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## THE STUDENT-FRIENDLY MODEL: CREATING COST-EFFECTIVE EXTERNSHIP PROGRAMS

*James H. Backman\** and *Jana B. Eliason\*\**

### I. THE CURRENT SITUATION: HIGH TUITION RATES AND HIGH EXTERNSHIP COSTS FOR STUDENTS

With students accruing more debt than ever and with employment rates barely creeping up from the recent drop,<sup>1</sup> students need and are seeking affordable opportunities to get experience and gain important legal skills. Recent news reports that law firms are cutting the number of summer associates they usually hire<sup>2</sup> and public sector entities are experiencing hiring freezes and reducing posi-

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<sup>1</sup> UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, *Employment Situation Summary*, BLS (Feb. 3, 2012), <http://www.bls.gov/news.release/empstat.nr0.htm>; Louis Uchitelle, *Jobless Rate Hits 7.2%, a 16-Year High*, N.Y. TIMES, Jan. 9, 2009, <http://www.nytimes.com/2009/01/10/business/economy/10jobs.html>.

<sup>2</sup> *Trouble with the Law: Graduates of American Law Schools Are Finding that Their Chosen Career Is Less Lucrative than They Had Hoped*, ECONOMIST (Nov. 11, 2010), available at [http://www.economist.com/node/17461573?story\\_id=17461573](http://www.economist.com/node/17461573?story_id=17461573) ("Graduates' chances in the job market have worsened since the 'great purge' of 2009, when firms laid off young lawyers and withdrew job offers. The *National Law Journal* says that the 250 biggest firms cut their numbers of attorneys by 4% in 2009 and were projected to cut by another 1.1% in 2010, making for the worst two-year period in the 33 years of the journal's surveys."); Chris Mondics, *Many Law Firms are Cutting Back on Summer Internships*, L.A. TIMES, July 19, 2010, <http://articles.latimes.com/2010/jul/19/business/la-fi-law-interns-20100719>; Karen Sloan, *Summer Associate Offers Hits 17-Year Low*, NAT'L L. J., Mar. 2, 2010, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202445314748&slreturn=1&hbxlogin=1>.

tions for law students.<sup>3</sup> Law schools are trying to prepare students more practically as a result, by implementing clinical education programs and law students are clamoring for externship positions.<sup>4</sup> But, recent news has also highlighted a barrier that many students face in getting the practical training they seek. This problem comes from the other end of the job-seeking process—the law schools themselves. The problem, as it is commonly referred to, is “paying to work.”<sup>5</sup> Students, in need of hands-on training and externship opportunities, are forced to pay extra tuition to get this needed work. In this time of economic crisis, law schools should consider ways to make externship opportunities more available to students.

The paying-to-work problem, in large part, affects mostly the law students, while other graduate programs allow students to work for compensation and credit. It is very possible under the current situation, for example, that a government agency hires students in MBA or MPA internship programs while, at the same time, they have law students working in its office without pay. This is because law students are subject to the ABA no-compensation rule,<sup>6</sup> which disallows

<sup>3</sup> Jahna Berry, *Law-school Graduates Face Uncertain Job Markets*, AZ CENTRAL (Sept. 22, 2010, 12:00 AM), <http://www.azcentral.com/arizonarepublic/business/articles/2010/09/22/20100922biz-lawfirms0922.html>.

<sup>4</sup> Karen Sloan, *Reality's Knocking as Law Schools Provide More Practical Training*, NAT'L L. J., Sept. 11, 2009, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202433723740>; Emily Heller, *The Recession Makes Externships a Sweeter Deal for Students*, NAT'L L. J., Sept. 7, 2009, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202433569967&slreturn=1&hblogin=1>.

<sup>5</sup> Jennifer Halperin, *Pay to work: Internships for College Credit Can Be a Hefty Bill for Students*, WALLETPOP (May 19, 2010, 1:30PM), <http://www.walletpop.com/blog/2010/05/19/pay-to-work-internships-for-college-credit-can-be-a-hefty-bill/> (explaining how many students cannot afford to intern and miss out on opportunities); Julie Halpert, *Can You Afford to Be a Summer Intern?*, NEWSWEEK (Apr. 5, 2010, 8:00PM), <http://www.newsweek.com/2010/04/05/can-you-afford-to-be-a-summer-intern.html>; Timothy Noah, *Opportunity for Sale: Psst! Wanna Buy an Internship?*, SLATE (Jan. 28, 2009, 5:50PM), <http://www.slate.com/id/2209985/> (describing summer internships put up for bid at charity auctions for elite private schools).

<sup>6</sup> 2010-2011 ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 305, Interpretation 305-3, available at [www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2011\\_2012\\_aba\\_standards\\_chapter3.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_aba_standards_chapter3.authcheckdam.pdf) (last visited Feb. 24, 2012) [hereinafter ABA STANDARDS]. The need for this kind of law school support for students in summer externships is compelling because of the unusual law school accreditation rule prohibiting law students from earning credit if they are being compensated. I have explored the policies supporting this rule and arguments to change it in an article titled, *Law School Externships: Reevaluating Compensation Policies to Permit Paid Externships*, 17 CLINICAL L. REV. 21 (2010). The impact of the rule becomes particularly compelling when one compares the financial situation of a law student with another graduate student's posi-

compensation when a student receives credit for work. Thus, the financial burden on a law student is greater in connection with a summer externship than for a student in an internship in other graduate programs.

This effect on law students should raise alarm with law schools. Each law school should explore how it can better accommodate students seeking externship opportunities. With the economic slowdown, students need more experience and training to be competitive; but if it requires them to pay the schools extra tuition to get this training, students may decide to forfeit this opportunity. Several law schools have decided that it is worthwhile to subsidize students by reducing or subsidizing the tuition costs for externship credits during the summers. This article explores the rationale for reducing costs, and evaluates the benefits gained by the law schools that support summer externship enrollments through these methods. Measures to reduce the cost of externship tuition will not only benefit the students, but will benefit the law schools in a number of dimensions—including law school career services offices, the admissions committees, alumni, faculty, and of course, students.

This paper will address the need to minimize the costs to students who choose to participate in externships, give examples of externship programs, and discuss the benefits of externship programs for students, law schools, and the broad community. Part II will discuss the current structures in place for students to attain practical skills and benefits of externship programs. Part III will give a hypothetical scenario of various externship programs that a student may find at different law schools and the costs involved in participating in an externship at different schools. Part IV will discuss practical ways law schools can reduce externship costs, and Part V will briefly conclude.

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tion. A student in an MBA or an MPA program is often enrolled in an internship in the summer between their two years of classes. That student invariably finds a paid internship to gain experience in the practical application of what he or she has learned in his or her first year of graduate studies. These internship salaries can be significant. The students certainly benefit by the ability to earn money while they are learning through their externships. A law student, in a comparable summer externship, is pleased with the learning opportunities in the practice experience but the student falls into even greater financial difficulties because of the no-compensation rule.

## II. CURRENT STRUCTURES AND COSTS FOR PRACTICAL SKILL EXPERIENCES

A complete law school education includes theoretical thinking as well as practical training.<sup>7</sup> Currently, law schools offer practical training in a variety of ways,<sup>8</sup> and at a variety of costs. It is the goal of most law schools to provide practical training of law students so that students will be more valuable and more productive in the legal career path they choose.<sup>9</sup> This initiative stems from a few sources. The 1992 MacCrate Report “encourages schools to recognize the value of live-client clinical experiences and to explore ways to expand the availability of courses that offer such experiences.”<sup>10</sup> In 2007, The Carnegie Foundation for the Advancement of Teaching suggested that law schools focus on teaching students practical skills.<sup>11</sup> Additionally, the ABA sets its expectation for practical legal education in rule 302(b):

A law school shall offer substantial opportunities for:

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<sup>7</sup> AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (JULY 1992), REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (THE MACCRATE REPORT) 6 (“Today, clinical courses, both in a simulated and live-client setting, occupy an important place in the curriculum of virtually all ABA-approved law schools. Many are taught by full-time faculty members who, pursuant to an ABA accreditation standard, are eligible for tenure or some form of equivalent job security. A clinician is present on virtually every ABA site inspection team to help the team evaluate the quality of the law school’s skills-training program, with particular emphasis placed on the commitment of resources and the availability of full-time faculty supervision when students are involved in externship forms of clinical programs.”); Henry Rose, *Legal Externships: Can They Be Valuable Clinical Experiences for Law Students?*, 12 NOVA L. REV. 95, 112 (1987) (“Traditional American legal education has not adequately prepared law school graduates to be competent practitioners.”).

<sup>8</sup> “[T]he clinical movement began with ‘in-house’ law school clinics” in the law schools, but externship programs that placed students in public sector experiences quickly became a part of clinical education. Bernadette T. Feeley, *Examining the Use of For-Profit Placements in Law School Externship Programs*, 14 CLINICAL L. REV. 37, 40 (2007).

<sup>9</sup> Sloan, *supra* note 4, at 1.

<sup>10</sup> Peter A. Joy, *The MacCrate Report: Moving Toward Integrated Learning Experiences*, 1 CLINICAL L. REV. 401, 403 n.12 (1994) (quoting ROBERT MACCRATE, AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 254 n.36 (1992) [hereinafter MACCRATE REPORT]). Law Schools are encouraged to provide more opportunities for practical learning, and this can be achieved through lower summer tuition.

<sup>11</sup> WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 27-29 (2007) (focusing on three apprenticeships for learning, one being practice-based learning).

(1) live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence; . . .<sup>12</sup>

Law schools can achieve these goals at a lower cost by providing summer externship programs than they can through in-house clinics or simulated courses. Summer externships provide the opportunity for students to receive valuable training and skill development that effectively augments the training they receive in the classroom.<sup>13</sup> While students can gain summer experience through working for pay or working for free, externships (working for credit) help students in ways work-for-pay and work-for-free placements cannot.

For example, working for pay is an option that is not available to all students, particularly in hard economic times. A law school's location may also prevent widespread hiring of law students if the law school is located in an already saturated or rural area. Student learning is improved through the work-for-pay model, but a student may not have the same options available to students in the work-for-credit model since a paid student is given whatever type of work is available. Additionally, although students working for pay are compensated, the work may take time from studies since the student's course load is not lessened in work-for-pay experiences.

A work-for-free option gives the students training and provides similar benefits that the work-for-credit students have from working in areas that their grades or class standing would not afford them; however, the compensation is neither money nor credit. Students with this option will likely be strapped financially, but still must take the same load of classes each semester, without any academic credit for their legal work. Also, non-credit internships are more likely to be found by the student, and there is a greater risk that the experience is not a viable learning opportunity. Another concern for work-for-free students arises under the Fair Labor Standards Act,<sup>14</sup> which prohibits students working for private sector law firms

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<sup>12</sup> ABA STANDARDS, *supra* note 6, at 302(b).

<sup>13</sup> Sloan, *supra* note 4, at 1.

<sup>14</sup> 29 U.S.C. § 201 (2006).

from working for free unless they receive school credit.<sup>15</sup> Therefore, working-for-free creates legal concerns for law firms, limiting opportunities to students to work for free.<sup>16</sup>

Some students report that faculty members encourage them to seek out practical work experiences by volunteering with legal services offices.<sup>17</sup> Also, faculty members advise many of these students to forego earning externship credits connected with their work at these offices because of the large tuition required to enroll for credits.<sup>18</sup> However, the full externship support program built into a credit-bearing externship is eliminated if the student chooses the less expensive path of volunteering without signing up for tuition-triggering credit during the summers. Although students will have strong work experience, they will miss the involvement and guidance supplied by faculty working in the externship programs through reflection assignments, in-class meetings with groups of students, small faculty-student tutorials and faculty responses to student reflective journals.<sup>19</sup>

Therefore, these options have their disadvantages: working for the public sector for free (which is possibly outside the interest of the student and yet requires effort while he or she takes on full class loads), or working for pay (which is a nice option for the few that get

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<sup>15</sup> U.S. Dep't of Labor Wage and Hour Div., *Internship Programs Under the Fair Labor Standards Act* (April 2010), available at <http://www.dol.gov/whd/regs/compliance/whdfs71.htm>.

<sup>16</sup> Law schools have an interest in the law students' success and overall welfare. Offering summer externship programs that provide a secure and stable learning environment for the student prevents problems that may arise at the expense of the law school's reputation. Students who seek non-credit externships (in the event that externships for credit are too expensive) may seek experiences that will not be helpful to their learning. The students may be enticed by flashy websites or "smooth talk," but may end up in a summer experience that is less than helpful to their growth. Law students forced to seek experiences on their own will also be outside the liability and insurance coverage of the law school, which is a severe disadvantage to students. Students placed in a secure externship that has been researched and approved by the law school career office will receive a better education and have the security that liability issues have been previously contracted out.

<sup>17</sup> See *Legal Aid Cuts Stoke Competition for Public Interest Jobs*, ABANow, <http://www.abanow.org/2012/02/legal-aid-cuts-stoke-competition-for-public-interest-jobs/> (last visited Apr. 5, 2012).

<sup>18</sup> See Stephanie Steinberg, *Unpaid Internships Can Cost—or Pay Off for—College Students*, USATODAY, [http://www.usatoday.com/news/education/2010-07-27-internship-27\\_ST\\_N.htm](http://www.usatoday.com/news/education/2010-07-27-internship-27_ST_N.htm) (last updated July 26, 2010).

<sup>19</sup> See Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 J. LEGAL EDUC. 240, 250-51 (2009) (discussing how a faculty member reads a student's journal entry to provide feedback).

the jobs, but the work does not help law studies or grades, and may, in fact, compete with studies).

Externships, on the other hand, do not have these same challenges. Externships provide countless benefits to students, law schools, and the community.

### A. Benefits of Externships to Law Students

As one of the three main components of clinical legal education along with in-house clinics and simulated skill courses, externships have the advantage of providing unique professional, academic, and practical benefits.<sup>20</sup> With the current economic situation and its negative consequences for students seeking paid summer positions,<sup>21</sup> externships provide opportunities for students to gain legal skills and work in the legal field even if hiring freezes and the economy prevent them from getting hired.<sup>22</sup> Externships provide that “fall back” for law students to continue working toward a career, despite economic circumstances. Additionally, students with tight finances can opt to spread out their credit hours during the summer and the other regular semesters, which free up the students’ time to work and reduce the amount of debt the students accrue. By receiving credits during summer term externships and taking fewer classes during the regular semesters, students can allot more time to thorough learning. Students will find, as a result, that they have a better grasp on practical legal skills from their externship hours, and better theoretical knowledge based on their increased time to spend on their fall or spring classes.

Externships are the most flexible form of clinical legal education, especially if a law school permits students to be placed in any law office in any location. Summer externships offer diverse locations for students to work, which helps the students financially and professionally. First, students can tie a summer externship to the geographical location where they can conveniently live with family or friends with minimum housing costs. It is also possible to network

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<sup>20</sup> See Feeley, *supra* note 8, at 40 (“Many externship programs were similar to in-house clinics in that they set goals such as the acquisition and practice of core skills, substantive law and ethics training.”).

<sup>21</sup> See sources cited *supra* note 2.

<sup>22</sup> See Berry, *supra* note 3 (“As the recession’s impact rippled across the state, many law firms and government agencies stopped hiring or laid off workers.”).



through these personal or family ties. Friends or relatives can assist the student in gaining access to a specific legal experience even though those connections are far removed from the student's law school. Second, externships allow students to seek experiential opportunities in the geographical area where the law student hopes to begin practicing law or where the student eventually expects to settle down in a career position.<sup>23</sup> This not only helps during the interviewing process but also is helpful for the student's future plans. Flexible geographical placements have many other advantages. For example, those who speak a foreign language are often able to expand their language skills by immersing themselves in the legal vocabulary and customs in a foreign country.<sup>24</sup> The addition of international legal experience to the student's resume enhances the international connections the student may have already created. Summers are also an ideal opportunity for law students to experience a rural or small community setting if the law school is in an urban location or vice versa if the law school is far removed from large metropolitan areas. Often a student's long-term career plans focus on a specific kind of legal market that is simply not accessible in the surrounding area of the student's law school. The advantage of experiencing both extremes in the large metropolitan to rural spectrum is substantial.

Additionally, externships are ideal for students to try out an area of interest to experience real law practice. Live-client experience is a central component to externships that helps students apply legal skills and classroom-acquired knowledge.<sup>25</sup> These are experiences that the students cannot fully receive from a lecture. Students are often motivated by real-life scenarios in their learning and will learn certain concepts when placed in situations where the law is applied to real facts as opposed to hypothetical discussions.<sup>26</sup> Prior to

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<sup>23</sup> See Feeley, *supra* note 8, at 50 ("Certain externship program goals and benefits such as exploring career options and substantive law training can be better met by working in the particular field of interest.")

<sup>24</sup> See *Learn a Foreign Language Abroad and Work as an Intern*, ABROAD LANGUAGES BLOG (July 8, 2008, 1:57 PM), [http://www.abroadlanguages.com/blog/learn-a-foreign-language-abroad-and-work-as-an-intern\\_28/](http://www.abroadlanguages.com/blog/learn-a-foreign-language-abroad-and-work-as-an-intern_28/) ("[W]orking as an intern will help you expand your horizons and help you gain more experience for your field of study or for your own personal interests.")

<sup>25</sup> James H. Backman, *Law School Externships: Reevaluating Compensation to Permit Paid Externships*, 17 CLINICAL L. REV. 21, 40 (2010).

<sup>26</sup> See Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLINICAL L. REV. 347, 349 (1999).

an externship, some law students may feel they are drawn to a particular area of law based on their coursework. Before the law student truly commits to a profession in that area of law, he or she is given an opportunity through externships to “try it out” and see if the practice is something the student still wants to pursue.<sup>27</sup> When these students are able to learn early on what areas of law interest or do not interest them, they will make better career choices and likely experience greater job satisfaction.

One of the key opportunities opened up by the externship is access to other attorneys practicing the type of law in which the student has gained direct experience.<sup>28</sup> Students regularly report that they have gained valuable exposure to law practice and to specific legal issues that are useful topics for discussion in future employment interviews.<sup>29</sup> They go into these interviews with greater confidence because they are far better acquainted with certain aspects of law practice they have encountered and they feel comfortable talking about their own opinions and raising pertinent questions during the course of their interviews.<sup>30</sup> From the legal employer’s point of view, an externship provides a much clearer indication of the potential quality of a law student as a prospective attorney than the short interviews that often are the only personal contact an employer has with the law student before offering them a part-time, summer associate, or career position with that office. Even if the law office where the student has the externship is not in a position to hire that student, students report significant advantages that attach to the externship experience.

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<sup>27</sup> *Id.* at 357.

<sup>28</sup> See Feeley, *supra* note 8, at 40-41; Eyster, *supra* note 26, at 356.

<sup>29</sup> Eyster, *supra* note 26, at 356.

<sup>30</sup> Unfortunately, the first year of law classes often tears down these important motivational feelings in students. Most students have been used to being near the top of their college classes academically. They are facing the strong academic curve in law school in which at least half of the class is not in the top half of the class for the first time in their lives. Students are at a low point in their self-confidence, and they are often second guessing their decision to pursue a law degree after the first year grades arrive. I have often viewed summer externships after the 1L year as reviving the students from the despair that many of them feel at that point in their law school experience. Invariably students indicate that the externship shows them that they can become lawyers. They appreciate the positive ways they are treated by the attorneys, and they are almost surprised that they are viewed as capable of contributing in meaningful ways to the work of the attorneys. They love the chance to have their research and writing actually used in court documents or in correspondence with clients. In a very real way, the 1L summer externship is a capstone experience for the students in applying the skills they have learned in their legal research and writing courses during the school year.

riences they have.<sup>31</sup> They highly value the excellent letters of recommendation attorneys are willing to write for them based on their work experience during the externship. Students also have good opportunities to have useful discussions with attorneys and staff they come to know in the placement. They receive many helpful suggestions and good advice based on the career paths of the experienced attorneys they meet.<sup>32</sup> The students are also regularly introduced to attorneys through depositions, court hearings or client-related meetings they observe as part of their externship.<sup>33</sup> Several students follow up with these introductions by setting interviews with other law offices. Occasionally these connections stemming from externship-related contacts lead to a successful employment opportunity.<sup>34</sup>

The students who received credit for externships are able to work for firms or agencies where they might not otherwise get the chance to work for pay. Paid placements at prestigious law firms or agencies are commonly offered to students in the top tier of a law school class, leaving the majority of the class without these valuable experiences.<sup>35</sup> But the externship permits prestigious firms or agencies to allow students to gain experience at notable places, which improves the skills the students have since the attorneys they are working with are well-respected, and the externship gives students more value for future employers. The externship at a prestigious placement will also generate valuable networking contacts for students.<sup>36</sup>

Externships provide students with professional writing and researching opportunities.<sup>37</sup> First year law students write two to five legal papers (memoranda or briefs) and receive four to six credits for this work during the first two semesters.<sup>38</sup> These skills are crucial to

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<sup>31</sup> Feeley, *supra* note 8, at 51.

<sup>32</sup> Eyster, *supra* note 26, at 357.

<sup>33</sup> Feeley, *supra* note 8, at 41.

<sup>34</sup> *See id.* at 50-51 (discussing how students can use externships to explore career options and build contacts in the field); *see also* Steven Ginsberg, *Unpaid Externships Help Students Learn and Companies Recruit New Workers*, WASH. POST, Feb. 16, 1998, at Buff. News C2 (“Making those all-important contacts can be the most beneficial aspect of an externship.”).

<sup>35</sup> Feeley, *supra* note 8, at 51-52.

<sup>36</sup> *See id.* at 52 (explaining how school-sponsored programs allow students a way to get in the door and make contacts at a prestigious firm which would otherwise only consider the top ten percent of the class for a position.)

<sup>37</sup> *See id.* at 53 (stating that the ABA rules and law schools require supervisors to give students productive and educational legal work for the duration of the externship).

<sup>38</sup> *See* Grant H. Morris, *Teaching With Emotion: Enriching the Educational Experience of First-Year Law Students*, 47 SAN DIEGO L. REV. 465, 474 (2010) (stating that it is a typical

learn as a future attorney, but without continued practice and application, these skills will weaken. Externships with firms and agencies give students countless opportunities to use and develop the writing and research skills they acquired their first year and apply them in real-life scenarios. Students in externship placements will usually end up writing several legal documents before they finish their externship.<sup>39</sup> With the added experience of writing and researching for externships' work product requirements, students have something to show for themselves early on in their law school career.

### **B. Benefits to Law Schools**

There are several advantages to the law school with students who participate in externships during the summers. The four main positive impacts of summer externships on the law school are 1) skills and professional identity development for the students; 2) career services objectives including networking, career objective clarification, and sometimes continued employment on a paid basis for the participating students; 3) recruiting advantages for the admissions office; and 4) increased success of the program's objectives.<sup>40</sup>

From a career services perspective, externships are a natural means for a student to sort out the kind of law practice and the kind of office that will be the best fit for the student's personal and family goals. Externships are available in several types of practices where the student would not likely find a paid working position. Judicial offices, government agencies (including prosecutors and public defenders), and public interest positions in legal services offices are placements that regularly welcome externship students but which are generally not in a position to hire students as clerks.<sup>41</sup> Corporate

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requirement for first year law students to write a memorandum of law and an appellate brief).

<sup>39</sup> See James H. Backman, *Law School Externships: Reevaluating Compensation Policies to Permit Paid Externships*, 17 CLINICAL L. REV. 21, 51 (2010) (discussing the requirements of students to demonstrate "that they have fulfilled the necessary requirements connected to the law school program such as periodic and final reports and evaluations, submissions of sample work product, weekly journals, and the like.").

<sup>40</sup> See generally Feeley, *supra* note 8, at 49-54 (discussing the potential benefits of participating in externships).

<sup>41</sup> See Cynthia Baker & Robert Lancaster, *Under Pressure: Rethinking Externships in a Bleak Economy*, 17 CLINICAL L. REV. 71, 84-85 (2010) (discussing how budget cuts have led to an increased interest from both private and public externship placements).

counsel offices provide another example of this unique externship connection that is generally not available until later in a career as the firms normally hire experienced attorneys laterally rather than employing them during law school or employ them directly after the students graduate and pass state bar examinations.<sup>42</sup> Students welcome the chance to gain a hands-on experience introducing them to the work and relationships in these three types of offices during law school in order to better anticipate whether this is the kind of career they would eventually find to be a good match for their skills and interests.

Career services offices have embraced externships because they are one way in which those offices have been successful in reaching out to virtually all law students. It helps the office to show that it can provide assistance to more than those students sought after by on-campus recruiters who often limit the eligible students to those in the top part of the class, such as the top one-third based on the student's grade point average.<sup>43</sup> The career services' counselors can also encourage students to take advantage of the externships to improve their connections and opportunities that often translate into subsequent job possibilities. Some students receive offers to stay on as paid clerks in the offices even after the externships have ended or during subsequent summer periods.

The admissions office is also the beneficiary of student externships. For example, at BYU Law School, many students report that a significant factor in helping them choose to attend BYU Law is the fact that they have heard about the school's summer externship program. Many are especially intrigued by the fact that over the past several years, more than one-third of BYU law students have an international externship placement during the summer after the first year.<sup>44</sup> In the uncertain economic conditions faced by graduating law students, new applicants are very interested in hearing about curriculum opportunities that lead students into a wide variety of work set-

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<sup>42</sup> See *id.* (describing the increase in interest that law offices are expressing for more externs as opposed to paid positions).

<sup>43</sup> See Liana Corwin, *Taking Care of Business: Career Services Overhaul Internships*, THE DAVIDSONIAN-DAVIDSON COLLEGE (Oct. 5, 2011, 10:10AM), <http://www.davidsonian.com/news/taking-care-of-business-career-services-overhauls-internships-1.2646236#.T07UG81rm2A>.

<sup>44</sup> See James H. Backman, *Practical Examples for Establishing an Externship Program Available to Every Student*, 14 CLINICAL L. REV. 1 (2007).

tings like an externship program does. Prospective students are also attracted by evidence that they will be able to seek out legal opportunities in the geographical location where they eventually want to practice.<sup>45</sup>

### C. Benefits of Externships to the Community

In the economic challenges facing many in the legal profession, externs fill a need in both private and public offices. Government resources are tight and judges cannot always pay students to work for them; externships provide free services to the judicial system that preserve much needed resources and help further the role of the courts.<sup>46</sup> Many students opt to extern at public interest agencies because compensation is not an option and students can participate in something fulfilling while they earn school credit. Additionally, law students play an important role in helping to increase the supply of legal professionals in the public interest realm. Many other public interest projects and pro bono hours are assisted by law students who meet that need. Similarly, law firms benefit from legal externs. Many firms and agencies are not hiring and cannot afford more attorneys, although there is often work to be done. Students assist in filling that void at no cost to the externship provider.

Law school's support of students in public service externships is akin to the kind of programs involving a number of law firms throughout the nation. In order to give direct assistance to local legal service providers, some firms loan a new associate to the legal services office for a specific period of time, such as six months or one year.<sup>47</sup> The associate's salary continues to be paid by the law firm, but the legal services office houses the associate and gives assignments and supervision to the associate's work.<sup>48</sup> This process is a great way for the law firm to participate directly in providing access to justice. Additionally, alumni-run firms benefit from students from their alma mater coming as externs. Externships help provide a bridge for alumni to mentor current students and provide paths for future graduates into the legal profession. In turn, alumni are benefited

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<sup>45</sup> *Id.* at 19-20.

<sup>46</sup> *Id.* at 29.

<sup>47</sup> *Id.* at 13.

<sup>48</sup> *Justice Gap Fund Toolkit*, THE CAMPAIGN FOR JUSTICE, [http://www.caforjustice.org/documents/JusticeGapFund\\_ToolKit.pdf](http://www.caforjustice.org/documents/JusticeGapFund_ToolKit.pdf) (last visited Feb. 27, 2012).

with free help from legal externs.

The greatest disadvantage to many students attending various law schools is the cost of externships. Many students pay high tuition and fees to participate in externship experiences. However, the solution to this problem lies in the law schools' control. Externship programs are specifically designed to be more cost-effective for law schools to administer, compared to clinical programs.<sup>49</sup> Law schools have good reasons to reduce high tuition charges to students who are seeking this education option for practical training. Because students are unnecessarily paying high costs for these low-cost programs, law schools must consider ways to transfer the savings to law students and invest in student participation.

### III. LAW SCHOOL EXTERNSHIP PROGRAM MODELS: WHAT EXTERNSHIPS COST STUDENTS

Students follow a common pattern of choosing the most cost-efficient route in making decisions during law school,<sup>50</sup> which directly impacts the number of participants in legal externships. Although the students are receiving school credit and externships are valuable educational experiences, the financial burden, especially during summers (paying for the school credits, cost of living during externship period, and cost of travel), is enough to deter students from engaging in externship programs.

Many factors contribute to the cost of externships for students. These include the number of credits the student decides to take, how much the tuition costs per credit, whether the externships are required or not, and whether financial aid is available.

Law schools also have costs related to externships. These factors include the faculty resources needed to run an externship, the

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<sup>49</sup> Feeley, *supra* note 8, at 41 (“Despite their many similarities with in-house programs, externship programs were also recognized to offer distinct value from that available in the developing in-house clinics. In addition to skills, substantive law and ethics training, . . . externship programs were a less expensive means of providing clinical education than in-house clinics.”).

<sup>50</sup> See Judith Welch Wegner, *More Complicated than We Think: A Response to Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 623 (2010) (discussing fact that students use criteria when selecting law schools that will increase likelihood of lucrative employment).

faculty needed for externship courses,<sup>51</sup> the career service office resources for arrangements with paperwork, and the costs for using the law school's physical facility for externship courses. Depending on the law school externship model, externships can either require minimal costs or create a financial burden for the school. Models that put financial strain on law schools place financial strain on the students that have to pay to participate, which decreases the number of participants in externship programs.

The incentive for law schools to provide cost efficient ("student-friendly") externships is to improve the participation by students in externships and allow students to bring with them greater experience and contribution to the law school. The following are examples of current law school externship programs. The difference in price that a student pays for the same experiences is outlined in each model, emphasizing the great need for non-student-friendly schools to adjust their programs to better accommodate students. Each model is assigned an average payment of \$30,000 per year for tuition at a university and tuition at law schools with "per-credit" tuition is calculated at a \$1,000 per credit average.

The following models will track the thoughts and considerations of a fictional student named "Jill." Jill will weigh her options in deciding which school will allow her an opportunity to extern at a firm or agency. Seeing the models through the eyes of the student is an important exercise in understanding how financial constraints can play into students' educational decisions.

Jill is considering six different schools. The main criterion she balances out is the cost of externships per number of credits she

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<sup>51</sup> See Backman, *supra* note 44, at 28. In addition, the law school provides faculty involvement in connection with each student's externship as the academic component of the experience in order to add value to the student's experiences and to justify credit for this form of experiential education. Faculty involvement may be quite extensive especially in those law schools insisting that the student-to-faculty ratio stay in a range below fifteen students to one faculty member. Even if the individual faculty members are rarely tenured full-time faculty but rather are practicing attorneys with adjunct faculty status, they are part of this supplemental law school infrastructure supporting the externship credits. Faculty duties may include several hours of classroom contact with the externship students each week. In addition, most law schools also require weekly or periodic journals or other reports from the student that are reviewed by faculty members. Faculty may also be involved in site visits during the course of an externship in order to establish three-way communication between the student, the supervising attorney or judge and the faculty member. All of these supporting tasks performed by law school faculty are considerations justifying tuition from the students.



will be allowed to earn. She is also looking at ways schools reduce tuition costs or whether financial aid is available for summer externships. Jill considers externships to be an important part of her education, but she worries about the affordability of participation and the amount of debt she has already accrued for law school. Jill knows some law students who can afford externships because they have financial assistance from family, and Jill also knows students who will not get that opportunity because the student cannot afford to pay the summer tuition for externship credit. The students that have the opportunities to extern in the summers are able to choose flexible locations and many of them find jobs after graduation based on the externship experiences listed on their resumes. The students that could not afford to participate in externships are having a harder time finding jobs and do not have the same networking and practical skills as students that participated in externships have.<sup>52</sup>

Jill divided the schools into three different categories according to how “student friendly” the programs are. The programs that provide more experiences per amount of tuition are considered “student friendly.”<sup>53</sup>

## A. Student-Friendly Schools

### 1. Law School A: Rotating Education Program

Jill first considers School A, where she is offered practical experience each year in a rotating program. School A’s unique program is a cutting edge experiential education program. At School A, second and third year law students are placed in one of two tracks where, during two out of four semesters, the students alternate between classroom education and work experience. Work experience is a required part of the program, but rather than offering actual credit

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<sup>52</sup> See Heller, *supra* note 4 (explaining that “employers want lawyers who are competent, willing to learn and likeable, . . .” which are all things students can demonstrate during externships); Sloan, *supra* note 4 (“The students are really beginning to see [externships] pay off in their practical and marketable skills . . . [i]t’s not enough to learn the substance of the law.” (citation omitted)).

<sup>53</sup> All law school models are based on actual schools, but the names of the law schools are not disclosed.

hours, the students have paid job experiences.<sup>54</sup> This model, then, allows students the opportunity to get experience, and the law school helps them find the jobs they take each semester. The students, in turn, get paid, which will help them pay tuition in later terms and potentially relieve them from seeking a job during their busy school year.

This is an example of cooperative education that provides a viable option for students looking for practical experience and classroom experience. The students do not pay the school for the externship experience they receive, but interviewing employers still know that the student's education was composed of theoretical classes and practical experiences. Jill finds that her externship experience will be a paid experience and she will have these experiences noted on her transcript as fulfilling requirements for graduation. Jill's resume will have multiple legal experiences, and her education will be improved by each externship in which she participates.

Jill calculates what she would be paying overall at School A. A student pays an average of \$30,000 for law school each year, so Jill would end up paying \$90,000 for her three years, but leave with externship experience and compensation for that work, which will cover some of the \$90,000 she anticipates paying. The number of credit hours she can receive remains the same. Since it is required at School A, 100% of the students participate and the students do not need to take out a loan. The students have resume-building experiences that were provided through the school's co-op program and the students also receive a full six semesters of classroom learning. Jill considers School A a "student-friendly" program.

## **2. *Law School B: Summer Externships for Minimal Administration Fee***

At School B, Jill finds another viable approach where students can get for-credit externship experience that costs \$20 for 1-6 credits each summer. The Career Services Office helps students look for and obtain an externship position. Externships are available year-round

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<sup>54</sup> See ABA STANDARDS 305, [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2012\\_standards\\_chapter\\_3.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_standards_chapter_3.authcheckdam.pdf) (last visited Feb. 24, 2012) (explaining that schools can offer students credit or place them in a situation where they receive compensation, but cannot do both).

and are counted as credit hours during the regular semesters, but the summer program is designed for students to extern in all regions of the United States and abroad. Summer externships require reflective journals, periodic contact and interviews with faculty advisors, and work product requirements. Students also must track their hours of work to earn credits. There is no classroom component to School B's program. The supervising attorney or judge ensures that the student is getting practical experience, but also instructs and mentors the student in the law.

Jill calculates that she would pay \$90,000 for three years, but can earn 6 credits during the summer following her 1L year or she can spread out an entire semester's worth of credits (12 credits) in the two summers. A corollary advantage is that she can reduce the number of credits she is taking during the regular fall and winter semesters permitting her to have a more relaxed schedule to accommodate participation in valuable co-curricular programs such as law journals, moot court, and trial advocacy. She can also focus more attention on the courses she takes or she may have time to seek outside employment. The first year, if Jill takes 30 credits, and then takes 6 credits during the summer, she still only pays \$30,000 plus the administrative fee of \$20. Jill can take 16 credits the next semester, or take 12 credits, depending on her preference. She figures that she will still pay the same amount. She discovers that the fixed sum price allows for students who take classes during the summer and then lighter loads of classes during the school year to pay the same amount as a student taking 30 credits each year, with no classes in the summer. Nonetheless, Jill's experience will still be placed on her transcript.

Jill considers the benefits to the student at School B to be abundant. The cost to students is low. There are no classes to attend during the summers, so students can participate in distant externships. This allows students to go internationally or to a region of interest, and also allows students to return to hometowns where they may have a professional network already set up. As a result, Jill finds that a large number of the students end up participating in the externship program. A total of 192 students participated in summer 2010 externships from a law school graduating about 150 students each year. These 192 students' externship placements came out as 906 credits earned. This means hundreds of hours of pro bono service to private

and public law entities.<sup>55</sup> The students, in turn, received 2-6 credit hours of valuable training from legal professionals regionally, nationally, and internationally.

## B. Semi-Student Friendly

### 1. *Law School C: Summer Externships for Mid-range Administrative Fee*

Jill continues her search for an affordable externship program. She finds one law school that requires students to pay an administrative fee of \$1,000 for the summer term.<sup>56</sup> This law school decided that the students only need to pay an administrative fee to take credits, but do not need to pay full tuition for summer externships since the students are not using school resources during that time. If Jill were to attend Law School C, she would pay \$90,000 for the three years, plus an additional \$1,000 per summer for earning externship credits. This \$1,000 pays for any credits she receives, ranging from 1-6 credits. Receiving these externship credits during the summer gives her the opportunity to lessen her credits during the school year, which gives her an opportunity to work harder in her classes or per-

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<sup>55</sup> The student externships fell into three general categories: private, public, and international. Between private and public, the number of hours were split almost evenly (Public: 90 externships, Private: 99 externships), and there were 47 international externships. Credit and Type, BYU Law Externship Report, Summer 2010 (on file with author).

<sup>56</sup> One clinical professor explained the effect of an administrative fee:

[The law school] now charges a \$1,000 administrative fee for summer externships, and externships are now three credits rather than two. We raised the fee starting in the summer of 2009. Since raising (doubling) the fee, we have seen a decrease in the number of students who seek academic credit for participation in summer externships. In fact, the number of students who currently are receiving academic credit for their summer placements represents a decrease from last summer. There has never been a time when [the law school] charged the full tuition for summer externship courses, so we can't make the comparison you identified (tuition then reduction to administrative fee). In fact, there was a time when [the law school] did not charge either tuition or a fee. One exception: we have always charged full tuition to those students whose summer externship credits are used to help them acquire a sufficient number of credits to transfer from the evening division to the day division.

Email from a certain law school's Clinical Associate Professor of Law, June 22, 2010 (on file with author).

haps to retain employment during law school.

Jill finds that this is a semi-“student-friendly” system as it will still cost her something extra to participate in externships, but it is certainly more affordable than paying full tuition. Jill understands, as well, that the externship experiences she could participate in during the summer would be experiences she would not receive during regular law school semesters. Jill has interests in various firms and agencies, but many of them are quite a distance from the law schools she is considering. Finding an affordable summer externship program will give Jill the opportunity to pursue some of these firms and agencies she is interested in without requiring she get a paid position at these locations; but, Jill would still have the connections and the experiences she would need in pursuing work with the firms or agencies in the future.

Jill figures that she will pay \$90,000 for class credits and only \$2,000 over her law school career for any summer externship hours she participates in. In turn, School C finds that it can provide the resources necessary to accommodate these students when students pay for the administrative costs. This creates incentive for the Career Services Office to help the students find and earn summer externship credits.

**2. *School D: Students Enroll for Summer Externships with Pay-Per-Credit Tuition and Reduce Pay-Per-Credit Tuition Costs in One or More Regular Semesters***

Jill decides to look into School D, which offers complete pay-per-credit tuition during regular semesters and the summers as well. This means that if Jill wants to stick to only 90 credits to graduate, she can pay the same amount she would pay in other schools (\$90,000), and will have the option for summer externships. However, she will not have the advantage of taking more than 90 credits required for graduation without paying more than her \$90,000. Although this is the case, this model of externship credit allowed during summer months gives her the chance to spread out her educational credits and perhaps to hold employment during some of these semesters. Since School D officially holds school during the summer months, this model also offers summer semester loans to students, which further helps increase student participation in the program.

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### C. Less Student-Friendly Programs

Less student-friendly programs, or externship programs where students are paying full tuition for externship credits, are more prevalent. Most law schools<sup>57</sup> charge full tuition during the summers and require a classroom component in order to receive the credit. Jill considers two such schools and weighs the costs and benefits of both.

#### I. *Law School E: Student Pays Tuition per School Credit*

As Jill considers Law School E, which requires full tuition for school credit during the summer and full tuition for other semesters, she calculates that she will be spending a lump sum of \$90,000, plus an additional \$1,000 per credit if she decides to participate in summer externships. Jill decides that she will not do the externships, since she cannot afford to take out more loans (which are available for summer term) during the summer and still pay full tuition in the other semesters. She decides to take only the regular two semesters each year and work during the summers. Unfortunately, the economic downturn has left few jobs that would further Jill's educational pursuits, but she is nonetheless forced to bring in some income for the rest of the school year.

Jill comes to realize that the cost of the externships determines whether she will participate in summer externships or not. When she considers what she will miss if she does not participate, she realizes that she loses valuable work experience at firms where she may not have even received an interview previously. However, Jill's money constraints are a reality and she worries about making ends meet after graduation if she continues to accrue more debt. Jill discovers that at School E, about a quarter of the students take the summer externship option. She also realizes that these students take externships in their hometowns, so they do not have to pay for as many living expenses. Students from a more affluent background are able to take on these externship opportunities, but whereas Jill is financially independent and cannot afford to go much beyond the \$90,000 for the three years, she must opt out, along with other simi-

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<sup>57</sup> Survey to J. Reuben Clark Law Society student representatives at numerous law schools, June 2010 (on file with author).

larly situated students.

School E does lessen the cost of tuition for the students who take externship credits since there is no classroom component. Jill would not pay as much as a regular classroom course would cost during the summer months, which is a great benefit to students. This also shows recognition by School E that the externship hours are all spent outside the walls of the law school, and thus cost the law school little or no cost. School E's tuition structure spreads some of the benefit to externship-participating students.

## 2. *Law School F: Student Pays Full Summer Tuition*

There is a second less "student-friendly" model used by many law schools that require students to pay per credit for externship credits on top of regular tuition for the rest of the year. This is different from School E, however, because School F does not differentiate between summer classroom credit and summer externship credit. Students are paying the full tuition for the summer months at School F. Jill, if attending School F, would end up paying the required lump sum each semester, which for six semesters makes \$90,000. If she were to participate in summer externship placements, she is adding \$1,000 per credit. This is a bit more than just paying the administrative fee of \$1,000 that she would be paying at School C, because Jill will likely want to get at least two credit hours, if not more. As she does the math, however, she realizes that getting externship credits will simply cost too much in the long run. Additionally, she has to pay the \$90,000 for taking 12 credits or 15 credits per semester anyway. If she were to take 9 credits during the fall semester, she would be paying \$15,000 for that semester. If she decided to take 15 credits during the semester, she would pay the same price. Although she can take out loans for summer externships, she decides to skip externship opportunities and take the 15 credits each semester to get the full amount of classes out of the minimum amount of money. Jill sees little benefit in paying more tuition over the three years for the same number of credits she could get elsewhere for cheaper.

**Jill’s Conclusions at a Glance**

School Name	Type of School	Total Costs	Education	Average Number of Credits	Number of credits possible per/semester
School A	friendly	90,000 compensation	-	90	15 or more F/W No credit summer
School B	friendly	90,000 + \$20		90+	15 F/W or fewer (balanced,with 6/summer)
School C	less	90,000 \$1,000/summer	+	90+	15 or fewer F/W 3-4/summer
School D	less	90,000 \$1,000/credit	+	90	15 F/W, paid per credit 1-6/summer
School E	non	90,000 \$1,000/credit	+	90	15 F/W, lump sum, for any amount of credits 1-6/summer
School F	non	90,000 \$1,000/credit	+	90	15 F/W, lump sum 1-6/summer

**IV. MATCHING EXTERNSHIP ACADEMIC QUALITY WITH AFFORDABILITY: SUGGESTIONS FROM JILL’S STUDENT-FRIENDLY ASSESSMENT FOR REDUCING TUITION COSTS**

Looking at the considerations and findings of Jill, law schools can recognize the need for reducing costs for law students. Although most schools use the traditional externship model of regular summer tuition for externships, this is not required for an externship program. It is obvious that schools that have reduced tuition will have higher participation by students than other schools. Because externships are more cost effective than other programs,<sup>58</sup> schools can afford to cut

<sup>58</sup> Rose, *supra* note 7, at 96, 102 (“Cost considerations have deterred law schools from developing in-house clinical opportunities for students. Less expensive externship programs, which involve students working with attorneys outside of the law school, have not been extensively utilized because of concerns that participating students will not receive adequate supervision. . . . In-house clinics have been developed at many law schools in the last two decades, but the high cost of funding them has limited enrollment to a fraction of graduating students. Externship programs have the capacity to provide clinical experiences in actual cases to more students than in-house clinics.”); “James Moliterno has suggested that the two year simulated Law Office model he has developed at William & Mary, in combination with



tuition for students for summer placements. Because giving students opportunities to participate in hands-on lawyering has been an important push in the past couple of decades,<sup>59</sup> the availability of these opportunities can be expanded through reduced costs for law students.

### A. Reconsidering Summer Externship Costs and Tuition

Because law school externship credits cannot be awarded if the student is being compensated for the work experiences they are having,<sup>60</sup> the cost factor of externships becomes even more significant. A student is already foregoing other paid positions in order to have the externship experience. These opportunity costs are factored into the student's choice in selecting a summer externship experience. A student-focused evaluation of current externship practices would come to the conclusion that lower costs are preferable to a law school's heavy investment in the student's externship program.

In some cases, externship programs incorporate certain practices specifically because the faculty directors feel they owe their students this kind of attention because the students are paying substantial amounts for the externship credits they earn. This is an example of the tail wagging the dog. Externship practices should be adopted because they make good pedagogical sense, not to make sure the law school is earning the student tuition it is collecting. If the quality of the externship is not improved significantly by involving increased amounts of law school resources, then the law school should cut back in its involvement and lower the cost of tuition being charged for this part of the educational experience. During the school year, when a student can choose to enroll in an externship without any additional charges above and beyond the semester tuition payment normally

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externship placements in the third year, is the most cost effective model for law schools." Deborah Maranville, *Passion, Context, and Lawyering Skills: Choosing Among Simulated and Real Clinical Experiences*, 7 *CLINICAL L. REV.* 123, 123-24 (2000); *see also id.* at 141 ("I suspect that the expansion of externship programs at law schools across the country derives more from the combination of external pressures to provide practical experience, the desire to do so at low cost, and student demand, than from any theory of ecological learning.").

<sup>59</sup> *See Heller, supra* note 4 ("The increased emphasis on externships and practical training is one way that law schools have answered criticism that they have been inadequately preparing students for careers as lawyers.").

<sup>60</sup> *See supra* note 6.

made, the student is not concerned about the cost of an externship. However, during the summer, the tuition charged for an externship is an additional hardship faced by the student, who would appreciate any tuition reduction or another form of financial assistance.

The question may be asked, however, why the law school provides so much support for the externships if the main, day-to-day supervision and the primary infrastructure for the externship come from the law firm or court where the externship takes place. Are all these law school components of an externship program necessary? Are they worth the costs involved? Would the student be cheated out of important aspects of the externship experience if these law school contributions were reduced or eliminated? Clearly, the law school must have some connection to the externship experience in order to consider these programs worthy of academic credit. The law school's role should not be merely a record-keeping function that can be handled by a secretary or a student employee. On the other hand, the individual inputs from a faculty member should be evaluated in terms of what value they are adding to the student's experience. However, the very fact that some law schools give students a tuition break in one form or another for summer externships is evidence that charging full tuition for these credits is suspect.<sup>61</sup> There is something intuitively wrong with charging a student full tuition for an experience taking place away from the law school that is primarily supervised and in most respects dependent on experienced lawyers and judges who are not charging the law school anything for their valuable service. Every law school should be interested in considering ways in which it can reduce this unjust tariff it is charging students in summer externships.

In a very real way, financial advantages flow to the law school because lawyers and judges are willing to take on the role of supervising externship students and serving as their mentors without any cost to the law school. Law schools directly benefit from the willingness of judges and attorneys to act as supervising attorneys for externs. Law schools benefit from the free education their students receive from these polished and practiced attorneys. Students extern with judges from all levels of state and federal courts, with prosecutors and defenders, with civil and commercial practice attorneys, with

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<sup>61</sup> See, e.g., Brett Eaton, *Best Kept Secret: Summer School*, STATE NEWS SERVICE, Feb. 23, 2012 (touting the benefits of Wake Forest Law's summer program).

corporate counsel, with non-profits and public interest firms, intellectual property firms, government officials, legal scholars, etc. Law schools do not need to pay these attorneys and judges to come to the classroom and lecture or teach, nor do they even have to accrue any cost of inviting them to campus at all. The law schools are giving the students credit without providing all the resources for student learning, and therefore should not need to charge as much from the students who participate.

Under current rules, a law school may decide that another overarching objective justifies a financial break for students in a summer externship. Law schools are committed to increasing the exposure of students to the legal needs of the poor in our communities. It is a well-known fact, however, that the majority of students are unable to participate in a clinic because of resource demands on faculty and budgetary impacts.<sup>62</sup> Another valuable way students can have these experiences is through direct work with legal services and other non-profit law offices. Many students already participate by volunteering in these offices or through externships. A significant reduction in the tuition charged for these externship credits during the summer would have a corresponding impact on the numbers of students participating.

### **B. Creating Cost-Effective Externships**

Law schools can try several methods of reducing costs. Certain methods work better than others; some methods have proven problematic. For example, some law schools have experimented with the structure that allows students to receive credit in the semester before or the semester following the summer externship.<sup>63</sup> However,

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<sup>62</sup> See Rose, *supra* note 7, at 112.

<sup>63</sup> For instance, some schools are allowing students to enroll for credit during a semester before or after they participate in externships. The benefit for students and the law schools is that the summer classroom component is automatically unnecessary, so tuition and resources are saved. Depending on the school rules (whether it allows student to get credit for work performed outside the semester dates), students could attend a class during the fall semester following an externship experience or attend a class prior to leaving for the summer externship. Therefore, students can either be armed with the tools to succeed in the upcoming externship, or if the student takes a follow-up class, take a chance to reflect on what he or she learned during the externship experience. This option would save students from paying extra tuition since the cost for the credit would be absorbed into the fall or spring semester tuition. Schools that cannot afford to staff summer externship faculty, because of the economic downturn, may find this a money-saving option. The arrangements to put this in place

this can cause liability problems for law schools.<sup>64</sup> Using grant money for externs can also be a problem because grants often require students to take a certain number of credits to get the funding. Because externships are often only a few credits, ranging from one to six, grants may not cover the entire duration of the externship.<sup>65</sup> But, law schools can be creative in finding and implementing other viable methods.<sup>66</sup>

### 1. *Administrative Fees or Reduced Tuition*

One simple step law schools can take to lessen costs to students would be to reduce tuition for externships altogether. Tuition

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would require working with the registrar and creating the class for the student. The class could even be taught as a short course or a block class, where the student attends for two weeks each day or attends only half the semester, either leading up to or directly following an externship experience. Benefits for having either timeline can depend on what the student will most benefit from. Those who are heading out for a summer experience will benefit by learning certain skills to implement while at their placements. These could include networking skills, communication skills, question-asking skills, and basic “get the most out of your externship” tips. If a school opts to do a follow-up class, the students could bring work product for evaluation, could take time to reflect on skills learned, and create goals for how they will continue refining the skills. This class may also be helpful to require for students who are heading to paid placements, so the student will make any work experience, with or without externship curriculum and requirements, an educational experience. The students could still be required to write journals during their placements in the summer and be given credit for completing a journal task. This way, students are still reflecting on their work and are engaging in a learning process. The school will not have to worry about credits, faculty, and classes throughout the summer. Non-credit internships carry no liability protection or back up from the university since the student is not enrolled.

<sup>64</sup> Retroactive grading, though experimented in undergraduate programs, is not a viable option because of liability issues. Students must be covered throughout the time they are enrolled in classes, including externships. If the students are not actually enrolled during the summer, but receive credit another semester, this would leave students without coverage with resulting uninsured professional malpractice liability for the students to the agencies and firms where they work.

<sup>65</sup> For example, for certain federal grants, students’ enrollment as part-time or full-time students will affect their receiving of grant money. U.S. Dep’t of Educ., *Federal Pell Grant, STUDENT AID*, <https://studentaid.ed.gov/PORTALSWebApp/students/english/PellGrants.jsp?tab=funding> (last updated Jun. 30, 2011).

<sup>66</sup> Some schools have experimented with placing an incomplete on a student record during the spring semester and submitting the grade once the law student completes the summer externship. *See supra* note 8. This is a viable option for law schools, but it is only effective for second year students. Since first year students are not able to register for externships until their first year courses are complete, an incomplete could not be placed on their transcripts for spring semester. Law schools may consider registering second year students for externship credit during the spring term and carry an incomplete until they have completed summer externships.

costs often go up in law schools due to more staff at the law schools and, in the recent generation of law school staff, many of these positions are in IT or career services.<sup>67</sup> Also, clinical programs and faculty to run these programs cause high tuition costs for law students.<sup>68</sup> However, law schools can reduce these administrative costs by creating less expensive externship programs that require fewer funds and fewer faculty members. This can be done a couple of ways. First, law schools can calculate a “tuition per credit hour” amount, which would be less than a lecture credit. A “tuition per credit” option would encourage students to participate in summer externships because the tuition will be less tuition for the same number of credits. A second method involves establishing a flat-fee tuition, one cost for 1-3 or 1-6 credits. This could also simply be an administrative fee, especially if there is no classroom component to the externship. If there is a classroom component, a flat-fee tuition would not likely lose the school money since the school most likely offers the summer externship class throughout the summer and requires attendance for all students in a summer placement. The number of students may fluctuate depending on the time of summer they are earning credits, but the cost of using the classroom would not change if there was one student or several students.

## 2. *Adjusting the Classroom Component*

Likely going hand-in-hand with the reduced tuition suggestion is the suggestion for law schools to remove the classroom component altogether. Summer externships do not require classroom attendance to be effective ways for students to learn. Out-of-the-classroom experience is precisely what summer placements are geared toward. Faculty can maintain contact with students and maintain even closer connection with the students’ learning through email and phone conversations than having a student sit through a class or a lecture.<sup>69</sup> Some law schools have greatly expanded the student to faculty ratio to as many as 50 students for each faculty member in-

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<sup>67</sup> ABA Journal Podcast: *How Law Schools Can Help Next Gen Lawyers Take Gamble Out of Hefty Tuition* (June 7, 2010, 2:00 PM), available at [http://www.abajournal.com/news/article/lowering\\_the\\_stakes/](http://www.abajournal.com/news/article/lowering_the_stakes/).

<sup>68</sup> *Id.*

<sup>69</sup> BYU Law, *Externships*, BYU, [http://www.law2.byu.edu/page/?id=current\\_students&cat=careers&content=externships](http://www.law2.byu.edu/page/?id=current_students&cat=careers&content=externships) (last visited Apr. 6, 2012).

involved. The classroom component, considered essential by many externship programs, is one means of providing a forum for thoughtful student reflection on their experiences. However, the current American Bar Association standards governing externships also permit other forms of encouraging student reflection such as individual tutorials.<sup>70</sup> A number of law schools rely exclusively on weekly student journals with feedback from reviewing faculty members as the sole means of promoting student reflection on what they are learning from their experiences in the externship.<sup>71</sup> The law school can also implement a learning course for students, including phone interviews, weekly journals, and supervising attorney reports, to ensure that the students are still engaging in the educational experience. However, these non-classroom learning projects can be done with only a few faculty members who essentially rely on the supervising attorneys to create a learning experience for the student. Since the Career Services Office helps place students in the externships, faculty can feel confident that the students are in approved settings with competent attorneys who will provide good learning experiences.

It is noteworthy that externship programs built primarily around summer time periods and involving students in distant placements have often eliminated the weekly classroom component because of the logistical difficulties of having students participate in an actual classroom setting. Some of these programs have continued to provide a classroom-like experience for the students. For example, if law schools host online seminars, students can participate by using modern technology.<sup>72</sup> However, some law schools have abandoned the classroom component and the on-site visit requirements because they can hinder the valuable experiential learning available to the students in the summers through placements that are far from the law school.

For new law schools or schools looking for a new approach to preparing prospective lawyers, the co-op externship program is a tried and proven educational method. Students enroll in classes and rotate each semester with a paid placement. Northeastern Law

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<sup>70</sup> ABA STANDARDS 305(e)(7).

<sup>71</sup> See Backman, *supra* note 44, at 17.

<sup>72</sup> For example, BYU's externship program will introduce new virtual classroom technology to accommodate a number of distance placement externs in a classroom discussion with a professor.

School has successfully run this program for many years. Recent articles have remarked on the lack of preparedness of law students who enter the legal profession.<sup>73</sup> Many first year associates are trained again in everything they need to know because law schools did not offer practical experience. The co-op externship program is a remedy for this problem; as it prepares students for post-graduate opportunities by giving them at least three semesters of practical experience. When students take a full load of classes and alternate that with work experience, they are learning the material in a different way than if they received classroom instruction and then received practical experience. The classroom experience supplements the professional experience and the professional experience likewise informs the classroom experience.

## V. CONCLUSION

With the increasing need for practical training available to law students, law schools must consider ways to incorporate more cost-effective externship programs. Law schools may consider various options in decreasing costs. Adjusting the classroom component and consolidating the faculty involvement can allow schools to reduce tuition and fees for participating students. Such creative management of resources will lead to more opportunities for more students and bring benefit to students, schools, and the legal community.

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<sup>73</sup> *Trouble with the Law*, *supra* note 2; *see also* Sloan, *supra* note 4.