

FROM THE DEAN

The ABA's Proposal on Experiential Learning

Marquette University Law School long has sought to educate students who are fully prepared upon graduation to begin the practice of law and thereby to serve others. To do this, Marquette's law program extends beyond traditional classroom education to encompass "experiential learning," as well as a rich complement of student organizations, pro bono initiatives, lectures, and other cocurricular learning opportunities. Marquette's current experiential-learning offerings are considerably richer than they have ever been. Following the foundational leadership of now-emeritus faculty member Tom Hammer, Marquette Law School today offers a robust experiential-learning curriculum, involving supervised field placements in the community, judicial internships, and clinics. Full-time faculty engaged with the program include clinical professors of law: Nathan Hammons, director of the Law and Entrepreneurship Clinic; Mary E. Triggiano, director of the school's Andrew Center for Restorative Justice; and Anne Berleman Kearney, director of clinical education. Most recently (last academic year), Rebecca Donaldson, assistant clinical professor and assistant director of the Andrew Center, joined the faculty. And Nadelle E. Grossman, professor of law and associate dean for academic affairs, oversees both this work and the experiential-learning opportunities more generally available at the Law School, especially in the workshop component of the curriculum, which itself provides essential practice simulation. The knowledge, skills, and values important for a student to attain in developing into a Marquette lawyer make it essential that the school's education attend to the human side of practice.

Every law school must grapple with the difficult questions of balancing its offerings (all of which require resources) and covering the myriad subjects and skills that students may need to pursue a multitudinous variety of careers. Dean Joseph D. Kearney accordingly decided to oppose, on behalf of the Law School, a recent proposal by the American Bar Association to double the number of experiential-learning credits that a law school must



Dean Joseph D. Kearney (center) talks with student competitors at the 2025 Jenkins Honors Moot Court Finals.

require of every student in order for the school to remain accredited (the proposal would impose some strong mandates also on the details of experiential education). The dean is not some general critic of the ABA's work in the accreditation sphere, but the (de)merits of the ABA's proposal were clear. It exceeded the ABA's role as accreditor, which should be limited to imposing necessary standards for acceptable legal education; intruded on the primary curricular role of law schools; threatened to stifle innovation; and demanded significant new resources. Numerous others in the legal academy and broader legal communities submitted comments, some in support of the ABA's proposal but most in opposition.

Dean Kearney's letter is worth setting forth in the following pages here because the ABA remains undecided whether it will adopt the proposal and because, in all events, the *Marquette Lawyer* community should be aware of this significant move in legal education. Signs in August suggested that the official entity, the Council of the ABA's Section on Legal Education and Admissions to the Bar, would move to adopt a slightly revised proposal, imposing a revised requirement with a start date some few years hence. In fact, facing considerable opposition, the ABA (the Council) thereupon voted to pause its consideration of the requirement, giving "the committee time to discuss with our newly constituted members how we got to where we are, as well as whether we want to make any additional changes," in the words of the chair of the group's Standards Committee during a meeting of the Council in Chicago on August 22.

So where this will go next is anyone's guess. Dean Kearney's letter, of June 24, 2025, follows.

Dear Chair Brennan and Members of the Council:

Thank you for the opportunity to comment: The proposed revisions to the Standards, doubling to 12 the number of experiential-learning credits that each law student must earn and therefore that every law school must provide to every student, should be withdrawn. The basis for this conclusion should not be mistaken. Marquette University Law School shares the widespread view that simulations, clinics, and field placements are valuable in legal education. Indeed, many of our law students routinely exceed the requirements of the current Standards. Marquette Law School works hard at and takes great pride in its experiential program, whose contours and features serve our communities impressively.

Yet the Council's proposal would mandate a startling redirection of resources. Given the integrated nature of a program of legal education, the proposal would constitute an unprecedented invasion into the upper-level curricula of law schools, diminish substantially the schools' appropriate autonomy, and impair their ability to innovate and to adapt their programs to local needs and institutional missions—all at a time of other extraordinary pressures on legal education. More succinctly and concretely: The proposal ignores the curricular tradeoffs that will necessarily result for schools and students and dismisses the likely financial costs of the new requirements.

The proposal's apparent general animating philosophy—which has scant regard for the precept that accreditation standards are intended to establish minimum requirements for “adequate” education while protecting each school's leading role in defining its own educational program—is regrettable enough. More specifically objectionable is that the proposal to double the current minimum requirement of experiential-learning credits lacks adequate

evidentiary support. Valuable though experiential education is, a “more is better” approach to its requirement is not adequately supported in the proposal— notwithstanding the observation that other, very different professions, with different educational pathways, have more experiential education. Given the weak evidentiary basis for increasing the number of mandatory experiential-learning credits, the absence of a rigorous (or really *any*) cost-benefit analysis should prompt the proposal's withdrawal.

Accreditation Framework

The proposal, as formalized, now acknowledges that accreditation standards, by law and design, only “ensure . . . acceptable levels of quality” and that “institutions of higher education are permitted to operate with considera[ble] independence and autonomy.” Proposal, p. 4 (quoting the U.S. Department of Education). Not just in theory, but also in fact, the current ABA Standards generally fulfill this role appropriately. That is, they set true standards—required general contours of curriculum, faculty, governance, and the like—ordinarily without dictating particulars. By contrast, the proposed requirement of 12 experiential credits—some 20 percent or more of a typical law school graduate's upper-level curriculum—is, quite evidently, not so much a standard as a specific mandate. It would require significant changes at Marquette and at other law schools. Even greater change would be required to accommodate the specific proposed 3-credit requirement of a clinic or field placement, as opposed to simulation-based courses, such as workshops, through which students may currently fulfill some or all of their required 6 experiential credits. Such an approach can be justified only by a finding that a law school requiring fewer than this number and precise form of credits thereby would not be providing a minimally acceptable education.

The proposal responds to this fundamental point (which I made previously in writing to Council Member Mary Lu Bilek, chair of the working group) first by pointing to ABA Standard 301(a)'s general requirement that all schools provide a “rigorous” legal education (Proposal, p. 4). Then, the proposal portrays a general practice-readiness crisis (p. 5) and reiterates that experiential education generally is “preferred” for some skills and valued by students and employers (pp. 5, 6).

None of this adequately supports the proposal to double experiential minimums, as demonstrated below.

The Proposal's Inadequate Evidentiary Basis

It is doubtful that the ABA, by invoking the adjective “rigorous,” can use its own Standard to change the legal and historical practices that accreditation sets only minimums. But, even on its own terms, the proposal does not establish that 12 credits are necessary for such an education. It is not enough for the proposal to state a concern over practice readiness—an evergreen concern, which law schools have every market incentive to address, based on their particular student bodies and practice communities. To begin, the ABA Standards, consistent with their proper focus on outcomes and not on prescriptive intervention, already require law schools to assess their success in part by engaging with their relevant constituencies. *See* ABA Standards 302 (requiring schools to establish learning outcomes), 315 (requiring assessment of outcome achievement) & Interpretation 315-1. More importantly, practice readiness has multiple dimensions and contributors. The 2021 changes to Standard 303's interpretations to enhance professional-identity development, for only one example, were similarly connected with promoting practice readiness. *See* ABA Standard 303 & Interpretation 303-5 (“The development of professional

identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice.”). In these circumstances, the proposal rests, at bottom, on a “more is better” theory. In fact, whether due to the law of diminishing returns, the choice paradox, information overload, or increasing costs at greater quantities, more is not always better—indeed, it may be worse.

Similar problems inhere in the proposal’s reliance on survey evidence. Among the surveys that the proposal cites, just two are instances in which respondents are said to have called for “more,” and each of these studies predates the 2014 increase to require 6 experiential-learning credits.¹ And the recent, comprehensive survey of relevant research, by Robert Kuehn and Peter Joy, repeatedly warns of the shortcomings of survey evidence in this sphere: “Some of the survey research has methodological issues, such as lack of a control group, no before-and-after measurement, possible selection bias, and undefined and overlapping terms for experiential courses.”² Most importantly, Professors Kuehn and Joy, while corraling significant evidence for the general value of experiential education, say that survey data do not support even the 2014 increase, noting no evidence “that the increased experiential requirement measurably improved [recent law school graduates’] practice skills.”³

To be sure, decisions sometimes must be made on imperfect information. But schools already have different approaches to experiential requirements, creating the kind of diversity that can be studied (rigorously). And one thing we do know, as the proposal concedes (after my having noted this in earlier written comments to Ms. Bilek), is that there is no evidence that experiential education improves bar exam passage. The proposal responds by suggesting that the NextGen bar exam is better aligned with experiential education (pp. 2, 3–4, 8), but it properly refrains from suggesting that the proposed revisions to the Standards will help improve bar passage.⁴ That is a necessary (if implicit) concession, given the only available relevant evidence: “Repeated studies have failed to find that participation in experiential courses is related to bar exam passage”⁵ Certainly, researchers and schools will be

addressing these matters in the future, in a world actually involving widespread use of the NextGen bar exam, at which point the Council can take this up again if it so desires, on a record reflecting actual experience with that bar exam.

Other Professional Education

The proposal portrays “legal education [as] significantly behind other professions that require experiential learning,” Proposal, p. 8, echoing Kuehn and Joy, 73 J. Legal Educ. at 608–09. Yet neither document makes any case for equivalence. Take medical education as an illustrative example: Medical school is four years in length and is usually succeeded by a residency (to say nothing of a fellowship frequently following the residency). Even the largely clinical residencies require intensive examination of published case studies and academic research. Indeed, relatively recent limitations on medical residents’ clinic hours have been designed in part to “increase . . . the time available for residents to read and strengthen clinical knowledge,” and most surgery residents “reported reading consistently for patient care throughout the year.”⁶ And this education is always preceded by—for medical schools *require*—significant *undergraduate* coursework in biology, chemistry, math and statistics, and physics.⁷ Legal education routinely makes a different choice on “prerequisites”—and appropriately so: Given its pervasive societal scope and impact, legal education is infinitely enhanced by encouraging students from all backgrounds to attend. So, too, may legal education and various law schools reasonably and appropriately make a different choice, or different choices, concerning such extensive aspects of experiential learning and upper-level curricula as the proposal would shift to centralized national control.

In short, the proposal fails to engage in any sophisticated way with the different contexts of the various other professions to whose educational modes it points.

Costs and Tradeoffs

Aside from providing insufficient evidence of its benefits, the proposal scarcely engages with the costs. The proposal concedes that clinics are higher cost than large-enrollment courses, but states that tuition increases will be avoided though a three-year phase-in, which will allow schools to “shift resources” and “make faculty hires to meet the revised

¹ See Proposal, p. 5 n.13 (referring to 2012 survey cited at end of n.12); *id.*, p. 6 n.17 (citing Richard A. Posner & Albert H. Yoon, *What Judges Think of the Quality of Legal Representation*, 63 Stanford L. Rev. 317, 350 (2010)).

² Robert R. Kuehn & Peter A. Joy, *Measuring the Impacts of Experiential Legal Education*, 73 J. Legal Educ. 598, 610 n.76 (2024, though still forthcoming) (available on SSRN); see also, *e.g.*, *id.* at 613, 616–17, 628 n.192.

³ *Id.* at 621.

⁴ See also Robert R. Kuehn & David R. Moss, *A Study of the Relationship Between Law School Coursework and Bar Exam Outcomes*, 68 J. Legal Educ. 624, 640 (2019) (“the claim that enrollment in experiential education courses is related, either positively or negatively, to bar exam passage lacks empirical support in our sample”).

⁵ Kuehn & Joy, 73 J. Legal Educ. at 655.

⁶ Jerry Kim et al., *Reading Habits of General Surgery Residents*, 150 JAMA Surgery 882, 882, 883 (2015) (available at <https://jamanetwork.com/journals/jamasurgery/fullarticle/2389262>) (last visited June 24, 2025).

⁷ Association of American Medical Colleges, 2024 Official Guide to Medical School Admissions 12 (required courses for medical school “usually represent about one-third of the credit hours needed for [undergraduate] degree completion”) (available at https://store.aamc.org/downloadable/download/sample/sample_id/636/) (last visited June 24, 2025).

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Standard.” Proposal, p. 8. So the proposal concedes that these tradeoffs will occur. Yet it neither offers a specific cost-benefit analysis of those tradeoffs nor takes any real broader account of the circumstances of legal education.

Even a general statement as to aspects of legal education's situation should be instructive: The Council has continued to increase programmatic and reporting requirements. Universities and law schools face budget challenges, which range from declining undergraduate student populations to rising costs overall. And new developments—including AI technologies, proliferating areas of practice, and larger societal phenomena—demand new teaching and research as well. At the same time, with respect to experiential learning, as noted above, even Kuehn and Joy report that there is, as yet, no proof that the 2014 increases provided any benefits.

In these circumstances, which extend beyond the absence of a strong justification, the proposal's timing is exceptionally poor and its urgency unfounded.

An Inaccurate Presentation of Modern Law School Pedagogy

The proposal depends upon the impression that, outside of experiential-learning credits, law school classes are exceedingly more passive than has been the case for some time. For example, one writer, favorably cited, contrasts experiential learning with “simply learning information through reading and lecture.” Janet Eyler, *The Power of Experiential Education*, Liberal Education, Fall 2009, at 24, 28 (cited in Proposal, p. 5 n.9). Kuehn and Joy put it just about equally starkly: “Experiential education contrasts with traditional education, which relies more heavily on passive forms of learning, such as listening to lectures or reading textbooks.” 73 J. Legal Educ. at 600.

This is a false dichotomy, even to leave aside that the Socratic method, well undertaken, is hardly passive “reading and lecture.” “In response to [various] criticisms,” the Socratic method in legal education has come to be “often supplemented with other teaching techniques such as group work, skills simulations, [and] practice problems.”⁸ Classrooms in substantive courses at American law schools today are increasingly “flipped,”⁹ focused on problems and real-world examples,¹⁰ with active discussions and group work.¹¹ And not only are such courses often supplemented with active and experiential components, but law school co-curriculars and extracurriculars, at Marquette and no doubt elsewhere, similarly include community outreach and engagement, teamwork, and project management, well beyond the norms of just a decade or more ago. To be sure, the mix might be changed and even improved, but the Standards already require law schools to attend to these matters and, unlike the proposal, give schools substantial leeway in testing and evaluating teaching that works for them. See ABA Standards 302 (outcomes must include skills, professionalism, ethics), 303(b) (law schools must educate on professional identity), 304 (law schools must require 6 credits of experiential education). That we do not have significant data on the full pervasiveness of each of these pedagogies should be another research inquiry appropriate for the Council prior to an intervention into the curriculum such as the proposal would decree.

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Marquette Law School is deeply committed to, and in fact highly accomplished in, experiential education, as is true of American law schools more generally. These various successes across the nation should be a matter of pride for the Council; among other things, they demonstrate that more than one model for experiential education can succeed, as it does in substantive courses and other programmatic realms. For such an astonishing revision as has now been proposed, we should require substantial evidence for its net desirability, accounting for costs as well as benefits. No such presentation has occurred. The proposed revisions should be withdrawn.

Respectfully,

Joseph D. Kearney
Dean and Professor of Law

⁸ Jamie R. Abrams, *Reframing the Socratic Method*, 64 J. Legal Educ. 562, 566–67 (2015).

⁹ See Lutz-Christian Wolff & Jenny Chan, *Flipped Classrooms for Legal Education* (2016); William R. Slomanson, *Blended Learning: A Flipped Classroom Experiment*, 64 J. Legal Educ. 93 (2014).

¹⁰ See, e.g., Debora L. Threedy & Aaron Dewald, *Re-conceptualizing Doctrinal Teaching: Blending Online Videos with In-Class Problem-Solving*, 64 J. Legal Educ. 605 (2015); Terrill Pollman, *The Sincerest Form of Flattery: Examples and Model-Based Learning in the Classroom*, 64 J. Legal Educ. 298 (2014).

¹¹ See, e.g., Jodi S. Balsam, *Teaming Up to Learn in the Doctrinal Classroom*, 68 J. Legal Educ. 261 (2019); William R. Slomanson, *Pouring Skills Content into Doctrinal Battles*, 61 J. Legal Educ. 683 (2012).