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# TOWARD A CLINICAL PEDAGOGY OF EXTERNSHIP

ELIZABETH G. FORD\*

*Externships offer a tantalizing experiential option for law schools. Students are hungry for the real-world experience, networking opportunities, and the chance to take skills learned in the classroom to the next level. Administrators love externships because of their high enrollment and low cost. Faculty appreciate these programs because they provide students with context and skills, inspire them in the doctrinal classroom, and require little diversion of resources from the more traditional faculty ranks.*

*The danger of grasping too tightly to externships as the experiential solution is the temptation to avoid thinking carefully about connecting the external experience to the doctrinal and skills training that law schools are charged to deliver. It is possible to leverage students' real world excitement into deeper reflection and enhanced skills, but it requires us to confront the lack of a clear teaching and learning theory of externships.*

*To this end this article proposes The Legal Skills Learning Taxonomy, a learning theory based in Bloom's Taxonomy in the Psychomotor Domain and adapted to meet the unique learning potential of externship programs. This taxonomy describes the competencies that mark a student's legal skills development, creating the basis for a goal-driven learning experience and bridging the divide between students' external experiences and their classroom work. The article both proposes this theory and offers concrete teaching methods to enable students to assess their initial proficiency, set meaningful and aggressive goals, reflect on their performance, productively process feedback, target their learning in the seminar, and develop a depiction of their own progress. Ultimately this article offers a significant step*

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*toward developing learning theory and practice unique to the rich potential of externships.*

## INTRODUCTION

As law schools grapple with contracting budgets, the need to graduate practice-ready students, and the desire to provide a graduate school-like education, externship programs are increasingly thrust forward as the cost-effective solution.<sup>1</sup> While the description of externship programs generally focuses on the value of live client experience,<sup>2</sup> part of the allure for law schools is the low cost, high

<sup>1</sup> See James H. Backman & Jana B. Eliason, *The Student-Friendly Model: Creating Cost-Effective Externship Programs*, 28 *TOURO L. REV.* 1339, 1339 (2012) (“With students accruing more debt than ever and with employment rates barely creeping up from the recent drop, students need and are seeking affordable opportunities to get experience and gain important legal skills . . . 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.”); Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert F. Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 *WASH. U. J.L. & POL’Y* 11, 11–12 (2013) (“The clamor for reform in legal education is precipitated by a confluence of factors, including new insights about lawyering competencies and experiential legal education; the shifting nature of legal practice in the United States; a decrease in law jobs; changes in the economics of the legal profession that challenge the current cost of legal education; a dramatic drop in law school applications and admittees; increased competition for students among law schools; increased market demand for ‘practice-ready’ law graduates; and increased numbers of law grads going into solo and small firm practice.”); see also Brooke K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 *CLIN. L. REV.* 1 (1999) (describing the benefits of participative learning over instructor-centered learning as “students learn best, in fact inevitably, through coordinated social action, through participation in the world of practice, and that a principal goal of legal educators should be to intensify and enrich the quality of participation.”); Cynthia Baker & Robert Lancaster, *Under Pressure: Rethinking Externships in a Bleak Economy*, 17 *CLIN. L. REV.* 71 (2010) (presenting the results of a survey of externship programs finding that as the result of the economic downturn there is increased student demand for externships and increasing reliance on those programs to provide students with skills training); Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 *J. LEGAL EDUC.* 240 (2009) (arguing that externships should provide the structure for the professional formation pedagogy).

<sup>2</sup> See, e.g., *Experience: The Real Teacher*, ARIZONA STATE UNIVERSITY SANDRA DAY O’CONNOR COLLEGE OF LAW, <http://www.law.asu.edu/centersprograms/CentersPrograms/ExternshipProgram.aspx> (last visited Feb. 28, 2015); *The Real World of Law Practice*, BROOKLYN LAW SCHOOL, <http://www.brooklaw.edu/academics/clinicalprogram/ClinicExternships.aspx> (last visited Feb. 28, 2015); *An Array of Real World Classrooms*, UNIVERSITY OF CALIFORNIA HASTINGS COLLEGE OF LAW, <http://www.uchastings.edu/academics/clinical-programs/index.php> (last visited Feb. 28, 2015); *Legal Externship Program*, UNIVERSITY OF DENVER STURM COLLEGE OF LAW, <http://www.law.du.edu/index.php/legal-externship-program> (last visited Feb. 28, 2015) (“[A]n effective and comprehensive bridge to take students from law student to lawyer.”); *Clinics, Externships and Practicum Courses*, GEORGETOWN LAW, <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/index.cfm> (last visited Feb. 28, 2015) (“[W]e know that the best way for students to learn what it means to be a lawyer is to do what lawyers do.”); *Hands on Learning: Clinics, Externships, and Projects*, UNIVERSITY OF INDIANA MAURER SCHOOL

enrollment potential of externship programs.<sup>3</sup> This is not all bad; externship programs can leverage existing resources in a mostly positive way for all of the participants.<sup>4</sup> The practitioner community views participation as part of their professional obligation to train new lawyers, and generally finds the addition of a legal extern helpful to their work.<sup>5</sup> And these external experiences not only receive rave reviews from students, they may also increase engagement when the students return to the classroom.<sup>6</sup>

The danger of grasping too tightly to externships is the temptation to avoid thinking carefully about connecting the external experience to the doctrinal and skills training that law schools are charged to deliver. Though much has been written on the value and process of reflection in the externship context,<sup>7</sup> there has been little development

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OF LAW, <http://law.indiana.edu/students/clinic/index.shtml> (last visited Feb. 28, 2015).

<sup>3</sup> According to the Center for the Study of Applied Legal Education's 2013–2014 survey, 25 percent of law schools having externship programs report enrollments of 29 or more. DAVID A. SANTACROCE & ROBERT KUEHN, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION, THE 2013–14 SURVEY OF APPLIED LEGAL EDUCATION 30 (2015), available at [http://www.csale.org/files/Report\\_on\\_2013-14\\_CSALe\\_Survey.pdf](http://www.csale.org/files/Report_on_2013-14_CSALe_Survey.pdf) (last visited Feb. 28, 2015). While the median number of students supervised by a single faculty member was 15 students, the study also found that “[o]ver thirty [sic] percent of field placement faculty supervise 25 or more students per term; almost 10% supervise 50 or more.” *Id.* at 30.

<sup>4</sup> Though it is beyond the scope of this paper, it is critical to acknowledge the danger of substituting a high-enrollment externship for an in-house clinical program. See Elie Mystal, *This Week in Law Schools in Trouble*, ABOVE THE LAW (Sept. 2, 2014, 1:18 PM), <http://abovethelaw.com/2014/09/this-week-in-law-schools-in-trouble/#more-339155> (last visited March 2, 2015).

<sup>5</sup> I have found no empirical studies on this point, but base this assertion on the hundreds of site visits that we have conducted. In each, I discuss with the site supervisor—a practicing lawyer or judge—his or her experience with the externship. Almost without exception, supervisors find the experience to be positive even in spite of the fact that they uniformly recognize that taking an externship student represents an expenditure of time and resources.

<sup>6</sup> The Outcomes Assessment Project at Northeastern University aims to quantify the effects of Northeastern University School of Law's Co-op program, which requires students to work fulltime every other quarter. Through examination of the Law School Survey of Student Engagement, the study's consultant, William D. Henderson, has found that Northeastern students report a higher propensity to ask questions in class, higher levels of class preparation during their second and third years, and increased perceived ability to work effectively with colleagues. William D. Henderson, *Studying Our Alumni to Identify Outcomes that Really Matter 4–5*, available at <https://www.northeastern.edu/law/pdfs/academics/exp-future-papers/plenary4-henderson.pdf> (last visited March 2, 2015) (author permission granted).

<sup>7</sup> See, e.g., J.P. OGILVY, LEAH WORTHAM & LISA LERMAN, *LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS* (West Academic Publishing 2d ed. 2007); DONALD A. SCHON, *EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS* (1987); Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLIN. L. REV. 317 (2014); Michael Meltsner, James V. Rowan & Daniel Givelber, *The Bike Tour Leader's Dilemma: Talking About Supervision*, 13 VT. L. REV. 399 (1989).

of a learning structure to connect that reflection to the advancement of student skills and knowledge. This article fills that gap by proposing a learning structure to be used in the externship course and by confronting directly the Achilles heel of most externship programs: the seminar.<sup>8</sup>

This article will argue that the externship course presents a key opportunity to connect students' external work back to the core objectives of their legal education and will propose both a theoretical framework and concrete steps toward that end. Part I describes the struggle of externship pedagogy by looking at the historical development of externships and resulting fragmentation in the development of teaching and learning theory. Part II then proposes a taxonomy for skills learning and assessment in the externship context. Finally, Part III offers several concrete steps toward enhancement of externship teaching, learning, and assessment using that taxonomy. The article concludes with a review of critical next steps.

## I. THE STRUGGLE OF EXTERNSHIP PEDAGOGY

This section lays out the struggle to develop a teaching theory appropriate to externships. It begins with the troubled early history of externship teaching and the resulting regulatory attention from the American Bar Association. It then describes the more recent scholarly efforts to impose in-house clinical pedagogical theory onto the externship classroom. Finally, it describes the practical barriers to learning that students experience in the seminar component of their externship course.

### A. *Teaching Theory Challenges*

#### 1. *The Troubled Past*

Originally, external placements and what we now know as in-house clinical courses were indistinguishable. Law school clinics, like those in medical and nursing schools, consisted of students working in legal dispensaries operated by law schools in partnership with outside legal services or defender organizations.<sup>9</sup> Beginning in the 1970s, law

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<sup>8</sup> The "seminar" as described in this piece is intended to refer more broadly to a goal-driven educational component of the field placement.

<sup>9</sup> Peter A. Joy, *Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?*, 10 CLIN. L. REV. 681, 692–97 (2004) ("During the same time that the ABA was gaining stature and becoming involved in law school accreditation, law students were developing the first law school clinics as 'legal dispensaries' or legal aid bureaus starting in the late 1890s and early 1900s. These initial clinics usually involved students working with legal aid offices on a volunteer or low credit basis, and were precursors to today's externship programs."); see also Cynthia F. Adcock, *Beyond Externships and Clinics: Integrating Access to Justice Education into the Curriculum*, 62 J. LEGAL EDUC. 566, 567 (2013) (iden-

school faculty began operating in-house clinics, increasingly independent of outside legal services organizations. This offered benefits to students and faculty alike in that students received the teaching, supervision, and client contact all in one location. As in-house clinics increased in number and popularity, clinicians developed pedagogy unique to those clinics.<sup>10</sup> External placements remained, but they were increasingly disengaged from the overall curriculum, with the cost of and responsibility for supervision spread across many outside lawyers.

Because these external placement programs were popular with students and well situated to produce revenue at low cost, some law schools succumbed to the temptation to treat them as mere “placements” with no real connection back to the curriculum.<sup>11</sup> By 1977, the ABA stepped in, noting that “lack of substantial supervision given by a law school faculty to law students working with practicing lawyers throughout a state” does not conform to Standard 306(c).<sup>12</sup> By 1980, the ABA’s site visit teams were increasingly focused on reviewing externship programs for compliance with basic curricular requirements.<sup>13</sup> In 1985, the ABA’s Skills Training Committee issued a Report on Placement Clinics and Related Matters, concluding that placement clinics “have a well-deserved, but unnecessary, bad name in academic circles” and adding:

The era has passed when it was sufficient to justify any clinical program on the basis that the students would ‘learn something’ about law practice by representing real clients under supervision. Clear, specific educational objectives should be articulated. The learning

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tifying the first for-credit legal aid dispensary as having been offered by the University of Denver and run by a local lawyer).

<sup>10</sup> Adcock, *supra* note 9, at 567 (“It became important for clinical faculty to advocate for themselves and for the cause of clinical education. . . . They had to separate themselves from legal aid programs that gave no credit to students (and that were not run by faculty who could provide training and supervision). Clinical faculty developed a pedagogy focused on the teaching of lawyering skills and values, and less focused on the number of clients served. . . . These professors sought to prove their clinics had the academic rigor necessary to be accepted within the legal academy.”).

<sup>11</sup> Joy, *supra* note 9, at 695; *see also* Letter from William Patton, Professor of Law, Whittier Law School, to Standards Review Committee (Jan. 13, 1999) (in 1973, the ABA “recognized that at many schools externships were merely cheap means of providing a clinical student experience; usually, professors were not given course credit, students were often neglected by both the law faculty and the field supervisors, and the school failed to properly evaluate the student’s extern experience.”).

<sup>12</sup> Joy, *supra* note 9, at 702; *see also* Lawrence K. Hellman, *The Effects of Law Office Work on the Formation of Law Students’ Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1991) (studying the experience of students in a state bar sponsored external placement, and concluding that students learned little because of the absence of close supervision).

<sup>13</sup> Joy, *supra* note 9, at 696–701.

experience should be structured; supporting materials should be provided and discussed; and the students should be forced to reflect on their experiences and demonstrate their levels of comprehension and improvement.<sup>14</sup>

From this negative attention, the ABA tightened its requirements surrounding externships. The rules required that all field placement programs include seven programmatic elements, the first being a “clear statement of its goals and methods, and a demonstrated relationship between those goals and methods and the program in operation.”<sup>15</sup> This, of course, did not generate a teaching and learning theory to sustain externships, but it did create some significant momentum toward it.<sup>16</sup>

## 2. *The Fragmented Present*

This section outlines basic principles of clinical law teaching, and describes the ways in which those principles have been applied, criticized, or ignored in the externship context.

Over the past several decades, clinical law teachers have developed a vigorous theory of in-house clinical teaching. Andragogy, adult learning theory, is the central tenet of that theory, starting with the proposition that adult learners expect a mutuality of control and respect between teacher and student.<sup>17</sup> Adult learners are assumed to

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<sup>14</sup> Joy, *supra* note 9, at 700–01 (quoting Report on Placement Clinics and Related Matters from Marilyn V. Yarbrough, Chair, ABA Skills Training Committee, to Council of the Section on Legal Education and Admissions to the Bar (Dec. 14, 1985)).

<sup>15</sup> ABA STANDARDS AND RULES OF PROCEDURE FOR THE APPROVAL OF LAW SCHOOLS 2014–2015 § 305(e)(1) (2014), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_and\\_rules\\_of\\_procedure\\_for\\_approval\\_of\\_law\\_schools\\_bookmarked.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_and_rules_of_procedure_for_approval_of_law_schools_bookmarked.authcheckdam.pdf) [hereinafter CURRENT ABA STANDARDS]. Programs are also required to include periodic on-site visits by the faculty member, as well as:

- (2) adequate instructional resources, including faculty teaching in and supervising the program who devote the requisite time and attention to satisfy program goals and are sufficiently available to students;
- (3) a clearly articulated method of evaluating each student’s academic performance involving both a faculty member and the site supervisor;
- (4) a method for selecting, training, evaluating, and communicating with site supervisors.

<sup>16</sup> Recent changes to the ABA Standards create even more pressure. The Standards focus even more on the requirement of rigor and assessment throughout the academic program. For the first time, ABA Standard 301(b), imposes on law schools an explicit obligation to “establish and publish learning outcomes designed to achieve these objectives.” CURRENT ABA STANDARDS, *supra* note 15, at § 301(b). These learning outcomes must include both cognitive goals (“knowledge and understanding of substantive and procedural law”) and skills objectives (legal analysis, legal research, written and oral advocacy, and “other professional skills needed for competent and ethical participation as a member of the legal profession.”). CURRENT ABA STANDARDS, *supra* note 15, at § 302.

<sup>17</sup> Frank Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV.

be motivated by their already established social roles, and so a learning environment that allows immediate and relevant application is most effective.<sup>18</sup> Thus, the basic prerequisites of learning in the in-house clinic are the direct representation of a live client by a student, along with mutually inquisitive and non-directive supervisory relationship between teacher and student.<sup>19</sup> Students are then called upon to combine this role assumption with careful reflection,<sup>20</sup> and to use that reflection to support the transference of their skills and knowledge from the classroom to the live experience.<sup>21</sup> Through classroom discussion, particularly case rounds, students learn to reflect on their practice and develop critical self-awareness of their own decision-making and its ethical, professional, and social justice implications.<sup>22</sup>

While teachers and scholars have persistently assumed the applicability of this pedagogy to externships,<sup>23</sup> they also express a deep discomfort with the role that externships should play.<sup>24</sup> Indeed, at times

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321, 330 (1982) [hereinafter “Bloch”]; M. Knowles, *The Modern Practice of Adult Education* (1970) (Adult education requires “a spirit of mutuality between teachers and students as joint inquirers.”)

<sup>18</sup> Bloch, *supra*, note 17 at 332.

<sup>19</sup> Bloch, *supra*, note 17 at 338 (“The sharing of responsibility for clinic cases creates the proper atmosphere for an optimum andragogical learning experience.”); Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 110, 113 (1993–1994) (identifying clinical supervision as “a touchstone for clinicians” and poignantly exploring, through a case example, how the daily choices in supervision “shapes the intellectual project of clinical education.”).

<sup>20</sup> Deborah Maranville et al., *Re-Vision Quest: A Law School Guide to Designing Experiential Courses Involving Real Lawyering*, 56 N.Y.L. SCH. L. REV. 517, 525 (2011/2012) (“Simply stated, we believe [student role assumption combined with reflection] is the reflective, context-based education that best realizes the aims of the Carnegie Report and *Best Practices* and most responds to the public service needs of the times.”); Minna Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L.REV. 185 (1989) (identifying role modeling as an important precursor to role assumption).

<sup>21</sup> Susan Bryant & Elliott S. Milstein, *Rounds: A “Signature Pedagogy” for Clinical Education?*, 14 CLIN. L. REV. 195, 247 (2007).

<sup>22</sup> See, e.g., Shalleck, *supra* note 19; Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 612 (1984) (asserting that clinical legal education provides “ways of thinking within and about the role of lawyers.”); Robert Dinerstein, *A Meditation on the Theoretics of Practice*, 43 HASTINGS L.J. 971 (1992); Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301 (1986); Bryant & Milstein, *supra* note 21.

<sup>23</sup> See, e.g., Harriet Katz, *Personal Journals in Law School Externship Programs: Improving Pedagogy*, 1 T.M. COOLEY J. PRAC. & CLINICAL L. 7 (1997) (“The educational approach of externships is consistent with the pedagogical theory of clinical education which centers on contextual legal experience together with reflection and critique with the help of a mentor.”).

<sup>24</sup> Peter Jaszi, Ann Shalleck, Marlana Valdez & Susan Carle, *Experience as Text: The History of the Externship Pedagogy at the Washington College of Law, American University*, 5 CLIN. L. REV. 403 (1999) (“As they were commonly structured at that time, externships seemed to amount to clinics without clients, without supervision and without intellectual framework.”); Nancy M. Mauer & Liz Ryan Cole, *Design, Teach and Manage:*



externships have been characterized as the “orphan children” of clinical pedagogy.<sup>25</sup> This is motivated not by antipathy toward externships, but by the awkward separation of case supervision from the classroom teaching.<sup>26</sup> In response, externship teachers have developed several competing approaches. Some argue that, in the context of external placement, the role of faculty should be de-emphasized:

The natural ecology of the workplace may be the best setting for novices to learn the skills of lawyering. . . [t]he theory postulates that a novice learns best by doing appropriate, complex tasks in a work setting where the nature and importance of the work elicit explicit and implicit guidance, feedback, and evaluation. Each element is important: the work has to be situated in a real-world setting; it has to be appropriate to the novice’s skill level; it has to matter and be valued in the same way as other office work; and it has to be performed within a web of professional relationships which provide support, guidance and feedback to the novice.<sup>27</sup>

Others suggest a combination of andragogical and humanistic teaching theories.<sup>28</sup> Some would apply the in-house clinical pedagogy but

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*Ensuring Educational Integrity in Field Placement Courses*, 19 CLIN. L. REV. 115, 143 (2012) (“We believe for every field placement course, whether high credit or low, the focus must be on education — on advancing educational benefits for students, not merely offering opportunities for practice.”)

<sup>25</sup> Janet Motely, *Self-Directed Learning and the Out-of-House Placement*, 19 N.M. L. REV. 211, 211 (1989) (“The out of house placement has long been ignored, serving as the orphan child of legal education.”); see also Steven T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education*, 69 NEB. L. REV. 537, 540 (1990) (“Practice supervised clinical programs are not only at the fringes of the law school curriculum, they are at the fringes of clinical legal education.”); Peter Hoffman, *Message from the Chair*, AALS sec. on Clinical Legal Educ. Newsl., Mar. 1987 at 3 (“If clinical education has been a second class citizen in the law school world, externships have been second class citizens among clinicians.”)

<sup>26</sup> See, e.g., Mauer & Cole, *supra* note 24, at 119 (“In this article we argue that the current trend—for law schools to charge for and award academic credit for legal work with which the schools are very little involved, and for experience they do not know enough about to evaluate—can and should be reversed.”).

<sup>27</sup> Daniel J. Givelber, Brook K. Baker, John McDevitt & Robin Miliano, *Learning Though Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1, 9 (1995); see also Brook K. Baker, *Learning to Fish, Fishing to Learn: Guided Participation in the Interpersonal Ecology of Practice*, 6 CLIN. L. REV. 1, 2 (arguing that law schools should place “less emphasis on top down teaching and idealized forms of supervision and much more emphasis on theories of expertise and the circumstances of its replication.”); see also Erica Eisner, *The Externship Class Requirement: An Idea Whose Time Has Passed*, 10 CLIN. L. REV. 659 (2004) (“A further problem is that the class does not lend itself easily to clinical methodology of active learning. As clinicians, we believe that students learn best by doing. For this reason, some clinicians view the class an inimical to clinical practice, an attempt to mirror the teacher-directed, passive methodology of traditional, non-clinical legal education.”).

<sup>28</sup> Linda Morton, Janet Weinstein & Mark Weinstein, *Not Quite Grown Up: The Difficulty of Applying an Adult Education Model to Legal Externs*, 5 CLIN. L. REV. 469, 47 (1999) (“Despite its attractive humanistic underpinnings, the application of andragogical

limit the teaching mission for externships.<sup>29</sup>

Even in the midst of this fragmentation, there is some emerging consensus surrounding a few core principles. First, the design of an externship course must place the live experience at the center, whether that is as “text” for the course or as the site of learning.<sup>30</sup> Second, externship students should be approached as adult learners, though the in-house clinical methodology should not be imported wholesale.<sup>31</sup> Third, the skills of self-awareness and reflection should be central to the student’s learning.<sup>32</sup> Fourth, externship courses should build students legal skills, particularly given the realities of the current job market.<sup>33</sup> And finally, the development of externship courses should begin with clear learning goals; those goals should drive the student’s work at the placement and the structure of the classroom component; and there should be meaningful formative and summative assessment.<sup>34</sup>

### B. Classroom Challenges

Part of the reason for a fragmented theory of learning in externships is that their design – relying on an in-class component separated from the onsite supervision - creates serious structural barriers to student learning. This section presents an examination of the practical problems associated with the classroom component of the externship course, beginning with a discussion of student perception of the seminar; moving to the issues of student numbers, credits, and locations;

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theory to our externship program’s goals and methods at California Western has proven frustrating . . . We attempt to approach the process of becoming a lawyer in a holistic manner, particularly focusing on the self-reflection and self-directedness as essential components of the students’ experiences.”).

<sup>29</sup> Jaszi, et al., *supra* note 24, at 410-411 (At Washington College of Law, faculty concluded that “externship placements cannot substitute for clinical experiences where providing pedagogically sound training in the practice and theory of client representation is concerned . . . We realized, however, that some of the secondary and tertiary foci of reflection in the clinic could begin to provide a coherent educational program for externships.”).

<sup>30</sup> LEARNING FROM PRACTICE, *supra* note 7, at 9 (“The readings, exercises, journal questions, and other materials suggest methods to maximize experiential learning at your placement through the cycle of planning, doing, reflecting and integrating.”); Jaszi, et al., *supra* note 24, at 420; Mauer & Ryan Cole, *supra* note 24, at 123 (“the focus must be on education—on advancing educational benefits for students, not merely offering opportunities for practice.”).

<sup>31</sup> Mauer & Ryan Cole, *supra* note 24, at 11; Morton, et al., *supra* note 28 at 484; Jaszi et al., *supra* note 24, at 410-411.

<sup>32</sup> Casey, *supra* note 7.

<sup>33</sup> Cynthia Baker & Robert Lancaster, *Under Pressure: Rethinking Externships in a Bleak Economy*, 17 CLIN. L. REV. 71 (2010) (“law schools have started to recognize the need to play a bigger role in preparing ‘practice ready’ lawyers.”).

<sup>34</sup> Kelly S. Terry, *Embedding Assessment Principles in Externships*, 20 CLIN. L. REV. 467 (2015).

and finally raising the difficult questions surrounding confidentiality.

### 1. *Student Perception*

Students' feelings about the seminar are decidedly mixed: they are appreciative of the real-life experience overall and generally view the seminar as a necessary, but not especially desirable, component of that opportunity.<sup>35</sup> Part of this is attributable to the fact that they are tired. Students in externships are working incredibly hard at their sites, often working many more hours than the credits reflect. They are motivated to work extra hours by their passion and their feeling of responsibility toward their clients or judges. They are also, not incidentally, trying to position themselves for employment, which depends a great deal more on their ability to impress a practicing attorney or judge than pleasing a professor. Often, the time spent in the seminar is standing in the way of their finishing a brief, or preparing for trial, or doing that last set of edits on an advice memo. Or sleeping.

### 2. *Numbers, Placements, and Locations*

The very nature of externship placements creates a teaching challenge. Students are working in a variety of organizations doing any one of a thousand tasks. This, of course, is the reason that externships are so administratively successful; they leverage small amounts of resources from hundreds of organizations. To be meaningful, the associated seminar must provide a learning structure that is complementary to each of those experiences. It is not impossible to do this, but it is important to acknowledge the barriers presented by seminar enrollment numbers and the physical disconnection between the seminar and the placement.

Externship seminars are often larger than in-house clinic seminars.<sup>36</sup> The practical effect of this is that students can be placed into subject matter seminars at high levels of generality. For example, students may be grouped together in the "civil" seminar with all of the other students in any non-criminal, non-judicial placement.<sup>37</sup> Or all the students in trial, appellate, and administrative judicial placements would be assigned to the "judicial" seminar. A larger externship pro-

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<sup>35</sup> This description is based entirely on my own observations through one-on-one sessions with students, site visits, and teaching the seminar. The experiences at other law schools may be different.

<sup>36</sup> See Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLIN. L. REV. 347, 351 (1999) ("In making the transition to the extern clinic, I was first faced with the problem of numbers. Instead of the rather small discussion group of 8 to 10 students, I was dealing with over 60 students each semester.").

<sup>37</sup> *Id.* at 357, 368-71.

gram might have the luxury of further segmenting the seminar by subject matter.<sup>38</sup> For example, students in “transactional” civil placements could be segmented from students in more litigation-oriented civil settings. Even here, however, a “transactional” seminar could still include a student working on franchise issues at Starbucks, students working on NCAA compliance at the University of Washington, and students working on financial regulation at Russell Investments. While this diversity of experience is an exciting demonstration of the power of the externship concept, it creates a genuine course design challenge.

Additionally, the seminar is physically and psychically disconnected from the externship placement. In order to attend the periodic seminar sessions, students are generally required to physically leave their site and return to campus in order to sit in a classroom.<sup>39</sup> Because students are so focused on the exciting work at their sites and experiencing such dramatic professional growth, it can feel jarring and strange to suddenly be sitting still in a classroom far away from their worksite and from their new colleagues. This is especially true when the conversation in the classroom is at a high level of generality and inhibited by obligations of confidentiality. This is not insurmountable and, indeed, creates some exciting opportunities for learning and reflection, but it is important to acknowledge that students will feel a level of disconnect between the classroom and the worksite.

### 3. Confidentiality

One major distinction between externships and in-house clinics is that the student and faculty cannot share client information. In their practice settings, students are bound by the Rules of Professional Conduct applicable to their supervisors, including maintaining client confidences.<sup>40</sup> The scope of the confidentiality obligation under Rule 1.6 creates a serious risk of unethical conduct by in-class reflection on their workplace experiences.<sup>41</sup> Indeed, many on-site supervisors spe-

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<sup>38</sup> For example, the University of Denver’s externship program is divided into 14 separate substantive seminars. Even there, however, there are several larger groupings. For example, all judicial externs are placed together in a single seminar as are criminal defense and criminal prosecution students. See *Legal Externship Program: Specific Externship Programs*, UNIVERSITY OF DENVER STURM COLLEGE OF LAW, <http://www.law.du.edu/index.php/legal-externship-program/specific-externship-programs> (last visited March 1, 2015).

<sup>39</sup> See *Syllabi*, THE CATHOLIC UNIVERSITY OF AMERICA, <http://lexternweb.law.edu/materials/syllabi/index.cfm> (last visited Feb. 27, 2015) (collecting externship course syllabi, each of which schedules class at the law school building).

<sup>40</sup> See MODEL RULES OF PROF’L CONDUCT R. 1.6, 5.3 (2013).

<sup>41</sup> The Model Rules of Professional Conduct, as well as the Washington Rules of Professional Conduct, no longer limit the confidentiality obligation to client communications,

cifically caution students not to disclose anything about their work in the seminar.<sup>42</sup> Students, called upon to reflect on their experiences, are placed in an impossible position: either they comply with the faculty member's request or they comply with the supervisor's instruction. Students can hardly be blamed for prioritizing their obligation to the site.

Students also often instinctively assume an additional duty to maintain the business confidences of their site. Any employee assumes a duty of loyalty to her employer and therefore an obligation not to disclose trade secrets and confidential business information.<sup>43</sup> While this obligation does not generally extend to routine business decisions and culture, students are understandably reluctant to reveal the business workings and workplace dynamics of their site to a group of other students. Imagine a student in the seminar describing that, at her placement with a local city attorney's office, lawyers recycle the same briefs for every land use case. Students in the seminar then have a spirited discussion about how to achieve work-life balance without sacrificing quality. Word of this seminar discussion then travels back to the City Attorney, who hears that the extern described the office's work as "low quality." It is easy to understand why the student might want to avoid this possibility.

The confidentiality limitation for students in judicial placements is perhaps even more discouraging. Like the non-judicial placements, students in chambers are bound by the ethical rules to maintain the secrecy of their judge's deliberative process.<sup>44</sup> Especially at the appellate level, this obligation often extends even to discussion of the ab-

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but extend it to "information relating to the representation of a client." MODEL RULES OF PROF'L CONDUCT R. 1.6; WASH. RULES OF PROF'L CONDUCT R. 1.6; *see also Seventh Elect Church in Israel v. Rogers*, 688 P.2d 506, 510 (1984) (acknowledging that the bounds of the duty of confidentiality in Washington extend beyond the attorney-client privilege).

<sup>42</sup> In a recent ethics presentation to our supervisors, our presenter, a prominent trial court judge, took pains to reinforce that supervisors should admonish their students not to talk about their cases at all in the seminar.

<sup>43</sup> Though the duty to maintain the confidentiality of business information under the Uniform Trade Secrets Act generally extends only to trade secrets, in Washington State there is authority for the proposition that an employee's common law duty of loyalty extends further. *See Boeing Co. v. Sierracin Corp.*, 738 P.2d 665, 674-75 (1987) (holding that a breach of confidence claim can be lodged to protect valuable commercial information, regardless of whether it rises to the level of a trade secret). Externs are, of course, not employees; however, the principle-agent concepts that form the basis for the duty of loyalty could be equally applicable to an extern's duty toward her field placement.

<sup>44</sup> *See* MODEL CODE OF JUDICIAL CONDUCT R. 2.9(A) ("A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter."); MODEL CODE OF JUDICIAL CONDUCT R. 2.9(D) ("A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by . . . others subject to the judge's direction and control.").

stract legal issues that arise in their cases. Even that limited information could reveal which justice or judge is assigned to write a particular decision and, thereby, reveal the probable outcome of the case or the judge's deliberations.<sup>45</sup> Taking this conservative approach limits the in-class conversation to abstractions and hypotheticals, hardly better than the students receive in the traditional doctrinal courses.

It is tempting to conclude, after all of this critique, that we should simply abandon the in class component of the field placement. Even if it were possible to do this consistent with the ABA standards,<sup>46</sup> I argue below that, by developing a teaching and learning theory unique to externships, it is possible to devise an externship course that begins to meet our teaching obligations.

## II. TEACHING AND LEARNING THEORY RELEVANT TO THE EXTERNSHIP COURSE

Before launching into a discussion of some of the alternative ideas for the structure of the seminar, it is important to identify the foundational teaching theory employed here. Bloom's Taxonomy of Educational Objectives, particularly in the psychomotor domain, provides the basic teaching and assessment framework, which when combined with adult learning theories provides a solid theoretical basis upon which to build the externship seminar.

### A. Bloom's Taxonomy

#### 1. Background

Bloom's Taxonomy of Educational Objectives is perhaps the most well-settled approach to teaching, learning, and assessment.<sup>47</sup> In

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<sup>45</sup> This assertion is based on many conversations with judges at all levels of court. For example, the Washington State Supreme Court takes the explicit position that externs may not discuss any legal issues arising in pending or, in some cases, decided cases. As a result, students are not permitted to use the law school reference librarians or discuss their research projects in one-on-one sessions with externship faculty.

<sup>46</sup> The 2014-2015 Standards have loosened the seminar/tutorial requirement. The rules now require "Where a student may earn four or more credit hours in a field placement program, the opportunity for student reflection must be provided contemporaneously." ABA STANDARDS, at Rule 305(e)(7).

<sup>47</sup> See generally BENJAMIN S. BLOOM ET AL., TAXONOMY OF EDUCATIONAL OBJECTIVES, THE CLASSIFICATION OF EDUCATIONAL GOALS, HANDBOOK I: COGNITIVE DOMAIN (David McKay Company 1956) [hereinafter BLOOM'S TAXONOMY, HANDBOOK I]; DAVID R. KRATHWOHL, BENJAMIN S. BLOOM & BERTRAM B. MASIA, TAXONOMY OF EDUCATIONAL OBJECTIVES, THE CLASSIFICATION OF EDUCATIONAL GOALS, HANDBOOK II: AFFECTIVE DOMAIN (David McKay Company 1964) [hereinafter BLOOM'S TAXONOMY, HANDBOOK II]; ELIZABETH JANE SIMPSON, THE CLASSIFICATION OF EDUCATIONAL OBJECTIVES: PSYCHOMOTOR DOMAIN (1966) [hereinafter SIMPSON'S TAXONOMY]; see also LORIN W. ANDERSON & DAVID R. KRATHWOHL, A TAXONOMY FOR LEARNING, TEACH-

his original 1956 work, Bloom described the reason for developing a taxonomy in terms remarkably applicable to law school education:

Most readers will have heard of the biological taxonomy which permits classification into such categories as phylum, class, order, family, genus, species, variety. Biologists have found their taxonomy markedly helpful as a means of insuring accuracy of communication about their science and as a means of understanding the organization and interrelation of the various parts of the animal and plant world. You are reading about an attempt to build a taxonomy of educational objectives. . . . It is especially intended to allow [teachers, administrators and researchers] to discuss these problems with greater precision. For example, some teachers believe their students should “really understand,” others desire their students to “internalize knowledge,” still others want their students to “grasp the core or essence” or “comprehend.” Do they all mean the same thing? Specifically, what does a student do who “really understands” which he does not do when he does not understand? Through reference to the taxonomy as a set of standard classifications, teachers should be able to define such nebulous terms as those given above. This should facilitate the exchange of information about their curricular developments and evaluation devices.<sup>48</sup>

The goal of the taxonomy was not to measure student aptitude or to rank students against one another, rather “the major phenomena with which we are concerned are the changes produced in individuals as a result of educational experiences.”<sup>49</sup> The taxonomy was, for that reason, designed to set out those behaviors that represent the desired educational outcome, and it was explicitly not an attempt to catalogue or evaluate teaching methods.<sup>50</sup>

Unlike a simple classification or a hierarchy system, the taxon-

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ING, AND ASSESSING: A REVISION OF BLOOM’S TAXONOMY OF EDUCATIONAL OBJECTIVES (2000) [hereinafter AMENDED TAXONOMY] (proposing a slightly different taxonomy of the cognitive domain of learning in order to incorporate changes in the area of developmental psychology and “to refocus educators’ attention on the values of the original Handbook, not only as a historical document but also as one that in many respects was ‘ahead of its time.’”). Though there are important distinctions in the evolution of the taxonomy, a full evaluation of those changes is beyond the scope of this article.

<sup>48</sup> BLOOM’S TAXONOMY, HANDBOOK I, *supra* note 47, at 1.

<sup>49</sup> *Id.* at 12; AMENDED TAXONOMY, *supra* note 47, at 3 (“In education, objectives indicate what we want students to learn; they are ‘explicit formulations of the ways in which students are expected to be changed by the educative process.’”) (quoting BLOOM’S TAXONOMY, HANDBOOK I).

<sup>50</sup> BLOOM’S TAXONOMY, HANDBOOK I, *supra* note 47, at 11 (“it should be noted that we are not attempting to classify the instructional methods used by teachers, the way in which teachers relate themselves to students, or the different kinds of instructional material they use. . . . What we are classifying is the intended behavior of students – the ways in which individuals are to act, think, or feel as the result of participating in some unit of instruction.”); *see also* AMENDED TAXONOMY, *supra* note 47, at 11 (The taxonomy is “more likely to function as a heuristic than a guide.”).

omy was intended to express the behavioral phenomena and their relationships to one another. The taxonomy structure is “based on the idea that a particular simple behavior may become integrated with other equally simple behaviors to form a more complex behavior.”<sup>51</sup> Thus, each class in the taxonomy builds on—adds to—the one before, and the behavior of each includes the behavior of the preceding class.<sup>52</sup> The taxonomy, however, was not intended to be a rigid prescription or to anticipate all possible applications. Indeed, the authors gave explicit permission to be creative: “[t]he reader may wish to develop such further classifications as are necessary for his work, using the taxonomy as a basis.”<sup>53</sup>

## 2. Taxonomy in the Cognitive and Affective Domains

The taxonomy is divided into three major domains of learning: cognitive, affective, and psychomotor. The cognitive domain “includes those objectives which deal with the recall and recognition of knowledge and the development of intellectual abilities and skills.”<sup>54</sup> It was the first of the three domains to be developed and the one most commonly referred to as “Bloom’s Taxonomy.”<sup>55</sup> The taxonomy in this area is quite familiar in legal education. It moves from simple knowing, to comprehension, to application, analysis, synthesis, and evaluation.<sup>56</sup> Because this taxonomy mirrors the historic law school experience so closely, much has been written about it in the context of legal education.<sup>57</sup>

The second learning domain for which Bloom developed a taxonomy, affective learning, “includes objectives which describe changes in interest, attitudes, and values, and the development of appreciations

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<sup>51</sup> BLOOM’S TAXONOMY, HANDBOOK I, *supra* note 47, at 18.

<sup>52</sup> *Id.* (“Thus our classification may be said to be in the form where behaviors of type A form one class, behaviors of type AB form another class, while behaviors of type ABC form still another class.”)

<sup>53</sup> *Id.* at 31.

<sup>54</sup> *Id.* at 7.

<sup>55</sup> *Id.* (Bloom chose to take this domain first, not because he considered it the most important but because it was most central to his role as an examiner and “[i]t is the domain in which most of the work in curriculum development has taken place and where the clearest definitions of objectives are to be found . . .”); see AMENDED TAXONOMY, *supra* note 47 (the AMENDED TAXONOMY focuses only the cognitive domain).

<sup>56</sup> BLOOM’S TAXONOMY, HANDBOOK I, *supra* note 47, at 7.

<sup>57</sup> See, e.g., Michael T. Gibson, *A Critique of Best Practices in Legal Education: Five Things All Law Professors Should Know*, 42 U. BALT. L. REV. 1, 13, 30 (2012) (urging law professors to make transparent use of the taxonomy to structure doctrinal teaching and resist the urge to move directly to the higher stages); Paul D. Callister, *Time to Blossom: An Inquiry into Bloom’s Taxonomy as a Hierarchy and Means for Teaching Legal Research Skills*, 102 LAW LIBR. J. 191 (2010) (using Bloom’s Taxonomy as a means to organize legal research and writing curriculum).



and adequate adjustment.”<sup>58</sup> The authors developed a taxonomy which sought to “describe a process by which a given phenomenon or value passed from a level of bare awareness to a position of some power to guide or control the behavior of a person.”<sup>59</sup> The taxonomy itself moves from simple receiving and responding to a phenomenon, to valuing it, to organizing a set of values, and ultimately to the creation of a complete values complex.<sup>60</sup> The authors describe this process as “internalization.”<sup>61</sup> This learning objective is also somewhat familiar to legal educators, having been called by both the Carnegie Report as “professional formation” and Best Practices in Legal Education as “professionalism.”<sup>62</sup>

### 3. *Taxonomy in the Legal Skills Domain*

Though Bloom recognized the third, psychomotor domain, he had little interest in pursuing it. “Although we recognize the existence of this domain, we find so little done about it in secondary schools or colleges that we do not believe the development of a classification of these objectives would be very useful at present.”<sup>63</sup> Happily, Elizabeth Simpson, a researcher at the University of Illinois, did not share Bloom’s skeptical view of skills education. Dr. Simpson sought “to develop a classification for educational objectives, psychomotor do-

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<sup>58</sup> BLOOM’S TAXONOMY, HANDBOOK I, *supra* note 47, at 7; BLOOM’S TAXONOMY, HANDBOOK II, *supra* note 47, at 7 (“Affective objectives vary from simple attention to selected phenomena to complex but internally consistent qualities of character and conscience.”). The development of this taxonomy lagged behind that of the cognitive domain because there was much less attention given to it in the existing methods of teaching. BLOOM’S TAXONOMY, HANDBOOK II, *supra* note 47, at 15 (“It is not entirely fair to imply that evaluation of the attainment of affective objectives is completely absent from the regular activities of school and teachers. Undoubtedly almost every teacher is on the alert for evidence of desirable interests, attitudes and character development. However, most of his is the noting of usual characteristics or dramatic developments when they are almost forced on the teacher’s attention.”).

<sup>59</sup> BLOOM’S TAXONOMY, HANDBOOK II, *supra* note 47, at 27.

<sup>60</sup> *Id.* at 95.

<sup>61</sup> *Id.* at 29. The authors were, even then, aware of the dangers and limitations of attempting to induce or assess changes in values, interests or character. Those challenges exist today. Because this article focuses on the use of the psychomotor domain, I will not explore these dynamics further except to note the importance of this discussion in future exploration of this issue.

<sup>62</sup> WILLIAM SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW, at 14 (Foundation for the Advancement of Teaching 2007); ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION (Clinical Legal Education Association 2007) (“This principle calls on law schools to give students an understanding of the values, behaviors, attitudes, and ethical requirements of a lawyer and to infuse a commitment to them. In other words, it highlights the importance of teaching professionalism.”)

<sup>63</sup> BLOOM’S TAXONOMY, HANDBOOK I, *supra* note 47, at 7–8.

main, preferably in taxonomic form.”<sup>64</sup> Recognizing that “educational objectives in the psychomotor domain are usually stated in terms of abilities and skills,” Simpson defined the objectives that fall in this domain as those that “emphasize some muscular or motor skill, some manipulation of material and objects, or some act which requires a neuromuscular coordination.”<sup>65</sup> While this taxonomy, by its own terms, applied to things like agricultural work and the so-called “industrial arts,” it was also intended to apply to music, art, dentistry, aviation, and the like.<sup>66</sup>

Simpson’s taxonomy was intended to chart the path from seeing a physical skill performed, to being ready to perform the skill, to identifying the steps necessary for performance, to performing the skill with guidance, to performing it habitually, to adapting to changing circumstances, and finally to being able to create new physical skills using the ones already learned. For simplicity, the following depicts Simpson’s taxonomy in the psychomotor domain.

TABLE 1: SIMPSON’S TAXONOMY IN THE PSYCHOMOTOR DOMAIN

Classification	Description
Perception	Understands sensory cues that guide actions
Set	Demonstrates a readiness to take action to perform the task or objective
Guided Response	Knows the steps required to complete the task or objective and can perform them when prompted
Mechanism	Performs task or objective in a somewhat proficient and habitual manner
Complex Overt Response	Performs task or objective in a confident, proficient and habitual manner requiring a minimum of energy
Adaption	Performs task or objective as above, but can also modify actions to account for new or problematic situations
Organization	Creates new tasks or objectives incorporating learned ones

<sup>64</sup> SIMPSON’S TAXONOMY, *supra* note 47, at Abstract. Like Bloom’s Taxonomy, Dr. Simpson’s learning progress seems to have withstood the test of time, having been cited more recently in KEVIN COX, *STUDENT ASSESSMENT IN HIGHER EDUCATION* (Routledge 1998). It has also been amended at least once. ANITA J. HARROW, *A TAXONOMY OF THE PSYCHOMOTOR DOMAIN: A GUIDE FOR DEVELOPING BEHAVIORAL OBJECTIVES* (David McKay Company 1972).

<sup>65</sup> SIMPSON’S TAXONOMY, *supra* note 47, at 9.

<sup>66</sup> SIMPSON’S TAXONOMY, *supra* note 47, at 2. More complex psychomotor skills, like conducting a meeting or making a speech, were discussed in Dr. Simpson’s work, where she suggested that they could well fall in an as-yet-undeveloped “action-pattern” domain. *Id.* at 8. Unfortunately, that domain was never developed and later iterations for the taxonomy in the psychomotor domain move further from the “action-pattern” formulation toward the pure movement involved in athletics or dance. *See, e.g.*, HARROW, *supra* note 64.

This taxonomy is not perfectly applicable to the process of legal skills acquisition. Its primary focus is on the purely physical activity, like throwing a ball or riding a bike. However, the taxonomies were not intended to be rigid rules or unchanging prescriptions.<sup>67</sup> Rather, the authors intended these to serve as the basis for the creation of new learning taxonomies in a variety of disciplines.<sup>68</sup> Thus, the matrix below is an adaptation of Simpson's psychomotor taxonomy into the legal skills context.

TABLE 2: LEGAL SKILLS TAXONOMY

Stage	Definition
Identification	Student is able to define the skill.
Understanding	Student is able to describe the associated procedural rules and the steps necessary for performance of the skill.
Simulation	Student can perform the skill in a simulated environment that allows for trial, error and repetition.
Limited Live	Student is able to perform the skill in a real situation with close supervision and assistance.
Second-Chair	Student can perform the skill in a real environment with loose supervision but limited context.
First-Chair	Student can perform the skill confidently and in a habitual manner with little supervision.
Expert	Student can perform skill independently with a high degree of success and minimum exertion of energy and can adapt to changing external circumstances.
Creativity	Student can perform the skill with a high degree of success, evaluate the skill and create new and better ways to perform it.

To demonstrate how this taxonomy works in practice, take cross-examination as an example. The student begins by recognizing what cross-examination is: the process of questioning a witness called by an adverse party. Then, she demonstrates an understanding of the rules of evidence related to cross-examination and the steps necessary to question an adverse witness. Once she understands the concept and associated rules, she will demonstrate an ability to describe the process of cross-examination, without yet doing it. Next, she will be called to demonstrate a cross-examination under the close supervision of her teacher and with the ability to engage in trial and error, as in a simulation. To progress further, the student would demonstrate the ability to actually perform the skill in a real but limited circumstance, with close supervision, as in cross-examining one witness in a trial.

<sup>67</sup> BLOOM'S TAXONOMY, HANDBOOK I, *supra* note 47, at 31.

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

She might next demonstrate the ability to “second chair” in a hearing or trial situation; she would be called upon to do some, but not all, of the cross-examination and would be supported by her co-counsel. After that, the student would progress toward an independent and habitual ability to perform, as one would in the “first chair” at trial, integrating the cross-examination of witnesses with the overall dynamics of the trial. Then, the student would demonstrate an ability not only to perform cross-examination successfully, but she would be able to adapt to change. For example, this student would be able to respond easily to an unexpected piece of damaging evidence revealed during her cross-examination. Finally, the student could move to the final stage in which she will demonstrate the ability to devise a better way to conduct cross-examination.<sup>69</sup>

The purpose of this taxonomy is to provide a structure to measure, not students’ performance in relationship to one another, but students’ progress against an external benchmark. In Bloom’s words, it is intended to provide a way to identify and then measure the “changes produced in individuals as a result of educational experiences.”<sup>70</sup> Because Bloom’s and Simpson’s taxonomies were built with child-learners in mind, adapting this framework to law students must incorporate additional concepts of adult learning and transference.

### B. Adult Learning and Transference

In addition to the necessity for goal setting and assessment, the design of the externship course should take into account basic principles of adult learning. This section sets out some of the major tenets of adult learning theory and the theory of transference.

Students in law school are adult learners. According to the Law School Admissions Council, in 2014 most prospective law students were between the age of 20 and 30, with some emphasis on the lower age range.<sup>71</sup> Adults see themselves as self-directing personalities; they

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<sup>69</sup> It is unlikely that the student would progress through all of these classifications in the course of her law school education, but it is worth thinking carefully, and ambitiously, about where the breaking point should be.

<sup>70</sup> BLOOM’S TAXONOMY, HANDBOOK I, *supra* note 47, at 12. Separating these domains into individual taxonomies, however, is not meant to suggest that separate modules or curricular structures are required to achieve progress in each domain. A single class, task, or discussion can stimulate student progress in more than one domain; indeed, experiential learning is the perfect example of a tool which consistently stimulates learning in all three domains simultaneously. Likewise, the insertion of a simulation or practice discussion in a doctrinal course is another method of achieving synergy among the three domains.

<sup>71</sup> Kimberly Dustman & Phil Handwerk, *Analysis of Law School Applicants by Age Group: ABA Applicants 2005-2009* (Law School Admissions Council October 2010) available at <http://www.lsac.org/docs/default-source/data-%28lsac-resources%29-docs/analysis-applicants-by-age-group.pdf> (last visited March 1, 2015).

“expect to make their own decisions, face the consequences of their decisions, and manage their own lives.”<sup>72</sup> Thus, there should be a “spirit of mutuality between teachers and students as joint inquirers” in the educational environment.<sup>73</sup> A corollary to this principle is the basic assumption that, for adults, active experience is a greater source of learning than passive receipt of information.<sup>74</sup> Thus, the role of experience should be paramount; the student should engage as much as possible in the application of their learning to a relevant live situation.<sup>75</sup> Finally, adults will seek to apply their learning immediately and in a manner appropriate to their social role and experience. For that reason, the learning structure should be presented in the context of problems the learner is likely to face.<sup>76</sup>

In addition to a student-driven learning environment, the goal for externship program—indeed any experiential course—should enhance the student’s capacity for transference: the ability to move a problem solving structure from one context to another.<sup>77</sup> At the novice level, a student’s problem solving structures are coded by superficial characteristics. For that reason, novice learners tend to extrapolate from experience to experience by reference to the surface details. So, for example, when faced with a research problem regarding a bicycle accident, the student might search her memory for other bicycle problems. By contrast, an advanced learner is able to encode a problem by not only its surface features, but also its underlying structure.<sup>78</sup> For this reason, an advanced student is more easily able to apply problem-solving techniques from one experience to another.

To move from novice to advanced, students must learn to map the information in a way that is recognizable in a variety of contexts. Thus, they must learn to recognize both the surface characteristics of the issue (problems about bikes) and the structural form of the issue (problems about negligence doctrine). Techniques for teaching this higher level of transference draw primarily from the ability to manage

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<sup>72</sup> Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321, 328–29 (1982).

<sup>73</sup> *Id.* at 338 (quoting M. KNOWLES, *THE MODERN PRACTICE OF ADULT EDUCATION* (1970)).

<sup>74</sup> *Id.* at 330 (“[E]ducators should not view their students as ‘receiving sets for the teacher’s transmissions of wisdom.’”).

<sup>75</sup> *Id.* at 331–32 (“[T]he curriculum must be timed to coordinate the teaching of subjects or skills with the developmental tasks facing the students at that time.”).

<sup>76</sup> *Id.* at 334.

<sup>77</sup> See Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 60 (2010) (cataloguing definitions of transfer); Laurel Currie Oates, *I Know That I Taught Them To Do That*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 1, 1 (2001) (defining transfer as “the use of knowledge or a skill acquired in one situation to perform a different task.”).

<sup>78</sup> Kowalski, *supra* note 77, at 61; Oates, *supra* note 77, at 5.

the classroom meta-conversation.<sup>79</sup> In class, students are constantly transferring surface information; they are exchanging narratives describing issues or problems. By managing the meta-conversation, the teacher surfaces the problem solving patterns and structures common to these narratives and holds them up to students for evaluate.

The externship course, therefore, should recognize that our students are adults, and the classroom structure should be based on a mutual exchange among students and between students and faculty, and the curriculum should minimize the passive receipt of information. The exchange of stories and experiences is critical to the seminar component and should be used to identify and crystalize problem-solving structures so as to assist the process of transference. The next section offers some concrete examples and ideas for implementing these principles in the seminar.

### III. ENHANCEMENTS TO THE SEMINAR: SKILLS ASSESSMENT AND GOAL SETTING

The new skills assessment process at Seattle University School of Law has, as its centerpiece, the Legal Skills Taxonomy described in Section II. Some facets of that program are described below, including a skills assessment and goal setting process based on the taxonomy; “pop up workshops” driven by the results of that assessment; and mid-semester and final skills assessment again using the taxonomy.

#### A. *Initial Assessment*

In making the skills assessment process central to the course, we sought to honor students’ legitimate expectation to be self-directed learners, responsible for making their own decisions and dealing with the consequences. We also recognized that self-directed learning is not a hallmark of most doctrinal courses, thus students may be totally unfamiliar with this mode of learning. Externship courses, in which students have one foot in and one foot out of the classroom, are perfectly suited to help them rediscover their own agency. We also recognized that, at least initially, structure would be critical to students’ ability to design their own learning.

The first step in building this structure was to create an easy-to-understand scale based on the Legal Skills Taxonomy. This resulted in the “Proficiency Scale” shown below, which each student is required to use to assess their skills.

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<sup>79</sup> Kowalski, *supra* note 77, at 87.

TABLE 3: PROFICIENCY SCALE

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>Able to describe the skill but not to perform it (Observer)</b>	<b>Able to perform the skill in a simulated environment (In Class)</b>	<b>Able to perform skill in a live environment but only with assistance. (Beginner)</b>	<b>Able to perform skill with minimal assistance. (First-Year Attorney)</b>	<b>Able to perform skill independently (First Chair Attorney)</b>	<b>Able to perform skill independently and to adapt to new situations. (Expert Attorney)</b>

This scale, by itself, turned out to be not quite sufficient. In the first iteration of this survey, students routinely over-estimated their proficiencies. This reflects the perfectly understandable desire to make a good initial impression on their supervisors and reflects the optimism bias that we are all plagued with. To counter this, we added an additional set of descriptions. Now, the proficiency scale itself is followed by something like the following:

TABLE 4: PROFICIENCY SCALE AS APPLIED TO THE STUDENT-SUPERVISOR RELATIONSHIP

*Here is what you are saying to your supervisor when you rate yourself at each of these levels:*

<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>
<i>I have not yet done this, but I know what it is.</i>	<i>I have done this in a classroom, but not yet live.</i>	<i>I can do this live on a limited basis with help from an attorney.</i>	<i>I can do this as well as a first year attorney.</i>	<i>I can do this as well as a first chair attorney.</i>	<i>I can do this as well as my supervisor</i>

Though arguably redundant, this additional step accomplishes two things. It puts the student on explicit notice that they should not promise a level of work that they are not capable of delivering. Second, it alerts supervisors to the more colloquial meaning of the proficiency scale.<sup>80</sup>

Creating a meaningful baseline assessment tool is also meant to provide students with a comprehensive, but not overwhelming, list of

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<sup>80</sup> To really get at this problem, though, it will be important to build the one-on-one, “did you really mean to say that?” conversation into the process. This can be accomplished in one of several ways. First, supervisors could be trained to have this initial conversation. Or, faculty could have an early semester meeting with each student to go over their goals and to test the student’s actual skills against their assessment. Or, the seminar could include an in-class exercise asking students to reality check one another.

core skills.<sup>81</sup> Based on The MacCrate Report, and incorporating some additional skills in the areas of business transactions and public policy advocacy, we created the following broad categories of skills for students to assess:

- Problem solving
- Legal Analysis
- Legal & Factual Research
- Written & Oral Communication
- Client Counseling
- Negotiation
- Trial Advocacy
- Business Transactions
- Public Policy Advocacy
- Ethical Decision-Making

In each area, students are provided with individual skills, which they rate according to the proficiency scale. For example, in the Problem Solving area, students are asked to rate their proficiency in “identifying and diagnosing the client’s problem,” “generating alternative solutions,” and “developing a plan of action.”<sup>82</sup>

The final challenge is the format of this survey, and in this regard we are pressing against some negative history. Historically, students in most externship courses have been asked to engage in a “self-assessment” at the outset of the semester. This was sometimes a rote process that the students tended to see as more of a bureaucratic hoop than a useful tool. Thus, creating a more meaningful baseline assessment of student skills required persuading students that it was more than mere “box checking.” As a first step, I put the skills survey online so that it was a more interactive process and, to be blunt, so that it looked different. Students complete the online survey and immediately receive an email telling them their average proficiency in each of the skills areas.<sup>83</sup>

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<sup>81</sup> The legal academy itself has had a tough time agreeing on the core skills necessary to law practice, and the solution has often been to include everything. We end up with endless lists of skills, some overlapping, some skills self-evidently included to satisfy certain constituencies, and still others arguably within the cognitive, rather than the skills, domain of learning. Because at Seattle University we began with a goal of keeping the form short, we did not have the option of using the kitchen sink approach, so we relied primarily on The MacCrate Report to create a list of skills. See generally ABA SECTION OF LEGAL EDUCATION & 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, (1992).

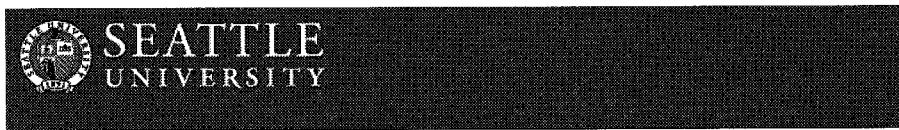
<sup>82</sup> The Skills Definitions for each of these can be found at <http://www.law.seattleu.edu/Documents/externships/Skill%20Definitions.pdf>.

<sup>83</sup> A sample of the online assessment can be found at *Introduction to Your Initial Skills*



The online version has the added advantage of concealing the length of the skills list. Whereas a paper version of this tool looks like an imposing undertaking, the online version goes through about fifteen screens with the students clicking a few times in each screen. A typical screen will contain a reiteration of the proficiency scale and three or four specific skills. For example, the Problem Solving screen appears as shown below.

FIGURE 1: SEATTLE UNIVERSITY SCHOOL OF LAW INITIAL SKILLS ASSESSMENT, PROBLEM SOLVING SKILLS



PLEASE RATE YOUR PROFICIENCY ON THE FOLLOWING **PROBLEM SOLVING SKILLS**.



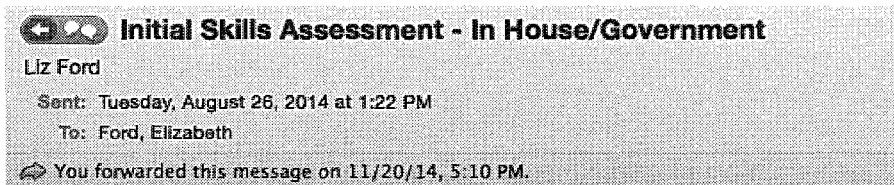
#### SKILLS PROFICIENCY SCALE

1  Able to describe the skill but not to perform it.  (Observer)	2  Able to perform the skill in a simulated environment.  (In Class)	3  Able to perform skill in a live environment but only with assistance.  (Beginner)	4  Able to perform skill with minimal assistance.  (1st Year Associate)	5  Able to perform skill independently.  (First Chair Attorney)	6  Able to perform skill independently and to adapt to new situations.  (Experienced Attorney)
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*Assessment*, SEATTLE UNIVERSITY, [https://seattleu.qualtrics.com/SE/?SID=SV\\_4MzX4UTMWE8xUah](https://seattleu.qualtrics.com/SE/?SID=SV_4MzX4UTMWE8xUah) (last visited 9/1/15). You should feel free to take the survey. Once you have completed the survey, you will receive an email with your average reported proficiencies. I will also receive an email with the same information. The software will also compile for me, in an excel spreadsheet, all of the data collected.

Once the students have completed the survey, they will receive two sets of results immediately. First, they will receive a document simply reiterating their selections. Next, they will get an email giving them average proficiencies in each skill area, looking like this:

FIGURE 2: INITIAL SKILLS ASSESSMENT SUMMARY OF PROFICIENCIES



**Congratulations!** You have completed your Initial Skills Assessment.

Below are your average proficiencies in each of the skills areas. A copy has been sent to me as well.

**Make sure to save this email and the a pdf copy of your individual survey results. You will use it in class!**

**Summary Results**

Skills Area	Average Score
Problem Solving	5.23
Legal Analysis	5
Legal Research	4.33333333333333
Factual Research	4.33333333333333
Written Communication	5.5
Oral Communication	5
Client Counseling	4.66666666666667
Negotiation	2.75
Business Transactions	2.5
Litigation and Trial	3.5
Public Policy Advocacy	4.25
Ethical Decision-Making	4
Workplace Skills	5.16666666666667

So far, we have seen a uniformly positive response to this scale. Students and supervisors have expressed real appreciation for its simplicity. On the teaching side, we have been able to use this scale to create a common language of skill progression: “I moved from simulating cross-examination in class (Level 2) to actually doing it with my

supervisor's help (Level 3)."<sup>84</sup> Perhaps most importantly, it gives students a tool to assess their skills with reference to meaningful, external benchmarks, rather than the relentless ranking and sorting that happens in most other courses.

Once students have created a baseline assessment, the next step in their self-directed learning is for them to identify learning goals.

### B. Collaborative Goal Setting

Once we have a means of initial assessment, it must be connected to an overall curriculum that integrates the work in the placement, the reflection process, and the content in the classroom. Learning goals are the obvious tool to make this connection. This section lays out some of the cognitive science in the area of goal setting, followed by several ideas for creating learning goals in the unique context of externships.

#### 1. The Science of Goal Setting

While organizational psychologists formerly viewed goal setting as the voluntary creation of dissonance between the current and future states, thereby generating energy to resolve that disconnect, current scholars view the mechanism in a more biological light.<sup>85</sup> Goal setting is the process, either voluntary or involuntary, that allows organisms to survive and thrive, whether the goal is to seek water, avoid danger, build tools, or engage in cross-examination of a witness.<sup>86</sup> Goals, in this formulation, are defined as "the aim of an action," not the task itself but its purpose in meeting a need.<sup>87</sup> They are the "why" behind task.<sup>88</sup>

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<sup>84</sup> On the not-so-positive side, there is some concern that transactional lawyers will not have a way to use—or will feel alienated by—the "first chair" designation. While sympathetic to the underrepresentation of transactional practice in law school curriculum, I am unable so far to come up with a designation that would be as widely understood by lawyers.

<sup>85</sup> EDWIN A. LOCKE & GARY P. LATHAM, *NEW DEVELOPMENTS IN GOAL SETTING AND TASK PERFORMANCE* 4 (2013) ("Control theorists view discrepancy reduction to be the motivating force for action, whereas goal-setting theory states that the goal itself is the primary source of a person's motivation.").

<sup>86</sup> *Id.* ("People volitionally create discrepancies between their current performance and a specific desired goal. . . . because they need to attain goals in order to live; hence the biological focus we noted above.").

<sup>87</sup> *Id.* at 4–5.

<sup>88</sup> It is worth pointing out the similarities between this goal setting formulation and the structure of basic problem solving theories like dispute system design and principled negotiation. See WILLIAM URY, JEANNE M. BRETT & STEPHEN B. GOLDBERG, *GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT THE COST OF CONFLICT* (Jossey Bass 1989); CATHY CONSTANTINO & CHRISTINA SICKLES MERCHANT, *DESIGNING CONFLICT MANAGEMENT SYSTEMS: A GUIDE TO CREATING PRODUCTIVE AND HEALTHY ORGANIZA-*

Goal setting is effective in enhancing work performance and priming the mind to learn. At this point, it is well settled that there is a linear relationship between the degree of goal difficulty and performance enhancement.<sup>89</sup> Where an individual sets her goals at an aggressive, but still achievable, level, her performance will improve in direct relationship to the level of challenge.<sup>90</sup> Likewise, the specificity of the goal will correlate to higher levels of performance; “do your best” goals do not enhance performance.<sup>91</sup> Additionally, goals operate as a subconscious primer; the goal “remains in the periphery of consciousness as a reference point for guiding and giving meaning to subsequent mental and physical actions.”<sup>92</sup> As an extra bonus, goals are positively correlated to increased passion and enhanced propensity toward altruism at work.<sup>93</sup>

The question, then, is how does this work? There are several behavioral and cognitive changes that are associated with setting difficult, concrete learning goals. First, concrete goals enhance attention. “[A] specific, high goal orients an individual’s attention and effort toward goal-relevant activities and away from those that are deemed by that individual to be irrelevant.”<sup>94</sup> A specific, difficult goal also encourages transference of learning, in that it “activates the knowledge and skills a person possesses that are necessary to attain the goal.”<sup>95</sup> Goals also increase persistence, the willingness to stay with a task

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TIONS (Jossey Bass 1996); ROGER FISHER, WILLIAM URY & BRUCE PATTON, *GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN*, UPDATED AND REVISED (Penguin Books 2011). Like those approaches, here the focus is on the “why” and not on the “what.” Just as negotiators and system designers must distinguish between positions from interests, effective goals must go beyond the particular tasks sought to be performed to the “why”. For example, a “why” goal (“By the end of the semester, I will be able to cross-examine an expert witness with minimal supervision”) is much more useful than a “what” goal (“By the end of the semester, I will have cross-examined three witnesses”).

<sup>89</sup> LOCKE & LATHAM, *supra* note 85, at 5 (“Locke (1967) found that the performance of participants with the highest goals was over 250% higher than those with the easiest goals. He (Locke, 1968) derived an empirical function based on the results of 12 separate studies.”).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* (“The problem with a do-best goal is its ambiguity as to what constitutes performance effectiveness.”)

<sup>92</sup> Edwin Locke & Gary Latham, *New Directions in Goal-Setting Theory*, 15 DIRECTIONS IN PSYCHOL. SCI., no. 5, 2006, at 267.

<sup>93</sup> See generally Sara Thorgren & Joakim Wincent, *Passion and Challenging Goals: Drawbacks of Rushing Into Goal-Setting Processes*, 43 J. APPLIED SOC. PSYCHOL., no. 43, 2013 (finding that passion can accelerate the goal setting process, resulting in less challenging goals); Eran Vigoda-Gadot & Larisa Angert, *Goal Setting Theory, Job Feedback, and OCB: Lessons From A Longitudinal Study*, 29 BASIC AND APPLIED SOC. PSYCHOL. 119 (2007) (finding goal setting correlated with organizational citizenship behavior (OCB)).

<sup>94</sup> LOCKE & LATHAM, *supra* note 85, at 6.

<sup>95</sup> *Id.*

longer.<sup>96</sup>

Next, the question is how to apply this powerful cognitive tool to the externship seminar.

## 2. *Applying Goal Setting to the Classroom*

Knowing that goal setting is useful does not necessarily mean that it is important to devote seminar time to it. This section will describe one way in which an in-class discussion of goal setting can be useful to the students and guide the content and structure of the seminar.

If we consider the act of goal setting as a legal skill in and of itself, then seminar time should be used to build the students' capacity for that skill to the point that they are able to engage in it in a live environment. Nowhere in the law school curriculum are students explicitly introduced to goal setting as a skill. Thus, students should first understand what goal setting is and then demonstrate the ability to engage in it in a simulated environment before expecting them to do it live in their placements.<sup>97</sup>

The first piece, then, is to make sure students understand the skill of goal setting and the purpose that it serves. By the time they engage in goal setting, the students have already been introduced to the Legal Skills Taxonomy and its origins. Therefore, the next stage is to build on that knowledge by adding information regarding the cognitive effects of goal setting, largely as described in Section III.B.1, above. This serves the purpose of motivating students toward setting effective goals by emphasizing the connection between goals and improved performance: "do this right and it will help you do well at your site."

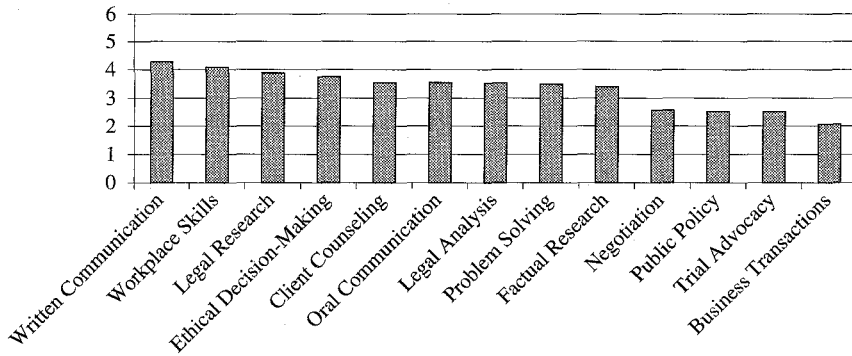
The next stage is an in-class simulation of goal setting. This is where the data collected through the skills assessment survey proves useful. As a way to build the bridge between students' reported skill level and their goals, I start by showing them the class-wide averages in each skill area. It usually looks something like this:

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<sup>96</sup> *Id.* There are several things, the absence of which will undermine the performance enhancements provided by goals. They include (1) feedback, (2) commitment to the goal, and (3) confidence. Thus, there must be adequate supervisory input and direction; the student must be actually committed to achieving the goal; and the student must believe that it is possible for her to achieve the goal. See LOCKE & LATHAM, *supra* note 85, at 7.

<sup>97</sup> See *supra* Part IV.A.3.

FIGURE 3: AVERAGE SKILL AREA PROFICIENCIES



After, as a class, thinking through what each of these averages demonstrates and why it might have come out the way that it did, students are asked to use this data to practice goal setting. Specifically, I ask them to set one specific and challenging goal for the entire class. Essentially, I ask them to answer this question: what is one thing we should try to achieve as a whole? This exercise accomplishes two important things. First, it gives the students a chance to simulate in class the skill of goal setting. As they set their collective goals, we can stop and examine how they have done it and how their goal could be made more concrete, challenging and measurable. Second, once the class has set their goal, I have a strong foundation for a curriculum unique to their needs.

C. Pop-Up Workshops

Taking the goal that the students set in class, we develop a multi-session workshop to move the students toward that goal. All that is needed is to reserve three or four seminar sessions in the syllabus for the “Pop-Up Workshop.” It is easy to make some guesses about the areas students might choose, and develop some initial ideas before the semester begins, but it does require some comfort with uncertainty.

Last semester, for example, students noticed that they had rated themselves quite low in the negotiation skill area, and decided to set the following class-wide goal: “By the end of the semester, the class will be able to prepare for and engage in negotiation in a simulated environment.”

Given this goal, I knew that I needed to ensure that the students understood the basic negotiating concepts, were able to use them to prepare for a negotiation and could ultimately apply those skills in an in-class simulation. I persuaded a faculty member from the Business School to join me and together we designed a four-session workshop including didactic instruction, simulation, and reflection. Each session

used each of these formats and became progressively more complex as the workshop progressed. The final session was an extended class in which students were required to engage in a complex, four-party settlement negotiation, and then complete a reflection on the skills they relied upon and on the ethical and professional issues raised by the session.

#### *D. Mid-Semester Assessment*

The skills assessment process includes a mid-semester assessment that consists primarily of a one-on-one meeting between the student and the on-site supervisor, the goal of which is to discuss the student's progress toward her skills goals. We begin the preparation for this meeting with a classroom component designed to introduce students to the structure of a well-run professional meeting, focusing on the benefits of the careful preparation of an agenda.

Then, I have the students return to their skills assessment and goals in order to prepare for their meeting. Students are paired. I ask each student to describe her skills goals to her partner. The partner then reflects those goals back to the student and asks clarifying questions. Then, the partner asks the student to assess her own progress and the areas in which she could most benefit from feedback.<sup>98</sup> Then, together, the students create an agenda for the supervisory meeting. After this class, the students are instructed to conduct meetings with their supervisors.

So far, the feedback from the mid-semester supervisory meetings has been uniformly positive. Students do not seem to be just filling out the form and getting a supervisor's signature on it. They are actually engaging in productive and substantive discussions of their skills progress. This may be, in part, because at the mid-semester point I also visit with many of the sites and explicitly ask both student and supervisor about the student's progress toward their goals. Whether it is because of that impending visit or because of the enhanced classroom attention to the process, students are coming away with sophisticated feedback and plans for the remainder of the semester.

#### *E. Final Assessment*

The final evaluation includes two components: a student final assessment and a supervisor final assessment.<sup>99</sup> It is simple: the student

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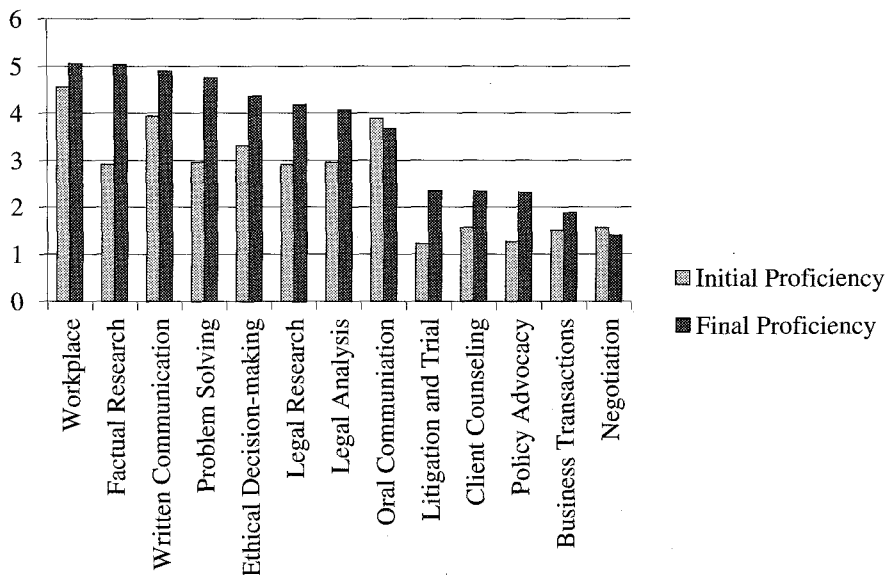
<sup>98</sup> At this point, student pairs almost always digress into problem solving together about particularly difficult issues or things they just can't seem to "get." I do not discourage these conversations. Students consistently report finding this portion incredibly valuable.

<sup>99</sup> As always, we will ask the supervisors also to discuss the student's performance in

and supervisor meet, and the supervisor provides an assessment of the student's progress in all of the skill areas. Then, the student returns to the online assessment and re-ranks him or herself. This is, again, an online process that generates immediate results comparing the student's initial reported proficiencies with the final reported proficiencies.

This will give the student three pieces of information. First, it will show the areas in which the student believes she has progressed. Second, it will test that perception against her supervisor's view. Finally, it is also an opportunity for the supervisor to let the student know areas in which she may have initially mis-assessed her skills. For the program, it will also provide useful, though still subjective, information about how our students view their own progression. It will also eventually allow us to demonstrate the overall skills benefit of engaging in an externship.

While I do not base the students' seminar grade on their reported skills progress, it does provide some compelling feedback. Below is a hypothetical before and after depiction based on a student's final assessment:



This provides me with a concrete basis on which to offer the student advice for the future, particularly because I will know the students well enough to have a sense of their career aims. For this student, for

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the form of a narrative. These are very useful and, frankly, gratifying for the students to receive because they are consistently positive.



example, I would praise her dramatic progress in factual research, problem solving and ethical decision-making. I would also likely suggest – if I knew that she was headed toward a litigation practice - that she consider a trial advocacy course, an ADR course and an in-house litigation clinic in order for her to develop some of the client counseling, negotiation and trial advocacy skills that she is missing. While this data is certainly plagued with subjectivity, it provides a very useful starting point for students to reflect about their skills, get some external feedback, and be strategic about how to approach their education and ultimately their practice.

#### CONCLUSION AND WHAT'S LEFT TO DO

My colleagues and I often (perhaps too often) joke about my obsession with the externship course. As a committed clinician and practitioner, it is impossible for me to stand at the periphery of a law student's first live-client experience and be satisfied with providing weekly drudgery that doesn't just fail to add to their experience but actually detracts from it. The ideas contained here are intended to take one step toward a more unified pedagogy of externship and to provide concrete tools to apply this theory to the classroom. So far, the tools have succeeded some, and failed some. But students have been uniformly active and willing to think deeply and critically about their own needs in the classroom and in their placements. For that, I am grateful.

And there is much, much more to do. For example, we must develop assessment tools in all three domains of learning, extending next to the values domain. In doing this, we must treat our students as adults and engage them in a rigorous course of building and expressing their values through tangible work in the community or at their site. We must consider the possibility of collaborative classrooms, working with off-site supervisors to develop and enhance the didactic portions of the course. We also need to take a serious look at the limits of client confidentiality. Are there sensible changes to the rules to allow a real learning conversation between a student and faculty supervisor that includes a description of work with clients without waiving attorney client privilege? Finally, and critically, we must look at the way in which student field placements figure into the overall curriculum, including accurate calculations of student contact hours for externship faculty and a sensible and clearly articulated limit on student-faculty ratios. On that basis we can create curricular support more appropriate to the vast potential of these programs.