

# Whence Did Thee Come, LSSSE?

George D. Kuh and Patrick T. O’Day

“Say, do you have a couple of minutes?”

Carl Monk, then the executive director of the American Association of Law Schools (AALS), directed the question to Russ Edgerton and George Kuh as they were walking away from the December 2000 meeting of the Washington Higher Education Secretariat. Edgerton was then the Education Program Director for The Pew Charitable Trusts, which bankrolled the development and subsidized the first three years of the National Survey of Student Engagement (NSSE).<sup>1</sup> Kuh was the NSSE director and professor of higher education at Indiana University. Edgerton and Kuh were at the Secretariat—chief executive officers of about fifty national higher education associations—to provide a brief overview of NSSE, which had just completed its first national administration at 276 four-year colleges and universities.<sup>2</sup>

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1. *Evidence-Based Improvement in Higher Education*, National Survey of Student Engagement, <http://nse.indiana.edu/> (last visited July 10, 2021).
2. The National Survey of Student Engagement annually collects information at hundreds of four-year colleges and universities about first-year and senior students’ participation in programs and activities that institutions provide for their learning and personal development. The questionnaire asks about student behaviors and institutional policies and practices that are associated with desired outcomes of college. The results provide an estimate of how undergraduates spend their time and what they gain from attending college. Institutions use their data to identify aspects of the undergraduate experience inside and outside the classroom that can be improved through changes in policies and practices more consistent with good practices in undergraduate education. This information is also of interest to prospective students, parents, counselors, academic advisors, institutional research officers, and researchers. In addition to the Law School Survey of Student Engagement (LSSSE), NSSE’s widespread use spawned several other engagement instruments, including the Beginning College Survey of Student Engagement, Community College Survey of Student Engagement and Faculty Survey of Student Engagement. Since its first national administration in 2000, NSSE has collected data from about 6 million students at more than 1650 institutions in North America. Adaptations of NSSE have been created for use in other countries, including Australia, China, England, Ireland, New Zealand, and South Africa.

Monk then posed a second, more evocative unexpected query: “Could a questionnaire like NSSE be adapted for law school students?”

And so, the seed was planted for what several years later grew into the Law School Survey of Student Engagement (LSSSE). In this essay, we recount some of the more noteworthy aspects of LSSSE’s early years, specifically how and why LSSSE took root and evolved into a self-sustaining, widely-used legal education assessment and improvement tool.

While archived e-mails document much of what we report in this essay, some retrospective sense-making may surface here and there. In addition, even though today we write with confidence (and more than a little satisfaction) about how LSSSE got off the ground and its continuing success, there were moments in the first months when we wondered whether we were on a fool’s errand.

### **I. The Beginning**

In 1999, Patrick O’Day began the higher education doctoral program at Indiana University (IU). In addition to coursework in the School of Education, O’Day started taking classes at the IU School of Law-Bloomington (now the Maurer School of Law). As his interest in legal studies deepened (he earned a J.D. from IU Law-Bloomington in 2004), he also was discussing potential Ph.D. dissertation research ideas with Kuh who mentioned the brief interaction with Carl Monk in late 2000. This prompted O’Day to seek advice from IU Law-Bloomington faculty and staff about the viability of a law student engagement survey.

Len Fromm, then assistant dean at IU Law-Bloomington, was a resourceful, encouraging sounding board. Fromm also recommended to Lauren Robel (then interim law school dean) that O’Day serve as a student representative on the recently constituted reaccreditation self-study committee. Meanwhile, O’Day was developing a draft of a law student engagement questionnaire, which he mentioned to Robel who was keen on using the emerging LSSSE prototype in the self-study for ABA accreditation. However, the instrument was not quite ready.

In summer 2002, Kuh initiated discussions with the IU Center for Postsecondary Research (CPR)<sup>3</sup> staff and the NSSE National Advisory Board about the viability of an engagement survey for law students. Developing such an instrument seemed timely, given that law school rankings at the time dominated conversations about quality while ignoring what

3. The Indiana University Center for Postsecondary Research (CPR) promotes student success and institutional excellence by conducting and disseminating research on student access, assessment, engagement, and persistence and by assisting postsecondary institutions and related agencies in gathering and using data for educational decision making and institutional improvement. A research center of the Indiana University School of Education, CPR hosts NSSE and several other ongoing research and development initiatives.

happens to students.<sup>4</sup> Members of the NSSE board were not immediately persuaded, primarily because they did not want NSSE staff to be distracted by implementing another survey. Nevertheless, Kuh encouraged O'Day to continue working on a law school student engagement questionnaire to use as a dissertation data collection instrument.

After O'Day completed a version of the LSSSE questionnaire he invited comments and advice from a dozen law faculty and staff at IU Law-Bloomington and a handful of legal scholars at other law schools, including Gerry Hess (Gonzaga), Judith Wegner (North Carolina at Chapel Hill), and Dale Whitman (Missouri-Columbia). Also consulted were others with an interest and expertise in legal education such as Gita Wilder at the Law School Admissions Council and ABA staff. Of particular interest were responses to the following queries:

- Are the survey questions appropriate for the law school context?
- Will they work for different types of law school settings, and for different types of students?
- Are there important areas that are missing?
- Would the results of these items be of interest to legal educators?
- Should some questions be revised?

As the LSSSE project was taking shape, we were sensitive to the likely subtle and not-so-subtle differences between what constitutes educationally purposeful engagement for undergraduates and law students. The NSSE design team<sup>5</sup> was advantaged when developing the collegiate questionnaire because it had many decades of research into good practices in undergraduate education to consult.<sup>6</sup> In 1999, the *Journal of Legal Education* featured commentary by legal educators on how law schools would benefit from applying these “good practice” principles to the law school setting.<sup>7</sup> However, there were

4. Patrick T. O'Day & George D. Kuh, *Assessing What Matters in Law School: The Law School Survey of Student Engagement*, 81 IND. L. J. 401 (2006).
5. George D. Kuh, *The National Survey of Student Engagement: Conceptual and Empirical Foundations*, 141 NEW DIRECTIONS FOR INSTITUTIONAL RES. 5 (2009).
6. See, e.g., ALEXANDER W. ASTIN, WHAT MATTERS IN COLLEGE? FOUR CRITICAL YEARS REVISITED (1993) (summarizing over thirty years of research from the Cooperative Institutional Research Program about the student experience at hundreds of undergraduate colleges and universities); Arthur W. Chickering & Zelda F. Gamson, *Seven Principles for Good Practice in Undergraduate Education*, 39 AAHE BULLETIN 3 (1987) (summarizing research about teaching and learning, and suggesting key principles that could guide improvement in undergraduate education); ERNEST T. PASCARELLA & PATRICK T. TEREZINI, HOW COLLEGE AFFECTS STUDENTS: A THIRD DECADE OF RESEARCH (2005) (analyzing the results of studies on higher education conducted from the late 1960s to the early 2000s).
7. Susan B. Apel, *Principle 1: Good Practice Encourages Student-Faculty Contact*, 49 J. LEGAL EDUC. 371 (1999); Okinner C. Dark, *Principle 6: Good Practice Communicates High Expectations*, 49 J. LEGAL EDUC. 441 (1999); R. Lawrence Dessem, *Principle 5: Good Practice Emphasizes Time on Task*, 49 J. LEGAL EDUC. 430 (1999); David Dominguez, *Principle 2: Good Practice Encourages Cooperation*

few empirical data to link engagement indicators to law school outcomes.<sup>8</sup> This meant the validity standards for LSSSE would have to depend more on forms of expert judgment or consensus than inferences from peer-reviewed studies.<sup>9</sup> Another challenge was persuading law schools to administer LSSSE, given the relative lack of experience law schools had in collecting and using information about the law student experience.

## II. Testing LSSSE in the Field

Even though there was no cost to join the 2003 pilot test, persuading institutions to do so was not a slam-dunk. The interest and ongoing moral support from Carl Monk and AALS were critical in this regard. For example, Monk sent a memo to all law school deans about LSSSE, inviting their participation in the pilot test. In addition, LSSSE formed a national advisory board made up of a mix of experts and perspectives that helped lend credibility to a fledgling organization. Bryan Garth, director of the American Bar Foundation and former IU Law-Bloomington dean, and Lauren Robel were members of the inaugural LSSSE National Advisory Board.<sup>10</sup> Len Fromm also joined the recruitment effort by reaching out to his counterparts at other law schools to encourage their participation in the pilot.

In addition to the endorsement by AALS, LSSSE benefited from its association with the Carnegie Foundation for the Advancement of Teaching, which was an early partner with NSSE thanks to the support and advice of its president, Lee Shulman. Fortuitously, Thomas Ehrlich was then also at Carnegie. Ehrlich was previously the dean of the University of Pennsylvania Law School, IU president emeritus, and current NSSE board member. His endorsement of the LSSSE project was very important to convincing the NSSE board of LSSSE's potential.

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*Among Students*, 49 J. LEGAL EDUC. 386 (1999); Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401 (1999); Terri LeClercq, *Principle 4: Good Practice Gives Prompt Feedback*, 49 J. LEGAL EDUC. 418 (1999); Paula Lustbader, *Principle 7: Good Practice Respects Diverse Talents and Ways of Learning, and Conclusion: Adapting the Seven Principles to Legal Education*, 49 J. LEGAL EDUC. 448 (1999).

8. See, e.g., Michael J. Patton, *The Student, The Situation, and Performance During the First Year of Law School*, 21 J. LEGAL EDUC. 10 (1968) (finding students who do better in law school than what is predicted by their admission criteria were more involved with their law school and worked longer on their studies than their peers).
9. Prior to the development of the LSSSE survey, former dean of Harvard Law School Derek Bok noted that NSSE's evaluation of how extensively colleges use effective teaching methods would present a better basis of measuring the quality of professional schools. Derek C. Bok, *Markets and Mindwork*, 10 WASH. U. J.L. & POL'Y 1 (2002).
10. The inaugural LSSSE National Advisory Board also included Alison Anderson (California-Los Angeles), Thomas Ehrlich (Carnegie Foundation for the Advancement of Teaching), Richard Matasar (New York Law), Carl Monk (AALS), Harry G. Prince (California-Hastings Law), and Todd Rakoff (Harvard).

Happily, in early fall 2002, the NSSE board approved the pilot test and its startup funding with the caveat that no more than a dozen schools be involved. It turned out that more law schools expressed interest in the pilot test than could be accommodated. Explaining to the three dozen institutions not selected for the LSSSE pilot why they could not participate was a sensitive public relations challenge, especially when communicating with a few excluded law schools that were preparing for reaccreditation and wanted LSSSE data to include in their self-study.

*A. Indiana University Center for Postsecondary Research*

Adopting the effective field-tested procedures established by NSSE and the CPR, the IU Center for Survey Research (CSR),<sup>11</sup> in concert with NSSE staff administered the Spring 2003 pilot test questionnaire online to all students at ten of the eleven participating law schools.<sup>12</sup> One law school administered locally a paper survey on an experimental basis. During the field test, O'Day made site visits to five campuses (William and Mary, Duke, North Carolina at Chapel Hill, Fordham, and New York Law) to speak with students, faculty and staff about their reactions and feedback about the LSSSE items.<sup>13</sup> These cognitive interviews generated valuable information and guidance for fine-tuning the instrument.

For example, the pilot questionnaire asked how often the respondent discussed grades or assignments with a faculty member. Because most law classes only provide one final grade, we changed this item to ask how often students discussed *assignments* with a faculty member, which was a more common topic of their interactions with a faculty member. In addition, we learned that many students had trouble accurately estimating the *number of pages* they read in a given week for their classes and personal enjoyment. We changed this quality of effort item to the *number of hours* they devoted to reading. Another change was expanding the response options for the item "What have most of your grades been up to now at this law school?" In the pilot, we grouped "A,

11. The Indiana University Center for Survey Research (CSR), led then by John Kennedy, was a key factor in the success of NSSE and LSSSE. Partnering with CSR, an independent professional survey research center, was critical to ensure that LSSSE results would be reliable, trustworthy, comparable, meaningful, and credible. In addition, CSR staff developed the infrastructure and software that made it possible for NSSE to administer the survey online to tens of thousands of students across several hundred colleges and universities, setting the industry standard at the time for online surveys.
12. Law schools in the LSSSE pilot administration were Brigham Young, District of Columbia, Duke, Florida, Fordham, Indiana-Bloomington, Minnesota, New York Law, North Carolina at Chapel Hill, William and Mary, and Wisconsin.
13. See, e.g., FLOYD J. FOWLER, JR., *IMPROVING SURVEY QUESTIONS: DESIGN AND EVALUATION* 110-14 (1995) (describing how allowing students to think aloud while completing a survey is an effective means to investigate whether questions are understood in a similar manner by different students); Judith A. Ouimet et al., *Using Focus Groups, Expert Advice, and Cognitive Interviews to Establish the Validity and Reliability of a College Student Survey*, 45 RES. HIGHER EDUC. 233 (2004) (describing the value of using focus groups to refine survey questions).

A-” together; however, the difference between “A” and “A-“ is a meaningful distinction for law schools to determine class rank.

The 2003 LSSSE field test institutional response rates ranged from thirty-three percent to seventy-two percent, yielding 4212 completed surveys from the 8619 law students surveyed for a forty-nine percent unadjusted response rate. After the data were collected and analyzed, each school received an institutional report with a frequency distribution report, means summary report, and the raw data for all student responses.

### III. LSSSE Goes Nationwide

Forty-two schools made up the first national LSSSE administration in 2004, enough to cover a sizable portion of the annual project costs, which were artificially depressed somewhat because of the time contributed by Kuh, O’Day, and several other staff from the CPR. More important, this first national survey cycle was by all accounts successful. For example, 13,197 law students responded for an average, adjusted institutional response rate of fifty-three percent, which was comparable to the 2003 LSSSE pilot administration. Individual school response rates ranged from thirty-four percent to sixty-nine percent with almost two-thirds realizing at least a fifty percent response rate, enough for schools to have confidence in the findings.

The inaugural national LSSSE administration received generally favorable media coverage. The press release sent by LSSSE followed the form and approach established by NSSE resulting in stories in *The Chronicle of Higher Education*, *USA Today* and *National Law Journal*, and on National Public Radio. Such coverage is good for business, giving further credibility to the importance of the work and results, and encouragement to those who are committed to improving the quality of legal education. Efforts to gain attention in the national media continued with subsequent administrations, with mixed success.

Law school participation increased with each subsequent LSSSE administration through 2007, with comparable response rates:

- 2005: fifty-three schools, 21,650 respondents, fifty-seven percent response rate.
- 2006: sixty-six schools, 24,000+ respondents, fifty-eight percent response rate. LSSSE introduced that year the consortium option whereby law schools could create a group of six or more participating LSSSE schools and ask up to twenty additional questions created and agreed on by member schools.
- 2007: seventy-nine schools, 27,000 respondents, fifty-four percent response rate, including many Canadian schools, a few of which administered a French language version of the questionnaire.

In June 2007, LSSSE hosted its first Users Workshop at the annual Institute for Law School Teaching meeting. Informative sessions for users were offered at other meetings (e.g., AALS, ABA) during these early years. LSSSE staff talked with law school administrators and faculty about innovative, instructive ways to analyze or use LSSSE data to understand student issues, bar passage rates, and other comparative data that could point to ways to improve student learning and other desired outcomes such as student satisfaction.

For example, a faculty committee at Brigham Young University Clark Law School reviewed its LSSSE findings with an eye toward modifying curricular requirements and expectations to enhance learning. The school also shared the survey results with its Student Bar Association which sponsored several student-led initiatives designed to create a supportive environment for all students.

St. John's University School of Law worked with its institutional research office to summarize LSSSE findings in ways that would be useful to academic advisors and placement staff. Institutional researchers at New York Law School and South Texas College of Law disaggregated LSSSE data to identify differences in engagement patterns of sub-populations of interest in order to target specific interventions to improve engagement.<sup>14</sup>

LSSSE also conducted workshops on individual campuses to promote and support data use for improvement purposes. Indeed, one of the most attractive features of LSSSE is that much of the information obtained about the law school student experience is actionable; that is, schools can identify where to make improvements.

#### **IV. Enacted and Aspirational LSSSE Operational Values**

From the outset, the NSSE National Advisory Board and CPR staff cautioned that LSSSE could not have the intended impact if it were merely a student survey. Most national surveys release an annual report, which—with luck—gets a day or two of attention in some local and maybe even national media. Then the report is filed along with other such documents in a dean's office or on the shelf in the institutional research or assessment office. Sometimes the findings are used to track national, sector, and campus trends (informative certainly), but they rarely stimulate or guide institutional improvement efforts.

To help improve the quality of the law school student experience, we sought to weave three cultural threads into LSSSE's operating philosophy, principles, and activities, drawing on experience with the NSSE initiative.

The first is an equity-minded commitment to betterment. That is, we wanted the LSSSE project to prioritize discovering, documenting, and enhancing student engagement and student learning, and promoting the use

14. For more examples of using LSSSE findings see Victor Quintanilla, Ajay Mehrotra, and Kirsten Winek in this issue and the resources on the LSSSE website available at <https://lsse.indiana.edu/insights/> (last visited July 10, 2021).

of educationally effective practices in legal education. In addition, LSSSE instilled an ethic of continuous quality improvement. This is demonstrated by annually improving survey administration processes, fashioning institutional reports ever easier to understand, performing annual psychometric testing of revised items and consortium-specific modules, and conducting qualitative inquiries into individual institutional applications of student engagement results and related approaches to enhance learning and teaching.

The second cultural thread was a campaign orientation. To be sure, the LSSSE instrument and analytics had to adhere to industry standards in documenting dimensions of quality in legal education and providing meaningful, useful information and assistance to law schools. This was accomplished largely by adapting the policies, processes, and practices established by the successful NSSE project. In addition, LSSSE had to be something akin to a vocal partner with national associations and legal education leaders advocating for improvements in law school quality.<sup>15</sup> This could be done only through a multiyear campaign that could help animate a national movement to change the conversation about what constitutes quality in the law school environment—that is, focusing on engagement or what students *do*, contrasted with what schools *have*, such as average LSAT scores and unadjusted bar pass rates. In addition, LSSSE had to consistently provide reliable information that law schools would use to engage students at higher levels in effective educational activities.

The third cultural thread was nurturing a collaborative ethos by, among other things, seeking advice from law school and national association leaders about what the field required to advance promising assessment and improvement practices. As noted earlier, LSSSE collaborated with AALS, the Carnegie Foundation for the Advancement of Teaching, and individual institutions to advance the improvement agenda. Among other notable efforts was working closely with and benefiting immeasurably from an ongoing relationship with the IU Law–Bloomington faculty and staff. In addition to encouraging the formative development work of the questionnaire, IU Law–Bloomington was the first to sign on for the 2003 field test as well as the first national administration in 2004. It has been a regular participant, administering LSSSE almost every year. In addition, several IU Law–Bloomington faculty, including Ken Dau-Schmidt, Bill Henderson, and Jeff Stake constituted the first wave of LSSSE faculty associates and early on worked with the data to find ways to, among other things, link LSSSE findings to such other outcomes measures as bar passage and employment. Since then, other IU Law–Bloomington faculty have worked with LSSSE data as have legal scholars and faculty from other institutions and organizations.<sup>16</sup>

15. For more on the importance of institutional partners, see Kellye Testy, *Advancing an Evidence-Based Approach to Improving Legal Education*, 69 J. LEGAL EDUC. 561 (2020)

16. The LSSSE website includes a listing of some recent publications utilizing LSSSE data. *Publications Citing LSSSE Research*, Law School Survey of Student Engagement, <https://lssse.indiana.edu/scholarship/>.

These cultural threads—betterment, campaign orientation and collaborative ethos—are relatively easy to grasp conceptually. However, they are difficult to enact consistently over time. At different points in time, these cultural elements were as much aspirational and inspirational as they were realized in practice. Indeed, a major challenge going forward for the LSSSE enterprise is to assiduously strive to attain these noble ends.

### V. Last Word

Perhaps had LSSSE not come online in 2004, something akin to it might have emerged soon thereafter, given the constant drumbeat for more transparency, accountability, and evidence about the return of investment of earning (and paying for) a law degree. Instrumental to LSSSE's acceptance were its associated products and services, including customized data analyses, consortium participation, and user workshops.

As important as any other factor to whatever success LSSSE achieved is the many people who contributed to its development at the outset and continue today. We mentioned some of them in this essay, and apologize to the scores more who merit acknowledgment. Especially important are the legal education leaders—deans, law scholars, and others—who sensed LSSSE's potential in its early years to help support and guide a movement to enhance the quality of legal education. Our hats are off to these good people and to the tens of thousands of law students over the years who took the time from what are often very hectic schedules to complete the questionnaire. Bravo!

#### Figure 1. LSSSE Timeline, 2000–2007 (abbreviated)

2000 December: Carl Monk, AALS executive director, asks Russ Edgerton and George Kuh whether a questionnaire like the National Survey of Student Engagement (NSSE) could be used with law students.

2002 Spring: Kuh talks with Patrick O'Day, then a higher education doctoral student and iL in the Indiana Law-Bloomington, about possible Ph.D. dissertation topics and mentions 2000 conversation with Monk.

2002 Spring: O'Day consults with IU Law-Bloomington faculty and staff about the need and form of a law school student engagement survey and begins to draft a questionnaire.

2002 Summer: Kuh talks with the NSSE National Advisory Board about developing a law student engagement survey; the NSSE board is not yet convinced.

2002 Fall: Kuh persuades the NSSE board to approve the development and pilot testing of a law school student engagement survey. O'Day joins the IU Law-Bloomington reaccreditation self-study committee as a student representative and helps design a student survey in lieu of the law school engagement survey, which is not yet ready. O'Day and Kuh continue to work on the pilot test version of the Law School Survey of Student Engagement

(LSSSE).

2002 Fall-Winter: O'Day consults with legal education experts at IU Law-Bloomington and elsewhere about the content and form of the LSSSE pilot instrument and fine-tunes the pilot questionnaire.

2003 Spring: LSSSE conducts the pilot test with eleven law schools, achieving a very respectable fifty-seven percent response rate; O'Day makes site visits to five law schools to gather feedback about LSSSE from students, faculty and staff to revise the LSSSE questionnaire.

2003 Fall: Pilot test schools receive their customized reports and raw data, the inaugural LSSSE National Advisory Board is appointed, and recruitment begins for the first national LSSSE administration.

2004 Spring: LSSSE conducts its first national administration at forty-two law schools achieving a fifty-three percent response rate. National media publish stories about LSSSE and the law student experience. LSSSE becomes self-sustaining from institutional participation fees after the start-up investment from NSSE.

2005 Spring: Fifty-three schools participate, achieving a fifty-seven percent response rate.

2006 Spring: Sixty-six participating schools achieve a fifty-eight percent response rate. Consortium option introduced. Since 2004, LSSSE has been used one or more times by 111 different law schools.

2007 Spring: Seventy-nine schools administer LSSSE, with a fifty-four percent response rate. Many Canadian schools participate, a few of which administer a French language version of the questionnaire. LSSSE hosts first Users Workshop at annual Institute for Law School Teaching meeting. Lindsay Watkins succeeds O'Day as LSSSE project manager. Kuh continues as LSSSE director.