Essay

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

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INTRODUCTION

The legal academy must continue to examine what it means to "provide" a legal education. We often boast that we are training lawyers to "think critically" and to "think like a lawyer."[1]

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1. Law schools boast about training students to "think like a lawyer" when they may not have a clear understanding of what it means to "think like a lawyer." *See* Catherine Bramble & Rory Bahadur, *Actively Achieving Greater Racial Equity in Law School Classrooms*, 70 CLEV. ST. L. REV. 709, 751–55 (2022) ("The reality is that there is no universal agreement about or understanding of exactly what the phrase 'thinking like a lawyer' means."); Kris Franklin, *Sim City: Teaching "Thinking Like a Lawyer" in Simulation-Based Clinical Courses*, 53 N.Y. L. SCH. L. REV. 861, 866 (2008) ("'Thinking like a lawyer' is a phrase so

But, as we all know, lawyers do more than just "think." And they certainly do more than just think and speak quickly on their feet. Lawyers research. They write. They counsel. They listen. They collaborate. They negotiate. They practice law. A reimagined legal education would have law schools doing what they should be expected to do: teach and train students to practice law.

When I think of reimagining legal education, I think of my experience as a law student and law professor. I think of the many stories that students have shared with me and my colleagues in our legal skills and academic support work.[2] I think

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routinely used and so often self-referential that its meaning is generally left unexplained, or at least ill-articulated. Given the variability and subjectivity of potential meanings of the phrase, our use of it skates uncomfortably close to something that 'we know when we see it.'"); *see also* L. Danielle Tully*, The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 STAN. J. C.R. & C.L. 201, 203 (2020) ("At the heart of the debate for legal education is whether law schools should teach students to 'think like' lawyers or to 'be' lawyers.").

2. I have been working in the law school academic support professional (ASP) space since I started teaching at UNC in 2011. I believe folks working in the ASP space, often called "ASPs," should be recognized as faculty teaching legal skills. The work that ASPs perform, including (but certainly not limited to) helping students learn to read and brief cases, issue spot, and apply law to facts, is at the heart of what it means to train law students to become practicing lawyers. Without these foundational skills that ASPs help their students develop, law students can be left trying to learn how to swim in the sea of law school rigor without a life jacket. Those who are fortunate enough to stay afloat may be able to engage in their law school studies, including their doctrinal and skills courses. Those who struggle are left behind to continue to play "catch-up" or drown.

Unfortunately, many law schools still do not give ASPs faculty titles, pay equity, or any type of job security. A reimagined legal education would do so.

> [M]any in ASP have staff classifications, despite teaching required and elective courses. Too many in ASP are denied a voice or vote in the programs they teach or direct, are physically segregated far from the faculty hallways, . . . are denied budget funding for travel and professional development, and have 12-month appointments that limit writing projects and scholarly pursuits.

Marsha Griggs, *Where Does ASP Fit In?*, L. SCH. ACAD. SUPPORT BLOG (Nov. 29, 2020), https://lawprofessors.typepad.com/academic_support/2020/11/where-does-asp-fit-in.html [https://perma.cc/YDL6-HRBY]. For a discussion on some of the inequities that ASPs face in the legal academy, see Renee Nicole Allen, Alicia Jackson & DeShun Harris, *The "Pink Ghetto" Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525, 537 (2019) (noting that American Bar Association Standard 405 does not provide job security for academic support and bar preparation professionals); *see also* Rachel Gurvich, L. Danielle Tully, Laura A. Webb, Alexa Z. Chew, Jane E.

of those students who may have struggled academically in their traditional casebook method courses, only to then shine and find a new, more welcoming place in their skills courses. I think of a law school curriculum that will continue to better reflect our goal of training future lawyers to enter the practice of law. I think of a legal profession (and law school faculty) that better reflects the wonderful diversity of our general population. And I think of a legal academy that will better value those faculty who are tasked with teaching our students the practical lawyering skills that they will be expected to perform when they enter the practice of law.

I have been teaching at the University of North Carolina School of Law (UNC) since 2011. I was lucky to be a part of the original cohort of hires for UNC's transformation of its 1L Legal Research and Writing (LRW) program. Prior to the fall of 2011, UNC's 1L LRW program was taught primarily by adjunct faculty. 1Ls would receive a total of four credit hours for their 1L

Cross & Joy Kanwar, *Reimagining Langdell's Legacy: Puncturing the Equilibrium in Law School Pedagogy*, 101 N.C. L. REV. F. (forthcoming 2023) (manuscript at 126–27), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4411101 (identifying skills faculty and ASPs as "lower-status" personnel who are often paid less and have fewer, if any, voting rights than doctrinal faculty); Katie Rose Guest Pryal, *Front-Line Faculty and Systemic Burnout*: *Why More Faculty Should Attend to Law Students' Mental Health and the Inequities Caused by Faculty Who Opt Out*, 27 LEGAL WRITING: J. LEGAL WRITING INST. 199, 203 (2023) (clustering ASPs and skills professors as "front-line" faculty who, as a result of their lower-tiered positions, cannot opt out of working closely with students or tending to the academic and emotional well-being of their students); Louis N. Schulze, Jr., *The Manifold Ways of Reaching Law Students*, L. SCH. ACAD. SUPPORT BLOG (Oct. 28, 2022), https://lawprofessors.typepad.com/academic_support/2022/10/the-manifold-ways-of-reaching-law-students-another-perspective.html [https://perma.cc/44E6-WUDG] ("Academic support programs cost money. This is not breaking news. But very few schools properly fund and support these efforts. The literature is replete with accounts of strikingly low salaries, extraordinary performance results requirements, the absence of contractual stability, and institutional prohibitions against impactful pedagogy.").

For a discussion on how ASPs help train future lawyers, see Louis N. Schulze, Jr., *Alternative Justifications for Academic Support II: How "Academic Support Across the Curriculum" Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 CAP. U. L. REV. 1, 5, 59–62 (2012) ("Because ASPs provide a positive and healthy environment for students and because these programs are already steeped in the fundamentals of effective educational philosophies and techniques, they provide a ready-made solution to many facets that the Carnegie Report and Best Practices call to reform.").

LRW courses, one credit hour of which was graded pass/fail.[3] The small number of credit hours for the courses, coupled with the transient nature of the faculty who taught the courses, limited the number of opportunities for 1Ls to practice, develop, and receive consistent individual feedback on their legal research, reasoning, and writing skills. Similarly, the fact that the courses were not taught by full-time members of the law school faculty suggested to the student body (and, perhaps, employers) that these courses—those which were focused on teaching students the practical lawyering skills they would be expected to perform during their summer work and legal practice—were not as important as their so-called "doctrinal" courses. The skills courses were secondary courses taught by secondary faculty.[4]

In many ways, the legal academy continues to see skills courses and skills faculty as secondary to their doctrinal and tenured/tenure-track counterparts. Despite experiential learning

3. UNC 1Ls now take a total of six credit hours in our 1L LRW program, all of which are traditionally graded and contribute to a 1L's overall grade point average, just like the rest of their 1L courses. Students receive three credit hours in Research, Reasoning, Writing, and Advocacy (RRWA) I in the fall semester. Students receive three credit hours in RRWA II in the spring semester. For information on UNC's 1L LRW program, see *Research, Reasoning, Writing, and Advocacy (RRWA) Program*, UNIV. OF N.C. SCH. OF L., https://law.unc.edu/academics/the-writing-and-learning-resources-center-wlrc/rrwa [https://perma.cc/4C69-AJJ9].

4. For a review of the scholarship discussing how the legal academy has often treated skills professors as "second-class citizens", see Lucille A. Jewel, *Oil and Water: How Legal Education's Doctrine and Skills Divide Reproduces Toxic Hierarchies*, 31 COLUM. J. GENDER & L. 111, 112–13 (2015) (describing "the disparate treatment and conditions that make the skills professorate the 'other professorate'").

> [L]egal skills teachers are treated as second-class citizens, receiving lower pay, fewer faculty governance rights, and lesser titles than teachers hired on the tenure-track to teach doctrinal courses. Legal skills teachers are "something other (or less) than tenured or tenure-track doctrinal professors in the overwhelming majority of American law schools." A legal skills teacher is often physically separated from his/her doctrinal colleagues, occupying offices in a law clinic's basement or a windowless office in some far-flung wing of a school's faculty suite. Skills teaching is often perceived as unrewarding "donkey work," with a teacher's time better spent researching and writing scholarly articles or preparing for a doctrinal class. When we think of the professional identity of a law professor, the dominant conception of the law professor is the "heroic" doctrinal professor, an identity that excludes skills teaching.

Id.

curricular changes partially driven by the American Bar Association (ABA)[5] and the *Carnegie Report*,[6] the primary method for "training" future lawyers—particularly during their first year of law school—remains a casebook method approach that seems to reward a limited set of skills and furthers "the reproduction of hierarchies of power and subordination."[7] Despite growing

5. ABA Standard 301 requires law schools to "maintain a rigorous program of legal education that prepares its students upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession." *ABA Standards and Rules of Procedure for Approval of Law Schools 2022–2023,* A.B.A. ch. 3, Standard 301 (2022) [hereinafter *ABA Standards*], https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2022-2023/22-23-standard-ch3.pdf [https://perma.cc/72AB-PXC4]. As part of this rigorous program of legal education, the ABA continues to formally acknowledge the importance of professional lawyering skills, including a law school curriculum requirement of six hours of experiential learning. *See id.* Standards 302, 303(a)(3), 314. Interpretation 302-1 identifies "professional skill" as including "interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation." *Id.* Standard 302. Experiential learning courses can be law clinics or field placement courses or "simulation" courses. *Id.* Standard 303(a)(3). "A simulation course provides substantial experience not involving an actual client, that is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member . . . ." *Id.* Standard 304(b).

6. Many law schools increased their emphasis on skills training and experiential learning after the 2007 Carnegie Foundation for the Advancement of Teaching report. *See* WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (The Carnegie Found. for the Advancement of Teaching ed., 2007) [hereinafter CARNEGIE REPORT]. The report highlighted how law school fails to fully prepare students for the practice of law. *Id.* at 82 ("[W]e believe laying a foundation for the development of practitioners requires that legal education expand along the continuum to include significant involvement in the experience of performing the tasks of practicing attorneys."). The Clinical Legal Education Association's 2007 "best practices" publication also prompted an increased emphasis on skills training and experiential learning. ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP ch. 5 (2007).

7. Sheila I. Vélez Martinez, *Towards an Outcrit Pedagogy of Anti-Subordination in the Classroom*, 90 CHI.-KENT L. REV. 585, 586–87 (2015) (arguing that the traditional casebook method approach to teaching in law school "ignores best practices in teaching and critical pedagogy," and "has a particular oppressive effect in female students and students of color"); *see* Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 593 (1982) (describing the first year casebook method experience as

changes in the student body who sit in our classrooms, as well as the growing legal needs in our communities,[8] the traditional teaching tool for law school has remained relatively unchanged for over 150 years.[9] This has remained true despite criticisms

"pseudo-participation [where] one struggles desperately, in front of a large audience, to read a mind determined to elude you").

> [S]tudents learn a particular style of deference. They learn to suffer with positive cheerfulness interruption in mid-sentence, mockery, ad hominem assault, inconsequent asides, questions that are so vague as to be unanswerable but can somehow be answered wrong all the same, abrupt dismissal, and stinginess of praise . . . They learn to savor crumbs, while picking from the air the indications of the master's mood that can mean the difference between a good day and misery. They learn to take it all in good sort, that his bark is worse than his bite, that there is often shyness, good intentions, some real commitment to students learning something behind the authoritarian facade.

Id. at 604; *see also* Elizabeth Mertz, *Inside the Law School Classroom: Toward a New Realist Legal Pedagogy*, 60 VAND. L. REV. 483, 508–12 (2007) (noting that the traditional casebook method approach to teaching can create a "premature closure" of the class discussion among female students and students of color).

8. As Dean Martin H. Brinkley notes, "[t]he role of the American lawyer, and of the legal profession in a country uniquely dependent on lawyers, is a pluralistic one. What our society needs from lawyers grows more complex and diverse with society itself." Martin H. Brinkley, *Teaching Leadership in American Law Schools: Why the Pushback?*, 73 BAYLOR L. REV. 194, 197 (2021) (highlighting how law schools fail to provide formal leadership teaching to their students).

9. CARNEGIE REPORT, *supra* note 6, at 50 ("With its focus on teaching students how to think like a lawyer, the case-dialogue method constitutes the legal academy's standardized form of the cognitive apprenticeship.").

> 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 . . . .

Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 597 (2007) (criticizing the casebook method as limiting students' understanding of the practice of law to how or whether issues fit within appellate decisions); *see* Martin H. Brinkley, *supra* note 8, at 200 ("I think it irrefutable that the system of formal legal education American law schools have evolved over the last century and a half still lays primary value on inculcating analytical and rhetorical skills—the ability to 'reason and argue in ways distinctive to the American legal profession'—over virtually every other achievement.").

> It is noteworthy that throughout legal education, the focus remains on cases rather than clients. The analogy in medical training would be the tension between focusing teaching on disease processes, on the one

that the casebook method approach is an ineffective engine for preparing students for the practice of law,[10] and that it humiliates, embarrasses, and devalues students.[11]

Using the casebook method as the primary teaching tool for training future lawyers, particularly during the first year, encourages ostracism. It can create a situation where students feel quickly separated into a "you do belong here" or "why are you here?" bucket. Those students who are strong oral communicators who can think quickly on their feet,[12] or those whose identi-

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> hand, or on patient care, on the other. The skill of thinking like a lawyer is first learned without the benefit of actual clients, and the typical form in which the case books present cases may even suggest something misleading about the roles lawyers play, more often casting them as distanced planners or observers than as interacting participants in legal actions.

CARNEGIE REPORT, *supra* note 6, at 56–57.

10. Todd D. Rakoff and Martha Minow argue that the traditional casebook method approach to teaching even fails to teach students how to "think like a lawyer":

> We are not talking about fancy goals here; we are talking about teaching students "how to think like a lawyer." Langdell's case method fails in this mission. It fails because lawyers increasingly need to think in and across more settings, with more degrees of freedom, than appear in the universe established by appellate decisions and the traditional questions arising from them. The Langdellian approach treats too many dimensions as already fixed.

Rakoff & Minow, *supra* note 9, at 600. For a summary of some of the criticisms of the traditional casebook method approach to teaching, see Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609, 649 (2007) (highlighting, among other criticisms, that the casebook method lacks experiential training and "is inconsistent with the learning process"); *see also* Kennedy, *supra* note 7 (emphasizing, among other criticisms, that legal education helps promote legal hierarchy); Laura A. Webb, *Speaking the Truth: Supporting Authentic Advocacy with Professional Identity Formation*, 20 NEV. L.J. 1079, 1101–11 (2020) (writing, among other criticisms, that the traditional casebook method approach to teaching encourages students to think that "the law is indeterminate: that a plausible argument can be created for virtually any position").

11. *See* STUCKEY, *supra* note 6, at 216–18 (criticizing the traditional casebook method approach to teaching as often "a tool for humiliating or embarrassing students"); Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 7, 34–41 (2021) (discussing how the Socratic method often "devalues the very things that make . . . students different: their race, their backgrounds, them").

12. *See* CARNEGIE REPORT, *supra* note 6, at 24 ("The surface structure [of the casebook method] is a set of dialogues entirely focused by and through the

ties and perspectives mirror the majority, can feel somewhat empowered and further accepted. They are placed into the "you do belong here" bucket. Those who are not are left on the sidelines watching the law school game and questioning whether law school and the legal profession are right for them.

I felt like I was on the sidelines when I was in law school. And, like many faculty who teach skills courses in the legal academy, I have experienced what seems like teaching and working from the sidelines. This semiautobiographical Essay provides an opportunity for faculty and administrators to better recognize when they may be working with students who feel like they are on the sidelines.[13] This Essay also encourages law school faculty and administrators to reevaluate how they support skills training and treat and value faculty who teach skills courses.

Thus, this Essay provides commentary on reimagining legal education for a new era. It includes observations and personal reflections—both from my work as a skills and academic support professor, as well as my experience as a first-generation person of color who almost quit law school. Part I of this Essay summarizes my personal experience and struggles in (1) the traditional law school classroom, where only certain skills and experiences seemed to be valued and appreciated, and (2) the legal academy, where I may often be considered a secondary faculty member teaching secondary courses. Part II of this Essay discusses how the increased efforts by law schools to expand experiential learning created more opportunities for students to connect doctrine

instructor. In these dialogues about legal texts, students are expected to engage in intense verbal duels and competitions with the teacher as they struggle to discern facts and principles of interpretation within a case.").

13. Since most law school faculty and administrators did (really) well in law school, they may often incorrectly assume that their students are also doing well in law school. Their survivorship bias can encourage "overly optimistic thinking" and cloud their ability to recognize that many students find the law school experience quite challenging and, sometimes, disheartening. *See Survivorship Bias Explained: 4 Examples of Survivorship Bias*, MASTERCLASS (May 6, 2022), https://www.masterclass.com/articles/survivorship-bias [https://perma.cc/UR5B-6FAK] ("When you look at only the successful subset of a particular situation, it encourages you to believe in a skewed reality in which circumstances are easier or more likely to work out than they actually are."). I hope this Essay will poke a hole in the survivorship bias balloon that many law faculty and administrators carry. For a discussion on survivorship bias, see *infra* notes 16–18 and accompanying text.

to the practice of law while, unfortunately, solidifying the disparate treatment of skills faculty.[14] Part III concludes that the incorporation of skills assessment into the NextGen bar exam is an appropriate time for law schools to reevaluate and restructure how their curricula advance the training of practical lawyering skills and how their administration and doctrinal faculty value and support faculty who teach skills courses.[15]

I. VALUING A VARIETY OF SKILLS AND EXPERIENCES IN THE LAW SCHOOL CLASSROOM AND IN THE LEGAL ACADEMY

Law school administrators and faculty often make administrative and policy decisions while comfortably wearing blinders. Most law school administrators and law school faculty come from a certain mold.[16] They look a certain way. They attended certain

14. For a summary of some of the recent scholarship describing the differences between doctrinal faculty and faculty who teach skills courses, see *infra* note 57.

15. The first administration of the NextGen bar exam is scheduled for July 2026. *Implementation Timeline*, NAT'L CONF. OF BAR EXAM'RS, https://nextgenbarexam.ncbex.org [https://perma.cc/UDP2-VXSV]. The NextGen bar exam will focus on assessing practical lawyering skills, like client counseling, negotiations, and legal research, with many of the questions placing the test taker in the role of representing a client. *See Next Generation of the Bar Exam Content Scope Outlines*, NAT'L CONF. OF BAR EXAM'RS, https://nextgenbarexam.ncbex.org/wp-content/uploads/NextGen-Content-Scope-Outlines-Report.pdf [https://perma.cc/HBL4-LU45] (detailing the topics to be assessed for the NextGen bar exam). In answering test questions, test takers may still need to be able to predict outcomes of a hypothetical case based on the understanding of certain substantive law, but test takers will also need to strategize and identify appropriate or best "next steps" for advising and representing a hypothetical client. *Id.* at 5–6. In this respect, the NextGen bar exam may pose questions or scenarios that are more akin to what students practice in their law school simulation courses than what they practice in their doctrinal courses. *See also ABA Standards, supra* note 5, at Standard 304(b) (noting that simulation courses are "reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member").

16. *See* CARNEGIE REPORT, *supra* note 6, at 89–91 (identifying the "self-replicating circle of faculty and graduates" as an obstacle to the legitimacy of skills teaching in law schools).

> Most faculty are drawn from a very small number of leading academic institutions, from among lawyers who have taken predictable career paths. Students at the top schools who are identified after their first year as stars in analytical reasoning receive extensive apprentice-like training as law review editors during their second and third years;

schools.[17] And they teach certain classes. They excelled in their law school classrooms, and their survivorship bias can often

> training comes from both faculty and more experienced peers. They then go on to yet more hands-on mentoring as law clerks for appellate judges before taking up such positions as appellate advocate, legal scholar and teacher, or judge. Drawing law school faculty from this pool has ensured great uniformity in career path and outlook, especially in matters of faculty promotion and curriculum, introducing little diversity of experience into faculty perspectives.

CARNEGIE REPORT, *supra* note 6, at 89; *see also* Jewel, *supra* note 4, at 116 ("[P]rofessors who obtain positions as traditional doctrinal teachers are most likely to hail from a privileged background."); Michael J. Higdon, *A Place in the Academy: Law Faculty Hiring and Socioeconomic Bias*, 87 ST. JOHN'S L. REV. 171, 174 (2013) ("[S]tudy after study has found that the overwhelming majority of law professors in the United States graduated from top-tier law schools."). This "self-replicating circle" can often cause faculty and administrators to "lose sight" that most of their students are in law school to become practicing lawyers, not scholars or professors. CARNEGIE REPORT, *supra* note 6, at 90. Indeed, even though law schools are professional schools aimed at training students to enter the practice of law, it is rare for law school deans to enter their positions outside of the tenured, doctrinal professor route. For example, UNC's current dean, Martin H. Brinkley, is the first person to serve as dean of the law school straight from the practice of law. *Martin H. Brinkley*, UNIV. OF N.C. SCH. OF L., https://law.unc.edu/people/martin-h-brinkley [https://perma.cc/V4GQ-XTB8]. Dean Brinkley has written about the "rigid pipeline" tied to faculty hiring, as well as the limited skills that seem to be valued in law school:

> Exclusionary notions of greater and lesser prestige hold sway over law faculties, and, in different guises, exercise a powerful influence over the practicing bar. A rigid pipeline of faculty identification ensures that persons entering the academy are the people the academy has already embraced—that is, those who did well in law school themselves. Perhaps, unconsciously, embryo faculty seek to return to a place and time where they were personally validated, in contrast with a practice world in which broader skills are needed and rewarded. They see existing structures of legal education as inherently defensible and correct, if liable to criticism at the margins.

Brinkley, *supra* note 8, at 203.

17. *See* Jewel, *supra* note 4, at 117 ("[S]ocioeconomic under-representation exists on law school faculties because law school hiring committees continue to place great value on elite credentials, which strongly correlate with socioeconomic privilege."); Higdon, *supra* note 16 (highlighting how securing a law professor job for applicants who did not attend an Ivy League or equivalent school can often be compared to "walking on water").

> [T]he students who attend top-tier law schools are overwhelmingly representative of the elite socioeconomic class—often times as a result of merely being born to parents who were also a member of that class. As such, hiring faculty members from primarily those ranks undermines a law school's ability to achieve socioeconomic diversity on its faculty

cloud their ability to understand or accept that students may be struggling in their class or in law school in general.[18] Law school administrators and faculty may often have the mistaken belief that because law school was easy and fun for them, it should be easy and fun for everyone else. In this Part of the Essay, I share my experience and struggles as a law student and law faculty member to illustrate the importance of law school skills courses and faculty who teach skills development both for increased student learning and inclusion.

I realize personal narratives are not the norm for law review articles and essays.[19] I also realize that describing some of my

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> and instead helps perpetuate a class-based monopoly within the legal academy to the detriment of all involved.

Higdon, *supra* note 16, at 175.

18. Survivorship bias can influence our expectations for the law student experience. We may make assumptions based on our experiences as survivors, while disregarding or downplaying the experiences of those who may struggle. "Survivorship bias (or survivor bias) is a cognitive fallacy in which, when looking at a given group, you focus only on examples of successful individuals (the 'survivors') in the selection process rather than the group as a whole (including the 'non-survivors')." MASTERCLASS, *supra* note 13. "In education, and every other profession, we are complicit in Survivorship Bias each time we positively accept[] many of the predetermined judgements made by those who have experienced idiosyncratic pathways to success." Neil MacNeill & Ray Boyd, *Redressing Survivorship Bias: Giving Voice to the Voiceless*, EDUC. TODAY (Sept. 4, 2020), https://www.educationtoday.com.au/news-detail/Redressing-Survivorship-Bias-5049 [https://perma.cc/58KB-K2QY]; *see* Bryan Penfound, *Survivorship Bias in Education*, FULLSTACKCALCULUS:FTLOM BLOG (June 23, 2016), https://fullstackcalculus.com/2016/06/23/survivorship-bias-in-education [https://perma.cc/2DWC-DX45] (defining survivorship bias as "an error that arises when we only consider objects that 'survive' a particular process, ignoring the objects that do not survive").

19. Personal narratives may not be the norm for law review articles and essays, but they can be an effective tool for challenging a common perspective. *See* Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185, 214 (1994) ("In the hands of Outsiders, storytelling seeks to subvert the dominant ideology. Stories told by those on the bottom, told from the 'subversive-subaltern' perspective, challenge and expose the hierarchical and patriarchal order that exists within the legal academy and pervades the larger society.") (footnotes omitted).

> Personal narratives of alienation or subordination present additional challenges when used in the domain of critical legal writing. Being a member of the legal professoriate, even if one is a member of several traditionally oppressed groups, means having a significant amount of social and cultural power and privilege. Personal accounts of humiliation, bias or deprivation told from within the academy may sound to

struggles may likely feed into the negative stereotypes and biases that certain students and faculty may have towards students and faculty of color and individuals who did not grow up with a lot of money. However, I hope that my personal stories will help disrupt some of these stereotypes and biases. I hope my stories help normalize the struggles that many law students experience (often quietly and alone) while in law school. I hope my stories help influence how law school administrators and faculty approach their work and interactions with students. I hope my stories will encourage others to tell their stories.

My law school experience has greatly influenced how I approach my work as a law school professor. It can be hard to separate your personal story from the general law school experience for students when so many students you work with often describe your story or some version of your story.[20] It can be hard to feel welcomed and accepted in an institution and profession when your identities and experiences remain quite different

> some like whining or may be perceived as excessive involvement with the self rather than with the real needs of the Outsider communities. Hopefully, linguistic diversity will be recognized as enhancing the dialogue within the academy by bringing in new voices and fresh perspectives.

Id. at 217.

20. My personal experience as a law student was previously described in a Legal Writing Institute *LWI Lives* story in 2017. *LWI Lives*, LEGAL WRITING INST. 1, 4–5 (Apr. 1, 2017) https://www.lwionline.org/sites/default/files/2020-09/LWI%20Lives%20-%20April%202017.pdf [https://perma.cc/N83D-JEEK]. My story is not that different than the stories of many law students who may feel different than their classmates or discouraged by the traditional Socratic class. ASPs and legal skills professors work with students in individual conferences quite frequently. They have heard these stories. They have heard more stories. If you are unsure about the climate at your law school, talk to those faculty and staff who meet with a variety of students regularly in individual conferences—not just those select students who may be especially interested in your scholarship or who serve as your teaching or research assistants. If you question why students may not regularly reach out to you outside of class or visit you during office hours, reevaluate how you may be perceived by those students. What do you say in and out of class that may be perceived as elitist, judgmental, or unwelcoming? How do you respond to students who may appear to be struggling, whether academically or not? What characteristics or aspects of your pedigree and background may influence students to hesitate before they walk into your office? Are you letting your survivorship bias cloud your views as to what a student's law school experience may be?

than the rest of the institution and profession.[21] But it is important for these stories to be told and these differences to be acknowledged. The stories that our students, skills faculty, and faculty of color continue to tell can help shift the blinders that our law school administrators and doctrinal faculty wear.[22] The stories can help poke a hole in the survivorship bias balloon that many law faculty and administrators carry. The stories can create better awareness and promote positive change. The stories can help build a more welcoming and inclusive environment for all law students and faculty.

A. PERSONAL STORY, PART I: MY EXPERIENCE AS A LAW STUDENT

Law school was neither easy nor fun for me. I wanted to quit law school during and after my 1L year—not because of grades, but because I did not like the law school experience.[23] As one of the few Hispanic students in the law school, I knew I was different than most of my classmates.[24] I also knew I was different

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21. When I started teaching at UNC in 2011, I was told that I was the first Hispanic to hold a full-time faculty position at the law school. Sadly, as of the publication date of this Essay, I remain the only Hispanic to hold a full-time faculty position at the law school. *See Faculty*, UNIV. OF N.C. SCH. OF L., https://law.unc.edu/directory/faculty [https://perma.cc/R4WQ-HUBF].

22. The stories can help faculty and administrators to see things in a new and different light. *See* Brinkley, *supra* note 8 ("I am a prisoner of my own choices and the experiences they gave me. I must seek out the insights of others, both as a curb on my own blindness and as a path to wisdom . . . .").

23. I disliked the law school experience so much that I went back home to Texas right after my 1L final exams. I did not stay to compete in the 1L journal competition that occurred after final exams. I later discovered that I had "graded on" to law review, but I was still not sure that I would return for my 2L year.

I made the decision to return to law school during the summer after my 1L year. I also accepted my spot on the law review, partially because I felt like participating in law review was something that students were expected to do if they were given the opportunity to do so. But it is important for our students (and faculty and administrators) to understand that there are many ways to "do law school." Participating in law review or journal is one way, and it may be the right way for some students. But it is not the *only* way. Often, our students may feel pressured to take a certain path during law school because that path may be viewed by some as the "successful" path. But "success" can mean different things to different people, and we should recognize and support the different paths that our students choose.

24. For a discussion on the enrollment numbers for students of color in law school, see Capers, *supra* note 11, at 22–24 ("At least from the point of view of

than almost all of my professors.[25] I often felt like the traditional law school classroom negatively highlighted these differences.

I entered law school quite naïve. My parents did not get the opportunity to go to college, and I went straight from undergraduate school to law school. I did not know much about law school rankings, and I did not have any relatives or personal contacts who were lawyers. I grew up in a small south Texas town near the border of Texas and Mexico. We had two stop lights in our town, and my senior class had fewer than sixty students in the graduating class. The population was overwhelmingly Mexican American, and most of us in the area did not grow up with much money.

I chose to attend law school because I wanted to do the lawyerly things that I saw folks do on television. I wanted to help people, and I figured all law schools would equally train students to do just that. I figured if lawyers are problem solvers, then the law school classroom would help place me in the role of helping a client solve a problem. The law school classroom would easily help me develop problem-solving skills, not create more problems for me.

Those of us[26] who may have looked or sounded different than the rest of the student body already felt like we were in a bit of

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students and faculty of color, to claim that law schools are white spaces may be on par with asserting the obvious. One can even imagine a collective 'Duh' in response.").

25. The "differences" that law students may feel remain today. "[N]on-traditional students remain marginalized on campus, left out of the community, devalued, and underappreciated." L. Sch. Surv. of Student Engagement, *Diversity & Exclusion: 2020 Annual Survey Results*, IND. UNIV. CTR. FOR POSTSECONDARY RSCH. 5 (2020) [hereinafter *LSSSE 2020 Survey*], https://lssse.indiana.edu/wp-content/uploads/2020/09/Diversity-and-Exclusion-Final-9.29.20.pdf [https://perma.cc/92LN-GEYR]; *see* Capers, *supra* note 11, at 24–25 (highlighting the results of a 2020 Law School Survey of Student Engagement).

> While 31% of white law students report having a strong sense of belonging at their schools, only 21% of Native American and Black students strongly agreed with the statement that they feel "part of the community." Women of color were even less likely to feel part of the law school community. Moreover, while only 9% of white students noted they felt uncomfortable being themselves on campus, the percentages of Black and Latinx students who reported feeling uncomfortable being themselves were 25% and 18% respectively.

Id.

26. I hope folks reading this part of the Essay do not assume that my story is just some isolated experience that happened to me in the late 1990s when I was in law school. While this story is based on my personal experience, the

hole at the start of the law school race.[27] It felt like the traditional law school classroom—with its focus on students reading judicial opinions and professors asking Socratic-style questions—often amplified the size of the hole, while simultaneously pouring dirt on top of us. We often felt like we were playing "catch-up" in a game that seemed to only value certain skills and life experiences. We may have felt like law school failures.[28]

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themes from the story remain consistent with what our students continue to experience while in law school. I have heard and seen their stories. Other skills faculty and staff who meet regularly with students have heard and seen their stories. I hope more faculty and administrators will welcome and accept these stories and not assume that the law school experience is the same for every law student.

A law professor's view as to what the law school experience is often varies quite significantly from the personal story that a law student experiences. The more the academy creates and accepts this false narrative of what the law school experience is, the more isolating and frustrating it can become for those students who experience law school differently than the "common" narrative. There can be academic and non-academic factors—some hidden and others not so hidden—that can negatively influence how a student engages with their schoolwork. There can be academic and non-academic factors that create an unwelcoming and more challenging environment for our students. I hope my story encourages other law faculty and administrators to share their stories as well. Disclosing some of the struggles that you may have experienced in law school (and perhaps hidden from others so that you could better "fit in" with your colleagues and the profession) should not be viewed as a negative by the academy. It shouldn't diminish your scholarly reputation. It shouldn't prevent you from getting tenured. It shouldn't cancel your successes. Rather, it can show your students—particularly those who may experience law school differently—that they, too, can be successful.

27. *See* Montoya, *supra* note 19, at 190–95 (highlighting how people of color often try to hide their accents or way of speaking to blend in with the common language of a student body or profession).

28. For a discussion of growth mindset and framing failure in the law school space, see Kaci Bishop, *Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience*, 70 ARK. L. REV. 959 (2018). Bishop argues that law schools should be better equipped to recognize and address when law students may be experiencing what may feel like a failure, rather than "hiding and ignoring failure." *Id.* at 961.

> Law school is tough for most every student; for some it can be emotionally ruinous. Students facing this higher level of distress often feel discouraged from putting forth more effort and are likely to see a resulting decline in their well-being, which can then carry over into the profession. Teaching students to engage productively with failure can thus enhance students' experiences while in law school and help them carry these lessons and habits into practice.

Id. at 966.

If our life experiences were different than the cases that we were reading or from the experiences of our classmates or professors, we hid these experiences and frustratingly tried to blend in.[29] If we were not strong public speakers who could think

29. Professor Marsha Griggs writes about the challenges when one's lived experiences do not match with what is expected or discussed in the law school classroom:

> The prevalence of racial injustice and police violence have always been my realities. I am an attorney, a law professor, and a Black woman who was reared in an over-policed inner-city community. I learned soon after my entry into law school that my lived experiences would be disregarded at every turn and ultimately invalidated.

Marsha Griggs, *Race, Rules, and Disregarded Reality*, 82 OHIO ST. L.J., 931, 933–34 (2021) (highlighting, as a personal narrative, how the traditional approach to law school teaching and learning can "disregard the experiences of outgroup students").

> Even though race has been identified as a key lens for viewing and understanding law, it is often conspicuously absent from foundational core first-year courses. It is almost as if legal educators had stipulated to some pre-curricular motion in limine to exclude the role of race in property ownership, the rights and bargaining position of parties to contract, and the power-based presumptions that challenge the right to a fair trial. While this suppression goes easily unnoticed by insiders, it leaves outgroup students (and instructors) struggling to attach weight and meaning to their own identities and experiences.

Id. at 945; *see* Capers, *supra* note 11, at 11 ("I mastered the 'language of law,' even if in doing so I had to 'unrace' myself, even if I adopted what Sandy Levinson might call a 'bleached out identity.'") (citation omitted); *see also* Margaret E. Montoya, *supra* note 19, at 205 ("I sense that students still feel vulnerable when they reveal explicitly gendered or class-based knowledge . . . or personal knowledge about the lives of the poor and the subordinated . . . . Students respond to their feelings of vulnerability by remaining silent about these taboo areas of knowledge."); Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577, 1601 (1993) ("A 'professional' goes through a social process, including training in law school, medical school, or a military academy, designed . . . in some way to 'bleach out' or make otherwise irrelevant what might be seen as central aspects of one's self-identity.").

For a discussion on the challenges that students of color may face in presenting or hiding their true selves, see Montoya, *supra* note 19, at 188–207 (discussing, as a narrative, how masking one's hair, speech, clothing, class, and life experiences can act as a "cultural disguise" that helps one to mirror the "values, norms and behavior of the dominant ideology").

> Being masked may be a universal condition in that all of us control how we present ourselves to others. There is, however, a fundamental difference in feeling masked because one is a member of one or more oppressed groups within the society. When members of the dominant culture mask themselves to control the impressions they make, such

quickly on our feet, we felt as if we had nothing to contribute to the classroom or the practice of law. If we were one of the few students of color in the classroom, we felt like our responses to the professors' cold calls carried substantially more weight. We were answering not just for ourselves. Our responses would likely be viewed as representative of every other student of color in the law school.

All this created extra burden and hardship on top of what was already a challenging and rigorous law school experience. Those who grew up with the privilege to freely, openly, and confidently speak their thoughts and opinions seemed to be striving.[30] Classmates around me were raising their hands in class to willingly contribute to the classroom discussion, while I sat on my hands hoping that I would not move in a way that might indicate to the professor that I wanted to speak. I did not think I had anything worthwhile to say. I did not think I belonged in the law school classroom or in the legal profession.

Even though my law school grades were good, I did not feel like I could really do the type of work that lawyers do until I started participating in skills courses that placed me in the role of representing a mock client. Until then, I felt like I was simply a participant in a long-held classroom hazing event that we had to endure because every other law student had to endure it too. We did what we did (and we continue to do what we do) in the law school classroom because that is the way law school classrooms have traditionally operated. But following tradition may not always be the right thing to do. Like the *Carnegie Report* emphasized, there can be "room for improvement."[31] There can

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> behavior is not inherently self-loathing. But when we attempt to mask immutable characteristics of skin color, eye shape or hair texture because they historically have been loathsome to the dominant culture, then the masks of acculturation can be experienced as self-hate. Moreover, unmasking for members of the dominant culture does not involve the fear or depth of humiliation that it does for the subordinated, for whom the unmasking is often involuntary and unexpected.

Id. at 196–97.

30. "Speaking out assumes prerogative. Speaking out is an exercise of privilege. Speaking out takes practice." Montoya, *supra* note 19, at 209.

31. William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond & Lee S. Shulman, *Summary, Educating Lawyers: Preparation for the Profession of Law,* THE CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING 4 (2007) [*hereinafter Carnegie Report Summary*], http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf [https://perma.cc/2AT9-AJ2A].

(and should) be room for a "bolder [and] more integrated approach" to legal education that matches "skills of legal analysis" with a "strong skill in serving clients and a solid ethical grounding."[32]

I endured the hazing events. And I continued through law school unsure as to whether I belonged in the law school classroom or in the legal profession, even though my grades were externally telling me that I was doing well in law school. But things started to change when I began to take more skills courses. Getting to participate in a mock oral argument where I was able to practice what I wanted to say in advance of speaking publicly or trying to negotiate a resolution for a mock client, helped me to better connect the substantive law to the practice of law. The simulations created an environment that showed me that I did have skills and talent that are important for the practice of law—they just were not valued as much (if at all) in most of my law school classes.

The simulations helped those of us who may have felt different than most of the student body to realize that we did have something to say. The simulation courses helped us understand that we did belong in the law school classroom and in the legal profession. The simulation courses helped us see that we were not law school failures. Thinking back, perhaps the traditional law school classroom and the law school environment failed us.

A reimagined legal education would not fail students. Faculty and administrators in a reimagined legal education would remove their survivorship bias glasses and better recognize when students may be struggling or feeling unwelcomed. A reimagined legal education would provide more opportunities for students to demonstrate their diverse skills and talent in the law school classroom. A reimagined legal education would proactively work to find ways to increase student learning, engagement, and inclusion.

B. PERSONAL STORY, PART II: MY EXPERIENCE IN THE LEGAL ACADEMY

My path to the legal academy was not the norm. I did not attend a highly ranked law school, and I did not clerk for a judge after I graduated. Rather, like most lawyers, I graduated law school, studied for the bar exam, and then practiced law. I prac-

32. *Id.*

ticed full time for over six years with no intention of ever teaching in a law school. I did not really enjoy my law school experience. Why would I want to teach law for a living?

Things began to change after I received my master's degree in counseling. I began teaching academic support and law-related courses as an adjunct professor at a local university[33] around the same time that law schools throughout the country started expanding their curricular offerings in response to the *Carnegie Report*.[34] I soon realized that law schools throughout the country were interested in advancing practical lawyering skills, and I soon found that some law schools were interested in *my* educational and professional background. Perhaps these schools might also be interested in my story?

I arrived at UNC carrying the baggage that can accompany someone who is different. I was told that the law school had never hired a full-time faculty member who was Hispanic. So, I was immediately carrying a big weight.[35] But I also knew that my pedigree was notably different than almost all the faculty teaching at the law school at the time. Unlike most of my colleagues, I did not attend a highly ranked law school, nor did I clerk after law school. I had not worked in "big law" or for the federal government. And my only international travel was crossing the border into Mexico to purchase some off-brand clothing for high school. I wondered if I would fit in. I wondered if the students would respect me just like they respected the rest of their professors.[36] I wondered if I would be viewed as a "less than" or secondary.

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33. I primarily taught freshman seminar courses at the University of Texas at San Antonio that focused on helping high school graduates transition to the rigors of college. As part of my work as Director of Academic Excellence at UNC, I help incoming students transition to the rigors of law school.

34. At the time, UNC had a legal writing and ASP professor who also had a master's in counseling, Ruth McKinney. *See Ruth Ann McKinney*, UNIV. OF N.C. SCH. OF L., https://law.unc.edu/people/ruth-ann-mckinney [https://perma.cc/6E7U-8Z3H]. Ruth is a big reason why I ended up at UNC. She has remained a wonderful mentor throughout my time at UNC.

35. I still carry this weight, as there are no other full-time faculty members who teach at the law school who are Hispanic. *See supra* note 21.

36. To my surprise and honor, the UNC Class of 2017 selected me as the recipient of the Frederick B. McCall Award for Teaching Excellence. "The McCall Award is an annual award for outstanding teaching elected by the graduating class pursuant to the students' own rules and customs, and presented at commencement." *Faculty Awards*, UNIV. OF N.C. SCH. OF L., https://law.unc

So, I entered law school quite naïve and different, and I was now a naïve and different law professor. But my differences extended beyond my pedigree and last name. I was part of a new cohort of full-time "clinical" faculty who were hired to teach legal research and writing. Never had the law school faculty seen so many professors who teach skills courses walking around the law school, taking up office space, and participating in law school governance. The faculty had voted to expand our skills curriculum and hire us, so they knew why we were there in the building. It just seemed (at least, initially) like they did not really know or appreciate what we did. They seemed unsure of our ability to contribute to the training of future lawyers because the way we trained our students deviated from their way of "training" students. We used a variety of teaching methods in class that extended beyond Socratic questions. We met with students quite regularly in individual conferences. We (not students or teaching assistants) provided extensive individual feedback on our students' work.

Like many faculty who teach skills courses throughout the country, we quickly started recognizing some of the hierarchical differences between doctrinal professors and skills professors. Pay was significantly different. Our input at faculty meetings was often disregarded or met with skepticism. We were often called "instructors" instead of "professors."[37]

But things started to change a bit after the first round of promotion reviews for our cohort. As doctrinal faculty observed our classroom teaching, read our syllabi and scholarship, and learned of our service to the students and legal profession, more and more of them began to understand and appreciate our important roles at the law school. They began to trust and value

.edu/faculty/faculty-awards [https://perma.cc/DM95-6C5E]. The UNC graduating class makes its selection from tenured/tenure-track and non-tenure-track faculty, as well as doctrinal faculty and faculty who teach skills courses. I was the first non-tenure-track faculty member originally hired to teach legal research and writing to win the McCall Award. Professor Rachel Gurvich, another non-tenure-track faculty member who teaches skills courses, like legal research and writing, won the McCall Award in 2022. *Rachel I. Gurvich*, UNIV. OF N.C. SCH. OF L., https://law.unc.edu/people/rachel-i-gurvich [https://perma.cc/FHJ8-B9BV].

37. Our cohort all had clinical "professor" titles, yet we were often referred to as "instructors" of legal writing in faculty meetings. Rarely, if ever, did we hear our doctrinal counterparts called "instructors" of constitutional law, contracts, torts, etc.

our opinions. They already knew that the student body was tremendously grateful for our work. They (and the administration) now got the opportunity to see why. Like a lot of the learning that happens in skills classes, we had to show them—and not just tell them—what and how we do things.

We have seen significant progress at UNC since our cohort started teaching in 2011.[38] Our skills faculty are chairing faculty committees and task force groups. Some skills faculty are even in leadership positions as associate deans.[39] We are providing input and instruction to the rest of the faculty on learning and pedagogy. We are eligible for summer research grants, and we are teaching skills and doctrinal courses alongside those faculty members who may have initially doubted our ability to contribute to the law school experience.

However, like many institutions throughout the country, a major hierarchical difference that continues to plague skills faculty at UNC is salary. Despite our success and contributions (and some small salary increases),[40] skills faculty who have been teaching for over a decade at the law school earn about $40,000–$50,000 less than newly hired tenure-track faculty members who

38. Interestingly, much of the significant progress has occurred under the deanship of Martin H. Brinkley. "Brinkley became the 14th Dean of Carolina Law in July 2015, the first person to lead the law school directly from practice in its 175-year history." *Martin H. Brinkley*, *supra* note 16. Perhaps it took someone outside the traditional tenured, doctrinal professor route to recognize and promote the successes of folks outside of the traditional tenured, doctrinal professor route.

39. Professor Craig Smith, the director of UNC's 1L LRW program, is now the Associate Dean for Academic Affairs. *Craig T. Smith*, UNIV. OF N.C. SCH. OF L., https://law.unc.edu/people/craig-t-smith [https://perma.cc/5GF8-6RDY]. Professor Kaci Bishop, one of the original hires of our legal research and writing cohort, will become an associate dean overseeing experiential education at UNC during the summer of 2023. *See Kaci Bishop*, UNIV. OF N.C. SCH. OF L., https://law.unc.edu/people/kaci-bishop [https://perma.cc/S967-QC9X].

40. Across-the-board faculty salary increases often do nothing to tighten the wide gap between salaries for doctrinal faculty and faculty who teach skills courses. Indeed, across-the-board faculty salary increases based on a common percentage widen the salary gap between doctrinal faculty and faculty who teach skills courses. For example, if an institution provides a three percent raise to all faculty members at the institution, those faculty members with larger salaries (almost always doctrinal faculty) are awarded the largest salary increases. A doctrinal faculty member earning $150,000 per year would receive a $4,500 increase in their salary because of an across-the-board three percent raise. A skills faculty member earning $75,000 per year would receive $2,250.

have never taught law school before getting hired.[41] For some reason that continues to be justified and accepted by those making policy and hiring decisions at UNC and in the legal academy throughout the country, doctrinal faculty are granted what seems like a two- or three-lap lead in the salary race ahead of those of us "secondary" faculty members.

A reimagined legal education would eliminate the salary gap and truly treat skills and doctrinal faculty as equals. A reimagined legal education would value and reward teaching and service, just as it does scholarship. A reimagined legal education would welcome and acknowledge the stories that our students, skills faculty, and faculty of color continue to tell and use these stories to promote positive changes in the law school experiences for all students and faculty.

II. RESPONSE TO THE *CARNEGIE REPORT*: PRACTICAL SKILLS ARE IMPORTANT (BUT NOT THAT MUCH)

The *Carnegie Report* provided some insight and instruction on how law schools could better educate future lawyers. The 2007 report highlighted how law school education often lacked training on the practice of law:

> Unlike other professional education, most notably medical school, legal education typically pays relatively little attention to direct training in professional practice. The result is to prolong and reinforce the habits of thinking like a student rather than an apprentice practitioner, thus conveying the impression that lawyers are more like competitive scholars than attorneys engaged with the problems of clients. Neither understanding of the law is exhaustive, of course, but law school's typically unbalanced emphasis on the one perspective can create problems [for] . . . "the transition to practice."[42]

41. As a public institution, UNC salaries are publicly available on the UNC System Salary Information Database. *See* UNIV. OF N.C. SALARY INFO. DATABASE, https://uncdm.northcarolina.edu/salaries/index.php [https://perma.cc/BN5A-XV8Y]. Some of the publicly available salary information may be a bit misleading because the database does not distinguish between faculty (like me) who are on twelve-month contracts and faculty who are on nine-month contracts. As a faculty member on a twelve-month contract, my salary is paid for twelve months of work, while faculty on nine-month contracts are paid for nine months of work. Most of our doctrinal and skills faculty are on nine-month contracts, and faculty on nine-month contracts are eligible for research grants to supplement their salary.

42. CARNEGIE REPORT, *supra* note 6, at 188; *see also Carnegie Report Summary*, *supra* note 31, at 6 (providing similar quotation).

The *Carnegie Report* motivated law schools to pay better attention to the "direct training [of] professional practice."[43] Many law schools at that time—perhaps in part spurred by the rebuke and recommendations of the *Carnegie Report*—moved to increase emphasis on skills training and experiential learning.[44] Simulation courses that focused on helping prepare students for the practice of law expanded, and faculty were hired throughout the country to teach these courses. The expanded skills curriculum provided students with more opportunities to connect doctrine to the practice of law. But the increased hiring of faculty to teach these skills courses helped reinforce the division between doctrinal faculty and faculty who teach skills courses.

A. MORE OPPORTUNITIES TO CONNECT DOCTRINE TO THE PRACTICE OF LAW

On a positive note, the increase in skills training and experiential learning provided students with more opportunities to

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43. *Carnegie Report Summary*, *supra* note 31, at 6. The *Carnegie Report* noted that a "rapid socialization into the standards of legal thinking" takes place during the first months of law school through the traditional casebook method approach to teaching. CARNEGIE REPORT*, supra* note 6, at 185–86; *see also Carnegie Report Summary*, *supra* note 31, at 5 (same). But the report criticized the casebook method approach to teaching as fostering a "largely uncritical level" of understanding on how the law works in day-to-day legal practice. CARNEGIE REPORT*, supra* note 6, at 186; *see also Carnegie Report Summary*, *supra* note 31, at 5–6 (same). "[T]he task of connecting . . . conclusions with the rich complexity of actual situations that involve full-dimensional people, let alone the job of thinking through the social consequences or ethical aspects of the conclusions, remain outside the [case-dialogue] method." CARNEGIE REPORT*, supra* note 6, at 187; *see also Carnegie Report Summary*, *supra* note 31, at 6 (same).

44. As my former colleague, the late Judith Wegner, noted: "[T]he number of conferences, symposia, and editorials on the subject" of legal education indicated that "[c]hange [was] in the air . . . ." Judith W. Wegner, *Reframing Legal Education's Wicked Problems*, 61 RUTGERS L. REV. 867, 867 (2009) (leading article in Rutgers Law Review's 2009 Symposium, *A Legal Education Prospectus: Law Schools & Emerging Frontiers*). Judith Wegner highlighted the *Carnegie Report* (which she co-authored) and the Clinical Legal Education Association's Best Practices for Legal Education as prompting "stimulated discussion among academics and legal professionals" on the status of legal education. *Id.* at 867–68; *see also 2007 Symposium on the Future of Legal Education*, 60 VAND. L. REV. 325 (2007); Symposium, *The Opportunity for Legal Education*, 59 MERCER L. REV. 821 (2008); Symposium, *Radical Proposals to Reform Legal Pedagogy*, 43 HARV. C.R.-C.L. L. REV. 595 (2008).

connect doctrine to the practice of law.[45] Like the "problem-based learning" classes in medical school where first-year students are presented with a mock patient complaint and tasked with developing a treatment plan for the patient, law students began getting more opportunities throughout their three years of law school to develop the practical skills that they would be expected to perform during their summer or post-graduation work. Students were no longer just passively reading substantive law and attempting to predict the result of a hypothetical situation.[46] Rather, they were now playing the role of the attorney representing a mock client or actual client. Students were having to strategize.[47] They were having to deal with the emotions and expectations of clients, co-counsel, and opposing counsel.[48] They were having to develop and use a variety of skills in the law school classroom. They were learning how to practice law. A reimagined

45. "Educational experiences oriented toward preparation for practice can provide students with a much-needed bridge between the formal skills of legal analysis and the more fluid expertise needed in much professional work." CARNEGIE REPORT, *supra* note 6, at 88.

46. The *Carnegie Report* criticized legal education as being dominated by "academic genes" at the expense of training students for the practice of law:

> [T]here is room for improvement. The dramatic results of the first year of law school's emphasis on well-honed skills of legal analysis should be matched by similarly strong skill in serving clients and a solid ethical grounding. If legal education were serious about such a goal, it would require a bolder, more integrated approach that would build on its strength and address its most serious limitations. In pursuing such a goal, law schools could also benefit from the approaches used in education of physicians, teachers, nurses, engineers and clergy, as well as from research on learning.

Carnegie Report Summary, *supra* note 31.

47. "By learning to analyze facts and construct arguments in use, students were also being taught how to strategize as a lawyer would. They were beginning to cross the bridge from legal theory to professional practice." CARNEGIE REPORT, *supra* note 6, at 105 (discussing how syllabi for legal writing classes often "focused on learning tasks that are typical of legal work").

48. *See* CARNEGIE REPORT, *supra* note 6, at 58 (highlighting that law school simulation and clinical-legal education courses "are the law school's primary means of teaching students how to connect abstract thinking formed by legal categories and procedures with fuller human contexts"); *see also id.* at 82 ("The essential dynamic of professional practice, especially in fields such as law, in which face-to-face relationships with clients are typical, proceeds in the opposite direction from the logic of academic specialization. Practice requires not the distanced stance of the observer and critic but an engagement with situations."); *id.* at 187 (criticizing the traditional casebook method approach to teaching as a "simplification [that] consists in the abstraction of the legally relevant aspects of situations and persons from their everyday contexts").

legal education would continue to increase the portion of classes in which students learn how to *practice* law, rather than just read and recite it.

As someone who works with law students in the academic support space, I have seen how giving students more opportunities to identify and use different skills in the law school classroom can increase learning.[49] It can also help students feel more welcomed and included in the law school experience.[50] It can encourage students to see themselves as part of the legal profession because they are doing the type of work that practicing lawyers do, early and often throughout their law school education. A reimagined legal education would continue to expand the types of skills valued in the traditional law school classroom and proactively work to make the law school experience more inclusive for all students.

Thus, the *Carnegie Report* likely led to an increase in student learning and contributed to a more inclusive law school experience by encouraging the legal academy's expansion of skills training and experiential learning.[51] The expansion also motivated some doctrinal faculty to incorporate skills assignments

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49. *See* CARNEGIE REPORT, *supra* note 6, at 26 (highlighting how simulations can "serve as scaffolds" that can increase student learning, and noting that "[r]esearch suggests that learning happens best when an expert is able to model performance in such a way that the learner can imitate the performance while the expert provides feedback to guide the learner in making the activity [their] own").

50. *LSSSE 2020 Survey*, *supra* note 25, at 5–14 (reporting the importance of diversity-related skills in helping law students "navigate an increasingly diverse American society and potentially global clientele" and noting that "[s]cholarly research indicates that students who have a strong sense of belonging at their schools are more likely to succeed"). "[S]tudents . . . apprentice to the aggregate educative effects of attending a particular professional school or program. . . [T]hey are formed, in part, by the formal curriculum but also by the informal or 'hidden' curriculum of unexamined practices and interaction among faculty and students and of student life itself." CARNEGIE REPORT, *supra* note 6, at 29; *see also* Gurvich et al., *supra* note 2 (manuscript at 131) (arguing that law schools need to acknowledge how prior hierarchies have failed to "confront the value of inclusion").

51. *See* CARNEGIE REPORT, *supra* note 6, at 26 (discussing how modern cognitive psychology places apprenticeship "at the heart of education," emphasizing "learning the concepts and procedures that enable the expert to use knowledge to solve problems"); *LSSSE 2020 Survey*, *supra* note 25 (discussing importance of valuing diverse experiences in legal education); Shaun Ossei-Owusu, *Guest Post: Legal Education and the Illusion of Inclusion*, LAW SCH. SURV. OF STUDENT ENGAGEMENT (2021), https://lssse.indiana.edu/blog/guest

into their doctrinal classes, which likely further promoted student learning and inclusion.[52] Faculty who primarily focused on the traditional casebook method approach to teaching were now integrating professional skills into their doctrinal classes, like short oral arguments, small writing assignments, and negotiations, to break the "divide between the understanding of legal doctrine and the exercise of lawyering skills."[53] Others incorporated mediations, research assignments, or document review to "broaden learning, deepen student engagement, and create a more dynamic classroom."[54] They added collaborative group work, transactional drafting, individual feedback, and multiple opportunities for formative assessment to help promote better learning.[55]

-post-legal-education-and-the-illusion-of-inclusion [https://perma.cc/5M63-EMST] (highlighting that "law students from backgrounds that the profession has historically excluded—women, racial minorities, LGBTQ communities, and people with disabilities in particular—do not feel part of the academic community and believe law schools are relatively disinterested in their stigmatization").

> [O]ne thing can be said with some measure of confidence: issues of race and gender—amongst other social categories—will remain relevant inside and outside the sometimes intellectually-cordoned off walls of law schools. How these issues are integrated in the classroom, if they are at all, will affect the substantive learning of law and will either include or exclude historically marginalized groups.

Id.

52. *See* LAWYERING SKILLS IN THE DOCTRINAL CLASSROOM: USING LEGAL WRITING PEDAGOGY TO ENHANCE TEACHING ACROSS THE LAW SCHOOL CURRICULUM (Tammy Pettinato Oltz ed., 2021) [hereinafter LAWYERING SKILLS IN THE DOCTRINAL CLASSROOM] (providing concrete examples, collected from contributions of faculty at law schools throughout the country, on how to incorporate skills training in the doctrinal classroom); *see also* O.J. Salinas, Book Review, 70 J. LEGAL EDUC. 181, 184–89 (2020) (reviewing LAWYERING SKILLS IN THE DOCTRINAL CLASSROOM, *supra*, and summarizing a variety of methods and assignments that contributors to Oltz's book have implemented to incorporate skills training into the doctrinal classroom); Margaret Martin Barry, *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & SOC. JUST. 247, 256–62 (2012) (highlighting law school responses to expanding experiential learning).

53. Anthony Johnstone, *Integrating Mini-Briefs and Mini-Moots into Lectures and Seminars*, *in* LAWYERING SKILLS IN THE DOCTRINAL CLASSROOM, *supra* note 52, at 137.

54. Cynthia D. Bond, *Using Skills Pedagogy to Enrich the Family Law Classroom*, *in* LAWYERING SKILLS IN THE DOCTRINAL CLASSROOM, *supra* note 52, at 245, 258.

55. *See* Salinas, *supra* note 52.

A reimagined legal education would continue to see more faculty incorporating practical lawyering skills into their doctrinal classrooms. No longer would doctrinal faculty feel too busy, ill-equipped, or "too good" to provide practical skills training in their doctrinal classrooms because the reimagined legal education would better balance the "academic genes" of legal scholarship with the expectation that all law school faculty truly contribute to the training of their students as future practitioners.[56] A reimagined legal education would recognize the necessity and benefits of teaching practical lawyering skills throughout the law school curriculum, just as the National Conference of Bar Examiners (NCBE) is now recognizing the importance of assessing practical lawyering skills in the national licensing exam for lawyers.

B. MORE OPPORTUNITIES TO SEPARATE DOCTRINAL FACULTY AND FACULTY WHO TEACH SKILLS COURSES

While the increase in skills training and experiential learning gave students more opportunities to practice and perform the type of lawyering tasks that they would be expected to perform in their summer or post-graduation work, the increase also helped solidify some of the division between doctrinal faculty and faculty who teach skills courses.[57] Many of these divisions

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56. "Like other professional schools, law schools are hybrid institutions. One parent is the historic community of practitioners . . . . The heritage is that of the modern research university." CARNEGIE REPORT, *supra* note 6, at 4.

For a discussion of some of the concerns that doctrinal faculty may face when trying to incorporate practical lawyering skills, like legal writing assignments, in their doctrinal classroom, see Linda H. Edwards, *Improving Doctrinal Learning by Using Discrete Steps of the Writing Process*, *in* LAWYERING SKILLS IN THE DOCTRINAL CLASSROOM, *supra* note 52, at 107, 107–08.

> As Edwards describes, professors of doctrinal courses may feel that they are '[v]ery busy' or 'have precious little syllabus time.' They may feel ill-equipped or unwilling to learn the type of skills needed to be effective teachers of assignments that focus on experiential learning and practical skills. Or they may fear not being able to handle the F-word that legal writing faculty constantly and dependably use to help their students improve their professional skills—feedback.

Salinas, *supra* note 52, at 185 (citation omitted).

57. The differences between how law schools treat and support doctrinal faculty and faculty who teach skills courses have been well documented. For a helpful review of some of the recent scholarship, see, e.g., L. Danielle Tully, *What Law Schools Should Leave Behind*, 2022 UTAH L. REV. 837, 847–57 (2022) (arguing that law schools must "relinquish . . . the faculty caste system and the distinction between doctrine and skills that it reflects"); Alexa Chew & Rachel

unfortunately remain, even as the ABA and NCBE continue to recognize and embrace the importance of law schools training their students in practical lawyering skills.[58] The differences remain, even at law schools that tout how strongly they value experiential learning and the professors who teach skills development.[59]

Gurvich, *Saying the Quiet Parts Out Loud: Teaching Students How Law School Works*, 100 NEB. L. REV. 887, 889–93 (2022) (arguing that law schools "shouldn't be incubators of inequality"); John Cook, *Taking a Shot at the (Unmodified) Title: The Value of the Title "Professor of Law" for Improving the Status of Legal Writing Faculty and ALWD/LWI Survey Trends*, 24 LEGAL WRITING: J. LEGAL WRITING INST. 65, 65 (2020) (supporting the "adjustment of faculty titles to properly reflect that legal writing faculty have the same status as other faculty members"); J. Lyn Entrikin, Lucy Jewel, Susie Salmon, Craig T. Smith, Kristen K. Tiscione & Melissa H. Weresh, *Treating Professionals Professionally: Requiring Security of Position of All Skills-Focused Faculty Under ABA Accreditation Standard 405(c) and Eliminating 405(d)*, 98 OR. L. REV. 1, 3 (2020) ("The resulting irony is that faculty who teach writing and experiential courses—two of the three major curricular requirements for accreditation—receive substantially less protection under [ABA] Standard 405 than faculty who qualify for the protections required for tenured and tenure-track faculty."); Allen et al., *supra* note 2, at 527 ("In the law school 'pink ghetto,' women have lower status and pay, higher workloads, and less job security than their male counterparts."); Kristen K. Tiscione & Amy Vorenberg, *Podia and Pens: Dismantling the Two-Track System for Legal Research and Writing Faculty*, 31 COLUM. J. GENDER & L. 47, 62–63 (2015) ("Title, security of position, compensation, and faculty entitlements are the cultural capital withheld from LRW faculty both to prove their inferiority and to make existing law school hierarchies appear merit-based."); *see also* Pryal, *supra* note 2 (highlighting the increased levels of depression and anxiety among law students and how lower-status professors carry an increased service load because they tend to be the faculty responsible for working with and supporting such students); Ted Becker & Marci A. Rosenthal, *ALWD/LWI Legal Writing Survey, 2019–2020: Report of the Institutional Survey*, ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST. 89–161 (2019–20), https://www.alwd.org/images/resources/ALWDLWI2019-20InstitutionalSurveyReport.pdf [https://perma.cc/8MPQ-NQEJ] (tabulating survey responses for legal writing faculty on a variety of status issues, including faculty governance, salary, and hiring and promotion); MEERA DEO, UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA 79–98 (2019) (highlighting different salaries and job security for law school faculty and staff).

58. *See supra* note 5 (detailing ABA standards); *see also supra* note 6 (containing reports recommending practical and experiential legal training).

59. Tiscione & Vorenberg, *supra* note 57, at 47–48 (highlighting how law schools market their skills courses while treating skills faculty unequally).

> Under increasing economic pressure to attract law students, law schools are aggressively marketing their "practice ready" programs. Legal research and writing, as well as other skills programs, are typically featured in marketing materials and on websites. However, even

Doctrinal faculty remain the only kind of faculty who are assumed capable of "teaching the law" or working with doctrine.[60] Their ability to teach substantive courses is often not questioned because "doctrine" is part of their identity or scholarship.[61] They are the "academic archetype."[62] Skills faculty, in contrast, often do not get the benefit of the doubt in terms of

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> as they are prominently represented in marketing efforts, LRW faculty continue to be underrepresented as full faculty members and suffer as a result in terms of lesser job status and lower salary.

Id. For instance, UNC promotes the successes of the faculty who teach skills courses, while still maintaining hierarchical, job security, and salary differences between doctrinal faculty and faculty who teach skills courses. *See Carolina Law Is Only NC Law School that Didn't Drop in the 2022 Bar Passage Rate for First-Time Test Takers*, UNIV. OF N.C. SCH. OF L. (Sept. 13, 2022), https://law.unc.edu/news/2022/09/carolina-law-is-only-nc-law-school-that-didnt-drop-in-the-2022-bar-passage-rate-for-first-time-test-takers [https://perma.cc/ND2C-F5ZG] (promoting bar passage success when the director of the academic and bar success program is paid less than other faculty and has less job security than other faculty); *Top-Ranked Legal Writing Program Teaches Bar Success and Client Advocacy*, UNIV. OF N.C. SCH. OF L. (May 25, 2020), https://law.unc.edu/news/2020/05/top-ranked-legal-writing-program-bar-success [https://perma.cc/9P35-AML8] (highlighting the success of the first year legal research and writing program when the faculty who teach in the program are paid substantially less than other faculty and are not eligible for tenure). To review the publicly available salaries for UNC faculty, staff, and administration, see UNIV. OF N.C. SALARY INFO. DATABASE, *supra* note 41.

60. It is difficult to break the cycle of this incorrect assumption because those faculty and administrators in leadership and decision-making roles are in their leadership and decision-making roles because they climbed the ladder that is often only available to faculty who teach doctrinal courses. In this sense, breaking the assumption may require doctrinal faculty and administrators to question their own superiority and distance themselves from the traditional hierarchical structures that gave them their superior status.

61. The authors of the *Carnegie Report* "rarely found faculty teaching case-dialogue courses [who were] under pressure to demonstrate the educational effectiveness of their approach to teaching." CARNEGIE REPORT, *supra* note 6, at 101.

62. Rachel López, *Unentitled: The Power of Designation in the Legal Academy*, 73 RUTGERS L. REV. 923, 925 (2021).

> While doctrinal professors are "Professors of Law," the academic archetype, the legal academy has developed a virtual cottage industry of other professional designations. These titles denote "the other teachers" in the legal academy: Clinical Professor, Professor of Practice, Teaching Professor, and Legal Writing Instructor, to name a few. The message is that "Professors of Law" are the ones who really teach the law, while those with the other titles teach something else less important.

Id.

capability of teaching substantive courses. They often face skepticism from faculty and administrators if an opportunity to teach a substantive course arises, or they simply never get the opportunity to teach a substantive course.

Because skills faculty are not viewed as teaching or working with doctrine,[63] their titles and salaries are often significantly different than their doctrinal counterparts. Doctrinal faculty typically have job titles and salaries that denote superiority and value.[64] They often are tenured faculty with job security, or they are tenure-track faculty who will soon have job security.[65] Doctrinal faculty often earn substantially more than skills faculty, and doctrinal faculty receive research stipends that supplement their salary during the summer months.[66]

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63. I have previously highlighted the misconception that skills faculty do not work with legal doctrine:

> [F]aculty teaching skills-based courses still work with legal doctrine. It's not as if skills-based courses are in some vacuum totally isolated from the law. Legal writing assignments have students research and apply legal doctrine to a set of facts. Client interviews often have students orally explain how legal doctrine applies to a real or mock client's case. Negotiations often have students trying to resolve a legal dispute outside of the courtroom.

Salinas, *supra* note 52, at 183.

64. "Titles send messages; in academia, a title carries prestige, and, with it, respect." Lisa T. McElroy, Christine N. Coughlin & Deborah S. Gordon, *The Carnegie Report and Legal Writing: Does the Report Go Far Enough?*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 279, 301 (2011) (criticizing the *Carnegie Report* as reinforcing "hierarchies and stereotypes that undermine the Report's fundamental lessons about educating thoughtful, engaged, and ethical lawyers").

65. *Id.* at 290–92. Tenure status "communicates to students that faculty—and the courses they teach—are equally valuable." *Id.* at 292.

66. For a discussion on the salary disparities between doctrinal faculty and skills faculty who teach legal research and writing, see Amy H. Soledad, *Legal Writing Professors, Salary Disparities, and the Impossibility of "Improved Status,"* 24 LEGAL WRITING: J. LEGAL WRITING INST. 47, 48–49 (2020) (referencing the 2017–2018 ALWD/LWI Annual Legal Writing Survey Report).

> Legal writing professors earn significantly less than professors who teach doctrinal courses. The median salary for an associate professor is $168,840. Compare this dollar figure to $95,664, the annual base salary of legal writing faculty, hired full-time, on a tenure track. However, seventy-two percent of legal writing appointments are untenured; the average salary for a full-time untenured, long-term legal writing professor is $72,350 and that of a short-term legal writing professor is $69,083.

Id.; *see also* Meredith Aden & Ted Baker, *ALWD/LWI Annual Legal Writing*

Skills faculty, on the other hand, are often the "untenurable" faculty who are tasked with teaching students practical lawyering skills.[67] Skills faculty are often paid two to three times less than their doctrinal counterparts, and many are not eligible for summer research stipends.[68] Many law schools identify skills faculty with subordinate job titles, such as "clinical professor," "professor of practice," or "instructor."[69] And a minority of law schools continue to hire adjuncts, sometimes paired with second- or third-year law students, to teach skills courses.[70]

Survey: Report of the 2017–2018 Institutional Survey, ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST. 8 (2017–18), https://www.alwd.org/images/resources/ALWD-LWI-2017-18-Institutional-Survey-Report.pdf [https://perma.cc/D79H-H7NR].

67. While more law schools are providing tenure or tenure-track opportunities for skills faculty, many institutions still have separate tracks for doctrinal faculty and faculty who teach skills courses (including separate salary tracks). "[S]tudents might not realize . . . that the teachers they have the most individual contact with, like their legal writing professors, are also the teachers who are paid the least and have the least amount of job security." Chew & Gurvich, *supra* note 57, at 891–92.

Job security is particularly important for bar support professionals, where one's job security may often fluctuate because of an institution's yearly bar passage rate. When bar passage rates are good, everyone in the law school is seen as having contributed to this success. However, when bar passage rates may dip, fingers tend to quickly point only to the individuals working in bar support. For a discussion on job security for skills faculty, see Entrikin et al., *supra* note 57. For a discussion on job security for academic and bar support professionals, see Allen et al., *supra* note 2.

68. "A student may call lots of different people dean or professor but not realize that one full-time professor is paid two or three times more than another or that a third is an adjunct professor who has no say in the law school's decision-making." Chew & Gurvich, *supra* note 57, at 891–92; *see* Amy H. Soledad, *supra* note 66; *see also* Ted Baker & Marci A. Rosenthal, *ALWD/LWI Annual Legal Writing Survey: Report of the 2020–2021 Institutional Survey*, ASS'N OF LEGAL WRITING DIRS. & LEGAL WRITING INST. 126 (2020–21), https://www.alwd.org/images/resources/2020-2021-ALWD-and-LWI-Individual-Survey-report-FINAL.pdf [https://perma.cc/MWS5-VFGZ] (noting that about one third of responding legal writing faculty are not eligible to receive research grants).

69. *See* Cook, *supra* note 57; *see also* López, *supra* note 62 ("Labels, in the form of titles, help cement . . . disparities, concretizing them into a caste system that justifies unequal pay, less power in faculty governance, and, at times, abusive behavior.").

70. Various law schools have adjuncts and second- and third-year law students teaching skills courses, like first-year LRW. In the 2019 to 2020 school year, twenty-eight law schools reported using a "complex hybrid model" of more than one type of staff member teaching LRW. *See* Becker & Rosenthal, *supra*

The increase in skills training and experiential learning highlighted (and, in some cases, expanded) the unbalanced priorities that many law school administrators and faculty reinforce. Many of these individuals are in their positions because they climbed the ladder that is often only presented to faculty who teach doctrinal courses. This can create a cyclical situation where those in leadership positions in the legal academy only value and reward those who have backgrounds and pedigrees similar to theirs—which is especially problematic since faculty teaching skills courses, like legal research and writing and academic and bar support, tend to be women and people of color.[71]

A reimagined legal education would better value and provide administrative and governance opportunities to faculty who teach skills courses, regardless of their backgrounds and pedigrees. A reimagined legal education would break the wall that often divides doctrinal faculty and faculty who teach skills courses. A reimagined legal education would treat doctrinal faculty and faculty who teach skills courses equally.

III. ASSESSING AND APPRECIATING PRACTICAL LAWYERING SKILLS

The most recent significant content change to the bar exam occurred in 1997, when the NCBE added the Multistate Performance Test (MPT) to the bar exam. The MPT, which is often valued at twenty percent of a test taker's overall bar exam score, was "designed to test an examinee's ability to use fundamental

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note 57, at 9. Of those schools, twenty-one employed adjuncts, and three employed students "who provide a substantial portion of individualized feedback on papers or have substantial responsibility for classroom teaching." *Id.* at 10. Among those three schools is the University of Minnesota Law School, which employs second- and third-year law students to teach LRW. *See Legal Research and Writing Student Instructor*, UNIV. OF MINN. L. SCH., https://law.umn.edu/course/7003/legal-research-writing-student-instructor [https://perma.cc/K3W3-2QYB].

71. For a general review of the demographics for faculty teaching legal research and writing, see Allen et al., *supra* note 2; *see also* Tiscione & Vorenberg, *supra* note 57, at 48–55 (charting gender and salary differences for faculty who teach legal writing); López, *supra* note 62, at 926–27 ("Women so frequently teach legal writing, clinical, academic success, bar preparation, or library skills courses, that some legal scholars describe the legal academy as having a 'pink ghetto' . . . . [T]he women in these positions increase faculty diversity without being afforded the benefits typically associated with tenured faculty positions.") (citation omitted).

lawyering skills in a realistic situation."[72] The MPT asks test takers to complete two separate, timed writing tasks that a newly licensed lawyer may be asked to complete in practice, like an objective memo or a persuasive motion.[73] Test takers are assessed on their ability to follow instructions from their "supervisor" on how to complete the writing tasks, as well as their ability to apply facts from a provided case file to a provided set of legal authority.[74]

Now, the NCBE is again reimagining what it means to assess minimum competency to practice law.[75] After several years of research and consultation from academics, judges, and practitioners, the NCBE has decided to create an entirely new bar

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72. *The Multistate Performance Test (MPT)*, BAR EXAM'R, https://thebarexaminer.ncbex.org/2019-statistics/the-multistate-performance-test-mpt [https://perma.cc/6H3N-8RJ6]. In addition to the MPT, the other two components on the Uniform Bar Exam, which has been adopted by over forty jurisdictions in the United States, are the Multistate Bar Examination (MBE) and the Multistate Essay Examination (MEE). See *Uniform Bar Examination*, NAT'L CONF. OF BAR EXAM'RS, https://www.ncbex.org/exams/ube [https://perma.cc/R67F-CSE3]. The MBE, which is valued at fifty percent of a test taker's overall bar exam score, tests civil procedure, constitutional law, contracts, criminal law and criminal procedure, evidence, real property, and torts. *See Preparing for the MBE*, NAT'L CONF. OF BAR EXAM'RS, https://www.ncbex.org/exams/mbe/preparing [https://perma.cc/ADC2-Z8E7]. Test takers typically have a total of six hours to complete two hundred multiple-choice questions on the MBE. *Id.* The MEE, which is valued at thirty percent of a test taker's overall bar exam score, tests all the substantive law tested on the MBE, in addition to business associations, secured transactions, trusts and estates, family law, and conflicts of law. *See Preparing for the MEE*, NAT'L CONF. OF BAR EXAM'RS, https://www.ncbex.org/exams/mee/preparing [https://perma.cc/D7WM-CD45]. Test takers typically have a total of three hours to answer six essay questions on the MEE. *Id.*

73. *See Multistate Performance Test*, NAT'L CONF. OF BAR EXAM'RS, https://www.ncbex.org/exams/mpt [https://perma.cc/6VPH-4WBQ].

74. The MPT provides test takers with: (1) some instruction on each writing task from a supervisor; (2) a closed universe of legal authority for test takers to use while completing their writing task; and (3) a case file of evidence, like depositions or affidavits, to which test takers are expected to apply the substantive law while completing their writing task. *See id.* Test takers typically have a total of three hours to complete both MPT writing tasks. *Id.*

75. *See Implementation Timeline*, *supra* note 15 ("Designed to balance the skills and knowledge needed in litigation and transactional legal practice, the [NextGen bar] exam will reflect many of the key changes that law schools are making today, building on the successes of clinical legal education programs, alternative dispute resolution programs, and legal writing and analysis programs.").

exam—the "NextGen" bar exam—to better reflect an appreciation for the real-world practice for newly licensed lawyers.[76] The NCBE is reducing the amount of substantive law tested on the bar exam while adding assessment of practical lawyering skills, like client counseling, negotiations, and legal research.[77] In an effort to better assess what newly licensed lawyers should be expected to know and do in the general practice of law, the NCBE will no longer test secured transactions, trusts and estates, family law, and conflicts of law.[78] Additionally, the depth and breadth of knowledge for the remaining substantive areas of law will be reduced.[79]

The NCBE's move to less memorization of the law and more focus on the practice of law demonstrates a shift in priorities with respect to the licensing exam that most of our graduates will likely take in a few years.[80] The bar exam's shift in its priorities is an ideal time for law schools to reevaluate what it

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76. *See Final Report of the Testing Task Force*, NAT'L CONF. OF BAR EXAM'RS 2 (Apr. 2021) [hereinafter *Final Report*], https://nextgenbarexam.ncbex.org/wp-content/uploads/TTF-Final-Report-April-2021.pdf [https://perma.cc/ZQ7H-XJRS].

77. The seven "foundational skills" that will be tested on the NextGen bar exam include: (1) legal research; (2) legal writing; (3) issue spotting and analysis; (4) investigation and evaluation; (5) client counseling and advising; (6) negotiation and dispute resolution; and (7) client relationship and management. *See Implementation Timeline*, *supra* note 15.

78. *Id.* The eight "foundational concepts and principles" that will be tested on the NextGen bar exam include: (1) civil procedure; (2) contract law; (3) evidence; (4) torts; (5) business associations; (6) constitutional law; (7) criminal law and constitutional protections affecting criminal proceedings; and (8) real property. *Id.* This means that the NextGen bar exam will continue to test the seven substantive areas of law currently tested on the multiple-choice portion of the bar exam (often called the MBE), plus business associations. *See Final Report*, *supra* note 76, at 21.

79. As the NCBE reported in its Final Report of the Testing Task Force, "the depth and breadth of coverage in the knowledge areas tested [on the NextGen bar exam] should be limited to the core legal principles that [newly licensed lawyers] need to know without 'looking it up' (i.e., they should be able to issue spot and know the basic rules but should not be expected to know 'the exceptions to the exceptions')." *Final Report*, *supra* note 76, at 18.

80. The NCBE's Testing Task Force report highlights a significant shift from a bar exam that has traditionally focused on assessing a test taker's knowledge of an immense amount of blackletter law. *Id.* at 2 (emphasizing a shift towards "test[ing] fewer subjects," and "test[ing] less broadly and deeply within the subjects covered"). Test takers will still be expected to know some general legal concepts and principles on the NextGen bar exam. *Id.* at 18. However, the "objective is to reduce the amount of legal knowledge candidates must

means to prepare their students for the practice of law. Indeed, that was partially what the NCBE was hoping to achieve with the NextGen bar exam:

> The National Conference of Bar Examiners (NCBE) created the Testing Task Force (TTF) to undertake a comprehensive three-year study to ensure that the bar examination continues to test the knowledge, skills, and abilities needed for competent entry-level legal practice in a changing profession. The primary goal of this research was to identify the foundational knowledge and skills that should be included on the next generation of the bar exam and to determine how and when they should be assessed. However, the TTF expected that its research could also potentially be useful to others involved in educating, training, and mentoring law students and newly licensed lawyers.[81]

The NCBE expects the first administration of the NextGen bar exam to occur in July 2026. That means full-time law students matriculating in the fall of 2023 and law students *currently* enrolled in part-time programs throughout the country will soon take a different licensing exam—a licensing exam that will incorporate the assessment of a test taker's ability to identify and perform practical lawyering skills throughout the bar exam. This significant and quickly approaching change may catch the legal academy by surprise. Law schools—to the extent that they see themselves as partially responsible for preparing their students to pass the bar exam and enter the legal profession—may not be ready from a curricular or staffing standpoint to fully prepare their students for this new gatekeeping-exam for the legal profession.[82] Similar to what happened in response to

learn for the exam, while emphasizing skills such as interpreting and applying law." *Id.* at 22. The NextGen bar exam will remain a closed-book exam as test takers will not be "permitted to bring in or otherwise access materials not made available in the exam materials provided to all candidates," but test takers may be provided a closed universe of legal authority to help them answer a set of questions. *Id.* at 21–22. The report notes that "the new exam's emphasis on the application of provided legal resources will yield the practical effect of an open-book exam while maintaining the standardization central to applicant fairness." *Id.* at 22.

81. *Id.* at 2. The NCBE Testing Task Force began researching potential changes to the bar exam in January 2018. *Id.*

82. The ABA, through its "Standards and Rules of Procedure for Approval of Law Schools," expects law schools to help prepare their graduates for the bar exam: "At least 75 percent of a law school's graduates in a calendar year who sat for a bar examination must have passed a bar examination administered within two years of their date of graduation." *ABA Standards*, *supra* note 5, at Standard 316. If law schools fail to reach an "Ultimate Bar Passage" rate of at least seventy-five percent, they may lose their ABA accreditation. *Id.; see also* Gregory G. Murphy, *Revised Bar Passage Standard 316: Evolution and Key*

the *Carnegie Report*, law schools will likely need to offer more courses that provide training on practical lawyering skills, and they will likely need to hire more faculty who can teach these courses.[83]

A reimagined legal education would not worry about this shift in the licensing exam from an intense review of an immense amount of substantive law to an exam focused on the real-world practice of newly licensed lawyers. A reimagined legal education would already provide and support the training of practical lawyering skills throughout the law school curriculum. A reimagined legal education would embrace and value skills training and faculty who teach skills courses just as the NCBE is now embracing and valuing the assessment of practical lawyering skills in the NextGen bar exam.

CONCLUSION

The move to the NextGen bar exam is happening. It is happening now, whether law schools are ready for it or not. It is happening now, whether or not law schools recognize and appreciate the bar exam's shift to the assessment of practical lawyering skills. It is happening now, whether or not law schools heed the call to fully integrate skills faculty and skills courses into the law school curriculum.

Questions remain as to what (if anything) law schools will do as the NCBE shifts to the NextGen bar exam. Will the traditional casebook method approach to teaching remain the popular means of providing students with a legal education? Or will law school courses continue to incorporate more training of legal skills across the curriculum? Will law schools preserve the separation and hierarchy among doctrinal and skills faculty? Or will law school administrators and doctrinal faculty create and support a more equitable environment for all faculty? Will law

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Points, BAR EXAM'R, Summer 2019, at 21, 21–23, https://thebarexaminer.ncbex.org/article/summer-2019/revised-bar-passage-standard-316-evolution-and-key-points [https://perma.cc/KM66-NS6B] (discussing ABA Standard 316).

83. While many law schools currently offer skills courses within their curriculum, like interviewing and counseling, negotiations, and legal research, these courses tend to be smaller in size, which can limit the number of students who are able to take the courses. Additionally, there are often fewer sections of these courses offered during a semester, which can also limit the number of students who are able to take the courses. As the first administration of the NextGen bar exam approaches, many law schools will likely need to increase the number of skills courses offered during a semester (including offering multiple sections of these skills courses during the semester).

school courses, particularly in the first year, remain focused on highlighting and rewarding a segment of the student body that may be strong oral communicators? Or will students find their law school experiences more welcoming and inclusive when the law school classroom demonstrates an appreciation of the diversity of skills valued in the practice of law?

Like the NCBE's shift to the NextGen bar exam, the shift of a reimagined legal education would better reflect an appreciation for the real-world practice for newly licensed lawyers. A reimagined legal education would incorporate more skills training throughout the law school curriculum and treat doctrinal faculty and faculty who teach skills courses equally. No longer would the law school classroom experience leave students with the impression that their talents, stories, and perspectives are not needed and will not be valued in the legal profession. No longer would faculty of color or faculty who teach skills courses feel separated from or inferior to doctrinal faculty. No longer would legal education need to be reimagined because law schools will be properly doing what they should have been doing all along: teaching and training students to be practicing lawyers.