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# SELF-DIRECTED LEARNING AND THE OUT-OF-HOUSE PLACEMENT

JANET MOTLEY\*

The out-of-house placement has long been ignored, serving as the orphan child of legal education. Even most clinicians have looked with disdain upon these placements, denying ownership and disclaiming their role as a legitimate form of legal education. For the relatively few educators who have worked with the out-of-house placement as a serious option, little guidance has been provided.

During the past eight years I have been intimately involved with a clinical program which consists exclusively of out-of-house placements, and for the past six years as the full-time director of such program. The course which I have developed is the result of a combination of several factors, among them my own experience, my interest in the process of learning, particularly self-directed learning, my close work with students, and discussions with attorneys. What follows is a description of the program, including the theory which supports it and a discussion of problem areas. This article has two purposes: 1) hopefully it will assist others who are establishing or reshaping placement programs; and 2) it should inform legal educators of the educational value of such programs.

## I. ASSUMPTIONS SUPPORTING OUT-OF-HOUSE PLACEMENTS

One fundamental premise that underlies the out-of-house placement as it takes form at California Western is that we are working in the realm of adult education. This premise contains certain assumptions. One major assumption is that our students are capable adults who have the ability to express their needs, their problems and their interests and to make decisions which adults normally make. This ability to make decisions includes the ability to choose, when informed, the appropriate situation for experiential learning. The assumption that we are in the business of educating adults also includes an attitude of trust—that our students are capable of discerning effective and/or appropriate behavior in others, especially when given the encouragement to reflect upon their observations.

The assumption that we are dealing with adults is certainly well-grounded in fact. Many of our students are mature, second-career individuals with more business and worldly experience than can be claimed by most members of our faculty. Although we also have a number of students fresh out of undergraduate school, we have found that the great majority are mature, thoughtful, and serious about their education, at least when it comes to the training they will receive in this program.

Another assumption which underlies our program and any out-of-house placement is that there are attorneys in practice who can and do make good teachers and role models. The walls of the institution do not contain a monopoly on

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exemplary behavior, reflective manner, and patience. This is not to say that all attorneys embody these qualities; however, we have discovered that there are a sufficient number who do. For these attorneys who have an interest in teaching, the one-on-one approach may be ideal.

A further assumption underlying our program is that there are law professors who are willing to and are good at working with students on an individual basis to draw out relevant and appropriate learning from unique situations. These professors do not teach in the ordinary sense, using a casebook or text, but work with each student in areas of substantive law, practice, ethics, interpersonal relations, learning style or whatever other subject is called for at any particular time. Perhaps this assumption is most difficult to prove, as we have realized that there are relatively few law professors who fit well in this category.

## II. DESCRIPTION OF THE PROGRAM

The Internship Program ("internship" and "clinical" are used interchangeably in this article) places students in law offices, public agencies and courts. At these placements the students work under the supervision of an attorney or judge, performing the variety of tasks which would ordinarily be performed by a lawyer. Students work four hours per week for each unit of credit they will receive; they may earn between three and ten units, a maximum of ten units counting towards graduation requirements. Selection and supervision of students and attorneys is performed by the clinical faculty.

Our placements include both the private and public sectors, sole practitioners and large law firms, profit-making entities as well as public interest organizations. In determining the appropriate placement for each student, the interests of the student, the student's prior experience and maturity, and the kinds of skills desired and needed by the student are considered. All students are screened by the clinical faculty before they may interview for an internship placement. From time to time students are turned away from the program for various reasons, including a determination that the student needs to spend more time in the classroom or the discernment of an attitude problem.

Students are permitted to interview for three placements. Selection of placements/students is made the semester before the internship is to take place. At the beginning of the semester the interns and clinic faculty meet for an orientation session. We review the course requirements and discuss the first assignment on learning style. Students are thoroughly indoctrinated regarding their responsibility to make this a worthwhile learning experience and to communicate all problems and potential problems to their supervising attorneys and the faculty.

Over the course of the semester the students meet individually and in groups with the internship faculty. Although the group meetings have a designated agenda, the individual meetings are informal discussions and very individualized. Reports of these meetings are maintained in student files.

Students are required to keep time logs which record how they are spending their time at their internship. They are required to make records of the tasks they perform or observe, to turn in copies of their written work product and to complete an evaluation of their placement at the end of the semester. Students are also

required to maintain a journal in which they reflect upon their experience and relevant issues of professional responsibility.

Students receive a numerical grade for one unit of the course and a pass/fail grade for the remainder of their units. We have found that the one unit grade motivates students to take their assignments and meetings more seriously than if the entire course were pass/fail. The students' written assignments and journals, as well as the quality of their discussions in private meetings, are used for determining their numerical grade.

Supervising attorneys are required to communicate with the internship faculty in the event any problem arises during the semester. They are also required to complete a short mid-semester evaluation (Appendix A) and a more detailed final evaluation of the student's work at the end of the semester (Appendix B). These evaluations must be reviewed with and signed by the student.

The clinical faculty holds training sessions for new supervising attorneys. These sessions include comments about proven effective means of supervising students and suggestions for enhancing the experience. From time to time the faculty holds follow-up training sessions for all of our supervising attorneys. At these meetings we discuss some of the more common problem areas; supervising attorneys exchange information about how they handle these situations. The clinical faculty may provide recently acquired information or suggestions which have been culled from our experience. All supervising attorneys receive a copy of our Supervising Attorneys Handbook which includes information about our program as well as specific suggestions about working with interns.

### III. PURPOSES OF THE INTERNSHIP PROGRAM

The Internship Program at California Western has several purposes:

1. Training students in lawyering skills;
2. Giving students greater insight into the workings of the legal system;
3. Promoting in students a sense of professional responsibility; and,
4. Developing students' ability to learn from the experience.

The fulfillment of each of these purposes depends upon three factors and the interrelationship between them. The factors are: the student, the supervising attorney, and the faculty member.

The student must be motivated not merely to perform well in a challenging new setting, but also to take risks, to take responsibility for the learning she receives and to reflect upon the situation and her role in it. The supervising attorney must be willing and able to serve as the student's role model, teacher, supervisor and friend.

The faculty member needs enough experience in the practice of law to be able to converse intelligently with the student and with the supervising attorney as well as to be able to review meaningfully the student's written legal work. She must also know enough about people to handle problem situations tactfully and appropriately. She must maintain a genuine interest in the work and development of each student. She must be able to provide guidance in research and other skills as well as in more personal areas such as office relations and the building of self-confidence. She must be able to demonstrate to the student the importance

of self-reflection and to make the student more conscious of the process of learning.

The roles of these parties can be made more specific in examining each of the Program's purposes.

### A. *Training of Students in Lawyering Skills*

#### 1. The Role of the Supervising Attorney

Students are trained in lawyering skills as a natural by-product of the internship arrangement. What is not necessarily natural is the provision of a high quality, broad-ranged and demanding training. One of the frequent criticisms of out-of-house clinical programs is that supervising attorneys tend to view their student interns as "free help." Certainly this would be an easy attitude to take where the law office is understaffed and busy. Should such a notion of the internship predominate, the supervising attorney would tend to give the student either work which can be done easily with little training or supervision, work which is repetitive, or work which the student already knows how to perform. Such work is inappropriate for an educational experience. Students will solve problems any way they can, most likely using their strongest skills rather than trying to overcome their deficiencies. The supervising attorney who is not committed to the internship will encourage this because of the need to serve her clients. "Everyone learns how to survive with the minimal possible learning, unless the teacher as a 'systems manager' can design a strategy for insuring that students have to cope with their deficiencies as well as utilize their strengths."<sup>1</sup>

This is not to say that the student should not be of assistance to the supervising attorney or the law office—she should be—but, the assistance should be at the level of a lawyer rather than a lackey. In many situations it may turn out that the time spent in training and supervising the student is just compensated by the amount and quality of student work product. In a few cases the attorney's efforts might not be totally compensated by the student's work. This is a warning which must be given to all potential supervising attorneys. *The supervising attorney's primary motivation for participating in the program must be an educational one.* Our supervising attorneys seem to be motivated by this direct participation in the professional development of future lawyers.

Successful practicing attorneys are not necessarily good teachers or supervisors of interns. Given motivation, attorneys can learn skills and attitudes which will assist them in performing these roles effectively. One of the roles of the clinical faculty member is to provide the supervising attorney such information. This is done through individual and group meetings, telephone conversations, and written material.

The supervising attorney is expected to assist in the skills training of the student in much the same way that clinical faculty members train their students in the in-house programs. Students are given real client problems to work on under the supervision of the attorney. The supervising attorney is expected to provide guidance, not answers. The student is expected to observe the supervising

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1. Cahn, *Clinical Legal Education from a Systems Perspective*, 29 CLEVELAND ST. L. REV. 451, 464 (1980).

attorney in the performance of lawyering tasks. The supervising attorney is expected to provide opportunities for the student to perform a variety of challenging tasks and to repeat the tasks until some level of mastery is achieved. Specific feedback on the student's work is also a critical element of this training process. Finally, the supervising attorney is asked to specifically evaluate the student's performance two times during the internship.

## 2. The Role of the Student

Most students come to an internship very willing to learn lawyering skills. In fact, most students come to the Internship Program with this as their sole objective. Yet, many of our students find that they must reach beyond their initial expectations and expand their goals for skills training. As has been stated above, most of us tend to select work which we know we can perform and which, therefore, is comfortable. A student will often make an initial selection of an internship placement from this subconscious motivation. It is the job of the student intern to move into areas which are unfamiliar and may threaten initial failure. This is uncomfortable and often resisted. Even a student who states a broad desire to learn as much as possible often resists learning when her ego is on the line.

A related role of the student in acquiring skills training is to seek out aggressively those situations which will provide the challenge required for further learning. Even the most committed supervising attorneys will not always have the student's learning goals at the forefront of her mind. In receiving assignments from the supervising attorney, the student must be willing to ask for an appropriate task. In addition, the student must be willing to refuse an assignment which is make-work or repetitious and must be willing to take the time to observe attorney work, resisting the temptation to be a good "producer."

Another important role for the student in acquiring skills training is to become an effective self-directed learner. Most formal education, law school included, is a passive experience. Students are assigned books and other materials and are directed by the teacher to read those subjects which the teacher determines appropriate. Even in a course such as a seminar, where a student is required to do independent research, the subject matter and focus for research is narrowed by the professor's choice. An attorney who is practicing law cannot afford to have such a passive approach to learning. No one is going to direct the lawyer to read up on trial practice skills; no one is going to tell the attorney to take a course in client interviewing and counseling. The practicing attorney needs to be aware of her needs and to seek out learning resources for continuing development. The student intern is encouraged to seek out such resources to expand her knowledge during the internship. This should expand the student's understanding about how law is practiced and develop the student's skills as a self-directed learner.

## 3. The Role of the Clinical Faculty Member

One of the major roles of the clinical faculty member in meeting the goal of training students in lawyering skills is to see to it that both the supervising

attorney and the student fulfill their obligations. This entails a clear understanding among all the parties as to what the expectations are and requires meetings with both the student and the attorney. One way of making these expectations concrete is to put them into writing. We have found that something akin to a "learning contract" can be tailored for each student.<sup>2</sup>

This monitoring role also includes trouble-shooting in the event that there is a problem. Occasionally, a student will complain that she is not getting enough attention from her supervisor. The majority of these cases can be handled by encouraging the student to directly and clearly communicate with the supervisor. Very rarely, a supervisor will have a problem with a student—a bad attitude about the work, sloppy habits such as tardiness, or poor work quality. In these cases the faculty member will work with both the student and the supervisor to make necessary corrections. In the extreme case the student will be removed from the placement. One of the most important aspects of this role is that the faculty member be accessible to the other parties and that the students and attorneys be encouraged to communicate before any problem becomes serious.

The faculty member must be sufficiently versed in lawyering skills and resources so as to serve as a sounding-board and support for the student. Each meeting with a student may require a new response. At times it may be appropriate to simulate a client interview or an argument to a court. Other situations may call for an analysis of the case on which the student is working and a discussion of legal theory. Sometimes the faculty member has to strongly suggest to the student that a particular course of action is required for optimal learning. The faculty member must recognize that a student may be quite skilled at rationalizing why she has not performed a certain task when, in fact, the avoidance might stem from fear of failure.

It is not the purpose of our internship program to directly train students in a wide variety of skills; these opportunities are available elsewhere in the curriculum in courses such as trial practice, appellate advocacy, interviewing and counseling, negotiation and mediation, etc. The internship serves as a place to practice some of these skills and to learn about the day-to-day activity of lawyering. Therefore, we do not include materials on specific skills in our course work. We do include, however, material which focuses on the use of models or theories for the practice of various skills. The understanding of and ability to use models are important lawyering skills. In a sense, the internship serves as a laboratory for experimenting with skills and for observation of and reflection about the legal profession.

Another important function of the faculty member is to serve as a model for the aspiring professional. This is particularly true in terms of client relations and issues of professional responsibility as well as in attitudes about work and work quality. Each meeting with a student is a demonstration of a client interview. By discussing ethical issues which arise in the internship, we demonstrate the need for the professional person to be alert to the impact of her work. In reviewing the written work of an intern, we encourage the student to achieve work worthy of a competent professional.

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2. See *infra* Section B1.

## *B. Giving Students Insight into the Workings of the Legal System*

This is another aspect of the internship which might appear to be a natural by-product. Such insights occur, however, only to the extent that the student is exposed to a variety of situations and is able to discuss these observations with her supervising attorney. For the most part, a student who spends her entire internship in the library doing research and writing memos will not have a significantly better idea of the functioning of the legal system than a student who has remained in the classroom. This does not mean that an internship which primarily involves research and writing cannot be a good learning experience.

### 1. The Role of the Supervising Attorney

In order to ensure that students obtain this broad exposure, we meet with each supervising attorney and design what we call an Experience Check List, akin to a learning contract. The supervising attorney and faculty member consider what kinds of activities would constitute a challenging experience over the course of the semester. This list is used by the faculty during the internship to monitor the variety of the student's work.

It is also important for the supervising attorney to spend time with the intern discussing matters pertinent to an understanding of the legal process. For example, we expect that the supervising attorney will discuss case strategy in the context of the student's review of a case file, that a supervising judge will explain elements of the decision-making process, that a prosecutor will talk with the student about issues related to plea bargaining, and so on.

### 2. The Role of the Student

At the beginning of each semester the clinical faculty meets with all of the interns for an orientation. One of the points stressed at this time is that students are to be constantly looking at how the work they are doing relates to a larger context of lawyering. During the semester, as we meet with our students individually and in groups, this point is reiterated and students are required to demonstrate that they are "seeing the forest through the trees." The faculty member will often engage an intern in a discussion of topics such as legal policy, the effectiveness of the adversary system, and alternatives to litigation. Students are required to maintain a journal which reflects what they are learning, including the generalizations they are drawing from their specific experiences. Often their notations will inspire further discussion about the legal system. We expect our students to demonstrate motivation and interest in these issues and to engage in thoughtful conversation.

### 3. The Role of the Faculty Member

Perhaps in the ideal world the student and supervising attorney could be expected to fulfill this and the other purposes of the program on their own. In reality, however, the presence and inspiration of the faculty member serve as a catalyst to ensure that a meaningful consideration of the legal system actually occurs. The practicing attorney or judge, as well as the student, are involved in



problem-solving on a day-to-day basis, often pressured for time by client and other needs. Even with the best of intentions, they can easily become engulfed in handling these pressures at the expense of the consideration of the larger context. The faculty member, on the other hand, is at least a step removed from such pressures and may be able to provide a different perspective. We frequently remind our students that this is a learning experience, for which they are paying and receiving credit, and that they are required to observe and reflect upon matters beyond the particular case law or procedure with which they happen to be involved at the time. We expect them to engage in intelligent conversation about their work when they meet with us, and we probe them for their insights. In addition, we require that they take the responsibility for exposing themselves to the various activities which appear on the Experience Check Lists, in spite of their desires to present themselves as productive and hard workers. At times our own experiences in the practice of law or our perspectives derived from teaching particular courses may help the student to understand how what she is doing fits into the scheme of legal problem solving.

### *C. Promoting the Development of Professional Responsibility*

Professional Responsibility is the name of a required course in law school. Most of us who can recall our experience in such a course would agree that it was rather ineffectual. Those who have written about such courses agree with this observation, concluding that it is a subject which must be internalized and that the most sure way for this to occur is to have students involved in the actual practice of law.

#### **1. The Role of the Supervising Attorney**

The internship is the ideal situation for the teaching of professional responsibility. At no other time will the student enjoy the opportunity of being professionally responsible under the guidance and supervision of a teacher. Both by serving as a role model and by engaging in dialogue with the student, the supervising attorney is the most influential teacher of professional responsibility.

Questions of professional responsibility and ethics arise as a matter of course in law practice, so there is rarely a need for the supervising attorney to create hypotheticals. Some of these matters have become so routine to practicing attorneys, however, that a special focus on them may be necessary in order to raise the point with a student. For example, an attorney in a counseling position may be accustomed to treating his clients' disclosures confidentially, whereas this necessity may not occur to a student. Attorneys involved in criminal practice, particularly, may no longer consciously dwell on whether what they are doing seems to be "fair" or "just"; students do consider such things, but may be embarrassed or otherwise reluctant to raise these issues. Significant learning opportunities are available but they must be recognized and used.

Beyond the treatment of ethical questions, it should be kept in mind that many students have never been responsible for anyone other than themselves. Acting professionally and being responsible for the welfare of clients is a new experience. For many students this realization of responsibility is quite dramatic. They will

watch attentively the actions and attitudes of their supervising attorneys for models. If the supervising attorney can engage in meaningful dialogue on this subject the lesson is powerful. There may be times when this dialogue takes the form of critiquing the student's work. For example, it may be relevant to a reprimand in a situation when a student has not met a commitment. It may also be appropriate in the form of praise, such as an expression of appreciation for the responsibility which the student is demonstrating in handling a case.

## 2. The Role of the Student

Interns are expected to be familiar with the local rules of professional responsibility. They are also to be on the alert for ethical issues which may arise in their work and to make note of such issues in their journals. Students are encouraged to talk with their supervising attorneys about these matters, and to complete a self-reflective exercise on professional responsibility which is included in the course materials.

## 3. The Role of the Faculty Member

This role requires the faculty member to be sensitive to the kinds of ethical problems which might occur in each placement and to be able to inspire the student to personalize these issues. Naturally, the faculty member must know enough about the practice of law and the rules of professional conduct to be able to recognize problem areas. Frequently, interns ask the faculty member for advice in handling perceived ethical problems, rather than speaking to their supervising attorneys. This might be because they do not want to appear judgmental or critical of their attorney or the office, or because they are unsure of their own judgment and want to test it out on the faculty member. The faculty member must be able to handle the situation in a way which creates the best learning for the student. As with the specific performance skills, the clinical faculty do not attempt to teach, directly, a course in professional responsibility as part of the internship program. This course is already required by the school. Instead, the internship experience actualizes the material from that course for each intern in a different way. One group intern meeting focuses on ethical issues which have arisen during the semester. Typically, students attend closely to peer presentations on this subject.

### *D. Developing the Ability to Learn from Experience*

Each case presents us, as attorneys, with new problems to resolve. Three years of law school cannot possibly teach students the substantive and procedural law for every case which could possibly come their way, nor the non-legal information and behavior which they must have to succeed. Law school graduates often complain that their formal education did not prepare them for practice. Their dissatisfaction may arise, in fact, not because the legal education was inadequate, but, rather because the purpose of that education was not conveyed clearly.

The purpose of legal education should be to train students to become effective problem solvers in the legal context. This requires effective learning—knowing

how to learn from experience, to avoid repeating mistakes, and to improve performance with practice. The first year of law school, with its emphasis on analysis of appellate opinions, intends not solely to teach the substantive law of contracts, torts, property, etc., but rather aspires to teach a process of thinking about the law which can later be transferred to the task of learning new subjects. In other words, traditional legal education's goal is teaching students *how to learn* and apply the law.

Likewise, clinical courses affording opportunities for real and simulated practice intend only in part to teach actual skills for specific practice. The primary purpose of clinical courses, like substantive courses, is to develop students' ability to learn from their experience.

Learning from experience sounds like an ordinary and simple thing to do, and, in some respects, it is. Yet, in other ways it is neither ordinary nor simple. To learn from experience requires a willingness to face facts—to look at our actual behavior. This is not usually easy, nor is it something for which we have been trained. We have been trained primarily to place the cause of our circumstances outside of ourselves, on external factors—the judge, the client, the witness, the jury, the system—rather than to see our own responsibility in the matter. In an achievement oriented and highly competitive environment such as the legal profession, the admission of error can be painful and expensive. Each participant in the program plays a role in easing the difficult process of learning from experience.

### 1. The Role of the Supervising Attorney

Given both the importance and the difficulty of providing frank criticism of the intern's behavior, the supervising attorney must first come to the task willing to do whatever is necessary for the student's education. This might mean dealing with the student's unhappiness or defensiveness or with the attorney's own discomfort at seeming to be unkind. It also means giving students positive feedback about their work to maintain their interest in the learning process and to build their self-confidence. We instruct the attorneys to give this feedback in a personal meeting with the student whenever possible and the situation warrants such expenditure of time. In some cases, the attorney may give the student written feedback. The supervising attorney's role as a teacher is optimal for this interaction. The possible breakdown in this role occurs when the attorney becomes "too busy" to perform this essential task. Attorneys who agree to supervise a student sign a Memorandum of Agreement which embodies this responsibility (Appendix C). From time to time some have to be reminded of this commitment.

### 2. The Role of the Student

Much of the course material develops this theme of learning to learn. Students must complete written assignments which include the Kolb Learning Style Inventory and other questions about the student's experiences with and attitudes toward learning. At our orientation meeting we focus on learning to learn and advise interns that they must include the details of what they are learning and their insights about this learning in both their journal and their discussion with

the faculty. One of the greatest challenges for students in this area seems to be achieving specificity. We press them to be specific about what they want to learn and what they are learning, rather than to rely upon generalizations ("I want to learn what it's like to be a lawyer"; "I'm learning a lot.") We require students to select a few reasonable learning goals for the semester and to design a plan for accomplishing these goals. In our individual meetings we require students to demonstrate that they are using the learning cycle<sup>3</sup> to accomplish their goals. This may involve expressing their educational needs to their supervising attorneys in regard to assignments and feedback. For instance, the student may have to ask her supervising attorney for different assignments or more precise feedback on work already completed.

Students must be willing to look at their behavior and discuss it in order to learn from it. It is not acceptable behavior in the program for a student to doggedly maintain a position of merely wanting to learn law or procedure and to do so by just accepting the assignments from her supervising attorney, one after another. Students should be able to describe their approach to their work so that it can be examined for effectiveness.

This aspect of the internship is most challenging for students. It requires them to become active—not passive—learners, conscious of their learning behavior. It places on them the responsibility for what they get from the experience.

### 3. The Role of the Faculty Member

This is the most vital role of the clinical faculty. Each group and private meeting with students provides an opportunity to demonstrate the process of learning how to learn. This might involve referring to the student's learning style and how it affects the work the student is doing. It might mean requiring the student to do something different; to change an approach or choose a different task. It almost always includes speaking explicitly about the learning process and suggesting alternatives. Sometimes what we do can be as mundane as informing students about available resources for self-directed learning, teaching students that part of the learning process includes making use of the experience of others.

As stated above, much of our class material focuses on the theme of learning to learn. Our assignments and discussions with students include topics such as what it means to be learning from experience and an examination of the various barriers to doing this.

An essential element to the faculty member's role is the modeling of desired behavior. In working with students, we must demonstrate that we are involved in an ongoing learning process. This means that we must be willing to ask students questions about things we might not know. Thus, if a student is working for the Bankruptcy Court, we might ask something about the substantive law with which the student is working or about the Court's jurisdiction. Such questioning performs several functions. First, it forces the student to articulate something she has learned or points out something she needs to learn. Second, it demonstrates to the student that being a lawyer does not necessarily mean having

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3. See, D. KOLB, *LEARNING STYLE INVENTORY, TECHNICAL MANUAL* (1976).

memorized a great deal of information or having to appear to know everything. Third, it helps to make the exchange between teacher and student closer to a conversation between colleagues, helping to boost self-confidence as well as reinforcing the student's new role. Fourth, it allows us to determine whether the student is grasping the fundamentals of the specific area of law and taking responsibility to learn more than what is called for in each assigned narrow task. These questions sometimes require the student to return to the supervising attorney for further information, creating an indirect bond between the three parties.

#### IV. SOME ADVANTAGES OF THE OUT-OF-HOUSE PLACEMENT

As legal educators our foremost concern should be: "What is the educational value of allowing a student to work for credit outside of the school under the supervision of an attorney who is not employed by the school and who is not a professional educator?" The answer to this question is determined by what our students will learn in these situations, and is, obviously, not simple. By virtue of their very presence in the law office, courtroom, agency, etc., students will learn many things. Advantages and disadvantages are inherent in this situation.

##### A. *Variety of Experiences*

The kinds of experiences available to students surpass the opportunities of even the most expansive in-house programs. Students interested in acquiring experience in almost any area of specialization may do so. For example, we have placed students in offices where they may learn the practice of patent law, medical malpractice, construction defects, real estate law, corporate law, education law, banking law, international law and much more. This is in addition to the numerous opportunities to work within the court systems in judicial internships.

##### B. *Quality of Supervision—Field Supervisor*

In addition to the variety which is available, which might be considered a matter of "quantity," there is the matter of "quality." We have found a growing number of attorneys expressing an interest in taking on the role of "mentor" to our students. The internship facilitates this relationship. Although it might seem that few attorneys possess the skills required to be both a good role model and effective teacher, we have found no lack of well qualified supervisors who combine these characteristics.

##### C. *Psychological Benefits*

There are also a number of psychological advantages to these placements. First, students enjoy the opportunity to be away from school. Much as this might be disparaged by traditional authorities, the mere break in the routine of going to classes attracts students to all kinds of clinical programs—in-house as well as out-of-house placements. Being "off campus" apparently provides even greater relief.

Second, working in an office not run by the school often feels more like the "real world." The students know that these offices have lives of their own and

will function with or without the students; that they have a role independent of the educational experience which the students might receive. Thus, the clients and the cases might seem more significant and evoke more student energy. In addition, the students see the supervising attorney as an important contact, either as a prospective employer or a reference on their resume. Therefore, the students' desire to please a field supervisor might exceed the desire to receive a good grade and, therefore, could enhance the quality of the students' educational experience. Third, even students who seem to have turned off to the traditional schooling process see this as an opportunity to start out with a "clean slate." Students who have not performed well according to our academic standards often shine at their internship work. This kind of positive feedback helps them to develop self-confidence and improved self-image which are assets in later practice. Fourth, students working in outside law offices and agencies are exposed to caseload and office management situations which they might not see in-house; they learn how to prioritize, to bill clients, to be involved with local bar activities, and to attend to the numerous other details which practicing attorneys handle. The supervising attorneys are able to model a more complete lawyering role than can a faculty member. Finally, students who are uncertain whether they want to practice law or what kind of law they want to practice may be exposed to several different types of law practice, possibly assisting them in making these hard choices.

#### *D. Quality of Supervision—Internship Faculty*

Another significant advantage of the out-of-house program is the function of the internship faculty. Not being responsible for the direct supervision of cases, internship faculty have more time to consider reflectively the work being performed. Because the students are not working on a case directly with the faculty member, they are more open to discussions about their learning processes, their office relationships, their anxieties and uncertainties, than they might be with their supervising attorneys. The relationship between student and internship faculty does not encourage students to seek to please, but rather encourages them to be open and thoughtful. With their faculty supervisor, students may challenge decisions made by their supervising attorneys or may express dislike for particular skills or areas of law without risking their relationships with their supervisors. This separation of case supervision functions from educational supervision functions is one of the greatest assets of the out-of-house program. Most students appreciate the opportunity to talk about their work with someone who will be interested and to have a safe place to discuss tangential matters. For a supervising faculty member, the role provides a wonderful opportunity to improve student-faculty relations and to take part in an important maturing process. We find reward in working closely with students and observing their reflective abilities in a way which most teachers never know.

#### *E. Community Involvement*

Another significant advantage of such a program is the involvement of the legal community in the training of its future members. Attorneys who supervise interns are participating in their education. Practicing attorneys would logically

seem to be the perfect resource for the teaching of lawyering skills. Academia has under utilized this resource, however, because of intellectual elitism and mistrust, and an awareness of the wide range of quality among practitioners. If, however, the institution can find ways to establish and maintain quality control, it can greatly expand its educational base by tapping current practitioners to assist in the process of educating future practitioners.

#### *F. Providing Continuing Education*

Attorneys must be approved to serve as supervising attorneys in a credit-earning internship program. Once involved, they are drawn into the academic environment. These attorneys can be made conscious of their roles as models, thus enhancing the quality of experience students receive. The ongoing supervision of the program and communication between the attorneys and the clinic faculty have the potential to upgrade the quality of lawyering these attorneys practice. As attorneys explain strategy, provide feedback, and teach students in other ways, they are forced to think more about the work they are doing, articulating their theories of action and evaluating their practice.

#### *G. Economic Benefits*

One further advantage to these programs is a very practical one—more students can be served for fewer dollars. Although the cost of an out-of-house placement program, when adequately supervised by full-time faculty, is still higher than the cost of traditional law school classes, it is lower than the cost of the in-house program. Financial concerns are forcing more and more law schools to consider this kind of program as an option for providing students with practical lawyering experience.

### V. STANDARDS AND SAFEGUARDS FOR AN OUT-OF-HOUSE PLACEMENT PROGRAM

The attorneys who are chosen to participate in a program which allows students to receive credit for working with them must be people who have an interest in being educators. One way to ensure selecting such people is to establish certain pre- or co-requisites to certification as a supervising attorney. At California Western we have devised a system for certifying supervising attorneys which we believe operates as a screening mechanism in this selection process. The system consists of the following:

- Memorandum of Agreement
- Supervising Attorneys Training Program
- Student Evaluations of Placement
- Time Logs
- Experience Check List

#### *A. The Memorandum of Agreement*

Many of the pre- and co-requisites of our supervising attorney certification program are listed in our Memorandum of Agreement which is signed by all

supervisors and is reproduced in Appendix C. The agreement stipulates that students will have a diverse experience, will perform lawyering skills in addition to doing research, and will observe lawyering tasks which the student might be unable to perform herself. The supervisor agrees to supervise actively and to give the student feedback. In addition, local supervisors agree to attend a training program.

### *B. Supervising Attorneys Training Program*

The Supervising Attorneys Training Program is a workshop intended to enhance the quality of the student learning experience and upgrade the quality of the relationship between the supervisor and the student. Members of the internship faculty discuss and demonstrate various components of the supervisory role and may engage in some role playing with the attorneys. The clinic faculty maintains contact with each supervising attorney throughout the internship to monitor the quality of supervision.

### *C. Student Evaluation of Placement*

At the end of each semester students are required to provide a written evaluation of their internship experience (Appendix D). These evaluations focus on the quality of supervision and feedback given by the attorney, and on the diversity and interest of the work assigned. These written evaluations supplement feedback received from students during our private meetings throughout the semester.

### *D. Experience Check List*

Most attorneys are accustomed to using students as law clerks, for pay. The role of the intern must be perceived as something different, for the primary obligation to interns is not pecuniary, but educational. Where students are being paid to work, the attorney is generally planning to bill the cost of the student to the client. In a private, profit-making law office, profit-making principles would require that the intern be kept busy doing those tasks which produce profit. In a nonprofit organization the problem is not eliminated; nonprofit organizations must account to the public for effective and efficient use of their resources. The obviously efficient use of a student's time is to have her do work that she knows how to do well. Activities such as observing, reflecting, conceptualizing, experimenting, and receiving feedback—all important ingredients to a well-rounded learning experience—are not tangibly productive because they are not billable. Nor are the attorney's hours spent teaching the student billable, except to the extent the attorney is reviewing work product. This situation could pressure both the attorney and the student to assign the student routine, nonchallenging "productive" work, and exclude the student from other educational activities. Clearly, such work would not be educationally credit worthy. We have taken measures which provide a simple means of avoiding these problems.

The Experience Check List is our version of a learning contract. It includes the lawyering tasks which a student at each particular placement must perform and observe in order to pass the internship course. Students are primarily re-



sponsible for fulfilling each of these requirements sometime during the course of the semester. Supervising attorneys assist in the drafting of the list of experiences and are responsible for allowing the student to perform or observe these tasks.

## VI. THE CHALLENGES OF AN OUT-OF-HOUSE PLACEMENT PROGRAM

As stated earlier, students will learn many things merely by being present in a law office, agency, or courtroom. Unfortunately, much of what students observe in a law office or courtroom is not behavior that we would like them to emulate. Thus, one danger of out-of-house placements is that our students may be exposed to poor lawyering, that this behavior might serve as a model for them, and that they might come away from the experience with serious misconceptions about their professional roles and work. To give credit for such an experience would be ludicrous.

We have found, however, that our students confront this challenge well. They ably perceive and distinguish effective lawyering from ineffective, professional behavior from unprofessional, and ethical conduct from unethical. When there is no alternative role model, the students often set themselves up as comparisons to what they have observed (e.g., "I would never have done it like that. I would have . . ."). This gives the faculty member an opportunity to suggest resources which describe models or to discuss explicitly a specific model for action.

As discussed above, another potential problem with the educational soundness of these internships is that the supervising attorneys are not usually trained educators (although we have found that many of the attorneys who undertake this work have taught in the past or are teaching part time). Furthermore, and the more serious problem, is that they are unlikely to hold the educational needs of the students as a high priority in carrying out their work. Where supervising attorneys are looking for a student to be maximally productive in minimum time, the educational value of the experience must suffer. Even where the supervising attorneys do take some interest in the educational needs of the students, the attorneys may not be skilled in the methodology which is appropriate to clinical teaching. For instance, an attorney may avoid giving honest and thorough critique for fear of hurting a student's feelings, or an attorney may fail to discuss ethical issues with a student because she has become accustomed to taking such things for granted.

Naturally, there have been occasions where our internships did not work out as we had hoped. There have been many instances, however, where we were pleasantly surprised by the high quality of supervision our students received. Even careful screening cannot prevent such unknowns, just as careful screening of full-time faculty cannot prevent mistakes. Where there are problems with attorney supervision, feedback, or other behavior, we do our best to work them out, first through the student and then directly with the attorney. In these instances we are usually working closely with the student, and, in some ways, this compensates for what the student might be missing at the internship. Sometimes we move the student to another office. We always discontinue that attorney's rela-

tionship with our program at the end of the semester. Problems of methodology are dealt with in our training programs and follow-up sessions with individual attorneys.

One of the biggest challenges of this kind of program is determining the school's role in supervising and complementing the students' internship work. Simply to turn the students over to a trusted, but distant, supervisor for a semester is unwise. There would be no way to know just what attitudes and skills our students are learning and no way to ensure the continued quality of the placement. Students and supervising attorneys must have contact with the school, not only so the school can control quality, but also to ensure that our students remember that they are students/learners, and not employees.

A person who considers herself an employee will be less likely to ask questions, to take risks, to insist upon proper supervision and feedback, to request more challenging assignments, to take time from "producing" in order to observe a deposition or trial, to ask to sit in on a client interview, or to take the time to read an entire case file rather than look up a narrow point of law for the attorney. Students who engage in an internship which is entirely separated from the academic environment are more likely to take on the role of employee than are students who are obligated to report to the educational institution. We have also found that when we remind the students that they are paying tuition for the experience, they are more willing to take the aggressive and active role as learners.

Given the need for an ongoing relationship between the school and students engaged in out-of-house work, those of us in the "business" have been experimenting with different relationship forms, looking for the most effective. Many of us have tried classroom components, some more successfully than others. Generally, we have not been very satisfied with what that form has produced. Where 25-60 students are each doing very different work, it is difficult to create a relevant classroom component for all of them. This is compounded by the fact that many of these students have taken or are taking courses such as trial practice, interviewing and counseling, appellate advocacy, legal drafting and professional responsibility, which already provide foundations for skills which they are practicing at their work.

Moreover, we have found that most of our students resist a substantial classroom component. Their resistance might come from two primary causes. First, one of the reasons that students enroll in the internship course is that they are anxious to get out into the "real world." Many have been in school for as long as they can remember and need to be in a new environment. Even those who have been out of school for some time, such as those seeking second careers, have come to be bored, disenchanted or resentful of the educational process and do not want to spend their time at school. Requiring these students to enroll in a two or three unit class as a condition to their internship is just as likely to result in their not taking an internship at all. If they can get one, they might consider a paid clerking job to be an equivalent experience and forego the benefits of an internship, further separating themselves from the academic environment.

The second reason that students may resist classroom components is that the materials used in them tend to be reflective and intellectual at a level which is

foreign to many of our students. This is not to say that the students are not bright enough or reflective enough to appreciate the materials, but rather, that they are unaccustomed to dealing in this way in their law school experience, that they find the process uncomfortable and, thus, that they resist it. Nothing is wrong with discomfort; growth may come from struggling through uncomfortable situations. When the discomfort is so great that students turn away from the process rather than working through it, however, the process is counterproductive. The same ideas which are introduced in some of the traditional classroom materials can be introduced outside of the classroom, for instance in one-on-one counseling sessions, in ways which stimulate students.

One answer to this challenge comes through combining written materials with individual meetings with interns. Though a labor intensive formula, it is the most successful one we have tried. The individual meetings with interns allow for personal dialogue geared to promote a student's reflective thinking about her work, relations with others, adjustment to professional standards, the legal system, and whatever other topics seem to be important at the time to that particular student.

In addition to attending the individual meeting, interns need occasions when they can meet together in groups to discuss their experiences. This exchange expands students' concepts of an attorney's role and stimulates exciting discussions about professional responsibility, the effectiveness of our legal system, and the quality of lawyering being observed in various arenas. Both the individual and group meetings give the internship faculty essential information about what is occurring at the placement law offices and courts.

Another challenge of the out-of-house program is staffing. To be taken seriously by students, attorneys and faculty, the program must be staffed by full-time faculty members. The everyday running of the program (correspondence, meeting schedules, etc.) can be run by an administrator. But, the individual and group meetings, the assignments, the screening and training functions, should all be done by faculty members who have practiced law.

Not all people who might choose to be traditional clinicians are suited to this work. Many clinical teachers enjoy their work because it allows them to keep an active hand in practice. This is not so for the internship faculty; for us, the relationship to practice is less direct (although we do dash to the library with an intern from time to time). To be good at this work, one must really enjoy it; a person who doesn't like to spend a lot of time working directly with students would not create an atmosphere in which students would be likely to disclose much of interest. The job requires a teacher who has practiced law and who can relate with students when they discuss their experiences in the field. Finally, the person must be a good listener. This is, perhaps, the hardest quality to find among law teachers. We all seem to want to tell our students how much we know. Yet, the process works best when reflective listening is employed. Students should usually be doing at least eighty percent of the talking in most meetings. Part of being a good listener requires being able to hear things which are not said—to "read between the lines"—and to comment appropriately about sensitive areas. In addition to having these qualities, the faculty members should

enjoy working with attorneys and should present themselves impressively to supervising attorneys.

Once the institution finds the right faculty for the program, it must do something to prevent their burnout. Because the job is so labor intensive, burnout can occur within a couple of years. One partial safeguard is to combine intern supervision with classroom work, providing for a change of pace. Another necessity is time off. Internship faculty should not work straight through the year. Just like any other teacher, they require time away from the program if they are to approach the job with the required attention and freshness.

## VII. ABA/AALS APPROACH TO OUT-OF-HOUSE PLACEMENTS

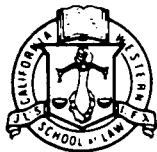
The Accreditation Committee of the ABA has recently adopted guidelines for reviewing placement clinics. As meaningful regulation of such programs has been lacking, it will take some time and experience to sort out appropriate regulation. It is important, however, for those who are evaluating such programs to understand their function, and to avoid making comparisons to in-house clinics. As an educational form, the placement clinic is unique. The danger exists that long standing prejudice against such clinics will create pressure to disapprove them or to attempt to fashion them into something with which academics are more familiar.

A better approach would be to focus on the potential educational value in these clinics and to do what is necessary to support them in meeting this potential. The result could be the long overdue collaboration between the practicing bar and law schools in the training of future lawyers.

Appendixes A, B, C, D on following pages.

## APPENDIX A

## MID-TRIMESTER



# California Western School of Law

CLINICAL INTERNSHIP PROGRAM  
 350 Cedar Street, San Diego, California 92101  
 (619) 239-0391

## AGENCY EVALUATION OF STUDENT'S INTERNSHIP PERFORMANCE

Intern \_\_\_\_\_ Date \_\_\_\_\_

Agency \_\_\_\_\_

Supervising Attorney \_\_\_\_\_

1. What is the quality of the student's work to date?

EXCELLENT 5 4 3 2 1 POOR

COMMENTS

2. How well is the student grasping the underlying principles of his or her work?

VERY WELL 5 4 3 2 1 POORLY

COMMENTS

3. Please describe the student's attitude (e.g., motivation, initiative, enthusiasm, confidence, participation in office activities, relations with others).

---

Signature and title of person  
 completing evaluation

---

Student's signature

APPENDIX B

FINAL EVALUATION FORM



# California Western School of Law

CLINICAL INTERNSHIP PROGRAM  
350 Cedar Street, San Diego, California 92101  
(619) 239-0391

## AGENCY EVALUATION OF STUDENT'S INTERNSHIP PERFORMANCE

Intern \_\_\_\_\_ Date \_\_\_\_\_

Agency \_\_\_\_\_

Supervising Attorney \_\_\_\_\_

1. What was the quality of the student's work?

EXCELLENT 5 4 3 2 1 POOR

COMMENTS:

2. How well did the student grasp the underlying principles of his or her work?

VERY WELL 5 4 3 2 1 POORLY

COMMENTS:

3. Was the student responsible (e.g., punctual and reliable)? *Check one*

( ) At all times ( ) Most times ( ) Only when asked ( ) Never

COMMENTS:

4. Please describe the student's attitude. (e.g., motivation, initiative, enthusiasm, confidence, participation in office activities, relations with others)

COMMENTS:

5. Please evaluate the student in the following areas.

SCALE: (3)= ABOVE AVERAGE (1)= NEEDS IMPROVEMENT  
(2)= Satisfactory (0)= NOT APPLICABLE

- ( ) Research/Writing Technique ( ) Demeanor
- ( ) Rapport w/Supervising Judge ( ) Professional Responsibility

For those areas in which you have indicated that the student's work is satisfactory of needs improvement, please describe below, more specifically, what the student can do to improve.

---

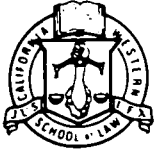
Signature and title of person completing evaluation

I have received a copy of this evaluation, read and reviewed it with my Supervising Judge.

---

Intern's Signature

## APPENDIX C



# California Western School of Law

CLINICAL INTERNSHIP PROGRAM  
 350 Cedar Street, San Diego, California 92101  
 (619) 239-0391

## SUPERVISING ATTORNEY'S MEMORANDUM OF AGREEMENT (LOCAL)

I, \_\_\_\_\_, agree to the following conditions for participation  
 (please print)

in the California Western Clinical Internship Program.

1. To give the student a case load that is in some way a part of my work, involving both large and small matters. If possible, the student should be certified and, if appropriate, he/she will handle a case load under my supervision.

2. To assign student's assignments as challenging as he/she can reasonably handle.

3. To have the student work four hours per week per unit of academic credit.

4. To have the student approximate working as a lawyer to the maximum extent feasible.

5. To assign most legal research tasks in conjunction with the work described in paragraphs 1-4 above. Other legal research (e.g., a memo on questions of law on delivered facts in a case in which the student is not otherwise involved) will not occupy more than 25% of the student's time.

6. To keep menial tasks, e.g., filing library updating, indexing, etc. to less than 5% of the student's work time.

7. To allow students, when feasible, to participate in, and not merely observe, the strategic decision-making process.

8. As much as possible, to engage in the following assignment, work, and feedback process:

a. The student and I will discuss the matter to be assigned, including a discussion of our mutual objectives;

b. I will advise the student of the resources, methods, and materials available for the job.

c. When the student completes a first draft, I will review the work and meet with him/her for a specific critique of the work.



d. I will have the student redraft as many times as necessary until he/she achieves a satisfactory final product.

e. While work is in progress, or after it is completed, I will discuss with the student, as appropriate:

- i. Alternative methods of handling the matter;
- ii. The relationship of the specific job to the larger substantive, procedural or practical issues in the case; and
- iii. Noteworthy ethical or social implications of the matter.

9. I agree to complete and submit both a mid-trimester and final evaluation report on the intern's work (forms to be provided by the law school), and to participate in the Supervising Attorneys' Training Program.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_  
Supervising Attorney

**APPENDIX D**

**PLACEMENT/INTERNSHIP EVALUATION  
LOCAL**

Name \_\_\_\_\_ Date \_\_\_\_\_

Place of Internship \_\_\_\_\_ Year \_\_\_\_\_

Please evaluate the following areas of your internship. Your comments will assist the Clinic Faculty and prospective interns wishing to work with this agency.

1. WHAT WAS THE QUALITY OF YOUR LEARNING EXPERIENCE?
  - a. Challenging projects, variety of work, manageable workload?
  
  - b. Supervision and feedback from your supervising attorney; relationship with supervising attorney and other staff members?
  
2. WERE YOUR EXPECTATIONS MET (based on what supervising attorney told you during interview/orientation)?
  
3. WHAT PART OF THE INTERNSHIP DID YOU LIKE BEST AND WHY?
  
4. WHAT ARE THE DRAWBACKS OR DISADVANTAGES OF INTERNING WITH THIS AGENCY?
  
5. HOW CAN THIS INTERNSHIP BE IMPROVED FOR FUTURE INTERNS (workload, supervision, physical environment)?
  
6. DID YOU FIND THE MEETINGS WITH THE CLINIC FACULTY HELPFUL? IF SO, EXPLAIN IN WHAT WAYS. WHAT SUGGESTIONS DO YOU HAVE TO IMPROVE THE STRUCTURE AND CONTENT OF SUCH MEETINGS?
  
7. WHAT OTHER KIND OF SUPPORT BY THE FACULTY AND STAFF OF THE CLINIC OFFICE WOULD HAVE BEEN USEFUL TO YOU BEFORE AND DURING YOUR INTERNSHIP?