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THE GENERALIST EXTERNSHIP SEMINAR: A UNIQUE CURRICULAR OPPORTUNITY TO TEACH ABOUT THE LEGAL PROFESSION

SPRING MILLER¹

This article explores the role that a generalist externship seminar can play in teaching law students about the legal profession – lawyers, the institutions in which they practice, and the markets for their services. After reviewing the evolution of the externship course and externship seminar in the legal curriculum, the article turns to a discussion of the absence of opportunities at most law schools for students to study and learn about the legal profession. It contends that the absence of serious attention to the profession in the curricula of most law schools does a disservice to law students, who need specific, reliable information about the diverse institutions of the profession in order to chart their future careers, and to society as a whole, which relies on the legal profession to make real our nation's commitment to equal justice under the law. The article argues that generalist externship seminars offer a unique opportunity for students to examine critically the legal profession and the diverse institutions of law practice. It presents an approach to a generalist externship seminar that adopts a deepened understanding of the institutions of the profession as a learning objective and offers suggestions for designing such a seminar to maximize student learning.

INTRODUCTION

This article explores the potential of the generalist externship seminar – the classroom component of an externship course for students working in diverse practice settings. It contends that generalist externship seminars offer rich opportunities to fulfill what Professor David Wilkins refers to as law schools' largely unmet obligation to teach about the profession.²

Unlike in-house clinics or any other course in the law school cur-

¹ Assistant Dean for Public Interest and Lecturer in Law at Vanderbilt Law School. This article came to be thanks to many externship scholars and teachers who were gracious enough to engage me in their community and provide feedback and support at various stages of the development of ideas captured here. I want to thank the AALS Externship Committee and in particular Kendall Kerew, Inga Laurent, Christine Cerniglia, Meg Reuter, and D'Lorah Hughes.

² David Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach About the Profession*, 49 J. LEGAL EDUC. 76 (1999).

riculum, externship courses present an opportunity for students to engage in faculty-guided exploration and study of the live world of the legal profession – lawyers, the institutions in which they practice, and the market for their services - beyond law school walls. The generalist externship seminar is especially well-suited to helping students broaden and deepen their understanding of the legal profession because it allows students to witness and compare the institutional conditions of lawyers' work across diverse practice settings. Drawing on the critical participant-observer approach in the foundational period of externship literature and the more recent scholarship on externships and professional identity cultivation, this article argues that a general externship seminar provides unique opportunities for students to examine and consider the diverse organizational structures and conditions of practice displayed by various subsectors of an increasingly fragmented legal profession.³ Study of the institutions that employ attorneys and through which attorneys' services are organized and deployed to the public is important for two reasons. First, students need a meaningful understanding of the institutions that employ lawyers, so that they can evaluate the advantages and disadvantages of these institutions as prospective employers. Second, in order to prepare for their professional charge as public citizens with special responsibility for the quality of justice, students need to understand: how the market for legal services in this country functions; who it advantages and disadvantages; who has access to it and under what conditions; and what differentiated access to lawyers' services across our society means for its promise of equal justice.

Part I of this article presents an overview of the history of externships and the emerging field of externship pedagogy scholarship, with a focus on the externship course. Part II discusses the absence of intensive, focused teaching about the legal profession in the law school curriculum. Part III explores the promise a generalist externship course holds as a site for students to examine the legal profession and offers some concrete suggestions for how such a course might live up to that promise.

PART I. OVERVIEW OF EXTERNSHIPS AND THE GENERALIST SEMINAR

This section provides an overview of the evolution of externships over the past half century and presents data on the space they currently occupy in the legal curriculum. It describes the pedagogical

³ Ann Southworth, *Our Fragmented Profession*, 30 *Geo. J. of Legal Ethics* 431 (2017).

goals scholars have identified externships as serving, as well as the teaching methodologies they have advocated. It discusses varying approaches to the externship seminar and the generalist externship seminar in particular.

In this article, I use terms “externship,” “externship course,” and “externship experience” to describe credit-bearing experiential learning experiences in which students perform legal work under the supervision of attorneys outside the law school and engage in reflection on that work under the guidance of a faculty member.⁴ I use the term “externship seminar” to refer to a regular group meeting of students and a faculty instructor that serves as the instructional component of an externship course.⁵ I use the term “generalist externship” to refer to an externship course that includes students working in diverse practice settings, in contrast to a “specialized” or “specialist” externship that enrolls students who are working only in a particular type of practice setting (criminal, judicial, corporate etc). This article focuses on the pedagogical promise of the seminar component of a generalist externship course.

A. *Historical Evolution of Externships in the Law School Curriculum*

Externships historically occupied a marginal space in the law school curriculum. As legal education shifted from an apprenticeship model towards a university-based model in the late 19th and early 20th century, classroom instruction became the dominant mode of preparing new lawyers. Faculty and students at some law schools provided services to indigent clients through affiliated legal aid bureaus in the first half of the 20th century, but this activity was generally informal and unstructured, though some schools permitted students to earn credit for it.⁶

⁴ The ABA and some law schools refer to these courses as “field placements.” See ABA SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2020-2021 (2020), Standard 304(d).

⁵ The Standards require that a “field placement” program include some means of faculty-guided reflection, which can include a “classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous faculty-guided reflection.” *Id.*, Standard 304(a)(5). The approach to teaching about the profession suggested in this article can be implemented in any of these teaching formats, albeit in different ways. This article focuses only on teaching in a synchronous seminar format.

⁶ Elizabeth Ford, *Toward a Clinical Pedagogy of Externships*, 22 CLIN. L. REV. 113, 116-117 (2015); Peter A. Joy, *Evolution of ABA Standards Relating to Externships: Steps in the Right Direction?*, 10 CLIN. L. REV. 681, 692-93 (2004); see also Cynthia F. Adcock, *Beyond Externships and Clinics: Integrating Access to Justice Education into the Curriculum*, 62 J. LEGAL EDUC. 566 (2013).

In the 1970s, spurred in part by funding from the Ford Foundation, law schools across the country established in-house clinics, which allowed faculty to supervise student practice under the auspices of a law office within the law school, independent of external organizations. Students continued to work in for-credit arrangements with external organizations subject to varying degrees of faculty oversight,⁷ but the in-house clinic model came to be seen as the richest and most pedagogically sound model for student learning from practice.⁸ In-house clinical faculty worked to develop a coherent pedagogical theory of clinical teaching that emphasized the importance of the relationship between the faculty member and the student in the context of a shared responsibility for a particular case or client⁹ - a model that by definition excluded field placement courses.

By the 1980s, the clinical movement had made great strides in articulating goals and methodologies of clinical pedagogy and establishing the legitimacy of clinical faculty and instruction within the academy.¹⁰ For-credit external or field placements, however, were

⁷ Ford, *supra* note 6 at 117, (“External placements remained, but they were increasingly disengaged from the overall curriculum, with the cost of and responsibility for supervision spread across many outside lawyers.”)

⁸ See, e.g., Kenny Hegland, *Condlin’s Critique of Conventional Clinics: The Case of the Missing Case*, 36 J. LEGAL EDUC. 427 (1986) (describing the “received wisdom” of the clinical world as being that only in-house clinics are “the real thing”); Stephen T. Maher, *The Praise of Folly: A Defense of Practice Supervision in Clinical Legal Education*, 69 NEB. L. REV. 537, 540 (1990) (“If there is a conventional wisdom about [externship] programs, it is that schools that are serious about clinical education should not operate such programs.”); Rebecca Rosenfeld, *The Examined Externship is Worth Doing: Critical Self-Reflection and Externship Pedagogy*, 21 CLIN. L. REV. 127, 133 (2014) (“Externships have also been seen as a poor stepchild to in-house clinics, parallel to the way the clinics are viewed by some, as unfortunately and incorrectly, as second-rate compared to podium classes”); Ford, *supra* note 6 at 119 (discussing the “deep discomfort” amongst clinical faculty regarding the role externships should play in the clinical curriculum).

⁹ See, e.g., Frank Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 VAND. L. REV. 321 (1982); Ford, *supra* note 6 at 118-119.

¹⁰ These gains should not be overstated. While the clinical movement has undoubtedly made significant progress in securing status for clinical faculty and recognition of the value of in-house clinical teaching since the 1970s, stubborn inequities persist and clinical education in many law schools has not been fully integrated into the curriculum. See, e.g., David A. Santacroce, *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, 36 J. LEGAL PROF. 353 (2012) (“Clinical faculty still lag behind non-clinical faculty in security of position and governance rights at most law schools.”); Peter Joy, *Challenges to Clinical Education, Clinical Legal Education, and Clinical Scholarship*, 26 CLIN. L. REV. 237 (2019) (noting that many schools have made investments in clinical legal education “grudgingly,” in response to external factors); Margaret Drew and Andrew Morriss, *Clinical Legal Education and Access to Justice: Conflicts, Interests, and Evolution in BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA* (Samuel Estreicher and Joy Radice, ed 2013) (“Rather than incorporating clinical training into a coherent overall curriculum, law schools have largely minimized the effect of clinical education on non-clinical training”); Peter A. Joy, *The Uneasy History of Experiential Education in U.S. Law Schools*, 122 DICK. L. REV. 551 (2018) (describing law

often viewed as having limited educational value and pedagogical rigor; they were the “orphan child” of the legal curriculum.¹¹

In the early years of externships’ emergence as a standard feature of law schools’ experiential offerings, teachers and scholars worked to articulate their unique educational value and to develop a coherent pedagogical theory underlying them. In the 1980s and 1990s, externship scholars forcefully asserted the value of externships in general and *vis a vis* in-house clinical offerings.¹² In a perspective that this article seeks to revisit and reassert, several of these scholars emphasized the promise of externship seminars as a site for critical reflection on the legal profession and the operation of the legal system as a whole.¹³

As externships became more firmly enconced in the law school curriculum in the 2000s, scholarship on externship pedagogy evolved. Where early externship teachers mounted forceful defenses of the model generally, in recent years externship scholarship has turned to more particularized examinations of the pedagogical challenges and benefits the course presents. Scholars have highlighted the unique opportunities externships provide for students to engage in and cultivate habits of self-directed learning,¹⁴ to benefit from faculty mentoring and counseling,¹⁵ and to explore ethical issues in context.¹⁶ Since

schools’ ongoing reluctance to “adopt a true and substantial commitment” to experiential education).

¹¹ Janet Motely, *Self-Directed Learning and the Out-of-House Placement*, 19 N.M. L. REV. 211 (1989).

¹² See e.g. Robert F. Seibel and Linda H. Morton, *Field Placement Programs: Practices, Problems and Possibilities*, 2 CLIN. L. REV. 413, 415 (1996) (“Externship programs can provide a distinctively valuable educational experience for students - an experience not available in traditional classrooms and also an experience with some benefits that are not available through in-house clinics.”)

¹³ See Seibel and Morton, *supra* note 12 at 420 (“Externship programs also provide an ideal structure for helping students to gain perspective on the legal system-to examine legal doctrine in the context of societal problems, apply jurisprudential and other philosophical considerations to the practice of law, and compare and critique legal systems”); see also, Ann Shalleck, Peter Jaszi, Marlana Valdez, Susan Carle, *Experience as Text: The History of Externship Pedagogy at the Washington College of Law, American University*, 5 CLIN. L. REV. 403 (1999) (discussing the development of American University’s externship program, in which externship experiences provided the “text” for seminars in which students examined critically the institutions of the profession); Robert J. Condlin, ‘Tastes Great, Less Filling’: *The Law School Clinic and Political Critique*, 36 J. LEGAL EDUC. 45 (1986) (arguing that external cooperating law offices in which students work as participant-observers could provide rich fodder for faculty-guided development of critical understanding of the profession and the practice).

¹⁴ Laurie Barron, *Learning How to Learn: Carnegie’s Third Apprenticeship*, 18 CLIN. L. REV. 101 (2011).

¹⁵ Harriet N. Katz, *Counseling Externship Students*, 15 CLIN. L. REV. 239 (2009) (describing the process of advising students before and during their externship experience).

¹⁶ Alexis Anderson, Arlene Kanter and Cindy Slane, *Ethics in Externships: Confidentiality, Conflicts, and Competence Issues in the Field and in the Classroom*, 10 CLIN. L. REV.

the release of the Carnegie Report in 2007,¹⁷ much externship scholarship has focused on the unique value externships can add to what the authors of the Report described as a form of socio-ethical professional apprenticeship too often missing from the legal curriculum, a “sense of professional identity and purpose.”¹⁸

Scholars and educators have also acknowledged various challenges inherent to the externship model, including its reliance on practicing attorneys in the field to supervise and teach students,¹⁹ the faculty supervisor’s remove from the student practice experience, and the resource constraints and high student-faculty ratios that externship instructors are often forced to contend with.²⁰ They have identified a variety of principles and strategies to help faculty overcome these challenges and ensure that externships provide meaningful learning experiences for students.²¹

As the beginnings of a theoretical framework of externship pedagogy have taken hold in clinical scholarship over the past three decades, externships have become an established feature of contemporary American legal education. In a 2019-2020 survey of 185 ABA-accredited law schools conducted by the Center for the Study of Applied Legal Education (CSALE), all responding schools reported offering an externship or field placement course.²² Externship courses hold appeal for students and schools alike. According to the CSALE 2019-2020 survey, half of all JD degree graduates from those participating institutions took an externship course while in law school.²³

473 (2004).

¹⁷ WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (Carnegie Foundation for the Advancement of Teaching 2007) (hereafter cited as “Carnegie Report”).

¹⁸ Kelly S. Terry, *Externships: A Signature Pedagogy for the Apprenticeship of Professional Identity and Purpose*, 59 J. LEGAL EDUC. 240 (2009); Timothy Floyd and Kendall Kerew, *Marking the Path from Law Student to Lawyer: Using Field Placement Courses to Facilitate the Deliberate Exploration of Professional Identity and Purpose*, 68 MERCER L. REV. 767 (2017).

¹⁹ Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLIN. L. REV. 611 (2004); Lawrence K. Hellman, *The Effect of Law Office Work on the Formation of Law Student’s Professional Values: Observation, Explanation, Optimization*, 4 GEO. J. LEGAL ETHICS 537 (1991).

²⁰ Ford, *supra* note 6; Nancy Maurer and Liz Ryan Cole, *Design, Teach and Manage: Ensuring Educational Integrity in Field Placement Courses*, 19 CLIN. L. REV. 115 (2012).

²¹ Ford, *supra* note 6; Maurer and Cole, *supra* note 20.

²² ROBERT R. KUEHN, MARGARET REUTER, DAVID A. SANTACROCE, *THE 2019-20 SURVEY OF APPLIED LEGAL EDUCATION RESULTS* (CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION 2020), available at https://uploads-ssl.webflow.com/_%20on%202019-20%20CSALE%20Survey.10.19.20.pdf [hereinafter “2019-2020 CSALE Survey”]; email correspondence with Survey co-author Robert Kuehn, Jan. 7, 2021 (on file with author).

²³ 2019-2020 CSALE Survey, Table 9, p.14.

Students appreciate the diversity of practice and career-building opportunities externships offer.²⁴

Externships are generally considered significantly less costly than in-house clinics, making them a financially attractive vehicle for law schools seeking to expand experiential learning options.²⁵ This perceived difference in cost between in-house clinics and externship courses may result in part from a lack of consensus about the resources appropriate to effective externship design. No consensus exists about the appropriate student-faculty ratio in an externship course or the degree of oversight externship faculty should exercise over field supervisors, both of which bear on the costs of operating a high-quality externship program. Nonetheless, externship programs do not impose on law schools any of the overhead costs associated with law practice and live client representation that in-house clinics do. Attractive as they are to administrators and students, externships will continue to be a mainstay of law schools' experiential offerings for years to come.

B. *Ongoing Challenges to a Coherent Theory and Practice of Externship Pedagogy*

Despite their prevalence and the emergence of some common themes that point towards a framework of externship pedagogy,²⁶ however, there remain significant areas of ambiguity and divergence within the clinical community about what externships contribute to the legal curriculum and how they can best be structured to maximize student learning. These fissures appear both in externship scholarship and in the structure of externship offerings across law schools.

²⁴ Maher (1990), *supra* note 8 at 539, 546. 47% of law schools respondents to the 2019-2020 CSALE survey reported an increase in student demand for externships over the previous three years, while 46% of responding law schools reported consistent student demand during that time period. Among schools reporting an increase, the most common reasons for the increase are: students believe field placement courses improve marketability (at 80% of the schools); students believe field placements improve skills (70%); new ABA 6-credit experiential requirement (50%); increased interest in substantive areas of practice within field placements offered (44%); and increased support and promotion by law school (43%). 2019-2020 CSALE Survey, *supra* note 22 at 17.

²⁵ Ford (2015), *supra* note 6 at 113-114; Martin J. Katz, *Understanding the Costs of Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING 28, 30 (2014). This reality in itself has long given many clinical educators pause; the concern is that cost incentives (actual or perceived) could drive law schools to replace more pedagogically structured in-house clinical offerings with lower-cost and less-structured externship slots. See Maurer & Cole, *supra* note 20 at 142-143.

²⁶ See Ford *supra* note 6 at 121, identifying common principles for externship pedagogy, including: centering students' live on-site experiences; adopting a modified version of the in-house clinical adult-learning approach; emphasizing student self-reflection; developing legal skills, and identifying clear learning goals for externship courses.

A central challenge to developing a cohesive theory and practice of externship pedagogy is the diversity of forms externship course offerings take, across law schools and even within them. The fieldwork portion of some externship courses is limited to a particular subject or practice area; in other courses, students' fieldwork takes place in a diverse array of practice settings.²⁷ Some externship courses include a group seminar or classroom component; others satisfy the faculty-guided reflection requirement through individual faculty tutorials or other means.²⁸ Because externships encompass such a multitude of student experiences within and outside law school walls, it can be difficult to identify patterns in how students best learn from them – or agree precisely on what the “them” even is.

Moreover, externship course designs often reflect a law school's institutional histories, norms, and organization as much as they do intentional pedagogical decisions. Factors such as a school's size and resources; the relationship between podium, clinical, and externship faculty; the availability of seats in in-house clinical courses; and students' career prospects and expectations may all affect how a law school approaches its externship course offerings. External considerations such as the size and composition of the local legal market, the school's relationship with the local bar and alumnae, and state student practice rules may also shape a school's externship course design. Institutional constraints influence pedagogical decisions in many different courses across the law school curriculum. Forged as they are from student experiences both within and outside the law school, and marginalized as they have traditionally been to the core legal curriculum, externships are uniquely subject to external and institutional forces.

Nonetheless, externship faculty can and do create rigorous, meaningful learning experiences for their students within existing institutional and external constraints. These faculty should continue to advocate for the adoption of the most pedagogically sound course model. It is especially important for externship faculty and scholars to be explicit and precise about the learning objectives that can be achieved through the externship course model they adopt and to implement teaching methodologies tailored to those objectives.

²⁷ According to the 2019-2020 CSALE Survey, 70% of externship courses offered by responding law schools place students in a mix of different types of field placement/host offices rather than sending them to similar types of offices/practices. 2019-2020 CSALE Survey, *supra* note 22 at 42.

²⁸ Seventy-five percent of field placement courses meet the ABA requirement for “a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection” through a classroom instructional component (i.e., related seminar). 2019-2020 CSALE Survey, *supra* note 22 at 46.

Of all the features of the externship course, there is perhaps the least clarity and consensus within the clinical community about the function, value, and optimal structure of the externship seminar, particularly one enrolling students in diverse practice settings.²⁹ As Rebecca Rosenfeld observes:

[Q]uestions about the purpose of externship seminar classes, what those classes can and should accomplish, and whether law schools should require or even offer them persist in the externship community and beyond. Numerous sessions exploring how to structure and design these classes are presented at each national externship conference. . . . A number of experienced law teachers who have taught and worked with externs for decades have told me that they are still trying to figure out exactly what their externship classroom component can offer students.³⁰

The scholarship on externships is replete with similar observations. For example, Elizabeth Ford refers to the seminar as the “Achilles’ Heel” of the externship model and describes the diversity of practice settings represented in mixed-placement ones as a “genuine course design challenge.”³¹ Erica Eisinger goes further, identifying a set of challenges associated with the general externship class and concluding that any value it may add to student learning is unlikely to be worth the time or tuition dollars it requires.³²

Despite persistent questions about their educational value and purpose, generalist externship courses with a seminar component currently represent the most common externship course structure for law schools. Just over 50% of all externship courses captured in the most recent CSALE survey are generalist or mixed-setting courses that meet the ABA reflection requirement through a seminar.³³ While recognizing that institutional realities instead of (or in addition to) deliberate pedagogical choices may drive the design of some of these generalist externship seminars, I contend that they have a great deal of promise as learning experiences for students. All externship seminars create space for students to reflect upon and learn from the institutions of the legal profession and law practice that they encounter in their externship fieldwork. A generalist seminar offers students a unique opportunity to compare experiences and observations from diverse legal institutions and practice settings represented in the course

²⁹ Ford, *supra* note 6 at 121.

³⁰ Rosenfeld, *supra* note 8 at 129 (internal citations omitted).

³¹ Ford, *supra* note 6 at 116, 123.

³² Erica Eisinger, *The Externship Class Requirement: An Idea Whose Time Has Passed?*, 10 CLIN. L. REV. 659, 675-676 (2004).

³³ 2019-2020 CSALE Survey, *supra* note 22; email correspondence with Survey Co-Author Robert Kuehn, Dec. 27, 2020 (on file with author).

and to develop broader understandings of the current state of the profession.

PART II. LAW SCHOOLS' FAILURE TO TEACH STUDENTS ABOUT THE PROFESSION AND ITS CONSEQUENCES

In a plenary address at the 1999 AALS conference, Harvard Law Professor David Wilkins argued forcefully that the legal academy has an unmet responsibility to develop and pass along to students substantive knowledge about the American legal profession. According to Wilkins, law schools have an obligation to their students and to the public to move beyond "the array of job fairs, career counseling, distinguished alumni speakers, and anecdotal kibitzing"³⁴ that represent law schools' typical approach to exposing students to the profession and to practice. He argued that law schools should adopt a new kind of pedagogy that:

...emphasize(s) how organizational structures, norms, and practices shape individual careers and influence the practical meaning of substantive legal rules and professional commitments.³⁵

Wilkins's argument rests on the premise that the institutions and structures through which the work of lawyers is organized, funded, and mediated—i.e., law firms, court systems, prosecutors' and public defenders' offices, government agencies, nonprofit organizations, in-house counsel departments— are important subjects of study and analysis for future lawyers.

The "legal profession" Wilkins called on law schools to teach and study is distinct from the topics of professionalism, professional ethics, and professional identity that all have received much attention in recent scholarship on legal education in general and externships in particular.³⁶ The term "legal profession" as Wilkins uses it refers to lawyers as a social group and to the "organizational and institutional structures" through which lawyers practice.³⁷ This article adopts Wilkins's usage of the term as well as his argument that law schools should offer more and better opportunities for students to study it.

Lawyers and the institutions of law practice that constitute and give shape to the profession are critical topics of study for future lawyers for several reasons. First, future attorneys need to have information about and the conceptual tools to analyze the structures and

³⁴ Wilkins, *supra* note 2 at 79.

³⁵ *Id.*

³⁶ See, e.g., Terry, *supra* note 18; Floyd and Kerew, *supra* note 18; Anderson, Kanter, & Slane, *supra* note 16; Lisa G. Lerman, *Professional and Ethical Issues in Legal Externships: Fostering Commitment to Public Service*, 67 *FORDHAM L. REV.* 2295 (1999).

³⁷ Wilkins, *supra* note 2 at 77.

norms of the institutions within which they will build careers and navigate their professional lives.³⁸ For all the recent discussion of helping students cultivate a professional identity and an ethic of professionalism in law school, the reality is that the institutions into which students go on to work will heavily shape (and often limit) the professional, ethical, and career-related choices available to them. Students need information and tools to understand the particular constraints and opportunities associated with practice in widely diverse institutions of the profession so that they can forge careers that align with their professional, ethical, and personal values, as well as their material and financial needs.³⁹ Furthermore, in order for students to understand how the law and the legal system are experienced by the general public, they need to understand the institutions through which the law is mediated and legal services are delivered.⁴⁰

Since Wilkins's exhortation to the academy in 1999, other scholars, teachers, and commentators have developed and elaborated upon his critique and reiterated the importance of equipping students to understand and analyze the institutions of the profession they are preparing to enter.⁴¹ However, these issues still receive haphazard and

³⁸ Southworth, *supra* note 3 at 442-446, citing Wilkins and discussing many law schools' continuing failure to "equip students to equip students with the kinds of information and tools they need to build fulfilling careers. . ." Southworth describes how some law schools have successfully developed courses that provide opportunities for students to study the profession beyond the rules of professional conduct. UC-Irvine requires all first-year students to take a class on the legal profession that draws heavily on social science literature and examines the organizational contexts and structures of diverse practice settings. Southworth reports that the course receives positive reviews from students, "probably because they realize that it provides content that is more reliable and more systematic than the information they receive from legal recruiters, the legal press, and other students." *Id.* at 445.

³⁹ Ann Southworth and Catherine Fisk, *Our Institutional Commitment to Teach About the Profession*, 1 U.C. IRVINE L. REV. 73, 75 (2011) (explaining U.C. Irvine School of Law's decision to create a mandatory first year 4-credit class on the legal profession by asserting that law schools are "obliged to provide students with information and perspectives that will prepare them to navigate careers in law," and that doing so requires giving students the opportunity to learn about the profession's political and social history as well as "its relationship to the market for legal services and the legal system as a whole." While students might glean some of this information during their time in law school absent such a course, the authors argue, they deserve opportunities to be exposed to it in a systematic, serious way. Students "should not be left to rely on legal recruiters and the legal press for instruction on issues so central to their futures.")

⁴⁰ See, e.g., Deborah Rhode, *Access to Justice: An Agenda*, 62 J. LEGAL EDUC. 531, 545 (2013) ("Unlike medicine, which has well-developed courses, schools and concentrations devoted to public health, law does little to prepare practitioners to address structural problems in the delivery of legal services and the administration of justice. As a consequence, many students graduate without an informed understanding of how the law affects those who cannot afford to invoke it.")

⁴¹ See e.g., Deborah Rhode, *Legal Scholarship*, 115 HARVARD L. REV. 1327 (2002); Deborah Rhode, *Laws, Lawyers, and the Pursuit of Justice*, 70 FORDHAM L. REV. 1543

anecdotal treatment, if any, in most law students' curricular experiences. As the authors of the Carnegie Report noted, "[d]espite progress in making legal ethics a part of the curriculum, law schools rarely pay consistent attention to the social and cultural contexts of legal institutions and the varied forms of legal practice."⁴² A small but growing number of law schools offer courses expressly designed to teach students about the profession itself,⁴³ but the topic remains at the periphery of most law school curricula.

The absence of deep, meaningful opportunities for law students to examine the legal profession has serious consequences for future attorneys and for the public the profession purports to serve. For students, the lack of access to holistic, substantive information about the profession as a whole undermines their ability to make informed, empowered career choices. Most students begin law school with very little understanding of what most lawyers do, how markets for legal employment operate, or the variety of roles lawyers perform across various practice settings. At most schools, there is limited discussion in the first-year curriculum or extra-curricular programming about the organization of the work of lawyers, the economic and social forces that shape various sub-markets for lawyers' services, or the implications for lawyers and society of the increasing stratification of and specialization within the profession. Even the most fundamental observations made by social scientists about the profession and its employment markets – such as the deepening chasm between the market for corporate legal services and the market for individual legal services⁴⁴ – go entirely unmentioned in most conventional law school classes.

At elite law schools in particular, students' first and lasting impressions of the profession they are preparing to enter too often come

(2002); Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel, and Robert F. Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required*, 43 WASH. U. J. L. & POL'Y 11 (2013); Elizabeth Chambliss, *Lawyers: A Case Study*, 69 FORDHAM L. REV. 817 (2000).

⁴² See Carnegie Report, *supra* note 17, Summary at 6.

⁴³ See, e.g., Ann Southworth, Bryant Garth, and Catherine Fisk, *Some Realism about Realism in Teaching About the Legal Profession*, in 1 THE NEW LEGAL REALISM: TRANSLATING LAW AND SOCIETY FOR TODAY'S LEGAL PRACTICE 74 (describing UC-Irvine Law School's first-year Legal Profession course); CENTER ON THE LEGAL PROFESSION, HARVARD LAW SCHOOL, *Teaching Ethics and Professionalism*, 4 THE PRACTICE 3 (March 2018) at <https://thepractice.law.harvard.edu/article/teaching-ethics-and-professionalism/> (discussing various law schools that have adopted elective or mandatory courses on the profession).

⁴⁴ JOHN HEINZ & EDWARD LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1994); Gillian Hadfield, *Higher Demand, Lower Supply? A Comparative Assessment of the Legal Resource Landscape for Ordinary Americans*, 37 FORDHAM L. J. 129 (2010).

in the form of career panels and information from other students centered on opportunities at large law firms that primarily serve large corporate clients.⁴⁵ In the absence of comprehensive or critical information that would allow them to situate large law firms in broader economic and social context or to consider career paths in other sectors of the profession, students at these schools often come to see “big law” as being the primary and natural default market for lawyers’ services in the U.S. Even as they are increasingly confronting high-stakes career decisions about summer positions earlier and earlier in their law school careers, students’ understandings of the complex and fractured American legal profession often remain limited to generic binaries regarding areas of practice and practice settings – for example, private v. public; big law v. public interest; corporate v. litigation. These relatively superficial distinctions do little to inform students about the range of work lawyers perform, the nature of the organizations that employ them, the types of clients who may engage their services, or the ways in which lawyers’ institutional roles may shape their professional lives.

The lack of nuanced exploration and examination of the profession does a disservice to all students, who must make high-stakes career decisions with thin and incomplete information about the complex and diverse institutions and job markets they will navigate upon graduation. It works a particular hardship on students whose service-related aspirations were a primary motivation to pursue a law degree in this first instance. Recent empirical research on “public interest drift” suggests that the absence of information about legal careers in the first-year curriculum law school may undermine students’ ability to integrate their civic and public commitments into their career planning and to identify personally satisfying areas of legal practice.⁴⁶

The absence of attention to the legal profession and legal careers in the law school curriculum operates not only to the detriment of law students, but also to society as a whole. Wilkins uses the example of prosecutors and public defenders to make the point that while students taking traditional professional responsibility or criminal law classes would likely come away with the impression that decisions about charging, plea negotiations, and disclosures lie with individual attorneys, the reality is that most of these attorneys work in large organizations with their own institutional norms, incentives, and practices that shape individual attorney decision-making about such

⁴⁵ John Bliss, *From Idealists to Hired Guns?: An Empirical Study of Law Student Drift*, 51 U.C. DAVIS L. REV. 1973 (2018).

⁴⁶ *Id.* at 2027-2028.

matters.⁴⁷ Furthermore, he notes, these organizations (U.S. Attorney's Offices, local District Attorneys, public defender offices, emerging big law white-collar defense practices) "confront each other in larger institutional structures - courts, legislatures, prisons - that also shape and constrain lawyer conduct."⁴⁸ Focusing on the professional challenges faced by attorneys who work for public defender's offices, Wilkins observes:

[In addition to serving as advocates for their individual clients, public defenders] also work for a large and increasingly bureaucratic institution that must consider its own institutional role. . . [t]he chief public defender has an ethical responsibility to ensure that the office's limited resources are used effectively for the benefit of both current and future clients. The positions lawyers take in one case will necessarily affect the interests of other clients and of the community as a whole. . .⁴⁹

In failing to teach students about the institutions of the profession, Wilkins argues, law schools fail to prepare them for professional lives that will require navigating not just the challenges of individual client representation but also the incentives and constraints of their institutional roles.⁵⁰

Law schools' inattention to the organization and institutions of the profession also impedes students' attention to and understanding of access to justice issues. The inability of ordinary Americans to access help for their law-related problems in our increasingly law-thick society, alongside the deepening engagement of a spectrum of legal services by corporate and organizational entities, runs counter to the principles of equal access and equal treatment that are at the heart of our legal system and our democracy. The choices we have made about how to structure, organize, and regulate the legal profession have given rise to a distorted market for legal services, one that is increasingly oriented to meeting the legal needs of corporate entities while failing to address the needs of ordinary individuals.⁵¹ Yet students can graduate from law school without ever having been asked to consider these profound socio-economic disparities in access to lawyers' services, their origins, or their implications for our legal system and society.⁵² Without foundational exposure in law school to the history, organization, and norms of the profession itself, future attorneys

⁴⁷ Wilkins, *supra* note 2 at 84.

⁴⁸ Wilkins, *supra* note 2 at 84.

⁴⁹ Wilkins, *supra* note 2 at 85.

⁵⁰ Wilkins, *supra* note 2 at 85.

⁵¹ See e.g., Gillian Hadfield, *The Price of Law: How the Market for Lawyers Distorts the Justice System*, 98 *Mich. L. Rev.* 953 (2000).

⁵² Rhode (2013), *supra* note 40 at 546.

are poorly equipped to identify and address structural shortcomings of the profession *vis a vis* the justice system and society at large.

PART III. THE PROMISE OF GENERALIST EXTERNSHIP CLASSROOM COMPONENTS AS A MEANS OF STUDYING THE LEGAL PROFESSION

The generalist externship seminar presents a rich opportunity for students to examine and reflect upon the institutions and organization of the contemporary legal profession that is often elusive in the law school curriculum. Adopting the legal profession as a common subject matter, and a critical study of the profession as a common learning objective, can help provide pedagogical purpose and cohesion to the generalist externship classroom component, long considered a challenging seminar to design and teach. In this section, I explain how a generalist externship seminar can be used to enhance and deepen students' understanding of the legal profession. I also explore some potential drawbacks and challenges to the approach and discuss why I nonetheless consider it to be one that has a great deal to offer law students and, ultimately, the public the profession purports to serve. I present some suggestions for the design features of a generalist externship seminar that takes a critical examination of the profession as a common learning objective.

A. *The Generalist Externship Seminar's Promise as Site for the Critical Study of the Profession*

Externship courses in general, and the generalist externship seminar in particular, present unique opportunities for law schools to begin to fill the curricular void surrounding the study of the legal profession described in Part II. In all externship courses, students are required to engage in the live institutions of the profession while simultaneously reflecting on those field experiences under the guidance of a faculty instructor. This learning experience situates students as participant-observers in the legal profession while obligating them to draw from those experiences and observations to develop broader understandings of them. The bifurcated structure of externships lends itself to a critical study of how the legal profession and the legal system operate.⁵³ This opportunity is not readily available to students through in-house clinics, which are at least partly insulated from the constraints and incentives that operate on most external law offices, or through professional responsibility courses, which tend to focus on the rules of

⁵³ The externship course contains two settings for student learning: the site setting of an actual law practice and the academic, reflective setting of the law school.

professional conduct themselves instead of the live conditions of the profession and practice.

While the entire externship experience presents a unique opportunity for students to examine the legal profession, it is in the externship seminar or classroom – as opposed to a tutorial or other form of faculty-guided reflection – that presents the most fertile ground for this form of student learning. Holding regular classroom meetings with multiple students allows externship instructors to mine students' diverse field experiences to identify common themes and patterns that cut across various practice sites. In contrast to a tutorial or reflective experience that is focused on a single student's field placement, a classroom experience that draws upon multiple students' perspectives from various field placements generates more and richer subject material regarding the profession for students to examine. Moreover, structuring the reflective component of an externship course as a seminar allows faculty to enhance student learning about the profession by integrating other features of classroom and clinical teaching that can deepen student understanding of the profession: assigned readings; class presentations; student-led discussions; and rounds, for example.

Though all externship seminars present valuable opportunities for students to examine the institutions of the profession within which students carry out their field experiences, a generalist seminar composed of students working in diverse practice settings holds special promise for fulfilling what Wilkins refers to as law schools' unmet obligation to teach about the legal profession. This is the case for several reasons. First, students need access to information about the diverse institutions and settings of the profession as a whole so they can make informed decisions about which might be the best fit for them. A student in a specialist externship course will likely gain a deeper understanding of a particular sub-sector of the profession – say, prosecutor's or public defender's offices – but she will lose out on the opportunity a generalist externship seminar presents to develop a broader perspective on what lawyers who work in other sectors do and what the conditions of their work lives look like. Second, the profession as a whole is a subject worthy of examination for all law students because a macro-level familiarity with its organization and structure is necessary to understand how lawyers' services are distributed amongst organizational and individual clients, and how various sectors of American society and government experience and interact with law and the legal system.

Given the diversity of practice areas and settings represented in a generalist externship seminar, students in these courses have ample

opportunities to draw comparisons across a range of lawyering sites and styles and therefore to forge together a deeper and much more nuanced understanding of the profession than they could develop in other spaces in the law school curriculum. In her article on teaching a large externship generalist externship seminar, Professor Mary Jo Eyster emphasized students' eagerness to learn from one another in the seminar by comparing and contrasting their own site experiences with those of their classmates.⁵⁴ After establishing the profession as a shared subject of study and exploration, students working in a range of practice settings can focus on identifying the areas of divergence and commonality amongst them. While state regulatory structures largely treat the profession as unitary, in reality the norms, values, and conventions that shape attorney conduct and attorneys' professional lives vary widely across practice sectors and settings.⁵⁵ Facilitating students' analyses of the institutions in which they are working and the constraints and incentives that operate on attorneys within them can help illuminate for all students the fragmented, diverse nature of the modern U.S. legal profession.⁵⁶

A generalist externship seminar therefore provides a unique opportunity within the law school curriculum to help students develop deep, analytical, critical perspectives on the profession and its institutions. In many ways this approach represents a revival of one of the original theories of externship teaching. Much of the early scholarship on externships emphasized externships' promise as a site for critical examination of the institutions of the profession. Where externships could not provide students the deep case- and client-based learning experience in-house clinics offered, early scholars contended, they could offer students an opportunity to step back from, analyze, and critique the broader legal structures and systems within which their legal work takes place.⁵⁷ In a provocative and influential 1986 article,

⁵⁴ Mary Jo Eyster, *Designing and Teaching the Large Externship Clinic*, 5 CLIN. L. REV. 347, 357 (1999) ("Another aspect of looking at the internship as a means of exploring practice experience is the need to offer comparisons to experiences of others. Thus, if exploring practice is a goal, learning how one area of practice, or one particular office, compares with another, should be included in the seminar. Students would benefit from considering, for example, how various government offices differ in their approach to environmental enforcement, and what types of constraints there may be depending on whether one is in a not-for-profit office instead of a government office.")

⁵⁵ Southworth and Fisk, *supra* note 39; Wilkins, *supra* note 2 at 79.

⁵⁶ Southworth, *supra* note 3.

⁵⁷ See, e.g., Linda Morton, *Creating a Classroom Component for Field Placement Programs: Enhancing Clinical Goals with Feminist Pedagogy*, 45 ME. L. REV. 19, 51 (1993) ("because there is a more flexible agenda in field placement classes, questioning of institutional norms is more of a focus than it might be in other clinical programs. Emphasis in field placement programs is on challenging normative values within the legal system, rather than critiquing an individual's technique in a specific lawyering skill.").

Professor Robert Condlin argued that in-house clinics inhibit the systemic critique in which law schools should encourage students to engage and proposed an alternative “cooperating outside office” arrangement resembling an externship that would enable students to develop a critical understanding of law practice.⁵⁸

Discussing the externship model they developed in the 1990s at American University Washington College of Law, Professor Peter Jaszi and his colleagues described students’ externship practice settings as the “objects of study” in courses whose aim is:

[to provide] students with tools for thinking critically about their work as lawyers in the institutions in which they will operate. Our pedagogical goals call for students to observe the realities they are likely to face in practice, to develop some critical perspective on the conditions they find, and to begin to develop strategies for realizing their goals and values within these settings.⁵⁹

Jaszi and his colleagues saw the externship experience as complementing the school’s in-house clinical offerings. Where in-house clinics encourage students to identify and assume habits of good practice in a world that is insulated at least in part from the pressures that operate on most lawyers, externships provide an opportunity for students to observe legal practice in the live, real-world institutions of the profession, and to reflect on those observations under the guidance of faculty.⁶⁰

In the past two decades there has been limited scholarly discussion of the possibilities externships hold as vehicles for helping students to develop “systems knowledge” or to engage in institutional critique. Most recent articles on externship pedagogy have focused on individual skill development or the formation of professional identity. These are undoubtedly important learning objectives that externships are uniquely situated to help students achieve. But it is incumbent on law schools not just to prepare students for legal practice, but also to help students develop a contextual awareness of the systems within which they will practice⁶¹ and to cultivate the tools and inclination to

⁵⁸ Condlin (1986), *supra* note 13 at 63-64. *But see* Hegland (1986), *supra* note 8 (arguing that in-house clinics can engage students in critique while helping them develop legal skills, and that Condlin overemphasizes the importance of critique to the detriment of other important goals of clinical pedagogy).

⁵⁹ Jaszi, et al, *supra* note 13 at 405.

⁶⁰ *Id.* at 412.

⁶¹ *See* Tomar Pierson-Brown, 26 CLIN. L. REV. 515, 553-560 (2020). Though Pierson-Brown focuses on how systems thinking can be taught via an in-house clinical course, her model and analysis contain important features and insights that can be applied to an externship seminar focused on the legal profession as well. She emphasizes how systems thinking can be utilized by clinical instructors to help students develop into “legal professional[s] who see[] their position as lying in the balance between their roles as system

improve the capacity of our legal institutions to deliver on the promise of equal justice.⁶²

To be clear, this approach to institutional critique does not call for a focus on or the passing of judgment about the individual case-related decisions or conduct of practicing attorneys in students' externship sites. Externship faculty supervisors in a general externship seminar, removed as they are from the practice experiences and circle of confidentiality at externship sites and limited as their understanding often is of the work of the site, are not well-positioned to facilitate evaluations or criticisms of individual lawyering choices. The focus of the critical perspective in a generalist externship seminar that takes analyzing the legal profession as a common learning goal is on asking the questions that flow from students' observations about the *institutions* they encounter in their site experiences. They are the questions Jaszi and his colleagues identified as central to reflection in an externship course that takes "experience as text" – who these systems serve and disserve, and how they might be changed.⁶³ The generalist externship seminar is fertile ground for such a systems-based critical examination of the profession and its constituent institutions.

B. Challenges to the Generalist Externship Seminar as a Means of Studying the Legal Profession

Despite the promise generalist externship seminars hold as a means of helping students deepen their understanding of the legal profession, some may be skeptical about the pedagogical cohesion and rigor of the model. There are long-standing concerns within the clinical community about the function and value of the externship classroom component, particularly in the context of a generalist course. And there are legitimate questions that can be raised about whether an externship seminar linked to students' anecdotal experiences and perspectives in the field can provide a rigorous, comprehensive learning experience about the legal profession as a whole. I discuss these concerns below, and then explain how the approach I describe can overcome or at the least mitigate them.

First, there is persistent skepticism within the clinical community about the value and pedagogical coherence of externship seminars.⁶⁴ Externship teachers, scholars, and other observers have noted funda-

participant and as systems change agent." She explains how this approach can reveal for students important questions that they must ask themselves about the institutional roles they wish to play in their post-graduate careers.

⁶² Pierson-Brown (2020), *supra* note 61; Rhode (2013), *supra* note 40.

⁶³ Jaszi et al, *supra* note 13 at 413.

⁶⁴ Ford, *supra* note 6; Rosenfeld, *supra* note 8.

mental challenges associated with the externship course model that make designing a meaningful educational experience in the classroom difficult. Students' individualized site experiences are particularized and diverse, making it difficult for instructors to identify common ground for collective exploration and reflection.⁶⁵ The distance between students' site experiences and the classroom, as well as students' confidentiality obligations and habits,⁶⁶ limit the specifics of their site experiences that they can share with classmates and instructors, further restricting common learning material.⁶⁷ The "awkward separation"⁶⁸ of law school faculty instruction from the supervision of students' legal work in the externship model is difficult to reconcile with the well-established clinical pedagogical framework that integrates teaching and supervision through joint faculty/student casework. The remove between students' site experiences and the externship classroom can also make it difficult for instructors to implement a collaborative, active learning approach.⁶⁹ Erica Eisinger contends that externship class instructors often default to teacher-directed, passive methodology that is anathema to clinical pedagogy.⁷⁰ Some clinical scholars have argued that externship students would learn best in the natural ecosystem of the externship site, without the intervention of a faculty member.⁷¹ And despite the continued prevalence of generalist externship courses, much recent externship literature has focused on the value of specialized courses,⁷² implying that the time has come for law schools to move beyond the generalist

⁶⁵ Ford, *supra* note 6 at 121-124; Eisinger, *supra* note 32 at 670.

⁶⁶ Students often go beyond what the rules of professional conduct require of them with regard to confidentiality, avoiding discussion of information or observations from their site that could be embarrassing to their supervisors even if they are not subject to the requirements of Rule 1.6. See Ford, *supra* note 6 at 124, explaining how students often "instinctively assume an additional duty to maintain the business confidences of their site."

⁶⁷ Maurer and Cole, *supra* note 20 at 154; Ford, *supra* note 6 at 123.

⁶⁸ Ford, *supra* note 6 at 120.

⁶⁹ Eisinger, *supra* note 32 at 666.

⁷⁰ *Id.*

⁷¹ Anahid Gharakhanian, *ABA Standard 305's 'Guided Reflections': A Perfect Fit for Guided Fieldwork*, 14 CLINICAL LAW REV. 61 (2007); see also Daniel J. Givelber, Brook K. Baker, John McDevitt, & Robyn Miliano, *Learning Through Work: An Empirical Study of Legal Internship*, 45 J. LEGAL EDUC. 1 (1995); Brook Baker, *Beyond MacCrate: The Role of Context, Experience, Theory and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994).

⁷² Many recent articles on externships have discussed the promise of subject matter-specific externships and practicum. See, e.g., Amany Ragab Hacking, *Jumpstarting the Judicial Externship Experience: Building Upon Common Themes for Student Success in the Classroom and in the Judge's Chambers*, 21 CLIN. L. REV. 29 (2014); *Beyond Externships: Health Law Co-ops*, 9 IND. HEALTH L. REV. 401 (2012); Alexis Freeman and Katherine Steefel, *Uniting the Heads, Hands, and Heart: How Specialty Externships Can Combat Public Interest Drift*, 25 CLIN. L. REV. 325 (2019).

approach.

A fundamental premise of my argument is that the legal profession – the institutions of lawyers and law practice – can serve as a common subject matter in a generalist externship seminar. Adopting the legal profession as a common subject matter, and a critical approach to examining it as a common methodology, creates a cohesive framework for the seminar that all students can relate to, regardless of their site placement. The first step in developing such a seminar is to establish, unapologetically, that the profession and its institutions are topics worthy of study and analysis. Many students begin externship courses having given little thought to the institutional landscape of the profession and the legal system. They have not been encouraged to take notice of how the organizations that employ lawyers and deploy their services are structured or to analyze how the courts, agencies, and government offices through which ordinary people interact with the legal system function as institutions. Students often expect to explore and discuss issues of professional skill and identity development in externship classes, but the idea that their site institutions themselves can be subjects of study and analysis is often foreign to them. Once students see that some common questions⁷³ about the diverse legal institutions they encounter in their sites can yield a deepened understanding of the profession and system as a whole, they often become more engaged and eager to compare other aspects of their experiences in search of additional insights about lawyers' careers, the conditions of their work lives, and the realities of law practice. By engaging in critical examination and study of diverse practice sites in the seminar, students learn that *all* legal institutions and employers play powerful roles in shaping the work lives and professional choices of attorneys.⁷⁴

Indeed, taking the profession as a common subject matter and asking students to share their observations on it from the vantage

⁷³ These common questions are institutional and systems questions: what is the institutional history of your site agency? How is it organized, structured, and funded? Who do attorneys in your site have to answer to, be accountable to, in addition to their individual clients? What incentives and disincentives shape their professional choices and work lives? What is your agency's stated mission and how does it carry out that mission in fact?

⁷⁴ Erica Eisinger argues that "institutional critique" as a learning goal for an externship seminar is best accomplished in the context of a specialized course. Eisinger, *supra* note 32 at 668. While it is true that a placement-specific course could help students attain a more particularized understanding of the type of placement represented in a specialized course, other important possibilities for student learning and growth are lost. When they are given the opportunity to examine and reflect upon the ways in which legal institutions and employers shape the work lives and professional and ethical choices of attorneys in diverse practice settings, students can arrive at the important insight that all legal practice and attorney careers are shaped by the norms, cultures, and economics of the institutions of the profession.

point of their diverse externship sites cultivates a broad, rich active learning environment. This methodological approach of collaborative, student-to-student-based learning has deep roots in externship pedagogy. In 1993, Linda Morton described a feminist approach to externship teaching that “creates a student-facilitated, non-hierarchical atmosphere in which students learn about the practice of law by sharing their own experiences in the field and listening to those of others.”⁷⁵ In contrast to in-house clinical courses, the faculty supervisor in a general externship seminar is not presumed to have any particular expertise in or superior knowledge of the content of students’ legal work in an externship site or in the institutional workings of those sites. Instead, the students themselves are the experts in the various areas of law, practice, and institutional settings represented in the course. This decentralized expertise lends itself to collaborative learning through what Morton and other feminist scholars term “consciousness-raising”:

Through the telling of life events, participants explore common experiences and emerging patterns, thus building knowledge. . . . Consciousness raising is not simply a matter of stating one’s thoughts, but of discovering one’s thoughts with the support and assistance of the other participants’ tentative reports and statements. Consciousness raising gives authority to individuals’ experiences by testing them against the experiences of others in the group.⁷⁶

In a generalist externship seminar that takes the legal profession as a common subject matter, students’ sharing of experiences and observations from their externship sites can yield important insights and “raise consciousness” about the systems and institutions of the legal profession and law practice.

In addition to doubts about the quality of teaching and learning that is possible in an externship seminar, some observers may wonder whether such a seminar can truly offer students a comprehensive, rigorous education in the profession itself. The American legal profession is large, diverse, and complex, and there is vast scholarship from different fields devoted to examining it. An externship seminar that draws on the site experiences of students may not include a representative sample of the profession or its constituent institutions in its field placements.⁷⁷ Instead, the view of the profession to which they are

⁷⁵ Morton, *supra* note 57 at 21.

⁷⁶ Morton, *supra* note 57 at 42-43 (internal citations omitted).

⁷⁷ Indeed, many schools do not permit students to extern in law firms – the institutional practice settings that employ the majority of American attorneys. According to the 2016-2017 CSALE Survey, only 15% of law schools permitted students to extern at law firms. ROBERT R. KUEHN, DAVID A. SANTACROCE, MARGARET REUTER, SUSAN SCHECTER,

exposed in the classroom will be filtered through the particularized site experiences of their fellow students.

While there is some risk that a generalist externship seminar could slide into an anecdotal and haphazard approach to studying the profession, I believe there are ways to mitigate that risk and that pursuing such a seminar is worth the risk in any event. First, I do not contend that offering a generalist externship seminar on its own will satisfy law schools' obligation to teach students about the legal profession. Instead, these seminars offer one promising curricular avenue for exposing students to the topic by drawing on students' lived experiences and observations from the field. Ideally, generalist externship seminars would complement students' exposure to the broader organizations and institutions of law practice in other courses in the curriculum.

Second, the important insight that students will gain from engaging in a critical examination of their own site organizations and comparing them to the diverse site organizations of their classmates is that these institutions powerfully shape the conditions within which lawyers practice, forge their career, and make professional choices. Surfacing the institutional landscapes of sub-sectors of the profession and making them objects of study and learning will equip students to view other institutions they encounter in the course of their legal education through an inquisitive and critical lens. Finally, as I discuss below, generalist externship seminar instructors can draw on the rich body of scholarly research on the profession that will help students develop a big-picture understanding of American lawyers and legal institutions, while their site experiences serve as additional "text" that enable deeper exploration and analysis.

C. Suggested Design Features of a Generalist Externship Seminar that Adopts Critical Examination of the Legal Profession as a Learning Objective

In this section, I present several suggestions regarding how to design a generalist externship seminar that adopts as one of its learning objectives teaching students about the legal profession and that employs collaborative learning techniques. I present readings that can be assigned to establish the profession as a common subject matter for the course and to give students a big-picture overview of it. I describe some exercises that can be used to engage students in critical and comparative institutional analysis based on observations from their

externship sites. Finally, I discuss how externship rounds can be deployed within the context of a generalist seminar.

As many externship teachers have noted, students often approach the classroom component of an externship course skeptically, wondering why they are required to participate in it and what relevance it could have to their site experience. From the outset of the semester, I work to establish firmly two principles for the seminar: first, that the legal profession itself will serve as the common subject matter we explore at macro- and micro-levels, and second, that the bulk of knowledge-transfer in the classroom will flow not from me, the instructor, to the students, but amongst the students themselves. I also emphasize that the classroom discussions, presentations, and dialogue will lead not only to knowledge transfer but to knowledge creation, as students compare and contrast legal practice and the role of lawyers across institutional practice settings to develop deeper conceptions of the profession and its institutions.

Exposing externship students to empirical research on the profession can reinforce the message that the profession is a topic worthy of study and help them contextualize the observations they make about the profession in the externship sites. Macro-studies of the profession like the Heinz Laumann Chicago study of lawyers⁷⁸ and the NALP *After the JD* report⁷⁹ help students develop a big-picture understanding of who lawyers in the U.S. are, who their clients are, who their employers are, and how their work is organized and distributed to the public. With this big picture in mind, students are equipped to situate their externship sites and supervising attorneys within the landscape of the broader legal profession and to compare them with those of their classmates.

The Model Rules of Professional Conduct can also serve as material to introduce the profession itself as a shared subject of study. I ask students to read the preamble and to focus on the language about the “public citizen” role of all attorneys and the special responsibilities of attorneys for the “quality of justice.” We discuss whether and how attorneys in their externship sites have the opportunity to live out this “public citizen” role and what institutional factors might facilitate or impede them from doing so. We also consider the various roles for attorneys as client representatives contemplated by the rules – advo-

⁷⁸ JOHN HEINZ & EDWARD LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (1994).

⁷⁹ BRYANT G. GARTH, ROBERT L. NELSON, RONIT DINOVIETZ, GABRIELE PLICKERT, JOYCE STERLING, AFTER THE JD III: THIRD RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS, NALP, NALP FOUNDATION AND THE AMERICAN BAR FOUNDATION (2014).

cate, advisor, evaluator, and negotiator, and I ask all students to try to identify ways in which the attorneys in their office perform each of these functions. Students often are surprised to realize that even in what they consider to be purely “litigation” or “transactional” settings, the work of attorneys is generally more wide-ranging and nuanced than those binary categories suggest, as they advance their clients, constituents, and employers’ interests via a variety of advocacy and counseling services.

In addition to readings and research that orient students to big-picture empirical and normative perspectives on the profession, instructors can also draw from scholarship focused on particular areas of legal practice and practice settings to facilitate more focused learning about their particular practice site. For example, I require each student in my externship seminar to read a piece of scholarship (law review article, social science article, or book excerpt) that addresses the role of lawyers in their externship practice setting, and to write a response paper that compares the arguments or observations in the scholarship to their own observations of their externship site.

I use a variety of classroom and journal exercises to facilitate students’ individual and collective study of the institutions to which they are exposed in their externship. One of the most important is a modified and expanded version of the “Lawyering Audit” exercise that is presented in *LEARNING FROM PRACTICE*.⁸⁰ This exercise requires students to gather information about the mission, history, organizational and practice structure, funding, and operations of their site organization. It also asks students to identify whether the organization has “clients” in the sense contemplated by the rules of professional conduct: who they are; how they are chosen; what their legal needs are; and how the organization addresses them. For students in organizations that do not have “clients,” the exercise asks students to identify the constituencies served by the organization. Each student is asked to identify whose interests or needs their supervising attorneys must take into account in carrying out their legal work and to whom they are ultimately accountable.

All students in my generalist seminar, which includes externs in judicial chambers, in-house corporate legal departments, nonprofit legal aid and advocacy organizations, government agencies, and prose-

⁸⁰ Alexander Scherr, *Learning about Lawyering*, in *LEARNING FROM PRACTICE: A TEXT FOR EXPERIENTIAL EDUCATION*, 388-393 (Wortham, Scherr, Maurer, Brooks, eds. West Academic 2016). The entire chapter could also be assigned to students as a way of helping them make concrete connections between broader themes about the profession, the institutional features of their externship sites, and the work lives and practices of the attorneys in them.

cutors and public defenders' offices, present the results of this exercise to their classmates. The presentations typically yield important insights for the students about particularized organizational conditions that shape the conduct, decision-making, and work lives of their supervising attorneys. Some examples include:

- The influence that institutional and individual donors may have on a nonprofit legal organization's case selection and advocacy strategies;
- The difference between "horizontal" versus "vertical" staffing of cases in public defenders' offices and the costs and benefits in terms of institutional efficiency and quality client representation associated with each;
- The formal law (constitutional, statutory, and court rules-based) surrounding the role of federal magistrate judges and the importance of relationships and informal norms of conduct in particular jurisdictions that give additional shape to their roles in practice;
- The significance of the physical location of legal counsel's office space with regard to how employees and management of a corporation relate to and interact with in-house attorneys, which may in turn affect the degree to which consideration of legal perspectives inform and shape company decisions.

These exercises can also lead to important observations about the experiences of ordinary people with lawyers and the legal system. Students make and share observations about, for example:

- The large volume of callers to civil legal services offices whose requests for legal assistance are turned down;
- The challenges faced by unrepresented individuals navigating administrative adjudication and appellate processes involving applications for government entitlements like public health insurance, educational accommodations children with disabilities, and social security benefits;
- Whether and to what extent indigent defendants have any say in selecting the attorneys appointed to represent them.

Observations like these go to the heart of the conditions that shape ordinary people's experiences of the legal system. When students share them in the framework of a common exercise, they develop an understanding of the importance very particularized, concrete institutional factors play in the lives of lawyers and the legal system.

Student presentations about their externship sites – including substantive legal issues they encounter, but also the institutional context of these sites – represent rich opportunities for students to see value in the perspectives and experiences of one another, and to be

exposed to concrete, practical realities of diverse forms of legal practice. Journal exchanges – in which students are required to submit a journal entry that is a response to an entry of a fellow student – also present opportunities for students to learn from one another and to draw on diverse experiences to develop deeper understandings of the legal profession and practice.

Finally, externship instructors in a generalist seminar can use a modified version of rounds⁸¹ to engage students in collective reflection upon and learning about the institutions of the profession. Instead of focusing on individual casework, rounds in this context focus on the legal organizations, systems, and institutions students encounter in their externship site. Where clinical case rounds require students to narrate and reflect upon their own lawyering performance in the context of live client practice, these “institutional rounds” require students to analyze the organizations and systems in which they are acting as participant-observers in the field. The self-reflective dimension of these rounds emerges from the student’s contemplation of the fit between their own professional and personal values, aspirations, and skills and the norms, culture, and work conditions of the institutions and systems they are analyzing. Questions that can be used to guide institutional rounds in a generalist externship seminar include:⁸²

- Where does the funding for your agency/organization come from? What are the disadvantages and advantages of this funding structure – for clients, for attorneys, for the entity, for the public?
- How does your site organization/agency define success for itself? How does it define the success of its attorneys?
- At what point in the life of the problems facing your agency’s clients’ or constituents are the lawyers in your site engaged?
- What external institutions, agencies, or organizations do attorneys in your site interact with, and how do these interactions affect the conditions of their work?
- How is work distributed/allocated among attorneys in your site?

⁸¹ Rounds are an established form of clinical pedagogy in which students engage in an instructor-facilitated conversation about their legal work with their classmates. For a comprehensive discussion of the pedagogical theory of rounds, see Susan Bryant and Elliott Milstein, *Rounds: A ‘Signature Pedagogy’ for Clinical Education?* 14 CLIN. L. REV. 195 (2007).

⁸² Many of these questions – and numerous others that can be used to guide institutional rounds – appear in the “Lawyering Audit” exercise of the *Learning about Lawyering* chapter, in *LEARNING FROM PRACTICE: A TEXT FOR EXPERIENTIAL EDUCATION* (4TH ED.) See Scherr, *supra* note 80, 388-393.

- What observations can you make about the career pathways of attorneys in your site?

Using these “organizational rounds” in generalist externship seminars can serve as an avenue for the kind of collective learning (or “consciousness raising”) that is central to clinical education. As students articulate and compare their observations about institutional factors that give shape to the conditions of legal practice and lawyers careers, they are often able to identify patterns and move from “the particular to more generalized, contextual thinking.”⁸³ They come to understand that “organizational structures, norms, and practices shape individual careers [and the nature of legal practice]”⁸⁴ and how. This kind of grounded, collective reflection focused on the institutions within which lawyers work enables students to “see the water”⁸⁵ of the organizations and systems within which they will navigate their professional lives. As Professor Tomar Pierson-Brown writes, lawyers are both “agents and architects of the systems implicated in every practice area.”⁸⁶ Providing opportunities like “organizational rounds” to surface and compare the systems and structures through which the legal work of their site agencies is mediated allows students to develop a collective consciousness about the existence and influence of these structures across the legal profession and the legal system.

CONCLUSION

There are no shortage of criticisms that can be levied against the contemporary American legal profession or its approach to legal education. Law school graduates are insufficiently prepared to chart meaningful careers for themselves in an era of technological change and globalization that will inevitably transform the profession. And while law schools often provide top-notch cognitive training in legal analysis and reasoning, they frequently fall short in offering their students the ethical and practical apprenticeships that are necessary for meaningful professional preparation.⁸⁷ Moderate and low income Americans are all too often unable to access the services of attorneys or the promise of a just legal system and the guarantees of equal protection under the law.

Law schools are complex institutions constrained by economic, social, and cultural forces of the profession and the universities within which they are often embedded. They do not have the capacity to

⁸³ Bryant & Milstein, *supra* note 81 at 215.

⁸⁴ Wilkins, *supra* note 2 at 79.

⁸⁵ Pierson-Brown, *supra* note 61 at 533 (internal citation omitted).

⁸⁶ Pierson-Brown, *supra* note 61 at 562.

⁸⁷ Carnegie Report, *supra* note 17.

tackle all the serious challenges facing the American legal system and profession on their own. But as sites of professional learning and preparation, they are uniquely capable of and responsible for providing future lawyers the opportunity to develop meaningful, nuanced understandings of the ways in which the work of lawyers is organized, structured, funded, and distributed in our society. As Robert Condlin argued decades ago:

For most, law school provides the last unrestricted opportunity to take a larger view, where 'work' itself obliges one to develop a conception of lawyer behavior that serves more than selfish ends. In an important sense, the obligation to pursue critique is heightened not diminished by the fact that law school is the last step on a journey into a profession.⁸⁸

The generalist externship seminar is an underestimated offering in the contemporary law school curriculum. Approached thoughtfully, it offers outsized opportunities for students to study the legal profession so that they emerge better prepared to uphold the special responsibility for the quality of justice that accompanies membership within it.

⁸⁸ Condlin, *supra* note 13 at 51.

