NEW MEXICO LAW REVIEW

Volume 19
Issue 1 *Winter 1989 (Symposium)*

Winter 1989

Exploring the Invisible Curriculum: Clinical Field Work in American Law Schools

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EXPLORING THE INVISIBLE CURRICULUM: CLINICAL FIELD WORK IN AMERICAN LAW SCHOOLS

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INTRODUCTION

Let me start with a truth! At least I am convinced it is a truth for most law students and for many law faculty as well. A student's last semesters in law school are disorganized, ill-designed, monotonous, passive, repetitive, de-energizing, dissatisfying and apathy producing.[1] It has been said that particularly in that third year there is little value in classroom activity,[2] an overall formlessness in the curriculum,[3] a paucity of informative comment or feedback on student performance or progress,[4] a restricted and unhelpful method of evaluation of students,[5] and deeply troubling negative aspects of faculty-student relations.[6] These negative feelings are sometimes evoked by student phrases such as "distance, distraction, inaccessibility, misunderstanding, disrespect, hostility, anxiety."[7]

These harsh views of contemporary legal education are not just mine. These views are taken from a report by the Committee on Educational Planning and Development of Harvard University School of Law.[8] Harvard! It is the founder and leading symbol of traditional legal education. It is the birthplace of the case method, Socratic teaching, large classes, distant faculties and doctrinal thinking.[9] And, with very rare exception, all other law schools in the country have, over

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1. COMMITTEE ON EDUC. PLANNING AND DEV. OF HARVARD UNIV. SCHOOL OF LAW, INTERIM REPORT 17 (1980).
2. *Id.* at 23.
3. *Id.*
4. *Id.* at 21.
5. *Id.*
6. *Id.* at 24.
7. *Id.*
8. *See supra* notes 1-7 and accompanying text. The TENTATIVE FINAL REPORT was issued during April and May, 1982. This Harvard report, while perhaps among the more eloquent, was certainly not the first examination of these problems. A recent popular examination of the issues is Margolick, *The Trouble with America's Law Schools*, N.Y. Times Magazine 21 (May 22, 1983).
9. J. SELIGMAN, THE HIGH CITADEL: THE INFLUENCE OF HARVARD LAW SCHOOL (1978); J. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA (1976). Seligman notes that "[b]y the early twentieth century, Langdell's casebook approach to teaching law was well established," J. SELIGMAN, *supra* at 5. Another article notes that "the ultimate triumph of [Langdell's casebook approach], even in the narrow world of the university-affiliated law school, was not apparent until at least 1910 when the West Publishing Company thought that the market was large enough to support an entire series of case

the past 100 years, reproduced the Harvard model. We have all followed the leader. To coin a phrase from Vidal Sassoon: "If they don't look good, we don't look good!" Apparently traditional legal education—particularly after the first year—is not looking so good.

The Harvard Report makes a number of recommendations to cure these problems in legal education. I mean to focus on but one of them. The committee's Final Report concludes that clinical experience ought to be a substantial part of legal education. It discusses suggestions on how this can best be accomplished at Harvard.[10] My focus is narrower. I will address the possibilities of developing the externship model, rather than the "in-house" model, to resolve some of these "deeply troubling" curricular problems.

This article will probably raise more questions than it answers, but it will continue the process of replacing educational "neglect" in this area with inquiry and evaluation. My exploration has three parts. First, as with any explorer, I will briefly review where we have been before. I will initially focus on the history of tension in legal education between the law schools and the bar, and on the clinical and non-clinical faculties within law schools. Second, based on a national study conducted in 1982-83, and other data, I will examine the nature and extent of fieldwork programs in American law schools, and something of their relationship to other components of the clinical and professional skills training curriculum. Third, I will try to identify the potential strengths and weaknesses of these programs as they currently operate. I will not only look to pedagogy, but to issues of resources, management, control and relationship. What money and personnel are devoted by law schools to these programs? Who makes the key decisions and choices necessary to implement and run them? What is the relationship among law school faculty, administrators, students, and personnel at the field placement? Finally, drawing upon developments in clinical education generally, I will explore whether there are innovations or approaches which will maximize the potential of externships as an integral part of legal education. In particular, I will focus on strengthening two critical elements of the process: curricular design and control, and supervision.

I. LEARNING FROM OUR HISTORY

> Unlike the revolution that has introduced more skills training and clinical experience into the law curriculum, the extra-curricular growth of apprenticeship experiences has been largely unplanned . . . . The question for legal educators is whether to fight the apprenticeship . . . or to incorporate them into the formal educational program.[11]

books." Ronefsky & Schlegel, *Mirror, Mirror on the Wall: Histories of American Law Schools*, 95 HARV. L. REV. 833, 837 (1982).

Judge Jerome Frank, over thirty years ago, said, "To put it bluntly, my fundamental criticism is that the law schools remain too much under the influence of Langdell . . . . Under Langdell, Harvard Law School became an institution devoted to library law, with the library as its sole laboratory . . . . Soon all the university law schools aped Harvard. All became library-law-schools. Essentially, most of them still are." Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20, 21-22 (1951).

10. COMMITTEE ON EDUC. PLANNING AND DEV. OF HARVARD UNIV. SCHOOL OF LAW, FINAL REPORT (1982).

11. Cramton, *Change and Continuity in Legal Education*, 79 MICH. L. REV. 460, 464 (1981).

As Professor Cramton and others have clearly observed,[12] a "revolution" of sorts occurred during the 1960's and 1970's—generically referred to as the introduction of clinical and lawyering skills programs at many law schools. Prompted by a decade of serious social unrest, and the decisions of the Ford Foundation and the United States Department of Education to provide significant funding to innovate new programs in this area, by 1979 ninety percent of law schools had some type of clinical program.[13] Virtually all of this money went to support what has come to be called the "in-house" clinic. In these programs, students work on "live" legal matters under the tutelage of full-time law school faculty. Enormous amounts have been written concerning virtually every aspect of these programs. It is not the purpose of this article to rehash what has already been well done.[14]

But times have changed! The money has dried up! And in that educational and financial crunch, law faculty involved in teaching clinical programs have been met with a combination of repression and accommodation. Many schools still have some degree of clinical experience, but usually less than before and often with teachers in a secondary status.[15] At some schools, faculty who began

12. *See, e.g.*, Panel Discussion, *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U. L. REV. 337 (1986); Feldman, *On the Margins of Legal Education*, XIII REV. OF LAW AND SOCIAL CHANGE 607, 608-611 (1985); *Prefatory Remarks, Symposium: Clinical Legal Education and the Legal Profession*, 29 CLEV. ST. L. REV. 345 (1980); Pincus, *Clinical Education in the United States, 1968-1975*, 49 AUST. L.J. 420 (1975); Grossman, *Clinical Legal Education: History and Diagnosis*, 26 J. LEGAL EDUC. 162 (1974).

13. COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, SURVEY AND DIRECTORY OF CLINICAL LEGAL EDUCATION, 1978-1979 (1979), at vi. CLEPR issued a *Survey* each year beginning in 1971 and ending in 1979.

14. These goals were recently summarized as follows:

> Over the years the most popular objectives have been training in the motor dimensions of lawyer practice skills (skills training); teaching ethics, both the development of character and informing about relevant codes and rules (ethics); internalizing the tacit norms and lore of law practice (socialization); inspecting particular types of lawyer work prior to job selection (placement); increasing self-awareness of dispositions and values likely to affect performances as lawyers (self-awareness); teaching doctrine and analysis in an engaging fashion (pedagogy); and understanding and criticizing standard ways of performing lawyer practice skills for their contributions, both in specific instances and in the aggregate, to the legal system and the outcomes it produces (critique).

Condlin, *"Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 46 (1986). Condlin's work is particularly provocative. See Condlin, *The Moral Failure of Legal Education*, in THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS, (D. Luban 1984); Condlin, *Clinical Education in the Seventies: an Appraisal of the Decade*, 33 J. LEGAL EDUC. 604 (1983); Condlin, *Socrates' New Clothes: Substituting Persuasion for Learning in Clinical Practice Instruction*, 40 MD. L. REV. 223 (1980). *See also* LaFrance, *Clinical Education and the Year 2010*, 37 J. LEGAL EDUC. 352 (1987); Amsterdam, *Clinical Legal Education: A 21st Century Perspective*, 34 J. LEGAL EDUC. 612 (1984); several articles in *Symposium: Clinical Legal Education and the Legal Profession*, 29 CLEV. ST. L. REV. (1980); Barnhizer, *The Clinical Method of Legal Instruction: Its Theory and Implementation*, 30 J. LEGAL EDUC. 67 (1979); Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695 (1977); Barnhizer, *Clinical Education at the Crossroads: The Need for Direction*, 1977 B.Y.U.L. REV. 1025 (1977).

15. *See* CLEPR, *Survey of Legal Education*, in *Survey and Directory of Legal Education*, for each of the years 1972-73 through 1978-79, in which the status of clinicians is examined in some detail. *See* Tushnet, *Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education*, 52 GEO. WASH. L. REV. 272 (1984), where the author concludes that the "best analogy for clinical education is not that of a colonial outpost to the traditional classroom metropolis. Rather, like the enclaves of Liechtenstein or Monaco, clinical education survives because it serves purposes that its more powerful neighbors find useful . . . . [M]arginality seems to describe best the status of clinical education." A vague sort of "separate but equal" status for clinicians under ABA Standards for Approval of Law

as clinicians in a secondary status have been fully accepted into the faculty family, but only after proving their worth by teaching traditional classroom courses and writing a law review article or two.[16] Their acceptance has come by demonstrating their "sameness" with non-clinical faculty, not by refining and developing their "uniqueness."

Even within the ranks of those faculty participating in, or concerned with, "in-house" clinical programs, there have been a number of significant disagreements. One recurring debate has revolved around the current, and potential, value of clinical experiences based on a field placement model—usually called "externships"—as compared with the faculty taught "in-house" model. While a primary curricular battle within law schools during the 1960's and 1970's was between supporters and opponents of clinical legal education in any form, there was also a different, more veiled struggle. It was between the "in-house" clinicians and those (a pastiche of students, occasional faculty, practitioners and law school administrators) who supported the awarding of academic credit for law student learning in law offices, judicial chambers, and other legal field placements.

Faculty clinicians in the "in-house" programs, partly out of convictions about deficiencies, and partly out of the fight for survival and legitimacy, attacked these programs. Just as non-clinical academics, out of a combination of conviction and fear of the unknown, attacked these new in-house clinical programs as "anti-intellectual," and "relevant at any price,"[17] clinicians needed a whipping boy to legitimate their own struggling, fledgling academic innovations. The "externships" offered at many schools (often begun as a quick-fix response to student and community unrest in the 1960's), became the scapegoat which demonstrated to the opponents of clinical education the "unacceptable" alternative to supporting "in-house" models.

These "farm-out" programs, which to many exemplified the worst in clinical legal education, became a meeting ground on which classroom academics and clinic academics could agree. Non-clinical faculty opposed all (or most) clinical programs on two basic grounds. First, they held a pedagogical view that idealized "ivory tower" values and devalued almost all experientially-based learning that occurred outside the traditional law school classroom.[18] Second, opposition arose because there were clearly real, serious deficiencies in the academic value and

Schools was achieved after a long struggle. Standard 405(e) provides for "a form of security of position reasonably similar to tenure and perquisites reasonably similar to those provided other full-time faculty members . . . ." Interpretation 1 of Standard 405(e) (August, 1984) makes clear that the clinician's "tenure" or "long-term contract" does not survive the "termination or material modification of the professional skills program."

16. Two articles struggling with this dilemma are Leleiko, *The Opportunity to be Different and Equal—An Analysis of the Interrelationships Between Tenure, Academic Freedom and the Teaching of Professional Responsibility in Orthodox and Clinical Legal Education*, 55 NOTRE DAME LAWYER 485 (1980); Leleiko, *Clinical Education, Empirical Study, and Legal Scholarship*, 30 J. LEGAL EDUC. 149 (1979).

17. PACKER & EHRLICH, NEW DIRECTIONS IN LEGAL EDUCATION 46 (1972).

18. For an interesting exploration of both law professor self-images and images of the "ideal law professor" as identified by law students and practitioners, see McFarland, *Students and Practicing Lawyers Identify the Ideal Law Professor*, 36 J. LEGAL EDUC. 93 (1986); McFarland, *Self-Images of Law Professors: Rethinking the Schism in Legal Education*, 35 J. LEGAL EDUC. 232 (1985). For a cutting view of what the "ivory tower" represents at its worst, see Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247 (1978).

planning of many of these field placements.[19] Often there was virtually no connection between the externship and the law school (except the student's privilege of paying for the credits); no one at the school knew, or cared, what a student was doing in the field; adequate supervision was often non-existent.

Clinical faculty, while disagreeing with the non-clinical faculty on virtually every point related to the first series of objections—that is, the academic value of properly structured experiential learning—could coalesce with their opponents around the second objection—the inadequacy of then existent externships. Clinicians might claim to solve all those inadequacies with their in-house clinics: classroom components, pedagogically challenging work, books by West and Foundation Press, tenure tracks, committee assignments, and minute by minute supervision.[20]

In the political struggle to build and strengthen the "in-house" programs—an admirable goal—clinical faculty joined in undermining field-based externships. Rather than applying their different insights, skills, and energy to determining whether there was educational value in field-based externships which could be extracted, refined, and strengthened, clinicians often led the attack against them, or at best, ignored them.

It is not surprising that there was an enormous gulf between the non-clinical law school faculties and the members of the bench and bar who supervised these "new apprentices." There was a 100-year history of attempting to separate from the influence and involvement of practicing attorneys in the process of legal education. The ultimate compromise was to allow the bar to participate in approving the law schools that would educate the students (through accreditation), and screen their graduates through a bar admission process. Otherwise, they were to stay out of it.[21]

Listen to this debate! Is it familiar? "Two models for the organization of a law school compete for supremacy."[22] One view suggests that "the law school . . . should be remodeled . . . . The law school should become the ideal law office by combining theoretical instruction with a wide range of practice courses, all carried out under the . . . tutelage of eminent practitioners and professors."[23] The competing view, on the other hand, argued that "law must be taught and studied as a science and that the methods of legal reasoning rather than a . . . knowledge of the law and legal practice must be the focal point of the curriculum."[24]

19. "So long as the critical role of practice-based learning is allowed to remain invisible and unplanned, the learning that comes out of this relationship will be ad hoc and capricious." Meltsner, *Healing the Breach: Harmonizing Legal Practice and Education*, 11 VT. L. REV. 377, 385 (1986). This comment was by a former "in-house" clinician at Columbia Law School, and then Dean at Northeastern Law School, which has an innovative cooperative education program. The program requires that students work at "externships" during a certain portion of their law school training, alternating with periods of classroom work.

20. This is a mythical response by a clinician seeking favor from a tradition-bound faculty. Perhaps glib in form, it is quite truthful in content.

21. *See* PACKER AND ERHLICH, *supra* note 17, at 26-28.

22. W. R. JOHNSON, SCHOOLED LAWYERS: A STUDY IN THE CLASH OF PROFESSIONAL CULTURES 83 (1978).

23. *Id.* at 85.

24. *Id.*

The debate is not from a current faculty meeting over expansion of clinical programs, nor from law review articles in a symposium on legal education. It is 100 years old. It was heard at the height of the struggle between the movement to legitimate legal education by bringing it under the control of the university community and taking it out of the hands of the bar and proprietary law schools. It was at a time when the "Law Department to the University [was] not unlike that of a 'stray child.'"[25] In short, law schools were to the university 100 years ago much what clinical legal education programs were to the law school in the 1960's—like Cinderella, a stepchild, useful for some purposes, so tolerated, but never really measuring up, so not entitled to equality or security in the educational household.

In 1900, the Association of American Law Schools (AALS) was formed. It shortly thereafter labeled all non-university affiliated law schools as "anti-progressive," defenders of "low standards," and teaching a mere "trade."[26] The founders (called Charter Members) spent much of their time in the next twenty years trying to keep "practically oriented schools" out of the AALS. They were admitted only when they proved their "sameness" by simulating many of the University law school standards, rather than because of their "uniqueness."[27] In legal education, as elsewhere, history appears to repeat itself with undue frequency.

In 1910, the famous Flexner Report on medical school education was published. According to this report, which has served as the basic model for medical education since its publication, extensive clinical education was one of the distinguishing features of a first class medical school. Lawyers (particularly university academics) were impressed—if not with the clinical training mandates of the report then with the job the American Medical Association was doing in driving out of business medical schools that were marginal, i.e. schools that could not afford the extensive, supervised clinical training that Flexner required.[28] It did provoke some discussion in the Bar favorable to retaining "apprenticeship" training.[29] Of course, in 1922, not one state yet *required* attendance at a law school to gain bar admission.[30]

By the 1930's, law school training had gained predominance over appren-

25. *Id.*

26. *Id.* at 121.

27. *Id.* at 160. In discussing the "homogenization" of law schools in the 1920's and 1930's, Johnson notes:

> [I]n Wisconsin in 1933 . . . the state legislature passed a bill that extended the diploma privilege to Marquette graduates. The law simply recognized that Marquette University Law School now resembled other university-sponsored law schools in the country. The gradual transformation of law schools like Marquette into the model of legal education promoted by the AALS meant that no significant alternative to that model would be developed, tested, or even articulated in the twentieth century.

There were clearly some schools, and apprenticeship settings, that provided inferior education. But the same generalizations we fight today—"in-house" clinics are presumptively good; externships are presumptively bad—existed then in slightly different form—University based legal education is good; all other legal education is bad. The key, now as then, is to identify those educational components defining quality legal education, and evaluate them in each case.

28. Flexner, *Medical Education in the United States and Canada*, THE CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, BULLETIN NO. FOUR (1910). Johnson, *supra* note 22, at 140-141.

29. R. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S, 172 (1983).

30. *Id.*

ticeship training, and by 1938, most states preferred attendance at law school to office study as a prerequisite to bar admission. Today only a handful of states still allow law office practice as a substitute for law school, and it is rarely used.[31] The use of apprenticeship training as any recognized part of legal education was, for all practical purposes, dead.[32] In the town-gown struggle, the university had won.

Through the forties and fifties, the debate over "theoretical" versus "practical" legal education continued. While Professor Mark Spiegel has recently demonstrated that this dichotomy was, and is, misleading and judgmental, it nevertheless symbolized the continuing debate around the nature of legal education.[33] J.S. Bradway,[34] Karl Llewellyn,[35] and Jerome Frank[36] all argued for a blending of what appeared to be polar positions—for more of a realistic mesh of "theory" and "application." Frank kept calling for more emphasis on "law in action."[37] He spoke of law schools' need to address the "flesh-and-blood human beings;"[38] for an infusion into law students of "poetic insight" and "empathy."[39] Bradway, who ran the Duke Law School Clinic during the 1930's and 1940's, issued

> a challenge to law schools. Do they possess the imagination, resourcefulness, leadership, flexibility, courage, to use the existing examples [of law school clinics] as points of departure for experimenting until they find a device suited to their own local conditions? This we are interested in knowing. The problem is of long standing . . . . The Bar may well ask of the law schools—what are you waiting for?[40]

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31. *Id.* at 217, n. 9. A full review of the decline in the use of apprenticeship education leading to bar admissions is contained at 205-263.

32. *Id.* at chapter 12, particularly 219, nn. 24 & 25. While some states, like Wisconsin and New Jersey, retained some form of office practice requirement until recent days, it was in no way integrated into the law school educational program, and was often run by bar associations rather than law schools.

33. Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 U.C.L.A. L. REV. 577 (1987).

34. Bradway, *The Beginning of the Legal Clinic of U.S.C.*, 3 S. CAL. L. REV. 366 (1932); Bradway, *Legal Aid Clinic*, 7 ST. JOHN'S L. REV. 236 (1933); Bradway, *Clinical Preparation for Admission to the Bar*, 8 TEMP. L. Q. 185 (1934); Bradway, *Objectives of Legal Aid Clinic Work*, 24 WASH. U. L. Q. 173 (1939); Bradway, *Classroom Aspects of Legal Aid Clinic Work*, 8 BROOKLYN L. REV. 373 (1939); Bradway, *Education for Law Practice: Law Students Can Be Given Clinical Experience*, 34 A.B.A. J. 103 (1948); Bradway, *Case Presentation and the Legal Aid Clinic*, 1 J. LEGAL EDUC. 280 (1948).

35. Llewellyn, *Some Realism About Realism*, 44 HARV. L. REV. 1233 (1931); Llewellyn, *On What Is Wrong With So-Called Legal Education*, 35 COLUM. L. REV. 653 (1935); Llewellyn, *The Current Crisis in Legal Education*, 1 J. LEGAL EDUC. 215 (1948).

36. Frank wrote:

> But the law schools have insulated themselves and their students from intimate knowledge of large segments of the doings of courts and lawyers. As a consequence, they neither equip their students, as well as they could, to practice effectively, nor exercise leadership in bringing about much needed reforms in those segments of lawyerdom on which they have unwisely turned their backs.

Frank, *Both Ends Against the Middle*, 100 U. PA. L. REV. 20, 21 (1951). *See also* Frank, *A Plea for Lawyer Schools*, 56 YALE L. J. 1303 (1947); Frank, *Why Not a Clinical Lawyer-School*, 81 U. PA. L. REV. 907 (1932).

37. Frank, *supra* note 36, 100 U. PA. L. REV. 20, 44 (1951).

38. *Id.* at 26.

39. *Id.* at 37, 43. *See* Stevens, *supra* note 29, at 121 where he states: "The questions to be left to the 1970s and 1980s included such fundamental issues as whether the law schools were any more than high-grade schools of rhetoric and, more uncharitably, *whether their tendency was to produce analytic giants but moral pygmies.*"

40. Bradway, *supra* note 34, 34 A.B.A. J. 103, 106.

Of course, these advocates had their opponents, who if results are the measure, prevailed. The basic structure of legal education changed little during this period. It is ironic that one of the foremost commentators railing against clinical legal education was Dean Joseph McClain of Duke, where Bradway had successfully run one of the first "in-house" clinics for twenty years. His views fairly represent those of many opponents to change. Hear his objections!

1. The law school cannot provide the environment in which certain practical skills must be learned—that is, live clients and live problems.[41]
2. Neither can the law schools assemble . . . the teaching ability necessary for imparting all practical skills.[42]
3. How does one entice [a lawyer] to give up a successful practice (he is not wanted if he is not successful) to accept a teaching position . . . at 1/3 or 1/4 of what he can expect from his . . . practice?[43]
4. There are such obvious matters as temperament and skills—the willingness and ability to teach, and to fit . . . into a faculty group pursuing a common objective.[44]
5. Many aspects of skills, advocacy for example, cannot be successfully taught or learned in law school. Efforts to simulate actual conditions . . . fall flat.[45]

The 1960's and beyond engaged Dean McClain's perceptions in most areas, and found him to be short-sighted and pessimistic. "In-house" clinics have demonstrated that live clients and live cases can be used successfully; law schools have been able to attract extraordinarily able and successful lawyers to teach; clinicians have developed an extensive and remarkable set of teaching materials, resources and techniques for "imparting practical skills," and more importantly, to demonstrate that experiential or clinical education as a methodology is as valuable a tool in legal education as it has long been in virtually every other learned profession. Only his concern about clinicians being able to "fit into a faculty" remains viable—although that, too, is changing.

But during this period when the "in-house" clinical phoenix rose, no intellectual, educational or financial attention was devoted to externships. This modern reincarnation of apprenticeship training continued to absorb student time and energy in ever increasing amounts, but was subjected to "benign neglect" by law schools, each constituency for its own reasons. Students liked programs with freedom to function in the "real world" with little law school involvement; administrators coveted the easy tuition revenue at little expense or commitment; faculty enjoyed bad-mouthing the operations while appreciating that allowing

41. McClain, *Is Legal Education Doing Its Job? A Reply*, 39 A.B.A. J. 120, 122 (1953). This is one of a series of articles that appeared in the early fifties, when thousands of World War II veterans were flooding higher education—including law schools—with a quite different world view than pre-war students. The spark was an article in the American Bar Association Journal, Cantrell, *Law Schools and the Layman: Is Legal Education Doing Its Job?*, 38 A.B.A. J. 907 (1952). McClain's article was one of many apparently submitted to the Journal in response.

42. McClain, *supra* note 41, at 122.

43. *Id.*

44. *Id.*

45. *Id.* at 123.

these programs to continue kept student pressure off them for significant curricular change. How could a law school possibly offer enough courses and seminars to cover the substantive and skills range covered by a variety of externships? How could they possibly afford enough "in-house" clinical programs, or even simulation programs, to meet the demand now being filled by these field placements? The answer was simple. They couldn't! So into the early 1980's these programs grew unabated.

It was not until 1980 that formal suggestions came for restraints on these programs. A joint ABA/AALS report proposed that externship programs could be a viable part of the law school educational program, but with several restrictions.[46] As a general rule, a classroom component was required in connection with every clinical experience, including externships, and a full-time law school faculty member needed to play an integral role in both the classroom component and the direct supervision of students.[47] This would, of course, demand a time/money infusion into externships that in many instances made them almost as costly as "in-house" clinical programs. The report also made disparaging assumptions about field instructors' ability or willingness to provide a quality educational experience. In light of the jungle-like growth of these programs during the previous fifteen years, perhaps it is understandable that the image of a manicured garden was preferred—even if it did completely change the nature of the educational environment.

More recently, much of the approach of the 1980 Report has been incorporated by the American Bar Association into Standard 306 of its Rules on the Accreditation of Law Schools.[48] It likewise eschews the extreme position of rejecting the inclusion of externship experiences as part of legal education, but adopts an approach that significantly increases the time/money quotient to offer such programs, and also imposes some requirements that seem to severely restrict the geographical range of a school's offerings by tying many aspects of externship

46. REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS-AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION, Clinical Legal Education (1980).

47. *Id. See* Guidelines VII, XII, and XIII at 23, 29, 30. See in particular the Project Director's notes on these Guidelines at 76, 105, 107.

48. Rule 306 reads as follows:

> If the law school has a program that permits or requires student participation in studies or activities away from the law school or in a format that does not involve attendance at regularly scheduled class activities, the time spent in such studies or activities may be included as satisfying the residence and class hours requirements, provided the conditions of this section are satisfied.
>
> (a) The residence and class hours credit allowed must be commensurate with the time and effort expended by and the educational benefits to the participating student.
>
> (b) The studies or activities must be approved in advance, in accordance with the school's established procedures for curriculum approval and determination.
>
> (c) Each such study or activity, and the participation of each student therein, must be conducted or periodically reviewed by a member of the faculty to insure that in its actual operation it is achieving its educational objectives and that the credit allowed therefore is, in fact, commensurate with the time and effort expended by, and educational benefits to, the participating student.
>
> (d) At least 900 hours of the total time credited towards satisfying the "in residence" and "class hours" requirements of this Chapter shall be in actual attendance in regularly scheduled class sessions in the law school conferring the degree, or, in the case of a student receiving credit for studies at another law school, at the law school at which the credit was earned.

programs directly to in-school activities or personnel.[49] Nevertheless, this previously "invisible" portion of the law school curriculum has finally stepped into the light. This, alone, is good.

II. EXPLORING THE CLINICAL TERRAIN

A. First Impressions

When I first approached this topic, in 1982,[50] little was written on fieldwork education in law. The emphasis in the literature, as in law schools, was in-house clinical programs and simulation courses. Externships received little attention, except in an occasional piece describing a school's program.[51] Before I explored ways of strengthening fieldwork programs, it seemed important to know what was really out there. To what extent were externship programs part of law school curricula? What was the number of schools involved, the number of students involved, the relationships among the varying participants, the resources allocated, and the relationship between extern programs and other law school skills training efforts? In short, how did these programs actually operate in American legal education?

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49. Interpretation 2 of Standard 306, adopted in December 1986, reads:

Regarding Field Placement Programs.

(a) A law school which has a program that permits or requires student participation in studies or activities away from the law school (except in foreign programs) shall develop and publish a statement which defines the educational objectives of the program. Among educational objectives of such programs may be instruction in professional skills, legal writing, professional responsibilities, specific areas of the law, and legal process. The educational objectives shall be communicated to the students and field instructors.

(b) Such programs shall be approved by the same procedures established by the law school for the approval of other parts of its academic program and shall be reviewed periodically in accordance with those procedures and in light of the educational objectives of the program.

(c) The field instructor or a faculty member must engage the student on a regular basis throughout the term in a critical evaluation of the student's field experience.

(d) A member of the faculty must periodically review any program conducted by a field instructor to ensure that the program meets its educational objectives. In conducting such review, the faculty member should consider the time devoted by the student to the field placement, the tasks assigned to the student, selected work products of the student, and the field instructor's engagement of the student on a regular basis in a detailed evaluation of the student's field experience.

(e) In evaluating whether such a program, in light of the educational objectives of the program, complies with the requirements of Standard 306, the Accreditation Committee shall consider the following factors:

—prerequisites for student participation
—extent of student participation
—method of evaluation of student performance
—qualification and training of field instructors
—method of evaluation of field instructors
—classroom component
—student writings
—adequacy of instructional resources
—involvement of full-time faculty
—amount of academic credit awarded.

50. Stickgold, Clinical Field Work: Its History and Future, paper delivered at Western Regional Conference on Clinical Legal Education, October 24, 1982; Stickgold, Improving Field Placement Supervision: Program Design & Issues of Accountability, paper delivered at Pacific Regional Conference on Clinical and Lawyering Skills Education, October 17, 1981.

A review of material available on fieldwork programs during the decade 1970-1979 led me to material produced by Council on Legal Education for Professional Responsibility (CLEPR). While CLEPR was primarily a funding source, and political advocate, for the development of in-house clinical programs, the annual reports provided some interesting baseline information on the alternative—"farm-out" placement.[52] It appears that throughout the decade, about 30% of the reported law school clinical programs were classified by CLEPR as "placement in another agency with less than complete law school supervision."[53] These programs existed, however, at 66% of the reporting schools.[54] No information was provided on student enrollment in externship programs.

Professor Gordon Gee, who wrote an introduction to many of these reports, felt compelled to address the issue of externships, particularly in the later years of CLEPR's reporting. He always referred to law school supervised in-house clinics as demonstrating "a commitment . . . to quality legal education,"[55] and an indication that "law faculties are becoming more concerned about the quality . . . of legal programs."[56] Externships, however, were called "clinical legal education on the cheap."[57] Nevertheless, there was grudging acknowledgement that "farm-out" clinics "do serve, and will continue to serve in the future, an important clinical role."[58] He indicated that it "would be impossible, and educationally unsound, to attempt to service all clients from within the law school."[59] But he expressed hope that "faculties will assume a greater role in supervision of students."[60]

B. Digging Deeper: A National Study of Clinical Programs

1. The Research Plan

In 1982, I conducted a national study of clinical programs in American law schools.[61] The goal was to obtain as much information as possible on the range of issues mentioned above, and to begin to identify problem areas that could be

51. For an early debate exploring some of these issues, see Brosnahan, *Are practitioners the best teachers?* 3 LEARNING AND THE LAW 40 (1976) and Casdner, *Are law professors right for the job?* 3 LEARNING AND THE LAW 36 (1976). *See also, Judicial Clerkships: A Symposium on the Institution,* 26 VAND. L. REV. 1123 (1973); *Cooperative Legal Education at Northeastern University,* 3 J. OF CONTEMP. L. 210 (1977); Bergman, *The Consumer Protection Clinic at UCLA School of Law,* 29 J. OF LEGAL EDUC. 352 (1978); *Beyond Law School Walls: A Look at Four Clinical Education Programs—Georgetown University; Northeastern University School of Law's cooperative program; Center for Public Representative, Madison, Wisconsin; Local 423 and Ohio State law students' project,* 12 TRIAL 23 (1976).

52. *See* CLEPR, *Survey and Directory of Clinical Legal Education,* viii, ix, xxii (1979).

53. *Id.* at 1.

54. *Id.* at 1-20.

55. *Id.* at xxii.

56. CLEPR, *Survey and Directory of Clinical Legal Education,* vii (1978).

57. CLEPR, 1979 Report, at xxii.

58. *Id.* at xiii.

59. CLEPR, 1978 Report, at xxi.

60. *Id.*

61. The study was conducted with the assistance of a Golden Gate University School of Law Sabbatical Research Grant, and benefitted from the constant ideas generated at meetings of the California Clinical Consortium, a group of law professors teaching clinical and professional skills courses representing most of the California ABA-accredited schools. The failings, if any, are my own.

addressed in the search for ways to strengthen and improve fieldwork education for law students. National Clinical Project Survey questionnaires were sent to all 172 ABA-accredited law schools, and 105 (61%) were returned. The questionnaire asked for a variety of information about all skills training programs—whether in-house, simulation, or field placement—and then asked a series of more detailed questions concerning field placement programs (externships).

In spite of admonitions from some colleagues that categorizing the broad range of professional skills education programs into three categories tended to emphasize differences more than important similarities, I adopted such an approach for purposes of the questionnaire. Both CLEPR and the 1980 ABA/AALS Report[62] had tended to use these categories. The three basic models presented were: 1) in-house clinical programs; 2) simulation courses; and 3) field placement programs. In an attempt to side-step raging debates over what is a "true" clinical program, I provided my own definitions within the context of the questionnaire, which attempted to capture the basic understanding of most of the law school community.[63]

My focus in defining the three basic models was on two significant factors. First, was there *live client or case involvement* by the student? Second, who was *primarily responsible for the education and supervision* of the students? In-house programs required both full-time law faculty supervision *and* live client contact. Simulation programs were defined as professional skills training *without any live client or case involvement*. Fieldwork called for live client contact, but with supervision by *other than* full-time law school faculty.

2. Responses Concerning Different Educational Models

Of the 105 responding schools, the percentage with curricular offerings using the three models of professional skills education were as follows: Simulation courses, 100%; In-house clinics, 76%; Field placement clinics, 75%.[64] The results also indicated that 86% of the schools did not make any of the professional skills courses (other than traditional Legal Writing and Appellate Advocacy courses) available to, or required of, first year students, so we were clearly dealing with upper division courses.

A number of questions were asked about student enrollment in these different program models. For the eighty law schools offering *in-house clinics*, the average

62. *See supra* note 46.

63. The questionnaire definitions were as follows:

(a) For purposes of this survey, an *"in-house" clinical course* is one in which *full-time law school faculty* are primarily responsible for supervision of *live case work* by students.

(b) For purposes of this survey, a *"simulation" course* is one in which there is *no* live case work done by the student. It does not matter whether the simulation course is taught by a full-time or part-time faculty member. The determinant is whether there is any student work on live cases as opposed to *solely simulated* work.

(c) For purposes of this survey, a *"fieldwork placement" course* is a clinical course where *persons other than full-time law school faculty* have the primary responsibility for the supervision of the live case work performed by the students. These courses are sometimes called externships or farm-out programs.

64. National Clinical Study Project Survey Questionnaire (hereinafter Questionnaire). A copy of the Questionnaire is on file with the author.

annual enrollment was sixty-three students.[65] For the 105 schools offering *simulation* courses, the average *annual* enrollment was 162 students.[66] Finally, for the seventy-three schools offering *field placement* programs who furnished enrollment information, the average *annual* enrollment was eighty-nine students—sixty-eight in part-time programs, and twenty-one in full-time "semester away" programs.[67]

I attempted to discern trends in the growth of the various program models. Questions asked whether the *number of courses* offered, the *student enrollments,* and the *teaching resources* committed to the programs had increased or decreased during the survey year compared with the previous year. Of eighty-six schools responding to questions concerning in-house programs, 7% indicated there was a decrease, while 19% indicated some increase, in the *number of courses* offered; 22% indicated there was a decrease, while 31% indicated some increase, in *student enrollment;* and 12% reported a decrease, while 20% reported an increase, in the *number of full-time faculty* involved in the program.

The uncertainty reflected in the changes in in-house programs is matched by the clarity and focus of change in simulation courses. Of the 103 schools responding to questions concerning simulation programs, 41% indicated an increase in the *number of courses* offered; 55% reported an increase in *student enrollment;* and 37% indicated an increase in the *number of full-time faculty* teaching in these courses. In each instance, less than 5% of the responding schools indicated a decrease in any of these areas. Indeed, almost one-half of the schools reporting an increase indicated that the school had experienced a "significant," as opposed to "some," increase in courses, enrollment and faculty commitment.[68]

A number of issues are raised by these results. First, it was surprising to see significant statistical differences, in all areas, *both up and down* with regard to in-house programs. It appears that, in 1982, the political battles around clinical education still raged.[69] Second, many of the schools reporting the largest increases in their simulation courses were also the schools that reported significant declines in their in-house programs. Resources and students are clearly being shifted from one to the other.[70] The degree to which these changes are influenced by student

65. This ranged from a tax clinic with one student to a multi-faceted program which enrolled 460 students. The large clinic was an exception, the next highest enrollment being 180 students. The enrollment in the vast majority of programs fell between 25 and 75. Ten programs out of the 80 responding schools, each with an enrollment of over 100, raised the average.

66. The range was from a low of 20 students to a high of 600. The majority of programs fell between 90 and 180 students. Fourteen of the 105 reporting schools indicated enrollments in excess of 300 students, and five in excess of 400 students, per year.

67. The range of enrollment was again dramatic, from a low of one student to a high of 250 students in the part-time program, and from a low of one to a high of 120 students in the full-time, semester away program. The average for the part-time program is less telling. Rather, the size of these programs tended to fall into three distinct categories: small programs with enrollments under 20; middle sized programs between 40-80; and large programs in excess of 125. For full-time programs, most schools showed enrollments below 15, but four quite large programs raised the average.

68. The scale presented to respondents was a five point scale: Decreased Significantly, Decreased Some, Stayed the Same, Increased Some, Increased Significantly.

69. Cavers, *Signs of Progress: Legal Education, 1982,* 33 J. LEGAL EDUC. 33 (1983).

70. The approach taken by a number of law schools is to shift some of their clinical faculty into the teaching of various simulation courses—either of the traditional variety, like Trial Advocacy—or into newly devised courses, usually designated something like Lawyering. *See infra* note 90.

interest, faculty politics or financial tensions, and other factors, is a complex one.

While there had been significant activity in the area of both in-house clinical programs and simulation skills programs, there seems to have been relatively little change with regard to fieldwork placement programs. These programs are explored in more detail shortly, but the survey indicated that the number of schools offering such programs, the resources committed to such programs, and the enrollment in the programs, had changed little.

3. Fieldwork Placement Programs: Allocation of Resources

Five questions were asked in an attempt to determine the amount of *financial and faculty resources* committed to field placement programs by law schools. Of the seventy-eight schools providing information on finances, a mere 6% (five schools) indicated that field supervisors (non-faculty attorneys who supervised students in the work setting) were usually paid.[71] When asked if *any* field supervisers were *ever* paid, the number responding "yes" rose to 21% (sixteen schools). Excluding three of the schools, the remaining thirteen schools indicated that they occasionally paid *individual* field supervisors an amount from $300 to $4,000, with the average being $1,457.[72] The average *total* amount paid to field supervisors by these thirteen schools was $5,292.[73]

Of the seventy-nine schools providing information on *commitment of faculty resources,* there was an average of 2.92 full-time faculty who participated in "any aspect"[74] of the law school's clinical fieldwork program. Eliminating from the computation seven schools with an unusually strong commitment to these programs, the average falls to 2.1 faculty per school. When asked how many faculty members devoted *more than 25%* of her working time to externship programs, the faculty commitment per school falls to an average of 1.24. Again eliminating from the computation the same seven schools,[75] the average number of faculty committing more than one quarter of their working time to these programs drops to .74.

This can be compared to the results of the same questions for in-house and simulation programs. For eighty schools providing teaching resource information

71. These five schools included three that each paid one adjunct clinical instructor to supervise one small extern program, and two that paid more than one instructor. One of these two schools paid small amounts, totaling $60,000, to a number of different field supervisors. The second paid two instructors a total of $32,000 to teach classroom components for clinical fieldwork students, who were supervised in their live client work by unpaid field supervisors.

72. The three schools excluded from the computation include the two mentioned in the previous note, and one other school that said it sometimes paid from $24,000-$30,000 to one field instructor to conduct one small program.

73. Even including the amounts paid by the three atypical schools mentioned in the previous two notes, the average amount paid to field supervisors by the 16 schools would be $11,737. The average for all 79 schools offering fieldwork programs, of course, would be tiny.

74. In the context of the questionnaire, "any aspect" meant a degree of participation measured as *less than 25% of the faculty members' teaching time.* In the balance of this paper, I use the word "minimal" to describe this degree of involvement.

75. Each of the seven schools indicated that from eight to 15 members of the faculty were involved in the fieldwork program. The numbers dropped to three to five faculty who were involved in the program *more than 25%* of their time.

for in-house programs, there was an average of five faculty spending minimal teaching time, and four faculty involved *more than 25% of their time*. For ninety-five schools providing teaching resource information for simulation programs, there was an average of seven faculty spending minimal teaching time, and three faculty involved *more than 25% of their time*. It appears that the average faculty-student ratio, counting only those faculty involved *more than* 25% of their time, is 1:15 in in-house clinics, 1:54 in simulation programs, and 1:93 in fieldwork programs. Using *all* faculty involved, the ratios change to 1:13, 1:23, and 1:72, respectively.

The obvious conclusion that can be drawn from this information is that law schools devote far less financial and teaching support to externship programs. Virtually all field supervisors—the "adjunct" clinical faculty—work for free, and the amounts paid in those few instances where payment is made is more token than real.[76] Likewise, full-time law school personnel are used frugally. At most law schools the .74 faculty member who spends more than 25% of her time on externships usually turns out to be one member of the faculty who "supervises" externs in lieu of teaching one classroom course. The survey indicates that most of this time is spent accomplishing administrative chores and sometimes participating in a classroom component connected to the externship.[77] Then law school and ABA/AALS complaints are registered when clinical supervisors don't devote "enough" time to student supervision, or when students are "misused" to meet office "client service needs" instead of law school educational "goals."

4. Fieldwork Placement Programs: "Town and Gown"

By definition, fieldwork placement programs are those in which someone *other than* a full time law faculty member is primarily responsible for the supervision of the law student's live client or casework. The second half of the questionnaire was devoted to questions which were answered only by those schools that currently had fieldwork placement programs. The survey was concerned, first, with how contact between field supervisors and law school faculty members was established and maintained. Second, the survey attempted to identify how responsibility for the actual teaching and supervision of students was allocated.

a. Communication and Administration

Three inquiries concerned maintaining *regular written contact* between field supervisors and law school personnel during the program. They inquired about written communications at the beginning of the program, during the program, and at the conclusion of the program. Respondents were asked to indicate how frequently each transaction occurred in their externship program. Following are charts noting the range of responses:

76. No adjunct or otherwise part-time law school faculty member is expected to work for free. The wage paid, on the average, to field supervisors in fieldwork programs, is less than that paid to the average law student researcher.

77. *See infra* note 89.

CHART A

FIELD SUPERVISOR COMPLETES DOCUMENTS FOR LAW SCHOOL, AT THE BEGINNING OF THE PLACEMENT, DESCRIBING THE NATURE OF THE STUDENT'S WORK PROGRAM AND SUPERVISION.

size of program	percentage of respondent schools using this technique			
	never	infrequently	sometimes	frequently
enrolled 1-39	30%	25%	11%	34%
40-79	7%	43%	7%	43%
80-119	13%	0%	25%	62%
120-up	10%	19%	14%	57%
overall	19%	24%	10%	44%

CHART B

FIELD SUPERVISOR AND LAW SCHOOL REPRESENTATIVE(S) MAINTAIN CONTACT BY MAIL (OTHER THAN DESCRIBED IN PREVIOUS TWO QUESTIONS) THROUGHOUT THE TERM OF THE PLACEMENT.

size of program	percentage of respondent schools using this technique			
	never	infrequently	sometimes	frequently
enrolled 1-39	22%	42%	17%	19%
40-79	21%	21%	38%	21%
80-119	0%	50%	0%	50%
120-up	5%	33%	24%	38%
overall	15%	37%	20%	28%

CHART C

FIELD SUPERVISOR COMPLETES DOCUMENTS FOR LAW SCHOOL, AT THE END OF THE PLACEMENT, EVALUATING SOME ASPECTS OF STUDENT'S WORK AND SUBMITS IT TO THE LAW SCHOOL.

size of program	percentage of respondent schools using this technique			
	never	infrequently	sometimes	frequently
enrolled				
1-39	8%	11%	8%	73%
40-79	7%	21%	7%	65%
80-119	13%	0%	0%	87%
120-up	5%	5%	5%	85%
overall	8%	10%	6%	76%

While a significant number of the programs, ranging from 65-88% of those responding, require some sort of written evaluation of the student's work by the field supervisor at the *end* of the semester, it is interesting to note that roughly half of the programs require little or no written contact at the beginning (19% never, 24% infrequently), or during the pendency (15% never, 37% infrequently), of the program. Information obtained in response to the next three questions indicated that this minimal contact is not usually compensated for by telephonic, or person-to-person, contact.

I made three inquiries regarding other forms of regular contact between field supervisors and law school faculty—telephonic, face-to-face meeting, and joint teaching of some portion of the program. The results are as follows:

CHART D

FIELD SUPERVISOR AND LAW SCHOOL REPRESENTATIVE(S) MAINTAIN CONTACT BY TELEPHONE THROUGHOUT THE TERM OF THE PLACEMENT.

size of program	percentage of respondent schools using this technique			
	never	infrequently	sometimes	frequently
enrolled				
1-39	6%	17%	25%	53%
40-79	7%	14%	21%	57%
80-119	0%	25%	13%	62%
120-up	0%	24%	38%	38%
overall	4%	19%	27%	50%

CHART E

FIELD SUPERVISORS AND LAW SCHOOL REPRESENTATIVE(S) (OTHER THAN LAW STUDENTS) MEET FACE-TO-FACE THROUGHOUT THE TERM OF THE PLACEMENT TO DISCUSS THE WORK PROGRAM AND STUDENT SUPERVISION.

size of program	percentage of respondent schools using this technique			
	never	infrequently	sometimes	frequently
enrolled 1-39	6%	28%	19%	47%
40-79	7%	43%	29%	21%
80-119	13%	37%	13%	37%
120-up	5%	62%	19%	14%
overall	6%	40%	20%	33%

As can be seen, only one-third of the responding schools use face-to-face contact with supervisors frequently in their program. Almost one-half of the schools either never have face-to-face contact with a field supervisor, or do so only infrequently. Telephonic contact appears to be a bit more frequent, but it is surprising that only half the schools speak frequently with field supervisors.

The final inquiry concerning contact and cooperation between law school and law office dealt with the teaching of a classroom component. This question provided somewhat cloudy information, because not all seventy-nine of the survey schools which offered fieldwork programs had classroom components or seminars. Only fifty-four responding schools offered classroom components in which full-time faculty participated, and only forty-two schools involved the faculty member on a frequent basis. The following chart is based only on those fifty-four schools offering classroom components.

CHART F

FIELD SUPERVISOR PARTICIPATES IN CLASSROOM COMPONENT/ SEMINAR.

size of program	percentage of respondent schools using this technique			
	never	infrequently	sometimes	frequently
enrolled 1-39	25%	42%	11%	22%
40-79	14%	29%	43%	7%
80-119	38%	25%	37%	0%
120-up	14%	57%	19%	10%
overall	22%	42%	22%	15%

Of the fifty-four schools that indicated they offered a classroom component for at least some of their externs, only thirty-nine included the field supervisors as teachers in the class. Of these, only twelve indicated that field supervisors had significant responsibility for the classroom component. This is but 22% of all schools offering classroom components and 31% of schools that include field supervisor participation in class.

The end result appears to provide some grist for the mill of externship opponents. If there is *no* regular contact between the law school and the field supervisors in 50% of the programs, and the contact that does occur is not always extensive, it appears to substantiate worries over quality control. Of course, the key question is whether this is inherent in the externship form of learning or is a result of the law schools' reinforcing this problem—indeed perhaps causing it—by failing to structure the program and allocate resources to the externship programs sufficient to assure an integrated program and to maintain oversight.

With only .74 of a faculty member devoting more than 25% time to externships, the extent to which contact *is* maintained is surprising. The same schools are allocating four to seven times as much faculty time, not to mention money, to both in-house and simulation programs. One can imagine the quantum leap in the quality and quantity of law school-law office communication and cooperation if externships were allocated sufficient financial and teaching resources.

We examine this allocation of resources now not so much as part of the process of teaching the student, but as part of the integrative process between faculty and supervisor. No matter which method of communication is examined—written, telephonic, face-to-face meetings, or co-teaching—the interaction between the representatives of the academy and the community is well below the ideal. A "town-gown" split is quite apparent: You do your thing and I'll do mine. Communication is apparently kept to the minimum necessary to function administratively, rather than to the extent needed to structure and integrate a coherent and collaborative program. While the concept of having each participant take responsibility for the teaching he can do best is a good one, the current externship structure appears to allow decisions to be made by default, rather than by plan.

It should not be surprising that field supervisors, who by and large are receiving no payment for their work, are contacted infrequently by anyone at the law school, are presumed by law schools to be ineffective in their teaching roles, and are *not* particularly motivated to to take the initiative to restructure the programs. That responsibility belongs to the law schools. In Part III of this Article, I shall address precisely what steps need to be taken to meet this responsibility and will provide some descriptions of how much of the current expectation of ABA regulators is misperceived and misdirected.

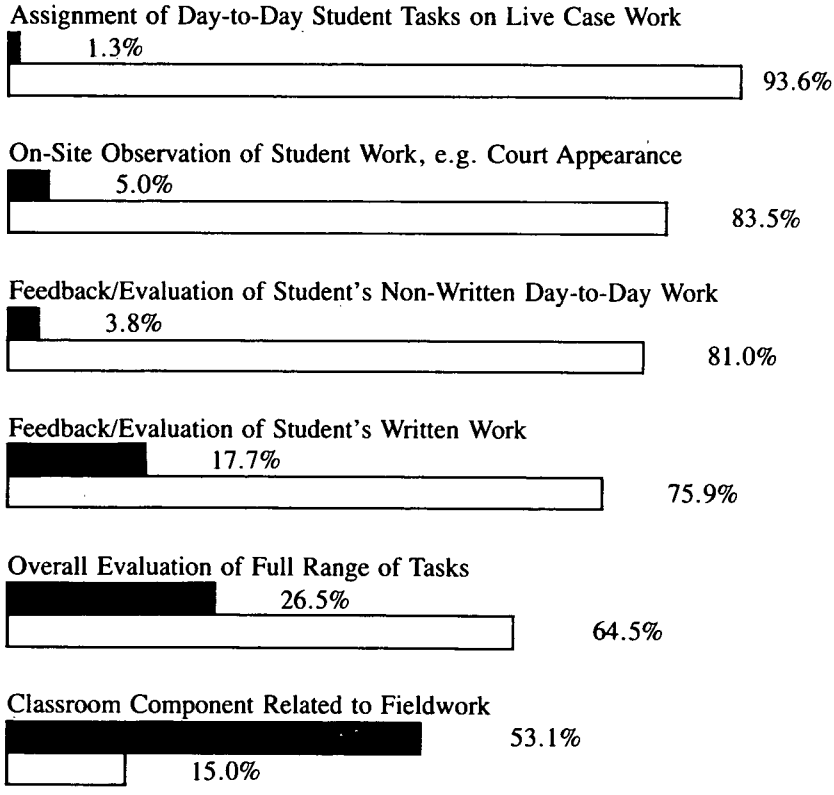
b. Education and Supervision

While understanding *how* law school and law office communicate is important because it describes the basic curricular decision making process, it is equally as important to understand the allocation of academic tasks between law school faculty and law office supervisor. Who has responsibility for assigning daily tasks; for on-site observation of tasks like interviews or court appearances; for review and feedback on these tasks, and on written work; for determining when

a student is ready for more complex assignments; for overall evaluation of the student's work; for preparing and teaching a classroom/seminar component; for awarding credit or assigning a grade?

When there is a joint educational effort, it is important not only to agree on general goals, but to carefully design and prepare the *implementation* of the tasks that will accomplish the goals. A series of seven questions in the survey explored this basic division of labor. All schools that indicated that they offered a fieldwork clinical program, either in 1981 or 1982, were asked to review their fieldwork placements as a whole, and for each of seven listed teaching or supervisory tasks provide their best estimate as to the percentage of time the task was assumed by the field supervisor or the law faculty member.[78] The following graph indicates the results:

GRAPH A



78. Respondents were also asked about "other participants" in the teaching process. This was envisioned to include such people as social workers, probation officers, and other non-legal professionals, as well as lawyers who did not fit into either the "faculty" or "field supervisor" category, such as visiting specialists, judges, and so forth. There were so few responses indicating other participants' involvement that these responses were dropped from the following computations.

7. Grants Credit or Awards Grade

Key: Full-Time Faculty
Field Supervisors[79]

i. Structure and Control of Student Assignments

The first two questions in the series[80] sought to identify who assumed primary responsibility for the *assignment of day-to-day student tasks*, and the *observation of student work* when the student was performing an observable task, such as interviewing a client or arguing a motion in court. Faculty involvement in these two teaching responsibilities was marginal. Of the seventy-nine schools offering fieldwork placement clinics, only twenty-two schools (28%) indicated minimal[81] faculty involvement in the assignment of daily tasks, but only one school (1.2%) indicated that a faculty member exercised over 50% of the responsibility. On the contrary, seventy-five of the seventy-nine schools (95%) indicated that field supervisors exercised responsibility for daily assignments, and seventy-four of seventy-nine (93.6%) indicated that the supervisor exercised more than 50% of the responsibility. Indeed, fifty-two of seventy-nine schools (65.8%) stated that the field supervisor exercised *all* responsibility for this teaching task, and sixty-six of seventy-nine schools (83.5%) stated that the field supervisor held at least 80% of the responsibility for this teaching task.

Faculty involvement increased slightly in meeting the responsibility of observing student work when the student was performing an observable task, such as interviewing a client or witness, appearing in court, or negotiating a settlement. In this instance thirty-five schools (44%) indicated minimal faculty involvement in observation of student performance, but only four schools (5%) indicated that a faculty member exercised over 50% of the responsibility. On the contrary, seventy-two of the seventy-nine schools (91%) indicated field supervisors exercised some responsibility for observation; sixty-six of the seventy-nine schools (83.5%) indicated that the supervisor exercised more than 50% of the responsibility; fifty-eight of seventy-nine schools (73.4%) indicated the field supervisor held at least 80% of the responsibility.

79. The percentages shown are the percentage of all 79 respondent schools offering clinical fieldwork programs that assign responsibility "frequently" or "always" to the person indicated—either a full-time faculty member or a field supervisor. It should be emphasized that this graph represents merely a report—not a judgment. Indeed, as discussed more fully in Part III, it would seem to be both prudent and effective to design reforms of externship programs around the way they *actually operate* rather than around some mythical or hypothetical program which nowhere exists.

Part of the quite valid criticism that is currently being leveled against law schools and law school regulators is that they are attempting to fashion externship programs in the image of in-house programs, rather than working with the actual structure of these programs. It is rather the way clinicians were first treated by classroom academics; it is rather the way many who propose innovation are treated—function in the image of the status quo and of those who hold authority, rather than based on the merit of your innovation.

80. Questions 37 and 38.

81. *See supra* note 74.

With regard to these teaching responsibilities, it appears that faculty involvement in those few cases[82] where the degree of responsibility was substantial involved a single small program conducted by a faculty member in conjunction with one or more field supervisors. No school other than these four involved faculty members in any but a minor way; 72% of the schools reported *no faculty involvement* at all in assignment of daily tasks; 65% reported *no faculty involvement* at all in observation of student performance.

ii. Providing Feedback and Evaluation of Student Work

The next three questions[83] sought information with regard to who provides the student with feedback and evaluation of work, both written and non-written, performed in the fieldwork setting. There were inquiries about evaluation of non-written work,[84] evaluation of written work,[85] and final overall evaluation of student work.[86]

With regard to feedback and evaluation of non-written work, thirty-three of seventy-nine schools (42%) indicated minimal faculty involvement; only three schools (3.8%) indicated faculty involvement exceeding 50%. Alternatively, seventy of seventy-nine schools (88.6%) indicated supervisor involvement; sixty-four of seventy-nine (81%) indicated supervisor assumption of more than 50% of the responsibility; fifty-three of seventy-nine schools (67%) indicated the field supervisor exercised 80% or more of the responsibility for evaluation of non-written work.

We begin to see some change in the pattern of allocating almost all responsibility to field supervisors when we examine the evaluation of *written* work. There is a noticeable increase in faculty exercise of responsibility. Even so, supervisors still predominate in the exercise of this teaching function. Now forty-one of seventy-nine schools (51.8%) show some faculty involvement; fourteen of seventy-nine schools (17.7%) show faculty exercising 50% or more of the teaching responsibility. Alternatively, sixty-nine of seventy-nine schools (87.3%) indicate supervisor involvement; forty-seven schools (59.4%) indicate the supervisor exercises 80% or more of the teaching responsibility.

It is interesting to note that this teaching task—review of a student's written work—has two qualities that might suggest the reasons for increase in faculty involvement. First, this kind of "teaching" is more like what a traditional faculty member usually does. The review and critique of written work, both exams and research papers, is a *sine qua non* of a faculty member's teaching responsibility. It is something done regularly, and the faculty member is familiar with the process. Second, this is work that can be done at the law school, on the faculty member's own schedule, and the faculty member need not venture out of the school into the field.

82. Only four schools indicated predominant (more than 50%) responsibility in a faculty member. One school indicated that the faculty member exercised all responsibility for both assignment and observation of day-to-day student work. Three other schools indicated more than 50%, but less than full, involvement in observing student lawyering tasks.

83. Questions 39, 40, and 41.

84. Question 39.

85. Question 40.

86. Question 41.

Finally, schools were asked to indicate who had responsibility for "overall evaluation," defined as evaluating the "full range of tasks assigned to the student which becomes part of the basis for awarding credit or assigning a grade."[87] We find again that forty-one of seventy-nine schools (51.8%) involve faculty in this task, but only twenty-one of seventy-nine (26.5%) indicate faculty responsibility of more than 50%. Alternatively, seventy-two schools (91%) indicate supervisor responsibility in this area, and forty-four schools (55.7%) indicate the supervisor exercises more than 80% of this teaching responsibility.

While faculty responsibility does increase in the areas of evaluation of written work and overall evaluation, these tasks are still predominantly assigned to field supervisors, and *in no instance* does the faculty member exercise predominant responsibility more than a quarter of the time. It was not clear from the survey results how the "average" faculty member who exercises predominant supervisory responsibility in but 1.3% to 17.7% of the cases can exercise 26.5% of the "overall" responsibility for evaluation. It suggests that some faculty members perhaps consider review of the documents filed by the supervisor with the school, or conversations with the supervisor throughout the semester, as part of the "final evaluation" process. Alternatively, it might suggest that the field supervisor actually makes the evaluation in a greater percentage of cases, but that the faculty member—feeling some kind of institutional responsibility for the awarding of credit—has indicated a greater degree of involvement than actually occurs. In either case, the involvement of faculty is still quite low.

iii. Conducting a Classroom Component and Awarding Credit

The final two questions[88] inquired as to who had responsibility for conducting the classroom component, if one was offered, and who had responsibility for actually awarding credit or a grade for the course. Fifty-four of seventy-nine schools (68.3%) indicated that *some* classroom component was offered. The number may be low since the question required that the classroom component "*directly relate* . . . to the tasks of the student in the fieldwork placement." This wording was an attempt—probably only partially successful—to distinguish "true" classroom components designed around the clinical placement from already established classes merely "tacked on" as a requirement.[89]

All fifty-four schools offering a classroom component "directly related" to the student's fieldwork indicated some faculty involvement; forty-two of fifty-four schools (77.7%) indicated that faculty exercised 50% or more of the teaching responsibility. By contrast thirty-nine of fifty-four schools (72.2%) involved field supervisors in the class; twelve of fifty-four schools (22.2%) indicated supervisor reponsibility exceeded 50%. Of course, in relation to *all* seventy-nine schools

87. Question 41.

88. Questions 42 and 43.

89. This could be a skills course, such as trial advocacy for a litigation oriented placement, or a substantive course, such as immigration law or landlord-tenant law for a placement that handles those kinds of cases. Normally these "tack-on" courses are open to clinic and non-clinic students alike, and little or no attention is given to the actual fieldwork experiences of the clinical students. Frequently the courses are taught by a different faculty member than the one "responsible" for oversight of the fieldwork placement. While there is nothing wrong with such requisites for participation in clinical fieldwork, the class cannot be called a "classroom component" for the clinical experience.

offering fieldwork programs, these percentages fall dramatically: forty-two of seventy-nine schools (53%) gave faculty primary responsibility for the class; twelve of seventy-nine schools (15.2%) gave supervisors primary responsibility for the class; and twenty-five of seventy-nine schools (31.6%) offered no such classroom component at all.

Finally, with regard to the actual awarding of credit or a grade, sixty-nine of seventy-nine schools (87.3%) indicated faculty involvement, and sixty of seventy-nine schools (75.9%) indicated primary (more than 50%) faculty responsibility. Only twenty-three schools (29.1%) indicated even minimal supervisor involvement; eight of seventy-nine schools (10%) gave supervisors more than 50% of the responsibility for awarding credit.

These final two questions show an interesting picture of faculty dominating the classroom components, when offered, and also the formal awarding of credit, while in most instances having little or no involvement in the assignment, structuring, observation or evaluation of the student's work. Field supervisors are given virtually all responsibility to fulfill course objectives by assigning and observing daily tasks and providing feedback and evaluation on all aspects of fieldwork—both periodically and ultimately. In addition, the communication between faculty and supervisor appears spotty at best, and not usually designed to coordinate teaching efforts.

In 1987, the ABA issued the results of a study of law school curricula. Part II of the study reviewed professional skills programs. Responses were received from 143 law schools, offering 143 judicial externship programs and 289 non-judicial externship programs. The pattern of primary supervision by field supervisors, lack of involvement of full-time faculty, and absence of meaningful classroom components apparently has continued unabated.[90]

90. Powers, *A Study of Contemporary Law School Curricula*, and *A Study of Contemporary Law School Curricula II: Professional Skills Courses* (1987). The statistics on externships appear at 16-17 of Part II, and can be summarized as follows:

	JUDICIAL EXTERNS	NON-JUDICIAL EXTERNS
Supervisor:		
Judge	56.8%	0.0%
Practitioner	7.1	53.4
Faculty Member	36.1	46.6
Full-time Faculty Involved:		
0	55.2%	37.4%
1	39.9	55.0
2 or more	4.9	7.6
Part-time Faculty Involved:		
0	85.2%	84.1%
1	9.2	4.0
2 or more	5.6	11.9
Classroom component: (# of hours per week)		
0	71.3%	64.5%
1-2	12.6	12.8
3 or more	16.1	22.8

iv. Course Approval and Training of Supervisors

Two final matters were explored in the survey. First, who had primary responsibility for approving, or withdrawing approval of, a particular office or agency as a fieldwork placement for law students? Second, did the law school offer any training sessions for field supervisors in any aspect of the teaching responsibilities they were expected to fulfill?

It was felt that the design and approval of a course—whether a traditional classroom course or a fieldwork clinical program—was a significant teaching responsibility. The respondents were asked to rank, from a provided list, all those involved in their school's approval process. The following chart indicates the responses.

CHART G

Role of Participant in Program	Ranking of Responsibility			
	1st	2nd	3rd	Total
a. Clinic Director or Clinical Faculty	48	7	2	57
b. Faculty Member (other than clinical)	8	6	2	16
c. Faculty Committee (Clinical or Curriculum)	11	3	3	17
d. Faculty-Student Committee (Clinical or Curriculum)	4	2	1	7
e. Dean or Designate	6	10	7	23
f. Students	1	0	0	1
g. Law School Governing Body	1	1	1	3
h. Field Supervisors	1	4	0	5
i. Other	0	4	2	6
	80	37	18	133

These results were stark. First, clinicians were given significant responsibility for the approval of these placements 43% (fifty-seven responses out of 133) of the time, and *primary* responsibility 60% (forty-eight responses out of eighty) of the time. A faculty clinical committee had significant responsibility 12% of the time.[91] Indeed, clinical committees had primary responsibility 14% (eleven of eighty) of the time. If indeed there is a conflict of academic interest between "in-house" clinicians and fieldwork programs, that conflict is exacerbated by assigning them *significant* curricular responsibility—either directly or through a

91. Sixteen of the faculty or faculty-student committees listed in categories c. and d. on Chart G were designated "clinical committees"; eight were designated "curriculum committees."

Clinic Committee, of which the clinician is usually a part—in 55% of the programs, and *primary* responsibility 74% of the time. At the same time, clinicians are spending more hours teaching, with continual status battles, than other faculty. These tensions only make it more unlikely that externships can receive the attention they need.

Second, only five responses of 133 (3.8%) reported that field supervisors had *any* role at all in the approval or selection of placements. The only available choice receiving less response was students, who were involved in .075% (one out of 133) of the programs, except that in seven other instances (5.3%) they were part of a faculty-student committee. Neither of the primary participants in the fieldwork educational experience—students and field supervisors—had any real role in the selection, evaluation, or approval of the placements.

Next, the schools were asked whether they had offered training sessions for field supervisors any time during the three preceding years. These inquiries explored whether the law school helped prepare supervisors to teach substantive law, teach lawyering skills, use videotape, simulation and other teaching methods, establish a supervisory relationship, including using techniques of evaluation, raise and discuss issues of professional responsibility, and develop teaching materials.[92] Respondents were then asked to explain any positive answers.

The results again were stark. Of seventy-nine schools, seventeen (21.5%) indicated that they had attempted, between 1979 and 1982, *some portion* of the training. But when the requested explanations were examined, the results showed that at thirteen of the seventeen schools "training" consisted of individual meetings with supervisors, "when needed," to deal with some "problem" that had arisen in the program. Only four of seventy-nine schools (5%) described anything more extensive than ad hoc troubleshooting. Two indicated that there were written materials prepared for supervisors, in the nature of a manual or handbook, which dealt with a range of "supervisory" expectations, and administrative details. One school indicated it met with supervisors, "in groups, once each semester." One school indicated that a faculty member met with supervisors four to eight times a year to discuss various topics.

The survey results reveal a dichotomy. While the field supervisors appear to have primary, if not exclusive, responsibility for all the normal clinical teaching functions, they have no say in the design and approval of the program, are not compensated, are given no help, preparation or training for the teaching functions assigned to them, and are integrated into the classroom component irregularly.

c. Summary of Survey Results

As a set of working principles to use in our discussion of improvement and redesign of clinical fieldwork, to be undertaken in Part III, we can reach the following ten conclusions:

1. Clinical fieldwork programs (externships, "farm-outs") are as prevalent in the American law school curriculum as "in-house" clinical programs.[93]

2. Student enrollment in both clinical fieldwork programs and simulation

92. Questions 54-63.

93. *See supra* note 65 and accompanying text.

courses was significantly greater than enrollment in "in-house" clinical programs.[94]

3. The volatility of the increases and decreases in size of "in-house" clinical programs demonstrates the continuation of real struggle over the future of this clinical model.[95]

4. The number and size of fieldwork clinical programs remained approximately the same in number and enrollment from 1979-1986.[96]

5. Simulation courses have grown significantly, in both number and enrollment, and substantial new teaching resources have been allocated to them, often at the expense of the "in-house" clinical programs.[97]

6. Law school resources devoted to fieldwork clinical programs, both financial and personnel, are minimal. Law faculty devote little time to any of the clinical teaching responsibilities involved in those programs, except for some responsibility for the classroom component when offered.[98]

7. Field supervisors, and the offices and agencies for which they work, are provided little or no financial support by the law schools, no training in clinical teaching, and no status within the academic community. They are, however, assigned virtually all of the clinical teaching responsibility.[99]

8. Communication and coordination between law school faculty and field supervisors, both in the planning process and during the semester, is spotty and irregular, with no apparent effort to operate as an integrated team.[100]

9. Members of law faculties with "in-house" clinical teaching responsibilities also appear to have primary responsibility for oversight of the clinical fieldwork programs.[101]

10. Field supervisors and students, the two primary players in the fieldwork clinical program, appear to have little, if any, role in the design, approval or selection of the various placement programs, or of the classroom component when one accompanies the placement.[102]

III. THE FUTURE: RECONSTRUCTING THE MODEL

A. The Right to Exist

It is difficult to start this discussion on the future of externship programs because there is still no agreement among legal educators on a basic issue: is there enough educational value in externships to continue justifying credit allocation to such programs? The apparent disagreement may be more rhetorical than real given that between two-thirds and three-quarters of American law schools have included fieldwork programs in their curricula for at least ten years. Yet one still finds criticism of such programs in terms that seem to suggest that

94. *See supra* notes 66-68 and accompanying text.
95. *See supra* notes 69-71 and accompanying text.
96. *See supra* notes 53, 54, 68, and 71 and accompanying text.
97. *See supra* notes 69-71 and accompanying text.
98. *See supra* notes 72-93 and accompanying text.
99. *Id.*
100. See Section II.B.4.a. of this article.
101. See section II.B.4.b.(i-iii) of this article.
102. *Id.*

the only possibilities for improvement lie in their abolition or conversion to an in-house model.[103] Consequently, before we can reach the issue that fieldwork clinicians are currently addressing—how can we modify and improve the structure of externship programs to maximize the learning experience for the student?—we must continue to assert our "right to exist."[104]

The discussion of the educational value of externship programs is coming quite late in legal education. Most other professional curricula long ago incorporated field placement experiential learning as integral parts of the educational plan. Many have field-based learning at the core of the curriculum, and coursework is built around it.[105] Law schools were among the last to come to clinical education and are again the last to carefully and openly explore field placement models.

Let me suggest, then, some of the primary educational goals (strengths? potentials?) of clinical education in a fieldwork setting. Some of the goals are no different than those frequently, and eloquently discussed, in connection with in-house clinical programs.[106] My purpose here is to identify unique educational benefits to be obtained from field placement settings. Some of them are variations on the goals of in-house clinical education; others are counterposed to them.

First, allocating credit to fieldwork experiences brings some student work experiences, otherwise "ad hoc and capricious,"[107] under the academic umbrella. It begins to meet Professor Cramton's concern that "the extra-curricular growth of apprenticeship experiences has been largely unplanned."[108] Every study done

103. *See supra* notes 50 and 51, and *infra* note 122.

104. Apologies to those concerned with tensions in the Middle East for the obvious "borrowing" of this loaded phrase. It seemed a way to emphasize, however, that many read Interpretation 2 of Standard 306 as an attempt to *change* externships into something else rather than an effort to *support* the existence of externships on their own terms. The best one can say is that the jury is still out.

"While debate about 'ultimate existence' is over, however, difficult questions remain about the form and content clinical instruction ought to have . . . ." Condlin, *"Tastes Great, Less Filling": The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45, 46 (1986).

105. A study of graduate and professional school catalogs indicates that, just as examples, the following professions frequently require fieldwork learning in their curricula: medicine, dentistry, pharmacy, architecture, education, social work, psychology, music, ministry, accountancy, public affairs, foreign service, and public health. *See* Gee & Jackson, *Bridging the Gap: Legal Education and Lawyer Competency*, 1977 B.Y.U. L. REV. 695, 794-840 (1977); Cramton, *Professional Education in Medicine and Law: Structural Differences, Common Failings, Possible Opportunities*, 34 CLEV. ST. L. REV. 349 (1986). See also the particularly moving piece by Professor Alfred Amins, in which he compares his graduate music education to legal education:

> I have often thought that at some point in law school we have to begin to move students from the reflective and analytic, but often receptive and passive, role to a more active professional role. They too are young creators of law, not just learners . . . . Students should be seen and treated as aspiring artists, not technicians. A first rate lawyer is an artist.

Amins, *Studying Music, Learning Law: A Musical Perspective on Clinical Legal Education*, ___ CORNELL L. F. ___ at ___ (1987).

106. *See supra* note 14.

107. Meltzner, *Healing the Breach: Harmonizing Legal Practice and Education*, 11 VT. L. REV. 377, 385 (1986).

108. Cramton, *supra* note 11 at 464 (1981). Professor Cramton continued, "Whether the on-the-job experiences of law students can be effectively utilized in the educational program without . . . difficulties remains an unsolved question." *Id.* at 466. The article was the reprint of a speech delivered at a CLEPR conference in 1977.

At the present time, the American Bar Association has prohibited students from receiving both academic credit and compensation for a work experience. This was done first by the ABA Section on Legal Education, Interpretation of Standard 306(a)(Nov.-Dec. 1979). The Standards simply stated that "[s]tudent participants

within the past ten to fifteen years,[109] and the experience of every law school, is that a significant number of upper division students work substantial hours in various law clerking positions.[110] While simulation courses and in-house clinics may help prepare some students for their fieldwork, or, occasionally, divert them from it for a semester, they both essentially *ignore* what many law students are doing with a significant percentage of their learning time and emotional energy. The question, as Professor Cramton has recognized, is not *whether* law students will be spending such outside working time, but *if and how* the law schools can restructure their educational programs so as to utilize the work experience as a meaningful learning experience.

It is essential that legal education take account of this very real dilemma. A professional program that sees a majority of its students spending as much time in non-credit learning as in faculty approved learning suggests serious deficiencies with the curricular system of that profession. We need to look at what so attracts students to learn in the field, and then design ways to use it.

Many law students appear motivated to do their best in a *real law office*. There is, indeed, a difference between "hothouse" growth, and growth in a real world environment. This is not to say that artificially structured environments are not useful learning models, particularly those that integrate real life experiences, such as in-house clinics. But it is to say that reality-based learning *in the field* is also valuable, comports with the world students will confront upon graduation, and introduces them to problems, decisions, and ethical concerns that cannot be addressed in-house, except in the abstract.

There is a sense of the "sheltered child" in many simulation and in-house programs.[111] This may be the appropriate environment for first introducing certain skills that encompass risks that need to be controlled. It may even be enough

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in a law school externship program may not receive compensation for a program for which they receive academic credit." Finally, in 1984, after lengthy debates, the ABA House of Delegates affirmed this interpretation. *See* Simon and Leahy, *Clinical Programs That Allow Both Compensation and Credit: A Model Program for Law Schools*, 61 WASH. U. L. Q. 1015 (1984). The special issues raised by the issue of compensation are not specifically addressed in this article, but the approach and conclusions which I outline suggest that, at best, compensation of the student, and its impact on the educational program, is but one of several factors that should be evaluated in designing an externship. It should not be conclusive.

109. *See, e.g.*, Zillman & Gregory, *The New Apprentices: An Empirical Study of Student Employment and Legal Education*, 12 J. OF CONTEMP. L. 203 (1987); Pipkin, *Moonlighting in Law School: A Multischool Study of Part-Time Employment of Full-Time Students*, 1982 AM. B. FOUND. RES. J. 1109 (1982).

110. Professor Cramton noted in his article, *supra* note 11, that "[I]t is widely believed that many upper-class students clock fifteen to thirty hours per week on a fairly regular basis. They do so partly for economic reasons, partly for job placement purposes . . . and partly because they find apprenticeship experience helpful and interesting." *Id.* at 465. *See also*, articles cited *infra*, note 111.

111. The conventional clinic is often described by students as a haven from the harsh world of law practice . . . . [E]ven if correct, it is a questionable premise on which to base an educational program. The safe haven concept was tested in the T-group—an experiment of organizational psychology to help managers learn to produce more open organization—with mixed and short-lived results. Laboratory training, as it was also known, developed skill at behaving competently in laboratories, but was not so successful at transferring learning "back home" to work. Law schools should think carefully before they replicate this result by resuscitating the T-group and making it a permanent part of the law school curriculum.

Condlin, *supra* note 104, at 62. *See*, in response to Condlin, Hegland, *Condlin's Critique of Conventional Clinics: The Case of the Missing Case*, 36 J. LEGAL EDUC. 427 (1986); Stark, Tegeler & Channels, *The Effect of Student Values on Lawyering Performance: An Empirical Response to Professor Condlin*, 37 J. LEGAL EDUC. 409 (1987).

clinical learning for a few students, but what of the rest of the student population? A law school curriculum without field-based programs is sorely lacking. One can dissect a cat, take a piano lesson, handle one landlord-tenant case, or parachute from a tower, but that does not make one a doctor, a musician, a lawyer, or an Airborne Ranger. More is required, and it is required *before* a student enters the profession—not afterwards.

This "more" results only from an immersion in the real problems of real people and agencies where the student feels that her work "matters." Only in the field is there an "honest" and continuous exposure to the real way decisions are made and judgment is exercised: how to make the "crooked straight and the rough places plane."[112] Students also learn how cases are obtained and assigned, caseloads distributed and managed, money accounted for, clients, opponents and judges handled, and work prepared. In particular, there is an exposure to daily issues of professional ethics and responsibility and how they are really resolved. This may be quite different than the process of an in-house clinic. Even when it is not, the learning opportunity is available to far more students through externships. There is also an assurance that the knowledge obtained in-house is transferrable to the student's practice after graduation. Real world experience mutes the skepticism of many law students that most of what they learn in law school is useless for the practice of law. The increased ability, confidence and sense of professionalism felt by many students who complete in-house clinics or extensive simulation training, is also felt by students in externship settings.

Field placement clinics allow a school to make available a far wider, more balanced, and more sophisticated range of clinical opportunities. Not only can more substantive specialities be offered, but offices specializing in a variety of lawyering skills, as well as institutional reform, can be included.[113] Because of cost, most law schools cannot hope to equal this range of offerings using the in-house model. The externship model is valuable not only because the student has a wider range of curricular choice, but because students now have an opportunity to learn in a number of different lawyering settings prior to graduation. While academics like to tell themselves that "clinical training" is fungible, and so a prospective securities lawyer can learn as much from the criminal defense clinic as from a securities law externship with the S.E.C., this is clearly overstated. Thus, if the motivational point is important, a student interested in securities law is likely to be far more *motivated* and *committed* to learning from experience

112. G.F. Handel, *The Messiah*, number 3.

113. Externships can provide students an opportunity to select not only a substantive area of the law, but also which package of lawyering skills they wish to learn. Again, while some placements provided students with an opportunity to engage in a variety of lawyering tasks, others specialized. A survey of the same three schools found placements which would allow a student to focus on interviewing and counseling, alternative dispute resolution (negotiation, arbitration, mediation, conciliation), appellate brief writing, trial preparation, legislative drafting and advocacy, legal planning, litigative drafting and advocacy, problem analysis, and more. A significant number of students worked for government agencies whose responsibilities included legislative, administrative or judicial reform, and students had the opportunity to observe these processes first hand, and to participate in actual reform efforts. A sample of such placements included the offices of U.S. Senators or members of Congress, federal and state legislative committees, federal administrative agencies, including the N.L.R.B., the S.E.C., the F.C.C., and F.T.C., the National Merit System Protection Board, state supreme courts and judicial councils, Federal District and Circuit Courts of Appeal, and agencies of the United Nations, and other international agencies.

if working in a setting which relates to current interests and future occupational plans. It is just not true that securities law practice is *just like* criminal defense work.

It has been mentioned that this model of clinical education is available to far more students because it costs less. But clinicians have always been the first to argue, and quite correctly, that a program is not automatically valuable because it is cheap, or on the contrary, inadvisable because it is expensive. We must address cost versus value directly. Even revised as suggested later in this Article, externships cost significantly less per student than in-house clinics. From this flows a significant number of educational benefits.

The externship model makes it viable to consider some clinical experience for all graduating law students. It promotes experimentation and flexibility in program design. It promotes integration of relationships among the academy, bench, and bar. It utilizes legal resources in a more rational and coordinated manner. Properly structured, it reduces academic arrogance,[114] while still allowing legal educators to play critical roles around the design, implementation, and supervision of the programs, and it reduces academic impotence,[115] since it does not demand that academic faculty do well what they cannot, or do not want to, do at all.

The student in an externship engages in a process of self-learning, based upon a construct which includes an evaluative relationship between supervisor (called by some "mentor"[116]) and student. Students must "learn how to learn" from experience—their own and that of those around them. The job of law schools, and of clinical training in particular, is to teach students how to self-learn and be self-critical. That is the essence of professional growth. The key part of that learning process is the "supervisory relationship" with the field supervisor. This relationship must include the concept of mutual evaluation. When properly structured, the student will *both receive and provide* more one-to-one feedback and evaluation on lawyering, teaching and learning than anywhere else in law school. Professor Michael Meltsner captured this tone.

> When supervisors also mentor and mentors also supervise, we will have created an apprenticeship worthy of the demands on today's lawyers. Rather than the supervisor determining the quality and character of what the supervisee receives, for example, the process will be understood as a two way street. A supervisee must also direct, focus, and organize the supervision from his or her experience for it to be successful. Information, feedback,

114. That "arrogance" seems to demand that law school faculty control every aspect of the student's learning; that faculty should review all work done by students in the field, even overruling the judgments and decisions of the field supervisor; that field supervisors presumptively do not know how to teach, do not want to teach, or teach the wrong things; that law faculty know more about anything of teaching importance than the supervisor. In-house clinical legal education has been described as "arrogant" elsewhere. Condlin, *supra* note 104, at 62.

115. The impotence is the feeling that it just cannot be done; that there is no effective way to structure an externship, no matter how hard the faculty tries, because the competing service demands of the field office, together with the supervisor's teaching ineptness, will destroy most of the educational value that the faculty so carefully designs.

116. *See* Meltsner, *supra* note 107, where he discusses Vermont Law School's new General Practice Program which relies upon field supervisors designated "mentors" to capture the concepts of teacher, sponsor, role model, and friend that is lost in the employment focused word "supervisor."

> and rewards must flow from supervisee to supervisor as well as from supervisor to supervisee. Both participants have needs for learning and satisfaction, as well as a need that the work gets done.[117]

Further, not only does self-learning and self-improvement ride on diligent participation in the supervision process, but also on more concrete motivators. The feedback is "up close and personal"[118] (as opposed to anonymous exam grading, or even comments on papers—often delivered weeks after the work is done, or even when the course is already over). Concrete matters (real client and cases, job possibilities, recommendations, reputation) flow from the student's ability to respond to the feedback. But it is a two-way street. The student must learn to evaluate himself and the attorneys (and others) with whom he works.

Since a disproportionate number of placements in most externship programs are with public agencies and non-profit law firms, fieldwork also places more law students into public service positions early in their legal career—legitimizing and encouraging pro bono work, and providing needed support for underfinanced and undersupported agencies and offices. Such placements deemphasize personal gain as the primary motivation for becoming a lawyer, and convey the message that the law school cares not just how well the student "thinks like a lawyer," but how well the student functions, and the student's values. The separation of "thought" and "feeling" and of "hired gun" vs. "principled actor," are constant themes in discussions of legal education. Any program that keeps them integrated is valuable.

This model also tends to encourage expansion of teaching and scholarly options of classroom academics. With students working in virtually the full range of substantive law areas, every member of the faculty will be brought into the discussions stimulated by the students' experiences. No longer will the few clinicians on the faculty be the only ones knowing, or caring, what legal doctrine hath wrought. When supervisory systems are structured well, almost all faculty will be involved in the clinical fieldwork program. What they learn from it can only improve their teaching, their scholarship, their perspective, and their insight.

Likewise, faculty will have much to offer supervising attorneys and students in the way of perspective on the experiences of the trenches. This interchange should be structurally encouraged and strengthened. More opportunity and interest in scholarly and empirical reseach on how law in operation actually works. What do lawyers really do? How do courts really function? Research and reform efforts can only be encouraged and strengthened by a regularized, daily bridge between law school and law practice.

B. The Emperor's New Clothes

I would now like to move forward on the assumption that a restructured externship program has much to offer legal education and all its participants. Because I view one of the great strengths of such programs as their flexibility in structure and design, my intention here is not to provide *the* model program.

117. *Id.* at 387.

118. With apologies to Barbara Walters!

It is rather to make suggestions for some minimal structural requirements to assure educationally viable programs.

The work of the American Bar Assocation and the Association of American Law Schools tends to move in one direction: to either abolish externships or convert them to what are essentially in-house programs that rely on some outside lawyers for additional help.[119] To put the conclusory cart before the explanatory horse, that approach is destined to failure. It ignores the strengths of field placement programs, denies the difference in structure and role that is needed to make them work, and significantly misuses resources.

I will focus on three areas of program structure and suggest how they can be altered to best support field based learning, while not unduly intruding into other portions of the curriculum or making demands on participants that are unrealistic or unwise. These three areas are: 1) the relationship between law school and field office in curricular decision making and program design; 2) the assignment of teaching and supervisory responsibilities between faculty member and field supervisor; and 3) the law school's allocation of resources.

1. Curricular Decision Making and Program Design[120]

One of the primary problems that seems to arise in field settings is a supposed tension between "educational goals" and "service goals."[121] At AALS meetings, not to mention in the faculty lounge at many schools, discussion always seems to turn to the mythical student who spent his or her entire semester Xeroxing depositions, getting coffee for lawyers, or reading Ross MacDonald in the firm library. Similar criticisms, somewhat more muted, identify the occasional student whose work consisted entirely of indexing lengthy discovery documents, writing

119. *See supra* notes 48 and 49. Note that Interpretation 2 of Standard 306, unlike requirements for any other law school course, *mandates* in section (b) that externships be "reviewed periodically . . . in light of the educational objectives of the program." Again, it states, in section (d) that a "member of the faculty *must* periodically review" externships and "should consider" the field instructor's performance. The full intensity of the intended faculty review is unclear from the Interpretation, but Prof. James P. White, in a January, 1987, memorandum to Members of Site Evaluation Teams regarding Review of Professional Skills Programs indicated that the following inquiry "should" be made: "2. . . . Do faculty supervisors visit each placement clinic on at least a weekly basis?" *See* Motley, Memo to Members of Externship Committee of the Clinical Law Section of the A.A.L.S., (April 1987) (on file with author).

If this inquiry represents present ABA policy, it places unrealistic, and unnecessary, demands on externship programs. Only the smallest programs could possibly comply, in light of the fact that our survey reveals that less than one faculty member per school, on the average, supervises these externships. It also seems to preclude any semester away programs (conducted by 26 schools answering the 1982 survey) outside the immediate geographic area of the law school, unless air tickets are provided to visit the placement, perhaps in Washington or Geneva, Switzerland, on a "weekly basis."

120. Much of this section was stimulated by an article addressing similar issues in social work education. The modifications and adaptation to legal education are mine. Caroff, *A Study of School-Agency Collaboration in Social Work in Health Curriculum Building*, 2(3) SOC. WORK IN HEALTH CARE 329 (1977).

121. This problem also arises in in-house clinics, often in far more complicated and subtle ways. Condlin sees the role of in-house clinician as an irreconcilable "conflict of interest," not only in the struggle to balance client service goals against educational goals, but in the losing battle to fill two competing roles: that of "client-representing-lawyer" and "role-model-for-student" vs. critiquer of both the lawyering and the modeling. Condlin, *supra* note 104, at 53-59. He also notes, as has been noted before, that it defines the clinician's job "as encompassing two full-time jobs, and virtually to guarantee that neither will be performed at the level of excellence. Such a conception programs clinicians to fail . . . ." *Id.* at 53, n. 25. His view has been challenged in Hegland, *supra* note 111.

the same type of motion over and over in different cases, interviewing one indigent divorce client after another, and so forth.

More sophisticated criticisms of the same genre suggest that even when the student does fairly challenging and responsible work, the failure of the supervisor to keep educational goals in mind, and his lack of teaching experience or interest, depreciates the student's experience. The work is not sequenced properly; there is not enough explanation of what is expected, leaving students floundering for much of the time; students never understand how their work fits into the case; the school can never know from one semester to another what type of work a student will be asked to do; there is little or no time spent in reflective discussion. These faulty faculty perceptions must be corrected. My point is not to dispute that these latter problems occasionally occur in current externship programs. It is that these occasional problems have come to many faculty to describe field learning in general. It is unfair to ask that every possible problem of field-based learning be solved before the model will be given serious attention.[122]

The core problem is "how to achieve maximum utilization of the expert knowledge and experience of the class and the field in educating for the profession."[123] One of the critical stumbling blocks is that "educators have presumed that they are better prepared than practitioners to formulate practice models . . . and to define the professional body of knowledge."[124] This has led to a denigration of the contributions and insights of practitioners, supported by over seventy-five years of ideology developed to break the apprenticeship system and consolidate authority in the law schools and the ABA.[125] "There has been conflict in the differential valuing of the respective contributions of school and agency in educating for our profession."[126] To resolve this conflict, what is needed is a "systematic collaborative and concurrent"[127] working relationship which includes "mutual responsibility for assuring the conceptual, orienting and integrative learning that professional education require[s]," as well as a "mutual willingness to review existing structural arrangements for learning and teaching."[128]

122. A rough parallel—just to demonstrate the pressure of the finger on the scales against externships—might be to look at classes taught by adjunct faculty. Ideally the student would diligently read all the assigned material, as well as some extra reading on his/her own initiative, attend all classes and participate actively and thoughtfully, seek out personal interchange with the faculty member, who will be readily available when needed, seek feedback on her/his performance, write an in-depth paper, and do well on the exam.

This ideal is rare however, not only in adjunct taught classes but in any class. Most frequently the student reads some, but not all material, rarely seeks out extra reading, or the teacher, the teacher is frequently unavailable, the student misses at least 25% of the classes, participates sporadically, and most grades are in the C+-B range. Indeed, one could well surmise that there are occasional students who rarely attend or participate in class at all, read none of the material, but rely on outlines, write nothing and crash study for the exam, and pass. *See* Margolick, *supra* note 8, at 23.

Yet no one would propose eliminating the use of adjuncts, or converting all adjunct taught courses to courses taught by full-time faculty, just because some abuses and imperfections can be demonstrated. If they occur in adjunct taught classes, as in a few externships, it is because the law school refuses to make the commitment necessary to improve these shortcomings.

123. Caroff, *supra* note 120, at 329.

124. *Id.* at 330.

125. *See* R. STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S (1983); W. R. JOHNSON, SCHOOLED LAWYERS: A STUDY IN THE CLASH OF PROFESSIONAL CULTURES (1978).

126. Caroff, *supra* note 120, at 330.

127. *Id.* at 331.

128. *Id.*

One of the primary reasons such problems occur is that there is no mechanism that works; there is no *structured curriculum decision-making process* by which these tensions are explored and resolved effectively. For other law school courses, a curriculum committee, made up of a range of faculty members, explores the strengths and weaknesses of a curricular proposal, as well as analyzes how it comports with the rest of the curriculum, analyzes the school's resources and mission, and responds to faculty requests for change and modification.

While such a process sometimes goes on with regard to field placement programs, more frequently such decisions are merely relegated to an administrator or overworked faculty member. But the critical failing of the law school system of designing fieldwork curricula, regardless of who within the law school has responsibility, is that it *totally excludes* field placement personnel from meaningful participation in the process. When planning traditional classroom curriculum, keeping the process "in-house" makes sense because all of the participants are "in-house." But field programs, by definition, are operated in conjunction with agencies and *teachers* who are outside the law school. It is essential, therefore, that a decision-making structure be created for the design and oversight of externship programs that includes representatives from the field on an *equal basis*. It is only in this way that differences can be regularly discussed and resolved, and working curricular guidelines can be designed. Offices who regularly use students must make a commitment to this process, as must the law school. "The primary challenge [is] to improve communication and develop an attitude of mind which accept[s] the benefits to the profession of a more truly collaborative effort."[129]

A committee structure must be designed that will have sufficient breadth of membership so as to demand credence and support from both the law school faculty and the primary field placement offices. Each member must speak and vote equally, and "[hold] the authority to innovate in both class and field curriculum."[130] Meetings must physically accommodate all parties, so they may rotate, for example, between law school and law office.[131] Membership must have some continuity and be assigned to those with demonstrated interest and

129. *Id.* at 333. The difficulty of achieving true collaboration without continuing, conscious effort was illustrated by the following brief story.

> A turning point toward cohesion in our relationship occurred in the second year of the committee's operation. It was precipitated by a confrontational question from an agency colleague posed to the chair-person following a scheduled work session: "How come you always say, 'Let *me* bring you on board'? How come we never say, 'Let *us* bring you on board'?" Following some discussion about our process together at the next meeting, there was a noticeable shift among the committee members from the use of "you should" to "how can we?" (emphasis in original)

Id. at 334.

130. *Id.* at 332. To the extent that ABA or AALS accrediting rules seems to suggest that full-time law school faculty must control all such committees [see Standards 306 & 403], they must be interpreted otherwise, or rewritten. Because field placement programs utilize a whole new group of teachers—expanding the concept of faculty to include field supervisors—it is perfectly appropriate for them to be represented, and have authority, on the planning committee.

While it is something of a "totem" in higher education that faculty must control the academic program, we know that, in fact, this is often more myth than reality. While the faculty plays a crucial role in daily governance, university boards of trustees and administrators, state legislatures and state boards of bar examiners, and the ABA, all influence law school curricula regularly, and sometimes profoundly, particularly in times of change and stress.

131. In the new design created at Hunter School of Social Work, discussed in Caroff, *supra* note 120, classes were held both at the school and at selected field settings.

concern in the program.[132] If necessary, field representatives must either be freed from other responsibilities by their offices to perform this task, or be compensated additionally, because law faculty already consider such curricular planning work part of their job.

The critical point is that the makeup of this decision-making body, and the formal allocation of authority, will then be *shared* by the law school rather than *monopolized*. Sharing responsibility in this way should alleviate much of the basic structural problem of externships. Before a student enrolls in such a program, this new coordinating committee will decide on, and oversee:

—standards for approval of placements in the program[133]
—the types of work to be assigned to the student in each approved placement[134]
—the general sequencing of such work, any prerequisite or co-requisite courses, and suggestions for changes in the content of other, related courses[135]
—the credit allocation[136]
—techniques of oversight of placements[137]

132. In multi-school markets, an alternative arrangement would be for some or all schools who offer externship programs to join in a consortium arrangement and design a joint oversight committee. This would establish uniform standards for the area and would reduce the number of faculty from each law school who would need to participate in the governing process. As with any uniform code, individual schools and offices might choose to deviate from some of the decisions of the consortium committee, but this would likely be the exception rather than the rule.

133. Many of the issues which follow must be evaluated in approving an externship program. But standards may be different for different kinds of placements, and the committee should be flexible, using the resources of its community, and not feel rigidly bound to one grand set of standards. Certain standards, such as a description of minimally acceptable work space for the student, may be uniform. Others, like how much written work should be produced, may vary from a supreme court externship to a placement with a Legal Services domestic relations unit.

134. I have carefully stated "each" placement. Account needs to be taken of the various substantive law areas, as well as lawyering skills, that might be learned. It should not be necessary to make every placement all things to all students. It is perfectly appropriate for one to emphasize appellate writing, another pre-trial preparation, another client interviewing and counseling. The evaluation needs to measure the placement on its own terms and assure that the student will receive challenging work.

135. This task speaks much like the voice of a traditional curriculum committee. Are there substantive courses, or skills training courses such as trial advocacy, that are required for participation in the placement? Should new or additional classroom courses be recommended, e.g., a course in alternative dispute resolution? Should the content of a current course be modified, e.g., require that civil procedure include an alternative dispute resolution section? If externships are to have the educational quality everyone wants them to have, the full law school curriculum must respond, in reasonable amounts, to their curricular needs.

136. Credit can be allocated in a variety of ways, including number of hours worked, nature of work expected, reputation of supervisor, and more. The credit allocation involves two separate problems. The first is how to determine the amount of credit a given placement is worth. The second is to determine how many cumulative externship credits a student may earn, and what variables may affect this total, such as grade point or number of other school requirements. Current ABA Standard 306, *see supra* note 48, seems to limit the number of total credits earned outside a traditional classroom setting to 25% of the number required for graduation. It is premature to decide whether there is a need to change this standard. To the extent some classroom segment is integrated into most externships, the computation will also change since it is no longer clear that credit is being given solely for "work outside the classroom."

137. This includes such matters as the degree to which samples of student written work are collected and evaluated by the committee, frequency of on-site visits, whether student non-written work is ever observed by committee members, whether supervisor-student discussions and feedback sessions are observed, and whether students are individually queried concerning their experiences. Again, oversight techniques may differ for different placements or supervisors. The degree of oversight of a supreme court clerkship may be less intense than the oversight of a new government agency never before used as a field placement. It has been recommended by some that student journals be required, and reviewed, by law school faculty. I view journals more as a learning tool for the student than an oversight tool for the committee.

—qualifications for supervisors[138]
—training of supervisors, and any reallocation of workload that is needed to effectively supervise students[139]
—general coverage of classroom components designed specifically for one or more placements[140]
—special issues, such as affirmative action, funding, and interschool coordination.[141]

The success of such an effort will turn on the "ability to risk open exchange of ideas and attitudes, however conflictual or threatening to prior presumed prerogatives of autonomy, and to maintain a focus on mutually held objectives for education."[142]

2. Teaching and Supervision: Division of Responsibility

While one of the jobs of the joint committee discussed above clearly would be to make some decisions concerning allocation of teaching responsibilities, I believe there are certain roles inherent in the field placement structure that should be discussed. This issue is of particular importance, because the ABA[143] has been traveling the wrong road. While some of the indicia identified in Interpretation 2 of Section 306 are certainly relevant,[144] the entire tone of the ruling evidences a basic, and obvious, distrust of the field supervisor. It seems to demand that law faculty review much of the student's work, as well as the supervisor's work, as if the supervisor were but another student.[145] This is at odds with my model—one of collaborative and cooperative work among equals.

138. This is an area where inclusion of field personnel on the oversight committee is critical. While law faculty are fully capable of evaluating traditional "hiring" criteria, they may have more difficulty in evaluating the one-on-one field teaching skills of an applicant, obtaining peer recommendations, learning the reputation of the office, and supervisor, in the legal community, and assessing the supervisor's experience compared to other available candidates. Certainly the more subjective evaluation about competence, creativity, patience, and organization—important for a teacher—will come from other lawyers. The committee will want to consider the potential supervisor's experience in working with students, in supervising other persons' work, and a myriad of other factors. If there were one most critical function of the committee, this would be it. Without good supervisors, the rest is camouflage.

139. All supervisors should at least go through some orientation regarding the program, the functioning of the oversight committee, and the expectations of them as teachers. The integration of supervisors into the classroom will both structurally press them to think of themselves as teachers—not just lawyers—and also help assure some "time off" from daily caseload demands to participate directly in teaching.

140. I should be clear here that I am using "classroom component" in a broad sense. I speak of that meeting where the student, sometimes alone, sometimes with other students, can step back and reflect on work experiences, and the broader issues that are raised by them. This "class" may be at the school, in the supervisor's or a faculty member's office, or even over drinks at the end of a day. I would prefer to call it a "reflective component" rather than a "classroom component," but the latter is both the terminology of Interpretation 2 of Standard 306, *supra* note 49, and of the academy generally.

141. These issues are beyond the scope of this article, but clearly can present important considerations for such a committee.

142. Caroff, *supra* note 120, at 338.

143. While the AALS jointly sponsored the 1980 Report, *supra* note 46, it is the ABA that has the primary accrediting role and has taken the lead in defining these issues in recent years.

144. The full text of Interpretation 2 of Standard 306 is reprinted *supra* note 49.

145. *See supra* note 121. Condlin is emphatic that "[t]he clinician must . . . recognize that his task is *not* to pass judgment on attorney work . . . . The professor is engaged in studying the profession, not grading it." Condlin, *supra* note 104 at 70. He continues:

> A skilled lawyer has internalized a sophisticated repertoire of habits, beliefs, motor skills, tacit theories, and practical wisdom that are indispensible to good law practice and almost impossible

The allocation of teaching responsibilities is basically a simple one. Each teaching participant ought to have supervisory responsibility over those student lawyering activities with which the teacher is most closely involved. No teacher ought to have "control" or supervisory authority over the other teacher's work. We ought not structure a program that unwillingly converts the law faculty member into the practicing attorney, or converts the practicing attorney into the classroom academic. The point is to structure a system where each teacher focuses on what he does best.

Our survey showed us that, with little deviation, this is exactly what is happening in externships today. Field supervisors dominate the clinical teaching and supervision of the student's work tasks, as well as evaluation of both written and non-written work. Law faculty seem to control the classroom component, when one is offered, and the grading process.[146] There is no reason why this basic breakdown, with some modifications, should not continue. The modifications go toward implementing the collaborative model previously described.

There are four essential changes which, in some form or another, are needed. First, there must be a more *systematic inclusion of field supervisors* in the classroom components, both as a way of strengthening the class and improving coordination and contact between the faculty member and the field supervisor. The faculty member cannot raise and use student field experiences with the precision and context that can be done by the field supervisor; the field supervisor can fulfill his supervisory role more effectively if he understands the broader institutional, ethical and reflective discussions directed by the faculty member. Relying on students to raise their own experiences is insufficient. Sometimes ignorance, embarrassment, and other impediments prevent discussion of critical learning problems.[147] If the supervisor is regularly involved, these omissions are less likely to occur.

Second, we need *better preparation and training of supervisors* in the "art" of supervision, including such matters as how to fully explain work assignments, how to focus the student's lawyering tasks, how to provide both short-term and long-term feedback on the student's work, how to teach and encourage students to provide feedback to the supervisor, and how to include the student in overall case management, with particular emphasis on giving students the opportunity to accept responsibility for their judgments and decisions.

In this regard, law schools have a secret resource. Unlike the lawyers who worked with apprentices 100 years ago, we now are dealing with supervising attorneys, many of whom were students of "in-house" clinical programs. In those programs they experienced precisely the type of teaching desired of them now. They understand and appreciate the basics of one-to-one teaching and are

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to duplicate. A clinical course must provide access to such expertise or it shortchanges instrumental concerns and has nothing on which to ground its critical analysis. Clinicians cannot provide this expertise because typically they do not possess it, and if they do, they cannot be both data and critic. *The outside attorney is the professor's necessary and coequal collaborator, and he must be viewed in that light.*

Condlin, *supra* note 104, at 69 (emphasis added).

146. *See* Section II.B.4.b.(i-iii) of this Article.

147. Watson, *A Psychological Taxonomy of Lawyer Conflicts* in THE LAWYER IN THE INTERVIEWING AND COUNSELING PROCESS (1976).

open to learning more. I am not suggesting that field supervisors be limited to lawyers who have been through law school clinical programs, but they are a "missing link" in the efforts to join school and office in a joint educational effort.

Third, law faculty need to *teach students how to learn in an experiential setting*. The most important teaching task the law school can perform is giving students the ability to learn from their experience for the rest of their lives. This should be the primary function of any classroom component—not learning substantive law or armchair quarterbacking the supervisor's decisions. Of course, problems from the field—substantive, procedural, tactical, ethical, personal—can be used to teach the law student to reflect on his experiences, and dig deeper for understanding and options.

Law schools already do this. Students are taught to "think like a lawyer," a euphemism for developing clear analytical skills which will then be applied over and over throughout a professional career. But learning critical and self-critical skills in an experiential setting is different than in a classroom.[148] Law schools spend much of the first year teaching students classroom learning skills; some time needs to be spent on experiential learning. In-house clinicians always include this in their teaching—either explicitly or implicitly.[149] It must also be provided for externs.

What is *not* needed is to have the faculty member serve as the surrogate overseer of the student's fieldwork, reviewing *de novo* substantial amounts of that work. There are a number of reasons for this. It is duplicative of the field supervisor's role. As previously mentioned, the task is to improve the field supervisor's teaching skills, not duplicate or replace them. In addition, there is just too much student work to be reviewed. Faculty members have neither the time, or often the skill, to review it. To do a quality job, they would need to know as much about the field supervisor's case, and the field of law, as the field supervisor. While a faculty member can certainly tell "good" from "bad" writing, clinical supervision is more than English 1A.[150] There are also significant ethical problems lurking if the faculty member actually attempts to control portions of the work in the case, particularly in opposition to, or without consulting, the lawyer who possesses legal responsibility for the case—the field supervisor.

Finally, *more law faculty need to learn about the problems of practicing law,*

148. A full review of experiential learning material is beyond the scope of this article, but see BOLMAN, LEARNING AND LAWYERING: AN APPROACH TO EDUCATION FOR LEGAL PRACTICE, IN ADVANCES IN EXPERIENTIAL SOCIAL PROCESSES 111 (C. Cooper & C. Alderfer eds. 1978), DEVELOPING EXPERIENTIAL EDUCATION PROGRAMS FOR PROFESSIONAL EDUCATION (E. Byrne ed. 1980), DEFINING AND ASSURING QUALITY IN EXPERIENTIAL LEARNING (M.T. Keeton ed. 1980), EXPANDING THE MISSIONS OF GRADUATE AND PROFESSIONAL EDUCATION (F. Jacobs & R. Allen eds. 1982), and numerous articles in the Journal of Experiential Learning and Simulation.

149. For a particularly insightful article, see Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn From Experience Through Properly Structured Clinical Supervision*, 40 MD. L. REV. 284 (1981). There are a number of articles in this issue of the Maryland Law Review that should commend your attention.

150. Of course, it is perfectly appropriate for the oversight committee, perhaps through a faculty member, to ask for samples of written work done by students as part of the information used to evaluate a placement or a supervisor. If a supervisor allows a student to repeatedly produce sub-standard work, or assigns work with little challenge, this is certainly relevant to determining whether students will continue to be placed there. But that is a quite different process from expecting a faculty member to actually supervise the student in a substantial amount of work.

and the operation of the field placement offices, because this will permit them to more effectively generalize from the student's work and do what they do best: with questioning and hypotheticals, push the student to better understanding by taking him beyond the specifics of his particular work experience.[151] Structuring of a joint committee and fuller collaboration in the reflective component of the program will facilitate this over time. Teaching credit for faculty involvement in actual casework will encourage such faculty learning, as we now encourage faculty scholarship. Other techniques can obviously be devised.

3. Allocation of Law School Resources

As the national survey clearly indicated, the amount of financial and faculty teaching resources devoted by American law schools to externship programs is tiny. A mere .74 faculty member per school spends any real time on these programs. Field supervisors receive virtually no compensation. The proposals contained in the previous two sections, concerning mechanisms for curricular decision making, and integration and collaboration in the teaching process, will take a modest reallocation of resources—both financial and personnel—to properly implement. *Both* law school and law office will need to make this adjustment, but the primary burden must be on the law school because it is the one agent that coordinates and holds together all the various field placements. It also, of necessity, must take the lead in accomplishing these changes.

One of the many benefits of more egalitarian treatment of field supervisors in externship programs is that law school teaching resources will be significantly enlarged at small expense. Because agencies are receiving free service assistance from law students, and because much of the supervisor's teaching occurs on the job, this portion of her work is paid for by the agency. The extra amount which supervisors should be paid by the law school to compensate them for participation on the coordinating committee and in the classroom should be less than normally paid to an adjunct faculty member teaching a traditional substantive course. If, for example, the externship class does not meet every week, or the supervisor does not participate every week, the compensation can be reduced even more. Integration and acceptance as part of the academy requires that compensation be offered, at least to all supervisors who handle a sizable number of students on a regular basis and who devote themselves to the governance of the program. With the inclusion of supervisors as faculty, reallocation of law school teaching personnel should be modest. The struggle is more political than financial. Faculty are, under current operation, understandably reluctant to take on oversight of an externship program. It seems to mean one of two very different things—neither one very attractive. Either the faculty member is an administrative coordinator, engaging in very little teaching, or he attempts to comply with ABA guidelines which impose an overwhelming amount of work, not only requiring him to review much of the actual clinical work of the students, frequently placed in a variety of offices, but also requiring the unpalatable and impossible task of "supervising the supervisor" by reviewing his teaching and his actual case work.

Direct supervision of student field work and daily supervisor performance is

151. *See* Condlin, *supra* note 104, at 63-73.

just inappropriate for law school faculty in the externship model. If teaching responsibilities (in addition to curriculum design and oversight responsibilities discussed earlier) were restructured as discussed in this Article, however, faculty resistance should lessen. Faculty would then be asked to do what they know how to do: stretch a student's mind based upon a body of study material.[152] The study material here just happens to be case work in a law office, rather than a casebook. Indeed, the difference between an advanced criminal procedure *seminar* and the criminal law externship *classroom component* narrows considerably.[153] The "study materials" are somewhat different; the student's "product" takes a different form, but the *teacher's job* remains much the same.

If but three to five law faculty (together, remember with a number of field supervisors) agreed to participate in this kind of classroom component, all but the largest externship programs could be covered. Because a faculty member would almost always be asked to involve herself in an externship program where either the substantive law, or the lawyering skills, are ones the professor already knows, or uses, it would reduce the anxiety of asking a faculty member to oversee placements in substantive and skill areas in which she has no expertise. Indeed, the survey revealed that at many schools *one* faculty member is responsible for oversight of *all* externships, regardless of the fields of law or skills involved. While there are a few who have accomplished the remarkable task of actually "teaching" this disparate group of students (usually by focusing on teaching them "how to learn" in the field), most have retreated to administrative coordination.

Finally, the ABA, in its accrediting role, can assist in the effort to improve and support field based learning in law school. It can assist by rewriting, and reinterpreting, standards to more accurately reflect the model proposed in this article. It can assist law schools in its relationship with central university administrations, legislatures, and other funding sources. By and large, when the ABA determines that legal education should change, it does. Its support of simulated skills programs and in-house clinical programs has been most helpful in allowing law schools to devote resources and attention to two forms of professional skills training. Three's a charm!

152. *Id.*

153. Savoy, *Reteaching Criminal Procedure: A Public Interest Model for the Defense of Criminal Cases*, 10 NOVA L. REV. 801 (1986).