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Universal Clinic Legal Education: Necessary and Feasible

Robert R. Kuehn*

INTRODUCTION

It is hard to imagine a well-regarded professional school, much less one recognized by the U.S. Department of Education as worthy of taxpayer-subsidized student loans, where students are only vaguely offered “opportunities” to learn the skills necessary to later serve a patient or client competently. There is no lack of such clinical training at medical and dental schools, where students are required to spend half their education in clinical practica; in social work, architecture, or nursing schools mandating one-third of a student’s training in clinical or studio settings; or in veterinary, pharmacy, or clinical psychology schools where at least one-quarter of a student’s educational time must be in clinical practice.¹

Also, it is difficult to understand how an authority charged with protecting the public could then fully license graduates of these professional schools without any mandatory post-graduate apprenticeship or supervised on-the-job training to acquire or further develop these necessary skills. Professions such as medicine, psychology, architecture, engineering, and pharmacy require some

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1. Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. 1, App. A (2014) (documenting clinical requirements for various professional schools); Memorandum from Richard K. Neumann, Jr., Prof. of Law, Hofstra Univ., to Council of the ABA Section of Legal Educ. and Admissions to the Bar 18–22 (Jan. 31, 2014), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/201401_comment_ch_3_richard_k_neumann_jr.authcheckdam.pdf (detailing pre-licensure practice requirements for various professions).

period of post-graduation, pre-licensure supervised skills experience, typically of at least one year.²

It is further hard to imagine a professional licensing exam that is not intended to determine if the applicant is ready to work in the profession and relegates the testing of the skills necessary for successful practice to just 20% of the exam. Medical, architecture, dentistry, and veterinary licensing exams devote large percentages of time (up to 93%) to simulations and other formats intended to put the examinee in situations that mimic actual practice.³

However, legal education and admission to the bar in the United States lacks a mandated clinical experience in law school, has no requirement for post-graduation/pre-licensing apprenticeships, and relies on a licensing exam that does not seek to determine practice readiness and is unrelated to the profession's most common job tasks. The American Bar Association's Section of Legal Education and Admission to the Bar (ABA), as the recognized national agency for the accreditation of schools offering Juris Doctor degrees, simply requires a school to provide "substantial opportunities" for its students to participate in law clinics or field placements (what are termed "clinical" courses) where they gain lawyering experiences from advising or representing clients.⁴ According to ABA data, this permissive standard has allowed five accredited schools to provide their students with no opportunities to enroll in any law clinic and one school to provide positions in clinic and externship courses for only 10% of its students.⁵

Moreover, "[i]n virtually every country except the United States, graduates from law schools are not allowed to practice law until they

2. Neumann, *supra* note 1, at 5; see also Yoonsuk Choo et al., *Admission to the Bar: A Cross-Jurisdictional and Cross-Professional Survey* 19–21 (2011) (unpublished manuscript on file with author).

3. Neumann, *supra* note 1, at 5.

4. AM BAR ASS'N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 303(b)(1) (2015–16), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_aba_standards_for_approval_of_law_schools_final_authcheckdam.pdf.

5. AM BAR ASS'N, 2015 STANDARD 509 INFORMATION REPORTS AND COMPILATION—ALL SCHOOLS DATA, <http://www.abarequireddisclosures.org> (data on law school enrollment, number of seats available in law clinics, and number of field placement positions filled).

complete a period of supervised practice with a lawyer or a judge.”⁶ Yet, a post-graduation apprenticeship is only required for admission to the legal profession by two states and only for a period of a few months.⁷ Even the quasi-apprenticeships that a limited number of graduates used to attain in law firms are shrinking, as clients grow increasingly reluctant to pay the billing time of inexperienced associates and partners—with increased need for their own billing—reduce their mentoring of young attorneys.⁸

Furthermore, bar examiners disavow their licensing examination as a test to determine if a graduate is ready to represent a client: “The examination is not designed to predict success as a lawyer or even that a lawyer is ready for the practice of law.”⁹ The exam remains overwhelmingly focused on re-testing material taught in first-year doctrinal law courses to the exclusion of professional skills, even though the examiners’ own study indicates that newly-licensed lawyers rate twenty-five different skills or abilities as more significant to their performance than the highest-rated knowledge domain.¹⁰

6. Roy T. Stuckey, *Preparing Students to Practice Law: A Global Problem in Need of Global Solutions*, 43 S. TEXAS L. REV. 649, 659 (2002). These periods of supervised practice are then “commonly followed by a bar examination on the substantive and procedural law before students can be fully licensed.” *Id.* at 659–60.

7. NAT’L CONFERENCE OF BAR EXAMINERS & AM. BAR ASS’N, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 18 (2016), http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/ComprehensiveGuidetoBarAdmissions/2016_comp_guide.athcheckdam.pdf (noting Delaware’s five-month and Vermont’s three-month clerkship requirements).

8. See NAT’L ASSN. OF LEGAL CAREER PROF., THE STORIES BEHIND THE NUMBERS: JOBS FOR NEW GRADS OVER MORE THAN TWO DECADES (Dec. 2016), <http://www.nalp.org/uploads/NatlSummaryClassof2015.pdf> (reporting declining employment by law firms and less than 16% of law graduates start their careers in firms of more than 100 lawyers); Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 605–06 (2010); David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES (Nov. 19, 2011), <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html> (reporting that “a survey by *American Lawyer* found that forty-seven 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.’”).

9. Memorandum from Gayle Murphy, Senior Director, Admissions, Cal. State Bar, to Comm. of Bar Examiners, Cal. State Bar, at 3 (March 11, 2015), <http://apps.calbar.ca.gov/cbe/docs/agendaitem/Public/agendaitem1000000878.pdf>.

10. See Susan M. Case, *The NCBE Job Analysis, A Study of the Newly Licensed Lawyer*, BAR EXAMINER, Mar. 2013, at 52 (reporting results of a National Conference of Bar Examiners study of the job activities of lawyers in practice from one to three years).

Although some still challenge the need for law students to learn anything other than how to “think like a lawyer,” most legal educators and lawyers agree that students also need to obtain training in professional skills while in law school (i.e., “do like a lawyer”) and that clinical education is the best vehicle for that training. Yet, some question the feasibility, particularly the cost, of ensuring that every student graduates with a clinical experience.¹¹

This Essay seeks to rebut those questions. First, it summarizes the numerous reports and studies showing the need for clinical training for law students. It then demonstrates empirically that a mandated clinical experience for all students is both not costly to obtain and feasible to immediately implement. The Essay concludes that legal education’s failure to join other professions in ensuring that entrants into its profession have training while in law school in the handling of actual clients and cases can no longer be justified as too costly or too difficult to implement.

II. THE NEED FOR UNIVERSAL CLINICAL EDUCATION

Decades of reports have chronicled the failure of legal education to adequately prepare graduates for the practice of law and have called for increased training for students. A 1979 ABA report on lawyer competency noted the unpreparedness of recent graduates for practice and recommended that law schools devote more time to providing professional experiences.¹² A few years later, the ABA’s Task Force on Professional Competence repeated this concern and recommended that the ABA make enhanced law school training in lawyering skills a top priority.¹³ The highly-regarded 1992 ABA “MacCrate Report” extolled the importance of providing students with practice-oriented instruction in law clinics and externships.¹⁴

11. See *infra* notes 29–30 and accompanying text.

12. SECTION OF LEGAL EDUC. & 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).

13. AM. BAR ASS’N, FINAL REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON PROFESSIONAL COMPETENCE 11 (1983).

14. See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: REPORT OF

Most recently, the ABA's 2014 Task Force on the Future of Legal Education reported 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."¹⁵ It called for legal education to shift from doctrinal instruction toward more focused preparation for delivering legal services to clients. Heeding these repeated calls, the ABA's Young Lawyers Division passed a unanimous resolution 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, explaining that "a J.D. degree alone does not make a lawyer."¹⁶

Outside the ABA, the Carnegie Foundation issued an extensive report in 2007 stressing the need for students to engage in an "apprenticeship of practice" while in law school and contrasting legal education's minimal training with that provided in other professions.¹⁷ The report highlighted the crucial role of practice experience in the development of professional expertise: "Decades 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."¹⁸ The need for supervised practice experiences was echoed that same year by the Best Practices for Legal Education report: "In the United States, it is only in the in-house clinics and some externships where students'

THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 234–35, 259–60, 328 (1992).

15. TASK FORCE ON THE FUTURE OF LEGAL EDUC., AM. BAR ASS'N, REPORT AND RECOMMENDATIONS 26 (2014).

16. YOUNG LAWYERS DIV., AM. BAR ASS'N, 2013 ANNUAL MEETING ASSEMBLY RECAP, http://www.americanbar.org/groups/young_lawyers/about_us/assembly/2013_annual_meeting_assembly_recap.html (last visited November 18, 2016); *see also* YOUNG LAWYERS DIV., AM. BAR ASS'N, 2013 ANNUAL MEETING AGENDA 47 (AUG. 8, 2013), http://www.americanbar.org/content/dam/aba/administrative/young_lawyers/aba_yld_council_agenda_final.authcheckdam.pdf.

17. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 99 (2007).

18. *Id.* at 119–20.

decisions and actions can have real consequences and where students' values and practical wisdom can be tested and shaped before they begin law practice."¹⁹

State bar reports also note the need for more practice-based training in law school and urge regulators and schools to take action. An Ohio State Bar Association task force on legal education reform called for the adoption of 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.²⁰ A Massachusetts Bar Association report focusing on the problem of underemployment among recent law graduates called on schools to increase practical training options for third-year students and recommended schools expand law clinics and similar offerings “to ensure that a slot exists for every student who wishes one.”²¹

Multiple studies of lawyers indicate the need for hands-on professional skills education in law school. In a survey of hiring partners and law firm associates, 95% believe that recently graduated students lack key practical skills at the time of hiring but that those skills could be effectively honed through law clinics and externships.²² In the After the J.D. study of lawyers two to three years out of school, law clinics were rated the most helpful law school experience in successfully transitioning to practice trailing only prior legal employment.²³ Legal writing and internships followed clinics,

19. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 114 (2007).

20. TASK FORCE ON LEGAL EDUC. REFORM, OHIO STATE BAR ASS'N, REPORT 4 (2009), https://www.ohiobar.org/General%20Resources/pubs/OSBA_Legal_Education_Task_Force_Report.pdf.

21. TASK FORCE ON LAW, THE ECONOMY & UNDEREMPLOYMENT, MASS. BAR ASS'N, REPORT 7 (2012), <http://www.massbar.org/media/1246788/beginning%20the%20conversation.pdf>.

22. LEXISNEXIS, *Hiring Partners Reveal New Attorney Readiness for Real World Practice* (2015), https://www.lexisnexis.com/documents/pdf/20150325064926_large.pdf. In an earlier study, 90% of corporate counsel and private practice attorneys and 65% of students said that law school fails to teach the practical business skills needed for practice. LEXISNEXIS, *State of the Legal Industry Survey* (2009), http://www.lexisnexis.com/document/state_of_the_legal_industry_survey_findings.pdf.

23. NALP FOUND. FOR LAW CAREER RESEARCH & EDUC. & AM. BAR FOUND., AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 81 (2004).

and all rated ahead of the doctrinal courses that dominate legal education.²⁴ Lawyers in two later studies by the National Association of Legal Career Professionals rated the usefulness of law school experiential learning opportunities in preparing them for practice. Lawyers in nonprofit and government positions rated clinical courses with extremely high marks; out of maximum score of 4.0, law clinics received 3.8 and externships/field placements 3.6.²⁵ Associates in large law firms rated both clinical experiences slightly lower, but still ahead of simulation courses.²⁶

Judges and law students also agree on the need for clinical training. In a survey asking what change would most benefit law schools, judges of all levels (federal and state, appellate and trial) rated more coursework on practice-oriented skills the highest.²⁷ Expansion of the core curriculum lagged far behind, especially among federal trial judges and state trial and appellate judges. Similarly, 87% of recent law graduates agreed that legal education needs “to undergo significant changes to better prepare future attorneys for the changing employment landscape and legal profession,” with 97% favoring a “law school model that incorporates clinical experience” in the third year.²⁸

24. “[N]ew lawyers 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.” Rebecca Sandefur & Jeffrey Selbin, *The Clinic Effect*, 16 CLINICAL L. REV. 57, 88 (2009). “Between groups of schools [based on *U.S. News* rank], there were no statistically significant differences in ratings: clinical education was rated highly, and it was rated highly across the board.” *Id.* at 89.

25. NALP & NALP FOUND., 2011 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS: RESPONSES FROM GOVERNMENT AND NONPROFIT LAWYERS 26, 27 (2012).

26. NALP & NALP FOUND., 2010 SURVEY OF LAW SCHOOL EXPERIENTIAL LEARNING OPPORTUNITIES AND BENEFITS 27 (2011).

27. Richard A. Posner & Albert H. Yoon, *What Judges Think of the Quality of Legal Representation*, 63 STANFORD L. REV. 317, 339 (2011).

28. 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), <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>.

III. THE FEASIBILITY OF UNIVERSAL CLINICAL LEGAL EDUCATION

While lawyers and judges broadly agree on the need for more practical training for law students, the ABA and most law schools, including their deans through the American Association of Law Schools have resisted efforts to significantly increase practice-based training that would include a requirement that each student be provided a law clinic or externship experience. Typical of the arguments against such a mandate is the claim by a group of Yale professors that it “will impose large costs on law schools, costs that would have to be passed on to students. . . . Even a law school with significant financial resources could not afford such an undertaking.”²⁹ This infeasibility claim was seconded by the dean of the University of Virginia who claimed that additional training “would be punishingly expensive and would necessarily drive up tuition.”³⁰

As a factual matter, these hyperbolic claims of infeasibility are unfounded. Empirical evidence shows that clinical education can be provided to all law students without additional costs to those students. In fact, many schools have been successfully—and economically—providing such clinical experiences to all their students for years.

The City University of New York requires that each J.D. student take a twelve-to-sixteen credit law clinic or externship prior to graduation,³¹ yet tuition even for non-residents is only \$23,983, the

29. Letter from Yale Law School Sterling Professors, to Chief Judge Oliver, Mr. Currier, and Council Members, Am. Bar Ass’n Section of Legal Educ. & Admissions to the Bar (Jan. 29, 2014), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/201401_comment_std_303a3_sterling_professors_yale_law_school.authcheckdam.pdf.

30. Letter from Paul G. Mahoney, Dean, Univ. of Va. School of Law, to the Honorable Solomon Oliver, Jr., Chief Judge, United States District Court for the Northern District of Cal., and Barry A. Currier, ABA Section of Legal Educ. and Admissions to the Bar (Jan. 30, 2014), 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.authcheckdam.pdf.

31. *Curriculum & Course Descriptions*, CUNY SCH. L., <http://www.law.cuny.edu/academics/courses/curriculum.html> (last visited Sept. 29, 2016).

third lowest law school tuition in the United States.³² The University of the District of Columbia similarly requires students to enroll in a seven-credit clinic in their second year and a second seven-credit clinic in their third year.³³ The university's non-resident tuition is \$22,402, the lowest law school tuition outside Puerto Rico.³⁴

Washington and Lee revised its third-year curriculum in 2008 to require twenty academic credits in simulated or real-practice experiences that include at least one law clinic or externship.³⁵ Although this required a doubling of positions available to students in law clinics within three years, the school found that “the new curriculum is not more expensive to run than the prior third year curriculum, nor the current first or second year curricula (indeed, it is less expensive).”³⁶

Thirty-four additional law schools now require each J.D. student to successfully complete a legal clinic or externship prior to graduation; another nineteen guarantee each student the opportunity to take a clinic or externship if the student wishes.³⁷ When the 2015 tuition of the thirty-seven schools that mandate a clinical experience for their students is compared with the tuition charged by the remaining ABA accredited law schools, there is *no* statistically significant difference between the two groups.³⁸ Likewise, there is *no*

32. Data on tuition is from *ABA 2015 Standard 509 Information Reports and Compilation-All Schools Data*, <http://www.abarequireddisclosures.org> (last visited Sept. 29, 2016).

33. *Curriculum: Full-time J.D. Program*, UDC/DCSL, <http://www.law.udc.edu/?page=FullTimeCurriculum> (last visited Sept. 29, 2016).

34. *See supra* note 32.

35. *Second and Third Year*, WASH. & LEE U. SCH. L., <https://law.wlu.edu/about-wandl-law/curriculum/second-and-third-year> (last visited Sept. 29, 2016) (students now are required to take eighteen experiential credits over the second and third years).

36. Email from James Moliterno, Professor, Washington & Lee School of Law, to Jon Streeter, Chair, Task Force on Admission Regulation Reform, California State Bar (May 30, 2013) (on file with author).

37. Robert R. Kuehn, *Required or Guaranteed Clinical Experience* (May 2016) (identifying law schools that have adopted a clinical requirement or guarantee as of the end of the 2015–16 academic year) (on file with author).

38. Public/private status, *U.S. News* law school ranking, and the cost of living in the school's location have a statistically significant relationship with the tuition schools charge. Kuehn, *supra* note 1, at 29. When those variables are controlled, regression analysis shows that schools with a clinical experience mandate charge, on average, \$492 more in tuition than those without a requirement, but the difference is not statistically significant (p -value = 0.70).

statistically significant difference between the tuition charged by the nineteen schools that guarantee a clinical experience and those that do not.³⁹ In addition, there is *no* statistically significant difference in the tuition charged by the fifty-six schools that mandate *or* guarantee a clinical experience to their students with the schools that do not.⁴⁰ Thus, students denied the opportunity to take a law clinic or externship as part of their legal education do not benefit financially from this lost opportunity by paying less in tuition.

There also is no evidence that schools adopting a requirement or guarantee subsequently raise their tuition at a rate higher than the average for comparable schools that do not incur the expected costs of implementing the new training. Between Washington & Lee's adoption of its new eighteen-credit skills and clinical experience requirement and the second year of its implementation, its tuition increased at approximately the same rate as the median increase for all private law schools over the same period, even with the doubling of positions for students in law clinics.⁴¹

Similarly, the tuition patterns of the twenty-five schools that adopted a clinical requirement or guarantee between 2010 and 2014 show no evidence that these schools raised their tuition as a result of the new educational opportunities. ABA accredited law schools on average raised their tuition 19.7% between 2010 and 2015. In contrast, the twenty-five schools with a new clinical experience requirement or guarantee only raised tuition an average of 16.6%.⁴²

39. Schools that guarantee a clinical opportunity charge, on average, \$316 more in tuition than those that have not adopted a guarantee or requirement, but the difference is not statistically significant (p -value = 0.85).

40. Schools requiring or providing a clinical experience to all students charge, on average, \$499 more in tuition, but the difference is not statistically significant (p = 0.64). Substituting a discounted tuition estimate for the tuition amount reported to the ABA did not change the results—there were no statistically significant differences in the discount tuition charged between private schools requiring or guaranteeing a clinical experience and those that did not. See Kuehn, *supra* note 1, at 38 (explaining how discount tuition was estimated and finding that using the discounted tuition amount instead of the school's reported tuition tended to showed *inverse* relationships between the increased availability of experiential courses and the discount tuition amount).

41. Kuehn, *supra* note 1, at 27 n.150.

42. ABA 2015 Standard 509 Information Reports and Compilation - All Schools Data, AM. BAR ASS'N., <http://www.abarequireddisclosures.org> (last visited Sept. 29, 2016) (reporting 2015 tuition but excluding University of Massachusetts because it was not ABA accredited until after 2010); see also ABA 2010 509 Information Reports, LSAC, <http://www.lsac.org/>

This accords with earlier analysis finding that schools offering their students more law clinic and externship opportunities (measured by the ratio of positions in clinics and field placements to number of students) on average charged *less* in tuition in 2013 than schools offering fewer clinical positions, though the relationship was not statistically significant.⁴³ Even focusing solely on law clinics and their lower student/teacher ratios, there was *no* statistically significant difference between the tuition charged by schools where clinics are more available to students and the tuition charged by schools providing fewer law clinic opportunities.⁴⁴ Comparing the availability of law clinic and externship positions to tuition discounted through scholarships and grants (i.e., net tuition) likewise did *not* show that increased opportunities for students is statistically related to increased tuition.⁴⁵

Subsequent analysis of course and tuition data over the five-year period from 2011 to 2015 also refutes the claim that enhanced clinical opportunities will drive up tuition. For each of the years, the relationship between clinical course availability and tuition (either as reported or as discounted) was found either to *not* be statistically significant or to be *inversely* related.⁴⁶ That is, for four of the sixteen statistical comparisons, schools that provided more clinical opportunities charged *less* tuition than schools offering fewer opportunities; for the other twelve, the difference was *not* statistically significant.⁴⁷

In addition to being financially feasible, the overwhelming majority of schools could provide a clinical experience today for every J.D. student without the necessity of adding *any* additional faculty, clinic or externship, or position in existing clinical courses.

lsacresources/publications/official-guide-archives (last visited Jan. 2, 2017) (showing the median tuition increase for the twenty-five schools also was lower than the median increase for all law schools—18.9% vs. 19.6%).

43. Kuehn, *supra* note 1, at 34 and n.174. Controlling again for public/private status, *U.S. News* ranking, and cost of living variables, schools offering students more clinical opportunities charged \$702 less in tuition (p -value=0.18).

44. *Id.* at 35–36.

45. *Id.* at 38.

46. Robert Kuehn, *Relationship of Experiential & Clinical Courses to Law School Tuition* (Jan. 2016), <http://law.wustl.edu/ClinicalEd/documents/Kuehn-regressionsclinicalcourses.pdf>.

47. *Id.*

Based on 2015 data certified to the ABA as accurate,⁴⁸ 171 schools (84%) reported they had enough existing capacity in their clinical courses to have provided every 2015 graduate with a law clinic or externship experience, yet only 56 schools (27%) presently require or guarantee that training.⁴⁹ As another 9 schools have existing capacity for over 90% of its graduating students, 180 of 204 law schools could provide clinical training today for all of its students with no, or very minimal, additional resources.⁵⁰

The 171 schools with existing clinical course capacity for all graduating students charge *less* in tuition, on average, than schools that do not have sufficient available slots, though the difference is not statistically significant.⁵¹ Therefore, the thirty-three schools that would need to add additional positions in law clinic or externship courses to provide a clinical experience to all their students need not raise tuition to provide this opportunity.

CONCLUSION

The failure of a legal education to ensure that each graduate has clinical training prior to graduation can no longer be justified, if it ever could have, on the basis of cost or feasibility. Data repeatedly shows that every school can afford to provide a law clinic or externship course experience to all its students and to do so within the typical three-year period the ABA allows for schools to implement other curricular requirements.

48. The ABA requires each school's dean 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.

ABA Questionnaires - Annual Questionnaire, AM. BAR ASS'N., http://www.americanbar.org/groups/legal_education/resources/questionnaire.html (last visited Oct. 11, 2016).

49. *ABA 2015 Standard 509 Information Reports and Compilation*, *supra* note 42 (identifying schools where the sum of the "# of seats available in law clinics" plus "# of field place positions filed" divided by "J.D. Enrollment - First-Year Total" is 1.0 or greater).

50. *Id.*

51. Schools with sufficient clinical positions for all 2015 graduating J.D. students charge \$62 less in tuition (*p*-value=0.96). *Id.*

Instead, the failure lies with those who oversee legal education and bar admission. In 2013, the Clinical Legal Education Association (CLEA) petitioned the ABA Section of Legal Education and Admission to the Bar to amend its accreditation standards to require that every student graduate with a law clinic or externship experience.⁵² The petition included data showing such a requirement was financially feasible. Law school deans, whose interests are alleged to dominate the ABA section,⁵³ objected strongly. In response, the ABA failed to act on the petition's request, providing no explanation for its inaction.⁵⁴

The Ohio Supreme Court, responding to a bar report calling for the adoption of a requirement that a student complete a law clinic or externship prior to taking the bar examination, asked the state's law school deans to explore how such a rule might be implemented.⁵⁵ The deans did not respond with suggestions on how a clinical requirement could be implemented but instead with a statement of their opposition and descriptions of existing experiential activities at their schools.⁵⁶ Though presented with information that eight of the state's nine schools already had the capacity to provide each of its graduates with a law clinic or externship experience,⁵⁷ the court has not moved forward with a clinical requirement.

52. CLINICAL LEGAL EDUC. ASS'N, COMMENT ON DRAFT STANDARD 303(A)(3) & PROPOSAL FOR AMENDMENT TO EXISTING STANDARD 302(A)(4) TO REQUIRE 15 CREDITS IN EXPERIENTIAL COURSES (July 2013), <http://www.cleaweb.org/advocacy>.

53. John S. Elson, *The Governmental Maintenance of the Privileges of Legal Academia: A Case Study in Classic-Rent Seeking and a Challenge to Our Democratic Ideology*, 15 ST. JOHNS J. OF LEGAL COMMENT 269, 282 (2001).

54. CLINICAL LEGAL EDUC. ASS'N., COMMENT OF CLINICAL LEGAL EDUCATION ASSOCIATION ON PROPOSED STANDARD 303 (Jan. 30, 2014), http://www.americanbar.org/groups/legal_education/resources/notice_and_comment/notice_comment_archive.html; Memorandum from Solomon Oliver, Jr., Chief Judge, United States District Court for the Northern District of Cal., and Barry A. Currier, Am. Bar Ass'n Section of Legal Educ. & Admissions to the Bar, to Interested Persons and Entities 11 (Dec. 13, 2013) (providing alternate proposal on Standard 303 that does not include a requirement for a law clinic or externship experience).

55. Letter from Maureen O'Connor, Chief Justice, Supreme Court of Ohio, to Patrick F. Fischer, Ohio State Bar Ass'n (Sept. 26, 2012) (on file with author).

56. See Email from Craig M. Boise to Author (Mar. 31, 2014, 10:27 EST) (on file with author) (attaching section of report from Ohio Deans Task Force titled "Experiential Learning").

57. Letter from Author to Maureen O'Connor, Chief Justice, Supreme Ct. of Ohio, and Patrick F. Fischer, Ohio State Bar Ass'n (Aug. 17, 2013) (on file with author). The one

In 2015, the New York Court of Appeals observed that students have insufficient opportunities in law school to receive necessary training in practical legal skills, and appointed a task force to study whether the court should require a skills requirement for admission to the bar.⁵⁸ During the public comment period, CLEA proposed that the court adopt a clinical training requirement for all J.D. applicants to the bar.⁵⁹ It provided evidence that 92% of the schools with 10% or more of its graduates taking the New York exam had sufficient capacity to provide a clinical experience to every student before graduation; the remaining schools easily had the capacity to provide that experience for each student wishing to sit for the New York bar.⁶⁰ The AALS Deans Steering Committee, however, objected to any new requirement,⁶¹ and the task force acquiesced. Its lengthy report recommended schools simply “certify” that its students have met existing ABA requirements and offered no reason for failing to require a clinical experience.⁶²

Efforts by the State Bar of California to require fifteen-units of competency training prior to bar admission also has been delayed by objections from the AALS Deans Steering Committee and a proposal by a new executive director, a former law dean, to simply adopt the current ABA requirements.⁶³

remaining school had 94% of the necessary capacity to implement a clinical requirement. *Id.*

58. See TASK FORCE ON EXPERIENTIAL LEARNING & ADMISSION TO THE BAR, REPORT TO CHIEF JUDGE LIPPMAN AND THE NEW YORK COURT OF APPEALS 1 (Nov. 2015), www.nycourts.gov/publications/pdfs/Experiential-Learning-Admiss2Bar-Report122015.pdf.

59. CLINICAL LEGAL EDUC. ASS'N, COMMENT ON BAR ADMISSION SKILLS COMPETENCY PROPOSAL OF NEW YORK COURT OF APPEALS TASK FORCE ON EXPERIENTIAL LEARNING AND ADMISSION TO THE BAR (Nov. 9, 2015), www.nycourts.gov/rules/Part520-Public-Comments-Received-FINAL.pdf.

60. *Id.* at 5.

61. Letter from AALS Deans Steering Comm., to Judges of the New York Court of Appeals (Nov. 9, 2015), www.nycourts.gov/rules/Part520-Public-Comments-Received-FINAL.pdf.

62. *Supra* note 58, at 5.

63. See STATEMENT BY THE AALS DEANS STEERING COMM. ON THE CALIFORNIA TASK FORCE ON ADMISSIONS REGULATION RECOMMENDATIONS (TFARR) (July 15, 2015), <http://www.aals.org/tfarr-statement>; Memorandum from Elizabeth R. Parker, Exec. Dir., State Bar of California, to Members, Admissions and Educ. Committee 2–3 (July 18, 2016), <https://board.calbar.ca.gov/Agenda.aspx?id=11261&tid=0&show=100011216> (explaining changes to reflect comments from deans).

With this data overwhelmingly showing that clinical courses do not in fact increase tuition, why do deans oppose clinical requirements on the grounds that they are too costly? The short answer is that tuition revenues are used to fund various expenditures—classroom teaching, faculty research, administrative costs, etc.—and the imposition of a clinical requirement means that a certain amount of money used to fund legal research by faculty and other favored expenses would be allocated instead to support clinics and externships. When deans complain that clinics are too expensive, what they do not acknowledge is that faculty scholarship and required seminars also are very costly. The simple truth is that legal academics prioritize their own research and teaching interests above clinical opportunities for their students.

These failed efforts in the face of data showing need and feasibility also show the inordinate influence of legal academics in determining what professional skills training graduates should be required to obtain before beginning the practice of law. This acquiescence by regulators to the interests of academics is hard to understand, given how removed most law deans and professors are from the practice of law.⁶⁴ There is no justification for paying more heed to non-practicing academics than to the numerous studies by the ABA and state bars and surveys of judges, lawyers, and recent graduates showing the compelling need for more hands-on training of law students.

But if regulators continue allowing those who have a vested interest in the status quo and do not practice to determine what skills training should be required to enter the profession, then it is not hard to understand why a requirement for a clinical experience continues to be rejected and, as a consequence, why so many find today's law graduates ill-prepared for the practice of law.

64. See Lynn M. LoPucki, *Dawn of the Discipline-Based Law Faculty*, 65 J. LEGAL EDUC. 506, 508–10 (2016) (noting the increasingly high portion of law faculty who have foregone training in clerkships and law firms, especially among higher-ranked schools).