

ENHANCING EXTERNSHIPS TO MEET EXPECTATIONS FOR EXPERIENTIAL EDUCATION

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Many law schools are relying on externship programs to meet requirements and best practices for experiential education. Heightened attention to externships is a positive development, given the unique educational benefits associated with placing students in clinical courses in the field. This article urges schools to intensify efforts to enrich externships by developing them into hybrid courses. In particular, the article describes a low cost hybrid model that remains more similar to traditional field placement courses than other hybrid models, and retains strategic use of the dual supervision characteristic of externships. Especially for schools with limited resources, converting some externship courses into law clinics may be the only feasible way to meet emerging best practices for clinical education. The article analyzes compliance issues and concerns about relying heavily on adjuncts in a clinical program, and identifies the many expectations for a hybrid course. Because the course development process consists largely of educating and training community partners, the article synthesizes pedagogical expectations in a way that should help supervisors in the field more effectively maximize learning from experience. The article includes recommendations about allocation of responsibilities between law schools and placement sites, and concrete guidance for building partnerships and planning hybrid courses.

Recent revisions to accreditation standards relating to the curriculum have heightened the incentive for law schools and the local bar to effectively work together in the teaching and formation of new lawyers.¹ The new expectations set out in Revised Standards 301, 302, and 303,² which reflect key recommendations of the *Carnegie Report*

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¹ See, e.g., ABA Section of Legal Education and Admissions to the Bar, Standards Review Committee, "Overview of Changes from 2014 Comprehensive Review of the Standards" (visited Aug. 29, 2017) <http://www.americanbar.org/groups/legal_education/resources/standards.html>. Other helpful documents on the website include (i) Explanation of Changes from 2014 Comprehensive Review of the Standards, and (ii) Explanation of 2015 Changes.

² For the sake of clarity, when discussing current versions of the standards in the body

on *Educating Lawyers* (hereafter *Carnegie Report*),³ will require schools to devote considerably more attention to both skills training and professional formation.⁴ In essence, more of the training by the bar that previously occurred in a new lawyer's first year in practice should now be incorporated into a law school's program of legal education. To meet the expectations, schools should focus on innovative clinical course offerings. This is because, as emphasized in *Best Practices for Legal Education: A Vision and a Road Map* (hereafter *Best Practices*), clinical courses can provide important experiences that flow from work with real clients in a variety of real-world practice settings: experiences involving greater situational complexity and allowing use of a fuller problem-solving methodology, and experiences that are particularly valuable for developing professional judgment and professional identity and discerning a career path.⁵ Clinical

of the paper, and in textual material in footnotes, the author has used the phrase "Revised Standard(s)." Revised Standard 301(a) establishes a new overarching goal for law schools: to develop a curriculum that "prepares students, *upon graduation*, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession." Standard 301(a) (emphasized text added in the 2014 revisions). Revised Standard 302 requires schools to devote attention to a broader range of skills and professional formation by designing a curriculum to help students achieve "competency" in: (a) Knowledge and understanding of substantive and procedural law; (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context; (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and (d) Other professional skills needed for competent and ethical participation as a member of the legal profession." Standard 302. Revised Standard 303 directs law schools to require students to complete at least six credit hours in simulation, law clinic, or field placement courses. Standard 303(a)(3). For current standards, see ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017. The standards are accessible online, at <http://www.americanbar.org/groups/legal_education/resources/standards.html>. Any reference to a current standard in this paper will be to the 2016-2017 standards found at this website.

³ 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*").

⁴ Revised Standard 302(c) captures what the *Carnegie Report* refers to as the apprenticeship of professionalism and purpose. *Id.* at 129-30 (describing this apprenticeship as encompassing both the arena of professional ethics or the rule of conduct for lawyers and the broader arena of character, professionalism, and responsibility to clients and the welfare of the larger community).

⁵ *Best Practices* explains that learning is deeper in client representation courses than in simulation courses, especially as to key values of the profession: "the importance of seeking justice and providing access to justice, the reasons for fostering respect for the rule of law, the essentiality of integrity and truthfulness, the need to deal sensitively and effectively with diverse clients and colleagues, and the value of nurturing quality of life in light of the stresses and time commitments of law practice." ROY STUCKY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* 140 (Clinical Legal Education Association 2007) (hereafter cited as "*Best Practices Report*").

courses will thus be particularly helpful in meeting the goals of the revised standards.

For many law schools, expanding clinical course offerings is challenging,⁶ and the challenge is magnified for schools with very limited resources. Those schools may therefore focus their efforts on existing field placement courses, also known as externships – courses that allow students to earn academic credit for legal work performed on-site at hosting legal services organizations or within legal departments of agencies or corporations. Strategies include increasing the number and range of externship courses and enhancing their educational value. This paper focuses on the later strategy, understanding, of course, that the idea of enhancing the educational value of externships is not new and that experienced externship faculty have developed externship pedagogical methods that enrich student learning from their externship experiences.⁷

More specifically, then, this paper urges law schools to go further in efforts to enrich externship courses by developing them into hybrid courses: courses that fall somewhere between traditional in-house law clinics and traditional field placement courses. Over the years, law schools have experimented with various hybrid models as a way to provide unique clinical experiences for students, or clinical experiences at a lower cost than that required for a traditional in-house clinic.⁸ Many models used, however, remain out of reach of schools with very limited resources.⁹ This paper therefore focuses somewhat heavily on one type of hybrid course, a model that could be described as converting traditional field placement courses into law clinic courses – a model referred to in this paper as field clinic courses. A special name for this model is not required because, like most hybrids,

⁶ See, e.g., Peter deL Swords and Frank K. Walwer, *Cost Aspects of Clinical Legal Education*, in CLINICAL LEGAL EDUCATION: REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS-AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 133, 184-85 (1980). Some argue that the challenge is not as great as law schools assume. See, e.g., Robert Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. 1 (2014); Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B. C. J. L. & SOC. JUST. 309 (2012). But the challenge is not just the cost. For schools with limited resources, including limited faculty lines, challenges arise from the reality that many faculty who have traditionally taught doctrinal courses, even if willing, lack the practice skills needed to effectively teach experiential courses.

⁷ See, e.g., LEARNING FROM PRACTICE (Leah Wortham, Alexander Scherr, Nancy Maurer, and Susan L. Brooks, eds., 3rd ed. 2016). See also, e.g., Elizabeth G. Ford, *Toward a Clinical Pedagogy of Externship*, 22 CLIN. L. REV. 113 (2015).

⁸ See BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 249-52 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas, and Antionette Sedillo Lopez eds., 2015) (outlining several variations or alternative clinic models used by law schools) (hereafter cited as “Building on Best Practices”).

⁹ See *id.* See also *infra* notes 24-26 and accompanying text.

the courses would satisfy requirements for a law clinic and provide some of the unique educational benefits of an in-house clinic. This paper uses the name “field clinic course” to emphasize that the courses would remain similar to field placement courses in many respects, and even more so than other hybrid models. It is a model that will require and result in a more robust partnership with the local bar. Although prior versions of the accreditation standards did not preclude this approach, the revised standards reflect a purposeful acknowledgement and acceptance of less costly approaches to law clinic courses, and the field clinic course is a model that schools with very limited resources may find feasible to pursue.

While the information and analysis in this paper should be helpful in working with the bar to develop a variety of types of hybrid courses, it is written primarily for externship faculty at schools with limited resources who are being directed to enlarge and enhance externship programs, and who may have limited experience with the practicalities of designing and developing hybrid clinic courses. In Part I, the paper explains the nature of hybrid courses and the field clinic model and, because compliance is an important aspect of the job of most externship faculty, considers the appropriateness of relying on adjuncts for clinical education and assesses issues arising from revisions to standards governing hybrid courses. Part II focuses on the intensive educational effort required to develop a solid hybrid clinic course. Part II synthesizes the many expectations for a hybrid course, and then discusses the core expectations in greater depth and from the perspective of what externship faculty should explain to partnering legal services providers about how to structure and teach a hybrid course, and addresses a key concern placement sites may have regarding balancing teaching responsibilities with duties to clients. Conveying the wealth of information in Part II to community partners, over time and as part of training them in the art of clinical pedagogy, is a key aspect of strengthening a law school’s partnership with the bar. Part III provides concrete, step-by-step guidance for how to approach legal services organizations or offices and develop courses, and advocates for use of various control and assistance mechanisms to safeguard the educational value of the student experience.

I. HYBRID CLINIC COURSES

A hybrid clinic course will fall somewhere between traditional in-house law clinics and traditional field placement courses. Understanding what a hybrid course is, and options for structuring them, thus requires an understanding of the basic structure and characteristics of the traditional versions of the courses. This part of the paper

begins with a discussion of the key characteristics of the courses in their traditional form, and then explains the nature of hybrid courses and the field clinic model in particular, and addresses concerns about relying on adjunct faculty in a clinic program. This is followed by analysis of revisions to accreditation standards that bear on use of this approach to hybrid courses.

A. *Characteristics of In-House Clinics, Externships, and Hybrid Courses*

In 2007, the discussion in *Best Practices* of how to structure and enhance the educational value of experiential courses focused on the three traditional forms of the courses: simulation courses, in-house clinics, and externships.¹⁰ Moreover, as noted in *Building on Best Practices: Transforming Legal Education in a Changing World* (hereafter *Building on Best Practices*), the earlier discussion in *Best Practices* did not define the structural characteristics of each type of course or address variations.¹¹ Rather, there was an implicit assumption that law schools understood and adopted the basic characteristics of these three distinct types of courses. In contrast, the more recent *Building on Best Practices* devotes several pages to describing the distinguishing characteristics of both in-house clinics and externships, and provides some limited guidance for law schools developing alternative clinic models.¹² A particularly valuable aspect of the analysis in *Building on Best Practices* is the identification and articulation of the unique educational value offered through externship courses.

Building on Best Practices describes the distinguishing features of an in-house law clinic as students handling real legal matters for real people and acting in role, and supervision by “professional teachers hired by the law school with adequate time and expertise to engage in intensive supervision, using well-developed pedagogy.”¹³ It describes the essential characteristics of an externship as immersion in real practice, guided reflection to enhance learning and help students develop habits of reflective lawyering, and dual supervision by (i) a site supervisor who assigns work to the student, oversees performance, and provides feedback and assessment of student performance, and (ii) a law school faculty member who holds the site supervisor accountable for teaching in the field and designs and implements exercises to help the

¹⁰ Best Practices Report, *supra* note 5, ch. 5 (best practices for experiential courses).

¹¹ *Building on Best Practices*, *supra* note 8, at 245.

¹² *Id.* at 171-176 (distinguishing between the types of experiential courses), 191-201 (discussing distinguishing characteristics of in-house clinics), 217-220 (discussing defining characteristics of externships).

¹³ *Id.* at 191.

student reflect on and integrate what is being learned through the externship field work.¹⁴

Both types of courses are particularly valuable, then, in helping schools achieve the goals of Standards 301 and 302. They are both legitimate clinical courses that provide important experiences not attainable in simulation courses; experiences that flow from opportunities for students to work on real legal matters for real clients and to assume the role of lawyer. *Building on Best Practices* acknowledges this point and, further, recognizes educational benefits in both types of courses associated with the two genuine distinguishing factors: the nature of the supervision and the setting.

Regarding supervision, the traditional in-house clinic uses a unitary supervision model: the person who directly oversees student performance is the “educator” or clinic teacher and, further, is employed by the law school to teach and thus is “free from other law practice obligations.”¹⁵ That is, in the traditional model, a clinical faculty member’s “primary professional commitment is teaching;” the teacher does “not hold positions in practice where [he or she may] simultaneously work for other employers.”¹⁶ This arrangement allows significant integration of the various aspects of the course (field work, classroom work, and reflection); more intensive teaching as the student carries out field work; and regular use of well-developed clinical pedagogy.¹⁷ The dual supervision in an externship course makes it more challenging to achieve these benefits, but well-designed and carefully implemented externships will achieve them to some extent.¹⁸ Further, having a law school faculty member teaching students how to reflect on experiences and integrate new knowledge with previously held knowledge in an externship offers distinct benefits: allowing students to more objectively critique the effectiveness of the lawyers and legal institutions they encounter, and to focus more attention on developing skills in self-directed learning, reflective lawyering, and working effectively with busy supervisors – skills that are vitally important for professional development, especially in an attorney’s first few years in practice.¹⁹

Regarding the setting of the courses, *Building on Best Practices*

¹⁴ *Id.* at 218-19. Referring to both the practitioner and the faculty member as “supervisors” can be confusing, but this is the common practice. The practitioner ordinarily is called the site or field supervisor, and the faculty member overseeing the course ordinarily is called the faculty supervisor.

¹⁵ *Id.* at 194.

¹⁶ *Id.* at 198-99.

¹⁷ *Id.* at 195-202.

¹⁸ *Id.* at 218.

¹⁹ *Id.* at 219.

does not focus on the location of the clinic work, but on the idea that courses considered in-house clinics more often are intentionally designed to primarily serve educational purposes: *i.e.*, cases or matters are selected based on suitability for student work, often meaning small caseloads and “slow-motion practice.”²⁰ In this type of setting, the primary focus remains on the student’s educational experience. *Building on Best Practices* contrasts this with a setting created primarily for delivery of services, the externship placement site, in which “the education of the students will necessarily be an add-on to the primary mission” of the setting.²¹ The externship setting, however, offers some unique educational value: it exposes students to the realities of law practice, namely, the “ever-present mix of case-related questions, client and workplace relationships, professionalism and ethical challenges, and work-life balance realities that [characterize] day-to-day legal practice.”²²

Both types of clinical courses, then, offer genuine and unique educational value. *Building on Best Practices* explains that “accumulated experience” in clinical education warrants including as a new or emerging best practice, that of requiring all students to complete two courses involving supervised “real practice” experiences – “preferably one law clinic and one externship.”²³ For many law schools, especially those with limited resources that struggle to provide even one clinical course for all students, achieving this emerging best practice will be extremely challenging. Adopting a strategy of developing externships into field clinic courses would help move a school toward alignment with best practices. Enhancing externships without the additional efforts involved in converting them into law clinics remains a good practice, and it perhaps would help a school move towards a goal of offering at least an externship course to all students. But the emerging best practice is to offer both experiences because each has unique educational value. If successful in converting at least some externships into field clinic courses while also expanding traditional externship placements, a school will be in a position to allow more students to take both types of courses, or, at a minimum, to allow students taking only a field clinic course to be exposed to the educational benefits of both types of courses.

For schools with very limited resources, maintaining some opportunities for the type of intensive supervision found in an in-house

²⁰ *Id.* at 172-73.

²¹ *Id.* at 173.

²² *Id.* at 216.

²³ *Id.* at 163. *See also id.* at 179 (noting: “Given the distinct strengths of each, students ideally should have the opportunity to take both a law clinic and an externship . . .”).

clinic course will be important – because there are students whose professional development depends on that high level of supervision and mentoring. But developing innovative hybrid clinic courses may be the only genuinely feasible strategy for meeting emerging best practices in legal education and, as is described in the following section, carefully developed hybrid courses will offer solid clinical experiences.

B. *The Field Clinic Model*

Drawing on law schools' experimentation with hybrid approaches, *Building on Best Practices* outlines a non-exhaustive list of seven common variations or alternative clinic course models.²⁴ In most of the variations described, the course retains to a large degree the key distinctive feature of in-house clinic supervision: the supervision is provided by a full-time faculty member whose primary professional commitment is teaching,²⁵ which means these variations are not a viable solution for schools with very limited resources.²⁶ Two options listed, however, are structured closer to the externship model. In one variation, the externship experience is enhanced by having the faculty supervisor take on a more intensive supervisory role in relation to the students' work on cases in the field; what is referred to as the "enhanced externship."²⁷ The other is described as the "practitioner-supervised and practitioner-taught community partnership

²⁴ *Id.* at 249-51.

²⁵ Variations that retained use of full-time faculty supervisors may involve higher caseloads, which may lessen the intensive nature of the supervision (*e.g.*, the "grant funded in-house clinic"); use of assistant volunteer attorneys to enable more students to participate, or to deal with particular areas of substantive law (*e.g.*, the "faculty taught and coordinated clinic"); operating out of the offices of an external community partner (*e.g.*, the "off-site, faculty taught and supervised community partnership clinic"). *Id.* at 249-50. The options also included using as the supervisor a practitioner who is able to focus significantly on student education for the term of the clinic, as opposed to responsibilities related to delivery of legal services. *Id.* at 250. In this model, the practitioner presumably remains primarily employed by a legal services entity, but the employer authorizes substantial time spent on working with students rather than on delivery of services. *See also* Claudia Angelos, *The Hybrid Clinic: Bringing the In-House Clinic to the Field*, in *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 283, 283-84 (Susan Bryant, Elliot S. Milstein & Ann C. Shalleck authors & eds., 2014) (defining a hybrid clinic as one that "operates in whole or in part in a law office outside the law school . . . and in which the students' field work is directly supervised in whole or in substantial part by a fulltime law school faculty member"; and describing the author's hybrid clinic as involving eight law students, a full-time clinical professor, and the associate legal director of the hosting office who was appointed as an adjunct).

²⁶ Schools with limited resources have few faculty lines available. Further, even if one is used to hire a full-time faculty member to teach clinical courses, the number of additional students served is small.

²⁷ *Building on Best Practices*, *supra* note 8, at 251.

clinic.”²⁸ The field clinic course discussed in this paper aligns more closely with this last model.

1. *The Basic Structure of a Field Clinic Course*

Enhancing the educational value of externship courses is an ongoing task for externship faculty. To help meet the heightened expectations for experiential education, externship faculty, with sufficient institutional support, can go a step further and develop at least some externship courses into law clinic courses, what this paper refers to as field clinic courses. The courses would retain the unique educational benefits of externships (immersion in real practice settings and dual supervision that maximizes self-directed learning and reflective lawyering), while incorporating some of the unique educational benefits of an in-house clinic course (more intensive supervision and greater use of clinical pedagogy, and a setting with a stronger focus on education). The courses would satisfy accreditation requirements for law clinics, but in a more cost-efficient manner than transforming them into in-house clinics or more costly hybrid courses.

In a field clinic course, the clinic experience would be provided at a placement site away from the law school and direct supervision of student performance would be by attorneys employed by the placement site. To this extent the course retains characteristics of an externship: the setting is within an entity that exists primarily for delivery of legal services, and field supervision is by someone whose primary professional commitment is to the employing legal services provider. However, the goal would be to work with the hosting legal services provider and the attorneys selected to supervise students to carefully design and structure the experience so its characteristics move closer to the in-house clinic course than a traditional externship. As discussed more thoroughly *infra*, the experience can be more intentionally planned, with cases and matters selected for their educational value and inclusion of some slow-motion practice, and site supervisors can be more thoroughly trained in how to use clinical pedagogy and more heavily involved in the classroom component traditionally handled by the externship faculty supervisor.²⁹

As part of ordinary attention to the educational value of their courses, externship faculty regularly employ strategies to raise the bar

²⁸ *Id.* The model is described only very vaguely: “Depending on the law school’s arrangement with the community partner, the focus may be primarily on education or primarily on service, and the practitioner may or may not have the time and support to focus significantly on supervision, and to develop expertise around clinical pedagogy.” *Id.* In contrast, Part II *infra*, describes in detail expectations relating to the character, content, and structure of lower cost hybrid courses.

²⁹ See *infra* Parts II.B and II.C.

for teaching and supervision in the field, primarily involving various ways of educating and training site supervisors.³⁰ There often is limited success, however, given that a site supervisor in a traditional field placement course is “on the job” and juggling responsibilities. Developing a field clinic course will require intensified efforts, but, in addition, the strategy gives externship faculty an important tool to increase the likelihood of success. To be in compliance with the 2014 revisions setting out requirements for a law clinic, a site supervisor in a field clinic course must be a faculty member.³¹ Although the attorney’s primary professional commitment would not be teaching as in a traditional in-house clinic, designation as an adjunct instructor is an effective way to heighten the site supervisor’s commitment to focusing on the educational value of the experience – especially when supplemented with intensified efforts to educate and train them.³² Further, the compensation that ordinarily accompanies appointment as an adjunct, although limited, makes it reasonable for law schools to set more rigid expectations about supervision and feedback and provides a tool to hold site supervisors accountable.³³

A field clinic course can be distinguished from hybrid courses used by some law schools that may seem similar to the field clinic discussed in this paper (*e.g.*, hybrids involving clinic work at hosting legal services providers and conferral of adjunct status on supervising attorneys).³⁴ First, it is likely that the compensation to site supervisors in a field clinic type of hybrid will be less – and perhaps significantly

³⁰ Samples of training materials are available online at <Lexternweb.law.edu>. A good example available at the website is the “Manual for Extern Supervisors: Best Practices – A Primer,” developed by the Bay Area Consortium on Externships.

³¹ See Standard 304(b) (requiring that supervision and feedback in a law clinic be “by a faculty member”). See also *infra* Part I.C.1-2.

³² See *infra* Part II.C (discussing strategies for helping field supervisors assume greater responsibilities for the educational value of a hybrid clinic course).

³³ In a traditional field placement course, it is a challenge to hold site supervisors accountable. Typical strategies used by externship faculty include continued training and building of good will to encourage quality supervision and feedback, and terminating the partnership when the level of supervision and feedback is unacceptably low. In a field clinic course, continued compensation will depend on meeting expectations: if expectations are not satisfied the course can be re-designated as an externship. Compensation arrangements are likely to vary from placement site to placement site, as community partners have unique concerns. Although the particulars of the arrangements may vary, law schools generally should strive to treat community partners relatively similarly.

³⁴ This type of hybrid is presumably what *Building on Best Practices* refers to as the “practitioner-supervised and practitioner-taught” hybrid. *Building on Best Practices* describes the model only very vaguely: “Depending on the law school’s arrangement with the community partner, the focus may be primarily on education or primarily on service, and the practitioner may or may not have the time and support to focus significantly on supervision, and to develop expertise around clinical pedagogy.” *Building on Best Practices*, *supra* note 8, at 251.

less when the field clinic model is adopted by schools with very limited resources.³⁵ Second, and in part as a consequence of the lower compensation, there likely remains a need in a field clinic course for some aspects of the dual supervision associated with traditional externships. Realistically, the more limited the compensation the less reasonable it is to expect a busy practitioner-supervisor to carve out time from day-to-day demands for effective teaching and feedback during supervision in the field. To offset that reality, a law school should design the course such that full-time law school faculty shoulder some of the responsibilities associated with teaching.³⁶ In the field clinic model, this assistance is not with direct supervision in the field, but, rather, is more inline with the teaching in a traditional externship, with a focus on use of strategies that foster reflective lawyering, self-directed learning, and self-assessment by the student, as well as more meaningful assessment and feedback by the site supervisor.

Retaining to some extent the dual supervision used in traditional externships adds to the expense of the course, but the costs associated with offering a field clinic course are likely to remain less than the costs of an in-house clinic course or a more expensive type of hybrid. In large part this is because effective use of externship pedagogy does not require the eight-to-one student to teacher ratio recognized as a best practice for traditional clinic courses, or even the low enrollment associated with a traditional seminar.³⁷ Although circumstances will vary from school to school, meaning that the costs also will vary, creative use of the field clinic approach can create a significant number of seats in courses that are not merely enhanced externships, but are courses that offer some of the unique educational benefits associated with both traditional law clinic and externship courses. Moreover, using some level of dual supervision is important from the perspective of staffing clinics consistently with recommendations of a task force re-

³⁵ This point is speculative, of course, given that there is no easy way to discover specific practices relating to amount of compensation for adjunct instructors, including for both traditional in-house and hybrid clinic courses.

³⁶ The discussion in Part II.C points out several aspects of the course for which law schools can assume responsibility, and the discussion in Part III.C highlights several strategies associated with externship courses that should be used with field clinic courses to safeguard educational value.

³⁷ *Building on Best Practices* reiterates the eight-to-one ratio in law clinic courses. *Building on Best Practices*, *supra* note 8, at 210. In contrast, it does not identify a recommended best practice for the student-to-teacher ratio in externship courses, noting only that, given the considerable efforts required to train and motivate site supervisors and to foster meaningful reflection by students, law schools should ensure that externship faculty (i) have appropriate resources and time and (ii) teach a reasonable number of students. *Id.* at 233, 234. Although a challenging task, as part of the planning process law schools should attempt to compute the costs of various options for course design. Costs will vary from school to school.

port addressing the status of clinical faculty. The next subsection discusses those recommendations and describes concrete examples of field clinic courses involving dual supervision.

2. *Retaining Some Dual Supervision as an Aid to Adjuncts Teaching in the Field*

Supervision of student performance in the field clinic model will be provided by attorneys employed by the placement site who have been designated as faculty in some form. For schools with very limited resources, the supervisor presumably would be appointed as some type of adjunct instructor. Although accreditation standards should not present an obstacle to use of adjuncts in hybrid clinical courses,³⁸ law schools nonetheless may have concerns, especially if the clinical program relies heavily on adjuncts. This is because a specially convened task force, the Task Force on the Status of Clinicians and the Legal Academy (the Task Force), issued a report in 2012 that cautions against heavy use of adjuncts.³⁹ The statement regarding adjuncts was included within a recommendation relating to use of short-term contracts. The report notes:

Law schools should limit the use of faculty on short-term contracts to experimental programs of short duration or specific programs financed with short-term funding.

.....

Adjunct professors, who by definition have other employment, should be sparingly used to supervise clinical students. Adjuncts should be employed only in limited circumstances, such as unanticipated openings in clinical teaching positions, in programs requiring unique expertise not otherwise available, or in partnership with permanent, full-time clinical faculty.⁴⁰

³⁸ This issue is discussed in greater detail *infra* notes 51-62 and accompanying text. The only explicit limitation on use of adjuncts is in Standard 403(a), which includes two limits: law schools must assure (i) that full-time faculty teach most of the first one-third of each student's coursework, and, (ii) during an academic year, that full-time faculty teach "either (1) more than half of all of the credit hours actually offered by the law school, or (2) two-thirds of the student contact hours generated by student enrollment at the law school." Standard 403(a). Further, although Standard 405(c) reflects concerns relating to treating clinical faculty similarly to other law school faculty, the standard applies only to full-time clinical faculty. Standard 405(c) (directing law schools to provide full-time clinical faculty "a form of security of position" and "non-compensatory perquisites" reasonably similar to that provided for other full-time faculty members).

³⁹ See Bryan L. Adamson, Bradford Colbert, Kathy Hessler, Katherine Kruse, Robert Kuehn, Mary Helen McNeal, Calvin Pang, & David Santacroce, *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. OF LEGAL PROF. 353 (2012) (hereafter cited as "Task Force Report on the Status of Clinicians").

⁴⁰ *Id.* at 412.

This recommendation is not binding on law schools and, although the Task Force was convened and charged by the chair of the Association of American Law Schools (AALS) Section on Clinical Legal Education, the recommendation does not carry the explicit endorsement of the section or the AALS.⁴¹ Nonetheless, given the clarity of the Task Force's position, law schools should carefully consider the appropriateness of adopting a field clinic approach.

Notably, the report provides limited explanation for its position on adjuncts. The Task Force was charged to identify the "most appropriate models for clinical appointments," but the main focus of the study and report is on the perceived need for equality between clinical and non-clinical faculty.⁴² The key recommendation of the report is that the benefits of clinical legal education are best achieved by predominantly employing full-time clinical faculty on a "unitary" tenure track, as opposed to having a separate tenure track for clinical faculty, or using long-term contracts.⁴³ The bulk of the discussion relating to this recommendation addresses the importance of using a unitary tenure track, as opposed to the importance of employing clinical faculty full-time.⁴⁴ Although the report includes a discussion of the specialized nature of clinical teaching and the time demands involved, these ideas are not woven into the explanation of the recommendations.⁴⁵ That the position is grounded primarily, if not exclusively, on the concern with faculty equality, rather than on broader concerns about the quality of teaching and supervision, lessens its influence in the context at hand, namely, devising a plan to expand clinical offerings in a law school with very limited resources – or stated

⁴¹ *Id.* at 353, 356. Interestingly, *Building on Best Practices* does not discuss in any depth the use of adjuncts in clinic courses, even in the specific discussion of variations on clinic models. *Building on Best Practices*, *supra* note 8, at 249-51, 246-47 (noting only that "full-time, professional teachers will often have more time and opportunity to develop a familiarity with clinical teaching methodology than part-time faculty, attorneys employed by outside agencies, or volunteers").

⁴² Task Force Report on the Status of Clinicians, *supra* note 39, at 357 (identifying four core principles and recommendations, three of which relate to matters bearing on equal treatment for clinical faculty) and 389-95 (and presenting three recommendations, all relating to ensuring equal treatment).

⁴³ *Id.* at 388-89. The report explains, however, that only 27% of all full-time clinical faculty nationally are tenured or on a unitary tenure track. *Id.* at 374. Further, only 48% of all ABA accredited law schools employ "at least one" tenured or tenure-track clinical faculty. *Id.* Another 13% are tenured or on a separate clinical tenure track. *Id.* at 375.

⁴⁴ *Id.* at 388-92. For example, the report states: "The touchstone for this recommendation is equal treatment, a concept that requires the extension of full inclusion of clinical faculty in institutional decisions that affect the mission, function, and direction of their law schools, including important decisions related to faculty hiring." *Id.* at 388.

⁴⁵ The nature of clinical teaching is explained in Part I.A of the report. *Id.* at 363-367. Time demands are noted in Part II.A.4 of the report, discussing standards for hiring, retention, and promotion. *Id.* at 386, 387.

more precisely, in a law school genuinely lacking the resources to hire sufficient full-time faculty to offer clinic courses to all students.

In addition, when discussing the separate recommendation to limit use of short-term contracts and clinical fellowships, the reasons highlighted actually support use of community partners as clinical teachers.⁴⁶ The report explains that, for clinical programs to be successful, “clinical faculty need the long-term experience to understand, interpret, and predict local practice,” and that courses should be staffed with “long-term faculty with a personal and professional investment in the community.”⁴⁷ It notes that many cases in clinics “require a long-term commitment” or involve representing “an unpopular client or cause.”⁴⁸ Use of practicing attorneys employed by partnering legal services entities for supervision in field clinic courses is not inconsistent with these concerns. They will have knowledge of local practice and a commitment to the community; and the cases selected for student clinic work involve persons or entities that are clients of the community partner – so client needs will be served. The report’s discussion of the benefits of short-term contracts similarly supports use of adjuncts in hybrid courses. The report explains that use of short-term contracts can be more cost-effective and flexible, allow clinical programs to expand into new areas, open up clinic slots to additional students, and “strengthen and enliven a clinical program that is built on a solid foundation of tenured and tenure-track clinical faculty members.”⁴⁹

The take away from a critical study of the Task Force’s position is that developing hybrid courses using a field clinic model can be a reasonable and appropriate strategy for schools with very limited resources. The strategy is not a replacement for traditional in-house clinics. It is a reasonable alternative for schools that cannot find a way to offer more traditional clinic courses. However, it is a reasonable strategy only if the courses are carefully developed so their content and characteristics genuinely mirror those of more traditional clinic courses. As a practical matter, this will require that a law school adopting the strategy have experienced clinical faculty who are willing and have the time to work with community partners to develop quality clinic courses. That is, a law school adopting the strategy should have in place at least some traditional clinic courses and use of the

⁴⁶ A short-term contract is defined as not presumptively renewable and less than five years in duration. *Id.* at 377. The report explains that 20% of all clinical faculty are employed on all variations of short-term contracts, including adjuncts or staff attorneys. *Id.* The report did not include data about clinical fellowships.

⁴⁷ *Id.* at 394.

⁴⁸ *Id.* at 411.

⁴⁹ *Id.* at 394.

strategy should build upon and not undermine existing clinic courses.

Furthermore, as noted, a field clinic course as described in this paper will be designed such that full-time law faculty shoulder some aspects of teaching the courses.⁵⁰ This aspect of course design renders the use of adjuncts largely consistent with the Task Force's recommendation that, if adjuncts are used, it should be in partnership with permanent, full-time clinical faculty. As envisioned by this paper, field clinic courses will depend on such partnerships, as is reflected in the collaborative course development process and use of certain aspects of the dual supervision employed in externship courses.

By way of example, the author of this paper has collaborated with several legal services providers that historically have served as placement sites for law student externs and several hybrid clinic courses have been developed. As a result of meetings and discussions spanning several months, the following new clinical course offerings will be available for students:

- through a legal services corporation, a consumer law clinic and a family law clinic;
- through a county prosecutor's office, a general criminal prosecution clinic; and
- through a county public defender's office, a juvenile-focused public defender clinic.

At each placement site, site supervisors have agreed to take on more responsibilities for teaching students. At two placement sites, although the supervisors will remain responsible for day-to-day delivery of legal services, their job descriptions will include working closely with law students as they perform lawyering activities and helping to provide regular classroom instruction. At the other, the site supervisor has obtained permission to assume some greater responsibilities for teaching while on the job, but also is willing to work evenings to meet expectations (*e.g.*, the regular classroom component will be in the evening). The site supervisors in each clinic also have committed to ensuring certain student experiences aimed at helping students develop lawyering skills and achieve the learning goals of a clinic course; *e.g.*, students will have cases for which they have direct responsibility, and the matters will require problem-solving and use of professional judgment. They also have committed to using clinical teaching methods more regularly during supervision. The student-to-supervisor ratio will remain very low: one-to-one or two-to-one.

Nonetheless, the law school, the hosting legal services provider, and the particular supervising attorneys recognize that time limita-

⁵⁰ See *supra* note 36 and accompanying text.

tions, although lessened, will continue to exist and that the site supervisors likely cannot offer the same level of intensive supervision and teaching as in a traditional in-house clinic staffed with a full-time educator who is free from law practice obligations. A law school faculty member, likely a faculty member with expertise in externship pedagogy, will thus continue to work with the students as part of the course – providing some level of the dual supervision typically used in an externship course. More specifically, that faculty member will (i) supplement efforts to teach reflective lawyering skills (*e.g.*, strategic and complementary use of reflection exercises); (ii) teach students how to work effectively with supervisors (*e.g.*, help students learn and use strategies for soliciting effective feedback and implementing productive meetings); (iii) help students develop and monitor progress on personal learning goals; and (iv) help students develop and use personalized self-assessment tools. Providing this level of supplemental supervision allows the site supervisor to spend his or her time providing supervision and feedback in the field, and also helps the supervisor provide more meaningful feedback and assessment of student performance. It also is in addition to the time and efforts devoted to collaborative course development and educating and training site supervisors in clinical teaching methods. By contributing this level of assistance and resources, a law school significantly counters concerns associated with relying on adjuncts for clinical education.

Success in developing the courses required garnering the support of the law faculty – since the site supervisors will have faculty status and achieving and maintaining educational quality requires other law school resources. But, as is discussed in Part II, success hinged more largely on educating community partners about and assisting them in meeting expectations.

C. Revisions Bearing on Use of Lower Cost Hybrid Courses

The revised accreditation standards have prompted a heightened interest in developing hybrid courses. In part this is because the revisions for the first time set out definite requirements for a course designated as a law clinic, thereby giving law schools a specific benchmark for course development. In addition, the revisions reflect a purposeful endorsement of lower cost approaches and leave much discretion to schools as to course design. Externship faculty charged with enhancing externship programs must be confident that field clinic courses will not compromise compliance with accreditation standards. Reliance on past practices of clinical faculty developing somewhat similar hybrid clinic courses under pre-2014 standards is not sufficient, since those courses also must be carefully evaluated for compliance with

revised standards. This section of the paper therefore highlights three important aspects of the revisions bearing on use of lower cost hybrid courses: endorsement of lower cost approaches to clinical education and flexibility in structuring the courses, use of non-faculty supervision, and application of requirements for field placement courses.

1. *Endorsement of Non-Traditional Clinics*

Prior to the 2014 revisions, the standards did not define or set out specific requirements for a course to be called a “law clinic,” which, on the one hand, allowed schools to experiment with course structure and design. On the other hand, an interpretation of prior Standard 304 had a restrictive effect.⁵¹ That interpretation explained that minutes allocated for clinic work could be treated the same as classroom time in traditional courses, as long as the work involved time and effort comparable to that required to earn academic credit generally, and, more importantly for purposes of this paper, as long as the clinic work was done “under the direct supervision of a member of the law school faculty or instructional staff whose primary professional employment [was] with the law school.”⁵² Given the context, this interpretation did not require that supervision of student work in a clinic course be by a person “whose primary professional employment was with the law school.” A law school could staff clinics with lower-cost adjuncts as long as it also capped the credits that could be counted toward graduation.⁵³ Nonetheless, the interpretation provided an incentive, and also tended to promote a culture wherein traditional clinics that provided supervision via full-time instructors were perceived as providing a better educational experience than those providing supervision by lower-cost adjunct instructors.⁵⁴

The definition of law clinic provided by the recent revisions re-

⁵¹ The previous version of Standard 304(b) required, for graduation, that students complete a “course of study in residence of not fewer than 58,000 minutes of instruction time;” and directed that “at least 45,000 of these minutes shall be by attendance in regularly scheduled class sessions or direct faculty instruction.” Standard 304(b) in ABA Standards and Rules of Procedure for Approval of Law Schools 2013-2014, *available at* <americanbar.org/groups/legal_education/resources/standards.html> (use link for Standards – Archives) (visited August 23, 2016).

⁵² *Id.* (Interpretation 304-(3)(e)).

⁵³ Interestingly, *Building on Best Practices* does not discuss in any depth the use of adjuncts in clinic courses, even in the specific discussion of variations on clinic models. *Building on Best Practices*, *supra* note 8, at 249-51, 246-47 (noting only that “full-time, professional teachers will often have more time and opportunity to develop a familiarity with clinical teaching methodology than part-time faculty, attorneys employed by outside agencies, or volunteers”).

⁵⁴ *See id.* at 191 (noting that *Best Practices* implies that high quality law clinics are staffed by “professional teachers hired by the law school with adequate time and expertise to engage in intensive supervision, using a well developed pedagogy”).

flects an endorsement of non-traditional clinics, including lower cost models. Revised Standard 304(b) states:

A law clinic provides substantial lawyering experience that (1) involves advising or representing one or more actual clients or serving as a third-party neutral, and (2) includes the following: (i) direct supervision of the student's performance by a faculty member; (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and (iii) a classroom instructional component.⁵⁵

The text of the standard both backs away from any presumption that quality supervision of student clinic work requires a full-time faculty member and leaves substantial discretion to law schools in developing law clinic courses. The drafters did not use the phrase “in-house” clinic, but only law clinic, which in itself reflects endorsement of schools designing courses that deviate from the traditional model. Additionally, although a law clinic course must provide direct supervision and feedback by a “faculty member,”⁵⁶ the drafters did not use the term “full-time faculty member,” which, under the revised standards, means “an individual whose primary professional employment is with the law school.”⁵⁷ The text therefore reflects acceptance of a hybrid clinic course in which student work is supervised by an attorney whose primary professional employment may be with a partnering legal services provider.

Beyond the text, other signals support use of lower cost hybrid courses. Foremost, the revisions eliminated the interpretive language distinguishing courses using clinical instructors whose “primary professional employment” is with the law school.⁵⁸ Further, the requirements for supervision and feedback by a faculty member do not include any other qualification or condition that would preclude supervision by attorneys who not only are employed by, but also are

⁵⁵ Standard 304(b).

⁵⁶ Standard 304(b)(2)(i) & (ii).

⁵⁷ See Definition 7, 2016-2017 Standards (full citation information provided *supra* n. 2). The definition for full-time faculty member was added in the 2014 revisions. See ABA Section of Legal Education and Admissions to the Bar, *Revised Standards for Approval of Law Schools August 2014* (redlined version), at 1, available at <http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/201406_revised_standards_redline.authcheckdam.pdf> (visited April 22, 2016) (hereafter cited as “2014 Redlined Version”).

⁵⁸ See 2014 Redlined Version, *supra* note 57, at 35. The standards now address the amount of a student's legal education that must involve regularly scheduled classes or direct faculty instruction in Revised Standard 311(a). The standard is substantially the same, but speaks in terms of credits rather than minutes: schools must require a “course of study of not fewer than 83 credit hours,” and at least 64 of these credits must be in courses that “require attendance in regularly scheduled classroom sessions or direct faculty instruction.” See Standard 311(a).

working for the hosting placement site during student supervision.⁵⁹ Including such a qualification would not have been difficult. For example, in addition to highlighting that clinic teachers typically are persons whose primary professional commitment is teaching,⁶⁰ *Building on Best Practices* points to other characteristics of clinic teachers: e.g., they are employed by the law school and thus “free from other law practice obligations;”⁶¹ and they do not hold positions in practice where they “simultaneously work for other employers.”⁶² The drafters of Revised Standard 304(b) could have but did not include any of this type of qualifying language to condition the requirement: e.g., there is no requirement that the faculty member, during supervision, have no competing responsibilities arising from an employer other than the law school.

The new definition of a law clinic thus reflects an endorsement of non-traditional law clinics, specifically including lower cost approaches to clinical courses. Further, the minimal nature of the requirements gives schools great discretion as to course content, structure, and design. However, the text does give rise to an issue in relation to hybrids adopting the field clinic approach, an issue related to the reality that busy site supervisors in a field clinic course will sometimes delegate supervisory responsibilities.

2. *Selective Use of Non-Faculty Supervising Attorneys*

Supervision of student performance in a law clinic following the field clinic model will be provided by attorneys employed by the placement site who have been designated as faculty, presumably some form of adjunct instructor. When most or all of a student’s clinic work is performed at a partnering placement site, a question that arises is whether, as a matter of accreditation standards, any of the direct supervision of the student’s performance may be provided by an attorney at the placement site who is not a faculty member. This is an issue because it is not uncommon for students placed at a partnering legal services organization to be assigned to a primary supervisor who, from time to time, will delegate supervision responsibilities to other site supervisors. In a hybrid course, especially one developed from an existing field placement course, although the primary supervisor will have some type of faculty status, other supervisors may not.

⁵⁹ See *supra* note 55 and accompanying text.

⁶⁰ See *Building on Best Practices*, *supra* note 8, at 199 (noting that such persons are “academics who study both the theory and the practice of law” and who have a “primary professional commitment to the educational process” and “detachment from the legal practice in the community”).

⁶¹ *Id.* at 194.

⁶² *Id.* at 199.

The text of Revised Standard 304 does not specifically address the issue and, in fact, creates an ambiguity. Subsection (b) specifies that a law clinic must provide a “substantial lawyering experience” that “involves advising or representing a client” and that “includes” direct supervision of student performance and feedback on that performance “by a faculty member.”⁶³ Because the text of subsection (b) uses the word “includes” prior to setting out the requirement for supervision and feedback, at first blush a reasonable answer to the question is yes. A requirement to include supervision by a faculty member does not exclude supervision by others.

However, the answer is not so clear when the text of subsection (c) is also considered. The 2016 revisions moved field placement requirements into Standard 304 with the addition of new subsection(c).⁶⁴ The subsection defines a field placement course as providing “a substantial lawyering experience” that is “reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks” and that “includes the following:”

- (i) direct supervision of the student’s performance by a faculty member or site supervisor;
- (ii) opportunities for performance, feedback from either a faculty member or a site supervisor, and self evaluation;
- ...
- (v) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection;⁶⁵

The directive to include supervision and feedback by either a “faculty member or site supervisor” perhaps can be read as simply authorizing the traditional externship, involving extensive use of non-faculty site supervisors. But this is not the only way to interpret Revised Standard 304. The explicit authorization of supervision and feedback by non-faculty site supervisors in field placement courses reasonably casts some doubt on whether any of the direct supervision and feed-

⁶³ Standard 304(b)(1) & (2)(i) & (ii) (also allowing experiences involving serving as a third-party neutral).

⁶⁴ The new subsection (c) was added to Standard 304 primarily for two reasons: (1) to define within one standard the three types of experiential courses that can be used to satisfy standard 303(a)(3)’s six-credit requirement; and (2) to strengthen the standards governing field placement courses. See Memorandum from ABA Section of Legal Education and Admissions to the Bar, “Memorandum on Proposed Standards,” at *11 (December 11, 2015), (discussing Standards 304 and 305), available at <http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20151211_notice_and_comment.authcheckdam.pdf> (visited August 23, 2016).

⁶⁵ Standard 304(c).

back in a law clinic may be provided by a non-faculty supervising attorney.

Resolution of the issue perhaps may be found in the drafters' use of the phrase "substantial lawyering experience." As discussed above, it is reasonable to view this phrase qualitatively rather than quantitatively, meaning that the course must intentionally offer opportunities for students to genuinely experience what it is to be a lawyer advising or representing a client.⁶⁶ But the course likely also will provide additional and/or unplanned opportunities to practice lawyering skills and/or develop as a professional. What the standard arguably requires is direct supervision of and feedback on student performance by a faculty member as to learning opportunities that comprise an intentionally planned "substantial lawyering experience." This would not preclude supervision and feedback by non-faculty supervisors as to student performance stemming from other or additional learning opportunities that may arise over the course of the semester. Further, given the substantial discretion left to law schools in designing non-traditional law clinics, there is no reason to presume intent to preclude occasional non-faculty supervision as long as the bulk of the supervision is by a faculty member. It is thus at least reasonable to conclude that selective delegation of supervision in a law clinic is permitted by the standards.

3. Field Placement Requirements Inapplicable to Clinic Work Performed in the Field

A field clinic course retains significant characteristics of an externship course – most notably, the setting remains "in the field," within an entity that exists primarily for delivery of legal services. For law schools working to convert field placement courses into hybrid courses using the field clinic model, it is thus reasonable to ask whether, under the revised standards, any of the requirements applicable to field placement courses would apply also to the enhanced courses. Careful study of 2014 and 2016 revisions suggests the drafters considered and addressed this question.

Prior to the 2014 revisions, Standard 305 addressed credit earned for courses that required "student participation in . . . activities away from or outside the law school or in a format that does not involve attendance at regularly scheduled class sessions;"⁶⁷ and Standard 305(e) set out a list of expectations for a "field placement program" and thus specifically targeted courses that place students with hosting

⁶⁶ See *infra* notes 96-98 and accompanying text.

⁶⁷ Standard 305(a), 2014 Redlined Version, *supra* note 57, at 27.

legal services providers.⁶⁸ Traditional externships presumably were governed by the standard primarily because the bulk of the student's course work was clinical work at the placement site and thus "away from or outside the law school." The standard also was triggered if the student work did not involve attendance at regularly scheduled class sessions, but field placement or externship programs at many law schools require participation in class sessions (*e.g.*, the common externship seminar), and thus the key trigger was that student course work was largely at the placement site. The 2014 revisions eliminated the phrase "away from or outside the law school,"⁶⁹ thereby suggesting that, as long as a classroom component is included and the course otherwise complies with the new definition of law clinic, additional field placement requirements would not be triggered for a field clinic course.⁷⁰

New subsection (c) in Revised Standard 304 arguably confirms this view. A careful comparative reading of subsections (b) (defining a law clinic) and (c) (defining a field placement) confirms that a student's "substantial lawyering experience" in a field placement course might actually be very similar to the experience in a law clinic course: it might involve advising or representing an actual client (but it might also only be "reasonably similar"); and it might involve supervision of and feedback on student performance by a faculty member and include a classroom instructional component (but it might also involve supervision and feedback by a site supervisor, or provide regularly scheduled tutorials or faculty-guided reflection rather than a classroom component).⁷¹ Nonetheless, subsection (c) reflects the drafters' intent to treat the courses distinctly. It defines a "field placement course" as providing the substantial lawyering experience "in a setting

⁶⁸ Standard 305(e), 2014 Redlined Version, *supra* note 57, at 27-28.

⁶⁹ *See* Standard 305(a), 2014 Redlined Version, *supra* note 57, at 27.

⁷⁰ Arguably, another reading of standard 305 was plausible. Under the 2014 version, the requirements of Standard 305 would apply if a course did not involve attendance at regularly scheduled class sessions, but the revision also explicitly included "courses approved as part of a field placement program." *Id.* (adding the phrase "including courses approved as part of a field placement program"). The standard thus continued to specifically target externships regardless of whether a law school requires participation in a regularly scheduled seminar. Further, because the standards nowhere defined a "field placement program," a field clinic course arguably could have been considered part of a "field placement program" – even if it met Revised Standard 304(b)'s definition of a law clinic – by virtue of placing students in the field. However, in light of the specific definition of "law clinic," this would seem to be an overly rigid reading of the text. A better reading would be that, as long as the specific requirements for a law clinic are satisfied, there is no reason to also treat the course as part of a field placement program governed by a distinct standard.

⁷¹ *Compare* Standard 304(b) *with* Standard 304(c).

outside a law clinic.”⁷² Subsection (c) thus clarifies that a course that satisfies subsection (b)’s requirements – even if student clinic work is performed in the field, or on-site at a partnering placement site – will not be subject to additional field placement requirements. As this paper explains in Part III(C), schools should nonetheless safeguard the educational value of the courses by continuing to provide oversight and assistance by adopting, to some extent, expectations for field placement courses.

II. INFORMATION TO HELP PRACTITIONER-PARTNERS STRUCTURE AND TEACH QUALITY COURSES

In developing hybrid courses, and in particular field clinic courses, law schools must assume responsibility for educating the local bar about expectations and best practices that bear on the educational value of clinical experiences. While this responsibility exists for externship faculty overseeing any field placement course, the efforts must be intensified to achieve a solid hybrid course with characteristics of an in-house clinic course. This part of the paper is intended to help with course development, especially for externship faculty working to educate partnering practitioners about how to structure and teach a quality field clinic course. Section (A) presents a concise synthesis of the many expectations arising from governing standards and best practices. The remaining sections then explore the most important expectations in greater depth, including attention to allocation of responsibilities between law schools and partnering placement sites. Section (B) focuses on expectations related to student experiences, and Section (C) focuses on expectations related to teaching and supervision. In Section (C), the material is presented in a way that should be helpful to community partners to more fully understand how to maximize learning from experience. The section will be particularly beneficial to law schools working to convert externships into field clinic courses, as it synthesizes and makes manageable some of the best resources on clinical pedagogy.

A. Synthesis of Expectations for Hybrid Courses

Law schools working to develop hybrid courses will want to be guided by both accreditation standards and best practices in designing the structure, content, and characteristics of the courses. The requirements of Revised Standard 304(b) have been discussed and, as noted, many externship courses provide the type of “substantial lawyering

⁷² Standard 304(c)(1).

experience” required,⁷³ although some greater efforts to attain predictability and uniformity will be important.⁷⁴ In addition, a law clinic must satisfy the requirements of Revised Standard 303(a)(3). Under that standard, an experiential course must:

- integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
- develop the concepts underlying the professional skills being taught;
- provide multiple opportunities for performance; and
- provide opportunities for self-evaluation.⁷⁵

Most externship courses likely also could satisfy these requirements with only minor adjustments, *e.g.*, adding some attention to teaching concepts underlying skills.

Importantly, however, converting an externship course into a law clinic course should involve considerable planning. It will not be sufficient merely to designate a site supervisor as an adjunct instructor and make minor adjustments. Clinical faculty collaborating with partnering placement sites should work to build a solid clinic course that not only satisfies the requirements in a technical way, but also is designed to achieve the objectives underlying the call for more experiential learning in the curriculum⁷⁶ and to reflect best practices in clinical education.⁷⁷ Understood in this way, the course development process

⁷³ See *supra* notes 55 & 71 and accompanying text.

⁷⁴ The field placement experience often is less structured and predictable than the in-house clinic experience. This is because the in-house clinic exists primarily to educate law students and student clinic work is more intentionally planned. In contrast, because student clinic work in a field placement course is performed within a legal services entity with its own mission and with clients who must be served, the experiences and activities vary widely from placement site to placement site, and even at one placement site from semester to semester. See *supra* notes 20-22 and accompanying text.

⁷⁵ Standard 303(a)(3)(i)-(iv).

⁷⁶ Regarding experiential courses generally, *Best Practices* explains that the objectives are to help students: adjust to their roles as professionals; become better problem solvers; develop interpersonal and professional skills; and learn how to learn from experience, *e.g.*, through exercises requiring pre-performance planning and post-performance self-evaluation, and guided reflections prompting generalizations drawn from experiences. *Best Practices Report*, *supra* note 5, at 124.

⁷⁷ Key recommended best practices for *experiential courses* generally that set expectations beyond the accreditation standards include: provide students with clear and explicit statements about learning objectives and assessment criteria; record student performances; train supervisors to give meaningful feedback, and train students to maximize the learning potential from feedback; and help students identify and plan how to achieve individually important learning goals. *Id.* at 123, 128-131. Key recommended best practices for *in-house clinic* courses that set expectations beyond the accreditation standards include: modeling appropriate law practice management practices; approving and observing or recording student performances; and striking the right balance between student autonomy and client protection. *Id.* at 142-45 (also including maintaining adequate malpractice insurance for

becomes largely a process of educating community partners about pedagogical expectations.

In educating community partners, it will be important to present the many expectations in a concise and understandable way. Overall, the expectations fall into two categories: those relating to student experiences and those relating to teaching and supervision. Synthesizing and aligning the expectations in this way leads to the following concise outline that can be shared with community partners when introducing them to the concept of a hybrid course.

Student Experiences: A hybrid clinic course will:

- offer a reasonably **structured and predictable** experience that involves **specifically identified activities** that will:
 - help students (i) develop interpersonal skills and (ii) gain proficiency in **specifically identified lawyering skills** (Standard 302 skills), by having **multiple opportunities for performance** of those skills;
 - expose students to **situational complexity**;
 - promote development of **problem-solving** skills and **legal judgment**;
 - provide some opportunities to **advise or represent a client**; and

students and faculty).

Building on Best Practices does not identify additional best practices relating to content and characteristics of clinic courses, but explores many of the key expectations in greater depth. In the chapter on in-house clinics, *Building on Best Practices* fleshes out (i) the distinguishing features of this type of course, and how those features contribute to student learning, *Building on Best Practices*, *supra* note 8, at 190-207; (ii) the value of in-house clinics and their faculty to the larger legal profession, *id.* at 207-09; and (iii) how to maximize the learning in the courses through sufficient staffing and modeling law office management. *Id.* at 211-14. As an example of fleshing out best practices, *Building on Best Practices* articulates more specific best practices for the clinic seminar: the seminar should (i) include case rounds, with a planned a structure and planned topics that may be addressed during rounds, *id.* at 201; and (ii) help students learn to identify and resolve ethical dilemmas, build cross-cultural competence, understand justice concepts, form professional identity, and learn empathy skills (*e.g.*, non-judgmental understandings of client perspectives and emotions). *Id.* at 203-04. It also articulates some new recommended practices relating to law school support for clinic courses generally, which are important but not directly relevant to the discussion in this paper: sufficiently staff clinics; examine the quality of the client experience; seek ways to promote coherence and cooperation among different programs and the educators who staff them; assure clinics are managed effectively, provide a high level of service, and render services competently and ethically; and identify a faculty member to serve as “managing director of clinics.” *Id.* at 210–14. Recommended responsibilities for the managing director include “serving as ‘ethics counsel,’ ensuring adequate and continuing malpractice insurance coverage, overseeing conflicts management, human resources issues, and other operations;” encouraging “cooperation and camaraderie” among clinical faculty, staff, and students; and organizing periodic meetings of clinical faculty, structured to meet the needs of the participants. *Id.* at 214.

- as to selected activities, allow students to have **direct responsibility**; and
- will develop students' appreciation for and ability to learn from experience, through opportunities to engage in (i) meaningful guided **reflection** on experiences and (ii) **self-evaluation** as to performance of and progress on skills.

Teaching and Supervision: Supervisors in a hybrid clinic course, in collaboration with the law school, will:

- be **adjunct instructors** of the law school;
- set clear and explicit **learning objectives and assessment criteria**;
- provide a **classroom instructional component** to help students:
 - learn pertinent law to be integrated with experiences;
 - understand concepts and theories underlying the professional skills being taught; and
 - identify and resolve commonly experienced ethical issues;
- directly **supervise** and provide **regular and meaningful feedback** on student performance; and
- assume greater responsibility for educational goals, including efforts to use **clinical teaching methods** with an emphasis on experiential learning and developing professionalism and professional identity.

To avoid overwhelming community partners, law schools should acknowledge that incorporating all best practices and expectations into a course can be a work-in-progress, an on-going and deliberate process of course improvement.

Moreover, they should stress that it will require a genuine partnership, necessitating contributions from both sides. By helping law schools expand clinical offerings, the site supervisors and hosting placement sites will undertake a significant aspect of the program of legal instruction offered by law schools. In turn, law schools should be willing and able to provide significant resources – especially during the planning and initial implementation phases, but continuing thereafter in significant ways.⁷⁸ In this way, as noted, law schools are heeding the Task Force's cautionary position relating to use of adjuncts in clinic courses, namely, that adjuncts be used in partnership with regular faculty with experience in clinical pedagogy.⁷⁹ Following is a more in-depth discussion of the most important expectations, including their

⁷⁸ Cf. Building on Best Practices, *supra* note 8, at 245 (noting that best practices for hybrid courses (or "variations") require that law schools make "fair contributions").

⁷⁹ See Task Force Report on the Status of Clinicians, *supra* note 39, at 412.

underlying rationale; some of the implications for law schools, site supervisors, and placement sites; and suggestions for ways law schools can provide a substantial contribution to the courses.

B. Expectations Related to Student Experiences

1. A More Structured and Predictable Experience Allowing Multiple Performances of Selected Lawyering Skills

Structure and predictability are important and can enhance the educational value of a clinic course. Structure and predictability allow identification of specific learning outcomes for the course, and more readily ensure that students achieve those learning outcomes. They also make it more feasible to develop exercises, protocols, and tools tailored to specific activities and learning outcomes. The result is a more robust educational experience. The existence of specific learning outcomes also helps students know which courses are more likely to help them gain proficiency in areas needing improvement.

In developing hybrid courses involving student work at a placement site, the site supervisors could work with law schools to identify certain lawyering activities that students could be guaranteed the opportunity to perform. Those activities could be scrutinized to identify particular lawyering skills used in performance. The next step would be to think about a preferred sequence for performing the activities, from the perspective of allowing students to gain proficiency and, if needed, to develop a process to timely channel students to experiences that will allow them to perform the targeted skills.

A hybrid clinical course should focus on a limited and specified set of lawyering skills, which can be reflected in the learning outcomes for the course. Clinic teachers recognize the value in selecting a reasonable number of teachable experiences and focusing on deeper exploration into theories underlying the skills being taught; and focusing on a smaller group of skills allows time for multiple performances including, when appropriate, pre-performance simulations.⁸⁰ The experiences selected should contribute materially to the objectives or goals of the course, should involve performing the tasks and skills discussed in the classroom component or covered by readings, and include tasks and skills the supervisor can conceptualize with the student and adequately critique after the student has performed.⁸¹

The selected skills can include foundational skills such as legal analysis and reasoning, legal research, and written and oral communi-

⁸⁰ See Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284, 315 (1981).

⁸¹ See *id.* at 320.

cation in the legal context, but hopefully will also include some other professional skills needed for competent and ethical practice of law, such as problem-solving in the context of a real cases, client or witness interviewing, client counseling, fact investigation, negotiation, or performing litigation or transactional lawyering tasks.⁸²

The appropriate number of opportunities for performance depends on the educational objectives of the particular course. The course should include teaching of both theory and technique and, if the goal is to attain competency, students should be given several opportunities to perform the skills, each time receiving meaningful feedback.⁸³ The number of opportunities for performance can be limited to what is feasible – so long as the course provides more than one opportunity to perform the skills being taught.⁸⁴ Providing more than one opportunity for performance is important to the overall objective of allowing the student to progress towards competency based on meaningful and informative feedback.⁸⁵

Regarding sequencing, the skills necessary for performance should be within the student's capacity with supervision and, ideally, the experiences should progress from relatively easy to more complex situations.⁸⁶ This might mean taking a more formal approach to certain targeted tasks. For example, students could be required to perform carefully designed supplemental activities or exercises, such as an exercise involving various types of factual analysis to concretely demonstrate the students' attention to detail, understanding of the case, and level of analysis; or an exercise requiring use and documentation of a specific problem-solving methodology. These may well be steps that supervising attorneys would not themselves perform, given their level of expertise and typical time constraints. But strategic use of exercises that require students to plan and deliberately work

⁸² To satisfy the six-credit requirement of Revised Standard 303(a)(3), an experiential course must engage students in performance of one or more of the professional skills identified in Revised Standard 302. Standard 303(a)(3)(i). For the skills specified in Revised Standard 302, see *supra* note 2. An interpretation of Revised Standard 302(d) clarifies that law schools may determine what "other professional skills" they will help student learn, and notes that they "may include skills such as, interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation." Standard 304, Interpretation 302-1.

⁸³ See Best Practices Report, *supra* note 5, at 133-35 (in the context of simulation courses, explaining that practicing only a few times is not sufficient for a student to achieve competency, but it can be sufficient to provide a useful introduction to particular skills).

⁸⁴ See Standard 303(a)(3)(iii).

⁸⁵ See Building on Best Practices, *supra* note 8, at 195 (explaining that allowing students to practice the same or related activities on multiple occasions creates a cycle of planning, performance and reflection that fosters transfer of learning).

⁸⁶ See Kreiling, *supra* note 80, at 321.

through foundational steps can greatly enhance the educational value of performing lawyering tasks.

In the course development process, law schools should work with placement sites to identify experiences that can be predictably provided and carefully plan how to structure the experiences over the course of the semester. The plan may involve some modification of the day-to-day work of the placement site, but in manner that will not significantly interfere with serving its clients. Law schools also can assist in identifying a select set of lawyering skills that will be taught in each course, and in developing specific learning outcomes for the course and meaningful supplemental exercises.

2. *Advising or Representing a Client and Some Direct Responsibility*

In most field placement courses, students work side-by-side with practicing attorneys, and any activity beyond observation and involving use of lawyering skills is an opportunity to perform legal work in relation to real clients and cases. Researching, drafting a legal analysis, strategizing and preparing for a hearing or trial, or reviewing a contract, lease, or other important document, etc., all are important and valuable opportunities to develop lawyering skills, legal judgment, and professionalism in a context with real-world situational complexity. They can and should remain part of a hybrid clinic course.

In addition, Revised Standard 304(b) specifies that a law clinic *must* include advising or representing a client.⁸⁷ *Advising a client* involves meeting and communicating directly with a client in a manner requiring integration of relevant law with relevant facts and circumstances, and in light of the client's questions and objectives. *Representing a client* involves acting on behalf of a client in any number of settings, all requiring integration of relevant law with relevant facts and circumstances, and in light of case planning (e.g., talking with a judge or opposing counsel about the client's case; filing litigation documents or appearing in court or in an administrative hearing; negotiating for terms in a contract or regarding a plea; etc.). These activities offer valuable opportunities for developing a wide range of distinct lawyering skills, and perhaps unparalleled opportunities for engaging in problem-solving and exercising legal judgment.⁸⁸

They also are distinctive in terms of fostering a student's sense of responsibility to the client and the legal system. The importance of instilling this sense of responsibility in law students was stressed in

⁸⁷ Standard 304(b)(1) (or, in the alternative, serving as a third-party neutral).

⁸⁸ See *supra* note 5 and accompanying text.

both the *Carnegie Report*⁸⁹ and *Best Practices*.⁹⁰ This concern was captured in Revised Standard 302, which requires law schools to design a curriculum that will lead students to competency in foundational lawyering skills, and explicitly includes the “[e]xercise of proper professional and ethical responsibilities to clients and the legal system.”⁹¹

Best Practices specifically notes that representing clients allows students to personally test a number of abilities essential to professional practice of law, namely, the ability to:

- effectively communicate and deal with clients, colleagues, and members of other professions;
- effectively manage client expectations;
- effectively manage workload, including the ability to manage effectively and concurrently a number of client matters;
- select and skillfully use appropriate behaviors in a range of situations; and
- act with integrity in a range of situations.⁹²

Hybrid clinic courses also should be designed such that students have some direct responsibility. Clinical scholars recognize that having some direct responsibility for the client and case significantly enhances the educational value of the experience. Having direct responsibility for cases means that students “must establish independent relationships with clients, must think ahead, and must shoulder the responsibility of the choices they make.”⁹³ Direct responsibility magnifies the experience: it “often inspires students to learn more about the law, their clients, and their clients’ communities, as well as the skills that they will need to more effectively understand the problems facing their clients, and the prospects for resolving them”;⁹⁴ it helps them better internalize duties to clients and better understand “what it means in context for the clients to determine the ‘objectives’ of the representation, and the lawyer to determine the ‘means.’”⁹⁵

A hybrid clinic course should therefore ensure that every student, every semester, have opportunities to advise or represent a client and to have at least some direct responsibility for some aspect of a case.

⁸⁹ See *supra* note 4.

⁹⁰ See *Best Practices Report*, *supra* note 5, at 140 (explaining that actual experience with a client is an “essential catalyst for the full development of ethical engagement”).

⁹¹ Standard 302(c).

⁹² *Best Practices Report*, *supra* note 5, at 140.

⁹³ April Land, “*Lawyering Beyond*” *Without Leaving Individual Clients Behind*, 18 CLIN. L. REV. 47, 56 (2011) (quoting Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 1008 (2004)).

⁹⁴ *Id.* at 57.

⁹⁵ *Id.* at 58.

By way of example, perhaps some particular cases could be selected, or some regularly recurring aspect of cases, to be primarily worked by law students. From the perspective of converting field placement courses into clinic courses, this would require that student experiences involve more than shadowing and assisting supervising attorneys with their day-to-day work. In addition, students would have a particular case or portion of a case for which they would be directly responsible. This would require that students have time to strategize about their case or portion thereof, and that attorney oversight of this work would be, in essence, segregated from the supervising attorney's day-to-day work. Of course, this type of student experience already occurs in some field placements, but converting to a clinic course would require that it be built into the course with predictability and intentionality.

The text of Revised Standard 304(b) is ambiguous regarding the extent to which the overall course experience must consist of advising or representing a client and does not explicitly reference students assuming direct responsibility. The course must provide "substantial lawyering experience that . . . involves advising or representing one or more actual clients."⁹⁶ This does not clearly mean that the advising or representing activities must comprise a substantial part or majority of the course. The phrase "substantial lawyering experience" is used in both the definition of "law clinic" and the new definition of "field placement" in subsection (c); and in the definition of field placement it is followed by the phrase "that . . . is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic"⁹⁷ This follow-up phrase distinguishes a law clinic from a field placement course (advising an actual client versus being reasonably similar to advising a client), but the phrase "substantial lawyering experience" can have the same meaning in both definitions. It reasonably can be read as having a qualitative rather than quantitative meaning: as emphasizing that the course provides a *genuine* experience of what it means to be a lawyer, in terms of being able to develop lawyering skills, legal judgment, and professionalism in the context of real-world cases and clients. In a hybrid clinic course, then, although the experiences of advising or representing clients may be somewhat less than in a traditional in-house clinic,⁹⁸ they nonetheless should be suffi-

⁹⁶ Standard 304(b) (alternatively, the experience can involve serving as a third-party neutral).

⁹⁷ Standard 304(c)(1).

⁹⁸ *Cf.* Building on Best Practices, *supra* note 8, at 196 (noting that, the "prototypical clinic model intentionally gives students as much case or project responsibility as they can manage with intensive scaffolding and supervision").

ciently robust to genuinely foster development of a student's sense of professional responsibilities to clients and the legal system.

For supervising attorneys employed by placement sites dedicated to serving clients, allowing students to advise or represent a client and to have some direct responsibility may raise concerns related to how to balance educational responsibilities to students with professional responsibilities to clients. Clinical instructors overseeing law school in-house clinics face a similar concern, but it will be magnified in a hybrid course using a field clinic model. The concern has been studied and criteria developed to guide decisions about intervention to protect client interests. The issues and criteria are explored in the next section, following the more in-depth discussion of expectations relating to teaching and supervision.

C. *Expectations Related to Enhanced Teaching and Supervision*

Revised Standard 304(b) requires that a law clinic include direct supervision of a student's performance by a faculty member, and feedback from a faculty member.⁹⁹ In a hybrid clinic course using the field clinic approach, the supervision will be provided by an attorney whose primary professional employment is with the partnering legal services organization.¹⁰⁰ A crucial part of the course development process, then, is enabling the practitioner-supervisor to assume greater and explicit responsibility for the educational value of the students' experiences. Effective field supervisors will not merely be supervisors and mentors, they also will be teachers.

Helping a supervising attorney transition into the role of teacher will require more than conferring adjunct faculty status. Providing compensation and an appropriate title are important, as well as the equitable thing to do. But law school clinical faculty also will need to work closely with partnering practitioners to help them plan the course, provide a sound classroom component, and understand and more intentionally incorporate into their supervision teaching strategies developed to prompt reflective lawyering. In addition to teaching students about concepts, theories, and values relevant to the skills being taught, supervisors will commit to helping students recognize their personal and professional strengths and weaknesses, identify the limits of their knowledge and skill, and develop strategies that will enhance professional performance. *Best Practices* notes that this responsibility

⁹⁹ Standard 304(b). In contrast, in a field placement (externship) course, the standards require faculty oversight to ensure the quality of the educational experience and the appropriateness of the supervision and the student work, and faculty participation in evaluating a student's academic performance. See Standard 304(c).

¹⁰⁰ See *supra* Part I.B.1 (explaining the basic field clinic model).

requires clinical instructors to be attentive to the attributes of individual students and to develop and use specialized teaching techniques.¹⁰¹

The following subsections discuss key aspects of enhancing the teaching and supervising in a hybrid course. As to some aspects, law schools can provide much of the labor and resources required. As to others, practitioner supervisors will be assuming substantial teaching responsibilities. In doing so, they will need support from the law school, including on-going training and mentoring. In training them, the following information will be very helpful. Much of the discussion draws heavily on scholarly literature addressing clinical teaching, and is written from the perspective of what information would help community partners more fully understand how to structure and teach a hybrid clinic course to maximize students' learning from experience.

1. Learning Objectives and Assessment Criteria

Under the revised accreditation standards, law schools must establish learning outcomes for their program of legal education, and develop a curriculum to help students achieve the outcomes.¹⁰² Revised Standard 302 directs law schools to establish learning outcomes that include “competency” as to knowledge and understanding of doctrinal law and a broad range of skills and values.¹⁰³ Clinic courses involve work with real clients and cases, and are especially effective for developing the competencies essential to ethical and effective practice of law. Indeed, it's probably fair to say that all clinical courses are likely to help students make progress as to almost all Standard 302 competencies.

At the same time, however, each clinic course will offer unique experiences and be structured to help students learn particular areas of substantive and procedural law, and develop certain targeted skills and values. The course development process should include articulating learning objectives relating to the knowledge, skills, and values that students should be expected to achieve by the end of the semester. Clear and explicit learning objectives serve several purposes:

¹⁰¹ Best Practices Report, *supra* note 5, at 141. *Building on Best Practices* emphasizes that a hallmark of a clinic course is use of a “well developed pedagogy.” *Building on Best Practices*, *supra* note 8, at 191.

¹⁰² The focus on outcomes is a shift away from a focus on resources and content. Learning outcomes typically address three components: knowledge, skills, and values; they should describe what students will know, and what they will be able to do and how they will be able to do it. In planning a curriculum, the goal is to select course content and learning experiences that should help students achieve the desired outcomes. See Best Practices Report, *supra* note 5, at 30-31.

¹⁰³ Standard 302. For the specific text of Revised Standard 302, see *supra* note 2.

maximizing the effectiveness of instruction, as people learn better when they know what they are supposed to be learning;¹⁰⁴ guiding supervisors as they select particular assignments and projects for students; and providing helpful information to students selecting between various clinical course offerings (to allow students to select a course that will help them address areas of weakness or gain experience in areas of interest).

Assessment and feedback play an important role in helping students achieve learning outcomes and objectives. In clinic courses, most assessment efforts are focused on student performance of professional lawyering skills. The standards require opportunities for performance, feedback, and self-evaluation. Feedback and self-evaluation are discussed in greater depth in subsection (3) above, but it is important to note here that, for performance to improve, students need meaningful (informative) feedback. *Best Practices* recommends assessments evaluating student performance in relation to a specific standard, i.e., detailed, explicit criteria that identify (i) the abilities or skills students should be demonstrating and (ii) what differences exist between excellent, good, competent, or incompetent performances.¹⁰⁵ Law schools are only just beginning to develop quality assessment tools for experiential learning,¹⁰⁶ but schools can and should work with field supervisors and placement sites to create tools for at least a few of the experiences or activities students will perform in the course.

In addition, it would be appropriate to give some attention to learning objectives related to substantive and procedural law and/or ethical issues, or to theories and concepts underlying the skills being taught.¹⁰⁷ The essence of experiential learning is the integration of doctrine, theory, skills, and ethics; and integration fosters not only proficiency in skills and legal practice, but also deeper learning in the domains of knowledge and understanding. Because assessment and feedback prompts learning, some attention to non-performance aspects the course will be helpful for students. Law schools should thus also help with the development of objective tools to test for knowledge and understanding.

¹⁰⁴ See *Best Practices Report*, *supra* note 5, at 123.

¹⁰⁵ *Id.* at 182. For example, rubrics are a common criterion-based assessment tool. See generally DANIELLE D. STEVENS & ANTONIA J. LEVI, INTRODUCTION TO RUBRICS: AN ASSESSMENT TOOL TO SAVE TIME, CONVEY EFFECTIVE FEEDBACK, AND PROMOTE STUDENT LEARNING (2d ed. 2013).

¹⁰⁶ For example, the Third National Symposium on Experiential Learning in Law, held June 10-12, 2016, at New York Law School, focused on assessment tools for use in experiential courses. See <http://www.nyls.edu/academics/office_of_clinical_and_experiential_learning/third-national-symposium-experiential-learning-law/> (visited 9/5/2016).

¹⁰⁷ See *Best Practices Report*, *supra* note 5, at 178.

2. *A Classroom Component and Attention to Theories Underlying Professional Skills*

Accreditation standards and *Best Practices* recognize the importance of a classroom component accompanying students' clinical experiences, but leave ample room for discretionary decisions about the timing and content of class sessions. The classroom component can be used effectively to accomplish many important aspects of a sound clinical experience. Many clinic courses schedule sessions intensively at the outset of the semester, and then periodically and strategically throughout the semester.

The core of clinical methodology is the interaction between case experiences and structured intellectual inquiry related to those experiences.¹⁰⁸ The intellectual inquiry occurs throughout and in all aspects of the clinic course, including during one-on-one supervision in the field. The classroom component, however, can provide an essential foundation and structure.¹⁰⁹ In particular, class sessions can be used for at least three key purposes: to efficiently provide the foundation, scaffolding, and shared discourse that are part of a successful clinical course.

a. Foundation

A sound foundation can greatly enhance the educational value of a clinic course. Class sessions of course provide an efficient way to introduce students to the course and course expectations, *e.g.*, objectives and methods of the clinical course, the types of cases students will be working on, and information about the placement site's policies, personnel, and practices.¹¹⁰ In addition, it is important to ensure a sufficient level of understanding of pertinent substantive and procedural law. Further, to make the best use of the limited time available for clinic work – for both students and supervisors – supervisors can use the classroom format to provide information about the most helpful sources of law, model documents, and other useful resources. The supervisor should concentrate on collecting helpful resources, preparing necessary materials when nothing exists, familiarizing students with these resources, and, when necessary, explaining how the resources can be used most effectively.¹¹¹ Attending to these tasks at

¹⁰⁸ See Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, XXI N.Y.U. REV. L. & SOC. CHANGE 109, 141 (1993-94).

¹⁰⁹ See Building on Best Practices, *supra* note 8, at 200-01 (explaining that the clinic seminar allows students to “integrate their legal work experiences with legal doctrine, lawyering ideals, self-awareness, professional identity and more”; and that clinical teachers use simulations, role plays, team and small group work, and other teaching techniques).

¹¹⁰ See Kreiling, *supra* note 80, at 311.

¹¹¹ See *id.*

the outset allows for better use of time throughout the remainder of the semester.

b. Scaffolding

The class component also can be used to help students develop a cognitive structure or framework for the lawyering activities they will experience in their clinic work. A cognitive framework enables students to better understand and make decisions about the lawyering activities they will perform in the clinic.¹¹² It involves teaching students concepts, theories, and values underlying the lawyering skills being taught so they can more readily perceive the relevance of course exercises and clinical experiences and fit them into a “conception of the overall process, rather than see them as a series of isolated or unrelated events.”¹¹³

For example, teaching students about problem-solving involves helping them see the task as a recursive process involving several distinct steps:

- recognizing a problem and defining it;
- preparing by gathering and evaluating information and raw materials;
- generating a range of options and/or potential solutions;
- evaluating options and potential solutions;
- deciding on a strategy; and
- implementing the strategy.¹¹⁴

It also involves introducing students to concepts such as divergent thinking, cognitive biases (*e.g.*, availability bias, anchoring bias, confir-

¹¹² See, *e.g.*, David R. Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67, 82-83 (1979-80) (noting that a cognitive framework helps students see the “relevance of the experiences they are having and to fit each of these experiences into a conception of the overall process, rather than seeing them as a series of isolated or unrelated events”).

¹¹³ *Id.* at 83. Learning theory supports the importance of cognitive structure:

Existing cognitive structure, that is, an individual’s organization, stability, and clarity of knowledge in a particular subject matter field at any given time, is the principal factor influencing the learning and retention of meaningful new material. If existing cognitive structure is clear, stable, and suitably organized, it facilitates the learning and retention of new subject matter. If it is unstable, ambiguous, disorganized, or chaotically organized, it inhibits learning and retention. Hence it is largely by strengthening relevant aspects of cognitive structure that new learning and retention can be facilitated. When we deliberately attempt to influence cognitive structure so as to maximize meaningful learning and retention we come to the heart of the educative process.

Id. at 82-83 (quoting David Ausubel, *Cognitive Structure and the Facilitation of Meaningful Verbal Learning*, in CONTEMPORARY ISSUE[S] IN EDUCATIONAL PSYCHOLOGY, 198, at 199 (Harvey F. Clarizio ed., 1987)).

¹¹⁴ See, *e.g.*, STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., *ESSENTIAL LAWYERING SKILLS* 35-36 (5th ed. 2015).

mation bias), confidence illusions, and the “inclusive solution.”¹¹⁵

As another example, teaching students the skill of factual analysis involves helping them appreciate that humans process facts in different ways (sometimes using a paradigmatic approach guided by abstract principles, sometimes using a narrative approach that filters facts in light of a particular story), and introducing them to different models of organization (according to legal elements, the chronology of events, or a particular story).¹¹⁶ It also involves teaching students distinct steps for assessing the strength or persuasiveness of facts: identifying the need for additional legal or factual research, assessing the sources (tangible and oral sources), distinguishing direct from circumstantial evidence, assessing the structural integrity of the story the facts are being used to prove, and assessing the context (*e.g.*, the importance of a fact may depend on its chronological relationship to other facts, or the setting in which a fact-producing event occurred).¹¹⁷

The theoretical underpinning of skills includes consideration of when and why various lawyering strategies are used and the role of personal and professional values. *Best Practices* explains:

Just teaching technique is not sufficient; “[o]ur additional obligation to law students is to teach the norms and values in support of which those skills will be applied.” Among the values that we should include in our instructional design are the lawyer’s obligations to truth, honesty, and fair dealing; the responsibility to improve the integrity of the legal system . . . ; the obligation to promote justice; and the obligation to provide competent representation.¹¹⁸

Texts have been designed to help teach the general concepts and theories underlying many professional lawyering skills.¹¹⁹ Field supervisors with experience using the skills can confirm or question the validity of concepts and theories presented in the text.

Helping students build a cognitive framework provides an essential tool - or scaffolding - for students with limited experience. Because the concepts, theories, and values are learned outside the context and dynamic of particular cases, students understand and internalize their general nature and general applicability. That knowledge can then be effectively integrated with and tested through the

¹¹⁵ *Id.* at 38-43.

¹¹⁶ *See id.* at 147-48, & ch. 11 (the legal elements model), ch. 12 (the chronology model), ch. 13 (the story model).

¹¹⁷ *Id.* at ch. 15.

¹¹⁸ Best Practices Report, *supra* note 5, at 125 (quoting Steven Lubet, *What We Should Teach (But Don't) When We Teach Trial Advocacy*, 37 J. LEGAL EDUC. 123, 126 (1987)).

¹¹⁹ *See, e.g.*, KRIEGER & NEUMANN, *supra* note 114. *See also, e.g.*, JAY FOLBERG, DWIGHT GOLANN, THOMAS J. STIPANOWICH, LISA A. KLOPPENBERG, *TEACHER'S MANUAL WITH EXERCISES AND ROLEPLAYS* (2010) (written to accompany *RESOLVING DISPUTES: THEORY, PRACTICE, AND LAW* (2d ed. 2010 (now available in a third edition))).

students' fieldwork on particular cases. In early experiences in the course, students perform by drawing largely on these tools. As the course progresses, students begin to draw also on what they have learned from their prior performances.

c. Shared Discourse

The classroom setting also allows students to develop a shared understanding of concepts and ways of thinking and talking about the practice of law.¹²⁰ Students can reach a deeper understanding of the concepts and theories when some class sessions later in the semester are devoted to group analysis of case work that allows students to learn through sharing information about their experiences.¹²¹ Specifically, students can draw upon the shared discourse of the classroom to understand and discuss the issues in their cases (in a general manner consistent with the duty of confidentiality). Through the process of discussing particular situations presented by cases, students use and test as a group the general concepts and theories they are learning. The discussions focus on particular experiences of students, which provide a jumping off point for group discussion and analysis of more abstract issues. This type of group analysis is particularly helpful where the aggregation and comparison of a number of experiences is important, such as learning how case theory shapes a lawyer's activity.¹²²

Many responsibilities for the classroom component can be shared between law schools and field supervisors. Placement sites and supervisors likely will have a vision for the content and nature of the classes, but law schools generally can provide substantial assistance in fleshing out details, and by making recommendations as to scheduling and selection or development of appropriate required or recommended texts or materials. Law schools also can work with supervi-

¹²⁰ See Shalleck, *supra* note 108, at 141.

¹²¹ See Kreiling, *supra* note 80, at 313-14; Shalleck, *supra* note 108, at 144-45.

¹²² See Shalleck, *supra* note 108, at 145. Another useful exercise for class sessions is the Case Presentation, wherein a student presents an entire case and other students question the strategies and decisions made in the case and offer their own experiences as comparisons. To save time students can write out the facts and procedural history in advance and the supervisor and other students can read them in advance of the presentation. The supervisor might provide each student certain questions to address to provide a starting point for the group discussion. Students should be encouraged to present aspects of the case related to professional ethics, the limitations of the role of the lawyer, or the efficacy of the justice system; or related to cultural and economic diversity issues, in terms of the students' personal and professional reactions to and relationships with their clients. See Amy L. Ziegler, *Developing a System of Evaluation in Clinical Legal Teaching*, 42 J. LEGAL EDUC. 575, 588-89 (1992). See also Building on Best Practices, *supra* note 8, at 199-201 (discussing the clinic seminar and case rounds).

sors to develop learning outcomes, exercises, and necessary or helpful assessment tools. Law schools also should strive to better prepare students for the experience, by teaching, in non-clinical courses, helpful substantive or procedural law (including more attention to state law when appropriate), as well as providing some introduction to concepts and theories underlying skills that will be taught in clinical courses. However, field supervisors and placement sites should take primary responsibility for leading the sessions, providing the bulk of the introduction to the course, teaching students the concepts and theories underlying skills in the context of the legal services provided at the placement site, and monitoring and facilitating group discussion and analysis of field work.

3. Enhanced Feedback and Increased Attention to Experiential Learning

Carefully planned and implemented one-on-one supervision is crucial for a sound clinical experience for students. The most important aspects of supervision in a clinical course are regular and meaningful feedback and evaluation, and intentional and strategic use of teaching strategies developed for experiential courses.

Law schools historically have asked and expected field supervisors in field placement courses to provide meaningful feedback and evaluation and they often have done a remarkably good job. However, challenges exist. Time is one important obstacle. Meaningful comment and critique requires analysis of the student's performance, and analysis takes time. But other obstacles also exist. For example, busy supervisors may neglect to collect sufficient data for sound analysis of non-written performance. With respect to both written and non-written performances, helpful rubrics or other assessment tools may not have been adequately developed for use in the field setting. Further, it is challenging to provide timely and helpful feedback without having in place an established set of procedures or protocols and an expectation that they will be used regularly.¹²³

Law schools can address many of these challenges in the process of planning and developing hybrid clinic courses. Clinical faculty should work with placement sites to design and achieve a more structured and predictable experience. The planning process will involve selecting certain lawyering activities that students will be guaranteed the opportunity to perform, thinking about the preferred sequence for performing the activities, and developing supplemental exercises to

¹²³ See Nina W. Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L. J. 967, 982 (1990).

enhance the educational value of the experience.¹²⁴ With this information, law schools can then assist in developing quality task-specific assessment tools that are feasible for use by busy supervisors in the field. Task-specific assessment tools will help ensure that adequate data is collected and that supervisors can convey reliable and valid feedback to students in an efficient manner. Law schools also can draw upon their expertise to help establish procedures and protocols (e.g., requiring students to submit a pre-performance exercise demonstrating adequate preparation, and/or a post-performance exercise reflecting self-evaluation), and also be clear about expectations for timing and frequency of feedback.

Moreover, law schools can help busy field supervisors understand and appreciate intentional and strategic use of teaching techniques developed by clinic instructors whose primary professional commitment is teaching.¹²⁵ Field supervisors will be familiar with some methodologies, such as use of role-playing and simulations, and allowing multiple opportunities for performance with feedback.¹²⁶ They will be less familiar with theories for learning from experience. Respected clinical teaching strategies are grounded in theories of experiential learning, which emphasize student reflection on experiences and self-evaluation of performance as being integral to learning and improving future performance.¹²⁷ The accreditation standards acknowledge this emphasis and explicitly require self-evaluation and reflection in all experiential courses.¹²⁸ Similarly, the *MacCrate Report*, *Best Practices*, and the

¹²⁴ See *supra* Part II.B.1.

¹²⁵ Clinical instructors must keep in mind a number of objectives when providing one-on-one supervision and mentoring in relation to students' clinic work. In addition to helping students with the technical aspects of performing lawyering skills, supervisors should be helping students make connections between their specific work and the concepts and theories taught in the classroom component, internalize a sense of professional responsibility, and engage in systematic reflection and self-evaluation of their experiences. Helping students with these multiple aspects of performance requires multiple teaching tools, methods, and approaches. See Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 505, 517 (2012).

¹²⁶ Cf. BUILDING ON BEST PRACTICES, *supra* note 8, at 202 (identifying role plays and simulations, reflection, and multiple opportunities for performance and feedback as the three primary methodologies used by clinic teachers). For a helpful and very in-depth discussion of the various aspects of clinical pedagogy, see generally SUSAN BRYANT, ELLIOT S. MILSTEIN & ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* (2014).

¹²⁷ For many clinicians, the primary goal of clinical education is to teach a method for learning from experience – so students can apply this method beyond the law school setting and continue to learn and grow as professionals throughout their legal career. See Kreiling, *supra* note 80, at 286. See also Justine A. Dunlap & Peter A. Joy, *Reflection-in-Action: Designing New Clinical Teacher Training by Using Lessons Learned From New Clinicians*, 11 CLIN. L. REV. 49, 51-52 (2004).

¹²⁸ See Standard 303(a)(3).

Carnegie Report all stress that law schools must teach students to appreciate the importance of reflection and self-assessment for learning from experience, and thus for professional growth leading to expertise.¹²⁹ Hybrid clinic courses must therefore help students understand and value, and train students to use, a systematic approach to learning from experience.

As explained by Professor Kreiling, the method for effectively learning from experience typically involves the following steps:

- Action in a particular instance, and observation of the effect of the action.
- Reflection on the resulting information about cause and effect.
- Understanding the effect in the particular instance, and understanding the general principle underlying the particular instance.
- Application of the general principle to a new situation within the range of generalization.¹³⁰

In explaining these steps, Professor Kreiling notes: “There is no doubt that some learning occurs from any experience. But the ability to generalize from experience and to improve performance on future occasions is not learned by most people unless they articulate why they are taking certain action and reflect upon the effect of their actions.”¹³¹

Professor Shalleck has explained that reflection is crucial to experiential learning because engaging in action transforms comprehension. “Action gives rise to a host of new meanings and associations capable of being identified and elaborated upon: sensation, perception, intuition, feeling, and cognition necessarily combine to produce ‘new knowledge’ at different levels of awareness, complexity, particularity, and immediacy.”¹³² Reflection as prompted by supervisors “serves to identify, test, and shape that ‘new knowledge,’ as well as to assist the students in understanding the largely unexamined process by which they acquire knowledge from their experiences in practicing

¹²⁹ Carnegie Report, *supra* note 3, at 145-46; Best Practices Report, *supra* note 5, at 190 (noting that “[t]hroughout an attorney’s professional life after law school, her success in practice will depend on the ability to self-assess professional performance, behavior, and attitudes”). See also 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) 220 (1992) (calling on lawyers to “take advantage of opportunities for continuing learning and improvement, including the use of the process of self-reflection to learn from experience in a ‘reflective, organized, [and] systematic’ manner”).

¹³⁰ Kreiling, *supra* note 80, at 285 n. 4.

¹³¹ *Id.* at 286 n. 8.

¹³² Shalleck, *supra* note 108, at 153 (quoting Gary Bellow, *On Teaching the Teachers: Some Preliminary Reflections on Clinical Education as Methodology*, in CLINICAL EDUCATION FOR THE LAW STUDENT 374 (Council on Legal Educ. for Professional Responsibility ed., 1973)).

law.”¹³³ Further, clinical scholars also stress the importance of law schools affirmatively teaching students how to engage in reflective lawyering.¹³⁴ Thus, in addition to other important aspects of the course, strategies designed to teach students how to learn from experience should be infused throughout a hybrid clinic course.

4. *Fostering Reflective Lawyering*

In teaching reflective lawyering in a hybrid course, especially one that has been developed from an existing externship course, the site supervisor can rely in part on the structured exercises used by externship faculty. Law school faculty overseeing field placement courses typically use a variety of exercises to prompt self-assessment of learning and reflection on field experiences. Students typically are required to develop specific learning outcomes for the course, and to periodically assess their progress in achieving the objectives.¹³⁵ They typically are asked to write reflection essays drawing on their experiences, and to engage in some group analysis.¹³⁶ These activities could be appropriately incorporated into hybrid clinic courses. For example, although careful course design will include specific learning outcomes, students will still benefit from being expected to develop and assess

¹³³ *Id.*

¹³⁴ See, e.g., Tarr, *supra* note 123, at 970 (“In order to facilitate continued growth when a supervisor is no longer available to critique their work, students must learn to constantly examine their own work. What makes lawyers improve rather than stagnate is the ability to examine and learn: to learn how to learn in the skills context as well as in the substantive or procedural context. . . . New lawyers [will receive training of various sorts, but they] will neither be trained in the skill of [self-]evaluation nor even necessarily be critiqued in an effective manner once they are out of law school.”). *Best Practices* explains the importance as follows:

The students who spend three years in law school will next spend 30-50 years in practice. These 30-50 years will be a learning experience It can be, as conventional wisdom has it, merely a hit-or-miss learning experience in the school of hard knocks. Or it can be a mediated and systematic learning experience *if* the law schools undertake as part of their curricula to teach students techniques of learning from experience. Clinical courses can do this – and should focus on doing it – because their very method is to make the student’s experience the subject of critical review and reflection.

Best Practices Report, *supra* note 5, at 126 (emphasis in original) (quoting Anthony G. Amsterdam, Remarks at *Deans’ Workshop*, ABA Section of Legal Education and Admissions to the Bar, Jan. 23, 1982 (copy on file with Roy Stuckey)).

¹³⁵ Cf. Building on Best Practices, *supra* note 8, at 225 (it is a best practice to articulate for a course both institutional goals and individual learning goals), 229-30 (it is a best practice for externship teachers to develop and use meaningful assessment tools to track student progress in learning and achieving goals).

¹³⁶ Cf. *id.* at 233-25 (discussing the importance of externship teachers fostering meaningful reflection by students, and noting: “It is therefore a best practice to assign journals frequently and regularly . . . and for the teacher to provide timely response and feedback, creating a continuing and iterative dialogue throughout the experience”).

progress as to one or two personal learning goals.¹³⁷ Similarly, reflection essays and group discourse will remain valuable, *e.g.*, for prompting deeper thinking about experiences or helping develop professional identity.¹³⁸ Responsibility for assigning and reviewing these experiences could be split between field supervisors and law schools; or, to lessen the burdens on field supervisors, law schools could continue to assume primary responsibility.

Importantly, however, a key goal in hybrid clinic courses will be increased attention to teaching reflective lawyering in the interactions between students and supervisors in the field during student performance. To achieve this goal, law schools will need to help supervisors understand and more fully implement effective supervision techniques. This will involve collaborative development of exercises requiring students to demonstrate thoughtful preparation for and self-evaluation of performance. For example, site supervisors can be introduced to some variation of Professor Kreiling's "theory-of-action" teaching methodology.¹³⁹ This involves guiding students through four steps: development and articulation of a theory-of-action for a lawyering activity designed to achieve a particular outcome; performance of the lawyering activity; study of a particular instance of action and comparison with the theory; and modification of the theory to improve effective performance.¹⁴⁰ Law schools can help develop tools and protocols to encourage this type of reflective lawyering – at least as to more significant clinical tasks or projects.

Law schools also will need to help supervisors understand and strike the right balance between the two basic approaches to clinical supervision: directive and non-directive. A directive approach involves telling a student what to do. A directive approach is appropriate if the lesson to be learned is simple and not worth processing through a conversation, or if an answer must be given at that moment to protect the client.¹⁴¹ In contrast, a non-directive approach involves reviewing with a student the course of action the student has identi-

¹³⁷ *Cf. id.* at 205 (noting that it is a best practice for a clinic course to have students identify their own learning objectives for the clinic experience), 207 (noting that it is a best practice for a clinic course to include assessment of whether the student achieves personal learning goals).

¹³⁸ *See id.* at 202 (explaining that clinical pedagogy emphasizes the importance of "being continually self-reflective").

¹³⁹ Kreiling, *supra* note 80, at 291-95 (with a helpful diagram on p. 294).

¹⁴⁰ *Id.* For a similar methodology, *see* Tarr, *supra* note 123, 981-82. The Task Force on the Status of Clinicians states that clinical teaching in the field can be described as "Prepare-Perform-Reflect." Task Force Report on the Status of Clinicians, *supra* note 39, at 364 (noting also that clinic faculty "guide students to engage in thoughtful planning, give detailed feedback on student performance, and engage students in studied reflection . . .").

¹⁴¹ *See* Mlyniec, *supra* note 125, at 518-19.

fied, or leading a student through an analysis of a problem using a questioning method, sometimes similar in style to the Socratic method.¹⁴² A non-directive approach – at least as to fairly significant tasks or projects – involves several steps: “[T]he clinician [asks what needs to be done and why], discusses the student’s plan for accomplishing the work, reviews and critiques the student’s work when it is completed, and then discusses what the student believes to be the next steps.”¹⁴³

A non-directive approach is still somewhat directive, in that the clinical teacher is guiding the student in an exploration that leads to new knowledge or a solution to a problem.¹⁴⁴ Nonetheless, clinical faculty value non-directive approaches when appropriate because they tend to foster initiative, deeper understanding due to working through a problem independently, and a sense of ownership of the resulting learning.¹⁴⁵ A directive approach is the simplest path, but a student’s professional growth is limited if he or she is merely following an instructor’s direction. In contrast, non-directive supervision “allows a student greater autonomy, and provides the student with the opportunity to be fully in role as the primary lawyer representing the client,” which generally is viewed as one of the core goals of a clinic

¹⁴² See *id.*

¹⁴³ Dunlap & Joy, *supra* note 127, at 67. Students sometimes resist a non-directive approach, preferring to be told what to do. In those situations, the instructor should

Remind[] the student that she is not a law clerk but rather the primary lawyer for the client [at least for the task at hand]. The student should be encouraged to take ownership of the case, the client’s interests, and the issues. It may be useful to point out that the student will soon be a lawyer and may be practicing in a setting in which there will not be anyone else to consult for advice or assistance. The student may thereby come to appreciate the importance of learning how to devise answers on her own, or at least push herself to suggest alternative plans of action and to weigh the benefits and detriments of each plan. [Instructors] should assure the student that the [instructor] will review each proposed course of action before the student executes the plan.

Id. at 86.

¹⁴⁴ See Mlyniec, *supra* note 125, at 518-19.

¹⁴⁵ See Harriet N. Katz, *Reconsidering Collaboration and Modeling: Enriching Clinical Pedagogy*, 41 GONZ. L. REV. 315, 319 & 343 (2005-06). Two other approaches are modeling and collaborative. Modeling involves teaching by example. Modeling occurs intentionally, but it also occurs when the clinical teacher is not aware of it. Modeling is pervasive in clinical education because students learn any time they are observing attorneys, including both supervising and non-supervising attorneys. Modeling conveys information about professional skills, habits, and values. See *id.* at 335-39. A collaborative approach involves teaching through a work process in which participants share ideas and feedback concerning a task. The approach can be used with both large and unstructured tasks such as strategic planning, and more finite tasks such as arguments to be used in motions. To be effective, all participants must feel responsible for the work product. It can be effective even if the participants are not equals, as long as each participant feels permitted to speak and be heard and correspondingly listens to other participants. See *id.* at 340-41.

program.”¹⁴⁶

Certain circumstances or situations likely warrant a more directive approach, such as early in the semester when a student’s skills, abilities, confidence, and motivation remain untested; when a court deadline or other significant deadline is imminent and the student remains unclear about the appropriate course of action; or when a student needs assistance in the midst of some proceeding or event (a hearing, deposition, negotiation, etc.), and direction is necessary to protect the client.¹⁴⁷ However, when a non-directive approach is feasible and appropriate it is preferred.¹⁴⁸ A non-directive approach is especially valuable as to clinic work that involves advising or representing clients or lawyering tasks for clients over which the student has direct responsibility, and, further, the approach fosters regular and frequent reflection and self-assessment.

Understandably, some concerns may arise from devoting greater attention to the educational needs of students and using, more frequently, a non-directive approach to supervision; concerns relating to how to balance educational responsibilities to students with professional responsibilities to clients. This concern, often framed in terms of when it is appropriate to “intervene” to protect a client, is addressed in the next subsection.

5. *The Question of Intervention*

a. *Basic Parameters of Intervention*

As used in this discussion, intervention is a distinct type of student-instructor interaction. Intervention occurs when a clinical instructor engages the student, the client, or an adversary or other person, or the adjudicative or other relevant process, in a manner that usurps the judgment of the student, *i.e.*, in a manner that replaces the instructor’s authority and judgment for that of the student.¹⁴⁹ The question of this sort of authoritative intervention is particularly pertinent as to those activities for which a student has been given direct responsibility – and thus to those situations when students can benefit most from use of a non-directive approach. However, intervention is not simply use of a directive approach, but, rather, intervention occurs when the instructor makes an intentional and immediate shift from a

¹⁴⁶ Dunlap & Joy, *supra* note 127, at 84-85.

¹⁴⁷ *See id.* at 85.

¹⁴⁸ Regardless of approach, each interaction between student and instructor, and the words used, must be directed towards “improving the student’s ability to make choices, take actions after the interaction, and reflect upon the reasons for [the actions taken].” Mlyniec, *supra* note 125, at 522.

¹⁴⁹ *See* George Critchlow, *Professional Responsibility, Student Practice, and the Clinical Teacher’s Duty to Intervene*, 26 GONZ. L. REV. 415, 419 (1990-91).

non-directive to a directive approach. Clinical teachers recognize that authoritative intervention may at times be necessary to protect clients, and standards and factors relevant to intervention have been proposed.

The overarching principle is that field supervisors should strive to ensure that a student's provision of legal services in a law clinic comports with professional and ethical standards.¹⁵⁰ While this is certainly the case when a student is using a limited practice license, it also is the case when a student is performing other tasks for which a license is not required – tasks that still involve developing lawyering skills, but that do not constitute the practice of law.¹⁵¹ In addition, supervising lawyers should ensure that students' actions reflect the broader aspirations of professionalism. In part this is because a student acting under authority of a limited practice license ordinarily will have undertaken an oath that very likely encompasses professionalism.¹⁵² But it also is because the overarching goals of a clinic course warrant extending the aspirations of professionalism to all student activities and tasks.

Supervisors should remind students to review all pertinent rules, and should initiate discussions of rules when appropriate and be open to student questions about the rules. To guide issues related to profes-

¹⁵⁰ In large part, this principle flows from the fact that students in a law clinic course will have obtained a limited student license. With a limited license, students often may provide legal services, including appearing in court proceedings, to a defined category of persons (*e.g.*, persons financially unable to employ counsel); or may appear in state court proceedings on behalf of state prosecutors. *See, e.g.*, Kentucky Rules of the Supreme Court, Admission of Persons to Practice Law, Rule 2.540 (hereafter SCR 2.540). However, students generally may engage in these activities only under the personal supervision of a member in good standing of the local bar. *See id.* SCR 2.540(d). The personal supervision is for the purpose of ensuring that a student's provision of legal services comports with professional and ethical standards.

¹⁵¹ *See, e.g.*, Kentucky Rules of the Supreme Court, Practice of Law, Rule 3.130 (Rules of Professional Conduct, hereafter "KRPC"), Rule 5.3. Rule 5.3 addresses a lawyer's responsibilities for nonlawyer assistants. Rule 5.3(b) provides that a lawyer having direct supervisory authority over the nonlawyer "shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer." KRPC, Rule 5.3(b). The supervising lawyer is responsible for conduct of a nonlawyer assistant that would be a violation of the KRPC if engaged in by a lawyer only if the lawyer (1) "orders or, with the knowledge of the specific conduct, ratifies the conduct involved," or (2) "has direct supervisory authority" and "knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action." *Id.* 5.3(c)(1) & (2).

¹⁵² For example, under Kentucky's limited student practice rule, a student swears to act "as an officer of the court with the utmost fidelity toward the court and all persons whose affairs are in any way entrusted to [them];" to avoid taking part in or allowing any "deception of the court," and to inform the court should any deception be practiced; to "abide by the Rules of Professional Conduct as adopted by the Supreme Court of Kentucky;" and to use the license in a manner that both serves justice and prepares the student "to assume full responsibility later as a member of the bar." *See* SCR 2.540 ("Oath of Legal Intern Under Student Practice Rule).

sionalism, supervisors and students should look to the applicable creeds of professionalism or statements of principles and goals developed by state bar associations for professionalism among lawyers. Whenever a student's actions raise concerns related to any rule of professional conduct or any aspect of professionalism, a supervisor should promptly discuss the concerns with the student. Intervention would be appropriate whenever necessary to prevent a violation of a rule of professional conduct, or to ensure that student actions reflect the broader aspirations of professionalism.

b. Intervention to Ensure Competent Representation

The rule of professional conduct most likely to raise questions and concerns about intervention is Rule 1.1. This rule requires a lawyer to provide "competent representation to a client," and defines competence as "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation [of the client]."¹⁵³ Indeed, scholarly treatment of the issue of intervention has focused on the need for competent representation.

Best Practices recognizes that deciding whether to intervene to ensure competent representation is one of the most difficult decisions faced by clinical teachers, and emphasizes the importance of striking the appropriate balance. "When a supervisor intervenes too early in the process, the student is not afforded the opportunity to learn from approaching the problem by herself" and, further, early intervention may undermine the student's confidence in her ability to become a capable lawyer.¹⁵⁴ On the other hand, "providing little or no intervention when it is apparent the student is beyond his or her capabilities risks real harm to the client."¹⁵⁵ *Best Practices* cautions supervisors to never lose sight of the need for competent representation, but recommends that the issue be approached with respect for students and the clinical method's "cornerstone" of providing opportunities for students to experience primary professional responsibility for real legal matters.¹⁵⁶

Two standards for intervention due to competency have emerged. The more rigid standard significantly limits intervention:

The clinical instructor must ensure competent representation and take remedial action to avoid or mitigate the consequences of incompetent representation; thus an instructor must intervene when

¹⁵³ See, e.g., KRPC 1.1.

¹⁵⁴ Best Practices Report, *supra* note 5, at 144.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

necessary to prevent irreparable damage to the client.¹⁵⁷

Clinicians using this standard view learning from mistakes as crucial to clinical legal education, and they are “willing to sacrifice efficiency and control for the perceived educational benefits derived from student autonomy so long as malpractice is avoided and the Rules of Professional Conduct are not violated.”¹⁵⁸ The less rigid standard allows intervention in more instances:

The clinical instructor must ensure competent representation and take remedial action to avoid or mitigate the consequences of incompetent representation; thus an instructor must intervene when necessary to prevent irreparable damage to the client, but also should intervene when the student’s performance, although minimally competent, “seriously departs from the level of skill and judgment the teacher would bring to bear on the particular case.”¹⁵⁹

Clinicians using the less rigid standard view a client’s interests as generally superior to a student’s educational needs, and believe clients have an interest “in reasonably efficient representation and in avoiding anxiety and demands caused by student mistakes and delays.”¹⁶⁰ They also have concerns about imposing on the legal system and other participants in the process an undue strain on resources and time that may result from student mistakes, even if the mistakes are remediable.¹⁶¹

Law schools should recognize that placement sites and supervisors in hybrid clinic courses using a field clinic approach likely will prefer the standard that prioritizes clients’ interests. Use of this standard for intervention to ensure competent representation is clearly acceptable, as it was developed for use by clinicians teaching in law school in-house clinic courses.

It is important, however, that supervisors keep the standard in mind and strive to adhere to it as a means of keeping in check the tendency to want to intervene whenever a student’s performance deviates from the supervising attorney’s vision of how a task or activity should be performed. Rather, intervention should be used only when a student’s performance would “seriously depart” from the level of

¹⁵⁷ This standard is grounded in Rules 1.1 and 5.3 of the rules of professional conduct, as well as the *Guidelines for Clinical Legal Education*. See Critchlow, *supra* note 149, at 425-27 (citing *Guidelines for Clinical Legal Education*, 1980 Report of the Assn. of Amer. Law Schools-ABA Committee on Guidelines for Clinical Legal Education, § VIII(B)(1) (specifying that supervisors should “accompany the student in all proceedings where the effects of the actions which may be taken can be irreversible, and be prepared to take over for the student if the client’s interests require”)).

¹⁵⁸ *Id.* at 428.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *See id.*

skill and judgment the supervisor would bring to bear on the particular case. Furthermore, in making the decision, other factors likely will be relevant:

- Is the client's relationship primarily with the student?
If so, intervention will be more disruptive. On the other hand, if the relationship is primarily with the supervisor, intervention may be appropriate in terms of honoring the client's legitimate expectations and because the supervisor may be better informed and prepared.
- Has the client given informed consent to primary representation by the student?
If not, intervention may be appropriate to avoid exposing the client to risks he or she did not knowingly and voluntarily assume.
- Is the supervisor familiar with the student's proficiency as to relevant underlying skills?
If the supervisor cannot adequately judge and anticipate how the student will respond to unexpected events, the question whether to intervene will call for speculation and should be resolved in favor of the more reliable representation by the clinical supervisor.
- Is the supervisor as fully apprised of the facts, law, and legal strategy as the student?
Although presumably more proficient, a supervisor's ability to improve on the student's performance will be limited by the degree to which he or she lacks important information relevant to the case or the particular proceeding or transaction. If the supervisor lacks information, a conservative approach to intervention is appropriate.
- Will intervention significantly avoid the imposition of additional burdens on the client, court, or other interested persons or parties (in terms of delay, or financial or emotional costs)?
Intervention is appropriate if it will expedite resolution of the legal problem, or save time, money, and anxiety for the client or others.¹⁶²

Together, the basic standard and additional relevant factors provide substantial guidance to help a clinic supervisor decide whether authoritative intervention is appropriate. When intervention does occur, it is crucial to educational goals that the supervisor finds an appropriate time and place to have a meaningful discussion with the student about why the instructor decided intervention was necessary.

Review of the additional factors bears also on course protocols.

¹⁶² See *id.* at 430-437. See also Best Practices Report, *supra* note 5, at 144.

For example, they demonstrate the need to have procedures that will clarify when a student has direct responsibility for aspects of a case, and to ensure that, when appropriate, a client's informed consent for student representation is obtained; and the need to have tools and instruments designed to help supervisors adequately diagnose and evaluate a student's level of maturity and proficiency as to lawyering skills (both at the beginning of the semester and throughout the semester). The latter is manageable when the course has been designed to provide experiences involving carefully selected activities and a narrow range of lawyering skills.

In developing hybrid clinic courses following the field clinic model, law schools should recognize that attorneys serving as clinic supervisors are likely to have questions about intervention. The foregoing information should be included in the education and training provided. Because it is an especially important issue, perhaps the standard and additional relevant factors could be printed or otherwise provided in an easy to reference format that would be readily accessible when needed. Deciding when to intervene obviously falls within the realm of the supervisor's discretion, but law schools can promote proper understanding and use of the appropriate standard.

III. CONCRETE STEPS FOR BUILDING PARTNERSHIPS AND PLANNING COURSES

A. *Presenting a Vision and Overarching Goals*

The first step in developing hybrid courses is to begin identifying and educating community partners. In identifying partners, it makes sense to look to existing partners, particularly those that already partner with the school to offer externship courses. Externship faculty who have worked with placement sites, individual site supervisors, and persons with authority over site supervisors will have an intuitive sense of which partners would be good candidates.¹⁶³ The partner needs to be willing and able to engage in on-going course development and to assume the additional responsibilities aimed at enhancing the educational value of the experience. The day-to-day work of the partnering legal services provider also must include the types of lawyering activities that will allow the course to provide the type of student experiences outlined in Part II(B).

Regarding educating partners, over time much of the information

¹⁶³ Revised Standard 304(c)(iii) highlights the importance of including in discussions the "person in authority" at a placement site. Standard 304(c)(iii) (requiring a "written understanding" of many aspects of the field placement course among the student, faculty member, and "a person in authority at the field placement").

in Part II of this paper should be conveyed to and absorbed by the attorneys at placement sites who are working with students. At the outset, however, the focus should be on the following:

- Explaining the changes to accreditation standards that are prompting the need for more experiential learning in general and clinical courses in particular (Revised Standards 301, 302, and 303(a)(3));
- Outlining the core expectations for a hybrid course, as to both student experiences and teaching and supervision (those highlighted in Part II(A)); and
- Emphasizing the law school's commitment to be a genuine partner by providing assistance and resources (as explored in Parts II(B) & (C)).¹⁶⁴

In discussions with community partners, law schools should be able to describe their vision for a hybrid clinic course – as reflected in the core expectations – and articulate overarching goals. For example, the identification and discussion of core expectations for hybrid clinic courses suggests a three-fold overarching goal for the courses:

Through experiences involving lawyering tasks related to real cases and clients, including some advising and representing of a client and some direct responsibility for cases or matters, the course will help students understand, value, and gain proficiency in

- selected lawyering skills,
- the exercise of proper professional and ethical responsibilities to clients and the legal system, and
- systematic reflection and self-evaluation for purposes of professional development.

Schools may also have a vision or goals related to specific aspects of their mission or to particular areas of doctrine or concentrations, etc. Articulating and presenting the vision and goals will better help community partners identify effective ways of collaborating with the law school.

B. Brainstorming and Collaborative Development

The next steps involve designing the content and structure of particular courses. This process will require a series of discussions, sometimes facilitated by meeting in person and other times by phone or email communication. Who will represent the community partner in discussions will vary. In some situations, it may be a person with au-

¹⁶⁴ Contact the author for sample power point slides that can be tailored for use in initial discussions with community partners.

thority over the attorney-employees at the placement site. In others, although a person in authority will have authorized discussions and be kept apprised of discussions, it may be a particular attorney with a special interest in initiating or enhancing a partnership who will work with the law school. Law schools should be prepared to present ideas, but also should be open to brainstorming with placement sites about options and opportunities. It also is important to allow placement sites time for internal discussions and to take the lead when appropriate. The goal should be a genuinely collaborative planning process. The initial focus should be on the following steps:

- Identifying experiences and activities available at each placement site.¹⁶⁵
- Developing a plan for sequencing the experiences.
- Identifying particular attorneys who will serve as supervisors and/or help teach the class sessions.¹⁶⁶
- Determining the number of students the course can accommodate.
- Designing the classroom component.¹⁶⁷

During this stage of the process, pushing placement sites for details will be important. Schools should consider developing a tool to guide the process, such as a “clinic planning worksheet” designed to prompt placement sites to address specific questions.¹⁶⁸ Another helpful way of prompting specificity is to ask placement sites to explain their vision as to student activities for each week of the semester, including both field work and classroom work, *e.g.*, asking placement sites to develop a week-by-week “roadmap” of the course. If the experiences and activities selected for the course will require that students be available on certain days and at certain times, the roadmap

¹⁶⁵ The experiences should: require integration of doctrine, practical skills, and professionalism; be available in a relatively structured and predictable manner, and ideally allow students to progress from easy to more complex use of skills; allow multiple performances of selected skills, and some opportunities to engage in problem-solving and to exercise legal judgment; and involve some advising or representing of one or more actual clients, and some direct responsibility, in a manner that fosters development of professional responsibilities to clients and the legal system. *See supra* Part II.B.

¹⁶⁶ As in externships generally, how the selection process is carried out in a field clinic course likely will vary from placement site to placement site. In some situations, a person in authority makes the initial selection, but in others the decision is prompted by a relationship between the externship faculty and a particular attorney or by a special interest of the particular attorney. Once selected, the law school has an obligation to train and monitor the supervisor’s performance.

¹⁶⁷ The class sessions should complement the students’ field experiences throughout the semester. This step includes identifying appropriate texts or other materials, including materials that will help in teaching about the concepts and theories underlying skills being taught. *See supra* Part II.C.2.

¹⁶⁸ Contact the author for a sample “clinic planning worksheet.”

should include this information. Similarly, placement sites should be asked to determine what number of hours per week and/or per semester students should be available to maximize participation in the experiences and activities.

After the basic plan for the course has been fleshed out, the focus can shift to the following steps:

- Developing course descriptions, specific learning outcomes, and course syllabi.¹⁶⁹
- Designing methods, protocols, and tools to enhance feedback and evaluation.¹⁷⁰

In the planning process, field clinic supervisors and placement sites generally should take the lead on identifying experiences and activities that should be included in the hybrid clinic course. Law schools can and should take the lead on the other steps – but always working closely with supervisors so the process remains genuinely collaborative.

C. *Safeguarding Educational Value through Assistance and Control*

Ensuring the educational value of clinical courses must be a priority for law schools. In traditional in-house law clinics, schools can ensure educational benefit because the courses are staffed by attorneys whose primary professional employment is with the law school – and thus who have time and resources to develop and use clinical pedagogy. Controlling educational value becomes more challenging in a hybrid course, and especially for the low-cost model involving conversion of externships into field clinic courses. In this type of hybrid course the supervising attorney, although an adjunct faculty member, remains primarily employed by the hosting placement site.

¹⁶⁹ Course descriptions should describe typical experiences and activities and include a list of the skills to be taught in the course. Learning outcomes should be sufficiently course-specific to help students choose courses likely to help them address areas of weakness. *See supra* Part II.C.1.

¹⁷⁰ Drawing on the model used by faculty overseeing externship programs, law schools can train field supervisors to effectively use clinical teaching strategies. *Cf.* Building on Best Practices, *supra* note 8, at 230-33 (but noting that no consensus exists as to the “best way” for schools to train and nurture the teaching skills of supervising attorneys). Additionally, identification of particular experiences and activities, and their preferred sequencing, will allow for development of task-specific assessment tools. These tools will help ensure that adequate data is collected and that supervisors can convey reliable and valid feedback to students in an efficient manner. *See supra* Part II.C.1. Law schools also can assist in developing procedures and protocols (*e.g.*, requiring students to submit a pre-performance exercise demonstrating adequate preparation, or a post-performance exercise reflecting self-evaluation), and in setting expectations about timing and frequency of feedback. *See supra* Part II.C.3-4. At the outset, a reasonable goal would be to develop assessment tools and protocols for at least two experiences or activities, and to add tools over time.

The need to attend to day-to-day work other than educating and supervising the student will create tensions for the supervisor, and the ability of the law school to influence behavior will be more limited than in a traditional clinic course.

As noted, new subsection (c) in Revised Standard 304 clarifies that the requirements law schools must follow to safeguard the educational value of field placements would not be applicable to a hybrid course using the field clinic model.¹⁷¹ That does not mean, however, that safeguards are not important. Indeed, *Best Practices* recognized that field placement courses may provide educational experiences comparable to those in more traditional law clinic courses, but only if law schools “exercise significant control.”¹⁷² Thus, for clinic courses that remain similar to field placement courses by virtue of supervision being provided in the field by busy attorneys primarily employed by the placement site, continued use of quality control measures by the law school is crucial.

Because a hybrid clinic course must meet Revised Standard 304(b)’s definition of law clinic, the field supervisor will be an adjunct faculty member and the law school can exert some control through the appointment process. For example, schools should set out expectations in a formal memorandum of understanding or an adjunct appointment letter. A good starting point would be to adopt or follow the new requirement for a “written understanding” in field placement courses. Revised Standard 304(c)(iii) requires that a field placement course include

a written understanding among the student, faculty member, and a person in authority at the field placement that describes both (A) the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and (B) the respective roles of faculty and any site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student’s academic performance.¹⁷³

Schools also should have a mechanism through which they can hold field supervisors accountable, such as requiring supervisors to submit copies of completed assessment tools, or perhaps asking supervisors to

¹⁷¹ See *supra* Part I.C.3.

¹⁷² Best Practices Report, *supra* note 5, at 141. See also Building on Best Practices, *supra* note 8, at 230 (noting that it is a best practice for externship teachers “to work with field supervisors to assure that students receive high quality supervision of their legal work”).

¹⁷³ Standard 304(c)(iii). Examples of written understandings can be found at <Lex-ternweb.law.edu>. The author also has drafted and has on file a comprehensive written understanding for use with field placement courses.

complete weekly time sheets reflecting time spent with students.¹⁷⁴ As long as law schools design user-friendly forms for reporting and find ways to make submission relatively easy, supervisors likely will not view mechanisms such as these as unreasonable. Schools also can conduct periodic site visits that allow full-time clinical faculty to directly observe the supervision process. But these tools alone would provide only limited control.

Fortunately, much more control can be implemented via means that, to field supervisors and placement sites, takes the form of assistance. On the one hand, some level of monetary compensation and an appropriate title (e.g., “adjunct clinical instructor”) will be perceived as assistance helping to offset the time and effort required to be a good supervisor. On the other hand, other control mechanisms more clearly result in assisting field supervisors and placement sites: helping with course design; identifying content and materials for class sessions; developing supplemental exercises, and assessment tools and protocols; and selecting field supervisors and helping them to appreciate and use clinical teaching strategies.

Additionally, some practices typically used in conjunction with externships can serve as “behind the scenes” quality control mechanisms, such as monitoring of student experiences through work logs and periodic individual meetings with a faculty supervisor, and having a faculty supervisor review contemporary guided reflection essays, self-evaluation exercises, and student evaluations of field supervisors.¹⁷⁵ As discussed, incorporating some aspects of the dual supervision used in externships into hybrid courses is an important aspect of relying on adjuncts for clinic courses.¹⁷⁶ An effective partnership between adjunct site supervisors and a full-time faculty member creates a solid quality control measure. Because a hybrid clinic course will have a classroom instructional component, this sort of faculty oversight of the course could be less intensive than in a traditional externship course. But to eliminate it entirely would seem inappropriate.

Use of control mechanisms such as these obviously will require law school resources. In addition to the adjunct compensation, developing and providing appropriate oversight of hybrid clinic courses will

¹⁷⁴ In relation to externship courses, *Building on Best Practices* states that one of the key responsibilities of the faculty supervisor is to “hold the field supervisor accountable for his teaching in the field.” *Building on Best Practices*, *supra* note 8, at 218. These mechanisms would be in addition to those used to instruct the site supervisors about expectations and to train them in clinical pedagogies – which site supervisors likely will view as assistance.

¹⁷⁵ *Cf. id.* at 232-33 (discussing ways to monitor student work and solicit information from students as a strategy for ensuring the quality of the educational experience).

¹⁷⁶ *See supra* Part I.B.2.

involve control and assistance by law faculty with expertise in clinical pedagogy and experiential learning. Nonetheless, this model of clinical course remains less costly than the traditional in-house clinic model or other hybrid models. It will be more costly than a traditional externship but, if properly developed, it will be providing a clinic experience that is a step up from what, realistically, can be achieved in most externships. Working to enhance the quality of externships is a good practice, but success is heightened when combined with strategies such as designating supervisors as adjunct instructors and providing some level of compensation; strategies that help motivate site supervisors to do a better job and, at the same time, make it reasonable for law schools to set, and expect compliance with, higher expectations. For law schools with very limited resources, developing hybrid courses may be the only feasible option for moving towards alignment with emerging best practices for clinical education.

CONCLUSION

Although not an exhaustive treatment of issues related to development of hybrid clinic courses, this paper has tried to provide significant guidance – particularly for law schools that may seek to build on existing externship programs and develop courses with characteristics that move them closer to a traditional in-house clinic than an externship course, while retaining some of the unique educational benefits of externships. The paper has addressed many questions likely to arise both within and outside the law school about how to achieve compliance with standards and best practices. It also has presented a wealth of information that can and should be conveyed to community partners during the course development process about how to structure and teach a clinic course, and provided a roadmap for working through the stages of course development.

As stressed in this paper, success in developing hybrid courses will depend in large part on a law school's intensified efforts in reaching out to and working in a collaborative manner with partnering placement sites. But, realistically, it also will depend on the resources of community partners. Although the law school is providing a significant contribution, a successful course still depends largely on attorneys at the placement site being willing and having the time to devote to teaching and supervising students. Some community partners may not be able to devote the resources necessary to implement a hybrid clinic course. Law schools that decide to try to convert some externship courses into hybrid clinic courses should appreciate that, even if a particular course falls short in some respect and thus cannot be la-

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beled as a law clinic, the planning process nonetheless should result in stronger externship course. There is no real downside, then, to making the attempt.

