

Afterword: Nudging Toward Virtue

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The Law School Survey of Student Engagement began fifteen years ago with work by a wonderful student, Patrick O’Day, who both George Kuh, an eminent scholar of higher education and I had the privilege to teach at around the same time. Professor Kuh is the genius behind the National Survey of Student Engagement (NSSE), begun in 2000 as a survey of undergraduate students.¹ Nothing similar had been attempted at law schools, and both George and Patrick should take immense pride in what their work generated, as this collection of essays and remembrances makes clear.

From its inception and for the first time, LSSSE brought the considerable scholarship of student engagement to a graduate professional program. Beginning with practices tracked through NSSE that have been shown to increase undergraduate student learning, LSSSE refined its survey over the next decade and a half into an instrument to meet the evolving challenges of legal education. In doing so, as the essays in this symposium make clear, it gave students voice; deans a meaningful method to compare their schools with those of their peers; accreditors a way to evaluate institutional commitments around learning and student success; teachers purchase on classroom and climate information critical to learning; and scholars an invaluable longitudinal dataset that is beginning to be mined for the answers to unforeseen questions and to connect in unforeseen but thrilling ways to other datasets. It is being used in other countries, giving us a new window into globally comparative information about how law is taught and learned. When catastrophe strikes, as it did this year, we’ve learned that LSSSE’s strong institutional and research base can quickly focus on hastily shifted practices and help us determine how to ensure a strong experience for our students.² If LSSSE achieved nothing more, it would be an unqualified success.

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1. See *What Does NSSE do?*, NATIONAL SURVEY OF STUDENT ENGAGEMENT (Jan. 2021), <https://nsse.indiana.edu/nsse/about-nsse/index.html>.
2. See, for instance, Jessica Erickson, *Connections and Community in Distanced Classrooms*, LSSSE Blog (Jan. 2021), <https://lssse.indiana.edu/2021/01/?cat=80> (using LSSSE data on importance of relationships and connections to suggest ways online teachers could focus on building those relationships during the pandemic).

Despite all of these notable achievements, LSSSE has even more potential. Both NSSE and LSSSE were conceived in part as nudges to push institutions toward practices (and students toward behaviors) that would improve student success.³ Both have succeeded in that effort, demonstrating that colleges, universities, and law schools appreciate the ability to track their progress at the institutional level toward a set of practices empirically shown to support student development.⁴ In recent years, as LSSSE has matured, it has appropriately ventured into areas beyond those at the core of NSSE's concerns with undergraduates. For instance, it has solicited information that has explored controversies around legal education, such as student debt levels⁵ and inclusion and equity.⁶ While LSSSE's strong credibility comes from its roots in NSSE's insistence on translating deep research on engagement and high-impact practices into survey questions that reinforce those practices, LSSSE has the ability to explore with even more depth issues critical to the distinctive mission of law schools.

Perhaps the most important of those issues concerns law school's responsibility for the formation of the professional identities of the vast majority of our nation's lawyers. Those professional identities are, in turn, critical to our democracy, including not only the system of justice that is at the center of many of the deepest racial tensions in our country, but also the commitment to process, rights, and constitutionalism that underpins our political institution. As LSSSE celebrates its fifteenth year, its methodology gives it a unique opportunity to aid schools in tracking and improving what lessons students are absorbing about the distinctive obligations they will face for these issues as members of the legal profession.

1. NSSE and LSSSE: Engagement and High-Impact Practices Move from the Undergraduate Experience to Law School

The Indiana University Center for Post-Secondary Research, under Professor George Kuh's guidance, developed NSSE as a way to bridge the extensive higher education research documenting the links among students engaging in certain behaviors, the practices of institutions of higher education to support those behaviors, and educational attainment and student retention.

3. See RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* 6 (2008) ("A nudge . . . is any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives.").
4. Meere E. Deo et al., *The Changing Landscape of Legal Education: A 15-Year LSSSE Retrospective*, Law School Survey of Student Engagement (2020), https://lsse.indiana.edu/wp-content/uploads/2015/12/LSSSE_Annual-Report_Winter2020_Final.pdf.
5. *2015 Annual Survey Results: How a Decade of Debt Changed the Law Student Experience*, Law School Survey of Student Engagement (2015), <https://lsse.indiana.edu/wp-content/uploads/2016/01/LSSSE-Annual-Report-2015-Update-FINAL-revised-web.pdf>.
6. Meere E. Deo & Chad Christensen, *2020 Annual Survey Results: Diversity & Exclusion*, Law School Survey of Student Engagement (2020), <https://lsse.indiana.edu/wp-content/uploads/2020/09/Diversity-and-Exclusion-Final-9.29.20.pdf>.

Decades of higher education research has identified both institutional practices and student behaviors that positively affect students' learning, retention, and satisfaction with their college experiences. NSSE has consolidated those practices and behaviors in two broad concepts—student engagement and high-impact practices—that have shaped the questions NSSE has rigorously explored over the past twenty years with over 6 million students.⁷ NSSE's attention to these practices and its consistency, coupled with its exceptionally large reach, have in turn had an enormous impact on how institutions of higher education have shaped policies as varied as counseling, advising, facilities, study abroad, and faculty-student interaction.

Over the years, NSSE has allowed colleges and universities to understand their students' experiences with a broad range of campus and classroom structures, including academic support structures. It has explored higher-order learning by asking students about their opportunities to engage in fact, theory, and method application, analysis in depth, critical evaluation, and idea formation. It queries students about opportunities for reflective and integrative learning through a series of questions asking students how often they are asked to synthesize materials across the curriculum. It looks at opportunities for quantitative reasoning and sustained writing; collaborative learning with peers and professors; and the quality of interactions with those on a campus. It explores opportunities for students to engage in experiences that have been shown to have a high impact on student learning, such as internships, study abroad, research work with a professor, service to others, learning communities, and senior capstone experiences. And it asks about the ways in which undergraduates use their campuses.

LSSSE's translation of this research from undergraduates to law students relied, as Kuh and O'Day note, on expert judgment and consensus rather than empirical data.⁸ In the law school context, however, the concept of student engagement intuitively translates well. As does NSSE, LSSSE includes questions about intellectual activities, use of time, social integration and engagement with diverse perspectives, interactions with faculty, and collaboration with peers, all markers of student engagement. Like NSSE, it explores opportunities for higher-order learning, such as application and synthesis, and it includes questions about law school experiences that correlate well with NSSE's high-impact practices, such as clinical experiences or field placements, service to others, research with a professor, and intensive cocurricular activities like moot court or law journal. And as with NSSE, LSSSE's persistence and ability to permit law schools to compare themselves

7. For a thorough discussion of NSSE's approach to survey design and the research that underlies its approach, see *NSSE's Conceptual Framework*, Law School Survey of Student Engagement (2013), <https://nsse.indiana.edu/nsse/about-nsse/conceptual-framework/index.html>. See also George D. Kuh, *The National Survey of Student Engagement: Conceptual and Empirical Foundations*, 141 *Using NSSE in Institutional Research* 5–20 (2009).
8. See George D. Kuh & Patrick T. O'Day, *Whence Did They Come, LSSSE?*, 69 *J. LEGAL EDUC.* 402 (2020).

to their peers on issues they understand to be important has likely had a virtuous effect. LSSSE's recent retrospective report, for instance, shows gains in learning outcomes, certain kinds of institutional support, such as for career counseling, and social integration, such as discussions between diverse groups.⁹

II. LSSSE Next Steps: Exploring What Makes Law School Distinctive

NSSE differs in one important way from LSSSE: It is agnostic to the myriad undergraduate disciplines its respondents are studying. Law schools, however, have a specific responsibility that differs from many undergraduate disciplines: Law schools must prepare their students for a profession. When NSSE and then LSSSE were created, they benefited from a decades-long foundation of research that George Kuh and his colleagues could translate into practices that form the basis for these survey instruments. There is a similar literature on understanding professional identity formation, much but not all of it outside the field of law,¹⁰ and a growing interest in connecting that understanding to practices that could be implemented effectively at law schools.¹¹

The question of how law schools shape professional identity, or even if they can, has been at the center of numerous studies by both scholars and the bar associations;¹² over the past several years, LSSSE researchers have been exploring how the survey could be used to examine and, when empirically supported, shape law school practice in this important area. In 2011, former LSSSE Director Carole Silver and Project Manager Lindsay Watkins co-authored a paper on this scholarship of professional identity and described two experimental sets of LSSSE questions, administered in 2008 and 2009, to gather more data about how schools approached what the Carnegie Report

9. Meere E. Deo, *The Changing Landscape of Legal Education: A 15-Year LSSSE Retrospective*, Law School Survey of Student Engagement (2020), https://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE_Annual-Report_Winter2020_Final.pdf.
10. In addition to the Carnegie Foundation "Preparation for the Professions" series, of which WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION* (2007) (known as the "Carnegie Report"), is a part, see Jerome M. Organ, *Is there Sufficient Human Resource Capacity to Support Robust Professional Identity Formation Learning Outcomes?*, 14 U. ST. THOMAS L.J. 458 (2018) (noting that many schools have connected professional identity to student outcomes). Indeed, the entire symposium on professional identity formation to which this article belongs, which includes excellent contributions by Bryant Garth and William Sullivan, reviews much of this literature within law.
11. See, for instance, the work of the Holloran Center at the University of St. Thomas, which is attempting to connect professional identity formation to learning outcomes. *Welcome to the Holloran Center*, University of St. Thomas School of Law, <https://www.stthomas.edu/hollorancenter/> (last visited Apr. 2, 2021).
12. See, for instance, SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION* (2007), *supra* note 11, at 126-61, citing ABA publications and studies going back to *Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, 1992 A.B.A. Sec. OF Leg. Educ. & Admission (1992) popularly known as the MacCrate Report.

had called “the third apprenticeship” of identity formation.¹³ Those questions explored how schools approached teaching professional ethics; settings in which ethics could best be learned; and a myriad of qualities associated with mature professional development, such as acting with integrity, sensitivity to client relationships, capacity for moral reasoning, handling the stress of law practice, and serving the public good.¹⁴

From that experience, LSSSE now includes two questions specifically about that aspect of law school, and two that are related. First, the survey asks students to evaluate how much the school encourages “the ethical practice of law.” Second, it asks students to evaluate how much the school encourages pro bono and public service. And in related questions, the survey asks about law schools’ encouragement of the development of a “personal code of values and ethics.” Finally, in common with NSSE, it asks students to evaluate how well the school encourages “understanding people of diverse racial and ethnic backgrounds.”

The events of the past year, however, give fresh urgency to expanding this aspect of LSSSE’s exploration of law school. Lawyers exercise substantial power, and their role in sustaining our commitment to the rule of law and democratic institutions suggests that understanding, and nudging schools to encourage other fundamental aspects of professional identity formation is critical. Can we identify, for instance, and ask about a law school’s encouragement of strategies for fidelity to law in the face of political pressure?¹⁵ Can we determine what actions law schools engage in that support their future graduates’ understanding of the oath they will take to defend the Constitution of the United States?¹⁶ What about the commitment to diversity and inclusion that is necessary to ensure the legitimacy of courts and criminal justice?¹⁷ All of the questions surrounding professional identity and lawyers’ distinctive responsibilities have taken on additional resonance in a year in which lawyers and judges have been crucial actors, both in support of the rule of law and in opposition to it.

At the fifteen-year mark, as LSSSE has benefited from its grounding in the translation of research to actionable practices, law schools and the country could benefit from a continued focus on the question of what makes the formation of lawyers distinctive, and what practices make that formation most effective. The work of evaluating this complicated literature and translating it

13. Carole Silver et al., *Unpacking the Apprenticeship of Professional Identity and Purpose: Insights from the Law School Survey of Student Engagement*, 17 J. LEG. WRITING INST. 373, 400–01 (2011).

14. *Id.* at 385–86.

15. See, e.g., Reid J. Epstein, *A Conservative Justice in Wisconsin Says He Followed the Law, Not the Politics*, N.Y. TIMES (Dec. 21, 2020), <https://www.nytimes.com/2020/12/20/us/politics/wisconsin-justice-brian-hagedorn.html>.

16. For a discussion of the complexity of oaths to support the Constitution, see Richard M. Re, *Promising the Constitution*, 110 NW. U. L. REV. 299 (2016).

17. See Meera Deo’s Foreword in this symposium.

into the questions that allow us to think about how we are doing as law schools in this critical work will be as difficult, and as important, as the work George Kuh and Patrick O'Day did in LSSSE's earliest days. Can we look forward to nudging ourselves, through LSSSE, toward a greater understanding of our roles in forming lawyers capable of virtue in their professional roles?