

**THERAPEUTIC PEDAGOGY: THOUGHTS ON INTEGRAL
PROFESSIONAL FORMATION**

ARTICLE

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Far from brimming over with personal and intellectual self-confidence, by the second (2L) year, a surprising number of Harvard Law students come to resemble what one professor has called “the walking wounded”: demoralized, dispirited, and profoundly disengaged from the law school experience. What’s more, by third (3L) year, a disturbingly high number of students come to convey a strong sense of impotence and little inclination or enthusiasm for meeting the world’s challenges head on.¹

– Note, Harvard Law Review

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¹ Note, *Making Docile Lawyers: An Essay on the Pacification of Law Students*, 111 HARV. L. REV. 2027, 2027 (1998).

We value academic achievement in our culture, yet it is such a small part of what ultimately determines success in life. If we work hard in school and get good grades – grades measured largely by short-answer standardized tests– we get into a good college. If we achieve academically in college and score well on yet another standardized test, we may get into a good law school. If we work hard in law school and get more good grades, we have access to many employment opportunities. But will we be good lawyers?²

– Marjorie A. Silver

One cannot choose wisely for a life unless he dares to listen to himself, his own self, at each moment in life.³

– Abraham H. Maslow

INTRODUCTION

MOST LAW SCHOOL CURRICULA CREATE FEW, IF ANY, OPPORTUNITIES FOR students to reflect in an intentional, structured, and sustained manner on a fundamental element of the educational process: integration. Law students are on a journey of professional formation, and this journey is one that cannot be separated from the journey of personal evolution that students are simultaneously undergoing. It is neither possible nor desirable to separate or compartmentalize one's development as a professional from the inevitable personal transformation that is also occurring during those several years one spends pursuing a J.D.

If we want students to enjoy careers as “happy, healthy, and ethical” members of our otherwise “unhappy, unhealthy, and unethical profession,”⁴ we must create a space for these burgeoning professionals to integrate their personal inner world –wherein lies the wellspring of deep meaning and profound purpose– with their professional outer world bounded by obligations to clients, employers, the court, and society. Drawing upon theories and evidence provided by scho-

² Marjorie A. Silver, *Therapeutic Jurisprudence/Preventive Law and Law Teaching: Emotional Intelligence and Legal Education*, 5 PSYCHOL. PUB. POL'Y & L. 1173, 1179 (1999).

³ ABRAHAM H. MASLOW, *THE FARTHER REACHES OF HUMAN NATURE* (THE VIKING PRESS 1971).

⁴ Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 871 (1999).

lars working in the worlds of humanizing legal education and therapeutic jurisprudence (TJ), this paper suggests that a “therapeutic pedagogy” attempting to illumine a student’s inner world and move her towards integration of personal passions and professional commitments can better prepare students to “think like a professional.” That is, to create a more holistic goal of legal education that would integrate: 1) the ability to rigorously apply legal theory to relevant facts and analytical judgment to judicial opinions, administrative regulations, and legislative statutes with, 2) the ability to reflect upon, discern, and develop a contemplative and practical wisdom that is in harmony with the lawyer’s authentic self.

I. NEVER AGAIN LOOK AT THE GRADES

After my first year of law school at Vanderbilt, I never again looked at my grades. Well, that is not entirely true. About two years after graduation I opened the final transcript I had received in the mail from the registrar, and took a peek. The curiosity was killing me. By that time, however, I had been successfully practicing law as a civil litigator for a while and had enough perspectival distance to avoid being psychologically harmed by the numbers that stared back at me.

But after 1L, I did not look at my grades again while in law school. It is not that my first two semesters’ grade point averages (G.P.A.) were low. The first semester of my first year resulted in a G.P.A. that was very close to the law school median, a respectable achievement by any objective measure. However, I knew I had worked very hard that first semester, and expected to make only the “A’s” and “A-’s” of my previous academic conquests. From August to December I had done all the reading, briefed most of the cases, and paid careful attention in every class. During the final weeks of the semester I studied like crazy, reworked my notes into an outline, flipped flash cards with two of my classmates in a study group, and practiced old exam questions on reserve in the library. Yet despite my best efforts, when grades were released in mid-January, I had settled into the middle of the pack along with the majority of my classmates. Statistically, this was as it should be, as my law school’s mandatory curve had warned us that 10% would receive an “A” or better, 15% would receive an “A-”, 30% would receive a “B+”, 25% would receive a “B”, and 20% would receive a “B-” or lower.

But statistics be damned, I was disappointed and disillusioned. I was not prepared for the shock of being labeled academically mediocre. I imagine that none of the 75% of my fellow students were comfortable with the “B’s” littering their report card. All of us had excelled academically for the previous sixteen years, and, speaking for myself, much of my self-identity and self-worth had heretofore been aligned with my grade point average. For as long as I could remember, I was the guy who made “A’s.”

Having invested myself fully in the previous semester and worked harder than I ever had before, I was left demoralized by my middle-of-the-pack G.P.A., and I began questioning the entire law school evaluation format and myself. As

for the format, how dare my entire four month academic journey be reduced to one three hour issue-spotting exam and an arbitrary curve designed to determine artificially that 25% of my classmates were “A” material and the other 75% of us were only worthy of a “B” or worse?⁵ I knew that I had worked harder and learned more during this first semester of my first year of law school –more than any other four month period of time in my life– and yet my grades suggested something else entirely.

As for my own sense of self, I began to wonder whether I was even cut-out to be a lawyer. Perhaps I did not even belong in law school. Such thoughts, apparently, are not uncommon.

When the first-term grades eventually come out in February, it is an extremely traumatic experience for many first-year students. As any law professor will tell you, every year there is a palpable change that comes over the class at this point in the semester. Although some formerly quiet 1Ls gain confidence and the courage to participate in class as a consequence of strong first-term exam results, in the main, the opposite is true. Formerly engaged, enthusiastic students withdraw, becoming what Professor Morton Horwitz calls “the walking wounded.” . . . [G]etting average grades can precipitate for many HLS students a painful downward recalibration of their personal expectations, self-confidence, and sense of their own potential.⁶

The literature suggests that Vanderbilt and Harvard are not outliers with regard to this “walking wounded” phenomenon.⁷

5 For illuminating critiques of the law school grading curves, ranking schemes, and other entrenched pedagogical impediments, see Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 WASHBURN L.J. 247, 297-303 (2008); Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students*, 45 S. TEX. L. REV. 753, 781 (2004); Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879 (1997).

6 Note, *supra* note 1, at 2034.

7 See generally Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 75 (2002) (“The law school experience systematically beats [feelings of excitement and eagerness] out of many of [my students].”); Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test and Extension of Self-Determination Theory*, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (June 2007); Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity*, 60 VAND. L. REV. 515 (2007); Lawrence S. Krieger & Kennon Sheldon, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Values, Motivation and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004); Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 (2002); Matthew Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 LAW & HUM. BEHAV. 55, 61 (1999); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999); Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524 (1998); Barbara Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627 (1991); G. Andrew Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 11 AM. B. FOUND. RES. J. 225 (1986);

Although I was much less sure of myself and far less intellectually enthusiastic, I approached my second semester similarly to the first. Again I worked consistently hard to stay on top of the daily reading assignments and tried my best to master the material as I headed down the stretch toward the 1L second semester final exams. In most respects my approach to preparation was similar to my first semester, although in an attempt to think strategically about how to perform better I did add review of my previous exam answers to my regimen. And so, when the exam grades were released in early June, I found myself bewildered (and again disappointed) by what I saw. My second semester G.P.A. was exactly the same as my first – to the second decimal point.⁸

I was incredulous. Flabbergasted. How could this be? Again, I had worked hard throughout the semester and invested hours of preparation during the final few weeks. I thought I knew the material. I know I knew the material. I thought my final exam essay answers adequately spotted the issues and adroitly considered multiple angles of analysis. I thought that surely I had proven to my law school professors that I was better than middle-of-the-pack. And yet, the numbers revealed something else entirely. Seeing this very median G.P.A. for the second semester in a row left me wondering whether I really was just an average student on my way to becoming an average lawyer.

At the time, I probably did not realize the extent to which my grade point average was informing my burgeoning identity as a legal professional. Now, I understand that in very unhealthy ways I was equating my grade point average with my identity as a lawyer-to-be and my self-worth as a person. I was losing zeal for the two-year adventure in legal education that still lay ahead, confidence that would be necessary for the bar exam, and a sense of self that would be essential for the type of legal professional I aspired to be.

So, I decided to rebel. In an attempt to reclaim a sense of ownership over my law school experience, I stopped looking at my grades and started focusing on a different metric of success: was I developing as a professional? Was I becoming what Marjorie Silver has described as the “good lawyer”?⁹

[T]he good lawyer should possess skills and wisdom, “practical, effective, persuasive, inventive skills for getting things done,” and “wisdom and judgment in selecting the things to get done.” The good lawyer “is respectful of human dignity, and is committed to social justice, fairness, equality and other values of the professional community.” The law is a “calling” and the good lawyer should possess “professional qualities that include integrity, honesty, trustworthiness, compassion and faithfulness. . . . Although dedicated to truth, the good lawyer is tolerant of ambiguity and diverse points of view, and has a capacity for empathy and

Stephen Shanfield & G. Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985).

⁸ I entered law school in large part to stay away from numbers, so I have not run the statistical analysis, but common sense suggests that the odds of this occurrence are highly improbable.

⁹ Silver, *supra* note 2, at 1198.

imagination that allows for the complexity of social relations and a wide range of human activities, behaviors, motivations and interests.”¹⁰

I concluded that my law school G.P.A. –forged on the anvil of an enforced curve– was of little use as I attempted to evaluate my progression towards becoming a “good lawyer” with an integral¹¹ professional identity. And so, while I checked-in periodically with the law school registrar just to ensure that I would graduate, I never again looked at my grades while I was a student.

II. THINK LIKE A PROFESSIONAL

These days I teach law school courses in legal ethics and professionalism in which I attempt to create a safe space for my students’ professional formation and personal evolution to occur.¹² To this end, early in the semester I challenge the notion that grades are the only meaningful proxy for how one is developing as a legal professional. I tell my students about my personal struggle with the grade point average, share with them aspirational constructs of what it means to be a “good lawyer” or holistic professional, and I introduce them to Larry Krieger’s integration thesis.¹³ Professor Krieger’s integration thesis is two-pronged. First, he argues that “satisfaction and professional behavior are inseparable manifestations of a well-integrated and well-motivated person.”¹⁴ Second, he asserts

¹⁰ *Id.* (citing Karl Llewellyn, *The Crafts of Law Re-Valued*, 15 ROCKY MTN. L. REV. 1, 2-4 (1942) and SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS’N, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT –AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992)). See also Larry Krieger’s definition of professionalism: “broad vision/wisdom, integrity and honesty, compassion, respect for others and for differences, unselfishness, the desire to serve others and one’s community, self-confidence, individualism, and a real commitment to justice” in Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 427 (2005).

¹¹ As used in the title and throughout this essay, “integral” is intended not only as a variation on “integration” and a modifier defined by WEBSTER’S as “necessary to the completeness of the whole,” (WEBSTER’S NEW UNIVERSAL UNABRIDGED DICTIONARY 738 (1989)), but also as a subtle reference to “integral theory,” an “all-inclusive framework that draws on the key insights of the world’s greatest knowledge traditions,” available at <http://www.integralinstitute.org/> (last visited Dec. 5, 2008). Although a comprehensive review of “integral theory” is beyond the scope of this essay, it is worth highlighting its proponents’ bold claim that “the awareness gained from drawing on all truths and perspectives allows the Integral thinker to bring new depth, clarity and compassion to every level of human endeavor –from unlocking individual potential to finding new approaches to global-scale problems.” *Id.*

¹² For an extremely illuminating and helpful description of a similar attempt to create a “safe” law school classroom environment conducive to student engagement with both personal and professional development, see John Mixon and Robert P. Schuwerk, *The Personal Dimension of Professional Responsibility*, 58 LAW & CONTEMP. PROBS. 87 (1995).

¹³ Krieger, *supra* note 10, at 426.

¹⁴ *Id.*

that “depression and unprofessional behavior among law students and lawyers typically proceed from a loss of integrity –a disconnection from intrinsic values and motivations, personal and cultural beliefs, conscience, or other defining parts of their personality and humanity.”¹⁵

My variation on this integration theme is something I call “thinking like a professional.”¹⁶ By this I mean a type of thinking that incorporates rigorous analysis of legal theory and relevant facts along with self-reflection and self-awareness that appropriately seeks to harmonize the ethical aspects and social consequences of one’s legal practice. It is this broader, more holistic, more therapeutic approach to professional identity formation that I encourage my students to pursue. For many of them, the pursuit begins by adopting a more balanced approach to those external markers of success, including G.P.A., class rank, and “BigLaw” firm job offers. Rather, learning to think like a professional necessarily incorporates more of an emphasis on “those inner values and motivations that promote or attend professionalism” while simultaneously correlating

¹⁵ *Id.* Such an emphasis on the interpersonal consequences of studying the law, becoming a lawyer, and grinding-out the daily minutia of one’s practice is, of course, in complete harmony with the TJ movement, and TJ’s emphasis on the law’s power as a social force with inevitable psychological and emotional consequences for all those it affects. See generally Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, in PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 17 (Dennis P. Stolle et al. eds., Carolina Academia Press 2000) and *infra* Part IV.

¹⁶ Joshua E. Perry, *Thinking Like a Professional*, 58 J. LEGAL EDUC. 159 (2008). I use the term “thinking like a professional” as a way of contrasting and critiquing the notion of “thinking like a lawyer.” See generally ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* 28 (Oxford University Press 2007) (“This [ability to think like a lawyer] includes specific skills such as ‘fact gathering,’ ‘capacity to marshal and order facts to apply concept,’ and ‘ability to understand and interpret opinions, regulations, and statutes.’”). Of course, I concur with a point made by the recent report by The Carnegie Foundation for the Advancement of Teaching, *Educating Lawyers*, that learning to “think like a lawyer” has an important, formative role to play in the creation of lawyers.

Within months of their arrival in law school, students demonstrate new capacities for understanding legal processes, for seeing both sides of legal arguments, for sifting through facts and precedents in search of the more plausible account, for using precise language, and for understanding the applications and conflicts of legal rules. Despite a wide variety of social backgrounds and undergraduate experiences, they were learning, in the parlance of legal education, to “think like a lawyer.” This is an accomplishment of the first order that deserves serious consideration from educators of aspirants to other professional fields.

WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 186 (Jossey-Bass 2007)). However, as the Carnegie Foundation report also notes, too infrequently do our legal curriculum include opportunities to engage the “moral imagination” and foster reflection upon the “social and cultural contexts of legal institutions and the varied forms of legal practice.” *Id.* Full engagement as a legal professional requires *both* thinking like a lawyer and thinking like a professional. In other words, as legal educators we must be about teaching legal skills, knowledge, and theories, but also about encouraging our students to reflect, explore and develop a deep awareness of the intersection between who they are as a person and who they are becoming as a professional.

with well-being and life satisfaction.¹⁷ At the end of the day, thinking like a professional is really about harmonizing or integrating who one is with what one does.

The standard law school curriculum, however, rarely creates opportunities for students to reflect in an intentional, structured, and sustained manner about how they might harmonize who they are as a person and what they are becoming as a legal professional. As most forcefully argued ten years ago by Patrick Schiltz, the development of “happy, healthy, and ethical” lawyers must include an emphasis on the importance of integrating who one is when they arrive as a 1L with who one is becoming as they matriculate towards their Juris Doctor.¹⁸ Legal education must create a space for burgeoning professionals to integrate their inner world, which provides deep meaning and purpose, with their professional obligations and commitments to clients, employers, the court, and society.¹⁹

In my experience, students are rarely given time, opportunity, or guidance to explore the following types of identity questions, questions that evoke engagement,²⁰ that are essential to their professional formation and personal flourishing: 1) Why did I come to law school in the first place? 2) Who was I on day one of 1L, and how is law school changing me? 3) What type of legal professional do I want to be? 4) With the access, power, and prestige that accompany a law degree, what duties will I owe my community? 5) How will I balance my personal life with my professional life? 6) How will I resolve tensions between personal commitments and professional responsibilities owed to my clients and my community?

Perhaps, such questions of professional and personal responsibility are rarely engaged because they too uncomfortably probe a student’s inner landscape. Having taught a required section of Professional Responsibility (PR) and creating space for reflection on these questions, I certainly know that many of my 2Ls and 3Ls confront such introspection with mixed emotions. Many, if not most, students show up to my class just wanting to pass the looming Multi-state Professional Responsibility Exam (MPRE). Of course, I cover much of the material that they will confront on that exam. And, in compliance with the grade curve policy, I distribute grades at the end of the semester. But, I work hard to prevent my students from leaving my course with the misunderstanding that training in legal ethics and maturing as a professional begin and end between the covers of a disciplinary code book consisting of rules, cases, and formal opinions or that

¹⁷ Krieger, *supra* note 10, at 427.

¹⁸ See Schiltz, *supra* note 4.

¹⁹ See Krieger, *supra* note 10.

²⁰ See generally HOWARD LESNICK, BEING A LAWYER: INDIVIDUAL CHOICE AND RESPONSIBILITY IN THE PRACTICE OF LAW 2 (1992) (“Teaching, to me, is evoking . . . engagement.”).

proficiency in professionalism can be evaluated by a number, a decimal point, and a couple of more numbers.

So I approach my PR course convinced that my primary objectives include teaching each student how to “think like a professional” and inspiring each one to imagine their professional role in integral terms that William Simon described as “simultaneously a form of social commitment and self-expression.”²¹ Reflecting on these deeper, more introspective questions set forth above is necessary because the first step in learning to think like a professional is connecting with who one is as a person.²² A confident awareness of who one is as an individual and as a member of multiple communities is integral to the journey of professional formation and, ultimately, to an ethical and fulfilling law practice. One must be able to recognize that nagging internal voice –that intuition each student shows up with on the first day of law school– and then be able to discern what it says and what it means. This is a fundamental component of the professional and practical wisdom upon which a student’s clients will one day rely.²³

Ultimately, clients do not hire (merely) experts in legal research, former journal editors, or moot court champions. Of course, these skills, credentials, and honors are important for establishing competence, confidence, and credibility. But most clients will also desire a multi-dimensional legal professional who is equipped with the ability to engage on a human level that surpasses mere legal analysis. And, on these occasions when, for instance, moral concerns are in the mix or empathy is called for, one trained merely in and comfortable only with the analytical skills of “thinking like a lawyer” runs the real risk of failing her client and herself.²⁴

²¹ William H. Simon, *The Trouble With Legal Ethics*, 41 J. LEGAL EDUC. 65, 66 (1991) (critiquing both a view of professional formation that conflates legal ethics with the disciplinary rules of the codes and a view of professional formation that conflates legal ethics with the private or personal moralities of individual lawyers).

²² See *infra* Part IV.

²³ Warren Lehman, *The Pursuit of a Client’s Interest*, 77 MICH. L. REV. 1078, 1082 (1979) (“The lawyer is consulted as a man of practical wisdom.”). See also KARL N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 116 (Oceana Publications 1960):

It is not easy thus to turn human beings into lawyers. Neither is it safe. For a mere legal machine is a social danger. Indeed, a mere legal machine is not even a good lawyer. It lacks insight and judgment. It lacks the power to draw into hunching that body of intangibles that lie in social experience.

²⁴ It is in these instances that “moral dialogue” may be appropriate. Stephen Pepper, building upon the work of Thomas Shaffer, presented the “moral dialogue” model as an attempt to provide a way by which a “good lawyer” could also be a “good person.” Pepper described “the utility of wide-ranging communication between lawyer and client” –explicitly including “moral input”– as a way in which the lawyer might still provide full access to the law for the client, while also assuming “the moral role of moral educator” and inviting the client to consider her “moral and ethical perceptions” of the matter at hand. Thomas Shaffer, *The Practice of Law as Moral Discourse*, NOTRE DAME LAWYER 231 (1979); Stephen L. Pepper, *The Lawyer’s Amoral Ethical Role: A Defense, A Problem, and Some Possibilities*, AM. B. FOUND. RES. J. 613, 635 (1986).

Indeed, one can only be completely present –ready to listen, to interview, to counsel, to problem-solve, and to be in a constructive, successful relationship with another– to the extent that one is himself in a healthy and integrated personal place of well-being. To the extent one’s legal education results in a compartmentalization of the professional and the personal, that lawyer risks not being in-tune with her own intuition, moral commitments, and sense of purpose. Much depressing data reveals that over the course of a long career, such a lawyer will struggle to flourish personally and professionally.²⁵

Thus, a “sense of inner congruence –of fully integrating one’s personal and professional lives” is critically important as a lawyer seeks to understand the client’s needs and the law’s power as a social force.²⁶ The time to begin this intentional and conscious journey towards an integral professional formation that recognizes the importance of such an “inner congruence” is during the first semester of the first year of one’s legal education.

III. CREATE SPACE FOR 1LS TO BEGIN THE PROCESS OF PROFESSIONAL AND PERSONAL IDENTITY FORMATION

Professional formation, i.e., developing the ability to “think like a professional,” should be an intentional, explicit, and vibrant process that is taken seriously throughout each of a student’s three years of legal education.

For better or worse, the law school years constitute a powerful moral apprenticeship, whether or not this is intentional. Law schools play an important role in shaping their students’ values, habits of mind, perceptions, and interpretations of the legal world, as well as their understanding of their roles and responsibilities as lawyers and the criteria by which they define and evaluate professional success.²⁷

²⁵ Unfortunately, too few law students in the midst of developing their own professional identities have a sustained classroom opportunity for organized and rigorous reflection on the domain of inner landscape concerns. And, too frequently, the failure to address these issues during the years spent in law school reverberates with unfortunate consequences. See generally John Hagan, *Even Lawyers Get the Blues: Gender, Depression, and Job Satisfaction in Legal Practice*, 41 *LAW & SOC’Y REV.* 51 (2007); Joan E. Mounteer, *Depression Among Lawyers*, 33 *COLO. LAW.* 35 (2004); AMIRAM ELWORK, *STRESS MANAGEMENT FOR LAWYERS* 15 (2d ed. 1997); Connie J.A. Beck et al., *Lawyer Distress: Alcohol-Related Problems and Other Psychological Concerns Among a Sample of Practicing Lawyers*, 10 *J.L. & HEALTH* 1, 50 (1995-96); Eric Grogin, *Alcoholism in the Legal Profession: Psychological and Legal Perspectives and Interventions*, 15 *LAW & PSYCHOL. REV.* 117, 127 (1991); David Margolick, *More Lawyers Are Less Happy at their Work, a Survey Finds*, *N.Y. TIMES*, Aug. 17, 1990, at B5.

²⁶ Bruce J. Winick, *Using Therapeutic Jurisprudence in Teaching Lawyering Skills: Meeting the Challenge of the New ABA Standards*, 17 *ST. THOMAS. L. REV.* 429, 438 (2005) (noting the connection between “getting students in touch with their values” and clinical skills training).

²⁷ SULLIVAN, *supra* note 16, at 139.

This process of “moral apprenticeship” should begin early in the first semester of the first year, while student enthusiasm and idealism are at their zenith.²⁸ Indeed, both moral judgment and moral identity –the values, goals, and feelings that are central to one’s sense of who one is as a person and as a professional– can be “transformed quite dramatically in adulthood when individuals encounter conditions that are conducive to further growth.”²⁹ And “[e]ven though the three years of law school represent a relatively brief period in the lifelong development of a lawyer, the law school experience, *especially in its early phases*, is pivotal for professional development.”³⁰ As noted by theorists at the Harvard Business School:

[Students in their twenties and thirties are at a critical stage in their development.] This is a period for inquiry and reflection; extended time is necessary to develop sufficient strength and sophistication to acknowledge the presence of ethical dilemmas, to imagine what could be, to recognize explicitly avoidable and unavoidable harms. It takes time to develop tough minded individuals with the courage to act –especially when it is so much easier to take refuge in the psychological safety of distant analytics, and of remote but comforting rationalizations.³¹

However, “unless they make an explicit effort to do so, law schools do not contribute to greater sophistication in the moral judgment of most students.”³²

As an attempt to begin a more explicit effort in this direction, during the 2006, 2007, and 2008 Fall Semesters, Vanderbilt Law School Assistant Dean for

²⁸ In addition to capitalizing on the zeal of 1Ls, my argument to begin intentional and integrated professional formation in the first year is further buttressed by those who would suggest that “law school, especially during the stress of the first year, induces a regression in social and personal values which might be reflected in a regression on moral development measures or at least [retarded] growth,” as well as “a decline in ethics and emotional sensitivity.” Susan Daicoff, (*Oxymoron?*) *Ethical Decisionmaking by Attorneys: An Empirical Study*, 48 FLA. L. REV. 197, 209 (1996) (citing Thomas E. Willging & Thomas G. Dunn, *The Moral Development of the Law Student: Theory and Data on Legal Education*, 31 J. LEGAL EDUC. 306, 339 (1981)). See also Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School*, 13 LAW & SOC’Y REV. 11, 30 (1978); James M. Hedegard, *The Impact of Legal Education: An In-Depth Examination of Career-Relevant Interests, Attitudes, and Personality Traits Among First-Year Law Students*, AM. B. FOUND. RES. J. 791, 805 n.34, 825 (1979); Craig Kubey, *Three Years of Adjustment: Where Your Ideals Go*, JURIS. DR., Dec. 1976, at 34; Walter Steele, *A Comparison of Attitudes of Freshmen and Senior Law Students*, 23 J. LEGAL EDUC. 318, 319 (1970); Wagner P. Thielens, *The Influence of the Law School Experience on the Professional Ethics of Law Students*, 21 J. LEGAL EDUC. 587 (1969). For a review of the empirical research on the effect law school has on law students, see Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997).

²⁹ SULLIVAN, *supra* note 16, at 134.

³⁰ *Id.* at 139 (emphasis added).

³¹ THOMAS R. PIPER, MARY C. GENTILE, & SHARON DALOZ PARKS, CAN ETHICS BE TAUGHT?: PERSPECTIVES, CHALLENGES, AND APPROACHES AT HARVARD BUSINESS SCHOOL 5-6 (Harvard Business School Press 1993).

³² SULLIVAN, *supra* note 16, at 134.

Student Affairs, Julie Sandine, and I taught an informal series of sessions designed to introduce Vanderbilt Law School 1Ls to themes in legal ethics and professionalism and to create a supportive environment in which 1Ls might process their immersion into “the legal vision of the world.”³³ The sessions met one hour a week for the first ten weeks of the semester. Neither credit nor grades were awarded. Enrollment, capped at twenty five, was voluntary and conducted by lottery due to overwhelming numbers of interested students who signed up during August orientation after hearing a description of the offering. Attendance records were kept, and approximately eighteen to twenty students attended all ten sessions. The course objectives were to: 1) Create opportunities for students to explore their values and bases for moral judgment, and begin the life-long process of forming their professional identity consonant with their personal priorities and the fundamental purposes of the legal profession; 2) Acquaint students with concrete ethical issues and moral tensions that exist in law school, throughout all areas of the law, and in all legal practice environments; 3) Expose students to empirical data linking professionalism and personal satisfaction; 4) Empower students to seek purpose and fulfillment as they begin to consider and to weigh career opportunities; 5) Sensitize students, on a preliminary basis, to the basic rules and concepts of professional responsibility that one might draw upon during legal employment over the summer between first and second year; and 6) Provide students with a small, supportive and safe environment in which to engage their moral imaginations and to explore common concerns with fellow 1L colleagues and to access the guidance of an experienced community practitioner with a realistic and real-life practice perspective.

Dean Sandine and I found that first year students responded particularly well to the small class size, interactive discussion format, outside speakers from the legal community, and the use of real life simulations and hypothetical examples.³⁴ Formal student reactions to the course ranged from positive to extremely enthusiastic.³⁵

IV. BEWARE THE BLINDNESS

I chose the title “Therapeutic Pedagogy” as an intentional nod toward the themes highlighted by both the TJ and humanizing legal education movements of the last ten years. David Wexler and Bruce Winick first framed TJ as the

³³ MERTZ, *supra* note 16, at 4.

³⁴ See SULLIVAN, *supra* note 16, at 134 (“higher education can promote the development of more mature moral thinking, [and] specially designed courses . . . teaching legal ethics and professional responsibility in small, highly interactive seminars . . . do support that development.”).

³⁵ In addition to the formal evaluations, an informal and unsolicited letter was drafted and signed by 11 students who, “because of [their] positive experience in taking the course and [their] desire to see it offered in future classes,” urged the administration to continue offering the 1L introduction and orientation to ethics and professionalism to future classes.

“study of the role of the law as a therapeutic agent.”³⁶ Moreover, Professor Wexler has noted that “[t]herapeutic jurisprudence focuses our attention [on the law’s impact on emotional life and on psychological well-being], humanizing the law and concerning itself with the human, emotional, psychological side of law and the legal process.”³⁷ In addition to “law” and “the legal process,” I would add that the TJ movement also focuses our attention on the “human, emotional, psychological side of” legal education and professional formation.³⁸

Barbara Glesner Fines, addressing the recent Humanizing Legal Education Symposium, reminded the legal academy that “creating positive, supportive learning environments is the starting point in valuing our students.”³⁹ Indeed, what I term “psychologically safe” learning environments will be required if the legal academy is going to carve-out space for students to explore their own inner paths and to seek an authentic, integral life purpose that harmonizes their personal soul with their professional role.⁴⁰ An example of such a space is described in Part III, as the sessions for Vanderbilt 1Ls are intentionally designed to create a positive, contemplative, and supportive space for the roots of professional formation to take hold. Additional opportunities for students to explore the discords and harmonies of inner and outer integrity might be found in existing clinics, skills courses, or upper-level seminars. And while engaging 2Ls and 3Ls is important, the legal academy misses an opportunity if it fails to address these issues throughout the three year educational programming and curricula – particularly beginning in 1L.⁴¹

³⁶ DAVID B. WEXLER & BRUCE J. WINICK, *LAW IN THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* xvii (1996).

³⁷ David Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T.M. COOLEY L. REV. 125 (2000).

³⁸ Winick, *supra* note 26, at 437:

By getting our students to identify their inner values, and stressing the need to define a professional role for themselves that is consonant with these values, we hope to assist our students to become the professionals and happy people they would like to be. In our view, the high degree of professional satisfaction that comes with living the professional life one has envisioned, and not one that is out of keeping with one’s inner values, can be one of life’s greatest pleasures. Furthermore, this feeling contributes importantly to one’s general sense of psychological well-being.

See generally Leslie Larkin Cooney, *Giving Millennials a Leg-Up: How to Avoid the “If I Knew Then What I Know Now” Syndrome*, 96 KY. L.J. 505, 509 (2008).

³⁹ Barbara Glesner Fines, *Fundamental Principles and Challenges of Humanizing Legal Education*, 47 WASHBURN. L. J. 313, 318 (2008).

⁴⁰ PARKER J. PALMER, *A HIDDEN WHOLENESS: THE JOURNEY TOWARD AN UNDIVIDED LIFE* 13 (Jossey-Bass 2004).

⁴¹ See generally Edward Rubin, *The Citizen Lawyer and The Administrative State*, 50 WM. & MARY L. REV. (forthcoming Mar. 2009) (manuscript at 45-47, on file with author):

When students arrive in law school, they are immediately subjected . . . to intense substantive instruction in a morally ambiguous profession. . . . [L]aw is controversial in its entirety, and the ethical status of the lawyer is always open to question. For this and other rea-

Unless legal educators are intentional, however, opportunities for students to explore holistic integration will not happen, and harried students will default into an unacknowledged, unreflective compartmentalized process of professional and personal identity formation. This is not good. Educator Parker Palmer highlights but a few of the ways in which a divided or compartmentalized life manifests as personal pathology: 1) Failure to invest oneself in one's work, thus diminishing its quality and creating distance between attorney and client; 2) Resignation to make one's living at a job that violates one's basic values; and 3) Concealment of one's true identity or deeply held beliefs for fear of being ostracized or attacked.⁴²

Similarly to Krieger, Palmer argues that a failure to live holistically manifests as both a personal and professional dissatisfaction ultimately yielding bad outcomes for clients, colleagues, and communities. As just one example, Palmer observes that many of the professionals working at Enron, Vinson & Elkins, Arthur Andersen, and the Roman Catholic Church had doubtless taken courses on professional ethics and presumably received high grades, yet those whose crisis of professionalism created front-page headlines around the world "had a well-rehearsed habit of holding their own knowledge and beliefs at great remove from the living of their lives."⁴³ Palmer continues:

Surely these people heard an inner call to wholeness. But they became separated from their own souls, betraying the trust of citizens, stockholders, and the faithful –and making our democracy, our economy, and our religious institutions less trustworthy in the process The divided life, at bottom, is not a failure of ethics. It is a failure of human wholeness.⁴⁴

To the extent the legal academy is not intentional about illuminating the path to inner reflection and emphasizing the importance of integrated human wholeness, it fails its students, the bar, and the broader society.

I typically conclude my law school Professional Responsibility course by showing a thirty second DVD of six kids bouncing basketballs as they weave

sons, the first year curriculum comes festooned with implicit messages and unspoken assumptions. Its stated goal . . . is to teach students to think like lawyers –in other words, to mess with their heads. . . . [I]t would be useful to have one course where students could discuss these issues, one arena where the implicit, disconcerting content of the curriculum could be brought to light and opened to discussion. . . . [T]he goal of the first semester course would be to confront the moral complexities that confront modern law students. . . . A discussion-based course in the first semester will be much more effective in alerting students to the ethical issues involved in being an attorney, and giving them the opportunity to relate those issues to their own experience as beginning law students. That is the only way to produce the integration of general principles and personal commitment on which ethical behavior, in the generally accepted meaning of this concept, necessarily depends.

⁴² PALMER, *supra* note 40, at 6.

⁴³ *Id.* at 7.

⁴⁴ *Id.* at 6-7.

back and forth amongst each other.⁴⁵ Three of the children are wearing white shirts, and three of the children are wearing black shirts. I ask my students to pay very careful attention to the kids wearing white shirts and to count the number of times the ball gets passed back and forth. It is actually more difficult than it may sound, as the kids are weaving quickly, sometimes bounce passing, sometimes tossing the ball. Plus, the children in black shirts are doing the same thing, and they are all intermingling.

After the thirty second clip concludes, I ask my students how many passes they counted between the children wearing white shirts. Responses from the class usually range from seventeen to twenty one. The number of bounces, however, is not the point, and so I move on to ask, "Did anyone see the gorilla that walked across the screen right through the middle of all the basketball passing, turned to face the camera, thumped its chest King-Kong style, and then resumed walking across the screen?" Typically around two-thirds of my students are incredulous. They missed the gorilla completely and can only be convinced if I replay the video again.

The exercise demonstrates a phenomenon that cognitive psychologists refer to as "inattention blindness."⁴⁶ The same experiment, under controlled laboratory conditions, typically results in approximately half of the research subjects failing to notice the gorilla. Psychologists claim that the experiment demonstrates that without attention, there is no conscious perception.⁴⁷ In other words, when observers are deeply engrossed in one event, they are less likely to notice an otherwise obvious, yet unexpected event.

The take-home message for my students is this: be aware, be open, be mindful. During the stressful and exhausting matriculation towards a J.D., students can be blinded by a myriad of externalities and conscious awareness can become blurred. Obsession over grades, class ranking, job prospects, journal membership, humiliation during a Socratic interrogation in class, school loan debt, romantic relationships, family relationships –the list of those things that blind and blur is potentially endless. And in this milieu, a law student is, whether consciously or unconsciously,⁴⁸ in the process of forming a professional identity that will most certainly have implications for the student's personal identity and

45 DVD: Surprising Studies of Visual Awareness (VisCog Productions 2003) (on file with author).

46 Daniel J. Simons & Christopher F. Chabris, *Gorillas in Our Midst: Sustained Inattention Blindness for Dynamic Events*, 28 PERCEPTION 1059, 1059-74 (1999).

47 *Id.* at 1071.

48 FRED KOFMAN, CONSCIOUS BUSINESS: HOW TO BUILD VALUE THROUGH VALUES 3 (Sounds True 2006):

Consciousness is the ability to experience reality, to be aware of our inner and outer worlds To be conscious means to be awake, mindful. To live consciously means to be open to perceiving the world around and within us, to understand our circumstances, and to decide how to respond to them in ways that honor our needs, values, and goals.

long-term well-being, as well as for the future lawyer's impact on individual clients, the community, and the bar.

Thus, I am convinced that room for therapeutic pedagogies must be carved into meaningful portions of the legal curriculum. Law school administrators and faculties should creatively consider taking innovative and progressive leadership roles in rethinking ways in which legal education can better address integral professional formation. Perhaps individual professors teaching 1L courses or clinics or skills courses can place a greater emphasis on reminding students to look inward during this journey of professional formation. In many cases, it will be student support professionals who can best serve as the students' guide to integrating inner and outer identities and revealing the blind spots. For the legal academy to dismiss or ignore these intertwined and complex dynamics, however, is to commit pedagogical malpractice, to fail those who have entrusted us with their professional and personal development, and to risk the profession's continued demise.⁴⁹

⁴⁹ See generally Jason M. Dolin, *Opportunity Lost: How Law School Disappoints Law Students, The Public, and The Legal Profession*, 44 CAL. W. L. REV. 219 (2007); Carl T. Bogus, *The Death of an Honorable Profession*, 71 IND. L.J. 911 (1996).