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HELPING STUDENTS DEVELOP A MORE HUMANISTIC PHILOSOPHY OF LAWYERING

*Beth D. Cohen**

*Well I learned a whole lot about life in law school.
Learned how to make a wrong right in law school.
I learned how to talk way above your head.
I used to be charming, but then instead
I went to law school.*

*Well I learned a whole lot about greed in law school.
And I saw a future Senator cheatin' in law school.
He said, I used to feel bad when I was wrong,
Now I distinguish my position and I move right along
'cause I've been to law school.*

*Hold me now.
I got a "B" in Evidence, I am proud
'Cause I know right now
How I can set you up so you fall down.*

*And I learned a whole lot about pain in law school.
And I even saw a little cocaine in law school.
Oh yeah my Mama thought the music business was a disgrace,
But I ain't never been to a sleazier place
Than when I went to law school.*

* © 2006, Beth D. Cohen. All rights reserved. Associate Professor of Law and Director of the Legal Research and Writing Program at Western New England College School of Law, Springfield, Massachusetts. The Author teaches Legal Research and Writing, Advanced Legal Research and Writing, Judicial Externship Seminar, Legal Education Achievement Program, and Professional Responsibility. A sincere and special thank you to Chris Whalley, law student and research assistant, for his tireless work and enthusiasm on this project.

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*Well I lost a whole lot of my life in law school.
I traded credibility and timing for law school.
But then I learned how to use the other side of my brain.
I used to be carefree and partially sane
Until I went to law school.
And I graduated from law school.
And I learned a whole lot about life in law school.¹*

I. INTRODUCTION

The lyrics of the “Law School” song capture the often demoralizing and unsatisfactory experience of many law school students.² Although intellectually stimulating and challenging, law school, and ultimately the practice of law is often an unhappy and unhealthy endeavor.³ In fact, although the number of students entering law school has remained relatively constant, the number of lawyers, particularly women, leaving the profession or generally dissatisfied with the profession, has been of growing concern.⁴

¹ John T. McMullan, *Law School* (Mackyttoons BMI 2002) (CD) (John McMullan happily practices criminal law in Kennett, Missouri, and did not hate law school.); e-mails from John T. McMullan, to Beth Cohen (Mar. 23 & 25, 2005).

² McMullan, *supra* n. 1; see also Lawrence S. Krieger, *Psychological Insights: Why Our Students and Graduates Suffer, and What We Might Do about It*, 1 J. ALWD 259 (2002) (bibliography included) [hereinafter *Psychological Insights*]; Lawrence S. Krieger, *What We're Not Telling Law Students—And Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13 J. L. & Health 1 (1998–1999) (detailing law student and lawyer distress caused by competitive measures of success and setting forth principles that focus on internal motivations and individual attitudes) [hereinafter *What We're Not Telling Students*]; see generally William W. Eaton, *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. Occupational Med. 1079 (1990) (study finding lawyers to have highest rate of depressive disorder among 104 occupations).

³ Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 Vand. L. Rev. 871, 874–888 (1999) (citing statistics that legal professionals suffer disproportionately from health and psychological issues and ethical problems, and details the poor health and well-being of lawyers; also sets forth advice on what to avoid regarding career paths and choices); see Deborah L. Rhode, *In the Interests of Justice: Reforming the Legal Profession* 23–38, 45–48 (2000); Martin E.P. Seligman et al., *Why Lawyers Are Unhappy*, 23 Cardozo L. Rev. 33 (2001).

⁴ See 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, 2–3 (1996) (examining propensity among lawyers for alcohol abuse and psychological distress, particularly amongst women); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 Am. U. L. Rev. 1337, 1346–1347 (1997) (identifying a “tripartite crisis” in the profession, a crisis in professionalism, public opinion, and lawyer dissatisfaction); Schiltz, *supra* n. 3, at 882–883; but see Kathleen E. Hull, *Cross-Examining the Myth of Lawyers' Misery*, 52 Vand. L. Rev. 971 (1999) (disputing Schiltz's argument and citing contrary statistics); Lawrence R. Richard, *Psychological Type and Job Satisfaction among Practicing Lawyers in the United States*, 29

Consequently, legal education and the legal profession have begun to respond to these concerns.⁵ Responding to these concerns requires ongoing assessment, questioning, and reflection about what we as educators and members of the legal profession want students to learn during law school, learn about life, and learn about life in the law. With these concerns in mind, viewing law school as the entry into the profession, a fundamental consideration is how to help students more effectively develop a sustainable philosophy of lawyering during law school that lends itself to the rigors and demands of life, law school, and lawyering.

Generally, a philosophy of lawyering refers “to the basic principles that a lawyer uses to deal with the discretionary decisions that the lawyer faces in the practice of law.”⁶ A philosophy of lawyering also includes an approach that attempts to address and balance the conflicts and tensions among the various roles of a lawyer.⁷ The various roles of the lawyer include fiduciary, advo-

Cap. U. L. Rev. 979 (2002) (finding that 70% or more of lawyers are essentially satisfied with profession with no significant gender difference); *ABA Young Lawyers Division Survey: Career Satisfaction*, http://www.abanet.org/y/d/satisfaction_800.doc (2000) (finding that a majority of young lawyers, both men and women, are satisfied with the profession, although a substantial number of those surveyed had reservations over the length of time they will remain at their current firm); see generally *More Than Part-Time: The Effects of Reduced-Hours Arrangements on the Retention, Recruitment and Success of Women Attorneys in Law Firms* (Women's B. Assn. of Mass. 2000) (available at <http://womenlaw.stanford.edu/model.policies.html>); Nancy Gertner, U.S. Dist. Ct. for Dist. of Mass., Address, *Twenty-Fifth Anniversary Annual Women's Bar Association Gala* (Apr. 28, 2003) (copy on file with Author).

⁵ See e.g. Leonard Riskin, *Mindfulness in the Law and ADR: The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and Their Clients*, 7 Harv. Negot. L. Rev. 1, 8–9 (2002). In 2002, following a twenty-four year tenure as dean of Notre Dame Law School, David Link, embraced the notion of the lawyer's role as a healer and became the first president and CEO of the International Centre for Healing and the Law, based at the Fetzer Institute in Kalamazoo, Michigan. Steven Keeva, *Once More With Healing: Ex-Law Dean Heads Center Dedicated to Alternative Approaches to Practice*, 90 ABA J. 74 (May 2004); see also Michael S. Greco, *A Renaissance of Idealism: A Lawyer's Gift of Time and Expertise Can Change a Needy Client's World*, 91 ABA J. 6 (Sept. 1, 2005) (announcing the appointment of the ABA Commission on the Renaissance of Idealism in the Legal Profession. Commission, led by honorary co-chairs United States Supreme Court Justice Ruth Bader Ginsburg and New York City lawyer Theodore C. Sorensen, special counsel to President John F. Kennedy, and chair Mark D. Agrast of Washington, D.C., will devise and help implement strategies for enhancing lawyers' pro bono and public service work); Michael S. Greco, *Western New England College School of Law Convocation Speech*, 28 W. New. Eng. L. Rev. 1 (2005) (calling for a renaissance of idealism in the legal profession and commitment to public service and public education).

⁶ Nathan M. Crystal, *Developing a Philosophy of Lawyering*, 14 Notre Dame J.L. Ethics & Pub. Policy 75, 75 (2000) (“Almost all significant ethical decisions that lawyers face in the practice of law involve discretion. For some of these decisions, no rules or standards guide lawyers.”).

⁷ Nathan M. Crystal, *Professional Responsibility Problems of Practice and the Profession* 6 (3d ed., Little Brown & Co. 2004).

cate, officer of the court, individual, and member of the legal profession and of the larger community.⁸ A philosophy of lawyering “operates at three interrelated levels: the personal, the practice, and the institutional.”⁹ Defining what is meant by philosophy of lawyering, however, is not nearly as crucial as introducing students to the process and skills by which they can evaluate their options and approaches. This Article considers the need to help students develop a cohesive philosophy of lawyering and suggests some ideas and methods to help introduce these concepts and concerns to students. Although this Article focuses primarily on aspects of the legal research and writing curriculum and pedagogy as well as professional development programs that can enhance the curriculum, the concepts are applicable and transferable to other subjects and courses.¹⁰ The purpose of this Article is to explore the issues raised by a conscious decision to help students consider and develop a beneficial philosophy of lawyering in areas including the development of legal research and writing curriculum and professional development programs.¹¹

⁸ Model R. of Prof. Conduct preamble ¶ 1 (ABA 2005).

⁹ Crystal, *supra* n. 7 (delineating the various lawyering roles of advocate, officer of the court, fiduciary, individual, and professional and discussing the tensions among the various roles).

¹⁰ For a discussion of the integration of alternative methods of dispute resolution in law schools, see generally Leonard L. Riskin, *Disseminating the Missouri Plan to Integrate Dispute Resolution into Standard Law School Courses: A Report on a Collaboration with Six Law Schools*, 50 Fla. L. Rev. 589 (1998), and Ann Juergens, *Practicing What We Teach: The Importance of Emotion and Community Connection in Law Work and Law Teaching*, 11 Clin. L. Rev. 413 (2005).

¹¹ For another commentator's approach to this issue, see Lawrence S. Krieger, *Essay on Professionalism and Personal Satisfaction: The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 Clin. L. Rev. 425, 426 (2005) (arguing “(1) that satisfaction and professional behavior are inseparable manifestations of a well-integrated and well-motivated person; and (2) 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.” The author suggests ways to teach professionalism, and suggests as a professional model “the wise, compassionate lawyer-statesperson.”).

II. THE NEED TO DEVELOP A PHILOSOPHY OF LAWYERING

A. Curriculum

When students begin their legal education, they also begin to develop their professional habits and skills.¹² However, considerations of helping students to develop their professional identity, their philosophy of lawyering—a concept of how, as professionals in the law, they will relate to their clients and relate to the community—are often not addressed, or may be displaced or subsumed by the rigors and practicalities of the demanding law school curriculum.¹³ Helping students to develop an accessible and practical philosophy of lawyering, while also assisting in the forging of their professional identities and their place in society as professionals, is a valuable, yet often neglected aspect of both legal education and the practice of law.¹⁴ Given the unparalleled access of the legal research and writing faculty to first-year law students, this faculty has the best opportunity to promote professionalism and the development of a humanistic philosophy of lawyering.

The first thing to address with students is competition.¹⁵ As new classes of students enter the profession of law, a profession struggling against a tide of disaffectedness, adding more opportunities for students to consider a broader, more humanistic and holistic approach to a lawyer's place in the society of problem-solvers may help ease some of the discontent.¹⁶ Students arrive at law school with diverse experiences and backgrounds and are generally excited and energetic about the study of law and becoming

¹² "Teaching Responsibility, not just to one's own career but to the system in general, is an important part of legal education and could never be taught simply by the memorization of black-letter rules alone." Peter F. Lake, *When Fear Knocks: The Myths and Realities of Law School*, 29 Stetson L. Rev. 1015, 1020 (2000); see generally James D. Thaler, Jr., *The Law School Dilemma—Student or Lawyer in Training*, 29 Stetson L. Rev. 1265 (2000).

¹³ Crystal, *supra* n. 6, at 76 (recognizing the lack of guidance and consensus regarding a philosophy of lawyering).

¹⁴ See also Steven Keeva, *Mindfulness in the Law and ADR: Practicing from the Inside Out*, 7 Harv. Negot. L. Rev. 97, 105 (2002); see generally Lawrence S. Krieger, *Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. Leg. Educ. 112, 117 (2002).

¹⁵ See generally Seligman et al., *supra* n. 4, at 51–53 (recognizing the negative impact of competition in law school and the practice of law).

¹⁶ See Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?* 8 Leg. Writing 175 (2002); Martha C. Nussbaum, *Cultivating Humanity in Legal Education*, 70 U. Chi. L. Rev. 265 (2003).

lawyers.¹⁷ However, students often face a difficult transition, and, as the "Law School" song notes, their enthusiasm is often dampened by or replaced by self-doubt and insecurity.¹⁸ Legal education, instead of embracing diversity of thought, opinion, and experience traditionally tends to relegate individual perspective in favor of the notion of "thinking like a lawyer."¹⁹ Typically, the lawyer in thinking like a lawyer is conceived and presented as a thoroughly competitive notion of "advocate or gladiator" rather than as a collaborative, compassionate, and humanistic problem-solver or counselor, advisor, or problem-avoider.²⁰

Viewing the lawyer's role as predominantly or exclusively one of a competitive advocate in litigation underemphasizes legal work that involves counseling, advising, negotiation, and other types of more collaborative and compassionate dispute resolution and problem-solving.²¹ For example, the casebook and Socratic-method approach of legal education, with the primary focus on litigation and the corresponding high valuation of extrinsic measures of success, generally stresses the competitive win-lose perspective.²² This approach gives students a distorted sense of the validity of the lawyer's role as counselor, advisor, and conciliator. The focus on learning to build arguments and distinguish positions based on the law, generally without thorough consideration of the impact on the relationships involved, tends to dehumanize and compartmentalize the practice of law.²³ This type of compartmentalizing and dehu-

¹⁷ Some students also enter law school affected with deep cynicism and doubt about entering the legal profession, a profession they recognize as being fraught with problems. Helping these students develop a positive attitude toward lawyering and helping them develop an ethical philosophy of lawyering is critically important to the individual students and the profession. See Richard J. Heafy, *Moral Attorneys; Moral People: Law Students Reflect on the Principles They Intend to Follow in Their Professional Lives*, 8 *Issues in Ethics* (Markkula Ctr. for Applied Ethics) (Summer 1997).

¹⁸ *Supra* n. 1 and accompanying text; see also Krieger, *Psychological Insights*, *supra* n. 2.

¹⁹ Morrison Torrey, *You Call That Education?* 19 *Wis. Women's L.J.* 93, 101 (2004); but see Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 *Hofstra L. Rev.* 955, 1014-1015 (2005); see also Kathryn M. Stanchi, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 *Dick. L. Rev.* 7 (1998).

²⁰ The Socratic method, in various forms, "remains the traditional and most honored legal teaching methodology." Torrey, *supra* n. 19, at 102.

²¹ See generally J. Kim Wright & Dolly M. Garlo, *Law as a Healing Profession: New Trends Are Expanding Choices in Law Practice*, 63 *Or. St. B. Bull.* 9 (Apr. 2003).

²² See Keeva, *supra* n. 14, at 105; Krieger, *supra* n. 14, at 117.

²³ In response, a number of practitioners have found that a multi-disciplinary approach to client problem-solving allows greater efficiency in some cases and an environment where "clients feel seen, heard and cared for in an emotionally respectful atmosphere."

manizing has taken a heavy toll on the well-being of lawyers and law students.²⁴ The depression and dissatisfaction among law students and lawyers is well documented.²⁵ Consequently, the need to help students develop a philosophy of lawyering that takes into account a more humane and satisfying way of practicing law has become more urgent.

Furthermore, the first-year curriculum is typically dominated by classroom rather than experiential learning.²⁶ Clinics and externships that provide opportunities to engage in some of the more practical aspects of problem-solving, where students typically begin in earnest to define their professional identities and philosophies, are traditionally not available until after students complete their first year studies.²⁷ In view of the current structure of mainstream legal education—the focus on the casebook and Socratic and adversarial method—the legal research and writing course provides an excellent opportunity for first-year students to go beyond the confrontational casebook method by considering lawyer's role as a problem-solver in society in relation to the personal, practical, professional, and institutional dimensions of the study and practice of law.²⁸

B. Professional Development

Helping students develop a philosophy of lawyering may also be viewed as an essential part of professional development.²⁹ Nu-

Steven Keeva, *A Multi-Door Law Office: Divorce Clients at This Firm Can Get Team Advice on Emotional and Financial Issues*, 89 ABA J. 96 (2003).

²⁴ See e.g. Keeva, *supra* n. 14, at 101–102.

²⁵ Krieger, *supra* n. 14, at 113–115.

²⁶ Some commentators argue that this traditional approach underserves the different learning styles of students. See e.g. Robin A. Boyle & Rita Dunn, *Teaching Law Students through Individual Learning Styles*, 62 Alb. L. Rev. 213, 217–218 (1998).

²⁷ See generally Myron Moskowitz, *Beyond the Case Method: It's Time to Teach with Problems*, 42 J. Leg. Educ. 241 (1992).

²⁸ See generally Rebecca A. Cochran, *Legal Research and Writing Programs as Vehicles for Law Student Pro Bono Service*, 8 B.U. Pub. Int. L.J. 429, 437–440 (1999) (discussing the incorporation of pro bono service into Legal Research and Writing programs); Suzanne E. Rowe, *Legal Research, Legal Writing, and Legal Analysis: Putting Law School into Practice*, 29 Stetson L. Rev. 1193 (2000) (presenting a thorough description of legal research and writing courses and the skills learned in relation to law study and practice).

²⁹ Derrick Bell recognizes that the question “How can I maintain my integrity while seeking success?” is an ongoing concern for law students. Derrick Bell, *Ethical Ambition—Living a Life of Meaning and Worth* 1 (Bloomsbury 2002); see generally Krieger, *supra* n. 11, at 434–438; Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 Loy. U. Chi. L.J. 719 (1998).

merous studies detail the distress caused by law student disaffect-ness, law student depression, and other stress related problems.³⁰ Moreover, lawyer dissatisfaction, stress, and depression contribute to many unhappy lawyers leaving the profession and, perhaps even more disturbing, many unhappy lawyers remaining in practice.³¹ Encouraging law students to reflect on and explore the practice of law in more humane terms, while considering the impact of their work on their own lives and the lives of others, is likely to ease some of the feelings of isolation and disconnect.³² For example, there are now many professional organizations and practice approaches that recognize the importance of human connection in the practice of law, the importance of finding meaning in the practice of law, and the ongoing quest to attain a balanced life in the face of grave unhappiness and dissatisfaction within the profession.³³

Despite the feelings of isolation and disconnect, the law, at its best, is generally a collegial profession, and, like practicing lawyers, law students often desire a connection to the broader community. Although it is important for students to be fully immersed in the study of law and to become part of the law school community, complete disconnect from the “outside world,” the world beyond the classroom, often fundamentally distorts students’ perspective regarding the impact of the law and often proves unhealthy and isolating for students themselves.³⁴ Although law students are a relatively transient population, in law school for only a few years, their experiences, and the opportunities available to them, have a profound impact on their perception of the study and practice of law and their future life in the law. Therefore, it is crucial for legal research and writing faculty to consider professional development and career satisfaction throughout legal education and to provide and develop opportunities for students to connect with the law in ways that are affirming rather than demoraliz-

³⁰ See e.g. Krieger, *supra* n. 11, at 434–438; Schiltz, *supra* n. 3.

³¹ See generally Krieger, *supra* n. 11; Deborah L. Rhode, *The Professionalism Problem*, 39 Wm. & Mary L. Rev. 283 (1998) (describing lawyers’ feelings of dissatisfaction with their profession and concern over the decline of professionalism); Schiltz, *supra* n. 3.

³² See Robert Granfield & Thomas Koenig, *It’s Hard to Be a Human Being and a Lawyer: Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. Va. L. Rev. 495 (2003).

³³ See Susan Daicoff, *Comprehensive Law Movement: Law as a Healing Profession*, <http://www.fcsi.edu/faculty/daicoff/overalltalk2003.ppt> (accessed Mar. 30, 2007); Steven Keeva, *Transforming Practices* (Contemporary Bks. 1999).

³⁴ See Ann Juergens, *supra* n. 10, at 418–419.

ing.³⁵ The legal research and writing course provides a valuable opportunity to introduce important issues of professionalism, ethics, and career satisfaction. If students develop positive attitudes toward the study and practice of law and the lawyer's role as a humane problem-solver, the impact is likely to transcend law school and create a more satisfied individual and professional.³⁶

In order to achieve such connection with the law and collegiality within the profession, it is vital to integrate opportunities for students to consider and develop the broader aspects of their professional identity. As part of developing their philosophy of lawyering, students should consider their professional development and identity through an examination of professionalism issues such as the moral implications of lawyering,³⁷ the importance of pro bono work,³⁸ and various dispute resolution approaches including holistic lawyering,³⁹ collaborative lawyering,⁴⁰ and other humanistic

³⁵ "It is almost too obvious to state that if our operant paradigms, teaching methods, or other practices exert pressures that undermine the physical health, internal values, intrinsic motivation, and/or experience of security, self-worth, authenticity, competence, and relatedness of our students, we should expect the negative results that studies of law students (and lawyers) consistently demonstrate: major deficits in well-being, life satisfaction, and enthusiasm, and flourishing depression, anxiety, and cynicism." Krieger, *supra* n. 14, at 124-126.

Furthermore, positive attitudes about the legal profession and the practice of law are also likely to improve the reputation of lawyers in our society. See generally ABA Sec. of Litig., *Public Perceptions of Lawyers: Consumer Research Findings*, <http://www.abanet.org/litigation/lawyers/publicperceptions.pdf> (Apr. 2002).

³⁶ "There is a bottom-line message for law students and lawyers in all of this: If you have the wrong values and motives, your life will not feel good regardless of how good it looks. And there is a bottom-line message for law teachers: Do everything possible so that the law school experience preserves and strengthens, rather than dampens, the enthusiasm, idealism, and integrity (in its broadest sense) of your students." Krieger, *supra* n. 11, at 438.

³⁷ Russell G. Pearce, *Model Rule 1.0: Lawyers Are Morally Accountable*, 70 Fordham L. Rev. 1805 (2002); see Walter H. Bennett, Jr., *Making Moral Lawyers: A Modest Proposal*, 36 Cath. U. L. Rev. 45 (1986).

³⁸ Joe Puskarz ed., *Pro Bono Begins in Law School*, 35 Syllabus (ABA Sec. of Leg. Educ.) 8 (Sept. 2003).

³⁹ Holistic lawyering is "[a]n orientation toward law practice that shuns the rancor and bloodletting of litigation whenever possible; seeks to identify the roots of conflict without assigning blame; encourages clients to accept responsibility for their problems and to recognize their opponents' humanity; and sees in every conflict an opportunity for both client and lawyer to let go of judgment, anger, and bias and to grow as human beings." Ingrid Tollefson, *Enlightened Advocacy: A Philosophical Shift with a Public Policy Impact*, 25 Hamline J. Pub. L. & Policy 481, 505 (2004) (citing Keeva, *supra* n. 33, at 139).

⁴⁰ "Collaborative law was originally a family law model in which the parties and their attorneys contractually agree at the outset that they will not litigate. They focus on resolution and problem-solving without the threat of court filings and process. Thus, unlike other forms of alternative dispute resolution in which a lawsuit is filed first and then referred for mediation or arbitration, mutually satisfactory cooperative resolution is the focus of all

approaches to lawyering.⁴¹ Integrating such considerations into the legal research and writing course and the law school community is likely to capture the students' energy and enthusiasm and enrich the students' educational experience.

In law, a profession that requires continuing education, the earlier that law students are able to consider their place in the larger community and value "ethical ambition,"⁴² the better for the student as an individual and as a professional in the community of lawyers. In fact, the book *Ethical Ambition* begins with the question, "[h]ow can I maintain my integrity while seeking success?"⁴³ and research and writing faculty should introduce this question to students as a valuable tool to help address their life's work. Helping students consider the moral implications of lawyering may enable them to effectively "reconnect law and morality and make tangible the idea that lawyering is a 'public profession,' one whose contribution to society goes beyond the aggregation, assembling, and deployment of technical skills."⁴⁴ "In this way lawyers committed to using their professional work as a vehicle to build the good society help legitimize the legal profession as a whole."⁴⁵ Helping students develop a philosophy of lawyering that considers the moral and human impact of the profession "elevates the moral posture of the legal profession beyond a crude instrumentalism in which lawyers sell their services without regard to the ends to which those services are put."⁴⁶ The impact of integrating such considerations into the legal research and writing curriculum and into the broader law school culture will likely benefit the student, the lawyer, and the community.⁴⁷

parties from the outset." Wright & Garlo, *supra* n. 21, at 11-12.

⁴¹ For useful summaries of many of these humanistic or "healing" approaches to law practice see *id.* and *infra* nn. 80 and 119.

⁴² Bell, *supra* n. 29.

⁴³ *Id.* at 1.

⁴⁴ Austin Sarat & Stuart Scheingold, *Cause Lawyering, Political Commitments and Professional Responsibilities* 3 (Oxford U. Press 1998).

⁴⁵ *Id.* at 3, 3 n. 7.

⁴⁶ *Id.* at 3.

⁴⁷ One commentator has argued for lawyers to adopt a "nurturer" model in their professional approach:

The lawyer as nurturer implies a focus on the client's needs encompassing humanistic, analytical and technical approaches to conflict resolution. The metaphor, however, does not imply a "new-age," "feel-good," "touchy-feely," or "warm-fuzzy" approach to lawyering. Proficiency in the intellectual and technical rigors of legal analysis, or "thinking like a lawyer" is fundamental to capable and accomplished lawyering. However, compassion is equally pragmatic. It functions as an essential and practical component of the nurturing practice. Thus, for the

Because, as the "Law School" song notes, law school can often be an isolating place, it is important to encourage students to see themselves as part of the law school community and the larger community as a "lawyer in training."⁴⁸

This includes helping students to consider the broader impact of their approach to lawyering on their professional development. Legal research and writing courses and the legal research and writing faculty are actively involved in addressing these issues, facilitating these discussions, and helping students to consider issues of professional development.⁴⁹ Approaching law school from the "lawyer in training" perspective calls for consideration of the interrelatedness of professional and personal lives.⁵⁰ Recognizing that work is a significant part of one's life and that it provides "[a]n opportunity for discovering and shaping where the self meets the world"⁵¹ underscores the importance of providing a forum to explore and nurture this area of professional development. "To have a firm persuasion in our work—to feel that what we do is right for ourselves and good for the world at exactly the same time—is one of the great triumphs of human existence."⁵²

Law school in general, and the legal research and writing curriculum in particular, is a good place to introduce students to the lifelong pursuit of exploring these essential values.⁵³ The legal research and writing course provides a wonderful forum to help students consider their professional choices and paths in order to help students develop their philosophy of lawyering. As more lawyers and law students consider and practice law in a way that values both effective and compassionate problem-solving, perhaps

nurturing lawyer, ambition to master critical reading, writing, argument, and reasoning skills met with the ambition to cultivate compassion creates the ideal for what it means to be 'successful' in the art of legal advocacy and counseling.

Tollefson, *supra* n. 39, at 501 (footnotes omitted).

⁴⁸ McMullan *supra* n. 1; Thaler, *supra* n. 12 (discussing how to become a lawyer in law school rather than remaining just a student).

⁴⁹ See Pamela Edwards & Sheilah Vance, *Teaching Social Justice through Legal Writing*, 7 J. Leg. Writing 63, 65, 73 (2001).

⁵⁰ See Thaler, *supra* n. 12.

⁵¹ David Whyte, *Crossing the Unknown Sea—Work as a Pilgrimage of Identity* 4 (Riverhead Bks. 2001).

⁵² *Id.*

⁵³ "At its best, work seems never-ending only because, like life, it is a pilgrimage, a journey in which we progress not only through the world but through stages of understanding. Good work, done well for the right reasons and with an end in mind, has always been a sign, in most human traditions, of inner and outer maturity. Its achievement is celebrated as an individual triumph and a gift to our societies. A very hard-won arrival." *Id.* at 12.

more will attain "one of the great triumphs of human existence . . . to feel that what we do is right for ourselves and good for the world at exactly the same time."⁵⁴

III. TECHNIQUES TO HELP DEVELOP A CONSIDERATION OF A MORE HUMANISTIC PHILOSOPHY OF LAWYERING

A. Curriculum

Legal research and writing faculty can help students develop a more humanistic philosophy of lawyering within the context of curricular design and classroom discussions. For example, numerous articles describe the benefits of integrating social justice issues into the legal research and writing curriculum.⁵⁵ "Teaching social justice issues supports the creation of more sensitive and understanding attorneys."⁵⁶ Assignments can be developed that incorporate considerations of the law as a healing profession where lawyers are viewed as humanistic and compassionate problem-solvers instead of solely as advocates wielding the sword for a client.⁵⁷

If litigation is appropriately viewed as a last resort of conflict resolution, integration of other problem-solving methods and approaches may help broaden students' perspective and understanding of the law and provide students with a more realistic assessment of how lawyers in practice incorporate a range of problem-solving techniques.⁵⁸ Therefore, teaching communication skills, oral and written, need not always be framed within the adversarial model. Indeed, many legal research and writing programs incorporate negotiation, letter writing, and interviewing and counseling exercises into the first-year curriculum.⁵⁹ Such exercises

⁵⁴ *Id.* at 4.

⁵⁵ See e.g. Miki Felsenburg & Luellen Curry, *Incorporating Social Justice Issues into the LRW Classroom*, 11 Persps. 75 (2003); Edwards & Vance, *supra* n. 49, at 65–70. "In raising social justice issues, a professor helps students develop a broader sense of themselves and of the world." Edwards & Vance, *supra* n. 49, at 67.

⁵⁶ *Id.* at 66.

⁵⁷ J. Kim Wright, *Visionary Law: New Approaches to Expanding Our Choices in Law Practice*, http://www.iahl.org/articles/08_Visionary_lawyering.htm (2002).

⁵⁸ See e.g. Tollefson, *supra* n. 39, at 504–509.

⁵⁹ 2006 Survey of the Association of Legal Writing Directors and the Legal Writing Institute question 20 (available at www.alwd.org); Ken Kirwin et al., Presentation, *Writing outside the Usual Box: Expository Writing Options in LRW Courses* (Biennial ALWD Conf., 2005) (copy of materials on file with Author); see Kate O'Neill, *Adding an Alternative Dis-*

provide students with opportunities to consider lawyering skills outside of the litigation context. Incorporating these approaches into the curriculum, even if not the central focus, may provide a vehicle for students to solve problems more collaboratively and may also afford them the opportunity to more directly consider the impact of options and resolutions on the relationships of those involved in the dispute.

Additionally, the integration of small group projects within the class fosters collaborative learning and takes into account various learning styles often excluded from the dominant approach to legal education.⁶⁰ Going beyond the Socratic and casebook methods to incorporate different assignments into the legal research and writing classroom and curriculum also provides the opportunity to discuss diversity among lawyering roles, approaches, and philosophies. For example, discussion of different problem-solving approaches among students may be used to explore diverse approaches and philosophies among lawyers.⁶¹ Such subtleties are often ignored in favor of keeping everyone on the same page, a tendency that may exclude valid opinions and approaches leading to further student isolation and dissatisfaction.⁶² Therefore, it is important to validate divergent views and approaches of students and lawyers within the legal research and writing curriculum and the classroom. After all, the law is not a science but a human endeavor, which, at its best, strives to solve problems in the context of what is just and fair within the confines of the adversarial system that ideally views litigation as a last resort.

In addition to incorporating collaborative and dispute resolution discussions and assignments into the curriculum, another vehicle to demonstrate lawyers' role in the broader community is to assign a book such as *Damages: One Family's Legal Struggles in the World of Medicine* as part of the legal research and writing curriculum.⁶³ *Damages*, a non-fiction work by Barry Werth, details

pute Resolution (ADR) Perspective to a Traditional Legal Writing Course, 50 Fla. L. Rev. 709 (1998).

⁶⁰ See Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 Thomas M. Cooley L. Rev. 201, 209-211 (1999).

⁶¹ For a discussion of the importance of promoting an effective learning environment in law school, see Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. Leg. Educ. 75, 84-86 (2002).

⁶² *Id.* at 87-90.

⁶³ Barry Werth, *Damages* (Simon & Schuster 1998). For another example of the use of

the compelling story of a medical malpractice case and its impact on the lives of the family, lawyers, medical professionals, and insurance carriers.⁶⁴ *Damages*, which Western New England College law students read during the summer before entering law school, provides invaluable insight into the human impact of litigation and the significance of the work of the lawyers involved in all aspects of the case.⁶⁵ *Damages* provides a context within which to discuss the life of a lawsuit from all perspectives.⁶⁶ In addition to providing a basis for substantive legal research and writing assignments, the book also provides a framework to discuss different lawyering roles, approaches, strategies, and philosophies.⁶⁷

The factually rich details of the real-life drama provide an opportunity to explore many professionalism issues in relation to the various roles of the lawyers involved.⁶⁸ For example, *Damages* effectively exposes the complicated layers of the lawyers' relationships among themselves, and with clients, experts, and adversaries. *Damages* also provides students with a realistic perspective of the many complicated and competing interests that must be bal-

Damages as a legal text with comparisons to other legal narratives, see Melody Richardson Daily et al., *Damages: Using a Case Study to Teach Law, Lawyering, and Dispute Resolution*, 2004 J. Dis. Res. 1, 3–6.

⁶⁴ "In *Damages*, when Donna Sabia went into labor on April 1, 1984, she was expecting healthy twins. Instead, one baby was stillborn—and the other just barely clung to life. Caring for their son would exhaust the Sabias emotionally, financially, and physically, and put a nearly lethal strain on their marriage—but after deciding that a lawsuit might bring them some relief, they discovered that what it brought was a seven-year-long maelstrom of conflict, stress, and further expense. This examination of the Sabia family's story brings us not only into their lives but into the lives of the doctors, lawyers, insurance carriers, and countless other players in this heartrending tale of human sorrow which is also, in the words of *The San Francisco Chronicle*, 'a disturbing biopsy of a system in serious need of an overhaul.'" See generally Barry Werth, *Damages* (Simon & Schuster 1998).

⁶⁵ For a more comprehensive discussion of the use of the book *Damages*, see Jeanne Kaiser & Myra Orlen, *Using a Literary Case Study to Teach Lawyering Skills: How We Used Damages by Barry Werth in the First-Year Legal Writing Curriculum*, 12 Leg. Writing 59 (2006).

⁶⁶ After working through the issues in the book from several standpoints, including a variety of writing assignments, students are invited to discuss *Damages* and how it affects their view of the legal system. For many students, since the book is assigned prior to the beginning of the first semester at law school, *Damages* is their first introduction to the real life application of the law, the lives of lawyers, and the effect of litigation on its participants. See also Daily et al., *supra* n. 63, at 3–6.

⁶⁷ For a more detailed examination of the assignments, see Kaiser & Orlen, *supra* n. 65.

⁶⁸ For example, one theme is the relative role of "truth" in the litigation process. See generally Alexander Scherr & Hillary Farber, *Popular Culture as a Lens on Legal Professionalism*, 55 S.C. L. Rev. 351 (2003) (describing and advocating the use of images of lawyers from popular culture such as cartoons and other media to teach issues of ethics and professionalism).

anced in the practice of law. Moreover, *Damages* provides a common language and reference point for the students, and the book can be used illustratively throughout the year to exemplify the significant impact of litigation on the lives of all those involved.⁶⁹ Reading and discussing *Damages* enables students to grapple with the difficult issues of lawyering including the indeterminacy of facts, the role of truth in the law, and, significantly, the impact of various lawyering philosophies and strategies on the lives and relationships of those affected by a lawsuit.⁷⁰

The opportunity to read a book such as *Damages* during the first year of law school provides students with realistic insight regarding the complicated impact of litigation on peoples' lives and may therefore serve to temper the potentially dehumanizing effect of the casebook method. In light of the pervasive casebook method in traditional first-year curriculum, students need to be cognizant of the fact that, from the outset, the very decision of whether to accept a case or file a lawsuit is a decision with serious moral, ethical, professional, and institutional consequences; one that should not be taken lightly, without due consideration of the ramifications.⁷¹ Such considerations raise issues of the different roles of the lawyer and the impact of various lawyering strategies and philosophies on the progression of a lawsuit and resolution of a dispute. Assigning a book such as *Damages* provides a good vehicle to integrate these important professional issues into the legal research and writing curriculum and also to weave in discussions of the importance of developing a lawyering philosophy that considers these issues.

Although there are valid pedagogical reasons to frame legal research and writing assignments in the litigation context, assignments and discussions can transcend the familiar adversarial paradigm to introduce other problem-solving strategies.⁷² Thus,

⁶⁹ "Although the traditional model of legal education has many virtues, it also has limitations. Among other things, the traditional model places excessive emphasis on appellate court decisions, ignores the methods that most people use to resolve their disputes, disregards the 'law in action' by downplaying the way legal regimes affect the people involved, and alienates a significant number of law students." Daily et al., *supra* n. 63, at 1.

⁷⁰ *Id.* at 3-5; see *supra* n. 66.

⁷¹ An important benefit of using *Damages* as a text is the fact the case was settled before trial "presenting detailed descriptions of several dispute resolution processes that are now routine for attorneys (even for those who consider themselves trial attorneys)—negotiation, mediation, and settlement discussions." Daily et al., *supra* n. 63, at 4.

⁷² "The law student can also gain much from studying the entire 'life cycle' of a lawsuit. The reported decision is a dead thing; it memorializes the remains of a living lawsuit between real clients. How much more might a student learn if she studied the germination

even when assignments are set in typical adversarial posture, there are opportunities to discuss how the implementation of various lawyering techniques may have avoided the escalation to litigation or resolved the dispute by employing other means.⁷³ To dis-

of the case (when the client first arrives in the law office); watched it grow (as the lawyer does research to determine the legal issues and possible remedies); watched the case adapt to different growing conditions (as the opposition files motions or seeks to defeat the claim); watched the case bloom (in trial and argument); and then saw how the fruit produced by the case might be harvested (through negotiation and settlement)." Kenneth D. Chestek, *Reality Programming Meets LRW: The Moot Case Approach to Teaching in the First Year*, 38 Gonz. L. Rev. 57, 62 (2003).

⁷³ Such other methods include the following:

- **Holistic Lawyering:** "PEACELAW: Promote peaceful advocacy and holistic principles. Encourage compassion, reconciliation, forgiveness, and healing. Advocate the need for a humane legal process. Contribute to peace building at all levels. Enjoy the practice of law. Listen intentionally and deeply in order to gain complete understanding. Acknowledge the opportunity in conflict. Wholly honor and respect the dignity and integrity of each individual." Intl. Alliance of Holistic Laws., *International Alliance of Holistic Lawyers, about Holistic Law*, <http://www.iah.org/index.cfm/hurl/obj=AboutHolisticLaw/AboutHolisticLaw.cfm> (accessed Aug. 17, 2006).
- **Collaborative Lawyering:** The mission of collaborative law is "[t]o promote the non-adversarial practice of law. To promote collaborative law, which resolves legal conflicts with cooperative, rather than confrontational, techniques, and in which lawyers do not litigate—thereby encouraging parties to reach agreements in a creative and respectful manner. To educate the public and the legal community about the process and value of collaborative law." Mass. Collaborative L. Council, *About Us*, <http://www.massclc.org/about.html> (accessed Apr. 1, 2007).
- **Restorative Justice:** "[A] systematic response to wrongdoing that emphasizes healing the wounds of victims, offenders, and communities caused or revealed by the criminal behavior." Crim. Just. Resources, *Restorative Justice*, <http://www.lib.msu.edu/harris23/crimjust/restjust.html> (last revised Nov. 21, 2005).
- **Therapeutic Jurisprudence:** "[C]oncentrates on the law's impact on emotional life and psychological wellbeing. It is a perspective that regards the law (rules of law, legal procedures, and roles of legal actors) itself as a social force that often produces therapeutic and anti-therapeutic consequences. It does not suggest that therapeutic concerns are more important than other consequences or factors, but it does suggest that the law's role as a therapeutic agent should be recognized and systematically studied." David B. Wexler, *International Network on Therapeutic Jurisprudence*, <http://www.law.arizona.edu/depts/upr-intj/> (accessed Jan. 14, 2007).
- **Creative Problem Solving:** The Center for Creative Problem Solving, based at California Western School of Law, "develops curriculum, research, and projects to educate students and lawyers in methods for preventing problems where possible, and creatively solving those problems that do exist. The Center focuses both on using the traditional analytical process more creatively and on using nontraditional problem solving processes, drawn from business, psychology, economics, neuroscience, and sociology among others." Cal. W. Sch. of L., *Center for Creative Problem Solving, Creative Problem Solving*, http://www.cwsl.edu/main/default.asp?nav=creative_problem_solving.asp&body=creative_problem_solving/home.asp (accessed Aug. 17, 2006).

suade students of the misconception that most disputes ultimately wind-up in litigation, it may also prove helpful to discuss the specific pedagogical considerations for setting the assignment in litigation.⁷⁴ In the legal research and writing context, the widely recognized curricular goal of teaching students analytic writing in the form of drafting major types of documents that lawyers are called on to draft, including law office memoranda and court briefs, often dominates the curricular choices. Thus, students are primarily writing within the context of litigation or impending litigation. However, within the context of problem design and classroom discussions, faculty can introduce philosophies and approaches to the practice of law that include focus on problem resolution and win-win solutions beyond the typical win-lose result of litigation.⁷⁵

For example, as in the case chronicled in *Damages*, analysis of legal issues and lawyering strategies can include consideration of the impact of the litigation on the relationships of those directly and indirectly involved in the dispute including the parties and the community. Reflections about what happens following the escalation of a legal dispute, including a focus on the future relationships of those involved, may also help to introduce and incorporate

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- **Preventive Law:** "The National Center for Preventive Law ("NCPL") is dedicated to preventing legal risks from becoming legal problems." The Center is also based at California Western School of Law and provides materials and information to those interested in the theories and practice of Preventive Law. Cal. W. Sch. of L., *National Center for Preventive Law*, <http://www.preventivelawyer.org/main/default.asp> (accessed Aug. 17, 2006).
 - **Mediation:** New approaches to mediation include transformative mediation and the understanding-based approach to mediation. In the understanding-based approach to mediation, "the mediator seeks to work directly and simultaneously together with the parties throughout the mediation in the effort to support their finding their resolution to their conflict." Ctr. for Mediation in L., About the Center, *The Center's Model for Mediation: The Understanding-Based Approach to Mediation*, <http://www.mediationinlaw.org/about.html#centersapproach> (accessed Aug. 17, 2006).
 - **Transformative Mediation:** "In the transformative view, conflict is primarily about human interaction rather than "violations of rights" or "conflicts of interest." The "transformative" or "relational" mediation approach seeks to restore balance and transform the conflict into positive and constructive interaction by helping the parties "identify the opportunities for empowerment." Inst. for Study of Conflict Transformation, Inc., *The Transformative Framework*, <http://www.transformativemediation.org/transformative.htm> (accessed Aug. 17, 2006).

⁷⁴ See Ralph L. Brill et al., *Sourcebook on Legal Writing Programs* 5–8 (ABA 1997); see generally ABA Sec. of Leg. Educ. & Admis. to B., *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* 138–140 (ABA 1992) (detailing the fundamental skills for good lawyering).

⁷⁵ Brill et al., *supra* n. 74, at 5–8.

themes of taking a more holistic view of how to approach problems and help clients resolve issues beyond the hired-gun adversarial model.⁷⁶ The holistic approach to the practice of law may include efforts to reconcile, forgive, understand, and empathize within the context of maintaining a philosophy of respectful law practice and a commitment to the non-violent practice of law and use of non-violent language and strategies.⁷⁷

It is important to recognize that lawyers are often accused of escalating conflict.⁷⁸ A legal research and writing curriculum that provides students with the opportunity to consider dispute resolution options and lawyering philosophies that take a more holistic and humanistic view of the consequences of the escalation of disputes, beyond the externally defined economic measure of success, will likely have a beneficial impact on the individual, the practice, and the institutional levels.⁷⁹ In fact, recent studies indicate that lawyers who embrace a more humanistic, less adversarial approach to the practice of law express greater fulfillment and happiness.⁸⁰ Conceivably, discontent and depression could give way to greater fulfillment and happiness among law students who are introduced through the legal research and writing curriculum to more humanistic and holistic lawyering strategies and philosophies from the start of their legal education.

B. Professional Development

Professional development is another venue where legal research and writing faculty can help students develop their philosophy of lawyering. For example, as noted above, helping first-year students connect with the community greatly enhances the educational experience.⁸¹ Activities such as mentoring students, formally and informally; hosting a diverse range of speakers; spon-

⁷⁶ Intl. Alliance of Holistic Laws., *supra* n. 73; see David A. Binder et al., *Lawyers as Counselors: A Client-Centered Approach* (2d ed., West 2004) (discussing the client-centered approach to lawyering).

⁷⁷ Intl. Alliance of Holistic Laws., <http://www.iah.org> (accessed Jan. 14, 2007).

⁷⁸ See Daily et al., *supra* n. 63, at 4.

⁷⁹ Susan Daicoff; Susan Daicoff—*Personal Web Page*, <http://www.fcsl.edu/faculty/daicoff/law.htm> (accessed Aug. 17, 2006); Steven Keeva, *Temptation to Tally*, 90 ABA J. 74 (June 2004) (discussing the importance of keeping track of work beyond win/lose record).

⁸⁰ Steven Keeva, *Listen Well*, 91 ABA J. 76 (Sept. 2005) (attributing recent increases in lawyer satisfaction to growth in areas of collaborative law and restorative justice); Wright, *supra* n. 57.

⁸¹ See *supra* nn. 17–46 and accompanying text.

soring legal trainings; and organizing community-based volunteer programs are effective ways for legal research and writing faculty to help students consider and develop their own professional identity and philosophy of lawyering early in their legal training.

In addition, it is also helpful for the legal research and writing faculty to introduce students to different lawyering roles and how to recognize and reconcile the tension between them.⁸² In the context of analyzing legal problems and strategies, it is beneficial to consider the lawyer as an individual, a fiduciary, and an officer of the court.⁸³ First, consider the lawyer as an individual with a personal and moral framework and the corresponding self-defined, self-determined duties owed to the self, family, and community.⁸⁴ Next, consider the roles of the lawyer as a fiduciary, an advocate, and a representative.⁸⁵ In these roles, the lawyer must try to balance the corresponding duties of loyalty, zealous representation and its limits, confidentiality, competence, communication, and delegation of decision-making authority.⁸⁶ Finally, to complete the discussion, it is important to consider the lawyer's role as an officer of the court and representative of the legal system.⁸⁷ In these roles, the lawyer must attempt to balance the obligations of candor to the tribunal, communication and fairness to others, aspirations of pro bono work and public service, and the foundational goal of working toward improving the system of justice.⁸⁸ Addressing these various ethical issues of lawyering in the context of legal research and writing, problem-solving, and professional development should take into account the benefits of developing a philosophy of lawyering in relation to the corresponding professional responsibilities.⁸⁹

⁸² See generally Daicoff, *supra* n. 4, at 1411–1414; Tollefson, *supra* n. 39, at 488–489.

⁸³ See generally Model R. Prof. Conduct preamble ¶¶ 1–3 (ABA 2006); Crystal, *supra* n. 7, at 6, 11–32 (delineating the various lawyering roles of advocate, officer of the court, fiduciary, individual, and professional and discussing ways to resolve the tensions among these various roles).

⁸⁴ Crystal, *supra* n. 7, at 4–5.

⁸⁵ *Id.* at 1–4.

⁸⁶ See generally Model R. Prof. Conduct preamble ¶¶ 1–13.

⁸⁷ *Id.* at preamble ¶¶ 6, 13; Model R. Prof. Conduct 3.3 cmt. 2 (Candor toward the Tribunal); Crystal, *supra* n. 7, at 3–4.

⁸⁸ See Model R. Prof. Conduct 3.3 (Candor toward the Tribunal), 3.4 (Fairness to Opposing Party and Counsel), 4.1 (Truthfulness in Statements to Others), 6.1 (Voluntary Pro Bono Publico Service), 6.2 (Accepting Appointments).

⁸⁹ See Deborah Rhode, Presentation, *Expanding the Role of Ethics in Legal Education and the Profession* (Santa Clara U., Jan. 17, 2002) (presented as part of the 2001–2002 Markkula Ethics Center Lecture Series); see also Benjamin H. Barton, *The ABA, the Rules,*

1. *Volunteer Experience*

When law students, often new to the area, are able to connect with the community beyond the law school, there are numerous benefits, including integrating pro bono service into their professional lives and philosophy of lawyering.⁹⁰ Furthermore, legal research and writing faculty efforts to establish early connections between law students and the community greatly enhances the classroom component and depth of the educational experience.

Given the demands of law school, encouraging students to fully integrate pro bono work into their professional development is a significant challenge. However, addressing this challenge provides valuable opportunities for law schools to offer flexible and manageable community volunteer opportunities. These opportunities enhance students' sensibilities about the impact and importance of maintaining a commitment to pro bono work at an early stage of their careers. The unparalleled access of the legal research and writing faculty to first-year law students provides considerable opportunities for legal research and writing faculty to increase student awareness and involvement in such programs as part of professional growth and development.

Unfortunately, although law schools generally offer numerous clinics and public interest externships, these programs are typically limited to upper-level students.⁹¹ First-year students, enthusiastic about beginning the study of law, are an underutilized community resource for many under-funded community programs in need of volunteers. These volunteer projects also provide a reference point for students to appreciate the role of a lawyer in conjunction with the role of other professionals in problem-solving, as well as the need for lawyers to develop problem-solving skills beyond those used in case analysis. These insights are important considerations in professional development and in developing a cohesive philosophy of lawyering. Therefore, it is important for the

and Professionalism: The Mechanics of Self-Defeat and a Call for a Return to the Ethical, Moral, and Practical Approach of the Canons, 83 N.C. L. Rev. 411, 480 (2005) (mentioning the need for better integration of legal ethics into the law school curriculum and noting the problems involved with relying solely on the Rules of Professional Conduct for ethical guidance).

⁹⁰ Cochran, *supra* n. 28, at 431 (recognizing that pro bono requirements benefit students and communities); Tigran W. Eldred & Thomas Schoenherr, *The Lawyer's Duty of Public Service: More Than Charity?* 96 W. Va. L. Rev. 367 (1993).

⁹¹ Cochran, *supra* n. 28, at 431, 435 (recognizing that clinics and externships are typically not required and are often limited to a small number of upper-level students).

legal research and writing faculty to support and facilitate such programs and community connections in order to nurture professional development and to enhance the relevance of effective communication and problem-solving skills so fundamental to the legal research and writing curriculum.

Another benefit is that students who avail themselves of these hands-on learning experiences are exposed firsthand to different lawyering and counseling approaches. Students who volunteer witness firsthand the impact a lawyer can have in obtaining access to justice for members of a disenfranchised community. These experiences and insights enrich classroom discussion in the legal research and writing course by providing students with a context of the lawyer's role in various problem-solving situations. Significantly, these volunteer experiences are even more crucial to first-year students who are just beginning to form their own identities as lawyers, most notably in the legal research and writing course where students more concretely assume the role of a lawyer for purposes of completing assignments. Therefore, incorporating community volunteer opportunities for first-year law students introduces students to actual lawyers practicing in underserved areas of the law. These examples provide an actual and readily accessible context for incorporating social justice considerations into the legal research and writing curriculum.⁹²

Finally, offering community volunteer opportunities for first-year law students provides a vehicle to help students gain a broader perspective of problem-solving philosophies and humanizes the practice of law. Students who participate in these volunteer programs bring to their legal research and writing class additional insight into the collaborative nature of the problem solving role of lawyers problem-solving in the community. For example, over the course of the past few years, Western New England College School of Law, in collaboration with the YWCA Visitation Centers, designed and implemented an interdisciplinary "Domestic Violence Community Service Project."⁹³

⁹² See *id.* at 437-440; Edwards & Vance, *supra* n. 49, at 65, 73 (noting that introducing social issues in the legal writing classroom enhances students' understanding of the relationship between public interest advocacy and the legal writing and analysis course); Rowe, *supra* n. 28 (providing an in-depth discussion of legal research and writing courses and the skills learned in relation to law study and practice).

⁹³ A sincere thank you to Barbara Loh, YWCA Visitation Center Director; Chris Newman, Northampton Site Coordinator; Brenda Douglas, Springfield Site Coordinator; Kim Zadworney and Kelley Cooper-Miller, former students involved in the Western New England College School of Law Women's Law Association; all of the dedicated student volun-

The YWCA Visitation Centers in Western Massachusetts provide supervised visitation services for families affected by domestic violence “as a way of maintaining on-going parent-child contact pending reunification or termination of parental rights.”⁹⁴ The YWCA Visitation Center in Springfield, Massachusetts, established in 1994, was one of the first in the state.⁹⁵ The Probate and Family Courts in Western Massachusetts can order supervised visitation in the YWCA Visitation Centers so that batterers may visit their children in a “safe, neutral place, with monitoring and accountability.”⁹⁶ Prior to the establishment of Visitation Centers, “[w]omen and children, often suffering post traumatic stress disorder, were left unprotected and vulnerable to further trauma and victimization when unsupervised visitation was ordered.”⁹⁷ In addition to court ordered supervised visitation, referrals can also be made by the Department of Social Services, battered women’s programs, victim witness advocates, batterers’ intervention programs, men’s groups, attorneys, therapists, community agencies, or the parents themselves.⁹⁸

At the start of this Project, there was more than a six-month wait for families to schedule court-ordered supervised visitation.⁹⁹ The backlog was due primarily to the shortage of trained visitation monitors.¹⁰⁰ This collaborative project set out to help alleviate the

teers; and Dean Arthur Gaudio for his support of the community volunteer initiatives.

⁹⁴ Maureen Sheeran & Scott Hampton, *Supervised Visitation in Cases of Domestic Violence*, 50 Juv. & Fam. Ct. J. 13, 17 (Spring 1999).

⁹⁵ *Id.* at 17 n. 28 (citing *Family Violence: Emerging Programs for Battered Mothers and Their Children* (Natl. Council of Juv. & Fam. Ct. Judges 1998)). According to the YWCA of Western Massachusetts, the first Visitation Center in Massachusetts was established in 1991 in Brockton, a southeastern town in Massachusetts. Memo from YWCA of W. Mass., to Beth D. Cohen, Asst. Prof. of L. & Dir. of the Leg. Research & Writing Prog. at W. New Eng. College Sch. of L. and Students at W. New Eng. College Sch. of L., *Supervised Visitation Milestones 1* (copy on file with Author). By 1999, the Massachusetts Department of Social Services Domestic Violence Unit funded seventeen visitation centers statewide. *Id.* at 2.

⁹⁶ Ltr. from Barbara Loh, M.S.W., L.I.C.S.W., Dir., YWCA Visitation Ctr. in W. Mass. to Beth D. Cohen, Asst. Prof. of L. & Dir. of Leg. Research & Writing Prog. at W. New Eng. College Sch. of L., *Recognizing National Supervised Visitation Month* (May 5, 2003) (copy on file with Author).

⁹⁷ *Id.*; see also Sheeran & Hampton, *supra* n. 95, at 17 (noting that both the Model Code on Domestic and Family Violence and the American Bar Association support the use and establishment of visitation centers.).

⁹⁸ *Services for Families Affected by Domestic Violence* (YMCA of W. Mass. Visitation Ctrs. June 2002) (pamphlet on file with Author).

⁹⁹ Conversations with Barbara Loh, M.S.W., L.I.C.S.W., Dir., YWCA Visitation Ctr. in W. Mass. (Oct. 2003).

¹⁰⁰ *Id.*

waiting time by training law students interested in domestic violence to serve as monitors for court-ordered supervised visitation. As an interdisciplinary and collaborative program, the Domestic Violence Community Service Project provides important benefits to both the community and the law students.¹⁰¹ The volunteer program helps alleviate the shortage of trained supervised visitation monitors by providing law students who are interested in becoming trained court-ordered supervised visitation monitors. These additional monitors help provide more access to protection for underserved families and their children.¹⁰² Furthermore, students who participate as volunteers witness firsthand an example of a collaborative inter-disciplinary approach to problem-solving: lawyers and social workers working together for a common good. This experience reinforces the topics introduced in the legal research and writing curriculum regarding humane, holistic, and collaborative methods of problem-solving.

Although the YWCA Visitation Center had an on-site methodology in place for training members of the community to serve as court-ordered visitation monitors, in order to create a training model that would enhance the educational experience for law student participants, we included training that put the program into the broader legal context.¹⁰³ The social workers from the YWCA,

¹⁰¹ *Id.* (crediting law student volunteers as reason that program remained solvent during funding cuts).

¹⁰² The primary role of the court-ordered visitation monitor is to make certain that all required protocols are adhered to by all family participants and to record observations of the supervised visit. *Id.* The recorded observations provide monitoring and accountability to the probate and family court. *Id.* The students were trained to complete observation reports in the required objective and descriptive manner. As monitors, asked to be objective observers, the students are able to experience firsthand how difficult it is to avoid insinuating their own perspective and judgment into a given situation. Students are able to experience an awareness of their own subjectivity and the difficulties in remaining objective even when describing something through firsthand observation. The experience of serving as a monitor exemplified the importance and power of word choice as well as the impact of the report on the reader, all invaluable insights for law students learning to appreciate the power of language.

¹⁰³ Unlike training for other volunteers, we supplemented the training in order to provide the law students with a broader understanding of the legal issues raised in domestic violence cases. Therefore, a lawyer from Western Massachusetts Legal Services provided students with an overview of the legal advocacy issues involved in domestic violence cases. The issues regarding court-ordered supervised visitation were put into the broader legal context for the students. The presentation allowed students to integrate their experiences as monitors within the broader framework of issues raised by domestic violence, the impact on families, the role of legal services, advocates, social workers, and the courts. Many students who volunteered were interested in finding out more about the family law practice area in general. Before her death, Professor Catherine Jones, a faculty member who taught family law, also attended these sessions and provided additional perspective about some of

sensitive to the students' academic schedules, agreed to provide some of the preliminary training at the law school. Follow-up sessions were on-site at the two western Massachusetts YWCA Visitation Centers, and students were fully trained to comply with the YWCA Visitation Center protocol.¹⁰⁴

Additionally, other meetings were held at the law school after students had the opportunity to monitor cases. These additional meetings, as well as the on-going support and guidance of the YWCA staff, provided added support for students throughout every stage of the training process. As part of the on-going support, and in an effort to strengthen the link between the practical experience of serving as a monitor and the educational considerations, we held follow-up sessions at the law school with students, professors, and social workers from the YWCA. These sessions provided a collegial opportunity for students to share and reflect on their varied experiences. With the awareness of how the monitors' observation reports are used by advocates and the courts, the meetings also provided a contextual framework to discuss a variety of issues including the interplay between law and fact and objective versus subjective analysis.

Students who participated as volunteers gained practical understanding of complex issues that are a significant part of the legal research and writing curriculum. The use of facts, the importance of storytelling, and the difference between predictive or objective writing and persuasive writing are cornerstones of the legal research and writing course.¹⁰⁵ Furthermore, the volunteer experi-

the legal issues raised as well as further institutional support for the project.

We also arranged for the student volunteers to visit the Probate and Family Court and meet with a judge. In addition to the benefits of observing the emotionally palpable atmosphere of the court, the judge addressed the students and welcomed questions from them. The judge shared his perspective and insight about the mechanics and philosophy of the court ordered supervised visitation program as well as the sweeping impact of domestic violence. The judge confirmed the importance of neutral monitoring and accountability. He explained when he might order supervised visitation and touted the importance of, and alternatives provided by, the program. The judge also discussed the role of the monitors, and detailed what the court was looking for in the reports. Finally, he explained how the information contained in the reports was used in the decision-making process. This session provided students with an invaluable opportunity to view the inner workings of the adversarial system.

¹⁰⁴ There are nationally recognized standards promulgated by the Supervised Visitation Network that include standards regarding all facets of the services provided. Supervised Visitation Network, *Standards for Supervised Visitation Practice*, <http://www.svnetwork.net/Standards.html> (accessed Sept. 10, 2006). The most recent version of the standards was adopted on May 19, 2006. *Id.*

¹⁰⁵ See Brill et al., *supra* n. 74, at 5–8; see also Carrie Menkel-Meadow, *Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 Fordham L. Rev. 787

ence provided a forum to discuss cross cultural sensitivity and access to justice issues.¹⁰⁶ Pedagogically, participation in the program raised students' awareness of important social issues and legal strategies thereby increasing the opportunity to greatly enrich the discussion of these issues when raised within the context of the legal research and writing curriculum.

This modest yet successful effort helps serve an important community need and provides students, most of whom are in their first year of study, with an invaluable opportunity to volunteer in a capacity that provides insight into the complexities of innovative and interdisciplinary problem-solving.¹⁰⁷ Moreover, this model can be adapted in other states and in other areas of practice. In fact, the law school has also collaborated with the Court Appointed Special Advocate (CASA) program to have students trained as special advocates for children in cases involving domestic violence.¹⁰⁸ The training also took place at the law school and the trained student volunteers were sworn to serve as CASA advocates.¹⁰⁹

The model for the interdisciplinary volunteer opportunities provided by the Domestic Violence Community Service Project and the CASA program is transferable to other visitation center programs as well as to other areas of practice. The projects can be expanded to provide an umbrella for other volunteer opportunities for law students within the community. Such opportunities broaden the students' understanding of the practice of law and the impact of the law on the lives of those in the community.

(2000).

¹⁰⁶ See generally Brook Baker, *Incorporating Diversity and Social Justice Issues in Legal Writing Programs*, 9 Persps. 51 (2001); Charles Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 Berkley La Raza L.J. 140 (1995); Deborah L. Rhode, *Access to Justice: Again, Still*, 73 Fordham L. Rev. 1013 (2004).

¹⁰⁷ Students are continuing to volunteer in the project; the feedback has been extremely positive, and we plan to expand the project next year. The introductory training sessions at the law school were open to everyone and were extremely well attended. Most students in attendance volunteered for the project. Other students came to find out more about the program, family law, and legal services. Although many of the initial volunteers were first-year students, others were upper-level students in family law courses. Word of the project also spread to alumni who attended the training sessions, volunteered, and were trained to serve as monitors.

¹⁰⁸ The Child Abuse Prevention and Treatment Act, enacted in 1974, 42 U.S.C. §§ 5101-5302 (2000), provides a requirement for appointment of a guardian ad litem to represent an abused or neglected child. The CASA program has been developed in all fifty states to meet the needs of abused and neglected children. See generally Natl. CASA Assn. Info., <http://www.casanet.org> (accessed Jan. 14, 2007).

¹⁰⁹ Students completed the thirty-hour training program.

The volunteer opportunities also highlight access to justice issues and the disparity of allocation of resources. Law students, especially those influenced by the negative public perception of lawyers, observe firsthand the dedication among lawyers, judges, and other professionals doing good work in the community. Such firsthand experience provides an invaluable supplement to the classroom component of the legal research and writing course specifically and legal education in general. Creating volunteer opportunities also provides an important foundation for students to begin developing their professional identities and considering a more humanistic philosophy of lawyering.

2. *Mentoring Programs*

In addition to providing community volunteer opportunities for students, mentoring programs are effective to increase support and connection in the lives of law students.¹¹⁰ For example, as director of the legal research and writing program, I have collaborated with student groups and law school administrators to help facilitate student-to-student mentoring and student-to-lawyer mentoring.¹¹¹ During Orientation, first-year students are assigned upper-level student mentors to ease the transition and adjustment to law school.¹¹² Later in the first year, students are assigned a community legal mentor for general professional support and guidance. This mentoring program is established through collaboration with career services and in cooperation with alumni and local bar associations. Therefore, during the first year of law school, students have access to student mentors and professional mentors, lawyers and judges, for support and guidance. Many aspects of the mentoring program are administered through the legal research

¹¹⁰ Although faculty are generally available to provide a great deal of informal mentoring and support, formal mentoring programs connect students with practitioners who are able to provide additional support and insight for the students. Students may shadow them for a day and observe court hearings. Mentors are also available more informally to answer student questions and concerns. Additionally, meeting future colleagues demystifies some of the profession for students.

¹¹¹ Thank you to the numerous students, lawyers, and judges who have volunteered to serve as professional mentors. Thank you also to the Assistant Dean and Director of Career Services Paula Zimmer and Assistant Dean of Law Student Affairs Nancy Sykes.

¹¹² For another example of a law school mentoring program designed to foster ethical standards among students, see generally Patrick J. Schiltz, *Making Ethical Lawyers*, 45 S. Tex. L. Rev. 875, 879–889 (2004).

and writing program because our program offers us unparalleled access to first-year students.

Mentors provide an invaluable resource for students, model volunteerism, and add an opportunity for an early introduction to the collegiality of the profession. The mentors add a supportive connection within both the context of the law school community and the greater legal community. Right from the start, in addition to learning about the law, students begin to meet their colleagues, develop their professional reputation, and develop their professional persona. Mentoring programs foster collegial relationships and add strength to the connection between the law school and the community of lawyers while also confirming that the study and practice of law need not be isolating. These are important principles for students to consider while developing their philosophy of lawyering. Furthermore, students are often able to “shadow” their mentors and gain insight into heretofore mysterious legal proceedings such as motions and depositions. This real-life perspective and experience adds a level of understanding of the legal research curriculum and assignments that is difficult to duplicate within the confines of the traditional law school curriculum.

Another method of bridging the gap between the practicing legal community and academia is for the legal research and writing faculty to coordinate efforts to bring members of the legal community to the law school as guest speakers and as volunteer judges in the moot court program. Following the first-year legal research and writing moot court argument, students have the opportunity to speak informally about the practice of law with a lawyer who served as the judge. Additionally, as director of the legal research and writing program, I collaborate with career services to host lawyers and judges as guest speakers on a variety of legal practice areas as part of a “Lunchtime Lawyering” program. These informal discussions provide another opportunity to introduce students to lawyers practicing in traditional areas such as real estate, or in a small firm practice, as well as practice areas such as collaborative law and transformative mediation. Helping to provide numerous opportunities for students to meet lawyers practicing in different areas and with different philosophies of practice, is another concrete way that legal research and writing faculty can help bridge the gap between education and practice, one of the critical goals of lawyering skills courses.

3. Professional Training Programs

In addition to bringing members of the legal community into the law school and sending students into the community as volunteers, sponsoring continuing legal education events that are open to students as well as lawyers, provides another opportunity to help students learn about different practice philosophies. For example, Western New England College School of Law Legislative Institute and the Massachusetts Collaborative Law Council co-sponsored training on Collaborative Law Practice.¹¹³ The training generated interest and enthusiasm from students, faculty, and area lawyers. Additionally, providing mediation training for interested law students and lawyers provides another opportunity for students to add practical dispute resolution skills as a supplement to their classroom litigation focused education.¹¹⁴ Although such training is usually quite expensive, some projects obtain grants to offset the cost in exchange for a volunteer requirement.¹¹⁵ The range and diversity of the participants in the mediation training as well as the focus on transformative mediation¹¹⁶ provided a

¹¹³ This was a collaborative effort. I would like to specifically thank attorney Eileen Sorrentino and all of the members of the Massachusetts Collaborative Law Council.

¹¹⁴ The formal qualifications for mediators may vary from state to state or rules may or may not be determined by specific courts for mediators. For a sample discussion of some differing qualification standards, as well as their advantages and disadvantages, see generally Norma Jeanne Hill, *Qualification Requirements of Mediators*, 1998 J. Disp. Resol. 37, 39-50.

¹¹⁵ After serving on the advisory board of a local mediation program, I, along with numerous law students, participated in mediation training sufficient to meet court-promulgated uniform rules on dispute resolution. Working with the mediation program, we were able to schedule the training so that students were able to participate.

¹¹⁶ One commentator recently noted that

Robert Baruch Bush and Joseph Folger argued that the true purpose of mediation is to help individuals gain a better understanding of each other and themselves. Mediation, [Bush and Folger] wrote, should be neither evaluative nor facilitative, but rather "transformative." Whether or not the dispute that brings parties together with a mediator is resolved is less important than the individuals' gaining new understanding, new skills for dealing with problems that may arise in the future, and an enhanced sense of control over their lives.

Deborah R. Hensler, *Our Courts, Ourselves: How the Alternative Dispute Resolution Movement Is Re-Shaping Our Legal System*, 108 Penn St. L. Rev. 165, 190 (2003) (citing Robert A. Baruch Bush & Joseph Folger, *The Promise of Mediation: Responding to Conflict through Empowerment and Recognition* (Jossey-Bass Publishers 1994) (outlining a framework for the practice of transformative mediation)). Transformative mediation, unlike problem-solving mediation, focuses on empowerment and recognition and seeks to transform the individuals by helping them to approach the problem and future problems with a more open view. *Id.* The disputants, rather than the mediator, take responsibility for defining the problem and possible solutions. Brad Spangler, *Transformative Mediation*, http://www.beyondintractability.org/essay/transformative_mediation/?nid=1293 (Oct. 2003).

solid foundation for the students to add these skills to their problem-solving repertoire.

Providing legal trainings that focus on the collaborative and humanistic practice of law demonstrates to students that there are diverse approaches to the practice of law, something that often gets lost in the casebook method of the traditional first-year curriculum. Incorporating consideration of professional development issues and opportunities for positive connection with the law throughout the first-year curriculum helps students to put the "lawyer in training" approach into practice. Providing opportunities for students to explore the notion of the practice of law as a compassionate and humanistic problem-solving mechanism may help to alleviate some of the disconnect and dehumanization endemic in the study and practice of law.

IV. CONCLUSION¹¹⁷

In summary, against the backdrop of the rising dissatisfaction of those entering or already in the legal profession, law faculty and administrators in general, and legal research and writing faculty specifically, have opportunities to help students develop a more satisfying way to study and practice law. Developing legal research and writing curriculum more inclusive of humanistic ideals and creating opportunities for pro bono professional development from the start of law school may help ease some of the negativity and discontent in the study and practice of law.

¹¹⁷ Helpful websites:

- Contemplative Practice: <http://www.contemplativemind.org/practices/>
- Comprehensive Law: <http://www.fcsl.edu/faculty/daicoff/law.htm>
- Humanizing Legal Education: http://www.law.fsu.edu/academic_programs/humanizing_lawschool/humanizing_lawschool.html
- International Academy of Collaborative Professionals: <http://collaborativepractice.com/>
- International Alliance of Holistic Lawyers: <http://www.iah.org/>
- Massachusetts Collaborative Law Council: <https://ssl4.westserver.net/massclc.org/home.htm>
- Restorative Justice: <http://www.restorativejustice.org/>
- Therapeutic Jurisprudence: <http://www.therapeuticjurisprudence.org/>
- Transforming Practices: <http://www.transformingpractices.com/>
- The Peace Book: http://www.thepeacecompany.com/store/prod_books_the_peace_book.php
- Visionary Law: <http://www.renaissancelawyer.com/>

Helping students consider their role as compassionate problem-solvers in the greater community and helping students develop a more humanistic and holistic philosophy of lawyering can help to improve the way that students study law and practice law. The benefits transcend the legal research and writing curriculum to help create a more unified view of the study and practice of law and a more unified view of a life in the law. Helping students to appreciate that “[a]n ethical endeavor at which you can work with passion and integrity is a key component in a satisfying life” will ultimately lead to more satisfied students, lawyers, and members of society.¹¹⁸

¹¹⁸ Bell, *supra* n. 29, at 17.

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and
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