

## THE PRACTICE VALUE OF EXPERIENTIAL LEGAL EDUCATION: AN EXAMINATION OF ENROLLMENT PATTERNS, COURSE INTENSITY, AND CAREER RELEVANCE

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*How will law schools meet the challenge of expanding their education in lawyering skills as demanded from critics and now required by the ABA? This article examines the details of the experiential coursework (clinic, field placement, and skills courses) of 2,142 attorneys. It reveals that experiential courses have not been comparably pursued or valued by former law students as they headed to careers in different settings and types of law practice. Public interest lawyers took many of these types of courses, at intensive levels, and valued them highly. In marked contrast, corporate lawyers in large firms took far fewer. When they did enroll in such courses, they too found the courses delivered good value to their preparation for practice, but at distinctly lower levels. The analyses provide three valuable takeaways relevant to most, if not all, law schools—i) all lawyers, whatever their practice, give high value marks to experiential learning courses that had certain intensity characteristics (e.g., level of student responsibility, time-on-task, multiple experiential learning courses); ii) career relevance is fundamental to understand how well the learning value of experiential learning coursework endures and supports graduates' early practice; and iii) schools should acknowledge that students with certain profiles have systematically dodged experiential learning courses. If a school wants to avoid malcontents in the classroom, they should address experiential learning course intensity and career relevance as they plan to meet the ABA's new standards re-*

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*quirements for experiential education.*

INTRODUCTION—LAW SCHOOLS AND EXPERIENTIAL TEACHING: THE  
CURRENT “BEST HOPE” FOR WHAT AILS US

*The belief that all genuine education comes through experience does not mean that all experiences are genuinely or equally educative. . . . The central problem of education based on experience is to select the kind of present experiences that live fruitfully and creatively in subsequent experiences.*

—John Dewey<sup>1</sup>

Every law student and law teacher thirsts for educational experiences that “live fruitfully and creatively in subsequent experiences.” What does it take to offer and deliver that durable and empowering education in courses like law school clinics, externships, and skills courses? Dewey was right; all experiential education is not equal. A two-phase nationwide survey shows that the intensity of the experiential courses and the degree of alignment with the student’s eventual career are key indicators of the extent to which experiential courses deliver practice-value to new law graduates (or as Dewey would phrase it, the extent to which these courses live fruitfully and creatively in our graduate’s professional lives.)

The *Experiential Learning Opportunities and Benefits Survey (EL Survey)* examined lawyers’ self-evaluations of the educational benefit of clinic, field placement, and skills courses. This is the first wide-scale survey that matches practitioners’ views with details about the intensity characteristics of their experiential learning (EL)<sup>2</sup> coursework and features of their practice. Some 2,142 lawyers participated. The respondents practice in large firms, government offices, and non-profit organizations; in litigation and transactional practices; and in law offices that are very large to ones that are quite small. This breadth allowed us to tease answers to three important questions. Who extracts the most value from the EL coursework? Who engages the EL curric-

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<sup>1</sup> JOHN DEWEY, *EXPERIENCE AND EDUCATION: THE 60TH ANNIVERSARY EDITION*, 13-17 (Kappa Delta Pi Publications 1998) (1938).

<sup>2</sup> This article uses the terms *experiential learning coursework* and *experiential learning pedagogies* to denote both the learning derived and teaching techniques employed. These terms correspond with “experiential education” described as a designed, managed, and guided experience for students in the role of the lawyer or through observation of practice, which is accompanied by genuine academic inquiry. See ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 121* (Clinical Legal Education Association 2007) [hereinafter *BEST PRACTICES REPORT*]. See also David I. C. Thomson, *Defining Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING 1 (2014-15).

ulum most? And what elements of EL coursework yield the highest values?

EL coursework was rated positively by nearly every lawyer, albeit not evenly, which points us to some answers to our first question—who profits the most from these courses? A quick look at two lawyer populations tells one thread of the story we observed in the data. Public interest and government service lawyers gave markedly higher ratings than private practitioners. Litigators gave higher ratings than transactional or regulatory lawyers, whether practicing in a private or public setting. The data show that the more alignment there is between the nature of the EL coursework and the attorney's practice, the more the EL learning is appreciated by our former students in their preparedness for practice.

The next thread of the story offers some insights to our second question—who enrolled most and least actively in these courses? Certain segments of the student body gravitated to these courses heavily, while others bypassed EL courses. For instance, private transactional lawyers showed the lowest enrollments on many levels. Is it right to say they shunned those courses? Or did they simply prefer other offerings? The data do not provide answers to such questions. But these distinctions are critical to law schools as they undertake curricular reform.

A third, and perhaps the most enlightening, thread of the story answers our third question—what elements of these courses yield the highest values to prepare lawyers for practice. Courses that gave the lawyers the opportunity to test oneself in a live environment are more highly valued than the simulation courses that are taught within the protective shell of the school building. Course combinations that offered students more time-on-task intensified the learning and yielded heightened values.

These questions and answers come at a propitious time in legal education. American law schools stand at an exciting point in history, where reformers debate the extent and role that experiential learning courses should play in a legal education today.<sup>3</sup> The *EL Survey* joins that debate and provides empirical understanding of the impact of key aspects of experiential courses from the lawyers' viewpoint.

The debate and discourse reached a new level in August 2014,

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<sup>3</sup> See, e.g., WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the Advancement of Teaching 2007)[hereinafter Carnegie Report"]; BEST PRACTICES REPORT, *supra* note 2, at 121-52, 205-09; BRIAN TAMANAHA, FAILING LAW SCHOOLS (2012); William Henderson, *A Blueprint for Change*, 40 PEPERDINE L. REV. 461 (2013).

when the American Bar Association Section on Legal Education and Admission to the Bar promulgated major revisions to the standards for law school accreditation.<sup>4</sup> Among the most important, was an amendment that set a new graduation requirement for all law students to take at least six credits of experiential coursework.<sup>5</sup> The new standard singles out three experiential pedagogies—clinics, externships, and skills courses—as the only ones that satisfy the criteria set in the standard: i) integrate doctrine, skills, and ethics; ii) engage students in performance of professional skills; iii) develop the concepts underlying the professional skills being taught; iv) provide multiple opportunities for performance; and v) provide opportunities for self-evaluation.<sup>6</sup>

The new curricular mandates carry expectations regarding how they will help prepare law students at the moment of graduation—not after a year or two cutting their teeth in practice. As such, it is an especially fruitful time to examine the dimensions of the three signature experiential learning pedagogies that might deliver on those hopes and expectations.

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<sup>4</sup> ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2014-2015 (2014) [hereinafter “ABA 2014 REVISED STANDARDS”]. The revised Standards and Rules resulted from a multi-year (2008-2014) comprehensive review of the standards by the Section. See also 2008-2014 Comprehensive Review Archive, ABA SEC. LEGAL EDUC. & ADMISSION TO THE BAR, [http://www.americanbar.org/groups/legal\\_education/committees/standards\\_review/comp\\_review\\_archive.html](http://www.americanbar.org/groups/legal_education/committees/standards_review/comp_review_archive.html) (last visited August 17, 2015). Cf. STATE BAR OF CALIFORNIA TASK FORCE ON ADMISSIONS REGULATION REFORM, PHASE II FINAL REPORT (2014), Attachment A, Recommendation A, at 1-5 [hereinafter “TFARR RECOMMENDATIONS”], <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000012730.pdf>, (last visited August 18, 2015) (proposing a requirement that new admittees to the California bar have had a minimum of 15 credits of experiential course work). The Task Force recommendation was adopted unanimously by State Bar of California Board of Trustees, November 7, 2014. The timeline for consideration by California Supreme Court and submission to the legislature has not been set, as of this writing.

<sup>5</sup> ABA 2014 REVISED STANDARDS, *supra* note 4, Std. 303(a)(3). The Council and the Section on Legal Education and Admissions to the Bar have established a transition and implementation plan (issued August 13, 2014). Among the items covered in the transition memorandum, are that the new standards in *Chapter 3, Program of Education* will be applied to accreditation visits beginning 2016-2017 and applicable for 1L students entering in 2016 (graduating Spring 2019), specifically Standards 301(b), 302, 303, 304, 314, and 315. In the phase-in period, compliance with these standards will be assessed by evaluating the “seriousness of the school’s efforts,” according to the memorandum. *Transition to and Implementation of the New Standards and Rules of Procedure for Approval of Law Schools*, ABA SEC. ON LEGAL EDUC. & ADMISSIONS TO THE BAR, 2 (2014), [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2014\\_august\\_transition\\_and\\_implementation\\_of\\_new\\_aba\\_standards\\_and\\_rules.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_august_transition_and_implementation_of_new_aba_standards_and_rules.authcheckdam.pdf) (last visited August 17, 2015).

<sup>6</sup> ABA 2014 REVISED STANDARDS, *supra* note 4, Std. 303(a)(3)(i) to (iv). Courses that are not “primarily experiential in nature,” like traditional doctrinal courses, do not satisfy the new requirement.

This article is organized in three parts to explore the findings of the *EL Survey* and to reveal lessons for course design, curricular priorities, and academic advising.

Part I explains the genesis of the *EL Survey* and its design. The survey was part of a NALP and NALP Foundation initiative to uncover useful insights for attorney professional development and recruiting. Part II examines the data. It lays out the enrollment patterns and attorney evaluations of their EL coursework for two survey populations – private law firm practitioners and public interest/government attorneys who participated in experiential learning courses as students. The analyses focus on specific characteristics of the clinics, externships, and skills courses that the attorney took – the intensity, numerosity, and combinations of courses that yielded specific and significant instances of heightened value. To understand the lawyers' ratings fully, the article also examines how the nature of the lawyers' current practice factors into their evaluations of the EL coursework. Finally in Part III, we pose a set of questions for deans, curriculum committees, and academic advising leadership to consider in setting curricular priorities and providing academic advice. Among the ABA's most recent amendments to the accreditation standards, is a mandate that law schools establish and publish learning outcomes reflecting their school's educational program as well as monitor their success in achieving the learning outcomes.<sup>7</sup> Reflecting on the data derived from the *EL Study* can inform such law school efforts.

#### I. GENESIS AND GOALS: EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS SURVEY AND STUDY

In 2010, members from two NALP sections on professional development formed a working group<sup>8</sup> to pursue a study about lawyers' evaluation of their experiential learning coursework. The group comprised law school career advisors and law firm professional development managers who hypothesized that experiential learning coursework offered important value to lawyers' practice-effectiveness whether they practiced in a firm, public interest organization, or gov-

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<sup>7</sup> ABA 2014 REVISED STANDARDS, *supra* note 4, Stds. 301(b), 302 & 315.

<sup>8</sup> The working group comprised Vice-Chairs, Meg Reuter, New York Law School (at the time) and Indiana University-Maurer (presently) and Kris Butler, Sr. Program Manager for Career Development, Holland + Knight LLP, with Sandra Magliozzi, Santa Clara University School of Law, Stacey Kielbasa, Director of Professional Development, Attorney Recruitment and Diversity (Chapman and Cutler LLP) and Gillian M. Murray (Bryan Cave LLP). Others within NALP and its Foundation were instrumental to the success of the study, James Liepold, Executive Director, Judy Collins, Director of Research, Steve Grumm, Director of Public Service Initiatives, and Tammy Patterson, President of the NALP Foundation.

ernment office.<sup>9</sup> The NALP Board of Directors and the NALP Foundation embraced the sections' study proposal and agreed to use their combined resources to disseminate a survey and collect the data.

The *Experiential Learning Opportunities and Benefits Survey* was designed as an exploratory instrument to uncover differences in how lawyers value the three signature teaching methods of experiential learning. The working group specifically focused on the perspective of the *lawyers*, rather than assessments from *master educators* like the studies of the Carnegie Foundation<sup>10</sup> and the Clinical Legal Education Association,<sup>11</sup> or from the perspective of *clients, supervising attorneys, and legal employers* as Marjorie Shultz and Sheldon Zedeck,<sup>12</sup> Neil Hamilton,<sup>13</sup> and others<sup>14</sup> have studied. Rather, the pursuit was to understand the nature of the value to lawyers as they transitioned to practice, through the lens of the information they know best—the particular characteristics of the EL coursework they took.

### A. Previous Research

The *EL Survey* design<sup>15</sup> was built on important early work, the

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<sup>9</sup> In addition to the survey, the sections co-sponsored multiple programs to introduce and demystify experiential learning courses to law firm recruiters and professional development directors, including programs on interpreting transcripts to identify EL coursework and on differences in teaching goals between doctrinal and clinical courses.

<sup>10</sup> Carnegie Report, *supra* note 3.

<sup>11</sup> BEST PRACTICES REPORT *supra* note 2.

<sup>12</sup> Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOCIAL INQUIRY 620 (2011).

<sup>13</sup> See, e.g., Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 567 (2014); Neil W. Hamilton, *Law-Firm Competency Models and Student Professional Success: Building on a Foundation of Professional Formation/Professionalism*, forthcoming 12 UNIV. ST. THOMAS L.J. \_\_ (2014).

<sup>14</sup> See, e.g., ALLI GERKMAN & ELENA HARMAN, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., *AHEAD OF THE CURVE: TURNING LAW STUDENTS INTO LAWYERS* (2015); Susan Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795 (2012); Susan Wawrose, *What Do Legal Employers Want to See in New Graduates? Using Focus Groups to Find Out*, 39 OHIO N. UNIV. L. REV. 505 (2013); Jason Webb Yackee, *Does Experiential Learning Improve JD Employment Outcomes?* (U. Wisc. Legal Stud. Research Paper No. 1343, 2015), available at: <http://ssrn.com/abstract=2558209>.

<sup>15</sup> In the survey design phase, the group consulted with NALP and NALP Foundation researchers, law school clinical faculty, empirical scholars, and professional development thought leaders. We reviewed numerous law school catalogs and course descriptions, and previous surveys of law school curricula. See, e.g., David A. Santacrose & Robert R. Kuehn, Ctr. for the Study of Applied Legal Educ., *2007-08 Survey of Applied Legal Education* (2008) [hereinafter "CSALE 2007-08"]; J.P. "Sandy" Ogilvy & Sudeb Basu, *Externship Demographics Across Two Decades with Lessons for Future Surveys*, 19 CLIN. L. REV. 1 (2012). ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *A Survey of Law School Curricula: 2002-2010* (Catherine L. Carpenter, ed., 2012) [hereinafter "Car-

*After the JD Study* (“*AJD Study*”), a major multi-year longitudinal study of lawyers’ careers, comprising surveys and interviews of 4,500 lawyers nationwide.<sup>16</sup> The first *AJD Survey* was conducted when the lawyers were two years in practice. Among its extensive set of questions, the *AJD Survey* asked the lawyers to rate ten types of law school experiences (curricular and extracurricular) in the helpfulness of each “in making the transition to your early work assignments as a lawyer”<sup>17</sup> (Table 1). The *AJD Survey* respondents ranked clinics the highest of any of the curriculum-based experiences, just after student legal employment (summer and school year). Several other curriculum-based options were among the items queried, including upper level lecture classes, course concentrations, and legal writing. One might have expected those options to elicit high ratings as they represent the more specialized courses in the curriculum; allow the students to target their learning in a manner relevant to their career aspirations; and focus on the most widely used skill in law practice (writing). Nonetheless, clinical training was favored more highly than any other faculty-delivered learning.

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pentner”] has been instrumental in providing context for the analyses of the *EL Survey* data, but it was yet to be published at the time of the survey design.

<sup>16</sup> RONIT DINOVIETZ, BRYANT G. GARTH, RICHARD SANDER, JOYCE STERLING & GITA Z. WILDER, THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION & THE AMERICAN BAR FOUNDATION, *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* (2004) [hereinafter “*AFTER THE JD*”]. The *AJD Study* population is a nationally representative sample of 4,500 lawyers, in all practice areas and settings, who were first admitted to the bar in the year 2000. Sample members were first surveyed in 2002 (*AFTER THE JD* 1) in their second or third year of practice. *Id.* at 89-90. The same group was surveyed again in 2007 and 2012. See RONIT DINOVIETZ, ROBERT L. NELSON, GABRIELLE PLICKERT, REBECCA SANDEFUR, JOYCE STERLING, AMERICAN BAR FOUNDATION & NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION, *AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS* (2009); BRYANT G. GARTH, ROBERT L. NELSON, RONIT DINOVIETZ, REBECCA SANDEFUR, AMERICAN BAR FOUNDATION & NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION, *AFTER THE JD III: THIRD RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS* (2014).

<sup>17</sup> *AFTER THE JD*, *supra* note 16, at 81, Table 11.1. The questionnaire (with response tallies) can be found at GARTH, BRYANT G., JOYCE STERLING, AND RICHARD SANDER, *AFTER THE JD - WAVE 1: A LONGITUDINAL STUDY OF LEGAL CAREERS IN TRANSITION DATA COLLECTION: MAY 2002-MAY 2003, UNITED STATES. ICPSR26302-v2*. Ann Arbor, MI: Inter-university Consortium for Political and Social Research [distributor], 2013-08-13. <http://doi.org/10.3886/ICPSR26302.v2> (Question 67 with response tallies at 340-47).

TABLE 1  
 AFTER THE JD: LAWYER RATINGS OF LAW SCHOOL  
 EXPERIENCES IN EARLY PRACTICE<sup>18</sup>

*On a scale of 1 to 7, rate each experience's helpfulness to making your transition to early work assignments as a lawyer.*

Experience	Rated item helpful to extremely helpful (5-7)	Statistical significance
Legal employment (summers)	78%	Category 1: Statistically MORE helpful than next categories
Legal employment (school year)	67%	Category 2: Statistically MORE helpful than next categories
Clinical courses/training	62%	
Legal writing training	60%	
Internships	58%	
Upper-level lecture courses	48%	Category 3: Statistically MORE helpful than next category
Course concentrations	42%	
First-year curriculum	37%	
Pro bono service work	31%	Category 4: Statistically LESS helpful than previous categories
Legal ethics training	30%	

As with any interesting data, the *AJD Survey* data suggested more questions. The more we considered those ratings and value preferences, the more we wondered: How did the respondents interpret that question and define clinical training? Did clinical training include skills and simulation courses? Did clinical training include field placement or externship courses? The list of experiences in the *AJD* question also included internships. Did the respondents consider credit-bearing externships under internships, under clinical training, or not at all?

Rebecca Sandefur and Jeffrey Selbin explained in their revealing article, *The Clinic Effect*, that the *AJD Survey* question presented further challenges for analysis.<sup>19</sup> We do not know important details about the clinical training the responding lawyers received. Many models exist. Live representation with individuals or entities as clients is the oldest format, but has been joined by other models that now offer non-

<sup>18</sup> Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLIN. L. REV. 57, 85-88 (2009) (Table 1 represents the authors' graphic presentation of Sandefur and Selbin's statistical analysis). Sandefur and Selbin used data from *AFTER THE JD*, *supra* note 16, at 58.

<sup>19</sup> Sandefur & Selbin, *supra* note 18, at 84.

litigation practice or working in a law office on a number of matters without primary responsibility for a particular client.<sup>20</sup> From the *AJD* data, we cannot tell whether the lawyer had an intensive course or a limited experience, much less whether there were multiple courses, multiple semesters, or other indicators of intensity and scope of his or her experience.<sup>21</sup>

### B. The Survey

The *EL Survey* was distributed in two phases: first to private practice attorneys (November 2010) and second to public interest and public service attorneys (November 2011). The questionnaires used were identical in all major respects.<sup>22</sup> Importantly, each of the surveys used the identical phrasing for the question eliciting information on each EL course and for the value-rating question. We refer to the 2010 respondents as the *private attorneys*, and the 2011 respondents as the *public attorneys*.

The key elements of the *EL Survey* questionnaire were:<sup>23</sup>

- i) Threshold question: Lawyers were asked if they participated in any of three identified experiential learning course—clinics, externships, or skills courses, or none at all.
- ii) Coursework details: For each experiential learning pedagogy, the lawyers were asked to provide details specific to that coursework.
- iii) The value question: Lawyers were asked to rate on a scale of 1-4 each of the types of EL “in preparing . . . for the practice of law?”
- iv) Practice details: Questions about the attorney’s type of practice, office size, and years in practice.

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<sup>20</sup> See, e.g., Deborah Maranville, Mary A. Lynch, Susan L. Kay, Phyllis Goldfarb, and Russell Engler, *Re-vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517, 522 (2011-12) (tracing history of clinics from litigation on behalf of subordinated populations to broader array of lawyering skills and roles).

<sup>21</sup> Additionally, the *AJD Survey* data had a glitch. The respondents were asked to rate only the experiences they actually had, but it appeared that many respondents rated clinical training who had not actually taken a clinic. Sandefur and Selbin suspected that those lawyers may have rated clinical training as “not useful,” rather than “did-not-take.” Sandefur & Selbin, *supra* note 18, at 84-85 The *EL Survey* questionnaire was designed to minimize that risk.

<sup>22</sup> Appendix C (containing full text of the *EL Survey* questionnaire). The reprint of the survey shows the minor variations between the 2010 and 2011 surveys. The differences were limited to questions about type of office and the role of the EL coursework in the attorney’s job interviewing (questions 4, 4a, 4b, and 10).

<sup>23</sup> *Id.*

### 1. *Threshold Question*

We wanted cleanly to isolate lawyers who had actually taken one or more of the EL courses. As such, the first question simply asked which, if any, courses the respondent took: clinic (representing individual clients); externship/field placement; legal practice skills or simulation course; or none. We had definitional concerns as well. While there is considerable agreement about many of terms used in the survey, it is also clear that law schools employ a very wide array of course names for the same thing and also have widely divergent content for courses that carry the same names.<sup>24</sup> The *EL Survey* approach for comparing apples-to-apples was two-fold. First, the survey asked participants to choose the course that “best describes the most significant content of the course(s) you took.” Second, the survey asked specific questions about course characteristics so that we could compare characteristics as much as possible, rather than course titles.

### 2. *Course Detail: Clinics*

We wanted to be able to isolate the ratings for the attorneys who had the classic clinical experience in building skills and in forming one’s professional identity, namely when the student is bestowed the direct and personal responsibility for the legal welfare of a client.<sup>25</sup> It is seen as the bright crucible moment of professional identity forma-

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<sup>24</sup> Alliance for Experiential Learning in the Law has made it part of its early mission to create a common nomenclature and typology for experiential education. See Cynthia F. Adcock, Cynthia Batt, Susan L. Brooks, Justine A. Dunlap, Carolyn Wilkes Kaas, Katherine R. Kruse, Susan Maze-Rothstein & Ruth Anne Robbins, *A Glossary for Experiential Education in Law Schools*, in Alliance for Experiential Learning in Law, *Experience the Future: Papers from the Second National Symposium on Experiential Education in Law*, 7 ELON L. REV. 1, 12-23 (2015) (providing a “Glossary for Experiential Education on Law Schools” that was developed out of the Report of the Working Group on Vocabulary and Collaboration). The newly revised ABA standards 303 to 305 provide new clarity to its definitions of faculty-supervised law clinic, field placements, and simulation courses. See 2015 Annual Questionnaire Instructions, Part I, School Information, ABA SEC. ON LEGAL EDUC. & ADMISSION TO THE BAR, 6-9, Questions 12-a-j (last updated July 2, 2015) [hereinafter ABA Ann. Questionnaire], [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2015\\_aq\\_part1.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_aq_part1.authcheckdam.pdf) (instructing schools how to categorize and report their curricular offerings, number of course titles, seats available and students registered).

<sup>25</sup> The *EL Survey*’s threshold question characterized a clinic as “representing individual clients.” If the survey participants followed that descriptor precisely, we would not have gathered data from attorneys who took a clinic that was not designed for direct representation of live clients (*e.g.*, mediation), and perhaps where clients were organizational entities rather than people. There is some evidence in the response data that the attorneys abided by the advice to answer the question for the courses that best describe the course you took and answered the clinic-specific questions even if their clinic did not represent individuals. For instance, more than 25 percent of the respondents indicated that they did not consider themselves to be lead counsel or to have worked under a student practice rule. See *infra*, Table 5.

tion where the student must bring to bear her full attention and best effort.<sup>26</sup> The survey asked whether the respondent considered herself the lead or co-lead counsel and whether she conducted the matter under a student practice rule.<sup>27</sup> We also asked details about the number of terms and supervision (e.g., law school faculty member, an outside attorney, or both).<sup>28</sup> The survey asked these details for each clinic the attorney had taken.

### 3. Course Detail: Externship/Field Placements

We know that by far most externships are one-term,<sup>29</sup> but that the number of hours the student is expected to work can vary greatly from a modest time commitment to full-time. We also know that placements in courts, government agencies or public interest groups are nearly universally offered at law schools nationwide, but that a growing minority of schools allows placements in the private sector in law firms and corporations.<sup>30</sup> As such, our key questions concerned

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<sup>26</sup> See, e.g., Lisa Bliss & Donald C. Peters, *Delivering Effective Education in In-House Clinics*, in *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* 193-94 (Deborah Maranville, et al. eds., 2015) (noting the signature feature of clinics where students assume the role of a lawyer to handle live legal matters for real people, which tends to compel students to shift their identities from students to professionals).

<sup>27</sup> In 1969, in one of its efforts to increase student practical training, the ABA prepared a Model Student Practice Rule, which has been adopted in some form in every state allowing law students to appear on behalf of clients in court under the supervision of a licensed practitioner. See Sandefur & Selbin, *supra* note 18, at 77. David A. Santacroce & Robert R. Kuehn, Ctr. for the Study of Applied Legal Educ., *2010-11 Survey of Applied Legal Education* 19 (2012), [hereinafter "CSALE 2010-11"] (68% of schools reported all clinic students practice under a student practice rule; 18% have no students practicing under a practice rule, and the remainder have a mix). The most recent CSALE survey shows little change from those numbers, David A. Santacroce & Robert R. Kuehn, Ctr. for the Study of Applied Legal Educ., *2013-14 Survey of Applied Legal Education* 25 (2012), [hereinafter "CSALE 2013-14"] (65% of schools reported all clinic students practice under a student practice rule, 20% have no students under a student practice rule).

<sup>28</sup> In 2012, the ABA defined clinics and externships vis-à-vis who bore the professional responsibility for the work of the law student – a full-time faculty member or an outside attorney. Clinics were defined as courses in which full-time faculty have primary professional responsibility for all cases on which students are working. Externships or field placement courses were distinguished as those in which someone other than full-time faculty has primary responsibility to the client. See Ogilvy & Basu, *supra* note 15, at 3, note 2. The ABA now distinguishes clinics and externships based, in part, on whether the supervisor is a faculty member and employed by the law school for a clinic, or not employed by the law school for externships. It does not have a requirement that the faculty member is a full-time employee. See ABA Ann. Questionnaire, *supra* note 24 at Section 4, Question 12a-j.

<sup>29</sup> CSALE 2013-14, *supra* note 27, at 27 (84% of externships are one-term).

<sup>30</sup> Carpenter, *supra* note 15, at 77, Figure 63. Externships courses have expanded in every placement setting since 1992. Even the most common placements such as serving in a judge's chambers showed a 40 percent increase in the number of schools offering such a course (from 100 to 124 to 140 schools in 1992, 2002, and 2010). *Id.* While in-house counsel and law firm placements remain the least common placements offered, their growth has

the placement setting and the number of hours worked (providing three time ranges, 10-20, 21-30, and 31-40 hours per week).<sup>31</sup> This data allow us to compare externships across many schools, without sorting through the variations of how schools assign credits,<sup>32</sup> for fieldwork and/or the academic component.<sup>33</sup> It also has the benefit of being easier to recall than the number of credits earned for a course. To avoid confusion with unpaid or paid internships, the survey prominently noted that we sought information only on JD-credit bearing externships.

#### 4. *Course Details: Legal Practice Skills or Simulation Courses*

Skills and simulation courses have expanded in recent years, in part, due to a 2006 ABA standard that imposed a graduation requirement of “substantial instruction in . . . professional skills.”<sup>34</sup> This requirement ensured that a course like *Negotiations*, for example, would be a performance/practice-oriented course, rather than something like a readings-based course on game theory.<sup>35</sup>

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been the most dramatic from 1992 to 2010. Externship courses with corporate counsel office placements have grown more than three-fold (28 in 1992 to 88 schools in 2010) and law firm placements have more than doubled in that same time period (from 30 to 66 schools). *Id.*

<sup>31</sup> In the 2010-11 CSALE survey, roughly 11% of field placements programs allow students to work fewer than 10 hours per week. However, the CSALE authors have suggested that those responses of very low hourly commitments were errors. CSALE 2010-11, *supra* note 27, at n. 16. The *EL Survey* ranges did not include those limited-hour externships.

<sup>32</sup> See Ogilvy & Basu, *supra* note 15, at 13-17 (detailing allocation of credit between fieldwork and academic component and fieldwork hours required per credit).

<sup>33</sup> We did not ask questions about the companion seminar to the field placement. The campus-based academic element of the field placement is very common (84% of schools). CSALE 2013-14, *supra* note 27, at 34. This represents a slight drop from 88% in 2010. CSALE 2010-11, *supra* note 27, at 24. The externship standard, Std. 305, does not require a classroom component. Rather it requires “opportunities for student reflection through a seminar, regularly scheduled tutorials, or other means of guided reflection.” Std. 305(e)(7). If the course awards three or more credits, the opportunity for student reflection must be provided contemporaneously. *Id.*

Ogilvy and Basu’s survey found that the nature of that classroom component is wide-ranging, from graded substantive seminars that met weekly, to a handful of tutorial meetings with a professor; from substantial journaling requirements to limited expectations. Ogilvy & Basu, *supra* note 15, at 21-28. We avoided overburdening the survey to extract information at a detail level that lawyers may not remember with a reliable level of accuracy and where school terminology varies widely.

<sup>34</sup> ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR THE APPROVAL OF LAW SCHOOLS, Standard 302(a)(4) (2006-07) [hereinafter “ABA 2006 STANDARDS”] (revisions adopted by the Council in December 2005; the House of Delegates concurred in February 2006; published in the 2006-07 Standards), [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/standardsarchive/2006\\_2007\\_standards.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/standardsarchive/2006_2007_standards.authcheckdam.pdf) (last visited August 18, 2015).

<sup>35</sup> ABA Section on Legal Education and Admissions to the Bar, *Consultant’s Memo # 3 (Revised)* 2 (August 2013) [hereinafter “Consultant’s Memo”] “[T]o be ‘substantial,’ in-

We developed a list of nine skills courses that included the most typical in law school catalogs<sup>36</sup> as reported in the recent *ABA Survey of Law School Curricula*.<sup>37</sup> We also included three courses that schools have added to respond to student demand and/or employer criticism (i.e., *Leadership*, *Business management*, and *Law firm management*).<sup>38</sup> Further the survey specifically noted that it was not seeking information about first-year required legal writing courses, but did seek information on *Advanced Drafting* courses. The *EL Survey* specifically used “Drafting” rather than “Writing” course to exclude upper level seminars that require lengthy academic papers.<sup>39</sup> Recognizing the variation in course names and content among law

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struction in . . . professional skills must engage *each* student in skills *performances* that are *assessed* by the instructor. . . . [M]erely reading about and taking an exam on counseling and negotiation will not suffice.” (emphasis in original) *Id.* at 2. This has now been expanded and codified Standard 304(a), *see* ABA 2014 REVISED STANDARDS, *supra* note 4, Std. 304(a).

<sup>36</sup> See full list of courses at Table 10 and Appendix C.

<sup>37</sup> Carpenter, *supra* note 15, at 75 and 78. The ABA Survey showed the number of schools offering each skills course (out of 160 schools responding): Trial advocacy (98%), Alternative dispute resolution (89%), Appellate advocacy (88%), Mediation (85%), Transactional skills (78%), Advanced trial advocacy (74%), Pre-trial advocacy (74%), Interviewing and counseling (73%), Negotiation-Settlement (68%), Arbitration (60%), Negotiating-Business (56%), Substantive course coupled with practicum (55%), and Discovery practice (51%). *Id.* at 75. Drafting courses were offered at 10-75% of schools depending on subject focus. *Id.* at 78.

<sup>38</sup> See, e.g., John C. Coates IV, Jesse M. Fried and Kathryn E. Spier, *What Courses Should Law Students Take? Lessons from Harvard's BigLaw Survey*, 64 J. LEGAL EDUC. 443 (2015). The courses surveyed in this study were: Accounting and financial reporting; Corporate finance; Negotiation workshop; Business strategy for lawyers; Analytical methods for lawyers; Leadership in law firms; and Statistical and Quantitative analysis. Their value question: Please indicate how useful the course would be for an associate to have taken, scale 1 to 5, 5 = extremely useful. Accounting and financial reporting scored 4.38/5 and Corporate finance scored 4.21/5. *Id.* at 445. See also Eric Talley, *Berkeley Transactional Skills Project and Survey*, 23 (Berkeley Center for Law, Business and the Economy 2014), [http://www.law.berkeley.edu/files/bclbe/Cal\\_Bar\\_Assn\\_Deck\\_Final.pdf](http://www.law.berkeley.edu/files/bclbe/Cal_Bar_Assn_Deck_Final.pdf) (last visited August 15, 2015). This presentation reports results of a survey of 346 business lawyers about transactional skills and competencies, and recommends that the California Task Force on Admission Regulation Reform add specific transactional practice oriented skills to the list of “practice-based experiential courses that meet the professional competency training requirement,” namely Financial Analysis (e.g., accounting, budgeting, project management, and valuation) and Business Strategy and Behavior. *Id.* at 23. Both suggestions were included in Task Force on Admission Regulation Reform’s final recommendations to the State Bar Board of Trustees and adopted November 7, 2014, *see* TFARR RECOMMENDATIONS, *supra* note 4, at 2. The Coates and Talley studies were conducted after the *EL Survey*. It would have been useful had the *EL Survey* included course titles such as Financial analysis, Corporate finance, or Business strategy.

<sup>39</sup> The *EL Survey* also provided opportunity for the attorneys to indicate the name of any skills or simulation course taken that was not represented on the list. The most common courses indicated by the *EL Survey* respondents included: advanced legal research (14), general lawyering skills (10), mediation skills (6), moot court or trial advocacy competition (4), communication skills (4) and evidence simulation (2).

schools, we asked the attorneys to check the title that best described the most significant content of the course, and to check only one title for any course they took. The “intensity” measure here was the number of courses the respondent took, not the number of credits for any skills course.

### 5. *The Evaluation Question*

We specifically wanted to focus the attorneys’ attention on the value of the coursework to the period where they were transitioning from school to practice. We wanted to build upon “helpfulness” data that was collected in the *AJD Study*, but with a slight modification. The *EL Survey* asked: How useful in general were each of the experiences listed below *in preparing you for the practice of law?* [emphasis added]. The *AJD Study* had used a similar question, but it focused on the value of clinical training “to early work assignments.”<sup>40</sup> We broadened the question to make sure the survey gave the opportunity for the lawyer to consider some of the less concrete learning values that might not be specifically pertinent to an assignment, such as professionalism, cultural competence, ethics, empathy, or other important aspects of EL course design. The *EL Survey* question is utilitarian and self-referential in focus—was the course “helpful to your practice preparedness,” not did you enjoy the course or was it well taught.<sup>41</sup>

The scale provided was 1 to 4, with 1 representing “not at all useful,” and 4 representing “very useful,” as well as “NA—did not have this experience.” We chose an even number for the rating categories to eliminate a tendency of survey-takers to choose a middle or neutral value along a continuum.<sup>42</sup> Although we sought information on each

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<sup>40</sup> See *supra* note 17, and accompanying text.

<sup>41</sup> As we report the findings on the lawyers’ ratings throughout the article, whether worded as appreciation, learning value, utility, or similar term, it all boils down to this one metric: helpfulness in preparing the lawyer for practice. Cf. David L. Chambers, *Satisfaction in the Practice of Law: Findings from a Long-Term Study of Attorneys’ Careers*, U. of Mich. Public Law Research Paper No. 330, at 2 (2013), [http://repository.law.umich.edu/alumni\\_survey\\_scholarship/26](http://repository.law.umich.edu/alumni_survey_scholarship/26) (lasted visited August 18, 2015) (explaining the subjectivity element of such survey questions, that the respondents must call up an overall impression of their work experience, then measure it against their expectation or some other standard, and reach a judgment how well their experience matches that standard; each element is subjective).

<sup>42</sup> This is the same scale (4-point, forced choice scale) used in the Law School Survey of Student Engagement (Indiana University, Center for Postsecondary Research) for questions seeking student ratings of their experience with numerous aspects of their school’s program. Law School Survey of Student Engagement 2015 Survey instrument, <http://lsse.indiana.edu/pdf/2015/2015%20LSSSE%20Survey.pdf> (last visited August 17, 2015) (see questions 8-10). In the *EL Survey*, we chose to provide a scale labeled only by the end values (not at all useful; very useful), and did not characterize or provide descriptive labels for the intermediate values in order to facilitate the respondents interpreting each choice as equidistant from the others.

EL course the respondent took, the survey did not ask the respondents to evaluate each individual course (*e.g.*, when they took multiple courses in a single EL category), but rather to place a value on each category of experiential coursework. In this manner, the *EL Survey* focused the respondents' attention on the aggregate benefit and avoided asking a level of granularity that would make the survey unwieldy.<sup>43</sup>

#### 6. Questions About Attorney's Practice

The *EL Survey* collected information on the nature of the respondent's practice, using the broad categories of litigation, transactional, regulatory, and legislative practice, rather than subject matter. Unlike the private lawyers who all practiced in law firms, the public lawyer population practiced in many types of offices. For the second round of the survey, we added a question about the kind of office where the attorney worked, providing the categories that NALP has long used in its employment data collection efforts, such as level of government, public defender, indigent legal services, and impact advocacy organization, among others. We asked the number of attorneys in the office. Finally the survey asked about longevity in practice, dividing respondents into early practice years (0-3) or more established in their careers (more than 3 years).

#### C. Early Reports

The survey response was robust: 930 private attorneys and 1,212 public attorneys provided usable answers.<sup>44</sup> NALP Foundation issued reports regarding each of the surveys, as well as a separate report on the comparisons.<sup>45</sup> These reports gave general overview of the level of

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<sup>43</sup> When our analyses examine a particular course characteristic (*e.g.*, served as lead counsel in a clinic, externed for a judge, or took a particular skills course), we show the mean value for the EL category rating, not a rating for the particular course or feature. When we aggregate the ratings of dozens or hundreds of lawyers' experiences, we can isolate those features of the EL coursework that resulted in a significant impact on the overall rating when that characteristic was present or absent.

<sup>44</sup> The demographics of the survey respondents are provided in Appendix B.

<sup>45</sup> 2010 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS (NALP and the NALP Foundation, 2011); 2011 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS: RESPONSES FROM GOVERNMENT AND NONPROFIT LAWYERS (NALP and the NALP Foundation, 2012); A COMPARISON OF RESPONSES FROM LAW FIRM ASSOCIATES AND PUBLIC SERVICE LAWYERS (NALP and NALP Foundation, 2012).

The NALP Reports, especially the first one regarding the private lawyers' EL experiences, generated considerable discussion on listservs and blogs raising many questions about the limitations of the survey population, course sequencing, course definitions, and how to put these lawyer value ratings in context with the direct practice value of non-experiential courses taught in law school. *See, e.g.*, Email thread started by Deborah Ma-

participation by the lawyers and the ratings assigned by the lawyers. Those reports did not disaggregate the data to explore differences in the scope and intensity of the EL coursework. NALP and the Foundation licensed the data to us to enable us to pursue these deeper analyses. Preliminary findings were presented and discussed at roundtables, conferences, workshops.<sup>46</sup> This article is the culmination of these early presentations.

#### D. Survey Populations in Context

Nearly all respondents of the *private* attorney survey indicated that they practiced at firms of 100 or more attorneys, with nearly 70% indicating that they practice in firms of 250 or more attorneys, and 94% in firms of 100 or more attorneys. Such large firms are generally or exclusively dedicated to business clientele, with few individuals as clients. The *public* attorney respondents were roughly evenly split with half working in government (federal, state Attorney General offices, other state agencies, local government, local prosecution) and half in public interest organizations (advocacy organization, legal services-civil, public defender).

The immediate analytical concern was how to put these specific lawyer populations (large firm, government, and public interest) in context, and whether their experiences could provide insights regarding lawyers in other practice settings, especially small and mid-sized firms. The *AJD Study* data provide useful insights to this question. Robert Nelson, one of the *AJD* principal investigators, sorted the *AJD* responses regarding the helpfulness of clinical training by the

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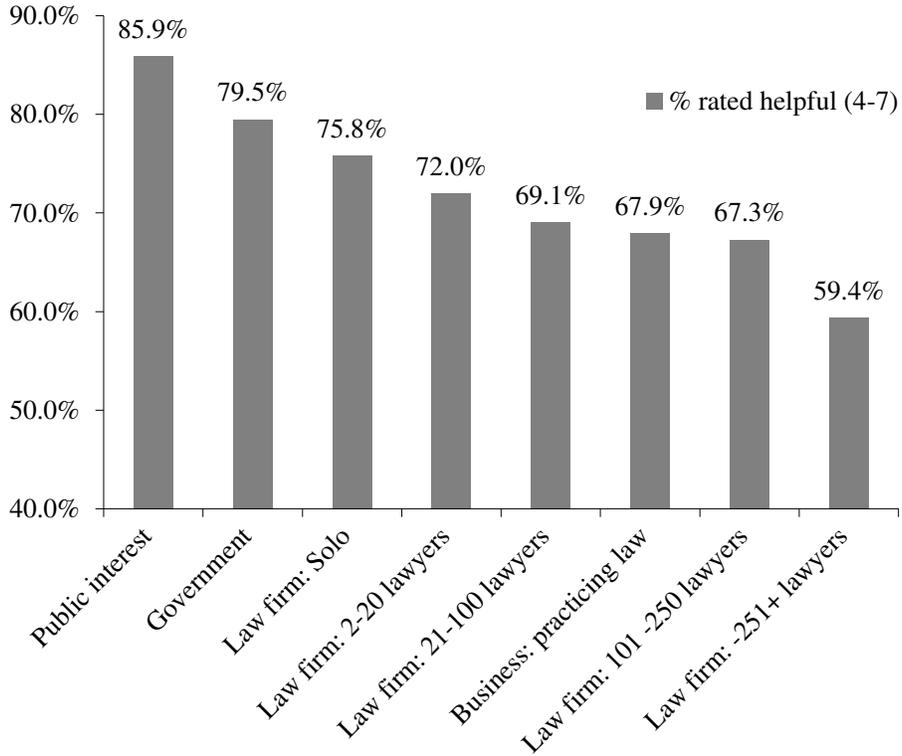
ranville, Professor of Law, Univ. of Washington, to Lawclinic listserv, *NALP Survey on Experiential Learning* (Apr. 22, 2011, 4:47pm) (19 contributions to the listserv thread); Stephen Ellmann, *What prepares students for practice: new empirical data, and new empirical questions* (Apr. 23, 2011, Now Without Hesitation blog). The questions raised by the comments informed our analysis, contextual research, and the highlights offered in this article.

The findings of those early reports also became part of the dialogue on legal education reform, and were referenced in comments to the ABA Task Force on the Future of Legal Education regarding the appropriate pedagogical goals for legal education. Clinical Legal Education Association, Comment to ABA Task Force on the Future of Legal Education, at 2 (June 19, 2013)(citing NALP reports on the *EL Survey*, and noting its findings that non-profit, government, and private firm lawyers rated clinics and externships 'very useful' by large majorities).

<sup>46</sup> See, e.g., Margaret Reuter and Sandra Magliozzi, Lawyers' Assessment of the Value of Law School Experiential Learning, presentation at Externship 6 Conference; Preparing Lawyers: The Role of Field Placement (Northeastern and Harvard Law Schools, Boston, MA, Mar. 2012); Margaret Reuter, Fellow, Are We Making a Difference? Developing Outcome Measures to Evaluate the Effectiveness of Law School Efforts to Teach Ethics and Develop Professionalism (Georgia State University School of Law and American Bar Association Standing Committee on Professionalism, Palmetto, GA, Nov. 15-17, 2013).

lawyer’s practice setting and law firm size.<sup>47</sup>

CHART 1  
 HELPFULNESS OF CLINICS IN TRANSITION TO PRACTICE,  
 SORTED BY PRACTICE SETTING<sup>48</sup>



The data show a striking linear progression with public interest lawyers rating their clinical experience most highly and the large firm lawyers valuing their clinical training least highly. Importantly the ratings of lawyers in government, small and medium sized firms, and in business settings lie squarely in the middle. The *EL Survey* analyses offer insights for participants in specific settings—public interest, government, and large firms. Nelson’s *AJD* analysis suggests that law school graduates practicing in other settings may have experience somewhere in between the public lawyers and private lawyers in the *EL Survey*.

<sup>47</sup> Robert L. Nelson, *The Future(s) of Lawyering: Young Lawyers Assess the Value of Law School*, at Am. Bar Found. Fellows Research Seminar, ABA Mid-yr Mtg., Feb. 12, 2011) (on file with author).

<sup>48</sup> *Id.* (authors’ graphic presentation of Nelson’s data). Nelson’s data also showed that non-practicing lawyers in business settings rated their clinical training (67.5%) on par with lawyers in practicing roles in business settings. *Id.*

The next concern was the extent to which the *EL Survey* populations are representative of the practice settings of new lawyers. New graduate employment data provide a rough benchmark for understanding the proportion of graduates whose practices are represented (or not represented) among the *EL Survey* populations. According to the ABA's most recent Employment Summary for all law graduates, public interest and government positions account for 24.0% of new law graduate jobs, while large firms (more than 101 attorneys) represent 19.5% of the new grad jobs.<sup>49</sup> As such, the *EL Survey* population covers less than one-half (43.5%) of the practice settings where new lawyers start their professional careers. These figures aggregate employment outcomes for all law schools; individual law schools have quite different distributions for their new graduates.<sup>50</sup>

TABLE 2  
PRACTICE SETTINGS FOR NEWLY GRADUATED  
ATTORNEYS<sup>51</sup>

Employment for Class of 2014 (ten months after graduation)	
Practice setting	% of employed graduates
Law firm: solo	2.5
Law firm: 2-25	25.9
Law firm: 26-100	5.0
Law firm: 101-250	5.9
Law firm: 251+	13.6
Government	18.1
Public interest	5.9
Judicial clerk	9.2
Business	18.1
Academic	2.1

## II. ENROLLMENTS, INTENSITY, AND CAREER RELEVANCE

Through nine tables that follow, we present several angles to un-

<sup>49</sup> ABA SECTION ON LEGAL EDUCATION, *Employment Summary Report* (2015) (authors' calculations based on ABA data; includes all reported employment for class of 2014), available at <http://employmentsummary.abaquestionnaire.org> (last visited August 18, 2015).

<sup>50</sup> *Id.* The ABA's employment outcomes webpage provides school specific data, as well as a full compilation spreadsheet.

<sup>51</sup> *Id.*

derstand the *EL Survey* data.<sup>52</sup> Section A provides a 30,000-foot overview of the enrollment and value-rating differences for each of the three categories of EL coursework as between private and public lawyers. The differences are pronounced and statistically significant. Given that schism, we decided to conduct parallel analyses throughout, rather than blend the data and analyses. Sections B and C drill down to examine how the lawyers responded to different course characteristics. Section B examines course intensity characteristics for clinics, externships, and skills courses. It presents several findings that show when certain intensity factors are present, the lawyers responded with heightened value ratings. While there is striking similarity between private and public lawyers in how they respond to intensified EL courses, there are also distinct differences that reveal a secondary set of findings about the career relevance of the coursework. Section C delves into those differences more, with a focus on the skills course subjects and the nature of the attorney's work in litigation, transactional, and regulatory practice. With each of the tables in Sections A, B, and C, we highlight several points of interest in the data regarding our three threads of inquiry: differences in enrollment choices, course intensity features that enhance the values ascribed by the lawyers, and connectedness to the lawyers' current careers. In Section D, we recap the findings.

A word of caution: From these side-by-side analyses, it is nearly irresistible not to fall into the assumption that these lawyers were choosing courses with their career trajectory in mind. It is important to use caution in interpreting the apparent student course-selection strategy. The *EL Survey* did not ask when the lawyer formed his/her practice aspirations (*e.g.*, prior to attending law school, during 1L, 2L, or 3L year, or post-graduation); how much those aspirations were influential in their course selections; or whether they are employed in the type of practice to which they aspired and targeted their courses. We all know students who start law school dedicated to a career path, and stay devoted. We also know students who knew little to nothing about their career aspirations through most of their legal education, as well as those whose ultimate jobs are not in the kinds of practice for which they planned. Nonetheless, in these large numbers it *appears*

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<sup>52</sup> Our data hygiene and calculation protocols allow us to preserve and report as much of the collected data as possible, with limited exceptions. The key exception: we deleted any rating where the attorney neither indicated that he took the particular type of coursework (threshold question) nor provided any course detail. Some attorneys indicated that they took a particular type of EL course, but did not provide full details and/or ratings. If details were provided, they are included in any raw number counts. Percentages and ratings are based on the number of attorneys actually responding to the pertinent survey questions.

many lawyers devised their course selection with purpose and direction.

A counter-conclusion might be that a lawyer's ultimate career direction is a byproduct of the courses he took. For instance, those students who took a clinic might be more inclined to pursue a public interest career. Selbin and Sandefur's work suggests that this is not the case.<sup>53</sup> Selbin and Sandefur found that lawyers who entered law school specifically with the motivation to improve society or help others tended to take clinics, and they were more likely to take jobs in government and non-profit settings, than the average student. But lawyers who entered law school with other motivations, were statistically less likely to take a public sector job, even if they had taken a clinic.<sup>54</sup>

### A. *Overview of Enrollment Patterns and Value Ratings*

#### 1. *Enrollment*

Given the growth in the experiential offerings nationwide, we hoped to find widespread enrollments in one EL pedagogy or another. The data affirmed our hope. Table 3 shows the percentages of private and public lawyers who took each of the EL pedagogies and a selection of other data points to give a snapshot of their enrollment patterns.

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<sup>53</sup> Sandefur & Selbin, *supra* note 18, at 97-100.

<sup>54</sup> *Id.* at 100 (Table 4).

TABLE 3  
COMPARISON OF PRIVATE AND PUBLIC LAWYER  
PARTICIPATION IN EL COURSEWORK

Attorney characteristics	Private lawyers	Public lawyers
# of attorneys	930	1,212
# and % in most common practice type	Litigation: 529 (57%)	Litigation: 937 (77%)
# and % in 2d most common type	Transactional: 301 (32%)	Regulatory: 155 (13%)
Participation indicators		
# and % who took a clinic (CLC) *	317 (34%)	711 (59%)
# and % who took an externship (EXT) *	360 (39%)	678 (56%)
# and % who took a skills course (SKI) *	678 (73%)	1,016 (84%)
# and % who took all three EL types *	126 (14%)	379 (31%)
# and % who took "0" EL coursework *	159 (17%)	67 (6%)
For those who participated in Experiential Learning Courses		
# and % in full year (or longer) CLC *	147 (50%)	427 (61%)
# and % in single semester CLC *	141 (50%)	257 (38%)
# and % who had 2 or more EXT *	98 (28%)	226 (35%)
Most popular settings for EXT	Court (43%) Government (26%) Non-profit org (14%)	Non-profit org (36%) Government (31%) Court (22%)
% with EXT in law firm setting *	12%	7%
Median # SKI courses	2	2
Most common SKI courses	Trial advocacy (55%) Negotiating (34%) Pre-trial litigation (26%)	Trial advocacy (67%) Appellate adv (24%) Negotiating (23%)
% took Transactional Practice SKI *	10%	5%

\* For each indicator, difference between private/public lawyer participation is significant ( $p < .05$ ).

*a. Nearly Everyone Took at Least One Experiential Learning Course*

It is a sanguine development in legal education that the vast majority of public and private lawyers took some coursework within the experiential learning curriculum of their law schools. Almost 90 percent of the respondents took at least one EL course (89.4%). While the *EL Survey* did not ask about credit values for any of the courses, it is apparent that a sizeable number of public and private lawyers would have met the ABA's new 6-credit EL coursework requirement, and many more would have made significant progress.

*b. More Than 200 Lawyers Indicated that They Did Not Take a Single EL Course*

Lawyers' interest and enrollment in EL course was not universal. Just over 10 percent (226) of lawyers indicated that they did not take a single EL course – despite the ABA requirement that law schools ensure that all graduates had at least one credit in professional skills training.<sup>55</sup> The gap might have multiple explanations. Some of the survey respondents graduated before the requirement was effective. Further, numerous schools allowed their students to satisfy the requirement through alternate routes, such as moot court, law journal, advanced research courses, or with doctrinal classes that had sufficient skills instruction to meet the one-credit standard.<sup>56</sup>

*c. Private and Public Lawyers Engaged the EL Curriculum at Very Different Levels*

The differences between the two lawyer populations at nearly every participation level for clinic, externship or skills course is striking and statistically significant. The public lawyers not only took more clinics, externships and skills courses, but they were more likely to enroll in the full palette of EL courses. The private lawyers did participate in the EL curriculum, but evidently favored non-EL doctrinal classes more so. The differences between the two populations are evident in many slices. These data provide the first suggestion that students bound for private and public practice careers approached their course selections with intentionality and directionality, which sparks a whole set of questions. Why does a sizeable segment of the student body shy away from such EL courses? What are they choosing instead? Do the enrollment patterns represent a prioritization of other classes, a rejection of EL courses, or some other consideration?

*d. Within the EL Curriculum, Private Lawyers Favored Different Courses than Public Lawyers*

Public and private lawyers preferred different externship settings and skills courses. Private lawyers heavily favored judicial externships over other settings, choosing to work with a judge twice as often as the

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<sup>55</sup> ABA 2006 STANDARDS, *supra* note 34, Std. 302(a)(4).

<sup>56</sup> Carpenter, *supra* note 15, at 41-42 (reporting on schools' approaches to compliance with this standard). ABA 2006 STANDARDS, *supra* note 34, Interpretation Std. 302-3; Consultant's Memo, *supra* note 35, at 2 (schools may satisfy the requirement by requiring students to a particular course or use a cafeteria plan where students may enroll in a course from a list of eligible courses). The broad array of courses recognized under the 2006 standard would not satisfy the 2014 ABA experiential learning course requirement. The students must satisfy it with clinic, field placement or skills courses only. ABA 2014 REVISED STANDARDS, *supra* note 4, Std. 303(a)(3).

public lawyers did. In building a résumé, judicial externships are seen as useful irrespective of whether one desires a litigation or non-litigation career.<sup>57</sup>

Transactional skills courses and law firm placements in externships show low enrollments overall for both groups, but were much more likely to attract private lawyers. On a percentage basis, roughly twice as many private lawyers signed up for law firm externships and *Transactional skills* courses as the public lawyers did.

The low enrollment in *Transactional skills* courses and law firm externship placements likely has its roots in school offerings. Many schools exclude private sector externship placements citing concerns that the profit demands in a law firm or business will limit a supervising lawyer's careful attention to student learning; concerns about federal wage law application; and a preference to devote law school resources to enhancing access to justice.<sup>58</sup> Law firm and corporate in-house counsel placements are the least common placement offered, although their growth has been the most substantial from 1992 to 2010.<sup>59</sup>

The ABA *Survey of Law School Curricula: 2002-2010* reported that 78 percent of surveyed schools offer a transactional skills course,<sup>60</sup> although it provided no data on how many sections or seats are available. As will be seen in Table 10, it is apparent that there are not nearly as many seats in *Transactional practice* courses as there are in courses like *Trial advocacy*.<sup>61</sup> The participation rate by private lawyers in transactional skills courses and in law firm externship placements may suggest that there is more interest than schools are currently satisfying.

## 2. Lawyer Valuations

Before delving into the lawyers' value ratings, there are a few cautions to lay down. First this is not a beauty contest. Although one

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<sup>57</sup> See Email from Kenny Tatum, Assistant Dean for Career Services, Indiana University-Maurer Law School, to Margaret Reuter (August 26, 2014, 5:33pm EST) (on file with author) (noting that judicial externships are valuable regardless of the practice area someone eventually enters—litigation or transactional; and indicating the vast majority of employers understand the value of working for a judge).

<sup>58</sup> See Carolyn Wilkes Kaas with Cynthia Batt, Dena R. Bauman, & Daniel Schaffzin, *Delivering Effective Education in Externship Programs*, in *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* 241-42 (Deborah Maranville, et al., eds., 2015). See also Niki Kuckes, *Designing Law School Externships That Comply with the FLSA*, 21 *CLIN. L. REV.* 79, 79-82 (2014).

<sup>59</sup> See note 30 *supra* and accompanying text.

<sup>60</sup> Carpenter, *supra* note 15, at 75 (125 of 160 schools responding).

<sup>61</sup> See Table 10, *infra* (showing 991 respondents took *Trial advocacy*, and 137 took a *Transactional skills* course).

of the chief goals of the *EL Survey* analysis was to understand the value to a lawyer's early career of different course features, we are not pitting one teaching method against the others. Each methodology serves useful objectives within a law school's curriculum.<sup>62</sup> And we found aspects of each method that show genuine value to different sets of lawyers.

Second, there is no raw-value rating that sets a bar to judge whether a course is sufficiently effective or not. Our analysis focuses on relative values, namely characteristics that impact the mean value rating in a substantial manner, which can illuminate where different types of attorneys found enhanced value. For the most part, we highlight differences that are statistically significant,<sup>63</sup> although at times, the findings also highlight patterns that are interesting or noteworthy, even if they do not rise to levels of statistical significance.

With those cautions in mind, we turn first to understanding how the lawyers rated the value of each of the EL pedagogies to their early careers. The rating scale was 1 (not at all useful) to 4 (very useful). The middle point on the *EL Survey* scale is 2.5. We use the mean value rating as our common unit of comparison for EL categories, course features, and lawyer populations.

Table 4 shows mean value for how highly the lawyers rated each EL category. While differences between the private and public lawyers are quite noticeable, it is worthwhile to examine the similarities first. And then we will turn attention to the differences.

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<sup>62</sup> See generally Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Programs*, 13 CLIN. L. REV. 807, 830-36 (2007); Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education through a Relationship Centered Experiential Curriculum*, 41 BALT. L. REV. 395, 417-18 (2012); Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert F. Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL'Y 11, 14-15 (2014).

<sup>63</sup> We considered any difference to be significant where the probability level was 0.05 or lower chance of being the result of a random distribution of the values.

TABLE 4  
LAWYER RATINGS OF EXPERIENTIAL LEARNING  
COURSEWORK IN EARLY PRACTICE

Experiential learning coursework	Private lawyers (n = 930)			Public lawyers (n = 1,212)		
	# attnys	% attnys	Mean rating	# attnys	% attnys	Mean rating
Took at least one Clinic (CLC)*	317	34%	3.42	711	59%	3.76
Took at least one Externship (EXT)*	360	39%	3.40	678	56%	3.63
Took at least one Skills course (SKI)*	678	73%	3.10	1,016	84%	3.29
Took at least one of each (CLC, EXT, SKI)	126	14%		379	31%	
Took "0" EL coursework	159	17%		67	6%	

\* For each EL category, the differences in mean value ratings assigned by private and public lawyers are statistically significant ( $p < .05$ ).

*a. Ratings Show Strong Appreciation*

Every pedagogy category—clinic, externship, and skills—elicited positive response and garnered mean ratings of 3.10 to 3.76. Most of the attorneys' responses were 3's and 4's, indicating that the coursework was quite helpful to very helpful in preparing them for practice.

*b. More Lawyers Took Skills Courses than Enrolled in Clinics or Externships*

It makes sense that skills courses would be more heavily subscribed. The ABA *Survey of Law School Curricula* found that the great majority of law schools offer at least seven skills courses, and half offered ten or more skills courses.<sup>64</sup> A tally of the ABA-reported data for the 2013-14 academic year shows that schools offered an average of 725 seats in skills courses, 160 clinic slots, and had 165 externship placements filled.<sup>65</sup> From the student perspective, skills courses

<sup>64</sup> Carpenter, *supra* note 15, at 75.

<sup>65</sup> ABA Standard 509 Information Reports, *All school data, Curriculum (previous academic year)* (Excel spreadsheet) (2014) [www.abarequireddisclosures.org](http://www.abarequireddisclosures.org) (last visited August 15, 2015) [hereinafter "ABA 509 Reports Curriculum spreadsheet"] (author calculations from ABA data). The ABA Annual Questionnaire gathers data on faculty supervised clinics and simulation courses, including the number of seats available (offered) and the number of seats filled for the academic year. For field placements, schools report only the number of positions filled, suggesting that the ABA does not assume law schools have capacity limits for the number of field placements in an academic year. See ABA

are easier than externships or clinics to fit into their class schedule in coordination with other classroom-based courses. Skills courses often have fewer academic credits and lower hourly commitments than are typically expected for clinics and externships.<sup>66</sup>

*c. Clinics and Externships Earn Higher Ratings than Skills Courses*

Clinics and externships are valued considerably more highly than skills courses, for all lawyers, by +0.32 to +0.47 points. In clinical pedagogy, we expect that coursework occurring in fluid, less predictable practice environments and with external consequences for poor performance, will represent the brighter learning moment. These are the teaching and learning moments when the heat is turned up. Conversely, skills courses take place in the protective shell of the school, often have low-credit demands, and are frequently taught by outside practitioners who have limited or no office hours outside of class.<sup>67</sup>

*d. Clinics Earn Higher Ratings than Externships*

Although private lawyers scored both clinics and externships at very similar levels, the public lawyers showed higher values for their clinical work. These numbers are aggregates; they do not reflect how an individual lawyer would rate one course over another. Table 9 shows the ratings differential when an individual lawyer took both a clinic and an externship. Although the number of lawyers with that course combination is relatively small, the value ascribed to the clinical experience was generally more favorable for both public and private lawyers.

*e. Public Lawyers Valued Each Method of EL Teaching More Highly than Private Practitioners*

Despite some broad similarities between private and public law-

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Ann. Questionnaire, *supra* note 24.

<sup>66</sup> CSALE 2010-11, *supra* note 27, at 16, 22 (For clinics, more than 85% are 4-8 credits, with 6 credits the most common level. For externship courses, the field placement credit allocation is generally lower, with 65% between 3-5 credits, and 4 credits is the most common level.). We have located no comprehensive compilation of law school skills courses offered, with number of credits awarded or number of seats available. The author conducted a limited survey of two dozen law school catalogs showed most skills courses are two to three credits.

<sup>67</sup> ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, TWENTY YEARS AFTER THE MACCRATE REPORT: A REVIEW OF THE CURRENT STATE OF THE LEGAL EDUCATION CONTINUUM AND THE CHALLENGES FACING THE ACADEMY, BAR, AND JUDICIARY 12 (2013) (noting that adjuncts are often hired to teach skills and practice modules, but are given the lowest faculty status, do not have on-campus office hours, and have limited opportunity to participate in faculty development).

yer ratings, it is quite apparent that the public lawyers valued each of type of EL coursework significantly more highly. This finding is not necessarily surprising. Most clinics and externships are in public interest practice and government settings.<sup>68</sup> The similarity between course tasks and tasks performed as a practicing lawyer in those settings can be quite direct. Educational psychologists and cognitive development scholars refer to this as ‘near transfer’ of learning.<sup>69</sup> For private lawyers the articulation and transfer is less direct or immediate.

Transfer of learning occurs when learning acquired in one context (e.g., law school, clinic, externship, skills course) contributes to performing *fruitfully and creatively* in another context (e.g., law practice). Near transfer is the term used for transfer between very similar contexts, while far transfer refers to transfer between contexts that are more remote from one another. Education researchers, David Perkins and Gavriel Salomon, have provided useful examples of near and far transfer. Near transfer is when a garage mechanic repairs an engine in a new model of car, which has a design much the same as prior models. Far transfer is demonstrated when a chess player applies basic strategic principles such as “take control of the center” to investment practices, politics, or military campaigns.<sup>70</sup> As shown later (Table 12), lawyers who work in legal services offices gave clinics the highest value ratings, while private transactional lawyers gave far less positive ratings, illustrating the near versus far transfer dilemma facing the EL curriculum (as well as any law school course).

In legal education terms, near transfer might be the lawyer who draws on her public interest externship assisting indigent clients to assert claims for housing benefits and applying that learning to her post-graduation work at a homeless services agency or bringing impact litigation regarding government benefits. Far transfer might be a large firm lawyer’s cultural competence skills developed in a special education clinic to build rapport with an indigent client and applying such skills in her post-graduation practice representing an East Asian entrepreneur in his international business dealings.<sup>71</sup>

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<sup>68</sup> See Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 *FORDHAM L. REV.* 997, 997-98 (2004) (describing clinical legal education’s focus on large unmet need for legal representation for the poor in both criminal and civil cases). *See also* Carpenter, *supra* note 15, at 77 (reporting that government agencies, public defender and prosecutor offices were the most common placements); CSALE 2010-11, *supra* note 27, at 23 and CSALE 2013-14, *supra* note 27, at 33 (both surveys reporting that for-profit law firm and corporate counsel offices are the most commonly widely prohibited placements).

<sup>69</sup> David N. Perkins & Gavriel Salomon, *Transfer of Learning*, in *INTERNATIONAL ENCYCLOPEDIA OF EDUCATION* (2d ed., Pergamon Press 1994).

<sup>70</sup> *Id.*

<sup>71</sup> There is a rich body of literature regarding teaching for transfer within the EL curric-

In sum, the magnitude of the differences in EL enrollments and mean value ratings between public and private lawyers revealed important information about transfer of learning, such that we chose to conduct parallel analyses throughout, rather than blend the data for analysis.

### B. Examination of Intensity

Having shown a broad-brush view of enrollments and value ratings, we move our analysis to more granular levels, specifically, to consider characteristics of intensity. One of the prime motivations for the *EL Survey* was to learn something about the impact of course intensity on the learning value for lawyers. While the previous set of tables (3-4) showed major differences between private and public lawyers, the next tables (5-9) show us both enlightening commonalities and further differences between these two lawyer populations.

In clinical coursework, we sought to understand the value difference where the student was given direct personal responsibility in a client matter. Table 5 shows the strong value boost where the lawyer had served “in role” as a (student) lawyer exercising professional judgment.

For externships, we isolated different intensity measures—time-on-task (number of hours, number of separate externships) and variety (number of placement settings). Tables 6 and 7 show that total hours in fieldwork is a potent predictor of enhanced value ratings.

Skills courses have more muted value ratings. We might conjecture whether that is due to their protected classroom environment, the simulation nature, or other factors, but we still sought evidence of intensified values. Table 8 shows the heightened values when lawyers took multiple skills courses.

Finally, our last intensity review was of the value enhancement when lawyers took multiple types of EL courses. In a surprising de-

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ulum. See, e.g., Sean Archer, James P. Eyster, James J. Kelly, Jr., Tonya Kowalski, & Colleen F. Shanahan, *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 J. LEGAL EDUC. 1 (2014) (breaking down the elements necessary for students to transfer classroom learning to clinic practice and then on to practice as a lawyer); Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE UNIV. L. REV. 51 (2010) (providing a history of learning theory on transfer and citing numerous earlier works at note 10); Deborah A. Maranhville, *Transfer of Learning*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 90-94 (Deborah Maranhville, et al. eds., 2015). See also Floralynn Einesman, *The Parts are Greater than the Sum: What I Learned from My Mediation Clinic Students*, manuscript at 24-32, forthcoming OHIO ST. J. ALT. DISPUTE RES. (2015-16) (reporting survey results of 150 former clinical students that shows the frequency with which the alumni lawyers use 12 specific skills taught in the clinic not only in mediation (near transfer) but also in other professional and personal contexts (far transfer)).

parture from the previous analyses, the private and public lawyers did not show comparable enhanced values. Table 9 shows the mixed results as between private and public lawyers.

*1. Clinics: The Intensity of Direct Personal Responsibility*

Table 5 examines the value difference where the student explicitly performed in the role of the attorney (albeit under supervision), whether as lead counsel or under a student-practice order. Both characteristics have the potential to crystallize and magnify student learning along a range of dimensions.

TABLE 5  
CLINIC RATINGS: STUDENT PRACTICE ORDER<sup>72</sup> AND LEAD COUNSEL STATUS

Private lawyers (317 attorneys with CLC)					
Student practice order	# attnys	CLC mean rating	Lead counsel status	# attnys	CLC mean rating
Yes	169	3.60	Yes	228	3.53
No	91	3.25	No	89	3.15
Value-change b/t Yes - No *		+0.35	Value-change b/t Yes - No *		+0.38
Public lawyers (711 attorneys with CLC)					
Student practice order	# attnys	CLC mean rating	Lead counsel status	# attnys	CLC mean rating
Yes	492	3.88	Yes	575	3.86
No	162	3.55	No	136	3.5
Value-change b/t Yes - No *		+0.33	Value-change b/t Yes - No *		+0.36

\* The differences between these responses are significant (p < .05) for both lead counsel status and representing a client under a student practice rule.

*a. Genuine Responsibility Delivered Important Added Value*

When a law student was given genuine responsibility, the learning value reverberated much more potently, no matter where the student’s career took her. Each instance—whether having a court’s imprimatur as the attorney of record or performing as lead counsel—creates a learning environment that delivered lasting value, increasing the average rating +0.33 to +0.38—quite sizeable and statistically significant for both private and public lawyers. This metric is especially

<sup>72</sup> The survey allowed the respondents to note that they did not recall whether there was a student practice order. We only compare the responses from the lawyers who recalled his/her status well enough to answer in the affirmative or negative.

meaningful. Taking direct personal responsibility for the legal welfare of another is one of the most significant experiences in forming one's identity as a professional.<sup>73</sup>

*b. Lawyers Without the Indicators of Personal Responsibility  
Still Rated Clinics Higher than Skills Courses*

Private lawyers who noted that they did not consider themselves lead counsel nor worked under student practice rules, still rated their clinic highly (3.25 and 3.15); higher than their skills courses generally (3.10). Public lawyers who answered that they did not have lead counsel or student practice rule status, also showed stronger clinic values (3.55 and 3.50) than skills courses (3.29).

*2. Externships: The Intensity of Time in the Field*

To analyze externship intensity, we collapsed and integrated two sets of data—number of externships taken by a lawyer and the weekly hourly commitment. This fusion allowed us to see how the intensity of the externship, whether more hours in the field and/or more placements, affected ratings.

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<sup>73</sup> Brooks, *supra* note 62, at 425-35 (describing the differences between the mentee role and the first chair role and citing Stuckey, *Teaching with Purpose*, *supra* note 62, at 830-31); Bliss & Peters, *supra* note 26, at 193-95 (describing how direct services clinics offer special vantage for students to form their professional identity through resolution of ethical dilemmas, building cultural competence, and understanding justice concepts). *See also* Carnegie Report, *supra* note 3, at 120-22.

TABLE 6  
EXTERNSHIP RATINGS: BY HOURS AND BY MULTIPLES

# EXT and hourly commitment		Private lawyers (360 attny with EXT)		Public lawyers (678 attnys with EXT)	
		# attnys	EXT mean rating	# attnys	EXT mean rating
Low-hour	1 EXT @ 10-20 hrs/wk	143 (43%)	3.14	241 (38%)	3.46
Mid-hour	1 EXT @ 21-30 hrs/wk	22 (7%)	3.27	48 (8%)	3.71
Low-hour	2 EXT @ 10-20 hrs/wk	35 (11%)	3.66	72 (12%)	3.69
Full-time	1 EXT @ 31-40 hrs/wk	75 (23%)	3.62	112 (17%)	3.73
	2 or more EXT; multiple hr. combinations	57 (17%)	3.59	153 (24%)	3.85
1 to 2 Low hour *	Value-change		+0.52		+0.23
Low hr. to Full-time *	Value-change		+0.48		+0.27

\* The differences between these types of externship experiences are significant ( $p < .05$ ).

*a. The Most Common Externship Enrollment—One Placement with 10-20 Hours/Week Time Commitment—Yielded Tepid Value Ratings*

For both populations, the most common enrollment was a single field placement course with a limited hourly commitment. The value ratings are muted, especially for private lawyers. The student's limited availability tempers the types of assignments that are suitable, whether due to time sensitivity or to the extern being insufficiently steeped in the workflow and details of ongoing matters.

*b. Full-Time Externships Amplified the Learning Value Compared to Low-Hour Field Placements*

Full-time externships, called Semester in Practice at many schools, represented the second most common externship for both groups.<sup>74</sup> The full-time experience allows a greater possibility of genu-

<sup>74</sup> Although full-time placements have growing enrollment at many schools, they had not been common until recently. CSALE 2010-11, *supra* note 27, at 22 (full-time externships were offered at roughly 10% of schools). The *EL Survey* data shows 18-23% of attorneys indicated they had a full-time externship. The difference might suggest something about the EL respondents' hindsight estimation of how hard or long they worked during school at their placements, or perhaps reflects that students worked more hours weekly

ine integration into the life of the law office, progressively more complex work assignments, and/or substantial, direct, and personal responsibility for the office's work product.<sup>75</sup> While the survey did not elicit data whether the respondents actually experienced these intensity factors (*e.g.*, higher complexity, greater direct responsibility), the amplified value ratings support a suggestion that factors like these may be at play. In comparison to the low-hour placements, the full-time externship's value rating is much higher. The increase is substantial and statistically significant, especially for private practitioners (+0.48 for private lawyers; +0.27 for public lawyers).

*c. Two Low-Hour Placements Provide Substantial Value Enhancement over a Single Low-Hour Placement*

For schools that do not offer full-time externships, it is encouraging to note that two low-hour externships also delivered substantial practice-preparation value. Lawyers who had two field placements rated externships far more highly than those who had only one (at statistically significant levels). That held true for private and public lawyers. (+0.52 for private lawyers; +0.23 for public lawyers).

*d. Full-Time Placements and Two Low-Hour Placements Garnered Nearly Identical Values*

The more surprising comparison, however, is that the value enhancement for two low-hour externships yields virtually the same value rating as a full-time externship. The amplifier effect holds for both private and public lawyers. The full-time placement values are within a scant +0.04 points of the value given to two low-hour placements.

This is perhaps the least anticipated finding of the data analysis. The high value of full-time externship is easy to understand. The student can be more fully integrated into the work of the office. The modest value of a low-hour externship is also easy to understand; there is simply less opportunity to do substantial work. However, it is not nearly as easy to suggest explanations why or how lawyers would rate two low-hour placements on par with a full-time externship. The differential was similar and statistically significant for both private and public lawyers.

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than was required by the school. Such high-credit placement options may increase further due to addition of summer field placements in international settings. Ogilvy & Basu, *supra* note 15, at 14-15. As of 2013-14, 24% of field placement courses allowed full time placements, defined as 10 or more credits for the fieldwork alone. CSALE 2013-14, *supra* note 27, at 32.

<sup>75</sup> Kaas, et al., *supra* note 58, 243-44 (describing how full time field placements allow students to function like a new lawyer in task complexity and independence).

One working theory is that a student learns a great deal from functioning in multiple workplaces, each with a new set of bosses, co-workers, office cultures, and practice styles. Each placement presents different work expectations and offers different role modeling opportunities. As such, two externships deliver valuable seasoning and maturing, as we would expect with any repetition in skills practice. A second hypothesis is that a student uses multiple externships to sample different practice areas of interest. The heightened value may simply reflect that the lawyer found at least one placement that was an agreeable fit and/or was similar to her eventual career path. Thus the course-to-career alignment prompted the high value rating.

*e. Externships Values Plateaued When Lawyers Took Four or More*

The data also showed that the value ratings start to plateau after three externships. Multiple externships, numbering four or more, even with significant cumulative hours, did yield some high values, but the ratings are mixed and the curve softens.

*3. Externships: The Intensity of Variety*

We also wanted to probe the values that lawyers ascribed to different practice settings. We wondered whether certain practice settings were noticeably more likely to deliver durable utility. Additionally we sought to understand whether the added value derived from multiple externships was a function of variety in the practice settings, compared to variety of placements even within the same practice setting. Many externship programs restrict or discourage subsequent placements in the same law office and/or in the same setting.<sup>76</sup> The *EL Survey* data showed that lawyers who had multiple externships, tended to choose a different practice setting for the additional placement(s). Was time-on-task (number of externships; hourly commitment) more or less important than variety of practice settings in the lawyers' valuation of the experience?

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<sup>76</sup> See LEXTERN listserv discussion, *Summary of Repeat Placements Responses*, started by Lauren K. Knight, July 28, 2014 (on file with author); LEXTERN listserv discussion, *Student award*, started by Jennifer M. Kinsley, November 17, 2014 (on file with author); LEXTERN listserv discussion, *Externships for a second time*, started by Justine Dunlap, July 27-30, 2013 (on file with author).

TABLE 7A  
EXTERNSHIP RATINGS: BY PLACEMENT SETTING

Setting	Private lawyers (360 attny with EXT)		Public lawyers (678 attnys with EXT)	
	# attnys	EXT mean rating	# attnys	EXT mean rating
Court/judge's chambers	173 (52%)	3.47	154 (25%)	3.60
Gov't agency/ legislature	86 (26%)	3.36	223 (36%)	3.64
Non-profit org	39 (12%)	3.26	204 (33%)	3.69
Law firm	20 (6%)	3.40	33 (5%)	3.64
Corporation-business	14 (6%)	<i>Small sample</i>	4 (1%)	<i>Small sample</i>

TABLE 7B  
EXTERNSHIP RATINGS: BY SETTING VARIETY

Setting variety	Private lawyers (360 attny with EXT)		Public lawyers (678 attnys with EXT)	
	# attnys	EXT mean rating	# attnys	EXT mean rating
1 EXT/ 1 setting	245 (73%)	3.30	417 (65%)	3.56
<b>Multiple EXT</b>				
all same setting	22 (7%)	3.61	72 (11%)	3.77
2 settings	63 (19%)	3.64	124 (19%)	3.76
3+ settings	4 (1%)	<i>Small sample</i>	27 (4%)	3.87

a. *Public Lawyers Rated Most Settings Well, Including Law Firms; Private Lawyers Gave Highest Scores to Judges and Law Firms*

Public lawyers showed a relatively even appreciation for all externships, no matter what the forum. Their highest ratings went to their placements in non-profit organizations. Interestingly, they gave the same strong ratings to law firms as they did to government agency placements. The private attorneys heavily favored judicial externships in both enrollments and value rating. Their second highest rating was for placements in law firms.

The strong law firm ratings opens the suggestion that one of the concerns of externship directors may not be as problematic as projected, namely that law firm supervisors may be too preoccupied with billable work to provide quality supervision to law student externs.

Law firm placements are relatively low, but growing.<sup>77</sup> As those enrollment numbers increase, it is worth tracking whether the positive ratings from this limited set of lawyers hold steady.

*b. Sampling Multiple Practice Settings Yielded Little Added Value*

Reinforcing the earlier finding, both public and private lawyers showed substantial value enhancement for second and third externships, but that value bump was largely the same whether the subsequent externships were in the same setting or in a different venue.

*4. Skills Courses: The Intensity of Multiple Courses*

Perhaps in part, due to the easier scheduling, most lawyers took two or more skills courses. Table 8 provides insight into how value ratings tracked the increases in number of courses. As a side note, we had also sought notable value ratings increases for any particular pairs or groupings of skills courses as an additional intensity factor; but did not discover or discern any combinations that yielded noteworthy results.

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<sup>77</sup> Carpenter, *supra* note 15, at 77.

TABLE 8  
SKILLS RATINGS: BY NUMBER OF COURSES

# SKI courses	Private lawyers (678 attnys with SKI)			Public lawyers (1,016 attnys with SKI)		
	# attnys	% SKI attnys	SKI mean rating	# attnys	% SKI attnys	SKI mean rating
1	187	29%	2.93	327	37%	3.17
2	200	31%	3.04	257	29%	3.37
3	123	19%	3.20	165	18%	3.33
4	63	10%	3.22	77	9%	3.51
5	37	6%	3.41	37	4%	3.22
6+	27	4%	3.66	29	3%	3.34
Value change b/t 1 and 3 SKI*			+0.27			+0.16
Value change b/t 1 and 4 SKI*			+0.29			+0.34
Value change b/t 1 and 5 SKI*			+0.48			+0.05

\* Private attorneys: the difference between 1 skills course, and 3, 4 or 5 is statistically significant ( $p < .05$ ). Public attorneys: difference between 1 skills course and 3 or 4 courses is statistically significant ( $p < .05$ ).

*a. Private Lawyers Gave Notably High Value Ratings When Enrolled in Numerous Skills Courses*

Private lawyers who took numerous skills courses (six or more) gave value ratings on par with the most potent live practice course experiences: six skills courses (3.66); 2 low-hour externships (3.66); clinic working under student practice rule (3.60). Given the generally lower ratings in the Skills category, that is remarkable. Comparison of private and public lawyers' ratings at five or more courses reveals that the private lawyers assigned values higher than their public attorney colleagues. This is a notable break from the persistent patterns observed between public and private lawyers' ratings, but the variance does not rise to the level of statistical significance. Although these value ratings are high, it is important to note the relatively small set of attorneys who enrolled in numerous skills courses. For a lawyer to have enrolled in five or six skills courses in the second and third years, his school would have had to offer a substantial program in skills/simulation courses and that the lawyer would have been quite directed in course registration for each semester of his second and third year.

A substantial value increase is also evident when lawyers took more than three courses. It is clear, however, that the great majority of lawyers did not enroll in skills courses at such numbers. Without that numerosity, the lawyers' valuations were positive but restrained compared to the live practice courses (*i.e.*, clinics and externships).

*b. Plateau Effect: Public Lawyers Showed Reduced Values When Taking More than Four Skills Classes*

While adding skills courses yielded generally greater value to public lawyers, there was a crest. Enrollment in more than four skills courses tended to depress the value ratings for public lawyers, suggesting there may be a point of diminishing returns. Further research might help explain this observation.

5. *Experiential Learning Curriculum: The Intensity of Multiple Pedagogical Methods*

Many clinical faculty and experiential learning deans are actively designing courses and course sequences, trying to maximize the value of all three pedagogies.<sup>78</sup> In our final search for intensity factors, we probed how the value ratings would change when lawyers had various combinations of EL courses, whether as a stand-alone course, in pairs, or a triple play. Were there combinations that showed noteworthy synergies?

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<sup>78</sup> See, e.g., Katherine R. Kruse, *Legal Education and Professional Skills: Myths and Misconceptions About Theory and Practice*, 45 *McGEORGE L. REV.* 7, 30-35 (2013); Brooks, *supra* note 62, at 435-40; Maranville et al, *supra* note 20, at 526-36; Tokarz et al., *supra* note 62 at 32-44; Deborah Maranville with Cynthia Batt, *Pathways, Integration, and Sequencing the Curriculum*, in *BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD* 53-59 (Deborah Maranville, et al., eds., 2015) (describing optional methodologies for integration of three experiential pedagogies into the curriculum with doctrinal coursework).

TABLE 9  
DIVERSITY OF EL TEACHING METHODOLOGY

Course combinations	Private attorneys (768 attorney responses)				Public attorneys (1142 attorney responses)			
	Private attnys	CLC mean rating	EXT mean rating	SKI mean rating	Public attnys	CLC mean rating	EXT mean rating	SKI mean rating
CLC only	27 (4%)	3.15			53 (2%)	3.81		
EXT only	36 (5%)		3.25		27 (2%)		3.81	
SKI only	248 (32%)			3.07	193 (17%)			3.27
CLC + EXT	23 (3%)	3.41	3.10		52 (5%)	3.71	3.47	
CLC + SKI	136 (18%)	3.42		3.04	248 (22%)	3.78		3.23
EXT + SKI	169 (22%)		3.35	3.11	239 (21%)		3.59	3.36
CLC, EXT + SKI	129 (17%)	3.50	3.59	3.27	330 (29%)	3.75	3.67	3.32
Value change (1 pedagogy to all 3) *		+0.35	+0.34	+0.20		-0.06	-0.14	+0.05

\* Private attorneys: differences are strong, but not statistically significant. Public attorneys: no statistical significance for the changes in the public attorney values from a single pedagogy to taking at least one course in each of the three pedagogies.

*a. Private Lawyers Favored Enrollments in Skills Courses Alone. Public Lawyers Favored Enrollment in All Three EL Courses*

Observing the enrollment patterns, it is apparent that the two lawyer populations chose courses quite differently. The most popular course selection pattern among the public lawyers was the triple play, at least one course in each EL pedagogy (29%). The next most common selection was pairing a skills course with one of the live practice courses (either clinic or externship). For the private lawyers, the most common course selections were skills course(s) exclusively (32%).

*b. When Private Lawyers Took Courses in all Three Pedagogies, They Showed Heightened Values for Each One*

The private lawyers who had all three experiences tended to show higher value for each of those experiences than those who had only

one. If a lawyer's EL coursework was exclusively limited to clinics, the average rating was a modest 3.12, but if the lawyer had enrolled in all three types of EL courses over her years of law school, the average clinic rating jumped to 3.50, with an increased value of + 0.38. That was surprisingly positive. The pattern held for externships, comparing lawyers who exclusively took externships to those who enrolled in the three-way combination (+0.34). The same was true of skills courses, comparing only skills courses with a fusion of all three teaching methodologies (+0.20). The pattern was strong and notable, albeit not statistically significant.

*c. For Public Lawyers, Variety of EL Pedagogies Did Not Show Synergistic Values Similar to Private Lawyers*

We anticipated a similar accelerant effect with the public lawyers. After all, they valued each of these types of courses so well and in all other intensity measures, they responded with similar intensified value ratings as the private lawyers. The data, however, showed a different pattern. There was little change in the value ratings when public lawyers added multiple types of EL courses. And for the most part, the variety of teaching methodologies depressed the comparative ratings. Learning solely through clinical teaching garnered one of the highest values we have identified, 3.81. Learning exclusively through field placement pedagogy yielded the same high value, 3.81. But where the lawyers had at least one clinic and at least one externship, both values sank. A clinic and an externship tended to dilute the value attributed to each of them. If the additional pedagogy was a skills course, the values still decreased, but not as steeply.

The difference in private and public attorneys regarding the value of the braiding of all three course types is thought-provoking. Perhaps it simply reflects that the public lawyers had already assigned very high values to these courses; there was less room for an increase. A second hypothesis might be considered. For careers well-aligned with the EL coursework (*e.g.*, public interest and government careers), it may be especially important to the students/lawyers that the scaffolding of the three pedagogies offers progressively higher levels of challenge and responsibility. For many schools these courses are offered as interchangeable parts, without sequencing or EL pre-requisites.<sup>79</sup> The corollary might be that where the attorney's practice does not align

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<sup>79</sup> The most common pre-and co-requisites for clinics and externships are not EL courses, but rather doctrinal courses, such as Evidence, Professional Responsibility, or the doctrinal law related to the clinic practice. CSALE 2010-11, *supra* note 27, at 19, 25. The latest CSALE report shows no changes in the most common pre-and co-requisites, none of which include EL courses. CSALE 2013-14, *supra* note 27, at 25, 37.

with his or her law school EL coursework, (*e.g.*, private attorneys representing corporate clientele), the attorney does benefit from synergies among and between the three types of courses. It transforms the learning in a manner that makes the transfer from class-to-practice more likely. There is more to explore and understand here, and is a worthy subject of further research and introspection within individual schools.<sup>80</sup>

### C. Examination of Career Relatedness

The *EL Survey* collected data that could match lawyer ratings with characteristics of their practice (practice setting, practice type, size of office, years in practice).<sup>81</sup> The most interesting correlations centered on practice setting (private/public), which the previous charts have explored, and secondarily on practice type (litigation, transactional, regulatory), which we explore next through analysis of skills courses. This is the only segment of the *EL Survey* that collected subject matter-specific data. The next pair of tables (10 and 11) shows enrollment and values that lawyers assigned to skills courses by course title and type of practice. The strong patterns evident in the live practice courses are not as strong or uni-directional. Additionally, the private and public lawyer experiences are not as different as we have seen before. Further, the tables suggest that school offerings may skew the enrollment patterns. The last table (12) returns our analysis to a broad overview of course selection and value, but this time comparing two narrow subsets of lawyers where we found the greatest differences. Table 12 presents striking data points that underscore the differences we have seen throughout—in enrollment patterns and career relevance.

#### 1. Skills Courses by Subject Matter

Table 10 shows enrollments and mean value ratings by the subject matter of the course. For most courses, the differences in ratings between public and private lawyers is modest.

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<sup>80</sup> Sequencing and advanced skills training will become a more pressing issues for schools faced with regulatory proposals like California bar authorities to mandate 15 credits of experiential learning coursework. See TFARR RECOMMENDATIONS, *supra* note 4.

<sup>81</sup> See Appendix D for a comparison of lawyer value ratings by junior lawyers (3 or fewer years in practice) and seasoned lawyers (more than 3 years in practice).

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TABLE 10  
SKILLS RATINGS: BY COURSE TITLE<sup>82</sup>

Core skills courses	Private lawyers (678 attnys with SKI)				Public lawyers (1,016 attnys with SKI)		
	Total Priv/Pub attnys	# Private attnys	% SKI attnys	SKI mean rating	# Public attnys	% SKI attnys	SKI mean rating
Trial advocacy	991	364	54%	3.23	627	62%	3.37
Negotiation	426	218	32%	3.08	208	20%	3.26
Appellate advocacy	373	155	23%	3.30	218	21%	3.41
Alt. dispute resolution skills	335	141	21%	3.26	194	19%	3.31
Pre-trial litigation	335	170	25%	3.24	165	16%	3.30
Subject matter specific skills	317	130	19%	3.22	187	18%	3.36
Adv. drafting (not 1L course)	284	154	23%	3.24	130	13%	3.22
Counseling and interviewing	221	73	11%	3.34	148	15%	3.30
Transactional practice	137	89	13%	3.08	48	5%	3.25
<b>Specialty courses</b>							
Law practice mgmt skills	61	39	6%	3.18	22	2%	3.18
Leadership	24	17	3%	3.41	7	1%	<i>Small sample</i>
Business mgmt/ planning	22	18	3%	3.06	4	<1%	<i>Small sample</i>

*a. Enrollments Show Heavy Orientation to Dispute-Based Skills Courses Over Transactional Skills Courses*

Nearly 1,000 lawyers indicated that they took *Trial advocacy*, making it the most common skills course taken by both public and private lawyers (991), overshadowing all other skills courses. Most law

<sup>82</sup> As we have highlighted earlier, the value ratings reflect each lawyer's overall rating for any course(s) she took in a particular pedagogy category, e.g., Skills courses. When we highlight the mean value rating for one course, it reflects any lawyer who took that course whether it was her only skills course or one of multiple skills courses in which she had been enrolled. This technique allows us to see how a particular course changes the mean SKI values, whether in a minor or major way. See note 43, *supra*, and accompanying text.

schools have complied with the ABA's professional skills instruction requirement by offering a menu of courses from which students may select.<sup>83</sup> *Trial advocacy* was the most common course on such lists (98% of schools).<sup>84</sup> Both private and public lawyers gave it solid ratings vis-à-vis other skills courses. The next most common course was *Negotiations*, with less than half of the enrollment (426). Transactional courses, like *Advanced drafting*<sup>85</sup> or *Transactional practice* had even lower enrollments (284 and 137, respectively).

*b. Specialty Courses Have Low Enrollments, With Mixed Ratings*

The enrollment numbers for specialty courses, such as *Leadership*, *Law practice management*, and *Business management*, were low, as expected. They represented a set of courses that some critics have argued should be part of the law school curriculum. While there are some bright spots, for the most part, the range of value ratings were comparable to other skills courses (albeit on the low side).<sup>86</sup> Other researchers have found certain business methods courses, like *Accounting/Financial reporting* and *Corporate finance* to have earned high value ratings from practicing lawyers.<sup>87</sup>

*c. Private and Public Lawyers Gave Nearly Identical Ratings for Half of the Courses*

The data showed for five of the courses, the public and private value ratings were nearly identical, with mean value differences as narrow as 0.0 to +0.06; sometimes more positive for private lawyers and sometimes more positive for public lawyers (*ADR*, *Pre-trial litigation*, *Counseling and interviewing*, *Advanced drafting*, *Law practice management*). The other five courses showed rating differences at higher but still modest levels, +0.11 to +0.18 (each showed values

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<sup>83</sup> Carpenter, *supra* note 15, at 41. See also *supra* note 56 and accompanying text regarding possible explanations for 10 percent of EL respondents not to have taken any EL courses.

<sup>84</sup> Carpenter, *supra* note 15, at 42 (118 of 124 schools responding included Trial advocacy as eligible to satisfy the professional skills requirement).

<sup>85</sup> See Carpenter, *supra* note 15, at 78. Advanced drafting courses that focused on non-litigation work, have expanded considerably. *Id.* Transactional/contract drafting now has the broadest adoption among 162 respondent schools at 75%; followed by Litigation drafting (71%), Estate planning drafting (59%), Business organization drafting (47%), Legislative drafting (34%), Family law drafting (18%), and Regulatory drafting (10%). *Id.*

<sup>86</sup> For example, the Coates survey included two course titles similar to the EL Survey, neither of which scored in the top echelon of usefulness for practice at several very large firms: Business strategy for lawyers scored 3.59/5.0 and Leadership in law firms scored 2.88/5. Coates et al., *supra* note 38, at 452-53.

<sup>87</sup> See *id.* at 445-46; Talley, *supra* note 38, at 22 (describing business methods oriented skills courses that have been found to be well-valued by lawyers).

more positive for public lawyers).

## 2. *Course Selections and Career Relevance*

Skills courses are oriented to the nature of the lawyering tasks per se—litigation, transactional or regulatory, and less oriented to practice area, setting, or clientele. The *EL Survey* list of course titles provides the opportunity to detect how the lawyers might have made course selections anticipating and preparing for their career plan.

We teased apart the data for the two most common practice types within each lawyer population. For both private and public lawyers, litigators comprised the largest sub-population. The second most common practice type for private lawyers was transactional, and for public lawyers it was regulatory.<sup>88</sup>

Table 11 shows the high prevalence of enrollments in a limited set of courses no matter what the lawyers' practice type, perhaps suggesting the offerings in their law schools (*e.g.*, number of seats or sections) are skewed. It also shows that the private transactional lawyers gave the lowest values consistently.

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<sup>88</sup> There were very few legislative lawyers among public (39 or 3%) or private lawyer respondents (9, less than 1%). *See* Appendix B.

TABLE 11  
 SKILLS RATINGS: FOR THE FIVE MOST POPULAR SKILLS  
 COURSES BY PRACTICE TYPE

Private lawyers			Public lawyers		
Skills course	# attys (% SKI)	SKI mean rating	Skills course	# attys (% SKI)	SKI mean rating
<b>LITIGATION (529 attnys)</b>			<b>LITIGATION (937 attnys)</b>		
All skills courses		3.20	All skills courses		3.31
Trial advocacy	280 (53%)	3.31	Trial advocacy	518 (55%)	3.39
Pre-trial litigation	133 (25%)	3.25	Appellate advocacy	173 (18%)	3.47
Negotiation	122 (23%)	3.23	Negotiation	165 (18%)	3.28
Alt. dispute resolution	93 (18%)	3.31	Subject specific practice	146 (16%)	3.36
Advanced drafting	79 (15%)	3.23	Alt. dispute resolution	144 (15%)	3.31
<b>TRANSACTIONAL (301 attnys)</b>			<b>REGULATORY (155 attnys)</b>		
All skills courses		2.91	All skills courses		3.24
Negotiation	71 (24%)	2.90	Trial advocacy	67 (43%)	3.34
Advanced drafting	60 (20%)	3.25	Alt. dispute resolution	32 (21%)	3.41
Trial advocacy	55 (18%)	3.02	Negotiation	26 (17%)	3.31
Transactional practice	54 (18%)	3.04	Appellate advocacy	24 (15%)	3.21
Subject specific practice	41 (14%)	3.15	Subject specific practice	21 (14%)	3.48

\* Percent attorneys taking skills courses by the specific practice type.

a. *Two Courses Dominate the “Top 5” Course Lists, Irrespective of Attorneys’ Practice Type or Setting*

There is more in common among the most popular courses for the four attorney sub-populations than there is difference. *Trial Advocacy* and *Negotiation* are among the top five courses for all four sub-populations—private litigators and transactional attorneys, as well as public litigators and regulatory attorneys. These courses were rather evenly rated by three of the sub-groups, with mean ratings of 3.23-3.39. The outlier sub-group was the private transactional attorneys. They gave noticeably lower value ratings than the other three types of lawyers (3.02 and 2.90, respectively).

*b. Litigators—Whether Private or Public—Reaped Similar Values*

The public and private litigators had substantial overlap in course selection—*Trial advocacy*, *Negotiation*, and *Alternative dispute resolution*. And both groups gave ratings much more in line with each other than we have typically seen. Although public litigators still showed higher values for these courses than the private litigators, the differentials are now slight (+0.05-0.08). This opens the suggestion that the skills courses are taught in a manner where the students/lawyers are primed on a similar scale for skills-transfer irrespective of their eventual practice setting or clientele.

*c. Private Transactional Lawyers Appear to Have Attempted to Enroll in Relevant Skills Courses, but Failed to Assign Heightened Values*

In addition to *Transactional practice*, the Survey included three course titles where the course design might be relevant to skill development particularly useful to transactional lawyers: *Advanced Drafting*, *Negotiations*, and *Subject-specific skills*. Each course comprises content that may be oriented toward business-deal (transactional) practice or dispute (litigation) practice, whether exclusively, predominantly, modestly, or not at all. The *EL Survey* did not ask questions at that detail level.<sup>89</sup>

The private transactional lawyers showed highest enrollments in those specific courses—four of the five most common courses were the course titles with potential transactional skills orientation. They signed up for *Negotiations*, perhaps hoping to develop skills in working a business deal. They took *Advanced drafting* and *Transactional practice*, perhaps hoping to learn how to prepare various legal documents to maximize client interests in deals or official filings. They took *Subject-specific skills* courses that might focus on topics like real estate practice, intellectual property licensing, or similar transaction-heavy practice areas. Whether the courses were designed with the transactional lawyer in mind, or these lawyers enrolled in them hoping for a transactional orientation to the course content, is not revealed in the survey questions or responses. Those who took *Advanced drafting*

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<sup>89</sup> Catherine Carpenter, Vice Dean, Southwestern Law School, *ABA Survey of Law School Curricula: A Closer Look at the Numbers*, at ABA Ann. Mtg. (Aug. 2012) (on file with author) (showing the expansion of *Negotiations* courses among law schools, from 82 in 1992, to 125 in 2002, to 198 in 2010). For the first time in 2010, schools indicated whether the *Negotiations* course was business or settlement oriented. More were litigation (settlement) oriented (108), but with a strong showing for transactional (business) oriented courses offered (90). *Id.* at 1.

gave relatively solid ratings (3.25), but none of the other courses yielded particularly noteworthy values. These ratings challenge the near transfer hypothesis that practice relevant skills training will result in lawyers showing higher appreciation for the value of those courses in preparing them for practice. The gap deserves further research.

That *Trial advocacy* ranks among the private transactional lawyers' most common skills courses is a reminder of the prevalence of that course in law school catalogues. Interestingly, these lawyers gave *Trial Advocacy* a rating (3.02) very similar to *Transactional practice* (3.04) and better rating than *Negotiations* (2.90).

### 3. *Bellwether Comparisons: Different Careers, Different Course Selections, and Different Educational Appraisals*

We started the analysis of the *EL Survey* data with broad comparisons of public and private lawyers, and drilled down further to see how the attorney's practice type impacted enrollments and value ratings in skills courses. So far the analyses have generally shown that private lawyers enroll in and value EL courses at lower levels than public lawyers.

The following table (12) isolates two sub-populations to show the starkest contrasts we observed: litigators in civil public interest legal services practice and transactional lawyers in private, large firm practice. Legal services, civil litigation, is colloquially termed poverty law. Generally speaking, such practitioners provide direct individual representation to clients with limited means, usually for free or modest fees, in a range of substantive areas.<sup>90</sup> This sub-population for the *EL Survey* includes only civil lawyers, not public defenders. Transactional lawyers are sometimes referred to as corporate or deal lawyers. The practice is a broad category that would include a diverse mix of corporate, banking, real estate, tax, and intellectual property, among other practice types.<sup>91</sup>

Table 12 provides several snapshots of the profiles of the two sets of lawyers. Of the private lawyers, the transactional lawyers found the

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<sup>90</sup> See generally Lillian Salinger, *Poverty Law: What Is It?*, 12 LEGAL REF. SERV. Q. 5 (1992) (defining poverty law as the laws that apply particularly to the financially poor in their day-to-day lives, includes public benefits law, health care law, housing law, education law, elder law, family law, juvenile law, employment law, welfare law, social security law, consumer law, immigration law, and domestic violence law).

<sup>91</sup> See generally Kenneth N. Klee, *Teaching Transactional Law*, 27 CAL. BANKR. J. 295, 299 (2004) (defining transactional practice as focusing primarily formation, negotiation, documentation, or consummation of a business deal, which cover practice areas such as real estate, banking, international business transactions, bankruptcy, insurance law, trusts and estates).

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least utility in EL coursework, generally speaking. Of all the public lawyers, the legal services civil litigators gave the strongest ratings.

TABLE 12  
COMPARISON: PRIVATE TRANSACTIONAL LAWYERS WITH  
PUBLIC LEGAL SERVICES-CIVIL LITIGATORS

	Private attorneys: Transactional practice	Public attorneys: Legal services-Civil
<b>Demographic features of respondents</b>		
# respondents	301	357
% in office with 100 or fewer attnys	4%	94%
% attended school in city of 1 million+	54%	49%
% male	56%	24%
<b>Experiential learning overview</b>		
% who rated at least one EL category at "4, very helpful"	32%	96%
# who took all three EL course types	30	342
% with no EL coursework at all	26%	4%
% with SKI only	30%	6%
<b>Clinic features</b>		
% who took CLC	24%	65%
CLC mean rating	3.18	3.83
CLC ratings (lead counsel/ not)	3.25 (lead); 3.04 (not lead); +0.21 increase	3.94 (lead); 3.44 (not lead); +0.50 increase
<b>Externship features</b>		
% who took EXT	29%	51%
EXT mean rating	3.21	3.63
Most common EXT settings	Courts (43%); Gov't (33%)	Non-prof (86%); Gov't (30%)
<b>Skills features</b>		
% who took SKI	66%	84%
SKI mean rating	2.92	3.31
Highest SKI rating	Advanced drafting (3.25)	Appellate advocacy (3.43)
<b>Role of EL coursework in job search</b>		
# indicated that CLC, EXT, or SKI was discussed extensively in job interview	5 of 301 attorneys (1.7%)	
# indicated that CLC, EXT, or SKI was very useful in obtaining first job		249 of 357 attorneys (69.7%)

*a. Private Transactional Lawyers Showed Appreciation for EL Coursework, but Much Less Than Legal Services Litigators*

As we expected from the earlier data review, private transactional lawyers pursued less and reaped less from the experiential learning wing of the curriculum. Gratifyingly, when they had taken such courses, they found them to be valuable in their early careers, rating them on average in the low 3's. The legal services litigators experience is brightly different on almost every mark, giving conspicuously higher ratings consistently.

*b. Three Times as Many Legal Services Litigators Gave Highest Ratings to EL Coursework than Private Transactional Lawyers*

Nearly every legal services lawyer gave the highest value to one or more of courses in their EL curriculum (96%); barely a third of the transactional lawyers (32%) had taken EL coursework that they felt warranted the highest value rating "4" (labeled "very useful" to preparing for practice of law).

*c. The Value Enhancement of "Lead Counsel Status" was Twice as Strong for Poverty Lawyers as for Transactional Lawyers*

As we saw in Table 4, the high-level responsibility of serving as lead counsel in a clinic was one of the most potent amplifiers in attorney value ratings for private and public attorneys. This Table shows the underlying variation. For the legal services litigators, lead counsel status was an especially potent value-amplifier, adding +0.50 to the mean value rating. Lead counsel status also yielded enhanced values for transactional lawyers, but with less than half of the potency, adding +0.21 to their mean value rating.

*d. Employers of Private Transactional Lawyers Rarely Probed the Candidate's EL Coursework in Hiring Interviews*

In the end, the most telling factor may be related to a hidden curriculum.<sup>92</sup> Whose opinions are the most influential in student

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<sup>92</sup> See, e.g., David M. Moss, *The Hidden Curriculum of Legal Education: Toward a Holistic Model for Reform*, 2013 J. OF DISPUTE RESOLUTION 19, 21-23 (2013) (noting the hidden curriculum of prioritizing knowledge-based courses over experiential courses sends implicit messages of learning priorities for law students); F.W. Hafferty & R. Franks, *The Hidden Curriculum, Ethics Teaching, and the Structure of Medical Education*, 69 ACADEMIC MEDICINE 861 (November 1994) (arguing that most of the critical determinants of physician professional and ethical identity operate not within the formal curriculum but in a subtle, non-officially recognized hidden curriculum).

course selection? Is it the faculty and academic advisers on campus, or are unofficial (“hidden”) sources more influential? To offer some insight on that question, we look to the implicit messaging from employers in job interviews.<sup>93</sup> The great majority legal services lawyers felt that their EL coursework was very useful in obtaining their first job (nearly 70%). In contrast, a scant five transactional lawyers (fewer than 2%) indicated they had extensive conversations about their EL coursework in interviews.<sup>94</sup> It is a powerful message to law students whether their prospective employers value highly or minimally their coursework and the learning derived from it.

*e. The Data Provide Anchors for School to Set Priorities and Examine their Graduate Career Patterns*

This is not a brief to argue that the experiential learning wing of the curriculum must meet the skills training needs of Big Law deal lawyers as deeply or as thoroughly as it meets the needs of legal services litigators. Indeed, access-to-justice is a fundamental value of the profession and is core to the mission of many law schools. Those values remind us that it is truly important to meet the training needs of the poverty lawyers.<sup>95</sup>

As we saw earlier in Chart 1, the *AJD Study* data on helpfulness of clinics to the lawyer’s transition to practice show that law graduates who start their practice in government offices, small and midsized firms, or in business settings give higher ratings to their clinical training than the large firm lawyers, but not nearly as high as public interest lawyers do.<sup>96</sup> The *EL Survey* populations represent the two ends of the spectrum, showing us where the most and the least value is transferred from the EL curriculum to law graduates as they enter practice.

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<sup>93</sup> This is one of the rare instances of the two surveys had different phrasing, the questions related to the role of EL coursework in their job search. For exact phrasing, see Survey at Appendix B, Questions 4-4b.

<sup>94</sup> Most large firm recruitment of entry-level associates is through summer associate programs, where students are interviewed and hired during the early fall of their 2L year, at a time well before the candidates have made the majority of their elective course selections, whether experiential or podium-based classes. See NALP Principals and Standards, <http://www.nalp.org/fulltextofnalpprinciplesandstandards> (regarding timing of offers for summer associate positions, generally before December 1 of the 2L year)(last visited August 18, 2015).

<sup>95</sup> See, e.g., Rachel F. Moran, *Transformation and Training in the Law: Serving Clinical Legal Education’s Two Masters*, Association of American Law Schools, President’s Message, May 2009 (expressing concern that clinical education will lose its social justice mission the more it is deployed as the vehicle for the full palette of skills training new lawyers need); Wizner & Aiken, *supra* note 68, at 1006-11 (arguing that clinics should not overshadow their social justice training mission with a singular focus on skills training).

<sup>96</sup> See Chart 1, *supra*; Nelson, *supra* note 47.

#### D. *Recapping the Findings*

Our analysis comprised three threads of inquiry: What are the characteristics of the EL coursework that delivered enhanced values? What kinds of enrollment patterns did different lawyers exhibit? And who extracted the most value or least value from the EL curriculum? The answers to the last two of these questions show how divided our campuses are. Private and public lawyers show very different patterns in enrollment and practice value of EL coursework. But the data also revealed where our students' experiences show gratifying commonality. And that is where the data provide insights to answer the first question.

Inquiry 1: What characteristics delivered enhanced values? The data showed several intensity factors that delivered reliably heightened value for private and public lawyers alike.

- Live practice courses (clinics and externships) deliver more practice-preparedness value than simulation classes.<sup>97</sup>
- Live practice combined with authentic responsibility for a client's legal welfare yields heightened value ratings. Clinics where the student was authorized by the court to represent a client under a student practice rule or where the student served as lead counsel magnified the lawyers' assessment of the practice preparation value.<sup>98</sup>
- Multiple externships were rated as much more valuable than a single externship, unless the single externship was an immersive semester in practice.<sup>99</sup>
- An externship requiring more hours per week garnered higher value ratings than lower hourly commitments.<sup>100</sup>
- Although skills courses were assigned lower ratings generally, when lawyers had three to four skills courses, the value ratings improved substantially and came closer to the values ascribed to clinics and externships.<sup>101</sup>

Each of these amplifiers held true for both the public and private lawyers, which is a point worth underscoring. This data showed great commonality. As such, these points provide useful touchstones for schools as they expand, calibrate, and set priorities for their EL curriculum.

Inquiry 2: Who took which courses? The data showed us at first

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<sup>97</sup> See *supra* Table 4 and accompanying text.

<sup>98</sup> See *supra* Table 5 and accompanying text.

<sup>99</sup> See *supra* Table 6 and accompanying text.

<sup>100</sup> *Id.*

<sup>101</sup> See *supra* Table 8 and accompanying text.

blush that the private and public lawyers exhibited marked differences in their experience with the EL curriculum. Private lawyers did not embrace the EL curriculum offerings with the intensity that the public lawyers did.<sup>102</sup> One in six elected not to take a single EL course.<sup>103</sup> The ones who did register for EL courses, tended to approach the EL curriculum with reserve—taking fewer courses, and favoring skills courses over live practice courses.<sup>104</sup> Meanwhile the public lawyers enrolled in all three types of EL courses, more than any other course combination.<sup>105</sup> And they were far more likely to register for courses that put them in live practice milieu.<sup>106</sup>

Inquiry 3: Who captured what value from EL courses? The data showed us the next dimension of difference between the private and public lawyers. Career relevance matters. The public lawyers saw the EL courses as learning vehicles that delivered valuable support in launching their careers. The more closely aligned to the lawyer's new career, the more the EL courses were given consistently high ratings.<sup>107</sup> Legal services lawyers in civil practice, who served as lead counsel in a school clinic, rated their experience a 3.94,<sup>108</sup> meaning that nearly every single one of the poverty lawyers gave the highest rating. Conversely, the private lawyers judged the practice preparation value of the same courses at lower levels. Within the population of private lawyers, the private transactional lawyers gave the most subdued ratings, although still on the higher end of the scale (usually in the low 3's). Encouragingly, when private lawyers enrolled in multiple EL courses (mixed teaching methods, numerous courses), they assigned much stronger values.<sup>109</sup> *Transactional practice skills* courses attracted considerably more private lawyers than public lawyers, but the private transactional lawyers, didn't give them the higher value ratings that we had anticipated.<sup>110</sup>

### III. PATH FORWARD—DEANS, FACULTIES, CURRICULAR PRIORITIES, ACADEMIC ADVISING

The *EL Survey* responses and our analyses suggest a set of ques-

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<sup>102</sup> See *supra* Tables 3 and 9 and accompanying text.

<sup>103</sup> See *supra* Tables 3 and 4 and accompanying text.

<sup>104</sup> See *supra* Table 9 and accompanying text.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> See *supra* Tables 4 and 12 and accompanying text. *But see* Table 11 and accompanying text (private lawyers enrolled more heavily in transactional practices courses, but assigned relatively weak ratings).

<sup>108</sup> See *supra* Table 12 and accompanying text.

<sup>109</sup> See *supra* Tables 8 and 9 and accompanying text.

<sup>110</sup> See *supra* Table 11 and accompanying text.

tions that a school might consider regarding course offerings, its graduates' career directions, and the practice preparation values that the graduates derived. The mean value ratings we highlight are aggregates across many schools and practices. As much as they cover, they still don't include graduates who practice in mid-sized and small firms or in businesses. While more than 2,000 lawyers rated the courses' value in preparing him or her for the practice of law, the data do not show what was valued (was it knowing how to interview a client; learning how to be a reflective self-critic; having the wherewithal to appreciate the dynamics of power hierarchies at play; or some other skill or nuanced competency).

The experiential wing of the curriculum is considered the prime venue for law students to take on the mantle of the profession, to develop one's professional identity. What elements of the ratings reflected the graduate's budding sense of his professional identity? Research from the nationwide Law School Survey of Student Engagement found that graduating students who had taken at least one clinic indicated that their legal education deepened their capacity for serving the public good, moral reasoning, acting with integrity, and handling stress, at higher levels than students who had not had a clinic.<sup>111</sup> Did the *EL Survey* respondents credit similar factors when assigning values to their EL courses?

The survey asked several pinpoint questions about lawyers' EL coursework, but collected no data on any aspect of their podium courses or how they valued those courses in preparing them for practice (that is grist for a different, and necessary, survey). We teased out several points of interest in the data and offered possible interpretations. Readers will have many interpretations of their own and zero-in on other data points. It is up to individual schools to consider the usefulness or applicability of the *EL Survey* findings to their curriculum, their students, and their graduates. The analyses don't presume to set an absolute value for a "quality" EL course or program, but the data clearly show where EL courses have provided less practice value for lawyers in certain careers and less practice value when certain course characteristics were missing.

Others have researched and probed the divide within the profession, dubbed the two hemispheres—attorneys who represent individuals and those who represent businesses.<sup>112</sup> There are further divides

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<sup>111</sup> Carole Silver, Amy Garver & Lindsay Watkins, *Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement*, 17 J. LEGAL WRIT. INST. 373, 403 (2011) (Fig. 8, comparing student responses to questions about five measures of professional identity development).

<sup>112</sup> JOHN HEINZ AND EDWARD LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUC-

within law schools. The data from the *EL Survey* indicate that American law schools are better organized to train lawyers for litigation careers<sup>113</sup> and for government and public interest careers.

The ABA's new 6-credit experiential coursework requirement presents the prime opportunity to re-examine course offerings and delivery. California, the second biggest bar in the country, is on the verge of requiring 15 credits of experiential coursework.<sup>114</sup> In compliance with these regulatory developments, law deans and faculty will set compulsory graduation requirements encompassing some mix of clinics, externships, and skills courses.

This survey and its findings are preliminary in nature. They suggest questions to ask ourselves; they do not suggest a set of parameters to judge the "ideal" experiential curriculum or what should be offered, required, elective, or sequenced. That is beyond the scope of these findings. But as deans and faculty face curriculum review to meet these new standards, one of the preliminary questions might be: why do private lawyers engage the experiential wing of the law school curriculum with such meekness? As shown on Tables 3 and 12, on numerous marks the private lawyers, especially the transactional lawyers, are registering for classes with far different patterns than the public lawyers.

A. *Are the Right Courses, with the Right Number of Seats Available? Do Campus Limitations Impede Student Enrollments?*

We know that schools are increasing the numbers of EL

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TURE OF THE BAR 379 (1982) ("The difference between litigators and office lawyers has, of course, also been widely noticed for a long time; it has been formalized in England in the distinction between barristers and solicitors. But that is a task or skill difference, analogous to that between physicians and surgeons. The distinction within the American bar that is based in service to corporations, on the one hand, and to individuals and their small businesses, on the other, is quite another sort of phenomenon, with quite different consequences."); JOHN HEINZ, ROBERT NELSON, REBECCA SANDEFUR, AND EDWARD LAUMANN, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* (2005). This divide is reflected to some extent in Chart 1, *supra*, which arrayed the lawyers by firm size and practice setting. The smaller the firm, the more likely it caters to individuals; the larger the firm, the more likely it caters to business clientele.

<sup>113</sup> See, e.g., Eric J. Gouvin, *Teaching Business Lawyering in Law Schools: A Candid Assessment of the Challenges and Some Suggestions for Moving Ahead*, 78 UMKC L. Rev. 429, 431-39 (2009) (detailing the deficiencies in training for transactional practice to serve cost-sensitive businesses, and noting that most business law faculty are former commercial litigators rather than former deal lawyers); Klee, *supra* note 92, at Table 2 (authors' calculations based on Klee's data show that of 328 business law classes offered at 40 surveyed schools, fewer than half were taught with a transactional focus, and only 5 percent were taught through a clinic rather than a lecture or seminar class).

<sup>114</sup> See TFARR RECOMMENDATIONS *supra*, note 4.

courses.<sup>115</sup> But we also know that many schools currently have excess capacity in their EL courses. Through ABA-reported data, clinics and simulation courses are at 82% and 79% capacity, on average.<sup>116</sup> But are those under-subscribed EL courses ones that correspond with the career and practice interests of the student body?

It is quite apparent that *Trial advocacy* is widely available among law schools, with an abundance of seats, more than double the next most common skills course (*Negotiation*), at least according to the responses from the *EL Survey*. Clinics in non-litigation practices, such as community and economic development, tax, bankruptcy, wills & trusts, and elder law, have expanded over the years, but so have other types of clinics and the transactional clinics still represent only 15 percent of all clinics offered.<sup>117</sup> Externship programs tap the mentorship talents of practicing lawyers and judges and expand on-campus offerings. But do they offer enough slots for students with diverse career aspirations? In order to improve enrollments on a wider scale, schools will have to probe the historical patterns of enrollments on their campus.

Other limitations might be at play as well, including scheduling limitations,<sup>118</sup> grading policies,<sup>119</sup> application competitiveness, or other campus-specific considerations. Many schools require students to participate in a selection process to be accepted into a clinic and/or preference third-year students. Students interested in legal services or public defender careers will naturally gravitate toward clinics oriented to low-income or indigent clientele. As a consequence, students whose career aspirations are quite different may be crowded out. We can also ask ourselves another less comfortable question: Is there a cultural

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<sup>115</sup> Carpenter, *supra* note 15, at 75-78.

<sup>116</sup> ABA 509 Reports *Curriculum spreadsheet*, *supra* note 65 (author calculations based on ABA data). Capacity ranges vary widely on a school-by-school basis. For instance, for simulation courses, 32 schools were at =90% capacity and 34 schools were =66% capacity. For clinics, 32 schools reported 100% capacity, and 32 schools reported capacity =66%. For field placements, no capacity limits are reported. *Id.*

<sup>117</sup> CSALE data show the percentage of clinics offered in each of 30 specific subject areas or practice types. Of the transactional-oriented clinics, categorized as Community and Economic Development, Transactional (domestic or international), Tax, Bankruptcy, Wills & Trusts, and Elder law, has been 13.3% in 2008, 14.7% (2011), and 15.3% (2014). CSALE 2007-08, *supra* note 15, at 8; CSALE 2010-11, *supra* note 27, at 7-8; CSALE 2013-14, *supra* note 27, at 7-8.

<sup>118</sup> Typical issues include scheduling against other major or bar courses, travel considerations (time, difficulty) to offsite clinics or field placements, and part-time/evening students with little availability during business hours to participate in live-practice environments.

<sup>119</sup> Some students shy away from pass/fail courses that do not help them bolster their cumulative grade point average or class rank. CSALE data shows that 24% of clinics; 19% clinic seminars; 79% of field placements; and 41% of externship seminars are graded pass/fail basis. CSALE 2013-14, *supra* note 27, at 21, 24, 32, and 35.

divide on our campuses that makes the EL curriculum less hospitable and welcoming to private practice oriented students?

*B. What Courses Did the Private Practitioners Choose Instead and Why Were Those Courses Preferred?*

Nothing in the *EL Survey* concludes that the EL curriculum is affirmatively “rejected” by the private lawyers, although that is the effect when compared to their public practice colleagues. Rather, the private lawyers might simply be thirsty for other courses. What courses? Perhaps their course selection strategy was to construct subject matter concentrations, taking multiple specialized courses relevant to their anticipated practice areas, whether of their own design or a formal school program.<sup>120</sup> From the *AJD Study*, we know that new lawyers felt upper level lecture courses and course concentrations were only modestly helpful in their transition to practice.<sup>121</sup> But a law student would scarcely appreciate the practicing lawyers’ viewpoints when making course selections. Seventeen percent of the private lawyers and six percent of public lawyers did not take a single EL course. What would be enough to prompt them to enroll in EL courses eagerly, and not just by the compulsion of a graduation requirement?

Law schools need to understand those reasons because they potentially represent important inertia or resistance within the student body. Schools will have to overcome these forces if their newly expanded EL curriculum is to be effective for students with diverse practice interests. Few students learn at maximum potential when forced to take courses contrary to what they think is best for them personally. The *EL Survey* data pretty clearly suggest that a school that simply sets an EL graduation requirement without understanding their students’ interest (embrace and resistance), will not be able to deliver the learning outcomes we hope. What would be the impact on student body morale if students felt they had to forego courses they consider more important to their careers? What will happen in the clinic office, field placement, or skills classroom when a significant portion of the class is reticent or annoyed at this graduation requirement.

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<sup>120</sup> See Carpenter, *supra* note 15, at 68-70. Schools offering specializations or certificates have increased from 84 to 94 between 2002 and 2010. *Id.* at 68. Of the schools offering some kind of program, the number of options offered as expanded dramatically. *Id.* at 69. The ABA Survey did not ask questions about the requirements for the specializations or whether EL courses are among the requirements.

<sup>121</sup> See *supra* Table 1.

C. *Is There a Need or Opportunity to Create Sequencing and EL-Prerequisites?*

As more EL course credits are required, more students will thirst for increasingly more complex work. The *EL Survey* data provide some suggestion that public lawyers may have faced a plateau. Developing course sequences that aim to expose students to progressively more challenging legal work is pedagogically exciting. It also raises substantial administrative and resource issues.<sup>122</sup>

D. *What is the Role for Academic Advising?*

Schools set myriad graduation requirements (*e.g.*, number of credits, mandatory courses, writing requirements, etc.).<sup>123</sup> Six credits of experiential coursework will be added to that list soon. In all likelihood, most schools will offer a menu of courses that students can take to satisfy those EL requirements. How will students choose—a clinic, or two externships, or two skills courses and a clinic? The permutations will be many. Who is advising the students now on course selection? What do the official sources advise (*e.g.*, curriculum guides, student affairs and faculty advisors)? What do the unofficial sources advise (*e.g.*, employers, classmates, alumni, family)? What messages from official or unofficial sources are explicit and transparent? What messages are implicit, and perhaps unintended or counterproductive?

E. *How Do Course and Curriculum Planners Deal With the Inevitability of the Far-Transfer Dilemma?*

One of the themes that emerges from the *EL Survey* data is that the private lawyers who practice in large firms transfer less of their learning from their EL coursework than their public practice colleagues. That makes sense. As much as law school clinics offerings might expand to cover legal work in more areas than they do now, they will never be able to cover all career paths with comparable intensity. So there will always be the challenge of far-transfer of learning.

The ABA's new accreditation standards lend force to this exercise of reflection and course planning. Standard 301 requires each school to set and publish specific learning outcomes—not course by course, but for the whole of the law degree offered.<sup>124</sup> The standard requires each school to monitor and assess its progress toward those

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<sup>122</sup> See generally *supra* note 78-80.

<sup>123</sup> Carpenter, *supra* note 15, at 25-45.

<sup>124</sup> ABA 2014 REVISED STANDARDS, *supra* note 4, Std. 301 and 302. See also *supra* note 5, regarding the ABA's phase-in of the standard.

self-defined outcomes.<sup>125</sup> Can each of the school's graduates demonstrate the proficiencies that the school professes to teach, on commencement day? How will those stated learning outcomes sync with the many career paths our graduates follow and deliver transferable learning pertinent to those career paths?

Much research has emerged in recent years to identify the competencies and skills that lawyers need at high proficiency levels—not just seasoned lawyers but also brand new lawyers. Marjorie Shultz and Sheldon Zedeck have identified 26 lawyering effectiveness factors—none of which is subject matter based, but include factors such as the ability to see the world through the eyes of others, strategic planning, practical judgment, and stress management.<sup>126</sup> Their work has been a catalyst to much research that has included surveys and interviews with a wide host of legal employers (beyond large firms, government offices, and public interest organizations) that has provided more color to what those competencies mean in practice.<sup>127</sup> The National Conference of Bar Examiners engaged a research firm to survey new graduates nationwide to understand what lawyering tasks are asked of them and what skills and abilities have the new lawyers found to be critical to the performance of their responsibilities.<sup>128</sup> Collectively, these works provide a rich base for faculty to identify learning outcomes for their own classes, and for the law degree bestowed by their school. The EL curriculum will be critical to delivering many of those core lawyering competencies.

#### CONCLUSION

This is a national study, examining data from many schools and many career paths. Its findings may not be reflected at similar levels in any particular school. But there are three takeaways that are likely relevant in every law school regarding course offerings and design, and enrollment patterns.

First, intensity matters in how durable and transferable the learning is from EL course to a graduate's career. So serious examination of the EL curriculum and a school's articulation of the new EL graduation requirement should include consideration of how it can achieve

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<sup>125</sup> ABA, Std. 315 provides that the dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods and use the results to determine the degree of student attainment of competency in the learning outcomes. ABA 2014 REVISED STANDARDS, *supra* note 4, Std. 315.

<sup>126</sup> Shultz & Zedeck, *supra* note 12.

<sup>127</sup> See, e.g., Hamilton, *supra* note 13.

<sup>128</sup> Steven S. Nettles and James Hellrung, *A Study of the Newly Licensed Lawyer* (National Conference of Bar Examiners, July 2012).

genuine intensity (which courses, what combinations or sequences).

Second, career relatedness matters to the long-term practice value of EL courses. Litigators reap the highest values from EL coursework and transactional lawyers reap the lowest value, at least as those courses have been offered historically. That's a surprise to no one. But the differentials between the values ascribed to EL coursework by private and public lawyers are illuminating. We expected some discounted value, but some of the differentials were notable and more persistent than we might have expected. Again, in the upcoming curricular reviews, schools ought to consider how well their EL courses support and advance the career trajectories of their graduates.

And the last takeaway: Without a well-aligned EL curriculum, schools will continue to have a group of students who sidestep EL courses as much as possible. It is easy to celebrate the students who embrace these courses. But the real challenge is that private lawyers have avoided these courses in substantial numbers. Nearly all lawyers took some EL coursework, but it is clear that compliance with the new ABA six-credit experiential education requirement will require concerted persuasion to attract the students who have under-enrolled in these courses to date. If part of the student body has little or negative interest in the courses, they will enroll through compulsion only, and come to such classes with an ennui that threatens to be counter-productive in the classroom.

Schools will have to address these questions. The ABA's new experiential education requirement is exciting. If law schools explore and understand their graduates' career paths and align the curriculum with those skill needs, they will be able to deliver high value to all their graduates.

## APPENDIX A

**Limitations of the Study and Recommendations  
for Future Research**

We have attempted to identify data limitations throughout the article, but here are other limitations that may temper one's interpretation of these findings. Appendix B provides side-by-side demographic comparisons of the two survey populations.

*Data limitations and gaps*

- This survey research was exploratory with the goal of identifying insights that might stimulate future research.
- The survey population constitutes a convenience sample.
- The use of volunteer respondents may introduce bias. Those who responded may have had particularly good or bad experiences with experiential learning settings.
- The pool of public attorneys has more years of experience with a higher percentage reporting they had three or more years of practice. Appendix C shows a comparison of key indicators in responses from junior and senior lawyers.
- The public practice respondents had a higher percentage of females as compared to the private attorney respondents. Sometimes women respond to surveys at higher rates and with a more positive disposition. A comparison of mean scores of male and females in the private, public and total groups showed similar or identical mean scores.
- There are no data to evaluate if the respondents represented a wide or narrow range of law schools. The EL Survey did not ask the attorneys which law school they attended, or in what state.
- The survey asked where the respondent practices. The most common states were New York, District of Columbia, Texas, Illinois, and Washington State. Most lawyers practice in New York and California, which suggests that survey population is not geographically representative.
- Given the timing of the EL Survey (November 2010 and 2011) and the dates that the respondents attended law school, the data collected do not capture any curricular reform since 2011, and at best, captured a modest level of curricular reform since the 2007 Carnegie Report.

*Recommendations for future research*

- Conduct a study employing a random sampling methodology and include a wider range of practice settings, to allow for better

generalization.

- Explore the specific aspects of the EL courses that were valued.
- Explore how summer employment impacts the value of the EL coursework.
- Develop surveys to understand how lawyers rate the practice preparation value of their non-EL (podium based) courses.

## APPENDIX B

**Demographic and Other Characteristics of the Survey Populations**

Characteristic	Private attorneys	Public attorneys
# attorneys	930	1,212
Gender: % women	48% women	65% women
Race: % non-White	18% non-White	19% non-White
Less than 1 year in practice	192 (21%)	96 (8%)
Seniority: 1 year in practice	122 (13%)	62 (5%)
Seniority: 2 years in practice	126 (14%)	92 (8%)
Seniority: 3 years in practice	65 (7%)	56 (4%)
Seniority: more than 3 years in practice	422 (45%)	904 (75%)
States: # of states represented	32 (62%)	46 (88%)
States: 3 most represented states	DC, TX, IL	NY, WA, DC
Law school location: Capital city	369 (40%)	306 (25%)
Law school location: Metro areas 1 million or more	481 (53%)	657 (55%)
Law school location: Metro area 100,000-1 million	275 (30%)	380 (32%)
Law school location: Metro area less than 100,000	138 (15%)	124 (11%)
Law school location: Rural, not part of a metro area	6 (<1%)	49 (5%)
Practice type: Litigation	529 (58%)	937 (78%)
Practice type: Transactional	301 (32%)	65 (6%)
Practice type: Regulatory	89 (9%)	155 (13%)
Practice type: Legislative	9 (<1%)	39 (3%)
Law office size: More than 1,000 attorneys	111 (12%)	19 (1%)
Law office size: 500-999	348 (37%)	142 (12%)
Law office size: 251-500	184 (20%)	225 (19%)
Law office size: 101-250	238 (26%)	128 (11%)
Law office size: 51-100	43 (5%)	116 (10%)
Law office size: 26-50	5 (<1%)	183 (15%)
Law office size: 25 or fewer		386 (32%)

## APPENDIX C

**NALP and NALP Foundation Survey: 2010 and 2011 Survey Instrument**

The 2010 and 2011 surveys were identical in almost all respects. Where the questions differed, they are identified and labeled below. Differences:

- Questions 4 to 4b regarding the role of the experiential learning in the attorney's hiring process.
- Question 10 added to the 2011 public attorney survey regarding the attorney's organization or government office.
- Question 12 regarding the location of the attorney's office.

*This is a facsimile of the EL Survey. The survey was administered online.*

*SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING: OPPORTUNITIES AND BENEFITS*

This survey is designed to learn which practice-oriented course(s) you took as a law student and how they have prepared you for practice as an attorney.

This survey takes no more than 10 minutes to complete. All information will be submitted on an anonymous basis, and no information that could be attributed to an individual will be released.

If you have questions, please contact Judith Collins, NALP's Research Director, at [jcollins@nalp.org](mailto:jcollins@nalp.org).

2010 Survey: Please submit your survey by December 5, 2010.

2011 Survey: Please submit your survey by December 9, 2011.

1. Which of the following *JD-credit bearing* courses did you take during law school? (Check all that apply.)

[Note that law schools offer a broad spectrum of course using various titles and that they often have content that falls into more than one of the choices provided below. Choose the description(s) that best describe the most significant content of the course(s) you took.]

- Clinic(s) representing individual clients [Please also complete 1a on the next page]
- Externship(s)/field placements(s) [Please also complete 1b on the next page]

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- Legal practice skills or simulation course(s) [Please also complete 1c on the next page]
- None of the above.

1a. For any clinics you took, answer each of the four questions.

How many terms/semesters did you participate in this clinic?

Answer choices provided: 1, 2 or more than 2

Clinic 1

Clinic 2

Clinic 3

Clinic 4

Clinic 5

Clinic 6

Were you lead or co-lead counsel?

Answer choices provided: Yes or No

Clinic 1

Clinic 2

Clinic 3

Clinic 4

Clinic 5

Clinic 6

Did you work under a Student Practice Order with a court?

Answer choices provided: Yes, No, or I don't know

Clinic 1

Clinic 2

Clinic 3

Clinic 4

Clinic 5

Clinic 6

Who supervised your work?

Answer choices provided: A faculty member; An outside attorney; or Both a faculty member and an outside attorney

Clinic 1

Clinic 2

Clinic 3

Clinic 4

Clinic 5

Clinic 6

1b. For each of your externship/field placement(s), please tell us:

How many hours per week did you work?

Answer choices provided: 10-20 hours; 21-30 hours; or 31-40 hours

Placement 1

Placement 2

Placement 3

Placement 4

Placement 5

Placement 6

What was the setting for this placement?

Answer choices provided: Court/judge's chambers; Government agency or legislature; Not-for-profit organization; Law firm; Corporation/business; Other (describe below)

Placement 1

Placement 2

Placement 3

Placement 4

Placement 5

Placement 6

1c. Which of the following practice skills course did you take? (Check all that apply).

[Note that law schools offer a broad spectrum of courses using various titles and that they often have content that falls into more than one of the choices provided below. Choose the description(s) that best describe the most significant content of the course(s) you took. Please choose only one description per course.]

- Advanced drafting (beyond the 1L course)
- Pre-trial litigation (e.g., deposition skills)
- Trial advocacy
- Appellate advocacy
- Alternative dispute resolution skills
- Counseling and interviewing
- Negotiating
- Transactional practice (e.g., business formation/governance,

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- licensing closings)
- Law practice management skills (e.g., running a law firm)
  - Subject matter specific skills (e.g., Education Law practice)
  - Business management and planning
  - Leadership
  - Other (please specify) \_\_\_\_\_
2. At the time you attended, did your law school have a pro bono service graduation requirement?
- Yes (indicate hours requirement below also and complete items 2a and 2b)
  - No [please also complete items 2a and 2b]
  - I don't know
- If yes, how many hours of service were required?
- Fewer than 10
  - 10-20 hours
  - 21-40 hours
  - 41-60 hours
  - 61-80 hours
  - 81-100 hours
  - More than 100 hours
  - I don't know/don't recall
- 2a. Did you perform voluntary (as opposed to required) pro bono service during law school?
- Yes [if yes, please also answer item 2b]
  - No
- 2b. If yes, how many hours did you volunteer?
- Less than 10
  - 10-20 hours
  - 21-40 hours
  - 41-60 hours
  - 61-80 hours
  - 81-100 hours
  - More than 100 hours
3. How useful in general was each of the programs or experiences listed below in preparing you for the practice of law?  
Answer choices provided: 1 Not at all useful; 2; 3; 4 Very useful;  
NA-did not have this experience
- Clinic(s) representing individual clients
  - Externship(s)/field placements(s)
  - Legal practice skills or simulation course(s)

- Required or voluntary pro bono hours

*2010 question (private attorney survey)*

4. At the time you interviewed with your current employer, in which of the following were you registered or had you participated? (Check all that apply).

- Clinic(s) representing individual clients
- Externship(s)/field placements(s)
- Legal practice skills or simulation course(s)
- Required or voluntary pro bono hours

*2010 question (private attorney survey)*

- 4a. In your interview, how much were any of these experiences discussed?

- 1 Not at all
- 2
- 3
- 4 Extensively

*2011 question (public attorney survey)*

- 4a. To what extent was your experiential learning useful in obtaining your first job in a non-profit or government setting?

Answer choices provided: 1 Not at all useful; 2; 3; 4 Very useful; NA-did not have this experience

- Clinic(s) representing individual clients
- Externship(s)/field placements(s)
- Legal practice skills or simulation course(s)
- Required or voluntary pro bono hours

*2011 question (public attorney survey)*

- 4b. Are you currently practicing in any of the same subject matter areas as your experiential learning activities?

Answer choices provided: Yes; No; NA-did not have this experience

- Clinic(s) representing individual clients
- Externship(s)/field placements(s)
- Legal practice skills
- Required or voluntary pro bono hours

The remaining questions request background information about you, your school, and your employer. All responses will be used for statistical purposes only and will remain anonymous.

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5. Which of the following graduate degrees do you currently hold? (Check all that apply).
- Juris Doctor (JD)/Bachelor of Laws (LLB)
  - LL.M.
  - Joint JD/MBA
  - Other joint degree (describe below)
  - Law degree from a country other than the US or Canada
- Please describe other joint degree program \_\_\_\_\_
6. Where is your law school located?
- Metropolitan area (central city(ies) and suburban areas) with population of 1 million or more
  - Metropolitan area (central city(ies) and suburban areas) with population of 100,000 to 999,999
  - A city or metropolitan area of less than 100,000
  - A rural area not part of any metropolitan area
7. Is your school located in a state or provincial capital?  
Answer choices provided: Yes, No
8. How would you describe your primary area of practice? (Choose one).
- Litigation-based
  - Transactional-based
  - Regulatory-based
  - Lobbying/legislative
9. How long have you been practicing law?
- Less than one year
  - 1 year
  - 2 years
  - 3 years
  - More than 3 years

*2011 question (public attorney survey)*

10. What type of organization do you work for?
- Civil legal services (defined as an organization that PRIMARILY provides direct legal services to low-income clients in civil matters)
  - Policy/impact/advocacy organization (defined as an organization that PRIMARILY works for changes in legislation, regulations, and other types of systematic change including impact litigation)

- Local prosecutor
- Local public defender
- Local government: not prosecutor or public defender (Please specify in the Additional Information box below)
- State Attorney General
- State government-not attorney general (Please specify in the Additional Information box below)
- Federal government (Please specify in the Additional Information box below)
- Other (Please specify in the Additional Information box below)

Additional information: \_\_\_\_\_

11. Including yourself, how many lawyers in your organization?
  - 25 or fewer
  - 26-50
  - 51-100
  - 101-250
  - 251-500
  - 501-1,000
  - More than 1,000
  
12. State where you currently practice law.  
Provided options for all 50 states and District of Columbia  
*2010 survey of private attorneys included Canada.*  
*2011 survey of public attorneys included Virgin Islands, Puerto Rico, Guam, and Trust Territories.*
  
13. Your gender.
  - Male
  - Female
  
14. Your race/ethnicity
  - American Indian/Native American
  - Asian/Pacific Islander
  - Black/African-American
  - Hispanic/Latino
  - White/Caucasian
  - Multi-racial

Please use the box below to make any comments on the topics covered in this survey.

Fall 2015]

*Practice Value of Experiential Legal Education*

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## APPENDIX D:

**Experiential Learning Coursework-Participation and Ratings by Duration of Practice**

	<b>Private lawyers</b> <i>(surveyed Nov 2010)</i>		<b>Public lawyers</b> <i>(surveyed Nov 2011)</i>	
	<b>Junior attnys</b> <b>≤ 3 years</b>	<b>Seasoned attnys</b> <b>&gt; 3 years</b>	<b>Junior attnys</b> <b>≤ 3 years</b>	<b>Seasoned attnys</b> <b>&gt; 3 years</b>
	Attended law school 2004-2010	Attended law school prior to 2004	Attended law school 2005-2011	Attended law school prior to 2005
# attorneys	505	422	304	904
% all 3 EL pedagogies	14%	14%	42%	22%
% no EL coursework	15%	19%	1%	7%
<b>Clinics</b>				
% in CLC	34%	28%	68%	52%
CLC mean rating	3.49	3.32	3.76	3.76
<b>Externships</b>				
% in EXT	40%	32%	65%	50%
EXT mean rating	3.48	3.28	3.64	3.63
<b>Skills</b>				
% in SKI	70%	70%	93%	80%
Avg # SKI courses	1.74	1.58	2.15	1.75
SKI mean rating	3.13	3.06	3.23	3.32

