

# PRICING CLINICAL LEGAL EDUCATION

ROBERT R. KUEHN<sup>†</sup>

## ABSTRACT

Some blame the cost of clinical legal education for high law school tuition. They argue that, regardless of the educational and employment benefits to students, clinical legal education, and law clinics in particular, are too expensive to expand or require for all students in a time of decreasing law school enrollments and revenues. This Article is an empirical examination of these claims.

Reviewing tuition, curricular, and enrollment data from all law schools, this Article demonstrates that 84% of law schools already have the capacity to provide a clinical experience to every student without adding courses or faculty, although only 18% presently require or guarantee that training. It finds there is no effect on the tuition and fees that students pay from requiring or guaranteeing every student a clinical experience and no difference in tuition between schools that already have sufficient capacity to provide a clinical experience to each student and those that do not. In addition, there is no tuition growth associated with the increased availability of experiential or law clinic courses for students or the increased participation of students in law clinics, in spite of the higher costs many associate with clinics. These findings demonstrate that clinical courses have not cost, and need not cost, students more in tuition. The Article concludes that providing a clinical experience to every student is more a question of a school's will to provide that educational experience than of cost.

## TABLE OF CONTENTS

INTRODUCTION .....	2
I. THE RISING COST OF LEGAL EDUCATION .....	6
II. THE CALLS FOR MORE CLINICAL EDUCATION .....	13
III. EXAMINING THE COSTS OF CLINICAL LEGAL EDUCATION .....	19
IV. THE EFFECT OF CLINICAL LEGAL EDUCATION COURSES ON TUITION.....	25
CONCLUSION.....	39

---

<sup>†</sup> Professor of Law, Washington University School of Law in St. Louis. The author wishes to thank Rachael Hinkle and Elizabeth Coggins with The Center for Empirical Research in the Law at Washington University and Michael Small, Nikki Berkowitz, and Dan Kempland, my research assistants, for their help with assembling and analyzing the data in this Article.

## INTRODUCTION

Law lags far behind other comparable professions in the practice-based education requirements for its new licensees. While other professions require that at least one-quarter to one-half of a student's education be in clinical or practice courses, the minimum requirement for professional skills education in law schools was only recently increased to just six credit hours.<sup>1</sup> For decades, reports have called for more clinical training in law school so that graduates, in addition to learning to think like a lawyer, would be prepared to carry on the day-to-day tasks of lawyers upon graduation.

In the midst of discussions about the need for more hands-on legal training, students, legal educators, politicians, and the bar have expressed concerns over the high cost of legal education. Law school tuition has increased rapidly, and average law student debt has soared. At the same time, the economic recession has resulted in reduced law firm hiring and dismal employment prospects for many recent graduates. Recent statistics show that slightly more than half obtained permanent lawyer positions nine months after graduation.<sup>2</sup> “The overall employment rate for the class of 2012 was the lowest since 1994”;<sup>3</sup> the rate for the class of 2013 showed almost no improvement.<sup>4</sup>

Many believe the failure of law schools to graduate “practice ready lawyers” exacerbates the employment problems of graduates.<sup>5</sup> Law firms complain that students are graduating unprepared for practice and that clients are growing reluctant to pay the billing time of inexperienced associates.<sup>6</sup> Partners explain that an increased need for their own billing

---

1. See *infra* Appendix A (listing the clinical requirements for various professional schools); SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, REVISED STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 303(a)(3) (2014) [hereinafter ABA ACCREDITATION STANDARDS]; Tony Mauro, *ABA Delegates Approve Law School Reforms*, NAT'L L.J., Aug. 11, 2014, <http://www.nationallawjournal.com/id=1202666475781/ABA-Delegates-Approve-Law-School-Reforms> (reporting on the ABA House of Delegates' adoption of revised accreditation standards).

2. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, 2013 LAW GRADUATE EMPLOYMENT DATA (2014), *available at* [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html).

3. TASK FORCE ON NEW LAWYERS IN A CHANGING PROFESSION, N.Y. C. BAR ASS'N, DEVELOPING LEGAL CAREERS AND DELIVERING JUSTICE IN THE 21ST CENTURY 17 (2013).

4. Karen Sloan, “*Very Modest*” *Jobs Growth Seen for Law School Graduates*, NAT'L L.J., Apr. 9, 2014, <http://www.nationallawjournal.com/law-school-news/id=1202650371787/Very+Modest+Jobs+Growth+Seen+For+Law+School+Graduates%3Fmcode=1202615496822&curindex=4> (reporting increase in full-time, long-term jobs that require bar passage from 56.2% in 2012 to 57% for 2013).

5. See *infra* notes 92–96 and accompanying text.

6. See Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 606 (2010); David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1 (explaining that clients are forcing law firms to bear the costs of training new associates, and stating that, “a survey by *American Lawyer* found that 47 percent of law firms had a client say, in effect, ‘We don't want to see the names of first- or second-year associates on our bills.’”); see also Patrick G. Lee, *Law Schools Get Practical*, WALL ST. J., July 11, 2011, at B5 (quoting the head of lawyer recruitment for

and further client acquisition has “decreased the amount of time [they] are willing to spend mentoring young attorneys.”<sup>7</sup> As a result, law firms increasingly prefer to hire more experienced lawyers over graduating law students.<sup>8</sup> The depressed job market has led to a significant increase in the number of law graduates forced into solo practice, with the percentage of those practicing solo doubling between 2007 and 2011.<sup>9</sup>

In reaction to the news about reduced employment, applications to law schools have dropped dramatically, leading to lower enrollments and a significant loss of income at many schools. According to the Law School Admission Council, the number of applicants to law schools dropped by 12.3% from fall 2012 to fall 2013 and individual applications by 17.9%.<sup>10</sup> In just four years, the number of applicants dropped by 38%.<sup>11</sup> The number of persons taking the Law School Admissions Test (LSAT) is down over 38% since 2009, and is the lowest since 1998.<sup>12</sup>

---

a law firm stating, “This is a push from clients saying, ‘Why are we going to pay this kind of money? We don’t want to train new lawyers.’”); Katy Montgomery & Neda Khatamee, *What Law Firms Want in New Recruits; Business Acumen, A Greater Focus on Global Issues, Management Skills and the Ability to Write Well*, N.Y. L.J., Apr. 27, 2009, at 11 (reporting a hiring partner’s comment that current economic conditions “make it more imperative that new associates hit the ground running, and operate efficiently and effectively from day one”).

7. Thies, *supra* note 6, at 606.

8. *Id.* at 605. The founder of a legal placement firm testified before an Illinois state bar committee that “much of the problem in the legal job market is not oversupply of lawyers, but inadequate training.” SPECIAL COMM. ON THE IMPACT OF LAW SCHOOL DEBT ON THE DELIVERY OF LEGAL SERVS., ILL. STATE BAR ASS’N, FINAL REPORT & RECOMMENDATIONS 28 (2013) [hereinafter IMPACT OF LAW SCHOOL DEBT, ILL. STATE BAR].

9. See Marie P. Grady, *Economy Spurs Recent Law Grads to Go Solo*, CONN. L. TRIBUNE, Aug. 31, 2011, (on file with author); see also IMPACT OF LAW SCHOOL DEBT, ILL. STATE BAR, *supra* note 8, at 21. One-half of all private-practice lawyers practice solo, with almost two-thirds in either solo offices or law firms of five lawyers or less. AM. BAR ASS’N, LAWYER DEMOGRAPHICS (2013), available at [http://www.americanbar.org/content/dam/aba/administrative/market\\_research/lawyer\\_demographics\\_2013.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf).

10. *End of Year Summary: ABA Applicants, Applications, Admissions, Enrollment, LSATs, CAS*, LAW SCHOOL ADMISSION COUNCIL, <http://www.lsac.org/lsacresources/data/lsac-volume-summary> (last visited Sept. 25, 2014) [hereinafter *End of Year Summary*]. Fall 2014 applicants were down 6.7% and applications down 8.2% from even the low levels of 2013. *Three-Year ABA Volume Comparison*, LAW SCHOOL ADMISSION COUNCIL, <http://www.lsac.org/lsacresources/data/three-year-volume> (last visited Sept. 25, 2014) [hereinafter *Three-Year Comparison*].

11. *End of Year Summary*, *supra* note 10 (indicating 87,500 applicants for fall 2010); *Three-Year Comparison*, *supra* note 10 (indicating 54,527 applicants for fall 2014); see also Ethan Bronner, *Law Schools’ Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 31, 2013, at A1.

12. *LSATs Administered—Counts and Percent Increases by Admin and Year*, LAW SCHOOL ADMISSION COUNCIL, <http://lsac.org/lsacresources/data/lsats-administered> (last visited Sept. 24, 2014) (indicating 105,532 LSATs administered in 2013–14 and 171,514 in 2009–10); see also Debra Cassens Weiss, *LSAT Test-Takers Continue to Decline; October Number is at Lowest Point Since 1998*, A.B.A. J. (Nov. 4, 2013, 11:35 AM), [http://www.abajournal.com/mobile/article/lsat\\_test\\_takers\\_continue\\_to\\_decline\\_october\\_number\\_is\\_at\\_lowest\\_point\\_sinc](http://www.abajournal.com/mobile/article/lsat_test_takers_continue_to_decline_october_number_is_at_lowest_point_sinc).

First-year law school enrollment in fall 2013 was down 28% since 2010 and is now at 1977 levels.<sup>13</sup>

Some schools have responded to decreased enrollments by cutting faculty and staff, and most schools are looking for ways to operate with less revenue and reduced operating expenses. One school notified its faculty that it plans to eliminate one-third of its full-time faculty positions, regardless of tenure or seniority, within one year.<sup>14</sup> Meanwhile, a myriad of other law schools have offered professors buyouts, restructured contracts, and early retirement deals, as schools adjust to lower enrollment numbers by reducing full-time faculty.<sup>15</sup>

State bars have taken note of the crisis in legal education. The State Bar of California recently adopted a task force recommendation that the rules for admission to the bar be amended to require that prior to admission, a student must have taken at least fifteen units of practice-based, experiential course work designed to develop law practice competencies or have participated in a bar-approved externship, clerkship, or apprenticeship.<sup>16</sup> The chief judge of the New York Court of Appeals has announced an early bar exam program where third-year students, after completion of the February bar exam, would spend their final three months of legal education providing full-time pro bono assistance through externships and law clinic programs developed by their schools.<sup>17</sup> The American Bar Association's (ABA) Council of the Sec-

---

13. *End of Year Summary*, *supra* note 10 (indicating enrollment of 39,700 in fall 2013 and 52,500 in 2010); *see also* Jennifer Smith, *U.S. Law School Enrollments Fall*, WALL ST. J., Dec. 18, 2013, at B1.

14. Paul L. Caron, *New England Law Faculty Face 8-Course Teaching Loads, Mandatory Office Presence (M-F, 9-5) Unless 35% Accept Buyouts*, TAXPROF BLOG (Oct. 25, 2013), [http://taxprof.typepad.com/taxprof\\_blog/2013/10/new-england.html](http://taxprof.typepad.com/taxprof_blog/2013/10/new-england.html).

15. Ashby Jones & Jennifer Smith, *In Rare Step, Law Schools Shrink Faculty*, WALL ST. J., July 16, 2013, at B1. Among those affected are twenty-one law professors who accepted buyout packages at Widener University School of Law, seven professors who agreed to early retirement packages at the University of Dayton School of Law, and eight professors at Vermont Law School who accepted offers to restructured their contracts, take pay cuts, or give up tenure. *Id.*; *see also* Karen Sloan, *Big Slump for LSAT; The Decline Means Hard Choices for Law Schools*, NAT'L L.J., Nov. 4, 2013, [http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202626211107&Big\\_Slump\\_for\\_LSAT&slretur n=20131017131755](http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202626211107&Big_Slump_for_LSAT&slretur n=20131017131755) (identifying additional schools shedding faculty to adjust to smaller enrollments).

16. TASK FORCE ON ADMISSIONS REGULATION REFORM, STATE BAR OF CAL., PHASE I FINAL REPORT 15–16 (2013) [hereinafter TASK FORCE ON ADMISSIONS, PHASE I REPORT]. The Task Force's recommendation was adopted unanimously by the State Bar of California Board of Trustees and implementation rules are now being developed. TASK FORCE ON ADMISSIONS REGULATION REFORM, STATE BAR OF CAL., PHASE II IMPLEMENTATION (2014), *available at* <http://www.calbar.ca.gov/AboutUs/BoardofTrustees/TaskForceonAdmissionsRegulationReform.aspx>.

17. JONATHAN LIPPMAN, *THE STATE OF THE JUDICIARY 2014: VISION AND ACTION IN OUR MODERN COURTS* 3–6 (2014). The chief judge explained that the pro bono work “will take place through educational programs developed by law schools and their clinics, and in partnerships with legal service providers, corporations, and law firms.” *Id.* at 4. At the time of the announcement, a New York State Bar Association's Committee on Legal Education was studying whether skills training should be required for admission to its bar. *See* Adele Bernhard, *Should Skills Training Be Required for Licensing?*, N.Y. ST. B.A. J., Sept. 2013, at 53, 53–54.

tion of Legal Education and Admissions to the Bar, spurred into action by a petition to amend law school accreditation standards to require not just fifteen academic credits in experiential courses but that each J.D. student must take a law clinic or externship prior to graduation,<sup>18</sup> recently increased its professional skills requirement from a single course to six semester credit hours. But the ABA refused the request to require a clinical experience for all students and the new requirement will not apply to graduating students until 2019.<sup>19</sup>

The conventional wisdom is that clinical courses, defined as law clinics *and* externships, are expensive. Thus, it is argued that, even if important to the professional education of students and their employment prospects, a clinical experience cannot be required for all students in a time of decreasing enrollments and revenue.<sup>20</sup> In addition, as schools search for ways to cut costs, many are concerned that schools, dominated by faculties that do not teach clinical courses, will single out clinical programs, resulting in reduced clinical offerings for students or the targeted layoffs of clinical faculty.

Putting aside the value of clinical courses to a student's training for law practice and employment marketability, existing data do not demonstrate what effect a school's clinical legal education program has on tuition and, therefore, how its availability may affect what students pay and how much debt they incur. Even if the costs per student or academic credit are higher in lower-enrollment clinical courses than in large lecture courses, no research has addressed whether or not providing more clinical legal education results in students paying higher tuition.

---

18. See CLINICAL LEGAL EDUC. ASS'N, CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA) COMMENT ON DRAFT STANDARD 303(A) (3) & PROPOSAL FOR AMENDMENT TO EXISTING STANDARD 302(A) (4) TO REQUIRE 15 CREDITS IN EXPERIENTIAL COURSES, (2013), available at <http://cleaweb.org/Resources/Documents/2013-01-07%20CLEA%2015%20credits.pdf>; see also Mark Hansen, *Clinical Law Profs Solicit ABA Legal Ed Council to Require 15 Credit Hours in Practice-Based Courses*, A.B.A. J. (Jul. 2, 2013, 8:56 PM), [http://www.abajournal.com/news/article/CLEA\\_15\\_credit\\_hours\\_accreditation\\_aba\\_section](http://www.abajournal.com/news/article/CLEA_15_credit_hours_accreditation_aba_section).

19. See ABA ACCREDITATION STANDARDS, *supra* note 1, at Standard 303(b)(1) (requiring only that schools provide students with "substantial opportunities" for law clinics or field placements); Memorandum from Barry Currier, Managing Dir., Section of Legal Educ. and Admissions to the Bar to Council, Am. Bar Ass'n, (July 20, 2014) (on file with author) (explaining that curriculum changes in the revised standards will apply to J.D. students entering law school in 2016–17).

20. See, e.g., Letter from Paul G. Mahoney, Dean, Univ. of Va. Sch. of Law, to Hon. Solomon Oliver, Jr., Chairperson, Council of the Section of Legal Educ. and Admissions to the Bar, Am. Bar Ass'n, & Barry A. Currier, Managing Dir. of Accreditation and Legal Educ., Section of Legal Educ. and Admissions to the Bar, Am. Bar Ass'n, (Jan. 30, 2014), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/comments/201401\\_comment\\_std\\_303a3\\_paul\\_g\\_mahoney.a.uthcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/201401_comment_std_303a3_paul_g_mahoney.a.uthcheckdam.pdf); Letter from Michael H. Schill, Dean, Univ. of Chi. Law Sch., to Hon. Solomon Oliver, Jr., Chairperson, Council of the Section of Legal Educ. and Admissions to the Bar, Am. Bar Ass'n, & Barry A. Currier, Managing Dir. of Accreditation and Legal Educ., Section of Legal Educ. and Admissions to the Bar, Am. Bar Ass'n (Jan. 30, 2014), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/comments/201401\\_comment\\_std\\_303a3\\_michael\\_h\\_schill.a.uthcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/201401_comment_std_303a3_michael_h_schill.a.uthcheckdam.pdf).

This Article is an effort to address this lack of data and determine how the availability of clinical legal education for students may affect tuition pricing at law schools. After reviewing information on the rising cost of legal education and calls for more clinical experiences for law students, it examines studies on the costs of clinical legal education. The Article then provides empirical data not on the instructional costs of law clinics or externships, but on the pricing of clinical legal education through tuition. With this pricing data, it seeks to determine if schools requiring or providing greater clinical education opportunities for their students pass on possible increased instructional costs from those courses through higher tuition charges. Based on an analysis of current enrollment, curricula, and tuition data submitted by all law schools, it concludes that there is no relationship between providing a clinical education experience for every student, or providing more opportunities for students to participate in law clinics, and tuition. The evidence supports the claim that providing more clinical opportunities, and even ensuring or requiring an opportunity for every graduating J.D. student, has not and need not cost students more through higher tuition charges.

### I. THE RISING COST OF LEGAL EDUCATION

Legal educators, the bar, students, and even politicians are concerned about the rising costs of legal education. The average tuition and fees at private law schools in 2013 was \$41,985, with public law schools charging \$23,879 for in-state residents.<sup>21</sup> Although lower than the tuition at other professional schools such as medicine, dentistry, and veterinary,<sup>22</sup> present law school tuition represents a 64% rise at private law schools and 123% rise at public schools since 2003.<sup>23</sup> Average private law school tuition rose 2.6 times the national rate of inflation, with public school resident tuition growing by over 5.5 times the inflation rate.<sup>24</sup>

The result of this steep rise in tuition has been a substantial increase in the average debt of graduating law students. For the class of 2013, law school graduates incurred over \$4 billion in debt.<sup>25</sup> The average debt of

21. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, LAW SCHOOL TUITION (1985–2013; PUBLIC/PRIVATE) (2014), *available at* [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html) [hereinafter LAW SCHOOL TUITION (1985–2013)].

22. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-20 HIGHER EDUCATION: ISSUES RELATED TO LAW SCHOOL COST AND ACCESS 16 (2009).

23. LAW SCHOOL TUITION (1985–2013), *supra* note 21.

24. *Tuition Tracker*, LAW SCHOOL TRANSPARENCY, <http://www.lawschooltransparency.com/reform/projects/Tuition-Tracker> (last visited Sept. 25, 2014).

25. *Federal Investment in Legal Education: Class of 2013*, LAW SCHOOL TRANSPARENCY, <http://www.lawschooltransparency.com/reform/projects/Law-School-Financing> (last visited Sept. 25, 2014); *see also* Matt Leichter, *2010 Law School Grad Debt at \$3.6 Billion*, THE LAW SCHOOL TUITION BUBBLE (Oct. 11, 2011), <http://lawschooltuitionbubble.wordpress.com/2011/10/11/2010-law-school-grad-debt-at-3-6-billion>.

private law school graduates reached over \$122,000 in 2012, a 74% increase from the average debt just ten years prior.<sup>26</sup> Meanwhile, public school graduates owed an average of \$84,600, an increase of 82%.<sup>27</sup>

This debt can prove devastating to recent law graduates, as a mere 57% could claim permanent full-time lawyer jobs nine months after graduation.<sup>28</sup> These weak employment numbers underscore the problems recent graduates have in paying back debt. The standard monthly payment on a \$125,000 debt load is over \$1,400.<sup>29</sup> According to Professor Brian Tamanaha's calculations, "[t]o manage monthly payments this large (after taxes, rent, and other basic expenses) requires a salary in excess of \$100,000, which less than 15 percent of graduates nationwide obtained."<sup>30</sup>

The causes for the rise in tuition are likely many, with no consensus on which factor is most significant. Many believe that the increased size and rising salaries of faculty, driven in part by reduced teaching loads and competition among schools for the best faculty, are important causes. The average law school had 37% more full-time professors in 2012 than it did in 1999, even though full-time J.D. enrollment was only 2% higher and total law school enrollment was only 13.5% higher.<sup>31</sup> Student/faculty ratios at an average-sized law school decreased by 28% during the 10-year period from 2002 to 2012.<sup>32</sup> Professor Peter Joy concluded, after looking at the dramatic fall in teaching loads at law schools, that "the most significant long-term drivers of rising legal education costs are lower teaching loads and higher salaries for law faculty."<sup>33</sup> A *National Jurist* study estimated that 48% of the tuition increase from 1998 to 2008 was attributable to increased faculty size and higher salaries.<sup>34</sup> As one

26. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, AVERAGE AMOUNT BORROWED (2014), *available at* [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html) (reporting average amount borrowed for academic years 2001–2002 through 2011–2012).

27. *Id.*

28. Sloan, *supra* note 4.

29. See Brian Z. Tamanaha, *The Problems with Income Based Repayment, and the Charge of Elitism: Responses to Schrag and Chambliss*, 26 GEO. J. LEGAL ETHICS 521, 523 (2013).

30. *Id.* at 523–24.

31. See Matt Leichter, *Stealth Layoffs Revealed?*, THE LAW SCHOOL TUITION BUBBLE (Nov. 13, 2013), <http://lawschooltuitionbubble.wordpress.com/2013/11/13/stealth-layoffs-revealed/>; see also SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, FIRST-YEAR-ENROLLMENT/TOTAL ENROLLMENT/DEGREES AWARDED (2014), *available at* [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html) [hereinafter ENROLLMENT AND DEGREES AWARDED].

32. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, STUDENT-FACULTY RATIO (2014), *available at* [http://www.americanbar.org/groups/legal\\_education/resources/statistics.html](http://www.americanbar.org/groups/legal_education/resources/statistics.html) (reporting ratios from academic years 1978–79 to 2012–13); see also ENROLLMENT AND DEGREES AWARDED, *supra* note 31 (indicating average law school enrollments of approximately 750 J.D. and other students).

33. Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 309, 316 (2012).

34. Jack Crittenden, *Why Is Tuition Up? Look at All the Profs*, NAT'L JURIST, Mar. 2010, at 40, 40.

commentator observed, law schools have chosen more professors over reduced tuition.<sup>35</sup>

Additionally, the cost of legal education is substantially higher because of the large subsidy students pay, via their tuition, for faculty scholarship. Professor Richard Neumann estimates that with faculty spending 30% to 50% of their time producing scholarship, the cost of writing one law review article per year may be as high as \$88,000.<sup>36</sup> Dean Ed Rubin similarly noted that at most research-oriented law schools, which includes more than half of all law schools, the general rule is that faculty are expected to spend 40% of their time on research.<sup>37</sup> He calculated that “if faculty were not expected to conduct research, they could teach twice as much, thus reducing the faculty cost of providing the same number of courses by 40 to 50%,” resulting in tuition savings to students in the same proportion.<sup>38</sup> Dean Rubin explained that, alternatively, by ceasing to support or reward faculty research, schools “could offer a more intensive educational program, with individualized training in specific legal skills, while still maintaining the same tuition.”<sup>39</sup> A report by the Illinois State Bar Association on law school debt similarly observed that “the focus on academic scholarship prevents law schools from focusing on the time-intensive instruction techniques that are necessary to educate new lawyers.”<sup>40</sup>

Competition for students to enhance a school’s *U.S. News & World Report* ranking also plays an important part in the rising cost of legal education. Most schools today seek to obtain the best students (defined in *U.S. News* by higher LSAT scores and college GPAs) by offering merit-based scholarships. A 2002 ABA report found that the greatest increase in law school expenditures between academic years 1993–1994 and 1999–2000 was in financial aid, increasing over 87% in just six years, a 140% greater increase than the rise in salaries and benefits.<sup>41</sup> The report attributed the increase in financial aid expenditures to efforts to relieve

35. See Leichter, *supra* note 31.

36. Richard K. Neumann, Jr., *Distorted Resource Allocations in Legal Education* 6–7, (Oct. 28, 2011) (unpublished manuscript) (on file with author); see also Karen Sloan, *Legal Scholarship Carries a High Price Tag*, NAT’L L.J. (Apr. 20, 2011), <http://www.nationallawjournal.com/id=1202490888822?>

37. Edward Rubin, *Should Law Schools Support Faculty Research?*, 17 J. CONTEMP. LEGAL ISSUES 139, 142 (2008).

38. *Id.* at 142–43; see also Erwin Chemerinsky, *Why Write?*, 107 MICH. L. REV. 881, 881 (2009) (“In fact, if law professors wrote much less, teaching loads could increase, faculties could decrease in size, and tuition could decrease substantially.”). The rise of centers and institutes to support faculty scholarship and programs also have likely contributed to the increased cost of law school. See JAMES VESCOVI, *WHY DOES LAW SCHOOL COST SO MUCH?*, COLUMBIA LAW SCHOOL REPORT (2006), *available at* [http://www.law.columbia.edu/law\\_school/communications/reports/summer06/lawschoolcost](http://www.law.columbia.edu/law_school/communications/reports/summer06/lawschoolcost).

39. Rubin, *supra* note 37, at 148.

40. IMPACT OF LAW SCHOOL DEBT, ILL. STATE BAR, *supra* note 8, at 37.

41. John A. Sebert, *The Cost and Financing of Legal Education*, 52 J. LEGAL EDUC. 516, 519–20 (2002). More current comparative data on aggregate law school spending is not available from the ABA.

student debt burdens and “increased competition for entering students (and *U.S. News* rankings) through increased merit scholarships.”<sup>42</sup> In the twelve years after that report, the total amount spent on financial aid at law schools rose even faster at 258%,<sup>43</sup> thus supporting the view that schools are engaged in an expensive arms race for students and rankings.

Dean Rubin explains the effect of this aggressive merit-based approach to financial aid: “This can be understood as a cross-subsidy from the tuition-paying students to the scholarship students, because if all students were required to pay full tuition, the tuition-paying students would need to pay less to support the law school’s educational program.”<sup>44</sup> Professor Tamanaha determined that “if you spread that money across the class, [instead of using it for merit scholarships] you would immediately reduce tuition by 30 percent.”<sup>45</sup> In fact, when the University of La Verne College of Law recently eliminated merit-based scholarships and instituted a flat-rate tuition system for all students, it was able to lower its tuition by over 37%.<sup>46</sup>

The costs of new buildings cannot be overlooked. Seeking to explain the rapid rise in tuition, the *New York Times* observed that as other industries closed offices and downsized plants during the most recent economic downturn, there has been a “law school construction boom.”<sup>47</sup> It noted that in the midst of rising concerns about the cost of tuition and employability of graduates, a number of schools were constructing new buildings costing more than \$100 million.<sup>48</sup> Highlighted was New York Law School’s 235,000 square-foot expansion, a massive addition at a school ranked in the bottom third of all law schools yet charging more in tuition than Harvard.<sup>49</sup> It is not clear how these building costs have af-

---

42. *Id.* at 520. The ABA report concluded that “competition by law schools for students (through increased admissions recruiting and increased merit scholarships) and for reputational ranking (for example, through glossy publications)” were more significant causes of the increase in law school expenditures during the 1990s than ABA accreditation standards, which required more skills training and reduced student/faculty ratios or increased financial aid to address the problem of student debt. *Id.* at 524.

43. See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, INTERNAL GRANT AND SCHOLARSHIPS TOTAL DOLLAR AMOUNTS AWARDED 1991–2012 (2014), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/internal\\_grants\\_scholarships\\_awarded.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/internal_grants_scholarships_awarded.authcheckdam.pdf).

44. Rubin, *supra* note 37, at 143.

45. Jack Crittenden, *How to Cut Tuition*, NAT’L JURIST, Mar. 2013, at 22, 23 (alteration in original) (internal quotation mark omitted).

46. Karen Sloan, *La Verne Offers Flat-Rate Law School Tuition*, NAT’L L.J. (Mar. 26, 2014), <http://www.nationallawjournal.com/id=1202648544187/La-Verne-Offers-Flat-Rate-Law-School-Tuition> (announcing that the new tuition would be \$14,900 less than the existing \$39,900 list tuition price).

47. David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, July 17, 2011, at BU1.

48. *Id.* (noting Fordham Law School’s \$250 million, 22-story building, the University of Baltimore and University of Michigan’s buildings costing more than \$100 million, and Marquette University’s \$85 million project).

49. *Id.*; see also THOMAS JEFFERSON LAW SCHOOL, A NEW ERA IN LEGAL EDUCATION 2 (2013), available at <http://www.tjls.edu/sites/default/files/files/TJSL-Handout-v7-072711-Edit-opt.pdf> (touting the school’s \$90 million, eight-story, 305,000 square-foot new law facility).

fects the tuition schools charge, but at some schools it has likely been substantial.<sup>50</sup>

Tuition costs also have been driven upwards by an increase in administrators and student services. The 2002 ABA report on costs found that expanded administrative costs rose significantly more than the rate for total law school expenditures, noting that expenditures on administrative salaries showed the largest increase within the salaries and benefits category, exceeding the rise in instructional salaries by 50%.<sup>51</sup> The report observed that this rise was consistent with the impression that schools had greatly expanded support services such as career services, academic support, admissions staffing, and technology support.<sup>52</sup>

Another tuition driver is the payments that law schools are required to make to their universities, sometimes significantly more than the school's proportionate share of university overhead costs. As one writer found, "law schools toss off so much cash they are sometimes required to hand over as much as 30 percent of their revenue to universities, to subsidize less profitable fields."<sup>53</sup> The University of Baltimore was reported to have taken about 45% of the money generated by the law school from tuition, fees, and state subsidies.<sup>54</sup> Catholic University's budget relied so heavily on extra income generated by its law school that the university recently asked deans in other schools to cut their operational expenditures by 20% because a decline in law school revenue from decreased enrollment had severely impacted the university's budget and necessitated cuts in other academic departments.<sup>55</sup>

A 2009 U.S. Government Accountability Office (GAO) study sought to determine the factors affecting the cost of law school for students.<sup>56</sup> Law school officials told the GAO that increases in resource-intensive approaches to education and competition among schools for higher *U.S. News* rankings appear to be the primary influences on in-

---

50. See Joy, *supra* note 33, at 316 (observing that "a major expense not analyzed is the cost of new law school buildings"); Paul Campos, *Thomas Jefferson School of Law Slashes Jobs, Salaries, and Budget*, LAWYERS, GUNS & MONEY BLOG (Dec. 12, 2013), <http://www.lawyersgunsmoneyblog.com/?s=TJSL&x=10&y=10> (describing Thomas Jefferson School of Law's financial difficulties and "extremely expensive and very heavily leveraged new law building").

51. Sebert, *supra* note 41, at 520 ("Total instructional salaries increased only 31.8 percent, while total expenditures on administrative salaries showed the largest increase, 47.5 percent.").

52. *Id.*

53. Segal, *supra* note 47.

54. Debra Cassens Weiss, *Law Dean Hits University Tuition Grab in Widely Distributed Resignation Letter*, A.B.A. J. (Aug. 1, 2011, 10:30 AM), [http://www.abajournal.com/news/article/law\\_dean\\_hits\\_university\\_tuition\\_grab\\_in\\_widely\\_distributed\\_resignation\\_let](http://www.abajournal.com/news/article/law_dean_hits_university_tuition_grab_in_widely_distributed_resignation_let).

55. Clair Finnegan, *Law School Enrollment Dropoff Causes Departmental Budget Cuts*, TOWER, Apr. 12, 2013, at 3, available at <http://tower.lib.cua.edu/Default/Skins/CatholicUniversity/Client.asp?skin=CatholicUniversity&AW=1411758798353&AppName=2> (follow Browse Archives and input date of publication).

56. U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 22, at 2.

creased costs, while public law schools reported that decreases in state funding also contributed to their rise in tuition.<sup>57</sup> Some officials believed that increased emphasis on clinical experiences and skills-based courses, more diverse course offerings, and enhanced student support (e.g., academic support, career services) were contributing factors.<sup>58</sup> No effort was made to verify if or how much increased clinical experiences had driven up costs or tuition.

School officials also believed that competition among schools for higher *U.S. News* rankings were pressuring schools to “offer clinics and diverse elective courses to compete for students,” thus contributing to the rise in cost.<sup>59</sup> Indeed, there may be good reason for schools to enhance their clinical programs when competing for students. A 2012 Law School Admission Council (LSAC) survey found that when applicants were asked what factors were most important in influencing them to apply to particular law schools they listed “[c]linics/internships” third, behind only location and employment of recent graduates, and as important as bar success.<sup>60</sup> When admitted applicants were later asked to identify the factors that ended up being the most important in their decision to enroll at a particular school, they listed clinics/internships second, behind only location.<sup>61</sup> Trailing in importance in an admitted student’s final decision about where to enroll were reputation, bar success, employment of recent graduates, cost, reputation of faculty, and rankings. In a recent survey of pre-law students, 97% favored a law school model that incorporates clinical experiences for students.<sup>62</sup> Many schools recognize the importance of their clinical course offerings by heavily promoting them to prospective students, and alumni, through brochures, magazines, and other materials.<sup>63</sup>

The listing by admitted students of the importance of clinics and externships ahead of reputation and ranking, qualities that schools expend tremendous resources to enhance, raises a question about whether some of the costs outlined above are being misdirected and could be better

---

57. *Id.* at 11.

58. *Id.* at 24.

59. *Id.* at 25.

60. LAW SCHOOL ADMISSION COUNCIL, LAW SCHOOL APPLICANT STUDY 9 (2012).

61. *Id.* at 46.

62. Press Release, Kaplan Test Prep, What Pre-Law Students Want: Kaplan Test Prep Survey Finds that Tomorrow’s Lawyers Favor a Two-Year Law Sch. Model and Want Significant Changes in Legal Educ. (Feb. 11, 2014), available at <http://press.kaptest.com/press-releases/what-pre-law-students-want-kaplan-test-prep-survey-finds-that-tomorrows-lawyers-favor-a-two-year-law-school-model-and-want-significant-changes-in-legal-education>.

63. See, e.g., GEORGETOWN LAW, EXPERIENTIAL EDUCATION AT GEORGETOWN LAW available at <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/upload/Experiential-Education-Brochure-2014.pdf> (last visited September 26, 2014); Clint Willis & Suzanne Barlyn, *Bringing the Law to Life: NYU’s Clinical Program Helps Students Change the World—One Case at a Time*, LAW SCHOOL, Autumn 2007, at 21, 21–31, available at <http://issuu.com/nyulaw/docs/2007?mode=embed&layout=http%3A%2F%2Fskin.issuu.com%2Fv%2Fflight%2Flayout.xml&showFlipBtn=true> (last visited Sept. 26, 2014).

spent on increasing the availability and quality of a school's clinical course offerings. Thus, even if it were to cost a school more to develop a quality clinical program, that added cost may ultimately persuade, not dissuade, prospective students from attending, even if those costs were passed on through increased tuition (a point addressed below).<sup>64</sup>

Some argue that clinical courses, because of their perceived higher costs compared to lecture courses, should be among the first cut when a school needs to reduce expenditures.<sup>65</sup> However, the above discussion illustrates that there is a wide range of causes for the high tuition that students face and many expenditures appear to dwarf the amount of money a school may be spending to provide students with a clinical education experience. Rather than fixating on the notion that tuition is driven by the cost of clinical education courses, schools must consider their full range of expenses when looking for ways to reduce costs and tuition.<sup>66</sup>

Arguing for a broader examination of all law school costs and how they benefit students is not meant to dismiss the advantage of lower student-faculty ratios, the societal value of legal scholarship, the importance of enhancing a school's reputation, or the need for appropriate buildings and administrative support staff. But discussions that excessively focus on cutting clinical courses both miss other more significant contributors to the high cost of legal education and fail to consider fully the relative

64. After Washington and Lee School of Law adopted a new experiential learning curriculum in the third year, including a law clinic or externship, its number of applicants increased by 33%, compared to a decline nationwide of 19%. William D. Henderson, *Washington & Lee is Biggest Legal Education Story of 2013*, LEGAL WHITEBOARD (Jan. 29, 2013), <http://lawprofessors.typepad.com/legalwhiteboard/2013/01/biggest-legal-education-story-of-2013.html>. Surveys of its incoming students in 2011 and 2012 ranked the new third-year curriculum as the school's top strength, ahead of ranking/prestige and national reputation. James Moliterno, *On W&L Law's Third Year Curriculum*, LEGAL WHITEBOARD (Feb. 13, 2013), <http://law.wlu.edu/faculty/facultydocuments/moliternoj/legalwhiteboardfinal.pdf>. As one expert on legal education concluded, "[a] sizeable number of prospective students really do care about practical skills training and are voting with their feet. W&L has therefore become a big winner in the race for applicants." Henderson, *supra*.

65. See, e.g., Victor Fleischer, *The Unseen Costs of Cutting Law School Faculty*, N.Y. TIMES (July 9, 2013, 3:46 PM), <http://dealbook.nytimes.com/2013/07/09/the-unseen-costs-of-cutting-law-school-faculty> (arguing that rather than reducing the size of the tenure-track faculty to shrink a school's budget, "[c]linics can be closed," and suggesting that law clinics were expendable because they are not "profit centers").

66. Professor Tamanaha argues that tuition pricing is not driven solely by costs. He quotes a former college president, stating, "[p]ricing is a marketing, not a cost accounting decision." "Tuition in the private higher-education industry is a classic example of price leadership—the 'top players' define the sticker price and all others follow suit." BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 130 (2012) (quoting Henry Riggs, the former president of Harvey Mudd College). Tamanaha explains:

Tuition varies in relation to prestige—not costs—because the perceived value of the education affects how much students (and their parents) are willing to pay for it. As long as a sufficient pool of purchasers of higher education continue to believe that degrees from elite institutions provide the best opportunities, elite schools can, and will, raise their prices. Nonelite schools raise tuition as well, keeping a price separation one level below, to pick up the remaining demand for higher education.

*Id.*; see also *infra* notes 196–199 and accompanying text.

importance of various expenditures on a student's preparation for the practice of law.

## II. THE CALLS FOR MORE CLINICAL EDUCATION

The calls for more clinical education as a way to better prepare students for the practice of law are not a recent phenomenon. Over 30 years ago, the ABA's *Report and Recommendation of the Task Force on Lawyer Competency: The Role of Law Schools* (the Crampton Report) proposed that law school curricula pay more attention to providing professional experiences.<sup>67</sup> The ABA's 1983 *Task Force on Professional Competence* shared this perspective and recommended that the ABA make enhanced law school training in lawyering skills a top priority.<sup>68</sup> A decade later, the 1992 ABA *Report of the Task Force on Law Schools and the Profession* (the MacCrate Report) focused on the value to law students from practice-oriented instruction in courses such as law clinics, externships, and simulations.<sup>69</sup> The ABA's recent *Task Force on the Future of Legal Education's* report noted that much of what it "heard from recent graduates reflects a conviction that they received insufficient development of core competencies that make one an effective lawyer, particularly those relating to representation and service to clients."<sup>70</sup> Responding to this deficiency, the task force concluded that legal education needed to shift still further from doctrinal instruction toward more focused preparation for delivering legal services to clients.<sup>71</sup> The ABA's Young Lawyers Division passed a unanimous resolution in 2013 calling on the ABA and law schools to require at least one academic grading period of practical legal skills clinical experiences or classes as a graduation requirement, noting that "a J.D. degree alone does not make a lawyer."<sup>72</sup>

---

67. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS 17 (1979).

68. AM. BAR ASS'N, FINAL REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON PROFESSIONAL COMPETENCE 11–12 (1983).

69. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 260–61, 328 (1992) [hereinafter MACCRATE REPORT].

70. TASK FORCE ON THE FUTURE OF LEGAL EDUC., AM. BAR ASS'N, REPORT AND RECOMMENDATIONS 26 (2014), available at [http://www.americanbar.org/groups/professional\\_responsibility/taskforceonthefuturelegaleducation.html](http://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation.html).

71. *Id.* at 3. The Task Force took the position that:  
The educational programs of a law school should be designed so that graduates will have (a) some competencies in delivering (b) some legal services. A graduate's having *some* set of competencies in the delivery of law and related services, and not just some body of knowledge, is an essential outcome for *any* program of legal education.

*Id.* at 26.

72. YOUNG LAWYERS DIVISION, AM. BAR ASS'N, RESOLUTION 1YL (2013) (on file with author); see also E-mail from Daniel Thies, Liaison to the Council of the ABA Section of Legal Educ. and Admissions to the Bar, ABA Young Lawyers Division, to author (Dec. 12, 2013, 8:53

Besides the ABA, the 2007 Carnegie Foundation report on legal education stressed the need for law students to engage in an “apprenticeship of practice” while in law school, contrasting legal education’s minimal training with that provided in other professions such as medicine.<sup>73</sup> The report highlighted the “crucial role of practice experience in the development of expertise,” observing that “[d]ecades of pedagogical experimentation in clinical-legal teaching, the example of other professional schools, and contemporary learning theory all point toward the value of clinical education as a site for developing not only intellectual understanding and complex skills of practice but also the dispositions crucial for legal professionalism.”<sup>74</sup> That same year, the *Best Practices for Legal Education* report argued that it was critical for students to have supervised practice experiences while in law school: “In the United States, it is only in the in-house clinics and some externships where students’ decisions and actions can have real consequences and where students’ values and practical wisdom can be tested and shaped before they begin law practice.”<sup>75</sup>

State bars, too, are pressing for more practice-based training in law school, especially in this era when students are finding it so difficult to market their skills to employers. An Ohio State Bar Association task force on legal education reform called on the Ohio Supreme Court to adopt a rule requiring that a student, prior to taking the bar exam, complete a law clinic or externship in law school or a practice experience through a bar association program that involves law school faculty and the practicing bar.<sup>76</sup> The court has announced that a task force will ex-

---

AM) (on file with author) (explaining that the Resolution was adopted unanimously by the delegates at the Division’s 2013 Annual Meeting).

73. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 99 (2007). A much earlier Carnegie Foundation report on legal education make a strikingly similar observation: “The failure of the modern American law school to make any adequate provision in its curriculum for practical training constitutes a remarkable educational anomaly.” ALFRED ZANTZINGER REED, TRAINING FOR THE PUBLIC PROFESSION OF THE LAW: HISTORICAL DEVELOPMENT AND PRINCIPAL CONTEMPORARY PROBLEMS OF LEGAL EDUCATION IN THE UNITED STATES WITH SOME ACCOUNT OF CONDITIONS IN ENGLAND AND CANADA 281 (1921). The 1921 Carnegie report observed that there was no “foreign country in which education for the practice of law is so largely theoretical as it is in America” and argued that putting theoretically educated students into contact with actual law practice was so important that it should be insisted upon as a law school requirement. *Id.* at 281, 287. Although the ABA had requested the 1921 Carnegie study, the ABA ignored its recommendations and issued its own report endorsing the structure of legal education as it still exists today. See AM. BAR ASS’N, *Report of the Special Committee to the Section of Legal Education and Admissions to the Bar of the American Bar Association*, in REPORT OF THE FORTY-FOURTH ANNUAL MEETING 679, 679–80 (1921) (reprinting the report of the Special Committee to the Section of Legal Education and Admissions to the Bar of the American Bar Association on conditions that will tend to “strengthen[] the character and . . . improv[e] the efficiency of those admitted to the practice of law”).

74. SULLIVAN ET AL., *supra* note 73, at 119–20.

75. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 155 (2007).

76. TASK FORCE ON LEGAL EDUC. REFORM, OHIO STATE BAR ASS’N, REPORT 4 (2009).

plore how a rule requiring all bar applicants to have completed a law clinic or externship experience might be implemented by law schools.<sup>77</sup>

In announcing a new early bar exam program in New York, the Chief Judge of the New York Court of Appeals noted the growing realization that law students have “insufficient opportunities to receive necessary training in practical legal skills” and the program’s overarching goal to provide students with “valuable legal skills that will prepare them for the practice of law.”<sup>78</sup> An earlier New York State Bar Association report noted that fundamental changes in the practice of law required new approaches to the education of lawyers, including law school curricular initiatives designed to enhance the development of practice ready graduates.<sup>79</sup> The Bar Association followed up its report with a proposed resolution, passed by the ABA House of Delegates, calling on “legal education providers to implement curricular programs intended to develop practice ready lawyers including, but not limited to[,] enhanced capstone and clinical courses that include client meetings and court appearances.”<sup>80</sup>

A Massachusetts Bar Association report in 2012 on the problem of underemployment among recent law graduates concluded that students needed more marketable real-world experience in order to be of greater value in today’s more competitive market for lawyers.<sup>81</sup> The report called on schools to increase the focus and emphasis they place on practical training options for third-year students and specifically encouraged schools to expand law clinics and similar offerings “to ensure that a slot exists for every student who wishes one.”<sup>82</sup>

A 2013 Illinois State Bar Association report focused on law school debt and concluded that “the training that law students receive in law

---

77. Letter from Maureen O’Connor, Chief Justice, Sup. Ct. of Ohio, to Patrick F. Fischer, Ohio State Bar Ass’n (Sept. 26, 2012) (on file with author).

78. LIPPMAN, *supra* note 17, at 3–4. In a 2008 survey, federal and state judges were asked what change would most benefit law schools. See Richard A. Posner & Albert H. Yoon, *What Judges Think of the Quality of Legal Representation*, 63 STAN. L. REV. 317, 338 (2011). By an over three to one margin, judges chose “more coursework oriented to instilling practice-oriented skills” over the second most popular response (expansion of the core curriculum). *Id.* at 335–36, 338 (reporting that 59% of judges identified more practice-oriented skills coursework as the most beneficial reform).

79. TASK FORCE ON THE FUTURE OF THE LEGAL PROFESSION, N.Y. STATE BAR ASS’N, REPORT 6 (2011). A 2013 report by a New York City Bar Task Force, which included deans from seven New York law schools, similarly stated: “Tomorrow’s lawyers need more practical experience, skill development, and problem-solving practice, in addition to analytical skills honed by more traditional methods of instruction.” TASK FORCE ON NEW LAWYERS IN A CHANGING PROFESSION, *supra* note 3, at 8.

80. H.D., N.Y. STATE BAR ASS’N, RES. 10B, at 1 (2011). The resolution called on the ABA’s constituent bodies to keep these necessary requirements for the success of future lawyers in mind as they carry out their ABA responsibilities. *Id.*

81. TASK FORCE ON LAW, THE ECONOMY AND UNDEREMPLOYMENT, MASS. BAR ASS’N, REPORT 5 (2012).

82. *Id.* at 5–7.

school today is increasingly not worth its high cost.”<sup>83</sup> It recommended that law schools prioritize, and make available to every student, “simulations courses, live-client clinics, and other courses that give students the opportunity to learn and apply legal principles in the context of real life problems.”<sup>84</sup>

The State Bar of California’s recommendation that all students seeking admission to the bar must either have taken fifteen units of law school course work in practice-based experiential courses or participated in a bar-approved externship, clerkship, or apprenticeship is before the California Supreme Court for adoption.<sup>85</sup> In calling for a shift of priorities toward more clinically-based education, the state bar explained that it was motivated to act now because the economic climate and demands of clients for trained lawyers meant that “fewer and fewer opportunities are available for new lawyers to gain structured competency training early in their careers.”<sup>86</sup> It observed that law graduates were now entering the profession as solo practitioners “without the solid foundation necessary to represent clients in a competent manner and with nowhere to turn to build that foundation. From the standpoint of regulatory policy, this situation presents serious issues of public protection that cannot be ignored.”<sup>87</sup>

Following up on these proposals, in 2013 the Clinical Legal Education Association (CLEA) petitioned the Council of the ABA Section of Legal Education and Admissions to the Bar to adopt an accreditation standard requiring every J.D. student to complete the equivalent of at least fifteen semester credit hours after the first year of law school in

---

83. IMPACT OF LAW SCHOOL DEBT, ILL. STATE BAR, *supra* note 8, at 3.

84. *Id.* at 5.

85. See *Board of Trustees Approves Competency Skills Training Requirements*, CAL. B.J. (Dec. 2014), available at <http://www.calbarjournal.com/December2014/TopHeadlines/TH5.aspx>. If adopted by the California Supreme Court, the requirement for 15 units of practice-based coursework would go into effect in 2017. Don J. DeBenedictis, *State Bar Panel Adopts Plan to Require Law Students Have Skills Training Before Admission*, DAILY J. (June 12, 2013) (on file with author).

86. TASK FORCE ON ADMISSIONS, PHASE I REPORT, *supra* note 16, at 1. Echoing this lack of preparation from their legal education, a 2011 survey of over 33,000 law students found that forty percent “felt that their legal education had so far contributed only some or very little to their acquisition of job- or work-related knowledge and skills.” LAW SCH. SURVEY OF STUDENT ENGAGEMENT, NAVIGATING LAW SCHOOL: PATHS IN LEGAL EDUCATION 9 (2011).

87. TASK FORCE ON ADMISSIONS, PHASE I REPORT, *supra* note 16, at 1. As part of its effort to increase the competency training of bar applicants, California also has proposed that applicants must devote 50 hours to pro bono or modest means clients. *Id.* at 13–17 (noting that the pro bono requirement would help prospective lawyers increase core competencies). New York has already adopted a 50-hour pro bono requirement for applicants to the bar in part because it “helps prospective attorneys build valuable skills.” ADVISORY COMM. ON N.Y. STATE PRO BONO BAR ADMISSION REQUIREMENTS, REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK AND THE PRESIDING JUSTICES OF THE FOUR APPELLATE DIVISION DEPARTMENTS 1 (2012) (describing the goal of helping prospective attorneys build valuable skills as just as important as the goal of addressing the crisis in access to justice); see N.Y. COMP. CODES R. & REGS. tit. 22 § 520.16 (2013); see also N.J. COURTS, REPORT OF THE WORKING GROUP ON THE PROPOSED PREADMISSION PRO BONO REQUIREMENT 6 (explaining that one of the primary goals of a proposed preadmission pro bono requirement for applicants to the New Jersey bar is to “give students real-world work experience”).

practice-based, experiential courses, with at least one course in a law clinic or externship.<sup>88</sup> The petition pointed out that the accreditation standard at the time only required schools to provide one credit of professional skills training and only “substantial opportunities” for “live-client or other real-life practice experiences.”<sup>89</sup> CLEA compared these requirements with the pre-licensing education requirements of other professions, which require at least one-quarter, and in some cases over one-half, of a student’s education to be in clinical courses.<sup>90</sup> Appendix A summarizes the practice-based and clinical education requirements for other professional schools and contrasts those with the minimal requirement for law students.<sup>91</sup>

The lack of practice-based training in law school can have significant consequences for graduates. As noted in the Massachusetts Bar Association report, some commentators argue that “major post-graduate employers such as law firms (and their paying clients) are now less willing to pay for new lawyers who do not possess any skills related to the actual day-to-day practice of law or any awareness of the legal needs of clients.”<sup>92</sup> Similarly, the Illinois Bar reported that it had received testimony that the tight job market faced by recent law grads “may have—at least in part—*resulted from* the inadequate training of law students for the jobs that are available.”<sup>93</sup> It explained that because recent law graduates are not adequately prepared for practice, law firm hiring partners have become less willing to hire new lawyers and instead prefer hiring those with several years of experience.<sup>94</sup> It concluded, “[t]he inadequate ‘practice ready’ skills of new graduates has apparently contributed to the reality that only 55% of the law school class of 2011 had full time, per-

---

88. CLINICAL LEGAL EDUC. ASS’N, *supra* note 18, at 1–4. The author helped draft the petition and prepared the chart on the education requirements of other professions that was attached to the petition.

89. *Id.* (referring to then-Standard 302(a)(4)); *see also* Am. Bar Ass’n, *Consultant’s Memo # 3* (Mar. 2010) (advising that one credit of skills training would be sufficient to satisfy the “substantial instruction” in professional skills requirement in prior Standard 302(a)(4)). In August 2014, the ABA adopted a new 6-credit experiential course requirement. *See supra* note 1. The ABA has not explained what constitutes “substantial opportunities” for live-client or other real life practice experiences in Standard 303(b)(1), but there are ABA-accredited schools with capacity in their law clinic and externship courses for less than one-third of their graduating J.D. students. *See infra* note 168 (explaining method for calculating a law school’s capacity to provide its J.D. students with a law clinic or externship experience).

90. CLINICAL LEGAL EDUC. ASS’N, *supra* note 18, at 3–4.

91. *See infra* app. A. In addition to the mandatory practice-based training in medical, veterinary, pharmacy, dentistry, social work, architecture, and nursing schools set out in the appendix, “[s]ome amount of clinical training or internship is also a regular part of the education of teachers and members of the clergy. Engineering students must demonstrate their abilities to design functioning projects.” SULLIVAN ET AL., *supra* note 73, at 88.

92. TASK FORCE ON LAW, THE ECONOMY AND UNDEREMPLOYMENT, *supra* note 81, at 5; *see also* TASK FORCE ON ADMISSIONS, PHASE I REPORT, *supra* note 16, at 5 (“Big law firms and government agencies had in the past done trainings to provide that sophisticated knowledge [necessary for successful transition into practice]. Now, clients no longer want to pay for that training and are refusing to do so.”).

93. IMPACT OF LAW SCHOOL DEBT, ILL. STATE BAR, *supra* note 8, at 3.

94. *Id.*

manent jobs that require a JD nine months after graduation.”<sup>95</sup> The State Bar of California explained that its proposal to require greater practice-based coursework was “designed to improve the employability of law school graduates,” noting that critics of its proposal “fail to consider the role that inadequate practice-readiness among new lawyers has had in contributing to the difficult job market that these lawyers face.”<sup>96</sup>

Beyond enhancing job prospects, recent law graduates understand the importance of practice-based training in law school to their later success as attorneys. The *After the JD* study surveyed lawyers two to three years into their new careers.<sup>97</sup> It asked them to rate the importance of certain experiences and courses during law school in helping them successfully transition to practice. Clinical courses were rated the third most helpful experience, trailing only summer and school year legal employment; legal writing and internships followed law clinics.<sup>98</sup> Behind those practice-based experiences were the traditional doctrinal courses that dominate most of a law student’s legal education.<sup>99</sup> Law graduates in other surveys have similarly endorsed the importance of, and need for, enhanced clinical training in law school.<sup>100</sup>

---

95. *Id.*

96. TASK FORCE ON ADMISSIONS, PHASE I REPORT, *supra* note 16, at 21.

97. NALP FOUND. FOR LAW CAREER RESEARCH AND EDUCATION & AM. BAR FOUND., *AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS* 13 (2004).

98. *Id.* at 81.

99. See Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 88 (2009) (observing that new lawyers in the survey “were significantly more likely to say that clinical training was ‘extremely helpful’ for making the transition to practice than they were to make the same assessment of legal writing training, upper-year lecture courses, course concentrations, pro bono service, the first year curriculum and legal ethics training”).

100. Two studies by the National Association of Legal Career Professionals (NALP) asked lawyers to rate the usefulness of law school experiential learning opportunities in preparing for the practice of law. Lawyers in nonprofit and government legal positions rated law clinics extremely high, with clinics rated 3.8 using a scale of 1 (“not useful at all”) to 4 (“very useful”) and externships/field placements 3.6, both ahead of skills courses (3.3) and pro bono work (3.2). NALP & NALP FOUND., 2011 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS: RESPONSES FROM GOVERNMENT AND NONPROFIT LAWYERS 26, 27 graph 12 (2012) (internal quotation marks omitted), available at <http://www.nalp.org/uploads/2011ExpLearningStudy.pdf>. Law firm associates rated law clinics and externships not quite as high (3.4 out of 4), but ahead of skills course (3.1) and pro bono work (2.2). NALP & NALP FOUND., 2010 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS 27 graph 12 (2011), available at <http://www.nalp.org/uploads/2010ExperientialLearningStudy.pdf>.

Law graduates, applicants to law school, and law school admissions officers all want to see the focus of legal education changed. In a survey, 87% of 2013 law graduates agreed that the “legal education system needs ‘to undergo significant changes to better prepare future attorneys for the changing employment landscape and legal profession’”; 97% favored a “law school model that incorporates clinical experience” in the third year. Press Release, Kaplan Test Prep, Kaplan Bar Review Survey: 63% of Law School Graduates from the Class of 2013 Believe that Law School Education Can Be Condensed to Two Years (Sept. 10, 2013), available at <http://press.kaptest.com/press-releases/kaplan-bar-review-survey-63-of-law-school-graduates-from-the-class-of-2013-believe-that-law-school-education-can-be-condensed-to-two-years>. In a survey asking transactional lawyers their degree of support for efforts to mandate minimum skills/competencies training for law students, positive support outweighed negative by four to one. ERIC L. TALLEY, THE BERKELEY CENT. FOR LAW, BUS. AND THE ECON., UNIV. OF CAL., BERKELEY,

### III. EXAMINING THE COSTS OF CLINICAL LEGAL EDUCATION

Although the bar, and especially new lawyers, appreciate the value of more practice-based education,<sup>101</sup> some are concerned about the costs of providing clinical education to more students, especially in a time of escalating student debt and financial crisis at many law schools.

In issuing its recommendation that every student be required to complete a law clinic or externship, two members of the Ohio task force worried that such a mandate would likely increase tuition for students.<sup>102</sup> The California State Bar Task Force similarly expressed initial concern over the potential cost burden of its recommendation but believed that schools could shift their priorities toward incorporating more clinically-based, experiential education into the curriculum in a way that need not drive tuition up.<sup>103</sup> A special committee of the ABA Section on Legal Education and Admissions to the Bar recently opined that “[a]lthough there are still a few dissenters regarding the value of experiential education in law school, the primary obstacle to requiring a clinical experience for every student is cost.”<sup>104</sup> Even the Carnegie and *Best Practices* reports, though calling for more clinical legal education, acknowledged the

---

THE BERKELEY TRANSACTIONAL PRACTICE PROJECT: COMPETENCIES / SKILLS SURVEY; 2014, at 14 (2014), available at [http://www.law.berkeley.edu/files/bclbe/Cal\\_Bar\\_Assn\\_Deck\\_Final.pdf](http://www.law.berkeley.edu/files/bclbe/Cal_Bar_Assn_Deck_Final.pdf). As noted above, delegates to the ABA Young Lawyers Division’s 2013 Annual Assembly unanimously supported a resolution calling on the ABA and law schools to require at least one academic grading period of clinical experiences or classes. See *supra* note 72 and accompanying text.

Seventy-nine percent of students who had taken a Law School Admissions Test preparation course similarly agreed on the need for significant changes to better prepare students for practice, as did 78% of law school admissions officers. Press Release, Kaplan Test Prep, Kaplan Test Prep Survey: Today’s Pre-Law Students Want Changes in Legal Education, Are Looking for Non-traditional Employment Opportunities, Favor Mandatory Pro Bono Work, and Value Racial Diversity (July 29, 2013), available at <http://press.kaptest.com/press-releases/kaplan-test-prep-survey-todays-pre-law-students-want-changes-in-legal-education-are-looking-for-nontraditional-employment-opportunities-favor-mandatory-pro-bono-work-and-value-racial-diver>; Press Release, Kaplan Test Prep, Kaplan Test Prep Survey: Law Schools Cut Their Incoming Classes and Increase “Practice Ready” Curricula (Oct. 1, 2013), available at <http://press.kaptest.com/press-releases/kaplan-test-prep-survey-law-schools-cut-their-incoming-classes-and-increase-practice-ready-curricula>.

101. IMPACT OF LAW SCHOOL DEBT, ILL. STATE BAR, *supra* note 8, at 37 (“Many [new] lawyers testified at the hearings that law school did not provide them adequate tools to succeed, and that they needed more instruction in the skills that are required in practice.”); TASK FORCE ON THE FUTURE OF LEGAL EDUC., AM. BAR ASS’N, *supra* note 70, at 26 (reporting on statements from recent law graduates that they received insufficient development of competencies relating to representation and service to clients); LEXISNEXIS, STATE OF THE LEGAL INDUSTRY SURVEY: COMPLETE SURVEY FINDINGS 7 (2009), available at [http://www.lexisnexis.com/document/state\\_of\\_the\\_legal\\_industry\\_survey\\_findings.pdf](http://www.lexisnexis.com/document/state_of_the_legal_industry_survey_findings.pdf) (reporting that 90% of corporate counsel and private practice attorneys say that law school fails to teach the practical skills needed to practice law in today’s economy).

102. OHIO STATE BAR ASS’N, REPORT, *supra* note 76, at 5–6.

103. TASK FORCE ON ADMISSIONS, PHASE I REPORT, *supra* note 16, at 21.

104. COMM. ON THE PROF’L EDUC. CONTINUUM, AM. BAR ASS’N, TWENTY YEARS AFTER THE MACCRATE REPORT: A REVIEW OF THE CURRENT STATE OF THE LEGAL EDUCATION CONTINUUM AND THE CHALLENGES FACING THE ACADEMY, BAR, AND JUDICIARY 9 (2013).

potential costs of implementation, at least when compared to large lecture classes.<sup>105</sup>

Efforts to calculate the true cost of clinical legal education, however, have proved challenging, and until this study there has been no attempt to determine if those costs may have resulted in higher tuition for students. One difficulty in determining actual costs is that salaries for clinical professors vary between schools, and at many schools clinical faculty are paid significantly less than non-clinical faculty. In addition, student/teacher ratios for clinical courses, as well as the number of academic credits awarded, differ between and even within schools, as does the practice of clinical faculty also teaching larger enrollment non-clinical courses or assuming administrative responsibilities.<sup>106</sup>

ABA prohibitions on access to school-by-school, or even aggregate, information on instructional costs frustrate efforts to determine the factors driving law school tuition and the possible influence of clinical courses.<sup>107</sup> Even in the limited, and now dated, instances where reliable data have been available, those reports do not show that widespread clinical education is financially infeasible but simply state the obvious—that lower enrollment law clinics have higher per academic credit instructional costs than large enrollment classes.

An extensive 1980 study of the cost aspects of clinical programs examined ABA annual questionnaire responses from eighty-three representative schools to calculate median salaries for full-time faculty, including clinical teachers.<sup>108</sup> Based on staffing and teaching loads at the time, the authors calculated that the average cost per student credit hour for a typical fifteen-student seminar was, not surprisingly, triple that of a fifty-six-student classroom course (the national average), and that a law-school supervised clinical course was about seven times that of a tradi-

---

105. STUCKEY ET AL., *supra* note 75, at 189; MACCRATE REPORT, *supra* note 69, at 254 n.36.

106. See generally Deborah J. Merritt, *Core Faculty*, LAW SCHOOL CAFÉ (Mar. 24, 2013, 8:58 PM), <http://www.lawschoolcafe.org/thread/core-faculty> (noting lower pay for clinical faculty); DAVID A. SANTACROCE & ROBERT R. KUEHN, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION: THE 2010–11 SURVEY OF APPLIED LEGAL EDUCATION 16–18 (2011) (reporting on differences in student teacher ratios and academic credits in clinical courses).

107. AM. BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2013–2014, r. 25, 27(b) (2013); see also E-mail from Barry Currier, Managing Director, ABA Section of Legal Education and Admissions to the Bar, to author (Oct. 29, 2013, 3:07 PM) (on file with author) (denying access to school-specific information on instructional costs, even with a pledge of confidentiality).

108. Peter deL Swards & Frank K. Walwer, *Cost Aspects of Clinical Education*, in CLINICAL LEGAL EDUCATION: REPORT OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS—AMERICAN BAR ASSOCIATION COMMITTEE ON GUIDELINES FOR CLINICAL LEGAL EDUCATION 133, 135–36 (1980). At the time, the ABA's annual questionnaire asked each school to report the median salary paid to full-time teachers who devote all their instructional time to clinical teaching; another question asked for salary data for all teachers. *Id.* at 135. After a 1995 settlement of an antitrust lawsuit brought by the U.S. Department of Justice, the ABA stopped asking for information on faculty salaries. See generally David Zaring, *A Conspiracy of Paper-Pushers*, CONCURRING OPINIONS (Mar. 28, 2006), [http://www.concurringopinions.com/archives/2006/03/a\\_conspiracy\\_of.html#comments](http://www.concurringopinions.com/archives/2006/03/a_conspiracy_of.html#comments).

tional, large enrollment course.<sup>109</sup> Field-placement courses, enrolling twenty-five students per term for three academic credits, were found to be cheaper per student credit than the average fifty-six-student course.<sup>110</sup>

The authors assumed that a clinic faculty member would teach between fourteen to twenty-four students per year, compared to 224 for a “[t]raditional” classroom teacher.<sup>111</sup> Although this may have reflected the teaching responsibilities of clinical teachers at the time, a recent survey of clinical faculty found that most teach doctrinal and other applied skills courses (e.g., trial practice) in addition to their clinical courses, usually without relief from their clinical teaching obligations.<sup>112</sup> The 1980 cost estimate for clinical courses, therefore, overstates the differences found today between the teaching loads of clinical and non-clinical law faculty at many schools. Yet in spite of the instructional cost differences found at that time between clinical and other courses, the authors demonstrated that the curriculum could be restructured to give every student a faculty-supervised clinical experience without changing the size of the faculty, though “significant changes would of course need to be made in what law schools expected of a good number of their teachers.”<sup>113</sup>

Dean John Kramer, also using ABA annual questionnaire data, compared the major items in law school budgets over the ten-year period from 1978 to 1988. He found that, even though this was a period of significant clinical program expansion, clinical education costs in 1987–1988 were a small proportion of a school’s overall expenditures, constituting only 3.1% of the total operating budget and an even smaller percentage if capital outlays and required payments to university budgets were included.<sup>114</sup> Clinical education’s percentage of overall law school expenditures actually decreased during that period by almost one-third.<sup>115</sup> While clinical education expenditures, like all other budget categories, did increase over that ten-year period, it was only 2.8% of the total increase in law school expenditures and less than the overall percentage increase in tuition revenue.<sup>116</sup> Kramer concluded, “Although clinics are undeniably more expensive to run than Socratic or lecture

---

109. Swords & Walwer, *supra* note 108, at 177 & n.69.

110. *Id.* at 153.

111. *Id.* at 146.

112. SANTACROCE & KUEHN, *supra* note 106, at 29. “Approximately 79% of [clinical faculty] are permitted to teach doctrinal courses,” while “[n]early 86% . . . are permitted to teach non-doctrinal ‘skills’ courses.” *Id.* However, “over 70% [of those clinical faculty who teach both doctrinal and skills courses] are not relieved of their clinical teaching obligations” when teaching these non-clinical courses. *Id.*

113. Swords & Walwer, *supra* note 108, at 184–85.

114. John R. Kramer, *Who Will Pay the Piper or Leave the Check on the Table for the Other Guy*, 39 J. LEGAL EDUC. 655, 661 tbl.D, 663 (1989).

115. Clinical education’s percentage of law school budgets dropped during the ten-year period from 4.5% to 3.1%. *Id.* at 661 tbl.D.

116. *Id.* at 658 tbl.B, 666–67.

classrooms because of the personpower required, our commitment to them may be somewhat overstated.”<sup>117</sup>

The ABA’s MacCrate Report in 1992 strongly advocated for greater skills training in law schools and extolled the virtues of law clinics. It estimated in a footnote that providing a live-client, in-house clinic experience to all students (rather than to the then one-third of students) would represent an increase approaching 10–15% of a school’s overall law school budget in 1987–1988.<sup>118</sup>

Four recent studies have focused on the comparative costs of clinical education to a school’s other instructional expenditures. David Chavkin at American University’s Washington College of Law examined the proportionate tuition generated in the courses taught by clinical faculty at his school and determined that it came very close to meeting the actual instructional costs of law clinics to the school.<sup>119</sup> He included in his analysis an assumption that the clinical faculty member, in addition to teaching in a law clinic with an 8:1 student/teacher ratio, would teach one other non-clinical course per year, reflecting today’s clinical faculty teaching practices at most schools.<sup>120</sup>

Chavkin concluded that although clinical education was not a “financial cash cow” like large classes, it is “far more financially feasible than some make it out to be.”<sup>121</sup> He argued that it was significant that his private school could afford expanded clinical education opportunities: “Since our tuition fees are comparable to other institutions that provide far fewer clinic experiences, the issue in large part is one of will and not of impossibility.”<sup>122</sup>

Professors Nancy Maurer and Liz Ryan Cole posed the question: “How Much Do Field Placement Courses Cost?”<sup>123</sup> Using assumptions about salaries and student/faculty ratios in various types of law school courses, they determined that the typical cost per credit hour of a field placement course, although higher than large and mid-sized classes of fifty students or more, was lower than the cost of a twenty-student class and significantly less than a typical twelve-student seminar.<sup>124</sup> They concluded that when examined simply from a cost perspective, unless a school is going to argue that it is too expensive to offer a three-credit

---

117. *Id.* at 666. At some point after 1988, the ABA’s Annual Questionnaire stopped including a question about clinical education expenditures.

118. MACCRATE REPORT, *supra* note 69, at 254 n.36.

119. David F. Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 3, 13–14 (2009).

120. *Id.* at 14. *See supra* note 112 and accompanying text.

121. Chavkin, *supra* note 119, at 14.

122. *Id.* at 13–14.

123. Nancy M. Maurer & Liz Ryan Cole, *Design, Teach and Manage: Ensuring Educational Integrity in Field Placement Courses*, 19 CLINICAL L. REV. 115, 155 (2012).

124. *Id.* at 157–58.

class for 20 students or a seminar for twelve, “there is no fact-based reason to suggest that a field placement course with a manageable faculty/student ratio and a budget for travel and other support is too expensive.”<sup>125</sup>

An article examining a “legal studio” approach to teaching core lawyering skills compared a range of instructional costs for law clinics, seminars, and lecture courses.<sup>126</sup> Based on estimates of instructor salaries, number of students in a course, and credit hours per course, it determined that the cost of instruction for a typical law clinic course is slightly less per credit per student than for a seminar with fifteen students.<sup>127</sup>

Most recently, Dean Martin Katz proposed a model to compare the costs of experiential education to traditional classroom courses.<sup>128</sup> Assuming that the law clinic is taught by a tenured member of the faculty and paid the same as a non-clinical “podium” faculty member and that the clinic instructor only teaches two courses per year, compared to three and one-half courses per year for a non-clinical faculty member, his “basic model” estimates that the faculty cost per student credit for a law clinic is about 9% higher than the cost for a seminar.<sup>129</sup> Externships, which the model assumes are taught by lower paid non-tenure-line faculty, are one-third the cost of seminars and almost one-half as expensive as twenty-student classroom courses. In estimating costs per credit, the model does not account for any offsetting of law clinic expenses through attorney’s fees, grants, donations, or other income.

Like the 1980 study of relative teaching costs, Dean Katz’s basic model uses assumptions that do not reflect the majority of today’s law clinics. A 2014 survey of over 500 clinical faculty revealed that only 27% of full-time law clinic faculty are either tenured or on tenure track,

---

125. *Id.* at 158.

126. Cody Thornton, Note, *Shared Visions of Design and Law in Professional Education*, 6 NE. U. L.J. 21, 70, 79–80 (2013) (basing cost of instruction data on conversations with administration officials at Northeastern University School of Law and assuming that the salaries for clinic course instructors were the same as the salaries for seminar and lecture course instructors).

127. *Id.* at 80. The instructional costs for a law clinic and seminar of median class size were both about 300% of the cost of a 50-student lecture course. *Id.*

128. Martin J. Katz, *Understanding the Costs of Experiential Legal Education*, 1 J. EXPERIENTIAL LEARNING (forthcoming 2014).

129. *Id.* at 117–32. The basic model also assumes that a law clinic will spend \$45,000 per year on outside attorneys for summer coverage (even with the model’s charge of \$74,000 for in-house staff attorneys or fellows) and \$95,205 per year on litigation expenses (discovery costs and expert fees). *Id.* at 116–17. Because most law clinics do not incur such large additional costs, these added expenses have not been included in determining the relative faculty labor costs of clinics. See SANTACROCE & KUEHN, *supra* note 106, at 7–8 (reporting that in the 2010-11 CSALE survey only two of the ten most prevalent law clinics were of a type that might incur significant litigation expenses).

with most in lower-paid contract or at will positions.<sup>130</sup> The survey also determined that two-thirds of clinical faculty teach non-clinical courses, including traditional podium courses, averaging over one additional course per year.<sup>131</sup> When the basic model is adjusted to include these more realistic assumptions, the faculty labor cost for a law clinic is reduced by over 57% and is half the cost of a seminar and less than the cost of a traditional twenty-student class.<sup>132</sup> This reanalysis suggests that the wide variety of clinical faculty salaries, teaching loads, and student-teacher ratios, found not just across but even within law schools, will confound any cost model that lumps all of a school's law clinics together or assumes a common labor cost even within categories of experiential courses.

Professor Peter Joy reviewed the causes behind the rising law school costs and the role of clinical education in educating law students.<sup>133</sup> He argued that a legal education must include a combination of doctrinal and experiential courses and that schools, particularly in dealing with current budgetary challenges, need to weigh the relative costs and merits of clinical learning against other law school operations.<sup>134</sup> He cautioned against overemphasis on the cost of law clinics and efforts to simply weigh the costs of clinics against the costs of simulation and externship courses without also considering the goals of legal education and needs of students.<sup>135</sup> Noting the rapid increases in law school expenses outside the clinical program, he concluded that “[u]ntil there is a better understanding of how to measure the benefits of the various aspects of legal education, simply considering the cost of in-house clinical education or other components of legal education may not do service to law students, their future clients, or employers.”<sup>136</sup>

---

130. CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION, 2013–14 CSALE SURVEY OF APPLIED LEGAL EDUCATION: PHASE III FACULTY SUB-SURVEY pt. B: Individual Characteristics Ques. 3 (forthcoming 2014) (survey responses on file with author).

131. *Id.* at Ques. 16–17 (survey responses on file with author). Over 78% of those clinical faculty teach non-clinical courses without any relief from their law clinic or externship teaching responsibilities; 19% are relieved in part from their clinical obligations while teaching the non-clinical course; and only 3% are full relieved from those obligations. *Id.*

132. Using the model's non-tenure-line faculty labor costs and conservatively assuming that the faculty member would only teach an additional 0.5 non-clinical courses per year with 20 students at 3 credits, reduces the law clinic faculty member's labor costs from \$2,078 to \$881 per student credit, below even the \$950 cost of a “small podium” 20 student course. Assuming one additional non-clinical small podium course per year reduces the cost to \$712 per student credit, 66% less than the basic model's projected law clinic faculty labor cost.

133. See Joy, *supra* note 33, at 315, 320.

134. *Id.* at 327–28.

135. *Id.*

136. *Id.* at 330. Professor Joy also argued for a cost-benefit analysis of all law school costs in an earlier article:

Upon closer examination, the cost criticism of real-client clinical education is usually myopic. The comparative high costs of seminar classes, supervised research, upper class writing requirements, or maintaining high volume count law school libraries in the computer age are often left out of the cost critique. Moreover, to evaluate effectively any of these programs, one has to look at the benefits of each program in light of their costs.

Professor Mark Tushnet made a similar observation about the need to consider the value clinical education provides:

When faculties feel pressure to reduce budgets or to restrain rates of increase, they look first to, and often not beyond, the clinical curriculum. The reason given is clinical education's unusually high cost. In making budgetary decisions, however, the relevant figure is not cost but the cost-benefit ratio. Yet, observing that clinical education is expensive says nothing about the cost-benefit ratio.<sup>137</sup>

#### IV. THE EFFECT OF CLINICAL LEGAL EDUCATION COURSES ON TUITION

Any debate over the costs of clinical legal education needs to focus on the knowledge, skills, and values students should obtain while in law school to prepare them for the effective, ethical practice of law and on how schools can best provide instruction in those areas. Because of the many variables contributing to the high cost of legal education and the need to contain tuition, schools should be asking which expenditures most benefit students and are most worthy of preserving or enhancing and which benefit others and perhaps should not be so heavily subsidized by student tuition. Simply saying that clinical education costs more than other modes of instruction and should not be increased, or should be among the first items cut to reduce expenses, shortchanges students by failing to consider the costs and benefits to students from how their tuition dollars are spent.

Another issue is resource allocation. As noted, an early study concluded that schools could restructure their existing curricula to give every student a faculty-supervised law clinic experience without changing the size of the faculty but merely through reassignments of teaching responsibilities.<sup>138</sup> Given the wide array of expenditures and course offerings that a school could reduce or restructure, a reallocation of resources toward more focus on training students for practice need not mean increased costs for students. Although many recent reports present two major concerns—containing tuition and increasing the practice readiness of students—as being in tension,<sup>139</sup> they need not be if a school makes a choice to allocate resources more toward practice readiness and away from other expenditures that do not as directly contribute to a student's preparation for practice.

An array of schools, in fact, already have made the choice to provide clinical experiences to all of its J.D. students and have done so without noticeable impacts on tuition. At the City University of New

---

Peter A. Joy, *The MacCrate Report: Moving Toward Integrated Learning Experiences*, 1 CLINICAL L. REV. 401, 404 (1994).

137. Mark V. Tushnet, *Scenes from the Metropolitan Underground: A Critical Perspective on the Status of Clinical Education*, 52 GEO. WASH. L. REV. 272, 273 (1984) (footnote omitted).

138. Swords & Walwer, *supra* note 108, at 184–85.

139. See *supra* notes 102–05 and accompanying text.

York School of Law (CUNY), all students must take a twelve- to sixteen-credit faculty-supervised law clinic or field placement prior to graduation.<sup>140</sup> CUNY provides over 140 positions annually in supervised law clinic courses for entering J.D. classes of around 110 students and charges \$14,472 in tuition (plus any annual fees), significantly less than the average public law school resident tuition of approximately \$24,000.<sup>141</sup> When asked by the authors of the Carnegie Report on legal education how the school could afford such resource-intensive instruction, CUNY administrators answered, “We cannot afford not to do it.”<sup>142</sup>

Students at the University of the District of Columbia David A. Clarke School of Law (UDC-DSCL) similarly must enroll in a seven-credit law clinic in their second year and a second seven-credit clinic in their third year.<sup>143</sup> UDC-DSCL provides almost 200 faculty-supervised law clinic positions for its entering classes of about sixty full-time and fifty part-time students.<sup>144</sup> Yet, UDC-DSCL charges only \$11,265 in tuition, the second lowest in the country outside Puerto Rico.<sup>145</sup>

One of the more publicized efforts to revamp curriculum to require more experiential education was by Washington and Lee University School of Law (W&L) in 2008, a school with a 2013 entering class of around 110 students and tuition of \$44,707.<sup>146</sup> The school’s new third-year curriculum now requires twenty academic credits in simulated or real-practice experiences that include at least one law clinic or extern-

---

140. *Curriculum & Course Descriptions*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/academics/courses/curriculum.html> (last visited July 23, 2013).

141. Unless otherwise noted, the data on law schools analyzed herein is from each school’s 2013 Standard 509 Information Report, *available at* <http://www.abarequireddisclosures.org> (reporting data from the ABA 2013 Annual Questionnaire completed in fall 2013 that reflect academic year 2012–13 courses and fall 2013 tuition (plus annual fees) and entering J.D. class statistics) [hereinafter *ABA 2013 Standard 509 Information Reports*].

The ABA’s Annual Questionnaire requires the dean of each school to certify:

I have reviewed the Annual Questionnaire and know its contents. I have made an appropriate and thorough inquiry so as to satisfy myself that the information contained in this Annual Questionnaire has been properly collected and is fully and accurately reported. I represent that this Annual Questionnaire is true, accurate, complete and not misleading.

I understand that the provision of false, inaccurate, incomplete or misleading information in this Annual Questionnaire could subject the law school to the imposition of sanctions under Rule 16 of the Rules of Procedure for Approval of Law Schools.

*ABA Questionnaires - Annual Questionnaire*, AM. BAR ASS’N, [http://www.americanbar.org/groups/legal\\_education/resources/questionnaire.html](http://www.americanbar.org/groups/legal_education/resources/questionnaire.html) (last visited Apr. 22, 2014) (quoting from Dean’s Signature Page). This certification requirement minimizes the possibility of reporting error in the information included in the school’s Standard 509 Information Report.

142. SULLIVAN ET AL., *supra* note 73, at 36 (internal quotation marks omitted).

143. *Curriculum: Full-time J.D. Program*, UNIVERSITY OF THE DISTRICT OF COLUMBIA DAVID A. CLARKE SCHOOL OF LAW, <http://www.law.udc.edu/?page=FullTimeCurriculum> (last visited July 23, 2013).

144. *ABA 2013 Standard 509 Information Reports*, *supra* note 141 (using 2013 data for UDC-DSCL).

145. *See id.* (using 2013 data, sorting the resident tuition for all public law schools).

146. *See id.* (using 2013 data for Washington and Lee).

ship.<sup>147</sup> Since the new curriculum was adopted by the faculty, the school has more than doubled the number of positions available to students in law clinic courses, increased its externship placements by 87%, and expanded its simulation courses by 63%.<sup>148</sup>

The professor overseeing the program explained that a review of the first few years and the costs of the new curriculum showed that “it is no more expensive to run than our first or second years.”<sup>149</sup> Adoption of the additional experiential courses also has not resulted in tuition increases disproportionate to other private law schools, as W&L’s tuition has increased by 29% since 2007–2008 while the median increase for all private law schools over the same time period was 27%.<sup>150</sup> This at a school where about half of the students in their third year take a year-long law clinic for ten credits and the remainder take a one-semester clinic or externship for five credits.<sup>151</sup>

What is significant about these examples, in addition to the administration and faculty’s commitment to mandate clinical education, is that the three schools reflect the range of the 202 ABA-accredited law schools. They include schools that are: public and private; ranked as “the top schools” and unranked (“second tier”) by *U.S. News*; in urban and rural areas; graduating students that seek employment primarily locally and students looking across the country; offering a part-time degree program; and charging high and low tuitions.<sup>152</sup>

To consider further the effect that the availability of clinical courses has on the cost to students for their legal education and, therefore, the financial feasibility of more clinical education, I examined the effect of

147. *Washington and Lee’s New Third Year Reform*, WASHINGTON AND LEE UNIVERSITY SCHOOL OF LAW, <http://www.law.wlu.edu/thirdyear> (last visited July 23, 2013).

148. These data collected from the school’s reported information in LAW SCHOOL ADMISSIONS COUNCIL & AM. BAR ASS’N., ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS ARCHIVES (2006–2014) [hereinafter ABA-LSAC OFFICIAL GUIDE], available at <http://www.lsac.org/lsacresources/publications/official-guide-archives>. Compare 2014 ABA-LSAC OFFICIAL GUIDE, available at <http://www.lsac.org/docs/default-source/official-guide-2014/aba5887.pdf> (listing positions available to W&L students in experiential courses during 2011–12 academic year), with 2010 W&L ABA-LSAC OFFICIAL GUIDE, available at <http://www.lsac.org/docs/default-source/official-guide-2010/aba5887.pdf> (listing positions available in W&L’s experiential courses during 2007–08 academic year).

149. James E. Moliterno, *A Way Forward for an Ailing Legal Education Model*, 17 CHAP. L. REV. 73, 78 (2013). Professor Moliterno explained that the new third-year curriculum was less expensive “in large measure because of the contributions of part-time professors from several major Virginia law firms.” E-mail from James Moliterno, Professor, Washington & Lee School of Law, to Jon Streeter, Chair, Task Force on Admissions Regulation Reform, California State Bar (May 30, 2013) (on file with author).

150. Compare 2014 W&L ABA-LSAC OFFICIAL GUIDE, *supra* note 148 (listing W&L’s tuition and fees for school year 2012–13), and 2010 W&L ABA-LSAC OFFICIAL GUIDE, *supra* note 148 (listing W&L’s tuition and fees for school year 2007–08), with LAW SCHOOL TUITION (1985–2013), *supra* note 21 (listing median tuition and fees at private law schools).

151. E-mail from Professor James Moliterno, *supra* note 149.

152. See *ABA 2013 Standard 509 Information Reports*, *supra* note 141; 2013 U.S. NEWS & WORLD REPORT (BEST GRADUATE SCHOOLS) 76–80 (2013) (on file with author) [hereinafter U.S. NEWS, BEST GRADUATE SCHOOLS].

providing or requiring clinical legal education courses on tuition using data reported by each school to the ABA for the 2012–2013 academic year and fall 2013 J.D. entering class.<sup>153</sup> Because the call for more clinical education (i.e., law clinic and externship courses) is often part of a broader call for more practice-based experiential education (which includes law clinic, externship, *and* simulation courses),<sup>154</sup> I first examined the possible relationship between the availability of experiential courses and the tuition and fees paid by law students. The State Bar of California’s Task Force on Admissions Regulation Reform noted that many concerns about requiring more practice-based experiential coursework for bar applicants “are rooted in the idea that for law schools to offer more practice-based experiential education will be enormously costly, that law schools will inevitably pass those increased costs along to their students by increasing tuition, and that this will only add to the challenges that recent law graduates face.”<sup>155</sup>

It is initially clear from analyzing ABA data that a school’s public or private status greatly affects what a full-time J.D. student pays in tuition and fees, with private schools charging, on average, about \$19,000 more, holding other influences on tuition constant.<sup>156</sup> *U.S. News* ranking of law schools also is significantly related to tuition and fees—schools on average charge their students about \$1,000 more for each ten place increase in ranking.<sup>157</sup> In addition, schools in geographic areas with

153. Enrollment, curricular, and tuition data was obtained from each school’s *ABA Standard 509 Information Reports*, as noted in *supra* note 141. Earlier analyses based on data for the 2010–11 and 2012–13 academic year and fall 2011 and 2012 entering class, when entering class sizes were larger at many law schools, yielded results that were consistent with those reported here for students entering in 2013.

154. See STUCKEY ET AL., *supra* note 75, at 166 (describing “[e]xperiential education” as including simulation-based courses, law clinics, and externships); see also ABA ACCREDITATION STANDARDS, *supra* note 1, at Standard 303(a)(3) (defining an experiential course as a simulation course, a law clinic, or a field placement).

155. Memorandum from John Streeter, Chair, Task Force on Admissions Regulation Reform, to State Bar of Cal. B. Comm. on Operations and Bd. of Trs. 5 (Oct. 12, 2013), available at <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000011266.pdf>.

156. Comparing tuition and fees data from each school’s *ABA 2013 Standard 509 Information Reports*, *supra* note 141, when holding *U.S. News* ranking and cost of living constant. For public schools, resident tuition and fees were used. See U.S. NEWS, BEST GRADUATE SCHOOLS, *supra* note 152.

157. Comparing tuition and fees data in *ABA 2013 Standard 509 Information Reports*, *supra* note 141, with law school rankings in U.S. NEWS, BEST GRADUATE SCHOOLS, *supra* note 152 at 76–80 (excluding 46 schools for which rank is not published (referred to as “second tier”) and six schools indicated as “not ranked”). Note that *U.S. News* analyzes 200 law schools while the ABA 2013 Standard 509 Information Reports include data on 202 schools, listing Widener University’s Delaware and Pennsylvania campuses separately and including Belmont University, a new provisionally-accredited school. See *ABA 2013 Standard 509 Information Reports*, *supra* note 141; U.S. NEWS, BEST GRADUATE SCHOOLS, *supra* note 152.

The influence of ranking on tuition is most pronounced within the upper quartile of ranked law schools, where an improvement in ranking from the second quartile of law schools (ranked between 53–98) to the first quartile (between 1–48) results in an average increase in tuition of around \$140 per ranking position. In contrast, schools ranked in the lowest quartile (second tier) charge more, on average, than schools ranked between 102–144, primarily because of a greater proportion of higher-priced private law schools in the lowest quartile.

higher costs of living on average charge higher tuition than schools in lower cost of living locales.<sup>158</sup> The relationships of these three variables to tuition and fees are illustrated in Figure 1.

FIGURE 1

## RELATIONSHIP OF CONTROL VARIABLES TO TUITION

Variable	Estimate (Std. Error)	p-value
Private School	19054.93 (±961.32)	<0.001
Ranked ( <i>U.S. News</i> )	-93.93 (±9.37)	<0.001
Cost of Living	95.66 (±17.61)	<0.001

The adjusted R-squared value with these variables is 0.74. Thus, these three variables alone explain about three-quarters of the total variation in tuition and fees among ABA accredited law schools.

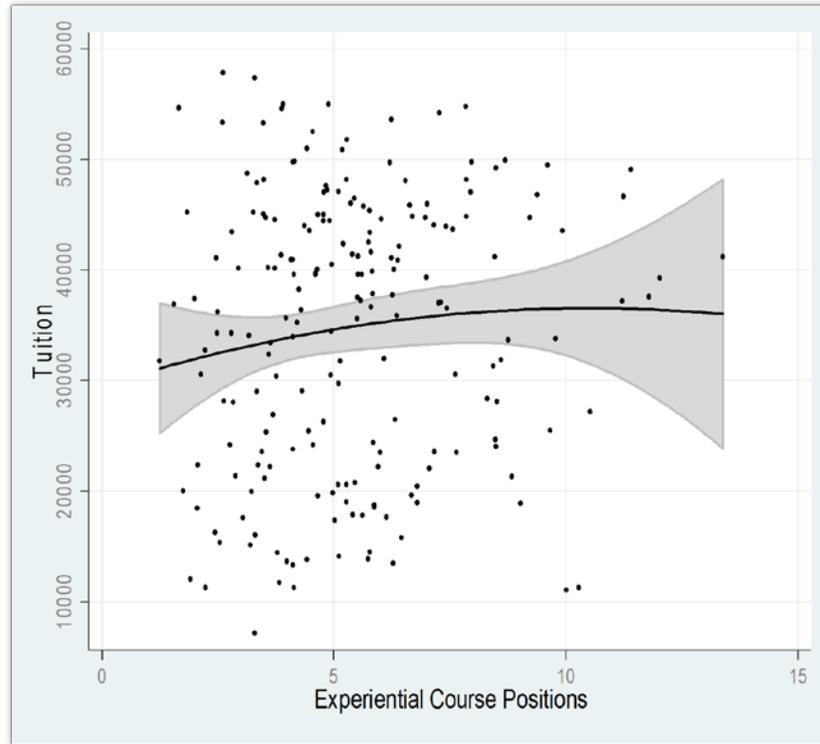
When the public-private, *U.S. News* ranking, and cost of living variables are then controlled to measure just the relationship between certain coursework and tuition, there is no statistically significant relationship between the availability of experiential education courses and the tuition and fees students pay.<sup>159</sup> As the Figure 2 scatterplot with standard error bars illustrate, there is no increase in the tuition students pay, and even a statistically insignificant average decrease of \$60, as opportunities to enroll in experiential courses are made more available to those students.<sup>160</sup>

158. Using data from the U.S. Census Bureau in the 2012 *Statistical Abstract of the United States*. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 479–80 (2012). The observed relationship between cost of living and tuition is primarily among schools charging in excess of \$35,000.

159. The ABA Annual Questionnaire defines three types of experiential courses: “*Simulation courses* are those courses in which a substantial portion of the instruction is accomplished through the use of role playing or drafting exercises, e.g., trial advocacy, corporate planning and drafting, negotiations, and estate planning and drafting.” SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, 2014 ANNUAL QUESTIONNAIRE INSTRUCTIONS PART I: SCHOOL INFORMATION 6 (2014), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2014\\_aq\\_part1.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2014_aq_part1.authcheckdam.pdf). “*Faculty-supervised law clinics* are programs in which students advise or represent one or more actual clients [individuals or organizations], in which students are supervised by a faculty member (full-time or adjunct), and which include a classroom instructional component.” *Id.* “*Field placements* are externships or internships (typically off-site) that are field supervised by persons not employed by the law school for which students receive credit and which may or may not include a classroom component.” *Id.*; see also ABA ACCREDITATION STANDARDS, *supra* note 1, at Standard 303(a)(3) (“An experiential course must be a simulation course, a law clinic, or a field placement.”).

160. See ABA 2013 *Standard 509 Information Reports*, *supra* note 141 (comparing each school’s ratio of the sum of “[n]umber of positions available in simulation courses” plus “[n]umber of positions available in faculty supervised clinical courses” plus “[n]umber of field placement positions filled,” full-time and part-time, to “J.D. Enrollment - First-Year Total” with tuition and

FIGURE 2

RELATIONSHIP OF AVAILABILITY OF EXPERIENTIAL COURSES TO  
TUITION

These data strongly suggest that proposals to mandate more practice-based experiential coursework need not result in increased tuition. This finding should not be surprising. Simulation courses, which make up the bulk of practice-based experiential courses at most schools, are largely taught by adjunct faculty, who law schools pay very modestly.<sup>161</sup> Examining just simulation courses, no statistically significant relation-

---

fees). On average, tuition decreases by \$60.50 for each additional position in an experiential course that is made available to a student ( $p$ -value 0.76).

All results are compared to the 95% ( $p$ -value 0.05) and 90% ( $p$ -value 0.10) confidence levels to judge statistical significance. The shaded area in the scatterplots indicates the upper and lower boundaries of the 95% confidence interval. Two results from the 2013 reported data were significant to the 80% ( $p$ -value 0.20) confidence level and showed that as clinical course availability to students increased, tuition decreased. See *infra* note 174, Figure 4.

161. See David A. Lander, *Are Adjuncts a Benefit or a Detriment?*, 33 U. DAYTON L. REV. 285, 288–89 (2008) (reporting on a survey showing that at most courses a majority of trial advocacy courses are taught by adjuncts and describing adjuncts as providing instruction “at bargain basement rates”).

ship was found between the availability of positions in simulation courses at a school and the tuition a school charges.<sup>162</sup>

Even when excluding low-cost simulations and focusing just on more resource intensive clinical education courses, the data still do not show a relationship between law clinic and externship courses and the tuition students pay. Looking first at schools that have a clinical experience mandate, twenty-two schools currently require that each J.D. student must take a credit-bearing law clinic or externship as a graduation requirement.<sup>163</sup> Those schools do not, on average, charge higher tuition than schools that do not have such a requirement, as illustrated below in the comparison of law school tuitions. In fact, schools that mandate a clinical experience charge around \$800 less than schools that do not, but the estimate is not statistically significant.<sup>164</sup>

Examining the fourteen other schools that guarantee, but do not require, each J.D. student the ability to take a credit-bearing law clinic or externship prior to graduation yields a similar result—guaranteeing a clinical experience to every student does not show a statistically significant relationship to the tuition and fees charged those students. Schools guaranteeing a clinical experience charge, on average, approximately \$200 more in tuition and fees than schools that do not, but the relationship is not statistically significant.<sup>165</sup> Together, the schools that either require *or* guarantee a clinical experience charge \$400 less in tuition than schools that do not, but, again, the relationship is not statistically significant.<sup>166</sup>

Therefore, the thirty-six schools that either already mandate or guarantee a clinical experience to every student are not charging their students more than schools that do not require or guarantee that opportunity. Although those schools might be incurring additional instructional costs over schools not providing those law clinic and externship experiences, tuition pricing does not reflect those costs, and students are not being asked to pay more for those educational experiences. These

---

162. See *ABA 2013 Standard 509 Information Reports*, *supra* note 141 (comparing for each school the ratio of the “[n]umber of positions available in simulation courses” to “J.D. Enrollment - First-Year Total” with tuition and fees). Schools on average charge approximately \$48 more in tuition for each simulation course position made available to a student, but the result is not statistically significant (*p*-value 0.84).

163. See Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J.L. & POL’Y 11, 45–46, 45 n.154 (2013) (identifying law schools with mandatory clinical education requirements based on a fall 2013 survey). The University of Hawaii was subsequently removed from this list; hence, only 22 schools are analyzed.

164. As with other comparisons, tuition data were obtained from *ABA 2013 Standard 509 Information Reports*, *supra* note 141. On average, schools with a clinical education requirement charge \$796.08 less in tuition and fees than schools without a requirement (*p*-value 0.60).

165. Tokarz et al., *supra* note 163, at 46–47, 46 n.155 (identifying schools that guarantee a clinical experience). Schools guaranteeing a clinical experience charge, on average, \$195.19 more in tuition and fees than schools without a guarantee (*p*-value 0.91).

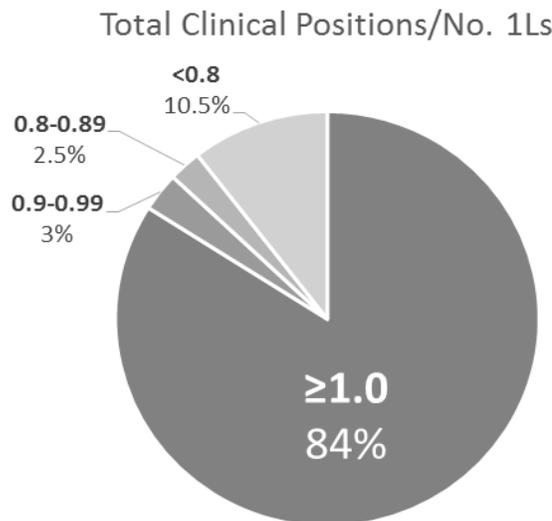
166. The thirty-six schools charge, on average, \$402.61 less in tuition and fees than the schools without a requirement or guarantee (*p*-value 0.74).

schools show that clinical legal education can be made a priority without a resulting increase in tuition when the school is willing to make a choice to allocate its resources toward those courses.

These thirty-six schools with clinical requirements or guarantees are not the only evidence that a clinical education requirement can be implemented without increasing tuition. According to data each school certifies to the ABA as “true, accurate, complete, and not misleading,”<sup>167</sup> 170 of 202 law schools (84%) already have the law clinic or externship course capacity to provide each of their J.D. students who entered in fall 2013 with a clinical experience (Figure 3).<sup>168</sup>

FIGURE 3

## PERCENTAGE OF SCHOOLS WITH CLINICAL EXPERIENCE CAPACITY



Thus, although the ABA requires each school to offer “substantial opportunities” for live-client or other real-life practice experiences,<sup>169</sup> only 18% of law schools (36 of 202) presently require or guarantee a

167. *ABA Questionnaires - Annual Questionnaire*, *supra* note 141 (quoting from Dean’s Signature Page).

168. *See ABA 2013 Standard 509 Information Reports*, *supra* note 141 (comparing for each school the sum of “[n]umber of positions available in faculty supervised clinical courses” plus “[n]umber of field placement positions filled,” full-time and part-time, with “J.D. Enrollment - First-Year Total”). Sixty-one schools (30%) have sufficient capacity in their existing law clinic courses for every J.D. student to take a law clinic prior to graduation. *See id.* (comparing “[n]umber of positions available in faculty supervised clinical courses” with “JD Enrollment - First-Year Total”). Yet, only five schools presently require a law clinic as a condition of graduation; one additional school guarantees a law clinic experience. Tokarz et al., *supra* note 163, at 45 n.154.

169. *See ABA ACCREDITATION STANDARDS*, *supra* note 1, at Standard 303(a)(3).

clinical experience.<sup>170</sup> The ABA has failed to ensure more than “opportunities” even though a clinical experience could be provided today to every J.D. student at 84% of schools at no additional expense or new faculty.<sup>171</sup>

When comparing the tuition at these 170 schools with sufficient law clinic and field placement positions for each student with schools that do not presently offer enough positions, there is no statistically significant difference in the amount of tuition charged to make these law clinic and externship positions available to all students.<sup>172</sup> So, not only are nearly seven out of eight schools already capable of providing a clinical education experience to each of their students without adding any additional courses or instructors, they are able to do so without charging their students more in tuition than schools presently without sufficient positions to provide every student with that experience.

Moreover, upon adoption of a clinical education requirement or guarantee, schools do not raise their tuition at a rate higher than schools that do not require or provide those courses. Examining a school’s rate of tuition increase from the time its clinical mandate or guarantee was adopted to its current tuition, the rate of increase at three-quarters of those schools was actually less than the national average of other schools over that same time period; only one-eighth of those schools increased their tuition at a rate greater than the national average.<sup>173</sup>

These data suggest that the schools adopting a clinical experience mandate or guarantee already may have had sufficient capacity for a universal clinical experience and did not need to change their course offer-

---

170. Compare Tokarz et al., *supra* note 163, at 45 n.154, 46 n.155 (identifying the thirty-six schools that require or guarantee a clinical experience) with *ABA 2013 Standard 509 Information Reports*, *supra* note 141 (providing information on 202 schools). The most recent Law School Survey of Student Engagement found that 43% of third-year students had never participated in a clinical or pro bono project as part of a course or for academic credit. LAW SCHOOL SURVEY OF STUDENT ENGAGEMENT, EVALUATING THE VALUE OF LAW SCHOOL: STUDENT PERSPECTIVES ANNUAL RESULTS 2013 8 (2013), available at [http://lsse.iub.edu/pdf/2013/LSSSE\\_2013\\_AnnualReport.pdf](http://lsse.iub.edu/pdf/2013/LSSSE_2013_AnnualReport.pdf).

171. See *supra* note 168 and accompanying text. Using enrollment data for J.D. students entering in fall 2011 and 2012, when entering class sizes were larger, yielded similar results; 79% of schools in fall 2012 had sufficient capacity to provide a clinical experience to every entering J.D. student and over 69% did in fall 2011. See *supra* note 153.

172. Comparing tuition and fees at schools where the sum of the “[n]umber of positions available in faculty supervised clinical courses” plus “[n]umber of field place positions filed,” full-time and part-time divided by “J.D. Enrollment - First-Year Total” is 1.0 or greater with the tuition and fees at schools with smaller ratios. See *ABA 2013 Standard 509 Information Reports*, *supra* note 141. On average, schools with sufficient law clinic or field placement course capacity for every graduating J.D. student charge approximately \$778 more in tuition and fees than schools without that capacity, but the estimate is not statistically significant (*p*-value 0.54).

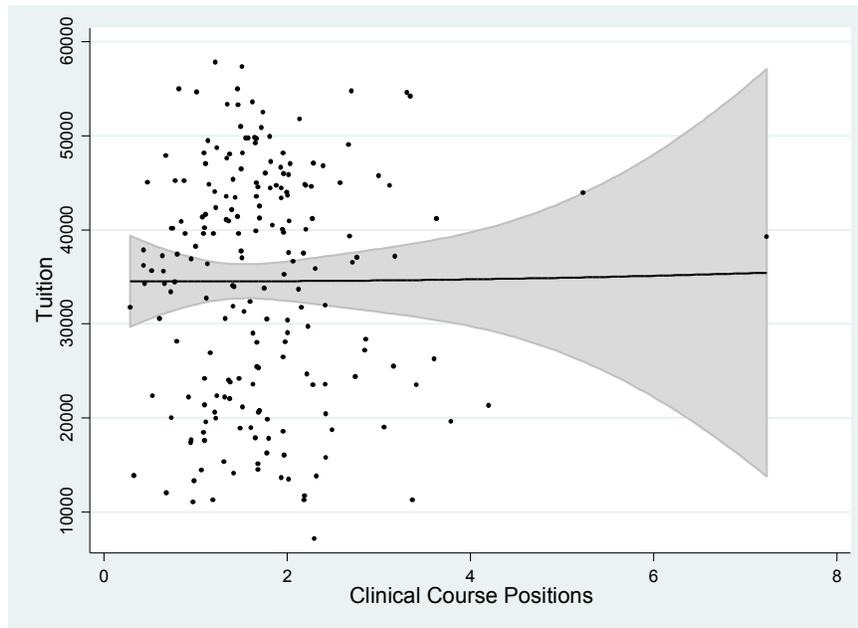
173. Compare Tokarz, *supra* note 163, at 45–46, 45 n.154 (listing schools with a clinical mandate or guarantee and the respective dates of adoption) with 2014 ABA-LSAC OFFICIAL GUIDE, *supra* note 148 (using data for fall 2012 tuition); 2006–2009 ABA-LSAC OFFICIAL GUIDE, *supra* note 148; 2010–2013 ABA-LSAC OFFICIAL GUIDE, *supra* note 148. Because access to archived tuition amounts is limited, rates of tuition increase were only analyzed for schools adopting a mandate or guarantee since 2005. The results of these calculations are on file with the author.

ings upon adoption of the new curricular policy. The data could alternatively suggest that implementation of the new clinical education provision did not impose increased costs on the schools or, if it did, schools reallocated existing resources and did not pass on any increased costs to students through higher tuition pricing.

Looking just at the enhanced availability of clinical courses, even if not presently sufficient to provide a clinical experience to every student, again there is no relationship between the increased availability of law clinic and field placement courses for students and the tuition they are charged. Instead, as the ratio of combined positions in law clinics and field placement courses to the number of first-year students increases, schools charge approximately \$700 less in tuition (Figure 4).<sup>174</sup>

FIGURE 4

## RELATIONSHIP OF CLINICAL COURSE AVAILABILITY TO TUITION



Law clinics in particular, compared to clinical legal education more generally (which includes both low student/teacher ratio law clinics and typically higher enrollment field placement courses), often are the focus

174. See *ABA 2013 Standard 509 Information Reports*, *supra* note 141 (comparing for each school the ratio of the sum of “[n]umber of positions available in faculty supervised clinical courses” plus “[n]umber of field placement positions filled,” full-time and part-time, to “J.D. Enrollment - First-Year Total” with tuition and fees). On average, tuition decreases by \$702.57 for each additional position in a clinical course that is made available to a student (*p*-value 0.18).

of the claim that clinical legal education costs too much.<sup>175</sup> Here too, even with the higher instructional costs per student for low enrollment law clinic courses, the data do not show that the increased availability of law clinic positions for students results in higher tuition. Comparing the availability of positions for students in faculty supervised law clinic courses to the size of the first-year J.D. class, schools with higher ratios of clinic positions to students (i.e., law clinic courses are more available to students) do not charge statistically higher tuition than schools that provide fewer law clinic opportunities for their students.<sup>176</sup>

Further, examining the difference between the sixty-one schools with sufficient present capacity for every J.D. student to participate in a law clinic course before graduation and the schools that do not presently have that law clinic capacity, schools that have sufficient law clinic capacity charge around \$1,500 less in tuition, on average, than the schools without that capacity.<sup>177</sup>

The relative proportion of law clinic to field placement positions available for students at a school similarly shows no relationship to the tuition those students are required to pay. Examining the ratio of law clinic course positions to field placement course positions for students, schools with a higher ratio of law clinic to field placement positions (i.e., providing a greater proportion of law clinic to field placement opportunities for students) do not have statistically significant higher tuitions than schools with lower ratios of law clinics to field placement course positions.<sup>178</sup>

Nor does a school's percentage of students that participate in a law clinic show an effect on tuition. A 2010–2011 survey by the Center for the Study of Applied Legal Education (CSALE) asked clinical program directors at each law school to identify the percentage of students that will participate in a live-client law clinic at their school before graduation.<sup>179</sup> Comparing law clinic participation with tuition shows that schools with a greater percentage of students participating in a law clinic

---

175. See Joy, *supra* note 33, at 309 (noting that when discussing the cost of legal education, some suggest that in-house law clinics should be eliminated because they require more faculty resources than classroom courses); see also Fleischer, *supra* note 65 (calling for the closure of law clinics to bring law school budgets in balance).

176. See *ABA 2013 Standard 509 Information Reports*, *supra* note 141 (comparing for each ABA-approved law school the ratios of the “[n]umber of positions available in faculty supervised clinical courses” to “J.D. Enrollment - First-Year Total” with tuition and fees).

177. See *id.* (comparing tuition and fees at schools with ratios of “[n]umber of positions available in faculty supervised clinical courses” to “J.D. Enrollment - First-Year Total” 1.0 or greater with tuition and fees at schools with smaller ratios).

178. See *id.* (comparing the ratios of the “[n]umber of positions available in faculty supervised clinical courses” to “[n]umber of field placement positions filled” with tuition).

179. 2010 CSALE SURVEY OF APPLIED LEGAL EDUCATION, CENTER FOR THE STUDY OF APPLIED LEGAL EDUCATION 8 (2010), available at <http://www.csale.org/files/2010-11.Complete.Survey.Instrument.pdf>, see also SANTACROCE & KUEHN, *supra* note 106, at 9–10.

before graduation do not charge higher tuition than schools with a lower participation percentage.

Therefore, like the relationships between the availability of experiential courses and tuition and of clinical education courses and tuition, providing more law clinic course opportunities for students, and even providing a law clinic experience for every student, is not associated with higher rates of tuition. Figure 5 shows the lack of a statistically significant relationship between the availability of law clinic courses and tuition for any of the four law clinic capacity and participation variables.

FIGURE 5

## RELATIONSHIP OF LAW CLINIC AVAILABILITY &amp; PARTICIPATION TO TUITION

Independent Variable	Estimate (Std. Error)	<i>p</i> -value
Law Clinic Positions/# 1Ls	-969.77 ( $\pm$ 918.71)	0.29
Sufficient Clinic Capacity	-1505.04 ( $\pm$ 1003.49)	0.14
Law Clinics/Field Placements	-1.46 ( $\pm$ 1.46)	0.32
% Participate Law Clinic	-20.26 ( $\pm$ 24.67)	0.41

The enhanced placement of students in externships likewise shows no relationship to tuition. Schools with a greater percentage of students participating in field placements on average charge around \$650 less in tuition than schools with proportionately fewer of its students in externships, but the relationship is not statistically significant.<sup>180</sup> Similarly, schools with a greater percentage of its students participating in a field placement before graduation charge less than schools with lower percentages, but this estimate also is not statistically significant.<sup>181</sup>

The data do show differences in approaches toward clinical education based on a school's ranking by *U.S. News*.<sup>182</sup> No law school ranked in the top ten mandates or guarantees a clinical education, even though all but three have sufficient capacity to provide every graduating J.D.

180. See *ABA 2013 Standard 509 Information Reports*, *supra* note 141 (comparing the ratios of the “[n]umber of field placement positions filled” to “J.D. Enrollment - First-Year Total” with tuition and fees; *p*-value 0.35).

181. See *id.*; SANTACROCE & KUEHN, *supra* note 106, at 9–11; see also 2010 CSALE SURVEY OF APPLIED LEGAL EDUCATION, *supra* note 179. On average, schools with greater field placement participation charge approximately \$29 less in tuition than schools with lower participation (*p*-value 0.24).

182. Analyzing the relationship between *U.S. News* ranking and clinical legal education does not suggest any endorsement of the validity or importance of the rankings. However, many current discussions of student educational opportunities do reference the rankings. The data is provided herein only to inform those discussions.

student with that experience.<sup>183</sup> Similarly, only one school ranked in the top twenty mandates or guarantees a clinical education, though seventeen have the capacity to do so.<sup>184</sup> By contrast, one-quarter of schools ranked in the bottom quartile (referred to by *U.S. News* as second tier) mandate or guarantee a clinical education for their students.<sup>185</sup>

On the other hand, even though a disproportionate number of schools with lesser rankings in *U.S. News* are requiring or guaranteeing their students a clinical experience, twenty-five percent more schools in the top quartile already offer enough clinical positions to provide every graduating J.D. student with a clinical experience than do schools in the bottom quartile.<sup>186</sup> That is, students in the bottom quartile are offered less opportunity to obtain legal training through a law clinic or externship course than students at schools ranked in the top quartile.

Looking at actual enrollment, as opposed to availability of positions within courses, the CSALE survey of clinical programs indicates that while 43% of students at the top quartile of law schools take a law clinic, only 25% of students at second-tier schools enroll in a clinic.<sup>187</sup> By contrast, participation in field placement courses shows only small differences across *U.S. News* ranking quartiles.

Furthermore, having a highly regarded clinical program is not related to tuition pricing. In addition to annually ranking law schools, *U.S. News* ranks specialty programs, including “clinical training,” based on votes by the director of clinical programs at each law school. Comparing schools ranked best in clinical training by *U.S. News* with schools not ranked shows no significant difference in tuition.<sup>188</sup> Therefore, students at schools with more highly regarded clinical programs are not outwardly paying more for their quality programs.

The lack of any relationship between the availability of or participation in experiential, field placement, or law clinic courses also holds true when examining the ABA Annual Questionnaire data submitted by schools one year earlier in fall 2012. Although the three control variables

---

183. Comparing *U.S. News* ranking of law schools, *supra* note 152 and accompanying text, with listing of schools requiring or guaranteeing a credit-bearing law clinic or externship in Tokarz et al., *supra* note 163, at 45 n.154, 46 n.155.

184. See *supra* note 182 and accompanying text.

185. See *supra* note 182 and accompanying text.

186. Comparing *U.S. News* ranking of law schools, *supra* note 152 and accompanying text, with *supra* note 168 and discussion in accompanying text.

187. See SANTACROCE & KUEHN, *supra* note 106, at 9–11 (including survey results from questions seeking estimate of percentage of students that participate in a law clinic or in a field placement program before graduation). Each school’s CSALE survey responses are on file with the author.

188. See U.S. NEWS, BEST GRADUATE SCHOOLS, *supra* note 152, at 80 (ranking of top 15 clinical training programs). Clinical programs ranked in the top 15 charge approximately \$46 less in tuition and fees, on average, than schools that are not ranked (*p*-value 0.98). The online *U.S. News* edition ranks the top 29 clinical programs and they too do not show a statistically significant relationship with tuition (estimate \$774.52; *p*-value 0.59). See *id.*

of public-private, *U.S. News* law school ranking, and cost of living again were related to the tuition charged in 2012, none of the experiential or clinical variables from 2012 showed any statistically significant relationship to tuition.<sup>189</sup>

Using discounted or net tuition amounts for law schools, rather than the published or list tuition, likewise failed to demonstrate that experiential or clinical courses are related to higher tuition for students. Because of discounting through scholarships and grants, a school's advertised tuition amount does not correspond to the net tuition the school receives. Prior to 2013, the ABA only required schools to report their median grant amount, so reliable calculations of tuition discount rates and the average net tuition paid by students were not possible. However, beginning with the fall 2013, schools must also report their seventy-fifth and twenty-fifth percentile amounts of aid. Using the twenty-fifth, fiftieth, and seventy-fifth percentiles and the percent of full-time students receiving grants, a discount rate, estimated to within around one percent the actual discount rate, and net tuition amount was calculated for each private school.<sup>190</sup>

Using discounted tuition, ten relationships between simulation, law clinic, and externship course availability and discounted tuition were examined.<sup>191</sup> The availability of four types of experiential courses was significantly related to the net tuition a school receives; six types of courses were not. All four course types that were significant showed, surprisingly, an *inverse* relationship with net tuition—as the availability of experiential courses for students increased, average net tuition at private law schools decreased in amounts ranging from \$420 to \$1,915.<sup>192</sup>

---

189. 2014 ABA-LSAC OFFICIAL GUIDE, *supra* note 148 (examining data for each school based on fall 2012 tuition and AY2011-12 courses). The relationship between the ratio of law clinic positions to field placements filled was significant at the 85% confidence level ( $p$ -value 0.14), but only showed an \$11.50 increase in tuition for each 1.0 increase in the ratio.

190. Using each school's grant and scholarship information in *ABA 2013 Standard 509 Information Reports*, *supra* note 141, a weighted median was calculated by summing the 25th, twice the 50th, and the 75th percentiles and dividing by four. A discount rate was then calculated by multiplying the weighted median times the percent of full-time students receiving grants divided by the tuition and fees for academic year 2013–14. Finally, the net tuition amount was calculated by multiplying the difference between 1.0 and the discount rate times the 2013–14 tuition.

To check the validity of the weighted median discount tuition methodology, admissions officers at three private schools compared their actual discount rate with the rate predicted by using the weighted median. Two stated that the estimated discount rate was within 1% of their actual rate; the other said the estimated rate was “pretty close” but would not state a percentage. The weighted median method also was validated by La Verne College of Law's recent announcement that it was no longer going to discount tuition. *See Sloan, supra* note 46 and accompanying text. The school, in turn, reduced its tuition list price by 39.3%; the weighted median model predicts La Verne's discount rate as 39.75%.

191. For discounted tuition data, see *supra* note 190; for simulation, law clinic, and externship course availability data, see *supra* note 141 and accompanying text.

192. An increase in experiential course positions is associated with a \$669.66 decrease in tuition; an increase of 1.0 in the ratio of law clinic to field placement positions is associated with a \$1,359.11 decrease in tuition; and increases in the availability of positions in simulation and field

Although the absence of reported mean grant amounts and reliable information on public law schools cautions against drawing too strong a conclusion from these inverse relationships, they are further evidence that the availability of experiential or clinical courses is not related to what law students are paying in tuition.

#### CONCLUSION

The conclusion of Swords and Walwer's early study of clinical course costs turned out to be accurate—in spite of potentially higher costs for some clinical courses, a school's curriculum can be structured to give every J.D. student a clinical experience without having to charge students more in tuition.<sup>193</sup> The new empirical evidence presented herein demonstrates that 84% of schools already have the capacity to provide each student with clinical training prior to graduation without adding any new law clinic or externship courses or slots within existing courses, yet only 18% require or guarantee that experience. On the issue of tuition pricing, the evidence does not show any relationship between the tuition and fees students are charged and whether their school requires or guarantees every student a clinical experience. In addition, the evidence does not show any relationship between the tuition at schools that already have sufficient capacity to provide a clinical experience to each graduating student and at those that do not have that capacity. Nor do the data show any relationship between tuition and the increased availability of law clinics or increased participation of students in law clinics, or from offering students a highly regarded clinical education program.

Notwithstanding the higher instructional costs of some forms of clinical education, students that are provided more clinical opportunities, or even required or assured of a chance to enroll in what are identified as more costly law clinics, are not charged more in tuition for those enhanced educational opportunities. Stated alternatively, students that receive fewer clinical education opportunities from their schools, or are not offered law clinic training, do not benefit financially from this lost educational opportunity by paying less in tuition and fees. Contrary to what is sometimes claimed, this study, and the examples at a number of schools, show that providing or even requiring clinical training in law school need not cost students more in tuition.

The reasons for the absence of any relationship between the availability of clinical courses and tuition are not discernible in this study, but a number of explanations are possible. If tuition is sensitive to costs, perhaps the instructional costs for clinical courses are not more than, or not significantly more than, the costs for non-clinical courses and, therefore,

---

placement courses are associated with decreases in tuition of \$696.87 and \$1,915.64, respectively. All are significant at the 95% confidence level ( $p$ -value  $<0.05$ ).

193. See Swords & Walwer, *supra* note 108, at 184–86.

are not influencing tuition sufficiently to be captured by the model used herein. The lower salaries of clinical faculty at many schools, clinical faculty workloads that include non-doctrinal courses for which those faculty are not additionally compensated, the use of inexpensive fellows and staff attorneys in some law clinics, and income through grants, attorney fees, and donations can contribute to lower than expected instructional costs for clinical courses at many schools.

It is also possible that although clinical courses do have higher per credit instructional costs, the overall amount of those costs is small in comparison to the many other substantial law school costs identified in Section I. Dean John Kramer's study of legal education expenses found that the relative cost of clinical education was quite low compared to overall law school expenditures and increased at a smaller rate than most other costs.<sup>194</sup> The data reported herein show that public-private status, *U.S. News* ranking, and cost of living explain three-fourths of the variance in tuition between schools. Thus, perhaps even if the enhanced availability of clinical courses may increase instructional costs, clinical courses' small contribution to overall law school expenses do not result in measurable effects on tuition pricing.

Schools alternatively could be incurring higher costs from increased clinical courses but are unable to pass on those added expenses through higher tuition because prospective students do not value those enhanced courses and are unwilling to pay for that educational feature. While under normal rules of price setting law schools would charge higher tuition when providing more expensive clinical courses, it is possible that lack of demand by applicants for those courses restrains schools from passing on those added costs. No published study has examined what students would pay for certain educational services. Numerous surveys do show, however, that applicants value clinical courses and schools heavily promote them in their application materials.<sup>195</sup> Contending that schools do not charge more for the additional costs of clinical courses because students do not sufficiently value them assumes that normal rules of pricing apply to legal education, which is almost exclusively comprised of not-for-profit institutions. Yet, educators and economists warn that "education is an 'industry' in which the normal rules of competition, productivity and price-setting don't apply."<sup>196</sup>

---

194. See *supra* notes 114–17 and accompanying text.

195. See *supra* notes 60–63, 100 and accompanying text.

196. Edward B. Fiske, *How Tuition Costs Are Set: An Education in Itself*, N.Y. TIMES, May 14, 1987, at B13, available at <http://www.nytimes.com/1987/05/14/us/how-tuition-costs-are-set-an-education-in-itself.html?pagewanted=all&src=pm>; see also Daniel L. Bennett, *Competitive Nature*, CAREER COLL. CENT., Nov. 2011, at 32, 32–33, available at <http://www.careercollegcentral.com/magazine/nov2011/index.html> (“[K]ey assumptions of the theory of competition leading to lower prices are violated in the current structure of the higher education marketplace.”).

A final possibility is that law school tuition is not sensitive to costs but largely driven by demand. That is, schools set prices to reflect the prestige of the school and perceived value of the degree to prospective applicants, not based on the cost to provide the educational services.<sup>197</sup> Under this theory, schools allocate expenditures within a defined tuition range that mirrors what their competitors are charging. As one university official explained, “[t]he goal of pricing is to get into a pack. You want to be part of a group, not an aberration.”<sup>198</sup> “Once tuition is set, costs are controlled—or permitted to grow—to match the maximum revenues each institution believes it can get.”<sup>199</sup>

Evidence of this insensitivity of tuition to costs is that no relationship was found in the ABA-reported data between what a law school charges students in tuition and fees and the school’s student/faculty ratio, a surrogate variable for increased instructional costs.<sup>200</sup> In addition, no relationship was found between the amount a school spends on library materials per J.D. student and its tuition.<sup>201</sup>

Higher instructional expenditures for clinical courses therefore may be treated as just one necessary cost of operating a law school, especially with the high student interest in such courses, which schools do not seek to pass on in tuition but instead reallocate existing resources to provide. Schools that offer fewer clinical education opportunities end up spending

---

197. See TAMANAHA, *supra* note 66, at 130 (“Tuition varies in relation to prestige—not costs—because the perceived value of the education affects how much students (and their parents) are willing to pay for it.”). One pricing strategy consultant encouraged nonprofits “to base their pricing on the value of the services they provide rather than on what it costs them to provide their services.” Norah McVeigh, *Setting Prices for Nonprofit Services*, CHRON. PHILANTHROPY (Oct. 29, 2010, 2:50 PM), <http://philanthropy.com/blogs/money-and-mission/setting-prices-for-nonprofit-services/27586> (referencing advice from Rafi Mohammed in a June 2010 *Stanford Social Innovation Review* blog); see also Jacob Gershman, *Tuition Cuts are a Risky Bet for Law Schools*, *Moody’s Warns*, WALL ST. J. L. BLOG (May 7, 2014, 6:45 PM), <http://blogs.wsj.com/law/2014/05/07/tuition-cuts-are-a-risky-bet-for-law-schools-moodys-warns> (observing that despite their desire for greater value, many law students still associate tuition price with the quality of the school); Kathy Kurz & Jim Scannell, *Setting Tuition: Key Factors to Consider: Higher Ed, Like Any Business, Must Listen to the “Voice of the Customer” in Pricing Considerations*, U. BUS., May 2005, at 26, 26, available at <http://www.universitybusiness.com/article/setting-tuition-key-factors-consider> (observing that unlike in the past, universities no longer set price based on what is necessary to balance the budget); Matt Leichter, *Relaxed Accreditation Rules Unlikely to Reduce Law School Tuition*, L. SCH. TUITION BUBBLE (Aug. 20, 2013), <http://lawschooltuitionbubble.wordpress.com/2013/08/20/relaxed-accreditation-rules-unlikely-to-reduce-law-school-tuition> (arguing that reforms that reduce the costs of instruction are unlikely to reduce tuition because “[s]tudents are paying for the law degree’s signaling value—not the marginal cost of learning various legal doctrines”).

198. Fiske, *supra* note 196 (internal quotation marks omitted).

199. Henry E. Riggs, Editorial, *The Price of Perception*, N.Y. TIMES, Apr. 13, 2011, at ED33.

200. See *ABA 2013 Standard 509 Information Reports*, *supra* note 141 (using school specific data on “[s]tudent faculty ratio” and “J.D. Enrollment Total”). Tuition for 2013 slightly increases as the student/faculty ratio rises by 1.0 (estimate \$150.25), the opposite of what would be expected, but the result is not statistically significant (*p*-value 0.42). Reviewing 2012 data, tuition decreased slightly (\$23.71) as the student/faculty ratio rose (*p*-value 0.16).

201. 2014 ABA-LSAC OFFICIAL GUIDE, *supra* note 148 (using school specific data on “[t]otal amount spent on library materials” and “JD Enrollment - Total”). There is the smallest increase in tuition as library materials expenditures per student rise (estimate \$0.24), but the relationship is not statistically significant (*p*-value 0.66).

any resulting costs savings on other budget categories and do not pass on those savings to their students.

Of course some of each theory could be occurring. Clinical courses may not be as expensive as often thought and may constitute a relatively small part of the law school expenditures that influence tuition. At the same time, price setting among similarly situated schools reduces the influence of costs on tuition so schools generally choose to reallocate resources when confronted with higher clinical course costs. Whatever the reasons, contrary to popular belief, enhanced clinical courses, even if more costly to schools, are not a measurable factor in what students are charged in tuition.

Although the costs of instruction are part of any curriculum design, these empirical data support the argument that the costs of clinical courses do not justify the failure of law schools to provide students with more clinical training. Rather, the debate over law school curricula and costs, including discussions about where cuts might be made to reduce expenditures, should focus on the value of certain educational programs, what students need to learn in school to begin the practice of law, and how best it can be taught. If the focus is kept on students and what they should obtain from their professional education and their tuition payments, available resources can be allocated to provide a clinical experience for every student without raising tuition. If the will is truly there among law schools and the legal profession to refocus the curriculum of legal education to provide students with more practice-based, clinical coursework, the price of clinical legal education will not impede schools from providing that training for all of its graduates.

## APPENDIX A

**Practice-Based and Clinical Education Requirements for Professional Schools**

<b>Law</b>	<b>Medical</b>	<b>Veterinary</b>	<b>Pharmacy</b>
6 credits in experiential courses; no clinical requirement <sup>202</sup>	2 of 4 years of clinical practica or clerkships <sup>203</sup>	Minimum 1 of 4 years in clinical settings <sup>204</sup>	300 hours in first 3 years & 1,440 hours (36 weeks) in last year in clinical settings <sup>205</sup>
<b>1/14</b> of total education	<b>1/2</b> of total education	<b>1/4+</b> of total education	<b>1/4+</b> of total education
<b>Dentistry</b>	<b>Social Work</b>	<b>Architecture</b>	<b>Nursing</b>
57% of education in actual patient care <sup>206</sup>	900 hours (18 of 60 required credits) in field education courses <sup>207</sup>	50 of 160 credits in studio courses (nat'l licensing board's calculation of minimum needed for licensure) <sup>208</sup>	Varies by state, e.g., California: 18 of 58 credits in clinical practice; Texas: 3 to 1 ratio of clinical to classroom hours <sup>209</sup>
<b>1/2+</b> of total education	<b>1/3</b> of total education	<b>1/3</b> of total education	<b>1/3+</b> of total education

202. ABA ACCREDITATION STANDARDS, *supra* note 1, at Standards 303(a)(3), (b)(1). This does not include the required first-year writing experience, which may be as few as two credits, or upper-class writing experience, which is not required to be and generally is not a practice-based course.

203. MOLLY COOKE ET AL., EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY 21 (2010).

204. AM. VETERINARY MED. ASS'N, ACCREDITATION POLICIES AND PROCEDURES OF THE AVMA COUNCIL ON EDUCATION § 7.9, Standard 9 (2012).

205. ACCREDITATION COUNCIL FOR PHARMACY EDUC., ACCREDITATION STANDARDS AND GUIDELINES FOR THE PROFESSIONAL PROGRAM IN PHARMACY LEADING TO THE DOCTOR OF PHARMACY DEGREE, at Guidelines 14.4, 14.6 (2011).

206. COMM'N ON DENTAL ACCREDITATION, AM. DENTISTRY ASS'N, ACCREDITATION STANDARDS FOR DENTAL EDUCATION PROGRAMS, at Standards 2-8, 2-23 (2010); *see also* TASK FORCE ON LAW, THE ECONOMY, AND UNDEREMPLOYMENT, *supra* note 81, at 4.

207. COUNCIL ON SOCIAL WORK EDUC., EDUCATION POLICY AND ACCREDITATION STANDARDS, at Educ. Policy 2.3, Accreditation Standard 2.1.3 (2012).

208. NAT'L COUNCIL OF ARCHITECTURAL REGISTRATION BDS., NCARB EDUCATION STANDARD 24 (2012) ("The *NCARB Education Standard* is the approximation of the requirements of a professional degree from a NAAB-accredited degree program.").

209. CAL. CODE REGS. tit. 16, § 1426(c) (2013); 22 TEX. ADMIN. CODE § 215.9(c) (2013).