



TOURO UNIVERSITY
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

Journal of Experiential Learning

Volume 1 | Issue 1

Article 4

April 2015

Understanding the Costs of Experiential Legal Education

Martin J. Katz

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/jel>



Part of the [Legal Education Commons](#)

Recommended Citation

Katz, Martin J. (2015) "Understanding the Costs of Experiential Legal Education," *Journal of Experiential Learning*: Vol. 1: Iss. 1, Article 4.

Available at: <https://digitalcommons.tourolaw.edu/jel/vol1/iss1/4>

This Article is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Journal of Experiential Learning by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

Understanding the Costs of Experiential Legal Education

Cover Page Footnote

1-1

UNDERSTANDING THE COSTS OF EXPERIENTIAL LEGAL EDUCATION

MARTIN J. KATZ*

INTRODUCTION

Law schools across the country are under pressure to do two seemingly contradictory things. First, we must do a better job of preparing our graduates for practice.¹ Most commentators, including me, believe that this requires law schools to increase the quantity and quality of experiential education we provide.² At the same time, law schools are under pressure to control costs.³ If we do not do so, we risk pricing a large and growing segment of the population out of our market.

* Dean and Professor of Law, University of Denver Sturm College of Law. The author is a founder and serves on the Executive Board of the Educating Tomorrow's Lawyers project. Thank you to John Campbell, Roberto Corrada, Clint Emmerich, Scott Fruehwald, Rebecca Love Kourlis, Robert Kuehn, Deborah Maranville, Kenneth Margolis, Justin Marceau, Jim Moliterno, Nantiya Ruan, David Thomson, Philip Schrag, Joyce Sterling and the participants of Externship 7 Conference. And thank you to Diane Burkhardt and Jessica Neumann for their research assistance. Any errors are solely mine.

¹ See, e.g., Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & SOC. JUST. 247 (2012); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Robert M. Lloyd, Essay, *Hard Law Firms and Soft Law Schools*, 83 N.C. L. REV. 667 (2005); see also Lincoln Caplan, Editorial, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 15, 2012, at SR10 (“[Law schools’] missions have become muddled, with a widening gap between their lofty claims about the profession’s civic responsibility and their failure to train lawyers for public service or provide them with sufficient preparation for practical work.”); Ashby Jones & Joseph Palazzolo, *What’s A First-Year Lawyer Worth?*, WALL ST. J., Oct. 17, 2011, at B1 (“[T]here is still a gulf between a newly minted lawyer and one who can provide value to a client.”); David Segal, *What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1 (“The fundamental issue is that law schools are producing people who are not capable of being counselors.” (internal quotation marks omitted)).

² See, e.g., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM (ABA Section of Legal Education and Admission to the Bar, 1992) (hereinafter “MACCRATE REPORT”); see ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION (Clinical Legal Education Association, 2007) (hereinafter “BEST PRACTICES”); WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATION LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (hereinafter “CARNEGIE REPORT”).

³ See William Henderson, *A Blueprint for Change*, 40 PEPPERDINE L. REV. 461, 465 (2013); BRIAN TAMANAHA, *FAILING LAW SCHOOLS*, Chapter 11 (2012) (chapter entitled, “Is Law School Worth the Cost?”); See also Michael Simkovic & Frank MacIntyre, *The Economic Value of a Law Degree*, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2250585, at 1 (2013) (“We estimate the mean pre-tax lifetime value of a law degree as approximately \$1,000,000” – which is well in excess of the cost of law school.).

Can law schools meet both of these mandates simultaneously? The received wisdom seems to be that experiential education is the most expensive type of education.⁴ So can we offer more and better experiential education and still control costs? The short answer is probably yes. But to do so, it is important to understand the cost structure of experiential education. This Essay will attempt to help with that project.

The Essay will start by examining some of the work that has already been done on trying to understand the costs of experiential education, noting some important gaps in that work. The Essay will then fill those gaps, providing a comprehensive and up-to-date model of the costs of different types of experiential legal education,⁵ as well as the costs of some types of more traditional legal education. It will conclude by discussing some ramifications of the cost model for deans and curriculum committees as they think about how to manage and expand their schools' experiential offerings. And it will discuss some promising new hybrid experiential courses, which have the potential to provide high-quality opportunities for students at relatively low cost.

It is important to note that this is an Essay about cost, which represents only half of the important question of value. The other half of the equation is the set of benefits provided by experiential education.

⁴ See Peter deL. Swords & 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, 180 (1980) (comparing costs of in-house clinics, field placement programs, and course simulations); Nancy M. Maurer & Liz Ryan Cole, *Design, Teach and Manage: Ensuring Educational Integrity in Field Placement Courses*, 19 CLINICAL L. REV. 115, 157-58 (2012) (comparing costs of several different types of courses).

⁵ Some definitions I will use throughout this Essay are as follows. The traditional types of experiential legal education are: (1) In-House Clinics, in which faculty members supervise students in representing actual clients, and generally provide a substantive seminar related to the work, (2) Externships (also known as Field Placements), in which students work for lawyers outside the school (supervising attorneys) on those lawyers' client matters, sometimes with a degree of oversight from one or more faculty members (who also often provide a substantive seminar related to the work and/or opportunities for the students to reflect on the work they do for the supervising attorneys), and (3) Course Simulations, in which faculty members supervise students in working on simulated legal problems in a classroom setting.

Externship programs may be decentralized, with students working for a diverse group of supervising attorneys working at different organizations, or centralized, with students working for supervising attorneys within a particular organization (generally a legal services organization or a non-profit legal department). The latter form of externship or field placement is often called an Outside Clinic. As will be discussed below, *infra* Section II.E, schools are increasingly experimenting with hybrid forms of experiential education, which combine elements from these more traditional types of experiential education. (Additionally, many schools are experimenting with adding experiential elements to more traditional classes.)

For purposes of this Essay (and more generally), I will assume that the benefits of experiential legal education are extremely high.⁶ Thus, even where the costs of experiential education are high, there is likely to be significant value in offering this type of education to our students. But the focus of this Essay will be on the cost side of the value inquiry. Without understanding cost, as well as benefits, we cannot meaningfully discuss the value of experiential legal education.⁷

I.

THE QUEST TO UNDERSTAND COST

The debate over the costs of experiential education is not new. More than 30 years ago, Deans Swords and Walwer wrote, “Money issues, circa 1980, dominate the American scene. Legal education is no exception, and within legal education any discussion regarding the pros and cons of clinical programs is apt to precipitate anxious concern about relative costs and financing.”⁸

The “anxious concern” continues today. Amidst debates over the cost of legal education, some have suggested that the way to control cost is to eliminate certain types of experiential education, such as in-house clinics.⁹ Others have predicted that schools will move away from in-house clinics towards less expensive forms of experiential education, such as externships.¹⁰ Still others have suggested that schools

⁶ Within the education literature, “several well-controlled studies have now showed that students demonstrate more learning, better conceptual understanding, superior class attendance, greater persistence, and increased engagement when collaborative or interactive teaching methods are used compared to when traditional lecturing is employed.” See, e.g., Susan A. Ambose et al., *HOW LEARNING WORKS: 7 RESEARCH-BASED PRINCIPLES FOR SMART TEACHING* 5 (2010); George M. Slavich & Philip G. Zimbardo, *Transformational Teaching: Theoretical Underpinnings, Basic Principles, and Core Methods*, 24 *EDUC. PSYCHOL. REV.* 569, 570 (2012). See also sources in *supra* note 2.

⁷ When I set out to write this, some of the leaders in the field of experiential legal education expressed concern that any article on costs might be used by short-sighted administrators as an excuse to (1) reduce experiential offerings on the ground that such offerings are expensive relative to other types of offerings, or (2) reduce the availability of particular types of experiential education (e.g., in-house clinics), on the ground that they are more expensive than other types of experiential education (e.g., externships). Obviously, a writer cannot control the way in which people might choose to use his or her work. However, I hope this Essay will make clear that either of these strategies would be a bad idea.

⁸ See Swords & Walwer, *supra* note 4, at 133 (1980).

⁹ See 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); see also HERBERT L. PACKER & THOMAS EHRLICH, *NEW DIRECTIONS IN LEGAL EDUCATION* 46 (1972) (questioning value of clinical legal education in light of its costs).

¹⁰ See Swords & Walwer, *supra* note 4, at 139-43; Arthur B. LaFrance, *Clinical Education and the Year 2010*, 37 *J. LEGAL EDUC.* 352, 355-56 (1987).

may find it too expensive to offer well-run externship programs.¹¹ Professor Peter Joy notes that, while these predictions have not yet come true, “the threat remains.”¹² And in the current economic climate faced by law schools, concerns about cost are as relevant as ever.

A. *The Priorities Argument*

Supporters of experiential education have attempted to address concerns about its cost in a number of ways. The most common approach has been to frame the issue in terms of choices that law schools make; that is, in terms of priorities. In an early work on the costs of legal education, for example, Professor Joy pointed out that law schools provide many traditional offerings that are quite expensive, such as small seminars.¹³ His point was that schools routinely make curricular choices that are costly. Presumably they do so because they believe that such offerings have significant educational value, and therefore choose to prioritize them. Such schools, he argued, should make experiential education a similar priority.

The priorities argument assumes that schools have a relatively fixed budget, which they can spend on things that are most valued by the school. For example, a school might choose to offer a seminar – or a clinic – instead of another type of class, such as a large lecture class. If the other type of class were less expensive to offer, the school might choose to offer even fewer of that type of class in order to fund the more expensive but more-valued type of class. Alternatively, the school might choose to forego staff or space or renovations in order to fund the more expensive but more-valued type of class.

Note that this is not an argument that experiential education is inexpensive. Rather, it is an argument that, even if experiential education is expensive, schools should still provide it, and that they can do so by prioritizing it over other potential expenses. The argument (which rings quite true) is that experiential education has value that justifies its cost, and therefore justifies making it a priority.

¹¹ See Maurer & Cole, *supra* note 4, at 151 (“It is commonly accepted in some circles that it is expensive to offer a well-run field placement course.”). The difference between a well-run externship program and a less well-run program is explained well in this piece by Profs. Maurer and Cole, and generally involves the amount of oversight offered by the school (generally by full-time faculty members) and the educational component provided to the students, both in terms of substantive legal education in the area of the externship and in terms of the opportunity for feedback and reflection.

¹² See Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C.J.L. & Soc. JUST. 309, 328 (2012).

¹³ See Peter A. Joy, *The MacCrate Report: Moving Toward Integrated Learning Experiences*, 1 CLINICAL L. REV. 401, 404 (1994).

In a recent article, Professor Robert Kuehn provides strong empirical support for the priorities-based defense of experiential education.¹⁴ Professor Kuehn's empirical study examines correlation – or the lack of correlation – between schools that require their students to participate in certain types of experiential learning and tuition rates. He finds that schools that require their students to take clinics and externships do not have higher tuition than schools without such requirements.¹⁵ This important finding suggests that schools can put together a curriculum that is rich in experiential educational opportunities without increasing the overall cost of the legal education they provide.

There are, of course, two possible explanations for this finding. First, it is possible that, contrary to received wisdom, experiential education is no more expensive than traditional education. Second, even if experiential education is in fact more expensive than traditional education, schools might be able to prioritize experiential education and make trade-offs in order to keep the overall costs of the enterprise, and thus tuition, at a rate that is similar to more traditional schools.

Professor Kuehn understandably adopts the latter view, in which his findings support a priorities-based defense of experiential education.¹⁶ I say “understandably” because Professor Kuehn does not undertake a detailed examination of the relative costs of different types of educational opportunities. Rather, he is willing to accept for the purposes of his study the received wisdom that experiential education is more expensive than traditional education.¹⁷ As will be demonstrated below, that assumption is generally correct.¹⁸

A detailed exploration of the relative costs of experiential education might shore up Professor Kuehn's hypothesis. That is, such a

¹⁴ See Robert R. Kuehn, *Pricing Clinical Legal Education* 30 (forthcoming in DENV. L. REV. 2014). See also John R. Kramer, *Who Will Pay the Piper or Leave the Check on the Table for the Other Guy*, 39 J. Legal Ed. 655, 666-67 (1989) (10-year study, concluding that increases in clinic education account for only a small fraction of overall cost increases at law schools during the period); Joy, *supra* note 12 (comparing clinic expenses to other law school expenses and concludes that clinics are not major drivers of tuition increases).

¹⁵ See Kuehn, *supra* note 14, at 30.

¹⁶ See *id.*, at 29-30 (“These schools show that clinical legal education can be made a priority without a resulting increase in tuition if the school is willing to make a choice about how its resources are allocated.”).

¹⁷ See *id.* (Assuming that “the schools [that offer more experiential education] may be incurring additional instructional costs over schools not providing those law clinic and externship experiences,” but hypothesizing that “tuition pricing does not reflect those costs and students are not being asked to pay more for those important educational experience.”).

¹⁸ See *infra* Section II.C.

study might eliminate the possibility that experiential education is no more expensive than traditional education, and thus confirm that Professor Kuehn's findings support the priorities-based view of experiential education – i.e., that schools can (and should) prioritize experiential education and make trade-offs to keep the cost of tuition in line with schools that have more traditional curriculum.

But there is also a second and perhaps more important reason why it makes sense to focus on the relative costs of different types of curricular offerings: If Professor Kuehn is correct (which I believe he is) that some schools have managed to set their priorities in a way that has allowed them to offer extensive experiential education without increasing the cost to students, the question remains: How have these schools done this? If other schools want to try to increase their experiential offerings, what are the trade-offs they must make to avoid significant cost increases? And even for schools that already have substantial experiential offerings and have so far managed their costs, how can they increase their experiential offerings even further without increasing their cost? For the many schools that are grappling with these questions, the priorities argument would suggest that it is possible to expand experiential education without substantially increasing cost. But without relative cost data, it is difficult or impossible to know how.

B. Attempts to Quantify the Costs of Experiential Education

Swords and Walwer attempted to analyze the costs of clinical programs and other types of courses “to enable law school faculties and others to grapple with these highly charged questions.”¹⁹ To that end, they looked at cost data that was then available in ABA reports and estimated the cost-per-student-credit-hour for 15 in-house clinics, 18 field placement (externship) programs in which schools sent students to government or public service legal providers, and 8 trial advocacy programs.²⁰ They also estimated costs per-student-credit-hour for a hypothetical simulation course, a hypothetical seminar course, and a hypothetical lecture course.²¹

The results of Sword and Walwer's study were interesting in three respects. First, they found significant variation in the costs of particular offerings across schools. For example, the most expensive in-house clinic cost more than twice as much as the least expensive in-

¹⁹ See Swords & Walwer, *supra* note 4.

²⁰ See *id.* at 152, 168, 176.

²¹ See *id.* at 152, 177.

house clinic.²² Second, they found that some types of experiential education cost more than others. For example, the least expensive in-house clinic cost nearly 1.5 times as much as the most expensive field placement program, and infinitely more than the least expensive field placement program (which they concluded had no real cost).²³ Third, they found that some types of traditional education were as costly as or more costly than some types of experiential education. For example, the hypothetical seminar course was more costly than several of the field placement programs.²⁴

Unfortunately, Sword and Walwer's data is now quite dated (it is more than 30 years old). And so are some of the ways that clinics and field placements were run at the time. For example, many of the in-house clinics they studied used large student/faculty ratios by today's standards, with several of the in-house clinics being taught at a 12:1 ratio.²⁵ Today, most in-house clinics are taught at an 8:1 ratio.²⁶ Similarly, some of the field placements Sword and Walwer studied had virtually no supervision by faculty members.²⁷ Fortunately, few, if any field placement programs are run this way today.²⁸

It would be good if we could replicate and update the Sword and Walwer study. Unfortunately, because their study was focused on actual programs at specific schools, it is not easy to vary the assumptions they used in their cost model. Additionally, because the data they used is no longer collected by the ABA, it is virtually impossible to replicate. Thus, if we want to have serious discussions about the costs of experiential legal education today, we need a new model.

In a more recent article on the regulatory history of and best practices for field placements, Professors Maurer and Cole model the cost for a range of field placement programs, as well as some traditional types of courses for comparison. Like Sword and Walwer, Maurer and Cole find a fairly wide variation in the costs of different types of field placement programs.²⁹ And like Sword and Walwer, they find that some types of traditional courses are more expensive than some types of field placements.³⁰

²² See *id.* at 152.

²³ See *id.* at 152, 168.

²⁴ See Sword & Walwer, *supra* note 4, at 168, 177.

²⁵ See *id.* at 149.

²⁶ See Peter A. Joy, *The Cost of Clinical Legal Education*, 32 B.C.J.L. & Soc. JUST. 309, 309 n.1 (2012).

²⁷ See Sword & Walwer, *supra* note 4, at 168.

²⁸ See Maurer & Cole, *supra* note 4, at 115.

²⁹ See *id.* at 157-58.

³⁰ See *id.*

The focus of Maurer and Cole's article is not on cost. Their (otherwise excellent) piece makes some minor errors. For example, in calculating the costs of a seminar class, they appear to assume that the professor teaches only two courses, as opposed to three or four classes as they do for other types of teaching.³¹ And they seem to assume – unrealistically – that doctrinal teachers teach only one type of course (for example, seminars or large lecture courses), as opposed to a mix of courses.³²

But the biggest problem with their article from the point of view of someone looking for a cost analysis of experiential education is that they do not look at the cost of clinics or simulation courses.³³ This is quite understandable, since that is not the focus of Maurer and Cole's project. But it means that, in the 30 years since Sword and Walwer's now-dated piece, there has been no comprehensive analysis of the cost of experiential legal education.³⁴ This Essay will attempt to fill that void.

II.

A NEW MODEL OF COST

A. *The Elements of Cost*

In discussing the cost of any particular academic offering, it is important to understand the proper unit of measure. In economic terms, costs are expressed as cost per unit. So there are two questions. What are the appropriate units? And what is the cost of those units?

The first question (the appropriate unit of measure) is a fairly easy one. As most commentators in the area have grasped, the proper unit of measure is the cost per student-credit-hour.³⁵ This unit is calculated by: (1) starting with the total incremental cost of teaching a

³¹ See *id.*

³² See *id.*

³³ See *id.*

³⁴ A slightly different approach to the cost of experiential education was advanced in David F. Chavkin, *Experiential Learning: A Critical Element of Legal Education in China (and Elsewhere)*, 22 GLOBAL BUSINESS & DEVELOPMENT LAW JOURNAL 4 (2009). Professor Chavkin looked at the revenue generated by student credit hours in clinics at his school and concluded that, because those revenues came close to covering the cost of the professor's salary and associated costs, it was financially feasible to add clinics. See *id.* at 13-14. Because Professor Chavkin does not specify the other related costs, it is difficult to tell if the clinics at his school were close to "break-even." But beyond that, his analysis is not comparative. That is, he does not explore the costs of clinics relative to other types of experiential or non-experiential courses. For an excellent summary of the literature on the cost of experiential education, see Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert F. Seibel, *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required!*, 43 WASH. U. J. L. & POL'Y 11, 52-53 & n.182 (2013).

³⁵ See, e.g., Sword & Walwer, *supra* note 4; Maurer & Cole, *supra* note 4.

course (which will be discussed in detail below), (2) dividing those costs by the number of students in the course (to arrive at cost per student), and (3) dividing that figure by the number of credit hours provided by the course (to arrive at the cost per student-credit-hour). At schools where students' tuition is calculated based on the number of credit hours taken, the student-credit-hour is the precise unit of production. But even at schools where students' tuition is calculated at a flat, per-semester rate, most students take a similar number of credit hours per semester, making the student-credit-hour a good approximation of the unit of production.

The second question (what costs to measure) is a bit more complicated. After all, there are many costs in running a law school, and thus in producing legal education. While it is certainly possible – and necessary for many purposes – to catalog and quantify all of those costs, that is beyond the scope of this Essay.

Fortunately, for purposes of this Essay, where the goal is to determine the relative cost of offering particular types of courses, we can narrow the range of costs we need to consider. This is because many of the costs of running a law school are fixed; they would be incurred irrespective of whether the school offered a particular course. For example, a school must pay for its physical space irrespective of whether it offered any particular course. Similarly, there is likely a base level of administrative staff that is required irrespective of whether the school offers any particular course.³⁶ Such fixed costs need not be considered in determining the relative cost of offering one type of course as opposed to another. This fact permits me to focus on variable costs in order to understand the relative cost of offering any particular type of course.

There are three important variable costs in offering a course: (1) the cost of the professor's labor; (2) the cost of other labor that would not be required if that particular type of course were not offered, and (3) other expenses that would not be required if that particular type of course were not offered.

Professor Labor Costs. As a general matter, the largest cost of offering any particular course is the cost of the professor. Put simply, to offer a course, the school needs to pay the professor who is going to teach that course. That pay usually consists of a salary, various other payments (such as summer stipends and funds for professional development), and benefits (such as health insurance).

³⁶ That is not to say that the school might not be able to use (and pay for) less space and less staff if it matriculated fewer students. However, for purposes of this analysis, I will assume a fixed number of students. In speaking about incremental costs, I will assume that the only question is whether to offer those students a particular course.

In this respect, experiential courses and traditional courses are similar. The only significant difference is at schools where the professors teaching these types of courses have different statuses. In many schools, professors who teach traditional courses are tenure-line professors, while those who teach many experiential courses are non-tenure-line professors, who may be paid less. At such schools, the costs of professor labor might be less for experiential courses than for traditional courses.³⁷

The last issue that should be considered regarding the costs of professor labor is that, in the short term, this cost may look more like a fixed cost than a variable cost. Whether because of tenure, or because of other school rules or norms, many (if not most) schools hesitate to lay off a faculty member even where there is no incremental need for that faculty member's service.³⁸ If this is the case, then a decision not to ask that faculty member to teach a particular type of course does not save any money. The school will pay the faculty member's costs irrespective of whether it offers that course.³⁹

However, this Essay will include faculty costs as a factor in calculating cost per student-credit-hour for two reasons. First, over the longer term, even in systems with tenure or other retention norms, faculty costs are variable. If a law school chooses to offer courses which require less faculty labor, then when a faculty member retires or leaves, the school will be less likely to hire a replacement. In that sense, choices about which types of courses to teach have real cost implications, even if only in the long run.

But there is a second reason to include faculty costs as a factor, even if faculty size were fixed: It helps with comparative analysis and, therefore, decisions about allocation of resources. To understand this, assume that a school would pay Professor X's costs for the next 20 years irrespective of what courses Professor X teaches. In such a case, the cost of Professor X is effectively fixed. However, what the school gets for that cost may still vary – both pedagogically (the type of

³⁷ This is intended solely as a descriptive observation. I do not mean to suggest that it is normatively or pedagogically better to have such a dual-status system. Of course, this is an Essay on cost. And, as will be noted below, in a dual system, it might be less expensive to offer experiential courses (or any course taught by non-tenure-line faculty). See *infra* Section II.D. Again, this is not intended to suggest that a dual-status system is better. That issue is beyond the scope of this Essay.

³⁸ This, too, is intended solely as a descriptive observation. I do not mean to suggest that it is normatively or pedagogically better not to have a tenure system or other norm against laying off faculty when demand for their services goes down. That issue is beyond the scope of this Essay.

³⁹ This is why several commentators, including Professors Joy and Kuehn, have correctly observed that, for most schools, the question about what courses to offer is an allocative question. See *supra* notes 13-14 and accompanying text.

teaching that Professor X does) and economically (the student-credit-hours that Professor X teaches) – depending on the courses chosen. Thus, even if professor labor costs were fixed, understanding the relative benefits the flow from those costs is helpful and important.⁴⁰ For these reasons, I will include the cost of professor labor in my model.

Other Labor Costs. As noted above,⁴¹ there is a certain amount of labor that a law school probably requires irrespective of its course offerings. For example, faculty members likely need a certain level of administrative support for their basic teaching and writing activities. However, certain types of experiential course offerings may require additional staffing.

For example, most in-house clinics have one or more administrative staff to greet clients and perform basic law firm-type administrative tasks. In-house clinics staffed by tenure-line faculty may have staff attorneys or fellows, or they may pay outside attorneys, to provide coverage for the clinic's cases during the summer so that the clinical faculty members can write. And many externship programs have staff who assist with administrative duties involved in placing students in externships. While it is possible that some of these labor costs offset other labor costs that might be incurred (for example, if the administrative staff reduce the need for basic administrative support for the faculty members involved), most of the costs of this labor are above and beyond those required for faculty who teach traditional courses. For this reason, I will treat these costs as incremental costs of providing these types of experiential courses.

Other Expenses. Certain types of experiential offerings involve expenses that would not be incurred in more traditional courses. For example, an in-house clinic may take a case that requires depositions or experts. There may also be travel, bar licensing fees, case management software, and similar expenses.

Of course, the clinic might conceivably generate revenue that could offset (or more-than offset) these expenses. For example, the clinic might occasionally win fee and cost awards. It might even decide to charge client fees.⁴² Or it might receive grant-funding.⁴³ It is conceiv-

⁴⁰ As noted above, in the text accompanying *supra* note 7, my focus in this Essay is on the economic benefits, as opposed to the pedagogical benefits, which I assume adhere to most forms of experiential legal education.

⁴¹ See *supra* note 36 and accompanying text.

⁴² See, e.g., <http://www.chicagolawbulletin.com/Articles/2014/08/29/IIT-Chicago-Kent-8-29-14.aspx> (discussing fee-generating clinics at Chicago-Kent).

⁴³ There has been a push among many clinicians to move away from grant-funded, or so-called "soft money" clinics. The reason for this push is that when grants stop or run out, the school is likely to be faced with the choice of funding the clinic or discontinuing it. If there are insufficient funds to continue it, the clinics' partners and clients will lose the

able that, if such sources of revenue were large enough, a clinic could even be a net revenue generator for the school. But any net expense that remains, after such fees or grants, is an incremental cost of providing these types of experiential courses.

B. The Assumptions

There are two types of models for costs: static models, which rely on a specific set of assumptions about costs and dynamic models, which allow the user to vary those assumptions to fit their own institution.

To date, all the commentators that have attempted to model the costs of experiential legal education have created static models. That is, they have made certain assumptions about the elements of cost and, based on those assumptions, have determined the relative cost of different types of course offerings.⁴⁴ In a printed medium, that is really the only approach that is possible. And that is what I will provide here in the print version of this Essay.

However, the problem with a static model is that the assumptions that the author makes may not be accurate for the reader's institution. In fact, they can be quite far off. This means that the reader must accept the incorrect assumptions as a (hopefully) close approximation or endeavor to re-create the author's model independently and adjust the assumptions to fit the particular institution. To avoid this dilemma, on a dedicated website, I offer a dynamic model, which allows the reader to vary the assumptions I make to fit the institution in question.⁴⁵

For purposes of the static (print) model, I will make assumptions based on our experience here at Denver Law. I recognize that these assumptions may not fit every school, or even most schools. That is why I also provide a dynamic model on the website.⁴⁶ I will also try to address some of the limitations of the static model in my discussion of

services that they may have come to rely on. Additionally, the professors may find themselves out of a job. And there may be concerns that decisions about continued funding could be influenced by problematic considerations, such as political issues arising from unpopular lawsuits filed by the clinic. I do not address the merits of these concerns about soft-money clinics in this Essay, as they are beyond the scope of my project. But it may be worth pointing out that, to the extent that a school has such concerns, the school might need to choose between seeking grant funding (which would trigger such concerns, as well as the costs of trying to get such funding), or foregoing grant funding (which might increase the cost of its clinics).

⁴⁴ See, e.g., Sword & Walwer, *supra* note 4; Maurer & Cole, *supra* note 4.

⁴⁵ See <http://www.law.du.edu/documents/directory/publications/Katz-Cost-Analysis-Protected.xlsx>. For users who do not have Microsoft Excel, or who prefer a web-based interface, go to <http://www.law.du.edu/forms/Katz-cost-analysis.phd>.

⁴⁶ See *id.*

results, below, in which I will vary some of my assumptions to illustrate the range of possible results.

The assumptions I use in the static model are:

- Faculty Labor Costs:⁴⁷
 - Tenure-line faculty labor cost: \$199,400/year. This assumes (1) an average salary of \$141,500/year and an average summer stipend of \$10,000, for a total average compensation of \$151,500/year, (2) a 30% cost of benefits based on compensation, for a total of \$196,950 in average compensation and benefit costs, and (3) \$2,500 in faculty development and travel costs, for a total of \$199,400 in average total cost per tenure-line faculty.
 - Non-tenure-line faculty labor costs: \$111,050/year. This assumes (1) an average salary of \$78,500/year and an average summer stipend of \$5,000,⁴⁸ for a total average compensation of \$83,500/year, (2) a 30% cost of benefits based on compensation, for a total of \$108,550 in average compensation and benefit costs, and (3) \$2,500 in faculty development and travel costs, for a total of \$111,050 in average total cost per non-tenure-line faculty.

⁴⁷ In this Essay, I focus on the labor costs for full-time faculty, as opposed to adjunct faculty. Some commentators have suggested that law schools' labor costs could be drastically reduced by relying more on adjunct faculty members and less on full-time faculty members. See, e.g., Kyle P. McEntee, Patrick J. Lynch & Derek M. Tokaz, *The Crisis in Legal Education: Dabbling in Disaster Planning*, 46 U. MICH. J. L. REV. 225 (2012). I do not address this issue here for three reasons. First, and most importantly, I am trying to make an apples-to-apples comparison between different types of course offerings. Because most traditional courses at ABA accredited law schools are currently offered by full-time faculty, I use that as the comparison. Second, and related, the ABA and AALS currently place limits on the use of adjunct faculty. See ABA Standard 402, Interpretation 402-1 (in calculating faculty size, adjuncts count as 0.2 faculty; and total adjunct faculty can count for no more than 20% of the total faculty size); AALS Bylaw 6-4(d) no more than 1/3 of instruction can be done by adjuncts. So staffing large numbers of courses with adjunct faculty is not really an option for most schools. Finally, staffing courses with adjuncts is often more a form of cost-shifting than a form of cost-saving. This is because the pay offered to adjuncts at most law schools is well below the market value of the adjuncts' services. (An extreme version is the partner at a big firm who commands \$1,000 per hour for client work, but who teaches a course – which likely takes hundreds of hours – for an adjunct stipend of \$3,000.) As a result, most adjunct teaching represents a donation to the school and its students. It does not mean that the adjunct-taught class is cheaper; it is merely cheaper to the school since the lion's share of its cost is subsidized by the adjunct or her organization.

⁴⁸ This assumes that stipends for non-tenure-line faculty are the same size as those for tenure-line faculty, but that fewer non-tenure-line faculty members receive such stipends, since such stipends often require scholarship and fewer non-tenure-line faculty members produce scholarship.

- Percent of faculty time allocated to each type of teaching: 100%.⁴⁹
- Type of faculty for each type of course:
 - In-House Clinic: Tenure-line
 - Externship: Non-tenure-line
 - Simulation Course: Tenure-line
 - 1st Year Lawyering: Non-tenure-line.
 - Traditional Courses: Tenure-line
- Courses taught per year by faculty with a full load in this type of teaching:
 - In-house clinic: 2 courses/year (one per semester)
 - Externship program: 3 courses/year (one per semester and one during summer)
 - Simulation courses: 3.5 courses/year
 - 1st Year Lawyering: 4 courses/year
 - Traditional faculty: 3.5 courses/year
- Credits per course (on per-term basis)
 - In-house clinic: 6 credits
 - Externship program: 3 credits⁵⁰
 - Simulation courses: 3 credits
 - 1st Year Lawyering: 3 credits
 - Traditional courses: 3 credits
- Students per course (per-faculty member, if more than one)
 - In-house clinic: 8 students

⁴⁹ At some schools, faculty teach different types of courses. For example, a faculty member might teach a 50% clinic load and a 50% traditional load. This assumption can be varied in the dynamic model. *See supra* note 45. For purposes of this static model, I will assume that faculty do only one type of teaching.

⁵⁰ Increasingly, externship programs are offering more in-depth opportunities, which carry higher credit loads. For example, at Denver Law, we offer a Semester in Practice, which is a full-immersion, 15-credit externship. *See* <http://www.law.du.edu/documents/legal-externship-program/types/Semester-in-Practice.pdf>. Additionally, these assumptions are based on an externship program with a wide variety of placements. In contrast, some externship programs are more like external clinics, done in partnership with a legal services organization or government legal office. However, the staffing and administrative needs of both models tend to be similar. To the extent that they differ at any particular law school, the assumptions can be adjusted appropriately in the dynamic model. *See supra* note 45.

- Externship program: 33 students⁵¹
- Simulation courses: 20 students
- 1st Year Lawyering: 17 students
- Traditional courses:
 - Large podium course: 75 students
 - Medium podium course: 50 students
 - Small podium course: 20 students
 - Seminar: 10 students
 - Average podium course: 39 (assumes a mix of one of each of the above types of podium courses).
- Other Labor Costs:
 - Administrative staff:
 - Compensation costs: \$52,000/year. This assumes (1) an average salary of \$40,000/year, (2) a 30% cost of benefits based on compensation, for a total of \$52,000 in average compensation and benefit costs.
 - In-house clinic staff-faculty ratio: 3:10. (3 staff members for 10 faculty members.)
 - Externship program staff-faculty ratio: 2:4 (2 staff member for 4 faculty members.)
 - In-house staff attorneys or fellows:
 - Compensation costs (for fellows): \$74,000/year. This assumes (1) an average salary of \$55,000/year, (2) a 30% cost of benefits based on compensation, for a total of \$71,500 in average compensation and benefit costs, and (3) \$2,500 in faculty development and travel costs, for a total of \$74,000 in total cost.
 - In-house clinic fellow-faculty ratio: 2:10 (2 fellows for 10 faculty members.)
 - Student supervisions per fellow: 2 per term.⁵²

⁵¹ Maurer and Cole use, as their standard, a 25:1 ratio, but also assume that the externship provides 14 credits to each student. See Maurer & Cole, *supra* note 4, at 157.

⁵² At Denver Law, clinical fellows serve 3 year terms, with no student load the first year, a 2 student load the second year, and a 4 student load their final year – for an average of 2 students/year. Because fellows generate some student credit hours, this must be taken into account in looking at this cost. In my model, I take this into account by dividing the total administrative costs of running a clinic by a number of student credit hours that includes those taught by the fellows.

- Fees for outside attorneys for in-house clinic summer coverage: \$45,000.
- Other Expenses for In-House Clinic:
 - Litigation costs (e.g., discovery, experts): \$95,250/year
 - Other admin. costs (e.g., bar licenses, case management software, travel): \$55,000
 - Fee and cost awards in favor of clinic: \$56,500/year (5-year average)
- Other Administrative Expenses for Other Types of Experiential Courses (beyond those for Traditional Courses):
 - Externship Program: \$7,000
 - 1st Year Lawyering (Teaching Assistants): \$47,500
- Total number of full-time faculty members:
 - In-house clinic: 10.
 - Externship Program: 4.

(Administrative costs should be measured per student-credit-hour. To calculate this, I take all of the administrative costs incurred by the unit and divide that total cost by the number of student-credit-hours generated by the unit. To calculate the total number of student-credit-hours generated by a unit, I take the number of student-credit-hours generated by each faculty member multiplied by the total number of faculty members in the unit.)

C. The Model: Findings

Based upon these assumptions, the costs per student-credit-hour of different types of course offerings are as follows:⁵³

⁵³ The tables in the text are summary tables. A table showing more detailed calculations is provided in Appendix A.

TABLE 1 – THE BASIC MODEL

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
Experiential							
In-House Clinic	199,450	2.0	6	8	2,078	439	2,517
Externship	111,050	3.0	3	33	374	93	467
Simulation	199,450	3.5	3	20	950	—	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
Traditional Courses							
Large Podium	199,450	3.5	3	75	253	—	253
Medium Podium	199,450	3.5	3	50	380	—	380
Small Podium	199,450	3.5	3	20	950	—	950
Seminar	199,450	3.5	3	10	1,900	—	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	—	490

From this, we can observe that there is a wide range of cost for different types of experiential offerings. For example, an in-house clinic is more costly than a simulation course, which in turn is more costly than an externship program. This means that, when a school wants to add capacity in experiential learning, the expense it incurs will depend on the type – or the mix – of experiential opportunities it decides to add.⁵⁴

We also see from this model that comparisons with traditional courses need to be nuanced. For example, in the line for seminars, it appears that the cost per student credit hour is \$1,900 – nearly the cost of an in-house clinic without administrative costs (\$2,078), and more than any other type of experiential course. Based on similar calculations, some commentators have suggested that schools should only consider an in-house clinic too costly to offer if they are prepared to give up seminars.⁵⁵ Similarly, it appears that large podium courses cost only \$253 per student credit hour, roughly one tenth the cost of an in-house clinic with administrative costs. This might lead an observer concerned about cost to conclude that we should increase the number of large podium courses we offer.

⁵⁴ See DEBORAH MARANVILLE ET AL., BEYOND BEST PRACTICES: REFLECTIONS ON TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (forthcoming from LexisNexis 2014) (schools that want to add experiential learning capacity should consider adding a mix of clinics, externships, simulation courses, and hybrids).

⁵⁵ See, e.g., Joy, *supra* note 13, at 404 (focusing on the high cost of clinics often fails to look at other expensive things in law school budgets, such as seminars or supervised research); Maurer & Cole, *supra* note 28, at 158 (“Looking purely at a cost-per-credit-hour calculation, however, one can see that unless a law school is going to argue that it is too expensive to offer a three-credit class for 20 students, not to mention a three-credit seminar for 12 students, then 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.”).

However, unlike many clinicians who teach only clinics, few podium faculty teach only one type of course, be it seminars or large podium courses. Thus, it is important to look at the average student load for podium faculty, not just the student load in a particular seminar or large podium course. In the model, the cost for the average podium course, based on an average student load, is \$490/student-credit-hour, which is similar to the cost for an externship course (\$467 per credit hour including administrative costs).

D. Some Implications for the Cost of Experiential Education

We can see from this model that there are four primary drivers of cost: (1) student-faculty ratios, (2) faculty compensation costs (which tend to be linked to faculty status), (3) credits offered per course, and (4) for in-house clinics, the complexity of the clinic.

One thing that we can see from this model is that a primary driver of cost is faculty-student ratio. In the in-house clinic, the average faculty member teaches 16 students per year.⁵⁶ In the model, this leads to a cost per student credit hour of \$2,517. If we added two students per semester to the clinic each semester, increasing the student-faculty ratio from 8:1 to 10:1, the cost per student credit hour would drop to \$2,017. This is still more than the other forms of education in our model. But it is significantly less than the \$2,517 per student credit hour that it took to teach the same clinic with an 8:1 ratio.

TABLE 2 – INCREASED STUDENT LOAD IN CLINIC (TO 10/TERM)

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
<u>Experiential</u>							
In-House Clinic	199,450	2.0	6	10	1,662	355	2,017
Externship	111,050	3.0	3	33	374	93	467
Simulation	199,450	3.5	3	20	950	-	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
<u>Traditional Courses</u>							
Large Podium	199,450	3.5	3	75	253	-	253
Medium Podium	199,450	3.5	3	50	380	-	380
Small Podium	199,450	3.5	3	20	950	-	950
Seminar	199,450	3.5	3	10	1,900	-	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	-	490

⁵⁶ Some clinics are year-long, as opposed to semester-long clinics. In such clinics, the average clinical faculty member teaches 8 students per year. However, in terms of credits purchased by students (as opposed to students who get the opportunity to take a clinic), the benefits to the school are the same as a one-semester clinic, since each of the students in the year-long clinic pays for two semesters of credits.

And if we increased the ratio to 12:1, the cost would be even lower, at \$1,683 per student credit hour, less than the typical seminar (assuming that podium faculty taught only seminars).

TABLE 3 – INCREASED STUDENT LOAD IN CLINIC (TO 12/TERM)

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
Experiential							
In-House Clinic	199,450	2.0	6	12	1,385	298	1,683
Externship	111,050	3.0	3	33	374	93	467
Simulation	199,450	3.5	3	20	950	-	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
Traditional Courses							
Large Podium	199,450	3.5	3	75	253	-	253
Medium Podium	199,450	3.5	3	50	380	-	380
Small Podium	199,450	3.5	3	20	950	-	950
Seminar	199,450	3.5	3	10	1,900	-	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	-	490

Similarly, we can see that high student-faculty ratios are a major driver of the low cost of externship programs. If Denver Law sought to reduce the student faculty ratio on its externship program to 25:1, which some might suggest is a more optimal ratio than our current 33:1 ratio,⁵⁷ it would increase the cost per student credit hour from \$467 to \$617 – roughly a 32% increase in cost.

TABLE 4 – REDUCED STUDENT LOAD IN EXTERNSHIP PROGRAM
(TO 25:1)

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
Experiential							
In-House Clinic	199,450	2.0	6	8	2,078	439	2,517
Externship	111,050	3.0	3	25	494	123	617
Simulation	199,450	3.5	3	20	950	-	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
Traditional Courses							
Large Podium	199,450	3.5	3	75	253	-	253
Medium Podium	199,450	3.5	3	50	380	-	380
Small Podium	199,450	3.5	3	20	950	-	950
Seminar	199,450	3.5	3	10	1,900	-	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	-	490

That is not to say that increasing student-faculty ratios in any particular type of experiential offering is a good idea. Most clinicians, for example, believe that the optimal student-faculty ratio is 8:1, both for

⁵⁷ See Maurer & Cole, *supra* note 4, at 157 (using model based on 25:1 ratio).

pedagogic reasons and reasons relating to quality of representation.⁵⁸ And some externship faculty believe that ratios greater than 25:1 are not optimal.⁵⁹ There may be significant pedagogic costs to increasing student-faculty ratios beyond these numbers. My point is simply that, to the extent schools are concerned about the cost of particular types of experiential education, one way to reduce cost is to increase student-faculty ratios.

A second driver of cost is faculty status and compensation. One of the reasons that externships are relatively inexpensive in this model is that they are taught by non-tenure-line faculty, whereas most of the other types of experiential courses at Denver Law (other than 1st Year Lawyering) and most of the podium courses are taught by tenure-line faculty. While I offer no thoughts here on the normative desirability of dual pay structures, non-tenure-line faculty cost, on average, 56% of what tenure-line faculty cost. This means that, if a school chose to staff an externship program with tenure-line faculty, and pay those faculty the same as its other tenure-line faculty, the costs per student credit hour of the externship program would increase from \$467 to \$765.

TABLE 5 – STAFFING EXTERNSHIP PROGRAMS WITH TENURE-LINE FACULTY (STILL 3 TERMS)

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
Experiential							
In-House Clinic	199,450	2.0	6	8	2,078	439	2,517
Externship	199,450	3.0	3	33	672	93	765
Simulation	199,450	3.5	3	20	950	-	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
Traditional Courses							
Large Podium	199,450	3.5	3	75	253	-	253
Medium Podium	199,450	3.5	3	50	380	-	380
Small Podium	199,450	3.5	3	20	950	-	950
Seminar	199,450	3.5	3	10	1,900	-	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	-	490

And if switching the externship faculty to tenure line status meant that externships could no longer be offered in the summer (since the externship faculty would have writing obligations), the cost per student credit hour would increase to \$1,147 – nearly 2.5 times its current cost.

⁵⁸ See Joy, *supra* note 12, at 309 n.1. There is, obviously, some self-interest in clinicians' observations about optimum student-faculty ratios in clinics. However, this self-interest does not necessarily mean that these clinical faculty members are mistaken.

⁵⁹ See Maurer & Cole, *supra* note 4, at 157 (using model based on 25:1 ratio).

TABLE 6 – STAFFING EXTERNSHIP PROGRAMS WITH TENURE-LINE FACULTY (ONLY 2 TERMS)

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
Experiential							
In-House Clinic	199,450	2.0	6	8	2,078	439	2,517
Externship	199,450	2.0	3	33	1,007	140	1,147
Simulation	199,450	3.5	3	20	950	-	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
Traditional Courses							
Large Podium	199,450	3.5	3	75	253	-	253
Medium Podium	199,450	3.5	3	50	380	-	380
Small Podium	199,450	3.5	3	20	950	-	950
Seminar	199,450	3.5	3	10	1,900	-	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	-	490

Conversely, if a school chose to staff an in-house clinic with non-tenure-line faculty, and pay those faculty the same as other non-tenure-line faculty, the costs per credit hour of the in-house clinic would drop from \$2,517 to \$1,596.

TABLE 7 – STAFFING CLINICS WITH NON-TENURE-LINE FACULTY (WRITING OBLIGATIONS, 2 TERMS)

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
Experiential							
In-House Clinic	111,050	2.0	6	8	1,157	439	1,596
Externship	111,050	3.0	3	33	374	93	467
Simulation	199,450	3.5	3	20	950	-	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
Traditional Courses							
Large Podium	199,450	3.5	3	75	253	-	253
Medium Podium	199,450	3.5	3	50	380	-	380
Small Podium	199,450	3.5	3	20	950	-	950
Seminar	199,450	3.5	3	10	1,900	-	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	-	490

And if staffing an in-house clinic with non-tenure-line faculty allowed the clinic faculty to teach a summer term and eliminated the need for summer coverage in the clinic (since the clinic faculty would no longer have writing obligations), the cost per credit hour would fall to \$945 – less than the cost of a small podium course, and roughly twice the cost of an externship program (as opposed to 5 times the cost in the original model). This suggests that a significant amount of the cost difference between in-house clinics and externship programs may be based on status differences and attendant differences in compensation and related costs.

TABLE 8 – STAFFING CLINICS WITH NON-TENURE-LINE FACULTY
 (NO WRITING OBLIGATIONS, 3 TERMS)

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
<u>Experiential</u>							
In-House Clinic	111,050	3.0	6	8	771	173	945
Externship	111,050	3.0	3	33	374	93	467
Simulation	199,450	3.5	3	20	950	-	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
<u>Traditional Courses</u>							
Large Podium	199,450	3.5	3	75	253	-	253
Medium Podium	199,450	3.5	3	50	380	-	380
Small Podium	199,450	3.5	3	20	950	-	950
Seminar	199,450	3.5	3	10	1,900	-	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	-	490

This is not to suggest that tenure should be abolished, either for clinicians or more generally, or that pay for tenure-line faculty should be reduced. Nor is it meant to suggest that faculty who are currently non-tenure-line should never be given tenure or paid at a level that is commensurate with tenure-line faculty. Those issues are well beyond the scope of this Essay.⁶⁰ The point is only that, in a dual-status system with different pay levels and obligations, how a school chooses to staff different types of experiential courses will have significant impact on the cost of those courses.

A third driver of cost is the number of credit hours offered. Suppose that, instead of giving students 6 credits for an in-house clinic, we gave them 12 credits – a Semester in Practice in the clinic. The costs per student credit hour for the clinic would drop from \$2,517 to \$1,258.

⁶⁰ A great deal has been written in defense of academic tenure at law schools. See, e.g., Ralph S. Brown & Jordan E. Kurland, *Academic Tenure and Academic Freedom*, 53 LAW & CONTEMP. PROBS. 325 (1990), available at http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=3722&context=fss_papers; Stephen Diamond, *ABA Does the Right Thing in Keeping Tenure Standard for Law Schools*, <http://stephen-diamond.com/?p=5268>; see also <http://www.aaup.org/issues/tenure>. However, the desirability of tenure continues to be debated. See, e.g., James C. Wetherbe, *It's Time for Tenure to Lose Tenure*, HARV. BUS. REV. BLOG March 13, 2013 (<http://blogs.hbr.org/2013/03/its-time-for-tenure-to-lose-te/>); *Should Tenure for College Professors be Abolished?* WALL. ST. J. June 24, 2013 (<http://online.wsj.com/news/articles/SB10001424052702303610504577418293114042070>) (presenting pro and con perspectives).

TABLE 9 – INCREASED STUDENT CREDIT HOURS IN CLINIC

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
Experiential							
In-House Clinic	199,450	2.0	12	8	1,039	220	1,258
Externship	111,050	3.0	3	33	374	93	467
Simulation	199,450	3.5	3	20	950	-	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
Traditional Courses							
Large Podium	199,450	3.5	3	75	253	-	253
Medium Podium	199,450	3.5	3	50	380	-	380
Small Podium	199,450	3.5	3	20	950	-	950
Seminar	199,450	3.5	3	10	1,900	-	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	-	490

Unlike the first two-cost drivers (faculty-student ratio and tenure-line faculty in clinics), adjusting credits offered may be less controversial. In fact, several highly-respected clinical programs, including Georgetown's, already offer 12- and 14-credit clinics.⁶¹ Students have often remarked to me that they spend far more time in their clinical courses than would be expected from the 6 credit hours they receive. Many clinical faculty members concur, and would gladly increase the credit hours offered for clinics. And while some podium faculty members might bemoan the loss of student credit hours to the clinic, or even question the value of the clinic credits relative to podium credits, the intensity of such battles is likely to be far less than those involving adjusting student-faculty ratios, faculty status, or compensation.

However, a strategy of increasing student credit hours in clinics raises a few questions. First, if there is no change in the amount of work that students do and no change in the amount of work professors do, what would justify such a change in the number of credit hours awarded? One possible response would be to have the students do more work. If so, would the professors be doing more work? If so, would we need to reduce their workload? If we did this by reducing student load, that would likely offset any cost benefits from increasing the number of credit hours associated with a clinic. (Though there still might be pedagogical benefits from immersion.) Alternatively, we might change the number of credit hours awarded for a clinic with no change in the amount of work expected of the students or workload credit granted to faculty. Presumably, the justification would be that, in some sense, the current credit hours awarded are too low. But to have confidence in this response would require some thought about how to determine the appropriate amount of credits to award in expe-

⁶¹ See <http://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/brochure/index.cfm>.

riential courses (where, unlike more traditional courses, there may be reasons to deviate from the hours/week in class formula). This is all to say that, while raising the number of credits offered in some experiential courses may be a relatively uncontroversial way of lower costs, it is not likely to be controversy-free.

A final cost-driver in clinics is the complexity of the matters taken on by the clinic. Compare, for example, a simple criminal defense clinic, which operates in county court with no discovery or experts, with a complex environmental clinic that operates in federal court and requires discovery and experts (and perhaps travel). In the basic model, administrative costs added \$439 per student credit hour. Without the costs of discovery or expert fees, the administrative costs would fall to \$345 per student credit hour.

TABLE 10 – CLINICS WITHOUT LITIGATION COSTS

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
Experiential							
In-House Clinic	199,450	2.0	6	8	2,078	345	2,422
Externship	111,050	3.0	3	33	374	93	467
Simulation	199,450	3.5	3	20	950	-	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
Traditional Courses							
Large Podium	199,450	3.5	3	75	253	-	253
Medium Podium	199,450	3.5	3	50	380	-	380
Small Podium	199,450	3.5	3	20	950	-	950
Seminar	199,450	3.5	3	10	1,900	-	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	-	490

Similarly, in simpler clinics, matters are less likely to extend for long periods of time, and therefore may require fewer or even no fellows, staff attorneys, or outside attorneys for summer coverage. Assuming no summer coverage costs, the administrative costs drops to \$161 per student credit hour, reducing the total costs per credit hour from \$2,517 to \$2,239 per student credit hour.

TABLE 11 – CLINICS WITHOUT LITIGATION OR SUMMER
COVERAGE COSTS

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
Experiential							
In-House Clinic	199,450	2.0	6	8	2,078	161	2,239
Externship	111,050	3.0	3	33	374	93	467
Simulation	199,450	3.5	3	20	950	-	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
Traditional Courses							
Large Podium	199,450	3.5	3	75	253	-	253
Medium Podium	199,450	3.5	3	50	380	-	380
Small Podium	199,450	3.5	3	20	950	-	950
Seminar	199,450	3.5	3	10	1,900	-	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	-	490

That is not to say that law schools should not offer complex litigation clinics. Such clinics may offer students opportunities that they could not get in simpler litigation – including experiences which may be closer to the work those students will do after law school. That is, there may be (and likely are) good pedagogic reasons for offering complex clinics.⁶² And complex clinics may be more likely to generate fees. My point here is only that offering more complex clinics may add significant administrative costs to in-house clinics.

The last point I will make here is that schools may choose to address multiple cost-drivers simultaneously, and thereby achieve even greater effects on cost. For example, suppose that a school decided to adjust both student-faculty ratio (from 8:1 to 10:1) and credits offered (from 6 to 12) in a clinic. These two changes together would reduce the cost of the clinic from \$2,517 per credit hour to \$1,008 per credit hour – a 250% reduction, which would bring the cost of the clinic in line with the cost of a simulation or a small podium class.

⁶² The converse may also be true: Less complex clinics may offer students unique experiences, including more trial work. This suggests that schools should consider offering a mix of different types of clinics. See BEYOND BEST PRACTICES, *supra* note 54.

TABLE 12 – CLINICS WITH 10:1 RATIO AND 12 CREDIT HOURS

Type of Course	Faculty Compens. Costs	Courses/ Year	Credits/ Course	Students/ Course	Faculty Cost/ Student Credit	Admin. Cost/ Student Credit	Total Cost/ Student Credit
Experiential							
In-House Clinic	199,450	2.0	12	10	831	177	1,008
Externship	111,050	3.0	3	33	374	93	467
Simulation	199,450	3.5	3	20	950	-	950
1st Yr. Lawyering	111,050	4.0	3	17	544	23	568
Traditional Courses							
Large Podium	199,450	3.5	3	75	253	-	253
Medium Podium	199,450	3.5	3	50	380	-	380
Small Podium	199,450	3.5	3	20	950	-	950
Seminar	199,450	3.5	3	10	1,900	-	1,900
Avg. Podium Load	199,450	3.5	3	38.75	490	-	490

E. New, Hybrid Forms of Experiential Education

In the last section, I quantified the costs of the most common forms of experiential legal education: in-house clinics, externship programs, and simulation courses. However, schools are experimenting with various hybrid approaches to experiential learning that break down some of the walls between these categories. Such hybrid approaches have significant potential for offering new forms of experiential learning at relatively low cost.

To understand the concept of a hybrid, it helps to break down the tasks that occur in more typical types of live-client experiential courses.⁶³ Fundamentally, there is a teaching component and a supervision component. The teaching component generally includes teaching seminars or classes on the material and skills involved in the course. It may also involve encouraging self-reflection by students, in order to maximize learning and promote the formation of professional identity. The teaching component also includes evaluating the students' work and giving grades. The supervision component involves making sure that the students adequately (hopefully excellently) represent the client. The supervisors also generally select cases and clients. Of course, there is overlap, in the sense that the supervisor can provide instruction and feedback, and in that sense teach the students. And to the extent that privilege issues permit, the teachers can discuss the supervised work in seminars and classes.⁶⁴

In the typical in-house clinic, the teaching and supervision functions are performed by the same person; the teacher is also the supervisor. This has significant benefits in that the more formal teaching

⁶³ See BEYOND BEST PRACTICES, *supra* note 54 (Chapter 5.e.i discusses the characteristics of common forms of experiential education).

⁶⁴ See Laura Rovner, *The Unforeseen Ethical Ramifications of Classroom Faculty Participation in Law School Clinics*, 75 U. CIN. L. REV. 1113 (2007).

(seminar and classroom) can be easily tied to the learning that occurs in the supervision. Additionally, the cases and clients can be selected with an eye toward their pedagogic value.⁶⁵ For these, and other reasons, in-house clinics are often considered the “gold standard” of experiential education. But as we saw above, they also tend to be the most expensive form of experiential education.

In the typical externship, the teacher and supervisor functions are generally divided. Students likely take a seminar or class taught by a faculty member, and are graded by the faculty member, based in part on feedback from the supervisor. The supervisor is generally a lawyer in the community, and work is done for the lawyer’s clients. High quality externship programs carefully select supervisors who provide good instruction and feedback to students, and who are working on matters that will be good teaching tools.⁶⁶

This division of labor makes externship programs relatively inexpensive. Because the supervision part of the work is done by an outside lawyer who is essentially trading his or her labor in the supervision role in exchange for the students’ labor, the supervision work is essentially free. And because the faculty member does not need to directly supervise the students, the faculty member can teach many more students that could be taught in a typical in-house clinic.

Hybrid experiential classes mix and match these roles in ways that seek to provide high-quality educational experiences, while breaking down the silos that tend to exist among the common forms of experiential education.⁶⁷ Such hybrids can be offered at relatively low cost because they use labor from podium professors or from members of the legal community, both of which tend to have low incremental cost. For example:

- At some schools, podium faculty are taking on pro bono legal work and supervising students in that work.⁶⁸ In these hybrids, teaching and supervision are done by the same person. But the cost savings comes from the fact that this teaching and supervision occupies only a fraction of the podium faculty member’s time, generally being done instead of a seminar, but in addition

⁶⁵ See BEYOND BEST PRACTICES, *supra* note 54 (Chapter 5.e.i discusses the characteristics of clinics, including selection of cases for pedagogic value; Chapter 5.e.ii discusses the value of clinics).

⁶⁶ See Maurer & Cole, *supra* note 4.

⁶⁷ An excellent discussion of new course structures appears in BEYOND BEST PRACTICES, *supra* note 54 (Chapter 5.e.i., Section II.A).

⁶⁸ For example, in the Appellate Practice Lab at Denver Law students work on federal appellate briefs on a real case, which two faculty members took pro bono. The students enrolled in the course work with the professors and a prominent outside counsel in preparing the appeal.

to multiple larger podium courses. Essentially, this type of hybrid offers a relatively easy version of the trade-off envisioned by Professors Kuehn and Joy.⁶⁹

- Some podium faculty are partnering with private lawyers in the community to supervise students on pro bono matters.⁷⁰ Like the hybrid above, there is little to no incremental cost from the work done by the podium faculty member, since that work is generally done instead of a small seminar-like course, or perhaps as an overload (which is generally done for adjunct-level pay). The difference here is that the podium faculty members partner with local lawyers, either sharing or dividing the teaching and supervising work, similar to a traditional externship.
- Some externship faculty are partnering with legal services organizations to share the work of training students in ways that combine the benefits of off-site clinics and those of on-campus externship programs.⁷¹ The students get some of the benefits of a clinic (teaching and supervision by a full-time faculty member, working on real cases with real clients, and cases selected in part for their pedagogic value), but the partnership between the faculty member and the non-profit allow for shared supervision and therefore higher levels of student participation and lower costs. (This model is, of course, like a traditional outside clinic.)
- Some schools are creating interdisciplinary externships, in which law student externs work alongside externs from other graduate professional schools.⁷² These types of externships are similar to the externship partnerships mentioned above, but add an interdisciplinary component which can be extremely valuable to future lawyers who will need to work on interdisciplinary teams.
- Some legal research and writing faculty, instead of creating purely hypothetical simulations, have had their students work perform legal research and writing on real legal issues for public interest organizations.⁷³

⁶⁹ See Joy, *supra* note 13; Kuehn, *supra* note 14.

⁷⁰ For example, in the Wills Lab at Denver Law, students work with a faculty director and lawyers in the local community to draft wills for low-income clients. See <http://www.law.du.edu/forms/registrar/course-description.cfm?ID=278>. And in the Tribal Wills Project, they draft wills for members of Native American tribes. See Lucy Marsh, *The Tribal Wills Project at DU Law*, 42 COLO. LAWYER No. 7 (July 2013), available at SSRN: <http://ssrn.com/abstract=2321215>; Lucy Marsh, *Experiential, Modern Learning and Community Service at Their Best*, 90 D.U. LAW REV. 167 (2013), available at SSRN: <http://ssrn.com/abstract=2321811>.

⁷¹ For example, in the Hybrid Immigration Project at Denver Law, students work on immigration cases with a full-time faculty member and supervising attorneys from a local non-profit. See <http://www.law.du.edu/documents/legal-externship-program/types/Hybrid-Immigration.pdf>.

⁷² See <http://www.du.edu/rcsdf/>.

⁷³ See, e.g., Nantiya Ruan, *Experiential Learning in the First-Year Curriculum: The Public Interest Partnership*, 8 LEGAL COMM. & RHETORIC 191 (2011).

- Some schools are integrating experiential aspects (such as small-scale simulations or labs) into more traditional classes.

There are many other possibilities. For help in thinking about the ways that the teaching and supervising roles can be divided, I include in Appendix B a chart that we have used to think about these issues at Denver Law. But the point here is not to exhaustively cover the concept of the hybrid. Rather, it is to point out that such hybrids – and the entrepreneurial thinking behind them – may provide excellent ways to increase the quality and quantity of experiential education that schools can make available and actually reduce its cost.

From a cost standpoint, the analysis above points the way: Any offerings that add courses, credits, or seats at a cost less than current forms of experiential education will move a school in the right direction.

Such hybrids also remind us of an important concept that affects both the cost and quality of experiential education: partnership with the community. Some forms of experiential legal education, such as in-house clinics and simulation courses, involve primarily law school faculty (though often with exposure to outside lawyers and judges). However, other forms, including externship programs and many of the hybrids discussed above, essentially split the work of educating students between faculty members and members of the community. The community members may be motivated by a desire to mentor or teach, or they may be motivated by the fact that the students can help them with their work. But it is worth noting that, to the extent that we can get comfortable with the quality of the teaching and mentoring done by community members, this model has the potential to provide not just lower cost, but also added value.

F. A final Thought on Allocating Experiential Education

Although this Essay focuses on cost, rather than allocation, it raises allocation questions. The model developed here suggests that, no matter how we adjust certain variables, certain forms of legal education are more costly than others. This fact means that law schools need to confront two issues of allocation.

First, schools must decide how to allocate their resources to create an optimal mix of learning opportunities for their students. As Professors Kuehn and Joy have pointed out, schools must decide how much experiential education they want to offer and what they need to trade off to accomplish that goal.⁷⁴ Professor Kuehn's research suggests that many schools have managed to do so in a way that permits

⁷⁴ See Joy, *supra* note 13; Kuehn, *supra* note 14.

them to offer significant quantities of experiential education.⁷⁵ Hopefully, the model set out in this Essay will help with discussion about these allocation questions.

Second, once schools create a mix of educational opportunities, they must decide how to price them. At this point, I know of no law school that prices different types of courses differently (with the possible exception of study-abroad or study-away types of courses). This one-price approach effectively assumes that all students will take a similar mix of courses, and thus that the cost of different types of courses will be more or less evenly distributed among students. Or it might assume that those students who are admitted into limited-enrollment higher-cost types of courses, such as in-house clinics, have some superior claim to those seats. I do not know if either of these assumptions is in fact true.

But another potential response to the cost differences between courses might be to charge differential tuition: higher per credit tuition for certain types of high-cost courses. I am not suggesting that this is a good idea, an efficient idea (once administrative costs are taken into account), or even an unproblematic idea. My point is simply that schools with a single-price model are effectively choosing a particular allocative strategy; and that they might want to consider whether they are choosing the best allocative strategy.

CONCLUSION

Law schools today face pressure to offer more (and better) experiential education without significantly expanding the costs of legal education. The model in this Essay provides a framework for discussing the relative costs of expanding different types of experiential learning at a school. Those discussions must also include the pedagogical value of those types of experiential learning. Such discussions about costs and benefits will hopefully enable schools to think about the types of trade-offs postulated by Professors Kuehn and Joy in a productive way, and to produce a good mix of high value experiential learning opportunities in order to train the next generation of excellent lawyers.

⁷⁵ See Joy, *supra* note 13; Kuehn, *supra* note 14.

APPENDIX A

Faculty Costs

Administrative Costs

Type of Course	Type of Faculty	Average Compens.	% of Salary Alloc. To Course-Type	Courses/Year	Credits/Course	Students/Course	Faculty Cost/Student Credit	Admin. Staff	Staff Attys + Fellows	Outside Atty Fees	Discovery + Expert Fees	Other Admin Costs	Fee Awds + Grants	Total Admin Cost/Year	FT Faculty in Dept	Student Credit-Hrs/Yr All FT Faculty	Students/Fellow	Student Credit-Hrs/Yr All Fellows	Total Credit-Hrs/Yr in Dept	Total Admin Cost/Student Credit	Total Cost/Student Credit
Experiential																					
In-House Clinic	Tenure	199,450	100%	2.0	6	8	2,078	3	2	45,000	95,250	55,000	(56,500)	442,750	10	960	2	48	439	439	2,517
	Contract	111,050	100%	3.0	3	33	374	2	0	0	0	7,000	-	111,000	4	1,188	-	-	93	93	467
	Tenure	199,450	100%	3.5	3	20	950	0	0	0	0	0	-	-	-	-	-	-	-	-	950
1st Yr. Lawyering	Contract	111,050	100%	4.0	3	17	544	0	0	0	0	47,500	-	47,500	10	2,040	0	-	23	23	568
Traditional Courses																					
Large Podium	Tenure	199,450	100%	3.5	3	75	253	0	0	0	0	0	0	-	-	-	-	-	-	-	253
	Tenure	199,450	100%	3.5	3	50	380	0	0	0	0	0	0	-	-	-	-	-	-	-	380
	Tenure	199,450	100%	3.5	3	20	950	0	0	0	0	0	0	-	-	-	-	-	-	-	950
	Tenure	199,450	100%	3.5	3	10	1,900	0	0	0	0	0	0	-	-	-	-	-	-	-	1,900
Avg. Podium Load	Tenure	199,450	100%	3.5	3	38.75	490	0	0	0	0	0	0	-	-	-	-	-	-	-	490

APPENDIX B

Examples	Full-Time Faculty				Adjunct
	Clinical	Externship (Traditional)	Externship (Hybrid)	FT, Non-Clinic/Externship - Occasional Adjunct	Externship Model
			Hybrid Immigration Project	Wills Lab	Rocky Mt. Children's Law Center, Center for Separating and Divorcing Families
Who is Supervising Attorney	SLO Fac	Practitioner	LEP Fac and/or Practitioner	FT Fac and/or Practitioner	Adjunct
Whose Client	SLO	Practitioner	Practitioner	FT Fac and/or Practitioner	Adjunct
Who Provides Insurance	DU	Practitioner	Partner Org and DU	DU (if pro bono + student particip)	Adjunct
Direct Representation by Students under SPA	Yes	Ltd (Gov't + non-profit for 3L's)	Not under SPA. Maybe under other statute.	Possible if Partner Org is gov't or non-profit	Possible if Partner Org is gov't or non-profit
Who Grades the Students	SLO Fac	LEP Fac	LEP Fac	FT Fac	Adjunct (Class) + LEP Fac (Field)
Other Special Requirements	None	None	None	ADAA Permission	ADAA Permission
Seminar Component (and Who Teaches)	Yes (SLO Fac)	Yes (LEP Fac)	Yes (LEP Fac)	Possible (FT Fac)	Yes (Adjunct)