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### Symposium Introduction: Sharing Stories about Our Commitment to Teaching Ethics Symposium: Recommitting to Teaching Legal Ethics- Shaping Our Teaching in a Changing World

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# SYMPOSIUM INTRODUCTION: SHARING STORIES ABOUT OUR COMMITMENT TO TEACHING ETHICS

*Steven H. Hobbs\**

## I. INTRODUCTION

When Dean and Professor Mary Kay Kane<sup>1</sup> became President of the American Association of Law Schools (“AALS”) in January 2001, she announced that the theme for her presidency would be, “Recommitting to Teaching and Scholarship.”<sup>2</sup> She invited us to engage in conversations about what we value and honor in our teaching and our scholarship. She said that:

We are blessed with the ability to pursue our ideas and research as we wish. The chance to spend time thinking about what we do, why we do it, and how we can do it more effectively is an opportunity not to be missed. Thus, I hope that this year will spur a robust dialogue and encourage the kind of collegial debate and sharing of ideas among faculty that is the ideal of our learned profession.<sup>3</sup>

By focusing on *re-commitment*, she was suggesting that we might be Janus-like and look backward and forward at the same time.<sup>4</sup> Look back

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\* Tom Beville Chairholder of Law, University of Alabama School of Law.

1. Dean Kane served as President of the AALS from January 2001 to January 2002. She is Chancellor, Dean, and Distinguished Professor of Law at The University of California, Hastings College of the Law.

2. Mary Kay Kane, *President's Address: Recommitting to Teaching and Scholarship*, THE NEWSLETTER (Association of American Law Schools, Washington, D.C.) Feb. 2001, at 5.

3. *Id.* at 6.

4. In the President's Address, Dean Kane further stated:

This year marks the first of the new century. It thus seems an appropriate time to stop and to take stock of just how far legal education and law schools have come in the past 100 years, as well as to reflect on the question of what legacy we want to leave for those in legal education when the 22<sup>nd</sup> Century unfolds. This opportunity for reflection is not an indulgence; it is a necessity. We live in a fast-paced world, with almost daily changes and challenges raised by technology and globalization. It is critical for us to take stock of where we are and where we want to be so that we

to what we value most about the task of teachers and the role of the scholar in unfolding new knowledge.<sup>5</sup> Look forward to this new century in a rapidly changing world and test how those values not only hold up to critical examination and reflection, but also ground our vision of the future. Hence, those examined values will frame, we hope, a renewed commitment to excellence in teaching and scholarship.<sup>6</sup>

Dean Kane was inviting us to share our stories about teaching and scholarship.<sup>7</sup> The AALS Section on Professional Responsibility dedi-

can adapt to the changes around us in a way that preserves our core values, while enhancing and furthering our teaching, scholarship, and public service missions.

*Id.* at 1.

5. Professor Howard Lesnick considers this idea of looking back by asking the question of how we seek personal fulfillment when and as we become lawyers. Howard Lesnick, *Personal Fulfillment in the Changing World of Law Practice: Opportunities and Obstacles*, 72 TEMP. L. REV. 1011 (1999). He suggests that reflection on the past is critical to charting a future direction:

The question is how we can tame the influences of this world on our mind and our work situation, so that, living our lives "by our own pondered thoughts," we can find our own way toward fulfillment as a lawyer. The answer, of course, is that I don't know. But let me recall a few lines from Robert Pirsig's *Zen and the Art of Motorcycle Maintenance*:

You look at where you are going and where you are, and it never makes sense. But then you look back at where you've been, and a pattern seems to emerge. And if you project forward from that pattern, then sometimes you can come up with something.

When you look back, what do you see? That's a question I *can* answer: When you look back, you see what came before. In some Buddhist traditions everyday begins with a service in which the names of "Buddhas and ancestors" are recited, a lineage that goes back twenty-five hundred years. Now *there* is a practice calculated to give one some perspective on what's important and what isn't.

*Id.* at 1016 (citations omitted).

6. The issue of taking up a critical examination of the values we hold dear in our profession was considered by Nathan Crystal in examining what the profession meant by holding on to our core values in the context of the multidisciplinary practice debate held by the ABA in the context of the Report of the Multidisciplinary Commission at the July 2000 ABA Annual Meeting. Nathan M. Crystal, *Core Values: False and True*, 70 FORDHAM L. REV. 747 (2001). He proposed a method of doing the critical reflection:

To decide whether a professional value qualifies as a core value, I suggest a two-step approach. First, define precisely the value at issue to eliminate ambiguities and uncertainties about the meaning and scope of the value. Second, analyze whether the value qualifies for treatment as a core value. In making this determination, one should consider both the history and the importance of the value to the professional role. History of the value is significant because it is to be expected that core values find expression early in the history of professional ethics. The importance of the value to the professional role is significant because a value that has only marginal or uncertain importance hardly qualifies as a core value.

*Id.* at 749.

7. Dean Kane suggested,

now is the time that conversations and thinking about these core values should begin in individual member schools. In that way, faculty members can help shape their school's development and responses to these emerging technological and global opportunities, and they can better mentor their junior faculty as to what is expected of them. More specifically, individual faculty members should engage in some personal reflection and exchanges to consider how we want to develop professionally in light of emerging opportunities.

Mary Kay Kane, *supra* note 2, at 5.

cated its 2002 annual meeting to a consideration of the teaching of ethics. Our specific theme was: Recommitting to Teaching Legal Ethics: Shaping Our Teaching in a Changing World. We acknowledge to ourselves that ethics is a challenging course to teach and certainly our scholarship reflects a desire to understand how to better teach the course.<sup>8</sup> Thus, the invitation to share stories about our teaching was timely. Moreover, sharing our stories was necessary for meeting the aspirations of the annual meeting theme, as Professor Laura Gardner Webster posits, I view storytelling as the essential means of circulating wisdom, reaffirming commitment, and restoring hope.<sup>9</sup>

At our meeting, we sought to offer a forum for sharing our stories about teaching ethics and an opportunity to join in the continuing dialogue on improving the teaching of ethics.<sup>10</sup> In keeping with the theme of the 2002 AALS Annual Meeting, we sought to examine and reflect upon the task of teaching professional responsibility in an era of fast-paced changes.<sup>11</sup> Certainly, our subject matter has evolved significantly since

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8. See Lisa G. Lerman, *Teaching Moral Perception and Moral Judgment in Legal Ethics Courses: A Dialogue About Goals*, 39 WM. & MARY L. REV. 457 (1998). Professor Lerman crisply captures the angst we feel as we continue to work towards advancing our teaching pedagogy:

We produce a stream of creative teaching materials, videotapes, . . . simulation courses, clinical ethics courses, intensive week-long courses, multi-semester programs integrating the teaching of lawyering skills and legal ethics, interdisciplinary courses, specialized ethics courses, and proposals for the pervasive teaching of ethics. The exchange of information draws us to meetings, as does our wish to keep up with the burgeoning law governing lawyers. But for many of us, another draw is the sense of failure and the quest to find a different formula for success.

*Id.* at 458-59 (citations omitted).

9. Laura Gardner Webster, *Telling Stories: The Spoken Narrative Tradition in Criminal Defense Discourse*, 42 MERCER L. REV. 553, 557 (1991).

10. This article liberally uses the metaphor of stories. Stories and storytelling is often used as a medium for conveying knowledge and reflections about the law, lawyers, and legal ethics. See Carrie Menkel-Meadow, *Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 FORDHAM L. REV. 787 (2000). The importance of telling stories was highlighted in work by Professor Roger C. Cramton and Susan P. Koniak in their article, *Rule, Story, and Commitment in the Teaching of Legal Ethics*, 38 WM. & MARY L. REV. 145 (1996). They observed:

"Stories" provide the context and detail essential to understanding and applying legal rules. One cannot determine the meaning of rules or the priority among rules that conflict until stories put some flesh on the bare bones of those rules. Stories that provide metaphors for lawyering, such as the lawyer as the champion of individuals who face state and private oppression, are part of the professional personae of all American lawyers. Stories of lawyer-heroes feature in the imagination of all lawyers and figure prominently in the teaching method employed by some. Cases of the more mundane sort, flowing from disciplinary boards, civil and criminal charges against lawyers, agency proceedings, and court-imposed sanctions give meaning to the law of lawyering by providing specific situations and practice contexts that interpret and give life to ethics rules. These cases also contain echoes of metaphor stories lurking in the background.

*Id.* at 177.

11. Our meeting was not the first time that teachers of legal ethics gathered to discuss how to teach the material. On January 4, 1990, at its annual meeting, the AALS sponsored a Mini-Workshop: Teaching the Law and Ethics of Lawyering Throughout the Law Curriculum. Papers from that meeting are published at Symposium, *Teaching Legal Ethics: A Symposium*, 41 J. LEGAL EDUC. 1 (Mar. 1991). Professor Roger C. Cramton introduced the symposium issue by describing

professional responsibility became a mandatory curriculum entry in the mid-1970's.<sup>12</sup> Our thinking and our scholarship on the subject has become deep and sophisticated, as its margins have expanded exponentially.<sup>13</sup> Accordingly, we designed a discussion panel of teachers with diverse perspectives on the teaching of ethics to share the story of their experiences in teaching the course. They included Antoinette Sedillo Lopez from the University of New Mexico, Russell Pearce from Fordham University, Richard Painter from the University of Illinois, Bradley Wendel from Washington and Lee University, and Elizabeth Alston, a

the mini-workshop:

The general sessions were designed primarily to provide an overview of some major controversies concerning the role and function of lawyers. The nine small-group sessions provided an opportunity for law teachers to meet with colleagues who had attempted to infuse professional responsibility issues into the teaching of a particular subject. Short presentations describing efforts to introduce the law and ethics of lawyering into first-year and core curriculum courses were followed by group discussions.

Roger C. Cramton, *Teaching Legal Ethics: A Symposium—Introduction*, 41 J. LEGAL EDUC. 1 (Mar. 1991). Whether to teach the material as a single course or through the curriculum is a continuing topic of discussion. See Russell Pearce's article in this Symposium issue, Russell G. Pearce, *Legal Ethics Must Be the Heart of the Law School Curriculum*, 26 J. LEGAL PROF. 159 (2002). This topic was also explored in Symposium, *Teaching Legal Ethics*, 58 LAW & CONTEMP. PROBS. 1 (1995). Symposium, *1997 W. M. Keck Foundation Forum on the Teaching of Legal Ethics*, 39 WM. & MARY L. REV. 283 (1998).

12. At the 1990 Mini-Workshop on Professional Responsibility, Professor Roger Cramton summarize the emergent nature of the subject matter:

The law and ethics of lawyering are now recognized as a central aspect of legal education. Once left to scattered lectures by visiting dignitaries, the legal, moral, and social aspects of lawyering have become a legitimate and important field of scholarly inquiry, professional discourse, and law school instruction. Professional responsibility courses are offered in all law schools and required for graduation in nearly all. The quantity and quality of empirical and theoretical scholarship in the field have risen dramatically. There is little or no dissent from the general proposition that every law student should acquire a basic understanding of what the profession does, the law and policy bearing on its activities, and the moral and social significance of lawyering.

Roger Cramton, *Teaching Legal Ethics: A Symposium—Introduction*, 41 J. LEGAL EDUC. 1, 1 (1990).

The debate then, as now in this Symposium issue, is how best to accomplish this pedagogical goal. Professor Teresa Stanton Collett recently observed the need for continued dialogue:

Teaching professional responsibility has matured. People who have taken innovative approaches now feel that those approaches have at least produced enough evidence that they can discuss their experiences. They talk about what they have tried, how it worked, what problems remain with the approach, and what successes recur every time. Although these discussions are not empirical studies, they are the beginning attempts to determine the best methodologies to achieve particular objectives in teaching professional responsibility.

Yet clear definition of those objectives seem illusive. Debate still rages between advocates of the moral philosophy, law of lawyering, and practical judgment approaches. Many of us want to embrace all three, yet in the two-to-three credit hours allotted in most law schools doing one well is difficult enough.

Teresa Stanton Collett, *Teaching Professional Responsibility in the Future: Continuing the Discussion*, 39 WM. & MARY L. REV. 439, 451 (1998) (citations omitted).

13. The range of the ideas expressed in this Symposium issue is a wonderful reflection of the intellectual growth of our subject.

Louisiana practitioner with extensive experience teaching legal ethics in continuing education courses and working on bar ethics committees.

The discussion panelists were asked to consider the program theme with several goals in mind. First, the practice of law and the regulation of lawyers have become increasingly diverse and complex as we experience the rush of specialization, globalization, technology, multidisciplinary and multijurisdictional practice, and the economics of contemporary practice.<sup>14</sup> One can hardly imagine the practice of law even in the near future, with so many technological and innovative developments in the service industry. What the poet Kahlil Gibran said about children is equally true about our students—"You may house their bodies but not their souls, For their souls dwell in the house of tomorrow, which you cannot visit, not even in your dreams."<sup>15</sup> Clearly it is imperative that we engage in a dialogue reflecting upon our role as teachers of students who will face new and multi-layered challenges in the effective, competent, and ethical practice of law in the 21<sup>st</sup> century.<sup>16</sup> The challenge for teachers of professional responsibility is, not only to keep up with the often daunting changes, but also to reflect upon exactly what our goals and objectives are in teaching the course given the practice of law in a world yet born.<sup>17</sup>

Second, there is a broad spectrum of opinion on what the goals and

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14. See Mary C. Daly, *The Ethical Implications of the Globalization of the Legal Profession: Challenge to the Teaching of Professional Responsibility in the Twenty-First Century*, 21 *FORDHAM INT'L L.J.* 1239 (1998); see also *Thinking Globally: Will National Borders Matter to Lawyers a Century From Now?*, 1 *J. INST. STUDY LEGAL ETHICS* 297 (1996); Roger C. Cramton & Peter W. Martin, *Information Technology and Legal Ethics: Expanding The Teaching and Understanding of Legal Ethics Through the Creation of a New Generation of Electronic Reference Materials*, 58 *LAW & CONTEMP. PROBS.* 337 (1995) (discussing the new world our students will face in a global and highly technical world).

15. KAHLIL GIBRAN, *On Children, in THE PROPHET* 21 (Walker & Co., N.Y. 1986) (1923).

16. See Andrew M. Perlman, *A Career Choice Critique of Legal Ethics Theory*, 31 *SETON HALL L. REV.* 829 (2001) (discussing how law schools, in crafting legal ethics instructions, should consider the various ways students will practice and the ethical implications of choosing one employment venue over another).

17. Professor Dale Whitman, the 2002 AALS President and Dean at the University of Missouri-Columbia School of Law, noted in his Presidential Address that the legal academy has made many changes and improvements in delivering legal education over the past decade. However, he further noted future challenges:

Finally, I would suggest that we have not yet fully come to grips with the fact that the clients our students will serve as lawyers are increasingly engaged in global enterprises and transactions. Even litigation, traditionally the most local of activities, often takes the form today of international arbitration. Thousands of small American enterprises which a decade or two ago would not have considered doing business across national boundaries are doing so today. We are not yet doing a good enough job of training our students to represent them. I hope to make our role in globalization the theme of the plenary session at next year's annual meeting in Washington, and we will sponsor a world-wide conference for legal educators in 2004 that will examine the "global curriculum."

Dale Whitman, *President's Address at 2002 Annual Meeting* THE NEWSLETTER (Association of American Law Schools, Washington, D.C.) Feb. 2002, at 7.

objectives of the course should be.<sup>18</sup> The panelists for our program were chosen in part because they each take varying perspectives on the topic.<sup>19</sup> Their ideas and points of view are presented in this Symposium issue and reflect the dynamic nature of the dialogue on teaching ethics.

Third, as academic scholars, we have a tendency to address these subjects from a scholarly, theoretical point of view. Certainly, such scholarly reflections are invaluable for exploring and expanding our knowledge base for the subject.<sup>20</sup> Ultimately, we have to apply this knowledge in the classroom to students who approach the course with some skepticism.<sup>21</sup> So the panelists were asked to comment on our theme from a pedagogical frame of reference. In other words, we sought to promote a dialogue which focused on how the various teaching methodologies are presented by the professors and received by the students.<sup>22</sup>

18. See *supra* note 11.

19. Papers by the panelists are published in the Spring 2002 issue of *The Journal of the Legal Profession*. See Elizabeth A. Alson, *Fundamentalism in the Legal Education Curriculum*, 26 J. LEGAL PROF. 123 (2002); Antoinette Sedillo Lopez, *Teaching a Professional Responsibility Course: Lessons Learned from the Clinic*, 26 J. LEGAL PROF. 149 (2002); Russell G. Pearce, *Legal Ethics Must be the Heart of the Law School Curriculum*, 26 J. LEGAL PROF. 159 (2002); W. Bradley Wendell, *Ethics for Skeptics*, 26 J. LEGAL PROF. 165 (2002).

20. The past decade has witnessed an explosion of research on legal ethics as we expand the boundaries of our knowledge on what is encompassed in the field. Much of the rich and deep work can be found in symposium issues of various law journals, as the following examples demonstrate but a sampling of recent publications: *Conference: Legal Ethics: The Core Issues*, 1 J. INST. STUDY LEGAL ETHICS 1 (1996); *The Phyllis W. Beck Chair in Law Symposium: New Roles, No Rules? Defining Lawyer's Work*, 72 TEMP. L. REV. 773 (1999); Symposium, *The Lawyer's Duty to Promote the Common Good*, 40 S. TEX. L. REV. 1 (1999); Symposium, *Case Studies in Legal Ethics*, 69-3 FORDHAM L. REV. 787 (2000); Symposium, *Ethics in Criminal Advocacy*, 68 FORDHAM L. REV. 1371 (2000); *Allan Chair Symposium 2001: Lawyer Advertising in the Electronic Age*, 36-1 U. RICH. L. REV. 1 (2002); *The History of Legal Ethics: How the Past Shapes and Informs the Law's Code of Ethics*, 8 U. CHI. L. SCH. ROUNDTABLE 239 (2001) (Introduction).

21. Professor Lisa Lerman offers a stark description of the challenge students and teachers face in taking this course seriously:

Because professional responsibility classes deal with ethical issues, "academic politesse" produces an extra layer of awkwardness between the teacher and the students. The patterns of low attendance and preparation are more conspicuous in these classes than in others. Also, because the course examines issues of professional conduct, the teachers tend to want students to conduct themselves in a professional manner by reading and coming to class. Often there is sharp divergence between the teacher's expectations and the students' conduct. If the teacher calls attention to the students' poor performance, she risks increasing the level of cynicism and alienation. But if the teacher avoids overt attention to low levels of attendance and preparation for class, she is colluding in the pretense. The structure of the situation, to say the least, is not conducive to meaningful teaching.

Lisa Lerman, *Teaching Moral Perception and Moral Judgment*, 39 WM. & MARY L. REV. 457, 482-83 (1998) (citations omitted).

22. The heart of this dialogue is located at the point where we differ on the pedagogical methodologies for the course of legal ethics. Professor Timothy P. Chinaris raised this issue in a piece posted on the Internet, which considered why students have more difficulty in understanding the goals of the course on legal ethics than in other law school courses. He observed:

But there is another, more subtle difference that is even more damaging to our goal of trying to familiarize students with the basic tenets of legal ethics: too many professors spend too much time talking about morality or philosophy, and too little time teaching the legal standards that govern our conduct as lawyers.

## II. THE CONTOURS OF THE DIALOGUE

There is a story told of six blind men who each try to describe what an elephant is like. Each walked up to an elephant and described the part of the elephant that he touched. One touched the sharp tusk and declared that the elephant was like a spear. One wrapped his arms around the elephant's leg and suggested that the elephant was like a tree. One stroked the elephant's trunk and said that the elephant was like a snake. Another caressed the elephant's broad, floppy ear and decided that the elephant was like a big fan. One man leaned up against the elephant's sturdy side and imagined that the elephant was like a wall. And the last man grabbed hold of the elephant's tail and surmised that the elephant was like a rope.<sup>23</sup>

Describing the elephant is much like describing the contours of legal ethics and proscribing how best to teach the subject.<sup>24</sup> Like the six blind men, we each approach the subject from a different point of view.<sup>25</sup>

Some legal ethics professors argue that these differences are positive. I disagree, believing instead that we digress from our mission and devalue our message when we decline to present professional ethics as the substantive legal doctrine that it is.

Timothy P. Chinaris, *Ethics as law: High-Impact Teaching of Legal Ethics*, at 1-2 (Mar. 6, 2001), at <http://www.law.com> (last visited Mar. 6, 2001). See also Elizabeth A. Alson, *Fundamentalism in the Legal Education Curriculum*, 26 J. LEGAL PROF. 123 (2002).

23. There are many variations of this story and storytellers have adapted it for their own purposes. One version is presented by Heather Forest. See *The Blind Men and the Elephant, in WISDOM TALES FROM AROUND THE WORLD*, 25 (Heather Forest ed., 1996). Forest ends her version of the story with this poem which holds much wisdom for pontificating law professors:

The elephant stood inside the walled garden,  
nibbling the leaves of a tree.  
His ivory tusks curved toward the sky,  
a miraculous sight to see.

With billowing minds and bellowing mouths  
to opinions these blind men held fast.  
While the elephant stood, quite undefined,  
in the garden of ancient past.

*Id.* at 26.

24. See Carrie Menkel-Meadow, *supra* note 10.

25. Professor Lisa Lerman describes the various points of view on our goals for teaching legal ethics by suggesting a continuum of perspectives:

One could construct a continuum of teaching goals for legal ethics. At one end of the continuum are teachers who focus exclusively on the teaching of positive law. At the other end are teachers who aspire to teach moral perception or moral judgment. For example, a teacher interested in teaching positive law would aspire to familiarize the students with the Model Rules of Professional Conduct and to prepare them to take the MPRE [Multistate Professional Responsibility Examination]. Toward the middle of the spectrum would be a teacher who teaches all of the law governing lawyers, including not only ethical rules and their interpretation in disciplinary opinions and ethics opinions, but malpractice law, relevant criminal law, court rules, and other bodies of law that govern lawyers. This teacher might eschew the use of problems and video dramatizations and focus principally on teaching substantive law and its application.

Lisa Lerman, *supra* note 8, at 469. Of course, a teacher might find him or herself attempting to



Should we teach the Model Rules and the Law of Lawyering, focusing on conveying basic knowledge of the subject and the analytical techniques and skills needed to understand the fundamental doctrines of legal ethics?<sup>26</sup> Should we teach the habits of good lawyering through lawyer stories and literature which considers the moral role of lawyers in our larger society?<sup>27</sup> Can we even encourage our students to aspire to the highest levels of professional competence and personal integrity through our teaching materials?<sup>28</sup> Further, as we consider such course content and coverage questions, we face the challenge of selecting from a wide range of the available materials.<sup>29</sup>

Our first dilemma is to decide what to call the course. It could be a course in legal ethics, professional responsibility, professionalism, the

utilize multiple portions of this continuum in order to present a broad spectrum of viewpoints and to appeal to the divergent learning styles of the students. See Edmund B. Spaeth, Jr., Janet G. Perry, & Peggy B. Wachs, *Teaching Legal Ethics: Exploring the Continuum*, 58 LAW & CONTEMP. PROBS. 153 (1995).

26. One such approach is to use simulation and experiential learning as suggested by Professor Robert B. Burns:

Ideally, this method of learning professional responsibility integrates legal ethics with the learning of important lawyering skills. In the course, students interview and counsel clients; deliberate with firm partners; prepare client witnesses for and present direct examination; interview nonparty witnesses; conduct a long negotiation with frequent intervals in order to counsel clients; cross-examine witnesses; argue and deliberate concerning the admission of candidates to the bar; and deliberate as a firm's management committee. Doctrinally, students address issues including participation in client wrongdoing; relations with the unrepresented persons; distribution of authority between lawyer and client; perjury; obligations of candor in the discovery process; and conflicts in civil and criminal contexts.

Robert B. Burns, *The Purpose of Legal Ethics and the Primacy of Practice*, 39 WM. & MARY L. REV. 327, 330 (1998).

27. See Thomas L. Shaffer, *On Teaching Legal Ethics with Stories About Clients*, 39 WM. & MARY L. REV. 421 (1998); MIKE PAPANTONIO, RESURRECTING AESOP: FABLES LAWYERS SHOULD REMEMBER (2000); Dena S. Davis, *Tell me a Story: Using Short Fiction in Teaching Law and Bioethics*, 47 J. LEGAL EDUC. 240 (1997); Rob Atkinson, *Br'er Rabbit Professionalism: Homily on Moral Heroes and Lawyerly Mores*, 27 FLA. ST. U. L. REV. 137 (1999); and Carrie Menkel-Meadow, *Can They Do That? Legal Ethics in Popular Culture: Of Characters and Acts*, 48 UCLA L. REV. 1305 (2001).

28. This issue was raised by Professor Lisa Lerman, see *supra* note 8, in her discussion about the continuum of teaching goals:

At the moral perception end of the continuum one might find a few experienced teachers who have backgrounds in moral philosophy or psychology and who have spent a great deal of time thinking about what really matters in educating future lawyers. They might have concluded that teaching students *how* to think about moral dilemmas is more important than covering any particular body of legal doctrine.

Lisa Lerman, *supra* note 8, at 470. See Ian Johnstone & Mary Patricia Treuthart, *Doing the Right Thing: An Overview of Teaching of Professional Responsibility*, 41 J. LEGAL EDUC. 75 (1991); Bruce Green, *The Role of Personal Values in Professional Decisionmaking*, 11 GEO. J. LEGAL ETHICS 19 (1997); Barry Sullivan & Ellen S. Podgor, *Respect, Responsibility, and the Virtue of Introspection: An Essay on Professionalism in the Law School Environment*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 117 (2001) (providing further discussion on developing moral judgment in law students).

29. See Deborah L. Rhode, *Annotated Bibliography of Educational Materials on Legal Ethics*, 58 LAW & CONTEMP. PROBS. 361 (1995) (describing the breadth of materials available for teaching legal ethics).

law of lawyering, or, as it is called at The University of Alabama, the legal profession.<sup>30</sup> Next, one must decide the basic approach to the subject in terms of content. Some focus on the professional rules of ethics, specifically, the American Bar Association Model Rules of Professional Responsibility;<sup>31</sup> the American Bar Association Code of Judicial Conduct;<sup>32</sup> variations in the rules made by particular state bars; complementary sets of rules such as the standards of courtesy and rules for specialized areas of practice; and special statutes that apply to the professional responsibility of the lawyer, such as the Federal Rules of Civil Procedure.<sup>33</sup> Some professors tackle the larger content under the rubric of the law of lawyering or the regulation of lawyers.<sup>34</sup> This approach considers not only the rules of ethics, but also case law on attorney conduct, ethics opinions, scholarly readings, legal malpractice, *Restatement (Third) of*

30. Each law school has its own way of naming the course and describing the course and each determines how many credits to allocate. At The University of Alabama Law School, the catalogue description is as follows:

660. The Legal Profession (3)

This course is designed to investigate and describe the professional environment of the American lawyer. What lawyers do; competition, admission, and educational standards; and bar associations and other bar-related groups are examples of the subject matter discussed. The student studies the efficacy of professional rules and customs from a historical, economic, and sociological viewpoint.

The University of Alabama, Law School Catalog 2000-02. Naturally, each professor puts his or her own spin on how to best accomplish the course goals.

31. MODEL RULES OF PROF'L RESPONSIBILITY (1983).

32. CODE OF JUDICIAL CONDUCT (1972).

33. The focus on all of these rules and standards can best be assessed by looking at the statutory supplements which are used in most courses on professional responsibility. Each year the statutory supplements are larger and include a growing list of codified standards for lawyers. For example, Professor John S. Dzienkowski's *Professional Responsibility Standards, Rules & Standards—2001-2002 Edition* (West Group 2001) comes in an unabridged (1370 pages) and abridged (1073 pages) version. The Table of Contents lists 55 entries and includes: the Annotated ABA Model Rules of Professional Conduct; Selected Significant State Modifications to the ABA Model Rules; the Ethics 2000 Commission on the Evaluation of the Rules of Professional Conduct, November 2000 Report; Restatement of Law Governing Lawyers; ABA Report of Commission on Professionalism; ABA Model Code of Judicial Conduct (2000); ABA Standards of Practice for Lawyer Mediator in Family Disputes; and the ABA Recommendation for the Evaluation of Disciplinary Enforcement. This is just a sampling of the extensive codification of lawyer rules and suggested standards. A similar collection is found in THOMAS D. MORGAN & RONALD D. ROTUNDA, 2002 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY, INCLUDING CALIFORNIA, NEW YORK AND WASHINGTON, D.C. RULES (Foundation Press 2002) and STEPHEN GILLERS & ROY D. SIMON, REGULATION OF LAWYERS: STATUTES AND STANDARDS 2001 (Aspen Law & Business 2001). Each year Gillers and Simon include a special section highlighting a recent development, case, or controversy in legal ethics. In the 2001 edition, at page 1049, they focused on *The Debate Over Multidisciplinary Practice*; in the 2000 edition, at page 991, they focused on *Contempt and Perjury in Jones v. Clinton and the Starr Investigation*; in the 1999 edition, at page 941, the focus was *New United States Supreme Court Cases on Attorney-Client Privilege*; and in the 1998 edition, at page 883, they authored a section entitled *Office of The President v. Office of Independent Counsel*.

34. See, e.g., STEPHEN GILLERS, REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS (5<sup>th</sup> ed. 1998); GEOFFREY C. HAZARD, JR., SUSAN P. KONIAK & ROGER C. CRAMTON, THE LAW AND ETHICS OF LAWYERING (3<sup>rd</sup> ed. 1999); JAMES E. MOLITERNO, CASES AND MATERIALS ON THE LAW GOVERNING LAWYERS (2000) (each of which provides an example of the way scholars organize their casebooks in a regulatory and law of lawyering way).

*Law Governing Lawyers*,<sup>35</sup> and much more.<sup>36</sup> And finally, some professors approach the subject from a more theoretical basis. They ground the teaching in ethical theories,<sup>37</sup> philosophy,<sup>38</sup> moral reasoning,<sup>39</sup> and theological perspectives.<sup>40</sup> The theoretical approach often calls for the students to engage in a deeper, personal reflection on what it means to be a good lawyer and a good person.<sup>41</sup> Of course, some professors borrow from each of these approaches or utilize creative variations on these themes.

Next, a professor must choose a methodology for presenting the materials. This task is often determined by the broad choice of materials that a professor can use.<sup>42</sup> Some materials emphasize a problem approach where class discussion is organized by a set of problems in which students apply the course material to construct ethical responses.<sup>43</sup> Others focus on more traditional case analysis flavored with scholarly critiques of a particular topic.<sup>44</sup> Other methodologies focus on role-playing, re-

35. RESTATEMENT (THIRD) OF LAW GOVERNING LAWYERS (2000).

36. See RONALD ROTUNDA, PROFESSIONAL RESPONSIBILITY: A STUDENT'S GUIDE, 2002-2003 (2002); see also NATHAN M. CRYSTAL, AN INTRODUCTION TO PROFESSIONAL RESPONSIBILITY, (1998) (providing a comprehensive study of the this ever-expanding topic).

37. Here I use the broad rubric of ethical theories to denote a variety of approaches to developing ethical analysis for lawyers. The scholars who work in this vineyard often draw on interdisciplinary theories to craft new methodologies for analyzing ethical dilemmas. See, e.g., Eli Wald, *An Unlikely Knight in Economic Armor: Law and Economics in Defense of Professional Ideals*, 31 SETON HALL L. REV. 1042 (2001); Jean R. Sternlight, *Lawyers' Representation of Clients in Mediation: Using Economics and Psychology to Structure Advocacy in a Nonadversarial Setting*, 14 OHIO ST. J. ON DISP. RESOL. 269 (1999); Elizabeth Chambliss, *Professional Responsibility: Lawyers, A Case Study*, 69 FORDHAM L. REV. 817 (2000) (a sociological approach); Richard W. Painter, *Irrationality and Cognitive Bias at a Closing in Arthur Solmsen's The Comfort Letter*, 69 FORDHAM L. REV. 1111 (2000) (a psychological approach); Richard W. Painter, *Game Theory and Contractarian Paradigms in the Uneasy Relationship Between Regulators and Regulatory Lawyers*, 65 FORDHAM L. REV. 149 (1996).

38. See DAVID LYONS, ETHICS AND THE RULE OF LAW (1984) (for a study of traditional philosophy and analytical and normative jurisprudence).

39. See THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY (1994); DONALD NICOLSON & JULIAN WEBB, PROFESSIONAL LEGAL ETHICS: CRITICAL INTERROGATIONS, (1999); and W. Bradley Wendel, *Public Values and Professional Responsibility*, 75 NOTRE DAME L. REV. 1 (1999).

40. THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER (1981); Lucia Ann Silecchio, *Integrating Spiritual Perspectives with the Law School Experience: An Essay and an Invitation*, 37 SAN DIEGO L. REV. 167 (2000); Symposium, *The Relevance of Religion to a Lawyer's Work: An Interfaith Conference*, 66 FORDHAM L. REV. 1075 (1998); and Symposium, *Rediscovering the Role of Religion in the Lives of Lawyers and Those They Represent*, 25 FORDHAM URB. L. J. 821 (1999).

41. See JAMES L. KELLEY, LAWYERS CROSSING LINES: NINE STORIES (2001); see also RICHARD ZITRIN & CAROL M. LANGFORD, THE MORAL COMPASS OF THE AMERICAN LAWYER: TRUTH, JUSTICE, POWER, AND GREED (1999) (providing a reflective approach to considering the ethical bounds of lawyering).

42. See Rhode, *supra* note 29.

43. See, e.g., THOMAS D. MORGAN & RONALD D. ROTUNDA, PROFESSIONAL RESPONSIBILITY: PROBLEMS AND MATERIALS (7<sup>th</sup> ed. 2000) (one of the first textbooks in this area); see also MORTIMER D. SCHWARTZ ET AL., PROBLEMS IN LEGAL ETHICS (5<sup>th</sup> ed. 2001).

44. See, e.g., DEBORAH RHODE & DAVID LUBAN, LEGAL ETHICS, (3<sup>rd</sup> ed. 2001); ROBERT F. COCHRAN, JR. & TERESA S. COLLETT, CASES AND MATERIALS ON THE RULES OF THE LEGAL

search tasks, guest presentations, video presentations with discussions, or the use of literature, generally in the form of novels, plays, and stories about lawyers.<sup>45</sup> Still others may choose not to limit the teaching of ethics to one course, but elect to teach the subject by the pervasive method or across the curriculum.<sup>46</sup> A variation of this theme would permit certain professors in a particular law school to agree to teach the subject of professional responsibility from the perspective of a distinctive subject matter, such as corporations, criminal law, or public interest law.<sup>47</sup> Additionally, choosing a methodology is often bounded by the strictures of time and the limitations of course coverage in an ever-expanding universe of how lawyers practice.<sup>48</sup>

These points merely lie out the contours of the dialogue and suggest a richer, fuller inquiry into what we are truly up to when we profess legal ethics.<sup>49</sup> Beyond a review of the Model Rules, we bring a certain hope to our teaching efforts, which beneath the surface, discloses our frame of reference on the legal profession and how we attempt to train students to

PROFESSION (1996); and ROBERT H. ARONSON, ET AL., PROBLEMS, CASES AND MATERIALS IN PROFESSIONAL RESPONSIBILITY (2<sup>nd</sup> ed. 1995).

45. Nathan Crystal recommends this approach in his casebook entitled *Professional Responsibility: Problems of Practice and the Profession*. NATHAN CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION (2<sup>nd</sup> ed. 2000). The accompanying teacher's manual offers user-friendly instructions for utilizing these methods in class.

46. See, e.g., DEBORAH RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (1994); JAMES E. MOLITERO & JOHN M. LEVY, ETHICS OF THE LAWYER'S WORK (1993).

47. Mary C. Daly, Bruce A. Green, & Russell G. Pearce, *Contextualizing Professional Responsibility for a New Century*, 58 LAW & CONTEMP. PROBS. 193 (1995).

48. Lawyers practice in various ways, from small firms to mega-firms with multiple offices in different jurisdictions. Lawyers have different specialties such as criminal defense, criminal prosecution, insurance work, government lawyers, lawyers of organizations, and international law, just to name a few examples. Further, lawyers now function in a variety of roles such as mediators, arbitrators, negotiators, and advisors in a multitude of legal situations. Hence, a course on ethics can hardly begin to fully cover the variety of ways in which ethical issues will arise. See Robert R. Keatinge & George W. Coleman, *Practice of Law by Limited Liability Partnerships and Limited Liability Companies*, Symposium Issue, THE PROFESSIONAL LAWYER 5 (1995); Mary C. Daly, *Practicing Across Borders: Ethical Reflections for Small-Firm and Solo Practitioners*, Symposium Issue THE PROFESSIONAL LAWYER 123 (1995).

49. THOMAS L. SHAFFER, AMERICAN LEGAL ETHICS: TEXT, READINGS, AND DISCUSSION TOPICS xxiii (1985) (emphasis in original) [hereinafter AMERICAN LEGAL ETHICS]. The idea of internal assessment of what we are doing when we teach our students is informed by the thinking of Professor Thomas Shaffer in much of his work. He insists that we contemplate larger questions of morals as a way of truly understanding the inquiry about legal ethics and how we should extrapolate the moral content of the inquiry. He posits:

Our subject involves what a lawyer should do *as a lawyer*; that is a specific jurisdiction, but we will do well not to let it get narrow on us. It can be claimed—it *has*, often, been claimed by American lawyers—that being a lawyer is a way to become a good person. Most of us lawyers think, at least, that being a lawyer is compatible with being a good person. We hope that the lawyer part of one of us does not *destroy* goodness. It is still possible, in living as a lawyer, to ask ourselves broad moral questions, such as:

- What am I up to in my client's life?
- How is my client changing because of me?
- How am I changing because of him—because of what I think he wants me to do?

*Id.*

enter that profession.<sup>50</sup> In other words, we each have a clear sense of what intellectual tools, resources, and understanding we believe our students need to be familiar with before they enter the world of professional service.<sup>51</sup> To borrow from Professor Thomas Shaffer, it is a quandary to decide how to teach legal ethics with commitment and integrity to our sense of who we are as teachers.<sup>52</sup> We each have a story about how we arrived at our pedagogical stances.

### III. SWAPPING STORIES

This Symposium offers us the opportunity to continue the longstanding dialogue and to share our stories about how and why we describe the

50. See Chinaris, *supra* note 22.

51. One example of shaping our teaching to the needs of our students as they enter the profession is offered by Professor Phyllis E. Bernard in her article, *Teaching Ethical, Holistic Client Representation in Family ADR*, 47 LOY. L. REV. 163 (2001). In this work, Professor Bernard describes the work of the Oklahoma City University School of Law's Center on Alternative Dispute Resolution, which offers a summer institute for students focusing on divorce, child custody, and other family issues. Of particular concern is training students to recognize and ethically manage cases where there is evidence of domestic violence. She describes the importance of this training as follows:

In the Summer ADR Institute, law students are introduced to the profound moral, psychological, and legal responsibilities that an attorney faces when she undertakes a divorce or child custody matter. Despite a practice by some family court judges in certain jurisdictions to refer all family cases to mediation, *the attorney retains an ethical obligation to use her considered, professional judgment to assess whether mediation is appropriate in her client's case.* It may be that some aspects of the case could be mediated face-to-face, between the parties, while others require negotiation by the attorneys, while still other aspects may require arbitration or adjudication. The Institute teaches that one of the most critical elements in making the assessment will be the past, present or future potential for domestic violence.

For the first time in their legal training, students are compelled to deal with how the advice they render to a client or the actions they take or fail to take may have, quite literally, a life-or-death impact on the client, a member of the client's family, or the attorney herself. . . . Because of the extremely sensitive nature of the issues involved, both for the law student and for the would-be client, the Center on Alternative Dispute Resolution has elected not to use "live" cases but instead utilizes client simulation.

*Id.* at 175-176 (emphasis added).

Professor Bernard's article is included in a larger collection of articles on domestic violence which extensively considers lawyers' responses to this troubling tragedy of family life. See *Symposium on Integrating Responses to Domestic Violence*, 47 LOY. L. REV. 1 (2001).

52. Shaffer argues:

The most common method in legal education, and especially in the study of professional responsibility, has been to talk in quandaries. Our penchant for the study of cases in law carries over into a preference for cases in morals and so we present a dilemma and say, "what would you do?" This method is attractive and probably unavoidable, but it is limited.

...

Quandaries make it too comfortable for us to go on a little hike through a field of moral brambles and come home thinking we have learned something.

elephant in our own unique way. As I previously described the panel discussion, our purpose was to exchange stories about how we approach teaching the subject. The essays presented herein represent the reflections of four of our five panelists. I will briefly outline Richard Painter's remarks which he has so artfully and thoroughly presented in other recent forums.<sup>53</sup> Not surprisingly, the reflections represent the broad spectrum of ideas on teaching our subject.

Professor Antoinette Sedillo Lopez offers her story based on the context in which she teaches at the University of New Mexico. All students at her school are required to take a clinical course with live clients. Professor Sedillo Lopez, like a good number of the professors who teach substantive courses at New Mexico, also takes a turn teaching in the legal clinic. Consequently, her teaching both the course on professional responsibility and her substantive areas are informed by the hands-on, ethical training students get in the clinical context. As her article suggests, she teaches the fundamental rules and the law of lawyering.<sup>54</sup> She also focuses on issues of professionalism, which, for her, include professional norms, moral issues, role of the attorney, professional boundaries, and other issues not specifically addressed by the 'law of lawyering.'<sup>55</sup> She offers a story of a clinical student who overstepped professional bounds and propriety by becoming too personally involved in the client's problems. She correctly asserts that law students ought to become aware of what is appropriate professional distance and what acts cross the boundaries of the professional role.<sup>56</sup> Finally, she offers a story from her clinical experiences that demonstrates that cross cultural awareness may be essential to a lawyer's ethical and legal response to the needs of a client. Professor Sedillo Lopez suggests that as we recommit to teaching and preparing students for the twenty-first century, we must also raise their awareness of the multi-cultural aspects of practicing in a world of diverse clients whose problems often cross international borders.<sup>57</sup>

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53. For a listing of some of Professor Painter's work, see *supra* note 7.

54. Antoinette Sedillo Lopez, *Teaching a Professional Responsibility Course: Lessons Learned from the Clinic*, 26 J. LEGAL PROF. 149 (2002).

55. *Id.*

56. JOE M. GOODMAN & DIRK R. DREUX IV, *BUSINESS SUCCESSION PLANNING AND BEYOND*, 8 (1997).

57. Professor Yvonne A. Tamayo reflects on the issue of cross-cultural lawyering in her article, *Doing Good While Doing Well in the Twenty-First Century: One Cuban's Perspective*, 70 FORDHAM L. REV. 1913 (2002). In calling upon her own experiences and the experiences of other Latinas, she observes:

Our stories reflect diverse experiences and varied backgrounds: however, immigrant lawyers' linguistic and cultural fluency consistently display perspectives influenced by navigating between two cultures: our own and that of mainstream Anglo society. During my visit to Cuba, I gained a more profound appreciation for the ways in which experience informs individual perspective.

*Id.* at 1917.

Attorney Elizabeth Alston, of Mandeville, Louisiana, is an ethics practitioner who represents and advises lawyers on ethical matters. She has served as Chair of the Louisiana Disciplinary Board, often teaches continuing legal education courses, and lectures on the subject of professional responsibility, both in Louisiana and nationally. From her perspective, she offers stories of lawyers caught up in the disciplinary system due to some violation(s) of the rules of ethics. What is striking about these stories from the real world is that the disciplined lawyers often offered the excuse of ignorance of the basic rules of professional responsibility as a mitigating factor. That is, they do not know the rules of the profession and moreover, they seem to have not been exposed to the rules of the profession during their law school education. As her article suggests, disciplinary boards and judges who ultimately must issue the sanctions against lawyers, do not have much sympathy for lawyers who offer ignorance as a mitigating factor in their discipline. Accordingly, her advice to legal academicians is to recommit ourselves to providing the necessary training for entrance into the profession by insuring that law students better understand what is ethically required of them as a condition of obtaining and maintaining their licenses to practice law.

Professor Richard Painter's remarks at the annual meeting reflect two different, but intersecting branches of the dialogue on teaching legal ethics. First, law students tend to find this course tedious, boring, and irrelevant beyond the necessary preparation for the Multistate Professional Responsibility Examination.<sup>58</sup> Assuming this challenge, Professor Painter seeks to craft a course that is exciting and intellectually engaging and therefore interfaces with the portion of our dialogue which considers the deeper, intellectual, or substantive content of the subject. Certainly, Professor Painter does not neglect the rules of ethics, but he positions those rules within an interdisciplinary analysis grounded in stories about lawyers as they confront the ethical dilemmas created by servicing clients. Second, Professor Painter suggests that much can be learned from studying the stories of lawyers from an historical perspective and how they confronted certain ethical situations. This is the driving approach in *Professional and Personal Responsibilities of the Lawyer*, second edition, the casebook that he co-authors with Judge John T. Noonan, Jr.<sup>59</sup> Next,

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58. See Lerman *supra*, note 8.

59. The casebook is designed to stimulate classroom discussions about historical lawyers such as John Adams, Abraham Lincoln, and Justice Louis Brandeis, as well as more contemporary lawyers, as the authors explain in their forward:

Instead of relying primarily on cases which apply the rules derived from the Model Rules of Model Code of the American Bar Association, this book includes cases from throughout the history of our legal system in which lawyers, and sometime judges, make ethical decisions. Our emphasis is on the lawyers and judges themselves, not exclusively on legal rules. Some of these lawyers and judges make honest attempts to behave ethically. Others ignore ethical problems. Still others behave in a

Professor Painter posits that a study of professional responsibility should include a consideration of contractarian economics in which one considers whether the formal rules of ethics might be negotiated between the client and the lawyer to account for circumstances unique to that client and the representation.<sup>60</sup> The idea is that rigid rules about disclosure or conflicts of interests might allow for a flexible response to situations which arise outside of the plain reading of the rules. Finally, Professor Painter also suggests that cognitive psychology might offer some insight into how lawyers and clients make decisions about legal and ethical problems. In effect, exigent circumstances can impact the rational decision making process of individuals that can only be understood by examining the psychological motivations of the decision-maker.<sup>61</sup> One concludes that Professor Painter is urging a recommitment to expanding the boundaries of our intellectual inquiry as we teach students the nuances of ethics as applied in real life circumstances.

Professor W. Bradley Wendel challenges us to think about the *ethics* part of legal ethics; that is, to consider a process of assessing how we resolve dilemmas by making reasoned choices between competing alternatives based upon articulated principles. For many law professors and students, ethics as a study of normative and analytical reasoning is a daunting proposition if there is no prior exposure to topics such as philosophy, jurisprudence, or rhetoric.<sup>62</sup> Professor Wendel tells a story of

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blatantly unethical fashion. Our selections are designed to explore the impact of human values on professional ethics and to expose students to the complexities of circumstances in which people act.

JOHN T. NOONAN, JR. & RICHARD W. PAINTER, PROFESSIONAL AND PERSONAL RESPONSIBILITIES OF THE LAWYER (2<sup>nd</sup> ed. 2001).

60. See Richard W. Painter, *Contracting Around Conflicts in a Family Representation: Louis Brandeis and the Warren Trust*, 8 U. CHI. LAW SCH. 353 (2001); Richard W. Painter, *Game Theory and Contractarian Paradigms in the Uneasy Relationship Between Regulators and Regulatory Lawyers*, 65 FORDHAM L. REV. 149 (1996).

61. See, Richard W. Painter, *Irrationality and Cognitive Bias at a Closing in Arthur Solmsen's The Comfort Letter*, 69 FORDHAM L. REV. 1111 (2000).

62. In the past, I have attempted to integrate ethical reasoning into my teaching of the professional responsibility course. I was inspired by David Lyons's work which articulates the nature of the ethics enterprise:

Philosophical problems concerning law fall within two broad areas: the fundamental nature of law, and how law may be evaluated. Analytical jurisprudence asks, what is a law, and how is it part of a system? How can a decision be made according to law, when the law is unclear? How is law like and unlike other social norms? How is it like or unlike moral standards?

Normative jurisprudence deals with the appraisal of law and moral issues that law generates. Human law can be made and changed by deliberate decision: what direction should those decisions take? Law claims authority to lay down rules and enforce them: are its claims warranted? Can we legitimately refuse to comply? Things are done in the name of the law which are not normally justifiable: people interfere in others' lives, they deprive others of goods, liberty, even life itself. How, if at all, can such practices be defended?

DAVID LYONS, *ETHICS AND THE RULE OF LAW* 1 (1984). My intent was to test the Model Rules



developing a process by which teacher and students can engage in ethical discourse. Such discourse can be characterized as the give and take, the back and forth of argumentation about how we seek answers to ethical questions. The process of ethical inquiry is not nearly as frightening if we accept that we engage in such thought processes everyday. For example, he suggests that we all have thought about the rightness or wrongness of former President William Jefferson Clinton's personal conduct in the White House.<sup>63</sup> We assess the conduct, articulate principles supporting our view of that conduct, and further test our assessment by analogical comparison to the conduct of other presidents, like Richard Nixon. While this oversimplifies Professor Wendel's suggested process, the point is that recognizing and highlighting the methodology by which we make everyday moral and ethical judgments, we strengthen our ability to utilize ethical reasoning in the practice of law. Hence, by this process, we recommit to providing our students with the analytical tools whereby they can recognize and systematically solve ethical dilemmas.

Professor Russell G. Pearce urges a radical restructuring of the law school education process so that legal ethics becomes the most important subject in the law school curriculum.<sup>64</sup> He offers a cautionary tale about how our current methods of teaching legal ethics are wholly inadequate to the task of preparing students for their lives' work in the law. Moreover, the tendency of legal academics to marginalize the teaching of ethics can only be confronted by making legal ethics the fulcrum of our educational mission. Thus, he urges that we must not only recommit ourselves as individual teachers of legal ethics, but we must also lead our institutions to recommit to the preparation of ethical lawyers as the core part of our pedagogical mission.

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against these questions. I had limited success in convincing my students that this was a worthy endeavor. Professor Wendel offers a more manageable approach which has the benefit of being low keyed. See W. Bradley Wendell, *Ethics for Skeptics*, 26 J. LEGAL PROF. 165 (2002).

63. W. Bradley Wendell, *Ethics for Skeptics*, 26 J. LEGAL PROF. 165, 169 (2002).

64. Russell G. Pearce, *Legal Ethics Must Be the Heart of the Law School Curriculum*, 26 J. LEGAL PROF. 159 (2002).

IV. RECEIVING SHARED STORIES<sup>65</sup>

There is a common theme that runs through these stories that may not be evident on first hearing or reading them. The underlying echo in these stories harkens back to Dean Kane's theme of recommitting to teaching. Without directly stating the inquiry, the panelist are asking of themselves a question which paraphrases Professor Tom Shaffer's, What are we up to in our students lives when we attempt to teach them legal ethics?<sup>66</sup> The choice of what to teach and how to teach it reflects greatly on our role as teachers of future lawyers.

My sense is that our decisions on methodology and content are driven by our commitment to the process and purpose of the academic setting, especially within schools of law. We are, hopefully, doing more than *just* producing the future lawyers of America, we are certifying to their skill level and professional acumen. As Wendell Berry suggests, our task is larger than that of factories producing goods:

The thing being made in a university is humanity. Given the current influence of universities, this is merely inevitable. But what universities, at least the public-supported ones, are *mandated* to make or help to make is human beings in the fullest sense of those words—not just trained workers or knowledgeable citizens but responsible heirs and members of human culture. . . . The common denominator has to be larger than either career preparation or preparation for citizenship. Underlying the idea of a university—the bringing together, the combining into one, of all the disciplines—is the idea that good work and good citizenship are the inevitable by-products of the making of a good—that is, a fully developed—human being. This, as I understand it, is the

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65. In the tradition of oral storytelling, a listener is needed to receive the story and to experience the story in a way that is meaningful to the listener. The listener may respond by sharing what was significant or moving in the told story. In another work, I have explained this phenomenon as follows:

Storytelling is immediate; it happens in the oral words of the storyteller as they are received by the listener. The words create a connection between the storyteller and the listener. Rafe Martin describes this as a process where "(t)he teller works with the imaginative, creative powers of the listeners' minds. And the two sets of skills—of the teller and of the listener—must mesh for a told story to finally 'work.'" The storyteller puts the story out there in the space between the teller and the listener and literally gives the story away, to be experienced by the listener as he or she receives it. There is a physicality in this moment where we feel the story as a lived experience.

Steven H. Hobbs, *Ralph Ellison as Oral Storyteller*, 26 OKLA. CITY U. L. REV. 927, 935 (2001), citing RAFE MARTIN, *Between Teller and Listener: The Reciprocity of Storytelling*, in WHO SAYS: ESSAYS ON PIVOTAL ISSUES IN CONTEMPORARY STORYTELLING 141, 143 (Carol L. Birch & Melissa A. Heckler, eds., 1996)

66. *Supra* note 49.

definition of the name *university*.<sup>67</sup>

Necessarily, our stories about teaching reflect our commitment to our students as we assist them in their individual journeys towards a professional life of providing legal and counseling services to the public. Moreover, our commitment to our students is about helping them, and perhaps helping us, become more fully developed human beings. It is only when we move towards the goal of achieving our highest potential as human beings, that we obtain a glimpse of the enormous responsibilities we assume as lawyers.

For law teachers, assisting in the task of helping law students towards the goal of being fully developed human beings requires an acute awareness of the professional roles the students will assume and the attributes they will need in fulfilling those roles.<sup>68</sup> Thus, Professor Sedillo Lopez demands that her students come to grips with appropriate professional boundaries. Consequently, students, in understanding their part in solving legal problems with and for clients, come to know the limits of their strengths and the extent of their internal limitations. Attorney Alston seeks professional preparedness grounded in a full knowledge of the profession's ethical traditions, mores, and culture.<sup>69</sup> Professor Painter challenges his students to apply intellectual rigor in creatively uncovering the sentient issues which frame the application of the rules. For Professor Wendel, the course offers the opportunity to engage students in the process of ethical reasoning, especially where the rules of ethics provide no clear answers.<sup>70</sup> And finally, Professor Pearce implores all legal

67. WENDELL BERRY, *HOME ECONOMICS: FOURTEEN ESSAYS BY WENDELL BERRY, THE LOSS OF THE UNIVERSITY* 76, 77 (1987).

68. See Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997) (critiquing of the professionalism crisis, the personality characteristics of law students and lawyers which may heighten the crisis, and a prescription for enhancing the moral development of law students).

69. Certainly this is a vital concern of the profession as evidenced by the American Bar Association Section on Legal Education and Admission to the Bar Professionalism Committee's Report, *Teaching and Learning Professionalism*, published in 1996. The same committee held a national Symposium on Teaching and Learning Professionalism on October 2-4, 1996 and the proceedings are published by the American Bar Association in a monograph format. In his Keynote Address, Professor Roger Cramton framed the issue to be considered by the symposium:

My thesis in a nutshell is that since 1955, when I became a lawyer, the legal profession has neglected its central moral tradition for the modern heresy, endless repeated multiple settings, that "the client comes first," meaning "first and only." Some years ago the fidelity and loyalty owed to clients was balanced by a generally accepted understanding that the lawyer's primary obligation was to the procedures and institutions of the law. When tension arose between client interests and those of the legal system, the lawyer's respect for the rule of law—the maintenance and improvement of just and efficient legal institutions—almost always prevailed. Our greatest need today is to regenerate this common faith.

Roger Cramton, *Teaching and Learning Professionalism*; Symposium Proceedings, *On Giving Meaning to "Professionalism,"* 7-8 (1997) (citations omitted).

70. See JAMES RACHELS, *CAN ETHICS PROVIDE ANSWERS? AND OTHER ESSAYS IN MORAL*

academicians to place legal ethics at the heart of the pedagogical mission of law schools as a necessary predicate to students placing ethical behavior at their heart's center.

The collective emphasis is on enhancing the student's journey towards a fully developed personhood with training that calls forth the ability to cope with the human dramas presented by clients.<sup>71</sup> This is no easy task to be sure, but one which goes to the heart of the teaching enterprise as demonstrated by Professor Howard Lesnick in his textbook, *Being a Lawyer: Individual Choice and Responsibility in the Practice of Law*:

I have set out in this book *not* to treat Professional Responsibility as the thing that I am teaching, that is, as a body of knowledge or ideas that I am transmitting or imparting to students. My intention is rather to use Professional Responsibility, both doctrinal development and theoretical critiques, to evoke in students their own responses to some fundamental questions about themselves as emergent lawyers, to teach students to ask themselves: Who am I? In my work as a lawyer, what will I be doing in the world? What do I want to be doing in the world?<sup>72</sup>

I am not suggesting that we can or should mold our students into our own image.<sup>73</sup> As my students often remind me, they enter law school with a firm sense that they have received ethical and moral training from their families, from religious and educational training, and from a wide variety of life experiences. Our commitment to the students is to aid them in understanding, seeing and feeling the story of our great profession and the tradition out of which it comes.<sup>74</sup> Moreover, we stand, hopefully, as sage guides preparing them for a wonderful, mysterious, and oft-times frightening journey into a world whose landscape evolves as

PHILOSOPHY (1997) (for another critique of the challenge of teaching ethical reasoning).

71. See Bernard, *supra* note 51.

72. HOWARD LESNICK, *BEING A LAWYER: INDIVIDUAL CHOICE AND RESPONSIBILITY IN THE PRACTICE OF LAW I* (1992).

73. Like it or not, we do have an impact on our students' development and sometimes for the good, and sometimes for the not so good. The challenges of being a role model, not just from the perspective of the practice of law, but from larger sense of purpose of the university in the terms spoken by Wendell Berry, *supra* note 67, is wonderfully articulated by Professor Thomas Morgan:

When one understands the challenge of modeling professional life as a task—not primarily of modeling qualities or practices—but of modeling *life* and *living*, the task becomes daunting. But its critical importance also becomes clear, as does the fact that the task of such modeling is not limited to persons with particular professional experiences. It is impossible to model *life* and *living* in an entirely satisfactory way, but it is a teaching challenge worth a professional lifetime.

THOMAS MORGAN, *TEACHING AND LEARNING PROFESSIONALISM—SYMPOSIUM PROCEEDINGS, Law Faculty as Role Models* 37, 52 (1997) (emphasis in original).

74. See Symposium, *The History of Legal Ethics: How the Past Shapes and Informs the Law's Codes of Ethics*, 8 U. CHI. L. SCH. ROUNDTABLE 239 (2001).

we speak.<sup>75</sup>

## V. CONCLUSION

All of the changes and projected changes in the legal landscape have inspired us to look backward at our most important professional values, contemplate the current challenges facing our profession, and envision a professional future of which we can all be proud. As academic lawyers, these challenges present opportunities for each of us to participate in the exciting debates on our professional values and to aid our students in understanding how these values will frame their personal and professional lives.<sup>76</sup> This is all the more essential after September 11, 2001. We come to sense in our great disbelief that the only certainty in this world is uncertainty. Out of the ashes, smoke, and dust of the World Trade Center, the Pentagon, and a field in Pennsylvania, we saw anew what we have valued in the past, and we recommitted ourselves to protecting and honoring those values we hold dear.<sup>77</sup>

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75. We have many wise sages among us who inspire us to teach at the highest levels in a manner which encourages and inspires our students. Professor David Hall, who formerly served as Dean at Northeastern University School of Law, presented an inspiring address at the 1996 Annual Luncheon of the Minority Section of the AALS in which he trumpeted the important role we can play in the future of legal education:

Throughout the academy are those of like mind, spirit, and vision, who desire the same transformation. Together we can develop a model of legal education that trains lawyers to care about their clients; lawyers who see themselves as servants of humanity, who have the ability and willingness to communicate with the powerful and commune with the powerless, and who know that their ultimate charge is to leave society better than they found it. This the philosophy and tradition that Charles Hamilton Houston cultivated and of which we are heirs. What we do with this legacy is our great challenge.

David Hall, *Legal Education and the Twenty-First Century: Our Calling to Fulfill*, 19 W. NEW ENG. L. REV. 139, 150 (1997). For a discussion on Charles Hamilton Houston, the architect of the legal side of the civil rights movement, see GENNA RAE MCNEIL, *GROUNDWORK: CHARLES HAMILTON HOUSTON AND THE STRUGGLE FOR CIVIL RIGHTS* (1983).

76. We are reminded of the importance of this challenge by Professor Carrie Menkel-Meadow:

Throughout their daily lives, long after the particular substantive rules they once studied have changed, our students will continue to confront complex issues of personal and professional morality. The classroom may be the last safe haven in which they can explore the ethical and moral underpinnings of their values and choices without actually hurting a client or themselves. As our classrooms become more diverse, our discussions about what constitutes a good lawyer will inevitably be broadened by the different perspectives that new entrants to the legal profession will bring to bear on the issues. In short, there can never be too much discussion in traditional, substantive classes of what it means to be a good lawyer. To model ethical conversations in all classes is to illustrate the pervasiveness of ethical issues in law and in life.

Carrie J. Menkel-Meadow, *Can a Law Professor Avoid Teaching Legal Ethics?*, 41 J. LEGAL EDUC. 3, 10 (1991) (citations omitted).

77. A recent issue of the *ABA Journal* considered the impact of the September 11<sup>th</sup> terrorist attack on America and how the response to terrorism will call for critically assessing the delicate balance between individual freedoms and public safety. See, John Gibeaut, *Winds of Change*, 87 A.B.A. J. 32 (Nov. 2001); Margaret Graham Tebo, *Rewriting the Rules*, 87 A.B.A. J. 36 (Nov. 2001); see also Terry Carter, *Into the Breach: ABA Responds Quickly to Assist Victims of Terrorist*

While the public perception of lawyers may not be the most flattering, we are in fact the first bulwarks of protection for our system of laws. I still find great inspiration in the Preamble to the ABA Code of Professional Responsibility:

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.<sup>78</sup>

Lawyers are guardians of the law and play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.<sup>79</sup>

We lawyers are the guardians of our society. Among so many more rights and privileges, we protect our right to express old ideas and to create new ones; to carry out commerce and do business in the world and in our neighborhood; and to travel freely and safely. We stand ready to protect the individual from the tyranny of oppressive governments, despots and terrorists. Because we respect the rule of law, we stand united where our fore-parents stood when the fight for freedom was from a tyrannical king; from the tyranny of the slave chain; or from the tyranny of religious zealots.<sup>80</sup>

Our battles, both collectively and individually, have often involved an active pursuit of justice. Though we have varying ideas of what the pursuit of justice might mean, serving the needs of justice has always been at the heart of our profession and a core value of our society.<sup>81</sup> The

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Attacks, 87 A.B.A. J. 63 (Nov. 2001).

78. ABA MODEL CODE OF PROF'L RESPONSIBILITY Preamble (1980).

79. ABA MODEL RULES OF PROF'L CONDUCT Preamble: A Lawyer's Responsibilities (2000).

80. One example of how a lawyer can build his career around fighting oppression of the powerless and injustice is Attorney Morris Dees, who founded the Southern Poverty Law Center which regularly fought the Klu Klux Klan and continue to fight racial hatred and the injustice of the capital punishment system. See, MORRIS DEES with STEVE FIFFER, *A SEASON FOR JUSTICE: THE LIFE AND TIMES OF CIVIL RIGHTS LAWYER MORRIS DEES* (1991).

81. See Colloquium, *What Does it Mean to Practice Law "In the Interest of Justice" in the Twenty-First Century*, 70 FORDHAM L. REV. 1543 (2002) (for a rich and full discourse on the ideal of pursuing justice by those of us who practice the law). The colloquium asked participants to respond to the recent book by Deborah L. Rhode, *In the Interest of Justice: Reforming the Legal Profession*. See DEBORAH L. RHODE, *IN THE INTEREST OF JUSTICE: REFORMING THE LEGAL PROFESSION* (2000).

scriptures remind us that we should pursue justice.<sup>82</sup> The prophet Micah, in the Old Testament of the Bible, put it this way when asked, "Will the LORD be pleased with thousands of rams, with ten thousands of rivers of oil? Shall I give my first-born for my transgression?"<sup>83</sup>

Micah's answer proclaims what for me is a simple truth: "He has showed you, O man, what is good; and what does the LORD require of you but to do justice, and to love kindness, and to walk humbly with your God."<sup>84</sup> This simple truth could be a cornerstone of one's personal and professional code. The third item in Micah's list, walking humbly with God, is subject to individual interpretation and dependent on whomever or whatever one identifies as God, a higher power, or the creative force of the Universe; or, even if one does not believe in a higher being, individuals have developed their own unique moral cosmology. Certainly, the essence of Professional Responsibility is embodied in the first two—DO JUSTICE AND LOVE MERCY! If we are just and compassionate human beings, everything in our personal and professional lives should fall into line as we apply this truth to our relationship with our clients and with other persons. To recommit to teaching this subject is to share the rich wealth of stories of our profession which reflect and embody this truth.

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82. *Amos* 5:21-24 (Harper Study Bible Revised Standard Version 1980).

83. *Micah* 6:7 (Harper Study Bible Revised Standard Version 1980).

84. *Micah* 6:8 (Harper Study Bible Revised Standard Version 1980).