

SATISFYING EXPERIENTIAL EDUCATION REQUIREMENTS THROUGH EXPANDING EXTERNSHIPS IN FOR-PROFIT PLACEMENTS

EMMA LLOYD BEST*

This article explores the best method for expanding experiential education to create practice ready law school graduates and to meet the American Bar Association's requirement of students participating in a minimum of six credit hours of experiential education. The goal of the article is to review clinical programs, externship programs, and for-profit placements to evaluate the feasibility of expansion of experiential educational opportunities. After reviewing the specific benefits and concerns of expanding clinics, externships, and for-profit placements, this article uses Charlotte School of Law as a case study to create a solution based on its change in curriculum requiring experiential education during the third year of law school. The author concludes that the best way to expand experiential education would be through externships in for-profit placements starting with an in-house counsel program and then, if successful, moving into law firms.

INTRODUCTION

Legal education in America is at a crossroads with law schools competing for fewer applicants,¹ and a growing number of underemployed and debt-laden graduates in a lagging economy.² In order to remain relevant in a world where every penny counts and employers expect new hires to have the cognitive skills and professional values to hit the ground running, it is critical law schools create programs that enable graduates to be competitive in the marketplace.³ Buttressed

* Emma Lloyd Best supervises the Co-op Program and the Entrepreneurship Clinic at Charlotte School of Law. I thank Rocky Cabagnet and Cindy Adcock for editorial suggestions and Kristin Whalen and Alexis Vitali for their research and other assistance.

¹ *Three Year Applicant Volume Graphs*, LSAC.ORG <http://www.lsac.org/lscresources/data/three-year-volume> (last visited May 15, 2014). As of 5/09/14, there are 337,978 fall 2014 applications submitted by 49,907 applicants. Applicants are down 8.3% and applications are down 8.9% from 2013.

² See generally JAMES E. MOLITERNO, *THE AMERICAN LEGAL PROFESSION IN CRISIS: RESISTANCE AND RESPONSES TO CHANGE* (2013); RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013); BRIAN Z. TAMANAHA, *FAILING LAW SCHOOL* (2012).

³ See generally *supra* note 2.

by the recommendations of the Carnegie Foundation's 2007 report, experiential education has grown in popularity as one possible way to satisfy these needs.⁴

Experiential education has been defined as that which "integrates theory and practice by combining academic inquiry with actual experience."⁵ Therefore, experiential education may be the most promising response to increasing pressures from private law firms and their clients for practice-ready graduates with stronger lawyering, professional, and problem-solving skills.⁶ For instance, rather than completing three years of coursework, with the last year predominantly filled with electives, law schools might require students to complete six credit hours of experiential education programs during their third year. Traditionally, experiential education placements have been with government offices, non-profit organizations, or in-house clinics serving indigent clients. However, this article argues that the best way to solve the demand for better prepared practice-ready law graduates is by providing students with opportunities to participate in for-profit externship placements for credit as part of a required experiential education program prior to graduation.

Part I of this article explores the background of experiential education, describing the differences between clinics and externships. Part II examines for-profit field placements for credit and specifically in-house counsel placements. Part III explores the development of an externship program with for-profit placements for credit at Charlotte School of Law (CSL), where all students are required to participate in an experiential education placement prior to graduation. Part IV analyzes the requirement of experiential education in law school generally and specifically the possible expansion of for-profit placements. It concludes that as law schools change their curriculum to require experiential education, they should focus resources on expanding opportunities in the private sector where most students will ultimately practice law.

⁴ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (Carnegie Foundation for the Advancement of Teaching 2007) [hereinafter *CARNEGIE REPORT*].

⁵ Robert Dinerstein, *Experiential Legal Education: New Wine and New Bottles*, 44 SYLLABUS 2 (Winter 2012-2013); A Glossary for Experiential Education in Law Schools, The Alliance for Experiential Learning in Law Vocabulary Working Group, Work in Progress Draft July 2014, Received from Professor Cindy Adcock [hereinafter *Glossary for Experiential Education*].

⁶ NAT'L ASS'N FOR LAW PLACEMENT, 2010 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS 5 (2011) [hereinafter *NALP SURVEY*].

I. BACKGROUND OF EXPERIENTIAL EDUCATION

Apprenticeships were the predominant method of legal preparation prior to the 1870s.⁷ Indeed six United States Presidents gained their legal education through this method.⁸ By the middle of the 20th century, early clinics evolved in response to the Langdellian Case and Socratic Methods, and provided students with the opportunity to work directly with clients.⁹ These programs served as a return to legal education that reflected the realities of legal practice and grew during the Civil Rights Era when students sought to help those in need while continuing their legal studies.¹⁰ The Title IX Law School Clinical Experience Program, funded by the Ford Foundation and the United States Department of Education, focused on service to indigent clients, which helped clinics expand significantly from the 1960s through the 1990s.¹¹

In 1992, the Report of the Committee on the Future of the In-house Clinic set forth emerging goals and aims of clinical legal education and helped to solidify its place in the legal academy.¹² According to the Carnegie Report, students need to develop skills in law school to counsel clients, exercise good judgment, and to respond effectively to factual and ethical ambiguities of real world practice.¹³ The three “apprenticeships of professional education” listed in the Carnegie Report are the intellectual or cognitive ability to perform rigorous analysis,¹⁴ expert practice shared by competent practitioners,¹⁵ and identity and purpose.¹⁶ Over time externship programs placing students in field placements with the government, judicial, and non-profit law firms with supervisors who were not faculty, became a recognized method of providing clinical education.¹⁷

⁷ ROBERT STEVENS, *LAW SCHOOL LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S* (Univ. of N.C. Press 1983).

⁸ John Adams, Thomas Jefferson, John Quincy Adams, Martin Van Buren, John Tyler, and James Polk each apprenticed as lawyers after completing undergraduate degrees at American universities. Dan Slater, *Barack Obama: The U.S.'s 44th President (and 25th Lawyer-President!)*, WALL ST. J. BLOG (November 5, 2008, 9:16 AM) <http://blogs.wsj.com/law/2008/11/05/barack-obama-the-uss-44th-president-and-24th-lawyer-president/>.

⁹ STEVENS, *supra* note 7, at 174, 177.

¹⁰ *Id.* at 215-16.

¹¹ Margaret Martin Barry, John C. Dubin & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLIN. L. REV. 1 (2000).

¹² CARNEGIE REPORT, *supra* note 4, at 28 (this report on legal education emphasizes how law schools should change to be more practical and proposes reforms to curricula to assess student learning).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Bernadette T. Feeley, *Examining the Use of For-profit Placements in Law School*

More recently law schools have begun to experiment with for-profit field placements.¹⁸ According to some commentators, there does not appear to be any rules under the American Bar Association (ABA) Standards for Approval of Law Schools, American Association of Law Schools (AALS), Executive Committee Regulations, federal employment law, or state bar students practice requirements that forbid law schools from providing for-profit placement opportunities.¹⁹ Law schools providing credit for externship placements are subject to ABA Standard 305.²⁰ And for-profit placements must be concerned about violating the Fair Labor Standard Act (FLSA) for unpaid internships.²¹ But as long as externship programs comply with ABA Standard 305 and FLSA, there appears to be no prohibition on externship placements at for-profit entities.

This year the ABA adopted a recommendation that every law student receive at least six credits of experiential education.²² This new experiential learning rule can be satisfied with simulation courses.²³ Thus perhaps more than ever, experiential education encompasses “many methodologies” and can be as limited as stand-alone exercises of role-playing, mock negotiations, and teamwork exercises, or can span entire semesters in programs such as clinics and externships. “In high-quality legal clinics, expert performance is modeled by supervising faculty, students enact a wide array of skills, and faculty coaches them toward improved performance through continuous feedback.”²⁴

Externship Programs, 14 CLIN. LAW REVIEW. 37, 40 (2007-2008).

¹⁸ 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> (last visited Apr. 15, 2014) [hereinafter CSALE SURVEY] (finding that the most common limit on the type of placement would be not-for-profits); Sudeb Basu & J.P. “Sandy” Ogilvy, *Externship Demographics Across Two Decades with Lessons for Future Surveys*, 19 CLIN. L. REV. 1, 19 (2012) (showing that the number of law schools not placing any limitation on the type of placement doubled from 15 to 33 in the five years between the 2002-2003 and 2007-2009 surveys).

¹⁹ Feeley, *supra* note 17, at 42 (evaluating all applicable laws and finding that some laws may impact the use of for-profit placements, but no laws prohibit law schools from using for-profit placements).

²⁰ See discussion *infra* note 33.

²¹ Feeley, *supra* note 17, at 43; see discussion *infra* note 43. The FLSA covers internship programs and helps determine whether interns must be paid.

²² Tony Mauro, *ABA Delegates Approve Law School Reforms*, NAT'L L.J. (Aug. 11, 2014) <http://www.nationallawjournal.com/id=1202666475781/ABA-Delegates-Approve-Law-School-Reforms?slreturn=20140722123858>.

²³ Glossary for Experiential Education, *supra* note 5 (defining a simulation course as one in which the student assumes the role of the lawyer with a sets of facts and circumstances devised or adopted by a faculty member reasonably similar to a real life practice experience).

²⁴ CARNEGIE REPORT, *supra* note 4, at 145; see also Anthony G. Amsterdam, *Clinical Legal Education—A 21st-Century Perspective*, 34 J. LEGAL EDUC. 612, 616 (1984).

Given the range of possibilities that may satisfy ABA requirements, legal educators may be faced with having to choose among various options when deciding which programs to grow or enhance to provide at least six credit hours of experiential learning in the days ahead. Looking more carefully at the pros and cons of some of these options may assist law school administrators in making these difficult decisions. However, in the end, this author believes growth and development of externship placements with for-profit organizations should take priority.

A. Clinics

In clinics, law school faculty work directly with law students to represent clients and engage in other legal work.²⁵ In addition to coursework, students are typically assigned several clients for whom the students advocate and guide through the legal process. In addition to guidance from faculty, students are encouraged to collaborate with classmates and are often placed in small groups or “firms,” which further the goal of emulating a real practice experience. Students develop a variety of skills while participating in clinics including legal research, document drafting, client counseling, and professionalism.²⁶ In addition, students may be able to appear and argue in court if the practice rules in the state permit students to receive a practice certificate.²⁷ Some schools retain adjunct professors to assist with clinical teaching coverage.²⁸ Given their current practice experience, many adjunct professors are especially able to help guide students through a particular practice area. However, they may not have time to adequately supervise the students if they maintain full-time practices.

B. Externships

Externships or field placement programs are defined as “a collection of courses offered by a school that provides students with the opportunity to integrate academic inquiry with work experiences in the law for academic credit.”²⁹ Depending on the organization, students may have direct contact with clients and are “supervised by persons not employed by the law school.”³⁰ The program typically

²⁵ Glossary for Experiential Education, *supra* note 5 (students address real world matters through interacting with clients through supervised practice experience).

²⁶ NALP SURVEY, *supra* note 6, at 8.

²⁷ *Id.*

²⁸ James H. Backman & Cory S. Clements, *Significant but Unheralded Growth of Large Externship Programs*, 28 BYU J. PUB. L. 114 (forthcoming 2014).

²⁹ Glossary for Experiential Education, *supra* note 5.

³⁰ 2013 Annual Questionnaire: Glossary, ABA SECT. LEGAL EDUC. & ADMISSIONS TO B., at 3.

includes a course component where students learn about issues relevant to their placements. Common course topics include ethics, reflective lawyering, creative problem solving, and bias in the legal profession.³¹ Journaling, where students are encouraged to reflect upon their experiences, is also an important part of most externship programs.³² In addition to learning from their professors, students in these programs have the added benefit of having a supervising licensed attorney at their job site to mentor them.

Students receive credit hours for both time spent in the classroom as well as for the work completed at an off campus site in accordance with the requirements under ABA Standard 305.³³ Standard 305 includes a clear statement of goals and methods, including adequate instructional resources, clear methods for evaluating student performance, methods for properly vetting and training field placement supervisors, periodic site visits for placements awarding four or more credits, limitations of placements to second and third year law students only, and opportunities for student reflection.³⁴

II. FOR-PROFIT FIELD PLACEMENTS

Externships in for-profit law firms have the potential to expand and open up opportunities to law students for externships associated with academic programs. Law schools may be more comfortable developing in-house placements compared to law firms that have more traditional externship programs since there is no pressure to bill hours to pass along to externs. Therefore, this section will distinguish in-house placements from law firm placements and cover the benefits and downsides of for-profit placements.

A. *In-house Counsel Programs*

Law schools, with increasing frequency, are offering placements at for-profit entities as part of their experiential learning curriculum. They may have course titles like: “Corporate Counsel Externship Pro-

³¹ J.P. OGILVY, LEAH WORTHAM, & LISA LERMAN, *LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS* (2nd ed. 2007).

³² *Id.* at 199-214.

³³ ABA Standard 305 addresses study outside of the classroom. Under 305 (c) “each student’s academic achievement shall be evaluated by a faculty member” and 305 (d) “the studies or activities shall be approved in advance and periodically reviewed following the school’s established procedures for approval of the curriculum.” ABA SEC. LEGAL EDUC. & ADMISSIONS TO B., 2013-2014 ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: PROGRAM OF LEGAL EDUCATION (2013), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf.

³⁴ ABA STANDARD 305(E)(1) – (7).

gram,”³⁵ “In-House Counsel Externship,”³⁶ “Corporate Counsel Practicum,”³⁷ or “Cooperative Legal Education Program”³⁸ (“Co-op program”).³⁹ During their 2L and 3L years, law students are placed in corporate legal departments and work side-by-side with in-house counsel for twelve to twenty hours per week over the course of one semester. Most of the programs include a companion course that covers skills and topics essential to the life of an in-house attorney including: ethical responsibilities of in-house counsel, employment law, corporate governance, and contract negotiation. These courses are normally two credits and are sometimes offered online.⁴⁰ Many courses require small group discussions, role-plays, simulation exercises, presentations, and a final paper.⁴¹

In existing law school corporate externship programs, students receive credit for both the time spent working at the corporation as well as for coursework completed. However they do not receive any monetary compensation from the corporation.⁴² These placements trigger

³⁵ *Types of Externships*, UNIV. ARK. SCH. L., <http://law.uark.edu/academics/externships/types-of-externships/> (last visited Mar. 3, 2014); *Corporate Counsel Externship Program*, SMU DEDMAN SCH. L., <http://www.law.smu.edu/Current-Students/Other-Resources/Corporate-Counsel-Externship-Program.aspx> (last visited Mar. 3, 2014); *Corporate Externship Program*, UNIV. DENV., <http://www.law.du.edu/documents/legal-externship-program/externships/corporate.pdf> (last visited Mar. 18, 2014); *Civil Programs*, UNIV. GA., <https://www.law.uga.edu/civil-programs> (last visited Mar. 3, 2014); *Externship Program*, UNC SCH. L., <http://www.law.unc.edu/academics/externship/default.aspx> (last visited Mar. 18, 2014); and *Corporate Counsel Internship Program*, UNIV. SAN DIEGO SCH.L., http://www.sandiego.edu/law/academics/clinical_education/programs/corp_counsel_internship.php (last visited Mar. 18, 2014).

³⁶ *Clinics and Externships*, UNIV. OR., <http://law.uoregon.edu/clinics-externships/externships/> (last visited Aug. 20, 2014).

³⁷ *Bluhm Legal Clinic Center for Externships: Practicum Sources*, NW. L., <http://www.law.northwestern.edu/legalclinic/externships/studentopps/courses/#corporate> (last visited Mar. 26, 2014).

³⁸ *Real Experience: The Co-Op Program*, DREXEL UNIV. SCH. L., <http://drexel.edu/law/academics/co-op/> (last visited Aug. 20, 2014); see also *Co-Op Program*, CHARLOTTE SCH. L., <http://www.charlottelaw.edu/academics/co-op-program> (last visited Mar. 18, 2014), *The Incomparable Co-op: Four Full-Time Experiences*, NE. UNIV. SCH. L., <http://www.northeastern.edu/law/experience/co-op/index.html> (last visited Mar. 18, 2014).

³⁹ Glossary for Experiential Education, *supra* note 5 (differentiates a Cooperative Education Program from an externship by the fact that students do not normally receive academic credit for the fieldwork).

⁴⁰ See *Corporate Counsel Internship Program*, UNIV. SAN DIEGO SCH.L. http://www.sandiego.edu/law/academics/clinical_education/programs/corp_counsel_internship.php (last visited Mar. 18, 2014) (San Diego’s Corporate Counsel Internship program includes on-line class sessions); *Co-Op Program*, CHARLOTTE SCH. L., <http://www.charlottelaw.edu/academics/co-op-program> (last visited Mar. 18, 2014) (Charlotte School of Law’s Corporate Co-op also has an online component).

⁴¹ See, e.g., *Types of Externships*, *supra* note 35.

⁴² *Id.* (Students participating in the externship program at University of Arkansas can receive four credit hours). Although the University of San Diego School of Law Corporate Counsel Program is called an “Internship Program,” this school does not permit the stu-

FLSA considerations because the extern is not paid and may be doing work that a regular employee would do at the corporation. Thus, employers must qualify under an exception to FLSA to avoid employment law violations.⁴³

FLSA sets forth a six-factor test that allows externs to qualify as trainees rather than employees under limited circumstances. To evaluate whether a placement qualifies, law school administrators must ask whether: (1) the internship is similar in training to an educational environment, (2) the internship is for the benefit of the intern, (3) the intern does not displace a regular employee, (4) the employer derives no immediate advantage from the activities of the intern, (5) the intern is not entitled to a job at the end of the internship, and (6) the intern does not get wages for time in the internship.⁴⁴ For-profit employers such as corporations may feel more comfortable about satisfying FLSA requirements if there is a formal arrangement in place with the law school that indicates students receive academic credit for the hours worked in the externship.⁴⁵

B. *Distinguishing Programs with For-Profit Placements*

In-house counsel programs address an important need that other experiential education programs are unable to fill. Most clinics and clinical labs focus on the needs of the underserved and indigent persons, as well as non-profit groups. While these are important demographics that need legal assistance, relatively few students will go on to work for such non-profits or indigent clients outside of pro-bono work. In an economy where state and federal governments are increasingly cutting back on funding for such programs and donations to non-profits have similarly decreased, most non-profits and governmental organizations simply cannot afford to hire new attorneys.⁴⁶

dent to receive monetary compensation for work performed in a corporation's legal department, because the students receive academic credit for time spent working at the corporation (1-3 credits). *Corporate Counsel Internship Program*, UNIV. SAN DIEGO SCH.L. http://www.sandiego.edu/law/academics/clinical_education/programs/corp_counsel_internship.php (last visited Mar. 18, 2014).

⁴³ WAGE & HOUR DIV., FACT SHEET #71: INTERNSHIP PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT (2010) [hereinafter FACT SHEET #71], available at <http://www.dol.gov/whd/regs/compliance/whdfs71.htm> (lays out six criteria to be applied when making the determination to classify the intern as a trainee rather than an employee under the FLSA). See, e.g., *Glatt v. Fox Searchlight Pictures, Inc.*, 2013 293 F.R.D. 516 (S.D.N.Y. 2013) (where the benefits from the unpaid internships, such as resume listings and job references, were "incidental to working in the office like any other employee and were not the result of internships intentionally structured to benefit them," this does not support an exclusion from the wage requirements of FLSA).

⁴⁴ FACT SHEET #71, *supra* note 43.

⁴⁵ Feeley, *supra* note 17, at 44.

⁴⁶ See, e.g., Media Release, Legal Aid of N.C., Legal Aid of NC to Close Offices, Re-

Even if recent graduates were able to secure positions with non-profit groups, most would not be able to afford to work with them. Students graduating from CSL, for example, often have as much as \$120,000 in non-dischargeable debt and simply cannot afford to work for non-profits. But the average starting salary of a public interest attorney is only \$35,000 to \$39,000 a year. Meanwhile, large law firms may offer new attorneys starting salaries of up to \$160,000.⁴⁷ Some students may apply for loan forgiveness by working in public service jobs for a period of 10 years.⁴⁸ There are other ways to reduce the student loan payments based on income and pay-as-you-earn-plans.⁴⁹ But most students pursue other paths.

Rather than working for non-profits or public organizations, most law students will eventually work in the private sector. About seventy-two percent of lawyers work in private practice and an additional ten percent serve as in-house counsel for for-profit and not-for-profit corporations.⁵⁰ In such positions it is more likely that lawyers will represent business clients or handle transactions and disputes in which business organizations are involved. Thus co-op placements with for-profit entities will enable students to develop the contextual understanding and skills needed to represent and work with business clients, even if the students ultimately join private law firms.

Similar to non-profit placements, students working in for-profit placements have the benefit of multiple mentors with both professors and on-site supervising attorneys providing guidance. Depending on the size of the corporation's legal department or the law firm, it is likely that the student will also receive projects from attorneys other than their direct supervising attorney. This provides an opportunity to learn from even more lawyers. In addition to fostering feedback and critique by different people, these contexts provide tremendous networking opportunities for students who will likely rely on such connections when seeking postgraduate employment.⁵¹ Therefore, the

duce Staff and Servs., *Affecting Thousands in NC* (August 5, 2011), available at www.legalaidnc.org/public/Learn/Media_Releases/2011.

⁴⁷ Susan Adams, *Law Schools Whose Grads Make the Highest Starting Salaries*, FORBES (March 28, 2014, 12:09 PM) <http://www.forbes/sites/susanadams/2014>.

⁴⁸ *Public Service Loan Forgiveness*, FED. STUDENT AID, AN OFF. DEP'T EDUC., <http://studentaid.ed.gov/repay-loans/forgiveness-cancellation/charts/public-service> (last visited Feb. 5, 2014).

⁴⁹ Joseph Pisani, *A Guide to Student Loan Forgiveness and Repayment Options*, HUFFINGTON POST C. (Sept. 26, 2013, 6:09 PM) http://www.huffingtonpost.com/2013/09/27/student-loan-forgiveness-guide_n_4002065.html.

⁵⁰ Feeley, *supra* note 17, at 53.

⁵¹ Brook K. Baker, *Practice-Based Learning: Emphasizing Practice and Offering Critical Perspectives on the Dangers of "Co-op"tation*, 2 N.Y.L. SCH. L. REV. 620, 622 (2011-2012) ("discussing how students can develop imaginary identities about what it might mean to be a nurse or a lawyer or a manager based on cultural messages, but their personal sense

lawyers who students encounter in their field experience play an important role of shaping the student lawyer's future professional success.

C. *Benefits of For-Profit Field Placements*

In his article about implementing a successful corporate counsel externship program, Professor Carl J. Circo describes the benefits of, and lessons learned from, such programs.⁵² He asserts many new ideas cannot be learned from a book, but only through actual experiences and practice immersion. For example, he points out that appreciating corporate culture and understanding business clients can only be achieved in the corporate or business milieu.⁵³ Professor Bernadette T. Feeley similarly highlights positive educational outcomes available through for-profit placements that are unavailable in the non-profit setting, such as exposure to different kind of clients, practice settings, and substantive areas of law.⁵⁴ Specifically, students may be exposed to institutional clients, such as corporations, and the special ethical issues that arise from representing these organizations. They might also work within the realms of intellectual property, international, and real estate law – areas that might not present themselves when representing an individual, indigent client.⁵⁵ Understanding the subtleties of corporate transactions and being able to deploy that knowledge allows business lawyers to provide truly excellent counsel for their clients. Students completing corporate in-house placements will, therefore, have an edge over some classmates in seeking future employment in these areas.

Students placed with in-house counsel also learn what it means to be a professional in a corporate environment. They learn the importance of developing a strong moral compass that may be especially necessary in the for-profit world. And through such groundwork, they can carry these moral lessons with them throughout their careers. Participation in a professional community exposes students to the public dimension of the professional life.⁵⁶ Through discussions with

of what it means for them to be a certain kind of professional, a certain kind of worker, or a certain kind of social activist, can only be learned by engaging authentically in that role and being exposed to live identities of other participants”).

⁵² Carl J. Circo, *An Educational Partnership Model for Establishing, Structuring, and Implementing a Successful Corporate Counsel Externship*, 17 CLIN. L. REV. 99, 102-03 (2010-2011).

⁵³ *Id.*

⁵⁴ Bernadette T. Feeley, *Guiding Law Students Through For-profit Field Placements*, 19 CLIN. L. REV. 1, 62 (Fall 2012).

⁵⁵ *Id.* at 63.

⁵⁶ CARNEGIE REPORT, *supra* note 4, at 28.

attorneys in a corporation's legal department, students begin to understand the moral and ethical decisions many of these attorneys face on a daily basis. "The general counsel is the chief ethicist in most companies and that's a powerful and daunting role."⁵⁷ Most in-house counsel courses include guest speakers that share their experiences (both good and bad) with the students. Through such exercises, students are encouraged to reflect on their own moral leanings and contemplate what they would do in such similar difficult situations.⁵⁸ Professionalism can be explicitly modeled, taught, and addressed.

Additionally, there are numerous practical skills that are gained through an in-house placement. Students learn the practical application of using the law to solve common business problems; become familiar with important statutes and regulations governing the business world.⁵⁹ As they learn the law, students also learn the language of business and how best to translate legal jargon into that language for their business clients.⁶⁰ By knowing the correct business terms and how to use them appropriately, an attorney builds rapport with her client, which enhances the client's confidence in her advice. Students will learn how to show their business clients that the law is not something "to get around," but rather is something that competent legal counsel can help them to "work within" to achieve their goals.⁶¹

Finally, students will have the rare opportunity to experience first-hand the special role of in-house counsel.⁶² This is something that many practicing attorneys do not get to experience until they secure an in-house counsel position. Students will learn that legal decisions are not made in a vacuum and that there are important political, business, personal, and ethical implications that must be considered. Therefore, students learn the importance of understanding business first and foremost in order to be able to adequately advise business clients.

D. Downsides of For-Profit Field Placements

Following the apprenticeship model, supervising attorneys con-

⁵⁷ Sue Reisinger, *Training for Trouble*, CORP. COUNS. (November 1, 2012) http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1202574093143&Training_for_Trouble&slreturn=20130321162705.

⁵⁸ *Id.*

⁵⁹ Circo, *supra* note 52, at 109.

⁶⁰ *Id.* at 111.

⁶¹ Interview by CSL student with George Battle, III, General Counsel, Charlotte-Mecklenburg Schools (Apr. 13, 2012) ("that in [my] fourteen years of experience as an in-house attorney, it was an extremely important lesson that an attorney could help his client to understand").

⁶² Circo, *supra* note 52, at 105.

trol student-learning opportunities within for-profit externships. This may not be ideal if the attorney is too busy to mentor students.⁶³ Faculty members may provide field supervisors with manuals to follow, but there is no way to know if the supervising attorneys are modeling professionalism, mentoring students, or providing constructive feedback.

Moreover, if this is the student's only experience with a practicing attorney, then their perspective on practicing law could be negatively shaped by a supervising attorney who is incompetent, unethical, or unprofessional.⁶⁴ Unfortunately, some workplaces might also subject students to subtle or direct discrimination based upon gender, sexual orientation, minority status, or otherwise. This puts such student-trainees in very difficult situations – dealing potentially with both violations of workplace and educational rights, while at the same time trying to develop professional personas and networks.⁶⁵ Such complex situations, beyond presenting challenging legal questions, could forever fracture a student's sense of identity, undermine student self-confidence, and otherwise lead a student to disengage.⁶⁶

As for-profit placements grow, faculty members are required to oversee more students and therefore may not have time to monitor experiences very closely. Students might be assigned mundane work such as filing and copying and may not acquire any professional skills to become practice ready. Students may not complain to supervising attorneys or faculty members because of wanting to fit in their assigned law firm or corporation. They might also believe the arrangement is the norm for field placements.⁶⁷

III. CHARLOTTE SCHOOL OF LAW'S EXPERIENTIAL EDUCATION PROGRAMS

In the fall of 2013, Charlotte School of Law (CSL) changed its curriculum, launching a new set of courses and programs under the banner of "CharlotteLaw Edge." These include requiring students to complete one of our experiential educational opportunities prior to

⁶³ Backman & Clements, *supra* note 28, at 116 (discussing the differences between the clinic-based model versus the apprenticeship model for experiential learning).

⁶⁴ Baker, *supra* note 51, at 639.

⁶⁵ *Id.* at 624.

⁶⁶ *Id.*; *see also id.* at 640 (discussing the usual "reservations of apprentice-like placements: (1) students are not getting anything other than premature exposure to a lifetime of practice, (2) the type and variety of work is low level and trivial, (3) students are completely at the mercy of any substandard practice and ethical hooliganism to which they are exposed, (4) the educational focus and quality of supervision offered by typical practitioners is highly suspect, and (5) practitioners are unreflective and uncritical about their practice").

⁶⁷ Baker, *supra* note 51, at 639.

graduation,⁶⁸ which currently includes a co-op program, an externship program, and eight in-house, live-client clinics. In addition, law students must perform fifty hours of public service prior to graduation, consistent with New York state's requirement for admission to its bar. In light of these changes to the curriculum, CSL must decide how to expand its experiential education opportunities in order to provide opportunities for each student currently in the second year class. This section examines all experiential education programs which CSL could expand to provide adequate opportunities under CharlotteLaw Edge, to determine the one that is most feasible.

A. *CharlotteLaw Edge*

CharlotteLaw Edge significantly changed our existing law school curriculum, trying to better prepare students to pass the bar exam upon graduation, as well emerge as practice-ready lawyers. The first year curriculum includes an intensive class to introduce students to legal professionalism as well as classes to present problems faced in transactional and litigation practice.⁶⁹ Through these early experiences, students can gain a better sense of their strengths and career paths that interest them. It also helps them decide which experiential education opportunity to pursue in their third year.

The CharlotteLaw Edge curriculum further includes specialized support for meeting graduation requirements, passing the bar, and starting a career. Students are assessed and given feedback more frequently to ensure academic success in small-section courses designed specifically to teach practice-ready skills and to ensure that every student will acquire real-world knowledge by providing "live practice experience" for all students prior to graduation.⁷⁰ In addition, the purpose of the CharlotteLaw Edge curriculum is to teach a broader range of competencies than traditional law school education and to help students build confidence in their abilities.⁷¹

B. *Charlotte School of Law's Co-op Program with For-profit Placements*

CSL's co-op program began in the spring of 2011 with four in-house counsel field placements at local Charlotte, North Carolina cor-

⁶⁸ For details on the CharlotteLaw Edge Curriculum, see *CharlotteLaw Edge*, CHARLOTTE SCH. L., <https://www.charlottelaw.edu/academics/charlottelaw-edge> (last visited Mar. 21, 2014).

⁶⁹ For first year class curriculum at CSL, see *id.*

⁷⁰ *Id.* Charlotte School of Law changed its curriculum to require that each student participate in one experiential education opportunity.

⁷¹ *Id.*

porations and a related companion class focused on corporate law. CSL now provides two sections of the co-op program: one involving in-house counsel placements; the other providing placements with private law firms that represent corporations in civil litigation. Each has its own related companion course. The students receive two academic credits for the companion courses and do not receive any credit for the fieldwork in the for-profit placements even when they are not compensated.⁷² The faculty member supervising the co-op program teaches one section of the co-op class and manages all the administrative work of maintaining the co-op partners and pairing students accordingly. The faculty member also manages one adjunct professor who teaches the law firm section of the co-op class and grades the student's course work.

In the corporate section of CSL's co-op program, the companion course provides perspective on what it is like to practice as in-house counsel. Students receive an overview of corporate governance, compliance, employment law, intellectual property and contract negotiations. Students then work together throughout the semester on joint projects although placed at different offices. Students are also required to check in with the professor during their internship and attend talks by other attorneys to get the benefit of hearing about their career paths. The corporate students work with in-house corporate attorneys at local corporations over the course of one semester. Currently, over one hundred students participate in the program each year and students have been placed in co-ops with companies ranging in size from Fortune 500 companies to smaller organizations and law firms based in the Charlotte-Metro area. In addition to Charlotte, CSL students have also completed co-ops in their hometowns of Salt Lake City, Utah; Chicago, Illinois; Brooklyn, New York; and Charleston, South Carolina. As of August 2014, fifteen co-op students have gone on to secure full-time employment with the companies with which they interned.

In the law firm section of the co-op program, students are exposed to an attorney practicing civil litigation with real world experience. The course material prepares students to be practice ready for their internship by learning about many of the practical aspects of a law firm including handling pre-trial documents, management of a firm, client-focused legal practice, and billing hours. During the course, students complete simulated exercises in small groups or "firms" including conducting client interviews, drafting discovery, and negotiating settlements. Students only receive academic credit for

⁷² Glossary for Experiential Education, *supra* note 5 (in line with co-op definition).

coursework completed and not for the time spent working with the law firm, even though some students will get paid and some students will not get paid. As with the Corporate Co-op Program, both their co-op course professor as well as a supervising attorney at the law firm will mentor the students. However, the supervising attorney in the field placement takes the primary responsibility for learning opportunities. Therefore, the co-op programs follow the apprenticeship model rather than the clinic-based model.⁷³

C. Charlotte School of Law's Externships with Non-Profit Placements

CSL sponsors approximately fifty to sixty externship placements each semester in which students represent indigent clients in either civil or criminal matters while working with public interest organizations, government agencies or on pro-bono matters for private firms.⁷⁴ Students have opportunities during the school year to clerk with the North Carolina District Court, the Federal District Court or the North Carolina Court of Appeals. One full-time faculty member supervises the externship program and manages three adjunct professors teaching in the externship program. All students are required to attend class each week. Their progress is monitored throughout the semester, except summer when students obtain their own externships, subject to approval, anywhere in the world. Externships at CSL differ from co-ops because students in externships earn credit not only for the externship class, but also for the hours that they spend working at their externship. As a result of this, the CSL externship program is subject to ABA Standard 305 requiring site visits, reflections by students, methods for evaluating students as well as selection and training for field placements, and a clear statement of goals. This means there is a need for adequate instructional resources to meet the requirements.⁷⁵

CSL's externship program follows a clinic-based teaching model since faculty involvement is central to the student's learning with weekly class meetings, reflective journals due every other week, time sheets, and site visits as often as feasible.⁷⁶ There are several different classes that students may take with the externship program that are geared towards the students' specific externship. These include a judicial, civil, or criminal course, or the externship companion course that

⁷³ Backman & Clements, *supra* note 28, at 113.

⁷⁴ For admissions and externships at CSL, see *Externships*, CHARLOTTE SCH. L., <https://charlottelaw.edu/academics/externships> (last visited Feb. 19, 2014).

⁷⁵ ABA STANDARD 305(E)(1) – (7).

⁷⁶ Backman & Clements, *supra* note 28, at 113.

focuses on ethics and professionalism. Externship classes enroll no more than fifteen students.⁷⁷ Students receive one to two credit hours for the externship class depending on the hours the class meets. They also receive two credits for one hundred and twenty hours of work they complete in their externship placement. Students may receive up to four credit hours over the summer if they work two hundred and forty hours, which equates to one credit per sixty hours of work. Students are still required to take the externship companion course with an intensive class up front and then attend online meetings throughout the summer.

D. Charlotte School of Law Clinics

CSL currently has eight in-house, live-client clinics: civil rights, community economic development, criminal justice, domestic violence, entrepreneurship, family advocacy, immigration, and tax controversy. Clinics expose students to live client experiences in a controlled environment in which there is close supervision, journals, and weekly reflections, which enhances the students' learning and motivates the students because they are graded on work performance and meeting their goals. CSL has five full-time faculty, which teach eight to ten students in their clinics, and four adjunct faculty members, who teach up to five students in their clinics each semester. These faculty members work directly with students to represent clients who cannot afford legal representation.⁷⁸ Students learn to apply what they learn in the classroom to real world practice problems. The clinic program at CSL has expanded over the last few years. Yet it remains very competitive for students to get into a clinic. Clinics meet in class every week and students submit their hours to professors to monitor. All the work they do for clients must be approved by the bar licensed professor.

E. Expansion of Experiential Education

To solve the need for additional experiential education opportunities for all students at CSL under the new curriculum of Charlotte-Law Edge, administration may look to expand our clinics, externship program, pro-bono program, co-op program, or create simulation

⁷⁷ *Id.* at 114 (stating that ten to fifteen students are ideal under the clinic based model).

⁷⁸ Phyllis Goldfarb, *Back to the Future of Clinical Legal Education*, 32 B.C.J.L. & Soc. Just. 279, 301 (2012); Guy Loranger, *Could There be a Right to Counsel in Civil Cases?* N.C. LAW. WKLY., November 9, 2009, at 1 ("Funding from state and federal governments . . . has dropped for Legal Aid, which already must turn away eight of every ten actionable claims that come through its doors because it only has one attorney for every 15,500 of the state's residents who are eligible for its services.")

courses. This section evaluates each program to determine the feasibility of expansion to meet the six-credit experiential education requirement of CharlotteLaw Edge and provide opportunities for all students who are currently in their second year.

1. Clinics

CSL could choose to expand the clinic program with adjunct professors to control costs. But overseeing a clinic requires a lot of time, which practicing attorneys may not have. Clinics primarily serve those clients who cannot afford legal services and give back to the community. Even though clinic experiences may help students determine the area of law they are interested in, clinics are not likely to lead to full time jobs post-graduation. In addition, clinics are only as good as the professor teaching them. If the professor has not had much practice experience or does not have much time to devote to interactions with their students, then a clinic may not be the best experiential education opportunity to expand.

2. Pro-bono Program

Since CSL has a new requirement that students perform fifty hours of unpaid legal work and ten hours of community service before graduating, there is a definite need to expand the pro-bono program,⁷⁹ which is in line with ABA Standard 302 (b) (3).⁸⁰ Currently, there are approximately twenty-five group projects at CSL and a focus on an access to justice curriculum, which resulted in the creation of an access to justice law journal. One faculty member supervises the pro-bono program. In order to meet the new fifty-hour graduation requirement for all students, the director of the pro-bono program would need additional staff to help identify community partners as well as new software for students to log their hours. Similar to externship place-

⁷⁹ Glossary for Experiential Education, *supra* note 5 (the purpose of pro-bono programs is to inspire students to serve without credit or pay and to instill pro-bono service as a professional value); *see also* ABA Standing Comm. on Pro-bono & Pub. Serv. & the Center for Pro-bono, *Directory of Public Interest and Pro-bono Programs: Definitions of Terms Used*, <http://apps.americanbar.org/legalservices/probono/lawschools/definitions.html> (last visited May 15, 2014).

⁸⁰ ABA STANDARD 302(B)(3) (addressing curriculum). *See* Interpretation 302-10 states, “that each law school is encouraged to be creative in developing substantial opportunities for student participation in pro-bono activities. Pro-bono activities should at a minimum involve rendering of meaningful law related service to persons of minimum means or to organizations that serve such persons; however, volunteer programs that involve meaningful services that are not law-related also may be included within the law school’s overall program.” *ABA Standards for Approval of Law Schools 2013-2014*, A.B.A., http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf (last visited Aug. 20, 2014).

ments and clinics, these pro-bono opportunities provide students ways to give back to the community. Some students take the initiative and find their own pro-bono opportunities. Students go through training with the director of pro-bono as well as with the organization they are interning for before beginning their pro-bono projects. Students may be inspired to serve the underserved through the pro-bono program, but these opportunities are not as likely as placements in the private sector to result in jobs post-graduation that would enable students to pay off debt.

3. *Simulation Courses*

The development of simulation courses has the potential to satisfy the need for more experiential education opportunities. These courses would take place entirely in the law school and would not entail dealing with the community to set up live-client practice experiences. As a result, current faculty members would be able to teach these classes to more students because there is no need for supervision of legal work or relationships with supervising attorneys in the field placement. Although, it could be argued that the students in the simulation classes are not getting the same experiences as students who have to think on their feet, be creative with live clients who have different needs and personalities, and learn the professionalism skills when interacting with clients. In addition, these simulation courses do not qualify as live-client or other real-life practice experiences under ABA Standard 302(b) (1).⁸¹ However, the ABA's alternative proposal on Standard 303(a)(3) modifies 302(b)(1) by specifically mentioning simulation courses as an example of what would satisfy the experiential education requirement and further clarifies that:

a course must be primarily experiential in nature and must: (i) integrate doctrine, theory, skills, and legal ethics and engage students in performance of one or more of the professional skills identified in Standard 302; (ii) develop the concepts underlying the professional skills being taught; (iii) provide multiple opportunities for performance; and (iv) provide opportunities for self-evaluation.⁸²

⁸¹ ABA STANDARD 302(B)(1) (addressing curriculum). Interpretation 302-5 states "the offering of live-client or real-life experiences may be accomplished through clinics or field placements. A law school need not offer these experiences to every student nor must a law school accommodate every student requesting enrollment in any particular live-client or other real life practical experience." *ABA Standards for Approval of Law Schools 2013-2014*, A.B.A., http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2013_2014_standards_chapter3.authcheckdam.pdf (last visited Aug. 18, 2014).

⁸² Memorandum from American Bar Association: Section of Legal Education and Admissions to the Bar to Interested Persons and Entities 11 (Dec. 13, 2013), *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201312_notice_comment_stds_205_207_

4. *Externship Program*

CSL's externship program has the benefits of the clinic program in which students are held accountable, reflect on their experiences, and work through specific goals and expectations to earn credit hours.⁸³ In addition, the externship program offers similar benefits to the co-op program in which students experience different work environments and receive mentoring from their professor in class as well as a supervising attorney. Therefore, the externship program seems like a good balance of student learning with attributes from both the co-op program and the clinic program. It also promotes giving back to the community through working for the government, non-profits, or other organizations doing work for those clients who cannot afford it.

However, it is hard to expand the externship program to other cities and states because of the requirements of site visits as well as students having to attend the weekly externship class. The externship program could be expanded for the summer in which students take the intensive class up front and then participate online for class credits. So students could go back to their home towns for the field placement or anywhere in the world with the addition of adjunct professors. Additional resources would need to be added to support the director of the externship program for the summer, and to recruit more supervising attorneys for field placements in the Charlotte area. Externships could result in more jobs for law school graduates than clinics, but these jobs may not pay enough for law students to repay law school debt unless they qualify under loan repayment or the program offers for-profit placements.

5. *Co-op Program*

In the co-op program, a supervising attorney is primarily responsible for the learning experience of the student with the faculty member's primary role being to prepare the student for the placement. The director of the co-op program seeks field placements in both for-profit law firms and companies and sends recommendations to the field supervisors. The director of the co-op program does not control the learning experience that the student has at the internship because the student only gets credit for the companion course and not for the time they work. Therefore, there is a higher risk that the student will not get as good a learning experience as in the other experiential education programs. She may not be as engaged in the work if she is not

303a3_603a_c.authcheckdam.pdf.

⁸³ Feeley, *supra* note 17, at 56 (advising that law schools adopt strict guidelines for student work and supervision to help ensure educational quality in for-profit placements).

getting paid or receiving course credit. Therefore, an immediate solution to expand experiential education at CSL and improve the academic program associated with placements may be to offer credit for unpaid field placements with for-profits in order to encourage these placements to try out having a student work there for a semester.

This would convert the current for-profit co-op placements that do not pay into externships for credit. The faculty member would have more control over the learning environment while giving students unique opportunities for experience in the private sector where they may be hired after graduation with a salary high enough to pay their loans.⁸⁴ The students would benefit because they would receive experience and credit for both the class and the fieldwork. The for-profit placements would feel more comfortable under the FLSA because the students would be participating in a structured academic program to receive credit for the fieldwork. By offering more flexibility to for-profit placements and students who want experience, the experiential education program could be expanded to provide more opportunities in the for-profit sector to comply with the six-credit experiential education requirement.

6. *Long-Term Solution of Expansion into Rural Law Firms*

A longer term, more idealistic solution for CSL to expand for-profit placements, would be to place students with law firms located in rural areas throughout North Carolina in addition to law firms in the Charlotte-Metro area – especially if students could receive a subsidy or stipend to help pay off their law school debt. Rural Americans are one of the most underserved legal populations in America.⁸⁵ “Just 2 percent of small law practices are in rural areas, where nearly a fifth of the country lives, recent data show.”⁸⁶ In North Carolina the proportion of the population living in rural areas is 50% higher than the U.S. average.⁸⁷ There is a critical need for quality legal assistance for the rural poor in the areas of family law, real estate law, public benefits, advance directives, consumer rights, housing, community education,

⁸⁴ *Id.* Fifteen students have been hired full time from the co-op program placement with starting salaries ranging from \$60,000 to \$100,000.

⁸⁵ Feeley, *supra* note 17, at 47 (this may help address the concern of for-profit placements resulting in students moving away from providing representation to the under-represented).

⁸⁶ Ethan Bronner, *No Law for 100 Country Miles, So One Rural State Offers Pay*, N.Y. TIMES, Apr. 9, 2013, at A1.

⁸⁷ NC Legal Servs. Planning Council, *North Carolina Statewide Legal Needs Assessment*, LEGAL AID N.C., (2003) <http://www.legalaidnc.org/public/Participate/Legal%5FServices%5FCommunity/EqualJusticeAlliance/NC%20Statewide%20Needs%20Assessment%2003%2024%2003.pdf>.

and immigration.⁸⁸ While Legal Aid of North Carolina (“LANC”) and other non-profits try to assist as many people as possible, countless of these needs are simply not being met at all. More than twenty percent of North Carolina’s population qualifies for civil legal aid, however LANC can provide “only one staff attorney to serve approximately 19,000 eligible clients.”⁸⁹ “In some instances, there are no lawyers available to help certain clients either through the non-profit community or through the private bar.”⁹⁰ For example, when a client can find an attorney to help her, many times the attorney cannot represent the client if the client has already consulted with the opposing counsel.⁹¹ Therefore, students would still be serving the underserved while getting experience in the private sector if placed with small, rural law practices. In addition, the faculty member would comply with the supervision requirements of ABA Standard 305 to create a controlled learning environment.

This issue is also on the ABA’s radar. In 2012, it called on federal, state, and local governments to stem the decline of attorneys in rural areas.⁹² South Dakota heeded this call last year when it passed a law that offers lawyers an annual subsidy of \$12,000 a year to live and work in rural areas in exchange for a five-year commitment.⁹³ However, this is the first state to have done so. And in the meantime attorneys who currently work in rural areas are retiring with no one to take over their practices. A chairman of the Iowa state bar rural practice committee said “thirty years ago, there were a dozen lawyers in his area, now there are seven, none of them young.”⁹⁴ In some states like South Dakota this can have particularly harsh consequences when in some areas, there are no working attorneys for 120 miles.⁹⁵

CSL could be on the forefront of alleviating this problem in North Carolina by having students train with local attorneys in rural areas throughout the state. Because students could earn up to nine credits in a semester during their third year for internships under the CharlotteLaw Edge model, they will be able to live in these rural communities for the semester and complete all of their coursework online. By living in the communities that they will be serving, students will

⁸⁸ *Id.*

⁸⁹ Diana Smith, *Legal Aid Struggles to Place Cases with Lawyers in Rural Areas*, N.C. LAW. WKLY. (September 23, 2010) http://www.probono.net/nc/news/article.337168-Legal_Aid_struggles_to_place_cases_with_lawyers_in_rural_areas.

⁹⁰ NC Legal Servs. Planning Council, *supra* note 87, at 61.

⁹¹ Smith, *supra* note 89.

⁹² Bronner, *supra* note 86.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

have the opportunity to fully immerse themselves in the culture. Such experiences may lead students to return to these areas upon graduation and establish a practice.

This has been the case with medical residency programs in rural areas. Indeed a spokesman for the federal medical program said “research had shown that residents who train in rural settings are two to three times more likely than urban graduates to practice in rural areas.”⁹⁶ Of course students would have more incentive to practice in rural areas in North Carolina and it would be more feasible for them to do so if the state offered an annual subsidy like South Dakota or if federal loan forgiveness programs were expanded.

Such a plan is also consistent with and supported by our new Rural Community Lawyering course at CSL, which was started last year. In addition to learning about developing a solo firm practice in a rural community, students conducted fieldwork in neighboring Union and Burke Counties. Having CSL students out in rural communities to identify pitfalls or problem areas will help to make the transition smoother when students work in the communities in later semesters. Students in the externship program would be supervised and trained by a local lawyer, further preparing them for the rural law firm setting. Therefore, this program could be a way for students to be placed where there is a need without significant funding. Additionally, connections with local community leaders and organizations will be established which the law firm externship program can then use to expand into other rural communities.

IV. THE FUTURE OF LEGAL EDUCATION

Experiential education in law school better prepares students for practice upon graduation than traditional law school learning.⁹⁷ Both public service attorneys and law firm associates agree.⁹⁸ Of all experiential education opportunities, externships and clinics were considered the most useful to graduates.⁹⁹ But externships in for-profit

⁹⁶ *Id.*

⁹⁷ Center for Excellence in Teaching, *Schools Requiring Experiential Courses*, ALBANY L. SCH., <http://www.albanylaw.edu/celt/reform/Pages/Schools-Requiring-Experiential-Courses.aspx> (last visited Feb. 5, 2014) (compiling a list of schools with experiential learning or pro-bono requirements). See also Karen Tokarz, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL'Y 11, 45-47 (2013) (listing the law schools that require or explicitly guarantee a credit bearing clinic or externship through October of 2013).

⁹⁸ NALP SURVEY, *supra* note 6 at 26. Law firm associates rated legal clinics and externships field placements as 3.4/4 whereas public service attorneys rated clinics as 3.8/4 and externships/field placements as 3.6/4 for usefulness of learning opportunities in preparing for the practice of law.

⁹⁹ *Id.*

placements for credit may be the best way to expand experiential education opportunities in the future to respond to student and market demands for practice-ready attorneys.

A. Curricular changes

Much of the current literature on legal education is focused on providing law students with opportunities for practical experiences within the law. The framework of experiential education enables such experiences to occur. Many legal scholars recommend that the legal community follow the example of the medical community. They call for residency-type programs in which, upon graduation, law students would work at a reduced rate for two years in a law firm under the supervision of licensed practitioners.¹⁰⁰ At the end of their “legal residency,” students would have the practical skills and experience necessary to move forward with their careers, and would be better prepared if they chose to hang out their own shingles. Law firms would have the benefit of paying the graduates a reduced salary to perform necessary work and be able to pass those savings on to clients who are increasingly hesitant to pay hefty legal bills. Additionally, the residency could be viewed as a working interview whereupon the firm could choose to make offers of permanent employment to those residents who did exemplary work.¹⁰¹

Others have recommended that states establish the legal equivalent of nurse practitioner training. In Washington, for example, the State Bar Association has established a board to create a program for limited-license legal technicians.¹⁰² The technicians will have more training and responsibility than paralegals, but will not appear in court or negotiate on their clients’ behalf.¹⁰³ The goal is to provide more access to the consuming public and prevent people from practicing without authorization.¹⁰⁴ As inspiring as these residency-type programs sound, it will take a concerted effort by the American Bar Association (“ABA”), state bar associations, and individual attorneys across the country to commit to such a structural shift in the legal

¹⁰⁰ Ethan Bronner, *To Place Graduates, Law Schools are Opening Firms*, N.Y. TIMES, March 8, 2013, at A14. (“All law schools, including the elites, are increasing skills training by adding clinics and externships. . . . Many of the schools and plans mention medical education as their model.”); John J. Farmer Jr., Op-Ed., *To Practice Law, Apprentice First*, N.Y. TIMES, February 18, 2013, at A17, available at <http://www.nytimes.com/2013/02/18/opinion/to-practice-law-apprentice-first.html>; Bronner, *supra* note 86, at A1.

¹⁰¹ Farmer Jr., *supra* note 100.

¹⁰² Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES (February 10, 2013) <http://www.nytimes.com/2013/02/11/us/lawyers-call-for-drastic-change-in-educating-new-lawyers.html>.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

field. Additionally, as with medical residency programs, funding will be an important concern; teaching hospitals have a federal tax dispensation, but there is currently no equivalent for legal programs.¹⁰⁵ Although many gears are in motion and the need is certainly present, it will likely take several years for any such recommendations to actually be implemented.¹⁰⁶

For students who have zeroed in on a particular area of law, the third year could be used to develop specialized skills and begin important networking for post-graduate employment. For example, if a student knew they wanted to practice criminal law, they could seek an externship with the district attorney's office, or with a criminal defense law firm. Not only would the student get a feel for what their future career would entail, but they would also gain practical experience giving them an edge over the competition. "If this trend continues . . . those who graduate from rigorous three-year programs will not only emerge with sharper legal skills, but also be more essential to employers, raising the rate of job placement out of law school."¹⁰⁷

B. *Promise of For-Profit Field Placements in Particular*

Emerging externship programs in for-profit placements will need to be careful to comply with ABA Standard 305.¹⁰⁸ To enhance the experience, clear expectations will need to be laid out at the beginning of the semester among the professor, the supervising attorney, and the student.¹⁰⁹ Other ways to add value would be for the director of the externship program to continually improve the program based on feedback. The students should fill out a survey about the class so the professor can continually develop the program and tailor it to the specific skills that the students need for the field placements. Most likely, the professor will see consistent themes from students that they wished they would have known more before beginning their externship. The companion course could be structured so that students work in pairs and will therefore have the benefit of hearing about another student's experience throughout the semester. Also, the professor will

¹⁰⁵ Bronner, *supra* note 102.

¹⁰⁶ *Id.*

¹⁰⁷ Daniel B. Rodriguez & Samuel Estreicher, Op-Ed., *Make Law Schools Earn a Third Year*, N.Y. TIMES, January 18, 2013, at A27.

¹⁰⁸ ABA STANDARD 305(E)(1) – (7) (requiring a clear statement of goals, adequate instructional resources, clear method of evaluation, a method for selecting, training, evaluating, and communicating with the field supervisor, periodic site visits, students in their second or third year, and opportunities for student reflection).

¹⁰⁹ Feeley, *supra* note 17, at 57 (stating that the field supervisor should be clearly informed that the student is receiving law school credit for the externship and the primary goal is the educational benefit to the student).

serve as the mediator at times between the student and the field supervisor, so it is important to check in regularly with both to make sure the relationship is flourishing and serve as a neutral party to address both of their concerns. There will be opportunities for professional development for all parties and it is important to remedy issues quickly.

In addition, the field supervisor needs to give feedback to the student and about the program. This will help the professor to understand what supervisors recommend to better prepare the students. A single-semester externship versus a full-year placement may deter some supervisors. So it is important to know what would best help the supervisors and their organizations. If the field supervisor really likes the student, then there is always an opportunity for them to hire the student post-graduation. Screening field placements will help alleviate a lot of potential concerns since the externship program ideally will be used to enhance the law school's reputation in the community and field supervisors should be the biggest advocates of the externship program. It will take time and resources to properly vet and evaluate the field placements. Once supervisors are on board, hopefully they will remain consistent field supervisors. Also, making sure students are better prepared for internships by getting exposure to the practical aspects of practicing as in-house counsel or for a law firm should support a positive educational experience.

In light of the curriculum changes that will have taken place at CSL, other recommendations to improve the externship program need to be implemented with the new developments and potential influx of participants in the program.¹¹⁰ First, all participants in the program should receive an informational packet upon placement with a company, but prior to starting work for the field supervisor. The packet will benefit the relationship with outside partners; clearly detailing expectations will build trust with the company as it shows the school's due diligence in the program's execution. It will also benefit the students in that they know what is expected of them and how they can best meet those expectations. The packet should include the following information: (1) a confidentiality agreement, (2) a questionnaire to screen students for potential (legal) conflicts of interest, (3) a statement that the student understands that the position is part of an educational program to further the student's understanding of business and transactional law and that the student should not anticipate

¹¹⁰ As part of CharlotteLaw Edge program, each 3L student will be required to complete an Externship, Clinic, or Co-op over the course of one semester in order to graduate. *CharlotteLaw Edge – The Third Year*, CHARLOTTE SCH. L., http://www.charlottelaw.edu/sites/default/files/academics/Edge_the%20third%20year.pdf (last visited Aug. 20, 2014).

or expect any offer of employment at the conclusion of the externship program,¹¹¹ (4) a statement that the student understands that at all times he/she is a representative of CSL and should always act in a professional manner, and (5) performance standards and expectations for the course. The field supervisor should also sign a one-page memorandum of understanding that includes the six-factor test from the Department of Labor to ensure that the externship is for the benefit of the student as a trainee and to agree not to place the student in the position of an employee or bill hours for the student's time.¹¹²

Finally, because the for-profit placement's companion class will likely be the first non-traditional law school course that students will take, it will be important to convey the educational benefits of the program. Additionally, students should use this time to set realistic goals they hope to achieve during their placement.¹¹³ Letting their supervising attorney know at the outset that they have a strong interest in a particular area of the law, or that they would really like to learn how to perform a specific type of transaction will help to set the tone for the students' experience. However, students should also understand the nature of the placement (an actual operating office) and that it is important to welcome all assignments as part of a well-rounded educational experience.

CONCLUSION

Legal education is in a state of flux. But law schools can implement new experiential education programs to help quell some of the uncertainty, respond to market demands, and meet student needs. Through a combination of clinics, externships, co-ops, pro-bono work, and simulation courses, law schools can provide students with critical practice-ready experiences that will allow them to develop professionally, ethically, and analytically as attorneys. Polished graduates with the ability to hit the ground running will have a much easier time finding employment than those who are not practice-ready.

An immediate solution may be to develop an externship program with for-profit placements. This can be accomplished through establishing in-house counsel placements initially that offer students credit for the fieldwork as well as a companion course in compliance with

¹¹¹ FACT SHEET #71, *supra* note 43 (job entitlement is one of the six factors that the DOL lists to determine whether an unpaid internship is considered "employment" under the FLSA).

¹¹² *Id.*

¹¹³ ABA STANDARD 305(E)(1) (requiring a clear statement of goals and methods of field placement and a demonstrated relationship between those goals and methods to the program in operation).

the FLSA and ABA Standard 305. Students would benefit from the experience by developing skills to deal with business clients without any pressure of billable hours. Once an in-house counsel externship program is developed, the law school may look to expanding into other for-profit law firms in the local area.

But to really stay ahead of the curve, law schools will need to be willing to think outside of the box. New placements with for-profit organizations in which attorneys are needed, such as a rural law firm externship program, are one such creative effort. That is law schools need to provide graduates with lawyering and professional skills necessary to be successful in today's job market – which is predominantly driven by for-profit groups – through experiential education placements in for-profit externship programs.

