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## **Commitment and Responsibility: Modeling and Teaching Professionalism Pervasively**

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# COMMITMENT AND RESPONSIBILITY: MODELING AND TEACHING PROFESSIONALISM PERVASIVELY

Marjorie A. Silver\*

## I. INTRODUCTION

In contemplating the topic of "Teaching Professionalism Through Mentoring and Modeling," my thoughts went immediately to what it is I do in and out of the classroom to support my students through law school in their journey of becoming lawyers. I began with the assumption that I needed to define the term "professionalism."<sup>1</sup> After reading a sampling of the definitions of others,<sup>2</sup> however, I realized that it was not an especially productive enterprise. Although definitions abound, I found it difficult to come up with any one definition that was sufficiently comprehensive to encompass the totality of the word's

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\* Professor of Law, Touro Law Center. I want to thank all of my students for the privilege of being their teacher. This paper was originally presented at the 2004 AALS Annual Meeting in Atlanta Georgia, Section on Professional Responsibility, Jan. 5, 2004. A Touro Law Center Faculty Research Grant enabled me to write this paper.

<sup>1</sup> See Anthony T. Kronman, *Legal Professionalism*, 27 FLA. ST. U. L. REV. 1, 1 (1999).

It is a cliché that ours is a profession and not a trade . . . . To say this is, however, to say something merely negative, to define ourselves by contrast or opposition to something else. But when one shifts from the negative to the positive, and asks what values and aspirations the notion of legal professionalism implies, things become more difficult.

*Id.*

<sup>2</sup> See, e.g., SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE 6-7 (1996); Jerome J. Shestack, *Taking Professionalism Seriously*, A.B.A. J., Aug. 1998, at 70. (The six basic elements of professionalism "are: ethics and integrity, competence combined with independence, meaningful continuing learning, civility, obligations to the justice system and pro bono service."); THOMAS M. COOLEY PROFESSIONALISM COMM., PROFESSIONALISM PLAN FOR THE THOMAS M. COOLEY LAW SCHOOL (2002); UNIV. OF S.C. SCH. OF LAW, PROFESSIONALISM PRIMER AND PROBLEM-SOLVING GUIDE: A RESOURCE FOR LAW STUDENTS 5 (Roy Stucky et al. eds., 2003).

connotations.<sup>3</sup> It is, I think, in some ways like Justice Stewart's definition of pornography.<sup>4</sup> In truth, I am much less interested in defining the term than I am in exploring what we as law teachers can do to enable our students to develop their own visions of professionalism—visions hopefully compatible with the highest aspirations of the legal profession. Yet this is inevitably a subjective undertaking, and one in which my own biases are likely to intrude.<sup>5</sup> I bring to this enterprise my conception of "the good lawyer." What qualities do I value, do I wish to nurture? It would be nice to claim that I started there at the beginning of my career as a law professor and built courses consciously to develop those qualities. But I did not think very much about these mega-issues when I started to teach twenty years ago. As a thirty-five year old neophyte law professor, I was not especially introspective about what I wanted to accomplish, other than to challenge my students' minds and, hopefully, impart some knowledge of the course's subject matter in the process. So, in deciding to write this paper, I approached the question inductively: What do I do and why do I do it? The core values<sup>6</sup> I identified as important to me include excellence, integrity, responsibility, rules compliance, and public service. They also include emotional competence. I hope my students develop empathy and compassion toward their clients, their colleagues, their adversaries—and toward themselves. I value—and hope my students, too, will value—the human side of

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<sup>3</sup> This difficulty was discussed by presenters Professors Melissa L. Breger, Gina M. Calabrese, and Theresa A. Hughes and at the September 5, 2003 New York Law School Clinical Theory Workshop on their work in progress *Teaching Professionalism in Context: Insights From Students, Clients, Adversaries and Judges*, and participants seemed to share a consensus that this was so. Melissa L. Breger et al., *Teaching Professionalism in Context: Insights From Students, Clients, Adversaries, and Judges*, 5 S.C. L. REV. 303, 305-06 (2003).

<sup>4</sup> *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

<sup>5</sup> "We cannot be value neutral on matters of value." Deborah L. Rhode, *Professionalism in Professional Schools*, 27 FLA. ST. U. L. REV. 193, 197 (1999).

<sup>6</sup> I credit Professor Sue Bryant of CUNY Law School with her observation at the September 5, 2003, New York Law School Clinical Theory Workshop that what one identifies as components of "professionalism" seems to be one and the same with the attributes of the Good Lawyer; in other words, the core values of the profession. See *supra* note 3.

lawyering. And I hope that they find meaning and satisfaction in their work that contribute to a life well lived.<sup>7</sup>

Although I have been teaching law for two decades, it is only in the last few years that I have consciously integrated pervasively into my pedagogy the modeling and teaching of the skills and values of professionalism.<sup>8</sup> Cultivating professionalism is an essential component of my Professional Responsibility course. In this paper, however, I want to focus on what I do in my first year, year-long Civil Procedure class to set students on their paths to becoming Good Lawyers.

## II. THE NEW STUDENT IN CIVIL PROCEDURE

Many of the students at Touro<sup>9</sup> made it through college with minimal effort. For them, adjusting to the rigorous demands of a legal education is a significant challenge. Requirements that they be on time for class—or even show up at all—are inconsistent with the habits many of them have developed previously. Students often feel that the rules imposed on them in law school resemble those they recall from elementary school, rather than what they expected to find in a graduate education. To become good lawyers, they need to unlearn their nonprofessional habits and develop the habits of a professional. Lecturing them about what that means is at best inadequate and most likely totally ineffectual.<sup>10</sup>

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<sup>7</sup> Towards that end, I recommend to all of my students that they take time to read STEVEN KEEVA, *TRANSFORMING PRACTICES: FINDING JOY AND SATISFACTION IN THE LEGAL LIFE* (1999). See also Marjorie A. Silver, *Lawyering and Its Discontents: Reclaiming Meaning in the Practice of Law*, 19 *TOURO L. REV.* 773, 774 (2004) [hereinafter Silver, *Lawyering and Its Discontents*].

<sup>8</sup> I contrast skills and values to knowledge. The knowledge is the subject matter of my Professional Responsibility course, and it arises as well—albeit far less frequently—in my Civil Procedure course.

<sup>9</sup> Touro College, Jacob D. Fuchsberg Law Center; Huntington, New York.

<sup>10</sup> Cf. Joshua D. Rosenberg, *Teaching Values in Law School: Teaching Empathy in Law School*, 36 *U.S.F. L. REV.* 621, 636-37 (2002).

Not surprisingly, the typical law school classroom does not readily lend itself to the teaching of empathy. A professor could lecture about the importance of empathy, and students could take notes and be able to explain both that the teacher thinks empathy is important, and why the teacher thinks so. A master of the Socratic method may even be able to help students arrive on their own at the theoretical conclusion that empathy is important. However, in terms of

### *A. Commitments*

I spend much of the second class hour of Civil Procedure each fall with a discussion of what students expect from the course—what they expect from me and what they expect from each other. I then ask them what they are willing to *give* to the course—what commitments they are willing to make—to ensure that they have the best possible educational experience on their road to becoming the best possible lawyers they can be. I write their suggestions on the blackboard, and ask one student in the class to take notes. I then post the results in the discussion forum of TWEN, adding some "suggested" commitments of my own.<sup>11</sup> Here is a sample posting from the 2001-2002 academic year:

Starting from the assumption that we are all committed to having the best possible educational experience to assist you in becoming the best possible attorneys you can be, below is a list of commitments for your consideration and comment. It includes those commitments that we discussed last Wednesday, as well as some additional suggestions from me and one of your classmates. These add-ons appear in italics below. I welcome your comments, either posted here on TWEN or, if you prefer, by speaking with me or leaving me a note.

#### **What the class expects from the Professor:**

- To deliver accurate information on Civil Procedure.
- To guide students through learning Civil Procedure.
- To teach students how to apply what they learn.

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actually convincing students on a personal, rather than a theoretical, level that empathy is important, I doubt that any teacher would be more successful at that than we are at convincing students generally to adopt our own values. . . . Simply put, the ability to empathize is a behavioral skill, rather than a cognitive process. As such, it is no more subject to being taught in a large lecture class than is any other behavioral skill, such as dancing or ice-skating.

*Id.*; see also Marjorie A. Silver, *Emotional Intelligence and Legal Education*, 4 PSYCHOL. PUB. POL'Y & LAW 1173, 1197-1200 (1999) [hereinafter Silver, *Emotional Intelligence and Legal Education*] (describing proposed curriculum to maximize experientially-based learning).

<sup>11</sup> I use TWEN (The West Educational Network) actively during the course of the semester. Among its other benefits, it enables students to maintain a dialogue about the course beyond the constrictions of the three hours of class each week.

- To be on time and prepared.
- To cover material that will be on exam.
- *To keep current in all significant developments in the law of procedure as covered in this course and share relevant information with the class.*
- *To give prompt, written, general feedback on written Lockett assignments.<sup>12</sup>*
- *To be available before and after class to speak with students, as well as during posted office hours and by appointment.*
- *To support and guide students to take responsibility for their own learning.*

**What the class expects from each other:**

- To stay in assigned seats.
- To support one another.
- To be courteous.
- To promote discussion.
- To share new information.
- To offer personal insights.
- *To refrain from chewing gum during class unless able to do so silently.*

**What each member of the class is prepared to give:**

- I will do all of the assignments and be prepared.
- *I will provide Professor with written note before class if not prepared.*
- *I understand that being prepared requires checking TWEN regularly and making a good faith attempt to answer the questions posted on TWEN.*
- I will show up and be on time.
- I will offer thoughtful commentary.
- I will ask questions for clarification.
- I will have respect for other members of the class.
- I will speak up and/or make it known if I haven't heard what was said.
- I will be quiet, won't pack up early, and will refrain from talking to my neighbor.
- I will listen respectfully, so that we may conduct "meaningful dialogue."

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<sup>12</sup> See *infra* note 35 and accompanying text.

- *I will stay in the room during class except for emergencies.*
- *I will promptly inform Professor if unable to meet any of my commitments.*
- *I understand that in order to become a competent lawyer, I must take responsibility for my own learning. This consists of actively listening to class discussion, even when I am not participating, reviewing my notes after each class and insuring that I understand the material covered. If I have unanswered questions, I will review the assigned readings, consult a Civil Procedure hornbook, ask my classmates, my teaching assistant, and/or post questions and comments on TWEN. If despite these efforts I have not resolved my question or confusion, I will speak with Professor.*
- *I further understand that I will not learn how to be a lawyer by being told "the right answer" to my questions. Becoming a lawyer is not about memorizing a lot of facts. The law is too vast for any individual to "know" it all. In order to be a competent lawyer, I must learn how to teach myself what I do not know.*

Rarely do students object to, or suggest substantial changes to, the posted list.<sup>13</sup> This then becomes an agreement that governs the conduct of all of us throughout the course. I haven't changed the rules of the game significantly through this method, nor have I really relinquished much control. Yet rather than the rules being *imposed* upon the students by me—the authority figure (whom I know must remind at least some of them of their authoritarian mothers!)—the rules have been reached by consensus and become a negotiated contract.<sup>14</sup> When lapses occur (and some inevitably will), rather than call them to task, I can instead refer them to their commitments. If students arrive late or speak to one another during

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<sup>13</sup> This fall, the only suggestion was the following:

When anyone, either students or Professor Silver, is reading something from the text, can you please specify exactly where (page number and beginning or end of a specific paragraph) you are reading it from so the rest of the class can follow along? I think this will help everyone follow citations from the text easier and people will not get lost by trying to find exactly where it is on the page.

<sup>14</sup> I do not have the students actually *sign* the contract, but a student has yet to raise the Statute of Frauds or otherwise challenge its validity!

class, I remind them of the commitments they made to be on time and to refrain from speaking to their neighbor.<sup>15</sup>

### *B. Class as Professionalism Laboratory*

First-years require frequent reminders that they are professionals-in-training. The class, its rules, and its requirements, are a useful laboratory to demonstrate what that means. Many teachable moments occur one-on-one, after class, or in my office. For example, in class, I call on a student to discuss an assigned case. The student gets flustered, searches through his brief, and stumbles through answers that suggest that, while this is not the first time the student has seen this case, he certainly hasn't spent much time thinking about it, or about the answers to the questions I had posted on TWEN previously.<sup>16</sup> The student comes up to see me after class, apologizes, and says something like, "I prepared this case last week and I knew it then, cold." In fact, implicitly, I am at fault because we have fallen a little behind. I had assigned this case for last week, but we didn't get to it until today. My response: "Let's just say that you had a case scheduled to go to trial last week, but then it gets postponed one week. Can you picture yourself saying to the judge, 'Your honor, I was prepared to try this case last week, but I just don't remember it very well today'?" The student gets the point.

It is often useful, when a student is resisting some rule or responsibility, to inquire why she decided to go to law school. The response may be "I just always wanted to be a lawyer" or "because I really want to help domestic violence victims" or "I don't know, my parents thought I should." I have learned over time that if the student who is having difficulty adjusting to law school is there only because her parents thought she should attend, chances of a successful outcome are slim. But if a student has a specific focus,

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<sup>15</sup> I continue to struggle with achieving patience and nonjudgmentalism. Although I *strive* to communicate in terms of their commitments, and not to reprimand, I lapse, alas, not infrequently!

<sup>16</sup> See *supra* note 11.



then I can help her see the relationship between her goal and the requirements that her legal education demands from her.<sup>17</sup>

Many students resist following "the letter of the law." This manifests itself both in their grasp of specific rules of procedure, as well as in their attitude towards compliance with the written rules of the course or oral instructions I might give them *ad hoc*. They do not understand why "close enough" is not good enough—it generally had been throughout their experience before law school. If I ask students to get into groups of two or three during class to discuss a hypothetical, invariably some groups of four will form. So I might explain that if a court has a local rule that memoranda of law in support of a motion to dismiss shall not exceed twenty-five pages in length, then the court will in all likelihood reject a memorandum that is twenty-six pages long.

One of my core commitments is to always begin class exactly on time, at ten after the hour. I take attendance silently using a seating chart with face shots of the students.<sup>18</sup> I tell students that if they come in late, they need to come see me at the end of class so that I don't mark them absent. I tolerate a reasonable number of latenesses. Not infrequently, if I mark a student late, a student will protest, "But I was only a minute late!" Thus, another teachable moment that allows me to stress the consequences of filing a complaint a day after the statute of limitations has run.

My husband, Doug, is a documentary filmmaker. Being an artist, he also tends to favor a "good enough" view of rules compliance. I share with my class (affectionate, of course)

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<sup>17</sup> See Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 99 (2002) (citing Donelson R. Forsyth & James H. McMillan, *Practical Proposals for Motivating*, in TEACHING AND LEARNING IN THE COLLEGE CLASSROOM 263, 268-69 (Kenneth A. Feldman & Michael B. Paulsen eds., 1993)) ("Students perform better when they know what goals they are trying to achieve and the goals are personally important to them.").

<sup>18</sup> When I first started teaching law in 1983, a colleague shared his own pictorial seating charts with me and I have been using them ever since in all of my classes, save seminars. I require students to bring in a small face shot (1" x 1") on the first day of classes, and permit them to merely photocopy their student ID or drivers license. I have found this to be a highly effective way to enable me to call on students by name, and I thus learn (most of) their names far more rapidly than I otherwise would.

anecdotes about Doug, designed to reinforce the importance of rules compliance in their new profession. For example, for a long time, Doug would engage in what I considered high-risk behavior when parking our car on the street in New York City, where we live. If the car was *almost* the prescribed fifteen feet from the fire hydrant, he would say, "No jury in the world would convict me!" My protestations that it wouldn't be a jury question, or that the parking violations employee who writes tickets might not see it his way, would often fail to persuade him. (Doug was pretty much cured of this habit, however, when our car was *towed* in Brooklyn last year for just such a minor offense!)

I have a new favorite story about Doug and rules. Our teenage daughter, Lucy, needed to renew her passport. I downloaded the form and instructions, which stated that the renewal application must be accompanied by two identical photos: two-by-two inches in size, "[f]ull face, front view with a plain white or off-white background."<sup>19</sup> Armed with the latest technology in the form of our own digital camera, we decided there was no reason we needed to go out and spend ten dollars for passport photos.<sup>20</sup> We could do this on our own. Doug took a picture of Lucy against a background that appeared gray in the finished photo. He was incredibly annoyed when, after waiting in line for twenty minutes at the passport office, he was told the photos would probably be rejected.<sup>21</sup> He next took a picture against a white wall, but in the photo it appeared a paler shade of gray than the first try, but gray nonetheless. I had a hard time persuading him that the passport office might not accept pale gray as "close enough" to the required

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<sup>19</sup> BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, HOW TO APPLY IN PERSON FOR A U.S. PASSPORT, at [http://travel.state.gov/passport\\_obtain.html](http://travel.state.gov/passport_obtain.html) (last visited Feb. 3, 2005).

<sup>20</sup> See, e.g., FROMEX DIGITAL, at [http://www.fromexdigital.com/passport\\_photos.html](http://www.fromexdigital.com/passport_photos.html) (last visited Feb. 3, 2005) (listing the minimum price for digital passport photos as \$9.95 for a set of two).

<sup>21</sup> See BUREAU OF CONSULAR AFFAIRS, U.S. DEP'T OF STATE, GUIDELINES FOR PRODUCING HIGH QUALITY PHOTOS FOR U.S. TRAVEL DOCUMENTS, at <http://travel.state.gov/pdf/Photo%20Guide%202010-01-04.pdf> (last visited Feb. 3, 2005) (suggesting that photos with common defects cause delays).

"plain white or off-white background" either.<sup>22</sup> The artist in Doug has trouble getting that rules may be nonnegotiable. (Happily, Lucy knew how to manipulate the computerized image to change the background color to white!)

In representing a client, close enough is not good enough. Sure, the court might not reject the twenty-six-page brief. But then again, it might never get past the court clerk, and, as I warn my students, such mistakes may cost their clients "big time." So complying with the rules—showing up, being on time, being prepared—is training to become the professionals they aspire to be.

It is important that students don't confuse the responsibility that comes with being a professional with a standard of perfection, for if they do, they are likely to despair of ever meeting it. Although I require students to be prepared for class, I recognize that occasionally life—or other work—might make that infeasible. I tell them at the beginning of the year that if, for any reason, they have not been able to prepare, they should just give me a note before class, and that a reasonable number of such notes will not adversely affect their grades. I tell them the purpose of giving me the notes is so that we will avoid the mutual embarrassment of my calling on them when they are unprepared. The other purpose is to instill in them the habit of taking responsibility for when they fall short. If they need an extension on an assignment, and they have a good reason, I will generally grant it—if they ask before the deadline. I tell them that most judges and other lawyers are reasonable people—if they need additional time and have good reasons, they are likely to be granted their request without adverse consequences for the client or themselves. The key, however, is asking in advance—unless doing so is impossible given the circumstances. That's what a professional would do, and that's what I expect from them as well.

Students also need to learn to take responsibility for their own mistakes. Although it wasn't always so, I now find this relatively easy to model. I make a commitment to treat my students with respect. Not infrequently, I fall short of that. I have a tendency to

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<sup>22</sup> See *id.* (listing several strict requirements for passport photos including setup and production guidelines, composition checklist, head position and background, exposure and lighting, and print quality).

get annoyed. There are times I have accused the class of lack of preparation when my questions meet with dead silence. More than once, a student I especially respect<sup>23</sup> will come up after class, or email me, to correct my misimpression with something like: "I read this case three times, but I just didn't understand what the court was saying, and that's why I didn't raise my hand," or "I just didn't know the answer to your question." Sometimes, especially when we have fallen behind, I will get impatient with questions I perceive as off the main topic. I caught myself doing this a week or so after the fall semester had begun. It was towards the end of class, and I was trying to finish the introductory Overview to Civil Procedure so we could get on with Personal Jurisdiction. A student asked a question that I regarded as way off the mark, and I snapped that I didn't see how that was relevant to what we were discussing. On reflection—and it didn't take much—I realized this second-week law student would have absolutely no idea of what was on topic and what was off; it was all brand-new territory to her. So next class, I apologized. When I screw up, I apologize. I may apologize at the beginning of class, or I may post my apology on TWEN—or both. Many students are, to say the least, surprised by the apology. Most have never heard a teacher apologize before.<sup>24</sup> What I hope they take away from this is the power of the apology, something I hope they will use in their lives and practices, and,

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<sup>23</sup> I strive to have the same level of respect for all of my students—what Carl Rogers describes as "unconditional positive regard"—but I do often find this a tough one!!! See CARL R. ROGERS, ON BECOMING A PERSON: A THERAPIST'S VIEW OF PSYCHOTHERAPY 283-84 (1961) (attributing to unpublished work by Ph.D. candidate Stanley Standal).

<sup>24</sup> Professor Gerald Hess has written about what he describes as his "most humbling moment as a teacher, and an experience that helped [him] grow." Hess, *supra* note 17, at 98. Confident that as an enlightened teacher he would have no difficulty receiving face-to-face critical feedback from students, he was surprised at his angry and defensive reaction to a student letter criticizing a graded assignment he had given.

A day later I realized what a fool I had been. At the next [Student Advisory Team] meeting I apologized to the students and admitted that I still had lots to learn about listening and teaching. My confession became the foundation for a close, productive relationship with my students that semester.

*Id.*

perhaps, encourage their clients to do as well.<sup>25</sup> Taking responsibility for one's mistakes, one's human fallibility, is another critical aspect of being a professional. And I hope they develop compassion towards themselves, so that after taking responsibility, they can forgive their own shortcomings, and move on.<sup>26</sup>

### *C. Taking Responsibility for Their Own Education*

If teaching the importance of strict rules compliance is a challenge, it pales in comparison to the project of teaching our students to take responsibility for their own education. For seventeen or more years of schooling, most of them have learned that if they took good notes, studied the assigned material, and regurgitated it on an examination, they would do just fine. They expect straightforward answers to straightforward questions. Most find it enormously frustrating and painfully stressful to be told that they have to learn to find the "answers" themselves. So I remind them repeatedly that the law is infinite and ever changing, and that when they are in practice, they will need to know how to find out the answers (or possible answers) to the questions that will regularly arise. Most Touro students will go into solo practice or small firms where there may be no one who knows the answers to even their most basic questions. And I will not be there either. The time to start learning how to find out what they do not know is at the beginning of their legal education.

I make a commitment to insure that all of my students' questions get answers. This is not, however, the same as agreeing to answer all of their questions myself. For instance, when a student comes up after class with a question about something that we have already discussed in class, I find that often the most effective teaching device is to engage in a one-on-one Socratic dialogue with the confused student. When the student is able to

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<sup>25</sup> There is substantial literature on the role of apology in resolving legal disputes. See, e.g., *Acknowledgement, Apology and Forgiveness*, in CONFLICT TRANSFORMATION AND PEACEBUILDING: A SELECTED BIBLIOGRAPHY (Catherine Morris ed., 2004), at <http://www.peacemakers.ca/bibliography/bib44forgivenessapology.html> (last visited Feb. 24, 2005).

<sup>26</sup> See *infra* Appendix, note 71 and accompanying text.

derive the answer through her active engagement with the question, then she owns that answer in a way she never would if I merely answered her question in the way she hopes I will—by just *telling* her the answer. Frequently, merely through the process of putting her question into written words, a student will be able to resolve her confusion. Often I will suggest that a student post his question on the TWEN discussion forum, inviting his classmates to attempt an answer. I then monitor the discussion and chime in as appropriate to ratify, or take issue with, a responsive posting. In addition to posting on TWEN, I encourage students to reread the material in the casebook, consult a hornbook, or ask their study group members (I strongly encourage study groups). In other words, I want students to develop strategies that they can rely on not only in law school, but also afterwards in practice, to answer the questions that will certainly arise.<sup>27</sup>

#### *D. The Final Exam as a Lawyering Exercise*

In constructing my final exams, I endeavor to simulate a lawyering experience. Each exam contains a complicated fact pattern that starts with something like "You are a lawyer engaged in practice in New York City. A client comes to see you and tells you the following . . . ." Usually, all of the exam questions—essay and short answer<sup>28</sup>—flow from the one fact pattern. All of my exams are open book; I tell the students that my reason is that in practice they will be able to—in fact *should!*—consult law books.<sup>29</sup> And I tell them that to the greatest extent possible, when they take

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<sup>27</sup> Of course, legal research is a primary avenue for finding out what you don't know, but I do not expect my first years, especially in the first semester, to do much independent research. Some, however, invariably do, even without my encouragement.

<sup>28</sup> I utilize a series of "agree/disagree with an explanation" questions and liberally award partial credit.

<sup>29</sup> Of course they are still going to have to pass the bar exam, the mother of all closed book exams, before they can get to that point. But inasmuch as there is very little federal civil procedure covered on the New York Bar Exam, *see* N.Y. COMP. CODES R. & REGS. tit. 22, § 6000.6(c) (2004), and virtually all of my colleagues teaching first year courses give closed book exams, I feel I can concentrate on preparing them for what happens *after* the bar exam. I rationalize that they will get sufficient practice taking *that* kind of exam so they do not need it from me as well.

that exam, each of them needs to really *believe* they are a real lawyer with a real client who has a real life problem for which that client is seeking help. I am not interested in a lengthy recitation of the history of personal jurisdiction since *Pennoyer v. Neff*<sup>30</sup>—especially not in an open-book exam. I want them to discuss how the cases we have studied relate specifically to *this client's particular problem*. Most students have a great deal of difficulty with this—it is not what they have been asked to do on examinations previously. Despite all my warnings, I generally get back a number of exams that nonetheless summarize all of the personal jurisdiction cases we have studied, before mentioning any of the particular facts bearing on the client's problem. I have found that the great majority of students who perform poorly on exams have failed to heed the advice that they approach the exam as a "real" lawyer would approach a real client's case.

I spend at least one class hour early in the spring semester going over the fall exam. Before that meeting, I give the class a memo summarizing what each question called for and the most common errors or oversights. After that, I require students who received a C or lower to meet with me to discuss their fall final exam. I *encourage all* students to meet with me. Because I find it infeasible to have more than three productive exam review meetings a day, these meetings may continue for well into the second half of the spring semester. Before each meeting, I require the student to reread her own exam, along with a copy of the top exam(s), and then to tell me specifically what it is she wishes to discuss about her exam. I also reread her exam, as well as her self-evaluation,<sup>31</sup> before the meeting.

In the earlier part of my teaching career, I used to dread these meetings. I always felt on the defensive, explaining *why* the student didn't get more points for this or that answer. I never felt the meetings were very productive.

That has changed dramatically. Now the burden is initially on the student to identify the deficiencies of her exam. I will often refer to her self-evaluation, using it as a tool to talk about her strengths and weaknesses, and what might be good strategies for

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<sup>30</sup> 95 U.S. 714, 724-26 (1877).

<sup>31</sup> See *infra* text accompanying note 34.

addressing them. It is an opportunity to send students who have writing issues to our Writing Center, and to send students who have difficulty analyzing and applying law to facts to our Academic Support Program.<sup>32</sup> It is also an opportunity to reiterate on a one-to-one basis the reasons for really *believing* she is a lawyer while she is taking the exam.<sup>33</sup>

### *E. Self-Evaluations*

I require students to submit written self-evaluations that ask them to reflect on how well they met their commitments during their first semester, and the relationship, if any, between that and how well they performed on their final exam. I also ask them to renew their commitments and to set personal goals for what they plan to do differently (if anything) in their second semester. The goal is, again, *to help them become the best lawyers they can be*. These self-evaluations are wonderful vehicles for beginning a discussion about what a student might do to improve her performance. They also give me a window into who that individual student *is*, which is often difficult among a class of seventy. Having a better sense of that student enables me to determine what particular type of support this student might need to succeed.

At the end of the spring semester, I encourage, but do not require, the students to review their earlier self-evaluations and evaluate how well they met their commitments and their individual goals. I tell them that nothing they write will adversely affect their grade, although an honest and thoughtful assessment might well contribute to raising their grade.<sup>34</sup>

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<sup>32</sup> Yet another of my personal deficiencies is that, although I can identify what may be wrong with a piece of writing, and, although I can edit poor writing, I feel almost completely inept when it comes to *teaching* students how to write better. It is my hope that the dedicated resources my law school provides will be able to do what I feel incapable of doing.

<sup>33</sup> Is this effective? Does it make for better lawyers? Even better exam takers? Many students say they find it extremely helpful, but it is hard for me to evaluate. Testing this empirically would be ideal, but, at least currently, beyond my capabilities.

<sup>34</sup> At Touro, faculty have discretion to raise or lower an exam grade by one third of a point. I use this discretion liberally, and consider multiple factors in deciding whether a student's exam grade should be adjusted. These factors include compliance with assignment deadlines, class participation, quality of



I have set forth in the Appendix a sample of responses from the students' self-evaluations. It is gratifying to see how useful many of the students find this exercise. Some of them write that they originally thought that the exercise of making commitments was absurd; that commitments like "To be prepared" or "To be courteous" were so obvious that it seemed silly to put them in a contract. However, the students who share that with me inevitably follow it by saying that in fact checking those commitments periodically helped keep them on course when things got rough—when their workload was overwhelming—and that they either have already, or plan in the future, to engage in such an exercise for each of their courses. (Of course, students who continue to think it was a silly exercise are unlikely to share that with me!)

### III. MODELING EMOTIONALLY COMPETENT PROFESSIONALISM

Earlier, I mentioned that much of the second hour of Civil Procedure is devoted to discussing the mutual commitments the students and I will make to one another. What about the first hour? I spend about half of that first class doing the Lockett #1 exercise designed more than fifteen years ago by Professor Phil Schrag of Georgetown University.<sup>35</sup> The written instructions inform the students to imagine themselves to be an attorney who has received a call from an old friend, Carl Lockett.<sup>36</sup> Carl tells you that his daughter, Lucy, was bitten by a snake on the preceding Saturday, in a pet store where she had been working part-time. Although the store manager, George McConnell, had told his employees that he carried no poisonous snakes, Lucy had suffered a severe reaction and had to be taken to the hospital. By the next morning, her arm had swelled to twice its normal diameter and the doctors had to perform a fasciotomy, an operation whereby they cut her arm from

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written work, and others. TOURO COLL., JACOB D. FUCHSBERG LAW CTR., TOURO LAW STUDENT HANDBOOK AND CODE OF CONDUCT 20 (2004-2005), available at [http://www.tourolaw.edu/pdf/publications/Student\\_Handbook.pdf](http://www.tourolaw.edu/pdf/publications/Student_Handbook.pdf) (last visited Jan. 27, 2005).

<sup>35</sup> Philip G. Schrag, *The Serpent Strikes: Simulation in a Large First-Year Course*, 39 J. LEGAL EDUC. 555, 557 (1989).

<sup>36</sup> *Id.* at 559.

wrist to elbow to drain fluids, in order to save her arm. Her arm was to remain open for one or two days when a further operation would be necessary to close it up.

Carl is calling you because he had just spoken with McConnell who offered to pay \$10,000 towards anticipated hospital costs of approximately \$35,000.<sup>37</sup> Carl wants to know if you have any advice.

What invariably follows is a lively discussion with widespread participation among these brand new law students, who offer suggestions ranging from rejecting the offer of help and immediately filing a lawsuit, to brainstorming about what to do about the snake.

The goal of this exercise is, of course, to allow students to see that before they have even begun their legal education, they bring intelligence, common sense, and problem-solving skills that will be critically important to the work they will do as lawyers. Given the level of apprehension with which most students begin their legal education, this is a very exciting and reassuring message.

It is also an excellent vehicle to introduce the importance of interpersonal skills and empathy to good lawyering. I start the discussion by asking, "What's the first thing you will say to Carl?" Immediately some of them start to make noises like a lawyer—or at least what they think lawyers would or should do or say in such circumstances. "Tell him not to accept the offer." "Tell him that he should sue the pet store and George McConnell." "Tell him he needs to find out from whom the store got the snake." In response to each of these I ask, "Is that the first thing you will say?" Students make more attempts to figure out the proper lawyer-like response. Finally, one student will suggest that one should ask how Lucy is doing, express some human emotion, some concern, about this terrible thing that has befallen the daughter of a friend. That gives me the opportunity to remind them that they should not leave their humanity at the law school door. Hopefully they came into law school being empathic, caring, human beings, and that those qualities will be important to retain—and develop—as they go through the next three or four years of becoming lawyers. I note

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<sup>37</sup> As with other aspects of the Lockett simulation, these amounts have been updated over the years.

that most of their first year will be spent reading appellate court opinions, but they must not lose sight of the fact that lawyering is about *the client*. It is about *people*.

This is not a message they are likely to get in most of their other first year courses. In fact, little in traditional legal education encourages or develops the human side of lawyering, even though the vast majority of law graduates will have individual people as their clients—people with problems and concerns that are only in part legal. I have written elsewhere of the critical importance of developing intrapersonal and interpersonal skills as part of basic legal education.<sup>38</sup> But just as it is largely ignored in law school, the emotional dimension of lawyering rarely enters into any discussion of professionalism. Yet emotional competence, and all that entails, I submit, is a core component of being a lawyer and a professional. Increasingly—through relatively new developments such as Therapeutic Jurisprudence, Collaborative Lawyering, and Transformative Mediation—the importance of emotional competence and psychological-mindedness is gaining in recognition.<sup>39</sup>

To be effective counselors and advocates, lawyers need to develop their emotional competencies. This quality, I assert, has *intrinsic* importance. Yet, there is an *instrumental* argument to be made as well. Lawyers need to understand themselves sufficiently to appreciate how they appear to others. If things they say or do produce unwanted reactions in others, then they will, necessarily, be less effective as lawyers. If they are aware of how they can act or speak in ways that produce desired results, to achieve desired goals, then they will be both more successful and more fulfilled as lawyers.<sup>40</sup>

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<sup>38</sup> See Silver, *Emotional Intelligence and Legal Education*, *supra* note 10, at 1176 (citing HOWARD GARDNER, *MULTIPLE INTELLIGENCES: THE THEORY IN PRACTICE* 9 (1993)).

<sup>39</sup> See, e.g., Susan Daicoff, *The Role of Therapeutic Jurisprudence Within the Comprehensive Law Movement*, in *PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION* 470 (Dennis P. Stolle et al. eds., 2000).

<sup>40</sup> See Rosenberg, *supra* note 10, at 637-41 (discussing student development of awareness of how others perceive them to enable more effective lawyering).

Lawyers need to recognize when their own reactions to their clients may be affected by biases or conflicts unrelated to the client. They need to know that sometimes they may experience strong positive or negative feelings towards particular clients that have little or nothing to do with the clients themselves and may come from some earlier memory or relationship.<sup>41</sup> They need sufficient self-awareness to recognize when this happens and know what they can do about it to avoid having it negatively influence the quality of their legal representation. A lawyer who develops strong amorous feelings towards a client requires sufficient self-awareness to insure that her own interests do not compromise the quality of her legal representation. Unexamined, a divorce lawyer may overlook possibilities for exploring reconciliation; a transactional lawyer may procrastinate bringing a deal to a close if it will mean no further contact with the client. Even more problematic are unexamined negative feelings that may arise from less than conscious sexism, racism, homophobia, or merely a resemblance to a disliked relative.<sup>42</sup>

Similarly, lawyers should know enough about human psychology to understand the sometimes strange and problematic behaviors or attitudes their clients present. In order to render not only the best possible *legal* advice, but to be an agent for helping a client who is a victim of domestic violence be able to benefit from that advice, a lawyer needs basic knowledge about abused or battered spouse syndrome.<sup>43</sup> A lawyer representing survivors of a

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<sup>41</sup> See generally Marjorie A. Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259 (1999) (discussing how emotional reactions toward a client affect the lawyer-client relationship).

<sup>42</sup> See *id.* at 277-78, 304-05 (discussing additional examples); Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L. REV. 219, 221-29 (2002) (discussing personal narrative in Clark D. Cunningham, *The Lawyer as Translator, Representation as Text: Towards an Ethnography of Legal Discourse*, 77 CORNELL L. REV. 1298, 1306, 1308-30 (1992)); see also Michelle S. Jacobs, *People From the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 363-74 (1995) (also discussing Cunningham narrative).

<sup>43</sup> See, e.g., *Battered Spouse Syndrome*, at <http://www.open-mind.org/News/Abuse/> (describing battered spouse syndrome) (last visited Feb. 3, 2005).

major disaster, such as the September 11th devastation, needs to know something about the range of normal reactions to trauma.<sup>44</sup>

Having said all that, I confess to feeling I have succeeded in practicing what I preach only to a very limited degree. The constraints posed by the size of the class—not to mention the subject matter I am assigned to teach—make accomplishing these goals rather daunting. I tend to agree with Professor Joshua Rosenberg that helping students hone their intrapersonal and interpersonal skills demands a small, intimate setting based on mutual trust.<sup>45</sup> I agree that it requires not only modeling, but also opportunities to practice and obtain constructive feedback.<sup>46</sup> Hopefully, as I continue to develop as a teacher, I will find more ways of introducing these opportunities into my classes.

But even with all of the constraints, I nonetheless think that exposing my own humanity, my own human fallibility, enables at least some of my students to accept and value those qualities in themselves. And that, hopefully, enables some of them to not lose sight of these qualities as they progress through an education that does little to validate them.

In part, I accomplish this by being—and communicating—that I am emotionally available to my students. If they are struggling, if they are anxious, if their boyfriend dumps them or their mother has breast cancer, they know they can come and talk to me. I can be there to just listen, with or without offering advice,<sup>47</sup> to share tactics and techniques that have worked for me or for other students, or to suggest a consultation with the school psychologist. For several years now, I have shared with my students my own struggles with major clinical depression. Sometimes I "out" myself in Professional Responsibility when we are discussing whether people with mental illness should be allowed to practice law. More often, I reveal it in the privacy of a one-on-one conversation in my office with a student who is struggling with anxiety or

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<sup>44</sup> See Marjorie A. Silver, *September 11th, Pro Bono, and Trauma*, 7 CONTEMP. ISSUES IN L. 64 (2003-2004).

<sup>45</sup> See Rosenberg, *supra* note 10, at 646-47.

<sup>46</sup> *Id.* at 637.

<sup>47</sup> I admit that just listening without trying to "fix" is not one of my strong points.

depression.<sup>48</sup> I do this because I want the student to know that I know what feeling anxious or helpless or hopeless (or all three) is like, because I have been there. I know how intense anxiety engenders obsessing, and how obsessing renders concentration on legal studies impossible. Sharing that with a student is often the impetus a student needs to seek appropriate help. Being able to help others is the silver lining to my painful clinical history. I got through it, and they will too.<sup>49</sup>

#### IV. FINDING JOY AND SATISFACTION IN BEING A LAWYER<sup>50</sup>

I love teaching because, in no small measure, I feel I make a positive contribution to the lives of many of my students. Although law teaching allows me to enjoy a comfortable lifestyle, the primary rewards of my work are intrinsic.<sup>51</sup> I am a better teacher

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<sup>48</sup> The statistics as to the incidence of clinical depression and other disorders among law students are alarming. *See, e.g.,* Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 113-14 (2002) (citing studies indicating widespread clinically significant levels of anxiety and depression among law students). "Most teachers and students are practically dumbfounded when they see [published studies of incidences of law student and lawyer distress]." *Id.* at 126.

<sup>49</sup> Happily, I haven't had an episode of major depression in over ten years. Sharing this with students may help them understand that how they are currently feeling is not the way they will always feel.

<sup>50</sup> This heading is taken directly from the title of Steven Keeva's book. *See supra* note 7.

<sup>51</sup> *See, e.g.,* Krieger, *supra* note 48, at 121.

[E]xtrinsic *motivations*—acting for reasons outside of oneself, such as to relieve guilt or anxiety, please others, or gain rewards—predict decreased well-being, sense of meaning, and personal integration. By contrast intrinsic motivations—working and behaving in ways that are either inherently satisfying or that reflect strongly one's deepest convictions and beliefs—are correlated with enhanced well-being, increased meaning, and increased personal and social integration.

*Id.* at 121 (citing Kennon M. Sheldon & Tim Kasser, *Goals, Congruence, and Positive Well-Being: New Empirical Support for Humanistic Theories*, J. HUM. PSYCHOL., Winter 2001, at 30); *see also* Kronman, *supra* note 1, at 1.

Many believe . . . that the intrinsic fulfillment of the work they do as lawyers is linked to its professional character. If we concede, for the sake of argument, that the law is a trade, a business and nothing more—just another way of making money—many practicing lawyers would, I think, say that

for loving what I do. Similarly, I believe that a lawyer will be a better professional if she finds intrinsic fulfillment in the practice of law.<sup>52</sup> I am committed to enabling my students to find joy and satisfaction in the practice of law. It is why I spend time in class—Professional Responsibility more so than Civil Procedure—talking about the importance of making life choices that will enable each student, at the end of her life, to look back and say, "Yes, that was a life well-lived." It is why I urge my students to take care of themselves, physically and emotionally, and to find balance in their lives. It is why I urge my students to read Steve Keeva's inspiring book.<sup>53</sup> And it is why my proudest professional accomplishment is a conference I organized at Touro last year entitled *Lawyering and its Discontents: Reclaiming Meaning in the Practice of Law*.<sup>54</sup> The conference was a forum for exploring the individual and systemic reasons for lawyer unhappiness and presenting a multiplicity of individual and systemic solutions.<sup>55</sup> These solutions ranged from introducing alternative approaches to law practice and dispute resolution,<sup>56</sup> to problem-solving courts,<sup>57</sup> as well as to non-legal strategies such as mindfulness meditation.<sup>58</sup> One panel focused on stress, burnout, and trauma, and how these psychological conditions impair caregivers' ability to serve their clients.<sup>59</sup> Another panel focused on the healing power of

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such a characterization ignores the very thing that makes their work personally rewarding for them—its capacity to be intrinsically fulfilling.

*Id.*

<sup>52</sup> This principle is an underpinning of the humanistic approach to legal education and lawyering. *See, e.g.,* Krieger, *supra* note 48. Professor Krieger manages a well-subscribed Humanizing Legal Education listserve. *Id.* at 129 n.61.

<sup>53</sup> *See generally* KEEVA, *supra* note 7 (explaining why finding meaning and satisfaction in work contributes to a life well lived).

<sup>54</sup> *See* Silver, *Lawyering and Its Discontents*, *supra* note 7, at 773.

<sup>55</sup> *Id.* at 799-823.

<sup>56</sup> *Id.* at 807-12.

<sup>57</sup> *Id.* at 799-807.

<sup>58</sup> *Id.* at 785-86, 791-92.

<sup>59</sup> *Id.* at 793-98; *see also* Marjorie A. Silver et al., *Stress, Burnout, Vicarious Trauma, and Other Emotional Realities in the Lawyer/Client Relationship*, 19 TOURO L. REV. 847 (2004). The need for lawyers to take care of themselves, for self-care, so that they will be able to take care of their clients, especially those who are most vulnerable, ought to be viewed as an ethical

involvement in *pro bono* relationships.<sup>60</sup> For as I have discovered in both my research and in my own life, *pro bono* work is intrinsically rewarding.

#### V. *PRO BONO*: UP CLOSE AND PERSONAL

I think that for as long as I have been teaching Professional Responsibility—some twenty years—I have devoted at least an hour to a discussion of *pro bono* work: why we need it to address the unmet legal needs of the poor, how well or poorly the profession has responded to its obligation to provide *pro bono* representation, and whether or not it should be mandatory. There is invariably a lively debate, especially with respect to mandatory *pro bono*.

Yet, for the first seventeen or so of those years, I felt like a fraud. I had been active in various kinds of law reform work, in particular through my committee work for the Association of the Bar of the City of New York (ABCNY). I was, for many years, a member of its Civil Rights Committee, and served for over three years as the chair of the Association's Sex & Law Committee.<sup>61</sup> But I had *never* undertaken one-on-one representation of a client—not in my pre-teaching practice (I was an attorney with the federal Office for Civil Rights), and not in my volunteer work.<sup>62</sup>

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responsibility. See JEAN KOH PETERS, *The Lawyer-As-Context II: Fulfilling the Ethical Duty to Address Occupational Hazards That Imperil Client Service: Stress, Burnout, Vicarious Traumatization*, in REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 421, 444 (LexisNexis 2d ed. 2001) (citing Debra A. Neumann & Sarah J. Gamble, *Issues in the Professional Development of Psychotherapists: Countertransference and Vicarious Traumatization in the New Trauma Therapist*, 32 PSYCHOTHERAPY 341, 345 (1995) (discussing self-care as caregivers' ethical responsibility)); see also Krieger, *supra* note 48, at 116 ("It is wholly unrealistic to expect that depressed or highly distressed lawyers will exemplify professional behavior, no matter how well they are schooled in their obligations.").

<sup>60</sup> Silver, *Lawyering and Its Discontents*, *supra* note 7, at 818-23.

<sup>61</sup> For information on Committees of the ABCNY, see ASS'N OF THE BAR OF THE CITY OF N.Y., ABOUT ABCNY: COMMITTEES (2003), available at <http://www.abcny.org/aboutus/committees.html> (last visited Feb. 14, 2005).

<sup>62</sup> In truth, the class on *pro bono* wasn't the only occasion in which I felt like an imposter. How could I teach about the ethical dilemmas that arise in



In fact, I was rather reluctant to take on direct client representation. Not because it was beneath me, but because I feared that I was not competent to represent clients who were real people, with real problems.

Several years ago, I decided to overcome my diffidence, and I responded to a notice from the ABCNY's Community Outreach Law Program, offering training for attorneys willing to represent immigrant women who were victims of domestic violence.<sup>63</sup> I took the training, and soon thereafter, had my first real client. The excellent training materials and close supervision by the knowledgeable staff attorneys at the ABCNY's Immigrant Women and Children's Project alleviated my fears of competence.

Representing my first client, Carol, turned out to be one of the most challenging and fulfilling professional experiences I have ever had. There were, of course, the expected benefits: the extraordinary sense of pride and pleasure I had in helping Carol transcend the obstacles that the legal system had placed in her way;<sup>64</sup> the sense of accomplishment I felt in supporting her physical separation from her abusive husband; the gratitude with which Carol showered me when I was able to help her bring her thirteen-year old daughter up from St. Lucia—whom she had not seen in five years—to live with her and her other two daughters in New York. Added to this, in my own eyes, I now had credibility to talk about undertaking *pro bono* work.

And, I make sure I let my students know not only that I am doing this work,<sup>65</sup> I share with them how scared I was to do something I had never done before, so that they will feel safe in taking similar risks. I also make a pledge to them that if at any time in their careers ahead, they have any difficulty finding *pro bono*

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representing clients, when the only client I had ever represented was the government?

<sup>63</sup> The Immigration and Naturalization Act, as amended by the Violence Against Women Act (VAWA), provides for an abused spouse of an American citizen or permanent resident to self-petition for permanent resident status. 8 U.S.C. § 1154(a)(1)(B)(ii)(aa)-(bb) (2001).

<sup>64</sup> In addition to helping her obtain her green card, I was able to find a criminal defense lawyer when her estranged husband filed domestic violence charges against her, as well as a lawyer to help her obtain a divorce, child support, and custody of her children.

<sup>65</sup> I have continued to take on other cases.

work that interests them, they can call on me and I will help them find it.

## VI. CONCLUSION

In this paper, I have described some of the strategies I use to foster the development of professionalism among my first year students. How successful am I? Does it make a difference that I develop mutual commitments with them? That I require them to do written self-evaluations? As with anything we might offer, some students will take advantage of the opportunities we create and will benefit more than others. Whether in individual cases or on the whole it makes a difference is ultimately an empirical question and one for which I have no evidence one way or the other. Yet I am confident that I am a better teacher now than I was twenty, fifteen, ten, even five years ago. In fact, I am confident I will be a better teacher this year than I was last year. One of the tremendously exciting things about the teaching profession is its unlimited capacity for growth. I *want* to be a better teacher. I want to understand why some things I try work well and others do not. And as long as I cherish this curiosity, I am confident I will continue to evolve and improve as a teacher.

So, too, will our students. If we give them the tools they need, if we can cultivate their desire to be life-long learners, then they will be prepared to embark on the life-long process of becoming professionals. There is no end point. One is constantly in the process of *becoming* a professional, much as one is always in the process of becoming a person.<sup>66</sup> After all, we "practice" law; professionalism is a process. Teaching is a process. Both have the potential to be such wonderful journeys!

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<sup>66</sup> See ROGERS, *supra* note 23.

## APPENDIX

*Shamelessly Self-Serving Feedback from Students*<sup>67</sup>

The following comments are taken from the self-evaluations submitted by my Civil Procedure students from the 2002-2003 academic year. Unless otherwise indicated, all are from their optional end of the year evaluations.

**SM:**

If there was one class I took this year that helped me to develop skills to become a good lawyer as well as skills to become a stronger person, it was this one. Although I cannot say that this was my favorite or most interesting class, I can say that it challenged me to step up and decide if becoming a lawyer was what I truly wanted. . . . I think it hit me one day when I was not fully prepared for class, instead of feeling the anxiety of being called on, I felt angry with myself that I had let myself down. From that day on I worked my very hardest to stay on top of everything, and I listened to the words that you spoke to us. You often told us that you were preparing us for practice, but for me I think you were doing more, you were helping me to become an adult. My whole life I did well because it was easy, and when it wasn't, someone did it for me. For the first time in my life no one was doing it for me, doing well was completely up to me. I worked hard at meeting deadlines and being as prepared as possible every class. I began to realize that I wasn't doing it because anyone was making me but because for the first time I truly wanted something, something no one was going to just give me but something I had to work for.

Although I enjoyed my other classes none of them made me realize that becoming a lawyer was what I really wanted; most of them pushed me to work hard, but Civil Procedure pushed me to become a stronger person. I also discovered that working toward a goal means that you may fail once in a while, but that's ok.

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<sup>67</sup> As these evaluations were not submitted anonymously, there is likely some conscious or unconscious inclination for the students to tell me what they think I want to hear. And they are right—I *do*!

Besides learning so much about myself I did learn a great deal of what is needed to become a great lawyer. Lockett<sup>68</sup> served as a valuable tool in my preparation for practice as well as did the numerous deadlines that we were forced to meet while overwhelmed with the typical law school work. The structure that we developed in class as well as the mutual respect are things that helped my first year of law school to be more than a learning experience but a truly amazing time for me to grow. I am thankful for all that you've taught us but am grateful that I'm done with Civil Procedure. I am relieved and overjoyed that I have completed a great feat. I made it through my first year of law school and only have a few bruises to show for it. Thank you!

**ES:**

This year has been an amazing year for me. Law school has provided me with the personal challenges that I believe my life was missing. Civil Procedure was definitely my favorite class. I liked it probably because it was the most challenging for me. Civil Procedure has taught me to be responsible when it comes to deadlines and thorough when learning new material.

**CB:**

So what do I take away from this semester? Well, for one, regardless of how I did in my classes, I realized something incredibly important. I have learned that being a "professional" carries a whole new meaning. There were times this semester when I could not focus to save my life. The imminent possibility of being plucked out of my seat at a moment's notice completely twisted my reality. [The writer was in the Air Force reserves at the time of the Iraqi war.] I had to maintain a level of professionalism throughout to ensure nobody saw what was going on inside. We in fact talked about this in private. **[On empathy:]** I must say that I was pleasantly surprised as to the genuine concern you showed me. I will not forget that.

Furthermore, the lesson of professionalism includes the fact that no matter what is going on in one's personal life, business is business, and I still needed to keep my head in the game and come prepared. The pressures of law school,

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<sup>68</sup> For a description of Lockett simulation, see Schrag, *supra* note 35 and accompanying text.

possibility of deployment, and other personal issues must all be dealt with accordingly. Once one overflows into another, you become inefficient. This is a difficult task, however. There will be times in our careers when we are going to have to deal with problems in our lives, still having to maintain our client's best interests. Thus the importance of your friends/colleagues who are there to assist you when you need them.

As I look back over the last year, I feel that there w[ere] some things I could have done differently, but hindsight is 20/20. Overall, the first year of law school and particularly Civ Pro provided me with a renewed confidence in my work ethic, which helped me get through.

**AD:**

I think that these promises we made did not only help for Civ Pro, but for other classes. I made the same promises to myself for each class and I honestly feel that it helped be more prepared and organized throughout my first year of law school. I was able to keep up with the lessons and I was always prepared when called on in class. That is a very rewarding thing in law school. When you are able to give an intelligent answer or ask an intelligent question because of the work and discipline that you have put into it.

**JG:**

Being honest with oneself is the only [way] to ever find room for improvement and act on it. I thank you for the opportunity to do so and I thank you for a great year of learning, growth and development.

**DG [On balance]:**

I feel much more satisfied about the path my life is taking now than I did in my prior career. I just think that I forgot to pace myself throughout the *entire* first year; that is a lesson I would tell incoming students. I spoke to some incoming students when they were visiting and I told them to be prepared for a lot of hard work and less time for pre-law school friends and family. But I also told them to find a balance of some kind [to enable them] to complete their schoolwork and give themselves a little quality time.

**[On the value of self-evaluations:]** I am not sure if this is the kind of evaluation you wanted but it really helped me get all of

these feelings on paper. I haven't had time to write in my journal for some time now, so this definitely helped.

**MJ [first semester evaluation—on the value of the commitments and the self-evaluation]:**

When we listed our expectations of both each other (as students) and from the professor early in the semester, I was convinced that living up to all the expectations I had agreed to would be a simple task. It was not until I sat down to do this assignment that I figured differently. Accordingly, I have determined that I have not lived up to certain aspects of my in-class performance that I agreed to in August 2002, and I will make it my goal, in addition to success, to both make up the difference from last semester, and to live up to each and every expectation for this semester.

**MJ:**

To say that I've grown both as a student and as an individual throughout the course of this year is a stark understatement. Besides the fact that I actually *grew* (I put on about 10 lbs.), I have matured in both my scholastic behavior and my behavior outside the classroom.

**[On the value of commitments:]** [After describing dropping out of a difficult undergraduate course after receiving an unanticipated low grade] I felt a similar frustration after receiving my grade for Civil Procedure for the first semester. Obviously, I did not consider dropping the class because it wasn't an option (nor would I have exercised that option if it was!), but I was frustrated as to how I could improve my grade for the second semester. My first step was to refer back to my agreed obligations for class in hopes of giving me a place to start. After reviewing them, I reviewed my personal evaluation from last semester to review which obligations I failed to live up to. My first order of business was to make sure I reviewed the relevant class materials after class each day. To say that I had a stronger grip on the material this semester as a result of my applying what I was taught in class, is likewise, an understatement.

My next order of business was to prepare for class every day as if it was my turn to be called on. Some of my fellow students tried to predict when they would be called on (names not necessary) and their study habits reflected their predictions.

Instead of trying to decode Professor Silver's method for selecting students in class, I made it my business to prepare every single case relentlessly.

The most important lesson that I came away with from Civil Procedure (notwithstanding personal jurisdiction, joinder, etc.) is that healthy competition and a large amount of pressure can produce a brilliant product. It is important, however, to maintain one's composure in the face of those adverse conditions in order to grow as a human being. Thank you for the most challenging class I have ever taken.

**CP [On ego-feeding]:**

Civil Procedure was indeed an eventful, not to mention laborious, journey . . . . However, the journey could not have been possible without a remarkable tour guide. You provided us with the necessary tools for success.

**JR:**

Professor, I would like to thank you for your inspiration to work hard and to not just sideline sit and wait for the information to come to me. Through your lessons you encouraged me to work harder than I have ever done before. I accepted your challenge and I have received many benefits from doing so.

I have developed exceptional time management skills. I was always waiting to the last minute to do everything in college. I quickly learned from your Civil Procedure class that it was not going to be that simple if I wanted to pass Law School, [not to mention] do as well as I feel I did.

**[On the commitments:]** I truly believe that the day we went over the commitments in class first semester was the most important day of Law school for me. I remember looking up at all the things written on the screen and feeling very overwhelmed. I knew what had to be done. I felt very lucky for that because not all teachers are as straightforward as you are. You tell it like it is which makes you a terrific instructor.

**JR [first semester evaluation]:**

[T]he key to [the] success I had was not just keeping these commitments for five minutes of class, it was doing it all class long during every class.

**SW [a student who rarely spoke, in or out of class, and of whom I had no sense]:**

I feel that although there might not be an improvement in my grade this semester, there has been an improvement in myself. There is no doubt in my mind that I have lived up to the commitments that we established at the beginning of the year. I also have no doubts about whether you have fulfilled your end of the commitments. . . .

Additionally Professor Silver, I must give you credit for fulfilling your end of the commitments and for some of my law school accomplishments. You always kept the class on track and you were always thoroughly prepared for class. We never strayed from the syllabus and for this, I admire you. I know that my section is very good at getting professors off topic. Additionally, you always helped to clear up the confusion that we had. TWEN<sup>69</sup> is a great learning tool, especially for Civ Pro. Whenever there was a misunderstanding about anything, our class could rely on the other class members (and when we were wrong you would jump in to save the day).<sup>70</sup> This showed a sense of teamwork and actually helped us interact and apply the material we were learning. As a result, our understanding of Civ Pro was amplified.

I would now like the opportunity to thank you once again. Professor Silver, my learning experience in Civ Pro was one that could not have been topped. I know that I have told you this already but I truly feel I learned more in Civ Pro this year than any other class. Your learning [sic] style is one that forces students to constantly be prepared for class, thus enhancing our learning experience. Thank you Professor Silver, it has been a pleasure.

**MZ [On the value of self-evaluations]:**

Looking back at my self-evaluation from last semester, I realized that I worked harder on achieving the goals I had set up for myself at the end of first semester. I participated more in class and volunteered and got to be a part of the Lockett exercises.

Speaking for myself, though I am sure many others agree, your class has taught me what being a lawyer really will be

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<sup>69</sup> See *supra* note 11.

<sup>70</sup> The student is referring to the TWEN Discussion forum. See *id.*



like. I am going to have to meet deadlines, be prepared and organized, but I will also have plenty of references to help me along the way. **[On forgiveness:]** I was extremely disappointed in myself when I missed the quiz over Spring Break and did not feel better until I got your e-mail telling me to relax. I think that is something I want to work on as that incident ruined my day and I think I was way too hard on myself; though all I could think about was what I would do if I was in the "working world."<sup>71</sup>

I want to . . . thank you for being a great teacher and role model.

**LB:**

At this point, I would like to thank you Professor Silver for speaking with me at a time when I really needed someone to vent to. Thank you for caring for my academic, personal, and emotional well-being, and thank you so much for your terrific advice and patience. I can't wait to spend another semester with you in Professional Responsibility!

**JC:**

The last thing I would like to say is that I am very grateful to have had you as a professor during my first year at law school. To enter such a different environment and it being such an adjustment, I know having you as a professor brings as much comfort as there can be to a first year student. I appreciate your patience and the fact that you made such an effort to know the students by their first names. That may not seem like such a big thing, but I know I speak for more than just myself and it really makes a difference. Again, thank you, I thoroughly enjoyed the opportunity of being a part of one of your classes.

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<sup>71</sup> What I find particularly gratifying about this comment is that the student appreciated the importance of not missing deadlines, but was able to take some comfort when she learned that this would not cause her to fail Civil Procedure. When students do "mess up," as most inevitably will at one time or another, they need to be reassured that law school is the place where they can afford to make mistakes, without dire consequences. This was a particularly conscientious student. I would not be so reassuring to a student who repeatedly missed deadlines.

**FD [from first semester evaluation—on the value of commitments]:**

I could not have performed the way I did last semester without sticking to both class-created commitments and my own.

**DG [from first semester evaluation]:**

I need to learn to develop the important trait of teaching myself what I do not know. This has been a skill that is very difficult for me to do but I must work harder at it. In addition, I have to develop a more professional attitude in the sense that I get too emotional when I do not understand something and I am being criticized for that. Being a good lawyer is all about taking criticism and using it to correct your mistakes in order to prevent them from reoccurring . . . .

**FG [from first semester evaluation—on the value of commitments]:**

My first semester in law school was more challenging than I ever could have expected. I knew from the beginning that in order to succeed I would have to live up to certain expectations. The commitments that were decided in class gave me an outline for what I would have to do in order to make my law school experience worthwhile and successful. . . .

**[On cooperation and collaboration:]** One of the most important goals set was that we should cooperate with one another rather than be competitive. I can honestly say that I was expecting a much more competitive atmosphere when I entered law school. Now, at the beginning of the second semester, I have to say that without the help of my colleagues there was no way I could have got through the term. Not only was our section not competitive with one another, they were the exact opposite. I have never seen a group of people more willing to help than the group of students in my classes . . . . Overall, this lack of a competitive atmosphere helped us all to be a more prepared, respectful, and coherent group when it came time for class. . . .

I feel as though the final exam, while difficult, was a fair test of the work we did throughout the semester. The satisfying result of my exam indicates to me that I did put [in] the necessary time and effort, and I now will make sure that I continue to do so throughout law school and my legal career.

**SG [from first semester evaluation—on emotions]:**

In law school I have learned the important life lessons that I am sure to use throughout my career and my life. For example, I have learned the importance of allowing myself to feel emotions, without allowing the emotions to preclude me from fulfilling my responsibilities. . . .

Though I did work very diligently last semester, I have made some commitments for the new semester. I have written a contract for myself that I have signed. The contract outlines the goals I want to achieve; to stay mentally and physically healthy.

**EG:**

Even though I was already a professional,<sup>72</sup> under your guidance I have found myself rising to an even higher level as regards to time commitments, deadlines and the importance of being really thoroughly prepared. . . .

Thanks for being so available by e-mail and phone and thanks for being not just a really good professor but a really nice person.

**BH [from first semester evaluation]:**

I must say that overall, Civ. Pro. I was a very rewarding experience. It was more demanding than my other classes but the ends justified the mean. Not only did I get a good grade but [also] I feel as if I took a small step to becoming the best lawyer I can be. I was able to develop work habits that I hope will stay with me through the rest of my education as well [as] for my entire life.

**KP [from first semester evaluation]:**

When I enrolled at Touro and when we discussed our commitments for the year, I did not know if or how I would succeed. The first day of class when you said that if we do the work and try our best we would succeed, I did not believe you. However, your reassurance that the material would make sense as the days progressed was true. Please know I am truly grateful for your words of encouragement and your

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<sup>72</sup> The writer had been a practicing osteopathic physician.

commitments to the class; without [them] I may not have survived. **[On the value of the self-evaluation:]** Writing this paper was very therapeutic for me. Having been away from the academic environment for 8 years I was terrified of failure. Throughout the semester I was haunted by my past academic failures, and for me the commitments have a greater meaning.

I am certain that the final will accurately test me on how well I can apply the material. I am grateful to you for adhering to your commitments to us, and in turn I want to do the very best I can in your class. I take the commitments very seriously and believe I have satisfied them all. Honestly, the feeling I now get when a concept suddenly becomes clear is sometimes more than I can bear. Attending this class has been a great first year experience. The skills you have instilled in the class have been a perfect starting point to ensure we will become the best lawyers we can be.

**AR:**

Thank you for being a wonderful professor and mentor.

**DR [from first semester evaluation—on the value of the commitments]:**

Although the commitments that we made in class seem to be the normal routine a student should have while in school, I think it was a great help to reiterate that routine to the class. Sometimes, students may take these simple rules for granted.

**JS [from a student planning to transfer to a law school in Chicago, his home town]:**

I thank you Professor Silver for your guidance, your professionalism, and your enthusiasm towards my law school education. As inappropriate as it is in this "review" format, I will never forget you Professor Silver. I appreciate that. I will continue to make class commitments for myself, and continue with semester-end self reviews in order to keep myself on track.

The best to you always.

