3. Delivering on the Potential of Externships

As indicated earlier, it is an emerging best practice to assure that students can take at least one law clinic and one externship course. Students will benefit most if they have at least one closely supervised, intensely “scaffolded” practice experience and at least one that requires excellent independent performance even in the face of the pressures and conditions of practice – the bridge to practice. To fulfill that role, externship courses must meet the standards below in order to deliver to students the promise of what externships can and should offer.

A. Externships Must Be Clinical Legal Education Courses that Are Taught

All elements of the law school curriculum, including externship courses, must meet rigorous and explicit standards. At a minimum, externships should meet the newly revised standards for any experiential course; they are courses for credit, and as such, they must be taught, not simply administered. Moreover, they are a form of clinical legal education, which are experiential courses that involve real life learning opportunities. To consider them anything else leaves these courses vulnerable to erosion of the core practices necessary to assure their integrity as courses worthy of credit. They are an intended vehicle for neither job creation nor alumni connection. It is, therefore, a best practice for schools to categorize these courses within the curriculum as a necessary part of the clinical array of courses.

i. Teachers, Not Administrators

20 See, Chapter 5 Section F, Subsection 1, *Incorporating Experiential Education Throughout the Curriculum*, above.

21 In order for an externship, or field placement, to satisfy the definition of an experiential course under the 2014 ABA Revised Standards, and, therefore, count as part of the new requirement of six experiential credits, the externship must meet four criteria: integrate doctrine, theory, skills, and legal ethics and engage students in one or more professional skills; develop the concepts underlying the professional skills being taught; provide multiple opportunities for performance; and provide opportunities for self-evaluation. ABA Standards, Standard 303(a)(3), (2014). Externship teachers will need to review their course design features to determine if they meet the new Standard.

22 There are some inevitable administrative duties involved in teaching an externship course, but the clinical educator should still be viewed as a “teacher” of externship courses, not the administrator.

23 See e.g., Batt, *A Practice Continuum*.

24 Both job creation and alumni connection can be strong potential secondary benefits of externship but neither should be the primary purpose or design feature.
It is the teacher who provides the value that sets an externship course apart from a volunteer opportunity or paid job. She is in charge of the overall educational quality of the externship experience, through setting the goals for the course, approving which entities and supervisors will serve as field placements; monitoring and at times helping to improve the quality of the lawyering and supervision; teaching the classroom component or otherwise meeting with the student; and guiding the student’s learning from the experience through readings, assignments, and discussion, as described below.

To what extent, if any, should individuals without faculty status be involved in teaching externship classes? This question provokes controversy in many quarters. This discussion uses the term “teacher” to refer to any person assigned to teach and administer the externship course or program. However, those who teach externships may hold a wide variety of positions and job titles. In externships across the U.S., teachers include full-time faculty members, externship “directors,” administrators with other job functions such as career development, and adjunct faculty; programs can include various combinations of these individuals. Some sets of job responsibilities, as reflected by those titles, are more likely to lead to successful teaching than others. One commentator has recommended that in order to improve student learning, “[f]ull time faculty with clinical or experiential teaching experience or knowledge should be the primary pool from which externship teachers are drawn.”

Currently, law schools employ a variety of structural designs, generally falling into one of three categories: freestanding programs; locating the program within a clinic or experiential department; or locating it within the career services office or other administrative office. Regardless of where the office is physically placed within the law school, however, externships should be categorized organizationally as courses (and collectively, programs) that are part of the overall clinical legal education program. It is a best practice to organize both the courses and the faculty structure to accomplish this.

It is a best practice to consider the person assigned to teach the externship course or direct the program as part of the clinical teaching faculty. He may inevitably have some additional administrative duties inherent in this unusual form of teaching, but the primary function is to teach. One reason he should be part of the teaching faculty is that externship teachers are

26 Full-time teachers may be tenured/tenure track or contract (short-term or long-term) faculty. They may have as their sole teaching assignment the teaching of externships or may have other duties in doctrinally-focused, simulation, or other clinical courses.
27 An externship director is a person hired to oversee the set of externship courses that are treated as a program and, often, to teach one or more of the externship courses. The person may be hired as an administrator, rather than as someone with faculty status, or could be a faculty member who is given additional administrative responsibilities to oversee the program.
28 Rosenfeld, The Examined Externship, at 166.
29 Depending on space and clinic layout, the externship program may not be able to be physically located within the same space as one or more of the law clinics due to confidentiality concerns in the clinics. Physical location, however, is not dispositive of whether the program is part of the clinical legal education offerings.
30 At times, one person may be categorized solely as an administrator, overseeing an array of teachers. This is not the best model. First, there are teaching duties entwined with administrative-like duties, such as “selection” of placements, which take significant judgment and experience. Second, an administrator who does not also actually teach will likely “oversee” a program without a full appreciation of the challenge of this form of teaching.
31 Maurer & Cole, Design, Teach and Manage, at 115.
particularly vulnerable to complaints from field supervisors and students. These individuals have a heightened need to have the protection and independence necessary to perform the tasks of selection and retention of field supervisors and monitoring of the quality of the field supervision. These aspects of externship design and teaching often require difficult choices – such as whether to “fire” a supervisor – that must be based on educational integrity, free from interference based on considerations of the field supervisor’s ability to hire, his reputation as a practitioner, or at times, his status as an influential alumnus or law school supporter. Externship teachers also require sufficient support and time to steep themselves in the theory and methods of clinical pedagogy. It is, therefore, a best practice to assure that everyone teaching externships has the necessary expertise, time, and protection to perform the teaching tasks well, and the requisite status and recognition of the importance of this teaching endeavor. 

ii. Teachers and Scholars

Law schools should evaluate the benefits to the profession, the academy, and the law school itself of considering externship faculty as scholars. Externship teachers are not always given the opportunity to commit time and energy to the scholarship endeavor; this is especially likely if they are considered administrators rather than faculty members.

Externship educators work closely with students; by helping them learn how to practice ethically, externship teachers necessarily must theorize practice. The potential for contributions to the body of scholarship on pedagogy and on the elements of practice are enormous. Externship teachers also are in close proximity to practice and yet, are separate from it. They know what is happening in the world of lawyers, yet they retain an academic objectivity. Like their in-house clinic colleagues, externship teachers are in an ideal place to produce scholarship that provides either descriptive empirical data on practice, incisive critique of practice, and/or prescriptive, theoretical recommendations for improvements in the practice of law. Given the rich scholarship opportunities that result from this vantage point, law schools should decide carefully how externship teachers contribute best to the mission of the law school: as teachers or as teacher/scholars.

iii. Teachers: The Special Relationship with Career Development Offices

Placing externship programs in career development offices or assigning career development administrators to teach the externship courses presents special and complicated concerns.

Law schools that house their externship programs in their career development office raise significant concerns regarding the mission and expectations for externships and potentially send

32 See Chapter 8, Section B, Faculty Status and Institutional Effectiveness, below.
33 It is time consuming to fulfill all the obligations of externship teaching: developing and maintaining the contacts in the profession necessary to provide students with an array of excellent placements and overseeing the quality of the field supervision. Many externship teachers have large numbers of students in their courses, requiring a significant commitment of time to provide the necessary level of engagement with students, in the classroom, in the field, and reviewing written and reflective work.
34 If scholarship duties are available to, and/or required of, externship teachers, then the teaching workload, directorship duties, and other obligations must be assigned or adjustably equitably. See Chapter 8, Section B, Faculty Status and Institutional Effectiveness, below.
problematic "mixed messages" to students and the legal community. Given increasing scrutiny of post-graduate employment outcomes, law schools are under intense pressure to demonstrate that their graduates are obtaining high-quality positions, and most of that pressure is focused on the career development office. That environment can undermine the educational focus of the externship program.

Career development professionals pride themselves, rightly, on the guidance they routinely provide to students. However, because the career development office is an administrative department within the law school, it does not have the same independence of action afforded to the curricular domain governed by law school faculty. The student’s expectations for the externship may be shaped by the law school’s choice of structure. If the career development office is overseeing the externship program, students may envision the externship as a semester-long audition for a job, and therefore placement goals can supersede learning goals. Students might be unwilling to take risks, either in the selection of a placement or while at the site, and might avoid seeking out challenges to develop new skills, focusing instead on assignments they perceive as likely to impress, regardless of the educational benefit. While preparation for a career is a welcome and appropriate aspect of the externship experience, it is best served by maximizing the educational value at the placement. Many field supervisors provide superb education to many students semester after semester, but rarely, if ever, are able to hire. Students benefit greatly from this type of placement, and are more likely to see that benefit when they are expressly engaged in clinical legal education rather than involved in what their law school views as a career development endeavor. Although the benefit of extensive coordination and sharing of information between externship programs and the career development office is necessary and obvious, it is a serious mistake to categorize the externship program as a “service” of the career development office, rather than as a clinical course.35

Assuming the externship program is properly identified as part of the clinical legal education program, many career development administrators, nonetheless, offer valuable skills that translate well to externship teaching. Some may have had prior careers as attorneys that included supervision and mentoring of students and young attorneys. In their current jobs, they often routinely guide students to develop skills of self-assessment and self-direction, and help them shape their professional identities in preparing for their post-graduate careers.36 The danger is that career service administrators may lack the time to run a high-quality externship program or teach a sophisticated externship course, given their other critical and time-consuming responsibilities.37 Both administering a career office and teaching an externship course well are important tasks and each requires substantial investments of time. Situations arise that may create a conflict of interest between meeting the educational priorities for students and developing career placement connections for the institution. A school must evaluate seriously...
whether assigning the externship teaching role to a career development administrator will further the best interests of its students, given the individual’s competing duties and time constraints.

Having career service administrators teach externship classes can provide synergy between the externship program and the career office. But this will be true only if the school treats the administrators as part-time members of the clinical teaching faculty and ensures that its externship courses and teachers are held to the same pedagogical goals and standards as the rest of the law school’s curriculum and faculty. Best practices require that, as members of the clinical teaching faculty, these teachers have the necessary time to develop expertise in clinical pedagogy through attendance at appropriate conferences and participation in the faculty as clinical teachers. Best practices require that they be accorded faculty status and protection against interference in their teaching role.

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**Faculty Responsibilities**

- Standard 304(c) requires that *faculty*:
  - Evaluate each externship student’s educational achievement
  - Maintain “regular contact” with site supervisors “through in-person visits or other means of communication that will assure the quality of the student educational experience”
  - Enter into written understandings with site supervisors and students
  - Offer a classroom instructional component, tutorial or other means of contemporaneous guided reflection

- “Faculty” includes:
  - Tenure-stream and not tenure stream
  - Full-time and part-time (e.g., adjuncts, lecturers)
Decisions to be Made by “Faculty”

- What constitutes a “substantial lawyering experience”?
- Who can supervise? What does supervision mean? What does “direct” mean?
- Defining, Tracking, & Documenting:
  - Direct supervision of student performance
  - Feedback on student performance
  - Multiple opportunities for performance
  - Opportunities for student self-evaluation
- On-going, contemporaneous, faculty-guided reflection
- Drafting, negotiating, and maintaining written agreement
- Identifying course outcomes and assessment methodology
- What constitutes “regular contact” between faculty and site supervisor?