

Nancy Schultz, Legal Scholar

*Lawrence Rosenthal**

I would like to take a few moments to discuss a subject that may be surprising to some—the legal scholarship of Nancy Schultz. [Audience laughs] I knew that sentence was going to get a laugh. The reason you laughed is illuminating.

Nancy, especially for a law professor, was a person of unusual modesty. She would brag until the cows came home about her students, but never about herself. Even so, Nancy’s legal scholarship was extraordinary. I want you to know about it.

Like Nancy, I made a mid-career switch. I left the full-time practice of law to teach. Like many practitioners who come to teach law, I had agenda. I had become convinced that law school was failing all too many students by neglecting to provide them the set of practical skills necessary to succeed as entry-level lawyers.

For the biggest, most profitable firms, servicing the biggest, most powerful clients, this really is not a problem. These firms have the resources to train lawyers and prefer to do it themselves, rather than leaving something this important to a bunch of law professors they don’t really know or trust, and who are likely have limited experience in the practice of law.¹ But for smaller firms, or government and public interest firms with far more limited resources that can be devoted to training, and that is where I practiced, this was a huge problem. I wanted to address it, but I soon discovered that I did not know how.

When I started teaching, like most new law professors, I defaulted to the pedagogy that was used when I was in law school—some version of the Socratic method, which I now have come to refer to as a form of inefficient lecture. Over time, it became clear to me that I was failing in my agenda to reform law

* Professor of Law, Chapman University, Dale E. Fowler School of Law. These remarks were originally delivered at a tribute to Professor Schultz held on January 25, 2024. They have been revised and edited for publication.

¹ For a helpful discussion of the trend toward hiring law faculty with ever-declining experience in the practice of law, see Lynn M. LoPucki, *Dawn of the Discipline-Based Law Faculty*, 65 J. LEG. EDUC. 506 (2016).

school pedagogy, and I started looking for scholarship on the issue that could offer some insight. After reading a number of largely unhelpful articles, I found one that had appeared in the *Journal of Legal Education* in 1992, fortuitously written by my colleague, Nancy Schultz. It was revelatory. I commend it to all of you. It is called *How Do Lawyers Really Think?*²

In her article, Nancy put her finger on the problem that I had not even been able to define—what is the root of the problem with legal pedagogy that causes it to fail to produce lawyers possessing the set of knowledge, skills, and abilities necessary for success even at the entry level? Nancy identified the culprit as the dichotomy in legal pedagogy between so-called doctrinal courses in which what you are supposed to learn legal doctrine—holdings, black-letter rules, and so-forth, and apply them in a variety of hypothetical situations—and so-called skills courses that purport to teach the skills that lawyers need in order to solve their clients' problems.

No law firm in the country has a doctrinal department and a skills department, but that is how we organize legal education. Yet, in law schools, this distinction between teaching doctrine and skills is strictly regimented. The doctrinal professors greatly resent having to teach skills. They believe that this is like teaching mechanics how to fix a car. The skills professors resent anyone intruding on their turf, and anything that suggests that they are some kind of appendage to the doctrinal courses. Nancy's great insight was that doctrine and skills have to be holistically combined in every course because that is how lawyers practice law. That is how they help their clients.

I had many conversations on these issues with Nancy over the years and she produced a pretty good-sized bookshelf of articles and books advocating this agenda for the reform of legal pedagogy.³ During these conversations, there is another thing that she said to me that hit me as if I were thunderstruck. Nancy told me: You can do one of two things when you are a law teacher. You can sort your students—give them tasks and assessment mechanisms designed to figure out which of your students come to

² Nancy L. Schultz, *How Do Lawyers Really Think?*, 42 J. LEG. EDUC. 57 (1992).

³ See, e.g., NANCY L. SCHULTZ & LOUIS J. SIRICO, JR., *LEGAL WRITING AND OTHER LAWYERING SKILLS* (6th ed. 2014); NANCY L. SCHULTZ & LOUIS J. SIRICO, JR., *PERSUASIVE LEGAL WRITING* (4th ed. 2015); Nancy Schultz, *The Integrated Curriculum of the Future: Integrating First-Year Legal Writing with Other Lawyering Skills*, 7 ELON L. REV. 405 (2015); Nancy L. Schultz, *What Do Lawyers Really Do?*, 50 CAP. L. REV. 1 (2022).

you with the best skills for succeeding on exams and other assessment mechanisms—and if you sort them properly, the ones who arrive as the best students will get the best grades. Your other choice is to actually train them, and enable them to develop professional skills that they do not yet have. Training is harder than sorting, and a lot of professors do not want to do it, but that is what law students need to succeed in this profession.

Of course, Nancy was exactly right. Even worse, sorting your students only exacerbates existing educational inequalities. For a group of people who largely claim to care about inequality, law professors do not do much in their pedagogy to actually remediate educational inequality and its effects on the legal profession.

Nancy's 1992 article was written more than 30 years ago. Today, it still sounds radical, daring, and cutting-edge. The ABA is currently considering a proposal to expand the role of experiential education and legal pedagogy⁴—a proposal that Nancy first made in her pathbreaking article more than 30 years ago.⁵ The world is finally starting to catch up with Nancy.

Wherever Nancy is, I know exactly what she is doing. She's saying, "Rosenthal's talking about legal scholarship? Give me a break." And she is rolling her eyes. Nobody perfected the eye roll, not even my teenage daughter, the way that Nancy did. But I will tell you, despite the eye rolling I know Nancy is doing up there, her legal scholarship was revelatory. I am profoundly grateful for it, and for her.

⁴ Karen Sloan, *ABA Eyes Increasing Hands-On Learning Requirement for Law Schools*, REUTERS (Nov. 21, 2023), <https://www.reuters.com/legal/legalindustry/aba-eyes-increasing-hands-on-learning-requirement-law-schools-2023-11-21/> [<https://perma.cc/G6VY-WUWK>].

⁵ See Schultz, *supra* note 2, at 67–70.

