

Foreword

Leaving Langdell Behind: Reimagining Legal Education for a New Era

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For most of us (the Editors of Volume 107 of the *Minnesota Law Review*), the summer before starting law school was characterized by a global pandemic and a racial reckoning.¹ Like many Americans, we experienced a toxic mix of feelings of isolation, hopelessness, and even anger; and we yearned for the requisite skills and credentials to fight the injustices and inequities all around us. Our 1L year was a roller coaster ride: we experienced the ordinary challenges of the 1L curriculum through our Zoom screens while simultaneously watching a meme-fueled retail investor uprising,² an attempted overthrow of a presidential

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1. See, e.g., Colleen Long, Kat Stafford & R.J. Rico, *Summer of Protest: Chance for Change, but Obstacles Exposed*, AP NEWS (Sept. 6, 2020), <https://apnews.com/article/election-2020-shootings-race-and-ethnicity-or-state-wire-racial-injustice-9035ecd58d5dba755185666ac0ed6d> [https://perma.cc/EG7J-F6FX] (describing widespread protests during the summer of 2020); *In Pictures: A Racial Reckoning in America*, CNN (July 9, 2020), <https://www.cnn.com/2020/05/27/us/gallery/george-floyd-demonstrations/index.html> [https://perma.cc/ZL7E-78G9] (sharing photographs of protests and demonstrations against racial injustice in 2020); Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (Nov. 5, 2021), <https://www.nytimes.com/article/george-floyd-protests-timeline.html> [https://perma.cc/44UG-FT43] (laying out the timeline of protests following the murder of George Floyd in Minneapolis).

2. See, e.g., Matt Phillips & Taylor Lorenz, *'Dumb Money' Is on GameStop, and It's Beating Wall Street at Its Own Game*, N.Y. TIMES (Oct. 18, 2021),

election and attack on our nation's capitol,³ the trial of George Floyd's murderer,⁴ and the breakdown of all trust in government⁵ on our phones and televisions.

So why, after all these events and out of all the possible topics, did we vote to make *legal education* the focus of our Symposium?⁶ We chose it because we recognize the importance and urgency of legal education reform. We can see how central the education we are receiving is to our ability to respond to these issues—and how central lawyers are to any hope for change. Though we appreciate our dedicated professors and our excellent law school, we recognize that the structure of American legal education is merely preparing us to—as Professor Bennett Capers

<https://www.nytimes.com/2021/01/27/business/gamestop-wall-street-bets.html> [<https://perma.cc/922J-JRAK>] (describing a retail investor-led uprising against Wall Street investors); David J. Lynch, *The GameStop Stock Craze Is About a Populist Uprising Against Wall Street. But It's More Complicated than That.*, WASH. POST (Feb. 1, 2021), <https://www.washingtonpost.com/business/2021/02/01/gamestop-origins> [<https://perma.cc/XKH6-YCCD>] (analyzing the retail investor uprising).

3. See, e.g., Associated Press, *From 'an Attempted Coup' to Chaos, Searing Moments of Jan. 6*, AP NEWS (July 23, 2022), <https://apnews.com/article/Jan-6-hearings-key-moments-b374e48ab5a1a0a597fd5b6ec69048c2> [<https://perma.cc/5NSA-EWY5>] (describing key moments from the January 6 hearings in Congress, which investigated factual details of the attempted coup at the United States Capitol on January 6, 2021).

4. See, e.g., Nicholas Bogel-Burroughs & Tim Arango, *What to Know About the Trial of Derek Chauvin*, N.Y. TIMES (June 25, 2021), <https://www.nytimes.com/live/2021/derek-chauvin-trial-explained> [<https://perma.cc/8YXJ-QHMT>] (summarizing important details of the trial of the police officer who murdered George Floyd); *27-CR-20-12646: State v. Chauvin*, MINN. JUD. BRANCH, <https://mncourts.gov/StateofMinnesotavDerekChauvin> [<https://perma.cc/BHX8-P9SH>] (providing the litigation documents associated with the trial of the police officer who murdered George Floyd).

5. See, e.g., Gabriel R. Sanchez, Keesha Middlemass & Aila Rodriguez, *Misinformation Is Eroding the Public's Confidence in Democracy*, BROOKINGS (July 26, 2022), <https://www.brookings.edu/blog/fixgov/2022/07/26/misinformation-is-eroding-the-publics-confidence-in-democracy> [<https://perma.cc/NM5V-ZUPZ>] (analyzing the relationship between misinformation and public confidence in democracy in the United States).

6. A playlist of each of the videos—comprising all of the presentations and panels of the Symposium, except for the Legal Pedagogy Workshop breakout sessions—is available on the *Minnesota Law Review's* YouTube page. Minn. L. Rev., *MLR Vol. 107 Symposium: Leaving Langdell Behind*, YOUTUBE (Jan. 31, 2023), https://youtube.com/playlist?list=PLwPT8-x_9wN6KUM1fdJDfovEF3WKYU4NN.

puts it—make change only on the margins.⁷ We recognize that if our system of government and laws is ever going to properly and equitably serve the people it's supposed to, we need lawyers who are prepared to completely reimagine the system.

And to do that, we need to reimagine legal education. It has been more than 150 years since Christopher Columbus Langdell first brought the case method to the law school classroom, and—though a few changes have been made on the margins, like the addition of skills courses and clinics—the basic foundation of law school remains the same.⁸ We need true structural change to break free from the old way of thinking. As Capers argues, we need to see law schools “no longer as a white space (in terms of demographics, or what is taught, or how it is taught), but as a *white space* (as in a blank page, at once empty and full of possibilities).”⁹

From this vantage, we designed a symposium that would question and re-envision the core pillars of legal education.

THE GOAL OF LEGAL EDUCATION

Our Symposium began by rethinking the goal of legal education. Our first speakers recognized the gravity of law schools' mission and began to define the goal of legal education in our rapidly changing society.

7. See Minn. L. Rev., *3 Redesigning the Law School Curriculum*, YOUTUBE, at 10:20–10:50 (Oct. 7, 2022), <https://youtu.be/v485Lum5cfl> [hereinafter *Redesigning the Law School Curriculum*].

8. See, e.g., Bruce Kimball, *The Proliferation of Case Method Teaching in American Law Schools: Mr. Langdell's Emblematic "Abomination," 1890–1915*, 46 HIST. EDUC. Q. 192, 192 (2006) (“Case method teaching was first introduced into American higher education in 1870 by Christopher C. Langdell . . . [and is] regnant today . . .”); Harvard L. Sch. Libr., *The Early History of the Case Method in US Law Schools*, YOUTUBE (2020), https://youtu.be/i-8hr_6cdGM (summarizing the early history of the case method in a short video); Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 597–98 (2007) (“The plain fact is that American legal education, and especially its formative first year, remains remarkably similar to the curriculum invented at the Harvard Law School by Christopher Columbus Langdell over a century and a quarter ago. Invented, that is, not just before the Internet, but before the telephone; not just before man reached the moon, but before he reached the North Pole; not just before Foucault, but before Freud; not just before *Brown v. Board of Education*, but before *Plessy v. Ferguson*. There have been modifications, of course; but American legal education has been an astonishingly stable cultural practice.”).

9. Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 7, 14 (2021).

Editor-in-Chief Leah Reiss observed, “we are at a crossroads of our understanding of what the law even is.”¹⁰ We no longer think of the law as a “set of dictates handed down from an omniscient source” and instead acknowledge that “people make the law and therefore people can change it.”¹¹ Our democracy faces many challenges, including erosion of respect for the rule of law, disregard for the truth, and increasing polarization. And—as Keynote Speaker Judith Gundersen,¹² President of the National Conference of Bar Examiners (NCBE), observed—preserving our democracy requires constant effort and vigilance.¹³ Amid foundational shifts in constitutional principles, “we need to be conscious of how we tend to the health and resiliency of the rule of law in this country.”¹⁴ Gundersen asked:

[I]f lawyers don’t identify the systemic issues we face and seek to solve them, who will? If lawyers don’t ask how can we use the law as a tool to ensure freedom, equality, opportunity, and justice, who will? There is no profession better suited to take on the task of ensuring that our democracy thrives and that all who live in our society have the opportunity to thrive, and this profession—our profession—has its beginnings, its roots, in legal education, law students, and law faculty.¹⁵

So what is the proper goal of legal education? We may continue to debate the details, but one thing is certain: it involves respecting democracy and the rule of law enough to care for them like massive, yet fragile, trees. Lawyers—like arborists—must be prepared to protect the roots of law and democracy, watering them and caring for their health and resiliency. But lawyers must also be ready to nurture law and democracy to grow and change; lawyers must prune the branches that are holding them back; lawyers must straighten their trunks so that they bend toward the sunlight—truth and justice.

10. Minn. L. Rev., *1 Opening Remarks and Keynote Address, 107 MLR Symposium*, YOUTUBE, at 08:48–12:45 (Oct. 7, 2022), <https://youtu.be/nLN5QsR5rqs> [hereinafter *Opening Remarks and Keynote Address*].

11. *Id.*

12. See *The National Conference of Bar Examiners Names Judith A. Gundersen as President and CEO*, NAT’L CONF. OF BAR EXAM’RS (Aug. 28, 2017), <https://www.ncbex.org/news/judith-gundersen-ncbe-president-ceo> [https://perma.cc/TKE3-XUD7].

13. *Opening Remarks and Keynote Address, supra* note 10, at 24:00–25:30; Judith Gundersen, *Keynote Address*, 107 MINN. L. REV. 2407, 2408 (2023).

14. *Opening Remarks and Keynote Address, supra* note 10, at 25:15–26:37; Gundersen, *supra* note 13.

15. *Opening Remarks and Keynote Address, supra* note 10, at 26:38–27:27; Gundersen, *supra* note 13.

In simpler terms, our system of legal education should aim to train lawyers not only to be stewards of law and democracy but also to be advocates for positive change—to think critically and advocate for progress in the law, not just maintain the status quo. With this goal in mind, we next asked *who* these lawyers should be.

ADMISSIONS

Turning to admissions, we asked how we can achieve a more diverse class of law students, with the aim of creating a class of lawyers that reflects the people it will represent.

Associate Dean Natalie Rodriguez¹⁶ and Dr. Elizabeth A. Anderson¹⁷ shared the innovative approach that they developed with Vice Dean Anahid Gharakhanian¹⁸ at Southwestern Law School to create a more diverse class of law students by offering structured interviews to wait-listed students who show potential.¹⁹ Gharakhanian, Rodriguez, and Anderson share the full details of their approach in their Article, “*More Than the Numbers*”: *Empirical Evidence of an Innovative Approach to Admissions*,²⁰ available at page 2431 of this Issue.

Dean Anthony Niedwiecki²¹ then told us about the variety of programs that the Mitchell Hamline School of Law has implemented in pursuit of a diverse class of lawyers that reflects the communities it will serve.²² Niedwiecki shared his experiences with a variety of partnerships and pipeline programs, including one partnership with two-year colleges and a first-of-its-kind

16. See *Natalie Rodriguez '12*, SW. L. SCH., <https://www.swlaw.edu/faculty/administrator/natalie-rodriguez> [<https://perma.cc/4L3A-NBKY>].

17. See *Elizabeth Anderson*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., <https://iaals.du.edu/profile/elizabeth-anderson> [<https://perma.cc/4EQS-UXUU>].

18. See *Anahid Gharakhanian*, SW. L. SCH., <https://www.swlaw.edu/faculty/administrator/anahid-gharakhanian> [<https://perma.cc/6PUD-5RDA>].

19. Minn. L. Rev., 2 *Equitable Admissions Presentations*, 107 *MLR Symposium*, YOUTUBE, at 00:00–39:34 (Oct. 7, 2022), <https://youtu.be/kXY157GvG-g> [hereinafter *Equitable Admissions Presentations*].

20. See Gharakhanian, Rodriguez & Anderson, “*More than the Numbers*”: *Empirical Evidence of an Innovative Approach to Admissions*, 107 MINN. L. REV. 2431 (2023).

21. See *Anthony Niedwiecki*, MITCHELL HAMLINE SCH. OF L., <https://mitchellhamline.edu/biographies/person/anthony-niedwiecki> [<https://perma.cc/KT7U-ZGS5>].

22. *Equitable Admissions Presentations*, *supra* note 19, at 39:39–1:15:46.

“Prison to Law Pipeline” that has allowed two currently-incarcerated students to pursue law degrees via online classes and live video conferencing with their professors and peers.²³

By putting forth the effort to implement programs designed to diversify the profession, we can push the profession to reflect the People more closely—and, hopefully, by extension, push our democracy and laws in the direction of better representing the People.

CURRICULUM

We then discussed *what* is taught in law schools. Professor Jon Lee²⁴ moderated a panel on redesigning the law school curriculum.²⁵ Speaking first, and referencing his recent Essay, *The Law School as a White Space*,²⁶ Capers²⁷ pointed out the need for law schools to start with a “blank slate”—to step back and think about what law school would look like if schools just let go of everything that faculty and staff had experienced in law school.²⁸

23. See *First Student to Attend Law School from Prison Will Attend Mitchell Hamline*, MITCHELL HAMLINE SCH. OF L. (June 13, 2022), <https://mitchellhamline.edu/news/2022/06/13/first-student-to-attend-law-school-from-prison-will-attend-mitchell-hamline> [https://perma.cc/7H9C-X4J4]; see also *Mitchell Hamline’s Prison to Law Pipeline Work Featured on PBS NewsHour*, MITCHELL HAMLINE SCH. OF L. (Dec. 14, 2022), <https://mitchellhamline.edu/news/2022/12/14/mitchell-hamlines-prison-to-law-pipeline-work-featured-on-pbs-newshour> [https://perma.cc/3594-C5Z8]; *The Legal Revolution FAQs*, ALL SQUARE, <https://www.allsquarempls.com/pipelinefaqs> [https://perma.cc/A6YE-GC75]; Elizer Darris, Emily Hunt Turner & John Goeppinger, *The Prison-to-Law Pipeline Can Transform the Legal Discipline*, HENNEPIN LAW., <https://www.mnbar.org/hennepin-county-bar-association/resources/hennepin-lawyer/articles/2021/04/30/the-prison-to-law-pipeline-can-transform-the-legal-discipline> [https://perma.cc/U7VZ-TEF4]; *Dean Niedwiecki Proctors LSAT at Two Minnesota Prisons*, MITCHELL HAMLINE SCH. OF L. (Apr. 19, 2021), <https://mitchellhamline.edu/news/2021/04/19/dean-niedwiecki-proctors-lsat-at-two-minnesota-prisons> [https://perma.cc/2TUL-PFUD]; *Benefits of Prison Education*, NW. UNIV. PRISON EDUC. PROGRAM, <https://sites.northwestern.edu/npep/benefits-of-prison-education> [https://perma.cc/Y4NH-VHHB].

24. See *Jon J. Lee*, UNIV. OF OKLA. COLL. OF L., <https://law.ou.edu/directory/jon-lee> [https://perma.cc/W32X-SRVD].

25. *Redesigning the Law School Curriculum*, *supra* note 7, at 00:00–1:08:00.

26. Capers, *supra* note 9.

27. See *Bennett Capers*, FORDHAM L. SCH., https://www.fordham.edu/info/29956/bennett_capers [https://perma.cc/FZ6D-ZXRU].

28. *Redesigning the Law School Curriculum*, *supra* note 7, at 01:55–14:41 (citing ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO*

Capers urged us to “check, and even disturb, the very foundations on which most law schools are built.”²⁹

Professor Susan McMahon³⁰ spoke next. She observed that legal analysis has traditionally been taught—particularly in the first year—to give students the impression that law is neutral, and she argued that law schools should give students the analytical skills to identify where the law has gone astray and how to fix it.³¹ McMahon’s full argument is available in her Article, *What We Teach When We Teach Legal Analysis*, starting on page 2511 of this Issue.

Then, Professor Robert Kuehn³² provided one immediate and pragmatic solution: a greater emphasis on clinical and skills coursework.³³ Kuehn shared data showing that students benefit from clinical coursework more than almost any other law school experience and noted that law schools lag behind other professional schools in their use of skills-based coursework.³⁴

THINK LIKE A LAWYER 207–24 (2007); Lani Guinier, Michelle Fine & Jane Balin, *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 3, 21–31 (1994); Ion Meyn, *Why Criminal and Civil Procedure Are So Different: A Forgotten History*, 86 FORDHAM L. REV. 697 (2017).

29. *Id.* (quoting Capers, *supra* note 9, at 14).

30. See *Susan McMahon*, ARIZ. ST. UNIV., <https://search.asu.edu/profile/3983610> [<https://perma.cc/K463-DWQT>].

31. *Redesigning the Law School Curriculum*, *supra* note 7, at 14:47–30:45.

32. See *Robert R. Kuehn*, WASH. UNIV. IN ST. LOUIS SCH. OF L., <https://law.wustl.edu/faculty-staff-directory/profile/robert-r-kuehn> [<https://perma.cc/6QAB-9VE6>].

33. *Redesigning the Law School Curriculum*, *supra* note 7, at 30:45–45:01.

34. *Id.* (citing Bryant G. Garth, Robert L. Nelson, Ronit Dinovitzer, Gabriele Plickert & Joyce Sterling, *After the JD*, AM. BAR FOUND. (2004), <https://www.americanbarfoundation.org/research/project/118> [<https://perma.cc/8DPF-MRQP>] (sharing “systematic, detailed data about the careers and experiences of a national cross-section of law graduates”); *Study of Experiential Learning Opportunities in Law School: A Comparison of Responses from Law Firm Associates and Public Service Lawyers*, NAT’L ASS’N OF L. PLACEMENT, <https://www.nalp.org/uploads/2011Comparison.pdf> [<https://perma.cc/MTM4-ZLVX>] (highlighting “some of the key comparisons between the responses received from law firm associates and public service lawyers” on two different surveys “regarding their participation in law school experiential learning opportunities and the perceived usefulness of these activities”); *Kaplan Bar Review Survey: 63% of Law School Graduates from the Class of 2013 Believe That Law School Education Can Be Condensed to Two Years*, KAPLAN (Sept. 10, 2013), <https://www.kaptest.com/blog/press/2013/09/10/kaplan-bar-review-survey-63-of-law-school-graduates-from-the-class-of-2013-believe-that-law-school-education-can-be-condensed-to-two-years> [<https://perma.cc/6AVA-S84X>] (sharing results of a survey showing that sixty-three percent of law

To reimagine the future of the law school curriculum, we must ask ourselves a host of questions. To name just a few: If we reimagined law school, would we have the same required coursework? For example, would we still require Property as a foundational course? Would we spend an inordinate amount of time on concepts like the Rule Against Perpetuities?³⁵ Would Criminal

school graduates think law school could be condensed into two years and that, if a third year is required, ninety-seven percent of graduates favor a law school model that incorporates clinical experience); Susan M. Case, *The NCBE Job Analysis: A Study of the Newly Licensed Lawyer*, BAR EXAM’R, Mar. 2013, at 52, 54–56 <https://thebarexaminer.ncbex.org/wp-content/uploads/PDFs/820113testingcolumn.pdf> [<https://perma.cc/9Q3W-FZUT>] (sharing results of a survey of practicing lawyers’ opinions on the significance of eighty-six “Knowledge Domains,” thirty-six “Skills and Abilities,” and forty-three “General Tasks,” and many “Specific Practice Area Tasks” to their practice; notably twenty-five Skills and Abilities received higher average significance than the Knowledge Domain with the highest average); Richard A. Posner & Albert H. Yoon, *What Judges Think of the Quality of Legal Representation*, 63 STAN. L. REV. 317 (2011) (opining that more practice-oriented legal coursework would increase the quality of legal representation); Alli Gerkman & Logan Cornett, *Foundations for Practice: Survey Overview and Methodological Approach*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (July 26, 2016), <https://iaaals.du.edu/publications/foundations-practice-survey-overview-and-methodological-approach> [<https://perma.cc/96FC-DRXZ>] (surveying practicing lawyers to identify the most important skills and competencies for legal practice); *Kaplan Test Prep’s Survey of Law School Admissions Officers*, KAPLAN (Oct. 16, 2013), <https://www.kaptest.com/blog/press/2013/10/16/kaplan-test-preps-2013-survey-of-law-school-admissions-officers> [<https://perma.cc/X2MW-BR2A>] (finding that ninety-seven percent of pre-law students favored a law school model that incorporates clinical education); Mitu Gulati, Richard Sander & Robert Sockloskie, *The Happy Charade: An Empirical Examination of the Third Year of Law School*, 51 J. LEGAL EDUC. 235 (2001) (finding that law students at the University of California, Los Angeles who took clinical courses were much less likely to see the third year of law school as superfluous and were more satisfied with law school); Roger Bolus, *Performance Changes on the California Bar Examination: Part 2*, THE ST. BAR OF CALIF. 53 (Dec. 20, 2018), <https://www.calbar.ca.gov/Portals/0/documents/admissions/Examinations/Bar-Exam-Report-Final.pdf> [<https://perma.cc/S3RE-AXFQ>] (finding no correlation between the number of credits students obtained from clinical coursework and their performance on the bar exam); Robert R. Kuehn & David R. Moss, *A Study of the Relationship Between Law School Coursework and Bar Exam Outcomes*, 68 J. LEGAL EDUC. 623, 638 (2019) (same); Robert R. Kuehn, *Pricing Clinical Legal Education*, 92 DENV. L. REV. 1, 1 (2014) (finding that “clinical courses have not cost, and need not cost, students more in tuition,” and therefore “providing a clinical experience to every student is more a question of a school’s will to provide that educational experience than of cost”).

35. See Deborah J. Merritt, *The Rule Against Perpetuities*, L. SCH. CAFE (Jan. 16, 2023), <https://www.lawschoolcafe.org/2023/01/16/the-rule-against>

Procedure replace Criminal Law as one of the fundamental first-year courses? Would most first-year students' experiences still be limited to simulations, or would they interact with real clients right from the beginning? Would we focus on doctrine and common law when so much of contemporary legal practice is based in statute, or would we instead emphasize statutory interpretation and administrative law? Indeed, would Legislation and Regulation be recognized as one of the most foundational first-year classes? Would law school still be three years? Would we still have grades—particularly in the third year? Would we even have a bar exam? Or would we have bar exams customized to the type of law a student wants to practice? Would we rethink the balance between practitioners and full-time law professors? Would we allow schools to experiment?³⁶

Perhaps most importantly, shouldn't the focus of law school become the *skills* that students must have to be successful lawyers, rather than content knowledge? Not only can skills-focused courses get us closer to our goal, but skills can also be the focus of doctrinal courses. With this in mind, the Author of this Foreword recommends two simple, immediate changes that any legal educator can implement when writing their next round of syllabi.

This Author recommends using a newer, skills-centered method for curriculum design. Rather than starting with the seminal cases and concepts from a casebook, educators should begin by reflecting on the specific skills required for reading, writing, and thinking within the specific content area of their class. If a professor is teaching a class on criminal law or procedure, they should reflect on how criminal lawyers think differently from other lawyers. If they teach mergers and acquisitions, they should think about what documents are important to their practice area and how the writing style is different from other transactional practice areas. In her book, *This Is Disciplinary Literacy: Reading Writing, Thinking, and Doing . . . Content Area by Content Area*, ReLeah Cossett Lent helpfully illustrates this form of reflection and encourages teachers to identify the

-perpetuities [<https://perma.cc/PN3M-JMNK>] (criticizing the July 2022 bar exam for including two “essays requiring detailed knowledge of the rule against perpetuities”).

36. Some of these questions were originally posed by Capers. See *Redesigning the Law School Curriculum*, *supra* note 7, at 12:30–14:36.

specific skills needed to succeed within their specific content area.³⁷

Once the educator has comprehensively identified what disciplinary literacy looks like in their content area, they should then engage in “backward design,”³⁸ using the Understanding by Design framework developed by Grant Wiggins and Jay McTighe.³⁹ They should start with the skills and documents that lawyers need to perform and produce to be successful in their content area. Then, they should plan backward, step by step, to identify the scaffolding, performance tasks, and experiences that will slowly build students’ understanding and ability toward performing those skills and producing those documents on their own. At the end of the planning, professors can then add seminal cases, statutes, and concepts into the framework and tasks that they have already developed based on *skills* rather than doctrine.

By asking these questions and changing the way we select courses and design our curriculum, we can transform law schools into institutions that prepare students to be more effective stewards of democracy and rule of law.

PEDAGOGY

In the afternoon, we turned our attention from curriculum to pedagogy—from *what* we teach to *how* we teach it. We started with Legal Pedagogy Workshops led by various professors. Then,

37. RELEAH COSSETT LENT, THIS IS DISCIPLINARY LITERACY: READING, WRITING, THINKING, AND DOING . . . CONTENT AREA BY CONTENT AREA 1 (2016) (“[E]ach content-area teacher is responsible for showing students how to use discipline-specific literacy skills as tools for accessing content and . . . incorporating readings strategies only when they make sense within the context of the discipline.”). Though these resources are largely written for secondary teachers, the principles of good curriculum design and pedagogy are universal. And though the content of law school may be more advanced, the way that students learn best remains the same.

38. See, e.g., Ryan S. Bowen, *Understanding by Design*, VAND. UNIV. CTR. FOR TEACHING (2017), <https://cft.vanderbilt.edu/guides-sub-pages/understanding-by-design/#benefits> [<https://perma.cc/6ZKT-ECKP>] (listing the benefits of backward design, describing the stages of backward design, and providing a template for backward design).

39. See generally GRANT WIGGINS & JAY MCTIGHE, UNDERSTANDING BY DESIGN (Expanded 2d ed. 2005) (providing a comprehensive guide to the Understanding by Design framework); AMY J. HEINEKE & JAY MCTIGHE, USING UNDERSTANDING BY DESIGN IN THE CULTURALLY AND LINGUISTICALLY DIVERSE CLASSROOM (2018) (applying the Understanding by Design framework to diverse classrooms).

the next panel, titled *In(doctrine)ation: Alternatives to the Case Method*, and moderated by Professor Daniel Schwarcz,⁴⁰ discussed the specific details of what an ideal law school classroom would look like.⁴¹

Schwarcz opened by observing that law professors have a tendency to teach the way they were taught and that the method of asking students questions without knowing why they are asking the questions can confuse students.⁴² He further observed that the Socratic method can be a useful tool for engagement when students understand why it is being used—and when it is used in combination with other methods, such as lecture, writing, discussion, and group work, through a more reflective approach to pedagogy.⁴³ Later, when asking the panel questions, Schwarcz, drawing from his own research,⁴⁴ also emphasized the importance of professors providing individualized feedback on students' written work.⁴⁵ Finally, he argued that the incentive and performance review structure for professors should be changed to recognize the importance of teaching well, rather than overemphasizing scholarship.⁴⁶

Next, Professor Sandra Simpson⁴⁷ shared an overview of her Article, *Law Students Left Behind: Law Schools' Role in Remediating the Devastating Effects of Federal Education Policy*, available starting on page 2561 of this Issue. Simpson argued that federal education policies adopted in the 2000s, which emphasized standardized testing, have created students with underdeveloped problem-solving skills, critical thinking, self-regulation, and cognitive adaptability; and she proposed a variety of solutions that law professors can implement in their classrooms.⁴⁸

40. See Daniel Schwarcz, UNIV. OF MINN. L. SCH., <https://law.umn.edu/profiles/daniel-schwarcz> [<https://perma.cc/LD3E-F82T>].

41. Minn. L. Rev., *4 Alternatives to the Case Method*, 107 *MLR Symposium*, YOUTUBE (Oct. 7, 2022), <https://youtu.be/JO8j2TnL6fA> [hereinafter *Alternatives to the Case Method*].

42. *Id.* at 01:42–02:18.

43. *Id.* at 02:19–03:16.

44. See Daniel Schwarcz & Dion Farganis, *The Impact of Individualized Feedback on Law Student Performance*, 67 *J. LEGAL EDUC.* 139 (2017).

45. *Alternatives to the Case Method*, *supra* note 41, at 54:20–56:23.

46. *Id.* at 1:04:45–1:06:54.

47. See Sandra Simpson, GONZ. UNIV., <https://www.gonzaga.edu/academics/faculty-listing/detail/simpsons> [<https://perma.cc/78E9-ZY95>].

48. *Alternatives to the Case Method*, *supra* note 41, at 04:07–16:32.

Professor Sherri Lee Keene⁴⁹ then discussed the issues that arise from relying almost exclusively on appellate cases to teach law—failing to examine the considerations, biases, and assumptions that go into legal opinions. She encouraged professors to use dissents to illustrate these hidden aspects of the judicial decision-making process.⁵⁰ Keene’s Article, *Teaching Dissents*, is available starting on page 2619 of this Issue.

Professor O.J. Salinas,⁵¹ drawing on his experience both in the academic support space and the practical lawyering skills space, encouraged professors to incorporate more skills instruction into doctrinal courses and to eliminate the divide between doctrinal courses and faculty and skills courses and faculty.⁵² As Salinas highlights in his Essay, available starting on page 2663 of this Issue, lawyers “do more than just think quickly and speak quickly on their feet. . . . Lawyers . . . counsel; they listen; they collaborate; they write; they research; they negotiate; they practice law.”⁵³

Finally, Professor Beth Wilensky⁵⁴ shared anecdotes about the struggles that some of her students experienced as 1Ls due to doctrinal courses’ fixation on the Socratic method—which wrongly tells students that the essence of effective lawyering is the ability to handle a cold call.⁵⁵ Wilensky proposed a test for effective pedagogy and a variety of fixes for when pedagogy fails

49. See Sherri Lee Keene, GEO. L., <https://www.law.georgetown.edu/faculty/sherri-keene> [<https://perma.cc/UA4K-26UU>].

50. *Alternatives to the Case Method*, *supra* note 41, at 16:45–27:45.

51. See Oscar J. Salinas, UNIV. OF N.C. SCH. OF L., <https://law.unc.edu/people/oscar-j-salinas> [<https://perma.cc/3ERN-7WCX>].

52. *Alternatives to the Case Method*, *supra* note 41, at 27:50–39:24 (citing LAWYERING SKILLS IN THE DOCTRINAL CLASSROOM: USING LEGAL WRITING PEDAGOGY TO ENHANCE TEACHING ACROSS THE LAW SCHOOL CURRICULUM (Tammy Pettinato Oltz ed., 2021)); see also Robert R. Kuehn, *The Disparate Treatment of Clinical Law Faculty*, 29 CLINICAL LEGAL EDUC. ASS’N NEWSL. (Winter 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3760756 [<https://perma.cc/N9PN-J2HH>] (demonstrating the disparate treatment of clinical versus doctrinal faculty).

53. *Alternatives to the Case Method*, *supra* note 41, at 30:09–30:22; O.J. Salinas, *Secondary Courses Taught by Secondary Faculty: A (Personal) Call to Fully Integrate Skills Faculty and Skills Courses into the Law School Curriculum Ahead of the NextGen Bar Exam*, 107 MINN. L. REV. 2663 (2023).

54. See Beth H. Wilensky, MICH. L., <https://michigan.law.umich.edu/faculty-and-scholarship/our-faculty/beth-h-wilensky> [<https://perma.cc/33RR-3VPT>].

55. *Alternatives to the Case Method*, *supra* note 41, at 39:28–54:18.

her test.⁵⁶ You can read more about this in her Essay, *Dethroning Langdell*, available at page 2701 of this Issue.

In addition to the excellent solutions proposed by the panel, the Author of this Foreword recommends two simple actions that law schools and law professors can take immediately to improve their pedagogy.

First, professors who are not already well-versed in pedagogical methods should pick up a copy of at least one book: Marcia L. Tate's *"Sit & Get" Won't Grow Dendrites: 20 Professional Learning Strategies that Engage the Adult Brain*.⁵⁷ In only 192 pages—many of which are left partially blank for notes or are covered with pictures and diagrams—Tate provides a variety of alternative methods for engaging adult learners in fun and interesting ways that will also lead to greater retention of information and synthesis of ideas.

Second, faculty should develop programs—formal or informal—in which they observe each other's pedagogy.⁵⁸ To start, such a program could consist of each professor simply sitting in to observe a colleague's class once a week—not to provide judgment or even feedback, but just to gain ideas about pedagogical methods that they could try for themselves. Once a culture of classroom observation is created, faculty may begin giving each other feedback, or even coaching and mentoring each other. In some cases, law schools might even consider consulting experts in instructional practice to help design curricula and coach faculty in their pedagogy. Such a program would come at little cost but would make the educational experience more enjoyable for both professors and students—and it would improve outcomes along the way.

By changing our pedagogy, we can change the way students think. And by changing the way students think, we can change the way lawyers practice law. We can create lawyers who are prepared to change the system on more than just the margins.

56. *Id.* at 45:45–46:20 (“If the way that we are teaching routinely and incorrectly tells law students that ‘you’re not going to be a successful attorney; you don’t have the skills that it takes; the skills you do have are not skills that are valuable and are going to help you be successful as an attorney,’ then I think we’re doing something wrong.”).

57. MARCIA L. TATE, “SIT & GET” WON’T GROW DENDRITES: 20 PROFESSIONAL LEARNING STRATEGIES THAT ENGAGE THE ADULT BRAIN (2d ed. 2012).

58. *See, e.g., Alternatives to the Case Method*, *supra* note 41, at 56:20–1:03:22 (discussing the remarkable, positive impact of faculty engaging with each other about pedagogical methods and observing each other’s classes).

ACCREDITATION

We finished the Symposium by discussing how we decide who will ultimately be marked with the stamp of “lawyer” and entrusted with its attendant responsibilities. How do we ensure that those who are permitted to enter the profession have the ethics, intuition, judgment, and responsibility that it takes to make the world a better place?

Professor Carol Chomsky⁵⁹ moderated the final panel of the day, *The Future of Lawyer Accreditation*.⁶⁰ Chomsky began by noting the importance of the licensing process to what professors teach and how they teach it—along with its importance to students, for whom licensing is perhaps the primary objective of law school.⁶¹

Dr. Danette McKinley,⁶² the Director of Diversity, Fairness and Inclusion Research for the NCBE, then presented a framework of assessment principles and competence.⁶³ McKinley emphasized how difficult it is to define and measure competence for the general, unsupervised practice of law.⁶⁴ She then explained how the NCBE drew from its own practice analysis⁶⁵ and the

59. See Carol Chomsky, UNIV. OF MINN. L. SCH., <https://law.umn.edu/profiles/carol-chomsky> [<https://perma.cc/GQ44-SCDG>].

60. Minn. L. Rev., 5 *The Future of Lawyer Accreditation*, 107 *MLR Symposium*, YOUTUBE (Oct. 7, 2022), <https://youtu.be/gepeH27hPx4> [hereinafter *The Future of Lawyer Accreditation*].

61. *Id.* at 02:15–03:45.

62. See Danette McKinley, *PhD*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/members/danette-mckinley-phd> [<https://perma.cc/9SP6-B9PN>].

63. *The Future of Lawyer Accreditation*, *supra* note 60, at 04:45–07:34 (citing Stan Lester, *Professional Competence Standards and Frameworks in the United Kingdom*, 39 *ASSESSMENT & EVALUATION HIGHER EDUC.* 38, 39 (2013) (“An individual, internal, attributes-based perspective is concerned with the properties or competencies (skills, knowledge, behaviours, attitudes, motivations and so forth) that a person has, which enable him or her to act competently in various situations.”)).

64. *Id.* at 07:34–08:46 (citing Michael T. Kane, *The Validity of Assessments of Professional Competence*, 15 *EVALUATION & HEALTH PROS.* 163 (1992)).

65. *Testing Task Force Phase 2 Report 2019 Practice Analysis*, NAT’L CONF. OF BAR EXAM’RS (Mar. 2020), https://nextgenbarexam.ncbex.org/wp-content/uploads/TestingTaskForce_Phase_2_Report_031020.pdf [<https://perma.cc/A8K4-U4CN>].

“twelve building blocks of minimum competence” from the *Building a Better Bar* report⁶⁶ to design the NCBE’s NextGen Bar Exam—which is set to debut in 2026.⁶⁷ McKinley acknowledged that there will always be some degree of error when sampling from the wide variety of tasks that lawyers perform to test whether a law student has the requisite knowledge and skills for those tasks;⁶⁸ and she explained—using the example of assessments of medical students—how combining cognitive assessments, simulations, and direct observation can result in an assessment with higher validity, which is the aim of the NextGen Bar Exam.⁶⁹ McKinley concluded by emphasizing that law schools should be increasing the use of skills-based learning and assessment so that students are prepared for the NextGen Bar Exam and for practice.⁷⁰

Professor Deborah Jones Merritt⁷¹ spoke next, discussing the need for client-centered legal education.⁷² After observing that both legal education and lawyer licensing are currently misaligned with the ultimate goal of serving clients, Merritt urged replacing written bar exams with more client-centered assessments of lawyering competence.⁷³ Drawing upon the psychometric literature, she described how these alternative assessments

66. Deborah Jones Merritt & Logan Cornett, *Building a Better Bar: The Twelve Building Blocks of Minimum Competence*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (Dec. 2020), https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar.pdf [<https://perma.cc/DBM3-E4ET>].

67. *The Future of Lawyer Accreditation*, *supra* note 60, at 08:46–11:30; see also *NextGen Bar Exam of the Future*, NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org> [<https://perma.cc/RE45-FACH>].

68. *The Future of Lawyer Accreditation*, *supra* note 60, at 11:34–12:21 (citing Kane, *supra* note 64, at 167 (“The validity of an assessment of professional competence depends on the evidence supporting inferences from an examinee’s score, which is based on fallible evaluations of limited samples of performance, to conclusions about the examinee’s expected performance over the domain of encounters defining the area of practice.”)).

69. *Id.* at 12:22–21:39 (citing George E. Miller, *The Assessment of Clinical Skills/Competence/Performance*, 65 ACAD. MED. S63 (1990); Kane, *supra* note 64).

70. *The Future of Lawyer Accreditation*, *supra* note 60, at 21:39–23:50.

71. See Deborah Jones Merritt, THE OHIO ST. UNIV. MORITZ COLL. OF L., <https://moritzlaw.osu.edu/deborah-jones-merritt> [<https://perma.cc/FSE3-BSZT>].

72. *The Future of Lawyer Accreditation*, *supra* note 60, at 23:55–46:55.

73. *Id.* at 25:20–46:42.

can be valid, reliable, and fair.⁷⁴ Merritt's Article, *Client-Centered Legal Education and Licensing*, available at page 2729 of this Issue, explains these solutions in detail.

Professor Catherine Christopher⁷⁵ was the last to speak, sharing her idea for lawyer accreditation: a modern diploma privilege.⁷⁶ Christopher discussed her vision for a widespread licensing regime, similar to the Daniel Webster Scholars program in New Hampshire⁷⁷ or the diploma privilege program in Wisconsin,⁷⁸ in which state boards of law examiners would partner with law schools to assess competencies through their coursework and then directly admit students with diplomas from partnering law schools to the state bar. Christopher lays out her vision in detail and discusses its benefits and drawbacks in her Article, *Modern Diploma Privilege: A Path Rather than a Gate*, available at page 2777 of this Issue.

Whatever form of licensure each state adopts, the desire for change from the old bar exam is undeniable.⁷⁹ Whether states choose the NextGen Bar Exam, a modern diploma privilege, or some other form of licensure, states should keep their focus on the various constituencies that depend on the knowledge, skill, and integrity of lawyers—especially clients and courts. Our system of licensure must ensure that those constituencies will be

74. *Id.*

75. See Catherine Christopher, TEX. TECH UNIV. SCH. OF L., https://www.depts.ttu.edu/law/faculty/c_christopher.php [<https://perma.cc/RLD3-PDRC>].

76. *The Future of Lawyer Accreditation*, *supra* note 60, at 46:48–1:03:31.

77. See Daniel Webster Scholar Honors Program, UNIV. OF N.H. FRANKLIN PIERCE SCH. OF L., <https://law.unh.edu/academics/daniel-webster-scholar-honors-program> [<https://perma.cc/RU2V-ANMF>].

78. See *Diploma Privilege*, UNIV. OF WIS.-MADISON L. SCH., https://www.law.wisc.edu/current/diploma_privilege/#:~:text=Diploma%20Privilege%20allows%20our%20graduates,country%20that%20offers%20diploma%20privilege [<https://perma.cc/Q49U-CLAK>]; *Diploma Privilege*, MARQ. UNIV. L. SCH., <https://law.marquette.edu/prospective-students/diploma-privilege> [<https://perma.cc/K9CW-5VFH>]; *Admission to the Practice of Law in Wisconsin*, WIS. CT. SYS., <https://www.wicourts.gov/services/attorney/bar.htm> [<https://perma.cc/K6Z9-CSVD>].

79. See, e.g., *Competency Study – 2021 to 2023*, MINN. ST. BD. OF L. EXAM'RS, <https://www.ble.mn.gov/bar-exam/competency-study-2021-to-2023> [<https://perma.cc/NH6B-M9SY>] (discussing the recommendations of multiple working groups, which propose a variety of options for licensing other than the traditional bar exam).

well-served, but it should not be so strict as to cause disparities⁸⁰ or scare away people who would diversify and advance the profession for the better.

CONCLUSION

This Issue proceeds in the same order as the Symposium. It begins with a transcript of the keynote address and then turns to admissions, curriculum, pedagogy, and accreditation.

Does this Issue actually achieve its goal of reimagining legal education? That is for you to decide. But regardless of the answer, you should not stop here. Legal educators and other advocates all over the world are sharing ideas for reform.⁸¹ This Issue is but a small subsection of the widespread calls for change, and we need everyone to join the movement toward a legal education system that will prepare students to thoughtfully cultivate a better legal system.

To create a system that treats the people it governs equitably, we need a population of talented lawyers that looks like the People and is prepared to advocate for change. It is not enough for us to teach law students to describe the law as it is; instead, we must give them the tools to say what the law should be and make it so.

80. See generally Cecil J. Hunt II, *Guests in Another's House: An Analysis of Racially Disparate Bar Performance*, 23 FLA. ST. UNIV. L. REV. 721 (1996) (analyzing disparities associated with the traditional bar exam).

81. See, e.g., *Journal of Legal Education*, ASS'N OF AM. L. SCHS., <https://jle.aals.org/home> (publishing scholarship on legal education quarterly).