

2010

Addressing Problems of Power and Supervision in Field Placements

Nancy M. Maurer
Albany Law School

Robert F. Seibel
California Western School of Law

Follow this and additional works at: <https://scholarlycommons.law.cwsl.edu/fs>



Part of the [Legal Education Commons](#)

Recommended Citation

Robert F. Seibel & Nancy M. Maurer, Addressing Problems of Power and Supervision in Field Placements, 17 CLINICAL L. REV. 145 (2010).

This Article is brought to you for free and open access by CWSL Scholarly Commons. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of CWSL Scholarly Commons. For more information, please contact alm@cwsl.edu.

HEINONLINE

Citation: 17 Clinical L. Rev. 145 2010-2011



Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Mon Apr 28 12:18:07 2014

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[https://www.copyright.com/cc/basicSearch.do?
&operation=go&searchType=0
&lastSearch=simple&all=on&titleOrStdNo=1079-1159](https://www.copyright.com/cc/basicSearch.do?&operation=go&searchType=0&lastSearch=simple&all=on&titleOrStdNo=1079-1159)

ADDRESSING PROBLEMS OF POWER AND SUPERVISION IN FIELD PLACEMENTS

NANCY M. MAURER & ROBERT F. SEIBEL*

Power dynamics play a role in all workplace relationships and are of particular significance in field placement programs where such dynamics can have an impact on the learning opportunities for law students. This article examines power issues in relation to supervision of law students. The article begins by exploring the parameters of the problem through examples, and then examines the potential consequences of failing to address such issues in field placement programs, including ethical ramifications. Faculty in field placement programs, who generally are not responsible for client work product, have a unique opportunity to address power and supervision issues with students and supervising attorneys. The goal of field placements is to equip students to fully exploit opportunities in the programs, and to prepare them for workplace issues they may face in the legal workplace. The article contains extensive suggestions for teaching about power in each phase of field placement programs, in hopes of enabling students, faculty and supervisors to identify and address problems of power and supervision and to maximize student learning.

*You consider me the young apprentice
Caught between the Scylla and Charybdis. . .
I have only come here seeking knowledge
Things they would not teach me of in college*

*Wrapped Around Your Finger: Sting & The Police*¹

INTRODUCTION

There are ever-present power issues in every workplace.² The

* Nancy M. Maurer is Clinical Professor of Law and Director of Field Placement Clinic at Albany Law School, in Albany, NY. Robert F. Seibel is a Distinguished Visiting Professor at California Western School of Law, in San Diego, CA. We are grateful to Mary Lynch and Linda Morton for comments and suggestions on an early draft of this article, and to all the participants at our panel presentations at the Externships 4 Conference for their suggestions and creative ideas. Finally we thank our students for being our inspiration and for teaching us to be better teachers.

¹ THE POLICE, WRAPPED AROUND YOUR FINGER (A&M Records 1983).

² See, e.g., Susan D. Carle, *Acknowledging Informal Power Dynamics in the Workplace: A Proposal for Further Development of the Vicarious Liability Doctrine in Hostile Environment Sexual Harassment Cases*, 13 DUKE J. GENDER L. & POL'Y 85 (2006) (discussing impact of informal power dynamics in workplace on effective use of employer sexual harassment policies by victims of harassment and urging courts to more closely

power issues that arise in field placements³ can harm individual students, impede student learning, and affect students' future success. Power issues can be blatant, as when a supervising attorney intentionally or inadvertently abuses her supervisory authority over a law student by overstepping workplace boundaries, or subtle issues that occur when a supervisor fails to sufficiently oversee students' work. More commonly, subtle power problems undermine learning opportunities for our students by limiting the amount and quality of feedback and guidance they receive. While there are limits to what clinical or externship supervisors can do to change power dynamics in the workplace, they cannot ignore potential power problems in field placements. Faculty members must identify, address and ameliorate such problems.

How can faculty accomplish this? What is the proper role of faculty when a student raises concerns about her relationship with a supervisor? How do faculty assist or counsel a student whose fear or timidity inhibits her from requesting feedback and learning opportunities from a supervising attorney at the placement? Should faculty intervene? How can faculty identify unarticulated as well as clearly identified potential blocks for student growth? Are there specific skills that students should develop in order to have successful supervisor/supervisee relationships? What do students need to learn about supervision and the appropriate relationship between student and supervisor; about asserting and claiming their own power; and how do we teach it to them?⁴

Just as students need to learn about power and supervision, so do supervising attorneys. Supervision and mentoring are not tradition-

examine use of employer-granted power in considering an employer's affirmative defenses); Linda A. Hill, *Power Dynamics in Organizations*, HARVARD BUSINESS REVIEW (1994) (comparing power and influence dynamics of organizations to political entities and noting importance of understanding such dynamics for effective management); Lisa Mainiero, *A Review and Analysis of Power Dynamics in Organizational Romances*, 11 ACAD. MGMT. REV. 750 (1986) (discussing power dynamics of organizational romances, possible internal and external impact of such relationships and implications for management intervention).

³ When we refer to "field placements" we mean externships and internships for which students receive academic credit. Such "for credit" programs often have a classroom component, but we do not mean to exclude programs that do not have a classroom component as long as students receive academic credit. For purposes of this article, field placements do not include unpaid activities, like pro bono or volunteer work — for which students do not receive credit — or paid clerkships. In this article, we may occasionally use the terms "externship" or "internship" and unless the context clearly indicates otherwise, those terms mean "field placements."

⁴ See Alexis Anderson, Arlene Kanter & Cindy Slane, *Ethics in Externships: Confidentiality, Conflicts and Competence Issues in the Field and in the Classroom*, 10 CLIN. L. REV. 473 (2004) (noting legal education does little to prepare lawyers for supervisory responsibility).

ally part of lawyers' training.⁵ How do faculty and programs manage relationships with supervising attorneys in order to maximize student learning? Can programs teach practicing attorneys to be better supervisors? To what extent is faculty responsible for the ethical behavior of field placement supervisors?⁶ How do faculty ensure that supervising attorneys understand and comply with their ethical duties to supervise or to avoid the unauthorized practice of law? How can faculty encourage supervisors to develop close working relationships with students without overstepping boundaries? When there are allegations of abuse of power, how does faculty identify and balance the interests of the current field placement student, the field supervisor, future students, the law school, the placement and other constituencies? The finite duration of the typical field placement relationship, approximately fourteen weeks, necessarily means that there is scant time for power issues to work themselves out and for the parties to develop trust. Avoiding and minimizing problems of power through prevention and training is, therefore, crucial. The triangularity of relationships between law student, supervising attorney, and faculty member makes addressing power dynamics in law school field placement programs especially complex. Yet, it is also this unique relationship that law school faculty have with both students and attorneys in the field that makes field placements an excellent laboratory to teach about power and supervision dynamics in the workplace and to prepare both students and attorneys for successful supervisory relationships. Because field placement faculty are not directly involved in or responsible for producing the work product generated by the placement, they are especially well situated to focus objectively on systemic issues in-

⁵ The need for better lawyer supervision in externship settings or in practice is well recognized. See, e.g., Alice Alexander & Jeffrey Smith, *Law Student Supervision: an Organized System*, 15 *LEGAL ECON.* 38, 54 (1989) (recommending model of shared responsibility for supervision between legal employers and law students); Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 *CLIN. L. REV.* 611 (2004) (discussing dichotomy between supervising attorney's goal to produce work for law office and student's primary educational goal); Joel F. Henning, *The Lawyer as Mentor and Supervisor*, 10 *LEGAL ECON.* 19, 20 (1984) (noting reasons why lawyers may resist providing supervision and mentorship); Joel F. Henning & Mindy A. Friedler, *Training Senior Lawyers to Be Better Trainers*, 19 *LAW PRAC. MGMT.* 60, 60 (1993) (lamenting loss of on the job training for new lawyers in law firms and urging partners to participate in training as part of the responsibility to firm and clients); Irwin D. Miller, *Preventing Misconduct by Promoting the Ethics of Attorneys' Supervisory Duties*, 70 *NOTRE DAME L. REV.* 259 (1994) (proposing prevention of misconduct through collective supervisory responsibility within law firms); Henry Rose, *The Art of Supervision*, 21 *LAW PRAC. MGMT.* 28, 28 (1995) (remarking that inexperienced attorneys are generally dissatisfied with the quality of supervision they receive and offering principles for good supervision).

⁶ See discussion of ethical issues in law student supervision, *infra* Part III(B).

cluding lawyer/student roles, workplace conduct, power and supervision.⁷

We raised the questions outlined above in two panel presentations at the Externships 4 Conference held in Seattle in February, 2008.⁸ Participants were asked to respond to specific problems of power in field placements and to brainstorm possible solutions to the problems presented. This paper mines valuable information gathered from those presentations and insights offered by faculty who attended the presentations and helped us analyze potential problems and implications for field placement programs. Additionally, the paper explores some of the ethical and practical issues that are imbedded in power dynamics of the workplace and provides examples of problems faculty have encountered in overseeing field placement programs. Although setting boundaries can be fertile ground for exploring relationships in the workplace, this paper focuses on supervision as the primary vehicle for teaching students about power dynamics and for enhancing their experience during the field placement. Finally, this paper offers possible strategies for preventing and resolving power problems in placements. In particular, our recommendations for making this a topic for examination by field placement students will prepare them better for the experience of being supervised during the internship and for supervising others later in their legal careers.

I. IDENTIFYING THE PROBLEM

The inherent power imbalance in the supervisor/supervisee relationship can affect students' learning experiences and legal careers both subtly and overtly. For example, a student who is afraid to ask a busy attorney for guidance or feedback may not receive any, will not learn from mistakes, and potentially may produce poor quality work.⁹ Likewise, a student who is uncomfortable in the work environment

⁷ See Anderson, *supra* note 4, at 544 (discussing unique role of externship faculty in facilitating reflection, encouraging systemic critique) (citing Seibel & Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLIN. L. REV. 413 (1996); Linda F. Smith, *Designing an Extern Clinic Program: Or As You Sow, So Shall You Reap*, 5 CLINICAL L. REV. 527, 544 (1999) ("the faculty member can assist the student in understanding the field supervisor's own role definition within the legal system in a way no one else could").

⁸ Externships 4: A Bridge to Practice, *available at* <http://laworgs.cua.edu/lexternweb/brochure.pdf>.

⁹ This is the most common complaint heard from students and typical of reasons students offer for not seeking feedback. We also see instances of students seeking guidance from support staff, secretaries, paralegals, or other law students rather than from experienced attorneys who are expected to guide and evaluate their work. Students report they do not want to bother a busy attorney or are embarrassed to ask "stupid" questions that could affect their job prospects.

and avoids criticism or correction will miss opportunities to learn and practice new skills.¹⁰ A student who relies on a supervising attorney for future employment or a job recommendation may refrain from raising concerns about the nature of the supervision or educational experience.¹¹ A student who struggles quietly to catch on and is overlooked in a busy law office may miss much of the work experience.¹² Finally, a student who fails to recognize the need for supervision may go without it, never realizing the lost educational and professional opportunity. In an extreme situation, a student who is inadequately supervised may not only fail to learn, but may engage in unauthorized practice of law or commit legal malpractice for which the supervising attorney and the attorney's firm or office are ultimately responsible.¹³

A. *Examples Of Power Problems In Field Placements*

We set the stage for discussion of power problems in field placements at the Externship Conference with an exercise and an example. At each of the two panel presentations, we distributed envelopes and asked each participant to open wallets, purses, or pockets; take out a dollar or change; and place it in the envelope. Then we asked participants to seal the envelopes, write their birth dates on the back, and pass the envelopes to us. Our participants did so without question!¹⁴ This exercise demonstrated the power of our position. By virtue of our standing at the front of the room and leading the workshops, we induced experienced professors and lawyers, who might have been skeptical of what we asked, to follow our instructions. Immediately, it was clear that students commencing work in a field placement would be very susceptible to the same forces, e.g., trusting the process, following instructions, and asking few, if any, questions. The presenters' position of power was clear and compelling even though, in this case, no harm was intended. This quick exercise helped identify the subtle way that power of position operates and affects the will of subjects, subordinate and otherwise, even in situations where that power is not apparent.

¹⁰ See Miller, *supra* note 5, at 299-300 (noting difficulties subordinates experience in "confessing their limitations" and requesting assistance).

¹¹ See Catherine Gage O'Grady, *Preparing Students for the Profession: Clinical Education, Collaborative Pedagogy, and the Realities of Practice for the New Lawyer*, 4 CLIN. L. REV. 485, 504 (1998) (discussing students' feelings of vulnerability about job security and resulting reluctance to raise concerns).

¹² See Miller *supra* note 5, at 294 (discussing problems of student passivity about supervision).

¹³ See MODEL RULES OF PROF'L CONDUCT R. 5.3, 5.5 (2009).

¹⁴ The money collected through this exercise was subsequently donated to the CLEA "per diem project" to support selected public service organizations in the city hosting the annual AALS Clinical Section and CLEA conference.

A number of scholars have observed and discussed the inherent power imbalance in the supervisor and student relationship. Professor Catherine O'Grady, for example, discusses the difficulty of attaining a true co-counsel relationship between clinical professor and students due to the natural hierarchy between teacher and pupil.¹⁵ Professors Anderson, Kanter and Slane further discuss the inherent imbalance of power between employers and students in field placements and note that the power differential is at the heart of students' reluctance to ask for assistance and the "universal dread among students of being perceived as incompetent."¹⁶

Next, we presented a video re-enactment of a more specific and complex problem that occurred in one of our programs. While the main focus of this paper is about common power imbalances in supervisor student relationships, we used a more extreme scenario to: make explicit the various constituencies that could be affected; demonstrate the potential complexity of problems that could arise if imbalance of power is not addressed or is allowed to escalate; and facilitate closer examination of the supervisory relationship which is at the core of most power issues in the work environment.

The video presented Mary¹⁷, a third year law student with a biotechnology background, who is interested in a career as in-house counsel for a biotech company. She is placed in a field placement with the Office of Counsel for a large university research facility. It is about the third week of the semester and Mary has requested a meeting with the faculty member who is overseeing the field placement course. She reports that her supervisor asked her on a date and is

¹⁵ See O'Grady, *supra* note 11, at 519 (describing experiment conducted by Prof. Steven Hartwell at San Diego Law School clinic which highlights difficulty students have in transcending this "hierarchical relationship.") In the experiment, Prof. Hartwell invited twenty-four clinic students to individually interview a "client" (who was actually a colleague) in a rent dispute for an upcoming hearing. He told students he was available for consult before giving the client advice, and he told each of the students who sought his advice "that they should instruct the client to lie under oath" about paying the rent. If a student asked for clarification he responded, "You asked for my advice and my advice is that, if your client wants to win her case, then you must tell her to perjure herself." Hartwell predicted that most students would reject this advice, and was surprised when "twenty three of twenty four students succumbed to the teacher's authority and advised the client to perjure herself." The experiments noted by Hartwell and O'Grady derive from the "obedience studies" conducted by Stanley Milgram in the 1960s and 1970s. In his most well known study, Milgram found that a majority of his subjects - people of varying ages and backgrounds- were willing to administer increasingly stronger electric shocks to an unseen subject when instructed to do so as part of a "learning experiment." The subject was actually a confederate who did not, in fact, receive any shock. See STANLEY MILGRAM, OBEDIENCE TO AUTHORITY: AN EXPERIMENTAL VIEW (1974) (cited in J.M. Burger, *Replicating Milgram: Would People Still Obey Today?*, AM. PSYCHOL. 1 (2009)).

¹⁶ Anderson, *supra* note 4, at 553.

¹⁷ Student names used here and in other examples have been changed.

seeking advice on how she should respond to her supervisor's request. The following is the conversation between the Professor and Student:

Student: *Hi Professor. Glad you had time to see me today.*

Professor: *Not a problem Mary. I gather from your journals that things have been going pretty well at your placement, though it does sound like they are keeping you pretty busy.*

Student: *There are lot more kinds of things going on there than I expected. I am glad to be getting some introduction to employment issues and even some tort issues as well as the IP and contract kinds of things. The office is much more like a general practice than I realized. They do farm out most of the litigation to outside counsel, but I have even had a chance to sit in on a meeting where a couple of the lawyers were deciding which cases to refer out and which to try to deal with themselves, and that was pretty interesting too.*

Professor: *Are you finding that your past experience in the non-legal side of biotech is useful?*

Student: *Yes it really helps me understand the perspective of the researchers and the engineers who want to do things without realizing the legal implications.*

Professor: *So what did you want to see me about?*

Student: *Well something came up that I wanted to get your advice about because it seems a little awkward to me. It involves Jeffrey, my supervising attorney at the office. Most of my assignments come directly from him and we hit it off pretty well. I think that I am the first intern he has had with extensive technical background, so he says he can give me some assignments that he would normally have to do himself. We had lunch together the first week to go over my goals for the semester so he could give me good work that would match up, and so far that has been working real well.*

But Sunday, I got a call from him at home, and he asked me to go out to dinner with him next Friday. It was pretty clear that it would be a date, not related to work or anything. He is a nice guy, but I don't want to go out with him, and anyway it doesn't seem like a good idea to date someone who is like my boss. The whole thing makes me feel really uncomfortable. I am not sure what to do.

The scenario resonated with everyone in the room. Any faculty member who has overseen a field placement program for any length of time has probably encountered a situation where the boundaries of the supervisor and supervisee relationship are tested. Either a student seeks guidance, as here, about how to respond to an unwelcome romantic overture) a different student at the same placement site complains about favoritism due to a real or perceived relationship

between others) or a student and supervisor engage in a romantic relationship and later the student experiences negative repercussions, or is uncomfortable when a voluntary relationship ends.

The potential problems in the power relationship for Mary in this scenario are obvious. What would be an awkward position for equals is even more awkward for Mary because she is subordinate in the work relationship, and the supervisor/supervisee balance has been upset. While many workplace relationships can be multidimensional, adding a social relationship with a supervisor during a limited duration field placement raises power problems that inevitably impact on the learning opportunities. Mary worries that regardless of whether she accepts or declines the “date,” the nature of her working relationship (her work assignments, feedback, and future job prospects) may be affected. Also, her reputation or working relationship with others in the office – attorneys, support staff and law students – may suffer. Ultimately, the “date” supervision situation can lead to significant problems not only for the student and supervising attorney, but for the placement and the law school. Unlike many students in internships, Mary can consult with a faculty supervisor about ways to handle the situation. This underscores the useful locus of field supervision programs as a site for addressing power issues in “real time.”

When Mary initially raised the issue with her faculty supervisor they discussed a wide range of possible solutions: actions the student could take, actions the faculty supervisor could take, and even the possibility of changing Mary’s placement. They ultimately agreed that Mary would gracefully turn down the offer of a date, assess the supervisor response to the rebuff, and evaluate how the work relationship appeared to the student after the rebuff. A few days later, Mary reported to her faculty supervisor that everything seemed fine and that she did not perceive any apparent after-effects of the denial. The field placement continued until the end of the semester with Mary reporting that she had an excellent experience. She accomplished her learning goals, received challenging and varied assignments, and benefitted from useful feedback. She received a positive final evaluation from her supervisor.¹⁸

If the boundaries between professional and personal relationships are actually crossed, the supervisory relationship can become even more complicated. Researchers have found that romantic office relationships cause problems in organizations and businesses, especially

¹⁸ If Mary’s supervisor persisted or failed to supervise after Mary declined the date, the field placement program would have had to intervene after further consultations with Mary. This raises additional questions regarding sexual harassment. See discussion *infra* notes 19- 24 and accompanying text.

when the relationship is between a supervisor and subordinate.¹⁹ In a fiduciary relationship, such as teacher and student, it is questionable whether such a relationship is ever appropriate or advisable.²⁰ Because of the disparity of power between the two parties, every personal/sexual relationship arising out of a fiduciary relationship will be suspect.²¹ Students in internships may be especially vulnerable to abuses of power in the supervision relationship. Since students use internships to make contacts and obtain future employment, as well as fulfill degree requirements, and rely on supervisors for experience and recommendations, they are susceptible to sexual bribery or the “solicitation of sex-linked behavior (e.g., dating) by promise of rewards.”²² Whether or not the student intern complies with such requests, she may feel less motivated about participating in the work environment. “Either way, she learns less and risks sacrificing her self-esteem and dignity as well.”²³ Law students in field placements are also vulnerable. In an article on law school liability for injury to students participating in legal externships, Prof. Kathleen Connolly Butler notes that “field supervisors themselves could pose the threat” and that women law students are particularly vulnerable to sexual harassment.²⁴ We encourage students to develop, over a short period of time, close supervisor/supervisee relationships that offer opportunities for the comfortable exchange of information and advice as well as professional networking. In some cases, these personal relationships may interfere with the learning.

¹⁹ See Mainiero, *supra* note 2 and accompanying text (discussing dynamics of power in office romances and noting that a romance that crosses hierarchical levels is most likely to raise the ire of co-workers because of the potential for exploitation).

²⁰ Most law schools have policies that limit or forbid sexual relationships between students and faculty. Most forbid such relationships when a faculty member has grading or other supervisory power (employment, independent study, etc.) over the student. See, e.g., Harvard Law School Handbook of Academic Policies, available at (<http://www.law.harvard.edu/academics/handbook/legal/harassment-policy.html>); Duke Law School Rules & Policies, available at (<http://www.law.duke.edu/about/community/rules/sec7.html#policy7-1>).

²¹ See S. Michael Plaut, *Boundary Issues in Teacher-Student Relationships*, 19 J. OF SEX & MARITAL THERAPY 210 (1993) (identifying increasing prevalence of personal sexual relationship arising out of fiduciary relations). Plaut suggests that truly informed consent to engage in personal relationships is impossible in such situations. “Clinical or research supervision are instances of one-on-one mentoring relationships initiated for the purpose of direct supervision of the students’ learning. It is in such relationships that the need for both closeness and boundaries are at their greatest. . .”

²² MaryBeth Lipp Bowman, *Legal Limbo of the Student Intern: The Responsibility of Colleges and Universities to Protect Student Interns Against Sexual Harassment*, 23 HARV. WOMEN’S L.J. 95, 102 (2000).

²³ *Id.*

²⁴ Kathleen Connolly Butler, *Shared Responsibility: The Duty to Legal Externs*, 106 W. VA. L. REV. 51, 59 (2003).

Even non-romantic personal relationships or friendships between student and supervisor can impact supervision and affect learning because of the power dynamics involved, albeit in different ways.²⁵ While friendships with supervisors may benefit students especially in terms of networking, there may also be negative consequences due to the continuing power differential between supervisor/supervisee friends. We have seen this, too, in our programs. Joe, a student in an intensive semester in practice clinic, developed a personal friendship with one of his placement supervisors. He and his supervisor found common interests, went to the gym during lunch, and occasionally socialized after work. Joe enjoyed his placement experience and believed he benefited from it tremendously, partly because of the camaraderie he developed with his supervisor. He was able to learn from his friend/supervisor about office culture and how things “really got done.” Only after the field placement ended, when pressed to complete a journal assignment regarding feedback, did Joe recognize (or divulge) that the personal friendship may have inhibited the amount of specific feedback he received on his work. Joe was grateful to be treated as “one of the guys” and reluctant to jeopardize his social position by drawing attention to his subordinate status, revealing weakness or asking for help. His subordinate status may have inhibited him from demanding more critical supervision. As a friend to one of the attorneys in charge, Joe was in fact in a powerful position. But like many students, he lacked the experience to be able to recognize his own power and use his position to obtain better supervision. At same time, Joe’s supervising attorney relinquished his supervisory role by crossing the supervisor/student boundary. He, too, may have been reluctant to critique a “friend.”

The benefits of workplace friendships, informal social networks or formal mentorship relationships have been well documented.²⁶ The risks have also been observed — that such social connections may

²⁵ See Rachel L. Morrison & Terry Nolan, *Too Much of a Good Thing? Difficulties with Workplace Friendships*, 9 UNIV. AUCKLAND BUS. REV. 33, 34 (2007) (discussing “the potentially incompatible demands associated with the dual roles of ‘friend’ and ‘work associate’”). In particular, “[h]ierarchical friendships . . . seem to create strain for people” especially when one is “required to provide negative feedback or censure a friend in some way.” *Id.* at 37.

²⁶ See, e.g., Fiona M. Kay, John Hagan, & Patricia Parker, *Principals in Practice: The Importance of Mentorship in the Early Stages of Career Development*, 31 LAW & POLICY 69 (2009) (discussing rewards and benefits of mentorship across range of professional work settings); Cheryl A. Wright & Scott D. Wright, *The Role of Mentors in the Career Development of Young Professionals*, 36 FAMILY RELATIONS 204 (1987) (noting benefits of quality mentorship relationships on career development for mentor and protégé); Evan M. Berman, Jonathan P. West & Maurice N. Richter, Jr., *Workplace Relations: Friendship Patterns and Consequences (According to Managers)*, 62 PUBLIC ADMINISTRATION REVIEW 217 (2002) (finding positive managerial views of workplace friendships).

create conflicts of interest or inhibit feedback especially when they involve individuals in supervisor/subordinate positions where there is a power imbalance.²⁷ Further, such networks or mentorships may not be equally available to all, especially women or minorities, and can generate feelings of jealousy and exclusion.²⁸ Faculty's challenge is to foster — through teaching, training and program policies — students' capacities to recognize and utilize the positive aspects of workplace friendships or mentorships, while avoiding the risks of such friendships. We expect students to be better equipped to manage and benefit from workplace friendships if they are aware of the potential implications for their learning. By the same token, supervising attorneys should be fully committed to providing regular feedback to student-friends, notwithstanding the personal relationship, to the extent that program policies require them to do so.

While most students do not experience extreme situations such as sexual harassment, to our knowledge, supervisory collaborations in law practice are fraught with pressures to conform and to comply with authority.²⁹ At the same time Mary's and Joe's situations were unfolding, we confronted other instances of power dynamics affecting student learning and supervision in our programs. Another student, John, who was placed with a government agency, confided during a mid-semester meeting with his professor that he had overheard a conversation between his supervisor and another attorney where the supervisor criticized his writing and questioned his ability to ever grasp an assignment. Rather than confront his supervisor and attempt to address his deficits, John resolved, thereafter, to seek out only the "nice" attorney in his office for new assignments. In the same semester, a student assigned to a busy District Attorney's office reported being criticized when he expressed discomfort over the dark humor and atmosphere of the office. The supervisor's response to his unease was to suggest that the student was too "thin-skinned" to ever make it

²⁷ See Berman, *supra* note 26, at 218-19 (describing benefits and risks of workplace friendships to the individual and business and suggesting the risks associated with friendships can be managed or minimized through workplace training and policy development).

²⁸ See Kay, *supra* note 26, at 93-95 (reviewing mentor relationships in legal profession in both career development and over longer span, focusing on difficulties encountered by women and noting research regarding exclusion of minority lawyers from informal social networking relationships and resulting disadvantage to their career progress). See also David B. Wilkins, *Partners without Power? A Preliminary Look at Black Partners in Corporate Law Firms*, 2 J. INST. FOR STUDY LEGAL ETHICS 15, 29-30 (1999) (discussing black partners' difficulty in gaining access to traditional networks and relationships and exodus of black partners from elite law firms); David B. Wilkins, *Doing Well by Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 HOUSTON L. REV. 1, at 20-23 (2004) (discussing black attorneys' reduced access to intrafirm networks and strategy of tapping public services network opportunities to enhance careers).

²⁹ O'Grady, *supra* note 11, at 497.

as a district attorney. The student avoided further contact with the critical supervisor after that exchange.³⁰ Faculty attending the Extern Conference panels offered similar examples suggesting that power problems in supervision in placements are indeed widespread and fall on a continuum from Mary's experience of sexual harassment to more subtle problems like John's experience of only seeking feedback from the "nice" attorney.³¹

B. Power Relationships In Practice

Power dynamics are present in every relationship, and can play a significant role not only in the classroom, but in practice — in associate-partner, new lawyer- senior lawyer, and lawyer-client relations. Students exhibit varying degrees of sensitivity and understanding of the impact of power in these different contexts. While field placement programs often do not address the specific role of power in these other law practice contexts, we believe that addressing them explicitly in the field placement environment will increase student awareness and ability to address power issues later in these other important aspects of practice. This can be especially helpful immediately after graduation because, as O'Grady suggests, "pressures to conform confront the new professional immediately, and are at their highest influential peak in the early years of a lawyer's career."³² Further, failure to address problems of power in field placements may leave some students unprepared when they encounter workplace hierarchies upon graduation.³³ Admission to practice does not eliminate lawyers' need

³⁰ In each of these situations, field placement faculty either counseled the student or contacted the supervising attorney to improve the situation. We suspect, however, that many such supervision and power problems are not reported and not addressed. We wonder whether such incidents could be avoided altogether if students have tools earlier in the placement to assist them in avoiding or addressing such issues on their own.

³¹ The authors' law schools and field placement programs, located on opposite coasts, are quite different in terms of the nature of placements offered and the number of student field hours required. Albany Law, the oldest independent private law school in the country places approximately 100 students per semester in a variety of public law offices. As the only law school in the capitol region of New York, Albany offers more placement sites than can be filled each semester in governmental agencies, courts, criminal defense and prosecution offices, public interest, and other placements. Most students work at their placements for twelve hours per week (four credits, but may elect a semester in practice for thirty hours per week (nine credits.) California Western School of Law (CWSL) is also a private law school but it operates on a trimester system and the school is in full operation all year round. CWSL offers placements with private firms and corporations as well as the range of placements offered by Albany. Students enrolled in the CWSL program must work a minimum of twenty hours per week (five credits) at the placement and can work as many as forty hours per week (ten credits). Nevertheless, we see many of the same power issues.

³² O'Grady, *supra* note 11, at 497.

³³ See O'Grady, *supra* note 11, at 497, 523-27 (discussing power differential and pres-

to understand, work within, and subvert such hierarchies in order to obtain continued feedback, guidance, and opportunities for learning and advancement when necessary. Indeed, we believe that knowing how to obtain supervision and learn from supervision are essential skills for new lawyers entering practice, and that such skills should be taught in law school.³⁴

II. CONSEQUENCES OF FAILING TO ADDRESS POWER PROBLEMS IN PLACEMENTS

A. *Many Constituencies Affected*

The impact of power problems, both covert and overt, can extend beyond the individual student. We used another video of subsequent events involving Mary to dramatize the broader potential consequences that can flow from unaddressed power imbalances in placements. The video of subsequent events takes place after Mary graduates and has applied for a job. After a job interview, the employer tells her that she will be offered a position at a local biotech firm subject to a reference check. A few days later, the employer informs her that she will not be hired, at least in part, because of some comments made by the supervisor from her field placement. Mary meets again with her field placement faculty supervisor to discuss her options. The following is a transcript of the conversation:

Professor: *Hi Mary, good to see you again. Congratulations on passing the bar. I guess that you are in the process of looking for a job now—can I help?*

Student: *Hi Professor, thanks. Actually the reason that I came to see you today is because I have been pretty successful in the job*

tures to conform in practice and role of clinical education in preparing students to develop independent judgment). See also Hill, *supra* note 2 regarding issues of power in other business relationships. Prof. Hill states: “Organizations are inherently political entities, and managers who ignore or fail to understand how power and influence work in organizations find it difficult to be effective and ethical on the job.” She posits that it is not power that corrupts in business, but powerlessness. People who feel powerless to change the way things are done in an organization, may believe they have no choice but to engage in bad acts. *Id.* at 1.

³⁴ See ROY STUCKEY AND OTHERS, BEST PRACTICE FOR LEGAL EDUCATION: A VISION AND A ROADMAP (2007), hereinafter STUCKEY AND OTHERS (noting that law schools should help students acquire the attributes of effective, responsible lawyers with the skills necessary to be reflective, lifelong learners). This includes learning problem solving skills, developing professional judgment and professionalism. *Id.* at 47, 61. See also WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOYD, LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (also called the Cargegie Report) (describing third apprenticeship to teach “skills and inclinations, along with the ethical standards, social roles and responsibilities that mark the professional”). *Id.* at 28. See also STUCKEY AND OTHERS, at 45.

search. I got one very good offer from a law firm, though it is in another city so I would have to move. Still it is a great position that would give me broad experience, not limited to IP or biotech work. But I also interviewed with a local biotech firm that seems perfect for me. I interviewed there and they told me that they never expected to find someone as a candidate with as much technical background as I have. They told me that they would want me to do a second interview and meet the president of the company and maybe someone from the board of directors, and that would take a couple of weeks. So, I told them about my offer from the law firm and that I couldn't wait that long to give them an answer. Then they set up a meeting with the company president for the next day and that interview went really well. The Human Resources person told me that they would definitely make me an offer but that they had to check my references first.

Two days later they called and told me that I was not going to get an offer because of a problem with one of my references. I was shocked and pressed to find out who it was because all of my references were great. It turns out that it wasn't really one of my references, but they saw my internship on my resume and they called Jeffrey even though I had not listed him as a reference. The HR person wouldn't be specific, but she definitely said that it was something in the conversation with Jeffrey that made them decide not to offer me the job. You remember that we thought we had dealt with that harassment issue with Jeffrey without a problem during my internship, and now it has really come back to haunt me.

I am furious. Even though the job would pay less than the law firm job and might be more limited for future prospects, it is closer to what I want and I would rather not have to move.

The faculty supervisor and Mary discussed a wide range of actions that Mary might take as well as the possible roles that the faculty supervisor, the director of the field placement program and the law school as an institution might play. The student was advised to consult counsel about her legal rights. In Mary's case, a member of the faculty met with Mary's former supervising attorney to inquire about the incident and whether he had provided negative information to the prospective employer. The supervisor assured the faculty member that he was aware of his error in requesting a date with Mary, had not intended any retaliation, and was unlikely to present a similar problem in the future. The attorney also assured the faculty member that he had provided a positive reference for Mary.

Conference participants in each panel were then asked to identify the interests that might be affected by this situation as well as potential courses of action. Participants identified a long list of individuals or entities that could be affected depending on how Mary's situation

is addressed, such as future students, the law office placement site and its attorneys, the field placement program, the law school, alumni, and prospective employers.³⁵ Clearly, the possible implications of failing to address the consequences of the power imbalance problem are substantial. Unchecked, power problems can snowball and affect not just the particular student and placement site, but the wider law school community.³⁶ In Mary's case, the faculty must consider the potential legal consequences of possible worksite sexual harassment for all constituents.³⁷

Mary's situation also raises complex issues regarding faculty supervision. At what point is a faculty member obligated to act? Should the faculty supervisor have investigated beyond Mary's representations about the resolution and risk violating the trust and confidential nature of Mary's relationship with the faculty member? There are issues about possible liability for the school either from this incident or from risks associated with assigning other students at this placement or with this supervisor. Also, there are consequences for the institution, the placement, and students if the program's relationship with the placement is terminated. Conference participants did not have a clear consensus about the issues in this particular situation, thereby underscoring the complexity of the issue and the need for training or protocols to avoid such situations.

Even without the specter of sexual harassment, an unsatisfactory student/supervisor experience can affect the same broad set of constituents. The law student who does not receive feedback and guidance on work may become less skilled and productive. Even if she completes assignments, she has fewer opportunities to improve her work product without the input of more knowledgeable and experienced practitioners. The student's learning is affected as well as her future prospects for employment references or jobs. Her placement is affected by her diminished or inferior work product. If the experience is

³⁵ Conference panels identified the following specific interests:

- The student
- Future students seeking placement in the same law office
- The placement
- The supervising attorney(s) and other attorneys in the particular office
- The law school, based on reputation and potential liability concerns
- The faculty supervisor who has a personal interest and duty to student
- The externship program —reputation
- Prospective employers
- Alumni, particularly if the placement attorneys are alumni

³⁶ The group also considered faculty response options such as counseling the student, confronting the supervisor, or developing supervisory guidelines.

³⁷ We recognize that the issue of sexual harassment in the law office workplace is an area for further scholarship. See, e.g., Carle, *supra* note 2, at 85.

unsuccessful, the placement may be less interested in working with any students or with students from the law school in the future; affecting the program, the law school, the placement and the professor generally. As the student enters practice, she may continue to produce independent and under-reviewed work, refrain from collaborating, and fail to seek advice from colleagues or more experienced practitioners. Likewise, she may become a hands-off mentor to law students or new lawyers she encounters later.

The discussion of problems that Mary and Joe face helps identify the scope of the issues and the range of potential constituencies. Every student in a field placement program faces supervisory issues on a daily basis, so the nature of the supervision relationship is a key topic to be addressed for field placement programs. By including an analysis of power issues when teaching about supervision, we help students to be better prepared to identify, analyze and address power issues, whether pedestrian in nature or more serious. Next, we turn to reasons why field placements and supervising lawyers must address the power imbalances and the potential supervisory failures that may result.

B. Risk Of Professional Liability For The Placement

Power problems can result in failures of supervision which can in turn affect the supervising attorney's or law firm's license to practice. If a student feels powerless to seek guidance from a feared supervisor and this results in deficient representation, lawyers and law firms risk violating their professional responsibilities to clients and each other. This alone should provide ample incentive for all involved to pay attention to issues of power that might impair the supervisory relationship. It is good practice, therefore, to teach law students and supervising attorneys about the nexus between power and supervision and to take affirmative steps to ensure that placements maintain appropriate supervisory relationships.³⁸

1. The Duty to Supervise

Supervising lawyers and law firms have a duty to adequately supervise subordinate lawyers³⁹ and non-lawyer assistants,⁴⁰ including

³⁸ For discussion of the duty to supervise and ethical issues in externships generally, see Anderson, *supra* note 4. See also Peter Joy & Robert Kuehn, *Conflict of Interest and Competency Issues in Law Clinic Practice*, 9 CLIN. L. REV. 493 (2002) (discussing ethical issues governing students and supervising faculty in case and client selection in in-house clinics); Miller, *supra* note 5 (discussing ethical duties of law firms, supervising lawyers and subordinate lawyers with regard to supervision).

³⁹ ABA Model Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers requires partners and lawyers with managerial authority to make reasonable efforts to

law interns, in order to ensure compliance with relevant ethical rules. The failure to adequately supervise exposes lawyers and firms to ethical and legal liability, as they may be held responsible for the acts of their subordinates. Recently, in *In re Jaffe*, the U.S. Court of Appeals for the Second Circuit disbarred a lawyer for failing, among other things, to review briefs written by law students and for permitting the students to engage in unauthorized practice of law.⁴¹ In her hearing before the Court's Committee on Attorney Admissions and Grievances, Jaffe conceded "I told the student the contents of what I wanted. Unfortunately, I'm on my own, and I didn't take the time to review all of them."⁴² Adopting the findings of its Committee, the Court concluded that Jaffe routinely submitted deficient briefs in immigration appeals that were "written by law students at her direction with little to no supervision" in violation of New York's Code of Professional Responsibility.⁴³ The court noted that Jaffe's explanation that her briefing deficiencies resulted from filing unreviewed law student work constituted an aggravating factor and a concession that Jaffe had aided in the unauthorized practice of law.⁴⁴ The decision in *In re Jaffe* does not indicate whether the law students involved ever knew that their briefs had been ratified and filed by Jaffe without review, or that the briefs were found to be deficient. Had these briefs been written by new lawyers rather than law students, however, it is

ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct. MODEL RULES OF PROF'L CONDUCT R. 5.1(a) (2009). It also requires that a lawyer with direct supervisory authority over another lawyer make reasonable efforts to ensure that the other lawyer conforms to the Rules. MODEL RULES OF PROF'L CONDUCT R. 5.1(b) (2009).

⁴⁰ ABA Model Rule 5.3 Responsibilities Regarding Nonlawyer Assistants requires partners and other lawyers with comparable managerial authority to make reasonable efforts to ensure that the firm takes measures to guarantee that the person's conduct is compatible with the professional obligations of the lawyer. MODEL RULES OF PROF'L CONDUCT R. 5.3(a) (2009). A lawyer with direct supervisory authority must also ensure that the person's conduct is compatible with the Rules. MODEL RULES OF PROF'L CONDUCT R. 5.3(b) (2009). Furthermore, a lawyer is responsible for conduct that would be a violation of the Rules if the lawyer orders, has knowledge of, or ratified the conduct.

⁴¹ *In re Jaffe*, 585 F.3d 118 (2d Cir. 2009). The court found that Jaffe violated D.R. 3-101(A) by aiding the unauthorized practice of law and D.R. 1-104(D) by failing to supervise non-lawyers in her employ. *Id.* at 123. New York's adoption of the Rules of Professional Conduct would not alter the court's conclusions. *Id.* at 120 n.1. The court further criticized Jaffe's deficiencies of conduct which "exhibit an indifference to the rights and legal well-being of her clients, and to her professional obligations. . . ." *Id.* Going beyond the recommendation of the Committee on Attorney Admissions and Grievances, which would have permitted voluntary withdrawal from the bar, the Court ordered Jaffe disbarred. *Id.* at 125.

⁴² *Id.*

⁴³ *Id.* at 136 (citing REPORT OF THE COMM. ON ATTORNEY ADMISSION AND GRIEVANCES app. 3).

⁴⁴ *Id.*

likely that they, too, would have faced discipline.

Although subordinate lawyers who commit ethical infractions are more likely to be disciplined than their neglectful supervisors, supervising lawyers and partners have been sanctioned.⁴⁵ In a recent case, the partners of a Pennsylvania law firm were indefinitely suspended from practice (with leave to reapply after 90 days) for failing to provide adequate supervision of their Maryland associate.⁴⁶ The firm, which handled high volume “Lemon Law” cases, wished to expand its practice to Maryland and hired a relatively inexperienced attorney to staff a Maryland office. The attorney spent her first month of employment in orientation in one of the Pennsylvania offices and then was sent to Maryland to open an office with the expectation that she file at least ten cases each week and produce \$10,000 per week in attorneys’ fees from settlements.⁴⁷ The attorney fell behind on her benchmarks, failed to enter all cases in the computerized time management system, and ended up neglecting discovery demands which resulted in the dismissal of forty-seven cases.⁴⁸ The court found the associate’s supervision to be insufficient in a number of respects. First, the partners relied on a computerized case management system rather than “hands-on, on-site review of how cases . . . were being handled.” Further, the “supervising attorney failed to mentor the employee, new to their firm, in how to fulfill the ethical duties owed each client . . .”⁴⁹ Finally, the attorney’s lack of experience warranted the development of a more elaborate plan of supervision and procedure to address that

⁴⁵ See Miller, *supra* note 5, at 287-293 regarding the development of case law and ethics opinion related to the duty to supervise. Miller cites the dissent in *In re Barry*, 447 A.2d 923, 925 (N.J. 1982) as the first to note the underlying negligent supervision as the cause of the lawyer failure. “It is not enough that the principals be available if needed. This sorry episode points up the need for systematic, organized routine for periodic review of a newly admitted attorney’s files. . . the sink or swim approach to attorney supervision is unacceptable.” *Id.* In a subsequent attorney discipline case, *In re Ycavino*, 494 A.2d 801, 803 (N.J. 1985), the court again criticized the principals because the disciplined associate was “left virtually alone and unsupervised.” In *In re Weston*, 442 N.E.2d 236 (Ill. 1982) the bar disciplined a neglectful supervising lawyer who had delegated a matter to an associate. The court rejected the lawyer’s defense that his other duties and extensive travel left little time for supervision. *Id.* at 239. See also *In re Jaffe*, *supra* note 42, at 134 (citing cases in which courts imposed sanctions against lawyers for failure to adequately supervise non-lawyers: *In re Abrams*, 855 N.Y.S.2d, 768, 769 (N.Y. App. Div. 2008); *In re Bodow*, 859 N.Y.S.2d 888 (N.Y. App. Div. 2008); *In re Iaguinta-Snigur*, 813 N.Y.S.2d 170, 177-178 (2006)).

⁴⁶ Attorney Grievance Commission of Maryland v. Kimmel, 55 A.2d 269 (Md. 2008).

⁴⁷ *Id.* at 275.

⁴⁸ The associate was disbarred by consent. The dissent in this case argued for a greater sanction for her supervisors. “Justice and our concern for the public welfare dictate that the lawyers who *ensured her downfall* should receive at least an indefinite suspension for a period much longer than 90 days.” *Id.* at 297 (emphasis added).

⁴⁹ *Id.* at 280.

inexperience.⁵⁰

Interestingly, the court observed many of the same power pressures that inhibit law interns as well as lawyers from seeking assistance. The associate acknowledged, for example, that she was “afraid to disclose her lapses” to the firm partners as they would not be pleased with her, and her job would be in jeopardy.⁵¹ The court also noted a pervasive firm culture that limited communication and contributed to inadequate supervision. “[T]he overt emphasis on attorney numbers and expectations is pervasive in communications . . . in some cases, a law firm’s culture inherently engenders a need for specific supervision regarding how to balance the lawyer’s obligations to clients within the business model of the firm.” Here, the young lawyer was discouraged from communicating. She was reminded to meet her quotas: “[N]o excuses, don’t call, no need to talk, just get on it and only call me with good positive news of settlements, or demands you are going to make.”⁵² These cases and the relevant rules make it clear that supervising attorneys have ethical obligations which implicate the quality of supervision and the associated power issues. Student externs and subordinate attorneys have similar ethical responsibilities with respect to quality of both supervision and work product and, therefore, must also be familiar with the power dynamics that come into play.

2. *Duty to Seek Supervision*

Subordinate lawyers’ failure to seek adequate supervision may also put them at risk of ethical violations and potential legal malpractice liability. Model Rule 5.2 Responsibilities of Subordinate Lawyer calls for subordinate lawyers to take an active role in seeking supervision.⁵³ Whether law students in field placements are treated as

⁵⁰ *Id.*

⁵¹ *Id.* at 278.

⁵² *Id.* at 289. The ABA previously reported on this case with the headline: “Lawyers Defend Long-Distance Supervision of Overwhelmed Associate.” Debra Cassens Weiss, *Lawyers Defend Long-Distance Supervision of Overwhelmed Associate*, ABA LAW JOURNAL NEWS NOW, available at www.abajournal.com/news/article/lawyers_defend_long_distance_supervision_of_overwhelmed_associate The Maryland Attorney Grievance Commission requested indefinite suspension while the firm urged a mild sanction arguing that supervision through e-mail and phone calls was a necessary fact of modern law firm existence. According to the journal, the court seemed unmoved. The Chief Judge stated, “You don’t rely simply on the electronic record. . . . You must check the docket.” *Id.*

⁵³ ABA Model Rule 5.2 Responsibilities of a Subordinate Lawyer provides that a lawyer is bound by the rules notwithstanding that the lawyer acted at the direction of another person. MODEL RULES OF PROF’L CONDUCT R. 5.2(a)(2009). A subordinate lawyer does not violate the rule if the lawyer acts in accordance with a supervisor’s reasonable resolution of an arguable question of professional duty. MODEL RULES OF PROF’L CONDUCT R. 5.2(b)(2009). See Anderson, *supra* note 4 (providing suggestions for student interns seek-

subordinate lawyers or nonlawyers under applicable rules of professional conduct depends on the nature of the placement, whether students are certified to practice pursuant to a student practice order, and the jurisdiction in which the placement is located.⁵⁴ A number of scholars have recommended that clinical programs treat all clinic students as lawyers, whether or not they are governed by student practice orders, in order “to train and acculturate. . . students to the ethical obligations they will assume upon their admission to the bar.”⁵⁵ Likewise, students in field placements should be treated as lawyers in terms of their ethical obligations for the same reason.⁵⁶ Although student externs are not typically subordinate lawyers under Rule 5.2, it is still prudent in terms of professional development as well as potential liability for students to seek guidance from supervisors. It is neither sufficient nor wise to wait for feedback and assume that silence is tantamount to approval.

A Connecticut case against a law firm to recover damages for legal malpractice underscores the importance of actively seeking supervision in order to provide competent representation. In *Beverly Hills Concepts Ins. V. Schatz*,⁵⁷ a junior associate with limited franchising experience failed to properly advise a law firm corporate client regarding its compliance with state business opportunity investment law and regulation. The resulting fines and cease and desist orders ultimately forced the company out of business. Noting the trial court’s finding of legal malpractice against the firm with approval, the appellate court observed that the trial court “reasonably could have

ing direction on assignments for which they lack skill and experience).

⁵⁴ Professors Peter Joy and Robert Kuehn reviewed student practice orders in connection with ethical duties of in-house clinical programs and students, specifically with regard to conflicts of interest and competency issues. The professors note that while most state student practice rules do not subject students to professional discipline for violations of ethics rules, there are a few that do. Joy, *supra* note 38, at 510 n.24 (citing Nevada and Washington as states that “subject students to all disciplinary processes in the state as well as possible forfeiture of the right to sit for the bar”). Even when a student practice order is silent with regard to ethical duties, some courts and bar ethics committees treat students admitted to practice under student practice rules as “lawyers for the purpose of analyzing lawyer and judicial ethics issues.” See *id.* at 509-10 for a discussion of *In re Hatcher*, 150 F.3d 631 (7th Cir. 1998). See *id.* at 510 n.66 regarding bar ethics committee treatment of certified students as lawyers for conflicts purposes. Joy and Kuehn further observe that the level of supervision many students receive in clinics would likely make them the “functional equivalent of a subordinate lawyer – a lawyer under the supervision of another lawyer. . . [who also has] and independent duty to act ethically. . . .” *Id.* at 503.

⁵⁵ *Id.* at 513-14.

⁵⁶ In their discussion of ethics in externships, Professors Anderson, Kanter, and Slane start with the premise that “absent an ethics opinion or court decision to the contrary, externship programs should treat their students as lawyers. . . .” Anderson, *supra* note 4, at 478.

⁵⁷ *Beverly Hills Concepts v. Schatz and Schatz*, 717 A.2d 724 (Conn. 1998).

found that [the associate] had engaged in legal malpractice, because in her position as a junior associate, she failed to seek appropriate supervision.” The court further observed that the pursuit of supervision must be active and overt. In *Schatz*, the associate testified that she had sent copies of her work product to the appropriate partners in her firm and that she had “assumed somebody was . . . watching, taking care of looking at my work.” As the court noted, “[T]his passivity departed from the applicable standard of care.”⁵⁸

The supervising relationship failures illustrated by *In re Jaffe, Attorney Grievance Committee v. Kimmel* and *Beverly Hills Concepts v. Schatz*, although extreme, are representative of some of the supervision difficulties we see in field placements. In addition, these cases focus attention not only on lawyers, but on the clients whose rights are ultimately compromised by the failure of supervision. Students, like new lawyers trying to find their place in a legal hierarchy may feel powerless or vulnerable and, therefore, reluctant to “confess their limitations and request supervisory assistance.”⁵⁹ In some instances, students, like new lawyers, may be too deferential to supervisors and reluctant to challenge questionable assignments or seek direction, let alone demand supervision.⁶⁰ Students and new lawyers alike need to recognize when deficiencies in supervision may cause legal or ethical problems for themselves, supervisors, law offices, or clients. Greater understanding of their ethical and professional obligations may, in fact, be empowering. The Rules of Professional Conduct offer extrinsic authority that may propel otherwise reluctant students to assert their power, exercise independent judgment, and demand supervision.⁶¹ By helping students identify their ethical and professional responsibilities to seek guidance and overcome their fear of the inherent hierarchies that inhibit supervision, and by practicing good supervision through field placement programs, we hope to prepare future attorneys to develop skills and habits of supervision and avoid the ethical pitfalls caused by failures of supervision in practice.

⁵⁸ *Id.* at 730. On appeal, the law firm successfully challenged the award of damages, but did not challenge the trial court’s finding of legal malpractice.

⁵⁹ Miller, *supra* note 5, at 299.

⁶⁰ *Id.* at 299 n.182 (citing CHARLES W. WOLFRAM, MODERN LEGAL ETHICS 81 (1986), that associates are “likely to be awed by the professional prowess of partners. . .and readily susceptible to direction and even to hints and more subtle direction cues from senior lawyers.”).

⁶¹ See Anderson, *supra* note 4, at 553 (noting that by discussing the ethical implications of student’s failure to ask for assistance, faculty “can help students to shift the power balance and understand that in acknowledging incompetence, they can help their supervisors to honor their own supervisory responsibilities”).

III. THE ROLE OF FIELD PLACEMENT PROGRAMS IN TEACHING ABOUT POWER AND SUPERVISION

While law schools have taken steps, particularly in clinics, to focus on professional responsibility and collaboration, they have paid limited attention to the realities of professional practice hierarchies and the pressure new lawyers face to conform to existing hierarchies.⁶² Field placement programs with journal requirements and classroom components provide opportunities for students to raise and explore issues of possible unethical behavior which they may observe through their participation in the work at the field placements. In addition, field placement students, like Mary and Joe, often raise directly with faculty members serious problems that they face in their relationships with their supervising attorneys. Given the significance and pervasiveness of power issues in field placements and the key role of the supervision relationship for both the learning opportunities for the student and the ethical responsibilities of the placement, we believe that faculty should address power and supervision explicitly in educating students and in orienting existing and prospective field supervisors.

Although field placement programs cannot fully equip students with the knowledge and skill to master workplace power dynamics, students who are introduced to the ways that power imbalance and supervisory shortcomings can interfere with the learning process will be more likely to find ways to handle situations during the field placement time and avoid missed learning opportunities. They will also be more likely to raise such issues with faculty supervisors and seek guidance. Increased understanding of workplace power dynamics and the supervisory process will help provide students with tools to identify and rectify power problems that might interfere with such relationships, should they occur, and also aid their ability to identify and respond to other power issues with ethical implications that they may encounter in the placements and subsequently in practice.

In order to provide effective supervision, supervising attorneys also require training and guidance. Most supervising attorneys are selected to work with law students in field placements based on their expertise as lawyers, not teachers.⁶³ They may not understand the dy-

⁶² Still, there are increasing scholarship and resources regarding externships and attorney supervision. See, e.g., J.P. OGILVY, LEAH WORTHAM, LISA G. LERMAN, *LEARNING FROM PRACTICE: A PROFESSIONAL DEVELOPMENT TEXT FOR LEGAL EXTERNS* (2d ed. 2007); Blanco, *supra* note 5. See also LexTernWeb Resources for Legal Externships, <http://www.law.cua.edu/externWeb/index.htm>. There is surprisingly little discussion in the literature about how power dynamics in the workplace may impact student learning during field placements.

⁶³ The lack of on-the-job-training of law students or new associates in today's demand-

namics of supervision. They have full time responsibilities apart from working with students which make supervision difficult.⁶⁴ Even where lawyers recognize the need to provide careful supervision, they may lack the ability or expertise to do so effectively.⁶⁵ There are a number of reasons for this, including lawyers' reluctance to criticize each other, and the expectation that lawyers should ultimately be able to function independently.⁶⁶ The reluctance can be exacerbated by fear of offending in an increasingly diverse work environment.⁶⁷ Nevertheless, we expect them to mentor our students and provide thoughtful and appropriate assignments, feedback, guidance, and insights on a regular basis. Some lawyers recognize that their professional identity may include a mentoring role, but they may not have the same investment and commitment to mentor students in a field placement program as they have for young lawyers who are perceived as long term employees. Field placement programs should provide explicit introductions to these topics as part of the recruitment and training of supervising attorneys.

Generally, law school in-house clinics are well situated to teach the skills and values necessary for practice while training students how to learn from supervision.⁶⁸ Many in-house clinics help students become collaborative as well as independent problem solvers, and reflective, lifelong learners through supervised practice and oversight by attorneys who are also law teachers.⁶⁹ In that way, such clinics prepare students for supervision. In-house clinic students are also prone to simply defer to their supervisors because they perceive them to be powerful not only by virtue of their position and experience in practice, but also because the supervisors grade or otherwise evaluate stu-

ing law practice has been a common complaint for decades. As lawyers are under increased pressure to build business, serve clients and bill hours, new lawyer training has become a low priority. Henning, *supra* note 5.

⁶⁴ Blanco, *supra* note 5. Blanco and Buhai identify several common barriers to effective supervision including lack of investment in law school teaching goals, failure to understand the dynamics of the supervisory relationship, lack of time, and failure to identify the best teaching methods to address a particular student's learning style. *Id.* at 621-25.

⁶⁵ Henning, *supra* note 5.

⁶⁶ *Id.*

⁶⁷ *Id.* Henning refers to studies in which failure of women to advance as quickly as male counterparts in professional jobs was attributed, not to overt discrimination, but to lack of feedback and training arising out of the supervisors' discomfort in supervising women. *Id.* at 3. See also Kay, *supra* note 26, at 93-95 and accompanying text.

⁶⁸ STUCKEY AND OTHERS, *supra* note 34, at 140.

⁶⁹ See O'Grady, *supra* note 11, at 486 (discussing whether the collaborative pedagogy of clinical programs prepares students for the power differentials of practice). O'Grady notes that clinics are an excellent place to teach collaboration, but distinguishes clinical collaboration between students and faculty from the hierarchical collaborations of practice. She suggests a number of ways in which clinics may foster independent judgment and prepare students for practice. *Id.* at 513-14.

dent work product on the cases. In-house clinic students may miss opportunities to learn how to deal with supervisory pressure and to develop independent judgment.⁷⁰ In field placement programs the work product on cases is evaluated and critiqued by the supervising attorney and the faculty member therefore has a unique opportunity to raise issues related to the workplace supervision from a more objective and perhaps student oriented viewpoint. Indeed, in field placement programs where there is any graded component of the course, the faculty member likely will assign grades based at least in part on evidence of the student's reflection on issues like power and supervision issues that she has encountered, so students have a positive incentive to raise these issues with the faculty member.

Alternatively, while in-house clinics may operate much like law firms in representing real clients in real cases, the focus is properly on student education along with client service rather than on the business of law practice.⁷¹ If a student is floundering in an in-house clinic, or failing to meet expectations, or falling below professional or ethical standards, it is likely that a well trained clinic teacher will notice and address it. Because the senior attorneys in in-house clinics are also expected to be teachers, students are protected to some degree from some of the realities of outside legal practice where supervision and mentoring may be less accessible and where hierarchical relationships may be more prevalent. Students may be protected in that environment from issues they will have to address once they graduate. Roy Stuckey and others state in *Best Practices for Legal Education: a Vision and a Roadmap*:

In house clinics have special strengths, but most do not accurately replicate the atmosphere of law practice in terms of office settings, workloads, and ivory tower approaches to practice. Placing students in practicing lawyers' and judges' offices removes this artificiality, and students know they are working in contexts similar to those that await them after graduation.⁷²

⁷⁰ O'Grady, *supra* note 11, at 524-25.

⁷¹ We recognize there is tremendous diversity in both in-house clinics and field placement programs in terms of levels of student oversight, faculty training in supervision and feedback, and direct faculty interventions and involvement in student work. There are also hybrid programs where students are directly supervised by site supervisors but also receive specific case related skills instruction from faculty. Nevertheless, the basic distinctions between in-house clinic and field placement faculty oversight remain. In-house faculty generally have more direct authority and control over students work product and direct responsibility to provide students with feedback on their performance. More typical field placement faculty oversee the students' learning from the field placement experience, independent of the actual work produced at the placement and serve as a liaison between the placement and student.

⁷² STUCKEY AND OTHERS, *supra* note 34, at 198.

We believe that field placements can achieve the goals of teaching supervision skills and introducing students to workplace power issues better than other methods of instruction because students are functioning in an environment that is more like that which they will encounter in practice.⁷³ Our consistent experience with journals and class component discussions in field placement programs has shown us that students not only confront real practice (as they do in in-house clinics), but they are exposed to power dynamics, workplace hierarchies, and the pressures of outside practice including the pressure to conform to particular law office norms, develop working relationships with outside supervising attorneys, and perform as lawyers, all without the direct faculty oversight and protection available in clinics on campus.⁷⁴ Field placements provide a training ground for students to gain independence and ownership of their learning as they transition to practice.⁷⁵ Because field placements link law students with lawyers in the community, and help provide a bridge between law school and outside law practice, we believe that field placement programs are best situated for the challenges of teaching both students and supervising attorneys about supervision.⁷⁶

IV. RECOMMENDATIONS FOR PREPARING STUDENTS FOR POWER ISSUES AND SUPERVISION

In the year following the Externship 4 Conference in Seattle, we had the opportunity to build on some of the suggestions gathered from participating faculty as well as to further develop our own methods for addressing problems of power in placements within our programs.⁷⁷ We describe below some of the strategies that may be useful

⁷³ *Id.*

⁷⁴ Field placements do require indirect supervision by faculty which includes faculty responsibility to approve placement sites and terminate placements where necessary.

⁷⁵ See J.P. Ogilvy, *Guideline with Commentary for the Evaluation of Legal Externship Programs*, 38 GONZ. L. REV. 155, 160 (2002-2003) (noting “externships may provide students with unparalleled opportunities to define and pursue learning goals, to explore career interests in a variety of legal jobs, and to build a professional network”). See also OGILVY, *supra* note 62 at vii-x for information regarding the history and importance of externships and the ways in which externships and in-house live-client clinics pursue both similar and different teaching goals.

⁷⁶ Alexander, *supra* note 5, at 476-480.

⁷⁷ Based on the collective wisdom and expertise of the Extern 4 conference workshop participants, a number of general suggestions were generated for preparing students for the externship experience. For example:

- Provide written expectations and standards to all program participants
- Role play with students some common situation such as seeking assignment clarification or feedback
- Advise students that they may use the faculty member as the “heavy” when making demands on supervisors

at various stages of the field placement experience to assist students, supervisors, and law faculty in recognizing, addressing, or avoiding power issues in order to build good supervisory relationships and habits.⁷⁸ While we recognize that there are a wide variety of field placement program structures with many different goals and points of emphasis, every program should address the power issues that students will face in placements. This section sets forth a variety of possible ways and sites for addressing power issues including program planning and materials, meetings, orientations, classes, shared experiences, and targeted training in order to support better supervision. These recommendations are based on practices we use as well as reports of successful techniques used by other experienced faculty. Faculty engaged in field placement programs should review these recommendations to find those that can work best in their own programs to give students tools and awareness to help them address difficulties in supervision stemming from the power imbalance between student and lawyer so that the students are able to take an active role in achieving learning goals through guided practice. We also find it helpful, as discussed below, to use ethical rules, cases, and institution policy as appropriate to both empower students to negotiate appropriate supervision, to recognize when intervention is required, and to deter abusive or unethical behavior.

A. *Orienting the Student: Pre-Placement*

Most students sense the power imbalance to some extent prior to starting the field placement. Many have worked in law offices as law clerks or have done volunteer work in situations where they could not control the assignments or feedback they received or whether feedback would be available to them.⁷⁹ Many students enter field placements with an explicit goal of getting a job offer, expanding networking opportunities, or obtaining a recommendation from a supervising attorney that will enhance their job prospects. Others come to field placements with little or no work experience and are unfamil-

-
- Bring Supervisors to class for role plays
 - Invite prior externship students to develop Top Ten Tips lists for both students and supervisors
 - Assign and use *Learning from Practice* as a reference

⁷⁸ Depending on the structure of the program, recommendations can be modified for application in weekly classes, at faculty meetings, in orientations, or through training. We recommend using multiple strategies to address problems of power and supervision throughout the field placement process in order to increase the chances of success.

⁷⁹ One of our programs established as a pre-requisite that students complete at least 50 hours of work in a law setting before enrolling in the program to ensure that they have some exposure to at least one professional work environment. Most students complete this requirement by doing *pro bono* work, an added plus.

iar with workplace structures or hierarchies.⁸⁰ All of these factors can militate against students aggressively advocating for their learning goals.

1. *Preliminary Information about the Program*

The process of teaching students about supervision can begin before the students even select a field placement. We suggest a pre-screening process that includes reminders of the ways that a field placement experience differs from clerking or volunteering, and stresses the primary educational objectives of field placements. The pre-screening process may take the form of individual student meetings or group information sessions, but should include materials that encourage students to consider the distinct educational value of field placements. For example, if you share with students the agreements or commitments that the school requires of supervising attorneys or placement sites, they will understand that supervising attorneys have assumed responsibilities that actually empower the students. Such agreements typically include the obligation to provide guidance and feedback to students, general supervision requirements, acknowledgement of the law school's institutional goals and other terms which can help students understand that participation in the program has imposed on the lawyers a duty to the students.⁸¹

We also remind students that they are paying for the opportunity to learn through working at the placement as part of an academic program and that they have a role in making sure that they achieve their educational goals and a responsibility to work with their supervisors to achieve those goals. It may be useful in an information meeting to ask students to share their previous work and volunteer experiences and to identify ways that their expectations for their field placement participation are different from their prior experiences. Faculty can use this interchange to help students identify steps they can take to ensure that their expectations are fulfilled, drawing attention to the power they have that underlies these steps.

2. *Introducing Goals*

Part of the pre-screening process should require students to articulate their goals for the placement. This is a critical part of counseling

⁸⁰ See Carolyn Young & Barbara 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, 122 (2007) (discussing student and supervising attorney interviews regarding student effectiveness at placements, offering suggestions for improving preparedness and observing "problem of student reluctance to ask questions or impose on the supervisors' time").

⁸¹ Samples of such agreements used by our programs are included as Appendix A.

students about which placement locations they should pursue. We provide students with examples of goals to prod their thinking about what they hope to learn.⁸² It may not be necessary to fully develop goals during pre-screening, but it is critical to direct student attention to articulating their goals in order to assist them in assessing placement opportunities.⁸³ Directing students to think about their goals also subtly suggests that they have power to assert and inquire about a placement's ability to satisfy them as part of the selection process.

Emphasizing goal identification with students at an early stage is also an opportunity to point out that the field placement experience gives them power to take major responsibility for deciding what they want to learn. Generally, this can lead them to consider what knowledge and skills may be required to be the kind of lawyer they aspire to be, and then to assess what they need to do in order to progress toward that professional persona.⁸⁴ We encourage students to plan ways to incorporate their thoughts about their goals into a strategy for placement interviews and into securing commitments from supervising attorneys about the kind of experience they will receive.

3. *Placement Interviews*

Students who interview for placement positions should be reminded that they are gathering information to help ensure a good match. This means that the students can share their goals and seek assurance that those goals are attainable at that placement. Students can also be advised to at least make some preliminary inquiries to determine who will be responsible for giving assignments and supervision at the placement. Encouraging students to be clear about their goals and expectations in the interview stage helps them to be responsible and powerful in making the choice about the placement.

Students in the prescreening process will often present themselves as having little prior experience or skills that will be of value to the placement office, which can be a clue that they feel powerless. It can be helpful to them if a faculty member or other trusted advisor points out the ways that their non-legal experiences may be beneficial to their performance as an extern or lawyer. For example, a student who has been a bartender or waiter may not credit the listening skills,

⁸² See Appendix C.

⁸³ For a further discussion of goals, see *supra* notes 69-70, and accompanying text.

⁸⁴ It may be helpful to have students complete a self-assessment based on the skills and values identified by American Bar Association. See AM. BAR ASS'N SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, AN EDUCATIONAL CONTINUUM REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) (also known as MACCRATE REPORT). The exercise of doing so can help them clarify some of their goals and thinking about possible opportunities at placements.

interpersonal skills, and the client service attitudes that are effective in law practice. A student who has created internet websites might not see the relevance of the planning skills to the work of an attorney. These conversations help students begin to see the connections between the personal and the professional which may have been obscured by the intensive emphasis on rule based analysis in law school. A key component of reflection during the field placement will be the ability to relate prior life experiences to current experiences in practice. So the conversation about the assets that students bring to the placement not only empowers them, but also demonstrates an element of reflective thinking that they will use in processing their experiences.⁸⁵

B. Orientation

A formal field placement orientation provides an opportunity for students to begin to address some problems of power in placements head on as they explore their roles in achieving personal learning goals. Orientation is another place to begin empowering students to take ownership over the development and success of the supervisor/intern relationship.⁸⁶ We have tried a variety of approaches to accomplish this orientation goal.

1. Tips from Supervisors

One simple method is to include supervising attorneys in the orientation to share their tips for success at the field placement site.⁸⁷ Although the results are anecdotal, students report that they are less fearful about asking questions, or seeking assignments and feedback related to their goals if they are given permission and explicitly directed to do so by supervising attorneys (as opposed to a professor). A student in a technology placement, for instance, reflected on this particular lesson in her final paper. Ann had struggled to understand

⁸⁵ At Albany, we found that by working with the law school Career Center (which regularly advises students about resumes) we were able to assist students in better identifying and relating prior non-legal experience to legal placement and employment goals.

⁸⁶ Orientation can also occur in a first field placement class. The benefit of conducting orientation routinely is that all students hear common expectations and recommendations, regardless of their placement.

⁸⁷ We recommend involving experienced supervising attorneys and/or students in planning orientation to identify goals for orientation and communicating tips for success. At Albany Law, adjunct clinic faculty who oversee some individual placements and conduct related classes advised students to: (1) talk to supervising attorneys and ask questions—field placements offer a unique opportunity to practice with someone specifically watching your back; (2) recognize that supervising attorneys have a full time job apart from providing student supervision; and (3) discuss student role and responsibility in planning for success in the supervisory relationship.

the technical terminology and processes surrounding her at her placement and found it difficult to complete her assignments. Even though her supervising attorney was willing to speak with her, she was reluctant to ask questions “for the fear of sounding incompetent.” She was able to turn this situation around by recalling the advice she had received at orientation — a placement supervisor had stressed that “no question is a stupid question.” As Ann later reflected:

The concept is one that I have known for years, however, when placed in a real life situation of having to ask them, it is sometimes easier said than done. . . . What I learned from this is that it is important to ask questions, and actively educate yourself as well along the way. Not only did I ask [my supervisor] questions whenever I did not understand, I made it a point to speak with others in the office and I also made it a point to research various topics that were confusing for me.

Ann became a more self-directed learner:

It is very true that ‘no question is a stupid question,’ especially when one has a supervisor who is willing and able to explain things. However, rooted in this concept is the further step that one must take in actively educating oneself. The two go hand in hand—communication and active research. Through questioning and actively educating myself throughout the process, I was able to derive a more fruitful experience than when I began.

Ann was empowered to play a more active role in reaching her goals and asking for time from her supervisor because another supervising attorney in the orientation provided her with a credible and concrete basis for doing so.

2. *Tips from Students*

We have also used a variety of student exercises to push students to think about what they need to do to assert themselves while building positive relationships with their supervisors. We ask students to reflect upon the lessons they may have learned from previous work experience. Students might be asked to: (a) identify one thing you wish you had known before you started a job or clerkship; or (b) identify a problem with a supervisor that you encountered in a prior job or work place and what you did to address the problem. Students discuss their experiences in small groups, write down individual responses, anonymously if preferred, and then volunteer to share with the larger group. Students with previous field placement or law clerking experience are asked in advance to volunteer. The resulting discussion typically yields advice to students from peers about the benefits of speaking up in the placement to achieve success. Students confirm for each other that it is not only acceptable, but necessary, to take an

active role in ensuring adequate supervision. The responses are then posted on TWEN.⁸⁸ Similarly, we have asked students at the end of their field placement experience to write in journals about things they learned during the experience that helped contribute to making it successful, and things they wish they had known early in the experience. We edit and compile these and distribute them to students at the start of subsequent semesters so that they get the collective wisdom of their predecessors.⁸⁹

Hearing from peers is empowering because of the inherent credibility that students accord to people like themselves who have recently gone through similar experiences. A key to feeling comfortable with various actions is to have a sense of the norms of behavior in a particular environment and hearing from former interns or perhaps other students who have greater work experience helps a new intern understand that actions like asking for feedback and for guidance are normal and expected behaviors in field placements. This knowledge empowers them to act in similar productive ways.

In another peer exercise, we ask students to assume they will all get a grade of “A” or the field placement equivalent of an “A” for the course – a job offer or excellent recommendation. Students are instructed to place themselves in the future, at the end of the semester, and reflect on the insights and accomplishments they had achieved in order to answer the question: “I got a job offer from my field placement office because. . .”⁹⁰ Students then discuss their insights and means to success which were then shared in the orientation and

⁸⁸ The following are a few of the students’ tips:

“I had a difficult time when my supervisor was always on the phone or in meeting and I did not know how to approach him when I had questions. I finally spoke with him about the issues and we came up with a communication system e.g. leaving notes on his chair, waving me in the office, etc.”

“I had too many projects going on and a supervisor who needed everything ‘right now’. . . I made a list and asked where projects should be prioritized whenever he gave me something new.”

“I wish I had realized that the people around me were in my shoes in the past, and not be intimidated by them but rather use them as resources.”

“I had a hard time asking questions. I was always nervous that other employees would think that I was incompetent if I didn’t know everything. Eventually I realized that some things I’ll only learn by asking and I had to get over my fear.”

⁸⁹ A sample compilation is attached as Appendix B. See also Young, *supra* note 80, at 126 (suggesting that faculty assign end-of-semester guided reflection asking students what they might have done better to prepare for their field placements).

⁹⁰ The idea for this exercise is borrowed from Rosamund and Benjamin Zander’s *The Art of Possibility* and adapted for field placement orientation thanks to field placement supervisor and Adjunct Clinical Professor Lillian Moy. ROSAMUND STONE ZANDER & BENJAMIN ZANDER, *THE ART OF POSSIBILITY: TRANSFORMING PROFESSIONAL AND PERSONAL LIFE* 25-53 (HARVARD BUSINESS SCHOOL PRESS 2000).

posted on TWEN.⁹¹ Again the discussion highlights students' recognition of the need to not only demonstrate effort and skill at their placements, but to seek and respond to critical feedback from supervising attorneys in order to improve their work.

3. *Introducing the Power Imbalance*

Other introductory activities may help students put issues of power in perspective so that they are able to recognize power imbalance and so that it does not impede their learning. Most students seem sensitive, perhaps overly so, to the power imbalance with supervising attorneys. Yet they may blame themselves or feel that somehow the imbalance is individual to them. So it may be helpful to put the issue into perspective. One way to do this is to use an exercise like the one we used at the Externship 4 conference⁹² to quickly make the point about how deference is universal and can be triggered by relatively small differentials of power. Professor Nina Tarr uses a variation on that exercise, asking students to bring a resume to the first class (or orientation) and submit it to the professor. Nearly all students will comply, and after collecting them faculty can make the same points about how quickly we obey instructions from people we perceive to be in power. Additionally, this exercise may also raise issues about questions that students could have considered in connection with this "assignment" (e.g. what is the purpose for which the resumes are being collected). The point of this kind of exercise is not to promote resistance to authority, but to sensitize students to the pervasive presence of power issues.

⁹¹ Students offered the following among their insights as to why they "got a job" (an "A") at the end of their externship:

"To me a job isn't just a job – it's a career. My work reflects me, and therefore, I put 110% into everything."

"I absorbed all the information my supervising attorney helped impart to me and I used that information and knowledge to improve my personal work and become a valuable member of the office."

"I displayed that I was an excellent candidate for the position by being proactive. I always asked about what cases were on the docket, and took advantage of the meatier ones. I also asked the supervising attorney a lot of questions, and always asked her to review my memos, suggested opinions and court papers. I spoke to everyone from the Judge to the Security Guard so that I would never miss anything."

"I took ownership of my projects and responded to constructive criticism."

"I learned how to ask for help when I needed it which allowed me to complete each assignment to the best of my ability."

There was also the inevitable "I got a job offer because I am awesome."

⁹² *Supra* discussion in note 14 and accompanying text.

C. Getting Started in the Placement

1. Articulating and Planning to Achieve Goals

The first week at the placement can set the tone for the entire experience and students may benefit from some structure and guidance to help ensure a good beginning. We suggest to both students and supervising attorneys that they meet on the first day of the placement to discuss goals, supervision, communication, student and office expectations, office procedures and rules, ethics, logistics, schedules, dress code, and other matters.⁹³ In particular, it can be helpful to establish early that the student's learning agenda is an important consideration for all involved in the program. One way to do this is to require that each student develop a somewhat detailed list of goals and share that information with the supervising attorney early in the relationship.⁹⁴ This builds on goal identification work which began

⁹³ The field placement handbooks we provide to both students and supervising attorneys contain first meeting checklists which identify the follow areas for discussion:

- The function of the agency, office, or organization.
- The nature of the legal work and student's role in the office
- Relevant office policies, chain of command
- Ethical requirements, confidentiality
- Schedule regular meetings with supervising attorney
- Best methods for communication between student and supervising attorney
- Student's expectations for the placement
- Student's work schedule
- Layout of the office and library and introduction to others
- Student's workspace.
- Explanation of first assignment

⁹⁴ At Albany, students are required to complete a simple educational planning form which they use to identify their three most important goals for the semester and the methods they will use to achieve their goals. They review their planning form with the supervising attorney who must approve the student's plan. Students and supervisors are encouraged to revisit the planning form periodically, and the form is reviewed with field placement faculty at mid-semester. A sample Educational Planning Form is attached in Appendix C. Other schools use a more fully developed learning contract. See, e.g., Liz Ryan Cole, *Lessons from a Semester in Practice*, 1 CLIN. L. REV. 173, at 178 (1994) (discussing student identification of specific learning goals and development of mechanisms to accomplish and measure progress toward goals). Providing students with a list of possible goals as early as the pre-selection process may prompt them to think about their own goals. The following is a sample list:

- Legal skills—writing, interviewing, mediating
- Legal knowledge—learning a substantive area of law
- Legal procedures—learning about court proceedings, mediations, filing pleadings
- Legal institutions—How do courts work? How do government agencies function? How are law firms structured?
- Interpersonal matters—how to interact with lawyers, clients, court personnel, etc.
- Work habits—time management, organizational skills—balancing or integrating professional and personal interests
- Career options—what jobs may be of interest, what excites you about work as a lawyer?
- Professional Role and Responsibility—what behaviors are expected of lawyers in

during the pre-screening process, and hopefully extends any discussion that might have occurred about goals during the interview process. Once students have articulated their goals, the next step is to consider what will be required in order to meet those goals. Here, the supervising attorney will be familiar with the kinds of assignments and interactions that will be available at the placement to help fulfill the goals. This early explicit conversation about goals helps both the student and the supervising attorney focus on the significance of what the student will get from the placement, and it frequently helps establish a supportive and cooperative working relationship.

We make this conversation a requirement of the program to essentially finesse the problem of powerlessness on the part of the student. A student who is reluctant to ask a supervising attorney to focus on student goals now has a legitimate reason to do so, and the reason is one they know the supervising attorney will accept because they know the placement has made commitments to the school.⁹⁵ This situates the student in the middle of two potentially more powerful forces, the faculty member and the supervising attorney.⁹⁶ In our experience, however, the outcome nearly always results in a fruitful discussion and has the corollary effect of removing some of the fear that students may feel about taking their supervisor's time and attention to talk about their needs. Once they experience a positive and rewarding response they will be less reluctant to emphasize their own goals and needs in the internship.

An additional step that may prove useful is to require students to write a reflective journal or contribute to a discussion board posting about the conversation with their supervisor about goals.⁹⁷ The requirement of the conversation with the supervisor ensures that students have an experience in the first week that is a good subject for reflection and forces them to further develop their thinking about what they will need to attain their goals. Often students cannot identify the options for meeting their objectives until they have input and guidance from the supervisor. A written reflection on the conversation helps them refine the goals and the plan to reach them. The re-

different contexts? How do the rules governing lawyer activity arise in day to day situations?

- What is fun and exciting about law?—Life as a lawyer can involve lots of fun, how can you make this happen?

⁹⁵ See *supra* notes 80–82 and accompanying text.

⁹⁶ It also serves as a timely reminder to the supervising attorney of her commitments and responsibilities to the program.

⁹⁷ We use TWEN or Lexis Webcourses as online course websites for posting assignments, course documents and links to relevant websites and other materials. Both services have features that allow students to post and respond to comments on assigned or suggested topics.

flection also gives the faculty member an opportunity (in responding to the journal or posting) to help the student further explore ways to meet his goals. This step completes the cycle of planning—doing—reflecting that is a key process for experiential learning throughout the field placement.⁹⁸ We often use comments in response to these journal entries to acknowledge that the student successfully demonstrated sufficient power in the relationship with the supervising attorney to get some valuable information, guidance or commitment. This reinforces desired behavior and also explicitly addresses power as an important factor early in students' development of their working relationship with the attorney. Where a student is less successful we suggest other ways to interact with the supervisor to overcome any reluctance to deal with the perceived power of the lawyer. We may even ask the student to directly address their feelings of powerlessness through further reflection.

2. *Defining the Working Relationship*

Part of the purpose of requiring the goal conversation with the supervisor is to help shape that working relationship. It is worthwhile to direct students' attention explicitly to the working relationship. This issue is well suited for a guided reflection paper (journal) or discussion board as well, perhaps followed by a classroom discussion. We ask students to focus on the supervisory relationship through specific assignments or reflections. For example, we may ask students to describe the supervisor/supervisee relationship, or identify something they did to set the tone for the relationship.⁹⁹ This can be particularly effective as an on line discussion board exercise so students share and

⁹⁸ D. BOUD, R. KEOUGH & D. WALKER, REFLECTION: TURNING EXPERIENCE INTO LEARNING 12 (Kogan Page 1985) (citing D.A. Kolb & R. Fry, *Towards an Applied Theory of Experiential Learning*, in THEORIES OF GROUP PROCESSES 33-58 (Cary Cooper ed., 1975)).

⁹⁹ The following are additional questions to help focus student attention on the supervisory relationship:

- A paragraph or two describing your working relationship with the supervisor. Give a flavor of the relationship so far.
- Some things that your supervising attorney (SA) did that were important in setting the tone and nature of your working relationship.
- At least one thing that you did that was important in setting the tone and nature of your working relationship.
- What factors might be blocking or inhibiting the establishment of the best possible working relationship with your SA?
- Describe what you think would be either the ideal working relationship with your SA or an aspect of the current relationship that could be improved. What do you think that each of you could do to move toward improvement?
- What possible problems might come up in the relationship between a student and supervising attorney and what can students do to avoid them?

compare, but it also works well as a journal topic. It reinforces that students have the power to define the relationship and helps students identify elements that form the basis for good working relationships. We focus on the supervisory relationship as part of class discussion, so students compare experiences and more easily recognize deficiencies or other red flags in their own supervision situations. Hearing about how their peers have exerted influence on the formation of their relationships is empowering to those who have been more reticent.¹⁰⁰

D. During the Field Placement

Probably the most common interference with student learning at a field placement arises from the absence of clear, specific communication between the student and the supervisor when the student feels powerless to ask questions. A supervisor gives a new assignment to the student, but each has very different understandings about what is to be done and by when. A student completes and submits a project and is told "Great job, I used most of it directly." The student and the supervisor again have very different ideas about what the student has or might have learned from the experience, and again the student feels powerless to seek more information. Clearly, there is room for improvement for both the student and the supervisor. Here we identify several specific aspects of power and supervision in the field placement experience that can be addressed and propose ways of addressing them with both the students and the supervisors. In conjunction with addressing communication issues, we also revisit the theme of power in the relationship between student and supervisor.

1. Assignments

Students need to address new assignments with nearly reflexive ingrained question sets. Professors Young and Blanco have identified a set of questions, which students can modify and adapt in different kinds of placements.¹⁰¹ However, as teachers of trial advocacy skills often observe, merely providing the recipe questions will not ensure

¹⁰⁰ Sometimes a problem with supervision or feedback is not the power differential but a misunderstanding about communication preferences. We urge students to address the mechanics of student/supervisor communication as part of the initial goal discussion with the supervisor. Students read cues to navigate the best path for communicating with their supervisors at various skill levels. Students can avoid miscommunication if they establish a clear path for communication between them and their supervisor at the beginning of the relationship. This kind of conversation will help avoid confusion and can provide the faculty member with an opportunity to address the nexus of power and communication with students.

¹⁰¹ Young, *supra* note 80, at 139 provides an "Assignment Clarification 'Cheat Sheet.'" See also Blanco, *supra* note 5, at 637-642.

that students (or lawyers) will be able to actually ask them in an effective way. We suggest not only distributing a list of new assignment related questions or areas of concern to students, but discussing the list in the context of their actual experiences with new assignments in the first couple of weeks. Students could begin the process of sharing these experiences through an online discussion board as available on TWEN and LexisNexis web courses. We ask students to share an experience of an assignment they received, discuss the questions they thought of about that assignment, and comment on each others' questions.¹⁰² This exercise also lends itself to a classroom exercise. Faculty can also post the list on the course website, and invite students to make additions throughout the semester. Faculty can employ this exercise in a large group, as part of the field placement orientation.

There are several reasons why students frequently fail to ask questions about new assignments and these exercises address them. Students may be paralyzed by fear of undermining future employment prospects by asking questions that will make them look stupid or lacking in basic knowledge or they may fear annoying a supervisor by taking up valuable time. These fears are compounded when students simply do not know what questions to ask. Exercises that allow students to develop clarifying questions can help them overcome these fears and sense of powerlessness. Practice helps students ingrain the questions so that they are automatically triggered whenever there is a new assignment. Once they see how quickly they can get some critical information at the time of receiving the new assignment, their fears are largely dissipated. These exercises help them realize that such questions are a normal part of the workflow in any office. As before, a faculty member can capitalize on student concern about doing a good job to address the issue of the ways that power differentials can subtly undermine the very accomplishments that the students desire.

¹⁰² The following is an excerpt from a discussion board assignment of this type used by California Western:

"Sometime during the week you will get an assignment—it could be a new case to work on or a specific task for a case that you are already working on. When you get the assignment you should write a brief (not more than one paragraph) description of the assignment as initially presented to you. Then take 5 minutes and write down all the questions that you can think of about the assignment (take the full 5 minutes so you don't quit with the first few things you think of—push yourself!) . The questions should be oriented toward the nature and process of the assignment more than the substance of the assignment (meaning that the questions I am seeking are not the legal questions that must be answered to complete the assignment). Some of them may be questions that you did ask when you got the assignment; others will questions you thought of afterwards. . . . You should be able to think of at least 10 questions that relate to new assignments. Once you have written the description of the assignment and the questions that you came up with about the assignment, post them on the website Discussion Board."

Field placement programs should also provide supervising attorneys with a checklist of considerations for giving new assignments.¹⁰³ For example, office protocols and use of secondary sources are second nature to supervising attorneys who may assume that students have knowledge of key practice tools even though they do not have significant practice experience. Often, supervisors (and people who have superior power or information generally) are not aware that their position of power can inhibit students from taking a risk to show weakness or ignorance. Reminding supervisors, through checklists, training and other periodic contact, of the risks of making assumptions about students, makes it likely that they will take steps to alleviate the effects of the power imbalance.

2. *Feedback*

Frequently, training for supervisors on giving feedback is a part of a field placement program. The literature on clinics and field placements addresses best practices for delivering feedback.¹⁰⁴ While supervising attorneys may be trained to give feedback and committed to helping students have educationally sound experiences, their primary professional responsibility to clients or employers will likely predominate. Therefore, students must take an active role in making sure that there is meaningful feedback. Guidelines exist to assist students in maximizing the benefits of feedback,¹⁰⁵ but this assumes that feedback is forthcoming. Less developed are specific strategies to motivate students to seek or demand such feedback. Again, the power relationship between student and supervisor can impede the quest for meaningful feedback. We recommend that field placement programs address this need by providing students with specific guidance for asking for feedback.

The first step in preparing students to receive feedback concerns strategies to ensure that students and supervisors set aside time for feedback. We suggest that setting up a regular meeting time for feedback be part of the agenda for a first meeting between the student and supervising attorney. Next, just as students benefit from identifying

¹⁰³ See a sample of such a checklist in Appendix D. The supervising attorney checklist will be similar to the student checklist of assignment questions.

¹⁰⁴ See, e.g., OGILVY, *supra* note 62, at 43-48. (discussing how to get the most from feedback); Blanco, *supra* note 5, at 653-654 (describing good feedback). See Bernadette T. Feeley, *Training Field Supervisors to be Efficient and Effective Critics of Student Writing*, 15 CLIN. L. REV. 211, (2009) (recommending the use of specific legal writing pedagogical techniques by supervising attorneys to provide feedback on student writing).

¹⁰⁵ See STUCKEY AND OTHERS, *supra* note 34, at 130 (offering guidelines for students to maximize the value of feedback). We recommend distributing such guidelines to both students and supervisors.

issues for assignment clarification, they should be prepared to ask for specific feedback. We ask students to identify areas of specific concern they might have had with a particular project and to keep a running list of their questions as they surface so that they can ask about those issues during feedback meetings. Often students have questions about how they prepared for or performed a task, e.g., a court hearing or witness examination. With written work there are frequently difficult parts of a document that challenged students which can be good starting points for getting feedback. A useful paradigm for thinking about this is to get students to focus on choice points in their work—places where they recognized different options and had to select the best one. These are often great starting points for getting feedback on the overall project as well as the particular choices, and the supervisor will appreciate the thoughtfulness that underlies this kind of question or request for feedback.

Another strategy we have used for training students to think about how to get the most from feedback is to begin by identifying and defining characteristics of good feedback. It is useful to familiarize students with material directed toward supervisors.¹⁰⁶ Materials such as supervising attorney feedback guidelines or checklists will help students formulate questions and strategize about ways to proactively prompt the supervisor to follow the articulated principles for feedback. For example, one field placement program shares with students a list of seven principles of feedback along with some brief readings about feedback.¹⁰⁷ Faculty reviews the principles in class and then asks students to come up with ways that they can use their knowledge of the principles to get more and better feedback. Students are quick to see that they can use the principles to help formulate questions to ask their supervisors which will get them either more feedback or more useful information. Students find this knowledge empowering. Most students have little or no training about the feedback process, and once they gain some understanding of it they are better equipped

¹⁰⁶ Examples of feedback guidelines or checklists are attached in Appendix E.

¹⁰⁷ California Western, provides students with the following Seven Principles of Useful Feedback:

Prompt—near in time to the performance (though sometimes passage of time and some reflection can be useful too)

Positive and Negative—identify some good and some bad aspects of the performance

Precise—detailed and specific—can form the basis for a plan for improvement or generalization

Prescriptive—offer suggestions or alternatives—positive models

Prioritized—do not address everything, focus on the most important things

Probing—explore reasons for the actions and choices

Personalized—address concerns of the supervisee

to overcome the feeling of powerlessness that goes with ignorance and inexperience.

We also construct some mini exercises that require students to give feedback to their peers which further helps students clarify their understanding of the principles and allows them to practice applying the principles when on the receiving end of the feedback. Giving and receiving feedback from peers helps demystify the power issues as students see that effective feedback techniques are not rooted in power. Once they understand the dynamics of feedback, they can address the related power issues that we have discussed in other contexts (e.g. fear of looking bad or fear of taking up time from a busy superior).

We also ask students to provide specific examples of feedback from their placements (either in class or on a website discussion board) so the class can discuss the positive and less positive feedback. Then students role play in class to practice proactive approaches for improving the feedback they receive. Students have been innovative in coming up with ways to use the principles and some have even suggested ways to review them with supervisors without suggesting that the supervisor's feedback has been ineffective.¹⁰⁸

Our goals in pushing students to take a proactive role in their feedback and supervision go beyond helping them understand and address the power imbalance issues. In order to engage their supervisors effectively in the feedback process, students need to establish deliberate self evaluation habits and techniques. These will also be critical for their ongoing development after the field placement is over. These skills should also assist students in negotiating power issues.

E. Supervisor Training

For a variety of reasons, individual supervising attorneys and their offices have a vested interest in learning good supervision practices.¹⁰⁹ First, supervisors are ethically obligated to provide adequate oversight to ensure competent representation and compliance with ethics rules.¹¹⁰ Second, well supervised students will be more productive and competent. Third, attention to appropriate boundaries in the workplace protects the attorney and office from potential liability situations including charges of favoritism or harassment. Field placement programs should explicitly address problems of power in placements

¹⁰⁸ For example, leadership and management skills are among the qualities that many students identify as important professional qualities that they want to learn. Students may discuss these principles with their supervisors in the context of whether they are useful to them as managers of projects and people in the placement environment.

¹⁰⁹ Supervisor training is discussed at length in Blanco, *supra* note 5. We focus here on training that addresses issues of power in placements as it affects supervision.

¹¹⁰ See discussion *supra* notes 26 – 44 and accompanying text.

and appropriate student/supervisor boundaries with supervising attorneys.¹¹¹ Programs can do this informally through regular contact between supervising attorneys and field placement faculty or on a formal basis through conferences or Continuing Legal Education (CLE). In our experience, most attorneys welcome guidance on supervision in any form.

1. *Informal Supervisor Training*

Every contact with a field placement site or supervising attorney is an opportunity to provide training on appropriate supervision. This training may occur first at a meeting to establish a field placement site, and thereafter at regular site visits or through other contacts. Information regarding the goals and expectations of the law school program, including supervisor involvement in the development and assessment of student goals, assignments, and feedback can be exchanged at every contact. We recommend that written materials to assist in supervision be provided regularly.¹¹² In addition, it helps to

¹¹¹ Given limited conference time, we asked Seattle workshop participants to provide resources and guidance on appropriate student/supervisor relationships and setting boundaries. Conference participants made the following suggestions:

- Address appropriate supervisor/student boundaries as a specific part of the course classroom component
- Discuss issues of office etiquette, dress, and behavior with students individually and in class
- Invite former students into the classroom discuss for greater credibility
- Role play power problems such as Mary's situation with students: How should Mary respond to the date invitation?
- Share real stories
- Refer to existing resources including *Learning from Practice* and other scholarship

Conference participants also offered suggestions for supervisor training aimed at building positive relationships between law school, externship faculty and placements, and introducing issues of power dynamics to supervising attorneys:

- Use simple exercises in supervisor training to demonstrate power dynamics
- Role play power problems and possible solutions
- Provide supervising attorneys with periodic handouts related to supervision
- Offer to become part of in-house training at individual placement sites
- Advise/remind supervising attorneys of the relative inexperience of students
- Make personal contact with new supervisors
- Create opportunities for supervising attorneys to exchange and share information with each other
- Hold a reception for supervisors and invite students to speak informally about good supervision
- If a conflict of interest develops, refer student to an attorney

¹¹² We provide supervisors with a Supervising Attorney Handbook at regular intervals and supplement the handbook with checklists on giving assignments and feedback at trainings and site visits. A copy of the Albany Law School Supervisors' Handbook which includes program goals, responsibilities of students and supervisors, relevant ABA standards, student practice rules, and forms is available at <http://www.law.cua.edu/lexternWeb/index.htm>.

remind supervisors about the power issues as experienced by students in these casual and informal encounters. Sometimes the topic is relevant to a particular student whose presence at the placement has triggered a site visit or other contact, and sometimes the topic arises as we discuss general issues informally with supervising attorneys.

2. *Formal Supervisor Training*

We suggest further appealing to the self interest of supervising attorneys by making CLE credit available for free for participating in supervisor training. As observed by faculty participating in Externship 4, recognizing and rewarding good supervision can pay dividends.¹¹³ For this reason, it is helpful to offer frequent and convenient CLE sessions at the law school or at a placement site where a number of supervisors are located.

Explicit training for supervising attorneys on ethical issues arising in law student supervision provides an entrée into discussion of power problems in placements and how student reluctance to seek supervision and feedback can escalate. Avoiding the ethical pitfalls of failed supervision should serve as a powerful incentive for supervising attorneys and placements to recognize and address problems of power that interfere with effective student supervision and to seek out training to do so. Regardless, the offer of free Ethics CLE credit may provide the additional incentive necessary to draw attorneys to specific training. Once there, it is helpful to use some of the actual problems encountered in practice as the basis for discussion of supervision. For example, we have developed discussion problems based on failure to supervise disciplinary matters. We have also used Mary's case to draw attention to potential problems caused by the crossing of relationship boundaries. Even if these situations never occur for the supervising attorneys who attend, the discussion prompts them to be vigilant about similar problems of supervision and to think in advance about the potential consequences. We emphasize that good communication with interns and an understanding of the power dynamics of the relationship will help the attorneys avoid a variety of potential ethical issues.

In addition to providing training and informal guidance to super-

¹¹³ See Externship 4: A Bridge to Practice "Supervising Attorneys: Our Best Allies, Worst Obstacles or Our Other Students" available at <http://www.law.cua.edu/lexternWeb/index.htm>. Albany Law School offers two CLE sessions each semester: a basic supervisor training aimed at attorneys who are relatively new at supervision in which we highlight some of the typical problem that may occur, especially with students who fail to seek clarification of assignments, or feedback and solutions for addressing such problems; and ethical issues in supervision which offers more specific opportunities to tackle problems of power in placements.

vising attorneys, we require each supervising attorney sign a Memorandum of Agreement at the start of each semester during which they have a student at their placement. This reinforces prior training and reminds them that they need to review the Supervising Attorney Handbooks which we provide and which are incorporated by reference in the agreements.¹¹⁴

CONCLUSION

In our role as faculty supervisors, we are in a unique position to facilitate the success of our students, both in the placements and beyond, because we can interact with them free of the pressures of direct responsibility to a client. We can serve as consultants to the field placement supervisors on matters related to the supervision of students and we can ask for certain behavior and commitments from them as a condition of participation in our programs. We should include explicit attention to power issues in our interactions with both students and placement supervisors because power issues are critical during students' participation in field placements and because these are issues that students and supervisors will encounter throughout their careers. Explicit attention to the supervisory relationship between the student and the supervising attorney is critical to maximizing student learning from the placement and an excellent method to raise broader issues of power in the workplace.

¹¹⁴ See Appendix A.

APPENDIX A

California Western School of Law
SUPERVISING ATTORNEYS'
MEMORANDUM OF AGREEMENT

Firm/Agency/Corporation: _____

Supervising Attorney: _____

I/we agree to the following conditions for participating in the California Western School of Law Clinical Internship Program.

1. I/we have read the Supervising Attorney's Handbook and agree to follow the education goals stated therein.
2. I/we understand that the purpose of the program is to allow the student to experience working as a lawyer, including the ethical and professional responsibility issues that arise in context.
3. The student will be given assignments that are representative of the Supervisor's work. Where appropriate, the student will be certified and to the extent possible, will be responsible for a caseload under my/our supervision.
4. The student's assignments will be as challenging as the student can reasonably handle.
5. The required working time for the student is 4 hours/week per unit of credit. I/we agree to review and sign the student's time sheets on a weekly basis.
6. Students will always do research in the context of a real case. When assigning research, any relevant case file will be made available to the student.
7. The student will participate in all aspects of cases including, but not limited to, client interviewing, counseling, case planning, discovery, fact investigation, trial preparation and trial.
8. The assignment, work, and feedback process will be in accord with the Supervising Attorney's Handbook.
9. Interns will have access to support staff substantially equal to the attorneys in the office. Clerical tasks, e.g., filing, photocopying, li-

brary updating, indexing, will occupy not more than 5% of student work time.

10. I/we agree to complete, review with the student, and submit both a mid trimester and final evaluation report on the intern's work (forms to be provided by the law school).

Signatures of all attorneys who will supervise students.

**ALBANY LAW CLINIC & JUSTICE CENTER
FIELD PLACEMENT CLINIC
Supervising Attorney's Memorandum of Agreement**

Field Placement Office: _____

Location: _____

Supervising Attorney: _____

I agree to the following conditions for participating in the **ALBANY LAW CLINIC & JUSTICE CENTER FIELD PLACEMENT CLINIC**:

1. I have read the Supervising Attorney's Handbook and agree to follow the education goals stated therein.
2. I understand that the purpose of the program is to allow the student to experience working as a lawyer, including exploring ethical and professional responsibility issues.
3. The assignment, work, and feedback process will be in accord with the Supervising Attorney's Handbook.
4. The student will be given assignments that are representative of the supervising attorney's work. Where appropriate, the student will be certified to appear in court and or personally represent a client under attorney supervision.
5. Student assignments will be as challenging as the student can reasonably handle.
6. The required working time for the student is a minimum of 168 hours for the semester (approximately 12 hours per week for 14 weeks).

7. Students research will be assigned in the context of real cases, issues, or other projects in which the placement is involved. When assigning research, any relevant case files will be made available to the student.
8. The student will participate in all aspects of cases where possible, including, but not limited to, client interviewing, counseling, case planning, discovery, fact investigation, trial preparation and trial.
9. Law student interns will not be assigned clerical tasks, e.g., filing, photocopying, library updating, indexing, unless such tasks are specifically related to an educational activity.
10. I agree to complete, review with the student, and submit a placement evaluation of student at the end of the semester.

Signatures of Supervising Attorneys

APPENDIX B

Prior Interns' Suggestions of Important Things for an Intern to Do in Order to Get the Most out of the Internship**1. Ask questions**

Asking questions serves several important purposes. First off, the intern learns more about the area of law and all the various nuances, exceptions, etc. Second, the intern learns more about general attorney skills, for example how to be professional to opposing counsel, how to draft a legal document or correspondence, and how to act in front of a judge. Finally, when it comes to assignments, your work will be better and more efficient if you get clarification of what is expected and why (how the assignment fits in the larger case context). Look for answers on your own before asking your SA – they appreciate it – and if you still end up having to ask them, you will at least be more informed about the subject and hence your question will be more to the point.

2. Communicate honestly with your SA

Tell the SA if you're feeling overwhelmed. This covers many aspects including number and complexity of assignments. Similarly, don't be afraid to ask for things to do. You don't have to wait to be told what to do. Solving problems and taking your own initiative are great ways to stand out from the pack. Also, don't feel shy about asking your SA how to approach an assignment—search terms, sources, etc. Chances are, he/she has faced a situation of not knowing an area of law too well and needing to start broad in a search for information.

3. Learn to prioritize/organize

Use a calendar/PDA religiously and make notes of deadlines when your SA gives them to you. This will help you not be so overwhelmed and make you feel on top of things. Also, it will give you time to generate lots of drafts to give to your SA for review.

4. Get to Know Office Operations.

Get very familiar with the document and filing system so that you can easily search for examples of documents to model because the Supervising Attorney will most likely prefer a certain style or format for documents. Get to know the support staff early on because they can be very helpful. Treat everyone in the office with respect.

5. Establish a good personal relationship with your SA.

If your Supervising Attorney asks you to lunch, you should go. This will give you the opportunity to discuss your long-term goals for the internship as well as allow you and your Supervising Attorney to get to know one another on a more personal level. The more you know about your supervising attorney, and the closer you are able to get to them, the more comfortable you will feel around them, asking them question, and even letting them know you made a mistake on something.

6. Maximize Feedback

Your supervising attorney will give you feedback, but don't be afraid to ask for it too. Sometimes SAs intend to give feedback but get caught up in the press of daily work and lose track of it and they will probably appreciate you taking the initiative to ask. It is also helpful if you can come up with some specific questions about what you did—you will get more out of the feedback if it is more detailed and directed to your concerns, so don't be afraid to express them.

7. Get the most from your projects

Ask your supervising attorney for client updates or project updates. This lets the supervising attorney know you are interested in the final outcome of your tasks. Try to get as many diverse projects as possible, but be open to all projects. Approach every assignment with the same enthusiasm (often those that seem the least interesting turn out to be the ones you learn the most from anyway).

8. Keep track of writing samples

You never know when you may write something that will serve as a good writing sample, so make sure you have a copy for yourself at the end of the internship. If it is a motion, for example, and the judge ruled in your side's favor, be sure to mention that when you submit the sample to a potential employer.

9. Relax, relax, relax!!

You know that you are capable of doing the work, and your supervising attorney is there to help you, and if you don't relax you aren't going to live up to your full potential – you'll be too preoccupied with worrying.

10. After the internship is over, maintain contact with your SA

This is important for a couple of reasons, especially the following: (1) Your SA is going to serve as a reference for you in the future and will be a very reliable one since the SA has worked so closely with you and seen the growth in your work; (2) the SA knows other attorneys in the field and can very likely help you find a job in the future. Discuss with your supervising attorney how you should describe your experience in your resume and in interviews and ask for advice in searching for jobs.

APPENDIX C
ALBANY LAW CLINIC & JUSTICE CENTER
FIELD PLACEMENT CLINIC
STUDENT EDUCATIONAL PLANNING FORM
[To be signed by Student and Supervising Attorney]

Student Name: _____

Placement / Semester: _____

1. Please state your primary goals to be derived from this clinic placement.

Goal 1.

Goal 2.

Goal 3.

2. Possible mechanisms to achieve each of these goals.

Goal 1.

Goal 2.

Goal 3.

3. Please state your present areas of strength (e.g., research skills, writing, issue identification, reasoning, oral advocacy, interpersonal skills, etc.)

4. Please indicate your areas of weakness.

Supervising Attorney Signature: _____

Student Signature: _____

Complete this Educational Planning Form. This is to assist you in formulating goals for the semester. Review it with your Supervising On-Site Attorney at the outset of your placement and have the Attorney sign to acknowledge this discussion.

APPENDIX D

**ALBANY LAW SCHOOL FIELD PLACEMENT CLINIC
SUPERVISING ATTORNEY ASSIGNMENT CHECKLIST***

A key to any successful field placement is the ability of a Supervising Attorney to effectively give assignments to the law student intern. It is important that the student understand exactly what is expected. Below is a checklist to assist you in assigning work to law students in a manner that avoids confusion and increases productivity.

Giving and Clarifying Assignments:

- Have you explained each assignment to your student (keeping in mind the relative inexperience of the student)?

We recommend that assignments be given in writing when possible. This gives the student something to refer after your assignment meeting. The process of writing may also assist you in clarifying your goals for the assignment.

- Have you discussed the objectives of the assignment or project?
- Does the student know how the assignment fits into the overall case, project, mission, etc.?
- Have you provided deadlines for drafts? Final product?
- Have you communicated how much time you expect the student to spend on the project?
- Have you communicated the format you require or prefer?
- Have you provided any examples to assist the student in understanding your expectations?
- Have you provided guidance in terms of starting points?
- Have you given the student an opportunity to ask questions?
- Have you followed up with your student to clarify, review, and answer questions as the assignment progresses?

*This checklist is based on material from the Greater Los Angeles Consortium on Externships (GLACE)

APPENDIX E

**ALBANY LAW SCHOOL FIELD PLACEMENT CLINIC
SUPERVISING ATTORNEY FEEDBACK CHECKLIST**

In order for students to progress in their placements, meet their educational goals and develop as attorneys, it is important that they receive detailed and constructive feedback on their work – both written and oral work. Students should have a sense of what they did well and why, as well as what can be improved upon. With your guidance they, students should be able to reflect on their performance and develop strategies for improvement. Below is a checklist to assist you in providing effective feedback:

- Ask the student to first assess his/her own performance.
- Offer your feedback frequently and in a timely manner.
- Feedback should be nonjudgmental.
- Feedback should be detailed.
- Focus on ways in which a student may improve his/her performance (not just what student did wrong) Give specific examples where possible. Discuss alternatives.
- Communicate high expectations – i.e. that the student CAN improve and that you will assist.
- Encourage questions and dialog.