

The Costs and Value of Clinical Legal Education: A Data Driven Assessment

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Washington University in St. Louis

(Law Clinic Directors Workshop, May 4, 2015)

Is the cost of expanding or requiring clinical or experiential experiences prohibitive?

“Requiring all law schools to provide 15 experiential credit hours to each student **will impose large costs on law schools, costs that would have to be passed on to students.**

In-house clinics, simulations courses, and properly supervised externships are all resource-intensive and therefore substantially more expensive compared to other law courses. . . . **Even a law school with significant financial resources could not afford such an undertaking.”**

-Yale Law School Sterling Professors (Jan. 2014)

Washington and Lee

- **20 credits in 3rd year experiential courses including at least one law clinic or externship**
- **“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.”**

**Professor James Moliterno
Washington & Lee School of Law**

W&L Increase in Positions in Experiential Courses

Academic Year	Simulations	Law Clinics	Field Placements	Total
2007/08	333	47	69	449
2008/09	431	68	59	558
2009/10	464	52	100	591
2010/11	402	45	98	545
2011/12	544	96	129	769
2007/08 – 2011/12	↑63%	↑104%	↑87%	↑71%

Tuition increase 2007/08-2011/12:

- W&L: 29%
- Private Law School Median: 27%

The Relationship of Experiential Legal Education to Tuition – Data

Tuition, size of 1L J.D. class, and experiential course enrollment: *ABA 2014 Standard 509 Information Reports*

Law school and clinical training ranking: *U.S. NEWS, BEST GRADUATE SCHOOLS (2015)*

Participation rates in law clinics and field placements: Center for the Study of Applied Legal Education (CSALE) (2013-14 survey)

Cost of Living: Census Bureau, *Statistical Abstract of the United States (2012)*

Pricing Clinical Legal Education,
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2318042
(92 DENVER LAW REVIEW 1 (2014))

Significantly Related to Tuition

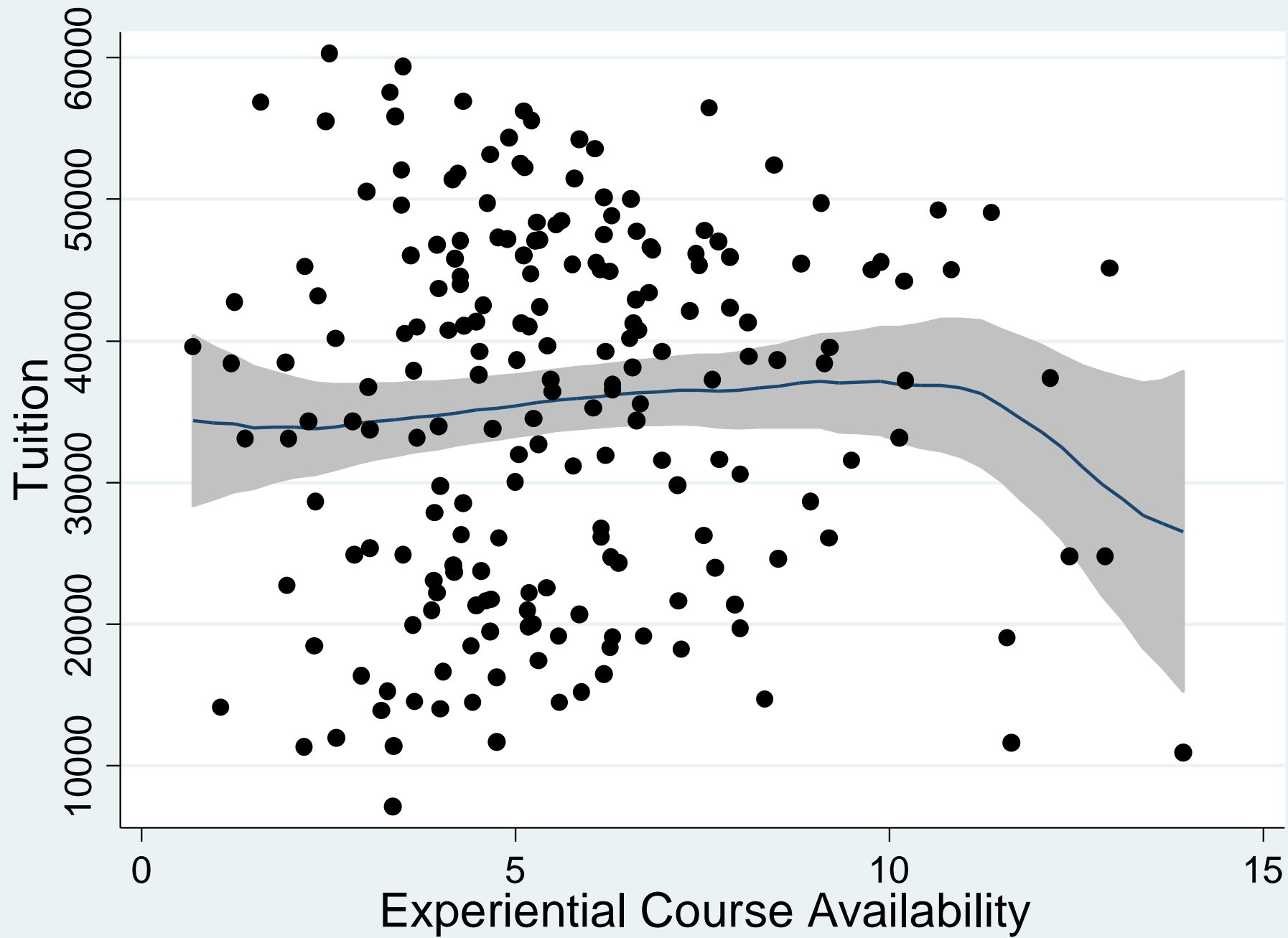
Variable	Estimate Tuition Change in \$	<i>p</i> -value
Private School	19,418.51	<0.001
School Rank (<i>U.S. News</i>)	-97.20	<0.001
Cost of Living	111.30	<0.001

Adjusted R-squared	0.75
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Relationship of Experiential Course Positions Available to Tuition:* Inverse

Independent Variable	Estimated Tuition Change in \$	<i>p</i> -value
Experiential Course Positions / # of 1Ls	-360.97	0.05

*Controlling for public-private, school rank, and cost of living.



Relationship of Simulation Course Positions Available to Tuition: None

Independent Variable	Estimated Tuition Change in \$	<i>p</i> -value
Simulation Course Capacity/ # of 1Ls	-196.53	0.37

Relationship of Field Placement Participation to Tuition: Inverse

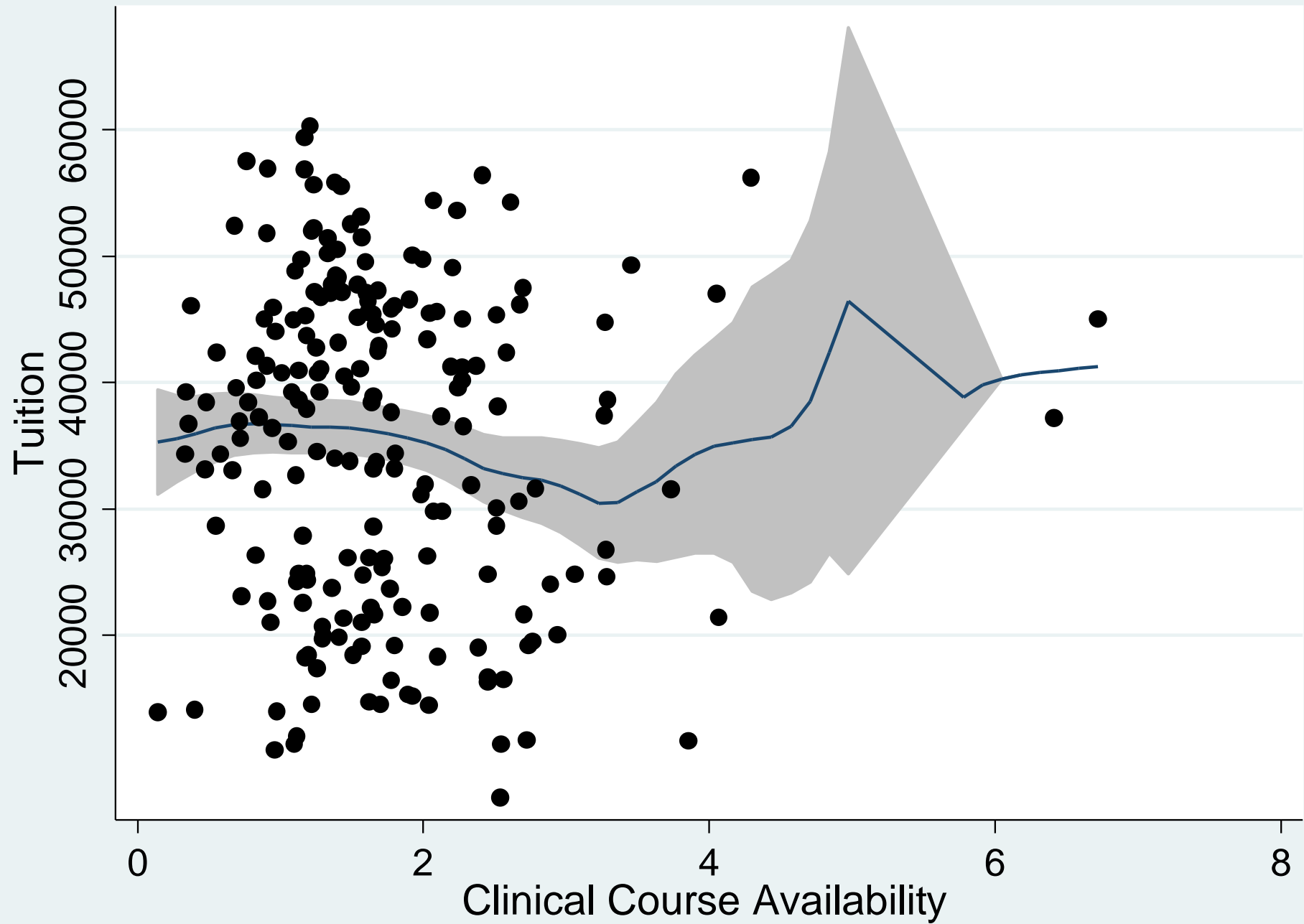
Independent Variable	Estimated Tuition Change in \$	<i>p</i> -value
Field Placements / # 1Ls	-1356.76	0.06
Field Placement Participation	-41.01	0.09

Relationship of Law Clinic Positions Available to Tuition: \approx Inverse

Independent Variable	Estimated Tuition Change in \$	<i>p</i> -value
Law Clinic Positions / Number of 1Ls	-1769.92	0.03
Sufficient Law Clinic Capacity (n = 62)	-2612.19	0.01
Law Clinics / Field Placements	-14.33	0.92
Law Clinic Participation	8.27	0.73

Relationship of Increased Availability of Clinical Courses (law clinic & externship) to Tuition: Inverse

Independent Variable	Estimated Tuition Change in \$	<i>p</i> -value
Increased Availability of Clinical Courses	-1405.77	0.01



Relationship of Clinical Experience Capacity to Tuition: None

Independent Variable	Estimated Tuition Change in \$	<i>p</i> -value
Sufficient Clinical Experience Capacity (n =167)	-1354.74	0.29

167 of 202 schools (83%) report having the capacity in their existing law clinic and externship courses to provide each student who entered in fall 2014 with a clinical experience before graduation.

Relationship of Mandatory or Guaranteed Clinical Experience to Tuition: None

Independent Variable	Estimated Tuition Change in \$	<i>p</i>-value
Mandate or Guarantee a Clinical Experience (n = 46)	218.07	0.84

Relationship Between Clinical Program Ranking and Tuition: None

Independent Variable	Estimated Tuition Change in \$	<i>p</i> -value
Top 20 <i>U.S. News</i> Clinical Program	283.47	0.86

Experiential Variables to **Discounted Tuition (Private Schools):
7 Inverse; 2 Positive (where statistically significant)**

Variables	Estimated Tuition Change in \$	<i>p</i>-value
Experiential, Simulation & Clinical Course Availability; Field Placements Filled; % Participate Field Placement; Enough Law Clinic Capacity	-63.11 to -3745.64	≤0.05
Enough Clinical Course Capacity	-2578.37	0.09
% Participate Law Clinic	65.56	0.03
Top 20 <i>US News</i> Clinical Program (n=11)	3982.00	0.07

Statistically Significant Comparisons from 2011, 2012, 2013 & 2014 School Data

≤ 0.05 : 17 of 67 total regressions p -value ≤ 0.05

1 positive relationship (as course availability/student participation increases, tuition increases)

16 inverse relationships (as availability/participation increases, tuition decreases)

≤ 0.10 : 21 of 64 total regressions p -value ≤ 0.10

2 positive relationships

19 inverse relationships

WHY DOESN'T IT COST MORE? - NOT THAT COSTLY

perhaps instructional costs for clinical courses are not more than, or not significantly more than, costs for non-clinical courses and therefore not influencing tuition sufficiently to be captured by the model

e.g., lower salaries of clinical faculty at many schools, clinical faculty workloads that include non-doctrinal courses for which not additionally compensated, use of inexpensive fellows and staff attorneys, income through grants, attorneys fees, etc.

e.g., lower cost simulations (taught by adjuncts) and externships (with higher student-teacher ratios)

Comparative Studies of Clinical Costs

Swords & Walwer (1980): cost/credit of clinic courses are double seminar but curriculum could be restructured to give every student a law clinic experience without changing size of faculty

MacCrate Report (1992): providing in-house law clinic experience to every student would increase school's budget by 10-15%

Chavkin (2009): tuition from courses taught by clinical faculty matches actual instructional costs to school

Maurer & Cole (2012): cost/credit of field placement courses are lower than cost of 20-student class and significantly less than 12-student seminar

Thorton (2013): cost/credit for law clinic course is slightly less than seminar

Dean Katz's "Basic" model of faculty costs/credit minus administrative costs

In-House Clinic:* \$2,078 [tenured; 2 courses/yr.; 8 students @ 6 credits]

Externship: \$374 [non-tenure; 3 courses/yr.; 33 students @ 3 credits]

Simulation: \$950 [tenured; 3.5 courses/yr.; 20 students @ 3 credits]

Medium Podium: \$380 [tenured; 3.5 courses/yr.; 50 students @ 3 credits]

Small Podium: \$950 [tenured; 3.5 courses/year; 20 students @ 3 credits]

Seminar: \$1,900 [tenured; 3 courses/year; 10 students @ 3 credits]

* Basic Model assumes: in-house staff attorneys/fellows @ \$74,000; outside attorneys for summer coverage @ \$45,000; and litigation expenses @ \$95,250; assumes no administrative costs for "traditional courses."

(Marvin J. Katz, *Understanding the Costs of Experiential Legal Education*, J. Experiential Learning (2014))

Using 2013-14 CSALE Survey Profile of Law Clinic Faculty*

In-House Clinic: \$1,157 [non-tenure]

\$925 [non-tenure; 2.5 courses/yr. w/ 8 students/class]

\$771 [non-tenure; 3 courses/yr. w/ 8 students/class]

Small Podium: \$950

Seminar: \$1,900

* Only 27% of full-time clinic faculty are tenured/tenure track; majority are in lower-paid contract or at will positions; 66% also teach non-clinical courses averaging over 1 course/year- 80% without additional compensation, 78% without any relief from clinical teaching responsibilities and 19% with only partial relief.

If assume clinical faculty are tenured but doctrinal faculty teach 3 courses/year

In-House Clinic: \$1,662 [tenure; 2.5 courses/yr. w/ 8 students/class]

\$1,385 [tenure; 3 courses/yr. w/ 8 students/class]

Externship: \$672 [tenure]

Medium Podium: \$443 [3 courses/yr.]

Small Podium: \$1,108 [3 courses/yr.]

Seminar : \$2,216 [3 courses/yr.]

WHY? -- OTHER SCHOOL COSTS ARE MUCH LARGER

perhaps clinical courses do have higher per credit instructional costs, but the overall amount of those costs is relatively small in comparison to many of the other substantial law school costs

e.g., non-clinical faculty size, salaries and perquisites; faculty scholarship costs; merit-based financial aid; new buildings; increased cost of administrators and student services; payments to university, etc.

WHY? -- SCHOOLS CAN'T RECOUP

perhaps schools are incurring higher costs from clinical courses but are unable to recoup those added expenses through higher tuition because prospective students do not value those enhanced courses and are unwilling to pay for that educational feature

surveys show applicants do value clinical courses and schools heavily promote them in application materials

assumes that normal rules of pricing apply to legal education, which is almost exclusively comprised of not-for-profit institutions

educators and economists: “education is an ‘industry’ in which the normal rules of competition, productivity and price-setting don’t apply”

WHY? -- TUITION/PRICE REFLECTS PRESTIGE

perhaps law school tuition is not sensitive to costs but largely driven by demand -- schools set prices to reflect the prestige of the school and perceived value of the degree to prospective applicants, not based on cost to provide educational services

university officials: “The goal of pricing is to get into a pack. You want to be part of a group, not an aberration.”

“Once tuition is set, costs are controlled - or permitted to grow - to match the maximum revenues each institution believes it can get.”

the relationship of other law school costs to tuition --

Student/Faculty Ratio (surrogate for instructional costs) -- tuition increases as ratio rises but opposite of expected and not statistically significant

Library Materials -- tuition increases slightly as expenditures/student rise but not statistically significant

Law Journal Participation -- tuition increases significantly as student participation increases (\$3,385; p -value 0.08)

Upper Level Seminars -- tuition decreases with more seminar positions for students but not statistically significant

Skills Competition Participation -- tuition decreases with more competition participation but not statistically significant

WHY? -- A BIT OF EACH

perhaps some of each theory could be occurring:

- experiential and clinical courses may not be as expensive as often thought; and
- those courses may constitute a relatively small part of the expenditures that influence tuition; and
- 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

CONCLUSIONS ON COSTS AND PRICING

- Contrary to popular opinion, enhanced experiential or clinical courses are not a measurable factor in what students pay in tuition.
- Students provided more clinical education opportunities, or required or guaranteed a clinical experience, are not paying more in tuition.
- Providing or requiring more clinical training need not cost students more in tuition.

Are the benefits of clinical education worth the possible additional costs?

“Over the last twenty years, I have written letters of recommendation for and advised many students who have gone on to the most competitive federal court clerkships **Not once have I heard of a federal judge who demanded that the student take more ‘experiential learning’ courses.** To the contrary, they want their clerks to take courses on Federal Courts, Administrative Law, Evidence, Criminal Procedure, and Securities Regulation: in other words, **they want their students to have deeper and broader knowledge of legal doctrine.**”

Brian Leiter, *Experiential Education Is Not the Solution to the Problems Facing Law Schools*
(Huffington Post (Jan. 2014))

What do judges and practicing attorneys think about the benefits?

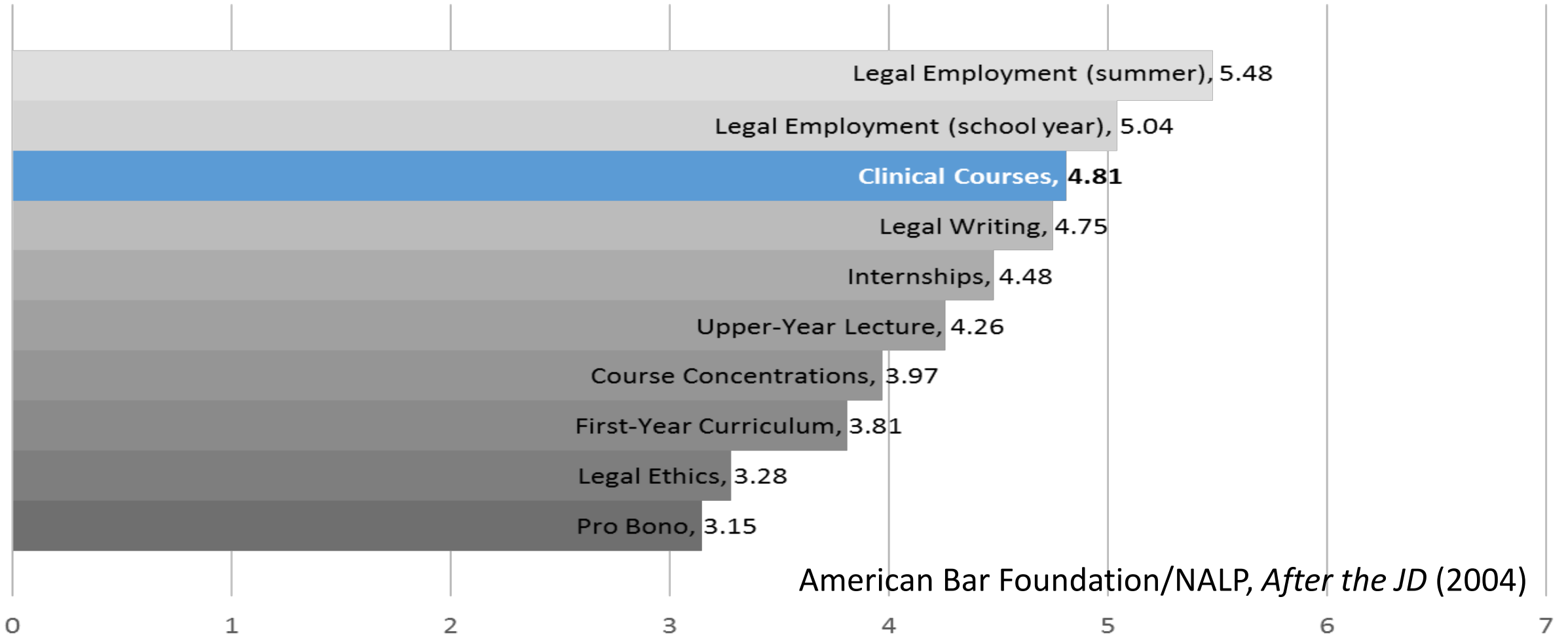
Survey of Federal and State Judges

	Type of Court			
	Federal Appellate	Federal District	State Appellate	State Trial
Q18. What Change Would Most Benefit Law Schools?				
Higher admissions standards	10%	9%	6%	6%
Expansion of core curriculum to ensure greater legal foundation	31%	25%	16%	9%
More affordable tuition	14%	7%	10%	5%
More coursework on practice-oriented skills	36%	51%	54%	73%
Other	10%	7%	13%	6%
Number of Responses	42	187	173	234

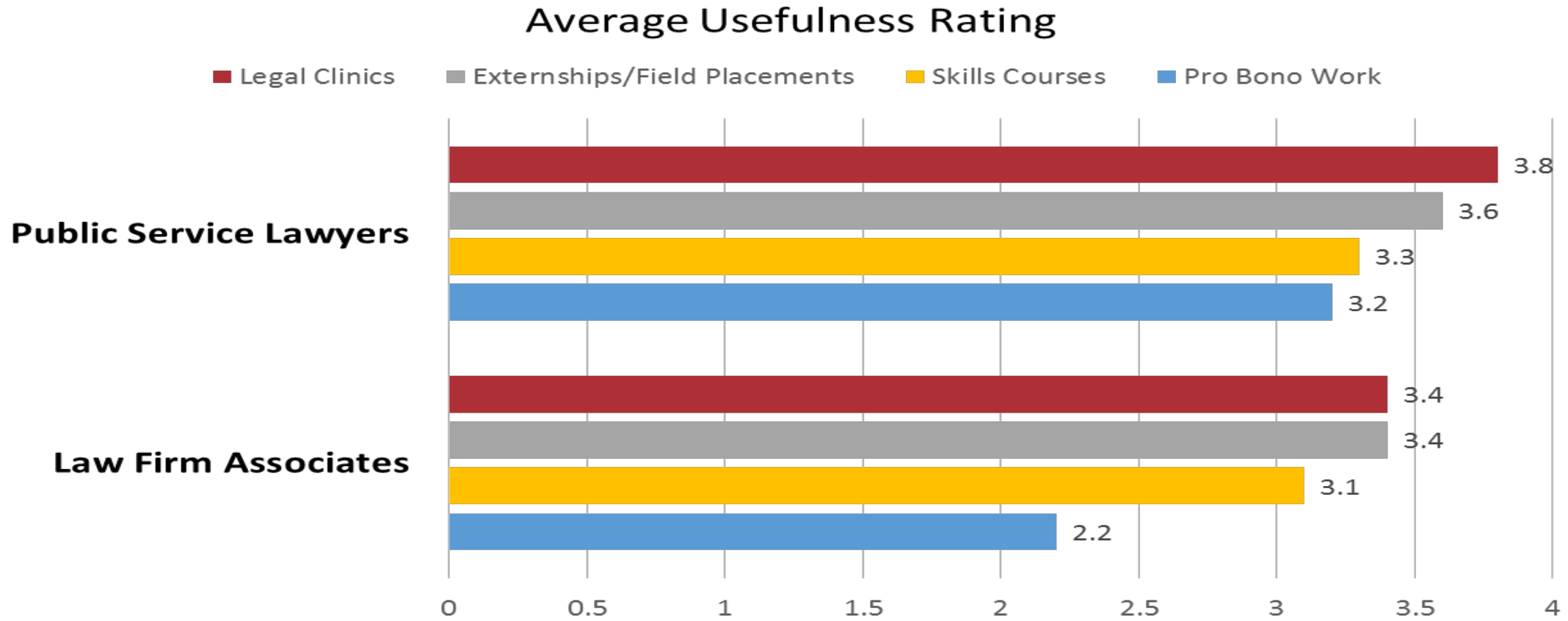
Richard A. Posner & Albert H. Yoon, *What Judges Think of the Quality of Legal Representation* (Stanford L. Rev. (2011))

Mean Attitudes Toward Dimensions of Law School Experiences

(on a scale where 1 = not at all helpful and 7 = extremely helpful)



NALP Study of Experiential Learning Opportunities in Law School - Law Firm Associates and Public Service Lawyers (2012)



note - 96% of law firm associates were in firms of 100+ lawyers

public and private lawyers valued law clinics and externships considerably more highly than skills [simulation] courses

public lawyers valued law clinics over externships; private lawyers rated clinics and externships at very similar levels

public lawyers rated all forms of experiential coursework (i.e., law clinics, externships & skills courses) more highly than private lawyers

Margaret E. Reuter & Joanne Ingham, Experiential Education and Our Divided Campuses (Clinical Law Rev. (2015))

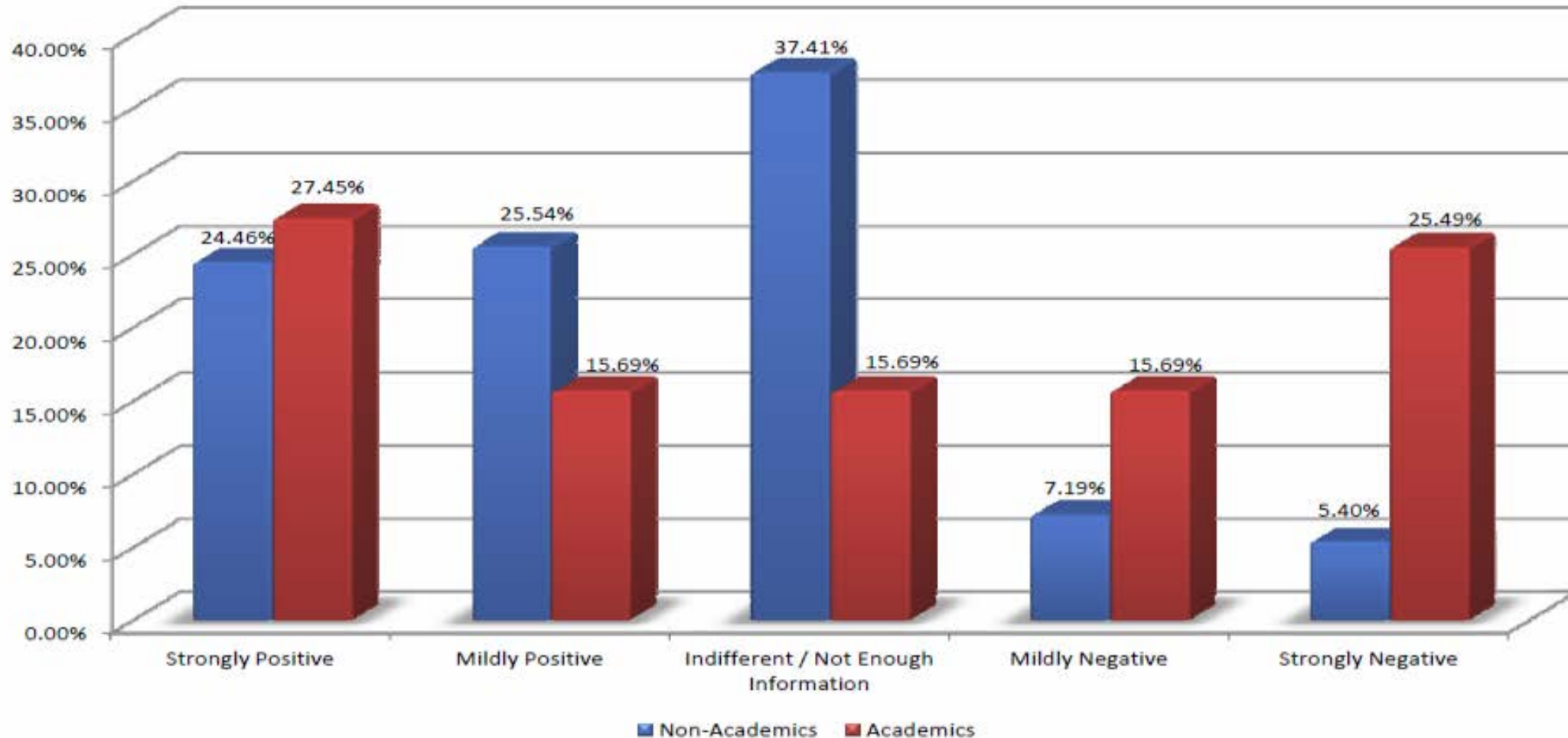
What Law Firms Say They Want From Law Graduates in the New Normal (James Leipold, NALP 2014)

A strong traditional legal education plus:

- More experiential learning, client-based & simulated
- A basic understanding of the business of running a law firm (large & small) and how law firms make money
- Exposure to the tools of the modern trade: technology
- Exposure to the business school skill sets of problem solving, working in a group, project management and understanding the client-service business model
- Strong writing, public speaking, confidence, initiative

Berkeley Transactional Practice Project: Competencies/Skills Survey (2014)

Degree of support for efforts to mandate minimum skills/competencies training for law students?



“State of the Legal Industry” Survey (LexisNexis 2009)

90% of lawyers (and 65% of law students) surveyed said that law school teaches legal theory but not the skills needed to practice law in today’s economy.

“Hiring Partners Readiness for Real World Practice” Survey (LexisNexis 2015)

95% of hiring partners and associates believe recently graduated law students lack key practical skills at time of hiring

litigation and drafting skills are most lacking, followed by transactional skills and legal research skills

“Most attorneys involved with hiring and management of new lawyers agree practical skills can be effectively honed through clinics, internships, clerkships, and experience in actual or simulated application to a case.”

Novice Attorneys' Perceptions on Law School Learning Experiences

Qualitative study of novice practicing criminal law attorneys on their law school's preparation for practice:

- need more focus on practice of law, rather than theory -- need to connect theory to practice
- need more focus on communication skills in a diverse society
- classes providing experiential learning opportunities were considered the most valuable in preparing them to practice law

(Bryan F. Taylor & Mary E. Gardiner, *Closing the "Gap": Novice Criminal Attorneys' Perceptions on Law School Experiences* (T.M. Cooley J. Prac. & Clinical L. (2011))

ABA Young Lawyers Division (April 2013)

Unanimous resolution:

that the American Bar Association urge law schools “to require at least one academic grading period of practical legal skills clinical experiences or classes as a law school graduation requirement for all matriculating Juris Doctorate (or an equivalent degree) students”

Do Employers Value Clinical Experience in Hiring?

“No evidence of a meaningful relationship between clinical opportunities and employment outcomes”

comparing clinical positions available at school with that school’s employment rate

US News rank is an important predictor of a school’s employment score (explaining around 54% of variance)

Jason Webb Yackee, *Does Experiential Education Improve JD Employment Outcomes* (Jan. 2015)

Also No Evidence of a Relationship Between Non-Experiential Courses/Activities and Employment Outcomes

- a decrease in student/faculty ratios (i.e., increased faculty hiring) is not statistically related to increased employment (p -value 0.94)
- an increase in the availability of upper-level seminars for students is not statistically related to increased employment (p -value 0.75)
- an increase in law journal participation at a school is not statistically related to increased employment (p -value 0.77)

Why Aren't Clinical Opportunities Related to a School's Employment Rate?

“Firms use class rank and rank of law school as surrogates for some threshold level of excellence that a candidate's legal analysis and doctrinal knowledge must meet.”

“Among those candidates remaining in the pool after the initial screen, the other competencies [primarily professional and practice skills] are important differentiating factors in the decision to hire.”

Neil Hamilton, *Law Firm Competency Models & Student Professional Success: Building on a Foundation of Professional Formation/Professionalism* (Univ. of St. Thomas L. J. (2013))

Focus groups of legal employers on the ideal law graduate:

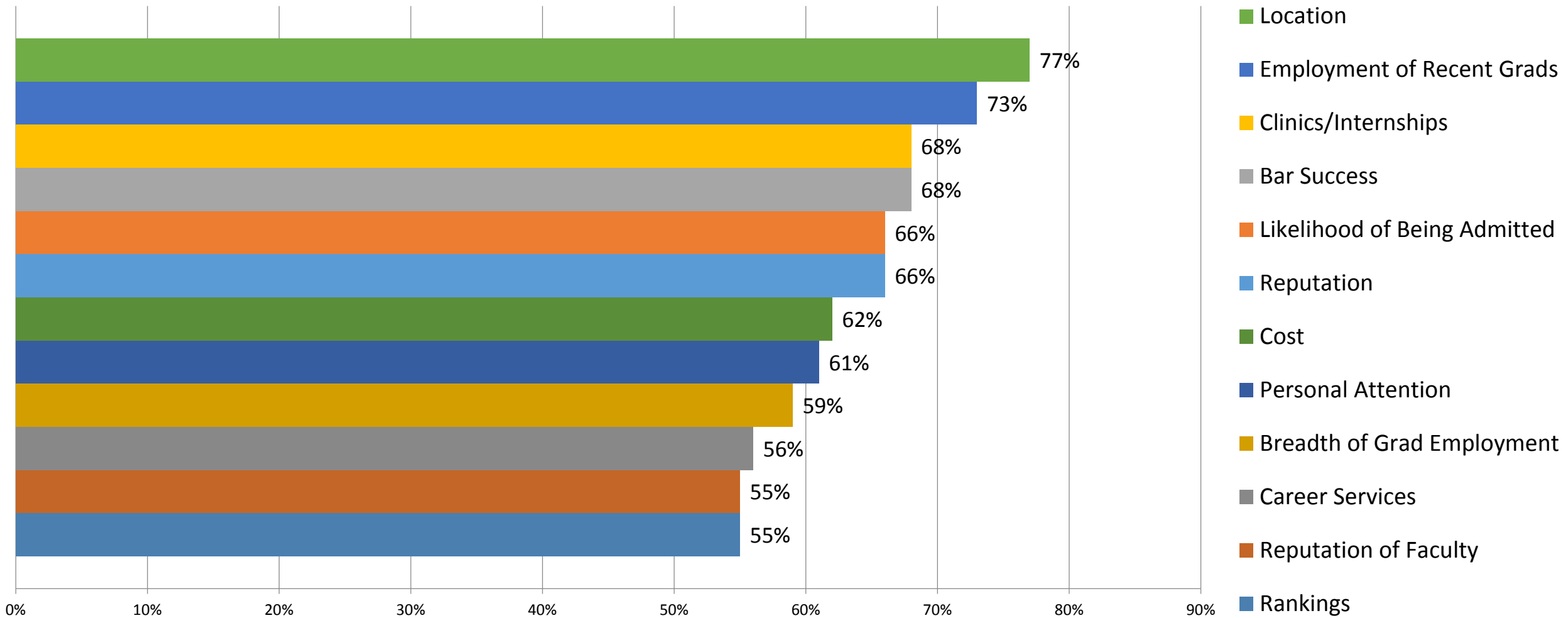
first and predominate hiring preference was for new hires
“who have well-developed professional or ‘soft skills’”

next, “employers want new hires with strong fundamental
practice skills”

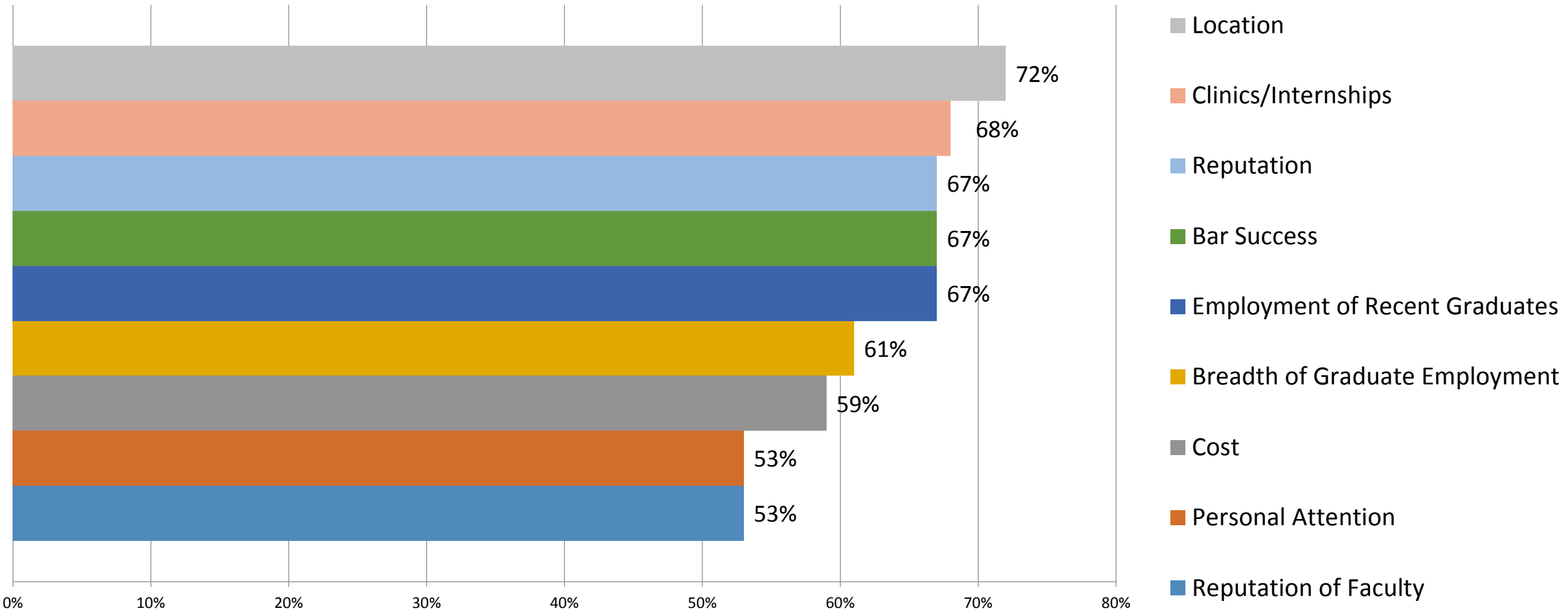
*Susan C. Wawrose, What Do Legal Employers Want to See in New Graduates?:
Using Focus Groups to Find Out (Ohio Northern L. Rev. (2013))*

**What do law students think
about the benefits?**

Factors Most Important to Applicants in Influencing Decision to Apply to Particular Schools



Factors Most Important to Admitted Applicants in Decision to Enroll at a Particular School

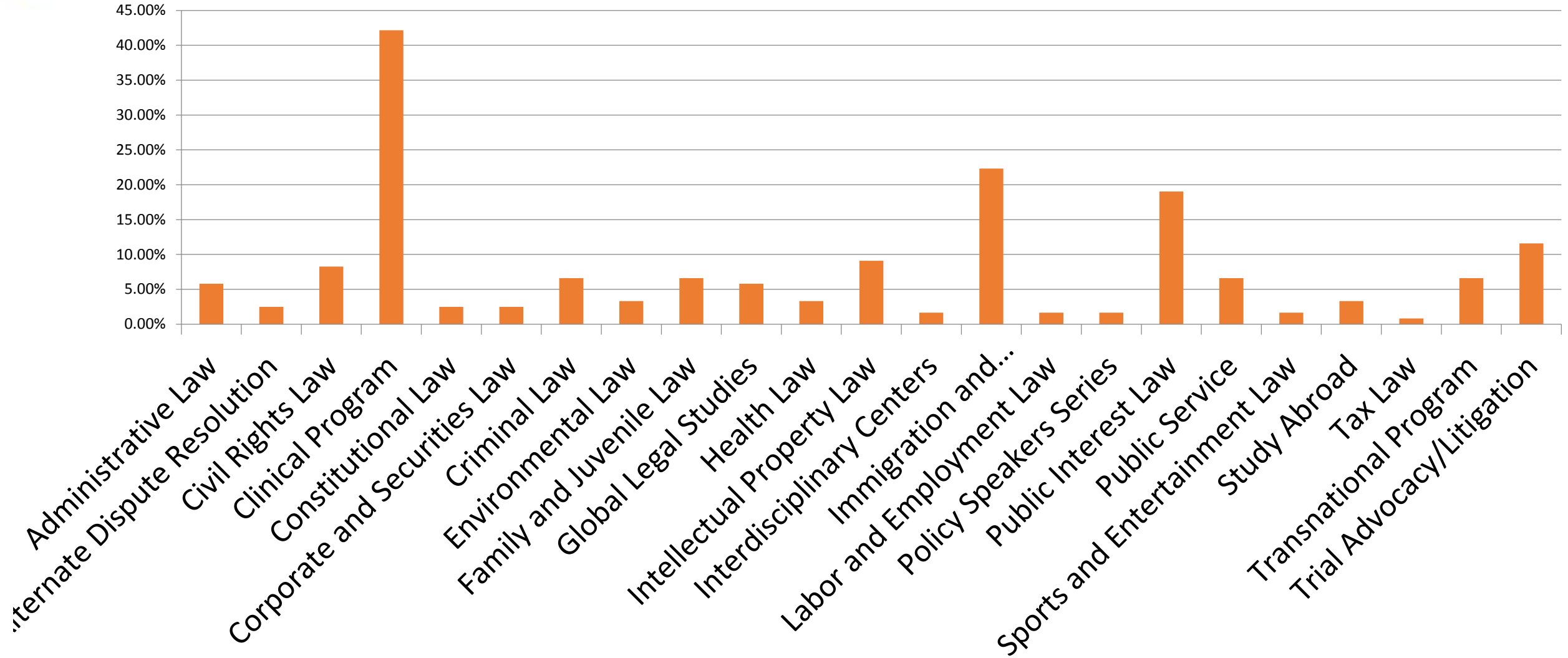


Matriculant Interest in Clinical Programs

Open-ended “interest area” question on LSAC application for admission:

“The Admissions Committee often likes to know whether an applicant has a specific reason for his or her interest in Washington University School of Law. If you have any comments that would be helpful to the Admissions committee, please include them below.”

Percentage of Wash U Law Matriculant Interest - Class of 2015



Kaplan Bar Review Survey (2013)

- 87% of 2013 law school graduates surveyed said that the U.S. legal education system needs “to undergo significant changes to better prepare future attorneys for the changing employment landscape and legal profession.”
- 97% of graduates surveyed said that they favor a law school model that incorporates clinical experience.

Law School Survey of Student Engagement (LSSSE) - 2006 & 2012

students with law clinic or externship experience report greater gains in: higher order thinking skills; speaking and writing proficiency; and competence and confidence in solving complex real world problems

experiential learning activities significantly and positively affect - students' perceptions that they are developing higher order learning including writing, speaking, research, and job-related skills

no relationship between summer experiences and higher order learning

Law School Survey of Student Engagement (LSSSE) - 2010

students with experience in law clinics were more likely than other students to report that their law schools provided adequate professional preparation

clinical participation correlated with a higher degree of preparation in:

- understanding the needs of future clients
- working cooperatively with colleagues
- serving the public good
- understanding professional values

Significance of Clinical Experience on Development of Professional Identity and Purpose

students with a clinical experience reported higher positive gains in professional identity and purpose than those without; paid legal work does not seem to yield similar gains

clinical experience may enhance learning legal ethics, but more research is needed to confirm the direct relationship

(Carole Silver, et al., Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement (J. Legal Writing (2011))

“The Happy Charade: An Empirical Examination of the Third Year of Law School” (Gulati, Sander & Sockloskie (2001))

- for most law students, the 3rd year seems remote and largely irrelevant
- students in clinical courses: slightly less likely to see 3rd year as superfluous
- students appear willing and eager to do more work if provided with opportunity to pursue real interests
- significant number want more (and better) clinical offerings and business skills training
- “This suggests that clinical education may indeed have the potential to fill much of the third-year void, if schools will only invest more in the depth, evaluation, and comparison of these programs.”

Kaplan Test Prep's Surveys (2013)

- Law School Admissions Officers: 78% agree on the need for significant changes to law school curriculum to better prepare students for practice
- Prospective law students: 79% agree on the need for significant changes to better prepare students for practice

Comparison of Students with Experience-Based Curriculum with 2nd Year Practicing Lawyers

Standardized client interview assessment of 3rd year Daniel Webster Scholar students with NH lawyers licensed up to 2 years:

Students in DWS program outperformed lawyers who had been admitted to practice within the last 2 years

(*Educating Tomorrow's Lawyers, Ahead of the Curve: Turning Law Students into Lawyers* (2015))

Effect of Clinical Experience on Legal Reasoning

students with law clinic experience are:

- better at exploring client interests and identifying next steps in case
- better able to filter out irrelevant facts and focus on relevant ones

students without clinical experience:

- better at drawing inferences and identifying areas for fact investigation
- better at identifying legal rules applicable to a problem; clinic students would rather research the issues

(Stefan H. Krieger, *The Effect of Clinical Education of Law Students on Law Student Reasoning: An Empirical Study* (Wm. Mitchell L. Rev. (2008))

Comparison of Students with Law Clinic Experience vs. Students Without on Lawyering Skills Simulations

Law students with clinical experience had a significantly higher mean score on practice skills simulations than students without any clinical exposure.

(Donald L. Alderman, et al., *The Validity of Written Simulation Exercises for Assessing Clinical Skills in Legal Education* (1981))

Effect of Externship Placement on Attitudes Toward Professional Ethics and Behavior

in areas of professional responsibility, expected involvement in community and professional activities, and reactions to certain types of clients -

responses of students who participated in an externship were not significantly different from responses of students who simply completed 3rd year of law school without the placement

(Rita James Simon, *An Evaluation of the Effectiveness of Some Curriculum Innovations in Law Schools* (J. Applied Behavioral Sci. (1966))

What do other comparable professional schools and licensing authorities think about the benefits?

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

CONCLUSIONS ON VALUE

- Practicing attorneys, recently graduated law students and prospective law students all value clinical and experiential courses highly (and above traditional courses) and support the need for more professional skills training in law school.
- A school's clinical program appears to be a significant factor in a prospective student's decision about which law school to apply to and ultimately attend.
- Studies measuring the effect of taking a clinical course on practice skills or professional readiness are few but generally positive.
- Other professional schools recognize the value of and need for clinical training of their students prior to graduation.

**“Everyone is entitled to his own opinion,
but not his own facts.”**

Daniel Patrick Moynihan