

# PANDEMIC INNOVATION

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*“Never let a good crisis go to waste.”*

*-Winston Churchill<sup>1</sup>*

## I. INTRODUCTION

There’s a buzz in the air. It’s August 2022, and staff, faculty, and administrators are busy welcoming the Class of 2025 to 1L Orientation at Willamette University College of Law in person and without masks. This sort of welcome has not happened for two years. The buzz is therefore well-deserved and well-earned. The group welcoming these roughly 130 new students has been through a lot together. They have seen the best and worst in others, and likely in themselves. They’ve been jostled back and forth—sometimes more than once in the same semester—from remote instruction to in-person instruction with masks, to hybrid instruction, and back. This is the group that has led the institution in a historic time, a time that now everyone is anxious to put in the rearview and keep there.

Getting to this point was no easy task. Willamette, like law schools across the country, moved to fully remote instruction at the outset of the COVID-19 pandemic in March 2020.<sup>2</sup> Little did we know at that time, courses would remain delivered primarily remotely for nearly eighteen months, during which time law students, faculty, staff, and administrators navigated a world of uncertainty and feared for their health and that of their families. These wide-felt anxieties were only exacerbated in the Pacific Northwest, which saw historic wildfires and served as the epicenter of racial justice protests in fall 2020, as well as endured a once-in-a-generation ice storm the following February.<sup>3</sup>

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1. Owen Adams, *Never Let a Crisis Go to Waste*, 20 HEALTHCAREPAPERS 4, 4 (2022) (recognizing that this quote is widely attributed to Winston Churchill).

2. See Jennifer Johnson, *A Month Like No Other*, WILLAMETTE UNIV. (Apr. 20, 2020), <https://willamette.edu/news/library/2020/04/willamette-response-to-covid-19.html>.

3. Lee van der Voo, *Heat, Wind and a Cruel Twist of Nature: Inside Oregon’s Nightmarish Wildfire Season*, THE GUARDIAN (Dec. 22, 2020, 6:00 AM EST), <https://www.theguardian.com/world/2020/dec/22/oregon-2020-fire-season-smoke-coronavirus>; Gillian Flaccus, *Portland’s*

The 2021-22 academic year brought its own unanticipated challenges. For how difficult it was to move an institution with a deep historical and proud 100+ year backdrop of high-touch, mentor-focused, residential education to teaching by Zoom, it was harder to get back to residential instruction.<sup>4</sup> And I underestimated that challenge. Dramatically. Ours was a community that, like much of the Pacific Northwest, took the pandemic extremely seriously.<sup>5</sup> We therefore greeted with skepticism the idea of returning to indoor classrooms where masks were required but students sat next to one another. I had naively assumed that being back together would be a welcome energy boost. After all, the vaccine was, by fall 2021, widely available,<sup>6</sup> and ours was a university that required it.<sup>7</sup> However, many within our community were concerned that perhaps not everyone got the vaccine and that others might be tempted to falsify their vaccine status. Accordingly, the idea of sitting next to someone in class who might be unvaccinated was paralyzing to some and, in any case, the vaccine requirement itself was deeply divisive.<sup>8</sup> It led several students in our community to submit a petition to the administration seeking the creation of a hybrid option for every course offered by the College of Law. The short version of that story is that the administration and student body collaboratively resolved the petition. And it was collaborative; I deeply admire and respect the student authors of that petition. But again, the point is that, as a leader, I dramatically underestimated how hard it would be to get back to regular, every day in-person instruction.

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*Grim Reality: 100 Days of Protests, Many Violent*, ASSOCIATED PRESS (Sept. 4, 2020, 7:09 AM PDT), <https://apnews.com/article/virus-outbreak-ap-top-news-race-and-ethnicity-id-state-wire-or-state-wire-b57315d97dd2146c4a89b4636faa7b70>; Joseph Dames, *First the Snow, Then the Ice. Why We Won't Forget February 2021*, KOIN 6 NEWS (Feb. 10, 2022, 2:32 PM PST), <https://www.koin.com/weather/2021icestorm/february-snow-and-ice-the-past-present-and-future/>.

4. See *COVID End of Quiet Period Update*, WILLAMETTE UNIV. (Jan. 31, 2022), <https://willamette.edu/news/today/past-issues/2022/01/31/covid-end-of-quiet-period-update.html>.

5. See Andrew Selsky, *Pacific Northwest Faces Shutdowns Amid Rising Virus Cases*, ASSOCIATED PRESS (Apr. 28, 2021, 2:21 PM PDT), <https://apnews.com/article/business-coronavirus-lifestyle-government-and-politics-health-0701bfd2edd76b00a6770f3358783f41>.

6. The COVID-19 vaccine became available to all people age sixteen and older on April 19, 2021. The vaccine's availability expanded to people age twelve through fifteen on May 10, 2021, and those age five through eleven on October 29, 2021. See *COVID-19 Vaccines*, U.S. DEP'T OF HEALTH & HUM. SERVS. (Sept. 13, 2023), <https://www.hhs.gov/coronavirus/covid-19-vaccines/index.html>.

7. *Willamette University Vaccine Requirement*, WILLAMETTE UNIV., (Oct. 6, 2021), [https://willamette.edu/community/icl/pdf/forms/willamette\\_vaccination\\_form.pdf](https://willamette.edu/community/icl/pdf/forms/willamette_vaccination_form.pdf).

8. Of course, ours was hardly the only community to wrestle with this range of issues. See Meerah Powell, *Oregon Colleges and Universities Offer COVID-19 Vaccine Incentives*, OR. PUB. BROAD. (Sept. 7, 2021, 5:11 PM), <https://www.opb.org/article/2021/09/06/oregon-colleges-offer-covid-19-vaccine-incentives/>.

Against that backdrop, 1L orientation for the Class of 2025 very much had a “we made it” feel. For the incoming students, it was perhaps just another orientation, but for those of us who had not seen one in person for so long, it had more of a graduation feel. The day also marked a meaningful opportunity to reflect on the other side of the pandemic; that is, apart from the myriad of challenges it brought, COVID-19 also brought with it a host of opportunities to revisit practices in legal education that, frankly, were long overdue for reexamination.

The purpose of this brief essay is to comment on the ways in which the COVID-19 pandemic—in my experience—spurred positive change in legal academia. In particular, this piece will comment on three areas. First, Part II discusses the caste system<sup>9</sup> often present in law schools, a system we reevaluated as the pandemic unfolded. Part III discusses classroom innovations and the ways in which the pandemic’s forced instructional pivot to remote learning allowed for permanent and positive student-centric curricular change. Finally, Part IV comments on the pandemic’s role in what remains an ongoing reexamination of attorney licensure. There is still much work to be done to make legal education more equitable, accessible, and inclusive, but, remarkably, we have the pandemic to thank for some recent efforts to address these issues.

## II. FACULTY EQUITY

During her year as the Association of American Law Schools (AALS) President, Dean Darby Dickerson challenged law schools in November 2020 to reexamine the “caste” system in legal education and, in doing so, to abolish it.<sup>10</sup> In a particularly persuasive note sent to law schools across the country, she wrote:

Any caste system is insidious. But most, if not all, law schools have them. In many schools, the caste system means that many individuals are not recognized appropriately or compensated fairly for their contributions. At some schools, non-tenure-track (NTT) faculty carry a disproportionate share of the teaching and service loads so that others can focus on research.<sup>11</sup>

But let’s back up. A caste system in law schools, as previously defined by Dean Kent Syverud, includes the following hierarchy listed from highest

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9. See Darby Dickerson, *President’s Message: Abolish the Academic Caste System*, THE ASS’N OF AM. L. SCHS., <https://www.aals.org/about/publications/newsletters/aals-news-fall-2020/presidents-message-abolish-the-academic-caste-system/> (last visited July 31, 2023).

10. *Id.*; see Sara L. Ochs, *Imposter Syndrome & The Law School Caste System*, 42 PACE L. REV. 373, 38288 (2022), for additional discussion on the caste system in legal education.

11. Dickerson, *supra* note 9.

to lowest: (1) tenured and tenure-track faculty; (2) deans; (3) clinical faculty; (4) legal writing faculty; (5) law librarians; (6) adjunct faculty; (7) staff.<sup>12</sup>

As Dean Syverud's list portends, there is deep and troubling ambiguity in the word "faculty."<sup>13</sup> Further, his list is hardly exhaustive; indeed, there are also academic success professors, bar success professors, visiting assistant professors, librarians, faculty fellows, distinguished practitioners in residence, distinguished jurists in residence, and a host of other titles afforded to legal educators.<sup>14</sup> For every faculty title out there, there are accompanying consequences in terms of differing—and typically lesser—pay, status, workload, and governance rights.<sup>15</sup> Oftentimes, those concerning consequences fall disproportionately on female faculty and faculty of color.<sup>16</sup>

The pandemic exacerbated those divisions.<sup>17</sup> Some faculty were asked to teach hybrid courses, which required teaching in-person while wearing a mask with half of the students in the class attending in person while the other half attended by Zoom.<sup>18</sup> Meanwhile, other faculty were permitted to teach wholly remotely, thereby avoiding in-person instruction.<sup>19</sup> On the best days, the challenges brought on by the pandemic called for everyone to pull together—professional title aside—but on the worst days, those challenges served only to strengthen and reinforce the preexisting divisions of the academic hierarchy. In either case, the pandemic's circumstances naturally raised questions about the propriety of perpetuating the hierarchy system.

In December 2020, we started asking those questions at Willamette. At that time, like many institutions, the College of Law's personnel policies defined "faculty" along fairly traditional lines by dividing tenure-track

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12. See Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS'N LEGAL WRITING DIRS. 12,1316 (2002). As the late Dean Browne Lewis observed, "caste system" may not be an appropriate term to describe the hierarchy of legal education. The granddaughter of slaves, she objected to the use of the term in the context of legal academia, noting that law faculty are privileged by default and the hierarchies of legal academia should not be conflated with a race-based caste system. I aspire in her memory and give thanks to her wisdom to use the word "hierarchy" throughout the balance of this piece.

13. See *id.* at 14.

14. *What are the Various Kinds of Law Teaching Jobs?*, THE ASS'N OF AM. L. SCHS., <https://teach.aals.org/tenure-track-faq/> (last visited Oct. 15, 2023).

15. See Dickerson, *supra* note 9.

16. See MEERA E. DEO, *UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA* 1617 (2019).

17. See Meera E. Deo, *Investigating Pandemic Effects on Legal Academia*, 89 FORDHAM L. REV. 2467, 246869 (2021).

18. See Sarah Bello, *The "Pandemic Class" of 2022*, WILLAMETTE UNIV. (May 19, 2022), <https://willamette.edu/news/library/2022/05/2022-law-commencement-pandemic.html>.

19. Staff were also deeply impacted by the pandemic. A number of staff were generally required to come in and bar success faculty had to work more, not less, while adapting to the many different iterations of the bar that arose because of the pandemic. See *id.*

faculty from continuing non-tenure-track faculty.<sup>20</sup> Although the personnel policies at that time allowed for a path to clinical tenure, it was a path to *clinical* tenure.<sup>21</sup> There was otherwise no available tenure path for writing, academic success, or bar success faculty, although a path to earning renewable three-year contracts did exist.<sup>22</sup> With roughly three divisions across the faculty, the time seemed right to ask whether one faculty of roughly thirty should be so divided by policy.

Through a series of conversations that began in winter 2020 and extended through spring 2021, it became increasingly clear the sort of cultural damage these divisions had on our community. I appropriately heard a range of perspectives during that time—a range that, during our listening sessions, was sometimes both pointed and emotional. Concerns shared by faculty without a tenure option included that they felt ignored in the text of the College’s personnel policies and that corresponding lesser or different titles from their colleagues invited disrespectful treatment from students. Collectively, the conversations were at once overwhelming, overdue, and yet healing. It was in any case, a place to start.

What began as conversations during that 2020-21 academic year fostered genuine action that began during the 2021-22 academic year. Across what became a two-year effort, two committees of dedicated faculty reexamined the College’s personnel policies and went a step further by drafting a separate governance memorandum. The faculty voted in February 2022 to accept the committee’s recommendations on both the changes to personnel policies and to adopt the committee’s governance memorandum. The University’s central administration accepted the faculty’s vote in February 2023 after a separate series of negotiated line edits. Suffice it to say that those two years were filled with an untold number of meetings, emails, and edits. I will spare you all of them. Instead, let me share the primary highlights.<sup>23</sup>

First, the personnel policies amended the language describing the scholarship requirement to allow for consideration of works that are relevant

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20. WILLAMETTE UNIV. COLL. OF L., FACULTY PERSONNEL POLICIES AND PROCEDURES 12 (2016), <https://willamette.edu/offices/hr/pdf/handbook/law-handbook.pdf>.

21. *Id.* at 3.

22. *Id.* at 13.

23. Perhaps not coincidentally, and with those changes in mind, the College of Law successfully hired four new faculty in a competitive hiring landscape during the 2022-23 academic year. It is indeed easier to hire if you can tell every candidate that regardless of the nature of their class load, they will be treated equivalently in terms of both requirements and benefits. See Sarah Bello, *Willamette Law Announces Plan to Hire Additional Faculty as Oregon Advances Alternative Pathways to Licensure*, WILLAMETTE UNIV. (Jan. 13, 2022), <https://willamette.edu/news/library/2022/01/alt-licensure.html#:~:text=In%20anticipation%20of%20opening%20these,experiential%20learning%20in%20the%20curriculum>.

to a national audience in the professor's field.<sup>24</sup> Moreover, the appointments committee is now permitted to nominate candidates in any field to receive a faculty recommendation for hiring, and current faculty members are permitted to apply through this process.<sup>25</sup>

Second, the revised personnel policies strengthened the long-term contract policy by affording promoted faculty presumptively renewable five-year contracts.<sup>26</sup> The process to earn that status is designed to mirror the tenure-track path in terms of substance and voting rights, though without a publication requirement. Roughly speaking, candidates from most fields would be appointed by the appointments committee and hired after a faculty recommendation.<sup>27</sup> This timeline mirrors the tenure track, as do the promotion steps and accompanying faculty titles.

Finally, in adopting the College's first-ever governance memorandum in February 2022, the faculty agreed, with limited exceptions, to extend the voting rights to "faculty," defined as "all tenured and tenure-track faculty members and long-term contract faculty."<sup>28</sup> The awkward days of tracking which faculty members could vote on which matters and in which context are mercifully in the rearview.

Reflecting back now on those three years of work, the process of shifting to an increasingly unified faculty track has made faculty equity closer to the new normal. There remains work to do, to be sure, but, as a community, we are increasingly in the habit of reconsidering the status quo and feel more confident in doing so. I am convinced that developing that habit as a matter of everyday culture is just as important as the result. In many ways, we have the inequities exacerbated by the pandemic to thank.

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24. WILLAMETTE UNIV. COLL. OF L., FACULTY PERSONNEL POLICIES AND PROCEDURES 8 (2023), <https://willamette.edu/offices/hr/pdf/handbook/law-faculty-policies-2023.pdf>.

25. *Id.* at 12-13.

26. *Id.* at 11-12.

27. Doctrinal faculty are not eligible for this position. Doctrinal faculty can apply for either tenure-track or year-to-year contracts. This particular restriction is based on ABA Standard 405. See AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2023-2024 at 31-32 (2023), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/standards/2023-2024/23-24-standards-ch4.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/23-24-standards-ch4.pdf).

28. Memorandum from Willamette Univ. on Faculty Governance to the Faculty of Willamette Univ. (Feb. 2022) (on file with author).

### III. CLASSROOM INNOVATION

Classroom instruction in law schools has remained, in many ways, unchanged over the past several decades.<sup>29</sup> Indeed, the stereotypical image of a law professor lecturing from a podium to a classroom full of students, relying on a Socratic dialogue to generate classroom conversation, remains the prevailing instructional delivery method.<sup>30</sup> But that stereotypical “sage on the stage” hides opportunities to think about reexamining student learning. To be sure, students need a well-founded—and well-grounded—understanding of core principles of law in courses that are frequently tested on the bar exam. But is a classroom the only medium delivering a curriculum?

The pandemic forced the legal academy to reconsider that question. In March 2020, law schools nationwide transitioned to remote instruction to curb the spread of COVID-19.<sup>31</sup> The transition, which seemingly occurred overnight, was not entirely easy, but faculty, students, and administrators quickly and effectively adapted. Remote instruction, law schools came to realize, delivers in certain areas where traditional, in-person lectures fall short.<sup>32</sup> As the pandemic began to recede and residential instruction resumed, the legal academy began asking a new question: does remote instruction have a place in the non-pandemic legal curriculum?

At Willamette, we answered that question in the affirmative. Let me explain how we did so. In summer 2020, we engaged in a comprehensive study to examine what led to bar success for Willamette students. Incorporating five years of data designed to answer the question of why Willamette students pass the bar, we learned all sorts of interesting things about our students, our faculty, and the overall effectiveness of our curriculum.<sup>33</sup> Known around our halls as the “Institutional Effectiveness Study,” the results demonstrated an empirical correlation between in-person instruction and bar success—for *bar courses*.<sup>34</sup> The relationship between

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29. See Richard K. Neumann, Jr., *Osler, Langdell, and the Atelier: Three Tales of Creation in Professional Education*, 10 *LEGAL COMM. & RHETORIC* 151, 172 (2013).

30. See *id.*

31. See ACCESSLEX INST., *LAW SCHOOL IN A PANDEMIC: STUDENT PERSPECTIVES ON DISTANCE LEARNING AND LESSONS FOR THE FUTURE* 6–7 (2021), [https://www.accesslex.org/sites/default/files/2021-06/Law%20School%20in%20a%20Pandemic\\_Student%20Perspectives%20on%20Distance%20Learning%20and%20Lessons%20for%20the%20Future.pdf](https://www.accesslex.org/sites/default/files/2021-06/Law%20School%20in%20a%20Pandemic_Student%20Perspectives%20on%20Distance%20Learning%20and%20Lessons%20for%20the%20Future.pdf).

32. See *id.* at 26–27.

33. See Brian Gallini, *Institutional Effectiveness Study (Summer 2020)* (confidential study) (on file with author).

34. See *id.*

non-bar elective courses was perhaps not surprisingly either tenuous or non-existent.<sup>35</sup>

Based on that data, in fall 2021, we made two decisions. First, we announced to our community that, as residential classroom instruction resumed, bar courses would be taught only in person.<sup>36</sup> The data all but demanded it if we were to take bar success seriously.

Second, going forward, we would routinely offer a set of elective courses only remotely, including our upper-level bar preparation course.<sup>37</sup> As to the former, these courses would be synchronously delivered by Zoom and would include classes like Healthcare Law & Policy, Agricultural Law: Animal Farming Policy & Practice, and Cannabis Law.<sup>38</sup> We opened the opportunity to teach remotely widely to all full-time faculty, regardless of status. In doing so, we sought to inspire our faculty to think creatively about teaching in a new medium, in a new format, in a manner that would have pedagogical benefit to students.<sup>39</sup> We also recognized, through our course evaluation system, that students found some instructors *more* effective by Zoom than in the residential classroom.

As to the latter, offering our bar success course remotely was a decision that may seem counterintuitive. After all, the course historically has been taught to an intentionally smaller classroom in a manner that requires significant student engagement through robust formative assessment. There is significant value to that approach, but it no longer matches how the bar preparation companies deliver their courses post-graduation. Indeed, a trend began pre-pandemic and accelerated during the pandemic that moved bar preparation from inside the walls of law schools, where in-person, live bar review lectures were historically taught as recent graduates took notes, to

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35. *See id.*

36. *See Willamette University Announces New Guidelines Ahead of In-Person Fall Opening*, WILLAMETTE UNIV. (Apr. 22, 2021), <https://willamette.edu/news/library/2021/04/willamette-open.html>.

37. *See generally Bar Examination Accountability and Support Team (BEAST)*, WILLAMETTE UNIV., <https://willamette.edu/law/internal/students/osa/beast/index.html> (last visited Nov. 3, 2022).

38. *See, e.g., Willamette U. College of Law Schedule – Fall 2023*, WILLAMETTE UNIV. (Aug. 15, 2023), <https://willamette.edu/law/pdf/osa/fall-2023-class-schedule-final.pdf>.

39. We also hoped to offer a level of flexibility to our faculty, particularly our female faculty who, as has been widely reported across academic disciplines, were disproportionately impacted by the pandemic. *See Liz McMillen, The Pandemic Hit Female Academics Hardest*, THE CHRON. OF HIGHER EDUC. (July 27, 2021), <https://www.chronicle.com/article/the-pandemic-hit-female-academics-hardest>.

outside the classroom walls where examinees were increasingly preparing for the bar on their own.<sup>40</sup>

What became a trend to study remotely for the bar pre-pandemic became the new normal during the pandemic.<sup>41</sup> A majority of bar preparation companies ceased live lectures and moved the totality of their preparation curriculum to online delivery.<sup>42</sup> But as the pandemic receded, there was not an accompanying move by the bar preparation companies to return to the in-person delivery of bar preparation content. Studying for the bar, then, it seems, will now, and for the foreseeable future, be done by examinees by themselves, without their class cohort, and in a format that the in-person law school experience is poorly designed to support. We, therefore, recognized that we needed to intentionally deliver some bar preparation to students remotely, if for no other reason than to offer them meaningful practice engaging with important course material in a remote format.<sup>43</sup>

Those two decisions—to require that bar courses be taken in-person and to routinely offer remote electives—permitted the College of Law to consider a further innovation: the launch of our first-ever immersion externship anywhere in the country.<sup>44</sup> To be sure, we are not the first school to consider permitting students to earn full-time academic credit for field placements around the country, but the idea of supporting a student's full-time field placement with remote courses taught by their home institution's faculty was novel—at least to us.

The idea grew organically from our pandemic experience. Before March 2020, students at Willamette who enrolled in an externship completed their field placements locally—at nearby firms, government offices, or with

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40. See Marc Berman, *Is COVID-19 Forcing Bar Prep Companies to Change?*, PROGRAMMING INSIDER (July 23, 2020, 9:37 AM), <https://programminginsider.com/is-covid-19-forcing-bar-prep-companies-to-change/>.

41. See *id.*

42. See *id.*

43. However, the synchronous Zoom format may not go far enough given the uniform movement of bar preparation providers to delivering the bar preparation content in a self-paced, *asynchronous* format. Students who therefore engage with their law school bar success courses synchronously may simply not be receiving enough practice working through self-paced courses in a manner that requires them to take full ownership over their progress in doing so. After all, engaging in an asynchronous course outside the walls of the law school, without the support of a known faculty member, and in the absence of classmates is a completely different experience. Given the high-stakes nature of the bar exam, I suspect law schools will have an increasing affirmative obligation to offer their students the opportunity to enroll in asynchronous bar success courses for academic credit). See generally *Information for Law Remote Students*, WILLAMETTE UNIV., <https://willamette.edu/distance-learning/law/index.html> (last visited Oct. 17, 2023).

44. See Jessica Rotter, *Willamette Law Launches Its Inaugural Immersion Externship*, WILLAMETTE UNIV. (Apr. 14, 2023), <https://willamette.edu/news/library/2023/04/immersion-externship-story.html>.

nearby judges—and took the accompanying externship seminar course in person, often in the evening.<sup>45</sup> During the pandemic, however, upper-level students took their remote courses from anywhere and everywhere, including their field placements and externship seminars.<sup>46</sup> We therefore saw students accept externships from around the country,<sup>47</sup> including at the DA’s office on Staten Island, the Army Corps of Engineers in Rhode Island, and the L.A. DA’s office, specializing in the hard-core gang unit in Compton.

As the pandemic receded, we therefore made the decision to formalize the immersion externship program to permit students to complete their final semester from anywhere in the country.<sup>48</sup> Our first student did just that during the spring 2023 semester, externing in Anchorage, Alaska, for Judge Joshua Kindred, a federal district judge in the U.S. District Court of Alaska.<sup>49</sup> That student rounded out their externship by enrolling in a remotely delivered bar success course. Neither the immersion externship nor the remotely delivered bar success course existed pre-pandemic. Once again, were it not for the pandemic, I imagine the status quo would have precluded the development of these two important innovations.

#### IV. LICENSURE

The arrival of the pandemic also forced the legal community to reassess the wisdom of the bar exam.<sup>50</sup> Traditionally, to enter the profession, aspiring lawyers must complete three years of legal education.<sup>51</sup> Just months after receiving their diplomas, law school graduates must pass the bar exam—a test divided across two days that generally requires examinees to write a number of essay responses on the first day and complete two hundred

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45. See generally *Featured Externship Placements*, WILLAMETTE UNIV., <https://willamette.edu/law/programs/aao/externship/featured-externships/index.html> (last visited Oct. 17, 2023).

46. See Rotter, *supra* note 44.

47. See *Featured Externship Placements*, *supra* note 45.

48. See Rotter, *supra* note 44.

49. *Id.*

50. See Maryilyn Cavicchia, *In Wake of COVID-19, Several Jurisdictions Explore Other Ways to License New Lawyers*, A.B.A. (Nov. 1, 2022), [https://www.americanbar.org/groups/bar-leadership/publications/bar\\_leader/2022-23/fallissue/in-wake-of-covid-19-several-jurisdictions-explore-other-ways-to-license-new-lawYers/](https://www.americanbar.org/groups/bar-leadership/publications/bar_leader/2022-23/fallissue/in-wake-of-covid-19-several-jurisdictions-explore-other-ways-to-license-new-lawYers/).

51. Of course, even before entering law school, students generally must sit for and receive a score on the Law School Admissions Test, which is a significant factor for law admissions criteria at schools across the country. See Brandon Galarita & Veronica Freeman, *What Is the LSAT? Everything You Should Know*, FORBES (Jan. 12, 2023, 5:17 AM), <https://www.forbes.com/advisor/education/guide-to-lsat/>.

multiple-choice questions on the second day.<sup>52</sup> Scholars studying licensure far longer than I have known that such an approach bears little resemblance to the practice of law.<sup>53</sup> Scholars have also recognized that the exam has a disparate impact on racial minorities and that non-traditional students (e.g., those with families, those who must work to subsist) have a distinct disadvantage when it comes to obtaining a passing score.<sup>54</sup> Nevertheless, the bar exam and its related licensure requirements largely went unquestioned for the better part of a century—that is, until the pandemic.

In May 2020, regional and national concerns surfaced about the prospect of state bar examiners administering an in-person bar exam.<sup>55</sup> Although many expressed concerns to boards of bar examiners across the country about the prospect of virus spread during an in-person bar, it seemed clear that a July exam would go forward in many jurisdictions.<sup>56</sup>

But not every jurisdiction.<sup>57</sup> On June 12, the Supreme Court of Washington issued an order granting diploma privilege and temporarily modifying admission and practice rules.<sup>58</sup> Then, at a June 29 public meeting, the Oregon Supreme Court voted to grant diploma privilege to the 2020

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52. See *What is the Format of the UBE?*, JD ADVISING, <https://jedadvising.com/what-is-the-format-of-the-ube-2/> (last visited July 31, 2023).

53. E.g., Debra Moss Curtis, “*They’re Digging in the Wrong Place: How Learning Outcomes Can Improve Bar Exams and Ensure Practice Ready Attorneys*,” 10 ELON L. REV. 239, 249 (2018) (arguing that the bar exam, in its current form “is a poor predictor of practice/lawyer skills”); Lorenzo A. Trujillo, *The Relationship Between Law School and the Bar Exam: A Look at Assessment and Student Success*, 78 U. COLO. L. REV. 69, 77 (2007) (explaining that one criticism of the bar exam is that it “does not verify minimum competence necessary for the practice of law”); Kristin Booth Glen, *When and Where We Enter: Rethinking Admission to the Legal Profession*, 102 COLUM. L. REV. 1696, 1710 (2002) (arguing that practical “skills—like counseling, negotiating, mediation, and other alternative dispute mechanisms—cannot be easily . . . taught by traditional methods and require more experiential instruction, whether through simulation or supervised, live client representation.”).

54. E.g., Catherine Martin Christopher, *Modern Diploma Privilege: A Path Rather Than A Gate*, 107 MINN. L. REV. 2777, 2787–88 (2023) (quoting Steven Foster, *Does the Multistate Bar Exam Validly Measure Attorney Competence?*, 82 OHIO ST. L.J. 31, 41 (2021)) (“Passing the bar exam requires tremendous amounts of time spent in preparation, making it ‘more a test of economic advantage—the ability to devote ten weeks to unpaid memorization of legal principles—than of minimum competence to practice law.”); Jane E. Cross, *The Bar Examination in Black and White: The Black-White Bar Passage Gap and the Implications for Minority Admissions to the Legal Profession*, 18 NAT’L BLACK L.J. 63, 64 (2005) (arguing that the bar exam “disproportionately screens out minorities” and, as a result, impedes “efforts to diversify the legal profession.”).

55. See *The Bar Exam’r, Covid-19 and the July 2020 Bar Exam*, 89 BAR EXAM’R 12, 1224 (2020).

56. See *id.*

57. See *id.*

58. Order Granting Diploma Privilege and Temporarily Modifying Admission & Practice Rules, No. 25700-B0630 (Wash. June 12, 2020), <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Orders/Order%20Granting%20Diploma%20Privilege%20061220.pdf>.

graduating class.<sup>59</sup> In doing so, Oregon became the third state to grant diploma privilege to the 2020 graduating class (Utah and Washington being the other two).<sup>60</sup>

Ultimately, a total of five jurisdictions adopted diploma privilege during summer 2020,<sup>61</sup> and more than 1,000 new lawyers were hired without sitting for the test that year. Law schools within those five jurisdictions saw an increase in their job placement rates.<sup>62</sup> And, to this point, though confirming data is not yet available, I have not heard about an increase in attorney misconduct from attorneys in the Class of 2020. Wisconsin has known for decades that offering pure diploma privilege to graduates of their state's law schools has had no impact on attorney misconduct, as some might fear.<sup>63</sup> With all of that in mind, questions were therefore raised about whether the bar exam in its current form was properly optimized to protect the public in a manner that prioritizes equity.<sup>64</sup>

As those conversations evolved, the Oregon Supreme Court, in September 2020, requested that a task force be formed to undertake an examination of whether alternatives to professional licensure exist beyond the traditional bar exam.<sup>65</sup> Following roughly ten months of work and public comment,<sup>66</sup> the Oregon Task Force produced a report recommending

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59. Order Approving 2020 Attorney Admissions Process, No. 20-012 (Or. June 30, 2020), <https://www.courts.oregon.gov/rules/Documents/SCO20-012Order2020BarExam.pdf>.

60. Sam Skolnik, *Over 1,000 New Lawyers Get Licenses Without Taking Bar Exam*, BLOOMBERG LAW (Jan. 4, 2021, 3:50 AM PST), <https://news.bloomberglaw.com/business-and-practice/over-1-000-new-lawYERS-get-licenses-without-taking-bar-exam>.

61. *Id.* (noting that Louisiana and Washington, D.C. also shortly followed suit).

62. Stephanie Francis Ward, *Despite the COVID-19 Crisis, Some Law Schools See Increases in Jobs For New Graduates*, A.B.A. J. (May 5, 2021, 1:30 PM CDT), <https://www.abajournal.com/web/article/despite-the-covid-19-crisis-some-law-schools-see-increases-in-jobs-for-new-graduates>.

63. Milan Markovic, *Protecting the Guild or Protecting the Public? Bar Exams and the Diploma Privilege*, 35 GEO. J. LEGAL ETHICS 163, 169 (2022) (demonstrating that “the rate of public discipline against Wisconsin attorneys who were admitted via the diploma privilege is . . . no higher than that of Wisconsin attorneys who qualified via bar exams.”).

64. *E.g.*, The Daniel Webster Scholar Honors Program at the University of New Hampshire School of Law is an important initial reform. The two-year program “immerses law students in experience-based learning settings complemented by ongoing assessment and feedback” and ultimately “culminates in a review of each student by a New Hampshire bar examiner that replaces the two-day bar examination.” Zachary Willis, *Evaluation of Experiential Law School Program Proves Graduates “Ahead of the Curve,”* UNIV. OF DENVER (Feb. 5, 2015), <https://iaals.du.edu/blog/evaluation-experiential-law-school-program-proves-graduates-ahead-curve>.

65. Letter from Martha L. Walters, C.J., Or. Sup. Ct., to Members of the Board of Bar Exam'rs et al. (Sep. 14, 2020), <https://taskforces.osbar.org/files/2021/02/CJLetterReAdmissionsBBXTaskForces.pdf>.

66. *See* Meerah Powell, *Oregon Advances Alternative Routes to Becoming a Licensed Lawyer*, OR. PUB. BROAD. (Jan. 18, 2022, 11:35 AM) <https://www.opb.org/article/2022/01/17/oregon-advances-alternative-routes-to-becoming-a-licensed-lawyer/>.

adoption of an experiential learning pathway<sup>67</sup> and, separately,<sup>68</sup> a supervised practice pathway.<sup>69</sup> For examinees who sought it, the current iteration of the Uniform Bar Exam would remain an option.<sup>70</sup>

The Oregon Supreme Court, in considering the June 2021 Report, requested a supplemental response by December 1.<sup>71</sup> The second report, formally issued on November 29, 2021, expressed a couple of core ideas.<sup>72</sup> First, in reviewing the many public comments on the Oregon Experiential Pathway (OEP) and Supervised Practice Pathway (SPP) proposals, the second Task Force Report observed that although the comments reflected disagreement about the role of the bar exam, they reflected a shared concern about how to measure the proper competencies to practice law.<sup>73</sup> Competency expectations aside, the second Task Force Report also

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67. The experiential pathway—dubbed the Oregon Experiential Pathway (OEP)—would offer “a two-year curriculum-based experiential pathway to licensure” through which “[a]pplicants applying for admission [to the bar] through the OEP would complete a set curriculum during law school, culminating in a capstone portfolio or examination assessed by the [Oregon State Bar Board of Bar Examiners].” Letter from Joanna Perini-Abbott, Chair, Alts. to the Exam Task Force, to Or. St. Bd. of Bar Exam’rs (June 18, 2021), <https://taskforces.osbar.org/files/Bar-Exam-Alternatives-TFReport.pdf>. The curricular pathway would begin in a student’s second year and could be completed by graduation. *Id.* This OEP option was primarily designed for students who attend law school in Oregon and want to practice in Oregon, though other ABA-accredited law schools could apply to participate. *Id.*

68. Those recommendations—to adopt separate experiential and supervised practice pathways—were guided by two principles: “consumer protection and equity.” *See id.* The Oregon Task Force’s June 2021 Report builds on extensive empirical work from the Institute for the Advancement of the American Legal System, known as IAALS, affirming what many have already recognized: the current iteration of the bar exam does not test the skills new lawyers need or that employers want. *See* DEBORAH JONES MERRITT & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., BUILDING A BETTER BAR: THE TWELVE BUILDING BLOCKS OF MINIMUM COMPETENCE 38 (2020), [https://iaals.du.edu/sites/default/files/documents/publications/building\\_a\\_better\\_bar\\_pre\\_print.pdf](https://iaals.du.edu/sites/default/files/documents/publications/building_a_better_bar_pre_print.pdf).

69. Applicants to the Supervised Practice Pathway (SPP) would establish their minimum competence for licensure by engaging in a set number of hours of supervised legal practice and submitting for review to the Oregon Board of Bar Examiners proof of their work-product done during the applicant’s supervised practice. *See* Letter from Joanna Perini-Abbott, Chair, Alts. to the Exam Task Force, to Or. St. Bd. of Bar Exam’rs, *supra* note 67. The SPP option was designed for those who are graduates from a law school outside of Oregon who plan to practice in Oregon. *Id.*

70. The Board of Bar Examiners’ adoption of the Task Force report on Friday, June 25, 2021, garnered attention from industry and national media. *E.g.*, Karen Sloan, *Oregon Becomes First State to Weigh Permanent Bar Exam Alternatives Following Pandemic Upheaval*, LAW.COM, (June 30, 2021, 03:40 PM), <https://www.law.com/2021/06/30/oregon-becomes-first-state-to-weigh-permanent-bar-exam-alternatives-following-pandemic-upheaval/>.

71. Letter from Meagan A. Flynn, J., Or. Sup. Ct., to Members of the Bd. of Bar Examiners et al. (Sept. 2, 2021), <https://taskforces.osbar.org/files/Exhibit-1-2021.09.02-ltr-to-Task-Force.pdf>.

72. Letter from Joanna Perini-Abbott, Chair, Alts. to the Exam Task Force, to Martha L. Walters, C.J., Or. Sup. Ct., (Nov. 29, 2021), <https://taskforces.osbar.org/files/2021-11-29SupplementalReporttoJune182021ATEReport.pdf>.

73. *Id.* at 5.

proactively addressed the racially inequitable outcomes of the current bar exam:

The passage rates of the bar exam are not race neutral. There are people who are competent to practice law, who for a variety of reasons cannot pass the bar exam. The bar exam, while seemingly okay at admitting lawyers who are competent, can in some circumstances, create institutional barriers that improperly exclude others who are *also* competent to practice law in Oregon. Adopting these alternative pathways serves as a meaningful effort to try to alleviate what might otherwise be an improper barrier to admission without sacrificing the important goal of ensuring that those who are admitted, by whatever means, are competent.<sup>74</sup>

At a historic public hearing on January 11, 2022, the Oregon Supreme Court unanimously voted to approve in-concept both the OEP and SPP.<sup>75</sup> Offering an alternative to the bar exam marked a seismic shift in the thinking around attorney licensure and the court's vote paves the way for law graduates to demonstrate their competency and career readiness through methods other than the traditional bar exam.<sup>76</sup>

These reform efforts in Oregon are not anomalous. New York,<sup>77</sup> Minnesota,<sup>78</sup> Washington,<sup>79</sup> Utah,<sup>80</sup> and California<sup>81</sup>—to name a few jurisdictions—are actively studying the prospect of adopting alternatives to

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74. *Id.* at 35.

75. Zane Sparling, *Oregon Supreme Court Supports Alternative to Bar Exam Requirement, Adding Options for New Lawyers*, THE OREGONIAN (Jan. 14, 2022, 12:24 PM), <https://www.oregonlive.com/news/2022/01/oregon-supreme-court-approves-dropping-bar-exam-requirement-adding-options-for-new-lawYERS.html>; Associated Press, *Oregon Supreme Court OKs Dropping Bar Exam For Alternatives*, THE REGISTER-GUARD (Jan. 13, 2022, 10:56 AM PT), <https://www.registerguard.com/story/news/2022/01/13/oregon-supreme-court-oks-dropping-bar-exam-alternatives/6514602001/>; Powell, *supra* note 66.

76. Powell, *supra* note 66.

77. *Task Force on the New York Bar Examination*, N.Y. STATE BAR ASS'N, <https://nysba.org/committees/task-force-on-the-new-york-bar-examination/> (last visited July 31, 2023).

78. Josh Verges, *Should New Lawyers Have to Pass the Bar Exam? MN Supreme Court is Open to Alternatives*, PIONEER PRESS (Oct. 2, 2021, 4:13 PM), <https://www.twincities.com/2021/09/30/should-new-lawYERS-have-to-pass-the-bar-exam-mn-supreme-court-is-open-to-alternatives/>.

79. *Washington Bar Licensure Task Force*, WASH. CTS., [https://www.courts.wa.gov/appellate\\_trial\\_courts/SupremeCourt/?fa=supremecourt.LicensureTaskForce](https://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.LicensureTaskForce) (last visited July 31, 2023).

80. Jon Reed, *After Pandemic Changes, Some Re-Examining the Bar Exam*, U.S. NEWS & WORLD REP. (Aug. 8, 2021, 8:00 AM), <https://www.usnews.com/news/best-states/utah/articles/2021-08-08/after-pandemic-changes-some-re-examining-the-bar-exam>.

81. Cheryl Miller, *State Bar to Pursue Licensing Alternative to Traditional Bar Exam*, LAW.COM (May 19, 2023, 04:37 PM), <https://www.law.com/therecorder/2023/05/19/state-bar-to-pursue-licensing-alternative-to-traditional-bar-exam/>.

the bar exam.<sup>82</sup> In these jurisdictions, rather than pay thousands of dollars for prep courses and spend hours studying for a test that does not measure or assess the skills expected of newly licensed lawyers, future lawyers will have the option to demonstrate their qualifications through experiential learning or supervised practice.<sup>83</sup> That level of reform will empower law schools in those jurisdictions to focus more heavily on teaching students the skills that the public needs and employers want, rather than on strategies for passing a standardized test. Collectively, these conversations would not have been possible—at least at the rate they have matured—without the pandemic’s arrival.

## V. CONCLUSION

As the saying goes, “it’s always darkest before the dawn.”<sup>84</sup> I found that to be true in reflecting on the pandemic time between March 2020 and August 2022. Welcoming the Class of 2025 was a powerful reminder of the value of in-person community—a value I will never again take for granted. It was also an opportunity to reflect on lessons learned; as Winston Churchill reminds us, underneath the challenge of a crisis is the opportunity to uncover fresh insight, to look at old problems anew, and—ideally—to reveal opportunities for growth.<sup>85</sup> In the emerging dawn, I tried to do just that; that is, to look anew at faculty equity, opportunities for classroom innovation, and the chance to challenge norms around attorney licensure. COVID, therefore, spurred needed reforms and ultimately initiated positive change across legal academia. Now, the goal is to continue the movement of those conversations but, this time, let’s do it without an accompanying pandemic.

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82. See Stephanie Francis Ward, *As Some Jurisdictions Consider Bar Exam Alternatives, ABA Legal Ed Section Again Looks at Bar Pass Standard*, A.B.A. J. (Aug. 19, 2022, 2:53 PM CDT), <https://www.abajournal.com/web/article/as-some-jurisdictions-consider-bar-exam-alternatives-legal-ed-again-looks-at-bar-pass-standard>.

83. See, e.g., Powell, *supra* note 66.

84. *Why Do We Say “It’s Always Darkest Before the Dawn”?*, BOOKBROWSE, [https://www.bookbrowse.com/expressions/detail/index.cfm/expression\\_number/582/its-always-darkest-before-the-dawn](https://www.bookbrowse.com/expressions/detail/index.cfm/expression_number/582/its-always-darkest-before-the-dawn) (last visited Nov. 4, 2023).

85. See Adams, *supra* note 1, at 4.