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SYMPOSIUM: LEGAL EDUCATION

REFLECTIONS ON TEACHING LAW AS RIGHT LIVELIHOOD: CULTIVATING ETHICS, PROFESSIONALISM, AND COMMITMENT TO PUBLIC SERVICE FROM THE INSIDE OUT

Laurie A. Morin*

[T]here is a deep yearning among teachers and students today – a yearning for embodied meaning – that will be fulfilled only as education embraces the fact that what is inward and invisible is at least as important as what is outward and empirical.¹

I. INTRODUCTION

This is a story of inner transformation that led me to question the very foundation of what it means to “teach” and to “learn.” My quest grew out of a period of struggle in which I doubted both my abilities as a teacher and the value of teaching students who seemed to care about nothing but grades and high-paying jobs. My search for answers took me far afield from the legal scholarship that had become my

*. Associate Professor of Law and Director of the Mason Enhancement Program for Academic Success, University of the District of Columbia David A. Clarke School of Law. With thanks to the many colleagues who have nurtured me on my own spiritual and professional path, especially Brook Baker, Gay Gellhorn, David Hall, Jim Rowan, Jane Scarborough, Alice Thomas, and all the participants in the women’s scholarship group at UDCSL. Susan Waysdorf graciously reviewed and commented on an earlier draft of this article. My thoughts on this subject were inspired by David Dominguez, whose creative presentation at a SALT teaching conference gave me hope that the life of the spirit could live in the modern American Law School. My role models are the pioneers in the academic support field – especially Paula Lustbader, Cathaleen Roache, and Laurie Zimet – who bring the full force of their spirits to their work, and without whom I would never have started on this venture.

1. PARKER J. PALMER, *Foreword* in MARY ROSE O’REILLY, *RADICAL PRESENCE: TEACHING AS CONTEMPLATIVE PRACTICE* (1998).

staple reading diet, to the vast playing grounds of philosophy, theology, and education. On this journey, I discovered some profound truths that have changed my view of the role I play in my students' lives, and the nature of the enterprise we jointly undertake in the classroom.

Thanks to the wonderful writings of national educator Parker Palmer, the first truth I encountered was that the cynicism I felt about my students simply reflected my own troubled soul.² My inner journey was thus not a luxury – for self-knowledge is an essential element of good teaching.³ Since the dissatisfaction I felt was deep in my soul, I turned to spiritual writings for answers. What I discovered in books was the Buddhist notion of “right livelihood” – work that is personally fulfilling, helps rather than harming others, and makes a difference in the world.⁴ What I discovered about myself was that, in undertaking the challenges of a new teaching position, I had lost sight of some of the wisdom I needed to pass on in order to make teaching fulfill my need for purpose and meaning.

Once I understood the nature of my discontent, I knew that the answer lay in trying to cultivate “right livelihood” for myself and my students. But I wasn't quite sure how to accomplish that goal. Although I tried to make space in my classroom for students to get beyond the confines of legal doctrine and advocacy to consider greater notions of fairness and justice, my efforts seemed to either deteriorate into simplistic political debate, or worse yet, to fall on deaf ears. It seemed that nothing in my professional training prepared me to help students look within -- to examine and challenge their deepest beliefs and values. I needed a more cohesive educational theory to help make these discussions more disciplined and meaningful.

Like most legal educators, I had adopted my pedagogical methods primarily by virtue of personality and imitation, augmented by a smattering of learning theory I encountered in the academic support literature.⁵ By nature, my teaching style tends to be interactive and collaborative rather than didactic and autocratic. I have developed a “bag of tricks” that includes collaborative problem-solving, multi-sensory materials, and reflective writings to facilitate learning for diverse preferences.

But the next important “truth” I learned from educational scholarship is that “good teaching cannot be reduced to technique; good teaching comes from the identity

2. Parker J. Palmer, *THE COURAGE TO TEACH: EXPLORING THE INNER LANDSCAPE OF A TEACHER'S LIFE* 2. According to Palmer, “[A]s I teach, I project the condition of my soul onto my students, my subject, and our way of being together. The entanglements I experience in the classroom are often no more or less than the convolutions of my inner life. Viewed from this angle, teaching holds a mirror to the soul. If I am willing to look in that mirror and not run from what I see, I have a chance to gain self-knowledge – and knowing myself is as crucial to good teaching as knowing my students and my subject.” *Id.*

3. *Id.* at 2-3. Palmer proposes that there are three important sources of the “tangles” of teaching. “First, the subjects we teach are as large and complex as life, so our knowledge of them is always flawed and partial. No matter how we devote ourselves to reading and research, teaching requires a command of content that always eludes our grasp. Second, the students we teach are larger than life and even more complex. To see them clearly and see them whole, and respond to them wisely in the moment, requires a fusion of Freud and Solomon that few of us achieve. . . . But there is another reason for these complexities: we teach who we are.” *Id.* at 2. Thus, Palmer claims that self-knowledge is essential to knowing one's students and one subject, and whatever self-knowledge we attain as teachers will serve our students and our scholarship well. *Id.* at 3.

4. See, e.g., E.F. Schumacher, *Good Work*, in *MINDFULNESS AND MEANINGFUL WORK: EXPLORATIONS IN RIGHT LIVELIHOOD* 131 (Claude Whitmyer, ed., 1994).

5. See, e.g., Robin A. Boyle and Rita Dunn, *Teaching Law Students Through Individual Learning Styles*, 62 *ALB. L. REV.* 213 (1998); Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 *J. LEG. ED.* 402 (1998).

and integrity of the teacher.”⁶ This truth helps explain the counter-intuitive reality that teachers who are widely loved by students vary widely in their styles: some predominantly lecture, others excel at Socratic dialogue, while still others tend toward creative chaos. What matters is not the methods, but the teacher’s ability “to weave a complex web of connections among themselves, their subjects, and their students so that students can learn to weave a world for themselves.”⁷

The third truth I learned about teaching illuminates the nature of these complex relationships. Good teaching does not place the teacher at the center of the room – keeper of all knowledge and wisdom.⁸ It does not place the students at the center of the room – reservoirs of knowledge just waiting to be tapped.⁹ Good teaching places a transcendent third thing – a subject – at the center of a learning community where the role of the teacher is to bring students into the circle of practice in that field.¹⁰

Our knowledge of the world comes from gathering around great things in a complex and interactive community of truth. But good teachers do more than deliver the news from that community to their students. Good teachers replicate the process of knowing by engaging students in the dynamics of the community of truth.To teach is to create a space in which the community of truth is practiced.¹¹

The remainder of this Essay expands upon these educational concepts, exploring what it might mean to place the notion of “right livelihood” in the center of a learning community where the teacher’s role would be to guide students through the process of discovering their own truths about how the legal profession can best fulfill their need for purpose and meaning in their work. In the process, I propose, students will go beyond the externally-imposed norms of professional ethics, civility, and public service to a state of ongoing vocational integration – a learning process in which they will continue to question how to practice law in a way that is consistent with their deepest values, beliefs, and goals.

For purposes of illustration, this Essay draws upon stories peopled by my students as well as myself. While I am pleased to share some of my own experiences in the interest of learning, I have done my best to obscure the identities and

6. Palmer, *supra* note 2, at 10. Palmer claims that good teachers share one trait: a strong sense of personal identity infuses their work. *Id.* “Bad teachers distance themselves from the subject they are teaching – and in the process, from their students. Good teachers join self and subject and students in the fabric of life.” *Id.* at 11.

7. *Id.*

8. *Id.* at 116. According to Palmer, conventional pedagogy “centers on a teacher who does little more than deliver conclusions to students. It assumes that the teacher has all the knowledge and the students have little or none, that the teacher must give and the students must take, that the teacher sets all the standards and the student must measure up.” *Id.*

9. *Id.* Palmer describes the student-centered model as an extreme reaction to the teacher-centered model, where “students and the act of learning are more important than teachers and the act of teaching.” *Id.* The problem with this model is that it can lead to mindless relativism. Teachers may yield too much of their leadership, because “it is difficult to confront ignorance and bias in individuals or the group when students themselves comprise the plumb line.” *Id.* at 119.

10. *Id.* at 122. According to Palmer, teachers do not need to tell students everything they know about a subject. Rather, they can “present small but critical samples of the data of the field to help students understand how a practitioner in this field generates data, checks and corrects data, thinks about data, uses and applies data, and shares data with other.” *Id.*

11. *Id.* at 115, 120.

characteristics of my students to avoid embarrassment. As their teacher, I assume full responsibility for our failed classroom experiments.

II. IN THE BEGINNING

When I first started teaching, I knew I had finally found the ideal way to put my law degree to use. It combined all the features I need to make my work meaningful: an opportunity to “help” others in a collegial environment with ongoing opportunity for intellectual exchange and challenge.¹² When things went well in the classroom, I derived great satisfaction from communicating what I knew about the law, seeing the light bulb go off when a student “got” a form of argument or a fine doctrinal point, watching students grow as their knowledge of the law expanded. I also enjoyed the things I learned from students, as they challenged me with a provocative question, a different experience, or a new way of looking at things. I felt that my investment in them paid off as I watched many of them go on to blaze trails in civil rights, human rights, and poverty law.

Preparing to teach those courses also immersed me in the heady pleasure of deep reading and reflection, and the luxury of developing my own perspective on topics that had been only a jumble of rules while in law school. Moreover, the norms of the academy encouraged me to do what I loved best – think, reflect, and write about issues that engrossed me.

However, as the years passed, I found myself growing dissatisfied with my chosen profession – struggling not to join colleagues as they grumbled about burdensome committee work, compassion fatigue, and the declining quality of students. What troubled me most was the competitive atmosphere of legal education -- the relentless pressure to give and justify grades that determined students’ futures, and the time constraints that made it difficult to integrate discussion of justice and values in my skills courses. Against the backdrop of declining job opportunities, the public siege on the legal profession in general and legal education in particular, it seemed that the students’ joy in learning – and mine in teaching -- was being subsumed by concerns about grades, bar passage, and getting jobs that would enable them to pay back staggering student loans.

My discontent went beyond the normal “bad teaching” days when students seem confused, the discussion seems lifeless, and I question what ever made me think I

12. Apart from a stint as a Legal Writing instructor my first year out of law school, my first teaching experience was as an adjunct professor at my *alma mater*, Northeastern University School of Law, where I was initially hired to create and teach their first academic support courses. As the years went by, I became increasingly immersed in teaching, until I found myself in the position of a full-time adjunct, juggling courses in legal research and writing, academic support, and doctrinal law. I consider myself fortunate to have begun my career as a teacher at a law school that did its best to include discussion of values in its curriculum. Under the leadership of Dean David Hall, the faculty adopted a required first year course – Law, Culture and Difference – that gave students an opportunity to examine and question the cultural values, beliefs and assumptions underlying the law. I am grateful for the opportunity to help facilitate that course, which was seminal in helping me develop my own perspective on the role of law in society. After several years of trying to fit teaching into the spaces left by my other legal work, I was eager to make teaching my full-time vocation. Thus, I was pleased to accept a position as full-time, tenure-track Director of the Academic Success Program at the University of the District of Columbia David A. Clarke School of Law. The mission of UDC-DCSL – to open up the legal profession to groups under-represented in the bar and to provide legal services to poor and under-represented communities – gives me the opportunity to continue my commitment to cultivating diversity and public service in the legal profession.

could teach in the first place.¹³ This was a deeper, spiritual discontent. I found myself at conferences and awards dinners envying the lawyers who seemed to be doing something more tangible with their expertise – representing the poor, getting involved in their communities, engaging in the global struggle for human rights – in sum, making a difference in the world.

This discontent came to a head when a respected colleague, who gave up the practice of law to run a non-profit agency, asked the question I had been asking myself: Even though I loved teaching law, was I doing any good in the world by helping to educate a new generation of lawyers in a society that was already overpopulated with lawyers who did nothing to solve the pressing social issues of the day?

III. DISCOVERING RIGHT LIVELIHOOD

Like many baby boomers, I was experiencing a crisis of meaning that forced me to sit back and contemplate whether the work I was doing was helping me fulfill my purpose in the world.¹⁴ In the process of wrestling with my demons, I sought advice in books written by everybody from career counselors¹⁵ to corporate philosophers¹⁶ to theologians¹⁷. A recurrent theme that emerged in this research was the notion of “right livelihood.”¹⁸ The original concept of right livelihood comes from the teachings of Buddha, who encouraged seekers of enlightenment to avoid work that might hurt living beings or the environment.¹⁹ Of course, the notion of work that links people to a higher purpose can be found in nearly every culture and spiritual

13. See, e.g., Palmer, *supra* note 2, at 1. Teachers who love their work all have days when they question their calling, but when the bad days threaten to harden into cynicism, a period of introspection may be needed.

14. See e.g., MATTHEW FOX, *THE REINVENTION OF WORK: A NEW VISION OF LIVELIHOOD FOR OUR TIME* 103 (1994) (“In our time, we workers are being called to reexamine our work: how we do it; whom it is helping or hurting; what it is we do; and what we *might be doing* if we were to let go of our present work and follow a deeper call”); Claude Whitmyer, *Doing Well by Doing Good*, in *MINDFULNESS AND MEANINGFUL WORK: EXPLORATIONS IN RIGHT LIVELIHOOD* 3, 14 (Claude Whitmyer, ed., 1994) (in recent years, more and more people are seeking meaning and fulfillment in their work, as reflected in the burgeoning academic interest in ethics in business, spirituality in the work place, and the like). See also, *Focus on Work*, *New Age* 93 (1998) (discussing the quest for right livelihood; providing profiles of business, health and non-profit leaders who have successfully integrated spirituality with their work; and citing dozens of books and more than 1,700 web pages devoted to the subject).

15. See, e.g., MARSHA SINETAR, *DO WHAT YOU LOVE, THE MONEY WILL FOLLOW: DISCOVERING YOUR RIGHT LIVELIHOOD* (1987); BARBARA SHER, *IT’S ONLY TOO LATE IF YOU DON’T START NOW: HOW TO CREATE YOUR SECOND LIFE AFTER 40* (1998).

16. See, e.g., MICHAEL NOVAK, *BUSINESS AS A CALLING: WORK AND THE EXAMINED LIFE* (1996); THE DRUCKER FOUNDATION, *THE ORGANIZATION OF THE FUTURE* (Frances Hesselbein et als. Eds., 1997. See also, stories of the reinvention of business in Fox, *supra* note 14, at Chapter 8 and sources cited therein.

17. See, e.g., LAMA SURYADAS, *AWAKENING THE BUDDHA WITHIN: TIBETAN WISDOM FOR THE WESTERN WORLD* (1997); *THE PATH OF COMPASSION: WRITINGS ON SOCIALLY ENGAGED BUDDHISM* (Fred Eppsteiner ed., 1988).

18. See, e.g., Sinetar, *supra* note 15, at 10-11.

19. *Id.* In borrowing “right livelihood” and other terms from Buddhist tradition, I am mindful of the risk of misappropriating spiritual concepts. I am not a Buddhist, although I have studied some Buddhist writers, especially American Buddhists, and have engaged in some Zen practice. What draws me to the concepts of Buddhism is its emphasis on spirituality as contemplative “practice” rather than as a static system of beliefs. See, e.g., MARY ROSE O’REILLY, *RADICAL PRESENCE: TEACHING AS CONTEMPLATIVE PRACTICE* 5 (1998). My reference to “right livelihood” and other Buddhist concepts in this article is grounded in a belief that contemplation is as essential to “knowing” as facts, theories, and doctrine. Thus, Buddhist notions provide a metaphor for discussing the need to “create a space” in the classroom for contemplation that will lead to greater self-knowledge. See *id.* at 6. By using Buddhist notions in this manner, I mean no disrespect to those who practice Buddhism as a way of life, and I will do my best not to trivialize or misconstrue the basic tenets of their beliefs.

tradition.²⁰ It also has deep roots in philosophy²¹ as well as modern psychological theory.²² In contemporary times, the concept has become part of standard discourse in the corporate business world.²³ It has even gained some currency in the legal profession.²⁴

As the concept of right livelihood has been absorbed by twentieth century western culture, its meaning has expanded beyond the Buddhist idea of doing no harm to embody three key concepts: work should be personally fulfilling, help rather than harming others, and make a difference in the world.²⁵ My work as a law professor satisfied the first two requirements, but I was battling doubts about the third.

After much reflection, I came to the conclusion that I don't have to give up the teaching profession that I love so much. However, in order to make it my "right livelihood," I need to do more than be a "good teacher" in the traditional sense of the

20. See, e.g., Sinetar, *supra* note 16, at 198 ("[a]ll major cultures have, somewhere within their instructive tradition, grasped this central truth: that work, done rightly, affords the individual an understanding of the key principles of life and of the universe, and – moreover – that work is a critical avenue and a discipline for personality health and optimum, responsible functioning. If the individual will but use his work for this end, then whatever his role in life, his work can become an immediate and practical way of developing his highest motives and transforming him in such a way that he reaches completeness as a personality"). In Christian theology, the term "calling" or "vocation" has traditionally been used to refer to the work or activity that God desires and makes known for a person to do. Timothy J. Floyd, *The Practice of Law as a Vocation or Calling*, 66 *FORDHAM LAW REV.* 1405 (1998). There is some disagreement among religious scholars as to whether or not every person has a calling or vocation, and whether or not the practice of law can be such a calling. *Id.* at 1407-1408, discussing *inter alia* the work of JOSEPH G. ALLEGRETTI, *THE LAWYER'S CALLING: CHRISTIAN FAITH AND LEGAL PRACTICE* (1996). The Buddhist concept, by contrast, is not based on mandates or commandments, nor does it depend upon being called by a powerful god or divine savior. Kinji Kanazawa, *Being a Buddhist and a Lawyer*, 66 *FORDHAM LAW REV.* 1171 (1998).

21. See, e.g., Floyd, *supra* note 19, at 1413-15 (discussing an Aristotelian philosophy in which living well, developing character, virtues and good habits is more important than knowing and following rules).

22. See, e.g., Sinetar, *supra* note 14, at 13-14, (describing Abraham Maslow's psychological theory of self-actualization); Fox, *supra* note 14, at chapter 7 and sources cited therein; Floyd, *supra* note 20, at 1413.

23. See, e.g., *THE ORGANIZATION OF THE FUTURE*, *supra* note 16, containing articles written by dozens of managers, academics, human resources experts, and management consultants. Articles that explicitly address the concept of right livelihood include Ian Somerville and John Edwin Mroz, *New Competencies for a New World*, *Id.* at 65, 69 ("Corporate higher purpose can provide a point of stability and a motivational framework so that employees can bring their hearts as well as their minds to work"); Rosabeth Moss Kanter, *Restoring People to the Heart of the Organization of the Future*, *Id.* at 139, 145 (describing mission as one of the motivational tools to help people believe in the importance of their work); Greg Parston, *Producing Social Results*, *Id.* at 341, 347 ("The leaders of tomorrow's socially responsible businesses will coach and educate and facilitate others in their organization to contribute to a social result that is bigger than themselves and bigger than their organization.") See also, TERRENCE DEAL, *CORPORATE CELEBRATIONS: PLAY, PURPOSE, AND PROFIT AT WORK* (1998).

24. There have been at least two law review symposia devoted to the topic of "religious lawyering." See, *Symposium: The Relevance of Religion to a Lawyer's Work: An Interfaith Conference*, 66 *FORDHAM L. REV.* (1998); *Faith and the Law*, 27 *TEX. TECH. L. REV.* (1996). The Fordham symposium devoted two articles and an entire working group to the topic of law as a vocation or calling. See, Floyd, *supra* note 21; David L. Gregory, *The Discernment of (the Law Student's) Vocation in Law*, 66 *FORDHAM L. REV.* 1425 (1998); *Report of Working Group #3: Agenda: the Practice of Law as a Vocation or Calling*, 66 *FORDHAM L. REV.* 1597, 1601 (1998). One author suggested that the religious lawyering movement is likely to expand as a result of lawyers' continuing search for meaning in their work. See, Russell G. Pearce, *Foreword: The Religious Lawyering Movement: An Emerging Force in Legal Ethics and Professionalism*, 66 *FORDHAM L. REV.* 1075, 1081 (1998). Pearce argues that, in some ways, the search is particular to lawyers as the crisis of professionalism continues, and individual lawyers find themselves unable to discover a satisfactory way to reconcile their personal and professional aspirations; and as the organized bar has not found a successful means of inspiring lawyers to meet their ethical obligations, including their responsibilities to the public interest. *Id.*

25. See, e.g., Schumacher, *supra* note 4, at 131. "Traditional wisdom teaches that the function of work is at heart three-fold: to give a person a chance to utilize and develop his faculties; to enable him to overcome his inborn egocentricity by joining with other people in a common task; and to bring forth the goods and services needed by all of us for a decent existence. I think all this needs to be taught.... The question is raised: How do we prepare young people for the future world of work? and the first answer, and the first answer, I think, must be: We should prepare them to be able to distinguish between good work and bad work and encourage them not to accept the latter." See also Sinetar, *supra* note 15, at 11; Das, *supra* note 17, at 231, 234.

work. I need to change the way I teach law to encourage students to go out and make a difference in the world – to practice their own “right livelihoods.” I need to nurture the dreams many of them had had when they came to law school – dreams of helping their communities, providing justice to the under-represented, and making the world a better place. I need to help them leave law school not just better lawyers, but better people.

These goals are certainly not a new idea to me or many of my colleagues on law school faculties.²⁶ What is new is my proposal for how to accomplish those goals. In addition to making sure that our students learn the externally imposed norms of the profession, I believe that law schools must take the lead in nurturing students’ inner professional growth -- encouraging them to develop their “right livelihoods by integrating their own values and beliefs with the norms of the legal profession.”²⁷ Nurturing this kind of inner growth requires the teacher to “spend less time filling the space with data and [her] own thoughts and more time opening a space where students can have a conversation with the subject and with each other.”²⁸

IV. CREATING A LEARNING COMMUNITY

Incorporating right livelihood into the curriculum would require a paradigm shift in the way we think about and deliver legal education. The traditional model of law school teaching, with its emphasis on the Langdellian method, rigorous categorical thinking, and competitive adversarial process, may accomplish some important pedagogical goals, but it leaves many casualties in its wake.²⁹ Critics

26. There are literally hundreds of law review articles written about the need for law schools to foster professional ethics and public service in their students. See, e.g., *Legal Professionalism*, 32 WAKE FOREST L. REV. (1997) (entire issue devoted to articles about professionalism); Phoebe A. Haddon, *Education for a Public Calling in the 21st Century*, 69 WASH. L. REV. 573 (1994); Mary Ann Dantuono, *A Citizen Lawyer's Moral, Religious, and Professional Responsibility for the Administration of Justice for the Poor*, 66 FORDHAM L. REV. 1383, 1390-91 (encouraging law schools to train students to participate in public discourse and engage in pro bono work).

27. See, e.g., Fox, *supra* note 14, at 171, 175, arguing that educators must accept the responsibility for nurturing students’ right livelihoods. (“The first task in remodeling education is to understand it as education *for work* and not merely *for jobs*....If we understand education to be preparation for work (and not just jobs), we must ask: what work today would be the most useful? What work would be the best investment, and therefore what educational models would serve us best? I propose that the most useful work for our times will not be the destructive work that factories make for us but the constructive work of compassion. The effects of compassion as the primary goal of education will flow everywhere into society.”)

28. Palmer, *supra* note 2, at 120.

29. See, e.g., Theresa Glennon, *Theoretics of Practice: The Integration of Progressive Thought and Action: Lawyers and Caring: Building an Ethic of Care into Professional Responsibility*, 43 HASTINGS L.J. 1175 (1992). Glennon argues that the incessant competition and individualism of law school engenders a sense of failure and negative feelings about law school. *Id.* at 1179. Moreover, she argues that students disengage from a search for meaning and connection in their professional lives because the traditional law school curriculum conveys the idea that law offers few opportunities to effect meaningful social change. *Id.* As a result, Glennon argues, law students may shift their hopes for a meaningful and connected existence from their professional lives to their personal lives. *Id.* See also, Howard C. Anawalt, *The Habit of Success*, 10 NOVA L.J. 255, 256-57 (1986) (noting that uncertainty causes students to want to be told The Answer). See also, Susan P. Strum, *Article: From Gladiators to Problem-Solvers: Connecting Conversations about Women, the Academy, and the Legal Profession*, 4 DUKE J. GENDER L. & POL’Y 119 (1997). Strum characterizes the present system as the “gladiator” model of legal education and lawyering, which celebrates analytical rigor, toughness, and quick thinking and defines successful performance as “fighting to win.” *Id.* at 121. She proposes a problem-solving orientation to lawyering and legal education that has the potential to address the interrelated critiques of exclusion of women and minorities from the profession, *Id.* at 119; concerns about the values and goals of the prevailing legal educational mission, *Id.* at 120; and the prevailing model of legal professionalism perpetuated by the traditional law school curriculum, *Id.* at 121.

suggest that it devalues students' experience and knowledge,³⁰ fosters alienation,³¹ and ultimately leaves some students who survive the process cynical and greedy.³²

Although I share in some of the critiques, I don't believe they result from teaching methodologies,³³ rather, I believe that the problems stem from our misconceptions about the meaning of "knowledge" and how it is acquired. The dominant mode of "knowing" in traditional education, including legal education, is objectivism, which portrays truth as something we can achieve only by disconnecting ourselves from the thing we want to know.³⁴ Objectivism manifests itself in an educational model where knowledge flows from the top down – from experts (teachers) who are qualified to know the truth to amateurs (students) who are qualified only to receive truth.³⁵

In the law school classroom, objectivism manifests itself in discourse that glorifies linear, logical doctrinal analysis as the primary method of "knowing" the law. We discourage students from talking about what they feel, believe, or value,

30. See, e.g., Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 LOY. U. CHI. L.J. 449 (1996). As a result of Langdellian questioning, students may suffer anxiety at the realization that law is not as certain, predictable, and ordered as many students expect. "Not only are the questions themselves difficult, but the student does not enter into a quid pro quo relationship with her questioner. In other words, students often go unrewarded for their persistence and insight." *Id.* at 458. Moreover, because the Langdellian method emphasizes logic and reason over personal conviction, it may threaten the personal values by which students define themselves as distinct and special. *Id.* at 457, n. 64, citing Michael E. Carney, *Narcissistic Concerns in the Educational Experience of Law Students*, 18 J. PSYCHIATRY & L. 9, 17 (1990). These problems may be compounded for minority and non-traditional law students whose experience and values clash with law school culture. See, e.g., Stropus, *supra*, at 462-63 and sources cited therein; Judith G. Greenberg, *Erasing Race from Legal Education*, 28 U. MICH. J.L. REF. 51 (1994); Strum, *supra* note 29, at 119.

31. See, e.g., Cathaleen A. Roach, *A River Runs Through It: Tapping Into The Informational Stream To Move Students From Isolation to Autonomy*, 36 ARIZ. L.REV. 667 (1994). Roach argues that the Langdellian model of case law and Socratic method produces widespread acute psychological distress among first year law students, often resulting in attitudes of emotional detachment or alienation. *Id.* at 670-671. Roach posits that the problem results more from isolation than it does from the typically described alienation for from a loss of self-esteem. *Id.* at 672. She found that students in her academic support program were isolated from themselves, each other, their professors, and virtually all previously successful coping mechanisms from their undergraduate experience. *Id.* Moreover, she found that much of the acute distress felt by first year law students resulted from the lack of context within which they were operating; they were completely isolated from any direction, modeling, or explicit instruction about what specifically is expected of them during their first year. *Id.* at 672. According to Roach, the problem is even more difficult for many minority and non-traditional law students, who experience acute isolation in most law schools. *Id.* at 673. Students of color are often shut out of both formal networks, such as study groups, and more informal networking systems by which white students tend to acquire information about how to function in law school. *Id.* at 676. See also, Ronald M. Pipkin, *Moonlighting in Law School: A Multischool Study of Part-Time Employment of Full-Time Students*, 1982 Am. B. Found. Res. J. 1109. Pipkin found that "[b]oth temporal and attitudinal disengagement from law school [are] commonplace among upper-class students in all school settings." *Id.*

32. See, e.g., Ruta K. Stropus, *supra* note 30, at 449. Stropus argues that some students respond to the Langdellian method by adopting coping mechanisms that include obsession with grades and class rank, withdrawal from the learning experience, and antagonism toward their instructors and colleagues. *Id.* at 459. Some take pride in beating the professor at his own game, and relish humiliating rather than helping colleagues. *Id.*

33. See Palmer, *supra* note 2, at 10-11; 115-116. Parker argues that "good teaching cannot be reduced to technique; good teaching comes from the identity and integrity of the teacher." *Id.* at 10. A strong sense of personal identity infuses a good teacher's work; moreover, good teachers are able to "weave a complex web of connections among themselves, their subjects, and their students so that students can learn to weave a world for themselves." *Id.* at 11. However, different teachers with different gifts create this learning community in surprisingly diverse ways, using widely divergent methods – including lectures, Socratic dialogues, laboratory experiments, fieldwork, and many other pedagogies, traditional and experimental. *Id.* at 11, 115. The proper and powerful role of technique, according to Palmer, is that "as we learn more about who we are, we can learn techniques that reveal rather than conceal the personhood from which good teaching comes. *Id.* at 24.

34. *Id.* at 51.

35. *Id.* at 100-101. "In this myth, truth is a set of propositions about objects; education is a system for delivery those propositions to students; and an educated person is one who can remember and repeat the experts' propositions." *Id.* at 101.

fearing a descent into “mushy” thinking. In teaching legal advocacy, for example, I hear a tape of my voice coaching students: “The judge doesn’t want to know what you feel or believe; she wants to know what the law compels.” Of course, this “perspectiveless” view has been criticized by a vast body of critical legal scholarship,³⁶ but I think it is safe to say that it continues to predominate in most law school classrooms.

By contrast, an educational model based on engaging students in a “community of truth” represents knowing quite differently. In a community of truth, “objects” of knowledge and ultimate authorities are replaced by a community of learners gathered around a common “subject” and guided by shared rules of observation and interpretation.³⁷ “As we try to understand the subject in the community of truth, we enter into complex patterns of communication—sharing observations and interpretations, correcting and complementing each other, torn by conflict in this moment and joined by consensus in the next.”³⁸ Thus, “objective” knowledge is replaced with a notion of truth as “an eternal conversation about things that matter, conducted with passion and discipline.”³⁹

In law school teaching, the shared rules of observation and interpretation encompassed in traditional methodology include *stare decisis*, common law development through Socratic dialogue, rules of statutory construction, and other traditional methods of legal reasoning, with an occasional foray into the exotic land of “policy.” Rarely, however, does the traditional classroom venture into the more rarefied atmosphere of jurisprudence, critical analysis, or moral reasoning. We leave those rules of observation and interpretation for the more “scholarly” students who elect to take small, upper-level seminars. Small wonder many law students find the law school experience demeaning, infantilizing, and ultimately devoid of passion.

36. See, e.g., Kimberle Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 11 NATIONAL BLACK L. J. 1, 2 (1989) (arguing that the norm of perspectivelessness is problematic in general, and particularly burdensome on minority students). POWER, PRIVILEGE AND LAW: A CIVIL RIGHTS READER (Leslie Bender and Daan Braveman, eds. 1995) (collecting some of the best critiques on a neutral and objective view of law).

37. Palmer, *supra* note 2, at 101. “This distinction is crucial to knowing, teaching, and learning: a *subject is available for relationship; an object is not.*” *Id.* at 102. Palmer distinguishes this “subject-centered” model from the two more familiar educational models that are often pitted against one another. Traditional “teacher-centered” pedagogy centers on a teacher who does little more than deliver conclusions to students. *Id.* at 116. It assumes that the teacher has all the knowledge and the students have little or none. *Id.* In reaction to this scenario, a “student-centered” pedagogy has emerged, based on the principle that students and the act of learning are more important than teachers and the act of teaching. *Id.* “The student is regarded as a reservoir of knowledge to be tapped, students are encouraged to teach each other, the standards of accountability emerge from the group itself, and the teacher’s role varies from facilitator to co-learner to necessary evil.” *Id.* By contrast, a subject-centered model places a “transcendent third thing” at the center of the pedagogical circle. *Id.* at 116-117. “In a subject-centered classroom, the teacher’s central task is to give the great thing an independent voice—a capacity to speak its truth quite apart from the teacher’s voice in terms that students can hear and understand.” *Id.* at 118.

38. *Id.* at 103. Parker contends that truth is not lodged in the conclusions we reach about objects of knowledge, since the conclusions keep changing. *Id.* at 104. We need to know the current conclusions in order to get in on the conversation, but “truth” evolves as the result of a passionate and disciplined process of ongoing inquiry. *Id.* “[T]he only ‘objective’ knowledge we possess is the knowledge that comes from a community of people looking at a subject and debating their observations within a consensual framework of procedural rules.” *Id.*

39. *Id.*

V. PREPARING A LEARNING SPACE

A shift from hierarchical objective ways of teaching to fostering a “community of truth” does not mean that the teacher should abandon her leadership role in fostering learning, nor should she totally abandon techniques and methodology. It does, however, mean resisting the urge to “do what I was trained to do: fully occupy the space with my knowledge, even if doing so squeezes my students out.”⁴⁰ In order to make this transition responsibly, teachers must learn to “prepare a learning space” that provides a proper balance of planning and flexibility, introspection and dialogue, substance and gaps in which students can think their own thoughts.⁴¹

To do this effectively, we must learn to embrace paradox, for creative tension is a prerequisite for learning to occur in a community of truth.⁴² Applying this paradoxical tension to “right livelihood,” a student needs grounding in the external norms of the profession, with ample time for contemplation and critical introspection to find her own “authentic voice” -- her place within those norms. She needs reflection and response (a form of “moral dialogue”⁴³) to test her own thoughts about the law and the legal profession, while listening for a collective wisdom that may influence her ideas and beliefs. And she needs both solitude and community, silence

40. Palmer, *supra* note 2, at 120. The need to “fill the space” arises from a professional ethic that holds us responsible, as many faculty would say, to “cover the field.” *Id.* at 121. The problem is that the worst way to deliver a great deal of information is by nonstop lecturing. Real learning requires time to assimilate, review, and process information; thus, it is much more effective to deliver it in brief but frequent installments. *Id.* Parker contends that every discipline is like a hologram, in which every part contains all of the information possessed by the whole. *Id.* at 122. Thus, by presenting small but critical samples of the data of the field, a teacher can bring students into the circle of practice in that field -- learning how a practitioner in the field generates, checks, thinks about, uses and applies data. *Id.* That is precisely what most law professors are attempting to do when they talk about “teaching students to think like lawyers.”

41. *Id.* at 133.

42. *Id.* at 73-74. Palmer offers six paradoxical tensions that, although not prescriptive or exhaustive, can contribute to pedagogical design. The space should be open and bounded -- planned around a text or body of data that keeps us focused on the subject at hand, but open to the many paths down which discovery may lead. *Id.* at 74-75. It must be hospitable and charged -- inviting, safe and trustworthy as well as open and free. *Id.* at 75. The space should invite the voice of the individual and the voice of the group -- inviting students to find their authentic voices, while simultaneously gathering and amplifying the voice of the group, so that the group can affirm, question, challenge, and correct the voice of the individual. *Id.* The space should honor the “little” stories of the individual and the “big” stories of the disciplines and tradition. *Id.* at 76. It should support solitude while surrounding it with the resources of the community. *Id.* Finally, the space should welcome both silence and speech -- words of exchange and an opportunity to reflect on what we have said and heard. *Id.* at 77.

43. See, e.g., Steven Hartwell, *Promoting Moral Development Through Experiential Learning*, 1 CLINICAL L. REV. 505 (1995). As contrasted with legal discourse, moral discourse uses the method of self-revelation with the goal of self-knowledge -- “students cooperate together to understand mutually what each is saying with the goal of revealing to themselves and others their moral position and moral reasoning.” *Id.* at 530. Moral discourse can also be contrasted from the dominant “persuasive mode” of most law school discourse. Moral discourse employs a “learning mode” in which the listener collaborates with the speaker in helping the speaker clarify what he means. *Id.*

and speech to reach a place of “vocational integration,”⁴⁴ where work is imbued with her own beliefs and values.⁴⁵

The task of the “teacher” is to provide a learning space that bounds the inquiry with appropriate texts or source material, while leaving room for the students to look inward and engage with one another and the materials from the perspective of their own experience, beliefs, and insights -- to test their beliefs and values against the norms of the profession and against one another. This approach facilitates an ongoing process of moral and professional growth in which students will have the space to question what kind of law they want to practice, what kinds of clients they want to represent, and what kinds of strategies and methods they are comfortable employing in their representation of clients.⁴⁶ In other words, the path to teaching law as “right livelihood” must evolve “from the inside out.”

VI. RESPONDING TO THE “CRISIS” OF PROFESSIONALISM

In addition to making our students better people and better lawyers, a pedagogy that emphasizes “right livelihood” would go a long way toward addressing the mounting public critique of the legal profession. Much ink has already been shed about the “crisis” of professionalism and how law schools should respond to it.⁴⁷ The

44. For a full discussion of vocational integration, see Sinetar, *supra* note 15, at Chapter 10. Vocational integration involves total commitment of oneself to one’s life work. *Id.* at 192. The achievement of vocational integration is described as both psychological and spiritual in nature, leading to a conscious, intentional manner of living. *Id.* Sinetar argues that all major cultures have grasped this central truth: “that work, done rightly, affords the individual an understanding of the key principles of life and of the universe, and – moreover – that work is a critical avenue and a discipline for personality health and optimum, responsible functioning. If the individual will but use his work for this end, then whatever his role in life, his work can become an immediate and practical way of developing his highest motives and transforming him in such a way that he reaches completeness as a personality.” *Id.* at 198.

45. See *id.* 177. “Work is one of the ways that the mature person cares for himself and others. Through his work and relationships the individual finds a place in the world, belongs to it, takes responsibility for himself and for others. Work becomes his way of giving of himself.” *Id.* According to Sinetar, work in the vocationally integrated person becomes somehow sacred, although not necessarily tied to religious concepts or dogma. *Id.* at 179. “Because of this he achieves a kind of spiritual health or wholeness which is a direct result of his own truthfulness, courage and conscious choices.” *Id.* at 192.

46. See, e.g., Eleanor W. Myers, *Article: “Simple Truths” About Moral Education*, 45 AM. U.L. REV. 823 (1996). Myers argues that the bar’s unitary conception of the profession undermines the profession’s attempts to respond to concern for declining professional values. *Id.* at 823. She proposes that law schools should openly proclaim the variety and diversity of professional work so students can seek a practice that fits their personal styles and utilizes their skills. *Id.* at 826. Because their work environments will significantly influence the kinds of ethical dilemmas they will face as well as their resolution, students should be encouraged to seek out mentors in practice with whom they can discuss ethical questions. *Id.* Moreover, they should be trained to have confidence in their own moral intuitions in resolving ethical dilemmas. *Id.*

47. See, e.g., TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE (American Bar Association Section of Legal Education and Admissions to the Bar, August 1996) (report culminating a two-year effort to determine how to better inculcate a higher sense of professionalism among American lawyers, building on the work of two prior major reports issued by the American Bar Association.) Several recent books have been written on the subject. See also Mary Ann Glendon, *A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society* (1994); ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1994); DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (1988); and THOMAS L. SHAFFER, *AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION* (1991). In addition, there are scores of law review articles addressing different dimensions of the problem. See, e.g., Leslie Griffin, *The Relevance of Religion to a Lawyer’s Work: Legal Ethics*, 66 Fordham L.Rev. 1253, 1264 n. 27, and sources cited therein; Mary Ann Dantuono, *A Citizen Lawyer’s Moral, Religious, and Professional Responsibility for the Administration of Justice for the Poor*, 66 Fordham L.Rev. 1383, 1384, n.4 and sources cited therein; Deborah L. Rhode, *The Professional Responsibility of Professional Schools*, The Newsletter 2-4 (Association of American Law Schools February 1998).

critiques tend to center around several themes, including economic changes that have converted law practice from a profession to a business; perceived excesses in the adversarial process, including a loss of civility; undermining of the traditional independent counseling role of lawyers; concerns about lawyer competency and ethics; and loss of purpose and a sense of "calling" to the legal profession.⁴⁸ There is also a mounting critique of legal education, centering on the values and goals of the prevailing educational mission,⁴⁹ as well as the prevailing model of legal professionalism perpetuated by the traditional law school curriculum.⁵⁰ Discontent is also widespread within the legal profession. A majority of lawyers report that they would choose another career if they could, and three-quarters would not want their children to become lawyers.⁵¹

Perhaps most troubling is the ongoing gap between the increasing number of attorneys and the unmet legal needs of the poor and middle class. A significant majority of students come to law school committed to working in the public interest, but by the time graduation arrives, most opt for corporate or firm jobs that enable them to pay their staggering student loans.⁵² As a nation with the world's highest concentration of lawyers, the U.S. meets less than a fifth of the legal needs of its low income populations.⁵³ Although the American Bar Association's Model Rules of Professional Conduct set an aspirational goal for each attorney to provide at least 50

48. TEACHING AND LEARNING PROFESSIONALISM, *supra* note 46, at 3-4.

49. See, e.g., Susan P. Strum, *supra* note 29, at 120. This critique decries the focus on short-term, purely economic interests at the expense of long-term interest, and without regard to the public interest or to the system of justice. See also Myers, *supra* note 46, at 826. It also challenges legal education's preoccupation with rigorous, analytical thinking and its failure to prepare future lawyers to meet the multi-faceted, transactional nature of legal practice.

50. See, e.g., Carrie Menkel-Meadow, *Can a Law Teacher Avoid Teaching Legal Ethics?* 41 J. LEGAL EDUC. 3, 6-8 (1991), *quoted in* TEACHING AND LEARNING PROFESSIONALISM, *supra* note 46, at 13-14. Menkel-Meadow argues that "the traditional classroom fosters adversariness, argumentativeness, and zealotry, along with the view that lawyers are only the means through which clients accomplish their ends - what is 'right' is whatever works for this particular client or this particular case. We extol loyalty to the client above moral and other concerns. ... We fail to teach our student that lawyering involves responsibility to and for others." *Id.* Moreover, the ABA report criticizes most law schools for relegating professionalism issues to the basic course in legal ethics or professional responsibility where students gain most, if not all, their understanding about the norms of the profession. *Id.* at 14.

51. See, e.g., Myers, *supra* note 46, at 828, and sources cited therein. Myers argues that lawyers are increasingly dissatisfied with practicing law because it makes extraordinary demands on them without providing compensating satisfactions. Moreover, many no longer feel loyalty to a law firm; nor do they expect their clients to feel loyalty to them. The legal profession has become a competitive business with enormous financial pressures and corresponding increases in a "killer" approach to resolving problems. *Id.* at 828. See also David L. Gregory, *The Discernment of (the Law Student's) Vocation in Law*, *supra* note 24, at 1428 and sources cited therein.

52. See, e.g., ROBERT V. STOVER, MAKING IT AND BREAKING IT: THE FATE OF PUBLIC INTEREST COMMITMENT DURING LAW SCHOOL (ed. Howard S. Erlanger 1989). Stover found that, as students progressed through law school, their interest in helping others through their work declined relative to the emphasis they placed on work conditions and craft satisfaction. *Id.* at 22-23. The scarcity of public interest jobs may also be a significant factor leading to student abandonment of public interest aspirations. See Howard S. Erlanger, *Young Lawyers and Work in the Public Interest: A Problem of Supply or Demand?* 1978 Am. B. Found. Res. J. 83.

53. The ABA Standing Committee on Lawyers' Public Service Responsibility, which proposed the 1993 amendment to Rule 6.1, see note 54, *infra*, stated that "the inability of the poor to obtain needed legal services has been well documented: Since 1983, when Rule 6.1 was adopted, at least one national and 13 state-wide studies assessing the legal needs of the poor have been conducted. Of those studies reporting unmet legal need, there has been a consistent finding that only about 15%-20% of the legal need of the poor are being addressed." Dantuono, *supra* note 27, at 1388, n. 22, *quoting*, STANDING COMMITTEE ON LAWYERS' PUBLIC SERVICE RESPONSIBILITY, COMMITTEE REPORT SUPPORTING 1993 AMENDMENT TO RULE 6.1, *reprinted in* REGULATION OF LAWYERS: STATUTES AND STANDARDS 308-09 (Stephen Gillers & Roy D. Simon, Jr. Eds., 1995). See also, Alan W. Houseman, CIVIL LEGAL ASSISTANCE FOR THE 21ST CENTURY (Center for Law and Social Policy, April, 1998), *citing* Albert H. Cantril, AGENDA FOR ACCESS: THE AMERICAN PEOPLE AND CIVIL JUSTICE (American Bar Association, 1996).

hours of pro bono publico legal services a year,⁵⁴ various studies report that few attorneys meet those aspirations; moreover, much pro bono work is directed toward bar association activities, local charities, and other work that builds relations with lawyers and potential clients, rather than to representation of poor people who need legal services.⁵⁵

Law school is the obvious place to start to rectify these problems. In its 1992 report on legal education and professional development [hereinafter referred to as the MacCrate Report], the American Bar Association's Task Force on Law Schools and the Profession urged law schools to help narrow the gap between legal education and the profession by, among other things, fostering fundamental values that are central to the profession.⁵⁶ A lawyer should be committed to the values of, *inter alia*, promoting justice, fairness, and morality;⁵⁷ treating other people (including clients, other attorneys, and support personnel) with dignity and respect;⁵⁸ contributing to the profession's fulfillment of its responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them;⁵⁹ and striving to rid the profession of bias based on race, religion, ethnic origin, gender, sexual orientation, age, or disability, and to rectify the effects of these biases.⁶⁰

While the MacCrate Report has generated much criticism,⁶¹ bar leaders and academicians have generally agreed that law schools share responsibility for fostering a sense of ethics and public service in their graduates.⁶² Thoughtful scholars, teachers and administrators at many law schools have experimented with integrating

54. Model Rules of Professional Conduct Rule 6.1 (1993).

55. See, e.g., Roger C. Crampton, *Symposium: The Future of the Legal Profession: Delivery of Legal Services to Ordinary Americans*, 44 CASE W. RES. 531, 578, n. 121 and sources cited therein

56. LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, STUDENT EDITION (Robert MacCrate ed., 1992) [hereinafter referred to as the "MacCrate Report"]. Part Two of the MacCrate Report sets forth "A Vision of the Skills and Values New Lawyers Should Seek to Acquire." *Id.* at v. "The Task Force concluded that the skills and values of a competent and responsible lawyer are developed along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career. The report admonishes both legal educators and practicing lawyers to recognize that the task of educating students to assume the full responsibilities of a lawyer is a continuing process that neither begins nor ends with three years of law school study." *Id.* The Report's analysis of professional values recognized that "training in professional responsibility" should involve more than "just the specifics of the Code of Professional Responsibility and the Model Rules of Professional conduct"; it should encompass "the values of the profession," including "the obligations and accountability of a professional dealing with the lives and affairs of clients." *Id.* at 117-118, citing McKay, *What Law Schools Can and Should Do (and Sometimes Do)*, 30 N.Y.L. SCH. REV. 491-509-10 (1985).

The MacCrate Report's recommendation generated much discussion about the appropriate role of law schools and the future direction of legal education. My citation of the Report here does not signify wholesale acceptance of its recommendations, but I do agree with the Task Force that legal training should emphasize values along with skills; and I agree generally that most of the values identified by the Task Force are fundamental to the profession.

57. MacCrate Report, *supra* note 56, Value 2.1, *Id.* at 207.

58. *Id.*, Value 2.1.

59. *Id.*, Value 2.2.

60. *Id.*, at 201.

61. See, e.g., Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing From the MacCrate Report of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593 (1994) (arguing that the MacCrate report pays insufficient attention to the human aspects of lawyering, focusing instead on a taxonomy of skills that would be appropriate for a particular kind of "means-ends" litigator who maximizes an abstracted client's goals); Phoebe A. Haddon, *supra* note 26, at 573) (arguing that the MacCrate Report's vision of the legal profession's responsibility to the values of promoting justice, fairness, and morality is too narrowly conceived); Brook K. Baker, *Beyond MacCrate: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 ARIZ. L. REV. 287 (1994) (critiquing the report for perpetuating the split between the academy and practice)

62. See sources cited in note 47, *supra*.

ethical training with doctrinal and skills courses,⁶³ discussing issues of race, gender and culture in the classroom,⁶⁴ teaching empathy and alternatives to the adversarial approach,⁶⁵ and even instituting mandatory pro bono or public service projects.⁶⁶

VII. RIGHT LIVELIHOOD AND “THE GRACE OF GREAT THINGS”

Although I certainly agree that law schools could do a better job of teaching professional ethics, professionalism, and fostering a spirit of public service by adding more courses, clinics, and mandatory public service, that alone will not solve the problem. Many of the most thorny ethical dilemmas cannot be resolved by learning the Code of Professional Responsibility. Alternative dispute resolution techniques do not necessarily guarantee civility in an attorney’s interactions with clients, colleagues, and adversaries. And a single pro bono experience, especially one which does not spring from the student’s own values and beliefs, will not necessarily foster a life-long commitment to public service.

63. One of the most ambitious experiments along these lines took place a decade ago at City University of New York. See Howard Lesnick, *Infinity in a Grain of Sand: the World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 37 UCLA L. REV. 1157 (1990). The alternative program integrated the entire first year curriculum with a month-long hypothetical designed to integrate various fields of law, to study legal development in the context of lawyering decision-making; to study lawyering in the context of moral and political theory; and to actualize students’ capacity to active, reflective learners. *Id.* at 1183-84. The larger educational purpose of the program was to enable student to exercise responsibility in the practice law – recognizing that the decisions one makes as a lawyer affect people’s lives. *Id.* at 1184. The aim of the program was “to encourage students to reflect on their life choices, their evolving concept of professionalism, and the content of the law itself, in ways that fostered their capacity to practice law in a societally useful manner.” *Id.* at 1184-85. The program attempted to integrate legal theory, doctrine, and skills; along with a commitment to experiential learning, feedback, and reflection as primary learning modes. *Id.* at 1185. In evaluating the success of the program, Lesnick concludes that “[t]he very holism of the CUNY design was its greatest flaw: even if a faculty could be found that was willing to adopt so integrated and comprehensive a design, with the degree of rejection of division of labor that it entailed, the design would inevitably prove too partial and fragmentary. A grain of sand is not capable of providing neophyte lawyers with a sufficiently layered experience...” *Id.* at 1192. However, Lesnick also concludes that the pursuit of one or a few of the goals or methods that went to make up the overall CUNY concept might be a useful undertaking. *Id.* See also, Nancy M. Maurer and Linda Fitts Mischler, *Introduction to Lawyering: Teaching First-Year Students to Think Like Professionals*, 44 J. LEGAL EDUC. 96 (1994)(describing a partnership between Clinical Legal Studies and Legal Reasoning, Writing and Research designed to introduce first-year students to essential skills and values of the profession).

64. The popularity of these classes was manifested by publication of a case book collecting cases, transdisciplinary readings, commentaries and questions “focusing on the role of law in producing, replicating, and disrupting hierarchies of power privilege, particularly those based on racial groupings, gender, social and economic class, sexual orientation, and disabilities.” Power, Privilege and Law: A Civil Rights Reader, *supra* note 36, at v-vi.

65. See, e.g., Strum, *supra* note 29, at 121. Strum characterizes the present system as the “gladiator” model of legal education and lawyering, which celebrates analytical rigor, toughness, and quick thinking and defines successful performance as “fighting to win.” *Id.* She proposes a problem-solving orientation to lawyering and legal education that has the potential to address the interrelated critiques of exclusion of women and minorities from the profession, *Id.* at 119; concerns about the values and goals of the prevailing legal educational mission, *Id.* at 120; and the prevailing model of legal professionalism perpetuated by the traditional law school curriculum, *Id.* at 121. See generally Glennon, *supra* note 29.

66. See, e.g., Howard S. Erlanger and Gabrielle Lessard, *Mobilizing Law Schools in Response to Poverty: A Report on Experiments in Progress*, 43 J. LEGAL EDUC. 199 (June 1993). For example, the Interuniversity Consortium on Poverty Law is a group of legal academics from a varied group of law schools working with a wide variety of advocates to accomplish two goals: increasing and improving law school scholarship and teaching about the relationship of the legal system to poor, disadvantaged, or marginalized persons; and increasing linkage of that scholarship and teaching with individuals and organizations directly engaged in service to, and advocacy on behalf of, poor, disadvantaged, or marginalized persons. The consortium’s Project Group brings together academic participants who are implementing innovative projects at their schools, several of which are described in Erlanger’s article. Additional consortium projects are described in Louise G. Trubeck, *Lawyering for Poor People, Revisionist Scholarship and Practice*, 48 U. MIAMI L. REV. 983 (1994).

As the MacCrate Report acknowledges, developing professional skills and values is an ongoing process. If students learn how to integrate their personal values with professional norms, they will carry the process of introspection and moral dialogue with them in their careers as lawyers. Thus, what we need to do is to help students develop habits of learning that will lead to a process of ongoing vocational integration.

This Essay proposes that we begin students on their journeys toward vocational integration by placing the subject of “right livelihood” in the center of a learning community held together by the power of “the grace of great things.”⁶⁷ The subject of right livelihood qualifies as a “great thing”⁶⁸ because it raises a host of profound questions about the very nature of work. What gives purpose and meaning to my work as a lawyer? How can I use my work to express my values, ideals, and visions? What kind of professional relationships do I want to foster with clients, colleagues, and adversaries? How can I use my profession to make a meaningful contribution to my community and to the world around me? By placing right livelihood at the center of legal education, we would foster a professional ethic of ongoing inquiry into the paradox of lawyering as service to self and others.

VIII. FOUR PATHWAYS TO RIGHT LIVELIHOOD

If we are willing to embark on this journey, there are many paths leading to the same goal. The remainder of this essay borrows from Buddhist notions⁶⁹ to set forth four pathways to cultivate professional ethics, values, and a commitment to public service, not as external norms, but “from the inside out.”

(1) First, do no harm: re-connecting students with their own goals and values by creating space for mindfulness and contemplation;

(2) Deepening the well: cultivating professional ethics and values through moral dialogue.

(3) Practicing compassion: cultivating civility and respect for diversity.

67. The phrase “the grace of great things” comes from an essay by Rilke, cited in Palmer, *supra* note 2, at 107. Palmer describes “great things” as including “genes and ecosystems of biology, the symbols and referents of philosophy and theology, the archetypes of betrayal and forgiveness and loving and loss that are the stuff of literature. ... the artifacts and lineages of anthropology, the materials of engineering with their limits and potentials, the logic of systems in management, the shapes and colors of music and art, the novelties and patterns of history, the elusive idea of justice under law.” *Id.* at 107.

68. *Id.* at 108. Parker contends that the grace of great things evokes virtues that give educational community its finest form. “We invite diversity into our community not because it is politically correct but because diverse viewpoints are demanded by the manifold mysteries of great things. We embrace ambiguity not because we are confused or indecisive but because we understand the inadequacy of our concepts to embrace the vastness of great things. We welcome creative conflict not because we are angry or hostile but because conflict is required to correct our biases and prejudices about the nature of great things.” *Id.* at 107. “We practice honesty not only because we owe it to one another but because to lie about what we have seen would be to betray the truth of great things. We experience humility not because we have fought and lost but because humility is the only lens through which great things can be seen – and once we have seen them, humility is the only posture possible. We become free men and women through education not because we have privileged information but because tyranny in any form can be overcome only by invoking the grace of great things.” *Id.* at 108.

69. Buddhism is not only a religion, but is also a philosophy, a psychology, and a way of life – a path to enlightenment that is open to all, regardless of their religious beliefs. Kanazawa, *supra* note 20, at 1171-1172. Although right livelihood is specifically mentioned as one fold of the eight-fold path, it cannot be seen in isolation from the entire path. Thus, on the path to right livelihood, one must also practice right view, right thought, right speech, right action, right effort, rights mindfulness, and right contemplation. Whitmyer, *supra* note 14, at 10.

(4) Doing well by doing good: fostering a sense of public service in law school and beyond by integrating students' personal and vocational values.

It is my thesis that fostering this process of ongoing introspection, moral dialogue, and vocational integration will lead us to produce lawyers whose work is consistent with their values, who uphold the highest professional and ethical standards, and who use their skills to help resolve the pressing social problems of the day. In short, we will be training lawyers who will make a difference in the world.

Scene 1

It is a rainy November day. A student from my Lawyering Process⁷⁰ class is in my office crying. She got "18" out of "30" on her last writing assignment, and wants to know if she is going to flunk out of law school. I reassure her that it is much too early to worry about that. I tell her different students have different learning curves in the transition to the formalities of legal writing. I try to steer the discussion to broader topics, such as why she came to law school and what kind of work she wants to do when she gets out. But nothing I say seems to connect with her.

"I don't know why I'm here any more," she says, voice trembling. "I thought I was a good student in undergrad. I always volunteered in class, and got mostly "A's" in my courses. Teachers told me I was a good writer, and should go on to graduate school. But since I've been here, I've lost all my confidence. Everything I say in class seems to be wrong, so now I just slouch down in my seat and try to hide. I got such bad marks on my first few papers that now I freeze every time I sit down at the computer. I don't even know if I want to be a lawyer any more, but my whole family is counting on me, and I can't let them down."

Her story reminds me of the crisis of confidence I experienced at the end of my first year of law school. I promise to give her extra help, and make an appointment to review a re-write with her next week. She leaves the office and I start to cry. I am confident that she will eventually learn to "think like a lawyer," but I'm not so sure that she will regain her confidence or enthusiasm for becoming a lawyer.

A. First, do no Harm: Re-connecting Students With Their Own Goals and Values by Creating a Space for Mindfulness and Contemplation

As a member of my law school's admissions committee, I have read hundreds of personal essays. Before the dispirited students in my Lawyering Process class came to law school, they were full of confidence, enthusiasm and dreams of bringing justice to their communities, and righting the wrongs of modern society. What, I ask myself, has wrought such dramatic change in three short months?⁷¹

Like many of my colleagues, I love teaching law, in part, because of the opportunity to nurture students' professional growth. Perhaps that's why I take it

70. Lawyering Process is the required first year legal research, reasoning and writing course at UDC-DCSL.

71. Of course, this transformation is not unique to law school. For example, the dean of a large research university, concerned that the compassion that had led many student to enter medical school had largely disappeared by the time they completed their studies, described the typical medical school education as an exercise in "objectifying the patient and 'dumbing down' the students." Palmer, *supra* note 2, at 124-125. The academic culture he described motivated students to learn "not in order to treat patients but to best one another in competition." *Id.* at 125.

personally when one of my students, especially one who is working so hard, is not “getting it.” I’ve seen so many students give up their hopes and dreams in the desperate struggle just to survive the first year of law school. Even if they make it through, you can see the energy drain out of their bodies. They start the second year a shadow of their former selves.

Much scholarship bears out my observations. Critics of the Socratic method and the logical, linear formalities of legal reasoning argue that they are demoralizing at first for most students, but take even more of a toll on women and students of color.⁷² Most law school courses, especially in the first year, do not discuss values as they relate to the law. The way cases are presented discourages personal empathy with “plaintiffs” and “defendants” who are portrayed as wooden characters in a story. In order to adapt to the rigidities of legal thought, students may have to give up valued ways of thinking and perceiving the world.⁷³ In order to keep up with the vast quantities of doctrine they are expected to learn, students have no time for introspection; as a result, they are split off from their own idealism and forget the very reasons they went to law school. In the process, their self-confidence is shattered and they lose sight of the goals and values they held when they entered law school.⁷⁴ It is clear

72. See generally notes 29-31 and accompanying text, *supra*; Crenshaw, *supra* note 36, at 2. Crenshaw argues that, in many instances, “minority students’ values, beliefs and experiences clash not only with those of their classmates, but also with those of their professors.” *Id.* However, these conflicts seldom, if ever, reach the surface in law school discourse due to dominant beliefs in the objectivity of legal discourse. Crenshaw labels this dominant mode of thinking “perspectivelessness,” and argues that it is particularly burdensome on minority law students. *Id.* To assume the air of perspectivelessness that is expected in the classroom, minority students must stand apart from their own history and identity; on the few occasions when they are invited to incorporate their racial identity and experience into the discussion, they often feel that they have been put on the spot. Crenshaw argues that these twin problems of objectification and subjectification are obscured when minority experiences are deemed to be completely irrelevant, but the price of this invisibility can be intense alienation. *Id.* at 3. Moreover, Crenshaw argues, alienation is engendered when law school discussions focus on problems, interests and values that either minorities do not share or that obscure or overlook issues that are particularly relevant to minorities. *Id.* at 9. See also, Judith G. Greenberg, *Erasing Race From Legal Education*, 28 U. MICH. J.L. REF. 51 (1994).

73. See, e.g., Greenberg, *supra* note 72. Greenberg argues that a bias inherent in the structure of legal education rewards cultural traits which do not match those of African American culture. *Id.* at 56. In particular, she cites the distinct oral tradition of African American culture, which is not valued as highly in legal education as excellence in writing. *Id.* Moreover, she claims that African American communities draw an important portion of their strength and meaning from their collective identity – which may lead to feelings of exclusion when African American law students are confronted with the time demands and competitiveness of law school culture. *Id.* at 99. In order to succeed in law school, students may be forced to forego participation in the community activities which form an important part of their communal identity and self worth. *Id.* Finally, Greenberg argues, alienation from the dominant culture is a cultural characteristic that distinguishes some African Americans from white Americans. African American law students whose identities are formed in opposition to white culture are at a disadvantage in law school, affecting both their relationships with colleagues and faculty, and their understanding of the doctrines they are learning. *Id.* at 111-112. In order to succeed in law school, they have to make “choices” that favor study time over community time; acquiescence over opposition; and a willingness to write in the required style. *Id.* at 115. These choices force them to surrender or suppress aspects of their identities that are invisible in the color-blind world of legal education. *Id.* at 117.

74. See, e.g., Lesnick, *supra* note 63, at 1157. Lesnick argues that “law teachers systematically portray the world of law and lawyering to students in ways that, to a great extent, distort their own beliefs.” *Id.* Lesnick posits that there is an implicit message in the curriculum of most American law schools that communicates significant truths about lawyering and the law; and that much of the content of these assertions is not congruent with what many law teachers would avow. *Id.* at 1160. Those messages include compartmentalization of problems into isolated “fields;” *Id.* at 1173-1174; that the core of law is “private law;” *Id.* at 1175; that the core skill of lawyering is incisive analytical reasoning, *Id.* at 1176; that litigation is the most significant means of processing disputes; *Id.* at 1178; and that the lawyer’s task is to make arguments on behalf of the instrumental objectives, usually the financial or autonomy objectives, of the client. *Id.* at 1178-79. The ultimate result of this set of implicit assumptions is that students get the message that little that they did or knew prior to beginning law study is very helpful or relevant to the task of learning to be a good lawyer. *Id.* at 1180. “The exclusion is not merely of a student’s personal history, such as prior work or study; it carries over to treatment of the relevance of a student’s larger sense of self, of purpose in seeking to become a lawyer, of his or her impulse to seek understanding.” *Id.* at 1180.

that law is a transformative process, and the transformation is not always for the better.⁷⁵

How can law schools help students weather the transition to legal thinking without losing themselves? To begin with, we must cultivate the practice of mindfulness and contemplation for ourselves and nurture it in our students.⁷⁶ But it is not enough to give students space to think. One of the most important roles we can play as teachers is to listen to what they have to say with unconditional presence.⁷⁷ In Buddhist terms, what we are trying to effectuate with contemplation and deep listening is the opportunity for students to learn their own “right thought” and “right purpose.”⁷⁸ by clarifying the values underlying their motives and intentions, students will also clarify their vision of life and personal purpose in the legal profession.⁷⁹

For many students, personal statements from their admissions files provide a good starting point to re-connect them with the values they felt so deeply before law school.⁸⁰ These essays generally reflect hours of careful attention to the student’s

75. Sometimes I find myself joining with my colleagues who blame students for being apathetic, unprepared, and disengaged from the learning process. However, Palmer argues persuasively that students who appear apathetic are most often operating from a position of fear. Palmer, *supra* note 2, at 36. “The behaviors generated by fear – silence, withdrawal, cynicism – often mimic those that come with ignorance...”. *Id.* at 46. But “[b]ehind their fearful silence, our students want to find their voices, speak their voices, have their voices heard. A good teacher is one who can listen to those voices even before they are spoken – so that someday that can speak with truth and confidence.” *Id.*

76. See, e.g., Diana Chapman Walsh, *Cultivating Inner Resources for Leadership*, in *THE ORGANIZATION OF THE FUTURE*, *supra* note 16, at 295. Describing her work as president of Wellesley College, Walsh says that leaders have a special responsibility for attend to what goes on inside themselves. *Id.* at 296. “My challenge as the leader of a great institution of higher learning – one dedicated to providing an exceptional liberal arts education for women who will make a difference in the world – is to do everything I can to hold open a space in which a community of growth and self-discovery can flourish for everyone.” *Id.* at 297.

77. Many have written about concepts of unconditional listening, but the following story told by a Buddhist nun goes to the heart of the concept. “Something was troubling me and I asked advice of a Buddhist monk who was leading our retreat. He told me to meet him in the garden, under the full moon. We sat down. He looked for a moment at the moon. Then he folded his robes under him and assumed the lotus position. He closed his eyes and said, ‘Now I am ready to listen.’ I talked for an hour and then he opened his eyes. He said, ‘I understand what you are saying.’” Sister Thanh Minh concluded, “when someone listens like that, your life is up for grabs.” O’Reilley, *supra* note 19, at 31. As teachers, we need not sit in the lotus position to listen to our students so fully. In fact, O’Reilley’s wonderful book is full of examples of unconditional listening, which she also calls “listening like a cow,” in both the classroom and individual encounters with students. See *id.* at 26-27. What is important is that “[w]e listen with absolute taking-in of the other.” *Id.* at 31. As educator Louis Evely puts it: “The really moving thing in the work of education is listening to a person at the deepest level while preserving round all that he confides us a halo of mystery, patience, care and love, thanks to which, sometimes, we can free him from what he is and give him access to his future.” *Id.* at 31, quoting from Evely (1978, 78).

78. Whitmyer, *supra* note 14, at 12. Right thought refers to the motives behind one’s actions, as reflected in one’s thinking. *Id.* It might be better understood as right “purpose.” Motives or intentions arise from values; therefore, the clearer one is about her values, the clearer her vision of life and personal purpose. *Id.*

79. *Id.*

80. Stover’s study of students’ commitment to public interest bears out my own observations that first-year students are more receptive to discussion of moral, philosophical, or policy issues than upper-class students. Stover, *supra* note 52, at 59. He found that by second or third year, students typically react to such discussions by putting down their pens, and perhaps also by rolling their eyes in disgust, whispering to a neighbor, or staring into the distance. By that time, most students have learned that legal analysis, narrowly defined, is all that matters. *Id.*

priorities, notions of justice, and reasons for attending law school,⁸¹ yet in most law schools, once the student is admitted, they are never mentioned again.

One practice I have established during the Orientation period at the beginning of each school year is to have my first year students look back at their personal statements and write a reminder to themselves of the reasons they came to law school. I ask them to place this reminder above the bathroom mirror or someplace they will see it every day to keep up their motivation when the grind of daily case law gets tough. Students then spend some time sharing their deepest motivations, hopes and dreams, in what is often a moving experience in building community. In my Lawyering Process class, I use personal statements as “works-in-progress,” providing students with a series of opportunities to refine and expand their goals as they learn more about themselves and the norms of the legal profession.

However, despite the enthusiasm of their applications, not every law student enters law school with a clear notion of why (or even whether) they want to become lawyers.⁸² For some, it is simply the next logical step in their academic careers. For others, it is a way to fulfill family expectations. For still others, the desire to become a lawyer has more to do with glamorized media images and high salaries than with the real work of practicing law. Moreover, as students are exposed to new ideas and

81. See, e.g., David Dominguez, *Past Imperfect: Personal statements can renew motivation, improve learning*, *The Law Teacher* 1 (Fall 1997). Dominguez proposes that personal statements can be used, not only as a motivational tool, but as an educational resource, prompting the law teacher to turn diverse life backgrounds into a new source of instructional material. He has students write an updated personal statement, examining the discrepancy between how they imagined law school would deal with their ideals and what in fact law school has done in that regard. He then uses the revised statements in an exercise that requires students to compare the problem-solving skills that law school is sharpening (such “left-brained” abilities as analytical dissection of facts, spotting of relevant legal issues, selection and application of legal rules, logical argument over the relative merits of a legal position in light of the facts, advocacy of policy considerations, and so on) with such “right-brained” methods of processing disputes that rely on intuitive, creative, empathic, relational and spiritual strengths. Dominguez then poses a question not often heard in law school classrooms: whether the students’ diverse visions of justice could be attained using only logical/intellectual aptitude. “Invariably,” he reports, “they realize that to meet the career goals set forth in their personal statements they will need to expand traditional law school problem-solving (i.e., theoretical expertise and rights-based advocacy) with far better training in critical reflection, active listening, mediation, goal-setting, coalition-building, delegation, supervision, accountability, evaluation, and other interactive skills to manage group conflict.” *Id.* at 2-3. This personal statement exercise jump starts a semester-long commitment to integrate student ideals into the learning enterprise. *Id.*

82. See Gregory, *supra* note 24, at 1428 (raising doubts whether law schools “are shining exemplars facilitating the discernment of vocation.”) Gregory also raises doubts whether every law student is called to the law. *Id.* He posits that many attend law school for economic reasons, to postpone other decisions, to fulfill parental expectations, or because no better alternatives have presented themselves. *Id.* Thus, for many, the process of discerning their true vocation may result in bitterness and disillusionment rather than job satisfaction. *Id.* at 1429. Although personal observation leads me to agree with Gregory’s diagnosis, I don’t believe that this means law schools should abandon their duty to engage students in critical self-reflection about the profession they are about to enter. Perhaps in the process they will discover more meaning in their legal pursuits, or decide before investing too much time and money that the law is not for them and they should pursue another career path. The symposium working group assigned to consider the issue of law as a calling or vocation kept coming be to one recurring theme: “What role do and should law schools play in instilling and nurturing a sense of call in future lawyers?” *Report of Working Group #3*, 66 *FORDHAM L. REV.* 1597, 1598 (1998). Although the law professors and other members of the working group had differing views, they agreed to recommend, *inter alia*, that law professors have an obligation to teach students craft, character, and justice. *Agenda: The Practice of Law as a Vocation or Calling*, 66 *FORDHAM L. REV.* 1601, 1602 (1998). Others have come to similar conclusions, for example, challenging academics to “give students the gift of our wisdom.” Thomas L. Shaffer, *On Being a Professional Elder*, 62 *NOTRE DAME L. REV.* 624, 626 (1987), *quoted in*, Steven H. Hobbs, *The Lawyer’s Duties of Confidentiality and Avoidance of Harm to Others: Lessons from Sunday School*, 66 *FORDHAM L. REV.* 1431, 1453, n.131 (1998). According to Hobbs, the knowledge and experience we possess can assist in the moral training of law students – training Shaffer describes as the process of becoming “a good person, a person of integrity.” *Id.* at 1453, n. 132. Yet another symposium speaker says that what he wants to say about law school is that “our graduates are better people for having completed our program.” Floyd, *supra* note 21, at 1415.

experiences in law school, their values and professional goals can be expected to change.

Thus, another exercise I use during Orientation attempts to connect students with role models or mentors, real or imaginary, who can help them develop their own sense of connection with the legal profession.⁸³ For example, during Orientation, I ask students to identify the person, real or imaginary whose advice and support they most rely upon. I then lead them through an imaginary conversation, asking for advice about what to do when things get difficult or when they are faced with a moral dilemma. I have them record this conversation in a personal diary and look back at it whenever they need support or inspiration.⁸⁴

Although these Orientation exercises may be a good start, they are not nearly enough. The opportunity for contemplation and reflection must be an ongoing process, deepening as students' knowledge of the law and the legal profession grows. Given the time constraints most law students experience, it is essential to create some space in the classroom for students to nourish their inner lives.⁸⁵ This need not significantly impact the amount of time we have available for course coverage.⁸⁶ A simple pedagogical technique -- brief reflective writing assignments -- can build the opportunity for ongoing contemplation and reflection can be built into nearly any class on any topic.

Brief writing assignments, giving students no more than five minutes to record their reflections on a topic, can be used as a springboard for discussion at the beginning of class, or as a closing reflection for students to internalize the day's lessons.⁸⁷ For example, I might ask at the beginning of a class on professional ethics, how a student would handle a particular dilemma in the absence of external norms. The responses can then be used to inform our discussion of the policies underlying

83. Mentors can play an important role in helping students develop their right livelihoods by connecting them with their passions. For example, in discussing mentors who helped him discover his love of teaching, Palmer explains that: "The power of our mentors is not necessarily in the models of good teaching they gave us, models that may turn out to have little to do with who we are as teachers. Their power is in their ability to awaken a truth within us, a truth we can reclaim years later by recalling their impact on our lives. If we discovered a teacher's heart in ourselves by meeting a great teacher, recalling that meeting may help us take heart in teaching once more." Palmer, *supra* note 2, at 21.

84. I also keep a looseleaf notebook full of inspiring stories about potential mentors who could inspire students to learn more about their own right livelihoods. During the course of the year, I encourage students to attend lectures by and about attorneys doing interesting work. I often bring in articles about attorneys who have taken risks in their careers; for example, the African American attorney who was asked to resign from the NAACP when he accepted a pro bono case from the American Civil Liberties Union representing a Ku Klux Klan member in a First Amendment case. See *Freedom of Speech: Was the NAACP right to fire one of its lawyers for representing the KKK?*, ABA JOURNAL 32 (December 1993). Students generally react with passion to these stories, which help them to define the limits of their own feelings in shaping a legal career.

85. For many of us, silence in the classroom is perceived as a teacher's worst nightmare, for we fear the vulnerability underlying it. However, psychological theory supports the notion that cognitive development depends as much on students' inner lives as on any external knowledge we attempt to fill them with. O'Reilly, *supra* note 19, at 3, citing the work of Robert Coles and Edward Robinson.

86. Educators like Palmer and O'Reilly, who advocate the nourishment of students' inner lives, acknowledge the educator's responsibility to shape the classroom experience. See, e.g., Palmer, *supra* note 2, at 74; O'Reilly, *supra* note 19, at 1. As Palmer says, "I fill the space because I have a professional ethic, one that holds me responsible for both my subject's integrity and for my students' need to be prepared for further education or the job market. To quote many faculty who feel driven by it, it is an ethic that requires us to 'cover the field.'" Palmer, *supra* note 2, at 121. However, they question whether "filling the space" with our attempts to transmit knowledge is the most effective way to accomplish our goals. Instead, Palmer argues, we can teach from the microcosm, bringing students into the circle of practice in their field. *Id.* at 122.

87. O'Reilly counsels that writing exercises "can create a spacious moment: at the beginning of class to find a spiritual center; in the middle, to brainstorm; and at the end, to reflect. The final period of quiet is, in my experience, the most productive, surprising, and moving." O'Reilly, *supra* note 19, at 6.

the relevant rules of professional conduct. At the end of the same class, I might ask the students to write how they would handle the same situation, integrating their own values with the rules of the profession.

The first brief writing assignment I employ in my Lawyering Process class builds upon the students' personal statements by asking them to put their skills, values and interests in right livelihood terms, providing a list of questions and tentative responses that can be refined during the course of the semester. (See Appendix A) In the sections that follow, I use this initial writing as a springboard for several exercises that can be used to deepen students' understanding and integration of personal and professional goals and values.

B. Deepening the Well: Cultivating Professional Ethics and Values Through Moral Dialogue

By providing an opportunity to keep students in touch with their own beliefs and values, we can honor the simple tenet of "doing no harm." But our responsibility as educators extends beyond that simple notion. As facilitators in a "community of truth," we must help students challenge their own beliefs, testing them against the traditions and norms of the profession, as well as the views of others.⁸⁸ In short, we must help them "deepen the well."

The need for such deepening is obvious. Although law may, for some, be a "calling" or "vocation," I don't believe the right question is whether a particular student believes, at the beginning of law school, that she has a "calling" to be a lawyer.⁸⁹ The better question is whether or not she can learn to practice law in a manner that is consistent with her evolving sense of self and the profession.

Putting the subject of "right livelihood" in the middle of the room calls upon students to ask themselves some of the most profound questions about meaning in their lives. How can the practice of law best express and develop my skills and interests? What kind of practice will enable me to live consistently with my own values and achieve personal satisfaction? How can I use my professional skills to make a meaningful contribution to the world? What should I do when the norms of my profession conflict with my innermost beliefs and values? The answers to these questions can be expected to change as the student learns more about herself, about the law, and about the profession she is about to enter.

Even students who are committed to becoming lawyers need our help to begin the difficult process of integrating their goals with the professional values and culture of the legal profession. Those application essays, though often heartfelt, just as often

88. Palmer describes six "principles of paradox" that should contribute to pedagogical design of a learning space. Palmer, *supra* note 2, at 74; *see also* note 42, *supra*. Two of them are implicated by my recommendation. First the space should invite the voice of the individual and the voice of the group. *Id.* at 75. According to Palmer, although individual expression is crucial to learning, it is not sufficient. The voice of the group must also be gathered and amplified, "so that the group can affirm, question, challenge, and correct the voice of the individual. The teacher's task is to listen for what the group voice is saying and to play that voice back from time to time so the group can hear and even change its own collective mind." *Id.* at 75-76. In addition, "[t]he space should honor the 'little' stories of the individual and the 'big' stories of the disciplines and tradition." *Id.* at 76.

89. *See, e.g.,* Floyd, *supra* note 20, at 1407. Floyd contends that the question is not whether the practice of law is a special calling; "[r]ather, the better question is: 'Can we serve God and neighbor as lawyers?'" *Id.* He claims that "the practice of law, at its best, is character building – that it fosters the development of virtue in its practitioners." *Id.* at 1423. For that reason, he concludes, the practice of law can be a calling. *Id.* at 1424.

reflect a naïve and uninformed view of the law and the legal profession. It's hard to estimate how many essays I've read that proclaim racial discrimination, poverty, or child abuse the greatest problem facing society – with every expectation that the law can provide a satisfactory solution. In my experience, many entering law students are unaware of the competing political, cultural and ideological values that shape both the enactment and the implementation of the law. The traditional law school classroom, with its focus on doctrinal analysis, does little to deepen their political, cultural, or moral understanding.⁹⁰

Scene 2

My own law school experience provides a good illustration. After graduating from college with a degree in psychology, I spent several years counseling poor people about how to get and keep jobs.⁹¹ I applied to law school thinking that there must be a better way to tackle the problems of poverty, hopelessness, and despair of the inner city. I had always been more interested in personal development than in political history; like many of my students, my knowledge of the legal system was unsophisticated and idealistic. I, too, thought that the law could solve society's most intractable problems.

I remember distinctly the day my Employment Law professor announced gravely that “civil rights litigation was dead.” She was referring to the line of cases that preceded the 1991 amendments to the Civil Rights Act of 1964⁹² – cases that dramatically cut back the scope and effectiveness of civil rights protections in the

90. Although some educators question whether moral development can be “taught” in law school, others have been experimenting with various models designed to promote moral reasoning. See, e.g., Hartwell, *supra* note 43. In six years of applied teaching research, Hartwell reported that an experientially taught professional responsibility course significantly positively influenced the level of moral reasoning of students; however, the same results were not achieved in other experientially taught clinic courses that introduced students to the same theory of moral development. *Id.* at 527-528. In evaluating the reasons for these results, Hartwell posits that the critical feature of the professional responsibility courses was the opportunity to engage in truly “moral discourse.” *Id.* at 528; see also note 43, *supra*. Hartwell acknowledges that the model of moral reasoning employed in his courses, based on the work of psychologist Lawrence Kohlberg, is not universal because it is derived from Western liberal individualism and may not take into account women's moral preferences for an ethic of “care” rather than an ethic of “justice.” *Id.* at 512-522. Hartwell situates the difference between a “rights” orientation, which seeks to manage power through institutional rules, and a “care” concern for enhancing cooperation and avoiding harm, and acknowledges that there seems to be an acculturated gender difference along these lines. *Id.* at 521. However, he concludes that these differences do not undercut the meaningfulness of his work, because the test he used to measure moral development is consistent with law practice, which is based on a “rights” approach; moreover, Hartwell argues, the most advanced stages of Kohlberg's model incorporate an ethic of care. *Id.* at 522. Some feminist scholars have challenged the dominant view of moral development embodied in Kohlberg's work, emphasizing the roles care and relationship can play in defining a moral and political theory. See, e.g., Theresa Glennon, *supra* note 30, at 1178, n. 16, and sources cited therein. An “ethic of care” is based not only on personal relationships; it also takes into account the interrelatedness of individuals and groups in society. *Id.* at 1178. Glennon argues that an ethic of care provides a foundation for reconceiving professional responsibility to include a duty to provide legal services to people living in poverty. *Id.* at 1175, 1179; see discussion at note 149, *infra*.

91. I was working for a federally funded program that was a precursor to modern “work-to-welfare” laws. Its goal was to move poor women, ex-offenders, and juveniles who had been involved in the justice system into jobs and off the entitlement system.

92. Civil Rights Act of 1991, P.L. 102-166, amending 42 U.S.C. s. 2000 et seq.

workplace by increasing the burdens on plaintiffs.⁹³ Although the professor was clearly chagrined at these developments and made brilliant doctrinal arguments to illustrate how wrong they were, what was most striking about the ensuing conversation was what was missing. There was never a mention of the words “right” and “wrong.” There was no discussion of competing views of equality and justice; no discussion of the political, historical and cultural developments that led to those cases; and no discussion of the impact of those decisions on society as a whole, or on individuals who had been discriminated against. And, it goes without saying, there was no discussion of how we felt about it, or how it affected our plans as aspiring lawyers. Like most law school classrooms, the discussion focused on abstract principles and rigorous doctrinal analysis.

As with the typical law school classroom, in my Constitutional Law class there was no “space” to consider alternative approaches to the problem – such as the political lobbying strategies that led Congress to later amend the law. We did not consider what labor unions could do to protect their members’ rights (Labor Law was a different subject). We did not consider the possibilities of community activism, using our legal skills to help poor people develop alternative forms of business enterprises, or a host of other alternatives. The lesson we were supposed to learn and apply to the exam was that “plaintiffs never win.”

By contrast with the abstract logic of our classroom discussions, the legislative history of the 1991 Amendments is replete with moral and political justifications. The House Report accompanying the bill states boldly that “[v]irtually everyone in America now understands that it is both ‘wrong’ and ‘illegal’ to discriminate intentionally.”⁹⁴ The report also explicitly acknowledges the human suffering caused by employment discrimination, stating that “[v]ictims of intentional discrimination often endure terrible humiliation, pain and suffering while on the job.”⁹⁵ In setting forth its findings and purpose, Congress expresses the opinion that “the Supreme Court’s recent employment discrimination decisions have cut back dramatically on the scope and effectiveness of civil rights protections, and that as a result, existing protections and remedies are not adequate to deter unlawful discrimination or to compensate victims of intentional discrimination.”⁹⁶ One can only imagine the different discourse that would have emerged in my employment law class had we discussed the moral, humanistic, and political considerations that later molded the Congressional decision to amend the statute.

My purpose here is not to criticize the professor who taught the course. She did what she was trained to do: she taught us to “think like lawyers” in the traditional

93. See, e.g., *Wards Cove Packing Co. v. Atonio*, 109 S.Ct. 2115 (1989)(shifting the burden of proof to the complaining party and significantly reducing the standard for employers to justify an employment practice shown to cause a disparate impact); *Price Waterhouse v. Hopkins*, 109 S.Ct. 1775, 1795 (1989)(ruling that even when a plaintiff proves that gender played a motivating role in an employment decision, the defendant may avoid a finding of liability by proving that it would have made the same decision even if it had not taken gender into account); *Patterson v. McLean Credit Union*, 109 S. Ct. 2363 (1989 (limiting the applicability of Title 42, Section 1981 to discrimination at the formation of an employment contract, not during the performance of the contract). Congressional disapproval of these doctrinal interpretations was clearly expressed in the legislative history of the 1991 Amendments. See, e.g., House Report (Education and Labor committee) No. 102-40(I) (Apr. 24, 1991); House Report (Judiciary Committee) No. 102-40 (II)(May 17, 1991), Cong. Record Vol. 137 (1991).

94. House Report No. 102-40(I), *supra* note 93, at 1.

95. *Id.*

96. *Id.* at 16.

sense of the profession. But the clear message that emerges from this method is that there is only one way to practice law – traditional adversarial litigation, and only one set of important skills – logical, linear doctrinal analysis. In this kind of traditional classroom, the rare student who musters the courage to question the “fairness” of a case gets the clear message that her inquiry does not belong in the law school classroom. Her moral inquiry is quickly converted into a doctrinal argument, or brushed over in the rush to the next doctrinal point. She is not given the opportunity to integrate her own sense of fairness with what she is learning about the law, or to consider alternative ways of using her legal knowledge in pursuit of her own values.

Scene 2 (Reprise): Creating a Space for Students to Deepen and Refine Their Professional Goals and Values

In my experience, many law school professors are afraid to open up discussion to include personal beliefs and values because they are afraid that the conversation will either turn to emotional “mush” or deteriorate into “politically correct” oratory and debate.⁹⁷ But good learning thrives on risk, and it thrives on paradox.⁹⁸ It takes courage to open up space for discussion of values, but the fear of losing control can be minimized by exercising deliberation in creating the learning experience. An open discussion can be contained by creating boundaries -- using a question, a text, or a body of data that keeps students focused on the subject at hand.⁹⁹ Personal expression can be balanced by “testing” the voice of individual students against the collective voice of the group; and by testing the students’ personal stories against the archetypal stories of the disciplines and tradition.¹⁰⁰

One simple technique for deepening personal voice is an exercise called “think, pair and share.”¹⁰¹ In this exercise, students are provided a question, then given two minutes to reflect upon it; another two minutes to discuss it with a colleague; followed by several minutes of discussion with the larger group. I often start a class with this technique, throwing out a question at the beginning of class, then using it as a springboard for the day’s discussion. But to do so successfully requires some ground rules. The technique of “moral dialogue” provides a theoretical framework for turning simple discourse into a method of self-revelation. In moral dialogue,¹⁰² “students cooperate together to understand mutually what each is saying with the goal of revealing to themselves and others their moral position and

97. The problem is that when a professor fills the room with her own knowledge, it does not leave room for competing views. There is an assumption that everybody in the room does (or should) agree. This technique often marks the fear of being able to control the conflict that could emerge if people were permitted to express their opinions, or the conversation would get out of control. Palmer argues that our fear of live encounter is really a sequence of fears beginning in the fear of diversity. “As long as we inhabit a universe made homogeneous by our refusal to admit otherness, we can maintain the illusion that we possess the truth about ourselves and the world.” Palmer, *supra* note 2, at 38.

98. See Palmer, *supra* note 2, at 74.

99. *Id.*

100. *Id.* at 75-76.

101. I first saw this technique modeled by Professor Vernallia Randall at a SALT teaching conference, and have been using it with great success in my classroom ever since.

102. Moral dialogue is an open-ended exchange designed to lead the participants to a better understanding of their own values. See discussion at note 43, *supra*.

reasoning.”¹⁰³ This requires that they first listen to one another without judgment, using discussion to deepen and clarify rather than to debate one another’s beliefs.

A story in the Zen tradition of Buddhism offers an interesting parallel. In this story, a smart and eager university professor seeks the teachings of an old Zen master. The Zen master offers him tea and upon the man’s acceptance he pours the tea into the cup until it overflows. “A mind that is already full cannot take in anything new,” the master explains. “Like this cup, you are full of opinions and preconceptions.” In order to find happiness, he teaches, you must first empty the cup.¹⁰⁴

Like the professor in the Zen fable, our students come to us with too many preconceptions about the law. Those preconceptions are often calcified by mindless adoption of (or reflexive resistance to) the “knowledge” we attempt to impart. Moral dialogue provides a vehicle for challenging those preconceptions, leading to deeper understanding and beliefs.

To employ these techniques takes great skill, courage, and a bit of serendipity. The teacher cannot sit back passively and permit students to simply express their feelings and beliefs. She must take an active role, listening for the group voice and playing it back from time to time, and re-focusing students on the universal story when discussion gets bogged down in the personal.

To make these suggestions more concrete, let’s examine how the discussion might have been shaped differently in the Constitutional Law class described in the last scene. First, let’s just push the boundaries of the conversation. In the original scene, the boundaries were set by the confines of the line of Supreme Court cases interpreting the Civil Rights Act. Without even threatening the comfort level of most law school professors, we could imagine a classroom session that set the boundaries by the contour of the statute itself, including its policy and legislative history. This simple change in boundaries would leave room for students to examine the values contained in the “big stories” of the statute and its case law interpretations.

Now, imagine pushing the boundaries one step further to permit students to consider the problem from the perspective of legislators rather than litigators. For example, what if students were asked to draft an amendment to the statute to address current problems of interpretation? This classroom exercise, although well within the confines of traditional law school pedagogy, would permit students to first clarify their own values, using techniques of moral dialogue, and then to test their own values against the collective voice by engaging in legislative debate.

My proposal for incorporating “right livelihood” into the classroom would push the boundaries one step further, putting at the center of the room a question that went unanswered for me in my Constitutional Law class: As an attorney, what should I do when my personal notions of right and wrong conflict with the norms of the profession? Specifically, in the scenario described above, what is a civil rights lawyer to do when she is convinced that well-established case law is morally indefensible?

103. Hartwell, *supra* note 43, at 530.

104. Adapted from Mark Epstein, M.D., GOING TO PIECES WITHOUT FALLING APART: A BUDDHIST PERSPECTIVE ON WHOLENESS xv (1998). Buddhist teachings are full of teachings in which the master, in a variation of “moral dialogue,” simply holds up a mirror to the contents of the seeker’s mind.

If we make a space to engage students in moral discourse about a particular line of cases, some of them may decide that serving the principles of *stare decisis* is not consistent with their own values. They may go on to practice law reform litigation, or to use their legal knowledge as community activists, lobbyists, or elected officials who have the power to enact laws. Some students may decide that the legal profession cannot help them live out their values at all. But for most students, this moral dialogue will simply foster a more realistic assessment of how they want to practice law – what fields of law they enter, what kinds of clients they represent, what strategies and tactics they are comfortable employing in representing their clients' interests. In short, it will help them to practice law as their "right livelihoods."

Scene 3

It's almost time for Christmas break – the end of my first semester as a full time law professor. In my Lawyering Process class, students have worked on a hypothetical employment discrimination case for the past three months. (See App. B) The plaintiff has a colorable cause of action for race-based discrimination under Title VII¹⁰⁵ of the Civil Rights Act, but the problem has been set up so that there are some gray areas. It is not clear whether the client is really "qualified"¹⁰⁶ for the promotion, and there is room for doubt as to whether the employer's decision was racially motivated.¹⁰⁷ Students have just turned in a memorandum analyzing whether or not the plaintiff can prevail in a disparate treatment claim, and advising their supervisor about the strengths and weaknesses of the case. Today is the day I've planned to discuss competing political and moral values, the human costs of litigation, and possible alternatives to the adversarial process.

"How do you feel about this case," I ask the room full of weary faces, "now that the semester is over and it is time to put it to rest? If you were a partner in a law firm, would you choose to represent this client? Do the law and your notions of justice lead you to the same result here?"

105. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a).

106. In a disparate treatment claim for failure to promote under Title VII, the plaintiff must establish that he or she fully satisfies the requirements of the job description, *Gunby v. Pennsylvania Electric Co.*, 840 F.2d 1108, 1116 (3rd Cir. 1988), and that he or she is "as qualified as" the person who was promoted. *Pinckney v. County of Northampton*, 512 F. Supp. 989, 996 (E.D. Pa. 1981). The facts in the hypothetical established that the plaintiff met the requirements of the job description, but there was room for argument as to who was more qualified for the position.

107. If the plaintiff establishes a prima facie case, the burden shifts to the employer to provide a legitimate, non-discriminatory reason for failing to promote her. *Bennett v. Veterans Administration Medical Center*, 721 F. Supp. 723, 730 (E.D. Pa. 1981). After the employer establishes a legitimate, non-discriminatory reason, the burden shifts back to the employee to prove that reason is pretextual. *Id.* Both direct and indirect evidence of discriminatory intent are admissible to prove pretext. *Id.* The hypothetical provided statistical evidence of under-representation, along with some ambiguous remarks with racial overtones, that could be used to establish pretext, but the evidence was not overwhelming.

Silence is a teacher's worst nightmare!¹⁰⁸ not a hand in the air, not an eye to make contact with. So I call on one of my most reliable participants. "Michael, what do you think would be the right result in this case?"

"I don't see that it's a matter of right and wrong," he says, looking up through the tops of his eyelids to see whether he's got the right answer. "The only question is whether the plaintiff has enough evidence to satisfy the elements of the *McDonnell Douglass* test.¹⁰⁹ I'm not sure there's really enough evidence of discriminatory intent here," he proclaims, a bit more confident now that he's fitting facts into legal categories -- talking in the rational language of legal discourse.

"You may be right, but that's not the question I'm asking," I reply, trying to keep him on the hook. "Putting the law aside, what do you think would be the fair result here? Should these parties go to court, or might there be some better way to settle their differences?"

Michael shuffles uncomfortably in his seat, his shoulders lifted to his ears in an exaggerated shrug. A classmate jumps to his rescue. "It doesn't matter what's fair," he explains patiently, as if I'm a rookie law student who doesn't understand the first thing about how the law works. "If the plaintiff can establish the elements under Title VII, he wins. If he can't he loses. That's all the supervising attorney needs to know."

I persevere, talking about how the law is supposed to reflect society's values; how it should embody our collective notions of what's right and wrong, fair and unfair; how it's hard to capture all that in general categories without losing the complexity of human situations. I talk about the human and financial costs of litigation, and posit possible alternatives. But I know it's too late; I've already lost them. All they want to do is take their exams, go home for Christmas break, and finish this year of boot camp so they can go out into the world and practice law.

With hindsight, it's easy to see where I went astray that last day of Lawyering Process class. On a small scale, I succumbed to the fear of silence, rather than using it as an opportunity for reflection. I could have opened space for students to connect with their values by assigning a brief writing, or a think, pair & share exercise. I also could have changed the boundaries by re-defining my question. For example, I could have asked for personal stories of discrimination, observed or experienced. I could have sent students back to their personal essays, asking them how the hypothetical we worked on all semester fit in with their own goals for the profession.

On a larger scale, I made the mistake of not "walking my talk." Although I was trying to avoid my own experience as a law student by including moral discourse in my classroom, it was not part of an ongoing process. In the press to cover the

108. My initial impulse is to rush and fill the space left when a question seems to fall flat. However, as Palmer points out, much can be gained by overcoming that initial fear and sitting with the awkward moment. Palmer, *supra* note 2, at 37. It is important to remember that we are not the only ones afraid to open up discussion in the classroom. Our students, also, are afraid -- of failing, of not understanding, of being drawn into issues they would rather avoid, of having their ignorance exposed or their prejudices challenged, or looking foolish in front of their peers. *Id.* "Students are marginalized people in our society. The silence that we face in the classroom is the silence that has always been adopted by people on the margin -- people who have reason to fear those in power and who have learned that there is safety in not speaking." *Id.* at 45.

109. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 was the seminal Supreme Court case establishing the prima facie case and shifting burdens of proof in a disparate treatment claim under Title VII.

complicated doctrine of employment discrimination and the skills of legal writing, I saved the discussion of justice and fairness for a single class session at the end of the semester.

We give students mixed messages when we talk about the importance of ethics, values and diversity, but don't incorporate them into the curriculum in a meaningful way. Students see what we value by the number of credits they earn, the way they are measured, who does the teaching and where. Thus, if we really believe in training about values, it has to be incorporated across the curriculum – not an occasional justice or diversity day tacked on to the end of a semester, or marginalized in professional ethics, skills courses and the career development office. Although our words are important, our actions speak more loudly than words. If we don't let students discuss their personal experience and values in class, if we clearly value some perspectives over others, if we approach the law as nothing but a process of rigorous logic, the implicit message is that good lawyering leaves no room for consideration of personal values and ethics.¹¹⁰

Real integration of moral discourse into the classroom may seem like a luxury, appropriate only for upper level electives with small enrollments and fewer constraints on the doctrinal materials to be covered. But I believe that at least some elements of critical self-reflection and moral dialogue should be incorporated into the core curriculum, even if at the expense of coverage.¹¹¹ The gain in alleviating student alienation, deepening moral understanding, and cultivating a healthy critical perspective on the law would be worth the trade-off. If students got the opportunity to engage in this kind of reflection across the curriculum for three years, they would emerge from law school with a better sense of their own values, and the possibility of incorporating them into their careers.

Scene 3 (Reprise): Using Moral Dialogue to Help Students Integrate their Values With the Ethical Norms of the Profession

It is the Fall of my second year teaching the Lawyering Process course, and I decide to make some changes. I set out deliberately to use the employment discrimination hypothetical to explore some central questions of professional ethics and right livelihood. Although codes of professional ethics provide some boundaries for ethical decision-making, they cannot provide definite answers to all of a lawyer's

110. See, Lesnick, *supra* note 63, and discussion at note 74, *supra*.

111. See, Palmer, *supra* note 2 and discussion at notes 10 and 40, *supra*. I agree with Palmer that "coverage" is to some extent a "red herring." In law, as in other disciplines, most of what needs to be learned can be "taught from the microcosm."

moral dilemmas.¹¹² It is at this intersection of professional and moral ethics that students need to work to integrate their personal and professional values.

With respect to client selection, I want to examine the boundaries of the duty to represent a particular client, the duty to provide access to justice, and the duty of zealous representation. In right livelihood terms, I want to ask the question: What should a lawyer do when she is asked to represent a client whose moral or political values conflict with her own?

With respect to client counseling, I want to examine the boundaries of permissible discussion. In ethical terms, to what extent may the attorney expand her advice to clients to include “non-legal” moral and ethical aspects of the dilemma? In right livelihood terms, I want to ask the question: What should a lawyer do when the client’s prior or proposed actions conflict with his view of right and wrong?

To set the stage for these discussion and to avoid last year’s marginalization, I use a series of reflection papers and moral dialogue exercises to incorporate student perspectives on the case throughout the semester. First, I provide an opportunity for students to relate the “little stories” of their own experience to the “big stories” of the hypothetical and employment discrimination cases they are assigned to read. This exercise reveals that most students in the room have been employees at one time or another; several have been supervisors or small business owners. Some believe they have experienced discrimination; one even believes that he has been unfairly accused of discriminating. We talk about different ways students would have approached the problem before going to law school, and whether any of those options seem viable in light of what they now know about the law. We brainstorm the advantages and disadvantages of different approaches, taking into account both legal and non-legal considerations. I try to bring the students’ personal perspectives to bear when we discuss the relevant doctrinal considerations.

Secondly, as we begin to examine the relevant legal doctrines, I make sure to explicitly discuss the policy and value decisions reflected in the statute and case law. I also expand the boundaries by assigning some excerpts from the legislative history and a couple of short articles critiquing the law from various perspectives. About half way through the semester, I devote a class to moral dialogue, exploring

112. It is important to acknowledge that legal ethics codes cannot provide all the answers to a lawyer’s ethical dilemmas. For example, many rules of professional conduct, such as the duty to provide pro bono legal services, are aspirational in nature, leaving room for discretion. Model Rules of Professional Conduct, Rule 6.1 (1993). Even where the rules provide more guidance, lawyers are often called upon to exercise judgment and choose between the lesser of two harms. See, e.g., Joseph Allegretti, *Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics*, 66 FORDHAM L.REV. 1101, 1107. Allegretti argues that rules “are only part of the moral life.” *Id.* “Rules cannot empower a lawyer to be caring or courageous. They cannot teach a lawyer how to balance a client’s lawful interests against the harm that will be done to opponents and third parties. They cannot tell a lawyer whether a tactic or strategy that *can* be employed *should* be employed. Moreover, rules provide no guidance for the lawyer who is grappling with questions that the rules themselves ignore – questions such as the ends of lawyering or the lawyer’s moral accountability for her actions. No rule can tell a lawyer if the rule itself should be obeyed. If we are to deal with these profound and fundamental questions, we need a more-encompassing approach to legal ethics and legal practice.” *Id.* at 1107-8. See also, Myers, *supra* note 45, at 833, n. 48 and sources cited therein. Myers argues that because of this discretion, the workplace exercises significant influence over how lawyers exercise their moral choices. Moreover, there may be times when sound moral reasoning and integrity put an attorney into conflict with professional ethics standards, or common practices, of the legal profession. See also, Leslie Griffin, *The Relevance of Religion to a Lawyer’s Work*, 66 FORDHAM L.REV. 1253, 1259. Griffin suggests that attorneys who find themselves in moral conflict with professional ethics should adopt a “civil disobedience” model, breaking the rules and stating publicly the reasons for her misconduct, or why the norms are wrong or inconsistent with her religious beliefs, then accepting whatever penalty the disciplinary committee assesses. *Id.* at 1259-1260.

collectively the various interests at stake in anti-discrimination laws. Students quickly identify the tension between the employer's individual right of association and the employee's individual right not to be discriminated against. Many struggle to balance the rightness of remedying the ongoing effects of slavery with their fear that prejudice cannot be legislated away. In these exercises, students experience for themselves the difficulty of legislating a solution that will both be effective and draw the proper balance between the competing interests. The goal of the discussions, however, is not to debate and persuade, but rather for students collaboratively to begin to develop a sense of their own moral perspectives on these issues.¹¹³

As we approach the semester's end, we try to collectively synthesize the pieces, helping one another to develop moral positions on the issues. Most students believe anti-discrimination laws are necessary to enforce workplace rights, and that the standards established by the case law draw a pretty good balance of the competing interests. Although some students think anti-discrimination laws should be made much tougher, many are skeptical whether the law can or should try to legislate morality. There is more *laissez faire* sentiment and more sympathy for employers than I might have expected.¹¹⁴ And there is much disagreement about whether or not the law should protect this particular plaintiff, and whether or not it is worth the costs of litigation to resolve the matter. Drawing on their own backgrounds and perspectives, students pose various alternatives, from labor organizing to arbitration to mandatory training programs for the employer.

At this point, I have set the stage for questions of professional ethics and right livelihood. In my final set of exercises for the year, I introduce students to the dilemmas of client representation and client counseling described above. (See Appendix B.)

First, I set the bounds for the discussion: placing the questions of right livelihood in the context of the norms of professional discourse. To that end, I have students read the relevant provisions of the Code of Professional Responsibility, which generally urge lawyers to provide access to justice, but do not require representation of a particular client. (See App. C) I also introduce some of the "Professional Values" from the MacCrate Report, which call upon lawyers, to the extent compatible with professional ethics, to take into account issues of justice, fairness, and morality in advising their clients. (See App. C)

Finally, to give students some "big stories" against which to test their own views, I assign brief articles about two cases in which attorneys reached divergent conclusions about client representation, reflecting different views of the nature of professionalism and the role of attorneys in society. (See App. D) The first is a Massachusetts case in which a female attorney was found to be in violation of the state's anti-discrimination laws for refusing to represent a male client in a contested

113. It is sometimes a struggle not to permit this to evolve into another forum for students to engage in persuasive legal advocacy. Even in the first year of law school, students are acculturated to argue rather than to reflect and explore their own beliefs. However, for true moral development to occur, students must listen and help one another develop their own perspectives on the value choices being discussed. See, e.g., Hartwell, *supra* note 43, and discussion at note 90, *supra*.

114. This is one of the risks of creating space for different perspectives. "When students engage actively in reflection and response — ... — they often take a direction we might not approve or affirm. Their inner teacher may speak differently from ours: surprise us, amuse us, instruct us, anger us." O'Reilly, *supra* note 19, at 8. Though frightening, it is only at this place of honest exchange that an opportunity for understanding diversity resides.

custody case.¹¹⁵ The attorney's policy of representing only women was based on her political convictions that women's contributions to marriage are routinely undervalued; the prospective male client, a father who stayed at home with the children while his wife worked, argued that her expertise was not only relevant, but essential to his case.¹¹⁶

The second case involves an African-American attorney who was retained by the American Civil Liberties Union to represent a member of the Ku Klux Klan in a First Amendment case.¹¹⁷ He agreed to the representation based on his political beliefs in freedom of speech, as well as his view of his professional responsibility to provide access to legal representation. As a result, he was barred from membership in the NAACP.

In order to model the norms of moral dialogue, I have students read excerpts from two law review articles that reach divergent conclusions about the issue.¹¹⁸ I also overcome my usual reluctance to share my personal perspective on the Massachusetts case. I confide that I find the ruling that the attorney has violated anti-discrimination law troubling. I admit that I would find it difficult to represent a client whose position was inconsistent with my own political values, although I would draw the line differently from the feminist lawyer in this particular case. In revealing my own uncertainty and difficulty in developing a moral position on this issue, I open a space for students to confront their own uncertainties in the face of ethical dilemmas.

We then proceed through a series of exercises in reflection and moral dialogue, starting with our employment discrimination hypothetical, then changing the facts to personalize and deepen the dilemma for each student. (See App. E) At the end, we circle back to professional discourse, debating a proposed ethical rule that would bind attorneys to the same anti-discrimination rules as employers.¹¹⁹

It is the last day of class, and we are all tired, but a lively discussion ensues. Students seem to feel free to explore their ambivalence about this proposal, and to

115. *Stropnick v. Nathanson*, 19 M.D.L.R. (Landlaw, Inc.) 39 (MCAD Feb. 25, 1997). An entire Symposium issue of the Western New England Law Review is devoted to discussion of the ramifications of this case. *Symposium: A Duty to Represent? Critical Reflections on Stropnick v. Nathanson*, 20 WESTERN NEW ENGLAND L. REV. Issue 1 (1998). The case raises many issues about the current and potential scope and definition of sex discrimination, First Amendment defenses, civil rights lawyering, the aspirations and realities of legal work, and the significance of individual identity and beliefs in legal representation. See articles described in Martha Minow, *Foreword: Of Legal Ethics, Taxis, and Doing the Right Thing*, 20 WESTERN NEW ENGLAND L. REV. 5, 6 (1998). I put this issue on reserve and urge students to peruse the many and varied arguments to stimulate their own thoughts on the subject.

116. *Id.*

117. See *Freedom of Speech*, *supra* note 84.

118. Gabriel J. Chin, *Do You Really Want a Lawyer Who Doesn't Want You?*, 20 WESTERN NEW ENGLAND L. REV. 9, 12, (1998); Chris K. Ijima, *When Fiction Intrudes Upon Reality: A Brief Reply to Professor Chin*, 20 WESTERN NEW ENGLAND L. REV. 73, 78 (1998). See brief excerpts from these two articles in App. D.

119. See American Bar Association, Young Lawyers Division, Report to the House of Delegates (February 1994) proposing to amend rule 8.4 of the *Model Rules of Professional Conduct* by making it professional misconduct for a lawyer to "(g) commit a discriminatory act prohibited by law or to harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation or marital status, where the act of discrimination or harassment is committed in connection with a lawyer's professional activities." See also, American Bar Association, Standing Committee on Ethics and Professional Responsibility, Report to the House of Delegates (February 1994), proposing to make it professional misconduct for a lawyer to "(g) knowingly manifest by words or conduct, in the course of representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socio-economic status." Although the proposed amendments have been vigorously debated, they have not been formally adopted by the American Bar Association. However, at least fourteen states (including the District of Columbia) have adopted various anti-bias ethics rules for lawyers. See Randall Samborn, *Ethics Codes Seek to Bar Discrimination*, 16 The National Law Journal 1 (November 29, 1993).

help one another begin to develop moral positions. I am grateful to have avoided last year's disappointing results. As we go off for the holiday break, most of the students in this LP section continue to be engaged in trying to define for themselves the meaning of justice.

C. *Practicing Compassion: Cultivating Civility and Respect for Diversity*

A basic foundation of the Buddhist doctrine of right livelihood is recognition of the diversity and interdependence of all living beings and all things.¹²⁰ To diminish or degrade anyone because of differences in culture or background, or to attempt to elevate one individual over another, is contrary to the teachings of Buddhism.¹²¹ A corollary of this philosophy is that Buddhists are asked to be compassionate and practice loving kindness even to those who have hurt them or with whom they disagree.¹²² Thus, practicing law as "right livelihood" is not possible if it is done at the expense of others.

At first blush, these beliefs seem singularly incompatible with the practice of law, with its emphasis on the adversarial process as the primary means to adjudicate disputes. However, there is growing recognition -- even in the legal profession itself -- that the adversarial process is ill-suited for certain disputes, that alternative methods of resolving disputes may be culturally or socially desirable in certain circumstances, and that attorneys should be able to engage in litigation with civility and without engaging in competitive abuse.¹²³

Most law schools give lip recognition to these issues, offering at least one elective in negotiation or alternative dispute resolution. Popular materials for negotiation classes emphasize "getting to yes," cooperative negotiation strategies, and "non-zero-sum" as well as "zero-sum" games.¹²⁴ However, even in "alternative dispute resolution" courses, discussions often fail to take account of cultural and gender differences in analytical and moral reasoning.¹²⁵

120. See, e.g., Kenneth Kraft, *Engaged Buddhism: An Introduction*, in *THE PATH OF COMPASSION: WRITINGS ON SOCIALLY ENGAGED BUDDHISM* xiv (Fred Eppsteiner, ed., 1988). "For these thinkers, awareness of interconnectedness fosters a sense of universal responsibility." *Id.* The Dalai Lama, exiled leader of Tibet, is among the thinkers who espouse this concept. *Id.* See also, Kanazawa, *supra* note 20, at 1171.

121. *Id.* at 1174. Kanazawa argues that "[a]n unrestricted application of the doctrines of diversity, impermanence, inter-relatedness, and the all-embracing doctrine of interdependency in any judicial case, whether criminal, civil, or constitutional, would generate varying views in our society. There is no case in which one person is solely guilty, liable, or responsible." *Id.*

122. *Id.* at 139-140. This respect for others, which translates into a need to behave fairly, even toward adversaries, seems to be a nearly-universal religious belief. See, e.g., N. Lee Cooper, *Remarks: Religion and the Lawyer*, 66 *FORDHAM L. REV.* 1083, 1086-87 (1998).

123. The MacCrate Report encourages law schools to train students in skills of client counseling, including consideration of justice, fairness, and morality, Skills Section 6.1(a); and the extent to which the client's perspective may differ from the lawyer's because of differences in, inter alia, personal values or attitudes and cultural differences. *Id.* at Section 6.2(a). Moreover, in order to advise clients about their options, the MacCrate Report states that lawyers should have an understanding of both litigation and alternative dispute resolution mechanisms. *Id.* at Section 8.4. Among the values law schools should advocate for the legal profession are the dictum to treat other people with dignity and respect, *Id.* at Section 2.1(c); and the elimination of bias in the legal profession. *Id.*

124. The MacCrate Report, *supra* note 56, includes among the skills students should develop the ability to evaluate the relative merits of "non-zero-sum" and "zero-sum" strategies, as well as "competitive (adversarial)" versus "cooperative (problem-solving)" approaches to a particular client's problem. Skill 7.1, *Id.* at 174-177.

125. See, e.g., Hartwell, *supra* note 43. In recent years, there have been numerous experiments in integrating race, gender and cultural perspectives into the law school classroom, see generally discussion at note 65, *supra*, but it is difficult to avoid the risk that explicit discussion of multi-cultural issues will be perceived as "zero-sum" contests, where one segment of the community is privileged at the other's expense. But see David Dominguez, *Beyond Zero-Sum*

Moreover, law school continues to create overwhelming pressure to win, to compete, to succeed at all costs.¹²⁶ Although the curriculum may incorporate some alternatives to the adversarial system, within the law school itself, competition is fierce.¹²⁷ The scramble for top grades, class rank, and elite law reviews all contribute to this pressure. In most courses, no matter how many creative teaching methods are incorporated in the classroom, the final grade is based primarily on one comprehensive, blindly graded written exam at the end of the semester. We may talk about working collaboratively, but the rewards go to those who compete most fiercely.

Scene 4

At the beginning of the Spring semester, I divide my students into two “law firms” to do a mock negotiation. One firm represents an artist who creates large-scale murals of goddess images. The other side represents a small, women-owned restaurant that commissioned one of the murals, then painted over it during a major renovation. The artist is complaining that her “moral rights” have been violated; the business owners claim the artwork is their property and they can do with it as they please.¹²⁸

In class, we talk about the fact that law does not have to be a zero-sum game. We strategize about how to produce “win-win” resolutions to conflict. Then I pair the students up and send them off on their own to negotiate a settlement. Many of the pairs come up with creative, “win-win” resolutions. The artist gets to paint a new mural; the business owner hosts an opening reception that generates good publicity for the restaurant, and everybody benefits.

But one pair of students runs into major conflict. The grade sheet offers two bonus points for a particularly good “deal,” and each of them wants to win those points, preferably at the other’s expense. After their first negotiation session, both students come to my office to complain. The artist’s attorney claims that her opponent is refusing to stick to the terms of their oral negotiation; he claims that she altered some of the terms when she drafted the settlement agreement. Both sides refuse to negotiate further, and accusations of cheating are overheard when the students get into a heated confrontation in the hallways.

I call both students into my office together to investigate. Although I don’t find evidence of cheating, I do find that they have engaged in competitive abuse, trying to use information to unfair advantage. I express disappointment in their conduct and penalize both of them ten points on their joint negotiation grade.

By now, news of the controversy is being whispered in the hallways. I decide that I have to address the issue publicly. During the next class, I hand out an article on the crisis of professionalism, and require every student in the class to write a responsive essay expressing their opinions about the accuracy of public perception

Games: Multiculturalism as Enriched Law Training for All Students, 44 J. LEGAL EDUC. 175 (1994).

126. See, e.g., Glennon, *supra* note 29, at 1177. “Law school, both implicitly and explicitly, encourages and rewards behavior that is individualistic and competitive, and discourages cooperation and caring for one another.”

127. In general, the U.S. higher education system, encourages competition through a grading system that separates teachers from students, and students from one another. Competition makes students and teachers alike wary of their peers. But divisive structures are only the system—the heart of the problem resides in fear. Palmer, *supra* note 2, at 36.

128. The case is governed by a federal statute, the Visual Artists Rights Act of 1990, which provides artists with limited “moral rights” to prevent their work from being destroyed or mutilated.

of attorney greed and unethical conduct, and what law schools can do to address the problem.

I am left to wonder where I went wrong in designing the course. All year, I've had my students assigned to work in teams. I've emphasized the value of collaboration; pointing out that as practicing attorneys they will often work on a case with others.¹²⁹ I've even experimented with collaborative grades on this project, awarding each pair of students the same grade for the settlement agreement they negotiate. One obvious mistake I made was not "walking my talk" -- awarding two bonus points for one client to "win" at the other's expense. That problem could be easily resolved by instead offering bonus points to both attorneys on a team that comes up with a truly creative win-win solution. But two bonus points do not entirely explain the level of competitiveness students displayed in this exercise. Both are earning "A's" in this course, and the two points will not make a significant difference in their grades.

I conclude there is something about the culture of competitiveness that transcends collaborative exercises and talk of "win-win" strategies. My observations are consistent with feminist and critical race scholarship critiquing the dominant competitive model in law school teaching.¹³⁰ The scholarship indicates that women, in particular, find the adversarial model discordant with their preferred way of thinking and relating to the world.¹³¹ However, traditional law school case books and discourse offer few alternative models for students to consider. Thus, women (and others whose personal values are inconsistent with the "gladiator" approach) either learn to play the competitive game or shrink into the background.

This dilemma implicates a central question of right livelihood. Who do we want to be and how do we want to act in relationship to clients, colleagues, and adversaries? Although the need for legal assistance often arises out of conflict, it is possible to re-frame conflict from a competitive, zero-sum game played by the individual for private gain to a public encounter in which it is possible for everyone to win by learning and growing.¹³² The MacCrate Report encourages attorneys, to the extent consistent with other professional norms, to discuss relevant non-legal considerations with their clients.¹³³ Another exercise I use in my Lawyering Process class provides students with an opportunity to help clients re-frame issues into win-win situations, or at least to avoid litigation and ethically questionable behavior. (See App. E)

But law school must go beyond re-framing issues. In order to make room for students whose values are more relational or collective than individualistic, law school discourse has to offer real alternatives. We have to seriously challenge the primacy of the adversarial system as a way of resolving disputes. What message are we sending when students read entire case books full of disputes settled only after

129. The Lawyering Process Student Handbook, written by UDCSL's Director of Legal Writing, Professor Alice M. Thomas, explicitly provides that "Lawyering Process permits and encourages cooperation and reliance on your fellow students. collaborating is essential to good lawyering; you are encouraged to develop your cooperative skills by talking to each other about the LP cases and assignments, using your colleagues as a sounding board for your ideas and arguments, and listening to different perspectives that can broaden your point of view."

130. See, e.g., Strum, *supra* note 29; Menkel-Meadow, *supra* note 50; Greenberg, *supra* note 30.

131. *Id.*

132. See, e.g., Palmer, *supra* note 2, at 103.

133. MacCrate Report, *supra* note 56, Value 2.1, at 207.

appellate litigation, with no reference to the many disputes that are settled in other ways?¹³⁴ We also have to find ways to cultivate empathy. Simulated client interviews, narrative and story-telling, even an occasional movie can do much to humanize the wooden story book characters in law school case books. Perhaps most importantly, because students learn as much by what we do as by what we say, we must find ways to truly reward collaboration and creative solutions to problems.¹³⁵

Instead of waiting, like I did, for conflict to erupt, we should encourage students to contemplate from the very beginning of law school what kind of profession they want to enter, and what kind of lawyers they want to be. Moreover, we should encourage them to start now to develop the kinds of relationships they want to maintain – not only with clients and colleagues – but also with their adversaries.

D. Doing Well by Doing Good: Fostering a Sense of Public Service in Law School and Beyond by Integrating Students' Personal and Vocational Values

In traditional Buddhist philosophy, a person could practice right livelihood without engaging in overt social action, for example, by acting as a role model or teacher.¹³⁶ But there is a growing trend in Buddhism toward socially engaged right livelihood.¹³⁷ Similar traditions of public service and caring for the poor inure in other religious faiths,¹³⁸ and participants in the Religious Lawyering Movement have urged the legal profession to voluntarily adopt these norms for itself.¹³⁹

134. See, e.g., Dominguez, *supra* note 126; Glennon, *supra* note 31, at 1177. "The legal system is represented as an endless series of bipolar disputes, of individual persons or businesses in competition before the courts. ... Issues of race, gender and class are often muted. Legal disputes that do not appear in judicial opinions simply do not exist." *Id.*

135. See, e.g., Glennon, *supra* note 29, at 1183. In representing poor clients in her LTP course, Glennon encouraged students to provide emotional support to one another and to think through problems together. In the classroom, students often worked together in "practice groups" to solve problems, and were encouraged to discuss their experiences providing legal services to poor people. *Id.* However, in my experience, encouragement is not sufficient incentive to overcome the competitiveness of law school culture. Students have to see their collaborative efforts reflected in traditional indicia of law school success. For example, grades on a collaborative assignment could be awarded collectively, so that each person on the team has an incentive to add value to the group's effort. To the extent that this approach raises concerns about possible "freeloaders," it provides a valuable lesson for students in collective responsibility.

136. See Nelson Foster, *To Enter the Marketplace*, in *THE PATH OF COMPASSION*, *supra* note 17, at 58-59. The Buddhist Peace Fellowship was founded in 1978 to, among other things, promote projects to respond to peace and ecology concerns. In the last decade, Zen communities around the world have engaged in direct social service, and there is tacit acknowledgement that practicing Zen and working for social change are not at odds. *Id.* at 58.

137. See generally *id.*, describing dozens of Buddhist social projects all around the world, from Tibet, Vietnam, Cambodia, Thailand, Sri Lanka, England, the United States and other countries. The term "engaged Buddhism" refers to active involvement by Buddhists in society and its problems. *Id.* at xii. As one Buddhist scholar states, "Anyone who looks at this world and society and sees its tremendous suffering, injustice, and danger, will agree on the necessity to do something, to act in order to change, in order to liberate people." Sulak Sivaraksa, *Buddhism in a World of Change: Politics Must be Related to Religion*, in *The Path of Compassion*, *supra*, at 9,11.

138. See, e.g., The Honorable C.G. Weeramantry, *On Earth as it is in Heaven: A Vision of World Order for the 21st Century*, 2 *TULSA J. COMP. & INT'L L.* 169, 180 (1995) (arguing that the phrase "lead us not into temptation" in the Lord's Prayer embodies all of the concepts of the Buddhist Noble Eightfold Path). This article holds up the life of Dr. Martin Luther King as an exemplar of the need for attorneys to actively pursue righteous conduct in the path of service to universal love. *Id.*

139. See, e.g., Nitza Milagros Escalera, *A Christian Lawyer's Mandate to Provide Pro Bono Publico Service*, 66 *FORDHAM L.REV.* 1393 (1998); Dantuono, *supra* note 28; Haddon, *supra* note 28.

The legal profession has historically recognized that lawyers have a professional obligation to represent poor people.¹⁴⁰ However, in practice, only a small minority of attorneys take this responsibility seriously.¹⁴¹ The debate over mandatory pro bono proposals dominates the profession's discussion of how to address this gap between aspiration and reality.¹⁴² The McCrate Report urges law schools to educate students about the professional values of serving the needs of the poor.¹⁴³ Many law schools try to incorporate notions of public service through clinical programs. Some have even adopted mandatory community service or public interest requirements.¹⁴⁴ However, schools that adopt mandatory "public interest" or "community service" requirements often run into ideological debates in defining the type of legal work that will fulfill the requirement. Should the definition be limited to providing pro bono legal services to the poor, such as legal services and public defender offices, or should it include work for civic and non-profit organizations,

140. See, e.g., Cramton, *supra* note 55, at 581-82, and n. 137 and sources cited therein. Cramton posits three rationales for this professional obligation. First, as officers of the court, lawyers have a concern that justice be done, and representing poor people is an obvious way to act on this concern. Another rationale is based on the monopolistic nature of the profession. Finally, representation of the poor is seen as a kind of continuing legal education that exposes lawyers to the realities of justice. *Id.*

141. See generally notes 53-55 and accompanying text, *supra*.

142. Although the American Bar Association has been unsuccessful in instituting a mandatory pro bono requirement, the Model Rules do contain an aspirational goal of 50 hours per year. See Cramton, *supra* note 55, at 583. Cramton summarizes the argument for mandatory pro bono as follows: "(1) There is an unmet need for vital legal services, especially on the part of poor people. (2) A lawyer is necessary for meaningful access to the justice system. (3) The American ideal of equal justice under law is undermined by lack of access to justice. (4) Although voluntary pro bono is commendable, it has proven insufficient, even when supplemented by modest public funds in the form of the national legal services program. Therefore, (6) lawyers must satisfy the unmet need with mandated services, at least until other alternatives, such as adequate provision of publicly-funded services, are put in place." *Id.* at 583. According to Cramton, the legal objections rest on various constitutional provisions, including freedom of speech and association, the takings clause, equal protection, and involuntary servitude. *Id.* at 584. There are also moral objections, based on the notion that mandated service intrudes on personal autonomy, converting a gift of volunteered services into a duty, *Id.* at 585; and practical objections based on concerns about the quality and efficiency of mandated services, administration and enforcement, discouragement of charitable and bar association work if they are excluded from the required pro bono category, and adverse effects in inter-state competition of attorneys. *Id.* at 585. See also, ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT 468-469 (American Bar Association, Center for Professional Responsibility, Third Ed. 1996)(discussing the history, rationale and objections to mandatory pro bono proposals).

143. MacCrate Report, *supra* note 56, Values Section 2, at 207. Some commentators have challenged the MacCrate Report's view as too narrow, charging that neither the profession as presently conceived, nor legal education as presently designed will equip lawyers to effectively promote these values. See, e.g., Haddon, *supra* note 28, at 582. Haddon argues that we should be working to define good lawyering for the twenty-first century as a public calling which emphasizes a professional obligation to promote equality in the legal system. *Id.* at 573. This would require re-assessment of such fundamental questions as the distribution of societal resources and power, and the lawyer's role as reformist; in other words, a willingness to engage in discussions of social justice. *Id.* at 578.

144. See, e.g., Glennon, *supra* note 29, at 1177. Glennon argues that the legal profession should adopt a vision of professional responsibility that draws on communitarian rather than individual rights. Based upon an "ethic of care," she has founded a Legal Theory and Practice program at the University of Maryland School of Law on the idea that it is every lawyer's professional responsibility to provide legal services to people living in poverty. *Id.* at 1175. Students in the combined Legal Theory and Practice/Civil Procedure course practiced with LTP faculty, public interest groups, or private attorneys working on pro bono cases in special education and school discipline. *Id.* at 1180. All students represented at least one client, and also engaged in a project that was designed to focus them on systems of law and how those systems affect groups of people. *Id.* at 1180, n. 28. Incorporating regard for clients and trying to understand their perspectives and humanity were depicted as essential to responsible lawyering. *Id.* at 1181. See also, Haddon, *supra* note 29, at 582, describing innovative programs at Stanford University Law School and North Carolina Central Law School; Cramton, *supra* note 56, at 587, n. 149 (describing requirements at a handful of law schools to require competence in some field of "poverty law"), citing John R. Kramer, *Law Schools and the Delivery of Legal Services - First, do No Harm*, in CIVIL JUSTICE: AN AGENDA FOR THE 1990'S 45, 57 (1991)("The best way to alter attorneys' attitudes is from the ground up by instilling in law students a sense of the responsibilities they must shoulder when they become members of the bar.").

government agencies, and creation of corporations that create jobs for the community?

These debates over what “counts” as public interest and whether or not it should be mandatory miss the point in “right livelihood” parlance. One of the great virtues of right livelihood is that it can be practiced by anybody in virtually any job.¹⁴⁵ The doctrine of right livelihood includes any work done consistently with our interests and values, and consciously chosen to benefit others as much as ourselves.¹⁴⁶ The questions of right livelihood that are called into the center of the room by this debate are fundamentally personal: How can I practice law in a way that is consistent with my values? How can I use my legal knowledge to pursue deeply held views of “serving” the community? In essence, how can I make a meaningful difference in the world?

This has profound implications for the way we talk about “community service” and “public interest” in law school. Although we should cultivate a commitment to “justice” and “public service” in all of our students, we don’t necessarily have to all agree on the meaning of those terms. There is an inherent tension between the pedagogical goals of “knowledge” and “transformation.” Knowledge about issues of injustice and difference can be transmitted from the outside, but transformation will only occur if the knowledge is internalized and synthesized with a person’s own sense of values. Although clinics and other forms of required community service may be pedagogically sound for purposes of raising consciousness, they may not have the intended results.

The prevailing pedagogical theory is not only that mandatory programs will provide much-needed legal services, but that they will instill in students an ongoing commitment to pro bono or public service. However, in my experience, law school has the opposite effect on most students. Those whose personal statements were full of aspirations for serving unmet legal needs end law school hoping only to pass the bar exam, get a job that will pay their student loans, and have some time left for home and family.¹⁴⁷ Students who are required to do pro bono or public service work that is not personally meaningful – or even worse, that is inconsistent with their beliefs

145. See, e.g., Steven D. Goodman, *Transforming the Causes of Suffering* in MINDFULNESS AND MEANINGFUL WORK, *supra* note 4, at 41, 44 (“right livelihood” is any activity motivated by the intention to bring knowledge about how to discover what is helpful and harmful into a language that people can understand and apply); Lama Surya Das, *supra* note 18, at 252 (“Right Livelihood is work that genuinely develops us as we develop it. In an interview, the wonderful poet Maya Angelou defined work as ‘something made greater by ourselves and in turn that makes us greater.’”) *Accord*, Floyd, *supra* note 20, at 1407 (“We are all called to serve God and neighbor with everything that we are and everything that we have and everything that we do. That includes our work lives as well as our spiritual lives or religious lives. Any occupation, then, can and should be a calling, because any job can be an instrument of service to God and neighbor.”)

146. See, e.g., Lama Surya Das, *supra* note 17, at 235 (“I don’t think it helps anyone to get too judgmental about different occupations. Some say that the legal profession lacks an ethical center, but Ralph Nader is a lawyer and Gandhi was a lawyer. So was Lincoln. I think it helps if each of us stops a moment and considers the many ways we can practice Right Livelihood – using our hands, our heads, and our hearts to help others – no matter what we do for a living. Right Livelihood helps us make a life, not just a living.”)

147. See, Glennon, *supra* note 29, at 1179-1180. In his study of law students as they entered and completed law school, Robert Stover concluded that they became somewhat less concerned with finding a job in which they could change the world and help others and somewhat more concerned with finding a “comfortable job.” Stover, *supra* note 52, at 34-35.

and values – is not likely to internalize the experience and carry a commitment to public service forward into their legal careers.¹⁴⁸

My own thinking on these issues has evolved in the course of incorporating notions of “right livelihood” into my teaching. I used to believe that students would benefit from any exposure to social justice issues; in fact, I believed that law school was the ideal place to immerse students in issues that they might not have encountered in their pre-law school experience. Moreover, I used to have a fairly narrow view of what constituted “public interest” – primarily legal activities that benefitted poor people or civil rights activities on behalf of traditionally under-represented minority groups. My pedagogy was grounded in these assumptions, but did not always lead to the results I had hoped for.

Scene 5

It is Spring semester in my Law, Culture and Difference course. We have spent the Fall laying theoretical groundwork for discussing issues of poverty; race, gender and sexual orientation discrimination; and other social ills. To continue our examination of these topics in a more concrete context, I have divided the 200 first-year students into ten “project teams” led by upper-level student facilitators. Each team is to investigate and report on a discrete issue, for example, environmental justice in a particular neighborhood; legal rights of gay students in public schools; welfare reform and media images of poor women; or employment rights of individuals with HIV/AIDS.¹⁴⁹

After the first team meeting, the facilitators report back to me that, although a substantial majority of students seem excited and eager to participate in the projects, a significant minority are protesting. They challenge the faculty’s intentions in designing the projects, complaining that we are “shoving political correctness down their throats.” Moreover, they question why they were assigned to a particular project rather than being offered a choice. The faculty and TA’s who planned the projects spend the rest of the week debating the merits of the students’ argument. In particular, we are trying to decide whether or not to let the protesting students switch teams to work on a project more to their liking.

The debate follows predictable lines. Some argue that we should not let the law school classroom be informed by identity politics; that law school is a place where students should be exposed to a wide array of issues, viewpoints, and perspectives. Others argue that it will be more meaningful for students to work on

148. In his mandatory Public Interest Law course for first year law students, Professor David Dominguez addresses this problem directly by starting with an imaginary dialogue between a professor and a first-year law student about public interest law. *See* Dominguez, *supra* note 128, at 186. The dialogue questions whether aspirational pro bono rules help or hinder delivery of volunteer legal services for the poor; raises arguments why pro bono should be made mandatory; and asks whether public interest law should be restricted to handling cases on behalf of the poor. *Id.* Students record their reactions to these arguments, then meet in small groups to learn about one another’s experience with the legal system. They also consider broader policy questions about the efficacy of access to legal services without addressing larger systemic problems. The exercise ends with students writing a short paper reflecting how their initial view of public interest law is changing in light of their classmates’ perspectives. *Id.*

149. In the course of their scholarly and field research, students were encouraged to examine and share their own perspectives on the issues and develop a collaborative approach that took into account competing values and beliefs. In the event that teams were unable to reach a consensus, individual team members were permitted to submit written dissents – an option that was rarely exercised.

topics that they care deeply about; that the cross-fertilization can come in the reporting process rather than in the actual team work. In the end, logistics win out. It is just too much trouble to design a system of choice that will ultimately divide 200 students into 20 groups of approximately the same size.

So the projects continue as designed. In some ways, they are wildly successful. Most of the first year students are much more invested and active in the team projects than they were in the theoretical discussions that took place in the Fall semester. The written team project reports are generally well-researched and well-written, although they tend to gloss over areas where real difference might be expressed. However, although this is a required course, the facilitators report a significant amount of attrition: a number of students are not attending the classroom sessions, and some teams complain that a few students are carrying the workload for their team-mates.

Finally, it is the end of the semester and time for the teams to make oral presentations to their classmates. The presentations are everything the course facilitators hoped for: creative, informative, and thoughtful about the issues of difference that have revealed themselves in the process. However, the audience is disappointing. Aside from a core group of students who are devoted to the course and attend every presentation, most presentations are attended by only a handful of faculty and students who are particularly interested in the issue being discussed. The course evaluations reflect all of the flaws students perceive in the course design. Some complain that the issues covered by the projects are too "politically correct," and that more conservative points of view are "silenced" by the process; others complain that issues of difference get watered down by the process of producing a collaborative report. Most students complain that the projects are too much work for the number of credit hours; and that the collaborative grading is unfair to students who carry the weight of the project for their team-mates.

My involvement with Law, Culture and Difference ended the next year, when I moved to my current teaching position at another university. However, the philosophy of "right livelihood" has changed my views on course design. If I had it to do over again, I would make every effort not only to accommodate student choice of projects, but to encourage students' participation in actually formulating their own projects.¹⁵⁰ I would explicitly raise the questions of right livelihood, encouraging students to start to formulate their own views on how they might use the law to make the world a better place.

In my new job, I am responsible for supervising a group of first year advisees in fulfilling their required "community service" hours.¹⁵¹ For the first two years, I designed projects for the students to participate in. But this year, I am taking a different approach. In my first meeting with my advisees, I asked them to fill out a survey setting forth what brought them to law school, what issues they are most

150. See, e.g., Dominguez, *supra* note 128, at 196. For example, in his Public Interest Law seminar, Dominguez has self-selected student teams negotiate and come to agreement on a team research agenda in a public interest field of their choice. They then design a field project which applies the knowledge gained through their interviews and readings. Finally, through a series of short reflective papers as well as oral presentations to the class, students cross-fertilize with other teams before disseminating a final report on their field project. *Id.*

151. First year law students at UDC-DCSL are required to take a two-credit course, Law & Justice, that explicitly examines issues of social justice. In addition to the classroom component of the course, students are required to perform forty hours of community service for a public interest organization.

interested in, what kind of work they hope to do when they get out, what kinds of community service they have provided in the past and what ties they have with ongoing community work. Based on the results of the survey, I provided some potential resources and community contacts, and gave students the option of designing individual projects. I also plan to periodically bring in guest speakers who can serve as potential mentors and role models, sparking passion in students for a particular line of public service.

For the students who have not designed a project by the beginning of the Spring semester, I will facilitate a process by which they design their own collaborative project. Built into the project will be an ongoing process of contemplation, reflection and response. At the end of the year, I will have them write papers describing not only what they have learned, but how their values, career goals, and notions of community service have changed during the course of the project. This is considerably more work than supervising a structured CSP project, but I hope it will pay dividends in helping my advisees develop their own sense of “right livelihood” in the legal profession.

IX. CONCLUSION

As a law professor, I have had the luxury to sit back and reflect on whether the work I do is enabling me to fulfill my unique life’s purpose. I have come to the conclusion that the opportunity for meaningful reflection on personal and professional values should not be separated from the learning of legal doctrine, analytical skills, and professional ethics. If we want to encourage students to fulfill the highest ideals of the profession – notions of fairness, justice, public service, and respect for the dignity of others – the opportunity for contemplation, reflection and response, and integration of personal with vocational values should be incorporated into the study of law from the first day of law school. Instead of cutting students off from the values and aspirations they have when they apply to law school, we should cultivate the ground for them to deepen and refine their beliefs and integrate them into the framework of the legal profession. In that way, we can encourage a new generation of lawyers to “do well by doing good,” thus bringing relief to the crisis in the legal profession and beginning to meet nation’s unmet legal needs.

APPENDIX A

PROFESSIONAL GOALS AND VALUES EXERCISE:

Each of you came to law school with hopes and dreams for the future, but as you learn more about the legal profession, your goals and interests will continue to evolve. In this exercise, you will begin an ongoing process of refining and clarifying your professional goals and values, using your personal statements as a starting point. The goal of this exercise is to define your goals in terms of “right livelihood” -- work that is personally fulfilling, helps rather than harming others, and makes a difference in the world. This will require you to think on several different levels and in several dimensions, as illustrated by the chart on the other side of the page. Here are some questions to get you started:

INTEGRITY. What principles attract me to the legal profession? How can I use my work to express my values, ideals and visions?

SERVICE. How can my work enable me to meet a need in the world that I care about? What individuals or groups do I wish to serve?

ENJOYMENT. What do I love to do? How can the legal profession take the most advantage of my innate skills and abilities?

EXCELLENCE: What draws out my best? What do I need to dedicate myself wholeheartedly to excellence in my law school and legal career?

PERSONAL. How can I be true to my own purpose and values in the practice of law?

INTER-PERSONAL: What kinds of relationships do I want to have with clients, colleagues, and adversaries?

COMMUNITY. What kind of difference do I want to make in the world?

APPENDIX B

SETTING THE BOUNDS: EMPLOYMENT DISCRIMINATION HYPOTHETICAL

Anoa Steele, an African-American female, is an employee of Global's Business Systems and Furniture Rentals, a national company specializing in renting office systems to businesses. Ms. Steele has worked for the company for ten years in progressively responsible positions. For the past two years, she has been a manager of one of the company's rental centers. This case arose when she applied for a promotion to division manager of the company's new Business Center Division. She was interviewed for the position, but passed over in favor of a white male, Simon Simpleton, from outside the company. Steele has filed a complaint with the EEOC alleging that she was discriminated against on the basis of race. The EEOC rejected her claim and issued the standard right-to-sue letter.

The two disputed issues in the case are qualifications and discriminatory motivation. Steele's qualifications include a master's degree in business administration, ten years of experience with the company, including some store management experience, and participation in a national leadership training workshop sponsored by the company. Simon's qualifications include a bachelor's degree in business management, some graduate course work, and experience servicing computer networks. The company's articulated reasons for hiring Simon, based on the recommendations of the regional manager and senior vice president who conducted the interviews, include his great personality, good interviewing skills, good recommendations from prior jobs, strong grasp of computer systems and networks, ability to "catch on fast," and his "vision" for the future of the division. The company conceded that Steele was "highly qualified for the job," but expressed concerns that she had been having some difficulty getting along with other store managers. Moreover, as the mother of three young children, they thought the demands of a new division manager, who is expected to put in fifteen hour days to get the division up and running, might be too much for her.

With respect to motivation, Global's argued that it had hired minorities for top management positions in the past, including a woman who was initially promoted to the division manager's position, but "just didn't work out." The company has

recently settled a suit for gender discrimination, but admitted no fault. Steele argues that there are no African Americans and only one Latino among the company's 50 top managers. Moreover, only 45 of the company's 3,000 stores are managed by minorities. About 6,000 of the company's 20,000 employees are minorities. Steele also offers anecdotal evidence of discrimination, including Barton's comment that she didn't get the job for intangible reasons, and "besides you people might have a difficult time motivating others to work with you. And besides, time deadlines are very important at that level of management and you people generally have a difficult time with that."

APPENDIX C

SETTING THE BOUNDS: PROVIDING NORMS OF PROFESSIONAL DISCOURSE

*A. Model Rules of Professional Conduct*¹⁵²

Rule 1.2: Scope of Representation

(e) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. ...

(f) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(g) A lawyer may limit the objectives of representation if the client consents after consultation.

(h) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

(i) When a lawyer knows that a client expects assistance not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Comment [3]

Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

152. Abstracted from Center for Professional Responsibility, American Bar Association, ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT, THIRD EDITION (1996).

Rule 2.1: Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Rule 6.2: Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as: ...

(c) the client of the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Comment [1]

A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing *pro bono publico* service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

*B. MacCrate Report: Fundamental Values of the Profession*¹⁵³

2. Striving to Promote Justice, Fairness, and Morality

2.1 Promoting Justice, Fairness, and Morality in One's Own Daily Practice, including:

- (a) To the extent required or permitted by the ethical rules of the profession, acting in conformance with considerations of justice, fairness, and morality when making decisions or acting on behalf of a client (citation omitted);
- (b) To the extent required or permitted by the ethical rules of the profession, counseling clients to take considerations of justice, fairness, and morality into account when the client makes decisions or engages in conduct that may have an adverse effect on other individuals or on society (citation omitted);
- (c) Treating other people (including clients, other attorneys, and support personnel) with dignity and respect;

3.1 Contributing to the Profession's Fulfillment of its Responsibility to Ensure that Adequate Legal Services are Provided to Those Who Cannot Afford to Pay for Them;

153. Excerpted from LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM, STUDENT EDITION (Robert MacCrate, ed.), Part Two. A Vision of the Skills and Values New Lawyers Should Seek to Acquire.

3.2 Contributing to the Profession's Fulfillment of its Responsibility to Enhance the Capacity of Law and Legal Institutions to Do Justice.

Commentary

...When, as often happens, a lawyer encounters a situation in which some of the options available for solving a client's problem would result in unfairness or injustice to others, the lawyer should counsel the client to act in a manner "that is morally just." (citations omitted) ... [T]he professional value of promoting justice, fairness, and morality in one's daily practice also calls for according appropriate dignity and respect to all people with who one interacts in a professional capacity. (citations omitted) This necessarily includes refraining from sexual harassment and from any form of discrimination on the basis of gender, race, religion, ethnic origin, sexual orientation, age, or disability, in one's professional interactions with clients, witnesses, support staff, and other individuals. (citations omitted)

*C. Proposed Model Rule 8.4 Misconduct*¹⁵⁴

It is professional misconduct for a lawyer to:

(d) commit a discriminatory act prohibited by law or to harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation or marital status, where the act of discrimination or harassment is committed in connection with a lawyer's professional activities.

Commentary:

III. ...There is no more sensitive environment than the judicial system. To discriminate unfairly or harass on the basis of personal characteristics, rather than the merits of the case, would violate the fundamental constitutional right to equal protection under the law. Such behavior taints case outcomes, cheapens the integrity of the legal profession, and prevents women and minority lawyers from effectively engaging in professional activities. ...

APPENDIX D

SETTING THE BOUNDS: PROVIDING THE ARCHETYPES OF THE PROFESSION

Case Summary #1

It's hard to think of a more mismatched attorney-and-client pair than Anthony Griffin and Michael Lowe. Griffin is a black lawyer who was counsel to the Texas chapter of the NAACP. Lowe is Grand Dragon of the Texas Ku Klux Klan, and has resisted the Texas Human Rights Commission's subpoena for his organization's mailing list.

154. REPORT TO THE HOUSE OF DELEGATES, American Bar Association Young Lawyers Division (February 1994).

Griffin was assigned Lowe's case by the Texas chapter of the American Civil Liberties Union. His acceptance of Lowe as a client drew fire from black groups, and culminated in his dismissal by the NAACP who saw the representation as a conflict of interest.

Griffin's former instructors, Yale and Irene Merker Rosenberg, both law professors at the University of Houston Law Center, believe he is a hero who has demonstrated exceptional courage and respect for the right of privacy and free speech.

According to Richard Delgado of the University of Colorado Law School at Boulder, Griffin's devotion to the First Amendment may be admirable, but the NAACP has an equally important – if not greater – interest in protecting African-Americans from KKK harassment.¹⁵⁵

Case Summary #2

Attorney Judith Nathanson, a feminist attorney specializing in divorce law, premised her practice on advancing the cause of women in the family law area in an effort to remedy past and present gender bias in the courts. When she refused to represent Joseph Stropnick, a stay-at-home father, he brought a lawsuit against her claiming that she had discriminated against him on the basis of gender. Nathanson was fined \$5,000 for engaging in unlawful gender discrimination in violation of the Massachusetts public accommodation law. The following excerpts from articles discussing the case are drawn from a special Symposium devoted to the topic.

Lawyers should be permitted to reject clients on the basis of sex, race, religion, national origin and sexual orientation, that is, on grounds which law and morality require be prohibited as selection criteria in virtually every other area of life. It is not that I approve of such discrimination; to the contrary, in my view no respectable, decent lawyer would discriminate on the basis of race, religion, or other arbitrary basis in the absence of a compelling reason. ... Even if progressive lawyers were not likely to be disproportionately affected, I would still question the ruling. Lawyers should have the right to use their lives for their private interests, that is, people should be allowed to choose to become political lawyers.¹⁵⁶

It must seem ironic to the lay observer that lawyers debate this issue at all. After all, it is lawyers who often credit themselves with the legal eradication of racial discrimination. Yet, now we argue that because our position is somehow more special and sacred than others, we claim the right to engage in giving free reign to our racial and gender biases in deciding whom we represent. ... I believe that an institution and profession that would enforce society's decision to ban invidious discrimination, but consciously exempt itself from that ban neither fosters nor deserves the public trust.¹⁵⁷

155. *Freedom of Speech: Was the NAACP right to fire one of its lawyers for representing the KKK?*, ABA JOURNAL 32 (December 1993). This was the introduction to an *At Issue* column debating the issue.

156. Gabriel J. Chin, *Do You Really Want a Lawyer Who Doesn't Want You?*, 20 Western New England L. Rev. 9, 12 (1998).

157. Chris K. Ijima, *When Fiction Intrudes Upon Reality: A Brief Reply to Professor Chin*, 20 Western New England L.Rev. 73, 78 (1998).

APPENDIX E

Reflection Paper: Client Representation

In this assignment, you will re-examine and refine your views about the service and interpersonal dimensions of right livelihood. To refresh your memory, look back at how you answered the following questions: How can I use the law to express my values, ideals and beliefs? What individuals or groups do I want to serve with the law?

First, take a moment to record any changes to your priorities since the last time we visited these questions.

Now, we are going to re-consider those questions in the context of the hypothetical employment discrimination case we are currently working on. [See App. B] Based on your goals and priorities, which party would you prefer to represent in this action? What values and beliefs would representation of that party help you to express?

Now, let's ask a more difficult question: Assuming that the case fit within your area of competence, would you be willing to represent the party you identified as less preferred above? Why or why not? What values would you be expressing by your decision? [Before you answer, review the relevant ethical rules [see App. C]. Under what circumstances (if any) would the rules require you to accept the case?]

The first reflection exercise is designed to give students space to contemplate their own feelings about representing a client with whom they disagree politically or morally, but in order to deepen their understanding, their initial reactions must be tested against both the norms of the profession and the views of others. To that end, I have them read the case excerpts and commentary describing the divergent decisions made by two attorneys who found themselves in similar circumstances. [See App. D] Then I assign the following exercise in moral dialogue.

Think, Pair and Share: Client Representation

THINK. Looking back at your personal statement, what individual or group of clients (or what kind of case) would cause the most conflict or tension with your values, purpose, and goals for the profession?

PAIR. Now choose a partner to explore your feelings about representing the client(s) you have identified. In this discussion, we will use the techniques of moral dialogue. Your goal is not to debate your partner, but rather to help her reveal her own moral position and reasoning. You can do that by asking questions that deepen and clarify – rather than challenging – what she is saying. I will let you know when we are at the half-way point so you can make sure both partners have an opportunity to express their thoughts.

SHARE. Based on your discussions thus far, do you think you would choose to represent a client whose values or beliefs are repugnant to yours? You need not be

sure about your decision; this is an opportunity for all of us to continue to explore and refine our beliefs.

Deepening the Well: Client Counseling

Another question of right livelihood that I explore with students revolves around the conflict they might experience when a client's actions conflict with their own notions of morality. Again, I use the employment discrimination hypothetical [Ex. B] as a starting point for a continuing conversation about client counseling. For purposes of the first exercise, I ask students to imagine that we represent the employer in the case. Although the facts indicate that the employer has some legitimate legal defenses to the discrimination suit, the tension arises because there are also facts in the record that could be interpreted to reflect racial animosity. For purposes of the exercise, I exaggerate those facts and place them in the context of providing legal advice about future employment decisions.

Reflection Paper: Client Counseling

In this exercise, we are going to re-examine the personal and inter-personal dimensions of right livelihood. To refresh your memory, look back at your initial answers to the questions: How can I use the law to express my values, ideals, and beliefs? How can I be true to my own values and beliefs in my legal career? What kinds of relationships do I want to cultivate with clients, colleagues and adversaries?

Now, imagine that you represent Global's Business Systems and Furniture Rentals in the employment discrimination suit brought by Anoa Steele. In the course of preparing for trial, Global's CEO, Tom Barton, has confided that he would really prefer not to have any African Americans working at the top management levels in his company, because he thinks it would detract from the "family atmosphere" he has tried to create for his managers. However, he is quick to assure you that he would certainly hire an African American for top management if that person was "clearly the most qualified for the job." Barton has asked you for advice in setting up an interview and hiring protocol for a newly created position of Division Manager.

Do Mr. Barton's feelings and beliefs about this issue cause any tension with your own values? In addition to counseling Mr. Barton about the requirements of Title VII, would you offer any non-legal advice? [Be sure to review the relevant ethical rules and values of the profession in App. C before answering this question.]

THINK, PAIR & SHARE EXERCISE: CLIENT COUNSELING

THINK. Assume Barton has followed your advice and set up an interview process that complies with the law. The search committee has narrowed the decision down to two choices: an African-American female with twelve years of progressively responsible experience in the furniture rental business, and a white male with several years of management experience, but in a totally unrelated service occupation. Barton wants to hire the white male, but he seeks your advice because he does not want to risk another lawsuit. His reasons for hiring the white male are as follows: He has proven management experience, and comes across as "totally confident and a take-charge personality." Barton feels comfortable with him and thinks he would fit

in well with the other managers. The African-American female “looks good on paper,” but Barton thinks she lacks the “personality of a manager.” He confides that, in his experience, African-American women seem to “have a hard time getting along with men.” He is afraid she would ruin the family atmosphere at their monthly management meetings.

Have you ever experienced or observed a similar situation? If so, what did you feel at that time? How has it shaped your views about employment discrimination?

PAIR. In this exercise we are going to use a new technique called “affirmation before challenge” (ABC). Our goal here is to make space to explore, refine and expand our beliefs and values. Remember that beliefs and values are shaped by experience and culture, so there are bound to be many perspectives on the issue. Rather than judging and reacting to one another’s views, use this exercise as an opportunity to remain open to the need for further development. In this exercise we will use reflective listening, asking questions to clarify and deepen our understanding of one another’s views. Another useful tool for improving understanding is to “mirror back” what the other person is saying by trying to repeat their views as accurately as possible.

Using the ABC technique, pair up with a partner and share your personal experiences and beliefs about employment discrimination. Remember to listen carefully, ask questions for clarification, and try to stay open to diverse views about the subject.

REFLECT. Based upon you own views and your discussion with you partner, think about the advice you would offer to Mr. Barton in these circumstances. What legal and non-legal considerations inform this advice?

PAIR. Get back together with your partner to discuss your preliminary thoughts about the advice you would offer. Again, use the ABC technique to clarify and refine, rather than challenging, one another’s opinions.

SHARE. As a group, let’s explore the possible legal and non-legal considerations that will inform the advice we would give to our client. Remember, this continues to be an opportunity to refine your beliefs. You should feel free to “try on for size” your evolving thoughts and beliefs on the subject.