 CLINICAL L. REV. 127, 128 (2019) [hereinafter *CLEA Diversity Imperative Revisited*].

tial courses while appropriately allocating resources to courses and programs.

### I. HISTORY AND METHODOLOGY

In March 2014, the ABA Council of the Section of Legal Education and Admissions to the Bar approved a proposal requiring law students to complete at least six credit hours of experiential coursework. Standard 303(a)(3), as revised, explains that “[a]n experiential course must be a simulation course, a law clinic, or a field placement,” and “must be primarily experiential in nature.”<sup>25</sup> Former Standard 302(a)(4) requiring “adequate opportunities for instruction in professional skills,” has been replaced; now law schools must have learning goals including ensuring students achieve competency in “professional skills generally regarded as necessary for effective and responsible participation in the legal profession.”<sup>26</sup> Standard 304 defines simulation, field placement, and law clinic courses. Furthermore, Standard 304 defines core experiential course requirements, namely that the courses:

- integrate doctrine, theory, skills, and legal ethics;
- provide multiple opportunities for students to perform professional skills;
- integrate self-evaluation and faculty/supervisor feedback regarding the performance of skills;
- contain a classroom instructional component;<sup>27</sup> and
- include direct faculty<sup>28</sup> supervision of the student’s performance.<sup>29</sup>

This new experiential coursework requirement along with a tightening of experiential course definitions mark an important transition in le-

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25. *ABA Standards and Rules of Procedure for Approval of Law Schools 2017–2018*, 2017 AM. B. ASS’N 16–17 [hereinafter *ABA Standards and Rules of Procedure for Approval of Law Schools 2017–2018*], [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017\\_2018\\_aba\\_standards\\_rules\\_approval\\_law\\_schools\\_final.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABAStandardsforApprovalofLawSchools/2017_2018_aba_standards_rules_approval_law_schools_final.authcheckdam.pdf) [<https://perma.cc/MJ5D-TK4F>].

26. *American Bar Association Section of Legal Educ. & Admissions to the Bar, Standards for Approval of Law Schools and Interpretations*, 1996 AM. B. ASS’N 30, [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/standardsarchive/1996\\_standards.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/1996_standards.pdf) [<https://perma.cc/3AGD-RRH3>].

27. Externships may, in lieu of a classroom instructional component, provide regularly scheduled tutorials or “other means of ongoing, contemporaneous, faculty-guided reflection.” *ABA Standards and Rules of Procedure for Approval of Law Schools 2017–2018*, *supra* note 25, at 18.

28. Externship courses could provide either direct supervision of the student’s performance by a faculty member or a site supervisor. *Id.*

29. *Id.*

gal education, which has been largely unexamined.<sup>30</sup> We developed our survey to complement the critical information collected from the Center for the Study of Applied Legal Studies (CSALE).<sup>31</sup> CSALE is a nonprofit entity, “dedicated to the empirical study of applied legal education” and the promotion of related scholarship, and the definitive source for data regarding the “program design, capacity, administration, funding, pedagogy, and the role of applied legal education and educators in the academy.”<sup>32</sup> Building upon CSALE’s research, our survey includes questions specifically informed by changes to ABA Standards governing experiential education, as well as topics not included in the CSALE survey.

With only forty-one total questions, our survey is relatively short, focusing on four discrete topics: experiential administrator roles; decision-making processes for approving and assessing new and existing experiential courses; and changes in upper level experiential curricula; and changes in first-year experiential curricula. We also pose a series of questions about experiential courses labeled labs and practicums, if schools have such courses. A copy of the full survey instrument is included as an Appendix.<sup>33</sup>

We developed the survey during the summer of 2018, and released it in October 2018 using the SurveyMonkey platform. We developed a list of all ABA-accredited law schools, and identified one target director, dean, or similarly situated faculty member at each school whom we believed could, ideally, answer questions regarding experiential education and curriculum. Generally, if a law school had a dean or director for experiential education,<sup>34</sup> this person became the first point of contact. For law schools

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30. Although an experiential requirement is a major change, many have noted the change is “modest” and have called for a higher credit requirement, or that clinic credits be specifically required. *See generally* CLINICAL LEGAL EDUC. ASS’N, COMMENT ON DRAFT STANDARD 303(A)(3) & PROPOSAL FOR AMENDMENT TO EXISTING STANDARD 302(A)(4) TO REQUIRE 15 CREDITS IN EXPERIENTIAL COURSES (July 1, 2013), [clea.wildapricot.org/Resources/Documents/2013-01-07%20CLEA%2015%20credits.pdf](http://clea.wildapricot.org/Resources/Documents/2013-01-07%20CLEA%2015%20credits.pdf) [<https://perma.cc/NRA4-W56Q>]; Robert Kuehn, *If 6 Turned out to be 9, I Don’t Mind (But 3? or 2!): The Uneven Implementation of Mandatory Experiential Credits*, BEST PRACT. FOR LEGAL EDUC. (Jan. 1, 2019), <https://bestpracticeslegaled.com/2019/01/01/if-6-turned-out-to-be-9-i-dont-mind-but-3-or-2-the-uneven-implementation-of-mandatory-experiential-credits/> [<https://perma.cc/SZH6-8CGF>] [hereinafter *If 6 Turned out to be 9*]; Robert R. Kuehn, *Universal Clinic Legal Education: Necessary and Feasible*, 53 WASH. U. J.L. & POL’Y 89 (2017) [hereinafter *Universal Clinic Legal Education*].

31. We are grateful to Robert Kuehn who provided detailed feedback on our survey instrument. In addition to his roles as Associate Dean for Clinical Education and Professor of Law at Washington University School of Law, Dean Kuehn is Vice President of CSALE.

32. CTR. FOR STUDY APPLIED LEGAL EDUC., <http://www.csale.org> [<https://perma.cc/3KGV-AEY8>] (last visited Jan. 22, 2020).

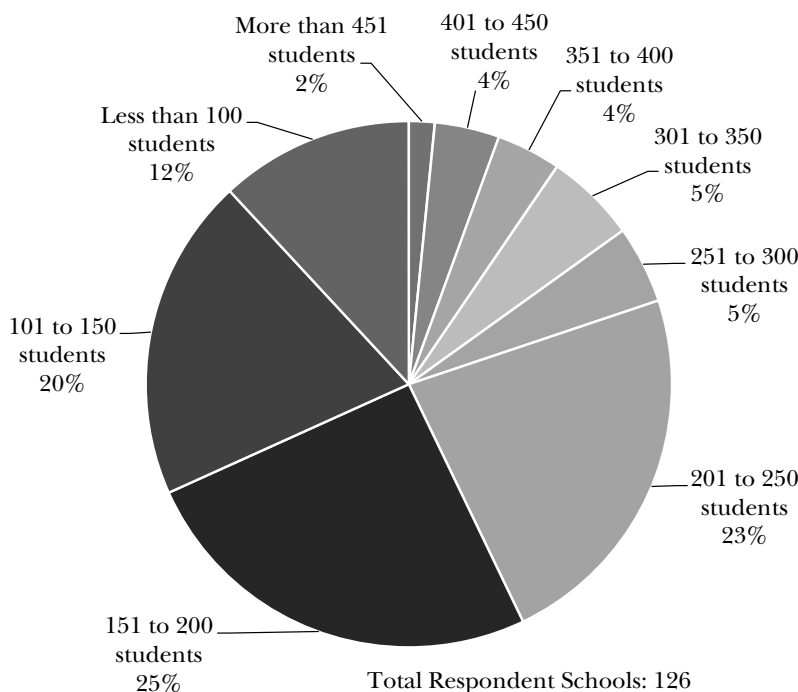
33. *See infra* Appendix.

34. For schools who had two faculty members with administrative oversight over experiential curriculum, we targeted the individual who seemed to have a higher rank.

that did not appear to have such a position, but did have a Director of Clinics, we identified the Director of Clinics as the point of contact. If a law school had neither a dean nor a director position, or if the initial target professed not to have the requisite knowledge to complete the survey, we identified the Academic Dean as the next point of contact. From October 10, 2018, to December 21, 2018, we emailed and called points of contact at schools that had not yet responded, until the survey was closed at the end of December. One hundred and twenty-six law schools,<sup>35</sup> out of about 200<sup>36</sup> approved ABA law schools, completed the survey.<sup>37</sup>

While 126 schools participated overall, not every survey question was mandatory; therefore, not all questions were answered by all participants. Schools that responded have, on average, a first-year class size between 101 to 250, reflective of general law school population trends. Of 125 responses, 40% (or 50 schools) have a part-time or evening J.D. program.

TABLE 1: SIZE OF FIRST-YEAR J.D. CLASS FOR THE 2018–2019 ACADEMIC YEAR



35. At one school, two different individuals responded, so we reconciled those answers into one entry, ensuring only one response per school. With another school, the respondent emailed us with a couple updates to questions that she neglected to include, so we manually inputted them.

36. *ABA-Approved Law Schools*, AM. B. ASS'N, [https://www.americanbar.org/groups/legal\\_education/resources/aba\\_approved\\_law\\_schools/](https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/) [<https://perma.cc/D7YL-46QB>] (last visited Jan. 22, 2020).

37. For a full list of the survey questions, see *infra* Appendix.

After analyzing the data, we identified and addressed some inconsistencies within responses. Where we found inconsistencies regarding law schools' answers about practicums and labs, we followed up via email to survey respondents, talked on the phone with law school registrars, and examined course registration materials online to reconcile the data. Once we received more information, we changed some responses to accurately indicate whether schools offer practicums, labs, both, or none. We also identified some discrepancies regarding the first-year curriculum, specifically, whether first-year experiential coursework is required or offered as an elective; to reconcile, we reviewed the respondents' descriptions of these courses collectively in order to conduct our final analysis. Finally, we reconciled some inconsistencies regarding whether schools had experiential dean and director positions informed by their comment responses.<sup>38</sup>

## II. FINDINGS OF 2018–2019 EXPERIENTIAL EDUCATION SURVEY

Our findings demonstrate several trends. Law schools have created a class of experiential education deans and directors with oversight responsibility over curriculum, programming, and faculty; expanded their experiential curriculum; and developed emerging models of experiential courses. A majority of schools have established experiential dean or director roles at their institutions, and have made changes to their upper level experiential curriculum in response to changes to ABA Standards governing experiential education. In addition, more than 25% of respondents noted changes to their first-year curricula regarding experiential methods and instruction. Furthermore, the findings illustrate that while a great number of schools are using the terms “practicum” and “lab” to describe various courses, there is little consensus as to the meaning behind those terms.

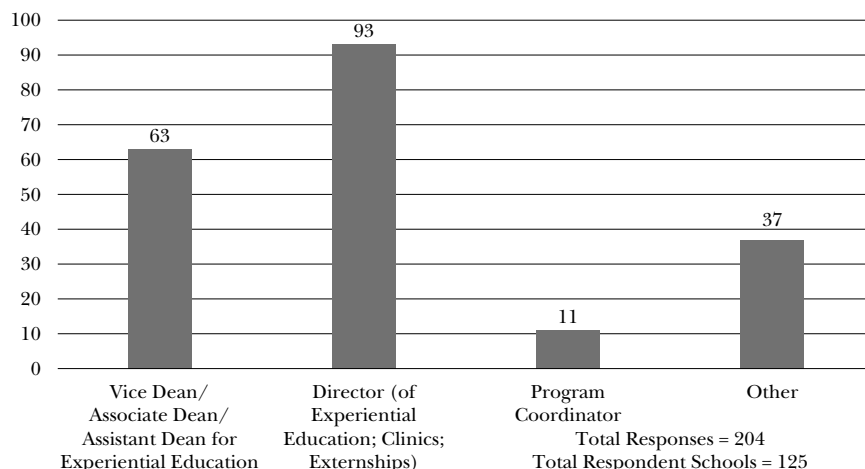
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38. Our early review of survey responses found that some respondents answered detailed questions about practicum and/or lab courses without having indicated that their schools had such courses. When we determined that some schools erroneously failed to indicate that they offer experiential practicum and/or lab courses, we changed their responses to Question 13 and indicated that they do, in fact, offer such courses. We also found that some respondents indicated that they offer experiential practicum and/or lab courses when, in fact, they do not. For these respondents, we removed their responses. We found some discrepancies between individual respondent's answers for Question 8 and Question 10, which aimed to distinguish between first-year experiential courses as required and elective. Some respondents, for example, identified the same first-year course(s) for each question. Respondents to these questions were asked to describe these first-year courses. We based our analysis on a review of these descriptions. Finally, for Question 5 regarding experiential oversight responsibility, some respondents selected only “other” in the provided responses, but then indicated in their descriptions that their law school has a dean or director position. For these respondents, we designated the dean or director responses in the affirmative.

A. *Creating a Class of Experiential Education Deans and Directors*

Within the past decade, law schools have created a class of deans and directors that oversee experiential programming and curriculum—with a variety of titles including “assistant dean, associate dean, vice dean, or simply dean.”<sup>39</sup> This trend aligns with the general elevation of experiential education and its integral role in law school curricula.<sup>40</sup> Regarding these oversight roles, our survey asked whether law schools have a Vice Dean/Associate Dean/Assistant Dean for Experiential Education, a Director (of Experiential Education/Clinics/Externships), a Program Coordinator, or a combination of these roles. The survey also asked respondents to describe “other” positions with oversight responsibility at their law schools.

TABLE 2: TYPES OF EXPERIENTIAL POSITIONS EXISTING<sup>41</sup>



The vast majority of schools—more than 74%—reported a director position having oversight responsibility for experiential courses. These responses might indicate a director of experiential education, director of clinics, or director of externships; alternatively, it might include multiple positions. The survey did not ask specifically which experiential courses or program components a position oversees—so the responses may contemplate roles with oversight power over clinics, externships, simulations, or a combination of these courses. Half of schools reported a vice, associate, or assistant dean position with oversight responsibility over experiential courses. Almost a dozen respondents have a dedicated program coordinator position. Thirty percent of respondents reported having an “other”

39. Margaret Martin Barry et al., *Exploring the Meaning of Experiential Deaning*, 67 J. LEGAL EDUC. 660, 670 (2018).

40. *See id.* at 661, 664–65.

41. Question 5: “What position(s) exist at your law school with respect to oversight responsibility for experiential courses, including clinics, externships and simulations [check all that apply].”

position or role with responsibilities extending to the experiential program. These include deans for academic affairs, faculty committees, and department chairs. Almost all schools indicated they have a role that assumes oversight duties over experiential education.

Nearly half of schools indicated they have at least two or more individuals with administrative experiential duties; only four schools have none.<sup>42</sup> Some of these collaborations suggest a hierarchy within the law school's experiential program: there may exist, for example, both a dean and a director of experiential education. In general, those roles with oversight responsibility for externship programs are classified as directors and serve under a dean. Other management structures tie experiential-specific roles with other general senior deans and directors, such as an associate dean for academic affairs. Law schools also report strong committee involvement; while some respondents indicate that their committees are focused expressly on experiential or clinical business, others reference more broad charges, such as curriculum or standards. At some law schools, oversight responsibility is shared among a collective of clinical faculty or delegated to individual clinic directors. This particular type of collaboration suggests a commitment to maintaining individual faculty autonomy over course structure.

No "one-size-fits-all" experiential administration structure has emerged. Schools have defined varying roles across a spectrum of expectations and responsibilities. While our question asked about "oversight responsibility," which covers a broad scope of duties and may be loosely interpreted, the data suggests that program and curricular oversight requires extensive collaboration among law school constituencies. And this oversight should not—and cannot—be undertaken by a single person, particularly at average to large-sized institutions, with class sizes of more than 100 students. In addition to determining the contours of these roles, it is increasingly important to define an organizational structure that ensures that the experiential program maintains an important voice in the life of the law school and allows for successful communication and collaboration across various parts of the law school administration.<sup>43</sup>

#### B. *Expanding the Experiential Curriculum*

One of the areas of greatest uncertainty is whether and how experiential curriculum has expanded. In this series of questions, we asked schools whether they mandate more experiential coursework than the six credits required by the ABA, how to assess and who assesses the experiential na-

42. No survey question specifically asked how many positions with administrative experiential duties existed. For each school, we tallied the responses if they indicated dean, director, program coordinator, and "other." As a note, "other" indicates that there were multiple directors, other positions, or the respondent felt the need for more explication. Therefore, these numbers are likely under-representative.

43. See *infra* Section II.A for further discussion.

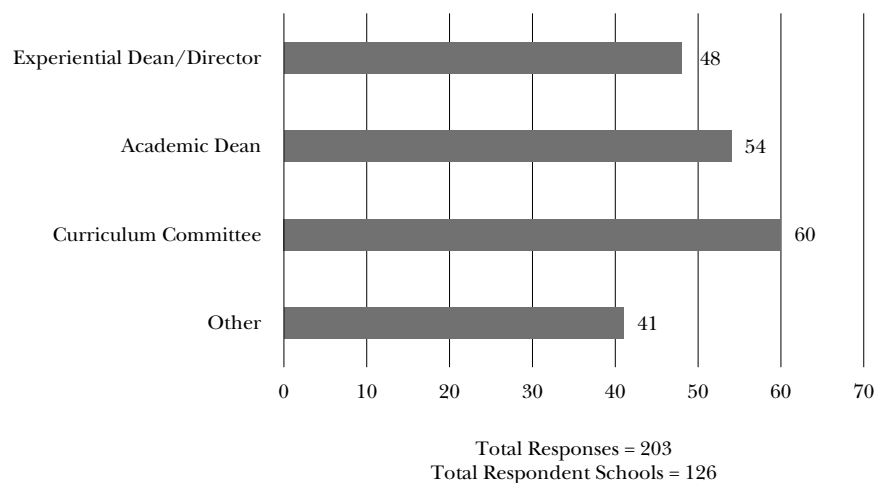
ture of courses, whether and how institutions have expanded the experiential curriculum, and what emerging experiential courses schools have designed.

We did not find clear consensus regarding whom schools designated to decide whether courses count as experiential. Large numbers of schools have the experiential dean, experiential director, academic dean, curriculum committee, or some combination of the four making the decision. Regarding curricular changes, we found that a vast majority of respondents reported expanding upper level experiential curriculum, and a notable nineteen schools reported expanding first-year experiential curriculum, not including legal research and writing courses. Lastly, schools reported a variety of emerging models of experiential courses, including hybrid courses termed labs and practicums.

#### 1. *Determining Whether Courses are Experiential*

To remain accredited, schools must assess courses, including determination of whether the courses satisfy modern definitions of law clinic, externship, and simulation courses. We found that some schools have developed tools to determine whether their existing and proposed new courses meet these definitions and will count for experiential credit, as well as new processes for making these determinations. Our survey asked respondents *who* at their institutions decides whether a proposed course will count for experiential credit.<sup>44</sup>

TABLE 3: DECISION-MAKERS FOR WHETHER A COURSE COUNTS AS EXPERIENTIAL<sup>45</sup>



44. Question 14 asks, “Who decides whether a new course will count for experiential credit? [Check all that apply] Curriculum Committee; Academic Dean; Experiential Dean/Director; and Other [Please describe].”

45. This is Question 14 of the survey.



The data underscores the importance of having an experiential curriculum assessment process; it reveals a variety of approaches. Slightly less than half of institutions reported that a curriculum committee is involved, about 43% reported their academic dean plays a role, and 38% noted that their experiential dean or director is part of the process. And, about one-third of respondents selected “other.” Of these “others,” fourteen indicated a process wherein decisions are considered first by a committee and then advanced to the law school faculty. These fourteen schools specifically indicate curriculum committee involvement, and none mentions an experiential or clinical committee playing a role in the committee-to-faculty process. In fact, only six out of the “other” responses reference an experiential committee at all.

As experiential curricula increasingly become an essential part of a law school’s mission, experiential deans and directors should have a critical role in shaping the programs. Where schools have assembled an experiential committee and are considering its responsibilities in relationship to the experiential dean and director, they may look to longstanding collaborations between academic deans and curriculum committees and move to replicate those processes through the lens of experiential pedagogy and mission. For example, schools have begun introducing screening tools, surveys, questionnaires, and other instruments to approve and assess new and existing experiential courses. In doing so, a deliberate interplay exists between the experiential committee and the dean or director. Parties should move beyond simply ensuring ABA compliance. Instead, they should strive for a process that advances a diverse and comprehensive curriculum that will bolster faculty expertise, develop students’ substantive and contextual knowledge and practical skills, and expand access to justice.<sup>46</sup>

Our survey asked respondents to share any tools or instruments their institutions use to assess whether experiential courses meet the requirements established by ABA Standards 302, 303, and 304. The instruments we reviewed tracked the Standards somewhat directly, with one school explicitly referencing the 2015 ABA Managing Director’s Guidance Memo on Standards 303(a)(3), 303(b), and 304 (Guidance Memo), which aims to clarify the revisions.<sup>47</sup> Mostly presented as a “checklist” or series of

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46. The role and contours of experiential dean and director roles is further discussed *infra* Part II.

47. See generally Guidance Memorandum from the ABA Managing Director’s Office on Standards 301, 302, 314, and 315 to ABA-Accredited Law Schools (June 2015), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_learning\\_out\\_comes\\_guidance.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_out_comes_guidance.pdf) [<https://perma.cc/KFW5-VR2H>]; Guidance Memorandum from the ABA Managing Director’s Office on Standards 303(a)(3), 303(b), and 304 to ABA-Accredited Law Schools (Mar. 2015), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_standards\\_303\\_304\\_experiential\\_course\\_require](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_standards_303_304_experiential_course_require)

prompts, each instrument requires an experiential faculty member to submit information as to the following:

- Whether and how the course is “primarily experiential”;
- Whether and how the course integrates doctrine, theory, skills, and legal ethics;
- Whether and how the course engages students in the performance of one or more skills described in Standard 302;<sup>48</sup>
- Whether and how the course develops these concepts;
- Whether and how the course provides multiple opportunities for performance;
- Whether and how the course provides opportunities for self-evaluation;
- Whether and how the course allows for supervision by and feedback from a faculty member.<sup>49</sup>

While each instrument contains language pulled directly from the Standards themselves, few provide more in-depth definitions of specific terms. For example, regarding the term, “primarily experiential,” one instrument says to “assume this means that the course must be more experiential than lecture-based”; however, none of the instruments provides an example or in-depth definition of what “primarily experiential” looks like. Furthermore, there is no clarifying information about the terms, “performance,” “self-evaluation,” or “supervision.”

Similarly, there are few, if any, examples of how a course can be structured to meet the ABA-established criteria for experiential courses.<sup>50</sup> One instrument provides examples of skills demonstrating “competence in the legal profession.”<sup>51</sup> Another references the Guidance Memo<sup>52</sup> when defining simulation courses: it has a classroom instructional component that includes assignments, learning outcomes, and assessments; but no examples are provided that clarify the interaction of these three or suggest possible learning outcomes for simulation courses. Moreover, there is no explanation of how an experiential course might integrate doctrine, the-

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ment\_.pdf [https://perma.cc/7M47-DMVG] [hereinafter March 2015 Guidance Memo].

48. See *ABA Standards and Rules of Procedure for Approval of Law Schools 2017–2018*, *supra* note 25, at 15.

49. Instruments collected by the survey are on file with authors.

50. Notably, the ABA assesses law school compliance with experiential standards through site visits that occur every ten years, but there is no published instrument which site visitors use to assess experiential programs. *Law School Site Visits*, AM. B. Ass’n, [https://www.americanbar.org/groups/legal\\_education/accreditation/law\\_school\\_site\\_visits/#:~:text=these%20visits%20may%20be%20comprehensive,ordered%20by%20the%20Council%20in](https://www.americanbar.org/groups/legal_education/accreditation/law_school_site_visits/#:~:text=these%20visits%20may%20be%20comprehensive,ordered%20by%20the%20Council%20in) [https://perma.cc/SM35-3FVV] (last visited Aug. 23, 2020).

51. This includes interviewing, counseling, negotiation, fact development/analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, and cultural competency.

52. March 2015 Guidance Memo, *supra* note 47.

ory, skills, and legal ethics, nor are there examples of how experiential courses may develop the concepts underlying their learning goals. One instrument requests the faculty member provide a syllabus of their proposed course. No information is provided, however, as to who will review the syllabus.

Having a bare bones instrument—one tracking language from ABA Standards—may be an important tool for course assessment, particularly given the tension between faculty creativity and ABA rule compliance.<sup>53</sup> The five assessment instruments raise a number of key questions institutions must decide regarding new course approvals: what conversations can and should take place before, during, or after a course is proposed, and who is involved in that conversation? Who is responsible for leading those conversations? How can information be shared institutionally to acclimate the greater faculty and administration to ABA Standards concerning experiential coursework? How do institutions ensure both opportunities across a broad spectrum of skills and substantive law as well as excellence among teaching faculty? These are critically important questions; there is no one-size-fits-all model that will meet every experiential program’s institutional goals. That said, directors and deans of experiential education should drive these conversations and determine the best ways to educate faculty and administrators about developing sound experiential courses.

## 2. *Increasing Experiential Offerings within Upper Level and First-Year Curriculum*

Our findings indicate schools have undertaken four categories of experiential curriculum changes which all point to experiential curriculum expansion: (1) creating an experiential mandate higher than the ABA’s six-credit mandate, (2) guaranteeing placement or requiring enrollment in law clinic and externship courses, (3) adding new experiential courses, adding seats to existing courses, and restructuring existing doctrinal courses to become experiential, and (4) permitting or requiring experiential courses in the first-year curriculum.

First, 15% of schools reported that they have a graduation requirement exceeding the ABA’s six-credit experiential mandate.<sup>54</sup> A few schools noted that they increased the six-credit mandate to fifteen, and one school reported that students may devote up to one-third of overall credits required to graduate to experiential coursework. In 2019, Robert Kuehn identified twenty-two schools that require students to graduate with

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53. *But see* John A. Sebert et al., *Is the Tail Wagging the Dog? Institutional Forces Affecting Curricular Innovation*, (Feb. 25, 2008) (manuscript at 198), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1095539](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1095539) [https://perma.cc/NCM9-RWFA] (“[T]he ABA Standards may be barriers to some things, but I’ll assure you they aren’t barriers to curricular innovation or curricular revision.”).

54. Most schools—85%, or 106 of 125—mirror the ABA requirement. This is Question 12 of our survey.

more than six credits of experiential coursework.<sup>55</sup> Of the institutions identified, Kuehn estimated the median as 10.45 credits, with ten schools at 10 credits or more.<sup>56</sup> Law schools have responded to elevate the importance of experiential pedagogy in the curriculum in other ways as well. Kuehn's research found that since the adoption of the ABA six-credit requirement, thirty schools have introduced a new requirement or guarantee of a law clinic or externship course experience.<sup>57</sup>

A second area of change is schools' efforts to require or guarantee a clinic or externship course. Many respondents to our survey indicated that they require or guarantee a law clinic or externship course enrollment. According to Kuehn's report, one-third of all ABA law schools require or guarantee students enrollment in a clinic or externship course.<sup>58</sup> These changes indicate that many law schools wish to be deliberate about experiential and institutional learning outcomes, using experiential units as a means for students to achieve outcomes. This concept is not new; the MacCrute Report in 1992 emphasized law clinic and externship courses as important ways of teaching practical skills and professional values;<sup>59</sup> in 2007, the Best Practices for Legal Education Report stated, "it is only in the in-house clinics and some externships where students' decisions and actions can have real consequences and where students' values and practical wisdom can be tested and shaped before they begin law practice."<sup>60</sup>

Third, we noticed a trend of experiential course expansion in the upper level curriculum. This was most often a result of adding new courses but also included restructuring existing courses. A strong majority of respondents—68%—indicated an expansion or enhancement of their experiential programming for upper level courses.<sup>61</sup> Of these eighty-five institutions that noted they made changes to the experiential upper level courses, fifty-five said that they added new experiential courses; however, only twenty-two articulated the type of courses that were added. Of the types of experiential courses defined by the ABA Standards, law clinics were the most common additions to upper level curricula; thirteen of the subset of twenty-two respondents indicated they added new clinics. Nearly as many schools (ten) increased the number of externship opportunities, and seven indicated that they created new simulation courses.

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55. *If 6 Turned out to be 9*, *supra* note 30.

56. *Id.* A couple schools had a seven-credit minimum for graduation, while others had a seventeen- to eighteen-credit maximum. *Id.*

57. *Id.*

58. *Id.*

59. *See MacCrute Report*, *supra* note 5; *see also Universal Clinic Legal Education*, *supra* note 30, at 92–94.

60. *See STUCKEY ET AL.*, *supra* note 5, at 114.

61. Question 6 asks whether changes were made to upper level experiential course offerings in light of the experiential mandate.

Important to highlight is that these schools report increasing *courses* and not seats in existing experiential courses.<sup>62</sup> Indeed, the teaching methods employed in experiential courses—as well as the rigor required to develop students’ substantive, practical, and contextual knowledge—requires a low student-faculty ratio.<sup>63</sup> Often repeated is that law clinic course enrollments should not exceed an 8:1 ratio.<sup>64</sup> However, this ratio may most often contemplate four and five credit clinics, and therefore, the ratio should be lower for clinics where students earn more credit hours.<sup>65</sup> Student-faculty ratios in clinics should depend on the number of credit hours the students receive, the types of cases handled, and other demands placed on the clinical teacher, such as scholarship, mentorship and training of fellows and staff, service, and other teaching responsibilities.<sup>66</sup> While externship ratios vary depending on course structure, we recommend considering 1:15 as a maximum when the supervisor is teaching a seminar and individually supervising students.<sup>67</sup>

Lastly, in course expansion, we saw more than a dozen respondents report that they “restructured” existing courses, where faculty members teaching those courses introduce discrete experiential pieces into the coursework and course structure. This restructuring may take the form of adding some experiential exercises to a doctrinal course, which may allow the course to be offered for experiential credit if it meets the criteria es-

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62. Approximately nine schools indicated being able to add seats to existing experiential courses.

63. Deborah Maranville et al., *Incorporating Experiential Education Throughout the Curriculum*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 178 (Deborah Maranville et al. eds., LexisNexis 2015).

64. Martin J. Katz, *Understanding the Costs of Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING 28, 34 (2015) (“Today, most in-house clinics are taught at an 8:1 ratio.”). “Moreover, the AALS-ABA Guidelines Committee recognized the desirability of a ratio of 1 to 8 or 1 to 10 as long ago as 1980.” *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 567 (1992).

65. See *Report of the Committee on the Future of the In-House Clinic*, *supra* note 64, at 566 (noting the ratios contemplated relate to four credit clinics). CSALE data show the average ratio is 8:1, with average credit load for clinic as five per semester. See ROBERT R. KUEHN, MARGARET REUTER, & DAVID A. SANTACROCE, CTR. FOR STUDY OF APPLIED LEGAL EDUC., 2019–20 SURVEY OF APPLIED LEGAL EDUCATION 33 (2020), [https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5f5bcf9641910f246b95ead9\\_Report%20on%202019-20%20CSALE%20Survey.pdf](https://uploads-ssl.webflow.com/5d8cde48c96867b8ea8c6720/5f5bcf9641910f246b95ead9_Report%20on%202019-20%20CSALE%20Survey.pdf) [<https://perma.cc/NZ6Z-MC5Z>] (noting the single largest student-faculty ratio for clinics is 1 to 8).

66. See *Report of the Committee on the Future of the In-House Clinic*, *supra* note 64, at 567.

67. See generally Lisa Radtke Bliss & Donald C. Peters, *Delivering Effective Education in In-House Clinics*, in BUILDING ON BEST PRACTICES: TRANSFORMING EDUCATION IN A CHANGING WORLD, *supra* note 63, at 218, 234 (explaining how different dual supervision models may take more time of the faculty member and noting that externship faculty should teach a “reasonable” number of students and not be “unduly distracted from the teaching obligations by other duties”). No specific externship faculty ratio is endorsed.

tablished by Standard 303(a), including that it must be “primarily experiential in nature.”<sup>68</sup>

Another restructuring model adds a separately credited experiential lab course to an existing doctrinal course. Incorporating a simulation, fieldwork activity, or clinical experience into a traditionally doctrinal course takes significant preparation and planning. As discussed more fully in our recommendations, restructuring courses raises important questions—for faculty who have not previously taught experiential courses, how can we ensure they are best supported to not only comply with ABA Standards but also to engage in best practices? For experiential educators, if they are being asked to take on new duties, how are they being compensated, or how are their teaching and administrative loads adjusted to accommodate these new duties? One possible response is suggested by a respondent who said that their institution awarded faculty innovation grants for restructuring or developing new experiential courses.

The fourth trend we note is expansion of experiential education into the first-year curriculum. Schools differ in their decisions for whether and how to incorporate experiential education into the first-year curriculum. While some schools have developed and required experiential courses in the first year, some institutions designated that those courses will not count towards students’ six-credit requirement. This trend shows that while schools may value offering more practice-based courses to students earlier in their legal education, they also have an interest in preserving the six-credit experiential minimum for upper level experiential courses. Another trend to note is offering courses for first-year students outside of the regular curriculum—in intersession or mini-courses. Finally, both the trend of restructuring existing courses as well as developing new ones underscore the importance of rigorous oversight to ensure schools meet the myriad of experiential requirements, including ensuring courses are “primarily experiential in nature.”<sup>69</sup>

Significantly, more than 20% of respondents report making recent changes to their first-year curricula.<sup>70</sup> Of these, we generally found they reported new or expanded experiential opportunities for first-year students related to simulation courses, including legal writing; interviewing, counseling, and negotiation; the legal profession or “lawyering”; and litigation or transactional skills. Some respondents said that they permit first-year students to enroll in existing clinical courses, discrete modules, or smaller segments attached to a clinical course. But, many institutions report simply incorporating experiential modules or complementary coursework into existing first-year courses.

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68. In order to count as experiential, the course must be “primarily” experiential. *ABA Standards and Rules of Procedure for Approval of Law Schools 2017–2018*, *supra* note 25, at 16.

69. *Id.*

70. A handful of these schools noted that the recent changes were not specifically tied to the ABA changes. Questions 7–11 asked about first-year curriculum.

According to survey results, a fairly even mix of institutions permit or require first-year student enrollment in experiential courses. Of the schools that allow experiential electives for first-year students, most of these experiential courses are offered outside of the regular academic semester, through spring or intersession elective terms, or a summer session. Most of these summer sessions seem to occur after the fall or spring terms of the first year, but one respondent described an optional simulation course offered to first-year students prior to the regular semester's beginning. A few schools noted that they provide first-year students with elective experiential courses during the regular academic semester, which are available only to first-year students. These courses cover a variety of subject matters including transactional law, guardianship, criminal law, community-based learning, and unemployment practice.

For those schools that require experiential coursework for first-year students, many simply modified longstanding required courses, often in the Legal Research and Writing curriculum. One criticism of modifying existing required courses is that it arguably undermines the purpose of increasing the mandated experiential credits. But, that criticism can easily be overcome: for example, if a required course has been significantly modified to include genuine experiential components and offer meaningful experiential learning opportunities, it is not undermining the revised Standards' purpose, as the course is—essentially—a new experiential course and follows a different structure from before. Furthermore, several respondents expressly indicated that, although they have introduced experiential coursework for first-year students, this coursework does not count toward the six units of experiential credit requirement set by the ABA Standards, thereby avoiding this critique.<sup>71</sup>

Some schools have developed mandatory simulation courses that serve as introductions to particular lawyering skills—such as litigation basics and transactional skills—perhaps preparing students for more “capstone” experiential courses in the upper level curriculum. Other schools require first-year students to engage in experiential coursework through simulation activities focusing on professionalism, lawyering, and problem-solving—suggesting that engaging with the context and problems facing lawyers in practice makes the theory and doctrine covered by traditional 1L courses more accessible. Finally, like many schools offering experiential electives to first-year students, some schools require experiential coursework or programming, but outside of the regular academic semester, such as an intersession or mini-term on interviewing, counseling, and negotiation.

Regardless of how institutions offer experiential curriculum to first-year students—adding experiential modules, enrolling students in clinics, and repackaging existing legal research and writing courses—if the

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71. Furthermore, experiential coursework in the first year may better prepare students to take advantage of upper level experiential offerings.

changes are substantial, they can require, among other things, faculty training and guidance on experiential teaching and methods. This trend, like experiential expansion in upper level courses, underscores how schools must consider who is providing training and guidance to faculty and how that training and guidance is deployed. If an institution adopts experiential education in the first-year curriculum, the teaching and learning in those courses should resemble the rigor and excellence of upper level experiential coursework and not exist as experiential education “light.”<sup>72</sup>

### C. *Emerging Experiential Course*

Experiential courses, as defined by the ABA, have significant overlap as they (1) integrate doctrine, theory, skills, and ethics, while students perform one or more professional skills; (2) develop foundational concepts of professional skill(s); (3) provide multiple opportunities to perform the skill(s); (4) provide opportunities for assessment of the performance through self-evaluation and feedback from a faculty member, or in the case of an externship, a site supervisor; (5) provide classroom instruction or another method of ongoing faculty-guided reflection; and (6) provide supervision of the performance by a faculty member, or for externships, by the site supervisor or faculty member.<sup>73</sup>

Yet, there are key differences in these courses. Simulation courses do not involve real clients or casework, but they rely on fact patterns devised by the faculty, as well as repeated performance of practical skills and intensive feedback.<sup>74</sup> Clinic experiences substantially involve students working with real clients, or serving as a third-party neutrals,<sup>75</sup> while externship experiences provide lawyering experiences in a real-world setting and involve a formalized relationship with an externship supervisor.<sup>76</sup> Experiential educators have long articulated how these three course structures can complement one another, enriching student learning.<sup>77</sup>

Leading up to the new experiential credit requirement, law schools faced pressures from “educators, . . . lawyers, judges, clients, and the public to rethink legal education,” and innovate within the curriculum.<sup>78</sup> Two

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72. See *infra* Section II.C for further discussion of assessing curriculum.

73. *ABA Standards and Rules of Procedure for Approval of Law Schools 2017–2018*, *supra* note 25.

74. *Id.* at 17.

75. *Id.*

76. *Id.* at 17–18.

77. Maranville et al., *supra* note 63, at 175–76.

78. Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL’Y 11, 11 (2013).



such innovations, often called practicums<sup>79</sup> and labs,<sup>80</sup> are regularly featured in experiential pedagogy-focused scholarship, yet the literature does not offer consistent or precise meanings of these terms.<sup>81</sup> In fact, the terms are sometimes used interchangeably.<sup>82</sup>

Our survey asked a number of questions about practicums and labs—how they are structured,<sup>83</sup> for how many credits, the student-faculty ratio, subject matter, status of the teacher, and how long the course has existed. We found that there is a good deal of disparity among law schools about what they mean when they use these terms, particularly for labs.

While almost all schools offer clinics and externships, and also would have simulation courses (e.g., the ubiquitous trial advocacy courses), according to our survey, law schools used practicums and labs less often, as well as a slew of other terms for experiential courses.<sup>84</sup> More than half

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79. See, e.g., Clint W. Alexander, *The Changing Nature of Legal Education*, Wyo. LAW. (University of Wyoming College of Law, Laramie, Wyo.) Feb. 2018, at 48 (discussing estate planning practicum); Alina Ball & Manoj Viswanathan, *From Business Tax Theory to Practice*, 24 CLINICAL L. REV. 27, 31–32 (2017) (discussing the UC Hasting Business Tax Practicum for Social Enterprises); Cynthia L. Dahl & Victoria F. Phillips, *Innovation and Tradition: A Survey of Intellectual Property and Technology Legal Clinics*, 25 CLINICAL L. REV. 95, 150–53 (2018) (many practicums listed); David R. Kuney, *Georgetown Law Center's Bankruptcy Advocacy Practicum Providing Pro Bono Appellate Briefs for Consumer Debtors*, AM. BANKR. INST. J., July 2018, at 8 (bankruptcy advocacy practicum); Jeffrey Thaler, *Experiential Educating in the Classroom: Designing an Administrative Law Practicum Meeting New ABA Requirements and Student Needs*, 68 ME. L. REV. 161 (2016).

80. See, e.g., Katherine Kruse, *Legal Education and Professional Skills: Myths and Misconceptions About Theory and Practice*, 45 MCGEORGE L. REV. 7, 43 (2013); Brown, *supra* note 7, at 44–45; Martha F. Davis, *Institutionalizing Legal Innovation: The (Re)emergence of the Law Lab*, 65 J. LEGAL EDUC. 190 (2015); Susan L. Brooks et al., *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. 1 (2015); AALS GLOSSARY, *supra* note 21.

81. In fact, some articles describe specific practicums or labs without ever defining the general category of practicum or lab course. See, e.g., Robert C. Blitt & Reece Brassler, *Experiencing Experiential Education: A Faculty-Student Perspective on the University of Tennessee College of Law's Adventure in Access to Justice Author*, 50 J. MARSHALL L. REV. 11 (2016) (discussing a human rights practicum without categorizing practicum more broadly); Lyman Johnson & Sean Leuba, *M&A as One Component of a Business Planning Course*, 3 AM. U. BUS. L. REV. 99, 100 (2014) (defining the “Business Planning Practicum” as a high credit simulation, but failing to more generally define practicum).

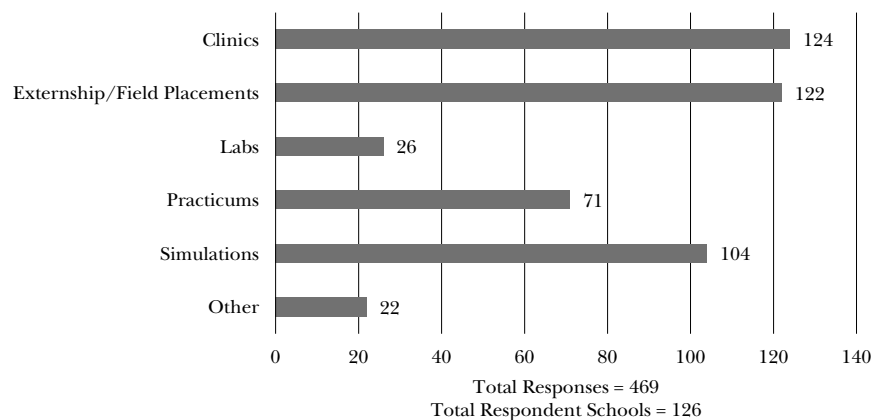
82. Tokarz et al., *supra* note 78, at 45 (“[M]ore recently, law schools have begun developing innovative experiential courses, taught as separate courses or attached to courses taught by podium faculty, sometimes referred to as ‘practicum’ or ‘lab’ courses.”).

83. Specifically, it asks if they are defined as a clinic, externship, or simulation for ABA experiential credit purposes.

84. Ninety-eight percent of schools (124 out of 126) indicated they had clinics, 97% (122 out of 126) indicated they had externship/field placements, and 80% (101 out of 126) indicated they used the label simulation.

(51%) of respondent institutions use the term “practicum,” while 21% use the term “lab.”<sup>85</sup>

TABLE 4: TERMS THAT SCHOOLS USE FOR EXPERIENTIAL COURSES<sup>86</sup>



Interestingly, twenty-two respondents reported using a title or label other than clinics, externships, simulation courses, practicums, or labs. Some of the other terms include, “Service-learning”;<sup>87</sup> “Residencies”; “Project”; “Capstone”; and “Co-ops.” Several respondents said that they refer to some courses as “Skills” courses, and others add a descriptor to the “Clinic” title or label, like “Practice Clinic” or “Field Clinic.” Some respondents said that, while they consider the functional titles of experiential courses to be “Simulations,” or even “Practicums” and “Labs,” their institutions refer to the courses only by their regular course names. Examples of these include, “Transactional Drafting for Business Associations”; “Health Law Policy and Advocacy”; “Family Law”; and “Contract Drafting.”

85. In the raw data collection, only nineteen schools indicated they had a lab course in Question 13, but more than thirty completed some of the lab-specific, follow-up questions in Questions 18–29. After comparing the list of institutions that answered questions, we followed up with the survey respondents—some clarified that they simply neglected to answer Question 13 but it should indicate lab, while other institutions clarified that they do not have experiential lab courses and therefore should not have answered the later questions. We adjusted the answers to reflect their corrections.

86. Question 13 of the survey.

87. See Lindsay M. Harris, *Learning in “Baby Jail”: Lessons from Law Student Engagement in Family Detention Centers*, 25 *CLINICAL L. REV.* 155, 178–79 (2018) (describing how one model of teaching students in immigration detention is students engage in service-learning program); see also Laurie Morin & Susan Waysdorf, *The Service-Learning Model in the Law School Curriculum*, 56 *N.Y. L. SCH. L. REV.* 561, 565 (2011).

1. *Developing New Models of Experiential Courses*

We asked schools to describe their emerging models of experiential courses,<sup>88</sup> which included models ranging from hybrid models,<sup>89</sup> add-ons to non-experiential courses, and new simulations. Nevertheless, several respondents took time to amplify the value of their longstanding experiential courses, including law clinic, externship, and simulation courses. Relatedly, a few faculty respondents shared their frustration with the “collective obsession with labels” and particularly, “trendy labels.”<sup>90</sup>

We find all of these responses—from those critiquing the focus on nomenclature to those extolling existing courses—noteworthy. These responses stem from an understanding that cutting-edge courses that utilize best practices in experiential education may not be easily categorized using existing terminology; indeed, a focus on new names and definitions may distract schools from more important goals relating to educating students and meeting community legal needs. Also, a focus on labels may encourage false comparisons of experiential programs and coursework across law schools when, in fact, critical differences may still remain between terms, and the comparisons remain unhelpful. Some respondents commented on the imperfectness of labels, while reflecting on their schools’ approaches to handling new labels following the changes to ABA Standards.

A number of responses indicated that, as a result of these changes, they have assessed their existing skills courses in order to classify courses according to ABA-standardized definitions of law clinic, externship, and simulation courses. One respondent noted that their practicums are not truly considered clinics in part because they are distinct from the school’s traditional year-long clinics; however, the practicums are similar to clinics for ABA accreditation purposes.<sup>91</sup> Another respondent said their school’s labs and practicums are experiential according to the ABA Standards, but they do not specifically label them using the standardized definitions of law clinic or externship courses.<sup>92</sup> One respondent said they were moving away from the term practicums: for them, these courses—where one-third

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88. This was Question 41.

89. Hybrid clinic or simply hybrid is often used to connote courses that involve elements of an in-house clinic, such as intensive supervision, classroom work, and a field placement outside the law school. See Mary A. Lynch, *Designing a Hybrid Domestic Violence Prosecution Clinic: Making Bedfellows of Academics, Activists and Prosecutors to Teach Students According to Clinical Theory and Best Practices*, 74 Miss. L.J. 1177, 1187, 1211–21 (2005).

90. Another respondent stated, “Your labels did not work for our school.”

91. “They are closest to clinics but are typically (although not all) semester-long instead of yearlong.”

92. “Each satisfies one of the models under ABA standard 304 but is not specifically labeled as such in our course catalog.”

or more was dedicated to practical exercises—existed before changes to ABA Standards and now are being phased out.<sup>93</sup>

Many schools reported new categories of experiential courses that they developed in recent years. These courses include (1) “hybrid” clinical-field placements, (2) experiential add-ons, and (3) new simulation courses. First, several schools reported developing “field clinics”:<sup>94</sup> hybrid clinics where fieldwork is done offsite at a nonprofit or government office supervised by a faculty member who teaches a concurrent seminar.<sup>95</sup> One school made clear that while the faculty member may be appointed on an adjunct basis, the faculty member is provided resources to aid their professional development and teaching, such as support to attend the annual AALS Clinical Conference.

A broad spectrum of experiential courses involve collaborations with community partners. In one model, a Land Use and Natural Resources Clinic enters into a memorandum of understanding with a nonprofit whose attorneys co-supervise students with the in-house faculty member. Another school describes a partnership between faculty and local, national, and international human rights organizations as part of a Human Rights Advocacy Project. Students perform fact-finding, legal research, and legal writing in support of ongoing advocacy as they learn fundamental principles of international human rights in a complementary seminar.<sup>96</sup> In another community–law school collaboration, a faculty member and a former assistant district attorney codirect student research and writing that provides advice to community organizations and agencies including anti-trafficking organizations and the local district attorney’s office.<sup>97</sup> Another school described a Prisoner Rights Project where students represent prison inmates on Section 1983 claims, taught and supervised by a part-time adjunct professor.

Second, several schools described courses where an experiential component was added on or became the centerpiece of a class integrating doctrinal studies and practical experience. For example, one school offers two courses—disability law and judicial writing—that include an option of a field placement, one day per week, at a related site. This school also offers an immigration law seminar that follows a similar model: students

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93. “We are now moving away from practicums to be consistent with the ABA.”

94. For example: “We have a robust set of field clinics.”

95. “We offer one ‘field clinic,’ which involves students working within a law firm doing veterans disability appeals cases.”

96. Topics include “the treaties that comprise the International Bill of Rights; basic principles of international law; the sources of international law; the Law of Treaties and the Law of State Responsibility; US law regarding treaty-making, interpretation, and compliance; and judicial decisions, statutes and other materials relevant to all of the projects worked on by the class.”

97. See THE VILLANOVA LAW INSTITUTE TO ADDRESS COMMERCIAL SEXUAL EXPLOITATION, <https://cseinstitute.org/> [<https://perma.cc/54JP-4LQD>] (last visited Jan. 24, 2020).

have the option of participating in fieldwork within a university organization that assists noncitizens through naturalization. One respondent reports a “Service-Learning” course, designed around a weeklong field placement immersion during spring break. The course was created in the aftermath of and in response to the disaster law crisis post-Hurricane Katrina, but more recently has also served detained immigrants in family detention centers.<sup>98</sup> Another school described a Trusts and Estates course that has an advanced workshop component where students draft wills.

Finally, a number of schools have developed new simulation courses. One law school offers a five-day, one-credit immersion course on Trial Advocacy over spring break in conjunction with their state district attorney general’s conference, where up to eight students learn about advanced criminal trial practice and engage in skills training related to interviewing and preparing witnesses, selecting juries, case analysis, charging decisions, discovery, prosecutorial ethics, and professionalism. Another school reported five-credit capstone courses with an experiential component in the areas of civil litigation, small business, and commercial real estate. One school has a mandatory simulation course for second-year law students, where students enroll in either a litigation or transactional-focused class.<sup>99</sup> A different school has developed an online appellate advocacy simulation course, where students perform skills using their webcams. This school offers a skills academy with weekend simulation courses that mimic the stages of litigation over a fourteen-week period. The simulation includes lawyering activities from the initial client interview through filing a lawsuit, conducting discovery and practicing trial skills.

Interestingly, one school stated that because they “have chosen to satisfy the ABA experiential requirement by having *all* students engage in a live-client experience,” they have not faced pressure to develop new models.

## 2. *The Emergence of Practicums and Labs*

In our survey, we focused on two innovations used with some frequency in the experiential world—labs and practicums. The AALS Section on Clinical Legal Education Policy Subcommittee developed a Glossary for Experiential Education (the Glossary) in part to distill a shared vocabulary for experiential terms and address existing inconsistencies.<sup>100</sup> According to the Glossary, practicums include a wide range of classes focused on a specific area of law integrating either real practice or complex simulations, and might be structured as clinics, externships, or

98. See generally Harris, *supra* note 87, at 176–78 (noting course model served dual purpose of disaster relief and asylum law); Morin & Waysdorf, *supra* note 87.

99. “Our LLEAP 3 course is an advanced legal writing/simulation course. Students enroll in either a litigation or transactional focused class. Mandatory in 2L year.”

100. The committee relied on a number of sources. See, e.g., Brooks et al., *supra* note 80, at 22.

simulations.<sup>101</sup> Practicums have also been defined as part-time, practice-based commitments performed near campus or as part of the classroom experience.<sup>102</sup> Others have defined a practicum as a course where students “have a live experience in the context of a traditional doctrinal course.”<sup>103</sup> Meanwhile, the Glossary defines labs as courses where students work “on real world projects with either actual or simulated clients to deepen student learning through application of knowledge gained in a related but separate non-experiential course, which is either a pre- or co-requisite.”<sup>104</sup> Professor Katherine Kruse describes a lab course as the application of a doctrinal law course in a smaller classroom setting where students are able to have multiple performances of the applied skill.<sup>105</sup>

Labs and practicums are not specifically included in the ABA’s definition of experiential courses, as the ABA Standards define only three categories of experiential courses: clinics, externships, and simulation courses.<sup>106</sup> Therefore, for a lab or practicum course to count for experiential credit, the course must conform with and be classified internally as either a clinic, externship, or simulation course.

The largest concentration of schools developed practicums around the time of the ABA rule change.<sup>107</sup> Of the fifty-three schools that gave a generally clear indication of timing, about 39% of respondents stated that practicum courses at their institutions began in 2014–2016, with 2014 as the most common year. A handful of schools developed practicums courses a much longer time ago, and other schools only developed the courses more recently.<sup>108</sup>

While more than half of respondents indicated their schools have practicum courses, some of these included non-experiential courses. Sixty-two schools indicated whether their practicums were experiential or not, and if experiential, whether they were categorized under the ABA-

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101. See AALS GLOSSARY, *supra* note 21; see also Brooks et al., *supra* note 80, at 23 (defining practicum as “[a] course focused on a discrete area of the law”).

102. See Tokarz et al., *supra* note 78, at 45.

103. Gilbert A. Holmes, *Training the Litigator in the Twenty-First Century: A Comprehensive Curricular Approach*, 33 REV. LITIG. 837, 850–51 (2014).

104. AALS GLOSSARY, *supra* note 21, at 12; see also Hornstein, *supra* note 8, at 410–11 (noting lab may be simulation or “live client matter”); Royal Furgeson & Ellen Pryor, *Making the Grade: The UNT Dallas College of Law, Which Opens This Fall, Wants to Provide a Top-Notch Law Education at a Low-Cost Tuition Price*, 77 TEX. B.J. 227, 230 (2014) (finding lab is the additional applied skills portion related to a doctrinal course).

105. Kruse, *supra* note 80, at 43.

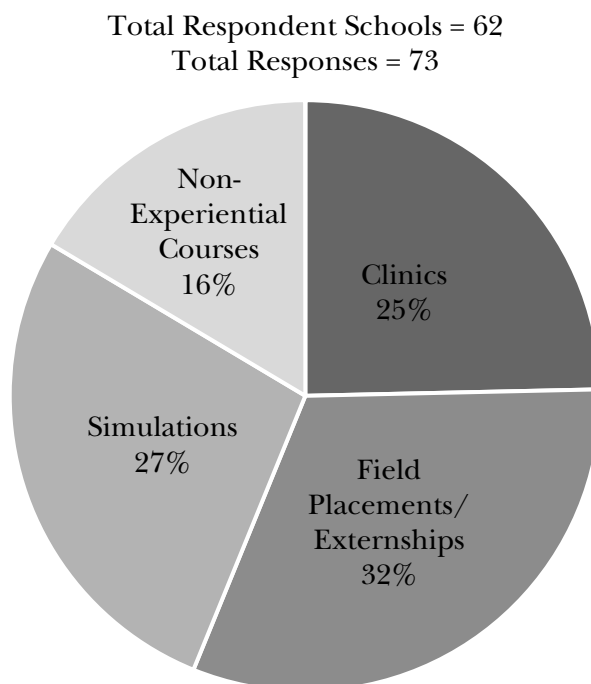
106. *ABA Standards and Rules of Procedure for Approval of Law Schools 2017–2018*, *supra* note 25, at 16.

107. Question 30: “If your law school has courses labeled “Practicums,” in what year did your law school first introduce that label/course?” Sixty-nine schools answered this question, but sixteen of these schools did not provide a clear sense of when courses were offered.

108. Twenty-six schools indicated that they started the courses in 2013 or earlier, and four schools indicated they introduced the practicum in 2017 or 2018.

definition of clinics, externships, or simulations. According to respondents, practicums are often structured as externships (32%), simulations (27%), clinics (25%), and even as non-experiential courses (16%).

TABLE 5: PRACTICUMS: DEFINITIONS FOR ABA EXPERIENTIAL PURPOSES<sup>109</sup>



The vast majority of schools with practicums categorized the courses as one type of ABA-standardized definition—either as a clinic, externship, simulation course, or a non-experiential course. Only eight of sixty-two schools use the term practicum for courses that fit within two or more ABA experiential categories or are offered as non-experiential courses.<sup>110</sup> This consistency may persist because schools generally do not have many practicum courses.<sup>111</sup> Fifteen schools reported having only one practicum course, and another nineteen had only two practicums. Five schools had three practicums, sixteen schools reported having between four to ten

109. Question 33: Categories of Practicums.

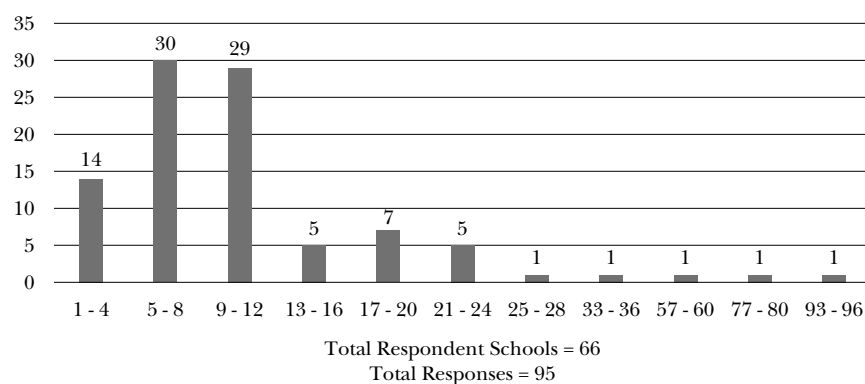
110. Seventeen schools used the term for field placements only, sixteen for simulation courses only, thirteen for law clinic courses only, and eight for non-experiential courses only.

111. Question 32: How many practicums? For this response, if schools approximated their courses, we selected the highest estimate they provided. One school stated there were two real practicums but a third externship course named practicum, so we coded that as “3” total, and for responses with no estimate or numerical value, we coded them as “other.”

practicums, seven schools offered more than ten practicums, and a few schools reporting more than thirty practicums.

Practicum courses tend to share some characteristics with courses that have small faculty to teacher ratios, count for three or more credits, are letter or number graded, or span a variety of subjects. We asked both about typical enrollment and average student-faculty ratio. Nearly half (46%) of responses indicated practicum enrollment is typically five to eight students.<sup>112</sup> About one-third (30%) typically have about nine to twelve students enrolled. A few outlier responses indicated very high enrollment with more than thirty students. Similarly, the student-faculty ratio generally was low.<sup>113</sup> Almost one-third (31%) of responses indicated the ratio was 4:1 or less; 30% indicated the ratio was between 5:1 to 8:1; and 30% indicated 10:1 and 12:1 ratios, with just a handful of schools indicating larger ratios.

TABLE 6: ENROLLMENT IN PRACTICUM COURSE(S) EACH SEMESTER



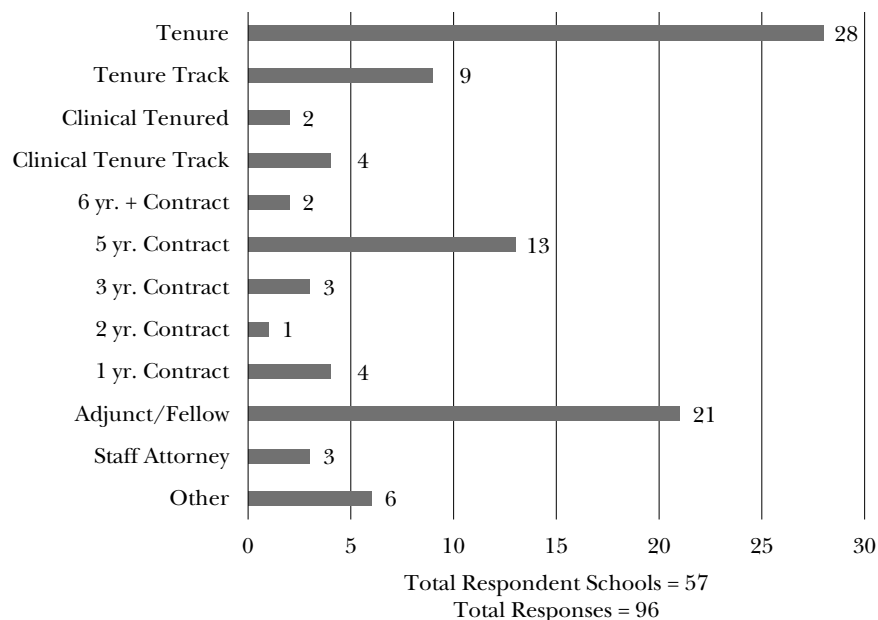
Corresponding with the trend of most schools offering only one or two practicums, schools tended to have few instructors involved in teaching practicum courses.<sup>114</sup> The most common responses were one (25%) or two (20%) instructors. Sixteen percent of schools reported between three to ten instructors, with a few schools indicating more than ten instructors, and about one-third selected “other.”

112. Question 34 pertains to responding schools’ typical enrollment in practicums.

113. Question 40 asked the typical student-faculty ratio. Sixty-four schools answered this question, and were only allowed one answer per school.

114. Question 38: “How many professors and/or instructors are involved in teaching (a) practicum course(s)?” Sixty-six schools responded to this question.



TABLE 7: PRACTICUMS—STATUS OF THOSE WITH PRIMARY TEACHING RESPONSIBILITY<sup>115</sup>

Almost 40% of responses indicated the practicum instructor is either a tenure-track or tenured faculty member. About one-fourth of responses indicated that an adjunct, fellow, or staff attorney was the primary person teaching the course. About 35% of responses indicated the primary teacher was under a contract, ranging between one to more than six years. Those who responded “other” included a tenured library faculty or a combination of adjunct faculty and other full-time faculty of mixed statuses. We unfortunately did not ask for characteristics such as race and gender of practicum faculty, so we do not have data regarding diversity within this subset of experiential educators.<sup>116</sup>

Practicums tend to be letter or number graded and medium or higher credit courses.<sup>117</sup> A majority of respondents (57%) offer practicum courses between three to six credits, with three credits as the most frequent response. About one-third (30%) offer one- or two- credit practicum courses. A few offer ten-plus credit practicum courses, and 9% indicated variable units. Practicum courses usually have a mandatory letter/number grade, al-

115. This is Question 29. However, there was a drafting error with this question in the survey and “lab” was used instead of “practicum.” Since all of the surrounding questions involved practicum, and this question was already asked regarding labs, it is likely respondents understood the true inquiry.

116. For critical discussion of the trends regarding demographics of clinical faculty, see *CLEA Diversity Imperative Revisited*, *supra* note 24, at 128.

117. Question 36 asks the number of credits per semester students receive for practicum courses.

though about one-quarter are mandatory pass/fail, and 16% have a mixed letter/number grade and pass/fail.<sup>118</sup> If schools have part-time or evening J.D. programs, they overwhelmingly (92%) allow these students to enroll in the courses.<sup>119</sup>

Practicums ran the spectrum of subject-matter. Of the sixty-seven schools that indicated the subject matter, they answered with 257 responses; of these, the most common topics were appellate (twelve), civil and criminal litigation (twelve), civil litigation general (eleven), civil rights (eleven), criminal defense (twelve), environmental (ten), immigration (fifteen), ADR (ten), and transactional (twelve).<sup>120</sup>

Similarly, the spread of courses termed labs across law schools is recent. Most respondent institutions that have labs said that these courses were introduced at their institutions between 2012 and 2018.<sup>121</sup> Labs are not as common as practicums; schools were about two or three times more likely to offer a practicum than lab.<sup>122</sup> Labs similarly are sometimes structured as law clinic courses (26%), field placements or externships (8%), or simulation courses (25%), and are often not even experiential (41%).<sup>123</sup>

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118. Question 37. Sixty-six unique schools responded with seventy-six responses.

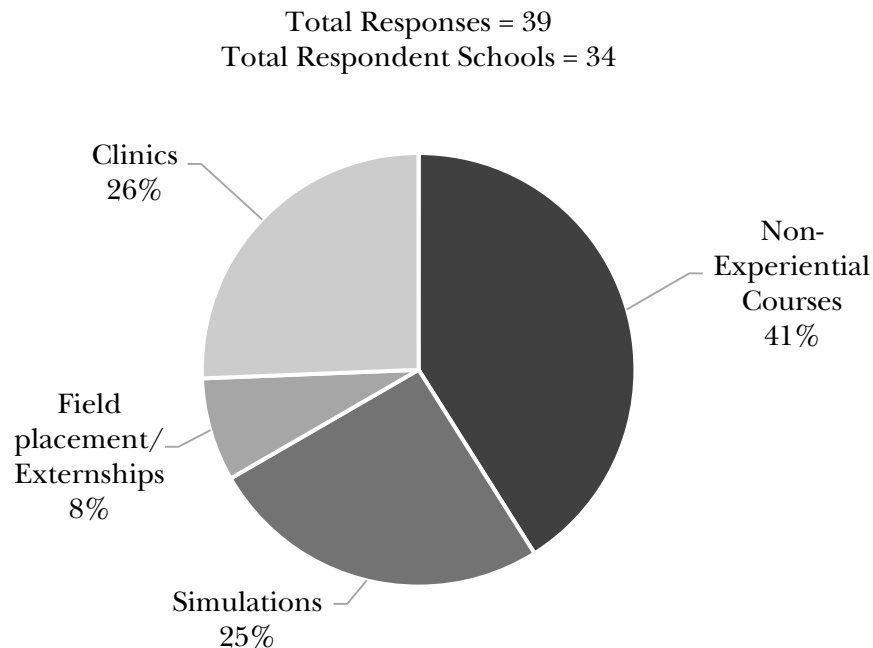
119. Question 35. Of seventy-four schools that responded to this question, forty-seven schools said the question did not apply. Twenty-five schools said they did allow part time or night students to take practicums and only two schools prohibited it.

120. Thirty-eight schools indicated “other.”

121. This is Question 18. Of twenty-four schools that indicated they had labs, thirteen indicated the courses were developed between 2013–2018. Nine indicated they were developed before 2012.

122. In Question 19 about labels used for experiential courses, seventy-one schools indicated practicum was used, and only twenty-six indicated labs were used. Fewer schools answered Question 33 about whether they had courses called practicums—including non-experiential courses—sixty-two school answered this, while thirty-four schools answered that they had labs, including non-experiential ones for Question 19.

123. Thirty-four schools answered this question, and they were allowed to choose multiple responses including if that course was structured as a law clinic, externship or field placement, or simulation course or if it was non-experiential. See *infra* Table 8.

TABLE 8: LABS—DEFINITIONS FOR ABA EXPERIENTIAL PURPOSES<sup>124</sup>

Schools tend to be internally consistent in the course structure of labs within their institution—either categorizing the lab as a simulation, clinic, or externship. For example, within the thirty-four schools that answered this question, fourteen use the term lab for non-experiential courses only, seven use it for law clinic-type courses, seven use it for simulation courses only, and one uses the term for field placement or externship courses. Only five schools use the term for more than one course type.

Schools tend to not offer a great number of different labs.<sup>125</sup> Of the twenty-five respondents indicating they have labs, nine schools indicated they have only one, five schools indicated they have two, two schools indicated they have three, and two schools indicated they have four. One school reported that their school offers more than twenty lab courses.

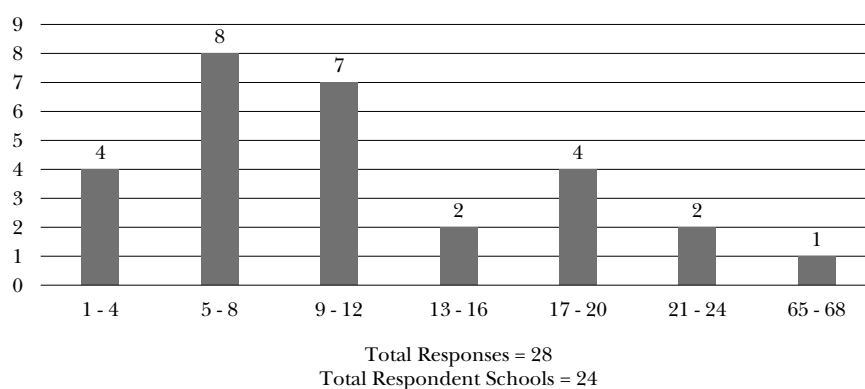
Labs share some characteristics such as generally low enrollment, low-credit and freestanding courses. Of twenty-four schools responding to the question, fifteen have only freestanding labs, seven have labs attached to a doctrinal course, and two schools have both. Labs tend to be low enrollment courses with small faculty-student ratios, although a few schools have outliers. About 68% of responses indicated between one and twelve maxi-

124. Question 19: “For purposes of the ABA definition of experiential courses, do you define the labs as [check all that apply]: Clinics; Field Placement/Externships; Simulations; and None (We have non-experiential courses as labs).”

125. Question 20 asked, “How many different labs does your school offer?”

imum enrollment for labs,<sup>126</sup> with several schools limiting enrollment to four students, and the most common response, a maximum of eight. One institution indicated a maximum enrollment as high as sixty-eight students, and a handful of other schools indicated maximum enrollments of sixteen, twenty, or twenty-four. Student-faculty ratios vary wildly for labs, with some as small as 2:1 and others as large as 20:1. However, generally labs seem to be smaller classes, with 71% of responders reporting a 10:1 or smaller ratio.<sup>127</sup>

TABLE 9: MAXIMUM ENROLLMENT ALLOWED IN LAB EACH SEMESTER<sup>128</sup>



We asked a few questions about the instructors of lab courses—how many faculty members at the institution taught these courses,<sup>129</sup> and the faculty status of those with primary teaching responsibility.<sup>130</sup> We failed to ask demographic questions, including race and gender of those faculty. Of the twenty-seven institutions who responded, nearly two-thirds said their school has between one and three instructors involved in teaching lab courses. Two schools said they have four instructors, another two have eight instructors, and one school said they have fifteen instructors in lab courses.

126. This was Question 23. Twenty-four schools answered this question, with twenty-eight total responses, as some schools have multiple lab courses with different enrollments.

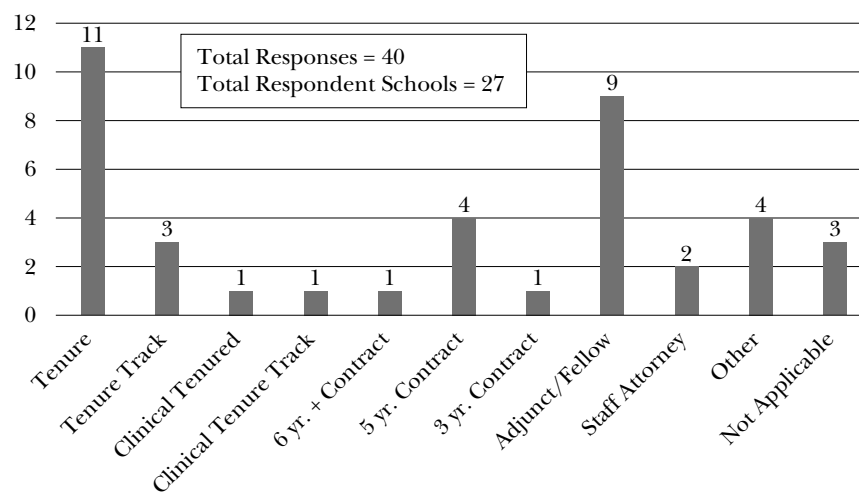
127. Seventeen of twenty-four schools indicated they had a 10:1 ratio or smaller.

128. Question 23. This question unintentionally diverges from the practicum question, which asked about typical, instead of maximum, enrollment.

129. Question 27.

130. Question 28.

TABLE 10: LABS: STATUS FOR THOSE WITH PRIMARY TEACHING RESPONSIBILITY



According to the survey, 35% of labs are taught primarily by either a tenure-track or tenured faculty member.<sup>131</sup> The next largest status type of those teaching labs with 22% of responses are adjunct faculty and fellows. Six respondents reported that labs are taught by those with contracts with an appointment of three or more years. A few respondents indicated instructors with or pursuing clinical tenure teach labs, others marked staff attorneys, and a handful marked “other” or “not applicable.” Some other responses included attorney consultants, executive directors, and academic success directors. Some respondents noted a mixture of adjunct and tenured faculty in this role, and one respondent institution said that no one faculty member has responsibility for teaching labs; rather, any faculty member can be assigned to have primary responsibility for a lab course.

Labs tend to have fewer credits than practicums—with most institutions offering lab courses for one and three graded credits. Of the twenty-nine responses,<sup>132</sup> 31% are one-credit courses, 17% are two-credit courses, 31% are three-credit courses, 14% are between four and six credits, and a couple respondents report lab courses with variable credits. According to survey respondents, more than 60% of labs have a mandatory letter or

131. Of forty responses from twenty-seven schools, eleven were tenure, and three tenure track. *See supra* Table 10.

132. Some schools responded with more than one answer, so it was only twenty-four individual institutions.

number grade.<sup>133</sup> If institutions have night or part-time students, they are generally allowed to enroll in labs.<sup>134</sup>

Labs, like practicums, vary greatly when it comes to subject-matter area. Twenty-seven institutions marked sixty-three total responses, with no real clumping in any particular subject-matter area. There are a few subject-matter areas that between three and five respondents selected, including Civil & Criminal Litigation, Civil Litigation/General, Criminal Defense, Health Law, and Transactional. Tellingly, the answer with the most responses (twelve), was “other.”

### III. RECOMMENDATIONS FOR BEST PRACTICES

In the past decade, law schools have faced significant challenges such as declining student enrollment, greater competition for applicants, and pressures to lower costs while also finding ways to increase skills training opportunities for more students.<sup>135</sup> Some have critiqued the diminishing role of justice within calls for reform, which focus primarily on graduating “practice-ready” students without acknowledging the complex social problems embedded in many clinical experiences.<sup>136</sup> In the aftermath of plummeting legal employer markets and law school enrollments, reforms largely have been motivated by a desire to satisfy the interests of more students and cater to private employers, instead of centering community justice needs.<sup>137</sup> The ABA passed the experiential mandates in the wake of these trends, and in the ensuing years, schools have expanded the creation deans of experiential education while inciting experimentation with and diversifying experiential curricula.<sup>138</sup> Schools have developed pedagogical hybrids such as practicums and labs, as well as have added more upper level experiential courses, and some first-year experiential courses.<sup>139</sup> Sheldon Krantz and Michael Millemann suggest that schools are in the midst of a “let a thousand flowers bloom” stage, where the need

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133. This is Question 26. Of twenty responses, sixteen had mandatory letter or number grade. Five institutions reported mandatory pass/fail, two had optional pass/fail and three indicated that their labs’ grades are a mix of pass/fail and letter or number grade.

134. Among respondent institutions with part-time or night J.D. programs, eleven schools reported allowing students in these programs to participate in labs, one did not, and the vast majority of institutions indicated that they do not have part-time or night J.D. students.

135. Kruse, *supra* note 80, at 8.

136. See generally Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CAL. L. REV. 201 (2016) (advocating for a “progressive vision of law school reform” that “focuse[s] on the development of critical analysis and political engagement”).

137. *Id.* at 203.

138. Barry et al., *supra* note 39, at 665.

139. Krantz & Millemann, *supra* note 16, at 58.

for assessment, as well as strategic planning for the future of experiential programs, is essential.<sup>140</sup>

We have come to a moment, six years after changes to the ABA Standards were adopted, where law schools must take serious stock of the changes they have made to and within their experiential programs, and create and implement deliberate policies to ensure quality and sustainability. Expansions of experiential coursework and creative new experiential course designs should be undertaken with the understanding the ABA Standards are a floor that must be met, not a ceiling.<sup>141</sup> Furthermore, schools must determine whether the efforts they have made to expand and innovate within their experiential programs are working<sup>142</sup> and, if so, to what end. Curricula should address students' and community needs<sup>143</sup> while also considering the existing experiential landscape at the school. Considering the urgency of calls to identify and dismantle racism across society, experiential curriculum and programs should be examined to ensure antiracist policies and pedagogies are implemented.<sup>144</sup> Furthermore, as law schools add new experiential faculty and normalize experiential dean roles, they must promote equity and ensure sustainability for experiential faculty, staff and ultimately the programs themselves. Schools must undertake an obligation to do this regardless of changes to the legal employer market, law school enrollment patterns, and ABA Standards. The need for sustainability is particularly urgent as experiential faculty members confront teaching and living in times of the pandemic.

#### A. *Ensuring Sustainability for New Deans and Directors*

Our research has crystallized trends noted since the 2014 ABA changes: the role of experiential dean or director in law schools is relatively new, yet it has proliferated quickly and wildly. In fact, we found that

140. *Id.* (internal quotation marks omitted).

141. See Barry et al., *supra* note 39, at 665–66.

142. We encourage deans and directors of experiential education, aided by their faculty and broader legal communities, to establish the goals and mission of their experiential program and create assessment tools to determine how and whether they are being met. While most every law school has common institutional goals for its experiential program—including offering enough seats, providing adequate administrative support, and ensuring quality of the experience, there are other values that vary across institutions and will be critical to determining whether the structure is “working.” For example, some law schools prioritize serving a critical public service role within its local legal community; others seek to ensure ample opportunities for students to transfer their skills across different practice contexts.

143. Much has been written about how clinics should serve justice at their core. See, e.g., Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 26 (2006); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461 (1998); Lynnise E. Phillips Pantin, *The Economic Justice Imperative for Transactional Law Clinics*, 62 VILL. L. REV. 175 (2017).

144. See Conway et al., *supra* note 20.

nearly half of schools had two or more individuals with oversight responsibilities for experiential programs. Therefore, schools might have a director and dean, deputy director, or simply directors of various categories of experiential coursework (such as clinics and externships) with one chief administrator helming the ship.

These findings suggest that responsibility for experiential programs—including curricular development, faculty training, assessment, and teaching, among other duties—requires collaboration among multiple faculty and administrative bodies. Indeed, now that changes to ABA Standards have been implemented, these deans and directors have the opportunity to usher schools' experiential programs into an era where they are a celebrated and essential part of the law school curriculum. To realize this opportunity requires clearly defined responsibilities for the role, as well as an administrative structure that ensures a sustainable workload with appropriate support. Because these positions are new, they are susceptible to becoming a dumping ground for a variety of co-curricular activities, pro bono programs, simulation courses, grant-funded student-directed projects, moot court, and even legal writing,<sup>145</sup> deliberate and well-communicated boundaries would make it less likely that all duties and decisions that are “experiential adjacent” become the experiential dean's responsibility.

An experiential dean's administrative work is accomplished and goals are set through the lens of experiential educator, so the expectation that they will teach is appropriate; nevertheless, a reduced teaching load and, if possible, co-teaching assistance should be considered. Because law schools entrust experiential deans with developing and rendering essential parts of curricula, it is imperative they have either tenure or a secure employment position. This secure employment position would provide an understood role in law school governance as well as compensation that acknowledges the role's significant duties. Lastly, in light of the expansion of these positions since the 2016 survey, we highlight a more urgent need to gather data on these newly defined or yet-to-be defined positions to allow them to expand sustainably and with realistic responsibilities, as well as sufficient authority in decision-making and ample administrative and financial support.

#### 1. *Clear Description of Roles*

While our survey data demonstrates that almost all law schools have at least one faculty member with experiential oversight power, and a large

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145. There is a question of what should be included within the purview of an experiential dean, such as “co-curricular activities, pro bono opportunities, legal writing, part-time student employment, grant-funded projects on which students work (either for credit or compensation) and newly developing practicum or other so-called hybrid programs?” Robert Dinerstein, *Experiential Legal Education: New Wine and New Bottles*, AM. B. ASS'N SEC. LEGAL EDUC. & ADMISSIONS TO B. (AM. B. ASS'N, Chicago Ill.), Winter 2012–2013, at 2.



portion of schools have two or more positions with oversight of experiential education, the experiential dean and director roles continue to evolve. While our survey did not capture specific information about the roles and responsibilities assigned to these roles, we found that the roles have significantly expanded since an in-depth survey on experiential “deaning” was deployed in 2016.<sup>146</sup> This study noted that equal numbers of schools had created associate deans for experiential education, versus directors or chairs, with at least one school reporting one of each.<sup>147</sup> Law schools have often focused more on the creation, rather than defining contours, of these positions,<sup>148</sup> and according to the study, a large majority of these positions have no formal job description.<sup>149</sup> This fact, coupled with our finding that the positions have proliferated in almost all law schools, should strongly encourage law school administrations to critically analyze and more clearly define the experiential dean role through the lens of programmatic and institutional goals.

Perhaps unsurprisingly, experiential deans report a broad range of responsibilities, including (1) developing and managing experiential curriculum such as clinics, externships, simulations; (2) hiring and staffing new and existing programs and courses; (3) evaluating experiential faculty; and (4) establishing criteria for reappointment and promotion.<sup>150</sup> To the extent job descriptions for experiential deans do exist, they have included the task of adapting curriculum in light of ABA experiential standards.<sup>151</sup> Indeed, compliance is a necessary part of an experiential dean’s role; but, that objective is realized by only creating and engaging with processes that analyze existing coursework and set criteria for approving new courses, among other associated strategic planning. For example, in our survey, a number of institutions noted in the comments section that they engaged in a full audit of all courses to determine which met experiential requirements and how some courses must change in order to meet the more rigorous standards.

Furthermore, experiential deans may be thinking expansively and aspirationally, mapping out their programs’ experiential offerings in every category, identifying faculty strengths while determining curricular gaps and weaknesses, and responding to all.<sup>152</sup> In addition to new experiential courses and improving existing ones, some experiential deans also work with nonexperiential faculty to insert experiential modules into nonexperiential courses and design new experiential courses.<sup>153</sup> It is particularly important that law schools account for the extent of obligations and sup-

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146. Barry et al., *supra* note 39, at 670–71.

147. Brooks et al., *supra* note 80, 74–75.

148. Barry et al., *supra* note 39, at 661.

149. *Id.* at 671.

150. *Id.* at 672.

151. *Id.* at 667.

152. *See id.* at 667.

153. *Id.*

port systems in place for experiential deans. Our survey's findings highlight this need for accounting—the majority of schools have expanded their experiential upper level curriculum in the last few years, with a significant number changing first-year curriculum to allow for experiential courses.

The 2016 study also found that experiential deans reported that their roles include counseling, supporting experiential faculty, and organizing experiential faculty meetings. Experiential deans administer experiential budgets and participate in development efforts supporting clinical fellows or other programmatic needs.<sup>154</sup> Some experiential deans have duties over additional “experiential adjacent” programs, such as pro bono, legal writing, moot court, postgraduate incubator residencies, and fellows’ programs.<sup>155</sup> Additionally, others reported assuming the time-consuming role of serving as law school spokesperson on experiential education, collaborating with communications departments to produce materials, admissions offices to promote programs, career services offices to advance job placement, development offices to ignite experiential giving, and other university departments to promote interdisciplinary programs.<sup>156</sup> Often, these roles require the complicated and abstract task of expanding and integrating experiential education in the overall law school curriculum.<sup>157</sup>

Now, on the heels of the first graduating class of J.D.s subject to the six-unit requirement, these tasks doubtlessly have expanded in size and dimension. Certainly, this moment requires a reflection on experiential program evolution that begins with reimagining the role of experiential dean and ensuring its—and experiential programs’—success and longevity.

## 2. *Providing Support for Experiential Directors and Deans*

In addition to clearly defining and ensuring robust institutional support for the role of experiential deans and directors, institutions should consider what administrative support is necessary. This includes (1) adequate and comprehensive support staff, (2) reduced teaching loads, (3) increased compensation, (4) appropriate faculty status to include security of employment, and (5) opportunity for sabbatical or other appropriate leave-with-pay schemes. The 2016 experiential dean study found that many respondents reported their roles were not sustainable and contained many more duties than originally contemplated.<sup>158</sup> Also in that study, experiential deans noted the role's many great challenges, including (1) feasibility of completing all duties of the role within a reasonable time frame; (2) general faculty resistance to experiential education as an essential part

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154. *Id.* at 672.

155. *See id.* at 673.

156. *Id.* at 674.

157. *Id.* at 667.

158. *Id.* at 675, 680.

of the law school curriculum; and (3) inadequate budgets to realize short- and long-term goals for experiential programming.<sup>159</sup>

First, related to the feasibility of the position and completing projects, institutions must consider how to reconcile ever-expanding administrative duties. As our data indicates, a majority of respondent law schools have two or more individuals or committees with oversight responsibility of experiential programs. Law schools should be deliberate about the administrative structure appropriate for meeting an experiential program's goals, guided by a renewed description of experiential dean responsibilities. Not only should this structure contemplate multiple faculty members sharing experiential duties, it also should ensure appropriate support staffing for experiential faculty and courses. Administrative support for an experiential program may include paralegal and law firm management duties in addition to regular faculty assistance.

Because experiential deans are almost always faculty members and approach most of their responsibilities from a teaching perspective, it is imperative that they have teaching and service responsibilities. Unsurprisingly, the 2016 study found that many experiential deans have a smaller teaching load, with fewer students, fewer courses, or both.<sup>160</sup> Experiential deans should enjoy course relief proportionate to the administrative responsibilities they are assigned. To the degree possible and where appropriate, law schools should consider providing faculty support—whether it be part-time or adjunct—to assist experiential deans in their teaching or supervision duties.

Second, due to the identified challenge of faculty resistance to experiential education, as well as experiential deans' significant roles in curricular development beyond experiential coursework, law schools must ensure that experiential deans have appropriate status and potential for security of employment, with faculty governance rights and stature to implement curricular and programmatic changes. According to the 2016 study, the status of experiential deans was remarkably similar—about half have traditional tenure, and when clinical tenure is included, a majority are tenured faculty, with virtually the rest on long-term contracts.<sup>161</sup> Experiential deans should be able to have a voice in experiential and non-experiential course development, as well as in recruitment for and appointment of faculty to teach in the experiential program. These roles also should have the freedom and security of employment necessary to set short- and long-term goals for the experiential program and realize complicated structural changes, such as introducing experiential coursework into the first-year curriculum.

Finally, law schools must identify and implement a budget structure appropriate for achieving goals set forth in the experiential program, in-

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159. *Id.* at 677.

160. *Id.* at 674–75.

161. *Id.* at 670.

cluding how to appropriately compensate experiential deans for their additional duties and realize a comprehensive administrative support structure. According to the 2016 survey, the vast majority received additional compensation for their administrative responsibilities.<sup>162</sup> Where law schools anticipate adding or expanding experiential courses, as well as appointing new full- and part-time faculty to teach and supervise those courses, the approval and hiring processes must require an inquiry asking how this course or faculty member will add to program tasks, who will be responsible for those new tasks, and whether additional support will be necessary. Where new programming invites additional funding through institutional or foundational sources, budgeting should include expenses related to administrative support.

B. *Sustainable and Equitable Practices for Experiential Curriculum and Faculty Development*

Together with refining the structure and ensuring long-term sustainability for experiential deans and directors, law schools must create and institute similar practices to support experiential faculty. This is especially important when those faculty are asked to take on new and additional roles to expand experiential offerings, as well as to participate in the hiring and training of new experiential faculty. These practices must include: (1) strategies to increase and retain diverse faculty, particularly underrepresented experiential faculty of color; (2) security of employment and valuation of teaching loads, alongside service, scholarship, and any administrative responsibilities; and (3) support and professional development.

1. *Increase and Retain Diverse Experiential Faculty*

Our survey showed that many law schools have recently grown their experiential programs by starting new law clinic courses, expanding externship courses, and adding new simulation courses. This rapid—and, at times, tenuous—growth raises an important issue in our community. As schools recruit new faculty to teach in their experiential programs, it is imperative to focus on diversity—particularly in the modern context where there are fewer opportunities for hiring with shrinking faculty overall.<sup>163</sup> Not only is increasing diversity of faculty key to improving equity, particularly among those faculty with more prominent leadership roles as directors and deans, it also benefits institutions and students by providing varied academic perspectives to best evolve and improve experiential pedagogy, scholarship, and lawyering theory.<sup>164</sup> Some scholars have

162. *Id.*

163. MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 5 (2019).

164. *CLEA Diversity Imperative Revisited*, *supra* note 24, at 131; *see also* Jon C. Dubin, *Faculty Diversity as a Clinical Legal Education Imperative*, 51 *HASTINGS L.J.* 445, 459 (2000) (“[D]iversity can enhance both the educational and legal product of

raised concerns that schools will achieve faculty diversity through the least secure positions because of existing market threats to legal employment and law schools.<sup>165</sup>

To our knowledge, diversity has not been studied among experiential professors writ large, although there have been two notable studies—in 2000 and 2019—of diversity within clinical legal education. In 2000, Jon Dubin found that the vast majority of law schools had no clinicians of color and virtually no clinic directors of color (outside of historically Black and Puerto Rican law schools)—which is of particular importance as experiential deans and directors make curricular decisions, set policy agendas, assign workloads, and often play a significant role in hiring and retention.<sup>166</sup> At that time, Dubin also found many clinicians of color are provided less job security and compensation than their white peers.<sup>167</sup> Unfortunately, according to a 2019 follow-up article, while clinicians of color representation grew from 10 to 21%, underrepresented Black, Latinx, and Indigenous clinical faculty remained stagnant.<sup>168</sup> Still, almost eight out of ten clinicians are white.<sup>169</sup> While women are underrepresented overall in law faculties, women clinicians outnumber men by almost two to one.<sup>170</sup> This trend “raises concerns about internal status inequities and the clustering of women faculty members in non-tenured positions with lower salaries and less job protection, including on clinical, legal research and writing (LRW).”<sup>171</sup>

The ABA and individual institutions should collect and share data on experiential faculty race and gender. Furthermore, institutions should identify and consider best practices for hiring and retention,<sup>172</sup> particularly as clinicians of color report facing “negative campus climate, challenging law school culture and implicit bias.”<sup>173</sup> Beyond ensuring more equity for clinicians of color, law schools must strive to understand how racism permeates experiential education, as it does larger legal institu-

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clinical programs by increasing the variety of viewpoints and ideas brought to the endeavor and the resulting availability of creativity, talent and experience.”).

165. DEO, *supra* note 163, at 20.

166. Dubin, *supra* note 164, at 447.

167. *Id.* at 450.

168. *CLEA Diversity Imperative Revisited*, *supra* note 24, at 128.

169. *Id.*

170. *Id.*

171. *Id.*

172. *See id.* at 143–45; *AALS Handbook: Statement of Good Practices, Recruitment and Retention of Minority Law Faculty Members*, ASSC. AM. L. SCHS. (July 12, 2017), <https://www.aals.org/about/handbook/good-practices/minority-law-faculty-members/> [https://perma.cc/9WK6-97UJ].

173. DEO, *supra* note 163, at 5. #*BlackInTheIvory* offers a rich and ongoing cataloguing of aggressions and challenges Black academics face. *See* Francie Diep, *How #BlackInTheIvory Got Started*, CHRON. HIGHER EDUC. (June 9, 2020), <https://www.chronicle.com/article/I-Was-Fed-Up-How/248955> [https://perma.cc/YES9-5XB2].

tions, and consider strategies to understand, catalogue, and attack racist practices and policies.<sup>174</sup>

2. *Ensuring Secure Status and Valuing Teaching Loads for Experiential Faculty*

As our data indicated, experiential faculty may be teaching new courses and adding additional seats to their courses, as well as helping evaluate or design experiential modules and programs. It is important in this moment of experiential expansion to carefully weigh and value experiential faculty's teaching loads. Due to the intensive supervision and feedback requirements of experiential courses, they tend to require a small student to faculty ratio. However, these courses still may be under-credited, and institutions may not fully appreciate the teaching and supervision required for these courses in relation to non-experiential courses.

Faculty status is a significant issue in light of experiential expansion. Interestingly, our survey found that three of the most common statuses of faculty teaching labs and practicums are tenured faculty and adjunct faculty members or fellows.<sup>175</sup> Scholars have noted in recent years that some experiential expansion has been coupled with soft-money positions, which offer less security of status to experiential faculty. Furthermore, many clinical scholars have raised concerns about financial incentives schools may have in outsourcing experiential education to adjunct professors.<sup>176</sup> Mina Kotkin has criticized what she has termed a replication of hierarchy in experiential education, identifying that clinical faculty have "encouraged or at least acquiesced to the creation of an underclass—clinical fellows, staff attorneys, visitors from practice—who now carry a significant share of actual student supervision, without job security or any role in law school governance."<sup>177</sup>

There are two main concerns implicated by this trend. First, it may be less likely that an adjunct professor, particularly if they are a practitioner with little exposure to teaching, will be equipped to design and implement an experiential course as well as a full-time, in-house experiential faculty member. As Katherine Kruse writes, "[i]t requires sustained intellectual

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174. The *Law Deans Antiracist Clearinghouse* suggests phases to engage with antiracist work in law schools, although it does not specifically focus on experiential education. See Conway et al., *supra* note 20.

175. There can be wide-ranging differences among fellows, depending on the law school. Some clinical teaching fellows are experienced practitioners that become members of the faculty for a fixed contract period: they co-teach, co-supervise, and, during the winter and summer periods, are assigned as attorney of record for the clinical docket; others obtain an LL.M in Clinical Pedagogy or Clinical Education, Social Justice, and Systems Change; some, still, are more recent graduates that provide supervision and teaching support, but do not hold teaching appointments. Salaries also vary quite widely.

176. See, e.g., Kruse, *supra* note 80, at 23.

177. Minna J. Kotkin, *Clinical Legal Education and the Replication of Hierarchy*, 26 CLINICAL L. REV. 287, 287–88 (2019).

work at the intersection of theory and practice to bring to the surface the structures that underlie expert practice and to articulate them into frameworks that are useful for teaching.”<sup>178</sup> Experiential learning will not simply happen by dropping students into a classroom with top-notch practitioners—the critical work is distilling the fundamentals of the skills and effectively communicating feedback that moves students forward.<sup>179</sup>

Even when adjunct faculty members have a particularly thoughtful pedagogical approach, a second concern is that they often have full-time and intensive practices in addition to teaching, which leaves them with less capacity and time to engage in the deliberative design and assessment critical to experiential learning.<sup>180</sup> As the Alliance for Experiential Learning in Law reports, “there needs to be considerable integration of the academic’s analysis with the realities of application [of lawyering] in order for the student to gain sufficient insight.”<sup>181</sup> Another concern with adjunct faculty members is that due to their status, they are often afforded no or little opportunity for professional development, so they are less likely to attend key events such as the New Clinicians Conference, the AALS Clinic Conference or the biennial Externship Conference. Lastly, they are often isolated from the rest of the faculty and, with their other full-time commitments, less likely to be aware of, invited to, or engaged with the larger national networks of experiential faculty, such as the “law clinic” or “lex-tern” listservs, as well as resources through associations like the AALS Clinical Section,<sup>182</sup> CLEA,<sup>183</sup> and Lextern Web.<sup>184</sup>

Concerns regarding security of status extend to regular experiential faculty. As one scholar has written, the “[b]iggest threat to the quality of experiential educational programs is that faculty who teach them may be particularly vulnerable to layoffs” because they may have unsecured status compared to other members of faculty.<sup>185</sup> Another scholar has noted that there has been a decline in tenure and tenure-track positions for clinicians and argued that “this bifurcation of status between clinical and doctrinal teachers only serves to cement the hierarchical division of legal education” without reasonable justification for inequality.<sup>186</sup> These trends directly

178. Kruse, *supra* note 80, at 29.

179. *Id.* at 30.

180. Brooks et al., *supra* note 80, at 89–90 (“However, legal practitioners are not able to give the same attention to educating as professional law teachers.”).

181. *Id.* at 90.

182. See *Section on Clinical Legal Education*, ASS’N AM. L. SCHS., <https://www.aals.org/sections/list/clinical-legal-education/> [<https://perma.cc/DK9C-ZHZZ>] (last visited Mar. 3, 2020).

183. See *CLINICAL LEGAL EDUC. ASS’N*, <https://www.cleaweb.org/> [<https://perma.cc/6STP-EN3R>] (last visited Mar. 3, 2020).

184. See *LEXTERNWEB*, <https://www.lexternweb.org/> [<https://perma.cc/RJ7W-9K79>] (last visited Mar. 3, 2020).

185. Kruse, *supra* note 80, at 38.

186. Kotkin, *supra* note 177, at 299 (citing 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, 384 (2012)) (“In excluding clinical

conflict with findings from the Association of American Law Schools 2012 Task Force Report on the Status of Clinicians and the Legal Academy.<sup>187</sup>

### 3. *Providing Support and Professional Development*

As explained above, adjunct faculty members and fellows are often in the most precarious positions with no or small professional development budgets, while also facing greater insecurity of position and isolation from regular faculty. However, institutions should evaluate the support and training they provide all experiential faculty in this time of experiential expansion.

For adjunct faculty in particular, the Alliance for Experiential Learning in Law has suggested that schools should provide “annual orientation and training sessions that include information about how to identify and assess teaching goals, craft a syllabus, choose a text, compile teaching materials, conduct a class, and evaluate student performance” for adjunct faculty.<sup>188</sup> These sessions could include information about student learning, such as learning styles, equity and inclusion, and mental health issues.<sup>189</sup> They further suggest finding ways to integrate adjunct faculty and contributing practitioners with faculty, encouraging participation in lectures and special events at the law school.<sup>190</sup> One model of incorporating adjunct faculty is a collaboration with faculty such that practitioners can incorporate their expertise and faculty can ensure the course is grounded with conceptual framework and assessment in mind.<sup>191</sup>

Law schools must provide all faculty teaching experiential courses sufficient access to support and professional development. Because clinical professors are often tapped to help develop new courses, due to their expertise in translating practice into an educational framework well-suited for student learning, it is critical to ensure they are appropriately compensated and provided course release when tasked with these new roles.<sup>192</sup> Institutions that aspire to develop rigorous, new experiential courses should provide summer stipends to faculty who are engaged in this work. They also should consider faculty workshops focused on experiential pedagogy to share expertise amongst experiential educators as well as those new to experiential pedagogy, including faculty who solely teach doctrine and adjunct faculty.<sup>193</sup>

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faculty from full governance over issues involving the mission and direction of law schools, especially faculty hiring, retention, and promotion, law schools have created hierarchies in which one class of permanent faculty members makes decisions affecting another class of permanent members, often without reciprocity.”).

187. *Id.* (citing Adamson et al., *supra* note 186).

188. Brooks et al., *supra* note 80, at 106.

189. *Id.*

190. *Id.* at 107.

191. Kruse, *supra* note 80, at 30.

192. *See id.*

193. *See, e.g.*, Brooks et al., *supra* note 80, at 107.



C. *Assessing Curricular Changes*

In 2018, Gerald P. López called for a deep and close reexamination of legal education structures and practices, leaving no program untouched. The “casualties” left behind, according to Lopez, would be those “practices whose main effect is to waste time and resources, to permit participants barely to engage, to fly the flag of eminence without delivering.”<sup>194</sup> Assessment is imperative now that institutions have experimented with new course structures and expanded experiential programs. Institutions should consider both how to best ensure rigor in approving new courses, as well as how to assess and support existing experiential courses. Furthermore, schools should consider how to provide opportunities for students to sequence their experiential academic curriculum and ultimately, for most students to engage in a clinical or externship experience. The ABA requires that schools provide substantial opportunities for law clinic and externship courses, but does not mention simulation courses;<sup>195</sup> this points to recognition that law clinic and externship courses are the most significant experiential opportunities for students to seriously advance a wide range of lawyering skills.

1. *Ensuring Rigor in Course Approval and Course Assessment*

Our survey found that a majority of schools have made changes to experiential curriculum, including some changes to the first-year curriculum, in the aftermath of the changes to ABA Standards. We posit that, hand-in-hand with the expansion of experiential coursework and the introduction of new experiential courses, there must be deliberate evaluation and approval processes to ensure rigor.

First, law schools must have a means to ensure existing and proposed experiential courses are meeting current ABA Standards, and a way to adjust their curricula to appropriately do so. Both the 2016 experiential dean survey and several individual conversations with experiential deans and directors identified that many law schools have made efforts to map out their experiential offerings, determine gaps and weaknesses, and respond to those needs.<sup>196</sup> For example, after the University of Baltimore implemented a requirement for students to take a clinic or externship, the curriculum committee created a review process for every single course in the catalogue. The review process analyzed course descriptions, examined syllabi and put forth follow up questions to improve course descriptions. This process resulted in categorizing each course as: (1) a clinic; (2) an externship; (3) a simulation; or (4) none of the above. After categorization, a faculty vote determined final approval and the list of experiential

194. Gerald P. López, *Transform—Don’t Tinker with—Legal Education*, 24 CLINICAL L. REV. 247, 389 (2018).

195. *ABA Standards and Rules of Procedure for Approval of Law Schools 2017–2018*, *supra* note 25, at 82.

196. Barry et al., *supra* note 39, at 667.

courses was ultimately published in the student handbook.<sup>197</sup> As noted above, several survey respondents shared tools that their law schools have developed to assess whether experiential courses meet the requirements established by the revised ABA Standards. While these tools might be applied to assess existing experiential courses, they are also provided to faculty proposing new experiential courses. A majority of these tools ask questions or establish checklists tracking language from the ABA Standards themselves.

Furthermore, several schools noted in our survey that they had a review process for all existing experiential courses to determine if they would comply with new requirements, and some respondents mentioned creating new processes to approve new experiential courses. Many coupled a discussion of adjunct-taught courses with the issue of review, implying that oversight is particularly important to ensure compliance. Overall, this data underscores a need for more faculty oversight and involvement as experiential programs grow; it also suggests a need for training and professional development for adjunct faculty on experiential pedagogy and methodologies, as well as regular assessment of their teaching and coaching, where necessary and possible.

These processes and their complementary tools do much to confirm that existing and future experiential coursework will meet ABA Standards and allow law students to fulfill their graduation requirements regarding experiential units. We would also like to consider ways in which these processes can ensure curricular and programmatic rigor, as well as encourage innovation among faculty. As Christine Cerniglia Brown has written, “[faculty] cannot just experiment in the classroom . . . [but] must carefully design courses with assessment tools in place to ensure teaching objectives are met and fairly assessed.”<sup>198</sup> Standardized definitions of experiential courses issued by the ABA contain references to assignments, learning outcomes, and assessments; they also require that courses be “primarily experiential” and integrate doctrine, theory, skills and legal ethics.<sup>199</sup> Beyond creating instruments and deploying processes that track the requirements for experiential courses set out in the ABA Standards, we suggest that law schools also consider reviewing and assessing experiential course syllabi, learning outcomes—including how students learn and practice self-reflection and self-assessment—and teaching methods amidst larger institutional and programmatic objectives.

In addition to evaluating whether new and existing experiential courses meet ABA Standards and institutions’ own expectations for excellence, law schools also should consider the role of community need and

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197. Email from Michele Gilman, Professor of Law, University of Baltimore Law School, to Laila L. Hlass, Professor of Practice, Tulane University School of Law (Nov. 26, 2019, 6:34 PM) (on file with author).

198. Brown, *supra* note 7, at 44.

199. *ABA Standards and Rules of Procedure for Approval of Law Schools 2017–2018*, *supra* note 25, at 16.

whether experiential expansion effectively services the value of justice. Sameer Ashar has raised an alarm about moves from some legal educators “to flatten American Bar Association (ABA) accreditation standards, alter assumptions regarding faculty employment security, and accentuate skills training,” leading to the possibility of clinics with social justice missions being replaced by relatively low-cost externships and apprenticeships.<sup>200</sup> Schools should reflect on their experiential growth to determine if it has been smart growth, ensured rigorous courses, and met its tailored goals (including justice-forward goals).<sup>201</sup>

## 2. *Academic Sequencing & Allocating Resources for Experiential Courses*

Our survey illuminates the spectrum of experiential courses, with a variety of models seeking to achieve some overlapping and quite distinct goals. Considering these findings, schools should consider the benefits of different models of experiential education; in particular, they should determine how to best allocate resources to ensure that excellent clinical experiences are not under-resourced in favor of courses taught by undercompensated faculty. Experiential education holds space for a variety of rigorous course offerings, including clinics, externships, simulation courses, and hybrid courses.<sup>202</sup> A well-integrated experiential curriculum need not dictate a sequence of how and when students should engage with particular course structures. As Katherine Kruse says, “progression through experiential learning does not map neatly onto the three types of experiential courses because each type of experiential learning provides within it a range of possibilities for less and more challenging experiences.”<sup>203</sup>

Clinics should continue to anchor an experiential education program, offering students opportunities to engage in real-world practice under state, federal, and/or administrative rules.<sup>204</sup> Carolyn Grose has

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200. Ashar, *supra* note 136, at 204.

201. Legal curriculum should incorporate teaching justice, as lawyers have “special responsibility for the quality of justice.” *Preamble, Model Rules of Professional Conduct*, AM. B. ASS’N, [https://www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professional\\_conduct/model\\_rules\\_of\\_professional\\_conduct\\_preamble\\_scope/](https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope/) [<https://perma.cc/BN4G-C69P>] (last visited Aug. 1, 2020). There is a rich body of scholarship focused on teaching justice specifically in clinical education. See Jane Aiken, *Provocateurs for Justice*, 7 *CLINICAL L. REV.* 287 (2001); Margaret Martin Barry et al., *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 *CLINICAL L. REV.* 401 (2012); Debroah Archer, *Political Lawyering for the 21st Century*, 96 *DENV. L. REV.* 399 (2019); Carolyn Grose, *Beyond Skills Training, Revisited: The Clinical Education Spiral*, 19 *CLINICAL L. REV.* 489 (2013).

202. Hybrid courses must be categorized eventually in one of the three defined categories in order to be counted as an experiential course offering for ABA purposes.

203. Kruse, *supra* note 80, at 34.

204. Krantz & Millemann, *supra* note 16, at 58 (“[C]linics are and should remain the anchors of practice-based education, and we are confident they will in any rational planning process.”); see also Brown, *supra* note 7, at 45 (“[C]linical

argued that “the traditional clinic is the pinnacle of the legal education pyramid,” such that the rest of the curriculum should provide scaffolding for students to engage in rich application of law and theory.<sup>205</sup> While casework is, in many ways, more unpredictable than simulation courses, the low faculty-student ratio allows for individualized growth and learning, so faculty can adjust and adapt to truly meet students where they are.<sup>206</sup> A frequent argument among some law school deans, directors, and faculty is that clinics are too expensive and resources would be better spent elsewhere; yet, Robert Kuehn has found that there is no statistical relationship between a law clinic requirement or guarantee and tuition.<sup>207</sup> In fact, in an empirical study reviewing tuition, curriculum, and enrollment data of all law schools, Kuehn found that 84% of law schools already have the capacity to provide a clinical experience to every law student without adding courses or faculty.<sup>208</sup>

Externships are a key pillar in and core method of experiential education.<sup>209</sup> In these courses, students are placed at organizations and sites external to law school, where they immerse themselves in the law in action, often engaging with or observing a variety of lawyering models. Because their site supervisor is a different person from their faculty supervisor, there is not the same close, intensive feedback or reflection that clinic students receive.<sup>210</sup> However, as Carolyn Wilkes Kaas and others have noted, “[w]hen the pedagogy is employed most effectively, the externship teacher and the field placement supervisor work together to ensure that student learning is maximized through ongoing feedback and guided reflection.”<sup>211</sup> Best practices have long suggested that students should take at least one clinic or externship course.<sup>212</sup>

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education remains the gold standard for practical training” because students actually act as advocates, which is “described as true apprenticeship”).

205. Grose, *supra* note 201, at 489.

206. Kruse, *supra* note 80, at 33.

207. Kuehn, *supra* note 6, at 1.

208. *Id.*

209. See STUCKEY ET AL., *supra* note 5, cited in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD, *supra* note 63, at 217.

210. Kruse, *supra* note 80, at 34.

211. Carolyn Wilkes Kaas et al., *Delivering Effective Education in Externship Programs*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD, *supra* note 63, at 216.

212. See, e.g., Tokarz et al., *supra* note 78, at 14–15 (“[C]linical education (in-house clinics, hybrid clinics, and externships) is crucial to the preparation of competent, ethical law graduates who are ‘ready to become professionals’”); *Universal Clinic Legal Education*, *supra* note 30, at 92 (demonstrating “empirically that a mandated clinical experience for all students is both not costly to obtain and feasible to immediately implement”); Joy, *supra* note 1, at 581 (“Only through clinics and externships structured so that law students have primary responsibility for client representation can students grapple with the real-life demands they are going to face as practitioners.”); Kuehn, *supra* note 6, at 2 (“For decades, reports have called for more clinical training in law school so that graduates, in addition to learning to think like a lawyer, would be prepared to carry on the day-to-day tasks

Simulation courses, through hypothetical and role-playing scenarios, help students develop the long-considered “core” lawyering skills: interviewing and counseling, negotiation, drafting, taking depositions, and elements of trial advocacy. Through repetition, intensive peer and instructor feedback, and self-assessment, these courses help students not only refine their skills but also examine the types of complex, multifaceted questions and problems that lawyers are likely to confront on a regular basis. Indeed, there are elements of particular matters and cases that may not be replicated in a clinical or externship setting, and simulation courses offer opportunities for students to work through these lawyering processes and, in the future, apply their skills in real-world casework.<sup>213</sup>

Law schools should provide a range of experiential courses and course types, and offer students ample opportunities to learn through different methods and structures.<sup>214</sup> Our survey data shows not only that schools are expanding within these core spaces—law clinic, externship, and simulation courses—they are also experimenting with experiential modules in doctrinally focused courses as well as new course structures or “hybrids,” like lab and practicums. A well-balanced curriculum cannot be achieved by simply adding more experiential credit; law schools must take stock of existing courses and make deliberate determinations about what is necessary to meet experiential and institutional learning goals.

### 3. *Defining Practicums and Labs*

In our survey, we found that more than half (51%) of respondent institutions use the term “practicum”; and 21% use the term “lab.” Interestingly, about one in six respondents<sup>215</sup> reported using a title/label other than clinics, externships, simulation courses, practicums, and/or labs. These findings further draw attention to the need for rigorous assessment to ensure that courses are meeting their intended goals, that the course labels serve a purpose and are relatively clear to stakeholders, and that they are integrated with, and complementary to, the existing experiential landscape within a law school. Deans, directors, and other faculty should be particularly attentive to trends within new courses that may undermine core experiential courses, faculty, and the program overall.<sup>216</sup>

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of lawyers upon graduation.”); Gary S. Laser, *Educating for Professional Competence in the Twenty-First Century: Educational Reform at Chicago-Kent College of Law*, 68 CHL-KENT L. REV. 243, 244 (1992) (advocating for “reflective, live-client clinical education in a realistic setting under the close supervision of experienced clinical professors”).

213. See Paul Bergman & David A. Binder, *Thirty Years of Developing Professional Skills Through Clinical Legal Education*, UCLA L. MAG., Fall Winter 2000–2001, at 4–6.

214. Elizabeth G. Porter et al., *Implementing Effective Education in Specific Contexts*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD, *supra* note 63, at 101–252.

215. Twenty-two of the 126 respondents indicated they also use another term.

216. For example, experiential educators are considering learning outcomes beyond graduating “practice-ready” students; they aim to expose students to the

We posit that deep differences in how these terms are used are problematic: if there are no core points of agreement, the terms are rendered largely meaningless. We suggest that establishing core points of agreement regarding these two terms is important. First, law students often report confusion about curricular offerings, and introducing more instability among experiential course labels can lead to greater uncertainty. Second, for law schools grappling with the roles and responsibilities of their deans and directors of experiential education, differences in definition and implementation lead to ambiguity about whether these courses do or should fall within their oversight. Lastly, for those scholars writing about law school curriculum, particularly regarding emerging frameworks and models for teaching lawyering, a lack of consensus regarding the goals and definitions of course structures can stymie efforts to identify innovation and critique experiential expansion.

While greater consensus for terms would help students and faculty, we do not propose the ABA define these terms, as they have for law clinic, simulation, and externship courses. In our view, such regulation also would limit law schools' creative responses to experiential expansion and allow the ABA to assume more control over the means through which law schools deploy experiential education. Our recommendation is that institutions define these terms clearly and prominently, and adopt the core points of agreement for the framework for practicums and labs, perhaps using the foundation set by the AALS Section on Clinical Legal Education's Glossary for Experiential Education.<sup>217</sup> Per those definitions and bolstered by our data, practicums generally aim to provide a targeted classroom experience for an intensive field placement or fieldwork component—they often developed as hybrid clinics or integrated externships. Meanwhile, labs endeavor to add a dimension to a specific subject matter of law, often attached to a purely doctrinal course, through a low credit experiential module. In addition to ensuring more consistency in the use of these terms, it is critical, when assessing these new courses, to ensure that they maintain key components of experiential courses—with appropriately low student-faculty ratios and attentiveness to course load and other responsibilities of the faculty member to allow for intensive supervision and feedback, as needed in experiential courses.

#### CONCLUSION

The impact of recent changes to ABA Standards governing experiential education—including a new requirement that students complete at least six credit hours of experiential coursework in order to graduate with

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different roles lawyer play, the complex problems lawyers help resolve, and the importance of context when pursuing work on behalf of a community. Where expansion trends toward restructuring traditionally doctrinal courses or share supervision responsibilities with outside practitioners, for example, there may be trade-offs that make it more difficult to meet these goals.

217. See AALS GLOSSARY, *supra* note 21.

a J.D.—is not widely understood. We launched our study to assess whether, in fact, these changes have sparked a significant and positive evolution in experiential education at law schools across the country. Survey data showed that nearly all responding law schools now have a dean or director of experiential education position, and almost half find it necessary to share experiential oversight responsibilities among two or more individuals. Most law schools have changed their experiential curricula—including the addition of new experiential courses, increasing seats, and adding experiential modules to existing doctrinal courses. For the most part, these changes apply to courses offered in students' 2L or 3L years; yet, a not-insignificant number of law schools have added experiential coursework and methods into their first-year curricula. Beyond offering clinics, externships, and simulation courses, law schools are using the terms lab and practicum to describe creative, "hybrid" models of experiential courses; however, there exists little uniformity with respect to how these terms are defined and how the courses are structured. We believe that law schools should not be hemmed in by new definitions determined by the ABA, but instead should view practicums as a means to provide substantive law instruction and skills training for an intensive field placement or fieldwork component. Schools should also use labs as a vehicle for adding an experiential complement to a purely doctrinal course.

As newly appointed experiential administrators, we used our own experiences to surface questions and theorize around shared challenges; in particular, we sought to understand whether the ABA Standards inspired changes beyond providing six units of experiential coursework for every student. That is, as law schools increasingly add deans and directors of experiential education, add experiential courses, create new tools for course assessment and approval, and experiment with new course models, are they also working to uplift experiential programming as an essential part of the institution? As law schools hire new experiential faculty and appoint experiential deans and directors, are they taking steps to ensure to identify, recruit, and support clinicians of color? Are law schools not only integrating experiential deans, directors, and faculty into the greater faculty but also ensuring that they have reasonably similar security of position and a voice in law school governance? While investing in integration across the law school coursework, have law schools also acknowledged that experiential education is core to the law curriculum?

It is clear that most law schools are experiencing changes within their experiential programs, animated in part by the revised ABA Standards. But as these changes take hold and law schools begin to assess how and where experiential programs are growing, it is critical to ensure that this growth is meeting goals beyond providing six experiential units for each student and moving toward equity among faculty, excellence in teaching, and innovation in legal education.

## APPENDIX: SURVEY

We are seeking to collect information about emerging models of experiential courses. Due to the critical work of the Center for the Study of Applied Legal Education, we now have access to important information about clinics and externships/field placements, but there is not an analogous quantitative study regarding labs, practicums, and other “emerging models” of experiential courses that may qualify for experiential credit under ABA 304, although the course description uses different nomenclature than clinic or externship/field placement. Some of these courses are identified in the AALS Section on Clinical Education Glossary for Experiential Education <https://www.aals.org/wp-content/uploads/2017/05/AALS-policy-Vocabulary-list-FINAL.pdf> as well as are the subject of many law review articles. Thank you for sharing information about your program.

1. Please identify your law school. *[Open response]*
2. Please provide the following information about yourself: *[Open responses]*

*First Name; Last Name; and Email.*

## LAW SCHOOL CHARACTERISTICS

3. What was the size of your first-year J.D. class for the current academic year? *[Select only one]*<sup>1</sup>

*Fewer than 100 students; 101 to 150 students; 151 to 200 students; 201 to 250 students; 251 to 300 students; 301 to 350 students; 351 to 400 students; 401 to 450 students; or 451 or more students*

4. Does your law school have a part-time and/or evening J.D. program? *[Select only one]*

*Yes; or No*

## EXPERIENTIAL LEARNING COURSES

5. What position(s) exist at your law school with respect to oversight responsibility for experiential courses, including clinics, externships and simulations? *[check all that apply]*

*Vice Dean/Associate Dean/Assistant Dean for Experiential Education; Director (of Experiential Education; Clinics; Externships); Program Coordinator; and Other (Please describe)*

6. In light of the six units of experiential credit requirement instituted by ABA Standard 303, has your law school made changes/additions to its upper-level course offerings? (Ex. Increased number of spots in existing experiential courses; increased number of experiential courses; restructured formerly non-experiential courses to become experiential courses; etc.)

*Yes or No; If yes, what?*

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1. The survey did not have the text “[select only one],” but the program allowed respondents to select only one.



7. In light of the six units of experiential credit requirement instituted by ABA Standard 303, has your Law School made changes/additions to its first-year course offerings/curriculum? (Ex. Modified first year curriculum to include experiential coursework; restructured legal research and writing courses to become experiential courses; etc.) *[Select only one, although If yes, what is an open-response]*

*Yes or No; If yes, what?*

8. Not including Legal Research and Writing courses, does your law school offer experiential courses in which 1Ls are eligible to enroll? *[Select only one]*

*Yes or No*

9. If you checked yes to the above, please describe the course(s). *[Open response]*

10. Not including Legal Research and Writing courses, does your law school offer experiential courses in which 1Ls are required to enroll? *[Select only one]*

*Yes or No*

11. If you checked yes to the above, please describe the course(s). *[Open response]*

12. Does your Law School require students to complete more than six units of experiential courses? *[Select only one]*

*Yes or No*

13. Which of the following titles/labels does your law school use for experiential courses? *[check all that apply]*

*Clinics; Externship/Field Placements; Simulations; Labs; Practicums; and Other [Please list the type/name of course below]*

14. Who decides whether a new course will count for experiential credit? *[Check all that apply]*

*Curriculum Committee; Academic Dean; Experiential Dean/Director; and Other [Please describe]*

15. Is the process for approving a new experiential course different from approving new non-experiential courses? *[Select only one]*

*Yes or No*

16. If it is a different process, please describe how the processes differ. *[Open response]*

17. If your law school has a tool/instrument used in assessing whether experiential courses meet the requirements established by ABA Standard 304, please share. (Only one file may be uploaded)

#### LABS

18. If your law school has courses labeled "Labs," in what year did your law school first introduce that label/course? *[Open response]*

19. For purposes of the ABA definition of experiential courses, does your law school define the labs as *[check all that apply]*

*Clinics; Field placement/Externships; Simulations; and None (We have non-experiential courses as labs)*

20. How many different labs does your law school offer? *[Open response]*

21. From the list below, please check all the categories that describe the labs offered at your law school. *[check all that apply]*

*Administrative Law; Appellate; Asylum/Refugee; Bankruptcy; Children & the Law; Civil & Criminal Litigation; General Litigation Clinic; Civil Litigation/General; Civil Clinic; Civil Rights; Comm/Economic Development; Constitutional Law; Consumer Law; Criminal Defense; Criminal Prosecution; Death Penalty; Disability Law; Domestic Violence; Employment Law; Environmental; Family Law; Health Law; Housing; Human Rights; Immigration; Indian Law; Innocence; Intellectual Property; Legislative; Mediation/ADR; Prisoners' Rights; Securities; Tax; Transactional; Wills/Trusts/Estates; and Other (Please explain)*

22. At your law school, are lab courses: *[check all that apply]*

*Freestanding courses or Attached to a doctrinal course*

23. Please select the maximum enrollment allowed in your law school's lab course(s) each semester (if you offer more than one lab course, you may select multiple values if they apply):

*1-4; 5-8; 9-12; 13-16; 17-20; 21-24; 25-28; 29-32; 33-36; 37-40; 41-44; 45-48; 49-52; 53-56; 57-60; 61-64; 65-68; 69-72; 73-76; 77-80; 81-84; 85-88; 89-92; 93-96; 97-100; and 100+*

24. Can part-time or night J.D. students participate in labs? *[Select only one]*

*Yes; No; or Not Applicable*

25. For how many credits per semester are lab courses offered (if you offer more than one lab course, you may select multiple values if they apply)?

*1; 2; 3; 4; 5; 6; 7; 8; 9; 10+; and Variable*

26. How are students graded for lab courses? *[Check all that apply]*

*Mandatory Pass/Fail; Mandatory Letter/Number Grade; Optional Pass/Fail; and Grade Mixed Pass/Fail & Letter/Number Grade*

27. How many professors and/or instructors are involved in teaching (a) lab course(s)? *[Open response]*

28. Please select the most appropriate description of the person whose primary responsibility is teaching the lab course(s) (if you offer more than one lab course, you may select multiple values if they apply) :

*Tenure; Tenure Track; Clinical Tenured; Clinical Tenure Track; 6 yr. + Contract; 5 yr Contract; 4 yr Contract; 3 yr Contract; 2 yr Contract; 1 yr Contract; Adjunct Fellow; Staff Attorney; and Other (If other, please state title)*

29. What is the average student-teacher ratio (students per faculty member) in your law school's lab course(s):

*1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; and 27+*

## PRACTICUMS

30. If your law school has courses labeled “Practicums,” in what year did your law school first introduce that label/course? *[Open response]*

31. For purposes of the ABA definition of experiential courses, does your law school define practicums as [check all that apply]

*Clinics; Field placement/Externships; Simulations; and None (We have non-experiential courses called practicums)*

32. How many different practicums does your law school offer? *[Open response]*

33. From the list below, please check all the categories that describe the practicums offered.

*Administrative Law; Appellate; Asylum/Refugee; Bankruptcy; Children & the Law; Civil & Criminal Litigation; General Litigation Clinic; Civil Litigation/General; Civil Clinic; Civil Rights; Comm/Economic Development; Constitutional Law; Consumer Law; Criminal Defense; Criminal Prosecution; Death Penalty; Disability Law; Domestic Violence; Employment Law; Environmental; Family Law; Health Law; Housing; Human Rights; Immigration; Indian Law; Innocence; Intellectual Property; Legislative; Mediation/ADR; Prisoners’ Rights; Securities; Tax; Transactional; Wills/Trusts/Estates; and Other (please explain)*

34. Please select the typical enrollment in your practicum course(s) each semester (if you offer more than one practicum course, you may select multiple values if they apply):

*1–4; 5–8; 9–12; 13–16; 17–20; 21–24; 25–28; 29–32; 33–36; 37–40; 41–44; 45–48; 49–52; 53–56; 57–60; 61–64; 65–68; 69–72; 73–76; 77–80; 81–84; 85–88; 89–92; 93–96; 97–100; and 100+*

35. Can part-time or night J.D. students participate in practicums?

*Yes; No; or Not Applicable*

36. For how many credits per semester are practicum courses offered (if you offer more than one practicum course, you may select multiple values if they apply)?

*1; 2; 3; 4; 5; 6; 7; 8; 9; 10+; and Variable*

37. How are students graded for practicum courses? (Check all that apply)

*Mandatory Pass/Fail; Mandatory Letter/Number Grade; Optional Pass/Fail; and Grade Mixed Pass/Fail & Letter/Number Grade*

38. How many professors and/or instructors are involved in teaching (a) practicum course(s)? *[Open response]*

39. Please select the most appropriate description of the person whose primary responsibility is teaching the lab course(s) (if you offer more than one lab course, you may select multiple values if they apply) :

*Tenure; Tenure Track; Clinical Tenured; Clinical Tenure Track; 6 yr. + Contract; 5 yr. Contract; 4 yr. Contract; 3 yr. Contract; 2 yr. Contract; 1 yr. Contract; Adjunct Fellow; Staff Attorney; and Other (If other, please state title)*

40. What is the average student-teacher ratio (students per faculty member) in your law school's practicum course(s):

1; 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; 19; 20; 21; 22; 23; 24; 25; 26; 27+; and Other

41. If your law school has experiential courses that fall under another label or designation, but nonetheless may be considered an "emerging model," please tell us about them here: (Ex. If your school has experiential courses identified as "workshops" or "hybrids," please explain how they are structured) [*Open response*]

The following schools responded to the survey: American University Washington College of Law; Benjamin N. Cardozo School of Law; Boston University; Brigham Young University; Brooklyn Law School; California Western School of Law; Case Western Reserve University; Chicago-Kent; Cleveland-Marshall College of Law; Columbia; Cornell Law School; CUNY School of Law; Dickinson Law; Drexel University Kline School of Law; Duke Law School; Elon University School of Law; Emory Law School; Faulkner University—Thomas Goode Jones School of Law; Florida International University College of Law; Florida State University; Fordham University; Georgetown University Law Center; Georgia State University College of Law; Gonzaga University; George Washington; Harvard Law School; Howard University School of Law; Hugh F. Culverhouse Jr. School of Law at The University of Alabama; Indiana University Robert H. McKinney School of Law; Loyola Law School, Los Angeles; Loyola University Chicago School of Law; Loyola University New Orleans College of Law; LSU; McGeorge School of Law; Michigan State University College of Law; New England Law — Boston; New York Law School; Northeastern University School of Law; Northern Illinois University College of Law; Northwestern Pritzker School of Law; Notre Dame Law School; Nova Southeastern University Shepard Broad College of Law; NYU Law School; Ohio Northern University; Ohio State University; Oklahoma City University School of Law; Penn State Law; Pepperdine University School of Law; Quinnipiac University School of Law; Roger Williams University School of Law; Saint Louis University School of Law; Seattle University; Seton Hall Law School; SMU Dedman School of Law; Southern Illinois University; Southwestern Law School; St John's University School of Law; Stanford; Stetson College of Law; Suffolk University Law School; Syracuse University; Temple Law School; Texas A&M University School of Law; The John Marshall Law School, Chicago; Toledo; Touro Law Center; Tulane Law School; UC Berkeley; UC Davis School of Law; UC Hastings; UDC David A. Clarke School of Law; UMass Law; University of California, Irvine School of Law; University at Buffalo School of Law; University of Arkansas (Fayetteville); University of Arkansas at Little Rock Bowen School of Law; University of Baltimore School of Law; University of Chicago Law School; University of Cincinnati College of Law; University of Colorado Law School; University of Connecticut; University of Dayton School of Law; University of Denver

Sturm College of Law; University of Detroit Mercy School of Law; University of Florida Levin College of Law; University of Georgia School of Law; University of Houston Law Center; University of Iowa; University of Kansas School of Law; University of Kentucky College of Law; University of Maryland Carey School of Law; University of Memphis School of Law; University of Miami; University of Michigan Law; University of Minnesota Law School; University of Missouri School of Law; Columbia; University of Montana Alexander Blewett III School of Law; University of Nebraska College of Law; University of North Carolina at Chapel Hill; University of North Dakota School of Law; University of Oklahoma; University of Pennsylvania Law School; University of Richmond School of Law; University of San Diego School of Law; University of South Carolina School of Law; University of Tennessee; University of Texas School of Law; University of Tulsa College of Law; University of Utah S. J. Quinney College of Law; University of Washington School of Law; University of Wisconsin; UNLV Boyd Law; UNM School of Law; USC Gould School of Law; Valparaiso University Law School; Vanderbilt; Villanova University Charles Widger School of Law; Wake Forest; Washington and Lee; Washington University in St Louis; Wayne State Law School; West Virginia University College of Law; Western New England University School of Law; William & Mary Law School; WMU-Cooley Law School; and Yale Law School.