SHOULD LAW PROFESSORS HAVE A CONTINUING PRACTICE EXPERIENCE (CPE) REQUIREMENT?

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ABSTRACT

This Article considers whether law professors should have a Continuing Practice Experience (CPE) requirement, just as lawyers in most jurisdictions have a Continuing Legal Education (CLE) requirement. In the face of criticisms of legal education for failing to prepare students to be practicing lawyers and for generating scholarship that is of little to no use to practicing lawyers and judges, CPE offers one way to facilitate a connection between legal education and law practice. This Article considers the potential benefits of CPE (and reasons why law professors might be resistant to CPE). The Article also discusses ways in which the American Bar Association’s Standards for the Accreditation of Law Schools and the Association of American Law Schools’ Statement of Good Practices by Law Professors could be revised to adopt (or, at least, endorse) CPE. Finally, the Article addresses two questions relating to the development of a CPE requirement: specifically, what types of activity should “count” as CPE and how much of such activity should law professors have to engage in?

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INTRODUCTION

Legal education is in peril. Fewer students are applying to law school, and the cost of legal education is soaring. Students are accumulating massive amounts of debt to attend law school and then, once they graduate, are not finding jobs, let alone jobs that will enable them to pay off their loans. Moreover, students who do obtain legal jobs may find that they are unprepared for the work that those jobs require. In fact, law schools have regularly been criticized for failing to adequately prepare students for law practice.

1 BRIAN Z. TAMANHA, FAILING LAW SCHOOLS 160 (2012). Although most of the authorities cited in this article are law reviews articles, the state of legal education has received a fair amount of attention in the popular press as well. See, e.g., Lincoln Caplan, An Existential Crisis for Law Schools, http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html (July 14, 2012).

2 TAMANHA, supra note 1, at xiii, 108-09, 133-34.

3 Brent E. Newton, Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform in the Legal Academy, 62 S.C. L. REV. 105, 154 (2010). This debt, moreover, is not dischargeable in bankruptcy. TAMANHA, supra note 1, at 110-11.


5 See TAMANHA, supra note 1, at x (“The cost of a legal education today is substantially out of proportion to the economic opportunities obtained by the majority of graduates.”); id. at 172 (“A law graduate with the average amount of debt cannot get by on the average pay.”); Newton, supra note 3, at 108 (“In the coming years, hoards of ill-prepared law school graduates with huge debts will be realizing little or no return on their massive law school investments.”); see also Paul Campos, The Crisis of the American Law School, Mich. J. l. Reform (forthcoming 2012), available at http://ssrn.com/abstract=2102702 (“The ongoing contraction in the employment market for new lawyers has combined with the continuing increase in the cost of legal education to produce what many now recognize as a genuine crisis for both law schools and the legal profession.”).

Although some students receive scholarships to attend law school, these students may not be able to retain those scholarships throughout their entire law school career. See David Segal, Behind the Curve, N.Y. TIMES, May 1, 2011, at BU1; see also Debra Cassens Weiss, Law Schools Would Have to Disclose Scholarship Retention Rates Online Under ABA Section Proposal, A.B.A. J. (Aug. 30, 2011), http://www.abajournal.com/news/article/law_schools_would_have_to_disclose_scholarship_retention_rates_on_line_under/.

6 See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROADMAP 2 (2007) (“[N]umerous groups of leaders of the legal profession and groups of distinguished lawyers, judges, and academicians have studied legal education and have universally concluded that most law school graduates lack the minimum competencies required to provide effective and responsible legal services.”); TAMANHA, supra note 1, at 172 (“[T]he bar incessantly complains that graduates are inadequately prepared for the practice of law.”); Newton, supra note 3, at 108 (“The recent economic recession, which did not spare the legal profession, has made the complaints about American law schools’ failure to prepare law students to enter the legal profession even more compelling; law firms no longer can afford to hire entry-level attorneys who lack the basic skills required to practice law effectively.”) (footnotes omitted); Mitchell Nathanson, Taking the Road Less Traveled: Why Practical Scholarship Makes Sense for the Legal Writing Professor, 11 LEGAL WRITING: J. LEGAL WRITING INST. 329, 356 (2005) (“Many students are dissatisfied with the skill set they are taking with them from law school into the legal marketplace and feel that they are not prepared to tackle much of what will be thrown at them by their employers after graduation.”).

7 STUCKEY, ET AL., supra note 6, at 18 (“[L]aw schools can significantly improve their students’ preparation for their first professional jobs.”); Chemerinsky, Why Not Clinical Education?, 16 CLINICAL L. REV. 35, 37 (2009) (discussing the history of recommendations “for more training in practical skills and more experiential learning” in
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Furthermore, law professors have been criticized for writing scholarship that does not contribute to the legal profession and that is out of touch with the work that practicing lawyers and judges do. In addition, the priority given to scholarship (by the legal academy generally and law professors individually) creates pressure on law professors to devote more of their time to their own research and less of their time to teaching. One author has recently argued that the focus on scholarship means that law students’ tuition dollars are being used to pay for the non-teaching work of law professors and that the effort to give law professors more time for scholarship means that law students are paying more for law professors who are teaching less.

Authors have made numerous suggestions for the reform of law schools. With respect to law schools’ role in preparing students for law practice, suggestions include better preparing students for the types of skills that they will use as practicing lawyers and better preparing students for the professional and ethical responsibilities that they will assume as practicing lawyers. With respect to law schools’ scholarly mission, suggestions include encouraging law professors to engage in scholarship that addresses legal issues faced by judges and practicing lawyers.

legal education); Newton, supra note 3, at 110-13 (discussing more recent and less recent critiques of legal education and calls for legal education to do a better job of preparing students for law practice); see also Chemerinsky, supra, at 35 (“There is a growing recognition that law schools must do a better job of preparing students for the practice of law.”); Alex M. Johnson, Jr., Think Like a Lawyer, Work Like a Machine: The Dissonance Between Law School and Law Practice, 64 S. CAL. L. REV. 1231, 1233 (1991) (“Legal educators, with our increasing orientation away from law and the practice of law, are failing to adequately prepare students to practice law.”).

See, e.g., Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 MICH. L. REV. 34 (1992) (“[I]t is my impression that judges, administrators, legislators, and practitioners have little use for much of the scholarship that is now produced by members of the academy.”); id. at 36 (“[T]oo few law professors are producing articles or treatises that have direct utility for judges, administrators, legislators, and practitioners. . .”); id. at 42 (“The growing disjunction between legal education and legal practice is most salient with respect to scholarship.”); Seth P. Waxman, Rebuilding Bridges: The Bar, the Bench, and the Academy, 150 U. Pa. L. REV. 1905, 1906-07 (2002) (“Why does there often seem to be so little connection between the work being done in law schools and published in law reviews and the profession for which law schools prepare their students? Why does the relationship among law schools, judges, and practicing lawyers seem so dysfunctional?”); id. at 1907 (“Over time . . . the realms of practice and the academy have drifted farther and farther apart.”); id. at 1909 (“[L]aw reviews are less useful to judges and practitioners today than they were in the past.”); see also B. Cohen, The Dangers of the Ivory Tower: The Obligation of Law Professors to Engage in the Practice of Law, 50 LOY. L. REV. 623, 631 (2004) (discussing Edwards, supra); Suzanne Rabé & Stephen A. Rosenbaum, A “Sending Down” Sabbatical: The Benefits of Lawyering in the Legal Services Trenches, 60 J. LEGAL EDUC. 296, 309 (2010) (“Judges and lawyers express increasing alienation from law review scholarship.”); Newton, supra note 3, at 113-25 (discussing the criticisms of law professors’ scholarship for not being useful to practicing lawyers and judges).


TAMANAH, supra note 1, at 126-28; see also Newton, supra note 3, at 154-55.

See, e.g., STUCKEY, ET AL., supra note 6, at 8-9.

See, e.g., David Hricik & Victoria S. Salzmann, Why There Should Be Fewer Articles Like This One: Law Professors Should Write More for Legal Decision-Makers and Less for Themselves, 38 SUFFOLK U. L. REV. 761 (2005). Certainly, not all law professors agree with the premises that underlie these suggestions, and professors who
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Although these suggestions focus on different aspects of a law school’s mission, these suggestions emphasize ways in which law schools can strengthen their connections to law practice (and be more relevant to law practice). However, at the very time when legal education is being challenged to better prepare students for law practice and is focusing on ways in which students can be better prepared for law practice, very little attention is being given to whether law faculties could be better equipped to perform this important function. In the midst of the discussions about how law schools could better prepare students for practice, it is worth exploring whether one of the impediments to law schools becoming more relevant to law practice might be law faculties’ lack of connection to law practice.

Many law professors did not have extensive practice experience before they became law professors. In fact, individuals who want to become law professors might actually be advised agree with the premises might still not agree with these specific suggestions. Some law professors resist the idea that law school’s primary mission is to train law students to be practicing lawyers. Some law professors also resist the call for scholarship that is more immediately useful to judges and practicing lawyers.

Given that fewer students are applying to law school generally, a law school that can identify ways in which it is more connected to law practice might be a law school that can attract more and better students. See, e.g., Martha Neil, Law Dean at Arizona State Unveils Plan to Create Law Grad “Residency” Program at Nonprofit Law Firm, http://www.abajournal.com/news/article/Law_Dean_at_Arizona_State_Unveils_Plan_to_Create_LaL_Grad_Residency/ (June 5, 2012). This particular program will also result in the employment of new law school graduates, who might otherwise not be able to obtain legal employment (benefiting the graduates themselves as well as their law school).

See, e.g., Trail & Underwood, supra note 9, at 210-13 (discussing how law professors’ lack of connection to law practice might influence their teaching and scholarship); Stuckey, et al., supra note 6, at 23 (noting how law professors’ lack of practice experience might influence their pedagogy) (quoting Judith Wegner, Theory, Practice, and the Course of Study – The Problem of the Elephant 51 (Draft 2003) (unpublished manuscript on file with Roy Stuckey); Chemerinsky, supra note 7, at 39 (describing how law faculties’ lack of practice experience might impede law schools’ commitment to clinical education); see also Rabé & Rosenbaum, supra note 8, at 301, 301 n.18 (noting that “it has become routine for law professors . . . to be removed—sometimes for decades—from the law firm or the courtroom” and suggesting a connection between this situation and the criticism that law schools do not adequately prepare students for law practice).

Richard E. Redding, “Where Did You Go to Law School?” Gatekeeping for the Professoriate and Its Implications for Legal Education, 53 J. LEGAL EDUC. 594, 601 (2003) (studying the biographies of new law professors and noting that most new law professors had practice experience, with an average of 3.7 years in practice); id. at 612 (“Those who aim from graduation, or even earlier, at an academic career are probably less inclined to stay in practice for very long before entering academia.”). Of those law professors with practice experience, new law professors at the “top 25 schools” had an average of 1.4 years of practice experience, while new law professors “at all other schools” had an average of 3.8 years of practice experience. Id. at 601. Redding notes that “the number of years of legal practice experience and whether the candidate had prior teaching experience were negatively correlated, significantly but modestly, with the quality of the hiring school, with those having prior teaching experience or more years of practice experience less likely to be hired at a highly ranked law school.” Id. at 605. Law professors who spent only a short time in practice before becoming law professors may necessarily have experienced a more narrow range of lawyering tasks. See 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. 706, 758.
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not to spend too much time practicing law in order to improve their chances of getting hired.\textsuperscript{17} In addition, law professors who did spend a small amount of time in practice may not have actually enjoyed practicing law and may, in fact, have sought to become law professors because they did not like law practice.\textsuperscript{18} Moreover, with the increasing interest in interdisciplinarity and hiring law faculty with doctorate degrees (most often in fields other than law), the trend might be towards law professors having even less (if any) practice experience.\textsuperscript{19} Now and in the future, given the focus on scholarly productivity, aspiring law professors might be spending more time focusing on getting positions in law schools that enable them to publish scholarship before they go on the full-time teaching market than on spending more time in law practice.\textsuperscript{20} In fact, Yale Law School recently announced that it was starting a new Ph.D. in Law program “to prepare J.D. graduates for careers in legal scholarship through three years of supervised study.”\textsuperscript{21}

\textsuperscript{17} See Schiltz, supra note 16, at 762 n.225 (noting that law practice might be seen as a negative for prospective law professors); see also Newton, supra note 3, at 131-35 (discussing trends in law faculty hiring, including the trend away from hiring law professors with practice experience); David B. Wilkins, The Professional Responsibility of Professional Schools to Study and Teach About the Profession, 49 J. LEGAL EDUC. 76, 92 (1999) (“Not so long ago, hiring faculty members with substantial practice experience was fairly common. This is no longer the case at most schools.”); Nathanson, supra note 6, at 351 (“Historically, practical experience has been viewed within the legal academy as a negative when assessing faculty candidates.”).

\textsuperscript{18} See, e.g., Michael A. Mogill, Professing Pro Bono: To Walk the Talk, 15 NOTRE DAME J.L. ETHICS & PUB. POL’Y 5, 30 (2001) (noting that “some faculty exhibit disdain toward practice”); Cohen, supra note 8, at 632 (noting “the apparent disdain many professors feel and perhaps even express towards practice and practitioners”); id. at 632-33, 632 n.27; Schiltz, supra note 16, at 766 & 766 n.247; see also Johnson, supra note 7, at 1239 (noting that some law professors are “indifferent to the profession”); David Luban, Faculty Pro Bono and the Question of Identity, 49 J. LEGAL EDUC. 59, 66 (1999) (“The one thing that all nonclinical teachers have in common is that all have chosen teaching over law practice.”); Wilkins, supra note 17, at 77 (noting “the [legal] academy’s persistent inattention to legal practice”); Nathanson, supra note 6, at 334 (“traditional legal academics tend to disparage practitioner’s problems”).

\textsuperscript{19} See Waxman, supra note 8, at 1909 (“Increasingly, law professors see themselves more as colleagues of sociologists, economists, and philosophers than of judges and lawyers.”); Chemerinsky, supra note 7, at 39 (“The emphasis on inter-disciplinary study . . . means more law professors with a Ph.D. as well as a law degree, but with no practice experience.”); Edwards, supra note 8, at 37 (“[N]ow we see ‘law professors’ hired from graduate schools, wholly lacking in legal experience or training. . . .”).

\textsuperscript{20} See Waxman, supra note 8, at 1909-10 (“[I]t has become increasingly difficult for people with significant amounts of experience as practicing attorneys to be hired as law professors. Sadly, the emphasis of most top law schools on publication over teaching ability or practice experience means that many supremely talented law teachers never even try to join, or to interact with, the academy. And their perspectives and wisdom are consequently lost, both to students and professors.”).

\textsuperscript{21} Yale Law School, Ph.D. Program, http://www.law.yale.edu/graduate/phd_program.htm. The program will give aspiring law professors the opportunity to produce scholarship “that candidates can take with them on the job market.” Id. Although candidates are required to have a J.D. degree, there is no requirement that candidates have law practice experience. http://www.law.yale.edu/graduate/phd_faq.htm. Although Yale Law School notes that, “[p]ractice experience can be a useful qualification for admission,” the Law School also states that, [a]pplicants who have spent more than a couple of years after law school in practice should relate their practice experience to their scholarly agenda or use their personal statements to explain their change in direction.” Id. (emphasis added).
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Furthermore, even those law professors who were hired after spending a substantial amount of time in practice may not have maintained a connection to the world of law practice after they became law professors.\(^{22}\) Especially given the evolving nature of law practice, law professors who practiced law in the past might not be familiar with the current realities of law practice—both the substantive work that is done in law practice and the environment in which that work is done (for example, the business of law practice).\(^{23}\)

Although some law professors resist the idea that law schools should be training grounds for law practice,\(^{24}\) the reality is that law schools are training grounds for law practice.\(^{25}\) The irony is that many of the people who are entrusted with preparing students for law practice are people who may not actually have practiced law, who may only have practiced law for a short amount of time with the goal of not practicing law (in other words, becoming law professors), or who may not have practiced law recently.\(^{26}\) That is not to say that these individuals do not do an excellent job of helping students develop some of the skills that they will need to be successful lawyers. However, it does raise the question of whether we should identify ways in which law professors might strengthen their connection to the world of law practice and the current realities of that world.\(^{27}\)

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\(^{22}\) See Mogill, supra note 18, at 6 (noting that after author became a law professor after practicing law, he “was far removed from the daily toil of practice on the front lines”); Cohen, supra note 8, at 623 (“I had left the practice of law after a mere four years. Since that time, I have become increasingly bothered by the fact that I was spending my career preparing students for a world that was more and more removed from my daily existence and memory.”).

\(^{23}\) Cohen, supra note 8, at 623-24 (describing the author’s feeling of being out of touch with the current realities of law practice); id. at 624 n.3 (stating that even law professors who practiced law in the past “should occasionally refresh their skills and their memories by reconnecting with the world of practice”); Bruce A. Green, Reflections on the Ethics of Legal Academics: Law Schools as MDPs; Or, Should Law Professors Practice What They Teach?, 42 S. Tex. L. Rev. 302, 330 (2001) (noting the argument could be made that “since law professors’ memories of their pre-academic experience may fade or become increasingly irrelevant as the nature of law practice changes, there may be reason to encourage law professors to dip their toes back in the water from time to time.”).

\(^{24}\) See Trail & Underwood, supra note 9, at 223-24 (discussing the perspectives of some legal academics regarding the role of law schools).

\(^{25}\) Mogill, supra note 18, at 15 (“We, as law professors, are the gatekeepers for our students’ entry into the legal profession.”); Redding, supra note 16, at 611 (“law schools are training grounds for practitioners”); Chemerinsky, supra note 7, at 41 (“The preeminent purpose of law schools is educating our students to be lawyers.”); Edward D. Re, Law Office Sabbaticals for Law Professors, 45 J. Legal Educ. 95, 95 (stating that “the law school has assumed responsibility for the training of lawyers” and that “the basic goal of the law school is to prepare law students for the legal profession”); see also AALS Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities, available at http://www.aals.org/about_handbook_sgp_eth.php. (noting that law professors serve as “mentors” for law students and “can profoundly influence students’ attitudes concerning professional competence and responsibility”).

\(^{26}\) See Cohen, supra note 8, at 628 n.17 (“The one thing that all nonclinical teachers have in common is that all have chosen teaching over law practice.”) (quoting Luban, supra note 18, at 66-67).

\(^{27}\) See Cohen, supra note 8, at 634 (“[I]f law professors continue to distance themselves from practice, they cannot teach students to be better, more ethical lawyers because they are not themselves informed about the world of practice.”).
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This Article considers whether law professors should have a continuing practice experience (CPE) requirement, just as many practicing lawyers have a continuing legal education (CLE) requirement. A CPE requirement would require law professors to spend a limited amount of time each year in the world of law practice. Although law professors could satisfy this requirement by practicing law, law professors would not have to practice law to satisfy this requirement. As this Article will discuss, a range of activities could satisfy law professors’ CPE requirement.

To the extent that students are coming to law school to prepare to be practicing lawyers, it would be useful for those doing the preparing (law professors) to have some familiarity with the current world of law practice. Greater familiarity with the current realities of law practice could inform individual professors’ pedagogy as well as curricular decisions more broadly. In addition, spending time in the world of law practice could help law professors identify topics for their scholarship: both legal issues that arise in a practice setting and issues about the context in

28 See id. at 625 (identifying the issue of “Whether law professors have a professional obligation to keep current with the practice of law by actually engaging in such practice on some limited or occasional basis”); id. at 634 (noting that author’s experience spending time at a law firm during her sabbatical “persuaded [her] that one way to counter this disdain and cynicism [of law professors for law practice] is to encourage or even require law professors to connect with the world of practice and to see for themselves how lawyers conduct themselves in that world”).

Some professors have focused their discussion of the value of law practice experience on professors who supervise law clinics or teach skills courses. See Rabé & Rosenbaum, supra note 8, at 313 (suggesting that “clinical and skills professors, and legal writing professors in particular, consider practicing law during some portion of their sabbaticals”); Stacy Caplow, A Year in Practice: The Journal of a Reflective Clinician, 3 CLINICAL L. REV. 1, 19 n.31 (1996) (“[C]linical teachers might have a responsibility to return regularly to the real world [of law practice]”); id. at 53 (“more law teachers, particularly clinicians, should [spend a sabbatical practicing law]”). However, this Article considers whether all professors should have a continuing practice experience requirement, regardless of what they teach. But see infra note 113 (noting that, in some respects, professors who supervise clinics may have a less pressing need to engage in continuing practice experience).

29 See American Bar Association, MCLE Information by Jurisdiction, http://www.americanbar.org/publications_cle/mandatory_cle/mcle_states.html. In many states that have a CLE requirement, law professors who are bar members are subject to the same CLE requirements as all other bar members. See, e.g., Ariz. R. Sup. Ct. 45(b); Virginia State Bar Mandatory Continuing Legal Education Regulation 102(f); see also Illinois Supreme Court Rule 795(d)(6)(i). In other jurisdictions, law professors might not have to take traditional CLE courses because their teaching or scholarship responsibilities as law professors could satisfy their CLE requirements. See, e.g., Alabama Mandatory CLE Regulation 3.4; Alaska Bar Rule 65(g). In yet other jurisdictions (although not many), law professors who are members of the bar are exempt from CLE altogether. See, e.g., California State Bar Rule 2.54. Rather than requiring law professors to satisfy traditional CLE requirements (or have no CLE requirements), however, it would be more meaningful for law professors to engage in activities that would give them first-hand exposure to the present realities of law practice. Although individual jurisdiction’s CLE rules could be amended to enable law professors to substitute CPE for CLE, the CPE requirement would apply generally to law professors, not only professors who were active bar members subject to a CLE requirement.

30 See Gary S. Gildin, Testing Trial Advocacy: A Law Professor’s Brief Life as a Public Defender, 44 J. LEGAL EDUC. 199, 201-05 (1994) (discussing the pedagogical lessons learned from spending sabbatical in law practice); see also Paul T. Hayden, Professorial Conflicts of Interest and “Good Practice” in Legal Education, 50 J. LEGAL EDUC. 358, 367 (2000) (discussing the value of law professors serving as “legal consultant[s] or expert witness[es]” and noting that law professors “who occasionally work collaboratively with real lawyers on real cases” might gain “insights that can be brought to bear on both teaching and scholarship”).
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which law is practiced. Furthermore, to the extent that law professors choose to satisfy their CPE requirement by performing pro bono service, the CPE requirement would contribute needed legal services for traditionally underserved client populations.

Given the changing legal market (and the resultant difficulty that law students face trying to find law practice jobs), it might be more important than ever for law professors to develop connections with the current world of law practice. Law professors teach students and advise students. Law professors who advise students about law practice would be better-informed advisors if they actually had some exposure to law practice. Furthermore, law professors with CPE would be in a better position to inform students about different practice settings. Law professors with CPE might also be better able to make connections between their students and practicing lawyers because CPE would increase the number of practicing lawyers that law professors know.

A law school that endorses CPE could distinguish itself as a law school that takes seriously the preparation of students for law practice and the importance of both learning from and contributing to the world of law practice. Law professors who engage in CPE might also send the message to law students about the value of law practice and, thus perhaps, the importance of professionalism in law practice. Rather than being taught by professors who never practiced or who have not maintained a connection with law practice, law students would be taught by professors who have maintained an ongoing connection to law practice, thereby signaling the value of law practice.

Part I of this Article will discuss some of the reasons supporting a CPE requirement. This Part will also address some of the reasons why some law professors might be resistant to having

31 See Cohen, supra note 8, at 637-38 (discussing how spending time with practicing lawyers helped author identify issues to write about in her scholarship); Wilkins, supra note 17, at 79-80 (discussing the need for more research regarding the legal profession).
32 A number of law schools have a pro bono requirement for their students. See Directory of Law School Public Interest and Pro Bono Programs, Standing Committee on Pro Bono and Public Service and the Center for Pro Bono, http://apps.americanbar.org/legalservices/probono/lawschools/pb_programs_chart.html; see also Executive Summary, A Survey of Law School Curricula: 2002-2010, American Bar Association Section of Legal Education and Admissions to the Bar 15 (noting that “18% of law school respondents in 2010 require[e] an average of 35 hours of pro bono service to graduate”). To the extent that law schools value pro bono enough to require it of their students, one might ask whether they should also require it of their faculty. See Luban, supra note 18 (advocating that law professors have an obligation to perform pro bono service).
33 See Schiltz, supra note 16 (discussing the important role that law professors can play regarding law students’ transition into practice).
35 See Schiltz, supra note 16, at 786-87 (discussing how professors can help their students become members of the legal community); Hayden, supra note 30, at 367 (noting that law professors “who occasionally work closely with lawyers on cases may develop ties to the legal community that otherwise they would not have [and that] may benefit students hunting for employment”).
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A CPE requirement. Part II of the Article will explore ways in which a CPE requirement might be implemented, from individual faculties adopting a CPE requirement to the ABA Standards for the Accreditation of Law Schools and AALS Statement of Good Practices by Law Professors being revised to create—or at least, support—a CPE requirement. Part II will also discuss the types of activities that could satisfy a CPE requirement and the extent law professors should have to engage in such activities to satisfy a CPE requirement. Law professors being required to engage in CPE may be a controversial idea, but the time is ripe to consider both the concerns that such a requirement is intended to address and the ways in which such a requirement could be implemented.

I. Motivations for—and Arguments Against—a CPE Requirement

Perhaps one of the strongest arguments in favor of a CPE requirement is that law professors should have some current exposure to law practice because law professors participate in preparing students for law practice. Certainly, there has been ongoing debate about the role of law schools—with not all professors agreeing that the law school’s mission is the preparation of students to enter the legal profession. However, the fact of the matter is that law school is an intrinsic part of students’ preparation for the legal profession. Moreover, if anything, the trend is towards identifying ways that law schools can better prepare students for the legal profession, rather than focusing on ways that law schools can orient themselves away from preparing students to be lawyers.

The heightened focus on ways in which law schools can better prepare students for the legal profession suggests the importance of law professors having ongoing exposure to law practice. Law professors may well want to better prepare their students for law practice. Law professors may want to connect the legal theory that they are teaching their students with the

36 ABA Section of Legal Education and Admissions to the Bar, Standards, at http://www.americanbar.org/groups/legal_education/resources/standards.html.
38 Although this Article focuses on the CPE requirement, it would also be worth considering whether there are other steps that law schools could take to address some of these concerns.
39 See Cohen, supra note 8, at 627-34, for a discussion of some of the history and debate regarding the roles of law schools and law professors. See also Trail & Underwood, supra note 9, at 223-24 (discussing different views regarding the law schools’ role). Moreover, not all law professors agree that every law school has to have the same mission. See TAMANAH, supra note 1, at 174; Horwitz, supra note 34.
40 See Trail & Underwood, supra note 9, at 225 (“American law schools today enjoy a monopoly on entry into the legal profession.”).
41 See, e.g., STUCKEY ET AL., supra note 6; WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007). In addition, as the cost of a legal education gets higher and higher, the value of a legal education is being called into question. See, e.g., TAMANAH, supra note 1, at x-xi. Law professors having continuing contact with the world of law practice may be one way in which we can enhance the value of a legal education for students and, more broadly, the value of the legal academy.
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Type of issues that students will confront in law practice. However, it may be difficult for law professors to prepare their students for law practice—and connect theory to practice—when law professors are unfamiliar with what their students will be doing as practicing lawyers. Law professors without current practice experience may lack the knowledge of what their students will face in law practice. Law professors without current practice experience may also lack the confidence to integrate practice-related information and activities into their courses.

Certainly, there are skills that law professors know their students will use in practice and that law professors help their students develop in law school. Law professors help their students read and analyze cases, think critically, and communicate their ideas orally and in writing, among other skills. Students, however, are not going to be using these skills in a vacuum. Rather, students will be using these skills in particular practice contexts, and it might be useful for law professors to have some familiarity with these contexts. Law professors with continuing practice experience may be better able to explain to their students the relevance of

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42 See Edwards, supra note 8, at 73 (“[L]egal scholars must have some real understanding of practice before they can usefully address the ethical problems of the profession.”); Nathanson, supra note 6, at 344 (“[D]octrinal professors lack the [law practice] expertise to fully appreciate and analyze the issues confronting the practicing bar.”).

43 See Schiltz, supra note 16, at 791 n.347 (noting that, especially because of their lack of practice experience, professors may not “feel . . . confident about their ability to train students to practice law ethically”); Rabé & Rosenbaum, supra note 8, at 305 (stating that experience in practice made law professor a more confident teacher); Johnson, supra note 7, at 1260 (“[I]t is only when we know what practice entails for our students that we can fully perform our role as educators.”).

44 See Mogill, supra note 18, at 32 (“Experiential learning outside the tower can also increase the professor’s confidence as she gains insights into the strengths and weaknesses of the legal system. . . .”); see also Nathanson, supra note 6, at 348 (“[T]he backgrounds of many doctrinal professors likewise render them uncomfortable with many practical topics.”).

The discussion in this Article raises the question of the relationship between practice experience and how and what law professors teach their students. This would be an interesting area for empirical study, especially because there seems to be a distinct lack of empirical research that explores the relationship between the practice experience of faculty in professional schools and their teaching of students in those schools.

45 See Schiltz, supra note 16, at 767 (“For the practitioner, law is highly contextual.”); id. at 770-71 (discussing the value of the perspective of law professors who have had practice experience); Green, supra note 23, at 340 (“[W]hen the law professor elaborates on the views that originated in professional work, the resulting lecture or scholarly writing may be richer for having a personal appreciation of the context in which the issues arise.”); see also Mogill, supra note 18, at 30-33 (discussing the pedagogical benefits of law professors having practice experience); Okianer Christian Dark, Transitioning from Law Teaching to Practice and Back Again: Proposals for Developing Lawyers Within the Law School Program, 28 J. LEGAL PROF. 17, 38 (2004) (discussing the ways in which author’s practice experience influenced his teaching); Schiltz, supra note 16, at 708 (“Often, the topic of legal ethics as discussed in law reviews or law school classrooms is far removed from the topic of legal ethics as experienced by practitioners.”); Newton, supra note 3, at 136 (questioning whether law professors with limited interest or experience in law practice can effectively prepare students to be practicing lawyers); Wilkins, supra note 17, at 93 (“Unless scholars understand the practitioner’s frame of reference . . . they are unlikely to produce work that speaks to the real problems that the profession and those it serves confront.”). The concern with professors not having current experience in the field which they are preparing students to enter is not unique to law. See ARTHUR LEVINE, EDUCATING SCHOOL TEACHERS 45-46 (describing complaints about education school professors having limited and out-of-date teaching experience) (2006).
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what they are doing in class to what they will be doing in practice. Law professors with continuing practice experience may also be better able to identify the information and skills that students should be learning to be better prepared for practice. Moreover, the realities of law practice are evolving, so law professors need continued exposure to practice settings, so they can keep abreast of how law practice is developing.

If law professors have continuing practice experience, they will have a better understanding not only of what practicing lawyers do but also of what their own students are doing. Law students are being offered an array of experiential education opportunities—and, in some cases, are required to engage in them. Experiential education is identified as a key means by which to prepare students for law practice. As more and more students participate in experiential education in law school, students might want (or expect) more of a connection between their classroom courses and their experiential courses or activities. If law professors do not “keep up” with the world of law practice, then there might be more of a divide between experiential learning opportunities and non-experiential courses. Students might feel that non-experiential courses are less relevant to their role as practicing lawyers and, thus, might not focus their attention on non-experiential courses. If law professors have continuing experience in practice settings, then they might be better able to make connections between theory and practice, even in courses that are not explicitly experiential. Integrating theory and practice in legal education should not mean that only students have experience with both legal theory and

46 See Dark, supra note 45, at 38 (“It is not always as clear to the novice what briefing, case synthesis, or the questions we ask in class have to do with legal analysis, specifically, or, for that matter, the real world of practice. I suggest that we make it less of a mystery and tell students how this activity connects to their eventual ability to practice law . . . .”).
47 See Rabé & Rosenbaum, supra note 8, at 310-11, 312 (noting that professor’s time in practice helped her identify skills that she should be teaching her students).
48 Ideally, law professors should also be exposed to different practice settings. The context of law practice in a large law firm is likely to be different from the context of law practice in a nonprofit office. Also, even within the same type of law practice, the practice context can differ.
49 Mogill, supra note 18, at 6 (noting that when author spent a sabbatical practicing law, he “was able to practice what I had preached in the classroom, working side-by-side with student interns in applying what I myself had learned during my years of teaching”) (emphasis added); see also Schiltz, supra note 16, at 771 (“As the gap between the academy and the practice widens, so does the gap between the academy and its own students.”).
50 See Executive Summary, A Survey of Law School Curricula: 2002-2010, American Bar Association Section of Legal Education and Admissions to the Bar 15 (”Law schools have increased all aspects of skills instruction, including clinical, simulation, and externships . . . .”); see also Chemerinsky, supra note 7, at 37 (“Experiential training is increasingly being emphasized. . . .”); Mogill, supra note 18, at 27 (noting that some schools require their students to engage in pro bono work).
51 See STUCKEY, ET AL., supra note 6, at 166-67.
52 Cf. Campos, supra note 5 (noting that the development of law school clinics “has allowed traditional tenure-track faculty to rationalize paying relatively little attention to actual legal practice”).

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Law professors, too, should have experience with theory and practice, even if their practice experience is limited.\textsuperscript{54} In addition to having pedagogical benefits, law professors having continued exposure to law practice could foster a closer relationship between the legal academy and the world of law practice.\textsuperscript{55} Along with continuing calls for law schools to better prepare students for law practice have also been continuing calls for law schools to be less removed from the world of law practice more broadly.\textsuperscript{56} In particular, critics have advocated for scholarship that is more relevant to issues faced in practice.\textsuperscript{57}

Certainly, there is disagreement about whether this is a fair criticism of the legal academy.\textsuperscript{58} This criticism may be the product of disagreement over the purpose of law schools and, specifically, disagreement regarding whether legal scholarship necessarily has to be relevant to the legal profession.\textsuperscript{59} This criticism may also be the product of disagreement about whether law schools are, in fact, disengaged from law practice. There are some law professors who do participate in the world of practice, either by writing scholarship that addresses issues that arise in law practice, or by practicing law themselves or otherwise engaging with the legal community.\textsuperscript{60} This criticism may also be the product of disagreement over the relevance of particular types of scholarship.\textsuperscript{61} A law professor might think that he or she is writing an article that contributes to an issue faced by practitioners, while practitioners may not appreciate the relevance of that article to their practice (or may not be aware of the existence of the article).

\textsuperscript{53} Integrating theory and practice should also not mean that students are exposed to theory in some courses and practice in other courses. Rather, although the balance between theory and practice might vary depending on the course, both theory and practice should be addressed in individual courses.

\textsuperscript{54} Mogill, supra note 18, at 6 (noting that after author spent a sabbatical practicing law, he “returned to the classroom renewed, able to share experiences of both success and failure with students as part of their learning process”); id. at 33 (noting that when professors spend time practicing law, “[t]heory will be connected to practice, as the interaction between teacher and client, other attorneys, and the courts provides for additional learning opportunities once discussed in the classroom.”); Cohen, supra note 8, at 636 (noting that author’s experience in a law firm during her sabbatical would “undoubtedly enrich [her] teaching. . . . I have a new appreciation for what kinds of issues arise in practice and how practicing lawyers resolve them.”). Spending time in practice could also help professors identify issues that are of particular importance to practicing lawyers and, thereby, give professors additional information to consider when making decisions about what topics to cover in their courses and how much time to spend on those topics. See id. at 637 n.44.

\textsuperscript{55} See Dark, supra note 45, at 34 (“[A] more radical way to stay in touch with the bar and the challenges confronting practitioners is to support faculty who wish to return to practice for a limited period of time.”).

\textsuperscript{56} See Mogill, supra note 18, at 30-33.

\textsuperscript{57} See, e.g., Hricik & Salzmann, supra note 12.


\textsuperscript{60} But see Chemerinsky, supra note 7, at 39 (“My sense is that over the thirty years that I have been a law professor there has been a trend against law professors engaged in legal practice.”).

\textsuperscript{61} See Posner, supra note 59, at 1925-27.
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However, if law professors spend time with practicing lawyers in a practice environment, law professors might be more likely to identify issues that are of practical significance to the legal profession and might be in a better position to write scholarship that addresses those issues. Moreover, law professors who write about issues relating to law practice might have a fuller understanding of those issues (and more credibility) if they have ongoing exposure to law practice.

If nothing else, law professors spending time in a law practice setting will facilitate conversations between law professors and practicing lawyers. These conversations might result in law professors having a greater understanding of the work that practicing lawyers do and practicing lawyers having a greater understanding of the work that law professors do.

62 Mogill, supra note 18, at 18 (“[P]ro bono does provide the opportunity to gain insights into the legal process as it affects indigents, revealing the ‘warts’ and shortcomings in our justice system.”) (footnote omitted); Cohen, supra note 8, at 636 (noting that during her sabbatical spent at a law firm, author “was able to do research on a number of cutting edge, substantive issues that I might never have realized were of practical significance had I not been there to see how such issues arise in practice”); id. at 637-38 (spending time in practice helped author identify topics to write about in her scholarship). Of course, law professors may not necessarily end up writing about issues facing practicing lawyers just because they spend time in law practice. However, spending time in law practice may lead law professors to identify issues that could be topics for exploration in their scholarship. In addition, spending time in practice could give law professors a more well-rounded perspective on legal issues, which could result in some consideration of the practice-related implications of the issues that they address in their scholarship. On the other hand, there may be reasons why law professors do not consider practice-related issues in their scholarship apart from law professors’ lack of practice experience. For example, law professors might be discouraged by their colleagues from addressing practice-related issues in their scholarship, or law professors might feel that scholarship that addresses practice-related issues would be less desired by law reviews. See Hricik & Salzmann, supra note 12, at 763 n.7 (“[M]any in academia . . . believe that engaged scholarship . . . is not a worthwhile aspect, let alone an appropriate focus, of a law professor’s career.”); Nathanson, supra note 6, at 345 (“The range of topics most likely to be accepted by [the] top journals . . . discourages scholars from addressing issues of relevance to the practicing bar.”).

63 See Green, supra note 23, at 334 (“[H]aving experienced the lawyer’s perspective, the professor may have a fuller appreciation of [a] problem when he later analyzes it from a scholarly perspective.”); Newton, supra note 3, at 121 (“[T]heoretical scholarship—indeed, any legal scholarship—is more likely to be relevant and useful if its author has a real-world understanding of the context in which the law applies.”). Spending time in practice might also inspire professors who do not currently study the legal profession to examine particular aspects of the profession. Cf. Johnson, supra note 7, at 1260 (“The legal academy needs to commit resources to the specialized study of the legal profession.”); Wilkins, supra note 17, at 76 (criticizing “law school’s systematic and pervasive failure to study and to teach about the profession”).

64 See Waxman, supra note 8, at 1911 (“What we really need are far more venues in which practitioners, scholars, and judges can talk to one another.”); Dark, supra note 45, at 33 (“It is critically important that we, individually and institutionally, have ongoing dialogue and involvement with the practicing bar.”). CPE is one way to facilitate interactions between law professors and practicing lawyers. Although there are certainly other valuable ways to facilitate these interactions, many of these ways involve bringing practicing lawyers into the law school. See Dark, supra note 45, at 33-34. One of the values of CPE is that it can enable law professors to enter the environment of practicing lawyers, rather than bringing practicing lawyers into the environment of law professors.

65 See Rabé & Rosenbaum, supra note 8, at 307 (“It is probably fair to say that law professors know far too little about the practice of law, and practitioners know far too little about the changes in legal education.”) – and suggesting that law professors “work periodically among practitioners and judges” as a way to remedy this situation); id. at 308 (noting that law professor spending time in practice “probably dispelled a few stereotypes about
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Practicing lawyers might find that law professors are more interested in the issues faced in practice than they realize, and law professors might find that practicing lawyers can offer ideas to make both their pedagogy and scholarship more relevant.66

There is a growing body of literature that examines the pedagogy of legal education and proposes ways in which law schools can better prepare students for law practice.67 There is also literature which advocates for there to be a stronger connection between law professors and the world of law practice.68 Much of this literature focuses on the need for law professors to write scholarship that is more useful to the issues faced by judges and lawyers.69 There is also a relatively small body of literature which also addresses the value of law professors having practice experience. Some law professors have advocated for law schools to hire professors who have practice experience.70 Other law professors have written about the value of law professors using their sabbaticals (to the extent they have them) to spend time practicing law.71

the academy and bolstered the connections that the practitioners felt with the academy”); Cohen, supra note 8, at 641 (“[M]y experience [at a law firm] reminded me of many of the difficult dilemmas that confront those who practice law. . . . Additionally, my experience made me more sensitive to the types of ethical and professionalism issues confronted in practice.”); id. at 643 (noting that author’s time spent at a law firm “affected [her] attitude towards the practice of law and towards its practitioners”). 69 Cf. Wilkins, supra note 17, at 89 (discussing “professional responsibility teachers” and commenting that, “Those who come from the academy typically have little understanding of the actual lawyering contexts that give ethical dilemmas their resonance in practice. Those who come from practice frequently have no theoretical context within which to make sense of their practical experience.”).

66 See, e.g., STUCKEY, ET AL., supra note 6; SULLIVAN ET AL., supra note 41.
67 See, e.g., Waxman, supra note 8, at 1911-12; see also Cohen, supra note 8, at 627 (“Many scholars have written about the gap between law practice and law teaching.”); id. at 627 n.14.
68 See, e.g., Hrick & Salzmann, supra note 12, at 763.
69 Schiltz, supra note 16, at 780-81; R Michael Cassidy, Beyond Practical Skills: Nine Steps for Improving Legal Education Now, 53 B.C. L. REV. (forthcoming 2012); see also Schiltz, supra note 16, at 747 (“[E]very faculty must include a number of people who have substantial experience practicing law or a genuine interest in the work of practitioners and judges.”); id. at 756 (discussing the value of law faculty with practice experience); Waxman, supra note 8, at 1912 (“Premier law schools . . . need to make affirmative efforts to hire gifted people who have been successful in practice, public and private.”); Hugh W. Silverman, The Practitioner as a Law Teacher, 23 J. LEGAL EDUC. 424 (1971) (discussing the value of law professors having law practice experience); Wilkins, supra note 17, at 92 (advocating for law schools “to hire faculty who have a serious interest in, and experience with, legal practice”); see also Wm. Reece Smith, Jr., Foreword: Teaching and Learning Professionalism, 32 WAKE FOREST L. REV. 613, 617 (1997) (describing a recommendation of the Professionalism Committee of the American Bar Association Section of Legal Education and Admissions to the Bar “that law schools overcome ’an apparent reluctance’ to employ lawyers ’with extensive practice experience’ in tenure track positions”) (quoting PROFESSIONALISM COMMITTEE, AMERICAN BAR ASS’N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, TEACHING AND LEARNING PROFESSIONALISM (1996)). cf. Newton, supra note 3, at 150 (suggesting that law schools include both “research” and “teaching” professors and that each “teaching professor would have a significant amount of meaningful practical experience (typically a decade or more) and would have earned a reputation as a competent, ethical practitioner before joining a law school’s full-time faculty”). Newton also advocates for a law school in which professors continue to practice law. Id. at 150.
70 Mogill, supra note 18; Cohen, supra note 8; see also Gildin, supra note 30; Caplow, supra note 28; Rabé & Rosenbaum, supra note 8; see also Re, supra note 25, at 97 (“It is for the law professor with no prior practice experience that I propose a new sabbatical—a sabbatical in a law office.”).
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While spending an entire semester practicing law would be a valuable way for a law professor to develop a connection with the current world of law practice, this is not necessarily a feasible option for a large number of law professors. Not all professors get sabbaticals, and many law professors who do get sabbaticals might not be interested in spending those sabbaticals practicing law. In addition, some law professors might not be active members of the bar and might not, thus, be able to practice law. Even those professors who have active bar status might not feel equipped to practice law, and it might be difficult for law professors to find work that they could do for a few months. Furthermore, in light of how scarce law practice jobs are for new law graduates, some law professors might be reluctant to take on work responsibilities that might otherwise, at least in theory, be available for a new law graduate looking for full-time employment (or students looking for part-time work). Moreover, it might be more valuable for law professors to have continuing (albeit limited) exposure to law practice consistently over time, rather than spending several months in practice at one point during their teaching career. Regular exposure to law practice would give law professors the opportunity to experience different types of law practice and experience law practice as it changes over time.

Although it might not be practical to expect law professors to spend an entire semester working in full-time law practice, it would be valuable for law professors to engage in some activity that fosters a connection with law practice. This requirement would not mandate that law professors actually practice law (although practicing law might be one way to satisfy the requirement); there would be a range of ways in which law professors could satisfy a CPE requirement. This requirement would mandate that law professors engage in some activity each year which requires interaction with practicing lawyers in a law practice setting.

Although there are compelling arguments in favor of law professors having continuing practice experience, there are also arguments that could be raised against such a requirement. Some law professors might dispute the importance of their having practice experience. These law professors might believe that it is not their role to prepare students for law practice, or they might believe that they can adequately prepare students for law practice without having practice experience (or current practice experience) themselves. Some law professors might feel that the value of CPE would be outweighed by the reduction in time that they would have to devote to other important activities.

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72 Moreover, those law professors who are active members of a bar, might not be active members in the jurisdiction where they are professors and where they, most likely, would seek to practice.
73 But see Cohen, supra note 8, at 644 (“Every law professor should at some time during his or her teaching career be forced to confront [the] reality of law practice . . . .”).
74 Experiencing different types of law practice could mean different substantive practice areas; it could also mean experiencing different contexts in which law is practiced (e.g., large firms, public interest organizations, government organizations).
75 See Cohen, supra note 8, at 642 (“Law professors who devote too much time to outside practice may be depriving their students and their schools of important services.”); see also Hayden, supra note 30, at 366 (noting that law
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Even law professors who agree that it would be valuable for law professors to have practice experience might disagree that it should be required of them. Law professors value their autonomy and might resist the imposition of a CPE requirement. Autonomy concerns might influence law professors’ attitudes towards a CPE requirement in different ways. Some law professors might resist a CPE requirement because it is a requirement. They may not be averse to voluntarily choosing to engage in CPE, but they may not want to be required to engage in CPE. Other law professors might resist engaging in CPE because they are afraid that it will compromise their intellectual autonomy as law professors. These professors might feel that part of the value of their role as law professors is that they can observe and analyze the law removed from any constraints that client representation might entail.

In addition, some law professors might feel that they are not qualified to engage in CPE or might be reluctant to engage in CPE because they did not enjoy law practice. Law professors might not feel qualified to engage in CPE because they are not active bar members or, even if they are active bar members, because it has been so long since they practiced law. Law professors who have practiced law might not want to engage in CPE because they did not like professors’ outside work “may . . . take away too much time and attention from some or all of the core functions of teaching, scholarship, and service”).

70 See Luban, supra note 18, at 61 n.5 (1999) (advocating that law faculty have an obligation to perform pro bono legal service but recognizing that, “[s]ome might . . . argue that institutional recognition of a pro bono obligation is inconsistent with individual teachers’ academic freedom”); see also Hayden, supra note 30, at 360 (noting that academic freedom gives law professors autonomy); Green, supra note 23, at 318 (“As scholars law professors have autonomy—that is, ‘academic freedom’—to decide what views to espouse.”); Cohen, supra note 8, at 643 (“[W]orking for paying clients may affect the objectivity with which a law professor approaches teaching and scholarship.”); Green, supra note 23, at 315-16, 327 (discussing whether a law professor’s scholarship on an issue might be affected by a law professor having given advice on that issue and vice versa).

71 See Green, supra note 23, at 331 (discussing the “concern” that “a professor’s academic objectivity is diminished when he engages in scholarship on subjects relating to his law practice”); Association of American Law Schools, Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities (“The fact that a law professor’s income does not depend on serving the interests of private clients permits a law professor to take positions on issues as to which practicing lawyers may be more inhibited. With that freedom from economic pressure goes an enhanced obligation to pursue individual and social justice.”); see also Green, supra note 23, at 337-43 (discussing some of the issues regarding the scholarship (and teaching) of law professors who also practice law); Hayden, supra note 30, at 366-68 (discussing possible conflicts of interest that may arise when law professors do work outside the confines of the law school). Other considerations might also impact the extent to which a law professor feels comfortable writing about their own experiences in practice. See Caplow, supra note 28, at 44 n.60. However, law professors’ scholarship can be informed by their experiences in practice without law professors explicitly writing about their experiences in practice. In addition, although doing outside work will not necessarily create a conflict of interest, law professors can disclose when there is a potential conflict created by their outside work. See Hayden, supra note 30, at 372-73.

Rather than writing about their own personal experience in law practice, law professors could also engage with practicing lawyers for the express purpose of writing scholarly examinations of the legal profession. See Wilkins, supra note 17, at 93. Although law professors would not be practicing law themselves, this type of scholarly engagement with the legal profession could satisfy the CPE requirement. See id. (noting that scholarly examination of law practice “keeps faculty connected to the world of practice in the areas in which they teach [which] enhances both their teaching and their scholarship”).
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practicing law. In fact, their dislike of law practice may have been one of the motivations for their becoming law professors.

In considering whether a CPE requirement would be worth implementing, the question is not whether there are any conceivable objections to such a requirement, but whether the merits of a CPE requirement make it worth adopting despite the considerations to the contrary. Especially in light of the problems that law schools are facing today,78 the time is right to consider the value of a CPE requirement for law professors. Given the fact that law schools are professional schools where law students are introduced to the law and prepared for their professional roles as lawyers, the merits of law faculties having continued experience in practice would seem to outweigh the concerns against such experience. In addition, as law schools try to identify ways to attract students and help their students secure legal employment, finding additional ways to cultivate a connection between the legal academy and the world of law practice is more important than ever. Furthermore, the world of law practice is continually changing.79 Law professors spending time in law practice settings can facilitate the identification of changes in law practice and ways in which the legal academy can better prepare students for those changes and can also contribute to an understanding of those changes through law professors’ scholarship.80

In addition, the considerations weighing against the adoption of a CPE requirement can inform the design of such a requirement. For example, as will be discussed further in the next Part of this Article, the fact that law professors are not necessarily active bar members mean that any CPE requirement would have to be flexible and allow for law professors to be exposed to law practice in ways that do not necessarily require law professors to formally practice law.

Finally, some of the concerns that weigh against a CPE requirement may actually point to the very reasons why a CPE requirement would be so valuable. Professors who are reluctant to have a CPE requirement because they feel too removed from the world of law practice might be the law professors who would benefit the most from spending some time in a practice environment. Moreover, as law professors, we frequently ask our students (perhaps, particularly our first-year students) to engage in activities that are challenging and unfamiliar, and that take them outside of their comfort zone (for example, speaking in class, presenting oral arguments, reading cases, writing memos and briefs). It might be useful for law professors to engage in

78 See supra notes 1-6.
79 See Dark, supra note 45, at 19-26 (describing changes in law practice that author observed when he returned to law practice from teaching); see also Cohen, supra note 8, at 638-40 (noting how technology has affected law practice); Dark, supra note 45, at 35 (noting changing technology in law practice).
80 See Cohen, supra note 8, at 640 (“Knowing of these changes [in law practice] will help me better prepare my students for the world of law practice.”); Rabé & Rosenbaum, supra note 8, at 305-06 (“The students are facing a legal system far removed from the one that most experienced professors first entered. . . . [R]ecent experience with courts, clients, and even 21st century law office technology, can make all the difference in effectively communicating with students.”); see also Johnson, supra note 7, at 1236 (noting “the failure of law professors to pay close attention to changes in legal practice”).
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activity that takes us out of our comfort zone both to better appreciate how our students feel in law school and to better prepare our students for the law practice environments that they seek to enter.81 Keeping in mind the benefits and concerns with a CPE requirement, the next Part of this Article will address some of the issues attendant to the development and implementation of a CPE requirement for law professors.

II. Implementing a CPE Requirement

A. How Would It Happen?

There are different ways to promote law professors developing a connection with law practice. One option would be for the administration of a law school to encourage faculty members to engage in activities which foster this relationship and to value these activities (for example, when law professors are reviewed).82 The major advantage of the voluntary model is that it retains faculty autonomy. Professors are not obligated to engage in activity that fosters a connection with law practice; professors can choose whether to engage in such activity. The downside of the voluntary approach is that fewer law professors will engage in such activities. As a result, fewer law professors will engage with law practice. Moreover, the law professors who choose not to engage in such activities might be those law professors with the weakest existing relationship with law practice and who would, perhaps, benefit the most from developing such a relationship. In addition, law professors are busy and have many demands on their time. To the extent that engaging in activity that fosters a relationship with practice is optional, law professors might, understandably, choose not to devote their time to such activity.

To be sure, requiring law professors to engage in practice-related activity is a much more controversial proposition. However, requiring such activity would send a message regarding its priority to legal education and would ensure that law professors engaged in such activity. Law

81 See Caplow, supra note 28, at 4 (“My first lesson was an appreciation of the onerousness of journal-keeping. I have to confess that I did not live up to the standards I set for my students.”); id. at 11 (“If I was nervous and insecure in a new situation despite a clear degree of practical competence acquired from many years of lawyering, my students must experience these feelings to an exponentially higher degree—and for a longer period of time.”); id. at 12 (expressing newfound “appreciation” for what students go through when their law clinic performance is critiqued); id. at 52 (Perhaps the most unusual benefit of my year was the role-reversal opportunity that served the dual function of allowing me to assume an alternative professional persona and to discover something about the student’s perspective on experiential learning.); id. at 52 (“The opportunities I had during the year to step into my students’ shoes . . . succeeded in heightening my awareness of their sensitivities and struggles, and should cause me to pause and at least reconsider my attitudes and approaches to them.”).

82 See Cohen, supra note 8, at 643 (“suggesting that, at a minimum, law professors should be encouraged, if not required, to stay connected to the world of practice”); id. at 643 n.59 (“Again, I am merely suggesting that professors should be encouraged to gain exposure to the world of practice.”); see also Luban, supra note 18, at 74-75 (discussing ways that law schools could encourage faculty to perform pro bono service). Obviously, if this model were adopted, there would not be a CPE “requirement” at all. Rather, faculty members would choose—or not choose—to engage in CPE (although CPE might be more or less encouraged by a particular law school).
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professors might well be resistant to having a requirement imposed upon them, regardless of the nature of that requirement.\textsuperscript{83} On the other hand, law professors are required to engage in other activity that comprises an integral part of their role as professors: scholarship, teaching, service. Just as law professors are given great flexibility in how they fulfill these responsibilities, law professors should also be given great flexibility in how they fulfill a CPE requirement. Moreover, given the myriad ways in which such a requirement could be satisfied, some law professors are undoubtedly already engaging in qualifying practice-related activity.\textsuperscript{84}

A requirement to engage in practice-related activity would ensure that law professors who are not otherwise inclined to do so would also engage in such activity. Moreover, a CPE requirement would ensure that law professors who are interested in engaging in ongoing practice-related activity but not otherwise motivated to act on that interest would have an incentive to do so. Law professors are very busy and have many demands on their time. Even law professors who want to engage in ongoing practice-related activity might understandably not prioritize that activity unless they are required to do so.

In addition, requiring CPE would promote the development of systems that would enable law professors to actually engage in such activity. Some law professors may already have connections with practicing lawyers and might be able to undertake practice-related activity through those connections. However, other law professors might not have connections with practicing lawyers or with practicing lawyers who could make practice-related activity available to those law professors. If a law school had to ensure that its faculty members were engaging in CPE, then the law school would have an incentive to develop opportunities for faculty members to engage in such activity. This infrastructure would make it easier for law professors to identify ways in which they could engage in practice-related activity.\textsuperscript{85}

If law professors were going to be required to engage in CPE, the question still remains of how pervasive this requirement should be. The most realistic option is to leave the decision of whether to adopt a CPE requirement up to each individual law school.\textsuperscript{86} This option would enable law schools to determine for themselves whether the CPE requirement was enough of a priority to adopt. This option could also enable law schools to determine for themselves the types of activity and the extent of such activity that would satisfy a CPE requirement. While the

\textsuperscript{83} Some law professors who support the idea of law professors engaging in practice-related activity might oppose the idea of requiring such activity.

\textsuperscript{84} See Cohen, supra note 8, at 643 n.59 (“[M]any professors already engage in some outside practice activities. . . .”).

\textsuperscript{85} To the extent that a law school already has an infrastructure to support students working in the legal community, this infrastructure might also be used to match law professors with CPE opportunities. In fact, professors and students could participate in practice-related experiences together, but this would not necessarily have to be a component of a CPE experience.

\textsuperscript{86} Presumably, the decision of whether to adopt such a requirement could be made by the dean or the faculty, depending on the law school. See Standard 207, ABA Standards for the Accreditation of Law Schools (“The allocation of authority between the dean and the law faculty is a matter for determination by each institution as long as both the dean and the faculty have a significant role in determining educational policy.”).
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downside of leaving the decision of whether to adopt a CPE requirement to each individual law school is that many law schools might choose not to adopt any such requirement at all, those law schools that did adopt such a requirement could use that fact to distinguish themselves and signal their faculties’ engagement with law practice and connections to law practice. This information might be particularly useful for potential students as well as employers of students at these law schools, who might be especially interested to know that the faculty of these schools is engaged with practice, values practice, and is interested in staying informed about the current realities of law practice (and, presumably, better able to prepare their students for those realities).

A more extreme option for creating a CPE requirement would be for the ABA Standards for the Accreditation of Law Schools to incorporate such a requirement. If the ABA Standards included a CPE requirement, this would create a CPE requirement that would apply to all ABA-accredited law schools and would not enable law schools to opt out of adopting a CPE requirement. Including a CPE requirement in the Standards would signal the importance of CPE. However, legal educators might resist a CPE requirement being incorporated into the Standards because it would limit their autonomy. In fact, the Standards leave a lot of discretion to individual law schools to determine, among other things, the responsibilities of their faculties, so it may not be realistic to expect the Standards to be revised in a way that would limit this discretion.

Even if the Standards did not incorporate a CPE requirement, however, the Standards could be revised to highlight the value of law professors engaging in practice-related activities and encourage law schools to adopt policies regarding professors engaging in such activities. Standard 404, pertaining to “Responsibilities of Full-time Faculty,” is one specific standard that could be revised. Standard 404 states that, “A law school shall establish policies with respect to a full-time faculty member’s responsibilities in teaching, scholarship, service to the law school community, and professional activities outside the law school.” While “[t]he policies need not seek uniformity among faculty members,” the Standard does specify the categories of activities that the policies “should address.” Not surprisingly, these activities include teaching, scholarship, and service. Also, not surprisingly, service is divided into three categories: service “to the law school and university community,” service “to the profession,” and service “to the public.”

There are various ways in which Standard 404 could be revised to support a law school’s adoption of a CPE requirement. Standard 404(a)(2) regarding “research and scholarship” encourages the development of policies that address the “responsibility of faculty members to keep abreast of developments in their specialties.” This Standard could be revised to clarify that

87 The standards signal the educational value of teachers with practice experience. See Standard 403(c) (“A law school should include experienced practicing lawyers and judges as teaching resources to enrich the educational program.”) However, the standards do not signal the educational value of full-time professors having practice experience.

88 See Standard 404(a).
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“keep[ing] abreast of developments in their specialties” includes issues that are faced by practitioners in those specialties. Standard 404(a)(1) regarding “teaching responsibilities” could also incorporate a responsibility to keep abreast of developments in law practice. In addition, Standard 404(a)(4), regarding “[o]bligations to the profession,” could be revised so that it explicitly includes not only “working with the practicing bar and judiciary to improve the profession,” but also “working with the practicing bar and judiciary to stay abreast of developments in law practice to better prepare students for law practice and produce scholarship that is of value to the profession.”

Another way in which the Standards could signal the importance of law professors having continuing practice experience is through the revision of Standard 401 regarding the “qualifications” of faculty members. Standard 401 currently states that a law school’s “faculty shall possess a high degree of competence, as demonstrated by its education, experience in teaching or practice, teaching effectiveness, and scholarly research and writing.” Interestingly, the Standards group teaching and practice together, rather than listing them as separate qualifications, so law professors do not necessarily need to have experience in both teaching and practice to be considered qualified law professors. However, the Standards could include “engagement with the legal profession” as one of the hallmarks of a competent law professor. Including “engagement with the legal profession” as one of the qualifications of a competent law professor would not require that law professors have actually practiced law prior to becoming law professors, but it would endorse the value of law professors having some ongoing connection with the legal profession (other than teaching students who will be entering that profession).

Another source that could be revised to include a law professor’s responsibility to engage in CPE is the Association of American Law Schools’ Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities (“the Statement”). As with the ABA Standards, the Statement sets forth law professors’ basic responsibilities with respect to teaching, scholarship, and service. Although the Statement

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89 As currently drafted, Standard 404(a)(4)’s reference to law professors “working with the practicing bar and judiciary to improve the profession” arguably would encompass a law professor engaging in CPE to better prepare students for law practice (which would “improve the profession”). However, it would provide more support for the adoption of a CPE requirement if the Standard were revised to more explicitly incorporate CPE.

90 See Campos, supra note 5 (“Under the current ABA rules there is nothing barring a school from employing a tenure track faculty made up exclusively of people who have never practiced law. . . .”). Some scholars have advocated for law schools to value a candidate’s practice experience more highly in making hiring decisions. See supra note 70.

91 Including “engagement with the legal profession” as a law professor qualification would also support the service to the profession component of law professors’ responsibilities set forth in Standard 404(a)(4).

92 See Cohen, supra note 8, at 625-27.

93 The Statement of Good Practices is divided up into categories regarding law professors’ “responsibilities to students,” “responsibilities as scholars,” “responsibilities to colleagues,” “responsibilities to the law school and university,” and “responsibilities to the bar and general public.”
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recognizes that law professors may engage in law practice,\textsuperscript{94} the Statement does not explicitly identify continuing law practice experience as a responsibility of a law professor.\textsuperscript{95}

CPE could assist a law professor in carrying out some of the responsibilities identified by the Statement. For example, the Statement notes that law professors should engage in pro bono service and “assist students to recognize the responsibility of lawyers to advance individual and social justice.”\textsuperscript{96} Similarly, the Statement recognizes law professors’ “unique role as a bridge between the bar and students preparing to become members of the bar” and, as such, notes that “[i]t is important that professors accept the responsibilities of professional status.”\textsuperscript{97} In addition, the Statement states that “[l]aw professors should be reasonably available to counsel students about academic matters, career choices, and professional interests,” and that, “[i]n performing this function, professors should make every reasonable effort to ensure that the information they transmit is timely and accurate.”

The Statement also recognizes that law professors’ scholarship may benefit from law professors engaging in “activities outside the law school,” although the Statement does not specifically identify law practice experience as the type of outside activity that confers such a benefit on law professors. In fact, the statement about the benefits of outside activities is actually located in the section about professors’ “responsibilities to the law school and university.” There is no statement about the benefits of outside activity in the section regarding law professors’

\textsuperscript{94} For example, the Statement says, “If a professor expresses views in class that were espoused in representing a client or in consulting, the professor should make appropriate disclosure.” This statement does not only pertain to a law professor “representing a client or . . . consulting” while a law professor—a law professor could have engaged in such activity before becoming a law professor—but it would at least seem to contemplate that a law professor might engage in these activities while a law professor. The Statement also requires a law professor to “disclose the fact that views or analysis expressed in any covered activity were espoused or developed in the course of either paid or unpaid representation of or consultation with a client when a reasonable person would be likely to see that fact as having influenced the position taken by the professor,” which also seems to contemplate that a law professor may engage in continuing practice activity.

The Statement also states that law professors must “engage in uncompensated public service or pro bono legal activities.” The activities that would satisfy this obligation might—but would not necessarily—constitute continuing practice activities. See Statement (identifying some of the ways that law professors could satisfy their professional service obligation, “including direct client contact through legal aid or public defender offices . . . , participating in the legal work of public interest organizations, lecturing in continuing legal education programs, educating public school pupils or other groups concerning the legal system, advising local, state and national government officials on legal issues, engaging in legislative drafting, or other law reform activities”); see also Cohen, \textit{supra} note 8, at 627.

\textsuperscript{95} See also Cohen, \textit{supra} note 8, at 626.

\textsuperscript{96} See also Green, \textit{supra} note 23, at 306 (noting that law professors “may be encouraged” to perform pro bono work “in order to serve as role models for students”).

\textsuperscript{97} Given the current difficulty in students finding law related employment, it might be even more important for law professors to serve as “professional role models” for students. See Schiltz, \textit{supra} note 16, at 723 (referring to law professors as “possibly the only professional role models” law students have); see also Smith, \textit{supra} note 70, at 617 (“[L]aw school professors are often students’ first role models for lawyering.”) (describing the content of \textit{PROFESSIONALISM COMMITTEE, AMERICAN BAR ASS’N SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, TEACHING AND LEARNING PROFESSIONALISM} (1996)).
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“responsibilities as scholar.” Moreover, the statement about the benefits of outside activities precedes a qualifying statement that participation in outside activities “tends to reduce the time that the professor has to meet obligations to students, colleagues, and the law school” and noting that “[a] professor thus has a responsibility . . . to assure that outside activities do not significantly diminish the professor’s availability to meet institutional obligations.”

As with the ABA Standards then, the AALS Statement could be revised to identify CPE as a responsibility of law professors. Even if the Statement did not set forth a responsibility to engage in CPE, the Statement could identify CPE as activity which could facilitate law professors’ ability to carry out their responsibilities as teachers, scholars, and community members.

Certainly, law schools could adopt CPE requirements without revisions to the ABA Standards or the AALS Statement. The ABA Standards and the AALS Statement could be revised, however, if not to create an explicit CPE obligation then at least to signal the value of CPE. Although there are reasons why law schools and individual law professors might resist a CPE requirement, there would be value in all law professors engaging in CPE. The next Part will address some of the questions regarding the details of CPE: in particular, what type of activities should “count” and how much time should law professors have to spend engaged in such activities?

A. What Would It Look Like?

98 The Statement does include law professors’ responsibility to stay current in their areas of interest. However, this responsibility seems to be limited to staying current with relevant scholarship. As the Statement says, “A law professor . . . has a responsibility to be informed concerning the relevant scholarship of others in the fields in which the professor writes and teaches. To keep current in any field of law requires continuing study. To this extent the professor, as a scholar, must remain a student.” See also Cohen, supra note 8, at 626.

99 See also Cohen, supra note 8, at 626-27.

100 See id. at 627 (“[T]he Statement does not encourage law professors to engage in the practice of law or to otherwise stay in touch with the realities of what lawyers do in practice.”).

101 Standard 404(b) states that “A law school shall evaluate periodically the extent to which each faculty member discharges her or his responsibilities under policies adopted pursuant to Standard 404(a).” Just because the ABA standards highlight a particular type of activity does not mean that it will be valued by a law school. For example, some law professors would say that law schools do not value service and teaching nearly to the same extent as scholarship. However, including CPE in the standards would at least signal that it was deemed worthy of consideration by the ABA (or, more precisely, the Council of the Section of Legal Education and Admissions to the Bar of the ABA). See http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_aba_standards_preace.authcheckdam.pdf (discussing the development and revision of the Standards). Not including CPE in the standards sends the message that it is not a priority of the ABA, much less a priority of law schools.

102 On the other hand, there could also be value in giving law schools the opportunity to determine for themselves whether to adopt a CPE requirement. In that way, law schools could choose how to prioritize CPE, and law schools could distinguish themselves based upon their adoption (or lack thereof) of a CPE requirement. Cf. TAMANAH, supra note 1, at 174 (advocating for more diversity regarding different types of law schools).
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If a CPE requirement were going to be adopted, the question remains of what that requirement would be. Certainly, there are many different alternatives for what a CPE requirement could look like. This section will address some of the considerations that would inform the design of a CPE requirement. This section’s intent is not to dictate what a CPE requirement would have to look like. Rather the intent of this section is to examine some of the issues regarding the key features of a CPE requirement: specifically, what type of activity would satisfy the CPE requirement and how much of such an activity should a professor have to engage in to satisfy a CPE requirement?

In order to answer these questions, it is important to consider the purposes underlying CPE. These purposes are really what should inform the contours of a CPE requirement. At bottom, CPE is intended to expose law professors to contemporary law practice.103 As discussed previously, there are different reasons why such exposure might be important. First, because law school is “the gateway” to law practice,104 law professors are educating future lawyers. As the educators of future lawyers, law professors should be aware of the environment in which their students will be practicing law. This knowledge will help law professors identify the information and skills that will be most valuable to their students. This knowledge may also enable law professors to be better advisors for their students and to have more credibility with their students.105 Second, gaining first-hand knowledge about law practice might identify issues for law professors to address in their scholarship. Law professors learning more about law practice and using that knowledge to inform their teaching and scholarship could help to reduce the perceived disconnect between the legal academy and the world of law practice. These goals should be the main considerations in identifying the types of activities that could satisfy a CPE requirement.

103 Of course, there are different facets of being exposed to contemporary law practice. One aspect of this exposure would involve doing the work that a practicing lawyer does. Another aspect of this exposure would involve being in a law practice environment outside of the law school. Every CPE experience might be able to be mapped on a two-axis graph, representing the extent to which it involves doing law practice work and being in a law practice setting. There are some CPE experiences that might involve both of these components (for example, working at a law firm or a legal services organization). There are other types of CPE experiences that might involve more of one component and less of another. For example, shadowing a prosecutor or a defense attorney would involve a law professor being in a law practice setting but would not involve a law professor actually practicing law. A law professor advising a client pro bono from the professor’s law school office would involve the law professor doing the work that a practicing lawyer does, but would not involve the law professor doing that work in a law practice setting outside the law school. As will be discussed infra, it would probably be advisable to maintain a flexible definition of the types of experiences that constitute CPE, recognizing that not all CPE activities will necessarily include all facets of “the ideal” CPE experience.

104 Schiltz, supra note 16, at 746; see also Dark, supra note 45, at 17; Luban, supra note 18, at 69-70 (“Law schools have become the indispensable gatekeepers of the legal profession.”); id. at 69 (“Within the larger law economy, law schools exist primarily as conduits to practice.”).

105 Green, supra note 23, at 334 (“Professors who practice may be in a position to offer better, more credible understandings of the law, legal processes, and legal institutions.”).
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Beyond these considerations, in order to facilitate law professors engaging in practice-related activities—and recognizing the different backgrounds and interests of law professors—one of the key features of a CPE requirement should be flexibility. On the one hand, CPE is intended to ensure that law professors engage in practice-related activity. On the other hand, not all law professors may be qualified to actually practice law. Law professors may not be active bar members, may not be active bar members in the jurisdiction where they would engage in CPE, or may not feel qualified to practice law. For these reasons, although engaging in law practice would be one way to satisfy a CPE requirement, CPE should not require all law professors to engage in law practice.

What then are the types of activities that could fulfill the purposes of a CPE requirement while also being realistic and flexible, given law professors’ qualifications (and lack thereof), interests, and availability? Certainly, at one end of the continuum would be actual law practice. Professors could engage in private practice, or professors could engage in pro bono representation. Engaging in pro bono practice would have the added benefit of serving the public interest and also modeling a commitment to public service for students. As it currently stands, students are more likely the members of a law school community who model public service, given that students are the ones who are likely to be subject to a pro bono requirement.

At the other end of the continuum of law-practice activity would be opportunities that expose law professors to law practice without requiring law professors to actually engage in the

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106 See Cohen, supra note 8, at 643 (recommending different ways in which law professors could “stay connected to the world of practice”).

107 See Nathanson, supra note 6, at 344 (“[I]t is probably the simple lack of long-term practical experience and the comparatively quick transition from student to professor that results in the feeling that many doctrinal professors have that they are primarily academics rather than lawyers.”)

108 Presumably, this does not mean that a law school could not require its law professors to be active bar members in the jurisdiction where the law school is located or that a law school could not require its law professors to engage in some type of law practice. These requirements would raise faculty recruiting issues, but they would also send a signal to prospective students and the practicing bar about the law school’s commitment to maintaining a connection with the world of law practice.

109 See Mogill, supra note 18, at 6 (“question[ing] whether those of us in the academy are doing enough to provide for the needs of those who are under-represented” and discussing “the need for greater service by law professors to the indigent”); id. at 29 (“Faculty members who perform pro bono service help to provide not only assistance for the less fortunate but act as role models for their students.”); id. at 29 (“The law professor who performs pro bono services for the needy instills his students with professional values of service from the beginning of their educations.”); Association of American Law Schools, Statement of Good Practices by Law Professors in the Discharge of Their Ethical and Professional Responsibilities (stating that “law professors serve as important role models for law students” and stating that law professors have an obligation “to engage in uncompensated public service or pro bono legal activities” because they are “role models for students and . . . members of the legal profession”).

Pro bono representation would give law professors the opportunity to practice law. On the other hand, different types of pro bono representation would expose law professors to law practice settings outside the law school to a greater or lesser extent. Some types of pro bono work might be done within the confines of a law professor’s office, while other types of pro bono representation might involve more time spent outside the law school.
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types of activity that practicing lawyers engage in. These types of activities would be largely observational. For example, a law professor could spend a certain amount of time (how much time will be discussed further below) shadowing a practicing lawyer.

Another option could be for a law professor to spend time observing the proceedings in a courtroom. By observing court, a professor would be able to see lawyers and judges in a practice setting. However, observing court in and of itself would not afford a law professor the opportunity to actually engage with a practicing lawyer. If a law professor observed court and then discussed what was observed with one (or both) of the lawyers or the judge, this would be a more meaningful CPE experience. Alternatively, a professor could observe a lawyer in court in the course of shadowing that lawyer. The benefits of observing court in this context is that it would give the professor an opportunity to discuss and reflect on the experience with a practitioner.

In between client representation and shadowing a practicing lawyer are other types of activities that would provide a law professor with the opportunity to engage in practice-related activity. These activities have their pros and cons, but they might at least be a step in the right direction in order to give law professors personal experience with law practice. For example, one option could be for law professors to work together with students and clinical faculty on a case being handled by a law school clinic. The advantage of this type of activity is that the professor would be exposed to law practice and would be able to work together with a student and a colleague on a case. The disadvantage of this type of activity is that the professor would

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110 These types of activities are described as “at the other end of the continuum” from engaging in law practice because they involve observing practicing lawyers, rather than engaging in activity other than observation. However, in some respects, observing practicing lawyers at work is closer to the world of law practice activities than some of the other activities that might qualify as CPE (for example, serving on a bar committee or task force, discussed below).

111 Cohen, supra note 8, at 624 n.4 (noting that author spent most of her sabbatical at a law firm “‘shadowing’” two lawyers at the firm).

112 Observing court would also not afford a law professor the opportunity to actually engage in a law practice activity himself or herself.

113 See Luban, supra note 18, at 73 (noting that one way in which law professors could perform pro bono service would be “to cosupervise clinical cases with a clinician partner”). In distinguishing between “law professors” and “clinical faculty,” I do not mean to suggest that clinical faculty are not law professors. Although clinical faculty might benefit from practice experience outside the law school context, clinical faculty are the law school professors who are likely the least in need of a CPE requirement because they supervise students who are engaged in law practice. But see Caplow, supra note 28, at 2-3, 19, 19 n.31 (1996) (distinguishing between a law professor’s work in a law school clinic and law practice outside the law school context and noting that this difference “suggests that clinical teachers might have a responsibility to return regularly to the real world in order to retain an edge and credibility with our students”); Rabé & Rosenbaum, supra note 8, at 298 (specifically suggesting that clinical professors (and skills professors) “consider practicing law—in real-life, non-clinical settings—during . . . their sabbaticals,” while recognizing that clinical professors who work in environments analogous to law offices are less in need of such experiences).

114 Another benefit of non-clinical faculty working with the clinic might be a greater appreciation for the clinic. See Chemerinsky, supra note 7, at 40 (“The more academic tenure track faculty are involved in clinics the more they will understand their value and the more invested they will be in supporting them.”).
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not be working with a lawyer who was practicing outside of the law school context. Another type of activity that might satisfy a CPE requirement would be work on a bar committee or task force. This type of work would require a law professor to engage with members of the bar and address issues relevant to the bar. The downside of this type of work is that it is more attenuated from the work that lawyers do when they are engaged in direct client representation.

While there is merit in having a flexible, broad conception of the types of activities that would satisfy a CPE requirement, there is also value in considering the types of activities that might not constitute CPE. This is not necessarily an easy determination. However, keeping the goals of CPE in mind can inform the consideration of whether a particular type of activity would constitute CPE. One type of activity which might not count as CPE would be teaching or attending a traditional continuing legal education program. Although continuing legal education may expose a law professor to practitioners (as presenters and attendees at a session) and legal issues faced by practitioners, continuing legal education courses typically would not require law professors to enter a law practice environment to the extent anticipated by CPE.

A closer call perhaps would be CPE courses taught by practitioners for the express purpose of educating law professors about the current realities of law practice. The disadvantage of these courses would be that they would be removed from the real-world context in which law practice occurs and they would not involve law professors engaging in law practice. There are ways that these courses could include observations of law practice, either actual or simulated, but it would likely be a different experience than law professors accompanying lawyers as they engage in practice outside a classroom context. However, these courses could serve a valuable function and might be worth considering as another CPE option.115

Similarly, a question might be raised about whether a law professor could satisfy a CPE requirement by spending time speaking with a practicing lawyer about practicing law. Certainly, such a conversation would contribute to a law professor’s understanding of the issues faced by practicing lawyers and the context within which lawyers practice. However, conversations alone may not be considered sufficient exposure to law practice, unless they are accompanied by the law professor actually observing the practitioner engaged in law practice activities.

Another issue regarding a CPE requirement is how much time a law professor should have to spend on practice-related activity.116 To the extent that the CPE requirement is analogous to

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115 The author thanks Norman Stein for suggesting the idea of courses taught by practicing lawyers to educate professors about law practice.
116 An even more fundamental question is whether there should even be a specific amount of time that law professors should be required to engage in CPE. There are certainly different models that could be developed regarding the extent of a law professor’s CPE. One model could include a quantitative component, setting a specific amount of time (or a minimum amount of time) that a law professor would need to engage in CPE. An alternate model could focus on the qualitative component of CPE, rather than the quantitative component. However, it seems likely that some guidance regarding the amount of time that a professor should spend engaged in CPE activities would be useful, even if there is a fair amount of flexibility regarding the quantitative component of the standard.
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the CLE requirements of practicing lawyers, the time that law professors are required to spend on CPE could mirror the amount of time that lawyers are required to spend on CLE.\textsuperscript{117} Of course, CLE requirements vary from jurisdiction to jurisdiction,\textsuperscript{118} and a common CPE requirement could apply to all law professors. As a substantive matter, it would be useful to consider the amount of time that would be needed to make CPE meaningful—in other words, to give professors an opportunity to learn from that experience—and use that determination as a guide in setting any time requirements for CPE. From a practical point of view, it might be more expedient to use CLE time limits as a guide.

Although CLE requirements vary from jurisdiction to jurisdiction, an average of ten to fifteen hours of CLE per year is relatively typical.\textsuperscript{119} Some jurisdictions require lawyers to complete a certain amount of CLE each year.\textsuperscript{120} Other jurisdictions give attorneys more than one year to complete a prescribed number of CLE hours.\textsuperscript{121} This model—setting a certain number of hours that must be fulfilled over the course of a few years—seems like it would make sense for CPE. In this way, law professors would gain regular exposure to the world of law practice, but would have greater flexibility in determining when and how they would gain this experience. In addition, enabling law professors to satisfy a CPE requirement over the course of a few years might encourage law professors to engage in more substantive law practice projects because they could accumulate CPE hours as the project developed, rather than having to accumulate a fixed number of hours in a relatively short period of time (one year).

While one concern is whether law professors will engage in CPE for a sufficient amount of time (although it might not be entirely clear what constitutes “sufficient” time), the converse concern is that law professors not engage in CPE to an extent that will detract from their other responsibilities.\textsuperscript{122} The ABA’s accreditation standards already make clear a concern that law professors devote themselves to their professorial responsibilities and not engage in activities that interfere with their commitments to the law school.\textsuperscript{123} Moreover, the ABA’s interpretive

\textsuperscript{117} See http://www.americanbar.org/publications_cle/mandatory_cle/mcle_states.html (for information regarding individual jurisdictions’ CLE requirements). Specific amounts of time are also identified in the context of lawyers’ pro bono service. For example, the American Bar Association recommends that lawyers should “aspire to render at least (50) hours of pro bono publico legal services per year.”

\textsuperscript{118} See id.

\textsuperscript{119} See id.

\textsuperscript{120} See id. For example, attorneys in Tennessee have to complete fifteen hours of CLE over the course of one year.

\textsuperscript{121} See id. For example, attorneys in Colorado have to complete forty-five hours of CLE over the course of three years.

\textsuperscript{122} See Cohen, supra note 8, at 643 (“Perhaps one way to ensure that such work does not interfere with a professor’s primary responsibilities is to limit the number of hours or any additional compensation that a professor can earn from such endeavors.”).

\textsuperscript{123} See Standard 402(b). As this Standard states:
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guidance regarding the Standards explicitly identify law practice as an activity that calls into doubt a law professors’ commitment to his or her professorial responsibilities. In some way, then, the Standards create a tension between being a law professor and being a practicing lawyer, rather than seeing these two roles as complementary and enhancing of one another.

On the other hand, the Standards do allow law professors to engage in outside activities that are included in Standard 404(a), which defines the responsibilities of a law professor. The Standards also allow law professors to engage in other activities that “enrich the faculty member’s capacity as a scholar and teacher,” which would include CPE activities. Furthermore, the interpretation of the Standards does not prohibit a faculty member from practicing law; rather, the faculty member is still “a full-time faculty member” so long as the law school can demonstrate that the faculty member is able to carry out the responsibilities of a full-time faculty member. In addition, given the limited amount of time that a law professor would likely have to spend satisfying a CPE requirement, the law professor would likely not be considered to be practicing law to the extent contemplated by the interpretation.

Conclusion

There have been many critiques of legal education and recommendations for legal education reform. These critiques and recommendations tend to focus on the pedagogy of legal education. Recently, there have also been questions raised about the cost of legal education and whether it is even worth it for students to pursue a legal education when they will accrue so

A full-time faculty member is one whose primary professional employment is with the law school and who devotes substantially all working time during the academic year to the responsibilities described in Standard 404(a), and whose outside professional activities, if any, are limited to those that relate to major academic interests or enrich the faculty member’s capacity as a scholar and teacher, are of service to the legal profession and the public generally, and do not unduly interfere with one’s responsibility as a faculty member.

See Interpretation 402-4. This Interpretation states: Regularly engaging in law practice or having an ongoing relationship with a law firm or other business creates a presumption that a faculty member is not a full-time faculty member under this Standard. This presumption may be rebutted if the law school is able to demonstrate that the individual has a full-time commitment to teaching, research, and public service, is available to students, and is able to participate in the governance of the institution to the same extent expected of full-time faculty.


Standard 402(b).

Interpretation 402-4.

The goal of CPE is to create more well-rounded law professors who have continuing exposure to the world of law practice. The goal of CPE is not to turn law professors into full-time practicing lawyers. See Schiltz, supra note 16, at 761 n.219 (“[T]here is a large difference between occasionally doing some of the things that a practitioner does and being a practitioner. . . .”).
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much debt in the process and not necessarily be able to find a job that enables them to pay off that debt (much less earn a living on top of that). Especially at a time when the utility of a legal education is being questioned—and the utility of law professors’ work generally is being questioned—we should consider how our own experiences influence our students’ education and whether there are ways that we can enhance both our teaching and scholarship. In light of recurring concerns about whether legal education could do a better job of preparing students to be members of the legal profession and whether the scholarship of law professors could be contributing more to the issues faced by practicing lawyers and judges, it is worth considering whether law professors should have an obligation to regularly engage with the world of law practice and, if so, what the nature of that obligation should be.

This Article identifies the CPE requirement as one way in which law professors might be able to enhance our teaching and scholarship, and strengthen our connection to the legal profession. CPE not only also offers a way in which we might learn about the world of law practice but also offers other ways in which we might engage with our faculty colleagues and our students.

CPE offers opportunities for law professors individually, and law schools generally, to develop relationships with practicing lawyers and the organizations in which they practice. In engaging in CPE, law professors will spend time with practicing lawyers and speak with practicing lawyers about their work. In doing so, law professors will also likely discuss their own work with practicing lawyers. This exchange will, hopefully, educate both professors about the work of practicing lawyers, and practicing lawyers about the work of law professors. Moreover, as law professors pursue opportunities for CPE, they will develop relationships with individual lawyers and their organizations. Law schools might even work with local bar associations to cultivate CPE opportunities. These connections might benefit not only law professors who are looking for CPE opportunities but also students who are looking to develop their own professional relationships with the legal community. Moreover, to the extent that students are looking for law schools that will best prepare them for law practice and help them in securing employment as law students and lawyers, CPE is one more way in which law schools can demonstrate their commitment to helping students successfully transition from law students to practicing lawyers.

CPE also offers another facet to the exchanges that we can have with our faculty colleagues and with our students. Part of engaging in CPE should be sharing and reflecting on our experiences with our colleagues. As with discussions of scholarship and teaching, this interchange will likely occur in both informal conversations and in more formal settings.\(^\text{129}\) At the end of the year—and, ideally, periodically throughout the year, law professors could meet to discuss their CPE experiences and discuss how those experiences might inform law school

\(^{129}\) See Re, supra note 25, at 98 (“What the teacher learns during a law office sabbatical will not only be passed on to students. It can also be shared with faculty colleagues, in informal conversations or even in seminars or colloquia.”).
curriculum and pedagogy, as well as scholarship. These discussions would be more likely to occur amongst faculty at the same law school, although faculty at different law schools could also meet to discuss their CPE experiences and reflect on the implications of those experiences for both legal education and scholarship. CPE, thus, offers a way in which law professors can engage not only with the world of practice but also with each other. 130

CPE also offers an opportunity to enhance law professors’ interactions with our students. In the classroom, we can use our practice experiences to inform our teaching. We might also have more credibility with our students if they know that we have actually spent time recently in the world of practice and are interested in keeping abreast of developments in law practice. CPE might also help integrate theory and practice better in the classroom and in the minds of our students. We can demonstrate to our students how our perspectives on the law are informed by our law practice experiences, and how our perspectives on law practice are informed by theory. If we have CPE, we might be better able to model the integration of theory and practice for our students. Outside of the classroom, our continuing experience in practice (albeit limited) might make us better advisors to our students and more effective at counseling our students about successfully entering the legal market, especially given how difficult it is for so many students to enter the legal job market. We will have more first-hand knowledge about the legal environments that our students are seeking to enter and we will know more practicing lawyers who might be good resources for our students. 131 Also, as more and more of our students participate in clinics and other experiential learning opportunities in law school, CPE will give us the opportunity to have shared experiences with our students—either because we engage in practice experiences with them or because we face some of the same issues in the course of our CPE activities as students face in the course of their experiential learning opportunities.

CPE offers many potential benefits, but, of course, the question still remains of whether CPE should be a requirement for law professors and, if so, what the specific contours of that requirement should be. In addition, if CPE is going to be a requirement, the question remains of how that requirement would be administered. CLE requirements for lawyers are mandated by the attorney licensing bodies of particular states, which also monitor compliance with those requirements. In the case of law professors and CPE, it is likely more realistic to envision a world where law schools individually determine whether they are going to adopt a CPE

130 Ideally, law professors would be able to reflect on their experiences with both the practicing lawyers with whom they are engaging in CPE and their faculty colleagues. However, practicing lawyers may have more limited amounts of time to engage in these reflective conversations. See Caplow, supra note 28, at 3 (law professor who spent sabbatical in law practice notes that her “supervisors [in practice] largely, and undoubtedly correctly, saw their primary role to facilitate my litigation responsibilities, rather than to engage me in critical self-reflection”). Reflective discussions with practicing lawyers would be extremely valuable, and many practicing lawyers might be quite receptive to these discussions, especially if professors made clear that they were interested in having these types of conversations with practicing lawyers. That said, practicing lawyers might have less flexible schedules and less time at their disposal to engage in such discussions.

131 We will also have more resources for ourselves, to the extent that we have questions about law practice in the course of our teaching and scholarship.
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requirement for themselves and where law schools develop the mechanism by which they will determine whether their faculties have engaged in CPE as required. Nonetheless, the ABA could encourage law schools to adopt CPE policies by revising its accreditation standards to promote the value of law professors engaging in continuing law practice related activities.

At the least, the advantages and disadvantages of CPE should be explicitly addressed by law school faculties. These conversations in and of themselves will be valuable, regardless of the ultimate conclusions reached. As the value of a legal education is being called into question and as the legal profession is continuing to evolve in ways that are significant for our students, law professors should continue to examine our role as legal educators and scholars, and determine whether there are ways that we can enhance our ability to carry out these responsibilities.