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Major Reform With Minor Risk: Implementation of Change Initiatives as a Learning Challenge

Sara J. Berman

Chance Meyer

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Sara J. Berman & Dr. Chance Meyer

Major Reform With Minor Risk: Implementation of Change Initiatives as a Learning Challenge

22 U.N.H. L. Rev. 151 (2024)

ABSTRACT. The call for change in legal education has been loud and clear for more than a century. Despite some resistance among powerholders who benefit from status quo, faculty and administrators across the country work earnestly to solve problems, improve learning, and promote equity. Yet time and again, initiatives are logjammed, shot down as unworkable, misimplemented, or abandoned prematurely when they do not meet unrealistically high expectations for immediate, dramatic results. This article builds on the premises that (1) change is needed, (2) a wide range of sound change ideas for reform and progress are available, and (3) effective implementation of those ideas involves learnable knowledge and skills grounded in proven disciplines of evidence-based practice and change management. Written in two voices, one describing implementation strategies (the how-to) and the other surveying current change ideas (the what and why), this article provides polyphonic guidance and inspiration for law schools to make change happen. By developing a shared understanding of defined problems traced to specified causes, designing evidence-informed, context-sensitive solutions, and committing to iterating towards continuous improvement, law schools can answer the long-standing call for meaningful change in legal education.

AUTHORS. Sara J. Berman serves as Professor of Lawyering Skills and Director of the Academic Success Program, USC Gould School of Law. Dr. Chance Meyer serves as Visiting Professor of Practice, New England Law In Boston.

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INTRODUCTION

Far too often, a shared cynicism animates discourse around change in legal education. The common view is that change is too slow¹ if not downright impossible.² We, as colleagues and coauthors, hold different, often tensioned, and sometimes competing views of legal education's will and capacity to initiate, manage, and achieve meaningful change. Yet, over years of conversation and collaboration, we have found our way to a dialogic space grounded firmly in hope.

The key to unlocking a hopeful, progress-oriented discourse was a mutual realization, reached through separate but complementary lived experience and learning, that obstacles to change are often not failures of will or even lack of means, but rather two readily solvable challenges: (1) perceptions that change ideas are inaccessible or underdeveloped, and (2) the complexity of implementation.

In deans' offices and faculty meetings across the nation, we have observed earnest efforts around worthy change ideas driven by the felt needs of highly capable (often brilliant) stakeholders, some with access to significant resources. Yet time and again, these efforts are logjammed at the initial adoption stage, shot down as unworkable in early development stages, or abandoned as ineffective after only a short while because they did not meet unrealistic expectations to yield immediate, dramatic results. Our shared hope springs from a dual understanding that (1) many proposals to improve legal education—change ideas that are grounded in sound research—are available and accessible to law schools, and (2) effective implementation of those ideas involves knowledge and skills that can be learned—existing, proven disciplines of evidence-based practice, change management, and improvement science.

Change ideas of profound promise are ready and waiting for law schools to learn how to make them realities, and change initiatives can work if law schools learn how to work them.

We thus propose a counternarrative. Herein, we envision change as a learning challenge. We describe the main characteristics of successful change initiatives to implement change ideas and survey proposals for reform and progress in the current literature.

When change is viewed as a learnable set of available knowledge and skills, a clear path to progress snaps into focus. Modeling the kind of lifelong learning we want our students to embrace, legal educators can become agents of change by becoming ongoing learners of change leadership and management.

¹ For instance, looking back on the 20th century, Chemerinsky saw “remarkably little” change in legal education on the timescale of 100 years. Erwin Chemerinsky, *Radical Proposals to Reform Legal Pedagogy: Rethinking Legal Education*, 43 HARV. C.R.-C.L. L. REV. 595, 595 (2008). On the other hand, it has been suggested that pandemic remote teaching “demonstrated that law schools could change quickly.” Timothy Casey, *Reflections on Legal Education in the Aftermath of a Pandemic*, 28 CLINICAL L. REV. 85, 89 (2021).

² See generally Steven C. Bennett, *When Will Law School Change?*, 89 NEB. L. REV. 87, 103(2010).

This article proceeds in two parts, the first written by Dr. Meyer in his voice and the second by Professor Berman in hers. We maintain, rather than assimilate, our separate perspectives out of respect for the principle of heterogeneous discourse described in Part I as an essential characteristic of change leadership. We aim to engage, not eliminate, polyphony, even between ourselves. It would be inconsistent for us to argue that law schools should tap greater diversities of perspectives while reducing our own. In our view, disagreements between Parts I and II are not points of weakness. Rather, the tensions between our worldviews are where we find what Judith Butler called the “non-place of subversion” for the “iterability” of our embodied norms and identities.³ That is, we grow in our conflicts by reveling in them, not rushing to reconcile them. To learn is to negotiate contradictions,⁴ and all researchers should question their positionalities, assumptions, blind spots, and reproductions of power by seeking out “generative tensions.”⁵ For these reasons, we preserve our independent voices and celebrate those of the thought-leaders we cite herein.

Professor Berman was best positioned to develop Part II, surveying selected change ideas in legal education. In 2018, when she was recruited to establish and serve as the inaugural director of an Academic and Bar Success department at the AccessLex Center for Legal Education Excellence in Washington, D.C., Professor Berman prioritized spending time with legal educators around the country. While at AccessLex, she visited more than thirty law schools and participated in dozens of conferences—spending countless hours listening to, talking with, and engaging the needs, hopes, and dreams of deans, faculty, staff, and students. During that time, she also created grant programs that funded cutting-edge legal education research and opened doors to hear the voices of and collaborate with diverse legal education scholars. In recent years, Professor Berman also dedicated time to observing law schools as an ABA fact finder for variance applications and on ABA site visit teams. Through these broad experiences, while also serving on the faculties and in senior administrative positions at several law schools, Professor Berman has formed a unique perspective on the breadth and density of efforts towards change and improvement in legal education and the current state and direction of progress.

Dr. Meyer was best positioned to address in Part I the implementation of change ideas as a learning challenge. While Professor Berman was spending time in law schools across the country, Dr. Meyer was completing a doctorate in education focused on learning and leadership in organizations (Ed.D., Vanderbilt, 2023) and applying methods of evidence-based design, decision-making, and problem-solving in the Academic Excellence Program at New England Law | Boston and a series of improvement projects as a consultant at other law schools. As Professor Berman’s

³ JUDITH BUTLER, *THE PSYCHIC LIFE OF POWER*, 99 (1997).

⁴ Kris D. Gutierrez & Patrick Johnson, *Understanding Identity Sampling and Cultural Repertoires*, in *CULTURALLY SUSTAINING PEDAGOGIES* 247, 253 (Django Paris & H Samy Alim eds., 2017).

⁵ SHARON M. RAVITCH & NICOLE MITTENFELNER CARL, *QUALITATIVE RESEARCH: BRIDGING THE CONCEPTUAL, THEORETICAL, AND METHODOLOGICAL* 7 (2016).

perspective broadened on the availability of change ideas, Dr. Meyer’s perspective specified as to how law schools can undertake a replicable process to conduct successful change initiatives. In Part I, Dr. Meyer lays out the characteristics of successful law school change initiatives as a stage-by-stage progression of collective problem-solving and decision-making methods.

Change initiatives are more successful when they start by clearly defining context-specific problems and working backwards to identify causes and develop solutions from available change ideas. We thus provide an implementation process in Part I before providing an array of change ideas in Part II, any one or more of which may become the destination, not the origin, of a change initiative in the context of a particular law school.

Both Parts I and II call for advancement in action-oriented, results-oriented research. Throughout the discussion of potential change ideas in Part II, it is evident that there has been far more work done to articulate problems in law schools than to articulate practicable solutions. Throughout the discussion of implementation in Part I, it is evident that there has been far more work done to name the rough-hewn concept of a solution than to specify how to operationalize solution concepts into working programs under the problematic conditions of real-world law school practice settings.

Parts I and II reflect a research-practice gap in legal education—a gaping chasm between what we know we *should* do in law schools (worthy ideas for needed reforms) and what we *actually* do in our daily work. It is our hope that the change ideas and implementation process described below will help law school change leaders close the gap. There are available to law schools today both promising ideas for reform and progress and the learnable means to specify and operationalize those ideas into successful initiatives that actually change lives and livelihoods in today’s law school communities.

I. PART 1: IMPLEMENTATION (DR. CHANCE MEYER)

In The Onion’s satire of a TED-style speaking event, a self-proclaimed visionary announces to enthusiastic applause his idea for a compost-fueled car.⁶ He proclaims that because the first step was having the idea and the second step is implementation, “[w]e’re halfway there.”⁷ By way of explaining how the car works, he assures the crowd, “[i]t’s quite simple. Instead of using gas, it uses compost.”⁸ The gag becomes clear. The speaker has nothing but a basic concept for something that would be next to impossible to implement, yet he acts as if that basic concept offers great value. The lesson is that if you want to change the world, implementation will be the hard part.

⁶ The Onion, *Compost-Fueled Cars: Wouldn't That Be Great?*, YOUTUBE (Oct. 17, 2012), <https://www.youtube.com/watch?v=DkGMY63FF3Q> [<https://perma.cc/CE4DEKCT>].

⁷ *Id.*

⁸ *Id.*

The value of a change idea, no matter how great, is a potential value yet unrealized. Whether an idea for reform or progress will ever make a difference in the world depends entirely on the quality of implementation. Whether an idea will ever have a chance to impact learner outcomes or improve a law school community depends entirely on the quality of implementation. Yet, improvement experts warn that educators tend to overlook the importance of implantation: “We consistently fail to appreciate what it actually takes to make some promising idea work reliably in practice.”⁹ When change initiatives fail in implementation, educators blame the underlying change idea: “We become disappointed when dramatic positive results do not readily emerge, and then we just move on to the next new reform idea.”¹⁰ Thus, we jump from idea to idea, rather than learning how to give ideas a chance to work. For this reason, education has been called “a graveyard of good ideas.”¹¹

For years, improvement experts have known that implementation in organizational contexts is a greater barrier to change in education than a lack of change ideas. In most cases, proposals for reform wind up “embedded in a bad development strategy with weak collective will, limited capacity to execute, and an unrealistic timetable.”¹² Even when suggested reforms or program improvements are evidence-based, theory-informed, and responsive to pressing needs, they are hardly ever successful. In general, approximately seventy percent of organizational change initiatives fail.¹³ In education, successful initiatives are so rare that researchers argue whether they even exist.¹⁴ It is uncertain exactly why and how often educational initiatives succeed or fail because “there is no tradition of sustained analysis.”¹⁵ In legal education, we can safely assume success is no more common because implementation is no more sophisticated. But we cannot know for sure because it is not customary practice to predefine standards of success and measure program impacts against those standards. An odd reality of high-stakes legal education is that law schools rarely know whether what they do works.

Even though everything depends on the quality of implementation, law schools do not develop capacities in the requisite disciplines and sciences. Law schools tend to treat implementation as something that just happens—an extemporaneous series of events. Law school leaders (boards, universities, deans’ offices, and faculties) tell middle managers (associate and assistant deans and program

⁹ ANTHONY S. Bryk et al., *LEARNING TO IMPROVE: HOW AMERICA’S SCHOOLS CAN GET BETTER AT GETTING BETTER* 6 (4th prtg. 2016).

¹⁰ *Id.*

¹¹ James Hiebert et al., *A Knowledge Base for the Teaching Profession: What Would It Look Like and How Can We Get One?*, *EDUC. RESEARCHER*, 3, 13 (June–July. 2002).

¹² Bryk et al., *supra* note 9, at 3.

¹³ Nitin Nohria & Michael Beer, *Cracking the Code of Change*, *HARV. BUS. REV.* (May–June 2000), <https://hbr.org/2000/05/cracking-the-code-of-change> [<https://perma.cc/YB3J-ZXRE>].

¹⁴ *See, e.g.*, David Cohen & Jal Mehta, *Why Reform Sometimes Succeeds: Understanding the Conditions That Produce Reforms That Last*, *AM. EDUC. RSCH. J.*, 644, 645 (Aug. 2017).

¹⁵ *Id.*

directors) to turn an idea into a program, and then middle managers tell ground-level deliverers (faculty, instructors, and staff) to make the program work in daily activity. It is assumed that if the idea is strong enough, the program will work. But the success of a program has far more to do with whether implementation is carried out with authentic support, disciplined methods, and integrity to the original vision and intent. Misimplementation eats great ideas for breakfast.

The potential value of the change ideas described in Part II can be lost to misimplementation as readily as to rejection. We do not want to see that happen. Law schools must understand that they accomplish no more by adopting and botching a change initiative than by declining the idea in the first place. Legal education's success is measured in learner outcomes, not good intentions.

In fact, unsuccessful initiatives can cause more harm than inaction. Once a law school announces and undertakes a change initiative, future proposals based on the same underlying change idea will be met with a perfunctory "we tried that and it didn't work." New faculty and staff have difficulty gaining a clear understanding of what was done in the past, for what reasons, and why it did not work. Even if the change idea could be refined, specified, contextualized, and operationalized into an entirely different and more effective program with different leadership and new participants in the faddish¹⁶ cycles of teaching practice, the idea itself will already be tainted. Good ideas, once pursued, are condemned to the graveyard by a shared assumption that prior initiatives failed because the ideas were inadequate.

A powerful example from outside legal education is the Gates Foundation's small schools initiative. The initiative burned through two billion dollar building 2,600 new high schools in forty-six states based on the idea that small class sizes would improve learner outcomes.¹⁷ When the initiative failed to increase test scores due to poor implementation in varying school contexts, reformers simply moved on to the next big change idea—teacher evaluations.¹⁸ If a context-conscious initiative to reap the benefits of small class sizes through high-quality implementation would indeed have improved test scores across the country, we will never know. No one will soon propose yesterday's failed idea (especially untenured faculty in law schools). And so, misimplementation escapes scrutiny by letting good ideas take the fall for its failures.

Law schools seldom know whether their initiatives are successful because law schools seldom measure how new programs impact outcomes. Rather, law schools watch as overall outcomes fluctuate over time (bar passage, career placement, etc.), they guess or assume what decisions or activities might be driving results, and they spin community narratives about what programs or leaders deserve credit or

¹⁶ The history of education has been called a "chronicle of fads." Herbert M. Kliebard, *Success and Failure in Educational Reform: Are There Historical "Lessons"?*, PEABODY J. OF EDUC., 143, 144 (1988).

¹⁷ Bryk et al., *supra* note 9, at 1–2.

¹⁸ *Id.* at 4.

blame.¹⁹ Faculty long-timers train newcomers in the normative practices of self-promotional storytelling. Dominant narratives, not evidence, determine what change initiatives are thought to succeed or fail.

Legal educators have a tacit agreement to operate on impressions of success rather than measures of success. We glean a sense of how students and colleagues feel about a program or initiative from polls, feedback, and thousands of fleeting social interactions. But those impressions are misleading. Teacher impressions of their teaching tend to be falsely high²⁰ and skewed by neuromyths misunderstanding how learning works.²¹ Learner intuitions about what helps them learn tend to be opposite the truth.²² Moreover, because all people are subject to a multitude of biases²³ that operate below the level of consciousness, both teachers and students experience programs through a distortion field of misperception. Recency bias makes today's observations seem more important than last week's.²⁴ Confirmation bias conceals evidence that conflicts with first impressions.²⁵

In the field of program evaluation, evaluators are specifically instructed not to measure a program's effectiveness by asking deliverers and recipients of a program whether they think the program works.²⁶ That approach is known to be a flawed method of assessing a program's effectiveness. Recipients, like students, "will almost certainly have opinions to offer, but they will not be reliable informants about program effects"²⁷ (casting doubt on the propriety of student evaluations and a measure of teaching quality). Learners cannot feel their way to reliable measures of what learning activities impacted their outcomes. Program deliverers will struggle to overcome confirmation bias.²⁸ They also cannot feel their way to reliable measures of how their daily activities in a program impact learner outcomes. If the only goal of a program evaluation were to design a well-liked program, impressions

¹⁹ See Karina Nielsen & Mariella Miraglia, *What Works for Whom in Which Circumstances? On the Need to Move Beyond the 'What Works?' Question in Organizational Intervention Research*, HUMAN RELATIONS, 40 (2017).

²⁰ See generally Lori Dassa & Bryan Nichols, *Self-Efficacy or Overconfidence? Comparing Preservice Teacher Self-Perceptions of Their Content Knowledge and Teaching Abilities to the Perceptions of Their Supervisors*, THE NEW EDUCATOR, 156, 172 (2019).

²¹ Kelly Macdonald et al., *Dispelling the myth: Training in education or neuroscience decreases but does not eliminate beliefs in neuromyths*, FRONTIERS IN PSYCH., 1, 10 (Aug. 2017).

²² High-difficulty learning tasks are uncomfortable but helpful while helping learners avoid effort makes them happy but diverts learning. Henry L. Roediger & Jeffrey D. Karpicke, *Test-Enhanced Learning: Taking Memory Tests Improves Long-Term Retention*, PSYCH. SCI., 249, 254 (Mar. 2006).

²³ See MAX H. BAZERMAN, JUDGMENT IN MANAGERIAL DECISION MAKING 1 (6th ed. 2006).

²⁴ *Id.* at 41.

²⁵ PETER H. ROSSI ET AL., EVALUATION: A SYSTEMATIC APPROACH 5 (8th ed. 2019).

²⁶ See *id.* at 5–6.

²⁷ *Id.* at 5.

²⁸ See *id.*

would be sufficient indicators. But if the goal is to design an effective program, other data are needed. To figure out whether a program actually works, evaluators need “systematic methods structured to avoid bias and misrepresentation.”²⁹

Like the high schools that were part of the small schools initiative, law schools are not stable, unproblematic environments where good ideas will work by virtue of being good. In complex organizational settings like law schools, myriad administrative processes, leadership turnover, normative subprocesses, social arrangements, norms, power relations, histories and counterhistories, narratives and counternarratives, and other elements mediate and modulate the impacts of program activities. The same change ideas take shape differently in different law school contexts, interacting with varying conditions and yielding varying results. Solutions have to fit conditions. For example, a law school might demand its academic support program build learner confidence as part of bar exam preparation, but if the student body is largely overconfident (as underperforming learners tend to be³⁰), that solution—seemingly a plausible good idea coming from a place of good intentions—will do more harm than good.

To find the right ideas and make them work in context, law schools must learn to use measurement and disciplined inquiry to reduce uncertainty and manage the complexity in their organizational settings. To develop a nascent idea for change into a fully operationalized program in context, law schools need a disciplined approach to implementation.

In-depth descriptions and taxonomies of various frameworks and models for developing and implementing organizational change initiatives are available elsewhere.³¹ Fully detailed guides to relevant disciplines like improvement science are available elsewhere.³² My purpose is not to overwhelm readers by replicating those. Rather, I hope to offer legal educators and law school leaders an entry point into the worlds of change management and other disciplines that support effective implementation. Thus, what follows is a description of the main features of successful change initiatives, particularly those achievable to law schools without much investment in capacity building (e.g., developing talent and knowledge in the organization to perform functions like data analysis).

W. Edwards Deming famously said, “[i]f you can’t describe what you are doing

²⁹ *Id.* at 6.

³⁰ Chance Meyer & Nicole Noël, *Research Spotlight: Iterative Design and the Thrill of Praxis*, RAISING THE BAR, 11, 12 (Fall 2022); Clifford Nowell & Richard M. Alston, *Thought I got an A! Overconfidence Across the Economics Curriculum*, J. OF ECON. EDUC., Spring 2007, at 131; Nathaniel L. Foster et al., (2017). *Even After Thirteen Class Exams, Students are Still Overconfident: The Role of Memory for Past Exam Performance in Student Predictions*, METACOGNITION LEARNING, 1 (2017).

³¹ *E.g.*, Serina Al-Haddad & Timothy Kotnour, *Integrating the Organizational Change Literature: A Model for Successful Change*, J. OF ORG. CHANGE MGMT., 234, 234 (2015).

³² *See generally* GERALD J. LANGLEY ET AL., THE IMPROVEMENT GUIDE: A PRACTICAL APPROACH TO ENHANCING ORGANIZATIONAL PERFORMANCE (2nd ed. 2009).

as a process, you don't know what you are doing."³³ I thus lay out the components of a successful law school change initiative as a linear, stage-by-stage process. But it should be understood that the process is recursive and adaptive. Observation of events and developing conditions on the ground during implementation in an organizational context will often bring implementers circling back to earlier steps to adjust the design of their work. Nevertheless, while maintaining flexibility, it is beneficial for law school change leaders to conceptualize change initiatives as a process. Unstructured initiatives are often stymied or stalled. When an initiative hits resistance, participants struggle to find a way forward without being able to consult a guide that provides the next step and principles on which to resolve conflicts. Law schools can easily be paralyzed when high-stakes decision-making is approached as high-stakes guesswork. Approaching decision-making as a stage-by-stage progression of principled tasks encourages productive action.

The work of designing and implementing high-quality change initiatives can take many forms but generally involves the following stages of activity: defining solvable problems responsive to felt needs, specifying and prioritizing suspected causes through polyphonic discourse, implementing solutions with embedded measurement and data collection, and analyzing data and iterating with realistic expectations.

A. Define Solvable Problems Responsive to Felt Needs

Successful implementation of a change idea depends on decisions made before implementation begins. One of those decisions is selecting a change idea that fits the problem a law school needs to solve. To make that decision, a law school must first understand the problem. Otherwise, change initiatives become *activity traps*—“activities that seem like a good idea and perhaps carry political value, but do not target antecedent conditions related to the problem.”³⁴

At a law school where marginalized learners are not engaging with opportunities to learn because they experience a lack of belonging to the learning community, the generally good idea of offering interventions that improve legal analysis will not fix the problem. At a law school where underperforming learners are not receiving effective interventions that improve legal analysis, the generally good idea of offering interventions for managing test anxiety will not fix the problem. Solutions must be matched to existing problems. Because law schools cannot pick their problems, they cannot pick their solutions. Law schools must learn to let their problems tell them what they need rather than imposing their preferred solutions.

Often, organizations take for granted that all stakeholders have a shared

³³ Jim Sibthorp, *Making a Difference with Experiential Education Research: Quality and Focus*, J. OF EXPERIENTIAL EDUC., 456, 458 (Mar. 2009).

³⁴ Ralph Renger & Allison Titcomb, *A Three-Step Approach to Teaching Logic Models*, AM. J. OF EVALUATION, DEC., 493, 499 (2002).

understanding of the problems they face together. That assumption must be tested. For instance, a change management team once polled the board of an energy company on whether the company had clear strategic goals.³⁵ All of the board's twelve members responded yes.³⁶ But when the team polled the board with six options as to what the strategic goals were, each option received two votes, and the CEO stormed out of the meeting.³⁷ Such are the leadership assumptions in an organization, and such is the nature of change work. Participants often work on different problems in different directions for different reasons, and they do not realize it. Often, leaders assume that because they are powerholders their views are shared. They neglect to fully articulate their views and test them against the understandings of other organizational members.

Thus, a law school's first step towards change is to agree on a problem to be solved. Once negotiated and memorialized, a clear problem definition will ensure that proposed solutions match the actual problem and will anchor and organize the work to come.

Defining a problem is not always a simple matter. A common pitfall when conceptualizing a problem is what improvement experts call *solutionitis*.³⁸ Often, participants in an improvement effort *solutionize* a problem by importing their preferred solutions into their definition of the problem. For example, when Procter & Gamble began to lose its hold on the floor mopping market, it defined the problem as ineffective soap and convened an R&D team to make a better one.³⁹ After a lot of wasted time and resources trying to improve P&G's soap, the team wondered if it needed to step back and rethink the problem. The team got out in the field, watched users interacting with P&G mops in their kitchens, and discovered that the soap was not the problem at all (nor was it the solution). The problem was that users despised trying to rinse and re-soap their mops in a bucket of dirty water. From that clear and evidence-based problem definition was born a fitting solution—a new kind of mop with disposable wipes known as the *Swiffer*.⁴⁰ Had P&G not solutionized the problem with an assumed solution, they would have gotten to the *Swiffer* sooner. Smaller organizations like law schools do not have infinite resources to try every solution under the sun. They need to move straight to the solutions that will impact their problems.

To move more quickly to the right solutions, law schools, like P&G, need to slow down at the problem definition stage and not assume a preferred solution. Law schools must thoughtfully consider what it is they need to solve. If more evidence

³⁵ McKinseyLD, *McKinsey on Change Management*, YOUTUBE (May 20, 2014), https://www.youtube.com/watch?v=k69i_yAhEcQ [<https://perma.cc/R8W8-MGXY>].

³⁶ *Id.*

³⁷ *Id.*

³⁸ Bryk et al., *supra* note 9, at 24.

³⁹ *Id.* at 21–22.

⁴⁰ *Id.* at 23.

is needed to fully understand the problem, as at P&G, an investigation should be undertaken at this stage, not skipped. A sense of urgency does not relieve the need to define the problem. Suppose bar passage or career placement are foundering at a law school. In that case, the law school is not better off quickly tinkering around with soap solutions than patiently discovering its bucket of dirty water.

Solutionizing problems is common in law schools because committees and taskforces often begin change efforts with a round of unstructured brainstorming. Committee members reach out to collect opinions to avoid being surprised during a faculty vote. Of course, the proposed problem statements that will be compiled in this process will reflect the intuition-based solution preferences of their proponents. At a law school with low career placement, one faculty member might say the problem is inadequate clinical offerings. Another might say the problem is a lack of professionalism programming. Another might say the problem is students wearing the wrong color suit to interviews. These reported problems are proposed solutions in disguise. They are likely coupled to their proponents' casual impressions, recent experiences, biases, and interests.

To get a change initiative started in the right direction, law school stakeholders should begin by coming together to articulate and memorialize a shared understanding of the problem they face.

Problems should be formulated in a way that makes them solvable. Otherwise, it will not be known whether a change initiative succeeds or fails. For instance, a law school that decides it has *a problem with culture* will never know when and if it has solved the problem. If the initiative works to improve organizational culture in some ways, naysayers will be able to move the goalpost ("Yes, morale has improved, but we still have a problem with engagement") or simply deny progress has been made ("I, for one, don't feel like anything has changed"). If the initiative fails to improve culture in any way, leaders and proponents will still be able to spin narratives that frame success as having worked hard and taken some action. Thus, the accountability and knowability of a predetermined measure of success benefits both proponents and opponents of a change effort. Further, predetermined standards of success allow for initiatives to end or pivot so a law school can continually redistribute resources in a way that fits its most pressing problems. Like a war on terror, an initiative to improve culture has no delineable end. For this reason, too, everyone in a law school should want to know whether and how much progress their initiatives are making.

One way to better specify a solvable problem is to gather evidence. A law school that suspects it has a culture problem might use a tool like the Organizational Culture Assessment Instrument (OCAI) to measure what type of organizational culture it has and whether dominant values align with leadership goals and organizational needs.⁴¹ From that measure, a law school could define a solvable problem of needing to change culture type or increase certain values by certain

⁴¹ OCAIONLINE, <https://www.ocai-online.com/about-the-Organizational-Culture-Assessment-Instrument-OCAI> [<https://perma.cc/4YAF-3G7S>] (last visited Feb. 7, 2024).

amounts to be measured at a set date in the future.

Not all problems will be so challenging to specify in a way that makes them solvable. A law school facing low bar passage can simply define the problem as a pass rate below a certain percentage, below the state average, or below a competitor school. Deciding where to set the standard of success requires collective reflection and commitment to determining what leadership and faculty actually want to accomplish. A law school with disappointing bar results that continually insists it is shooting for a 100% pass rate uses positivity to relieve itself of the responsibility of meeting a preset, realistic goal for improvement.

It is unlikely that a change initiative will be successful if it is implemented by organizational members who do not register the program being addressed as a felt need.⁴² This, too, calls for a patient, thoughtful effort to define the true problem a law school needs to address. Systemic education reforms succeed only when the norms and values of ground-level implementers align with those of the initiative.⁴³ Anyone who has ever had to teach something they did not want to teach will understand why this is the case. Ultimately, a change initiative lands in the hands of people who, moment to moment, interaction to interaction, either feel a genuine drive to make it work or not. If they do not, they will either struggle to give more than lackluster performance out of an effort to be a team player or (consciously or unconsciously) allow themselves to undermine the program in invisible ways that will ultimately validate their initial position that the program would not work.

Ticking boxes, going through the motions, and active sabotage all lead to the same place—failure. Thus, it is imperative to define a problem that community members *feel* in the ground-level work of the organization. Felt problems may not include the one a law school leader wanted to make the centerpiece of their administration or legacy. But again, a law school leader can no more pick their solutions than they can pick their problems. Leadership is working on what needs to be solved in the community the leader serves. Leaders must put their preferred solutions aside if they do not match their community's problems.

B. Specify and Prioritize Suspected Causes Through Polyphonic Discourse

Once a problem is clearly defined and an initiative is poised to be problem-focused, a law school is still not ready to turn to selecting a solution. Participants in a change initiative are likely to advance their preferred solutions even if they do not match a clearly defined problem. An effort must be made to work backwards from a problem definition to define the causes that should be addressed by chosen solutions.

The research that led to the development of the Garbage Can Model of organizational decision-making showed that, in organizations like law schools, more

⁴² See David K. Cohen & Jal D. Mehta, *Why Reform Sometimes Succeeds: Understanding the Conditions That Produce Reforms That Last*, AM. EDUC. RSCH. J., 644, 646 (Aug. 2017).

⁴³ *Id.* at 644.

often than problems looking for solutions, there are “solutions looking for issues to which they might be the answer” and “feelings looking for decision situations in which they might be aired.”⁴⁴ Having a shared understanding of a problem is no guarantee that proposed solutions will be coupled to the problem they profess to address.⁴⁵ Participants will tend to impose the square peg of their preferred solutions into the round hole of the defined problem. The temptation will be to work from solutions to problems rather than problems to solutions. A law school change management team needs to let the law school organizational system tell them what it needs, not the other way around.

Thus, the next step is to collectively identify, array, and prioritize causes.

Often, causes are more visible to the ground-level deliverers of a program than to the top-level decision-makers.⁴⁶ Engaging in program activities as part of daily work life generates an understanding of how well program design fits needs and conditions. One irony of hierarchical organizational structures is that decision-making tends to be localized far away from the action. The profound knowledge and daily experience of living the implementation of leadership decisions rarely make it up to the decision-makers. Thus, top-down decision-making allows major causes to go unrecognized. The simple fix for this disconnect is for leaders to elevate and value the understanding of ground-level program deliverers.

When setting out to array potential causes, a change leadership team must marshal the profound knowledge and cognitive diversity inside the organization by getting various stakeholders in the room from all levels of the organizational hierarchy. No voice is more valuable than another in this process because lived experience, not positional power or status, reveals causes. In improvement science, the inclusion of ground-level organizational members is described as making the *user-centered*.⁴⁷ In design work, it is known that ideating from diverse perspectives yields more creative solutions.⁴⁸ Across disciplines formulations vary, but the point is the same—change leaders need to get everyone in the room and at the table so their voices can be heard.

Surfacing all known causes before deciding on solutions can save an organization. An example heavily studied by experts in organizational decision-making and problem-solving occurred in 1949 at Mann Gulch, when an organization of sixteen smokejumpers parachuted in to fight a forest fire.⁴⁹ Eventually, changing

⁴⁴ Michael D. Cohen et al., *A Garbage Can Model of Organizational Choice*, ADMIN. SCI. Q., 1, 2 (Mar. 1972).

⁴⁵ See *id.* at 1.

⁴⁶ See generally Bryk et al., *supra* note 9, at 5–6.

⁴⁷ See generally *id.* at 21.

⁴⁸ See Chithra Adams & John Nash, *Exploring Design Thinking Practices in Evaluation*, J. OF MULTIDISCIPLINARY EVALUATION, 12, 16 (2016).

⁴⁹ Karl E. Weick, *The Collapse of Sensemaking in Organizations: The Mann Gulch Disaster*, ADMIN. SCI. Q., 628, 628 (1993).

winds sent the blaze chasing the team up a hill faster than they could run.⁵⁰ In a terrible race for survival, thirteen perished, two made it to a rock outcrop, and only one passed through the flames and survived—Wagner Dodge.⁵¹ While in their moment of crisis other organizational members thought the cause of the problem was the wind speeding the flames towards them, Dodge recognized a different cause—the grass. Amazingly, Dodge had the presence of mind to stop running as the flames raced towards him and to do something improvisational—he started a fire of his own.⁵² He set fire to the grass at his feet. Dodge’s modest fire burned outward in a growing circle around him without harming him. He called for others to do the same, but they did not listen or understand. When the raging forest fire reached Dodge, he was standing in the middle of a patch of bare ground with no fuel to be burned. The fire parted around him and passed by. Against all odds, Dodge survived by burning a hole in the fire itself. Today, Dodge’s method is known as an escape fire.

To organizational researchers like Karl Weick, who studied the events at Mann Gulch as a breakdown of organizational sensemaking during crisis,⁵³ Dodge’s escape fire is a lesson in the need for organizations to harness the knowledge of their members. Dodge had the answer! The answer was in the organization! But thirteen of sixteen members of the organization perished because the team could not manage to act collectively on what Dodge knew about the causes of the problem.

When an organization like a law school works on a problem—especially in a time of crisis and what Weick calls a collapse of sensemaking⁵⁴—the organization needs to find its Dodges (be they at-will employees on the ground floor or leaders in the dean’s suite), amplify their voices, and use what they know about causes.

As a law school struggles to construct meaning around a problem, diverse perspectives are key. Under stressful circumstances, an organization’s reality becomes, in Weick’s words, “an ongoing accomplishment that emerges from efforts to create order.”⁵⁵ However, leaders often attempt to achieve order by exerting power to regain a sense of control, rather than by sharing and distributing power in a way that enables organizational members to improvise and flourish.⁵⁶ For example, leaders’ intuitions may tell them that forcing people to work harder will improve results when authoritarian accountability measures instead lead to minimal

⁵⁰ *Id.* at 629.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 635.

⁵⁶ See generally MARY P. FOLLETT, MARY PARKER FOLLETT: PROPHET OF MANAGEMENT (Pauline Graham ed., 1995).

effort, disengagement, and disillusionment.⁵⁷ Organizations are not rationally designed bureaucratic machines that work better the harder you work each part. They are values-laden social systems in which norms and culture drive behavior and progress.⁵⁸

Thus, it is not enough for a change leadership team to get diverse organizational members in the room and at the table. The members must also feel safe to speak. Psychological safety—a sense of being free to speak without fear of reprisal or damage to status⁵⁹—is a critical characteristic of change initiatives that aim to harness broad wisdom through pluralistic discourse. Weick determined that norms of respectful interaction are key to allowing profound knowledge to arise from all corners of an organization to inform collective problem-solving.⁶⁰ When role systems and sensemaking collapse among people who do not share trust, honesty, and self-respect, everyone is on their own.⁶¹ When team members recognize everyone’s knowledge, skills, and abilities, “attitudinal conformity” grows.⁶² People come together. Conflict generates unity.

Law schools can convene departmental or small group sessions for problem definition and cause identification in which all organizational members are present, but for those sessions to bear fruit, leaders must cultivate psychological safety. Psychological safety involves a sense that it is safe to contribute, question, grow, and take interpersonal risks.⁶³ There is robust literature on psychological safety, but essentially, there are four primary antecedents: interdependence, supportiveness, autonomy, and relations with leadership.⁶⁴ Social interdependence entails cooperation, which can be contrasted with competition in the workplace.⁶⁵ When

⁵⁷ See TED, *How Too Many Rules at Work Keep You from Getting Things Done* | Yves Morieux | TED Talks, YOUTUBE (Sep. 21, 2015), https://www.youtube.com/watch?v=t__NoFstCmQ [<https://perma.cc/9Q3D-XMVH>].

⁵⁸ Marya L. Besharov & Rakesh Khurana, *Leading Amidst Competing Technical and Institutional Demands: Revisiting Selznick’s Conception of Leadership*, *RSCH. IN THE SOCIO. OF ORGS.*, Mar. 2015, at 53, 54, 58 (quoting PHILIP SELZNICK, *TVA AND THE GRASS ROOTS: A STUDY IN THE SOCIOLOGY OF FORMAL ORGANIZATION* (1966)).

⁵⁹ William A. Kahn, *Psychological Conditions of Personal Engagement and Disengagement at Work*, 33 *ACADEMY OF MANAGEMENT J.*, 692–724 (1990).

⁶⁰ Weick, *supra* note 49, at 628.

⁶¹ *Id.* at 643.

⁶² Fred C. Lunenburg, *Power and Leadership: An Influence Process*, *INT’L J. OF MGMT., BUS., AND ADMIN.*, 2012, at 1, 5–6 (citing JEFFREY PFEFFER, *MANAGING WITH POWER: POLITICS AND INFLUENCE IN ORGANIZATIONS* (1992)).

⁶³ M. Lance Frazier et al., *Psychological Safety: A Meta-Analytic Review and Extension*, *PERSONNEL PSYCH.*, 113, 114 (2012).

⁶⁴ *Id.* at 118–19.

⁶⁵ Amy K. Verbos & De Vee E. Dykstra, *Female Business Faculty Attrition: Paths Through the Labyrinth*, *EQUAL., DIVERSITY AND INCLUSION: AN INT’L J.*, 372, 377 (2014) (citing David W. Johnson &

interests are aligned by social and cooperative goal interdependence, more positive interpersonal interactions occur, which nurture individuals.⁶⁶ Supportiveness can flow from coworkers or from an organization through leadership via trust.⁶⁷ Autonomy is freedom to design and engage in the methods, scheduling, and decision-making of one's daily work.⁶⁸ Autonomy is motivational—it leads to a greater sense of responsibility in one's work, which generates engagement and commitment.⁶⁹ Positive relations with leadership can be generated by inclusivity⁷⁰ as well as by distributed leadership and shared decision-making.⁷¹

Creating psychological safety is both art and science. It can be tricky to get leaders to share space in a problem-solving process with organizational members of lesser positional power. Powerholders do not like the feeling of letting go. Frantz Fannon's warning for revolutionaries can sometimes feel like it applied just as well to modern law school workplaces—"decolonization evokes for us the searing bullet and bloodstained knives which emanate from it."⁷² However, as described in the Introduction above, we have seen law school leaders across the country so eager find workable solutions that they understand and accept the need to share power in change initiatives aimed at progress in legal education. We emphasize here aspects of the literature describing leadership's role in change management to help align expectations and principles.

To bring diverse organizational members towards a common attitudinal posture approaching a change initiative, leaders should intentionally engage in sensemaking and storytelling. Making sense of events leading to the need for change is imperative so that organizational members do not all see a different problem. Suddaby explained that "contextualizing past events in the present . . . crystallizes the identification that group members have with their organization."⁷³ People "socially construct membership with an organization" based on the intersubjective assignment of meaning to historical events.⁷⁴ In other words, people who feel as if

Roger T. Johnson, *New Developments in Social Interdependence Theory*, GENETIC, SOC., AND GEN. PSYCH. MONOGRAPHS, at 285 (2005)).

⁶⁶ J. Wang & K. Leung, *The Antecedents And Consequents Of Individual Psychologically Safe Communication Climate* (paper presented at the Annual Conference of Academy of Management, San Antonio, TX) (2011, August).

⁶⁷ Frazier et al., *supra* note 63, at 119.

⁶⁸ Stephen E. Humphrey et al., *Integrating Motivational, Social, and Contextual Work Design Features*, J. OF APPLIED PSYCH., 1332, 1336 (2007).

⁶⁹ *Id.* at 1339.

⁷⁰ *See* Frazier et al., *supra* note 63, at 140.

⁷¹ Swati Hans & Ritu Gupta, *Job Characteristics Affect Shared Leadership*, LEADERSHIP & ORG. DEV. J., 730, 730–31 (2018).

⁷² FRANTZ FANON, *THE WRETCHED OF THE EARTH* (Richard Philcox trans. 2004) (1963).

⁷³ Roy Suddaby et al., *Re-Membering: Rhetorical History as Identity Work*, in *THE OXFORD HANDBOOK OF ORGANIZATIONAL IDENTITY* 297, 298 (Michael G. Pratt et al. eds., 2016).

⁷⁴ *Id.*

they are all part of the same story are more likely to work towards a happy ending.

Setting aside crisis situations, storytelling can also enable an organization to “recapture enchantment” in the face of mundane routinization, ‘stripping members’ experiences of magic and meaning.”⁷⁵ Stories encourage meaning-making, promote introspection about action, and clarify the boundaries of what actions are appropriate.⁷⁶

While creating narratives helps align understandings and create shared meaning, tools of improvement science can help a team facilitate and organize the process of arraying and prioritizing causes. For instance, a fishbone diagram⁷⁷ is a tool that can be used to identify causes by repeatedly asking *why is that?* until causes of particular problems are traced back to primary causes.⁷⁸ An interrelationship diagram can be used to push participants to decide which causes they believe are more weighty than others,⁷⁹ so the collective wisdom of organizational members will focus change efforts on the most significant causes.

There is some good news in this regard. According to the Pareto Principle, eighty percent of the variance in organizational system outcomes will be due to twenty percent of the causes.⁸⁰ That is to say, once a law school identifies, arrays, and prioritizes the suspected causes of a problem, it need not address *all* causes. Effectively tackling a few of the main causes should fix the lion’s share of the problem.

C. *Implement Solutions with Embedded Measurement and Data Collection*

With a problem defined and its likely causes specified and targeted, a law school is ready to turn to developing a solution. If a change idea described in Part II matches the problem and responds to the likely main causes, that idea can successfully serve as the basis for a change initiative.

Selecting a change idea is not the end of a change team’s work. A change initiative does not succeed by passing along “the germ of a good reform idea”⁸¹ to

⁷⁵ *Id.* at 312.

⁷⁶ Katherine K. Chen, *Charismatizing the Routine: Storytelling for Meaning and Agency in the Burning Man Organization*, 35 *QUALITATIVE SOCIO.*, 311, 313, 316 (2012).

⁷⁷ *Fishbone Diagram*, MINN. DEP’T OF HEALTH, <https://www.health.state.mn.us/communities/practice/resources/phqitoolbox/fishbone.html> (Oct. 26, 2022) [<https://perma.cc/39A6-N85X>].

⁷⁸ Chance Meyer, *Law Schools Need Improvement Science, Now More Than Ever*, 53 *SYLLABUS*, May 2020, https://www.americanbar.org/groups/legal_education/publications/syllabus_home/volume-51-2019-2020/syllabus-spring-2020-51-3/law-schools-need-improvement-science/ [<https://perma.cc/8Z3U-4XGH>].

⁷⁹ *Id.*

⁸⁰ Ralph C. Craft & Charles Leake, *The Pareto Principle in Organizational Decision Making*, 40 *MGMT. DECISION*, 729, 729 (2002), <https://doi.org/10.1108/00251740210437699> [<https://perma.cc/CWA5-ZAFE>].

⁸¹ Bryk, *supra* note 9, at 4.

program deliverers and hoping the idea will be turned into an effective program. Hope is not a strategy. Working with program deliverers and directors, the team must develop from the idea a specified program fit to organizational conditions and capacities. Change leaders must see their work through. Successful education initiatives offer “the educational tools, materials, and practical guidance educators needed to put the reform into practice.”⁸² They do not punt when it comes time to operationalize an idea.

Tools of program evaluation are useful at this stage. First, the team can develop a Logic Model, diagramming the inputs, activities, outputs, and target outcomes of a program.⁸³ A Logic Model is a visual representation of a program in which resources are mapped onto discrete program activities, and activities are mapped onto outputs and outcomes. Detailed instructions and examples for developing a Logic Model are readily available.⁸⁴

Often, law schools and other organizations operate with vague and varying understandings of how their programs might impact the outcomes they are intended to impact. Working together with program deliverers to construct a Logic Model generates a shared and memorialized understanding of exactly how a program—component by component—is thought to impact outcomes.

The specificity of a Logic Model—diagraming how each program activity is thought to impact each target outcome—sets the stage for a program to be evaluated and improved. Once a Logic Model is developed specifying the operation of a program, each assumption and relationship in the program can be measured and tested against outcome data. For instance, a law school may intend for its academic support program to impact the learner outcome of GPA without specifying how individual activities in the program are supposed to do that. Perhaps it is thought that a series of self-scoring exercises offered as part of an academic support program will improve the objectivity of learners’ self-assessment and that improving the objectivity of learners’ self-assessment will improve performance on legal analysis tasks, increasing GPA. There are at least two assumed relationships present in the design of this program component—the relationship between the exercises and self-assessment, and the relationship between self-assessment and legal problem-solving performance. Once specified, both can be targeted for measurement.

The objectivity of self-assessment can be measured by training learners to self-score their essays against a rubric and finding the difference between their self-

⁸² David K. Cohen & Jal D. Mehta, *Why Reform Sometimes Succeeds: Understanding the Conditions That Produce Reforms That Last*, 54 AM. EDUC. RSCH. J., 644, 646, 654 (2017).

⁸³ PETER H. ROSSI ET AL., *EVALUATION: A SYSTEMATIC APPROACH* 19 (Helen Salmon et al. eds., 8th ed. 2019).

⁸⁴ *Id.*; See Ralph Renger & Allison Titcomb, *A Three-Step Approach to Teaching Logic Models*, 23 AM. J. OF EVALUATION 493 (2002).

score and earned score.⁸⁵ If over the course of the exercises the difference in self-scores and earned scores does not decrease, program designers will have evidence that their first assumption was unsound and a redesign is in order. If, on the other hand, the difference decreases, indicating that self-assessment improves, the extent of that decrease can be compared to GPA outcomes to test whether there is a relationship with problem-solving performance.⁸⁶ If not, a redesign is in order. If so, the program can now conduct its self-assessment exercises confident that the work is related to the outcome it cares about. That sort of confidence invigorates daily work-life and inspires program deliverers to wholehearted engagement with their work.⁸⁷

Change leaders must assure participants at this stage of three important understandings in response to three common objections.

First, participants must be made to understand that “researchers can measure anything that exists.”⁸⁸ Initiatives in evidence-based practice are often met with objections like “some things can’t be measured” and “data isn’t everything.” These objections are based on a misunderstanding of what it means to measure something. In the social sciences—where researchers study all manner of vagaries in human experience—measurement is viewed as the reduction of uncertainty.⁸⁹ By that definition, everything *can* be measured. Some degree of disciplined observation and inquiry—beyond the casual gleaning of impressions in daily experience—is always possible. When opponents of evidence-based practice set up a strawman by implying that proponents believe they can achieve certainty through measurement, leaders should be prepared to explain that the expectation and goal are not to achieve certainty. The goal is merely to make more reliable decisions by reducing uncertainty as much as possible. Anything that a participant thinks matters is something they can perceive, and anything they can perceive is something that can be measured, and anything they think matters is worth thinking creatively about how to best measure it.

Second, everything need not be measured in order to test the relationships between a program activity and an outcome. Initiatives in evidence-based practice are often met with objections about considerations *not* included in the scope of the inquiry. While projects should be scoped to encompass as much relevant information as possible, reliance on evidence is itself an improvement over guesswork. The extent and quality of that evidence are matters for discussion and effort, not reasons to forgo evidence-based practice.

⁸⁵ Chance Meyer & Nicole Noël, *Research Spotlight: Iterative Design and the Thrill of Praxis*, RAISING THE BAR, Fall 2022, at 11, 13–14, <https://www.accesslex.org/tools-and-resources/raising-bar-vol-5-issue-4> [<https://perma.cc/V3BW-23TK>].

⁸⁶ *Id.*

⁸⁷ *Id.* at 11–13.

⁸⁸ EARL BABBIE, *THE BASICS OF SOCIAL RESEARCH* 127 (Cengage Learning, 7th ed. 2016).

⁸⁹ *See id.* at 127–38.

Regression analysis can indicate whether there is likely a relationship between an independent variable and an outcome variable,⁹⁰ as well as what percentage of the variance in an outcome variable is attributable to independent variables.⁹¹ Statisticians, social scientists, educational psychologists, and others argue whether and how particular statistical computations tell us exactly what we think they tell us, but nevertheless, an imperfect attempt at aim is better than shooting from the hip in the dark.

In order to move legal education closer to evidence-based decision-making, we need not achieve a level of reliability up to scientific standards—a nominal degree of uncertainty. Experimental research design to achieve the usual one percent or five percent uncertainty expected in experimental studies like medical trials need not be legal education's only alternative to shooting from the hip in the dark. Given the unreliability and bias of legal education's usual modes of decision-making, attempts to use the measurement of evidence to reduce uncertainty as much as possible is a huge step in the right direction.

Third, data-driven practice can be the embodiment, not the opposite, of empathy or care. Initiatives in evidence-based practice are often met with the objection that they reduce complex human learners to ones and zeros. Nothing could be further from the truth. In fact, there is no greater respect for the dignity of learners than to require of ourselves that we utilize evidence rather than gut impressions, add measurable value to their learning journeys, and change learning trajectories in ways that impact learning outcomes. True care demands discipline.

D. Analyze Data and Iterate with Realistic Expectations

Change leaders are dreamers who also manage to be realists or realists who manage to be dreamers. They are not one at the expense of the other. Change without a realistic process is fantasy, and a process without an inspired vision is just another bureaucratic routine likely to reproduce existing power imbalances and entrenched worldviews.

Efforts to improve how programs impact complex problems in complex environments must be allowed a realistic timeline. Too often in education, demands for immediate results send worthy change ideas to the graveyard by rushing or neglecting the complexity of implementation. Law schools looking for solutions must understand that there are no panaceas. There are no smoking guns. There are no simple solutions to complex problems. There are no set-and-forget solutions to unstable problems in ever-changing environments. There are no quick fixes to improve system outcomes that avoid engaging the complexity of a law school organizational system.

As described above in Section I.C., once data collection routines are in place to

⁹⁰ See GREGORY J. PRIVITERA, *STATISTICS FOR THE BEHAVIORAL SCIENCES* 537 (Sage Publications, 3rd ed. 2017).

⁹¹ *Id.* at 563–66.

measure independent variables, regression analysis, and other algorithms can be used to compute the relationships between independent variables and outcome data. Program designers and change leaders can learn what components of a program are most and least related to the outcomes they care about.⁹² Then, over time, they can iterate.⁹³ They can keep what works, drop what does not, and incrementally make programs more effective.⁹⁴ They can *give good ideas a chance to work in practice* by continually fitting their implementation of those ideas to developing conditions and outcomes measures.⁹⁵

When program deliverers feel pressure from associate deans and directors who feel pressure from deans, who feel pressure from universities or boards to fix problems *now* and get immediate results, the evidence-based, iterative design methods they need to solve problems never have a chance to work. No one has time for evidence-based practice when the sky is falling, so they miss their best chance to hold it up.

Legal education, like many fields, has more scholars focused on identifying problems than solutions, and where there are change ideas, there are many more of them than there is realized change. Our research-practice gap is wide. While it is important that we keep pursuing new and exciting ideas about what legal education should be, it is past time we start learning how to make good ideas work in the problematic contexts of law school settings. The characteristics of a successful change initiative described above will help structure and guide the development of a change initiative from a basic idea to a realized program.

II. PART 2: CHANGE IDEAS AS WORTHY RISKS (PROFESSOR SARA J. BERMAN)

Change ideas discussed in this article, some original and others previously proposed but not yet widely adopted, provide possibilities for reform or progress in legal education. We refer to them alternatively as “risks” because changing “the way we’ve always done things” often *feels* risky, especially to non-tenured faculty or professional staff. Further, all law school initiatives require a dedication of resources that are wasted if the initiatives are not successful. All come with opportunity costs; choosing one initiative may mean forgoing another. Thus, though change poses risk, the reform ideas below may be among those risks worth taking.

The change ideas discussed in this article fall into three overlapping goal categories: (1) better alignment between legal education and the profession, (2) promoting continuous professional and personal improvement for students, faculty,

⁹² Chance Meyer & Nicole Noël, *Distinguished Commentary: Beyond Best Practices*, RAISING THE BAR, Winter 2023, at 2, 4, <https://www.accesslex.org/tools-and-resources/raising-bar-vol-6-issue-1> [<https://perma.cc/KV52-4QPS>]; see generally Meyer & Noël, *supra* note 85.

⁹³ See sources cited *supra* notes 85 and 92.

⁹⁴ See sources cited *supra* notes 85 and 92.

⁹⁵ See sources cited *supra* notes 85 and 92.

and staff, including physical and mental health and wellness, and (3) building community while enhancing belonging, cultural humility, and a sense of purpose and meaning. I selected these categories as jumping-off points because they relate to identified and documented problems facing law schools today.⁹⁶ Each change idea below is listed under one of the three goal categories though in some instances the categories overlap, offering the potential to reap multiple benefits from a single change initiative.

Readers may find the word “[m]inor” in the title disingenuous. If based on costs or logistics, some proposals would indeed be significant; others, however, cost little and require little more than new mindsets. The descriptive “minor” was selected not to indicate low cost but to frame the proposals as discrete change ideas that do not require a rethinking of the entire legal education enterprise.

This is not to suggest that radical change may not be warranted. A number of significant studies have detailed the myriad ways in which legal education is flawed and must change.⁹⁷ Deeply troubling problems that flow from the cost of law school and the debt students incur have been well-documented.⁹⁸ Research on mental health challenges among law students—some life-or-death—begs for action to improve wellness if not dismantle the entire system.⁹⁹ Scholars and educators continue to explore explicit issues and profound problems that stem from or are exacerbated by structural racism¹⁰⁰ and by law schools’ “hidden curriculum”¹⁰¹ (unwritten and sometimes unintentional teaching and learning of values, norms,

⁹⁶ See generally EUGENE E. CLARK, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, (Illinois A.B.A. 1992). See generally WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (The Carnegie Foundation for the Advancement of Teaching 2007); see generally AMERICAN BAR ASSOCIATION TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, DRAFT REPORT AND RECOMMENDATIONS (A.B.A. 2013); see generally A.B.A., *News and Articles*, https://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation/newsandarticles/ (last visited Jan. 22, 2024) [<https://perma.cc/XGT2-LXDM>] (example list of articles that followed the publication of each of these).

⁹⁷ See generally sources cited *supra* note 96.

⁹⁸ This is the *raison d’être* for AccessLex. *History*, ACCESSLEX, <https://www.accesslex.org/about/history> [<https://perma.cc/YC2H-P66C>] (last visited Jan. 18, 2024). See also AMERICAN BAR ASSOCIATION TASK FORCE ON THE FUTURE OF LEGAL EDUCATION, *supra* note 96.

⁹⁹ See generally David Jaffe et al., “It is Okay to Not Be Okay”: The 2021 Survey of Law Student Well-Being, 60 U. OF LOUISVILLE L. REV. 439 (2021); see generally Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Wellbeing and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016).

¹⁰⁰ See generally *Law Deans Antiracist Clearinghouse Project*, THE ASSOC. OF AM. L. SCHOOLS, <https://www.aals.org/antiracist-clearinghouse/> (last visited Jan. 29, 2024) [<https://perma.cc/VJ6C-U8VS>].

¹⁰¹ *Symposium on Formation of Professional Identity*, STURM COLL. OF L. AT THE UNIV. OF DENV. (Sept. 2023) <https://www.law.du.edu/content/symposium-formation-professional-identity> [<https://perma.cc/J87Y-PYF6>].

and expectations). Some advocates for change call out failures to remedy problems identified decades ago; others predict change that will become necessary because of future needs and opportunities.¹⁰² Some have called for a two-year rather than three-year JD program, with the third year being devoted entirely to work experience.¹⁰³ Bottom line, there is no shortage of critique of legal education, in and outside the academy, and while it is essential to discuss the possible need to tear down and rebuild the system entirely, that is beyond the scope of this piece. The purpose here is to consider select implementable steps that might have a positive impact on achieving desired goals and, therefore, might be worth trying.

In addition to key studies, influential reform movements continue to change the face of legal education, including expanding clinical legal education, legal writing, academic support, and programs to improve professional identity formation. Clinical legal education has greatly impacted legal education generally and, in particular, its alignment with the profession. The ABA and many jurisdictions now require experiential credits. In theory, if greater funding, influence, and resources were dedicated to clinical education, a law school could achieve significant alignment, especially in a jurisdiction where bar examiners would license graduates based upon successful completion of clinical work. But in practice, seats remain limited in many clinical programs.¹⁰⁴

In addition to reform movements and research on the need for change, significant studies have been conducted on what the legal profession wants from new lawyers.¹⁰⁵ And law schools, now required to publish learning outcomes, are

¹⁰² See generally DAVID I.C. THOMSON, *THE WAY FORWARD FOR LEGAL EDUCATION* (2023).

¹⁰³ *Obama Says Law School Should Be Two, Not Three, Years*, N.Y. Times (Aug. 23, 2013) <https://archive.nytimes.com/dealbook.nytimes.com/2013/08/23/obama-says-law-school-should-be-two-years-not-three/> [<https://perma.cc/7MUV-G4Q4>]; see also THOMSON, *supra* note 102, at 57–70.

¹⁰⁴ See generally Robert Kuehn, *Implementation of the ABA's New Experiential Training Requirement: More Whimper Than Bang*, CLINICAL LEGAL EDUC. ASS'N NEWSL., Spring 2021, at 1, 11–12, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=383-7606 [<https://perma.cc/MJT9-7UYA>] (“It is time for the ABA to address these deficiencies by at a minimum requiring law schools to report actual enrollments in law clinic and simulation courses so that the ABA can better judge the effect of its requirement and prospective applicants to schools will not continue to be potentially deceived by reports of ethereal “available” law clinic opportunities. Yet, the ABA should do much more by heeding the many calls for reform of lawyer training and revisit proposals for fifteen credits of experiential coursework and a mandatory, live-client clinical experience for all J.D. students.”).

¹⁰⁵ See generally Alli Gerkman & Logan Cornett, *Foundations for Practice: The Whole Lawyer and the Character Quotient*, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS. (July 26, 2016), <https://iaals.du.edu/publications/foundations-practice-whole-lawyer-and-character-quotient> [<https://perma.cc/V3NT-YR9G>]; see generally CAL. ATT'Y PRAC. ANALYSIS WORKING GRP., *THE PRACTICE OF LAW IN CALIFORNIA: FINDINGS FROM THE CALIFORNIA ATTORNEY PRACTICE ANALYSIS AND IMPLICATIONS FOR THE CALIFORNIA BAR EXAM* (May 11, 2020), <https://www.calbar.ca.gov/Portals/0/documents/reports/2020/California-Attorney-Practice-Analysis-Working-Group-Report.pdf> [<https://perma.cc/CU4J-54ME>].

adjusting to better align their own target outcomes with practice study findings.¹⁰⁶

A. Proposals to Advance Better Alignment with the Profession

Many studies have urged that legal education be better aligned with the profession.¹⁰⁷ For purposes of this discussion, I assume such alignment is a shared goal.¹⁰⁸

1. Lobby for Change to Attorney Licensing

One of the greatest obstacles to change in law schools is external: the bar exam. Why start here? Isn't it the tail wagging the dog to begin a discussion of reform in legal education with the post-graduate licensing exam? It is. This tail does wag this dog.

Committees tasked with making changes at the law school level obviously cannot change bar exams. But, because institutional reform is so affected by and limited by bar exams, law school stakeholders should provide input to bar examiners and courts as these entities make critically impactful decisions about the future of attorney licensing. This section highlights a few licensing reform proposals that schools may want to encourage jurisdictions to consider and notes how such reform would help law schools to better educate lawyers.¹⁰⁹

Bar exams have outsized influences in many law schools. While everyone who graduates law school should have a reasonable path to licensure, too often law schools respond to external pressure by grasping at unvetted "solutions" to bar pass problems that are not responsive to evidence-based findings and may not be effective in the context of a particular school's student population.

One "solution" is a curricular mandate requiring most or all bar-tested subjects, but as Professor Robert Kuehn states, "It may seem logical that taking more law school courses on subjects that are tested on the bar exam should improve a graduate's chances of passing on the first attempt. Published studies, however, do not support broad claims about the benefit of bar courses."¹¹⁰ Being left with little curricular choice may contribute to decreased happiness and may feel punitive and stigmatizing, especially if the mandate is only imposed on certain students and classmates have the option of taking a dazzling array of timely and important

¹⁰⁶ See generally *Learning Outcomes Database*, UNIV. OF ST. THOMAS SCH. OF L., <https://law.stthomas.edu/about/centers-institutes/holloran-center/learning-outcomes-database/> (last visited Jan. 29, 2024) [<https://perma.cc/NY5G-NTUA>].

¹⁰⁷ See generally SULLIVAN ET AL., *supra* note 96.

¹⁰⁸ It is noted that there are those in the academy who believe law school should remain theoretical and train more doctrine and fewer skills.

¹⁰⁹ See generally LAW. LICENSING RESOURCES, <https://lawyerlicensingresources.org/> (last visited Jan. 29, 2024) [<https://perma.cc/YH7E-JP25>].

¹¹⁰ Robert R. Kuehn & David R. Moss, *A Study of the Relationship Between Law School Coursework and Bar Exam Outcomes*, 68 J. LEGAL EDUC. 623, 627 (2019).

electives.¹¹¹ Additionally, the skills needed for bar passage are not trained in most doctrinal “bar” courses, so forcing students to just take greater numbers of doctrinal courses does not provide “the answer” to bar pass issues. Creating “skills labs” to pair with key doctrinal courses (discussed below) may have a greater effect on bar passage.

Another related “solution” is to push coverage within courses based on what will or will not be tested on the bar exam. In such situations, professors are pressured to sacrifice depth as they rush through content in order to “cover” rarely-tested rules. More time spent on topics (bar-tested or not) about which professors are particularly passionate and can deeply engage the students might have a more positive impact on learning, professional identity formation, and bar passage than trying to “hit” every testable area.

Returning to the premise that licensing has an outsized influence on legal education, why would this pose an *alignment* problem? Some might think it a positive that the curriculum (at least in terms of doctrine) dovetails with the licensing exam. And it might well be a good thing *if* bar exams tested competencies actually needed for today’s practice of law. But, other than in performance testing, bar exams fall short of measuring what practicing lawyers say are the competencies new lawyers should demonstrate.¹¹² We thus have a legal education system that is not well aligned with the profession in part because it is constrained by a licensing exam that does not test the competencies today’s lawyers need¹¹³—the tail wagging the dog.

Criticism of bar exams is not new.¹¹⁴ But calls for reform in legal licensing have hit peak levels,¹¹⁵ convincing even bar examiners of the need for change; the National Conference of Bar Examiners (“NCBE”) and certain jurisdictions are now investing enormous amounts of time and money in efforts to modify existing

¹¹¹ Autonomy is a key component of happiness. See LAWRENCE KRIEGER, *CREATE SUCCESS WITHOUT STRESS IN THE LAW: NEW SCIENCE FOR HAPPINESS, HEALTH, AND POSITIVE PROFESSIONAL IDENTITY* (forthcoming 2023).

¹¹² *Learning Outcomes Database*, *supra* note 106; see generally DEBORAH JONES MERRITT ET AL., *BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE* (Dec. 2020).

¹¹³ See generally Merritt, *supra* note 112; see generally Deborah Jones Merritt, *GPT-4 Beats the Bar Exam*, L. SCH. CAFE (Oct. 26, 2023) <https://www.lawschoolcafe.org/2023/10/26/gpt-4-beats-the-bar-exam/> [<https://perma.cc/4PKM-LRRD>] (one of a series of posts in which Professor Merritt describes a number of examples of misalignment with even the sorts of questions proposed on newer exam, including teaching and testing a very narrow focus on legal rights rather than more holistic, client-centered solutions); see generally JOAN W. HOWARTH, *SHAPING THE BAR: THE FUTURE OF ATTORNEY LICENSING* 66–76 (Stanford Univ. Press, 2022).

¹¹⁴ See generally HOWARTH, *supra* note 113; See generally Joan W. Howarth & Judith Welch Wegner, *Ringin' Changes: Systems Thinking About Legal Licensing*, 13 FLA. INT'L U. L. REV. 383 (2019); see generally Marsha Griggs, *An Epic Fail*, 64 HOWARD L. J. 1 (2020).

¹¹⁵ See generally LAW. LICENSING RESOURCES *supra* note 109.

exams.¹¹⁶ Simultaneously, a number of studies and working groups have convened in various jurisdictions to consider future licensing reform—both via new bar exams and alternate licensing pathways.¹¹⁷

Alternate paths make sense.¹¹⁸ And the success of New Hampshire’s Daniel Webster program beg for other jurisdictions to at least pilot programs with curricular and portfolio requirements during law school that would allow for licensing upon graduation, as well as post-graduation supervised practice pathways.¹¹⁹

Though the NCBE’s new NextGen bar exam has yet to launch, from information that has been released as of this writing¹²⁰ questions emerge: How might the exam continue to impact law school curricular choices? Will the subjects set to be tested from memory change from what has been announced? Will the “foundational knowledge” requirement differ significantly from the level of knowledge required to pass the existing exam? If so, how will that impact applicants, especially those who were lower-performing students in law school, as they prepare for what will still be a timed, multi-day, post-graduation, high-stakes exam?

While there is great reason to laud these thoughtful efforts to better align the bar exam with the competencies that graduates will need in the profession (now and in the near future), there is also reason to be skeptical and wonder whether what emerges will be a “better bar.”¹²¹ It is imperative that full and transparent assessment and evidence-based research continue in both the development and implementation stages.

a. Skill-Specific Minimum Competence

If the main priority of bar exams is to assess skills competency, a simpler, less costly, and more effective step toward positive licensing reform (one that would also assist law school learning) might be to bolster performance test (“PT”) portions of

¹¹⁶ See generally NextGen Bar Exam <https://nextgenbarexam.ncbex.org/> (last visited Jan. 30, 2024) [<https://perma.cc/RSX4-SH86>]; see generally LAW. LICENSING RESOURCES *supra* note 109.

¹¹⁷ Change discussions are underway in a number of states. See *Jurisdictions*, LAW. LICENSING RESOURCES, <https://lawyerlicensingresources.org/jurisdictions> (last visited Jan. 29, 2024) [<https://perma.cc/24YF-TPTC>].

¹¹⁸ See generally Eileen Kaufman, *The Lawyers Justice Corps: A Licensing Pathway to Enhance Access to Justice*, 18 U. SAINT THOMAS L. J. 159 (2022).

¹¹⁹ See ALLI GERKMAN & ELENA HARMAN, AHEAD OF THE CURVE: TURNING LAW STUDENTS INTO LAWYERS: A STUDY OF THE DANIEL WEBSTER SCHOLAR HONORS PROGRAM AT THE UNIVERSITY OF NEW HAMPSHIRE SCHOOL OF LAW (2015); HOWARTH, *supra* note 113, at 123–24.

¹²⁰ See *Content Scope*, NEXTGEN BAR EXAM, <https://nextgenbarexam.ncbex.org/re-ports/content-scope/> (last visited Jan. 30, 2024) (outlines of proposed testable doctrine) [<https://perma.cc/2HCN-VYK3>]; *NextGen Bar Exam Sample Questions*, NEXTGEN BAR EXAM, <https://nextgenbarexam.ncbex.org/nextgen-sample-questions/> [<https://perma.cc/C7K6-4ZAT>] (last visited Jan. 30, 2024) (sample questions).

¹²¹ MERRITT, *supra* note 112, at 67.

bar exams.¹²² PTs have a forty-year track record of assessing basic lawyering skills.¹²³ A recent study confirmed that the PT is seen as the component of current bar exams that is most aligned with the work that new lawyers will actually do in practice.¹²⁴ “The performance test is actually exactly what I did as a first-year lawyer, and still do regularly,” one new lawyer declared.¹²⁵ Another noted, “My first lawyer job I remember thinking, ‘Oh my God it’s just like the performance test.’”¹²⁶ Other focus group members characterized the PT as “valuable,” the “most useful” part of the bar exam, and “very practical.”¹²⁷

PTs are also useful teaching vehicles to train awareness of professional responsibility and cross-cultural competence during law school.¹²⁸ If even a fraction of the amount of time, effort, and money invested in creating new bar exams had instead been put into creating new and better PTs, not only would there be more than enough quality content for PT-based licensing exams nationwide but legal educators across the country would have a treasure trove of useful, relevant, and reliable material for formative assessments to actually train students for practice after graduation.¹²⁹ In other words, having a PT-based licensing exam would help law schools to better educate students.

If skills competency is the goal of a modern licensing exam, PTs may be the answer—both for the future of licensing and the future of law schools.

b. Subject-Specific Minimum Competence

If, along with or instead of minimum skills competence, it is still desirable to ensure that students have some threshold level of content knowledge, perhaps a sensible and aligned approach would be to create discrete subject-specific testing

¹²² See LAW LICENSING RESOURCES, *supra* note 109 (summarizing the 2023 report of the Nevada Commission to Study the Administration of the Bar Exam and the Licensing of Attorneys); see also HOWARTH, *supra* note 113, at 136–46: (“[T]he more NexGen shifts away from memorization of rules to familiarity with and understanding of how to use the rules, the better NextGen will be.”); see also Ben Bratman, *Improving the Performance of the Performance Test: The Key to Meaningful Bar Exam Reform*, 83 UNIV. OF MO.-KAN. CITY L. REV. 565 (2015).

¹²³ Launched as a pilot by the California Committee of Bar Examiners in 1980 and adopted by the NCBE as the multistate performance test in 1997, PTs, similar to closed-universe legal research and writing assignments, test the most essential lawyering skills including legal analysis, factual analysis, critical reading, time management, and problem solving.

¹²⁴ MERRITT, *supra* note 112, at 66–67; See generally HOWARTH, *supra* note 113.

¹²⁵ MERRITT, *supra* note 112, at 67.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ See generally Sara J. Berman, *Integrating Performance Tests into Doctrinal Courses, Skills Courses, and Institutional Benchmark Testing: A Simple Way to Enhance Student Engagement While Furthering Assessment, Bar Passage, and Other ABA Accreditation Objectives*, 42 J. LEGAL PRO. 147 (2018).

¹²⁹ *Id.*

opportunities throughout law school—rather than one memory-dependent¹³⁰ comprehensive exam held months after most students graduate.¹³¹

Presumably, everyone agrees that future physicians should know anatomy. Such consensus about domain knowledge does not exist when it comes to future lawyers.¹³² But, if there were agreement on requisite foundational knowledge for new lawyers, wouldn't all practicing lawyers be expected to *maintain* fluency in tested subjects? If so, should there be periodic testing to maintain licenses,¹³³ given that CLE seldom involves testing? It is likely that attorneys who have been practicing for years would have the requisite skills to pass performance tests, but doubtful they would easily pass closed book essay or multiple-choice questions based on comprehensive, preexisting knowledge.¹³⁴

So, *if we agreed that some sort of licensing exam made sense, and if we further agreed that the exam should test some substantive knowledge, and if still further we were able to reach a consensus on the requisite subject matter, then what?* Does it still does not make sense that testing be in the form of a multi-day comprehensive exam administered two months post-graduation, requiring extensive preparation time and money from already debt-ridden law grads?¹³⁵ A better approach, similar

¹³⁰ It is unclear that the skill of being able to memorize is still a highly prized one for future lawyers.

¹³¹ The new “NextGen” bar exam will still include a performance test component. See sources cited, *supra* note 120. Nevada which has been creating and using its own performance tests and are evolving their bar exam to continue making that component an important part of the exam. See *Exam Subjects and Test Format*, STATE BAR OF NEV., <https://nvbar.org/licensing-compliance/admissions/bar-exam/exam-subjects-and-test-format/> [https://perma.cc/2N3F-E23D] (last visited Jan. 30, 2024).

¹³² The NextGen bar exam will require foundational knowledge of business organizations and the current MBE subjects: civil procedure, constitutional law, contracts, criminal law, criminal procedure, evidence, real property, and torts. For other subjects and certain topic areas within the preceding subject areas, applicants need either have familiarity with or will be provided legal authorities with which to work. California also conducted a study rating the importance of various topics and areas including employment, environmental, and administrative law ranked along with traditionally bar-tested subjects. An interesting conversation starter at attorney networking events is the question: what subjects they deem indispensable for new lawyers. Sources cited, *supra* note 120; CAL. ATT'Y PRAC. ANALYSIS WORKING GRP., *supra* note 105.

¹³³ Steven Foster, *Does the Multistate Bar Exam Validly Measure Attorney Competence?*, 82 OHIO STATE L. J. ONLINE 31 (2021).

¹³⁴ Kathleen Sullivan, at the time an extraordinarily accomplished lawyer and a law school dean, failed the CA bar exam on her first attempt. James Bandler & Nathan Koppel, *Raising the Bar: Even Top Lawyers Fail California Exam*, WALL ST. J. (Dec. 5, 2005, 11:59 pm ET), <https://www.wsj.com/articles/SB113374619258513723> [https://perma.cc/MXX9-RWW2]; Maura Dolan, *A High Bar for Lawyers*, L.A. TIMES (Feb. 21, 2006, 12 AM PT), <https://www.latimes.com/archives/la-xpm-2006-feb-21-me-bar21-story.html> [https://perma.cc/6MSF-B6GL].

¹³⁵ With graduation typically in May, and bar exams in July, grads must often go into further debt

to the MPRE, might take the form of subject-specific tests that could be completed any time between first semester and graduation and re-taken until passed.¹³⁶

Better alignment of legal education with the profession thus may require continued licensing reform. Thoughtful change in licensing at the jurisdictional level would allow law schools much-needed flexibility to make sound, evidence-based curricular decisions and empower students to make informed and self-motivated curricular choices. Additional licensing reform could also allow law schools to add training in subjects and competencies needed in practice today and in the near future, such as those discussed in the next section.

2. Add Non-Legal Subjects to Mandatory and Optional Curricula

Elective course offerings have expanded in recent decades with many law school catalogs listing fifty or more optional courses.¹³⁷ But because most schools still have extensive required courses, especially schools with lower rankings or significant bar passage problems, many students are not permitted to take most of these electives.

Though some large-scale changes have occurred that free up time (for example, contracts and property used to be year-long subjects and are now mostly single-semester courses¹³⁸), the basic 1L curriculum and, consequently the basic required

to do nothing but study for the bar for two months. See <https://www.reuters.com/legal/legalindustry/does-bar-exam-cost-too-much-these-law-profs-think-so-2022-04-22>, citing Professor Marsha Griggs, "Law graduates can expect to pay anywhere from \$2,000 to upwards of \$10,000 in exam fees, character and fitness review costs, laptop fees and, most notably, commercial bar prep courses."

¹³⁶ See what the author deems to be very thoughtful changes in a three-pronged approach to licensing proposed in Nevada. David Faigman & Richard Trachok, *The Nevada Bar Exam Study: Findings*, NEV. LAW. NEWS & NOTES, (July 2023) https://nvbar.org/wp-content/uploads/NevadaLawyer_July2023_News-Bar-Exam-Study-Findings.pdf [<https://perma.cc/A2Z5-A5LQ>] ("The Nevada Supreme Court formed the Nevada Commission to Study the Administration of the Bar Examination and Licensing of Attorneys to look at alternate methods of determining minimum competence. On February 13, 2023, the commission submitted its report to the court, suggesting a three-prong approach to licensing in Nevada: 1) A foundational subject exam similar to the MBE, or in the alternative, the certification of law school content and grades in the seven foundational subjects; 2) Successful completion of a one-day Nevada Performance Test exam, testing basic lawyering abilities analyzing facts, statutes, and cases, similar to the Nevada Performance Test currently offered in the bar exam; and 3) Supervised practice. The court created two task forces to make implementation recommendations on law school certification of the foundational subjects and the supervised practice components. The court issued its order creating the task forces on April 19, 2023 . . . Each task force was directed to report back to the court in April 2024."). See also LAW. LICENSING RESOURCES, *supra* note 109.

¹³⁷ For instance, the George Washington Law School, "offers students the opportunity to sample a broad array of areas of the law with more than 275 elective courses offered each year." *Courses*, GEORGE WASHINGTON UNIV. L., <https://www.law.gwu.edu/courses> [<https://perma.cc/MMN6-W667>] (last visited Jan. 30, 2024).

¹³⁸ Are we convinced that shortening all 1L courses to 1 semester helps learning? It may be that

curriculum has not changed.¹³⁹

As noted above, disagreement abounds as to what law students should study.¹⁴⁰ But if, for discussion purposes, law schools were to require all NextGen-tested subjects, legal writing, and professional responsibility (assuming the MPRE is still in place), that would total twelve required subjects: business organizations, civil procedure, constitutional law, contracts, criminal law, criminal procedure, evidence, real property, torts, professional responsibility, family law, and legal research and writing (LRW).¹⁴¹ With creativity and flexibility, the following non-legal subjects may be added to the curriculum: time management, financial literacy and basic business principles, cybersecurity and fundamentals of tech including AI and privacy, listening, public speaking, networking, and leadership training. Studying even some of these subjects would create a better alignment between schoolwork and the profession and may assist in promoting the other goals discussed below.

Clearly, proposing additional courses to already packed law school schedules is fraught. Hours cannot be added to the week. Students are overloaded. As noted above, there is already scant opportunity for electives in schools that adhere to heavily structured curricula. Thus, in order to add these sorts of new subjects, we might have to consider a new framework—perhaps a quarter system, robust intersessions, weekend intensives, online courses during summers while students are working, and/or new/different credit allocations (for example, including certain subjects as a half-credit or one-credit courses (as compared with most bar-tested subjects which are typically allocated three or four credits).

having some courses as year-long subjects could be useful, allowing for more time to digest and understand complex subjects.

¹³⁹ The need for curricular reform has been written about extensively. *See generally* Jon M. Garon, *Legal Education in Disruption: The Headwinds and Tailwinds of Technology*, 45 CONN. L. REV. 1165 (2013).

¹⁴⁰ *See generally* Mary Wood, *Which Electives Should Students Take in Law School?*, UNIV. OF VA. SCH. OF L. (Oct. 19, 2022), <https://www.law.virginia.edu/news/202210/which-electives-should-students-take-law-school> [<https://perma.cc/X6W5-33M5>].

¹⁴¹ Of course, not every state will adopt NextGen. At the time of this writing, Florida for example still tests many state-specific and federal/national subjects. The Florida Board of Bar Examiners states that the Florida portion of their exam tests: Florida Rules of Civil and Criminal Procedure and the Florida Rules of Judicial Administration comprise one segment. Questions on the Florida Rules of Judicial Administration will address only the following areas: disqualification of trial judges; public access to judicial branch records; minimization of the filing of sensitive information; the qualifications, restrictions, and conditions pertaining to attorneys in their representation of clients in Florida Courts; and the signature of attorneys and parties on pleadings and other papers. The remaining five segments, each of which will embrace no more than three subjects, are selected from the following subjects, including their equitable aspects: Florida Constitutional Law, Federal Constitutional Law; Trusts; Business Entities; Real Property; Evidence; Torts; Wills & Administration of Estates; Criminal Law and Constitutional Criminal Procedure; Contracts; Articles 3 and 9 of the Uniform Commercial Code; Family Law; Chapters 4 & 5 of the Rules Regulating The Florida Bar; and Professionalism. *See generally* FLA. BAR EXAM, <https://www.floridabarexam.org/> [<https://perma.cc/P79V-UX4N>] (last visited Jan. 30, 2024).

Some “new” subjects may also be learned in meaningful co-curricular contexts. For example, some schools have full- or half-days when classes are not held that might be dedicated to professional development and include a range of essential content. These could also be held on weekends and modeled after professional conferences, with speakers or panels at meals, in addition to other substantive sessions and networking opportunities. Third-year students might organize and lead such programming for 1Ls and 2Ls as part of 3L leadership courses.

Assuming logistical issues could be resolved, proposed new subjects that might align legal education with the profession are discussed below.

a. Time Management

The importance of time to lawyers cannot be overstated. Lawyers often bill in time increments (some use project billing) and need to understand time tracking and time management. Lawyers need to understand time as a precious, finite asset.¹⁴² There is often complaint in law firms about how new associates struggle to adapt to the practice of law is that they do not manage their time well. Professors also complain about student time management.¹⁴³ While certain time challenges relate to factors out of individuals’ control, many aspects of time management are teachable.¹⁴⁴ Students can learn to log their time and assess/analyze their productivity with a range of tools, including time-tracking apps. Students might be encouraged to experiment with strategies that maximize time by minimizing distractions and promoting concentration; for example, they may try using noise-cancelling headphones, silencing notifications on cell phones, and strategically suspending certain social media accounts. Developing skills relating to time tracking and time management would help students in law school and in their work as

¹⁴² See generally Sharon Mikki, *How to Track Time with a Billable Hours Chart*, CLIO, <https://www.clio.com/blog/billable-hours-chart/> (last visited Jan. 30, 2024) [<https://perma.cc/J6XM-WY8X>].

¹⁴³ Christine P. Bartholomew, *Time: An Empirical Analysis of Law Student Time Management Deficiencies*, 81 U. CIN. L. REV. 897, 940–41 (2013) (“[W]ith some minor adjustments, we can do a great deal to help students cope with time famine. The critical instruction falls into three categories: teaching students to break down tasks, teaching time allocation skills, and teaching techniques to implement those allocations.”). The author goes on to talk about breaking tasks down (chunking), goal setting, turning goal steps into concrete actions, and teaching time allocation. *Id.* at 941–47.

Viewing learning as a set of achievable short term goals won’t fight time famine without the next steps: (1) generating tasks, and (2) creating a plan for allocating time to complete those tasks . . . Students should be encouraged from the start of their legal education to view it as a job with set work hours each week.

Id. at 945–46. “Integrating [time logs] into the law classroom setting is straightforward. Professors can require students keep a mandatory task billing sheet or its equivalent for at least some assignments.” *Id.* at 947. Then the author goes on to talk about tools, e.g. calendaring and note-taking. *Id.* at 948–52. “Finally, the last part of teaching time management is encouraging students to cogitate on their personal time management techniques.” *Id.* at 951.

¹⁴⁴ See *id.* at 940.

professionals.

And time management is more than just a skill, albeit a critically important one. Time-related issues run deep and relate directly to professional identity. New lawyers must not only learn how to use a time entry app or log entries on a timesheet; they must also learn to consider, characterize, and label time as a professional (and personal) asset. Law students may thus be served by engaging in reflections regarding the notion of “protecting” their time rather than just “managing” it.¹⁴⁵ We protect that which we value.

One of the great shifts in becoming a professional is how one approaches the value of time. Engaging in thought exercises, along with training the “how to” of time management, would help law school align with the profession and help law students cope with an overwhelming amount of work, beginning in 1L. Additionally, time is not simply the hourly rate at which one bills clients. How we use time is a concretization of values. And a national (if not global) reckoning is underway of just how much time today’s students (soon-to-be lawyers) are willing to give to the “work” parts of their lives.¹⁴⁶ This reckoning goes far beyond the legal world and presents a challenge in part because the level of knowledge and skill required to be a great law student and become a great lawyer is significant. There is just no way around it: gaining expertise takes time.¹⁴⁷

At some point, the profession will need to re-configure employment to emphasize job sharing or other ways of limiting the amount of time one works. Remote work may assist in limiting hours by reducing commute times. But, even if the profession’s time conundrum is solvable, it is unclear how law school time-related issues can or should be tackled. In many law schools, discussions around time must be more candid. Some law students understand how much time is required to gain knowledge and skills, and some are willing to make sacrifices (of other things that take time), particularly knowing law school is finite, but others do not understand or accept the amount of time law school requires.¹⁴⁸ They believe

¹⁴⁵ SARA J. BERMAN, 1L SUCCESS: BECOMING A LAWYER, A PROFESSIONAL IDENTITY FORMATION WORKBOOK (West Academic forthcoming Mar. 2024).

¹⁴⁶ Joshua Needelman, *How Quitting a Job Changed My Work-Life Balance*, N.Y. TIMES (Sept. 2, 2022), <https://www.nytimes.com/2022/08/15/style/quitting-work-life-balance-career.html> [<https://perma.cc/QC9F-63X9>]; Heather Tenuto, *State of the Hiring Industry 2024*, RECRUITMENT MARKETING (Nov. 29, 2023), <https://www.businessinsider.com/gen-z-work-life-balance-interview-questions-millennial-genx-managers-2023-3> [<https://perma.cc/6LV5-MDSC>]; Alexandra York & Josée Rose, *Gen Z Job Seekers are Rattling Older Managers by Asking About Work-Life Balance in the First Interview*, BUS. INSIDER (Mar. 29, 2023), <https://www.recruitmentmarketing.com/industry-insights/state-of-the-hiring-industry-2024/> [<https://perma.cc/SJQ6-L468>].

¹⁴⁷ MALCOM GLADWELL, OUTLIERS: THE STORY OF SUCCESS 30–31 (2008).

¹⁴⁸ It is also true that some lower performing students can spend a great deal more time than perhaps might be needed by other students. See Jak Petzold, *How Much Time Do Law Students Spend Preparing for Class?*, LSSE (Jan. 16, 2019), <https://lsse.indiana.edu/blog/how-much-time-do-law-students-spend-preparing-for-class/> [<https://perma.cc/H3Z6-64C5>] (discussing a study on

(or have been led to believe) that they can become good lawyers with a minimal investment in their studies.¹⁴⁹ Leading students to such a belief is a grave disservice. Legal educators should be transparent (crystal clear) about the quantity of time successful students actually spend studying and successful lawyers actually spend lawyering. It does no good to tell students that they only need to spend some arbitrary amount of time outside of class if (a) people learn at different speeds, and (b) it really takes most people a lot longer than “suggested” times indicate, especially in 1L.¹⁵⁰

With some creative re-imagining, law schools may also be able to do more to help students balance study and life commitments. Schools may develop environments and invest in resources that assist students so that they are better able to devote sufficient time to studying while still eating well, exercising, sleeping enough, and having some meaningful social interaction. For example, schools may encourage the following in close proximity to their law schools: healthy food options, including a supermarket on campus; a gym, exercise classes, and daily walking groups or walking office hours; and sleeping pods, such as some airports now have for travelers stuck between flights that students could use during longer breaks between classes.

Schools with significant commuter populations might also address that elephant head-on. For example, schools could potentially facilitate:

- Carpool study groups and commuting “study buddy” systems;
- Van pools to and from various central locations where discussions about required reading could take place in the vans;
- Safe places open very early in the morning, with coffee and breakfast, so that students who want to avoid traffic can arrive early and study before classes;

time preparation for law classes that found, “In 2018, full-time 1L students read for 21.7 hours per week while full-time 3L students read for approximately 15.1 hours. Full-time 2L students fell right in between with an average of 18.3 hours per week.”).

¹⁴⁹ I am not referring here to thoughtful part-time programs designed intentionally for working students but to full-time students not appreciating how much time is actually required for law studies generally. I am also not placing “blame” for this lack of understanding on students alone. It is likely that some obfuscation occurs deliberately in order to bolster enrollments and make it seem like their programs won’t require much time.

¹⁵⁰ Misrepresentations regarding time create a vicious cycle where some students think they “should” be “getting it” in much less time than is actually needed; they then spend less time, do poorly, then have even worse self-esteem/imposter syndrome and the negative cycles spiral. If some of those students, rather than being forced to figure things out on their own and constantly worrying that if they are slow or stupid, had role models who demonstrated how long it really takes to perform certain tasks, such as reading and briefing cases, outlining courses, and critically reading exam fact patterns and organizing answers, they might they feel engage with a growth mindset, believe they have what it takes and that they belong and actually perform better.

- Spaces with healthy dinners and campus safety escorts to walk people safely to parking lots and transit stations for students who want to stay late to return home after traffic; and
- Opportunities for studying while driving or taking public transportation, such as banks of recorded lectures or faculty or student podcasts. Students could also be encouraged to create their own recordings of their own outlines or case briefs.

Educating lawyers takes time. Risks should be taken to explicitly and accurately represent time commitments to students, teach time management and the value of time, and put systems in place that encourage and facilitate more time for studying.¹⁵¹ Hopefully, critical thinking and candid conversations about time will spark change ideas that may lead to positive outcomes on the ground in specific institutions.

b. Financial Literacy and Basic Business for Lawyers

An understanding of basic finance is an essential component of the profession and assists in comprehension of law school reading, starting in the first year. Such knowledge may help law students in summer jobs and will assist them throughout their careers since much of the practice of law revolves around managing money and financial interests¹⁵² of clients and employers, as well as one's own.¹⁵³

Many lawyers run businesses either as part of a firm, partnership or as sole practitioners. Government and nonprofit lawyers develop and manage budgets. Yet self-deprecating law students and faculty continue to repeat the wisecrack that they went to law school because they did not love math or numbers, and we

¹⁵¹ Why this is referred to as a "risk" is because of the fear some express that being transparent with students about the time commitment of law school will hurt future enrollments. It may be better to have smaller classes of people who all graduate and pass the bar, however, than to have larger classes with many who do not.

¹⁵² See John C. Coates, Jesse M. Fried & Kathryn E. Spier, *What Courses Should Law Students Take? Lessons from Harvard's BigLaw Survey*, 64 J. LEGAL EDUC. 443, 451 (2015).

The most salient result from the survey for students is that they should learn accounting and financial statement analysis, as well as corporate finance. These subject areas are viewed as particularly valuable both for lawyers in litigation and as well those working in corporate and transactional practice areas. The survey also suggests that, to the extent opportunities to hone teamwork and develop and extend related 'soft' people skills and capacities during law school are available, students would be well advised to do so. For example, students may have opportunities to work together in teams by participating in advanced or specialized moot court programs, in clinics that are structured with multi-member teams, and in classes where team-based learning is part of the pedagogical design.

¹⁵³ See Melanie Hanson, *Average Law School Debt*, EDUC. DATA INITIATIVE (June 15, 2023), <https://educationdata.org/average-law-school-debt> [https://perma.cc/7B9G-6HLB]; Jane Nam, *Average Law School Debt: 9 Statistics Students Should Know*, BEST COLLEGES (June 5, 2023), <https://www.bestcolleges.com/research/average-law-school-debt-statistics/#:~:text=The%20average%20total%20cost%20of,by%20the%20time%20they%20graduate> [https://perma.cc/S9H4-MLN7] (finding in 2021, law students paid on average \$193,000 for their law degrees, and borrowed on average some \$100,000).

continue to graduate classes of lawyers, many of whom have no direct exposure to or training in financial matters.

Financial literacy is not an ABA standard or tested on bar exams. But, given that so many lawyers will be responsible for managing the finances of others and given that financial improprieties continue to be frequent causes for sanctioning practicing lawyers, law schools might consider adding these subjects to curricular or co-curricular requirements or heavily recommend them as optional courses. Schools that make such programming mandatory might allow law students who have completed undergraduate business majors or have demonstrated business experience to opt out.

One completely cost-free and immediate way for law schools to incorporate at least some financial literacy programming is by taking advantage of programming offered through the nonprofit AccessLex.¹⁵⁴ Law schools can also leverage faculty who are experts in finance and business organizations to create and teach business and financial literacy courses and training.¹⁵⁵

c. *Cybersecurity, Basic Tech, and AI*

Similar to the need for financial literacy, there is a great need for fluency among law students and lawyers with respect to tech, including tech safety, security, privacy, and AI. As one law school library guide notes, “[s]ophisticated technology skills are vital for law students and attorneys, and considered a required competency to practice law,”¹⁵⁶ and highlights Comments to Rule 1.1 of the ABA Model Rules of Professional Conduct that provide, “[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology . . .*”¹⁵⁷

¹⁵⁴ See *MAX by AccessLex*, ACCESSLEX INSTITUTE, <https://www.accesslex.org/max-by-accesslex> [<https://perma.cc/V8LM-XLLG>] (last visited Jan. 9, 2024); *Resources for Administrators*, ACCESSLEX INSTITUTE, <https://www.accesslex.org/resources-administrators> [<https://perma.cc/LV3H-8XYL>] (last visited Jan. 9, 2024).

¹⁵⁵ USC Law Professor Michael Chasalow teaches this sort of a basic business course for 1Ls called **Fundamental Business Principles** as an optional course in fall. *Law 530: Fundamental Business Principles*, USC GOULD SCHOOL OF LAW (Fall 2020) https://catalogue.usc.edu/preview_program.php?catoid=12&poid=13084&returnto=4257 [<https://perma.cc/U7V4-BH3V>]; *USC Catalogue 2020-2021 [Archived Catalogue]*, USC GOULD SCHOOL OF LAW (2020) <https://classes.usc.edu/term-20203/course/law-530/> [<https://perma.cc/NBH2-VSM3>] (“Business Fundamentals introduces students who lack a business background to the basic vocabulary, concepts, and modes of analysis relevant to the organization, financing, and governance of corporations and other enterprises.”). From the author’s conversations with students who have taken the course, they find it invaluable in both their understanding of content in other law school courses and when they are working in law jobs.

¹⁵⁶ *Top Tech Skills for Law Students*, USC Law Library (Oct. 12, 2023), <https://lawlibguides.usc.edu/toptechskills> [<https://perma.cc/RB8P-EFHA>].

¹⁵⁷ *Id.*

We live in an e-world that will become more and more wired. Our students will not work every day in-person, in an office where they only meet clients and work with colleagues face-to-face.¹⁵⁸ Our graduates will work in a hybrid manner, a “new” world but with the same sorts of significant confidentiality obligations that lawyers have had forever. Yet, we regularly communicate through systems that are highly vulnerable to privacy and data breaches, and we are not training law students on how to manage this in their future law practices. Some law schools themselves have had data breaches and students have suffered personally.

To prepare graduates to be minimally competent future attorneys, basic tech awareness is essential, yet it is not a required course, not in ABA standards, and not even suggested as a possible topic for new state-of-the-art bar exams.¹⁵⁹ If law schools are unable in the immediate future to include this among required courses, the subject should be addressed via required colloquia, readings, or co-curricular programming.

Closely related to basic technology and cybersecurity is familiarity with artificial intelligence (“AI”). Legal educators are responding to this new phenomenon with two opposite approaches: (1) lock it down and stick with the way we have always done it, or (2) learn everything we can about it so that we learn how to work with it.

The first (ostrich) approach is understandable but rarely wise. The second is preferable but takes time. It may be possible to combine the two approaches, for example, by closing outside resources for 1Ls but teaching upper-division law students to work with and grapple with AI to prepare for how they will incorporate its usage in practice. A law school committee tasked with producing AI-related policy may find it productive to collaborate with colleagues in other law schools. Some have already begun compiling resources for teaching AI basics in law schools, and interest in incorporating AI in legal education is growing.¹⁶⁰

¹⁵⁸ A 2022 ABA survey yielded, among other findings, that “most lawyers (59%) work more than 40 hours a week. More than 1 in 5 (22%) work more than 50 hours a week.” And that, “[T]he vast majority (87%) said their workplace allows lawyers to work remotely. About 30% of lawyers work from home almost all the time. Another 30% work in the office nearly 100% of the time.” *ABA Survey: Most Lawyers Want Options for Remote Work, Court and Conferences*, A.B.A. (Sept. 28, 2022), <https://www.americanbar.org/news/abanews/aba-news-archives/2022/09/aba-survey-lawyers-remote-work/> [<https://perma.cc/6ZY9-EHCE>].

¹⁵⁹ Many states have adopted a duty to be competent in technology. See Bob Ambrogio, *Another State Adopts Duty of Technology Competence for Lawyers, Bringing Total to 40*, LAW SITES (Mar. 24, 2022), <https://www.lawnext.com/2022/03/another-state-adopts-duty-of-technology-competence-for-lawyers-bringing-total-to-40.html> [<https://perma.cc/WMQ8-2DHD>]. States also provide technology resources. See *Ethics & Technology Resources*, STATE BAR CAL. <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Ethics/Ethics-Technology-Resources>. [<https://perma.cc/EQM2-S9JG>] (last visited Jan. 10, 2024).

¹⁶⁰ See *Artificial Intelligence (AI) for Law Students: Why It’s Essential*, LEXO (Mar. 28, 2023), <https://lexolearning.com/f/artificial-intelligence-ai-for-law-students-why-its-essential> [<https://perma.cc/B2XD-W48V>]; Safaa Deen, *Why Law School Curricula Should Include Artificial*

d. *Listening*

Listening is not an innate talent. Listening is a teachable and learnable skill, and arguably, along with critical reading, the most important professional lawyering skills. But listening is not a required course or tested on the bar exam.¹⁶¹ Listening skills are emphasized in clinical classes, including those that focus on interviewing, counseling, negotiation, ADR, litigation-related skills, and others. Listening could also be taught in a separate mandatory course or woven throughout the curriculum. We can teach students to become more aware of distractions that hamper effective listening and to use tools (such as those used by attorneys to listen to witnesses) to promote more careful listening. In 2022, Professors Lindsey P. Gustafson, Aric K. Short, and Neil W. Hamilton recognized “active listening as a foundational lawyering skill that should be incorporated by schools into their J.D. program learning outcomes” and urged schools “to approach active listening as they do analytical thinking, oral communication, and legal writing—as a competency that should be introduced early, practiced over time, and developed to at least a minimum standard by each student before graduation.”¹⁶²

Some simple additional ways to focus more attention on listening in law schools include:

Intelligence, MCGILL BUS. L. PLATFORM (June 16, 2022), <https://www.mcgill.ca/business-law/article/why-law-school-curricula-should-include-courses-artificial-intelligence> [https://perma.cc/WHS8-ATP3]; Justine Griffin, *Can You Ethically Use AI in Law School*, A.B.A. (Jul. 23, 2023), https://www.americanbar.org/groups/law_students/resources/student-lawyer/professional-development/can-you-ethically-use-ai-in-law-school/ [https://perma.cc/W923-LDC3]; Olivia Cohen, *ChatGPT on Campus: Law Schools Wrestle with AI Tools*, BLOOMBERG L. (Aug. 11, 2023), <https://news.bloomberglaw.com/business-and-practice/chatgpt-on-campus-law-schools-wrestle-with-emerging-ai-tools> [https://perma.cc/QM6D-MT7M]; Joseph Landau & Ron Lazebnik, *Law Schools Must Embrace AI*, NAT'L L. J. ONLINE (Jul. 10, 2023), <https://www.law.com/nationallawjournal/2023/07/10/needs-edit-law-schools-must-embrace-ai/> [https://perma.cc/7BE8-WABB].

¹⁶¹ Foreign language exams test listening and understanding; there are models for testing would-be-lawyers listening skills.

¹⁶² Lindsey P. Gustafson et al., *Teaching and Assessing Active Listening as a Foundational Skill for Lawyers as Leaders, Counselors, Negotiators, and Advocates*, SANTA CLARA L. REV., Mar. 11, 2022, at 4. See also, Susan L. Brooks, *Listening and Relational Learning*, in THE HANDBOOK OF LISTENING 361 (Debra L. Worthington & Graham D. Bodie eds., 2020); Liaquat Ali Khan, *Reflections on Teaching Law – Cultivating Listening Skills*, HUFFPOST (Oct. 30, 2015), https://www.huffpost.com/entry/reflections-on-teaching-l_b_8431232 [https://perma.cc/WRL9-FLDW]; Jennifer Murphy, *Tips for Listening Well in Your First Law School Classes*, SUFFOLK U. BOS. (Sept. 6, 2016), <https://sites.suffolk.edu/legalwritingmatters/2016/09/06/tips-for-listening-well-in-your-first-law-school-classes/> [https://perma.cc/SH6Z-VJQT]; Claire Stamler-Goody, *Listening Across Differences*, U. CHI. L. SCHOOL (Apr. 28, 2020), <https://www.law.uchicago.edu/news/listening-across-differences> [https://perma.cc/V-TP7-5RZQ].

- Professors stopping periodically in class so that students can repeat a response another student just gave or a question that another student asked, or asking students to summarize the main points addressed in class at the end of a class session;¹⁶³
- Role modeling effective listening;¹⁶⁴ and
- Bringing in trial lawyers, mediators, and others who are experts in listening to give seminars on how to listen to clients.

Outside legal education, listening is a robust area of research resulting in evidence-based guidance.¹⁶⁵

e. Plain English Translation for Fluency

Related to listening (discussed above) and public speaking (discussed below) is a concept called plain English translation (formerly called lay translation), essentially explaining legal doctrine and procedure in plain English so that non-lawyer clients can easily understand. Training this skill ties directly to assisting students in developing empathy and cultural competency, as well as other aspects of effective listening and speaking skills, and relates here to the goals of alignment with the profession and engagement and belonging.

Jargon defines particular domains. It serves to exclude, and it serves to create and foster expertise. Every field has its own jargon. Explaining complex legal doctrine and reasoning in plain English often helps students to understand the material that remains a mystery when shrouded in lingo. And this is not just an effective pedagogical tool; it is preparation for the profession, as students will eventually have to explain concepts to clients, non-lawyer professionals, support staff, and others.¹⁶⁶

Methods of incorporating plain English translation into legal education include:

- Administer formative assessments and performance tests that require drafting letters to non-lawyer clients.

¹⁶³ Students can independently participate in class by noting for themselves what they heard about a given topic or in response to a given question so that no one is “called on” but students still have a measure to assess the effectiveness of their listening.

¹⁶⁴ Using reflective communication tools and/or employing phrases such as, “What I believe I hear you saying is”

¹⁶⁵ MICHAEL PURDY, LISTENING IN EVERYDAY LIFE 1–20 (Deborah Borisoff ed., 2nd ed. 1996); Tony Lynch, *Theoretical Perspectives on Listening*, 18 ANN. REV. APPLIED LINGUISTICS 3, 3–19 (1998); David J. Mendelsohn, *Teaching Listening*, 18 ANN. REV. APPLIED LINGUISTICS 81, 81–101 (1998); Suzanne Rice, *Toward an Aristotelian Conception of Good Listening*, 61 EDUC. THEORY 141, 148–153 (2011).

¹⁶⁶ See Sara J. Berman, *Say it in Your Own Words: Translate and Reverse Engineer Legal Jargon to Read More Effectively*, The Learning Curve, Summer/Autumn 2017, at 8–11; Sara J. Berman, Rachel Croskery-Roberts, Olympia Duhart, & Alison Mikkor, *Demystifying the Lawyering Skills Classroom for First-Generation Students*, chapter in FOSTERING FIRST GEN SUCCESS AND INCLUSION (Britany L. Raposa ed., forthcoming Apr. 2024).

- Ask students periodically to explain concepts to a fictitious, non-lawyer family member.
- Pause at least once each class and ask students to write an explanation to a “very smart sixteen-year-old”¹⁶⁷ of whatever concept was just covered.
- Include quizzes every few classes phrased as client interviews where students must explain a concept to a client.¹⁶⁸ These can be short hypos that students must write out answers to as if they were speaking with a client, answered in teams/groups, or students could be called on to come up and roleplay the client and lawyer in front of the class. Students should be told that the client is not a lawyer so that the students do the work of the plain English translation.
- Assign readings to law students that explain concepts in the language they might use with clients.¹⁶⁹

f. Public Speaking, In-Person and Online

Much of the work that lawyers do involves public speaking. Whether in courtrooms or conference rooms, by Zoom or phone, attorneys spend hours each day communicating with others—lawyers and non-lawyers alike. Like listening, public speaking is not a divine gift but a trainable skill.

Universities and some law schools list public speaking courses and programs, yet judging by the vast numbers of training in bar associations and other post-law school professional environments, many law students, people whose livelihoods will depend on communication, graduate without having honed this skill.

Traditional legal education includes “cold calling,” where individual students are expected to answer questions under pressure in class while classmates watch. This provides some, albeit minimal, first-hand exposure to public speaking for those called on. For some students, cold calls are more hazing than training. Not only do they not help, but they humiliate and deter students from seeking the kind of feedback that might actually improve their speaking skills.

Regardless of whether inviting or requiring student responses, public speaking opportunities in law school classes are minimal, given high enrollments in core courses, especially in 1L. Some students find more opportunities to speak in upper-division seminars and clinics. And in clinical courses, especially in simulations, students may be recorded such that faculty can critique and suggest improvements

¹⁶⁷ I use the “very smart 16-year-old” as a teaching tool, representing someone relatable who is inquisitive and has no legal background. SARA J. BERMAN, *BAR EXAM SUCCESS A COMPREHENSIVE GUIDE* 102 (2nd ed. 2023).

¹⁶⁸ For example, a client says that they were owed money but never had a written contract. Ask a student to explain to the client which kinds of contracts do and do not have to be in writing and why.

¹⁶⁹ See SARA J. BERMAN & PAUL BERGMAN, *REPRESENT YOURSELF IN COURT: HOW TO PREPARE & TRY A WINNING CASE* (11th ed. 2022); SARA J. BERMAN & PAUL BERGMAN, *THE CRIMINAL LAW HANDBOOK: KNOW YOUR RIGHTS, SURVIVE THE SYSTEM* (Richard Stim ed., 18th ed. 2024).

in communication skills, similar to the way athletes are trained. Similar methodologies could be used throughout law school so that all students could have exposure to public speaking training. Professors could require students to make brief videos of themselves using plain English translation (discussed above) to explain concepts covered in class or “teaching” problems.¹⁷⁰ Students could be invited to share announcements in classes, or through Student Affairs in audio newsletters, or develop and lead a school-wide podcast that covers school-related activities.

Law schools could develop and require or encourage attendance in dedicated public speaking courses. There are many resources in and outside of legal education for those who want to create courses or programming on public speaking in their law schools.¹⁷¹

g. Networking & Etiquette, In-Person and Online

Change ideas to incorporate additional networking and etiquette training are not suggestions for cookie-cutter requirements that all would-be lawyers look alike or sound alike. Rather, the possibility here would be to provide exposure such that law students could gain experience during school that would make professional events such as conferences, dinners, happy hours, meetings, and interviews more comfortable and more rewarding.

There is not one way to network, and networking is something people have been learning on their own forever. But it is a skill, and providing some sound instruction might not only have the primary effects of preparing people for such

¹⁷⁰ I have received positive feedback on assignments requiring students to create short videos as teaching tools and posted them in “media galleries” on the course learning management system (LMS) to share with classmates.

¹⁷¹ MOLLY BISHOP SHADEL, *FINDING YOUR VOICE IN LAW SCHOOL; MASTERING CLASSROOM COLD CALLS, JOB INTERVIEWS, AND OTHER VERBAL CHALLENGES* (Carolina Academic Press 2013); Heidi K. Brown, *Empowering Law Students to Overcome Extreme Public Speaking Anxiety: Why “Just Be It” Works and “Just Do It” Doesn’t*, 53 DUQ. L. REV. 181 (2015); D. Joshua Crowfoot, *Young Lawyers Network: How to Improve Your Public Speaking*, 33 Prob. & Prop. Mag. 5 (Sept./Oct. 2019); Andrew Martin, *The Art of Elocution*, UVA LAWYER (Spring 2016), <https://www.law.virginia.edu/uvalawyer/spring-2016/article/art-elocution> [<https://perma.cc/VUY9-TD8H>]; Henry T. Wihnyk, *Syllabus: Public Speaking for Lawyers, Course 6930*, UNIV. OF FLA. COLL. OF L. (Spring 2019), <https://www.law.ufl.edu/law/wp-content/uploads/Wihnyk-Public-Speaking-for-Lawyers-S19.pdf> [<https://perma.cc/S5HY-QNMY>]; *Courses: Intensive Communication Skills for Lawyers*, BROOKLYN L. SCH., <https://www.brooklaw.edu/Courses/Intensive-Communication-Skills-for-Lawyers> [<https://perma.cc/E8C9-RYUG>] (last visited Jan. 26, 2024); *Speaker Training Program*, CAL. LAWYERS ASS’N, <https://calawyers.org/california-lawyers-association/speaker-training-program/> [<https://perma.cc/CHR9-QLX>] (last visited Jan. 26, 2024); *Public Speaking Tips for Law Students and Lawyers*, JD ADVISING, <https://jdadvising.com/public-speaking-tips-law-students-lawyers/> [<https://perma.cc/88TR-PKEY>] (last visited Jan. 26, 2024); *Spoken Like a True Lawyer: Public Speaking Strategies for Trial Attorneys*, ATL ACAD. OF CONTINUING LEGAL EDUC., <https://www.nacle.com/CLE/Courses/Spoken-Like-a-True-Lawyer-Public-Speaking-Strategies-for-Trial-Attorneys-368> [<https://perma.cc/4YAU-64P2>] (last visited Jan. 26, 2024).

experiences in the profession but might have secondary effects of building confidence, enhancing community, and encouraging belonging.

There are infinite numbers of networking opportunities and much urging of advice such as “*be confident*” (but don’t be arrogant), “*be memorable*,” and “*be outgoing*.” This focus on characteristics (who we *are or should be*) is not helpful. Training is.

Etiquette refers to “a set of customs and rules for polite behavior, especially among a particular class of people or in a particular profession.”¹⁷² There is no single lawyer etiquette code book, thankfully. What is considered custom or polite today differs radically from what was expected even in the recent past, and change continues rapidly. It could, therefore, be a landmine for law schools to enter this domain, but, implemented with care, focus on etiquette and networking could benefit students, especially if seen through a community-building lens.¹⁷³

One possible way to train networking skills while teaching about certain customs, such as those connected with professional meals, is with a teaching dinner.¹⁷⁴ A professor and/or an alum might be seated at every table, and part of the discussion/teaching could be about what forks to use, how to order wine and perhaps practicing refusing alcohol altogether when one is driving or does not want to drink. Another part of the dinner discussion might include practicing “elevator” speeches and conversation starters, such as “What is the most interesting project you are working on now and why?” and “What was the most challenging case you have ever worked on and why?”¹⁷⁵

¹⁷² COLLINS DICTIONARY (14th ed., 2023).

¹⁷³ Some schools keep collections of business clothing such as blazers and jackets for student to borrow for interviews when they don’t have or don’t want to buy interview clothing. See *Professional Clothing Closet*, KY. UNIV. CAREER CTR., <https://career.ku.edu/professional-clothing-closet> [<https://perma.cc/6J9M-YM34>] (last visited Jan 26, 2024).

¹⁷⁴ See *Etiquette Guide*, UNIV. OF MICH. L., <https://events.law.umich.edu/eiw/wp-content/uploads/sites/15/2019/05/Etiquette-Guide.pdf>; see also *Dinner Event Teaches Law School Students the Art of Etiquette*, THE UNIV. OF CHI. L. SCH., <https://www.theindiana-lawyer.com/articles/indiana-law-students-learn-etiquette-dos-and-donts> [<https://perma.cc/9SHM-C39T>] (last visited Apr. 9, 2024). See also *Networking Within the Law School*, BERKLEYLAW, <https://www.law.berkeley.edu/event/networking-within-the-law-school/> [<https://perma.cc/3DZ8-HNGS>] (last visited Apr. 9, 2024). Stating about LL.M. Students:

Past students have continually told us that one of the most valuable things they got out of their LL.M. program at Berkeley was the relationships they developed with professors and fellow students while at Berkeley Law. Come learn more about this essential skill. We’ll discuss evaluating your network, developing a networking mindset, cultivating networking skills, and networking when there is a power imbalance

Id.

¹⁷⁵ *What is an Elevator Pitch and why do I need one?*, PRINCETON UNIV. https://careerdevelopment.princeton.edu/sites/g/files/toruqf1041/files/media/elevator_pitch.pdf [<https://perma.cc/FD73-CGA>] (last visited Jan. 27, 2024).

In addition to dinners, training may be woven into alumni mentoring programs.¹⁷⁶ Lawyers who are particularly skilled in making effective elevator pitches, “circulating” in a crowd, and learning and remembering peoples’ names might be brought to the law school to lead workshops. There are also possibilities to collaborate with local bar associations to implement networking and etiquette programming. Please find information and resources in the following.¹⁷⁷

h. Leadership, Management, Giving and Receiving Feedback

For similar reasons to those noted above as to why future lawyers need training in basic finance, listening, public speaking, and other professional skills, future lawyers need leadership training. Some law schools offer courses or co-curricular leadership training.¹⁷⁸ And, in their 2022 book *Leading in Law Leadership*

¹⁷⁶ 3L networking events can be effectively combined with alumni mentoring programs. Readers should feel free to contact the author for information about implementing such programming.

¹⁷⁷ Christine Charnosky, *Ahead of the Curve: Etiquette Lessons for First Generation Law Students*, ALM L. (Nov. 7, 2022), <https://www.law.com/2022/11/07/ahead-of-the-curve-etiquette-lessons-for-first-generation-law-students/> [<https://perma.cc/W66V-GM9L>]; Roy S. Ginsburg, *Networking ROI: Understanding the Return on Investment for Lawyers*, WOLF MGMT. CONSULTANTS, <https://www.wolfmotivation.com/articles/networking-roi-understanding-the-return-on-investment-for-lawyers> [<https://perma.cc/5AFJ-UADM>] (last visited Jan. 27, 2024); Richard Goldman, *Networking: How Successful Lawyers do it and why you Should too*, A.B.A. J. (Jan. 10, 2019), https://www.abajournal.com/voice/article/networking_how_successful_lawyers_do_it_and_why_you_should_too [<https://perma.cc/H4RK-EXXE>]; Roy S. Ginsburg, *Networking ROI: Understanding the Return on Investment for Lawyers*, WOLF MANAGEMENT CONSULTANTS, <https://www.wolfmotivation.com/articles/networking-roi-understanding-the-return-on-investment-for-lawyers> [<https://perma.cc/5AFJ-UADM>] (last visited Jan. 27, 2024); Ashley Heidemann, *How to Build a Network in Law School*, NAT’L JURIST (Nov. 18, 2022), <https://nationaljurist.com/uncategorized/how-to-build-a-network-in-law-school/> [<https://perma.cc/WM9Y-HJMY>]; Melissa Walker, *Etiquette 101: Divisive Social Rules that Cause Anxiety*, FIRST GEN JD (Apr. 29, 2019), <https://firstgenjd.com/2019/04/29/etiquette-101-divisive-social-rules-that-cause-anxiety/> [<https://perma.cc/545F-JV4T>]; Melissia Walker, *Networking 101*, FIRST GEN JD (Feb. 18, 2019), <https://firstgenjd.com/2019/02/18/networking-101/> [<https://perma.cc/JNY2-58RJ>]; Archive of Event Calendar, NEW YORK L. SCH., <https://www.nyls.edu/events/first-generation-professionals-annual-etiquette-dinner/> [<https://perma.cc/9EDE-SX26>] (last visited Jan. 27, 2024); *Email Etiquette*, MARQUETTE UNIV., <https://www.marquette.edu/first-generation-students/email-etiquette.php> [<https://perma.cc/9KA4-PJPP>] (last visited Jan. 27, 2024); *How to Network Like a Pro in Law School*, LAWYER MONTHLY (Jan 27. 2022), <https://www.lawyer-monthly.com/2022/01/how-to-network-like-a-pro-in-law-school/> [<https://perma.cc/4FSW-DXRZ>]; *Mastering the Art of Networking at Bar Association Parties: A Lawyers Guide*, ALAMEDA CNTY. BAR ASS’N (MAY 30, 2023), <https://www.acbanet.org/2023/05/30/mastering-the-art-of-networking-at-bar-association-parties-a-lawyers-guide/> [<https://perma.cc/84D3-ERXR>]; *Networking for Lawyers*, BLOOMBERG L. (Feb. 23, 2023), <https://pro.bloomberglaw.com/insights/business-of-law/networking-for-lawyers/> [<https://perma.cc/5F9E-UFQ3>].

¹⁷⁸ April Mara Barton, *Teaching Lawyers to Think Like Leaders: The Next Big Shift in Legal Education*, 73 BAYLOR L. REV. 116 (2021); Neil Hamilton, *Fostering and Assessing Law Student*

Development for Law Students, Donald J. Polden and Barry Posner provide extensive explanations of how to train leadership in law schools, paving the way for students to lead in their workplaces and society.¹⁷⁹ Law schools can use this book as part of a professional identity formation or leadership course, as content for a school-wide book club discussion, or as part of co-curricular leadership training. Committees tasked with creating leadership education in law schools might begin searching for other implementable strategies with this book.

Additionally, there are leadership training opportunities in the work of organizations students are already engaged in. Students learn mostly by doing in such situations, but they could also learn from guided reflection and intentional debriefing. For example, schools can offer sessions on how to run meetings or how to plan events for student org leaders. Faculty advisors can ask student leaders to assess the activities they host and develop plans to improve those going forward. Student orgs could draft and work to implement strategic plans. Students could also host conferences.

B. Proposals to Promote Continuous Improvement

This section includes proposals to address academic and professional improvement as well as personal improvement, including wellness, well-being, and career satisfaction. This section starts with changing ideas for law school grading systems¹⁸⁰ because grades are the law school currency; they translate directly into job opportunities (and salary). The pressures imposed on students from hierarchical grading not only fail to promote continuous improvement, they can affirmatively discourage future learning¹⁸¹ and likely hamper wellness goals discussed below.

1. Change Law School Grading

The current law school grading system rewards those who achieve exceptional

Teamwork and Team Leadership Skills, 48 HOFSTRA L. REV. 619 (2020); Faith Rivers James, *Engaging Law Students in Leadership*, 30 SAINT LOUIS UNIV. PUB. L. REV. 409 (2011); Erwin Chemerinsky, Podcast: *Teaching Leadership in Law Schools*, (Oct. 2, 2023), <https://www.law.berkeley.edu/podcast-episode/teaching-leadership-in-law-schools/> [<https://perma.cc/Z7NP-DRUC>]; Kellye Y. Testy, *Embracing Leadership Development in Legal Education*, L. SCH. ADMISSION COUNCIL (Mar. 27, 2019), <https://www.lsac.org/blog/embracing-leadership-development-legal-education> [<https://perma.cc/JP9J-6LH4>]; William A. Treanor & Hillary A. Sale, *It's Time to Educate Lawyers as Leaders*, BLOOMBERG L. (Dec. 2, 2020), <https://news.bloomberglaw.com/us-law-week/its-time-to-educate-lawyers-as-leaders> [<https://perma.cc/47LL-DU9R>].

¹⁷⁹ DONALD J. POLDEN & BARRY Z. POSNER, LEADING IN LAW LEADERSHIP DEVELOPMENT FOR LAW STUDENTS (2022).

¹⁸⁰ Danielle McCain, *Embracing a Continuous Improvement Mindset in Student Drafting Through Development Writing*, 34 SECOND DRAFT 1 (Aug. 1, 2021).

¹⁸¹ Research shows that if a learner enjoys performing a learning activity, but then you ask them to do the activity to earn a reward, they will later be disincentivized to do the activity without a reward. See Mark R. Lepper et al., *Undermining Children's Intrinsic Interest with Extrinsic Reward*, 28(1) J. PERSONALITY & SOCIAL PSYCH. 129 (1973).

scores in their first semester. With spoils such as BigLaw summer jobs, law review,¹⁸² scholarships, and lavish praise, early achievers are rewarded in a disproportionate manner to everyone else in the class.

Because of their outsized importance, forced grading curves and rankings, and the fact that course grades are still based largely on a single final exam, grades provoke anxiety and negativity. The grading situation demoralizes students, including hard workers who just did not immediately understand how to perform well on law school exams.¹⁸³ The system disincentivizes improvement.¹⁸⁴

Is this the law school environment we really want? We all understand that only ten percent of the class can be in the top ten percent. Do we really want to make the other ninety percent feel lousy?¹⁸⁵ Don't we believe that everyone we admit into law school can pass the bar and become great lawyers—meaning they serve their clients well? If not, why are we admitting them?¹⁸⁶ And what message are we sending law students? Catch on quickly, or you are a loser. Is the lawyer who wins her first case “set” for life? Of course not. We are a profession that demands lifelong learning and continuous improvement; we should praise, support, and reward improvement in law school.

While I was directing the academic and bar success research program I founded at the AccessLex Center for Legal Education Excellence, a study was commenced assessing factors that relate to bar success. Based on my experience, I suggested the research team look into GPA growth possibly correlating with bar success. The resulting study confirmed that indeed GPA growth in law schools is significant in predicting bar exam success.¹⁸⁷ With empirical studies that prove growth and improvement are significant success predictors, what policies could law schools pilot, and what risks are worth trying to place greater emphasis on improvement and less importance on instant success? Major change from the current system to a competency-based model may be the most effective step forward. In the meantime, here are some possibilities for smaller changes to grading that might at least help promote continuous improvement:

¹⁸² Some schools include “write on” as well as “grade on” opportunities for law review.

¹⁸³ See sources cited, *supra* note 178.

¹⁸⁴ Student may conclude, “why bother trying to improve when my first semester GPA puts me in a hole I can never dig out of . . .” See Steven Chung, *The Cruel Grading System of Law-Ranked Law Schools*, ABOVE THE L. (May 27, 2015), [https://abovethelaw.com/2015/05/the-cruel-grading-system-of-low-ranked-law-schools/\[https://perma.cc/DK9H-TFSP\]](https://abovethelaw.com/2015/05/the-cruel-grading-system-of-low-ranked-law-schools/[https://perma.cc/DK9H-TFSP]) (reporting on demoralizing grade situation in low-ranked schools).

¹⁸⁵ See Lawrence S. Krieger & Kennon M. Sheldon, *Does Legal Education Have Negative Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAVIORAL SCI. L. 261 (2002).

¹⁸⁶ There is an old joke: What do you call the person who was last in their class in medical school? Doctor.

¹⁸⁷ Aaron N. Taylor et al., *It's Not Where you Start, It's How You Finish: Predicting Law School and Bar Success* (AccessLex working Paper No. 21-03) at 2.

- List grades as annual averages rather than cumulative averages—giving a clean slate each year.¹⁸⁸
- Institute law school “1L forgiveness” approaches modeled after undergraduate “freshman forgiveness” where the first semester would not “count” toward one’s law school GPA.¹⁸⁹ This may help balance the fact that the first semester of law school is often the most challenging.¹⁹⁰
- Institute an intensive at the beginning of law school where incoming 1Ls would take only one course. The substantive content might include a whole course, such as torts, or criminal law or part of an existing course—such as intentional torts¹⁹¹ or theft crimes. In addition to doctrinal learning, such a program could include skills training (beyond what is typically offered at orientations), formative assessments, and a final exam. The course could be graded, but the grades would not count or be listed on official transcripts. Once students “get the hang of” law school within the context of one doctrinal subject, the rest of the term and subsequent years would include studying multiple subjects simultaneously. The “intensive” approach might provide incoming students with tools to transition rather than putting them through sink-or-swim stress tests and then only rewarding those who master swimming most quickly. Intensive language and culture programs have long been used to acclimate those who study abroad in a foreign language. And law school, for most students (especially first-generation students), is a lot like learning in a foreign country.¹⁹² A variation on the single-subject intensive could be an intensive that covers one ungraded module in each of three core classes—for example, just intentional torts, contract formation (maybe even just offer and

¹⁸⁸ Sara Berman, *Best Practices: What Law Schools Might Learn from One of Basketball's Greatest Coaches, John Wooden*, BEST PRACS. FOR LEGAL EDUC. (Nov. 16, 2018), <https://bestpracticeslegaled.com/2018/11/16/best-practices-what-law-schools-might-learn-from-one-of-basketball's-greatest-coaches-john-wooden/> [<https://perma.cc/AN4Q-BAG5>].

¹⁸⁹ All credit for the idea of possibly applying “freshman forgiveness” to the law school context goes to AccessLex CEO Christopher Chapman with whom I first discussed this in 2018. See also Xuan Jiang & Kelly Chen, *Could Revamped Grade-Forgiveness Policies Promote Student Success in College?*, BROOKINGS (Mar. 29, 2022), <https://www.brookings.edu/articles/could-revamped-grade-forgiveness-policies-promote-student-success-in-college/> [<https://perma.cc/P5R2-Y4UW>] (citing Xuan Jiang et al., *A Second Change at Success: Can Grade Forgiveness Promote Academic Risk Taking in College*, (NBER, Working Paper No. 29493)).

¹⁹⁰ LSAC does not use grades that have been “forgiven” by an undergraduate institution and erased from the transcript in their reporting for law school admissions purposes. See LSAC, *Transcript Summarization*, L. SCH. ADMISSIONS COUNCIL, <https://www.lsac.org/applying-law-school/jd-application-process/cas/requesting/transcript-summarization> [<https://perma.cc/U64P-WJC6>] (last visited Jan. 27, 2024).

¹⁹¹ The author teaches a weeklong pre-law program using intentional torts.

¹⁹² See Petzold, *supra* note 148 (introduction describes law schools as countries).

acceptance) and non-homicidal injuries to a person in criminal law. This would accomplish similar goals, creating an environment designed intentionally to help students acclimate in low-stakes settings.

- Allow students to drop their lowest grade each semester so long as they complete a rigorous assessment of what went wrong and how to improve.¹⁹³
- Allow students to re-take exams several months after a course ends and have the first and second grades both listed on transcripts, similar to taking the LSAT more than once.
- Allow students the option of taking greater numbers of classes as “pass-fail.”
- Schools can also include more curricular and/or co-curricular content with feedback that does not count toward GPA, but that can be shown to employers. It may be possible for employers to assess student performance through traditional competitions such as moot court or more innovative competitions such as the client counseling competition¹⁹⁴ or the Diversity Case Competition.¹⁹⁵

Beyond the change ideas above, which may spark thoughts on reform proposals for specific institutions, additional resources can assist those seeking to reform grading policies.¹⁹⁶

¹⁹³ This may be a standalone assessment of performance in a particular course or part of a required personal “business plan” with annual updates or updates each semester. Olga V. Mack & Katia Bloom, *Drafting a Personal Business Plan to Drive Professional Success*, ABOVE THE L. (Nov. 28, 2016), <https://abovethelaw.com/2016/11/drafting-a-personal-business-plan-to-drive-professional-success/> [https://perma.cc/Y6CA-C3TP]; Sara J. Berman, *Why it Helps to Craft a Personal Mission Statement and Declare Your Law School Purpose*, A.B.A. (Jan. 1, 2022), https://www.americanbar.org/groups/law_students/resources/student-lawyer/professional-development/why-it-helps-to-craft-a-personal-mission-statement/ [https://perma.cc/7SG2-75EW].

¹⁹⁴ *Client Counseling Competition*, A.B.A., https://www.americanbar.org/groups/law_students/events/competitions/client-counseling/ [https://perma.cc/U482-NK7N] (last visited Jan. 27, 2024) (describing what was first established by Los Angeles attorney Louis M. Brown, the father of preventive law, as the Client Counseling Competition).

¹⁹⁵ Sherry English, *University of Cincinnati College Law Students Place First, Second at Case Competition*, UNIV. OF CINCINNATI (Jan. 20, 2023), <https://www.uc.edu/news/articles/2023/01/cincinnati-law-students-win-diversity-case-competition.html> [https://perma.cc/L4V9-AG9R].

¹⁹⁶ Jessica L. Clark, *Grades Matter; Legal Writing Grades Matter Most*, 32(3) MISS. C. L. REV. 375 (2014); Neil W. Hamilton & Jerome M. Organ, *Learning Outcomes that Law Schools Have Adopted: Seizing the Opportunity to Help Students, Legal Employers, Clients, and the Law School*, 69 J. LEGAL EDUC. 1 (2022); DeShun Harris, *Let’s Talk About Grading, Maybe: Using Transparency About the Grading Process to Aid in Student Learning*, 45 SEATTLE UNIV. L. REV. 805 (2022); Leslie Rose, *Norm-*

2. Institute Skills Labs

Designing and instituting labs as companions for core doctrinal courses would assist efforts to promote continuous improvement in building skills that legal employers want new lawyers to possess generally and augment contextual learning for law students. Professors teaching doctrinal classes, especially in large lecture settings, typically do not have the time or the bandwidth to train skills in the context of their course area.¹⁹⁷ But law schools could pilot skills labs where students would train analytical, critical reading, exam-taking skills in subject-specific contexts.

This may be particularly important in 1L, where students learn basic skills. So, for example, students enrolled in a three or four-credit 1L contracts course could simultaneously be enrolled in a one-credit small section contracts skills lab. Note that LRW classes are often held in small sections for similar reasons so that faculty can assess, critique, and provide feedback on student work products throughout the semester. The author has taught such a skills lab and has information on file for those wishing to pilot lab-type courses.¹⁹⁸

3. Create Programming Around Mental Health and Substance Use

Mental health and wellness, including substance use, are not merely significant and critically important topics that need to be addressed in law schools; they are existential. They merit in-depth discussion. The fact that they are only briefly discussed here in no way suggests the author does not believe they are essential.

Recent studies have found law students are in danger zones, not just in terms of stress and anxiety but in terms of suicide, depression, post-traumatic disorders, illegal and legal drug use, sleep-deprivation-related impairments, and other severe challenges.¹⁹⁹ And the ABA recently updated the standards regarding mental health to require that information be provided to law students on “well-being

Referenced Grading in the Age of Carnegie: Why Criteria-Referenced Grading Is More Consistent with Current Trends in Legal Education and How Legal Writing Can Lead the Way, 17 J. LEGAL WRITING INSTITUTE 123 (2011); Christopher Corts, *How to Make PIF Assessments More Accurate, Bias-Resistant, and Motivational for All Students*, UNIV. OF ST. THOMAS (Oct. 3, 2023), <https://blogs.stthomas.edu/holloran-center/how-to-make-pif-assessments-more-accurate-bias-resistant-and-motivational-for-all-students/> [<https://perma.cc/JQQ4-NHWM>].

¹⁹⁷ Alice M. Noble-Allgire, *Desegregating the Law School Curriculum: How to Integrate More of the Skills and Values Identified by the MacCrate Report Into a Doctrinal Course*, 3 NEV. L. J. 32 (2002).

¹⁹⁸ The author teaches an evidence-based lab that follows the proposed model. See also Camille M. Davidson, *Practical, Preparation, Student Focused, Serving the Community – The Wills Clinical Lab Experience*, 35 S. ILL. UNIV. L. J. 1 (2010); *Clinical Program*, CORNELL, <https://www.lawschool.cornell.edu/academics/experiential-learning/clinical-program/> [<https://perma.cc/V2MF-DFQQ>] (last visited Jan. 27, 2024).

¹⁹⁹ David Jaffe, et al., *“It is Okay to Not Be Okay”: The 2021 Survey of Law Student Well-Being*, 60 U. LOUISVILLE L. REV. 439 (2022); Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116 (2016).

resources.”²⁰⁰ Notably, however, proposals for programming or curricular requirements beyond providing information were rejected.²⁰¹ But, many schools voluntarily do more than just disseminate information, and many faculty and student-facing professional staff feel the need to do even more still, often describing student-facing work as being “on the front lines.”

Enhancing programming that promotes wellness generally relates to and may help stem mental health issues. Law school committees wishing to develop change ideas that will or might reduce mental health challenges and/or enhance wellness can choose from a wide range of co-curricular and extra-curricular initiatives that are well-documented in a number of books and articles on law student happiness²⁰²

²⁰⁰ ABA Standard 508 states in relevant part, “[a] law school shall provide all its students . . . Information on law student well-being resources.” ABA Standards and Rules of Procedure for Approval of Law Schools 2023-2024 (emphasis added). ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, 37 (2023-2024). Interpretation 508-1 states “[I]aw student well-being resources include information or services related to mental health, including substance use disorders . . . Law schools should strive to mitigate barriers or stigma to accessing such services, whether within the law school or larger professional community.” *Id.* at 38. Interpretation 508-2 states, “[r]easonable access, at a minimum, involves informing law students and providing guidance regarding relevant information and services, including assistance on where the information and services can be found or accessed” (emphasis added). *Id.*

²⁰¹ Janet Stearns, *Inoculating the Next Generation of Lawyers: Mandating Substances Use and Mental Health Education for Law Students*, 60 UNIV. LOUISVILLE L. REV. 497, 502 (2022).

²⁰² SHAILINI J. GEORGE, *THE LAW STUDENT’S GUIDE TO DOING WELL AND BEING WELL* (2021); JARRETT GREEN & REBECCA SIMON GREEN, *HAPPINESS AND PEAK PERFORMANCE IN LAW SCHOOL: CUTTING EDGE SCIENCE TO PROMOTE EMOTIONAL THRIVING AND COGNITIVE GREATNESS IN LAW SCHOOL AND BEYOND* (2023); LAWRENCE KRIEGER ET AL., *CREATE SUCCESS WITHOUT STRESS IN THE LAW: NEW SCIENCE FOR HAPPINESS, HEALTH, AND POSITIVE PROFESSIONAL IDENTITY* (2023); SCOTT L. ROGERS, *MINDFULNESS FOR LAW STUDENTS: USING THE POWER OF MINDFUL AWARENESS TO ACHIEVE BALANCE AND SUCCESS IN LAW SCHOOL* (2009); Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 GEORGE WASHINGTON L. REV. 554 (2015); Richard C. Reuben & Kennon M. Sheldon, *Can Mindfulness Help Law Students with Stress, Focus, and Well-being: An Empirical Study of 1Ls at A Midwestern Law School*, 48 SW. L. REV. 241 (2019); Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 HARV. NEGOT. L. REV., 1 (2002); Scott L. Rogers, *The Mindful Law School: An Integrative Approach to Transforming Legal Education*, 28 TOURO L. REV. 1189 (2012); Maggie Branch, *UMN Law Professor Practices Yoga and Meditation in Stressful Time*, UMN NEWS ROOM (Dec. 8, 2020), <http://news.unm.edu/news/unm-law-professor-practices-yoga-and-meditation-in-stressful-times> [<https://perma.cc/FA4U-F99K>]; Diane Curtis, *Meditation: A New Practice for Lawyers*, CAL. BAR J. <https://www.calbarjournal.com/January2011/TopHeadlines/TH2.aspx> [<https://perma.cc/K5WG-VYHJ>] (last visited Jan. 30, 2024); David Jaffe, *Law Schools Should Take on Students’ Mental Health and Substance Use From Day One*, A.B.A. J. (May 17, 2023), <https://www.abajournal.com/voice/article/the-legal-profession-has-a-drinking-problem> [<https://perma.cc/EY9R-QN4N>]; Anneke Rautenbach, *5 Ways Yoga Can Make You a Better Lawyer*, N.Y. UNIV. (Nov. 25, 2014), <https://www.nyu.edu/about/news-publications/news/2014/november/dean-fama-yoga.html> [<https://perma.cc/K8KY-AZUN>]; *Mindfulness in Legal Education*, BERKELEY L., <https://www.law.berkeley.edu/students/mindfulness->

or require dedicated mental health study in the context of professional responsibility courses.²⁰³ Findings from research at the undergraduate level²⁰⁴ along with institution-specific data will help schools determine how to invest in what helps students, faculty, and staff perform at their peak (and experience satisfaction in so doing) and how to reduce the effects of mental health and wellness issues.²⁰⁵

4. On-Campus Physical Health Services

Physical health also impacts student success and the learning experience. Perhaps it is beyond the scope or capacity of law schools; however, it may be that the positive impact of including such interventions as extra-curricular programming far exceed their expense. We will only know by instituting, assessing, and evaluating change ideas such as the following:

- Offer basic health services such as eye examinations, hearing checks, vaccinations, and other medical services at the law school once a month. Students who cannot easily read power points may just not read them, it being too time-consuming to go somewhere to get their eyes checked.
- Offer exercise, dance, sports, and other movement classes at the law school before and after classes and at lunch.
- Hold cooking and nutrition courses relating to healthy meal prep and food safety. These could be followed by a meal with a professor (or guest speaker) that could serve partially as a study session and partially as a tasty “break” from having to cook or buy food.
- Provide healthy “to-go” food options (or at least information listing contact info for places serving healthy prepared foods) for students who are not interested in or do not have the time to cook.
- Install sleeping pods so that students can nap in long breaks between classes, just as travelers can do in between flight connections in certain airports.

at-berkeley-law/resources/mindfulness-in-legal-education/ [https://perma.cc/R55A-ZDZV] (last visited Jan. 30, 2024); *Mindfulness Program*, COLUMBIA, <https://mindfulness.law.columbia.edu/> [https://perma.cc/7FRS-W3RV] (last visited Jan. 30, 2023); *Yoga, Bubble Tea, and Chair Massages: Unwinding with the Law School's Wellness Programming*, UNIV. OF CHI. <https://www.law.uchicago.edu/slideshows/yoga-bubble-tea-and-chair-massages-unwinding-law-schools-wellness-programming> [https://perma.cc/535G-LXHY] (last visited Jan. 30, 2024).

²⁰³ J. Janet Stearns, *Inoculating the Next Generation of Lawyers: Mandating Substance Use and Mental Health Education for Law Students*, 60 UNIV. LOUISVILLE L. REV. 499 (2022).

²⁰⁴ Sara Abelson et al., *What Works for Improving Mental Health in Higher Education*, AM. COUNCIL ON EDUC. (2023).

²⁰⁵ *Id.*; Noble-Allgire, *supra* note 197.

C. Proposals to Build Community and Enhance Belonging

Proposals in this section include “inside the box” changes, such as altering orientation messaging, and “outside the box” changes, such as providing on-campus assisted living for retired lawyers.

1. Demonstrate Intentional Welcoming and Genuine Warmth Beginning at Orientation

Law schools can explicitly communicate the following to students, with both words and actions:²⁰⁶

- You belong.
- We are happy to have you here.
- We would love to help individuals who need or want specific help.
- We have ordered meals to respect all dietary needs.
- We are all wearing nametags that show how to pronounce our names.
- We are joining together faculty, staff, and students to break bread and engage in conversation together.

In addition to updating the messaging to be more explicitly welcoming, schools might develop initiatives that inspire but avoid “information overload.” For example, rather than one orientation, schools might offer weekly sessions for the first month and/or robust online training so that teaching and learning basic law school skills can occur and be assimilated over time.

Faculty and staff can also be transparent about the fact that starting law school is overwhelming. In some ways, it is similar to the first weeks of living in a foreign country.²⁰⁷ It involves learning a new language and new culture and thus requires

²⁰⁶ A most welcoming recent orientation session began with these words:

As you embark on your law school journey, you can be competitive, and also kind. You can be ambitious, and also encouraging. You can be goal-oriented, but also gracious. You can be focused, and also friendly. You can be intense, and also inclusive.

These words, spoken by Nickey Woods, Ed.D., Dean of Students & Associate Dean for Student Affairs, Diversity, Inclusion and Belonging at the 2023 USC Gould School of Law 1L Orientation, set a truly welcoming tone and were followed by concrete actions, such as sharing meals (faculty, administrators, and new students) and assisting students who needed help getting to and from events.

²⁰⁷ One scholar put it this way:

As we try to define culture enough to recognize it, it is important to note that the law is its own culture with values, attitudes, and norms of behavior . . . ‘Any law student who has tried to communicate to friends and family, who are not in the legal profession or in law school, and tried to answer the question, ‘How class was today’ understands the nature of cross-cultural exercises’ . . . It’s almost as though you are speaking two different languages. The legalese and world of *res ipsa loquitur*, rules against perpetuities, IRAC, CRAC, beyond reasonable doubt, abuse of discretion, the difference between moot court and mock trial, in rem jurisdiction vs. long-arm jurisdiction, etc., creates a world of shared experiences and beliefs within law students that is unfamiliar and unshared by anyone outside of the legal profession.

acculturation. And such intentional acculturation efforts may not only help law students feel more comfortable in the moment but may bolster an awareness and appreciation of the fact that they are entering a profession where they will work with people from many different cultures.²⁰⁸

Another component of explicit welcoming and acculturation involves unmasking certain “hide the ball” traditions. This does not necessarily mean dispensing with the Socratic method altogether and certainly does not suggest “dumbing” down or making law school learning “easier.” The call here is for transparency, the hypothesis being that clarity, pulling back the curtains with respect to learning goals and processes, may make people feel more welcome, encourage belonging, and help combat or at least lessen the deleterious effect of certain problems that may stem in part from alienation such as depression, low self-esteem, and imposter syndrome.²⁰⁹

Legal educators have done a great deal to expose the mysteries of law school. Many faculty release past exam questions and sample answers so that students see what to expect and understand what quality answers look like, and most are clear about how grades will be calculated. Despite such efforts at transparency, many (even upper-division) students remain in the dark about certain expectations. 2Ls, for example, may not know what courses to take and why, and they may not have enough unbiased information about how to find a job that suits them. 3Ls may not know details about graduation and post-graduation licensing requirements. Schools that are not doing so might begin holding upper-division orientations. Such sessions are also useful venues to include information about professional identity formation and physical and mental health resources.²¹⁰

Stephanie Smith Ledesma, *Compassion: a Critical Skill for Law Students*, 22(2) MARQUETTE BENEFITS & SOC. WELFARE L. REV. 181, 191 (Spring 2021).

²⁰⁸ Cross-cultural competency is a part of the new ABA Standard 303. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, 19 (2023-2024).

²⁰⁹ For example, professors can explain the reasons they question students using the Socratic method. In one of my first doctrinal teaching experiences, I found myself abruptly stopping in the middle of questioning a student (who seemed unnerved), “breaking the fourth wall,” and asking if they knew the purpose of such questioning. I shared that for many people, having the “practice” of being challenged in school helped prepare to face tough opposing counsel and judges. And I shared a story about having been grilled by a judge when I practiced law. I further made clear that exam grading was anonymous and that responses to classroom questioning were not scored or judged in any way; they were for the purposes of learning and preparing for practice. The students appeared to greatly appreciate the candor and were noticeably more engaged and relaxed as a result.

²¹⁰ Schools that hold upper-division orientations include Harvard Law School, which tells its students, “As you may have heard, beginning this September, HLS will institute a new orientation session for returning 2L students designed to help you reconnect with classmates, reflect on what you have learned in your first year and first summer as a law student, and look ahead to your future career. There will also be an afternoon social event scheduled in celebration of the start of your 2L year A vital component of this new program will be a

2. Train Collaboration Alongside Competition

Traditionally, law schools pushed competition. Some deans have replaced the legendary orientation speech, “Look to your left, look to your right. At the end of 1L, one of them won’t be here,” with, “Look to your left, look to your right. Within the next decade, one of them may be your future law partner.” Despite this, legal education remains largely a competitive experience where students are ranked and thus pitted against one another.

The legal profession, however, is not a Hunger Games arena. Yes, there are winners and losers in litigation. But often, there are compromises, settlements, and alternative dispute resolutions. Even where adversaries compete, teamwork is critical on each respective “side.” Most law students will work in firms, government offices, in-house in companies, at nonprofits, and in other situations where they will not be acting alone but as part of a group or team.

Even opposing counsel often are friends or at least collegial outside of the courtroom or conference room. Yet we continue to train individual competition over collaboration in law schools as if students will all become isolated sole practitioners.²¹¹ We have some teams (moot court teams, journals, etc.), but in class and on exams, we still largely require students to answer questions and perform individually. Law students would be well-served if law schools also taught teamwork, group dynamics, and collaborative skills. (Think of tennis players learning to play doubles; different collaborative skills and training are required than when learning to play singles.) Law students also need training in how to give and receive helpful feedback. Most law graduates will also end up being supervised by and then supervising other attorneys, clerks, support staff, and others yet they may have no

session on professional identity, including working with broad and varied populations of attorneys and clients. The program will also include discussions about student wellness and HLS student services and other resources that will support your success as you embark on your upper-level years and next steps in the profession.” *Save the Date(s): 2L Orientation*, HARV. L. SCH. (Feb. 15, 2023), <https://hls.harvard.edu/opia-student-blog/save-the-dates-2l-orientation/> [<https://perma.cc/97DL-T26V>]; New York Law School, which states, “Unique among American law schools, our required 2L and 3L Evening Orientation provides more than just a “welcome back” for upper-division students. It advises students on key milestones as they progress through the semester, re-introduces them to the many offices that support their academic and professional journeys, orients them to the various licensing exams that must be completed before the end of law study, and introduces them to the gradual preparation for bar examination and admission they must undertake.” *Academic and Bar Success*, N.Y. L. SCH. <https://www.nyls.edu/academics/programs-of-study/academic-and-bar-success/> [<https://perma.cc/9XG8-QSVL>] (last visited Jan. 30, 2024).

²¹¹ Another challenge to shifting a focus from competition to collaboration might be law faculty themselves. See Michael J. Meyerson, *Law School Culture and the Lost Art of Collaboration: Why Don't Law Professors Play Well with Others*, 93 Neb. L. Rev. 547 (2015); see also Neil W. Hamilton, *Fostering and Assessing Law Student Teamwork and Team Leadership Skills*, HOFSTRA L. REV., (forthcoming) (Legal Studies Research Paper No. 19-07).

training or experience in leadership, management, or effectively giving or effectively receiving feedback.²¹²

Learning is not a zero-sum game. Students can benefit greatly from learning with and teaching each other. But class rankings do not incentivize classmates to help one another; they affirmatively disincentivize such collaboration. The competitive atmosphere is alienating and contributes to a pervasive feeling of not belonging, imposter syndrome, stress, anxiety, and other negatives that still permeate the halls of too many law schools.

Collaboration can be fostered through group work and a team-focused mindset.²¹³ A school-wide lawyering simulation is a possible change idea that might encourage collaboration and community building while teaching professional identity formation in action. Using a simple hypothetical case, such as a negligence-based car accident in the law school parking lot, second-semester 1Ls would be assigned roles as plaintiff or defendant. 2Ls would act as attorneys working in teams to represent 1Ls, and selected 3Ls would be chosen to act as partners supervising 2Ls, court reporters, mediators, judges, witnesses, and others. Students would be required to keep reflective journals. Faculty or other students might be assigned to read and comment on these. Such a simulation could be piloted with a small group of students and eventually expand school wide, or it could be implemented as a larger scale project, including most, if not all 1Ls. It may help to give participating students at least .5 course credits for participation, and perhaps make it an honor to be selected as a 3L supervising partner.²¹⁴ Students engaged in the simulation would be given “law bucks” or some sort of law school currency accounts so that they would be expected to bill clients or pay for counsel, depending on their role.

²¹² The author recently spoke on this topic, comparing learning to give and receive feedback in both the law school and law firm contexts with athletes in the “film room” reviewing their previous performance and having meaningful opportunities to course correct, *Enhancing Diversity and Wellness Across the Law School to Law Practice Continuum: Strategies to Engage Effectively in Tough Conversations and Learn to Constructively Give and Received Feedback*, Sara Berman and Rachel Patterson, January 5, 2024, AALS Annual Meeting in Washington, DC; see also Rachel Patterson, *Lawyers Shouldn't Be Shocked to Learn They're Off Partner Path*, BLOOMBERG LAW (Jan. 12, 2024), <https://news.bloomberglaw.com/us-law-week/lawyers-shouldnt-be-shocked-to-learn-theyre-off-partner-path> [<https://perma.cc/VT9H-NA3M>]; Rachel Patterson, *Ghosting In BigLaw: Why Better Feedback Habits Are Needed*, LAW360 (May 3, 2023), <https://www.law360.com/articles/1600399/ghosting-in-biglaw-why-better-feedback-habits-are-needed> [<https://perma.cc/VT9H-NA3M>].

²¹³ Krieger & Sheldon, *supra* note 185.

²¹⁴ This idea from a thought piece I wrote, “The Other Side of the Desk,” documenting the empathy and deep learning that came from first being a client after having been a lawyer for years. Lawyers are not required to be clients, but perhaps they should be just as students training in counseling psychology programs are often required to be in therapy for a time. See Jane Edwards, *Counseling and Psychology Student Experiences of Personal Therapy: A critical Interpretive Synthesis*, 9 FRONTIERS PSYCH. 1732 (2018) (finding there are positives and negatives associated with this requirement).

3. Provide Resources on or Near Campus

Law schools may eventually incorporate more programming online such that law students of the future do not spend nearly the time that students today would benefit from spending studying on campus. For schools that continue to offer robust in-person programs, in order to encourage students to spend more time studying law schools might consider a range of resources that would assist with other obligations and, thus, free up time for study.

a. *Childcare*

If law schools want meaningful participation on the part of students who are parents (in full-time and part-time JD programs), they might consider subsidizing, providing, or encouraging safe childcare options on or near campus.

Law schools may be particularly interested in such programs because returning students will widen future applicant pools. Second or third-career students and those who are more mature than typical twenty-two-year-olds may be more dedicated law students because they have demonstrated life skills and they really know they want to be there. Law school for them is not a default choice.

Some schools have such programs, and others are on the main campus, accessible to law students. Schools wanting to create these programs might start with existing childcare arrangements both in schools and analogous corporate entities.²¹⁵

b. *Kennels/Pet Care*

Kennel and other pet care providers on or near campus would help students, faculty, and staff who are pet owners and might be able to provide permanent sources of pet therapy. There is a great deal of research about the positive impact of pet therapy and pet ownership. If this were easier and more practical for law students, more may opt to own or take breaks to play with pets.²¹⁶

c. *Shopping and Other Everyday Needs*

Schools could provide or encourage reputable and affordable resources to operate on or near campus to fulfill student needs that take time away from studying and learning, such as great food places to purchase healthy take-home meals, dry cleaners/laundromats, hair and nail salons, business centers, yoga

²¹⁵ Lindsey Reichlin Cruse et al., *Evaluating the Role of Campus Child Care in Student Parent Success*, INST. WOMEN'S POL'Y RSCH. (Oct. 2021); *Student Services*, BERKELEY LAW <https://www.law.berkeley.edu/students/student-services/student-parents/> [<https://perma.cc/44FF-HTU3>] (last visited Jan. 30, 2024).

²¹⁶ See *The Best Law Schools for Dog Lovers: Should You Bring Your Dog to Law School?*, <https://www.lawcrossing.com/article/900048993/Best-Law-Schools-for-Dog-Lovers/> [<https://perma.cc/SU5H-YJAN>] (last visited Apr. 9, 2024); see also *New on-site counselor adds to wellness initiatives for law students*, UNIV. AT BUFFALO SCH. OF L. (January 2020), <https://www.law.buffalo.edu/links/2020-January/wellness-initiatives.html> [<https://perma.cc/4Z9T-DTS2>].

studios, in addition to childcare and kennels mentioned above.²¹⁷

d. Housing—Permanent and Temporary

Universities with ample physical space and downsizing student populations might consider transitioning existing dorms or unused buildings to graduate housing and housing for students with families and staff and faculty housing. Many who have significant time commitments at our nearby school may be willing to pay for safe housing that is on or near campus—freeing up time a commute would take for study, work, and life balance. Law schools might also use dorms that are otherwise unoccupied during summers to house law students studying for the bar exam.²¹⁸ This, too, would meet a law school's need while supplying the university with a possible new and additional revenue stream.

e. Assisted Living or Vacation Facilities on Campus and Other Opportunities of Meaningful Participation for Retired Lawyers and Judges in the Law School Community

Similar to the general housing suggestion above but distinct based on the nature of the occupants would be a program for retired members of the legal community. Some colleges are creating assisted living on campus,²¹⁹ a win-win both in terms of repurposing under-utilized space and providing needed resources for a generation that is in or moving toward retirement.

This proposal includes, in addition to possible full-time living spaces, what might be called “vacation villas” for retired judges and lawyers. As part of their stay on or near campus, retirees could sit in on certain classes or attend selected symposia. Some might be chosen to serve as mentors to faculty, students, or staff or to give guest lectures, depending on their experience and qualifications. This would provide a new source of revenue for law schools and a path for mentorship that would not burden already taxed faculty and professional staff.²²⁰ Such opportunities could be of great interest to alumni of the law school and/or attorneys who were members of the professional community where the law school is located. Role modeling respect for older people generally also makes a strong statement to students (many of whom are younger) about inclusion and belonging.

²¹⁷ Inspiration here derives from Eleanor Roosevelt's calls for resources to facilitate women working in factories while still fulfilling home-related obligations during WWII.

²¹⁸ It is the author's understanding that some law schools do this already, including the University of Dayton.

²¹⁹ See Jon, Marcus, *Retirement Living With a Campus Twist*, AARP (Aug. 14, 2019), <https://www.aarp.org/retirement/planning-for-retirement/info-2019/colleges-with-retirement-communities.html> [<https://perma.cc/9NPZ-R9C4>].

²²⁰ As much as faculty may want to mentor students, the burden of doing so often disproportionately falls on faculty without tenure who must spend time on their own research and writing. Being able to count on retired judges, lawyers, and law professors to do even some mentoring might free up much-needed time for faculty.

4. Practice Kindness, Civility, and Respect

Change ideas around kindness, civility, and respect may not “solve” or even lessen entrenched systemic problems in law schools, such as those that alienate students from historically under-represented backgrounds, implicate mental and physical health, or expose a crushing debt crisis. But school committees charged with formulating change ideas that relate to engagement and belonging might start with promoting basic decency and build from there. It is entirely possible that pulling on one string, even something as simple as a campaign to encourage smiling (that would cost nothing), might stimulate positivity that, in turn, would have a ripple effect on faculty, staff, and student satisfaction.²²¹

Committees formulating change ideas here might start with national and school-specific data such as that available through the Law School Survey of Student Engagement (LSSSE),²²² then delve further into some of the happiness research noted above.²²³

CONCLUSION

The many challenges in legal education are well-researched, yet concrete solutions and specific plans for implementation remain elusive. Hopefully, the change ideas in Part II will promote discussion and encourage the development of school-specific, problem-specific solutions. Change is difficult; proposing change is risky. But law schools face significant problems, and even where there is great disagreement or resistance, if individual “minor” change ideas get implemented

²²¹ See Sterns, *supra* note 203; Laurel Rigertas, *Demonstrating Civility: A Law School Learning Outcome* 112 Ky. L. J. 1, 5 (forthcoming) (“The survival of our democracy – and perhaps humanity – will require people with divergent views to listen to each other and seek areas of common ground as we try to solve serious legal, social, environmental, economic, and other problems”); Mark C. Palmer, *Making Civility Education A Law School Standard*, 2CIVILITY (Aug. 3, 2016), <https://www.2civility.org/making-civility-education-law-school-standard/> [<https://perma.cc/5PZG-583L>]. There are also numerous studies that have established a connection between smiling and mental and even physical health. See Marie P. Cross et al., *How and Why Could Smiling Influence Physical Health? A Conceptual Review*, 17(2) HEALTH PSYCH. REV. 321 (2023); Brian Canever & Amanda Womac, *Psychologists Find Smiling Really Can Make People Happier*, UNIV. TENN. KNOXVILLE (Apr. 11, 2019), <https://news.utk.edu/2019/04/11/psychologists-find-smiling-really-can-make-people-happier/> [<https://perma.cc/A78J-4CWH>]; Fernando Marmolejo-Ramos, *When You’re Smiling, the Whole World Really Does Smile With You*, UNIV. S. AUSTRAL. (Aug. 12, 2020), <https://www.unisa.edu.au/Media-Centre/Releases/2020/when-youre-smiling-the-whole-world-really-does-smile-with-you/> [<https://perma.cc/5FHS-AMVK>]; *The Health Benefits of Smiling*, INTERMOUNTAIN HEALTH (Oct. 25, 2023), <https://www.sclhealth.org/blog/2019/06/the-real-health-benefits-of-smiling-and-laughing/> [<https://perma.cc/9G3W-Q3KD>].

²²² *Register for LSSSE 2024*, LSSSE <https://lsse.indiana.edu/> [<https://perma.cc/Y4YC-R7ZH>] (last visited Jan. 30, 2024); *Using LSSSE Data*, LSSSE <https://lsse.indiana.edu/using-lsse-data/> [<https://perma.cc/DLZ4-B9LT>] (last visited Jan. 30, 2024).

²²³ Noble-Allgire, *supra* note 197.

well, they could have major positive downstream consequences for learners and educators. The only way to find out is to take those risks: work together to define problems, match them with context-specific causes, develop solutions from available ideas for reform and progress, commit to the sort of evidence-based, iterative implementation practices described in Part I, and see what happens.