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Reimagining Legal Education: Insights from UNH Franklin Pierce's First 50 Years

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Christopher S. Reed

Reimagining Legal Education: Insights from UNH Franklin Pierce's First 50 Years

22 U.N.H. L. Rev. 421 (2024)

ABSTRACT. Noted patent lawyer and MIT professor Dr. Robert Rines founded the Franklin Pierce Law Center in 1973 with the aim of training working professionals to practice patent law. The founding faculty comprised working patent lawyers from various fields, it offered the only patent practice course available at the time, and the curriculum overall emphasized practical skills over theory.

Today, half a century later, Dr. Rines’s vision not only endures, but flourishes.

In addition to becoming one of the world’s most celebrated intellectual property institutions, University of New Hampshire (UNH) Franklin Pierce School of Law* is the home of two pioneering programs that animate and exemplify the school’s founding principles: The Daniel Webster Scholar Honors Program, which equips students to practice law in New Hampshire from the moment they graduate, and the Hybrid J.D. Program, which enables working professionals to pursue an IP(“intellectual property”)-focused legal education while maintaining their day jobs. These programs, with their groundbreaking approaches to curriculum and pedagogy, have become models for what the future of legal education should look like—training students to practice law, rather than to simply think, talk, and write about it.

Although the notion of elevating practice over theory has traditionally been shunned by the upper echelons of the bar admission industrial complex, the idea of creating “practice ready” or “client ready” graduates has become a common refrain in public policy discussions about legal system reform.

In short, Dr. Rines was ahead of his time.

This essay first examines my own experiences with UNH Franklin Pierce, as a student and as a member of the affiliate faculty, and then reflects upon my own career and how my experience at the school has helped lead me to success. I then apply that learning to sketch out a broad proposal for what the future of legal education and bar admission might look like, describing its key features and characteristics, and identifying some key questions that remain unanswered.

* As friends of the school know all too well, it has several names over the years, including Franklin Pierce Law Center, Pierce Law, the University of New Hampshire School of Law, and the University of New Hampshire Franklin Pierce School of Law. For simplicity, I refer to the school simply as “Franklin Pierce” throughout this article.

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I. UP THERE IN NEW HAMPSHIRE

I first heard of Franklin Pierce by eavesdropping on a conversation at an LSAT prep class offered by my undergraduate alma mater, Lehigh University. The instructor was chatting with another student during a break when I heard him say that “Franklin Pierce up there in New Hampshire” was a good place to study intellectual property. At that point, I had little sense of what I wanted to do when I grew up, but I knew I wanted to do something in the media business, and I knew I was generally interested in the law and how it seemed to undergird many parts of the industry about which I was passionate.

So that settled it.

The decision to apply to Franklin Pierce—then still a “law center”—turned out to be a good one. I have long forgotten my LSAT score, but I do remember that I was in the thirtysomethingth percentile, which meant not only that I was rejected from nearly every other school to which I applied, but that perhaps the only meaningful information I retained from the LSAT prep class was that Franklin Pierce was a good IP school. Fortunately, Franklin Pierce has always been the type of school that put merit over metrics, and clearly took the time to read my application and consider its merits holistically, rather than making a snap decision based on a single parameter.¹ Based on my LSAT score alone, I probably never could have become a lawyer, but at least one person at the school saw some merit in the rest of my application.

Cliché as it may sound, I knew Franklin Pierce was the school for me from almost the moment I set foot on “campus.”² It was specifically a demonstration property lecture presented by “token faculty member” (his words), the late Marcus Hurn, whose irreverence toward traditional law school was a hallmark of his academic identity. Indeed, his biography on the Franklin Pierce website noted that he joined the school to “happily avoid the pedantry, status obsessions and bureaucracy of the general run of law schools.”³

Professor Hurn’s comment illustrates how Franklin Pierce is different in two ways: First, he stated as much specifically. As a small, then independent, school, it

¹ The average LSAT and undergraduate GPAs of an incoming law school class are factors in the U.S News & World Report rankings of law schools. Robert Morse, et al., *Methodology: 2023-2024 Best Law Schools Rankings*, U.S. NEWS & WORLD REP. (May 10, 2023, 9:00 PM), <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology> [https://perma.cc/MU8U-BL9C]. Because a drop in those averages may lead to a drop in overall ranking, many schools maintain arbitrary cutoff scores to ensure their ranking does not slip. As a result, applications for students that may have strong credentials aside from their LSAT or undergraduate performance may not ever get reviewed by admission staff.

² I first visited the school in spring 2003, after the much-celebrated barn era, but before the school had acquired many of the properties surrounding the main building at 2 White Street.

³ *In Loving Memory of Professor Marcus Hurn*, UNIV. OF N.H. FRANKLIN PIERCE SCH. OF L. (Feb. 22, 2021), <https://law.unh.edu/blog/2021/02/loving-memory-professor-marcus-hurn> [https://perma.cc/XDQ6-N83E].

did not have the same issues that the larger schools have. The faculty and student body were close-knit, and there was a genuine sense of community. Second, and perhaps more importantly, Hurn's comment demonstrates that it was the type of school where a professor wasn't afraid of making such a statement. That is, it was a bit nontraditional, which makes sense, given how it all started.

A. A Brief History of Franklin Pierce

For those who know the history of the school, the fact that Hurn fit in so well is hardly surprising. The school finds its origins in the very notion of bucking the trend. In the 1960s, founder Dr. Robert Rines had grown "alarmed" by the way courts were deciding patent cases.⁴ "He saw the decisions as ominous signs that the United States had its priorities wrong," said the *Chronicle of Higher Education* in a 1992 article about Rines, and he "worried that the legal trend would eventually debilitate the economy and threaten America's technological leadership."⁵

In 1963, Rines founded the Academy of Applied Science, which eventually evolved to become the Franklin Pierce Law Center.⁶ Originally conceived to be a law school affiliated with the Massachusetts Institute of Technology, or the "MIT North Campus," MIT later passed on the idea, forcing the school to go it alone, following a brief affiliation with Franklin Pierce College.⁷

The Franklin Pierce Law Center opened in the fall of 1973 with a mission of training "engineers, scientists, medical doctors and others for new careers in law and law-related pursuits, combining their developed technical skills for the many useful purposes increasingly emerging in the private, industrial, and government sectors."⁸ "Of particular significance to the patent bar," Rines wrote, "is the commitment of the Law Center to train patent lawyers, with a strong component of practical internship and apprentice experience in the preparation and prosecution of patent applications."⁹ The *Chronicle of Higher Education* observed that "[t]he law school has pioneered a curriculum that emphasizes technology in law, arming future

⁴ Salma Abdelnour, *The Mysterious Lives of an Eclectic Scholar*, THE CHRON. OF HIGHER EDUC. (Oct. 21, 1992), <https://www.chronicle.com/article/the-mysterious-lives-of-an-eclectic-scholar/> [<https://perma.cc/K7M4-MEAP>].

⁵ *Id.*

⁶ *Id.*

⁷ *History of IP at UNH Law*, UNIV. OF N.H. SCH. OF L., <https://web.archive.org/web/20140328211228/http://law.unh.edu/franklin-pierce-ip-center/about/history-of-ip-at-unh-school-of-law> [<https://perma.cc/Q2LU-D4WR>] (last visited Jan. 6, 2024) [hereinafter *History of IP*]; John D. Hutson, *Franklin Pierce Law Center: Leading the Way in Legal Education for New Hampshire*, 4 PIERCE L. REV. 405, 405 (2006).

⁸ Robert H. Rines, *A New Approach to a Law School and Research and Clinical Center, with a Specialty in Industrial and Intellectual Property Law*, 9 APLA Q.J. 69, 69 (1981).

⁹ *Id.*

lawyers with the expertise to protect technological inventions in court.”¹⁰

The school’s approach was groundbreaking at the time, not only because it was one of the few schools that offered a patent course, but because of its willingness to embrace practical education over academic theory. Rines described the school’s Innovation Clinic as “perhaps the nation’s only legal aid for inventors” which was intended to serve as an “in-house training ‘laboratory,’” giving students an opportunity to serve as patent counsel, under the supervision of licensed attorneys, to innovation centers at other educational institutions.¹¹

While phrases such as “practice ready” and “client ready” have become part of the familiar lexicon used to describe law school programs, at the time Franklin Pierce was founded, the idea of teaching students how to actually *be* lawyers, rather than simply think, talk, and write about the law, was a bit avant-garde. Suggested rewrite by AE: Although the school’s IP offerings were initially limited to patent law, the founding faculty included professors with experience from a range of settings and industries, causing the school to expand its curriculum, and become the first school to offer courses on intellectual property management, trademarks, copyrights, trade secrets, unfair competition, and related topics.¹² The school once described its curriculum as “IP through and through.”¹³

Franklin Pierce was also one of the first schools to harness the global nature of the intellectual property marketplace by offering international and comparative IP courses, conferences aimed at attracting delegates from around the world, as well as targeting its degree programs to international audiences.¹⁴ These efforts helped advance robust intellectual property regimes on a global scale and to train scholars and practitioners who go on to teach intellectual property in their home countries, spreading the Franklin Pierce reputation and brand the world over.

B. My Time at Franklin Pierce

Unlike Dr. Rines’s prototypical student, I had virtually no real-world experience in anything useful, and was not looking to become a patent lawyer. Although I had become obsessed with media when I was young, I had only scant experience actually working in the business when I went to law school. I was one of those students that had come straight from college.

Still, I found the school’s emphasis on practical skills to be inspiring and empowering, even as early as the first year. In lieu of a traditional textbook, my contracts professor, John Orcutt, used a series of “case files” that put students in the role of a junior associate. Each file contained a memo from a senior partner that described a hypothetical client’s contract issue and a series of cases that would

¹⁰ Abdelnour, *supra* note 4.

¹¹ Rines, *supra* note 8, at 69.

¹² *History of IP*, *supra* note 7.

¹³ *Id.*

¹⁴ *Id.*

guide us to the answer. Not only was this a unique experience for the first-year curriculum, but I found it to be highly effective, and though I wouldn't have realized it at the time, it turned out to be helpful training for the Multistate Performance Test, which is structured similarly, and administered as part of many states' bar exams, including New Hampshire's.

After the first year, my time at Franklin Pierce gave me the opportunity to write on topics that combined intellectual property with my passion for media. In 2005, I wrote *Zoning Out on Radio: Trademark Registration for Broadcast Brands* for the Germeshausen Center Newsletter, and the following year had the opportunity to expand upon that research for a piece later published in the American Intellectual Property Law Association's quarterly journal. I also wrote a piece on an obscure proposal at the Federal Communications Commission that might have forced broadcasters to infringe on copyright law to comply with its own regulations. Although I'm confident that nobody beyond my immediate family has read any of these, they have been immeasurably valuable to my career as they gave me something to show prospective employers that I had developed an expertise in a practical application of a particular area of law, and gave me something other than "I was an economics major at Lehigh and want to work in media" to talk about at networking events.¹⁵

In my second year, slightly jealous of my patent-focused colleagues taking the highly regarded Franklin Pierce patent practice classes, I set out to create my own trademark practice class. Trademark expert Professor Sue Richey graciously allowed me to pursue an independent study course under her guidance, during which I conducted research and developed the course materials, setting the stage for my interest in teaching.

Although that course was never taught, I have had the opportunity to teach at Franklin Pierce several times over the years. The first was in a series of "master classes" developed by the founding director of the Franklin Pierce Center for Intellectual Property, Professor Mary Wong, who invited me to teach *Current Issues in Copyright Practice* for several years beginning in 2012. After a hiatus, I joined the faculty again amid the COVID-19 crisis in 2020 to teach media law in a remote, online rekindling of Franklin Pierce's long celebrated in-person summer program, the Intellectual Property Summer Institute. That engagement evolved into regularly teaching media law and copyright policy in the Hybrid J.D. Program, discussed more fully in the next section.

As one might expect, my own approach to teaching, as well as coaching junior attorneys, interns, and the like, has been heavily influenced by my time at Franklin Pierce. Just as common advice to creative professionals is to "write the book you want to read" or "make the film you would want to watch," I attempt to create courses that I would have wanted to take—courses that offer legal substance

¹⁵ Indeed, when I am asked to provide career advice to law students and junior attorneys, I often emphasize the importance of finding opportunities to write on areas that allow the writer to show their own combination of knowledge, experiences, and skills.

alongside opportunities to apply those skills to real-world (or at least simulated real-world) scenarios like the ones students may encounter during practice.

I am fortunate to have found a school that let me learn like this and now lets me teach it the same way—an approach that is finally getting the attention it deserves in the broader legal community, due in large part to the ongoing creativity and ingenuity of Franklin Pierce.

II. THE PIONEERING SPIRIT TODAY

Although the school's pioneering spirit underpins nearly everything that Franklin Pierce does, two recent developments in particular illustrate the school's continued emphasis on revolutionizing legal education: the Daniel Webster Scholars Honors Program launched in 2006, and the Hybrid J.D. in Intellectual Property degree program launched just over a decade later, in 2019.

A. *The Daniel Webster Scholar Honors Program*

In 2006, Franklin Pierce launched the Daniel Webster Scholar (“DWS”) Honors Program following more than a decade of discussion.¹⁶ The program's broad mission is to produce “client-ready” lawyers, by providing a “practice-based, client-oriented education, which prepares law students for the awesome responsibility of representing others.”¹⁷

Students must apply to join the program during their first year, and those accepted supplement the school's ordinary graduation requirements with a series of courses designed specifically for the DWS Program taken during their second and third years,¹⁸ many of which include simulations, and a number of subjects that are typically offered as electives to the broader law school community—e.g., Evidence, Personal Taxation, Business Associations—and several credit hours of pro bono and clinical or legal residency experience.¹⁹ A “miniseries” course gives students exposure to a number of other topics such as family law, negotiable instruments, secured transactions, and law office management.²⁰ Finally, scholars take a capstone course that focuses on problem-solving and client counseling, allowing them to actualize the knowledge and skills they have learned throughout the program in simulated real-world scenarios, requiring them to interview clients,

¹⁶ See John Burwell Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 DUKE F. FOR L. & SOC. CHANGE 101, 115–17 (2009).

¹⁷ *Id.* at 118.

¹⁸ “Pretrial Advocacy; Trial Advocacy; Negotiations; a miniseries that exposes them to Family Law, Law Office Management, Commercial Paper (Articles 3 and 9) and Conflicts of Law; Business Transactions; and a capstone course that integrates and builds upon the skills they have already learned through the program.” *Id.*

¹⁹ *Id.* at 118–19.

²⁰ Garvey & Zinkin, *supra* note 16, at 125; ALLI GERKMAN & ELENA HARMAN, AHEAD OF THE CURVE: TURNING LAW STUDENTS INTO LAWYERS 7 (Inst. for the Advancement of the Am. Legal Sys. 2015).

identify legal issues and corresponding facts, perform legal research, and ultimately provide guidance.²¹ Upon successful completion of the prescribed course of study, DWS students are admitted to the New Hampshire bar without having to sit for the traditional two-day bar exam.²²

One hallmark of the program, and a key distinction from the traditional law school experience, is the use of regular, ongoing assessment throughout the semester.²³ In stark contrast to traditional law courses, where a student's performance is typically based on a single final exam at the end of the term, and grades are forced to fit a defined distribution, DWS participants are assessed by their ability to perform certain enumerated desirable outcomes.²⁴ Scholars are evaluated by legal professionals such as judges and practicing lawyers in addition to the DWS Program faculty, giving students a realistic sense of their capacity to practice in the real world.²⁵

Finally, and perhaps most unusually, students evaluate themselves, as self-reflection is a key component of the DWS experience:

At the conclusion of each DWS course, scholars . . . write a reflective paper . . . using the MacCrate skills and values²⁶ against which to evaluate themselves. The students identify which MacCrate skills and values were implicated during the course; they then discuss their own perceived strengths and weaknesses as they relate to the identified MacCrate skills and values, and reflect upon how they intend to improve going forward.²⁷

Through their time in the program, scholars build a portfolio of work which is evaluated once per semester by a bar examiner, and they meet annually with the examiner to discuss the scholars' work and answer questions.²⁸ "The experience culminates with [scholars'] final interview with a bar examiner during which the two review the scholar's portfolio and the scholar answers any questions posed by the bar examiner."²⁹ If the examiner is satisfied with the student's performance, they are recommended for admission without having to take the traditional bar exam.³⁰

²¹ Garvey & Zinkin, *supra* note 16, at 125.

²² *Id.* at 119.

²³ GERKMAN & HARMAN, *supra* note 20, at 10.

²⁴ Garvey & Zinkin, *supra* note 16, at 121.

²⁵ *Id.*

²⁶ Published in 1992 by the American Bar Association's Section on Legal Education and Admissions to the Bar, *Legal Education and Professional Development – An Educational Continuum Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, known colloquially as "The MacCrate Report," enumerated ten fundamental lawyering skills (each with multiple parts), and four professional values that budding lawyers should master in law school. Russell Engler, *The MacCrate Report Turns 10: Assessing its Impact and Identifying Gaps we Should Seek to Narrow*, 8 CLINICAL L. REV. 109, 113 (2001).

²⁷ Garvey & Zinkin, *supra* note 16, at 121 (footnote omitted).

²⁸ *Id.*

²⁹ *Id.* at 126.

³⁰ *Id.* at 125.

Perhaps the most notable feature of the DWS Program is that it works.

According to a 2015 study by the Institute for the Advancement of the American Legal System, some focus group participants tasked with evaluating the performance of DWS graduates found that they function “up to two years ahead” of traditional law school graduates.³¹

The report further observed that “[c]ompared with new lawyers who spend their first few years learning to practice, DWS graduates are able to hit the ground running, working with clients and taking a lead role on cases immediately.”³² One lawyer asked to evaluate the performance of DWS graduates noted that a “selling point for her firm was they needed someone who could start practicing law immediately[,]”³³ and graduates “value the opportunities they are presented with as a result” of the competence conferred by the program.³⁴ In an interview with the New Hampshire Bar Journal, 2022 DWS graduate Emily Peterson observed that “[a] lot of firms in New Hampshire recruit specifically from the DWS program” and noted that most of her DWS classmates had job offers by the time they graduated.³⁵

Peterson also acknowledged that “[p]eople sometimes have this attitude that you’re potentially less of a real lawyer if you haven’t taken the bar exam,”³⁶ but statistics reveal otherwise. Of DWS graduates from 2008 to 2015, forty-six percent took at least one bar exam, and ninety-six percent of those students passed on the first attempt,³⁷ a pass rate that exceeds the school’s overall first-time pass rate of about eighty-seven percent, based on 2022 data.³⁸

As of May 2023, 313 scholars have become New Hampshire lawyers following successful completion of the DWS Program without taking the traditional two-day state bar exam.³⁹

B. The Hybrid J.D. Program

Just over ten years following the successful launch of the groundbreaking DWS Program, Franklin Pierce disrupted legal education again by pioneering the first-in-

³¹ GERKMAN & HARMAN, *supra* note 20, at 13.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ Tom Jarvis, *Ahead of the Curve: A 150-Year Retrospective on the Unique Daniel Webster Scholar Honors Program*, N.H. BAR ASS’N, <https://www.nhbar.org/ahead-of-the-curve-a-150-year-retrospective-on-the-unique-daniel-webster-scholar-honors-program> [https://perma.cc/J8AW-2VZ5] (last visited Jan. 6, 2024).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *UNH Franklin Pierce Consumer Bar Passage 2023*, UNIV. OF N.H. FRANKLIN PIERCE SCH. OF L., https://law.unh.edu/sites/default/files/media/2023/02/unh_franklin_pierce_consumer_bar_passage_2023.pdf [https://perma.cc/V863-NNDH] (last visited Jan. 6, 2024).

³⁹ Jarvis, *supra* note 35.

the-nation part-time Hybrid Juris Doctor Program with a focus on intellectual property law.⁴⁰ The program brings the internationally renowned Franklin Pierce intellectual property program to students who cannot easily quit jobs, uproot families, and relocate to New Hampshire for three years to participate in the traditional “residential” J.D. program. This is, of course, especially true for those who have established careers in IP, technology, and related fields, to whom the program is targeted.⁴¹ In an interview about the program, Franklin Pierce Dean Megan Carpenter, who founded the program, explained that the first class comprised patent examiners, marketing professionals, designers, patent supervisors, IP managers at law firms, licensing specialists, entrepreneurs, and even doctors.⁴²

Most of the Hybrid J.D. coursework is completed asynchronously through video-based lectures, quizzes, discussions, and assignments that are completed online and on the student’s own schedule. The online learning is accented by weekly synchronous “live” office hours where students can interact in small groups with their professors, as well as quarterly in-person “immersion” sessions, where students take focused, intensive courses over three to five days. First-year students take typical first-year courses during the immersions—e.g., constitutional law, contracts, property—while upper-division students take various electives, often including a significant hands-on, practice-oriented component, such as the intensive trial advocacy program, a negotiations workshop, trademark prosecution, or privacy law.

In addition to the Concord-based offerings, the school has recently begun offering “Learn on Location” immersion courses that allow students to travel to various locations to learn directly from industry professionals in various IP-centric fields.⁴³ For instance, a Washington, D.C.-based immersion course focuses on policy

⁴⁰ *Inaugural Class of UNH Franklin Pierce School of Law’s New Hybrid Juris Doctor (JD) in Intellectual Property and Technology Law Begins August 14*, PR NEWswire (Aug. 12, 2019, 8:33 AM), <https://www.prnewswire.com/news-releases/inaugural-class-of-unh-franklin-pierce-school-of-laws-new-hybrid-juris-doctor-jd-in-intellectual-property-and-technology-law-begins-august-14-300899583.html> [<https://perma.cc/Z3AZ-Q9Q5>].

⁴¹ *Hybrid JD*, UNIV. OF N.H. FRANKLIN PIERCE SCH. OF L., <https://law.unh.edu/academics/degrees-certificates/hybrid-jd> [<https://perma.cc/C3N3-9SFA>] (last visited Jan. 6, 2024) [hereinafter *Hybrid JD*].

⁴² *Inside Law Admissions: The Hybrid JD*, UNIV. OF N.H. FRANKLIN PIERCE SCH. OF L., at 1:53 (May 28, 2020), <https://law.unh.edu/blog/2020/05/inside-law-admissions-hybrid-jd> [<https://perma.cc/H8AR-GNPV>] [hereinafter Podcast].

⁴³ See *UNH Franklin Pierce Viewbook*, UNIV. OF N.H. FRANKLIN PIERCE SCH. OF L., 8, <https://law.unh.edu/viewbook> [<https://perma.cc/Q7KY-2XXB>] (last visited Mar. 2, 2024) (describing the “Learn on Location” experiences generally) [hereinafter Viewbook]; see also UNH Franklin Pierce School of Law, LINKEDIN, https://www.linkedin.com/posts/unh-school-of-law_with-our-once-in-a-lifetime-learn-on-location-activity-7013858409925988352-Uu2y [<https://perma.cc/3Q6T-RC4Y>] (last visited May 6, 2024).

considerations in intellectual property law.⁴⁴ In Boston, students learned about legal issues in the biotech and pharmaceutical industries,⁴⁵ while the patent litigation course in Dallas took students to the neighboring Eastern District of Texas,⁴⁶ a popular judicial district for patent litigation,⁴⁷ to experience a real hearing. In January of 2023, Prof. Mike McCann hosted thirty students at the campus of Ultimate Fighting Championship (UFC) in Las Vegas, where students learned from UFC executives on topics ranging from intellectual property to antitrust and privacy.⁴⁸ Students who attended the New York course heard from IP professionals at the forefront of traditional industries such as finance, fashion, and real estate to learn how those businesses are developing new strategies for an increasingly online world.⁴⁹ My Los Angeles-based immersion course, *From the Silver Screen to Broadband Streams*, exposes students to similar topics, with an emphasis on the rapidly evolving media and entertainment industry.

As is evident from some of the immersion topics, and because the Hybrid J.D. degree is specifically intended to focus on IP, the curriculum emphasizes intellectual property courses. In addition to the typical requirements for “residential” J.D. students—torts, contracts, civil procedure, constitutional law, criminal law, professional responsibility and legal research and writing—Hybrid J.D. students are also required to take an IP survey course in their first semester, as well as full courses in patents, trademarks, copyrights, trade secrets, and antitrust during their law school career.⁵⁰

The first Hybrid J.D. class matriculated in fall of 2019 with forty-three students, and enrollment has grown steadily ever since. In fall of 2023, that number had more than doubled to ninety-five students, with approximately 250 students enrolled in

⁴⁴ See, e.g., UNH Franklin Pierce School of Law, LINKEDIN, https://www.linkedin.com/posts/unh-school-of-law_lol-sternekeessler-unhfranklinperce-activity-7119054118605791232-vCWo [<https://perma.cc/685Z-5YS5>] (last visited March 17, 2024).

⁴⁵ Flyer from University of New Hampshire Franklin Pierce School of Law, 2L/3L Learn on Location Elective – Boston (2022) (copy on file with author).

⁴⁶ See, e.g., UNH Franklin Pierce School of Law, LINKEDIN, https://www.linkedin.com/posts/unh-school-of-law_the-october-hybrid-jd-immersion-has-a-patent-activity-6987114614157099008-J2o0/ [<https://perma.cc/WNV4-PVAB>] (last visited March 17, 2024).

⁴⁷ See generally Andrei Iancu & Jay Chung, *Real Reasons the Eastern District of Texas Draws Patent Cases – Beyond Lore and Anecdote*, 14 SMU SCI. & TECH. L. REV. 299 (2017).

⁴⁸ *Powerhouse Press, Spring 2023*, UNIV. OF N.H. FRANKLIN PIERCE SCH. OF L., 7, <https://law.unh.edu/blog/2023/05/powerhouse-press-spring-2023> [<https://perma.cc/LG3R-ZBY5>].

⁴⁹ See UNH Franklin Pierce School of Law, LINKEDIN, https://www.linkedin.com/posts/unh-school-of-law_intellectualpropertylaw-innovation-hybridjd-activity-7045802108591202304-2KYR [<https://perma.cc/6AF3-8BKS>] (last visited March 17, 2024).

⁵⁰ *Hybrid JD Curriculum Overview*, UNIV. OF N.H. FRANKLIN PIERCE SCH. OF L. (May 3, 2023), https://law.unh.edu/sites/default/files/media/2023/04/unh-hybridjd_curriculum_map_classof2026.pdf [<https://perma.cc/DH4T-Y7Y9>].

total.⁵¹

If the most important feature of the Hybrid J.D. program is its focused curriculum taught by expert faculty, a close second is the student body itself. Because the program is targeted towards experienced working professionals, there is a richness to the learning environment that is simply different than it is in the traditional residential law school environment that comprises primarily students either immediately or just a few years out of an undergraduate program.

As Dean Megan Carpenter observed in an interview about the Hybrid J.D. program:

We look at students as whole people—that students’ working experience is something that they bring into the classroom. So the students are learning not just from the faculty, but they’re learning from each other. And we love to incorporate the students’ own professional experiences into the subjects that they’re studying.⁵²

Sarah McMullen, 2023 Hybrid J.D. graduate, agreed, saying that “the greatest strength of the Hybrid JD program is the diverse backgrounds, careers, and life experiences of the students and that increases our educational opportunities . . . As classmates, we come together and interact at immersions and learn law from people who are experts in their fields.”⁵³

Having taught in the Hybrid J.D. program for several years, I have witnessed firsthand the dynamic that develops among students and faculty. Each course, and particularly the in-person immersion sessions, essentially become small learning communities where faculty members perform traditional faculty teaching tasks: convey information, facilitate discussions, guide inquiries, and evaluate learning; but they also become learners themselves, gaining new insight into how the concepts they teach apply to different fields of endeavor in which the students practice. That, of course, enriches the experience of fellow students as well.

Although it is presumably possible to achieve a similar dynamic in a traditional residential program, the Hybrid J.D. program makes it much more accessible to those with significant experience and insight to contribute. For example, 2023 graduate Doug Vannoni says

I had thought about law school for many years but was never able to actually go because of my commitments to my family and career. At this stage of my life, the Hybrid JD allows me to continue to do all of this and enlarge my footprint of what I’m going to be doing next.⁵⁴

In the words of Dean Carpenter:

This is the future of legal education. Years ago, law firms spent the first few years training and losing money on new associates. Changing financial realities in the legal services industry means that law firms now need to hire associates who are prepared to

⁵¹ E-mail from Daniel Cwynar, Hybrid JD Program Coordinator & Acad. Advisor at Univ. N.H. Franklin Pierce Sch. of L., to Professor Christopher Reed (author) (Jan. 8, 2024, 04:38 PST) (on file with author).

⁵² Podcast, *supra* note 42, at 2:06.

⁵³ *Hybrid JD*, *supra* note 41 (Sarah McMullen profile).

⁵⁴ *Id.* (Doug Vannoni profile).

hit the ground running . . . And part of that, we accomplish through specialized experiential training that prepares students not just to think like lawyers, but to be lawyers. Allowing for specialization within law degrees is one way to do this. This program is the first of its kind, but it will not be the last of its kind, and incorporating technology to make a legal education accessible to those who are interested in earning it is something that is our responsibility as [law school] leaders . . .⁵⁵

III. SOME THOUGHTS ON THE FUTURE OF LEGAL EDUCATION

The DWS and Hybrid J.D. programs reflect the pioneering values of Franklin Pierce, emphasizing practice-focused education and bringing intellectual property education to working professionals.

But Franklin Pierce is only one of about two hundred ABA-approved law schools in the United States, and dozens of other state or regionally-accredited schools. As law schools face pressure from declining enrollment, and employers increasingly seek law graduates who know something about the practice of law, the bar admission industrial complex—law schools, bar examiners, and the organizations that enable and support them—will need to evolve. The programs launched by Franklin Pierce offer useful foundations for, or at least some learnings about, what legal education of the future should look like.

I have long had strong views about education. In my elementary school years, I was one of those students who constantly asked (whined) “when are we ever going to need this?” in response to learning things in school that I saw no immediate value in learning. Things improved, somewhat, throughout my school career, but my frustration flared up again years later as I was preparing for the bar exam. I found myself asking a variant of the question I asked years earlier: why are we being tested on this? I probably spent just as much time reading back issues of *The Bar Examiner*, the publication of the National Conference of Bar Examiners, as I did studying the substantive law. (Fortunately, notwithstanding my misguided use of time, I passed the exam).

Of course, then I had a little credibility on such matters. Having just graduated, with no “real world” experience, my complaints would likely have been chalked up to little more than griping about having to pay my dues to the profession, just as thousands of lawyers before me had done.

But today, with two bar exams, more than seventeen years of practice experience spanning all three branches of government and private industry, and half a dozen years of teaching experience under my belt, including traditional classrooms and in the Hybrid J.D. program, I can say that not only were my original thoughts on the bar exam more or less accurate—a lot of the material on it need not be tested—but that Franklin Pierce’s pioneering ethos appears to have rubbed off on me. I have spent a lot of time thinking about how we could improve the process of becoming a lawyer.

⁵⁵ Podcast, *supra* note 42, at 12:29.

What follows is a broad outline of what I think legal education should look like, ranging from the school as an institution, to the way we admit new lawyers to the bar.⁵⁶

A. *The Physical Space*

Most fundamentally, the law school of the future must be less focused on maintaining a fixed location, in favor of creating experiences that bring together faculty, students, and staff, in various environments conducive to learning. Put differently, we should start thinking about law school less as a physical place, and more as a suite of offerings that support students learning how to practice law.

As demonstrated by the Hybrid J.D. program, and more acutely, by the COVID-19 pandemic, legal education can quite easily transcend the physical borders of traditional classrooms when properly planned and implemented.

This is not to suggest that law schools should abandon their physical campuses entirely, but one could imagine a program where students come to campus only occasionally, perhaps for select courses or select experiences where in-person attendance would be especially beneficial to the learning objectives—e.g., a trial advocacy workshop or a simulated bar exam.

In-person offerings need not necessarily take place at a single location either. As mentioned above, the school has offered a number of “learn on location” courses for its Hybrid J.D. program as well as for the student body at large.⁵⁷

In January 2020, just before the world shut down because of the COVID-19 pandemic, and in between the fall and spring semesters, Franklin Pierce offered *IP Strategies for Today’s Industry*, a four-day course in Silicon Valley.⁵⁸ The course was held at Microsoft’s Sunnyvale offices, featuring field trips to other major tech-sector companies and lectures from Bay Area professionals that probably would not have been able to make the trek to the Franklin Pierce mothership in Concord, New Hampshire.⁵⁹

The school also offered a course in Napa, California on geographical

⁵⁶ A housekeeping note: I recognize and appreciate that many of my suggestions for the future of legal education would require significant changes to the standards by which law schools are accredited and ranked. I address some of those issues in more detail later in this section, but for the purposes of this exercise—writing a piece for a journal issue focused on risk-taking in legal education—I pretend that there are no regulatory constraints, with the goal of reshaping the legal education experience entirely, and perhaps also the way they are overseen and supervised.

⁵⁷ Viewbook, *supra* note 43.

⁵⁸ *UNH Franklin Pierce School of Law Hosts Inaugural Immersive Classroom Experience In Silicon Valley*, UNIV. N.H. FRANKLIN PIERCE SCH. OF L. (Jan. 16, 2020), <https://law.unh.edu/blog/2020/01/unh-franklin-pierce-school-law-hosts-inaugural-immersive-classroom-experience-silicon-valley> [<https://perma.cc/MAA2-AH2V>].

⁵⁹ *Id.*

indications,⁶⁰ a branch of trademark law that has become increasingly important to the seventy-eight billion dollar U.S. wine market.⁶¹ The doctrine deals with the identification of products that possess certain qualities or a reputation based on their origin.⁶² I had the pleasure of attending the course, the first day of which was held at the Napa Valley Wine Academy and the second day at a local law firm that specializes in alcoholic beverage law and related disciplines. Similarly, a course on the role of intellectual property in economic development among indigenous peoples was offered more than 5,000 miles away from the school, in Honolulu.⁶³

This non-exhaustive recitation of the course catalog does more than reveal the unique offerings of the school's curriculum. It illustrates that legal learning can take place in a variety of places and in a variety of forms. Students in the Hybrid J.D. program engage in most of their learning on their own time, through an online learning management system, but owing to the immersion sessions, some of it takes place in person at the school's campus, and some of it takes place in locations relevant to course material. Students in each of these environments could fairly characterize the experience as "law school," but it is an experience transcends the physical space—only part of their time is spent at the school in Concord.

The hybrid format should become the standard for legal education programs going forward, and schools should be free to experiment with varying degrees and types and balances of in-person and remote offerings to best accommodate students' schedules and desired learning objectives. Some programs may find it desirable to maintain a considerable in-person component. Others may find it valuable to reserve the in-person aspects of the program for location-based experiences such as the ones described above, while designating the "routine" or "standard" courses to various distance-learning modalities. Some schools may find it valuable to maintain campuses offering a range of programming from fully in-person to periodic immersion sessions such as those required by the Hybrid J.D. program. Other institutions might find it beneficial to rent or borrow space on an as-needed basis in appropriate locations based on pedagogical need, just as Franklin Pierce has done with some of its "Learn on Location" programs.

Regardless of the particular approach, thinking about "law school" as something bigger than a particular location will stimulate innovation in the delivery of legal

⁶⁰ *Intellectual Property Summer Institute 2023*, UNIV. N.H. FRANKLIN PIERCE SCH. OF L. (Feb. 29, 2024), <https://law.unh.edu/blog/2024/02/intellectual-property-summer-institute-2023> [https://perma.cc/L2AZ-U67W].

⁶¹ *Total Retail Value of Wine Sales in the United States from 2000 to 2021*, STATISTA (Sept. 23, 2022), <https://www.statista.com/statistics/233744/total-retail-value-of-wine-sales-in-the-us> [https://perma.cc/TJG5-NTMS].

⁶² See *Geographical Indications*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, https://www.wipo.int/geo_indications/ [https://perma.cc/89BN-PV5] (last visited Jan. 6, 2024).

⁶³ *Hawaii Intersession Represents Innovative Collaboration*, UNIV. N.H. FRANKLIN PIERCE SCH. OF L. (Feb. 9, 2024), <https://law.unh.edu/blog/2024/02/hawaii-intersession-represents-innovative-collaboration> [https://perma.cc/5HB8-RBRE].

education and open the opportunity to students for whom going to law school may have been a difficult or impossible proposition.

B. Students

One of the Hybrid J.D. program's many strengths is that it allows people from all over the world, and with various backgrounds, to pursue a legal education without having to leave their jobs and homes, or otherwise disrupt their lives. The result is a student body that is geographically, generationally, and experientially diverse. Such diversity greatly enhances the learning environment for students and faculty alike.

Even before the Hybrid J.D. program, Franklin Pierce attracted students that had some work experience prior to law school. I was not one of those students, but I benefitted greatly from the wisdom and knowledge of my more experienced peers who contributed aspects of their prior professional lives to the classroom. Now, as a professor in the hybrid program, I experience the same dynamic, but even more noticeable, as everyone in my classes has experience that they bring with them to the virtual classroom. My office hours sessions are often filled with students sharing stories and examples of how the course material relates to their professional lives. One of my media law students wrote to me shortly after the semester concluded to tell me about how he was able to apply to his job some of the course material on state public records laws.

One well established theory of learning is that learners are more likely to retain information and concepts when they can be applied to something with which they are already familiar.⁶⁴ Constructing legal education programs that help foster those connections, then, would presumably help produce more qualified lawyers; those that are able to see immediate practical application are presumably more likely to be "client ready" than those who have had mere academic exposure to the same topics.

This is not to suggest that legal education should be limited only to those with professional experience, but developing programs intended to cater to such students will undoubtedly increase access to legal education and potentially enhance the diversity of the legal profession. Indeed, I believe that programs designed to bring the educational experience to the students, allowing them to mostly stay where they are, will make law school more accessible to certain disadvantaged communities, the members of which may not have the luxury of dropping everything to move across the country to attend a particular school. Those of us who were able to do so should remain mindful of the privilege that allowed us that opportunity, and now use that success to expand opportunities to legal education to a wider, more diverse population.

⁶⁴ See generally STEPHEN DOWNES, *Connectivism and Connective Knowledge: Essays on meaning and learning networks*, in NAT'L RSCH. COUNCIL CAN. 9 (2012) ("Connectivism is the thesis that knowledge is distributed across a network of connections, and therefore that learning consists of the ability to construct and traverse those networks.").

C. Faculty

Just as remote or hybrid programs enable us to think more broadly about who is able to receive a legal education, such models allow us to rethink who delivers it as well.

In a typical law school, the core doctrinal law school subjects—torts, contracts, civil procedure, criminal law, evidence, property, and the like—are taught by full-time professors whose jobs are, generally speaking, supposed to be divided equally among teaching and research, with the remaining, smaller portion of time reserved for school governance and service such as serving on committees or advising students.

Although many law professors maintain an active practice on the side, take consulting engagements, or serve as expert witnesses, there is generally no requirement that law professors actually practice—or, for that matter, have ever practiced—the law that they go on to teach. Indeed, it is not uncommon for a law professor to have practiced law for only a few years before joining the academy.

Clinical faculty are hired for the express purpose of supervising students in a practice setting but are typically considered “beneath” the non-clinical faculty in the law school pecking order. Just below the clinical faculty are adjunct professors who typically have full-time “day jobs” and teach a course or two on a part-time basis. Courses taught by adjuncts are generally focused on a particular practice area or subspecialty and feature lower enrollment than the doctrinal courses.

While Franklin Pierce has a fantastic full-time faculty, some of the best courses I took in law school were taught by adjuncts, such as an insurance licensing course taught by a senior executive at the New Hampshire Insurance Department who infused the course with real-world examples of the concepts we were learning in class, and a copyright licensing course taught by a local transactional attorney who gave us practical insights into reviewing and marking up draft agreements that I still draw upon today in my own practice.

My view is that we should flip the script on the law school pecking order, and offer more courses taught by practicing professionals for whom teaching is a side gig. Having said that, I should be clear about two things. First, I do not mean to belittle full-time faculty members, nor do I intend to suggest that their scholarly work is valueless. Rather, I believe that the primary emphasis of a law school should be on educating future lawyers to *practice* law, which means that the primary emphasis of the courses a law school offers should be on practical skills. Scholarship is an important aspect of our legal system, but it does not follow that someone who is a productive, insightful scholar is necessarily also well qualified to teach the practice of law.

Secondly, I do not intend to suggest that the opposite is true. That is, just because a lawyer is a successful practitioner does not necessarily mean that they will make an effective instructor. Indeed, just as I had some great adjunct professors while in law school, I also had some pretty bad ones, such as one who quite literally read his lectures from a study aid that was keyed to the textbook. But having poor

teaching skills is not a feature that is unique to adjuncts. It is widely acknowledged throughout higher education that many well-credentialed and influential experts who are celebrated in their field are not necessarily good instructors.

All of this is to say that I believe law schools must refocus their principal emphasis to be on the (1) teaching of (2) practical knowledge and skills that students need to be successful lawyers. Scholarship should remain a part of the academic landscape, but it should be de-emphasized in law school popularity contests such as tenure decisions and ranking schemes as the emphasis shifts to teaching and instruction. Writing articles for the benefit of other law professors, and the occasional judge (or more likely, her clerks) is no doubt professionally fulfilling, but it does little to advance students' understanding of practicing law.

Schools must also invest in their teaching faculty to make them effective instructors. Most professors—full-time, clinical, and adjunct—are dropped into the classroom environment with no training or background in education (other than their own experiences as a student). That must change. We cannot complain about the effectiveness of instruction without providing people with the resources necessary to become better at it (and time to avail themselves of those resources).

Teaching effectiveness is a perennial “hot topic” in education policy circles⁶⁵ and as a result there are dozens of free or low-cost resources available online from which law schools could fashion a training program for new professors.⁶⁶ Law schools that are part of larger institutions with teacher training programs might take advantage of the affiliation, creating joint programs on adult education techniques, teaching effectiveness, and assessment.

Just as the COVID-19 pandemic taught us that remote teaching and learning is possible, it also taught us that effective remote instruction requires more than simply sticking a camera in front of a professor and attempting to mimic the in-class experience. Creating successful online experiences for students requires additional skills in instructional design and technology that law schools must plan for and offer to its faculty.

⁶⁵ See Laura S. Hamilton et al., *Standards Based Reform in the United States: History, Research, and Future Directions*, RAND CORP. (Dec. 2008) (observing that “[s]tandards based reforms . . . have become widespread across the United States”).

⁶⁶ For example, a search for “education” on the well-known “massive open online course” website Coursera generated just over 1,800 results. See COURSERA.ORG (searching for “education” courses). Similarly, most large academic institutions operate various centers for teaching and learning, such as UNH’s own Center for Excellence and Innovation in Teaching & Learning or my undergraduate alma mater, Lehigh University’s, Center for Innovation in Teaching and Learning. See *Center for Excellence and Innovation in Teaching & Learning*, UNIV. N.H. FRANKLIN PIERCE SCH. OF L., <https://www.unh.edu/professional-success/ceitl> [https://perma.cc/BZ6P-6WTQ] (last visited March 17, 2024); see also *Center For Innovation in Teaching and Learning*, LEHIGH UNIV., <https://grad.lehigh.edu/research-teaching-professional-development/center-innovation-teaching-and-learning> [https://perma.cc/PZ64-LCUK] (last visited March 17, 2024). While these exist primarily for the benefit of their respective institutions’ own faculty, many materials are made available online, for free.

I appreciate that some schools do this already, and organizations such as the American Association of Law Schools offer teacher training resources,⁶⁷ but it is far from standard practice now, and it will become increasingly important as schools take heed and offer a greater emphasis on practice-oriented courses taught by people who actively practice and experiment with new delivery modalities.

D. Curriculum and Pedagogy

Thanks to California's steadfast refusal to allow admission to the bar on motion, I had the pleasure of taking the state's abbreviated "attorney's bar exam" just a couple years ago, some fifteen years after I first sat for (and passed) the bar in New Hampshire.

Unlike my first go around, when I had a group of fellow Franklin Pierce graduates with whom to study and commiserate, I was largely alone with my thoughts for the California exam, so I joined a Facebook group for people taking the upcoming test. Aside from near constant fear, uncertainty, and doubt that permeated the discussions, one recurrent feature was the parlor game of predicting which topics would likely be tested on the essay portion, and in particular, which topics might be *combined* into one question—oh the horror. One participant pointed out that one time they tested civil procedure and evidence together; another one-upped that by noting an essay question once featured torts and remedies. How were they to appropriately answer the question if they can't even identify the topic! The bar exam is so unfair.

Of course, to any practicing lawyer, these combinations seem entirely logical, but upon reflection, we can't really blame students if they don't immediately see those connections because we don't teach the topics that way. In law school, topics are siloed, each relegated to a fourteen-week period of study with little crossover except, perhaps, in legal research and writing classes, clinics, or legal residencies. Generally, students take torts, contracts, property, civil procedure, constitutional law, and so on, and then don't encounter them again in any meaningful way until they take the bar exam.

There have been attempts at combining various curriculum areas, including one such attempt by a for-profit education provider, pseudonymously known as "Law Corp." in an ethnography by Professor Diaz Tejani.⁶⁸ As Tejani explains, the school sought to combine "discrete law school subject matter into larger conglomerate courses"⁶⁹ such as combining torts and civil procedure, contracts and property, and legal writing with criminal law,⁷⁰ which more accurately reflects the way topics arise

⁶⁷ See *News & Publications*, THE ASS'N OF AM. L. SCHOOLS, <https://www.aals.org/publications/> [https://perma.cc/W8CQ-XAPA] (last visited March 1, 2024).

⁶⁸ RIAZ TEJANI, *LAW MART: JUSTICE, ACCESS, AND FOR-PROFIT LAW SCHOOLS* (Stanford University Press 2017). The book chronicles the pseudonymous New Delta School of Law operated by Law Corp.

⁶⁹ *Id.* at 128.

⁷⁰ *Id.* at 129–30.

in practice.⁷¹ But the plan was controversial because it:

. . . ran counter to a century of legal academic tradition. The classic division of law school subject matter into torts, contracts, property, civil procedure, and criminal and constitutional law had arisen in the 1870s at Harvard under the direction of [president] Charles Eliot and [dean and professor] Christopher Langdell. These discrete core subjects had already taken shape thanks in part to publication of treatises by William Blackstone in England in the 1760s and James Kent in America during the 1820s. But, rather than reading and memorizing treatise materials the way students are required to do in the code-based systems of Europe, American law teachers began lecturing on legal doctrine using the now-infamous “case method.” Emanating outward from Harvard Law School through both scholarly hegemony and faculty recruitment patterns favoring its graduates, the case method quickly became the dominant methodology for teaching law in the United States. Within decades of its ascendancy in professional training, legal education was characterized by the twin features of divided subject matter and case method teaching.⁷²

In short, the reason legal curriculum is siloed is simply because it’s been that way for more than a century and a half, and it’s been that way for so long because that’s the way Harvard does it.

To be fair, one of the reasons Law Corp.’s attempt at integrated curriculum was viewed with skepticism was that some believed there was an ulterior motive.⁷³ By establishing a curriculum framework that was not widely accepted by other law schools, students would have a more difficult time transferring in or out of the program, a useful feature for the then-beleaguered Law Corp., which had been suffering from increased transfer attrition and, as a result, increased pressure on revenues.⁷⁴

While the practice of siloing law school curriculum enjoys a long history, the basic concept of integrating discrete disciplines into a unified teaching and learning experience is not especially new in education circles. In 1978, for instance, my old school district, Jefferson County Public Schools in suburban Denver, Colorado, developed its Primary Integrated Curriculum (“PIC”).⁷⁵ PIC, as it became known colloquially, was “an action-centered program for first and second-graders that blends science, social studies, health, environmental education, and career education into one unified, comprehensive curriculum.”⁷⁶ The impetus for the program was—stop me if you’ve heard this one—a recognition that education should focus more on practical skills. Specifically,

teachers in [the school district] were being increasingly pressured by the public to intensify classroom emphasis on the basic skills. At the same time, they were also

⁷¹ *Id.* at 128.

⁷² *Id.* at 128 (footnotes omitted).

⁷³ *See id.* at 137–38.

⁷⁴ *Id.*

⁷⁵ Marge Melle, *The Primary Integrated Curriculum*, 4-1 FOCUS ON EXCELLENCE: SCI. TEACHING AND CAREER AWARENESS 21, 23 (1987).

⁷⁶ *Id.*

expected to give children balanced instruction in [the PIC topics] as well as encourage creativity and aesthetic appreciation. Teachers could not find enough hours in the school day for this intricate balancing act.⁷⁷

Of course, I realize teaching first- and second-graders is fundamentally not the same as training future lawyers, but I was struck by the similarity in circumstances. Then, in primary education, as now in legal education, instructors were under pressure to emphasize practical skills without sacrificing substantive knowledge, which leads to curricular innovation.

Today, that innovative spirit is seen most clearly in legal education through the Institute for the Advancement of the American Legal System's ("IAALS") *The Whole Lawyer*.⁷⁸ Developed after consulting with 24,000 practicing lawyers, dozens of employers, and a handful of law schools, *The Whole Lawyer* comprises five key learning outcomes—communicator, practitioner, professional, problem solver, and self-starter—that break down into seventy-six "foundations" that comprise "the whole lawyer."⁷⁹ This framework emphasizes the skills and personal qualities that we expect legal professionals to exhibit, and perhaps most importantly, gives law professors the tools necessary to construct curricula that give students opportunities to develop and practice them, and to evaluate students' performance using "standards-based" assessment techniques which have become largely commonplace in other academic settings,⁸⁰ but which have only recently begun to become part of the legal education landscape.

Standards-based techniques for instructional design are an important step forward to reimagining how we build law school educational experiences, but the legal profession needs something much more drastic. To have meaningful impact, legal educators must rethink the entire scope and sequence of the curriculum so that it better aligns with what we expect lawyers to know—and to be able to *do*—when they graduate. In my reimagined law school curriculum, I see courses falling into a four-level taxonomy, with each level building on the one before it:

- **Foundations** courses are those that, as the name suggests, comprise the building blocks of successful legal understanding and practice, including legal writing and research, constitutional law, policy and legislation, basic advocacy skills, and experiences that offer exposure to the type of work that legal professionals are expected to do and the environment in which they do it. Although it launched long after my time at the school, Franklin Pierce

⁷⁷ *Id.* at 21.

⁷⁸ See INST. FOR ADVANCEMENT AM. LEGAL SYS. FOUNDATIONS INSTRUCTIONAL DESIGN GUIDE: USING LEARNING OUTCOMES & STANDARDS-BASED ASSESSMENTS TO TRAIN BETTER LAWYERS 3–5 (2021).

⁷⁹ *Id.*

⁸⁰ See *Development Process*, COMMON CORE, <https://www.thecorestandards.org/about-the-standards/development-process/> [<https://perma.cc/FY3L-ZX7M>] (last visited March 1, 2024) (chronicling the development of standards-based education frameworks in grade school education).

now requires first-year students to take a one-credit course called “The Legal Profession,” where students gain “a basic understanding of the numerous career paths available to lawyers, explore basic concepts of legal professionalism, understand the fundamental of the business of law, practice the ‘soft skills’ necessary for effective lawyering, and develop an individual career development strategy for exploring their unique professional interests”⁸¹ over the course of law school. Such courses should become a standard part of the law school curriculum, ideally persisting beyond the first year, following students through their law school journey, helping them develop their careers before they graduate.

- **Principles courses** are the “standard issue” doctrinal offerings, such as business associations, contracts, civil procedure, criminal law and procedure, evidence, property, torts, wills and trusts, and the like. Most schools offer these courses in fairly predictable ways, primarily because they are tested on most states’ bar exams.
- **Practice courses** are those that are built around exercises that put students into the role of junior attorneys, giving them opportunities to “do lawyer things,” as opposed to reading cases or listening to professors pontificate—courses on contract drafting, licensing, litigation practice, or judicial opinion drafting, for instance.
- **Focus courses** are my favorite because they bring together disparate areas of law into narrowly focused practical contexts to help students appreciate how legal issues are confronted and managed in real-world settings. The “Learn on Location” offerings I mentioned in section II.B., *supra*, would be considered “focus” courses, as would the Napa-based trademark and wine course, and the Silicon Valley intellectual property strategies course. Even if students in those courses never go on to work in the tech or wine industries, focus courses enlighten and inspire students by exposing them to diverse areas of legal practice.⁸²

Beyond the content itself, we should also reimagine the pedagogical approach that we follow in most law school classes. As noted above, the standard Langdellian method involves reading dozens of cases, extracting rules, identifying nuances, and then applying those rules to new facts to predict outcomes. Those are, no doubt, essential skills for any lawyer in a common law system, and schools must continue

⁸¹ *Course Catalog, LGP900 (01): The Legal Profession*, UNIV. OF N. H., <https://courses.unh.edu/class/202310/11875> [<https://perma.cc/MF9V-RBSL>] (last visited March 17, 2024).

⁸² Also, they’re simply more fun than traditional law school fare, which can serve to reinvigorate those students who may have become disenchanted with the law school experience. For those who eschew the notion of fun in law school, I suggest that attending courses in interesting locations will serve as good practice for future bar association conferences, where venues are seemingly chosen for the quality of their golf courses rather than legal relevance.

to teach them, but I do not believe that every course in law school necessarily needs the same treatment.

In my media law course, for instance, while I do assign particularly important cases, or opinions where I think the court did an especially good job of explaining a key principle, for the most part, I deliver the basic parameters of the law during the lectures, rather than asking students to fish for them in a textbook. We spend the remaining time discussing the application of the law to a comprehensive scenario that we revisit throughout the course, adding facts and identifying new legal issues as the semester unfolds and students learn the material. Various assignments put them in the role of serving as an in-house lawyer for the fictitious media enterprise around which the hypothetical is constructed.

We must start to map curriculum to skills, not just content, which is essentially what the IAALS calls for in its *The Whole Lawyer* framework.⁸³ To work effectively, law schools must take a comprehensive, institution-wide approach, considering the entire three-year experience, identifying the most appropriate combinations of skills and content, and appropriate placement in the overall academic program.

In short, law school curriculum, and by extension, the curriculum planning process, should look something like it does in the DWS Program described earlier. “Design your courses, intentionally weaving them together so that they create a seamless fabric,” said founding director, John Garvey.⁸⁴ “Carry simulations forward from one course to the next, so that as the courses progress, you build additional complexity. This allows students to build upon their skills as they go from exposure, to competency, to mastery.”⁸⁵

E. Assessment and Admission to the Bar

I often describe the process of becoming a lawyer as comprising three distinct phases that can be represented by a Venn diagram where the circles only slightly graze each other. The first circle represents law school, the second represents the bar exam, and the third represents learning how to actually practice law, which most students learn in their first job. Thus far I have described ways we might try to bring the first and third circles together—law school and legal practice. In this section I turn to the second circle: the bar exam. Although a comprehensive examination of the bar exam and bar admission standards is beyond the scope of this essay, we cannot realistically discuss making drastic changes to legal education without also thinking about how that might change the way we admit new practitioners into the profession.

Though readers are very likely already quite familiar with how the bar admission industrial complex works, just to level set, here’s a quick refresher: After spending three years and many thousands of dollars on a legal education, most law school

⁸³ INST. FOR ADVANCEMENT AM. LEGAL SYS., *supra* note 78, at 1.

⁸⁴ Garvey & Zinkin, *supra* note 16, at 127.

⁸⁵ *Id.* at 127–28.

graduates spend another few thousand dollars on a commercial bar preparation course and spend another couple of months to be cursorily reacquainted with the law they just learned, all so they can pass a two-day exam that, for the most part, does not resemble what they are likely to see in practice. Assuming safe passage, the law school graduate may be considered for admission to the bar, upon satisfactory completion of certain other requirements that vary by state, but almost always involve paying more money.⁸⁶

In short, the process of becoming a licensed attorney is, in most states, an expensive and arduous process that goes well beyond law school. It always struck me as strange that we have such little trust in the legal education system to prepare us to take the bar that most of us pay a third party to show us how to do it.

On top of all this, many states don't even trust their own admission practices. New Hampshire, for instance, requires that "every person admitted to practice law in New Hampshire must attend a practical skills course presented by the New Hampshire Bar Association" within the first two years of admission.⁸⁷ California requires new licensees to take a "New Attorney Training Program" within a year of admission, "focused on law practice competency."⁸⁸ One can only imagine what the world might look like if we taught "practical skills" and "law practice competency" in law school and state bars could trust them to have done so.

Some blame law schools for not doing enough to prepare students for the bar, and in response, many schools have begun to offer more bar preparation courses, mock bar exams, and similar experiences to help students get ready for the big day (or two days, in most cases).⁸⁹ But blaming the law schools alone ignores the fact that there has been plenty of criticism of the current bar exam, ranging from concerns that it is "an outdated format that rewards rote memorization over analytical ability and client-focused skills"⁹⁰ to concerns about serious racial disparities.⁹¹

⁸⁶ For example, most states also require an elaborate "character and fitness" examination which involves a background investigation, often requiring the candidate to spend more money. In California, for instance, among other things I was required to submit certified copies of my driving record in every state in which I had ever held a driver's license, and official certificates of good standing from the other jurisdictions to which I was admitted. California also requires that candidates be fingerprinted, but only by a state-approved service provider.

⁸⁷ N.H. Jud. Bd. Rule 42 XIII(a): Practical Skills Course Requirement.

⁸⁸ State Bar of Cal. Title 2, Division 4, Rule 2.53(d): New Licenses.

⁸⁹ See, e.g., David L. Hutson, Jr., *Schools add bar exam class to curriculum and find success*, 102 A.B.A. J. 35 (2016).

⁹⁰ Karen Sloan, *Overhaul the Bar Exam? Two Major Studies Focus on the Test's Future*, LAW.COM (July 31, 2019), <https://www.law.com/2019/07/31/overhaul-the-bar-exam-two-major-studies-focus-on-the-tests-future/> [https://perma.cc/L7X6-YTZD].

⁹¹ See Deborah Jones Merritt et al., *Racial Disparities in Bar Exam Results—Causes and Remedies*, BLOOMBERG L. (July 20, 2021), <https://news.bloomberglaw.com/us-law-week/racial-disparities-in-bar-exam-results-causes-and-remedies> [https://perma.cc/VLT8-67EP].

The various mechanisms of bar admission fall along a spectrum, with the bar exam at one end and what has become known as “diploma privilege” at the other. Diploma privilege is a mechanism whereby students who graduate from particular law schools are automatically admitted to the bar upon graduation.⁹² Although some states temporarily adopted diploma privilege during the COVID-19 pandemic, when in-person testing was not possible due to social distancing requirements,⁹³ Wisconsin is the only state that has consistently recognized such a privilege.⁹⁴ In the middle of these two poles is ample room for innovative approaches to assess competency to practice law. Once again, we can turn to Franklin Pierce’s innovative spirit for an example of what the bar exam of the future might look like.

The hallmark of the DWS Program is that successful graduates may be admitted to the bar without taking the traditional two-day bar exam. But DWS requires students do more than just graduate law school. Rather, as described in section II.A., *supra*, DWS is essentially a two-year bar exam, in which the students take specialized courses and engage in intensive practical exercises throughout the course of their legal education. During that time, the student meets regularly with a bar examiner who ultimately reviews a portfolio of their work and determines whether they have demonstrated competence sufficient for admission to the bar. A DWS graduate is thus “examined” for bar admission just as any other law school graduate is, it’s just that the mechanism of examination is a portfolio of real-world work versus measuring performance on a series contrived questions and exercises, given under unnecessary time pressure, that comprise the traditional bar exam.⁹⁵

⁹² Natalie Runyon, *Exploring diploma privilege and alternatives for attorney licensure*, THOMSON REUTERS (Apr. 13, 2021), <https://www.thomsonreuters.com/en-us/posts/legal/diploma-privilege/> [<https://perma.cc/2APM-MNL6>].

⁹³ Khorri Atkinson, *DC To Allow Limited Diploma Privilege Amid Pandemic*, LAW360 (Sept. 24, 2020), <https://www.law360.com/articles/1313391/dc-to-allow-limited-diploma-privilege-amid-pandemic> [<https://perma.cc/VJT9-8W6M>] (observing that the District of Columbia joined several other states, including Utah, Washington, Oregon, and Louisiana, in granting emergency diploma privilege).

⁹⁴ See UnCommon Law Podcast, *Could a Law School Diploma Stand in for the Bar Exam?*, BLOOMBERG L. (Nov. 17, 2021), <https://news.bloomberglaw.com/business-and-practice/could-a-law-school-diploma-stand-in-for-the-bar-exam-podcast> [<https://perma.cc/4CT5-BSW4>] (amusingly, Wisconsin is also the home of the National Conference of Bar Examiners, which publishes portions of the bar exam used by many jurisdictions, including the Multistate Bar Exam, the Multistate Essay Exam, and the Multistate Performance Test, which are often packaged together as the “Uniform Bar Exam.”).

⁹⁵ See *Nebraska Announces Plan to Adopt NextGen Bar Exam in July 2027*, Nat’l Conf. Bar Examiners (Dec. 15, 2023) (to be fair to the National Conference of Bar Examiners, in an attempt to remain relevant, it recently began a significant overhaul of its current battery of tests, replacing them with the “NextGen bar exam” which promises to “reflect the work performed by newly licensed attorneys,” by balancing “the skills and knowledge needed in litigation and transactional legal practice and will reflect many of the key changes that law schools are making to their own curricula . . .” by emphasizing practical skills.). See *id.* (as of December 2023, nine jurisdictions

In my view of a perfect world, the DWS model would become the standard mechanism for bar admission. Students meeting with bar examiners to discuss their portfolio would become just as routine as sitting in a lecture hall watching bar prep videos is today. But in a recent study of bar exam alternatives, the California Committee of Bar Examiners pointed out that “the elephant in the room . . . is scaling.”⁹⁶ The Committee observed that in the jurisdictions with alternative pathways that they studied—New Hampshire, Oregon, and Wisconsin—there were fewer law schools and fewer people seeking admission to the bar than in California.⁹⁷ The DWS program is limited to twenty-four students per year,⁹⁸ for instance, while in July 2023, just under 8,000 candidates took the California bar exam.⁹⁹

In New Hampshire,

each DWS bar examiner commits to five DWS scholars per year and receives a stipend of \$800 per year for participation in the program. One bar examiner suggested that it would not be possible for an examiner to evaluate more than five students per year and that they would have to add one additional bar examiner for every five students added to the program.¹⁰⁰

Thus, says California, one

cannot simply mimic or ‘copy and paste’ a program tailored for a smaller pool or state and expect to achieve similar success in California because the demand (and expense) for resources to launch and sustain a state-wide program is far higher and more challenging in California than in any other state.¹⁰¹

That’s probably true to a point, but the math suggests that the costs of administering such a program may not be as onerous as the bar’s explanation suggests. If we assume that the student-to-examiner ratio in New Hampshire would work in California, and that the approximately 8,000 people who took the bar exam in July 2023 is a reasonable estimate of the number of people who seek admission each year, the state would need 1,600 bar examiners. Further, let’s assume that akin to the DWS model, the examiners evaluate each student’s portfolio throughout their three-year law school career. With an \$800 annual stipend, adding 1,600 bar examiners would cost the state \$1.28 million a year, or a total of \$3.84 million over three years.

have announced their intent to adopt the NextGen bar exam after it becomes available in July 2026.).

⁹⁶ Letter from Audrey Ching, Admissions Dir., Off. Admissions, State Bar Cal. & Amy C Nuñez, Assistant Dir. Off. Admissions to Bd. Trustee Members (May 18, 2023) in STATE BAR CAL. BD. TRUSTEE MEETING ARCHIVE, May 2023, at 1, 56.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ STATE BAR CAL. OFF. ADMISSIONS, GENERAL STATISTICS REPORT FOR THE JULY 2023 CALIFORNIA BAR EXAMINATION 1 (2023).

¹⁰⁰ GERKMAN & HARMAN, *supra* note 20, at 11.

¹⁰¹ Letter from Audrey Ching & Amy C Nuñez, *supra* note 96, at 56.

In 2023, the State Bar of California expected exam fee revenues of just over \$10 million and exam-related expenses of about \$4.5 million.¹⁰² When compared with those figures, the \$3.84 million required to conduct a DWS-like portfolio review seem like a bargain, and much of it could likely be recovered through fees charged to candidates for admission. Of course, there would likely be other costs such as administrative overhead, costs to develop appropriate evaluative criteria, training for new examiners, and the like, but broadly, the costs seem manageable, even for a large jurisdiction like California.

Despite its initial reluctance, in November of 2023, the State Bar of California announced that it would establish a pilot program, limited to about one hundred people, through which provisionally licensed attorneys¹⁰³ could seek full admission based upon the bar’s review of a portfolio of work performed under the supervision of a licensed attorney instead of taking the traditional bar exam.¹⁰⁴ Although the “portfolio bar exam” or PBE is very much in its infancy, and is beneficial only to a very small group of candidates for bar admission, it represents an important first step, in a particularly significant jurisdiction, to reimagining the process of admitting people to the legal profession.¹⁰⁵

F. Challenges and Future Considerations

In its report on the DWS Program, the IAALS identified “capacity and community support”¹⁰⁶ as one of the principal impediments to replicating the program in other jurisdictions. And, indeed, that’s exactly what we saw in California. In a request for

¹⁰² STATE BAR OF CAL. OFF. FIN., 2022 ADOPTED BUDGET 15 tbl. 2 (2022).

¹⁰³ See *Provisionally Licensed Lawyers*, STATE BAR OF CAL., <https://www.calbar.ca.gov/Admissions/Special-Admissions/Provisionally-Licensed-Lawyers> [<https://perma.cc/NR4Z-GCFT>] (last visited Feb. 20, 2024) (“Provisional licensure” is a construct developed in response to the COVID-19 pandemic, initially for students who graduated law school in 2020, but was later expanded to a larger population based on certain criteria. Under the program, qualifying graduates may practice law under the supervision of a licensed attorney for a limited period of time, but must eventually take the bar exam to become fully admitted.).

¹⁰⁴ Ryan Boysen, *California Bar Signs Off On Exam Changes, Alternative Path*, LAW360 (Nov. 17, 2023, 4:19 PM EST), <https://www.law360.com/articles/1767987/california-bar-signs-off-on-exam-changes-alternative-path> [<https://perma.cc/Z9CA-U9WE>].

¹⁰⁵ Though it is beyond the scope of this essay, it is worth noting that I believe the legal profession needs to seriously consider the development of new credentialing frameworks that would allow people to offer certain legal services, but short of the full practice of law. Many routine legal functions, such as handling divorces, child custody matters, straightforward wills and trust instruments, business formations, and the like, could be easily performed by specialized licensed professionals, rather than “full service” lawyers. Many routine medical procedures are performed by registered nurses, nurse practitioners, or physicians’ assistants, reserving the doctors for more comprehensive or specialized treatment. The legal profession should consider developing a similar structure, which would serve to welcome more people to the profession, lowering the cost of, and increasing access to, basic legal services.

¹⁰⁶ GERKMAN & HARMAN, *supra* note 20, at 16.

public comment about California's PBE, more than seventy percent of respondents disagreed with the plan,¹⁰⁷ citing concerns about how it "dumbs down" the requirements for becoming a licensed lawyer and sacrifices public protection."¹⁰⁸ Others were concerned that the review process would be inherently subjective, lack standardization, and would not effectively assure students' knowledge of the same breadth of topics that are tested on the bar exam.¹⁰⁹

Put differently, the greatest impediment to reimagining legal education and how we admit new lawyers to the bar is the legal profession itself. The "I paid my dues" school of thought runs deep through the profession's power centers, leading to widely believed, yet largely inaccurate, assumptions that any changes to the way we teach or evaluate law students will invariably lead to a "lessening" of the profession.

That spirit is largely perpetuated by the American Bar Association's ("ABA") Section on Legal Education and Admissions to the Bar, the cartel of law schools that has been empowered by the Department of Education to accredit each other. Without such accreditation, schools would not be entitled to receive certain federal student loan funding, and graduates would not be eligible for admission to the bar in most U.S. jurisdictions.¹¹⁰ In his 2012 book *Failing Law Schools*, Professor Brian Tamanaha explained that:

A number of accreditation requirements imposed high costs on law schools. Law schools were required to have "adequate" facilities, substantial library collections, and low student-faculty ratios tallied on full-time professors in tenure-track positions (adjuncts or professors on short-term contracts did not count toward the ratio). To maintain their standing as genuinely academic institutions, law schools were prohibited from offering bar preparation courses for credit (which helps prop up the lucrative bar review course industry). And several provisions jealously guarded accreditation itself by penalizing students at unaccredited law schools. Accredited law schools were prohibited from accepting credits from students seeking to transfer from unaccredited schools. Graduates from unaccredited schools, furthermore, could not enroll in graduate law programs (LLM and SJD) offered by accredited schools. The standards barred them despite the fact that graduates from foreign law schools were freely permitted to enroll.

These various measures effectively kept out law schools built on a low-cost model which emphasizes teaching rather than research, relies on a smaller core of full-time faculty without tenure at lower pay, uses a larger number of lawyers and judges to teach courses as adjuncts, possesses basic facilities and library collections, and focuses on teaching students practice skills and the core knowledge necessary to pass the bar

¹⁰⁷ Letter from Audrey Ching, Dir. Off. Admissions, State Bar Cal., Donna Hershkowitz, Chief of Programs/Leg. Dir., State Bar Cal to Bd. Trustee Members in ST. BAR CAL. BD. TRUSTEE MEETING ARCHIVES, Nov. 2023, 1 at 4; see *id.* at Attachment C (notably, in responding to those comments, the state bar observed that "[m]any critical comments show little familiarity with the details of the proposal.").

¹⁰⁸ *Id.* at 5.

¹⁰⁹ *Id.*

¹¹⁰ See BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* 12 (2012).

exam.¹¹¹

The U.S. Department of Justice sued the ABA in 1995 alleging that certain ABA rules and practices were anticompetitive.¹¹² To settle the claims, the ABA entered into a ten-year consent decree that prevented the ABA from sharing faculty salary data among law schools, among other things.¹¹³

Although there have been some changes and new interpretations of certain rules since the antitrust case was brought, the majority of the ABA's restrictive accreditation standards persist today. They still emphasize the importance of full-time, tenured faculty, scholarship over teaching, and place significant limits on the number of credits students can earn remotely. Indeed, the only reason that the Hybrid J.D. Program is possible is because Franklin Pierce was granted a variance from certain of the rules, and it must annually file a report to demonstrate to the ABA that the quality of the education has not "suffered" as a result.

To its credit, the ABA has been making changes that recognize the changing landscape. In May 2023, for instance, it increased the number of distance education courses that students may take during their law school career, from one third of their total credits, up to half, and now a student may take all of their first-year courses online (the cap had previously been ten credits during a student's first year).¹¹⁴

Still, the ABA wields an enormous amount of power over law schools, and its outdated, outmoded regulatory framework poses a significant burden to the progress of the profession. Just as there are numerous regional accreditors for other academic programs, states should recognize law degrees from institutions that are accredited by organizations other than the ABA. California, for instance, allows graduates of state-accredited law schools to sit for the state bar exam.¹¹⁵ Critics will no doubt point to the significantly lower bar passage rate for such candidates—just thirty-three percent of first-time takers in July 2023, compared with seventy-three percent of graduates of ABA-accredited schools¹¹⁶—as an example of why ABA accreditation is superior to state accreditation.

But I posit that the distinction is largely one of the ABA's own making. The ABA's dominance in law school accreditation has led to a deep divide between the "haves" and the "have nots," and quality faculty naturally seek employment with the "haves." Expanding the landscape of organizations empowered to meaningfully

¹¹¹ *Id.*

¹¹² *Id.* at 13–14.

¹¹³ *Id.*

¹¹⁴ Rachel E., *ABA Rule Change Allows Law Students to Take 50% of Classes Online*, JDJOURNAL (May 15, 2023), <https://www.jdjournals.com/2023/05/15/aba-rule-change-allows-law-students-to-take-50-of-classes-online> [<https://perma.cc/4RGS-3WMD>].

¹¹⁵ *Legal Education, STATE BAR OF CAL.*, <https://www.calbar.ca.gov/Admissions/Requirements/Education/Legal-Education> [<https://perma.cc/5A6J-TQVP>] (last visited Feb. 28, 2024).

¹¹⁶ GENERAL STATISTICS REPORT, *supra* note 99, at 1.

accredit law schools could help level the playing field and stimulate talent mobility among schools. Neither academics nor students of other disciplines, where schools are typically accredited by one of several regional accreditation bodies, identify their schools of choice based on which of several regional accreditors have signed off on the program. The practice of educating lawyers is not so different than other instructional pursuits that it warrants separate, specialized treatment. If more states were to recognize law schools approved by accreditors other than the ABA—the same regional accreditation authorities that approve other academic programs—it would serve to enhance competition in the space, leading to innovation, improved quality, lower costs, and more access to legal education.

Another headwind facing legal education, and arguably higher education generally, is the traditional emphasis on scholarship over teaching (especially with practical skills). Although the ABA standards ostensibly place teaching and scholarship on equal footing,¹¹⁷ the reality is that most tenure and promotion evaluations emphasize, whether intentional or not, scholarship over teaching. The result is, quite understandably, that faculty—and particularly junior faculty who seek to attain tenure—are going to do likewise.¹¹⁸ This is particularly unfortunate considering junior faculty are more likely to have had recent practice experience from which students may benefit.

This is not to say that law schools should actively discourage faculty from conducting research and participating in other scholarly endeavors, but for law schools of the future, it should not be the primary focus. Indeed, I would separate entirely the research and scholarship functions of a law school from its teaching operations. The academic faculty would focus primarily on research while the teaching faculty would focus on teaching. There may certainly be some crossover at times—an academic might teach a course or two as appropriate, and the teaching faculty may engage in some research from time to time—but the principal driver for future law schools should be on the classroom experience (or its equivalent, in a remote or hybrid setting).

Teaching faculty may be full-time employees, or they may be drawn from the legal community, just as Franklin Pierce draws many of its Hybrid instructors from its deep bench of intellectual property professional alumni, and some of its DWS faculty from members of the local bench and bar. Academics would continue to enjoy academic freedom with respect to their scholarship, but teaching faculty would be asked to cooperate with school-wide curriculum planning processes to ensure that the full academic experience comprises all of the essential knowledge, skills, and abilities deemed necessary for successful lawyers.

¹¹⁷ See A. B. A., STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: STANDARD 404 30 (2023).

¹¹⁸ I recall being told early in my career, when I thought about trying to become a real (read: full-time) academic, that if I wanted to be taken seriously on the academic job market, I would be better off giving up my adjunct teaching work and using that time to write law review articles. It was more or less around that time I decided that I probably did not want to be a “real academic.”

Finally, and perhaps most importantly, we must reimagine the economics of law school at both a macro and micro level. Some readers were very likely shaking their heads at my naiveté above, when I suggested that we bifurcate the teaching and academic faculty. How could the economics of a typical law school possibly sustain professors that just write scholarship while also paying a teaching faculty? The answer is, of course, that such a model is probably not sustainable on an individual school basis—at least not in any significant way.

I believe law schools need to begin to differentiate themselves more aggressively than they are able to now. Schools do this today primarily by attracting faculty who specialize in particular subspecialties and launch “centers” devoted to studying them, but by and large, thanks to the ABA’s rules, most law schools are comparable to one another. In my reimagined world, some schools may opt to focus on academics and have a robust full-time scholarly faculty, but with a more limited teaching profile, perhaps reserving their seats for individuals who want to pursue careers in academic or scholarly fields. Other schools might choose to go in a different direction, offering courses taught primarily by adjunct or clinical faculty, and targeting students who want to pursue specific practice areas. Still others might choose to maintain the status quo, featuring a broad-based curriculum taught by a faculty that spends roughly half its time teaching and the other half pursuing scholarship.

Law schools must be freed to explore new management and governance structures that emphasize teaching and learning, and educational offerings should be developed through an understanding of the market requirements and demands, just as any other business might, rather than through the scholarly musings of academics. Such institutions need not necessarily be operated on a “for profit” basis,¹¹⁹ but they must be able to operate unencumbered by the “no faculty member left behind” communal governance structure of a traditional academic institution, currently required by the ABA’s accreditation standards.¹²⁰

IV. THE SPIRIT ENDURES

In a short film celebrating the fiftieth anniversary of Franklin Pierce, Doug Wood, one of the school’s first students, was quoted as saying that the inaugural

¹¹⁹ The most prominent attempt at establishing for-profit law schools, discussed briefly in Section III.D., *supra*, failed largely because it was forced to operate as though it was a traditional academic institution while simultaneously producing results expected of a commercial enterprise. In addition, the organization was backed by private equity investors, which traditionally seek fast growth and a speedy exit, which generally results in cost containment and revenue enhancement initiatives that would be incompatible with a traditional faculty’s academic or scholarly mission.

¹²⁰ See A. B. A., STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: STANDARD 201 11 (2023) (stating, “[t]he dean and the faculty shall have the primary responsibility and authority for planning, implementing, and administering the program of legal education of the law school, including curriculum, methods of instruction and evaluation, admissions policies and procedures, and academic standards”).

class was “basically a class of a bunch of misfits. We came to an empty building, so we had no cafeteria, we had no books, we had nothing. But we were all characters.”¹²¹

His classmate Jim Conway added:

We had no upperclassmen, we didn’t know what to expect. The popular movie back in the day was *The Paper Chase*, which was all about how horrible law school is. But we didn’t know any better, so we didn’t know what it was supposed to be like. And there was nobody to tell us what the rules were, so we kind of made a lot of them up ourselves.¹²²

“So began,” the voiceover proclaims, “Franklin Pierce Law.”¹²³

And so it has continued.

About thirty years after the school was founded, it revolutionized legal education again by launching the DWS Program, again aimed at advancing practice-based education. Echoing the sentiments of Wood and Conway about the launch of the school itself, Josh Wyatt, a member of the inaugural DWS class said that joining the program was:

a bit of a gamble. Everything we did was being done for the first time. There was a lot of anxiety from everyone, including the people who were building the program, about how it will work and how it will be perceived—will graduates be viewed as unqualified because they didn’t sit for the written bar exam? There was also a lot of national attention as a new model that was replacing the written bar examination, which was relied on to basically screen qualified versus non-qualified people, and this program was going to bypass that.¹²⁴

Founding director John Garvey said of that first class that “[t]hey were pioneers and they should get a lot of credit . . .”¹²⁵

The school elevated the game again by launching the Hybrid J.D. program, bringing the preeminent Franklin Pierce intellectual property education to working professionals throughout the world. And with these two programs, Dr. Rines’s twin goals of bringing intellectual property education to working professionals, and teaching law from a practice-oriented perspective, have never been more fully realized.

Ameen Rihani observed, “[t]he footsteps of a pioneer become ultimately the highway of a nation.”¹²⁶

While the world-class, practice-focused education that the school has offered for half a century has helped launch thousands of successful legal careers, perhaps

¹²¹ Jess Place et al., *UNH Franklin Pierce: The First 50 Years*, U. N. H., at 3:39 (Oct. 24, 2023), https://media.unh.edu/media/UNH%20Franklin%20Pierce%3A%20The%20First%2050%20Years/1_6ga58vma [<https://perma.cc/J29A-3CW6>].

¹²² *Id.* at 3:54.

¹²³ *Id.* at 4:15.

¹²⁴ Jarvis, *supra* note 35.

¹²⁵ *Id.*

¹²⁶ AMEEN FARES RIHANI, *THE PATH OF VISION: POCKET ESSAYS OF EAST AND WEST* 20 (1921).

the school's most enduring contribution to the profession is that it has become a paragon for the future of legal education. What was once a fringe concept—teaching students how to be lawyers, rather than just teaching the law—has today become a standard (but still largely unfulfilled) promise in virtually every law school's marketing materials. Similarly, the notion of online legal education, long shunned by the academy and its accreditor overlords, is slowly becoming more common. As of this writing, there are seventeen ABA-approved law schools with approved remote J.D. programs,¹²⁷ and a recent ABA proposal to approve fully online law schools was met with “overwhelming support.”¹²⁸

Former president and longtime dean Robert Viles, who gave up a tenured position at another school to join Franklin Pierce, said “[t]he prospect of starting the law center struck me as a rare opportunity to stop talking about what’s wrong with legal education and start doing something about it.”¹²⁹

Although the legal profession, and the world it serves and supports, has changed dramatically in the fifty years since the school began, legal education has remained largely unchanged. Though some law schools have advanced at the margins, for the most part, a law school classroom today looks more or less the same as it did when Christopher Langdell developed the case method of teaching law in 1870.

The longstanding resistance to change is now squeezing the legal education community, as applications to law school appear to be declining again following a pandemic bump.¹³⁰ A recent Gallup poll revealed that only twenty-three percent of law school graduates believed their education was worth the cost,¹³¹ while Bloomberg Law’s Spring 2023 Law School Preparedness Survey found that “new associates and recent graduates were deficient in client-centric skills, including client counseling and advising, client relationship management, and client

¹²⁷ *ABA-Approved Law Schools With Approved Distance Education J.D. Programs*, A. B. A., https://www.americanbar.org/groups/legal_education/resources/distance_education/approved-distance-ed-jd-programs [<https://perma.cc/6YQM-TVHV>] (last visited March 17, 2024).

¹²⁸ See Christine Charnosky, *ABA Proposal to Accreditate Fully Online Law Schools Draws Overwhelming Support*, LAW.COM (Jan. 4, 2024, 12:48 PM), <https://www.law.com/2024/01/04/aba-proposal-to-accreditate-fully-online-law-schools-draws-overwhelming-support/?slreturn=20240207223602> [<https://perma.cc/T4UG-F9LJ>].

¹²⁹ Plaque inside the foyer at the University of New Hampshire Franklin Pierce School of Law main campus at 2 White Street, Concord, New Hampshire.

¹³⁰ *Five Year US Volume Comparison*, L. SCH. ADMISSIONS COUNCIL, <https://report.lsac.org/View.aspx?Report=FiveYearComparison> [<https://perma.cc/XFK6-NVNL>] (last visited March 27, 2024). According to data maintained by the Law School Admissions Council, during the 2020 admissions cycle, just over 63,000 people applied to an ABA approved law school. In 2021, that number climbed to 71,085, but has since fallen to 61,537 during the 2023 admissions cycle.

¹³¹ Zach Auter, *Few MBA, Law Grads Say Their Degree Prepared Them Well*, GALLUP (Feb. 16, 2018), <https://news.gallup.com/poll/227039/few-mba-law-grads-say-degree-prepared.aspx> [<https://perma.cc/CBU6-EDVE>].

communications and interactions.”¹³² The survey also found that schools are deficient in teaching students how technology will impact the practice of law, particularly given the widespread proliferation of generative artificial intelligence.¹³³

These pressures on legal education will only continue to grow as the practice of law continues to evolve. As Franklin Pierce’s successful programs demonstrate, recent developments in technology and pedagogy are rich with opportunity to narrow the gap between what law schools teach and what the legal community needs graduates to know and be able to do.

Indeed, these advances offer legal education another rare opportunity to stop talking about what’s wrong with legal education and start doing something about it.

¹³² Stephanie Pacheco, Bloomberg Law, *ANALYSIS: Law Schools Need to Address Skill, Tech Gaps in 2024*, BLOOMBERG L. (Nov. 5, 2023, 9:00 AM), <https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-law-schools-need-to-address-skill-tech-gaps-in-2024> [https://perma.cc/V9UQ-JB4P].

¹³³ *See id.*