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Experiential Education and Our Divided Campuses

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Experiential Education and Our Divided Campuses

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Experiential education and our divided campuses

Margaret E. Reuter and Joanne Ingham¹

December 3, 2014

The Carnegie education masters, legal employers, and the ABA have appealed for more experiential teaching in law schools. The time is now; every school will soon have to provide at least 6 credits of clinic, field placement, and skills courses for each of their students according to the ABA's most recent amendments to the Standards for Approval of Law Schools. Many educators and commentators proclaim the successes of the experiential courses to date, and assume that our current offerings just have to be expanded to accommodate the influx of students. However examination of the nature of the experiential coursework of 2,132 attorneys reveals that experiential courses have not been comparably pursued or valued by our former students as they have headed to careers in different settings and types of law practice. There are dramatic contrasts between public and private lawyers, litigators and transactional lawyers in the types of courses they took (or avoided) and in the lasting value they reaped. The *Experiential Learning Opportunities and Benefits Survey and Study* provides important insights and questions for deans, faculties, and curriculum committees to consider as they reorient their curricula to meet the new ABA requirements.

¹ Margaret Reuter, Indiana University, Maurer School of Law, Center on the Global Legal Profession; Joanne Ingham, Ed.D., Assistant Vice President for Institutional Research at New York Law School. Meg is indebted to Sandra Magliozzi, Associate Dean for Experiential Learning and Clinical Professor, Santa Clara University School of Law. As the Chair of the NALP Law Student Professional Development Section, she was her trusted collaborator in developing the survey objectives. Her leadership was critical to marshaling the many resources of NALP and NALP Foundation. The Experiential Learning Survey would not have been possible without the encouragement and support of James Leipold, NALP President, and Tammy Patterson, NALP Foundation President. The article has benefited greatly from the comments and probing questions of readers of earlier drafts, including Neil Hamilton, William Henderson, Robert Kuehn, Jeffrey Selbin, Joyce Sterling, Nancy Stuart, Charles Weisselberg, the energizing NYU's Clinical Writers Workshop (2014), including Kate Kruse, Jim Stark, Tim Casey, Jill Engle, and Jenny Roberts.

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The belief that all genuine education comes through experience does not mean that all experiences are genuinely or equally educative. ... The central problem of education based on experience is to select the kind of present experiences that live fruitfully and creatively in subsequent experiences.²

In the dog days of August 2014, the American Bar Association House of Delegates gave final assent to major revisions in the standards for law school accreditation, concluding a multi-year review process³ instigated by a maelstrom of critiques of legal education⁴ and a withering recession in the legal services economy. Among the most substantial changes, the amendments impose a new graduation requirement of six credits of coursework that is “primarily experiential in nature.”⁵ Per the new standard, the experiential coursework must integrate doctrine, skills, and ethics; engage students in performance of professional skills; develop the concepts underlying the professional skills being taught; provide multiple opportunities for performance; and provide opportunities for self-evaluation.⁶ While doctrinal courses may very well include experiential learning elements, the ABA standard makes explicit that simulation, law clinic, and field placement courses are the only ones that satisfy the new requirement.⁷

² THE LATER WORKS OF JOHN DEWEY: VOLUME 13, 1925 - 1953: 1938-1939, EXPERIENCE AND EDUCATION, FREEDOM AND CULTURE, THEORY OF VALUATION, AND ESSAYS (Jo Ann Boydston, ed.) at 11-13 (Southern Illinois University Press, 2008).

³ American Bar Association Section of Legal Education and Admissions to the Bar, Standards and Rules of Procedure for Approval of Law Schools, as concurred by the House of Delegates, August 11, 2014 (vote on August 11; effective date August 12, 2014). The revised Standards and Rules that resulted from a multi-year (2008-2014) comprehensive review of the standards by the Section. In a similar regulatory thrust, the California bar, the second largest in the country, is on the verge of imposing even more robust experiential learning requirements for admission to their bar. *Task Force on Admissions Regulation Reform: Phase II Final Report*, September 25, 2014 (Jon B. Streeter, Chair; Patrick M. Kelly, Vice Chair) recommended a new requirement that an applicant must have taken 15 credits of experiential learning coursework in law school. The Task Force recommendation was adopted unanimously by State Bar of California Board of Trustees, November 7, 2014. The timeline for submission to legislature and California Supreme Court is not yet determined. Available at <http://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000012739.pdf>, (last visited November 21, 2014).

⁴ See, e.g., WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Jossey-Bass, 2007) (hereinafter, “CARNegie REPORT”); STUCKEY, ROY, ET AL, BEST PRACTICES FOR LEGAL EDUCATION (Clinical Legal Education Association 2007) (hereinafter, “BEST PRACTICES”); BRIAN TAMANAHA, FAILING LAW SCHOOLS (University of Chicago Press 2012)); William Henderson, *A Blueprint for Change*, 40 PEPPERDINE L. REV. 461 (2013).

⁵ Standard 303(a)(3).

⁶ Std. 303(a)(3)(i) to (iv).

⁷ Std. 303(a)(3). The Council and the Section on Legal Education and Admissions to the Bar have established a transition and implementation plan (issued August 13, 2014). Among the items covered in the transition memorandum, are that the new standards, Chapter 3, Program of Education, will be applied to accreditation visits beginning 2016-2017 and applicable for 1L students entering in 2016 (graduating Spring 2019), specifically Standards 301(b), 302, 303, 304, 314, and 315. In the phase-in period, compliance with these standards will be assessed by evaluating the “seriousness of the school’s efforts,” according to the memorandum.

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Our new curricular mandates carry a host of expectations and aspirations in how they will help prepare our students with the skills and values of the profession—at the moment of graduation, not after a year or two cutting their teeth in practice. As such, it is an especially fruitful time to examine the dimensions of the three signature experiential learning pedagogies that might deliver on those hopes and expectations. The EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS SURVEY (*EL Survey*) examined educational outcomes of clinics, field placement, and skills courses focusing on lawyers' self-evaluations and revealing aspects of that coursework that they saw as most valuable.

The *EL Survey* is a two-phase nationwide survey of attorneys, eliciting key details about the nature of their experiential learning (EL)⁸ courses. More than 2,000 lawyers participated. The respondents practice in firms, government offices and non-profit organizations, in litigation and transactional practices, in law offices very large to offices quite small. The breadth allowed us to probe twin questions. What course characteristics were critical to the learning value derived by the lawyers? How much of that value rating is influenced by characteristics of the lawyers' practice?

The findings have both predictable and unexpected qualities. Law schools do quite well in experiential training for students headed to litigation careers, especially those in public interest and government service. Litigators value their experiential education far more enthusiastically than transactional or regulatory lawyers. Private practice lawyers (whether litigators or transactional attorneys) tend to value their EL coursework notably less than public practice attorneys. The differentials might be explained, at least in part, by the reality that private lawyers and transactional lawyers had far fewer course enrollments in the experiential wing of the curriculum, compared to their public practice counterparts.

It is clear that the more alignment there is between the nature of the EL coursework and the attorney's practice, the more the EL learning value endures, transfers, and is appreciated by our graduates. Ultimately, the disparity of experiences show that law schools have to come to terms with a reality that they are divided within. The learning potential of the EL curriculum is not uniformly reaped by all their graduates.

⁸ This article uses the terms *experiential learning coursework* and *experiential learning pedagogies* to denote both the learning derived and teaching techniques employed. These terms correspond with "experiential education," which others have defined as: "a designed, managed, and guided experience for students in the role of the lawyer, or observation of practice, accompanied by genuine academic inquiry." See BEST PRACTICES, *supra* note 4, at 121. See also, David C. Thomson, *Defining Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING ___ (2014 *forthcoming*).

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Nonetheless, there are striking similarities in the characteristics that were most valuable to both private and public lawyers. Those commonalities provide course and curriculum designers valuable anchors. Courses that gave the lawyers the opportunity to test oneself in a live environment are more highly valued than the simulation courses that occur within the protective shell of the school building. The intensity of the experiential learning classes is an important indicator of how highly valued the course was to the lawyers. However, more is not always better. There appear to be points of diminishing return that need to be better understood. Learning through multiple teaching methodologies adds value, especially for private lawyers.

This article is organized in four parts to explore the findings of the *EL Survey* and to reveal lessons for course design, curricular priorities, and academic advising.

- In Part 1, the article explains the genesis of the survey and its design.
- Part 2 lays out important differences in how private practice and public interest/government attorneys participated in experiential learning courses as students.
- Part 3 reveals the aspects of experiential learning coursework that were widely recognized by the Survey respondents as especially high value. The analyses focus on specific characteristics of the clinics, externships, and skills courses that the attorney took--the intensity, numerosity, and combination of courses that yielded specific and significant value boosts. To understand the lawyers ratings fully, the analyses also drill down to examine how the nature of the lawyers' current practice is a factor in their evaluations of the EL coursework.
- Finally, in Part 4, we pose a set of questions for deans, curriculum committees, and academic advising leadership to consider in setting curricular priorities and giving student advice. Among ABA's most recent amendments to the accreditation standards, is a mandate that law schools establish and publish learning outcomes reflecting their school's educational program and to monitor their institutional success in achieving the learning outcomes.⁹ Reflecting on the data derived from the *EL Study* can inform such law school efforts.

⁹ ABA Standards 301 and 302.

Part 1

Genesis and Goals:

EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS SURVEY AND STUDY

Under the auspices of NALP and NALP Foundation, the “Law Student” Professional Development Section partnered with the “Lawyer” Professional Development Section¹⁰ to pursue a study about lawyers’ evaluation of their experiential learning coursework. The law school career advisors and law firm professional development managers had the hypothesis that experiential learning coursework offered important value to a lawyer’s practice-effectiveness whether he or she practiced in a firm, public interest organization, or government office.¹¹ The *EL Survey* is exploratory; it was designed to identify differences in how lawyers value the three signature teaching methods of experiential learning—clinics, externships, and skills simulation courses. The NALP Board of Directors and the NALP Foundation embraced the Sections’ proposal and enthusiastically participated at every stage. They agreed to use their combined resources to disseminate a survey and collect the data. And they expressly agreed to license the data collected to Indiana University, Santa Clara University and New York Law School to allow us to probe and analyze the results more deeply.

NALP Foundation issued reports regarding each of the surveys, as well as a separate report on the comparisons.¹² Their reports gave general overview of the level of participation by the lawyers and the ratings assigned by the lawyers. They did not disaggregate the data to explore differences in the scope and intensity of the EL coursework. That is the subject of this article and analysis.

¹⁰ Sandra Magliozzi, Santa Clara University School of Law, and Meg Reuter, New York Law School (at the time) and Indiana University-Maurer (presently), with Kris Butler, Sr. Program Manager for Career Development, Holland + Knight LLP and Gillian M. Murray (Bryan Cave LLP). Others within NALP and its Foundation were instrumental to the success of the study, James Liepold, Executive Director, Judy Collins, Director of Research, Steve Grumm, Director of Public Service Initiatives, and Tammy Patterson, President of the NALP Foundation.

¹¹ In addition to the survey, the Section sponsored multiple programs to introduce and demystify experiential learning courses to law firm recruiters and professional development directors, including programs on interpreting transcripts to identify EL coursework and on differences in teaching goals as between doctrinal and clinical courses.

¹² NALP and NALP Foundation, 2010 Survey of Law School Experiential Learning Opportunities and Benefits (2011); NALP and NALP Foundation, available at <http://www.nalp.org/uploads/2010ExperientialLearningStudy.pdf> (last visited November 4, 2014); 2011 Survey of Law School Experiential Learning Opportunities and Benefits: Responses from Government and Nonprofit Lawyers (2012), available at <http://www.nalp.org/uploads/2011ExpLearningStudy.pdf>. (visited November 4, 2014); <http://www.nalp.org/uploads/2011Comparison.pdf> (last visited November 4, 2014).

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The *EL Survey and Study* was specifically focused on the perspective of the *lawyers*, rather than *master educators* like the Carnegie Foundation¹³ and the Clinical Legal Education Association,¹⁴ or from the perspective of *clients, supervising attorneys, and legal employers* as Marjorie Shultz and Sheldon Zedeck,¹⁵ Neil Hamilton,¹⁶ and others¹⁷ have done.

The *EL Survey and Study* builds on important early work, the *After the JD Study (AJD)*, a major multi-year longitudinal study of 4,500 lawyers' careers.¹⁸ In their first survey of lawyers two years in practice, the AJD Survey asked the lawyers to rate ten types of law school experiences in the helpfulness to their early work assignments (Table 1). The AJD respondents ranked clinics the highest of any of the curriculum-based experiences, just after student legal employment (summer and school year). Several other curriculum-based options were among the items queried, including i) upper level lecture classes, ii) course concentrations, and iii) legal writing. One might have expected those options to elicit high ratings as they represent the more specialized courses in the curriculum; allow the students to target their learning in a manner relevant to their careers; or focus on the most widely used skill in law practice (writing). Nonetheless, clinical training was favored more highly than any other faculty-delivered learning.

¹³ CARNEGIE REPORT, *supra*, note 4.

¹⁴ BEST PRACTICES, *supra*, note 4.

¹⁵ Marjorie M. Shultz and Sheldon Zedeck, *Predicting Lawyer Effectiveness: Broadening the Basis for Law School Admission Decisions*, 36 LAW & SOCIAL INQUIRY 620–661 (2011).

¹⁶ See, e.g., Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 567 (2014).

¹⁷ See, e.g., Susan Daicoff, *Expanding the Lawyer's Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795 (2012); Wawrose, Susan, *What Do Legal Employers Want to See in New Graduates? Using Focus Groups to Find Out*, 39 OHIO NORTH UNIV. L. REV. 505 (2013).

¹⁸ RONIT DINOVIETZ, BRYANT G. GARTH, RICHARD SANDER, JOYCE STERLING & GITA Z. WILDER, THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION & THE AMERICAN BAR FOUNDATION, *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* (2004) [hereinafter "AFTER THE JD" or "AJD"]. AJD survey population is a nationally representative sample of 4,500 lawyers, in all practice areas and settings, who were first admitted to the bar in the year 2000. Sample members were first surveyed in 2002 (AJD 1) in their second or third year of practice. The same group was surveyed again in 2007 and 2012. See, *AFTER THE JD II: SECOND RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS*, American Bar Foundation and NALP Foundation for Law Career Research and Education (2009); *AFTER THE JD III: THIRD RESULTS FROM A NATIONAL STUDY OF LEGAL CAREERS*, American Bar Foundation and NALP Foundation for Law Career Research and Education (2014).

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Table 1
After the JD: Lawyer ratings of law school experiences in early practice¹⁹

On a scale of 1 to 7, rate each experience's helpfulness to making your transition to early work assignments as a lawyer.”

1 = Not at all helpful; 7 = Extremely helpful; Not applicable

Experience	% rated item as helpful to extremely helpful (5-7)	Statistical significance
Legal employment (summers)	78%	Category 1: Stat sig, more helpful than next categories
Legal employment (school year)	67%	Category 2: Stat sig, more helpful than next categories
Clinical courses/training	62%	
Legal writing training	60%	
Internships	58%	
Upper-level lecture courses	48%	Category 3: Stat sig, more helpful than next category
Course concentrations	42%	
First-year curriculum	37%	
Pro bono service work	31%	Category 4: Stat sig, LESS helpful than all previous categories
Legal ethics training	30%	

As with any interesting data, the AJD data suggest and compel more questions. The more one considers those ratings and value preferences, the more one wonders what features of “clinical courses/training” elicited the highest value ratings. How did the respondents interpret that question? Does clinical training include skills and simulation courses? Does clinical training include field placement or externship courses? The AJD list also included Internships. Did the respondents consider credit-bearing externships under Internships, under Clinical training, or not at all?

As Rebecca Sandefur and Jeffrey Selbin explained in their revealing article, *The Clinic Effect*, the AJD question presented challenges for empirical analysis.²⁰ First, we do not know important details about the clinical training the responding lawyers received. A variety of models exist in the field. Live

¹⁹ Rebecca Sandefur and Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 85-88 (2009). Sandefur and Selbin used data from *After the JD*, *supra* note 16.

²⁰ *Id.* at 84.

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representation with individuals or entities as clients is the oldest format, but has been joined by other models that now offer non-litigation practice or working in a law office on a number of matters without primary responsibility for a particular client. From the AJD data, we cannot tell whether the lawyer had an intensive course or a limited experience, much less whether there were multiple courses, multiple semesters, or other indicators of intensity and scope of his/her experience.

Additionally, the AJD data had a glitch. The respondents were asked to rate only the experiences they actually had, but it was quite apparent that many of the respondents rated Clinical training who had not actually taken a clinic.²¹

The Survey Instrument:

The key elements of the *EL Survey* instrument (reprinted in Appendix B):

- i) Threshold question: Did you participate in any of three identified experiential learning coursework—clinics, externships, or skills courses, or none at all.
- ii) Coursework details: For each experiential learning (EL) pedagogy, we asked the lawyers to provide further detail specific to that coursework.
- iii) The value question: How do you rate on a scale of 1-4 each of the types of EL “in preparing you for the practice of law?”
- iv) Practice details: Questions about the attorney’s type of practice, office size, and years in practice.

Threshold question:

Wading into the territory of law school course titles carries a certain definitional treachery. While there is considerable agreement about many of terms used in the survey, it is also clear that law schools employ a very wide array of course names for the same thing and also have widely divergent content for courses that carry the same names.²² Our approach for comparing apples-to-apples was two fold. First, at the very beginning of the survey instrument, we asked participants to choose the course that “best describes the most significant content of the course(s) you took.” So, if the Survey’s nomenclature did not smoothly align with the participant’s experience, we asked him/her to make a

²¹ *Id.* (84% of the respondents rated Clinics, but Sandefur and Selbin noted that the best evidence was that about one-third of law students enrolled in a traditional clinic in the relevant time frame.)

²² Alliance of Experiential Education has made it part of its early mission to create a common nomenclature and typology for experiential education. The newly revised ABA standards 303 to 305 and its Annual Questionnaire (Section 4 Curricular offerings) both create new clarity to its definitions of faculty-supervised law clinic, field placements, and simulation courses.

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choice as close as possible. Second, we asked specific questions about course characteristics so that we could compare the characteristics, rather than a course title.

Clinics:

We wanted to be able to isolate the ratings for the attorneys who had the classic experience in building skills and in forming one's professional identity—when the student is bestowed the direct and personal responsibility for the legal welfare of a client. It is often seen as the bright crucible moment of professional identity formation where the student must bring to bear her full attention and best effort. The survey asked how many terms was the clinic, whether the respondent considered himself the lead or co-lead counsel, and whether he conducted the matter under a student practice order/rule.²³ We also asked details about the number of terms and supervision (whether by law school faculty member, an outside attorney, or both).²⁴ We asked these details for each clinic the attorney had taken.

The *EL Survey's* threshold question characterized a clinic as “representing individual clients.” If the survey participants followed that descriptor precisely, we would not have gathered data from attorneys who took clinics that do not represent clients at all (e.g., mediation), and likely where clients were organizations rather than people. There is some evidence in the response data that the attorneys abided by the advice to answer the question for the courses that best describe the course you took and answered the clinic-specific questions even if their clinic did not represent individuals. For instance, more than 25 percent of the respondents indicated that they did not consider themselves to be lead counsel or to have worked under a student practice rule.

²³ In 1969, in one of its efforts to increase student practical training, the ABA promulgated a Model Student Practice Rule, which has been adopted in some form in every state allowing law students to appear on behalf of clients in court under the supervision of a licensed practitioner. Sandefur/Selbin, *supra* note 19, at 77. David A. Santacrose and Robert R. Kuehn, *2010-11 Survey of Applied Legal Education*, (Center for the Study of Applied Legal Education 2012), at 19 (hereinafter CSALE 2010-11)(68% of schools reported all clinic students practice under a student practice rule, 17.9% have no students under a student practice rule, and the remainder have a mix). The latest CSALE Survey data collection closed September 2014. Results forthcoming.

²⁴ In 2012, the ABA defined clinics and externships vis-à-vis who bore the professional responsibility for the work of the law student—a full-time faculty member or an outside attorney. Clinics were defined as courses in which full-time faculty have primary professional responsibility for all cases on which students are working. Externships or field placement courses were distinguished as those in which someone other than full-time faculty has primary responsibility to the client. See J.P. “Sandy” Ogilvy and Sudeb Basu, *Externship Demographics Across Two Decades with Lessons for Future Surveys* (2012) at 3 (Catholic University, Columbus School of Law Legal Studies Research Paper No. 2012-5), available at <http://ssrn.com/abstract=2038455>. The 2014 ABA Annual Questionnaire notes that clinic faculty can be full-time or adjunct and that field placements are supervised by attorneys not employed by the law school. See, http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_aq_part1.authcheckdam.pdf, at Section 4, Question 13 (2014) (last visited December 2, 2014).

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Externships:

We know that nearly most externships are one-term,²⁵ but that the number of hours the student is expected to work can vary greatly from a modest time commitment to full-time. We also know that placements in courts and government agencies or public interest groups are nearly universally offered at law schools nationwide, but that a growing minority of schools allows placements in the private-profit sector in law firms and corporations.²⁶ As such, our key questions concerned how many hours worked each week of the externship and the setting, for each externship experience. As with clinics, the survey asked for these details for each externship taken. To avoid confusion with unpaid or paid internships, we prominently noted that the survey sought information only on JD-credit bearing courses.

Lawyers indicated whether their externship was for 10-20 hours per week, 21-30 hours per week, or 31-40 hours per week (presumably representing low, medium, and high credit externships). This allows us to compare externships across many schools, without wrestling with the variations how schools assign credits, for fieldwork and/or the academic component.²⁷ It also has the benefit of being easier to recall than the number of credits earned for a course. Some schools offer credit for field placements that require fewer than 10 hours per week of work in the law office. Our ranges did not include those limited-hour externships.²⁸

We did not ask questions about the companion seminar to the field placement. The campus-based academic element of the field placement is widespread (88% of schools).²⁹ But the nature of that academic component is wide-ranging,³⁰ from graded substantive seminars that met weekly, to

²⁵ CSALE 2010-11, *supra* note 23, at 21.

²⁶ CATHERINE L. CARPENTER, A SURVEY OF LAW SCHOOL CURRICULA: 2002-2010 (ABA Section of Legal Education and Admissions to the Bar (2012) at 77. Externships courses have expanded in every placement setting since 1992. Even the most common placements such as serving in a judge's chambers showed a 40 percent increase in schools offering such a course (from 100 to 124 to 140 schools in 1992, 2002, and 2010). While in-house counsel and law firm placements remain the least common placement offered, their growth has been the most dramatic from 1992 to 2010. Externship courses with corporate counsel office placements have grown more than three-fold since 1992 (28 to 88 schools) and law firm placements have more than doubled in that same time period (from 30 to 66 schools). According the ABA Standard 509 disclosure statements, only one law school reported no field placements for the 2012-13 academic year, New York University.

²⁷ See Ogilvy/Basu, *supra* note 24, at 13-23 (detailing allocation of credit between fieldwork and academic component; detailing number of hours of fieldwork required over the term per field placement credit awarded).

²⁸ Some 10.8% of field placements programs indicated in the 2010-11 CSALE survey that students work fewer than 10 hours per week. CSALE 2010-11, *supra* note 23, at n. 16.

²⁹ CSALE 2010-11, *supra* note 23, at 24.

³⁰ In 2003, ABA Std. 305 imposed a requirement for a contemporaneous classroom seminar or tutorial to any field placement that awarded 6 or more credits. In 2005, Std. 305 extended the academic requirement to any placement awarded 4 or more credits, but broadened the means to satisfy it, to include seminar, tutorial, or other guided reflection. In the August 2014 Revisions, Std. 305 extended the academic/reflection requirement

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seminars that meet just once or a few times during the semester, or a handful of tutorial meetings with a professor; from substantial journaling requirements to limited expectations. We avoided overburdening the survey to extract information at a detail level that lawyers may not remember with a reliable level of accuracy and where school terminology varies widely.

Skills:

Skills and simulation courses have expanded in recent years, in part, because an amendment in 2005 to the ABA standards imposed a graduation requirement for law students, to include substantial instruction in “professional skills.”³¹ This requirement ensured that a “Negotiations” course, for example, is a performance/practice-oriented course, rather than a readings-based theory course.³²

We developed a list of nine skills courses that track the ones used by the *ABA Survey of Law School Curricula*.³³ The list included the most typical in law school catalogs, e.g., Trial Advocacy (98% of schools offer) to Subject Specific Skills courses (55% of schools offer).³⁴ We also included three courses that schools have added to respond to student demand and/or employer criticism (i.e., Leadership, Business management, and Law firm management). Recent law faculty surveys of corporate lawyers and large firms have highlighted skills developed in courses such as Financial Analysis, Accounting, Corporate Finance, and Business Strategy, among others.³⁵ These studies were conducted well after the *EL Survey*, and unfortunately it did not include such titles.

to placements awarded 3 or more credits. 2014-2015 Standards and Rules of Procedure for Approval of Law Schools.

³¹ ABA Standard 302(a)(4) (2005-06).

³² Consultant’s Memo # 3 (March 2010)(“substantial,” instruction in ... professional skills must engage *each* student in skills *performances* that are *assessed* by the instructor...[M]erely reading about and taking an exam on counseling and negotiation will not suffice.” (emphasis in original)). This has now been expanded and codified in new Standard 304(a) (2014).

³³ See Carpenter, *supra* note 26 at 75 and 78. The majority of schools offered seven or more skills courses, with the – most common being Trial advocacy (98%), Alternative dispute resolution (89%), Appellate advocacy (88%), Mediation (85%), Transactional skills (78%), Pre-trial skills (74%), Interviewing and counseling (72%), and Negotiation (67%).

³⁴ See full list of courses at Table 11, and Appendix B (full text of the *EL Survey*).

³⁵ John C. Coates, IV, Jesse M. Fried, and Kathryn E. Spier, *What Courses Should Law Students Take? Harvard’s Largest Employers Weigh In* (HLS Program on the Legal Profession Research Paper No. 2014-12; Harvard Public Law Working Paper No. 14-20, February 17, 2014), available at <http://ssrn.com/abstract=2397317>. The courses surveyed were Accounting and financial reporting; Corporate finance; Negotiation workshop; Business strategy for lawyers; Analytical methods for lawyers; Leadership in law firms; and Statistical and Quantitative analysis. Their value question: Please indicate how useful the course would be for an associate to have taken, scale 1 to 5, 5 = extremely useful. Accounting and financial reporting scored 4.38/5 and Corporate Finance scored 4.21/5. See also Eric Talley, *Berkeley Transactional Skills Project and Survey*, presented to Task Force on Admission Reform, at 23 (Berkeley Center for Law, Business and the Economy 2014), http://www.law.berkeley.edu/files/bclbe/Cal_Bar_Assn_Deck_Final.pdf (last visited November 21, 2014), reporting results of survey of 346 business lawyers about transactional skills and competencies, and recommending that the California Task Force on Admission Regulation Reform add specific transactional

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Since course names and content vary so widely among law schools, we asked the attorneys to check the title that best described the most significant content of the course, and to check only one title for any course they took. The Survey provided opportunity for the attorneys to indicate the name of any skills or simulation courses taken that were not represented on the list.³⁶ Further the survey specifically noted that it was not seeking information about first-year required legal writing courses, but did seek information on “advanced drafting” courses. The survey specifically used “Drafting” rather than “Writing” course to exclude upper level seminars that require lengthy academic papers. The “intensity” measure here was the number of courses the respondent took, not the number of credits for any skills course.

Evaluation question:

We specifically wanted to focus the attorneys’ attention on the value of the coursework to the period where they were transitioning from school to practice. We wanted to build upon “helpfulness” data that was collected in the *AJD Study*, but with a slight modification. We asked: How useful in general were each of the experiences listed below **in preparing you for the practice of law?** [emphasis added]. The *After the JD Study* had used a similar question, but it focused on the utility “to early work assignments.”³⁷ We broadened the question to make sure the survey gave the opportunity for the lawyer to consider some of the less concrete values such as professional identity formation, empathy, resilience, professionalism, cultural competence, or other important take-aways from the EL coursework that might not be specifically pertinent to an assignment, per se. Still, the *EL Survey* question is utilitarian in focus—was the course helpful to your practice, not whether you enjoyed the course or learned from it. The scale provided was 1 to 4, with 1 representing “not helpful at all,” and 4 representing “very helpful,” as well as N/A “did not have this experience.” We chose an even number for the rating categories to eliminate a frequent tendency to choose a middle or neutral value along any continuum.³⁸

Although we sought information on each EL course the respondent took, we did not ask the respondents to evaluate each individual course, but rather to place a value on each category of

practice oriented skills to the list of “practice-based experiential courses that meet the professional competency training requirement,” namely Financial Analysis (e.g., accounting, budgeting, project management, and valuation) and Business Strategy and Behavior. Both suggestions were included in TFARR’s final recommendations to the State Bar Board of Trustees and adopted November 7, 2014, see *supra* note 3.

³⁶ The most common courses added by the respondents included: advanced legal research (14), general lawyering skills (10), mediation skills (6), moot court or trial advocacy competition (4), communication skills (4) and evidence simulation (2).

³⁷ AFTER THE JD, *supra* note 18 (Questionnaire).

³⁸ This is the same scale used in the Law School Survey of Student Engagement (Indiana University, Center for Postsecondary Research).

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experiential coursework. In this manner, we focused the respondents' attention on the aggregate benefit and avoided asking a level of granularity that would make the survey unwieldy.

Attorney's practice:

Again, without getting mired in too much detail, we wanted to collect information on the nature of the respondent's practice. Rather than ask about practice area, we focused on broad categories of litigation, transactional, regulatory, and legislative. When we undertook the second round of the survey for public practice attorneys, we also asked about the kind of office where the attorney worked, providing the categories that NALP has long used in its employment data collection efforts, such as level of government, public defender, indigent legal services, and impact advocacy organization, among others. We also asked the number of attorneys in the office. Finally we asked about longevity in practice, dividing respondents into early practice years (0-3) or more established in their careers (more than 3 years).

Survey population

The survey was conducted in two parts: first to private practice attorneys (November 2010) and second to public interest and public service attorneys (November 2011). The two surveys were identical in all major respects.³⁹ Each of the surveys used the identical phrasing for the question eliciting information on each EL course and for the value question. For our purposes, we will refer to the 2010 survey respondents as the *private attorneys*, and the 2011 respondents as the *public attorneys*. The response was robust: 930 private attorneys and 1,212 public attorneys provided usable answers, from 47 different states.

The dissemination of the survey instrument was broad, using a convenience sample. It did not employ a statistically rigorous sampling methodology. Rather it was designed to gather a wide swath of data that that could be examined and mined to identify areas for further examination for individual schools or legal employers.

The private attorney survey link was emailed from the NALP Research Director, to 500 NALP law firm members with the request to distribute to their associates. We did not track the distribution (how many lawyers) or the response rates. We specifically chose not to elicit the names of the law

³⁹ Appendix B. The reprint of the survey shows the minor variations between the two surveys. The differences were limited to questions about type of office and the role of the EL coursework in the attorney's job interviewing.

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firms (or law school attended). NALP member firms tend to be large firms, whether on a regional, national, or international scale. Nearly all respondents indicated that they practiced at firms of 100 or more attorneys, with nearly 70% indicating that they practice in firms of 250 or more attorneys. Such firms will largely or exclusively have business clientele, and few individuals as clients.

The public attorney survey was disseminated by the NALP Director of Public Service Initiatives. NALP does not have as strong a membership of public employer members; so the director used two alternate methods. First, the director oversees PSLawNet,⁴⁰ the database of public interest and government law jobs and he emailed the survey to 12,000 employers listed in the database. Second, he emailed the survey to several professional organizations, including Legal Services Corporation, the National Legal Aid & Defender Association, the National Association of Attorneys General, and the Government & Public Service Lawyers Division of the American Bar Association, to request their help in disseminating it to their memberships. As with the private lawyer survey, we did not track the distribution (how many lawyers or types of lawyers were emailed the survey link); the response rates; or the identities of employers or law schools attended.

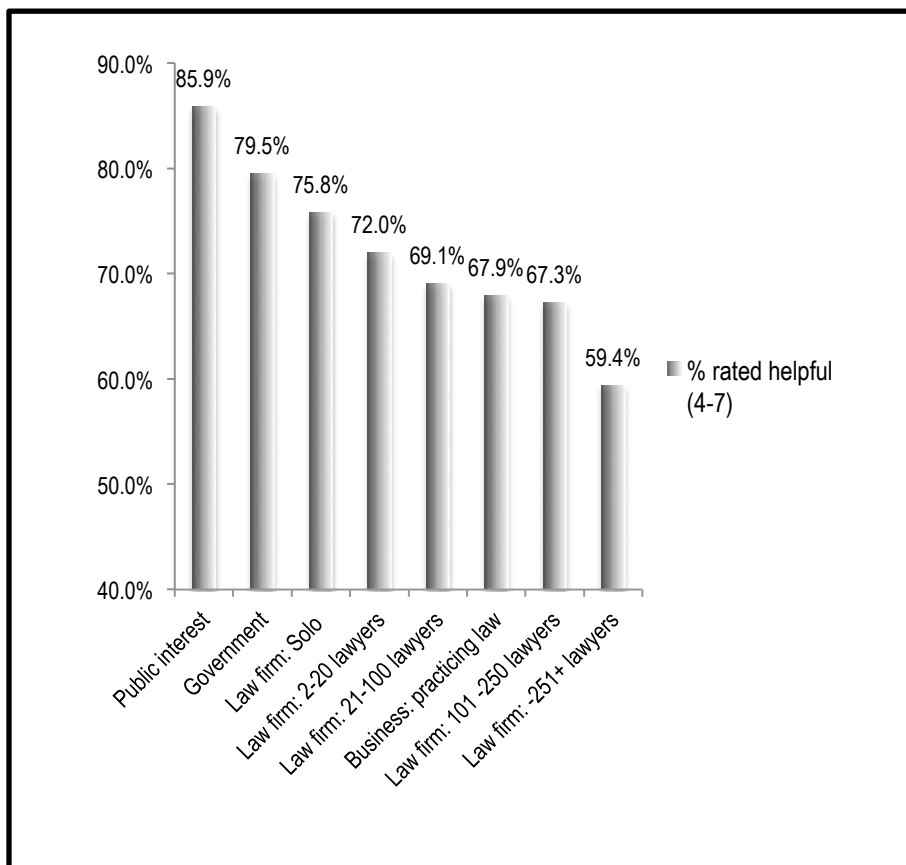
The *EL Survey* populations—private (large firm) and public (government and public interest) represent bookends of the spectrum of lawyers. The immediate analytical concern was how to put these specific lawyer populations in context, and whether their experiences could provide insights regarding lawyers in other practice settings, such as small and mid-sized firms.

The *AJD Study* data provide some context. Robert Nelson sorted the responses regarding the helpfulness of clinical training by the lawyer's practice setting and law firm size.⁴¹

⁴⁰ PSLawNet is now known as Public Service Jobs Directory.

⁴¹ Robert L. Nelson, *The Future(s) of Lawyering: Young Lawyers Assess the Value of Law School*, American Bar Foundation and Northwestern University, February 12, 2011 (on file with author).

Chart 1
After the JD: Helpfulness of clinics in transition to practice, sorted by practice setting⁴²



The data show a striking linear progression with public interest lawyers rating their clinical experience most highly and the large firm lawyers valuing their clinical training least highly. Importantly the ratings of lawyers in government and small and medium sized firms lie squarely in the middle. The *EL Survey* analyses offer insights for participants in specific settings—public interest, government, and large firms. But Nelson’s AJD analysis suggests that law school graduates practicing in other settings may have experience somewhere in between the public lawyers and private lawyers in the *EL Survey*.

The next concern was the extent to which the *EL Survey* populations are representative of the practice settings of new lawyers. New graduate employment data provide a rough benchmark for understanding the proportion of graduates whose practices are represented (or not represented) among the *EL Survey* populations. According to NALP’s annual *Jobs & JDs* report, public interest and government positions account for 18.6% of new law graduate jobs while large firms (more than

⁴² *Id.* Nelson’s data also showed that non-practicing lawyers in corporate and business settings rated their clinical training (67.5%) on par with lawyers in practicing roles in business or corporate settings.

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101 attorneys) represent 16.2% of the new grad jobs.⁴³ As such, the *EL Survey* population covers a little over one-third of the practice settings where new lawyers start their professional careers, at least as they did in 2013. The NALP data aggregate all law schools; individual law schools can have quite different distributions for their new graduates.⁴⁴

Table 2
Practice settings for newly graduated attorneys, 9 months after graduation⁴⁵

Practice setting	% of class of 2013
Law firm: solo	2.4
Law firm: 2-25	26.5
Law firm: 26-100	5.2
Law firm: 101-250	2.8
Law firm: 251+	13.4
Government	11.5
Public interest	7.1
Judicial clerk	9.0
Business	18.4
Academic	2.6

Part 2

One campus; Different career trajectories; Different curricula

Given all the growth in the experiential education offerings nationwide, we hoped to find widespread enrollments, in one methodology or another. We were rewarded. All but 226 of the 2,132 respondents had at least one course in the EL curriculum (89.4% participation).⁴⁶ Most had multiple.

⁴³ NALP, JOBS & JDS (2014), National Summary, of Employment Statistics, Class of 2013, <http://www.nalp.org/uploads/NatSummaryChartClassof2013.pdf> (last visited November 12, 2014).

⁴⁴ See <http://employmentsummary.abaquestionnaire.org>. Employment information is reported to the American Bar Association for accreditation and regulatory purposes, using categories and definitions very similar to NALP's. The ABA publishes these statistics on a school-by-school basis, and in a consolidated compilation.

⁴⁵ NALP, *supra* note 43.

⁴⁶ Our data hygiene and calculation methods preserved and report as much data as possible, with limited exceptions. The key exception: we deleted any rating where the attorney neither indicated that he/she took the particular type of coursework nor provided any response to the course detail questions. Some attorneys indicated that they took a particular type of EL coursework, but did not provide full details and/or ratings. If details were provided, they are included in any raw number counts. Percentages and ratings are based on the number of attorneys actually responding to the pertinent survey questions.

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We also found a dramatic split. Public and private lawyers approached experiential learning opportunities in very different ways—not only with the numbers of experiential learning courses they took, but also with the intensity of the experience. At almost every level, the public attorneys were more active in enrolling in experiential courses, and when they did, they participated at a more intensive level.

Table 3
Comparison of private and public lawyer participation in experiential learning coursework

Attorney characteristics	Private lawyers	Public lawyers
# of attorneys	930	1,212
# and % in most common practice type	Litigation: 529 (57%)	Litigation: 937 (77%)
# and % in second most common practice type	Transactional: 301 (32%)	Regulatory: 155 (13%)
Participation indicators		
# and % who took a clinic (CLC) *	317 (34%)	711 (59%)
# and % who took an externship (EXT) *	360 (39%)	678 (56%)
# and % who took a skills course (SKI) *	678 (73%)	1,016 (84%)
# and % who took all three EL types *	126 (14%)	379 (31%)
# and % who took "0" EL coursework *	159 (17%)	67 (6%)
# and % in full year (or longer) CLC *	147 (50%)	427 (61%)
# and % in single semester CLC *	141 (50%)	257 (38%)
# and % who had 2 or more EXT *	98 (28%)	226 (35%)
Most common settings for EXT	Court (43%); Government (26%); Non-profit org (14%)	Non-profit org (36%); Government (31%); Court (22%)
% with EXT in law firm setting *	12%	7%
Median # SKI courses (for those taking a SKI)	2	2
Most common SKI courses	Trial advocacy (55%); Negotiating (34%); Pre-trial litigation (26%)	Trial advocacy (67%); Appellate advocacy (24%); Negotiating (23%)
% took Transactional Practice SKI *	10%	5%

* For each of these indicators, the statistical differences between private and public lawyers participation is significant ($p < .05$).

Private and public lawyers choose their courses very differently.

The differences at nearly every participation level for clinic, externship or skills course is striking and statistically significant. The public lawyers not only took more clinics, externships and skills courses,

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but they were more likely to enroll in the full palette of experiential learning courses. The differences are evident in so many slices. It suggests that the students bound for private and public practice careers approached their course selections with intentionality and directionality. This sparks a whole set of questions that should make law faculty and administrators pause. Why does a whole segment of the student body shy away from such EL courses? What are they choosing instead? Do the enrollment patterns represent a rejection of the EL courses or a prioritization of other classes?

It is important to use caution in interpreting the apparent student course-selection strategy. As much as we may know students who came to law school with specific practice ambitions and targeted courses to maximize their preparedness, we also know many students with faint ideas about what kind of lawyers they hope to become. The Survey did not ask when the lawyer formed his/her practice aspirations (whether pre-law school, during 1L, 2L, or 3L year, or after graduation); how much those aspirations were influential in their course selections; nor whether they are employed in the type of practice to which they aspired and targeted their courses.⁴⁷

Even within the EL curriculum, private lawyers favored different courses than public lawyers.

Private lawyers heavily favored judicial externships. In building a résumé, judicial externships are seen as a useful résumé builder irrespective of whether one desires a litigation or non-litigation career. Consider judicial externships as the “universal donor” of résumé-enhancing experiences.⁴⁸

Transactional skills courses and law firm placements in externships show low enrollments overall for both groups, but were much more likely to attract private lawyers. On a percentage basis, private lawyers signed up for roughly twice as many law firm field placements and transactional practice skills courses as the public lawyers. The low enrollments may reflect school limitations. The substantial participation rate by private lawyers may suggest that there may be more demand than schools are currently satisfying.

School offerings impact lawyer enrollments.

Many schools exclude private sector externship placements citing concerns that the profit demands in a law firm or business will limit a supervising lawyer’s careful attention to student learning; concerns about federal wage law application; and a preference to devote law school resources to

⁴⁷ Cf. Sandefur/Selbin, *supra* note 19, at 97-100, found that new lawyers who indicated that they choose to attend law school to “improve society” or “help others” were more likely to take positions in government or non-profit work, and to give high ratings to their clinical training.

⁴⁸ Conversations with career services deans (Kenny Tatum, Assistant Dean for Career Services, Indiana University-Maurer Law School).

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enhancing access to justice. A growing number of schools are allowing private firm and business placements to advance the experiential learning of students headed to private practice, whether to small firms or large.⁴⁹ The latest report (2010-2011) from the Center for Applied Legal Education showed only 6.1% of schools allow law firm placements.⁵⁰

The ABA *Survey of Law School Curricula: 2002-2010* reported that 78 percent of surveyed schools offer a transactional skills course, although it provided no data on how many sections or seats are available.⁵¹ Given the responses of all lawyers, it is apparent that there are not nearly as many seats in Transactional practice courses as there are in courses like Trial Advocacy.⁵²

Part 3

Experiential teaching—features that elicit heightened appreciation

The goals of the Survey and Study are to understand some of the salient features of these EL teaching methodologies to a lawyer's early career. Of course, that creates a risk that we are pitting one teaching method against the others, or running a beauty contest. Each methodology serves very useful objectives within a law school's curriculum. And we found aspects of each method that show genuine value to different sets of lawyers.

Our analysis set two objectives: i) identify the points where the attorneys' values show stark and important differentials when certain features are present (or absent) and ii) understand the impact that the nature of the lawyers' practice has on the EL value ratings. We use the mean rating as our common unit of comparison, for every set of characteristics analyzed.⁵³ The middle point on the *EL Survey* scale (ratings from 1-4) is 2.5. Most responses were in the 3's and 4's, which most frequently yielded mean ratings in the 3.00+ range. We do not suggest that there is a raw-value rating to measure any form of EL coursework as sufficiently effective or not. Rather we sought to reveal characteristics that impacted the mean value rating in a substantial manner to illuminate where attorneys found enhanced value.

⁴⁹ Carpenter, *supra* note 26, at 77.

⁵⁰ CSALE 2010-11, *supra* note 23, at 23. [Obtain 2014 CSALE data].

⁵¹ Carpenter, *supra* note 26, at 75.

⁵² See Table 11, *infra*.

⁵³ For reporting and calculation methodology, see note 46, *supra*.

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For the most part, we sought to highlight differences that are statistically significant, although some differences demonstrated interesting patterns more than statistical importance. As a rule, we considered any difference where the probability level was 0.05 or lower chance of being the result of a random distribution of the values.

Throughout these analyses, we highlight different features of the coursework and examine whether its presence or absence changed the mean rating for that pedagogy category (clinic, externship or skills course). Recall that the Survey asked lawyers how *“useful in general”* was each course category [emphasis added]. It did not ask for a helpfulness rating on each course taken, when the lawyer took multiple skills, externships or clinics. So when we examine a particular characteristic (e.g., served as lead counsel in a clinic, externed for a judge, or took a particular skills course), we show the means for the lawyers’ composite ratings, not a rating for the particular course with that feature. A lawyer who was lead counsel in one clinic, may also have taken a clinic where he did not serve as lead counsel. The lawyer who externed for a judge may also have had a government agency placement. And so on. Although a lawyer’s rating may represent a blended evaluation of the experiential teaching category, when we aggregate the ratings of dozens or hundreds of lawyers’ experiences, we can isolate those features of the EL coursework that resulted in a significant impact on the overall rating when that characteristic was present or absent.

With that methodology in place, we turned first to understanding how many lawyers took which courses and how they rated the value to their early careers. Table 4 shows the raw number and percentage of the lawyers who took each kind of experiential coursework, and mean value for how highly they rated the course. While differences are quite noticeable, it’s worthwhile to examine the similarities first.

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Table 4
Lawyer ratings of experiential learning coursework in early practice

“How useful in general was each of the experiences (i.e., clinic, externship or skills course) in preparing you for the practice of law on a scale of 1-4?”

1 = Not at all useful; 4 = Very useful; N/A = did not take

Experiential learning coursework	Private lawyers (n = 930)			Public lawyers (n = 1,212)		
	# attnys	% attnys	Mean rating	# attnys	% attnys	Mean rating
Took at least one Clinic (CLC)	317	34%	3.42	711	59%	3.76
Took at least one Externship (EXT)	360	39%	3.40	678	56%	3.63
Took at least one Skills course (SKI)	678	73%	3.10	1,016	84%	3.29
Took at least one of each (CLC, EXT, SKI)	126	14%		379	31%	
Took "0" EL coursework	159	17%		67	6%	

Nearly everyone took at least one experiential learning course.

It is a sanguine development in legal education that the vast majority of public and private lawyers took some coursework within the experiential learning curriculum of their law schools. The ABA has just adopted a new graduation requirement for all law schools that each graduate must have earned a minimum of six credits in experiential learning coursework. While the *EL Survey* did not ask about credit values for any of the courses, it is apparent that a substantial number of these public and private lawyers would have met the requirement, and many more would have made significant progress.

More than 200 lawyers indicated that they did not take a single EL course.

In 2005, the ABA had instituted a requirement that law schools ensure that all graduates had at least one credit in professional skills training.⁵⁴ Despite the nationwide requirement, 226 lawyers did not take a single EL course. The gap might have multiple explanations. Some of the survey respondents graduated before the requirement was effective. Further, numerous schools allowed their students to satisfy the requirement through coursework other than the signature EL courses, such as moot court,

⁵⁴ ABA Std. 302(a)(4) (2005).

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law journal, advanced research courses, or with doctrinal classes that had sufficient skills instruction to meet the one-credit standard.⁵⁵

Ratings show high appreciation.

Every pedagogy category--clinic, externship, and skills--elicited very positive response and garnered mean ratings of 3.10 to 3.76. Most of the attorneys' responses were in the 3's and 4's, indicating that the coursework was quite helpful to very helpful in preparing them for practice. As our analyses progressed, we tended to look for strong values relative to these overall values.

More lawyers took skills courses, than enrolled in clinics or externships.

It makes sense that skills courses would be more heavily subscribed. The ABA Survey of Law School Curricula found that the great majority of law schools offer at least seven skills courses, and half offered ten or more skills courses.⁵⁶ A tally of the ABA-reported data for the 2012-13 academic year show that schools offered an average of 721 seats in skills courses, 161 clinic slots, and had 175 externship placements filled.⁵⁷ From the student perspective, skills courses are easier than externships or clinics to fit into their class schedule to coordinate with other classroom-based courses. Skills courses often have fewer academic credits and lower hourly commitments than are typically expected for clinics and externships.⁵⁸

Clinics and Externships earn value ratings much higher than Skills courses.

The next obvious takeaway, clinics and externships are valued considerably more highly than skills and simulation courses, for all lawyers.⁵⁹ In clinical pedagogy, we expect that coursework occurring in

⁵⁵ Carpenter, *supra* note 26, at 42. The courses which had been allowed under the 2005 standard would not satisfy the new ABA experiential learning course requirement. The students must satisfy it with clinic, field placement or skills courses only. ABA Std. 303(a)(3) (2014).

⁵⁶ Carpenter, *supra* note 25, at 75.

⁵⁷ ABA Standard 509 Information Reports, reporting year 2013, www.abarequireddisclosures.org, (last visited November 19-20, 2014). Schools report for faculty supervised clinics and simulation courses the number of positions (seats) available and the number of seats filled for the relevant academic year. For field placements schools report only the number of positions filled, suggesting that the ABA does not assume law schools have capacity limits for the number of field placements in an academic year.

⁵⁸ CSALE 2010-11, *supra* note 23, at 16, 22 (For clinics, more than 85% are 4-8 credits, with 6 credits the most common level. For externship courses credit awarded is lower, most between 2-5 credits, with 4 credits the most common level. Most schools require roughly 4 hours per week of fieldwork for each credit earned. So a 4 credits externship would require 16 hours in the law office or chambers, plus the associated seminar).

⁵⁹ Skills courses are heavily taught by adjunct faculty, which allows multiple sections of skills courses taught by expert practitioners. As much as this group includes gifted and committed teachers, it also bears reflection that they have a full-time "day" job. Their attention to teaching and their availability to students outside of class can be limited. Hertz, Randy (chair), et al, *Twenty Years After the MacCrate Report: A Review of the Current State of the Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary*, Committee on the Professional Educational Continuum, Section on Legal Education and Admissions to the Bar, American Bar Association, at p. 12-13 (2013).

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fluid, unpredictable practice environments and with external consequences for poor performance, will represent the brighter learning moment. These are the teaching and learning moments when the heat is turned up.

Clinics earn higher ratings than Externships.

Although private lawyers scored both clinics and externships at very similar levels of value to early practice, the public lawyers showed more appreciation for their learning from a clinic. These numbers are aggregates; they do not reflect how an individual lawyer would rate one course over another. As you will see later, however, on Tables 8 and 9, when an individual lawyer took both a clinic and an externship, the value ascribed to the clinical experience was more favorable.

Public lawyers valued each method of EL teaching more highly than their private practice counterparts.

Despite some broad similarities in the ratings by the private and public lawyers, it is quite apparent that the public lawyers valued each of type of EL coursework significantly more highly. This finding is not necessarily surprising. Most clinics and externships are in public interest practice and government settings. The transference or articulation from the course tasks to the tasks performed as a practicing lawyer in those settings is quite direct. Behavioral psychologists refer to this as ‘near transfer’ of learning.⁶⁰ For private lawyers the articulation and transfer is far less direct.

Transfer of learning occurs when learning acquired in one context (*e.g.*, law school, clinic, externship, skills course) contributes to performance in another context (*e.g.*, law practice). Near transfer is the term used for transfer between very similar contexts, while far transfer refers to transfer between contexts that are more remote from one another. Education researchers, David Perkins and Gavriel Salomon, have provided useful examples of near and far transfer. Near transfer is when a garage mechanic repairs an engine in a new model of car, which has a design much the same as prior models. Far transfer would be demonstrated when a chess player applies basic strategic principles such as “take control of the center” to investment practices, politics, or military campaigns.⁶¹ As will be shown later, Table 13, lawyers who work in legal services offices gave clinics the highest value ratings, while private transactional lawyers gave far less positive ratings, illustrating the near-far transfer dilemma facing the EL curriculum.

⁶⁰ See Sean Archer, James P. Eyster, James J. Kelly, Jr., Tonya Kowalski, Colleen F. Shanahan, *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 J. LEGAL ED. 1 (2014) breaking down the elements necessary for students to transfer classroom learning to clinic practice and then on to practice as a lawyer.

⁶¹ David N. Perkins and Gavriel Salomon, *Transfer of Learning*, INTERNATIONAL ENCYCLOPEDIA OF EDUCATION, 2d Edition (Pergamon Press 1992).

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The magnitude of the differences between public and private lawyers was so pronounced that we decided to conduct parallel analyses throughout, rather than blend the data and analyses.

Intensity matters: Live practice, authentic responsibility in clinics

We already have early evidence that intensity matters (namely that lawyers valued skills courses less highly than clinic or field placement courses). We pursued several other points of intensification within the EL course experience, especially in the clinical setting. What was the difference in value rating where the student explicitly performed in the role of the attorney (albeit under supervision), whether as lead counsel or under a student-practice order/rule? Both characteristics have the potential to crystallize and magnify all the other learning in lawyering skills, strategy, empathy, and communication. The response was as strong as expected and held for both the public and private attorneys.

Table 5
Clinic ratings: Student practice rule/order and Lead counsel status

Private lawyers (317 attorneys with CLC)					
Student practice order	# attnys	CLC mean rating	Lead counsel status	# attnys	CLC mean rating
Yes	169	3.60	Yes	228	3.53
No	91	3.25	No	89	3.15
Value-change b/t Yes - No *		➕0.35			➕0.38
Public lawyers (711 attorneys with CLC)					
Student practice order	# attnys	CLC mean rating	Lead counsel status	# attnys	CLC mean rating
Yes	492	3.88	Yes	575	3.86
No	162	3.55	No	136	3.50
Value-change b/t Yes - No *		➕0.33			➕0.36

* The differences between these responses are statistically significant ($p < .05$).

Genuine responsibility delivers important added value.

Each instance—whether having a court’s imprimatur as the attorney of record or performing as lead counsel—creates a learning environment that delivers lasting value, bumping up the average rating

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0.33 to 0.38—quite sizeable and statistically significant for both private and public lawyers. Given that the private lawyers start with a slightly lower value rating, this stimulant to learning value is proportionately higher than their public lawyer counterparts. Many elements integrate to form one’s professional identity and calling—whether as a practicing lawyer or as a law student. Service to and responsibility for the legal welfare of another are two key elements, both of which are reflected in this metric.

Intensity and multiples matter: Externships

In the pursuit of experiences with special potency, we examined the intensity of the lawyers’ externship coursework. We collapsed and integrated two sets of data—number of externships taken by a lawyer and the weekly hourly commitment, which allowed us to compare different combinations.

Table 6
Externship ratings: By hours and by multiples

	# and hr commitment	Private lawyers (360 attnys with EXT)			Public lawyers (678 attnys with EXT)		
		# attnys	% EXT attnys	EXT mean rating	# attnys	% EXT attnys	EXT mean rating
Low-hour	1 EXT @ 10-20 hrs/wk	143	43%	3.14	241	38%	3.46
Mid-hour	1 EXT @ 21-30 hrs/wk	22	7%	3.27	48	8%	3.71
Low-hour	2 EXT @ 10-20 hrs/wk	35	11%	3.66	72	12%	3.69
Full-time	1 EXT @ 31-40 hrs/wk	75	23%	3.62	112	18%	3.73
	2 or more EXT; multiple hr. combinations	57	17%	3.59	153	24%	3.85
1 to 2 Low hour *	Value-change			+0.52			+0.23
Low hr. to Full-time *	Value-change			+0.48			+0.27

* The differences between these types of externship experiences are statistically significant ($p < .05$).

The most common externship enrollment is one placement with 10-20 hour/week time commitment.

First, it is clear that for both populations, most took a single field placement course with a limited hourly commitment. It is also clear that the value rating is relatively modest, especially for private lawyers.

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Full-time externships amplify the learning value compared to low-hour field placements.

Full-time externships, called Semester in Practice at many schools, represented the second most common externship for both groups.⁶² The full-time experience allows genuine integration into the life of the law office, providing the opportunity for progressively more complex work assignments, as well as the chance to take on substantial, direct, and personal responsibility for the office's work product. That intensity is reflected in the amplified value ratings. In comparison to the low-hour placements, the full-time externship's value rating is much higher. The jump is dramatic, especially for private practitioners (+0.48 for private lawyers; +0.27 for public lawyers).

The value of two low-hour placements rivals that for a one full-time placement.

For schools that do not offer full-time externships, it is encouraging to note that two low-hour externships delivered substantial long-lasting learning value. Lawyers who had two field placements rated externships far more highly than those who had only one. That held true for private and public lawyers. (+0.52 for private lawyers; +0.23 for public lawyers).

The more surprising comparison, however, is that the value enhancement for two low-hour externships yields virtually the same robust value rating as a full-time externships. The amplifier effect holds for both private and public lawyers. The full-time placement values are within a scant 0.04 points of the value given to two low-hour placements.

This is perhaps the least anticipated finding of the data analysis. The high value of full-time externship is easy to understand. The student can be fully integrated into the work of the office. The modest value of a low-hour externship is also easy to understand. However, it is not nearly as easy to project why or how lawyers would rate two low-hour placements on par with a full-time externship. It does not appear to be anomalous; the value-add was similar and substantial for both private and public lawyers. One working theory is that a student learns a great deal from functioning in multiple workplaces, each with a new set of bosses, co-workers, office cultures, and practice styles. The opportunity allows the student to observe and gauge different work expectations and role modeling. As such, two externships deliver valuable seasoning and maturing, as we would expect with any repetition in skills practice. A second hypothesis is that a student uses multiple externships to sample

⁶² Although full-time placements have growing enrollment at many schools, they had not been very common until recently. In 2010-2011, CSALE reported that full-time externships were offered at roughly 9% of schools. CSALE 2010-11, *supra* note 23, at 22. This might suggest something about the EL respondents' hindsight estimation of how hard they worked during school at their placements, or perhaps reflects that students worked more hours weekly than was required by the school. Ogilvy/Basu, *supra* note 24, at 14-15 noted the increase in full-time placements and projected such high-credit options to increase due to addition of summer field placements in international settings.

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different practice areas of interest. The value enhancement may simply reflect that the lawyer found at least one placement that was an agreeable fit for him or her. Thus the course-to-career alignment prompted the high value rating.

Externships values plateau when lawyers took four or more.

The data also show that the value ratings start to plateau after three externships. Multiple externships, numbering four or more, with significant cumulative hours does yield some high values, but the ratings are mixed and the curve softens.

Practice setting is less important than time-on-task

We wanted to probe the values that lawyers ascribed to different practice settings. Were certain practice settings noticeably more likely to deliver durable utility? Additionally we wanted to understand whether the added value derived from multiple externships was a function of variety in the practice settings. Many externship programs prohibit, restrict, or discourage subsequent placements in the same law office and /or in the same setting.⁶³ The *EL Survey* data show that the great majority of lawyers who took more than one externship, chose a different practice settings for the additional placement. Was time-on-task (number of externships; hourly commitment) more or less important than variety of practice settings in the lawyers' valuation of the experience?

Table on following page.

⁶³ LEXTERN listserv discussion, *Summary of Repeat Placements Responses*, started by Lauren K. Knight, July 28, 2014 (on file with author); LEXTERN listserv discussion, *Student award*, started by Jennifer M. Kinsley, November 17, 2014 (on file with author); LEXTERN listserv discussion, *Externships for a second time*, started by Justine Dunlap, July 27-30, 2013 (on file with author).

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Table 7
Externship ratings: By placement and by variety of settings⁶⁴

Private lawyers (360 attny with EXT)							
Setting	# attnys	% attnys	EXT mean rating	Setting variety	# attnys	% attnys	EXT mean rating
Court/judge's chambers	173	52%	3.47	1 EXT/1 setting	245	72%	3.30
Gov't agency/ legislature	86	26%	3.36	Multiple EXT			
Non-profit org	39	12%	3.26	all same setting	22	7%	3.61
Law firm	20	13%	3.40	2 settings	63	19%	3.64
Corporation-business	14	6%	<i>Small sample</i>	3+ settings	4	1%	<i>Small sample</i>
Public lawyers (678 attnys wit EXT)							
Setting	# attnys	% attnys	EXT mean rating	Setting variety	# attnys	% attnys	EXT mean rating
Court/judge's chambers	154	25%	3.60	1 EXT/1 setting	417	65%	3.56
Gov't agency/ legislature	223	36%	3.64	Multiple EXT			
Non-profit org	204	33%	3.69	all same setting	72	11%	3.77
Law firm	33	5%	3.64	2 settings	124	19%	3.76
Corporation-business	4	1%	<i>Small sample</i>	3+ settings	27	4%	3.87

Public lawyers rated most settings well, including law firms; Private lawyers gave highest scores to judges and law firms. Public lawyers showed a rather even appreciation for all externships, no matter what the forum. Their highest ratings went to their placements in non-profit organizations. Interestingly, they gave the same strong ratings to law firms as they did to government agency placements. The private attorneys heavily favored judicial externships in both enrollments and value rating. Their second highest rating was for placements in law firms.

The strong law firm ratings opens the suggestion that one of the concerns of externship directors may not be as potent as initially feared—that law firm supervisors would be too preoccupied with billable work to provide quality supervision to law student externs. Law firm placements have grown

⁶⁴ Recall that the ratings are for the externship experience generally, not for each separate placement or setting. These mean ratings reflect what the lawyers scored the externship when they had at least one externship placement in that particular setting. The great majority of lawyers had externships exclusively in one setting (private lawyers 72%; public lawyers 65%).

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considerably among law schools in the recent past.⁶⁵ As those enrollment numbers increase, it is worth tracking whether the positive ratings from this relatively small set of lawyers hold steady.

Sampling multiple practice settings gives little added value.

Reinforcing the earlier finding, both public and private lawyers showed substantial value enhancement for second and third externships, but that value bump was largely the same whether the subsequent externships were in the same or in a different setting.

Diversity of teaching method matters: Combinations of clinics, externship and skills

Many clinical faculty and experiential learning deans are actively designing courses and course sequences, trying to maximize the value of all three pedagogies. We wondered how the value ratings might change if we compared lawyers who had various combinations of EL courses, whether as a stand-alone course, in pairs, or all three. Were there combinations that showed especially noteworthy synergies?

Table 8
Private lawyer ratings for the trifecta

Private attorneys				
Course combinations	# attnys	CLC mean rating	EXT mean rating	SKI mean rating
CLC only	29	3.12		
EXT only	36		3.25	
SKI only	248			3.07
CLC + EXT	23	3.41	3.10	
CLC + SKI	136	3.42		3.04
EXT + SKI	169		3.35	3.11
Trifecta (CLC, EXT + SKI)	129	3.50	3.59	3.27
Value change (1 pedagogy to all 3 pedagogies)		+0.38	+0.34	+0.21

Trifecta value: Clinic, externship, and skills—at least one of each deliver turbo-charged values for all three.

The private lawyers who had all three experiences showed much higher value for each of those experiences than those who had only one. If a lawyer’s EL coursework was exclusively limited to

⁶⁵ Carpenter, *supra* note 26, at 77.

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clinics (whether a single clinic or multiple), the average rating was a modest 3.12, but if the lawyer had enrolled in all three types of EL courses over his years of law school, the average rating jumped to 3.50, with a value-add of + 0.38. That was surprisingly positive. And the pattern held for externships, comparing lawyers who exclusively took externships to those who enrolled in the three-way combination (+0.34). Same result with skills courses, comparing only skills courses with a fusion of all three teaching methodologies (+0.20). The pattern was so positive that we dubbed the combination a trifecta. While a trifecta bet in horse racing (the biggest payoff) requires picking the horses for win, place, and show in exact order, the survey did not ask for semester-by-semester information. As such, we have no data on the attorneys' course sequencing as a factor in the extent to which the order of the courses affected the attorney evaluations.

We hoped to see the same accelerant effect with the public lawyers. After all, they valued each of these types of courses so well. The data, however, showed a very different pattern.

Table 9
Public lawyer ratings for the trifecta

Public attorneys				
Course combinations	# attnys	CLC mean rating	EXT mean rating	SKI mean rating
CLC only	53	3.81		
EXT only	27		3.81	
SKI only	193			3.27
CLC + EXT	52	3.71	3.47	
CLC + SKI	248	3.78		3.23
EXT + SKI	239		3.59	3.36
Trifecta (CLC, EXT + SKI)	330	3.75	3.67	3.32
Value change (1 pedagogy to all 3 pedagogies)		- 0.06	-0.14	+0.05

Public lawyers enrolled in all three EL pedagogies (the trifecta) more than any other combination.

By far the most popular course selection pattern among the public lawyers was to take at least one course in each EL pedagogy. The next most common selection was pairing a live practice course (either clinic or externship) with skills courses. For the private lawyers, the most common course selection was limited to skills courses only, that are conducted entirely within the confines of the

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school. Private lawyers' second most common pattern was a pairing of externship with a skills course.

Despite the tendency to seek EL coursework variety, public lawyers did not indicate amplifying values.

There was little change in the value ratings when public lawyers added multiple types of EL courses. And for the most part, the variety of teaching methodologies depressed the comparative ratings. Learning solely through clinical teaching garnered one of the highest values we have identified, 3.81. Learning exclusively through field placement pedagogy yielded the same high value, 3.81. But where the lawyers had at least one clinic and at least one externship, the values sank. A clinic and an externship tended to dilute the value attributed to each of them. If the additional pedagogy was a skills course, the values still decreased, but not as steeply.

The difference in private and public attorneys regarding the value of the trifecta is thought-provoking. Perhaps it simply reflects that the public lawyers had already assigned very high values to these courses. There was less room for a bump up. A second hypothesis might be considered. For careers well-aligned with the EL coursework (*e.g.*, public interest and government careers), it may be especially important that the scaffolding of the three pedagogies offers progressively higher levels of challenge and responsibility. For many schools these courses are offered as interchangeable parts, without sequencing and EL pre-requisites.⁶⁶ The corollary might be that where the attorney's practice does not align with his or her law school EL coursework, (*e.g.*, private attorneys representing corporate clientele), the attorney does find synergistic benefit from the variety among the three types of courses. It transforms the learning in a manner that makes the transfer from class-to-professional practice more likely. There is more to explore and understand here, and is a worthy subject of further research and introspection within individual schools.⁶⁷

Multiples matter: Skills courses

The next set of tables (Tables 10-12) show the values that lawyers assigned to skills courses by the number of courses taken, by course titles, and by the type of lawyer practice. We did not discover or discern a notable value bump for any pairs or groupings of skills courses. Rather the most interesting

⁶⁶ The most common pre-and co-requisites for clinics and externships are not EL courses, but rather doctrinal courses, such as Evidence, Professional Responsibility, or the doctrinal law related to the clinic practice. CSALE 2010-11, *supra* note 23, at 19, 25.

⁶⁷ Sequencing and advanced skills training will become a more pressing issues for schools faced with regulatory proposals like California bar authorities to mandate 15 credits of experiential learning coursework, *supra* note 3.

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findings were related to the nature of the attorney’s practice. The analysis provided insights that resurface (and/or reinforce) the suggestion that these lawyers made career-directed course selections.

Table 10
Skills ratings: By number of courses

	Private lawyers (678 attnys with SKI)			Public lawyers (1,016 attnys) with SKI		
# SKI courses	# attnys		SKI mean rating	# attnys		SKI mean rating
1	187	29%	2.93	327	37%	3.17
2	200	31%	3.04	257	29%	3.37
3	123	19%	3.20	165	18%	3.33
4	63	10%	3.22	77	9%	3.51
5	37	6%	3.41	37	4%	3.22
6+	27	4%	3.66	29	3%	3.34
Value change b/t 1 and 4 SKI*			+0.29			+0.34
Value change b/t 1 and 5 SKI*			+0.48			+0.05

* The differences between taking 1 skills course, and 4 or 5 are statistically significant ($p < .05$) for private attorneys. For public attorneys the statistical significance ($p < .05$) is found between taking 1 or 4 skills courses.

Private lawyers give notably high value ratings when enrolled in numerous skills courses.

This is one of the rare occasions that we identified a private lawyer “exuberance.” The mean rating (3.66) when taking 6 or more courses is remarkable—it rivals clinic ratings and it is an especially muscular rating among the lower ratings usually found in the Skills category. Comparison of private and public lawyers’ ratings at 5 or more courses reveals that the private lawyers assigned values well above their public attorney colleagues. This is a notable break from the persistent patterns observed between public and private lawyers’ ratings, although the variance does not rise to the level of statistical significance.

We see a substantial value bump when lawyers took more than three courses. Nonetheless it is clear that the great majority of lawyers enrolled in one to three courses. At those numbers, the lawyers’ valuations were quite restrained compared to the live practice courses (*i.e.*, clinics and externships). A load of 5 or 6 skills courses in the second and third years suggests that these lawyers had been quite directed in their course concentration and that their respective schools had a substantial program in skills/simulation courses.

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Public lawyers top out in added value; 4 skills courses is the value sweet-spot.

While adding skills courses yields progressively greater value to public lawyers, there is a crest. Enrollment in more than four skills courses tends to depress the value ratings. This might represent a pattern similar to the trifecta. For public lawyers, there seems to be a point of diminishing returns.

Table 11
Skills ratings: By course title⁶⁸

	Total Priv-Pub attnys	Private lawyers (678 attnys with SKI)			Public lawyers (1,016 attnys with SKI)		
		# attnys	% SKI attnys	SKI mean rating	# attnys	% SKI attnys	SKI mean rating
Core skills courses (as listed in Survey)							
Trial advocacy	991	364	54%	3.23	627	62%	3.37
Negotiation	426	218	32%	3.08	208	20%	3.26
Appellate advocacy	373	155	23%	3.30	218	21%	3.41
Alternative dispute resolution skills	335	141	21%	3.26	194	19%	3.31
Pre-trial litigation (e.g., deposition skills)	335	170	25%	3.24	165	16%	3.30
Subject matter specific skills (e.g., Education Law practice)	317	130	19%	3.22	187	18%	3.36
Advanced drafting (beyond the 1L course)	284	154	23%	3.24	130	13%	3.22
Counseling and interviewing	221	73	11%	3.34	148	15%	3.30
Transactional practice (e.g., business formation and governance, licensing, closings)	137	89	13%	3.08	48	5%	3.25
Specialty courses							
Law practice management skills (e.g., running a law firm)	61	39	6%	3.18	22	2%	3.18
Leadership	24	17	3%	3.41	7	1%	<i>Small sample</i>
Business management and planning	22	18	3%	3.06	4	0%	<i>Small sample</i>

⁶⁸ As we have highlighted earlier, the value ratings reflect each lawyer's overall rating for any course(s) he took in a particular pedagogy category, e.g., Skills courses. When we highlight the mean value rating for one course, it reflects any lawyer who took that course whether it was his only skills course or one of multiple skills courses he enrolled in. This technique allows us to see how a particular course changes the mean SKI values, whether in a minor or major way.

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Enrollments show heavy orientation to dispute-based skills over transactional skills courses

Nearly 1,000 lawyers indicated that they took Trial Advocacy, making it the most common course for both public and private lawyers and overshadowing all other skills course enrollments. Most law schools have complied with the ABA's professional skills instruction requirement by offering a menu of courses from which students may select. Trial Advocacy was the most common course on such lists (98% of schools).⁶⁹ Both private and public lawyers gave solid ratings vis-à-vis other skills courses.

The next most common course was Negotiations, with less than half of the enrollment (426). One title provided, Advanced Drafting, is actually an umbrella title for many possible courses. The *ABA Survey of Law School Curricula* noted that upper level drafting courses saw an explosion in transactional-focused drafting courses from 31 schools offering such a course in 1992, to 58 in 2002, to 122 schools in 2010.⁷⁰ Despite its growth, and growth generally among drafting courses,⁷¹ the enrollments of the EL Survey populations was less than 1/3 of the enrollment for Trial Advocacy.

Specialty courses garner solid ratings, especially from public lawyers.

The enrollment numbers are low, as expected, because none of these courses are common in law school catalogs. The ratings from both public and private lawyers might give encouragement to schools adding such courses to their catalogs.⁷²

Skills course selections provide evidence of career planning

Compared to clinics and externships, skills courses are arguably more oriented to the nature of the lawyering tasks per se—litigation, transactional or regulatory, and less oriented to practice setting or clientele. The list of course titles provides the opportunity to detect how the lawyers might have made course selections anticipating and preparing for their career futures. We teased apart the data for the two most common practice types. For both private and public lawyers, litigators comprised the largest sub-population. The second most common practice type for private lawyers was transactional, and for public lawyers it was regulatory.⁷³

⁶⁹ Carpenter, *supra* note 26, at 41.

⁷⁰ See Carpenter, *supra* note 26, at 78. Transactional/contract drafting now has the broadest adoption among schools at 75% of the participating schools; followed by Litigation drafting (71%), Estate planning drafting (59%), Business organization drafting (47%), Legislative drafting (34%), and Family law drafting (18%).

⁷¹ *Id.*

⁷² See note 36, *supra*, describing other business methods oriented skills courses that have been found to be especially well valued by lawyers.

⁷³ There were very few legislative lawyers among public or private lawyer respondents.

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Table 12
Skills ratings: For the five most popular skills courses by practice type

Private lawyers				Public lawyers			
Skills course	# attnys	% SKI attny by practice type	SKI mean rating	Skills course	# attnys	% SKI attny by practice type	SKI mean rating
LITIGATION (529 attnys)				LITIGATION (937 attnys)			
All skills courses			3.20	All skills courses			3.31
Trial advocacy	280	53%	3.31	Trial advocacy	518	55%	3.39
Pre-trial litigation	133	25%	3.25	Appellate advocacy	173	18%	3.47
Negotiation	122	23%	3.23	Negotiation	165	18%	3.28
Alternative dispute resolution	93	18%	3.31	Subject specific practice	146	16%	3.36
Advanced drafting	79	15%	3.23	Alternative dispute resolution	144	15%	3.31
TRANSACTIONAL (301 attnys)				REGULATORY (155 attnys)			
All skills courses			2.91	All skills courses			3.24
Negotiation	71	24%	2.90	Trial advocacy	67	43%	3.34
Advanced drafting	60	20%	3.25	Alternative dispute resolution	32	21%	3.41
Trial advocacy	55	18%	3.02	Negotiation	26	17%	3.31
Transactional practice	54	18%	3.04	Appellate advocacy	24	15%	3.21
Subject specific practice	41	14%	3.15	Subject specific practice	21	14%	3.48

Three courses dominate the most common course lists, irrespective of attorneys' practice type or setting

Trial Advocacy and Negotiation are among the top five courses for all four sub-groups—private litigators and transactional attorneys, and public litigators and regulatory attorneys. Alternative Dispute Resolution is reflected on three of the four sub-group most common skills courses. The courses were rather evenly rated by each sub-group (3.23-3.41), except for the private transactional attorneys, who gave noticeably lower value ratings to Trial Advocacy and Negotiations than the other three types of lawyers (3.02 and 2.90, respectively).

Three of the four sub-groups also identified subject-specific skills courses among the top five. The survey did not ask participants to identify the subject matter. The lawyers showed significant

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variation in the ratings given (private transactional lawyers 3.15, public litigators, 3.36; and public regulatory lawyers, 3.48).

Litigators—whether private or public—followed same law school playbook for skills courses; and reaped similar values

The public and private litigators had substantial overlap in course selection—Trial Advocacy, Negotiation, and Alternative Dispute Resolution. While the public lawyers still showed higher values for these courses, the differentials are now slight. This opens the suggestion that the skills courses are taught in a manner where the students/lawyers are better primed for transfer of the skills acquired irrespective of practice setting and clientele.

Private transactional lawyers attempted to enroll in relevant skills courses, but were left underwhelmed

In addition to Transactional Practice, the survey included three options where the course design might be relevant to skill development for transactional lawyers. Advanced drafting, Negotiations, or Subject-specific skills course titles could encompass course content that was exclusively or predominately oriented toward dispute (litigation) or business-deal (transactional) practice. The survey did not seek this level of specificity.

The private transactional lawyers sought out exactly those courses—four of the five most common courses were the course titles that could have transactional skills orientation. They signed up for Negotiations, perhaps hoping to develop skills in working a business deal. They took Advanced Drafting and Transactional Practice, perhaps hoping to learn how to prepare various legal documents to maximize client interests. They took subject-specific skills courses that might focus on topics like Real Estate Practice, or similar transaction-heavy practice areas. Whether the courses were designed with the transactional lawyer in mind, or these lawyers enrolled in them hoping for a transactional orientation to the course content, is not revealed in the Survey questions or responses. Those who took Advanced Drafting gave relatively solid ratings (3.25), but none of the other courses yielded particularly noteworthy values.

Having Trial Advocacy among the private transactional lawyers' most common skills courses is a reminder of the prevalence of that course in law schools' catalogues. Interestingly, these lawyers gave Trial Advocacy a better rating (3.02) than Negotiations (2.90). And the value rating for Transactional Practice (3.04) barely edged out Trial Advocacy.

Different career trajectories; Different curricula; Different educational outcomes

We started the analysis of the *EL Survey* data with broad comparisons of public and private lawyers, and drilled down further to see how lawyers' practice type impacted their enrollments and value ratings. The following chart isolates two sub-populations to show the starkest contrasts we observed: private transactional lawyers and public interest legal services litigators. Of the private lawyers, the transactional lawyers found the least utility in EL coursework. Of all the public lawyers, the public interest legal services lawyers gave the strongest ratings.

Table on following page.

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Table 13
Comparisons of Private Transactional Lawyers with Legal Services-Civil litigators

	Private attorneys Transactional practice	Public attorneys Legal services-civil matters
Demographic features of respondents		
# respondents	301	357
% in office with 100 or fewer attorneys	4%	94%
% attended school in city of 1 million+	54%	49%
% male	56%	24% ⁷⁴
Experiential learning overview		
% rated at least one EL category at "4"	32%	96%
# Trifecta	30	342
% with no EL coursework at all	26%	4%
% with SKI only	30%	6%
Clinic features		
% who took CLC	24%	65%
CLC mean rating	3.18	3.83
CLC ratings (lead counsel role or not)	3.25 (lead); 3.04 (not lead); 0.21 bump-up	3.94 (lead); 3.44 (not lead); 0.50 bump-up
Externship features		
% who took EXT	29%	51%
EXT mean rating	3.21	3.63
Most common EXT settings	Courts (43%); Gov't (33%)	Non-profit (86%); Gov't (30%)
Skills features		
% who took SKI	66%	84%
Median # skills courses (for those taking SKI)	2	2
SKI mean rating	2.92	3.31
Most common SKI (mean rating)	Negotiation (2.90)	Trial advocacy (3.35)
Highest SKI rating	Advanced drafting (3.25)	Appellate advocacy (3.43)
Role of EL coursework in job search		
# indicated that CLC, EXT, or SKI was discussed extensively in job interview (2010 Question)	5 of 301 attorneys (1.7%)	
# indicated that CLC, EXT, or SKI was very useful in obtaining first job (2011 Question)		249 of 357 attorneys (69.7%)

⁷⁴ Women attorneys are much more heavily represented in public practice settings. 13.2% of female attorneys practice in those settings, compared to 8.1% of male attorneys. Institute for Inclusion in the Legal Profession, THE STATE OF DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION, at 26, Table 12 (2012).

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The differences between private transactional lawyers and legal services litigators are manifold. It is clear that the transactional lawyers pursued less and reaped less from the experiential learning wing of the curriculum. Not surprisingly, even when they had taken such courses, they found them to be valuable in their early careers, but only at more modest levels. The legal services litigators' experience is brightly different on almost every mark.

A focus on three factors highlights some of the most dramatic and telling differences:

- the percent of lawyers who gave at least one EL pedagogy/course the highest value rating
- the value differential between those whose clinic course gave them the opportunity to serve as lead counsel or not
- the extent to which their EL coursework was a significant part of their hiring process

Nearly every legal services lawyer gave the highest value to one or more of courses in their EL curriculum (96%); barely a third of the transactional lawyers had any experience worthy of the highest value rating (32%). As noted earlier, lead counsel status in a clinic was one of the most potent amplifiers in EL. It did enhance the value for transactional lawyers, but at a fraction of the value-add for legal services lawyers (+0.21 compared to +0.50).

In the end, the most telling factor may be related to a hidden curriculum.⁷⁵ Are the faculty and academic advisers influencing course selection, or are unofficial (“hidden”) sources more influential? To answer that question, we look to the implicit messaging from employers in job interviews. The great majority of legal services lawyers felt that their EL coursework was very useful in obtaining their first job (nearly 70%). In poignant contrast, a scant five transactional lawyers (1.7%) indicated they had extensive conversations about their EL coursework in interviews.⁷⁶

EL Survey populations in context

This is not a brief to argue that the experiential learning wing of the curriculum must meet the skills training needs of Big Law deal lawyers as deeply as it meets the needs of legal services litigators.

Indeed, access-to-justice is a fundamental value of the profession and is core to the mission of many

⁷⁵ See, e.g., David M. Moss, *The Hidden Curriculum of Legal Education: Toward a Holistic Model for Reform*, 2013 J. of Dispute Resolution 19 at 21-23 (2013); F.W. Hafferty and R. Franks, *The Hidden Curriculum, Ethics Teaching, and the Structure of Medical Education*, ACADEMIC MEDICINE (November 1994).

⁷⁶ Most large firm recruitment of entry-level associates is through their summer associate programs, where students are interviewed and hired during the early fall of their 2L year, before they have made most course selections, whether experiential or podium-based classes. See <http://www.nalp.org/fulltextofnalpprinciplesandstandards> (for standards regarding timing of offers for summer associate positions, generally before December 1)(last visited November 21, 2014).

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law schools. Those values remind us that it is truly important to meet the training needs of the poverty lawyers.

It might be appealing to compartmentalize these differentials as a problem for large law firms and not be a priority for law schools with diminishing tuition streams. But these issues are not so isolated. As we saw earlier in Chart 1, the *AJD Study* data on helpfulness of clinics to the lawyer's transition to practice show that law graduates who start their practice in government offices, small and midsized firms, and in business give higher ratings to their clinical training than the large firm lawyers, but not nearly as high as public interest lawyers.⁷⁷ The *EL Survey* populations represent the two ends of the spectrum, showing us where the most and the least value is transferred from the EL curriculum to law graduates as they enter practice. The data and findings provide two anchors for schools to consider their own circumstances, current mix of experiential learning course offerings, student enrollments, and their graduates' career paths.

Recapping the findings

The characteristics of the EL coursework that delivered enhanced value for public and private lawyers alike give us a foundation for curricular assessment and reform.

- Live practice (clinics and externships) delivers more practice-relevant learning than simulation classes.⁷⁸
- Practice combined with authentic responsibility delivers potent value. Clinics where the student was authorized by the court to represent a client under a student practice rule or where the student served as lead counsel magnified and made durable the learning value.⁷⁹
- Multiple externships are more valuable than a single externship, unless the single externship was an immersive semester in practice.⁸⁰
- An externship requiring more hours per week garnered higher value ratings than lower hourly commitments.⁸¹
- Numerous skills courses are more valuable than a single skills course.⁸²

⁷⁷ See text accompanying note 41, *supra*.

⁷⁸ See Table 4 and accompanying text, *supra*.

⁷⁹ See Table 5 and accompanying text, *supra*.

⁸⁰ See Table 6 and accompanying text, *supra*.

⁸¹ *Id.*

⁸² See Table 10 and accompanying text, *supra*.

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Each of these amplifiers held true for both the public and private lawyers. These heightened value points hold meaningful advice for schools as they expand the skills credits students must take before graduation, especially considering how much the value ratings are driven by the nature of the lawyers' practice (type and setting). Where the EL coursework is not highly aligned with the lawyer's future practice, the data show dampened value ratings that are statistically significant.

Public lawyers

Public lawyers current participation levels and value ratings in EL coursework give support to the legitimacy and potency of the ABA's new six-credit experiential coursework requirement. The public lawyers were distinctly drawn to EL courses compared to their private practice counterparts.⁸³ They showed robust enrollments⁸⁴ and gave ample credit for the learning value to their practice preparedness.⁸⁵ The more closely aligned to the lawyer's new career, the more the EL courses were honored with consistently high ratings. Legal services lawyers in civil practice, who served as lead counsel in a school clinic, rated their experience a 3.94!⁸⁶ Nearly every single one of the poverty lawyers gave the highest rating when asked to evaluate the utility of his/her clinic coursework in practice.

Even where the public lawyers appreciation is not as remarkable, the data show many features of their EL coursework that yielded substantially heightened ratings. Intensity matters.⁸⁷ Multiples matter.⁸⁸ However, there appears to be a point for public lawyers where more is not always better. Variety is not necessarily as potent a stimulant for public lawyers as it is for private lawyers. Enrollment in clinics, externships, and skills classes seems to create clutter that suppresses the value to the public lawyers.⁸⁹ Interestingly, several public lawyers who had private-sector oriented EL experiences (field placements in law firms) gave strong ratings.⁹⁰

Private lawyers

Their story is different. Private lawyers had a markedly different course selection template choosing and enrolling in fewer EL courses (and thereby more podium classes) than their public lawyer

⁸³ See Table 3 and accompanying text, *supra*.

⁸⁴ See Tables 3, 5, 6, and 10 and accompanying text, *supra*.

⁸⁵ See Tables 3, 5, 6, 10, and 13 accompanying text, *supra*.

⁸⁶ See Table 13 and accompanying text, *supra*.

⁸⁷ See Tables 5 and 6 and accompanying text, *supra*.

⁸⁸ See Table 3 and accompanying text, *supra*.

⁸⁹ See Tables 6, 9, and 10 and accompanying text, *supra*.

⁹⁰ See Table 7 and accompanying text, *supra*.

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colleagues.⁹¹ The data show that the private lawyers showed appreciation for their EL coursework, nearly all mean scores were above “3,” but their ratings were notably more reserved than the public lawyers.⁹² It is not clear how much of that restrained value is due to their relatively meek embrace of the EL curriculum (*e.g.*, fewer courses, lower hourly commitments) or to the fact that the course content does not anticipate or approximate their eventual practice enough (*e.g.*, type of lawyering tasks, clientele, setting). Encouragingly, private and public litigators showed very similar values for the litigation oriented skills courses.⁹³

There are points of flat values where we had expected other results. Law firm placements were well valued, although didn’t earn the highest values (that was reserved for judicial externships).⁹⁴ Transactional Practice skills courses also attracted considerably more private lawyers than public lawyers, but the private lawyers didn’t give them the higher value ratings that we would expect.⁹⁵

Part 4

Path forward—Deans, faculties, curricular priorities, academic advising

The *EL Survey* responses and our analyses suggest a set of questions to consider about a school’s course offerings, its graduates’ career directions, and the learning values that the graduates derived. The mean value ratings we highlight are aggregates across many schools and practices. As much as they cover, they still don’t include graduates that start in private practice at mid-sized and small firms. While more than 2,000 lawyers rated the courses’ value in preparing him or her for the practice of law, we do not know what was valued. Was it knowing how to interview a client; learning how to be a self-critic; having the wherewithal to appreciate the dynamics of power hierarchies at play; or some other competency? The experiential wing of the curriculum is considered the prime place for law students to take on the mantle of the profession, to develop their professional identity. What elements of their value ratings reflected the graduate’s budding sense of his or her professional identity? The Survey asked several pinpoint questions about lawyers’ EL coursework, but collected no data on any aspect of their doctrinal or podium courses nor how they valued those courses. We teased out several points of interest in the data and offered possible interpretations (but no conclusions). Readers will have many interpretations of their own. It is up to individual schools to

⁹¹ See Table 3 and accompanying text, *supra*.

⁹² See Table 3 and accompanying text, *supra*.

⁹³ See Table 12 and accompanying text, *supra*.

⁹⁴ See Table 7 and accompanying text, *supra*.

⁹⁵ See Table 11 and 12 and accompanying text, *supra*.

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consider the usefulness or applicability of the *EL Survey* findings to their curriculum, their students, and graduates. The analyses don't presume to set an absolute value for a "quality" experiential education program, but they clearly show where EL courses have provided less value for lawyers in certain careers and less value when certain course characteristics were not present.

Others have researched and probed the divide within the profession, dubbed the two hemispheres—attorneys who represent individuals and those who represent businesses.⁹⁶ There is a somewhat different divide within law schools. The data from the *EL Survey* suggests that American law schools are better organized to train lawyers for litigation careers and for government and public interest careers. The ABA's new 6-credit experiential coursework requirement presents the prime opportunity to re-examine course offerings and delivery. And California, the second biggest bar in the country, is on the verge of requiring 15 credits of experiential coursework.⁹⁷ In compliance, law deans and faculty will set compulsory course requirements encompassing some mix of clinics, externships, and skills courses. If we want the courses to have enthusiastic enrollments and to be robustly valuable to their careers, we have some self-reflection to do.

Why do private lawyers engage the experiential education wing of the law school curriculum with such meekness? As shown on Tables 3 and 13, on numerous marks the private lawyers, especially the transactional lawyers, are registering for classes with far different patterns than the public lawyers.

Are the right courses, with the right number of seats available?

Do campus limitations impede student enrollments?

We know that schools are increasing the numbers of EL courses.⁹⁸ We also know that many schools have more capacity in their EL courses. Through ABA-reported data, on average clinics and simulation courses are only at 83% capacity.⁹⁹ But are those under-subscribed EL courses ones that reflect the career aspirations of the student body?

⁹⁶ JOHN HEINZ AND EDWARD LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR*, at 379 (Russell Sage Foundation, 1982) ("The difference between litigators and office lawyers has, of course, also been widely noticed for a long time; it has been formalized in England in the distinction between barristers and solicitors. But that is a task or skill difference, analogous to that between physicians and surgeons. The distinction within the American bar that is based in service to corporations, on the one hand, and to individuals and their small businesses, on the other, is quite another sort of phenomenon, with quite different consequences"); JOHN HEINZ, ROBERT NELSON, REBECCA SANDEFUR, AND EDWARD LAUMANN, *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* (Univ of Chicago, 2005).

⁹⁷ See note 3, *supra*.

⁹⁸ Carpenter, *supra* note 26 at 70-78.

⁹⁹ Review of the ABA Standard 509 Reports show that on average, schools skills courses and clinics are both at 82% and 83% capacity, respectively. But the capacity ranges vary widely on a school-by-school basis. For instance, for skills courses, 43 schools were at 90+ percent capacity and 33 schools were only at 61 or lower

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It is clear that Trial Advocacy is widely available among law schools, with an abundance of seats, more than double the next most common skills course (Negotiation), at least by the responses from the *EL Survey*. Transactional practice clinics, including community and economic development, tax, wills & trusts, and elder law, have expanded over the years, but they still represent only 13 percent of all clinics offered.¹⁰⁰ In order to improve enrollments on a wider scale, schools will have to probe the historical patterns of enrollments on their campus.

Other limitations might be at play as well, including scheduling limitations,¹⁰¹ grading policies,¹⁰² application competitiveness, or other campus-specific considerations. We know that many schools require students to participate in a selection process to be accepted into a clinic and/or preference third-year students. Students interested in legal services or public defender careers will naturally gravitate toward clinics oriented to low-income or indigent clientele. As a consequence, students whose career aspirations are quite different may be crowded out. We can also ask ourselves another less comfortable question: Is there a cultural divide on our campuses that makes the EL curriculum less hospitable or welcoming to private practice oriented students?

What courses did the private practitioners choose instead and why were they preferred?

Nothing in the EL Survey explains whether the EL curriculum is affirmatively “rejected” by the private lawyers, although that is the effect when compared to their public practice colleagues. Rather, the private lawyers might simply be thirsty for other courses. Why? Perhaps their course selection strategy was to construct subject matter concentrations, taking multiple specialized courses relevant to their anticipated practice areas, whether of their own making or a formal school program.¹⁰³ From the *AJD Study*, we know that new lawyers felt upper level lecture courses and course concentrations

percent capacity. For clinics, 34 schools reported 100% capacity, and 46 schools reported capacity lower than 61%. For field placements, no capacity limits are reported.

¹⁰⁰ Comparison of 2007-08 and 2010-2011 CSALE data show the number of clinics categorized as Community and Economic Development, Transactional (domestic or international), Tax, Wills & Trusts, and Elder law grew from 107 out of 806 clinics in 2007 to 137 out of 1,036 clinics in 2010. CSALE 2010-11, *supra* note 23, at 7-8; David A. Santacrose and Robert R. Kuehn, *2007-08 Survey of Applied Legal Education*, (Center for the Study of Applied Legal Education 2008) at 8. The 2014 update of the CSALE Survey may show further increases.

¹⁰¹ Typical issues include scheduling against other major or bar courses, transit issues to offsite clinics or field placements, and part-time/evening students with little availability during business hours to participate in practice environments.

¹⁰² Some students shy away from pass/fail courses that do not help them bolster their cumulative grade point average. CSALE data shows that 35% of clinics; 30% clinic seminars; 81% of field placements; and 45% of externship seminars are graded pass/fail basis. CSALE 2010-11, *supra* note 23, at 17-18 and 23-24.

¹⁰³ See Carpenter, *supra* note 26, at 68-70 Schools offering specializations or certificates have increased from 84 to 94 between 2002 and 2010. Of the schools offering some kind of program, the number of options offered as expanded dramatically. The ABA Survey did not ask questions about the content of the specializations and whether EL courses are among the requirements.

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were only modestly helpful in their transition to practice.¹⁰⁴ But a law student would scarcely appreciate the practicing lawyers' viewpoints when making course selections. Seventeen percent of the private lawyers and six percent of public lawyers did not take a single EL course. What would be enough to prompt them to enroll in EL courses willingly, and genuinely ready to learn?

We need to understand those reasons better because they potentially represent important inertia or skepticism within their student body. Schools will have to overcome these forces if their newly expanded EL curriculum is to be effective for students with diverse practice interests. Few students learn at maximum potential when compelled to take courses contrary to what they think is best for them personally. Simply setting a graduation requirement of a menu of EL courses, without preparing the groundwork, will not deliver the learning outcomes we hope. A look at the *EL Survey* data suggest that if we were to compel the private transactional lawyers to take six EL credits, the result would likely have yielded mean value ratings hovering around the 3.0.¹⁰⁵ Would a school's faculty be satisfied with such outcomes?

What is the role for academic advising?

Schools can and do set graduation requirements. Six credits of experiential learning will be added to that list soon. In all likelihood, schools will offer a menu of courses that students can take to satisfy those credits. How will students choose, even in an ideal world of an ample palette of EL course offerings that are relevant to diverse practice interests? Who is advising the students now—not just officially through curriculum guides, student affairs, and faculty advisors, but from unofficial sources? What do they hear that their desired employers seek or require in their new lawyers? It surely depends on the type of employer (and practice). What messages do our students hear and internalize?

How do we teach? How transferable are our desired learning outcomes?

One of the themes that emerges from the *EL Survey* data is that the private lawyers who practice in large firms transfer less of their learning from their EL coursework than their public practice colleagues. That makes sense. As much as law school clinics offerings might expand to cover legal work in more areas than they do now, they will never be able to cover all career paths that our graduates will take. So there will always be the challenge of far transfer of learning.

¹⁰⁴ See Table 1, *supra*.

¹⁰⁵ See Table 13, *supra*. Private transactional lawyers rated clinics (3.18); externships (3.21); and skills courses (2.92).

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Thus the questions for faculty reflection might include identification of the learning objectives of the clinics, externships, and skills courses that sync with the varied career paths of our students and make far transfer more probable and more robust. What learning objectives are durable enough and relevant enough to serve them in early practice? The experiential learning curriculum already has a developed set of best practices regarding educational objectives that are broadly relevant to myriad practice settings, including helping students adjust to their roles as professionals, become better legal problem-solvers, develop interpersonal and professional skills, and develop habits how to learn from experience.¹⁰⁶ The course design deserves review to assess how well it helps students where transferred learning will be more remote? How will those objectives be communicated to students before the semester starts when the students are making course selections? Of course, this is not simply a consideration for the experiential wing of the curriculum, but for every course in the catalogue. Every doctrinal and podium course can be examined to consider its potential for far transfer--what takeaways does the faculty member intend his course to deliver to his students beyond the immediate subject of the course?

The ABA's new standards lend force to this exercise of reflection and course planning. Standard 301 requires each school to set and publish specific learning outcomes—not course by course, but for the whole of their education.¹⁰⁷ The ABA standards go further and require each school to monitor and assess its progress toward those self-defined outcomes.¹⁰⁸ Can each of the school's graduates on commencement day demonstrate the proficiencies that the school professes to teach?

Much research has emerged in recent years that has identified the competencies and skills that lawyers need at high proficiency levels—not just seasoned lawyers but also new lawyers. Marjorie Shultz and Sheldon Zedeck have identified 26 lawyering effectiveness factors—none of which is subject matter based, and include factors such as the ability to see the world through the eyes of others, strategic planning, practical judgment, and stress management.¹⁰⁹ Their work has been a catalyst to much research that has included surveys and interviews with a wide host of legal employers (beyond large firms, government offices, and public interest organizations) that has provided more color to what those competencies mean in practice.¹¹⁰ The National Conference of Bar Examiners engaged a research firm to survey new graduates nationwide to understand what tasks

¹⁰⁶ See BEST PRACTICES, *supra* note 4 at 121-32.

¹⁰⁷ ABA Std. 301 and 302 (2014-15). See note 7, *supra* regarding the ABA's phase-in of the standard.

¹⁰⁸ ABA Std. 315 (2014-15) provides that the dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods and use the results to determine the degree of student attainment of competency in the learning outcomes.

¹⁰⁹ Shultz/Zedeck, *supra* note 15.

¹¹⁰ See, e.g., Hamilton, *supra* note 16.

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are asked of them and what skills and abilities have the new lawyers found to be critical to the performance of their responsibilities.¹¹¹ Educating Tomorrow's Lawyers, the organization formed to carry forward the work of the Carnegie Foundation, has just launched a multi-year project to determine the foundations entry-level lawyers, the models of legal education necessary to get us there, and the tools legal employers can use to make better entry-level hiring decisions. These works provide a rich base for faculty to identify learning outcomes for their own classes, and for the law degree bestowed by their school.

Is there a need or opportunity to create sequencing and EL-prerequisites?

Developing course sequences that aim to expose students to progressively more challenging legal work is educationally exciting. It also raises substantial administrative and resource issues. As more EL course credits are required, more students will thirst for increasingly more complex work. The *EL Survey* data provide some suggestion that public lawyers may have faced a plateau.

Conclusion

Litigators reap the highest values from EL coursework, as those courses have been offered historically. That's a surprise to no one. But the differentials between the values ascribed to EL coursework by private and public lawyers are illuminating. We expected some discounted value, but some of the differentials were notable and persistent. Examination of key intensity features—lead counsel role, immersive or multiple externships, and numerous skills courses—give schools a set of guideposts to examine their current offerings and consider adjustments where warranted.

But perhaps the biggest challenge facing schools is how to deal with the marked reluctance of certain students to partake in EL courses. Nearly all lawyers took some EL coursework, but it is clear that compliance with the new ABA six-credit experiential education requirement will require concerted persuasion to attract the students who have under-enrolled in these courses to date. If part of the student body has little interest in the courses (e.g., law students headed to private practice), they may well come to such classes with an ennui that can be counterproductive in the classroom. Schools will have to address that. The ABA's new experiential education requirement is exciting. If law schools explore and understand where their graduates' career paths take them and align the EL curriculum with those skill needs, they will be able to deliver high value to all their graduates.

¹¹¹ Steven S Nettles and James Hellrung, *A Study of the Newly Licensed Lawyer*, conducted for the National Conference of Bar Examiners (Applied Measurement Professionals, July 2012). My personal favorite skill cited by the new lawyers, is "listening," which ranks as the third most important skill to their work.

Limitations of the study and recommendations for future research

*Data limitations and gaps*¹¹²

- This survey research was exploratory with the goal of identifying insights that might stimulate future research.
- The sample constitutes a convenience sample.
- The use of volunteer respondents may introduce bias. Those who responded may have had particularly good or bad experiences with experiential learning settings.
- Public attorney respondents were more experienced with a higher percentage reporting they had three or more years of service.
- There was a higher percentage of females as compared to the private attorney respondents. Sometimes women respond to surveys at higher rates and with a more positive disposition. A comparison of mean scores of male and females in the private, public and total groups were showed identical mean scores.
- The Survey did not ask the attorneys which law school they attended, or in which state or region of the country. There is no data to evaluate if the respondents attended a wide or narrow range of law schools.
- Most lawyers practice in NY and CA, which suggests that survey population is not geographically representative.
- General questions about the utility of EL coursework to practice preparedness were posed. Respondents were not asked about which aspects of EL were valued.
- The survey did not capture any curricular reform since 2011, and only captured at best, a modest level of curricular reform since the 2007 Carnegie Report.

Recommendations for future research:

- Conduct similar surveys focused on individual schools and their graduates.
- Conduct a study employing a random sampling methodology and include practice settings from a wider range, which would allow for better generalization.
- Explore the specific aspects of the EL courses that were valued.
- Explore how summer employment impacts the value of the EL coursework.
- Explore the half-life of law school experiential learning value, to see what aspects of the law school experience have the longest lasting value to an attorney's practice.

¹¹² See Appendix A for demographic data on the private and public attorney populations.

Appendix A

Table A-1: Demographic and Other Characteristics of the Survey Populations

Characteristic	Private attorneys	Public attorneys
# attorneys	930	1,212
Gender: % women	48% women	65% women
Race: % Non-white	18% non-White	19% non-White
Less than 1 year in practice	192 (21%)	96 (8%)
Seniority: 1 year in practice	122 (13%)	62 (5%)
Seniority: 2 years in practice	126 (14%)	92 (8%)
Seniority: 3 years in practice	65 (7%)	56 (4%)
Seniority: more than 3 years in practice	422 (45%)	904 (75%)
States: # of states represented	32 (62%)	46 (88%)
States: 3 most represented states	DC, TX, IL	NY, WA, DC
Law school location: Capital city	369 (40%)	306 (25%)
Law school location: Metro areas 1 million or more	481 (53%)	657 (55%)
Law school location: Metro area 100,000-1 million	275 (30%)	380 (32%)
Law school location: Metro area less than 100,000	138 (15%)	124 (11%)
Law school location: Rural, not part of a metro area	6 (<1%)	49 (5%)
Practice type: Litigation	529 (58%)	937 (78%)
Practice type: Transactional	301 (32%)	65 (6%)
Practice type: Regulatory	89 (9%)	155 (13%)
Practice type: Legislative	9 (< 1%)	39 (3%)
Law office size: More than 1,000 attorneys	111 (12%)	19 (1%)
Law office size: 500-999	348 (37%)	142 (12%)
Law office size: 251-500	184 (20%)	225 (19%)
Law office size: 101-250	238 (26%)	128 (11%)
Law office size: 51-100	43 (5%)	116 (10%)
Law office size: 50 or fewer	5 (<1%)	26-50 attorneys: 183 (15%)
Law office size: 25 or fewer	not asked	386 (32%)

Appendix B

NALP and NALP Foundation Survey: 2010 and 2011 Survey instrument

The 2010 and 2011 surveys were identical in almost all respects. Where the questions differed, they are identified and labeled below. Differences:

- Questions 4 to 4b regarding the role of the experiential learning in the attorney's hiring process.
- Question 10 added to the 2011 public attorney survey regarding the attorney's organization or government office
- Question 12 regarding the location of the attorney's office

SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING: OPPORTUNITIES AND BENEFITS

This survey is designed to learn which practice-oriented course(s) you took as a law student and how they have prepared you for practice as an attorney.

This survey takes no more than 10 minutes to complete. All information will be submitted on an anonymous basis, and no information that could be attributed to an individual will be released.

If you have questions, please contact Judith Collins, NALP's Research Director, at jcollins@nalp.org.

2010 Survey: Please submit your survey by December 5, 2010.

2011 Survey: Please submit your survey by December 9, 2011.

1. Which of the following JD-credit bearing courses did you take during law school? (Check all that apply.)

[Note that law schools offer a broad spectrum of course using various titles and that they often have content that falls into more than one of the choices provided below. Choose the description(s) that best describe the most significant content of the course(s) you took.]

- Clinic(s) representing individual clients [Please also complete 1a on the next page]
- Externship(s)/field placements(s) [Please also complete 1b on the next page]
- Legal practice skills or simulation course(s) [Please also complete 1c on the next page]
- None of the above.

- 1a. For any clinics you took, answer each of the four questions.

How many terms/semesters did you participate in this clinic?

Answer choices provided: 1, 2 or more than 2

- Clinic 1
- Clinic 2
- Clinic 3
- Clinic 4
- Clinic 5
- Clinic 6

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Were you lead or co-lead counsel?

Answer choices provided: Yes or No

- Clinic 1
- Clinic 2
- Clinic 3
- Clinic 4
- Clinic 5
- Clinic 6

Did you work under a Student Practice Order with a court?

Answer choices provided: Yes, No, or I don't know

- Clinic 1
- Clinic 2
- Clinic 3
- Clinic 4
- Clinic 5
- Clinic 6

Who supervised your work?

Answer choices provided: A faculty member; An outside attorney; or Both a faculty member and an outside attorney

- Clinic 1
- Clinic 2
- Clinic 3
- Clinic 4
- Clinic 5
- Clinic 6

1b. For each of your externship/field placement(s), please tell us:

How many hours per week did you work?

Answer choices provided: 10-20 hours; 21-30 hours; or 31-40 hours

- Placement 1
- Placement 2
- Placement 3
- Placement 4
- Placement 5
- Placement 6

What was the setting for this placement?

Answer choices provided: Court/judge's chambers; Government agency or legislature; Not-for-profit organization; Law firm; Corporation/business; Other (describe below)

- Placement 1
- Placement 2
- Placement 3

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Placement 4
Placement 5
Placement 6

- 1c. Which of the following practice skills course did you take? (Check all that apply).

[Note that law schools offer a broad spectrum of courses using various titles and that they often have content that falls into more than one of the choices provided below. Choose the description(s) that best describe the most significant content of the course(s) you took. Please choose only one description per course.]

- Advanced drafting (beyond the 1L course)
- Pre-trial litigation (e.g., deposition skills)
- Trial advocacy
- Appellate advocacy
- Alternative dispute resolution skills
- Counseling and interviewing
- Negotiating
- Transactional practice (e.g., business formation/governance, licensing closings)
- Law practice management skills (e.g., running a law firm)
- Subject matter specific skills (e.g., Education Law practice)
- Business management and planning
- Leadership
- Other (please specify) _____

2. At the time you attended, did your law school have a pro bono service graduation requirement?

- Yes (indicate hours requirement below also and complete items 2a and 2b)
- No [please also complete items 2a and 2b]
- I don't know

If yes, how many hours of service were required?

- Fewer than 10
- 10-20 hours
- 21-40 hours
- 41-60 hours
- 61-80 hours
- 81-100 hours
- More than 100 hours
- I don't know/don't recall

- 2a. Did you perform voluntary (as opposed to required) pro bono service during law school?

- Yes [if yes, please also answer item 2b]
- No

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2b. If yes, how many hours did you volunteer?

- Less than 10
- 10-20 hours
- 21-40 hours
- 41-60 hours
- 61-80 hours
- 81-100 hours
- More than 100 hours

3. How useful in general was each of the programs or experiences listed below in preparing you for the practice of law?

Answer choices provided: 1 Not at all useful; 2; 3; 4 Very useful; NA-did not have this experience

- Clinic(s) representing individual clients
- Externship(s)/field placements(s)
- Legal practice skills or simulation course(s)
- Required or voluntary pro bono hours

2010 question (private attorney survey)

4. At the time you interviewed with your current employer, in which of the following were you registered or had you participated? (Check all that apply).

- Clinic(s) representing individual clients
- Externship(s)/field placements(s)
- Legal practice skills or simulation course(s)
- Required or voluntary pro bono hours

2010 question (private attorney survey)

4a. In your interview, how much were any of these experiences discussed?

- 1 Not at all
- 2
- 3
- 4 Extensively

2011 question (public attorney survey)

4a. To what extent was your experiential learning useful in obtaining your first job in a non-profit or government setting?

Answer choices provided: 1 Not at all useful; 2; 3; 4 Very useful; NA-did not have this experience

- Clinic(s) representing individual clients
- Externship(s)/field placements(s)
- Legal practice skills or simulation course(s)
- Required or voluntary pro bono hours

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2011 question (public attorney survey)

4b. Are you currently practicing in any of the same subject matter areas as your experiential learning activities?

Answer choices provided: Yes; No; NA-did not have this experience

- Clinic(s) representing individual clients
- Externship(s)/field placements(s)
- Legal practice skills
- Required or voluntary pro bono hours

The remaining questions request background information about you, your school, and your employer. All responses will be used for statistical purposes only and will remain anonymous.

5. Which of the following graduate degrees do you currently hold? (Check all that apply).

- Juris Doctor (JD)/Bachelor of Laws (LLB)
- LL.M.
- Joint JD/MBA
- Other joint degree (describe below)
- Law degree from a country other than the US or Canada

Please describe other joint degree program _____

6. Where is your law school located?

- Metropolitan area (central city(ies) and suburban areas) with population of 1 million or more
- Metropolitan area (central city(ies) and suburban areas) with population of 100,000 to 999,999
- A city or metropolitan area of less than 100,000
- A rural area not part of any metropolitan area

7. Is your school located in a state or provincial capital?

Answer choices provided: Yes, No

8. How would you describe your primary area of practice? (Choose one).

- Litigation-based
- Transactional-based
- Regulatory-based
- Lobbying/legislative

9. How long have you been practicing law?

- Less than one year
- 1 year
- 2 years
- 3 years
- More than 3 years

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2011 question (public attorney survey)

10. What type of organization do you work for?

- Civil legal services (defined as an organization that PRIMARILY provides direct legal services to low-income clients in civil matters)
- Policy/impact/advocacy organization (defined as an organization that PRIMARILY works for changes in legislation, regulations, and other types of systematic change including impact litigation)
- Local prosecutor
- Local public defender
- Local government: not prosecutor or public defender (Please specify in the Additional Information box below)
- State Attorney General
- State government-not attorney general (Please specify in the Additional Information box below)
- Federal government (Please specify in the Additional Information box below)
- Other (Please specify in the Additional Information box below)

Additional information _____

11. Including yourself, how many lawyers in your organization?

- 25 or fewer
- 26-50
- 51-100
- 101-250
- 251-500
- 501-1,000
- More than 1,000

12. State where your currently practice law.

Provided options for all 50 states and District of Columbia

2010 survey of private attorneys included Canada.

2011 survey of public attorneys included Virgin Islands, Puerto Rico, Guam, and Trust Territories.

13. Your gender.

- Male
- Female

14. Your race/ethnicity

- American Indian/Native American
- Asian/Pacific Islander
- Black/African-American
- Hispanic/Latino
- White/Caucasian
- Multi-racial

Please use the box below to make any comments on the topics covered in this survey.

Appendix C

**Table C-1:
Experiential learning coursework-participation and ratings by duration of practice**

	Private lawyers		Public lawyers	
	Junior attnys ≤ 3 years	Seasoned attnys > 3 years	Junior attnys ≤ 3 years	Seasoned attnys > 3 years
	<i>Attended law school between 2004-2010</i>	<i>Attended law school prior to 2004</i>	<i>Attended law school between 2005-2011</i>	<i>Attended law school prior to 2005</i>
# attorneys	505	422	304	904
% hit the trifecta	14%	14%	42%	22%
Clinics				
% in CLC	34%	28%	68%	52%
CLC mean rating	3.49	3.32	3.76	3.76
Externships				
% in EXT	40%	32%	65%	50%
EXT mean rating	3.48	3.28	3.64	3.63
Skills				
% in SKI	70%	70%	93%	80%
Avg # SKI courses	1.74	1.58	2.15	1.75
SKI mean rating	3.13	3.06	3.23	3.32