

# THE EXAMINED EXTERNSHIP IS WORTH DOING: CRITICAL SELF-REFLECTION AND EXTERNSHIP PEDAGOGY

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*Externships are a popular and important component of law school experiential offerings. These experiences provide students with structured learning opportunities that bridge the gap between the classroom and practice. Yet the classes that accompany externships do not demonstrate a fully developed pedagogy that addresses the particular role that externships serve in a student's education. This paper argues that one essential goal of these classes should be to teach students how to learn. Developing the habit of critical self-reflection enables externs to extract profound lessons from the role models and practice experiences they encounter in the field, and continue learning throughout their careers. Drawing from externship and in-house clinical literature, this paper explores how externship educators can effectively use two teaching methods, simulations and rounds, to teach critical self-reflection. These examples are intended to spur the development of externship pedagogy that incorporates habits of self-reflection. The pedagogical methods also speak to the need for greater integration and resourcing of externship programs by law schools.*

## INTRODUCTION

Law school externship programs embody the belief that structured, examined involvement in practice is an essential part of the training of skilled, ethical lawyers. These programs bridge the divide between the practice of law and the classroom. Clinical legal education equips students to use the raw material of their practical legal experience to forge answers to profound questions about life, work, and professional identity. Externship programs aim to elicit thought-

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ful student learning from doing, a project that fits firmly into the clinical paradigm.

How to elicit this learning raises pressing questions. Challenges to effective classroom study inhere in externship learning, as the sections below discuss. The wide variety of externship models raises the question of whether one pedagogical framework or set of teaching materials applies across the differences. Common models of field-based learning include externship or field placement programs, practicum classes, and hybrid clinic-externships.<sup>1</sup> These various experiential models are sometimes understood and described differently. The following typography generally holds true: in both externships and field placement programs, students work off-campus in a legal office or court, earning academic credit and working under the supervision of an attorney or judge. Externs take an accompanying classroom seminar, one-on-one tutorial, or online course. Full-time faculty, adjunct faculty (often practitioners), or externship administrators teach and run these courses. Practicum classes also include fieldwork along with a classroom component, which is likely to be a specific to a practice area and may be taught by full-time faculty. Hybrid clinic-externships are likely to contain a class taught by a full-time faculty member and include students who engage in some direct representation while being supervised by attorneys at the worksite.<sup>2</sup>

The continued growth of externships provides a motivating force to make the programs as educationally rich as possible. Student interest in externship programs continues to expand.<sup>3</sup> This durable trend reflects student desire for contact with the vibrant world of practice while in law school. It reflects a dire legal job market fostering the belief that students need to develop skills and make early inroads with potential employers. It reflects a faltering national economy stressing law school budgets and making externship programs attractive to law school administrations.<sup>4</sup> It also reflects, among many, an abiding be-

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<sup>1</sup> Law schools in the United States use the terms “field placement” and “externship” to describe similar offerings. Although the term “field placement” has the advantage of emphasizing the off-campus, community-based nature of placements, this paper uses the terms interchangeably.

<sup>2</sup> Nancy Maurer & Liz Ryan Cole, *Design, Teach and Manage: Ensuring Educational Integrity in Field Placement Courses*, 19 CLIN. L. REV. 119, 122-23 (2012).

<sup>3</sup> The latest version of the only large-scale survey of data on clinical programs reported that over three-fourths of responding externship programs saw an increase in demand for placements over the previous five years. David Santacroce & Robert Kuehn, *Center for the Study of Applied Legal Education: The 2010-11 Survey of Applied Legal Education*, <http://www.csale.org/files/CSALE.Report.on.2010-11.Survey.5.16.12.Revised.pdf> (hereafter CSALE).

<sup>4</sup> Cynthia Baker & Robert Lancaster, *Under Pressure: Rethinking Externships in a Bleak Economy*, 17 CLIN. L. REV. 71, 82-83 (2010); Robert Condlin, “Tastes Great, Less Filling”: *The Law School Clinic and Political Critique*, 35 J. LEGAL EDUC. 45, 46 (1986)

lief in the educational value of engaging with practicing lawyers and legal institutions.<sup>5</sup>

The vast majority of externship programs require a class along with fieldwork.<sup>6</sup> Law schools clearly believe that a classroom component is important.<sup>7</sup> Yet questions about the purpose of externship seminar classes, what those classes can and should accomplish, and whether law schools should require or even offer them persist in the externship community and beyond.<sup>8</sup> Numerous sessions exploring how to structure and design these classes are presented at each national externship conference.<sup>9</sup> Roy Stuckey observed that “[l]aw teachers have had a surprisingly difficult time articulating the educational goals of externship courses. . . and figuring out what to do with their classroom components.”<sup>10</sup> A number of experienced law teachers who have taught and worked with externs for decades have told me that they are still trying to figure out exactly what their externship classroom component can offer students.

Students enrolled in externship seminars deserve an answer to the question, “why do I have to take this class?” This is a fair question and one that is familiar to many of us teaching externs. These students are arguably paying to work.<sup>11</sup> The externship seminar must add value to the work experience. What this value is should not be a mystery to students. Students should have a clear understanding of why the law school offers — or requires — the class and what the class sets out to do. Enunciating the purpose of externship seminars dem-

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(comparing “economic rather than pedagogic” reasons for offering field placement programs).

<sup>5</sup> Engagement with practice shows how the student experience is a stepping-stone to being an excellent lawyer, fostering the transfer of knowledge from academic study to real life. Susan Ambrose calls teaching our students “to be able to apply what they learn beyond the classroom” the “central goal of education.” SUSAN AMBROSE, *HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING* 108 (Jossey-Bass, 2010).

<sup>6</sup> In 2011, 80% of externship programs included a classroom component. CSALE, *supra* note 3, at 24.

<sup>7</sup> Law schools offer these seminars even though the American Bar Association (ABA) does not require them. The ABA requires externship programs to provide “opportunities for student reflection” in some form. Currently it does not require a classroom component, and only specifies that opportunities for reflection in high-credit externships must be provided contemporaneously with fieldwork. ABA STANDARDS & RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 305(e)(7) (2013-14) (hereafter ABA STANDARDS).

<sup>8</sup> Erica Eisinger, *The Externship Class Requirement: An Idea Whose Time Has Passed*, 10 CLIN. L. REV. 659 (2004).

<sup>9</sup> See *infra*, n.38.

<sup>10</sup> ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND ROAD MAP*, 198 (Clinical Legal Education Association 2007) (hereafter cited as “Best Practices Report”).

<sup>11</sup> Maurer et al., *supra* note 2, at 140-42

onstrates their relevance to each students' work, despite the fact that one placement in the general counsel's office of an international human rights advocacy group, for example, may be worlds apart from another placement at a housing law center and another at a public defender's office. Clarifying how the lessons of the course apply more broadly promotes transfer of learning from classroom to life, with a firm understanding of how skills and concepts cross practice area and organization-specific boundaries.<sup>12</sup>

This paper argues that one express goal of field placement classes should be to help students learn how to learn. These courses should teach self-assessment and critical reflection, so students gain the ability to learn throughout their careers. Externships should teach skills to help students expertly analyze law, learn from mistakes, solve supervision problems, critique institutions from within, hone researching and writing, make ethics calls, and sound out the values that will undergird their careers.<sup>13</sup> This reflection-focused approach has roots in in-house live-client clinical teaching; in this paper, the methods are imported into the field placement context to show how they can be used in class to yield insights that reverberate beyond the semester.

Developing the skill of learning how to learn is critical because the real world of law practice contains boundless lessons for externs who have — or develop — the capability to learn from their experiences. Externship placements offer students rich raw material to study, and a wealth of opportunities to practice critical assessment and reflection. The law offices and judges' chambers where students work typically operate at breakneck pace, exposing students to inscrutable vocabulary, Dickensian court processes, case dispositions and theories which are moving targets, examples of lawyering ranging from exemplary to dastardly, and clients with intractable woes or unremitting demands. Students may be bruised by their supervisors' raw egos or inspired by their wisdom.

Externship students and their teachers step onto this rocky road together. Law practice is the terrain, the supervising attorney or judge is the more- or less-skillful guide, and classmates are fellow travelers.<sup>14</sup> The externship teacher fits into this picture as a maker of

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<sup>12</sup> The MacCrate Report identified some of these critical and transferable skills and values. 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) 138-41 (1992) (hereafter cited as “MacCrate Report”).

<sup>13</sup> Learning how to learn may also be defined as becoming a “self-directed learner.” Sandy Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLIN. L. REV. 55, 68 (1996).

<sup>14</sup> Students will travel on individualized journeys and arrive at different destinations at

meaning, helping seekers make sense of where they come from and proceed to.

Navigating the gulf between classroom and workplace calls upon externs to straddle multiple worlds. They must explain work experiences in their practice area to fellow students working in other fields. They must report back to a teacher with very different imperatives from those of the supervising attorney or judge. They must ask questions in the workplace — such as in a goals agenda assignment<sup>15</sup> or mid-term meeting<sup>16</sup> — that the academy requires or motivates them to ask. They must resolve supervision problems with solutions crafted and mooted in seminar. Traversing these differences and distances calls upon essential lawyering skills of communication, observation, and judgment. The field experience is the “text” for critical analysis.<sup>17</sup> To interpret successfully, externship students must be sharp observers, good listeners, adept managers, accurate reporters and keen analysts.

The path to success in these areas is distinct from the paths teachers and students follow in other law school classes. Externship classroom learning is different from in-house clinics in which students are likely to assume the role of primary lawyer and have an apprentice relationship with a faculty supervisor. It is different from learning in a podium class with a goal of mastering legal reasoning through close study of the primary sources of law. It is different from a simulation class with a closed universe of facts and the opportunity to repeat skills where mistakes do not hurt clients.

The demands of these roles and dynamics necessitate development of a unique externship pedagogy within the law school.<sup>18</sup> Effective externship teaching does not just happen. Externship teachers and programs must thoughtfully create academic components that amplify the lessons of fieldwork. Faculty must find ways to set and

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different points in time. Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLIN. L. REV. 317, 326-29 (2014) (reviewing literature in cognitive psychology and andragogical theory contemplating learners at different stages of development).

<sup>15</sup> Leah Wortham, *Setting Goals for the Externship*, in LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS 11, 11-15 (J. P. Ogilvy, Leah Wortham, & Lisa G. Lerman eds., 2d ed. 2007) (hereafter cited as LEARNING FROM PRACTICE).

<sup>16</sup> Laurie Barron, *Learning How to Learn: Carnegie's Third Apprenticeship*, 18 CLIN. L. REV. 101 (2011).

<sup>17</sup> Peter Jaszi, Ann Shalleck, Marlana Valdez & Susan Carle, *Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University*, 5 CLIN. L. REV. 403, 404 (1999) (tracing early development of WCL's externship program).

<sup>18</sup> Minna Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185 (1989) (tracing evolution of in-house clinical pedagogy over 1970s-'80s as prevalence, funding, sophistication, student demand and place within law schools changed).

reach common goals for externship students.<sup>19</sup> At the same time they must incorporate the contrary lesson that class aims must be open-ended and flexible.<sup>20</sup> Even the most well-prepared teachers cannot know what externs will do at work or will bring up in class. This need for openness is inherent in experiential work.<sup>21</sup> The unpredictability is exciting and foreshadows legal practice.

The following sections explore concepts and methods to guide and elicit effective teaching and learning in field placement programs, contributing to the discussion of how we can encourage intensive, purposeful learning in these classrooms. Section II considers why reflection is not currently a central or even a particularly important strand of externship pedagogy, by looking at institutional and attitudinal forces in law school communities, reviewing the literature in this area, and highlighting aspects of externship classes that present challenges and opportunities for the adoption of reflection-oriented teaching. Section II walks through three teaching methods which can effectively infuse this type of teaching into externship classrooms. The first example shows how externship faculty can utilize simulations to teach reflective practices. The second example shows how externship faculty can use rounds to teach reflection. The third example shows how externship directors, faculty or others engaged in designing externship programs can use simulations to prepare externship teachers themselves to teach reflection. The conclusion suggests implications of the paper's thesis that critical self-reflection should be woven into the DNA of externship programs.

This article delves into what externship classes can accomplish when thoughtfully planned and taught, answering "whether and why"<sup>22</sup> classes should be required along with fieldwork. Showing the classes' value refutes the contrary belief that seminars are not necessary or not effective.<sup>23</sup> This critique may have held true in the past.<sup>24</sup>

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<sup>19</sup> Best Practices Report, *supra* note 10, at 168.

<sup>20</sup> Goals will be "idiosyncratic" because teachers and students have "individualized interests and needs." Ogilvy, *supra* note 13, at 63.

<sup>21</sup> Externship fieldwork, like work in in-house clinics, regularly presents students with "disorienting moments" — experiences that are "unsettling or puzzling or somewhat incongruous with [a] present meaning structure," capturing students' attention and offering the opportunity to "transform how they think and act." Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLIN. L. REV. 37, 51 (1995).

<sup>22</sup> Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLIN. L. REV. 347, 351 (1999).

<sup>23</sup> See e.g. Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994). Questions about whether a teacher or classroom component is necessary to get students to engage in reflection demand answers, however. Advocates for developing externship classes must engage with the argument that students are equipped to distill insight on their own, and the most

It does not stand up at this juncture.

## I. BOUNDARIES AND BARRIERS

Reflection is a basic skill, providing a gateway to the “broader process of learning from experience.”<sup>25</sup> This article argues that it should be a fundamental plank of externship pedagogy. Yet it is not. This section explores the reasons why this is the case.

### A. *Institutional and Attitudinal Barriers*

There are a number of barriers to adopting a reflective orientation in externship classes. Traditionally externship educators have simply spent time doing other things. Venerable and valuable learning activities for externs include honing student professionalism and job contacts, practicing skills such as presentation or advocacy skills, and working on ethical issues common to all placements such as confidentiality and conflicts. Externships have also been seen as a poor stepchild to in-house clinics, parallel to the way the clinics are viewed by some, as unfortunately and incorrectly, as second-rate compared to podium classes. Externships are arguably closer than any other law school class to the world of law practice, which is far from what some law faculty see as a proper course of study for law students. Tensions, and the perception of them, arise at times between the in-house and externship communities over the spectre or reality of turf battles over funding and position between the two types of experiential learning. Finally, the staffing and location of externship programs influences how clinically-oriented the programs are. They are commonly within or connected to career services offices. They may utilize practitioners hired as adjunct faculty, relying on teachers who are more affordable within law school budgets but less familiar with experiential learning concepts. These structural elements can have the effect of separating

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empowering thing law schools can do is put them in the mix and let them draw their own conclusions. Southwestern Law School’s externship program, featuring non-clinical-faculty overseeing student journals asking for reflection on specified topics and no classroom component, terms itself a “fieldwork-centered approach” providing “a robust educational experience that is best realized through immersion into the real world of practice and is supported by the convenience of online guided reflections.” Anahid Gharakhanian, *ABA Standard 305’s “Guided Reflections”: a Perfect Fit for Guided Fieldwork*, 14 CLIN. L. REV. 61, 68 (2007).

<sup>24</sup> Minna Kotkin noted in 1989 that externship offerings were not developed to the point of being able to position students well to learn from externship experiences. Kotkin, *supra* note 18, at 198-99.

<sup>25</sup> Susan Bryant, Elliott Milstein & Ann Shalleck, *Learning Goals for Clinical Programs*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 13, 24 (Susan Bryant, Elliott Milstein & Ann Shalleck, eds., 2014) (hereafter cited as TRANSFORMING THE EDUCATION OF LAWYERS).

externships from the intellectual life of the law school.

### B. *Lack of Teaching Methodologies*

This article operates on the premise that the above barriers are surmountable. The conclusion of this article lists implications and ideas of how to storm and break the barriers down. This effort builds on the efforts externship educators have made over time to articulate a robust pedagogical framework for learning in the field.<sup>26</sup> Mary Jo Eyster wrote in 1999 that using reflection and critical thinking to teach learning from experience is “fundamentally important and incredibly well suited to an externship program.”<sup>27</sup> Faculty and staff at American University’s Washington College of Law, which at the time utilized full-time faculty to teach externship classes, wrote on the program’s goals in 1999. They sounded a call for a reflective pedagogy as they sought for “students to observe the realities they are likely to face in practice, to develop some critical perspective on the conditions they find, and to begin to develop strategies for realizing their goals and values within these settings.”<sup>28</sup>

The externship textbook *Learning from Practice* contains two chapters with significant focus on reflection, expressing the authors’ common understanding of its importance in externship study. Sandy Ogilvy’s chapter on journals advises that the writings help students “to become more aware of their preferred modes of learning, to become more aware of their strengths and weaknesses as learners, and to become more efficient at self-evaluation.”<sup>29</sup> Margaret Martin Barry’s chapter on reflective lawyering addresses students: when you reflect, you are “thinking in a disciplined manner about what you do as a lawyer. You articulate observations about action taken to comprehend and integrate new knowledge so that it can become a basis for future actions.”<sup>30</sup>

A number of externship educators and scholars persuasively encourage the use of written journals to promote reflection. Stacy Caplow wrote that journaling fosters “self-reflective dialogue between student and teacher.”<sup>31</sup> Judicial externs’ “own lives and stories con-

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<sup>26</sup> See e.g. Nancy M. Maurer & Robert F. Seibel, *Addressing Problems of Power and Supervision in Field Placements*, 17 CLIN. L. REV. 145 (2010); Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLIN. L. REV. 611 (2004); Jaszi et al., *supra* note 17.

<sup>27</sup> Eyster, *supra* note 22, at 359.

<sup>28</sup> Jaszi et al., *supra* note 17 at 405.

<sup>29</sup> J.P. Ogilvy, *Journals*, in LEARNING FROM PRACTICE 199, *supra* note 15, at 202.

<sup>30</sup> Margaret Martin Barry, *Reflective Lawyering*, in LEARNING FROM PRACTICE 145, *supra* note 15, at 146.

<sup>31</sup> Stacy Caplow, *From Courtroom to Classroom: Creating an Academic Component to*

tribute to their education as they integrate their observations and experiences with their personal beliefs.”<sup>32</sup> Journal-writing “inculcate[s] a life-long habit of detachment from and honest reaction to their immediate surroundings. . .”<sup>33</sup> Sandy Ogilvy finds that these personal, semi-private writings “consistently represent a quality of introspection and reflection that, while not deeply philosophical, is substantial.”<sup>34</sup> Timothy Casey holds that “reflection occurs primarily in the form of written assignments.”<sup>35</sup> Building on research from psychological and cognitive theory, he advocates structuring law school classes to teach reflection by progressing through increasingly-sophisticated “stages of reflection.” Using examples from externship journals, Casey explains how the stages ask students to compare their performances against objective professional standards, revisit choices, investigate the range of factors affecting those choices, and assess their own powers of reflection.<sup>36</sup>

In today’s burgeoning scholarship on externships, however, relatively little focuses on the importance of teaching the habit of reflection, and even less on teaching this habit in the classroom.<sup>37</sup> The national externship conferences held every few years teem with imaginative, incisive sessions on all aspects of field placements, including on the classroom component. Only a handful of session titles over the years address the possibilities of bringing in reflective practice.<sup>38</sup>

### C. Structural Factors

There are built-in aspects of the externship classroom with which teachers must grapple. One of these is that generally teachers do not supervise student fieldwork. This definitional yet vexing fact has cru-

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*Enhance the Skills and Values Learned in a Student Judicial Clerkship Clinic*, 75 NEB. L. REV. 872, 895-96 (1996).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 909.

<sup>34</sup> Ogilvy, *supra* note 13, at 59.

<sup>35</sup> Casey, *supra* note 14 at n.137.

<sup>36</sup> *Id.* at 347-48.

<sup>37</sup> J.P. Ogilvy & Harriet Katz, *Legal Externship Bibliography*, <http://lexternweb.law.edu/bibliography.cfm>.

<sup>38</sup> Arlene Kanter, Speedy Rice, Alex Scherr, *Fostering Critical Reflection through the Externship Seminar* (presented at Learning from Practice: Developments in Externship Pedagogy, May 5-8, 1998); Linda Morton, Janet Weinstein, Bob Seibel, *Toys, Chocolate and Clay: Exercises to Promote Creative and Reflective Thinking in Externship Students* (presented at Externships 3: Learning from Practice, March 24-25, 2006); Laurie Barron, Suzanne Harrington-Steppen, *Mid-Semester Evaluations: An Adaptable Tool Kit for Any Program* (presented at Externships 6: Preparing Lawyers: The Role of Field Placement, March 1-4, 2012); Timothy W. Floyd, Daisy Hurst Floyd, *Career Development Versus Reflective and Substantive Pedagogy: Can this Tension Be Reconciled?* (presented at Externships 7: Scaling New Heights: Field Placements and the Reform of Legal Education, February 27 - March 2, 2014).

cial implications for teaching and learning.<sup>39</sup> In-class discussion of fieldwork is at arm's length, with the advantages and drawbacks that distance provides. As an example of an advantage, an externship instructor who teaches — but does not supervise — students in diverse placements can weave together general concepts and workplace specifics so students “discover how instrumental and critical perspectives intertwine to make a complete frame of reference.”<sup>40</sup> The distance also enables the teacher to “relinquish control of the learning agenda to the student, and to independently raise issues of interest that are not directly related to the case.”<sup>41</sup> It creates the ability to examine supervision problems and critique institutions from within, in contrast to in-house clinics whose structure lends itself less to these inquiries. As an example of a drawback, the externship teacher generally lacks familiarity and problem-solving responsibility since externs “are enmeshed in a complex system with respect to which the faculty supervisor is an outsider.”<sup>42</sup>

The additional fact that field placement classes generally include students in disparate placements must also inform externship pedagogy. Students are often grouped into classes in broad categories such as civil, criminal justice or government practice.<sup>43</sup> Field placement class goals and design in such a class must serve students in different areas of law. The teacher must communicate the relevance of what is done in class so students buy in to subject matter outside the confines of their fieldwork. This buy-in is necessary to motivate the transfer of classroom lessons to students' later work lives.

#### D. Opportunities

This paper suggests that reflection can flourish in a small, supportive class where the teacher and course design encourage risks and experimentation. In the hands of a skillful teacher, students can take

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<sup>39</sup> There are other important differences between field placement programs and in-house clinics, such as the leading role likely to be filled by in-house students rather than the supporting role filled by externship students. However, this article focuses on the two differences that most strongly demonstrate the need for a clinically-oriented approach to classroom teaching in field placement classes.

<sup>40</sup> Condlin, *supra* note 4, at 66 (observing that supervising attorneys, with their case- and client-oriented scope, and classroom instructors, with their academic lens, “complement one another in their approach to the student's supervision”).

<sup>41</sup> Robert F. Seibel & Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLIN. L. REV. 413, 417-18 (1996)

<sup>42</sup> Jaszi et al., *supra* note 17, at 412. Instructors are “far removed from the project and its context.” Gharakhanian, *supra* note 23, at 68.

<sup>43</sup> This model is quite different from an in-house law clinic, often focused in a single practice area. Some externship programs “include. . . students in dozens of different placements, dealing with dozens of different practice areas, under the supervision of dozens of different practitioners and judges.” *Id.* at 83.

small steps, then larger steps, as they become more proficient and adept at turning a critical lens on their own actions and words as they move towards becoming lawyers. Practicing critical self-reflection is a way to improve in every skill area. There are numerous ways teachers can engage students in this practice, written journals being a prime example. This paper features two teaching methods, simulations and rounds, which I believe hold promise for inculcating this habit. Creative externship teachers are deploying and will doubtlessly continue to originate other effective methods.

The externship seminar is fertile ground, providing opportunities for reflection that the field experience alone does not. The Clinical Legal Education Association's best practices for preparing teachers to teach in field placement programs acknowledge and embrace the unique opportunities for learning these classes offer students.<sup>44</sup> The seminar brings the experience of teachers to bear in the service of student learning and distills "what we want students to take away with them, hold on to, and return to in the future."<sup>45</sup>

The craft of externship teaching in seminar – as opposed to the experiential learning students do on their own on the job – is a key entry point to helping students learn from their field placements.<sup>46</sup> The externship seminar is one of the only places in which a law school encourages students to wrangle lessons from the discipline they are preparing to enter by studying the experience of working with practicing attorneys and judges in the real world. Reflection is a habit that can be learned. Thoughtful teachers can guide students to practice and hopefully adopt the habit.<sup>47</sup> A working definition of reflection in

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<sup>44</sup> Best Practices commentary on experiential teaching generally applies aptly to field placement programs, for example the exhortation to provide explicit learning objectives. Best Practices Report, *supra* note 10, at 168. The upcoming refinements of Roy Stuckey's volume squarely endorse including a thoughtful classroom component in externships. *Building on Best Practices* (BPP), April 2014 draft outline at 3, on file with author. BPP questions the "conscionability" of law schools' charging tuition without providing classroom guided reflection to externs.

<sup>45</sup> Sophie Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 MICH. ST. L. REV. 1, 6 (2004).

<sup>46</sup> In this respect I agree with the emphasis on refining and honing teaching skill that is evident in in-house clinical teaching theory. See, e.g., Ann Shalleck, *Clinical Contexts*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1993-94). Others take a different approach and attempt to ensure positive externship experiences by focusing on training field supervisors. See, e.g., *Manual for Extern Supervisors: Best Practices – A Primer*, Bay Area Consortium on Externships, available at [http://www.aals.org/clinical2012/clinicaltakeaways/Supervising-the-Supervisors-oncurrent/bace\\_extern\\_supervisor\\_manual\\_word\\_spring\\_2012.pdf](http://www.aals.org/clinical2012/clinicaltakeaways/Supervising-the-Supervisors-oncurrent/bace_extern_supervisor_manual_word_spring_2012.pdf), viewed June 11, 2014; Liz Ryan Cole, *Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers*, 19 N.M. L. REV. 163 (1989); James H. Backman, *Externships and New Lawyer Mentoring: The Role the Practicing Lawyer is Filling in Educating Lawyers*, 24 BYU J. PUB. L. 65 (2009); Blanco et al., *supra* note 26.

<sup>47</sup> Some programs utilize tutorials or consults with non-clinical faculty to address ques-

the externship context is to thoughtfully consider aspects of the lawyering students are involved with in order to assess the role of the lawyer, the self as lawyer, and lawyering performance – one’s own and the performance of others – and glean lessons from this consideration.<sup>48</sup> An essential part of the definition is that reflection should be a lifelong part of lawyering, not something just for law school, big cases, or losses. Another aspect is the structured, rather than haphazard, nature of the undertaking.<sup>49</sup> Attention must also be paid to transferability, so students can apply concepts to new settings.<sup>50</sup> The task for field placement educators is to give life to these concepts within field placement classes.

These defining facts create unique opportunities and challenges for student learning in externships, and for their teachers. Developing a conceptual framework for this endeavor is essential. The class can wander aimlessly without a map.<sup>51</sup> The classroom teacher must create an overarching structure for learning that transcends practice area and type of practice.<sup>52</sup> The class as a whole and each segment or assignment should have a purpose the teacher articulates to students so they can understand each session and how it relates to the arc of the course. The urgent demands of practice are unlikely to be present in an externship seminar, in contrast to an in-house clinic, making the relevance of the subject matter less readily apparent.<sup>53</sup> Teachers must know what they want to teach, and announce to students the point of what is being taught in no uncertain or unclear terms.

The contention that field placement courses should teach “learning how to learn” and can succeed in doing so is not a universally held

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tions fieldwork raises for students, but “this teaching format has not achieved its potential in regard to fostering critical reflection that could evolve from such questions.” Harriet N. Katz, *Using Faculty Tutorials to Foster Externship Students’ Critical Reflection*, 5 CLIN. L. REV. 437, 440 (1999).

<sup>48</sup> Seibel et al., *supra* note 41, at 419 (noting paucity of attention paid in the traditional law school curriculum to teaching students to “learn on their own to develop the ability to analyze their own performances and the performance of others within the legal system”).

<sup>49</sup> Barry, in *LEARNING FROM PRACTICE* 145, *supra* note 15, at 146 (defining reflection as thinking “in a disciplined manner” about lawyering).

<sup>50</sup> Bryant, Milstein & Shalleck, in *TRANSFORMING THE EDUCATION OF LAWYERS* 13, *supra* note 25, at 20.

<sup>51</sup> This is along the lines of Yogi Berra’s classic quote, “if you don’t know where you’re going, you’ll never get there.”

<sup>52</sup> Externs cannot engage in the “building-block learning” that a shared practice area and type of representation can support. Susan Bryant & Elliot Milstein, *Rounds: A “Signature Pedagogy” for Clinical Education*, 14 CLIN. L. REV. 195, n.18 (2007).

<sup>53</sup> *Id.* at 222. “In-time learning” is knowledge that students are highly motivated to acquire because they perceive an immediate need to know it for a case at hand. *See also* Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 329 (1982) (andragogical theory in education lends the insight that “adults seek to apply learning immediately”).

position. It is possible that practicing skills, exploring models of professionalism, and conveying substantive law are the boundaries of what field placement classes can realistically accomplish. Yet forgoing the opportunity to engage students in critical self-reflection and try to make this reflection a habit underestimates externship faculty and may settle for an impoverished version of all the real world can teach students. The following sections seek instead to harness the deep resources among externship teachers and students to promote a reflective externship pedagogy.

## II. PATHS TO REFLECTIVE PRACTICE

The following three sections address teaching methods to promote reflective practice in externship seminars. The first two methods are to be used by externship teachers in teaching students. These methods, simulations and rounds, are familiar in other contexts, notably in-house teaching but also skills classes, and also appear in the externship world. Here simulations are used to show how powerful in-role work can be in helping externs in diverse placements find commonalities that support deep learning. Externship rounds, likewise, depend on the classroom teacher identifying common themes and lessons from disparate student fieldwork, and build students' collaborative and reflective skills by exploring the lessons of fieldwork. The final section takes a different tack in suggesting that externship teachers themselves can benefit from training utilizing simulations, in order to adapt to new teaching contexts and goals. In the third section, the article shifts from how students learn to how teachers learn, using clinical and experiential methods in ways similar to and also different from those that benefit students. This last example addresses the different groups from which externship teachers are likely to be drawn and how each can grow as effective teachers.

### *A. Student Learning Through Simulations*

Utilizing simulations that thrust students into the lawyer's role offers unique benefits in field placement seminars. It engages students, opening them up to externship learning. In teaching evaluations in externship classes at the Benjamin N. Cardozo School of Law, some students single simulations out for praise.<sup>54</sup> Playing a part can

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<sup>54</sup> Comments include: "good job of presenting real-life legal problems that do not have easy solutions"; "integration of real-life experiences and examples makes it a fun learning experience"; "I really liked the hypotheticals because they taught us about real-life situations"; the exercises "enriched the value of placements"; "interviewing exercise was very helpful"; "great problem-solving seminar"; "in-house exercises were helpful"; "the in-class exercises were very helpful and applicable to in-house practice"; "the professor creating

shed bright light, as a role is assumed and a new perspective is experienced. Simulation work provides externs with the opportunity to assimilate what they have seen and done on the job by going through the motions of practicing skills, exercising judgment, and reflecting on what they have done.<sup>55</sup> Simulations involving basic skills like negotiating or counseling bind together disparate placements by showing students how basic lawyering tools transfer across practice areas. For faculty who are practitioners, teaching with role-plays draws on their years of exposure to different practice styles and their comprehension of what makes for effective lawyering.<sup>56</sup> Play-acting can make people self-conscious so they joke around about their role, half-participating and half-mocking; putting the exercise into the context of learning how to practice law reduces anxiety and increases commitment to a role.

This section walks through the process of creating a simulation for use in an externship seminar. In doing so it illustrates the tremendous potential of this teaching method for eliciting self-reflection and self-critique in the classroom. While simulations like NITA fact patterns are commonly used and shared throughout the clinical teaching community, this discussion proceeds on the assumption that teachers will understand and use simulations most effectively when they are grounded in that teacher's experience and individually created to accomplish the teaching goals that teacher wants to accomplish.<sup>57</sup>

### 1. *Constructing the Simulation*

A simulation must have well-developed facts and goals. It can be set in any practice area, exercise any lawyering skill or tool, and aim

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the hypos made it more interesting"; "the skills we learned overall were relevant to various fields and practice areas"; "some of the classes were even fun"; "I thought the hypotheticals and role-playing exercises were a nice, interactive way to cover the subject matter"; "I liked the group exercises"; "I liked the active learning-group projects" (evaluations on file with author). These selected positive comments from a decided minority of our students do not belie the common wisdom and lived experience of many externship teachers that "externship students nearly always prefer to put energy and time into fieldwork experience of any type rather than into school assignments related to the program." Katz, *supra* note 47, at 447.

<sup>55</sup> Eyster, *supra* note 22, at 359 (arguing that role plays in field placement classes go beyond skills training and foster the synthesizing of doctrinal teaching with law practice, for example in a role-played deposition in which students "start to connect the concepts of evidence and theory of the case to the practical difficulties of adducing evidence").

<sup>56</sup> To be sure, not all practitioners are a good fit to teach these programs, and excellent candidates should be selected from among those practitioners who "continue to exercise critical judgment and have come to an advanced understanding of the issues, which they can share with students." *Id.* at 442.

<sup>57</sup> The process of deciding on goals focuses the teacher "to think more carefully about what we believe are the most important purposes of our courses and guide us in designing the delivery of the promised outcomes." Best Practices Report, *supra* note 10, at 200.

for any goal related to professional excellence.<sup>58</sup> Just a few examples of valuable goals are: sharpening verbal communication, practicing collaborative problem-solving, engaging in effective oral argument before a court, crafting the theory of a case, or untangling a complex set of disputed facts. Any lawyering challenge that riveted or provoked the teacher has the potential to induce student learning. To generate ideas, teachers should brainstorm what stands out in their own legal experience: what was puzzling, memorable, thorny? The teacher's fascination will stir up interest among students.

The following are examples of simulations created by Cardozo externship faculty in conjunction with the externship program and used in our seminars:

- One teacher with deep experience in housing law created a simulation around a landlord-tenant conflict over unpaid rent and an age discrimination charge, based on a case in New York City's Chinatown. Students read relevant sections of New York's Rules of Professional Conduct and a trial court decision. They were assigned as lawyers for the tenant or for the landlord. Over the semester they prepared for and conducted a client interview, a telephone negotiation, and an oral argument in housing court. The extended simulation looked at issues around legal and informal advocacy, fact-gathering, and communicating across cultural differences.
- Another teacher who created and runs a mixed nonprofit/"low-bono" immigration practice created a simulation in which students had to brainstorm their dream legal nonprofit, then create a five-year business plan and pitch it to their law school's legal incubator program to attain funding and office space, as she had done. This exercise aimed to familiarize students with the practicalities of starting one's own legal practice and encourage them to be creative about their career paths.
- The teacher for students working in in-house counsel placements, an experienced corporate general counsel, created a simulation based on his experience representing a high-end French fashion designer. The client discovered knockoffs of his designs being sold on Canal Street. Furious, he insisted on meeting with his lawyer right away. Students read an article comparing European and U.S. fashion law and prepared for and conducted a com-

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<sup>58</sup> Kelly Terry, *Embedding Assessment Principles in Externships*, 20 CLIN. L. REV. 467, 489 (2014) (stating that "no single learning goal is superior," but goals must be intentionally and carefully selected). See also Susan Bryant & Elliot Milstein, *The Clinical Seminar: Choosing the Content and Methods for Teaching in the Seminar*, in TRANSFORMING THE EDUCATION OF LAWYERS 33, *supra* note 25, at 34 (stating that there is "an almost endless list of possible topics that students might engage with on their path to being excellent lawyers").

mand-performance meeting with a high-maintenance client who wanted the impossible – yesterday.

- Another teacher of a class with students in various government placements devised a simulation based on the then-pending class action litigation contesting New York City’s stop-and-frisk policies. The simulation entailed progressive procedural steps in the lawsuit including interviewing a client, drafting pleadings and discovery requests, and participating in a settlement conference.

All of the above simulations were specific to a practice area, yet they were created for and taught to students in disparate placements, many outside the practice area the simulation addressed. In my experience, students can and will become interested and invest in facts that have nothing to do with their own fieldwork. This will only happen when the teacher makes it very clear to students how role-playing in a new, unfamiliar area unrelated to their fieldwork will benefit them. As a threshold matter, the simulation should touch on intrinsically interesting and topical subjects like those above to stimulate student interest. Referring to broad lawyering skills involved also makes new simulations relatable. At Cardozo, the teachers and the externship program spend considerable time developing simulations, articulating goals for the simulations that cut across practice areas, and strategizing how to communicate those goals in syllabi and in class.

Through this process, faculty new to experiential teaching learn that there is no simple or scientific way to construct a working, educational simulation except to prepare thoughtfully and take a stab. However, thorough preparation attends to details that make a simulation succeed.<sup>59</sup> The fact pattern involved must be carefully designed to advance the session’s goals. The person conducting the training (hereafter the “trainer”) should carefully consider what facts and roles are involved; how long various segments last; and what is set in stone and what is subject to judgment. Material facts must be conveyed. Lack of time management can mean the simulation eats up the entire class session. Critique tends to be shunted aside as the simulation expands to fit available time.

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<sup>59</sup> Failing to work up parameters sufficiently can result in confusion or frustration. In one simulation I observed, externship faculty assigned students to act as prosecutors or defense attorneys negotiating a plea bargain in a wage-and-hour violation case at a car wash. Students were assigned roles and given a criminal complaint. They were not, however, provided with information about what weight of the case might be – a year in jail? \$50 fine? – or how the adversaries would typically negotiate — on the phone? In court in front of a judge? As the instructors later observed, the students floundered, a superficial negotiation ensued, and students left appearing frustrated. The instructors realized that students needed to be armed with sufficient facts to create a jumping-off point from which they could dig into the role and improvise at a high level.

This section uses a real-life scenario from the criminal justice arena to illustrate constructing and conducting a simulation for externs. The setting is a seminar for students in criminal justice-related placements. Externs work in public defender offices, state and federal prosecutors' offices, and for criminal court trial judges and judges at the state and federal level who hear criminal cases.

The facts of the simulation come from an actual high-profile situation in which the Manhattan District Attorney's Office had to decide whether to prosecute international financier Dominique Strauss Kahn with sexual assault against a woman working as a maid in a hotel (the "DSK case").<sup>60</sup> The simulation consists of an internal strategy meeting in which lower-level prosecutors make the case to continue or drop the case to the Manhattan District Attorney and his deputies, in the aftermath of publicly-aired death blows to the complainant's credibility. The teacher assigns each student to be part of one of three teams: prosecutors who think the case should go forward; prosecutors who think the indictment should be dismissed; and the District Attorney of New York County, Cyrus Vance, and his top aides, who will make the decision. There will be one meeting with all students participating.<sup>61</sup> The exercise aims to create investment in a topical and controversial case towards the goals of illustrating challenging practice skills relevant to students working in many areas of law.

## 2. *Preparing to Conduct the Simulation*

Before class, reading materials are often necessary to give background so class time is not wasted. In class, the teacher should introduce the simulation to students, explaining goals and methods. Negotiating, interviewing, counseling, gaining mastery over caselaw or statutes, and translating complex ideas into simple language are examples of skills which relate to the work of every lawyer. Students recognize this. Externship teachers must spell out the relevance of what they to do their students' future lawyering – more than once. This transparency is essential to bring students on board with the exercise and show how they can benefit from it.

This groundwork helps dispel the notion some law students (and others) have that it is enough to be smart and stand up and make arguments off the cuff. Fleshing out facts, assigning reading (and es-

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<sup>60</sup> The idea for this simulation came from Gail Rubin, Chief of Affirmative Litigation, New York City Law Department, who first used it in a Cardozo externship seminar for students in government placements. I have since adapted and used it for a seminar for students in criminal-justice placements.

<sup>61</sup> This could also be done with simultaneous small groups. Teachers should consider the pedagogical and logistical implications involved with such decisions in advance.

tablishing the expectation that it be done), and expressly including prep time during class convey to students the need for lawyers to be well-prepared. The professor should tell the class what the learning goals are and why they matter. She should then instruct them what the protocol will be and what to expect.

*Professor: Today we are going to conduct a simulation based on the DSK case you have read about. We read the prosecution's Recommendation for Dismissal and the news articles. In our next hour you will work on the skills of persuasive verbal communication – specifically, advocating for a position within your office, not against an opponent — and mastering a set of complex and disputed facts. This exercise in advocacy relates to the work lawyers do across many settings. Afterwards we'll practice assessing our own performance, a step always necessary for improvement.*

The class should prepare, modeling a good lawyer's thorough preparation.

*Professor: Now each group will go to a separate corner for 25 minutes to prepare for the meeting. Talk about how you'll start when it's your turn to present to Vance and his aides. What are your best arguments? What will be your first words? What should you assume they already know? What arguments will the other side make, and how will you respond? Who will speak? Vance group, figure out how you will decide this issue. What do you need to know? How can this meeting be useful for you? What arguments do you want answers to?*

### 3. *Conducting the Simulation*

After providing facts and assigning roles, the class commences the simulation. The trainer should say “action!” or otherwise concretely indicate the point at which the simulation begins. Identifying the moment when participants start playing a role indicates the show is about to begin and heightens buy-in. The momentum of the scene then intensifies. The action at hand takes on a life of its own; participants respond spontaneously as they would in real life. They jump off the facts given and make the leaps of logic and advocacy that lawyers make. The teacher should call time at the end of the simulation to definitively mark an end point and the commencement of the next step.

#### 4. *Debriefing the Simulation*

A structured debrief must follow the simulation.<sup>62</sup> An unexamined role-play squanders potential for learning. The exhaling and relief that accompany stepping out of role introduce a moment ripe for insight. There is no one debriefing protocol or order that fits all simulations, but to be fruitful, critique should be thoughtfully pre-planned. At the same time, the process of reflection should not be rigid but should sprout organically from what happened in the previous minutes.

Self-assessment can be a powerful tool. It is invaluable for a lawyer to be able to dispassionately and accurately assess her own performance to correct her course. Asking students to comment on their performances conveys to the class that examining one's experience practicing law is important and worthy of academic focus.<sup>63</sup> It conveys that lawyers should develop the habit of self-reflection.

The simulation should aid in practicing peer critique skills. A lawyer who can perceptively and constructively give feedback to a colleague or subordinate will be a tremendous resource. The class should listen to a student checking in and ask her questions before giving their opinions on whether she did well or not and what she should have done.<sup>64</sup> They should suspend judgment, creating an atmosphere so the reporting student feels comfortable being vulnerable enough to engage in frank self-critique.

As a cardinal principle, the debrief must reference the goals of the simulation. The role-play was done for reasons which should not be abandoned. The purposefulness of circling back to the starting point conveys a message about the need for rigor and direction in the study of experience. By returning to the goals stated at the outset, the teacher models setting goals and evaluating progress. This habit is

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<sup>62</sup> Without structured feedback, "self-assessment is an after-thought. . . [which is] often underdeveloped, inconsistent, and incomplete. . . ." Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLIN. L. REV. 143, 153 (2006).

<sup>63</sup> Casey, *supra* note 14, at 319 (stating that "conscious and deliberate analysis of a lawyering performance can provide the new lawyer with insights" supporting well-grounded decision-making and broad understanding of important background information).

<sup>64</sup> After participants engage in interactive work they should "give their own interpretations of what. . . transpired as it was seen and immediately experienced. . ." They should "talk about what pleased and worried them. . . what they feel could be improved in their own actions, and what issues they think are unresolved. . ." Observers of the interaction should "ask questions of the [participant]. . . about their actions and the instincts, reasoning and assumptions that informed these." STEPHEN D. BROOKFIELD, *THE SKILLFUL TEACHER: ON TECHNIQUE, TRUST, AND RESPONSIVENESS IN THE CLASSROOM*, 123-130 (1990).

fundamental to practicing critical self-reflection.

*Professor: Very intense meeting. Let's take a breath and look back at your choices. Dan, what happened with your pitch?*

*Dan: I told them our job is to prosecute criminals and there's victim testimony that this assault occurred. I couldn't believe they would actually consider dismissing the indictment. I don't think cases like this should be dismissed.*

*Professor: What was your strategy?*

*Dan: Tell it like it is. This is the trenches. No one's pulling any punches. They hired me, they should trust what I say.*

*Professor: How effective do you think your strategy was?*

*Dan: Probably not very.*

*Professor: Why?*

*Dan: I didn't detect a lot of responsiveness. Nobody was nodding.*

*Professor: Anita, as Cy Vance, what seemed effective and ineffective to you about Dan's pitch?*

*Anita: He definitely cared. I stopped listening at a certain point because it seemed kind of one-sided. I kept waiting to hear what he thought about the victim's credibility falling apart.*

*Professor: Jill, how did you deal with this, as a colleague with an opposing view?*

*Jill: Our position was that we shouldn't take a case to trial that we can't win. We didn't really get back to that. I think they wanted to hear both sides.*

*Professor: Putting yourself into Vance's shoes, Dan, what would be useful coming from you?*

*Dan: Not just arguments but. . .counter-arguments. Answers to the press, the city, the cops.*

*Professor: And what made you decide not to go there?*

*Dan: I didn't decide. I basically lost it.*

*Professor: What would you do in the same shoes again?*

*Dan: Maybe dial down on the passion. I see lawyers lose it in court sometimes, and it's not pretty. It's not professional.*

An ordered plan is apparent here. The teacher refers generally to the goals she laid out at the beginning of the exercise, reminding students that lawyerly decision making is on the table. She questions one student, Dan, about that student's performance, and then seeks feedback from two other students. The order is important. The ability to create one's own critique can easily be squelched by a teacher or another student speaking first.

The teacher's authentic questions express that the group is collaboratively seeking insight. She is curious, not a sage enlightening students about things she already knows. By bringing in other students to comment on what happened, the teacher expresses that the class is partnering to analyze a lawyer's effectiveness. There is no guarantee of generating insight in each class. Dan's answer could also be a defensive "I did what I did, and I stand by it." It is hard to admit failure. Others in the class may still learn, however, absorbing the value of dispassionate, focused self-critique. And the lack of effectiveness of Dan's bluster may sink in with him later when he's less embarrassed, and generate self-reflection.

Engaging in exploration of what went into a lawyering choice conveys that making such choices should be an examined process. The message that there is nothing rote about effective legal decision making emerges. The exercise provides practice in the habit of making thoughtful, conscious choices about what benefits a client or case. Well-designed and debriefed simulations with clearly-articulated goals are uniquely positioned to teach reflection in externship seminars.

### *B. Student Learning Through Rounds*

Learning skills through the use of rounds is a worthy goal in field placement classes. All of us chat about work, nursing wounds, puzzling over problems, reliving triumphs. Structured rounds led by a well-trained teacher infuse this process with productivity, extracting deep lessons and inculcating habits of reflection, listening and collaboration.<sup>65</sup> Fieldwork issues are still fresh since classes closely follow work experiences. Questions from the instructor and class can stimulate student memories "evocative enough to recreate the relevant experience in the student's mind when it comes times for analysis."<sup>66</sup> Students deeply engaged in rounds practice drawing upon each other as resources. They experience one another as "peers and experts."<sup>67</sup> Their understanding of their professional role grows as they come to see themselves as agents of change, not as subordinates who are powerless to improve their circumstances.

A look at rounds in the in-house clinical classroom is useful in this context. In-house rounds are an area of rich curricular development, especially in Susan Bryant and Elliot Milstein's definitive article on clinical rounds. Their thinking contains much which those interested in fostering highly educational externship rounds can usefully

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<sup>65</sup> Linda Morton & Janet Weinstein, *Creative Problem Solving*, in *LEARNING FROM PRACTICE* 171, *supra* note 15, at 192-3.

<sup>66</sup> Condlin, *supra* note 4, at 68.

<sup>67</sup> Jane Aiken, *Provocateurs for Justice*, 7 *CLIN. L. REV.* 287, 288 (2001).

import and reinterpret. Clinical rounds consist of “structured conversations among peers. . . focused on fieldwork.”<sup>68</sup> Externship rounds are also structured and focused on fieldwork, but are not tethered to the details of cases, within the circle of confidentiality, or practice area-specific. Externship rounds require faculty to issue-spot and draw out commonalities given students’ various placements.

Bryant and Milstein identify

“three premises. . . [which] underlie learning in rounds. (1) Rounds learning is “in-time;” students can immediately see relevance to their work. (2) Through collaborative learning, students develop insights for contextual thinking, explore professional identity, and find support for stressful work. (3) Dialogue with peers is an important method for engaging [in] reflective practice; reflection in rounds helps students to apply, test, and refine lawyering theory while simultaneously developing professional norms.”<sup>69</sup>

In contrast to “in-time learning,” externship learning in the classroom will not be directly relevant to student fieldwork. Since the class is not within the law office’s circle of confidentiality, details of cases and clients are off limits. Students may not “immediately see relevance to their work.” In fact, everyone who has taught an externship class has probably encountered students who seem to feel that the class is completely irrelevant to them.

The risk of this detachment and its deleterious effect on learning is part of what requires externship faculty to distill lessons that apply to all students. The externship counterpart to “in-time learning” may be “if and when” learning, that is, learning that will certainly relate to every student in the class at some point in the future, even if the information is not immediately applicable to their work now. Skills of verbal communication, listening, explaining complex things in accessible language, and exhibiting emotional intelligence are examples of topics for externship seminars that will be useful to all students, no matter what practice area they enter. The simulation example in the previous section that is grounded in criminal law facts yields lessons from which all students can benefit, even if they never deal with a criminal case.

Next on the Bryant-Milstein list, collaboration is very much present in externship rounds although in a way different from in the in-house setting. In-house “rounds conversations model the kind of thinking done by lawyers in practice.”<sup>70</sup> Discussion is forward-looking and strategic. Externship rounds, in some contrast, model the kind of reflective, self-critical thinking that we hope students will adopt as

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<sup>68</sup> Bryant et al., *supra* note 52, n. 11.

<sup>69</sup> *Id.* at 206-07.

<sup>70</sup> *Id.* at n.1.

lawyers, but rooted didactically and self-consciously in academic soil. Externs will collaborate in discussion of their peers' work, but not on a case that is similar to that with which fellow externs are dealing. The discussion may be either forward-looking or retrospective; it may focus on strategic or tactical choices made or to come. Through skillful teaching which highlights common issues, the externship teacher generalizes a student's problem or question so other students can usefully collaborate on responses and solutions. For example, an extern with a supervisor who assigns too much work can benefit from discussing his plight with fellow students who may have faced the same challenge. With the teacher's guidance to elicit comments on similar situations, the overburdened extern can consider strategies to ease his load along with the group, and perhaps role-play requesting a more reasonable workload. Through these discussions students expand their understanding of professional role.

As to the third Bryant-Milstein premise, reflection, rounds (also sometimes known as checking in) are a standard component of externship classes which take many forms. These include narrations of the work students have done; a chance to ask the class about substantive law or how to carry out a specific task; ethical inquiries; a chance to vent about problems and ideally generate solutions; and finally the opportunity to engage in reflection. The last can occur spontaneously. However, it will only emerge dependably when the professor uses thoughtful and intentional questioning to focus students on their choices in an important moment, and what is gained and lost with different choices. What the teacher's distance from fieldwork loses in lack of familiarity, it can gain back in spades by focusing the class' attention on the analysis of acts of student decisionmaking as the student relates them.<sup>71</sup> The example below illustrates such an analysis.

Questions about how to handle conflicts and confidentiality also arise when students discuss individual cases. Every externship class – utilizing rounds or not – must address these issues to educate students about these fundamental and recurring issues and forestall problems in class. The risks of violating professional rules may seem larger where the teaching plan is to extract details about a student's work via rounds. However, faculty can address confidentiality requirements at the outset of the course (and again as seems advisable, for example before rounds where a student's work will be in the spotlight). Stu-

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<sup>71</sup> Students may relay case information or workplace dynamics incorrectly. There is no independent check on the reliability of what they say. The experience and common sense of both the teacher and other students should ferret out nonsensical reports and red-flag telling inconsistencies. Issue-spotting and accurate reporting are skills students need to work to develop.

dent must learn that if they are going to discuss work outside of work their recounting must be scrubbed of identifying information so no case or client can be identified. Alexis Anderson wrote that figuring out what can be shared is an essential skill to practice as students learn “how to ‘talk shop’ without disclosing confidential information.”<sup>72</sup>

Conflicts with externship rounds similarly are treated as in every externship class, with close attention paid to governing rules and how they play out in practice.<sup>73</sup> Some students, for example those in a public defender’s office and those in the jurisdiction’s prosecution placement, may need to be placed in separate classes. These decisions may also be appropriate to raise with supervising attorneys or judges, to allay any concerns and be clear that the law school consistently takes measures to respect confidentiality and avoid conflicts.

The question of the goals for the class necessarily arises when we set out to determine the function and effectiveness of rounds. For example, appropriate goals might be to gain insight into what goes into effective preparation and performance, and to assess preparation and performance by focusing on a specific act of lawyering done in the field. In other words, one student will report on something notable that happened at her workplace, and the class will discuss that occurrence both as it relates to that student’s placement and as it relates to larger issues in lawyering or their lives. These complementary goals hit the big and the small views, analyzing one small moment in depth while reminding the class that they must get into the habit of extrapolating to learn transferable lessons for the future.

This section illustrates the issue of teaching reflection in externship rounds by rendering three attempts to do so using the same fact pattern. The setting is a general civil externship seminar. The students are externs in various nonprofit organizations. They are reporting to the class on their placements. The professor is a legal aid lawyer who works in a government benefits office. One student, “Christina,” is working at a legal services immigration unit representing non-citizens who are victims of domestic violence seeking “U visas” to extend the time they may legally stay in the U.S. In the last class, Christina reported that she had done a phone intake for a new client and was tapped to conduct an initial intake interview, which has now occurred.<sup>74</sup>

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<sup>72</sup> Alexis Anderson, *Ethical Issues in Externships: Confidentiality*, in *LEARNING FROM PRACTICE* 67, *supra* note 15, at 70.

<sup>73</sup> Cindy Roman Slane & Arlene S. Kanter, *Ethical Issues in Externships: Conflicts of Interest*, in *LEARNING FROM PRACTICE* 79, *supra* note 15, at 80.

<sup>74</sup> Note that this is emphatically not a class on how to do a client interview, which would require completely different preparation, materials, and activities.

Background for all three scenarios:

*Professor: Hi everybody, as promised this week we will check back on things that were slated to happen during some of your field placements. Christina, did you do the U visa interview?*

*Christina: Yes. It was a trainwreck. My supervisor sat in. I introduced myself and the office through the interpreter, asked the client why she was there, and started collecting her information. I spent 45 minutes getting her background and stuff about her kids and work in this country. I could not bring myself to ask about the violence she suffered – not how long it lasted, when it started, what it consisted of, whether the kids were there — nothing. I wrapped up the interview and walked into the hall with my supervisor to check in with her before sending the client off. My supervisor told me I had to ask about the abuse itself. We went back in and I finally got what we needed. My supervisor said it was par for the course when you're just starting out, but I felt like a complete idiot.*

The next section reviews various directions in which the teacher can now take the class. The teaching strategies are, first, focusing on practicalities of practice rather than on reflection, second, expressing encouragement and strategizing next steps of the case, and, third, affirmatively attempting to elicit critical self-reflection. The comments following each example analyze the teacher's strategy and how it functioned in the class.

### *1. Practical Focus*

*Professor: Don't worry about it, you got there. What's your legal theory at this point? And did she file a police report? She can't even file for the U-visa without reporting, can she?*

*Student: Yes she made a police report, but only after she came to us for the visa. Does she still qualify? I know making an official complaint is a pre-requisite for filing for the visa, but what if it's done in anticipation of litigation. . .<sup>75</sup>*

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<sup>75</sup> This exchange again highlights the issue of confidentiality, and the need for teachers and students to hew to its contours carefully and learn what can and cannot be revealed outside the law firm. Understanding these decisions is crucial for all lawyers. Discussion of case specifics devoid of identifying information and exploring a lawyer's internal thought processes is ethical and fair use of fieldwork in the classroom. Students must learn these fine distinctions, and the externship seminar is an excellent controlled laboratory in which to do so.

In this example, the teacher does not attempt to guide the student in looking at her own performance, and Christina does not do so. The student has completed an exceedingly difficult lawyering task, meeting the challenges presented by a complicated legal area, newness to the process, a client interview across cultural and language barriers, and the sensitive nature of the information needed from the client. According to an experienced supervisor she did a good job. Yet she reports feelings of failure and evinces an inability to absorb the positive feedback. The class discussion quickly moves into case strategy without addressing Christina's choices in preparing for or carrying it out. The challenge of delving into sensitive information about a client's life is not put on the table.

There are undoubtedly multiple reasons for the professor's avoidance of questions which would lead the student to examine her own performance. His blunt reassurance may reflect his desire to shore up the student and acknowledge the enormity of the task accomplished. He certainly wants to help the student with her case. He is probably not in the habit of abstracting the process of learning and separating it from the imperative to make a decision on a case. Ironically, the same reason the student did not want to ask about "hard" things may be the very reason the professor avoided digging into the occurrence of domestic violence.

The professor's practice-oriented approach is not without benefit. The student may get an answer to her substantive-law question or information on where to find an answer. She may gain insight into the need to respond quickly and effectively in a high-pressure environment through the professor's laser focus on clarifying applicable law and defining next steps. Other students may echo the professor and support Christina by complimenting what she accomplished.

However, the professor's approach sidesteps the opportunity to explore what Christina and the rest of the class can learn from preparing and conducting the interview, particularly her reluctance to investigate the fundamental element of the case, the domestic violence. The teacher doesn't choose to frame learning as a process worth looking at distinct from the strategy in one case. This process goes unexamined along with the conscious and unconscious choices Christina made, how they related to her goals in the representation, how effective the choices she did make were in advancing her goals, how she might productively incorporate affirming response and mediate self-doubt, and what she should do differently next time.

By engaging in negative self-evaluation, Christina may be hinting at openness to constructive self-assessment. Her report to the class provides an opening to identify tools to improve this habit and involve

other students in the exercise of reflection. In Example #1, the message that substantive law and strategy are the central and worthy topics for the class comes through loud and clear. The class can also benefit from learning that how we prepare and learn is equally worthy.

## 2. *Support, Easing into Reflection*

*Professor: I don't think you should worry about not asking the right questions the first time. In my first client interview in law school I ended up giving legal advice – without a license, obviously — and had to go back in and retract it. You're also dealing with a very delicate subject area. Anyone would have a hard time. It sounds like they trusted you with good reason and you ended up doing a great job with the interview. How do you think you did, on a scale of one to ten?*

*Christina: A four I guess. I got the job done. I did connect with the client. She hugged me when she was leaving. It was just the cop-out on the DV questions and having to have my supervisor tell me I had to go back in.*

*Professor: Be a little more generous. I'm gonna go up to a seven or eight. And soon you'll be a nine. What does everybody else think?*

*Leo: Definitely an eight. I could not do that. Really hard. Makes me feel like I'm working in happy law helping incorporate a nonprofit arts project.*

*Kara: No, nine. You did great.*

*Christina: Thanks.*

*Professor: You did find a way to broach the issue in the second half of the interview. What did you say?*

*Christina: I know this is difficult to talk about. I have to ask it to fight for you. I'm going to ask specifically how he hurt you. Can we do that now?*

*Professor: Did you consider other ways of setting her at ease?*

*Christina: I offered her a drink. I made a point of looking her in the eye. I spoke slowly.*

*Professor: Let's replay the moment right before the break in the interview where you could transition into talking about the abuse. She had just finished telling you about her job and her kids. What's the next question going to be?*

*Christina: Ok. [silence, gathering her thoughts] Thank you for telling me all that. Now we're at a point where I need to ask you some pretty detailed questions about his violence. As you know, knowing this will help us show the judge why she should let you family stay here. If I tell her general things she won't understand, so I have to tell her specifics. Can we do that now, or would you like to take a break?*

*Professor: That was great. You did it. . .*

In this class, the professor plays a highly directive and supportive role. He leads Christina to effectively re-imagine and re-play how she could do the interview better and broach the painful subject of domestic violence. The professor starts with a war story identifying with the difficulty of making choices about representation while a law student. He asks Christina to assess herself on a numerical scale. While somewhat reductionist, the scale question succeeds in getting Christina to describe what she accomplished, which she had not done to that point.

The teacher attempted to bring the rest of the class into the conversation. He modeled uncritical affirmation and they followed suit. Perceiving the opportunity to re-enact a tough spot in the interview, the teacher directed Christina to consider how she might proceed differently. She took the time to consider, and generated a way to do so. The class' attention was clearly directed to the issue of "difficult topics," although they did not explore it or relate it to their own placements.

From a clinical teaching standpoint, this approach brings some progress in the area of self-assessment. The teacher's choices stimulate Christina to engage in limited assessment of her own performance. However, she remains sternly self-undermining without being spurred to realize how harsh she is being or how to take a more balanced view. Plus the teacher involves Christina in remediating a problem – avoidance of the topic of domestic violence – without stepping back to consider why she landed in that situation in the first place. The close-up perspective on the case at hand is not enlarged to a broader frame.

The issue of peer critique is similarly broached with some positive results yet room to dig deeper. The teacher asks the other students for their evaluation of Christina's performance by seeking a numerical assessment. The teacher does not make the choice to put the rest of the class into Christina's shoes to perceive the barriers she faced while preparing and interviewing. Deeper engagement with issues of preparation and performance – and barriers to them — might leverage the other students as resources for Christina and themselves.

The use of the spontaneous mini-simulation is creative and effective. This teaching tool may come more naturally than does non-directively trying to elicit reflection. This may be even more true for faculty in practice, as re-enactments – “go ahead, now you try it” — are actually done outside the academy, for example with impromptu coaching before a court proceeding. This familiarity comes in handy for practitioner-teachers and carries a likelihood that faculty will run students like Christina through these paces in useful ways.

The issue of broaching difficult issues was squarely identified and then glancingly dispensed with. Students may walk away from this class meeting knowing that some topics are hard to discuss, and that it is possible to become more comfortable with such challenges. However, they will not have had the opportunity to relate this to their own workplaces, or reflect with a broader perspective.<sup>76</sup>

A final notable aspect of these rounds is that the teaching goals — gaining insight into what constitutes effective preparation and performance, and assessing one’s own preparation and performance — are not mentioned. The teacher may have mentioned them before the rounds began, but they don’t resurface. It is his job to guide the class and help them see where he intends them to go. Referencing the goals performs the function of ordering and naming the activity in the class. Doing so transforms rounds from venting into a focused educational exercise with lessons that turn today’s raw material into life lessons.

### 3. *Delving into Reflection*

*Professor: Sounds grueling. Let’s talk about preparation, and we’ll come back to how it played out. Walk us through your preparation.*

*Christina: I was nervous so I worked this case up! I sat in on a bunch of other interviews, and asked my supervisor about them.*

*Professor: What was your plan to prepare?*

*Christina: Watch interviews, read law, watch court, write questions, say them out loud at home, email them to my supervising attorney, edit, dress up. . .*

*Professor: It’s a lot. Knowing how hard this turned out to be, is there anything you’d add?*

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<sup>76</sup> Operating at a “shallow level of learning” can limit the usefulness of knowledge to the facts it is originally tied to, and inhibit transfer of that knowledge to future situations. James M. Lang, *Why They Don’t Apply What They’ve Learned, Part I*, CHRONICLE OF HIGHER EDUCATION (Jan. 21, 2013), available at [http://chronicle.com/article/Why-Dont-They-Apply-What/136753/?cid=at&utm\\_source=at&utm\\_medium=en](http://chronicle.com/article/Why-Dont-They-Apply-What/136753/?cid=at&utm_source=at&utm_medium=en).

*Christina: I think I should really have focused on the abuse section of the interview. I could have practiced that more.*

*Professor: Practiced how?*

*Christina: Well, my supervisor told me to call her the night before if I wanted to, but I didn't want to bother her and plus I had a ton of reading. I think given how incredibly difficult this was it would have been worth calling. Basically I was avoiding thinking about that section of the interview, so I put it under the rug. Walking back into that room for the second half of the interview was the hardest thing I've done in law school.*

*Professor: It may still be hard ten years from now. What's hardest about it for you?*

*Christina: It might be painful for our client to relive. I'm not big on asking personal questions of people I don't know. Feels like prying. Yet I know I had to get into it.*

*Professor: So circling back to your very thorough preparation, what turned out to be useful?*

*Christina: I had thought about what I wanted to cover. I knew what the judge was looking for from seeing her rule on these before. I ran my sketched-out plan by my supervising attorney so I knew my questions were in good shape. I had practiced the first words I would say to the client out loud with her because I was so nervous. I think preparing really helped me to feel confident when the interview started. I also had worked really hard reading the statute, caselaw and country-specific info. I felt secure about the legal side.*

*Professor: What would help you to ask the personal questions?*

*Christina: Prepping the interview out loud really helped me feel comfortable. I think practicing the questions about abuse out loud would make them easier to pose to the client.*

*Professor: Jared, you told us about your housing court interview last class and we talked about what you did to prepare. Take us back to your planning before that interview.*

*Jared: It was pretty similar, although I did less and the whole thing was less. . .sensitive. I agree on the court watching, writing out questions, running them by my supervising attorney, and definitely checking out the law. I think the hard thing for me was talking to this mom who was going to be evicted when her nine-year old son was right there in the hallway with us. He was there during school hours, and he looked scared. It kinda made me mad at her. Then I felt like that was screwed up, and it was distracting.*

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*Professor: You're both talking about extremely intense experiences. What did you do in response to that anger during the interview, Jared?*

*Jared: I shoved it down and kept going. I advised her of her rights as a tenant. I gave her the materials from our info table. I've been thinking about it ever since.*

*Professor: And next time you work with another client – who may also have a child, either there or not — how is that going to be? How can we prepare for these moments of raw emotion and still offer excellence as lawyers?*

And the class continues, with the fundamental issues of preparation and difficult issues and moments identified and firmly on the agenda. One salient aspect of this rendition of a class discussion is the wildly unexpected nature of some of the student reporting. This teacher has obviously created a sense of trust and openness in his classroom, another topic worthy of close examination. Students are confiding about things that are fraught and emotional. It is possible that someone in the class is herself a survivor of violence, which raises issues that the teacher is not going to be equipped to handle or perhaps even be aware of. A seemingly safe, typical discussion of client interviewing in a law school class has opened up deep issues. This may not happen on a regular basis. The important point, though, is that the field placement teacher must be flexible and open to everything students bring up, since real life intrudes into experiential work in ways it does not surface in static fact patterns in casebooks. Field placement teachers must be adroit enough to change their plans and guide students to learn from the unexpected.

At the outset the professor referenced the session's goals, reminding students that the agenda is to explore preparation and performance. He uses language that places the issues not just in the context of this one lawyering event, but with reference to planning for and executing strong preparation and performance in general. He asks about the general before the specific, invoking the larger context for students. Understandably, Christina goes right into her recent, vivid experience, but he keeps the larger context in view.

Delving into the issue in this thoughtful manner led to deep insight on Christina's part. She looks inside at previously unrealized motivation for her behavior in preparing for the interview and avoiding the abuse. Her thoughts and feelings are operating in the classroom. Similarly, Jared speaks as if he is recognizing his anger in the moment of recounting to the class, sparked by Christina's report. This curiosity and alertness is the opposite of disengaged students in a field

placement seminar surfing the web while half-listening to reports of what their peers are doing at work. These moments are what bringing reflective-oriented teaching to bear in field placement classes can produce, at least sometimes.

The issue of engaging the larger class when one student is checking in is challenging. Here the professor managed to shuttle back and forth between the story of one client in immigration court, one recently-recounted story of another client in housing court, and the issue of legal and emotional preparation. To stay in such a moment and teach in a nimble, focused way is an outstanding aspiration. One riveting or complex exchange can absorb all the attention in the room, leaving the other students as outsiders. In a field placement seminar with disparate placements, the challenge is heightened to dig deep into specific situations while identifying points of commonality which relate to all students. Students absorb that “expertise in problem-solving is acquired by solving problems.”<sup>77</sup>

After looking at these three examples, it is clear that sparking the reflection that can arise in rounds is the challenge. These lessons must be taught and learned experientially. These goals are attainable at least sometimes with some students. Guiding principles for this enterprise include the need to engage in critical self-reflection as a means to gain insight on the lawyer’s role generally and in one’s workplace; to bring in fellow students as commentators; to practice balanced self-assessment; to identify goals and say them out loud to the class throughout the discussion to keep eyes on the prize; to examine the process of learning in the room, looking not just at what is learned, but how; and to remember that flexibility and spontaneity are inescapable in the field placement world, and present opportunities for learning.

### *C. Teacher Learning Through Simulations*

Teaching students to engage in self-reflection is a profoundly complex skill. The idea that reflection is itself a stand-alone lawyering skill that can be taught in a classroom is likely to be completely new to those outside the clinical academy. In addition to being a useful tool for students to reflect on their externships in the classroom, as the previous section discusses, simulations are also a useful tool in showing externship teachers how to teach reflection. This section illustrates how simulations can be used effectively to prepare externship seminar faculty to teach students. This technique might be used internally within the law school to train podium and other non-clinical

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<sup>77</sup> Gary Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 313, 386 (1995).

faculty to teach externship seminars. Another setting is in externship programs which hire practitioners as adjuncts to teach these seminars.<sup>78</sup>

Given the range of teachers who teach externship classes, those interested in creating excellence in externship programs must specifically acknowledge and grapple with externship teachers' diverse backgrounds and experiences. Some are podium teachers new to externship teaching, who may have conducted tutorial-style meetings with externs but have not considered what an externship curriculum would look like. Some are in-house clinical teachers switching over to the externship world or stepping in for one class, bringing deep knowledge of how to supervise students but less experience with how to teach those supervised by others. Some are practitioners teaching as adjunct faculty, eager to mentor and steeped in practice experience but unfamiliar with the concepts of intentional teaching or even classroom teaching. These teachers bring a perspective informed by their own careers, creating a need to crystallize externship-specific principles of experiential learning that they can readily assimilate and use.

Teachers new to the externship world need to learn and practice to teach effectively, since experiential teaching calls upon skills different from those used in practice or podium classes. Relinquishing control over a situation and letting learning unfold is a crucial element of experiential teaching. Enabling students to generate answers to problems themselves accustoms them to owning a problem and generating a solution.<sup>79</sup>

Yet relinquishing control is a challenge. The impulse to explain, to provide answers, to correct is hard to resist. Field placement teachers must assimilate the lesson that students generate the most profound and lasting self-assessment on their own, through their own painstaking consideration and interrogation of performance. Teachers need to make a deliberate decision to withhold commentary to allow students' confusion and discomfort to coalesce into new skills and insights in the classroom. Teachers then need to actually carry out the decision despite well-meaning instincts to advise students how to improve performance.<sup>80</sup>

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<sup>78</sup> Beth Schwartz, Clinical Professor of Law and Director of Professional Skills at Fordham University School of Law, and I presented a session addressing these teaching methods at the Externships 6 Conference in March 2012. *Training the Trainers: Working Effectively with Externship Seminar Faculty*, <http://www.northeastern.edu/law/pdfs/academics/x6/shwartz-trainig-trainers.pdf>.

<sup>79</sup> Linda H. Morton, *Creating a Classroom Component for Field Placement Programs: Enhancing Clinical Goals With Feminist Pedagogy*, 45 ME. L. REV. 19 (1993); see also Bloch, *supra* note 53.

<sup>80</sup> Linda Morton named this process feminist and saw the need to "create a completely

Instead of being the first word, teachers can practice the skill of setting up classroom exercises where sufficient foreknowledge of objectives, a non-judgmental atmosphere, and probing, open-ended questions lead students to make the most important observations themselves. Avoiding the instinct to pass judgment on student performance requires field placement professors to develop a nuanced and functional awareness of how learning happens.<sup>81</sup>

One method of teaching reflection is used at Cardozo School of Law during training sessions held before each term for new and returning faculty.<sup>82</sup> The sessions employ simulations to expose teachers to experiential teaching. Participants in the training sessions go into role as teachers and teach portions of an externship class meeting. By engaging in a simulation in which they have to teach reflection, faculty start learning how to teach reflection. At each step of the training of teachers, the simulation models a method teachers can use with their own students. Former externs are recruited to role-play students. Participants volunteer to take turns role-playing teaching for a few minutes. The setting of the simulation is rounds in an externship seminar, with students reporting on their placements.

The agenda for these training sessions on using and constructing simulations includes first setting out goals for the training, then actually conducting a simulation, and finally debriefing the simulation. This section discusses each of these steps in turn. Participation in a thoughtful simulation class teaches externship faculty how to conduct a thoughtful simulation class. The example breaks down how to conduct a simulation step by step, a demystification that faculty externship teachers need so they can be empowered to adopt this teaching tool.

The goals of this training are to introduce faculty – in Cardozo’s program, primarily practitioners hired as adjuncts – to clinical teaching; increase understanding of teaching the habit of reflection; and practice teaching reflection in the classroom. Faculty learn that teaching and learning are complex processes, going well beyond chatting about what students did in the past week. The sessions empower field placement faculty to attempt to teach students how to learn from experience, and make the scary attempt to teach reflection. Those en-

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different power structure in the [field placement] classroom” that “valued the mutual and cooperative exchange of experiences” and “avoided the pressures of professorial evaluation.” Morton, *supra* note 79, at 38.

<sup>81</sup> Both students and faculty will advance on a learning curve and improve skills of self-reflection over the course. Kimberly E. O’Leary, *Evaluating Clinical Teaching - Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method*, 29 N. KY. L. REV. 491, 508-09 (2002).

<sup>82</sup> I design and conduct these sessions.

gaged in training externship teachers should discuss these goals with participants.

### 1. *Conducting the Simulation*

Articulating the purpose of the exercise should almost always come first. The next excerpt illustrates how teachers can learn to convey their teaching goals to students in class.<sup>83</sup>

*Ana (trainer): In today's training we'll work on sharpening goals and articulating them to our students. We'll role play an externship seminar meeting halfway through the semester. Our three students sitting here will play externs in the class. Faculty, let's say you're about to have students check in, and you want to focus on supervision problems you've been hearing about over the weeks. Li, can you get the students started?*

*Li (professor): Hi guys, let's hear about your week at work and maybe the class can help each other out. Max, bring us up to date.*

*Max: I'm still spinning my wheels. You'd think at a housing nonprofit they'd want to use all their personpower, but my boss still has me taking notes on endless meetings.*

*Li: I know you've wanted more strictly legal assignments. Anybody else in the same boat?*

*Ana: Let's interrupt and freeze the action for a moment. Lin, what were you communicating with "help each other out"?*

*Li: Lots of heads are better than one. Other folks may have strategies to share.*

*Ana: You're identifying the skill of collaborative problem-solving, and also listening. Could I ask you to articulate that for your pretend students here to bring that goal out in the open and show them they're practicing an essential skill, not just schmoozing?*

*Li: Everybody, we're going to check back on some of the supervisor problems you've been telling us about. This class is a resource for you as your colleagues will be in practice. I'm constantly vetting my legal issues and people issues at work. Let's see if we can do some of*

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<sup>83</sup> Two different sets of goals are at play here. One is the goals of a training session held to prepare externship teachers. The other is the learning goals for students in the simulated classroom.

*that here. Being able to listen and to collaborate makes you a better problem-solver. . .and lawyer.*

For teachers, this broadening of scope plants the idea that a skill has the potential to transfer outside the classroom walls. The training session has provided the teacher an opportunity to stretch. She understands more about the power of naming to convey an idea. She has learned something experientially about how to teach.

Students benefit from observing that there is a larger frame to what they're doing. The teacher's own experience puts collaboration into the professional context. The flash forward into their own post-graduate jobs cultivates motivation.

The next section of the training session lets the simulated discussion play out as teachers experiment. The trainer breaks in at a point at which she perceives that a teacher can be steered toward practicing the teaching of reflection with a student.

*Ana (trainer): Let's continue with our simulated rounds. Leah, you're up next.*

*Leah (teacher): So you're frustrated with your assignments.*

*Max: I feel like a little scribe.*

*Leah: What are the notes about – and I know we're remembering confidentiality here.*

*Max: What people said, main ideas, what everybody's supposed to do.*

*Leah: Anyone else had a similar experience?*

*Rona: I've been taking notes all semester for an access-to-justice working group. It doesn't really feel administrative to me.*

*Max: I know they're preparing for a state-wide tenants' rights campaign, but still. I didn't go to law school for this.*

*Leah: Have you talked with your supervising attorney?*

*Max: He's pretty busy.*

*Leah: Right. Rona, any thoughts on how Max can improve the situation?*

*Rona: From my perspective, the note-taking is valuable. You have to decide what to put in and leave out, and they're going to rely on the summaries later.*

*Leah: Max, it sounds great. Anyone would jump at the chance to be such an integral part of the team. I'd love to have someone taking notes at meetings and summarizing them for me.*

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- Ana:* I'm going to break in here. Leah, I want to challenge you to help Max gain perspective and assimilate ideas on how to reassess or change the situation, before you dispense what may be perfectly sensible advice. What might help him gain insight into his "plight" and ways to change or accept it?
- Leah:* Okay. . . Max, what portion of your work have the meetings been?
- Max:* I've been at the agency five weeks. We've been in strategy sessions most of the last two. When I'm not doing that I'm putting together minutes and researching issues that came up.
- Leah:* Who would be taking the notes if you weren't there?
- Max:* My supervisor, I guess. It's not that I don't think the summaries are valuable. They all pore over them and work off them. I'm frustrated because I tried to make a comment, and instead we wrapped up. I felt like nobody wanted to hear what I had to say.
- Leah:* Is there a way to make time for that comment?
- Max:* I could bring it up with my boss. He did say a while back that I'm becoming an expert and he wants my input. It's just hard to find the time. I guess I could go in early and ask if I can walk with him to get coffee. I know they're all busy, and it's amazing what they're doing. I just really want to be a part of it.
- Leah:* Give it a try and let us know. We're expanding our conception of what it means to practice law here. Administrative duties are always part of a lawyer's work. Yet we also want to use our judgment and analytical powers. With public-interest work time is always scarce. That intensity has implications for you as students and future lawyers.

By trying and then trying again, faculty participants absorb that learning to teach is a process that involves missteps but can yield improvement. Lurching forward with their own progress, they become better able to bring students along into learning experientially.

## 2. Debriefing the Simulation

The training class will next debrief the simulation. The trainer should refer to the goals originally set out. Doing so underlines the importance of gearing learning towards identified goals, both in this training session and when teachers go out to teach their externship

seminars. As discussed above, the conversation should be structured yet open-ended. The trainer may plan to focus on goals. However, participants will have their own ideas and take the discussion in other places that interest them. They will bring valuable insights from practice and prior teaching. Having broad leeway to attack the problem from their own angles harnesses their creativity and spurs them to take ownership of new ideas and vocabulary.

*Ana (trainer): Now that we've wrapped up our simulation, let's go back to one of our goals, gaining insight into the concept of reflection. What thoughts about reflection do you have after volunteering?*

*Leah (teacher): I found it very hard not to tell Max just to chill out and enjoy the ride. He's privy to an incredible brain trust working up a major advocacy campaign. He got so involved with not being able to put his two cents in. Yet by my asking questions he did realize that on his own. He also may have found a way both to do the note-taking and speak up. It's kind of new and different to let them get there on their own. I feel a loss of control. It's like, why do they even need me here? I think it was good though.*

*Ana: Did they need you there?*

*Leah: Well, I did encourage Max to listen to Rona. And I think my questions did help him to stop fighting the situation so much. He admitted he felt small. He thought about how to possibly improve his experience.*

*Ana: This is the contemplation and self-searching we're asking you to bring to your teaching. Your reflection will help students learn to reflect.*

In addition to returning to goals, participants should first report thoroughly on their experience in the simulation. An open-ended question like "how did that go for you?" or "what was going on?" can elicit comments on the role-playing faculty member's view of what choices were productive, what led to a dead-end, what was surprising. More pointed questions should follow, honing in on key moments.

*Ana (trainer): What was going on with the discussion about the access-to-justice writing assignment?*

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*Remy (teacher): I did not know how to deal with that. Ten minutes of the supervising attorney, her vacation, the on-call attorney, the emails, the lateness. The whole discussion got away from me. Way too much detail.*

*Li (teacher): I have no idea what I would have done in your shoes.*

*Ana: Is there something you would do differently if you could do it over?*

*Remy: I don't know. I guess my question really is who's in charge in these discussions. Am I supposed to rein students in, rely on the group to provide guidance, or let them take it where they want to go?*

*Ana: How do others see your role in these rounds?*

*Li: For me it's a balance. I have 25 years of practice experience and they can learn from it. I think it's important to give nuggets about how to deal with life in the field.*

*Remy: I agree, and I do that. But we're not going to be with them in practice. They're going to be in the driver's seat. And they better start figuring out how to make their own decisions now.*

Faculty will critique themselves, sometimes too harshly. The usual focus and thoughtfulness on practice open up to include the process of how learning happens. Through colloquy, the magnifying lens is turned on how teachers can make intentional teaching decisions. This process can get a bit “meta,” with teachers teaching teachers and a simulation within a class about simulations. In practice it can work well.<sup>84</sup> Teaching students reflection through interactive work is so strange and challenging to a new field placement teacher that it is likely to be shunted aside in favor of more familiar, teacher-centered learning without practice and reinforcement. The use of simulations in the training of externship faculty educates faculty on and supports the proficient use of this experiential teaching tool in externship seminars.

## CONCLUSION

Examining the above three clinically-oriented externship teaching methods on a granular level illustrates the challenges and opportunities of making the attempt. The opportunities for lasting learning

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<sup>84</sup> Participants at Cardozo are asked to assess the usefulness of the sessions in anonymous written evaluation forms completed after the sessions; almost without exception, the evaluations indicate that teacher-participants found the session valuable in crafting their own teaching.

that field placements offer are numerous.<sup>85</sup> At its best, the externship classroom is an incubator of insight, a productive setting for rigorous and thoughtful processing of what legal life throws at students. In these seminars students utilize an outsider's critical perspective and a short-term insider's access to look critically at the legal institutions in which they work.<sup>86</sup> They gain experience in nurturing productive supervisory relationships. They generate ideas to solve supervision problems. They engage in critical self-reflection around their relation to all the aspects of law practice they and their fellow students encounter. They learn more about skills such as problem-solving, analysis, client interactions, and resolving ethical questions, and more about values, from providing competent representation to striving towards "justice, fairness, and morality."<sup>87</sup> Focusing externship studies on justice has been outside the scope of this paper, aside from the social, racial, gender and economic justice issues which are the subject matter of the examples, but is as important as any other goal mentioned here, in the sense that "[l]aw is about problem-solving, but it is also about justice, about moral judgments and ethical decisions, about the intersection of how things are and how they ought to be."<sup>88</sup>

Promoting excellence in externships requires the right support and environment at levels from the student all the way up to the law school as an institution. The need to move from where we are to a fuller, more reflective externship pedagogy necessitates the following:

1. Full-time faculty with clinical or experiential teaching experience or knowledge should be the primary pool from which externship teachers are drawn. The exercise of meeting students at their varying levels and working with them to elicit reflection on fieldwork is immensely challenging.<sup>89</sup> Externship teachers must actively engage with students, make intentional teaching decisions, use multiple modes of communication, be responsive to student experiences, and create rela-

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<sup>85</sup> An ongoing longitudinal study of almost 5000 lawyers found that legal employment and "internships" (along with clinical courses and legal writing) during law school were more helpful than other law school classes to attorneys in their transition to practice. NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION & AMERICAN BAR FOUNDATION, AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS at 81 (2004).

<sup>86</sup> Jaszi et al., *supra* note 17, at 412 (positing that the structure of externships in which students assist in casehandling and observe rather than master skills focuses extern "participant-observers" on reflection about the legal system). *But see* Gharakhanian, *supra* note 23, at 69 (stating externs are "intermittent visitors").

<sup>87</sup> MacCrate Report, *supra* note 12, at 138-141

<sup>88</sup> Gary Blasi, *Teaching/Lawyering as an Intellectual Project*, 14 J. PROF. LEGAL EDUC. 65, 72-3 (1996).

<sup>89</sup> Teachers should "identify the appropriate level for each student and guide the student as she advances from one level to the next." Casey, *supra* note 15, at 351.

tionships in the classroom.<sup>90</sup> Bringing externship instruction fully in-house is necessary to have the expertise and sophistication this instruction demands and students deserve. At a minimum, “significant [full-time] faculty involvement and oversight” are essential for “program integrity.”<sup>91</sup>

This recommendation emerges from my conviction that it is beyond the scope of most practitioners to be excellent clinical teachers. It is not realistic to expect adjunct faculty with consuming outside work and limited teaching hours to master a second discipline in addition to their law practice. The basis for this judgment is my experience conducting numerous training sessions for practitioners hired as adjunct faculty, my review of the syllabi they construct for their classes, my observation of them in classes and training sessions, and discussions with faculty directors of other externship programs utilizing practitioners as classroom teachers. Our talented faculty excels at their day jobs and offers deep service to the law school in terms of mentoring, critiquing skills practice, discussing substantive law, and advising on workplace problems and professional issues. I suspect they would be the first to say that teaching critical self-reflection is so unfamiliar and dissimilar to their experience that it is outside their formidable skill sets. Many of these same issues exist with podium faculty.

Collaborations between practitioners and full-time clinical or externship faculty may yield interesting and valuable results and are an intriguing possibility to investigate. Perhaps thoughtful collaborations can meet some of the law school’s fiscal and pedagogical needs.

2. Externship faculty should have requisite pedagogical training and time, inside and outside the classroom, to try new methods. Faculty development in this area will enrich externship pedagogy as skills and values explored by these courses can be “discussed, compared, and debated.”<sup>92</sup> Having sufficient time includes a reasonable teaching (and where applicable, administrative) load with enough resources allocated to maintain it.<sup>93</sup>

3. Externship classes themselves should remain, or move to, small seminars. The right faculty-student ratio has been a subject of some

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<sup>90</sup> Shalleck, *supra* note 46, at 179-81 (delineating the aspects of teaching involved in clinically supervising law students).

<sup>91</sup> Maurer et al. ., *supra* note 2, at 119.

<sup>92</sup> MacCrate Report, *supra* note 12, at 128.

<sup>93</sup> ABA Standard 305 requires externship programs to include “adequate instructional resources, including faculty teaching in and supervising the program who devote the requisite time and attention to satisfy program goals and are sufficiently available to students.” ABA STANDARDS, *supra* note 7, 305(e)(2).

discussion and a workshop or two within the externship community, but remains open to discussion. The kind of colloquy illustrated above is highly unlikely to take place in a larger, more impersonal setting. Some faculty may maintain that pedagogical justification exists to support larger classes of 25, 50 or even more students. The intimacy, familiarity and trust that enable students to take risks, honestly admit mistakes, plunge themselves into role-playing and find their way to new growth on their personal and professional journeys to being lawyers, however, take root in the small classroom infinitely more easily than in the larger class.

4. Externship pedagogy should be integrated into the broader law school curriculum by providing opportunities to transport teaching methods from externship practice that may be helpful to other teachers at the law school, including doctrinal, clinical, and legal writing faculty. Greater integration within the law school community will ensure that the larger faculty engages with externship goals, contributing their perspectives. This process should also spur broader faculties to spell out teaching and learning goals in similarly specific ways, given the externship community's experience in articulating goals their educational efforts strive to meet.<sup>94</sup> In-house and externship educators should continue exploring the ways their teaching and learning intersect.<sup>95</sup> Critical reflection and self-assessment are touchstones of clinical pedagogy.<sup>96</sup> These touchstones should and do speak directly to students doing externships. Conversely, insights and practices around topics that externships can address that in-house clinics generally cannot – supervision problems and the ability to critique institutions from within – are just some of the value externship experience can add to in-house clinical practice. Promoting communication and strengthening this synergy can only benefit students, who stand to gain

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<sup>94</sup> The ABA requires that field placement programs “develop, publish and communicate to students and field instructors a statement that describes the educational objectives of the program.” ABA STANDARDS, *supra* note 7, 305, Interpretation 305-4.

<sup>95</sup> The yearly topic of the 2013 American Association of Law Schools' Conference on Clinical Legal Education, The Value of Variety: Opportunities, Implications and Challenges of Diversification in Clinical Programs, spoke to this need. [http://www.aals.org/clinical2013/AALS\\_ClinicalConf\\_2013.pdf](http://www.aals.org/clinical2013/AALS_ClinicalConf_2013.pdf).

<sup>96</sup> Gary Bellow and Bea Moulton's foundational book, *The Lawyering Process: Materials for Clinical Instruction in Advocacy*, summarizes the aim of clinical legal education as gaining perspective on one's life in the law and engaging in the habit of reflecting on lawyering. GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY* (1978). Writing about this goal on the 25th anniversary of the book, Bryant and Milstein observe that it has become “the mantra for most clinical teachers.” Susan Bryant & Elliot S. Milstein, *Reflections Upon The 25th Anniversary Of The Lawyering Process: An Introduction To The Symposium*, 10 CLIN. L. REV. 1, 1 (2003).

tremendously from both the intensive supervision and role assumption in an in-house clinic and the real-world immersion and observation-mentoring of an externship.

5. The externship community should continue to challenge itself to explore the teaching of critical reflection and how to creatively and effectively teach it through written journals, in the classroom, and in the field. There are many fora where reflection can take root and provide students with tools to gain deeper understanding of all aspects of themselves as individuals who will be lawyers: scholarship; conference sessions and discussions at the externship conferences and AALS and regional clinical conferences; the Lextern and clinical listserves; and nascent and established externship director and faculty groups around the country. These efforts may involve bringing in field supervisors, students and former students who have unique vantage points on externship programs and insights to share. We should further develop tools and practices that allow us to frame teaching and learning success in terms of growth in learning how to learn, rather than solely in gains in substantive law, skills, and professional development.

This article contributes to the externship literature as these programs grow, offering just one of many paths to take towards developing pedagogy. There is no unitary formula for successful teaching. Different teachers will bring their own creative, productive ideas. This paper is not an argument that externship teachers should proceed lockstep, but that externship teachers and students can benefit from making the habit of reflection an express goal of externship classroom study. The exploration is intended to stimulate discussion and urge others to engage in this type of teaching and training. Successful efforts will advance experiential learning in the field placement context and enrich this area of externship pedagogy. They will increase the likelihood that externship study will provide the “mediated and systematic learning experience” that Anthony Amsterdam describes as the heart of clinical education.<sup>97</sup> Ultimately given the vagaries of field supervision and the mix of students and teachers in these classes, educational outcomes will be diverse and unpredictable, as is law practice and the rest of life.<sup>98</sup> The conversation about how students learn from real-life practice is worth having, and the teaching is well worth doing.

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<sup>97</sup> Best Practices Report, *supra* note 10, at 172.

<sup>98</sup> This is not to say that attempts to assess outcomes cannot help externship teachers “maximize their students’ learning and enhance their own teaching.” Terry, *supra* note 58, at 515. The rubrics, or critique guidelines, that Kelly Terry espouses function as detailed, class-specific roadmaps for student learning, and involve a self-consciousness and a feedback loop very much in line with this call for reflective teaching. *Id.*

