

PROCEEDINGS

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SHIFTING FROM
“SOFT SKILLS” TO “POWER SKILLS”

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PROCEEDINGS

VOLUME 1

ISSUE 2

SHIFTING FROM “SOFT SKILLS” TO “POWER SKILLS”

The 2020 Southeastern Association of Law Schools (SEALS) Conference Writing Connections Program included a discussion group that re-envisioned “soft” skills as “power” skills critical for success in legal practice. Shifting our understanding from soft skills to power skills demonstrates the importance of cultural sensibility, empathy, and vulnerability to inclusive representation. Power skills set law students apart in the current legal market—making them more desirable and successful, as law firms and organizations seek lawyers who are knowledgeable not only in the law but also in connecting with diverse clients and audiences. Discussants shared the power skill they teach in class, how they communicate its importance in legal education, and why it matters.¹

¹ This summary is drawn from the conference program.

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² The discussion group was moderated by Tiffany Atkins, Elon University School of Law. Other discussants included Renee Allen, The University of St. John's University School of Law; Joe Fore, University of Virginia School of Law; Tiffany Jeffers, Pennsylvania State University, Dickinson School of Law; Joy Kanwar, Brooklyn Law School; Robert A. Parrish, Emory University School of Law; Mikah Thompson, University of Missouri-Kansas City School of Law. Some have published their ideas elsewhere. For example, Joy Kanwar's remarks were drawn from her [2018 article](#) *Avatars, Acting and Imagination: Bringing New Techniques into the Legal Classroom*, 43 J. Legal Prof. 1 (2018) (excerpts were also published as a series of three blogs, co-authored with Kim Ricardo).

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SELF-CARE AS A POWER SKILL

ROSARIO LOZADA¹

Many of our students hold damaging misconceptions about self-care. Some view acts of self-care as weak, needy, self-indulgent, or selfish. Others may deem acts of self-care even unproductive and, therefore, unnecessary. Our students often carry these misconceptions unconsciously. As a result, many of their attempts to engage in healthy habits—such as consistent sleep, mindful nutrition, or meaningful human interaction—are short-lived and rarely prioritized. Yet studies show that self-care, or attending to one’s well-being, correlates to enhanced academic performance, ethical decision-making, and creativity. Students who prioritize their well-being will one day become effective and powerful advocates. And they will be more likely to live professional and personal lives that are consistent with their values.

It’s time to reframe self-care as the power skill that it is— for the benefit of our law students and those sometimes-skeptical educators (including, at times, many of us).

Traditional legal education and professional culture does not prioritize self-care or well-being as integral components of advocacy training. As educators, however, we are uniquely positioned to empower students with the language of well-being. We can also introduce them to habit-formation tools and optimal mindsets that will serve their well-being.

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An In-Class Exercise on Well-Being

The 2017 Report of the National Task Force on Lawyer Well-Being² defines well-being as the ongoing process of seeking to thrive across all dimensions of life—physical, intellectual, emotional, social, occupational, and spiritual. Teachers of all disciplines can introduce this holistic framework to students through an infographic on a PowerPoint slide.³ Next, we can invite students to reflect on one specific domain: “Bring to mind one activity you’ve undertaken, or hope to undertake, that will help you thrive in one of the six domains. Type the domain and the specific activity into the chat box. I’ll start.” In the span of a few seconds, every student and the professor can participate in this exercise. The chat box will be populated with concrete and relatable examples, e.g., “Social—FaceTime with siblings. Physical—two-mile run. Spiritual—write in my journal.” Consider the possibilities. In holding space for this exchange, educators can bring awareness to well-being practices. Students will appreciate the new vocabulary, as well as the opportunity to share with and learn from their peers.

Easy Tools for Habit Formation

Educators can empower students with concrete tools on habit formation. Over time, these tools will help students prioritize their well-being. Much like our students, we are well aware of our “bad” habits—those maladaptive coping mechanisms that we fall back on when life isn’t going our way. Maybe we consume one too many Oreos, KitKats, or Doritos. Perhaps we scroll mindlessly through social media. Or we reach for the remote control and binge-watch a

² National Task Force on Lawyer Well-Being, *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, <https://lawyerwellbeing.net>.

³ The information is available from the National Task Force on Lawyer Well-Being, at https://lawyerwellbeing.net/wp-content/uploads/2020/02/Lawyer-Well-Being-Definition2_EBB-2.png

Netflix series deep into the night—a night when our bodies and minds crave sleep.

Science tells us that our brains have the property of neuroplasticity and that we can create neural pathways that reinforce and support new, desirable habits. According to Kelly McGonigal, health psychologist and lecturer at Stanford University’s Graduate School of Business, habits are developed with three essential “Es”: (i) Ease, (ii) Environment, and (iii) Enjoyment.⁴

Ease refers to starting with manageable goals. We are more likely to engage in an activity if our goal is realistic. For example, “walk-run 10 minutes/day” is a more manageable goal for most than “run two miles/day.” Similarly, “turn off phone 20 minutes before going to bed” may be a more easeful entry into this practice than “no screens for two hours at night.”

Environment invites us to add a reminder of the goal to our physical surroundings. For example, if we hope to start walking or running every day, we may choose to place our running or walking shoes by the front door. If we aim to stretch every morning, we can leave a yoga mat next to our bed. A post-it on the bathroom mirror or a calendar reminder on a “smart” device are additional examples of environmental cues.

Last, Enjoyment refers to the process of intentionally adding elements of joy to our target activity. Examples include exercising to our favorite music or making a healthy meal with a close friend. Alternatively, we can add enjoyment by “rewarding” ourselves after we meet a daily goal. Over time, our brains will associate the activity with some level of personal enjoyment or happiness. As a result, we are more likely to stick with our fledgling habits.

⁴ Kelly McGonigal, Healthy Habits Course for Ten Percent Happier, Session 4. Course outline available at <https://www.tenpercent.com/habits>.

A Mindset that Empowers

Professor McGonigal’s advice includes a kind and strategic reality check: we will, in fact, fall short of meeting our goals and objectives. We will necessarily make “mistakes.” Our best bet is to take these setbacks as points of information and learning, rather than as opportunities to listen to our inner critic, get down on ourselves, or question our abilities. Carol Dweck refers to this approach as having a growth (rather than a fixed) mindset.⁵ Part of having a growth mindset involves knowing and internalizing the truth that any kind of learning process involves temporary setbacks—what some of us label “failures.” Curiosity is also critical to a growth mindset. When—not if—we fall short of meeting a goal, we can become scientists: That is quite interesting. I wonder why I had a pint of ice cream that night? Or I wonder why I binge-watched that show for four hours? We can inquire: What happened before I went into the kitchen? Or before I logged onto Netflix? Curiosity helps us learn from the setbacks and refine our processes for forming new habits. What could I do differently next time?

Conclusion

For maximum impact, educators should model the practice of self-care. We can normalize challenges by sharing personal anecdotes of our self-care strategies, struggles, and setbacks. We can tell our students how we attend to our own well-being, and whether the process is easy (a rarity) or whether it requires intention, structure, and kindness (always).

Self-care is a power skill that demands intention, structure, and ongoing curiosity and kindness. To instill in students the value of self-care as a strength, offer them a well-being vocabulary, tools for healthy habit formation, and a mindset that empowers. And lead by example.

⁵ Carol S. Dweck, *Mindset: Changing the Way You Think to Fulfill Your Potential* (2017).

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THE POWER SKILL OF WORKING WITH OTHERS

ANNE E. MULLINS¹

Working effectively with others is one of the most important skills for lawyer success.² When I tell students I am placing them into permanent teams for the semester, however, the response is not quite enthusiastic. More commonly, the responses range from deer-in-headlights to curiosity tempered with hesitation. The curiosity vanishes and only the hesitation remains after I share that teammate evaluations will be part of their final grade.

I have taught Team-Based Learning (TBL) for over five years. TBL is a collaborative learning process that starts with individual work, followed by teamwork, culminating with feedback; rinse, repeat.³ The backbone of TBL is permanent student teams for the entire semester or year.⁴ Two of the biggest challenges in TBL are getting students to buy into the process early in the semester and getting students to evaluate each others' performance meaningfully.

¹ Anne E. Mullins is a professor at Stetson University College of Law.

² See, e.g., Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competencies Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. Rev. 547, 552 (2014) (reporting that the legal employers the author surveyed considered the ability to initiate and maintain strong relationships “very important to critically important” in new attorney hiring decisions).

³ For more on Team-Based Learning, see e.g., Jim Sibley & Peter Ostafichuk, *Getting Started with Team-Based Learning* (2014); Melissa Weresh, *Assessment, Collaboration, and Empowerment: Team-Based Learning*, 68 J. Legal Educ. 303 (Winter 2019); Anne E. Mullins, *Team-Based Learning: Innovative Pedagogy in Legal Writing*, 49 U.S.F. L. Rev. F. 53 (2015); Sophie M. Sparrow & Margaret Sova McCabe, *Team-Based Learning in Law*, 18 Legal Writing: J. Legal Writing Inst. 153 (2012); Melissa Weresh, *Uncommon Results: The Power of Team-Based Learning in the Legal Writing Classroom*, 19 Legal Writing: J. Legal Writing Inst. 49 (2014).

⁴ The key components of TBL are (1) permanent teams, (2) the readiness assurance process, (3) team exercises, and (4) accountability. See Weresh, *Assessment, Collaboration, and Empowerment*, *supra* note 3, at 306.

In this essay, I share some of the strategies I have developed to overcome these challenges.

Creating Buy-In

Creating buy-in from the very beginning of the semester is key. Semesters are short, and most teams take several weeks to begin functioning effectively. The longer a student languishes in skepticism, the longer it will take the team to reach its full potential. Information alone will (sadly) not overcome the skepticism. I've tried: I have shared stories about the success of teamwork in promoting learning, and I have read excerpts from empirical studies showing that teamwork is one of the most important skills to legal employers. These stories and studies move the needle, but not enough.

After several years of talking to students about their initial reticence, I have realized that "teamwork" has very different connotations based on each student's experiences. Some have experienced teamwork in the academic context as a construct laced with frustration, exploitation, or exclusion. Unclear expectations, unfair division of labor, and poor communication are usually to blame. Moreover, implicit biases can permeate team interaction and replicate systemic discrimination within the team. As a result, I have instituted a three-part process to create buy-in and overcome skepticism. That process includes explicitly defining "teamwork," developing and writing down team members' expectations of each other, and setting goals together.

First, we explicitly define "teamwork" for the purposes of our class. Teamwork means (1) working together so that all members of the group master course objectives, (2) building consensus, (3) fulfilling team expectations, and (4) accomplishing clear objectives together. Successful teamwork requires students to develop self-awareness and ultimately be individually accountable for their learning and progress. Then, the team environment creates two

distinct learning partnerships. The first partnership is between the members of each team. The second is each team’s partnership with me. In my class, these partnerships are sacred.

The affirmative definition alone is not enough. Students also benefit from hearing what teamwork is not. While teamwork means shared responsibility, shared responsibility is not an invitation to economize effort spent. When we say that teamwork requires consensus building, they must appreciate that consensus building actually requires building. Building consensus is hard work; it is not taking straw polls and reflexively deferring to the majority.

Once we have defined teamwork, the teams must determine the expectations for their partnership with each other. A healthy team has shared expectations that all team members understand fully. The teams determine what their expectations are and write them down; I provide input to ensure that their expectations are robust and reasonable. In the process, I also set expectations for their partnership with me.

Typically, the team expectations center on communication, dispute resolution, and privacy. Teams always expect good listening. How the teams define good listening varies; some ask for non-verbal cues that teammates are following along, some ask that teammates remain mindful of talking over others; some ask each other to withhold judgment until after reflection. I usually ask them to add encouraging dissenting voices—usually, there is a dissenting voice, and that voice can become very quiet in the face of a growing and vocal majority.

Teams place high value on effective dispute resolution. They tend to ask each other to address problems directly, one-on-one. They expect respect and kindness during difficult conversations. My add-on to this part of their list is to assume good intentions. For example, if a teammate appears underprepared for class, they should open with an observation and a question. Instead of, “You need to be more prepared for class,” something along the lines of “You

seemed to hold back during our discussion today. Is everything ok?” tends to be more effective. It maybe that the teammate is well prepared for class but is feeling nervous about speaking up. It’s also possible the teammate isn’t prepared for class. If it’s the latter, the teammate is likely to respond with more self-awareness and candor to an inquiry made from a place of concern and kindness.

Finally, teams tend to ask for some form of privacy in the team environment. This way, they can make mistakes and ask questions without fear of looking foolish in front of other classmates. In response, I usually invoke a similar rule for our legal writing class—what happens in legal writing stays in legal writing. Our class is a safe space to make mistakes.

In addition to shared expectations, healthy functioning teams have shared goals. I encourage them to think of their team’s goals, and I require them to include promoting each other’s learning among them. I also commit to them that I will delineate clear learning objectives for every exercise and assignment.

Giving and Receiving Feedback

Generating buy in, however, is not enough to make the TBL model work well. Even students who have bought in to the learning model still struggle with giving meaningful feedback to teammates. Learning to give and receive feedback is a crucial element of being a member of an effective team. Moreover, feedback is a powerful aid to becoming a more self-aware team member and improving teamwork skills. As a result, a core element of Team-Based Learning is peer evaluations.

For me, learning how to teach students to provide effective feedback was a process. The first few times my students evaluated teammates, I fell short. I told them that giving and receiving feedback is a critical skill. I also shared that feedback is the best way to improve developing skills. I then asked them to share positive and constructive feedback for each teammate on an anonymous basis.

The evaluations are part of their final grade, but I emphasized that the evaluations are a very small part of that grade—in my class, less than 2%. I also commit to them that I remove points only for poorly executed evaluations or repeated rounds of evaluations that signal a failure to meet a basic expectation. Notably, I have only ever deducted points for the former; I have never had to deduct points for the latter. With that context, the students sent their evaluations to me. I reviewed them for substance and to ensure that the evaluation will remain anonymous when distributed. I then compiled the evaluations and shared each student’s evaluations with that student.

The evaluations were vague and mealy-mouthed. Most were along the lines of, “You’re great. Keep on doing what you’re doing!” Not helpful. Obviously, telling them the purpose and importance of evaluations did not inspire more meaningful evaluations, so I shared the information again, but this time with gusto. It still didn’t work.

I slowly began to add more direction and structure to the process to help the students produce better substance. I encouraged them to review their written expectations as they evaluated each other. I also gave them prompts, along the lines of these:

Something I appreciate about my teammate is _____.

Something my teammate can improve is _____.

The students were more specific with their positive feedback; the constructive feedback remained vague and unhelpful. Much of the feedback in both categories went to their teammates’ personal characteristics or perceived attitude, and not to their teammates’ contributions as a teammate.

I designed the next iteration of the prompt to focus the students specifically on learning within the context of the team.

My teammate promotes our team's learning by _____.

My teammate could better promote our team's learning by _____.

The focused frame produced far more substantive evaluations. The constructive feedback, however, still remained more timid than the positive feedback.

I finally refined the constructive feedback prompt in terms of offering advice instead of giving feedback or criticism. I made the change after reading an article on how executives can elicit more meaningful constructive feedback from their subordinates.⁵ While that dynamic is not entirely analogous to the TBL dynamic, the underlying obstacles to feedback were eerily similar: Evaluators held back out of fear that the person being evaluated did not want to hear constructive feedback. On top of that, students frequently express discomfort critiquing other students' work because they have not yet mastered the skills they are evaluating. Framing reviews in terms of advice seems to put students more at ease because they don't feel as though they are representing universal truths; they're representing only their truth. As a result, I currently use the prompts:

My teammate promotes our team's learning by _____.

My best advice to my teammate on how to better promote our team's learning is _____.

Jackpot! The refined prompts, along with class discussion about the purpose and importance of evaluations, produce much more meaningful information for the students.

⁵ Robert S. Kaplan, *Top Executives Need Feedback—Here's How They Can Get It*, McKinsey Quarterly, 2011, Issue 4 at 60, 60-71.

Over the last two years, I have added a self-reflection component to the team evaluations. Before evaluating any teammates, students must complete the following prompts themselves:

I promote our team’s learning by _____.

I could better promote our team’s learning by _____.

The quality of the responses from the first times my students did evaluations to now is markedly improved. My suspicion is that the required self-reflection encourages students to examine more closely their team’s written expectations as they engage in the exercise. I also suspect that it frees them to give feedback to each other—if they are assessing themselves closely, they are more comfortable assessing their teammates closely as well. The self-reflection piece also adds an opportunity for them to evaluate their own skills of self-assessment. If their perceptions of their contributions differ significantly from their teammates’, they learn that they may need to practice more self-awareness.

Creating buy-in and eliciting meaningful evaluations have been my biggest challenges in using Team-Based Learning. Providing structured opportunities for team formation to define teamwork, develop expectations, and set goals helps students buy into the team approach. Pairing self-evaluation with teammate evaluation and facilitating those evaluations with focused prompts produces more meaningful evaluations. My journey is a nice reminder that, as in most things, strong structure produces strong substance.

THE POWER OF EMPATHY: CULTIVATING CULTURALLY COMPETENT LAWYERS

EUNICE PARK¹

The ability to connect with diverse clients and audiences is not a soft skill, but a power skill. This connection is just as important as substantive knowledge and is essential for the competent practice of law. Fostering that connection must start with recognizing one's own positionality. Without that starting point, there can be no way to step beyond and recognize the validity of other positionalities. Thus, one challenge in the classroom is to cultivate this ability to recognize positionality. To use the language of assessments and learning outcomes, how do we cultivate this aspect of cultural competence?

One way is by building empathy. One cannot be culturally competent if one is in a silo, if one lacks empathy. Two ways to be intentional about building empathy in the classroom, as a pathway to cultivating culturally competent lawyers, include (1) modeling awareness as the professor; and (2) integrating culturally meaningful facts into assignments.

Modeling by the Professor

Students respond differently to instructors on the basis of their visible or perceived identity, including race and gender. The responses, at least initially, can include “a sense of trust, affinity,

¹ Eunice Park is Professor of Legal Analysis, Writing, and Skills at Southwestern Law School.

authenticity, hope, as well as distrust, alienation, skepticism, or isolation.”²

You can begin your modeling when introducing yourself to students by showing your awareness of that positionality, such as racial and social location.³ Modeling awareness of one’s own positionality allows for understanding, first of all, that such a thing as positionality exists, for those students who may not have considered it before; it also creates space for students to be able to critically evaluate their own.

While no formula can be stated for how to model awareness, conveying humility in one’s narrative will send the important message that you are the professor but also a human being, one who can make mistakes and also is committed to learning from them, and allows room for students to do the same and accept one another.⁴

Ultimately, what one decides to share will be a personal decision based on comfort zone and the makeup of the students. As an example, when I taught LL.M courses and had many international students, I shared a bit about my family’s immigrant background and the fact that I did not speak English when I started attending school. What works “for a white male instructor in a room full of students of color,” might not work for a female person of color “facing mostly white students.”⁵

In sum, sharing one’s own personal narrative invites students “to bring their whole selves to academic settings” and also to see—and have empathy for—other students’ whole selves.⁶

² M. Brielle Harbin, Amie Thurber & Joe Bandy, *Teaching Race, Racism, and Racial Justice: Pedagogical Principles and Classroom Strategies for Course Instructors*, 4:1 *Race and Pedagogy* J. 1, 14 (2019).

³ *Id.* at 25.

⁴ *See id.*

⁵ *Id.*

⁶ *Id.*

Integrating Meaningful Cultural Perspectives into Assignments

“Cultural perspectives” can address race, socioeconomics, gender, institutional structure, industry background, or any other demographics that can comprise positionality. In our increasingly global community, cultural perspectives can include different countries that opposing counsel, co-counsel, or clients may represent.

To teach this power skill, design assignments to incorporate cultural context that meaningfully affects the legal issue or task at hand, to instill awareness of this diversity’s significance. Two ways to do so are to include cultural context that affects (1) critical analysis of a legal issue; or (2) choices one can make about strategies in a skill set, such as negotiations.

Critical analysis of a legal issue

The following appellate brief problems are a few examples of assignments that plant culturally meaningful, legally significant facts that could affect the analysis:

Curtilage. The issue of whether the defendant’s shack was part of the domicile, under the Fourth Amendment, required the student to look beyond the Western definition of what is a “home” or “domestic use.”⁷

Confrontation Clause. The issue of whether the defendant’s Sixth Amendment rights of confrontation was violated gave students the opportunity to address the effect of the witness’s gender, her possibly involuntary role as the defendant’s female companion, and the argument that having a group of men in the courtroom made her fear for her safety.

⁷ Eunice Park, “Establishing Learning Outcomes Under ABA Standard 302: Cultural Competence,” AALS Section on Teaching Methods Newsletter, Fall 2016, at 6.

Sexual Harassment. The issue of whether the employer’s conduct created a hostile work environment under Title VII included the opportunity to discuss whether the plaintiff’s ability to make choices can be hindered by lack of workplace power or socioeconomic standing.

Strategic choices

Cultural factors also should dramatically affect negotiation strategy when the principals are, for example, from different countries. Differences in how to prepare and approach a negotiation can depend on cultural values, such as the following:⁸

- Goal: Is the goal an immediate substantive outcome, or a long-lasting relationship?
- Formality: What are the expectations regarding the formality of dress code or greetings?
- Communication: How does body language and tone of voice that may simply be typical of a culture affect perception and credibility by an individual from a different culture?
- Risk-Taking Propensity: How risk-averse is one’s own, or the other party’s, culture?
- View of Time: What are the attitudes held about time and punctuality?

Make students aware of these cultural frameworks and let them know that beginning a negotiation without awareness of such differences in cultural expectations is to undertake professional risk. Beginning with awareness, on the other hand, not only of the other party’s cultural expectations but also of one’s own cultural

⁸ See Jeswald W. Salacuse, “Negotiating: The Top Ten Ways that Culture Can Affect Your Negotiation,” Ivey Business Journal (Sept./Oct. 2004), <https://iveybusinessjournal.com/publication/negotiating-the-top-ten-ways-that-culture-can-affect-your-negotiation/>.

assumptions, requires being informed and empathetic, and will directly, and positively, impact the success of the negotiations.

Conclusion

Cultural competence is a power skill more than ever in the current sociopolitical climate. Cultivating culturally competent lawyers requires us to teach, among other tools, an ability to be empathetic. We can do this in the classroom by modeling awareness of positionality and by integrating culturally sensitive facts into assignments in analytically important ways.

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PROFESSIONAL IDENTITY FORMATION AS A POWER SKILL

L. DANIELLE TULLY¹

Law school is disorienting, especially in the first year, as students begin their socialization to the profession. This socialization impacts professional identity construction by defining roles, communicating norms, and unspooling narratives about what it means to be a lawyer and to practice law. For too long, the end goal of this socialization has been to “think like a lawyer,” and thinking like a lawyer has meant mastering black letter law, tactical issue spotting, and dispassionate communication.² As a result, many new law students find themselves quickly adrift, cut-off from their former selves.

The False Narrative of Neutrality

Despite decades of critique and various reform efforts, the traditional law school curriculum continues to replicate White dominant social culture and perpetuate a false narrative that law—not to mention the study of it—is neutral. Although some first-year podium professors integrate critical perspectives into their courses, most of these courses are taught exclusively from edited appellate decisions that gloss over human context and long-entrenched power structures. While focusing on black letter law to the exclusion of most everything else, first-year podium courses flatten the law and,

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² See Stephen Wizner, *Is Learning to “Think Like a Lawyer” Enough?*, 17 Yale L. & Pol’y Rev. 583, 589 (1998) (suggesting that it is “possible to discourage fuzzy thinking and sentimentalism, and to teach ‘abstract hypothetical-deductive critical thinking skills,’ while at the same time raising and addressing moral issues and encouraging humane responses to human experience”) (footnote omitted).

as Lucy Jewel notes, “privilege[] technical form and levels of legal authority over social contexts and moral issues.”³

Even in their more intimate legal writing courses, students focus on form—like mastering predictive analysis—rather than context. While some legal writing professors have embraced concepts such as cultural sensibility and social cognition, the discipline as a whole has not. Few legal writing textbooks discuss how social cognition and culture impact laws’ creation, interpretation, and implementation. And, none address race or structural oppression.

Challenging the White-normative professional identity framework is essential to rebuilding the legal profession. And, rebuilding the profession begins with what we teach our students. To prepare law students to practice law ethically, promote justice, and improve the legal profession, law professors must invite their students to connect their multidimensional experiences to their study and practice of law.

Professional Identity Formation

All professors of 1L courses can support professional identity development before their courses begin and keep the conversation going all semester long. Those who teach smaller sections of 1L students are particularly well-positioned to guide students in professional identity formation, but all professors can take small steps to assist students in developing their authentic identity as lawyers.

Refocusing Introductory Surveys. Prior to the semester’s start, professors can create an introductory survey with questions that subvert the typical gatekeeping questions about prior educational

³ Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 *Buff. L. Rev.* 1155, 1196 n.226 (2008).

and work experiences, which may entrench race, class, and gender hierarchies rather than level the playing field.⁴ Instead, survey questions can invite law students to consider their personal and cultural experiences before law school because those experiences will impact how they interpret, apply, and communicate the law. For example, I ask students to tell me how they approach problem solving either by explaining their process or by telling me a story about a problem they tried to solve. I also ask them to briefly describe any paid and unpaid work experience that they bring with them to law school. I ask them to tell me what they learned from these experiences and how that learning will help them on this new journey. I also let them control the response medium. They can tell me one story or several, and they can share a written document, audio recording, or video. I prime the answers by sharing my own.⁵

⁴ See Christopher Williams, *Gatekeeping the Profession*, 26 Cardozo J. Equal Rts. 171 (2020) (discussing various gate-keeping functions at work from law school admissions to post-graduate legal employment).

⁵ Here are my responses to those two questions this year: (1) For this question, I think about the various problems I have solved or attempted to solve and how. **Think, research, plan, try, recalibrate, try again.** Those five verbs capture my general process, but they don't always happen in that order. Sometimes problems emerge that require a different order. If the problem involves other people two other verbs are important: **listen and communicate.** One other thing I continue to work on is **embracing failure** as part of my learning and problem-solving processes. **I am also very determined.** (2) Between college and law school, I coordinated a five-agency initiative that sought to build community and enhance economic development in East Boston. As part of my job, I raised and managed the project's annual operating budget of \$150,000, developed and implemented action plans, and worked with diverse partner organizations to support community development. **Here I learned to listen to competing constituency interests and find common ground.** During college, I was a dishwasher and waitress, and I took care of school-aged children. **Here I learned patience, clear communication, and humility.** During two college summers I worked at Summerbridge Portland teaching rising 7th, 8th, and 9th graders and serving on the program's leadership team. **Here I learned how to be a member of and how to lead a high functioning team.** During time-off from college, I was a failed au pair in Madrid, Spain. **Here I learned that it is okay to quit.** I also spent six months volunteering at an orphanage in Honduras. **Here I learned the difference between service that builds dependency and service that supports self-determination.** I worked and volunteered in high school, too, where **I learned how to juggle multiple obligations.**

Beyond introductory surveys, professors should encourage students to continue to explore their personal, intersectional identities through frequent self-reflection. Using podcasts or TED Talks as a spring board, professors can ask students to think about how their own identities and experiences impact their reaction to and understanding of the material they are encountering.⁶ In addition to deepening a student's understanding of their own identities, purposeful discussions of the legal profession, lawyering, and professional identity development can help students to feel a sense of belonging and agency. This is particularly important given continuing segregation in law schools and institutions of higher education. Once started, professors should keep the conversation going throughout the 1L year.

Incorporating Ethics. Currently, most law students learn about legal ethics in a separate, required, upper-level professional responsibility course. Instead, students should consider the ethical and moral dimensions of law and law practice from the start of their education.⁷ They can do this by specifically exploring and critiquing the ethical rules governing the profession and imagining “a new code of ethics for lawyers,” as Purvi Shah implores in *Rebuilding the*

⁶ I developed an exercise that I have given my students during the first week of the fall 1L semester as part of setting ground rules and course expectations based on a TED Talk by Taiye Selasi. (https://www.ted.com/talks/taiye_selasi_don_t_ask_where_i_m_from_ask_where_i_m_a_local?language=en). After watching the TED Talk together, students consider the rituals, relationships, and restrictions that impact their identities. The exercise is meant to help students consider how identity shapes our role as lawyers and how it informs, changes, and reifies the law.

⁷ See Nelson P. Miller, *An Apprenticeship of Professional Identity: A Paradigm for Educating Lawyers*, Mich. Bar J. (2011) (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1924917) (arguing that the integration of ethical and moral considerations into more traditional, doctrinal courses allows for more nuanced professional identity development that incorporates a humanistic approach to the profession).

Ethical Compass of Law, “that is aspirational and inspirational; an ethical north star versus a bare minimum.”⁸

When building “traditional skills,” like case reading and rule synthesis, professors should expose students to how mental schema and master narratives impact their understanding of the law and impact legal problem solving. For example, professors can assign not only Orin Kerr’s *How to Read A Legal Opinion*⁹ but also Bennet Capers’s *Reading Back, Reading Black*¹⁰ and engage students in exploring the form and function of legal authority. On the one hand, legal opinions “follow a simple and predictable formula”¹¹—a genre students can learn. The “Facts of the Case” is one component of this genre.¹² Contrary to Kerr’s suggestion, though, the facts don’t just tell us what happened. They tell us which facts the judge selected from the facts presented by the parties. They tell us “a” story about what happened. Rather than accepting the facts at (neutral) face value, professors should encourage students to engage in transformative legal analysis¹³ by evaluating how culture, context, and cognition affect which facts are included and which are omitted from legal opinions. Doing so invites students to adopt a critical lens and understand how legal authority functions to produce and reproduce meaning.¹⁴ As Kerr aptly notes, “[i]f you don’t know the facts, you can’t really understand the case and can’t understand the law.”¹⁵

⁸ Purvi Shah, *Rebuilding the Ethical Compass of Law*, 47 Hofstra L. Rev. 11, 16 (2019).

⁹ Orin Kerr, *How to Read A Legal Opinion: A Guide for New Law Students*, 11 Green Bag 2d 51 (2007).

¹⁰ I. Bennett Capers, *Reading Back, Reading Black*, 35 Hofstra L. Rev. 9 (2007).

¹¹ Kerr, *supra* note 9, at 51.

¹² Kerr, *supra* note 9, at 53.

¹³ L. Danielle Tully, *The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 Stan. J. C.R. & C.L. 201, 237-38 (2020). I note in the article that the term “transformative legal analysis” is inspired by the work of Professor Lucy Jewel, a legal writing and rhetoric scholar. *Id.* at 207 n.27; see also Lucy Jewel, *Neurorhetoric, Race, and the Law: Toxic Neural Pathways and Healing Alternatives*, 76 Md. L. Rev. 663, 680 (2017).

¹⁴ See Capers, *supra* note 10, at 11 (noting “judicial opinions function as grand narratives, as master texts that contribute to an ideology of race and racial hierarchy.”).

¹⁵ Kerr, *supra* note 9, at 57.

Deepening the Human Context. Professors should also aim to counteract the prevalence of one-dimensional “cardboard clients”¹⁶ by considering the identities and experiences of the fictional characters who people their simulated legal problems or hypotheticals. While simulated clients can never replicate live-client representation, fictional clients can reflect the intersectional identities born of our lived realities. To this end, rather than waiting until a 2L externship placement or 3L clinic, professors can help students develop cultural sensibility in the 1L year by introducing Professor Sue Bryant’s seminal piece: *The Five Habits*.¹⁷ Professors in legal writing courses can have students complete an exercise based on the first habit, “Degree of Separation and Connection,” to understand their similarities to and differences from simulated clients. As part of the exercise, the students would discuss how the similarities and differences affect their ability to gather facts, identify legal issues, and communicate with their clients.¹⁸ Professors in podium courses can extend this exercise by considering concepts like reasonableness and asking students to imagine the “reasonable person.”¹⁹ In addition, they can assign law review articles, book chapters, and podcasts to help students

¹⁶ See Ann Shalleck, *Constructions of the Client Within Legal Education*, 45 *Stan. L. Rev.* 1731, 1733-39 (1993) (discussing the construction of clients in a typical law school classroom).

¹⁷ Susan Bryant, *The Five Habits: Building Cross-Culture Competence in Lawyers*, 8 *Clinical L. Rev.* 33 (2001).

¹⁸ See Tully, *supra* note 13, at 251. For other suggestions on applying *The Five Habits* in large first-year required courses, see Mikah K. Thompson, *Toward a Pedagogy of Cultural Self-Awareness in the First-Year Law School Classroom*, *Cultural Competence in Higher Education*, forthcoming (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3435854).

¹⁹ Thanks to Professor Osamudia James for this idea. In her Torts class, she asks students to close their eyes and picture the reasonable person. She asks: Who is this person? What do they look like? Where do they live? How do they move around the world? Students then open their eyes, and she asks a series of questions about who or what they conjured. Osamudia James, Professor, University of Miami Law School, Presentation at the Boston University School of Law Symposium: *Racial Bias, Disparities and Oppression in the 1L Curriculum: A Critical Approach to the Canonical First Year Law School Subjects* (Feb. 28, 2020) (remarks on file with author).

connect with and contextualize the cases they read.²⁰ Adding context and dimensionality allows professors to engage students in conversations about the complex people and stories they will encounter in practice. It also allows students to connect their identities and experiences to their law study.

Conclusion

Inviting students to cultivate their professional identities as a power skill during their 1L year reinforces the notion that, much like a lawyer’s duty of competence under the Model Rules, professional identity development requires an ongoing commitment to self-reflection, inquiry, and growth. When professors approach teaching professional identity development (and all lawyering skills) through an intersectional lens, we can begin to create an educational space that is a little less disorienting, and a profession where everyone feels they belong.

²⁰ For a simple, engaging addition to a discussion on “reasonable person,” include the podcast “Mr. Graham and the Reasonable Man.” Radiolab, *Mr. Graham and the Reasonable Man*, More Perfect (2017), <https://player.fm/series/radiolab-presents-more-perfect/mr-graham-and-the-reasonable-man> (last visited Dec. 1, 2020). For examples of scholarship on the reasonable person standard see Ann C. McGinley, *Reasonable Men?*, 45 Conn. L. Rev. 1 (2012) (discussing the reasonable person standard in negligence law and Title VII); Lucy Jewel, *Does the Reasonable Man Have Obsessive Compulsive Disorder?* 54 Wake Forest L. Rev. 1049 (2019) (exploring the cultural and legal attributes of the reasonable man).