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## Foreword: The Way to Carnegie

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# FOREWORD: THE WAY TO CARNEGIE

SHARON L. BECKMAN\*  
PAUL R. TREMBLAY\*\*

## INTRODUCTION

Law schools have a clear mission, one would think. Even if the American Bar Association did not insist upon it, any given law school would acknowledge its commitment to “prepare[] its students for admission to the bar, and effective and responsible participation in the legal profession.”<sup>1</sup> In return for a substantial contribution of (usually borrowed) money, law schools promise to train students to practice law as competent, thoughtful, and faithful fiduciaries for their clients and to seek a just and fair system.

Though law schools’ collective mission is apparent, the question of how best to implement that mission has perplexed the legal academy for decades and continues to do so. How might law schools best train their students to practice effectively? After an early period where lawyers developed skills through an apprenticeship experience, law schools attempted to teach law as a social science using appellate cases as its data, following the leadership of Christopher Columbus Langdell.<sup>2</sup> The aim was to train law students rigorously to “think like lawyers,” and es-

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<sup>1</sup> STANDARDS AND RULES OF PROCEDURES FOR APPROVAL OF LAW SCHOOLS, § 301(a) (2012), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2011\\_2012\\_aba\\_standards\\_chapter3.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_aba_standards_chapter3.authcheckdam.pdf).

<sup>2</sup> See Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 581 (1987). Langdell professed that “[l]aw, considered as a science, consists of certain principles or doctrines.” C. C. LANGDELL, A SELECTION OF CASES ON THE LAW OF CONTRACTS, at vi (1871); see also Spiegel, *supra*, at 581 (quoting LANGDELL, *supra* at vi). Langdell elaborated in a speech: “[L]aw is a science, and . . . all the available materials of that science are contained in printed books . . . [The library] is to us all that the laboratories of the university are to the chemists and physicists, the museum of natural history to the zoologists, the botanical garden to the botanists.” The Harvard Law Sch., *Harvard Celebration Speeches*, 3 L.Q. REV. 118, 124 (1887) (reprinting speeches delivered by Justice Holmes and Professor Langdell at Harvard University’s quarter-millennial celebration); see also Spiegel, *supra*, at 582 (quoting the same speech).

pecially to develop the analytic tools necessary to work expertly with law's complexity.<sup>3</sup>

The challenge to the Langdellian case method is that, while effective in inculcating rigorous habits of reading and understanding legal principles, it elides a substantial component of the lawyer's important work. Critics have long noted that the "science" devised by Langdell does not really teach students to think like lawyers, but more likely to "think like appellate judges," or to "think like law professors."<sup>4</sup> The case method misses a great deal of the *practice* of law by neglecting clients, the role of fact development and ambiguity, the importance of judgment and reflection, and the ethical underpinnings of serving others in a professional role. It erases the context of practice and, in doing so, fails to teach students to recognize and take account of the social, economic, and political forces constraining the choices of others.<sup>5</sup> Observers have recognized this weakness of traditional legal education for decades. The Legal Realists urged law schools to address the street-level experience of law practice in the 1920s and 1930s.<sup>6</sup> A succession of reports on legal education since then—including the *Reed Report* (also known as the first *Carnegie Report*) in 1921, the *MacCrate Report* in 1992, *Best Practices for Legal Education* in 2007, and the more recent *Carnegie Report* in 2007—each emphasized the need for greater attention to the practice experience of lawyers within legal education, the development of reflective judgment, and an exploration of the moral experience of lawyering.<sup>7</sup>

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<sup>3</sup> See, e.g., Lon L. Fuller, *On Teaching Law*, 3 STAN. L. REV. 35, 37 (1950) (noting the aim to teach legal thinking without accepting it); Jane Kent Gionfriddo, *Thinking Like A Lawyer: The Heuristics of Case Synthesis*, 40 TEX. TECH L. REV. 1, 13 (2007); Michelle M. Harner, *The Value of "Thinking Like a Lawyer,"* 70 MD. L. REV. 390, 392 (2011); Mary Kate Kearney & Mary Beth Beasley, *Teaching Students How to "Think Like Lawyers": Integrating Socratic Method with the Writing Process*, 64 TEMP. L. REV. 885, 897 (1991) (describing how to develop analytical skills through legal writing courses).

<sup>4</sup> Clark Byse, *Fifty Years of Legal Education*, 71 IOWA L. REV. 1063, 1087 (1986); Roy T. Stuckey, *Education for the Practice of Law: The Times They Are A-Changin'*, 75 NEB. L. REV. 648, 668 (1996); see also Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612, 613–14 (1984).

<sup>5</sup> See Byse, *supra* note 4, at 1087; Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 910–11 (1933); K. N. Llewellyn, *On What Is Wrong with So-Called Legal Education*, 35 COLUM. L. REV. 651, 653, 671–72 (1935); Stuckey, *supra* note 4, at 668.

<sup>6</sup> See Frank, *supra* note 5, at 911–12; Llewellyn, *supra* note 5, at 673; Karl N. Llewellyn, *The Current Crisis in Legal Education*, 1 J. LEGAL EDUC. 211, 212 (1948); see also Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303, 1321–22, 1327 (1947).

<sup>7</sup> See ALFRED ZANTZINGER REED, CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH

One readily apparent response to this consensus of opinion would be for law schools to introduce students to clients as a formal and explicit component of their legal education curriculum. During the first half of the twentieth century, few law schools included any form of experiential, practice-based education.<sup>8</sup> The earliest emerging phenomenon of law school clinics developed in the 1960s and 1970s from a mix of pedagogical and political commitments, with important seed funding from the Ford Foundation and its Council on Legal Education and Professional Responsibility.<sup>9</sup> The teachers within the “second wave” of clinical education tended to have some connection to legal services and legal aid practice or criminal defense, and saw their role as activists as much as law professors.<sup>10</sup> Over time, the role of experiential education within law schools evolved in important ways. While the emphasis on activism and social justice remained strong, the teachers and clinical supervisors developed more sophisticated clinical teaching methodology and pedagogy.<sup>11</sup> Law schools accepted clinical courses more and more as legitimate educational vehicles, granting students credit for their participation and offering clinical teachers improved status within the institution.<sup>12</sup>

Those trends, identified by Margaret Martin Barry, Jon Dubin, and Peter Joy as constituting the second wave in clinical education, have continued apace through 2012, as schools now have entered what those

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SOME ACCOUNTS OF CONDITIONS IN ENGLAND AND CANADA 281 (2d ed. 1986); SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 236–38 (1992) [hereinafter MACCRATE REPORT]; ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 167 (2007); WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 87–88 (2007) [hereinafter CARNEGIE REPORT]; Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 69–71 (2009).

<sup>8</sup> Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 9–10 (2000) (stating that, in 1951, twenty-eight schools offered some form of clinical experience, but only ten schools awarded credit for students who participated).

<sup>9</sup> *Id.* at 18–19.

<sup>10</sup> See Frank Askin, *A Law School Where Students Don't Just Learn the Law, They Help Make the Law*, 51 RUTGERS L. REV. 855, 856 (1999); Barry et al., *supra* note 8, at 12; Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 GEO. L.J. 1529, 1603–04 (1995); William Pincus, *The Clinical Component in University Professional Education*, 32 OHIO ST. L.J. 283, 285–86 (1971); William Pincus, *Programs to Supplement Law Offices for the Poor*, 41 NOTRE DAME LAW. 887, 894–96 (1966).

<sup>11</sup> Barry et al., *supra* note 8, at 16–18; see also *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511 (1992) [hereinafter *Future of the In-House Clinic*] (“Clinical education is first and foremost a method of teaching.”).

<sup>12</sup> Barry et al., *supra* note 8, at 10–12.

observers describe as the clinical movement's "third wave."<sup>13</sup> Every law school in the country offers some significant experiential education courses to its students, and most schools offer many robust opportunities.<sup>14</sup> Likewise, more and more law schools offer clinical professors status equivalent to other law school faculty, including many schools with a "unified" tenure arrangement.<sup>15</sup>

Within the third wave of experiential and clinical education, many important challenges and uncertainties remain for law schools, especially in light of changes in the legal job market brought on by economic forces and social, cultural, global, and technological developments. Among the most critical and stubborn of those challenges and uncertainties are questions of *pedagogy*, *social justice*, and *cost*. The pedagogy questions are central to the primary mission of law schools. If *Best Practices for Legal Education* and the *Reed*, *MacCrate*, and *Carnegie* reports are sound, how should law schools provide the most effective form of experiential and traditional education to their students, thereby maximizing educational development? Does exposure to any lawyering experience—including pro bono volunteer stints, academic year internships, summer jobs, externships, and in-house clinics—serve the necessary purpose? If not, what factors matter in transforming a felt experience into an effective learning and discernment opportunity?

The pedagogical questions and challenges connect directly to the role of social justice and caring for the disadvantaged. If one accepts the proposition that students will learn best when assuming the professional role of lawyers by representing clients engaged in actual disputes or transactions, it makes sense—at least initially—that the clients whom

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<sup>13</sup> *Id.* at 4, 12; *Future of the In-House Clinic*, *supra* note 11, at 518.

<sup>14</sup> Robert R. Kuehn & Peter A. Joy, *Lawyering in the Academy: The Intersection of Academic Freedom and Professional Responsibility*, 59 J. LEGAL EDUC. 97, 98 (2009) (citations omitted) ("Today, the American Bar Association (ABA) requires every accredited law school to offer substantial opportunities in live-client or other real-life practice experiences. As a result, there are law clinics in almost every law school, with the *AALS Directory of Law Teachers* listing nearly 1400 full-time faculty teaching clinical courses.").

<sup>15</sup> STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 405(c) (2012), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2011\\_2012\\_aba\\_standards\\_chapter4.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_aba_standards_chapter4.authcheckdam.pdf) ("A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members."). Many schools offer a "tenure equivalent" status for clinical teachers and other full-time faculty employed on long-term contracts, but more schools are instituting a unified tenure track. See Nina W. Tarr, *In Support of a Unitary Tenure System for Law Faculty: An Essay*, 30 WM. MITCHELL L. REV. 57, 58–59 (2003) (arguing for a uniform tenure track for all law faculty, as yet unrealized at the time Tarr wrote her piece).

the students assist ought to be those who cannot afford counsel elsewhere but face serious legal exposure. Representing disadvantaged clients intrinsically surfaces essential questions of systemic power and fairness. Access to justice therefore serves as a natural, and one might say serendipitous, accompaniment to the educational agenda. But that facile observation masks more complicated questions. Students may learn, and wish to learn, methods of practice and substantive law unrelated to the kinds of legal matters faced by low-income clients. Most observers would seemingly agree that some forms of legal practice, and some client matters, do not directly implicate serious questions of social justice or address access to justice needs. Should law school policies prevent students from learning effective lawyering in those settings?

And then there is the question of cost. Because it is true that one professor may (and some professors do) teach one hundred or more students in a classroom but one clinical professor could not possibly teach and supervise one hundred students as they actively represent clients in a clinic setting, the conventional wisdom concludes that experiential education is expensive, more expensive than other forms of legal teaching. That conventional wisdom, even if true (and, perhaps, on further investigation it may be less true than typically assumed), begs a number of questions, including how costs compare within the academy and how to account for the value of teaching and learning in the varied segments of the law school curriculum.

These questions, and others related to them, are important, interesting, and *hard*. They are also persistent. Because of all of those qualities, we conceived of the idea of bringing together for a day a group of experienced and thoughtful thinkers and writers to do their best to sort out the competing considerations. The result was this Symposium, named (by our colleague Alan Minuskin) *The Way to Carnegie: Practice, Practice, Practice: A Conversation About Pedagogy, Social Justice, and Cost in Experiential Legal Education*, and held on October 28, 2012, at Boston College Law School.

The Symposium consisted (after an event the evening before for panelists, faculty, and students) of three panels, each addressing one of the topics described above. The first panel addressed the issue of pedagogy. Moderated by Alan Minuskin,<sup>16</sup> the first panel included Margaret

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<sup>16</sup> Associate Clinical Professor, Boston College Law School.

Martin Barry,<sup>17</sup> Phyllis Goldfarb,<sup>18</sup> Rebecca Sandefur,<sup>19</sup> and Karen Tokarz.<sup>20</sup> The next panel addressed the role of social justice within experiential education. Moderated by Francine Sherman,<sup>21</sup> the second panel included Jane Aiken,<sup>22</sup> Praveen Kosuri,<sup>23</sup> Michael Pinard,<sup>24</sup> and Stephen Wizner.<sup>25</sup> A third and final panel addressed the critical questions of cost and implementation. Moderated by Alexis Anderson,<sup>26</sup> the final panel consisted of Muneer Ahmad,<sup>27</sup> Peter Joy,<sup>28</sup> and Richard Neumann.<sup>29</sup> Because Peter Joy encountered a last-minute complication preventing him from attending the event, Russell Engler<sup>30</sup> presented Peter Joy's ideas, as well as many of his own, as part of this panel.

In the middle of the Symposium, the participants heard a keynote address from Larry Kramer, then Dean of Stanford Law School.<sup>31</sup> Dean Kramer, who has had a notable career as a doctrinal classroom teacher and scholar in the areas of constitutional law, federalism, and civil procedure,<sup>32</sup> described the emphasis that Stanford Law School placed on

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<sup>18</sup> Jacob Burns Foundation Professor of Clinical Law and Associate Dean for Clinical Affairs, The George Washington University Law School.

<sup>19</sup> Senior Research Social Scientist, American Bar Foundation; Assistant Professor of Sociology, Stanford University.

<sup>20</sup> Charles Nagel Professor of Public Interest Law & Public Service, Director of the Negotiation and Dispute Resolution Program, and Director of the Civil Rights, Community Justice & Mediation Clinic, Washington University in St. Louis School of Law.

<sup>21</sup> Visiting Professor and Director of the Juvenile Rights Advocacy Project, Boston College Law School.

<sup>22</sup> Professor of Law and Director of the Community Justice Project, Georgetown University Law Center.

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<sup>24</sup> Professor of Law and Director of the Clinical Law Program, University of Maryland Francis King Carey School of Law.

<sup>25</sup> William O. Douglas Clinical Professor Emeritus of Law, Supervising Attorney, and Professorial Lecturer in Law, Yale Law School.

<sup>26</sup> Associate Clinical Professor, Boston College Law School.

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<sup>28</sup> Vice Dean and Henry Hitchcock Professor of Law, Washington University in St. Louis School of Law.

<sup>29</sup> Professor of Law, Hofstra University School of Law.

<sup>30</sup> Professor of Law and Director of Clinical Programs, New England School of Law.

<sup>31</sup> Larry Kramer, Dean, Stanford Law School, Keynote Address at the Boston College Journal of Law & Social Justice Symposium: The Way to Carnegie: Practice, Practice, Practice—Pedagogy, Social Justice, and Cost in Experiential Legal Education (Oct. 28, 2011), available at [http://www.bc.edu/schools/law/newsevents/events/conferences/carnegie\\_symp\\_twlj/carnegie\\_video.html](http://www.bc.edu/schools/law/newsevents/events/conferences/carnegie_symp_twlj/carnegie_video.html).

<sup>32</sup> See *Larry Kramer*, STANFORD L. SCH., <http://www.law.stanford.edu/directory/profile/37> (last visited Apr. 4, 2012).

experiential—and particularly clinical—legal education, including expanding its curriculum and faculty and moving to integrate its clinical faculty more seamlessly with classroom faculty. Dean Kramer shared his ideas about each of the topics addressed at the Symposium, both during his keynote address and during the discussion segments of each panel.

The Symposium was a great success. In addition to a day of rich and spirited conversation about clinical education, the Symposium produced six compelling papers, described below.

### I. QUESTIONS OF PEDAGOGY

If law schools aim to graduate lawyers who are “practice ready,” what does practice ready mean and what pedagogical methods will be most effective in achieving that goal? All six symposium papers offer insights on these questions. The two papers focusing primarily on curriculum—authored by Deans of Clinical Education at their respective law schools—both recommend more clinical and experiential education better integrated within the law school curriculum.

In *Back to the Future of Clinical Legal Education*, Phyllis Goldfarb warns that the current law school model, which costs too much and delivers too little, is economically and educationally unsustainable.<sup>33</sup> For law schools to survive, thrive, and strive to meet society’s legal needs, Goldfarb believes legal educators must reconceive the relationship between law schools’ dual identities as academic institutions and professional schools and create an integrated curriculum in which contextual educational methods play a larger and more central role. Clinical methods rooted in particular yet generalizable contexts, Goldfarb contends, are the most promising means law schools have for confronting future challenges and realizing their potential as schools of both academic and professional instruction.

Goldfarb explains that the schizophrenic separation of academic legal analysis and professional skills and values makes no sense in the law school of the future. Lawyers’ work is complex and requires integration of these components. When the educational enterprise is functioning at its best, the intellectual and practical are tightly intertwined and mutually reinforcing. Law students need—and society needs law students to get—educational opportunities that are three-dimensional, where they use the knowledge they acquire and become attentive, not

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<sup>33</sup> Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C. J.L. & Soc. JUST. 279 (2012).

only to what they are getting, but to the kind of professionals they are becoming.

Drawing on recommendations and findings of the *MacCrate* and *Carnegie* Reports and on Professors Marjorie Shultz and Sheldon Zedeck's empirical research on skills vital to the art of lawyering, Goldfarb argues that clinical legal education is the most promising means available for cultivating the competencies that future lawyers need.<sup>34</sup> Legal analysis, research, and writing will continue to be important, but the contextual pedagogy of skills, values, and professional identity in service to others offered only in clinics will enable law school graduates—and law schools—to thrive and make a positive contribution to society.

Goldfarb concedes that clinical education is expensive—especially compared to the mass education of the traditional case method—and that expanding clinical offerings may require law schools to reduce something else, but she warns that the social and economic costs of doing nothing are far greater. The same economic forces bearing down on law schools have only increased society's need for reflective, ethical, and skilled lawyers. Redeploying resources toward clinical education may enable clinical educators to teach more students more efficiently. By the same token, if clinics become more central in the law school curriculum, clinicians must maximize their educational value by teaching habits, skills, and values that will serve students in whatever professional opportunities they pursue.

The call for a revamped, integrated law school curriculum with experiential education at its core is also the theme of Margaret Martin Barry's Article, *Practice Ready: Are We There Yet?*<sup>35</sup> In this symposium contribution, Barry answers her subtitle's question in the negative. To move the project forward, she proposes a model law school curriculum, which she hopes will help build consensus among legal educators on how best to prepare students for the legal profession.

Beginning with the proposition that "practice ready" must mean more than the ability to perform legal analysis, Barry contends it must also include a "grounding in how the law is developed, interpreted, critiqued, accessed, and used to work toward expertise, whether inde-

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<sup>34</sup> CARNEGIE REPORT, *supra* note 7, at 87–88; MACCRATE REPORT, *supra* note 7, at 236–38; MARJORIE M. SHULTZ & SHELDON ZEDECK, FINAL REPORT: IDENTIFICATION, DEVELOPMENT, AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING 26–27 (2008), available at <http://www.law.berkeley.edu/files/bclbe/LSACREPORTfinal-12.pdf>.

<sup>35</sup> Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & SOC. JUST. 247 (2012).

pendently or with the benefit of organizational support.”<sup>36</sup> Barry points out that, despite almost a century of critique of the traditional case method and multiple calls for reform, law schools have been reluctant to assess—let alone redesign—their curriculum. While most law schools offer clinical and other experiential offerings in the second and third years and some have diversified their first year curriculum by adding electives and practice-oriented offerings, Barry complains that there has been little reflection on how these pieces fit together and relate to the overall educational enterprise.<sup>37</sup> To advance the conversation, Barry proposes a curricular framework for modern legal education which incorporates clinical and experiential education into an overall program designed to build the knowledge, skills, and values lawyers need to enter the profession.

Barry recommends that law schools begin with a “common portal to legal education,” emphasizing legal doctrine and theory but connecting them to people, communities, and values.<sup>38</sup> She would maintain basic doctrinal courses but infuse them with factual context, problem solving, ethics, and professionalism. In the second year, Barry recommends more active techniques such as simulations and role plays to teach additional skills, even in large classes.<sup>39</sup> Barry would devote the final year of law school to experiential education, allowing students to deploy knowledge, skills, and competencies learned in the previous two years while practicing on real cases in a law school clinic, externship, or a hybrid of the two. Barry recognizes that dedicating one-third of the law school curriculum to experiential education will require a significant reallocation of law school resources, and she urges legal educators to be creative in developing carefully supervised experiential opportunities. Law schools, she proffers, might consider creating their own fee-generating law firms if they can do so consistent with their pedagogical and social justice missions.

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<sup>36</sup> *Id.* at 250.

<sup>37</sup> *Id.* at 263. Barry discusses Stanford Law School as an example of a leading school that has revamped its second and third year curricula to include more clinical and experiential options, as CUNY School of Law, Dave Clark School of Law, and the University of New Mexico School of Law did before it. She also outlines the first year program reform at Boston College Law School, Cardozo Law School, Harvard Law School, Washington & Lee University School of Law, and the University of California Irvine School of Law. *Id.* at 256–60.

<sup>38</sup> *Id.* at 267, 270–71.

<sup>39</sup> *Id.* at 270–71. Barry points to the General Practice Program at Vermont Law School as an example of this approach. *Id.*

## II. QUESTIONS OF SOCIAL JUSTICE

Law school clinics arose from and were inspired by the civil rights and social justice movements of the 1960s and early 1970s. Over the past five decades, the clinical teaching method and social justice missions of clinical legal education have gone hand in hand, with law school clinics providing students opportunities to develop skills and values by representing the poor and politically disempowered. Indeed, all of the articles in this Symposium comment in one way or another on the pedagogical, social, and economic value of the social justice mission of clinical legal education. As the unique educational and career benefits of clinical legal education have become more widely appreciated, however, a diversity of law school clinics have emerged, not all of which serve the poor or promote progressive legal reform. Law students are interested in transactional, legislative, and Supreme Court clinics in addition to traditional, community-based clinics providing direct legal services to the poor. These developments raise questions about the continuing relevance of the social justice mission in clinical legal education: Is clinical legal education a neutral teaching methodology or does it (or should it) have a substantive social justice mission as well? Is teaching students to pursue social justice merely an option for clinics, or is it a moral imperative? A trio of articles by Stephen Wizner, Jane Aiken, and Praveen Kosuri delve deeply into the question of the relationship between clinical legal education and social justice.

In a narrative so appropriate for a symposium on experiential learning, Stephen Wizner describes his personal journey from neighborhood legal services lawyer to Yale professor, and in the process he articulates a timeless vision of the social justice mission of clinical legal education. His Article, *Is Social Justice Still Relevant?*, recounts how the first clinics arose in response to student demand for curricular reform driven by the social activism of the times.<sup>40</sup> Wizner and the Yale students who inspired him to start a clinic there—including Boston College Law School’s former Dean Avi Soifer—believed that lawyers, law schools, and law students could and should use the law to pursue progressive social change. Wizner and the other founders of the clinical legal education movement did not see it as mere skills training but rather as a way to involve future lawyers in the “struggle for social justice in America.”<sup>41</sup>

Wizner contends that the social justice mission that inspired the creation of the first law school clinics should and indeed does continue

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<sup>40</sup> Stephen Wizner, *Is Social Justice Still Relevant?*, 32 B.C. J.L. & Soc. JUST. 345 (2012).

<sup>41</sup> *Id.* at 347.

to be a central focus of clinical legal education. The *methodology* of clinical legal education includes professional skills training through the supervised provision of legal services to clients, but the *goal* is more ambitious. The goal includes, among other things, inculcating in students an understanding of and concern for the circumstances of those who live in poverty or otherwise lack access to legal services, and a feeling of professional responsibility for increasing their access to justice. One should not seek to extract the clinical methodology from this mission, Wizner contends, because giving law students the opportunity to recognize their power and responsibility to democratize the legal system and to pursue justice is an important part of what the methodology of clinical legal education *is for*.

Wizner does not see the development of new and innovative approaches to clinical legal education as inconsistent with a continued focus on social justice. As a descriptive matter, he points out that a social justice mission continues to inform and drive the majority of clinical program design, teaching, and student learning. He acknowledges the emergence of clinics that do not fit the direct legal services paradigm but suggests that these new types of clinics should also focus on helping low income and other under-represented clients, even if indirectly. Transactional clinics should assist small businesses and nonprofit community organizations. Environmental clinics should defend low-income populations from pollution and other environmental threats. Whatever the context, Wizner explains, when clinics focus their work on providing legal services to or on behalf of low income clients, students can experience the professional and personal satisfaction of making a difference in their lives. Law schools need not choose between clinical educational diversity and social justice because the two can and should continue hand in hand.

Wizner believes that while law schools may not be able to recapture the spirit of the social activism of the 1960s, the social justice mission of clinics should continue to inform everything clinicians do, from designing clinics to client and case selection to supervision and teaching. He urges clinical professors to continue to ask what knowledge and values we are inculcating in our students and how we are equipping them to address needs in the broader community, particularly of those who cannot afford to pay for legal services.

Jane Aiken takes up this challenge in *The Clinical Mission of Justice Readiness*, where she looks to transformative learning theory to inform

how law schools can best prepare students to pursue social justice.<sup>42</sup> Aiken contends that, because everything lawyers do has some relevance to justice or injustice, ignoring or reinforcing injustices in the legal system—as traditional law school classes tend to do—teaches students to respect the status quo and to think they have little or no power or responsibility for ensuring substantive justice. To avoid perpetuating injustice, law schools must do more than help students become ready to join an unjust system; they have a responsibility to teach their students to recognize injustice and fight against it in their legal careers. Aiken warns that the clinical legal education debate must therefore shift from whether clinicians should be in the justice business at all to which methods are most effective in teaching justice readiness.

Aiken believes that virtue, like proficiency in legal analysis and advocacy, can be taught, and is best taught in clinics where the justice dimension is discovered by the students themselves through experience and reflection. Drawing support from transformative learning theory, Aiken argues that the clinical experience, with properly chosen cases or projects, supervision, and guided reflection, allows student to experience the kind of “disorientation” and “reorientation” that can transform their thinking about the legal system and their responsibility to pursue justice in their professional lives.

Aiken argues that well-designed law school clinics are great laboratories for transformative learning because they are full of disorienting dilemmas, including the shock of responsibility for real cases and the emotional turmoil of caring about real clients. While learning theory suggests that the affective experience students gain in clinics may be transformative in and of itself, Aiken believes that combining disorienting experiences with restorative learning methods can move students beyond individual understanding to social responsibility and action.<sup>43</sup> In addition to choosing cases and projects most likely to stimulate transformative emotions and insights, Aiken urges clinicians to use research on transformative learning to develop teaching methods designed to help students mine their experiences and reflect upon them critically. Transformative learning theory, she suggests, may also provide a basis for comparing the relative efficacy of teaching methods and for en-

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<sup>42</sup> Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.L. & SOC. JUST. 231 (2012).

<sup>43</sup> *Id.* at 243–44. Aiken relies here on research by Elizabeth Lange. Elizabeth A. Lange, *Transformative and Restorative Learning: A Vital Dialectic for Sustainable Societies*, 54 ADULT EDUC. Q. 121, 137 (2004).

couraging law schools to offer students more transformative experiential learning opportunities.

Wizner and Aiken articulate and defend a vision for accomplishing social justice goals within a law school's experiential learning opportunities, and most notably through its clinical programs, but Praveen Kosuri offers a different perspective. Kosuri's contribution to this Symposium, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, questions whether law school clinics ought to pursue a social justice mission.<sup>44</sup> Kosuri is quick to note that he is not opposed to social justice; instead, his argument is that insisting on a social justice focus within law school clinics narrows the clinical opportunities available for a wide array of students and sacrifices some pedagogical aims.

Kosuri invokes the image of Martin Luther and The Reformation in his critique of the establishment perspective in clinical education and offers his own theses, much as Luther did in 1517. Kosuri's argument is elegant, describing clinical legal education as law school's "pinnacle" pedagogical experience but lamenting the exclusive province of an elite and self-selected group of teachers with uniform ideologies and commitments, all tending toward a shared (but narrow) conception of social justice in clinics. Those clinical teachers offer to students practice opportunities limited to those which replicate the social justice values owned by the clinicians and their "Great Clinician" progeny. The result, Kosuri notes, is that "the Great Clinicians defined social justice," and "to be a good clinician meant believing in the Great Clinicians' concept of social justice and inculcating students with that belief."<sup>45</sup>

In Kosuri's view, the clinics' homogeneous dedication to a vision of social justice ignores or excludes those students who do not share that vision or simply wish to participate in clinics covering practice and substantive law settings that happen not to include a social justice component. A diminished, or less dogmatic, focus on social justice would lead to an expansion of the kinds of clinical opportunities available to students and a more efficient delivery of the best kind of legal education.

Kosuri acknowledges the risks he takes by presenting his theses, both through the possible implication to readers that he is not a fan of social justice (not so), and through his defending a position not embraced by many of his clinical teacher peers (much more likely).<sup>46</sup> He is

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<sup>44</sup> Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J.L. & Soc. JUST. 331 (2012).

<sup>45</sup> *Id.* at 333.

<sup>46</sup> *Id.* at 343; see also Praveen Kosuri, "Impact" in *3D—Maximizing Impact Through Transactional Clinics*, 18 CLINICAL L. REV. 1, 45 (2011).

provocative in arguing that professors committed to social justice inculcate in their students their own values, and that schools ought to attend to the difference between “non-social justice clinics and social justice ones.”<sup>47</sup> Interestingly, Wizner uses the same theme of inculcation in his contribution to this Symposium. While Kosuri seems to worry about inculcation as an imposition of one’s personal values on another, Wizner appears to view that process as teaching and encouraging students to care about what a commonly shared sense of justice requires. This tension raises important questions about whether social justice is an essential element of the legal training mission, appearing in all contexts, or whether it is particular to certain practice settings.<sup>48</sup>

### III. QUESTIONS OF COST AND IMPLEMENTATION

The third panel of the Symposium addressed a topic critical to any discussion of experiential legal education, and especially clinical legal education—the allocation of resources necessary to offer students a meaningful practice experience in law school. The topics of cost and implementation appeared in other contributors’ work as well, but this panel addressed the questions most directly.<sup>49</sup> Conventional wisdom says that, even if it is the most effective method of teaching productive and thoughtful lawyering, clinical legal education—along with many other forms of experiential teaching—is just too expensive to offer to a majority of law students. With law school expenses (and the accompanying student debt) rising steadily, conventional wisdom places on institutions a fiduciary responsibility to their students to diminish, rather than increase, these expensive teaching vehicles.<sup>50</sup> At a minimum, observers note, one needs an effective and rigorous cost-benefit analysis before supporting a greater role for experiential learning opportunities for students.

The third Symposium panel addressed those concerns directly. In this issue, Peter Joy, vice dean and professor of law at Washington Uni-

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<sup>47</sup> Kosuri, *supra* note 44, at 341.

<sup>48</sup> See, e.g., Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What’s Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593, 595 (1994); Beverly Moran & Stephanie M. Wildman, *Race and Wealth Disparity: The Role of Law and the Legal System*, 34 FORDHAM URB. L.J. 1219, 1227 (2007); Stephanie M. Wildman, *Democracy and Social Justice: Founding Centers for Social Justice in Law Schools*, 55 J. LEGAL EDUC. 252, 253–54 (2005).

<sup>49</sup> See Barry, *supra* note 35, at 273–75; Goldfarb, *supra* note 33, at 305–06.

<sup>50</sup> See, e.g., John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157, 193–94 (1993).

versity in St. Louis School of Law, offers an assessment that acknowledges these challenges but defies much conventional wisdom. In his Symposium Article, *The Cost of Clinical Education*, Joy argues that observers are asking the wrong questions when they complain viscerally about the cost of clinics.<sup>51</sup> The correct questions, he tells us, relate to the goals of legal education as an endeavor, the reasons behind law school cost increases, the nature of law school expenses, and the effectiveness of teaching methods. The central thrust of his argument is that law schools spend a great deal of money on many things, several of which do not contribute significantly—or as significantly—to the central mission of training competent, ethical, and discerning lawyers.

Joy reports on studies showing that the escalating costs of legal education relate more reliably to the “market for prestige” than to the actual necessary costs of running an institution.<sup>52</sup> And the costs that students must bear, while quite serious, are not driven by experiential education programs. Joy’s research shows that “the most significant long-term driver of rising legal education costs are lower teaching loads and higher salaries for law faculty.”<sup>53</sup> Far from contributing significantly to the cost acceleration of recent years, expenditures for clinical programs, according to Joy, actually have dropped as a percentage of law school budgets, as other costs, including faculty salaries and building projects, have increased dramatically.<sup>54</sup>

Joy also explores the delicate comparison of the production cost of faculty scholarship compared to the costs of effective teaching of students through experiential methods. While experiential education surely calls for some concentrated dedication of resources—mostly in teacher time but also in law practice facilities—the direct cost to the school of producing a publishable law review article can exceed \$100,000.<sup>55</sup> Rigor-

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<sup>51</sup> Peter A. Joy, *The Cost of Clinical Education*, 32 B.C. J.L. & Soc. JUST. 309 (2012).

<sup>52</sup> *Id.* at 311–12, 315. Joy notes that the ranking high-prestige (and hence high-cost) schools “enable top law students and legal employers to identify each other, thereby increasing ‘employment opportunities and . . . long-term earning potential . . .’” *Id.* at 313 n.26 (quoting Russell Korobkin, *Harnessing the Positive Power of Rankings: A Response to Posner and Sunstein*, 81 IND. L.J. 35, 42 (2006)).

<sup>53</sup> *Id.* at 316.

<sup>54</sup> *Id.* at 328–29. Joy cites the *MacCrate Report’s* conclusion that between the late 1970s and the late 1980s—a period when clinics evolved to become a central part of most law school curriculums—clinical program costs dropped from 4.5% to 3.1% of the average law school budget. *Id.* at 329 (citing MACCRATE REPORT, *supra* note 7, at 249–50).

<sup>55</sup> *Id.* at 318–19. For a discussion of the costs of offering clinical opportunities to law students, see Beverly Balos, *Conferring on the MacCrate Report: A Clinical Gaze*, 1 CLINICAL L. REV. 349, 350–54 (1994); Costonis, *supra* note 50, at 172; Richard A. Matasar, *The MacCrate Report from the Dean’s Perspective*, 1 CLINICAL L. REV. 457, 478 n.48 (1994).

ous and elegant scholarship serves many important purposes within the academy, as does effective teaching and mentoring of students. Joy's point is that a good faith inquiry about the costs and benefits of law school spending on clinical teaching must be a principled one, including in its scope a wider swath of the academy's activities than the expense of practice-based learning alone.

Joy's contribution to the Symposium is an essential one. The first two panels grappled openly and compassionately with the pedagogical values of differing teaching methods and with the role of social justice within law schools, whether through clinics or otherwise. Those inquiries and debates alone, however, can easily be discounted if experiential education is simply too costly to implement, its benefits notwithstanding. Joy's Article introduces—but only begins—a more honest assessment of the *relative* costs of experiential and clinical education when assessed in light of competing expenditures in the institution and the benefits of those programs. As Joy reminds us at the end of his Article, "The longer law faculties delay addressing these issues, the more difficult the conversations and choices will become."<sup>56</sup>

#### CONCLUSION

The 2007 *Carnegie Report* reminded law schools of their fiduciary responsibility to take practice more seriously. The authors contributing to this Symposium have offered insightful and creative ideas to assist the academy in its effort to make legal education more relevant, effective, and just. We thank them and their colleagues who participated on the panels for their generosity of spirit, their kindness, and their commitment to the cause of clinical legal education.

We also express our deepest, heartfelt thanks to the staff of the *Boston College Journal of Law & Social Justice* who worked so hard and so efficiently to make this Symposium happen and to make it such a success.

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<sup>56</sup> Joy, *supra* note 51, at 330.