

The Opportunity for Legal Education

A Symposium of the Mercer Law Review

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Afternoon Session

DEAN FLOYD: Welcome back everyone. We have a great panel this afternoon, and I am looking forward to hearing from them as I know you are. We have Professor Roy Stuckey from the University of South Carolina Law School and Professor Alice Thomas from Howard University School of Law. Roy told me last weekend that this is his last presentation before he retires. I hope that he feels free to offer all of the thoughts he has been wanting to share over the last twenty-plus years in legal education. We are delighted and honored that we are going to be your last formal presentation before you retire. Welcome to the podium, Professor Roy Stuckey.

PROFESSOR STUCKEY: This is a wonderful time to be a law teacher. For the first time in a long time, there is a lot of excitement and energy about new directions we might take in our curriculums and in our individual courses. There may not have been another time in history when there was more hope for the future of legal education.

But we are a long way from the promised land. As Professor Wegner said, we know we are preaching to the choir today. If the Mercer Law

converted by reading these remarks. All we can do is try to save one soul at a time.

I am almost sixty years old. I have been a law teacher since I was twenty-five, more than thirty-four years ago. I am retiring in January, at least for a while. This might be the last presentation I make before my retirement, so I would like to use my time with you to share some reflections about legal education.

When I started teaching, I taught in-house clinical courses. Nothing else. We practiced law with our students. One thing you learn very quickly when you teach in a clinic is that third year law students are not ready to practice law without supervision—not even close to ready. Go spend a semester teaching a clinic. The level of your third year students' preparation for practice will scare you, and it might inspire you to do something about it.

I did not make a career decision to study legal education and become an advocate for change. It just worked out that way. I was fortunate to have opportunities over the course of many years to participate in the work of the American Bar Association's Section of Legal Education and Admissions to the Bar. I began by serving on various committees. Then I spent six years on the Council of the Section, which is the official accrediting body for law schools in the United States.

In 1987 while I was on the Council, I chaired a national conference for the Section on Professional Skills and Legal Education. The chair of the section, the Honorable Rosalie Wahl, was disheartened by what she learned at the conference about the state of professional skills instruction in American law schools. Consequently, she created a special task force on law schools and the profession and persuaded former ABA President Bob MacCrate to chair it. I served on the MacCrate Task Force during the three years that it took to produce its report.

Through my work with the ABA, I began to see what was wrong with legal education. I also learned how difficult it is to address those problems in meaningful ways.

I have also been involved in some international projects involving legal education, working with ABA-CEELI and other organizations. I even taught for six months in a Hong Kong law school. I learned a lot about legal education through my international work. While substantive and procedural law varies dramatically from country to country, the work of lawyers is pretty much the same the world over. No system of legal education is perfect, and countries all over the world are searching to find the best ways to transform lay people into professionals.

In 2001 I was given an opportunity to put some of these experiences to use. I was asked to chair the Steering Committee for the Best Practices Project of the Clinical Legal Education Association (the

“CLEA”). Our charge was simply stated: “develop a statement of best practices.” It was easy to say but difficult to accomplish. We did not know what to do or even how to begin. In the end, however, over six years later in March 2007, we published *Best Practices for Legal Education*.¹

We self-published the book with a grant from CLEA so we could give the book to the people we wanted to read it and, more importantly, so we could leave it posted on the Internet for global access. We shipped over seven thousand copies of *Best Practices* directly from the printing company to law teachers and other people we wanted to have the book. We are continuing to give the book away for free to anyone who requests it. We have been pleasantly surprised by the strength of international interest in the book. It has been translated into Russian, and it is being translated into Japanese. I heard that an Arabic translation may be in the works.

As you know, the Carnegie Report² and the *Best Practices* book call for significant, fundamental changes in what law schools teach and how they teach it. Of course, nothing in these books will have any real value unless they lead to positive changes in legal education. A growing number of law teachers agree with many of the recommendations in these books. Some law teachers, however, perhaps a majority, are not convinced that it is necessary to make substantial changes to legal education. Is it? Let me pose some questions to you.

Do you agree with the Carnegie authors that attention to clients and values is largely missing from the first year curriculum? That the experience of students during the first year can be characterized as a “moral lobotomy”?³

Surely, these findings require the close attention of every law school teacher, not just first year teachers.

Do you agree with the authors of the Carnegie Foundation’s report that our students’ intellectual development stagnates after the first year because we continue teaching the same lessons using the same methods of instruction?

If so, what are you going to do about that at your school and in your classes?

Do you agree with the authors of the Carnegie Foundation’s report that law schools focus too much on teaching legal doctrine and too little

1. ROY E. STUCKEY, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

2. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

3. SULLIVAN ET AL., *supra* note 2, at 78.

on teaching students how to think and act like members of the legal profession?

If so, what are you, personally, planning to do to change this?

Do you agree that most law school graduates are not adequately prepared to represent clients without supervision and that the licensing process is not adequately protecting the public from incompetent new lawyers?

How can anybody tolerate this? Even if law schools do a much better job of preparing students for practice, and they should, licensing authorities should not continue giving novice lawyers unrestricted licenses to practice law. Why are law school teachers and bar examiners not constantly communicating to figure out what to do about this?

Do you understand that every expert who has studied the way we test our students has concluded that the traditional assessment methods of law schools are not valid, they are not reliable, and they are not fair? This means that the students who make the best grades and get the top jobs may not be the students who deserve those grades and jobs. Do you think our students do not know that our assessment methods are indefensible?

How can we know this and still look our students in their eyes? What are we going to do to fix this absolutely unacceptable situation?

Are you aware of the studies and do you accept the data showing that legal education is harmful to the emotional and psychological well-being of many law students? And, most importantly, that this harm is unnecessary? Have you asked your students how they feel about their law school experience?

Let me read you something that appeared in a student newsletter at a southeastern university's law school—not South Carolina or Mercer. I think it captures the mind set of more of our students than we want to admit.

I freely confess to absolutely hating law school. I loathe it with every fiber of my being. Law school is everything it shouldn't be, with a little extra needless pain and suffering heaped on top. After a year spent in these hallowed halls, I understand even less about law school's purpose than I did as a 1L. I began my study of the law full of ambition, respect, and inspiration. A year later, I'm laughing at my notions of classes that would be applicable to real life, of teachers that would have a firm grasp on what the hell they were lecturing about, and of grades that would be representative of my worth as a student and future legal practitioner.

I came to law school having aced the LSAT and stunned my previous legal employers with my aptitude for the study of law. I present myself to you now, bitter, disillusioned, and apathetic. Now I chalk up my dismal grades to the ineffective teaching style of certain foreign faculty members and ineptly continue about my business.⁴

Does the fact that many law students are damaged by what we do deeply concern you? Do you not feel a sense of personal responsibility for so many students hating law school? Why have we not fixed this? Is there any good reason why law school cannot be a positive, enriching experience for all of our students?

If you have read the Carnegie Report and the *Best Practices* book, you know I could go on and on. If you agree with the findings I have just reviewed, or any of them, how can you deny that significant, fundamental changes are needed?

Would you not expect that every law teacher in the country would be very troubled by their students' negative feelings about legal education and by the findings of the Carnegie Foundation that we are doing a poor job of preparing our students for the legal profession?

Would you not expect to find the faculty at every law school working furiously to resolve as many of these very serious problems as possible? Do we not have an ethical obligation and a fiduciary duty to give our students the best possible legal education?

Perhaps that would be the expectation of most outsiders, but what we find among law teachers is widespread indifference. First, you have to find law teachers who have actually read either book. Then, if you ask them why they are not actively working to change the way they do business, you get answers like "I am too busy producing scholarship," "It would take too much work," "We have a committee looking into that, I think," or "That's why we have clinics." It is enough to make you crazy.

Fortunately, some schools began trying to change their students' law school experiences even before the Carnegie Report or the *Best Practices* book were published. Mercer is one example, and there are others. Today, many more law schools are reconsidering their educational programs, and new initiatives seem to be appearing every day. There is reason to have hope.

Let me share with you a vision of what the future of legal education could be, if we want it badly enough. Let's take a look into the future.

4. Carleigh Rust Leach, *Barely Legal*, THE CIVILIAN 9 (Sept. 2007). This is a student publication for the LSU Law Center community.

Not all things are better in the future. The food in the restaurants is so poor that only tourists and desperately hungry people will eat in them. This is largely the fault of the cooking schools. They do not allow student cooks to actually prepare meals or even to touch the ingredients of meals. Instead, students study stories about famous meals and read about the characteristics of ingredients. In advanced cases, they are allowed to read some recipes.

The faculty at the cooking schools demonstrate the operation of kitchen tools, such as knives, blenders, and ovens, but never in the presence of actual food. The faculty, who for the most part have never cooked themselves, look down their noses at the cooks in the restaurants. They advise their students to stay away from practicing cooks, lest they learn bad habits. They encourage their students to aspire to be teachers of cooks, not cookers of food, ignoring the reality of their students' career options.

Once, a young member of the faculty proposed a field trip to a restaurant to let the students see how meals are prepared. This proposal was summarily rejected and that unfortunate faculty member did not receive tenure.

Health care costs are very low in the future. While this may seem like a good thing, it is not really. Health care costs are low because no one seeks a doctor's care until there is no other option and sometimes not even then. Hospitals are dreadfully terrifying places.

Doctors graduate from medical school after attending three years of lectures. As soon as they graduate, doctors are given unrestricted licenses to practice medicine.

Medical students primarily read reports about cases involving illnesses and injuries, mostly rare and exotic illnesses and injuries. There is almost no mention of the common, everyday medical problems that most people encounter during their lives.

Some avant-garde medical schools give their students some simulated practical training. This is not wholly satisfactory. Students are allowed to remove certain organs, such as appendices, from cadavers, but they receive no training in anesthesiology, preparing for surgery, making incisions, controlling bleeding, closing up a wound, or postsurgical care. Members of the faculty say students can learn these things in practice.

The legal profession is different. Lawyers are very competent, and their collective reputation for integrity, fair dealing, and public consciousness makes them more highly esteemed than members of any other profession. Not many lawyers have high incomes, and those that do have high incomes donate most of their money to charity. The major complaint of lawyers is that there are not enough pro bono cases to go around.

Law schools are largely responsible for the competence and public spirit of lawyers. No one is hired to teach in a law school with less than ten years of practice experience. Especially highly prized in job searches are lawyers who actually represented people in practice, not corporate or governmental attorneys. New teachers are required to attend teacher training programs to obtain teaching certificates by the end of their first year, if they do not have one when hired. Teacher training programs include extensive instruction about assessing student learning.

Members of the faculty collaborate with groups of practitioners to remain current on trends in law practice. They are encouraged to continue practicing law, particularly through the schools' clinical programs which represent both indigent and paying clients in large, modern law offices. Any income that is generated from practicing law or writing textbooks is shared with the school. This income, combined with the faculty's law salaries, helps keep tuition quite low.

The program of instruction is very student-centered. Students are treated with kindness and respect inside and outside of class, and their workloads are carefully coordinated to ensure that they are kept busy, but not overworked. The curriculum is designed to develop students' professional knowledge, skills, and values in a progressive manner throughout their law school careers. Emphasis is placed on reflective learning, client-centered practice, compassion, and personal responsibility.

From their first day in law school, students spend time with practicing lawyers, observe transactional and dispute resolution law practice, work in teams, grapple with solving simulated legal problems in context, and eventually participate in the representation of actual clients, including the representation of corporations and government agencies, as well as individuals.

A committee consisting of lawyers, judges, law teachers, and students is responsible for tracking the effectiveness of the curriculum and reviewing new course proposals. Another committee trains its members to visit and evaluate the classes of all teachers, with special attention to members of the faculty who receive below average student evaluations.

Students' strict adherence to the honor code and to the school's code of professionalism ensure that no cheating occurs. The academic and professional support program not only helps the faculty assist students who are having academic problems, but it also tries to rehabilitate students who are exhibiting signs of irresponsible or unprofessional behavior. Students who continue to have academic or professionalism problems are dismissed from school. This rarely occurs, however, because the strict admissions screening process and the culture of professionalism at the school make it unlikely that any student would

engage in personal or professional misconduct. The faculty and staff are also subject to discipline, including dismissal, if they violate the code of professionalism.

All students must pass comprehensive competency exams to graduate. These exams are developed by testing experts working with practitioners and law teachers. Law schools are committed to ensuring that no student graduates who is not prepared for practice. If students are not able to pass the competency exams, they have the option of continuing to go to law school at no expense until they achieve the requisite levels of proficiency.

Students are admitted directly into practice from law school. There is no bar examination nor even a character and fitness check. The licensing authorities are confident that the law schools prepare all students adequately for the practice of law and weed out potentially unscrupulous lawyers. Of course, new lawyers are not fully licensed to practice law; they must work for a qualified lawyer long enough to demonstrate the ability to represent clients without supervision.

This may seem like a whimsical vision of legal education. And it is, at least for now. But if more of us refuse to tolerate the worst practices of legal education and commit ourselves to promoting best practices in the future, who knows what might happen?

The more you learn about current practices in legal education, the more concerned you should become about our collective failure to reform legal education. On the other hand, the more you learn about the potential future of legal education, the more inspired and committed you should become to making that future a reality.

We have a historic opportunity to make positive changes. Thanks to the Carnegie Foundation and CLEA's Best Practices Project, we know what needs to happen. Hopefully, enough leaders will emerge with the courage and commitment to make it happen. I know you will be among those leaders.

PROFESSOR THOMAS: Good afternoon. I want to thank Dean Floyd, President Underwood, and the Mercer Law Review staff for inviting me to participate in this conversation this afternoon; and thank all of you for joining us.

I have known Dean Floyd for a number of years now and all very pleasant years. We had the opportunity to work together, as she mentioned, through the Carnegie Foundation and have continued that working relationship in the years following. Dean Floyd knows well that anytime I get an opportunity to advance this conversation, I will. I will take the next plane, I will travel near and far, and I will cross the seas

to participate in these very important conversations about reforming legal education.

I hope to enter this conversation this afternoon where Professor Stuckey left off. He issued a charge, i.e., a challenge. He asked us as working professionals, particularly those who teach, “Are we going to do anything, i.e., take any actions, in the wake of the Carnegie Foundation’s *Educating Lawyers: Preparation for the Profession of Law Report* and the *Clinical Legal Education Association’s Best Practices for Legal Education Report*?” So, I hope to enter this conversation at the juncture where I, as a faculty person, choose to do something. What action then? I can align my class practices with the reports. I can engage in curriculum reform based on the reports. I can conduct further research on how students learn, attempting to begin to answer the many unanswered questions about learning in law schools, and I can suggest the adoption of a code of professional ethics for law teachers. I, however, do not believe that I have the option of sitting on the sidelines at this critical period in the history of legal education. This time is critical because the world around us is ever-changing at a fast pace, the complexity of legal work is increasing, and there is an increasing need for well-trained, adaptable lawyers. We need well-prepared lawyers to emerge from our law schools, ready to pass the bar examination and to begin to practice law in a complex, global society.

The title of my presentation is “Are We Committing Malpractice in the Classroom?: Toward a Code of Professional Ethics for Legal Educators.” My core thesis is that law teachers have to begin to conceive of their teaching not as vocation but as profession, in the same way they conceive of their doctrinal scholarship and their work as a practitioner before entering the teaching profession. Law teaching is an equally serious and professional pursuit and like other serious, professional pursuits, e.g., medicine, engineering, and architecture, should be pursued with a minimum standard of care and due diligence. This minimum standard of care and due diligence then becomes the benchmark, i.e., the threshold, for performance of the teaching aspect of the job. Job performance and expectation should then be measured against this standard. If job performance falls below, then one is committing malpractice. I started this presentation by asking the question, “Are we committing malpractice?” During the presentation, I will explore the components of this minimum standard of care and due diligence, which I believe naturally leads to teaching in a different way. The different kind of teaching must be informed by scholarly and experienced-based explanations of learning. I was asked to present to you my scholarship and experience in light of the Carnegie and CLEA Reports, and to

explain what that means for me, a pedagogical researcher, and how these reports might influence my scholarship over time.

And so, it is in this context that I pose the question again, “Are we committing malpractice in the way we choose to design, deliver, and assess law school effectiveness in today’s law schools?” After listening to Professor Stuckey’s remarks, you would not be surprised with my answer. It is an overwhelmingly resounding, “yes.” Yes, I think we are committing malpractice if we rely on presently held views and we ignore the findings of these reports and continue business as usual.

I will suggest that there is a reason why we continue to do just what we do in the wake of the knowledge contained in these two reports. The dominant paradigm of law school encourages faculty to be experts in areas other than teaching irrespective of whether they teach courses in those subject matter areas. Also, law schools succumb to pressures inside and outside. Professor Wegner mentioned them earlier, and these pressures are shaping our practice. Newer faculty have the additional pressure of achieving tenure, and this added pressure also shapes their practices in the classroom.

So, I, as a young, pretenured law faculty member, took the risk of actually venturing into pedagogical research, risking whether I would remain in the academy down the road to even have this conversation with you.⁵ The decision to take this road has a lot to do with who you are, how you position yourself, and how comfortable you are. You have to be comfortable with the idea of feeling alone and possibly not being retained in the academy down the road. I was comfortable with being the odd man out and with not being in the academy down the road, because I thought, as was mentioned earlier, it was a matter of conscience to actually take on the work of improving law teaching so that students might benefit. I felt strongly then, and still do today, that the most important part of my job is helping students learn and to meet their goals for a legal education. If that is the case, then I have to be about the business of trying to improve my teaching and encourage others to do the same, knowing that I am confronting difficulty in the classroom. I am generally aware of when my students are struggling with the course but I do not always know why. Once I rule out the obvious, the reasons for their difficulty are less apparent and possibly explained by educational research or theory.

So, for me the answer is, “Yes, we are committing malpractice.” And, again, what do I mean by that? I mean do we teach to all dimensions

5. See Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy*, 6 WIDENER L. SYMP. J. 49 (2000).

of student learning, do we approach teaching in a scholarly way, can we provide evidence of our claims of student learning in our classrooms, and do we teach using a theory of learning or educational research to guide our choices in the construction and delivery of our lectures. I also mean do we use a theory of learning or educational research to guide our assessment of student learning, do we build on the work of others in our teaching, and are we systematic.

Those are all attributes of what good scholarship is in other areas—that you build on the work of others, that you make your work available for public review and critique, and that you advance the subject matter of your research. Teaching practice is all too often invisible to persons other than the immediate teacher. It is what happens in our classrooms, offices, and school hallways. These are isolated spaces generally unoccupied by other teachers. At these moments, I am generally the only faculty in the classroom or these other spaces, with students. No one is watching and providing critique. The only times this differs is during the pretenure phase, and during that occasional moment when we ask a colleague to sit and observe one of our classes to make a particular observation. In most law schools, senior faculty come once a semester to the classrooms of junior, pretenure faculty. Once tenure is achieved, senior faculty generally do not visit classrooms of other tenured faculty unless invited, which is rarely done. If a colleague does just drop in, one might wonder why—why here?, why today?, what do they want?, and am I in trouble? Consequently, we generally do our teaching in our own private spaces with the students as the only observers. During the students' engagement with the teacher, students are less able to review and critique a teacher, and that such an attempt at a review and critique might lead to a constructive conversation about teaching is very unlikely. Hopefully, we will change all of that after having read and considered the reports. We are now in a better position to understand the scholarship behind our interactions with students.

To amplify my focus here today, I believe the main focus of both of these reports is to put a lens on student learning in law schools. I, on the other hand, want to put a lens on the teacher, amplifying and magnifying teacher preparedness and accountability in the delivery of a sound legal education. To do so, I must focus on the teacher as a participant in the learning experience who shapes the formation of student learning.

To facilitate this conversation, I will use the label “teacher metacognition.” I want to examine the “how to” of teaching and not so much whether students learn. I believe by shifting the focus temporarily I can better amplify teaching practice as a profession and put us in a better

position to predict whether students will learn as a consequence of the teaching moments. These reports give me a sense of why and how to go about it. I can draw upon these reports to help guide my “how to” in the classroom.

And, so, again why is this so important to me? Nearly eight years ago when all, including the principal authors of these various reports, were beginning to collect themselves, none of us knew each other, but we were all having similar thoughts about the need to better understand and to reform legal education. We were all coalescing around a common concern and perception that there needs to be some work in law schools around concerns about student learning and how we can, and should, teach to a broader audience of student learners. At that time, I was just an unknown law professor on a campus in Washington, D.C., at the University of the District of Columbia David A. Clarke School of Law, but I was having big ideas. I wrote an article wherein I had the audacity to call for a revolution in legal education in the twenty-first century.⁶ I chose my words carefully so that I might get people’s attention, so I named the changes revolutionary. In and of itself, an odd concept in law communities was that vast change is slow to come. Revolution usually connotes vast change (i.e., outside of the mainstream) that changes the playing fields for establishment society. So I said, why not. I will call for a revolution in order to shake up the firmly entrenched establishment of legal education, beckoning for true, vast changes to the way we educate or form new lawyers. My article got Professor Wegner’s attention and the attention of the Carnegie Foundation. My core thesis was then, and still is, that we can change law teaching and student learning for the better if we rely more directly on research findings about student learning. I do not think that we need to reinvent the wheel. I think that the CLEA Report reflects this point quite well. Each of the law school innovations presented in the CLEA Report is linked to a theory about how people learn or educational research. We are moving in the right direction.

Underlying my core thesis is, how do I then as a teacher practitioner begin to think in a metacognitive way about teaching (i.e., what do I do?). I answered this question by accepting that it was not enough for me to teach, to leave my classroom, and to reflect on the teaching moment, deciding to pull this trick out of the bag, then another and yet another. I lacked research, scholarly support for my choices, never having any confirmation that my choices were good ones and that my choices would make a substantive difference for my students. So I

6. See Thomas, *supra* note 5, at 10.

thought that teaching, based solely on experiential learning, although good, was not good enough. I then began to search for other areas of understanding wherein perhaps people had thought more rigorously and more scholarly about the learning enterprise. I knew from my undergraduate degree in psychology that there was a vast body of literature yet to be explored by me that focused on how people learn and how faculty can respond.

I began to advocate that law professors should evolve what I call “a theory of legal education.” A theory of legal education shapes one’s teaching and is the glue that holds your curriculum and instructional choices, class delivery, and assessment together. This theory is anchored by two pillars of knowledge. These two pillars are the following: one, scholarly research about how people learn and, two, practice-based experiential learning.

And so, it looks something like this. My personal theory, meaning how I design my course, deliver my course, and assess student learning, is shaped by my theory of legal education, e.g., social human constructivism, and is informed by two spheres/pillars of knowledge—scholarly-based research and experience-based community exchange. Although I emphasize the importance of scholarly explanations about learning, I cannot discount the importance of experience-based learning as an acceptable learning modality. So, experience-based learning is a part of the theory of legal education, but in assessing these two pillars, I shift the balance to scholarly-based research and explanations about how students learn. I make the core of my research agenda to seek information about how to think about student learning. The shift would be more like 80/20 or 90/10, tilted toward scholarly research.

For purposes of this discussion, the lens by which I will explore this notion of the teacher as a professional, and focus on how the teacher can go about his or her job, is comprised of the three apprenticeships identified in the Carnegie Report. These three apprenticeships (i.e., cognitive, practice, and identity), from the perspective of students, shape the Carnegie Report. Drawing upon these three apprenticeships, I will now shift the focus to the teacher, meaning how the teacher might engage these three facets (i.e., cognitive, practice, and identity) in the act of teaching as a profession.

Each apprenticeship of teacher practice has a number of dimensions. For example under cognitive, there is both subject matter and practice matter. By subject matter, I refer to one’s specific substantive domain of interest. In my case, my interest is the law of federal taxation and tax-exempt organizations. By practice matter, on the other hand, I refer to the information relating to the actual practice of teaching. I am talking about the information of “how to” teach, and not the actual

practicing or doing of teaching. So, to meet the minimum professional standard of care and due diligence, a teacher needs to have capacity in both cognitive domains—subject matter and practice matter. This kind of capacity is content-based. For most faculty, subject matter is overdeveloped, which makes us really good, as the reports have pointed out, at intellectually developing the content understanding of law students, but most faculty are underdeveloped in content knowledge about “how to” go about integrating content and practice. This is not surprising because most of us who teach law have never taken a course in teaching. We have never been taught about learning theory of any kind. We were plucked from the practice of law because historically we were law review members, editors in chief, went to the right schools, got the right kind of grades, and have gone through the right classroom environments. No one, not a single person, during the interview process asked me, “Alice, what is your facility to teach?” or “How do you impart information to others?” These questions came up only indirectly through the job talk but were in a substantive doctrinal subject matter area. Furthermore, it only comes up in a tangential way as one matriculates up the ranks of the academy. One’s greatest concern as a new faculty person is how to get good student evaluations, by any means necessary, so that the evaluations do not hurt you in the tenure process. To get good evaluations, we bring donuts, candy, and other treats right before evaluations are done to ensure that the evaluations come out positively favorable, but the process is never really about the actual substance of our teaching activity.

The second apprenticeship is practice. By practice in this context, I mean using a theory of legal education to actually guide classroom practice. Later on, I will use my own teaching experience to provide a concrete example of how practice played out in different ways for me.

And then there is the identity apprenticeship. The identity apprenticeship has three dimensions—professional, ethical, and moral choice. Just like we are cultivating and forming lawyer professional identities in our students in the way Dean Floyd will address in a few minutes, I think there is a need to think about the formation of teacher professional identities in law teachers. The teacher professional identity is shaped by three facets of the legal educator—the professional self, the ethical self, and the moral choice self. In each of these areas, there should be a clearly defined minimum standard of conduct that is acceptable to all who participate in or join the profession of law teachers. By comparison, when lawyers are sworn into the practicing bar, lawyers agree in the first instance to abide by a minimum set of ethical standards of professional conduct applicable to all admitted lawyers. There is no delay; the standards are nonnegotiable. The same should be true of

those entering the profession of law teachers. With the identity apprenticeship, the questions are these: Who are we? What is our moral compass? What is our ethical sense of what we ought to be doing in the classroom and how we prepare for the classroom? For this point, I go back to Professor Wegner's earlier statement that all of this is a matter of conscience. Professor Stuckey, too, said and I paraphrase, if we, faculty, have no ethical center and no sense of consciousness about what we are doing, we can easily sit back and watch others attempt to reform legal education and let the pursuit of tenure alone guide us. As the evidence in the reports emerges, one might be tempted to say that, "I have been doing the same thing for a very long time, it seems to work, and I just do not want to change." Or to say, "I have my summers to myself so I have no time for new practice." Well, I do not think we can say these things any more, in light of these reports, if we are going to meet the minimum standard of care and due diligence under the identity apprenticeship. I think we all need to enter the conversation. I also think that if you choose not to enter the conversation, then you are a part of the problem. The reform of legal education will take involvement from all of us.

I will now illustrate the three apprenticeships using my own personal narrative as a teacher professional to explain how I approach the analytical process of designing a learning experience for my students. In essence, I will illustrate what it looks like to carry out what I believe is an ethical obligation, i.e., the subject of a code of professional ethics for legal educators. This ethical obligation is captured by the label, "teaching with informed intention." So, now I will actually give you an example of how this all plays out for me, the individual, because we have heard the story of what we ought to be doing and we have been given the charge that we ought to get involved in reforming law teaching. So, I want to use my personal narrative to express how this journey has occurred for me and how I came to think so deeply about my practice in a scholarly way.

How do I conceive of teaching? Again, my notion of how I conceive of teaching is drawn from my research. I initially looked for explanations of good practices, i.e., best practices. There were not many sources that discussed teaching in law schools, but the few that did exist mostly described the experiences of other teachers. I wanted to move beyond anecdotal experiences to include researched explanations of student learning. I wanted to know what the scholars had to say about good learning environments for students. There was very little in the scholarship about law students, so I had to survey the larger body of scholarship for ideas that would fit the law school model of education. From this search, I found the research about meaningful learning,

constructivism, and intentionality most powerful. Meaningful learning includes the idea of connecting new information to old information, repetition, and scaffolding new ideas onto existing analytical frameworks. Meaningful deep learning is of the kind that is critical, adaptable, transferable, and reflective and is consistent with the kind of learning advocated in the reports we have seen today.

Constructivism provides an explanation of how learners acquire new information. This theory of knowledge acquisition provides that knowledge is organized in nodes and linking ideas and that the more expert the learner, the more detailed and differentiated the nodes. Constructivism assumes that the learner has an existing framework of knowledge onto which new concepts are being grafted. In addition to the best idea of constructivism, I embraced the idea in the scholarship that learning is a social experience.

Social constructivism is the idea that humans construct ideas in relationship with others. For me this means that, in a learning experience, the teacher, student, and all engaged students in the classroom are active participants in the learning experience; each is learning in relationship to the others. Students are not learning in isolated spaces. Students learn in relationship to each other. So, at anytime in the learning experience in the classroom, learning is happening between the teacher and learner and between learners engaging each other in the classroom. While some aspects of learning may occur in isolated spaces, a larger segment is social learning.

Learning occurs over a succession of what I call learning transactions between teacher and learner and also learner and learner. Learning is a two-way flow of information. The notion that I, the teacher, am doing all of the imparting of information and that students are the sponges doing all the absorbing of information is not the case. A good teacher practitioner understands that in any transaction or any learning moment not only is the student learning, but the teacher is also learning about how students learn. If the teacher is reflective and systematic, the teacher can go back and use the information to shape future learning encounters with other students, and perhaps, with the same student. Additionally, learning occurs in community.

The last idea, intentionality, means that the teacher must design and deliver course instruction with conscious awareness. This means that the teacher should have defined goals and objectives for the course and individual lectures, and the teacher should make these goals and objectives known to the students in the syllabus and at the beginning of each lecture. Intentionality empowers the learner to take responsibility for following the lecture, taking notes, and reviewing for understanding and completeness. Teaching that is intentionally guided by constructi-

vist and meaningful deep learning scholarship is scholarly teaching. For me, such teaching is anchored by scholarly theoretical ideas about learning, and to a lesser extent, experienced-based ideas about learning. It is scholarly in practice and reflection, and it is systematic.

How I conceive of lawyering shapes how I conceive of my teaching, and my ideas are drawn from the literature on how people learn. The literature supports the idea (and I embrace the idea) that students learn by thinking, feeling, and doing. So, Professor Stuckey asked how many of us ever question our students' feelings in the learning process. I think that is one of the more exciting and emerging areas of scholarship about the effective domains of learning and how it affects learning outcomes. So, I ask you now to think back in your lifetime to one of the experiences you had as a student when you thought you had learned the most. I estimate that many of you would describe that experience in emotional terms. Heightened emotional connections to great learning experiences are not uncommon, and some researchers believe the heightened emotional connections (positive or negative) contribute to learning.

How did I get here? This is part of how I see myself as a teacher, a scholarly teacher, and a teacher who does research in the field of scholarship, teaching, and learning. It started in 1993 when I started teaching. From day one, I started learning. I was just five years out of law school, and had been practicing law the entire time. I was plucked from the practice of law and dropped into a law school classroom. I started in legal writing which I think shapes how I think and who I am today. The legal writing discipline, like clinical education, gave birth to a lot of the scholarly and deep thought about how students learn and how to best educate them. The reports give credence to this claim.

So, I actually started in the legal writing community. After about five years of teaching nothing but legal writing, I first taught tax and eventually contracts and other commercial law courses. Today, I no longer teach legal writing but legal writing pedagogy was the catalyst for change in my doctrinal teaching. I borrowed heavily from my experiences teaching legal writing, as I developed a pedagogical approach to teaching doctrinal courses. Through legal writing, I learned about collaborate learning, self-guided critiques, the importance of in-office conferences, frequent interim assessments, and most of all, the importance of feedback. The doctrinal classroom was mostly Socratic, and there are benefits to this minimally collaborative and minimally interactive method. There usually is a talking head at the front of the classroom. As I forged ahead in my teaching, I thought that the doctrinal classroom had been too long isolated from all of the wonderful learning about how students learn that I came to know through my legal writing experience.

And so, on my journey to being a good teacher, I believe I hit a wall. I tried, I thought, I tried again and again. In my class, I had a group of students for whom I did not think my practices were making a big difference. Feeling a strong ethical and moral obligation to reach my students, I did what comes naturally. I drew upon my legal writing experience. I was motivated by the underperformance of my students. My conscience would not let me rest. I believed that it was my ethical obligation to help students learn and to help them reach their goals. Students, like you, told me that they wanted to matriculate law school, pass the bar, and have a good life as a member of the practicing bar.

So, I needed answers, and I did not have them. I think good lawyers readily admit what they do not know, and I did not know enough about how students learned to confidently believe that the changes I was making in my pedagogy would make a difference in student learning outcomes. So I drew upon known resources, and those known resources initially were colleagues. The experience-based knowledge I gained from colleagues was not enough and not always transferable to my classroom. I searched deeper when that experience-based knowledge was not enough. I searched my experiences for other sources of knowledge, and that took me back to my undergraduate experience. I majored in psychology as an undergraduate. I remembered learning about some cognitive theories about how people learn. So I decided to research in the cognitive psychology literature for ideas about how students learn. I just wanted to see what was out there. I realized there was more to decipher as I started doing the research. It was not easy going. The more I tried to learn, the more convoluted it became. In response, I just did what I do naturally as a lawyer—I categorized, classified, labeled, sorted, distilled, generalized, and synthesized. It was overwhelming at first.

The longer I worked at the literature, the more I appreciated that my search for the one theory about how people learn was actually a search in futility because there are many ideas about how people learn. Yes, it should have been obvious from the start but it was a rude awakening. Once I had a sense of the various theories, I sorted them by their core ideas along the lines of similarities and differences. Once I sorted the theories, I identified those theories that I thought best addressed the learning goals in the law school context. I got some useful ideas. There are ways of thinking about learning, like meaningful deep learning, learning in community, constructivism (i.e., how knowledge is constructed), and learning styles (i.e., how knowledge is acquired) that I took away from my research in cognitive psychology literature to apply in the law school classroom. These ideas began to shape my next steps.

So, where did all of this lead me to next? It led me to become a teacher who engages in metacognitive processes, who thinks deeply about student learning, and it eventually led me to the doing of scholarship. The Carnegie Foundation for the Advancement of Teaching invited teachers to propose a research project about student learning. I posed a question I wanted to answer in order to learn more about my students' learning. In this role, I see myself not just as a user of scholarship of teaching and learning but as a doer of the scholarship of teaching and learning, i.e., a researcher who asks questions and studies student and faculty engagement to try to find the answers. My classroom is my laboratory. I work with my students in and outside of the classroom as I do the scholarship of teaching and learning.

My first foray into this form of scholarship was studying my first year contract class. With all my good intentions, I began to explore the ideas students bring to law school about contracts and contract law. My experience was that some of these ideas the students bring to school are misconceptions and that they interfere with students learning correct contract rules of law. My concern was that my failing to identify these misconceptions for students and teaching to them explicitly meant that students might misapply these misconceptions to an exam or a real client problem. My quest was to debunk these myths. I spent a whole year in my mind debunking these myths with students. One myth that stands out for me has to do with gender bias. Students tended as a group to view older women as weaker links, and thus, more vulnerable in contracting situations, especially negotiations. Having addressed this stereotype (or so I thought!) throughout the school year, I wrote a wonderful essay question and included it in my final exam wherein I asked students to give me a contract answer to the problem.

The problem featured an older woman who was widowed for many years looking at a vacation home offer and one of those mail solicitations: "Come take a look and receive a set of luggage, \$50, or diamond ring." She had several grandchildren whom she wanted to host in the vacation home. Also, according to the fact pattern, she was still working, financially independent, and made about \$90,000 a year. It was reasonable to infer from these facts that she was educated, financially astute, and independent—the kind of person not easily taken advantage of.

Well, the interaction between this woman and the sales agent happens completely outside the purview of the fact pattern. The fact pattern provided that the older woman goes off to a room with the salesperson, and reenters the room, having bought a vacation home. On the way home, the woman changes her mind and wants to avoid the contract she just entered. I ask the students to analyze whether the court should

enforce the contract. To my surprise and dismay, I was astounded to read the many essays that expressed gender bias. In the midst of otherwise good contract answers, the students lost track of the contract doctrines and stereotyped the salesperson as a fast talking, high-pressure salesperson who took advantage of that old grandmother who was all alone in life. Because her husband died, the students said the woman did not have anyone to look after her interests; therefore, the contract should be overturned under the doctrine of unconscionability. I pondered how the students missed all of the clues about who she was. I concluded from this experience that my plan for debunking myths ran afoul, and I would have to start anew.

I then designed my Carnegie research project to first identify ten key misconceptions and then to design a learning module that could effectively debunk these myths and impart correct contract ideas. The experience at Carnegie permitted me to be more systematic and scientific about designing the experiment and more intentional about designing the learning module based on research findings about how students learn. To no one's surprise, this one research project turned out to be several and has taken years to complete. I still teach contracts, and I am better at debunking the myths.

There are other directions the research took. For every question I tried to answer, I generated many more questions that needed answers. At the same time, while I enjoyed the research, I was still a teacher. The more I tried to be a teacher and expand what I thought were helpful guidelines about how I could do a better job in the classroom, I stumbled upon something else. All teachers know that practice is important if you are going to incorporate the concepts into your learning. So I told my students, "You know, I have seen some really good problem practice books in the bookstore and that if you work some of the problems you will probably be in a good position to do well on my law exam." The more I did that, the more students ignored me. My instincts as a student were to follow through on suggestions made by my professor, particularly as the suggestions relate to exam success. If a professor told me that there was a particular book, that the professor had looked at the book, and that the book was really good help for the exam, I would have excused myself from class to beat everyone else to the bookstore. My students did not get the books. They did not practice the rules of law in a problem context. I said, "Okay, that did not work." Next, I tried to be more obvious. I said to the students, "Professor Thomas will take thirty-five percent of the multiple choice questions on the exam from one of those problem books in the bookstore." I specifically identified the book. I waited to see how many, if any, would excuse themselves from class to purchase the book. The bookstore was one floor

below the classroom. This time three students got up. After the exam, I still had a few students approach me in tears saying, "Oh, I think I failed the exam." I asked the students if they reviewed the material in the problem book, and the students said no.

I kept my composure and returned to my office. I was stunned by the fact that the students seemed to possess few survival instincts. I tried to make it obvious and tried to create trust. I had used the questions from the book on quizzes before after telling students I would do so. I was very deliberate about telling the students what I was going to do, and I was sure to do it. Another phase of my research grew out of this experience. I began to focus on the affective domain of learning, exploring the role of trust in the learning experience. I intuitively felt that trust was an important component, but I did not know much more than that. I researched the literature on trust to determine its fit and relevance to my classroom teaching. I learned that trust enhances learning. In addition, I ran focus groups with my students, who told me they would not trust a teacher who would tell them, in advance of the exam, where some of the questions were coming from. They said it was not me necessarily but teachers in general. That explanation worked for the first time I told them the source of the questions and followed through, but by the third time, that explanation did not suffice. I then wondered if there were intentional ways beyond the exam experience to build trust with my students. That query led to another experiment.

When I explored the literature on trust, I unearthed a body of educational research that explores trust and how it impacts student learning. I did not do the trust research, but used my own experience to lead me to the research question. I was able to unearth a body of knowledge that I could rely upon to inform my own teaching and to use as authority for the proposition that law teachers need to work to engender trust between themselves and their students as a way of enhancing learning in the classroom. My support for this proposition goes beyond the anecdotal and is based on scholarly researched explanations of student learning. An outgrowth of this research is that I have been invited to various forums to talk about trust in the learning experience and how the teacher might impact student learning by intentionally building trust.

There is a difference between the scholarship of teaching and learning and just doing scholarly teaching. Scholarly teaching, I think, is an ethical obligation of all of us. It is a core part of the code of professional ethics for legal educators. Notwithstanding, we all do not have to do the scholarship of teaching and learning to meet the minimum ethical obligation. Yes, we should base our teaching on the scholarship of teaching and learning as one of the two pillars mentioned earlier under

the theory of legal education, but we are not otherwise obligated to generate the scholarship. Scholarly teachers, on the other hand, will critically reflect upon the teaching experience, ask questions about their teaching, read the scholarly literature about how students learn, attend workshops, meet with mentors, and use other resources to bring scholarly insights to bear on their teaching, which, in turn, influences student learning. Consequently, each teacher should do what Professor Stuckey suggested, get the reports and read them. The reports should not be left to gather dust on the bookshelves in the offices of law faculty across America. For faculty sitting on a curriculum committee of any kind, such faculty ought to influence the discussion of curriculum reform with reference to the reports. Faculty should engage curriculum change or reform by first asking is there a learning theory or educational research to support the changes being suggested.

The scholarship of teaching and learning has various definitions and I have gone over some of those here for you, but the key is seeing the problems in your students' learning and welcoming those problems as your research questions. Through this self-reflective process and relying on peer critique, faculty can go public with their experiences helping others to improve along the way. There are various emerging definitions, and you can see in your own reading what some of those definitions are. Again, the key attributes are making your research public, objective, obtaining critical review, and having evaluation by members of your teaching communities.

The key types of questions that we answer in this work are as follow: What works? What is happening in students' learning? What are the possible visions? There are other kinds of questions, but those are three kinds of questions that are generally asked by researchers in the field known as the scholarship of teaching and learning.

What other directions have I taken? It was not enough for me just to be a researcher in my classroom; it was important for me to share it with others. The one thing I got from my Carnegie experience was that it really helps to be in community and work with others. I have formed a research institute for the study of legal education which is named, The Institute for the Advancement of Law Teaching. The Institute's purposes are to generate scholarship, to create a space for others who are like-minded to collaborate, to increase the vigor and rigor of the work, to review and critique the work, and to collect and disseminate the work to others. It is only a couple of months old, but this is the work of the Institute and with the Institute, I am beginning to take on more of a leadership role rather than merely the role of an individual researcher doing the work of this emerging scholarship movement.

Again, I am fostering greater reliance on the various reports. Both of these reports are great examples. The CLEA Report is an example of the theory of legal education. In each one of the reported best practices, the CLEA Report not only offers the ideal, but the ideal is supported with the scholarship of teaching and learning. It is an exact example of what I am talking about—teaching reforms anchored by the scholarship of teaching and learning.

I think at the end of the process we need to elevate all of these best practices conversations and all of these “do better” conversations about what is in the best interest of our students and incorporate these conversations into a code of professional ethics. By such a code, I mean that teachers will begin to make these standards, guidelines, and best practices explicit in a code of professional ethics based on their professional selves and identities. Such guidelines would be the criteria, the general statement of what is ethical. The code would be the measure of accountability and responsibility by which faculty performance is evaluated and evolved. I sometimes wonder how many law teachers are aware that the American Association of Law Schools, an organization for law professors, actually has a statement of best practices. In addition, the National Education Association (“NEA”) has a wonderful statement for educators that the NEA actually calls a code of ethics. We need such a code in the law school context. The preamble of this code would include all the things we have talked about today. The preamble would include the idea of faculty taking primary responsibility for our teaching so that it influences student learning in a positive way, being accountable to one another, and reflecting teaching best practices in our promotion standards so that we avoid marginalizing our colleagues who are willing to make the scholarship of teaching and learning their prime research agenda. I think of the scholarship of teaching and learning as the hub of our work as law faculty, and I think of everything else as the spokes in the wheel. So, the core of my job, I think, is the teaching function.

In addition to the aspects mentioned, one role that could be explored in the code of ethics is how faculty work with students. Another role is how faculty work with colleagues, sharing and exchanging information to advance the law school experience. Also, the code could include a section reflecting on being mindful that we are working for the public. It came out in the Carnegie study, and it came out in the CLEA Report. What makes us who we are as lawyers is that we actually stand in protection of and over the public good. The law community has an obligation to the greater public. As I educate law students, I am mindful that law students will go on to serve, and whether or not they are competent to serve is a reflection on how well I do my job. In closing,

teachers have to be mindful that our teaching is not just isolated within our institutions or with a particular set of students. We must be mindful that we are serving the public and society at large. The work on behalf of the greater public is what separates us from just being or producing technicians and is what makes us a profession. This idea is well-articulated in both reports.

I will leave it at that. I think there is much work to be done. This is only the beginning, the beginning of my thoughts. Where it will lead is a life's work. One thing Carnegie asks of the pool of Carnegie scholars before accepting our research proposals is whether this type of research will become a part of our life's work and it has been almost eight years now. I do not think I am going to turn back anytime soon. If nothing else, I am more on fire now than ever before. I am thankful to Professors Wegner and Stuckey and to the others who have persevered and stuck with it. I am also thankful to Dean Floyd for ushering in this opportunity and for keeping us all on our toes. I am hopeful that the students now and in the future will hold law faculty accountable for how we prepare students in the classroom and beyond. Students can rest assured that law faculty will certainly hold students accountable when it comes to exam time. So it is time to turn the tables. Thank you!

DEAN FLOYD: I am delighted to speak with you today about a subject that is important to me. Bill Sullivan described the three apprenticeships earlier today, using the metaphors of head to describe the cognitive or intellectual apprenticeship, of hands to describe the skill or practical apprenticeship, and of heart to describe the apprenticeship of identity and purpose. My remarks are going to focus on that third apprenticeship, that of identity and purpose. The title that I have chosen is "Forming Professionals: A Journey of Identity and Purpose," and it reflects that goal.

This is a challenging topic for many of us. It is a topic that requires us to stretch ourselves as educators and to stretch our students. It demands that we think about who our students are, who we want them to be as they become professionals, and who they will be after they become professionals. It demands that we work in intangibles, intangibles that are difficult to define, to identify, to assess, and to teach. The topic raises issues of vocabulary. We talk about many interrelated concepts: values, ethics, norms, practical wisdom, identity, and dispositions. The variety of language choices makes the topic complicated.

I want to begin with the label of "journey." The older I become, the more convinced I am of the power of learning from each other's stories, from individual journeys. Therefore, I ask for your indulgence as I share

a bit of my own journey to this moment. I do so because my journey informs my thoughts on the topic of developing professionals.

I bring at least five perspectives or roles to my thoughts on forming professionals. The first is my role as a lawyer, formed as many of you were formed by a fairly traditional legal education, more traditional than our students are receiving today. I learned through my education to think like a lawyer. Although I was a good student when measured by certain standards, I did not enjoy my legal education. Looking back, I realize now that much of what I was being asked to do in law school felt inconsistent with who I was and what I cared about, but I did not at that time have an ability to articulate or understand that. Nonetheless, I learned very well how to think like a lawyer, a skill that has served me well.

The second perspective is that of educator of professionals. I have been working in legal education a long time, certainly much longer than I practiced law, which was a brief time in my career. I have watched thousands of law students begin and complete their legal educations and observed those former students and others throughout their careers. I began my time as an educator in a nontenure track position, teaching the skills of legal research and writing, moved into a more traditional position, up the tenure and promotion ladder, before moving into law school administration, first as an associate dean, then as dean a little over three years ago.

I have given a lot of thought to curriculum, pedagogy, and scholarship, but until 2000, that examination was generally from a traditional perspective and from the silos of law and legal education. In 1999 I became involved with the Carnegie Foundation's study of legal education and the next year began a research project on the development of professional identity. That is when I really began to think about who my students are, the ways in which they experience their legal educations, and the impact of that experience on their careers and lives as lawyers.

I began to ask my students questions that I had not really thought about previously. Up until that time, I believed that I was a pretty good observer of what my students were experiencing. As I got involved with this project, I was allowed to really dig deeper into the topic that interested me: what happens to our students during the years that we have them in law school? That is, how does legal education impact their formation of identity and purpose? I began to realize that I did not know what was happening with my students.

I learned a lot about my students, more than I have time to go into today. But one really important thing that I learned is that my students come to law school with a very real sense of purpose. They want to

make a difference in the world. They want their work to have value and meaning. They have chosen law in part because they want to be in relationship with others. These findings are consistent with research that has been done across disciplines about why students seek higher education, particularly professional education. They do it because they want their work to have meaning.

I learned too that the environment of law school can cause students to lose that sense of purpose and negatively affect the development of professional identity. The environment can interfere with our students' abilities to live out their goals as lawyers.

My involvement with Carnegie opened me to the value of interdisciplinary work and taught me that much of what I thought was unique about legal education was being experienced across quite disparate educational settings. Additionally, it has taught me that professional education and traditional liberal undergraduate education have much to learn from each other.

The third role or perspective that I bring is that of administrator. As dean, I am responsible for institutional development, accountability, wise use of often scarce resources, hiring and developing faculty and staff, understanding the place of professional education within the overall university, pressures of competition, and the opportunity that leaders have—and do not have—to effect change. Becoming dean has taken me out of the classroom in a significant way, but connected me to alumni, the bench, and bar in new ways. I have less time to write or speak about scholarly endeavors but find it easier to get an audience when I do.

Those first three roles—lawyer, educator and scholar, and administrator—have been within the academy and within my own discipline. Two additional roles have expanded my perspective. They are the ones on which I want to focus because they offer perspectives that are often missing in professional education.

The first of these is as a client of a lawyer. About six years ago, I had a sudden and unexpected need to hire a lawyer to represent me in a workplace dispute. I was represented by that lawyer for three years, including the filing of a lawsuit in which I was the named plaintiff in a claim against a former employer. This was not the first time I had been represented by a lawyer, but it was the first time I had done so in an ongoing and contentious matter and the first time that I had been a party to litigation.

That experience made me realize that in all of my academic thinking about what makes a good lawyer, I had never really focused completely on the perspective of client. For the first time, I became aware that I would sit in classrooms, conferences, or just informal discussions with

lawyers in which we talked at length about “the client,” including what the client wants and needs. However, there were never any clients in the rooms for those conversations. I found myself wanting to shout about the obvious omission (that had not seemed obvious to me until that experience) and to contradict what was being said about “the client.” I began to realize that we make a lot of assumptions about what clients want. A lot of those assumptions help structure legal education and many of them are wrong. We organize legal education around this notion that clients want to maximize their recovery and minimize their liability; that everybody fits in the same mold. We have this one image of an individual that is all about avoiding responsibility or recovering maximum compensation. I learned from my experience that what clients want and need is a lot more complicated than the model used in the law school classroom implies.

I was astonished about the ways in which being a client opened my eyes to being a lawyer. Just as I had learned from my students how to be a better teacher through my Carnegie work, I learned from the experience of being a client about how to be a better lawyer. My thoughts evolved around who professionals are and what professional education should be.

What did I need from my lawyer? Most importantly, I needed him to help me to live through a period of conflict consistently with who I am and what I care about. Of course, I needed legal advice. I also needed him to be my face and voice in this matter, which became public and quite controversial. Having someone else speak for me was a position of great vulnerability that required a high level of trust. In fact, I learned that one of the most difficult things about having to hire a lawyer was the feeling of dependence. All of a sudden, I had a problem that I could not handle myself. I was in my mid-forties, I had been married a long time, I was the mother of two well-functioning children, I was tenured, I was an associate dean at the law school, and I was involved in my community. I was used to handling things on my own, particularly solving difficult problems, and to having a voice that spoke with some authority. Now I needed help to solve this particular problem. The moment that I realized that I needed to hire someone to help me was a singular moment of vulnerability and fear. My life had changed dramatically and quickly, and the result of that change was hiring a lawyer. While I have talked with students about how their clients are going to come to them at times of crisis in their lives, I never really understood what that meant for a client until it happened to me.

While I needed a lawyer who knew the law and understood the skills of practice, I needed much more than a technician. I needed someone with the head and the hands, but I also needed a lawyer with heart. I

needed a lawyer who, when all was said and done, would allow me to survive a difficult time with my integrity in place. I needed to be able to look back without regret, knowing that we had made the best judgments that we could, given difficult circumstances and an environment of uncertainty. I needed someone who could help me make decisions that would represent who I was—decisions that would say to my students, “This is who your teacher is”; to my children, “This is who your mother is”; to my friends, “This is who your friend is.”

If I were going to reach that goal, I also needed someone who would challenge me to do better than I was sometimes tempted to do in the midst of conflict. The legal system gives you permission to be at your worst. There were all kinds of excuses, even incentives, to act badly—out of anger, meanness, or retribution. In fact, the vocabulary of conflict and the process of litigation encourage such behavior. Therefore, I needed a lawyer who would challenge me to act out of the best of who I am, rather than out of the worst, even though the latter rose to the surface frequently. I needed someone who would say to me, as my lawyer did several times: “Well, we could do that and we might even be successful, but I don’t think that’s really who you want to be,” or “Why don’t you think about that overnight and then decide if that is the next step you want to take.”

I needed someone who could help me understand the role that fear was playing in my decision-making and in that of other people’s decision-making. He often did that through questions as well, e.g., “What are you afraid will happen if we do (or don’t do) X?” I needed someone who could help me see the humanity of those on the other side of the conflict rather than allowing me to demonize them and their actions, e.g., “What do you think he is afraid of?” That was very helpful to me.

I needed someone who understood that many of my important relationships were affected by the legal steps we took. I needed someone who could see me and all of my needs and offer professional judgment to help me meet those needs.

The fifth perspective that I bring to this topic is that of patient, a consumer of health care services. I have been going to the doctor my whole life, as I suspect most of you have. But, during the past ten years, I have had multiple surgeries and the need for care for chronic pain—these arising out of lingering problems from an auto accident of thirty years ago. During this time, I have consulted with over a dozen doctors from whom I have sought diagnosis and treatment—from Albuquerque to Philadelphia to Atlanta and various points in between. I have also encountered at least twice that number of other health care professionals associated with testing, anesthesia, recovery, physical rehabilitation, etc. These experiences contribute to my understanding

of what it means to be a good professional—again from the perspective of consumer.

What did I need from health care professionals? I needed the same thing that I needed from my lawyer. I needed their specialized knowledge and skills to help me make good decisions in the face of uncertainty. In the words of the three apprenticeships, I needed their heads and their hands. But, just as with a lawyer, I needed heart as well. I needed more than a technician. I needed someone who would understand my life and that I was trying to manage that life and to hold onto as many of my goals as I could with an unwelcome medical condition. Just as with a lawyer, I want, and need, a health care professional who can help me make good decisions about my life and my health. I needed someone who would say to me: “I am going to help you navigate this unwelcome situation in a way where you can come out on the other end being who you want to be. You will be altered because you are having to deal with this thing that has happened, but I am going to help you with that.” Just as with a lawyer, I need for this professional to see who I am and to know what matters to me. I need him or her to encourage me to keep trying for new solutions when appropriate and to challenge me to face unpleasant realities when appropriate.

In other words, I needed a partner. I needed my lawyer to be a partner with me, and I needed my doctor to be a partner with me. As both client and patient, my goal is to live my life with wholeness despite unwelcome legal or medical challenges. In other words, I need a professional who wants to be in a partnership with me and who will take the time to get to know me well enough to understand my goals and motivations.

By the way, I think that is the same thing that our students want from us as teachers. They want a partner who will say to them, “I am going to get to know you. I am going to understand what is important to you and what you care about. And my goal during the three years that you’re here is to help you to take in this new knowledge, to experience this transformational process, to get out on the other end better than you were when you started, with your integrity, your identity, your purpose, and your ability intact, so that you can leave here and fulfill your purpose.”

I know that this is asking a lot, especially given the many business and other pressures that professionals face, including the pressure of billable hours, insurance and governmental regulations, and public misunderstanding. I know too that there are necessary and appropriate boundaries and that my lawyer or doctor is not my therapist, my spouse, or my best friend. But I think it is right to ask professionals to take the

time to get to know the people they serve in that way; in fact, I think it is the obligation of professionals to do so.

All of these experiences have convinced me that the most important thing that we can do as educators of professionals is to help our students develop a positive, healthy professional identity—an identity that allows them to hold on to the purpose that brought them to professional school in the first place, that allows them to live their lives as whole persons, integrating their personal values with the norms and goals of their particular profession. Doing so will allow them to live their lives as whole persons.

The frequently used example of Atticus Finch illustrates the goal. In *To Kill a Mockingbird*,⁷ Atticus tells his daughter, Scout, that he must be the same person at home, at work, and at Sunday school. Atticus had a healthy identity. He lived his life with wholeness and integrity. He did not have one standard for his life as father, another for citizen, another for lawyer.

Similarly, Parker Palmer, in *The Courage to Teach*,⁸ notes that being a good teacher is not dependent upon subject matter or pedagogy or institutional context. It is about having the courage to bring who you are into the classroom and to teach from that place. It is also about recognizing the concomitant responsibility to keep working on who you are.

I believe that a lawyer, a doctor, or any other professional who lives a compartmentalized, fractured life, who is one person at work and another at home and perhaps another somewhere else, does not have a healthy and whole professional identity and will not be able to help the client or patient to live a whole life. That is why it matters.

I am convinced that the stakes are very high. They are high for the profession. They are also high for those who are served by the professions. But it is important as well for the professionals themselves that they live lives of wholeness. The high rate of crisis among professionals—attrition, unhappiness, divorce, mental illness, substance abuse, even suicide—is evidence of the stakes.

What does this mean for professional education? Well, it means that we must do the kinds of things suggested in *Educating Lawyers, Best Practices*, and discussed today by each of our speakers. We must integrate this idea of identity and purpose throughout legal education because we are educating professionals through a transformational process. We are taking students and turning them into lawyers.

7. HARPER LEE, *TO KILL A MOCKINGBIRD* (1960).

8. PARKER J. PALMER, *THE COURAGE TO TEACH: EXPLORING THE INNER LANDSCAPE OF A TEACHER'S LIFE* (Jossey-Bass 1997).

There are various definitions of professionals, with general agreement that the following attributes define professionals. Professionals have developed a particular expertise; they have acquired a body of knowledge, for example, a professional understands anatomy, disease, and healing, the spiritual texts and world religions, law and legal systems, physics, or educational theories. Professionals also possess certain skills, the ability to translate the specialized knowledge into diagnostic techniques, legal documents, blueprints, lesson plans, or sermons. Professionals exercise judgment under conditions of uncertainty. Professionals owe a fiduciary responsibility to the one who seeks the service of the professional. Professionals have an obligation of service to the public.

I want to offer another definition of a professional: an ethical, competent professional is one who works in partnership with a client so that the client can live his or her life with integrity. I use integrity to mean both honesty and wholeness. I mean integrity in a sense of living an authentic life, a life that allows one to handle difficulties consistently with who they are and whom they are striving to be.

The hard news for lawyers is that most of the time, clients come to lawyers at a point of crisis, at a point when they are not at their best. The challenge for the lawyer is to help clients strive for their best under circumstances that make that difficult. For lawyers to do that, lawyers must know how to live their own lives with integrity, with awareness, and with purpose.

That is why this concept of formation, as discussed in *Educating Lawyers*, is so important. Because if we are going to form professionals in a way that develops in them a healthy identity and purpose, we have got to start from the beginning. We should start with orientation, or maybe before orientation, and we have got to take it all the way through the three years of legal education in an integrated way.

As the speakers have pointed out, we must integrate the three apprenticeships of head, hands, and heart. We must teach knowledge, skill, and identity and purpose from the first day that we have our students. If professional school provides a professional identity, we must help students understand that they must not replace their personal identities with their new professional identities. Rather, they must integrate the two. Professional schools must work closely with undergraduate education and understand the disciplinary perspectives and life experience that their students bring with them.

While some breaking down of preconceptions is necessary to teaching the novice new skills, we should not neglect to teach our students how to reintegrate those newly developed skills with their own notions of justice and the complex demands of their own and their clients' lives.

Legal education makes the distinctive professional means of thinking and doing the exclusive means of thinking and doing. An emphasis on the third apprenticeship—of identity and purpose—can overcome that neglect. We can teach—and show—our students that those distinctive means of thinking and doing are a part of becoming a professional, but they are not the limits of it.

As educators, we must recognize that the student's experience of professional education is a journey. The cumulative effect of this journey is to form a professional identity. The journey is informed by many things: pedagogy, environment, curriculum—both explicit and hidden—the relationship between academia and the profession, professorial attitudes and behaviors, and public culture, among others.

When we neglect the development of identity, we rob our students of the purpose that brought them to law school with devastating consequences for our students and the profession they enter. There are signs of trouble: attrition rates; incidence of mental illness, such as depression, suicide, and substance abuse; and the popular negative image of lawyers. Often, the conversations about what is wrong with the legal profession focus on the impact on those served. But, the consequences are also great for the professionals themselves. The failure to teach appropriate professional identity and purpose leaves our students at sea and at high risk for failure in both their personal and professional lives.

I want to close with a story. I told you earlier that I think stories are important, and I would like to share with you the story of one lawyer's journey to purpose.

This is a story of Rick Halpert, a personal injury lawyer in Kalamazoo, Michigan who almost gave up practicing law, as told in *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*.⁹ He did all the right things, going to a good law school, making good grades and law review, taking a job at one of Chicago's most prestigious law firms, and hating it. He left the firm, became a prosecutor for a while, tried private criminal law practice, but through it all, he reports that he "felt a kind of spiritual deprivation." Things changed when he got involved in a personal injury case and through skillful legal and investigatory work was able to prove that his client—a young man who had been driving the car when it was involved in an accident that killed his sister—was not responsible for the accident. The young man "blossomed," according to Rick.¹⁰ And he had found a place in the law where he could blossom as well. He asks: "How can I use the law to serve my clients, to help

9. STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (1999).

10. *Id.* at 26.

them regain their self-esteem and happiness?”¹¹ He asks that now in a thriving personal injury practice in which he never has more than twenty cases at a time, so that he can get to know his clients well and be a part of their healing process. What follows is Rick Halpert’s account of one step in his journey:

The Joy in Personal Injury Law

It had been a hard day in my trial practice and I didn’t get home until 7 pm. Personal injury law is fulfilling, but it can be exhausting, and it certainly was that day. I had just gotten into casual clothes when the phone rang. It was “Jane’s” mom. Her 17-year-old daughter, my client, had been horribly burned in an explosion, disfiguring her hands, her arms and her entire face.

Now, one month past hospital discharge, her mom said Jane had given up. She refused to do her exercises, wear her specially made garments, or use her splints. It was just too much for this formerly beautiful young woman.

I knew that if she failed to do the exercises, the range-of-motion loss would require surgery and might well result in permanent disability. My only option was to drive the 30 miles to her home and work with her. But first I called her burn doctor to obtain accurate information as to the outcome if she didn’t do her exercises.

“What,” he asked, “was a lawyer going to do about it anyway?”

I explained that I was just leaving to go to her house to “talk her through it,” which I saw as an integral part of my role as her lawyer. Silence followed, then he asked, “would it help if I came too?”

The two of us sat on her bed for about an hour or so talking about her pain, depression and loss of hope and answering her “what if” questions. The doctor did most of the talking that I would have done in his absence. It will not be the last time we do this, but we got her through that night.

Finally, she said “ok” and agreed to continue her therapy. On the way home, the doctor told me that he now understood why I love being a lawyer. And I could tell that he did.

Rick Halpert, partner
Halpert, Weston, Wuori & Sawusch
Kalamazoo, Michigan¹²

Rick Halpert had arrived at that moment through a journey, a journey in which I would argue that he had developed a positive professional identity, one that allowed him to live his life with integrity and purpose. Because he had, he could help a client who needed his legal advice—and

11. *Id.*

12. A copy of this narrative is on file with the Author.

more—get through a difficult moment offered by the problem that had brought her to seek legal help in the first place.

Professional education at its best is about how to be in the world. It is not just about what to know or what to do but about who to become.

We have a large challenge ahead. There is great opportunity at the moment for legal education because we have so many people raising these questions and spending their time looking for ways to improve. I look forward to continued conversation and wish all of you well on your own journeys toward identity and purpose.

Now, I am going to ask Judith Wegner and Bill Sullivan if they will come back up front, and we will have an opportunity for questions.

What we would like to do is have this as a further opportunity for conversation. We want your reactions, your questions, your critiques, and your comments—whatever is on your mind after today. Who wants to start?

AUDIENCE QUESTION: One of our adjunct professors, who happens to be present, was recently trained as a therapist, and she is making rounds with teams of doctors, interns, and medical students. She is bringing to the conversation things about people skills and understanding people through a social work environment. I am wondering if you can see for legal education ways that perhaps we could do this better with our students and then our students could then do better with their clients?

DEAN FLOYD: Did everyone hear that? And Bonnie Cole is here, that is the professor she is speaking of. What reactions or comments from the panel?

PROFESSOR WEGNER: I wish that law schools would make it easier for students to take courses not just in the law school, but in other fields. Social work school is an example. One of the things we did at Carnegie was to create a set of seminars around the country on the topic of legal education as a point of inquiry. Dean Floyd was a part of that. One of the sessions by someone at the University of Pennsylvania involved co-teaching with a social work professor. It was very helpful to everybody involved because they were able to look at issues using the professional lenses of the different people and fields. They were working to some degree with criminal defendants so that you could see the way that might play out. I can imagine something of that type would be quite useful.

Another example may be helpful. When I was dean at UNC, our local medical society had a program in which they invited professionals in the

community to come and trail doctors for a day and a half. I got to sit in on a back surgery and talk about what lawyers do, what doctors do, and how insurance fits into it. I think one way to really foster the kind of thing you are suggesting might be for some number of other faculty to trail along on occasion with this kind of effort.

DEAN FLOYD: Any other comments?

DR. SULLIVAN: I am just going to try to follow up and take a theme from Professor Thomas. I think one of the things that is really important to keep in mind is that faculty are professors. And at some point, it is really crucial that they have some intellectual understanding of why they are doing something. So, one of the objections that I can imagine is that “people skills” are on the margins, that what is really serious is that you know how to do X or Y or to say X or Y. And then if you have a good “bedside manner” as they say in the medical world, that is an asset. But that really is not essential to what you are doing.

I think it is important to recognize that we have tossed off much too lightly people skills as a very important kind of understanding that is integral to professional life. That is what Dean Floyd’s talk meant to me, at least in large part. So, some of the currently fashionable things like talking about social intelligence, for example, really represent a development. We have to develop ways of teaching that resemble what good clinicians in medicine and good practicing lawyers do, which is to move back and forth between our experience and our theories or ways to try to make sense of this. I think part of what would have to happen is for faculty to confront and think about the differences in these ways of grappling with situations and decide best how they could begin to bring them closer together in their teaching.

DEAN FLOYD: Other questions or comments? Yes.

AUDIENCE QUESTION: Someone mentioned earlier this morning a responsibility of our profession is building a better and just society. My law school experience goes way back, but I do not quite remember having that as being an even implicit matter of instruction or learning. I am wondering whether you think we are imparting this sense of responsibility for a just society in our teachings. And if you think we are doing it, how is that manifesting itself?

PROFESSOR STUCKEY: In the *Best Practices* book, we quote a number of people who believe that teaching about justice should be the central mission of law schools. Justice is one of the foundations of the

legal profession. Are we doing it right in law school? No. The Carnegie Report, in fact, documented that especially in the first year we take it off the table. We rule it out of bounds. They strongly recommend we put it back on the table in all courses and allow that to be part of our discussion. But law schools are not doing a very good job of piquing students' sense of commitment to justice.

AUDIENCE QUESTION: Where does that sense of responsibility come from? Where is the overarching place of responsibility? I am suggesting that wherever this responsibility comes from helps to define this social responsibility of the law profession, and if we are not clear about from where it is derived then we are not going to be clear about how to embed it within the teachings and later the practice.

PROFESSOR STUCKEY: I agree. Professor Wegner, did you have something?

PROFESSOR WEGNER: Based on our field work, it did not seem all that common to incorporate social justice issues extensively into standard first year classes such as civil procedure. In my experience, an increasing number of courses have been developed since that time, including some on "social justice lawyering," such as we have at UNC. Many clinical programs raise lots of questions about justice. The pro bono efforts that many schools are making are focused around justice. Individual professors may do their best to incorporate social justice issues, if materials are readily available. Not to pick on civil procedure, but some professors may use teaching materials keyed to the book *A Civil Action*,¹³ that raises many issues about environmental justice. So, I think there are dimensions of social justice that can be addressed in individual classes. But it seems that you are posing a bigger question: should attention to social justice be an institutional goal that provides a point of cohesion as an institution as a whole? I think that concept is not happening in most places. Perhaps in order to really open students up to thinking about such issues, we need to surface ethical issues in many different kinds of ways throughout the curriculum. It is not just important to emphasize what one individual is thinking about or doing but how lawyers can better assure social justice by quality representation. We could put that question under the lens in a way that allows it to come up again and again rather than just putting it in a corner in some isolated courses.

13. JONATHAN HARR, *A CIVIL ACTION* (1996).

DEAN FLOYD: I think, too, that most of our students come to us with the notion that part of why they are going into the law is because they do think it makes a difference in the world, whether they call it social justice or not, and that part of what we do in law school by focusing so much on the cognitive skills in our first year is that we send them a message. It may be an unintended message, but we send them a message about what is valued and therefore what is devalued.

What I have found in some of my research is that students find it very difficult to hold onto that commitment to social justice that they bring into law school with them. A part of the solution is to begin to do things to make that more explicit in the first year as a part of who they are—again, as a part of their professional identity—and talk about what it means to be a professional in the first year. We are doing that here in the first year at Mercer. But we must talk about it so that it does not get removed. I think that is part of the distance a lot of people feel in the first year. They come in with this commitment and then they start thinking, “No, being a good lawyer is not talking about that fuzzy feel good stuff. It is about being able to analyze cases and write your essay exams.” So, they get this message that it does not matter when, in fact, we know it does matter. It matters a great deal. I think part of it is being explicit about addressing it but also trying to correct the places where that gets devalued in law school.

AUDIENCE QUESTION: I sometimes wonder if we look at that a little backwards; that it is possible students are reaching a higher level of moral understanding. A couple of years ago, I had a student tell me that she came to law school to help eliminate the injustice of murdering unborn children and she wanted to have *Roe v. Wade* overturned and so on. She said that her first year had taught her that there are two sides to every issue. A couple of weeks later another student said he came to law school because of global warming and so forth, and he had realized there were two sides to every issue and that a lot of factors had to be taken into account. He said it was a little like growing up to come to law school. By growing up morally you begin to see that it is not just black and white. I have always thought that a fanatic is probably always clearer minded about goals than somebody who sees that there are complexities in most of these issues. It seems to me sometimes we just stop and say, “Well, they’ve lost their idealism,” and it may not be that way at all. And I think that your point in your talk was exactly right, that the real idealism is becoming a lawyer and learning to do good for people and help them and so on.

DEAN FLOYD: That is helpful. Any reactions or comments to that?

PROFESSOR STUCKEY: But on the other hand, part of what we criticize legal education for is ruling debates about justice out of bounds. I do not necessarily mean that you are going to have a debate about a particular issue and agree on who is right and who is wrong. We ought to be able to talk about it, and we ought to be able to talk about it in that context, not just what would a judge do if presented with that question—but what is the right thing to do? Is there a right thing to do?

In Dean Floyd's discussion about her work with the lawyers, she pointed out that there were times that the lawyer would say, "You know, is this really what you want to do? Don't you want to sleep on this and think about it?" In other words, suggesting that the client's personal value structure, what she thought about what was right and what was wrong, might lead her to make a different decision when she had a chance to think about it. I think that something we have got to teach law students and lawyers to do is to think about their clients' values and say, "You really need to think about whether this is the right thing to do or not. Yes, we could win. We could clobber them. We could get a lot of money from them. But is this really something that you would feel comfortable with in your heart?" In law school, we really do not spend enough time allowing students to talk about those issues and to have that dialogue. How do we expect them to be able to do it when they are not in law school anymore?

DEAN FLOYD: I do think part of the challenge is to do that at the same time that we are doing very important things about teaching them there are two sides to every story, how to depersonalize disagreements, and how to articulate those things. I think it is wonderful that your students are having that maturation process. We just want to make sure that it includes those goals or values. Even if the way they see the world is changing, not having to give up their goals and values as the way they see the world is changing.

AUDIENCE QUESTION: I have a comment and I have a question. The comment first generated from the remarks of Professor Wegner. I was educated in England. In England after law school, which is admittedly an undergraduate education, not a graduate school education, we went to professional school for one year. The bar exam that we took was a six-day exam, and during the exam, on the criminal day, for example, we had a fact pattern. We had to identify the potential crimes that might be prosecuted and then draft an indictment from memory. On the civil day, we had a fact pattern and we had to draft a complaint from memory. So, we spent a year learning how to do that and actually

earning a practice certificate along the way, and then after that we did an apprenticeship or a tutelage on site. So, that is my comment.

My question is probably much too radical to even conceive of doing because it would mean dispensing with undergraduate education and making law school an undergraduate school if you were going to make the additional three year commitment on the other end. Is the only way to achieve some level of preparedness or some acceptable level of preparedness to have the pressure come from the licensing authorities? If as in the President's opening remarks about the intractability of faculty towards curriculum change, and the dean's remarks about the economic restraints of curriculum change, is the only way to really achieve these goals to have pressure come from the various licensing entities, in terms of the way that they say a person is or is not competent to represent the public?

PROFESSOR STUCKEY: I will take this question. I will be the first person to tell you that no matter what we do during three years of law school very few students are going to be really prepared to represent clients without supervision when they get out. We can do a lot better. That is what we are really talking about. We can do a lot better than we are doing in three years. I am not going to trust many law students who graduate after three years to handle any case I have.

I think the licensing authorities are doing a huge disservice to the public by giving full licenses to practice law when students graduate from law school. They need to give limited licenses to practice for a while until students can demonstrate their competency, and they will not do it. It is an outrage.

DR. SULLIVAN: It is going to require movement on several fronts that are coordinated; therefore, having a strong faculty consensus in the country about this is also indispensable. Second, both the examiners and the bar in different states also have very important roles to play in this. So, if we are really talking about the kinds of changes that people have been addressing today, then I think we are talking about a larger agenda that really is a kind of agenda in which the academy is central but which requires the other parts of the legal profession to join in moving that way.

My guess is that in the practicing bar there would be a lot of sentiment in favor of these sorts of things. The interesting thing would be what the objections would be as to why something approximating that could not be done.

PROFESSOR THOMAS: Somewhere in the last year the Stanford dean called for a revolution in legal education; it would be a nice idea if people actually had practice and theory blended and everyone had a clinical law school experience. People got excited because the Stanford dean called for revolution. Little old me calling for revolution does not get noticed, but if a dean does it, that is what makes a difference, who is speaking and where it comes from. I was thinking what is novel in that? I have worked at the oldest clinical law school in the country for thirty years. What is novel about clinical education? What was novel was that it was an important speech and most people do not have clinical education required for every student. I thought it was an important call and an important idea.

PROFESSOR WEGNER: Just another quick thought. We talked with people at two Canadian schools. Since we had two Canadian schools in our study set, I worry some about placements of students in articling positions because I think that there is real risk with who gets what opportunities that way and also a risk as to the quality of supervision. I had a chance to be involved in a conference of architecture interns who said they had a very structured set of requirements in connection with fairly formal apprenticeships and internships. Yet at one point, they had to bring a labor standards matter to the federal labor authorities because they were being basically forced into servitude without being paid. They had a very elaborate set of checking off if you had this or that experience. But what was really happening was not necessarily apropos. There may be strengths to an articling system, but I think it is not a panacea. It will be interesting to see how much the profession and the public moves toward expecting specialization certification. I think in a way that approach has emerged as a means of designating people who had developed mature expertise so that they can appropriately be seen as able to deal with complex problems. It is an interesting question between what we have now and that more senior experience level.

I agree with Professor Stuckey, but I think it would be healthy if we were to pursue the notion of bifurcating the bar exam. We could give a provisional license for a couple of years with limited things you could do without more significant supervision. Then, two years later, provisionally licensed lawyers would come in for a different kind of advanced bar exam, perhaps calling upon their experience in drafting or making arguments before particular tribunals. It would also be possible then to require more substantial character and fitness references from people who have seen the provisionally licensed lawyer in action, to see if they

really had developed the kind of judgment and commitment that would warrant full licensure.

PROFESSOR STUCKEY: And portfolios.

PROFESSOR WEGNER: Yes, and we could use redacted work product portfolios as a way of evaluating character and fitness.

AUDIENCE: Those of you who are not from Georgia may not be familiar with the fact that one impetus that came from the practicing bar in Georgia was there needed to be some sort of post-graduation, maybe post-admission requirement. Ten years ago, the State Bar of Georgia launched an investigation inquiring whether something should be required beyond graduation and admission. As a result of that, and it only took ten years, we were able to come up with something called the Transition into Law Practice program, which is actually a mentoring program. Every newly admitted lawyer is matched with a mentor upon being admitted to the bar. Now, the mentor can be in the employment relationship. For those few who are brave enough to go out and want to practice on their own, the State Bar provides a mentor. There are requirements on the mentoring plan that must be filed with the State Bar and continuing legal education courses that go along with that tailored to the particular practice area. But for the first full year after admission, every new lawyer in Georgia must go through the mentoring program. It is not perfect. It does not answer all the issues, but at least it is an effort in that direction.

AUDIENCE: Well, I hesitate to jump into this, not being from the land of academia, but I am general counsel for the State Bar and the Disciplinary Council. I have the opportunity to deal with and view rather closely the ugly under belly of what you produce. I think I have some observations about what you are producing and how you might be able to produce it better.

I do not think the problem is that you have a cadre of law students who you are graduating that are necessarily amoral or who do not have a moral fiber somewhere. Sometimes it is pretty deep and you have to dig for it. But it seems to me that at some time these students decide that the fact that they are representing someone is an excuse to leave their morals behind them, that the phrase "My client wanted me to do it," is the excuse that authorizes everything.

I had an experience about three months ago that just shook me to my foundation. I was talking to this lawyer who has done that which he ought not to have done, and in the process of discussing this, the

problem arose in a domestic relations case. He was representing the husband and he was seeking custody of the minor children, two daughters. There was absolutely no doubt that the client was a pedophile, and he was seeking custody of these children. I suggested that perhaps there was something wrong with that. And the lawyer's response was, "But that is what my client wants."

Now, if we are producing people who can use "my client wants" to justify that kind of behavior, then something is wrong. Now, I dare say that every one of you professors in this room have at some point during your experience told your students that it is not about what the client wants, but they have not heard it. So, let me just suggest, and this may be too practical, but let me just suggest, that you take a look at how you are dealing with that issue and perhaps try to deal with it a little deeper.

I do appreciate the fact that I am here today. I am glad that I was invited. I am glad that someone outside of the world of academia is able to participate. I think we have identified the problem. If we have not done anything else today, we have identified the problem. But when the next round comes up and we start to deal with solutions, I hope you will let us participate because those of us who must deal with your product have some suggestions and some things to tell you about what you are putting out. And I thank you.

PROFESSOR STUCKEY: I have been teaching for thirty-four years, and if I had a nickel for every time somebody from my law faculty or other law faculties around the country said, "I don't want any lawyers telling me what I have to teach," I would be a rich man. We have a very horrible attitude to get fixed in academia.

DEAN FLOYD: Any other comments or reactions?

AUDIENCE: I really appreciate the example because I teach legal ethics, and I am also involved nationwide around teaching legal ethics. The question of what should a lawyer do when the client says I want to do X is not taught in law school. It is just not. It is generally not even taught in the required legal ethics course. Our rules do not tell you too much about that. But it is not what we have been talking about, which is the exercise of judgment and the advice to a lawyer that you give to a client. You will go through three years of law school and not have any idea by and large that is what lawyers do. And if we think about what law students do, if they have to infer what is the purpose of a lawyer, they will at best draw their inferences from the case dialogue classroom,

which is a simulated appellate courtroom. That is basically what we do, we simulate an appellate argument.

But I would think that the average law student could probably go and win an argument in the appellate court pretty well. They know how to do research, they know how to write a brief, and they can do a moot court argument. But what is the purpose of an appellate lawyer? It is simply to win an argument in court. So, the implicit message, the purpose of a lawyer is to win an argument in court. As an appellate lawyer, that position is assigned to you.

With due respect, I understand your point that they learn to see that there are two sides to every question, but the next thing they learn is that it does not matter who wins. Each side is equally deserving of a victory, and that is how we set up the classroom, because I assign a student to argue the other side of the issue. You do not get to choose the issue. When you go into the appellate courtroom, there is a lawyer on each side and you have to assume that you are entitled to win. You never say to the judge, "Judge, the other side really should win." You are not allowed to do that in the appellate court. You are allowed to advise your client not to appeal. You are allowed to advise your client to negotiate rather than do the appeal or whatever, but that part is not taught in law school, the exercise of judgment in advice.

It is not an accident that you see what you see. It is because we, (a) do not teach that that is something lawyers do, and (b) the implicit message is lawyers simply win what clients ask them to win.

DEAN FLOYD: I think there are very practical suggestions in both of these books and these other conversations. I think if we build legal education around those visions I hope you will see less of that. My goal is that we will prepare students to operate in those contexts and, in a sense, come into law school thinking, "I would never represent somebody in that situation." For some reason they leave law school thinking that it is okay to do that kind of thing, and we have to bridge that gap. We must train lawyers who like my lawyer will say, "You know, I do not really think that is going to represent who you are very well if we do that. The law allows it. Maybe morally you are in the right if you do something, but I do not think you are going to feel good about what you are doing down the road, or this is going to be harmful to somebody else." I think we are close to doing that. I do not think we have to revolutionize legal education to get that done, but I think we have to begin to work on it to be better at that.

PROFESSOR WEGNER: I just want to take exception because I talk about those things in my classes and I think that is an overly broad generalization if you have not been in other people's classes.

PROFESSOR THOMAS: I want to look at it with a little broader lens and look at the question because we actually talk about these lawyers as if they just popped up in a law school classroom, but they are human beings who have been living on the planet for over at least twenty years. In thinking about that particular notion, I think what happens is they see these choices, these sides as equally viable, equally okay choices, and it does not make a difference which choice you make. But think about those students as being the same kids that were in little league and soccer and we saw the parents get very heated on the sidelines and start fighting and tackling each other over whether someone kicked the ball in the goal, instead of celebrating the fact that they got the ball near the goal.

So, I think they watch and replicate what they are experiencing growing up and that the moral fibers and social choices are being presented long before they get to law school. So, they actually think that they really are okay choices and that winning is the answer. It was not something we actually did to them; some of them bring it with them. They were not perfect morally formed human beings when they came to law school, so we did not actually create some of these people, they were already formed.

AUDIENCE QUESTION: But do you not think you ought to try to do something about it?

PROFESSOR THOMAS: Sure. But if I did all I could in three years, I do not know if I could undo what has been done to them in twenty years.

AUDIENCE: I would like to respond to Professor Wegner. It may be an accurate generalization. It is not intended to be a personal judgement of my fellow teachers. It is intended to be an observation about the inherent structure of legal education, and you may disagree with me about that. The thing I would like to say, one of the many good points many people, but particularly Professor Thomas made, is we need more information. The best evidence about how what we do in the three years affects our students is to find out more from our students. You and I can only speculate. I may be wrong about what the effect of our three years is, but we collect very little data about what our students think and feel, and for example, what they think is the purpose of being a

lawyer. I think one thing that these kinds of conferences should encourage us to do is to systematically collect much more information about the effects of what we do, and I think we would all agree with that. And we might be surprised, I might be surprised with what we find out.

DEAN FLOYD: Thank you.

AUDIENCE: I am an attorney and an adjunct law professor. Since becoming an attorney, I have done a marriage and family program from the medical school, so I am also a psychotherapist who just got licensed. Several times it has been said in the last few minutes that there are two sides to the story. There are two sides to the story. There is the winning or the losing. As an attorney, I understand what you are talking about. But as a therapist, the very first thing I would be asking you, point out to you, and challenging you with is that there are not two sides to the story, there are many sides of the story and it is a story. To think in terms of two sides to the story is at the core a sign of irrational thinking because that is dichotomous thinking. If we think at that level, I think it takes us astray from the drive towards social consciousness, justice, or whatever.

DEAN FLOYD: Thank you. Other comments? What about the students? We have been doing a lot of talking about you. Do you want to respond?

AUDIENCE: Yes. As someone who is in this process, you bring in a certain amount of life experience to law school. What you learn in your first year of law school, to a degree, is problem solving through the various methods of different teachers. You find out what kind of problem solving works for you, and you take that into the real world out of law school. But you also take your experiences that you had before coming to law school. Going back to what Professor Thomas was saying, I had twenty-six years of life before I went to law school. I had four years of doing an actual job before I came to law school. And so, I probably would not have told a pedophile, "Let us take this to court and seek custody," but I think I would have taken what I have learned in contracts and property, it may not necessarily be directly applicable, but take that process of being in an academic environment and solving problems for three years, take that and say, "Well, let us see how we can solve this problem." I do not get the sense that even though we are reading appellate cases—and that is all you read in your first year—or doing in class exercises where you represent one of the two sides, that

I have to “pick a side.” I get the feeling when I come out of class that I learned a little bit more about how to solve the problem. And I think that the concerns that the panel raise and that the law examiners raise are valid, but I just am not sure how much of that can significantly affect the global law school population. I think maybe one or two people could be affected, but a lot of times when you come into law school you have more experiences and thoughts than three years, no matter whether you are being taught by the saints or the devils, can change positively or negatively one way or the other.

DEAN FLOYD: Thank you. Yes.

AUDIENCE: I had a comment. I am in my second year here and like the rest of my classmates took Professor Longan’s professionalism course in the first year. And I do remember discussing situations where the client wants one thing—for example, when the pedophile wants his kid—then what do you do? How do you talk him out of it? What do you do if that does not work? What do you do if the next step does not work? Forgive me, Professor, for not remembering the steps.

It was addressed in theory, but theory is not reality and I think that is the problem. It seems it would be more helpful to witness an attorney, who I respect and admire, actually deal with that real life situation, taking it out of the theoretical realm and into reality. So, speaking of the apprenticeship, that makes a lot of sense to me because I think there is a certain part of that judgment you are just not going to fully develop in the classroom.

DEAN FLOYD: I think we offer an opportunity for you to rehearse those things and make mistakes in an environment where people are not hurt so that maybe we lessen a little bit of your chance of making mistakes when you are out there in a different environment. I think we do need to connect those lawyers to the classroom as well. Any other questions or comments?

AUDIENCE: I have a question. A lot of what has been said today is very like how the state of the law is now and where we should be going forward. I am curious to see what has led us to this current point? I guess what historical forces and underpinnings of the law have led us to where we are today? Is it just that our legal education is based on flawed notions from the nineteenth and early twentieth century; is it that we have just failed to keep up with the changing times? What is it that led us to where we are today?

DEAN FLOYD: We have some people up here who have given that a lot of thought.

PROFESSOR THOMAS: I read the report, and I was like, oh, yeah, yeah. I think how we got here is particularly laid out in the Carnegie Report, looking at the evolution of law and how we historically were an apprenticeship kind of activity and then we wanted to fit into an academy. Those were the earlier days, which meant a kind of stripping away of the practice element. So, then we looked more academic and less practice oriented and we got further and further away from our past.

I think that stuck out for me in the report, and I think Dr. Sullivan, Professor Wegner, and others would comment on. That really struck me as a kind of cookie cutter process, meaning that we took these same people from the same experiences and they began to shape what we all had been experiencing, but there is not enough diversity of experience, and so it all started looking the same. Then we had these external forces come in putting pressures on law schools, which I commented on earlier, that we all keep up with the Joneses and the Thomases. We all have got to stay in step with each other. As soon as someone steps out, then you look odd and as students, you need consumers, etc. So, it is kind of a self-fulfilling prophecy almost, I think, in some way.

DR. SULLIVAN: That is a great summary. The one thing I would add to that is it is really difficult to understand simultaneously the fact that while we are individual actors, thinkers, feelers, and people who make decisions, we are simultaneously deeply enmeshed in social relationships and institutions. Particularly in American society, which places so much value on the individual, it is one of our folk beliefs that institutions do not matter very much, that individuals solve problems, the Lone Ranger, the detective, or whatever. In fact, this is a great instance of why that is not true. I mean the underlying sociological point is that institutions do not just push people; they are not just external forces. It is not really like traffic laws. Institutions, if they are effective, endure over time, and define reality for us. So, I would suggest the strongest reason that law school has remained the same is that there has been a general willingness to concede that only that kind of thing is a real law school. That has been reinforced very powerfully by the accreditation work of the ABA. But the core of it is a deep belief, and I bet if you polled the faculty or even if you polled your fellow students, you might come up with some surprising figures about how many people would say if you did X, would that really be a law school? So, part of what you are seeing here is a microcosm of the way any

complex human society really works. That is why the idea of social change, in the sense of improvement, for some social goal is really a major undertaking. Because what we have got to do is change people's understanding of what a real law school is. We also have to change the idea of what a real lawyer is.

PROFESSOR STUCKEY: There are other issues as well. I wrote an article a few years ago on the evolution of legal education in the United States and the United Kingdom. I was trying to figure out how did we all start out having the same training before the Revolutionary War and end up with such different methods of training now. It is a very complex answer to your question as to how we got to where we are. If you look at the conclusion in the *Best Practices* book, it explains why it is so difficult now to get law faculties to take us seriously and actually do the hard work that is necessary to turn things around. There are just no incentives, other than personal ethics, for law professors to want to do the hard work that needs to be done, and they have every other incentive not to do anything different.

DR. WEGNER: I would add just one more perspective. I think the world has changed around us as well. There are different dynamics of law practice, the structure of large law firms has changed, the number of lawyers entering the profession has increased, and all the rest. These changes have led to an expectation that instead of the bar mentoring more systematically, instead of really taking the time within the context of the profession to work with junior people, the economic considerations and the changes in the profession and its organization has led the bar to push back these responsibilities onto the law schools. So, I think if you are seeing a gap, it is not only the legal education part of it, but also the evolution of the bar that somehow leaves that area to be thought through again.

AUDIENCE: I think it is the recruiting of law professors that has a lot to do with it. I think in the 1970s and the 1980s law professors became people who did exceptionally well in law school, clerked for a prestigious judge, and may have practiced for a major law firm for a year or two, but practically no practice experience. The greatest claim to expertise is their great performance in law school and then they replicated that experience in their professional life. In the 1950s and 1960s, you had people who had more great experience probably than in the 1970s, 1980s, and 1990s the overwhelming majority of the qualifications of being a law professor is someone who did well in law school.

DEAN FLOYD: Your program says I am going to make closing remarks, but I am not because there is nothing I could say that would add further to this wonderful conversation that has just been terrific, except I do want to thank our presenters very much for their contributions and thank all of you for being here and urge everything to continue this dialogue and to continue the work around this very important issue.

Thank you.