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THE MANY CONNECTIONS BETWEEN WELL-BEING AND
PROFESSIONALISM IN THE PRACTICE OF LAW: IMPLICATIONS
FOR TEACHING

Todd David Peterson*

At the 2014 Annual Meeting of the Association of American Law Schools (AALS), the AALS Section on Balance in Legal Education¹ (“Balance Section”) presented a program entitled “The Many Connections Between Well-Being and Professionalism in the Practice of Law: Implications for Teaching.” The extended session explored how well-being fosters professionalism in law students and the practice of law, and how professionalism and ethical practice in turn promote well-being in law students and lawyers. This symposium presents papers written by some of the presenters at the AALS program along with additional papers solicited by the Balance Section in a call for papers issued in advance of the AALS program.

The topic for the Balance Section’s 2014 program and this symposium had its origins in two papers written by Professor Lawrence S. Krieger, the immediate past chair of the Balance Section.² In the first of these articles, Professor Krieger proposed that there was an integral connection between well-being and professional behavior among law students and lawyers and that this connection worked in both directions.³ He suggested:

(1) that satisfaction and professional behavior are inseparable manifestations of a well-integrated and well-motivated person; and (2) that depression and unprofessional behavior among law students and lawyers typically proceed from a loss of integrity - a disconnection from intrinsic

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1. As described on the Balance Section’s homepage, “[t]he Section on Balance in Legal Education is a group of law faculty and law school professional staff who seek to enhance the overall health, well-being and life satisfaction of law students and lawyers.” *AALS Section on Balance in Legal Education*, FLA. ST. U.C.L., http://www.law.fsu.edu/academic_programs/humanizing_lawschool/ (last visited Apr. 6, 2014).

2. See Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425 (2005) [hereinafter Krieger, *Inseparability of Professionalism and Personal Satisfaction*]; Lawrence S. Krieger, *The Most Ethical of People, the Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation*, 8 U. ST. THOMAS L.J. 168 (2011) [hereinafter Krieger, *The Most Ethical of People*].

3. Krieger, *Inseparability of Professionalism and Personal Satisfaction*, *supra* note 2, at 427.

values and motivations, personal and cultural beliefs, conscience, or other defining parts of their personality and humanity.⁴

Professor Krieger based his argument on psychological research supporting the conclusion that “[t]hose values and motivations that promote or attend professionalism have been empirically shown to correlate with well being and life satisfaction, while those that undermine or discourage professionalism empirically correlate with distress and dissatisfaction.”⁵

This research dates back to the work of Abraham Maslow, the founder of humanistic psychology, who perceived a link between psychological satisfaction and well-being and the kind of professionalism that produces “strongly ethical” individuals.⁶ Maslow’s work has been further developed by modern positive psychology research, which shows that well-being is associated with intrinsic, as opposed to extrinsic, motivation.⁷ Thus, Krieger argued,

[a]ttorneys who are deeply committed to their own values are less likely to pursue the values or desires of their clients with unethical or abusive tactics. And a lawyer who chose her career path for the most fundamental intrinsic reason - because she genuinely enjoys the work - will generate a better work product and be consistently happy at work, thereby creating a positive effect on her clients, adverse counsel, court personnel.⁸

Unfortunately, as Krieger explained, “both legal education and early lawyering experiences can tend to erode integrity by separating people from their personal values and beliefs, conscience, truthfulness, and intrinsic needs for caring and cooperation.”⁹ Professor Krieger’s own research

4. *Id.* at 426.

5. *Id.* at 427.

6. ABRAHAM H. MASLOW, *MOTIVATION AND PERSONALITY* 168 (2d ed. 1970); *see also* Krieger, *Inseparability of Professionalism and Personal Satisfaction*, *supra* note 2, at 427–28.

7. Krieger, *Inseparability of Professionalism and Personal Satisfaction*, *supra* note 2, at 429. “A person is intrinsically motivated when he chooses a self-directed action which he genuinely enjoys or which furthers a fundamental life purpose, while extrinsically motivated choices are directed towards external rewards (i.e. money, grades, honors), avoidance of guilt or fear, or pleasing/impressing others.” *Id.* *See also* Kennon M. Sheldon & Tim Kasser, *Goals, Congruence, and Positive Well-Being: New Empirical Support for Humanistic Theories*, 41 J. HUM. PSYCHOL. 30, 32–33, 44 (2001).

8. Krieger, *Inseparability of Professionalism and Personal Satisfaction*, *supra* note 2, at 430 (footnote omitted); *see also* Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 907 (1997).

9. Krieger, *Inseparability of Professionalism and Personal Satisfaction*, *supra* note 2, at 432.

showed that legal education undermines law students' values and motivation and diminishes student well-being.¹⁰

Professor Krieger expanded upon this theory in 2011 by exploring the application of self-determination theory to law students and the formation of professionalism and ethical practice values.¹¹ Self-determination theory is a branch of positive psychology research, which posits that all humans need a sense of relatedness to others, competence in what they do, and autonomy in order to have a satisfying and meaningful life.¹² In addition, self-determination theory researchers have identified four values that help individuals fulfill these basic needs: "self-understanding/growth, intimacy with others, helping others, and being in/building community."¹³ Finally, a third strand of self-determination theory research supports the conclusion that intrinsic and identified motivations support psychological health and well-being.¹⁴

Professor Krieger argued that the implications of this self-determination theory research were clear: "[a]ll of the primary [self-determination theory] domains appear to strongly predict core propensities for ethical and professional behaviors, and it may turn out that the core qualities measured by [self-determination theory] are actually the identical qualities in personality that result in ethical, professional behavior."¹⁵ Each of the core needs posited by self-determination theory connects to particular qualities that are necessary for professional and ethical behavior.¹⁶ Moreover, the core values posited by self-determination theory "appear to encompass core qualities of professionalism," but in order to produce professional behavior, individuals must "make choices consistent with those values."¹⁷ Finally, intrinsically motivated individuals are more likely to produce professional and ethical work,¹⁸ while extrinsic values are more likely to lead to unprofessional and unethical behavior.¹⁹

Using these articles as a springboard, the Balance Section program brought together a number of individuals to explore both the theoretical

10. *Id.* at 433–34.

11. Krieger, *The Most Ethical of People*, *supra* note 2, at 170.

12. *Id.* at 170–71.

13. *Id.* at 172 (emphasis omitted).

14. *Id.* at 173; see also Richard M. Ryan & Edward L. Deci, *Self-Determination Theory and the Role of Basic Psychological Needs in Personality and the Organization of Behavior*, in HANDBOOK OF PERSONALITY: THEORY AND RESEARCH 654, 660, 662 (Oliver P. John et al. eds., 3d ed. 2008).

15. Krieger, *The Most Ethical of People*, *supra* note 2, at 174.

16. See *id.* at 175–76.

17. *Id.* at 176.

18. *Id.* at 176–77.

19. *Id.* at 182–83.

connections between well-being and professional behavior and the practical ways in which law schools and individual law professors can promote students' well-being and professional identity development. The articles in this symposium comprise the practical recommendation half of the program. Before introducing each of these articles, this introduction will describe the opening, theoretical component of the program.

The first speaker on the program was Professor Elizabeth Mertz, an anthropologist and law professor as well as a Senior Fellow at the American Bar Foundation.²⁰ Professor Mertz spoke about her groundbreaking 2007 study of first-year contract classes at eight different law schools.²¹ Professor Mertz studied classes taught by professors with widely varying backgrounds in teaching styles in order to create a linguistic analysis of the effects of first-year training on law students.²²

Professor Mertz found that in all of the classes, regardless of the teaching style employed by the professor, students were taught to "think like lawyers" by discounting their own moral values, setting aside their own feelings of empathy and compassion, and substituting a strictly analytical and strategic mode of thinking.²³ Based upon her observations, Professor Mertz concluded that law school "has the goal of changing people's values"²⁴ and encouraging students to disconnect themselves from moral reasoning.²⁵ Professor Mertz reasoned that this training resulted in students losing their sense of self and becoming analytically and emotionally detached.²⁶ Students are taught to replace their sense of morality, fairness, and sensitivity to human suffering with "combative dialogue."²⁷ In such a setting, students' judgments about what is right or moral become virtually irrelevant to the discussion.²⁸ As a result, she concluded that students become emotionally detached²⁹ and "unmoored from ethical and social identities."³⁰ Whatever values these students brought with them to law school, including concerns for

20. Professor Mertz is the John and Rylla Bosshard Professor of Law at the University of Wisconsin Law School.

21. See ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER"* (2007).

22. See *id.* at 94.

23. See *id.* at 6, 95.

24. See *id.* at 1 (quoting SHIRLEY BRICE HEATH, *WAYS WITH WORDS: LANGUAGE, LIFE, AND WORK IN COMMUNITIES AND CLASSROOMS* 367-68 (1983)).

25. *Id.* at 1, 6.

26. See *id.* at 99.

27. See MERTZ, *supra* note 21, at 4, 6, 95.

28. See *id.* at 98-99.

29. See *id.* at 99.

30. *Id.* at 214.

justice, public service, and helping others, are replaced by value-neutral adversarial skills.³¹

The picture that this description of legal education paints is fairly dismal, and it has significant consequences for the mental health and well-being of law students and the lawyers they eventually become. If the tenets of self-determination theory and the other learning from recent positive psychology research hold true, the loss of authenticity and the loss of the control over their own value structures would have significant adverse effects on law students and subsequently upon lawyers they become.

Appropriately enough for this symposium, Professor Krieger next presented the results of his latest study with Professor Kennon Sheldon, a major survey of over 6200 lawyers in four different states.³² In this study, Professors Krieger and Sheldon sought to identify factors that correlated with lawyers' well-being in the practice of law.³³ The study identified a hierarchy of five tiers of factors for lawyers' well-being, including "choices . . . in law school, legal career, and personal life, and psychological needs and motivations established by Self-Determination Theory."³⁴

Acknowledging that there is significant evidence of emotional distress among lawyers, the study attempted to identify lawyers who were thriving in the profession and discover why that appears to be true.³⁵ Professor Krieger summed up the results of the study as follows:

[T]he current data show that the psychological factors seen to erode during law school are the very factors most important for the well-being of lawyers. Conversely, the data reported here indicate that the factors most emphasized in law schools – grades, honors, and potential career income, have nil to modest bearing on lawyer well-being.³⁶

Krieger and Sheldon's study was designed to test whether the lawyers' well-being correlated with the factors predicted by self-determination theory,³⁷ which Krieger and Sheldon had previously studied in the context of law school and the well-being of law students.³⁸ In particular, the authors fo-

31. *See id.* at 11, 100–01.

32. *See* Lawrence S. Krieger with Kennon M. Sheldon, *What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers*, 83 GEO. WASH. L. REV. (forthcoming 2014) (manuscript at 1), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2398989###.

33. *Id.*

34. *Id.* (emphasis omitted).

35. *Id.* (manuscript at 3–5).

36. *Id.* (manuscript at 6) (emphasis omitted).

37. *See id.* (manuscript at 9); *see also* Ryan & Deci, *supra* note 14, at 660–62.

38. *See* Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261 (2004); Kennon M. Sheldon & Lawrence S. Krieger, *Under-*

cused on the following specific aspects of self-determination theory. First, all human beings have certain basic psychological needs which include the need to feel competence, a sense of autonomy, and relatedness to other people.³⁹ Satisfaction of these needs produces human thriving, while deficits in these needs result in significantly lower well-being.⁴⁰ Second, the pursuit of intrinsic goals, ones that are meaningful and consistent with one's own values, results in greater well-being than the pursuit of extrinsic goals, which satisfy standards and criteria established by others and are not inherently meaningful to the individual.⁴¹ Sheldon and Krieger's previous studies had shown that these principles of self-determination theory predicted well-being and, conversely, stress and depression among law students.⁴²

The results of Krieger and Sheldon's study broadly supported the tenets of self-determination theory and clearly indicated that goals commonly pursued by law students and lawyers (including law school grade performance, law review membership, freedom from law school debt, and income) were much less closely correlated with well-being. Krieger and Sheldon's study shows that the three basic needs posited by self-determination theory were all very strongly correlated with well-being among lawyers: autonomy correlated at $r = .66$; relatedness at $r = .65$; and competence at $r = .63$ (all $p < .001$).⁴³ Moreover, satisfaction of these three basic psychological needs has a strong inverse correlation with depression ($r = -.51$ to $-.63$; all $p < .001$).⁴⁴ Similarly, intrinsically motivated reasons for choosing work, "interest, enjoyment, or effectuating core values," were also strongly associated with well-being ($r = .55$; $p < .001$).⁴⁵ On the other hand, the goals typically pursued by law students and lawyers have a significantly smaller degree of influence on well-being. Both income and freedom from debt had a small to moderate correlation with well-being (income, $r = .192$; debt, $r = .189$; $p < .001$).⁴⁶ High law school class rank was even more modestly correlated with well-being ($r = .12$; $p < .01$).⁴⁷ Interestingly, law review membership, which

standing the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory, 33 PERSONALITY & SOC. PSYCHOL. BULL. 883 (2007).

39. See Kennon M. Sheldon et al., *What Is Satisfying About Satisfying Events? Testing 10 Candidate Psychological Needs*, 80 J. PERSONALITY & SOC. PSYCHOL. 325, 325 (2001).

40. See *id.* at 327.

41. See Kennon M. Sheldon et al., *The Independent Effects of Goal Contents and Motives on Well-Being: It's Both What You Pursue and Why You Pursue It*, 30 PERSONALITY & SOC. PSYCHOL. BULL. 475, 475-76 (2004).

42. See Krieger with Sheldon, *supra* note 32 (manuscript at 21).

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* (manuscript at 20).

47. *Id.* (manuscript at 18).

is so often coveted by law students, had absolutely no correlation to well-being.⁴⁸

Krieger and Sheldon summed up their conclusions in this way:

In addition to clear implications for the universal search for life satisfaction and happiness, these findings have important implications for attorney ethics and professionalism and for the “bottom line” productivity and/or profits of legal employers. The most powerful predictors of well-being in these data, autonomy ($r = .66$), relatedness to others (.65), competence (.63), and internal motivation for work (.55) are also sources of professional behavior and positive performance in lawyers; such lawyers are also likely to produce more, remain longer, and raise the morale of others.⁴⁹

When taken together, the presentations of Professors Mertz and Krieger present a grim picture of the impact of law school on law student well-being and future professionalism. Krieger’s research shows that well-being is correlated with work that is consistent with one’s internal values and goals and an environment in which people feel closely connected to others. Professor Mertz’s work shows that law school classes tend to disassociate students from their own internal values and weaken their connections with others. Thus, it is not surprising that law school has such a negative impact on the well-being of law students. The challenge for law schools is to find ways to connect students with their own values and other people, to educate them in the kind of professional behavior that is likely to be correlated with well-being in the practice of law, and to give them techniques to resist the debilitating aspects of law school education and legal practice.

Each of the authors in this symposium presents a model of how law schools can accomplish that goal. Perhaps not surprisingly, given its current prominence in our national consciousness,⁵⁰ the concept of mindfulness is a theme that runs through all of the articles. The authors make a strong case that incorporation of mindfulness into the process of legal education can

48. Krieger with Sheldon, *supra* note 32 (manuscript at 19).

49. *Id.* (manuscript at 25–26).

50. See, e.g., Kate Pickert, *The Art of Being Mindful*, TIME, Feb. 3, 2014, at 40 (the Time Magazine cover article for Feb. 3, 2014); see also Dan Hurley, *Breathing in vs. Spacing out*, N.Y. TIMES MAG., Jan. 19, 2014, at MM14, available at <http://www.nytimes.com/2014/01/19/magazine/breathing-in-vs-spacing-out.html>; Colin James, *Law Student Wellbeing: Benefits of Promoting Psychological Literacy and Self-Awareness Using Mindfulness, Strengths Theory and Emotional Intelligence*, 21 LEGAL EDUC. REV. 217 (2011); Richard C. Reuben, *Bringing Mindfulness into the Classroom: A Personal Journey*, 61 J. LEGAL EDUC. 674 (2012); David M. Zlotnick, *Integrating Mindfulness Theory and Practice into Trial Advocacy*, 61 J. LEGAL EDUC. 654 (2012).

enhance both the well-being and professionalism of law students and the lawyers they will soon become.

Professor Scott Rogers directs our attention to the ways that mindfulness practice can improve legal education.⁵¹ Professor Rogers's article serves as an introduction to the concept and science of mindfulness and explains how students and professors can begin a daily mindfulness practice.⁵² Professor Rogers explains why mindfulness is useful not just for law students but professors as well and explores a number of different ways in which mindfulness can be integrated into the law school environment.⁵³ Students can benefit from mindfulness practice through increased well-being and attention to ethical and professional behavior.⁵⁴ Finally, Professor Rogers explicitly links mindful well-being and ethical and professional behavior.⁵⁵

Professors Lisle Baker, of Suffolk University Law School, and Daniel Brown, of Harvard Medical School, introduce us to a different but equally useful application of mindfulness practice.⁵⁶ As previously noted, the sense of competence is one of the essential requirements for a sense of well-being.⁵⁷ Unfortunately, however, many law students find the introduction to legal analytic thinking in Socratic classrooms to be both stressful and challenging to their sense of competence. Law students must acquire the analytical skills taught in the law school classrooms in order to become successful lawyers, but they frequently lack the focus necessary to acquire those skills quickly. Professors Baker and Brown describe a practice of concentration meditation that can help law students achieve this focus and improve their well-being by increasing their feelings of competency in the law school classroom.

Professor Nathalie Martin's article describes the University of New Mexico School of Law's first-year Practicum course.⁵⁸ The Practicum course includes training in both mindfulness and emotional intelligence.⁵⁹ Professor Martin also explains the need for teaching prospective lawyers to be emo-

51. Scott L. Rogers, *The Role of Mindfulness in the Ongoing Evolution of Legal Education*, 36 U. ARK. LITTLE ROCK L. REV. 389 (2014).

52. *Id.* at 392–97.

53. *Id.* at 398–402.

54. *Id.* at 406–07.

55. *Id.* at 409–10.

56. R. Lisle Baker & Daniel P. Brown, *On Engagement: Learning to Pay Attention*, 36 U. ARK. LITTLE ROCK L. REV. 339 (2014).

57. *See supra* text accompanying notes 11, 39–49.

58. Nathalie Martin, *Think Like A (Mindful) Lawyer: Incorporating Mindfulness, Professional Identity, and Emotional Intelligence into the First Year Law Curriculum*, 36 U. ARK. LITTLE ROCK L. REV. 415 (2014).

59. *Id.* at 418.

tionally intelligent,⁶⁰ which “refers to the ability of people to become talented in any field through self-awareness, self-regulation, awareness of the feelings and reactions of others, and highly effective communication skills, all critical to the modern practice of law.”⁶¹ For example, this past year, students in the Practicum course read Chade-Meng Tan’s book *Search Inside Yourself*,⁶² which describes the mindfulness training program that the author introduced at Google.⁶³ In addition, students were asked to keep an online weekly journal in which they were asked to discuss various topics relating to mindfulness and emotional intelligence.⁶⁴ Students were also asked to participate in a project in which they drafted their own statements of ethical behavior⁶⁵ and were required to do a minimum of six hours of public service work.⁶⁶ The class, as described by Professor Martin, responds directly to the needs identified by Professors Mertz and Krieger, and it offers a promising model for other law schools to emulate.

Professor Jan Jacobowitz (Scott Rogers’s colleague at the University of Miami School of Law) describes two curriculum innovations at her law school that serve a similar purpose.⁶⁷ The first is a course entitled Mindful Ethics—Professional Responsibility for Lawyers in the Digital Age.⁶⁸ This course expressly links the concepts of mindfulness and ethical and professional behavior in a way that underscores the link between well-being and self-awareness and the professional obligations that law students will undertake as lawyers.⁶⁹ The second innovation is Miami’s Professional Responsibility and Ethics Program (PREP).⁷⁰ The PREP program allows students to develop customized continuing legal education ethics programs, which they offer to practicing lawyers.⁷¹ This program has been so successful that it was honored by the American Bar Association in 2012 with the E. Smythe Gam-

60. *Id.* at 424.

61. *Id.* at 422; *see also* DANIEL GOLEMAN, EMOTIONAL INTELLIGENCE (10th anniversary ed. 2005).

62. CHADE-MENG TAN, *SEARCH INSIDE YOURSELF* (2012).

63. Martin, *supra* note 58, at 420, 429.

64. *Id.* at 421.

65. *Id.* at 426.

66. *Id.* at 428.

67. Jan L. Jacobowitz, *Cultivating Professional Identity & Creating Community: A Tale of Two Innovations*, 36 U. ARK. LITTLE ROCK L. REV. 321 (2014).

68. *Id.* at 9; *see also* SCOTT L. ROGERS & JAN L. JACOBOWITZ, MINDFULNESS & PROFESSIONAL RESPONSIBILITY: A GUIDE BOOK FOR INTEGRATING MINDFULNESS INTO THE LAW SCHOOL CURRICULUM 31–33 (Mindful Living Press 2012).

69. Jacobowitz, *supra* note 67, at 330, 332–33.

70. *Id.* at 9; *see also* *Professional Responsibility and Ethics Program*, U. MIAMI SCH. L., <http://www.law.miami.edu/prep> (last visited Mar. 30, 2014).

71. Jacobowitz, *supra* note 67, at 334.

brell Professionalism Award.⁷² Both of these curriculum innovations provide inspiration for ways to help law students explore the connections between well-being and professional ethical behavior.

Finally, Professor Heidi Brown, of New York Law School, rounds out the symposium by explaining how law school professors can acquire the emotional intelligence skills that will allow them to respond effectively to their students' intellectual and emotional needs.⁷³ Professor Brown first provides a useful introduction to the concept of emotional intelligence,⁷⁴ and then explains why emotional intelligence needs to be an important part of the law professor's skill set.⁷⁵ She then provides a set of strategies to enhance professors' emotional intelligence and enable them to apply it in the classroom setting.⁷⁶ Professor Brown inspires us to improve our own teaching styles in order to assist our students and guide them to an emotionally healthy and ethical professional practice.

The presentations and the articles generated by the Balance Section program provide important guidance for law schools as they chart their paths through these difficult times for legal education. First, well-being is inseparably connected to the ethical professionalism we expect from law students and the lawyers they will become. Well-being fosters ethical and professional behavior, and such behavior, in turn, is important to the continued well-being of lawyers. Unfortunately, law schools traditionally have ignored this connection and neglected the well-being of their students. Indeed, law schools have harmed their students because the predominant mode of classroom teaching tends to unmoor students from their own ethical principles, which leads to emotional distress and significant declines in well-being.

Fortunately, as the following articles attest, law schools can correct this problem and help their students become happier and more ethical professionals. These articles provide thoughtful and practical alternatives for law schools to consider as they seek to address the problems created by the current model of law school education. The creative innovations discussed here should be used as models for a new curriculum that places students' well-being on par with the development of their analytical abilities. Such training will produce lawyers who are not only happier in their work, but also more ethically responsible and professional in the way they represent their clients.

72. *Id.* at 15.

73. Heidi K. Brown, *The Emotionally Intelligent Law Professor: A Lesson from The Breakfast Club*, 36 U. ARK. LITTLE ROCK L. REV. 275 (2014).

74. *See id.* at 276–86.

75. *Id.* at 287–88.

76. *Id.* at 303–31.