

DESIGN, TEACH AND MANAGE: ENSURING EDUCATIONAL INTEGRITY IN FIELD PLACEMENT COURSES

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Field placements are becoming increasingly important as law schools respond to demands for educational reform along with demands from students, practitioners, clients and other constituents to graduate “practice ready” lawyers who understand the values of the profession. At the same time, decreasing enrollments, ballooning law student debt, and a weak economy are creating internal pressures to cut the costs of providing legal education. As law schools react to competing demands to increase experiential learning while cutting costs, the ABA has relaxed accreditation standards governing study outside of the classroom. The result is that those who design, teach and manage field placement courses are expected to do more with less. In many instances, full-time field placement faculty members are being replaced with instructors or administrators who have limited teaching experience and no job security. The lack of experience, faculty status and job security makes it more difficult for those responsible for field placement experiences to participate completely in discussions of the proper role of these courses in legal education. We argue that it is precisely during these challenging times that law schools most need experienced faculty to be in charge of field placement programs, not only to design and teach these courses, but also to be part of faculty and administration discussions of law school mission, purpose, budget and curriculum. We describe how a faculty-designed and faculty-taught field placement course can allow law schools to offer robust experiential learning opportunities at reasonable cost.

INTRODUCTION

Imagine you are a member of a law school curriculum committee. Your dean approaches the committee saying,

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Our students, our alumni, newspapers from the *New York Times* to the *Wall Street Journal*, and even the *Above the Law* blog are all calling for more legal experience for students as part of the law school curriculum. Tuition has gone as high as it can go. We do not have the resources to offer an in-house clinical experience to every student, but I have an idea. Let's add some field placements¹ to our curriculum. Students will find their own jobs and will spend a full semester away from campus. We will hire a recent grad as field placement "coordinator" to collect student journals. We'll create a TWEN/internet based class to convey some content. We'll call the students once or twice during the semester to check on them. We can call the work site if there are any problems. We'll charge full tuition.

Would your law school approve this course?

Long, long ago, some decades ago in fact, in a jurisdiction far, far away, all three law schools in one state agreed that each law school would participate in a bar sponsored program in which students would be able to work for local lawyers and earn both academic credit and pay for that same work.² Deans thought this was a good way to help keep costs down in uncertain economic times. Employers liked having inexpensive law student help while simultaneously obtaining information that would help them decide which students to hire after graduation. Students were grateful for the chance to get experience in practice and get paid too. Perhaps faculty members shrugged their

¹ It is common to see Field Placement opportunities called programs—e.g., The Semester in Practice Program at Vermont Law School. In fact, a program is ordinarily a series of course offerings, sometimes paired with other requirements. Field Placements, whether offered for 2 credits or 13, are simply courses. Sometimes these courses make up part of a program (e.g., Vermont Law School's General Practice Program includes the option of a part or full-semester-long field placement course as one of the General Practice certificate requirements). Albany Law School calls its field-based course offerings Field Placement Clinics and we have adopted that convention in this paper. Field Placements are also known as externships, internships, or external clinics. We use the term field placement to mean work-based educational experiences for academic credit.

² This is based on the experience in the state of Oklahoma. Law students from three law schools participated in a bar-sponsored internship program in which students, under student practice rules, were placed in practice with minimal supervision from the law schools. (In fact, one of the three schools awarded credit only for the associated class and not for the practicum work itself.) The fact that the Oklahoma schools sought a waiver of then-existing ABA standards is one aspect of their experience that drew attention to the practice. Of course, there were other schools awarding credit for very loosely structured off campus work experience, but the experience of all three law schools in one state asking for a waiver happened at the same time the ABA was beginning to take a closer look at the entire question of credit for work off campus. For an excellent article that puts the Oklahoma experience into historical context and discusses the challenges faced by schools that send students into practice while still in law school, see Lawrence K. Hellman, *The Effects of Law Office Work in the Formation of Law Students' Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1991).

shoulders and said, “What can we do? This is an administrative decision and the kids do need some experience.” Although students sometimes complained about having to pay to work, especially work they felt was poorly supervised, overall, students, administrators and legal employers were happy.³

Time passed. Accreditation teams from the American Bar Association came to visit the schools and asked: What is happening in these “farm-out” programs? How do faculty know what students are learning and how well are they learning it? For what part of this experience is the school charging tuition?⁴

The ABA gradually responded to such farm-out programs with new incrementally adopted accreditation standards specifically designed to address the award of academic credit for student work off campus.⁵ Responding to the new stricter standards, law schools increased resources for field placements. Student-faculty ratios in field placement courses improved and law school hiring practices changed. Field placement program directors were selected for their teaching expertise and practice experience and were given teaching responsibility, faculty status, and job security. Employers and students and even most administrators were still happy.

Flash forward. Today, almost every law school in the United States offers students the opportunity to earn academic credit for legal work off campus.⁶ Many law schools, however, are turning back the

³ Hellman, *supra* note 2. Hellman designed and taught the course titled, Professional Responsibility in the Legal Intern Experience, and wrote the related study at Oklahoma City Law School. In addition to his teaching, he reviewed student journals and had frequent interaction with students both in class and through individual meetings and questionnaires. The results of his three-year long study are the core of his article, which concluded that, while field based learning had promise, there were also serious problems with the model.

⁴ Personal communication between Liz Ryan Cole and Frank Walwer, Dean of the University of Tulsa School of Law. October 1986. The first explicit ABA Standards reference to “studies or activities away from the law school” is in 1973 in Standard 306. AMERICAN BAR ASSOCIATION, APPROVAL OF LAW SCHOOLS; AMERICAN BAR ASSOCIATION STANDARDS AND RULES OF PROCEDURE, Standard 306 (1973). Discussed in Peter Joy, *Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?*, 10 CLIN. L. REV. 681, 694 (2004). See *infra* note 51 and accompanying text.

⁵ Joy, *supra* note 4 at 701.

⁶ According to the Center for the Study of Applied Legal Education (CSALE) 2007-2008 Survey, 131 schools reported 895 distinct field placement programs for an average of 6.8 field placement programs per school. Only one school reported no field placements. David A. Santacroce & Robert R. Kuehn, *Report on the 2007-2008 Survey*, available at <http://www.csale.org/files/CSALE.07-08.Survey.Report.pdf> [hereinafter 2007-2008 Survey]. “The Survey was composed of two distinct parts. A single *Master Survey* was directed to each of the [then] 188 ABA fully accredited U.S. law schools, 145 (77%) of which responded. Each school was, in turn, asked to distribute the *Staffing Sub-Survey* to every applied legal educator teaching there. Three hundred and fifty-seven applied legal educators at 70 law schools responded.” *Id.* at 1. The most recent CSALE data indicates that the

clock with regard to teaching and design of field placement courses—cutting resources and moving field-based work for credit into the office of Career Development. Changes in ABA accreditation standards three decades ago were arguably the single most important reason law schools changed how they staffed and funded field placements.⁷ Changes in ABA accreditation standards over the last ten years are once again influencing law schools in reconfiguring field placements, with the result that the pendulum is swinging the other way.⁸

Today it is permissible, at least from an accreditation perspective, for law schools to offer field placement courses that have little faculty involvement—courses that depend more on luck and the good will of volunteer supervising attorneys than on the thoughtful, rigorous, coordinated efforts of judges, practitioners and law school faculty to build educational experiences for which the law school may properly charge tuition and award credit.⁹ It is not hard to find law schools creating high student/faculty ratios in field placements,¹⁰ cutting back on or

number of field placement programs has increased over the last three years. In 2010-2011, 163 (or 84%) of 195 accredited law schools responded to a new CSALE Survey. One hundred and forty-five schools reported a total of 1393 distinct field placement programs for Fall 2010. Only seven schools reported no field placements. David A. Santacroce & Robert R. Kuehn, *The 2010-11 Survey of Applied Legal Education*, 8, available at <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf> [hereinafter 2010-2011 Survey]. The report authors note, however, that the number of programs listed is likely high due to some responders having misconstrued the question. *Id.* at 15, n. 21. Other surveys of externship demographics reveal similar increases. See J.P. Ogilvy & Sudeb Fasu, *Externship Demographics Across Two Decades: With Lessons for Future Surveys*, available at <http://www.northeastern.edu/law/pdfs/academics/x6/ogilvy-basu.pdf>. According to Ogilvy and Fasu's survey for 2007-2009, of 190 of 200 ABA accredited law schools responding, all 190 reported offering for-credit externships.

⁷ One decade earlier, changes in ABA Standards were the single biggest reason law schools integrated internal clinics into their course offerings. See Peter A. Joy & Robert R. Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN. L. REV. 183 (2008).

⁸ For example, the 1993 standard calling for mandatory site visits each semester by full-time faculty was changed to "periodic" site visits in 2003, and "periodic site visits or their equivalent" in 2005. See Joy, *supra* note 5, at 703 (discussing history and development of ABA standards and ABA standard 305 through 2003); and SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 305(f)(5) (2005) [hereinafter 2005 ABA STANDARDS].

⁹ While reasonable people can differ about what level of involvement from a law school is appropriate, most would agree that one faculty member responsible for overseeing 100 students in varied (and sometimes geographically diverse) field placements would be hard pressed to be closely involved in each student's learning experience or to monitor and support even the best-intentioned but busy field supervisors. Externship pedagogy is still developing consensus on what a best practices ratio might be. See J.P. Ogilvy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, 38 GONZAGA L. REV. 155, 165 (2003).

¹⁰ Professors Eden Harrington and Alexander Scherr are in the early stages of developing measures to help understand the real faculty/student ratio in each field placement course. They presented their theories in a workshop titled: *The Golden Mean: Evaluating Student-Clinician Ratios in Field Placement Programs*, at a 2012 AALS Conference on

eliminating selection and training of supervising attorneys in the field, and replacing experienced clinical faculty on the law school end with short-term contract hires or administrative staff whose primary responsibility is not teaching, but is instead helping students secure employment after graduation. Some schools appear to be returning to the days when externships were employee tryout programs for employers and cash cows for schools.

It should not be this way. In this article we argue that the current trend—for law schools to charge for and award academic credit for legal work with which schools are very little involved, and for experience they do not know enough about to evaluate—can and should be reversed.¹¹

This paper has three parts. We begin in Part I with a brief discussion of the history and expansion of field placements for academic credit and some of the factors that make field placement courses popular today. In Part II we set field placements in the context of decades of ABA accreditation standards, especially those designed to address study outside of the classroom. After looking at the historical background, including the changes since 2004, we address the possibility that the ABA may be poised to once again make significant changes in standards with regard to learning outcomes and security of position, which may impact many aspects of legal education, but particularly field placements. We argue that program integrity, which includes significant faculty involvement and oversight, should be maintained regardless of action taken by the ABA. In Part III we offer some recommendations for the components of what we believe to be a well-structured field placement course and the variety of ways a well-structured course can be taught. We discuss how schools can meet both pedagogical goals and oversight requirements in a cost-effective manner, and we offer recommendations for maintaining the academic integrity of field placements based on particular program goals and educational mission.

Clinical Legal Education—Takeaways for Clinical Teaching and Assessment in a Changing Environment, Los Angeles, CA, May 2012, <http://www.aals.org/clinical2012/2012clinical-booklet.pdf>.

¹¹ At a recent externship conference—Externships 6 Preparing Lawyers: The Role of Field Placements—held in Boston, MA, March, 2012—participants raised a question in the opening plenary that was considered throughout: “How does my law school justify charging tuition for a field placement?” One faculty member making the inquiry about cost concerns noted that when students at private law schools are paying \$25,000 per semester for work outside of the classroom they are very sensitive to the value of the experience. Conference materials available at <http://www.northeastern.edu/law/academics/conferences/externships6/presentations.html>

I. FIELD PLACEMENTS: HISTORY AND DEMAND

A. *What is a Field Placement?*¹²

For purposes of this discussion, a field placement is a course offered by a law school that focuses on law student learning in a legal setting outside the law school classroom, under the supervision of a lawyer or a judge. A field placement may be offered for as little as one credit (part-time) and for as much as a full semester (10-14 credits).¹³ The teaching and evaluation that is part of any course is divided between the work site and the credit awarding institution – the law school.¹⁴

Historically, most lawyers in the United States prepared for practice by apprenticing themselves to a practicing lawyer.¹⁵ For more than a century, however, the concept of a law school “course” has meant a series of class meetings structured as a lecture/discussion, sometimes meeting in large groups and sometimes in small seminar groupings. The process of expanding the definition of a course from a lecture/discussion or seminar to include opportunities or experiences in which students earn credit for learning in other settings has been

¹² Many people use the term internship whenever they talk about students outside the classroom in the world of work. We find it helpful to use the terms internship and externship or field placement to mean different things. The difference between internships and externships is based on the site that has ultimate responsibility for the student. If the student’s primary and ultimate supervision and evaluation is based internally at a work place, the student is an intern—INTERNAL to the work site. This is true whether the student is there for pay or for credit or simply as a volunteer. When, however, there is an external entity awarding credit, supervising some aspects of the student experience and/or otherwise taking ultimate responsibility for the student, then the EXTERNALITY of the supervision makes it an externship or field placement course. Thus, for example, when a judge says, I have an extern or field placement student, the listener will know there is a law school involved, but when the judge says I have an intern, then the listener knows that this is a only a relationship between student and judge. See generally Liz Ryan Cole, *Externships: A Special Focus to Help Understand Social Justice*, Chapter 22 in GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE (F.S. Bloch, Ed. 2010).

¹³ Law students also may learn as volunteers or as paid staff but if they are not earning credit it is not a field placement course. If law schools want to include practice as a part of their graduation requirements, but not award credit, we recommend they study the decades-long experience of Northeastern Law School’s Cooperative program. See, e.g., Daniel J. Givelber, Brook K. Baker, John McDevitt & Robyn Miliano, *An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995).

¹⁴ See, e.g., Elliot Millstein, *Clinical Education in the United States: In-House Clinics, Externships and Simulations*, 51 J. LEGAL EDUC. 375 (2001) (describing the differences between types of teaching involving students in real lawyering). See also ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 198–205 (2007) (focusing on best practices for Externship Courses). A bibliography of scholarship about externships or field placements is found at <http://lexternweb.law.edu/bibliography.cfm>.

¹⁵ See, e.g., Keith A. Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 WIS. INT’L L.J. 295, 296-300 (2007), for a general discussion of the transition from apprenticeships to law school as the preferred path to practice.

gradual and complicated.¹⁶ When law schools started allowing students to earn academic credit for work outside the traditional classroom, typically in connection with street law clinics or legal aid projects, the threshold question for faculties was how they could evaluate the field-based work—how worthwhile was it, how much credit did it deserve? Ultimately, faculties decided to adapt the faculty-centric model they were already using for selection of classroom faculty and course evaluation and apply that same standard to clinical faculty and clinical courses.

A faculty-centric model involves institutional (law school) selection of faculty and delegation of teaching responsibility to those faculty members. Once the “right” person is hired, it is that faculty member’s responsibility to establish teaching goals, teach and evaluate students, and award credit. Faculties that were faced with questions about how to incorporate student learning in an internal clinic rather than a classroom setting solved the problem, not by independently evaluating the course offering, but by selecting teachers with appropriate credentials and then having those teachers propose clinical course offerings, which then were approved, funded and evaluated in the same way as classroom-based courses. By adapting the faculty-centric model for clinical legal education (the major difference was that clinical faculty had, and often still have, lower status), law schools were able to integrate internal clinics into the curriculum.

This model worked relatively well when student learning was conducted under the direct supervision of a faculty member selected and evaluated by the larger faculty. New questions arose, however, when students wanted credit for work with lawyers unconnected to the law school. Law faculties were even more cautious when it came to giving credit for what they viewed as potentially exploitative part-time “jobs” with no pay and questionable educational value. They were concerned, at least in part, that they could not know whether students were learning what they should, or at least as much as they could in the familiar classroom setting or in an internal clinic.

One early experiment in field-based learning for credit was Yale’s Intensive Semester, first offered more than 40 years ago. Yale addressed the problem of oversight and evaluation by requiring students to obtain approval in advance from a faculty committee and then, working under the direct supervision of a member of the regular faculty, to write a significant (50 pages or more) paper based on their field experience. The field experience itself was considered valuable

¹⁶ For a thorough overview of the development of the modern law school including the place of clinical legal education, see Margaret Martin Barry, Jon C. Dubin & Peter A. Joy, *Clinical Education For This Millennium: The Third Wave*, 7 CLIN. L. REV. 1, 5-32 (2000).

only to the extent that it could be captured in an academic paper to be evaluated by a doctrinal faculty member.¹⁷ Other schools moved toward an apprenticeship model by selecting, paying, and supervising practicing lawyers who divided their responsibility between their own practices and supervising and teaching law students working within the supervisor's legal work setting. Under this hybrid apprenticeship model, law schools still selected the supervising practitioner and trusted the supervising practitioner to evaluate the students.¹⁸ Boston College created another model with their Urban Legal Lab, in which students spent four days in the field with lawyers in practice and one day in an on-campus class, taught by a member of the clinical faculty.¹⁹ At some schools the classroom component is considered the core of the course. The pedagogy underlying this particular model assumes the real learning and evaluation of that learning takes place in the classroom and the field experience is simply "text."²⁰ Still other schools adopted a "farm-out" model in which students working for a variety of public or private attorneys assumed primary responsibility for managing their own field experiences and learning.²¹

Field placement courses today range all the way from courses in which a small group of students²² earn a full semester of academic credit apprenticing in practice as part of a course taught by a tenured

¹⁷ Personal communication between Liz Ryan Cole and Daniel J. Freed, Clinical Professor of Law and Its Administration, Yale Law School, New Haven, CT, March, 1985.

¹⁸ See, e.g., Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 26 n.11 (2006) (referencing Margaret A. (Peggy) Tonon, *Beauty and the Beast—Hybrid Prosecution Externships in a Non-Urban Setting*, 74 MISS. L.J. 1043, 1048 (2005) (noting: "There is no single definition of what constitutes a hybrid clinic, although it typically contains components of both in-house clinics and externship programs. In many hybrid clinics, both the clinic faculty member and the on-site supervisor share the responsibility to supervise students.")).

¹⁹ Personal communication between Liz Ryan Cole and Professor of Law Robert M. Bloom, Boston College School of Law (1984) and Clinical Professor Carol B. Liebman, Columbia Law School (1987). Both Bloom and Liebman were active faculty members with Boston College Law School's Urban Legal Lab.

²⁰ See, e.g., Peter Jaszi, Ann Shalleck, Marlana Valdez & Susan Carle, *Experience As Text: The History of Externship Pedagogy at the Washington College of Law, American University*, 5 CLIN. L. REV. 403, 404 (1999) ("We conceive of externship seminars, taught for full teaching credit by a broad cross-section of permanent, full-time faculty at Washington College of Law, as the centerpiece of our program. It is these seminar experiences, rather than students' work in the field, that provide the forum in which learning takes place. Students bring their field experiences back to the law school as the 'text' for critical analysis.").

²¹ The most closely studied experience of this sort was the Oklahoma Bar-sponsored program described by Lawrence Hellman. Hellman, *supra* note 2.

²² People differ on what is meant by a small class. Here we mean a class in which a faculty member has time each week to communicate with each student individually. A course capped perhaps at 25 would qualify as small for these purposes.

faculty member whose primary teaching responsibility is the design and teaching of the clinical externship, to course offerings in which large groups of students (sometimes many hundreds) earn a few (1-3) credits working with supervising judges and lawyers with very limited oversight from the credit-granting law school.

We believe that for every field placement course, whether high credit or low, the focus must be on education—on advancing educational benefits for students, not merely offering opportunities for practice. The question the ABA and individual law schools must face moving forward is whether the ABA will require and law schools will provide the faculty and resources necessary to design, teach and manage field placement courses in a way that ensures educational integrity and justifies charging tuition and awarding credit.²³

B. Demand for Field Placements

Today field placements for academic credit are part of almost every law school's curriculum and the number of programs, courses, and placements has grown.²⁴ This expansion of field placements has

²³ Interpretation 305-4 provides: "In a field placement program, as the number of students involved or the number of credits awarded increases, the level of instructional resources devoted to the program should also increase." SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 305(f)(5), Interpretation 305-4(b) (2012-2013) [hereinafter 2012 ABA STANDARDS]. ABA Standard 305 and interpretation 305-4 have not changed since 2005.

²⁴ See 2007-2008 Survey, *supra* note 6, at 12 (noting that a vast majority of law schools reported increased demand for field placements). In the 2007-2008 CSALE Survey, approximately 62.5% of schools reported that, in the last five years, demand for field placement programs had increased; 30.5% reported constant demand over the same period; and 7% reported that demand dropped. *Id.* Respondents were allowed to select multiple factors to explain the increase or decrease in demand. "Of the 62.5 % of schools reporting an increase in demand, the most common reasons were: students believe field placement programs improve marketability (27.3%); students believe field placement programs improve skills (24.7%); increased interest in substantive areas of practice within field placement programs offered (19.4%); other faculty promoting field placement programs/encouraging students to enroll (11.6%); increased support and promotion by law school (9%); and "other" (8%)." *Id.* Of the schools reporting a decrease, the most common reasons were "lack of support and promotion by the law school and other faculty who discouraged enrollment." *Id.* In 2010, 75.7% of schools reported an increase in the demand for field placements in the last five years; 20% reported constant demand and 4% noted decreased demand. 2010-2011 Survey *supra* note 6 at 11. Again, the most common reasons given for increased demand were: students believe field placements will improve marketability (63.8%) or improve skills (53.4%); interest in subject matter (34.4%); and increased support and promotion by law school (33.7%). *Id.* Again, any decrease was attributed to lack of support and promotion by the law school as well as time commitment per credit hour. See also Emily Heller, *The Recession Makes Externships a Sweeter Deal for Students*, NAT'L L.J., Sept. 7, 2009, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202433569967> (reporting, for example, that at UCLA participation in field placements jumped from 41 in 2007 to 75 in 2009 and at Arizona State field placement enrollment went from 46 in 2004 to 75 in 2009); *Externships up 45% in Last 10 Years*, THE NAT'L JURIST,

been attributed to a number of factors—both internal and external. We see four significant factors at play. First, the recent economic downturn has reduced the availability of paying jobs for students (as well as for recent law graduates). This has prompted students to look for legal practice experience elsewhere.²⁵ Second, the demands of prospective employers and clients for law schools to graduate “practice ready” lawyers has pushed some law schools to offer more practical course experiences in the belief that this will help their graduates better compete in a depressed job market.²⁶ Third, experiential education, including field placements, in-house clinics, and other courses incorporating real law practice, has become a more valued and prominent part law school curriculum as law schools respond to various calls for curricular reform.²⁷ Finally, changes to the ABA standards relating to study outside of the classroom have allowed greater flexibility in the ways law schools teach and oversee field placements. We discuss the first three factors below, leaving a discussion of the ABA regulatory process for part two of this paper.

1. *Economic Downturn*

The impact of the economic downturn on the legal profession generally and on field placement programs and pedagogy in particular has recently been observed and discussed at great length in the popular press and scholarly literature.²⁸ The economic recession “has put

Sept. 17, 2011, available at <http://www.nationaljurist.com/search/node/%22Externships%20up%2045%25%20in%20Last%2010%20Years> (citing growth of number of law school externships offered).

²⁵ Cynthia Baker & Robert Lancaster, *Under Pressure: Rethinking Externships in a Bleak Economy*, 17 CLIN. L. REV. 71, 73-77. (2010) (tracing the impact of the recession of the last two years on the legal profession, law schools and externship programs); Heller, *supra* note 24, at 1.

²⁶ Baker & Lancaster, *supra* note 25, at 76; Heller, *supra* note 24, at 3.

²⁷ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter “Carnegie”]; STUCKEY ET AL., *supra* note 14; American Bar Association Section on Legal Education and Admissions to the Bar, *Legal Education and Professional Development—An Educational Continuum, Report on the Task Force on Law Schools and the Profession: Narrowing the Gap* (American Bar Association, Section of Legal Education and Admissions to the Bar 1992) [hereinafter “MacCrate Report”]. See also Baker & Lancaster, *supra* note 25, at 98 (discussing changes in legal education prompted by Carnegie, BEST PRACTICES, and MacCrate Report, stating: “Externships, traditionally the outer boundary of clinical pedagogy, are becoming central to how law schools are providing practical experience in conjunction with supervised reflection on the practice of law. As pressures exert change, externship faculty should be mindful about how externships meet the needs of today’s law students. Ultimately, externships affect the entire fabric of the legal community: students, supervising lawyers, faculty, and the legal profession as a whole.”).

²⁸ *Id.* See also Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598 (2010); Pat-

pressure on all components of the legal market, including the teaching and training models.”²⁹ The news media describe recent trends in law schools offering new clinical, problem solving, and skills courses as a way to attract employer attention during a prolonged economic downturn.³⁰ Field placements in particular are viewed as a way for students to gain experience and to stand out in a competitive job market.³¹

In their recent survey of field placement program faculty regarding the effect of a down economy on field placements, Cynthia Baker and Robert Lancaster found that “the economy is impacting externships in a number of ways, including greater collaboration between externships and career services offices, increased demand in externships due to fewer employment opportunities, changes in student expectations in their externship experience, and modified roles for externship faculty.”³² They note that field placement faculty are affected by the bad economy “more acutely than other faculty.”³³ Some directors reported that they have been expected to absorb additional students and placements or new programs into their responsibilities.³⁴ Other directors have been assigned additional roles in connection with career counseling or pro bono placements or entire programs have been moved into career centers or pro bono offices and are no longer considered part of the mainstream curriculum.³⁵ This can lead to con-

rick G. Lee, *Law Schools Get Practical—With the Tight Job Market, Course Emphasis Shifts From Textbooks to Skill Sets*, WALL ST. J., July 11, 2011 (noting that only about one-quarter of last year’s graduating law school classes—down from 33% in 2009—were able to secure positions with big firms); and Douglas S. Malan, *Exploring Options*, CONN. L. TRIB., May 17, 2010, available at <http://www.ctlawtribune.com/getarticle.aspx?ID=37131> (reporting that the legal sector lost 1,100 jobs in April of 2009, 1,000 jobs in March of 2009, and approximately 28,000 jobs from April 2009 to April 2010).

²⁹ Rachel Littman, *Training Lawyers for the Real World*, N.Y. STATE BAR ASS’N J., Sept. 2010, at 20.

³⁰ Thies, *supra* note 28, at 599 (observing that job markets are placing a greater premium on graduates with practical legal skills, and that law schools need to figure out how to make graduates more competitive while limiting costs).

³¹ Heller, *supra* note 24, at 2.

³² Baker & Lancaster, *supra* note 25, at 82-83 (“Uniquely positioned within legal pedagogy, externships provide an appealing answer to many of the challenges facing law schools. They are a relatively inexpensive way to provide real world, experiential learning to law students. Our survey results indicate that externship faculty are juggling the desires of placements, students, and law school administration at a new level of intensity and purpose.”). See also Theis, *supra* note 28, at 612 (citing Barry, Dubin & Joy, *supra* note 16, at 26-27 (discussing resistance from other parts of law school to budget shifts, so it is more likely law schools will leverage clinical faculty to do more)).

³³ Baker & Lancaster, *supra* note 25, at 82.

³⁴ *Id.* at 78.

³⁵ At other schools, field placements are housed in career center or pro bono offices. We presented this paper as a “work in progress” at Externships 6. See *supra* note 11. Of the approximately 40 externship teachers/directors in attendance, the majority self-identified as non-faculty administrators.

fusion on the part of students, field supervisors and faculty about differences in goals between field placements that are part of the curriculum and other work related experiences.³⁶

2. *Employer Expectations: New Lawyer Preparedness and Free Legal Work*

Law schools, including some of the most elite, are offering what they term more practical courses in response to employer demand for better-trained new lawyers.³⁷ Firms report that they are looking for new hires who can draft briefs and review documents, work with clients and coworkers, and who have communication and basic project management skills. Because many of these skills can be developed and demonstrated through field placements, and students can make themselves more attractive job candidates, more students than ever enroll in field placements and seek other types of legal experience.³⁸ The conflating of academic goals with “getting a job” goals in work settings can be problematic.³⁹ Students in field placements who focus solely on landing a job at the site where they volunteer often end up disappointed, while students who work toward individual educational goals, the development of their professional identity, professionalism and the transferability of competencies across settings, report real satisfaction with their field placement and end up more marketable as well.⁴⁰

³⁶ Baker & Lancaster, *supra* note 25, at 76–77 (“With the slowed economy and the lack of opportunity for students to obtain paying legal jobs, both placements and students are increasing demand for legal externships. Also, students are increasingly interested in and available to do volunteer placements, which are pro bono and not for credit. As a result, the lines between student objectives for a paid legal job versus an externship versus a pro bono opportunity have become more blurred.”).

³⁷ Patrick G. Lee, *Law Schools Get Practical*, WALL ST. J., July 10, 2011 (noting curricular changes at Harvard, Washington and Lee and Stanford among other law schools and quoting Larry Kramer, law dean at Stanford, stating: “Law firms are saying, ‘You’re sending us people who are not in a position to do anything useful for clients.’”).

³⁸ Tamara Loomis, *Has the Recession Forever Changed Large Law Firms?* THE AM. LAW., Oct. 6, 2009, available at <http://www.lawjobs.com/newsandviews/LawArticle.jsp?id=1202434302753>. The same is true for employment in other fields. Upon graduation, more and more companies are looking for graduates who also have some real-world internship experience. See Hillary Chura, *Hiring Is Rising in One Area: Low-Paid Interns*, N.Y. TIMES, Nov. 28, 2009, at B5.

³⁹ While a student may demonstrate an interest in or commitment to a particular law office or field of practice, the employer will select the best candidate, assuming there is even a job opening. Schools and students must remember that simply because a student spends some or all of a semester with a potential employer, that does not guarantee a postgraduate job offer. The semester-long “walk-on job interview” can all too often turn to heartache for the candidate passed over by the newly available federal judicial clerk or law review editor.

⁴⁰ This was most recently confirmed in a National Association of Law Placement (NALP) sponsored report, in which recent graduates reported their most valuable exper-

Finally employers have an increased interest in hosting unpaid interns as a way to decrease the costs inherent in managing a practice.⁴¹ This creates a vicious cycle, because that access to “free” labor through internships diminishes the need for hiring, thereby further cutting into available paid positions.⁴²

3. Institutional Recognition of the Value of Experiential Education

Responding to the MacCrate and Carnegie reports,⁴³ law schools are adopting new courses and changing their curriculums in order to “better align legal education with practice.”⁴⁴ Some of the most “traditional” schools are incorporating practical training including clinics and field placements into their curriculum.⁴⁵ These schools are supported in their moves by voices from practice. At its August 2011 meeting, the House of Delegates of the ABA adopted Resolution 10B, which supports this trend toward teaching skills and values necessary for the “successful modern lawyer.”⁴⁶ The ABA “urges legal education providers to implement curricular programs intended to develop practice ready lawyers including, but not limited to enhanced capstone and clinical courses that include client meetings and court

iences in law school were field placements. *NALP Survey: What Law School Classes are the Most Valuable* (May 13, 2011), available at <http://ms-jd.org/nalp-survey-what-law-school-classes-are-most-valuable>.

⁴¹ Eve Tahmincioglu, *Working for Free: The Boom in Adult Interns*, TIME (April 12, 2010), available at <http://www.time.com/time/magazine/article/0,9171,1977130,00.html>. We regularly receive calls from cash-strapped agencies and other public offices looking for “free” law students to help overburdened attorneys with their workloads. The challenge is to identify the placements that not only offer interesting opportunities for legal work but are also able and willing to work with law students and the law school to achieve educational goals and to provide essential support, feedback, and mentorship to students who are paying for the experience.

⁴² Jessica L. Curiale, Note, *America’s New Glass Ceiling: Unpaid Internships, the Fair Labor Standards Act, and the Urgent Need for Change*, 61 HASTINGS L.J. 1531, 1536 (2010). In addition, low-income students who cannot afford unpaid internships are disadvantaged in the job market. *Id.* See also David C. Yamada, *The Employment Law Rights of Student Interns*, 35 CONN. L. REV. 215, 218 (2002).

⁴³ See MacCrate Report, *supra* note 27; Carnegie, *supra* note 27.

⁴⁴ Rachel Littman, *Training Lawyers for the Real World, Part Two*, N.Y. STATE BAR ASS’N J., Oct. 2010, at 31.

⁴⁵ *Id.* (Referring to Washington and Lee’s new third year curriculum requiring professional training though simulation and actual practice experiences.) See Karen Sloan, *Consortium Pushes Legal Education Reform*, NAT’L L.J., Aug. 22, 2011 (discussing the Educating Tomorrow’s Lawyer’s initiative aimed at helping law schools share classroom innovations).

⁴⁶ See American Bar Association, *Daily Journal of the ABA House of Delegates*, 2011 Annual Meeting (August 8-9, 2011), available at http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2011_hod_annual_meeting_daily_journal_FINAL.authcheckdam.pdf (reflecting the House of Delegates’ adoption of Resolution 10B, submitted by New York State Bar Association, New York City Bar Association, Ohio State Bar Association, and ABA Young Lawyers Division).

appearances.”⁴⁷

Field placements offer an excellent platform from which to teach the skills law students need to be “practice-ready”—not only knowledge and substance, and skills and practice, but also understanding of professional identity, purpose, and legal ethics⁴⁸—what Carnegie refers to as the third apprenticeship of legal education.⁴⁹ In fact, some empirical research about student experience in law school suggests that students identify clinical experience as the most positive influence on their development. Students with only paid legal work experience did not identify the same gains.⁵⁰

In combination with, and in response to pressures from students, the bar, and the general public, the American Bar Association has, over the years, made significant changes in the standards that affect teaching outside the classroom.

⁴⁷ *Id.* If, when a school says “practice ready,” it is suggesting that its graduates are ready to practice immediately on graduation, we believe that promise is incomplete and potentially misleading. It is arguable whether even three years of post undergraduate legal education completely changed from what is done today and focused completely on “vocational training” could prepare a young lawyer to assume primary responsibility to represent clients in any but the most straightforward of cases. The term “hit the ground running,” also used by law school marketing types, may be more descriptive but still fails to capture the essence of what law students and those who hire them want from a legal education.

⁴⁸ Carole Silver, Amy Garver & Lindsay Watkins, *Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement*, 17 *LEGWRI* 373 (2011). Silver et al. examine data from the Law School Survey of Student Engagement (LSSSE) regarding ways in which students learn lessons relevant to Carnegie’s third apprenticeship of professional identity and purpose. They find that clinical education offered positive influences, although they suggest that more study is needed in order to explain the findings. The authors urge law schools to intentionally and explicitly offer opportunities for students to reflect on values and ethical obligations necessary to transition to their professional roles, and, consistent with Carnegie, “help students ‘connect the dots.’” *Id.* at 405. The research did not define clinical experience so that it may include in-house clinics as well as field placements with varying degrees of faculty involvement.

⁴⁹ See Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 *J. LEGAL EDUC.* 240 (2009). Terry proposes that field placement is an answer to Carnegie’s call for law schools to “attend more systematically to the pedagogical practices that foster the formation of integrated, responsible lawyers.” *Id.* at 268. She describes the field placement or externship model as a signature pedagogy for teaching professional identity, noting that such a model necessarily involves a significant amount of supervision and instruction from a faculty supervisor—making it more akin to a clinic-based model. *Id.* at 267. See also Laurie Barron, *Learning How to Learn: Carnegie’s Third Apprenticeship*, 18 *CLIN. L. REV.* 101 (2011).

⁵⁰ *Supra* note 48 at 395-396. Researchers asked students to evaluate the extent to which their experiences in law school help them develop characteristics related to professional identity and purposes, including: “building relationships with future clients, capacity for moral reasoning, handling the stress of law practice, serving the public good, and acting with integrity.” *Id.* at 399-400. “[S]tudents with a clinical experience, whether or not they also had paid legal work experience, reported higher positive gains across each item of development. *Id.* at 404.

II. ABA STANDARDS AND FIELD PLACEMENTS

A. *History*

The ABA Accreditation Standards relating to study outside of the classroom have had a significant impact on the development, structure, and faculty resources devoted to field placements. As the Accreditation Standards pendulum has swung from the limited regulation of the 1970s to the strict oversight requirements of 1993 and back to the more flexible standards of 2005, law schools have responded with changes of their own.

In his 2004 article, Peter Joy traced in detail the history of ABA standards relating to field placements. He found the first explicit reference to “studies or activities away from the law school” in 1973 in Standard 306.⁵¹ Standard 306 allowed law schools to include time students spent in studies or activities away from the law school to satisfy residency and class-hours requirements, provided, among other things, that the activity was periodically reviewed by faculty to insure it achieved its educational objectives and that the credit allowed was commensurate with the time, effort and educational benefits to the student.⁵²

At first, faculty efforts to ensure that educational objectives were met for activities away from the law school were not successful. In 1977, the ABA adopted a first interpretation to Standard 306, which provided that “lack of substantial supervision given by law school faculty to law students working with practicing lawyers” does not conform to standard 306(c).⁵³ In spite of this interpretation, during the 1980s and into the early 90s, as Joy documented, field placements continued to be criticized for failing to provide oversight.⁵⁴ In response to perceived problems in “out-house” offerings—including situations in which law schools collected tuition dollars for unsupervised work experiences—the ABA significantly increased requirements for scrutiny over field placements, particularly for programs offering substantial academic credit. The 1993 version of interpretation 2 of ABA standard 306 reflected the ABA’s growing concern with ensuring the academic value of field placements. The role of full-time faculty was

⁵¹ Joy, *supra* note 5, at 694.

⁵² *Id.* (citing 1973 version of Standard 306(c), AMERICAN BAR ASSOCIATION, APPROVAL OF LAW SCHOOLS, AMERICAN BAR ASSOCIATION STANDARDS AND RULES OF PROCEDURE (1973)).

⁵³ *Id.*

⁵⁴ *Id.* at 699–700 (quoting the REPORT ON PLACEMENT CLINICS AND RELATED MATTERS, DECEMBER 14, 1985, ABA SKILLS TRAINING COMMITTEE TO THE COUNCIL OF THE SECTION ON LEGAL EDUCATION AND ADMISSION TO THE BAR, asserting that “an unacceptable number of poorly planned and supervised clinics is being offered for academic credit across the country”).

deemed critical. Interpretation 2 required every school to publish a statement of educational objectives for its field placement programs, and required the field instructor or full-time faculty member to engage the student on a regular basis in a critical evaluation of the experience.⁵⁵ Where a field instructor was responsible for direct supervision, there had to be “some established and regularized communication among full-time faculty, students and field instructor during the field placement experience.”⁵⁶ An on-site visit by full-time faculty during the course of each placement was “preferred” and the field supervisor was expected to “participate with the full-time faculty member in the evaluation of the student’s academic achievement.”⁵⁷ For courses offering more than six credit hours, the requirements were more demanding. A classroom component involving full-time faculty was required.⁵⁸ Significantly, the standard also called for:

[c]areful and persistent full-time faculty monitoring of the academic achievement of each student. This shall include an on-site visit in each field placement by full-time faculty in the course of the field placements.⁵⁹

Furthermore, as both the number of students involved and the number of credits increased, the level of instructional resources devoted to the program was also expected to increase.⁶⁰ In order to comply with these new standards law schools assigned faculty to identify objectives for field placements, to develop classes in connection with the practice experience, and to conduct individual on-site visits with students and supervisors each semester.

We agree with Joy that the standards and interpretations adopted in the 1990s for activity outside of the classroom helped the development of field placement courses and programs by refocusing law schools on the educational purposes of such placements and activities.⁶¹ As Joy observed, “sound externship programs emphasize experiential *education* and not just experiential *learning*.”⁶² This means

⁵⁵ *Id.* at 698-699.

⁵⁶ AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, Interpretation 2 of Standard 306, Interp. 2(e) (1993), *reprinted in* Joy, *supra* note 5, at 717-19.

⁵⁷ *Id.*

⁵⁸ *Id.* at Interp. 2(h).

⁵⁹ *Id.* at Interp. 2(h)(3) (emphasis added).

⁶⁰ *Id.* at Interp. 2(d).

⁶¹ Joy, *supra* note 5, at 713 (noting that the standards and interpretations for externships went beyond standards required for other parts of the curriculum, but that this was due to reports of inconsistent faculty involvement and concern that students were not receiving sufficient added educational benefits beyond the work experience itself).

⁶² *Id.* at 711 (emphasis in original) (addressing law schools’ obligation to provide added value to the experience offered at a field placements—typically through reflection on the experience through guided discussion, writing, readying and observation). *See* Ogilvy,

supervisor feedback and student self-reflection under faculty guidance and conducted around student educational goals rather than supervisor convenience. Feedback, reflection, and faculty guidance are what distinguish field placements from other practice-based experience and makes them “educational”—whether paid or unpaid.

The 1990s round of ABA standards for field placements were controversial. Some criticized them as micromanagement. Critics said these standards would stifle creativity and deny student self-learning.⁶³ Others were more optimistic and saw opportunity for law schools to better oversee student learning through greater faculty participation and direct involvement with the student work experience supported by a commitment from the schools to devote the necessary resources to field placements.⁶⁴

Joy raised the question of whether law schools would rise to the challenge and adopt better field placement oversight, allowing the ABA to loosen its detailed regulatory grip.⁶⁵ Based on the development of field placement pedagogy and the quality and quantity of resources and scholarship now available on field placement teaching, supervisor training and program oversight (including texts such as *Learning from Practice*, and websites and email lists devoted to field placement, and externship conferences),⁶⁶ we believe that many law schools did indeed rise to the challenge.

By 2003, however, as part of the larger trend to relax accreditation standards, the ABA began to move away from some of the standards it had introduced only a decade before. The term “full-time faculty” contained in the 1993 Standard was replaced by “faculty member” meaning “a member of the full-time, part-time or adjunct faculty.”⁶⁷ Thus, faculty other than full-time faculty, including adjunct faculty, were now permitted to evaluate the student’s academic achievement, conduct site-visits, teach a contemporaneous classroom

supra note 9, at 163.

⁶³ Robert F. Seibel & Linda H Morton, *Field Placement Programs: Practice, Problems and Possibilities*, 2 CLIN L. REV. 413, 439-40 (1996).

⁶⁴ Anahid Gharakhanian, ABA Standard 305’s “Guided Reflections”: A Perfect Fit for Guided Fieldwork, 14 CLIN. L. REV. 61, 102 (2007)) The new ABA Standard 305(e)(7)’s “other means of guided reflection” provides welcome flexibility to allow crafting an academic component that serves the specific objectives of an externship program.”

⁶⁵ Joy, *supra* note 5, at 714.

⁶⁶ See J.P. OGILVY, LEAH WORTHAM & LISA G. LERMAN, *LEARNING FROM PRACTICE: A PROFESSIONAL TEXT FOR LEGAL EXTERNS* (2D ED. 2007); <http://lexternweb.law.edu> (website containing externship resources, materials and archives) and LEXTERN@LISTS.CUA.EDU email listserv both hosted by Catholic University School of Law.

⁶⁷ SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AMERICAN BAR ASS’N, *STANDARDS FOR APPROVAL OF LAW SCHOOLS*, Standard 305(c) (2003) [hereinafter 2003 ABA STANDARDS]. Prior ABA Standard 306 was renumbered 305.

or tutorial component, and generally oversee the program.⁶⁸

In 2005, the ABA Accreditation Standards moved even further away from the strict faculty oversight envisioned in the 1990s. In addition to permitting part-time or adjunct faculty to teach and oversee field placement courses, a school may now, “when appropriate,” use faculty members from other law schools to supervise.⁶⁹ Site visits are no longer connected to the individual student, and may be conducted before the student begins the field placement or long after the student is gone.⁷⁰ Law schools are not required to provide contemporaneous classes connected to field placements or to offer regular and persistent contact between faculty, supervisors and student, but may employ “other means of guided reflection.”⁷¹

A. *Field Placement Site Visits and the ABA Standards*

The ABA Standard relating to faculty on-site visits for field placements is probably the standard that has changed most significantly in recent years. The 1993 version ABA interpretation 2 of Accreditation Standard 306 regarding field placements required “an on-site visit in each field placement by full-time faculty in the course of the field placements.”⁷² The 2003 version of ABA standard 305 stated, “Periodic on-site visits by a faculty member are preferred.” But if the program awards more than six academic credits, “an on-site visit by a faculty member is required each academic term the program is offered.”⁷³ ABA Standard 305 was further amended in 2005 to allow “periodic, on-site visits *or their equivalent* by a faculty member if the field placement program awards four or more credits for field work in an academic term, or if on-site visits or their equivalent are otherwise necessary and appropriate.”⁷⁴

⁶⁸ *Id.* at Standards 305(e) and 305(f).

⁶⁹ 2005 ABA STANDARDS, *supra* note 8, at Standard 305(c).

⁷⁰ *Id.* at 305(e)(5).

⁷¹ *Id.* at Standard 305(e)(7). This never meant that a member of the full-time faculty had to supervise and teach each and every field placement student, but rather that a member of the full-time faculty had to be in charge of the course/program, which meant that field placements would have a voice at the administrative (budget) and curricular table.

⁷² 1993 ABA STANDARDS, *supra* note 56, at Interp. 2(h)(3).

⁷³ 2003 ABA STANDARDS, *supra* note 67, at Standard 305(f)(3); Joy, *supra* note 5, at 712 (discussing Ogilvy’s more flexible view of site visits as unnecessary in some situations).

⁷⁴ 2005 ABA STANDARDS, *supra* note 8, at Standard 305 (emphasis added). Ironically, the changes embodied in the new standard and its interpretations simultaneously expand and contract the site visit requirement. They replace a “preference” for “periodic” on-site visits where programs award fewer than seven credits with a mandate for such visits where programs award four or more credits. At the same time, though, they eliminate any reference at all to site visits where programs award three or fewer credits. In addition, they abandon the previous mandate for an on-site visit “during the course of the field placement” where a student earns more than six-credit hours in a semester. 2003 ABA STAN-

That site visits are no longer required “during the course of [each] field placement” (even in high-credit or full-time programs) and may be conducted by faculty with little or no connection to the degree-granting institution, suggests that the purpose of such visits (or their equivalent) as mandated by the ABA is surveillance rather than teaching. For law schools that always approached site visits from a “inspection” perspective, the 2005 changes were welcome, freeing up faculty time previously devoted to mandatory, semester-after-semester surveillance visits, for other activities. By contrast, law schools that incorporated site visits as express features of their program’s pedagogies likely saw these changes as springing from fiscal rather than pedagogical considerations. Field placement faculty who use site visits for teaching now find themselves defending the “value added” by on-site, three-way mentoring conferences when asked if visits really justify their cost. After all, if the ABA eliminated even a “preference” for site visits where programs award fewer than four credits, and no longer mandated visits every semester for even the highest credit programs, then why would a law school continue to fund programs at the level necessary to support regular, universal, teaching-oriented site visits? A field placement program could still pass ABA muster by conducting short surveillance visits on a bi-annual or even less frequent cycle. Moreover, a faculty member who didn’t have to visit 25, or 30, or 50 placement sites each semester would be able offer field placements to twice as many students.

Commentators have observed that the 2005 changes in ABA Standard 305 for Study Outside of the Classroom, which allowed greater flexibility in field placement oversight, have enabled some schools to expand field placement programs without increasing the resources dedicated to teaching and oversight.⁷⁵ Law schools are under pressure to do just that—to increase enrollment without increasing resources. While arguably any increase in opportunities for law students to gain exposure to lawyers in practice is good, the growth in field placements comes with risks, particularly for institutions where program growth outpaces law school and faculty resources. A few proposals for managing and even expanding field placement opportunities in the midst of an economic downturn have been suggested in recent

DARDS, *supra* note 67, at Standard 305(f)(3).

⁷⁵ See James Backman, *Practical Examples for Establishing an Externship Program Available to Every Student*, 14 CLIN. L. REV. 1, 3 (2007) (noting that minor changes in ABA Standard 305 allowing for periodic site visits or their equivalent and other means of guided reflection as alternatives to a seminar “greatly facilitates field placements”). See also Robert Parker and Sue Schechter, *The Ugly Duckling Comes of Age: The Promise of Full-Time Field Placements*, 11, unpublished manuscript available at <http://ssrn.com/abstract=1886509>.

years. James Backman suggests replacing clinic-based field placement models that require classes, site visits⁷⁶ and individual faculty/student meetings, with loosely structured apprenticeship models relying for oversight primarily on handbooks and checklists, journals, and phone contact.⁷⁷ Backman further advocates greater use of adjunct faculty or administrators as opposed to more expensive full-time faculty to teach and oversee field placements.⁷⁸ This proposal conceptualizes field placements as work experiences without any significant value added by the law school and fails to address the relationship between the award of credit and identifying and assessing measurable educational goals in a systematic way.

Others maintain that “faculty engagement—with both on-site supervisors and students—is a critical ‘best practice’ for externship programs,”⁷⁹ and that faculty involvement in field placement courses, and particularly in-person meetings with students and supervisors, rather than being a “luxury,” provides an essential mechanism for teaching the third apprenticeship envisioned by Carnegie—the development of professional identity.⁸⁰

C. Proposed ABA Standards in 2012

In the most recent round of proposed changes to ABA standards, the requirements for Study Outside of the Classroom were modified to further relax faculty oversight of field placements.⁸¹ Rather than “periodic site visits or their equivalent by a faculty member,” the proposed standard now calls for “regular contact between the faculty su-

⁷⁶ Usually the first thing to go due to a (false) perception that the cost of a field placement course that includes working with supervisors and students on site is prohibitively high.

⁷⁷ James H. Backman, *Where Do Externships Fit? A New Paradigm is Needed: Marshalling Law School Resources to Provide an Externship for Every Student*, 56 J. LEGAL EDUC. 615, 617, 636 (2006) (describing how schools can provide every interested student with a field placement experience and still meet ABA standards without increasing costs).

⁷⁸ *Id.* at 530. See also Theis, *supra* note 28, at 619-622. In a trickle up approach, Baker and Lancaster propose replacing more expensive in-house clinics with field placements to save law school resources. Baker & Lancaster, *supra* note 25, at 93.

⁷⁹ Barron, *supra* note 49, at 103.

⁸⁰ *Id.* at 105.

⁸¹ STANDARDS REVIEW COMMITTEE, SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, Ch. 3, Program of Legal Education, Standard 310 Study Outside of the Classroom, Draft for July 2012 Meeting, available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/July2012/201207_src_meeting_materials.authcheckdam.pdf. In the latest draft, Standard 305 is renumbered Standard 310, the term “academic credit” is changed to “semester credit hours,” and the requirements regarding regular contact between law school and field supervisor and contemporaneous classes or other methods of guided reflection apply to field placements that award three (instead of four) or more semester hours. See Draft for July 2012 Meeting at Standard 310(e)(5) and 310(e)(7).

pervisor or law school administrator and the site supervisor to assure the quality of the student educational experience, including the appropriateness of the supervision and the student work. Regular contact includes in person visits and *other methods of communication* that will assure the quality of the student educational experience.”⁸² Not only does this proposal all but eliminate the requirement of in-person site visits for even full-time field placements, it explicitly allows administrators, instead of faculty, to control the quality of the education. This proposed change risks completely undermining the educational integrity of field placements and, coupled with the ongoing review of accreditation standards with regard to learning outcomes and security of position, presents particular challenges for law schools and field placement faculty and directors.

1. Curriculum—Learning Outcomes

As of this writing, ABA proposed curricular accreditation Standard 302 for Learning Outcomes requires a law school to identify and publish the learning outcomes it seeks for its students.⁸³ At a minimum, this includes:

competency to represent clients as an entry-level practitioner, in the following areas:

- (1) Knowledge and understanding of substantive and procedural law;
- (2) Legal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context;
- (3) Exercise of proper professional and ethical responsibilities to clients and the legal system;
- (4) Other professional skills needed for competent and ethical participation as a member of the legal profession; and
- (5) Any other learning outcomes deemed by the school as important or necessary to meet the needs of its students and to accomplish its mission.⁸⁴

In our experience students in well-run field placement courses can meet most, if not all, school-designed and ABA-mandated learning outcomes. For example, to the extent that the ABA accreditation standards will require law schools to identify learning goals and measure outcomes for the institution and individual courses, field placement faculty are well situated to do so. In fact, because the ABA has required goals statements for field placement courses for more than twenty years, articulating and addressing outcomes is something well-

⁸² *Id.* at Standard 310(e)(5)(emphasis added).

⁸³ *Id.* at Standard 302 Learning Outcomes.

⁸⁴ *Id.*

structured field placement clinics are already doing or striving to accomplish for individual students. Learning goals and outcomes are designed and managed by field placement faculty as part of an integrated and collaborative process. Because goals in field placement courses by their nature are individual and differ for each student and placement, assessment of goals relies on one-to-one supervision, student self-assessment and faculty and supervisor evaluation. This can be a labor-intensive form of teaching, but if adopted across the curriculum, students and teachers will become more fluent with this sort of goal setting and assessment. While we make some reference throughout this article to work that discusses how field placement courses may meet specific teaching goals and outcomes measures, our purpose here is to address essential practices in field placement courses, from goal setting, to course design, to faculty voice—practices that must be implemented if field placement courses are to be a valuable part of the law school experience in years to come.

It is important for everyone concerned about legal education to note that, if implemented, proposed accreditation standards relating to outcomes and assessment will place additional demands on all faculty. As law schools make greater use of adjuncts for experiential education, the proposed changes may impact most heavily faculty who have low(er) status, especially clinical and field placement faculty.⁸⁵ If additional requirements and duties are imposed on field placement faculty without additional resources, in the current firestorm of economic factors, student and community demand for work experience and flexible ABA standards,⁸⁶ we may see a significant change to the entire model in which full-time law professors develop the curriculum

⁸⁵ While applauding the move to outcomes measurements, the Society of American Law Teachers (SALT) offered this caution: “The shift to outcome measures will have fiscal repercussions that could lead schools to make greater use of adjunct resources. SALT believes it is critically important for full-time faculty to maintain responsibility and control over the teaching and assessment of all aspects of the law school curriculum. Also, the shift to outcome measures will place significantly more responsibility on the legal writing and clinical faculties whose status tends to be less secure than others in the academy.” Society of American Law Teachers (SALT) Comments on the Interim Section of Legal Educ. and Admissions to the Bar, American Bar Ass’n, Report of the Outcome Measures Committee, July 21, 2008.

⁸⁶ For example, Thies suggests that law schools should address the need for more skills training by replacing tenure track faculty with contract faculty and adjuncts. Thies, *supra* note 28, at 619. He starts from the position that scholarship has no value for law schools and teaching and concludes that adjunct and contract teachers would provide more teaching at reduced cost. We disagree and think this is a bad idea that is contrary to the integrative teaching model suggested by Carnegie. While incorporating adjunct faculty into the educational program can indeed save resources and fill gaps in the learning experience, full time faculty informed by scholarship and immersed in the pedagogy of teaching are in a far superior position to oversee the curriculum and ensure and measure educational value to students.

and teach law.

2. *Security of Position*

As some writers have observed, “In the hierarchy of academic programs . . . field placements fall near the bottom.”⁸⁷ And the most recent changes to the ABA accreditation standards have exacerbated that hierarchy. By permitting or encouraging law schools to replace full time faculty overseeing field placements with adjuncts, contract or part time faculty or administrators, the last round of ABA accreditation standard changes relegate field placement directors and teachers once again to increasingly and disproportionately lower status positions in the legal academy. Some field placement directors lack any form of job security and have limited opportunity to participate in law school governance.⁸⁸ Field placement directors who are not considered faculty often have more limited funds for professional development than their other faculty, fewer opportunities to reflect on their work or write (e.g. no summer break or sabbatical) and few resources for programmatic support, including training field placement direct supervisors, or visiting students and supervisors at their work site.

Proposed modifications of Standard 405 on Professional Environment can weaken faculty status and security for many law school employees who teach or oversee field placements even further. The Standards Review Committee of the ABA is considering two alternatives in modifying Standard 405. The first alternative would essentially do away with true security of position for all faculty by eliminating altogether the requirement for law schools to have a specific system of tenure or presumptively renewable contracts.⁸⁹ The second alternative

⁸⁷ Parker & Schechter, *supra* note 75, at 1.

⁸⁸ In our experience more than one long-term field placement director has been demoted or terminated due to lack of security of position now that the ABA no longer requires full-time faculty direction. Surveys of field placement directors show that field placement faculty once again enjoy disproportionately lower status than podium faculty or in-house clinic faculty. Some field placement directors, especially those hired after 2005, are not considered faculty by their institutions, and instead serve as program administrators. According to recent CSALE data, a majority (55.1%) of faculty in charge of field placement programs report status that is not comparable to tenure or tenure track—that is, they have less than a five-year contract. Among field placement faculty, 16.1% hold one-year contracts, and 20.8% are considered adjunct faculty. 2010-2011 Survey, *supra* note 6, at 22. Of the 145 schools reporting on field placement programs, only 88 provided individual data. *Id.* at 21.

⁸⁹ STANDARDS REVIEW COMMITTEE, SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, Standard 405 Alternative Drafts (2011) available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/jan2012/20111222_standards_chapters_1_to_7_post_nov11.authcheckdam.pdf. Under both alternatives, law schools would be required to “establish and maintain conditions that are adequate to attract and retain a competent full-time faculty sufficient to accomplish its mission.” *Id.* at 16. Both alternatives also require

similarly eliminates any requirement for a tenure process, but requires presumptively renewable five-year contracts for full-time faculty (after a probationary period) to attract and retain competent faculty and ensure academic freedom.⁹⁰ Neither alternative offers sufficient security of position for field placement faculty who are especially vulnerable to cost cutting.

In comments to the ABA regarding proposed changes in accreditation standards, the Society of American Law Teachers (SALT) pointed out the specific risks associated with having faculty without job security overseeing field placements:

More recently, faculty involved with externships are aware of a significant change in faculty status, now that the ABA has revised the standard to allow for adjuncts and others to have primary responsibility for externships. Faculty/student ratios have increased, the requirement of classroom-based reflection has been eliminated, and most teachers responsible for externships no longer have the status that allows them to interact with colleagues as a member of a teaching faculty. Increased isolation of externship programs from the core teaching faculty is likely to be contrary to the goal of incorporating knowledge, skills, and values into the law school curriculum in a systematic and integrated manner.⁹¹

The Clinical Legal Education Association (CLEA) in its comments pointed out the contradiction in the ABA's call to improve law school curriculum by strengthening professional skills and values education while eliminating provisions that ensure quality and security of position for faculty most directly involved in teaching skills and values. CLEA argued that faculty who teach clinics and field placements and who have the most experience teaching and assessing skills and values should be part of the discussion surrounding redefining law school mission, learning goals and outcomes. Just when the ABA shifts from input to outcomes measures and faculty are asked to take a greater role in defining a law school's mission, learning outcomes and teaching methods, changes in security of position and the continued marginalization of some field placement faculty and program directors

law schools to "provide protection for the academic freedom of its full time faculty." *Id.* Schools must "provide meaningful participation of all full time faculty members in the governance of their school." *Id.* at 18. Both alternatives further require that schools have a "comprehensive system for evaluating candidates for promotion, termination, tenure and renewal of contracts or other forms of security of position." *Id.* at 17. While the first alternative proposal is silent on what satisfies security of position under Standard 405, the second clarifies that "security of position sufficient to satisfy this Standard must, at a minimum, provide a program of presumptively renewable long-term contracts that are at least five years in duration after a probationary period not to exceed seven years." *Id.* at 17.

⁹⁰ *Id.*

⁹¹ SALT Comments, *supra* note 85, at 2-3

make it more likely that such discussions may be dominated by doctrinal faculty with little or no understanding of the complexities of practice and the rich teaching environment open to students in field placement courses.⁹²

Moreover, without ABA requirements for sufficient job security, field placement faculty may increasingly be unable to guard against erosion of academic quality and standards. As stagnant or depressed law school budgets limit resources, field placement faculty—tenured, contract, adjunct and other—are expected to take responsibility for more placements and students in order to accommodate the demand. Law schools may consider cutting field placement budgets, especially if some constituents—students and lawyers—are satisfied with less. In fact, law students are indeed often delighted to have fewer academic demands as part of the field experience. Experience has shown that some students resist classes, meetings, and reflection-based assignments or fail to recognize the connection, at least initially, between classes or faculty-directed assignments and their learning from experience.⁹³ At the same time, field placement faculty who lack true security of position in the academy are more susceptible to negative student evaluations. They may be reluctant to push students out of their comfort zone or demand reflection on sensitive issues for the student. Their academic freedom is, for all intents and purposes, impaired. Placement sites and supervising attorneys, too, are often happy to host students without the responsibility of having to evaluate and report on student progress or meet with law school faculty.

The issue of status for field placement faculty is about more than job security and it means more than guaranteeing that expertise regarding field placement teaching be incorporated at the curricular and budget level. To be truly effective, field placement faculty must also

⁹² Letter from Ian Weinstein, CLEA president, on behalf of CLEA, to Donald Polden, Chair, Standards Review Committee, (Mar. 25, 2011) (regarding proposed ABA Accreditation Standard 405). CLEA provided its own proposal for revising Standard 405 for consideration by the Standards Review Committee. CLEA proposes that law schools afford all full-time faculty members “tenure or a form of security of position reasonably similar to tenure, participation in law school governance, and reasonably similar non-compensatory perquisites.”

⁹³ For example, as one student wrote in a final field placement report, “the classroom component clouds the program and takes away from the program’s purpose. It’s like getting a tour of a beautiful museum from a really annoying, attention hogging tour guide. Without the opportunity to enjoy the paintings in peace, there is no time to truly reflect on them and experience them for what they are.” (anonymous student, Spring, 2011) We should not merely dismiss these sentiments as the student’s failure to understand what’s good for him or her (which may be true). Law school and field placement faculty need to better communicate to students the educational value of classes, reflection, meetings, reports, and site visits, and connect it to their professional development and preparation for practice.

have the freedom, authority, and expertise to make hard and sometimes unpopular decisions with students and colleagues, and must have credibility with field supervisors. As one experienced professor and director of a field placement courses stated, “Experience is *key*. . . I would not know *at all* what [to do] and how to draw out experience and reflection in my assignments and in my seminar if I were not drawing on 20 years of clinical work and lawyering. . . This work is not for novices!”⁹⁴

Finally, significant tensions and conflicts can arise, and can be more difficult or impossible to address, when field placements are overseen, taught and graded by adjunct faculty or non-faculty administrators rather than by full-time faculty. For example, if adjunct faculty with program oversight responsibility also directly supervise students in the seminar, or are colleagues of field supervisors, this may make it harder for students to raise concerns they have, or to reflect on their work experiences in a critical way. It may also be difficult for such adjunct faculty to criticize workplace colleagues. In other instances where field placements are administered together with career development or pro bono programs with little or no faculty involvement, conflicts can arise between career, pro bono service and educational goals. If career services officers are evaluated in part on how many students have internships and employment, their first instinct will be to please the employer, rather than make demands on the employer based on student educational interests.

Whether or not the field placement director is faculty or staff, a reduction of faculty time devoted to each student has the potential to diminish the academic experience, short-change students in terms of their overall education, and ultimately, short-change the profession. Thus, whether or not the ABA continues to require robust faculty involvement in these courses, we suggest that it is incumbent on law schools to regulate their own course offerings, and to commit sufficient resources to ensure that field placements remain credit worthy. If, between pressures on law schools to offer more field placements and limited ABA oversight over such experiences, we return to the days of very loosely structured internships with minimal faculty involvement, it will be difficult if not impossible for law schools to honestly tell students they are paying for something of value when the students enroll in field placement courses.

⁹⁴ Email from Carolyn Kaas, Professor and Director Clinical Programs, Quinnipiac College School of Law, to Nancy Maurer (June 4, 2012) (on file with authors).

III. THE COMPONENTS OF A COMPLETE AND WELL-STRUCTURED FIELD PLACEMENT COURSE

As strong proponents of field experience we are delighted with the interest in and acceptance of field placements. We know a well-structured field placement course can address the “three apprenticeships,” legal analysis, practical skills and professional identity⁹⁵, described in Carnegie⁹⁶ and assist students in becoming graduates who, while not “practice ready,” are certainly better prepared both to begin to practice and to learn to be better lawyers in a practice setting.⁹⁷ We also know, however, that the value of an experience in the field without faculty guidance is simply random. Unsupervised experience ranges from superb old school one-on-one mentoring from an experienced senior partner, to mere document review under the supervision of a newly minted paralegal. In this section, we discuss the components we believe are essential for a credit-worthy experience.

There are many reasons law schools might want to offer field placement experience. Potential employers might become interested in hiring graduates of the school after having a student work with them. Potential donors might be drawn to the school after learning about field placement experiences. Potential applicants might become interested in the school after meeting students out in practice. We take as our operating premise, however, that field placement courses—offerings for which the law school charges tuition and awards academic credit—should not be offered unless they are first and foremost valuable learning experiences, grounded in specific pedagogical goals reflecting current understanding of the factors that influence effective learning and integrated into a faculty designed curriculum. If there are other benefits to the law school, then offering a field placement experience is so much the better, but if, from the perspective of learning

⁹⁵ SULLIVAN, ET AL., *supra* note 27, at 14-15.

⁹⁶ In fact the Carnegie Foundation for the Advancement of Teaching published, over the past decade, a series of five studies of professional education. Each report in the series is constructed around a framework of three apprenticeships. The other four reports are: MOLLY COOKE, DAVID M. IRBY & BRIDGET C. O'BRIEN, *EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY* (2010); PATRICIA BENNER, MOLLY SUTPHEN, VICTORIA LEONARD & LISA DAY, *EDUCATING NURSES: A CALL FOR RADICAL TRANSFORMATION* (2009); SHERI D. SHEPPARD, KELLY MACATANGAY, ANNE COLBY & WILLIAM M. SULLIVAN, *EDUCATING ENGINEERS: DESIGNING FOR THE FUTURE OF THE FIELD* (2008); CHARLES R. FOSTER, LISA DAHILL, LARRY GOLEMON & BARBARA WANG TOLENTINO, *EDUCATING CLERGY: TEACHING PRACTICES AND PASTORAL IMAGINATION* (2005).

⁹⁷ We agree with Kristen Holmquist that Carnegie does not ask enough of law schools. We believe that field placement courses, when properly structured, are one of the best ways to develop “sophisticated higher-order thinking about law and policy, problems and goals, and about potential paths, obstructions and solutions.” Kristin Holmquist, *Challenging Carnegie*, 61 J. LEGAL EDUC. 353, 354 (2012).

and teaching, the field placement course does not offer more educational value to the student than a job or volunteer experience, then the law school should not be charging for it and students should not be paying for or getting credit for random experience. In this final section we discuss who should make curricular decisions about field placements, what goals might be considered, and what the components of a complete and well-structured field placement course should be.

We start with specific pedagogical goals that should be considered to take best advantage of what is known about how students learn from practice and the cycles of teaching and learning.⁹⁸ While we can neither anticipate which way the regulatory pendulum will swing nor the pressures that will be brought to bear on field placement courses, we can describe what we believe to be a base - essential factors setting out a line below which no law school should award credit or charge tuition. We also discuss some best practices that we hope schools will retain or adopt.

A. *Pedagogical Goals for Field Placement Courses*

Faculties as Decision Makers: The final arbiter of the value of a course is the faculty. Faculty governance with regard to course approval is the current practice in most American law schools, but the choice of which courses to offer is strongly influenced by administrative, budget driven, considerations and expressed student interest. We take as an operating premise that a law school's own faculty, even without taking ABA accreditation standards into account, will not allow their school to offer courses whose goals are little related to legal education.⁹⁹

Faculties and Goal Setting: We believe the movement away from inputs measures and toward outcomes measures¹⁰⁰ means that in a relatively short period of time faculty for all courses, clinical and doctrinal, will articulate what they expect students should know by the end of a course, and how those outcomes will be measured.¹⁰¹ In our experience, however, curricular planning around field placements often sets the cart before the horse. Law schools may ask: What does the ABA require? Can our school's field placements satisfy ABA

⁹⁸ See *infra* discussion of student learning cycle at notes 109-111 and accompanying text.

⁹⁹ We would be surprised, for example, if "basket weaving for lawyers" type courses started appearing in law school course catalogues.

¹⁰⁰ See Program of Legal Education, Ch. 3, Draft for April 12, 2012 meeting, *supra* note 81, at Standard 302.

¹⁰¹ See Ann Marie Cavazos, *The Journey Toward Excellence in Clinical Legal Education: Developing, Utilizing and Evaluating Methodologies for Determining and Assessing the Effectiveness of Student Learning Outcomes*, 40 Sw. L. REV. 1 (2010).

skills course requirements? How much do field placements cost? Do we have to make site visits? Is there student demand? Alumni demand? Rather than asking these questions, faculties should begin by asking two foundational questions: How does this particular course meet the law school's mission and goals? And how do we know it does?¹⁰² Only after these questions are addressed should we consider demand, cost and other factors. What we believe is a best practice is for law faculties to determine what they want their graduates to know and be able to do as they graduate, and then to consider how the full gamut of teaching techniques, from lecture to simulation to field placement and clinic, can help accomplish those goals.

Goals a Faculty Might Consider: What sorts of goals are essential to a well-structured field placement course? There is no one correct answer to this question. Using the Carnegie framework, we believe that developing lawyers can learn substance, skills *and* professional formation through field placement courses. In particular, field placements can offer an efficient method of teaching students about professional values and identity essential to becoming effective lawyers.¹⁰³

The process of writing goals for law school courses is new to many doctrinal faculty members. Interestingly, however, because the ABA has mandated goals for field placement courses for years, almost all field placement courses already have written goals.¹⁰⁴ There are

¹⁰² Other questions that should be addressed in connection with educational goals and outcomes include: What faculty involvement do we need (if any)? Can we have a faculty/student ratio of 1:15? 1:50? What about 1:200? Can a non-faculty administrator run the externship? Should a related contemporaneous seminar be required, and how does having a seminar affect the faculty/student ratio for the course? Do students need face-to-face classes on campus? How effective are on-line classes in disseminating information, coaching supervisors, or getting students to reflect on difficult issues? Should we require journals, and if so, how many? Should someone read them, respond to them? Does it make a difference if we send a graduate of our law school or another volunteer to the site instead? Are phone calls or "Skype" calls sufficient for the purpose of monitoring placements, for mentorship of supervisors? For teaching?

¹⁰³ BEST PRACTICES recommends that law schools use field placement courses "to achieve clearly articulated educational goals more effectively and efficiently than other methods of instruction could achieve." See STUCKEY ET AL., *supra* note 14, at 198. See also Kelly S. Terry, *supra* note 49, at 243, 249-268 (arguing that externships are a signature pedagogy for teaching professional identity and purpose); Laurie Barron, *supra* note 49, at 105 (offering externships as a vehicle for teaching students to learn how to learn). Some programs may consider the effectiveness factors proposed by Schultz and Zedeck as appropriate goals for law student learning in field placements. See Marjorie Maguire Shultz & Sheldon Zedeck, *Final Report— Identification, Development and Validation of Predictors for Successful Lawyering* (Jan. 30, 2009), available at <http://dx.doi.org/10.2139/ssrn.1353554>.

¹⁰⁴ In our own experience field placement courses are sometimes the very best way to teach sophisticated higher-order thinking and problem solving skills. Other teachers agree. See, e.g., Tina L. Stark, *Thinking Like a Deal Lawyer*, 54 J. LEGAL EDUC. 223, 223 (2004). The unique role field placements can play in the improvement of legal education and of the profession are topics for another article.

hundreds of examples available. A few that serve to indicate the breadth of possible goals are:

- Professional Identity:
 - Develop understanding of what lawyers do
 - Develop criteria for defining, recognizing, and acting “professionally”
 - Identify and plan for a path for long-term career satisfaction
- Problem-Solving Skills—including development of analytical and substantive skills, the ability to function with unpredictability, and an understanding of the creativity and initiative necessary for problem solving
- Interpersonal and Professional Skills—including collaboration, civility, and cultural competence
- Learning how to learn from experience
 - Learning to be self-directed and reflective
 - Learning how to be effectively supervised
 - Learning self-assessment
- Practical Wisdom¹⁰⁵
- Substantive knowledge and understanding of practice skills:
 - To allow students to gain substantive knowledge in an area not offered at the law school
 - To allow students to improve in substantive knowledge at a level not offered at the law school
 - To allow students to develop or improve the development of analytical skills they cannot develop at the law school
 - To allow student to develop practice skills they cannot develop at the law school
 - To allow students to deepen their understanding of the factors that influence judicial and quasi-judicial decision-making.

Field placement courses are versatile enough to satisfy almost any educational goal. There are some goals for which field placements are particularly well suited. As with other courses, we suggest that faculty identify specific, measureable goals for field placements taking into

¹⁰⁵ Terry, *supra* note 49, at 243 and Barron, *supra* note 49, at 105. See also Daisy Hurst Floyd, *The Role of Field Placements in Legal Education Today: Purpose and Pedagogy* (Mar. 2, 2012), Externships 6, *supra* note 6, <http://www.northeastern.edu/law/pdfs/academics/x6/floyd-purpose-pedagogy.pdf>. Professor Floyd offered “practical wisdom” as a “Purpose and Pedagogy of Field Placements,” which she defines as follows: “In sum, a pedagogy for practical wisdom asks students to use a *body of knowledge* (subject matter content); to understand their developing *identities* (who am I and who am I becoming?); to be informed by *community* (how do others use this knowledge and why?); and to be aware of their *responsibility* to others (how do I use my knowledge on behalf of or in service to someone else?).” *Id.*

consideration the ways in which they help the school meet its self-identified mission.¹⁰⁶ Sandy Ogilvy summarizes it this way:

Externships share many of the teaching goals of in-house, live-client clinics. Some high credit-hour, closely supervised externships closely resemble in-house, live-client clinics. In most externship programs, however, students are given far less responsibility for client representation than is available through an in-house clinic. On the other hand, externships may provide students with unparalleled opportunities to define and pursue learning goals, to explore career interests in a variety of legal jobs, and to build a professional network.¹⁰⁷

Once a school adopts goals for field placement courses, how does it make certain, in the less than perfectly predictable world of practice, that the school's adopted goals and the student's learning goals are dependably met? We suggest that by identifying and making visible each component of the teaching and learning cycle (a concept we describe below), schools will be able to make fact-based assessments of what students and supervisors are actually doing, add the often-missing reflective component to the experience, and make corrections and interventions throughout the course as necessary and appropriate. In that way, the law school obtains sufficient information to determine whether or not the experience is worthy of credit, and how the experience compares to other credit-worthy experiences in the curriculum.¹⁰⁸

A. The Teaching and Learning Cycle in Field Placement

What is the teaching learning cycle? We use a four-stage cyclical model to describe the process of learning: *Planning*, *Observation*, *Performance*, and *Reflection* (including Assessment and Application). Once the cycle is completed, it is repeated.¹⁰⁹ Our particular formula-

¹⁰⁶ We are not so naïve as to believe that a faculty operating in a vacuum—without input from market forces, students, the bar, and regulators—might not create a school more focused on the individual scholarly interests of faculty members than on teaching. Of all the possible decision makers, however, we believe faculties at many types of institutions, here and abroad, over the centuries, have demonstrated that they are the most consistent keepers of the intellectual flame. The process of faculty consideration of each course, and of all courses together, will be most likely to lead to the creation of valuable educational programs for law students.

¹⁰⁷ Ogilvy, *supra* note 9, at 160.

¹⁰⁸ *Id.*, at 163.

¹⁰⁹ Readers who would like to learn more about early work in the field of learning and cognition could do no better than to begin by reading DAVID S. KOLB, *EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT* (1984). In the early 1970s, Kolb and Ron Fry (now both at the Weatherhead School of Management in Cleveland, Ohio) developed the Experiential Learning Model (ELM). They described a four stage cycle as: 1. Concrete Experience (CE), 2. Reflective Observation (RO), 3. Abstract Conceptualization (AC), and 4. Active Experimentation (AE). Cole was introduced

tion is built on work from multiple disciplines.¹¹⁰

For the law student, a field placement course can be an ideal situation in which to move through the learning cycle and develop from novice status toward mastery. One of the most important things a law school can do to ensure educational integrity in field placement courses is to make certain that each step in the cycle is recognized and accomplished.

A succinct summary of the teaching and learning cycle appears in Best Practices for Legal Education:

Optimal learning from experience involves a continuous, circular four-stage sequence of experience, reflection, theory, and application. “Experience is the immersing of one’s self in a task or similar event—the doing. Reflection involves stepping back and reflecting on both the cognitive and affective aspects of what happened or was done. Theory entails interpreting the task or event, making generalizations, or seeing the experience in a larger context. Application enables one to plan for or make predictions about encountering the event or task a second time.”¹¹¹

to Kolb’s work while doing training design with the Legal Services Corporation in the 1970s and early 1980s. The model she adopted for Vermont Law School in 1984 is constructed on a model that has students begin their field learning cycle with planning, followed by observation, followed by experience/performance, and finally reflection and assessment, before repetition. Many cognitive theorists believe that adult learners, when allowed to exercise a choice, will not all begin the cycle at the Planning Stage. Some students prefer to begin with observation; some just jump right in and start to do. No one starting place is “best.” What is most important for mastery is to complete the cycle (and repeat it over and over). One relatively short and understandable piece that explains the cycle in practice is DANIELE D. FLANNERY, *APPLYING COGNITIVE LEARNING THEORY TO ADULT LEARNING: NEW DIRECTIONS FOR ADULT AND CONTINUING EDUCATION* (1999).

¹¹⁰ We believe it is a best practice, consistent with adult learning theory, to design field placement courses around a structured learning cycle. Much of the current work on reflective learning in the context of legal education builds upon the work of Chris Argyris and Donald Schön. *See, e.g.*, Chris Argyris and Donald Schön, *THEORY IN PRACTICE* (1974); *ORGANIZATIONAL LEARNING* (1978); *ORGANIZATIONAL LEARNING II* (1996). *See also* DONALD SCHÖN, *THE REFLECTIVE PRACTITIONER* (1983). However, the concepts underlying reflective practice are much older. John Dewey was among the first to write about Reflective Practice. Dewey wrote many hundreds of articles and books. One that might interest readers is JOHN DEWEY, *HOW WE THINK* (1933).

While some of Schön’s work on cognition has been studied, and applied in other disciplines, less has been done in legal education. *See, e.g.*, Gary Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 *J. LEGAL EDUC.* 313 (1995); and the work of the UK Centre for Legal Education (the Centre closed in 2011, but there is still an archived web site <http://www.ukcle.ac.uk/>). For one of the earlier articles developing these principles in the context of legal education see Jay M. Feinman & Marc Feldman, *Achieving Excellence: Mastery Learning in Legal Education*, 35 *J. LEGAL EDUC.* 528 (1985).

¹¹¹ STUCKEY ET AL., *supra* note 14, at 166 (quoting Steven Hartwell, *Six Easy Pieces: Teaching Experientially*, 41 *SAN DIEGO L. REV.* 1011, 1013 (2004)). *See also* OGILVY ET AL., *supra* note 66, at 3-7 (describing the “plan-do-reflect-integrate” learning cycle). In our formulation, the Observation and Performance parts of the cycle, taken together, are con-

Implementation of the learning cycle in field placements requires consideration and balancing of three factors—Participants, Resources, and Teaching Techniques and Practices. The *participants* are:

- *Field supervisor/practitioner or judge*—who brings to the course her diversity of clients and cases, expertise, commitment to teaching and experience with supervision, together with the other demands on her work and personal life, and who directs the Planning, Observation and Performance part of the cycle and provides data for Reflection.
- *Student*—who brings motivation, energy, knowledge and skills to the semester.
- *Faculty Member*—who designs, oversees and teaches the entire course.¹¹²

When we discuss *resources* we mean the financial and other support the school will commit to meet the teaching and administrative responsibilities of field placement programs, taking into consideration the other obligations the faculty supervisor has, including other teaching, writing and community service. When we discuss *Teaching Techniques and Practices* we mean methods of implementing the learning cycle, discussed below.

1. Planning for Learning in a Field Placement Course

How do students and teachers plan for learning in a field-based course? The tools students bring to planning include their own life experience, written material,¹¹³ and the advice of teachers, mentors, supervisors and peers. Because the student is the key person in the field placement course, because adults learn best when they have an active role in determining what they will learn,¹¹⁴ and because evaluation is impossible without goals against which one measures progress, it is essential for each student to develop a plan for her field based

sistent with what BEST PRACTICES calls “experience,” STUCKEY ET AL., *supra* note 14, at 166, and what Learning from Practice refers to as “do.” OGILVY ET AL., *supra* note 66, at 6.

¹¹² The issue of faculty/student ratio is not well defined with regard to field placements. See Harrington & Scherr, *supra* note 10 (regarding the development of an experience-based recommended faculty/student ratio for field placements). J.P. Ogilvy suggests a faculty/student ratio of 1:6 for externships in which reflection is class-based and 1:10 when reflection is tutorial based. Ogilvy, *supra* note 9, at 163. Cole finds a ratio of 1:25 in a full-time Semester in Practice can be manageable. Costs often figure into this ratio. See *discussion infra* notes 134-136 and accompanying text. One way to maintain a workable faculty/student ratio is for the field placement faculty director to recruit, train, and pay a stipend to other faculty to work with some of the student/field supervisor teams.

¹¹³ See, e.g., OGILVY ET AL., *supra* note 66.

¹¹⁴ See generally STEVEN D. BROOKFIELD, UNDERSTANDING AND FACILITATING ADULT LEARNING: A COMPREHENSIVE ANALYSIS OF PRINCIPLES AND EFFECTIVE PRACTICES (1986).

learning.¹¹⁵

As they plan, students benefit from opportunities to talk with experienced teachers about what they believe their own strengths, weaknesses, and interests are and to obtain advice about strategies that will most effectively enable them to improve and learn more than they might otherwise by simply leaping into the performance phase of the cycle.

Planning, although time consuming, can be done relatively inexpensively. Most students, once persuaded of the value of planning and given some guidance and advice, are capable of creating meaningful personal legal learning plans. Although some students need extra support for planning, which takes more time, the cost for a law school to include curricular planning is still modest.¹¹⁶

How can a law school make planning for and in a field placement work well?¹¹⁷ *Best Practices* suggests that a faculty member “who is familiar with experiential education and law practice should have control over each externship course to ensure that the educational objective are recognized, emphasized, and achieved.”¹¹⁸ The faculty member who helps the student create a plan should have the time, expertise and the job responsibility to meet with the student, listen to

¹¹⁵ For a few early pieces on planning for learning in the field, see, e.g., Jane H. Aiken, David A. Koplow, Lisa G. Lerman, J.P. Ogilvy & Philip G. Schrag, *The Learning Contract in Legal Education*, 44 MD. L. REV. 1047 (1985); Liz Ryan Cole, *Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers*, 19 N.M. L. REV. 163 (1989).

¹¹⁶ As a rough measure of course cost we use a faculty/student/credit-hours calculation as modified by support staff, adjunct use, travel and other considerations. See *infra* notes 133-135, and accompanying text, for the basis of our cost calculations. Under this model there would be sufficient time for a faculty member to work with students in developing individual plans.

¹¹⁷ Sometimes it is the student who creates her own obstacles. Anyone who teaches in field placements has likely had the experience of finding a student waiting in the hall outside her office of a November afternoon. The student says something like, “I am going to graduate in May and the Career Services Office said I needed to get some legal experience or I’ll never get a job.” Sometimes the obstacles are external. Students with neither lawyers in the family, nor good faculty advisors, nor strong career services support, nor prior work experience, might have a particularly hard time. The student who has no lawyers among her friends and family, whose assigned law school advisor tells her that he knows very little about how to prepare for the career in environmental law that she believes she wants, who is studying in a school with 800 students and two career counselors (neither of whom may have ever practiced law), and whose class performance does not stimulate outreach from the busy doctrinal teacher with 100 other students, is often at a significant disadvantage all around. As law schools re-imagine their own offerings in light of the economy, interest in practice, and new ABA mandates, the use of resources to counsel and assist students from the time they enroll should be looked at in depth. People who teach and work with field placements are often the ones who see needy second and third-year students most often. We (and this includes administrative staff) are sometimes seen by students as the students’ last resort.

¹¹⁸ STUCKEY ET AL., *supra* note 14, at 200.

her, point her to a variety of resources, and help to develop individual goals, outcomes, strategies, and ways to assess what she is learning.¹¹⁹

Different schools address planning in different ways. Vermont Law School, whose practice has been to maintain a maximum of a 1:25 faculty to student ratio in our full-time/full-semester-long field placements,¹²⁰ implements the planning process in two stages. First, as students select (broadly) their goals for the upcoming semester, they work with the Faculty Director to set personal goals. Second, once students have been matched with a Field Supervisor, their assigned Faculty Supervisor¹²¹ guides students to articulate goals, objectives and strategies and capture this information in a Legal Learning Plan—a one-page-per-goal summary¹²²—before ever beginning their semester. While flexible, students and faculty supervisors use the initial plan as a contract with the field supervisor. The plan becomes a vehicle for educating the Field Supervisor about the student's goals and areas where the student wants to improve as well as a way to measure student accomplishments. Students participate in a pre-semester orientation and then use journals and an on-line seminar, together with meetings between field supervisor, student and faculty supervisor to refine and improve the plan over the course of the semester.

At Albany, which places approximately 75 students in local public law offices or courts for four credits each semester, students have more independent responsibility for identifying and articulating educational goals and strategies for meeting goals.¹²³ The process usually takes place during the first few weeks of the semester. Students are required to work with their Field Supervisors to complete an Educational Planning Form in which they identify three goals along with possible strategies for meeting each goal. They also identify strengths and weaknesses to prompt thinking about goals. Both student and su-

¹¹⁹ Another question to ask is how many students one teacher can help in a given semester. There are many schools at which directors and administrators say they would like to be able to spend more time helping students with the planning aspects of learning, but that they have too many students to do a thorough job.

¹²⁰ This is not a fixed rule, and sometimes we exceed it, but the general rule is that one faculty member works with no more than 25 students, once we move from the counseling and matching state to individual student-specific curricular planning.

¹²¹ For the first 25 students the Faculty Director also serves as Faculty Supervisor, but when necessary the director can hire others to serve the faculty supervisor role. This includes experienced adjuncts and sometimes members of the faculty who take on student supervision as an additional teaching load.

¹²² A one-page-per-goal summary is not the only way to structure a plan. What is essential is to articulate student goals and strategies in a way that permits student and supervisor to select appropriate tasks for the student and, even more importantly, provide an efficient way to encourage and structure feedback.

¹²³ Of course some planning must occur before students ever apply for a field placement or no one would ever apply.

pervisor sign the planning form, which is submitted to faculty and reviewed periodically. Students are provided with written guidelines and examples for developing their educational plans. They participate in weekly classes on campus with adjunct clinical faculty and hear from field supervisors and alumni in orientation, which may also stimulate thinking about field placement goals. In addition, students are encouraged to meet individually with the Faculty Director to discuss goals, placement options and planning.¹²⁴ At Albany and at Vermont we find that the students who take the planning process most seriously and work both with faculty and/or their supervising attorneys to identify and implement educational plans are often the most satisfied with their field placement experiences.¹²⁵

2. *Observation for Learning in a Field Placement Course*

The second part of the learning cycle is observation. We know that, from the moment they walk in the door of the field placement, students are observing. What is observation? What should students observe? How can they interpret what they have seen and heard? How can they build on observation and move toward performance?¹²⁶ In this section we address how the law school can help turn unsophisticated student observation into a building block toward mastery in a field placement course.

One teaching tool is to expose students to some of the literature about observation drawn from other disciplines including anthropology or psychology.¹²⁷ Another tool is to underscore the use of observation as a strategy for achieving educational goals. If the student's learning plan integrates observation into the Legal Learning Plan or Education Plan as a specific learning strategy, the student will more easily be able to enlist the help of his or her field supervisor and others at the work site. A court officer might suggest that the student watch a particular juror. A public defender will tell the student what signs to watch for in a judge's face or body language. An experienced negotiator will tell the student what she expects in advance of a meet-

¹²⁴ The Faculty Director reviews the educational plan and discusses progress toward goals with every student at individual mid-semester meetings.

¹²⁵ As one student commented at the end of a second field placement: "I found that the second [placement] was more beneficial because I understood what goals I wanted to achieve and took charge to make sure I accomplished them. I was able to sit down with my supervising attorney and explain what I wanted to change from my last experience. I got to sit in on meetings, read through agency documents and learn about things I wanted to learn." Field Placement Student Final Report, Spring 2010 (on file with authors).

¹²⁶ There is a wealth of information available to help teach observation. See, e.g., OGIIVY ET AL., *supra* note 66, at 215-37.

¹²⁷ See, e.g., Ogilvy, *supra* note 9, at 233 (suggesting use of American Anthropological Association Guidelines "for persons engaged in observation for research purposes").

ing and how to watch for the signs she will be evaluating as she negotiates.

Another teaching tool is to create one or more directed observation assignments during the semester. The teacher can ask directed questions for students to address in directed journals, and then respond to those journals, by email, in person or on the phone. Guided and structured observation might be built into a class meeting on campus. At a minimum, students should be made aware of the power of observation, and field supervisors should have the necessary perspective and experience to help students filter their observation experiences. The student should be encouraged to explain the role of observation to field supervisors, which can then prompt the field supervisor to design opportunities for observation.

The school must be cautious about the level of sophistication students are able to bring to their observations, especially early in the semester and especially regarding the student/supervisor relationship and the work/learning environment itself. Faculty assistance is often necessary to avoid misinterpretation. If faculty supervisors rely solely on the student's descriptions in journals and phone calls, they may miss issues that could have been detected through direct observation of the placement or direct discussion with students. Furthermore, without the filter and direction provided by the faculty supervisor, students can too often draw conclusions that are incomplete or simply wrong. One common example of misinterpretation we have seen occurs when students are working alongside poorly trained and/or overworked lawyers who themselves never learned effective legal writing and citation, and who tell students, "what they tell you in law school is just for the ivory tower."

What is the cost of including observation? As with planning, the most significant component to the cost of including observation in a field placement course is the cost of faculty time, which is a function of faculty/student ratio.¹²⁸

3. Performance for Learning in a Field Placement Course

One of the aspects of a field placement course that makes it such a powerful a teaching method is that students are given real legal assignments—from finding a case to interviewing a client to making an argument in court. Legal assignments in a field placement are not sim-

¹²⁸ While it is beyond the scope of this article to discuss which teaching techniques are most effective from both a pedagogical and a cost factor, in section C we discuss "How Much Does It Cost." If a ratio of 1:25 is maintained in a full semester long course, then the cost of providing support for and interpretation of observation is comparable to a small (25 student, 3 credits) class on campus.

ulations; students are in a lawyer's role and their work affects outcomes for real people. Real issues and real clients create motivated learners, but motivation is not enough. How does the law school make certain it offers sufficient added educational value to students in the performance stage?

Performance is the most visible part of any field placement course. For some, student performance is what the entire enterprise is about. There is work to do. The challenge for the law school, of course, comes in addressing the "what" and "how well" questions—How does the school know what the student is doing and whether the students is learning from the doing? How is the learning assessed?

In the performance part of the cycle, a basic requirement in our experience is to make certain the student is given some tasks that match her goals as well as the school's goals for the student's education.¹²⁹ In most instances the most effective learning occurs when the supervisor's work and the student's interests match in at least some ways so that assigned tasks are both helpful to the supervisor and instructive for the student.¹³⁰ At a minimum, however, the student must be given meaningful tasks to perform.

Let us assume a student and school have agreed that a goal for the semester is to deepen the student's understanding of and ability to counsel clients in the area of family law. If the student were learning family law in the classroom, by the end of the semester she would have been exposed to and expected to become familiar with a number of statutes, and some policy behind various rules and practices. If the doctrinal class also integrates skills, the student might have been able to participate in a simulation designed to teach interviewing and counseling clients, or drafting agreements in matrimonial matters. The same is true for a student learning about interviewing and counseling in family law in a field placement course. The student will identify a number of statutes relevant to the mentors' practice in family law, will observe her field supervisor interviewing and counseling a client, and then, as appropriate and under attorney supervision, interview and counsel clients herself. Along the way, the student will participate in discussions about client goals and the financial and emotional resources the client can bring to the dispute, will consider problem resolution that might include mediation, will be involved in preparing the

¹²⁹ Goals and objectives can, and almost always should be, modified throughout the semester. In addition, students will learn that tasks they did not even know existed can help them develop as lawyers.

¹³⁰ This matching of tasks is also helpful in motivating the field supervisor, who may not be gaining much for herself, except in terms of performing a service to the profession by supervising a student.

client for discovery and for trial, will learn about settlement in the context of a specific dispute, and will first or second-chair pre-trial motions and the trial itself.

If the student were learning in the classroom, she would be given a final examination to test what she learned. The student in a field placement does not take an exam, but she can do something perhaps even better—she demonstrates her learning through actual performance (along with assessment by her field supervisor and reflection by the student on her own performance).

The law school will need to know whether she learned what she was expected to learn from her performance experience—whether it met her goals and the school's goals. Did the student exercise good judgment in obtaining the information necessary from the client in an initial interview? Did the client leave the initial interview reassured and informed? Did the student understand her own role, properly complete forms and draft the pleadings? The law school is not in a position to evaluate the student's performance directly. The school delegates that task to the field supervisor. Having made this delegation to someone the law school believes has sufficient expertise, the law school must still decide how to assure itself that this student performance is worthy of an award of credit—both making sure the student is engaged during the semester and that the student is getting ongoing assessment of her work with feedback to help her know what to repeat and what to improve.¹³¹

How can the law school do this? The options range from complete reliance on the field supervisor, to significant law school faculty involvement in the student's experience. The law school might require the student to submit contemporaneous time records identifying tasks performed and the amount of time spent in order to ensure that the student is performing real legal tasks. The student may maintain portfolios of work product that allows faculty and student to track performance progress. The law school might also ask the student to assess her own performance through daily or weekly journals that are read and commented upon by the faculty supervisor. The law school can also ask for periodic reports from the field supervisor and call or email the field supervisor to check on a student's progress and respond if there are any reported problems.¹³² A law school might require stu-

¹³¹ Law schools may choose to delegate significant teaching and supervision to adjunct faculty. If a school makes this choice, however, the school must rigorously select/hire/evaluate these teachers, using the same level of screening and evaluation applied to full-time faculty. While a highly selective delegation and support model will help address the need to provide predictable and high quality experience for students, it does not address the need to have experienced faculty with a voice at the table in a management role on campus.

¹³² Examples of problems might be the student in the office of a US Senator who re-

dents to come to campus periodically and participate in a class or one-on-one meetings with faculty. If, during the seminar the school concludes that a student is not being given meaningful opportunities to participate and learn, or not receiving timely and descriptive feedback, the faculty might coach the student on how to raise these concerns with the supervisor and then follow up with the student about the quality of supervision through the student's reflective journals.¹³³ A faculty supervisor could call the field supervisor regularly or as needed to address concerns. A faculty supervisor could visit the student and field supervisor at the work site. The question with each strategy is whether there is sufficient communication and enough information to ensure the law school that the student's educational experience is valuable. At what point does a school know enough? In our view, it must be the faculty member who answers this question.¹³⁴

4. *Reflection for Learning in a Field Placement Course*

Performance without reflection makes for an incomplete and ineffective learning cycle. Everyone reflects in some fashion on what happens each day, but reflection is a skill that can be developed; and law schools that want students to get the most from a field placement can and do teach and support a reflective process. How does the law school make certain that students learn how to reflect and learn from reflection?

In our experience reflection is the aspect of the cycle that it is hardest for students and field supervisors to practice. Both students and field supervisors can find themselves so focused on client and casework that stepping back feels impossible or frivolous, yet this is where much significant learning occurs. While lawyers and students may give lip service to the importance of reflection, this is one of the functions that almost always requires the faculty supervisor's active involvement if the student is going to be able to obtain the perspective and learning that reflection brings.

ports in journals that half of each day is devoted to answering phones in the office, or the student who reports having no work to do at the field placement and records hours doing homework for other courses on time sheets.

¹³³ One challenge to teaching field placement courses is that the faculty member/director is not included in the circle of confidentiality that protects clients and their lawyers. The actual substance of student learning and practice must, therefore, be delegated to the field supervisor.

¹³⁴ As one thinks about the specifics of practice and reflection, because the educational demands imposed on students (reflection, time keeping, reports, meetings, classes) and field supervisors (student feedback, assessment reports to faculty) are not always popular, it is critical to remember how important it is for the faculty member overseeing the course to have the authority and security of position to assess the situation and make sometimes unpopular demands.

How can the law school do this? The tools a law school has at its disposal include providing basic information about the reflective process (such as texts or handbooks) and giving students a forum and process in which to reflect. That can include journals, personal conversations with faculty supervisors and with colleagues and supervisors at the placement site, classes, and group discussion. The cost of reflection is also one primarily of faculty time.

RECOMMENDATIONS

In a perfect world with unlimited resources we can imagine many other things a law school could do to guarantee educational value in field placements. In Appendix A to this article we provide a checklist for each stage—Planning, Observation, Performance and Reflection/Assessment. We include what we believe a law school must do if it is going to have enough involvement to charge for and award credit for a field placement as well as what we think a law school should do if it is to implement best practices in field placements.

It is beyond the scope of this article to address the rich variety of teaching methods law schools might use to create the involvement and contact necessary to honestly award credit for field placements courses.¹³⁵ Our fear, however, is that unless law schools insist on significant faculty involvement, we will be offering the equivalent of a classroom-based course in which students are told, “Here are your books, figure out the questions and answers on your own. Send us email. Call us up if you have questions. You need only watch lectures on-line and then send us a journal about what you think you are learning.” Is it possible to identify and meet sound pedagogical goals under these circumstances? We think not.

How Much Do Field Placement Courses Cost?

It is commonly accepted in some circles that it is expensive to offer a well-run field placement course. Our analysis shows, however, that even by the simplest cost-per-credit-hour calculations, field placements are no more expensive than seminars and other small classes. A

¹³⁵ The role of personal contact in field placement teaching has been called into question. Some suggest that there is no need for in-person on-site contact between a faculty member, student and field supervisor, especially when travel costs and substantial time are involved. Others argue that as long as the faculty member and student meet in person, perhaps in an on-campus seminar, that is enough. Empirical work is being done in fields from labor negotiation to on-line psychiatric counseling to determine what aspects of planning, observation, performance and reflection can be done without in-person contact, using email and phone calls sometimes enhanced with visuals instead. Whether it is necessary for field placements students, faculty members, and supervisors to meet in person, and if so, under what circumstances, is a question for future consideration.

full-time field placement course with a ratio of 1:25 that includes institutional and individual goal setting, planning, faculty on-site visits, and analysis of outcomes is not only no more expensive than a typical three-credit small class (20-25 students) but has the potential of addressing multiple complex learning goals. In this section we compare the costs of a variety of course offerings with a robust field placement course. See Appendix B.

Monetizing the cost of legal education has been the elephant in the room of curricular reform and a source of particular tension and potential division between clinical and doctrinal faculty and between clinicians who teach using an internal clinical model and clinicians who teach using a field placement model. One must proceed with caution. Comparing relative costs using simply a cost-per-credit-hour calculation is an incomplete process, and can be misleading, as it does not account for relative value of particular courses and methodologies in terms of accomplishing school-specific learning goals and outcomes or responding to calls for preparing practice-ready graduates. Neither does it account for the actual faculty-student contact hours offered by certain courses (especially field placements and in-house clinics) or the non-classroom institutional costs of faculty scholarship or course loads. Thus, our discussion of comparative costs across legal education is not a complete calculation of all costs involved in teaching. It is one tool schools can use as part of an examination of law school goals, curriculum, ABA mandates, and budgets.

In spite of the potential dangers of comparing costs across various types of courses, the calculations we use here allow us to demonstrate that appropriately resourced field placement courses can be compared favorably in cost to other upper-level courses. Costs should not be used as a justification for offering field placements in which faculty are so overextended that they are unable to work with students and field supervisors to ensure that each student is able to meet appropriate educational goals by virtue of participation in the course.

In order to understand our cost-per-credit-hour calculations one needs to understand the assumptions we use. They are:

- Faculty members all earn the same \$125,000 per year and all have the same benefits (calculated at 25% of salary). This assumption reflects our belief that all faculty should enjoy the same levels of pay (and job security) in order to ensure fairness, foster academic freedom, and encourage collaboration and curriculum development—a subject for future scholarship.
- We assume a ratio of 1:10 for doctrinal faculty, 1:5 for field placements. These ratios will vary depending on the nature of the course and the role of support staff.

- A large lecture has 100 students and students earn four credits.
- A mid-size class has 50 students who earn three credits.
- A smaller class has 40 students who earn three credits.
- A small class has 20 students who earn three credits.
- A full-time field placement course has 25 students who earn 14 credits.
- A part-time field placement course has 35 students who earn six credits (or, in an alternative calculation, 75 students who earn four credits).
- A seminar has 12 students who earn three credits.
- We assume the same salary/benefits/professional development budget for each professor with variations built in for the use of faculty colleagues earning a supplement or adjuncts. Many schools currently use adjunct faculty to assist in field placement courses. Where we incorporate adjunct or other faculty colleagues in the costs of field placement, it is with the understanding that such additional faculty are selectively hired, trained, and supervised by full-time faculty who have primary responsibility for course design and evaluation.
- We also include in the calculation of costs a portion of support staff salary, travel costs, and training and coaching for field supervisors.

Other types of courses we have not included here include simulation-based courses, transactional courses, in-house clinics, and courses that include work and study abroad.

Using these assumptions we calculate a cost-per-credit hour for each course.

- Large lecture classes with 100 students offered for four credits are, not surprisingly, least expensive. The calculated cost is \$26 per credit hour (PCH).
- Next least expensive is a mid-sized class for 50 students earning three credits. The cost PCH for this is \$68.
- A three-credit class offered to 40 students is \$85 PCH.
- A smaller three-credit class with a 1:20 ratio costs \$171.
- A full-semester-long field placement (1:25 ratio for 14 credits) with students at distant sites and individually tailored to student interest costs \$152 PCH, which can be reduced to \$143 PCH if other faculty colleagues serving as faculty supervisors are added to the teaching mix at a cost of \$1200 per extra student supervised.
- A part-time field placement course with a 1:6 ratio for 35 students costs \$218 PCH, while increasing the ratio to 1:75 and adding four

faculty colleagues to teach a class drops the cost to \$115 PCH.¹³⁶

- A seminar for 12 students for three credits is \$569 PCH.

Looking purely at a cost-per-credit-hour calculation, however, one can see that unless a law school is going to argue that it is too expensive to offer a three-credit class for 20 students, not to mention a three-credit seminar for 12 students, then there is no fact-based reason to suggest that a field placement course with a manageable faculty/student ratio and a budget for travel and other support is too expensive.

Finally, we emphasize that cost is simply one factor to consider in deciding which courses should be offered. We urge law schools to consider the value of field placement courses (and clinics) in meeting Carnegie's challenge and in educating "practice ready" graduates when assessing and comparing costs of all courses.¹³⁷

CONCLUSION

Field placements are becoming an increasingly important part of the experiential curriculum as law schools respond to demands for educational reform along with demands from students, practitioners and other constituents to graduate practice-ready lawyers who understand the values of the profession. Field placements are popular and on the rise. Field placements are also vulnerable to cost-cutting measures when budgets are tight. It is precisely during these challenging times that law schools most need experienced faculty to be in charge of field placements and part of the discussion of law school mission and curriculum. Well-resourced field placements course taught by experienced faculty are an essential part of a law student's legal education.

¹³⁶ Note that the real ratios of faculty time per student per credit are complex and need to be determined. See Harrington and Scherr, *supra* note 10 (regarding finding field placement ratios).

¹³⁷ See Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C.J.L. & Soc. Sci. 309, 329-330 (2012) (noting the value of clinics in producing practice-ready graduates and urging law schools to engage in cost-benefit analysis of every aspect of legal education including clinical legal education before cost-cutting).

APPENDIX A
RECOMMENDATIONS AND THE FIELD
PLACEMENT LEARNING CYCLE

PLANNING:*What a Law School Must Do:*

- Require planning, including the creation of a specific plan for each student.
- See that the plan, as shaped by experience on the ground, is followed by student.
- See that the plan, as shaped by experience on the ground, is followed by field supervisors.
- Require students and field supervisors to periodically review plans and assess progress toward goals, making modifications to plans as necessary.
- Remove student if insufficient value/experience to semester.

Other Best Practices

- Develop structured planning templates reflective of school and student goals.
- Explain the value of planning—now and in the future.
- Teach students how to plan effectively.
- Provide feedback on student plan for the semester.
- Teach supervisors the value of planning.
- Help supervisors use student plan over the course of the semester to maximize breadth of experience for student.
- Help supervisors use student plan over the course of the semester to maximize descriptive and timely formative feedback.
- Use the plan to shape forward-looking planning at semester's end.

OBSERVATION:*What a Law School Must Do:*

- Introduce the filter of faculty experience by creating directed journals or class discussion to share what individual students have learned from observation.

Other Best Practices:

- Underscore the power of observation as a learning strategy by building it in the learning plan.
- Create directed journals or class discussion to learn about observation.
- Provide readings and/or other background materials about observation.

PERFORMANCE:*What a Law School Must Do:*

- Require feedback from supervisor and student.
- Ascertain basic competence/experience in field supervisor.

- Make certain most student tasks are selected to meet agreed-upon goals.
- Student must be assigned meaningful lawyering tasks.
- Require feedback from the field supervisor to faculty.¹³⁸
- Require feedback from the student to the school about what student is doing.
- Respond to safety or ethical problems.
- Require student reflection on performance and experience.

Other Best Practices:

- Gather information in advance about the sort of tasks available.
- Match students with supervisors.
- Make certain there is some consanguinity between supervisor work/needs and student interest and background to allow student tasks to match supervisor needs.
- Review samples of performance (written or recorded).
- Respond to problems with task assignment or feedback.
- Create a team consisting of faculty supervisor/student/field supervisor in which there is regular communication, including through journals and in-person visits on campus and at the work site.

REFLECTION /ASSESSMENT

What a Law School Must Do:

- Provide materials to help students understand and practice reflection.
- Provide a format (journals/class/tutorial) in which student can actually reflect.
- Structure goal setting to include measurable objectives.

Other Best Practices:

- Provide materials to help supervisors understand the practice of reflection.
- Support/teach supervisors in reflection.
- Help students understand feedback on tasks they receive from supervisors.

¹³⁸ Making certain that supervisors give meaningful tasks to students can be a challenge. When talking to field supervisors we sometimes remind them that the experience the student is getting with them must be at least as valuable as the experience the student is giving up on campus. (For a full time field placement we might ask, "Is the experience you are offering worth a semester of law school?") One of the problems we must be vigilant about is the tendency to assign smaller, easier tasks rather than more challenging ones. We see a number of reasons this happens. Smaller, less difficult tasks are easier to assign, and easier to give feedback on. The lawyer also may have less concern that reliance on student work will lead to problems down the road. Finally, we sometimes see that a fear of dilution of the relationship with the client ("He'll like the student more than he likes me") means lawyers keep students away from clients.

