

## THE COUNTERINTUITIVE COSTS AND BENEFITS OF CLINICAL LEGAL EDUCATION

RICHARD E. REDDING\*

*The belief that all genuine education comes about through  
experience does not mean that all experiences are genuinely  
or equally educative.*

—John Dewey<sup>1</sup>

Learning experiences often produce outcomes we do not expect. Professor Yackee’s study finding no relationship between a school’s clinical offerings (measured by “the number of positions available in faculty supervised law clinic courses . . . as a percent of total JD enrollment”) and student employment outcomes (measured by the school’s Law School Transparency employment score)<sup>2</sup> was greeted with skepticism by practitioners and advocates of clinical legal education (hereinafter “CLE”).<sup>3</sup> Law students and recent graduates may also be skeptical given the popularity of clinical courses and surveys finding that many lawyers view their law school clinical experiences as useful in preparing them for law practice,<sup>4</sup> which is often advertised to students and employers as a key benefit of clinics.

---

\* Vice Chancellor for Graduate Education and Wang-Fradkin Professor of Law, Psychology, and Education, Chapman University; Ph.D., Psychology, University of Virginia; J.D., Washington and Lee University School of Law; M.S., Psychology, Vanderbilt University. I would like to thank Donald Kochan and Larry Rosenthal for helpful comments on an early draft.

1. JOHN DEWEY, *EXPERIENCE AND EDUCATION* 25 (Touchstone 1997) (1938).

2. Jason Webb Yackee, *Does Experiential Learning Improve JD Employment Outcomes?*, 2015 WIS. L. REV. 601, 606–07 (internal quotation marks omitted). The study also found that any correlation between the number of clinical offerings as a percentage of JD enrollment and law schools’ *U.S. News & World Report* rankings is not statistically significant. *Id.* at 611. Schools that have invested substantially in clinical education have apparently realized no demonstrable benefits *vis-à-vis* student employment or school ranking, which affects employment outcomes yet is uncorrelated with schools’ clinical offerings.

3. See Keith A. Findley, *Assessing Experiential Legal Education: A Response to Professor Yackee*, 2015 WIS. L. REV. 627; Robert R. Kuehn, *Measuring Legal Education’s Employment Outcomes*, 2015 WIS. L. REV. 645.

4. See Findley, *supra* note 3, at 634–35 (discussing surveys of private practice, government, and public interest lawyers). Interestingly, critics of legal education draw rather different conclusions from the findings of such surveys, including those of a 2009 piece—analyzing the results of a 2002 survey—reporting that 62% of recent law graduates found their law school clinical experience “helpful to extremely helpful” while transitioning into legal practice. Rebecca Sandefur & Jeffrey Selbin, *The*

Studies on outcomes in legal education are in short supply yet urgently needed.<sup>5</sup> Armed with a Ph.D. in political science and research experience,<sup>6</sup> Professor Yackee does not succumb to the methodological missteps common when law professors unschooled and inexperienced in empirical methods conduct empirical research.<sup>7</sup> His study is just the beginning of what needs to be a sustained research program on the learning and job preparation outcomes of pedagogical practices in legal education. But even the best studies have difficulty measuring how learning experiences might impact a graduate's competence or employment prospects. Professor Yackee's study is a correlational one that does not allow for causal conclusions, and the measures used do not provide the granularity needed to reliably rule-out all potential confounds and competing explanations for the findings. Moreover, given the varieties of clinical education, it would be surprising if such an amorphous category could produce any consistent outcome. With clinics ranging from Supreme Court brief-writing to eviction court, different clinics expose students to widely varying skills in terms of their transferability to law practice and employer perceptions of transferability.

If we may tentatively conclude from the study, despite its methodological limitations,<sup>8</sup> that clinical courses fail to give students any significant leg-up in the job market, then perhaps CLE entails some counterintuitive pedagogical costs and benefits that we ought to consider. Could CLE come at the expense of what is nowadays often

---

*Clinic Effect*, 16 CLINICAL L. REV. 57, 85 (2009) (providing original analysis of the first set of published data from the *After the JD* study, RONIT DINOVITZER ET AL., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS (Janet E. Smith et al. eds., 2004), <http://www.americanbarfoundation.org/uploads/cms/documents/ajd.pdf>). While Professor Findley takes such findings to mean that clinics teach students useful practice skills, see Findley, *supra* note 3, at 634–35, Professor Rosenthal suggests that “this data surely calls for some caution in assessing the claim that externships and clinics provide the best training for practice.” Lawrence Rosenthal, *Those Who Can't, Teach: What the Legal Career of John Yoo Tells Us About Who Should Be Teaching Law*, 80 MISS. L. J. 1563, 1618 (2011).

5. See Richard E. Redding, *The Legal Academy Under Erasure*, 64 CATH. U. L. REV. 359, 391 (2015) (discussing the program of research needed to “‘identify the knowledge, skills, behaviors, and attributes of highly successful [attorneys] . . . and then work backwards,’ using the identified knowledge and skills as course learning objectives” (alteration and omission in original) (quoting William D. Henderson, *A Blueprint for Change*, 40 PEPP. L. REV. 461, 496 (2013))).

6. See Jason Yackee, U. WIS. L. SCH., <https://law.wisc.edu/profiles/jyackee@wisc.edu> (last visited Mar. 30, 2016).

7. See, e.g., Richard E. Redding, *Without a Prayer?: Spirituality and Performance in Law School—A Reply to Professor Taylor*, 47 CAL. W. L. REV. 111, 116–22 (2010) (discussing an example of such a case).

8. See Kuehn, *supra* note 3, at 646–55 (providing a methodological critique of Professor Yackee's study).

touted as being precisely its goal, which is to equip students with practice-ready skills? As Professor Yackee's study suggests, law schools will not positively impact their employment outcomes by expanding clinical offerings because clinical experiences in law school do not provide students with the "hit-the-road-running" practice skills they need to be "practice-ready." And even if they did, employers may be wise to value students' aptitude for legal reasoning and long-term potential (with GPA and class rank serving as the proxy measures) over limited skills training that just gives new lawyers a head start on the first few months of law practice.<sup>9</sup>

Indeed, the notion that clinics can help law schools produce practice-ready graduates may only be, as Professor Robert J. Condlin puts it, "a millennialist fantasy."<sup>10</sup> Contrary to what they promise to students and employers, clinics provide a relatively poor platform for students to master, at anything approaching the level required for practice, the rules of evidence, principles of contract drafting, negotiation, or any other complex practice skill. This is not surprising when considering the demands of law practice in relation to what research in educational and cognitive psychology tells us about how people learn, retain, and transfer skills. The acquisition and retention of complex skills (and the declarative knowledge base and mental models needed to deploy them), including most of the skills involved in law practice, requires sustained and consistent practice over time in a developmental fashion whereby component skills are mastered as building blocks towards integration into the complex target skill.<sup>11</sup> Moreover, generalization of the skill, so that the learner is later able to deploy it in contexts other than the one in which she first learned it, requires further sustained practice across the diverse contexts in which she will use it in law practice. This generalization (called "skill

---

9. See Robert J. Condlin, *Assessing Experiential Learning, Jobs and All: A Response to the Three Professors*, 2015 WIS. L. REV. FORWARD 65, 68–69, <http://wisconsinlawreview.org/assessing-experiential-learning-jobs-and-all-a-response-to-the-three-professors/>. Likewise, perhaps for similar reasons, law schools tend to value the quality of the law school a faculty candidate attended and his or her academic record over other factors such as practice experience, teaching experience, or publication record. See Richard E. Redding, *Where Did You Go to Law School? Gatekeeping for the Professoriate and Implications for Legal Education*, 53 J. LEGAL EDUC. 594 (2003) (presenting a statistical analysis of the factors predicting law faculty hiring and finding that where a faculty candidate went to law school may trump all other factors).

10. Robert J. Condlin, "Practice Ready Graduates": A Millennialist Fantasy, 31 TOURO L. REV. 75 (2014).

11. See generally Richard E. Redding, *Metacognitive Instruction: Trainers Teaching Thinking Skills*, 3 PERFORMANCE IMPROVEMENT Q., no. 1, Mar. 1990, at 27 (1990).

transfer”) is also necessary for long-term retention, since we tend to forget skills we have learned only in narrow contexts at discrete times.<sup>12</sup>

Clinics are unable to provide students with anything close to the kind of sustained and consistent practice<sup>13</sup> across a variety of contexts, necessary for students to develop complex legal skills. Rather, “[b]ecoming proficient at practice tasks is the work of work, . . . the result of performing the tasks over and over again, on a daily basis . . . as part of the process of being socialized into the profession.”<sup>14</sup> I agree with Professor Condlin that CLE “is too uneven, episodic, and situation-driven to be a complete program of instruction for . . . lawyer practice skills.”<sup>15</sup>

Unfortunately, the limited practice-skills training students receive in the clinics they take towards the end of their law school careers comes “too little, too late” to result in meaningful skills acquisition and retention. Students in a clinic are typically able to work on just a handful of relatively simple cases or, perhaps, parts of a complex case during a brief time period in the life of the case.<sup>16</sup> The 2007 Carnegie Foundation report on legal education noted, with considerable concern, that “[u]nlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice. The result is to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner.”<sup>17</sup> But unlike the four-year program of American medical education—which provides students with almost two years of diverse

---

12. See Redding, *supra* note 5, at 390 n.182 (citing studies in cognitive and educational psychology). Thus, empirical studies of key lawyering skills should be conducted to identify the component skills; the sequence in which such components are learned and mastered; the learning conditions that best facilitate learning progression towards the target skill; the knowledge, mental models, and metacognitive and problem solving strategies supporting skill components; and key differences between good and poor performers. For a discussion of what such studies should entail, see *id.* at 391–92.

13. Thus, a recent survey found that the CLE courses lawyers completed in law school “offering students more time-on-task” were rated as being more valuable by lawyers than other CLE courses. 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, 183 (2015).

14. Condlin, *supra* note 10, at 79.

15. Condlin, *supra* note 9, at 79.

16. Perhaps because the skills work in clinics is relatively basic, it does not allow for much variability in grading, i.e., most students are able to perform quite well. Citing anecdotal data, Professor Condlin suggests that, at many schools, clinic grades are generally higher than grades in other courses. Condlin, *supra* note 9, at 71 n.23.

17. WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 188 (2007) [hereinafter EDUCATING LAWYERS].

clinical experiences in medical school before their three- to seven-year residency program where they then obtain years of supervised clinical experience—law school clinics do not serve the full range of specialties and clients but expose students to a narrow range of cases and client populations that may not be representative of what most lawyers encounter in practice. Particularly because the kind of work students do in clinics may have little transferability to law practice, it is not surprising, as Professor Yackee’s study may suggest, that completion of one or two clinical courses in law school fails to impress employers that students are “practice ready.” As Professor Lawrence Rosenthal observes, “[o]f necessity, clinical and other experiential education involves relatively unsophisticated, small-stakes litigation and therefore is unlikely to do much to develop the skills that will enable a student to practice at a higher level.”<sup>18</sup>

I have argued that legal education should be restructured to mirror the medical education model by adding a fourth year that includes a series of intensive clinical rotations in a law school law firm (that partners with private law firms).<sup>19</sup> But given the model of CLE in place in most law schools today, legal skills are better taught via skills courses and skills exercises integrated into doctrinal courses or in accompanying skills labs (e.g., a contract drafting lab alongside a contracts course). Arguing for the value of clinics, Professor Findley asks us to “[i]magine . . . the medical school that sought to teach anatomy by having students read about it and discuss it without allowing them to experience the human body through hands-on exploration.”<sup>20</sup> True enough, students who take a contracts course without ever having seen, drafted, or negotiated a contract will have an inferior understanding as compared to those students who have had such experiential learning, but skills courses can provide far broader and deeper learning experiences in contract law than a student will even get by working on several contracts issues in just a few cases in a law school clinic. In a typical negotiations course, for example, students spend the semester developing particular negotiation strategies and engaging in weekly simulations that test their ability to deploy those strategies. By contrast, mediation clinics offer students the opportunity to mediate only a few cases, often ones not typical to everyday law practice.

But requiring students to take just a few skills or clinical courses is insufficient and only reifies the false dichotomy between doctrine and skills. “Skills are the mechanism by which legal knowledge is applied

---

18. Rosenthal, *supra* note 4, at 1618.

19. See Redding, *supra* note 5, at 393–99.

20. Findley, *supra* note 3, at 634.

and understood in context, and skills practice provides students with feedback on how their knowledge should be interrogated, synthesized, and refined.”<sup>21</sup> Skills training must be integrated throughout the curriculum, along with theory and doctrine, as each is necessary to the other. For example, first-year contracts courses could include drafting exercises, first-year criminal law courses could require students to determine charges and defenses (with reference to state and federal statutes) from mock case files, and courses in evidence could include mock trial exercises. To truly develop students’ writing skills, foundational to effective lawyering, writing and drafting exercises must be regularly incorporated throughout the curriculum, and these writing exercises should also serve to develop other practice skills. A business associations course might require students to draft corporate bylaws or a shareholder agreement based on a mock term sheet, with students representing the parties and negotiating the terms.<sup>22</sup>

Perhaps one of the best models for skills integration throughout the curriculum has been developed by Indiana Tech Law School, which has implemented a curriculum that “horizontally” (exercises are sequenced in the order they would be performed in law practice: initial client interview, legal research and draft memorandum, draft motion to dismiss or answer, file interrogatories) and “vertically” (doctrinal issues in the hypothetical case are timed to coincide with relevant topics covered in the doctrinal courses) integrates skills exercises throughout the three years of law school.<sup>23</sup> First-year students receive a hypothetical case that incorporates doctrinal issues from all of their courses.<sup>24</sup> Students are required, over the course of their first year, to litigate the case from initial client interview to oral argument before a mock appellate court,<sup>25</sup> receiving “individual feedback from doctrinal and legal writing professors with detailed rubrics that collaboratively assess substantive legal knowledge and writing ability. . . . [that] helps students to understand the context within which law is practiced . . .”<sup>26</sup> The same model is implemented in the second and third years *vis-à-vis* upper-level required courses, bar-tested courses, and simulation and skills courses and includes transactional, litigation, and criminal adjudication hypotheticals.<sup>27</sup> The Indiana Tech curriculum also includes

---

21. Redding, *supra* note 5, at 390.

22. *See id.* at 390–91.

23. Adam Lamparello & Charles E. MacLean, Creating the New Law School by Fully Integrating Experiential Education Across the Entire Curriculum 5–7 (Jan. 8, 2016) (unpublished manuscript), *available at* <http://ssrn.com/abstract=2712762>.

24. *Id.*

25. *Id.*

26. *Id.* at 10.

27. *Id.* at 10–12, 24.

a five-semester clinical program and a thirty-hour pro bono service requirement.<sup>28</sup>

Although advocates of clinics claim that they develop in students an appreciation for principles of professionalism and client representation, the first several months of law practice will likely accomplish that. Discussing the findings of the Carnegie Foundation Report on Legal Education, Professor R. Michael Cassidy suggests that law students need to appreciate the profession's core values, the moral and ethical aspects of lawyering, how to challenge existing power structures, and what it means to "flourish" professionally as a lawyer.<sup>29</sup> It is said that clinics develop in students a "fiduciary disposition"<sup>30</sup> and "a professional identity with a moral and ethical core of service and responsibility"<sup>31</sup> to their clients, the profession, and society. We should be skeptical, however, of claims that students' professional identities and ethical sensibilities are developed significantly during just one or two semesters of clinical work, no matter how well mentored the students may be. As Professor Condlin points out, professional socialization "is a long-term process" and "[p]roponents of 'practice-ready' education do not seem to understand the difference between socialization and education,"<sup>32</sup> with education teaching students the knowledge, analytical, and critical thinking skills that are the necessary prerequisites for professional socialization. Moreover, socializing students to extant professional norms and practices may not be entirely what we want to achieve in legal education. A good legal education "*helps one avoid becoming a captive of socialization more than it socializes*, and to adapt received wisdom to changing beliefs and circumstances more than internalize wisdom in its present form."<sup>33</sup>

---

28. *Id.* at 27–28.

29. R. Michael Cassidy, *Beyond Practice Skills: Nine Steps for Improving Legal Education Now*, 53 B.C. L. REV. 1515, 1525 (2012) (discussing EDUCATING LAWYERS, *supra* note 17).

30. Neil Hamilton & Sarah Schaefer, *What Legal Education Can Learn from Medical Education About Competency-Based Learning Outcomes Including Those Related to Professional Formation (Professionalism)*, 29 GEO. J. LEG. ETHICS (forthcoming 2016) (manuscript at 4), available at <http://ssrn.com/abstract=2643031>.

31. Lee S. Shulman, *Foreword* to MOLLY COOKE ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY (2010), *quoted in* Hamilton & Schaefer, *supra* note 30 (manuscript at 5).

32. Condlin, *supra* note 10, at 89–90; *see also* Donald J. Kochan, *Thinking Like Thinkers: Is the Art and Discipline of an "Attitude of Suspended Conclusion" Lost on Lawyers?*, 35 SEATTLE U. L. REV. 1, 6 (2011) (discussing, generally, the necessity of educating for the development of thinking skills and an understanding of the cognitive biases that impede them as a prerequisite to learning the law, concluding that "there is a fundamental place in legal education for a focus on the thinking enterprise").

33. Condlin, *supra* note 10, at 79 (emphasis added) (footnote omitted).

The often unrealized potential of clinics is that they can foster in students a better understanding and appreciation of the legal theory and analysis that is the mainstay of their doctrinal counterpart. Pre-professional education ought to develop students' critical thinking and divergent and creative problem solving skills, along with the supporting intellectual "virtues" such skills require.<sup>34</sup> Professor Keith A. Findley argues that "the rationale for clinical education is . . . about effective pedagogy for adult learners (both about substance and skills)," which means active learning in applied contexts, with skills practice arguably the best form of "learning by doing."<sup>35</sup>

Dear Reader, the most meaningful, lasting, and transferable "skill" is knowing how to interpret, manipulate, employ, and reform legal (and relevant interdisciplinary and extralegal) theory, doctrines, and practices when applying them to solve real-world client problems. This equips students to be critical legal thinkers prepared to serve their clients.<sup>36</sup> "[T]here is nothing so practical as a good theory,"<sup>37</sup> as the eminent psychologist Kurt Lewin famously said, because it provides the descriptive and analytical framework for the deductive problem solving, creative thinking, and intellectual flexibility necessary when confronting novel problems and practice contexts. Most errors in problem-solving occur because the person's underlying theory or "mental model" is faulty or incomplete, and a key feature differentiating experts from novices is that "[t]he expert's knowledge is less context-specific or

---

34. See Barry Schwartz, *What 'Learning How to Think' Really Means*, CHRON. HIGHER EDUC. (June 18, 2015), <http://chronicle.com/article/What-Learning-How-to-Think/230965> (noting a distinction between intellectual "skills" and intellectual "virtues" and listing "Love of truth," "Honesty," "Fair-mindedness," "Humility," "Perseverance," "Courage," "Good listening," "Perspective-taking and empathy," and "Wisdom" as important intellectual virtues to develop in students); Redding, *supra* note 5, at 373-76 (arguing that law schools should be first and foremost legal academies that provide students with a liberal arts education in the law and only secondarily trade schools that provide technical skills training).

35. Findley, *supra* note 3, at 629. In my view, the argument made by clinical educators that "active learning" is a superior learning modality for adult learners is greatly overstated. There is little to no evidence that adult learners profit more from "learning by doing" than do children, for example, based on what we know from developmental psychology. "Learning by doing" is beneficial to learners of *all* ages. Moreover, because the doctrine-versus-skills distinction in legal education is often a false or artificial one, likewise is the distinction between "active learning" versus "classroom learning." See Condlin, *supra* note 9, at 74-75; Linda H. Edwards, *The Trouble with Categories: What Theory Can Teach Us About the Doctrine-Skills Divide*, 64 J. LEGAL EDUC. 181 (2014); Jessica Erickson, *Experiential Education in the Lecture Hall*, 6 NE. U. L.J. 87 (2013); Redding, *supra* note 5, at 388-90.

36. Redding, *supra* note 5, at 375-76.

37. KURT LEWIN, *Problems of Research in Social Psychology*, in FIELD THEORY IN SOCIAL SCIENCE: SELECTED THEORETICAL PAPERS 155, 169 (Dorwin Cartwright ed., 1951).

situation-specific in that he/she can generalize abstract principles in order to solve problems across a range of situations.”<sup>38</sup> Thus, “good experiential education includes a cycle in four stages — first, the experience, followed by reflection on that experience, abstraction of that experience to theory, and then application of the theory to new situations.”<sup>39</sup>

Clinical education is most effective when it actively engages students to grapple with the applications and limitations of legal theory and doctrine and the ways in which to interrogate and innovate existing law and practices. Indeed, as Professor Condlin points out, skills training “need not be relentlessly instrumental” and focus quite so much on lawyer behavior and practice techniques but “might [still] develop in a jurisprudential direction” as it started to do when it first began to take hold in legal education during the 1980s.<sup>40</sup> Clinics should provide opportunities for students to deploy and practice the skills of confronting, appreciating, challenging, and reforming the real-world applications of legal theory and doctrine and the equally vital skill of knowing when and how to draw upon interdisciplinary or extralegal approaches to “legal” problems. Professor Peter H. Schuck notes that the greatest failing of legal education is that “we do not teach our students how to handle facts—how to find, interpret, prove, and rebut them.”<sup>41</sup> Increasingly it is the case that lawyers must find and interpret extralegal facts; draw upon the relevant sciences, social sciences, and business sciences to better understand case facts and effectively advocate for their clients; and appreciate the policy and social context in which their cases arise. For example, business law attorneys must have an understanding of basic accounting; an understanding of economics is essential for effective practice in bankruptcy, antitrust, corporate, and securities law; and a basic understanding of forensic psychology issues is invaluable in a variety of civil and criminal contexts.

---

38. Redding, *supra* note 11, at 30.

39. Ian Holloway & Steven I. Friedland, *The Law School of 2020* 18 (Elon Univ. Law Legal Studies, Research Paper No. 2016-06, 2016), available at <http://ssrn.com/abstract=2733567>.

40. Condlin, *supra* note 10, at 109–10. Professor Condlin notes that the “early clinical law professors . . . taught about poverty and its effects, institutional ineptitude and unresponsiveness, distributional inequities, prejudice and its consequences, and the possibilities and limits of an ends-based morality authorizing system manipulation to produce good outcomes in individual cases.” *Id.* at 110–11 n.99.

41. Peter H. Schuck, *Why Don't Law Professors Do More Empirical Research?*, 39 J. LEGAL EDUC. 323, 325 (1989).

It is not that lawyers must or will have a deep substantive knowledge of these other disciplines, but to be effective, they must have developed the skill of knowing when disciplines outside the law can usefully inform their case.<sup>42</sup> Law school clinics are ideally suited for teaching students these important omnibus generalizable skills, building upon what students have learned in their doctrinal courses by highlighting for students how the law functions, is perceived to function, is failing to function, and ought to function; how to interrogate whether the social and behavioral assumptions underlying legal doctrine and practices comport with insights from those other disciplines; and how to employ knowledge from other disciplines in everyday law practice. As Professor Nancy L. Schultz observes, good lawyers must “critically analyze the utility, effectiveness, and social implications of legal doctrine and procedure; integrate nonlegal approaches into the legal problem-solving process; and synthesize and build original legal theories, frameworks, and systems.”<sup>43</sup>

But, there is a counterintuitive rub here as well. Professors who are mainly practitioners instead of scholars, who grapple regularly with theory and interdisciplinary approaches to legal problems, are unlikely to provide the kinds of cutting-edge and novel insights that engender in students thinking about real-world legal problems in new and innovative ways. Practitioners typically teach current modal and *status quo* practices, whereas the mindset of the legal scholar is to *interrogate and challenge* such practices.<sup>44</sup> Ironically, therefore, while law schools often staff clinics with non-tenure-track or adjunct practitioners who do little or no scholarship, “[l]awyers engaged in particular work for particular clients or constituents are not often in a good position to step back from that work and . . . see[] familiar things in new ways.”<sup>45</sup> Yet that is precisely what good clinics teach students to do. To be sure, the teaching of scholarly-minded clinical professors, and of doctrinal professors as well, can benefit substantially from sustained periodic exposure to real-world law practice.<sup>46</sup> Real-world learning experiences

---

42. For a detailed discussion of how the social sciences, business sciences, and humanities can inform everyday law practice, see Redding, *supra* note 5, at 379–88.

43. Nancy L. Schultz, *How Do Lawyers Really Think?*, 42 J. LEGAL EDUC. 57, 60 (1992).

44. See Redding, *supra* note 5, at 401–02.

45. Sherman J. Clark, *Drawing (Gad)flies: Thoughts on the Uses (or Uselessness) of Legal Scholarship*, 49 U. MICH. J.L. REFORM CAVEAT 63, 65–66 (2015), <http://mjlr.org/2015/10/22/drawing-gadflies-thoughts-on-the-uses-or-uselessness-of-legal-scholarship/>.

46. See Martin H. Pritikin, *The Teacher Becomes Student: What Law Professors Can Learn from the Legal Profession*, 81 DEF. COUNS. J. 333, 333–36 (2014) (law professor explaining how spending a sabbatical in a district attorney’s

and skills are the mechanism by which legal knowledge is applied and understood in context, and skills practice provides students (and their professors!) with critical feedback on the validity and limitations of their legal knowledge.

A related rub is that while the elite schools still retain somewhat of a focus on legal theory, interdisciplinarity (“law and . . .”), critical theory, and law reform, it is the lower-ranked schools that have most enthusiastically embraced the notion that they must teach concrete practice skills so their students will be “practice-ready.”<sup>47</sup> Schools do this to market themselves to prospective students in an increasingly tight and declining marketplace for applicants, to market their students to prospective employers, to brand the school as one that produces practice-savvy attorneys, to provide what they think the student- and employer-consumers want, and because they may believe that their students “must be able to practice, with little mentoring support, as soon as they receive their law licenses.”<sup>48</sup>

Contrary to what some reformers of legal education believe,<sup>49</sup> however, students at lower-ranked schools probably need the theoretical and interdisciplinary training more than students at the elite schools do. If they have not had the foundational exposure in law school to legally relevant other disciplines as well as legal theory and critique, graduates of lower-ranked schools may be poorly positioned to recognize and appreciate when other disciplines or legal theory may be useful for understanding and resolving their clients’ problems.<sup>50</sup> Yet, they will encounter cases requiring such insights no less often than will their

---

office informed his legal scholarship and made him “a more ‘value added’ professor that can better prepare [his] students for the real-world challenges of practice”); Redding, *supra* note 5, at 409–11 (noting that legal scholarship could benefit if law professors more fully considered the feasibility and practical application of their theories and critiques to the real world); Rosenthal, *supra* note 4, at 1619–26 (arguing that lack of practice experience can leave law professors ill-equipped to recognize the limits of legal theory in real-world application).

47. See Lucille A. Jewel, *Oil and Water: How Legal Education’s Doctrine and Skills Divide Reproduces Toxic Hierarchies*, 31 COLUM. J. GENDER & L. 111, 127–28 (2015).

48. *Id.* at 128.

49. See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 26–27 (2012) (arguing that because non-elite law schools are not training society’s future leaders, they need not provide students a kind of liberal education in the law but instead should focus more on practice skills and perhaps reduce the length of law school down to just two years).

50. Ample social psychological research demonstrates that people often fail to recognize their own incompetence and knowledge deficiencies, and this failing is often greatest among the less capable. See, e.g., David Dunning et al., *Why People Fail to Recognize Their Own Incompetence*, 12 CURRENT DIRECTIONS PSYCHOL. SCI. 83 (2003).

high-powered, big-law-firm counterparts. More often it is the everyday family or criminal case that benefits the most from such perspectives, not the giant corporate case. It is the socioeconomically disadvantaged clients and “small time” cases that suffer the most when the lawyer fails to draw upon relevant theoretical and interdisciplinary insights to effectively handle the case, and it often is these kinds of cases that provide the impetus for legal reform. We will have established a caste system in legal education that hurts most the lawyers and clients who can least afford it, if we continue down the road of the elite schools teaching theory, interdisciplinary approaches, critique, and law reform while the lower-ranked schools emphasize concrete practice skills.<sup>51</sup> As Professor Lucille A. Jewel explains,

[A]ll lawyers must recognize the social and economic facts and policies that impact all cases.

. . . .

. . . [T]he[] exclusion [of critical legal theories] from the curricula of lower-ranked schools . . . . sends the message that only law students of a certain type (most probably from socioeconomically privileged backgrounds) are qualified to deploy the kind of knowledge connected to structural critique and law reform. . . .

. . . .

In addition to large-scale reform, legal change also happens in the trenches . . . . Lawyers need to know, for instance, how cultural forces relating to race and gender can produce implicit bias that can infect the thinking of juridical actors . . . .

. . . All lawyers, no matter what their rank, need instruction in practice, but also in theory.<sup>52</sup>

I conclude with a disclosure. My own direct experience with CLE is limited to completing a year-long mental health law clinic as a law student and later teaching the same course for two years as a new law professor. I often reflected upon what I was learning as a student in the clinic, a reflexive impulse I did not feel in my doctrinal courses because what I was learning was transparent to me. But in the clinic, I never was able to identify any practice skills that I had learned, other than paralegal-type skills such as how to file a court motion. Yet, the clinic gave me the gift of something far more valuable. It brought to life how mental health law operated in practice (the difference between “law in

---

51. See Jewel, *supra* note 47, at 127–33; Redding, *supra* note 5, at 375–76.

52. Jewel, *supra* note 47, at 129–33.

books” and “law in action,” as Roscoe Pound put it),<sup>53</sup> providing me with an appreciation for the applications, limitations, and legal reform possibilities of the mental health law and theory I had learned in the doctrinal mental health law course. Later, as a clinical teacher, I reflected on what students were learning in my course. Did they leave the course with a practice-ready mastery of anything other than the simplest legal skills that they would otherwise pick up in the first month or so of law practice? Probably not. Did the course provide them with unique insights, which they would not have gained in a doctrinal course, about mental illness and the operation and limitations of the mental health system and our laws designed to protect the rights of patients, families, and the public?<sup>54</sup> I believe it did.

Since my own experience with CLE is rather limited, the old aphorism that “a little knowledge is a dangerous thing” may resonate with some readers. But perhaps the realities of CLE are not so counterintuitive after all. Clinical legal education can be immensely valuable, but not for the reasons typically advertised.

---

53. See Roscoe Pound, *Law in Books and Law in Action*, 44 AM. L. REV. 12 (1910).

54. See, e.g., Richard E. Redding, *Why It Is Essential to Teach About Mental Health Issues in Criminal Law (and a Primer on How to Do It)*, 14 WASH. U. J.L. & POL'Y 407 (2004) (outlining ways in which knowledge of mental illness, mental health issues, and the mental health system is essential to be an effective defense attorney or prosecutor); Richard E. Redding, *Children's Competence to Provide Informed Consent for Mental Health Treatment*, 50 WASH. & LEE L. REV. 695, 704–09 (1993) (discussing myths versus realities in children's mental health law and the operation of the mental health system).