

**DISRUPTING HIERARCHIES IN LEGAL EDUCATION:  
COMMEMORATING THE IMPACT OF THE FREEDMAN  
FELLOW PROGRAM  
FOREWORD**

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On October 24 and 25, 2019, twenty-three former Fellows of the Abraham L. Freedman Fellowship Program gathered at Temple University Beasley School of Law to celebrate the program's contributions to legal education. This celebration included presentations of papers organized around the theme of "Disrupting Hierarchies in Legal Education." That theme was especially appropriate given the disruptive impact of the Freedman Fellow Program itself.

At the time of its founding in 1974, there were relatively few routes for practicing attorneys to enter legal academia. Many law schools filled their faculty positions with graduates of a small number of elite feeder schools, who had some combination of law review editorships, federal court clerkships, and good connections.<sup>1</sup> For those who could not make an immediate transition from practice to full-time faculty positions, getting hired as a legal writing teacher for a year or so offered an opportunity to improve one's employment prospects by providing time to network and produce some writing (although a strong publication history was not a market demand in those days).

Temple set up a program that was, at the time, a radical alternative avenue into the legal academy. It was designed as a two-year fellowship leading to an LL.M. degree. This degree, which substituted teaching experiences for coursework, was described as a degree in "legal education." Fellows paid no tuition and received a yearly stipend. Initially, Temple divided the fellowship into two tracks. The core requirements for both tracks included the following: teaching a section of the first-year legal research and writing course during each of the four semesters of residency, collaborating on at least two doctrinal courses with Temple faculty members, participating in a legal education seminar, and writing a thesis of publishable quality. One of the tracks, called the Abraham L. Freedman Fellowship, additionally required teaching a simulation-based litigation skills course (Civil Trial Advocacy) and the supervision of law students in the Temple Legal Aid Office. The other track, called the Law and Humanities Fellowship, additionally required the teaching of a law-related undergraduate course elsewhere in the University.

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1. See generally Tracey E. George & Albert H. Yoon, *The Labor Market for New Law Professors*, 11 J. EMPIRICAL LEGAL STUD. 1 (2014) (discussing the influence various factors have on which candidates are interviewed and hired into the legal academy).

At the end of the 1980s these tracks were collapsed into a single Freedman Fellow Program. Almost all Fellows came into the program desiring to ultimately get a job teaching doctrinal courses. Since neither the skills and clinical experiences of the Freedman track nor the undergraduate teaching of the Humanities track seemed to contribute substantially to obtaining that kind of position, those components were replaced with a requirement of teaching a complete upper-level law school course in the spring semester of a Fellow's second year in the program. That, together with the common requirements of the original two tracks, set the basic configuration of the Freedman Fellow Program until it ended in the spring of 2017.

In short, Temple's Freedman Fellow Program was a pioneer in the development of transitional programs (fellowships, VAPs, and the like), which are now ubiquitous in the legal education landscape.<sup>2</sup> And what made the Freedman Fellow Program importantly different from other such programs was its emphasis on teaching. While the program took various steps over the years to encourage and facilitate scholarship among the Fellows, the core of the program remained the variety of teaching experiences.

Panel discussions of the symposium theme began at a dinner held on October 24, at which three former Fellows who are current law school deans discussed the impact of the program on their own visions of a dean's role. The symposium program continued the next day with a series of four five-person panels addressing different contexts in which established hierarchies impact legal education. These panels were titled "Rankings, Placement, and Institution Building"; "Access to Law School and the Profession"; "Hiring and the Market for Faculty"; and "Pedagogy, Curriculum, and the Enduring Theory/Practice Divide." In place of a keynote address, the symposium program included a "Directors Roundtable" in which five former directors of the Freedman Fellow Program—Anthony Bocchino, Richard Greenstein, Joseph Harbaugh, Jan Levine, and Joseph Passon—discussed the program's origins, history, and impact.

The panelists highlighted critical hierarchies in legal education and the legal profession that are in need of a "disruption." The five panelists' works included in this Symposia Issue are representative of the range and excellence of the discussions that took place among the panelists. The following summaries highlight this range.

In *Decanal Leadership in Law Schools and the Abraham L. Freedman Fellowship Program*, Byron Stier, a faculty member and associate dean at Southwestern Law School, focuses on the distinctive contributions of the Freedman Fellow Program as a training ground for leadership that laid the foundation for a remarkable number of Fellows to become deans or associate deans.<sup>3</sup> This essay carefully details what deans and associate deans do, dividing the work into three categories: (1) strategic ideation, inspiration, and implementation; (2) administration and management; and (3) financial planning and fundraising.<sup>4</sup> The specific roles of deans and of associate deans for academic affairs, for

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2. See, e.g., Paul Caron, *Fellowships for Aspiring Law Professors (Updated 2019-20 Edition)*, TAXPROF BLOG (Feb. 28, 2020), [http://taxprof.typepad.com/taxprof\\_blog/2020/02/fellowships-for-aspiring-law-professors-updated-2019-20-edition.html](http://taxprof.typepad.com/taxprof_blog/2020/02/fellowships-for-aspiring-law-professors-updated-2019-20-edition.html) [<https://perma.cc/F8XX-89WS>] (listing dozens of fellowship and VAP programs available).

3. Byron G. Stier, *Decanal Leadership in Law Schools and the Abraham L. Freedman Fellowship Program*, 92 TEMP. L. REV. 721 (2020).

4. *Id.* at 723.

faculty research, and for strategic initiatives are then described and differentiated.<sup>5</sup> The piece also serves as a robust primer for what skills, traits and relationships are needed to be an effective dean and for the selection of deans—such as energy, creativity, resilience, and interpersonal skills.<sup>6</sup> Byron next offers some history of the Freedman Fellow Program, recounting its organization and operation and its core purpose to prepare nontraditional candidates to become law professors, diversifying the profession.<sup>7</sup>

With this background in place, Byron demonstrates the great success of Freedman Fellows in obtaining faculty positions generally and particularly in ascending to decanal leadership positions in law schools. He finds that eleven percent of Freedman Fellows who had careers in academia serve or have served as deans and twenty-nine percent as associate deans.<sup>8</sup> The academy can learn from the lessons of the Freedman Fellow Program, Byron explains, as the program not only focused on the development of law faculty as effective and dedicated teachers and scholars but as leaders who are deeply collaborative, engaged, and ready to jump in as problem solvers.<sup>9</sup> The essay concludes with a tribute to the Freedman Fellow Program as a model to follow in other aspiring law faculty fellowships: “Other fellowship programs should particularly consider the Freedman Fellow Program’s emphasis on formal collaborations with faculty in teaching courses that may particularly have developed the collaborative skills essential for decanal leadership.”<sup>10</sup>

In *Integrated Learning, Integrated Faculty*, Rachel Arnow-Richman, a faculty member at the University of Denver Sturm College of Law, explores the origins and implications of the historic divide on law school faculties between teachers of doctrinal courses and teachers of skills courses, including teachers in the legal writing curriculum.<sup>11</sup> Rachel traces that divide to the nineteenth-century movement away from practice-based apprenticeship toward the university-based law school as the dominant site for instructing new lawyers.<sup>12</sup> Central to her analysis is an apparent contradiction: On the one hand, the legal academy has embraced the goal of “producing more practice-ready graduates and that a more comprehensive and integrated curriculum is essential to that mission.”<sup>13</sup> On the other hand, the “bifurcated faculty”—Rachel’s label for the pervasive organizational structure that distinguishes between doctrinal and skills faculty and subordinates the latter<sup>14</sup>—“is in tension with these institutional values, operating as a chronic headwind against efforts to implement them.”<sup>15</sup>

Drawing from management theory and employment discrimination scholarship, Rachel drills down to reveal the precise nature of this contradiction: “The bifurcated faculty impedes managerial flexibility, limiting law schools’ ability to adjust their

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5. *Id.* at 726–33.

6. *Id.* at 733–38.

7. *Id.* at 739–40.

8. *Id.* at 742.

9. *Id.* at 742–43.

10. *Id.* at 744.

11. Rachel Arnow-Richman, *Integrated Learning, Integrated Faculty*, 92 TEMP. L. REV. 745 (2020).

12. *Id.* at 746–48.

13. *Id.* at 747–48.

14. *Id.* at 747.

15. *Id.* at 748.

curricula in the face of changing market demands. At the same time, it undermines the purported equality of doctrinal learning and skills training by reifying stereotypes about the value and competence of skills faculty.”<sup>16</sup> Her analysis concludes with a call for nothing less than “a single tenure track, one in which all faculty are subject to the same standards,” considering “the potential for and achievement of excellence in scholarship, teaching, and service—regardless of their course package.”<sup>17</sup>

Training his sights specifically on the hiring market for legal writing faculty, Cody Jacobs, a faculty member at Boston University School of Law, offers a granular description of the process in *The “Other” Market*.<sup>18</sup> Shrewdly combining his personal experience in that market with an empirical survey he conducted and a review of some of the scholarship on the subject, Cody carefully describes the characteristics of successful legal writing faculty candidates, the timing of the hiring process, and the stages of that process.<sup>19</sup>

From that description an important fact emerges—while the market for doctrinal faculty is highly standardized in its operation, the market for legal writing faculty is quite variable.<sup>20</sup> Much of this variability stems from the different types of available legal writing positions: tenure-track positions; long-term, presumptively renewable contract positions; short-term, non-presumptively renewable contract positions; etc.<sup>21</sup> These disparate sorts of positions, in turn, generate dissimilar expectations in the hiring process—for example, different kinds of presentations required during call-back interviews.<sup>22</sup>

The ostensible purpose of Cody’s essay is “to guide would-be applicants [for legal writing faculty positions] through this daunting process.”<sup>23</sup> By the end, however, he has also made some important observations about how seemingly small features of that process reinforce the hierarchical distinction between legal writing and doctrinal faculty.<sup>24</sup> For example, Cody notes that law schools typically conduct the hiring of doctrinal faculty in the fall, synchronized to the faculty recruitment process that the Association of American Law Schools runs.<sup>25</sup> By contrast, the survey he conducted revealed that “40% of permanent legal writing jobs were not even *advertised* until after January 1. In other words, nearly half of legal writing searches did not even begin until searches for almost all other faculty positions were already completed.”<sup>26</sup> This sequence, in turn, “reflects an improper and outdated conception of legal writing as a lesser subject. No school would wait to hire a torts professor until the spring because they were too busy interviewing for a criminal law position in the fall.”<sup>27</sup> Even the fact that the hiring of

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16. *Id.* at 752 (footnote omitted).

17. *Id.* at 763.

18. Cody J. Jacobs, *The “Other” Market*, 92 TEMP. L. REV. 765 (2020).

19. *Id.* at 770–86.

20. *Id.* at 770.

21. *Id.* at 770–71.

22. *Id.* at 784–86.

23. *Id.* at 765.

24. *Id.* at 786–96.

25. *Id.* at 786–70.

26. *Id.* at 780 (footnote omitted).

27. *Id.* at 787 (footnote omitted).

legal writing faculty is typically left out of the Association of American Law Schools Faculty Recruitment Conference “serves to further separate legal writing from the rest of the faculty.”<sup>28</sup>

Perhaps his most interesting example is the skepticism that some law schools show toward legal writing candidates who express an interest in also teaching doctrinal courses—i.e., fear that such candidates are using legal writing positions simply as “stepping stones” to the tenure-track market.<sup>29</sup> But of course a law school would not likely be similarly suspicious of a candidate for, say, a position teaching criminal law who also expressed an interest in teaching constitutional law.<sup>30</sup> In short, the skepticism reflects an attitude that reinforces the separateness of legal writing as a faculty discipline, which in turn further isolates legal writing faculty in a faculty category typically marked by lower pay and lower status.<sup>31</sup>

Deseriee Kennedy, a faculty member at Touro College’s Jacob D. Fuchsberg Law Center, addresses the lack of diversity in the legal profession in her essay, *Access Law Schools & Diversifying the Profession*.<sup>32</sup> After noting that law lags behind “other occupational fields, including medicine, accounting, architecture and engineering, computer systems analysis, and medical science research” in minority representation,<sup>33</sup> Deseriee synthesizes several studies to trace a large part of the diversity problem to law school admission policies and, specifically, to “overreliance on standardized testing.”<sup>34</sup> The Law School Admission Test (LSAT), she observes, is at best a “modest predictive measure of law school success”<sup>35</sup> and likely a poorer predictor of law school performance for students of color.<sup>36</sup> Perhaps just as importantly, she argues that “it is not clear that the [LSAT] successfully measures the skills necessary to succeed in the profession.”<sup>37</sup> An important reason for that latter disconnect is that “the LSAT is essentially a speed test” that employs multiple-choice questions, and such an instrument poorly measures the critical qualities required for excellence in the practice of law: “[E]mpathy, motivation, perseverance, character, creativity, problem-solving, and communication and listening skills.”<sup>38</sup>

Deseriee notes that “access law schools,” which “provid[e] wide access to legal education to students who traditionally underperform on law school entrance examinations . . . , have a unique role to play in increasing diversity in the profession.”<sup>39</sup> However, because law school rankings are determined in significant part by the LSAT scores of entering students, efforts to “decouple the measure of law school quality from

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28. *Id.* at 789.

29. *Id.* at 795.

30. *See id.*

31. *Id.* at 795–96.

32. Deseriee A. Kennedy, *Access Law Schools & Diversifying the Profession*, 92 TEMP. L. REV. 799 (2020).

33. *Id.* at 800.

34. *Id.* at 799.

35. *Id.* at 803.

36. *Id.* at 803–04.

37. *Id.* at 805.

38. *Id.* at 806.

39. *Id.* at 808.

the entrance examination scores” are stymied by the potential reputational costs of such a move.<sup>40</sup>

In the end, Deseriee offers a radical proposal: to require admission of law students in proportions that mirror the diversity of the U.S. population as a whole, as determined by the U.S. Census:

In this way, the distribution of LSAT scores would be similar across law schools. This would help prevent inflated rankings based on LSAT score reports and manipulation. Schools would be forced to be more creative and innovative about how to teach and support their students.

In a world in which law school prestige could no longer rest on LSAT scores, schools and their relative rankings would necessarily have to rely on other factors, such as diversity; relative improvement in student performance; clinic work, including how many clients are helped; the number of young school children assisted through pipeline and neighborhood programs; student publications; and graduation rates.<sup>41</sup>

Continuing Deseriee’s interrogation of the lack of diversity among the law school professoriate, Milan Markovic, a professor at Texas A&M University, focuses on law school faculty hiring practices—specifically, on the debate among scholars about whether those practices may work to perpetuate socioeconomic bias and exclusion. In *The Law Professor Pipeline*, Milan advances the claims that some scholars have made that hiring practices for law faculty—which overwhelmingly favor graduates from elite schools—likely translate into a lack of socioeconomic diversity among faculty and further privilege those with more money and wealth.<sup>42</sup>

As Milan observes, previous research has looked at the law schools that law faculty have attended and found that the dominating practice is to hire from prestigious schools, so much so that “a small number of elite law schools have produced the vast majority of law professors.”<sup>43</sup> This means there is little diversity in the educational backgrounds among law faculty.<sup>44</sup> However, does that mean there is a lack of socioeconomic diversity? Milan raises the concern that it has been a challenge to explore a link between elite hiring practices and class as “discussions of class and the legal academy are often short circuited by the absence of reliable data on law schools’ socioeconomic diversity.”<sup>45</sup>

To address this gap, Milan shifts the debate to focus on which *undergraduate* institutions law faculty attended.<sup>46</sup> Stepping into this arena is helpful, he points out, because there is reliable data on family economic resources, making it possible to explore the questions further.<sup>47</sup> Drawing on parental income data by college and a study of law faculty hiring, Milan finds “that law professors generally graduate from private colleges that serve the wealthiest strata of U.S. society . . . . The median hire attended an

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40. *Id.*

41. *Id.* at 810 (footnote omitted).

42. Milan Markovic, *The Law Professor Pipeline*, 92 TEMP. L. REV. 813 (2020).

43. *Id.*

44. *Id.* at 815.

45. *Id.* at 816.

46. *Id.* at 827–34.

47. *Id.* at 817.

institution in which 67% of the students come from the top income quintile and only a fraction of students come from the bottom three quintiles.”<sup>48</sup> Milan shares an important new conclusion from this data: “Legal academia may not be entirely closed off to lower-income people, but the system is stacked in favor of economically advantaged individuals . . . .”<sup>49</sup>

Milan argues that this, in turn, might impoverish scholarship, service, and teaching in the legal academy by leaving out the different perspectives and experiences of lower-income individuals.<sup>50</sup> This essay highlights an inherent contradiction for those law school communities that subscribe to the values of inclusion, diversity and hierarchy—their own hiring practices may reflect and perpetuate class hierarchies.<sup>51</sup> Milan suggests some specific reforms to make the hiring process more inclusive.<sup>52</sup> *The Law Professor Pipeline* is a terrific fit for this symposium because Temple created the Freedman Fellow Program, in part, for the very purpose of challenging hierarchies and addressing a lack of diversity in the law professoriate.

In sum, the five pieces in this Issue well represent the two dimensions of the symposium: to celebrate the legacy of the Freedman Fellow Program and explore the symposium theme of “Disrupting Hierarchies in Legal Education.” We are very proud of the selection of panelists’ papers included herein.

Finally, we want to express our deepest appreciation for the superb work of Symposium Editors Nancy Fisher and Nikki Hatza in organizing the symposium. And we thank the editorial boards for Volumes 91 and 92 of *Temple Law Review* for making the symposium and this commemorative Issue possible.

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48. *Id.*

49. *Id.* at 828.

50. *Id.* at 832–34.

51. *Id.* at 814.

52. *Id.* at 829–30.