

Fulfilling “Skills” and “Writing” Requirements in Externship

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Introduction

Responses to a survey distributed by the author show that a significant percentage of law schools do not allow skills performance at externship placements to fulfill academic rules mandating law student enrollment in skills courses and almost none allow writing at externship placements to fulfill academic requirements for upper level writing.¹ This Article provides data that detail this pattern and the principal objections to granting such credit; it critiques these objections and suggests action in response.

American Bar Association Standards for accreditation of law schools that govern most American law schools require that “each student receive substantial instruction in...professional skills generally regarded as necessary for effective and responsible participation in the legal profession”² and that each student receive “substantial instruction in...writing in a legal context, including at least one rigorous writing experience ...after the first year.”³ As a result, academic requirements mandating student completion of courses involving lawyering performance and research and writing are nearly universal among ABA-accredited law schools. Externships, fieldwork supervised by practicing lawyers or sitting judges and monitored by law school faculty, seem like obvious choices to meet these requirements, providing challenging real-world experience in the essentials of lawyering.

The pattern of not recognizing skills or writing in externship may reflect a lingering suspicion about the quality of learning in law offices, or an overly cautious view of requirements set by the ABA Standards. It may also reflect a conceptual conflict between traditional academic perspectives about how to teach and how to assess learning and the reality of how novices learn in a professional setting. In addition, the partial separation of supervision between the student’s practice setting and on-campus

¹ Survey “Skills teaching in Externship” conducted via SurveyMonkey at <http://www.surveymonkey.com/s/PP9WMVM>, and distributed via the externship listserv lextern@lists.cua.edu, analysis of results on file with author.

² American Bar Association Standards for Approval of Law Schools, Standard 302(a)(4) hereafter ABA Skills Standard, viewable at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf

³ American Bar Association Standards for Approval of Law Schools, Standard 302(a)(3) hereafter ABA Writing Standard, *ibid.*

resources in most externship programs create legitimate challenges in recognizing skills or writing learning in externship, especially, but not only, when academic criteria that come from a classroom setting are applied.

This Article reports information from 90 law schools on their practices regarding recognizing skills or writing in externship, including the views of the respondents as to the reasons for these practices. The Article examines claimed concerns about whether externship can legitimately “count” as skills or writing education, taking into account how law schools currently define these educational goals, and the acknowledged challenges of evaluating student learning in externship. The Article discusses how law a school can manage these concerns, so that performance-based skills and legal writing in externship can be recognized. The Article concludes by proposing three strategies to increase recognition of skills and writing learning in externship: modifying existing rules while striving to bring externship education into line with traditional expectations, establishing separate criteria for recognition that are built on how students learn skills and legal writing in externship, and supporting more significant changes in legal education.

Background: a movement to strengthen skills education in law schools

A deluge of critical opinions on the state of legal education has asserted a serious gap in preparing law students to be practice-ready⁴, or to put this concern another important way, to prepare students to be “client-ready.”⁵ The American Bar Association, charged with setting and regularly reviewing accreditation requirements for law schools nationwide, responded by revising Section 302 of its Standards to emphasize teaching “skills necessary...to the practice of law.”⁶

While there are ambiguities in interpretation of Standard 302⁷ the core meanings are reasonably clear. With regard to skills other than writing, law schools must provide skills instruction, which may be provided in various ways, not necessarily in a required course. However provided, “each student” is to be “engaged in skills performances that are assessed by an instructor.”⁸ The word “instructor” is not defined, but the Standards elsewhere use the word “faculty” in regard to a core of the teaching staff, so presumably

⁴ WILLIAM M. SULLIVAN ET AL, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007), often called the Carnegie Report, in recognition of the report’s sponsoring organization. See also Report and Recommendations, American Bar Association Task Force on the Future of Legal Education (Jan. 2014), Theme E, page 26, and recommendation E 4, at page 34, viewable at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf. Other aspects of the Task Force Report, notably a critique of the role of tenure and of faculty scholarship, and specifics about faculty-student ratios, have stirred considerable controversy among law faculty, but that is beyond the scope of this article.

⁵ *Law School Grads Should be Client-Ready*, Ruth Anne Robbins, National Law Journal (Feb. 18, 2013)

⁶ *Supra*, note 2.

⁷ Harriet N. Katz, *Evaluating the Skills Curriculum: Challenges and Opportunities for Law Schools*, 59 MERCER L. REV. 909 (2008) at 913-917.

⁸ ABA Standard 302, Interpretation 302-3.

“instructor” can be more broadly understood than “faculty.”⁹ With regard to writing, in addition to a first-year requirement, law schools must require that every student have at least one rigorous writing experience after the first year, “in a legal context.”¹⁰ The phrase “in a legal context,” not defined, might include ‘scholarly’ work but seems unlikely to mean *only* scholarly work. Again, elsewhere, the ABA Standards refer to opportunities for “scholarly research” by faculty¹¹ and to policies to define faculty scholarship responsibilities.¹²

Foreground: Externships and skills education in 2014

Overall survey results

Among the sample of law school externship programs nationwide responding to the author’s survey, writing done in externship placements is very rarely credited as fulfilling a “rigorous writing” standard, while “skills” performed by externship students are, at best, inconsistently credited. Reasons for this pattern, provided by some survey respondents, reflect traditional academic attitudes, as well as possible persistent issues about how to assess what student learn in externship experiences.

Information from 90 law schools was provided by members of the externship faculty listserv between August 2013 and February 2014.¹³ Respondents were asked whether their law schools had a mandate for students to complete a skills course as a way to implement ABA Standard 302(a)(4), whether externship courses counted in fulfilling this mandate, and if not, why not. Next, respondents were asked whether their law schools had a mandate for students to complete an upper level rigorous writing course to implement the ABA Standard 302(a)(2), and again, whether writing done at an externship would count, and if not, why not. Followup email or personal conversations helped to augment or clarify a number of responses.

With regard to skills, 90% (81 law schools out of 90) of the responding schools, mandated that each student complete at least one course teaching skills.¹⁴ Of these 81, 53% (43 law schools) allow students to count skills performed in externship placements to fulfill that requirement. For the remaining 47% (38 schools)¹⁵ which do not count externship as a skills course, respondents who supplied a reason said that students

⁹ See, e.g., ABA Standard 403(a), providing that “full-time faculty” should teach most of the curriculum, while also stating that a law school “should include experienced practicing lawyers and judges as teaching resources...”

¹⁰ ABA Standard 302(a)(3)

¹¹ ABA Standard 402(a)(3)

¹² ABA Standard 404(a) and (a)(2)

¹³ *Supra*, note 1.

¹⁴ In addition, one school (Mississippi College of Law) that does not have a skills mandate, but that encourages students to complete skills courses, and includes externship in the list of approved skills courses. The skills Standard does not explicitly mandate that law schools require every student to enroll in a skills course. ABA Standard 402(a)(4), Interpretation 302-3.

¹⁵ This number includes three law schools which reported that skills count based on simulation exercises done in the externship class, and not work on done at the placement; the author coded these as a “no” for skills in externship.

fulfilled their skills requirement by enrolling in one of a limited number of specially designated courses (8 responses, or about 21% of the “no credit” responses), or that skills credit was only available for courses where the practice skill was supervised by faculty (5 responses, about 15%).

INSERT SKILLS GRAPHS HERE

To be sure that the skills information reflected recognition of fieldwork, as opposed to classroom assignments, followup questions posed to respondents from the “yes” schools asked them to confirm whether the recognized skills were performed at the placement under the supervision of the field supervisor. Respondents that confirmed that the credited skills were performed at the placement and supervised by attorney-supervisors often provided guidance to field supervisors on how to offer multiple opportunities for student skills experience and how to provide feedback, and asked field supervisors to evaluate student performance. A few law school respondents clarified that the skills recognized in externship were practiced in the classroom using simulation problems, due to a belief that skills must be assessed by faculty. These schools were re-coded as not recognizing skills in externship.

With regard to writing, every law school in the sample has an educational policy requiring each student to complete upper level rigorous writing, but only two (2.2%) allow externship students to fulfill this requirement by writing done at their placements, such as briefs, opinions, or policy analyses.¹⁶ The remaining 88 law schools (97.8%) do not. Principal reasons cited by respondents who said that externship writing did not “count” were that upper level writing had to be supervised by a faculty member (21 respondents or 24% of the no-credit law schools), or had to be scholarly (8, or 9%), or both faculty-supervised and scholarly (22, or 25%), for total of 58% (51) of the respondents. At eight additional schools (9% of the no credit schools), students were required to select from a list of designated upper level writing courses, a practice which may also reflect a preference for faculty supervision. The remaining no-writing-credit respondents did not indicate a reason.

INSERT WRITING GRAPHS HERE

Comments offered by respondents on the survey form or in subsequent exchanges with the author explained their law schools’ policy in various additional ways. Some respondents cited the newness of their program, so that policies are not fully developed yet. Some stated that there were enough opportunities for writing in the curriculum that externship students, who are generally third-year students, have already met these academic requirements. Several respondents mentioned concerns about the variability of individual student experience, due to uneven assignments and supervision among placements, as reasons to refrain from crediting writing or skills done by every externship student in a class. In addition, some mentioned that writing for use in a law

¹⁶ This number includes three law schools which had reported that writing in externship counts, but based on academic papers on a topic deriving from the externship experience and written under the supervision of the law school’s externship faculty; these were coded by the author as “no” for writing in externship.

office or judicial chambers was likely to have significant input from others and not be wholly original to the student, a practice regarded by these respondents as inconsistent with credit for the student's work.

No obvious differences among law schools appeared to correlate with the data. The author compared responses from law schools with various U.S. News and World Report rankings and saw no difference in this pattern.¹⁷ One could speculate whether the status of externship faculty may make a difference; possibly, a law school is more likely to accept these credits if its externship faculty has traditional or clinical tenure or is in other ways well-regard by faculty and administration. However, this would be hard to determine without very detailed information, and quite likely would present a chicken/egg problem; possibly, schools establish significant status for externship faculty because they recognize and value, or anticipate and want to support, student achievement in externship.

The survey was sent to the externship listserv *lextern* exclusively and not other e-mail vehicles that could reach law faculty more broadly, such as *lawprof* or *lawclinic*. This likely limited responses to externship faculty or administrators who are more connected to the national externship community. The results may therefore be skewed somewhat in favor of recognition of externship, assuming the connection between respondents and the externship teaching community is indicative of their law schools' commitment to the educational value of externship. This was intentional. The assumption was data from law schools where the externship faculty are connected with the national externship community would reflect the most developed format for recognition of externship learning. Data from these respondents therefor may not be representative of what is happening at other law schools.

The survey also asked whether there were additional rules, originating from the externship faculty or the law school, that must be complied with before credit is given for completion of either skills or writing requirements when they are done via externship. This question was posed to anticipate the issue of how a law school would verify the bona fides of either skills or writing. The skills standard requires instructor assessment, and the writing standard requires rigor; a law school may well choose to impose additional precise definitions to be sure that off-campus instructors such as field supervisors are meeting a reasonable definition of these requirements.

Few respondents stated that their law schools had any such additional rules or policies applying to skills or writing in externship. Two that did were Chapman University Fowler School of Law and Rutgers School of Law – Camden, the only law schools responding to the survey that allow practice-based writing supervised by a field supervisor to meet a skills requirement. Chapman requires students to accomplish two writing requirements, one academic and one which is practice-based; the Chapman respondent commented that writing done at the externship field placement satisfied what they call a practical writing requirement, so long as the writing product was a sufficient length. Rutgers-Camden requires the student's supervisor to verify that the writing met the requirements of the relevant academic rule, as part of the final

¹⁷ USNWR; obviously this is a very small sample size, however.

evaluation of the student, and the externship faculty to review drafts (which may be redacted) for the purpose of verifying that multiple drafts were produced, but not to evaluate the student's writing.¹⁸ Rutgers asks for similar supervisor verification of the skills performance.¹⁹

To further explore the landscape of skills and writing in externship, more information might be relevant. Exactly what kinds of writing and other skills are actually performed by externship students at their placements? How demanding are these performances and writing? How independent are the students in skill performance or in creation of written work? In addition to these aspects of the student learning experience, which are likely to directly relate to traditional academic concerns, it would be fascinating to determine if a law school has developed a reliable assessment of whether a student competence has improved as a result of his work at the placement.

So, in short, questions about whether student work at externship placements should "count" in meeting ABA skills teaching requirements arise from concerns about the substance of the work or performance, the teaching method employed by supervising attorneys, or the reliability of assessment by non-faculty members. Implicitly, critics may be comparing assignments and supervision of students in a law office or judicial chambers to teaching practices in simulation-based skills courses or on-campus clinics or to the norms that apply in exam-based academic settings. Some observations about the most frequently raised concerns follow.

Variability of assignments

There is certainly considerable variability in the degree of challenge presented by student assignments, both between offices and among students. Some tasks given to students will require less originality or knowledge than others, raising questions about suitability as a performance of "upper level skills." For example, when a student at a prosecutor's office presents a guilty plea, she learns where to sit, when to stand, how to be comfortable in the courtroom. Though essentially reciting a script, such a student is proud to have appeared "on the record" and will report that she has learned a lot. One may reasonably prefer, though, that a performed skill by an upper level law student be more difficult, if it is to count for the purpose of fulfilling the Skills Standard. And, in fact, that student will in time handle a more difficult advocacy task, appearing in court on a suppression motion, presenting her law enforcement witness and making an argument, while her public defender colleague at the same proceeding cross-examines the police officer and also makes a legal argument.

¹⁸ Credit for rigorous writing may be earned at Rutgers-Camden School of Law based on externship work when the student has written material of sufficient length, complexity, quality, and originality, and has revised the product(s) after feedback; the field supervisor must certify these accomplishments as part of the final evaluation of the student; the externship director reviews drafts only to verify that more than draft was produced.

<https://camlaw.rutgers.edu/externship-writing-credit>

¹⁹ Credit for skills may be earned at Rutgers Law based on externship work if the student has repeat opportunities for one or a sequence of skills, performance and feedback are reflected by journal entries and appropriate evaluation by the supervising attorney.

<https://camlaw.rutgers.edu/externship-skills-credit>

Similarly, writing assignments range from compiling case references to composing a coherent predictive memo, persuasive brief, pleadings, or strategic analysis of transaction options. Initial assignments that require relatively straightforward tasks following a prescribed pattern allow the student to become familiar with basics of practice before moving on to more difficult matters. To earn a skills or writing credit for tasks performed at an externship placement, the student should have tackled appropriately advanced assignments and received individualized feedback with opportunities for rewrites.

Uneven student experience across placements, particularly in classes with diverse types of placements, makes it more challenging to award credit in an even-handed way than it would be in a classroom, where students perform lawyering tasks that are calibrated to be comparable. In a simulation course, for example, the faculty has designed problems requiring performances of equivalent difficulty for students on any side of a negotiation, or in various types of interviews, witness examinations, or trial presentations. In on-campus clinics, students may have similar numbers of cases or cases of similar difficulty, although since real clients are involved, some accommodation may be imposed in recognition of different levels of student skill.

Consistency and quality of supervisory feedback

Learning from practice requires, or is at least enhanced by, some level of feedback from a supervisor and reflection by the learner.²⁰ Students should be periodically critiqued on their performances and writing. Feedback from supervising attorneys, whose primary occupation is practice and not teaching, may not match the frequency or level of detail of that provided by faculty in on-campus courses. For a written product, does the attorney supervisor instruct students in corrections to be made, or does she discuss principles of good legal writing, point out examples, and review the student's work with the assumption that the student will attempt a rewrite herself? Is "good job" enough feedback for a performed skill?

Supervisors at externship placements may be less likely than faculty to examine skills in the light of theories about best practices for their performance, so that feedback is primarily practical and directive. For example, in law school courses, faculty may stress that competency in interviewing requires understanding the importance of rapport; counseling requires a blend of empathy and objectivity; negotiation begins with analysis of the bargaining zone. Possibly, practicing lawyers will emphasize techniques and results and neglect reflection on theory. If theory is thought to be helpful in teaching the foundation of skills, its absence is a concern.²¹

²⁰ But see Laurie Barron, *Learning How to Learn: Carnegie's Third Apprenticeship*, 18 Clin. L. Rev. 101 (2011) (examining how to promote student reflection and role in learning how to be "effectively supervised by others"); and Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 Clin. L. Rev. 1, 55-56, and 75 (1999) (asserting that enlisting participation and providing timely guidance is relatively more important to the development of a novice's skills than feedback after a performance).

²¹ But see Baker, *supra* note 20, at 54-55 (asserting that theory can be helpful but has a relatively small role in learning skills)

Collaborative versus independent writing

Traditional academic norms mandate that work for credit be individual and original. Practice-based legal writers often consult an office-approved template, and submit their work to the edits of others. Beginning with prior work grounds advocacy or judicial opinion in consistent positions taken by the placement agency or chambers. Review by others serves to improve the product, reflecting a commitment to the office's reputation and competence. While collaboration is an accepted practice among lawyers, it is traditionally regarded as undesirable when awarding credit in an academic context. Presumably this is because the traditional academic goal of assessing student accomplishment is evaluation of the student's ability compared to that of other students as demonstrated by her final product and not evaluation of how she improved her abilities as a result of the process of learning.

Practice-based versus scholarly writing

The data confirm that law school faculty privilege scholarly writing over writing for law practice, although the ABA Writing Standard emphasizes the process of writing and rewriting and is silent on the topic other than requiring writing to be "in a legal context." A scholarly writing requirement confers credit to a seminar paper, but excludes student writing such as appellate briefs or judicial opinions. In fact, material such as briefs, opinions, pleadings, and predictive memos are composed and edited with the urgency conferred by knowing that real controversies and litigants will depend on the care with which they are written. In that legal context, they are likely to provide a "rigorous" writing experience. It may be worth noting that law school faculties regard their own primary purpose as producing scholarship, a perspective that likely affects the perspective on what students should accomplish in law school.²²

Going Forward: recognizing skills learning in externship

Law school requirements both assist students through a customarily self-guided program of legal education and signal to them what is valued about the preparation of candidates for the legal profession. Arguably, current rules on skills and writing, as evidenced by survey responses discussed above, misdirect students by undervaluing how experiential learning contributes to professional skills. Some combination of three strategic directions would help strengthen recognition of skills learned in externship, and encourage students to attend carefully to these educational goals.

Strategy I: work to modify prevailing 302-compliance law school rules that exclude practice-based learning

A law school that credits skills or writing in externship would need to manage concerns about variable assignments and uneven feedback. One approach is training for supervisors, teaching feedback methods and set expectations about how assignments are constructed. Some law schools already have regular supervisor training workshops,

²² See, e.g., BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS*, at e-book locations 437 and 1104 (2012)

which have been advocated for some time.²³ In final award of credits, the externship faculty would also need to commit to Individual assessment of student achievement of skills or writing standards. That is, within the externship enrollment, large or small, each student's experience would be evaluated by some feasible means, perhaps with a checklist of requirements. For rigorous writing, did the student compose multiple drafts? For skills, was the student skill performance assessed by an instructor?

The strong preference for faculty supervision over writing and skills education might arise from a concern for even-handed quality control. Faculty attuned to the law school's educational goals will, it might be assumed, set appropriately high standards and apply them fairly to all students. Perhaps a professor would focus on teaching and so would assign challenging skills performance or writing assignments and would require a student to complete the task, while a practitioner would assign easier skills so as not to take risks with a case and would take over and rewrite a document rather than taking the time to guide a student in a revision. A key response to this concern would, again, be adequate guidance for field supervisors.

The biggest challenge may be overcoming the near-universal law school preference for "scholarly" writing by students. Questioning this widely shared commitment implicates the longstanding debate over the purpose of legal education. It appears that law faculty strongly value student efforts to write non-advocacy analyses of a legal issue during their law school career. But writing "in a legal context," as discussed above, a reasonable approach to working with existing writing rules could be to add practice-based writing to requirements, without subtracting scholarly writing. Chapman University Fowler School of Law takes this approach.²⁴

Tactically, the get-along-with-the-system approach, requiring modest modifications to existing rules, would be most likely to succeed if externship faculty participate in the process of drafting law school academic rules. At Rutgers, for example, the author was on the committee to draft the rule. That circumstance may be another chicken/egg situation, though. If there had not been an intention of broadly including practice-based lawyering as the source for recognizing quality skills or writing instruction, the author, and other clinical and nonclinical faculty who supported skills education, would not have been appointed to the 2007 committee charged with drafting a new rule establishing a skills requirement and a revision to the academic rule on writing requirements.

Strategy II: embrace and promote the distinct educational method of externship

There are differences between practice-based opportunity for student learning and academy-based methods, and practice-based learning is not deficient. Strategy II is to advocate for this perspective in law schools. If the law school faculty as a whole, as the body that decides on academic standards, is not persuaded, establish separate expectations for students within externship programs, designed to acknowledge how

²³ Liz Ryan Cole, *Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers*, 19 N.M. L. Rev. 163 (1989).

²⁴ Information supplied by Externship Director Carolyn Young Larmore, in response to author's survey, on file with author.

skills and writing are learned in practice. Emphasizing the potential of learning from practice, this approach recasts some issues as opportunities.

Feedback in law offices often differs from feedback from professors. Varied methods of supervisor guidance are routinely offered in practice contexts but are generally avoided by law faculty, including clinicians, such as directive instruction, demonstration of a skill, and open collaboration with a student.²⁵ These methods, used to develop the professional skills of novices in law offices, can be very effective, and are welcomed by students. In addition, students in a practice context, like practicing lawyers, get daily feedback by virtue of the results of their actions, from judges and others.

Varied assignments mean that students are learning at an individualized pace. Ideally, law students have different experiences among placements, or at the same placement as other students, because supervisors select assignments for each student to match and, over the term of enrollment, to challenge each student's existing capability. This is a strength of externship. This pattern may create problems in grading (no doubt, why many externship faculty do not use letter grades) but should mean that each student is learning at her own pace, in contrast to the uniform educational practice in most classrooms.

A collaborative writing process is a powerful tool for learning to write well. Like the writing of less experienced attorneys, student writing in a practice context or a judicial chambers will be edited by others. Supervisors in any responsible law office or chambers will work with a student, or for that matter a new associate or law clerk, to produce a final written product that effectively represents a client's goals and consistently protects an office's reputation for competent work. This collaborative process derives from the attorney's obligation to produce work that best serves the mission of their offices, or a judge's obligation to serve the interests of justice. A collaborative approach to writing is consistent with a focus on each student developing greater writing ability and at the same time learning what lawyers value about good writing in practice.

Given that focus, it is reasonable to recognize a collaborative process to produce a high quality product as a rigorous upper-level writing experience. In other words, the words of the ABA Writing Standard itself, the emphasis could be on "experience" not on the creation of a wholly original product, with the educational goal being learning from the process.²⁶ A student exposed to this method of producing work-product both improves his own writing and learns why and how a law office strives to produce consistent quality work.

Traditional academic norms require identical assignments for each student, sole responsibility for the work, and assessment of a final product. The aim in that school context appears to be "fair" grading, if grading is primarily to compare students to each

²⁵ Harriet N. Katz, *Reconsidering Collaboration and Modeling: Enriching Clinical Pedagogy*, 41 GONZAGA L. REV. 315 (2005).

²⁶ [add cites from legal writing texts and Legal Writing Institute, 2013 survey -- may be moved to text]

other rather than to assess individual student learning. In contrast, students in field placements, as in on-campus clinics or employment, shift their definition of success from getting good grades to meeting client needs and contributing to the mission of their agency. This non-student perspective could be called professionalism. That professional development is an important educational goal of externship, so that practicing a lawyering skill is no longer, or not just, a performance or a writing assignment, but a task that the student knows is helping her long-term development as a lawyer. This celebrate-our-differences approach could be implemented by establishing a form of recognition of skills or writing within the externship curriculum, with or without a struggle over whether the rest of the faculty agrees.

Strategy III: join the movement to restructure legal education

The ABA Standards currently mandate “substantial opportunity” for “live-client or other real life practice experiences,”²⁷ though “substantial opportunity is, so far, not meant to require opportunity for every student.”²⁸ The ABA is considering going further with regard to skills requirements. Either of two versions of a proposed addition to Standard 303 would mandate specified credit hours dedicated to teaching skills referenced in Standard 302, by means of “experiential” legal education²⁹ consisting of legal practice training in clinical, field placement, or simulation courses.³⁰ Broader changes in law school curriculum are also being discussed, in the light of changes in the economics of law practice and of law schools.³¹

²⁷ American Bar Association Standards for Approval of Law Schools, Standard 302(b)(1), viewable at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf

²⁸ Ibid., Interpretation 302-5.

²⁹ See [Best Practices, and Cynthia Batt, when quote is permitted] forthcoming, for definitions and taxonomy of forms of experiential education.

³⁰ Proposed Standard 303(a)(3), ABA Section on Legal Education and Admission to the Bar (Dec. 13, 2013), viewable at http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201312_notice_comment_stds_205_207_303a3_603a_c.authcheckdam.pdf The proposed Standard would require either 6 or 15 credits of experiential education, and is currently worded as follows:

Standard 303. CURRICULUM

(a) The law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

(3) one or more experiential course(s) totaling at least [six] [15] credit hours

... An experiential course or courses must be: (i) simulation course(s); or (ii) clinical course(s); or (iii) field placement(s). To satisfy this requirement, a course must be primarily experiential in nature and must:

(i) integrate doctrine, theory, skills, and legal ethics and engage students in performance of one or more of the professional skills identified in Standard 302;

(ii) develop the concepts underlying the professional skills being taught;

(iii) provide multiple opportunities for performance; and

(iv) provide opportunities for self-evaluation.

³¹ Report and Recommendations of the American Bar Association Task Force on the Future of Legal Education (Jan. 2014), *supra*, note 4.

Many law schools are not waiting for the debate on the new proposal to be resolved, but are moving ahead independently of a national mandate. These schools are moving to provide access to experiential education for every law student. This initiative takes the form of requiring or making opportunities available to each student to enroll in clinic or externship, establishing capstone courses that combine process and substantive law in a sophisticated simulation, or other initiatives.³² Other schools are moving toward integration of practice perspectives throughout the curriculum, developing goals for faculty to revise or reconceptualize existing courses, and to create innovative capstone practicums.³³

To succeed in this join-the-revolution approach, externship faculty need to speak up about the educational value of externship, work to establish and maintain high standards, and keep connected with our allies in the law school, including other clinical faculty. Along with thoughtful implementation of modifying rules and embracing educational differences, externship will be recognized as a valuable resource in skills and writing instruction.

³² Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel, and Robert Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 J. OF LAW AND POLICY 11, 45-47 (2013)(listing 23 law schools requiring clinic or externship for every student and 14 explicitly guaranteeing each student a seat in clinic or externship, based on a survey conducted through October 2013, and noting that many other schools de facto provide clinic or externship opportunities for every student but do not explicitly guarantee each student a seat in those courses). In addition, an email thread on the listserv *lawclinic* in January and February 2014 notes several other law schools considering or adopting such a policy since the time of the Tokarz, et al, survey.

³³ Washington and Lee is an example of a law school where this approach is well established. [add cite, and note re other schools]