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Capital Lawyering & Legislative Clinic

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Capital Lawyering & Legislative Clinic

Rex D. Frazier*

ABSTRACT

This article outlines an approach for teaching law students about advocacy beyond the judicial branch, with particular emphasis on legislative advocacy. Given the long and well-documented shift away from the judicial branch as the primary source of original public law, it is critical to teach law students that legislative advocacy is more than just an “alternative” or “non-traditional” legal career option and, instead, is one which regularly involves “real lawyering.” Just as law students learn practical trial skills through moot court, shouldn’t they learn practical legislative advocacy skills through simulated legislative hearings? Further, can law students move beyond traditional approaches for drafting legislative proposals in a classroom setting to vetting and advancing student-developed legislative proposals in a legislative body? This article outlines an effort to determine the limits of how far, and under what circumstances, law students can both develop original legislation and engage in actual legislative advocacy.

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I. INTRODUCTION

This article outlines one law school's ongoing effort to update its curriculum to train law school students for careers in public policy development and advocacy, particularly California state legislative advocacy. To meet the needs of a society increasingly defined by statutes and regulations¹—as opposed to common law—it is necessary to elevate training in public policy advocacy to a regular career path for law school graduates, instead of such a subject being viewed as a lesser, non-doctrinal offering.

Calling it the “Capital Lawyering Concentration,” McGeorge School of Law (“McGeorge”) provides required and elective coursework, experiential courses, and clinics designed to help graduates succeed in legislative and executive branch work that is not typically within the definition of the licensed practice of law. It approaches such work as an everyday complement to developing public law through licensed practice in the judicial branch. The approach trains students to develop strategies for public policy change regardless of the branch of government, while realizing that each branch of government has venue-specific rules and tools for advocacy that merit both theoretical and practical focus. Ultimately, the goal of the program is to develop lawyers who can advocate among

1. See, e.g., Alexandra B. Klass, *Common Law and Federalism in the Age of the Regulatory State*, 92 IOWA L. REV. 545 (2007).

different branches of government, respecting the traditions, cultures, and purposes of each, and, when necessary, act in one branch to achieve or ameliorate a result in another.²

Part II of this article will provide an overview of the components of the Capital Lawyering Concentration. The choices McGeorge faced when constructing the concentration will be familiar to many educators. How much time should we allocate to statutory interpretation and administrative law in an introductory course? Should such a course include material on the mechanics of government, such as legislative process? How do we illustrate when an issue can have dimensions which are debated in each branch of government and, possibly, up through all levels of our federalist system? How do we incorporate practical skills, such as drafting legislation and executive branch rules? When is it appropriate to focus on advocacy skills training, such as simulated legislative committee hearings, as distinct from theory? How should we teach the skills necessary to work for the government versus the skills needed to petition the government? How far can a law school go to encourage and aid students in the development and pursuit of actual legislative proposals, while managing important reputational, ethical, and legal considerations? Part II argues that it is possible to go beyond traditional common-law curriculum and teach students the fundamentals of being multi-branch public policy advocates, but that it is much more difficult to fashion a curriculum for practical legislative skills development without, first, addressing specific issues.

Part III explores in greater depth the concentration's programs to train students to conduct actual legislative advocacy. Part III provides an overview and discussion of a recently-developed sequence of three upper-level courses at McGeorge focused on, first, classroom training on legislative process and advocacy and, second, on a legislative and public policy clinic for students to identify deficiencies in California state law, draft responsive legislation and, most critically, execute a strategy for personally advocating for this legislation in the California State Legislature. Part IV outlines several issues that McGeorge had to address in order to launch and execute the courses, including collaboration between full-time faculty and adjunct professors, who are either retired or active government officials, government affairs professionals, or lobbyists. This section also outlines the struggles and successes faced in these courses and, in the end, the author argues that these courses

2. See *Capital Lawyering Concentration*, U. OF THE PAC.: MCGEORGE SCH. OF LAW, http://www.mcgeorge.edu/Students/Academics/Areas_of_Specialty/Concentrations/Capital_Lawyering_Concentration.htm (last visited Apr. 19, 2017).

thrived in a specific set of circumstances that have facilitated student performance of public policy advocacy on par with fully-employed junior legislative staff or lobbyists.

II. CAPITAL LAWYERING CONCENTRATION

Located in downtown Sacramento, “only a bike ride away”³ from the California State Capitol building and a myriad number of state executive branch offices, McGeorge is dramatically impacted by, and impacts, the California state government. While most McGeorge graduates practice in a traditional transactional or litigation environment, a substantial number of students gain post-graduation employment either in or around the legislative or executive branches in Sacramento. Many graduates, such as the author, worked in state government capacities while they were also evening division students at McGeorge; the students were involved with complex legal considerations during the day and were finally able to understand them at night.

Despite this close proximity to the levers of California state government power, and an alumni network represented throughout, McGeorge has resembled other law schools in the pace of modifying its traditional common law focus to reflect the rise of the modern administrative and legislative state noted by legal commentators.⁴ This is understandable in the absence of evidence that significant numbers of full-time law school faculty have practical experience working in state government or lobbying and the scholarship opportunities are more heavily-focused on traditional doctrinal areas.

So, how does a law school develop sufficient internal pressure to develop legislative and administrative law programs with a focus on advocacy training, particularly if the courses require reallocating some required units or devoting limited resources to new types of courses? Obviously, it is difficult and can lead to faculty friction. There is not an easily-understood vocabulary for “legislative lawyering,” particularly when so many duties of legislative lawyers do not trigger licensure by a state bar association.⁵ But, persistent

3. Maura Dolan, *Legal clinic immerses aspiring lawyers in the political process*, L.A. TIMES (Feb. 8, 2015, 7:12 PM), <http://www.latimes.com/local/politics/la-me-law-school-politics-20150209-story.html>.

4. See, e.g., Elizabeth Garrett, *Teaching Law and Politics*, 7 N.Y.U. J. LEGIS. & PUB. POLY 11, 11 (2003).

5. California statute does not define the “practice of law,” but the commonly-accepted definition is set forth in a California Supreme Court case, *People v. Merchants Protective Corp.*, 209 P. 363, 365 (1922) (quoting *Eley v. Miller*, 34 N.E. 836 (1893)):

administrators, faculty, and alumni can help build this pressure and, over time, things can change. Such was the case at McGeorge.⁶

After many fits and starts, and various attempts to develop new language for “public policy lawyering” or “legislative lawyering,” McGeorge adopted the notion of “Capital Lawyering.” As McGeorge conceived it:

Capital Lawyering Concentration students complete a series of required and elective courses specially designed to train them to work in and around the California legislature in committees, in private firms that specialize in political law or lobbying, in nonprofit agencies that engage in issue advocacy, in local, state and federal agencies, and in law firms with regulatory practices in areas such as communications, energy, the environment, health and employment. The curriculum ensures that students graduate with real-life experience and on-the-job contacts within the government and public lawyering community. Students also participate in Capital Center student groups, attend Capital Center events, and network with the many Capital Alumni Chapter members in California, Washington, D.C., and elsewhere who work in government and public lawyering careers.⁷

While this concept may seem little different from many similar programs at other law schools, there are a few critical elements worth noting. First, McGeorge consciously attempted to eliminate the notion that public policy work not requiring a bar license is simply “non-traditional lawyering” or something less than “real lawyering.” Second, new vocabulary was necessary to allow the school’s

As the term is generally understood, the practice of the law is the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity to the adopted rules of procedure. But in a larger sense it includes legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured although such matter may or may not be depending in a court.

Id. Legislative lawyers routinely undertake duties outside the understood scope of these activities, including legislative bill analysis, written and oral communications with legislators and staff, and testifying in legislative proceedings.

6. Special recognition is deserved for former Dean Jerry Caplan’s leadership in spotting the importance of McGeorge’s location and creating the Capital Center for Law and Policy, and for appointing Professor Clark Kelso as the first director who ran a Capital Center program, which issued a separate “certificate,” for several years. This led to the creation of a precursor course to the current Lawmaking in California course, as well as other courses taught by full-time faculty, Professor Kelso and Professor Leslie Gielow Jacobs. This coherent program, which was innovative at the time, evolved into the current Capital Lawyering Concentration.

7. U. OF THE PAC.: MCGEORGE SCH. OF LAW, *supra* note 2.

career placement services to adequately describe a material career path for graduates as something more than an aberration.

So, what, exactly, is Capital Lawyering? The coursework is a blend of traditional concepts found at many schools and new courses for which there are no casebooks and few fully-relevant textbooks. The traditional concepts will be familiar. The courses, which are part of the Capital Lawyering Concentration and have a California state legislative focus, are newly-developed. Students apply for admission to the Capital Lawyering Concentration, with a required student statement of purpose and proposed coursework path.

A. *Required Courses for the Concentration*

1. *Statutes and Regulations*

In 2015, McGeorge, after surveying other law schools, for the first time, required all students, not just those enrolled in the Capital Lawyering Concentration, to take a traditional three-unit, single semester Statutes and Regulations course. The course uses the familiar Manning and Stephenson text⁸ to provide an introduction to the law governing administrative agencies and to legislation and its interpretation. As the syllabus notes, “[i]n this age of statutory proliferation, an understanding of how courts interpret statutes and how agencies administer them is a crucial skill every attorney should possess.”⁹ The course provides an important survey of these topics, but required the school to make space at the expense of other required courses—which can trigger consternation when such a change impacts full-time, doctrinal faculty.

2. *Introduction to Capital Lawyering*

The other required course for the Capital Lawyering Concentration is a “non-traditional” course, entitled Introduction to Capital Lawyering. This two-unit, single-semester course was first developed by an adjunct professor, Professor Tom Nussbaum, who has extensive experience in California state government.¹⁰ Other adjunct faculty now teaching this course, specifically Professor Chris

8. JOHN F. MANNING & MATTHEW C. STEPHENSON, LEGISLATION AND REGULATION (2nd ed. 2013).

9. Professor Brian Slocum, Syllabus, Statutes and Regulations (Spring 2016), McGeorge School of Law.

10. Tom Nussbaum worked for three decades in the California Community Colleges, including serving as both Vice Chancellor of Government Affairs and as General Counsel, and eventually serving as Chancellor of the entire system from 1996 to 2004. He became an adjunct professor with McGeorge in 2006. See *Thomas J. Nussbaum*, U. OF THE PAC.:

Micheli, also have extensive experience in California state government.¹¹

Introduction to Capital Lawyering serves a vital role in the overall Capital Lawyering Concentration. The primary learning objective of the course is to introduce and acquaint students with the fundamental knowledge and skills that are essential to lawyering in connection with California state government and with government in general.¹² The course introduces students to the lawyer's role in developing, modifying, implementing, advocating, and influencing public policy, including: legislation, regulations, executive orders, court orders, and other policy edicts. While the primary focus is devoted to the lawyer's role in the context of California state government, the course touches upon the full array of policymaking venues and processes, including: Congress, the California Legislature, California and federal agencies, California's initiative process, California and federal courts, and agencies of local government.

In the absence of a standard textbook for this material, Professor Nussbaum developed a reader to provide the students with the essential background to participate in class discussions and consider the case studies. The material in the reader includes a variety of policy analysis methodologies, including Eugene Bardach's well-known academic and theoretical approach to policy analysis.¹³ By the end of the course, the students have an analytical framework and skills for approaching public policy issues across multiple venues.¹⁴ There are graded midterm and final exams, as well as a written project that involves working on an actual current public policy

MCGEORGE SCH. OF LAW, http://www.mcgeorge.edu/Thomas_J_Nussbaum.htm (last visited Apr. 19, 2017).

11. Due to high student demand, there are multiple sections of this course and, in addition to Professor Nussbaum, a new adjunct professor, Chris Micheli, has started teaching the course. Prior to establishing his current Sacramento-based contract lobbying firm, Aperia & Micheli, Professor Micheli (also a McGeorge alum) was a partner in two previous contract lobbying firms as well as General Counsel and an in-house lobbyist for the California Manufacturers Association. See *Christopher Micheli*, U. OF THE PAC.: MCGEORGE SCH. OF LAW, http://www.mcgeorge.edu/Christopher_Micheli.htm (last visited Apr. 19, 2017).

12. Tom Nussbaum, Syllabus, Introduction to Capital Lawyering (Fall 2016), McGeorge School of Law.

13. See EUGENE BARDACH, *A PRACTICAL GUIDE FOR POLICY ANALYSIS: THE EIGHTFOLD PATH TO MORE EFFECTIVE PROBLEM SOLVING* (4th ed. 2011).

14. Using Professor Micheli's sequence for illustration, in classes one and two, he introduces the class, the employment opportunities for which McGeorge is attempting to prepare students, and the Bardach policy analysis rubric. After these classes, the students should understand the difference between policy analysis and policy development and be able to perform a simple policy analysis. In classes three and four, the students are challenged with specific, thorny issues (most recently, illegal immigration, public pensions, and obesity) and asked to demonstrate how the issues could be addressed by multiple governments, across branches, and up through the federal government. Classes five through eight are devoted to the venues for lawyering in California state government (the legislative and executive

problem facing California, or the nation, where students are expected to formally apply a policy analysis methodology.

After these two required courses, Statutes and Regulations and Introduction to Capital Lawyering, McGeorge expects Capital Lawyering Concentration students to have a sufficient baseline training that allows them to tackle progressively more difficult work, including a required experiential offering.

3. Experiential Courses

The Capital Lawyering Concentration requires students to choose at least one of three experiential courses. The options for the students include: the Administrative Adjudication Clinic, a two-unit, single-semester option; a Capital Lawyering Externship, which is a field placement that can range from three to fourteen units; and the Legislative and Public Policy Clinic, which is a four-unit, two-semester clinic.

The Administrative Adjudication Clinic provides a comprehensive overview of the administrative process through classes and simulated hearings.¹⁵ It is designed to educate students on how administrative law judges make decisions and how administrative hearing systems operate. The course utilizes a variety of instructional approaches including classroom instruction, observations, simulations, and research assignments. Weekly class sessions prepare each student to be an administrative hearing officer and include a number of sessions concerning the law as it relates to parking citations. Students are required to observe an actual administrative hearing and prepare a short paper concerning the observation. All students participate in simulated administrative hearings based on actual administrative hearings. Each student is ultimately assigned to conduct a number of parking citation hearings for a local government. The course is taught by Megan Shapiro, a

branches, the Governor, state agency rulemaking, the initiative process, and the courts). These classes cover essential aspects of the Legislature, researching legislation and initiatives, and the basics of open meeting laws. They also include more detailed information, such as the Governor's involvement in legislation, the state budget, executive orders, and agency activity. Classes nine and ten tackle analogous topics in the federal government, while class eleven does so for local government. Class twelve addresses the various forces and constraints (both legal and political) that can increase government gridlock, including voting and procedural requirements, special interests, the costs of running for office, partisan politics, term limits, legislative districts, and the media. Classes thirteen and fourteen are dedicated to student skills in advocacy, negotiation, and compromise in policymaking settings.

15. See *Administrative Adjudication Clinic*, U. OF THE PAC.: MCGEORGE SCH. OF LAW, http://www.mcgeorge.edu/Students/Academics/Experiential_Learning/Legal_Clinics/Administrative_Adjudication_Clinic.htm (last visited Apr. 19, 2017).

McGeorge alum and practicing attorney who has represented hundreds of clients in administrative hearings and maintains an active civil litigation practice. Enrollment in the course is limited to ten students.

McGeorge's field placement office oversees the externship program.¹⁶ Some of the options resemble the internship and field placement offerings that are typical at all law schools;¹⁷ however, a particular advantage of being located in a state capital is the many in-town placements that allow students to return to class for some portion of the day. Placements typically occur in government offices or public interest/non-profit organizations, and students must be supervised by a licensed attorney. For legislative externships, students are typically placed in committee offices, but there are instances of placement in a legislator's personal staff office. For public interest/non-profit organizations, students are typically placed with organizations that have a perceived public or civic-oriented purpose.

These placements are conscious choices and present several issues for consideration. What is the justification for requiring attorney supervision if not all Capital Lawyering jobs involve the licensed practice of law? Should the nature of the client work (e.g., for-profit versus non-profit, public interest versus corporate/labor) matter in determining whether a field placement deserves academic credit? Certainly, different law schools could arrive at reasonable, but different, answers to these questions. This author's viewpoint is that a Capital Lawyering program with faculty members talking about Capital Lawyering job opportunities should evaluate the quality of the work that would be performed but otherwise not limit externship opportunities to those supervised by attorneys or at public interest organizations, neither of which appears to be required by American Bar Association rules.¹⁸

16. *Externships*, U. OF THE PAC.: MCGEORGE SCH. OF LAW, http://www.mcgeorge.edu/Students/Academics/Experiential_Learning/Externships.htm (last visited Apr. 19, 2017).

17. Evening students with day jobs that meet the requirements of the externship may receive a waiver of this requirement.

18. See ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2013–2014 26–27 (AM. BAR ASS'N), (Standard 305)(e). Standard 305 sets forth the rules for field placements which accredited law schools must follow. Section (e) does not explicitly limit field placements to non-profit or public interest organizations, nor does the section require a "site supervisor" for the field placement to be an attorney. While there is always room to discuss whether field placements should be limited to non-profit organizations with attorney supervisors, the ABA accreditation standards do not appear to require this and certainly were not developed with Capital Lawyering in mind, where many for-profit lobbyists could provide valuable placements as non-attorneys.

The Legislative and Public Policy Clinic is the third experiential option¹⁹ and the newest offering in this category, commencing in the 2013–2014 academic year. The clinic is a four-unit, two-semester course, with enrollment limited to twelve students. The clinic is a test of how far law students can go in the formulation and passage of original legislative proposals in the California Legislature. In the first three years of Clinic operation, students have developed on their own, or facilitated in collaboration with outside advocacy groups, fourteen bills introduced into the California Legislature, with eight bills signed into law²⁰ by Governor Brown and one bill vetoed by him.²¹ The remaining five bills failed²² at various points in the legislative process. While students in the Clinic have demonstrated the ability to conceive original legislation and execute a strategy to get their bills on the Governor's desk, it has not been without a considerable number of issues and discussions among faculty and administrators at McGeorge. Parts III and IV of this article examine these issues in greater depth and offer observations on when such a program could be viable at another school.

B. Elective Courses for the Concentration

The Capital Lawyering Concentration includes general electives and electives by governmental level of practice. In all, students must reach a combined fourteen units of required and elective classes to satisfy the Concentration requirements.

The general electives will be familiar to most law schools. There is a three-unit, one-semester course in Administrative Law that

19. Students must take two electives, Lawmaking in California and California Lobbying and Politics, prior to, or concurrent with, the Clinic. *See infra* Part IV, Sections A.2, A.3 (describing these two courses in more detail).

20. AB 1554, 2016 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Irwin; powdered alcohol); AB 2505, 2016 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Quirk; prohibits euthanasia of animals using carbon dioxide gas); SB 1064, 2016 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Hancock; commercially sexually exploited children); SB 1339, 2016 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Monning; inter-county Medi-Cal transfers); AB 2623, 2014 Leg. 2013–2014 Sess. (Cal. 2014) (introduced by Pan; peace officer training in elder law); AB 2632, 2014 Leg. 2013–2014 Sess. (Cal. 2014) (introduced by Maienschein; state dependent care facilities); AB 2643 2014 Leg. 2013–2014 Sess. (Cal. 2014) (introduced by Wieckowski; revenge porn) (Cal. 2014); and SB 1058, 2014 Leg. 2013–2014 Leg. Sess. (Cal. 2014) (introduced by Leno; discredited expert witness testimony).

21. AB 1200, 2016 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Gordon; procurement lobbying).

22. AB 100, 2015 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Alejo; law fellowships); AB 291, 2015 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Medina; multi-county water transfers); AB 1740, 2016 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Alejo; law fellowships); AB 791, 2015 Leg. 2013–2014 Sess. (Cal. 2015) (introduced by Cooley; online advanced health care directives); AB 2452, 2014 Leg. 2013–2014 Sess. (Cal. 2014) (introduced by Pan; advanced healthcare directives).

delves into administrative law topics at a deeper level than the Statutes and Regulations required course. There is a three-unit, one-semester practicum in Legislation and Statutory Interpretation that delves into statutory interpretation topics at a deeper level than the Statutes and Regulations required course and includes several drafting exercises. Finally, there is a Negotiations and Settlements Seminar, which is a general negotiations course not specifically geared toward negotiation of legislation or regulations, but provides core lawyering skills relevant to the Concentration.

There is also a wide array of electives by governmental level of practice. The local law offerings²³ are California-specific, particularly related to land use planning and local agencies. The federal law offerings, in addition to the courses already mentioned, relate principally to traditional election law topics. It is the California state legislative electives, such as Lawmaking in California and California Lobbying and Politics, which will be covered in greater depth in Part IV of this essay. They highlight McGeorge's effort to develop new courses with both a theoretical and practical legislative advocacy focus in the Capital Lawyering Concentration, but for which there is no standard course book.

III. PREPARING FOR SUCCESS IN THE CAPITAL LAWYERING CONCENTRATION CLINIC

While McGeorge's Capital Lawyering Concentration will look familiar to other law schools in many respects, McGeorge has attempted in its California legislative practice courses to determine how far a law school can go to responsibly facilitate actual California legislative practice activities by law students. The previously-mentioned Legislative and Public Policy Clinic (the "Clinic") provides students with an opportunity to conduct actual legislative work approaching equivalency with the activities of junior legislative staff and lobbyists. While many law schools offer legislative clinics where students contribute meaningfully to the legislative process, particularly through research and drafting, the Clinic has attempted to oversee students from the initial point of identifying a deficiency in California law that is susceptible to correction through legislation; to developing, drafting and sponsoring a politically-viable bill introduced into the California legislature; to personally con-

23. The available courses are: Land Use Planning (two units); Local Agency Practice (two units); Local Government (three units); Municipal Innovation Seminar (two units); and Representing Local Agencies (one unit).

ducting effective written and oral advocacy in support of the legislation, including formal testimony in the State Capitol; and, ultimately, to petitioning the Governor for a signature. The goal is to do this in a single academic year through a two-semester sequence.

A brief overview of the Clinic process is necessary. There is an application process and students are admitted by the end of May preceding the upcoming fall semester; there is an enrollment cap of twelve students. Prior to the first Clinic meeting, each student is required to form a project group with one or two other students, resulting in a total of four to six Clinic project groups. Developing and pursuing a state policy change is an enormous amount of work and requires the efforts of more than one person. Diversity within groups is encouraged; partnering with like-minded people who simply provide an “echo chamber” of agreement will undermine group effectiveness. During the summer before fall semester, student groups are expected to meet and discuss possible ideas for state law changes. This could be a bill idea for the Legislature or a petition for rulemaking²⁴ to a state agency. Or, this could involve activities as a prelude to legislation,²⁵ such as developing factual information through public records act requests of governmental bodies or pitching stories to social or traditional media to shape the

24. While most Clinic students have a goal of getting legislation passed, not every problem needs a legislative solution or is yet ripe for a legislative solution. For example, in the 2015–2016 Clinic, a student group concerned about delays in state funding for indigent health services (particularly mental health services) when a recipient moved across county lines petitioned the California Department of Health Care Services (DHCS) to address the issue in a memo to the state’s County Welfare Directors. The director of the DHCS personally met with the students, gave them helpful suggestions, and was ultimately supportive of legislation that the students pursued after further developments, which led to the introduction and legislative passage of SB 1339, 2016 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Monning; inter-county Medi-Cal transfers). Governor Brown has signed this bill into law.

25. In cases where students identify a problem for which other, non-legislative work is appropriate, the professor attempts to guide students towards an effective strategy, whether that involves foundational research (such as public records act requests) or “softening the ground” prior to introducing a bill (such as social media campaigns or providing information to the media). An example of this approach can be found in the work of the 2013–2014 Clinic where students were concerned about the lack, as they saw it, of adequate background checks for individuals applying to work in state facilities providing care for vulnerable populations. Because the state Department of Social Services (DSS) was not interested in changing its procedures, the students did not want to pursue a bill which, if it reached the Governor, would be “veto bait,” so they commenced investigation and media activities and partnered with a local public interest lawyer who was able to share enough information with a local television investigative reporter to highlight the issue. DSS responded to the exposure by indicating that a policy change was imminent and, when that did not happen, the students and their public interest attorney partner found a legislator willing to author legislation on the topic, AB 2632, 2014 Leg. 2013–2014 Sess. (Cal. 2014) (introduced by Maienschein; state dependent care facilities), which, after significant negotiations, received legislative approval and a signature from Governor Brown.

public affairs climate. Litigation is also a possibility, but does not fit within the primary skills focus of the Clinic.

During the first Clinic meeting of the fall semester, each group provides a ten-minute overview of the ideas they are exploring. The conversation generally starts with students attempting to give a brief statement of the problem that needs to be fixed. While this may sound easy, issues get complicated quickly and true issue identification generally takes most of the fall semester. During each presentation, student groups answer questions from the rest of the class and conclude by agreeing to a list of “to do” items in preparation for the next time they present to the group. All students are expected to be engaged in these discussions. Following the first class, each time a student group presents their work progress in class, which may not be each week, they generally present for longer periods of time once the discussions advance possible and preferred solutions. During these presentations, feedback from the professor and fellow students provides an important “reality check” for the presenters and improves the student group work product.

For the fall semester, student groups work through the Bardach policy analysis methodology²⁶ and circulate written work product to the professor and students prior to each class. After students hone their problem statements, undertake legal and policy research, and develop possible policy responses, they move to additional topics. They attempt to develop public affairs strategies, such as constructing a favorable media climate, and undertake coalition-development efforts. Partnering with an existing advocacy group that will eventually “co-sponsor” the student proposal provides helpful credibility for the project. By the end of the fall semester, student groups are expected to submit a strategy memo, including actual bill or regulatory proposal language; an assessment of the prospects for passage; and a coalition, grassroots, and/or media strategy.

For the spring semester, each student group pursues adoption of its legislative or regulatory proposal. For legislation, which every Clinic group has pursued, this includes selecting and obtaining a bill author in January, who will introduce the bill, and then working the bill through the legislative process. Students discuss legislative strategy in class meetings, including plans for developing collateral materials which they will distribute to legislative staff, meeting relevant procedure deadlines, responding to committee staff and completing background sheets, writing a support letter for

26. See BARDACH, *supra* note 13.

the bill office, making office visits to advocate for passage, developing coalitions and media coverage in anticipation of a hearing, and participating in formal proceedings.

At the end of the spring semester, students are expected to memorialize their efforts in a form suitable for publication and, additionally, create a complete, detailed work file for the Clinic archives so that future students are able to build upon this work.²⁷ This work file typically includes confidential or sensitive information that is not suitable for publication.

IV. FACTORS NECESSARY FOR CLINIC SUCCESS

After three years of operations,²⁸ the overall conclusion is that, under the right set of circumstances and guidance, a law school can offer a successful state legislative advocacy clinic and law students can actually handle real-world activities.

There are, however, many considerations that a law school needs to take into account before attempting this. First, and foremost, a school must develop additional curriculum and skills development tools beyond those that exist in contemporary academic literature. Second, the school must determine what type of faculty expertise is needed to facilitate this student activity. Third, the school must determine whether the work flow and conditions exist with and within the state legislature to enable students to have a productive academic year. Fourth, the school must develop clear, attainable goals that drive student productivity and which can be evaluated fairly. Lastly, the school must analyze ethical, reputational, and legal issues associated with overseeing such student activity. An analysis of each of these considerations follows.

A. *Additional Curriculum and Skills Development Needed for the Clinic*

Three courses form a structured pathway into the Clinic. Introduction to Capital Lawyering, as its title suggests, introduces students to the broad range of types of, and venues for, policy change,

27. This archive was helpful to the 2015–2016 students who sponsored AB 1740, 2016 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Alejo; law fellowships). Their measure was a reintroduction and improvement of a bill from the 2014–2015 Clinic, AB 100, 2015 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Alejo; law fellowships), which failed in the Assembly Rules Committee.

28. Particular thanks to Professor Nussbaum for helping launch the Clinic in its first year, providing full involvement and feedback to the grateful students.

how the legislative branch fits into this picture, and includes California-specific substance and skills. The two-course sequence of Lawmaking in California and California Lobbying and Politics methodically and comprehensively teaches the subject and skills of California legislative practice. These courses are described more fully below.

1. Introduction to Capital Lawyering

The Introduction to Capital Lawyering course described in Part II is a foundational course for the Clinic, and is required for all Capital Lawyering Concentration students. It has, and continues to be, taught by adjunct faculty. The Bardach policy analysis²⁹ rubric has been adapted by the adjunct faculty to provide an essential framework for Clinic discussions. Prior to each Clinic meeting, students upload to the Clinic website an overview of their present work progress, as follows:

1. **Definition of the Problem:** In a sentence or two, define the problem that is being addressed. The problem will generally be stated from the perspective of your client—be it a legislator, the Governor, a state agency, an interest group, etc. If possible, include a sentence or two about your client’s positions and underlying interests.
2. **Background:** In this portion of the written presentation, address the following elements:
 - a. **Evidence of the Problem:** Provide key facts, statistics and other evidence of the problem—enough to validate the problem and help the reader understand its dimensions.
 - b. **Law on the Subject:** If there is an existing body of law on the subject (statute, regulation, case law at the state or federal level), you should summarize.
 - c. **Prior Attempts to Address the Problem:** If there have been prior attempts to address the problem (legislation, regulation, litigation), you should summarize them, including whether the efforts failed or succeeded.
 - d. **Views of the Parties of Interest:** Briefly describe the positions of the various parties of interest for and

29. See BARDACH, *supra* note 13.

against, including: interest groups, legislative caucuses, and government agencies.

3. Alternative Solutions: In this portion of the written presentation, briefly summarize and evaluate the various options for addressing the problem. When evaluating the various solutions, always discuss *effectiveness* (Does it solve the problem?) and *political feasibility* (Can you get it adopted?). Additional criteria to be applied at your discretion include equity, efficiency, and administrative/legal feasibility.

4. Preferred Solution: In this portion of the presentation, you identify and justify the alternative you have chosen. As a part of this discussion, address the following elements:

- a. **Groups/Parties for and Against:** Given your preferred solution, provide a more elaborate discussion regarding the groups/parties that you anticipate to be for and against. Try to identify not only their positions, but also their underlying interests. Also consider whether the proposal will attract media/blogger interest, and whether it will be favorable or unfavorable.
- b. **Strategy:** Lay out your strategy for advancing your preferred solution. Is it possible to form a support coalition for this change? If so, under what circumstances? Do you want to meet and negotiate with likely opposing parties *before* finalizing and introducing your proposal? Should you initiate a public affairs/grassroots campaign?
- c. **Realistic Outcome:** Describe how your preferred solution and accompanying strategy provides a realistic outcome for your client.

5. Additional Documentation: In addition to the foregoing analysis, include the following in the formal written presentation:

- a. **Draft of bill language, regulatory language, or complaint:** Depending on the solution you have chosen, include draft language to effectuate the proposal. In the case of a regulation, this would also usually include a petition for rulemaking.
- b. **Collateral materials:** To execute your strategy, also include drafts of materials which could be provided to decision-makers, stakeholders, coalitions, reporters, etc.

In the first few Clinic meetings, students will not have much or any meaningful entries for the majority of the above analytical elements. However, the students must start somewhere, and that somewhere is many weeks of defining the problem and performing background research. The Legislative and Public Policy Clinic explicitly uses the material from *Introduction to Capital Lawyering* to guide discussion and help students organize their projects.

2. *Lawmaking in California*

The first course not required for the Capital Lawyering Concentration, but which is required for admission to the Clinic, is entitled *Lawmaking in California*. Like *Introduction to Capital Lawyering*, the course is taught by adjunct faculty.³⁰ The two co-teachers are: Professor Micheli,³¹ a contract lobbyist, and Professor Diane Boyer-Vine.³²

This course covers the fundamental components of the California legislative process, including legislative procedure, bill drafting and analysis, legislative history and intent, advocacy, relationships with the executive branch, and the powers and limits of the legislative branch. Students learn about statutory and regulatory lawmaking and will develop the important legal skills of researching, analyzing, and writing by having practical experience in drafting legislation (bills and amendments) and bill analyses. This course exposes students to numerous aspects of the legislative process and the making of statutory law.³³ The primary learning objective of the course is to help students understand lawmaking in California, particularly the legislative process.³⁴ The course includes midterm and final exams.

30. This is a continuation of a long-running course, offered from the very beginning of the Capital Center and the certificate around 1994.

31. See U. OF THE PAC.: MCGEORGE SCH. OF LAW, *supra* note 11.

32. Professor Boyer-Vine is the Legislative Counsel of California and oversees the Office of Legislative Counsel, which is the nonpartisan public agency that drafts legislative proposals, prepares legal opinions, and provides other confidential legal services to the Legislature and others. She has served in her present capacity since June 2002 and previously served as a staff lawyer in the Office of Legislative Counsel since 1988. See *Diane F. Boyer-Vine*, STATE OF CAL. OFFICE OF LEGISLATIVE COUNSEL, http://legislativecounsel.ca.gov/attorney_bio/20 (last visited Apr. 19, 2017).

33. Chris Micheli & Diane Boyer-Vine, Syllabus, *Lawmaking in California* (Fall 2016), McGeorge School of Law.

34. Class one begins with an overview of the powers and limits of the Legislature. Class two covers the legislative calendar, legislative leadership, and the committee system. Class three probes the powers and limits of legislative power, including constitutional provisions and case law. Class four outlines legislative floor sessions, relevant rules, and legislative publications. Class five begins an in-depth skills development related to the basic tools of

At the end of the course, the goal is that the students will understand the role of a “legislative lawyer” who, in turn, must understand the following aspects of the job:

- How is the statute or regulation being interpreted? What does the language say?
- What are the formal and informal legislative or administrative procedures?
- What should the policy be? What does the client want it to be?
- What is feasible for the client to achieve in the legislative or administrative forum?
- How will the individuals and entities involved in each forum shape the likely outcome?³⁵

The sequence of Lawmaking in California is designed to provide substantive knowledge on a time frame for use in the Clinic.³⁶ By the time Clinic students have typically gained traction in refining their problem identification and conducting background research, the Lawmaking in California class is preparing them for drafting and the assessment of political viability.

3. California Lobbying and Politics

While Lawmaking in California prepares Clinic students for activity prior to introduction of legislation, the second required course for enrollment in the Clinic, California Lobbying and Politics, prepares students for post-bill introduction activity. Taught by the author of this article, the primary learning objective of California Lobbying and Politics is to help students develop a better understand-

legislative drafting, from initial inception of an idea through working with the Office of Legislative Counsel in the preparation of the text of a measure and amendments to that measure. Class six begins training students to draft a legislative committee bill analysis. Class seven provides practical instruction on statutory research and legislative intent. Class eight introduces the role of lobbyists in the legislative process. Class nine covers ethics rules related to regulating the conduct of legislators and legislative staff. Classes ten through twelve cover discrete topics, such as the role of the media, the Governor’s administration, and the state budget in the legislative process. Class thirteen provides an overview of the administrative rulemaking process. Class fourteen concludes with a discussion of the impact of the California direct democracy process—including initiative, referendum, and recall.

35. Micheli & Boyer-Vine, *supra* note 33.

36. Due to scheduling constraints, particularly attempting to provide opportunities to both day and evening division students, students are permitted to take Lawmaking in California contemporaneously with the Clinic, although it is preferred that students take the course in the prior academic year.

ing of how California state legislators actually make voting decisions on legislation and enable students to participate in real-world legislative advocacy. The course examines the tension between “deliberation on the merits,” on the one hand, and “politics and private interest,” on the other. Throughout the course, the professor attempts to demonstrate, based upon practical experience, that neither completely explains legislative decisions, but both are highly relevant—each legislator employs a different combination of deliberation and politics from time to time, depending upon: the specific public policy issue, the legislator’s personal history and relationships with third parties, and the level and nature of interest group/media attention to the issue.

Like Introduction to Capital Lawyering and Lawmaking in California, California Lobbying and Politics relies heavily on professor-developed material. The course does selectively employ what would be considered traditional political science textbooks,³⁷ but the majority of the material is gathered in a reader for the students. The principal reason for needing a reader is that there is no standard textbook or casebook that covers the necessary material.

The course is divided into two parts. The first half teaches students the practical tools of legislative advocacy and attempts to minimize how politics can derail deliberation “on the merits.” The first half concludes with a skills assessment in the form of a simulated legislative committee hearing in the State Capitol. The second half of the course develops the theory that sometimes advocacy “on the merits” is insufficient to achieve an advocacy goal; it is important to recognize such circumstances and develop additional “non-deliberative” tools (i.e., not “on the merits”) to complement advocacy “on the merits.”

The course begins with a comparison of traditional political science theory versus actual legislator voting behavior. Students review Besette’s excellent formulation of “deliberative democracy”³⁸ and his proposition that “[i]t follows that the proper standard for evaluating the democratic character of deliberative democracy is how well the institutions of government foster the rule of informed

37. There are two required books for the course: JOSEPH M. BESSETTE, *THE MILD VOICE OF REASON: DELIBERATIVE DEMOCRACY & AMERICAN NATIONAL GOVERNMENT* (1994) and JAY MICHAEL, DAN WALTERS & DAN WEINTRAUB, *THE THIRD HOUSE: LOBBYISTS, POWER AND MONEY IN SACRAMENTO* (2002).

38. BESSETTE, *supra* note 37, at 13. “The task that confronted the framers was to design a governmental system that would promote informed, reasoned, and responsible policymaking while also ‘preserv[ing] the spirit and the form of popular government,’ a system, that is, that would combine deliberation and democracy.” *Id.* (quoting FEDERALIST NO. 10, at 80).

and reasoning majorities rather than the rule of uninformed, passionate, or prejudiced majorities.”³⁹ The students test the limits of this theory by reviewing California interest group legislative voting scorecards and seeing how legislative results follow various patterns, including adherence to political party, geography/region, gender, race, ethnicity, and religion. The challenge for a particular advocate, then, is how to get legislators to break from (or adhere to, depending upon client needs) these well-known patterns. Students also review Bessette’s formulation of deliberation on the merits of public policy, including the three elements of deliberation: information,⁴⁰ arguments,⁴¹ and persuasion.⁴²

At this point additional materials are needed to prepare students for actual legislative advocacy in the California State Capitol. To prepare law students to advocate in a legislative environment, they first need to know the tools of advocacy “on the merits.” Classes focus on the primary tools which legislative advocates use for “persuasion”: (1) drafting a client letter outlining a position on legislation which is suitable for delivery to legislators, legislative staff, committee staff, and other stakeholders; (2) constructing and orally delivering a client position to legislators, staff, and stakeholders in an informal, pre-hearing environment (e.g., an office visit); and (3) providing formal testimony in a legislative committee hearing. Following this skills training, students participate in a mock legislative hearing at the California State Capitol, omitting significant “political” elements which ordinarily would impact (but not necessarily determine) the results of a legislative bill hearing. By the end of this portion of the course, a student should be able to demonstrate basic legislative advocacy skills.

After a full class where students debrief about their hearing experience and relate it to the previous teaching, the next half of the course explores the non-deliberative tools which may be necessary when a legislator may not be persuaded “on the merits.” The goal is to help a legislator become “persuadable” on the merits.

39. *Id.* at 35.

40. *Id.* at 49. “[I]nformation is the weaponry, the ammunition of legislative battle.’ Reasoning on the merits of public policy requires at a minimum that serious consideration be given to pertinent substantive information on policy issues.” *Id.*

41. *Id.* at 51. “Information alone is not enough to determine appropriate courses of action; for it is necessary also to connect mere facts with desirable goals. This is the function of arguments.” *Id.*

42. *Id.* at 52–53. “Persuasion occurs when information and arguments on the merits of an issue lead a participant in the policymaking process to take a substantive position that he or she had not taken prior to engaging in the process. It thereby involves some kind of change or development in the policymaker’s understanding.” *Id.*

The sequence of this material mirrors a legislator's typical journey to his or her first vote in the state Legislature. This journey involves an accretion of relationships, alliances, commitments and education which, while not determinative of any particular vote in a given circumstance, are levers for legislative advocates and, often, predictors of voting behavior.⁴³ The course concludes with group exercises and a final examination, which requires students to meld the deliberative tools from the first half of the class with the non-deliberative tools from the second half of the class and demonstrate the ability to formulate a policy and political strategy to accomplish specific client legislative goals.

The pacing of California Lobbying and Politics is designed to equip students in the Clinic with an adequate level of skills to pursue passage of their original legislative proposal in the spring semester. The skills in the first half of the class enable students to interact with interested parties through participation in committee hearings.⁴⁴

With the training and skills developed from these three required courses, students in the Clinic have demonstrated the ability to develop and pass meaningful legislation.

43. Following the mock legislative hearing and debrief (in weeks six through eight), class nine explores appointed and elected service in local government, whether a special district, city, county, or regional body, including the type of staff and organization necessary to be such an official and the donors involved in local political races, by type of race. Class ten examines the goals and reach of state and county political parties as well as local political clubs, and includes a review of organizational and policy documents, and the identity and activities of party leadership, activists, and donors. Class eleven explores how state legislative leadership and special interests in Sacramento approach the statewide "playing field" to achieve their partisan and ideological goals in the Legislature, including a discussion of prominent election law cases, the practical realities of direct and indirect funding of campaigns, and the rise and predominance of party and independent expenditures outside the control of a candidate for state office. Class twelve delves into the peculiar subculture of Sacramento political life and legislators' interactions with institutional legislative staff and the special interest groups (broadly defined to include public and private, for-profit and non-profit, corporate and labor, and business, environmental, and consumer actors). This class includes discussions about "sponsored" bills by interested parties, fundraising, and other demands on legislators in Sacramento, and institutional forces such as term limits. Class thirteen covers the public affairs world, including grassroots; astro-turfing (i.e., grassroots activity generated by paid professionals); earned, paid, and social media; and techniques for using public affairs in legislative advocacy.

44. A notable omission is training for lobbying a House Floor. Typically, if a bill makes it out of policy and fiscal committee in its house of origin, it will move to the second house for consideration. Little is typically necessary for a Clinic bill to pass off of the house of origin Floor.

B. Faculty Expertise Needed for the Required Courses and Clinic

The faculty needs for making the Clinic students successful are as specific as the environment of a particular state capitol. For success in the California State Legislature, it would be difficult for faculty without actual work experience in and around Sacramento to guide students from bill inception to the Governor's signature. The California Capitol community has a unique culture, just as each state's capitol community would have its own unique culture. Oftentimes, the key advice students need reflects a professor's knowledge of process and personalities, as well as an assessment of how a particular proposal would be perceived by legislators, staff, and special interest groups. General practitioners from outside a particular culture certainly could succeed in guiding Clinic students, but they would likely be tremendously, and uncommonly, capable people with many other people seeking to hire them.

The struggle for McGeorge has been how to provide effective Capital Lawyering in the state legislature during law school while using full-time faculty. To date, this has been difficult, but hopefully could change if Capital Lawyering develops significant scholarship around it and tenure-track professorships. Each of the three courses required for the Clinic, and the Clinic itself, were developed and executed by adjunct faculty, with each part-time professor having at least two decades of Capital Lawyering experience in California. Fortunately, the McGeorge law school administration and full-time faculty have been supportive and committed to teaching in a deeply-practical nature by developing new course readers and lectures in the absence of established scholarship.

It should also be noted that these Capital Lawyering courses continue to evolve. Each time these courses are taught, they provide valuable insight that is incorporated the next time the course is taught. For instance, in the fourth year of teaching California Lobbying and Politics, the professor changed the sequencing of the material to cover advocacy "on the merits" and the mock legislative hearing in the first half of the course instead of previous years when it followed materials on "non-deliberative" influences.

Assembling the Capital Lawyering faculty has taken a considerable amount of time and thought. Support and funding for the concept of Capital Lawyering has changed as deans have come and gone. Full-time faculty have a range of diverse scholarship interests and must teach a number of different required and elective courses. These realities make it difficult, even in a capital city, to assemble a critical mass of full-time faculty primarily devoted to

teaching state law practice courses. At McGeorge, a full-time constitutional law professor, Professor Leslie Gielow Jacobs, has provided vision and energy to the Capital Lawyering concept and oversaw the creation of a coherent Capital Lawyering Concentration. She pursued her vision of Capital Lawyering while listening to and empowering experienced adjunct faculty. She has made, and continues to make, a wonderful Director of the Capital Center for Law & Policy, which oversees the Capital Lawyering Concentration. Other full-time faculty, particularly Professor Mary-Beth Moylan, an election law expert, and Professor Melissa Brown, Director of Legal Clinics, have been leaders and extremely supportive of these developments as well.

C. Work Flow and Conditions Within the State Legislature

The conditions necessary for the success of the Clinic exist in California for McGeorge, but each law school would need to determine whether it has similar conditions before implementing a similar program. The first, and most obvious, condition that facilitates the Clinic is its proximity to the State Capitol. McGeorge is the only accredited law school in downtown Sacramento and students can easily reach the State Capitol. This closeness enables Clinic students to meet participants in the legislative process in person, frequently, and, if necessary, on short notice.

The second favorable condition for the Clinic is that the California Legislature is a full-time institution with many professional legislators and a permanent staff in the Capitol building (as opposed to a “part time” legislature where legislators have other occupations) with a work calendar that matches the Clinic’s needs. In the fall, which is the only time of year when the Legislature is out of session, the Clinic’s problem identification, planning, drafting, and strategy phases ensue and students can interact with legislative staff and “third house” participants⁴⁵ when they have enough time for a casual talk. In the spring semester, when the Legislature is in session and very busy, the students can pitch legislators to author legislation, get a bill introduced and in print, and pursue adoption through informal and formal advocacy.⁴⁶ This calendar match

45. “[B]usinesses, labor unions, professional organizations, and government agencies . . . depend on their lobbyists—what Capitol insiders have long called ‘the third house’—to protect their interests.” MICHAEL ET AL., *supra* note 37, at 2.

46. For instance, in 2015, the first year of a two-year session, the Legislature reconvened on January 5, 2015, and was in session until September 11, 2015. The bill introduction deadline was February 21, 2015, and committee hearings ensued from March through May 2015. In 2016, the second year of a two-year session, the schedule was similar. The deadline for

is essential to the operation of the Clinic, and is similar to the planning cycles of special interest groups considering their next year's legislative agenda during the Clinic's fall semester.

The third favorable condition for the Clinic is that the California Legislature is a member-driven body, rather than a committee-driven body. Each California legislator has a right to request Legislative Counsel to draft a proposal in legislative form, pass that formal proposal to the Floor of the body for introduction, and get a proposal (no matter how silly⁴⁷ or thoughtless) published and numbered. A California legislator would be surprised if a house's Rules Committee would refuse to refer a bill to the appropriate policy committee with jurisdiction over the matter or if that committee's chair would refuse to set a bill author's proposal for a committee hearing. This means that virtually any proposal for which a bill author seeks a hearing will, in fact, be referred to a policy committee, receive an analysis by committee staff, and be entitled to a formal presentation by the author and a committee vote. This is quite unlike many states and is distinct from the United State Congress where proposals only proceed with the direct involvement of house leadership and/or committee chairs and where member-driven legislating of the kind found in California is not permitted.⁴⁸ This member system ensures that a Clinic proposal which students convince a legislator to "author" (i.e., to introduce the bill) will provide law students the ability to work towards the passage of their "sponsored" bill.

The fourth favorable factor is the incredibly large number of full-time legislative and special interest group staff residents within a few blocks of the State Capitol. Clinic students can readily interact in person with experts in virtually any policy area. These experts are sources of history about previous legislation in a particular area and generally have an acute political compass for what is "doable" by a group of politically-powerless students. They have been kind and generous to the Clinic law students.

introducing new bills was February 19, 2016, and the session went through the constitutional deadline of August 31, 2016. Committees heard legislation from March through May 2016.

47. See Jordan Rau, *Senator Burton Yields Floor to Term Limits*, L.A. TIMES, (Nov. 27, 2004) <http://articles.latimes.com/2004/nov/27/local/me-burton27> ("In the spirit of satirist Jonathan Swift, [State Senator John] Burton enjoyed using outlandish legislation for rhetorical purposes. To protest what he considered Republican political attacks on the poor, he once drafted legislation that would have made it a crime to have an income below the poverty level. Another Burton bill would have required that state orphanages serve gruel.")

48. This system takes legislators by surprise when they have previously served in Congress and are used to being insulated from regularly making difficult votes. In the California Legislature, it is difficult for legislators to make promises to conflicting interests without ultimately being held accountable with a face-to-face vote.

Law schools without these four factors would need to consider how they could construct a Capital Lawyering Clinic that allows student activity from policy analysis through legislative advocacy.⁴⁹ For part-time legislatures which only meet a few months a year (or, potentially, every other year), this may mean having limited or sporadic advocacy opportunities. Much more difficult would be finding advocacy opportunities in a state legislature that allows a reigning committee chair to refuse to hear proposals which he or she dislikes. One possible answer to these types of constraints would be to have subsequent clinic students work on a proposal from a previous year, particularly when grassroots, coalition development, and media work needs to be performed prior to bill introduction.

D. Providing Students with Clear, Attainable Goals

Success of the Clinic has been directly related to providing students with clear, attainable goals. Because the Clinic involves the development and public discussion of proposed changes in state law, care must be given in the selection of topics. Controversy can attach to a student proposal; while this is a normal part of the deliberative process, the purpose of the Clinic is for students to develop successful projects rather than just “make a statement” which feels good, but changes little.

The most important consideration for Clinic work product is whether the students demonstrate high-quality legal and policy research, careful drafting, and the ability to move a proposal during the academic year. The Clinic focuses on students demonstrating the ability to go as far as possible with a proposal, while also getting the desired change in state law. Students who develop a proposal for a large change in law with a low probability of success will be marked down. Students who develop a proposal for a small change in law with a high probability of success will similarly be marked down. The main task for student groups is to demonstrate judgment in going as far as possible with a change in state law, while having a reasonable chance of changing the law during the academic year. Finding this “sweet spot” of a meaningful, yet achievable, change is at the heart of the day-to-day business in the State Capitol—and developing these skills is the clear goal of the Clinic.

49. An additional lesson learned from Clinic activities is that students must know, up front, that it is very difficult to succeed with legislation which seeks to increase funding for a particular activity. Competing against various groups for limited public funding is very difficult, particularly for politically-powerless law students. Changes to substantive law that do not require an appropriation have the best chances. Also, legislation mandating new or modified technology projects in state agencies is a recipe for unhappiness.

E. Ethical, Reputational, and Legal Issues

There are significant institutional issues which a law school should consider before facilitating real-world legislative advocacy. These include how such a program will: address ethical issues, including the selection of topics; impact the reputation of the school, including alumni relations; and affect the legal position of the school, which requires addressing issues surrounding the regulation of lobbying activities and tax status.

1. Ethical Issues

An important issue is whether Clinic students are actually prepared for this real-world work. Are they being put in water that is “too deep” and being set up for embarrassment? Admission of students to the Clinic is an important filter. Care must be exercised in selecting students with relevant work or volunteer experience. The course prerequisites help a great deal. To date, students have received support when interacting with professional advocates and legislative staff and are generally over-prepared on the details when they talk with others.

Another issue for a law school is whether and, if so, how much, it will attempt to control the subject matter of Clinic bills. This may sound simple, but it is not and reasonable people can differ. Such issues included whether Clinic projects should be limited to specific purposes (e.g., “public interest” work) or be censored based upon content. As to the first issue, most law school clinics are focused upon “public interest” work which is typically defined as serving indigent clients. Should students receive Clinic credit if their work is identified as facilitating a “special interest” and not the “public interest?” As to the second issue, it is pretty easy in contemporary America to list off a host of “hot button” topics that will create public controversy.

To both of these questions, McGeorge has, thus far, permitted Clinic students to develop any bill idea they wish. The Clinic rules are clear that neither McGeorge nor the professor selects topics for the students or, in any way, grants approval or disapproval of topics. No student should feel pressure to conform to any particular ideology and the professor will certainly not bar development of a student proposal because of its content. Any topic is permissible, whether it is “left” or “right.” Badgering or bullying fellow students to conform to a particular viewpoint is not well-received in class; each student is expected to provide helpful, supportive feedback

during class discussions, even if they personally disagree with the views expressed by other students. The Clinic is not a “debating society,” but rather it is teaching legislative advocacy as a discipline in itself, regardless of ideology. In the real world, legislators, staff, and lobbyists regularly encounter people of goodwill who, nonetheless, represent different (and, sometimes, offensive) perspectives; the inability to co-exist and be polite to such people is a certain sign that public policy advocacy is not a good fit for the student.

Regarding “public” or “special” interest legislation, the Clinic students have produced a wide variety of both. With clear expectations, the students have been understanding of how others do not share their belief systems, and the students have playfully cringed when they have had to provide helpful input on legislation that they expressly stated they did not like.

As far as “hot button” issues, the three years of the Clinic have not produced anything more than lukewarm items. The author suspects this to be the case because of the evaluation mechanism for the course. As noted earlier, Clinic student groups receive a grade based upon the judgment they displayed in crafting a meaningful, yet attainable, bill through the legislative process. Getting a legislator who courts controversy by regularly introducing deeply offensive or controversial bills will not be well-received in the Clinic, not because of the professor’s personal ideology, but because that bill will most certainly die in the first policy committee. The Clinic is focused upon the day-to-day business of successful legislative advocates, which is to pursue incremental changes in state law for clients who rarely need sweeping changes.

2. Reputational Issues

Even with this “agnostic” approach towards selection of topics, there is a risk that the Clinic could produce reputational issues for the school if a student group selects a “controversial” issue. Schools considering such a clinic should realize that a critic of a student group’s legislation will look for any means of creating adverse pressure, including, if possible, creating pressure against the law school.⁵⁰

50. Such an example is AB 1200, 2016 Leg. 2015–2016 Sess. (Cal. 2016) (introduced by Gordon; procurement lobbying), from the 2014–2015 Clinic. This measure added to the definition of regulated lobbying activities the work of paid professionals who help clients obtain contracts from the California state government. Two of the three students had previously had a field placement with the Fair Political Practices Commission (FPPC), which is the government “political watchdog” in California, and the students believed this change in law was necessary but that the FPPC would not vote to seek this change in law on its own. So, the

3. *Legal Issues*

Prior to the introduction of any legislation in the State Capitol, McGeorge had to assess whether the Clinic activities would subject the school or the students to any legal issues surrounding the regulation of lobbying. If lobbying thresholds would, in some way, be triggered, this could impact the school's tax status and, potentially, arouse the state agency responsible for regulating lobbying activity, the Fair Political Practices Commission (FPPC).⁵¹ The school concluded that the Clinic would not trigger lobbying rules. Several sections of California's Political Reform Act⁵² govern lobbying.⁵³ Under these statutes and rules, an individual is a "lobbyist" if he or she has "direct communication" with a "qualifying official"⁵⁴ in order to influence legislation or administrative rules and who also meets one of the following two criteria:

- is acting on behalf of an employer and spends one-third or more of compensated time in any calendar month on lobbying;⁵⁵ or
- is acting on behalf of someone other than an employer and receives or is entitled to receive \$2000 in compensation in any calendar month for lobbying.⁵⁶

No Clinic students are employed to pursue their legislation and none are receiving compensation through a lobbying contract.

While Clinic students are not "lobbyists" under California law, McGeorge adopted a few best practices in order to avoid any confusion between the activities of the students and the legal position of

students worked in tandem with a former enforcement lawyer for the FPPC and developed a proposal which Assembly Member Gordon, a well-staffed and thoughtful legislator who was also the powerful Chair of the Assembly Rules Committee, agreed to author. The school received inquiries from concerned members of the public about the bill, and the students worked diligently with stakeholders to craft amendments which removed all public opposition. Despite the successful amendment exercise and zero "no" votes in the Legislature, Governor Brown vetoed the measure, demonstrating just how talented these "procurement lobbyists" really are. See Melanie Mason, *Law students propose bill to close lucrative Capitol lobbying loophole*, L.A. TIMES (June 2, 2015, 5:58 PM), <http://www.latimes.com/local/politics/la-me-pol-lobbying-20150603-story.html>.

51. See Kevin Barry & Marcy Karin, *Law Clinics and Lobbying Restrictions*, 84 U. COLO. L. REV. 985 (2013).

52. Political Reform Act of 1974, CAL. GOV'T CODE §§ 81000–91015.

53. The FPPC enforces these laws and has issued regulations in Title 2 of the California Code of Regulations, CAL. CODE REGS. tit. 2, §§ 18600–18640.

54. CAL. CODE REGS. tit. 2, § 18239(a)(1).

55. *Id.* § 18239(c).

56. *Id.* § 18239(b).

the school. First, each advocacy letter from the Clinic can be on McGeorge letterhead, but has to have a standard opening:

We, [Student Names], are students enrolled in the McGeorge Legislative and Public Policy Clinic (McGeorge Clinic) and we support [Senate/Assembly] Bill [Number], authored by [Formal Legislator Title and Name]. This bill would [describe in one sentence the general purpose of the bill].

To date, these letters have not generated concern about official school sponsorship of a particular student proposal or position, but that day could certainly come.⁵⁷

In the third year of the Clinic, the students received Clinic business cards. By far, the largest complaint from students enrolled in the first two Clinics was that they were unable to look professional without a business card. After considerable internal school review of the issue, the school permitted student business cards with an official logo, but with a disclaimer on the bottom stating: "Institutional affiliation is for identification purposes only and does not represent the views of the institution." The students were grateful for the business cards and could walk confidently around the State Capitol when visiting offices.

V. CONCLUSION

Getting to the point of operating a successful California legislative practice clinic took many steps, any of which could have derailed the endeavor. Institutional support is critical and it is not guaranteed that administrators and full-time faculty will view such a program as equivalent to traditional legal instruction. Developing practical curricula as a prelude to actual legislative advocacy is critical. Unfortunately, that material does not currently exist in casebooks and must be cobbled together by professors.

Finding actual legislative practitioners is also essential; imagine a professor teaching trial advocacy without ever being in a courtroom. Many knowledgeable professors can guide their students through the development of a legislative proposal, but experience teaches us that such measures are just the "opening bid" that often fail to reflect unpredictable political realities that are only learned

57. The students who developed the "procurement lobbying" proposal, AB 1200, which was formally opposed by the FPPC, did hear rumors that the FPPC was asking questions about the operation of the Clinic but, to the author's knowledge, there was no informal or formal communication between the FPPC and University of the Pacific regarding Clinic operations.

following introduction of the measure and analysis and feedback from experts and stakeholders. Bills are amended many times during the process for good reason: They were drafted without the benefits of the deliberative process refining them. Clinic directors, while not advocates for a particular bill, have a large role to play in helping students identify issues that need resolution, using their own knowledge to suggest strategy and tactics, and providing direction and introduction to key actors who should be engaged in dialogue at a point before those actors have decided to kill that legislation.

As a final point, the author hopes that not only McGeorge, but law schools across the country, conclude that training programs for legislative advocacy are as important as training programs for trial and appellate advocacy. While policy analysis is an important part of legislative advocacy, it is only a part and must be augmented by training on how to advocate, both in written and oral form. There are strong reasons that successful lobbyists continue to be successful. While they certainly have good clients and a lot of political resources, they, without fail, know how to analyze issues, make arguments and display all the hallmarks of the mastery of legislative procedure, relationship-building and, advocacy, all of which are crucial skills for students to learn when considering this career path.