An Educational Partnership Model for Establishing, Structuring, and Implementing a Successful Corporate Counsel Externship

Carl J. Circo, University of Arkansas, Fayetteville

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By
Carl J. Circo
University of Arkansas School of Law
AN EDUCATIONAL PARTNERSHIP MODEL FOR ESTABLISHING, STRUCTURING, AND IMPLEMENTING A SUCCESSFUL CORPORATE COUNSEL EXTERNSHIP

Carl J. Circo*

This article explores what the author has learned from developing and supervising an externship program that places students in the legal departments of major corporations. Externship placements in corporate legal departments provide unique opportunities for law schools to integrate into the curriculum the core practice competencies that are essential for commercial and business lawyers but that are rarely taught in an experiential setting. The article proposes an educational partnership model to establish, structure, and implement a corporate counsel externship. This approach advocates a carefully orchestrated collaboration between the faculty who administer the program for the school and the lawyers who supervise the students on site. The structure of the program must be adaptable enough to take advantage of the particular opportunities that each participating legal department offers, with the only inflexible principle being that the primary purpose must be to educate the students. The author concludes that educational partnerships of this kind offer some of the most promising avenues for improving legal education in the 21st century.

INTRODUCTION

The experiential learning movement in legal education is forceful enough to tug old ships in new directions.¹ During my career as a doctrinal professor, this powerful towline has pulled me partially out of the traditional classroom and into an experiential education path.² This article draws on my experience establishing and supervising the Corporate Counsel Externship program at the University of Arkansas School of Law. It explores what I have learned about one

* Professor of Law, University of Arkansas School of Law. Amos Waranch, a second-year law student at the University of Arkansas provided excellent research assistance and painstaking editorial support for this article. Kelly Bowie, a 2008 graduate of the University of Arkansas School of Law, provided valuable preliminary research. I am also grateful to the many externship professors who commented on an outline of this article at the Externship 5 conference hosted by the University of Miami in March, 2010 and who also provided additional information and suggestions in e-mail exchanges both before and after the conference. These dedicated colleagues, although too numerous to mention by name, have been a source of inspiration and influence beyond measure. The opinions expressed here are mine alone.


² I also now teach a negotiations skills course, which is an experiential learning story for another day.
experiential learning dimension from working with the students and practicing lawyers in our program. I offer no fixed principles. Rather, I outline but one among several valid alternative approaches for externship programs that place students in the offices of the general counsel of for-profit firms. I write primarily for those interested in understanding how externships of this kind can be implemented to serve experiential learning objectives and not for those who wish to question or defend the legitimacy or efficacy of placements with for-profit organizations.

A little background information on the externship program that I supervise will help to put this article in the proper context. The University of Arkansas School of Law is located in Fayetteville, Arkansas, which is in the northwest corner of the state, too distant from major metropolitan areas to allow our students to commute to any centers of finance and commerce where corporate legal departments are plentiful. But Northwest Arkansas is home to the corporate headquarters of two major corporations that have exceptionally strong legal departments and long-standing ties with the University community. As a result, we are able to place students in our corporate counsel externship program with the highly experienced and dedicated lawyers at Wal-Mart Stores, Inc. and Tyson Foods, Inc. I have had the privilege of helping to establish this program, and I have supervised dozens of our students who have been placed primarily with these two legal departments over the past five years. This article, therefore, draws on this experience and reflects some of the unique characteristics of the educational partnerships between the School of Law and these legal departments. This article, however, speaks for me alone and does not in any way represent the opinions or views on any matter of any company involved in our program or of any lawyers or employees of those companies.

In three separate parts, this article addresses how to establish, structure, and implement a corporate counsel externship using the educational partnership model that I advocate. In

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3 Externships that provide credit toward the J.D. degree must, of course, comply with the applicable accreditation standards, and in particular the standard on “Study Outside the Classroom.” See SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, A.B.A., STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 305 (2009-2010) [hereinafter A.B.A. STANDARDS].

4 Professor Bernadette Feeley has dealt extensively with the broader question. See Bernadette T. Feeley, Examining the Use of For-Profit Placements in Law School Externship Programs, 14 CLIN. L. REV. 37 (2007).

5 Our program is not limited by design to these two legal departments, but because of the location of our campus, up to this time we have only placed one student with the legal department of another company. That placement was possible because it occurred during the summer with a company headquartered in the student’s hometown.

6 A few preliminary words about terminology are in order. I use the terms “corporate counsel externship” and “in-house program” interchangeably to refer to any law school course that places law students for academic credit outside the law school to work under the direct supervision of lawyers who are employed in the legal department of a for-profit firm, whether the firm is organized as a corporation or as some other business entity. The term “legal department” means an organizationally distinct segment of a for-profit firm staffed by lawyers who are employees of the firm and who have the primary function of providing legal services to the firm. I refer to a lawyer who is a member of a firm’s legal department as either “inside” or “in-house” counsel, and I reserve “general counsel” for the head of the department. “Outside counsel” refers to a lawyer or law firm retained under a traditional lawyer-client arrangement rather than through an employer-employee relationship.
keeping with the reflective learning theory of law school externships, the concluding part of this article explores what I have learned more broadly about experiential education from having the opportunity to supervise and administer our program.

I. Establishing the Externship

A. Begin by Articulating Why an In-House Program Will Serve Your School’s Mission.

1. Explore How a Corporate Counsel Program Can Complement Existing Experiential Programs.

An externship in a corporate legal department shares many of the experiential learning characteristics of other externships, but it offers some of those shared learning features in special ways. It can also contribute to a school’s experiential learning objectives in ways that most other programs cannot. As a preliminary step, whoever is heading up the effort should articulate these considerations for the faculty.

To begin with, any program that places students in a practice environment under the mentoring of experienced attorneys serves the apprenticeship of practice goal so clearly identified by the Carnegie Report. For many schools, existing clinics and externships do not provide sufficient slots to meet the demand for hands-on, real-life exposure to the practice of law. No less than judicial externships or placements with not-for-profit organizations, in-house programs give students an intimate and extended opportunity to learn how lawyers conduct the practice of law. In-house lawyers handle an exceptionally wide range of matters: litigation and claims management; regulatory compliance; business and tax planning; employment and labor; corporate governance; business formation; intellectual property; transactions of all kinds; and much more. From that perspective, the experience for the students will be at least as broad as

7 See J.P. Ogilvy, Learning from Experience, in Learning from Practice: A Professional Development Text for Legal Externs 3-7 (2d ed., J.P. Ogilvy et al., eds., 2007) (explaining how reflection helps a student convert the externship experience into learning).
8 See Feeley, supra note 4, at 49-54. See generally Best Practices, supra note 1, at 198 (calling for externship courses to be used “to achieve clearly articulated educational goals more effectively and efficiently than other methods of instruction could achieve”).
9 See Carnegie Report, supra note 1, at 27, 95-97.
11 See Feeley, supra note 4, at 40-42.
in many other settings, and the corporate legal department environment will be particularly relevant for students interested in representing business clients.13

Beyond these benefits common to many programs, corporate counsel externships offer special advantages for achieving some goals integral to the experiential education objectives of most law schools. Placements with courts, government agencies, and legal aid offices and other not-for-profit organizations dominate traditional externship programs.14 Yet, over the course of their careers, lawyers perform a wide variety of roles, and relatively few spend their entire careers working in the judicial system or government or representing indigent clients or not-for-profit organizations. Many lawyers regularly represent business clients or handle transactions and disputes in which business organizations are involved.15 Indeed, a significant number of lawyers devote their careers exclusively or primarily to serving business clients or are otherwise employed primarily in business contexts.17 Students can best develop some of the knowledge and skills they will need to succeed as commercial and business lawyers through experiential learning opportunities that occur in a business context.

For example, while judicial externships may expose students to business litigation, they will not directly involve students in the process of giving legal advice to business clients or participating in the business decisions and processes that routinely create, avoid, manage, or resolve business conflicts and disputes.18 Similarly, placements in legal aid offices or other not-for-profit organizations that provide legal services directly to clients give students the opportunity to work closely with clients, but the matters the students handle will not normally involve business clients or business activities. Of course, in transactional clinics and in certain externship placements with not-for-profit organizations students have valuable opportunities to incorporate or form legal entities, to resolve organizational and governance issues, to address employment questions, to wrestle with tax considerations, and to handle contracts, leases, and other transactional matters.19 But not-for-profit organizations typically do not present all of the

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13 See, e.g., JOHN K. VILLA, I CORPORATE COUNSEL GUIDELINES § 1.3, available at Westlaw, CORPCG (2009) (discussing the special considerations that the attorney-client privilege presents for in-house counsel).
15 See Feeley, supra note 4, at 53.
16 See Day, supra note 12, at 505-06.
17 In 2000, perhaps as many as 9% of attorneys were employed either in private industry or worked for private associations. CLARA N. CARSON, THE LAWYERS STATISTICAL REPORT, THE U.S. LEGAL PROFESSION IN 2000, 28 (2004).
19 Milstein, supra note 10, at 376.
most significant organizational, operational, regulatory, and transactional needs for legal services that are the daily diet of corporate counsel offices.20

Overall, a traditional legal education offers relatively few experiential courses or programs of any kind to help students develop the context and skills they need to represent and work with business clients.21 To be sure, the mainstays of the business law curriculum—business organizations, business taxation, business planning, intellectual property, labor and employment law, to name a few—provide a rich academic diet to help students acquire the doctrinal knowledge they will need to represent business clients. And, while many skills course offerings, such as trial advocacy, counseling and interviewing, negotiations, advanced drafting, and alternative dispute resolution, are relevant to representing business clients, those courses typically train students in fundamental skills rather than the application of those skills to the business environment. Distinctly experiential offerings for students pursuing a commercial and business track are more limited than what the contemporary law school curriculum provides for other fields. Clinics, which often provide students their most intense opportunity to develop practical skills, only rarely give the student attorney a business client to represent. Those that do cannot consistently expose students to the full range of legal matters that business lawyers handle in the for-profit sector. The limited exposure to business clients reflects one of the most noticeable shortcomings of a traditional law school education in which “the focus remains on cases rather than clients.”22 For-profit businesses offer the primary opportunities for students to encounter business clients and to experience the role of lawyers in such business matters as mergers and acquisitions, business contracts, real estate transactions, securities laws, defense of complex litigation and class actions, compliance with governmental regulation of business and industry, and risk management, among others.

Under these circumstances, the question for the faculty is whether the school’s experiential learning program should extend into the practice of commercial and business law in its broadest sense. On this point, my own background both in practice and as a law teacher devoted to transactional subjects, leads me to wonder how any law school whose mission is not exclusively dedicated to public interest law could doubt the experiential learning value of a corporate counsel externship. I understand and endorse the preference evident at many schools for experiential learning that also helps to provide legal services to underrepresented populations,23 but the addition of a corporate counsel externship to the curriculum does not necessarily require any sacrifice in public interest programs. Moreover, any school committed to

20 See infra Part I.A.2.
22 CARNEGIE REPORT, supra note 1, at 57.
23 See Feeley, supra note 4, at 39.
experiential learning should be interested in offering an apprenticeship of practice for the full range of the profession.

2. **Identify the Unique Experiential Learning Value of an In-House Program.**

Perhaps the most important advantages of a corporate counsel externship involve discrete lawyering skills that may be extremely difficult to address in other experiential learning contexts. This section discusses some of the specific educational advantages that merit the greatest consideration when a faculty is evaluating how placements with corporate legal departments can help to prepare students to practice law.

*Experiencing the profession in a business context.* Working in the legal department of a for-profit company exposes students to the practice of law within a business environment in a way that few other experiences during law school can. The skills that the students observe and develop will not only help prepare those who eventually become inside counsel, but will also contribute materially to the success of the much larger number of graduates who will represent business organizations as outside counsel during their careers. The experience will even help provide an appreciation of the business lawyer’s perspective that will prepare students to deal with business organizations as adverse parties or in other non-client capacities. Corporate counsel externs will learn that almost every decision made and every piece of advice given by inside counsel occurs in the context of advancing well-defined business objectives. An inside lawyer cannot analyze a legal matter in an abstract way, detached from the significance the analysis has to the business. Rather, inside counsel must learn to see a legal problem or consideration as one component among many that the client must weigh in making a decision and setting a course of action. And inside counsel must learn to adjust to the reality that legal considerations, even when they are material and sensitive, rather infrequently dominate the client’s decision process.

*Understanding the business client.* This last point—that even important legal considerations may not be controlling in a business context—has independent significance for the practical education of a business lawyer. Legal education, including most experiential training, generally gives a central role to the law, lawyers, and legal analysis. This is

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25 Neil W. Hamilton, *Counseling the Post Enron Corporation Using the Lawyer’s Independent Professional Judgment*, PROF. LAW., Winter 2003, at 24, 25 (noting that executives believe that their lawyers “must have substantial knowledge about the business to be effective”).

26 Janet Langford Kelly, et al., *The Relationship Between the Legal Department and the Corporation*, in 1 SUCCESSFUL PARTNERING, supra note 18, at §§ 16:13:-16.

27 “For any lawyer to add value to the client, he or she must provide the best business solution to the matter, regardless of whether it is the best legal solution.” *Id.* at § 16:16 (emphasis in original).
understandable because the primary objective of legal education must be to introduce and orient students to the law, legal analysis, and the legal process. But inside a business organization, the law is more commonly just one among many factors that influence behavior and the decision process. In fact, as already suggested, the law and the lawyers often occupy a secondary place. Decisions are made by business people based on a full array of relevant business factors. To be effective in serving a business client, a lawyer must be able to help the client place the legal analysis within the much broader context of sound business judgment. There is no better way for a law student to grasp that truth than through the reflective learning process that an in-house program offers.

Business lawyers, especially those who practice in corporate legal departments, frequently comment on the importance of serving their clients without getting into the way of the business. Indeed, one of the most common complaints that business clients have about legal representation is that the lawyers tend to be naysayers who continually place obstacles in the path of business progress. Lawyers who do not know how to play the appropriate supporting role may operate like traffic barriers that tell drivers that the street is closed ahead but offer no information about an alternative route. They impose extraordinary costs on business activities by emphasizing risks of legal liability without suggesting any useful ideas for managing those risks. They seem to expect business to come to a halt in the face of lawsuits or threats of legal action or, what is worse, they seem oblivious to the business implications of the legal opinions they render. They are deal breakers rather than deal makers.

Corporate counsel externs will see that one of the key functions of a legal department is to keep legal risks from blocking business progress. One of the earliest lessons that in-house lawyers must learn is that “no” should usually be the response of last resort, not to be given until every reasonable adjustment to a course of action has been considered. Inside lawyers do not have the luxury, often assumed by outside counsel, of thinking that the job is done when they explain to the client why it cannot or should not proceed as planned, leaving it to the client to make appropriate business decisions in light of the legal advice given. Lawyers in corporate legal departments must recognize that business decisions almost always involve risk assessment and that business lawyers must be able to offer “reasonable predictions of legal risk outcomes.”

28 Id. at § 16:13.
29 Id. at § 16.16.
30 Thomas B. Green, Law Department Management, in 1 SUCCESSFUL PARTNERING, supra note 18, at § 17:8 (stressing that it is important for the members of a legal department to develop business skills).
31 See Thomas B. Metzloff, Ethical Considerations for the Corporate Legal Counsel, C566 A.L.I.-A.B.A. 109, 111 (1990) (recalling a manager’s characterization of a company’s legal department “as the Department of Profit Prevention”).
32 Id.
The daily objective of the legal department is to help chart a course through difficult legal waters that will allow the business to reach the destination that sound business judgment selects. \(^{33}\)

*Learning the special role of inside counsel.* This point derives directly from the previous one. For many clients, including business organizations operating without general counsel, lawyers essentially are external vendors who provide legal services when the need arises in isolated or specialized contexts. By contrast, the legal department of a company serves a far more integrated and comprehensive function. Members of the legal department, unlike a company’s outside counsel, routinely help the company establish critical operating procedures and risk management policies, and they add a consistent legal component to the company’s overall business plan.\(^{34}\) The top lawyers in the legal departments of many companies are members of the management team.\(^{35}\) They participate in a wide range of business decisions, and they must understand business principles and business objectives and incorporate them into their daily decisions, recommendations, and actions.\(^{36}\) The legal department also commonly provides a buffer between operational personnel and outside lawyers.\(^{37}\)

*Appreciating the importance of corporate culture.* Companies, especially those with many employees or long histories, have cultures—entity personalities that reflect core values and world outlooks.\(^{38}\) A corporate culture helps to define the entity and can provide a basis for explaining or predicting the entity’s behavior just as cultural characteristics can help to explain or predict the behavior of a tribe or a nation.\(^{39}\) It also serves as a guide to those who would have compatible and enduring relationships with the company.\(^{40}\) To survive long within the corporate structure, employees must understand the culture, and to thrive over time they must often adapt their own behavior and expectations to the corporate culture.\(^{41}\) While employees without supervisory or management responsibilities may succeed in their limited roles by conforming only minimally or even grudgingly, supervisors, managers, and executives who do not adapt their work behavior to the culture may find it difficult to function effectively in the corporate

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\(^{33}\) See Villa, supra note 13, at § 4:4 (emphasizing the role of in-house counsel in making business decisions relating to litigation matters).

\(^{34}\) See, e.g., id. at § 2:6 (discussing the critical nature of legal input from corporate counsel regarding waste handling, grievance, and other company-wide, internal procedures).

\(^{35}\) See Mark Curriden, CEO, Esq. Why Lawyers Are Being Asked to Lead Some of the Nation’s Largest Corporations, A.B.A. J., May 2010, at 31 (examining the trend among large companies to name lawyers to top executive positions).

\(^{36}\) Green, supra note 30, at § 17:8.

\(^{37}\) See id. at § 17:39.


\(^{39}\) See Kelly, supra note 26, at § 16:4; Teague, supra note 38, at 791.

\(^{40}\) Id. at 798-804.

\(^{41}\) Id. at 803-04.
environment for long. In-house lawyers are no less subject to the effects of corporate culture than are other high-level employees.

What is most important in this regard for lawyers is to understand how organizational culture affects the task of representing the company. In other words, knowing how to think like a lawyer in general is not the same as knowing how to think like an effective business lawyer operating in the context of a specific organization. For example, a company that is highly risk-averse requires different guidance on pending or threatened litigation (and is susceptible to different settlement offers) than one more accustomed to taking risks. A company that lives the “customer first” motto may be far more sensitive to consumer protection strategies than the law requires. And some companies behave like extroverts in the sense that they actively cultivate and promote a public image as part of a business philosophy, while others go to great lengths to protect the company’s operations from public view. A company that has achieved and that treasures its reputation as a model corporate citizen may view regulatory compliance much differently than a company respected within its industry for feistiness in the public forum or one that prefers a high level of secrecy. A company dedicated to aggressive business targets in a highly competitive, fast-paced environment, may benefit more from timely, pragmatic legal advice than from exhaustive legal research and comprehensively articulated legal analysis. But a highly regulated business that is subject to continuous public scrutiny may require far more circumspect legal advice. In some organizations, genuine teamwork dominates, while in others, intra-company competition and politics nearly always affect decisions. And the list goes on. Neither the classroom nor traditional experiential programs can teach students the sensitivity to corporate culture that they need to acquire to succeed as business lawyers.

Experiencing professional responsibility as an employee of the client. Every law student who has taken a course on professional responsibility knows that in the representation of a business, for the purpose of legal ethics and the rules of professional conduct, the client is the business organization, not the directors, managers, partners, officers, or employees of the organization. Law students often learn this important principle by studying extreme circumstances, where some employee’s or director’s malfeasance, personal interests, or poor judgment are adverse to the lawyer’s duty to the organizational client. These dramatic lessons are, of course, essential to the training of ethical and competent lawyers. But how should business lawyers apply the principles of professional responsibility in normal settings, in which

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42 Id. at 801-02.
43 See Kelly, supra note 26, at § 16.3 (asserting that “company culture will drive how the legal department is organized and managed, how its members communicate with clients and how they manage outside counsel”).
44 See Geoffrey C. Hazard, Jr., Legal and Managerial “Cultures” in Corporate Representation, 46 Hous. L. Rev. 1, 6-7 (2009).
the organization has necessarily and quite appropriately delegated business decisions to non-lawyers who must take legal considerations into account in order to do their jobs?47

A distinct attorney-client relationship results from the fact that the lawyers in a corporate legal department are employees of the company as well as its attorneys.48 Some of the customary ways of conceptualizing and articulating the principles of professional responsibility must be adapted to that special relationship.49 In-house lawyers, far more than outside counsel, operate with intimate knowledge of the company’s policies and the chain of command procedures. When a company utilizes its legal department in an optimal manner, it should be able to incorporate legal advice into the business decision process. Often, part of inside counsel’s job is to shepherd that process in accordance the very policies and procedures that the company adopted based on the legal department’s advice—procedures crafted by lawyers to facilitate decisions by business colleagues by balancing legal considerations in the way most appropriate to the matter at hand.50 The shadowing opportunities frequently afforded to corporate counsel externs can provide especially effective ways for students to see how legal ethics can be integrated into standard operating procedures sufficient for most routine situations.51

Applying the law to solve business problems. Contemporary leaders in legal education emphasize the importance of giving law students more opportunities to engage in solving problems.52 In a corporate counsel externship students find themselves continuously engaged in the process of using legal knowledge to help clients solve business problems. The task may be as simple as updating an existing company policy to conform to a new law, court decision, or regulatory development. Or it may be as complex as advising business colleagues about the best way to structure an international transaction, reorganize the operations of an entire division of the business, or evaluate a settlement proposal in a massive class action suit. In any of these circumstances, and in most of the other activities in which members of the legal department engage on a daily basis, the lawyer’s task is to help clients solve business problems by drawing on the knowledge of the law and the legal system and the skills in research, writing, analytic thinking, and advocacy that are the mainstays of a traditional legal education.

47 The principles of entity representation expressly recognize that an organizational client “cannot act except through its officers, directors, employees, shareholders and other constituents.” A. B. A., supra note 45, R.1.13, cmt 1. See also VILLA, supra note 13, at § 3:6 (discussing problems that arise in deciding to whom in-house counsel owes a duty).

48 See VILLA, supra note 13, at § 1:1 (discussing the non-traditional nature of the attorney-client relationship in the corporate legal department context).

49 See id. at § 3:1.

50 See Metzloff, supra note 31, at 111-12.

51 See generally Hamilton, supra note 25, at 27-28; Metzloff, supra note 31, at 111-12.

52 See, e.g., CARNEGIE REPORT, supra note 1, at 94-95; BEST PRACTICES, supra note 1, at 149-57.
Teamwork driven by business objectives. Many critics have noted that the traditional law school curriculum ignores the importance of teamwork both in the educational process and in the practice of law. In part, this reflects the adversarial nature of much of the legal process, and it also results from the competitiveness of the law school experience. Even when law students work in teams or otherwise in cooperation with others, the setting is often adversarial or at least competitive. Law school study groups, for example, frequently aim to help each member of the group compete for grades, and when students work in teams for law school course simulations or in internal and external trial advocacy, moot court, and other competitions, they are not only involved as members of teams competing with other teams, but they frequently work on exercises that occur in the context of the adversarial process. This is not invariably so, because many clinics and simulation classes require students to work together to solve a problem for a real or hypothetical client. But a corporate counsel externship program provides an unusually rich opportunity to teach students how to function effectively as members of teams.

For-profit businesses routinely use teams to solve problems and to execute business strategies. In many companies, success for both the business and for individual employees depends extensively on the ability to work successfully in teams. Inside lawyers frequently work in interdependent relationships with other members of the legal department to implement a business objective. The matter may involve teams of lawyers collaborating on a major legal task, such as responding to discovery requests in a class action lawsuit or completing the due diligence required to close a major transaction, or even lawyer and non-lawyer members of the legal department working together to meet the department’s budgetary goals. For law students, even more important opportunities to learn teamwork arise when one or a few lawyers are part of a team working toward a business objective. In this way, students learn how teamwork can integrate legal and business functions.

Of course, lawyers handling significant litigation and most transactional lawyers frequently work in teams. But lawyers working for law firms may find that their own financial


54 See Deborah L. Rhode, Missing Questions: Feminist Perspectives on Legal Education, 45 STAN. L. REV. 1547, 1557 (1993) (observing that “the individualistic ethos of legal education” may conflict “with the needs of legal practice, where teamwork and an understanding of cooperative process is often critical”).

55 See O’Grady, supra note 53, at 512-22.

56 “Both functions are crucial to the success of the client, and both business people and the lawyer need to work as a team to negotiate the deal, draft the contract language, and use every opportunity to avoid or minimize potential litigation which may flow from subsequent performance of the contract obligations. Teamwork usually helps avoid future litigation.” Charles D. Gill Jr., et al., supra note 18, at § 2:11.
rewards and career advancement opportunities flow more from their individual accomplishments than from the team’s success. This may be especially true for new or relatively inexperienced attorneys working in law firms, who may be assigned to only minor, discrete tasks or who may regularly move from one team to another. By contrast, many inside lawyers spend their careers working in interdisciplinary teams formed for business purposes. In these circumstances, the employer will likely measure the individual lawyer’s success at least to some extent by reference to the success of the team, and in a company with a strong commitment to teamwork, all members of the team benefit financially and professionally from success at the team level.

Students who work in these environments will experience benefits and challenges of teamwork that are difficult to reproduce in law school simulations or competitions.

Learning to translate the law into the language of business. Law students spend much of their time and energy learning to communicate effectively with judges, law professors, and other lawyers. As essential as these skills are, they do not help law students to learn how to communicate effectively with most clients. Law school courses on client interviewing and counseling can help introduce students to the special art of communicating with clients who are not lawyers, but these courses do not primarily call on students to apply legal principles and give legal advice in language that business clients can use. Externs placed in corporate legal departments regularly work with lawyers who are directly advising and collaborating with business colleagues. And if their supervising attorneys bring these externs to meetings, include them in telephone conferences, and assign to them projects that require written and oral communications to the clients, these students can directly gain experience translating the law into the language of business.

Two simple examples will help illustrate. First, consider a supervising attorney who spots a concern over a contractual provision that may violate the company’s insurance carrier’s subrogation rights under an insurance policy that applies to a transaction. The lawyer might ask an extern to investigate the concern. In that situation, it might be appropriate for the student to prepare a memorandum that analyzes the relevant provisions of the policy and that discusses appellate cases construing similar contract clauses. But that same memorandum may be of little value to the client, who instead needs a business translation of the subrogation principle and one or two practical suggestions that will allow the contracting parties to resolve the insurance concerns in a way that permits the transaction to be finalized on mutually acceptable terms. Perhaps the lawyer can suggest a choice between paying an additional premium to obtain the insurer’s approval of a waiver of the subrogation right or modifying the offending contract provision to skirt the issue. As a second example, assume that a company’s marketing department regularly calls upon inside lawyers to review proposed advertisements and

57 See, e.g., Harold S. Barron et al., Transactions, in 3 SUCCESSFUL PARTNERING, supra note 18, at § 48:3 (explaining the central role of teamwork when a legal department undertakes transactional work).
58 See generally Day, supra note 12, at 516-17.
promotional materials for compliance with controlling law. Indeed, that practice may be dictated by a company policy that the legal department helped to prepare. Purely as a technical matter, the lawyer reviewing a particular advertisement may question whether a statement about a product, service, or program complies with a statute or regulation. The marketing department, however, will not necessarily benefit from receiving an analysis exploring the risk that the statement may violate a regulation or an administrative interpretation that the lawyer’s research has disclosed. The lawyer must be far more helpful than that. The most efficient and effective legal representation in this circumstance may simply require that the lawyer edit the statement to accomplish the marketing objective while avoiding or minimizing the legal risk. Or it may require that the lawyer prepare a one-page, bullet point list of phrases that should or should not appear in promotional materials of the kind involved. A law student working in a corporate legal department may have the opportunity to assist the supervising attorney who first must work through such an assignment as a lawyer, but who ultimately must offer an efficient and useful business solution. The learning experience will be even greater if the lawyer, with the extern’s help, must advocate or negotiate with business colleagues to arrive at a compromise between the marketing department’s unabridged preference and the approach that presents the least legal risk.

Discovering the relationship with outside counsel. Graduating law students are more likely to find themselves serving business clients as outside counsel than as members of a legal department. And because the corporate legal department so frequently retains outside counsel and then serves as the principal client contact with the outside lawyer or firm, it is valuable for students to appreciate the relationship between the legal department and outside counsel from the in-house lawyer’s perspective. One of the main functions of inside counsel is to manage outside counsel. Corporate legal departments often have written and unwritten policies that apply to the work that outside counsel performs for the company. These policies may extend to such matters as determining the scope of and an approved budget for the work of outside counsel, billing practices, lines of communication, authority for certain decisions, how responsibility for the representation is allocated between inside and outside counsel, and how the work is to be delegated and managed among the outside firm’s lawyers and staff. In-house lawyers who supervise externs will demonstrate the working relationships they have with outside counsel in ways that cannot be duplicated in any other law school course. And a student who has witnessed and worked within this relationship from the corporate legal department perspective should be far more prepared to function effectively as an associate in a firm retained by a corporate legal department.

59 See Michael S. Harris, Local and Specialized Outside Council, in 1 SUCCESSFUL PARTNERING, supra note 18, at § 20:1.
60 See id. at §§ 20:17–27.
61 My students frequently tell me that their externship experience becomes the central topic of interest when they interview with commercial law firms.
Exposure to career opportunities. To the extent that a school’s goals include offering students opportunities to explore career options and to achieve career placement objectives, a corporate counsel externship can fill a significant gap in what most schools could otherwise provide. Most students have opportunities to experience a wide range of career options through clinics and skills classes, and paid clerkships allow many students to learn about the practice of law in law firms of many different sizes and practice specialties. But relatively few law students will have the opportunity to work in corporate legal departments unless their schools establish externship programs there.

3. Anticipate Potential Objections.

Once the law school administration or a faculty committee or other group of interested faculty members decides that a corporate counsel externship fits into the school’s educational mission, it is important to anticipate concerns and objections that others may raise about the proposal. Some of the most forceful and significant resistance may come from those who worry that the externship may detract from other experiential programs or even conflict with the primary mission of those programs.

Substantial conflicts can arise when the clinical and experiential programs at a school are expressly dedicated to public interest law, legal services for the underprivileged, and social justice objectives. For-profit corporations do not need free legal services, and they do not exist to serve the public interest or social justice. Whether objections of this nature present a significant barrier to establishing an in-house program will vary from one law school to another based on at least two distinct considerations. The first relates to the perceived core mission of the school in general and that of its experiential learning programs in particular. It may be that in-house placements are not in keeping with the core mission of a few schools primarily dedicated to public interest and social justice goals. But most schools expect and encourage students to compete and succeed in all aspects of the profession, including the for-profit sector of the economy. A more common issue may arise if the existing clinical and externship programs share an exclusive commitment to public interest and social justice. Under those circumstances, the best solution may be to recognize that it is not essential, and may not even be appropriate, to centralize all experiential learning or to try to involve the current experiential faculty with the for-profit sector. The goals and operations of a corporate counsel program will be sufficiently distinguishable from the existing experiential learning programs at some schools.

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62 See Feeley, supra note 4, at 50-51.
63 Id. at 46-49.
64 See id. at 47-48.
65 See Milstein, supra note 10, at 375 (associating externships with a movement in clinical education “to respond to students’ desire to learn how to use law as an instrument of social change and to be involved in the legal representation of poor people”). The available data suggest that a substantial percentage of externship programs limit participation to government agencies and not-for-profit organizations. See SANTACROCE & KUEHN, supra note 14, at 23.
to merit separate faculty supervision and administration. Faculty members who teach business and transactional courses, whether doctrinal or skills-based, may be appropriate candidates to administer a proposed corporate counsel externship.

Another common basis for challenging a corporate counsel program is a perceived difficulty in assuring a consistent, high-quality educational experience when students work in for-profit firms. Faculty members may worry that the pressure on lawyers in corporate legal departments to work efficiently and to promote the financial interests of the company at all times may lead supervising attorneys to manage externs’ work assignments to bring value to the company rather than primarily for the education of the students. If this were to occur, an extern might be assigned only routine work that the student could perform without requiring much time or attention from the supervising attorney, or the extern might be used to perform repetitive tasks that yield the greatest return to the legal department for the least investment of time and supervision. A related concern is that busy practicing lawyers may only allow externs to perform administrative or clerical tasks, such as making copies or organizing files. In fact, however, these problems are risks associated with any externship program, and they have more to do with the quality of the faculty administration and supervision of the program than with the nature of the placement. As long as the program is properly structured and the faculty supervisor monitors each extern’s experience properly, it should be relatively easy to identify problems of this nature. And as long as the relationship between the school and the legal department is based on the foundation of an educational partnership, as discussed in detail below, it will be feasible in almost all cases to make the necessary adjustments when these problems arise. In the rare instance in which corrective steps fail, the faculty should discontinue that specific relationship.

Another basis for resisting an in-house program at many schools involves resources. While externship programs do not make the same demands on faculty time, school facilities, and administrative resources as do clinics or skills courses, most schools have the capacity to administer only a limited number of placements. A proposal to add an externship should identify the resources that the program will require and consider whether the program will necessitate any reallocation of existing resources. As is true for most law school programs, the key resource is the faculty time required to administer the externship properly. While the amount of faculty time involved can be managed to some extent by limiting the number of students and companies involved and the number of credit hours awarded, no educationally sound externship can operate solely on the efforts of volunteer supervising attorneys at the placements and only administrative staffing on the school’s part. And while existing staff or administrative personnel may be able to

66 Id. Feeley, supra note 4, at 46.
67 Id. at 48. Concerns of this nature, however, are far more relevant when the placement is with a law firm rather than a legal department because the billable hour system could affect how a private attorney supervising an extern selects work assignments. Id. In-house lawyers are not subject to that economic incentive.
68 See infra Part I.B
69 See Feeley, supra note 4, at 49.
handle some of the responsibilities for such matters as recordkeeping and reporting, significant faculty time will still be required to monitor the students and the placements. The structure and size of a new program should be carefully planned to reflect the availability of faculty to handle those responsibilities. Consideration of how best to allocate resources may lead to a discussion of whether or the extent to which it is appropriate to use adjuncts or contract faculty to supervise the externs. Each faculty must answer this question based on the school’s specific circumstances.

B. Focus on the Relationship Between the Law School and Participating Legal Departments.

Because the success of a program depends on the collaboration of the faculty who administer the program for the school and the lawyers who supervise the students on site, I advocate an approach that proactively fosters an experiential learning partnership between the law school and each participating legal department. To some considerable extent, this tactic will lead to arrangements that are individually tailored for each participating legal department. While all placements will share consistent objectives and similar basic components, the program structure can leave significant room for variations reflecting the special characteristics and opportunities that each legal department presents. Through this dynamic approach, an externship program can take full advantage of the relationship between the law school and each legal department participating in the program. While this technique may not work when circumstances require a program to bring on board several legal departments all at the same time or when the prospect is slim for repeat externship positions over time at a particular placement, I believe it to be ideal for long-term relationships that can be built one at a time. And because I believe that it is through just such individualized educational partnerships that a program is most likely to thrive, the following subsections suggest how to establish and nurture this kind of relationship.

1. This Is a Teaching Partnership Between the Law School and the Legal Department.

Every partnership requires mutual trust. The exact details of the program at a specific company will be much easier to determine after the required level of trust exists. This approach may seem heresy to some. Because the externship is a law school course overseen and administered by members of the faculty, many legal educators may think it essential to develop

70 Of approximately 70 schools responding to a recent survey, over 31% reported overall program supervision by tenured or tenure track faculty; adjuncts (over 26%) or faculty employed under long-term contracts (over 21%) provided the overall supervision at most of the other schools. SANTACROCE & KUEHN, supra note 14, at 21. The same respondents reported that the classroom components of their programs are most commonly taught by adjuncts (38%), followed by tenured and tenure track faculty (over 24%). Id. at 24.

71 The accreditation rules require that a faculty member evaluate each student’s academic achievement, but they permit supervision to be by part-time faculty or even by faculty from another school if appropriate, which presumably applies at least when the placement is at a location distant from the school awarding the credit. See A.B.A. STANDARDS, supra note 3, at Standard 305(c).
the program details and procedures first, and only then begin to work with representatives of the legal department to mold the opportunity to the program’s objectives and attributes. From this perspective, program structure, procedure, and policies must be based on principles that cannot properly vary with the characteristics of participating law departments. One could certainly design a successful program on that basis. What I suggest, however, is that because a corporate counsel externship is a cooperative experiential learning venture between two institutional partners, success at the highest level requires a foundation based on an educational partnership. As with other joint ventures, because the participants voluntarily agree to work together for a common purpose, they must negotiate mutually acceptable terms of their partnership that satisfy the needs and interests of each partner. The only inflexible principle should be that the primary purpose of the externship must be to educate the students. Beyond that fundamental objective, how the experiential learning is to occur should be guided not only by abstract faculty policies but also by the unique attributes of each legal department involved. In other words, at least to some extent, every placement reflects a distinct experiential learning partnership.

2. **Consider Starting With One or Two Legal Departments With Which the School, Alumni, or Faculty Members Have Strong, Long-Term Relationships.**

Any program that follows the partnership formula I endorse will require time to build the relationships between the law school externship program and the participating legal departments. And because every corporate legal department is unique, every relationship must be built separately. For these reasons, I advocate having the faculty member or members charged with establishing the program begin by working with a limited number of legal departments. The faculty in charge of establishing the program should learn something about each company’s corporate culture and the characteristics of the legal department and should explore the capacity of the department to integrate students into its operations. Discuss the goals of the program and determine whether placements in the particular legal department can be administered in ways that are consistent with those goals. And do not be afraid to break off discussions respectfully if it appears that the legal department does not share a commitment to the educational goals of an externship.

For many schools, the most natural way to establish partnerships of this nature will be to draw on existing relationships with companies or legal departments. Alumni and supporters of the school come to mind first, especially if they are lawyers in the legal department or executives in companies that have legal departments. The faculty committee or member charged with the responsibility for establishing the externship program will probably not have all of the personal relationships needed to begin the conversation. For that reason, other faculty members, and particularly the dean and other administrators, may be essential to the effort. In many situations, laying the necessary groundwork may require several contacts as well as patience, especially if the company involved is a large one or operates under policies or customs that require buy-in from several decision makers.
Geography may also be important. Unless the externship will be exclusively a summer program or it will provide a full semester’s worth of academic credit, the participating companies will need to be within commuting distance from the school. As a result, urban schools will have more options than will schools that are distant from potential placements. Some urban schools will even have the advantage of working with the local chapter of the Association of Corporate Counsel to build relationships with a group of leaders of the region’s in-house legal community. But, as the University of Arkansas program demonstrates, the mere fact that a school is not close to a major metropolitan area does not necessarily mean that it does not have access to ideal placement prospects. For startup programs, it is more important to identify one or a small number of companies that are well-situated to work with your students than it is to accommodate a large number of students.

C. Anticipate the Business and Administrative Challenges and Concerns That an Externship Presents for the Legal Department.

For the early stages, I recommend approaching a prospective placement opportunity as a sale to be made. While it is easy for faculty members to recognize many of the issues that the proposed externship presents for the law school, it is equally important to analyze the program from the perspective of the other participant in the partnership. Many legal departments will either have experience working with law students only as part-time law clerks or they will have no frame of reference at all for considering how to integrate law students into their offices. Even departments that have a history of their own internship programs have probably not considered how to collaborate with law faculty to implement a program in which law students earn academic credit. By anticipating and proactively addressing issues and potential problems that an externship will likely present for the legal department, the law school can avoid a number of complications that could delay or even derail progress.

For any partnership to be successful, the partners must first learn about each other. In this regard, it is especially helpful to anticipate that there may be some interesting contrasts between the perspective of the law faculty and that of a corporate legal department. Only careful investigation and planning will disclose these potentially critical differences. For example, faculty may be concerned that students might not perform educationally meaningful work assignments, but the managers of the legal department may worry that the students will take too much of their busy lawyers’ time. Or faculty may think that a for-profit company will be tempted to take advantage of free student labor, while the company’s human resource manager may more be concerned with the potential Fair Labor Standards issues that unpaid externs may present. And some faculty members may doubt that lawyers practicing in the corporate

\[\text{\textsuperscript{72}} \text{ See infra notes 75-79 and accompanying text. Currently, “[a] law school may not grant credit to a student for participation in a field placement program for which the student receives compensation.” A.B.A. STANDARDS, supra note 3, at Interpretation 305-3. This restriction may soon change. The A.B.A. is considering a controversial proposal to delete this interpretation and permit academic credit for paid externships. See Student} \]
environment will adhere to academic program standards, yet the supervising lawyers may worry that the school will provide insufficient guidelines to help them succeed as mentors in an educational setting. By looking at the externship from the company’s point of view, the faculty member in charge of the program should be able to craft program policies and procedures that successfully address the issues from both perspectives.

In the early planning stages, it may be especially helpful for the law school representative to work with the legal department to explain the externship concept from the school’s point of view and to identify and articulate the most significant challenges or issues that an externship program may present for the company. If for no other reason, this can be valuable to demonstrate the law school’s commitment to a collaborative approach that respects the needs and interests of the legal department. The process will also help to solidify the legal department’s commitment to the educational mission of the program.

While the lawyers engaged in the discussion on behalf of the legal department may already know a good deal about the law school, they may not know how externships fit into a law school curriculum, and they will probably know even less about the emerging importance of experiential learning in legal education. It may be useful to provide that information to the lawyers involved. What is more important, however, is that the faculty member or members involved take the time to find out what questions or concerns members of the legal department or the company’s executive leadership may have about bringing law students into their offices. It will also be important to learn about the process that the company will follow to decide whether to participate in the program. Although the faculty member in charge may know something about the company, he or she will probably know little about how the legal department operates. In many companies, there is a chain of command process that must be navigated before anything as intrusive as an externship can be implemented. Asking about the process, and learning who is involved in making the decision, will help the faculty representative manage the process successfully.

While many different preliminary issues may require attention, a few common ones deserve special mention. Reservations about the demands that the externship may place on the supervising attorneys, for example, can be at least partially addressed by acknowledging the concern, even if it is not openly expressed. You may also be able to alleviate these concerns by offering examples and processes that will allow the program to meet its educational goals without unduly interfering with the business of the department. You should make it clear at the outset that the program contemplates a wide range of experiences that can be adapted to whatever may be going on in the department at any particular time. Explain that students can

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Learning Outcomes, Draft for January 8-9, 2010 Meeting, A.B.A. Sec. of L. Educ. and Admissions to the Bar, Standards Review Comm. at 6. available at, http://taxprof.typepad.com/files/aba-revisions.pdf. How this change, if made, could affect corporate counsel externships is an interesting question that is beyond the scope of this article.  

73 See BEST PRACTICES, supra note 1, at 198-205 (suggesting best practices for externship programs).
often learn effectively through observational opportunities that simply allow the externs to shadow practicing attorneys or through discrete assignments that contribute to almost any larger project occupying the supervising attorney’s time. 74 The information that a faculty member will be conducting a companion classroom component for the externs or will be meeting with them periodically to help them reflect on what they are learning may reduce worries that the supervising attorneys may need to spend too much time guiding the learning process.

A short list of the program’s learning objectives by reference to the character of assignments and projects most appropriate for achieving those objectives may make it much easier for members of the legal department to see how they can integrate the externs into routine activities. Already having in place a process for screening students for potential conflicts of interest and providing a form of confidentiality agreement for the students to sign will speak to two primary concerns that most companies will ultimately want to address. And offering in advance a simple evaluation form for supervisors to complete at the end of each externship term may overcome the fear that the assessment process may become burdensome.

It is also helpful to anticipate that a company reviewing an externship proposal may be concerned that externs could be classified as employees for minimum wage purposes under standards promulgated by the U.S. Department of Labor’s Wage and Hour Division in connection with training programs. 75 The issue has been a topic of discussion for many years with respect to training programs, and it is not necessarily limited to externships with for-profit companies. 76 But the concern is much more significant for placements with for-profit companies than those with government agencies or not-for-profit organizations. 77 Although the fact that the central purpose of an externship is to award academic credit for a faculty-supervised course arguably provides a strong basis to exclude the externs from the employee category, that alone does not guarantee the exclusion. 78 A faculty member who is working with a corporate legal department to establish a new externship placement would be well-advised to become familiar enough with this issue to be able to discuss it with representatives of the company and to explain how the program has been structured to minimize any risk that the externs could be viewed as employees of the company. While the matter is one that the company must ultimately address for itself, the law school should remain

74 See id. at 199.
75 See U.S. DEPT. OF LABOR, WAGE & HOUR DIV., FACT SHEET #71: INTERNSHIP PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT (2010) (discussing the definition of “employee” for this purpose and providing six criteria to be applied to determine whether a training program qualifies for the relevant exclusion) [hereinafter FACT SHEET #71].
76 See Feeley, supra note 4, at 43-45. The applicable federal standards articulated by the U.S. Department of Labor have been updated subsequent to the date of Professor Feeley’s article, but the analysis remains similar. See supra note 75.
77 In a concluding note to FACT SHEET #71, the Department comments that: “[u]npaid internships in the public sector and for non-profit charitable organizations, where the intern volunteers without expectation of compensation, are generally permissible,” and that the Wage and Hour Division “is reviewing the need for additional guidance on internships in the public and non-profit sectors.”
78 Feeley, supra note 4, at 44-45.
open to making adjustments in the program to provide greater comfort to the company on this issue. 79

Finally, the faculty member handling the discussions with the legal department should explore and develop the company’s motivation for participating in the externship program. Given the potential burdens and disruption that academic placements may present, one might wonder why any legal department would ever be interested in taking on law students. The answer must be that the lawyers involved, and perhaps some key business executives of the company itself, have a commitment to legal education in general or to the specific law school, or both. Countless practicing lawyers already volunteer their time to law school programs and activities of all kind; many eagerly serve as underpaid adjunct professors; many more make regular financial contributions to law schools. A law faculty, therefore, should not doubt that many legal departments already have, or can be persuaded to make, the commitment to the profession and legal education that an externship program requires. Moreover, most companies large enough to have legal departments recognize the value of becoming involved with their communities and supporting education at all levels. It is this kind of commitment—and not the expectation that inexperienced law students will provide valuable free labor—that makes educational partnerships with corporate legal departments possible. By investing time and energy in exploring the potential for an externship placement with members of a legal department, the faculty member in charge can confirm that the foundation for a successful partnership exists.

D. Listen to the Legal Department and Remain Open to Program Adjustments.

Every successful partnership requires good communication. Through active listening, the supervising faculty member can help to move the discussions along. You should have—and display—a genuine interest in understanding what impact the externship will have on the legal department. Thoughtful, probing questions will help refine vague reservations so that they become well-articulated problems to be solved. As already noted, it is relatively easy to anticipate some common issues and to approach the legal department with solutions in hand. But some matters may arise that are unique to the company. These require an attentive ear and a problem-solving attitude.

Perhaps the company has special security concerns about short-term visitors on site. Or the company’s risk manager may see some obstacles that neither you nor your counterpart in the legal department can address, but those problems may be resolved by getting your university’s risk manager involved in the discussions. Perhaps the legal department is eager to participate in

79 For example, one of the considerations that the Department of Labor highlights as supporting an exclusion from the minimum wage requirement is that the externship is not being “used by the employer as a trial period for individuals seeking employment” when the externship period ends. See FACT SHEET #71, supra note 75. In light of that factor, it may be appropriate to document that neither the student nor the company anticipates an offer of employment at the conclusion of the externship.
the program but the company’s information technology department will find it burdensome to equip and train the students to use company technology. Many other potential challenges may be lurking in the background. By acquiring as much information about the source and basis for these concerns as possible, you should be able to suggest adjustments to the program to overcome most of these problems. The key considerations in dealing with these unique problems are, first, to give them the time and attention they require and, second, to maintain a flexible approach that focuses not on the conflicts they seem to create but on the underlying needs and interests that they reflect. Just as is true in most other negotiations, the process of understanding and earnestly exploring the relevant needs and interests of the parties will often lead to appropriate solutions.

E. **Confirm That the Legal Department Will Devote Appropriate Resources to Support the Externship.**

Presumably, you would not be discussing the idea with any legal department unless you believe (or at least your dean, committee, or whoever is in charge of externships believes) that the placement can serve the school’s objectives. But once you have successfully addressed the questions and challenges that the externship presents for the legal department or, more likely, at the same time as that process is progressing, you need to take steps to confirm that the students will have the learning experience the program contemplates. For the most part, this means exploring the resources that the legal department will commit to the program. Who will serve as the supervising attorneys? Will each extern work exclusively with one supervising attorney or will several supervising attorneys be involved? Will someone else be involved in selecting projects to assign to the externs? Will the department as a whole become involved with the program? What will be the physical work environment for the externs? How close will the externs physically be to the supervising attorney or attorneys? Will each extern have a suitable work station throughout the externship? Will a company computer and e-mail account be provided? The answers to these questions will help you assess the legal department’s adaptability to the educational partnership.

F. **Work Out a Procedure for Selecting Students to Participate.**

Because I remain committed to the partnership model and I view the students themselves as the most important representatives of the law school once the externship program begins, I think it is important to place the right students in the right environment. I provide a detailed description of the externship to interested students and invite those who meet the program requirements to submit their applications to me. I interview each student not only to confirm that the educational attributes of the program meet the student’s needs, but also to give me an opportunity to judge whether the student will be a good representative of the law school for purposes of carrying on the partnership. Of course, students need not share the company’s world view and need not be committed to remold themselves in accordance with the corporate culture, but they should be comfortable with the idea of spending significant time over several weeks in
whatever environment the company offers. I also prefer students who demonstrate strong positive reasons for seeking the externship as a learning experience over those primarily motivated by a desire to avoid another law school class or those who hope that the externship may lead to a job offer. Finally, I use special criteria when placing students for the first time with a company, and I prefer to select only one or two students for the initial placement, because these students will make the first and most important and lasting impression that will create the externship’s reputation at the company.

The selection process should also reflect the company’s preferences. I encourage the company to interview students or at least to participate in the selection process by reviewing more applications than the number of available slots. But, unless the company feels strongly about selecting the students on its own, I also prefer to remain involved in the process. One convenient approach is for the faculty member in charge of the externship to screen applicants before sending a limited number of applications on to the company for a final decision.

II. Structuring the Externship

Part I of this article lays the groundwork for a corporate counsel externship. It is, therefore, not surprising that themes sounded in Part I periodically recur here as concrete suggestions for features of the program.

A. Review the Program for Compliance With Your School’s Relevant Policies and the A.B.A. Accreditation Standards.

Especially for those who follow the suggestion to tailor each placement to the circumstances presented by the participating company, it is important to review all of the policies that govern externships before implementing a new placement. Presumably, the framework of the program consistently followed for each placement inherently reflects a design based on the relevant A.B.A. accreditation standards, especially Standard 305, which is the standard that directly governs externships. Even so, it is worthwhile to re-read Standard 305 to determine whether any aspect of the externship needs to be modified. Standard 305 specifies that the activities of a program of study outside the classroom “shall be approved in advance and periodically reviewed following the school’s established procedures for approval of the curriculum.” For that reason, among others, it is appropriate for the faculty member who administers the externship to prepare a brief overview of the program that explains how the program’s features comply with the specific requirements of Standard 305. Faculty should also

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80 On the significance of corporate culture, see supra notes 38-44 and accompanying text.
81 For additional guidance on many of the issues discussed in this Part II and in Part III of this article, see BEST PRACTICES, supra note 1, at 165-79 (proposing best practices for experiential courses in general) & 198-205 (proposing best practices for externship courses in particular). See also J.P. Ogilvy, Guidelines with Commentary for the Evaluation of Legal Externship Programs, 38 GONZ. L. REV. 155 (2002/03).
82 A.B.A. STANDARDS, supra note 3, at Standard 305.
83 Id. at Standard 305(d).
be mindful that the school’s site visit will probably closely look at all externship programs for compliance with Standard 305.  

The program should also be assessed based on any faculty policies, or even unwritten faculty practices or customs that may apply to externships. Doing this carefully before placing any students will avoid embarrassing or potentially contentious encounters later. Depending on the structure in place, the faculty member in charge of the externship may wish to seek the advice of the administration or the appropriate faculty committee about any features of the externship that might raise questions. Although, to avoid micromanagement, the externship faculty may prefer to minimize unnecessary attention to details of the program by the faculty at large, it is possible that a faculty discussion of certain details may help to build faculty commitment to and involvement with the program and contribute to the status of the externship approach to experiential learning.

Under the accreditation standards, to qualify for an externship, students must have “successfully completed one academic year of study.” Aside from this requirement, however, the standards do not establish any course prerequisites for externships. And because the externs are likely to receive assignments in a wide range of practice areas, for many placements it may not be productive to adopt prerequisites for subject area courses except in accordance with any faculty policies or practices generally applicable to externships. To emphasize that the rules of professional conduct are critically important to professionalism for business lawyers, and in particular to provide to the students an appropriate grounding in the importance of protecting client confidences, I favor requiring Professional Responsibility either as a prerequisite or a co-requisite. I adhere to this view even if the students operate exclusively as assistants to their supervising lawyers, as ours do, and are therefore not practicing as student attorneys.

B. Establish a Good Working Relationship With A Primary Contact in Each Legal Department Involved.

To maintain the partnership model, the faculty supervisor should identify those members of the participating legal departments who will have the most significant roles in administering the externship on site and should foster relationships with those persons to facilitate the educational objectives of the program. In some cases, it may be essential for the faculty supervisor to propose that one or two persons be designated by the legal department to serve as the primary contact with the faculty supervisor. Depending on the size of the legal department,

85 A.B.A. STANDARDS, supra note 3, at § 305(e)(6).
86 See BEST PRACTICES, supra note 1, at 204 (stating that “Professional Responsibility may be an important prerequisite for any placement”).
87 Interpretation 305-4 to the A.B.A.’s Standard 305 specifies that the “program shall develop, publish and communicate to students and field instructors a statement that describes the educational objectives of the program.” A.B.A. STANDARDS, supra note 3, at Interpretation 305-4.
the number of students involved at one time, and the length of time that the legal department continues to participate in the program, it is likely that several supervising attorneys may work with students over time. When that is the case, for the sake of continuity and consistent quality, it may be especially important to have one or two primary contacts within the legal department who will help make certain that all supervising attorneys are aware of the program’s objectives and procedures.\footnote{See \textit{Best Practices}, supra note 1, at 201 (noting that a coordinator may be useful if several students are assigned to the same placement site).}

C. \textit{Develop an Assigned Reading List or Syllabus that Introduces the Externs to the Practice of Law in a Corporate Legal Department.}

Whether or not the externship includes a distinct classroom component, the students will benefit from advance preparation that helps orient them to the practice of law in a corporate legal department.\footnote{See \textit{id.} at 204 (discussing the need for externs to be adequately prepared).} While some materials are available to provide helpful overviews of the practice of law within a corporate legal department,\footnote{See generally \textit{Successful Partnering}, supra note 18; \textit{Villa}, supra note 13; \textit{Day}, supra note 12, at 510-11.} I prefer to expose students to a few broad principles and suggestions derived from some relatively informal perspectives on in-house counsel and the roles of law clerks and subordinate lawyers.\footnote{See, e.g., \textit{Suzanne B. O’Neill & Catherine Gerhauser Sparkman, From Law School to Law Practice} 235-244 (1998).} At the risk of over-simplifying a terrifying transition, I have even referred my students to a popular, nontechnical resource for law students entering a business law environment.\footnote{See, e.g., \textit{Kimm Alayne Walton, What Law School Doesn’t Teach You . . . But You Really Need to Know} (2000).} These readings serve as the basis for our first tutorial session, which I schedule at the beginning of the semester or term, before the students report to the placement site.

No matter how the students receive their general orientation to the corporate legal department environment, it is important to expose them to several topics that they have probably not previously encountered but that are applicable to most corporate counsel externship placements. As has already been suggested, one lesson that students need to learn early on is the importance of becoming familiar with the culture of the company and beginning to understand how that culture influences all employees of the company and the company’s lawyers in particular.\footnote{See supra notes 38-44 and accompanying text.} Students also need an introduction to the relationship between in-house counsel and their business clients. Most students will be surprised to learn that in-house lawyers use the term “clients” to refer to the business employees of the company with whom they interact on legal matters. The students have dutifully learned that the client is the corporation itself, but now they
must learn that as a practical matter in routine situations it is both normal and logical for the lawyers to think of the business people as their clients.\textsuperscript{94}

It is also useful to introduce the students to the relationship that normally exists between in-house counsel and the outside counsel they retain for special services.\textsuperscript{95} Students should be encouraged to seek opportunities to discuss outside counsel relationships with their supervising attorneys and to observe how inside lawyers manage outside counsel.

Another topic that deserves attention at the outset is the manner in which effective in-house lawyers communicate with their business colleagues about legal matters, especially those that involve technical knowledge or legal analysis.\textsuperscript{96} Externs are often surprised to learn that business clients have little tolerance for the thorough analytic writing style that the students have so carefully developed by writing case abstracts, legal memoranda, and briefs in law school.

One of the most important orientation steps is to cover the requirements of confidentiality and professional responsibility in the business setting. Most companies in the private sector that are large enough or sophisticated enough to have legal departments are extremely sensitive about confidentiality.\textsuperscript{97} And the concern extends well beyond the technical scope of the attorney-client privilege. Students should be cautioned against discussing information they learn about pending business transactions, potential lawsuits, and business developments.\textsuperscript{98} They must recognize that they themselves have the primary responsibility to determine what they can and cannot discuss in light of company policies and practices. While it is important for the faculty supervisor to monitor the students’ experiences in the externship, students must even keep these confidentiality principles in mind when preparing work logs, journal entries, and reflection papers.

The orientation process should not, however, be limited to legal considerations and lawyering skills. Business lawyers need to understand their client’s industry and business, and need to become familiar with the terminology and concepts of the business.\textsuperscript{99} They also need specific knowledge about the company’s financial situation and the other conditions and circumstances that affect the current and ongoing operations of the company.\textsuperscript{100} Shareholder and customer information on the company’s website will often help the students learn about the most

\textsuperscript{94}“A lawyer for a corporation represents the corporation—not its officers, employees, or shareholders. Yet, in taking care of the day-to-day business, your ‘client’ is represented by various of these individuals acting on its behalf.” Jonathan L. Pompan, Practical Tips for Young Lawyers Going In-House, YOUR ABA, § 3 (2006), http://www.abanet.org/media/youraba/200612/article10.html.
\textsuperscript{95}See generally Harris, supra note 59, at §§ 20:3, 20:18-27.
\textsuperscript{96}See generally Green, supra note 30, at § 17:8.
\textsuperscript{97}See generally Andrea Utecht & Abraham C. Reich, Ethics, in 2 SUCCESSFUL PARTNERING, supra note 18, at § 31:21.
\textsuperscript{98}See VILLA, supra note 13, at § 3:11.
\textsuperscript{99}See Green, supra note 30, at § 17:8.
\textsuperscript{100}Id.
relevant current matters of interest to the company and the industry. Students placed with public companies should also review selected parts of the company’s annual statement.

D. Decide on a Classroom Component, Periodic Reporting by the Students, and an Experiential Reflection Component for the Students.

Experiential learning depends on reflection. The accreditation standards require an opportunity for student reflection on the externship, and most externship programs include a classroom component at least in part to stimulate a reflective learning process. Some programs allocate separate academic credit for a required companion course. But whether they occur merely as a few tutorial sessions during the term or as regularly scheduled classes constituting a formal course component, meetings between the faculty supervisor and the students provide the most reliable form of guided reflection.

I prefer to use assigned readings for the first session or two, including at least one reading on the experiential learning process itself. During those meetings, I lead the students in a discussion of how learning occurs in a law school externship. At these early sessions, I also ask the students to articulate how they think the externship program differs as an educational experience from traditional classes, simulation exercises, clinics, and law firm clerkships. And I ask them how they think an externship in a corporate legal department differs as a learning opportunity from other externship programs. In keeping with common externship practice, our program requires the students to submit weekly work logs or journals and a final reflection paper at the end of the externship. During the periodic classroom meetings, I discuss with the students how they should use the weekly work logs and the final paper as components of the reflective learning process.

E. Prepare a Reader-Friendly Program Description for the Guidance of the Supervising Attorneys and the Participating Students.

To promote and protect the educational quality of the externship, the faculty supervisor should provide written guidance to both the supervising attorneys and the students. While

101 BEST PRACTICES, supra note 1, at 172-73.
102 A.B.A. STANDARDS, supra note 3, at Standard 305(e)(7). For programs in which students earn four or more credits, some form of guided reflection must be provided on a contemporaneous basis. Id. A recent survey indicates that the overwhelming majority of programs include a classroom component, but less than half of those programs award distinct credit for the classroom component. SANTACROCE & KUEHN, supra note 14, at 23. See also Diane E. Hoffmann, Teaching Health Law, J. L., MED. & ETHICS, Fall 2009, at 513 (describing the classroom component for a health law externship).
103 BEST PRACTICES, supra note 1, at 205 (noting the advantages of “a regularly scheduled on-campus classroom meeting” between the students and the externship faculty).
104 See, e.g., Ogilvy, supra note 7.
105 The accreditation standards require an externship program to include “a method for selecting, training, evaluating, and communicating with field placement supervisors.” A.B.A. STANDARDS, supra note 3, at Standard 305(e)(4). See also BEST PRACTICES, supra note 1, at 201-02.
some direction will naturally occur through the interactions between the faculty supervisor and the supervising attorneys and the students, effective administration of the program requires something more tangible. For this purpose, the faculty supervisor can prepare a concise program description that highlights the specific features of the program that are most critical to achieving the educational objectives.

Currently, I use two versions of a program description. One is a comprehensive, narrative document that helps orient students and faculty to the salient features of the externship. The other is a much briefer description that serves as a handy reference for supervising attorneys. It is, in effect, an executive summary of the full description. Many programs use placement agreements, which outline the program’s objectives and procedures in the same way as a written program description does. Having a representative of the legal department sign a placement agreement may be an advantage in some settings because it underscores the commitment involved, but if the groundwork for that commitment has been adequately documented through the process of forming a strong educational partnership, as described above, a written agreement may be an unnecessary and distracting formality.

I also supplement the description for the students with an additional orientation document. The main description explains the program features, including its structure and objectives, as well as the course prerequisites and requirements. I provide this document for the benefit of all students who may be interested in applying, and it also serves as the primary description of the course for other purposes within the school, including for curriculum committee and faculty reference purposes. The supplemental document provides additional details about the course requirements and performance standards for the students who enroll in the course. After they have been accepted into the externship, I provide this second document to the students as an introduction and general syllabus for the course.

Both of the documents for internal use, as well as the executive summary for the supervising attorneys, help to manage expectations. This can be especially important because students and supervising attorneys could otherwise develop unexpressed or subconscious expectations that are inconsistent with the program—a circumstance that can only lead to confusion or disappointment. The students, for example, need to understand that the nature of the projects they will be assigned is somewhat unpredictable because specific projects depend on the demands that the client places on the supervising attorneys from time to time. They also need to recognize the central role of the reflective learning process and the importance of their personal responsibility for following that process proactively. Supervising attorneys need to know that observational opportunities and periodic feedback are important to the educational process. Both the students and the supervising attorneys need to know how many hours per

106 See Feeley, supra note 4, at 55.
week the students will be on site, when the externs will begin and end their on-site work, and how the faculty supervisor will monitor the students’ progress.

F. Work Out Preliminary Procedures for Periodic Contacts With the Supervising or Coordinating Attorneys, Site Visits, Feedback, and Performance Evaluations.

A corporate counsel externship requires the same faculty oversight as any other externship program. In general, this means that the faculty supervisor should establish an ongoing line of communication with the supervising attorneys and should solicit from them and provide to them feedback on a regular basis. Because there are several supervising attorneys involved at each of the companies that participate in the program I administer, I work most closely with one coordinating attorney at each company. This allows for consistency and continuity even though different supervising attorneys work directly with students at different times.

But no matter whether the primary communication is with one coordinating attorney or several supervising attorneys, it is important to stay in touch with the lawyers involved with the program on site. Two-way input and feedback is particularly important at critical junctures during the term, such as immediately before the externs begin, during the first few weeks of the externship, and during the final days of the externship, including for purposes of the evaluations of student performance. When it is feasible, I also encourage some form of interim assessment process after the midpoint in the externship, although this can be as informal as an e-mail exchange between the faculty supervisor and the coordinating attorney. I also periodically provide comments to the externs in response to their weekly work logs, especially during the initial weeks of the externship. These steps allow for the assessment process to be formative in the sense that comments and suggestions from the supervising or coordinating attorneys and the faculty member become part of an iterative learning process in a way that allows the students, the supervising or coordinating attorneys, or the faculty member to make responsive adjustments.

Site visits, while time-consuming, can be integral to the success and evolution of a program. Although the accreditation standards require site visits only if the program awards four or more academic credits, I view this limitation as nothing more than a matter of administrative convenience. No matter how many academic credits the program awards, site visits provide excellent opportunities to keep the educational partnership vibrant and dynamic. For new placements, site visits help to confirm that the legal department has committed the appropriate resources to the externship and that the supervising attorneys are familiar with the educational objectives of the program and the administrative details of the assessment process. As the partnership between the legal department and the school’s externship program matures,

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107 See A.B.A. STANDARDS, supra note 3, at Standard 305(e)(4); BEST PRACTICES, supra note 1, at 201-02.
108 See BEST PRACTICES, supra note 1, at 201.
109 Id. at 172-177; CARNEGIE REPORT, supra note 1, at 171.
110 A.B.A. STANDARDS, supra note 3, at Standard 305(e)(7).
the site visit is often the best way for the faculty supervisor to collaborate with the legal department to strengthen the program and to explore possibilities for updating or expanding the program.

The supervising attorneys should play meaningful roles in the process of evaluating student performance.\textsuperscript{111} A concise evaluation form can facilitate the process, but it is not sufficient merely to have the supervising attorneys complete a form. An evaluation form provides a stimulus for a final review of the extern’s performance, and it also serves the important function of documenting the involvement of the supervising attorneys in the assessment process. But far more important than obtaining the information that a form can provide is to invite the supervising attorneys to reflect and comment on how well the externship program is achieving its educational objectives.\textsuperscript{112} As just mentioned, I find that a site visit often provides the best opportunity for this, but another way to serve this purpose is to follow up with the coordinating or supervising attorneys after the evaluation forms have been received by asking for their comments and suggestions for improving the program. I also provide to the coordinating attorneys copies of the externs’ reflection papers and invite their reactions for the benefit of the program.

III. IMPLEMENTING THE EXTERNSHIP

A. Well Before the Beginning of the Term, Communicate With the Students and the Coordinating or Supervising Attorneys.

Most externships extend over just three or four months, or even less for a summer placement. For the optimal educational benefit, a strong start is essential. Consider providing detailed information to the students well before the externship begins. This can prove difficult because students will typically be away from school on a semester or summer break until just before the externship commences. It may require a communication at the end of the preceding school term. While students entering an externship are frequently more enthusiastic about the prospect than they are about traditional classes, it still may be difficult for them to pay close attention to preliminary information that far in advance or for that information to have its full intended impact when the time for the externship finally arrives. The students need to know in advance about any initial classroom component as well as any on-site orientation sessions.

Consider furnishing to the students at the time they are accepted into the program a course syllabus or an overview that serves a purpose similar to a syllabus.\textsuperscript{113} You can post this document to a course website along with other information that the students will need, and you

\textsuperscript{111} See id., at Standard 305(e)(3) (requiring that the method of evaluating each student involve “both a faculty member and the field placement supervisor”).

\textsuperscript{112} See BEST PRACTICES, supra note 1, at 202 (suggesting standards to assure that on-site supervision is consistent with the program’s educational objectives).

\textsuperscript{113} See supra Part I.E.
can ask the students to register for that website at the same time that they enroll in the course. For spring semester and summer externs, you may be able to hold a preliminary meeting or distribute the information during or immediately following the exam period for the preceding semester. For fall semester externs, you may want to obtain updated information about how best to communicate with the students over the summer so that you can provide or repeat important preliminary information shortly before the new school year begins.

Some companies, especially corporations that have many employees or that have heightened concerns about proprietary information or safety, have security clearance procedures that the externs must complete in order to have the access and other on-site privileges essential to their work. Many companies will need to run the externs through some preliminary processes with their information technology departments before the externs will be able to use company computers or other critical technology. Some companies will also want to schedule orientation sessions to cover company policies and procedures, just as they routinely do for new employees. Unless you work with the company in advance to schedule and facilitate all this, these preliminary steps can make it difficult for the externs to experience the strong start that can be so important to the experience. Delays and missteps during these initial administrative stages may be discouraging to both the externs and their supervising attorneys.114

Aside from planning in advance for any administrative process the company requires, the most important thing the faculty supervisor can do to ensure a positive and educationally effective initial experience for the externs is to encourage the supervising attorneys to have substantive work assignments ready for the externs when they report to the legal department. This can present a challenge because in-house attorneys cannot always predict in advance what work they will have for an extern. Some of the most meaningful projects will routinely be ones that arise with short notice and that require immediate attention. But in many departments, ongoing projects will provide sufficient long-range options for an initial assignment. In other instances, the supervising attorney may be able to have the extern begin by reviewing and summarizing or providing information about a significant file, report, or legal or industry development that the attorney expects to be dealing with in the near future. Or the supervising attorney may be able to develop a meaningful assignment based on a pending case or transaction that is likely to be active later during the externship. The ideal first project is a short assignment that requires a well-defined work product to be delivered by the end of the extern’s first or second day and that will be immediately used in some way. Such an assignment conveys to the extern the message that he or she is being proactively integrated into the real work of the department and that the externship is truly an opportunity to learn from doing.

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114 See generally BEST PRACTICES, supra note 1, at 205-06 (identifying a need to ensure that externship “placements sites provide acceptable space, word processing equipment, and supplies to enable students to accomplish their assignments”).
B. *Meet With the Externs Before They Report to Their Companies, and Set High Expectations.*

Earlier portions of this article have already suggested the most important features of the interactions between the externs and the faculty supervisor. The subsections below reiterate and expand some of those themes that may be most important for the initial classroom or tutorial session.

1. **Explore the Role of Inside Counsel as Members of a Business Team.**

   Few, if any, students understand how in-house lawyers function on a daily basis. The externs will especially benefit from a discussion of the problem-solving, teamwork model that most legal departments adopt as standard operating procedure. Explain that inside counsel is not simply called upon to supply the legal expertise, formal legal opinions, and legal documentation that the business needs, but that they normally work closely with their business colleagues to solve business problems that have legal aspects. Provide examples and ask for student reactions.

   While the experience of the supervising faculty member and the nature of the placements must influence how to make the teamwork point, a good illustration can be developed based on almost any technical regulation that might apply to the business or businesses involved. Assume, for example, that a recently amended environmental regulation or administrative agency alert imposes new self-reporting responsibilities on businesses in a particular industry whenever an event of a certain character occurs on company property. Posit that the application of the administrative mandate depends on the relationship between complex statutory provisions and technical definitions under the applicable regulations. Explain that the company’s on-site employees and managers, who have no training in law or environmental protection, must make on-the-spot decisions about whether to invoke an internal company mechanism to initiate the self-reporting process. A properly directed discussion should lead the students to recognize that in this situation, inside counsel cannot simply write a legal memorandum to management that summarizes the regulatory requirements and analyzes relevant court opinions and administrative rulings. These may, in fact, be critical first steps in the process of solving the problem, and that fact may explain why the business people bring the matter to the attention of the legal department. But a team comprised of both business managers and lawyers needs to develop a practical tool that the on-site employees can use to comply with the regulatory requirement without undue interruption in operations. Should the team distribute a one-page bulletin to certain employees, create a comprehensive compliance manual or update an existing one, prepare and present training sessions, propose routine investigation procedures, or perhaps recommend that the company engage an outside consultant (legal or other)? If some of the students have worked as clerks or summer associates in law firms, you might ask them how the lawyer’s role in this situation differs from the projects on which they have worked. You can ask all of the students to reflect on how their law school classes and training have prepared them to help solve a problem such as this. You might also ask them what other training or experiences they have
had, or might wish for, outside of law school that could help them collaborate successfully with business colleagues to serve the company’s interests in such a situation.

2. **Share What You Have Learned About the Corporate Cultures of the Companies Involved.**

Because it is so important for externs working in a business environment to understand the significance of corporate culture, you can help your students acclimate themselves to their placements by offering to them some information about the specific corporate cultures and business contexts in which they will be working. Even if the placement is a new one, you should have some sense of the company’s core values and relevant customs as the result of your efforts to create a working educational partnership. For those externs who will be placed at companies that have participated in the program in the past, you should have even more useful information based on the reflections of previous students. At a minimum, you should be able to provide guidance on some of the minor considerations that sometimes can help the new externs make a great first impression. You can ease the students’ transition by providing simple information about the legal department’s dress code, the public image that the corporation intends to project, the extent to which members of the legal department are integrated into business decisions, important company initiatives, recent business successes or setbacks, and important customs.

Some companies will be able to help by directing you or the students to written policies or guidelines that the company provides to its new employees or to other written information about the corporate culture or the business environment in which the company operates. At least, the legal department or the company’s human resources department may even prefer to provide a structured orientation session that includes a segment on company policies, important ethical issues, and other core values that the company espouses. At a minimum, the students should review the company’s website or other publicly available information about the company so that they know a great deal more about the company on their first day on site than they knew when they applied for the externship. This will not only make the students more comfortable as they begin but also give them the background they need to impress their supervising attorneys with their commitment to becoming effective team members.

3. **Reiterate Program Expectations and Requirements.**

Either during the first meeting with the externs or through some other explicit means, you should also reinforce key aspects of the preliminary information relating to the course’s learning objectives, methodology, and requirements. In particular, the students should begin the externship with more than a passing or vague understanding of the experiential learning process. They should also have realistic expectations. Students should know whether to anticipate

\[115\] At the beginning of the term, students in our externship at the Legal Department of Wal-Mart Stores, Inc. read a book that explicitly lays out the business philosophy and core values of the company’s founder. I know of no better illustration of how corporate culture can influence every aspect of a business. See SAM WALTON WITH JOHN HUEY, SAM WALTON MADE IN AMERICA: MY STORY (1992).
assignments in specific fields in which they have expressed interest. Some students may especially need to hear the reasons why they should welcome any and all assignments. Most need to be told that their supervising attorneys are extremely busy and will not be able to provide continuous feedback. They will benefit from specific suggestions about how they can promptly develop positive rapport with supervising attorneys and the other members of the legal department (both lawyers and staff). They need advice about when and how to request feedback from their supervising attorneys and when to seek input or advice from the supervising faculty member. They also need direction about the importance of keeping their supervising attorneys apprised of their progress on pending matters and their availability to take on additional assignments. They should understand from the beginning that they themselves are primarily responsible for the success of the experiential learning process.\footnote{See generally \textit{Best Practices}, supra note 1, at 172-73, 176-78; Feeley, \textit{supra} note 4, at 58.}

As is true with any other course, some of the students will need to hear more than once about some of the most important requirements, such as the periodic work logs or journals they must submit to the faculty supervisor and how many hours they must spend on site. They need to know about required attendance at classroom or tutorial sessions. Any student placed with a legal department that does not typically extend job offers to new law graduates should understand and accept that reality.\footnote{Additionally, employment law considerations dictate that job offers should not routinely flow from the externship. \textit{See supra} notes 75-79 and accompanying text.} Students will also benefit from an early understanding of the assessment process. Additionally, I encourage them to begin planning for their reflection papers early during the externship.

C. \textit{Develop a Process for Monitoring the Externs’ Activities During the Externship, Especially During the Early Phase so that you can Intervene or Provide Feedback as Appropriate.}

Most externship programs require students to submit regular work logs or journals.\footnote{See generally \textit{Best Practices}, supra note 1, at 205.} It may be useful to provide to students sample reports or journals and to discuss with the students at the beginning of the term your expectations about these reports. Beyond making certain that the students know what information they need to provide to you about their experiences and when they need to provide that information, you should also decide how you will gather and evaluate any other information that you need to monitor the externs’ progress. It may be sufficient in most instances simply to read the periodic reports and follow up individually as appropriate with particular students or their coordinating or supervising attorneys when you have questions or concerns. If your program includes a weekly classroom component, you may want to take some class time during the week after the externs begin working on site to learn about the projects that each extern has been assigned, how the students are relating to their supervising attorneys and others in the department, and whether they are receiving feedback. If your
program uses periodic tutorials rather than a regular classroom component, you may wish to schedule a session as early as possible during the externship to cover these matters. Or you may ask students to meet with you informally shortly after the first week on site. These early steps are especially important for first-time placements with a company. Once you have established a solid working relationship with a legal department, you may be able to rely more on the coordinating or supervising attorneys to alert you to any special concerns.

D. *Maintain Periodic Contact With the Coordinating or Supervising Attorneys, and Plan Site-Visits Well in Advance.*

The benefits of regular contact with the coordinating or supervising attorneys extend well beyond the opportunity to identify and address problems that occur early during the term. Ongoing communication about the performance of the externs and any developments affecting the externship is a key aspect of the continuing educational partnership between the school’s externship program and the participating legal departments.119 As long as things are going well, a few brief e-mail messages may suffice to create the appropriate atmosphere for the open exchange of information and ideas.

As previously mentioned, I strongly advocate site visits even when the accreditation standards that apply to the particular program do not require them.120 Schedule a visit each semester sufficiently in advance to improve the prospects for meeting with the optimal number of legal department members involved with the program. For relatively new placements, it may be helpful to propose an agenda and a procedure. You should also invite the coordinating attorney or the supervising attorneys to make suggestions about how to conduct the site visit. If more than one extern is working in the department, more coordination and advance planning may be required. Will you meet with a group or individually with several persons? Is it important for you to see where the externs work? Should the externs be present for all or part of the visit? Will the visit include an evaluation of the externs’ performance or of the program? Do you want the opportunity to meet with the general counsel or some other specific people at the company in addition to your primary contact? Once you have been working with a company for an extended period, the site visit process may conform to an established pattern, but even then you should do some advance planning, and you should consider whether any changes in the process will help make the site visit as productive as possible. And take care to listen actively to the members of the legal department who participate in the site visit. That may be the best way to discover potential problems or opportunities to improve the program.

**IV. CONCLUSION: THE EXPERIENTIAL EDUCATION OF ESTABLISHING, SUPERVISING, AND ADMINISTERING A CORPORATE COUNSEL EXTERNSHIP**

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119 See id. at 200-02.
120 See supra note 110 and accompanying text.
The process of writing this article has been a reflective one for me. In this conclusion, I invoke the same guided learning process that I promote to my corporate counsel externs. My observations and recommendations about how to establish, structure, and implement a corporate counsel externship derive from my own process of learning more about being an experiential educator by reflecting on my experience supervising our program. As acknowledged at the beginning of this article, I recognize that my perspectives and recommendations concerning a corporate counsel externship do not represent the only valid approach. But because I believe that I have learned some important lessons from my experience, I confidently advocate for what I have learned. To conclude, I want to state a few of my reflections explicitly in the same way that I ask my students to do in their final reflection papers.

In keeping with externship learning theory, I tell my students that the reflective process calls on the learner to replay the experience mentally by asking questions that stimulate critical thinking intended to convert the experience into education. In closing, I will use a few of the same questions that I pose to my students to explore my own learning process. What skills did I develop or use? What did I do well or poorly? What results flowed from my efforts? What actions or omissions were important or unimportant to those results? What environmental circumstances and actions by others were important? What do I wish I had known or realized before I began, and why did I not know or realize it? How can I use what I have learned in my career in the future?

What skills did I develop or use? Before I took on responsibility for this course, I knew little about experiential education and, as a result of my ignorance, I had limited skill as an experiential teacher. I now have at least started to learn how to guide students in a reflective learning process. I am improving my ability to help students develop some of the most important practical skills they need to represent business clients and to succeed in a business environment. To this end, I have learned how to engage legal externs in an iterative learning cycle that requires them to plan, act, reflect, and integrate. I have also learned that partnerships between law schools and practicing lawyers hold tremendous potential for enhancing legal education. And I am beginning to learn some of the strategies that law schools and practicing lawyers can use to structure such partnerships successfully.

121 See Ogilvy, supra note 7, at 3-7. As all experiential educators know, the incidental learning that comes naturally from experience alone is not the same as the learning that results from intentional, professionally directed, experiential education. See James E. Moliterno, Legal Education, Experiential Education, and Professional Responsibility, 38 WM. & MARY L. REV. 71, 78 (1996).
122 See Ogilvy, supra note 7, at 3-7.
123 “A clear benefit to including for-profit organizations in law school-sponsored externship programs is the expansion of the network of law school alumni and members of the bar that participate in the training of lawyers and engage in meaningful on-going contact and discussion with law school faculty about issues affecting the legal profession.” Feeley, supra note 4, at 54.
What did I do well or poorly? On the positive side, I was able to draw on my experience of over 20 years as a practicing business lawyer to build good working relationships collaboratively with in-house lawyers. But the most significant successes were not mine; they resulted from the same kind of teamwork that our externs should be experiencing. In the first place, my faculty colleagues and I, under the leadership of the law school administration, collectively recognized the educational opportunity that some existing relationships presented. And in building on those relationships, we were reasonably good listeners (although not perfect ones), we asked many of the most important questions, and we maintained our focus on the goal of establishing educational partnerships. It is no surprise, however, that I have learned more from what I did less well. I only anticipated some of the most important hurdles that we would face in getting the program started, and I did not initially perceive some of the most significant advantages of a corporate counsel externship that are described in Part I of this article. I should have invested more time learning as much as possible about all of the relevant circumstances, and I should have asked more of those good questions. Even when I asked the right questions, I should have asked them earlier.

What results flowed from my efforts? Some of the shortcomings mentioned above retarded our progress in settling on a good structure and in getting our first externs placed. But focus and persistence—qualities that I must repeat were collective strengths and not mine personally—eventually produced a well-conceived program. Students, members of the legal departments, faculty, and alumni all have reacted positively to the program. In particular, students routinely report that the externship is one of the most effective learning experiences they have had in law school. Several graduates who were in the program have confirmed that the externship in fact helped to prepare them to practice law. Feedback from the participating lawyers has been equally encouraging, as is the fact that so many of them continue to serve as supervisors.

What actions or omissions were important or unimportant to those results? What was most important was that the participants in these educational partnerships invested the necessary time and energy in the relationships and that we took the appropriate problem-solving approach as we encountered challenges along the way. Although it took much longer to implement the program than we had planned, the delay was, in my view, unimportant even though some of us thought otherwise at one time. We probably needed the extra time to refine the structure and to establish the educational partnerships.

What environmental circumstances and actions by others were important? The corporations where our students work have long histories of supporting the University and otherwise being involved in education and in their communities and professions. Many of the supervising lawyers are our alumni or have other close ties to the law school or the University at large. Some even have served as adjunct law professors, and many have volunteered their time to work with our students in other ways. All of the lawyers who have been involved have an abiding interest in legal education and in the legal profession. The legal departments recruit
highly talented and experienced lawyers from all over the country, and they offer a constant supply of interesting, varied, and sophisticated projects to our students. But an environmental factor that works against our program is that there are relatively few corporate legal departments located within commuting distance. This circumstance necessarily limits our opportunity to expand the corporate counsel program. Another limiting circumstance is that we do not have adequate faculty resources to provide for all of the experiential education programs we might wish to offer our students. As a result of this last factor, if our faculty wants to enhance our experiential learning programs significantly we must either develop new resources or we must make some difficult choices about how to allocate existing ones.

What do I wish I had known or realized before I began, and why did I not know or realize it? It took me a few years to realize that the externship movement in law schools, led by a dedicated group of externship faculty across the country, had already developed many resources for externship programs. I am grateful to members of our clinical faculty and to colleagues at other schools for pointing me in the right direction. But it was not until earlier this year, when our Dean brought to my attention the externship conference at which I presented an outline of this article, that I began to realize how much the legal externship community has to offer. I wish that I had asked more questions and explored more of these resources before getting started. This is ironic because the one lesson I thought I had learned well from my traditional legal education is that preparation, including a thorough investigation of published resources, is every lawyer’s secret to success.124

How can I use what I have learned in my career in the future? For me, this is the ultimate question of the experiential education process. How can I use this experience to become a more effective law teacher and to make a greater contribution to legal education? I now know that I can use some experiential learning principles and a greater dose of adult learning theory in all of my classes.125 I am also beginning to understand how law schools can take steps to integrate into the curriculum the core practice competencies that contemporary leaders in legal education reform recommend, and I am convinced that law faculties should work toward that goal.126

124 To be fair to myself, I note that not a few of the most enlightening resources cited in the footnotes of this article were published after I started working with our program, although a solid body of externship literature certainly existed at that time.
125 Experiential education builds on a foundation of adult learning theory. See Ogilvy, supra note 7, at 7-9.
126 See A.L.I.-A.B.A. CONTINUING PROFESSIONAL EDUCATION & ASSOCIATION FOR CONTINUING LEGAL EDUCATION, EQUIPPING OUR LAWYERS: LAW SCHOOL EDUCATION, CONTINUING LEGAL EDUCATION, AND LEGAL PRACTICE IN THE 21ST CENTURY 6-7 (2010), available at http://www.equippingourlawyers.org/docs/final%20report.pdf (recommending that law schools should integrate the core practice competencies described in the CARNEGIE REPORT and other recent studies on legal education); Leah M. Christensen, The Power of Skills: An Empirical Study of Lawyering Skills Grades as the Strongest Predictor of Law School Success (or in Other Words, It’s Time for Legal Education to Get Serious about Integrating Skills Training Throughout the Law School Curriculum If We Care about How Our Students Learn), 83 ST. JOHN’S L. REV. 795, 798 (2009) (concluding that “law students learn most effectively . . . when law professors integrate the skills of a lawyer within the theory and doctrine of the law”).
Above all, I have come to believe that educational partnerships between law schools and the practicing bar offer some of the most promising avenues for improving legal education in the 21st century. The challenge is to act on that belief.

127 See id. (advocating that “law schools should partner with the bar and the bench in the career-long development of lawyer competencies”).