

5-1-2009

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Recommended Citation

James Backman, *Externships and New Lawyer Mentoring: The Practicing Lawyer's Role in Educating New Lawyers*, 24 BYU J. Pub. L. 65 (2013).

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Externships and New Lawyer Mentoring: The Practicing Lawyer's Role in Educating New Lawyers

*James Backman**

I. INTRODUCTION: ROLE OF THE PRACTICING ATTORNEY IN LAW SCHOOL EXTERNSHIPS AND BAR ASSOCIATION NEW LAWYER TRAINING PROGRAMS

This Article is designed to explore connections between law school externship programs and bar association mentoring programs.¹ These opportunities, which are available to law students and to new lawyers in their first year of practice, are the primary means available outside of law school classrooms or in-house clinics to prepare lawyers for the actual practice of law. The key in both of these dimensions of law student and new lawyer development is whether a practicing lawyer is willing to take time to supervise law students in externships and new lawyers in mentoring programs.

More credit and attention needs to be given to the role of attorney mentors on both sides of “bridging the gap programs” available through law schools and bar associations. These experiential learning opportunities occur primarily in law school externship programs and in bar association new lawyer training programs. The first national conference on mentoring in the legal profession was appropriately given the title of *Mentoring, The Future of the Profession*.² Attorney mentoring is often overlooked but it is important to recognize that it is the most

* Stephen L Richards Professor of Law, J. Reuben Clark Law School, Brigham Young University. Professor Backman thanks the professors and staff working with the externship program at the Brigham Young University Law School and the attorneys and staff from the Utah State Bar Association's Mentoring Committee for their excellent work in assisting the practicing lawyers who serve as field supervisors and mentors to law students and new lawyers.

1. Throughout the Article, I quote from weekly student journals, which are required from law students during their externships. These quotations are set in italics for easy recognition. The journal quotations will not give the name of the student, but will be identified as quotations from a “Student Extern.” Quotations from student externs are in a file in the externship records of the author.

2. The conference on *Mentoring: The Future of the Profession* took place in Columbia, South Carolina, on March 27–29, 2008. <http://professionalism.law.sc.edu/conference/> (last visited Oct. 27, 2009). For a list of mentoring programs in Alabama, Florida, Washington, D.C., Illinois, Ohio, Maryland, Oregon, Georgia, New Jersey, South Carolina, and Texas, see <http://professionalism.law.sc.edu/barinitiatives.php?id=10> (last visited Oct. 27, 2009). For a state-by-state list of mentoring programs, see <http://www.abanet.org/cpr/professionalism/mentoring.html> (last visited Oct. 27, 2009).

readily available, and least expensive, means of providing these valuable experiences for every new lawyer. The attorney time and involvement are available without cost to either the law school or the bar association. The reason attorney involvement is effective is that it is an authentic form of experiential education potentially available through a one-on-one mentor for each graduating student and new lawyer.

There are two significant features of these parallel, institution-sponsored means for preparing new lawyers for practice. First, they are available for virtually every law student and for every new lawyer. Second, these programs involve no cost to the law schools or bar associations for the mentoring that attorneys provide. Practicing lawyers are ready and willing to provide these services without charge to the law student through law school externships or to the new lawyer through bar association mentoring programs. The cost is fully borne by the individual mentoring lawyers and the firms and offices that employ them.

The basis for this amazing bargain in legal education and in new lawyer training programs is the goodwill and professional ethics of individual lawyers. The mentoring tradition has been part of law practice over the centuries and is connected to the tradition of apprenticeships, the primary means of training lawyers until the rise of the modern law schools. It is appropriate that law schools and bar associations are once again turning to this long-used means of preparing lawyers as a solution to the problem noted by many that law schools have not successfully provided preparation for students to be ready to practice law when they complete formal legal education. It is noteworthy that the new Carnegie report on Educating Lawyers analyzes the strengths and weaknesses of law school training through the metaphor of apprenticeships.³

My ideas stem from work on two projects currently underway. First, I have created and supervised an extensive externship program at the Brigham Young University Law School based on an apprenticeship model. It is significant that law students in Utah have access to two of the largest apprenticeship-based externship programs in the nation based on the percentage of students participating.⁴ Lawyers and judges have

3. See generally WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter EDUCATING LAWYERS].

4. See generally AMERICAN BAR ASSOC. AND LAW SCHOOL ADMISSION COUNCIL, 2009 OFFICIAL GUIDE TO ABA APPROVED LAW SCHOOLS (2008) [hereinafter 2009 GUIDE]; AMERICAN BAR ASSOC. AND LAW SCHOOL ADMISSION COUNCIL, 2010 OFFICIAL GUIDE TO ABA APPROVED LAW SCHOOLS (2009) [hereinafter 2010 GUIDE]. Using reported data in the 2009 GUIDE and the 2010 GUIDE, the top externship schools in the United States—based on the percentage of eligible second and third-year law students participating in externships in a given year—are:

2009 GUIDE—2006-07 academic year
BYU 83%

2010 GUIDE—2007-08 academic year
Utah 99%

Utah 74%	Drexel 80%
Appalachian 66%	Golden Gate 74%
Brooklyn 65%	Brooklyn 72%
Quinnipiac 63%	BYU 70%
Toledo 60%	Denver 63%
Golden Gate 57%	Southwestern 61%
Hawaii 57%	Toledo 54%
Cincinnati 56%	Appalachian 53%
Santa Clara 55%	Colorado 52%
Southwestern 55%	U. Nevada-Las Vegas 51%
U. of Washington 55%	Arizona State 48%
U. Nevada-Las Vegas 54%	Michigan State 47%
Thomas Jefferson 51%	Pace 47%
Fordham 49%	St. John's 47%
Georgia State 49%	Valparaiso 47%
Albany 48%	Wayne State 47%
Colorado 48%	Chapman 46%
Denver 47%	Penn State 46%
Michigan State 46%	U. of Washington 46%
Arizona State 44%	Illinois 45%
Indiana-Bloomington 44%	Capital 44%
Valparaiso 44%	Cincinnati 44%
New England 43%	North Carolina Central 44%
Pacific (McGeorge) 43%	Detroit Mercy 43%
Houston 42%	Quinnipiac 43%
Marquette 42%	San Francisco 43%
St. John's 42%	Touro 43%
Chapman 41%	Connecticut 42%
Whittier 40%	Marquette 42%
Wisconsin 40%	Arizona 39%
Pepperdine 39%	California-Berkeley 39%
Illinois 38%	New England 39%
Penn State 38%	Ave Maria 38%
Touro 38%	Georgia 38%
Baylor 37%	Indiana-Bloomington 38%
Emory 37%	Louisville 38%
Northwestern 37%	Santa Clara 38%
St. Thomas, Miami 37%	Stetson 38%
San Francisco 37%	Wisconsin 38%
Temple 37%	Emory 37%
LaVerne 36%	Maryland 37%
Maryland 35%	Ohio Northern 37%
Ohio Northern 35%	Temple 37%
Stetson 35%	Vermont 37%
	Albany 36%
	Baylor 36%
	Dayton 36%
	George Washington 36%
	John Marshall 36%
	Pacific (McGeorge) 36%
	Charleston 35%
	St. Thomas-Miami 35%

provided excellent opportunities for law students to be involved in the practice of law as part of their law school training.⁵

The second project stems from my work on a new Mentoring Committee for the Utah State Bar Association. I have worked on a Mentoring Plan (New Lawyer Training Program) for the Utah State Bar that has been adopted by the Utah State Supreme Court.⁶ Former Dean Kevin Worthen from BYU Law School and Dean Hiram Chodosh from the University of Utah College of Law have also been members of this committee. Our committee has gathered and studied new mentoring programs from bar associations in Georgia,⁷ Ohio,⁸ Texas,⁹ Illinois,¹⁰ Indiana¹¹ and San Diego.¹²

This Article considers state bar association mentoring programs¹³ and law firm development programs for new lawyers and possible connections to law school externship programs.

Thomas Jefferson 35%

The percentage figures are not reported in the GUIDES. They are my calculations based on a formula that is applied to the reported number of field placements in the GUIDES. The formula takes the reported number of field placements divided by the number of full-time students multiplied by 0.67 in order to represent the percentage of eligible second and third-year full-time students who participated in the law school's reported field experiences in the reporting year.

5. The 2009 GUIDE underscores the continuing growth of law school externship programs. The 19,177 field placements from the 2008 GUIDE have grown by 7.5% to 20,624. *See generally* 2008 GUIDE, *supra* note 4; 2009 GUIDE, *supra* note 4. In comparison, the total number of clinical enrollments has fallen slightly from 17,560 to 17,548 positions filled. *See generally* 2008 GUIDE, *supra* note 4; 2009 GUIDE, *supra* note 4. In the 2009 GUIDE, 115 law schools have more students involved in field placements than in clinical positions; eighty-seven law schools have more clinical positions than field studies. *See generally* 2009 GUIDE, *supra* note 4. In the 2010 GUIDE, there were eighteen new law schools above thirty-five percent with a total of fifty-four law schools exceeding thirty-five percent. *See generally* 2010 GUIDE, *supra* note 4.

6. The Utah State Bar New Lawyer Training Program was approved by the Utah State Bar Commission in July 2008. I acknowledge the assistance of my student, James Bennin, who assisted me in creating the first draft of the Model Mentoring Plan in this new program as a project in my Community-Based Legal Research course, Winter Semester 2007, at BYU Law School.

7. STATE BAR OF GEORGIA, TRANSITION INTO LAW PRACTICE PROGRAM, MODEL MENTORING PLAN [hereinafter GEORGIA MENTORING PLAN], *available at* http://www.gabar.org/programs/transition_into_law_practice_program/ (last visited Oct. 29, 2009).

8. THE SUPREME COURT OF OHIO, COMMISSION ON PROFESSIONALISM, LAWYER TO LAWYER MENTORING PROGRAM, MENTORING PLAN, *available at* <http://www.supremecourtfohio.gov/mentoring> [hereinafter OHIO MENTORING PROGRAM] (last visited Nov. 14, 2009).

9. Earl F. Hale, Jr., *Mentoring*, in THE TEXAS CENTER FOR LEGAL ETHICS AND PROFESSIONALISM, A GUIDE TO THE BASICS OF LAW PRACTICE, 105 (10th ed. 2004).

10. ISBA MENTORING COMM., ISBA MENTOR CENTER HANDBOOK: PRACTICAL INFORMATION FOR A SUCCESSFUL MENTORING RELATIONSHIP (2007), *available at* <http://www.isba.org/mentorcenter/handbook.pdf>.

11. INDIANA STATE BAR ASSOCIATION/YOUNG LAWYERS SECTION MENTORING PROGRAM, MENTOR MATCH HANDBOOK (2005) [hereinafter INDIANA MENTORING PLAN], *available at* http://www.inbar.org/content/Mentor/MentorMatch_Handbook.pdf.

12. SAN DIEGO MENTORING PROGRAM HANDBOOK (2006).

13. In August 2004, the ABA Law Practice Management Section devoted an entire issue of LAW PRACTICE TODAY to mentoring.

The thesis of this Article is that bar associations, law firms, and law schools should work together to develop mentoring programs¹⁴ with specific practice-based opportunities for each new lawyer.¹⁵ Mentoring programs assist new lawyers in gaining valuable insights¹⁶ through discussion of specified topics and by participating in certain practice-based, substantive,¹⁷ and procedural legal experiences.¹⁸ These required steps can be fulfilled partly during law school and/or during the initial year of law practice. Many of these same opportunities are available to students during law school. Law firms and experienced attorneys benefit from their interactions with new lawyers as they have the satisfaction of promoting improved professionalism, encouraging public and professional service, improving the competence of new attorneys, enhancing work and career satisfaction, and boosting morale for the participating lawyers and their organizations.¹⁹

In 1992, the ABA issued the MacCrate Report.²⁰ The report urged the practicing bar and law schools to work together in bridging the gap between law schools and the practicing bar in preparing new lawyers for

14. For a list of helpful mentoring resources, see <http://www.abanet.org/lpm/lpt/articles/slc08041.html> (last visited Apr. 21, 2009).

15. Anthony G. Amsterdam, *Clinical Legal Education — A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 637 (1984) (“We should continue working to increase the opportunities our students have during law school to engage in legal problem-solving and to practice the tasks that lawyers perform, preferably in real life situations.”).

16. *I filed the motion in limine because I wanted to exclude certain of the defendant’s comments to police officers that were inappropriate. I had an attorney look it over before it was filed, and he was impressed because I put a lot of detail and care into it. I backed up my argument with three separate lines of reasoning. He said that I did a much more thorough job than most attorneys would have done. I thought that his words were a pretty high compliment to me. As a side note, the judge granted the motion today without hearing oral argument.* Student Extern in a prosecutor’s office.

17. *There is so much discussion in the office that completely goes over my head, but every once in awhile, I am able to contribute and participate. It is amazing all of the foundational knowledge that I have gained in my first short year of law school. Being able to step outside the classroom and see that the principles I learned there have real-life applications motivates me to learn more and study harder.* Student Extern with a federal district court judge.

18. *I have learned a lot about the trial process. Coming into the externship, my experience with trials was so limited that I really didn’t understand how any of these proceedings fit together. Now, I feel I have a much better understanding. I know that there are many parts of the process I’m not familiar with and that my understanding is mostly superficial, but it’s nice to see how all these motions and orders, etc. fit together.* Student Extern.

19. See generally Monica C. Higgins & Kathy E. Kram, *Reconceptualizing Mentoring at Work: A Developmental Network Perspective*, 26 ACAD. OF MGMT. REV. (2001).

20. 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 (1992) [hereinafter MACCRATE REPORT].

the practice of law.²¹ The opportunity exists, through bar association mentoring programs and law school externship programs, for law schools and bar associations to work together in offering practical skills training available during law school and during the initial year of law practice.²² Many students have opportunities to satisfy required components of bar association mentoring programs as they work with supervising attorneys in law school externship programs. Similar experiences are available through law school clinical or simulation courses. New lawyers, who have already experienced practical training in law school, can focus on new training opportunities in bar association mentoring programs to further develop practice skills in the initial year of the program.

To the degree that law school programs and bar association mentoring initiatives can complement or, even in some ways, dovetail with each other, new lawyers will be better equipped to begin their law practice years. In this Article, I analyze the objectives and requirements of bar association mentoring programs, law firm development plans, and law school externship programs to identify and suggest ways for law schools, law firms, and local bar associations to work together in providing these practical training opportunities to students and young lawyers under the supervision of qualified mentors.

II. CRITICS OF LEGAL EDUCATION IN PREPARING LAW STUDENTS FOR TRANSITION INTO PRACTICE

At least four recent studies have pointed to problems faced by new lawyers in making the transition between law school and their first year in law practice.²³ One was recently published by the Carnegie Foundation for the Advancement of Teaching in the book, *Educating Lawyers: Preparation for the Practice of Law*.²⁴ It is based on intensive field studies of sixteen law schools over two years in 1999 and 2000. This new book will undoubtedly have an important impact on legal education, probably more than the American Bar Association's MacCrate Report²⁵ from 1992, because it makes specific recommendations aimed at law schools as they develop students in

21. The *MacCrate Report* encourages lawyer "participation in 'mentor and buddy systems' . . . to enable inexperienced lawyers . . . to seek help and guidance from experienced lawyers; participation in training programs or support services for new lawyers in one's own office." *Id.* at 211.

22. EDUCATING LAWYERS, *supra* note 3, at 95 ("[L]ittle of this kind of close mentoring is typically available for the great majority of future lawyers.").

23. *Id.* at 88 ("Educational experiences oriented toward preparation for practice can provide students with a much-needed bridge . . .").

24. *Id.*

25. *Id.*

preparation for the profession of law.²⁶ One of its major findings is that “[u]nlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice. The result is to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner”²⁷ The Carnegie book recommends that legal education should use the second two years of law school more effectively and more fully complement the teaching and learning of legal doctrine with the teaching and learning of practice.²⁸

A second report is the 2006 Law School Survey of Student Engagement, entitled *Engaging Legal Education: Moving Beyond the Status Quo*.²⁹ The report involved 24,000 students at 64 law schools. One notable finding in the report states:

During the second and third years of law school, students who had a clinical internship or field experience or who did pro bono work report gaining more than other students in several desirable areas. These areas included higher order thinking skills, speaking and writing proficiency, and competence and confidence in solving complex, real world problems.³⁰

The report also notes the tendency of third-year students to be increasingly disengaged from the standard lectures and classes based on the Socratic Method³¹ and concludes that clinical and simulation skills

26. Richard K. Neumann, Jr. & Donald Schoen, *The Reflective Practitioner and the Comparative Failure of Legal Education*, 6 CLINICAL L. REV. 401, 426 (2000) (“[L]egal education stands nearly alone in its contempt for the idea of a reflective practicum. . . . It would be unthinkable to graduate physicians with no clinical clerkships or architects with no experience in a design studio.”).

27. EDUCATING LAWYERS, *supra* note 3, at 188.

28. *Id.* at 12. “It is also important that students encounter and gain insight into legal expertise in its various manifestations. . . . [T]he relevance of ‘learning from practice’ in order to improve the understanding of expert practice—and to use that understanding to point a direction for improved professional training” *Id.* at 118.

29. *Law School Survey of Student Engagement*, ENGAGING LEGAL EDUCATION: MOVING BEYOND THE STATUS QUO (2006), available at http://nsse.iub.edu/lssse/2006_Annual_Report [hereinafter ENGAGING LEGAL EDUCATION].

30. *Id.* at 16. EDUCATING LAWYERS mentions “the crucial role of practice experience in the development of expertise. [And argues that] [p]ractice experiences need not be entirely ‘authentic’” EDUCATING LAWYERS, *supra* note 3, at 119.

After a year in law school, I held a ridiculously high estimation of what attorney work product required. After revising a memo and brief dozens of times over the year, I began to feel that perhaps this is the norm for attorneys. It has become clear to me at this internship that such meticulous attention is not practicable in the real world. Attorneys do not have enough time. Still, accuracy and thoroughness are required. Student Extern.

31. *This externship has also served to preserve my desire to be a lawyer. After my first year of law school I was very unsure that this was the world that I wanted to enter. I did not like the writing that I had to do in school, I did not enjoy the finals, and I*

courses and externships are an antidote to the boredom and endemic lack of preparation reported regularly during the final year of law school. Both of these new reports are pointing to renewed attention to apprenticeships.³²

A third report is the newly released white paper from The Center for Internet and Society at Harvard Law School, under the title *New Skills, New Learning: Legal Education and the Promise of Technology*.³³ The author, Gene Koo, identifies problems in lawyer preparation because law schools and law firms fail to provide sufficient training for skills and for practice preparation. He states:

One issue covered in the paper . . . echoes the Carnegie study's concern about skills training in law schools today. Not surprisingly, the attorneys we surveyed often (75%) identified skills as something they wished they had learned before the end of their first year of practice. And . . . most employers aren't providing that training (only 36% report some kind of formal introduction to practice).³⁴

wondered about the wisdom of spending all this money to continue in this profession. However, this experience has been great. I have loved the writing assignments I have been given and the freedom I have had to pursue the answers. I loved the courtroom scenes that I was able to see, and what I thought originally would be a tedious profession, I have found to be alive and interesting. Student Extern with a state court.

32. I have spent more time than I probably should have the last few days pondering . . . [the] suggestion . . . that schools might ban or discourage 3d years from traditional lecture courses, directing them instead to externships, clinicals, seminars, and similar forms of study. I think it is a very compelling idea, in that it propels us back towards our roots in legal education —the idea of apprenticeship. In Abraham Lincoln's day, lawyers were trained primarily by serving as apprentices to working attorneys. This training method emphasized a close relationship with a mentor and an emphasis on experiential knowledge. It seems that we have now hit the opposite extreme; legal education too often offers few close relationships between student and teacher, and the case method of learning has broken the link between what we teach and "real life."

<http://lsi.typepad.com/lsi/2006/week49/index.html> (Dec. 9, 2006) (posting of Mark Osler to Law School Innovation).

33. Gene Koo, *New Skills, New Learning: Legal Education and the Promise of Technology*, BERKMAN CTR. FOR INTERNET & SOC'Y AT HARV. L. (Mar. 25, 2007), available at <http://cyber.law.harvard.edu/~gkoo/NewSkills,NewLearning-Published.pdf>.

34. *Id.* at Executive Summary. As a point of interest, this study points to BYU Law School's interviewing and counseling course positively:

Computer-based simulations can lower the cost of capturing and conveying skills in a dependable, high-quality manner. The interviewing and counseling simulations recently developed at Brigham Young University Law School, for example, make use of custom-developed video-recording and annotation software to capture law student performances for distributed evaluation by trained alumni.

Id.

One further study, *After the JD*,³⁵ follows recently graduated law students into their first years of practice. This longitudinal study focused on surveys of 5th-year attorneys. It contains valuable statistical data indicating the percentages involved in various types of practice settings and a range of law office sizes. For example, twenty percent of the surveyed attorneys practice in large firms with more than 250 lawyers and thirty-one percent are in government and other not-for-profit offices. The *After the JD* study reports that graduates mostly see their experiences with law-related summer employment after the first and second years of law school as having the greatest influence on their selection of career paths.³⁶

Law school clinical education has emerged as the most important new component of law school curriculum over the past thirty-five years. Beginning with in-house clinics and simulation courses for skills training, law schools have created a rich offering of opportunities for students to have training in the practical skills apprenticeship highlighted in the Carnegie Foundation's *Educating Lawyers*.³⁷

As good as these courses have been, many law students are unable to participate in them because of limited enrollment policies at the law schools. Clinical legal education in this context is very expensive. Many law schools follow the recommendation that the student-to-faculty ratio should not exceed eight students to one faculty member.³⁸

An externship is another means increasingly available to law students whereby they might have practical legal training during law school under the supervision of a one-on-one mentor.³⁹ The accreditation

35. RONIT DINOVTZER, BRYANT GARTH, RICHARD SANDER, JOYCE STERLING & GITA WILDER, *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* (2004).

36. *Id.*

I still feel that I have been able to find out if working in a big firm is something I would want to do for a career. That was my original goal when I applied for an international matched externship. This has been a valuable experience because it has taught me two major things. First, working at a firm is not as bad as I had anticipated from all the negative comments I have heard over the years. Second, I still do not want to work at a firm for my career. When I set up my summer, I decided to do half with a private firm and half with the government. I figured this would give me a chance to compare my options and to get a glimpse at two different career possibilities. I already was a little familiar with life in the government due to a previous internship. Thus, I have been able to compare my experience with [X firm] with that experience and try to understand which option I would enjoy more. Student Extern in a large international firm.

37. Association of American Law Schools, *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508 (1992) [hereinafter *AALS Report, In-House Clinic*]; J. P. Ogilvy, *History of Clinical Legal Education*, Presentation at AALS Workshop for New Clinical Teachers (2004), available at <http://www.aals.org/nlt2004/ogilvy.pdf>.

38. *AALS Report, In-House Clinic*, *supra* note 37, at 520.

39. Michael True, Internship Center director at Messiah College shared the following characteristics of a quality internship with the Internship Listserve:

A quality internship placement will
-Provide substantive and challenging work experiences.

standard⁴⁰ for these externship programs permits more expansive student involvement with higher student-to-faculty ratios. There are also non-credit programs at law schools such as pro bono service opportunities (required in a number of law schools) by which students can have practice opportunities during law school. Students also have part-time work during the summers and during law school semesters to gain practice experiences. If they are compensated for these experiences, however, law schools cannot award academic credit for these learning opportunities.⁴¹

The need for practical experience for every law student and every new lawyer is commonly noted in all four of these studies. The chief problem in meeting this need has always been the expense involved. Typically, less than one third of law students throughout the nation have in-house clinical training opportunities designed to prepare students through actual practice experiences in serving clients.⁴² From the practicing bar, a similar deficiency is identified for two-thirds of new lawyers because law firms have found that it is too expensive to provide new lawyer training programs.⁴³

-Planning and structure of internship position prior to student beginning internship (breadth and depth); minimal 'grunt work'; opportunity to apply principles learned in and outside the classroom; realistic goals/projects.

-Strong training/orientation for student(s) involved (including company culture, office procedures, etc. in addition to training for specific job duties).

-On-going, structured supervision by a primary supervisor (weekly meetings are suggested); opportunities for feedback; adequate opportunities for students to ask questions; perhaps a mentoring relationship.

-Opportunity to observe professionals in action (participate in staff meetings, client meetings, attend presentations, and talk with professionals in the department about their jobs and career paths).

-Opportunity to develop specific skills (i.e. research, writing, computer, presentation skills).

-Provide evaluation of overall experience; provide closure through recognition of intern contributions, reflection on learning experiences, and wrap-up on-going projects; provide follow-up if necessary (letters of recommendation, networking, etc.).

-Some organizations provide professional development opportunities (e.g. presentations by upper-management to all interns within the organization, informational interviews with higher-ups, brown bag lunch seminars, etc.) and if there are multiple interns in a new location, some organizations provide social opportunities (picnics, movie night, etc.). <http://listserv.messiah.edu> (last visited Nov. 14, 2009) (posting of Michael True, mtrue@messiah.edu) (on file with author).

40. AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, STANDARDS FOR APPROVAL OF LAW SCHOOLS, 205 (2005) [hereinafter ABA STANDARDS].

41. *Id.* at 305.

42. Dean Rivkin, *Remarks at the ABA's National Conference on Professional Skills and Legal Education* (Oct. 15, 1987), 19 N.M. L. REV. 42 (1989); Dean Rivkin, *Remarks at Panel Discussion at Conference on Clinical Education* (Oct. 18, 1986), *Clinical Legal Education: Reflections on the Past Fifteen Years and Aspirations for the Future*, 36 CATH. U. L. REV. 337, 340 (1987).

43. Koo, *supra* note 33, at Executive Summary.

Several factors lead to adoption of mentoring programs by bar associations. First, new lawyers report that they feel unprepared through law school training⁴⁴ for the actual practice of law,⁴⁵ noting a disconnect between the traditional emphasis in law schools on doctrinal courses and the skills and experiences needed to handle clients facing legal problems. Second, the increased emphasis on billable hours has led many young attorneys to worry about taking time for training programs.⁴⁶ Third, law firms indicate that they are no longer able to pass on the cost of training programs to clients,⁴⁷ so the opportunities for new lawyers to spend time observing more experienced lawyers in practice have become more limited. Fourth, new lawyers who are women or who are from an ethnic minority background⁴⁸ have fewer options to find mentors through traditional association patterns inside the legal profession.⁴⁹

44. *This week has really made me feel incompetent and insecure about my legal abilities and my capacity as an attorney. I just don't know if I have what it takes to successfully represent clients in the real world. I guess I can take comfort in knowing that the other clerk feels the exact same way, but at the same time, I feel like we should be performing better. I just feel like a total idiot when the attorneys ask me questions to which I don't know the answer and feel very nervous just talking to them at all. How on earth am I ever going to impress someone enough to get a job? Also, would someone really want me to represent them when I have no idea what the heck I am doing? When I think about the possible ramifications of my incompetence, it makes me feel like I should just get out of the game right now.* Student Extern.

45. *I think I will start taking in a copy of the Utah Court Rules Annotated whenever I have a chance to watch any proceedings. When the jury is out of the room, the attorneys and the judge throw out numbers like 404(b) evidence without any explanation. I got it when one attorney began talking about pursuing a 12(b) motion but that is the only number I recognized. I do love it when the lawyers really know their stuff and can quote the various rules of procedure that support their actions. Knowing those rules is clearly powerful stuff in the courtroom because of the ability to force a continuation of their argument or to stop the other attorneys' arguments cold in their tracks all by bringing up a number of one of the rules. I do wish I had seen how these rules apply BEFORE I had the civil procedure class from Prof. [X]. I could never wrap my mind around the subject because I just couldn't see why it mattered. I was so clueless as to why I needed this stuff. I figured it was all for knowing how to title certain documents that I would need to file for various submissions but I had absolutely no idea the power of the rules in the dynamics of a courtroom. At least I know it now.* Student Extern working with a judge.

46. Koo, *supra* note 33, at 14.

47. *Id.* at 17.

48. IDA O. ABBOTT & RITA S. BOAGS, MINORITY CORPORATE COUNSEL ASSOCIATION, MENTORING ACROSS DIFFERENCES: A GUIDE TO CROSS-GENDER AND CROSS-RACE MENTORING, available at <http://www.mcca.com/index.cfm?fuseaction=page.viewpage&pageid=666> (last visited Nov. 14, 2009).

49. *Judge X is the first judge of Samoan descent appointed in this state, which is interesting to me because I am Samoan also. It is encouraging to know there are positive Samoan role models out there. Judge X has spent most of his career in public service including being a public defender and a judge for 17 years. In addition I have noticed a number of awards and commendations on the wall in his office. Despite all the recognition, he is very humble. I have learned a lot from working with him. He is an excellent judge and I am glad to have the opportunity to work for him during this externship.* Student Extern working with a judge.

The means to overcome these identified problems are available. Law schools and bar associations are able to provide the necessary framework to permit every student and every new lawyer to identify practicing lawyers who are willing and able to provide training opportunities. Law schools tap into this valuable resource by establishing externship programs where students can earn credit as long as they are not paid by the practicing lawyers giving them hands-on practice experiences.⁵⁰ Bar associations create the structure for new lawyer training by establishing mentoring relationships with practicing attorneys willing to assist the new lawyer in the first year of practice. The problem stemming from the lack of preparation for the transition into law practice has developed because law students and new lawyers had no structure to access these kinds of experiences. Experience based on successful externship programs and new lawyer mentoring programs has shown that there is no lack of willing attorneys to fill these supervising attorney and mentoring attorney roles. Law schools that are limiting the numbers of students who can participate and bar associations that have not adopted mandatory mentoring programs are cheating students and new lawyers out of these valuable experiences. Law schools and bar associations have the power and organizational resources available to make these experiences available to every new attorney.

The failure of law schools and bar associations to implement these programs handicaps their students and new lawyers. Some, but not all, law students have paid summer associate opportunities or paid clerkships during their law school semesters. Others will take advantage of valuable clinical courses and simulated skills courses. But these opportunities are not available to every student. Externships can reach every student, as has been demonstrated by a number of law school externship programs.⁵¹ Similarly, some new attorneys are in law firms or government offices with well developed professional training programs. Reports indicate, however, that fewer offices are offering these kinds of new lawyer development programs because of the pressure of billable hours and the high costs of providing these programs within the law office.⁵² Many other lawyers, perhaps a majority of new lawyers, have no formal training programs available to them because they are practicing in small

50. Daniel J. Givelber, Brook K. Baker, John McDevitt & Robyn Miliano, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1, 3 (1995) (“Overwhelmingly, our respondents report that they learn, and learn well, through active engagement in legal work in law offices; that they do legal work which challenges them; and that their skills improve as a result.”).

51. James H. Backman, *Practical Examples for Establishing an Externship Program Available to Every Student*, 14 CLINICAL L. REV. 1 (2007).

52. Ida O. Abbott, *Increasing Associate Retention Through Professional Development*, LAW FIRM GOVERNANCE (1999).

offices or solo practice settings or because the law offices have not established such programs. Bar associations are in a position to require law firms to develop in-house mentoring programs for their own new lawyers and to encourage other experienced members of the bar to step forward and provide the training required in mandatory mentoring programs.

III. BAR ASSOCIATION PROGRAMS TO ASSIST WITH THE TRANSITION FROM LAW SCHOOL TO LAW PRACTICE

Recently several bar associations have created mentoring programs designed to help new lawyers in making the transition into practice. The Georgia Bar Association's mentoring plan⁵³ is one of the more innovative programs. The Supreme Court of Ohio has also implemented a Lawyer to Lawyer Mentoring Program through its Commission on Professionalism.⁵⁴ Other bar associations, including Indiana, Illinois, Texas, and San Diego, have programs for new lawyers.⁵⁵

Utah's New Lawyer Training Program is being implemented for the first time with new lawyers who passed the February 2009 bar examination in Utah.⁵⁶ The Utah Supreme Court approved this new program and adopted new rules requiring new lawyers to participate in December 2008. The New Lawyer Training Program "fulfill[s] the requirements of new lawyer MCLE [Mandatory Continuing Legal Education] within the first year of the lawyer's two-year compliance period."⁵⁷ In essence, the New Lawyer Training Program replaces twelve hours of CLE lectures with one-on-one mentoring sessions with an experienced attorney. The new lawyer must have a certification from a Court-appointed mentor that he or she has completed an approved mentoring plan within a twelve month period after being admitted (mentoring periods occur from January 1st–December 31st; or from July 1st–June 30th)⁵⁸ in order to renew the license to practice law for the second year. The Rule provides for deferrals for judicial clerks⁵⁹ and for newly admitted lawyers "not engaged in the practice of law . . . or who

53. GEORGIA MENTORING PLAN, *supra* note 7.

54. OHIO MENTORING PROGRAM, *supra* note 8.

55. *Supra* notes 9–12.

56. UTAH COUNCIL CODE OF JUD. ADMIN. R. 14–808.

57. *Id.* at 14–808(a)(2). The new lawyer must complete an additional 12 hours of Mandatory Continuing Legal Education by the end of the second year of practice.

58. NLTP MANUAL, PROGRAM GUIDELINES AND FREQUENTLY ASKED QUESTIONS AND ANSWERS 13 [hereinafter NLTP MANUAL], available at <http://www.utahbar.org/nltp/Welcome.html>. There is also an Initial Meeting Guide, Mentoring Timeline, and a Model Mentoring Plan available at this website.

59. UTAH COUNCIL CODE OF JUD. ADMIN. R. 14–808(c)(1).

are unemployed” who seek postponement of the required program.⁶⁰ New lawyers “who do not reside in Utah” and those “who have practiced law elsewhere for two years or more” have an exemption from the new program.⁶¹ The program includes materials to assist the new lawyer and the mentor in developing a plan for the new lawyer to complete or discuss during the expected monthly meetings⁶² with the mentor. The goal is to enhance the new lawyer’s professional skills and values. “The Bar has developed a proposed NLTP Manual which delineates the requirements that must be completed during the twelve month period. The Manual also includes a Model Mentoring Plan, a timeline, necessary forms, and suggestions for developing effective mentoring relationships.”⁶³

Each new lawyer must work out a Mentoring Plan with the Mentoring Attorney and receive approval of the Plan from the Utah State Bar administrator of the program. The Model Mentoring Plan will generally be used but the new lawyer and mentor can modify it to fit their interests and needs. Certain parts of the Model Plan are mandatory.⁶⁴

Most new lawyers in larger law offices and government agencies will work with an Inside Mentor arranged through their employer. Outside Mentors (a mentor who is not in the same office as the new lawyer) are available for new lawyers in small or solo practice. The Bar also provides a Mentoring Circle Alternative designed specifically for new lawyers “who are not actively representing clients or engaged in the practice of law.”⁶⁵

To qualify as a Mentor, an attorney must have at least seven years of practice experience; must be free of pending or past disciplinary proceedings; must have “malpractice insurance in an amount of at least \$100,000/\$300,000 if in private practice; and approval by the Utah Supreme Court’s Advisory Committee on Professionalism.”⁶⁶ The mentor must attend or listen to the audio tape of the mentor orientation training.⁶⁷ The new lawyer also attends a New Lawyer Training Program seminar.⁶⁸ If problems arise in the mentoring relationship, the new

60. *Id.* at (c)(2).

61. *Id.* at (d)(1)–(2).

62. NLTP MANUAL, *supra* note 58, at 15.

63. UTAH COUNCIL CODE OF JUD. ADMIN. R. 14-808(g).

64. NLTP MANUAL, *supra* note 58, at 45–50.

65. *Id.* at 16.

66. *Id.* at 17.

67. *Id.* at 19.

68. *Id.* at 17.

lawyer or the mentor may petition for a change.⁶⁹ The mentoring attorney receives twelve hours of CLE credit, including two ethics credits for working with the new lawyer in completing the Mentoring Plan.⁷⁰

It is suggested by mentoring experts that law firms providing mentoring programs should select a mentor for the new lawyer who does not have direct supervisory responsibilities over the new lawyer.⁷¹ The new lawyer should recognize, however, that even if the in-house mentor is not one of the supervisors, it is never safe to discuss certain viewpoints with the mentor. The problem may not arise if the same discussion is with an outside mentor.⁷² A new lawyer should seek multiple mentors in various contexts rather than relying solely on one assigned through a bar association or a law firm mentoring program.⁷³

Several alternative approaches are represented among the Mentoring Plans the Utah State Bar Association's Mentoring Committee has reviewed. The most extensive alternatives are represented by the San Diego⁷⁴ and the Indiana⁷⁵ mentoring programs. They involve a list of General Activities as well as suggestions for practice-area-specific activities from family law, litigation, estate planning, real estate, criminal law, employment law, and others.⁷⁶ For example, the San Diego program's list under suggestions for family law includes attending a mediation, attending a final hearing, attending a deposition, reviewing child support and parenting time guidelines, and discussing forms.⁷⁷

In the transactional practice area,⁷⁸ the list of suggested activities for real estate includes discussing the drafting of contracts, attending a

69. *Id.* at 21 ("Neither the new lawyer nor the mentor is required to report the reason for a request to change. Completing the full year of mentoring in the original mentorship together is strongly preferred. Decisions regarding how and whether to reconstitute a mentoring plan because of the change in a new lawyer's status will be made by the NLTP Office, using a rule of reason. The decision will be made on a case-by-case basis, taking into consideration individual circumstances and achievements during the original mentorship.")

70. *Id.* at 7.

71. Wendy Werner, *The Importance of Mentoring*, LAW PRACTICE MANAGEMENT TODAY (July 2004), available at <http://www.abanet.org/lpm/lpt/articles/mgt07041.html>.

72. *Id.*

73. *Id.*

74. SAN DIEGO COUNTY BAR ASSOCIATION, *supra* note 12.

75. INDIANA MENTORING PROGRAM, *supra* note 11.

76. SAN DIEGO COUNTY BAR ASSOCIATION, *supra* note 12, at 12.

77. *Id.*

78. *Id.*

I mostly wanted to learn what it was like to work in real estate law—what kinds of work were [sic] involved, whether it was interesting to me, whether there was a lot of variety. Though still not positive as to whether this is the area of law for me, it certainly remains a serious option. I've had the opportunity to attend several meetings and to discuss various aspects of this practice with the other attorneys in the office. I've gotten to work on several different types of projects, including broker agreements, leases, and corporate filings. I do very little writing and a lot of administrative work, but I've found that that is what most of the real estate work is (at least in house, the way this externship

closing, discussing mortgage foreclosures, discussing the eviction process and reviewing a title insurance policy.

The Utah New Lawyer Training Program contains six required sections, including Introduction to the Legal Community, Rules of Professional Conduct and Standards of Professionalism and Civility, Litigation and Transaction Handling Experiences, Introduction to Law Office Management (required for new lawyers in private practice), Working with Clients (required where applicable), and Life Balance, Public Service and Bar Programs.⁷⁹ The new lawyer must also choose and complete at least five of the Elective Sections, selecting as many activities in each area as feasible. The Elective Sections include Advocacy and Litigation, Alternative Dispute Resolution, Negotiation, Client Interviewing and Counseling, Civil Procedure, Criminal Procedure, Estate Planning, Probate, Family Law, Juvenile Law, Business Law, Tax Law, Real Estate Law, Employment Law, Patent Law, Trademark Law, and Other Electives (includes another seventeen suggested areas in which the new lawyer “may prepare a plan and your own check-off sheet.”⁸⁰

The best developed mentoring program is Georgia’s mandatory Transition into Law Practice Program.⁸¹ Georgia implemented their program five years ago following ten years of committee study and work. The program has five mandatory Advocacy Experiences to be completed by new attorneys before they can be eligible to be lead counsel in any contested civil case or criminal trial. “The mentors and beginning lawyers shall devise five mandatory Advocacy Experiences tailored to the practices of the beginning lawyers.”⁸² The program includes several examples, including an actual or simulated deposition, jury trial, non-jury trial or evidentiary hearing, appellate argument, or mediation. They allow a new lawyer to complete “up to three of the five mandatory Advocacy Experiences prior to admission to practice.”⁸³ It is expected that “the Mentor should monitor and facilitate the progress of the Beginning Lawyer in observing five Advocacy Experiences and by discussing, or arranging for another experienced lawyer to discuss, the context and assess the event observed.”⁸⁴ The Georgia program also lists Optional

is). Because we’re dealing with so many different entities and tenants, things are constantly changing and we have to keep our information up to date and make sure that we’re keeping up on our part of the various deals we’ve made. Student Extern in a real estate-related externship.

79. NLTP MANUAL, *supra* note 58, at 45–50.

80. *Id.* at 51–62.

81. GEORGIA MENTORING PLAN, *supra* note 7, at 7.

82. *Id.* at 6.

83. *Id.* at 7.

84. *Id.*

Advocacy Experiences including an actual or simulated arbitration and a judicial-type hearing conducted by a state or local administrative body. It also lists experiences with Closing and Transactional Work such as observation of a real estate or other business transaction or financial closing.⁸⁵

Ohio's approach in the Lawyer to Lawyer Mentoring Program is to have the mentor and the new lawyer discuss one of several listed topics⁸⁶ for each of several required topic areas, including Introduction to the Legal Community and the Community at Large; Introduction to Personal and Professional Development; Introduction to Ethics; Introduction to Law Office Management; and Introduction to Client Communication, Advocacy, and Negotiation.

The Mentoring Plan includes core concepts, lawyering skills, activities and experiences which should be used as learning activities for the new lawyer and Mentor and as topics for discussion between them. . . . The Mentoring Plan should be developed by the Mentor and new lawyer together during their first meeting Each individualized Mentoring Plan should incorporate as many of these activities and experiences as

I then decided to have more contact with my boss and let him know what I was doing and where I was at in my project. At first I didn't want to bother him too much because I know that he is really busy, but after just going into his office a couple of times just to give him an update, he started to talk to me and at one point we had a discussion for over an hour about what I am looking for in this externship, along with what are my future plans. Not only did I appreciate his advice, but I noticed that the more I talked with him and discussed what I have been doing, the more projects he gave me. Student Extern.

85. GEORGIA MENTORING PLAN, *supra* note 7.

My main objective at the law firm this week was to complete a letter requesting a formal sit down with a political entity in order to discuss our takings claims. I wrote the first draft of this letter last week and it was essentially graded and given back to me. My initial impression was this was to be a simple one page paper, but when I had it critiqued by my supervising attorney he told me he wanted it to be around four pages. I had to spend more time researching in order to strengthen and to go further in depth on my takings section. I also had to rethink my legal theory. I had to spend some time just thinking about the problem. Since our claim revolved around impact fees, I interviewed a knowledgeable general contractor about impact fees in order to gain a 'real world' understanding of how they worked. After the interview, and the additional lexis research, study of maps, and just plain thinking, I was able to come up with a better legal theory and write the paper as a three page document with some attachments. It was a lot of work and a lot of fun. Student Extern working with a real estate development firm.

86. OHIO MENTORING PROGRAM, *supra* note 8.

X was very helpful in reminding me to take a step back from my work and learn to see the big picture of the case and the case's position in relation to other cases. She spent an hour and a half discussing the issues of the case with me and my memo [sic]. I know that this feedback is priceless. I appreciated her care and concern about my work product. Student Extern working with a state supreme court justice.

feasible, while being customized to the particular practice setting, individual needs and personal goals of the new lawyer.⁸⁷

Texas simply provides a list “of the kinds of things [the mentor and the new lawyer] might try to accomplish.”⁸⁸ Similarly, Illinois represents a non-prescriptive approach to mentoring by providing a list of “Things a Mentor Can Do, Things a Mentee Can Do, and Things that Both Can Discuss.”⁸⁹

The Utah New Lawyer Training Program has modeled itself more closely to the Georgia program than any other mentoring program. Both are mandatory for every new lawyer during the first year of practice. Certain exemptions exist for new lawyers practicing outside of these states and judicial clerks can apply for an exemption until after they complete their clerkship. Like the Georgia plan, a new lawyer is expected to accomplish a certain number of Litigation and Transaction Handling Experiences. “The new lawyer is required to accomplish at least ten . . . Experiences in Handling a Case or Transaction. Up to four (4) of the selected Experiences may be accomplished during law school in a credit-earning Externship, a Law School Clinical program, a simulated skills course, or a supervised Pro Bono case.”⁹⁰ In order to demonstrate that the new lawyer has filled these experiences during law school, the new lawyer must describe the experience, the course or externship in which it occurred, and the new lawyer must reflect on what was learned from each of these experiences during law school.⁹¹ For these experiences completed during law school, “[t]he supervising attorney/judge or law professor for the assignment must sign the report certifying that the assignment was completed by the new lawyer.”⁹²

87. OHIO MENTORING PROGRAM, *supra* note 8. In Ohio, the new lawyer and mentor are required to meet for a minimum of six, in-person sessions totaling nine hours of mentoring time. *Id.* at 2.

88. Hale, *supra* note 9, at 106.

89. ISBA MENTORING COMM., *supra* note 10, at 6–7.

90. NLTP MANUAL, *supra* note 58, at 5.

91. *Id.* at 20.

92. *Id.* The list of activities includes participating in a deposition, a trial, an evidentiary hearing, a mediation or arbitration, a negotiation, the interviewing or counseling of a client, trial preparation and a trial, plea negotiations, and an administrative hearing, preparing a complaint and a Summons, drafting of Wills and revocable Living Trusts, initial probate documents, incorporation documents and business agreements, settlement documents, a contract, a pleading or motion for an administrative body, and a client’s tax return. *Id.* at 5–6.

IV. CONNECTIONS BETWEEN LAW SCHOOLS AND BAR ASSOCIATIONS IN
PREPARING NEW LAWYERS FOR PRACTICE

Law Schools have traditionally depended on the support of local attorneys and have important relationships with state and local bar associations. In this time of increasing discussion about law school curriculum reform, it is helpful to consider the impact of the practicing bar on law schools.

The main representative for the practicing bar in connection with law schools has been the American Bar Association (“ABA”). The ABA serves as the accrediting agency recognized by the Federal Department of Education for this crucial function. The primary vehicle for carrying out this role rests with the ABA’s Section of Legal Education and Admissions to the Bar. The Accreditation Committee reports to the Council of the Section. The Section has adopted Accreditation Standards⁹³ and they organize law school site visits through site visit teams assigned to prepare a report for each law school every seven years. These accreditation standards are regularly amended as the Section directly impacts the way legal education curriculum develops. The most recent changes have focused on skills training,⁹⁴ field placement (externship) programs,⁹⁵ and pro bono opportunities for law students.⁹⁶ Each of these practice-oriented approaches is a primary means available during law school for preparing attorneys for the practice of law.

A number of significant studies and reports have urged greater attention to skills development and preparation for professional practice. The call came through the MacCrate Report from the American Bar Association in 1992.⁹⁷ More recently, the Carnegie Foundation for the Advancement of Teaching renewed the call in 2007 in their study, *Educating Lawyers*.⁹⁸ These studies urge law schools to provide more practical preparation courses and programs designed to assist students in being better prepared to begin their professional practice careers.

As important as the American Bar Association has been in shaping legal education through the accreditation process, it is surprising that state bar associations have not done more. The states are the gatekeepers

93. ABA STANDARDS, *supra* note 40.

94. *Id.* at 302(a)(4).

95. *Id.* at 305.

96. *Id.* at 302(b)(2).

97. MACCRATE REPORT, *supra* note 20.

98. EDUCATING LAWYERS, *supra* note 3, at 10. Another new book also provides “[a] [v]ision and [a] [r]oad [m]ap” in *Best Practices for Legal Education* published as a product of the Best Practices Project by the Clinical Legal Education Association. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007) [hereinafter BEST PRACTICES], available at http://law.sc.edu/faculty/stuckey/best_practices/best_practices.pdf.

to the practicing bar, so they are in a position to place specific requirements on applicants for admission to the bar. Every lawyer must pass a state bar examination or qualify under other requirements in order to be licensed to practice law. It is possible for state bar associations or state supreme courts to impact legal education provided through the law schools. As a matter of fact, the local bar associations have done very little to impact the curriculum choices of law schools.

Over the years, the bar examination has consisted primarily of a series of essay questions. In recent decades, the multistate bar examination has become an additional part of the process. In contrast to the essay examination, the new multistate bar uses multiple choice questions to test a student's knowledge of the doctrinal courses students typically attend during law school or for which they have prepared through specialized bar preparation courses. The only innovation aimed at directly assessing the practical preparation of bar applicants is the new Multistate Performance Test.⁹⁹ This relatively new portion of a majority of state bar examinations has also been prepared as a part of the multistate examination. It focuses on a student's abilities to engage in problem solving based on actual documents and materials describing a practice situation a lawyer may encounter in dealing with a client's dispute or transaction.

A few states have adopted new lawyer training programs often establishing a mentoring program new lawyers have to complete. Although these programs could (and some do) give a new lawyer credit for fulfilling certain of these new lawyer training requirements based on practice experiences they have had during law school, most of the new lawyer training/mentoring programs require accomplishment of all of the components of the program during the first year of a newly admitted attorney's career. Delaware's apprenticeship program for new lawyers,¹⁰⁰ in contrast, is to be completed by a new attorney as a prerequisite for admission to the bar as a practicing attorney. To complete Delaware's requirements, a bar applicant must spend at least five months working under the supervision of an experienced attorney as a preceptor in the state. Part, or all, of that requirement can be satisfied during the law school years.¹⁰¹

Even though bar associations rarely exercise their inherent authority to mandate specific student learning experiences during law school, there are many important connections between the practicing bar and law

99. "The Multistate Performance Test examines six fundamental lawyering skills that are required for the performance of many lawyering tasks." <http://www.ncbex.org/multistate-tests/mpt/> (last visited Oct. 27, 2009).

100. DEL. SUP. CT. R. 52(a)(8).

101. *Id.*

schools especially in clinical legal education. In fact, it would be difficult for law schools to provide many quality educational opportunities without the involvement of local attorneys.

Many experiential learning opportunities would not be available to law students without the generous help of the practicing bench and bar. The cost for the hours of dedicated mentoring provided our students would be prohibitive.

Externships are the best example of valuable opportunities for students to work on actual cases and transactions in law offices as part of their law school curriculum. Students earning two credits in the semester are in the law offices and judicial chambers for at least one hundred hours. If they are earning ten credits, it is for five hundred hours. Over fifteen weeks in a typical academic semester, the student will be supervised by a practicing attorney or judge from seven (for two credits) to thirty-three hours (for ten credits) each week.

Supervision is a key to the learning experience because the student's assignments are connected to actual work of the office involving lawyer tasks. These assignments often focus on legal research and writing, but students create learning plans at the beginning of the externship in which they designate the kinds of assignments and observation opportunities they want to have. In many cases, the supervision provided by the attorney/judge mentors is the first individualized connection they have had in their many years of education. Even in clinical courses, a supervising faculty member in a skills course or in an in-house clinic is dividing supervision time among eight to fifteen students during the semester.¹⁰² Typically, an externship supervisor is involved with only one law student in the externship.

Supervisor experience and ability are varied among the participating attorneys and judges, but the best of them will take time to develop assignments for the student geared to the student's past experience, interests, and abilities based on the quality of the student's initial work product and initiative. Supervisors will be careful in explaining the assignment and clarifying expectations. At their best, the assignments will be placed in a context by the supervisor's summary of the matter or case to which they are connected. They also specify the expected manner in which the completed tasks should be presented and the time frame involved. Supervisors typically provide the student with an example of the work product desired based on prior work performed on similar assignments by other attorneys or paralegals. The assignments are to be meaningful, interesting, and comparable to work attorneys do. Menial work such as filing, routine and repetitive tasks, and assignments

102. *AALS Report, In-House Clinic*, *supra* note 37, at 520.

designed solely as time-filling activities or other forms of make-work chores are to be avoided. One of the most useful roles filled by the supervisor is helpful feedback delivered orally or in writing so the law student can learn how to improve assignments in the future. Opportunities to receive critical evaluations of work performed in a timely manner are among the best teaching moments arising in the externship. Specific suggestions for improving externship work product are especially valued. Often the law student will have exposure to a variety of partners, associates, paralegals, and other office staff, who expand the law student's opportunities to learn from these associations. Supervisors typically receive written materials and pointers about being good supervisors from the law school prior to the student's time in the externship and during the term of the experience through site visits, telephone discussions and email correspondence from the law school. The student's desires and expectations are also shared with the supervisor through creation of the student's learning plan early in the externship.

Why are attorneys willing to take the time and the responsibility to assist a law student? The primary motivation is the caring desire to participate in a valuable training experience with the law student in these early, formative encounters the student has with the practice of law. Experienced attorneys enjoy the role of being mentors as they recall the early time in their own legal careers and the work assignments and involvement of attorneys who helped them along the way.¹⁰³ Another motivating factor is the professional responsibility each attorney has to improve our legal system¹⁰⁴ by impacting the early development of young law students. A third enticement is the chance to give back to a law school in a meaningful way. Especially if the attorney attended that law school, the chance to work with law school professors and administrators they knew as students is a satisfying way to support the law school. Finally, exposure to young law students is a means of keeping up with legal education through interactions with highly motivated, willing law students, who are interested in discussing lessons they are learning in their classes and in discovering the ways in which the theories and procedures they are learning are applied in real-world practice settings. Students in externships also produce useful work products for the law office or judge. Even though they have minimal legal experience, students often perform legal research competently in

103. Dennis Kennedy, *Finding Great Resources About Mentoring on the Internet May Be Even More Difficult than Finding a Great Mentor On Your Own*, LAW PRACTICE TODAY, Aug. 2004, available at <http://www.abanet.org/lpm/lpt/articles/slc08041.html>.

104. MODEL RULES OF PROF'L CONDUCT, pmbl.

finding answers to questions the supervising attorney would otherwise have to charge clients at the lawyer's hourly rate.

Consider the economic and resource impact of lawyers' participation as supervisors in law student externships. The law school receives these services for free. Law school resources devoted to supporting the externship program include time of an externship director and faculty involved in administering the externships. Law schools provide counseling to students in their selection of the externship placement and guidance in the classroom component of the program. They also provide guidance through other reflection activities that students complete such as journal writing, site visits with the supervising attorneys/judges. Other similar procedures, such as reports, work product, and evaluations are used to keep the school in touch with the students and supervisors and to allow support staff to keep track of the student externship requirements. The law school support personnel give rise to expenses connected to the externship, but the most crucial part of the experience—the work students perform at the placement—is available without law school financial resources. The potential expansion of this training program is relatively unlimited compared to other forms of practice-related courses in a law school's clinical education program because of this lesser demand on resources.

Traditionally, law schools have relied heavily on large classes in which 50 to 100 students in a given class are typical. Most first-year courses are taught in these large classes with very high student-to-faculty ratios. Students have smaller classes in upper-class years through seminars, skill simulation courses like trial advocacy or legal interviewing and counseling, and in-house clinic programs. Small student-to-faculty ratios are necessary in these courses because of the nature of the work students are assigned. In seminars, they write lengthy papers and prepare class presentations; in simulated skill courses, the faculty member interacts with the students through role play and technology supported video and audio recording exercises; in clinics, students practice law with actual clients under the direct supervision of clinical faculty. The one form of clinical legal education that can be delivered in large classes with relatively minimal faculty involvement is the externship approach.

Many law schools limit the numbers of students participating in externships by keeping the student-to-faculty ratio low.¹⁰⁵ These law schools have goals focusing on small group interaction where students can discuss the practice settings in which they have their externships and

105. James H. Backman, *Where Do Externships Fit? A New Paradigm is Needed: Marshaling Law School Resources to Provide an Externship for Every Student*, 56 J. LEGAL ED. 615 (2006).

reflect on a variety of career, substantive and procedural issues, and ethical situations they encounter. They take a leading part in selecting placements, counseling students in choosing the externship setting, and conducting on-site visits with the student and supervisor in the office or court where the externship is taking place. If each of these tasks is conducted by a faculty member, the maximum number of students served by a single faculty member is ideally set at fifteen or eighteen.¹⁰⁶

Other law schools have cut back on several of these tasks with the result that a single faculty member may be responsible for as many as fifty externship students.¹⁰⁷ For example, the selection of externship placements may be left to the student's own initiative. After a program is in place for a number of years, the students are able to choose from a large list of externship placements where students have previously had their externship experience. Students may also seek approval for new placements even though no student has previously been there. This approach is especially common in summer externship programs where students are permitted and encouraged to find an externship anywhere. Geographical limitations are removed, so students can seek externships wherever they choose based on many factors such as convenience of being able to live at home or with relatives or developing connections in a city where the student plans to practice after law school even though it is far away from the law school. In these distant externship programs, many students are able to take advantage of international placements as well. The main role of counseling and advising students is shifted from a faculty member to the career services office. These law school administrators are well connected to take advantage of alumni and career related connections they have developed throughout the United States and abroad.

The focus in these distant and summer externship programs necessarily reduces the role and importance of weekly classroom meetings.¹⁰⁸ Orientation for the students can still take place but may not be part of the externship course. Several law schools provide orientation class sessions on a non-credit basis during the semester prior to the summer when the student takes part in the distant externship.¹⁰⁹ These sessions can be held in large groups because they do not have the same purpose of giving students chances to reflect on their experiences. The desired reflection is handled through an emphasis on weekly reflective

106. J.P. Ogilvy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, 38 GONZ. L. REV. 165, 172 (2002).

107. Backman, *supra* note 51.

108. Erica M. Eisinger, *The Externship Class Requirement: An Idea Whose Time Has Passed*, 10 CLINICAL L. REV. 659, 660 (2004).

109. Backman, *supra* note 51, at 15.

journals submitted by email to which the faculty supervisors respond within a few days. Some other law schools preserve the advantages of weekly classroom sessions by using modern technology through teleconferencing approaches.¹¹⁰

Site visits in distant externship placements are also more problematic. The purpose of site visits as a means of having personal contact with the student and supervising attorneys or judges is sometimes filled through telephone conversations because of the expense and logistical difficulties in visiting a widespread set of locations. The ABA standards for field placements permit law schools to meet the site visit requirement by using equivalent alternative means.¹¹¹

A school that makes all of these adjustments in the way faculty supervisors are involved frees itself from the lower student-to-faculty ratio. Theoretically, it is possible for an externship program to have as many students under the direction of a faculty member as the law school has in the largest of the standard classes with high student enrollment. Because the students' practice-based assignments are supervised directly by an attorney or judge responsible for the work on the case or for the client, the individual students have direct and meaningful contact with the supervisor at the externship site. Experiential education through externships is primarily dependent on the field supervisor because the actual work being done by the student is connected to a case or client for which the field supervisor has full professional responsibility. Even though an individual student may share the faculty supervisor with as many as fifty other students, each student has a unique one-on-one relationship with the field supervisor. The practicing bench and bar provide this crucial element for an externship, which is correctly viewed by the students as the essence of their externship enrollment.

Externships are the newest, but also the most extensive, manner in which practicing lawyers and judges are involved in a law student's education. Other law school programs have also depended on voluntary, usually unpaid activities of practicing lawyers. Moot court and trial advocacy competitions at individual law schools would be impossible to offer to virtually every student without the generous participation of lawyers and judges serving as competition judges several evenings each semester. Many law schools have well developed mentoring programs in which new law students are assigned a mentor who provides discussion and networking opportunities through office visits, meetings, lunches, and observation experiences. Law school pro bono programs, including a number of schools with required student participation, also depend

110. *Id.*

111. *Id.* at 17.

exclusively on cooperating attorneys supervising the student work. Many students take advantage of third-year practice rules¹¹² in a variety of practice settings dependent on the willing supervision of a responsible attorney and the approval of the judge assigned to the individual case. Career services offices at law schools develop close working relationships with practicing attorneys who come to the law schools to have on-campus interviews as part of the hiring process. Students also benefit from the advice and comments of attorneys participating in law school sponsored mock interview sessions. Attorneys and judges are sought out by students for letters of recommendation in the law school admissions process and in the hiring context through job references and career counseling. Other interactions between law students and members of the bench and bar are available.¹¹³ Many of these connections are key components of the experiential education students receive during their law school years.

One appropriate consequence of the many contributions provided to law schools by the practicing bar is a justification for bar associations to have a larger impact on law school curriculum reform than they have had in the past. The bar and numerous recent books and studies have called for more attention by law schools aimed at the preparation of law students so they are ready for practice from the day the young attorney is licensed as a practicing attorney. The Carnegie Report's study on *Educating Lawyers*¹¹⁴ calls for increased attention to the "apprenticeship of practice" and the "apprenticeship of professional identity." In order for law schools to increase opportunities for students to have these important educational experiences, they must rely even more on willing attorneys and judges. Externships are an appropriate vehicle to meet the Carnegie Report's call for more opportunities to satisfy these two apprenticeship-related goals.

Real practice settings become available to every student through externships. Previously, many students were unable to find paid work opportunities in law offices during the law school years because the majority of these positions are reserved for students with high class standing based on law school grades or are offered based on family relationships or friendships. Large externship programs overcome some

112. See, e.g., UTAH COUNCIL CODE OF JUD. ADMIN. R. 14-807.

113. Interactions arise through programs sponsored by Inns of Court, extra-curricular events, journal articles, alumni sponsored events and programs, class presentations, seminars and clinical courses with practice connections, graduation speeches, and public interest opportunities for individual students and student organizations. Financially, law schools rely on attorneys to provide externship placements and supervision; to serve as adjunct professors; as sources of student summer clerkships and part-time work during academic semesters; and scholarships and other generous donations for endowments, chairs, and professorships.

114. EDUCATING LAWYERS, *supra* note 3, at 126.

of these limitations for the full range of students. Law practice opportunities are available for virtually every student, including positions with judicial chambers and many government offices and smaller for-profit and public interest law offices that are not able to pay students to work for them because of limited budgets. These offices are very willing to provide real work experiences for law students who are working for law school credits instead of compensation from the employer. Externship programs are truly leveling the competitive field through the most democratizing example of student placement that exists in the world of law practice. Career services offices at many law schools have embraced externships as a means for providing valuable placements for virtually all students. These opportunities help career services offices to overcome the image among students that they are able to help only students in the top third of the class.

Externships add a significant component to a law school's ability to give students opportunities to fulfill the aspirations of providing an apprenticeship of professional identity as recommended by the Carnegie study on *Educating Lawyers*.¹¹⁵ The other two means available for this same purpose are the traditional professional responsibility course and in-house clinic experiences. The class on legal ethics and the in-house clinic experiences are enriched significantly when students also participate in an externship. For many students, an in-house clinic is not as readily available as an externship because of the resource limitations that prevent offering a clinic enrollment to every student. The doctrines and theory taught in law school classes become more meaningful to students as they have the opportunity of working with lawyers and judges as the supervisors in an externship. Most externship programs encourage students to identify and reflect on ethical issues that arise in their work assignments and through the opportunities to observe lawyers performing legal work. The role of being a zealous advocate and the important responsibilities concerning competence, confidentiality, and loyalty to the client are regularly noted and discussed by students in their reflective journals and in classroom discussions. Many externship programs build specific topics related to professional responsibility into the class syllabus for the externship and assign these topics to be treated in the student journals. Students regularly comment on the value of exploring these ethical obligation topics with the attorneys or judges in their externship placements.

115. *Id.*

V. REFORM RECOMMENDATIONS FOR IMPROVED LEGAL EDUCATION IN
PREPARING NEW LAWYERS FOR PRACTICE OF LAW

The following section highlights a number of the key suggestions contained in the two major studies calling for greater availability of experiential learning courses in law schools as a priority objective for improving legal education. They follow the challenge raised by the American Bar Association's MacCrate Report on *Narrowing the Gap*¹¹⁶ from 1992 emphasizing the need for legal educators and the practicing bar to work together in improving legal education and professional development. *Best Practices for Legal Education, A Vision and A Road Map*, published by the Clinical Legal Education Association in 2007,¹¹⁷ and *Educating Lawyers*, by the Carnegie Foundation in 2007,¹¹⁸ recommend steps for improving legal education in preparing new lawyers for the practice of law. Unfortunately, both of these recent studies fail to give adequate attention to law school externship programs. In this section, I explore the role of externships in accomplishing these objectives and why externship programs are in the best position to give every law student valuable opportunities to bridge the transition from law school to the practice of law. The common theme emphasized in this Article focuses on how practicing lawyers can and do assist legal education to achieve these practice preparation aspirations.

In *Best Practices for Legal Education*,¹¹⁹ Roy Stuckey and others encourage bar associations to expect greater results from legal education in preparing new lawyers for the practice of law. Both *Best Practices* and *Educating Lawyers*, suggest that law schools should "integrate the teaching of knowledge, skills and values . . . and give much greater attention to instruction in professionalism."¹²⁰ *Best Practices* applauds the "new training framework for solicitors, including a description of the knowledge, skills, and values that new solicitors should have on their first day in practice"¹²¹ being developed by the Law Society of England and Wales. *Best Practices* identifies the "changes we need to make" in

116. MACCRATE REPORT, *supra* note 20.

117. The topic of legal education reform was the focus of a conference, The Future of Legal Education: Comparative Perspectives, held at Georgia State University College of Law. For resources on Innovative Legal Education, see Course Home Page, <http://law.gsu.edu/ccunningham/LegalEd/Resources.htm> (last visited October 23, 2009); Abstracts of the Presentation, <http://law.gsu.edu/FutureOfLegalEducationConference/abstracts.php> (last visited October 23, 2009).

118. See generally EDUCATING LAWYERS, *supra* note 3.

119. STUCKEY ET AL., *supra* note 98.

120. *Id.* at viii; see generally EDUCATING LAWYERS, *supra* note 3.

121. STUCKEY ET AL., *supra* note 98, at 1.

law school curriculum as “substantial,” “significant,” and “compelling,” and calls for “lower student-faculty ratios.”¹²²

Externships help accomplish the lower student-to-faculty ratios if the participating lawyers and judges providing supervision over the actual field experiences can be considered as faculty. They are certainly in a teaching position as supervisors and they provide an opportunity for a student to have individualized attention on the important one-to-one basis involved in this form of experiential education.

Best Practices maintains that “[l]aw schools should demonstrate a commitment to preparing their students . . . for law practice. They should engage in a continuing dialogue with . . . practitioners, judges, licensing authorities, and the general public about how best to accomplish this goal.”¹²³ Externships are among the important contact points a law school has with practitioners and judges as they provide learning experiences to prepare students for law practice. *Best Practices* also encourages “outcomes-focused programs of instruction that are concerned with what students will be able to do and how they will do it, as well as what they will know on their first day in law practice.”¹²⁴ Externships exist in the practice setting where students receive assignments to handle actual practice functions. The assignments grow out of the needs in client matters. Law schools and practitioners have an opportunity to shape the outcomes desired by providing assignments that give students the chance to accomplish them, thereafter allowing the supervising attorney or judge to measure how well the student performed these assignments. Some externship programs have created checklists of experiences for specific kinds of placements (judicial, prosecutor, general practice, immigration, family law, etc.) to be used by the student and supervisor in identifying desired experiences to meet the student’s learning goals.

Best Practices addresses the delivery of instruction in part by encouraging law schools to “enhance the quality of their programs of instruction with technology and by making appropriate use of practicing lawyers and judges.”¹²⁵ Externships clearly provide an impressive way to use practicing lawyers and judges. It is also common for students to have experiences with up-to-date technology in the externship placements that are often superior to the technology available at the law school. The practitioners’ equipment and technology are available to the student without any cost to the law school. Many students work in offices with unlimited availability of Lexis-Nexis or WestLaw search capabilities and

122. *Id.* at 4.

123. *Id.* at 8.

124. *Id.*

125. *Id.* at 9.

they appreciate the additional experiences they have in practicing with the use of these research aids.

Best Practices also suggests improvement of the licensing process through bar associations. “For example, bar admissions authorities could impose additional requirements on law school graduates to ensure that they are prepared to provide professional legal services”¹²⁶

Bar Associations are in a position to make a positive impact on law school curriculum by including specific practice-oriented classes as a bar admission requirement. Several states have taken steps in this direction. In fact, a majority of states now require students to pass a new performance test component prepared by the National Bar Examiners.¹²⁷ Delaware places the most extensive requirement on student applicants by requiring them to have at least five months in a law practice apprenticeship before they can be admitted to the bar following the standard kind of bar examination. This Preceptor requirement ties in to the law school curriculum because a student can begin accumulating the necessary five months of practice during their first year of law school.¹²⁸ Apparently time in an externship will be counted during the time a student is there for a full-time position.

The Society of American Law Teachers (SALT) has criticized current bar examinations and suggested various alternative “ways to license applicants.”¹²⁹ In New Hampshire, there is a proposed alternative method of licensing program “that would require law students . . . to participate in live-client clinics or externships”¹³⁰ in addition to taking specific courses in Law Office Management, ADR, Criminal Law, Family Law, and Real Estate. Assignments from these classes and work product from the clinics and externships “would be compiled in a portfolio” to be reviewed by the Bar Examiners to “determine whether the portfolio demonstrates that the bar applicant possesses sufficient knowledge of legal principles and skills to be admitted to the New Hampshire bar.”¹³¹ In New York under a proposed pilot project called the

126. *Id.* at 12.

127. National Conference of Bar Examiners—Multistate Performance Test, <http://www.ncbex.org/multistate-tests/mpt/>.

128. DEL. SUP. CT. R. 52(a)(8).

129. SALT, *Statement on the Bar Exam: July 2002*, 52 J. LEGAL EDUC. 446 (2002). See SALT, *Potential Alternatives to the Existing Bar Exam*, available at http://www.saltlaw.org/~salt2007/files/uploads/bar_examalternatives.doc; see also, Clark D. Cunningham, *The Professionalism Crisis: How Bar Examiners Can Make a Difference*, 74 THE BAR EXAMINER 6 (Nov. 2005) (discussing a series of alternatives to the bar examination); Andrea A. Curcio, *A Better Bar: Why and How the Existing Bar Exam Should Change*, 81 U. NEB. L. REV. 363 (2002). STUCKEY ET AL., *supra* note 98, at 12–13. The Georgia State University School of Law published a symposium issue devoted to examining alternatives to the bar exam, 20 GA. ST. U. L. REV. VII (2004), available at <http://law.gsu.edu/lawreview/index/archives>.

130. SALT, *Statement on the Bar Exam*, *supra* note 129.

131. *Id.*

New York Public Service Alternative to the Bar Exam, an applicant must successfully complete “(1) the Multistate Professional Responsibility Exam; (2) a videotaped simulation exercise; (3) a performance-type written exam, such as the Multistate Performance Test . . . and (4) a three month rotation in the New York state court system.”¹³² Successful applicants admitted through this alternative route “would be required to perform, pro bono, 150 hours of similar services in the New York courts during the first 18 months of admission.”¹³³ In Arizona there is a proposed Community Legal Access Bar Alternative requiring successful completion of “a one-year apprenticeship in the CLABA Institute (an institute representing the working poor).” It may be possible for an applicant to have credit working in one of these alternative community or judicial programs through externship programs or in-house clinic programs in which the applicant is enrolled during law school.¹³⁴

VI. HOW EXTERNSHIPS MEET THE CARNEGIE FOUNDATION CONCERNS RAISED IN *EDUCATING LAWYERS*

The Carnegie Foundation’s book published in 2007, *Educating Lawyers*, praises the way law schools prepare students through the case-dialogue method. The approach in first-year law classes prepares future lawyers well in the intellectual or cognitive apprenticeship,¹³⁵ the first of the three apprenticeships the Carnegie study identifies as necessary in preparing law students for their professional careers. The report is more critical of law schools regarding the other two identified apprenticeships—the apprenticeship of practice¹³⁶ and the apprenticeship of professional identity.¹³⁷

132. *Id.*

133. *Id.*

134. *Id.*

135. “The first apprenticeship, which we call intellectual or cognitive, focuses the student on the knowledge and way of thinking of the profession.” *EDUCATING LAWYERS*, *supra* note 3, at 28. This first apprenticeship focuses on “[t]he teaching of legal doctrine and analysis . . .” *Id.* at 194.

136. “The students’ second apprenticeship is to the forms of expert practice shared by competent practitioners.” *Id.* at 28. “Introduction to the several facets of practice included under the rubric of lawyering, leading to acting with responsibility for clients.” *Id.* at 194.

137. “The third apprenticeship, which we call the apprenticeship of identity and purpose, introduces students to the purposes and attitudes that are guided by the values . . . [of] the professional community [I]t is the ethical-social apprenticeship . . .” *Id.* at 28. This apprenticeship is related to professional identity “which is sometimes described as professionalism, social responsibility, or ethics, [professional identity] draws to the foreground the purposes of the profession and the formation of the identity of lawyers . . .” *Id.* at 14. This apprenticeship places an “emphasis on inculcation of the identity, values, and dispositions consonant with the fundamental purposes of the legal profession.” *Id.* at 194.

During the two semesters of law school, the plaintiffs, defendants, their counsel, and judges seemed so unreal—so far away. But over the last month and a half I have seen

The apprenticeship concept harks back to the means by which lawyers were trained for legal careers before the current system of law school education emerged.¹³⁸ Current learning theory also focuses on the role of apprenticeships in describing the way a novice learns by observing, modeling, acting, and receiving feedback from a coach or expert¹³⁹ as they aspire to becoming experts themselves in the profession of law.¹⁴⁰

The Carnegie Foundation's criticism is that law schools have not provided sufficient training in educating lawyers to prepare them adequately for becoming practicing attorneys.¹⁴¹ The challenge to law schools is highlighted by contrasting advances made in preparing doctors, nurses, and engineers in recent decades.¹⁴² The study shows that law schools have not provided the universal opportunity for novices to receive sufficient training in the apprenticeship of practice focused on skill development.¹⁴³ Similarly, law students do not receive adequate opportunities to achieve the goals of the apprenticeship of professional identity.

how real the law is. How it affects so permanently the lives of criminals, plaintiffs, and other civil defendants. Being a lawyer is very serious business. I have learned during the course of my externship that what lawyers do is important. That as far as criminal law is concerned, both the prosecutor and the public defender jobs are important and that even though they are on opposite sides of every case, these lawyers are good people who have honorable professions. Student Extern.

138. “[C]hange in professional training over the past century . . . entailed a shift away from apprenticeship, with its intimate pedagogy of modeling and coaching, toward reliance on the methods of academic instruction . . .” EDUCATING LAWYERS, *supra* note 3, at 25.

139. *The format of the trial was familiar as I participated in the Trial Ad competition last semester. For some reason, this seemed more relaxed. The attorneys did not have everything memorized. They had to look at their notes once in a while. They weren't always eloquent. They did not have perfected opening and closing statements. This made me feel a little better if I choose their line of work when I graduate. I don't have to be perfect. What I did realize though is that they were prepared. They knew the law. They knew their theories. They knew how to examine and cross examine. Student Extern working in a trial court.*

140. “[L]earning happens best when an expert is able to model performance in such a way that the learner can imitate the performance while the expert provides feedback . . . A great contribution of modern cognitive psychology has been to place apprenticeship . . . once again at the heart of education.” EDUCATING LAWYERS, *supra* note 3, at 26.

141. “Our primary concern is . . . how to use the second two years of law school more effectively . . . and . . . how to bring the teaching and learning of legal doctrine into more fruitful dialogue with the pedagogies of practice.” *Id.* at 12 (parentheses omitted). The authors of the Carnegie study conclude that “the common core of legal education needs to be expanded . . . to encompass substantial experience with practice, as well as opportunities to wrestle with the issues of professionalism.” *Id.* at 195. They urge “greater attention to preparation for practice . . .” *Id.* at 202. They explain that “legal education typically pays relatively little attention to direct training in professional practice.” *Id.* at 188.

142. In noting that students are losing out on valuable practical experience, the authors point out that “law schools could benefit from ideas drawn from the education of physicians, teachers, nurses, engineers, and clergy, as well as from research on learning.” *Id.* at 185.

143. *See generally id.*

In connection with skills training, Carnegie's *Educating Lawyers* applauds advances aimed at "enhancing the role of clinical education."¹⁴⁴ The positive examples provided point to clinical opportunities and simulation courses in which law students receive excellent opportunities to move along the path beginning as novices to learn the skills necessary to become experts.¹⁴⁵ Three drawbacks prevent these positive clinical examples from succeeding in providing every student with the desired apprenticeship of practice.¹⁴⁶ First and foremost, these examples of clinical advances are very expensive because they require intensive faculty coaching and low student-to-faculty ratios.¹⁴⁷ These costs are a significant hurdle for law schools that have developed their primary focus on case-dialogue teaching in large classroom settings. Second, because of the high cost for the highly praised clinics and simulation courses, a majority of students are unable to participate in this form of training in law school.¹⁴⁸ Third, clinical faculty members are typically teachers with lower status than the full-time faculty members who are teaching standard, doctrinal courses.¹⁴⁹

Externships or supervised field placements are mentioned as an additional form of practical, clinical experiences¹⁵⁰ for law students in the Carnegie report but are not explored in any depth.¹⁵¹ Externships are generally included as one of the approaches available for law school clinical education. However, in *Educating Lawyers*, the focus is on the ways simulation courses and clinics fulfill the apprenticeship of practice

144. *Id.* at 192.

145. They draw attention to "'lawyering' courses, particularly legal writing instruction, simulated practice, and clinical-legal courses . . ." *Id.* at 17. They advocate for "'a clinical model for the systematic study of practice . . . to probe the elements of inarticulate expertise . . . the study of law in use.'" *Id.* at 200–01 (quoting P.C. Davis, *Experiential Legal Education in the United States*, in *CAN JUSTICE BE TAUGHT? SOCIAL RESPONSIBILITY AND LEGAL EDUCATION* 124–25 (2006)).

146. [I]t was not uncommon to hear faculty voice deep skepticism about the intellectual value of practice-oriented courses. 'Students will get better training when in a firm than from our skills courses. . . . [O]ur clinical program is not a good use of resources. . . . It is a side show in which the central faculty and students are not interested.'" *Id.* at 100–01 (quoting an unidentified professor).

147. The authors explain that "[o]f all the obstacles to this reform, the relatively higher cost of the small classes is the most difficult to overcome . . ." *Id.* at 198.

148. The authors emphasize: "[I]n virtually no law schools do these experiences systematically reach all of the students." *Id.* at 191.

149. The authors point out that "[clinical courses are] taught by instructors who are themselves not regular members of the faculty." *Id.* at 24. For this reason, they explain "clinical education's problematic legitimacy . . ." *Id.* at 89. The reasons for the lower status is that clinical courses are "often taught by faculty . . . that is not typically tenured and that has lower academic status." *Id.* at 87–88. "[C]linicians operate from a devalued position institutionally . . ." *Id.* at 94.

150. *Id.* at 120 ("[P]ower of clinical experiences to engage and expand students' expertise and professional identity through supervised responsibility for clients.').

151. The book does encourage externship programs where "students experience real-world lawyering in . . . a supervised field placement . . ." *Id.* at 37, 120.

and apprenticeship of identity training opportunities Carnegie recommends.¹⁵²

This Article on externships and mentoring adds suggestions to the Carnegie study by examining the manner in which externships contribute to these aspirational goals. The perspective presented shows that externships developed on the apprenticeship model¹⁵³ are a uniquely appropriate vehicle available for law schools to supplement other practical training opportunities so that every law student can participate through externships in an apprenticeship of practice and in the apprenticeship of identity and purpose.¹⁵⁴

Externships offer several advantages to law students, law schools, and bar associations. First, law school externships are superior to traditional apprenticeship approaches because they introduce quality control features. Apprenticeship-based externships differ from discredited legal apprenticeships from the past. As credit-bearing courses for law students, externships provide law school oversight that did not exist in the previous apprenticeship training systems run by bar associations. Law school externships are not based on the “often haphazard nature of old-time apprenticeships.”¹⁵⁵ Law school faculty or administrators are involved in numerous ways to guide the learning opportunities for participating students. Law schools approve student placements, establish academic requirements expected from participating law students, monitor student experiences, and use a variety of means for students to reflect on their assignments and activities by reporting what they are learning through the externship.¹⁵⁶

152. The main focus in the book is on skills courses or clinics where “[s]tudents learn . . . in simulated practice situations . . . or in actual clinical experience with real clients.” *Id.* at 28.

153. Another term for this approach to externships has been called a “fieldwork-focused approach to externships.” Anahid Gharakhanian, *ABA Standard 305’s “Guided Reflections”: A Perfect Fit for Guided Fieldwork*, 14 *CLINICAL L. REV.* 61, 66 (2007). The goal of these programs is to:

Graduat[e] most law students – not just a handful – with practical skills, with the ability to solve legal problems in real-life situations, and exposure to professionalism issues in real legal settings . . . [and] allow[] students to test out and refine educational as well as career goals, including identification of practice areas about which they are passionate, and to establish a sense of fitting into the profession, including building a professional network.

Id.

154. “Our primary concern is . . . how to use the second two years of law school more effectively . . . and . . . how to bring the teaching and learning of legal doctrine into more fruitful dialogue with the pedagogies of practice. . . . [This] focus[es] on the professional formation of law students.” *EDUCATING LAWYERS*, *supra* note 3, at 12–13.

155. *Id.* at 25.

156. *He was able to examine the legalities at issue and accurately predict the axis from which the other side would attack. He spent time pacing the halls and sitting at his desk just thinking through the case as if he were counsel for the defendants. I admire his legal acumen and would like to emulate his disciplined and thorough approach to legal problems. I realized that even after 30 years of practice, [he] still takes a formal and*

Second, the educational opportunities available through externships are affordable. Learning objectives for the student are paramount because they are receiving credit for the experience.¹⁵⁷ Law school accreditation regulations permit no monetary compensation for the students' work.¹⁵⁸ The purpose of this rule is to emphasize the educational purpose of the externship to everyone involved. Virtually any law office can participate because budgetary constraints for many non-profit organizations or government offices are not an issue. Law schools obtain access for their students to a wide range of experienced practitioners willing to participate as expert mentors to externship students without requiring any compensation for the supervision they provide. Even though the law office may not pay the student earning externship credits, the office benefits from the work accomplished by the student as they prepare documents, conduct research, write motions and memoranda, and complete other assignments for attorneys in the office. Student costs are part of the normal tuition they pay for law school courses. In fact, some law schools reduce the usual tuition costs for summer externships because students are not using campus buildings.¹⁵⁹

Third, externships are able to give every student one-on-one mentoring experiences in the context of practical learning opportunities.¹⁶⁰ Other forms of simulation skills courses and clinical experiences are typically unavailable to a majority of students because of the unusually low student-to-faculty ratios they require and the prohibitive costs for law schools if these kinds of courses were made available to every student.¹⁶¹

Fourth, externships are an ideal vehicle for students to experience the advantages of an apprenticeship identified by learning psychologists as a

structured approach to counter analysis which allowed him to walk into the courtroom well-prepared to meet the opposition which he encountered. Student Extern after watching his mentor, a prosecutor.

157. *I looked over my Learning Plan Objectives and I am pleased with the way my internship is going. I have gained a lot of confidence through my experiences here. I have seen that my work is on par with most of the attorneys around me, although I take a lot more time. Still, I feel like, with a little more practice, I can do this.* Student Extern.

158. ABA STANDARDS, *supra* note 40, at 305.

159. Backman, *supra* note 51, at 28.

160. “[L]ittle of this kind of close mentoring is typically available for the great majority of future lawyers.” EDUCATING LAWYERS, *supra* note 3, at 95.

161. “Of all the obstacles to this reform, the relatively higher cost of the small classes is the most difficult to overcome” *Id.* at 198. In-house clinics have special strengths, but most do not accurately replicate the atmosphere of law practice in terms of their office settings, workloads, and ivory tower approaches to practice. Placing students in practicing lawyers’ and judges’ offices removes this artificiality, and students know they are working in contexts similar to those that await them after graduation. STUCKEY ET AL., *supra* note 98, at 198–99.

beneficial way for a novice to learn from an expert.¹⁶² Students receive encouragement, guidance, and feedback¹⁶³ from both a law school faculty supervisor and from the supervising attorney or judge at the externship site.¹⁶⁴ Student reflection opportunities come from the law school and from the attorney or judge supervising the student's daily work assignments.¹⁶⁵ Students typically have numerous academic responsibilities they must complete in order to earn externship credits.¹⁶⁶ Usually they must identify learning objectives, attend classes, submit reflective journals, respond to assigned journal topics, turn in work product samples, prepare evaluative reports, and engage in feedback interviews with their site supervisor and final interviews with faculty from the law school.¹⁶⁷ All of these requirements assist students in learning how they can optimize their learning opportunities as they are being coached by the law school on how to learn from experience.¹⁶⁸ The law school is also in a position to improve the quality of the supervision and mentoring available to a student through faculty conducted site visits or telephone discussions.¹⁶⁹ Although some supervising attorneys are

162. "Improvement of practice and movement toward expertise take place best within a community of learners in which more experienced and recognized others can serve as coach and guide." EDUCATING LAWYERS, *supra* note 3, at 201.

163. *I learned from this experience that writing a motion can be really exciting and fulfilling because you are moving the legal process along as you do that and you are taking action that could really help your client and provide a valuable service for them which they appreciate. I also learned that every attorney has their style and their preferences about how a motion should be written. I was glad I was able to learn from the edits that Mr. X made and the ones that another attorney made. It was great to work with both of them and learn how to write a succinct and effective memorandum that accompanied the motion to dismiss.* Student Extern.

164. "Traditional apprenticeship emphasizes the informal transmission of expert knowledge through face-to-face contact. . . . [T]he experience of most law students . . . includes little of this highly particularistic kind of training or assessment of competence . . . as students typically have little close contact with faculty." EDUCATING LAWYERS, *supra* note 3, at 98.

165. "[G]reater emphasis on instruction in skills These require . . . tasks with feedback, including ongoing reflective evaluations of student performance." EDUCATING LAWYERS, *supra* note 3, at 93. "[N]orms and expectations . . . [of] professional expertise are taught. They are reinforced by the feedback that students receive as they attempt various approximations to expert practice." *Id.* at 10.

166. *I have worked hard. I have packed in 250 hours into four weeks. I worked on the bus, on weekends and on a federal holiday. I have read hundreds of cases, read dozens of briefs and motions and orders, and have written almost 50 pages of work product connected with my time here. It has been grueling, but so much fun.* Student Extern.

167. These are examples of "*intentional learning* practices that help students become self-conscious about and self-directed in their own learning." EDUCATING LAWYERS, *supra* note 3, at 179 (citation omitted).

168. "The ultimate goal is to lay the groundwork for 'a lifetime of professional self-reflection and improvement.'" *Id.* at 39. One student wrote: "*I am learning so much by doing. However, the greatest thing that is happening is the growth of confidence that I may be able to be an attorney someday after all.*"

169. MACCRATE REPORT, *supra* note 20; ABA STANDARDS, *supra* note 40, at 23.

better than others as mentors, many of them are very good at providing specific feedback especially when students are appropriately guided by the law school in asking for constructive assessment of their work. The best of the supervising attorneys also provide students with the kind of expert coaching¹⁷⁰ in which students learn through the kind of repetitive, iterative skill practice described in the Carnegie Foundation's study of legal education.¹⁷¹ Many students are asked to complete multiple drafts of an assigned project¹⁷² and they make revisions based on the supervisor's critique.¹⁷³

Fifth, externships remove some of the difficulties students have in seeking work experience during law school years.¹⁷⁴ Law students and law offices participate in externships with no expectations connected with future employment. Law offices are more willing to accept students without consideration of a student's class standing. These factors have a democratization impact on externship programs. Students are not limited by the recruiting-influenced approach of many law offices that screen out

170. "[I]ntroducing students to those activities of legal professionals that involve both clients and cases, like counseling, solving legal problems, or litigating. . . . [S]tudents can then be coached toward performing as professionals through increasingly complex and engaged contexts." EDUCATING LAWYERS, *supra* note 3, at 11.

Someone from management came in and needed a contract reviewed. X and I sat there and went over it together. I got to take a look at it and tell him what I thought should be changed and then the hard part . . . what I thought it was missing. I came up with a few things and X coached me through how to add them in. As we were talking, he coached me through the whole process he goes through when he gets a contract. It was very helpful, yet again, a great example of how good a mentor he is. Student Extern working with in-house counsel.

171. EDUCATING LAWYERS, *supra* note 3, at 108–10 ("[S]tudents learn primarily by being led, coached, and given abundant feedback directed to improving their ability to practice legal reasoning in specific contexts. . . . Common features distinguish this pedagogy of learning in context. Among them is its surface structure, which consists of four typical steps: (1) the instructor defines the task; (2) the instructor provides the scaffold of prompts and rules for engaging the activity within a collaborative group context; (3) the students practice the activity and present their work to the group for feedback; and (4) the instructor coaches and models the activity in order to improve performance but also to call attention to strategies for improvement. . . . then the process is reiterated, with gradually more difficult and complex tasks . . .").

172. With my first two trials, I had a supervising attorney watching my every step of preparation, from joint pretrial statement to each and every specific question that I asked to each and every witness. It was micromanaging—but let's be honest, I really needed it. And I still need help. But this time, the office is giving me a little bit more free reign to do the preparation. I did most of the preparation over Friday, Monday, and Tuesday. (Yes, I still need about two days more than the rest of the attorneys to become prepared for trial). Student Extern with a prosecutor's office.

173. See EDUCATING LAWYERS, *supra* note 3, at 110–16.

174. "After the JD reports that graduates mostly see these experiences [especially the summer employment typical of the first and second summers of law school] as having the greatest influence on their selection of career paths. It is very important, then, to bring these experiences into the educational program in intentional ways." *Id.* at 195 (citing RONIT DINOVIETZ ET AL., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS (NALP Foundation for Law Career Research and American Bar Foundation) (2004)).

the majority of students for paid work because they are not in the top 20% of the law school according to grades.

Sixth, law firms do not face normal concerns about mentoring future attorneys based on confidentiality issues. Externship students become part of the law office where they are working and have the same confidentiality obligations as anyone else on the staff. They receive assignments and perform work for the office as any other person employed there. They are under the same professional ethics obligations as other attorneys and staff at the office.¹⁷⁵ The same rationale does not apply in bar association sponsored mentoring programs. There, an attorney serving as a mentor for a young attorney from another office cannot involve that attorney in handling client matters because the mentored attorney is not part of the office staff. The Utah Supreme Court has minimized this concern by exempting the relationship between an outside mentoring attorney and a new lawyer from the concerns connected to confidentiality.¹⁷⁶

Seventh, an externship student has access to a wider range of learning experiences than a paid employee. Because the student is earning credit rather than wages, the law firm is generally willing to permit the student to accompany experienced attorneys.¹⁷⁷ Students may shadow the attorneys into court proceedings, depositions, client interviews, and other practice settings without the need of justifying the experience as one that can be charged to a client. It appears that some clients have refused to pay for these kinds of educational opportunities for law office employees.¹⁷⁸ It is also common for externship students to request experiences¹⁷⁹ giving them actual client contact and caretaking experiences.¹⁸⁰ Law offices are willing to recognize that the student is

175. "Ethical deportment depends on complex traditions of living that can only come alive through apprenticeship experiences with exemplars of judgment and skill." *Id.* at 119.

176. UTAH COUNCIL CODE OF JUD. ADMIN. R. 14-808(h).

177. *I think one of the aspects that isn't really taught in the classroom is interaction with clients or interaction with other attorneys. The theories underlying those meetings are taught, but you also have to be able to convey those ideas to another party and to be able to interact confidently. I am definitely glad I've gotten to see that firsthand by sitting in on a few meetings that involve both attorneys and clients. That experience alone is a great addition to the legal knowledge I get from the classroom.* Student Extern with an international law firm.

178. IDA O. ABBOTT, *THE LAWYER'S GUIDE TO MENTORING* 25 (2001) ("Economic changes in law practice discourage non-billable activities such as mentoring and training. Bottom line pressures mean that lawyers are working longer hours to maximize revenues, develop business, and handle growing administrative responsibilities, while they are not rewarded in tangible ways for their mentoring efforts.")

179. *I have taken initiative to talk to the clients and to talk to the attorneys about work that I would like to do. The attorneys are great; they know the kind of things that I like to work on, and they usually offer those to me.* Student Extern in a law firm.

180. *An attorney works with clients. The idea is so ingrained in my supervisor's mind that he calls his coworkers in the office his clients, because he doesn't have*

seeking a wide range of learning opportunities in the externship and are usually willing to give them assignments beyond those handled by paid law clerks.

Eighth, students may participate in a career exploration externship following the first year of classes and may choose a more advanced, capstone type of externship during the third year of law school.¹⁸¹ In an early externship, students are in an excellent position to apply what they have learned in their first-year legal writing and research course.¹⁸² During the third year, students have more training to apply in practice and they are often able to handle actual court cases under a state's third-year practice or limited license rules.¹⁸³

Ninth, law schools are in an excellent position to give students access to a network of alumni willing to assist a law student through an externship.¹⁸⁴ The law school's career services office is able to identify externship placements that fit a student's specific interests and requests.¹⁸⁵ Generally, they are able to serve all of the students in arranging for externships in comparison to the common problem and criticism they face in serving only the highest ranked students with on-campus interviews for paid clerkships.

business world clients anymore. He has decided that it is his job to serve others and help them accomplish what they need to be done. This is one of the important lessons that he taught me by example. As I enter the legal practice, I need to make sure that my focus is on helping my clients whether it be working on a merger or whether it be helping a mother resolve her legal issues. The job is about service and the focus cannot be billable hours or amount of income, but whether or not the client's goals and needs have been met. Student Extern.

181. One way to bring work experiences into law school is to "give new emphasis to the third year as a kind of "capstone" opportunity for students to develop specialized knowledge, engage in advanced clinical training, and . . . comprehensive reflection on their educational experience and their strategies for career and future professional growth." EDUCATING LAWYERS, *supra* note 3, at 195.

182. *I have had the chance to read several briefs during my time at the court and the difference between the good briefs and the bad ones is shocking. Some of the briefs that I read misinterpreted case law, quoted case law that was out of jurisdiction as controlling, used authorities that contradicted their points, displayed atrocious grammar and spelling, and were generally unpleasant to read. On the other hand, the best briefs make you want to agree with them and get the court to rule for their side. I have learned that I need to continually improve my writing skills in order to write good, persuasive briefs and not the kind of brief that gets laughed out of court.* Student Extern with a state court.

183. *I also was able to participate in my first jury trial. I tag teamed the trial with X. I did the opening statement and did the direct on two of the witnesses for a DUI case. We won the trial after a long day in the courtroom. I felt well prepared for the trial and was excited to push my limits in the courtroom.* Student Extern with a prosecutor's office.

184. The assistance of the law school Career Services office provides externship students with a "picture of today's profession, including the diversity of the practicing bar . . ." EDUCATING LAWYERS, *supra* note 3, at 46 n.8.

185. Law schools with the assistance of their Career Services offices "need to rethink legal education to prepare attorneys for a wide variety of careers . . ." *Id.* at 93.

VII. PROFESSIONAL DEVELOPMENT PROVIDED BY LAW FIRMS

In addition to the training and mentoring available to new lawyers through law school and bar association programs, many law offices provide professional development programs aimed specifically at the new lawyer.¹⁸⁶

Private law firms, especially large firms,¹⁸⁷ have non-lawyer professional developers¹⁸⁸ to design and implement these in-house training programs.¹⁸⁹ Many government offices such as large prosecutor or public defender offices also assign specific attorneys to be in charge of professional development opportunities for new attorneys. One of the incentives drawing recently graduated lawyers to these offices is the quality and reputation of the formal training they provide.

Many new attorneys do not have access to these programs because they are in smaller law offices where they are not available. If they launch their own solo practitioner office,¹⁹⁰ they must rely on training they have received during law school and from bar association training and continuing legal education programs.¹⁹¹ In addition to formal training, all lawyers also have their own informal networks and contacts to which they turn to seek guidance, consultation, and previously used forms to assist them when they are handling new tasks for the first time.

186. See Ida O. Abbott, *Best Practices in Professional Development for Law Firms*, NALP 2001. The Professional Development Consortium is a group of individuals working at law firms, government agencies and corporations who are responsible for developing and administering training and continuing professional development for lawyers. See www.pdclegal.org.

187. For a good summary of a large firm mentoring program, see VINSON & ELKINS, NEW LAWYER MENTORING PROGRAM HANDBOOK, available at <http://www.vinson-elkins.com/pdf/overview/NewLawyerMentoringHandbook.pdf> (last visited Apr. 21, 2009).

188. Henning, *Maximizing Law Firm Profitability, Hiring, Training and Developing Productive Lawyers* (1993) (article on file with author).

189. Students in externships often have opportunities to participate in these training programs.

My Judge is the chief judge in this Court and as such he conducts training for new defense attorneys every six months. It is two days and involves two mock trials with a jury, a judge, and all the frills. On Thursday I had the opportunity to serve as a Juror for one of these mock trials. It was a really fun experience. It was great to see the attorneys argue, but the best part was seeing the judge and mentors give their comments and advice at the end of the trial. Student Extern with a court.

190. *From this placement I have also learned that I would likely be interested in going into solo practice. I really enjoy the flexibility and the lack of a billable hours requirement. But, a great deal of time has to be spent on administrative matters. There is also the difficulty of getting someone to open your mail and to cover emergencies when you are out of town. This placement has helped me to see that what would work best for me would be something like a loose partnership with one other person.* Student Extern.

191. EDUCATING LAWYERS, *supra* note 3, at 44–45 (“America’s de facto division into two kinds of legal profession. . . . a world of big firms that dealt with large corporate clients, government, and the wealthy. The other, much larger bar of solo practitioners and small partnerships served most people’s day-to-day legal needs.”)

Time and expense are the limiting factors affecting these training opportunities associated with professional development programs through law offices. These programs are expensive. They cannot typically be billed to individual clients and often young lawyers cannot count training sessions as billable hours, although participation may be mandatory. Furthermore, law offices with developed training materials guard these resources and rarely share them with attorneys outside of their own employees.

VIII. CURRENT LAW SCHOOL PROGRAMS

Law schools have developed a rich set of offerings for providing students with an apprenticeship-type opportunity.

First, externships have been based on an apprenticeship model that is available for virtually every student.¹⁹² Currently at Brigham Young University Law School, most students enroll in an externship during the summer following their first year. These experiential learning opportunities are designed primarily as introductory opportunities for students anxious to have their first hands-on experiences with the practice of law.¹⁹³ We have emphasized flexibility so students can tailor their placement choices to fit their individual interests, plans, and personal circumstances. Unlike many externship programs built on a clinic-based model, we do not focus on classroom teaching (although we provide pre-placement orientation sessions and stay in touch with students through weekly reflective journals and faculty responses) or on-site visits (although we conduct telephone visits with the students and their supervising attorney or judge) because these components of externship programs limit the number of participating students, limit placements to local practice settings, and require low student-to-faculty ratios. Thus, our students have been able to participate predominantly in distant locations all across the nation and in a wide range of international placements.¹⁹⁴ We also permit students to seek externships from the full range of law practice settings, ranging from judicial chambers and the

192. Backman, *supra* note 105; Backman, *supra* note 51.

193. *I think one of the aspects that is not really taught in the classroom is interaction with clients or interaction with other attorneys. The theories underlying those meetings are taught, but you also have to be able to convey those ideas to another party and to be able to interact confidently. I am definitely glad I've gotten to see that firsthand by sitting in on a few meetings that involve both attorneys and clients. That experience alone is a great addition to the legal knowledge I get from the classroom.* Student Extern in an international placement.

194. The past three summers we have had close to fifty first-year students participate in international externships each year at BYU Law School from a first-year class of 145 students.

usual public interest legal offices to corporate positions and private firms as well.

Students also have opportunities to participate in externships for one of the semesters during the second or third year of law school. These learning opportunities also build on the flexible externship program we have built over the past fifteen years. Students can use a large portion of their law school credits to seek out practice-based externships in the criminal justice arena¹⁹⁵ or in civil practice in both private law firms and in public interest positions. To the degree possible, they can seek their apprenticeship externship placements locally but also in distant cities where they ultimately plan to begin their legal careers. We are one of several law schools, including the S. J. Quinney College of Law at the University of Utah, prepared to offer such an extensive externship plan.¹⁹⁶

The course on Legal Interviewing and Counseling is a popular means of practicing valuable practice skills. The use of online resources permits students to videotape their simulated client interviews and submit the recordings for responses from other students and from their professors. The number of students accommodated by this approach is also expanding because of the use of technology. The skills practice provided in this simulation course fits nicely with actual practice opportunities students may be participating in during the same semester. The *New Skills, New Learning: Legal Education and the Promise of Technology* study mentioned earlier summarizes specific benefits of computer-based simulations “to supplement a formal legal education program.”¹⁹⁷

Reliability. Real practice – whether in a clinical or law office setting – cannot guarantee a student or lawyer any specific experience in any particular order. Simulations can ensure that every student encounters the desired set of challenges and opportunities.

195. *I was given the responsibility of deciding what witnesses to call, their order, and what other evidence to submit. I decided to call four witnesses. One was the police officer that saw the defendant hit the victim once. One was an eye-witness inside the house that originally stated she saw the defendant hit and kick the victim but later recanted and said she didn't see anything. One was a witness called to impeach the previous witness and testify to what she originally said, and the criminal investigator. I questioned three of the witnesses, entered in all the exhibits which included photos of the victim, photos of the residence, photos of the defendant's bloody hands and boots, and medical reports. Although I still stumbled over the procedural things like entering the exhibits, I really enjoyed the questioning of the witnesses, even trying to get the eyewitness to admit to what she really saw, and then impeaching her statement with the subsequent witness. Student Extern in a prosecutor's office.*

196. Backman, *supra* note 51, at 1–4. See *supra* note 4 for a growing list of law schools with extensive externships programs.

197. Koo, *supra* note 33, at 21.

Rigor. Because most computer simulations require explicit programming of the experience and outcomes, it is harder for designers to shirk the need to understand actual practice. Adherence to an explicit learning framework and insuring opportunities to deploy specific skills distinguishes simulation-based learning from ad hoc mentoring.

Scalability. Clinical and mentoring programs are personnel-intensive. While instructors still need to be involved in most simulations, the automation of a significant portion of the teaching enables them to focus on more nuanced instruction rather than managing logistics.¹⁹⁸

Law school Civil and Criminal Trial Practice seminars have permitted students to prepare for practice-based externships through excellent simulated exercises and valuable feedback from the practicing attorneys and judges teaching these courses as adjunct professors. It may be possible through the technological advances introduced by Professors Larry Farmer and Gerry Williams at BYU Law School in their simulation courses to permit students to participate in the Trial Practice seminars even though they are simultaneously involved in practice-related externships.

Similarly, it may be possible for students to take part in other law help seminars and mediation seminars and community-based courses through distance learning technology. In that way, these courses could be made available to students at the same time as they are participating in an apprenticeship externship.

In many ways, enrollment in multiple experiential learning courses, including externships during the same semester, would have several advantages. Students can bring problems and situations they have faced in one of the courses or externships into the discussions and journal entries they are participating in for another practice course or externship.¹⁹⁹ Students can make decisions about courses and externships in order to maximize the skills training opportunities each presents. Professors and Career Services Office assistants can provide coordinated counseling aimed at helping students shape an Apprenticeship Semester in which the externship and clinical courses complement each other well.

198. *Id.*

199. The Carnegie book encourages law schools to seek opportunities for students to have practice-based experiences: “[P]rofessional judgment gained through typical situations of practice. . . . [R]eflective practice in clinical situations. . . . [P]rovision of educational experiences directly concerned with the values and situation of the law and the legal profession.” EDUCATING LAWYERS, *supra* note 3, at 196–97.

IX. NEW APPRENTICESHIP SEMESTER PROPOSAL FOR THIRD-YEAR
CAPSTONE OPPORTUNITY

I propose an innovative approach that law schools are well prepared to adopt.²⁰⁰ It builds on the Carnegie book's suggestion that law schools provide a capstone opportunity for students to gain practical experience and develop a plan to continue improving professionally.²⁰¹

Under my proposal, students may treat their twelve to fifteen credit hours in one of their third-year semesters as an Apprenticeship Semester by enrolling in an Apprenticeship Externship for four to twelve credits together with credits from one or more law school simulation or clinical courses including Criminal Trial Practice, Civil Trial Practice, Legal Interviewing and Counseling, Negotiation, Mediation, Community Lawyering, or Community-based Legal Research courses, or one of the law help seminars on Elder Law, Domestic Violence Intervention, Domestic Relations or Child Advocacy.

The purpose²⁰² of this approach is to give students a semester in which they focus on transitioning from law school into the practice of law.²⁰³ The professors involved are encouraged to collaborate closely with each other and to recognize which of their students are involved in an Apprenticeship Semester and which other practice-based courses they are taking. The classroom discussion and journal reflections should encourage students to share experiences they have had in other Apprenticeship Semester courses and in their externship experiences.²⁰⁴ A key finding in the *Student Engagement* study shows the benefits students can be expected to gain²⁰⁵ through an Apprenticeship Semester,

200. "[T]his approach aims to make practice more effective, comprehensible to students, and open to critical assessment. . . . [and] enable[s] learners to take part in the basic features of professional practice itself. Such teaching presupposes a relationship between the academic institution and the settings of practice" EDUCATING LAWYERS, *supra* note 3, at 9.

201. *Id.* at 195. "Contact with practicing lawyers is another important aid to this process." *Id.* at 32.

202. [D]eveloping lawyers must at some point learn another set of demanding skills . . . while negotiating the complex transition from the stance of student . . . to that of apprentice practitioner. . . . [N]ew lawyers especially appreciate those aspects of their law school experience that they see as having helped ease their transition to practice. . . . [and] law schools should undertake responsibility for initiating and fostering this phase of legal preparation. *Id.* at 87.

203. An apprenticeship semester is beneficial in that "it focuses attention on . . . engaged practice, one shared by a community of practitioners. . . . [And helps students gain] an understanding of legal practice from the inside." *Id.* at 8.

204. "[S]tudents need access to forms of social interaction that embody the basic understanding, skill, and meaning, that, together, make up the professional activity." *Id.* at 9. Educators should direct their efforts towards "expert practice . . . and . . . bringing novices into these practices while motivating their growth into becoming full participants in the profession." *Id.* at 9.

205. "[T]hinking like an apprentice' [means] a complete involvement with learning new ways of thinking, performing, and understanding oneself. . . . [A]pprenticeship can direct the

stating that “students who have clinical or field experiences have clearer career goals and report being better prepared for learning on their own and working effectively with others.”²⁰⁶ They also gain more in understanding people from different backgrounds and contributing to the welfare of the community.”²⁰⁷

The Apprenticeship Semester would be voluntary. The plan would be particularly beneficial for students planning to begin their careers in small offices lacking training programs for new lawyers. Students might also choose to participate if they will be practicing in states with required mentoring programs especially if the law school experiences are counted in fulfilling specific requirements set by these bar associations.

My suggestion is that a third-year student participating in an Apprenticeship Externship should receive permission to earn from four to twelve credits as long as the cumulative total of externship credits that a student earns during law school does not exceed fifteen credits.²⁰⁸ This relaxation of the rule to permit fifteen externship credits is necessary. Otherwise, students at BYU Law School, for example, who earned the maximum number of six credits allowed in the summer externship program after the first year are likely to be limited in externship participation in the Apprenticeship Semester; especially if they have earned co-curricular credits during two or three semesters. I would hate to see us enforce an internal law school rule that would eliminate students from taking part in an Apprenticeship Externship because involvement in Moot Court or an academic journal caused them to exceed our current fifteen hour limit.

One of the advantages of including an intensive Apprenticeship Externship in this proposed plan is that the externship approach offsets the relatively higher cost of the small, practice-based classes the students take concurrently as compared to the standard Socratic-method courses involving many dozens of students. Participating attorneys serve as one-on-one mentors for the students without any cost to the law school for their involvement. Students are able to work with attorneys with years of

attention of educators toward providing for their students clear notions of what professional expertise entails, along with carefully worked-out approaches to acquiring it.” *Id.* at 27.

206. *I also saw that the first place lawyers in my firm go when they have a new problem is not to the computer or books but rather to each other. I guess the concept isn't novel, it just wasn't what I expected. That kind of approach to law makes me feel more confident about my ability to practice law even though I don't have much experience.* Student Extern.

207. ENGAGING LEGAL EDUCATION, *supra* note 29.

208. At BYU Law School, the standard credits earned in an externship during an academic semester are two or three credits. Students can earn up to a total of fifteen credits for externships, directed research or co-curricular program participation during law school.

practice experience²⁰⁹ and they have access to technological support and expertise available to aide clients in a wide range of legal problems.²¹⁰

X. HOW A NEW APPRENTICESHIP SEMESTER PROVIDES ADVANTAGES OF MENTORING DURING LAW SCHOOL

Several advantages arise if law school programs fulfill bar association mentoring program requirements. I urge bar associations to consider ways in which experiences during law school can be counted in part to satisfy specific mentoring requirements set by the bar for new lawyers. Externships, clinical courses, and simulated trial practice courses ought to meet several of the objectives and fulfill several specific requirements set by any mentoring program.

Five specific features of law school provided skills experiences will help bar associations overcome problems and issues inherent in bar association mentoring programs.²¹¹ First, law schools are successful in recruiting lawyers and judges to supervise law students in externships. Law schools are able to recruit mentors from among the law school alumni more easily in many cases than bar associations can. Many alumni keep close ties with the law school and they often respond to invitations to be involved with current law student programs.

Second, through externships, a number of students can have in-house mentoring experiences that will not be in firms or law offices that provide these mentoring experiences. Several bar association programs make a distinction in the assignments suggested as part of mentoring programs depending on whether the new lawyer is working with an

209. The practice of law is, ultimately, a matter of engaged expertise. . . . [A] highly contextual understanding of client, case, and situation. . . . learned primarily through experience, especially the intimate relationships of apprenticeship, but similarly expert teaching can greatly expedite students' progress. . . . [S]kills in interviewing, counseling, arguing, . . . drafting of a whole range of documents. . . . [and] developing professional judgment takes a long time, as well as much experience. EDUCATING LAWYERS, *supra* note 3, at 115.

This week I worked on a motion for X, one of the founders of the firm! It was really neat to be able to work with him. He is a legend in the legal community and has tried over 600 cases. That is amazing and I really felt privileged to work with him. Student Extern.

210. The prime learning task of the novice . . . is to achieve a basic acquaintance with the common techniques of the lawyer's craft. . . . With proper coaching and sufficient experience, the novice can progress toward competence. . . . [and ultimately arrive at] [t]he end point . . . expertise [Expertise] is, in fact, the result of long training and practice, during which feedback and coaching are essential. EDUCATING LAWYERS, *supra* note 3, at 117.

211. For a summary of mentoring program difficulties, see Wendy L. Werner, *The Importance of Mentoring*, LAW PRACTICE MANAGEMENT TODAY, July 2004, available at <http://www.abanet.org/lpm/lpt/articles/mgt07041.html>. Difficulties include personality and commitment problems, and the power differences between the mentor and the new lawyer (suggesting that the mentor should be the one to set up the initial meetings).

inside mentor or an outside mentor. For example, in the Georgia Mentoring Program, an assignment under the category of Working with Your Client is to “participate in or observe at least one client interview or client counseling session.”²¹² However, it is noted that this assignment is “for inside mentors and beginning lawyers only.”²¹³

Many law firms and government offices provide training programs for new lawyers in which they match the new lawyer with specific mentors. There are many new lawyers, however, who will be working in a small law office or as solo practitioners, who have no inside mentoring opportunities.²¹⁴ Even for the new lawyers in larger law firms, as one recent study notes, most employers are not providing that training.²¹⁵ In order to avoid breaching confidentiality requirements, the bar associations suggest that these outside mentors should avoid discussing specific client matters with the new lawyer because of confidentiality and conflict of interest concerns.²¹⁶ In such situations, the mentoring experience has to be built on simulated situations and the mentor and new lawyer have to engage in hypothetical role playing scenarios. Or, as the Indiana bar association program suggests, any clients involved must give prior written consent in order for the mentoring attorney and the new lawyer to have mentoring activities focused on actual legal matters.²¹⁷

The Utah Supreme Court has adopted a new rule to overcome concerns about confidentiality and conflicts of interest when an outside mentor is involved with a new attorney in the New Lawyer Training Program.²¹⁸ The Court recognizes that the “short-term limited guidance or counsel” sought by the new lawyer or given by the mentor should not be considered to trigger violations of the lawyer-client representation ethical rules. The Court indicates that these exemptions from confidentiality and conflict of interest concerns are justified because “the disclosure is impliedly authorized under the circumstance and is necessary to carry out the purposes of the NLTP.”²¹⁹ If, however, the counsel or guidance is provided or sought “on an on-going or regular

212. GEORGIA MENTORING PLAN, *supra* note 7, at 5.

213. *Id.*

214. Matthew T. Christensen, *Equalizing the Mentoring Learning Curve: What's a New Solo Attorney to Do Without a Mentor?*, ABA (Dec. 2007), available at www.abanet.org/cpr/about/mentoring.pdf.

215. Koo, *supra* note 33, at 17 (“Only 36% of New Skills survey respondents report receiving ‘boot camp’ training in their first year of practice, that is, formal training on fundamental skills and knowledge [they] need to start practicing in [their] particular field.”)

216. ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 98-411, (1998).

217. INDIANA MENTORING PROGRAM, *supra* note 11.

218. UTAH COUNCIL CODE OF JUD. ADMIN. R. 14-808(h).

219. *Id.* at (h)(2).

basis relating to the needs of or litigation regarding a specific client” then the ethical rules do apply even though the discussion occurs between a new lawyer and the mentor.²²⁰ These same concerns are not present for law students working with mentors in externships or with faculty in clinical and simulated skills courses. The law student is an integral part of the office or clinic and should be considered the same as any paid employee in that office as related to confidentiality and conflicts of interest.

Third, law students, who are earning credits and are not being paid, do not give rise to the noted difficulty of providing training opportunities in light of client reluctance to pay for new associates’ time spent in valuable mentoring situations. Supervising attorneys are more willing to give mentored learning experiences to law students in externships because they are not paid associates, so the focus can be on learning opportunities rather than on billable hours.²²¹ Students are regularly invited to participate as observers in depositions, court hearings, or in trial situations.²²² One of the recent studies of legal education points out that clients increasingly refuse to cover billable hours for young lawyers while they are observing client interviews as part of their training program. “Clients are increasingly unwilling to pay for training of associates, e.g. prohibiting firms from billing for young attorneys’ attendance at client-facing meetings. New lawyers’ involvement in such meetings has long been an important apprenticeship activity.”²²³

220. *Id.* at (h)(4).

221. “Teaching students how to learn from experience.” EDUCATING LAWYERS, *supra* note 3, at 22.

One thing I’ve noticed that has very much impressed me is how hands-on Dr. X has been. He’s been very concerned with my experience, in both the quality and quantity of work I receive, has been very open to meetings, questions, etc., has done his best to make sure I have an educational as well as professional experience, and has taken me out to lunch and dinner nearly every week just to chat about life, his profession, and the unique situation he is in as father, bishop, lawyer, CEO, etc. Not a day has passed by where he hasn’t come by my little office to see how I’m doing or give me a little project to work on. Student Extern in an international placement.

222. *I really could not have asked for anything more in my externship experience. I had the chance to go to court everyday; I had the chance to participate in meetings with probation officers; I had the chance of participating in a drug court meeting; and I had the opportunity to work in an office where I felt comfortable approaching any member of the staff if I had a question. I really do not think I could have had a better experience. I have benefited greatly from my experience this summer. I have appeared in front of numerous judges; I have responded to motions in court; I have worked with probation officers and victim coordinators; and had meetings with the victims of certain crimes. Additionally, I have spoken with the defendants and have had the opportunity to talk to and ask the judges questions about certain topics. I have gained so much knowledge and so much experience in the last seven weeks and I think it will help to shape my entire career. I feel more prepared now to enter into the legal field than I ever have prior to this point.* Student Extern working with a prosecutor’s office.

223. Koo, *supra* note 33, at Executive Summary.

Fourth, a related positive motivation is that the mentoring attorney is less reluctant in helping a law student in an externship than would be the case if the new lawyer were from another law office, because the supervising attorney is able to give the student work assignments on actual cases. Thus, the mentoring attorney is willing to assist the new lawyer in learning from the experience,²²⁴ because the work produced is potentially beneficial and usable for the lawyer and the law office. The better the law student performs, the more helpful that student's work is likely to become²²⁵ and as the student becomes more useful, the mentoring attorney is more likely to spend time developing the student.

Law schools can provide other benefits to bar associations concerning mentoring program administration. Externship programs involve a faculty supervisor to make sure that all of the law school's credit requirements are met. Certification of student completion of mentoring program requirements can be supplied by the law school. Law faculty have interaction with the law student through orientation classes and any classes required as part of the externship, through reflective journals turned in by the student to the faculty supervisor and responses back to the student, and through final interviews and other reports required as part of the externship.²²⁶ The law school joins with the mentoring attorney and bar association administrators in giving valuable attention and guidance to the law student. In comparison, all of the mentoring procedural details must be handled by the bar association administrator if the mentoring experience did not occur during law school.

The opportunity is available through externship programs tied to a mentoring program for the bar association to work closely with local law schools in constructing and administering mentoring experiences aimed at professional development of the law student. A jointly sponsored mentoring program gives the law school and the bar association good opportunities to work closely together in the common enterprise of preparing new lawyers for practice.²²⁷ The law school should welcome

224. "[T]he best available knowledge points toward context based education as the most effective setting in which to develop professional knowledge and skills." EDUCATING LAWYERS, *supra* note 3, at 125 (citation omitted).

225. *I have taken initiative to talk to the attorneys about work that I would like to do. The attorneys are great; they know the kind of things that I like to work on, and they usually offer those to me. It is easier for me to talk to them because I feel like I have something to contribute instead of feeling like they are doing a favor to me by letting me be in the office. I can tell that they value the work that I'm doing because it goes out almost untouched to the opposing counsel and the clients.* Student Extern.

226. *See generally* Backman, *supra* note 105.

227. "[D]evelop a habit of ongoing self-assessment. . . mechanisms for stimulating reflection on current experiences and on aspirations for the future. . . [W]hen students form

the opportunity for bar associations to assist in designing appropriate mentoring requirements to be filled through externships. Similarly, such an arrangement would provide the bar associations a vehicle to meet regularly with law school faculty and administration in exploring ways for improving jointly established mentoring programs.

XI. CONCLUSION: LAW SCHOOLS SHOULD EXPAND EXTERNSHIPS
DESIGNED AS APPRENTICESHIP SEMESTERS AND BAR ASSOCIATIONS
SHOULD ADOPT NEW LAWYER MENTORING PROGRAMS

Law Schools and Bar Associations have begun successful and sustainable programs to assist law students and new lawyers in making the transition from law school to the first year of legal practice. The key to the universal availability of these proven approaches is the willingness of experienced lawyers to become supervising mentors for law school externship programs and for bar association mentoring programs for new lawyers. The traditional roadblocks to implementation of these programs have disappeared by eliminating the heavy costs involved in traditional law school clinical programs and by adding quality controls to bar association programs to assure that the formerly debunked apprenticeship programs operate as they should.

The Carnegie Foundation aptly uses the apprenticeship metaphor to challenge law schools to accomplish necessary reforms. Successful new lawyer training programs include expected learning opportunities through prescribed exercises and discussions for the mentoring attorney and the new lawyer to accomplish together. Law Schools can contribute to a meaningful transition by providing meaningful practice experiences as the method for learning in a capstone apprenticeship semester during the third year of law school. Bar Associations can adopt learning oriented plans for mentors to turn a relationship into a meaningful set of educational objectives. Thus, the last year of law school can incorporate practice-based teaching and learning into the curriculum. At the same time, the first year of practice can provide continuing educational opportunities under a planned structure. The key to the law school apprenticeship externship and the new lawyer's first year of guided learning is the practicing attorney. The voluntary involvement of the lawyer as the externship student's supervisor and through the teaching role taken on without cost by the new lawyer's attorney mentor provide the educational tools for law students as they transition through a final law school semester into the first year of practice. Practical education is

relationships with professionals who inspire them, they can internalize new images of what they want to be like" EDUCATING LAWYERS, *supra* note 3, at 146.

offered by the best equipped attorneys who have already made the transition from law school through the early years of practice as a novice lawyer into an experienced attorney with expertise, wisdom and skills they are ready and willing to share with others at the beginning of their journey along this same path.

The task of educating lawyers will improve as law schools and bar associations consciously develop programs to tap into the advantages provided by practicing lawyers. Other approaches are too expensive to be universally available and many law students and new lawyers will miss out if common law school clinical education and traditional law firm development programs are the only means provided to assist with the transition from law school to the first year of practice.