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Externship Assessment Project: An Empirical Study of Supervisor Evaluations of Extern Work Performance

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EXTERNSHIP ASSESSMENT PROJECT: AN EMPIRICAL STUDY OF SUPERVISOR EVALUATIONS OF EXTERN WORK PERFORMANCE

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ABSTRACT

Field supervisors' evaluations of their student externs are packed with lively stories. They deliver a fly-on-the-wall perspective, giving us color about the work entrusted to our students, the behaviors our students exhibited, and the enjoyment the attorneys reaped. The authors decided the evaluations were so fertile that they should be systematically scrutinized to seek meaningful, reliable insights about the extern experience, especially regarding the variety, complexity, and responsibility levels of their work. We also saw a prime opportunity to assess an externship program and find ways to improve it. Thus, the Externship Assessment Project was born.

We deployed qualitative data analysis methodology to distill the supervisor narratives in a comprehensive, uniform, and disciplined manner. Our method entailed building a database of all elements of the supervisor evaluations (both numerical and narrative), and coding the data for types and quality of student work. We added data on each placement's setting and practice area. From a two-page evaluation form we were able to tag characteristics about student work with dozens of codes, enabling us to compare and contrast student experience across many dimensions. We overlaid student demographic data to understand variations along class year, GPA, gender, and race.

The evaluations revealed that educational opportunities varied among different field placement settings and practice areas. For example, and perhaps the most expected finding of the analysis, nonprofit and government settings provided the best platform for dynamic and high responsibility work, especially in criminal practice. In contrast, student work was most often featured for its high complexity and quality in government and law firm settings. Student GPA was

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not a predictor of the types of work performed by the externs or of supervisor ratings. Although judicial placements tended to attract the higher-grading students, the judge and mentor attorneys tended not to highlight the complexity or quality of the student work in their final evaluations. Our analysis seeks to describe extern performance and learning in clear-eyed fashion and offer guidance for externship program design and assessment of programmatic and institutional learning outcomes.

TABLE OF CONTENTS

INTRODUCTION 4
I. ASSESSING THE STUDENT FIELD EXPERIENCE 6
II. CONTOURS OF THE BROOKLYN LAW SCHOOL EXTERNSHIP PROGRAM 10
A. Overview 10
B. Supervising the Mentor Attorney's Engagement 11
C. The Mentor Attorney Final Evaluation Form 12
III. STUDY OBJECTIVES AND METHODOLOGY 14
A. Objectives 14
B. Methodology: Qualitative Data Analysis 15
C. Defining Categories and Coding the Data: Eliciting Indicators of Variety, Complexity, and Responsibility 17
1. Coding for legal research 18
2. Coding for legal writing: dispute resolution, transactional, judicial, other 19
3. Coding for fact-based work 20
4. Coding for observation opportunities 21
5. Coding for assignments that require direct interaction with others 22
6. Coding for work that equates to the attorney role 23
7. Coding for professional work traits 24
D. Perspective and Caution 24
IV. PROJECT FINDINGS 26
A. Demographics of BLS Student Externs 27
Table 1: Student Extern Demographics 27
Table 2: Student Externs by Class Year 28
Table 3: Student Externs by Grade Point Average .. 28
B. Variety of Field Placement Settings and Practice Areas 28
Table 4: Practice Settings of Field Placements 30
Table 5: Practice Areas of Field Placements 31

C. Overview of Student Field Experience and Performance 32
1. Numerical ratings: core lawyering and professionalism competencies 32
Table 6: Numerical Ratings for Core Lawyering and Professionalism Competencies 32
2. Narrative assessment: variety of student work .. 35
Table 7: Frequency of Selected Work Assignments 36
D. Intensity of the Student Fieldwork Experience 38
1. Dynamic work 39
Table 8: Incidence of Dynamic Work by Student and Placement Characteristics 41
2. High responsibility work 43
Table 9: Incidence of High-Responsibility Work by Student and Placement Characteristics 44
3. High quality work 45
Table 10: Incidence of High-Quality Work by Student and Placement Characteristics 47
4. High professionalism 48
Table 11: Incidence of High-Professionalism by Student and Placement Characteristics 50
V. Lessons for Program Design, Student Counseling, and Institutional Assessment 49
A. Program Assessment and Design 53
1. Training in lawyering skills 53
2. Developing professional identity and responsibility 54
B. Course Level Assessment 54
C. Student Advising 55
D. School Level Assessment of Published Student Learning Outcomes 55
E. Limitations of the Study and Questions for Further Study 56
Conclusion 57
Appendix A
Brooklyn Law School Mentor Attorney Final Evaluation of Student Extern 58
Appendix B
Externship Assessment Project Coding Factors .. 60

INTRODUCTION

> *[The student] drafted a motion to allow expert testimony on the phenomenon of false confessions in an arson case, researched evidentiary issues during a manslaughter trial, sought criminal records dating back twenty years in three different counties, and prepared a motion to controvert a search warrant in a drug case. He also observed arraignments, several trials, and attended numerous strategy sessions where he contributed alternative theories and approaches.* [Record 82; public defender office].
>
> –Field supervisor responding to end-of-semester evaluation question asking: "describe the assignments and tasks undertaken and completed by this student."

A law student enrolls in an externship course and works the required hours at a field placement to earn academic credit. At the end of the semester, the field supervisor provides a written evaluation of what the student did and how well the student performed.[1] An externship teacher reviews this final evaluation of the student, among other inputs, to award a grade to the student. The evaluation is then interred in a file, along with the final evaluations for all students enrolled that semester, rarely to be exhumed.[2]

The Externship Assessment Project (EAP) proposes that repositories of supervisor evaluations of student externs can provide rich insights into the distinctive practice experience offered by externships. The stories from these evaluations offer a reservoir for advising about field placement selections with fine-tuned information regarding likely learning outcomes. Importantly, the project allows us to move beyond anecdote-based impressions of host offices and student work to comprehensive empirical evidence. Such externship program data can also serve as a resource for compliance with ABA accreditation standards that now require law schools to identify and measure institutional learning outcomes.[3]

We designed the study to excavate supervisor evaluation data

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[1] The Brooklyn Law School supervisor evaluation form is two pages and comprises six open-ended questions and eight skill areas for which supervisors provide a numerical rating. It is reproduced in Appendix A and described, Part II.C, *infra*.

[2] The final evaluation may also serve broader educational and administrative purposes, including ensuring compliance with pedagogical criteria for the externship program. *See* ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOL, CHAPTER 3 PROGRAM OF LEGAL EDUCATION 2018-19 (2018), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2018-2019ABAStandardsforApprovalofLawSchools/2018-2019-aba-standards-chapter3.authcheckdam.pdf (hereinafter "ABA STANDARDS") (last visited August 28, 2018).

[3] ABA STANDARDS, *supra* note 2, at §§ 302, 315.

from the Brooklyn Law School (BLS) Externship Program for analysis using social science methodology to explore and interpret this qualitative or narrative "data." Although it is a far more involved process than can be performed on a regular basis, by launching this project, we hope such analyses can provide insights for externship programs to develop program assessment protocols and better define and serve educational goals.

At the outset, two principal premises guided our interrogation of the data. First, in the aggregate, supervisor evaluations of students can inform how law schools structure, manage, and assess externship programs.[4] Data analysis should be able to describe: What kinds of tasks are actually performed by students at their placements? How do work assignments and skill-building opportunities vary among different placement settings? What field placements provide students with the most challenging experiences? How accurate are common assumptions about the nature of the lawyering experience in different practice settings? What student characteristics are linked to high-value field experience?

Our second premise asserts that supervisor assessments of student performance are relevant to measuring attainment of institutional learning outcomes.[5] Data analysis should tell us: Of Brooklyn Law School's published learning outcomes, which are advanced through the externship program and addressed in supervisor evaluations? What do the attorneys and judges who supervise the students say about their development of the professional skills the law school has established as its desired learning outcomes? Do those professional skills align with what field supervisors value in terms of competent lawyering and good work habits? What aspects of supervisor evaluations (currently or in a future revision) help inform the continuous process of defining institutional learning outcomes and refreshing the curriculum?[6]

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[4] ABA Standard 304(d) regulates externship programs, and notably requires programs to develop "a method for selecting, training, evaluating and communicating with site supervisors." ABA STANDARDS, *supra* note 2, at § 304(d). This study is not designed to review workplace supervisors, student supervision, or substandard student performance. *See* Brook K. Baker, *Practice-Based Learning: Emphasizing Practice and Offering Critical Perspectives on the Dangers of "Co-Op"tation*, 56 N.Y.L. SCH. L. REV. 619, 643-46 (2012).

[5] ABA Standard 314 requires assessment of student learning, and Standard 315 requires dean and faculty evaluation of the program of legal education, learning outcomes, and assessment methods. ABA STANDARDS, *supra* note 2, at §§ 314, 315. Interpretation 315-1 provides examples of appropriate methods to measure student attainment of school learning outcomes, and specifically includes assessment of student performance by judges and attorneys. *Id.*

[6] A third hypothesis was latent in our methodology, namely, that the evaluation narratives reveal what supervisors choose to report and how they perceive student performance. Our data analysis has the potential to expose cognitive biases in supervision, and how

The data confirm some widely held beliefs. For example, public defender, prosecutor's offices, and public interest organizations are more likely to provide students with opportunity to serve in the attorney role. But the data also show that student work in government offices, corporate in-house counsel, and law firm settings is more likely recognized for its high complexity and/or high quality. The study reveals, not surprisingly, that 89.8% of the students undertook some level of legal research, and that 93.5% produced written work product of some nature, deploying the skills most developed by the first-year law school curriculum. The study also confirms that over 90% of student externs met or exceeded their supervisors' standards for professional behavior and work habits. From virtually every dissection of the data, it is clear that externships deliver rich and meaningful practice experience to law students.

The first three Parts of this article lay the foundation for understanding the Externship Assessment Project's findings. Part I reviews the literature assessing externship programs and student attainment of learning outcomes such as reflective practice or student professional development. To date, there has been little study of final supervisor evaluations to illuminate the on-the-ground view of practitioners and judges who volunteer to train our students. Part II describes the contours of the BLS Externship Program, and how its field supervisors evaluate student performance. Part III explains the objectives and methodologies of the Externship Assessment Project. The project relies on both quantitative and qualitative data analysis to dissect and probe numerical ratings and narrative content from supervisor evaluation forms. Part IV reports findings regarding indicators of a worthwhile externship, including work product described as of particularly complex or high quality, work in dynamic or fluid situations requiring exercise of judgment, students functioning at levels of responsibility expected of attorneys, and instances of exceptional professionalism. Part V draws lessons for application to program design, student counseling, and institutional assessment. The article concludes with suggestions for future data collection efforts and analysis.

PART I ASSESSING THE STUDENT FIELD EXPERIENCE

Almost every law school in the country offers externship or field

those play out in assigning, describing and appraising the work of law students. Do differences in age, race, gender, and background—of the supervisor and/or the student—influence evaluation content? To what extent do supervisor choices about what to report in an evaluation reflect the practice setting's mission or values? What can we learn from supervisor evaluations that is relevant to addressing implicit bias in law practice generally? The data is rich with interpretive potential that will be explored in a future effort.

placement courses,[7] where "a significant part of the learning relies on students either representing clients or performing other lawyering roles under the supervision of practicing lawyers or other qualified legal professionals[8] who are not members of the law school faculty, in practices *outside the law school* [emphasis added]."[9] By definition, the school's understanding of the inner workings of the training is derivative, compelling externship faculty to scrutinize both the characteristics of learning experiences in different settings and how the field supervisors engage and evaluate our students. This is especially true in broad-based externship programs that offer placements across a diversity of settings and practice areas.

The externship literature includes works that explore specific types of externships, by subject matter[10] and setting.[11] Empirical research has shown that lawyers value highly their field placement expe-

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[7] A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE B., A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010, 16 (Catherine L. Carpenter ed., 2012); Robert R. Kuehn, David Santacroce, et al., THE 2016-17 SURVEY OF APPLIED LEGAL EDUCATION 8 (2017) (hereafter *CSALE 2017)*. CSALE 2017 notes that the increasing demand for field placement courses is driven by the following reasons: "students believe field placement programs improve marketability (88%); students believe field placement programs improve skills (67%); increased interest in substantive areas of practice within field placements offered (64%); increased support and promotion by law school (63%); and other faculty promoting field placements/encouraging students to enroll (35%)." *Id.* at 14.

[8] These practitioners agree to provide opportunities for students to perform lawyering tasks, under their guidance and with direct feedback. ABA Standard 304(d) describes faculty and site supervisor respective obligations in this regard. ABA STANDARDS, *supra* note 2, at § 304(d). Brooklyn Law School requires the supervisor, student, and the externship director each sign a memorandum of understanding ("MOU") at the beginning of the semester that lays out the roles and expectations of each party. The MOU satisfies the ABA requirement of a "written understanding" with all site supervisors. *Id.* at § 304(d)(i).

[9] ASS'N OF AM. L. SCHOOLS, SECTION ON CLINICAL LEGAL EDUCATION, GLOSSARY FOR EXPERIENTIAL EDUCATION at 6 (2017), https://www.aals.org/wp-content/uploads/2017/05/AALS-policy-Vocabulary-list-FINAL.pdf (last visited August 28, 2018). ABA Standard 304(d) requires field placement courses to provide a substantial lawyering experience that is reasonably similar to the experience of a lawyer. ABA STANDARDS, *supra* note 2, at § 304(d).

[10] *See, e.g.*, Diane E. Hoffmann, *A Health Law Practice Workshop: Bridging Externship Placements and the Classroom*, 37 J.L. MED. & ETHICS 513, 516 (2009); Hans P. Sinha, *Prosecutorial Externship Programs: Past, Present and Future*, 74 MISS. L.J. 1297,1344 (2005).

[11] *See e.g.*, Gerard J. Clark, *Supervising Judicial Interns: A Primer*, 36 SUFFOLK U. L. REV. 681, 681-83 (2003). Several articles assess and provide frameworks for private sector placements. *See, e.g.,* Emma Lloyd Best, *Satisfying Experiential Education Requirements Through Expanding Externships in for-Profit Placements*, 21 CLIN. L. REV. 1, 10-12 (2014) (outlining law school's private placement externship program's high education value; addressing risks of inadequate supervision); Carl J. Circo, *An Educational Partnership Model for Establishing, Structuring, and Implementing A Successful Corporate Counsel Externship*, 17 CLIN. L. REV. 99, 102-03 (2010) (exploring value of corporate counsel placements to prepare for career in commercial and business law); Bernadette T. Feeley, *Guiding Law Students Through for-Profit Field Placements*, 19 CLIN. L. REV. 57, 60-62 (2012) (describing educational opportunities more likely offered by for-profit placements).

rience from their law school days[12] and that the experience may be a particularly good platform for learning ethics and forming one's professional identity.[13] That speaks well for externships generally. But we sought to differentiate the learning experience and opportunities among settings.

One national study explored lawyers' assessment of their law school field experience, by practice setting.[14] It showed marked differences in how private and public lawyers had engaged in externships and how they assessed the value of those experiences in preparing them for practice, as now viewed from their current vantage point.[15] Private lawyers had gravitated heavily toward and gave highest practice-value ratings to placements in judicial chambers.[16] Public lawyers had taken far more externships in absolute numbers; had concentrated more on non-profit organizations and governmental placements; and gave their highest ratings to the practice-oriented settings (non-profits, government, and law firms) with slightly lower ratings to judicial chambers.[17] The study did not examine the specific characteristics of the externship experience that the lawyers found valuable. Another attorney-focused study provided some insight on that score.[18] A study of Northeastern School of Law alumni showed that the

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[12] *See* Ronit Dinovitzer, Bryant Garth, Richard Sander, Joyce Sterling & Gita Z. Wilder, AM. B. FOUND. & NALP FOUND. FOR L. CAREER RES. AND EDUC., *After the JD: First Results from a National Study of Legal Careers*, 81, Table 11.1 (2004) (hereinafter *After the JD)* (showing that early-career lawyers consider the most helpful experiences for making the transition to practice to be: summer legal employment, school-year legal employment, internships, and clinics); *see also*, Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLIN. L. REV. 57, 88 (2009) (noting that the data do not allow one to differentiate among the characteristics or quality of the clinic and internship experiences) Studies have also shown employer valuation of externship learning. *See*, Alli Gerkman & Logan Cornett, *Foundations for Practice: Hiring the Whole Lawyer: Experience Matters* 25 & n.23 (2017)(surveying lawyers on their criteria for hiring new lawyers and finding the most helpful criteria to be the applicant's prior legal employment, practitioner or judge recommendations, legal externships, other experiential education, life experience between college and law school, participation in law school clinics, and judicial clerkships).

[13] Carole Silver, Amy Garver, and Lindsay Watkins, *Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement*, 17 J. LEGAL WRITING INST. 373, 393-96 (2011) (study did not differentiate among student practice experiences and specifically disclaimed any insights as to whether all practice experiences are equal).

[14] Margaret E. Reuter and Joanne Ingham, *The Practice Value of Experiential Legal Education: An Examination of Enrollment Patterns, Course Intensity, and Career Relevance*, 22 CLIN. L. REV. 181, 182 (2015); *see also* Bill Henderson, *Part III Alumni Surveys, Responses on the Law School Experience*, THE LEGAL WHITEBOARD (Nov. 4, 2015), http://lawprofessors.typepad.com/legalwhiteboard/2015/11/part-iii-alumni-surveys-responses-on-the-law-school-experience.html (last visited August 28, 2018).

[15] Reuter & Ingham, *supra* note 14, at 202.

[16] *Id.*

[17] *Id.*

[18] Henderson, *supra* note 14.

alumni gave their highest value ratings to public defender's offices, judicial chambers and prosecutor's offices.[19] The alumni described the most salient learning features for each of these settings: learning to work with difficult clients, opportunity for in-court practice experience, and quality mentoring.[20]

Prior scholarship has focused on using course-generated records and written work (*e.g.*, student-prepared goal-setting plans, time records, reflective writings, self-assessments, supervisor evaluations) to assess both individual student learning[21] and attainment of externship course goals.[22] Another article instructs that faculty should make a comprehensive examination of the collected material to determine what students as a group have or have not learned.[23] This article's assessment framework focuses on course-level assessment, specifically on how well students meet individual learning goals and how well on-campus faculty guide students in critical analysis of the field experience. Did the course achieve its stated goals?

Notably, externship scholarship has yet to explore empirically the externship experience from the supervisor point of view to allow us to develop a deep understanding of the learning environment as well as to assess programmatic goals. The objective of the Externship Assessment Project is to use those supervisor evaluations to enable objective comparison of and differentiation of student skill building potential from the field supervisor perspective. Understanding this on-the-ground perspective is especially valuable to faculty designing externship programs and counseling students, without reliance on assumptions and anecdotes about the kind of experience a placement will offer.[24]

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19 *Id.*

20 *Id.*

21 BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD at 219-20, 229-30, 232-36 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo Lopez, eds., 2015) (hereinafter BUILDING ON BEST PRACTICES); J.P. "Sandy" Ogilvy, *Guidelines for the Self Evaluation of Legal Education Clinics and Clinical Programs*, 15 T.M. COOLEY J. PRAC. & CLIN. L. 1, 160-67 (2013).

22 Ogilvy, *supra* note 21, at 135-60.

23 Kelly Terry, *Embedding Assessment Principles in Externships*, 20 CLIN. L. REV. 467, 473-74 (2014) (Terry lays out four-step process for course assessment: i) set course objectives, ii) select appropriate assessment tools [e.g., reflective writing, self-assessment], iii) analyze student-generated data for gaps, and iv) make adjustments as appropriate). Other research indicates how supervisor evaluations are used to monitor and evaluate the placements to assure educational quality. *CSALE 2017*, *supra* note 7, at 37 (directors reported using supervisor evaluations (93%), student evaluations of placement offices and supervisors (91%), email communication with supervisors (89%), telephone calls with site supervisors (74%), site visits (69%), and remote video communications (13%)). *See also* BUILDING ON BEST PRACTICES, *supra* note 21, at 230-31(best practices to assure sufficient commitment by site supervisors to give externs appropriate work and feedback).

24 Harriet N. Katz, *The Past and Future of Externship Scholarship*, 23 CLIN. L. REV.

PART II CONTOURS OF THE BROOKLYN LAW SCHOOL EXTERNSHIP PROGRAM

A. Overview

The BLS Externship Program is a ripe program to examine because of its scope and enrollment numbers.[25] Over a full academic year (fall, spring, and summer terms), more than 400 students, on average, enroll in the principal externship courses, yielding an equal number of final evaluations.[26] BLS students have actively pursued externships long before the ABA mandated six experiential course credits for graduation,[27] and most enroll in three or more experiential courses, often including both an in-house clinic and an externship or multiple externships. Since the start of the 2000's, annual externship enrollment in these three courses has climbed steadily, surging with the class entering 2014 when BLS introduced its requirement that all students take a course that provides a "live-client experience," meaning an externship or a clinic. Annual externship enrollment peaked at 488 in the 2015-2016 year that is the focus of our project.[28]

During the Fall and Spring terms, BLS externship students work in one-semester field placements for three credits, committing 168

397, 414 (2016) ("Faculty guidance can be critical . . . [to] the selection of placement"). *CSALE 2017* reports: "The most common means of evaluating field placements to ensure the quality of the student education experience were through supervisor evaluation of student (used by 93% of externship directors), student evaluations of the placement office and supervisor (91%), email communications with field supervisors (89%), telephone calls with field supervisor (74%), site visits (69%), and remote video connections with field supervisor (13%). *CSALE 2017, supra* note 7, at 37.

[25] Of the 203 schools that submitted reports in compliance with ABA Standard 509, with respect to "field placement positions filled," only 16 schools have programs with more than 300 students in a full academic year. ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, REQUIRED DISCLOSURES (2017 reports), http://www.abarequireddisclosures.org/ (data generated from Curriculum Offerings report)(last visited August 28, 2018).

[26] BLS has three large-enrollment courses (Civil Practice, Criminal Practice, and Judicial); a number of small-scale field placement courses tied to subject-based doctrine such as Real Estate and Health Law; and a few remote and semester-in-practice externships. Only the first three courses are part of this project. The Civil Practice course is BLS's largest externship course, with about 100 students enrolled each semester. Criminal Practice typically enrolls about 25 students per semester, and Judicial enrolls about 35 students per semester. Enrollment in the externship courses is uncapped, although dependent on faculty approval of the student's placement.

[27] ABA Standard 303(a)(3), effective for the law school class entering 2016, states: "A law school shall offer a curriculum that requires each student to satisfactorily complete at least . . . one or more experiential course(s) totaling at least six credit hours." ABA STANDARDS, *supra* note 2, at §303(a)(3).

[28] Enrollment by specific externship course for that year was: Civil Practice, 300; Criminal Practice, 80; and Judicial, 108. BLS total student enrollment as of September 2015 was 1179, including J.D. and LL.M students. All but the first year JD students are eligible to enroll in externship courses.

hours (roughly 13 hours per week for 13 weeks). For the Summer term, externs may choose between two and five fieldwork credits.[29] With limited exceptions, externship students are required to take a weekly graded companion seminar for one credit, from a varied and progressive menu of companion seminars, taught by both full-time and adjunct faculty, ensuring that an appropriate academic component is available to each student.[30]

The BLS Externship Program allows students to earn credit for externships in a wide variety of law office settings, including public interest organizations, government agencies, unions, law firms, corporations, and courts.[31] Most placements are with offices and supervising attorneys, with which the school has long relationships, including many alumni.[32] It is very common that a placement will host multiple law externs from BLS and any of the other ten neighboring law schools.[33]

B. Supervising the Mentor Attorney's Engagement

BLS organizes the placement site's responsibility for training and supervising students around five main functions: (i) orientation and approval of a learning plan, (ii) ongoing assignments, supervision, and feedback, (iii) review and approval of time records, (iv) mid-term check-in, and (v) final evaluation (*i.e.,* the data source for our study). Students prepare a learning plan with specific goals for the semester and present it for review and approval to their primary field supervisor, designated in BLS's program as the "mentor attorney."[34] The mentor attorney and student assure that the goals are realistic and achievable given the nature of the assignments and other opportunities anticipated for the student over the term. Depending on the size

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[29] The BLS program requires students to log 56 hours per fieldwork credit, totaling 168 hours during the Fall and Spring terms.

[30] Most seminar faculty members teach only one seminar per semester, typically tracking 12 to 15 students. Occasionally students exhaust their seminar options and are assigned to a non-credit faculty tutorial.

[31] Students are expected to secure their own placements, and typically do so by searching BLS's online externship postings. BLS's database features over 800 distinct placement sites.

[32] Students are also permitted to develop relationships with new prospective placements independently, which the school vets to assure the capacity and commitment of the office and attorneys to advance the student's training and education.

[33] Eleven law schools are located in New York City's five boroughs and neighboring suburbs: BLS, Cardozo, Columbia, CUNY, Fordham, Hofstra, NYLS, NYU, Pace, St. John's, and Touro. During the summer term students from law schools nationwide also work and extern in the most popular New York metro area sites.

[34] The BLS program refers to the field supervisor as the mentor attorney to help reinforce the intended relationship between the student and the site. We use both terms in this article.

of the office, the student might receive assignments and feedback exclusively from the mentor attorney, or from other attorneys as well. In the latter case, the mentor attorney provides the coordination and oversight.

Every week, students record and describe their time spent performing fieldwork, and mentor attorneys review and approve those time records. Students and supervisors are required to have a mid-semester status meeting to assess the student's experience and need for any adjustments. During the study year, at each semester's end, the externship program administrator emailed to all supervisors a two-page form—BLS Mentor Attorney Final Evaluation of Student Extern—to complete and return directly to the administrator.[35] The form specifically asks if the supervisor has discussed the evaluation with the student, but the supervisor may choose to send the form to the externship program confidentially.

When placing a student for the first time, and periodically thereafter, BLS's representatives visit new field placements or conduct phone interviews with mentor attorneys. Annual supervisor trainings, hosted in coordination with other New York-area law schools, are offered to all BLS mentor attorneys.[36] BLS regularly communicates by email and phone with field supervisors throughout the semester during which an extern is working on site, to check in and provide reminders of administrative deadlines. As warranted by supervisor and student reports, the BLS externship program will reach out to placement sites to follow-up on any issues raised, and supervisors are actively encouraged to contact the program with questions or concerns.

C. The Mentor Attorney Final Evaluation Form

During the period of the study, the BLS form that mentor attorneys used to provide a final evaluation of student externs asked for a combination of narrative and numeric assessment of the student.[37] Six questions sought opened-ended appraisals of the student experience.

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[35] The evaluation form is included in the Mentor Attorney Handbook, which field supervisors receive when they enter the BLS program. Field supervisors now complete and submit the BLS final evaluation form through an online externship data management system.

[36] Supervisor trainings are not mandatory, but offer free CLE credits, which are a significant draw. The 2017 and 2018 trainings each had 150 supervisors in attendance. Methods for effective feedback to student externs is a recurring topic at these trainings.

[37] A blank final evaluation form is included as Appendix A, and is referred to herein variously as the supervisor evaluation or final evaluation. BLS used this version of the form from the early 1990s through 2017. One goal of this project was to evaluate how the form should be updated and expanded, and how to train supervisors to use the form, especially in view of the ABA's heightened expectations for assuring the educational quality of the experience for the student. *See* ABA STANDARDS, *supra* note 2, at § 304(d).

Some of those questions sought an overall description of assignments given or constructive criticism generally. Other questions sought particular examples of high-quality or deficient performance. The form also listed eight skill areas to rate the student's performance on a scale of 1 to 5.

The six narrative response questions were:

- Please describe the assignments and tasks undertaken and completed by this student.
- Please comment generally on any positive qualities this student exhibited.
- Please describe any examples of particularly good work performed by this student.
- Were there any examples of unsatisfactory work or areas where improvement is necessary?
- What constructive criticism and advice would you offer to this student?
- Other comments that might be helpful in evaluating the student's performance.

Of the eight skill areas, five comprise core lawyering skills (*i.e.*, Research, Fact Analysis, Legal Analysis, Writing, Problem-Identification/Solving) and three focus on professionalism or work traits (*i.e.*, Professionalism, Responsibility, and Attitude). The form also provided the option for the attorney to add supplemental skill areas. The rating scale for the student performance in all skill areas was framed in terms of quality and need for attorney oversight:

1. Needs work or improvement
2. Good, needs a lot of guidance
3. Very good, with guidance
4. Excellent, with guidance
5. Excellent, with little need for guidance

The instructions for the evaluation form ask for the mentor attorneys' "thoughtful responses;" explain that the evaluation plays an "extremely important role in the graded awarded to the student;"[38] and urge the mentor attorney to "personally review [the] evaluation" with the extern.[39] Mentor attorneys do not receive training specific to completing the final evaluation of the student.

In the 2015-16 academic year—summer, fall, and spring—BLS

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[38] Seminar faculty assign High Pass, Pass, Low Pass, or No-credit grades for student fieldwork. In addition to the supervisor evaluation, they consider the student's oral and written descriptions of the field experience contained in time records, reflective writings, self-assessments, classroom conversation, and individual meetings. The High Pass grading scheme is used in in-house clinics and externship courses. It has no GPA impact. The externship companion seminar is a separate letter-graded course.

[39] *See* Appendix A, *infra*.

field supervisors completed 488 final evaluation forms. The mentor attorneys' responses average about 200 words, but variation is considerable. For example, in response to the first narrative question asking for a description of the student's assignments, one evaluation offered a comprehensive account of work performed for a legal services organization:

> *The student was assigned an array of tasks from this office, which he completed in an exemplary fashion. We are a document-driven practice in a busy atmosphere and he was a great help. The student compiled accurate and complete loan modification packets to submit to lenders on behalf of our clients; he drafted answers to Foreclosure Complaints for clients we were directly representing and in our Pro Se Clinic; he researched legal issues that came up in litigation. Additionally, the student assisted with walk-in and phone intake for the entire agency and in all our practice areas.* [Record 211; legal services organization].

While other mentor attorneys offered terse descriptions.

> *Legal research, drafting memos, shadowing experienced attorneys.* [Record 247; prosecutor's office].

This range of detail manifested in the responses for each narrative question. Mentor attorneys from every practice setting included those who were highly descriptive, and those who were less illuminating.

PART III STUDY OBJECTIVES AND METHODOLOGY

A. Objectives

Our underlying premise is that the closer the student's work is to live practice with genuine responsibility and consequences for the quality of her work, the richer her learning experience will be. That richness begets reliable and durable transfer of learning from student fieldwork to later professional practice.[40] Conversely, where the student's assignments present low challenge or entail limited exposure to the breadth of lawyering tasks, these programmatic goals are less likely to be achieved or will be achieved with less fullness. The objective of our study is to shed light on the variety, complexity, and responsibility levels of work that externs perform, and to be able to describe typicality or unusualness of such work.

Through these data and analysis, we also anticipated that we might may be able to identify similarities and differences among the various settings and practice areas of the placements. Our hope is that the understanding that flows from this set of data and analyses will

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[40] Reuter & Ingham, *supra* note 14, at 220, 237.

suggest ways to prime students before they start their placement, enhance the seminar structure, and help manage the school's relationship with the placement sites and mentor attorneys.[41] The analyses can serve as a useful methodology for the faculty at large to assess student achievement toward the institutional learning outcomes articulated and set by the faculty, as mandated by ABA Standard 315.[42]

B. Methodology: Qualitative Data Analysis

Our first task was to build the database, inputting the text and ratings of the 488 final evaluations verbatim. We replaced any use of the student's name with a suitable generic, *e.g.*, "student" or "her" and assigned an anonymous record number.[43] Then we layered in details about the students, including class year, gender, race, and grade point average at the beginning of the externship semester.[44] Next, we also folded in details about each placement,[45] including the practice setting,[46] practice area,[47] and the evaluator's gender.[48] We wanted to understand whether characteristics regarding the student, the place-

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[41] Identifying supervisor expectations' as to student skills at the outset of an externship, while not a primary motivation for the project, is an outgrowth of our analysis, and can assist in defining realistic learning goals at both the course and institutional levels. *See, e.g.*, Alexa Z. Chew & Katie Pryal, *Bridging the Gap Between Law School and Law Practice*, UNC FESTIVAL OF LEGAL LEARNING 1, 6 (Feb. 13, 2016) (surveying attorneys regarding skills expectations for recent graduates' professional work habits); Carolyn R. Young & Barbara A. Blanco, *What Students Don't Know Will Hurt Them: A Frank View from the Field on How to Better Prepare our Clinic and Externship Students*, 14 CLIN. L. REV. 105, 106-07, 129 (2007) (identifying entering skills needed to perform well in an externships).

[42] *See* ABA STANDARDS, *supra* note 2, at § 315.

[43] Since the project is an examination of information about students, the proposal was reviewed for compliance with human subject research standards and referred to the Brooklyn Law School Institutional Review Board. The project was determined to fall within the exemptions for pedagogical assessments, pursuant to 34 CFR 97.101(b), per advice dated June 6, 2016 on file with authors. The law has special provisions for education assessment research that do not require consent of the study subjects, but encourage anonymity and confidentiality regarding the identity of the subjects.

[44] Student-specific data was retrieved from school records, and not supplied directly by students through surveys or similar instruments.

[45] These details about the placement site and supervisors were retrieved from externship program records.

[46] The settings included Government-civil, Government-criminal, Government-regulatory/other, Judicial-State, Judicial-Federal, Judicial-Other, Law firm 1 to 2 lawyers, Law firm 3 to 10 lawyers, Law firms 11-49 lawyers, Law firm 50 or more attorneys, Corporate-in-house counsel, Non-profit-individual representation, Non-profit: public defender (criminal), Non-profit: policy, reform litigation, and Union.

[47] The practice areas included General litigation (includes Courts), Real estate, Intellectual property/Patent/Entertainment, Family/marital, Immigration, Criminal, Public interest, Corporate/Securities, and Other.

[48] The person who completes the evaluation may not have been the only supervisor of the student's work. We did not attempt to discern or record the gender of any other individuals who may have contributed to the evaluation. We had no reliable source for evaluators' race or ethnicity.

ment, or the supervising attorney might impact student opportunities or performance.

The BLS evaluation form includes both textual description and assessment of student work, as well as numeric performance ratings. We were faced with the problem of analyzing textual data (the open-ended narrative responses from the evaluation form) with uniformity to allow reasonably illuminating analysis. Social science offers a technique, Qualitative Data Analysis (QDA), to dissect and probe narrative data.[49]

QDA is an analytical system born in ethnographic studies. Through analysis of text-based sources, ethnographers extract observations of patterns and themes of everyday life and practice in a culture to form a "thick description" of that culture.[50] The method seeks to understand the subject culture in qualitative terms through text. To extract the meaning, the researchers create a set of codes, and define the parameters for applying the codes to the subject text.

Coding enables us to reduce qualitative information to a quantitative or numeric form. Once the evaluation data are in numeric form, we can prepare tallies, averages, statistical significance tests, and other forms of analysis. As described below, our analysis of supervisor evaluations sought to discern the scope and nature of student learning from the field supervisors' perspective, by interpreting their evaluation narratives and applying codes. We analyzed the incidence of codes to provide a granular picture of the nature of student performance and program effectiveness.

Our analyses of the evaluation data rely on three levels of extracted information from the mentor attorneys' final evaluation. At the most basic level, we took some data directly from the supervisors' evaluations (*i.e.*, numeric ratings of eight performance factors).[51] The next level of extraction came from the coding of the evaluation text that describes the type of work assignments and types of engagement with others, as well as variety, complexity, and responsibility levels.

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[49] Norman K. Denzin and Yvonna S. Lincoln, eds., THE SAGE HANDBOOK OF QUALITATIVE RESEARCH (5th ed. 2017); Deborah R. Hensler, RESEARCH METHODS FOR POLICY ANALYSIS: A PRIMER FOR LAWYERS (2001).

[50] The QDA method does not focus on ethnography characteristics that are patently countable (*e.g.*, number of children per family, square footage of residences, etc.). Rather the method seeks to understand the subject culture in qualitative terms through text (*e.g.*, power relationships). Thus, a uniform set of measures are developed and used to interpret and code the text (*e.g.*, how group decision-making is described, vocabulary used, role description, participants, titles). *See, e.g.*, Ann Sinsheimer, David J. Herring, *Lawyers at Work: A Study of the Reading, Writing, and Communication Practices of Legal Professionals*, 21 Legal Writing: J. Legal Writing Inst. 63, 69 (2016) (describing ethnographic methods used in study of legal research and writing practices of law firm junior associates).

[51] *See supra* Part II.C.

Some of the coding choices were quite direct. For instance, did the supervisor identify student assignments such as research? Some of the coding choices required more interpretation on our part. For instance, did the supervisor indicate student work of particularly high complexity or quality? These codes and their parameters are described below.

We applied one higher level of abstraction or interpretation of the data. We created codes that could be combined to tell a deeper story. For instance, since we hoped to understand how many students had challenging and intense experiences, we developed codes that would identify diverse yet comparable examples of intensity (*e.g.*, in fact-based work, research and analysis, live speaking role). To that end, we created a set of intensity measures, which are composites of multiple codes, so that we could examine student work at a higher level of sophistication. In our coding descriptions below and in our analyses, we explain these levels of extraction, interpretation, and abstraction.

C. *Defining Categories and Coding the Data: Eliciting Indicators of Variety, Complexity, and Responsibility*

Creating the coding framework was the heart and guts of the study design. We wanted a far more multilayered and nuanced understanding of student work than how many students did research or writing or had client contact, as described in generic and opaque terms. Because we wanted to understand complexity and responsibility levels of student work, we needed fine-grained coding. We needed codes that would help us understand intensity. Since we also wanted to differentiate among practice settings, we needed coding that could reveal comparable findings across practices as different from each other as criminal prosecution, foreclosure prevention, and music licensing. We were quite conscious that we would not be satisfied with mere tallies of types of student work, so we needed to create codes that we could combine to show a composite of student experiences that had similar characteristics of intensity, complexity, or difficulty.

We defined the categories, themes and topics to be measured and analyzed through an iterative and recursive process of examining and sorting text responses to the evaluation form's narrative questions.[52] From that process emerged ten categories of information about stu-

[52] This process involved the authors reading and re-reading scores of final evaluations to understand how supervisors approached the evaluation task and what kinds of information we might reliably be able to capture. We devised lists of codes; independently coded a sample set of evaluations; discussed and debated each instance where we applied codes differently; refined our code definitions; and repeated the cycle several times, assuring ourselves that we were i) seeking realistic information, and ii) had a common understanding of what evaluations warranted what codes (inter-rater reliability).

dent fieldwork, covering types of lawyering assignments, the manner and level of interaction with others outside of the law office, the level of student responsibility, and professional work manner:

- Legal research
- Writing-dispute resolution
- Writing-transactional
- Writing-judicial
- Writing-other types of documents
- Fact-based work
- Observation
- Direct interaction with others (other than assigning attorneys)
- Attorney role
- Professionalism

Within each category, we devised coding factors to measure the variety and quality of the students' field experience.[53] The considerable number of codes reflects two forces—the substantive information we seek as externship teachers (is the work substantial enough; how does it add to the other teaching/training at the school) and the varied nature of legal work and ways it might be described. We proceeded to code each extern evaluation.[54]

1. Coding For Legal Research

Legal research is the quintessential contribution that most early-career lawyers undertake in client matters. Thus, we assumed that most student externs would receive research assignments. We created five codes to extract information from the evaluations regarding the type, variety, and complexity of those assignments. If an evaluation noted legal research assignments, we coded for whether it was one of

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[53] The complete list of categories and coding factors is included as Appendix B. For the 10 core categories listed in the text, we devised 55 coding factors to measure the variety and quality of the student experience. *See supra* Part III.C. The codes for each category include whether the supervisor made no mention of the category at all in the evaluation. Hence, every evaluation form was coded for at least 10 factors. While the number of factors may seem high, many of the factors are specific only to a limited band of externships. As such, most evaluations warranted coding for roughly 12-15 factors.

[54] All coding was performed without any identifying information regarding the student, placement, or evaluator. We hired two thoughtful and deliberate research assistants to undertake the coding once we had finalized a set of codes and definitions for them. It was vital to assure that we had inter-rater reliability, and so we underwent several rounds of independent coding of the same sample and discussed all variances. As we tried to define the codes for the greatest clarity and uniform interpretation, we came to realize the importance of relying on the words of the evaluation as exactly expressed, rather than interpreting the text too much. Where it was appropriate, we created lists of trigger words to determine which codes were warranted. We reached a solid consensus regarding the codes and when to assign them to an evaluation, such that the research assistants eventually took over the coding of the evaluation records.

many assignments; the research was high-level or complex; and/or a memo was prepared. The example below was coded for high quality research, among other attributes.

> *His research on the scope and enforceability of advance directive documents in New York State was exceptionally helpful. He utilized a wide and creative range of resources to collect information that was valuable to our firm's clients and presented it in a way that was well-crafted and thoughtful. I was particularly impressed by his creativity in citing New York's Human Rights Commission as a potential enforcer of the advanced directives of LGBTQ clients. He also did useful research on LGBTQ family law in Europe and was able to craft this into a strong client letter.* [Record 371; small family law firm].

2. *Coding For Legal Writing: Dispute Resolution, Transactional, Judicial, Other*

Anticipating that most student externs would spend time writing in their placements, we wondered i) how closely these writing assignments resembled what students produce in their legal writing courses, ii) introduced them to the panoply of practice writing, and iii) whether students wrote across multiple modalities and disciplines. We coded broad categories of drafting (dispute,[55] transactional,[56] judicial,[57] and other[58]) to capture the full swath of student drafting assignments and allow analyses among widely different practice settings. For each type of writing, we tagged where students prepared multiple types of legal documents (variety) and where the evaluator highlighted the student work for its complexity and/or quality (intensity).[59]

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[55] The dispute-oriented drafting assignments included documents such as pleadings, discovery, motions, briefs, settlement agreements, petitions, demand notices, settlement offers, etc.

[56] Transactional drafting assignments included licensing agreements, real estate transactions, goods/services agreements, term sheets, asset statements, closing documents, corporate resolutions, or opinion letters.

[57] For judicial documents, the variety is narrower, but we still wanted to capture whether the extern undertook drafting assignments on opinions, orders, report and recommendation, or bench memoranda.

[58] The "writing-other" category included assignments such as in-office presentations, charts, reports, policy papers, correspondence, internal memos (but not research memos). Since a number of BLS externships are in immigration and trademark practices, the evaluations spoke of applications and forms for submission to Department of Homeland Security or the U.S. Patent and Trademark Office. The writing-other category is where we captured that information.

[59] Our initial instinct was to code when the evaluation described an assignment as especially complex or tricky and separately to code when the evaluation characterized the student's work as especially high quality. While it is clear that those two characteristics of work are conceptually separate, it also became clear that these characteristics tended to be conflated in the evaluations, so we created a combination code. We specifically refrained from coding an evaluation for high quality where it simply referred to the time-consuming nature of the work. Although the complexity of the assignment may have been the cause

We distinguished *variety* from *intensity* of student work. Variety codes indicate broad exposure to multiple types of work assignments, similar to what a survey course might cover. Intensity codes capture instances where the student was meaningfully challenged, more akin to the experience in an upper level intensive seminar. A supervisor's description of student work indicating high quality or complexity would be coded for intensity. We adapted this set of variety/intensity codes in research, writing, and fact-based work categories as well.[60]

Here are examples of evaluation narratives coded for student drafting of multiple types of documents, among other attributes.

> Transactional: *We are an intellectual property firm, and the student completed tasks in all aspects of our practice, including patent drafting and claim drafting, patent prosecution, participating in client meetings and counseling on patent issues, learning, using and helping the firm upgrade the firm patent docketing software. She also worked on legal research concerning trademark licensing and on US customs practices. She also drafted and revised website privacy policies and term of service.* [Record 375; small intellectual property firm].

> Judicial: *Researched and drafted internal memos regarding pending motions before the Court regarding a motion to unseal the criminal record of a complaining witness and a motion to vacate a judgment. Drafted a decision regarding the motion to unseal the record. Prepared daily case sheets used to conference cases.* [Record 89; state court judge].

In this evaluation, the student's written work was tagged for its complexity/quality:

> *[Student] has been very successful at reviewing very complicated commercial leases and summarizing [legal] defense concepts in a way that clients and lay people can understand without sacrificing important information that a client would need to in order to make fully informed business and legal decisions, including accurately describing the rights and responsibilities of parties to a contract, the effects and consequences of specific events and actions, and the material terms of the deal.* [Record 21; small real estate firm].

3. *Coding For Fact-Based Work*

Fact gathering and sorting is the one of the prime gaps in classroom legal education. What most law students know about the *facts* of a legal matter is the post-hoc presentation in judicial opinions and hy-

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for the length of the task, we thought it was not a reliable indicator of complexity or quality.

[60] "High quality/high complexity work" is one example of an intensity code. In Part IV.D we analyze several other types of student work that we also categorize as evidence of intensity.

potheticals.[61] We wondered whether the students were assigned work that required them to dig into facts, and experience the messiness and indeterminacy of the factual basis of their legal work.

But not all fact-based work is equal. Under this category, we separated simplistic work from deeper fact work. We coded the preparation of the fact section of a brief, judicial opinion, or equivalent document with facts that have already been distilled, as limited fact-based work. The code for more substantive fact-based work was reserved for student work with gathering, obtaining, organizing, or analyzing factual material.[62] As with previous categories, we assigned a specific code wherever the evaluator highlighted the fact-based work for its high complexity or high quality. The entries below by mentor attorneys in judicial placements are examples of coding for simple fact-based work (first excerpt) and for substantial fact-based work (second excerpt).

> *[The student] assisted the Court with legal research and prepared a Statement of Facts and legal memos outlining various legal issues.* [Record 94; state court judge].

> *The student reviewed depositions of officers in civil litigation to spot any issues/problematic behavior or testimony; . . . summarized and reviewed civil litigation histories of officers with numerous lawsuits, attended meetings with those officers to discuss civil liability, and come up with ideas to reduce their exposure; and, researched and created a survey for officers to take related to civil litigation.* [Record 172; metropolitan police department].

4. Coding For Observation Opportunities

A distinctive feature of an educational externship is the opportunity to shadow a practicing lawyer and learn from observing, uncomplicated by the stress experienced by junior lawyers to provide value every minute on the job. Our research questions focused on whether student externs are offered and exploit opportunities for observation. We created separate codes to tag observations of specific kinds of actors or events.[63] Again, evaluations were coded to distinguish the ex-

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[61] JETHRO K. LIEBERMAN, FIGHT THE HYPO: FAKE ARGUMENTS, TROLLEYOLOGY, AND THE LIMITS OF HYPOTHETICALS (Tribeca Square Press, 2014)(decrying the over-reliance on teaching by hypothetical fact scenarios using Facts Already Known Exactly (FAKE)).

[62] Examples of substantial fact-based work include where the extern reviewed documents obtained in discovery; contacted clients or others to obtain records or information; analyzed court transcripts, admitted evidence, or a trial record; prepared affidavits; conducted due diligence reviews; reviewed accounts or business records; performed market/competitor research; or created a presentation of factual material.

[63] Separate codes were created to tag observations involving client(s), opposing counsel (other than in court), court proceedings, and negotiations.

tent of the observation (limited or substantial) and whether the mentor attorney spent the time to talk with the student before or after the occasion to deepen the student learning. The entries below, describing assignments that gave student multiple opportunities to observe court proceedings, are typical of this kind of coding.

> *Observed and discussed jury trials, hearings, motions and other court proceedings. Assisted by drafting decisions on the legal sufficiency of grand jury minutes.* [Record 97; state court judge].
>
> *Legal research. Assisting at depositions and witness preparation prior to depositions. Attending court conferences with US Attorney.* [Record 78; US Attorney's office].

5. *Coding For Assignments That Require Direct Interaction With Others*

The externship experience ideally involves participating in lawyering tasks that develop student adaptability. Thus, we sought to discover the degree to which the students directly interacted with others in their fieldwork (other than placement site personnel). We did not assume that a student's presence at a meeting meant that she was an active participant or had any speaking role. As with the Observation codes, we created codes to distinguish types of interactions and with whom.[64]

This category has considerable room for overlap with both fact-based work and observation coding. We wanted to be careful not to double-count experiences, but to make sure that we capture pertinent characteristics of an experience. For example, many evaluations mentioned instances where the student was present at a client meeting. Absent an express indication of the student's active role, with just his presence mentioned, the evaluation would be coded for observation (not direct interaction). If, however, the student had an active speaking role, it was coded for direct interaction and sub-codes that captured the type of lawyering task or individuals involved. The coder had to choose only one category for coding (observation vs. direct interaction).

This entry described both substantial fact-based work and direction interaction with witnesses:

> *The student was assigned with task to interview potential claimants in a class age hiring discrimination case. The student diligently interviewed over 50 claimants/witnesses, and drafted very comprehensive*

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[64] Codes were created to capture information about direct interaction with clients, court personnel (e.g., filing documents, problem-solving with court clerks), witnesses, opposing counsel, and others from whom the student needed to obtain information (e.g., records).

notes based on the interview. The student's interview notes were very helpful in identifying key issues and strength/weakness of the individual interviewed. . . . [Record 73, federal civil rights agency].

6. *Coding For Work That Equates To The Attorney Role*

The apogee of the student field experience is "engaging in practice with supervised full role assumption."[65] A classic example is the placement with a student practice order, such as a public defender's office where the student handles his own caseload, meeting with client(s) and appearing in court, on the record.[66] But that is not the only manner in which students demonstrated attorney level work and responsibility.

It was equally vital to us to capture the wide variety of attorney-level work the students might do outside of court appearances.[67] Some host offices or mentor attorneys are unwilling to take on that courtroom supervisory function, yet they ask students to shoulder substantial and primary responsibility for important aspects of the matter. Similar high-responsibility opportunities were evident in non-litigation practices. We were mindful to develop codes intentionally limiting this designation to student work/role assumption at a quality and professionalism level that approximates that of an attorney.[68]

[Student] was given a felony case and directed to prepare a plea board sheet—a detailed summary of the case, charges, defendant's criminal history and overall assessment of the case. Under the guidance the ADA, the student confidently and articulately briefed the [Section] Bureau Chief for the purpose of seeking an authorized offer. In a separate trial-ready proceeding, the student met with an ar-

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65 BUILDING ON BEST PRACTICES, *supra* note 21, at 217. Student practice rules define the availability and extent of attorney role opportunities. *See* Georgetown University Law Library, *Student Practice Rules – Clinical Research Guide* (*hereinafter Student Practice Rules*), http://guides.ll.georgetown.edu/c.php?g=271042&p=1808947 (last visited August 28, 2018).

66 Examples where evaluations were assigned the code for lead or co-lead counsel included explicit description where the extern took full responsibility for conducting some aspect of the legal matter, such as the extern appeared on behalf of the client; functioned under a student practice order; was assigned her own caseload; or handled a conference, mediation, or negotiation, and similar descriptions.

67 Not all states have student practice rules that allow students to appear on the record with non-faculty lawyers as supervisors. *See Student Practice Rules*, *supra* note 65 (links to all state and federal court student practice rules).

68 Two Attorney Role codes were created. The first was designated for instances where the student served as lead or co-lead counsel for all, or a major aspect, of a client matter. For the second code was created to tag instances where the student shouldered the major responsibility for a substantial attorney project *and* the extern's work product was used with little, or no, revision by the attorney(s) e.g., presented to a head of office, a client, or others outside of the host office. Mere indication that the extern's work was useful to the attorney or to the office would not be sufficient to warrant this code.

resting officer, reviewed the case file and prepared the witness for hearing, thoroughly reviewing the case facts and documents with witness. Student participated in a proffer session (queen for a day) with a prospective confidential informant. After interview, he actively engaged in thoughtful discussion assessing the prospective informant's reliability and potential for successful cooperation. [Record 262, district attorney's office]

7. *Coding For Professional Work Traits*

Development of the habits of professionalism is a core objective of the externship program. We wondered whether our students absorbed the essential values of the profession by the time they ventured into the practice environment. Had they developed habits of workplace performance that would meet our mentor attorneys' expectations? The "professional work traits" category aimed to capture information on the student's overall approach to work, as opposed to work quality. We focused on three work traits—general professionalism, attention to detail, and effective communication—that evaluators demonstrably cared most about (whether positively or negatively). We distinguished general descriptions of professional work traits from instances where the evaluator described the extern in exceptional terms. As we did with the attorney role codes, we set an intentionally high bar when coding students for exceptional professionalism, such as the student in the evaluation below.[69]

[This student] is truly a pleasure to work with and quickly earned the respect of her colleagues at the agency. She is professional in approach and appearance and organized and meticulous in her work habits. She has excellent instincts and apprehends issues quickly and accurately. Importantly, she has the rare gift of self-awareness and initiative that enabled her to forge ahead on new challenges while also knowing when to ask for guidance. The student provided in-depth research, written with clarity and in proper form, often working on a tight deadline. She demonstrated excellent drafting skills and keen issue-spotting. [Record 344; Mayor's office].

D. Perspective and Caution

It is important to put the mentor attorneys' evaluations and coding in context. Our analysis regards what the mentor attorneys directly said. That is removed from what the students actually did in at least three ways—under-inclusiveness, inconsistency, and subjectivity. An-

[69] The coding for High Professionalism draws from the narrative part of the evaluation. To warrant that code, the supervisor's description of highly professional work must have also been confirmed by an award of the highest rating (5) on the professionalism performance factors (Professionalism, Attitude, Responsibility).

other set of factors must also be considered—cognitive biases of the person preparing the evaluation may affect the content.

These evaluations, as an inventory of student work, are incomplete. Even the most detailed evaluations do not list or describe every assignment given to the extern. Some evaluators might have focused on the most interesting assignments (perhaps to promote the law office as a desirable place to work). At placements where student externs work with multiple supervisors, only partial reports may reach the mentor attorney who collates their feedback in the evaluation forms. In the aggregate, the externs did much more over the course of a term than was reported in the evaluations. Thus, the evaluations are under-inclusive.[70]

The evaluations are inconsistent. Although the mentor attorneys are all given identical questions to answer, there is no common understanding or consensus of the "best" way to write the evaluation. They are written by hundreds of lawyers in hundreds of law offices, with great variety in the nature and culture of their practice. Each lawyer chooses her level of specificity, what to highlight, and how carefully to review the full body of the student's work before writing the evaluation.

The evaluations are subjective. Each evaluating attorney has her own sense of high quality student work and each comes with her sense of how rigorously to assess student work in this context. This subjectivity is quite similar to law professors who have preconceptions and grading objectives that vary substantially from one another.

As is the case with all evaluators, field supervisors are subject to common appraisal biases.[71] Performance ratings inflation, just like grade inflation, can affect evaluations of externs, as supervisors may have discomfort with or limited interest in corrective criticism of a departing student.[72] This concern might be moderated by the option to submit the evaluation form confidentially to the BLS Externship Program.[73] The evaluators may also want to please the school with rosy evaluations, whether consciously or unconsciously, to keep the flow of students coming. The law school's many communications and discussions with the evaluators regarding the importance of honest as-

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[70] Conceptually, the evaluations can be over-inclusive as well, e.g., where an evaluation indicates more tasks or higher-level tasks than actually occurred. Given our other inputs including student time logs, reflective essays, and self-evaluations, we do not see over-inclusive exaggerations of student work as an appreciable or troubling concern.

[71] *See* John Edward Davidson, *The Temptation of Performance Appraisal Abuse in Employment Litigation*, 81 VA. L. REV. 1605, 1610 (1995) (identifying subjective influences in the performance appraisal process).

[72] *Id.*

[73] *See supra*, Part II.C.

sessment and feedback, mutes but cannot, eliminate this possibility.

Other possible appraisal biases consist of recency and halo effects.[74] The recency bias is a tendency to evaluate a student's performance based on what is most easily remembered ? that is, the most recent interaction (positive or negative) ? and fail to consider the full body of student work over the term.[75] The halo bias is a tendency to recall only the best performances of a well-liked student.[76] These limitations remind us, as investigators, not to overstate or misstate the nature of the findings.

Nonetheless, the evaluation narratives are rich and, taken as a whole, they can reveal meaningful information about the extern experience. Generally, we are confident that our findings reasonably illuminate the kinds of work the externs performed, and how the evaluator described or assessed the performance of the assignments.

PART IV PROJECT FINDINGS

In this Part, we highlight key findings from the analysis of the evaluation form data. Our first set of Tables (1 through 5) describes our study population. We provide demographic and other characteristics of the students and the placements represented in the study. These data help anchor our understanding of BLS's program and of the evaluation data.

Tables 6 and 7 help answer our first level questions: how well did the students perform and what kinds of tasks did they perform? We show, in numeric terms, how the supervisors rated student performance on the eight lawyering-skill and professionalism competencies delineated on the evaluation form. Table 7 shows the kinds of work accomplished by the students, and with what frequency.

Our last set of Tables (8 through 11) unearths lessons regarding the fluidity, complexity, responsibility, and professionalism of student work. We identified four areas of intensified live practice experience: legal work that is highly dynamic; work in which students were delegated or demonstrated high responsibility; work that was highlighted for its quality and difficulty; and workplace habits that showed exceptional professionalism. For each of these intensity measures, we show how student performances varied by student and by characteristics of the host office.

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[74] *See* Davidson, *supra* note 71, at 1610-11.

[75] *See* Thomas Earl Geu, *Are Employee Appraisals Making the Grade? A Basic Primer and Illustrative Application of Federal Private Employment Discrimination Law*, 47 S.D. L. REV. 430, 442 (2002)

[76] *See* Davidson, *supra* note 71, at 1610-11

A. Demographics of BLS Student Externs

We wondered how typical our externship students are compared to the Brooklyn Law student body as a whole and are there types of students who tended to migrate to this kind of educational experience. Our externship student population during the study period were quite representative of the student body. The demographic composition is largely similar to overall mix of BLS students regarding gender and race and ethnicity, with some variation. Further breakdown of the data show that our population is skewed as to gender and race (the cohort of white externs, 57.5% were men, and of externs who are students of color, 57.5% were women).

TABLE 1: STUDENT EXTERN DEMOGRAPHICS[77]

	EAP study sample (488)	**Brooklyn Law School**
Gender		
Male	53.9%	52%
Female	46.1%	48%
Race/Ethnicity		
White/Caucasian	69.5%	66.2%
Non-white	25.2%	26.9%
Not Indicated	5.3%	5.8%
Breakdown non-White		
Black/African American	3.3%	4.4%
Hispanic	8.4%	9.3%
Asian	11.5%	10.6%
Multi-racial	2.0%	2.6%

More 2Ls than 3Ls—55% to 37%—took advantage of the externship program during the 2015-16 academic year. The remainder of the enrollment comprised students in the law school's accelerated (2-year full-time) and extended (4-year part-time) J.D. programs.[78]

[77] Brooklyn Law School student body data is drawn from ABA Standard 509, Information Reports, Brooklyn Law School (2015)(covering the 2015-16 academic year).

[78] BLS offers a range of flexible options that allow students to earn a J.D. in 2, 2.5, 3, 3.5 or 4 years. Although the accelerated "AJD" program and the extended "part-time" program comprise a relatively small percentage of the overall student population (15% combined), the study segregates AJD and 4L data rather than fold them into the 2L and 3L numbers because of the attributes that distinguish those cohorts. While the graduation requirements are the same for every JD awarded by BLS, the AJD program abbreviates the time frame, adding a full summer of classes before the standard JD students matricu-

The GPA distribution (at the start of the student's externship semester) follows a bell curve with 52.3% of student externs having GPA's between 3.00 and 3.49, with a mean and median of 3.30. Students with GPA's lower than 3.00 made up 18.2% of the extern population, and students with GPA's of 3.5 and higher made up 29.5%. The median GPA for the BLS graduating class of 2016 was 3.39. These data repudiate the suggestion that externships serve as a redoubt for students who are less successful in the doctrinal classroom, and vouch for the attractiveness of externships across the spectrum of law student classroom achievement.[79]

TABLE 2: STUDENT EXTERNS BY CLASS YEAR

Class year	# (of 488)	%
2L	270	55.3%
3L	182	37.3%
4L	4	0.8%
AJD	32	6.4%

TABLE 3: STUDENT EXTERNS BY GRADE POINT AVERAGE

	GPA range	# (of 488)	%
High	3.50 – 4.00	144	29.5%
Mid	3.00 – 3.49	255	52.3%
Low	2.50 – 2.99	89	18.2%

B. Variety of Field Placement Settings and Practice Areas

The BLS externship program is designed to offer students the full variety of practice settings and type and has approved host offices in a very wide range of law practices. However, since students are the drivers to secure their own placements, we wondered where students were most drawn.

In our study year, BLS students performed fieldwork in 266 unique law offices or judicial chambers, with evaluations written by 347 unique evaluators (52% men and 48% women). Eight-seven host

late. By the end of their first year, AJD students have taken a course in professional responsibility and two upper class electives that are not part of the standard 1L curriculum, resulting in different degrees of preparedness for the externship work students do during the post-1L summer. In a similar vein, part-time students typically continue their work careers during law school to earn a paycheck, and thus ostensibly are developing work habits and perspectives that advance their preparedness for the law practice setting.

[79] *See* Thomas F. Geraghty, *Legal Clinics and the Better Trained Lawyer (Redux): A History of Clinical Education at Northwestern*, 100 NW. U. L. REV. 231, 249 n. 50 (2006).

offices hosted multiple students each semester or over multiple semesters during the study year.

The data show that the program enables broad student choice.[80] Tables 4 and 5 show that students are actively interested in obtaining practice experience across the full spectrum of legal subject matter beyond what is available in the classroom or in-house clinics, which has always been a compelling feature of externships.[81]

Host offices attracting the most externs were law firms, government, and courts, each with about one-quarter of the total placements. Law firms led the pack, with most of those placements in smaller firms with 10 or fewer attorneys.[82] Within the law firm category, the most popular practice areas were general litigation and intellectual property, with a smattering of corporate, family law, criminal defense, and immigration practices. Government placements weighed heavily toward prosecution/litigation settings.[83] Students also worked in a variety of federal, state, and city regulatory agencies.[84] Court placements were predominantly in the nearby federal courts, with state courts a close second, and a small representation of administrative tribunals.[85]

A subset of externs (79) worked in corporate in-house law departments across a range of industries, such as financial services; entertainment (film, television, music, and digital content); real estate development; and consumer products and marketing. Non-profit placements were in offices offering individual representation and indi-

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80 This is an example where BLS students are expected to engage in self-agency. BUILDING ON BEST PRACTICES, *supra* note 21, at 219-20 (identifying student self-determination and self-reliance as core identifying features of externship pedagogy).

81 BLS offers a wide variety of placements in the private sector, including with for-profit entities. Placements with non-profit organizations are split between the externship program and a dozen or so external clinics (*i.e.,* hybrid clinics), in which the school partners directly with an advocacy group focusing on specific causes and clients, or with a government office providing a specific practice experience. In these hybrid/external clinics, the school appoints the site supervisor as an adjunct professor, who handles both the fieldwork and academic components of the field placement on-site. The external clinic students working in these public interest settings are not reflected in the study sample.

82 BLS has an informal policy discouraging placements at law firms whose local office exceeds 100 attorneys, and as a practical matter, few such credit-bearing externships are available.

83 These include the local U.S. Attorney's Offices, New York State Attorney General's Office, New York City's Law Department, and district attorney's offices for the five counties in New York City. New York City is unusual in that each of its five boroughs is also the county. Each county (New York, Kings, Queens, Bronx, Richmond) has its own elected district attorney.

84 These host offices include Securities and Exchange Commission and Equal Employment Opportunity Commission, and state and local agencies such as the Port Authority of New York and New Jersey and the New York City Human Resources Administration.

85 Administrative tribunals included the National Labor Relations Board and the NYC Office of Administrative Trials and Hearings.

TABLE 4: PRACTICE SETTINGS OF FIELD PLACEMENTS

	# (of 488)	%
Courts	**111**	**22.7%**
Breakdown – Courts		
Federal	62	12.7%
State	42	8.6%
Other tribunal	7	1.4%
Government	**113**	**23.2%**
Breakdown – Government		
Civil	14	2.9%
Criminal prosecution	49	10.0%
Other	50	10.2%
In-House/Corporate	**79**	**16.2%**
Law Firms	**131**	**26.8%**
Breakdown – Law Firms		
1-2 Lawyers	41	8.4%
3-10 Lawyers	50	10.2%
11-49 Lawyers	26	5.3%
50+ Lawyers	14	2.9%
Non-Profit	**50**	**10.2%**
Breakdown – Non-Profit		
Individual Rep (civil)	16	3.3%
Public Defender	22	4.5%
Other	12	2.5%
Union	**4**	**0.8%**

gent defense,[86] as well as advocacy for specific causes or client groups (*e.g.,* housing, immigrants, children). Union placements were entirely in performing arts unions.

[86] Civil and criminal indigent practice organizations, such as New York Legal Assistance Group and The Legal Aid Society, are among the most common host offices. Students working in indigent criminal defense could be working in a non-profit organization or a law firm approved by the courts as assigned counsel. The non-profit defenders and private practice defenders are tallied in the relevant category (non-profit or law firm). In New York City, the non-profits include Appellate Advocates, Bronx Defenders, Brooklyn Defender Services, Center for Appellate Litigation, The Legal Aid Society, Neighborhood Defender Services of Harlem, New York County Defenders, and Office of the Appellate Defender. Assigned counsel for indigent criminal defense are pre-qualified and appointed by the courts under Article 18B of the County Law; they are included in the law firm category, not the public defender category.

TABLE 5: PRACTICE AREAS OF FIELD PLACEMENTS

Practice Area	# (of 488)	%
General Litigation	170	34.8%
Criminal	84	17.2%
Intellectual Property	78	16.0%
Corporate	68	13.9%
Other	27	5.5%
Real Estate	21	4.3%
Family	18	3.7%
Public Interest	13	2.7%
Immigration	9	1.8%

We categorized the field placements according to broad areas of practice BLS students were most likely to encounter.[87] The predominant practice area was general litigation (which included courts), representing 34.8% of the study year's externships. This practice area included government civil litigation offices and a wide swath of law firms whose caseloads included personal injury, commercial disputes, employment, medical malpractice, and insurance, among others. The next largest subset of students worked in criminal prosecution and defense, at 17.2%. Intellectual property practice ranks third on this list at 16%, most commonly in entertainment, sports, and brand management. A substantial number of students worked in corporate counsel settings at 13.9%, followed by real estate, family, public interest and immigration.

The study documented externships' appeal to students interested in intellectual property and corporate law, representing almost 30% of the sample. Evaluators described opportunities rarely accessible on campus to expose students to nuanced substantive law matters involving securities offerings, sponsorship agreements, and emerging digital technology, as well as to the ecology of boardrooms and business meetings.

[87] For example, if the extern worked in a firm with many practice areas, but was assigned to the real estate group, that student's final evaluation was coded "real estate" for practice area. In coding the evaluations, we preferred more specificity where possible, meaning a public defender's office was coded for criminal practice, not public interest. The public interest code was reserved for student work for non-profit organizations whose mission did not fit in another more specific practice area, e.g., the Urban Justice Center's Veteran Advocacy Project. The "other" practice area code captures student work primarily at government agencies such as the Federal Trade Commission and the NYC Mayor's Office of Environmental Remediation that assigned students to non-litigation projects.

C. *Overview of Student Field Experience and Performance*

Our initial examination of the evaluation form data pursued answers to two overview questions. First, on the numeric ratings, how well did the students perform on the five core lawyering skills and the three professionalism and work trait competencies? Table 6 displays data we drew directly from the evaluations and shows ratings for skills and work trait competencies on a scale of 1 to 5.[88] Second, what variety of work did the students perform, and at what frequency? Table 7 captures data we drew regarding the nature of the student work, *e.g.*, research, writing, fact-based work, and the like.[89]

1. *Numerical Ratings: Core Lawyering and Professionalism Competencies*

The supervisor evaluations provided ready data to discern how well the student's work met the placement's expectations, in eight defined skill areas. The quantitative data allow us to examine overall performance and differentiate performance on the separate skills. We especially wanted to understand relative values among the skills. Were there items that should caution us about student preparation or readiness to perform well in the field? The ratings were assigned on a scale of 1 to 5, with 5 indicating excellent with little attorney guidance.[90]

TABLE 6: NUMERICAL RATINGS FOR CORE LAWYERING AND PROFESSIONALISM COMPETENCIES

Skill Factor	**Performance Rating** (1-5)		
	Min	**Mean**	**Max**
Attitude	2	4.78	5
Professionalism	2	4.71	5
Responsibility	1	4.63	5
Research	1	4.30	5
Fact Analysis	1	4.23	5
Problem Solving	1	4.17	5
Legal Analysis	1	4.16	5
Writing	1	4.13	5
Cumulative Average	1.63	4.39	5.00

[88] *See supra* Part II.C.

[89] *See supra* Part III.C.; *see also* note 51 and accompanying text.

[90] *See supra* Part II.C.

Although some students received low scores, overall the students performed their fieldwork satisfactorily, and met expectations for workplace conduct. Most ratings were 4's and 5's.[91] The high numbers are gratifying from the BLS externship faculty's perspective. They show the host offices welcomed and appreciated the students, and that the students were well-prepared for the work they encountered. The high ratings also provide important information for assessment of the institutional learning outcomes set by the faculty for all students. Every law school's published learning outcomes include competencies in research, writing and problem-solving.[92]

We did not expect that supervisor evaluations of student externs would track the same distribution as their GPA's. Translating the skills 5-point scale to the GPA 4-point scale shows a mean skills rating of 3.51, higher than the study population mean GPA of 3.30 (for all their coursework). From many studies, we know that cognitive/analytical metrics (*e.g.,* GPA) are a limited indicator of success in law practice. The skill sets needed are far more diverse than can be tested on a final exam in a doctrinal class, which comprise the most significant data included in a student's GPA.[93]

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[91] *See supra* Part III.D. (regarding ratings inflation and subjectivity in completing evaluations). Some placement settings had supervisors much more likely to assign all 5's in the evaluation. Of students working in law firms, 33% received all 5's. Compare that to students working in government and non-profit placements, where respectively 26% and 22% received all 5's. Within the courts category, 29% of state court externs were awarded all 5's, while only 8% of federal court externs were awarded all 5's. The study was not designed to measure whether this circumstance represents true variation in student performance, or differentials in field supervisor expectations and/or approach to completing the evaluation form.

[92] *See* ABA STANDARDS, *supra* note 2, at § 302(b).

[93] *See e.g.,* Marjorie M. Shultz & Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOC. INQUIRY 620, 630 (2011). Shultz and Zedeck, UC-Berkeley researchers, used established industrial organization psychology methods to delineate the lawyer competencies. Through these methods, they identified 26 distinct effectiveness factors that underlie lawyer success, in eight broad categories (Problem solving and workplace skills; Legal analysis and research skills; Factual research skills; Written and oral communication skills; Client counseling skills; Litigation and trial advocacy skills; Negotiating and business transaction skills; Ethical decision-making skills). Alli Gerkman, Director of Educating Tomorrow's Lawyers, launched a multi-phase effort to examine the skills and competencies needed for early career attorney success. *See, e.g.*, Gerkman & Cornett, *supra* note 12, at 3. *See also* Steven S. Nettles & James Hellrung, *A Study of the Newly Licensed Lawyer*, conducted for the National Conference of Bar Examiners (Applied Measurement Professionals, July 2012) (a study to understand the skills and knowledge base that new lawyers both used consistently and were of high importance to their effectiveness). For general critiques of legal education; s*ee, e.g.*, WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the Advancement of Teaching 2007) (critiquing American legal education for over-emphasis in the knowledge based cognitive dimension of professional education, and under-emphasis in skills and professional values dimensions of professional educa-

The highest numerical ratings were not for the core lawyering skills, but for indicators of professionalism and workplace temperament—Attitude, Professionalism, and Responsibility—that one might consider the essential foundation for success in the other categories. Writing ratings were in the very positive range (4.13 average), but represented the lowest skills ratings, reminding us again that law is a profession with the critical need for strong, concise, articulate written expression. Only slightly higher than the Writing ratings were the ratings for Legal Analysis, Fact Analysis, and Problem Solving, categories which exemplify the value proposition of a lawyer's services. These ratings provide fodder for the externship program's companion seminars, in which faculty discuss with students in class and individually the expectations of the field supervisors and the points of relative strengths and weaknesses.

We also wanted to know whether and to what degree spending additional time in the law office affected the externs' performance ratings.[94] In the summer term, BLS students may choose to take the externship course for up to five credits, which is the equivalent of a full-time work week over seven or eight weeks, allowing the student to engage in a wider range of workplace assignments, with greater time sensitivity, and better opportunity to integrate into the flow of the law office. We recognize that students in the summer term, taking the externship for standard three credits, often spend more time at the office than their fall and spring counterparts, or at least encounter fewer distractions and scheduling conflicts.

We found that students earning 5 credits were rated higher than lower credit students: 4.50 on average across all eight skill areas; students working fewer credits were rated 4.38 across all areas. Cut another way, summer externs earned higher skills rating than the fall and spring externs: 4.52 on average across all eight skill areas; while fall and spring externs were rated on average 4.36 across all factors. These numbers confirm that summertime freedom to focus on work correlates with students performing more effectively in key skill areas.[95]

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tion); ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 59-65 (Clinical Legal Education Association 2007); BRIAN TAMANAHA, FAILING LAW SCHOOLS 172-76 (2012); William Henderson, *A Blueprint for Change,* 40 PEPP. L. REV. 461, 501 (2013).

94 Reuter & Ingham, *supra* note 14, at 211-12 (showing that, when lawyers had committed more hours weekly to their externships, they valued their externship experiences much more highly in preparing them for practice).

95 This comports with the *After the JD* study that showed new lawyers valued summer employment the highest of any law school experience in preparing them for their early work assignments. *After the JD*, *supra* note 12, at 81.

2. *Narrative Assessment: Variety of Student Work*

One of our hopes for the externship experience is that the students are exposed to a variety of attorney work. With diverse assignments and observation opportunities, students can expand their understanding of the range of tasks that an attorney must manage and better assess and cultivate their nascent skills.

Fortunately, the narratives provided in response to the six open-ended questions on the evaluation form allowed us to investigate. Given that supervisors were selective in what they described regarding student assignments, when we show that "x percent" of the evaluations noted a certain type of student work, we can confidently say that *at least* x percent of the students performed that work. We do not know how many more students performed similar work, but their supervisors did not mentioned it in their evaluation responses. In this respect, our analysis is more accurately a mix of what students tended to do in their field placement and what those supervisors considered important enough to report to the school. Table 7 represents our coding of the supervisors' narratives, showing tallies of the legal tasks assigned.

TABLE 7: FREQUENCY OF SELECTED WORK ASSIGNMENTS[96]

Codes	Nature of work	# (of 488)	%
LR-2	Legal research-one of many types of assignments	422	86.5%
LR-1	Legal research-exclusively	16	3.3%
WDR, WT, WJ, WO-1&2	Writing, any type/amount	456	93.5%
WDR-1 & 2	Writing-dispute resolution	143	29.3%
WT-1 & 2	Writing-transactional	110	22.5%
WJ-1 & 2	Writing-judicial	101	20.7%
WO-1 & 2	Writing-other	164	33.6%
FBW-1	Limited fact-based work (simple fact presentation)	86	17.6%
FBW-2	Substantial fact-based work (raw facts, gathering, analysis)	105	21.5%
OB-1 & 2	Observation-any type/amount	168	34.4%
OB-4	Observation of client	51	10.5%
OB-5	Observation of court proceedings	128	26.2%
OB-6	Observation of opposing counsel (meetings, etc.)	67	13.7%
DIO-1 & 2	Direct interaction with others-any type/amount	91	18.6%
DIO-3	Direct interaction with others-client	63	12.9%
DIO-4	Direct interaction with others-court representatives, clerks	16	3.3%
DIO-5	Direct interaction with others-witnesses, opposing counsel	24	4.9%
AR-1	Attorney role: Substantial and substantive responsibility	21	4.3%
AR-2	Attorney role: Lead/co-lead counsel (all or major aspect of client matter)	17	3.5%

What did we learn? Nearly everyone did some level of research and had the opportunity to prepare multiple types of legal documents. The data revealed that almost every student extern performed legal

[96] *See* Appendix B, *infra*, for list of all codes and incidence of each in the full sample set.

research (89.8%) and writing assignments (93.5%), tracking the skill set most advanced in law students and entry-level attorneys. The legal research category generated the most recognition of complex and high-quality student work product (19.9%), which we would expect of students whose in-school practical training to date is concentrated in that category. A similar percentage of externs (19%) were entrusted with and recognized for their performance on high-level writing assignments.

A mere 3.3% of the evaluations described student work as exclusively research oriented, reassuring us that students were not silo-ed and were encouraged to participate more broadly in the complex of law practice tasks. Notably, 94.5% of BLS student externs performed multiple and varied assignments in one or more categories of work, including drafting multiple types of documents; interacting with clients, witnesses, opposing counsel, court personnel, and the like; and observing attorney performance.[97] This variety of assignments confirmed that students were not relegated to repetitive and limited work, and that externships offer the opportunity to experience the diversity of law practice and to contend with the challenges of prioritizing and coordinating one's work.

We also learned that this variety was present to a notable degree in every practice setting. No practice setting could be singled out for providing a monotonous experience, as judged by the multiplicity and diversity of work assignments. Equal opportunity also prevailed in the variety of work, made available in roughly equivalent measures to men and women, white and non-white students, and students with low, mid, and high GPAs. By practice area, the variety of work was again consistently high, with the notable exception of public interest law. There, of the small sample of 13 students, only 9 evaluators (69.2%) reported that they assigned students multiple and varied assignments in one or more categories of work.

We found that the evaluations described types of student work—other than research and writing—with much lower frequency. Fewer than half the student evaluations described fact-based work (39.1%) or observation opportunities (34.4%). We surmise that fewer descriptions of passive observation opportunities may stem from the call of the question, asking about "assignments and tasks undertaken and completed."

Even smaller numbers of students engaged in direct interaction with others outside the placement setting (18.6%), or performed in

[97] In every practice setting, at least 90% of student externs received assignments across multiple skills and tasks, and for some settings that number was 100% including state courts, government civil litigation, law firms of 11-29 lawyers, and unions.

the role of lead attorney (7.8%). In part, this reflects the absence of a student practice order at many field placements,[98] but also evinces that the externship environment is not student-centered. While most law school clinics are constructed to provide virtually every student with assignments and interactions beyond research and writing, externship experiences offer varying levels of engagement that depend on the placement and the matters currently active at that placement. This limitation is also one of the virtues of externships as described in the Building on Best Practices Report: "[e]xternship courses immerse students in real life legal practice, that is, in practice settings created primarily for delivery of legal services rather than for educational purposes."[99] What students gain in this environment is a high degree of independence and the occasion to witness and develop adaptability to the urgency and responsibility imposed on practitioners.[100]

D. Intensity of the Student Fieldwork Experience

A catalyst for this study grew from our sense that BLS students were regularly exposed to first-rate legal work and were performing well in associated assignments, as described in supervisor evaluations. We were impressed with evaluations describing student work that was dynamic, required judgment, and compelled students to think on their feet. We were pleased with evaluations that described student responsibility—entrusting and turning over major responsibility to the student for all or a major element of the client representation. We were encouraged by evaluations that described student work as superior in quality and complexity. And we were heartened by attorneys' appreciation for the students' maturity and readiness to take on the mantle of the profession—noting deep evidence of professionalism. We probed both the narrative and numerical data to measure how typical—or rare—it was for supervisors to describe the students in this light. We deemed these features of student work to be evidence of the intensity

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98 New York State Unified Court System, Rules of Practice, Sec. 805.5 (law students having completed two semesters of law school may practice in limited fora and for select actions, under attorney supervision, where the law office has expressly secured a court order to supervise such students in practice in advance). Many other states allow law students to practice under a court rule that does not require the law office and supervising attorney to seek an order in advance. *See Student Practice Rules*, *supra* note 65.

99 BUILDING ON BEST PRACTICES, *supra* note 21, at 217.

100 *See* Bill Henderson, *Does Cooperative Placement Accelerate Law Student Professional Development*, THE LEGAL WHITEBOARD (Oct. 7, 2014) http://lawprofessors.typepad.com/legalwhiteboard/2014/10/does-cooperative-placement-accelerate-law-student-professional-development.html (commending student practice experience for "the lack of structure and clarity that practitioners face on a daily basis, and how lawyers are relied upon by clients, courts and third parties to impose order on situations")(last visited August 28, 2018).

of the learning experience. In our estimation, these qualities amplify student learning and facilitate productive transfer of their externship learning to other contexts.

To discern how representative these intensity characteristics were among all student experiences, we created four composites of codes to probe evaluations that evidenced i) dynamic, ii) high responsibility, iii) high quality, and/or iv) highly professional student work. Each intensity measure represents a collection of codes that we determined were signifiers of the specific characteristic.[101] Some intensity measures were commonly observed; others were relatively rare. Encouragingly, the data show that 308 of 488 evaluations (63%) described and commented on student work that had intensity, in one or more of the four categories.

Tables 8-11 report the incidence of the specific intensity measures according to student demographic and academic traits (gender, race, class year, and GPA) and placement categories (setting and practice area). We used the chi-square test to detect whether there are statistically significant differences in how the supervisors observed these intensity characteristics. We display both the actual and expected incidence of each intensity measure. The actual incidence is what we observed and tallied from the evaluations. The expected incidence is what one would anticipate based on the sample.[102] When the actual observed data varies from the expected, statistical analysis helps us understand whether the variation is in a normal range, or the variation is statistically significant and is not likely due to chance. Although the data show many marked differences or trends, only some are statistically significant. The most significant differences largely did not correspond to student traits; rather, the biggest and most statistically significant differences emerged from practice settings and practice areas.

1. Dynamic Work

The first intensity measure, Dynamic Work, focuses on the way in which students directly experience the fluidity of live practice. We

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101 *See infra,* Parts IV.D.1 to IV.D.4 (providing full descriptions of the composites of codes included for each intensity measure).

102 The expected incidence data is drawn from Tables 1-5, *supra*. By way of example, if the sample set comprises 46 percent female and 54 percent male, then evaluations describing high quality work would be "expected" to split, 46 – 54 percent female to male externs. Not all variation from the expected incidence is statistically significant; some is chalked up to chance. The chi-square test shows if and to what extent the variation of observed from expected incidence is not due to chance, and is considered statistically significant. The smaller the p value (0.05 to 0.0001), the less likely the observed variations are due to chance.

identified eight codes that reflect elements of unpredictability or demand the student to exercise judgment. Each of these codes represent instances where the extern had to struggle with the indeterminacy of facts, or had live speaking role on legal matters, and/or shouldered direct attorney responsibility. To qualify as dynamic work, the student field experience had to be coded for at least one of these factors:[103]

- Fact-based work—substantial or high-level (not simple).
- Direct interaction (speaking role)—with clients, court representatives, witnesses, opposing counsel, or multiple field supervisors.
- Attorney-role responsibility—substantial and substantive responsibility; lead or co-lead counsel for a major aspect of a client matter.

By this measure, almost half of the students (43.9%) encountered dynamic work that demanded more adaptive performance. These factors represent the aspects of practice that require the student to manage tactical or strategic lawyering interactions, for which law schools do not offer classroom-based teaching to prepare students. Below are examples of evaluations coded for factors that describe dynamic work.

> *The student was assigned a lead investigative role on an investigation regarding a complex offering fraud. On that matter, the student reviewed documents, prepared for testimony, participated in calls with witnesses and counsel, conducted legal research, and analyzed the strengths and weaknesses of a potential enforcement action. The student also assisted on a couple of other investigations, including an accounting fraud investigation.* [Record 228; federal securities regulatory agency].

> *The student was tasked with compiling the administrative record in connection with litigation that had been recently filed. He effectively contacted all of the involved agency staff to collect the appropriate records and was able to amass the various land use and environmental records from these various people and files and organized them well.* [Record 136; city planning agency].

[103] The Dynamic Work measure is a composite of all student records with any of the following codes: FBW-2, FBW-3, DIO-3, DIO-4, DIO-5, DIO-6, AR-1, or AR-2. *See infra,* Appendix B for descriptions of each code.

TABLE 8: INCIDENCE OF DYNAMIC WORK BY STUDENT AND PLACEMENT CHARACTERISTICS

Cohort: Students Performing Dynamic Work 214 of 488 (43.9%)				
	ACTUAL		EXPECTED	
	# (of 214)	%	# (of 214)	%
Gender				
Male	105	49%	115.3	53.9%
Female	109	51%	98.7	46.1%
Class Year				
2L	110	51%	118.4	55.3%
3L	86	40%	79.8	37.3%
4L	2	1%	1.8	0.8%
AJD	16	7%	14.0	6.5%
GPA				
Low	39	18%	39.0	18.2%
Mid	119	56%	111.8	52.3%
High	56	26%	63.1	29.5%
Race				
White	146	68%	148.2	73.4%
Non-White	56	26%	53.8	26.6%
Practice Setting* **				
Courts	22	10%	48.7	22.7%
Government	68	32%	49.6	23.2%
In-House/Corporate	22	10%	34.6	16.2%
Law Firm	64	30%	57.4	26.8%
Non-profit/Union	38	18%	23.7	11.1%
Practice Area* **				
Corporate	25	12%	29.8	13.9%
Criminal	59	28%	36.8	17.2%
Family	11	5%	7.9	3.7%
General Litigation	55	26%	74.5	34.8%
Immigration	4	2%	3.9	1.8%
Intellectual Property	26	12%	34.2	16.0%
Other	14	7%	11.8	5.5%
Public Interest	8	4%	5.7	2.7%
Real Estate	12	6%	9.2	4.3%

*** There is a statistically significant difference among practice settings and practice areas ($p < 0.001$).

Table 8 shows statistically significant differences in the availability of dynamic work based on the practice setting and practice area, but not based on gender, race, class year, or GPA. A disproportionately high quantity of dynamic work was provided in offices in nonprofit organizations and in government offices. Practice areas where dynamic work was most prevalent were in criminal law (both prosecution and defense), as well as public interest law. We see a few reasons for this skew. Many of these host offices are under-resourced, have caseloads that have short timelines, and client matters that have relatively high predictability. Each of these characteristics militates in favor of giving student workers more opportunities to exercise judgment and perform "on their feet." Drilling below the aggregate law firm numbers, we can report that the smallest firms—those with one or two attorneys—outpaced larger firms in providing students with dynamic work assignments.

The data for this cohort further suggest that dynamic work assignments are less likely in judicial chambers or corporate settings. That conclusion is intuitive for judicial externships that place students in fairly cloistered environments to work behind the scenes on legal research/writing assignments. It is not as apparent why corporate law departments offer fewer such assignments, although it is possible that more dynamic assignments are referred to outside counsel.

Table 8 shows that among the cohort that was coded for dynamic work, women, third-year students, and students with mid-level GPAs encountered more dynamic work than their numbers in the study sample would suggest, but those differentials were not statistically significant. Thus, the data do not show gender, academic markers, or student maturity as factors in likelihood of receiving assignments that require more adaptability or judgment. Rather, to the extent that evaluations of students with high GPAs were less likely to feature dynamic work, this outcome correlates to the higher GPAs of students in the less dynamic judicial externships.[104] Similarly, women were disproportionately represented in the practice areas of criminal, family, and immigration law; while men were more likely to extern in judicial settings.

A review of the numeric performance factor ratings for students in this cohort shows that the ratings for Writing skill are lower, at a statistically significant level compared to the whole study population. It is not immediately apparent what the reasons might be. These students also received somewhat higher performance ratings for Professionalism and Responsibility, although not at statistically significant

[104] Judicial externs in the study year posted an average law school GPA of 3.36, while the average GPA for all other non-judicial externs in our study population was 3.25.

levels. Whether this reveals causation or mere correlation is unclear. But at a minimum, those values are associated with more interactive roles in the office, rather than the more sedentary roles such as research and writing.

2. *High Responsibility Work*

The next intensity measure, High Responsibility Work, aimed to isolate students whose evaluations specifically described professional grade responsibility. We sought to understand the degree to which externship placements approximated the experience associated with the traditional in-house clinic—providing students with prime or principal responsibility for client work.[105] We culled the evaluations to identify when the student specifically functioned in the role of an attorney with a substantial degree of independence.[106]

Table 9 identifies the cohort of students whose evaluations described work that was so well finished that it was used without further attorney intercession, or because the students were given full responsibility for an important aspect of a client matter. We dubbed this cohort High Responsibility.

The evaluations reproduced here show the kinds of work that was coded as evidencing attorney level responsibility.

> *Under a student practice order the student represented clients in the Family & Integrated Domestic Violence Courts on family offense and custody/visitation proceedings. In addition she prepared uncontested divorce filings and a U visa immigration application. Working with a partner, the student commenced her cases with the initial interview, prepared all relevant petitions and motions, and appeared in court on behalf of her clients.* [Record 111; legal services organization].

> *The student became the liaison for a project requested by Tokyo brand management and took ownership for it, monitoring it, following up, making many additional requests to our website and technology colleagues, et. al. She lent a lot of value and saw it through, as you'd expect of a capable, full-time colleague.* [Record 149; multinational media company].

Only 38 (7.8%) of the evaluations described circumstances where the externs assumed this level of direct accountability. Despite the small sample size, we can again confirm a statistically significant role for practice setting and area.

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105 Clinical scholars associate "direct responsibility for the client and case" with the educational value of the student practice experience. *See, e.g.*, Karen A. Jordan, *Enhancing Externships to Meet Expectations for Experiential Education*, 23 CLIN. L. REV. 339, 368 (2016).

106 The High Responsibility measure is a composite of all student records coded AR-1, or AR-2. *See also, supra* Part III.C.6.

TABLE 9: INCIDENCE OF HIGH-RESPONSIBILITY WORK BY STUDENT AND PLACEMENT CHARACTERISTICS

Cohort: Students Performing Work with High Responsibility or in Attorney Role 38 of 488 (7.8%)				
	ACTUAL		EXPECTED	
	# (of 38)	%	# (of 38)	%
Gender				
Male	21	55%	19.9	53.9%
Female	17	45%	17.1	46.1%
Class Year				
2L	18	47%	20.5	55.3%
3L	15	39%	13.8	37.3%
4L	1	3%	0.3	0.8%
AJD	4	11%	2.4	6.5%
GPA				
Low	9	24%	6.7	18.2%
Mid	17	45%	19.3	52.3%
High	12	32%	10.9	29.5%
Race				
White	26	68%	25.7	73.4%
Non-White	10	26%	9.3	26.6%
Practice Setting**				
Courts	3	8%	8.4	22.7%
Government	18	47%	8.6	23.2%
In-House/Corporate	4	11%	6.0	16.2%
Law Firm	7	18%	9.9	26.8%
Non-profit/Union	6	16%	4.1	11.1%
Practice Area*				
Corporate	5	13%	5.2	13.9%
Criminal	10	26%	6.4	17.2%
Family	4	11%	1.4	3.7%
General Litigation	8	21%	12.9	34.8%
Immigration	0	0%	0.7	1.8%
Intellectual Property	3	8%	5.9	16. 0%
Other	5	13%	2.0	5.5%
Public Interest	2	5%	1.0	2.7%
Real Estate	1	3%	1.6	4.3%

* There is a statistically significant difference among practice areas ($p < 0.05$).
** There is a statistically significant difference among practice settings ($p < 0.01$).

Analysis of the variation among all factors shows that practice setting and practice area are important predictors of the opportunity for attorney-grade work, at statistically significant levels. The most prominent field placements for this level work are in government offices, and in criminal and family law practices. The pattern is quite similar to what the analysis revealed with the Dynamic Work cohort, and likely reflect the same advantages noted above.[107]

Greater responsibility was slightly more likely to be conferred on students who were further along in their law school careers, that is, 3Ls, 4Ls, and AJDs. While these more advanced students represent only 44.5% of the student externs in the study,[108] they constitute over half (53%) of the students given high responsibility. Although this differential was not deemed statistically significant, it is worth noting that virtually every 3L, accelerated, and part-time student has logged work experience either before or during law school prior to enrolling in the externship course. Almost all are at least a year or two older than their 2L counterparts.[109] With deference to the small sample size, it remains our intuition that maturity, and/or prior work experience is relevant to positioning a student extern to seek or be awarded greater responsibility in the practice environment.

We also examined how this cohort of students was rated on the eight performance factors: How well did the evaluation narratives conform to the numeric performance factor ratings? Not surprisingly, the numeric ratings affirmed the narratives. The Responsibility ratings for this cohort were notably higher in comparison to all externs, at statistically significant levels.

3. *High Quality Work*

The next intensity measure focused on student work deemed of high quality or of high complexity. This measure was devised to capture an important difference in assignments—smaller routine matters compared to larger, more complex matters. When novice lawyers and law students take on principal responsibility for a matter, it tends to concern more routine or less complex matters. Correspondingly, even if student externs do not receive high responsibility assignments, we hypothesized that they may encounter complex work within a larger matter. Or they might have a chance to do work substantial enough that it stands out as a high-quality work product. To tease that information from the data, we created a composite group of students

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107 *See supra* Part IV.D.1.

108 See *supra* Table 2.

109 The median ages of BLS students in the accelerated and extended J.D. programs are respectively one and two years older than the median age of standard 3-year J.D. students.

whose evaluations described their work as particularly complex or as being high quality.

We had a "quality-complexity" code for several work categories, including legal research, each of the four writing categories, and fact-based work.[110] We aggregated these evaluations for analysis and dubbed this group the High Quality cohort. More than a third of the evaluations (38.5% or 188 students) warranted this High Quality coding.

These are examples of evaluations coded for high quality work:

> *The student produced an analysis of the cases cited by the Defendants in a motion to dismiss that I advised our team of interns should be used as the model in the future. Her analysis of each case was insightful but concise and the memo as a whole was extremely well written and organized.* [Record 216; civil rights law firm].

> *Her work was of consistently high quality, even on her most challenging assignments. These included drafting some complex joint venture and finder's agreements, complex co-publishing agreements, and a complex master network services agreement to maximize the company's online revenues; creating an artist management agreement formbook and form agreements for music synchronization licenses; maintaining excellent working relationships with a very diverse group of talents, egos and personalities . . . .* [Record 400; music publishing and talent management company]

Among student traits, one statistically significant differential emerged in this cohort: female students were more likely to be recognized for work that displayed complexity and high quality. Evaluations of students of color showed lower incidence of high quality work featured, but not at statistically significant levels. The evaluations of students with higher GPAs showed no appreciably greater likelihood that their work would be highlighted for quality or complexity, while evaluations of upper level students showed slightly greater likelihood of high quality work. Neither of these variances are statistically significant. The differences may suggest that supervisors are modulating their expectations according to the student's formal educational progress, regardless of what the transcript reports.

Evaluations of students in court placements provided fewer mentions of quality work relative to the other settings, which may be a function of the routine (albeit highly educational) bench memo and opinion-drafting assignments judicial externs receive. Despite the small sample size, it is worth noting that students in Intellectual Prop-

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[110] *See supra* Part III.C.1-3. The High Quality measure is a composite of all student records coded for one or more of these codes: LR-3, WDR-3, WT-3, WJ-3, WO-3, FBW-3. *See infra,* Appendix B for descriptions of each code.

TABLE 10: INCIDENCE OF HIGH-QUALITY WORK BY STUDENT AND PLACEMENT CHARACTERISTICS

Cohort: Students Performing High Quality Work 188 of 488 (38.5%)				
	ACTUAL		EXPECTED	
	# (of 188)	%	# (of 188)	%
Gender*				
Male	90	48%	101.3	53.9%
Female	98	52%	86.7	46.1%
Class Year				
2L	97	52%	104.0	55.3%
3L	75	40%	70.1	37.3%
4L	2	1%	1.5	0.8%
AJD	14	7%	12.3	6.5%
GPA				
Low	37	20%	34.3	18.2%
Mid	92	49%	98.2	52.3%
High	59	31%	55.5	29.5%
Race				
White	140	74%	133.5	73.4%
Non-White	42	22%	48.5	26.6%
Practice Setting				
Courts	33	18%	42.8	22.7%
Government	49	26%	43.5	23.2%
In-House/Corporate	33	18%	30.4	16.2%
Law Firm	54	29%	50.5	26.8%
Non-profit/Union	19	10%	20.8	11.1%
Practice Area				
Corporate	23	12%	26.2	13.9%
Criminal	31	16%	32.4	17.2%
Family	7	4%	6.9	3.7%
General Litigation	59	31%	65.5	34.8%
Immigration	2	1%	3.5	1.8%
Intellectual Property	38	20%	30.0	16.0%
Other	14	7%	10.4	5.5%
Public Interest	4	2%	5.0	2.7%
Real Estate	10	5%	8.1	4.3%

* There is a statistically significant difference between genders ($p < 0.05$).

erty practices received higher quality marks. This suggests it may be worthwhile to pursue further inquiry into what contributed to that success.

As expected, the numerical performance ratings for this cohort of students were especially high. Compared to the whole study population, their performance ratings were higher on every factor, at statistically significant levels. The biggest gains were in Legal Analysis, Fact Analysis, and Problem Solving, areas requiring a degree of adaptability and judgment that would merit high confidence from the supervisor that the extern could handle vital assignments.

4. *High Professionalism*

The Project's final intensity measure focused on evaluations that provide effusive descriptions of a student's professionalism. As educators who strive to train students to take on the mantle of the profession, we have high expectations for our students to show the emblems of professionalism and leave behind their adolescent years.[111] This is an important enough point of measurement that the BLS evaluation form seeks information in multiple open-ended questions and multiple skill areas to confirm that students have been acculturated to the profession's high standards for workplace performance.

Our working premise was that most evaluations would include some positive mention of at least one of three work traits: general professionalism, attention to detail, and effective communication. The sample bore this out; 451 (92.4%) of the evaluations warranted codes for one or more of those work traits.[112] The numerical ratings affirmed this as well. Of the 488 student records, 456 evaluations (93.4%) gave students "excellent" numerical ratings of 4 or 5 in the "professionalism" competency.

With that as our baseline, we built the High Professionalism intensity measure focusing on evaluations that described the student's professionalism both in exceptional terms and by providing context

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111 Measuring law student professionalism has taken on even greater urgency with the insistent critique of the millennial generation as "self-entitled." Emily A. Benfer & Colleen F. Shanahan, *Educating the Invincibles: Strategies for Teaching the Millennial Generation in Law School*, 20 CLIN. L. REV. 1, 3 (2013); *see also* Susan K. McClellan, *Externships for Millennial Generation Law Students: Bridging the Generation Gap*, 15 CLIN. L. REV. 255, 256 (2009).

112 Of course, some evaluations highlighted unprofessional performance. Of those, many supervisors mentioned that the student responded to feedback and guidance, and that performance improved over time. Thus, the study supports the assertion that the iterative nature of externship fieldwork and its multiple opportunities for performance enabled students to make identifiable progress in professional formation. There were also students who had not redeemed themselves over the term, generally with regard to time management, poor listening, or weak follow through.

and specificity.[113] Thus, we chose to create a cohort limited to evaluations that gave especially detailed description of a student's professionalism, such as the one below.

> *The student is a bright, promising law student with a pleasant personality that meshed well with chambers. She took direction well, was eager to learn, and responded enthusiastically to tasks assigned. Although she was not afraid to ask questions when appropriate, the student took a largely independent role in competently completing assignments given. Chambers (including the Judge himself) quickly took note that the student could be trusted with many important duties and assignments, a somewhat rare quality among law school interns/externs. . . . Over the last 10 years clerking for three different Judges, I have supervised over a hundred of law student interns/externs. . . .* [Record 298; state court judge].

Only 22 (4.5%) of the evaluations warranted these codes, providing substantial and detailed description of student conduct at that level.

Table 11 shows statistically significant differences in high professionalism only by practice setting, with government placements most likely to single out students for their professional approach to work. The numbers also advert to the value of taking the time to develop workplace relationships. Although not shown in these tables, we also found that proportionally more students in the summer program (6.7%) garnered plaudits for high professionalism than in the fall and spring programs (4.5%). The extra time that summer externs typically work in their placements, give their field supervisors more opportunities to observe and interact with them, and give students more time to observe and conform to workplace standards of professionalism.

Review of the performance numerical skills performance ratings for the High Professionalism cohort shows appreciably higher marks in every category. The differences were statistically significant in all skill areas, other than Writing and Research.

Part V Lessons for Program Design, Student Counseling, and Institutional Assessment

Externship programs embed students in real practice to provide distinctive opportunities to work on substantive law matters and experience legal and business environments not accessible elsewhere in the law school curriculum. By definition and design, extern field experiences are not uniform. Externship programs offer placements with a considerable variability in the mix of cases and assignments, client and

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[113] The High Professionalism measure is a composite of all student records coded as PRO-2, PRO-4, and PRO-6. *See infra,* Appendix B for descriptions of each code.

TABLE 11: INCIDENCE OF HIGH-PROFESSIONALISM BY STUDENT AND PLACEMENT CHARACTERISTICS

Cohort: Students Performing Work with High Professionalism 22 of 488 (4.5%)				
	ACTUAL		EXPECTED	
	# (of 22)	%	# (of 22)	%
Gender				
Male	15	68%	11.9	53.9%
Female	7	32%	10.1	46.1%
Class Year				
2L	10	45%	12.2	55.3%
3L	8	36%	8.2	37.3%
4L	0	0%	0.2	0.8%
AJD	4	18%	1.4	6.5%
GPA				
Low	5	23%	4.0	18.2%
Mid	11	50%	11.5	52.3%
High	6	27%	6.5	29.5%
Race				
White	16	73%	15.4	73.4%
Non-White	5	23%	5.6	26.6%
Practice Setting*				
Courts	3	14%	8.9	22.7%
Government	9	41%	3.0	23.2%
In-House/Corporate	3	14%	6.3	16.2%
Law Firm	4	18%	1.2	26.8%
Non-profit/Union	3	14%	2.6	11.1%
Practice Area				
Corporate	1	5%	3.1	13.9%
Criminal	6	27%	3.8	17.2%
Family	1	5%	0.8	3.7%
General Litigation	7	32%	7.7	34.8%
Immigration	0	0%	0.4	1.8%
Intellectual Property	3	14%	3.5	16.0%
Other	0	0%	1.2	5.5%
Public Interest	1	5%	0.6	2.7%
Real Estate	3	14%	0.9	4.3%

* There is a statistically significant difference among practice settings ($p < 0.05$).

workplace relationships, and professional and personal development challenges.

The data from the Externship Assessment Project have nonetheless allowed us to identify recurring skills performances and learning outcomes for students in a broad-based large externship program, and examine assumptions about what types of lawyering experiences are available at different types of field placements. This knowledge has considerable consequences and utility for managing externship programs. With such knowledge, externship programs can engage in more intentional program design and administration; differentiate placement settings and practice areas by their potential to deliver specific learning opportunities; and provide data-supported assessment of how the program contributes to student attainment of the institutional learning outcomes published by the law school.

Broadly speaking, the Externship Assessment Project data show the following about the BLS externship students.

- Law student participation tracks the demographic profile of enrolled students; that is, externship courses appeal broadly to all students. (Table 1). There is some variability in race and gender that warrants more investigation or monitoring.
- Students take advantage of externships early in their law school careers when that option is available to them, with many more 2Ls than 3Ls (55% and 37% of the study population respectively). (Table 2).
- Grade point averages of externs follow a normal bell curve, showing that students in all GPA segments seek live practice field placement experiences. Variation in GPA did not generate statistically significant differences in the quality and intensity of the work experience as described by field supervisors. It should be noted that students in judicial placements had on average higher GPAs.
- Practice settings cover the professional landscape, with a majority of students opting for traditional placements in government agencies, non-profit organizations, and the courts (57%), and substantial numbers working in for-profit settings in law firms and corporations (43%). (Table 4).
- While most students gravitated toward traditional externship offerings in General Litigation (34.8%) and Criminal Law (17.2%), a sizeable portion of students showed marked interest in non-litigation practices, Intellectual Property (16.0%) and Corporate (13.9%). (Table 5).
- Almost every student extern encounters multiple and varied assignments in one or more categories of work; rare is the extern

who receives repetitive, routinized assignments. (Table 7). In every practice setting, at least 90% of student externs received assignments across multiple skills and tasks, and for some settings that number was 100% including state courts, government civil litigation, law firms of 11-29 lawyers, and unions.

- Almost every extern was assigned legal research and multiple writing projects. (Table 7).
- Evaluations highlighted certain types of legal work less consistently. Fact-based work (39.1%), opportunities to observe (34.4%), direct interaction with others (18.6%), and attorney-role (7.8%) were highlighted with less frequency than research and writing assignments. It is not clear whether this is an accurate reflection of the student work array or is a product of what the evaluator choose to highlight. (Tables 7, 8, 9).
- Nearly two-thirds of the students (63.1%) had evaluations that recounted work with intensity characteristics such as Dynamic, High responsibility, High quality, or High professionalism work/ performance.
- Evaluations that describe Dynamic and High-responsibility student work are most frequent from mentor attorneys in government and law firm settings, especially in criminal law and general litigation work. Smaller law firms are more likely than larger firms to provide Dynamic work. (Tables 8 and 9).
- Broadly speaking, students performed well, earning on average 4.39 (out of 5) points on eight lawyering and professionalism competencies. Student Writing received the lowest ratings on average (4.13/5) and Student Attitude received the highest average rating (4.78/5). (Table 6).
- Converting the skills 5-point scale to the GPA 4-point scale shows a mean skills rating of 3.51, higher than the study population's mean GPA of 3.30.
- In roughly one out of five instances, evaluators highlighted the quality and complexity of student research and writing work product (19.9% and 19.0% respectively).
- Students had the most success in generating work product recognized for its High quality and complexity in law firm and government settings, and especially where those settings practiced general litigation and intellectual property law. (Table 10).
- Evaluators consistently (93.4%) rated students as "excellent" in the Professionalism skill area (encompassing ratings both for Excellent with guidance, and Excellent with little need for guidance).
- When evaluations indicated High Professionalism or High Responsibility student performance, the numerical skill area ratings

increased markedly.

A. Program Assessment and Design

We can deploy these findings to assess attainment of programmatic learning goals, and to refine those goals. The BLS externship program has five specific programmatic educational goals:

- Training in lawyering skills
- Developing professional identity and responsibility
- Gaining insight into legal systems and institutions
- Exposure to particular practice areas
- Learning how to learn from experience

The data from the Externship Assessment Project are particularly useful to provide a nuanced examination of the first two goals, lawyering skills training and professional identity formation, which are highly typical of externship programs across the country.

1. Training In Lawyering Skills

To measure attainment of the goal to be a platform for effective training in lawyering skills, we look to the numerical performance ratings for the five core lawyering skills listed on the evaluation form: Fact Analysis, Legal Analysis, Research, Problem Identification/Solving, and Writing. Notably, these five skills track the minimum learning outcomes identified in ABA Standard 302.[114] Most field supervisors reported high performance of these skills, giving ratings largely of 4's (excellent with guidance) or 5's (excellent with little need for guidance).

We place those salutary ratings in more probing context. The greater value of the Project is to understand the constellation of assignments and skills building opportunities available to our students. Although nearly two-thirds of the students (63.1%) had evaluations that recounted work with intensity characteristics, we want to explore whether and how to set more ambitious goals for higher incidence of intensity in student work.

The data suggest that field supervisors may be underreporting certain types of extern work. That circumstance compels us to adjust the evaluation instruments to include some check-the-box questions to gather the information, making sure that the options include higher

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[114] ABA STANDARDS, *supra* note 2, at § 302(b) (requiring student competency in "[l]egal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context"); Interpretation 302-1 (suggesting additional skills including "fact development and analysis").

and lower level options. Next, we should reexamine our communications with our mentor attorneys to see where and how it would be effective to encourage high intensity assignments, cognizant that their work environments cover a diverse range. Additionally, we can examine where and how we can prepare students sufficiently well to optimize such learning opportunities.

Writing skills remain a core competency that supervisors expressly seek and persistently critique. In these evaluation narratives, it is clear that student drafting assignments will be diverse as to document types and audience. Cross-curricular response may be especially valuable here, with externship programs collaborating with writing faculty to better support the student practice experience.[115]

2. *Developing Professional Identity and Responsibility*

The BLS evaluation form specifically requests each supervising attorney (evaluator) to assess the student's workplace traits of Attitude, Responsibility, and Professionalism. By those numeric performance ratings, 93.4% of the students show excellence, whether with attorney guidance or without. Those numeric ratings are supported by field supervisors' written comments; 92.4% of the evaluations offered positive comment on professionalism traits of the student. Student lapses primarily involved insufficient attention to detail and gaps in communication (content, audience appropriate, responsiveness), again suggesting curricular amendments—perhaps in the companion seminar—to boost these skills.[116]

B. Course Level Assessment

Field supervisor evaluation data are equally relevant to determining attainment of the parallel learning goals of externship companion seminars. At BLS, each externship companion seminar expands on the overarching program goals to announce more specific outcomes, which typically correlate to the students' level of experience and prac-

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[115] That collaboration is already happening on many levels. *See* Sarah E. Ricks & Susan C. Wawrose, *Comment: Survey of Cooperation Among Clinical, Pro Bono, Externship, and Legal Writing Faculty*, 4 J. ASS'N LEGAL WRITING DIRECTORS 56, 59 (2007); *see also* Young & Blanco, *supra* note 41, at 117 (citing research on student difficulty transferring 1L research and writing skills to the workplace); Sarah O'Rourke Schrup, *The Clinical Divide: Overcoming Barriers to Collaboration Between Clinics and Legal Writing Programs*, 14 CLIN. L. REV. 301, 302 (2007) (observing that "upper-level faculty, including clinicians, lament the research and writing skills of the students that enter their courses"); *see also*, Harriet N. Katz, *Fulfilling Skills and Writing Requirements in Externship*, 21 CLIN. L. REV. 53, 63 (2014).

[116] *See, e.g.*, Elizabeth G. Ford, *Toward A Clinical Pedagogy of Externship*, 22 CLIN. L. REV. 113, 137-44 (2015) (describing companion seminar utilizing skills self-assessment and classroom exercises to promote skills development).

tice setting. For example, the BLS seminar for first-time externs seeks to develop students' communication and problem-solving skills, two of the skill areas that field supervisors numerically rate. The Government Counsel and Judicial Externship Seminars each seek to advance students' writing skills, which can be measured through supervisor evaluations of externs' writing. More reliable measurement might entail revising the evaluation form to identify specific components of an aspirational skill set, and request supervisor feedback on each component. At a minimum, study results can deepen seminar faculty's understanding of the range and typicality of the student experience, encouraging refinements to course design.

C. Student Advising

At the individual student level, the narratives the field supervisors write about externs' work are valuable to counseling about their externship choices and setting student expectations.[117] Whether an externship program matches students to placements or requires students to find their own placements, an essential step in the process is for the student to create a learning plan that defines individual learning goals. Examples of such goals might include learning how to conduct client interviews or exposure to a range of contract drafting assignments. The evaluation data offer guidance on which placements are more likely to fulfill student learning goals. They tell us, for example, that students interested in demanding work in intellectual property matters should seek law firm placements, and that the students who want to be on their feet and interacting with others should opt for government and non-profit settings.

D. School Level Assessment of Published Student Learning Outcomes

Institutional outcomes assessment is yet another beneficiary of the Externship Assessment Project. The ABA Standard requiring law schools to explicitly identify and publish institutional learning outcomes includes the corresponding obligation to measure attainment of those outcomes.[118] One accepted yardstick is what judges and practicing attorneys say about law student performance.[119] For example, a

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117 *See* Harriet N. Katz, *Counseling Externship Students*, 15 CLIN. L. REV. 239, 240 (2009) (attributing student success in an externship in part to appropriate counseling on choosing placements and identifying learning goals).

118 ABA STANDARDS, *supra* note 2, at §§ 301, 315.

119 ABA STANDARDS, *supra* note 2, at § 315 and Interpretation 315-1 (listing as a method for assessing student competency "assessment of student performance by judges [or] attorneys.").

BLS institutional learning outcome requires student proficiency in legal analysis and reasoning.[120] The first-year curriculum and every doctrinal course teaches the skill. According to the study data, our pool of 347 unique evaluators (field supervisors) rated 99.4% of the externs a numerical rating of 4 or 5 for "legal analysis." Another BLS learning outcome is to "[w]ork effectively to engage in and assist others in problem solving, including resolving uncertain, indeterminate, and unstructured situations."[121] The project data tell us that every student in the 2015-16 study year received a numerical rating of at least a 3 (very good, with guidance) for problem-solving and that 43.9% of those students were coded for the Dynamic Work cohort indicating exposure to fluid and unpredictable situations. These findings give BLS considerable confidence that its program of study achieves these learning outcomes.

Beyond outcomes assessment, the study offers lessons in curriculum development.[122] For example, the variety of writing projects assigned to students suggests more attention should be paid in law school to exposing students to transactional drafting and non-traditional writing assignments involving letters, emails, and presentation of factual information.[123] The frequency with which field supervisors wrote about students' oral communication skills (positive and negative), suggests its importance as a skill that deserves more curricular attention. Field supervisor evaluations thus can be used as part of an iterative process of both identifying learning outcomes and assessing student progress toward competency.

E. Limitations of the Study and Questions for Further Study

We have endeavored to make clear throughout the article where the limitations of the data or the analysis are possible. There are two aspects that are worth underscoring.

- Fine-grained characterizations of an evaluator's relatively short description of student work may exaggerate or minimize the writer's intended meaning.
- Using multiple coders makes it difficult to assure consistency, especially when the chief coders are law students who do not have

120 *See* Brooklyn Law School, Institutional Goals & Learning Outcomes, https://www.brooklaw.edu/Admissions/statisticsandprofile/learning-outcomes/goals-outcomes (last visited August 28, 2018).

121 *Id.*

122 *See* Young & Blanco, *supra* note 41, at 128-29.

123 *See* Susan C. Wawrose, *What Do Legal Employers Want to See in New Graduates?: Using Focus Groups to Find Out*, 39 OHIO N.U. L. REV. 505, 548 (2013) (recommending incorporating shorter, alternative format assignments into legal writing curriculum).

the years of experience interpreting the vernacular of lawyers as do the principal investigators.

The study also suggests avenues for further investigation.

- Our teaching, discussions with students, and conversations with mentor attorneys tell us that there is significant underreporting of certainty categories of work, including fact-based work, direct interactions with others, and observation opportunities. We need mechanisms to capture data from supervisor evaluations in sufficient detail to gauge the full extent of student dynamic and high responsibility work.
- It may be worthwhile to use this kind of data to explore the culture-typing of different practices. A further study might discern how much of the variation in the student work selected to highlight is a function of the host office culture (how they think and speak about their work) rather than a difference in student opportunity or performance.
- There are some indicators that there are differences in the experiences of the students of color that might suggest a need for further examination. Black and Latino students under-enroll in externships somewhat. It is worth discerning what experiences those students are engaging with instead (*e.g.*, different doctrinal or experiential coursework, legal employment, non-legal employment, or personal responsibilities). Similarly, there are some data suggesting concentrations of women and students of color in certain settings or practice areas. It may be worth figuring out how to determine the extent to which student informed decision making or workplace or stereotype biases are at play.

Conclusion

Externship program data, and particularly what we learn from field supervisor evaluations of our students, can serve as a resource for compliance with pedagogical criteria and regulatory demands. Our project delivered a host of findings about the power of the student extern experience, countering skepticism about its value and offering deep, representative explanations. The project also recommends development of more refined and precise evaluation instruments that align supervisor feedback with announced institutional and programmatic goals to better measure the degree to which students have attained competency. We hope the Externship Assessment Project can also provide a template for field placement programs nationally for examination and analysis of student fieldwork.

APPENDIX A
BROOKLYN LAW SCHOOL MENTOR ATTORNEY FINAL EVALUATION OF STUDENT EXTERN

BROOKLYN LAW SCHOOL

EXTERNSHIP EVALUATION FORM FOR YEAR 2016

JUDICIAL ○ CIVIL ◉ CRIMINAL ○

Fall ○ Spring ◉ Summer ○

Name of Student

Supervisor

Placement

Telephone Number Email

We appreciate your thoughtful responses to these questions. Your evaluation plays an extremely important role in the grade awarded to the student. In addition, it would benefit the student if you would personally review your evaluation with him or her. Please enter your responses in the spaces below, and then either attach the electronic file to an email or print out the form and fax or mail it to the address below.

a. Please describe the assignments and tasks undertaken and completed by this student.

b. Please comment generally on any positive qualities this student exhibited.

c. Please describe any examples of particularly good work performed by this student.

d. Were there any examples of unsatisfactory work or areas where improvement is necessary?

Page 1 of 2

e. What constructive criticism and advice would you offer to this student?

Please rate the student's performance in the skill areas listed using the following 1 to 5 scale:

1. Needs work or improvement
2. Good, needs a lot of guidance
3. Very good, with guidance
4. Excellent, with guidance
5. Excellent, with little need for guidance

Select Attitude	Select Research	Select Problem Identification\Solving
Select Fact Analysis	Select Responsibility	Select Writing
Select Legal Analysis	Select Professionalism	Select Other:

Other comments that might be helpful in evaluating the student's performance:

Have you discussed your evaluation with the student? Yes ○ No ○

Return to: Clinic Office, Brooklyn Law School, One Boerum Place, Brooklyn, NY 11201
Telephone: (718) 780-7994; Fax: (718) 780- 0367; Email: clinics@brooklaw.edu

APPENDIX B
EXTERNSHIP ASSESSMENT PROJECT CODING FACTORS

Abbrev	Coding Factor	Totals (488)
LR-0	Legal research-no mention	47
LR-1	Legal research-exclusively	16
LR-2	Legal research-one of many types of assignments	422
LR-3	High-level legal research: complexity, high quality	97
LR-4	Research memos	173
WDR-0	Writing-dispute resolution-no mention	341
WDR-1	Writing-dispute resolution-work on one type of document	60
WDR-2	Writing-dispute resolution-multiple types of docs	83
WDR-3	High-level dispute resolution writing: complex, high quality	26
WDR-4	Settlement agreements specifically mentioned	10
WT-0	Writing-transactional-no mention	375
WT-1	Writing-transactional-limited to one document type	33
WT-2	Writing-transactional-multiple doc types	77
WT-3	High level transactional drafting-complex, high quality	17
WT-4	Simple review, summarizing, abstracting	48
WT-5	Draft, revise, propose, recommend, analyze	59
WJ-0	Writing-judicial-no mention	383
WJ-1	Writing-judicial-limited to one document type	54
WJ-2	Writing-judicial-multiple doc types	47
WJ-3	High-level judicial writing: complex, high quality	20
WJ-4	Cite checking or bluebooking	17
WO-0	Writing-other-no mention	322
WO-1	Writing-other-limited to one document type	91
WO-2	Writing-other-multiple doc types	73
WO-3	High-level writing-other: complex, high quality	33
FBW-0	Fact based work-no mention	293
FBW-1	Limited fact-based work (simple fact presentation)	86
FBW-2	Substantial fact-based work (raw facts, gathering and analysis)	105
FBW-3	High-level fact-based work: complexity, high quality	26
OB-0	Observation-no mention	316
OB-1	Single or limited observation opportunity	18
OB-2	Multiple or substantial opportunities for observation	150

Abbrev	Coding Factor	Totals (488)
OB-3	Attorneys pre/post discussion re observation	15
OB-4	Observation of client	51
OB-5	Observation of court proceedings	128
OB-6	Observation of opposing counsel (meetings, etc.)	67
OB-7	Observation of negotiation	9
DIO-0	Direct interaction with others-no mention	379
DIO-1	Direct interaction with others-single or limited	29
DIO-2	Direct interaction with others-multiple or substantial interactions	62
DIO-3	Direct interaction with others-client	63
DIO-4	Direct interaction with others-court representatives (clerks, etc.)	16
DIO-5	Direct interaction with others-witnesses, opposing counsel, etc.	24
DIO-6	Assignments from multiple attorneys	73
AR-0	Attorney role-no mention of work with that level responsibility	448
AR-1	Student given substantial and substantive responsibility	21
AR-2	Lead or co-lead counsel for all (or a major aspect) of a client matter.	17
NUM-1	All one rating (5s)	119
NUM-2	All one rating (4s)	5
NUM-3	Varied ratings	359
PRO-0	Professional work traits-no mention	16
PRO-1	General professionalism-meets expectations	438
PRO-2	General professionalism-exceptional	14
PRO-3	Attention to detail-meets expectations	65
PRO-4	Attention to detail-exceptional	4
PRO-5	Perceptive communication-meets expectations	121
PRO-6	Perceptive communication-exceptional	6
PRO-7	Issue raised (concern, negative)	87