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A Reflection on Pricing Legal Clinical Education

A REFLECTION ON *PRICING LEGAL CLINICAL EDUCATION*

BY JEREMY SPECKHALS[†]

Kuehn's piece entitled *Pricing Legal Education* has a very clear message: law schools should be able to increase clinical legal education opportunities for law students without an accompanying increase in tuition. Furthermore, a school's ability to provide a clinical legal educational experience is more a question of will than of cost, Kuehn concludes. However, while Kuehn's piece provides an excellent bird's eye view of the overall picture of clinical legal education in today's law schools and its relation to tuition, the piece ignores two important realities. First, the piece overlooks that clinical legal education comes in many different forms and that each form of clinical legal education has a different cost. Second, the piece ignores the reality that while it might be true that law schools overall might be able to offer more clinical legal education opportunities for law students without increasing tuition, any one individual law school will have to make some sacrifices or changes in order for Kuehn's prediction to be a reality. By ignoring this reality, Kuehn overlooks the possibility that instituting more clinical legal education might not be as easy as Kuehn suggests.

LAW SCHOOL: A SCARY PLACE TO BE IN 2015

A few quotes from Kuehn's piece: "Recent statistics show that slightly more than half [of the class of 2013 graduates] obtained permanent lawyer positions nine months after graduation"¹; "Law firms complain that students are graduating unprepared for practice"² "Law school tuition has increased rapidly, and average student debt has soared";³ "The average debt of private law school graduates reached over \$122,000 in 2012"⁴ Meanwhile, public school graduates owed an average of \$84,600⁵"⁶ Kuehn's piece provides a sober—and realis-

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1. Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. U. L. REV. 1, 2 (2015).

2. *Id.* at 2.

3. *Id.*

4. *Id.* at 6–7.

5. *Id.*

6. These figures were based on data from 2001–2002 through 2011–2012. This data is based on the survey question, "The average amount borrowed *in law school* by J.D. graduates who borrowed at least one education loan in law school" (emphasis added). Thus, this figure does not include any undergraduate debt a law student might have. Furthermore, these figures are likely to rise overtime as law school tuition also rises. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, AVERAGE AMOUNT BORROWED (2014), *available at*

tic—picture of what it means to be a contemporary law student. Increasing clinical legal education will surely not solve every problem a contemporary law student faces. However, increasing opportunities for clinical legal education without increasing tuition is a step, albeit a small step, in the right direction.

WHERE KUEHN'S PIECE SUCCEEDS

Arguably, Kuehn's biggest strength is that he addresses the relationship between the availability of experiential courses and the tuition and fees students pay, ultimately coming to the conclusion that law schools overall should be able to increase clinical legal opportunities for their students without increasing tuition. Kuehn—in remarkably the first study of what variables affect tuition—comes to the conclusion that three variables explain 74% of the variance in tuition rates: (1) public versus private schools, (2) U.S. News rankings, and (3) cost of living.⁷ Kuehn's analysis even goes so far as to state that "there is no statistically significant relationship between the availability of experiential education courses and the tuition and fees students pay."⁸ No other study has examined the data in the way that Kuehn has. In this aspect, Kuehn has done a remarkable job at furthering the discussion about how clinical legal education, law school tuition, and students' ability to succeed in today's legal job market interact.

WHERE KUEHN'S PIECE FALLS SHORT

1. Kuehn's Piece Does Not Parse Out the Cost of Various Forms of Experiential Legal Education

While it is undoubtedly a strength of Kuehn's piece that he examines exactly what contributes to the cost of legal education, the piece does not examine the variables that affect tuition with enough detail. Mainly, Kuehn groups clinical legal education as including clinics, externships, and simulation courses without sufficiently detailing the cost differences between the three types of courses.⁹ In all likelihood, the costs of clinics, externships, and simulation courses vary greatly. Kuehn acknowledges that simulation courses are cheaper than clinics or field placement courses and includes this distinction in his statistical analysis.¹⁰ He also acknowledges that clinics are likely more expensive than field placement courses.¹¹ However, he does not make this distinction in

http://www.americanbar.org/groups/legal_education/resources/statistics.html (reporting average amount borrowed for academic years 2001–2002 through 2011–2012).

7. Kuehn, *supra* note 1, at 29.

8. *Id.* at 29.

9. *Id.* at 13.

10. *Id.* at 28–29.

11. *Id.* at 27.

his statistical analysis and the piece is not as strong as it could be as a result.

Kuehn notes that, “The conventional wisdom is that clinical courses, defined as clinics *and* externships, are expensive.”¹² Kuehn accepts this as true for the purposes of his piece, but does not provide any concrete evidence showing the statement to be, in fact, true.

It makes sense that clinics would cost more than a traditional doctrinal course. Professors, the attorneys of record for the cases that they oversee, must supervise a team of law student attorneys—this is a law firm. Depending on the nature of the clinic, students will need continued supervision over work product. They will also need supervision over strategy, client interactions, drafting legal documents, and appearing in court—just about every task the student attorney does. This no doubt takes quite a bit more time than a doctrinal course. And professors are unable to supervise as many students in a clinic as a professor could teach in a typical doctrinal course. Furthermore, this does not even include clinic professors other teaching or writing responsibilities, if he or she is able to partake in those responsibilities and the law school requires it.

Externships, in contrast, should be much less expensive to teach. Under the externship model, students are placed at an agency, with a judge, with an organization, or sometimes with a firm, depending on the school, and receive credit for work performed. The students are supervised by lawyers or judges at those locations, and a vast majority of the learning occurs outside the confines of the law school. Depending on the nature of the law school course, students will have very little, if any, interaction with law school professors, but these students are still paying law school tuition. A professor overseeing an externship course can likely supervise many more students than a professor teaching a clinical course can.

Kuehn more or less acknowledges this price difference.¹³ However, he does not include this difference in his particular study. He states, “Even when excluding low-cost simulations and focusing just on more resource intensive clinical legal education courses, the data still do not show a relationship between law clinic and externship courses and the tuition students pay.”¹⁴ The question should not be how do clinics and externships together affect tuition rates? Instead, Kuehn’s question should be broken into two questions: first, how do clinics affect tuition rates, and second, how do externships affect tuition rates?

12. *Id.* at 5. (emphasis in original).

13. *Id.* at 21–22 (stating that clinics are more expensive than the average fifty-six student classroom course per student credit hour and that field placement courses are cheaper per student credit hour than the average fifty-six student classroom course).

14. *Id.* at 37.

To group both clinical courses and externship courses together makes sense when discussing experiential legal education and the opportunities that students have to gain real world, legal experience. It does not make sense to group the two together when discussing cost. Kuehn's piece does not differentiate between the two, and his analysis suffers because of it.

This effect is further exacerbated when students enroll in field placement courses during the summer months. Students are already paying tuition during the school year, but not necessarily during summer months. Students who enroll in summer field placement courses should provide an additional economic benefit to the law school with little additional work from the professor supervising the course. Involvement in summer field placement courses further exacerbates the differences between field placements and clinics. While it is unclear what role these summer courses have on overall tuition rates, it is abundantly clear that a student will pay more in overall tuition if he or she signs up for a summer field placement course than if he or she does not. Kuehn's piece does not address this phenomenon.

2. *Kuehn's Piece Does Not Acknowledge That Individual Schools Will Have to Make Changes In Order to Offer More Experiential Education Without Increasing Tuition*

Perhaps more important than overlooking the economic cost differences of clinics versus field placements, Kuehn's piece does not address or recommend how any particular school should change its internal structure in order to offer more clinical education to its students.

Kuehn asserts that seven of eight schools can already provide more clinical legal education without adding courses or instructors or charging more in tuition.¹⁵ This assertion might be true in the abstract. However, the reality is that any individual school will have to make changes to their current internal structure in order to accomplish this. A law school could require its professors to teach more classes and publish less. A law school could potentially offer its newly tenured professors less salary and instead devote those funds to experiential education. Maybe a law school could compensate its administrative staff less or trim current administrative positions. While it might be true on the whole that law schools can provide more experiential education without increasing tuition, the article does not address the issue of how any individual school will accomplish this. Any individual law school will undoubtedly face difficult decisions on how to achieve Kuehn's prescription. Kuehn's conclusion that, "[A] school's curriculum can be structured to give every J.D. student a clinical experience without having to charge students more in tui-

15. *Id.* at 33.

tion,”¹⁶ is too conclusory. Any of the changes suggested above will no doubt be met with strong opposition making more experiential opportunities harder and more costly than Kuehn suggests.

CONCLUSION

Kuehn’s piece takes a step in the right direction. He has shown for the first time that law schools can provide their students with more clinical legal education opportunities without an accompanying raise in tuition. However, Kuehn does not parse through the distinctions between costs of simulation courses, clinics, and field placement courses with a fine enough comb. Because he does not make these distinctions in his calculations, the reader is left with a less than complete view of exactly how law schools tuition dollars are spent. Further, Kuehn does not acknowledge and suggest how any one individual school can make the changes necessary to provide more clinical legal education opportunities without raising tuition.

16. *Id.* at 39.