

THE CLINIC EFFECT

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Lawyers, law professors and experts on professional education perennially proclaim that law schools teach students to think like lawyers but not to act like them. Legal education's emphasis in the cognitive dimension comes at the expense of critical professional development in the skills (expertise) and civic (identity) dimensions. Clinical legal education has long been prescribed as a pedagogic corrective to these perceived deficits in law school training, but little research exists to inform our understanding of whether – much less how, when, why and for whom – clinics deliver on this promise.

With data from a new, nationally representative survey of early-career attorneys in the United States, this article explores evidence of clinical education's impact in the skills and civic dimensions of lawyer training. In the skills dimension, new lawyers rate clinical training more highly for making the transition to the actual practice of law than many other law school experiences, particularly the doctrinal core frequently the object of the standard critique. In the civic dimension, the study finds no evidence of a relationship between clinical training experiences and new lawyers' pro bono service, and no consistent evidence of a relationship between clinical training experiences and new lawyers' civic participation. Although there is no evidence of a general relationship between clinical training experiences and public service employment, the study finds a strong relationship between clinical training and career choice for those young attorneys who recall that they came into law hoping to improve society or help individuals. For this group of new lawyers, clinical training may have been an important factor in sustaining or accelerating their original civic commitments.

As a result of these findings and the continued dearth of data on these important questions, the article concludes with a call for a new generation of research into the effects of clinical legal education on the preparation of students for the practice and profession of law.

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INTRODUCTION

Law schools teach students to think like lawyers but not to act like them. That is, while law schools prepare students to reason analytically (the *cognitive* dimension), they neither prepare students adequately for the practice of law (the *skills* dimension), nor instill in them sufficiently a sense of professional responsibility and public obligation (the *civic* dimension).¹ Whether viewed as a “curious error in orientation,” a “remarkable educational anomaly,” or a “complete failure,” for more than a century legal education has been out of step with sister professional schools in preparing its graduates for practice.²

Clinical legal education – as an applied, apprenticeship-like setting now commonplace within most law schools – has been posited as a partial solution to shortcomings in both the skills and civic dimensions.³ In fact, clinics were developed as a direct response to the call for more practical and professional training, and they have proliferated throughout legal education during the last forty years. While “the movement beyond the casebook method to the wider integration of clinical methodology stands on a solid intellectual foundation,”⁴ we have surprisingly little empirical evidence about the relationship between clinical legal education and the practical and professional development of law students.

In a modest attempt to begin to fill this gap – and to identify areas for further inquiry – this article explores new findings from *After the JD*,⁵ a national, longitudinal survey of early-career lawyers. We know from prior published reports of *After the JD* data that early-career lawyers value clinical experience more highly than any other

¹ See generally WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 186* (2007) [hereinafter *CARNEGIE REPORT*] (describing the strengths and weaknesses of legal education in these three dimensions).

² See *infra* notes 37, 44, 56 and accompanying text.

³ On “the continuing transformation of legal education[,] . . . the role of clinical legal education in training competent, ethical practitioners” and a history of clinical legal education generally, see Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 CLIN. L. REV. 1, 5-32 (2000). Clinical legal education is catchall term for a wide variety of practices and methodologies not easily summarized. Though the contested and evolving definitions matter, we will not attempt to sort them out here, except to note that measuring “the clinic effect” will of necessity be context-dependent. See *infra* Parts II.B, III. For one treatment of the complex views and meanings of clinical legal education, see Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577 (1987).

⁴ Barry et al., *supra* note 3, at 32.

⁵ RONIT DINOVITZER, BRYANT G. GARTH, RICHARD SANDER, JOYCE STERLING & GITA Z. WILDER, THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION & THE AMERICAN BAR FOUNDATION, *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* (2004) [hereinafter *AFTER THE JD*].

aspect of the formal law school curriculum in preparing them to make the transition to the profession.⁶ This significant finding suggests that clinics may play an important bridge function between law school and law practice. Beyond that, however, there remains much we do not know about the teaching impact of clinical legal education in the skills and civic dimensions – what we call here “the clinic effect.”

In Part I of this article, we describe the problem with law schools by summarizing the deficiencies of legal education, especially with respect to law students’ practical and professional training. There is considerable consensus on the limits of the current model among a variety of observers and stakeholders, including scholars of the professions, the organized bar, the legal academy and experts on professional education. Recent critiques have sharpened the current focus on legal education’s curricular deficits, and law schools have begun to respond with individual and collective reform efforts.

In Part II, we describe the promise of clinical legal education to help address these well-known problems. From early efforts to establish practical and professional instruction more than a century ago, through the launch of the modern clinical legal education movement in the late 1960s, clinics have become ubiquitous in legal education with an impressive array of teaching, training and service methods. In fact, virtually every critique of legal education explicitly or implicitly identifies clinical instruction as at least part of the solution. And yet, we have very little evidence to inform our understanding of whether – much less how, when, why and for whom – clinics deliver on this pedagogic promise.

In Part III, we report new findings from our analysis of *After the JD* data. The data provide positive but general insight into the relationship between clinical education and skills acquisition. In the civic dimension, we find no correlation between clinical legal education and participation in activities such as *pro bono* work and service in public-minded organizations. There is a significant positive correlation, however, between clinic participation and subsequent public service employment. Though causal factors remain unclear, satisfied clinic participants who recall entering law with civic motivations are more than twice as likely to work in public service employment as are similarly-motivated non-clinic students.

In Part IV, we describe the limits of available data, including from *After the JD*, and identify opportunities for additional research on these important questions. Legal education may be at a crossroads, but diagnoses of its inadequacies far outpace our understanding

⁶ *Id.* at 81.

of potential solutions. While we should not ignore or understate other important contributions made by clinics – in particular, their service impact in meeting the legal needs of under-represented clients and groups – we believe that now is an opportune time to refine and test theories about the value-added role of clinical legal education in preparing students for the practice and profession of law.⁷

I. THE PROBLEM WITH LAW SCHOOLS

The shortcomings of legal education as training for the practice and profession of law have been evident almost since the inception of the modern law school.⁸ Yet with astonishing persistence, legal education in its current form has remained relatively static since it was conceived some 140 years ago.⁹ We will neither repeat legal education's well-described history and development, nor explore all of the divergent views on the subject. Nevertheless, it is important to note that the core critique of the modern law school is both consistent with a standard conception of professional socialization espoused by scholars of the professions (primarily sociologists), and broadly shared by the organized bar (lawyers), the legal academy (law professors) and experts on professional education (overlapping with, but independent from, these other stakeholders). Critics vary in their analyses of the problem – and a robust debate has taken place within and among them

⁷ We do not address here the vital client service dimension of clinical legal education. Extrapolation from recent surveys yields an estimate of 2.4 million hours of legal services provided annually by civil (1.8 million hours) and criminal (600,000 hours) clinics in the United States. DAVID A. SANTACROCE & ROBERT R. KUEHN, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC. (C.S.A.L.E.), REPORT ON THE 2007-2008 SURVEY 19-20 (2008). The report's authors estimate almost 90,000 clients are represented in civil matters (including group clients counted as one each) and more than 38,000 clients in criminal cases. *Id.* In the same spirit in which we hope to encourage research into the teaching impact of law clinics, commentators have suggested that clinics can serve as sites of inquiry to answer important service delivery questions. Jeanne Charn & Jeffrey Selbin, *Legal Aid, Law School Clinics and the Opportunity for Joint Gain*, MANAGE. INFORMAT. EXCHANGE J., Winter 2007, at 28.

⁸ The "problem with law schools" paraphrases HERBERT PACKER & THOMAS EHR- LICH, *Legal Education: An Introduction to its Problems*, ch. 3 in CARNEGIE COMMISSION ON HIGHER EDUCATION, NEW DIRECTIONS IN LEGAL EDUCATION 24 (1972) and Roger C. Cramton, *The Trouble with Lawyers (and Law Schools)*, 35 J. LEGAL EDUC. 359 (1985) (responding to systemic problems plaguing the profession, lawyering and legal education identified in Derek C. Bok, *A Flawed System of Law Practice and Training*, 33 J. LEGAL EDUC. 570 (1983)).

⁹ See generally, e.g., ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION FROM THE 1850'S TO THE 1980'S (1983) (tracing the development and persistence of the case method of instruction in legal education); Anthony Chase, *The Birth of the Modern Law School*, 23 AM. J. LEGAL HIST. 329 (1979) (noting the durability of and controversy surrounding the case method); Gordon Gee & Donald W. Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 BYU L. REV. 695 (1977) (noting the very incremental changes in legal education relative to other professional training during the preceding 100 years).

about the proper mix of theory, doctrine and practice in legal education – but most agree on the following observations.

First, “law schools rely too heavily on one signature pedagogy to accomplish the socialization process.”¹⁰ The Socratic case method has important strengths, teaching students analytic reasoning – or “*thinking* like a lawyer” – especially in the appellate court context. This cognitive dimension is a vital component of orientation to the profession and effective lawyering.¹¹ A perhaps unintended consequence of this signature pedagogy, however, is legal education’s failure to teach students how to *act* like a lawyer in a whole range of practice settings. Even the benefits of the well-honed cognitive approach are limited when taught in isolation from other skills by the “casual attention that most law schools give to teaching students how to use legal thinking in the complexity of actual law practice.”¹²

Second, *acting* like a lawyer is itself comprised of at least two distinct, if intersecting, elements, including the performance of basic tasks (the skills dimension) and the conduct of professional behavior (the civic dimension). Law schools provide too little direct training in practice – what we typically think of as “skills training” – and also fail to develop students’ sense of professional identity and responsibility. This “lack of attention to practice and inadequate concern with professional responsibility,” so the critique goes, ill-prepares students for the profession which most will enter after law school.¹³

Third, clinical legal education has been developed in response to these deficits. As we address more fully in Part II below, modern clinics represent perhaps the most significant reform movement in legal education during the last four decades.¹⁴ In fact, clinics are the law school sites within which the cognitive, skills and civic dimensions are purportedly iterative and integrated, where students learn and deploy legal skills and encounter the real-life ethical challenges of working directly with clients to diagnose and treat their legal problems.¹⁵

¹⁰ SULLIVAN ET AL., *supra* note 1, at 186.

¹¹ Some have argued that the case method itself involved an important shift in the direction of formalized skills instruction. See, e.g., Anthony Chase, *The Origin of Modern Professional Education: The Harvard Case Method Conceived as Clinical Instruction in Law*, 5 NOVA L.J. 323 (1981); see also William Twining, *Pericles and the Plumber*, 83 LAW Q. REV. 396, 406 (1967) (noting that the “introduction of the case method also involved a crucial switch from emphasis on knowledge to emphasis on skill.”).

¹² SULLIVAN ET AL., *supra* note 1, at 188.

¹³ *Id.*

¹⁴ STEVENS, *supra* note 9, at 215 (“Of all aspects of the renewed interest in skills [in the 1960s], the particular interest in the skills embraced in the concept of clinical legal education was to prove the most important.”). See also PHILIP G. SCHRAG & MICHAEL MELTSNER, *REFLECTIONS ON CLINICAL LEGAL EDUCATION* 5 (1998).

¹⁵ See, e.g., SULLIVAN ET AL., *supra* note 1. “[T]he iterative movement among the three apprenticeships that the best clinical instruction provides is isomorphic with the prac-

In this section, we begin by setting out a standard conception of professional training espoused by scholars of the professions. Next we turn to legal education's critics, including lawyers, law professors and experts on higher education and professional training. While these groups represent somewhat distinct interests, they nevertheless identify common strengths and weaknesses of the instructional model in law schools.¹⁶

A. *The View from Scholars of the Professions*

The classical account of lawyer professionalism described by scholars of the professions resonates strongly with the standard critique of law schools.¹⁷ In this account, professions are self-regulating occupational groups that possess both distinct competencies and ethical commitments, including a consciousness of their "fiduciary role vis-à-vis their clients and society."¹⁸ Scholars in this tradition focus on two potential products of law school experiences that correspond broadly to what we have termed the skills and civic dimensions of legal education: students' development of professional expertise and students' development of a commitment to public service.¹⁹

Studies of law schools suggest that they typically fail to communi-

tice of law in virtually all its forms. That is, the threefold movement between law as doctrine and precedent (the focus of the case-dialogue classroom) to attention to performance skills (the aim of the apprenticeship of practice) and then to responsible engagement with solving clients' legal problems – a back-and-forth cycle of action and reflection – also characterizes most legal practice." *Id.* at 124.

¹⁶ The boundaries of these categories are less rigid than presented here, since lawyers, law professors and experts on higher education and professional training are members of fluid, overlapping groups that are in frequent conversation with each other.

¹⁷ The other predominant story about professionalism is the market control account. Rebecca L. Sandefur, *Lawyers' Pro Bono Service and American-Style Civil Legal Assistance*, 41 *LAW & SOC'Y REV.* 79, 85 (2007). In this account, professionals' behavior is understood as "reflecting occupational self-interest. Lawyers act collectively . . . to try to ensure that they can make a good living, both by encouraging demand for their services and by restricting the supply of those services." *Id.* at 86. In law, this account is probably most closely associated with the work of Richard Abel. RICHARD ABEL, *AMERICAN LAWYERS* (1995).

¹⁸ Sandefur, *supra* note 17, at 86.

¹⁹ ELIOT FRIEDSON, *PROFESSIONALISM REBORN: THEORY, PROPHECY, AND POLICY* 200 (1994). "The character of professional work suggests two basic elements of professionalism – commitment to a practicing body of knowledge and skill of special value and to maintaining a fiduciary relationship with clients. A relatively demanding period of training is required for learning how to do esoteric and complex work well. That course of training tends to create commitment to knowledge and skill so that the professional's work becomes a life-interest which provides its own intrinsic rewards." *Id.* at 200. Talcott Parsons, *Professions*, 12 *INT'L ENCYCLOPEDIA SOC. SCI.* 536 (1968). "[F]ormal technical training . . . must lead to . . . mastery of a generalized cultural tradition, [the development of] skills in some form of its use, [and involve] some institutional means of making sure that such competence will be put to socially responsible uses." *Id.* at 536.

cate important lessons in both dimensions. For example, a recent year-long empirical study of first-year law school classes around the country concluded that doctrinal courses teach students “to pay attention to . . . abstract categories and legal . . . context” at the expense of learning to consider the “social context and specificity” of any real client’s actual situation.²⁰ Surveys of lawyers themselves find substantial gaps between the skills they think they need for practice and those they believe they were taught in law school. During the last thirty years, lawyers have expressed the belief that law schools simply ignore training in the skills most relevant to them as professionals.²¹ At the same time, lawyers think that skills instruction and professional responsibility *should* be a central part of legal education.²² When *After the JD* respondents – first admitted to the bar in 2000 – were prompted to describe their legal education:

[M]ost were not especially enthusiastic about the specific role of their law schools in the transition to practice. On the question of whether law school prepared them well for their legal careers, the median response is exactly in the middle (neither agree nor disagree). Respondents tended to agree [median 5 on a 7 point scale] – but not strongly – with the proposition that law school teaching is too theoretical and unconcerned with real-life practice. They also evinced a desire for more practical training in their assessment of the most helpful law school courses.²³

In the civic dimension, studies of law school socialization often tell a story of decline and diversion. During law school, students’ commitment to work for the public good is either crushed or its meaning is changed to encompass more mainstream aspirations. For example, a study of Harvard Law School students describes their legal education as a “moral transformation,” during which they “dissociate themselves from previously held notions about justice and replace

²⁰ ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* 4-6 (2007). See also Gary L. Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313 (1995) (exploring the nature of lawyer expertise and how law schools could convey it more effectively).

²¹ See, e.g., FRANCES KAHN ZEMANS & VICTOR G. ROSENBLUM, A.B.A., *THE MAKING OF A PUBLIC PROFESSION* (1981); Bryant G. Garth & Joanne Martin, *Law Schools and the Construction of Competence*, 43 J. LEGAL EDUC. 469 (1993); Frances Kahn Zemans & Victor G. Rosenblum, *Preparation for the Practice of Law – the Views of the Practicing Bar*, 1 AM. B. FOUND. RES. J. 5-6 (1980). For surveys of practicing lawyers in Montana and Minnesota, respectively, see John O. Mudd & John W. LaTrielle, *Professional Competence: A Study of New Lawyers*, 49 MONT. L. REV. 11 (1988) and John Sonsteng & David Camarotto, *Minnesota Lawyers Evaluate Law Schools, Training and Legal Education*, 26 WM. MITCHELL L. REV. 327 (2000).

²² Garth & Martin, *supra* note 21, at 490, 496.

²³ DINOVITZER ET AL., *supra* note 5, at 79.

them with new views consistent with the status quo.”²⁴ Another study describes law students’ development of an ethic of “reasonable responsibility,”²⁵ a tripartite vision of lawyers’ civic obligations comprised of “first, the notion that public service should only be undertaken when time and resources permitted; second, the compartmentalization of day-to-day work and social responsibility; and, finally, the redefinition of responsibility as any action that was not irresponsible.”²⁶ A study of the “fate of public interest commitment during law school” at the University of Denver found that only half of students who started law school wanting to pursue public interest law sustained that aspiration through to graduation.²⁷

B. *The View from the Organized Bar*

In light of the experiences of law students and lawyers described by scholars of the profession, it is not surprising that the organized bar repeatedly has called for more practical and professional training in legal education.²⁸ In the modern era, the American Bar Association (A.B.A.) has issued a series of reports asserting that law schools have responsibility for the competence of their graduates.²⁹ In its 1979

²⁴ ROBERT GRANFIELD, MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND 73 (1992).

²⁵ DEBRA J. SCHLEEF, MANAGING ELITES: PROFESSIONAL SOCIALIZATION IN LAW AND BUSINESS SCHOOLS 131 (2006).

²⁶ *Id.*

²⁷ ROBERT V. STOVER & HOWARD S. ERLANGER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL xix (1989). “The erosion of professional altruism began early, as students directed their attention to coping with the hectic, emotionally draining first year of law school. . . . [A]ltruistic values might have reasserted themselves during the second and third years, but the dominant professional culture – as manifested in both the law school and in the conventional law firms where many students worked – largely ignored altruistic concerns. At the same time, the dominant culture emphasized a broad range of competing values. As a result, students not finding refuge in a public interest subculture were not likely to leave law school with their altruistic values intact.” *Id.* at xix-xx.

²⁸ As early as 1916, for example, the New York State Bar Association established a committee on legal education, in part “to meet changes in office practice and accommodation for students (who are now largely deprived of opportunity for developing the professional spirit prior to their admission).” William V. Rowe, *Legal Clinics and Better Trained Lawyers - A Necessity*, 11 ILL. L. REV. 591, 594-95 (1917) (quoting 39 N.Y. STATE BAR ASS’N REP. 242-50 (1916)).

²⁹ A.B.A. commissions and task forces typically include not only practicing lawyers, but also prominent judges. Members of the bench have expressed concern directly about these issues. See, e.g., Warren Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 232 (1973) (noting that “Law schools fail to inculcate sufficiently the necessity of high standards of professional ethics . . . [and] to provide adequate and systematic programs by which students may focus on the elementary skills of advocacy”); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992) (lamenting the widening gap between law school training and legal practice).

Cramton Report, the A.B.A. singled out three dimensions of such competence: (1) fundamental skills; (2) knowledge about law and legal institutions; and (3) the ability and motivation to apply these skills and knowledge to tasks.³⁰ After analyzing the current state of legal education at the time, and noting the strength of the case method in the cognitive dimension, the report concluded:

Law schools can do a better job than they presently do in: (a) developing some of the fundamental skills underemphasized by traditional legal education; (b) shaping attitudes, values and work habits critical to the individual's ability to translate knowledge and relevant skills into adequate professional performance; and (c) providing integrated learning experiences focused on particular fields of lawyer practice, including but not limited to trial practice.³¹

In its 1983 *Final Report and Recommendations of the Task Force on Professional Competence*, the A.B.A. noted:

There appear to be no problems in law school curricula or pedagogy as they relate to the competence goal of making lawyers knowledgeable about fields of law in which they practice. Law schools do well in teaching substantive law and developing analytic skills. The problems and issues in American legal education involve chiefly the teaching of other lawyering skills.³²

Arguably the most influential A.B.A. contribution to this topic is the 1992 *MacCrate Report*, which found that: “[L]aw schools and the practicing bar must share responsibility for giving new members of the profession the training needed to practice competently . . . through a combination of law school education and opportunities for learning outside the law school environment.”³³ Though the report explicitly

³⁰ A.B.A., SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOL 9 (1979) [hereinafter *Cramton Report*].

³¹ *Id.* at 14. The report made a dozen recommendations “addressed to law schools.” *Id.* at 3-5. For those deemed most relevant by recent commentators to the teaching of professional skills and values, see Stephen Gerst & Gerald Hess, *Professional Skills and Values in Legal Education: The GPS Model*, 43 VALP. L. REV. 513, 515-16 (2009).

³² A.B.A., FINAL REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON PROFESSIONAL COMPETENCE 6 (1983). “Historical and theoretical understanding of law and legal institutions, the development of analytical skills, and legal scholarship employing traditional analytic tools and contemporary empirical research methods are all important. However, the development of legal writing skills, oral communication skills, fact-gathering, interviewing, counseling, negotiating and litigation skills is also important – these skills are among the fundamental skills of the lawyer.” *Id.* at 11-12. The A.B.A.’s 1986 *Stanley Commission Report* focused primarily on the role of the practicing bar in developing the professionalism of new lawyers. A.B.A., REPORT OF THE COMMISSION ON PROFESSIONALISM, IN THE SPIRIT OF PUBLIC SERVICE: A BLUEPRINT FOR REKINDLING OF LAWYER PROFESSIONALISM (1986).

³³ A.B.A. TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT, AN EDUCATIONAL CONTINUUM REPORT OF THE

declined to set forth “a standard for a law school curriculum,” it identified ten fundamental lawyering skills and four fundamental values of the profession that clearly map onto the skills and civic deficits in legal education.³⁴

C. *The View from the Legal Academy*

Within the legal academy, critics have long lamented the limits of the instructional model. As early as the turn of the 20th century, leading voices within law schools called for more practical and professional training of students. For example, future Dean H.W. Ballantine of the University of Illinois College of Law observed that the case method “fall[s] far short in fitting lawyers for the actual work of their profession.”³⁵ Columbia Law School Dean and future U.S. Attorney General and Supreme Court Justice Harlan Fiske Stone argued that “the law school has signally failed to transmit to its students as a class the professional ideals and traditions which were formerly acquired by the law clerk as a matter of course during his apprenticeship.”³⁶ And

TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 131 (1992) [hereinafter MACCRATE REPORT].

³⁴ *Id.* at 131. The ten fundamental lawyering skills are: (1) problem-solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) litigation and ADR procedures; (9) organization and management of legal work; and (10) recognizing and resolving ethical dilemmas; and the four fundamental values of the profession are: (1) provision of competent representation; (2) striving to promote justice, fairness and morality; (3) striving to improve the profession; and (4) professional self-development. *Id.* at 138-41. The report goes on to make twenty-five recommendations to enhance professional development in law schools. *Id.* at 330-34. The *MacCrate Report* is not without critics or limits. See, e.g., Russell G. Pearce, *MacCrate's Missed Opportunity: The MacCrate Report's Failure to Advance Professional Values*, 22 PACE L. REV. 575 (2003) (critiquing the report for prioritizing skills at the expense of values); Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLIN. L. REV. (1997) (suggesting the report does not provide obvious or sufficient guidance for how law schools can promote the four fundamental values of the profession). On the issue of professionalism in particular – and building on these prior reports – the A.B.A. subsequently issued the *Smith Report* in 1996. A.B.A. PROFESSIONALISM COMMITTEE REPORT, TEACHING AND LEARNING PROFESSIONALISM (1996). Even in its definition of a lawyer – “an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good” – the *Smith Report* emphasizes the importance of skills development and civic responsibility. *Id.* at 6. The report goes on to make specific recommendations about how law schools can more effectively teach professionalism, and calls for renewed attention to such training in law practice settings. *Id.* at 13-34.

³⁵ H.W. Ballantine, *Adapting the Case Book to the Needs of Professional Training*, 2 AM. L. SCH. REV. 135 (1908).

³⁶ Harlan F. Stone, *The Function of the American University Law School*, A.B.A. 34TH CONFERENCE ANN. REP. 768, 780 (1911). Stone expressed concern that “[i]f it is true that the function of the law school is to approach the study of law from the theoretical and scholarly side, it is equally true that it must not become so academic as to separate itself from the profession which it represents and for the practice of which it undertakes to train its students.” *Id.* at 773.

University of Minnesota Law School Dean W.R. Vance, having “taught in no fewer than seven institutions, . . . [concluded that] it is a safe statement to make that there is scarcely a law school in the United States which is not making a more or less complete failure in its efforts to teach practice.”³⁷ In the 1920s, Yale Law School and Columbia Law School considered serious curricular reforms;³⁸ Columbia’s two-year study of its curriculum during this period “constituted the most comprehensive and searching investigation of law school objectives and methods that has ever been undertaken.”³⁹

By the 1930s, the legal realists had joined the fray with Jerome Frank’s biting critique of formalism and the “*mere sham case-system*.”⁴⁰ Frank argued that “[t]he trouble with much law school teaching is that, confining its attention to a study of upper court opinions, it is hopelessly oversimplified.”⁴¹ Like earlier critics, Frank was not arguing for a complete rejection of the case method, nor a return to the apprenticeship system, but asked, “is it not plain that, without giving up entirely the case-book system or the growing and valuable alliance with the so-called social sciences, the law schools should once more get in intimate contact with what clients need and with what the courts and lawyers actually do?”⁴²

Karl Llewellyn, as principal author of a 1944 report from the Association of American Law Schools’ (A.A.L.S.) Curriculum Committee, noted that:

[P]erhaps the most striking thing about legal education during these past thirty-five years is that while effort after effort has gone into the problem of what bodies of law to teach and how to organize them for teaching, the dominant methods of actual teaching have remained in the area of undisclosed tradition rather than of ongoing restudy.⁴³

³⁷ W.R. Vance, *Essentials of An Act Regulating Admission to the Bar*, A.B.A. 37TH CONFERENCE ANN. REP. 799, 802-03 (1914).

³⁸ See Twining, *supra* note 11, at 407-88.

³⁹ Brainerd Currie, *The Materials of Law Study*, 3 J. LEGAL EDUC. 331, 332-34 (1951).

⁴⁰ Jerome Frank, *Why Not a Clinical-Lawyer School?*, 81 U. PA. L. REV. 907, 916 (1933) (emphasis in original).

⁴¹ *Id.* at 913. See also, Leon T. David, *The Clinical-Lawyer School: The Clinic*, 83 U. PA. L. REV. 1, 2 (1934) (“It is not that which is included in the curricula that occasions criticism; the complaint is rather that the educational process does not go far enough, in that no training is given in the common operations constituting the bulk of legal work nor in the technique of the law office.”).

⁴² Frank, *supra* note 40, at 913. See also Chase, *supra* note 11 (providing a thoughtful history and discussion of the complex relationship between “clinical” instruction and apprenticeship – or “merely artisan training” – in professional education).

⁴³ Karl Llewellyn, *The Place of Skills in Legal Education, Report of the Committee on Curriculum of the A.A.L.S.*, 45 COLUM. L. REV. 345, 349 (1945) [hereinafter LLEWELLYN REPORT].

The *Llewellyn Report* went on to identify “a somewhat curious error in orientation” in law school curricula, namely:

What we are training students for is not knowledge of the law, but practice of the law. Practice is an activity, a skilled activity, an activity to be carried on according to craft-traditions and craft standards of *ideals* and *skills*, an activity which involves expert knowledge and use of the law and also other lines of expertness, but which involves all of these not in the abstract, but in concrete work over the concrete problems of a client.⁴⁴

More than a quarter century later, the A.A.L.S. issued “one of the most important contributions in 50 years to the study of legal education.”⁴⁵ The 1971 *Carrington Report* critiqued legal education for its failure to identify and articulate clear teaching goals, its incoherent allocation of teaching resources, its unduly narrow teaching methods and its top-down, “hidden curriculum.”⁴⁶ The report recommended significant reform via a “model curriculum.”⁴⁷

In 2007, the Clinical Legal Education Association – the leading non-A.A.L.S. professional organization of clinical law faculty – issued *Best Practices for Legal Education (Best Practices)*.⁴⁸ *Best Practices* identified six “attributes of effective, responsible lawyers.”⁴⁹ Among the attributes were intellectual and analytical skills, professional skills and professionalism.⁵⁰ Noting a continued sense – as articulated in 1983 by Gary Bellow – “that no graduate of an American law school is able to practice when graduated . . . [which] is simply indefensible,”⁵¹ *Best Practices* sets forth a comprehensive blueprint for organizing law

⁴⁴ *Id.* at 367 (emphasis added). The *Llewellyn Report* recommended skills instruction in statutory interpretation, appellate advocacy, and drafting and counseling. *Id.* at 369-77.

⁴⁵ PACKER & EHRLICH, *supra* note 8, at 47.

⁴⁶ PAUL CARRINGTON, A.A.L.S., TRAINING FOR THE PUBLIC PROFESSIONS OF THE LAW 128-36 (1971) [hereinafter CARRINGTON REPORT] reprinted in PACKER & EHRLICH, *supra* note 8, at 95-162.

⁴⁷ CARRINGTON REPORT, *supra* note 46, at 110-126.

⁴⁸ ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007). The Clinical Legal Education Association (C.L.E.A.) is a non-profit trade association of clinical law teachers founded in 1992. See C.L.E.A. Home Page, <http://www.cleaweb.org/about/mission.html> (last visited Sept. 14, 2009).

⁴⁹ STUCKEY, *supra* note 48, at 65.

⁵⁰ *Id.* at 65-66. The other three related attributes included self-reflection and lifelong learning skills, core knowledge of the law, and core understanding of the law. *Id.* The report explores each attribute in considerable depth. *Id.* at 66-91. In addition to formal A.A.L.S. and C.L.E.A. pronouncements, legal academics have lamented the decline in professionalism among law school graduates. See, e.g., MARY ANN GLENDON, HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY (1994); ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS IN THE LEGAL PROFESSION (1993).

⁵¹ Gary Bellow, *On Talking Tough to Each Other: Comments on Condlin*, 33 J. LEGAL EDUC. 619, 622-23 (1983).

school instruction.⁵²

D. *The View from Experts on Professional Education*

Critiques of legal education also have come from outside the bar and legal academy. The Carnegie Foundation for the Advancement of Teaching – the leading independent policy and research center dedicated to the cause of higher education and professional training – conducted multiple studies of legal education during the 20th century.⁵³ The foundation's 1914 *Redlich Report* identified the benefits of the case method of instruction, especially its ability “to arouse, to strengthen, to carry to the highest possible pitch of perfection, a specifically legal manner of thinking” – i.e., thinking like a lawyer – but found a concomitant weakness in the method's narrow focus, resulting in its failure to provide students “a general picture of the law as a whole, not even a picture which includes only its main features.”⁵⁴ However, the report did not criticize law schools for failing students in the skills and civic dimensions. In fact, it found that “what [the law student] still has to learn in his law office” was of “subordinate importance” and declared that “this knowledge can never be gained in any school, anywhere, any more than any law school of Europe or America can teach the future lawyer the ethics of the legal profession”⁵⁵

The foundation's 1921 *Reed Report* was an exhaustive eight-year study of more than 100 law schools, which, like its predecessor, found important merit in the case method. At the same time – and in a marked shift from the *Redlich Report* – the *Reed Report* noted bluntly: “The failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly.”⁵⁶ Drawing analogies to other pro-

⁵² STUCKEY, *supra* note 48, at 93-104. The report's four recommendations include: (1) achieving congruence in the program of instruction; (2) progressively developing knowledge, skills and values; (3) integrating the teaching of theory, doctrine and practice; and (4) providing pervasive professionalism instruction and role modeling throughout all three years of law school. *Id.*

⁵³ The foundation was incorporated in 1905 and received a congressional charter a year later “to do and perform all things necessary to encourage, uphold, and dignify the profession of the teacher and the cause of higher education[.]” An Act to Incorporate the Carnegie Foundation for the Advancement of Teaching, Pub. L. No. 59-42, ch. 636, 34 Stat. 59 (1906).

⁵⁴ JOSEF REDLICH, THE COMMON LAW AND THE CASE METHOD IN AMERICAN UNIVERSITY LAW SCHOOLS: A REPORT TO THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING 24, 41 (1914) [hereinafter REDLICH REPORT].

⁵⁵ *Id.* at 40. These sentiments echo those of Harlan Stone who a few years earlier averred that “[f]idelity to professional ideals cannot, of course, be inculcated by instruction.” Stone, *supra* note 36 at 780.

⁵⁶ ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW

fessions, the report observed that “there is nothing in American legal education that corresponds in any way with the elaborate clinical facilities or shopwork provided by modern medical and engineering schools.”⁵⁷ Consequently, it called for comprehensive training to provide “a mastery of theoretical knowledge” both “in and for legal practice,” and “in all such additional sciences or arts as . . . may be helpful to the prospective lawyer.”⁵⁸

The most recent report – and perhaps the most influential document in current debates about the future of legal education – is Carnegie’s 2007 *Educating Lawyers: Preparation for the Profession of Law* (*Carnegie Report*).⁵⁹ The *Carnegie Report* identifies a teaching goal common across professional training in medical schools, nursing schools, engineering, the seminary and law schools: “[P]rofessional education aims to initiate novice practitioners to *think*, to *perform*, and to *conduct* themselves (that is, to act morally and ethically) like professionals.”⁶⁰ The report characterizes these complementary teaching goals – which correspond to the cognitive, skills and civic dimensions – as three “apprenticeships, each based in different facets of professional expertise as the particular school teaches these and guided by a variety of distinct pedagogical intentions.”⁶¹ Though short on prescriptions, the *Carnegie Report* recommends an instructional model which incorporates these elements into an integrated curriculum.⁶²

These contemporary reports – from the organized bar (*MacCrate Report*), the legal academy (*Best Practices*) and experts on professional education (*Carnegie Report*) – may usher in a new era of reform in legal education. The *Carnegie Report* in particular has begun to garner significant attention within law schools.⁶³ For example,

281 (1921) [hereinafter REED REPORT].

⁵⁷ *Id.*

⁵⁸ *Id.* at 277-78.

⁵⁹ SULLIVAN ET AL., *supra* note 1. Between the 1921 *Reed Report* and the 2007 *Carnegie Report*, the foundation issued a 1972 report which took as a first principle that law schools “primary mission is the education of students for entry into the legal profession,” criticized the narrowness of legal education in form and substance, and set out a case for a more varied and rich curriculum to connect law school and legal practice. PACKER & EHR- LICH, *supra* note 8, at 24.

⁶⁰ SULLIVAN ET AL., *supra* note 1, at 22 (emphasis added).

⁶¹ *Id.* at 28. “The first apprenticeship, which we call intellectual or cognitive, focuses the student on the knowledge and way of thinking of the profession The students’ second apprenticeship is to the forms of expert practice shared by competent practitioners The third apprenticeship, which we call the apprenticeship of identity and purpose, introduces students to the purposes and attitudes that are guided by the values for which the professional community is responsible.” *Id.*

⁶² *Id.* at 194-200.

⁶³ The A.A.L.S. featured discussion of the *Carnegie Report* in a plenary session at its

“[b]elieving that this is a critical moment for the future of legal education, ten law schools have come together to work with the Carnegie Foundation to promote thoughtful innovation in the law school curriculum, pedagogy and assessment.”⁶⁴ The schools have formed the “Legal Education Analysis and Reform Network,” and have issued an initial report with an agenda of local, regional and national activities to advance such innovation.⁶⁵ In addition, current A.A.L.S. President Rachel Moran has called for resurrecting the image of the “‘citizen-lawyer,’ who deploys legal skills to serve the common good . . . and to answer the call of service and restore national integrity and trust” to the profession and society at large.⁶⁶

Coupled with larger economic forces rippling through the profession and higher education, there is every reason to think that curricular reform will be on the agenda of most law schools for some years to come. Given these developments, we next consider briefly the development of and state of knowledge about clinical legal education, “the most significant change in how law was taught since the invention of the case method.”⁶⁷

II. THE PROMISE OF CLINICAL LEGAL EDUCATION

For almost as long as the practical and professional deficits in law schools have been identified, clinics of one kind or another have been promoted as a solution in both the skills and civic dimensions. Although clinical legal education has evolved considerably from the legal dispensaries at the turn of the 20th century, modern clinics purport to:

[E]xpose students *not only to lawyering skills but also the essential*

2008 Annual Meeting. 2008 A.A.L.S. Plenary, *Rethinking Legal Education for the 21st Century*, <http://www.aals.org/am2008/friday/index.html>. Several conferences have been organized to address the implications of the report’s finding for curricular reform: University of South Carolina, *Legal Education at the Crossroads: Ideas to Action, Part I* (2007), available at <http://law.sc.edu/crossroads/>; University of Washington, *Legal Education at the Crossroads: Ideas to Accomplishment: Sharing New Ideas for an Integrated Curriculum* (2008), available at http://www.law.washington.edu/News/Articles/schedule_Crossroads.pdf; University of Denver, *Legal Education at the Crossroads v. 3: Conference on Assessment* (2009), available at <http://www.law.du.edu/index.php/assessment-conference>.

⁶⁴ Legal Education Analysis and Reform Network, *General Descriptions of Planned Projects 2009-10* 9-10 (2009), available at http://www.law.stanford.edu/display/images/dynamic/events_media/LEARN_030509_lr.pdf. The ten law schools are CUNY, Georgetown, Harvard, Indiana (Bloomington), New York University, Southwestern, Stanford, University of Dayton, University of New Mexico and Vanderbilt University.

⁶⁵ *Id.*

⁶⁶ Rachel Moran, Special to the NATIONAL LAW JOURNAL, *Bring Back Citizen-Lawyers*, NAT’L L.J. (Jan. 19, 2009), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202427453356&slreturn=1&hbxlogin=1>.

⁶⁷ SCHRAG & MELTSNER, *supra* note 14, at 5; see also STEVENS, *supra* note 9.

values of the legal profession: provision of competent representation; promotion of justice, fairness, and morality; continuing improvement of the profession; and professional self-development. These professional values are taught and at the same time thousands of clients receive access to justice through clinical programs.⁶⁸

In this section, we trace briefly the development of law school clinics from early calls for practical and professional training through the emergence of the modern clinical movement.⁶⁹ We focus in particular on the relationship between the development of clinics and the critique of legal education in the skills and civic dimensions. We conclude this part by describing the evidence gap, that is, the lack of available data to demonstrate whether and how clinics deliver on their promise to address legal education's problems.

A. *Early Practical and Professional Training*

In 1911, Harlan Fiske Stone made an early case for practitioners on law faculties. While "[r]ecognizing that the law school has supplanted the law office as an instrumentality for legal instruction because of its superiority in certain directions, we must also recognize that in certain other directions the law office and the court room are superior agencies for legal training."⁷⁰ In 1914, former Pennsylvania attorney general and future A.B.A. President Hampton Carson extended the call for practical training: "As we cannot carry the students back to the office we should carry, as far as practicable, the offices to them."⁷¹ At the same time, Dean W.R. Vance lauded an outside col-

⁶⁸ Barry et al., *supra* note 3, at 13-14 (emphasis added). Law students themselves were at the forefront of efforts to gain hands-on practice experience and to provide public service, founding volunteer "legal dispensaries" at several law schools as early as the 1890s. *Id.* at 6, n.10 and accompanying text. For the history at Northwestern which dates to this era, see Thomas F. Geraghty, *Legal Clinics and the Better Trained Lawyer (Redux): A History of Clinical Education at Northwestern*, 100 NW. U. L. REV. 1 (2006). See also Alan Merson, *Denver Law Students in Court: The First Sixty-Five Years*, in CLINICAL LEGAL EDUCATION AND THE LAW SCHOOL OF THE FUTURE 138 (E. Kitch ed. 1970) (reproducing a 1905 announcement of a "legal aid dispensary" established the previous year at the University of Denver School of Law); HARRY SANDICK & JOHN A. FREEDMAN, A HISTORY OF THE HARVARD LEGAL AID BUREAU (1996) (describing this student-initiated legal aid clinic founded at Harvard Law School in 1913 and still operating today).

⁶⁹ We do not recount the history of clinical legal education here, which has been covered so ably by others elsewhere. See generally, e.g., Barry et al., *supra* note 3; Douglas A. Blaze, *Déjà Vu All Over Again: Reflections on Fifty Years of Clinical Education*, 64 TENN. L. REV. 939, 941 (1997).

⁷⁰ Stone, *supra* note 36, at 774-77. Stone was not, however, advocating a central role for clinics, for "the legal aid dispensary feature of the curriculum is subordinated, as it should be, to the main business of the law school, which is: sound, theoretical training by competent instructors of practical experience." *Id.* at 777-78.

⁷¹ Hampton L. Carson, *An Existing Defect in the American System of Legal Education*,

laboration with a local legal aid program established for this purpose, “which, for lack of a better name, *I will call a legal clinic.*”⁷²

In 1917, New York attorney William V. Rowe articulated perhaps the first formal case for law school clinics.⁷³ Rowe observed that legal education lagged behind sister professions of “medicine, surgery, the ministry, the arts, architecture, and engineering” in providing practical training.⁷⁴ Rowe advocated mandatory clinics, and, significantly, he believed the benefits of such training extended beyond mere law office (skills) preparation:

The real need . . . is education, training and discipline in the conduct of professional life – the development of what might be called the professional character, spirit and savoir faire, in the only possible way, that is to say, by placing the student in a proper law office, which we will call a clinic, under systematic instruction and training, and in constant touch with reputable practitioners of high character, who, in a general practice, are applying the law in the concrete, as a living force, to the living problems of our people.⁷⁵

Taking note of the work of Rowe and others, the Carnegie Foundation’s 1921 *Reed Report* acknowledged recent efforts between law schools and legal aid societies to establish clinic-like partnerships for

A.B.A. 37TH CONFERENCE ANN. REP. 887 (1914). In the transition to the case method “we have lost, to a menacing extent, that which gave *tone* to the profession. We have lost the old-fashioned preceptor, setting an example of deportment, of dignity, of professional morality, through meeting his clients in the presence of his students, or by talking familiarly to them of the standards set by tradition based upon the conduct of the best and the purest in the profession.” *Id.* at 897 (emphasis in original).

⁷² Vance, *supra* note 37, at 804 (emphasis added). Noting that such experience increased a law student’s exposure to substantive law, the rules of procedure, and the relationship between law as taught and practiced, Dean Vance observed, “not only does he come to the bar a far better lawyer than he would otherwise, but having seen something of the sufferings of the poor and the unfortunate, he goes to the Bar not only a better lawyer but a better citizen.” *Id.* at 806.

⁷³ Rowe, *supra* note 28, at 591. See also William V. Rowe, *The People’s Law Bureau*, 15 ILL. L. REV. 424, 430-31 (1921) (“All these considerations have led to the conviction that the all-round clinical training which lawyers themselves formerly supplied, inadequately enough, in their office . . . must now be efficiently furnished by the intimate association of law schools with such legal aid work, in what are aptly called ‘legal clinics’ . . .”); John H. Wigmore, *The Legal Clinic*, 12 ILL. L. REV. 25 (1917) (endorsing Rowe’s proposal and analogizing the benefits of a clinical approach to those of a teaching hospital in medical education); John H. Wigmore, *The Legal Clinic: What It Does for the Law Student*, ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 130 (1926) (extolling some of the teaching virtues of clinics).

⁷⁴ Rowe, *supra* note 28, at 596.

⁷⁵ *Id.* at 597. In 1916 Rowe endorsed a New York State Bar Association resolution establishing a committee to consider, among other things, the requirement that “every law school shall make earnest clinical work, through legal aid societies or other agencies, a part of its curriculum for its full course,” and “[t]he granting of preferential consideration, in time required for study or clerkship, to graduates of law schools, with clinical instruction, over students prepared by other methods.” *Id.* at 595 (emphasis in original).

practical training and public service. Concluding that consideration of these service-learning partnerships “would be outside the scope of the present Bulletin,” the report allowed that “the movement is too promising a one to be disregarded in any comprehensive view of the subject.”⁷⁶

By the late 1920s and early 1930s, legal aid pioneer John Saeger Bradway had founded law school clinics at the University of Southern California and Duke.⁷⁷ Bradway developed early clinic methodology and eventually enumerated three goals of clinical instruction: (1) to teach students routine practice information; (2) to train students in practice skills, techniques and cognitive processes; and (3) to develop in students a perspective on law practice.⁷⁸ At the same time, Jerome Frank – analogizing legal education to medical school training – was advocating hands-on instruction in law schools to immerse students as participant-observers in the world of practice.⁷⁹

A handful of additional clinics were developed during the 1940s and 1950s, until 1958 when the Ford Foundation provided seed money for law school demonstration clinics via the National Council on Legal Clinics (N.C.L.C.).⁸⁰ Including those affiliated with legal aid societies and public defender offices, by the late 1950s clinics had been established in thirty-five law schools nationwide.⁸¹ Nevertheless, and until

⁷⁶ REED, *supra* note 56, at 286. The *Reed Report* continued, “[t]he question of practicability can best be settled by the actual experience of particular law schools and particular legal aid societies which, sincerely agreeing as to the possibility of cooperation, aim in this spirit to work out a mutually advantageous plan.” *Id.*

⁷⁷ See generally JOHN S. BRADWAY, *HOW TO ORGANIZE A LEGAL AID CLINIC* (1938). Bradway was a tireless advocate of clinics. See John S. Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252 (1929); John S. Bradway, *The Legal Aid Clinic as an Educational Device*, 7 AM. L. SCH. REV. 1153 (1934); John S. Bradway, *Legal Aid Clinic as a Law School Course*, 3 S. CAL. L. REV. 320 (1930); John S. Bradway, *Legal Aid Clinics in Less Thickly Populated Communities*, 30 MICH. L. REV. 905 (1932); John S. Bradway, *The Nature of a Legal Aid Clinic*, 3 S. CAL. L. REV. 173, 174 (1930); John S. Bradway, *The Objectives of Legal Aid Clinic Work*, 24 WASH. U. L.Q. 173 (1939).

⁷⁸ BRADWAY, *HOW TO ORGANIZE A LEGAL AID CLINIC*, *supra* note 77, at 66.

⁷⁹ Frank, *supra* note 40, at 907. In law school clinics, Frank believed that “students would learn to observe the true relationship between the contents of upper court opinions and the work of the practising lawyers and the courts. *The student would be made to see, among other things, the human side of the administration of justice . . .*” *Id.* at 918 (emphasis in original). See also Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303, 1319-20 (1947) (referencing the Carnegie Foundation’s influential *Flexner Report*, which fundamentally changed medical school education in the United States during the first half of the 20th century).

⁸⁰ Blaze, *supra* note 69, at 941. Affiliated with the National Legal Aid and Defender Association and the A.A.L.S., N.C.L.C. funded matching grant programs at nineteen schools over six years. *Id.* at 942.

⁸¹ Even with a relatively modest number of clinics, critics expressed ongoing doubts about their educational value. See generally Quintin Johnstone, *Law School Clinics*, 3 J. LEGAL EDUC 533 (1951) (noting the contested nature of the role of clinical legal educa-

the modern movement described next, clinics remained the exception and not the norm at most of the nation's law schools.

B. The Modern Clinical Movement

The modern clinical movement was the product of several forces, which responded directly or implicitly to long-standing critiques of legal education. The ferment of the 1960s was alive and well in law schools, including "[g]rowing student demands for relevance, and the increasing sense of boredom felt by the elite schools' carefully selected students in their second and third years."⁸² Students were deeply dissatisfied with their law school experiences and anxious to engage in the social struggles swirling outside the classroom.⁸³ Building on the earlier N.C.L.C. grants,⁸⁴ the Ford Foundation also invested heavily in clinics through the successor Council on Legal Education and Professional Responsibility (C.L.E.P.R.). Explicitly established to advance instruction in lawyering skills and professional responsibility, C.L.E.P.R. catalyzed a rapid and broad expansion of clinics with grants to more than 100 law schools from 1968 to 1978.⁸⁵ Finally, clinicians began to articulate a more coherent instructional methodology. In 1973, a pioneer of the modern clinical movement, Gary Bellow, offered a robust and influential description of clinical teaching method.⁸⁶ After considerable efforts by clinicians across the country

tion). See also A.A.L.S., REPORT OF THE COMMITTEE ON LEGAL AID CLINICS (1948) (expressing doubts about the original optimism that legal aid clinics could provide sufficient material for law student training); A.A.L.S., REPORT OF THE COMMITTEE ON LEGAL AID CLINICS (1959) (noting the lack of integration into law school curricula of legal aid clinics and questioning the wisdom of the handful of law schools which use such clinics as formal teaching vehicles).

⁸² STEVENS, *supra* note 9, at 216.

⁸³ See PACKER & EHRLICH, *supra* note 8, at 37 (ascribing the popularity of clinical education in the early 1970s to "the urge, by no means confined to law schools, that education should become more 'relevant' to perceived social needs and should contribute to providing better legal services for the poor and other underrepresented groups in society."). For descriptions of the often-overlooked criminal justice underpinnings of modern clinics, see Marvin J. Anderson, *Gideon: A Challenging Opportunity for School and Bar*, 9 VILL. L. REV. 619 (1964); John J. Cleary, *Law Students in Criminal Law Practice*, 16 DEPAUL L. REV. 1 (1966); and Henry P. Monaghan, *Gideon's Army: Student Soldiers*, 45 B.U. L. REV. 445 (1965).

⁸⁴ See Blaze, *supra* note 69, at 941.

⁸⁵ Barry et al., *supra* note 3, at 19. Congressional funding through the Department of Education in the two decades that followed meant that by the late 1990s nearly \$100 million of external resources had been pumped into law schools to establish clinics. *Id.* C.L.E.P.R. was also deeply committed to realizing the service potential of law school clinics. Blaze, *supra* note 69, at 951.

⁸⁶ Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as a Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT 374 (1973). Five years later, Bellow gave content to the method in co-authoring a renowned clinical textbook. GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: MATERIALS FOR*

to build upon these foundations and to institutionalize clinics in the nation's law schools, by the early 1990s the *Report of the Committee on the Future of the In-House Clinic* asserted with confidence that:

Clinical education is first and foremost a method of teaching. Among the principal aspects of that method are these features: students are confronted with problem situations of the sort that lawyers confront in practice; the students deal with the problems in role; the students are required to interact with others in attempts to identify and solve the problems; and, perhaps most critically, the student performance is subjected to intensive critical review.⁸⁷

The bar also played an important role in fostering the growth of clinics. As described earlier, several A.B.A. reports identified weaknesses in legal education, and typically recommended that law schools

CLINICAL INSTRUCTION IN ADVOCACY (1978). Not everyone, however, was persuaded about the role and benefits of clinical education during this era. The 1971 A.A.L.S. *Carrington Report* – while “not antagonistic to the clinical method” – nevertheless was not sanguine that clinical education could “withstand a cost-benefit analysis as a dominant method of instruction.” CARRINGTON, *supra* note 46, at 134-35. The 1972 *Carnegie Report* – drawing heavily on the *Carrington Report* – observed: “In response to the discontent [about legal education] there is these days a good deal of talk about fundamental, overall change, a total curricular and methodological revolution in legal education. Apocalyptic solutions to largely misunderstood problems are hardly promising. The principal area in which misunderstood problems tend to yield easy answers is in the idea that law students should learn by doing, should get out of the sterile air of the classroom into the vital atmosphere of functioning legal institutions. The current shibboleth is ‘clinical education.’” PACKER & EHRLICH, *supra* note 8, at 37. After reviewing clinical rationale, methods and trade-offs, the report concludes, “we are dubious about the relative merits of clinical education given its high costs. . . . While we believe clinical education has a useful role to play in legal education, its role is not unique.” *Id.* at 37-46. Such critiques have persisted. *See, e.g.,* Allen Redlich, *Perceptions of a Clinical Program*, 44 S. CAL. L. REV. 574 (1971) (critiquing clinics for a lack of clear goals or program evaluation); Robert J. Condlin, “*Tastes Great, Less Filling*,” *The Law School Clinic and Political Critique*, 35 J. LEGAL EDUC. 45 (1986) (urging critical analysis of clinical programs).

⁸⁷ *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 511 (1992). This emphasis on teaching represents a subtle but important shift away from the dual service-learning mission of the modern clinical movement, a development which has been under-theorized and examined. For an interesting exploration of “how initially marginal, anti-institutional service-learning practices became a legitimate component of mainstream curricula in the field of U.S. higher education,” see Michael Lounsbury & Seth Pollack, *Shifting Logics and the Cultural Repackaging of Service-Learning in U.S. Higher Education*, 8 ORGANIZATION 319 (2001). For a resounding critique of “case-centered” (individual service) clinics in the social justice dimension, see Sameer Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355 (2008). For a critique of the same from the skills teaching dimension, see David A. Binder & Paul Bergman, *Taking Lawyering Skills Training Seriously*, 10 CLIN. L. REV. 191 (2003). For robust descriptions of the teaching and service benefits and challenges of the case-centered approach, see Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLIN. L. REV. 333 (2009) and Jeanne Charn, *Service and Learning: Reflections on Three Decades of The Lawyering Process at Harvard Law School*, 10 CLIN. L. REV. 75 (2003).

increase the teaching of skills and/or clinic and clinic-like activities.⁸⁸ In 1969, the A.B.A. promulgated a Model Student Practice Rule – eventually adopted in one form or another in virtually every state that didn't already have such a provision – allowing law students to appear on behalf of clients in court and to perform other legal tasks under the supervision of a licensed instructor.⁸⁹ By the early 1990s, the A.B.A.'s *MacCrate Report* found that:

Clinics have made, and continue to make, an invaluable contribution to the entire legal education enterprise. They are a key component in the development and advancement of skills and values throughout the profession. Their role in the curricular mix of courses is vital. . . . Clinics provide students with the opportunity to integrate, in an actual practice setting, all of the fundamental lawyering skills. In clinic courses, students sharpen their understanding of professional responsibility and deepen their appreciation for their own values as well as those of the profession as a whole.⁹⁰

In 1996, the A.B.A. amended its law school accreditation standards to require every A.B.A.-approved institution to “offer live-client or other real-life practice experience,” entrenching clinics into the heart of the instructional enterprise.⁹¹

As a result of these developments, clinics have proliferated in number, design and influence during the last forty years. By the late

⁸⁸ See *supra* notes 30, 32-34 and accompanying text. The A.B.A.'s 1979 *Cramton Report* fell short of calling for clinics themselves, but made several recommendations that address the teaching of skills and/or clinic and clinic-like activities. A.B.A., *supra* note 30, at 3-4.

⁸⁹ Barry et al., *supra* note 3, at 20 (citing A.B.A. MODEL RULE (1969), reprinted in BAR ADMISSION RULES AND STUDENT PRACTICE RULES 993-95 (Fannie J. Klein, Steven Leleiko & Jan H. Mavity, eds., 1978)). See also *Documentary Supplement, Student Practice as a Method of Legal Education and a Means of Providing Legal Assistance to Indigents: An Empirical Study*, 15 WM. & MARY L. REV. 363 (1973) (providing a history of student practice rules) [hereinafter *Documentary Supplement*]. The Georgetown Law Library maintains an electronic repository of state and federal student practice rules. Georgetown University Law Center Law Library, Student Practice Rules – Clinical Research Guide, <http://www.ll.georgetown.edu/guides/StudentPractice.cfm> (last visited Sept. 14, 2009).

⁹⁰ A.B.A. TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, *supra* note 33, at 238. On assertions of the professional responsibility and moral development benefits of clinics, see, e.g., Steve Hartwell, *Moral Development, Ethical Conduct, and Clinical Education*, 35 N.Y.L. SCH. L. REV. 131 (1990) (concluding that ethics can be taught effectively in clinics) and Steve Hartwell, *Promoting Moral Development through Experiential Teaching*, 1 CLIN. L. REV. 505 (1995) (describing an experiential course in legal ethics and reporting statistically-significant positive changes in the moral reasoning of participating law students).

⁹¹ Barry et al., *supra* note 3, at 20-21. See A.B.A., SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS Standard 302(b) (2009-2010). The live client or other real-life experiences are to be “appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one’s ability to assess his or her performance and level of competence.” *Id.*

1990s, clinics had been established in some 147 law schools.⁹² Today, there may be as many as 1,200 distinct clinics in 170 of the nation's roughly 200 law schools, a substantial expansion from the several dozen programs just a half century ago.⁹³

Law student participation in clinics appears to be growing apace. A nationally representative survey of lawyers found that 16% of attorneys who had graduated law school between the mid-1960s and the mid-1970s reported that they had worked in a legal aid clinic during law school, and 20% of lawyers who had graduated between the mid-1970s to the mid-1980s reported that they had done so.⁹⁴ The 1992 *MacCrate Report* estimated that as many as 31.7% of law students graduating that year may have participated in a live client clinic,⁹⁵ and clinical participation in the years 2000-2002 was estimated at 35%.⁹⁶ Most recently, a 2006 national survey of law students found that 64% of third-year law students had participated in a "clinical internship or field experience" at some point during law school,⁹⁷ and the 2007 *C.S.A.L.E. Report* found that 32% of law students participated in live client law school clinics, while 33% percent participated in field placements.⁹⁸

These data suggest that approximately one-third of contemporary law students are participating in clinics, and perhaps fifty percent or more are participating in some kind of live client (not simulated) experiential education. Though we cannot measure a precise trend with such diverse sources – and the exact nature and distribution of the placements remains unclear – the overall trajectory is one of increasing participation in clinical training by law students during the past forty years.⁹⁹

⁹² Barry et al., *supra* note 3, at 19-20. Programs often included multiple clinics. For example, in 1990 the A.B.A.'s MacCrate Task Force survey found 314 clinics in 119 schools. A.B.A. TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, *supra* note 33, at 239.

⁹³ Authors' calculations from SANTACROCE & KUEHN, *supra* note 7, at 14.

⁹⁴ Authors' calculations from the *National Survey of Lawyers' Career Satisfaction*. See RONALD L. HIRSCH, A.B.A., NATIONAL SURVEY OF LAWYERS CAREER SATISFACTION Wave I (1984). The survey asked, "During law school, did you have any legal work experience, either during the school year or summer?," and included "legal aid clinic" as a possible work experience. *Id.* item 46.

⁹⁵ A.B.A. TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, *supra* note 33, at 252 (assuming students did not enroll in more than one such course).

⁹⁶ Peter A. Joy, *The Ethics of Law School Clinic Students as Student-Lawyers*, 45 S. TEX. L. REV. 815, 822 (2004).

⁹⁷ LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, 2006 ANNUAL SURVEY RESULTS 16 tbl.4 (2006).

⁹⁸ Authors' calculations from SANTACROCE & KUEHN, *supra* note 7, at 10, 11.

⁹⁹ An analysis of recent A.B.A. data suggests that clinical slots are not distributed equally across law school tiers, with as many as double the percentage of available slots at top tier schools relative to lower tiered schools. Andrew P. Morriss, *Clinical Legal Educa-*

C. The Evidence Gap

As clinics have expanded in number and scope in recent decades, clinicians themselves have produced a rich literature describing them as vibrant sites of both skills instruction and the development of professional identity and responsibility.¹⁰⁰ The *Carnegie Report* echoes this central role for clinics in preparing students for practice and the profession:

Decades of pedagogical experimentation in clinical-legal teaching, the example of other professional schools, and contemporary learning theory all point to toward the value of clinical education as a site for developing not only intellectual understanding and complex skills of practice but also the dispositions critical for legal professionalism. In their modeling of and coaching for high levels of professionalism, clinics and some simulations exemplify the integration of ethical engagement along with knowledge and skill.¹⁰¹

Although we are sympathetic to these normative and descriptive claims, existing research does little to reveal, explain or otherwise inform our understanding of the relationship between clinical legal education and the practical and professional development of law students. For example, during this period of clinic expansion and consolidation, scholars of the legal profession have mounted a number of major surveys of practicing attorneys. Unfortunately, only a few of these research projects explore clinical experiences, and none of them focuses on how such training shapes professional skills and values.¹⁰²

tion's Role in Access to Justice: Interests & Interest Groups (Univ. of Illinois Law & Economics Working Paper Group, Paper No. LE08-0_ (2008) (unpublished manuscript, on file with authors).

¹⁰⁰ For a relatively recent compilation of the clinical literature, including sections dedicated to "Lawyering Skills" and "Professional Responsibility," see Sandy Ogilvy & Karen Czapanskiy, *Clinical Legal Education: An Annotated Bibliography* (3d ed.), 12 CLIN. L. REV. 1, Special Issue No. 2 (2005).

¹⁰¹ SULLIVAN ET AL., *supra* note 1, at 120. "Clinical teaching resonates clearly against the well-documented importance of active learning in role. Its most striking feature, however, is perhaps the power of clinical experiences to engage and expand students' expertise and professional identity through supervised responsibility for clients." *Id.* at 121 (referencing a small sample of the extensive literature from other professions about the positive socialization effects of clinical education in those settings).

¹⁰² In the early 1970s, in recognition that "there is precious little hard information now available on the performance of student lawyer programs," a national survey of judges, law students, deans, program directors, supervising attorneys, attorneys general and bar associations was mounted to assess student practice in law schools. See *Documentary Supplement*, *supra* note 89. A total of 225 individuals in 36 states responded to the survey regarding perceptions of student performance, providing statistically limited findings, including the perceived drawbacks of the case method for training beyond legal research and analysis and the relative merits of student practice broadly defined. *Id.* at 372-74. Intriguing findings include the highest perceived benefits accruing from student placements "outside the law school and without law school supervision." *Id.* at 377 (emphasis in original).

The Chicago Lawyers Surveys, fielded in 1975 and 1995, did not investigate lawyers' clinical training at all.¹⁰³ The National Survey of Lawyers' Career Satisfaction provides some information about clinical experience in law school, asking whether attorneys received any clinical training, but the survey inquires no further about the relationship between such training and skills acquisition or identity formation.¹⁰⁴ Through interviews and focus groups, the Predictors of Successful Lawyering Project recently surveyed lawyers, judges, law school faculty, law students and clients about lawyering competencies.¹⁰⁵ Analysis of these data yielded twenty-six "effectiveness factors" in eight umbrella categories: (1) intellectual and cognitive; (2) research and information gathering; (3) communication; (4) planning and organizing; (5) conflict resolution; (6) client and business relations – entrepreneurship; (7) working with others; and (8) character.¹⁰⁶ However, this research does not explore how or where lawyers acquire these skills.

Students also have been surveyed during law school about their exposure to and perceptions of various educational activities. For example, in the United States, the national Law School Survey of Student Engagement provides some information about rates of participation in clinical education.¹⁰⁷ Reports from the annual survey also have described students' positive perception of clinics' role in teaching them legal ethics.¹⁰⁸ In Australia, researchers following stu-

¹⁰³ See JOHN P. HEINZ & EDWARD O. LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1983); JOHN P. HEINZ, ROBERT L. NELSON, REBECCA L. SANDEFUR & EDWARD O. LAUMANN, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* (2005).

¹⁰⁴ HIRSCH, *supra* note 94.

¹⁰⁵ Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: A New Assessment for Use in Law School Admission Decisions* (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1442118.

¹⁰⁶ *Id.* at 26-27. The twenty-six effectiveness factors by respective categories include the following: (1) Intellectual & Cognitive (Analysis and Reasoning, Creativity/Innovation, Problem Solving, Practical Judgment); (2) Research & Information Gathering (Researching the Law, Fact Finding, Questioning and Interviewing); (3) Communications (Influencing and Advocating, Writing, Speaking, Listening); (4) Planning and Organizing (Strategic Planning, Organizing and Managing One's Own Work, Organizing and Managing Others); (5) Conflict Resolution (Negotiation Skills, Able to See the World Through the Eyes of Others); (6) Client & Business Relations – Entrepreneurship (Networking and Business Development, Providing Advice & Counsel & Building Relationships with Clients); (7) Working with Others (Developing Relationships within the Legal Profession, Evaluation, Development, Mentoring); (8) Character (Passion and Engagement, Diligence, Integrity/Honesty, Stress Management, Community Involvement and Service, Self-Development). *Id.*

¹⁰⁷ LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, *supra* note 97, at 16 tbl.4.

¹⁰⁸ LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, 2008 ANNUAL SURVEY RESULTS 8-9 (2008). In response to the question "Which types of academic settings and activities do students say are most effective for learning legal ethics?" clinics are among the highest

dents in a longitudinal survey from the final year of legal education through their first two years post-graduation found that students who had received clinical training were perhaps more willing to do future *pro bono* work than were those with no clinical experience.¹⁰⁹ These recent studies offer a glimpse into how law students' thinking may be shaped by their clinical experience, but they have yet to probe the causal relationship (if any) between students' clinical experiences and their acquisition of skills and development of professionalism.

If prior research on lawyers' training is inadequate to answer questions about the role clinics play in addressing legal education's deficits in the skills or civic dimension, the *After the JD* study provides some insight into how early-career lawyers evaluate what they learned in clinics. In particular, *After the JD* data shed some preliminary and intriguing light on the role of clinical training in preparing students to make the transition to early work assignments and in shaping their subsequent *pro bono* participation, civic activities and career choices. In the next part, we report our findings and analysis of this data, including important limitations and remaining gaps.

III. THE CLINIC EFFECT? FINDINGS FROM *AFTER THE JD*

In this part we report new findings from the *After the JD* study of early-career lawyers. In particular, we explore what the data have to say about the relationship between clinical education and the skills and civic dimensions of lawyering. Our analysis is described in more detail below, but we summarize it here.

First, a majority of new lawyers evaluated clinical training as among the most useful elements of the formal law school curriculum for making the transition to early work assignments as an attorney (approximating the skills dimension).¹¹⁰

Second, analysis of new lawyers' work histories and volunteer activities suggests the following relationship between clinical training and professional development in the civic dimension: (1) on average,

rated settings. *Id.*

¹⁰⁹ Adrian Evans & Josephine Palermo, *Lawyers and Ethics in Practice: The Impact of Clinical and Ethics Curricula on Lawyers' Ethical Decision-Making* (Monash Univ. Faculty of Law, Legal Studies Research Paper No. 2007/13), 1 ALTERNATIVE L.J. 12 (2007), available at <http://ssrn.com/abstract=1349427>. While the findings are suggestive, note that the authors conclude that "these results should be interpreted cautiously given that clinical placement in Australian legal education is an optional element of the program." *Id.* at 24. In addition to possible selection bias, and "[d]espite growing confidence in the United States that clinical experience is a key ingredient in the development of ethically responsible lawyers, more research that utilises controlled pre-post test designs is warranted to ascertain the efficacy of clinical placement as an effective intervention towards the development of professional ethical conduct." *Id.* at 24.

¹¹⁰ See discussion *infra* Part III.B, especially Table 1 and Figures 1-2.

clinical training experiences during law school bore no relationship to participation in *pro bono* work by new lawyers working in private practice or as internal counsel;¹¹¹ (2) on average, there was little relationship between clinical training experiences and lawyers' rates of participation in community, charitable, political advocacy and bar-related organizations;¹¹² and (3) early-career lawyers who reported receiving helpful clinical training were more likely to be working in public service employment than those who did not receive helpful clinical training. However, this relationship obtained for only certain lawyers, those who reported that they entered law for civic-minded reasons.¹¹³

A. *After the JD*

The *After the JD* (AJD) project is an empirical study of the career outcomes of a cohort of almost 5,000 new lawyers, offering both a nationally representative picture of lawyer career trajectories and an in-depth portrait of the careers of women and racial and ethnic minority lawyers. The AJD study design is longitudinal, following the careers of new lawyers over the first ten years following law school graduation; the first cohort of lawyers was surveyed in 2002, the second in 2007, and the third contact is planned for 2010.¹¹⁴

The *After the JD* study reports on the experiences and attitudes of people who became eligible to practice law for the first time in 2000, having completed their law school training in 1998, 1999 or 2000.¹¹⁵ The sample was stratified so that respondents came from 18 different legal services markets around the country, including major metropolitan markets, like New York City, smaller urban markets, like Minneapolis, and more rural markets, such as the state of Oklahoma.¹¹⁶ Lawyers who participated in the *After the JD* came from the full range of law schools and worked in a wide variety of legal and non-legal jobs.¹¹⁷

More than 3,500 of the new lawyers in the main sample responded to the first wave of the survey (2002) when they were in their second year as qualified attorneys, representing a response rate of

¹¹¹ See discussion *infra* Part III.C.1 and Table 2.

¹¹² See discussion *infra* Part III.C.2 and Table 3.

¹¹³ See discussion *infra* Part III.C.3 and Table 4.

¹¹⁴ A.B.A. Research, Current Projects: *After the JD*, <http://www.americanbarfoundation.org/research/project/44> (last visited Sept. 14, 2009).

¹¹⁵ DINOVITZER ET AL., *supra* note 5, at 89-90.

¹¹⁶ *Id.* at 28 fig.3.2.

¹¹⁷ *Id.* at 27 tbl.3.1.

71%.¹¹⁸ Fifty-eight percent of these respondents answered a long form of the *After the JD* questionnaire that included inquiries about their experiences during law school and current civic activities.¹¹⁹ Our analyses use data from this long form of the survey. The findings we discuss represent the experiences of attorneys who are very early in their careers, so we refer to them throughout as “new lawyers.”

The design of the *After the JD* sample results in a complex data structure that necessitates the use both of weights, so that the estimates represent the national population of new attorneys,¹²⁰ and of statistical adjustments to significance tests, so that the standard errors of estimates are corrected for the clustering of respondents within sampling units.¹²¹ Throughout this article, our estimates are weighted to represent the national population, and tests of statistical significance are corrected to take into account sample design.

B. Clinical Legal Education and the Skills Dimension

Our findings about the relationship between clinical training experiences and new lawyers’ development in the skills dimension rely on the perspective of legal education’s consumers, as does much extant empirical research on this question.¹²² The *After the JD* survey asked new lawyers: “How helpful were the following elements of your law school years in making the transition to your early work assignments as a lawyer?”¹²³

Among the queried elements were “clinical courses/training,” as well as other aspects of the formal curriculum, including legal writing training, upper-year lecture courses, course concentrations, first-year curriculum and legal ethics training. Lawyers were also asked about their summer and school-year legal employment, internships and *pro bono* service work during law school.¹²⁴ Respondents to the survey were asked to rate each element of legal education on a scale from 1

¹¹⁸ *Id.* at 90. Wave II (2007) data are not yet publicly available, though they may shed additional light on these questions. See A.B.A., AJD Data Access, http://www.americanbarfoundation.org/publications/AftertheJD/AJD_Data_Access.html (last visited Sept. 14, 2009).

¹¹⁹ DINOVITZER ET AL., *supra* note 5, at 89.

¹²⁰ GABRIELE PLICKERT & RONIT DINOVITZER, AFTER THE JD First Results Report: Technical Addendum 1-2 (June 2007), http://www.americanbarfoundation.org/uploads/cms/documents/weighted_AJDreport_9.6.07.pdf.

¹²¹ See generally HUBERT M. BLALOCK, JR., SOCIAL STATISTICS 523-27 (1972); Guishuang Ying & Ching Ching Yiu, *Statistical Analysis of Clustered Data Using SAS System* (2006), <http://www.nesug.org/proceedings/nesug06/an/da01.pdf>.

¹²² See, e.g., Garth & Martin, *supra* note 21; Ronald M. Pipkin, *Legal Education: The Consumers’ Perspective*, 1976 AM. B. FOUND. RES. J. 1161, 1161-92 (1976).

¹²³ DINOVITZER ET AL., *supra* note 5, Wave I Questionnaire 17 item 67 (2002) [hereinafter AFTER THE JD Wave I Questionnaire].

¹²⁴ *Id.*

(“not helpful at all”) to 7 (“extremely helpful”). They could also respond that the element was not applicable to them. Of the 2,278 respondents to the long form questionnaire, 1,896, or 83%, answered questions about their experiences in law school.¹²⁵

This survey question provides some of the most valuable information available to date about law students’ clinical experiences; it also presents some challenges for empirical analysis. First, we do not know important details about the clinical training new lawyers received. A variety of models exists in the field, including live-client community clinics that take a high volume of cases, live-client clinics that take few cases, seminar-style courses in which students work exhaustively on a single case and out-placements at legal aid or other hybrid settings.¹²⁶ Clinics similarly range widely in substantive focus, with some devoted, for example, to individual representation in general civil cases, group representation, impact litigation, criminal practice (defense and prosecution) or transactional work.¹²⁷ In addition, some students may have spent several terms in their law school’s clinical programs, while others will have spent only a brief time participating in clinical training. New lawyers’ reports on the helpfulness of clinical training will reflect a mix of these experiences, and the data do not permit us to disaggregate the method, substance or extent of respondents’ clinical training.

The second challenge for empirical analysis is particular to the *After the JD* survey design. Respondents were asked to rate the “helpfulness” of each element of law school training, and they were given the option of noting that the experience was not applicable. The pattern of responses suggests that some new lawyers may have rated experiences that they did not have, while others did not rate experiences that they probably did have. Table 1 reports the percentage of lawyers who rated each element and, among those providing a rating, the percentage that rated each law school experience as helpful or better (at least a “5” on the 7 point scale). For mandatory curricular offerings, the response rates are predictably high or universal. Virtually all respondents rated the first-year curriculum (100%) and legal writing training (99%), and a large majority rated legal ethics training (94%) and upper-year lecture courses (88%).¹²⁸

¹²⁵ Authors’ calculations from DINOVTZER ET AL., *supra* note 5, Wave I (2002) [hereinafter *AFTER THE JD* Wave I]. Our analyses of the *After the JD* data are original for this article. *After the JD* Wave I data, from the 2002 administration, are available for use by other analysts. See A.B.A. AJD Data Access, *supra* note 118.

¹²⁶ See *supra* note 3 and accompanying text and discussion *supra* Part II.B.

¹²⁷ See *supra* note 3 and accompanying text and discussion *supra* Part II.B, especially notes 92-98 and accompanying text.

¹²⁸ See *infra* Table 1 and note 131 and accompanying text.

For optional curricular offerings, however, some respondents may have rated as “not helpful” experiences that they did not have, and clinical courses and training are a case in point. Eighty-four percent of new lawyers rated the helpfulness of clinical training, implying that more than four-fifths of American attorneys who entered practice in 2000 participated in a clinic during law school. As noted above, available evidence suggests that perhaps one-third of U.S. law students enroll in clinics and up to two-thirds participate in “clinic” if it is broadly construed to include field placements or other externships.¹²⁹ We suspect, therefore, that some low ratings for the various elements of legal education, including clinics, reflect *no experience* rather than a less-than-helpful experience. As a result, we report here only the percentage of new lawyers who rated the experience as more helpful than not.¹³⁰

Table 1 ranks the elements of legal education by the percentage of raters who reported that the element was helpful for making the transition to early work experiences as a lawyer. The groupings in the table classify into four categories law school experiences that are statistically similar in terms of their rated helpfulness for making the transition into practice.

Table 1. New Lawyers’ Ratings of the Helpfulness of Legal Education Experiences. Percent providing a rating for each experience and percent rating each experience as helpful in making the transition to early work assignments as a lawyer. USA, 2002.¹³¹

Category by experience	% rating the experience	% of ratings as helpful to extremely helpful
I. Legal employment (summers)	91%	78%
II.a. Legal employment (school year)	71%	67%
II.b. Clinical courses/training	84%	62%
II.c. Legal writing training	99%	60%
II.d. Internships	60%	58%
III.a. Upper-year lecture courses	88%	48%
III.b. Course concentrations	83%	42%
III.c. First-year curriculum	100%	37%
IV.a. <i>Pro bono</i> service work	55%	31%
IV.b. Legal ethics training	94%	30%

¹²⁹ See *supra* notes 97-98 and accompanying text.

¹³⁰ This is a different measure than that used in the first *After the JD* report, which averaged the responses for each item. Though our measure is constructed differently, the resulting ranks for the helpfulness of elements of legal education are almost identical. The exception to this pattern is the relative ranking of legal ethics training and *pro bono* service work. By our measure, the former is ranked last; by the report’s measure, the latter is ranked last. Compare *infra* Table 1, note 131 and accompanying text, with DINOVIETZ ET AL., *supra* note 5, at 81 fig.11.1

¹³¹ Authors’ calculations (n=1896) from AFTER THE JD Wave I, *supra* note 125. In the

Category I includes the most highly rated experience – legal employment during summers – which received significantly higher ratings than any other element inside or outside the classroom.¹³² More than three quarters (78%) of new lawyers found summer legal employment helpful in making the transition to their work assignments as attorneys, and most attorneys (91%) reported on this experience.

Category II includes several experiences – school year legal employment, clinical courses or training, legal writing training and internships – which were not rated as highly as summer legal employment (i.e., each was rated significantly lower than summer legal employment), but which nonetheless were rated significantly more highly than the experiences in Categories III and IV.¹³³ Seventy-one percent of lawyers reported on school-year legal employment experiences, and two-thirds (67%) of them found these experiences helpful. As noted earlier, more than four fifths (84%) of lawyers reported on clinical legal education, with 62% rating it as helpful in making the transition to early work assignments as an attorney. Legal writing training, reported by nearly all (99%) of the respondents, was rated helpful by 60% of respondents. Finally, three-fifths (60%) of new lawyers reported internships during law school, and 58% of these found internships helpful as they moved in to practice.

Category III includes core experiences in the formal law school curriculum, all of which were rated significantly less helpful than those in Categories I and II and significantly more helpful than those in Category IV.¹³⁴ Upper-year lecture courses, rated by 88% of respondents, were found helpful by slightly less than half (48%) of those who rated them. Course concentrations were found helpful by 42% of the 83% of the attorneys who reported on them. The first year curriculum, reported by 100% of attorneys, was rated helpful by 37% of respondents.

Category IV includes *pro bono* service work and training in legal ethics, which received helpfulness ratings not significantly different

Table, education experiences are ranked by the proportion of new lawyers who rated them as at least helpful in making the transition to early work assignments as a lawyer.

¹³² See *supra* Table 1. In this article, we use the terms “significant” and “statistically significant” in ways conventional in contemporary social science. The issue of statistical significance arises any time one wishes to draw conclusions about an entire population based on a sample from that population. In this article, the population is U.S. lawyers who entered the profession in 2000 and the sample is respondents to the *After the JD* survey. Tests of statistical significance address the question of whether differences one observes in a given sample from a population approximate differences one would observe if one had taken a census of that population, *viz.* a sample that comprises every member of the population. See generally BLALOCK, *supra* note 121, at 201-05.

¹³³ See *supra* Table 1.

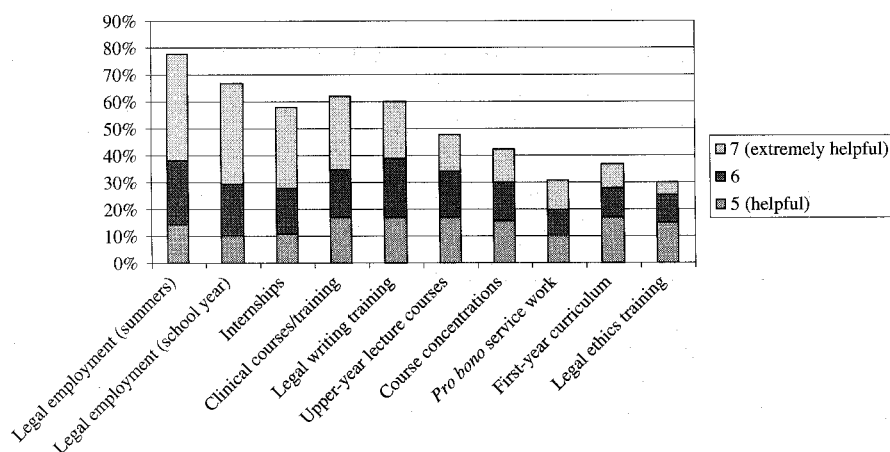
¹³⁴ *Id.*

from each other, but significantly lower than all of the elements in Categories I, II and III.¹³⁵ Slightly more than half of the respondents (55%) reported on *pro bono* work during law school, and 31% found this work helpful for making the transition to practice. Most attorneys (94%) reported on legal ethics training, but only 30% found it helpful in making the transition to early work assignments as attorneys.

A clear pattern emerges from Table 1: those law school experiences that involve the use of and training in skills that practicing lawyers use in their work are the experiences that new lawyers rate as most helpful for making the transition to practice.¹³⁶ This pattern persists even when we examine the ratings in more detail.

Figure 1 probes deeper into some of the data in Table 1 and reports the percentage of new lawyers who rated each element as helpful to extremely helpful in making the transition to practice. Figure 1 depicts the portion of each helpfulness rating that comes from values of 5 (indicating that the element was more helpful than not), 6 (indicating that the element was yet more helpful) and 7 (“extremely helpful”). Elements are listed in descending order, from left to right, of the percentage of lawyers who reported that they were “extremely helpful” in making the transition to practice.

Figure 1. New Lawyers’ Assessments of the Usefulness of Selected Elements of Law School Training. Percent rating each element of law school training as helpful for making the transition to early work assignments as a lawyer. USA, 2002.¹³⁷



¹³⁵ *Id.*

¹³⁶ An interesting exception to this pattern is *pro bono* service work, which received very low ratings relative to other elements of legal education.

¹³⁷ Authors' calculations (n=1016 to 1890, depending on the element of legal education; N/A responses excluded) from AFTER THE JD Wave I, *supra* note 125. Quantities

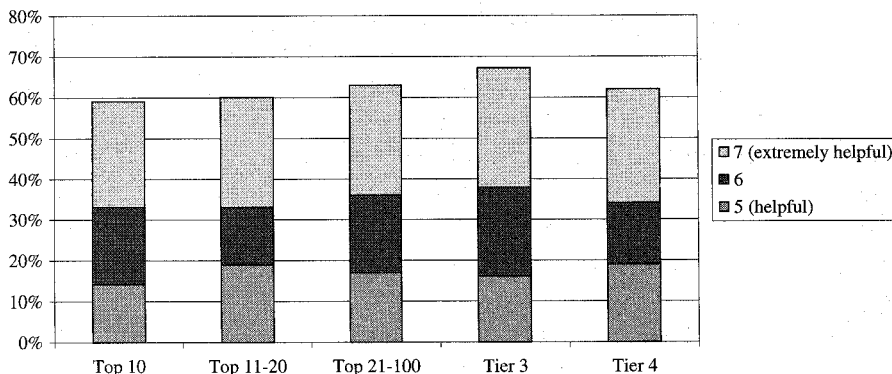
As Figure 1 indicates, clinical training is ranked fourth – after legal employment during summers, legal employment during the school year and internships – in the share of new lawyers who reported that it was “extremely helpful” (a value of 7) in making the transition to practice: 40% gave summer legal employment this rating, 38% gave the rating to school year legal employment, 30% gave the rating to internships and 27% gave the rating to clinical courses or training. The next most highly rated element by this measure is legal writing training, which 21% of new lawyers rated as extremely helpful. The differences between clinical courses and the lower-rated elements of law school training are statistically significant: new lawyers were significantly more likely to say that clinical training was “extremely helpful” for making the transition to practice than they were to make the same assessment of legal writing training, upper-year lecture courses, course concentrations, *pro bono* service, the first year curriculum and legal ethics training.

Clinical training was also highly rated across different kinds of law schools. Figure 2 reports the percentage of new lawyers graduated from each of the five groups of A.B.A.-accredited law schools identified by the *U.S. News & World Report* rankings who rated clinical education with a 5, 6 or 7.¹³⁸

reported are the percentage of respondents who rated the element with a 5, 6 or 7 on a scale from 1 to 7, where 1 represented “not at all helpful” and 7 represented “extremely helpful.” Elements are listed in descending order, from left to right, of the proportion of lawyers rating them as “extremely helpful” for making the transition to practice.

¹³⁸ Without endorsing the status rankings, we use the *U.S. News & World Report* law school rankings to group schools into five categories: Top 10, Top 11-20, Top 21-100, Tier 3 and Tier 4. We use these law school groupings because they are likely familiar to many readers. See Robert Morse & Sam Flannigan, *Law School Ranking Methodology: How We Rank Law Schools*, U.S. NEWS & WORLD REPORT, Apr. 4, 2009, available at <http://www.usnews.com/articles/education/best-law-schools/2009/04/22/law-school-rankings-methodology.html> (describing how the rankings are constructed).

Figure 2. New Lawyers' Assessments of the Usefulness of Clinical Courses/Training, by Law School Tier. Percent rating clinical training as helpful for making the transition to early work assignments as a lawyer. USA, 2002.¹³⁹



Across the groups of schools, graduates were about equally likely to rate clinical legal education highly. As Figure 2 shows, a majority of the graduates of schools in each group – between 58% and 67% – reported that clinical training had been helpful for “making the transition to early work assignments as a lawyer.”¹⁴⁰ Just over a quarter (26%) of graduates of Top 10 law schools favored clinical training with a rating of “extremely helpful” (7 on the 7-point scale), 27% did so from Top 11-20 and Top 21-100 schools, 29% did so at Tier 3 schools and 28% did so at Tier 4 schools. Between groups of schools, there were no statistically significant differences in ratings: clinical education was rated highly, and it was rated highly across the board.¹⁴¹

To summarize, new lawyers think that clinical education benefits them as they take on the work assignments of practicing attorneys. From the perspective of its consumers, clinical legal education is one of a group of experiences involving the hands-on cultivation of lawyering skills that facilitates the transition into practice. We turn now to an assessment of evidence about the relationship between clinical training and lawyers’ development on what we have termed the civic dimension, examining *pro bono* service, civic participation and public service employment.

¹³⁹ Authors’ calculations (n=1545; respondents’ missing data for law school tier and at unaccredited schools excluded; N/A responses excluded) from AFTER THE JD Wave I, *supra* note 125. Quantities reported are the percentage of respondents who rated the element with a 5, 6 or 7 on a scale from 1 to 7, where 1 represented “not at all helpful” and 7 represented “extremely helpful.”

¹⁴⁰ Chi-square tests of differences in ratings across pairs of school groupings revealed no statistically significant differences ($p < .05$).

¹⁴¹ Chi-square tests of differences in ratings across pairs of school groupings revealed no statistically significant differences ($p < .05$).

C. Clinical Legal Education and the Civic Dimension

To explore evidence of clinical training's contribution to the civic dimension of lawyer professionalism, we sought empirical indicators of whether law school graduates were "able and willing to join an enterprise of public service."¹⁴² Our analysis of new lawyers' behavior in the civic dimension of professionalism thus focuses on the work and volunteer activities of new lawyers. Lawyers may "provide public service through *pro bono* representation or professional or community activities,"¹⁴³ they may serve the public as employees of government, or they may work outside government in the public interest, "commit[ing] themselves and their legal skills to furthering a vision of the good society."¹⁴⁴ To assess the relationship between participation in clinic during law school and the civic dimension of lawyer professionalism, we examine three different aspects of new lawyers' activities: *pro bono* service; participation in community, charitable, political advocacy and bar-related organizations; and public service employment.

In these analyses, we explore the potential influence of clinical training by comparing the experiences of three groups of new lawyers: (1) those who reported that clinical legal education was not helpful for making the transition to early work assignments as an attorney; (2) those who reported that clinical training was not applicable to their experience; and (3) those who reported that clinical education was helpful for making the transition to early work assignments as an attorney. We focus on these three groups of new lawyers for a substantive reason. To the extent that new lawyers are reporting faithfully on their law school experiences, distinguishing them in this way allows us to explore the contribution of two different aspects of clinical training experiences: whether someone was exposed to clinical training at all, and whether that exposure was a valued experience.

In interpreting the findings, it will be important to keep in mind one of the insights from our analysis in Table 1. As we noted, it appears likely that some respondents who had not received any clinical training nevertheless rated that experience. We suspect that respondents who reported on the helpfulness of an experience they did not have would be likely to rate that experience as neutral or not helpful.

¹⁴² SULLIVAN ET AL., *supra* note 1, at 22.

¹⁴³ Robert L. Nelson, Rebecca L. Sandefur, John P. Heinz & Edward O. Laumann, *From Professional Dominance to Organizational Dominance: Professionalism, Inequality, and Social Change Among Chicago Lawyers, 1975-1995*, in REORGANIZATION AND RESISTANCE: PROFESSIONS CONFRONT A CHANGING WORLD 330 (William L.F. Felstiner ed., 2005).

¹⁴⁴ Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Authority: An Introduction*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 3, 3 (Austin Sarat & Stuart Scheingold, eds. 1998).

It is not possible with these data to compare people who experienced no clinical training to those who did, because some people who did not participate in clinic appear nevertheless to have rated clinical training's usefulness. We cannot identify these people and distinguish them from people who did receive training but did not find it helpful. This means that the group of new lawyers who said clinic was not helpful and the group that said it was not applicable will both contain some number of people who did not experience clinical training. This overlap between categories amounts to a type of *measurement error* that will tend to mute observed differences between the two groups, and the differences we find will likely be smaller than the differences that may actually exist.

As noted above, clinical training purports to *change* the people who experience it.¹⁴⁵ Given the available data, however, we cannot know whether students who received or valued clinical training would have turned out exactly the same even if they had experienced no clinical training. At most U.S. law schools, participation in clinics is a choice.¹⁴⁶ Students who sought out clinics or found them helpful might be students who already would have been more (or less) likely than others to do *pro bono* work, to volunteer in their communities or to seek out public service employment. In other words, students who opted for clinical training and found it helpful may have entered law with a greater (or lesser) orientation to its civic dimension than those who did not. This limitation of the data represents a form of *selection bias*, for which we attempt to control as described below.

The *After the JD* survey asked new lawyers to recollect their motivations for attending law school. Their responses thus represent their retrospective understanding of their own reasons for entering the profession. A majority of new lawyers reported that what might be termed "civic" motivations were important reasons for entering law. Of new lawyers in 2002, 62% reported that a "desire to help individuals as a lawyer" or to "change or improve society" had been "important . . . goals in [their] decision to attend law school."¹⁴⁷ Comparing lawyers who rated clinics as helpful versus not helpful revealed that

¹⁴⁵ See discussion *supra* Part II, especially notes 68, 73-75, 77-79, 87, 90 and accompanying text.

¹⁴⁶ The C.S.A.L.E. Report survey of law schools found that, among schools in its sample, "just over 2% . . . require students to enroll in an in-house, live client clinic before graduating, and less than 1% (0.7%) requires students to enroll in a field placement before graduating. Excluding these two groups of schools, 6.3% of the remaining schools require" students to enroll in one or the other type of clinical education before graduation. SANTACROCE & KUEHN, *supra* note 7, at 10.

¹⁴⁷ Authors' calculations from AFTER THE JD Wave I, *supra* note 125; AFTER THE JD Wave I Questionnaire, *supra* note 123, at 16 item 66.

their recollected motives for entering law were significantly different. Of lawyers who reported that clinical training had been helpful, 70% reported that a “desire to help individuals as a lawyer” or to “change or improve society” had been important reasons for entering law. By comparison, 56% of those who did not report on any clinical training said that they had entered law to change society or help individuals,¹⁴⁸ while 51% of attorneys who did not rate clinic as helpful reported that these motivations had been important in their decision to attend law school.¹⁴⁹ Thus, at least in their own recollection, new lawyers who experienced and appreciated clinical training were more likely to recall that they had entered law for what one might term “civic” reasons than were lawyers who did not receive the training or who did not find it helpful.

In our analyses of the relationship between clinical training experiences and civic dimension behaviors, we control for the influence of civic motivations by a method called stratification.¹⁵⁰ That is, we control for new lawyers’ motivations for entering law as a way of better isolating the association between clinical experiences and civic dimension behaviors. We report the relationship between clinical training experiences and civic dimension behaviors for the whole sample of new attorneys, and separately for two groups: those who reported civic motivations for entering law, and those who did not.

Examining the data in this way produces two interesting findings explored in more detail below.¹⁵¹ First, new lawyers’ recollected reasons for joining the profession are significantly associated with civic dimension behaviors. Those who recalled civic motivations for going to law school were more likely to engage in some civic dimension behaviors – public service employment and civic participation – than were those who recalled other reasons for entering the profession. Perhaps counter-intuitively, civic-motivated lawyers were also signifi-

¹⁴⁸ *Id.* The difference between the group who reported no clinical training (56%) and lawyers who reported that clinical training was helpful (70%) is statistically significant ($\chi^2=17.7$, $df=1$, $p<.001$).

¹⁴⁹ *Id.* The difference between lawyers who reported no clinical training (56%) and those who reported that clinical training was not helpful (51%) is not statistically significant ($\chi^2=1.6$, $df=1$, $p=.20$). The difference between lawyers who reported that clinic was not helpful (51%) and those who reported that clinic was helpful (70%) is statistically significant ($\chi^2=45.7$, $df=1$, $p < .001$).

¹⁵⁰ This method of control is “perhaps the most straightforward and the one most directly analogous to the laboratory experiment in which control variables are actually physically held constant But there is a fundamental difference that is crucial in connection with one’s *interpretations* of the results. When we control statistically, we carry out paper and pencil manipulations in which we adjust scores or move individuals around from one table to another. But we do not actually manipulate their true scores” on any variables in the analysis. BLALOCK, *supra* note 121, at 304 (emphasis in original).

¹⁵¹ See *infra* Tables 2-4 and accompanying text.

cantly *less* likely to engage in another civic dimension behavior, *pro bono* service.

Second, the relationship between clinical training experiences and civic dimension behaviors is contingent on new lawyers' reasons for entering the profession. In particular, clinical training experiences are positively associated with civic behaviors *only* for those new lawyers who report civic motivations for entering law. This finding suggests that any clinic effect in the civic dimension may be more powerful for some groups of students than for others.¹⁵² We turn now to our specific findings from analyses of the relationship between clinical training experiences and *pro bono* service, participation in civic organizations and public service employment.

1. Pro Bono Service

Our investigation of *pro bono* service, summarized in Table 2, focuses on attorneys who worked in private practice or as internal counsel of non-government organizations, whether for-profit or not-for-profit. We restrict our analysis to this group of attorneys because they are significant sources of *pro bono* labor in the United States,¹⁵³ and because many lawyers who work for government are not permitted to do any legal work outside of their paid employment.¹⁵⁴ Table 2 reports new lawyers' participation in *pro bono* activities by clinical training experience and recollected motivations for entering law school.

¹⁵² See discussion *infra* Part III.C.2, especially Table 3 and accompanying text.

¹⁵³ In particular, private practice attorneys working in multi-lawyer firms are a substantial source of *pro bono* labor. In 1984, 41% of the *pro bono* hours served in organized civil *pro bono* programs in the United States came from lawyers in private practice firms of 20 or more attorneys. Rebecca L. Sandefur, *Lawyers' Pro Bono Service and Market-Reliant Legal Aid*, in *PRIVATE LAWYERS IN THE PUBLIC INTEREST 100* (Robert Granfield & Lynn Mather eds., 2009 [in press]). In the *After the JD* survey results, 72% of new lawyers' total *pro bono* hours were served by new attorneys in private practice law firms of 20 or more lawyers. *Id.* at 101. See also Steven A. Boucher, *The Institutionalization of Pro Bono in Large Law Firms: Trends in the AmLaw 100*, in GRANFIELD & MATHER, *supra*; Scott Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1 (2004).

¹⁵⁴ See A.B.A., STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE & GOVERNMENT AND PUBLIC SECTOR LAWYERS DIVISION, *Statutory Prohibitions and Permissions*, in *PRO BONO PROJECT DEVELOPMENT: A DESKBOOK FOR GOVERNMENT AND PUBLIC SECTOR LAWYERS* 5-10 (1998).

Table 2. New Lawyers' Participation in *Pro Bono* Service, by Clinical Training Experiences and Motivations for Entering Law. Percent in private practice and for-profit internal counsel reporting any *pro bono* service during the prior year. USA, 2002.¹⁵⁵

	Any <i>pro bono</i> service during previous year
NEW LAWYERS	44%
No clinical courses/training	43%
Clinical courses/training not helpful	44%
Clinical courses/training helpful	45%
NEW LAWYERS WHO ENTERED LAW TO HELP INDIVIDUALS OR CHANGE/IMPROVE SOCIETY	41%†
No clinical courses/training	41%
Clinical courses/training not helpful	37%
Clinical courses/training helpful	43%
NEW LAWYERS WHO ENTERED LAW FOR OTHER REASONS	49%†
No clinical courses/training	46%
Clinical courses/training not helpful	51%
Clinical courses/training helpful	48%

As Table 2 indicates, of new attorneys working in private practice or as internal counsel, 44% reported that they had done at least some *pro bono* work during the previous year. There was no relationship between clinical experiences and *pro bono* service for these lawyers: among lawyers who rated clinical training as less than helpful, 44% reported *pro bono* service; among lawyers who did not report any clinical training, 43% reported *pro bono* service; among lawyers who rated clinical training as helpful, 45% reported doing some *pro bono* work in the year prior to being surveyed. Though these differences appear to be in the expected direction – valuing clinical training is associated with more *pro bono* – they are not statistically significant.¹⁵⁶

Controlling for their recollected reasons for entering the profession, we see that new lawyers working in private practice or as internal counsel who reported that they entered law with civic motivations were significantly *less* likely to have done *pro bono* work (41%) than those who entered law for other reasons (49%).¹⁵⁷ Because these are recollected reasons for entering law, we cannot know to what extent new lawyers' current activities are shaping their recollections of their

¹⁵⁵ Authors' calculations (n=1894) from AFTER THE JD Wave I, *supra* note 125.

† Difference between these two quantities is statistically significant ($\chi^2 = 6.0$, df=1, $p < .05$).

¹⁵⁶ Authors' calculations from AFTER THE JD Wave I, *supra* note 125.

¹⁵⁷ See *supra* note 155.

past motivations, nor to what extent their motivations are shaping their current activities. Whatever the causal relationship, this is an intriguing finding; at the very least, it suggests that the relationship between lawyers' civic identity and actual civic participation is complex.¹⁵⁸

Examining the relationship between clinical training experiences and *pro bono* service within groups of lawyers who reported similar motivations for entering law, there are no statistically significant differences.¹⁵⁹ Among lawyers who recalled that they entered law to help individuals or change or improve society, 37% of those who reported that clinical training was not helpful did *pro bono* work, 41% of those who reported no clinical training did *pro bono* work, and 43% of those who reported that clinical training was helpful did *pro bono* work. Again it may appear as though helpful clinical training correlates with increased *pro bono* work, but these differences are not statistically significant. Among lawyers who recollected that they entered law for other reasons, 51% of those who reported clinical training was not helpful did *pro bono* work, 46% of those who reported no clinical training did *pro bono* work, and 48% of those who reported clinical training was helpful did *pro bono* work; as before, none of these differences is statistically significant. Given these data, we find no relationship between clinical training in law school and *pro bono* service by new attorneys in private practice and offices of internal counsel.

2. Civic Participation

Our investigation of civic participation, summarized in Table 3, explores the relationship between clinical training and lawyers' participation in four different kinds of organizations: community organizations,¹⁶⁰ charitable organizations, political advocacy groups and bar-related organizations.¹⁶¹ The *After the JD* survey asked lawyers to report if they were current or past members or "active participants/officers" in each type of organization. Our analysis focuses on lawyers' active participation, and Table 3 reports new lawyers' participation in these four types of civic activities by clinical training experience and motivations for entering law school.

¹⁵⁸ See *supra* Table 2 and notes 153, 156 and accompanying text.

¹⁵⁹ See *supra* Table 2.

¹⁶⁰ In this group of organizations, we included "PTA or other school organization," "community/civic associations," and "service organizations (e.g., Kiwanis, Rotary)." See AFTER THE JD Wave I Questionnaire, *supra* note 123 at 13 item 45.

¹⁶¹ In this group of organizations, we included "A.B.A.," "state or local bar associations," and "substantive sections of bar associations." *Id.*

Table 3. New Lawyers' Participation in Four Types of Civic Organizations, by Clinical Training Experiences and Motivations for Entering Law. Percent reporting taking an active or formal leadership role in each type of organization. USA, 2002.¹⁶²

	Community organizations	Charitable organizations	Political advocacy	Bar organizations
NEW LAWYERS	12%	13%	3%	13%
No clinical courses/training	13%	11%	3%	9%
Clinical courses/training not helpful	12%	14%	4%	14%
Clinical courses/training helpful	13%	14%	3%	14%
NEW LAWYERS WHO ENTERED LAW TO HELP INDIVIDUALS OR CHANGE/IMPROVE SOCIETY	13%	15%†	4%‡	15%††
No clinical courses/training	13%	12%*	5%	9%
Clinical courses/training not helpful	15%	13%	4%	17%
Clinical courses/training helpful	13%	16%*	4%	15%
NEW LAWYERS WHO ENTERED LAW FOR OTHER REASONS	10%	11%†	2%‡	12%††
No clinical courses/training	14%	10%	2%	10%
Clinical courses/training not helpful	9%	12%	3%	11%
Clinical courses/training helpful	9%	10%	2%	13%

Overall, as Table 3 indicates, 12% of respondents reported they were active participants or leaders in community organizations, 13% in charitable organizations, 3% in political advocacy groups and 13% in bar-related organizations.¹⁶³ These rates of participation were similar among lawyers who reported different kinds of clinical experiences. Whether new lawyers reported that their clinical training had not been helpful, that they had not received clinical training, or that it had been helpful, there were no statistically significant differences in their likelihood of active participation in any of the four types of civic organizations.

On the other hand, lawyers' recollected motivations for entering law were significantly associated with their civic participation.¹⁶⁴ Attorneys who reported that they had entered law to help individuals or change or improve society were more likely to be active in charitable,

¹⁶² Authors' calculations (n=1894) from AFTER THE JD Wave I, *supra* note 125.

† Difference between the two quantities is statistically significant ($\chi^2 = 4.8$, df=1, $p < .05$).

‡ Difference between the two quantities is statistically significant ($\chi^2 = 6.4$, df=1, $p < .05$).

†† Difference between the two quantities is statistically significant ($\chi^2 = 5.2$, df=1, $p < .05$).

* Difference between the two quantities is statistically significant ($\chi^2 = 4.2$, df=1, $p < .05$).

¹⁶³ See *supra* Table 3.

¹⁶⁴ *Id.*

political advocacy and bar-related organizations. Fifteen percent of those who reported civic motivations for entering law were active in charitable organizations, in comparison with 11% of those who did not. Four percent of those who entered law for civic reasons were active in political advocacy organizations, in comparison with 2% of those who entered law for other reasons. Fifteen percent of those who entered law for civic reasons were active in bar organizations, in comparison with 12% of those who reported that they entered law for other reasons. A similar pattern appears for active participation in community organizations, but the difference is not statistically significant.

When we look among lawyers who reported similar reasons for entering law, the picture changes, but only a little.¹⁶⁵ Controlling for recollected motivations, we do not see significant relationships between clinical experiences and different kinds of community participation, with a single exception. The exception is active participation in charitable organizations. Among new lawyers who recalled that they entered the profession to change society or help individuals, 13% of those who reported clinical training was not helpful were active in such organizations, 12% of those who reported no clinical training were active in charitable organizations, and 16% of those who found clinical training helpful were active in charitable organizations. The difference in participation between lawyers in the group who reported no clinical training and those who reported helpful clinical training is statistically significant. However, given the available data concerning civic participation as a whole, we find little evidence for a relationship between clinical training experiences and civic participation among new lawyers.

3. *Public Service Employment*

Finally, we examined the relationship between clinical experiences in law school and new lawyers' public service employment, as summarized in Table 4. We classify as public service employment all work in public interest law and for state, local or federal government, but we exclude temporary judicial clerkships. Sixteen percent of the attorneys in our sample were employed in public service.¹⁶⁶ Of these public service attorneys, 20% were working in legal services or public defense, 6% were working in public interest law and 74% were working for agencies of local, state or federal government. Table 4 reports public service employment by clinical training experience and motiva-

¹⁶⁵ *Id.*

¹⁶⁶ Authors' calculations from AFTER THE JD Wave I, *supra* note 125.

tions for entering law school.

Table 4. New Lawyers' Employment in Public Service Work, by Clinical Training Experiences and Motivations for Entering Law.
Percent reporting public service employment. USA, 2002.¹⁶⁷

	Employed in public service
NEW LAWYERS	
No clinical courses/training	9% ^a
Clinical courses/training not helpful	11% ^b
Clinical courses/training helpful	20% ^{a,b}
NEW LAWYERS WHO ENTERED LAW TO HELP INDIVIDUALS OR CHANGE/IMPROVE SOCIETY	20% ^c
No clinical courses/training	12% ^d
Clinical courses/training not helpful	12% ^e
Clinical courses/training helpful	25% ^{d,e}
NEW LAWYERS WHO ENTERED LAW FOR OTHER REASONS	10% ^c
No clinical courses/training	7%
Clinical courses/training not helpful	11%
Clinical courses/training helpful	10%

Among those who reported that clinical training was not helpful, 11% were working in public service jobs. Among those who did not report on clinical training, 9% were working in public service jobs. But among those who rated their clinical training as helpful, 20% were working in such positions.

These differences are substantial and statistically significant. Early-career attorneys who found their clinical experience helpful were 82% $(= (.20-.11)/.11)$ more likely to be working in public service in their early careers than those who did not find it helpful.¹⁶⁸ They were 122% $(= (.20-.09)/.09)$ more likely to be working in public service than those who did not report on clinical experiences.¹⁶⁹ Further analysis, however, reveals that the relationship between clinical experiences and public service employment is statistically significant for only some groups of lawyers.

¹⁶⁷ Authors' calculations (n=1896) from *id.*

^a Difference between the two quantities is statistically significant. ($\chi^2 = 9.6$, df=1, $p < .05$).

^b Difference between the two quantities is statistically significant. ($\chi^2 = 20.0$, df=1, $p < .05$).

^c Difference between the two quantities is statistically significant. ($\chi^2 = 17.3$, df=1, $p < .05$).

^d Difference between the two quantities is statistically significant. ($\chi^2 = 7.5$, df=1, $p < .05$).

^e Difference between the two quantities is statistically significant. ($\chi^2 = 11.6$, df=1, $p < .05$).

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

As was the case with *pro bono* service and civic participation, lawyers' public service employment was significantly associated with their recollected motivations for entering law. New lawyers who recalled civic motivations for entering law were twice as likely to be working in public service jobs as those who did not (20% versus 10%). The second two panels of Table 4, which control by stratification for lawyers' reasons for entering law, reveal that clinical experiences are significantly associated with public service employment *only* for new lawyers who expressed civic motivations. Within this group of lawyers, those who found clinical training helpful were more than twice as likely to be working in public service jobs as those who did not report on clinical training or did not find clinic helpful (25% versus 12%). Among new lawyers who did not express civic motivations for entering law, 11% of those who did not find clinic helpful were working in public service jobs two years into their legal careers, 7% of those who reported no clinical training were working in public service employment, and 10% of such lawyers who found clinic helpful were doing so. None of these differences is statistically significant and thus there was no relationship between clinic experiences and public service work in this group of lawyers.

Only among new lawyers who report that they entered law to improve society or help individuals do we see evidence consistent with a "clinic effect." These lawyers are more likely to be in public service employment overall, and those who found clinic helpful are more than twice as likely to be working in public service employment than those who did not. This finding suggests the possibility of an accelerant effect, though it is not clear what is accelerating what. Clinical experiences may support or otherwise enable the public service work of people who are already more likely to do that work.¹⁷⁰ Alternatively, clinical experiences may change the self-understandings of people who are helped into public service work by their clinical training. For example, a clinic graduate working in legal services may come to realize, *post facto*, that she entered the profession "to help individuals as a lawyer" or to "change or improve society" after all. Finally, people

¹⁷⁰ Others have interpreted analogous evidence consistent with these findings. Though the results did not reach statistical significance in their relatively small sample size, researchers found law students more than twice as likely to take a "nontraditional" (public interest) job upon graduation if they had participated in a law school program with a social action component. Researchers concluded that the combination of the "subcultural" support provided by the social action programs and students' existing political commitments was important in determining "the 'staying power' of a pre-law school interest in a non-traditional career." Howard S. Erlanger, Charles R. Epp, Mia Cahill & Kathleen M. Haines, *Law Student Idealism and Job Choice: Some New Data on an Old Question*, 30 LAW & SOC'Y REV. 851, 860 (1996).

who entered law with civic motivations and take up public service work may give greater value to their clinical training because of its congruence with both their past motivations and their present employment. Probably, a mix of these processes occurs. With these data, it is not possible to determine precisely which processes are operating for which lawyers.

While not definitive, the available evidence is consistent with the presence of a “clinic effect” on public service employment. However, the relationship between clinical experiences and employment outcomes obtains only for some new lawyers: those who recollected that they came to law school wishing to “help individuals as a lawyer” or “change or improve society.” What is not clear from the correlation between clinical experiences and public service employment is how any such effect might be created. In particular, it is not clear to what extent clinical training may affect what jobs students want or to what extent it affects the jobs they are able to get.

D. Summary

These data permit us to observe associations, but we do not have enough information to establish causality. Thus, we can assess whether our findings are consistent or inconsistent with an impact of clinic participation on lawyers’ development on the skills and civic dimensions, but we cannot determine whether clinic causes what we observe. Our findings for a “clinic effect” on lawyers’ acquisition of lawyering skills and participation in civic behaviors are mixed but suggestive.

The skills dimension. New lawyers rated clinical training as one of the most helpful elements of the law school curriculum for making the transition to early work assignments as attorneys.¹⁷¹ This finding is consistent with a clinic effect: clinical education’s consumers find it useful as they move out of law school and into their jobs as qualified lawyers. This finding does not tell us that clinic made them more competent or skilled at their work, necessarily, but it does suggest that clinic was beneficial to them in their work. Certainly, it is reasonable to surmise that part of what made clinic helpful for new lawyers taking up their new work assignments was its conferral of some kinds of lawyering skills.

The civic dimension. Our findings on the relationship between clinical training during law school and new lawyers’ civic dimension behaviors are mixed. We found no relationship between clinical experiences and *pro bono* service by private practice attorneys and in-

¹⁷¹ See discussion *supra* Part III.B, especially Table 1 and Figures 1-2.

ternal counsel.¹⁷² This finding held when we controlled for lawyers' reasons for entering the profession.¹⁷³ Likewise, we found no consistent relationship between clinical training experiences and new lawyers' active participation in community, charitable, bar-related and political advocacy groups.¹⁷⁴ This pattern also held – with one exception – when we looked for relationships between civic participation and clinical experiences within groups of lawyers who expressed similar motivations for entering law.¹⁷⁵ However, we did find a strong relationship between clinical training experiences and public service employment. But this relationship held only for new lawyers who reported they had entered the profession for what might be termed “civic” reasons: a wish to help individuals as a lawyer or to change or improve society.¹⁷⁶

These findings are intriguing, but there is much that we still do not know about the clinic effect. Coming to know more will require the collection of new and better information about the role of clinical legal education in preparing students for the practice and profession of law. In closing, we reflect upon the implications of our findings and suggest several areas for future research.

IV. MINDING THE GAP

As described above, legal education consistently has been critiqued for its failure to prepare students for the practice and profession of law. This failure produces graduates with deficits in both the skills and civic dimensions of professional development. Proponents of clinical legal education and others have suggested that law school clinics are engaging sites of instruction where students acquire both practical skills and public service commitments. At the same time, little empirical evidence exists to demonstrate this “clinic effect” on law students.

To begin to fill this evidence gap, we analyzed data from *After the JD*, a national survey of early-career attorneys. The information available allowed us to examine lawyers' ratings of the usefulness of law school clinical experiences for making the transition to practice – approximating the skills dimension – and to look for associations between clinical experiences during law school and lawyers' civic dimension behaviors during their early careers. Our analysis produced findings that might soothe and trouble clinical legal education's advo-

¹⁷² See discussion *supra* Part III.C.1 and Table 2.

¹⁷³ See *id.*, especially notes 157-59 and accompanying text.

¹⁷⁴ See discussion *supra* Part III.C.2 and Table 3.

¹⁷⁵ See *id.*, especially notes 164-65 and accompanying text.

¹⁷⁶ See discussion *supra* Part III.C.3 and Table 4.

cates and detractors alike.

On the question of skills development, clinical training is more useful for making the transition to the actual practice of law than are most other law school experiences, particularly the doctrinal courses so frequently the target of the standard critique. However, while the evidence suggests that clinics help new lawyers feel better prepared for the practice of law, we do not know why new lawyers find clinical training helpful, nor whether new lawyers actually *are* better prepared in the sense of having more or better practice skills.

On the question of civic development, our analysis produced important new findings. Some of these are null findings, or findings of no association. For example, we find no evidence of a relationship between clinical training experiences and new lawyers' *pro bono* service. We similarly find no consistent evidence of a relationship between clinical training experiences and new lawyers' civic participation. Finally, we find no evidence of a relationship between clinical training experiences and public service employment for the large group of new lawyers who remember entering law for reasons unrelated to changing society or helping individuals. But for another large group of new lawyers – those who recall that they came into law hoping to improve society or help individuals – we find a strong relationship between clinical training experiences and public service employment. For this group of new lawyers, clinical training may have been an important factor in sustaining or accelerating their original civic commitments. But we qualify our findings, because the existing data are insufficient to establish the causal role of clinical training.

A. *What We Still Don't Know*

Separate and apart from the limitations of the *After the JD* data, available evidence to assess the clinic effect is still wanting in several important ways. First, our field-wide state of knowledge about existing models of clinical training is thin. Although efforts are underway to begin gathering such information, no one has developed a typology of clinics, including – to suggest a few major categories – their teaching methods, domain content or distribution across different kinds of law schools.¹⁷⁷ Undoubtedly various models and methods of clinical legal education will produce different effects on students, but we cannot begin to investigate these effects until we know what kinds of clinical training students are actually receiving.

Second, much of the available data about lawyers' work and ex-

¹⁷⁷ Examples of such efforts include the *C.S.A.L.E. Report*, *supra* note 7, and Andrew Morriss' study of the prevalence and distribution of "service" and "impact" clinics across law schools. Morriss, *supra* note 99.

periences comes from studies that collect information at a single moment in time. Studies of lawyers in practice can provide us only with retrospective constructions of law school experiences, while studies of students during law school can provide information only about their aspirations, attitudes or future career plans, but not about their actual jobs or behavior once they become fully qualified professionals. We cannot begin to disentangle the impact of clinical experiences from that of other law school experiences – or of lawyers’ motives for pursuing law, or of still other factors – without the kinds of information that will allow us to compare people who are otherwise similar *before* they experience (or don’t experience) clinical training. A prospective study of the impact of legal education on lawyers’ careers could follow students from the start of law school into their careers as attorneys. This kind of study would permit researchers to compare the lawyering skills, *pro bono* service, community participation, job choices and other experiences of students who were otherwise similar before they did or did not participate in clinics.

Third, existing research is inattentive to the contexts within which clinical training is provided and within which young lawyers work. During law school, clinical training reflects the experience of a single course, or maybe two, in a curriculum still dominated by the teaching of doctrine.¹⁷⁸ How clinic affects students will be shaped by their other law school experiences. As noted above, some studies of law school socialization find a marked reorientation of law students’ civic commitments over time.¹⁷⁹ But this clearly does not happen for all students. We and others find evidence that some students’ commitments to public service work may be sustained or strengthened by certain law school experiences, including clinical training.¹⁸⁰ Clinical training must be assessed and understood in the context of the other experiences that a law school offers its students.¹⁸¹

¹⁷⁸ See generally Anthony Amsterdam, *Clinical Legal Education – A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 618 (1984) (asserting that only through much greater exposure in the curriculum could the impact of clinical methods be “realistically assessed in comparison with the values of the law schools’ traditional commitment of the overwhelming bulk of teaching resources to the multiplication of classroom courses in a wide variety of substantive subject matters.”).

¹⁷⁹ See, e.g., GRANFIELD, *supra* note 24; SCHLEEF, *supra* note 25; STOVER & ERLANGER, *supra* note 27.

¹⁸⁰ See discussion *supra* Part III.C.3; see also Erlanger et al., *supra* note 170.

¹⁸¹ For general doubts about the extent to which professional socialization occurs in law school, see, e.g., Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School*, 13 LAW & SOC’Y REV. 11, 31 (1978-1979); and Eleanor W. Myers, “Simple Truths” About Moral Education, 45 AM. U. L. REV. 823, 826 (1996). In particular, law school training may have less impact than early-career experiences. See, e.g., Lawrence K. Hellman, *The Effects of Law Office Work on the Formation of Law Students’ Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1991). At

Outside of the law school environment, studies of lawyer professionalism consistently find four factors to be very powerful in shaping lawyers' behaviors: where they work, with and for whom they work, and the market conditions within which they operate.¹⁸² It would take a very powerful law school training experience indeed to overwhelm the pressures and imperatives of these aspects of lawyers' daily work lives. The influence of immediate circumstances to shape lawyers' public service behavior can be seen clearly in contemporary research on *pro bono* participation, whether one focuses on lawyers' attitudes about *pro bono* service or on their behavior with respect to it. For example, a recent study finds a "minimal impact" on attorneys' *pro bono* attitudes "of law school exposure to *pro bono* and public service."¹⁸³ Rather, "when it comes to the meaning of *pro bono*, the institutional effects of the workplace . . . outweigh the socialization effects of law school."¹⁸⁴ Another recent study found that lawyers' rates of actual participation in *pro bono* service are much more sensitive to conditions in legal markets than to attempts of the profession to encourage such work.¹⁸⁵

Market context clearly shapes not only what lawyers want to do, but what they are able to do. For example, it is quite possible that the main brake on new lawyers' employment in public service jobs is the supply of such positions, rather than law graduates' demand for them. Certainly, this is an argument put forth periodically to explain the rel-

the same time, not all law practice experience contributes to professional responsibility and ethical behavior. See, e.g., Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705 (1998). Some have called for additional study of law firm practices in this area. See, e.g., Elizabeth Chambliss & David B. Wilkins, *Promoting Effective Ethical Infrastructure in Large Law Firms: A Call for Research and Reporting*, 30 HOFSTRA L. REV. 691 (2002).

¹⁸² See, e.g., HEINZ ET AL., *supra* note 103 (arguing for the importance of the kinds of clients lawyers serve and the kinds of organizations in which they work in shaping lawyers' work and behavior); LYNN MATHER, CRAIG A. McEWEN & RICHARD J. MAIMAN, *DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE* (2001) (arguing for the importance of communities of practice in shaping lawyers' work and behavior); CARROLL SERON, *THE BUSINESS OF PRACTICING LAW: THE WORK LIVES OF SOLO AND SMALL FIRM ATTORNEYS* (1996) (arguing for the importance of the kinds of clients lawyers serve, lawyers' gender and age, and broad economic conditions in shaping lawyers' work and behavior).

¹⁸³ Robert Granfield, *The Meaning of Pro Bono: Institutional Variations in Professional Obligations Among Lawyers*, 41 LAW & SOC'Y REV. 113 (2007).

¹⁸⁴ *Id.* at 135. For example, attorneys in large law firms operate in an arena where organized *pro bono* service has become institutionalized and are "more supportive of mandatory proposals." On the other hand, small-firm and solo practitioner attorneys rely on *pro bono* as a means of attracting clients but oppose mandatory *pro bono*. The stiff competition and small margins faced by lawyers who work in this sector of the legal services market encourage a less favorable attitude toward mandatory free service. *Id.* at 138-39.

¹⁸⁵ See Sandefur, *supra* note 17.

atively small number of lawyers who take such positions.¹⁸⁶ If the market for public service positions is at all competitive, then clinical experience may be used by employers as a signal of new lawyers' competence, skill and/or commitment. In this context, many new lawyers might want such jobs, but those with clinical training would have a better chance of getting them. Only with more information about the demand side of the market for lawyers can we assess fully the clinic effect in this dimension.

Clinical training's impact, therefore, is mediated by the nature of the clinic experience itself, the context of the overall law school experience and forces external to legal education that powerfully shape lawyers' attitudes and behavior. Identifying a clinic effect will require additional study that begins to account for this range of factors.

B. How We Might Learn More

In response to gaps in existing data, we propose a research agenda that might proceed at two levels. First, clinicians could pursue lines of inquiry that involve documenting what they are already doing. In this research, clinicians could identify, describe and measure important aspects of their work. This research could produce new knowledge about clinical training by: (1) indentifying the specific lawyering skills and civic attitudes and behaviors that clinical instructors seek to teach and transmit; (2) describing the methods through which they do so; and (3) measuring how effectively their clinics achieve these instructional goals. Such evaluation projects would not need to be elaborate to be informative.

There will be limits, however, to what can be learned about clinical practice and its impact from isolated clinicians studying their own programs. Transcending these limits will require clinicians to collaborate with each other and to work with social scientists. Conducting empirical research on the impact of clinical training could involve multiple law schools working together to study clinics' impact on their students and working with social scientists to design more rigorous studies. Clinicians and social scientists could design research protocols that collect comparable information about training programs, student experiences and graduated students' skills and civic dimension outcomes.

In the first stage of this larger research program, clinicians would document what actually happens in their clinical programs, with a par-

¹⁸⁶ See, e.g., Howard S. Erlanger, *Young Lawyers and Work in the Public Interest*, 3 LAW & SOC. INQUIRY 83 (1978); Christa McGill, *Educational Debt and Law Student Failure to Enter Public Service Careers: Bringing Empirical Data to Bear*, 31 LAW & SOC. INQUIRY 677 (2006).

ticular focus on describing instructional models. Clinicians would share their findings with one another and collaborate to develop an empirically grounded typology of existing models. If clinicians decided to push the research agenda further to explore clinics' impact, collaborating law schools would join forces to study their students both before and after contact (or not) with clinical programs. These schools could take a census or select a representative sample of their entering law students. These students would be followed throughout law school and into their post-graduate careers. Upon entry, students in each school's research sample would be surveyed about their motivations for entering law and about their plans for *pro bono* service, community participation and future work. Every school that participated in the collaboration would give the same survey, so that the information collected would be comparable across schools and clinical programs. Participating schools could also administer skills assessments to the students in their research samples. One assessment could come near the beginning of law school and another near the end or after graduation. The protocol could take a variety of forms as long as the participating schools administered the same instrument to ensure that skills information was comparable across different law schools and clinical programs.

At least two distinct models for collecting independent assessments of lawyers' practice skills have been developed and could be applied to investigating the clinic effect. One approach is *psychometric*: develop tests that assess competence. A particularly creative psychometric approach is represented in the Predictors of Successful Lawyering Project noted above.¹⁸⁷ Project researchers have identified twenty-six "effectiveness factors" that make for skilled law practice, and have produced a "set of scales that could be used by an observer to evaluate the effectiveness of an attorney."¹⁸⁸ Scales like these could be used to design tests to evaluate new lawyers' competence in the skills dimension (and perhaps in aspects of the civic dimension).

Another possible approach to skills assessment is an *audit study*. Here, participating schools would audit their students' or graduates' actual or simulated practice. This could be done through the use of peer review – where independent lawyers review case files and assess whether appropriate practice was used – or through the use of "standardized" clients, where trained observers pose as clients and seek legal services, collecting information about how lawyers perform.¹⁸⁹

¹⁸⁷ Schultz & Zedeck, *supra* note 105.

¹⁸⁸ Linley Erin Hall, *What Makes for Good Lawyering?*, UNIVERSITY OF CALIFORNIA, BERKELEY, SCHOOL OF LAW TRANSCRIPT, Summer 2005, at 24.

¹⁸⁹ Karen Barton, Clark D. Cunningham, Gregory Todd Jones & Paul Maharg, *Valuing*

Such approaches are used in the United Kingdom to assess the competence of solicitors who participate in the legal aid schemes of Scotland, England and Wales.¹⁹⁰ Though very different, both psychometric and audit methods of assessment produce information about competence and skill that is independent from what lawyers and law students think they know and what law teachers believe they have taught.

Finally, such research could track law students from school well into their legal practices. In this follow-up, they would be surveyed about their civic dimension behaviors, including their *pro bono* work, civic participation and public service employment, and perhaps also their charitable giving or other civic activities. A collaborative research effort like this would produce the kinds of information that might allow comparison of civic and skills dimension outcomes for students who did and did not experience clinical training, who were exposed to different kinds of clinical programs at different law schools, and who entered law with different motivations.¹⁹¹

Our proposed agenda is meant to be representative and not exhaustive of the possibilities for further research. Because the state of knowledge in the field is so rudimentary at present, we clearly have much to learn. At the same time, the dearth of information means that even modest projects can build knowledge, generate new theories and test hypotheses. By reporting here what we know and do not know about the teaching impact of clinical legal education, we hope to encourage more in-depth and sustained inquiry into the clinic effect.

What Clients Think: Standardized Clients and the Assessment of Communicative Competence, 13 CLIN. L. REV. 1 (2006). For “an international collaboration to develop a research base and resources for the use of standardised clients in the teaching and learning of legal skills and knowledge . . . for all academics and practitioners interested in the use of standardization techniques in professional education,” see the Glasgow Graduate School of Law’s Standardized Client Initiative Blog, <http://zeugma.typepad.com/sci/> (last visited Sept. 14, 2009).

¹⁹⁰ RICHARD MOORHEAD, AVROM SHERR, LISA WEBLEY, SARAH ROGERS, LORRAINE SHERR, ALAN PATERSON & SIMON DOMBERGER, *QUALITY AND COST: FINAL REPORT ON THE CIVIL, NON-FAMILY ADVICE AND ASSISTANCE PILOT* (2001); Richard Moorhead, Avrom Sherr & Alan Paterson, *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales*, 37 LAW & SOC’Y REV. 765 (2003). See also Binder & Bergman, *supra* note 87 (arguing for the value of evaluating student learning using standardized clients).

¹⁹¹ This information would not exhaust everything one would want to know. For example, one might want to do a companion study of legal employers, in which they were asked how they evaluated job candidates on things like clinical training.

