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## Field Placement Programs: Practices, Problems and Possibilities

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# FIELD PLACEMENT PROGRAMS: PRACTICES, PROBLEMS AND POSSIBILITIES

ROBERT F. SEIBEL & LINDA H. MORTON\*

## INTRODUCTION

Throughout their history in legal education, field placement programs have been extolled, misunderstood, or simply ignored.<sup>1</sup> More recently, there has been a resurgence of appreciation for the role externship programs<sup>2</sup> play in legal education.<sup>3</sup> The popularity of these programs has grown as law schools have moved to respond to students' demand for employment experience, state bar associations' increasing emphasis on the learning of skills prior to graduation, the reality that externship programs may accommodate more students

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<sup>1</sup> For many years, of course, legal education denied that practical experience was an integral part of preparing lawyers for admission to the profession. Dean Christopher Columbus Langdell revolutionized legal education by eliminating the traditional apprenticeship training of lawyers in the late nineteenth century. ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S*, at 39, 52 (1983). Finding the Langdellian pedagogy too abstract, founders of the Legal Realist movement in the early 1930's advocated a return to clinical training in law schools. See EDWARD A. PURCELL, JR., *THE CRISIS OF DEMOCRATIC THEORY* 74-77 (1973); Jerome Frank, *Why Not a Clinical Lawyer School?*, 81 U. PA. L. REV. 907, 911 (1933); John S. Bradway, *The Beginning of the Legal Clinic of the University of Southern California*, 2 S. CAL. L. REV. 252, 252-53 (1929). Some decades later, in 1968, law school clinical programs, including field placement programs, received a tremendous boost through a Ford Foundation grant. Even then, however, most published studies of clinical programs focused on in-house clinics rather than on externships. See Marc Stickgold, *Exploring the Invisible Curriculum: Clinical Field Work in American Law Schools*, 19 N.M. L. REV. 287, 294, 296 (1989).

<sup>2</sup> We will use the terms "field placement programs" and "externship programs" synonymously, and we adopt the definition of these programs in an American Bar Association memorandum as "internships, externships, judicial clerkships, placement clinics, and any other program in which actual rendition of legal services or other actual legal activity are used and in which full-time members of the faculty are not ultimately responsible for the quality of the service or other activity." Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Members of Site Evaluation Team at 15 (Sept. 1988) (on file with the authors).

<sup>3</sup> For discussions of the benefits of field placement programs, see, e.g., Janet Motley, *Self-Directed Learning and the Out-of-House Placement*, 19 N.M. L. REV. 211, 222-24 (1989); Stickgold, *supra* note 1, at 314-18. For a thought-provoking argument that learning in field placements can occur without the input of professional educators, see Daniel J. Givelber, Brook K. Baker, John McDevitt & Robyn Miliano, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995).

than in-house clinics, and a recognition that some important curricular goals may be best achieved through field placement programs.<sup>4</sup> At the same time, externship faculty have contributed a more sophisticated analysis of the pedagogical opportunities available in externship programs.<sup>5</sup> An Extern Committee of the Clinical Section of the American Association of Law Schools has developed. In 1993, the Clinical Legal Education Association (CLEA) sponsored a National Conference on Externships.

The American Bar Association (ABA) has encouraged the development of field placement programs along with other clinical methodologies. However, the ABA has also responded to the increased prominence of externship programs by increasing the specificity of its accrediting regulations governing the content, teaching, and review of field placement programs.<sup>6</sup> These new requirements, embodied in Interpretation 2 of Accreditation Standard 306(c),<sup>7</sup> are more detailed and specific than the regulations governing other parts of the curriculum, including other clinical offerings. They have been received critically by externship faculty and others.<sup>8</sup> This kind of micro-management is the very type of intervention that may cause law schools to be generally wary of the way the ABA implements its role as the accrediting body. Perhaps their most fundamental defect, however, is that these specifications of appropriate content and methodology for externships are based on little or no empirical data as to the

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<sup>4</sup> AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 253-54 (1992) [hereinafter MACCRATE REPORT]; Arthur B. LaFrance, *Clinical Education and the Year 2010*, 37 J. LEGAL EDUC. 352, 355 (1987); Stephen T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education*, 69 NEB. L. REV. 537, 539 (1990); Henry Rose, *Legal Externships: Can They Be Valuable Clinical Experiences for Law Students?*, 12 NOVA L. REV. 95, 102-03 (1987).

<sup>5</sup> For examples of articles on the topic of field placement pedagogy, see, e.g., Linda Morton, *Creating a Classroom Component for Field Placement Programs: Enhancing Clinical Goals with Feminist Pedagogy*, 45 MAINE L. REV. 19 (1993); Motley, *supra* note 3; Linda F. Smith, *The Judicial Clinic, Theory and Method in a Life Laboratory of Law*, 1993 UTAH L. REV. 429.

<sup>6</sup> For a discussion of the history of ABA regulation, see MACCRATE REPORT, *supra* note 4, at 105-13, 260-66. On ABA regulation of externships, see Morton, *supra* note 5, at 30-33.

<sup>7</sup> AMERICAN BAR ASSOCIATION, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS, Standard 306(c), Interpretation 2 (Oct. 1993) [hereinafter ACCREDITATION STANDARDS].

<sup>8</sup> The ABA's 1993 redraft of Interpretation 2 was a topic of discussion at the AALS Clinical Conference in Albuquerque, New Mexico (May 1992) and at the AALS Conference in San Francisco (January 1993), and the arbitrary application of these regulations has been a continuing subject of study by the AALS Clinical Section's Externship Committee. For critiques of Interpretation 2 prior to its redraft, see Maher, *supra* note 4, at 623-24; Morton, *supra* note 5, at 30-35; Stickgold, *supra* note 1, at 319.

actual content and methodology of such programs—for almost no data on these issues have been available until now.<sup>9</sup>

In this Article we provide such data, based on a survey we conducted on externship programs offered during the 1992-93 school year. We believe this information is of value in and of itself, and our hope is that it can become the basis of a nationwide clearinghouse to help those beginning or evaluating externship programs. In addition, however, we analyze the implications of the statistical findings we report, first in order to understand the pedagogical value of the externship programs now in place at most of the nation's law schools, and second in order to judge the wisdom or lack thereof of the ABA's regulatory approach to these programs.

In conformity with our belief that a discussion of goals is the starting place for analysis of externships, we begin in Part I with a description of some of the goals possible for externship programs and an explanation of the role such goals might play in law school pedagogy. We argue that externship programs can provide a distinctively valuable educational experience for students—an experience not available in traditional classrooms and also an experience with some benefits that are not available through in-house clinics. In our view, externships not only provide skills training and concrete experience in an extremely wide range of actual practice settings, but also can be especially effective vehicles for teaching students self-directed learning and broadening students' perspectives on the legal system of which they are already a part.

We then turn in Part II to the data. In part our report of our findings, as we have already said, is valuable in and of itself as a report of the ways that externship programs actually operate, with respect to such issues as program subject matter, size, credits, pedagogical methods, and faculty responsibilities. But these findings also offer confirmation that externship programs in fact are fulfilling the potential that we have claimed for them in Part I, and that many of the worries that

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<sup>9</sup> In 1982, Professor Marc Stickgold conducted a survey of field placement programs. However, the emphasis of his survey was on the relationship between the field supervisor and the law school faculty, and his conclusions focus on the need to develop a stronger tie between supervisors and faculty in the design, implementation, and supervision of field placement programs. Stickgold, *supra* note 1, at 297-324. The emphasis of our survey is on the actual content and structure of field placement programs.

Much more recently, the MacCrate Task Force conducted an extensive study of skills offerings in law schools, comparing its data with prior studies by the Council on Legal Education for Professional Responsibility and the American Bar Association's Office of the Consultant on Legal Education. MACCRATE REPORT, *supra* note 4, at 236-60. For a report on a significant statistical study of in-house clinics, see Marjorie Anne McDiarmid, *What's Going On Down There in the Basement: In-House Clinics Expand Their Beachhead*, 35 N.Y.L. SCH. L. REV. 239 (1990).

apparently drove the ABA's regulatory approach are exaggerated or simply baseless. As we will see, perhaps the most significant characteristic of our data is the illustration of the incredible diversity of programs which currently exist. The plethora of varying programs made our data collection more difficult; at the same time, such variety demonstrates the unique ability of field placement programs to be structured in accordance with the goals and resources of individual law schools. Moreover, although statistical analysis cannot by itself tell us the reasons why schools have chosen the particular programs they have, we will argue that the variety of programs revealed by the data points to the discretionary judgments of sound pedagogy rather than to an inconsistency of design needing correction.

In that light, we will focus in Part III on the implications of our data for the question of the proper approach that the ABA, as the accrediting agency for law schools, should take towards field placement programs. This is a particularly appropriate time for the ABA to review the type of institutional support it should lend to field placement programs. The ABA is now at work on a comprehensive recodification of the accreditation standards,<sup>10</sup> and has recently received the report of the Wahl Commission, which reaffirms the ABA's role in the general enterprise of fostering skills instruction.<sup>11</sup> In addition, the ABA has been obliged by its recent antitrust settlement with the Justice Department to study and revise the accreditation criteria regarding, among other things, resource allocation, student-faculty ratios, teaching hours, and leaves of absence.<sup>12</sup>

We support an active and useful continuing role for the ABA with respect to clinical and skills programs, but we are critical of its micro-management approach to externships. Is greater specificity in the regulation of the content and methodology of field placement programs—the heart of the 1993 revisions of Standard 306(c)'s Interpretation 2—helpful to individual program goals? Our data confirm the judgment of many externship faculty that the ABA field placement program regulations are misguided. In our view this conclusion demonstrates the irony of failed potential which is a general theme of the flawed relationship between the ABA and the law schools in the ac-

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<sup>10</sup> See *Recodification of Standards Nears Completion*, SYLLABUS, Winter 1996, at 1, 1.

<sup>11</sup> See REPORT OF THE SPECIAL COMMISSION TO REVIEW THE SUBSTANCE AND PROCESS OF THE AMERICAN BAR ASSOCIATION'S ACCREDITATION OF AMERICAN LAW SCHOOLS, Aug. 3, 1995, at 20-31 [hereinafter WAHL COMMISSION REPORT] (on file with the authors).

<sup>12</sup> Proposed Final Judgment at 7-8, *United States v. American Bar Association*, No. CA 95-12111 (D.D.C. June 27, 1995). See Steven A. Holmes, *Pact Overhauls Accreditation of Law Schools*, N.Y. TIMES, June 28, 1995, at A1, A9; WAHL COMMISSION REPORT, *supra* note 11, at 26-33.

creditation process.

The ABA can and should play an important role in encouraging and requiring law schools to include in the curriculum valuable experiential educational opportunities, like clinics and field placement programs. But the way to do that is not to impose detailed requirements governing the elements of field placement programs. Instead, it is to require that these courses, like all others in the curriculum, have adequate supervision by faculty members who are given the time and resources to structure their programs in ways that fit with the constraints and opportunities in their particular schools and geographical locations. As we will show, the ABA has imposed too many detailed requirements about the content of field placement programs, and in so doing, has underplayed important issues of adequate resource allocation, particularly with respect to the teaching loads imposed on faculty who work in externship programs.

#### I. THE CONTRIBUTION OF EXTERNSHIPS TO LEGAL EDUCATION

The role of externships in promoting law schools' pedagogical goals has often been undervalued, even among those who believe in the importance of experiential training. In the past, field placement programs have been viewed primarily as vehicles for the teaching of lawyering skills.<sup>13</sup> Understood in this way, externship programs, in which volunteer lawyers taught students skills, could easily seem inferior to in-house clinics, in which full-time clinical faculty taught the skills.<sup>14</sup> Externship programs *do* commonly seek to teach skills, but to us, as we will explain shortly, it is far from clear that the supposed weaknesses of externship supervision actually make these programs less effective than clinics in doing so.<sup>15</sup> Moreover, as we will also show, there are several other forms of student learning about practice that externships are notably well-suited to provide.

More importantly, while there are similarities in approach and subject-matter between field placement programs and in-house clinics, there is a pedagogical aspect of externships that is unique: the freedom of the faculty supervisor to maintain some distance from the demands of producing the work product. This distance makes it more

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<sup>13</sup> See Mark Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Education*, 34 UCLA L. REV. 577, 590-91, 603-10 (1987).

<sup>14</sup> For example, Prof. Gordon Gee disparaged field placement programs as " 'education on the cheap.' " Stickgold, *supra* note 1, at 297 (quoting COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, 1979 REPORT, at xxii).

<sup>15</sup> Critics of externship supervision include Minna J. Kotkin, *Reconsidering Role Assumption in Clinical Education*, 19 N.M. L. REV. 185, 198 (1989); Rose, *supra* note 4, at 104-05. The MacCrate Report seems to concur. See MACCRATE REPORT, *supra* note 4, at 271, 334. Much of the ABA's approach suggests a similar appraisal.

likely that the supervisor can bring an independent view to the casework, and also makes it easier for the supervisor to relinquish control of the learning agenda to the student, and to independently raise issues of interest that are not directly related to the case. While some of these approaches may be possible in other clinic settings, we believe that the externship environment is uniquely adapted to them. The issue of control of the learning process is a fundamental one throughout legal education. Our experience, which includes a broad spectrum of clinical teaching methods, has convinced us that law students are often ready to assume more control of the learning agenda in externships than in traditional classes and even in-house clinics. We believe that externships provide the best opportunities for faculty and students to experiment with that reallocation of control.<sup>16</sup> We hope that field placement programs can provide an example for traditional classroom teachers and other clinical teachers of the importance and benefits of increasing student responsibility for the learning agenda.

Since the teaching of skills is still an important part of field placement programs, we want to be clear that we also believe that these programs can and do deliver effective skills instruction, albeit through different structures than the in-house clinics use.<sup>17</sup> Certainly supervision can provide a context for analysis that experience alone does not necessarily provide, but externships provide professional supervision—whether it takes the form of on-site guidance by the placement attorney, or work at the law school in tutorials, classroom components, and journal discussion. Externships are not bargain-basement clinics, but another form of experiential education, with their own virtues as well as limits. Advocates of clinical education, we feel, should acknowledge the benefits of both field placement programs and in-house clinics.

Just as several recent commentators have eschewed the theory/practice dichotomy,<sup>18</sup> we suggest that externships have an important role in the accomplishment of non-skills curricular goals as well as in teaching skills. Moreover, as our varied data will indicate, once a field placement program's objectives are determined, in accordance with the institutional goals of the law school, the program can be structured

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<sup>16</sup> We do not mean to imply that in-house clinical programs cannot reallocate control—only that it can be more difficult to do so when there are case-specific tasks for which the clinic supervisor is ultimately responsible.

<sup>17</sup> For a convincing empirical rebuttal to the criticism that externship work is trivial, repetitive, dull, and poorly supervised, see Givelber et al., *supra* note 3, at 27. We discuss the actual use of such supervisory systems as classroom components, journals, and grades in Part II of this Article.

<sup>18</sup> See, e.g., Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991); Spiegel, *supra* note 13.

precisely to meet its programmatic goals, whatever they may be. Among the most important of these goals, besides conventional skills training, are training in self-directed learning, education in perspectives on the legal system, and introducing students to a wide range of specific practice contexts.

Student mastery of self-directed learning is a significant aspiration of legal education which is greatly enhanced through externship programs.<sup>19</sup> In their field placements, students are confronted with the realities of practice weekly, if not daily. Through specific program design—utilizing such externship components as journals, tutorials, and classroom exercises—students are taught to persist in analyzing their field experiences in light of their current knowledge of the law and moral understanding. Thus, they learn to re-examine their own beliefs and potentially re-structure them in light of their new experience.<sup>20</sup>

On this score, externship programs are well positioned to help students advance their understanding of their work and their role beyond the point they are likely to reach in a traditional academic classroom. Non-externship law faculty often state that their goal in traditional first-year courses is to teach students to “think like lawyers.” By this they usually mean that they teach students rigorous legal analysis and argumentation. Little is accomplished in the traditional curriculum toward the important goal of having students learn to learn on their own—to develop the ability to analyze their own performances and the performance of others within the legal system. Little attention is given to students’ role in legal institutions, or to the application and use of legal analysis in legal problem-solving. By contrast, field placement teachers have the opportunity to accomplish these objectives by teaching students to use their field experiences to

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<sup>19</sup> Professor Lawrence Kohlberg discusses the development of personal morality through self-directed learning and reflection. By persistently re-examining our moral codes, we achieve higher levels of morality. See Lawrence Kohlberg & Elliot Turiel, *Moral Development and Moral Education*, in *PSYCHOLOGY AND EDUCATIONAL PRACTICE* 456 (Gerald S. Lesser ed., 1971); *RESEARCH IN MORAL DEVELOPMENT: THE COGNITIVE DEVELOPMENTAL APPROACH* (Lawrence Kohlberg & Elliot Turiel eds., 1973).

<sup>20</sup> This concept is perhaps better explained by Professor Robert Condlin: “Moral understanding is arrived at by critical reflection on activities that have been experienced pre-reflectively and begun to be internalized as dispositions. Until disposition is present, at least in some minimal or beginning form, the moral character of action cannot be fully understood. Without the experience of acting in a lawyer role, moral philosophizing will be just so many words.” Robert Condlin, “*Tastes Great, Less Filling*”: *The Law School Clinic and Political Critique*, 36 *J. LEGAL EDUC.* 45, 66-67 (1986). Another apt description of the “process of learning to learn” may be found in Professor Kenneth R. Kreiling’s article, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structured Clinical Supervision*, 40 *MD. L. REV.* 284 (1981).



learn reflective thinking.<sup>21</sup>

Moreover, while these same goals are often part of an in-house clinic's curriculum, the two types of clinics may not place the same emphasis on these concerns. Though an externship professor usually does not provide the detailed skills critique an in-house clinician does, the former can spend more time discussing the place of the supervising attorney's critique in the student's self-learning goals. In this respect, as in others, the issue is not the superiority of one of these clinical methods over the other. The real question is how to use both methods effectively within each law school curriculum.

Externship programs also provide an ideal structure for helping students to gain perspective on the legal system—to examine legal doctrine in the context of societal problems, apply jurisprudential and other philosophical considerations to the practice of law, and compare and critique legal systems. Recognizing that such goals require the teaching of cognitive skills different from those applied to the learning of black letter law or legal argumentation, many law schools have adopted classroom "perspective" courses.<sup>22</sup> Externship programs offer another, particularly promising opportunity for the accomplishment of these objectives. Students can use their placement experiences to discuss philosophical aspects of the law's application with their supervising attorneys, professors, and peers. Students who have their own concrete experiences in their placements can bring abstract principles to life in a way that students who do not have such experience simply cannot, so the externship experience enriches contemporaneous and subsequent traditional classes. So, too, the externship teacher may be freer than the in-house clinician to devote teaching time to broader issues, because he or she may have less responsibility for conveying the elements of the discrete skills the students must soon deploy on a particular case. Thus, for example, while a criminal law professor may teach the concept of *mens rea*, and a clinical professor may teach the subtleties of opening argument, the externship professor may have the students address the fairness of our criminal justice system from their experiential perspective.

In addition to recognizing the need for perspective courses, legal educators are increasingly conscious of the growing specialization of the law, and thus the potential benefit to students of a deep (and narrow) concentration in certain specialized fields. Staffing a sufficiently

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<sup>21</sup> For further descriptions of self-learning as a goal for field placement programs, see Maher, *supra* note 4, at 563-66; Motley, *supra* note 3, at 219-22; Stickgold, *supra* note 1, at 317-18.

<sup>22</sup> Examples of law schools with such programs include Columbia Law School and Northeastern University School of Law.

wide variety of doctrinal courses to respond to the full range of students' interests may be economically unfeasible; certainly staffing an in-house clinic in each field of student interest would be out of the question. Field placement programs, on the other hand, can provide a financially viable solution. If students are carefully guided to study a field while practicing in it, they can learn the substantive law and the application of lawyering in a particular area without law schools' having to create several different courses and specialized departments.

This same adaptability can help law schools to tap the full creative potential of their faculty. Externship programs, with their flexibility of subject matter and methodology, allow faculty who wish to be involved the creative opportunity of designing a course to meet their interests. Thus, a faculty member with a background in criminal law might create an externship program with the local District Attorney's office and have a trial skills classroom component. A faculty member interested in environmental law might create a program with various environmental agencies, accompanied by a teaching methodology emphasizing the varying philosophical approaches of environmentalists.<sup>23</sup>

The goals of externships—including teaching students reflection, institutional analysis, and legal specialties—complement and enhance law school curricula. Like in-house clinics, externships take students outside the boundaries of classroom walls and book knowledge by involving them in the practice of law. Externships and in-house clinics are not fungible, however; quite aside from any considerations of cost or curricular flexibility, they offer two quite different ways of encountering the world of practice, and potentially two quite different sets of emphases. We think that nearly every law school should devote more resources to the goals embodied in both types of clinics, and to the integration of those goals with other curricular goals. The point is not simply to multiply the number of programs; rather, law schools should be thinking about how the goals of each type of clinical education fit with each other and with the rest of the curriculum. To do that, schools need more data about the actual nature of externship education, and we now turn to the data.

## II. DESCRIPTIVE DATA ABOUT EXISTING PROGRAMS

This section describes our key findings about the characteristics of existing field placement programs. Much of this information is directly related to assessing the extent to which externships are actually achieving the kinds of goals we have just outlined for them, and to

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<sup>23</sup> For a description of the variety of programs in existence, see text at pages 423-24 *infra*.

evaluating the utility of existing and proposed accreditation standards. In addition, much of the data will be of interest to people who wish to create or evaluate a field placement program. We begin this Part by describing our methodology. Then we present basic descriptive data about the programs, data covering such issues as program numbers, focus, size, and credits. Finally we discuss statistical findings more directly bearing on the educational rigor and impact of field placement programs.

### A. Data Collection Methodology

During 1992-93, we conducted a nationwide survey of externship programs.<sup>24</sup> We focused our survey questions on those issues that we felt were of most concern among externship faculty and that we expected would help us analyze the structure, content and current teaching methodologies of the nation's externship courses. We wanted to find out about the type, size, format, and content of programs, as well as the amount and nature of faculty participation. We mailed surveys to the 176 "fee-paid" and "member" schools listed in the *AALS Directory of Law Teachers*.<sup>25</sup> The questionnaires were directed to the dean of the law school, any clinical professors listed in the *Directory* for that school, and any faculty directing externship programs at the school according to the list maintained by the Externship Committee of the AALS Clinical Section. We also distributed the survey at the AALS National Conference and Clinical Conference, as well as the CLEA Externship Conference, in 1993.

We received responses from sixty-eight schools, fifty-eight of which had externship programs, several of them more than one, resulting in a total of ninety-eight described programs.<sup>26</sup> We got responses from over 38% of the approved law schools, a reasonably good response rate. In our survey 85.29% of the schools responding reported having at least one field placement program. This corresponds well with the MacCrate Report's finding that 130 out of 155 schools (83.9%) have externship programs,<sup>27</sup> and helps confirm the representative nature of our sample.

In the next two sections we describe the results of our survey,

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<sup>24</sup> We recognize that, due to the ever-changing nature of externship programs, some of the program statistics we report may have changed from the time we received the data.

<sup>25</sup> See Appendix A for the text of our survey form.

<sup>26</sup> We received detailed information on more than one field placement program at 17 of the reporting schools, and we were told by respondents at several other schools that they too had more than one program. See text at note 30 *infra*. Except where the context clearly indicates otherwise, our discussions of data are based on the total number of programs, rather than the total number of schools.

<sup>27</sup> MACCRATE REPORT, *supra* note 4, at 253.

including not just statistical results but also additional information we learned in collecting and compiling the data, and our reflections on what the numbers mean.<sup>28</sup> We begin with basic descriptive data, from which the rich variety of externship program agendas tailored to accomplish individual program objectives and institutional needs becomes apparent. We then turn to data bearing on particular pedagogical issues, data that buttress our conclusion that this rich variety is consistent with, indeed in part the result of, externship programs' ability to match the experiential needs of students with the programmatic objectives and pedagogical concerns of each law school.

### *B. The Number and Nature of Externship Programs: Basic Data*

#### *1. Number of Schools with Externship Programs*

A total of sixty-eight schools responded, fifty-eight of which had field placement programs.<sup>29</sup> Seventeen of the schools gave us reports describing more than one program, so our data are based on a total of ninety-eight reported programs. Several others reported that they had more than one program, but the person responding only gave us detailed information about the one program which that person taught.<sup>30</sup> In all, nearly half the schools that reported externships had more than one field placement program. Thus, our survey confirms that most law schools now have externship programs, and suggests as well that if a school has any externships, there is a good chance that it will have multiple offerings.

#### *2. Types of Externship Programs*

The titles and descriptions of the ninety-eight reported programs, set out in Appendix B, indicate a wide variety of programs. We categorized the largest number of programs, thirty-nine in total (40%), as "General" externship programs, meaning that students in them are offered a wide variety of placements—civil, criminal, public, and private. The remaining programs are based on specialized fields of law, and include (beginning with the most numerous) Judicial, Government Agency, Criminal and Legal Aid/Legal Services programs. As Table One indicates, three programs, categorized as "Other," did not

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<sup>28</sup> We invite comments, reactions, and additional data. Part of our goal is to develop awareness and use of our current clearinghouse, and to encourage further interest in maintaining and updating this resource for externship programs.

<sup>29</sup> A few forms were returned to us after our compilation of all the data. One of our purposes is to keep an ongoing database of information about existing field placement programs as a resource to schools and individual faculty members who want either to create or compare programs. Specific questions about programs should be addressed directly to either author.

<sup>30</sup> Our data include only those programs for which we have detailed descriptions.

fit into any of the above categories.<sup>31</sup>

Though we believe it is helpful to categorize the programs into

TABLE ONE: TYPES AND NUMBERS OF EXTERNSHIP PROGRAMS

Program Types	Number	Percentage
General	39	40.0
Judicial	21	21.4
Government Agency	14	14.3
Criminal	12	12.2
Legal Aid/Svcs	9	9.2
Other	3	3.1
	98	100.0*

\* In this and subsequent tables, percentage columns do not always total 100%, because of rounding of the various percentages given in the column.

these six types, doing so may obscure the true extent of the variety of programs being offered. The program categories we have listed, after all, could almost be a list of the categories of the practice of law, including criminal, civil, legal aid, government, and judicial work. The "general" programs alone can encompass a very wide range of placements. Moreover, examination of the list of program titles suggests that there is additional variety within our categories. For example, within the criminal category there are "criminal practice," "criminal justice" and "administration of criminal justice" programs. These nuances of title reflect differences in conceptualization and goals among the courses.

### 3. Student Numbers

The average number of students participating in each externship program is surprisingly small, rebutting the fears of some regulators that these programs are burgeoning out of control.<sup>32</sup> As shown in Table Two, more than a third of all programs have a maximum of ten students, and over 70% of all programs have no more than twenty.

We also wanted to get some measure of the actual availability of programs to students. In part we wanted to know whether the number of field placements offered was roughly proportional to the size of the school. We investigated this question by adding together all of the externship opportunities at each school, based on the reported maximum enrollment in each program at each school. This told us the

<sup>31</sup> Those programs are Cornell's Law Guardian Externship, Franklin Pierce's ADR in Action, and North Dakota's Air Force Base Externship.

<sup>32</sup> See Stickgold, *supra* note 1, at 294-95 (discussing ABA fears).

TABLE TWO: NUMBERS OF EXTERNSHIP STUDENTS

Max # Students	# Programs	% Programs
1 - 10	38	38.8
11 - 20	32	32.7
21 - 40	18	18.4
41+	10	10.2
	98	100.0

maximum number of reported field placement opportunities at each school. Then we divided the schools into "small," "medium," and "large" groups based on numbers of students,<sup>33</sup> and determined the average number of field placement opportunities per school within each group. Surprisingly, the average maximum number of field placements available at medium schools was 37.2, while the average maximum at larger schools was only 31.5. This clearly suggests that medium size schools are providing more field placement opportunities for their size than larger schools. The average maximum number of students for small schools was 26.19. While this is significantly lower than the average for medium size schools, it may not be out of proportion for the size of the schools.

Because programs of different sizes may offer decidedly different educational experiences, we also examined our data to determine whether program size varied with the size of the school. We wondered, in other words, whether smaller schools tend to offer several small programs, while larger schools tend to offer placement opportunities in one large program. If so, we wanted to know whether there was a qualitative difference between the small and large programs.<sup>34</sup>

We found from our data, as shown in Table Three, that a student in a large school is more likely than a student in a small school to be in a large program. At small and medium schools, 75% of the programs are for twenty or fewer students, but at larger schools only 50% of the programs have twenty or fewer students. Programs with over forty-one students make up 10% or less of the available programs at small and medium schools, but include over 20% of the programs at larger schools.

The fact that larger schools tend to organize their externship offerings in larger programs might point to a substantial and troubling

<sup>33</sup> "Small" schools were those with fewer than 500 students; "medium" schools those with 500 to 1000 students; and "large" schools those with over 1000 students.

<sup>34</sup> Information absent from our data which might have been helpful includes the representations schools make about their programs and the extent to which externship programs are oversubscribed.

educational difference if it also turned out that larger schools offered less faculty supervision of externs. To examine this possibility, we looked at the percentages of teaching loads reported by the respondents at different-sized schools. At small and medium size schools the faculty member in charge of an extern program spends an average of about 26% of her teaching time on the field placement program. At large schools the average is 44%. Faculty supervising field placement programs at large schools are devoting significantly more of their time to these programs than their counterparts at medium and smaller schools.

TABLE THREE: EXTERNSHIP PROGRAM SIZE AT SCHOOLS OF DIFFERENT SIZES

Size of School ↓	Number of Programs of Varying Sizes				Totals
	1 - 10 students	11 - 20 students	21 - 40 students	41+ students	
Under 500	9	9	5	1	24
500 - 1000	27	18	9	6	60
Over 1000	2	5	4	3	14
	38	32	18	10	98

#### 4. Number of Credits

In light of the special attention the ABA has devoted to the regulation of externships awarding more than six credits,<sup>35</sup> it is striking that the overwhelming majority of programs—eighty-two out of ninety-eight—have a maximum credit allocation of six units or less. Of those eighty-two, fifty-four programs allocate no more than three credits to their programs. Only sixteen programs (at fourteen schools) allow students to obtain more than six credits for their externship experience.<sup>36</sup> Eleven of these sixteen programs also allow students to earn smaller numbers of credits. The existence of these options suggests that the schools are maintaining flexibility and examining each student's needs, goals, and commitment and assigning appropriate credit.

Only five programs have *minimum* credits of seven or higher. These schools essentially require an extern to earn most of the semes-

<sup>35</sup> See pages 440-41 *infra*.

<sup>36</sup> Those schools are California Western, Davis (2), Florida State (2), Franklin Pierce, Hastings, Iowa, Lewis & Clark, Michigan, Mississippi, Shepard Broad, Toledo, Utah, Vermont, and Washington.

ter's credit from participation in the externship. Should we take the existence of such programs as cause for concern? We think not. Schools may have higher credit allocations because of their need to place students in field placements outside of their own immediate geographical area. As indicated in Table Four, the Rockies/West region of the United States has the largest number of programs with such higher credit levels. Schools in the rural areas of the Northeast, such as Vermont and Franklin Pierce in New Hampshire, also have a need for semester away placements. Moreover, although Vermont has created a model semester away program for schools in rural areas,<sup>37</sup> the model is equally useful for schools in more urban settings. The adaptability of externship programs to a law school's environment and resources encourages the continued creation of varied programs which can be emulated elsewhere.

TABLE FOUR: SCHOOLS WITH EXTERNSHIP PROGRAMS OFFERING SEVEN OR MORE CREDITS, BY SCHOOL SIZE AND LOCATION

Schools with high-credit programs	Under 500 students	500-1000 students	Over 1000 students	Totals
Northeast	1	1	0	2
South	0	3	0	3
Midwest	0	2	1	3
Rockies/West	3	2	1	6
	4	8	2	14

Apparently out of concern about the quality of such high-credit programs, in 1993 the ABA decided that all programs with a credit allocation of over six units must have a classroom component to their program.<sup>38</sup> In fact, only four programs out of the total of sixteen reporting credit allocations over six units did not have a classroom component at the time of our survey, which was prior to the regulations being passed.<sup>39</sup> Similarly, all but one of the programs requiring students to earn seven or more credits already had a classroom component.

Moreover, our data on faculty teaching loads, to which we will

<sup>37</sup> See Liz R. Cole, *Training the Mentor: Improving the Ability of Legal Experts to Teach Students and New Lawyers*, 19 N.M. L. REV. 163 (1989).

<sup>38</sup> ACCREDITATION STANDARDS, *supra* note 7, Standard 306(c), Interpretation 2(h)(1)-(3).

<sup>39</sup> See text at page 29 *infra*. We have not followed up with these programs to see if, as a result of the new regulations, they have imposed a classroom requirement on their students.



return at more length below,<sup>40</sup> indicate that these high-credit programs are also typically high-teaching programs as well. We found that such programs serve a modest number of students and take up a large percentage of the faculty member's teaching load. Among the sixteen programs that award more than six credits, none has a maximum number of students per faculty member greater than twenty. Half of these programs are supervised by faculty members for whom the course represents more than 50% of their teaching load. In the other half, where the faculty members' responsibilities represent less than 50% of their teaching load, the average number of students is 8.5. Thus, the actual design of these programs suggests they are careful innovations rather than suspicious departures from sound educational practice.

### C. Focus on Pedagogy

#### 1. Hours of Fieldwork per Credit

Our data demonstrate that, in practice, externship programs around the country are quite consistent in their allocation of hours of fieldwork per credit. As Table Five reflects, the vast majority of programs—nearly 88%—allocate between three and five hours of fieldwork per unit of credit. Forty-five programs allocate three hours per unit, twenty-nine programs allocate four hours per unit, and twelve programs allocate five hours per unit. Only twelve of the programs in our survey fell outside this range.

We recognize, of course, that these data do not show complete consistency nationwide, and we agree that schools should ensure that the number of hours of work required of students are commensurate with the educational goals of the field placement program.<sup>41</sup> It is important to remember, however, that there may be sound reasons for schools' adopting different fieldwork credit rules. A four-credit field placement program that has a two-hour weekly class with substantial readings, but only requires ten hours per week at the placement site, should not suffer in a comparison with another four-credit externship that chooses to have a less demanding class component, but requires fifteen hours per week at the placement site.<sup>42</sup>

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<sup>40</sup> See text at pages 435-37 *infra*.

<sup>41</sup> Standard 306(a) of the ACCREDITATION STANDARDS, *supra* note 7, requires roughly this. See note 97 *infra*.

<sup>42</sup> It is instructive in this regard to look at the programs requiring seven or more hours of fieldwork per unit. There are eight such programs, at seven schools. As a group, these programs do not seem to place great emphasis on students' work in the classroom (only two have classroom components); perhaps, therefore, high requirements for earning credits outside the classroom are quite appropriate. Only one of the seven programs is graded. Moreover, six of the programs limit students to a maximum of two credits, so the high

TABLE FIVE: FIELDWORK REQUIRED PER CREDIT

Hours Fieldwork/Week/Credit	# Programs	% Programs
One hour	1	1.0
Two hours	3	3.1
Three hours	45	45.9
Four hours	29	29.6
Five hours	12	12.2
Six hours	1	1.0
Seven or more hours	7	7.2
	98	100.0

## 2. *The Classroom Component*

### (a) *Programs with a classroom component*

Of the ninety-eight total programs reported, sixty-eight programs (69%) have a classroom component, while thirty do not. As Table Six shows, over two-thirds of all programs awarding more than two credits do have a classroom component, and even those programs awarding two credits or less are slightly more likely than not to include a classroom segment. Moreover, as we have already observed, all but four of the sixteen programs offering over six credits feature a classroom component.

TABLE SIX: PROGRAMS WITH CLASSROOM COMPONENTS, BY NUMBER OF CREDITS AWARDED

Maximum credits	1-2	3-4	5-6	7 or more	Total
Classroom component	9	39	8	12	68
No classroom component	8	15	3	4	30

We have no doubt that classroom components can enhance students' experience in externships. At the same time, we do not view the absence of a classroom component in thirty of the programs we surveyed as signalling an educational problem in those programs. It is important to bear in mind that one of the curricular goals that is often best accomplished through field placement programs is development of the student's ability to learn independently and from experience. The requirement of a classroom component in some circumstances

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number of hours per credit may reflect a judgment that there is a minimum time commitment at the placement that is needed for the student to feel connected to the organization, and to obtain sufficient experience to form the basis for meaningful learning.

could actually be counterproductive with respect to this goal: it could advance pedagogical goals that are already adequately addressed in the curriculum, instead of allowing a faculty member to creatively encourage different learning styles.

A classroom component might be unnecessary or inappropriate where the program is small enough to allow faculty to interact with their students on a one-to-one basis rather than in the group setting of the classroom. In fact, the data presented in Table Seven show that there is much less likelihood of a classroom component in field placement programs with less than ten students.<sup>43</sup>

TABLE SEVEN: PROGRAMS WITH CLASSROOM COMPONENTS, BY NUMBER OF STUDENTS IN THE PROGRAM

Maximum students	10 or fewer	11-20	21-40	Over 40
Classroom component	21	26	14	7
No classroom component	18	5	4	3

In programs of under ten students, it is feasible for faculty to supervise and teach through one-on-one meetings with their students. Such supervision is usually combined with additional pedagogical tools, such as journals and/or papers. Classroom sessions may still be useful in small programs, as Table Seven also indicates. But often a formal class may be less responsive to individual students' placement experiences, and more inconvenient in terms of the students' placement and school schedules, than a focus on one-on-one meetings. In such instances, requiring faculty to initiate actual classes can only frustrate programmatic goals. Because of the potential variation in numbers of students and types of programs, structural flexibility is essential.<sup>44</sup>

<sup>43</sup> Once again we examined the data to see if there was any variation among different-sized schools with respect to the presence of a classroom component. Small schools had 16 of 24 programs with classroom components (67%), medium schools had 40 of 59 (68%), and large schools had 12 of 15 with classroom components (80%), so there is some evidence that large schools are a bit more likely to have a class component with their field placement programs. This may be because large schools are more likely to have larger programs, *see text at page 23 supra*, and classroom components are more common in larger programs.

<sup>44</sup> Another interesting geographical factor became evident. In the South and Midwest only about half the programs have classroom components. The percentage is much higher in the Northeast (80%) and in the Rockies and West Coast (82%). There would appear to be less emphasis on the classroom aspect of field placement programs in the South and Midwest.

(b) *Class meetings—frequency, length, and content*

Just as externship programs need flexibility in deciding whether to incorporate classroom components, so they need flexibility in designing these classes if they decide to include them. The data we collected show that externship classes in fact vary widely in number and length, as well as in focus.

The time devoted to the externship classes ranged from one hour per week to nine. The most usual meeting times reported were one hour once a week (eighteen of the sixty-eight programs with classroom components, or 26%), two hours once a week (twenty-five programs, or 37%) or two hours three times a week (thirteen programs, or 19%). Not surprisingly, the highest-credit programs typically require more classroom time from their students than other programs do. Programs which award more than six credits average 6.16 hours of class a week (two classes of 3.08 hours each), while programs where the maximum number of credits is limited to six or fewer average 2.65 hours weekly (based on an average class length of 1.72 hours and an average frequency of 1.54 meetings per week).<sup>45</sup>

We asked people who reported field placement programs with classroom components to estimate the percentage of emphasis placed in the classroom on the following areas: substantive or procedural law, legal skills, legal process, legal institutions, professional roles and responsibilities, career choices, student reflection, or other subjects. The “career choices” and “other” categories got few responses, so we focus here on the remaining six categories.

Many programs cover a variety of these subjects in their classroom component, as Graph One shows. More than forty of the sixty-eight programs with classroom components address legal skills and professional role issues. More than half also address student reflection. A similar number take up substantive or procedural law. Nearly half also examine issues of legal process and legal institutions. One clear implication of these findings is that externship classes rarely have a single, exclusive subject matter; in fact, only fourteen of all programs devote more than 50% of class time to any one topic (of those, half focus on skills).<sup>46</sup>

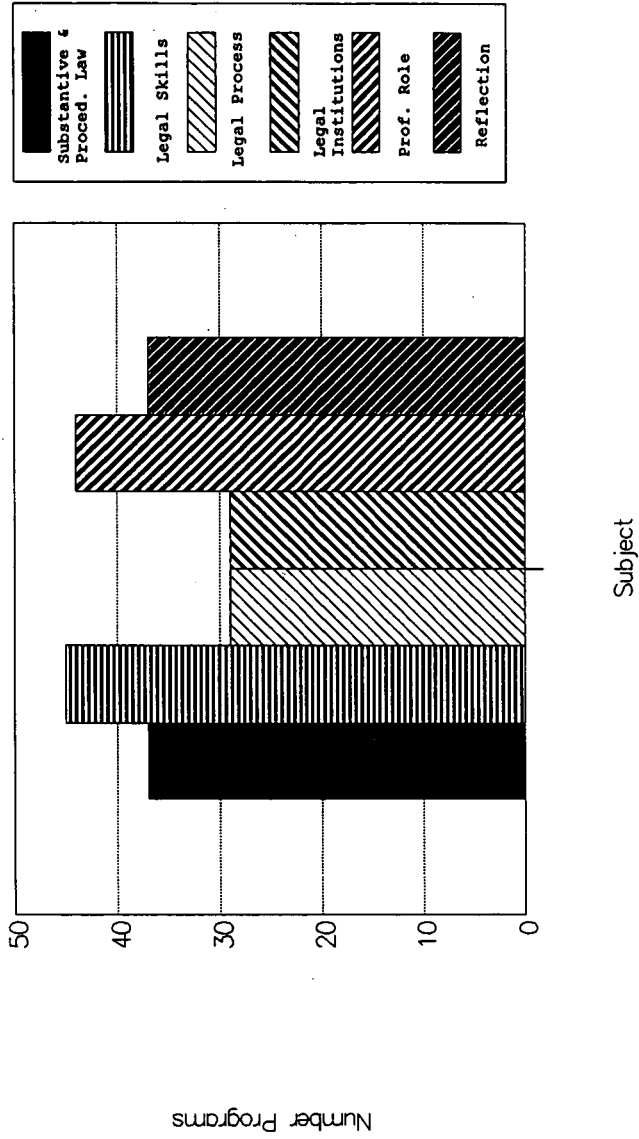
But externship classes are also far from random assortments of topics, and Graph Two helps us to see which topics tend to receive the greatest emphasis. This graph shows that more than one-third of the

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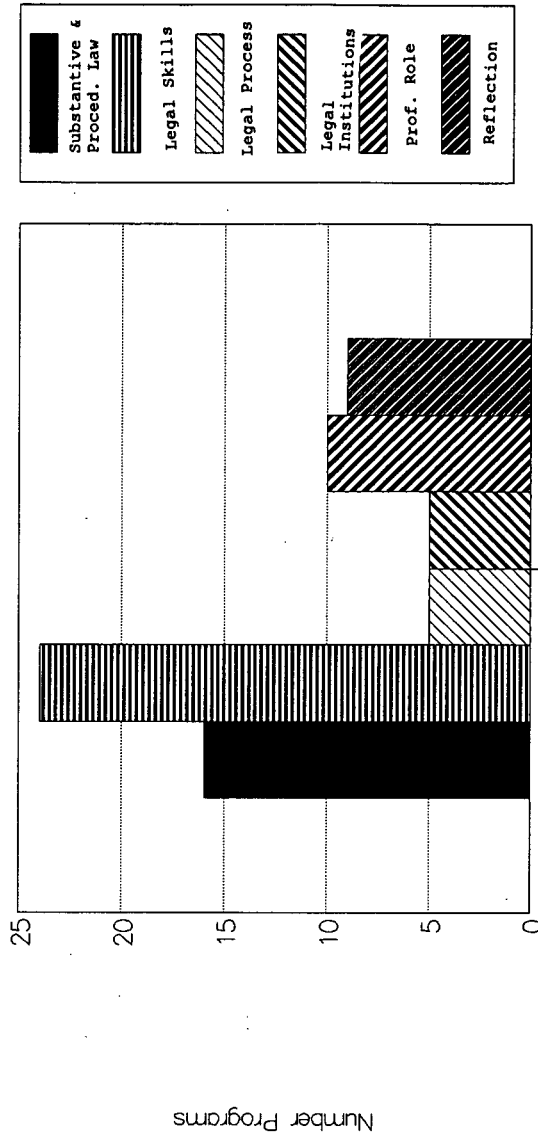
<sup>45</sup> Our data also confirm more generally that as the maximum number of credits allowed in programs increases, so too does the average amount of classroom time required.

<sup>46</sup> Given this attention to multiple subjects, it is not surprising that the vast majority of programs (56 of the 68 reporting a classroom component, or 82%) reported that they do not use a published text in their externship class.

GRAPH 1  
CLASS COMPONENT SUBJECTS  
Number of Programs Including Each



GRAPH 2  
CLASS COMPONENT SUBJECTS  
Programs Devoting >25%



Subject

programs with classroom components devote 25% or more of their time to legal skills. Programs that devote that much time to legal skills far outnumber programs devoting this degree of attention to any other subject. Also, substantive and procedural law replaces professional roles and responsibilities as the second most popular focus.

These data confirm our belief that field placement programs play a role in the law school curriculum that is not duplicated elsewhere. The classroom components often look at a range of issues, including lawyering skills and professional role issues, in the context of the students' actual experiences at the placement sites. This context makes the examination of those issues less abstract for the students. Moreover, it is evident that most externship teachers are choosing to address a variety of topics that are relevant to the students' work, and not narrowly limiting the scope of the classes. This pedagogical choice forces students to spend at least some time thinking about legal institutions, about the role of legal doctrine in the context of societal problems, and about the relationship of deep philosophical and jurisprudential considerations to the daily practice of law. These are curricular goals that are being achieved through the blend of placement activities and classroom focus.<sup>47</sup>

### 3. *Grades*

It is fair to say that externship programs are less likely to award grades than non-clinical courses.<sup>48</sup> Only thirty-two of the ninety-eight programs award grades. Programs that award grades are much more likely than ungraded courses to have a classroom component—twenty-nine of the thirty-two graded programs also have classroom components. But even among programs with classroom components, less than half utilize grading (twenty-nine of the sixty-eight programs reporting a classroom component, or 43%).

When externships do grade, they rely on a considerable range of materials as the basis for determining the grades. The survey asked about six possible components of the grading system, and the schools responded as follows: twenty-two programs (69%) base students'

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<sup>47</sup> These topics may also be addressed in field placement programs that do not have a classroom component, especially through journals and tutorial-style faculty-student meetings. We did not collect data on the subject-matter focus of teaching tools other than formal classes.

<sup>48</sup> It may be that the tendency of field placement programs not to grade is a factor in the ABA's skepticism about such programs. We certainly do not see the relatively limited use of grading by externships as a ground for ABA micro-regulation. At the same time, we agree that the merits and demerits of grading deserve careful consideration. The debate over grading is hardly confined to externships, however, and a full discussion of that debate is beyond the scope of this Article.

grades in part on attorney evaluations; the same number use placement work product as a criterion; twenty programs (63%) use class participation;<sup>49</sup> nineteen programs (59%) use student papers; and eighteen programs (56%) use student journals.<sup>50</sup> Only one program—Hastings—uses examination as a grading criterion. Almost every program, moreover, relies on at least two of these elements to arrive at its grades,<sup>51</sup> and most (twenty-four out of thirty-two, or 75%) use at least three different criteria as components of their grades.

#### 4. Faculty Load

The data we have gathered show a startling degree of disparity between programs in the percentage of the responsible faculty's courseload attributed to the teaching of the externship course. As Table Eight reflects, sixty of the programs reporting are treated as constituting only a fourth or less of the reporting faculty member's courseload. In twenty-five of these programs, the faculty member receives no teaching credit for his or her work in the externship program at all. On the other hand, for eleven faculty members, externship course supervision accounts for 76 to 100 percent of their teaching loads.

Part of the explanation for this disparity is program size. Programs with ten students or less are by far the most likely to credit faculty for only a fourth or less of their teaching loads. But this is not a complete explanation. For example, eleven of the sixty programs awarding this level of teaching credit have a maximum number of over twenty students in the course, and four programs have a maximum number of over forty students.

Another part of the explanation for differences in the teaching credit externship faculty receive may lie in differences in the time demands on faculty resulting from programs' various pedagogical choices. Factors affecting the extent of these time demands might be: whether or not the program has a classroom component, whether or not the course is graded, and whether or not students are required to keep daily journals (usually requiring extra work by the faculty supervisor in reading the journals on a regular basis). Our data allow us to examine all three of these considerations.

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<sup>49</sup> In other words, most—but not all—of the programs that include a classroom component and do grade rely in part on class participation in determining the grades.

<sup>50</sup> Since journals might have been thought to provide a particularly ready source of material for grading, it is interesting to note that there appears to be no correlation between grading and requiring journals. 44 of the 98 programs require students to keep a journal, but only 18 of these 44 are grading their students.

<sup>51</sup> Three programs use only one criterion in their grading system: Indiana-Bloomington (work product), Utah's Civil Clinic (class participation), and Utah's Judicial Clinic (paper).



TABLE EIGHT: EXTERNSHIP PROGRAMS, BY FACULTY TEACHING CREDIT AND NUMBERS OF STUDENTS

% Faculty Load ↓	1-10	11-20	21-30	31-40	41-50	51+	Total
0	14	7	2	1	1	0	25
1 - 10	17	5	0	1	0	2	25
11 - 25	2	4	2	1	1	0	10
26 - 50	3	12	5	1	0	3	24
51 - 75	0	1	2	0	0	0	3
76 - 100	2	3	2	1	1	2	11
	38	32	13	5	3	7	98

Predictably, as the percentage of faculty load increases, so does the likelihood that an externship course will have a classroom component, grades and journals. As indicated in Table Nine, thirty-six out of thirty-eight programs in which the program is more than 25% of a faculty member's courseload have classroom components, while almost half of the remaining sixty programs do not have classroom components. Similarly, out of the sixty programs treated as 25% or less of the faculty member's courseload, forty-seven programs are not graded, while almost half of the remaining programs do provide grades. Finally, almost two-thirds of the programs carrying lower teaching credit do not require journals, whereas over half of the others do have such requirements.

TABLE NINE: EXTERNSHIP PROGRAMS, BY FACULTY TEACHING CREDIT AND PEDAGOGICAL REQUIREMENTS

% Faculty Load ↓	Classroom		Journals		Grades	
	Yes	No	Yes	No	Yes	No
0	15	10	6	19	5	20
1 - 10	9	16	12	13	5	20
11 - 25	8	2	4	6	4	6
26 - 50	23	1	16	8	11	13
51 - 75	2	1	2	1	1	2
76 - 100	11	0	4	7	6	5
	68	30	44	54	32	66

Even after these factors are taken into account, however, some of the variation between programs in faculty teaching credit remains inexplicable. For example, fifteen faculty members receive no teaching credit for supervising externship programs with a classroom component, while for eleven faculty members, supervision of an externship

course including a classroom component is treated as 76 to 100 percent of their teaching load. We have no difficulty understanding how supervising an externship course could require most or all of a faculty member's time; our concerns stem from the numerous signs of a general trend of institutional undervaluation of the time spent by faculty on field placement program supervision. We will argue in Part III that correcting this problem is a task that the ABA could appropriately take up in the accreditation process without risk of micro-managing field placement programs to an unnecessary extent.<sup>52</sup>

#### D. *The Valuable Diversity of Externship Programs*

As the preceding sections suggest, the variation among externship programs goes far beyond the choice of substantive area or even of particular placement sites within a given substantive field. For example, among judicial extern programs, the maximum number of students accepted in a semester ranges from four to sixty. The number of credits awarded ranges from one to twelve. The number of hours of fieldwork required of each student for each credit awarded ranges from 2.67 to eight. The maximum number of externs per faculty member ranges from two to sixty and the fraction of the faculty member's teaching load devoted to the extern program ranges from zero to one hundred percent. Nor are judicial externship programs unique in being so diverse.<sup>53</sup>

That there is such variation should not be a surprise. There is similar variation from one school to the next even among traditional law school courses. After all, each faculty member who teaches, say, contracts, can choose from a variety of texts and approaches, and even those using the same text may cover varying amounts and sections. Different amounts of credit can be and are awarded at different schools for courses in the same general fields.

Much of this variation, in traditional courses just as in externship programs, results from the adaptation of the program to the individual characteristics and goals of the school and the interests of its faculty members. We believe that it is crucial for schools to maintain and use flexibility when establishing or reviewing their field placement programs. An examination of our data about judicial externship programs provides a good example of the ways this flexibility can be

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<sup>52</sup> See text at pages 449-51 *infra*.

<sup>53</sup> Similarly, there is much variation among the 12 criminal field placement programs. The range of maximum student enrollment is from 4 to 42; the maximum number of credits ranges from 3 to 12; the maximum number of students per faculty member ranges from 4 to 20; and the portion of the supervising faculty member's teaching load allotted to the program ranges from 0 to 100%.

valuably employed; it will also help us to understand the steps that might be needed to improve the exercise of this pedagogical discretion.

Goals of judicial placement programs could include such varied objectives as intensive work on the skills of legal research and writing or abstract examination of jurisprudential theory. Indeed, some of the teachers responding to our survey indicated that 50% or more of their classroom time is spent on substantive law and legal skills, while some indicated that their classes are mostly devoted to legal institutions and professional role issues, and that they spend little or no time on substantive law or legal skills.

In some ways the goals of the particular program may affect fundamental structural decisions about the course. For example, a judicial placement program whose primary goal is to provide students with research and writing experience might require very substantial time in fieldwork and relatively less in class preparation from students for each credit. A course that emphasized jurisprudence might require more class time and journal writing and less actual fieldwork for the same number of credits. In fact our data show that there is a lot of variation among programs with respect to the topics emphasized in the classroom<sup>54</sup> and the amount of weekly time at the placement site required for each credit.<sup>55</sup> We take this as a healthy sign of variety and customization of programs that should not be restricted by ABA regulation.

We also found a significant variation regarding the amount of the faculty member's courseload that was devoted to judicial externship programs. These differences were not simply the result of the number of students in the various courses nor, it seemed, of the pedagogical decisions made in shaping the course content. Nearly all of the judicial programs that had a classroom component had faculty who reported that the course was from thirty to one hundred percent of their coursework for the semester. But there were two teachers who indicated that their courses, despite having classroom components, accounted for only as little as ten to fifteen percent of their teaching load. And there were three programs that reported no classroom component and in which the faculty members indicated that their work in the field placement course counted for zero to five percent of their semester's work.

Are the programs without classroom components, or with relatively low teaching credit despite having classroom components, deficient? Not necessarily. For example, in one of the non-classroom

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<sup>54</sup> See text at pages 431-34 *supra*.

<sup>55</sup> See text at pages 428-29 *supra*.

courses students can receive only one credit and they are required to write journals. Only four to eight students can enroll in the course, and we would be very reluctant to conclude that this one-credit experience for a small number of students at this school should be targeted for possible elimination because of the lack of a classroom component.

We might have more hesitation about the other two programs that reported no class component, for they award two or three credits and enroll from fifteen to twenty-three students each semester. Similarly we might have more hesitation about the particularly low teaching credit allocated to the two programs, mentioned above, that do have classroom components and thus probably make very significant demands on their teachers' time. The question, however, is what to do about such possibly problematic courses as these. In Part III we will argue that the proper response is not to design ABA regulatory rules that rigidly bind externship teachers' discretion, but rather to develop a regulatory approach that aims to insure that externship teachers receive the same support and guidance in exercising their discretion as the teachers of other courses do in their work.

### III. REGULATION OF EXTERNSHIPS

As externship programs have grown, so has regulatory attention to them. *Attention* is appropriate; in our view, however, the kind of attention that the ABA has brought to bear in the accreditation process has not been. In recent years, the ABA has unwisely moved towards highly specific regulations governing the accreditation of externship programs.<sup>56</sup> We believe that externship faculty have rightly criticized this development as "micro-management,"<sup>57</sup> for it impedes

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<sup>56</sup> The Association of American Law Schools (AALS) also regulates law school curriculum and pedagogy. In 1995, the AALS adopted Executive Committee Regulation 7.6, dealing with externships. AALS Executive Committee Regulations, Reg. 7.6 (1995) (attached to Memorandum from Carl C. Monk, AALS Executive Vice-President and Executive Director, to Deans of Member Schools and House of Representatives (March 24, 1995) (Memorandum 95-13)) (on file with the authors). This provision is far less detailed than its current ABA counterpart, and thus has not incited the strong criticism triggered by the latter. The only criticism voiced by the AALS Clinical Section's Committee on Externships focused on Regulation 7.6(a), which mandates that externships may comprise no more than one-sixth (16.67%) of the total credit for graduation. The current ABA regulation is less stringent—externships may comprise 20% of a student's courseload. See ACCREDITATION STANDARDS, *supra* note 7, Standards 305 and 306 (together requiring that 900 of the necessary 1120 class hours be "in actual attendance in regularly scheduled class sessions in the law school"). Although the difference (3.3%) may be minimal, the damage resulting from adding an inconsistent layer of regulation to an already over-regulated form of law school pedagogy outweighs the drafters' apparent goal of reinforcing a preference for students' learning to remain within the confines of the law school classroom.

<sup>57</sup> See sources cited in note 8 *supra* and in the first paragraph of note 60 *infra*.

the flexibility and creativity so critical to externship program design.

In this Part we examine the current ABA approach and the approach we believe should take its place. We begin with an overview of the ABA's present position, and then explain its two central flaws. First, we believe that the ABA's over-regulation stems from exaggerated concerns regarding externship programs. Second, the approach the ABA has taken to regulating field placement programs is likely to be counterproductive. Nonetheless, we also believe the ABA can, and should, play an important role in encouraging law schools' support of externship and other experiential learning programs. We argue in the last section of this Part that the MacCrate Report, with its emphasis on faculty responsibility for the design and structure of externship programs, points to such a role, and should be the model for the ABA's regulatory efforts.

### A. *The ABA's Move Toward Regulation*

In December, 1986, the ABA's Council of the Section on Legal Education and Admissions to the Bar adopted Interpretation 2 of Standard 306(c) as a formal attempt to regulate externship programs.<sup>58</sup> Four years later, the Accreditation Committee of the ABA formed a Subcommittee on Externships to study the need for further regulation. Goals of the drafters of the revised Interpretation were as follows:

to allow the schools to plan and supervise their programs better; to reduce repeated or unnecessary report-backs from law schools to the Accreditation Committee concerning their diverse field placement programs and experiences; to reduce inappropriate micro-management at the regulatory level; and to acknowledge and emphasize faculty/law school responsibility.<sup>59</sup>

Both the Subcommittee and the Standards Review Committee proposed changes to Interpretation 2. After a period of comment, including some strenuous objection by law schools,<sup>60</sup> the two bodies' joint

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<sup>58</sup> Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Deans of ABA-Approved Law Schools, at 1 (Feb. 22, 1993) (Memorandum D9293-55) (on file with the authors). Except for its specification of the maximum number of externship hours for which a student can receive credit towards graduation, Standard 306 itself speaks in broad language aimed at ensuring a sound educational experience in placement programs. This version of Interpretation 2, however, set forth more specific factors to be considered in evaluating externship programs. Such factors included the presence of a classroom component, the involvement of full-time faculty, and the amount of academic credit awarded.

<sup>59</sup> Memorandum from James P. White, *supra* note 58, at 1-2.

<sup>60</sup> See, e.g., Comments on Proposed Amendment of Interpretation 2 of Standard 306, Memorandum from Liz Ryan Cole, President, Clinical Legal Education Association, to James P. White, Consultant to the ABA Section on Legal Education and Admissions to the

proposal was adopted by the Council, effective in July 1993.

The most troubling aspects of the proposal's adoption are the following additional regulations: a requirement of periodic program review by full-time faculty;<sup>61</sup> a preference for on-site visits by full-time faculty during the course of each field placement;<sup>62</sup> a preference for a contemporaneous classroom component;<sup>63</sup> a requirement that any part-time faculty or administrators obtain a variance—available only in “extraordinary circumstances”—to perform the array of review functions which the Interpretation now mandates for externship programs;<sup>64</sup> and, for programs awarding students more than six credits, requirements of a classroom component, a written appraisal of each program every three years, and a documented on-site visit to each field placement by full-time faculty.<sup>65</sup> As we will see, these highly specific requirements respond to a perception of serious academic weakness that is greatly exaggerated, and address that supposed problem in ways that will undermine the valuable pedagogical flexibility that characterizes externship programs.

### B. *The ABA's Exaggerated Perception of Academic Weakness*

The ABA's concern appears to be based on the premise that there are numerous students earning many credits in contexts outside

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Bar (Oct. 12, 1992) (on file with the authors); Letter from Dean Thomas Sullivan and 16 other law school deans to James P. White (Oct. 16, 1992) (on file with the authors); Letter from Paula Johnson and Linda Smith, Co-Chairpersons of the Externship Committee of the AALS Clinical Section, to James P. White (Feb. 4, 1993) (on file with the authors).

In December, 1995 the Council of the ABA Section of Legal Education and Admissions to the Bar “promulgate[d] . . . for comments and public hearings” a draft Recodification of the Accreditation Standards. This “Recodification Draft” renumbers the externship provisions, but proposes no substantial changes in the Standard or in the current Interpretation 2. Recodification of the Standards, Standard 305 & Interpretation 305-2 (Dec. 5, 1995 Draft) (attached to Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Deans of ABA Approved Law Schools) (Dec. 6, 1995) (Memorandum D9596-29) (on file with the authors).

<sup>61</sup> ACCREDITATION STANDARDS, *supra* note 7, Standard 306(c), Interpretation 2(e)(2).

<sup>62</sup> *Id.*, § (e)(3).

<sup>63</sup> *Id.*, § (e)(5).

<sup>64</sup> *Id.*, § (f). Absent such a variance, it appears that only a full-time faculty member can meet ABA requirements for such tasks as engaging with the students in evaluating their field experience (*id.*, § (c)), program review (*id.*, § (e)(2)), and site visits to programs offering more than six credits per semester (*id.*, § (h)(3)). The result is that much of the work of an externship program director who happened to be part-time might not count toward satisfaction of the accreditation requirements for his or her course!

<sup>65</sup> *Id.*, §§ (h)(1)-(3). The instructions to accreditation evaluation teams are even more specific as to site visits. The instructions pose the question of whether “the faculty supervisors visit each placement clinic on at least a weekly basis.” Memorandum from James P. White, Consultant on Legal Education to the American Bar Association, to Members of a Site Evaluation Team at 9 (Sept. 9, 1992) (on file with the authors),

of the law school in which they are inadequately supervised.<sup>66</sup> One hundred years ago, this may have been true, as evidenced by an ABA report from 1881 describing the experience of a legal apprentice as follows:

The applicant for admission spends a year or two thumbing Blackstone or Kent, or both, with now and then a dip into Chitty or Starkie, in the lonesome, dusty, dreary round of a country attorney's office, where he was left to work his way as best he could with little to guide him except his common sense (which was often no guidance at all). He may have asked a few vague questions and received a few vague answers.<sup>67</sup>

Today the situation for externs is vastly different, as our discussion in Part II has demonstrated. Externship programs today constitute just one component, and a relatively small one at that, in students' legal education. Externship programs are not particularly large, and certainly no larger than most courses taught in law school. Over seventy percent of the ninety-eight programs responding to our survey have less than twenty students per semester.<sup>68</sup> Only ten programs in our survey allow more than forty students.<sup>69</sup> Why wouldn't the ABA be more concerned about the quality of education in a Torts class of two hundred students? Moreover, students are not gathering vast numbers of credits for their participation in externships. The majority of programs (fifty-four out of ninety-eight) allow no more than three credits to their students.<sup>70</sup> Only sixteen programs allow more than six units of credit,<sup>71</sup> and only four of those sixteen programs did not have a classroom component at the time these statistics were gathered.<sup>72</sup>

Even more important, externships today are light years away from the boring, unsupervised, aimless experiences of apprentices a century ago. Instead, our data suggest that externships provide students the opportunity for exposure to a wide range of practice settings,<sup>73</sup> require substantial levels of fieldwork to earn placement credit,<sup>74</sup> and are enhanced by a range of pedagogical and evaluative tools, including attorney evaluations, journals, papers, classroom com-

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<sup>66</sup> This premise was discussed by the ABA drafters and externship directors at the CLEA Externship Conference in 1993.

<sup>67</sup> J.A. Hutchinson, *Appendix to the Report of the Committee on Legal Education*, 4 ABA REPORTS 278 (1881), quoted in STEVENS, *supra* note 1, at 30 n.28.

<sup>68</sup> See pages 424-26 *supra*.

<sup>69</sup> See page 425 *supra*.

<sup>70</sup> See page 426 *supra*.

<sup>71</sup> See pages 426-27 *supra*.

<sup>72</sup> See page 429 *supra*.

<sup>73</sup> See pages 423-24 *supra*.

<sup>74</sup> See pages 428-29 *supra*.

ponents, individual faculty-student tutorials, and grading.<sup>75</sup> And these programs are notable for their flexibility, a valuable flexibility that enables externship teachers to structure the various possible components of externship courses in light of the particular goals their programs seek to achieve.<sup>76</sup>

The ABA's mistake was in failing to properly study the structure of present externship education and consult with externship directors before issuing its regulations. The current regulations are a response to the ABA's exaggerated fears, not the realities of externship education.

### C. *The ABA's Misguided Remedies for the Flaws It Perceives*

In its attempt to regulate the quality of supervision of students' fieldwork, the ABA has actually impeded programs' goals. In a survey conducted in January, 1993 by Professors Paula Johnson and Linda Smith, Co-Chairpersons of the Externship Committee of the AALS Clinical Section, teachers at twenty-nine of the thirty-nine schools responding to a question regarding the expected quantitative impact of Interpretation 2 stated that the new regulations would require them to make "significant change" (thirteen) or "some changes" (sixteen) in their programs to fully comply with the revised Interpretation. Regarding the qualitative impact of the Interpretation, twelve of thirty-seven respondents stated that the regulations would "have no impact upon the educational quality of the program," while thirteen stated that the new regulations would actually "have a negative impact upon the educational quality of the program."<sup>77</sup>

It is not surprising that so many externship faculty viewed these changes as fruitless or counterproductive. In truth, the ABA's regulations are antithetical to their drafters' goals of reducing unnecessary report-backs, reducing micro-management, and emphasizing law schools' responsibility for their own programs.<sup>78</sup> Perhaps the most problematic are the ABA's preference (in programs awarding more than six credits, its requirement) that there be site visits to each placement, its effective mandate of full-time faculty directors, its insistence on written appraisals every three years for programs awarding more than six credits, and its preference (again, in programs awarding

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<sup>75</sup> See pages 429-37 *supra*.

<sup>76</sup> See pages 437-39 *supra*.

<sup>77</sup> The survey results are attached to the Letter from Paula Johnson and Linda Smith, Co-Chairpersons of the Externship Committee of the AALS Clinical Section, to James P. White (Feb. 4, 1993) (on file with the authors).

<sup>78</sup> See text at note 59 *supra*.



more than six credits, its requirement) that there be a classroom component.

### *1. Site Visits*

Site visits serve little, if any, pedagogical purpose and, where required, preclude many out-of-town programs. Faculty directors have better uses of their time than to spend precious hours visiting placements. For example, sixteen students participate in Cornell's Judicial Externship Program. They earn four credits for ten to twelve hours spent at their placement each week. Journals and a two-hour classroom component are required. For the director to spend what would be a minimum of twenty-five hours visiting every placement<sup>79</sup> would be a waste of faculty resources.<sup>80</sup>

For a law school to allocate funds for faculty visits to out-of-town placements also touches the realm of absurdity. California Western relies on an out-of-town externship program to provide students with placements not available in San Diego, for example in federal agencies in Washington, D.C., particular judicial clerkships, or offices in the state to which a student may want to return following graduation. With at least 20 students placed worldwide per semester, the law school cannot afford to send externship directors to each site. Moreover, a half-hour visit by a faculty member to a field placement does not necessarily accomplish what appears to be the ABA's underlying goal of adequate supervision.

A more feasible and more meaningful approach to supervision is the one California Western currently uses. In this system, out-of-town supervising attorneys must read about the program's goals, methods and requirements, fill out a detailed application form, sign an agreement as to the type of work and feedback provided to the student, fill out evaluation forms about the student, and regularly speak by telephone with the supervising faculty member. At the same time, faculty supervisors read student journals, review student work product, review student time logs, and have regular telephone conversations with the student.

### *2. Full-Time Faculty*

Refusing to allow anyone except full-time faculty to meet the requirements for interaction with the students in evaluating their field experiences, conducting site visits and performing program reviews, in

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<sup>79</sup> Seven of the judges who participate have chambers which are about a one-hour drive away from the law school.

<sup>80</sup> If the student or supervising judge or clerk reports a problem at the placement, of course, there would be reason for a person-to-person visit.

the absence of a waiver granted in "extraordinary circumstances" by the Accreditation Committee,<sup>81</sup> is also misguided. We believe that externship directors—the people who logically should take primary responsibility for performing these functions—should have full faculty status and have the protections of Standard 405(e).<sup>82</sup> As we will argue shortly, this requirement is exactly the sort of supportive regulation that the ABA should maintain and apply.<sup>83</sup> However, any other requirements are misguided and discriminatory. The current Interpretation effectively blocks skilled and experienced part-time faculty from directing externship programs. No such restrictions apply to other clinical or non-clinical law school classes after the first year of law school.<sup>84</sup> Moreover, if interpreted strictly, this Interpretation could even prevent full-time faculty from functioning as externship directors if they decide, for such personal reasons as child-care obligations, to work part-time.<sup>85</sup>

### 3. *Written Appraisals*

The requirement of written appraisals every three years for programs granting more than six credits per semester is an impingement on not only the time but also the academic freedom of externship faculty. What other law school faculty must submit written reports, or submit to being reported on by someone else, every three years? The

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<sup>81</sup> ACCREDITATION STANDARDS, *supra* note 7, Standard 306(c), Interpretation 2(f); see also note 64 *supra*.

<sup>82</sup> ACCREDITATION STANDARDS, *supra* note 7, Standard 405(e) provides:  
The law school should afford to full-time faculty members whose primary responsibilities are in its professional skills program a form of security of position reasonably similar to tenure and prerequisites reasonably similar to those provided other full-time faculty members. . . .

Unfortunately, part-time faculty are not protected by the "security of position" provision of this Standard, which by its terms applies only to "full-time faculty."

<sup>83</sup> See pages 449-51 *infra*.

<sup>84</sup> Standard 403(a) of the ACCREDITATION STANDARDS, *supra* note 7, requires that "substantially all" first-year courses be taught by full-time faculty members, but otherwise mandates only that "a major proportion of their [students'] total instruction" be from the full-time faculty.

<sup>85</sup> Externship Directors at both Albany and Vermont Law Schools decided to work part-time at one point based on child care needs. To exclude these experienced faculty from directing their own programs because of their part-time status can only have a negative impact on program goals.

Whether faculty who choose to work part-time for such personal reasons actually count as "part-time" for purposes of the Accreditation Standards depends on the somewhat ambiguous meaning of the definition of "full-time" in *id.*, Standard 402(b), and of the explanation of "full-time" in *id.*, Standard 405, Interpretations at 9 ("Basic Computation of [Full-Time Faculty/Student] Ratio"). The Recodification Draft, *supra* note 60, could possibly alleviate our concerns here, if Externship Directors' partial personal leave could be considered as "partial research leave" under proposed Interpretation 402-1(1). But the appropriate interpretation of this Interpretation is ambiguous.

job of the externship professor is to see that the pedagogical goals of the program are accomplished—the same job required of the criminal law professor. We see no basis in the survey evidence we have gathered to suggest that externship teachers are less able to exercise this discretion and responsibility wisely than their counterparts elsewhere in the law school. The reporting requirement only aggravates the hostility between the ABA and field placement faculty through its demonstration of the ABA's false suspicion that externship programs are flawed.

#### 4. *Classroom Components*

Interpretation 2's preference for a classroom component in all externships, and its insistence on this form of teaching in programs awarding more than six credits per semester, are further examples of intrusive regulation.<sup>86</sup> Classroom components, like journals, readings, tutorials, and other teaching methodologies, can be pedagogically sound attributes of certain programs, but their existence should not be regulated by the ABA. Instead, the need for an externship class should be determined by the program's director. Moreover, the director's decision to incorporate this or any other teaching element should be based on its contribution to the particular goals of the program he or she directs rather than its compliance with externally imposed mandates for specific program features.

In short, the ABA's highly specific regulations as to site visits, full-time status of externship faculty, periodic appraisals, and classroom components are not likely to enhance externships' pedagogical achievements. What these ill-chosen requirements are likely to do is to exacerbate micro-management, thereby increasing necessary report-backs. Rather than encouraging law schools to take responsibility for their own programs, these rules will press field placement programs to sacrifice the goals and methods they have carefully developed to meet their own institutional needs, in order to comply with the ABA's exacting standards.<sup>87</sup>

#### D. *The Need for Broader, More Supportive Regulation*

Despite our conviction that the ABA's current attempts at regulation are largely misplaced, we do not suggest that all ABA regulation of externship programs should cease. In other words, while we share the concern expressed by some leading law school deans that

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<sup>86</sup> The requirement of a classroom component in the high-credit programs is particularly excessive, in light of the fact that only 4 of the 98 programs we surveyed around the country actually would be affected by it. See page 429 *supra*.

<sup>87</sup> See text at note 77 *supra*.

the accreditation process can result in unproductive micro-management, we do not agree with their apparent resistance to the ABA's efforts to require more substantial experiential legal education.<sup>88</sup> We believe, fundamentally, that the ABA can and should broadly support this form of education. On this score, we concur with the many, many observers who have concluded that experiential education should play an important role in legal education. But can the ABA make any concrete contribution to the development and quality of experiential training? We believe it can, but not by moving towards detailed regulation of externship program components. Instead, we believe the ABA can play two roles: first, it can encourage law schools to teach students the application as well as the theory of law; second, it can insure that the externship faculty who will undertake this task have the institutional support that they should have.

*1. Encouraging Law Schools to Teach Students the Application as well as the Theory of Law*

The data presented in Part II evidence the program diversity we believe is critical to maintain. Critics could assert that the same data demonstrate the need for micro-regulation: to specify the number of placement hours per credit, for example, or the number of students in each program, or the particular teaching structure or evaluative methods to be employed. Certainly there is diversity on all these scores in the nation's externship programs, and some instances of that diversity may also be instances of ineffective program design. But using rigid rules to target specific aspects of certain programs, without understanding the overall programmatic goals, is unsound and likely just to invite further layers of micro-management. Moreover, imposing such regulations on externship programs and not other non-clinical classes is discriminatory. What is needed here, as in most other contexts of legal education, is instead to focus law schools' attention on the pedagogical challenges they must meet and the variety of ways of meeting them.

For example, we applaud the broader emphasis on the need for skills training in legal education, as stressed by the MacCrate Report. The MacCrate Report's philosophy is well expressed in its Recommendation Five:

Each law school faculty should determine how its school can best help its students to begin the process of acquiring the skills and values that are important in the practice of law, keeping in mind not only the resources presently available at the school, but the charac-

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<sup>88</sup> See generally Letter from Dean Ronald Cass and thirteen other law school deans to all deans of ABA-accredited law schools (April 28, 1994) (on file with the authors).

teristics of effective skills instruction.<sup>89</sup>

In the Statement of Skills and Values, the MacCrate Report explains what “the skills and values that are important in the practice of law” are. The Report’s recommendations include ensuring students understand such tasks as interviewing clients and managing a law office, become able to recognize and resolve ethical dilemmas, and learn the fundamental values of the profession, including the need to promote justice, fairness, and morality.<sup>90</sup>

Ideally, these recommendations can form the basis of externship programs’ goals, with the ensuing design and implementation of the program suited to match the goals. The many choices involved in this process of design and implementation should lie with the responsible faculty, and we read the MacCrate Report’s Recommendation Twenty-Five to this effect:

There should be faculty involvement in the design, supervision and evaluation of every program of extern experience, and accreditation standards should emphasize the critical importance of faculty responsibility for overseeing extern programs.<sup>91</sup>

Like the ABA, then, the MacCrate Report strongly emphasizes the role of the law school and faculty in externship design, but largely without the ABA’s contradictory stress on specific content and structure requirements.<sup>92</sup> From this perspective, instead of documenting the number of site visits, it is more appropriate for law schools to consider whether programmatic goals, such as those recommended by the

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<sup>89</sup> MACCRATE REPORT, *supra* note 4, at 330-31.

<sup>90</sup> *Id.* at 332-33.

<sup>91</sup> *Id.* at 334.

There could be debate as to precisely which “faculty” the Report is saying should be involved in program design and supervision. We interpret the Task Force language in its best light. “Faculty” comprise those persons who are appointed externship faculty, as well as other supportive law school personnel. We do not interpret the Task Force to imply that other faculty without a genuine engagement in the task of clinical education should meddle unnecessarily in the structure and content of externship programs.

<sup>92</sup> We say “largely” because the Report unfortunately does share the ABA’s apparent anxiety about the role and quality of externship supervision. The Report comments that:

A significant problem with credit-bearing externships is that the quality of supervision varies considerably depending on the experience of the field placement supervisor and the amount of time he or she is able to devote to such supervision.

*Id.* at 271. Later, in a similar vein, the Report observes:

In recognition of this problem, the ABA has sought to require law schools to oversee the nature of the supervision. This, alone, may not be sufficient to solve the problem. Further steps should be taken to require faculty involvement in the design, supervision, and evaluation of every program of extern experience, and to emphasize the critical importance of faculty responsibility for overseeing extern programs. The Task Force recommends that these principles be emphasized in ABA accreditation Standards.

*Id.* at 334. To the extent that these passages may endorse the ABA’s tendency to micro-manage placement programs, we of course disagree.

MacCrate Report, are being met. For example, are students obtaining a sufficient depth of experience in their field placement? Are students learning about the law as an institution, as well as about how to draft a complaint? Are students learning how to critically analyze their experiences and learn from their mistakes? In contrast to the approach the ABA has actually taken, this model, which allows law schools to formulate their own plans to improve implementation of programmatic objectives, would actually meet the ABA drafters' goals of avoiding micro-management and emphasizing faculty/law school responsibility.<sup>93</sup>

## 2. *Insuring Institutional Support for Externship Faculty*

If the ABA's true desire is to encourage law school responsibility for field placement programs, its focus should address institutional support instead of content review. In our judgment, a central contribution the ABA can make to the quality of externship programs is to guarantee fair and equal treatment for externship teachers as compared to other members of the faculty. If externship faculty are overburdened, then they will be unable to deliver the best possible education, just as any other overburdened faculty would be. If the ABA is concerned about particular aspects of current externship programs—for example, about the lack of classroom components in some high-credit courses—we suggest that the answer lies not in a rule requiring such components but in one ensuring that these faculty members get appropriate credit for their work on the field placement programs. Once that support is in place, we can expect and insist that the teachers will then spend their time seeing that their programs accomplish the goals that are desired at their schools.

ABA regulation therefore should look closely at the situation of externship teachers. Are the externship faculty overburdened? What

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<sup>93</sup> See text at note 59 *supra*. Another way that the ABA could promote law school responsibility is simply to require the law schools to provide students with accurate information about the availability of programs and the level and type of supervision. The ABA could suggest some parameters for such reporting. For example, each school could be required to list in its catalogue the maximum enrollment for each field placement program and the number of faculty (and other) supervisors for the program. This particular information would help students to judge for themselves how good their chances are for enrollment in a field placement program, and how much supervision they are likely to receive in it.

It should be noted that the ABA could play a similar role with respect to all parts of the curriculum in terms of law school disclosures to students. The ABA should ensure that schools do not list courses that are not regularly offered, that courses taught by adjuncts are clearly delineated, that information about enrollment caps and oversubscription is made available to students, and so on. These disclosures should be made with respect to all parts of the curriculum, not just clinical offerings.

is their status? What part of the budget is allocated toward the program?<sup>94</sup> On the first of these, our data confirm the need for closer scrutiny of faculty loads. Eleven programs have over twenty students, yet comprise twenty-five percent or less of the faculty member's teaching load;<sup>95</sup> similarly, in fifteen programs that include a classroom component, the responsible faculty member receives *no* teaching credit.<sup>96</sup> Budget allocation and faculty status were not part of our survey; nonetheless, we encourage the ABA to scrutinize these issues with the degree of focus the regulators apply to the question of mandatory site visits, for our sense is that there is cause for concern on each of these scores.

In fact, Interpretation 2 does lend support to externship programs in terms of teaching credits and resource allocation. For example, section (e)(6) of Interpretation 2 requires schools to give faculty members teaching credit which is commensurate with instructional responsibilities in relation to the number of students and credit hours.<sup>97</sup> Section (d) of Interpretation 2 urges that the level of instructional resources in a field placement program should increase as the number of students or the number of credits increases.<sup>98</sup> Similarly, section (b) requires the same procedures for approval of externship programs as for other parts of the law school's academic program.<sup>99</sup>

Unfortunately, the more detailed regulation of the content of the programs tends to detract from a focus on what we believe to be the

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<sup>94</sup> These questions were all posed in some form in the MACCRATE REPORT, *supra* note 4. On the issue of faculty burdens, the Report states that the mean ratio of students to faculty in externship programs is 4:1, but this figure must include the many volunteer lawyers in placements who supervise students. (Compare our statistics on faculty load, at pages 435-37 *supra*.) On status, in particular on the overall distribution of full and part-time faculty, see MACCRATE REPORT, *supra*, at 247. On law school budget expenditures on clinical programs, see *id.* at 249-51.

<sup>95</sup> See text at page 436 *supra*.

<sup>96</sup> See *id.*

<sup>97</sup> ACCREDITATION STANDARDS, *supra* note 7, Standard 306(c), Interpretation 2(e)(6) ("Teaching credit shall be given commensurate with the instructional responsibilities of the full-time faculty member in relation to the number of students and the credit hours granted."). See also *id.*, Standard 306(a) (requiring that "residence and class hours credit allowed must be commensurate with the time and effort expended by and the educational benefits to the participating student").

<sup>98</sup> This regulation states, in pertinent part, that "[i]n field placement programs, as the number of students involved or the number of credits awarded increase, the level of instructional resources devoted to the program should also increase." *Id.*, Standard 306(c), Interpretation 2(d).

<sup>99</sup> This section provides:

These programs shall be approved by the same procedures established by the law school for the approval of other parts of its academic program and shall be reviewed periodically in accordance with those procedures and in light of the educational objectives of the program.

*Id.*, § (b).

more important issues of resource allocation. It is far easier for a regulator to determine whether or not there is a classroom component than to determine whether the law school is supplying adequate resources to its field placement program.

In short, the time is ripe for a refocusing of the ABA's regulatory approach to externship programs. This is a particularly appropriate moment for such a reorientation, in light of the ABA's consent decree agreement to review its accreditation criteria, including resource allocation, teaching hours and student/faculty ratios, and the substantial reconsideration of accreditation standards which is in fact underway.<sup>100</sup> The ABA has an immediate opportunity to reverse its autocratic role and lend positive support to field placement programs. The organization need only ensure that the content of its regulations satisfies its own goals of appropriate institutional support and responsibility for externship programs.

#### CONCLUSION

Our hope is that this Article has begun a necessary dialogue, in which the variety and creativity of externship programs, and the need to maintain these critical qualities, will be recognized. We are convinced that the extraordinary flexibility of externship programs must be preserved if we are to meet the pedagogical goals of the law schools, their faculty, their students, and their communities. As the MacCrate Report confirms,

Excellence cannot be promoted by the kind of standardization involved in formulating any particular list of prescriptions and prerequisites. It is best supported by encouraging pluralism and innovativeness in legal education and practice.<sup>101</sup>

Ideally, the impetus for excellence should not have to come from a parent organization such as the ABA. Instead, it should emanate from each law school. And the central thrust of the schools' approach to their externship programs should be a desire to support, not scrutinize, field placement programs and their faculty. But to receive this type of support, externships must be valued as programs which greatly enhance student learning and understanding of both the theory and the application of the law. Only when law schools fully understand the practices and possibilities of externship programs, and the dangers of attempted standardization, will field placement programs begin to acquire the institutional support they deserve.

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<sup>100</sup> See page 416 *supra*.

<sup>101</sup> MACCRATE REPORT, *supra* note 4, at 132.



## APPENDIX A: EXTERNSHIP INFORMATION SURVEY

PLEASE PROVIDE INFORMATION BASED ACADEMIC  
YEAR 1992-1993

FILL OUT A SEPARATE FORM FOR EACH SEPARATE  
EXTERN COURSE

Name \_\_\_\_\_

School \_\_\_\_\_

1. STUDENT BODY IS  UNDER 500  500-1000  OVER 1000
2. GEOG. AREA:  N'EAST  SOUTH  MIDWEST  
 ROCKIES/WEST
3. HOW MANY SEPARATE EXTERN COURSES ARE THERE AT YOUR SCHOOL? \_\_\_\_\_
4. NAME OF THIS COURSE \_\_\_\_\_
5. HOW MANY STUDENTS ENROLLED IN THIS COURSE EACH SEMESTER? \_\_\_\_\_
6. HOW MANY DIFFERENT PLACEMENTS ARE THERE FOR THIS COURSE? \_\_\_\_\_
7. HOW MANY CREDITS EACH SEMESTER? \_\_\_\_\_ (If variable, give range, and in the next question give the # of hours of work required per credit)
8. HOW MANY HOURS OF FIELDWORK/WEEK ARE REQUIRED OF STUDENTS? \_\_\_\_\_
9. HOW MANY EXTERN STUDENTS ARE SUPERVISED BY EACH FACULTY MEMBER? \_\_\_\_\_
10. THIS COURSE IS \_\_\_\_\_ % OF THE FACULTY MEMBER'S TOTAL COURSELOAD FOR A SEMESTER
11. FOR ABOUT HOW MANY YEARS HAS THIS COURSE BEEN OFFERED? \_\_\_\_\_
12. IS THERE A CLASS ROOM COMPONENT  YES  NO If yes:

- A. IT MEETS FOR \_\_\_\_\_ HOURS/ MEETING;  WEEKLY  
 MORE OFTEN  LESS OFTEN
- B. DO YOU USE  PUBLISHED TEXT  COMPILED  
MATERIALS  BOTH  OTHER  NONE IF PUB-  
LISHED, NAME \_\_\_\_\_
- C. CLASS FORMAT IS MOSTLY:  LECTURE/DISCUSSION  
 GUEST SPEAKERS  STUDENT PRESENTATION/DIS-  
CUSSION  STUDENT FACILITATION  OTHER
- D. WHAT % OF CLASS TIME IS DEVOTED TO  
\_\_\_\_ SUBSTANTIVE/PROCEDURAL LAW  
\_\_\_\_ SKILLS  
\_\_\_\_ LEGAL PROCESS  
\_\_\_\_ LEGAL INSTITUTIONS  
\_\_\_\_ PROF. ROLES AND RESPONSIBILITY  
\_\_\_\_ CAREER CHOICES  
\_\_\_\_ STUDENT REFLECTIONS ON THEIR PLACEMENTS  
\_\_\_\_ OTHER
13. ARE STUDENT JOURNALS REQUIRED?  YES  NO
14. IS THE COURSE GRADED?  YES  NO If so, grades are  
based on (check as many as apply):  
 JOURNALS  PAPERS  WORK PRODUCT AT PLACE-  
MENT  EXAM  EVALUATION BY SUPERVISING ATTOR-  
NEY AT SITE  CLASS PARTICIPATION

*PLEASE WRITE A BRIEF DESCRIPTION OF THE COURSE ON  
THE BACK OF THIS PAGE, INCLUDING THE CONTENT OR  
FOCUS (e.g. SKILLS, SUBST. LAW, LEGAL PROCESS, ETC.)  
AND SOME DETAILS ABOUT THE CLASSROOM  
COMPONENT.*

RETURN TO BOB SEIBEL, CORNELL LEGAL AID, MYRON  
TAYLOR HALL, ITHACA, NY 14853

## APPENDIX B: EXTERNSHIP PROGRAMS SURVEYED

School	Name	Type*
Albany	Albany District Attorney Placement	Cr
Albany	Environmental Protection Bureau Placement Clinic	Gv
Albany	Externships	G
Albany	Judicial Placement Clinic	J
Albany	Law Revision Commission Placement	Gv
Albany	Legal Aid Placement Clinic	La
Albany	NYS Assembly Placement Clinic	Gv
Albany	Prisoners Legal Services Placement	La
Albany	U.S Attorney Office Placement Clinic	Gv
American	Externship Program	G
Baltimore	Internship program	G
Baltimore	Criminal Practice Clinic	Cr
Brigham Young	Judicial Externship	J
Brigham Young	Utah Legal Services	La
Brooklyn	Judicial Externship	J
California Western	Internship Program	G
Catholic	Becoming a Lawyer, Legal Externship	G
Catholic	Criminal Trial Program	Cr
Catholic	Law Students in Court	G
Catholic	Law and Deafness	La
Catholic	Legal Externship: Supervised Fieldwork	G
Catholic	SEC Training Program	Gv
Cornell	Judicial Externship	J
Cornell	Law Guardian Externship	O
Cornell	Legislative Externship	Gv
Cornell	Neighborhood Legal Services Externship	La
Cornell	Criminal Justice Clinic	Cr
Creighton	Clinical Internships	G
Davis	Administration of Criminal Justice	Cr
Davis	Public Interest Clinic	La
Davis	Judicial Clinics	J
Dayton	Judicial Externship	J
Florida State	Judicial	J
Florida State	Legal Aid	La
Florida State	Prosecution/Public Defender	Cr
Florida State	State agencies and universities	Gv
Fordham	Judicial Externship	J

\* Abbreviations are as follows: "G" (General); "J" (Judicial); "Gv" (Government Agency); "Cr" (Criminal); "La" (Legal Aid/Legal Services); and "O" (Other). For a description of the categories, and for the total numbers of surveyed programs in each category, see pages 423-24 *supra*.

Franklin Pierce	ADR in Action	O
Franklin Pierce	Externship Program	G
George Mason	Legal Clinic	G
Georgetown	Criminal Justice Clinic	Cr
Hastings	Criminal Practice Clinic	Cr
Hawaii	Externship	G
Hofstra	Externship	G
Indiana/Bloomington	Legal Interviewing and Counseling	G
Iowa	Clinic Externships	G
John Marshall	Judicial Extern Program	J
Lewis and Clark	Externship — full semester	G
Lewis and Clark	Externship — summer	G
Loyola/Chic.	Externship	G
Mercer	Public Interest Practicum	G
Miami	Clinical Placement and Theory	G
Michigan	Externship	G
Minnesota	Public Interest Law Clinic	La
Mississippi	Public Service Internship	G
Montana	Clinical training — externships	G
NYU	Corporation Counsel Clinic	Gv
NYU	Environmental Law Clinic	Gv
NYU	Governmental Civil Litigation Clinic	Gv
North Dakota	Air Force Base Externship	O
North Dakota	Judicial Externship	J
North Dakota	State Attorney Externship	Cr
Northeastern	Superior Court Judicial Interns	J
Northwestern	Clinical Practice Externships	G
Ohio State	Judicial Externship	J
Oklahoma	Judicial Clinic	J
Oklahoma	Legal Externship Clinic	G
Pace	DEC Environmental Externship	Gv
Pace	Judicial Clerkship	J
San Diego	Judicial Internship	J
Santa Clara	Criminal Justice Internship	Cr
Seton Hall	Judicial Internship	J
Shepard Broad	Civil Clinic Extern	G
South Carolina	Judicial Internship Clinic	J
South Texas	Judicial Externship	J
Southern Illinois	Legal Clinic/Externship	G
So. New England	Legal Clerking	G
St. Louis	Civil Externship	G
St. Thomas	Clinic	G
Syracuse	Judicial Externship	J
Syracuse	Legal Externship	G
Texas Tech	Skills Development	G
Toledo	Criminal Law Practice Program	Cr
Utah	Civil Clinic	G

Utah	Criminal Clinic	Cr
Utah	Judicial Clinic	J
Vermont	Internships	G
Vermont	Semester in Practice	G
Wake Forest	The Clinical Program	G
Washburn	Externship	G
Washington	Jud., Leg., Agency & Pub. Int. Internships	G
Widener/Harrisburg	Externships	G
William and Mary	Attorney General Practice Clinic	Gv
William and Mary	Court of Appeals Clinic	J
William and Mary	Employee Relations Clinic	Gv
William and Mary	Legal Clerking	G
William and Mary	US Attorney Practice Clinic	Gv
Yale	Legal Assistance	La

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