University of California, Berkeley

The Berkeley Transactional Practice Project

Competencies / Skills Survey; 2014

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Background

- Business Law Curriculum Coordination at Berkeley Law (Boalt Hall)
- For last several (~10) years…
  - Advised/lobbied by judges, attorneys, alumni and students to increase course offerings that enhance business competencies for students headed for transactional work
    - E.g.: Financial Statement Analysis / Accounting / Financial Valuation / Strategy & Org. Behavior / Spreadsheet skills
  - Many law firms / vendors have started "boot camps" to teach these competencies to new attorneys, often at substantial cost
    - Frequent Query: "Why can't they get this stuff in Law School?"

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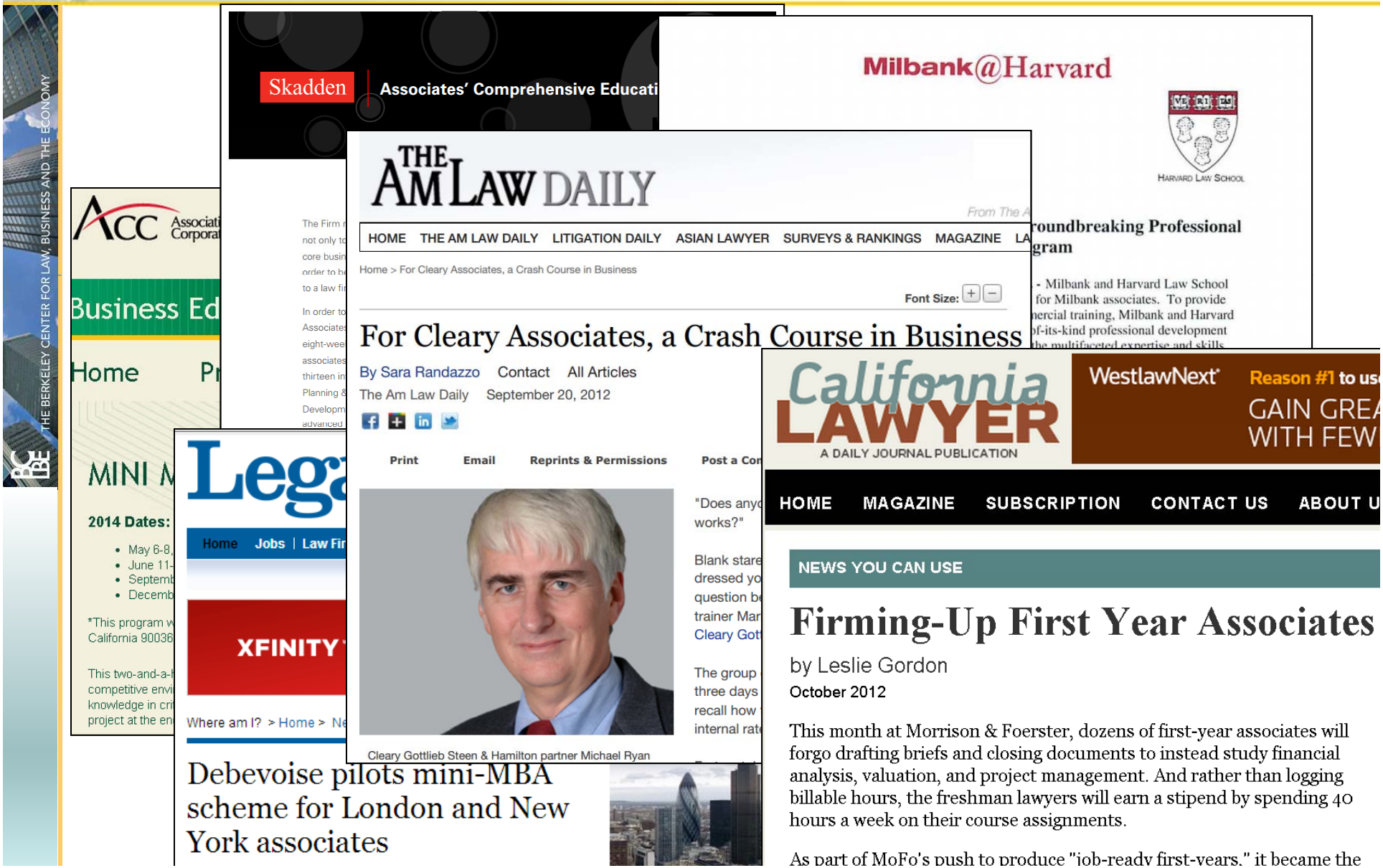
Proliferation of private-sector programs in "business skills" in recent years…



Background

- Heeding this advice, Berkeley Law has substantially enhanced its course coverage in the above competency areas
  - Mixture of lecture / problem-based instruction
- But: Task Force's (and ABA's) proposals don't explicitly list these areas as "example" courses that would fulfill new requirements
  - Reasons are unclear, at least to us.
- Purpose of survey: to gauge what transactional lawyers view as important competencies / skills for a new lawyer

Task force competencies recommendations (June 2013)

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Credit for the law school training units would be given for stand-alone courses, or for clinical work integrated into the core curriculum in such a way that it is part of and complements existing doctrinal classes; or it may take the form of earned credit units in externships, clerkships, or other apprenticeship-type work. Furthermore, in an effort to encourage greater integration with experiential learning, law schools may certify portions of courses to count towards satisfying this requirement. For those who elect to satisfy this requirement during law school, 15 units of coursework would be required from among the following subject areas:

- Oral presentation and advocacy
- Advanced legal research and writing (excluding first year legal research and writing)
- Negotiation and alternative dispute resolution (i.e. mediation, arbitration)
- Client counseling, effective client communication, and problem solving for clients in practice settings
- Witness interviewing and other investigation and fact-gathering techniques
- Law practice management and the use of technology in law practice
- Project management, budgeting and financial reporting
- Practical writing (e.g. drafting of contracts and other legal instruments, drafting of pleadings)
- Preparation of cases for trial during the pre-trial phase, including e-discovery
- Trial practice
- Basics of the justice system, including how courts in California are organized and administered, and what responsibilities lawyers have as officers of the court
- Professional civility and applied ethics (i.e. ethics in practice settings)[51]

Why doesn't this language take care of the problem?

The above list of subject areas is illustrative, is not intended to be exclusive, and is subject to further refinement in the implementation stage. Credit toward the 15-unit requirement, to the extent it falls within the parameters of one of the designated categories, may be received for in-the-field experience such as hours devoted to legal clinic work or in judicial or other governmental externships, and to the extent it is earned for in-class work, courses may entitle students to full or partial credit (thus permitting law schools to give appropriate levels of credit for integrated curricula involving a combination of experiential and doctrinal education). The 15 units may also overlap with the units required in Section B. below.

Threshold Issue: What constitutes a "competency / skill"?

- Not explicitly defined in task force reports (nor in those of many other national / state task forces)
- Our survey operates under the following 3-part definition as it pertains to transactional law:
  1. Not a traditional doctrinal course (or a strict subset of one)
  2. Enhances students' capacities to confront practical problems across many doctrinal areas of practice
  3. Recognized by the profession to be "critical" to the successful transition into the practice of law

- Note: *This definition not tied to modality of delivery (e.g., experiential) as pre-condition for inclusion/exclusion*
  - Deliberate: survey allows us to evaluate that dimension separately

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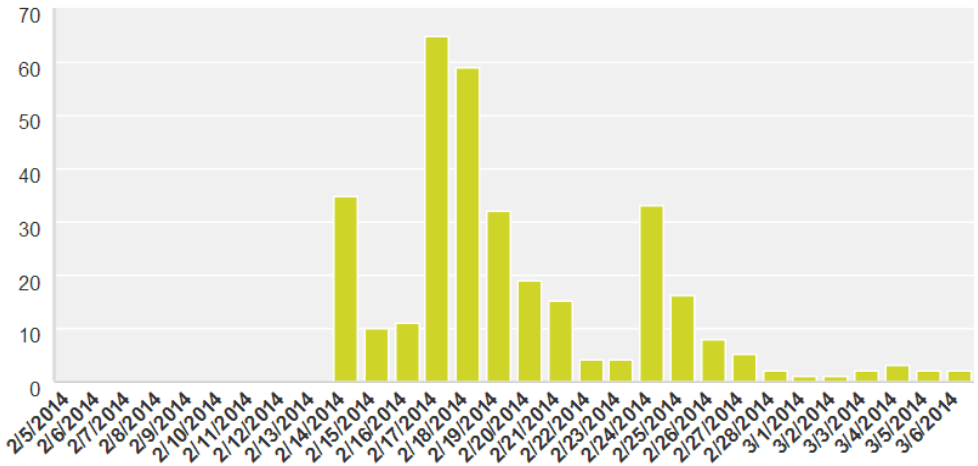
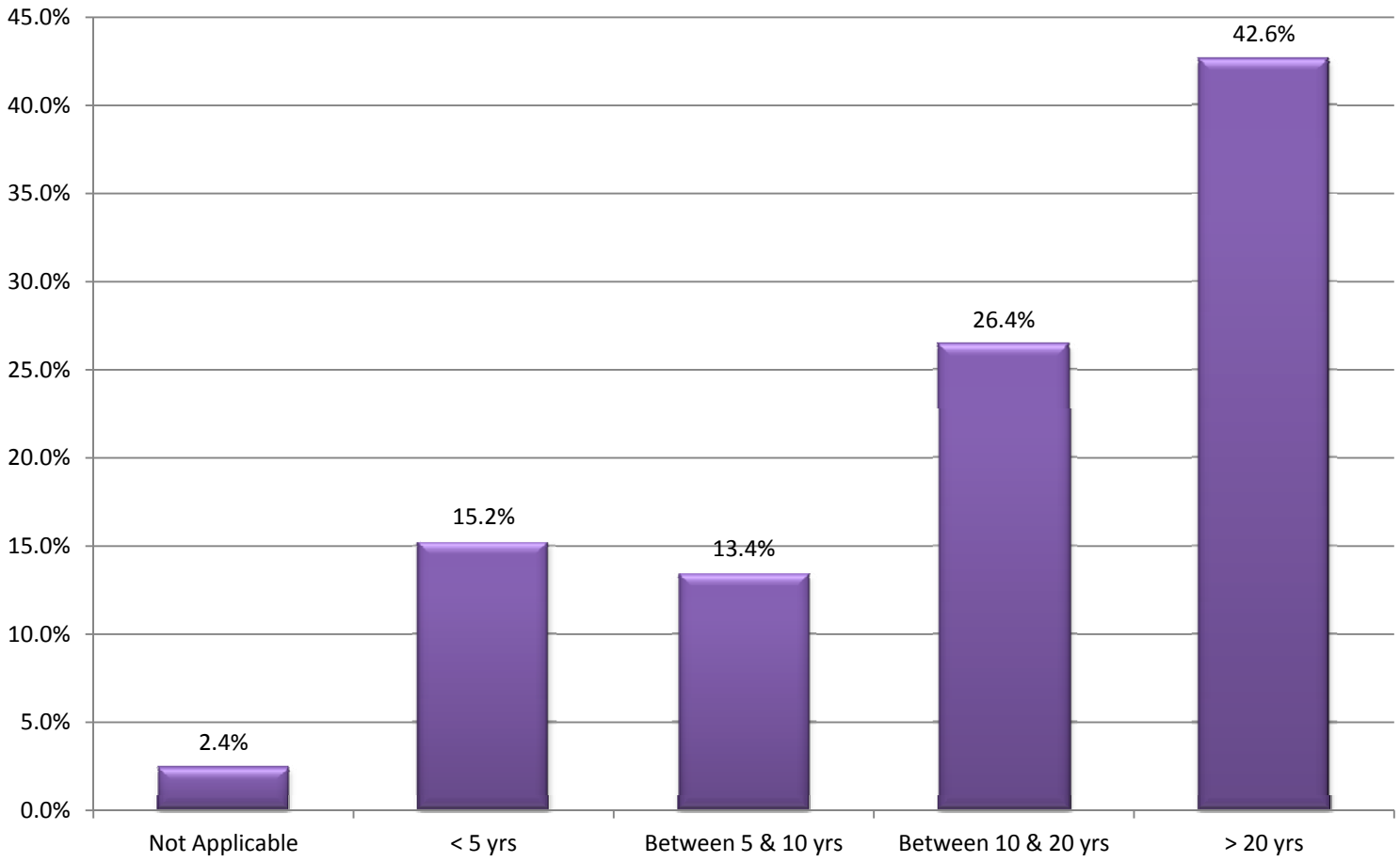
The Berkeley Transactional Practice Project Survey

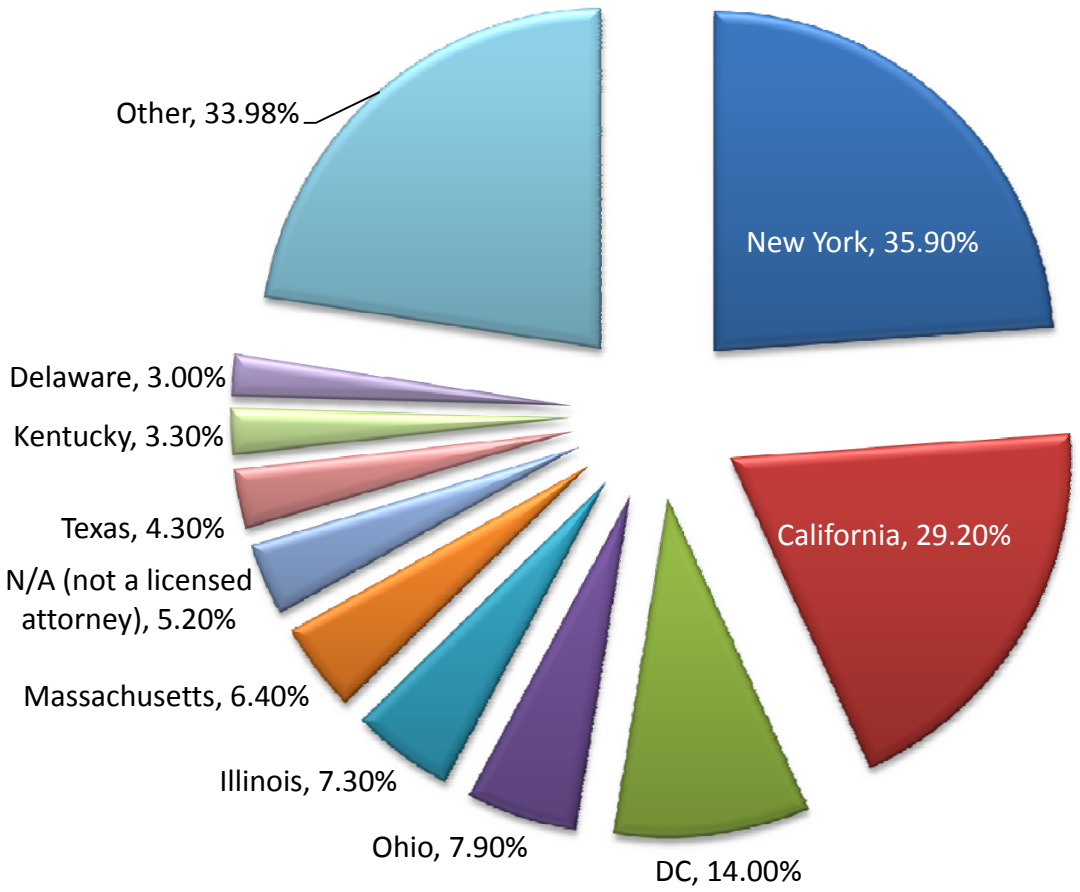
- Web based instrument directed at specialists in transactional law (though other could fill it out too)
- N=329 responses in all, collected between Feb. 14 and March 6.
- Specific overtures made to law firms, general counsel, ABA committees on Business Law and M&A; several national legal practice blogs



Respondents are, on the whole, experienced attorneys



They are admitted to practice in a variety of jurisdictions (esp. CA and NY)



Respondents practice in a large array of areas; most are transactional lawyers

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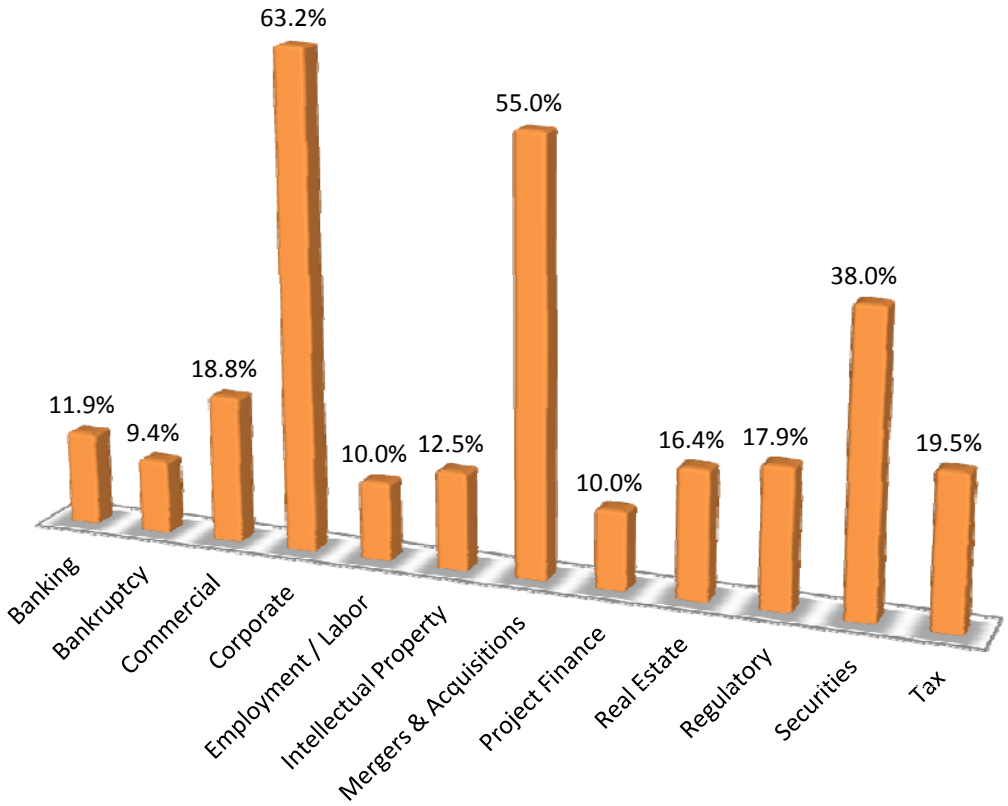
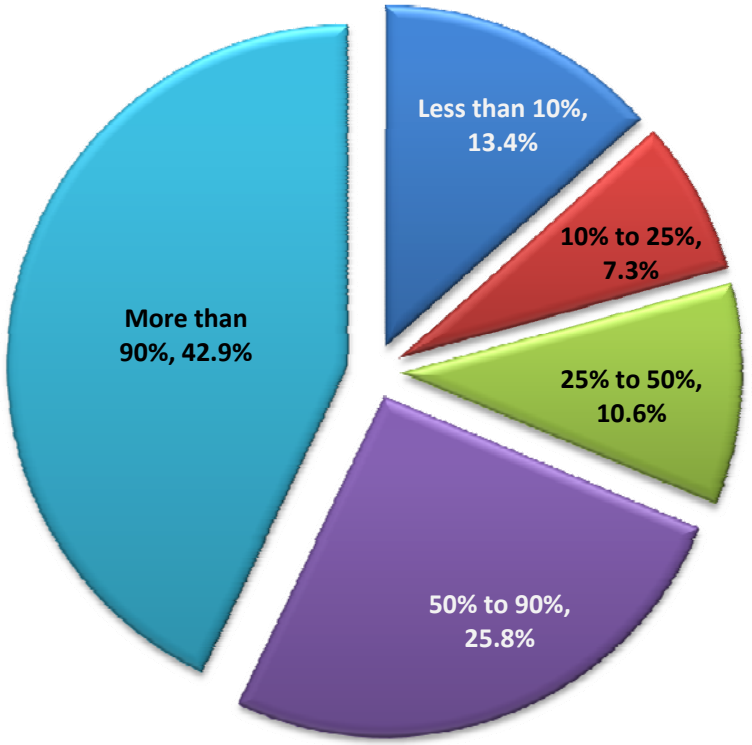
Practice Area / Specialization*

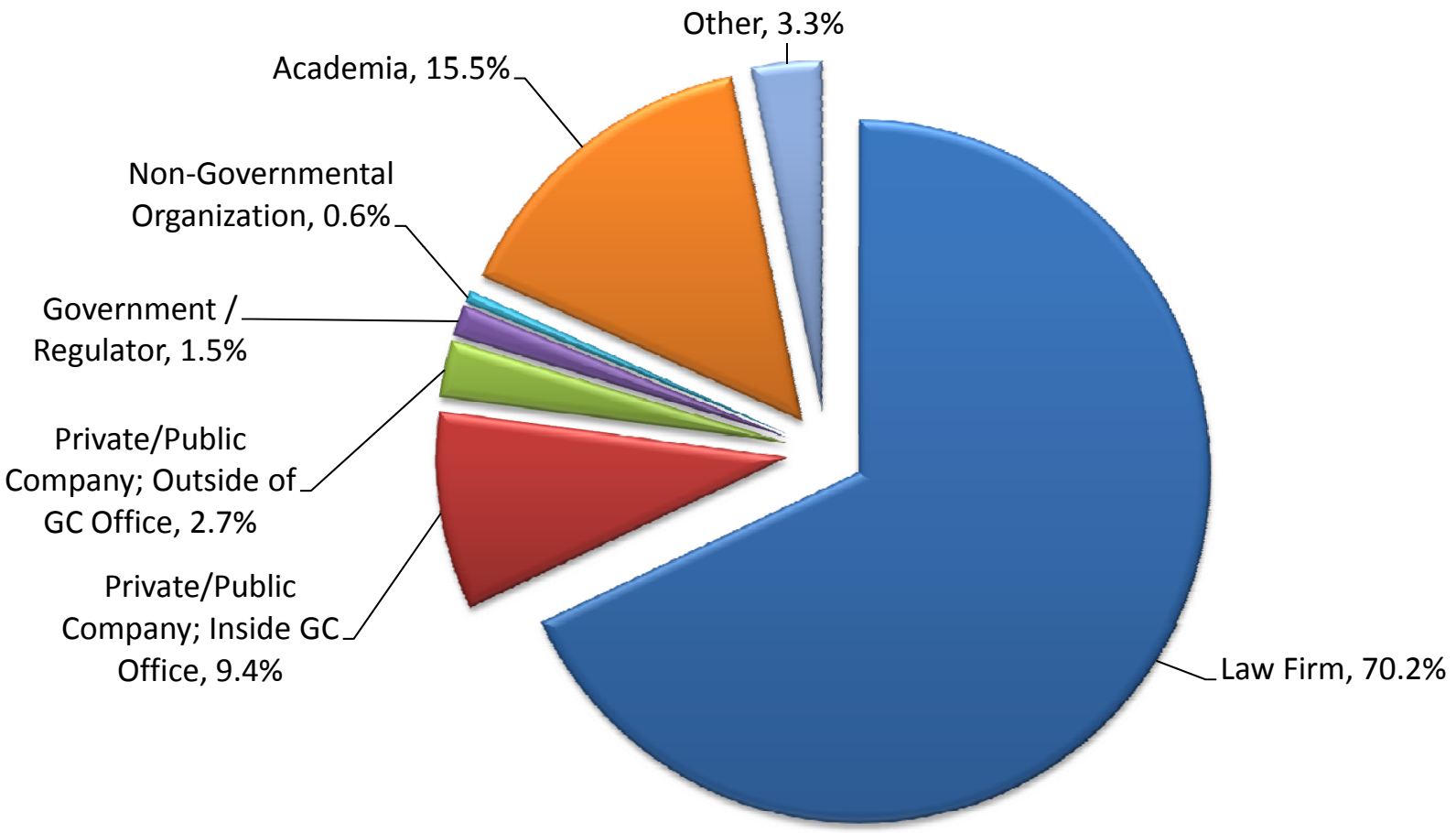




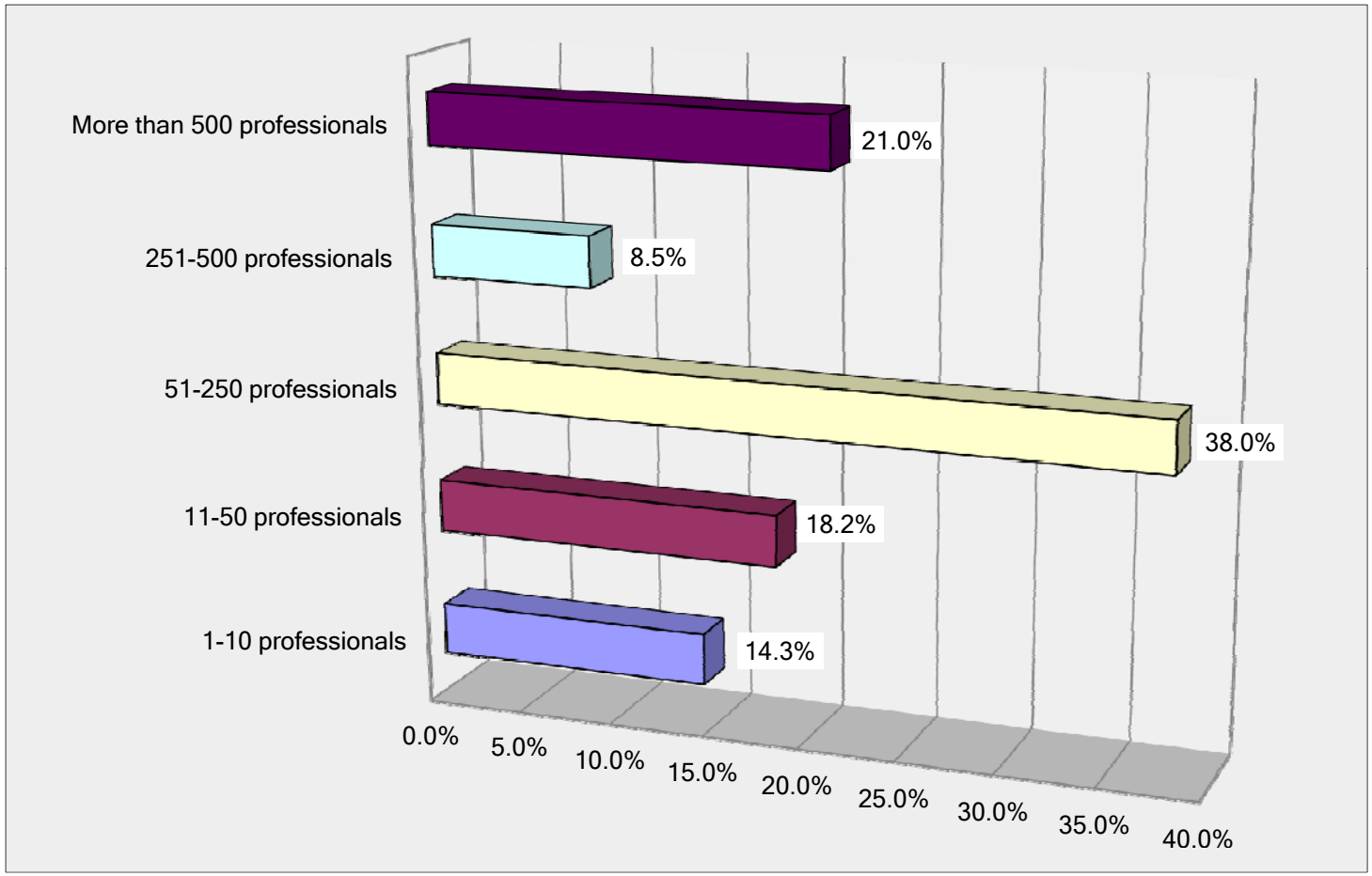
Percentage of Work that is "Transactional"

** Respondents were allowed to list multiple practice areas.; thus categories sum to more than 100%*

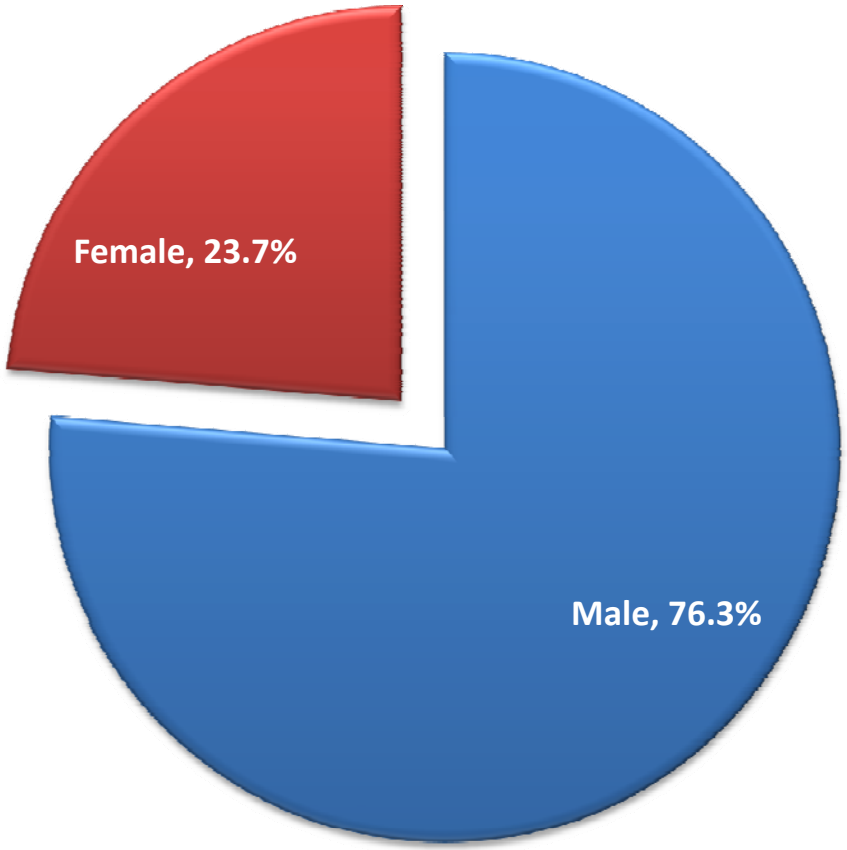
Respondents principally work in law firms



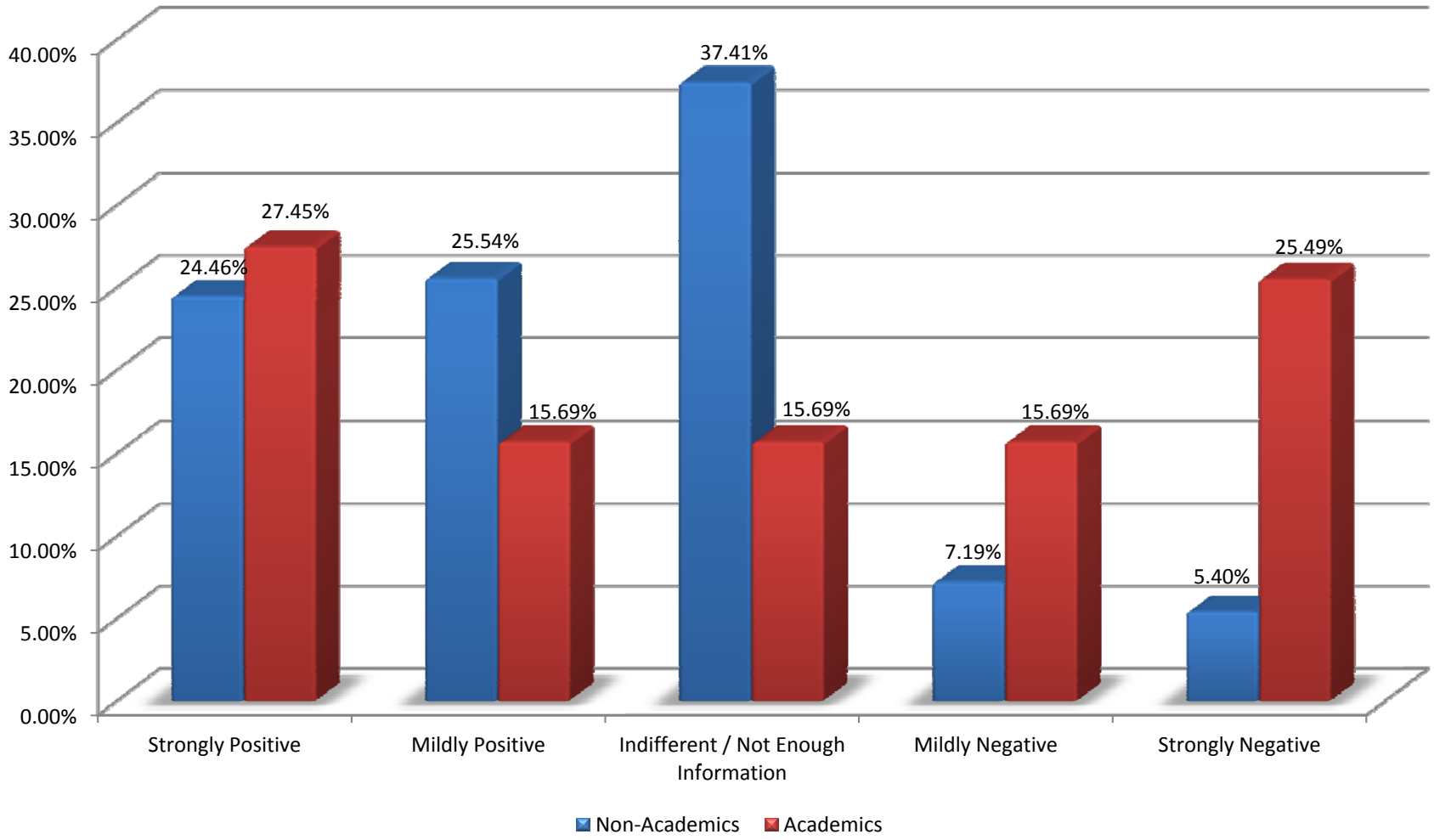
There is substantial heterogeneity in the size of their establishment



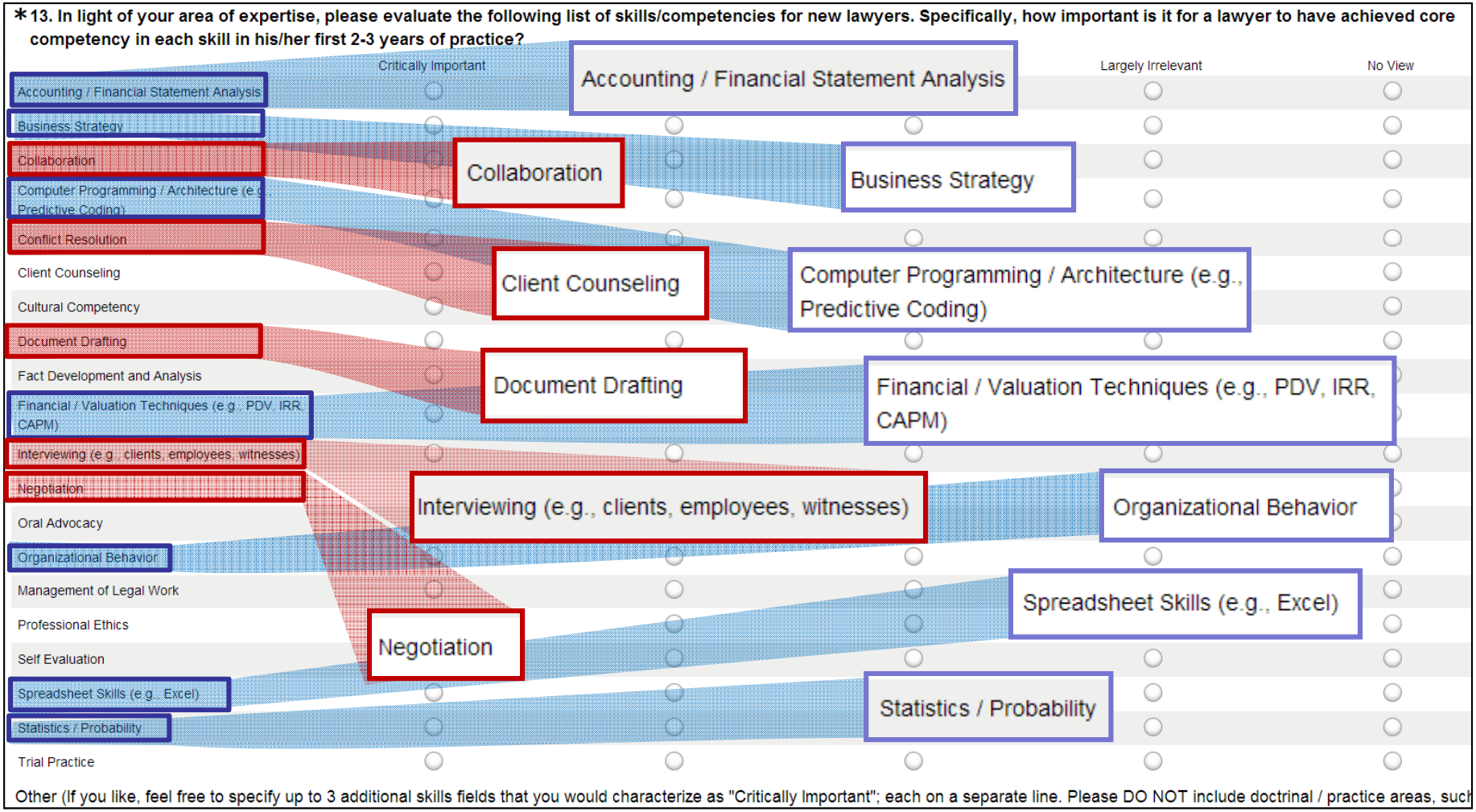
Respondents' Gender Composition



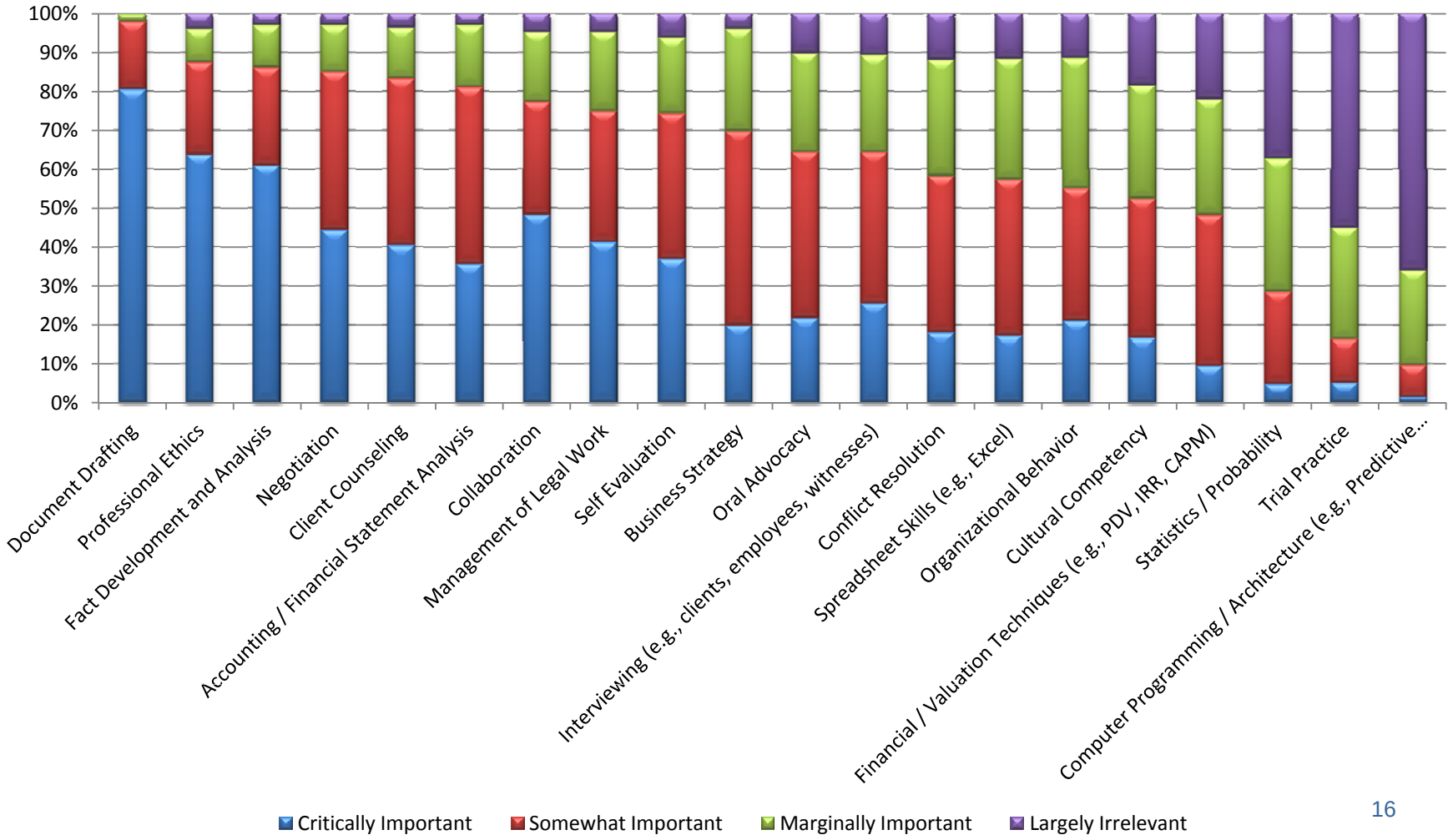
Q12: What is your degree of support for efforts underway … to mandate minimum skills / competencies training for law students?



Q13: Assessing importance of various candidate skills competencies



Q13: In light of your area of expertise, please evaluate the following list of skills/competencies for new lawyers. Specifically, how important is it for a lawyer to have achieved core competency in each skill in his/her first 2-3 years



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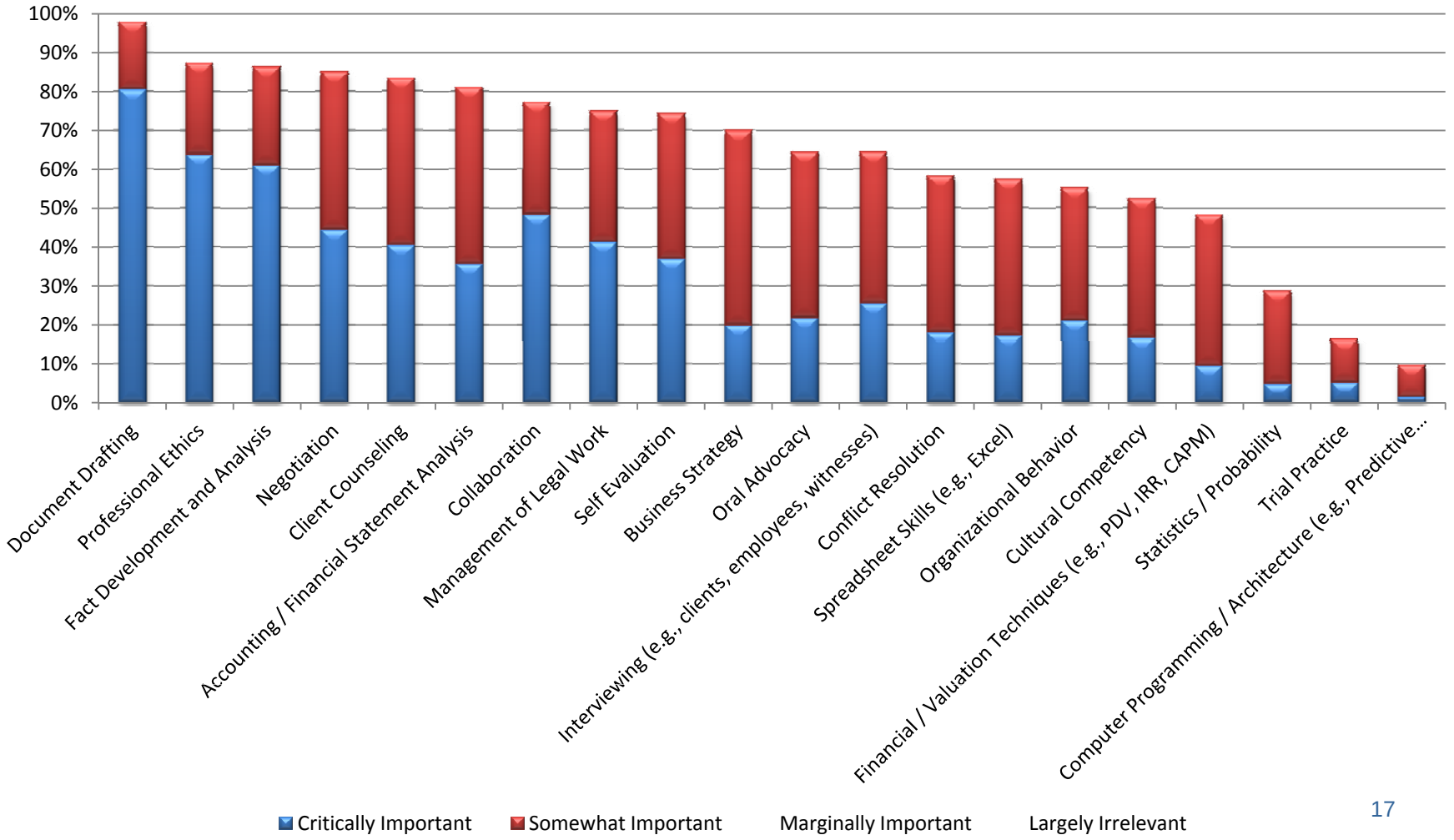

Q14: Mode of delivery

For the same list of skills/competencies evaluated above, please characterize the setting in which you think each is most effectively taught.

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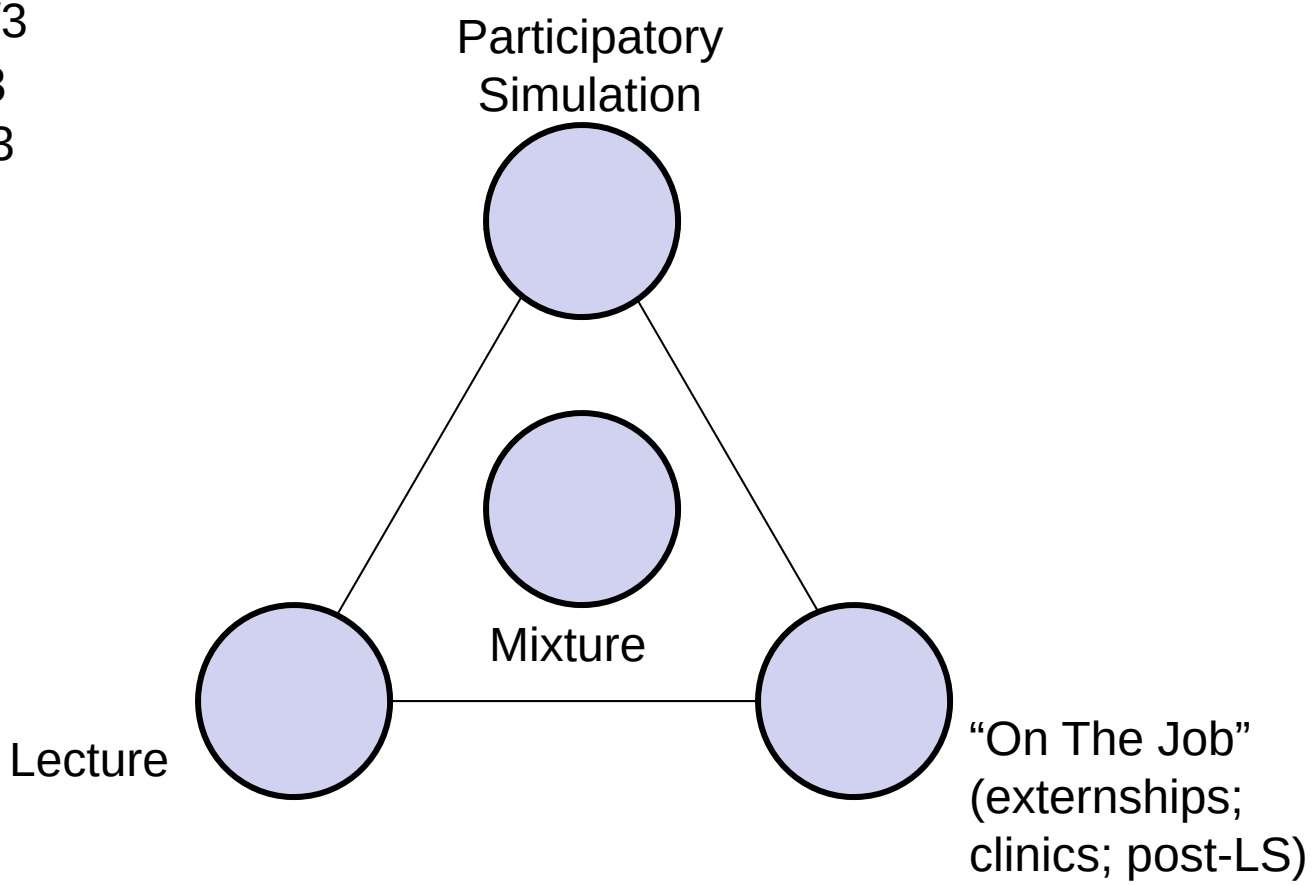
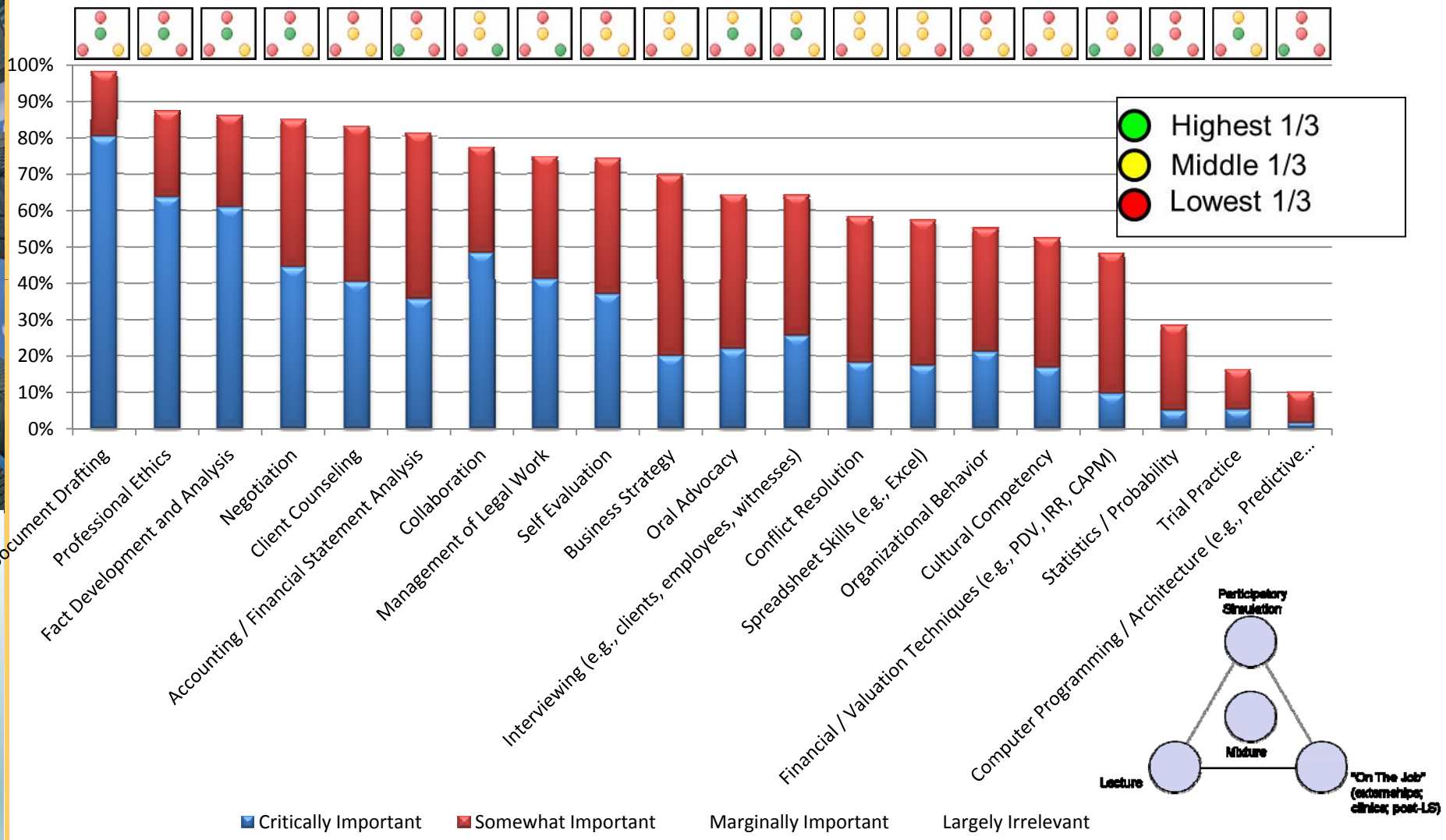
Hypothetical Example:

- Highest 1/3
- Middle 1/3
- Lowest 1/3

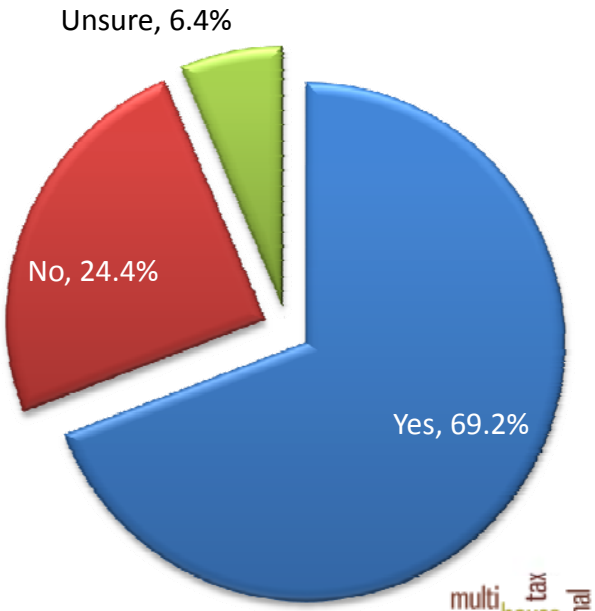


Highly-Ranked competencies (Q13) versus preferred modality of delivery (Q14)



See appendix A1 for specific numerical summaries of each category

For those who work in Law Firms: Does your firm offer formal training programs (either through a third-party vendor or internal staffing) in skills/competencies similar to those described above? Describe



Take Aways (Set #1)

- Many of the topics already identified by TF as "competencies" under current proposal have the support of transactional attorneys
  - E.g., Document drafting; negotiation; client counseling, many others
- Respondents suggest (somewhat strongly) that there is no "one size fits all" modality for delivery
  - Lecture; Simulation; Live-Client Experiences; Mixture
    - Best mode does not appear uniform across topic (nor, one might surmise, across schools)
  - This is consistent (in certain ways) with the Taskforce's suggestion that many courses may deserve "fractional" credit towards proposed competencies requirement

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Take-Aways (#2)

- **But** an important group of business skills not explicitly identified by task force also wins support
  - E.g., Accounting, Valuation, Strategy, Spreadsheet Skills
    - Note: Results of recent Harvard Law School study consistent
  - This makes sense: it is precisely these areas where transactional business law has been evolving…and where firms are moving aggressively to augment new lawyers' skill sets (often at substantial cost)
- Two implications:
  1. Implies that link between (a) "competencies" and (b) "experiential" delivery may not be as strong as presumed;
  2. Implies that the list of example courses could be tuned up to reflect this emerging reality in transactional practice…

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A modest proposal for slight alternation of language of task force report

For those who elect to satisfy this requirement during law school, 15 units of coursework would be required from among the following subject areas:

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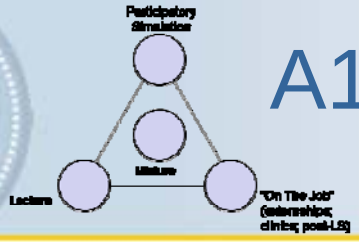
- Witness interviewing and other investigation and fact-gathering techniques
- Law practice management and the use of technology in law practice
- ~~Project management, budgeting and financial reporting~~
- Financial Analysis (e.g., accounting, budgeting, project management, and valuation)
- Business Strategy and Behavior
- Practical writing (e.g. drafting of contracts and other legal instruments, drafting of pleadings)
- Preparation of cases for trial during the pre-trial phase~~, including~~ (e.g., e-discovery, assessing evidence, utilizing experts)
- Trial practice
- Basics of the justice system, including how courts in California are organized and administered, and what responsibilities lawyers have as officers of the court
- Professional civility and applied ethics (i.e. ethics in practice settings)

Questions / Comments

- All raw data (as well as this presentation and a subsequent written report) will be made available on the website of the Berkeley Center for Law, Business and the Economy (BCLBE) at:

http://www.law.berkeley.edu/bclbe.htm



A1: "Best Delivery Modality" Response Numerical Responses by cell

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Accounting / Financial Statement Analysis	48.2%	18.2% / 29.7%	3.8%
Business Strategy	10.9%	27.2% / 34.7%	27.2%
Collaboration	0.7%	24.0% / 28.6%	46.6%
Computer Programming / Architecture (e.g., Pred. Coding)	54.6%	20.2% / 18.4%	6.7%
Conflict Resolution	1.4%	26.9% / 45.2%	26.5%
Client Counseling	0.7%	18.4% / 39.7%	41.3%
Cultural Competency	5.7%	15.7% / 41.0%	37.6%
Document Drafting	4.7%	18.3% / 49.2%	27.8%
Fact Development and Analysis	7.4%	20.5% / 48.8%	23.3%
Financial / Valuation Techniques (e.g., PDV, IRR, CAPM)	53.4%	13.8% / 26.5%	6.3%
Interviewing (e.g., clients, employees, witnesses)	1.4%	23.3% / 45.3%	30.1%
Negotiation	0.7%	21.6% / 49.2%	28.5%
Oral Advocacy	1.8%	34.4% / 48.6%	15.2%
Organizational Behavior	19.7%	9.9% / 39.9%	30.5%
Management of Legal Work	6.4%	9.6% / 32.6%	51.4%
Professional Ethics	32.6%	14.1% / 50.0%	3.3%
Self Evaluation	8.4%	14.3% / 45.1%	32.1%
Spreadsheet Skills (e.g., Excel)	44.1%	22.8% / 25.4%	7.7%
Statistics / Probability	67.2%	11.1% / 18.0%	3.7%
Trial Practice	1.9%	25.1% / 49.3%	23.7%