

THE PAST AND FUTURE OF EXTERNSHIP SCHOLARSHIP

HARRIET N. KATZ*

This article offers an overview of scholarship about legal externship produced over the past three decades, along with suggestions for the direction of future work. Past publications examined externship's educational value and pedagogic methods as a part of clinical education, surveyed characteristics of externship among law schools nationwide, chronicled the development of specific externship programs, and explored a variety of educational issues, as well as producing texts advocating best practices. Future work may examine the impact of changed ABA Standards and the evolution of legal education generally, including the status of externship faculty. It is hoped that this review helps orient new externship faculty and stimulates new ideas.

INTRODUCTION

This article considers three decades of scholarly writing about legal externship, starting with what we have cared about, worried over, analyzed, debated, and proudly declared, and then suggesting directions for future work. While Marc Stickgold in 1989¹ and Stephen Maher in 1990² stated accurately that “very little” had been written about externships, the externship bibliography now lists more than 100 entries,³ including symposium issues publishing papers from national externship conferences. Overviews have appeared in introductions to symposium issues in the *Clinical Law Review*⁴ or when

* Harriet N. Katz is Clinical Professor of Law at Rutgers Law School, and has been Director of Externship on the Camden campus until this fall 2016; after a sabbatical this fall, she will be retired at the end of the calendar year. Thanks to the organizers of the national conference *Externships*⁸, at which themes from this article were presented. Thanks also to Sandy Ogilvy for his development of the Externship Bibliography, to Meg Reuter for their careful reading and feedback on early drafts, and to the *Clinical Law Review* which has provided a top shelf platform for much of the scholarship described here.

¹ Marc Stickgold, *Exploring the Invisible Curriculum: Clinical Field Work in American Law Schools*, 19 N.M. L. REV. 287, 296 (1989).

² Stephen T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education*, 69 NEB. L. REV. 537, 541 (1990).

³ J.P. Ogilvy & Harriet Katz, *Legal Externship Bibliography*, LEXTERNWEB, <http://lexternweb.law.edu/bibliography.cfm> (last updated April 18, 2016).

⁴ See Harriet N. Katz & Alexander Scherr, *Toward a New World of Externships: Introduction to Papers from Externships 4 and 5*, 17 CLIN. L. REV. 1 (2010); J.P. Ogilvy, *Introduction to the Symposium on Developments in Legal Externship Pedagogy*, 5 CLIN. L. REV. 337 (1999).

authors have grounded a new perspective in the context of past work,⁵ but this article is the first effort to review externship writing as an entire body of work. Selected articles are explored in some depth to illustrate themes of past scholarship, meaning no disrespect to others mentioned more briefly. I am hopeful that this piece can serve to orient new externship faculty, as well as to encourage further scholarly work.

The article is also a celebration of a rich scholarly tradition. We have written about the educational value of fieldwork-based clinical education, defining and defending externship's core pedagogy.⁶ We have critiqued the regulatory environment established by the ABA or implicated by the Fair Labor Standards Act ("FLSA"),⁷ and composed our own standards and "best practices."⁸ We have explored a range of teaching methods and program design strategies, closely examining our relationships with supervisors and with students.⁹ We have considered how our programs relate to larger commentary about best practices in legal education and the legal profession, from MacCrate¹⁰ to Carnegie,¹¹ actively contributing to the national discussion about legal education. We have pushed for the integration of externship with on-campus clinics and other curriculum and into the broader discussion about teaching the practice of law.¹² We have reported on the results of detailed surveys, both comprehensive and specific to practice areas or educational concerns.¹³ Taken together, these publications demonstrate our passion for, and thoughtfulness about, our

⁵ See, e.g., Elizabeth G. Ford, *Toward a Clinical Pedagogy of Externship*, 22 CLIN. L. REV. 113, 114 nn.1-2 (2015).

⁶ See *infra* Section I.

⁷ Cf. 29 U.S.C. §§ 201-219.

⁸ See *infra* Section III.

⁹ See *infra* Section IV.

¹⁰ See ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) (1992) (hereafter cited as "MacCrate Report"). See also ABA COMMITTEE ON THE PROFESSIONAL EDUCATIONAL CONTINUUM, SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, TWENTY YEARS AFTER THE MACCRATE REPORT: A REVIEW OF THE CURRENT STATE OF THE LEGAL EDUCATION CONTINUUM AND THE CHALLENGES FACING THE ACADEMY, BAR, AND JUDICIARY (2013).

¹¹ 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) (hereafter cited as "Carnegie Report").

¹² See *infra* Section III. For an integrated approach to experiential legal education, see, e.g., Deborah Maranville with Cynthia Batt, *Pathways, Integration, and Sequencing the Curriculum*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 23, 23-59 (2015).

¹³ See *infra* Section II.

educational mission.

With this overview in mind, the article turns to the question “what’s next?” While aware that predictions about the future are hard to make persuasively, I suggest we both revisit old themes and strike out in new directions. The earliest publications in our field stressed the educational value of learning from work. In a world of emphasis on preparation for practice, we should again investigate the place of externship in the evolving law school world, defining our role within “experiential” legal education. In a world of restricted resources, we should also take a hard look at our place in the academy and strive to contribute to the re-imagining of legal education.

I. EXPLAINING AND DEFENDING EXTERNSHIP

The earliest externship scholarship discussed first principles. Written primarily between the mid-1980’s and mid-1990’s, these publications championed the educational value of externship. They examined the form and function of learning from supervised work in practice and judicial settings, often comparing these experiences to on-campus clinic and to traditional classes. It was illuminating to read, or re-read, these foundational studies. They are insightful and still remarkably relevant.

A. *In the Beginning. . .*

Several articles recounted a sort of externship origin story. Externship grew organically from a need for learning from work experience, a creative joint project of faculty and students, but remained beneath the radar, an “orphan child,”¹⁴ the “hidden curriculum.”¹⁵ When recognized, it was sometimes met with skepticism or outright opposition by in-house clinicians.¹⁶ Stephen Maher argued that in-house clinical faculty were “preoccupied” with their own job insecurity¹⁷ and viewed externship as a “danger,”¹⁸ citing evidence from clinical conferences, publications, and anti-externship lobbying in regard to ABA Standards to show this hostility.

Marc Stickgold’s *Invisible Curriculum* is a rich resource for citations to critiques of legal education published in the 1930’s and 1940’s,¹⁹ as well as later discussions of the comparative advantages of

¹⁴ Janet Motley, *Self-Directed Learning and the Out-of-House Placement*, 19 N.M. L. REV. 211 (1989).

¹⁵ Stickgold, *supra* note 1.

¹⁶ *Id.* at 291; Maher, *supra* note 2.

¹⁷ Maher, *supra* note 2, at 640.

¹⁸ *Id.* at 645.

¹⁹ Stickgold, *supra* note 1, at 294-96, nn.35-40.

fieldwork versus on-campus clinics.²⁰ Stickgold situated the development of externship in the broader battle of “‘theoretical’ versus ‘practical’” in the law school curriculum²¹ and in a struggle for resources and respect by clinical faculty.²²

As this theoretical exploration proceeded, externship supporters got organized, forming an externship caucus and an Externship Committee at the AALS clinical conference in 1986.²³ A movement was born.

B. Asserting the Advantages of Externship

Externship was declared a good opportunity, and to some authors, the best opportunity, to learn the practice of law in all its complexity. Maher was adamant about the advantages of externship over in-house clinic, asserting that externship students learn “how the legal system really works,”²⁴ and that external placements provide “flexibility” in meeting student interest in various areas of legal practice.²⁵ Henry Rose reviewed the argument that traditional legal education failed to prepare graduates for practice, and posited the need for experiential education that places the client at the center of the lawyer’s work, facilitates skill competency, and exposes students to values conflicts and other challenges of real-world law practice, experiences that can encourage critical assessment of the legal system.²⁶ Within a framework of simulation courses, on-campus clinics supervised by faculty, and off-campus externships supervised by practicing lawyers and sitting judges, he argued for the “superiority” of externship in exposing students to the time and cost challenges of actual practice, to specialized areas of practice, and to a richer understanding and critique of legal institutions.²⁷

Other authors agreed. Declaring that “the ‘out-of-house placement’ has been ignored” Janet Motley also set out to “inform legal educators of the educational value of such programs.”²⁸ Stickgold asserted that granting credit for faculty-supervised student work in law offices would maximize the potential of fieldwork as clinical educa-

²⁰ *Id.* at 297, n.51.

²¹ *Id.* at 293.

²² *Id.* at 290-91.

²³ J.P. Ogilvy & Robert Seibel, *Externship Demographics Redux* (Columbus School of Law Legal Studies, Research Paper No. 13, 2007), <http://ssrn.com/abstract=1077551>.

²⁴ Maher, *supra* note 2, at 568.

²⁵ *Id.* at 570.

²⁶ Henry Rose, *Legal Externships: Can They Be Valuable Clinical Experiences for Law Students*, 12 *NOVA L. REV.* 95 (1987).

²⁷ *Id.* at 103.

²⁸ Motley, *supra* note 14, at 211.

tion. Advantages included increased student motivation, introduction of a real lawyering environment in contrast to the more highly controlled simulation course or in-house clinics, “immersion” in a context where the student work “matters,” and exposure to specialized areas of practice not available on campus.²⁹ In regard to judicial placements, Linda Smith argued for the educational advantages of student work directly for judges, including greater understanding of jurisprudence, the operation of courts and the adversary system, and the selection and responsibilities of judges.³⁰

C. Identifying Essential Characteristics: Expert Supervision, Faculty Oversight, Student Responsibility, and Diverse Practice Areas

Several articles defined the externship pedagogy triad of student, faculty, and supervising attorney. Each has a role to play, distinct from their roles in a classroom-based learning environment. Janet Motley identified adult learning and individualized mentoring as key features of this educational structure. The externship student must be motivated to learn from work, the faculty supervisor must monitor the effectiveness of all aspects of the program, and the on-site supervisor must guide a general critique in understanding the legal system and mentor the student on personal professional development as well as technical skills.³¹ Motley stressed the importance of the “self-directed learner” – the student who plays an active role in seeking tasks to learn from.³²

On-site supervision of student work by attorneys in the field, and not by faculty, was seen as fundamental to the educational structure of externship. Maher offered the descriptive term “practice-supervised clinical program” to replace what he asserted was the less precise “externship.” This term emphasized the “common characteristic” of every proper externship program — real casework supervised on site by practicing lawyers. Maher noted the many conflicts presented by an alternative model of “case supervision” where faculty collaborated with field supervisors on how students handled their cases.³³ Similarly, it was critical that a judge (or sometimes a clerk) supervise a student’s work in a judicial externship, rather than faculty. The faculty’s role is to help students reflect on the larger issues presented by the experi-

²⁹ Stickgold, *supra* note 1, at 318.

³⁰ Linda F. Smith, *The Judicial Clinic: Theory and Method in a Live Laboratory of Law*, 1993 UTAH L. REV. 429. See also Linda F. Smith, *Designing an Extern Program: Or As You Sow, So Shall You Reap*, 5 CLIN. L. REV. 527 (1999) (describing principles for the development of practice-based externships).

³¹ Motley, *supra* note 14.

³² *Id.* at 215.

³³ Maher, *supra* note 2, at 538–39.

ence.³⁴ Student immersion in real practice settings encourages their independent critique.³⁵ Finally, case supervision by external practitioners opens the door for student exposure to diverse practice areas, including those outside the expertise of the full-time clinical faculty.³⁶

D. Acknowledging and Overcoming Challenges

Articles defending the value of externship also acknowledged the challenges of achieving its potential. Henry Rose asserted that these challenges could include conflicting duties of the supervising attorneys, the possibility that students have a fragmented role in a case, weak exposure to theoretical frameworks, and ill-defined divided supervision.³⁷ Rose responded to these concerns with recommendations for training supervisors, setting standards for work activities at external placements, and providing opportunities for reflection and theoretical learning in the classroom.³⁸

Lawrence Hellman provided an example of problematic attorney role models in an Oklahoma program with minimal law school oversight and concluded that:³⁹

while it is clear that better screening, training, and monitoring of supervisors are needed, the law schools are not necessarily in a position to take responsibility for this aspect of student practice. Some law schools are quite conscientious about monitoring the performance of supervisors, but this is most often the case for those schools which award extensive academic credit for the students' work experience. . . . Few schools, however, have the resources to maintain a truly close liaison with supervisors in the field.⁴⁰

On the other hand, Maher was optimistic about how program structure and regulatory models could overcome disadvantages. In a thoughtful insight, he recast some supposed concerns as opportunities. For example, what some may call "weak" supervision in the field is

³⁴ Smith, *Judicial Clinic*, *supra* note 30, at 449–50.

³⁵ Maher, *supra* note 2, at 583–84.

³⁶ Stickgold, *supra* note 1, at 316.

³⁷ Rose, *supra* note 26, at 104–05.

³⁸ *Id.* at 106–10. See also Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLIN. L. REV. 413, 414, 417–21 (1996) (arguing that practice supervision allows for the value of the "independent view" of the faculty in regard to the legal experience, and for greater opportunity for "student mastery of independent learning" and for "perspective" on the legal system). But see Maher, *supra* note 2, at 593 (criticizing the "overvaluation" of teacher-controlled experience); Stickgold, *supra* note 1, at 317 (asserting that the idea that only faculty can "control every aspect of the student's learning" was "academic arrogance").

³⁹ Lawrence K. Hellman, *The Effect of Law Office Work on the Formation of Law Student's Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1991).

⁴⁰ *Id.* at 599.

less intrusive than typical of on-campus clinical faculty, allowing for great role assumption by students, and pushing them to set and pursue their own goals. “Self-directed” learning is actually the primary way that adults learn on the job.⁴¹ Externship places students “inside the system” rather than in the “artificial environment of the in-house clinic,” allowing a truer critique of practice decisions and of the legal system.⁴² Attorney supervisors are often exceptional teachers; consider their role as adjunct professors in other law school contexts.⁴³ The possibility that students are assigned only peripheral tasks, or on the other hand, too much responsibility, can be avoided by adequate reporting to the faculty.⁴⁴ Problems can be minimized by carefully defining the role of the supervisor and faculty, and developing a strong culture of student responsibility for their learning.⁴⁵

Maher also warned against what he considered inappropriate adoption of in-house methods in efforts to prevent problems.⁴⁶ Instead of importing arguably heavy-handed methods of on-campus clinical supervision, he recommended course prerequisites, careful placement selection, a flexible non-traditional course component, activity reports, and journal writing.⁴⁷

II. WHO ARE WE?

A. *Comprehensive surveys of externship*

Externship clinicians have had a strong interest in assembling national data about the structure, teaching methods, enrollment patterns, and resources for fieldwork. Four comprehensive surveys of externship in American legal education have been published, one each covering the years 1982-83,⁴⁸ 1992-93,⁴⁹ 2002-2003,⁵⁰ and 2007-2009.⁵¹ In addition, the Center for the Study of Applied Legal Education (CSALE) surveys include valuable information about externship faculty and teaching.⁵²

⁴¹ Maher, *supra* note 2, at 581–82.

⁴² *Id.* at 583.

⁴³ *Id.* at 584.

⁴⁴ *Id.* at 586.

⁴⁵ *Id.* at 587, 646.

⁴⁶ *Id.* at 598.

⁴⁷ *Id.* at 599–604.

⁴⁸ Stickgold, *supra* note 1.

⁴⁹ Seibel & Morton, *supra* note 38.

⁵⁰ Ogilvy & Seibel, *supra* note 23.

⁵¹ Sudeb Basu & J.P. “Sandy” Ogilvy, *Externship Demographics Across Two Decades with Lessons for Future Surveys*, 19 CLIN. L. REV. 1 (2012).

⁵² David A. Santacroce & Robert R. Kuehn, Ctr. for the Study of Applied Legal Education, *2013-14 Survey of Applied Legal Education*, http://www.csale.org/files/2013-14_CSALE_Survey_All_Parts.pdf.

Marc Stickgold's 1982-1983 survey covered both "clinical fieldwork" and in-house clinical education. Stickgold solicited data from all of the then 172 ABA-accredited law schools, and 105 responded.⁵³ Stickgold concluded that "between two-thirds and three-quarters of American law schools have included fieldwork programs in their curricula for at least ten years."⁵⁴ This survey provided empirical support for the general impression in the literature that faculty and field supervisors divided teaching and supervision responsibilities. Field supervisors overwhelmingly handled task assignment and review⁵⁵ while classes and credits were the responsibility of faculty.⁵⁶

Stickgold expressed concern about some of the survey findings, noting that "communication between faculty and supervisor appears spotty at best, and not usually designed to coordinate teaching efforts."⁵⁷ These early data suggested a lack of coordination, limited resources, and at least potentially inadequate oversight by faculty, who generally had substantial other teaching responsibilities.⁵⁸ Stickgold remained a strong proponent for externship, however, arguing for the significant potential of externship to provide an educational experience and proposing reforms to prevailing externship practice.⁵⁹

Ten years later, Robert Seibel and Linda Morton surveyed all 176 AALS-affiliated law schools.⁶⁰ Of the 68 schools that responded, about 83% had externship programs. The survey examined required hours per credit, enrollment, existence and content of a classroom component, and faculty resources devoted to externship. The authors noted diversity among externship programs in regard to each of these factors. They drew particular attention to some law schools giving faculty relatively low teaching credit for externship courses and thus potentially reducing the time that faculty could devote to oversight of student participation.

In the third comprehensive survey, Ogilvy and Seibel's data analysis⁶¹ recapped the history of legal education, placing externship as a return to some apprenticeship features that had been displaced by classroom study early in the 20th century.⁶² Their 2002-03 survey was addressed to 195 law schools, the 186 ABA-accredited schools and

⁵³ Stickgold, *supra* note 1, at 298.

⁵⁴ *Id.* at 313.

⁵⁵ *Id.* at 308.

⁵⁶ *Id.* at 309.

⁵⁷ *Id.* at 310.

⁵⁸ *Id.* at 313.

⁵⁹ *Id.* at 314-318.

⁶⁰ Seibel & Morton, *supra* note 38.

⁶¹ Ogilvy & Seibel, *supra* note 23.

⁶² *Id.* at 5-6.

nine others. Of 112 responding schools, 108 had externship courses. The authors reported that of the four “no externship schools” two had established externships by the time the data had been analyzed and one had an extensive co-op program. Essentially, by the early 2000’s nearly all responding law schools had committed to student opportunities to learn from fieldwork.⁶³ The survey reviewed credits, subject matter, distance from the law school, required hours, and the existence and pedagogy of classroom components, including student presentations and journals and data on grading.⁶⁴ For what appears to be a first for these surveys, the authors gathered data on faculty status and administrative support.⁶⁵ The survey also inquired about site visits and student evaluations.⁶⁶

About five years later, Sudeb Basu and J.P. “Sandy” Ogilvy conducted the most recent and most comprehensive survey,⁶⁷ gathering information from 190 of the then approximately 200 ABA-accredited law schools, and collating data from other sources, including CSALE.⁶⁸ All responding law schools had credit-granting externship programs.⁶⁹ The survey included data regarding enrollment,⁷⁰ credit allocation,⁷¹ division of credit between fieldwork and classroom,⁷² and methods and frequency of site evaluation.⁷³ While their survey and the CSALE data included some information about faculty status, the authors concluded that information about faculty status was still inadequate.⁷⁴ The authors proposed a number of ways in which a future survey could develop data on student involvement, subject matter, allocation of credits among externship activities, employment status of faculty, and other aspects of fieldwork programs not yet fully explored.

These comprehensive surveys conducted over seventeen years demonstrate the growth in number and in educational sophistication of law school externship courses.

⁶³ *Id.* at 16.

⁶⁴ *Id.* at 20-38.

⁶⁵ *Id.* at 41-42. Previous surveys included data on commitment of faculty as measured by teaching credit. Stickgold, *supra* note 1, at 300; Seibel & Morton, *supra* note 38, at 435-36.

⁶⁶ *Id.* at 43-44.

⁶⁷ Basu & Ogilvy, *supra* note 51.

⁶⁸ *Id.* at 5 n.13.

⁶⁹ *Id.* at 5.

⁷⁰ *Id.* at 8.

⁷¹ *Id.* at 6.

⁷² *Id.* at 22.

⁷³ *Id.* at 34.

⁷⁴ *Id.* at 31.

B. Surveys tailored to specific issues

Several narrowly tailored surveys aimed at particular concerns. For example, James Backman surveyed widening access to fieldwork into all sectors of law practice, including private sector placements,⁷⁵ Carolyn R. Young and Barbara A. Blanco analyzed what supervisors expect from students,⁷⁶ I considered how many law schools permit externship courses to fulfil academic requirements for skills courses or rigorous writing experience,⁷⁷ and Sarah H. Ricks and Susan C. Wawrose reviewed how various aspects of lawyering education work together within law schools.⁷⁸

In the late-1990's, following increased regulatory attention to externship by the American Bar Association, William Wesley Patton explored ABA inspections, reporting on 60 law schools that had site inspections since ABA Standards had been modified in 1993.⁷⁹ Patton described how strictly the inspectors reviewed development of the classroom component and compliance with requirements for training and communication with field supervisors. He reported that some law schools modified their programs in response to ABA site team criticisms, adding classes and shifting oversight to fulltime faculty. He presented the Los Angeles area law schools' new externship consortium with common standards as a creative way to assure compliance with the Standards.⁸⁰

C. Related surveys

Other comprehensive surveys about legal education conducted in recent years have included data about externship. The most recent CSALE data set includes information on structure of externship, designated "field placement programs," the professional status of externship teachers, and requirements and evaluation methods for fieldwork and for related classes.⁸¹ An ABA sponsored survey about law school curriculum in general found near universal externship opportunities at

⁷⁵ James H. Backman, *Practical Examples for Establishing an Externship Program Available to Every Student*, 14 CLIN. L. REV. 1 (2007).

⁷⁶ Carolyn R. Young & Barbara A. Blanco, *What Students Don't Know Will Hurt Them: A Frank View from the Field on How to Better Prepare Our Clinic and Externship Students*, 14 CLIN. L. REV. 105 (2007).

⁷⁷ Harriet N. Katz, *Fulfilling Skills and Writing Requirements in Externship*, 21 CLIN. L. REV. 53 (2014).

⁷⁸ Sarah H. Ricks & Susan C. Wawrose, *Comment: Survey of Cooperation Among Clinical, Pro Bono, Externship, and Legal Writing Faculty*, 4 J. ASS'N LEGAL WRITING DIRECTORS 56 (2007).

⁷⁹ William Wesley Patton, *Externship Site Inspections: Fitting Well-Rounded Programs into the Four Corners of the ABA Guidelines*, 3 CLIN. L. REV. 471 (1997).

⁸⁰ *Id.* at 478.

⁸¹ Santacroce & Kuehn, *2013-14 Survey*, *supra* note 52, at 27-38.

law schools with increasing numbers of potential placements.⁸²

In an interesting recent article, Margaret Reuter and Joanne Ingham's survey asking more than 2000 practicing attorneys to reflect on their legal education revealed the respondents' view that the experiential courses they took in law school were most valued when they were "intense," that is, with substantial time on task in a real legal practice setting, and when they had "career relevance" to the attorney's practice area.⁸³ Reuter and Ingham examined enrollment patterns and attorney evaluation of these experiences in preparing them for practice. They drew conclusions about how to plan clinic, externship, and simulation options for maximum experiential impact. For externship, intensity and variety were highly valued; a greater time commitment by students, or more than one low-credit experience, produced a more highly valued experience as compared to one semester at few credits.⁸⁴ The availability of varied placements was also highly valued by respondents.⁸⁵

III. RULES AND STANDARDS

A. *Tracking ABA Standards and monitoring site inspections*

The ABA Standards for Legal Education have addressed externship over the years in regard to faculty supervision, course content, and other matters, drawing much scholarly concern.⁸⁶ From the 1990's on, there have been two broad reactions within the externship community to these Standards. One reaction was to be appalled at "micromanagement," arguing that no other law school course had regulators dictating the terms of engagement between faculty and students or reminding faculty to provide means for reflection. Seibel and Morton labeled ABA Standard 306, Interpretation 2 (adopted in 1993) as "micromanagement"⁸⁷ because it was based on no empirical data about how externship is really organized and taught, a problem they set about to solve with their survey. William Wesley Patton like-

⁸² ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, A SURVEY OF LAW SCHOOL CURRICULA: 2002 – 2010 (Catherine L. Carpenter, ed., 2012).

⁸³ Margaret Reuter & Joanne Ingham, *The Practice Value of Experiential Legal Education: An Examination of Enrollment Patterns, Course Intensity, and Career Relevance*, 22 CLIN. L. REV. 181 (2015) (an "Experiential Learning Opportunities and Benefits" survey was designed by career service professionals and externship faculty, supported by NALP, and references and builds on prior surveys including "After the J.D.").

⁸⁴ *Id.* at 212–13.

⁸⁵ *Id.* at 214.

⁸⁶ ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017 (2016); John A. Seibert, *ABA Accreditation Standards and Quality Legal Education*, 11 TEX. REV. L & POL. 395 (2007) (remarking on the history of ABA externship standards to that date).

⁸⁷ Seibel & Morton, *supra* note 38.

wise critiqued the site visits conducted between 1993 and 1997 following these Standards as ABA micromanagement.⁸⁸

On the other hand, some scholars suggested that ABA requirements could be a bargaining tool to improve resources.⁸⁹ In 2004, Peter Joy summarized the externship community's critical response to ABA rules, as expressed by Maher, Stickgold, Morton, and Seibel⁹⁰ but counterposed the view that regulation had good purposes, and in fact may have ultimately had a good result, with externship programs gaining resources.⁹¹ Joy reviewed the history of ABA regulation of legal education generally, and clinical and fieldwork courses in particular, with regard to classroom, site visit, and faculty oversight. He argued that these developments were "steps in the right direction"⁹² as the Standards were drawn to assure that credit bearing externships were qualitatively different from unpaid internships not connected to law schools. Though some of the Standards have since been revised, his article is a valuable history, as he recorded the evolution of principles like the no-compensation rule and rules emphasizing faculty oversight, classroom components, evaluation, the proper ratio of time and credit, and the need for on-site visits and regular evaluation of placements and of the program as a whole.⁹³

Perhaps consistent with this perspective that ABA Standards set parameters for externship that were supportive of its educational potential, other articles examined how student work in externship placements can effectively fulfill ABA Standards such as skills and writing,⁹⁴ or reflection.⁹⁵ In any event, externship faculty were urged to prepare for and manage the ABA site visit process.⁹⁶

⁸⁸ Patton, *supra* note 79.

⁸⁹ Peter A. Joy, *Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?*, 10 CLIN. L. REV. 681 (2004).

⁹⁰ *Id.* at 707–08.

⁹¹ *Id.* at 710.

⁹² *Id.* at 685.

⁹³ *Id.* at 695–97.

⁹⁴ Katz, *supra* note 77 (examining the extent to which externship courses fulfilled ABA Standard 302 as amended in 2014, with regard to teaching writing and other professional skills).

⁹⁵ Anahid Gharakhanian, *ABA Standard 305's "Guided Reflections": A Perfect Fit for Guided Fieldwork*, 14 CLIN. L. REV. 61 (2007) (noting how online writing assignments can meet the Standard requirement for contemporaneous opportunities for reflection, as an addition to or replacement for class or tutorial).

⁹⁶ Email from Barbara Blanco to author (Oct. 28, 2015), ABA Accreditation Inspections for Externship and Clinical Directors: Survive or Thrive? Thoughts on Preparing For and Surviving An ABA Accreditation Inspection (2007) (on file with author and was distributed informally at externship conferences) (describing the inspection process and setting out a recommended timeline to prepare for inspections).

B. Money issues: the no-compensation rule, the FLSA, and nonprofit-placement policy

A number of publications have explored the intersection of wage laws, ABA Standards, and law school policy concerning compensation for student work. The FLSA sets minimum wage and overtime standards to protect employees from exploitation. However, the Department of Labor has determined that FLSA permits unpaid positions as part of an educational or training program.⁹⁷ ABA Standards have historically prohibited compensation to students, aside from expense reimbursement.⁹⁸ Many law schools restrict externship placements to government and nonprofit settings; although no ABA Standard prohibits for-profit placements, many law schools appear to be committed to the idea that free student work should serve the public.⁹⁹ Some states also restrict student practice to not-for-profit or government positions.¹⁰⁰

Asserting that the “goals of the law schools and the Department of Labor are in sync,” Niki Kuckes outlined how an externship program can stay within the six-part test for legitimate educational internships.¹⁰¹ Kuckes examined the FLSA in detail,¹⁰² as well as court rulings on student and trainee work¹⁰³ and Department of Labor opinion letters regarding unpaid student externships at law firms and in corporate settings.¹⁰⁴ She applied the six key factors to law school supervised externships in both for-profit¹⁰⁵ and nonprofit offices¹⁰⁶ and offered advice to law schools on compliance.

Concern about compensation has dovetailed with law school policy about for-profit placements. Bernadette Feeley’s articles in 2007¹⁰⁷

⁹⁷ *Fact Sheet 71: Internship Programs Under the Fair Labor Standards Act*, U.S. DEPARTMENT OF LABOR WAGE AND HOUR DIVISION, <https://www.dol.gov/whd/regs/compliance/whdfs71.pdf>.

⁹⁸ ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015-2016 (2015), Standard 305, Interpretation 305-2 (note that the ABA approved deletion of this Interpretation in August 2016), *see infra* notes 200-205 and accompanying text.

⁹⁹ *See, e.g.*, Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 *FORDHAM L. REV.* 997 (2004).

¹⁰⁰ *See, e.g.*, N.J. CT. R. 1:21-3(b) (but note that not all externship students are “practicing” pursuant to such rules).

¹⁰¹ Niki Kuckes, *Designing Law School Externships that Comply with the FLSA*, 21 *CLIN. L. REV.* 79, 81 (2014).

¹⁰² *Id.* at 86-90.

¹⁰³ *Id.* at 91-98.

¹⁰⁴ *Id.* at 100-03.

¹⁰⁵ *Id.* at 104-12.

¹⁰⁶ *Id.* at 113.

¹⁰⁷ Bernadette T. Feeley, *Examining the Use of For-Profit Placements in Law School Externship Programs*, 14 *CLIN. L. REV.* 37 (2007).

and 2012¹⁰⁸ considered the use placements in for-profit firms. Feeley explained that while no specific statutes or regulations prohibit student externships in for-profit firms, the local student practice rule or the anti-compensation rule may constrain the student's experience. She noted concerns about possible conflicts between education and business goals, or between students seeking paid employment and those enrolled in externship,¹⁰⁹ but concluded that the benefits of greater variety in placements, meeting student career interests, enhancing involvement of the private bar in educating law students, and, in some cases, enhancing *pro bono* work outweighed these concerns.¹¹⁰ Feeley also advocated practices to maximize these benefits, notably clear guidance from the law school and consistent efforts to monitor progress and compliance.¹¹¹ In 2012, Feeley noted that business placements expose students to the clients and practice settings they are more likely to encounter in their careers,¹¹² to ethical issues relating to payment for legal services, to the interplay of market forces and legal advice, to the role of private sector *pro bono* legal work, to the role of in-house counsel, and to specialized practice areas that only appear in the private sector.¹¹³

Two articles in a 2010 Clinical Law Review Symposium furthered this discussion. James Backman wrote to address the ongoing debate about students earning field credits and compensation.¹¹⁴ Backman placed this discussion in the context of increasing sophistication in externship teaching methods, higher student debt, and the unique opportunities offered by private sector firms.¹¹⁵ Backman summarized the principal arguments for and against allowing compensation¹¹⁶ and suggested ways that the externship opportunities would evolve with law firm and other private sector placements.¹¹⁷ In the same issue,

¹⁰⁸ Bernadette T. Feeley, *Guiding Law Students Through For-Profit Field Placements*, 19 CLIN. L. REV. 57, 62-63 (2012).

¹⁰⁹ Feeley, *supra* note 107, at 47-49.

¹¹⁰ *Id.* at 49.

¹¹¹ *Id.* at 54-60.

¹¹² Feeley, *supra* note 108, at 62-63.

¹¹³ *Id.* at 64-72.

¹¹⁴ James H. Backman, *Law School Externships: Reevaluating Compensation Policies to Permit Paid Externships*, 17 CLIN. L. REV. 21 (2010). *See also* 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 (2006) (identifying many graduate and professional programs that include work experience with both credit and compensation); Roy D. Simon, Jr. & Tom Leahy, *Clinical Programs that Allow Both Compensation and Credit: A Model Program for Law Schools*, 61 WASH. U. L.Q. 1015 (1983-1984) (an early argument for abolishing the no-compensation rule.)

¹¹⁵ *Id.* at 36-40.

¹¹⁶ *Id.* at 60-61.

¹¹⁷ *Id.* at 66-68.

Carl Circo described how to structure externship placements at major corporate law departments, what the students are expected to learn, and how to maximize effective faculty supervision.¹¹⁸

Other articles also considered the educational potential of private sector placements, including meeting recently adopted ABA experiential requirements¹¹⁹ and introducing students to practice norms of corporate law.¹²⁰

When the ABA controversially proposed eliminating the no-compensation rule Lauren Knight comprehensively reviewed the FLSA standards applicable to for-profit law.¹²¹ Prof. Knight's article details the then prevalent six factor test as well as noting alternative formulations circulating through the courts.

C. *Setting our own standards*

We have also proposed our own guidelines for excellence in the design and methods of our externship courses. Faculty of the Columbus School of Law, Catholic University of America, have led the way in proposing optimum structure and teaching methods. J.P. Ogilvy's 2003 essay on this subject outlined several key points, including establishing goals and outcomes, preparing students for success, allocating sufficient resources, awarding appropriate academic credit, communicating and monitoring placement supervision, specifying faculty responsibility and student responsibility, and ongoing program evaluation.¹²² Ogilvy and others continued this work in an extensive 2014 publication covering guidelines for self-evaluation of experiential courses, part of which addressed externship standards.¹²³ And, of course, collective efforts at devising "best practices" and writing comprehensive texts have engaged much of our community; those efforts are discussed in the next section of this article.

¹¹⁸ Carl J. Circo, *An Educational Partnership Model for Establishing, Structuring, and Implementing a Successful Corporate Counsel Externship*, 17 CLIN. L. REV. 99 (2010).

¹¹⁹ Emma Lloyd Best, *Satisfying Experiential Education Requirements Through Expanding Externships in For-Profit Placements*, 21 CLIN. L. REV. 1 (2014).

¹²⁰ Circo, *supra* note 118.

¹²¹ Lauren K. Knight, *The Free Labor Standards Act? A Look at the Ongoing Discussion Regarding Unpaid Legal Internships and Externships*, 44 U. BALT. L. REV. 21 (2014).

¹²² J.P. Ogilvy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, 38 GONZAGA L. REV. 155 (2002–03).

¹²³ J.P. "Sandy" Ogilvy, *Guidelines for the Self Evaluation of Legal Education Clinics and Clinical Programs*, 15 W. MICH. U. THOMAS M. COOLEY. J. PRAC. & CLINICAL L. (SPECIAL ISSUE) 1, 135–67 (2014).

IV. INTEGRATING EXTERNSHIP INTO CONTEMPORARY LEGAL EDUCATION

Collective efforts at devising “best practices” and writing comprehensive texts have engaged much of our community. This Part discusses educational theory and course design, as set out in those texts and other publications.

A. *Re-exploring Educational theory and implications for design; creating texts*

While early publications defended the very legitimacy of externship within legal education, more recent work explores its potential for contributing to contemporary reforms in legal education. In the recent *Building on Best Practices*,¹²⁴ the externship chapter reiterated that the “[d]efined characteristics of Externship” are “immersion in real practice[,] dual supervision [and] guided reflection.”¹²⁵ The authors stress that successful externship teaching values students’ “self-reliance” in regard to setting and fulfilling learning goals. This focus effects the design, placement selection, and assignments. In addition, the chapter explores the question of the employment status of externship teachers, cogently setting out reasons to prefer a faculty status over an administrative one.¹²⁶

A 2015 article by Elizabeth Ford comprehensively reviewed the development of externship teaching.¹²⁷ Acknowledging a diversity of views on the role of externship teaching, she summarized the history of externship pedagogy as moving from relatively unstructured to more highly regulated. Externship presents unique challenges because student casework is often divided from reflection, resulting in a seminar that is “physically and psychically disconnected” from the student’s legal work experiences.¹²⁸ In response, she proposed a taxonomy of educational objectives applicable to externship and the use of adult-learning theory, which recognizes stages of learning outcomes in which “skills assessment” and development are “central.”¹²⁹

¹²⁴ DEBORAH MARANVILLE, LISA RADTKE BLISS, CAROLYN WILKES KAAS & ANTOINETTE SEDILLO LOPEZ, *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD*, 216–44 (2015), *updating* ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION* (CLINICAL LEGAL EDUCATION ASSOCIATION 2007).

¹²⁵ Carolyn Wilkes Kaas with Cynthia Batt, Dena Baumann & Daniel Schaffzin, *Delivering Effective Education in Externship*, in DEBORAH MARANVILLE, LISA RADTKE BLISS, CAROLYN WILKES KAAS & ANTOINETTE SEDILLO LOPEZ, *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD*, 217–19 (2015).

¹²⁶ *Id.* at 220–25.

¹²⁷ Elizabeth G. Ford, *Toward a Clinical Pedagogy of Externship*, 22 *CLIN. L. REV.* 113 (2015).

¹²⁸ *Id.* at 123.

¹²⁹ *Id.* at 133. *See also* Nancy M. Maurer & Liz Ryan Cole, *Design, Teach and Manage:*

In this *Clinical Law Review* issue, Karen Jordan suggests an innovative redesign of externship, incorporating some features of on-campus clinics.¹³⁰ Jordan asserts that “field clinics” with hybrid clinic and externship characteristics can meet good option to meet revised ABA Standards emphasizing experiential education. She sets out “governing standards and best practices” for such courses.

Cynthia Batt recently analyzed how and why to sequence skills experiences throughout the curriculum.¹³¹ By integrating a practice perspective in a wide range courses beginning in the first year, and continuing through the students’ law school experience, even doctrinal courses can play a role in preparing students for practice. She argued that the varied forms that externship takes, in various characteristic real practice settings, are appropriate to this effort. The goal is to continually focus students on “the fundamental touch points of practice: problem-solving; professional judgment by repeatedly assuming the role of the lawyer; the ability to learn from experience; and integration of theory, skills, and professional judgment in order to perform the lawyer’s duties.”¹³²

Texts for use in externship courses have provided material for students and faculty. The book aptly named *Learning From Practice*, expanding on many of the educational concepts developed over the years, first appeared in 1998, and is now in its third edition.¹³³ Intended for class use, the volume and its accompanying teacher’s manual include readings and assignments about ethics, problem-solving, bias, career planning, and other potential educational goals. The book also provides guidance on reflective journal writing, presentations, observation, and other teaching methods. Rebecca Cochran’s text for judicial externship, first published in 1995 and now in its fourth edition, provides readings on the role of law clerks, the tasks of judges, judicial writing, and the selection and regulation of judges, among other topics.¹³⁴

Ensuring Educational Integrity in Field Placement Programs, 19 CLIN. L. REV. 115, 150-51 (2012) (criticizing a trend toward decreasing resources for law school supervision of externship, resulting in greater reliance on non-faculty administrators, and analyzing the impact of ABA Standards, and describing “the components of a . . . well-structured field placement course.”).

¹³⁰ Karen A. Jordan, *Enhancing Externships to Meet Expectations for Experiential Education*, 23 CLIN. L. REV. 339 (2016).

¹³¹ Cynthia Batt, *A Practice Continuum: Integrating Experiential Education into the Curriculum*, 7 ELON L. REV. 119 (2015).

¹³² *Id.* at 165.

¹³³ SUSAN L. BROOKS, NANCY MAURER, ALEXANDER SCHERR, LEAH WORTHAM, *LEARNING FROM PRACTICE: A TEXT FOR EXPERIENTIAL LEGAL EDUCATION*, (3d ed. 2016) (J.P. Ogilvy, Leah Wortham and Lisa G. Lerman wrote previous editions that were published in 1998 and 2007).

¹³⁴ REBECCA A. COCHRAN, *JUDICIAL EXTERNSHIPS: THE CLINIC INSIDE THE COURT*.

B. Faculty and Student

The counseling relationship has long seemed to me to be an important foundation of what externship faculty offer students. Faculty guidance can be critical from the selection of placement, through identifying learning goals, reflecting on experience, developing problem-solving approaches, and encouraging self-evaluation. I have written about the opportunities and methods for such counseling in the course of each student's externship experience.¹³⁵ This opportunity for individualized learning is rare in classroom-centered legal education. Making a comparison to an individual-centered perspective in psychotherapy, I also proposed "narrative" as a counseling framework, in which the student, as counselee, is recognized as both author and protagonist.¹³⁶

Articles focusing on the faculty/student counseling relationship have proposed strategies for advising the "millennial" generation,¹³⁷ disabled students,¹³⁸ and students in for-profit settings.¹³⁹ Other publications about teaching methods in externship have discussed the special characteristics of adult learning,¹⁴⁰ promoting reflection on experience,¹⁴¹ understanding contextual learning,¹⁴² evaluation of outcomes,¹⁴³ critique of the legal system,¹⁴⁴ and collaborative learning.¹⁴⁵

HOUSE, (4th ed. 2016).

¹³⁵ Harriet N. Katz, *Counseling Externship Students*, 15 CLIN. L. REV. 239 (2009) (describing the process of advising students before and during their externship experience).

¹³⁶ Harriet N. Katz, *Stories and Students: Mentoring Professional Development*, 60 J. LEGAL EDUC. 675 (2011) (exploring how "narrative therapy," a concept borrowed from psychotherapy literature, can improve a counseling relationship by emphasizing the importance of listening to the counseled person, respecting her authorship of her situation).

¹³⁷ Susan K. McClellan, *Externships for Millennial Generation Law Students: Bridging the Generation Gap*, 15 CLIN. L. REV. 255 (2009).

¹³⁸ Keri Gould, *Assisting Law Students with Disabilities in the 21st Century: Brass Tacks*, 15 J. GENDER SOC. POL'Y & L. 817, 824–29 (2006–07) (as part of a panel discussion, describing ways to recognize accommodation needs as placement is selected and as supervisors are contacted).

¹³⁹ Bernadette T. Feeley, *supra* note 108.

¹⁴⁰ Linda H. Morton, Janet Weinstein & Mark Weinstein, *Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLIN. L. REV. 469 (1999) (exploring "androgogy" – a theory of adult learning which acknowledges the adult's need for autonomy in setting learning goals – and the tensions in applying that insight to law students).

¹⁴¹ Anahid Gharakhanian, *supra* note 95.

¹⁴² Robert Condlin, *Learning from Colleagues: A Case Study in the Relationship Between "Academic" and "Ecological" Clinical Legal Education*, 3 CLIN. L. REV. 337 (1997).

¹⁴³ Kelly S. Terry, *Embedding Assessment Principles in Externships*, 20 CLIN. L. REV. 467 (2014).

¹⁴⁴ Robert Condlin, "Tastes Great, Less Filling": *The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45 (1986). *But see* Kenny Hegland, *Condlin's Critique of Conventional Clinics: The Case of the Missing Case*, 36 J. LEGAL EDUC. 427 (1986).

¹⁴⁵ Linda H. Morton, *Creating a Classroom Component for Field Placement Programs*:

C. Supervision and Supervisor Development

A number of publications advocated methods for supporting and improving supervision of students by attorneys and judges. In one of the first, Liz Ryan Cole described a program for mentors of students enrolled in Vermont's Semester in Practice, teaching about adult learning styles, techniques for effective feedback, and how to plan for the student during the term.¹⁴⁶ Barbara A. Blanco and Sande L. Buhai, writing about coordinated norms developed cooperatively by Los Angeles law schools, asserted that training attorney supervisors can bridge gaps between externship's educational purposes and the pressures of law practice.¹⁴⁷

Other articles address student learning goals and the student/supervisor relationship. Bernadette T. Feeley commented on the challenges of supervising student writing in field placements, and recommended methods gleaned from legal writing scholarship.¹⁴⁸ Nancy Maurer and Robert Seibel detailed the dynamics of supervised fieldwork that are sometimes intimidating to students, and described ways to prepare students to manage supervision well, starting from the placement process and orientation through the working relationship, by clearly identifying goals and being proactive in getting feedback.¹⁴⁹ They asserted that supervisor training takes place informally whenever the faculty is in contact, while also advocating more structured training, via CLE-approved sessions.¹⁵⁰

Laurie Barron advocated a comprehensive in-person midterm review on behalf of each student, both to assess student progress and to mentor supervisory skills.¹⁵¹ Barron described in detail how she structures midsemester meetings jointly attended by the faculty, attorney supervisor, and student. The meetings are planned carefully and include student self-assessment, reviewing goals and accomplishments. Barron connected these midterm meetings to the Carnegie Report's focus on the development of professional identity.¹⁵²

Enhancing Clinical Goals With Feminist Pedagogy, 45 ME. L. REV. 19 (1993).

¹⁴⁶ 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).

¹⁴⁷ Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLIN. L. REV. 611 (2004).

¹⁴⁸ Bernadette T. Feeley, *Training Field Supervisors to Be Efficient and Effective Critics of Student Writing*, 15 CLIN. L. REV. 211 (2009).

¹⁴⁹ Nancy M. Maurer & Robert F. Seibel, *Addressing Problems of Power and Supervision in Field Placements*, 17 CLIN. L. REV. 145 (2010).

¹⁵⁰ *Id.* at 185–86.

¹⁵¹ Laurie Barron, *Learning How to Learn: Carnegie's Third Apprenticeship*, 18 CLIN. L. REV. 101 (2011).

¹⁵² *Id.* at 118. See also Denise Platfoot Lacey, *I'm a Believer! Converted by Three-Way Mid-Term Conferences*, CLEA NEWSLETTER, (Clinical Legal Educ. Ass'n, Philadelphia,

It may be helpful, though, to note the perspective of scholars who are skeptical about the academic critique of attorney supervision and subsequent concern about precise methods of supervision. Daniel Givelber and co-authors analyzed responses from about 700 attorneys and law students about learning from work experiences and concluded that students “learn in context by engaging in meaningful and appropriate [to their skills] work under the routine guidance of expert practitioners and collaborative peers,” concluding that “the natural ecology of the workplace may be the best setting for novices to learn the skills of lawyering.”¹⁵³ They cited scholarship on “ecological learning,” learning from robust experience in a real professional context, and criticized regulations requiring significant law school oversight in the form of supervisory training, site visits and so forth.¹⁵⁴

In a study of student-identified best externship supervision practices, I found that my students valued a variety of supervisory methods, seeming to vary with their own learning style and their supervisor’s expertise or preference.¹⁵⁵ At the outset of an assignment, some supervisors gave detailed instructions while others let students at least start out on a problem with little advance guidance. In either case, as work progressed, students were pleased when both greater autonomy and increased collaboration with supervisors evolved. Collaboration was especially highly regarded, as the student was both acting as an attorney immersed in the practice setting, and learning problem-solving in the context of an effective working relationships with other attorneys. These observations suggested to me that, consistent with the Givelber and Baker analyses, it may not be necessary to “train” supervisors in any particular method of supervision.

D. Teaching Professionalism

Our scholarship has asserted that students have a significant opportunity to develop professional ethics and identity in supervised legal externships mentored by skilled attorneys in the field and thoughtful faculty at the law school. Externship “immerse[s] students in the professional role” and exposes them to “norms and values.”¹⁵⁶

Pa.), Fall 2013, at 22.

¹⁵³ Daniel J. Givelber, Brook J. Baker, John McDevitt & Robin Miliano, *Learning Through Work: An Empirical Study of Legal Externship*, 45 J. LEGAL EDUC. 1, 9 (1995). See also Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLIN. L. REV. 1 (1999).

¹⁵⁴ Givelber et al., *supra* note 153, at 44–47.

¹⁵⁵ Harriet N. Katz, *Reconsidering Collaboration and Modeling: Enriching Clinical Pedagogy*, 41 GONZAGA L. REV. 315 (2005–06).

¹⁵⁶ Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Profes-*

Distance from direct work supervision allows externship faculty to engage students in critical reflection on ethical issues seen in the practice setting, as well on personal values regarding career paths.¹⁵⁷

In an intriguing comparison, Daisy Hurst Floyd, Timothy W. Floyd and Sarah Gerwig-Moore drew from clergy education to suggest a principled framework for the ethical development of students in externship.¹⁵⁸ The authors described “formation,” a robust tradition in clergy education of guiding students toward a deep personal understanding of religious values and professional role. Clergy education seeks to develop such qualities as empathy, self-awareness, respect for boundaries, and continued spiritual growth; reflection assignments and supervision are geared to those ends.¹⁵⁹ The authors suggested that externship can be a vehicle for similar professional growth.

Other publications have outlined teaching methods to spur professionalism. Role plays, premised on the assumption that case specific issues that students encounter will be discussed in the classroom, can be used to examine key ethical challenges of student practice like confidentiality, conflict of interest, and competence.¹⁶⁰ A commitment to mentoring, along with assigning each student to write an “ethics mission” and to identify at least two “lawyering or judicial experiences” that could help fulfill that plan, is used at one law school to signal the importance of ethical thinking.¹⁶¹

Externship experience can also instill everyday professional habits of conduct. Carolyn R. Young and Barbara A. Blanco surveyed judge and attorney supervisors about their experiences with students, finding concerns primarily in attention to detail, quality of written analysis, and professional conduct and attire.¹⁶² The authors imple-

sional Identity and Purpose, 59 J. LEGAL EDUC. 240, 243 (2009). See also Howard R. Sacks, *Student Fieldwork as a Technique in Educating Students in Professional Responsibility*, 20 J. LEGAL EDUC. 291 (1968).

¹⁵⁷ Lisa G. Lerman, *Professional and Ethical Issues in Legal Externships: Fostering Commitment to Public Service*, 67 FORDHAM L. REV. 2295 (1999).

¹⁵⁸ Daisy Hurst Floyd, Timothy W. Floyd & Sarah Gerwig-Moore, *Learning from Clergy Education: Externships Through the Lens of Formation*, 19 CLIN. L. REV. 83 (2012).

¹⁵⁹ *Id.* at 102–03.

¹⁶⁰ Alexis Anderson, Arlene Kanter, & Cindy Slane, *Ethics in Externships: Confidentiality, Conflicts, and Competence Issues in the Field and in the Classroom*, 10 CLIN. L. REV. 473 (2004).

¹⁶¹ Neil Hamilton & Lisa Montpetit Brabbit, *Fostering Professionalism Through Mentoring*, 57 J. LEGAL EDUC. 102, 122–23 (2007). See also Kate E. Bloch, *Subjunctive Lawyering and Other Clinical Extern Paradigms*, 3 CLIN. L. REV. 259 (1997) (exploring several potential teaching responses to an ethical problem arising in a student’s externship).

¹⁶² Carolyn R. Young & Barbara A. Blanco, *What Students Don’t Know Will Hurt Them: A Frank View from the Field on How to Better Prepare Our Clinic and Externship Students*, 14 CLIN. L. REV. 105 (2007).

mented changes to student orientation, added relevant “guided reflections,” and revised the supervisor evaluation form to monitor this aspect of student development.¹⁶³

E. Examining Course Development by Subject Matter, Setting, or Administrative Concern

Placements in judicial chambers are widely used and extremely valuable, exposing students to many kinds of attorney conduct and to a view from the bench about the justice system. Along with the text *Judicial Externships* a number of publications have described how externship teaching can enhance a judicial externship. These have included several articles describing potential educational objectives, such as understanding the judicial role, special ethical considerations, and opinion drafting.¹⁶⁴

Placements with prosecutors or public defenders have also consistently been a valuable resource. Readily available in every jurisdiction (and invariably in need of student assistance) public sector criminal placements provide courtroom experience, as well as a vivid exposure to controversial issues. A 2005 symposium on teaching criminal law practice provided insight into how criminal law externships can be taught, describing the structure and goals of on-campus, externship, and hybrid clinical courses that focus on immersing students in criminal law practice.¹⁶⁵ Articles in the symposium included data on the prevalence of prosecution externships,¹⁶⁶ principal educational goals,¹⁶⁷ the content of a course in which students at prosecution and

¹⁶³ *Id.* at 123–28. See also Cynthia Batt & Harriet N. Katz, *Confronting Students: Evaluation in the Process of Mentoring Student Professional Development*, 10 CLIN. L. REV. 581 (2004) (reporting supervisor views of student professionalism issues and considering the challenges of addressing these issues).

¹⁶⁴ Gerard J. Clark, *Supervising Judicial Interns: A Primer*, 36 SUFFOLK U. L. REV. 681 (2003); Stacy Caplow, *From Courtroom to Classroom: Creating an Academic Component to Enhance the Skills and Values Learned in a Student Judicial Clerkship Clinic*, 75 NEB. L. REV. 872 (1996); Amany Ragab Hacking, *Jumpstarting the Judicial Externship Experience: Building Upon Common Themes for Student Success in the Classroom and in the Judge’s Chambers*, 21 CLIN. L. REV. 29 (2014) (identifying judicial ethics, writing, decision-making, and professional workplace skills as the key areas for focus when learning from experience in chambers, and recommending classroom assignments that enhance this learning); Linda F. Smith, *The Judicial Clinic*, *supra* note 30, at 441 (stating that in judicial chambers students can improve legal research and writing, learn how procedural rules function, gain insight into how judges make decisions, and understand “problems in the adversary system”).

¹⁶⁵ Symposium, *Prosecutorial Externship and Clinical Programs*, 74 MISS. L.J. 919 (2005).

¹⁶⁶ Hans P. Sinha, *Prosecutorial Externship Programs: Past, Present and Future*, 74 MISS. L.J. 1297 (2005). (presenting survey results from seventy-one law schools about prosecution externships or clinics).

¹⁶⁷ William P. Quigley, *Reflections from the Journals of Prosecution Clinic Students*, 74

defense offices participate in a joint seminar,¹⁶⁸ and the design of prosecution externships located in prosecutors' offices with faculty involvement in cases.¹⁶⁹ Criminal law is one area where students have been moved to publish reflections on their experiences, expressing strong reactions to the overwhelming challenges of keeping communities safe while providing due process to the accused.¹⁷⁰

Articles about other subject matter externship courses have included family law,¹⁷¹ health law,¹⁷² and public policy.¹⁷³ The contribution of these authors has been to identify learning objectives for students in specific areas, along with types of placement and assignments that would enhance meeting those objectives.

"Therapeutic" courts and legal practice, a holistic approach to solving underlying client problems, not just resolving the immediately presenting legal issue, was the subject of a particularly interesting symposium. The articles described an externship course in a drug

Miss. L.J. 1147 (2005).

¹⁶⁸ Jean Montoya, *The University of San Diego Criminal Clinic: It's All in the Mix*, 74 Miss. L.J. 1021 (2005); Linda F. Smith, *Benefits of an Integrated (Prosecution & Defense) Criminal Law Clinic*, 74 Miss. L.J. 1239 (2005).

¹⁶⁹ Margaret A. (Peggy) Tonan, *Beauty and the Beast? Hybrid Prosecution Externships in a Non-Urban Setting*, 74 Miss. L.J. 1043 (2005) (describing a course in which case supervision was directly shared, in part, by the faculty member who was herself an experienced prosecutor). See also Howard K. Blumberg, *Confessions of an Assistant Public Defender Turned Criminal Appeals Clinic Professor*, 75 Miss. L.J. 769 (2006) (describing the development of an appellate litigation course located within a public defender office).

¹⁷⁰ See Joanne Carter, *Mixed Emotions: A Law Student's Perceptions While Working at a Public Defender's Office*, 2 W. MICH. U. THOMAS M. COOLEY. J. PRAC. & CLINICAL L. 329 (1998); Greg Dantzman, *My Externship Experience at the Public Defender's Office in Ann Arbor*, 2 W. MICH. U. THOMAS M. COOLEY. J. PRAC. & CLINICAL L. 337 (1998); Meryl Markowitz, *My Experience at the Eaton County Prosecution Office*, 2 W. MICH. U. THOMAS M. COOLEY. J. PRAC. & CLINICAL L. 343 (1998).

¹⁷¹ Nancy Ver Steegh, *Using Externships to Introduce Family Law Students to New Professional Roles*, 43 FAM. CT. REV. 137 (2005), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=909600 (describing a course that integrates substantive coursework with on-campus or externship experience at a variety of placements, including private law firms, so that students can improve understanding of the many roles that a lawyer can play in a modern family law practice).

¹⁷² Diane E. Hoffmann, *A Health Law Practice Workshop: Bridging Externship Placements and the Classroom*, 37 J.L. MED. & ETHICS 513 (2009) (describing a course in which students work in a wide variety of health law placements including hospitals, insurers, regulatory agencies, trade associations, and congressional committees, focusing on the role of health care lawyers along with reflection on how to learn in the work environment). See also Symposium, *Beyond Externships: Health Law Co-ops*, 9 IND. HEALTH L. REV. 401 (2012) (part of symposium on teaching health law outside the classroom including Wendy Parmet, describing full-time placements connected with health law).

¹⁷³ Harold A. McDougall, *Lawyering and Public Policy*, 38 J. LEGAL EDUC. 369 (1988) (analyzing the development of an innovative course on public policy, in which students worked in various public agencies while participating in a seminar on "the role of law and the formation of public policy").

court,¹⁷⁴ and the way that holistic legal counseling can be “an innovative way to improve the lives of . . . clients.”¹⁷⁵ Therapeutic jurisprudence can be taught in the externship classroom, to the end that students “not only know the value of establishing trust and confidence, but . . . will develop their emotional intelligence and be affective lawyers.”¹⁷⁶

Articles describing the development of externship courses at particular law schools have provided thoughtful reflections on the process of creating these programs, as well as recording the history of these programs.¹⁷⁷ A review of the planning and development of a course built on assisting victims of Hurricane Katrina offered a model for teaching fundamental skills while teaching students how lawyers can respond to urgent community needs.¹⁷⁸ Numerous articles have explored classroom and other teaching methods, including journals,¹⁷⁹ orientations,¹⁸⁰ guided reflection,¹⁸¹ pre-semester orientation,¹⁸² or case rounds.¹⁸³ Others focus on teaching goals, such as increasing un-

¹⁷⁴ Gregory Baker & Jennifer Zawid, *The Birth of a Therapeutic Courts Externship Program: Hard Labor but Worth the Effort*, 17 ST. THOMAS L. REV. 711 (2005); see also Gregory Baker, *Do You Hear the Knocking at the Door? A “Therapeutic” Approach to Enriching Clinical Education Comes Calling*, 28 WHITTIER L. REV. 379 (2006).

¹⁷⁵ Leslie Larkin Cooney, *Heart and Soul: A New Rhythm for Clinical Externships*, 17 ST. THOMAS L. REV. 407, 417 (2005).

¹⁷⁶ *Id.* at 419.

¹⁷⁷ See, e.g., Norman Fell, *Development of a Criminal Law Clinic: A Blended Approach*, 44 CLEV. ST. L. REV. 275 (1996); 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 (1999); Michael A. Yarnell, *An Externship Program: Start It, Grow It, Improve It*, 3 PHOENIX L. REV. 473 (2010). See also Kathleen M. Burch, *Going Global: Managing Liability in International Externship Programs — A Case Study*, 36 J.C. & U.L. 455 (2010); Kathleen Connolly Butler, *Shared Responsibility: the Duty to Legal Externs*, 106 W. VA. L. REV. 51 (2003); Tammy Cowart & Mildred Brown, *Legal Issues in College and University Internship Programs*, 12 ALSB J. EMP. & LAB. L. 58 (2011), available at <http://ssrn.com/abstract=1987082> (each addressing potential liability issues).

¹⁷⁸ Laurie Morin & Susan Waysdorf, *The Service-Learning Model in the Law School Curriculum*, 56 N.Y.L. SCH. REV. 561 (2012).

¹⁷⁹ J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLIN. L. REV. 55 (1996); Harriet N. Katz, *Personal Journals in Law School Externship Programs: Improving Pedagogy*, 1 W. MICH. U. THOMAS M. COOLEY. J. PRAC. & CLINICAL L. 7 (1997) (effective means to use journals as reflection assignments).

¹⁸⁰ Larry Cunningham, *The Use of “Boot Camps” and Orientation Periods in Externships and Clinics: Lessons Learned from a Prosecution Clinic*, 74 MISS. L.J. 983 (2005) (pre-semester orientation and training at Texas Tech to “front-load” the classroom requirement).

¹⁸¹ Anahid Gharakhanian, *ABA Standard 305’s “Guided Reflections”: A Perfect Fit for Guided Fieldwork*, 14 CLIN. L. REV. 61 (2007).

¹⁸² Cunningham, *supra* note 180.

¹⁸³ Rebecca B. Rosenfeld, *The Examined Externship is Worth Doing: Critical Self-Reflection and Externship Pedagogy*, 21 CLIN. L. REV. 127 (2014).

derstanding of issues of social justice,¹⁸⁴ and the challenge of teaching a large externship clinic with students in diverse practice areas.¹⁸⁵

To round out this discussion of teaching in the classroom, it is worth acknowledging an article challenging the need for any mandatory class component. Erica Eisinger argued that a regulatory framework requiring classes for general externships reflects biases about learning from practitioners. Eisinger argued that classes do not always add sufficient value to be the best use of time and should be offered only when the subject matter warrants it.¹⁸⁶

V. THE FUTURE OF EXTERNSHIP SCHOLARSHIP

Where do we go from here? Our field of scholarship is mature and diverse. Yet, old themes may benefit from renewed attention, welcoming new perspectives. In addition, the changing realities of legal education and of the practice of law urgently call for fresh ideas based on our expertise in preparing students for their professional work. Decades ago, we defended externship. What is our place in legal education now?

A. Mandating experience

The regulatory landscape has evolved as a result of a desire to improve the competence of novice lawyers. Externship is well positioned to fulfill the ABA Standard mandating “experiential” education for every law student,¹⁸⁷ as well as *pro bono* requirements now established by some state bars.¹⁸⁸ Future scholarship can investigate how we can best do this.

ABA Standard 303 now states that schools must require each student to complete:

¹⁸⁴ Liz Ryan Cole, *Externships: A Special Focus to Help Understand and Advance Social Justice*, in *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* (Frank Bloch ed., 2010); JEFF GIDDINGS, *PROMOTING JUSTICE THROUGH CLINICAL LEGAL EDUCATION* (2013), available at <http://justice-press.com/publications/432-promoting-justice-through-clinical-legal-education-jeff-giddings>; Linda F. Smith, *Fostering Justice Throughout the Curriculum*, 18 *GEO. J. POVERTY L. & POL’Y* 427 (2011). See also, Linda F. Smith, *Why Clinical Programs Should Embrace Civic Engagements, Service Learning and Community Based Research*, 10 *CLIN. L. REV.* 723 (2004) (exploring how externships, as well as other clinical offerings, can incorporate educational goals of “service learning.”)

¹⁸⁵ Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 *CLIN. L. REV.* 347 (1999).

¹⁸⁶ Erica M. Eisinger, *The Externship Class Requirement: An Idea Whose Time Has Passed*, 10 *CLIN. L. REV.* 659 (2004).

¹⁸⁷ ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015-2016* (2015), Standard 303(a)(3).

¹⁸⁸ See, e.g., N.Y. COMP. CODES R. & REGS. tit. 22, § 520.16 (the “Pro Bono Requirement for Bar Admission”).

one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, 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.¹⁸⁹

By its terms, Standard 303 recognizes “field placement” as an integral part of experiential legal education, along with on-campus clinics and simulation courses, which may fulfill this mandate so long as these criteria are met. This Standard could result in collaboration between varieties of clinical education, or could provoke the possibility of reigniting the old conflict between on-campus and external clinical legal education, as different elements of a law school’s clinical faculty vie for resources and enrollment. The new Standard may also affect how we evaluate potential new placements, or provide guidance to established ones. How much responsibility do we expect them to assume in regard, for example, to teaching underlying concepts? How should our classroom or other on-campus teaching adapt?

Note that ABA Standards have also moved externship from prior Standard 305 (“field placements and other study outside the classroom”) into revised Standard 304 (“Simulation courses, law clinics, and field placements”)¹⁹⁰ a change that recognizes how externship and on-campus clinics both provide significant experiential opportunities. Do our law schools’ academic rules, or educational outcomes for externship, need to be revised accordingly?

B. Defining “Skills” We Can Teach

What should law students know or be able to do at the outset of their careers, upon graduation? This question has renewed saliency given the experiential education Standard. It would be appropriate to examine recent investigations of that complex question, and then try to define the optimum contribution that externship could provide.

Some past writers enumerated skills needed for specific lawyering tasks and values that were viewed as underlying lawyer professional-

¹⁸⁹ ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, *supra* at note 187.

¹⁹⁰ Resolution 100, ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (2016), *available at* <http://www.americanbar.org/content/dam/aba/images/abanews/2016%20Annual%20Resolutions/100.pdf>.

ism. The ABA task force chaired by Robert MacCrate held numerous meetings and several public hearings, producing in 1992 a book that evaluated how law schools were preparing students for the practice of law.¹⁹¹ The report identified ten fundamental “skills” and four fundamental “values”¹⁹² that it deemed “essential for competent representation.”¹⁹³ The Carnegie Foundation for the Advancement of Teaching convened a panel of scholars and over several years visited law schools and reviewed literature on the subject, resulting in the publication in 2007 of *Educating Lawyers*.¹⁹⁴ That report focused on the teaching part of the question of how to prepare lawyers, describing three “apprenticeships” which summarize the education of lawyers as developing legal analysis, practical skills, and professional identity.¹⁹⁵ Marjorie M. Shultz and Sheldon Zedeck surveyed Berkeley and Hastings alumni as the basis for identifying twenty-six cognitive and personal competencies that lawyers must master.¹⁹⁶

More recently, the research findings of *Educating Tomorrow’s Lawyers* (ETL), an ambitious ongoing project that seeks to re-investigate the essentials of the practice of law, may fundamentally change the discussion of what new law graduates need to know.¹⁹⁷ Thousands of respondents have helped investigators “identify the foundations entry-level lawyers need to succeed in the practice of law” and then to “develop measurable models of legal education that support those foundations,”¹⁹⁸ separately defined as “competencies, characteristics, and skills.”¹⁹⁹ One innovation was to ask respondents whether each of the named aspects should be known or practiced by a student upon first entering the profession or whether they are expected to be acquired over time. So far, the overwhelming number of respondents believe that the competencies necessary when first entering the profession are primarily personal characteristics, such as diligence and

¹⁹¹ MacCrate Report, *supra* note 10.

¹⁹² *Id.* at 138–41.

¹⁹³ *Id.* at 135.

¹⁹⁴ Carnegie Report, *supra* note 11.

¹⁹⁵ *Id.* at 27–28.

¹⁹⁶ Marjorie M. Shultz & Sheldon Zedeck, *Final Report: Identification, Development, and Validation of Predictors for Successful Lawyering* (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1442118 (also reporting on an experimental effort to determine whether testing could predict these competencies well enough to improve admissions criteria used by law schools, but did not address whether the competencies could be taught).

¹⁹⁷ *Educating Tomorrow’s Lawyers*, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, <http://iaals.du.edu/educating-tomorrows-lawyers>.

¹⁹⁸ *Foundations for Practice*, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, <http://iaals.du.edu/educating-tomorrows-lawyers/projects/foundations-practice>.

¹⁹⁹ Alli Gerkman, presentation at Externships8 conference, March 2016.

honesty, as opposed to specifically legal skills, which are generally expected to be learned over time.²⁰⁰

The ETL findings may have significant implications for the design and learning goals of our externship courses. While externships, along with in-house clinic and simulation courses, are good avenues for teaching concrete skills, they arguably provide an even better resource for coaching and mentoring foundational personal characteristics for the practice of law. Future scholarship could both substantiate this claim and promote ways to integrate the ETL results into our teaching.

C. Responding to Evolving Rules About Money

Compensation of students for credit-earning fieldwork, long prohibited, is now permitted by the ABA, following a process that was made final in August 2016, as this article was being prepared.²⁰¹ As discussed above, compensation other than “reasonable expenses” had historically been forbidden.²⁰² A proposed revision deleting this rule, and therefore permitting compensation of students by employers, was published for comment on December 11, 2015, by the Council of the Section of Legal Education and Admissions to the Bar,²⁰³ and approved by the Council at its meeting on March 11, 2016, over opposition voiced by a number of commenters, including the Clinical Legal Education Association (CLEA)²⁰⁴ and the Society of American Law Teachers (SALT).²⁰⁵ The ABA House of Delegates granted final ap-

²⁰⁰ *The Whole Lawyer and the Character Quotient*, INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM, <http://iaals.du.edu/foundations/reports/whole-lawyer-and-character-quotient/analysis-results-survey-category>.

²⁰¹ *2016 San Francisco Annual Meeting*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/leadership/house_of_delegates/2016-san-francisco-annual-meeting.html.

²⁰² ABA Standards, *supra* note 86, Interpretation 305-2. See also *Guidance Memos*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/legal_education/accreditation/consultants_memos.html (for descriptions of reasonable expenses).

²⁰³ Council of the Section of Legal Education and Admissions to the Bar, *Notice and Comment*, AMERICAN BAR ASSOCIATION (Aug. 15, 2016), http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html.

²⁰⁴ CLEA asserted that “revoking the interpretation will damage the quality and diversity of law school field placement courses” by shifting student experience away from mentorship and toward serving financial goals of the employer, and by shifting students away from public service positions. CLEA Comments on Proposed Standard 304(c) & Retention of Interpretation 305-2, *reported in* Memorandum from Standards Review Committee, (Jan. 22, 2016).

²⁰⁵ SALT largely agreed with the CLEA analysis, adding that stipends and scholarships would be a better approach to alleviating student debt, to the extent that that was part of the motivation for the rule change proposal. Letter from Society of American Law Teachers to the Council of the Section of Legal Education and Admissions to the Bar, Memorandum from Standards Review Committee, (Jan. 22, 2016) (on file with author).

proval on August 6, 2016.

How should our externship programs adjust? Individual law schools, or coalitions of law schools in a region, will need to review their academic policies on the question of compensation. The ABA now allows externship compensation, but does not require it. Divergent practices among law schools may provide fertile ground for research. What will happen if some students are compensated and others, in public sector positions for example, are not? It may be helpful to make careful comparison to supervised professional work in other fields, like the required (and often paid) placements in social work²⁰⁶ or public school teaching.²⁰⁷ Research on methods and outcomes in these and other fields may provide insights applicable to legal education.

Meanwhile, recent case law developments may modify how the FLSA applies to unpaid educational internships. The Second Circuit has joined other circuits in establishing a “primary beneficiary” test to determine whether an unpaid intern is an employee under the FLSA.²⁰⁸ An examination of whether this new standard would have an effect on externship participation would be timely.

D. Incorporating Outcomes and Assessment

Learning outcomes and assessment methods are another recent emphasis in legal education, shifting the focus of legal educators from what is taught to what students have learned, an approach asserted to be consistent with the latest and best thinking in higher education.²⁰⁹

²⁰⁶ See, e.g., 49 PA. CODE § 47.12c(a)(5) (2016) (applicant must have “completed at least 3,000 hours of supervised clinical experience. . .”); see also Social Work License Requirements, SOCIAL WORK LICENSURE, <http://www.socialworklicensure.org/articles/social-work-license-requirements.html>. (“Supervised Practice Requirements: After graduation, a would-be clinical social worker must practice under board-approved supervision. Requirements vary, but a candidate can expect to do at least two years of full-time work (paid) before receiving the higher credential. In many states, the same holds true for nonclinical master’s social workers. . .”)

²⁰⁷ A variety of pathways can lead to a teaching career, all traditionally involving substantial time as a fellow or student teacher. See, e.g., NATIONAL COUNCIL FOR THE ACCREDITATION OF TEACHER EDUCATION, <http://www.ncate.org/>; *Pathways to Teaching*, NEW YORK CITY DEPT. OF EDUCATION, <http://teachnyc.net/certification>; *Student Teaching*, COLUMBIA UNIVERSITY, TEACHERS COLLEGE, <http://www.tc.columbia.edu/studentteaching> (“During the student teaching experience, pre-service teachers are guided and instructed by two key individuals - the cooperating or mentor teacher, and the university supervisor”); *Student Teaching in the United States*, NATIONAL COUNCIL ON TEACHER QUALITY, http://www.nctq.org/dmsView/Student_Teaching_United_States_NCTQ_Report.

²⁰⁸ *Glatt v. Fox Searchlight*, 791 F.3d 376 (2nd Cir. 2015) (rejecting the Department of Labor six-part test, articulated in fact sheet 71 derived from *Walling v. Portland Terminal Co.*, 330 U.S. 148 (1947)).

²⁰⁹ *Managing Director’s Guidance Memo: Standards 301, 302, 314 and 315*, AMERICAN

Several revised ABA requirements reflect this new emphasis: ABA Standard 301(b) requires law schools to establish learning outcomes that achieve their objectives; Standard 302, formerly prescribing skills to be taught, was redrafted to focus on what students learn; Standard 314 requires formative and summative assessment methods, and Standard 315 requires student law schools to evaluate outcomes and assessments.²¹⁰ These changes in the Standards were published in 2015, after several years of study.²¹¹ Establishing coursewide learning goals and requiring students to set their own goals has long been a fundamental part of externship pedagogy; developing outcome measurements for these goals will be an important next step inviting creative scholarship.

E. Teaching Our Courses/Approving Appropriate Placements

Reconsidering key goals of externship could lead to interesting discussions about placement approval and the academic component of our courses. For example, suppose that future externship courses are organized around newly defined lawyering competencies, or individual student career exploration, or coordination with an integrated experiential education track or some creative combination of these and other ideas. Future scholarship could examine how these goals impact every aspect of externship pedagogy, from site selection and oversight to the substance of our classes.

F. Faculty Status

Aware of the variable status of externship faculty among law schools,²¹² *Building on Best Practices* sets out a cogent argument for considering externship teachers as “part of the clinical teaching faculty.”²¹³ As faculty members, externship teachers believe that we are in the best position to be respected partners with our supervising attorneys and judges, as well as effective advocates for resources within our law schools. Recent revisions to ABA Standards re-emphasize the norm that externship should be under the guidance of faculty.²¹⁴ We could do more to document the educational impact of

BAR ASSOCIATION (Jun. 2015), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.pdf.

²¹⁰ ABA Standards, *supra* note 86.

²¹¹ Guidance Memo, *supra* note 209.

²¹² Santacroce & Kuehn, *supra* note 52, at 29; Basu & Ogilvy, *supra* note 51, at 31.

²¹³ BUILDING ON BEST PRACTICES, *supra* note 124, at 221–22.

²¹⁴ ABA Standard, *supra* note 86, Standard 305(e)(2) (requiring “faculty teaching in and supervising the program. . .”); *see also* Proposed Standard 304(c) (assuming a faculty role throughout, as it describes the responsibilities of faculty and site supervisor).

faculty status, or lack of it. Can we connect our positions in the academic world to the quality of our educational venture? How important is it that we are in the room when curricular decisions are made? In addition, if those teaching externship opt to pursue scholarship, such as the projects described in this article, their success may depend on the kinds of support and mentorship that the university budget generally provides only for faculty, such as research assistance, sabbatical leave, and conference travel.

G. *Who We Are, Once More*

It may well be time for a new comprehensive survey of externship programming across the nation. The years since the most recent such study have seen significant changes in legal education, including an economic recession and recovery, upheavals in law school enrollment, and a renewed emphasis on practical preparation for practice.

H. *The Law School of the Future*

And what if law school is restructured more dramatically? Possibly, a future analysis of externship could envision a neo-apprenticeship, deeply immersed in the complexities of practice, yet academically structured and demanding. These changes could be due to economic considerations, as described several years ago by Cynthia Baker and Robert Lancaster.²¹⁵ Or changes could follow from more thoroughgoing efforts to incorporate experience throughout the curriculum, as imagined by Cynthia Batt.²¹⁶ Continuing changes envisioned by the new standards on outcomes, legal education may become primarily competency-based, which could have a significant effect on the organization of coursework.²¹⁷

CONCLUSION

Like others in and out of academia, we have written to clarify our own thinking, to share ideas and encourage conversation about what matters to us. In the past, our main task was to set out the primary ways that externship accomplishes goals of legal education by teaching critical thinking about the legal system, building skills and values in

²¹⁵ Cynthia Baker & Robert Lancaster, *Under Pressure: Rethinking Externships in a Bleak Economy*, 17 CLIN. L. REV. 71 (2010).

²¹⁶ Cynthia Batt, *supra* note 131.

²¹⁷ Michele Pistone, *Competencies-Based Legal Education*, A PLACE TO DISCUSS BEST PRACTICES FOR LEGAL EDUCATION, (Mar. 29, 2016), http://bestpracticeslegaled.albanylawblogs.org/2016/03/29/competencies-based-legal-education/?utm_source=feedburner&utm_medium=email&utm_campaign=feed%3A+BestPracticesforLegalEducationBlog+%28Best+Practices+or+Legal+Education+Blog%29.

the context of real legal work, and preparing students for thoughtful choices in their careers. At present, we are refining our thinking about the place of supervised work experience, proposing best practices and situating externship in the evolving world of legal education. In the future, we will continue to contribute to the ongoing conversation about how to prepare the next generation of attorneys. Let's encourage our community to write on these and other topics, with mentorship and scholarship support, and forums to disseminate our work.