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CULTIVATING PROFESSIONAL IDENTITY & CREATING COMMUNITY: A TALE OF TWO INNOVATIONS

Jan L. Jacobowitz *

Life isn't about finding yourself. Life is about creating yourself.

George Bernard Shaw.¹

When students realize that everyone has a philosophy of how to conduct their lives—even those [who] are unconscious of the philosophy have one, just not a sound one—they can understand the importance of engaging in the process of developing a philosophy that will guide them in life and in their jobs as lawyers.

Benjamin V. Madison III²

I. INTRODUCTION

Students enter law school to become lawyers, but what does that really mean? What are a student's values, hopes, and dreams upon entering law school? Essentially, how does the student define herself? The answer varies depending upon the student—students with diverse backgrounds arrive at law school with differing goals. How does the law school experience transform these students and assist them in creating their professional identities as lawyers?

The traditional legal curriculum teaches students how to analytically *think like a lawyer*, but there is little evidence of traditional pedagogy dedicated to assisting students in developing a personal philosophy about the manner in which to practice law or in creating a professional identity. Moreover, the lack of focus on the values inherent in the role of the lawyer, and the alignment of these values with the personal, intrinsic values of law stu-

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1. *George Bernard Shaw Quotes*, BRAINYQUOTE, http://www.brainyquote.com/quotes/authors/g/george_bernard_shaw.html (last visited June 4, 2014).

2. Benjamin V. Madison III, *Professional Identity Formation- Legal Education's Early Emphasis on Character, the Evisceration of This Priority, and What the First Law Schools Can Teach Us* 45 (Aug. 16, 2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2311492.

dents as they enter law school, has contributed to an inordinate amount of stress and anxiety for some students.³ Intrinsic values may become sublimated to extrinsic values and careers are sometimes launched based upon extrinsic goals, which ultimately may lead to dissatisfied, distressed lawyers.⁴

While the need to infuse legal education with more focus on ethics, professionalism, and the development of professional identity is not a new concern, it has been given new momentum by the release of The Carnegie Foundation for the Advancement of Teaching's report, *Educating Lawyers: Preparation for the Profession of Law*,⁵ the recent economic downturn, and the evolution of the practice of law driven by technology and the Internet.⁶ This article focuses upon the need and the opportunity for curricular reform and provides two examples of courses offered at the University of Miami School of Law: Mindful Ethics: Professional Responsibility for Lawyers in the Digital Age, and The Professional Responsibility & Ethics Program (PREP). These courses are designed to cultivate professional identity, promote ethical conduct, and provide students with an opportunity to explore how to create a philosophy that will guide them into healthy, successful careers.

This article first defines and discusses the significance of the development of professional identity in law school. Next, the article provides a detailed description of the two courses mentioned above and shares examples of students' feedback about the courses. Finally, the article concludes by expressing the hope that the ongoing reform of legal education, which is focused upon the cultivation of a positive professional identity and the well being of law students, will become a mainstay of legal education and the law school experience.

II. THE DEFINITION AND SIGNIFICANCE OF PROFESSIONAL IDENTITY

Professional identity is related to ethics and professionalism, but requires its own working definition. The legal ethics rules are often referred to as the regulatory minimum standard for conduct, while professionalism in-

3. See SUSAN SWAIM DAICOFF, *LAWYER, KNOW THYSELF: A PSYCHOLOGICAL ANALYSIS OF PERSONALITY STRENGTHS AND WEAKNESSES*, at 73, 114-17 (2004).

4. See *id.* at 74-77, 158. For example, the proverbial high achieving student who enters law school determined to pursue a public interest career who finds herself in the top ten students in the class, and is lured into "Big Law," because it represents the extrinsic value of "real" success, only to ultimately find that she is unhappy and has lost her way. See *id.* at 158-59.

5. See WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW*, 12-14 (2007).

6. See A. Benjamin Spencer, *The Law School Critique in Historical Perspective*, 69 WASH. & LEE L. REV. 1949, 1953 (2012).

cludes the rules and also incorporates concepts such as civility, courtesy, personal conscience, and interpersonal dynamics among counsel, clients, and the courts.⁷ Professional identity may be defined as a lawyer's personal morality, values, decision-making process, and self-consciousness. It is "certain attitudes and habits of heart and mind that are thought critical to the practice and culture of the profession."⁸ In addition, "the cultivation of professionalism necessarily entails the nurturing of a sense of professional self-consciousness and constructive introspection, and an attitude of respect and responsibility towards others"⁹

The questions for legal educators include the following: (1) how do students develop professional identity; and (2) what environment supports the development of a positive professional identity? Daisy Floyd's 2002 discussion of the results of her Carnegie Academy for the Scholarship of Teaching and Learning (CASTL) project, which focused on how law students develop professional identity, is informative.¹⁰ She reported that law students suffer from isolation that stems partially from the competitive environment in law school and the fact that students become extrinsically motivated to capture the relative handful of prestigious "prizes" available to the top students.¹¹ Naturally, this environment leads to a lack of collaboration and "devalues emotional matters, including relationships."¹² In fact, "[i]t is not just that we fail to teach students about relationship skills; legal education actually diminishes or eliminates the ability to form and sustain relationships that students possess when they begin law school."¹³ Floyd notes the irony in this situation, as building relationships and collaboration are no doubt essential to effective lawyering.¹⁴ Even more troubling is Floyd's conclusion that students lose their sense of purpose and their expectation of

7. See, e.g., Neil Hamilton, *Professionalism Clearly Defined*, 18 PROF. LAW 4 (2008) 5–8 (discussing the complexities of defining professionalism and its distinction from the legal ethics rules).

8. Barry Sullivan & Ellen S. Podgor, *Respect, Responsibility, and the Virtue of Introspection: An Essay on Professionalism in the Law School Environment*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 117, 118 (2001).

9. *Id.* at 119.

10. See Daisy Hurst Floyd, *The Development of Professional Identity in Law Students*, FLA. ST. U.C.L. (June 2002), available at http://www.law.fsu.edu/academic_programs/humanizing_lawschool/images/daisy.pdf.

11. *Id.* at 2–3.

12. *Id.* at 3 (emphasis omitted).

13. *Id.* See also Rachael Field, James Duffy & Anna Huggins, *Supporting Transition to Law School and Student Well-Being: The Role of Professional Legal Identity*, INT'L J. FIRST YEAR IN HIGHER EDUC. (Aug. 2013) at 15, 16–19, available at <https://fyhejournal.com/article/view/167> (indicating that studies in Australia have also found the serious decline in well-being of students during the first year of law school and a need for positive development of professional identity).

14. See Floyd, *supra* note 10, at 3.

finding meaningful work due to the current law school environment.¹⁵ Winning as the end game becomes the cultural norm.¹⁶

The upside of Floyd's experience in surveying students during three seminar courses that she offered as part of her CASTL project is that the courses benefited the students.¹⁷ The students' ability to gain self-awareness and engage in reflection was therapeutic.¹⁸ Additionally, the students' collaboration with one another and interaction with the legal community was highly beneficial.¹⁹ Many students regained their sense of purpose and reconnected with their pre-law school values.²⁰ Moreover, the benefit of exploring various aspects of professional identity and personal values was significant for both the students and the professor.²¹

Daisy Floyd's experience is consistent with the tremendous body of work produced by Susan Daicoff in her book, *Lawyer Know Thyself*.²² Daicoff documents the studies indicating that law students begin law school with mental health that is similar to the general population; however, law students quickly develop an inordinate amount of depression and other stress-related symptoms that ebb and flow and are often carried into their professional lives.²³

Daicoff explains that students who come to law school with an ethic of care, or more of an emotional sensitivity, often suffer more stress than students who are more analytically inclined.²⁴ The result may be disastrous, as the students with an ethic of care are uncomfortably co-opted into the analytical culture while the analytically inclined students are reinforced, and, as a result, these students fail to develop the interpersonal skills for effective lawyering.²⁵ Daicoff also highlights the disconnect that occurs as students lose touch with their intrinsic values and become motivated (or devastated) by the extrinsic rewards of winning.²⁶ This move from intrinsic values to extrinsic values causes psychological discomfort and stress, and often leads to unhappiness, depression, or substance abuse.²⁷

Recent studies and calls for reform in legal education have acknowledged the need to address professional identity and the conflict that often

15. *Id.*

16. *Id.* at 2–3.

17. *Id.* at 1, 4.

18. *Id.* at 4.

19. *Id.* at 4–5.

20. Floyd, *supra* note 10, at 5.

21. *Id.*

22. *See generally* DAICOFF, *supra* note 3.

23. *Id.* at 73, 114–17.

24. *Id.* at 74–77.

25. *Id.*

26. *Id.* at 123, 158.

27. *Id.* at 74–77, 158.

arises between a student's pre-law intrinsic values and the perceived extrinsic values that are necessary for success in law school. Benjamin Madison succinctly explains this phenomenon:

Two recent studies of legal education, the Carnegie Institute for the Advancement of Teaching and Learning's *Educating Lawyers* (Carnegie Report), and the Clinical Legal Education Association's *Best Practices for Legal Education* (Best Practices Report), represent the most comprehensive and accurate evaluations of law school education in more than a century. Both reports document the decline in emphasis on the moral and ethical values necessary for a lawyer to maintain integrity. Even more disturbing is the observation that law schools not only fail to equip students for the ethical challenges of practice, but also actually damages students psychologically, emotionally, and spiritually. Students may graduate with heightened reasoning skills. But they pay a high price for those skills. They lose their "ideals, ethical, values, and sense of self."²⁸

Not only is this phenomenon alarming from a wellness standpoint, but it is also of concern from an ethical standpoint. Larry Krieger has posited the following:

Attorneys 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. The converse is also true—an attorney who does the work primarily for the money or to bolster his image will be more frustrated with the process, less effective, and much less pleasant to work with (or against).²⁹

Thus, the concern for students' well being and potential for becoming ethical, effective professionals begs the question: how does one "teach" professional identity? It has been suggested that "[the concept of] 'teaching' Professional Identity means we ask the student to finish this sentence: I am a lawyer, and that means for me that I will resolve this ethical dilemma as follows"³⁰ However, the

28. Madison, *supra* note 2, at 3 (citations omitted).

29. Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 430 (2005) (citations omitted). See also DAICOFF, *supra* note 3, at 152–55 (finding that post law school, lawyer well-being has been empirically demonstrated to be associated with pursuing one's intrinsic values and motivations, in one's work).

30. Martin J. Katz, *Teaching Professional Identity in Law School*, 42 COLO. LAW. 45, 45 (2013) (citing David Thompson, *Teaching Professional Identity with Skills & Values Texts*,

formation of an identity . . . is not something we can ‘teach’ per se, since you cannot teach someone to form their identity. Rather, we as teachers need to create ‘situations’ in which our students can be confronted with ethical questions and reflect on the decisions they make, and be guided by us as they form their own professional identities.³¹

Interestingly, Daicoff does not define professional identity per se, but rather sets forth the skill sets that should be taught to enhance effectiveness and well being. She uses empirical studies and proposes,

training in law school designed to encourage the development of the following lawyering skills: intrapersonal skills (such as honesty, integrity, maturity, reliability, judgment, passion, motivation, engagement, diligence, self-confidence, tolerance, patience, independence, adaptability, general mood, stress management, and continued professional and self-development); certain interpersonal skills (such as dealing effectively with others, understanding human behavior, empathy, listening, questioning, interviewing, counseling, influencing, advocating, instilling others’ confidence in you, obtaining and keeping clients, developing relationships, and networking within the profession); conflict resolution (including mediation and negotiation); collaboration (including teamwork, working cooperatively with others, and managing and mentoring others); problem solving; and strategic planning.³²

The teaching of many of these skills involves providing students with knowledge beyond black-letter law such as theories of cognitive and moral psychology that pertain to effective decision making. Indeed, a growing body of legal literature addresses the application of cognitive psychology to legal education, with an emphasis on the psychological variables that enhance, distort or inhibit decision making.³³ Other suggestions involve using

LAW SCHOOL 2.0 (January 21, 2012), <http://www.lawschool2.org/ls2/2012/01/teaching-professional-identity-with-skills-values-discovery.html>).

31. David Thompson, “Teaching” Formation of Professional Identity, LAW SCHOOL 2.0 (July 24, 2012), <http://www.lawschool2.org/ls2/2012/07/formation-of-professional-identity.html>.

32. Susan Swaim Daicoff, *Expanding the Lawyer’s Toolkit of Skills and Competencies: Synthesizing Leadership, Professionalism, Emotional Intelligence, Conflict Resolution, and Comprehensive Law*, 52 SANTA CLARA L. REV. 795, 873–74 (2012) [hereinafter, Daicoff, *Expanding the Lawyer’s Toolkit*].

33. *Id.* at 840–44; Alan M. Lerner, *Using our Brains: What Cognitive Science and Social Psychology Teach Us About Teaching Law Students to Make Ethical, Professionally Responsible, Choices*, 23 QUINNIPIAC L. REV. 643, 656–57 (2004); Andrew M. Perlman, *A Behavioral Theory of Legal Ethics*, 90 IND. L.J. (forthcoming 2015) (manuscript at 38–39), available at <http://ssrn.com/abstract=2320605>; JENNIFER K. ROBBENOLT & JEAN R. STERNLIGHT, PSYCHOLOGY FOR LAWYERS: UNDERSTANDING THE HUMAN FACTORS IN NEGOTIATION, LITIGATION, AND DECISION MAKING 85 (2013). See also Jan L. Jacobowitz & Scott Rogers, *Mindful Ethics—A Pedagogical and Practical Approach to Teaching Legal Ethics, Developing*

the principles of moral psychology and moral development to enhance legal curriculum.³⁴

This article does not attempt to restate or offer further support for much of the wonderful work that has been done regarding the importance of understanding the cognitive and moral psychology findings that support the need for law school curriculum reform. Rather, the article accepts as a given that law students benefit greatly from self-awareness, experiential learning, and knowledge not only about the law, but also about the process of decision making and the productive engagement in interpersonal relationships. Perhaps most importantly, law students benefit from gaining insight into what it means to be a lawyer and how the values of the legal profession may align or contrast with their own sense of pre-law school self. Indeed, the development of professional identity in law school is fundamental not only to achieving success in the practice of law, but also to living a life filled with integrity and happiness.

So how do we encourage students to explore their core values and connect with the practice of law? In other words, how may we create a professional experience that involves a sense of professional community—a picture of the profession that expands beyond winning as an end game and includes a myriad of images that define success and value in the practice of law? A reflection of the profession that portrays Thomas Jefferson's citizen lawyer reborn in the twenty-first century imbued with pride and purpose to lead with integrity and promote justice and the rule of law? Sound too *fantastic*? Admittedly, there may be a steep mountain of inertia and cynicism to climb to alter the view of the legal profession, but the place to begin the journey is in law school. If a greater number of students graduate law school with a positive feeling about being a lawyer and a greater understanding of the various roles for lawyers in our society, then no doubt the legal profession and its clients will benefit.

This article offers two curricula innovations to contribute to the ongoing evolution of how we teach professional identity and convey the tools for well being in law school and beyond: Mindful Ethics—Professional Responsibility for Lawyers in the Digital Age³⁵ (Mindful Ethics) and The Pro-

Professional Identity, and Encouraging Civility, 4 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS (forthcoming 2014), available at <http://ssrn.com/abstract=2374120>.

34. Clark D. Cunningham & Charlotte Alexander, *Developing Professional Judgment: Law School Innovations in Response to the Carnegie Foundation's Critique of American Legal Education*, in THE ETHICS PROJECT IN LEGAL EDUCATION (Michael Robertson et al. eds., 2010), available at <http://ssrn.com/abstract=1805941>.

35. The course is more fully described in SCOTT L. ROGERS & JAN L. JACOBOWITZ, MINDFULNESS AND PROFESSIONAL RESPONSIBILITY: A GUIDE BOOK FOR INTEGRATING MINDFULNESS INTO THE LAW SCHOOL CURRICULUM 2 (2012) (describing the course taught at the University of Miami School of Law).

Professional Responsibility & Ethics Program (PREP).³⁶ The courses share the traits of being “unconventional,” experiential, and ethics based. Mindful Ethics takes students on more of an internal experiential journey in relation to the legal profession, while PREP requires students to travel “externally” into the heart of the legal community to present creative continuing legal education (CLE) ethics trainings to the bench and bar. Students participating in either or both of these courses routinely express appreciation for the opportunity to connect their analytic academic training with the reality of the role of a lawyer and their own personal values and beliefs. The courses not only may be integrated into any law school curriculum, but each also contains elements that may be duplicated in the traditional courses offered throughout the law school curriculum.

III. MINDFUL ETHICS

Mindful Ethics is a course that I developed and teach with Scott Rogers, the founder and Director of the Mindfulness in Law Program at the University of Miami School of Law. The course is an integration of mindfulness and professional responsibility—the goal being to provide students with mindfulness as a tool to achieve greater self-awareness and thereby enhance ethical decision making. The students are engaged in the lives of two lawyers, Pedro Respono and Mindy Fuller, who travel through their careers on a road map illustrated in weekly vignettes that contain ethical speed bumps along the way. The vignettes are all crafted based upon real cases and are often tweaked from semester to semester based upon new legal opinions and student feedback. Each week the students complete two main assignments: a vignette analysis form (VAF), focused upon the professional responsibility rules, and a meeting of the minds (MOM) journal in which the students step into the shoes of Pedro or Mindy. The VAF is provided in a chart format upon which each student must identify the professional responsibility rules and ethical issues at play. The form also requires each student to decide whether Pedro or Mindy violated the rule in question and whether the student thinks that the rule is a warranted regulation. The VAF exercise begins a process of a student thinking about her own values and whether she disagrees or is uncomfortable with the professional responsibility rules. Having given some thought not only to the ethical issues, which are highlighted in the vignette, but also to the underlying nature of the rules involved, the student often comes to class having considered that there exists a “gray” area in the application of the rules. The classroom discussion

36. Professional Responsibility and Ethics Program, U. MIAMI SCH. L. www.law.miami.edu/prep (last visited June 17, 2014).

is geared to exploring the underlying policy considerations of the rules as well as the issues highlighted in the vignette and the discussion often becomes a debate as to how to clearly define a violation of the rule and whether the students believe that the rule has intrinsic merit.

For example, students offer varying views as to what degree lawyers should have to relinquish First Amendment rights to avoid commenting on the judiciary or advertising in a manner consistent with other businesses on the Internet. They also debate to what degree the state bar should be able to consider and regulate “personal” issues, such as the failure to pay child support, and question the mandate of client confidentiality regardless of whether an attorney has knowledge that an innocent man may be convicted.³⁷

These discussions often include heartfelt expressions about the nature of being a lawyer rather than merely analytical debate about regulatory interpretation. The “heartfelt” dynamic appears to stem partially from the fact that the students have also completed the MOM journal prior to the class discussion. The MOM journal acknowledges the ethical dilemmas contained in the vignette, but is geared toward the practice of mindfulness, which may be defined as “paying attention deliberately, moment by moment, and without judgment, to whatever is going on in the mind and body.”³⁸ The MOM exercise asks the student to role play the attorney who is featured in the vignette and express the thoughts, feelings, and bodily sensations that the student experiences in that role. The student becomes sensitized to the internal reactions of struggling with an ethical dilemma or a lack of professional judgment in the moment and the cognitive, emotional, and physical repercussions that may follow. Students confront the challenges of being a lawyer and learn the value of effective, ethical decision making.

Students also learn about some of the neuroscience and psychological insights into decision making and how emotion may cloud one’s thinking,

37. For example, the case of Alton Logan involves two lawyers who knew that Alton Logan was innocent when he was convicted; the lawyers’ knowledge, however, was obtained from their own imprisoned client who confessed to the crime for which Logan was convicted. These lawyers were bound by their duty of confidentiality and did not reveal the truth until their client died, because the client had given his permission that the lawyers could come forward only after his death. Logan had spent twenty-six years imprisoned by the time the lawyers revealed their client’s confession. Many students are stunned by the “role of the lawyer” in this situation and debate ensues over personal morality versus professional responsibility and the repercussions of a lawyer’s various options in challenging situations. The Logan case is a prime example of the need to consider and develop professional identity, which involves squaring one’s personal values and emotions with the role and obligations of a lawyer. *60 Minutes: 26-Year Secret Kept Innocent Man in Prison: Lawyers Tell 60 Minutes They Were Legally Bound From Revealing Secret* (CBS television broadcast Mar. 6, 2008), available at <http://www.cbsnews.com/news/26-year-secret-kept-innocent-man-in-prison/>.

38. Leonard L. Riskin, *The Place of Mindfulness in Healing and the Law*, in *SHIFTING THE FIELD OF LAW & JUSTICE: A COLLECTION OF ESSAYS RESHAPING THE LAWYER’S IDENTITY VOL. 1*, 102–03 (Linda Hager, et al. eds., 2007).

thereby causing an individual to react from a place of emotional reactivity rather than responding thoughtfully. Mindfulness exercises provided in class and as home exercises present the opportunity for a student to enhance her awareness and be more present so that she may opt to pause and take stock of the situation and her reactions to it before offering a response.

Mindful Ethics heightens the students' awareness of the professional responsibility rules and causes them to contemplate how they feel about the rules—both generally and as applied in various realistic scenarios. Many commentators champion the value of raising ethical awareness throughout the curriculum, which constitutes the pervasive ethics approach advocated by Deborah Rhode, the Ernest W. McFarland Professor of Law at Stanford Law School and one of the most frequently cited legal ethics scholars.³⁹ The addition of mindfulness to the equation creates a powerful mechanism by which students may more deeply contemplate how their thoughts, feelings, and values enter into their analysis and understanding of the ethics and role of a lawyer. They understand how practicing law involves more than the proverbial, analytical *thinking like a lawyer*, and that *being a lawyer* involves the challenges of balancing zealous representation of a client, respecting the fair administration of justice, and managing one's own emotions and values. Students are compelled to consider how their personal values naturally may or may not align with the various rules of professional conduct and thereby contemplate the development of a professional identity that results in an internal compatibility of personal and professional values and goals.

Mindful Ethics is a powerful vehicle for teaching a professional responsibility class—we are about to embark on our eleventh offering of the course at the University Of Miami School Of Law. The experience has been wonderful and the student feedback has been phenomenal. However, the application of Mindful Ethics is also worthy of consideration throughout the curriculum. In many areas of law, there is a relevant ethics case that may be incorporated and analyzed not only based upon the rules, but also discussed from the standpoint of why the lawyer might have chosen the path that he did.⁴⁰ How might the outcome have differed with a mindful pause to assess

39. See, e.g., DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (2nd ed. 1998). Deborah Rhode has long been the leading proponent for teaching ethics throughout the curriculum. Her book is a comprehensive look at the specifics of how ethics may be integrated into the law school core curriculum. The suggestion in this article is essentially to adopt her approach and add a “mindful” component. See also <https://www.law.stanford.edu/profile/deborah-l-rhode>.

40. See generally DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS STORIES (2006); JAMES L. KELLEY, LAWYERS CROSSING LINES: NINE STORIES (2001) (Both books contain numerous chapters illustrating examples of ethical challenges and mishaps involving lawyers practicing in diverse areas of law such as bankruptcy, personal injury, criminal defense, tax, and Title VII discrimination). See RHODE, *supra* note 39.

the ethical repercussions of the situation? Students might be asked to write short reflections in which each student imagines being a lawyer in the midst of the fact pattern that gave rise to the challenging ethical decision or being a lawyer who is dealing with the repercussions of a decision that has fallen short of legal ethics standards. Would the student have made the same decision? Why? What personal values or needs might enter into the decision? Where might a mindful pause to assess be placed? Would a mindful ethics approach have made a difference?

Even without the use of an ethics opinion, there are many cases that lend themselves to the question of why a lawyer took a case. An additional consideration is how the lawyer and client on the losing side felt about the result. Applying a bit of creativity, a professor might have the students imagine how a mindful ethics assessment at various points in the case might have altered the outcome. The primary goal is to have students engage in a holistic consideration of the practice of law. Learning analytical skills is critical, but law schools already do a terrific job of orienting students to analyze a case. Mindful Ethics provides the opportunity for a seamless integration into the curriculum of the consideration of the role of a lawyer, the process of becoming a lawyer, and the student's development of professional identity.

IV. PREP

One of the primary goals of PREP is to provide students with an experiential learning opportunity that enhances their legal skills and engrains the importance of legal ethics, professionalism, and public service. Unlike the Mindful Ethics classroom, however, PREP provides the opportunity for students to explore the application of legal ethics and the role of a lawyer outside of the classroom as students interact with lawyers throughout the South Florida legal community.

PREP students create and present customized CLE ethics presentations for the local bench and bar. They explore and research "hot-topic" professional responsibility issues, draft academic materials, and present on-site ethics programs to bar associations, nonprofit legal services organizations, government agencies, law firms, and corporations. Students' exposure to lawyers working in diverse practice areas and the related ethics issues that they confront provide students with insight into the professional identities and values of these lawyers.

For example, lawyers at nonprofits who practice immigration law may hold fast to the concept of "actual knowledge" in evaluating whether a client's testimony is valid regardless of intuitive suspicion about the client's back-story. Likewise, lawyers at the public defender's office or state attorney's office must be able to personally tolerate the sometimes troubling is-

sues inherent in defending and prosecuting individuals who may or may not be guilty. As PREP students develop customized CLE ethics programming for these organizations they may contemplate whether their own personal values align with the professional values inherent in the practice of immigration or criminal law. When the students ultimately present to these organizations, the students are able to speak with the lawyers and ask them about how they have squared their personal and professional identities.

PREP's programming originated as an outgrowth of a collaborative effort with the nonprofit legal community to provide training on ethics issues arising in the context of serving the underprivileged. Today, PREP has not only become an invaluable resource to the nonprofit community, but has also expanded to present ethics trainings to lawyers working throughout the legal profession. In 2012, PREP was recognized by the ABA with its E. Smythe Gambrell Professionalism Award—the leading national award recognizing programs and projects contributing to the understanding and advancement of professionalism among lawyers.

PREP combines the attributes of an ethics institute and an ethics clinic. Students collaborate in a manner that is analogous to an ethics law firm; PREP's director is the managing partner, the fellows are partners and the interns are associates.⁴¹ The organizations for which PREP prepares customized trainings are like clients, with the important distinction being that PREP does not provide legal advice, but rather delivers legal ethics education for which the students receive course credit and the lawyers receive CLE ethics credits. PREP provides a unique opportunity for synergy among law students and the legal profession; students interact with lawyers at the various organizations throughout the creative process as well as during the analytical discussion of the issues at the presentation.

A. The PREP Process

The students initially contact a designated person at the “client” organization to ascertain whether there are particular ethics issues upon which the “client” would like PREP to focus. Students’ “client” contact regarding the substance of the hypothetical and the logistics of the presentation provides the students with the opportunity to develop and polish professional communication and interpersonal skills. Conducting conference calls and meet-

41. Students in PREP contract to remain in the program for a year as interns and often return for a second year as fellows. Interns receive three credits per semester. PREP students also collaborate and connect with the practice of law by managing, writing, and peer editing posts for the student created PREP blog, *Legal Ethics In Motion*. Students not only stay abreast of current ethics issues and opinions, but also develop their interpersonal, analytical, and writing skills to maintain the blog, which has over 140 entries and may be found at <http://www.legaethicsinmotion.com>.

ings and drafting correspondence all contribute to the students' professional training. They not only learn professional etiquette and the scheduling issues that confront attorneys, but also learn about the practice areas of the attorneys to whom they are speaking and what ethical challenges are relevant to those attorneys in their practices.

After the students obtain a primary focus for the development of a legal hypothetical, they research the professional responsibility issues and the area of law that will provide the context in which these issues will arise. Thus, students are naturally exposed to ethical challenges in areas as diverse as public benefits law, criminal law, immigration law, bankruptcy law, insurance and personal injury law, commercial law, securities law, family law, housing law, etc.

PREP is pervasive ethics in reverse. Although it is a legal ethics course, the structure is such that ethics are naturally applied across a vast spectrum of law school course material. Students develop a hypothetical, based upon the legal ethics research in these various areas, which is designed to provide a realistic legal practice scenario. This exercise is one of the most difficult challenges and most rewarding learning experiences for the students who ultimately must connect their academic research to the real world of legal practice and the concerns of the lawyers with whom they are consulting.

After approval of the hypothetical by the director and the "client" organization, the students draft a legal memorandum, which analyzes and answers the hypothetical's questions. Often a PowerPoint is created to enhance the presentation. The students work in teams of two or three to develop the materials and are encouraged to collaborate throughout the process. It sometimes becomes clear that one student may be better at research while another is a stronger writer. The PowerPoint is a creative outlet for the students for whom the analytics of law school leave them wanting for creative expression. Students are encouraged to edit one another and assist each other so that the final product is the best possible result of their combined strengths. This collaboration is a welcome change from the competitive environment of the traditional classroom, and it provides the opportunity to develop meaningful relationships and practice interpersonal skills that many critics of legal education find to be lacking.

When the materials have been completed, the students present the ethics training in class and obtain peer feedback, which ranges from substantive comments on the law to suggested edits for the hypothetical and power point. The director poses questions similar to those that may arise at the presentation. All PREP students learn about the substantive areas of law contained in the presentation and learn not only the similarities, but also the significant differences in various practice areas of the law. By experiencing the distinction in the fact patterns and ethical concerns pertaining to a criminal lawyer, as opposed to a bankruptcy lawyer or a Legal Aid family lawyer,

the student is also gaining insight into the experience of these lawyers and is better able to determine whether those areas fit into the student's view of herself as a lawyer.

The preparation for the presentation is loosely analogous to preparing for an appellate hearing. The students need to know the legal issues, the research that supports answers to the questions posed, and generally be prepared for any questions that may be raised at the presentation. Because students are preparing to present their work to practicing attorneys, the students are motivated and challenged in a manner that is different from classroom performance. Students have told me that PREP provides a wonderful connection to the community because unlike networking events, PREP presentations allow the students to demonstrate their abilities.

B. The PREP Presentation

The hypothetical is read and the attorneys are prompted by the director to discuss the ethical issues raised by the hypothetical. The conversation is lively as attorneys often debate one another as to best practices relating to the ethical dilemmas at issue. Clinical pedagogy is at play as the director ultimately assures that the "client's" needs are met by facilitating the discussion and assuring that the students, who must think on their feet, discuss their research in response to questions from the participants. Students are buoyed by the experience of interacting and networking with attorneys and gain tremendous confidence from a well-done presentation. Moreover, students have experienced first-hand what attorneys think and feel about the ethical challenges presented and how they have dealt with some of the issues that have been raised. Students also observe that the lawyers in attendance often debate one another as to whether a practice is ethically problematic. Students see the impact that personal values and perspectives may have on the manner in which a lawyer analyzes an ethical quandary. The students also observe that some lawyers are lacking in their knowledge of the rules and therefore emphasize the importance of having an ethics-based approach to law so that the proverbial gut-check arises, informing a lawyer that something does not seem quite right and perhaps a consult with the rules is in order.

C. The PREP Experience

The PREP experience has a profound impact on many of the students—they remember the interaction with practicing lawyers and the distinctions drawn between academia and the real world of practice. The students develop a profound respect for legal ethics, which they have directly applied to the practice of law, and they understand integrity as a fundamen-

tal component of a lawyer's professional identity. The students have interacted with judges, career prosecutors, public defenders, nonprofit public interest lawyers, private practitioners in both small and large law firms, and corporate attorneys. They have been exposed to the practice of law in many different settings—all of those settings filled with exceptional, successful lawyers—and the overt definition of success manifesting in different ways. Moreover, they have gained insight into the more subtle aspects of a successful life as a lawyer, which come through in the passion with which some of the lawyers share their experiences—and ultimately their professional identities—thereby providing PREP students with an animated and complex picture of what it means to be a successful lawyer and an opportunity to contemplate their own personal and professional goals to further enhance the development of a professional identity compatible with the students' own internal value systems.

It is important to note that PREP is an advanced, applied legal ethics curriculum—students are required to take a basic professional responsibility course as a prerequisite or co-requisite—and many have taken mindful ethics and have had the benefit of both the internal and external travel itinerary. Interestingly, these students are often interested in sharing mindful ethics with the legal community. Recently, one bar association requested that PREP add a discussion of mindfulness and an introduction to yoga into its annual CLE ethics presentation. The PREP students are excited to include and demonstrate their newfound insight into the value of a mindful pause when in the midst of a stressful situation that calls for clear thinking and a thoughtful response.

V. STUDENT FEEDBACK

Although the observations in this article are undoubtedly those of the faculty member who teaches these courses—reflections of my experience—the student feedback has been tangible and overwhelmingly positive. In addition to traditional course evaluations, students in Mindful Ethics offer final reflections about their experiences and PREP students are often quoted in the school website articles that report upon their ethics presentations in the legal community. The following are a few representative examples of students' thoughts about their experiences.

A. Mindful Ethics

Mindfulness and professionalism share a symbiotic relationship in the practice of law. Mindfulness involves choosing to look at one's thoughts and to assess the contours and the weight those thoughts seem to have at any given moment, all without surrendering blindly to them. Through

self-reflection, mindfulness creates a distance between the thought and belief in that thought. My sense is that distance creates an opportunity for clarity and, ultimately (hopefully), wisdom. The practice of law, I suspect, will involve a great many questions and stressors that create tension in one's self. Mindfulness provides a way to mediate those tensions by providing an opportunity for the logic and principles of the rules and the conscience to resonate.

Cosme Caballero J.D. '11⁴²

The class teaches and practices methods that every lawyer, law-student, med-student, doctor, teacher, or anyone can use to cut through the chaos that has become part of daily life in our society. The recognition of the mindful self; the idea of looking inside to calm the storm, rather than looking for an external scapegoat; is a lesson that most students leave graduate school without. Mindfulness could be taught together with any subject, mindful criminal procedure, mindful mediation . . . but its interplay with the rules of ethics provides an easy way for students to be introduced to a mindful practice. As a law student we learn the rules of ethics as a guide for how we should, and can, practice law. Students are looking outward for these rules as guideposts. The juxtaposition of these rules against mindfulness, looking inward for guideposts, for clarity, for understanding, provides a unique and inviting approach to the material.

Scott Rosen J.D. '12⁴³

B. PREP⁴⁴

Creating CLE ethics trainings and presenting at bar associations across South Florida has provided me with a learning experience that is not found in most law school classes. PREP facilitates dialogue across a wide spectrum of the profession—law school students, professors, lawyers, judges, and legal assistants. Every student should have the opportunity to participate in PREP or a course like it and schools that do not offer a similar program should consider creating one.

Danielle Singer, J.D. '14⁴⁵

42. JACOBOWITZ & ROGERS, *supra* note 33, at 98.

43. *Id.* at 101.

44. The student quotes, with the exception of Danielle Singer's, were published on the University of Miami School of Law school website and were subsequently reprinted, by permission, in PREP's ABA Smythe E. Gambrell Award application.

45. Interview with Danielle Singer, Article Research Assistant, PREP Fellow, in Miami, Fla. (Jan. 25, 2014). Danielle Singer was a 2014 fellow in the program and my research assistant for this article. She provided this quote for the article and consented to its publication in the article.

Interacting with the lawyers and staff at Catholic Charities revealed how the realities of working in a busy immigration law firm can complicate the ethical obligations that attorneys owe to their clients.

Amanda Hirst, J.D.⁴⁶

I thoroughly enjoyed interacting with the attorneys [at Legal Services of Greater Miami]. The great thing about the program is that it allows students to not only become knowledgeable about current ethical issues that are plaguing the community, but it also gives us an opportunity to interact with practicing attorneys and become involved in Miami's legal community. This sort of experience is invaluable to law students.

Courtney Daniels, J.D.⁴⁷

Visiting FIAC [Florida Immigrant Advocacy Center] was an amazing experience. It was great to hear from the attorneys about their personal experiences with their clients in the day-to-day operations of the center. I will absolutely take what I learned with me to whatever job I have upon graduation.

Kelly Rains, J.D.⁴⁸

It wasn't until after we had begun preparation for the State Attorney's Office [Miami-Dade's criminal prosecutors] training that I realized how substantial the impact of social media could potentially be upon those who are entrusted to pursue the administration of justice. The issues are not only relevant, but could result in extensive changes to the way that not only prosecutors, but also everyone in the legal profession, take action to comply with the Rules of Professional Conduct in the future.

Garrett Lorentz, J.D.⁴⁹

The PREP program is designed for students and practitioners to exchange information about current legal ethics opinions. Presenting our hypotheticals in the community to practicing attorneys allows students to analyze issues in legal ethics using a "hands on" approach, which is a much different approach than other law school courses.

46. *Miami Law Students Conduct Ethics Training for Catholic Charities Legal Services*, U. MIAMI SCH. L. (Oct. 6, 2010), <http://www.law.miami.edu/news/2010/october/1667.php>.

47. *PREP Student Testimonials*, U. MIAMI SCH. L., <http://www.law.miami.edu/center-for-ethics-and-public-service/professional-responsibility-and-ethics-program-testimonials.php?op=2> (last visited July 15, 2014).

48. *Students Hold Presentation on Legal Ethics and Client Relationships in Immigration Law*, U. MIAMI SCH. L. (June 15, 2011), <http://www.law.miami.edu/news/2011/june/2005.php>.

49. *Miami Law Students Conduct Ethics Training for State Attorney's Office*, U. MIAMI SCH. L. (Jan. 25, 2012), <http://www.law.miami.edu/news/2012/january/2184.php>.

Daniel Casamayor, J.D. '12⁵⁰

VI. CONCLUSION

The Carnegie Report, the Best Practices Report, and Susan Daicoff's book, along with much of the other literature devoted to the importance of professional identity and student well being, all predate the economic downturn of 2008 and the subsequent crisis in legal education resulting largely from the decreased applicant pool, the reduction in employment opportunities, and the evolving nature of the practice of law.⁵¹ Nonetheless, the current crisis presents the opportunity for innovation and increased focus on student well being and the development of positive professional identity.

This article has offered two of the creative approaches to legal education that have been adopted by the University Of Miami School Of Law and that may be easily incorporated into curriculum at other law schools. It is inspiring to note that there are other curricular innovations occurring throughout the country that seek to humanize legal education and cultivate positive professional identity.⁵² Those of us who believe that it is possible to teach and develop analytical, skillful lawyers who simultaneously maintain their sense of selves and find not only success, but well-being and fulfillment in the practice of law, are hopeful that these goals will become a mainstay of legal education—the silver lining that emerges from the current economic cloud that hangs over the legal academy.

50. *PREP Students Conduct Ethics & Technology Training for the Dade County Bar Association*, U. MIAMI SCH. OF L. (Oct. 7, 2011), <http://www.law.miami.edu/news/2011/october/2091.php>.

51. Daicoff, *Expanding the Lawyer's Toolkit*, *supra* note 32, at 796–801.

52. *See* Cunningham & Alexander, *supra* note 34, at 15–26; Madison, *supra* note 2, at 53–79.