

Going Back to Kindergarten: Considering the Application of Waldorf Education Principles to Legal Education

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“In education we must take the whole human being into consideration, the growing, living human being, and not just an abstract idea of man.”¹

– Rudolf Steiner
Founder, Waldorf Education

I. INTRODUCTION

There have been many articles about the ethical decline of lawyers.² The current research suggests that practicing attorneys may overlook their personal morals and judgment when advocating on behalf of their clients.³ A recent survey showed that when faced with an ethical dilemma, young lawyers “retreat[ed] into their role as advocates” by focusing on legal issues rather than on social issues.⁴ In response to this perceived ethical decline, various scholars are now suggesting that lawyers “move beyond this ethical suspension to a place where [one’s] personal ethical principles take precedence.”⁵ Others argue

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1. Caroline Osteimer, *Waldorf Education*, IN CONTEXT: A QUARTERLY OF HUMANE SUSTAINABLE CULTURE 43 (Summer 1984) (on file with author).

2. See, e.g., MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY 83 (1994); ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993); SOL M. LINOWITZ & MARTIN MAYER, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY (1994); THOMAS L. SHAFER & ROBERT F. COCHRAN, JR., LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY 54 (1994); Alan Donagan, *Justifying Legal Practice in the Adversary System*, in THE GOOD LAWYER: LAWYERS’ ROLES AND LAWYERS’ ETHICS 123 (David Luban ed., 1983); James R. Elkins, *Lawyer Ethics: A Pedagogical Mosaic*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 117, 196 (2000); Deborah Rhode, *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589 (1985).

3. Larry O. Natt Gantt, II, *Ethical Guideposts for the Christian Attorney: Integration as Integrity: Postmodernism, Psychology and Religion on the Role of Moral Counseling in the Attorney-Client Relationship*, 16 REGENT U. L. REV. 233, 234 (2003).

4. *Id.* at 234 (citing Robert Granfield & Thomas Koenig, “It’s Hard to Be a Human Being and a Lawyer”: *Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495, 514-15 (2003)).

5. *Id.*; see also Robert Granfield & Thomas Koenig, “It’s Hard to Be a Human Being and a Lawyer”:

that law schools should take responsibility for the ethical development of their students by improving their legal ethics instruction.⁶ Still others suggest that “law schools have a duty to morally educate their students” because of the significant situations lawyers confront each day.⁷ The resolution of this debate may depend upon “a renewed, fresh emphasis on educating attorneys and law students about the importance of integrating their personal morality and their professional role.”⁸

Should legal instruction help law students determine their core values and develop their personal moral compass before they are amidst the pressures of law practice? One commentator frames the issue as follows: “Only if legal education recognizes that lawyering includes an acknowledgement of personal beliefs, even if this reflection is simply cursory, will lawyers be more human.”⁹ If we agree that law schools bear a responsibility to help create “ethical” attorneys (or at least that law schools should discuss the contribution of personal beliefs and values to good lawyering), how do we go about it?

If law schools want to create professional and ethical lawyers, law schools need to integrate ethics and personal values into the traditional law school curriculum.¹⁰ Waldorf Education, a progressive educational methodology, can serve as a model for this integration. The next section of this article defines and explores the basic principles of Waldorf Education. Part III then examines how the principles of Waldorf Education may be applied to legal education. Part IV discusses various practical suggestions as to how the proposed integration of ethics and values into the traditional curriculum might occur. In

Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice, 105 W. VA. L. REV. 495, 497-504 (2003) (discussing ethics instruction in law schools); Donald C. Langevoort, *Where Were the Lawyers? A Behavioral Inquiry into Lawyers' Responsibility for Clients' Fraud*, 46 VAND. L. REV. 75, 113 (1993); Deborah L. Rhode & Paul D. Paton, *Lawyers, Ethics, and Enron*, 8 STAN. J.L. BUS. & FIN. 9, 24-38 (2002).

6. Gantt, *supra* note 3, at 234-35.

7. Subha Dhanaraj, Comment, *Making Lawyers Good People: Possibility or Pipedream?*, 28 FORDHAM URB. L.J. 2037, 2039 (2001).

8. Gantt, *supra* note 3, at 270 (suggesting instructors require attorneys and would-be attorneys to consider their morals where counseling clients).

9. Dhanaraj, *supra* note 7, at 2071.

10. The literature contains various distinctions between ethics and professionalism, although most agree that there is in fact a distinction. For example, the ABA reported:

Professionalism is a much broader concept than legal ethics. For the purposes of this report, professionalism includes not only civility among members of the bench and bar, but also competence, integrity, respect for the rule of law, participation in pro bono and community service, and conduct by members of the legal profession that exceeds the minimum ethical requirements. Ethics rules are what a lawyer *must* obey. Principles of professionalism are what a lawyer *should* live by in conducting his or her affairs. Unlike disciplinary rules that can be implemented and enforced, professionalism is a personal characteristic.

CONFERENCE OF CHIEF JUSTICES, A NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM: A REPORT OF THE WORKING GROUP ON LAWYER CONDUCT AND PROFESSIONALISM 2 (Jan. 21, 1999).

Part V, I argue that although law schools have a responsibility to confront the role of ethics in practice, ultimately, each individual student must take personal responsibility for his or her own ethical and moral development. Finally, the article concludes by asserting that an integration by law schools of academics, professionalism, and personal values within the curriculum could go a long way towards producing ethical and successful lawyers.

II. WALDORF EDUCATION: A BRIEF HISTORY

A. *The Contemporary Education Crisis in America*

In the traditional educational system, students sit at desks to learn math and science; reading instruction begins in kindergarten or earlier. The focus of the curriculum is almost solely on academics. Nowadays, it is not uncommon for kindergartners to trade naps for homework. The push for academic excellence has eroded the very basic notion of what it means to be a child. One educator, troubled by the current manner in which children are taught, has gone so far as to describe this trend as an educational crisis:

The approach of the Bush administration to the crisis in education has been to tie federal funding to national testing, forcing legislators to emphasize raising test scores, and school districts to require that teachers “teach to the test.” Parents may not be aware that district-wide curricula now prescribe exactly what must be taught, and how, on each day in each subject. This kind of teaching, with its mind-numbing drill, rote learning and high-stakes testing, only increases the feeling of disconnection in students, who find little in the school experience that gives them a sense of meaning or purpose. It is an astonishing fact that more than a third of public-school ninth graders drop out before graduating from high school.¹¹

Personally, as my son reached kindergarten-age, I, too, found it troubling that early childhood education seemed no longer grounded in an understanding of how children learn. I was inspired by a trend in early childhood education—Waldorf Education—that moved away from traditional teaching methodologies to a more holistic approach to educating children.¹²

11. Rahima Baldwin Dancy, *The Wisdom of Waldorf: Education for the Future*, MOTHERING MAG., Mar./Apr. 2004, at ¶ 9, available at http://www.mothering.com/articles/growing_child/education/waldorf.html (citing Deb Kollars, *Dropout Program Reaches Few Pupils—After 18 Years*, SACRAMENTO BEE, Feb. 7, 2003, at A1, A16); see also Susan H. Bitensky, *Theoretical Foundations For a Right to Education Under the U.S. Constitution: A Beginning to the End of the National Education Crisis*, 86 NW. U. L. REV. 550, 551-52 (1992) (arguing there is a crisis in public education of “such menacing proportions” that our entire nation is jeopardized); Daniel Gardenswartz, *Public Education: An Inner-City Crisis! Single-Sex Schools: An Inner City Answer?*, 42 EMORY L.J. 591, 597 (1993) (stating the “current crisis in education” and its effects on our nation’s economy are relatively new); Note, *The Hazards of Making Public Schooling a Private Business*, 112 HARV. L. REV. 695, 695 (1999) (asserting that there is a “crisis” in American public education).

12. To me, Waldorf Education is a unique form of educating children, because it is based on the belief

Some childhood development experts have recognized that there is a serious problem with the dominant educational philosophy.¹³ Further, an increasing number of parents and educators are looking at the bigger picture: instead of educating only the heads or “minds” of our children with our sole focus on academics, we need to educate their “hearts” as well. Academic skills need to be integrated with social learning and moral lessons in order to produce successful, ethical, and well-balanced adults. As I watched my son thrive in the Waldorf environment, it occurred to me that my law students could likewise benefit from the principles of Waldorf Education.

In law school, we focus almost exclusively on the academics of the law: case analysis, “thinking like a lawyer,” and legal reasoning. Yet, there is more to becoming a good lawyer than simply understanding legal rules in a vacuum. In order to survive in the real world of law practice, and to be successful and happy doing so, law students also need to educate their “hearts.” Law students should be encouraged, while in school, to consider the human element of lawyering and how this human element impacts their clients, their colleagues, and themselves.

B. Waldorf Education: A Response to this Educational Crisis

Waldorf Education has been described as the most progressive and large-scale private-education movement in the world.¹⁴ Rudolf Steiner (1861-1925), an Austrian scientist and philosophical thinker, developed the Waldorf Education philosophy.¹⁵ Steiner sought to integrate spiritual and scientific “planes” of understanding and experience.¹⁶ In 1919, surrounded by the devastation of World War I, Steiner was contacted by Emil Molt, the owner of the Waldorf-Astoria cigarette factory in Stuttgart, Germany.¹⁷ Molt asked Steiner to address the factory’s workers.¹⁸ Steiner talked about the need for a new social order, a new sense of ethics, and a less damaging way of resolving conflict following the recent war’s devastation. Molt asked Steiner if he would

that the human being is made up of mind, body, and spirit. The specific methods used in Waldorf schools come from the view that a child develops through a number of basic stages from childhood to adulthood, and that the curriculum should respond to, and work with, the child through each of these stages of development. This curriculum is child-centered and flexible, building upon each child’s strengths and weaknesses. Academics are not stressed in the early grades, but instead the goal of the early years is on building a community within the students.

13. See generally EUGENE SCHWARTZ, *MILLENNIAL CHILD: TRANSFORMING EDUCATION IN THE TWENTY-FIRST CENTURY* (Steiner Books 1999) (arguing that Waldorf Education provides some answers to our pressing educational crisis).

14. Dancy, *supra* note 11, at ¶ 2.

15. See Carolyn Pope Edwards, *Three Approaches from Europe: Waldorf, Montessori, and Reggio Emilia*, EARLY CHILDHOOD RESEARCH AND PRACTICE, Spring 2002, at ¶ 4, available at <http://ecrp.uiuc.edu/v4n1/edwards.html>.

16. *Id.*

17. Dancy, *supra* note 11, at ¶ 3.

18. Dancy, *supra* note 11, at ¶ 3.

start a school for the workers' children. Steiner's "vision was that this new kind of school would educate human beings to create a just and peaceful society."¹⁹ This was the beginning of Waldorf Education.

Rahima Baldwin Dancy, an early-childhood specialist, describes the basics of Waldorf Education as follows:

The purpose of education, [Steiner] thought, should not be merely to instill knowledge, which can be coldly abstract and destructive when separated from human values and a feeling for the humanity of other people. Rather, Steiner's goal was to educate the whole human being so that thinking, feeling, and doing are integrated, and capable of functioning in a healthy way. Such people are more likely to discover and implement solutions that further human development, rather than fall prey to narrow and dogmatic doctrines²⁰

The moving force behind Steiner's vision was the idea of "cultural renewal."²¹ Steiner founded Waldorf Education to answer a basic question: How can we educate children to prevent another catastrophe like World War I? Steiner himself framed the question as follows:

We shouldn't ask: what does a person need to know or be able to do in order to fit into the existing social order? Instead we should ask: what lives in each human being and what can be developed in him or her? Only then will it be possible to direct the new qualities of each emerging generation into society. The society will become what young people, as whole human beings, make out of the existing social conditions. The new generation should not just be made to be what the present society wants it to become.²²

Steiner believed that there should be a unity of spirit, body, and soul, and that the best education should create a balance between thinking and feeling.²³ Waldorf teachers share in the common goal to be a nurturer, partner, and guide to their students.²⁴ The teachers create beautiful classrooms in calm, pleasing colors. The school environment itself sends a message of respect to its students.²⁵ The Waldorf teacher generally plays a performance role in the classroom by leading stories or plays involving the integration of the academic

19. Edwards, *supra* note 15, at ¶ 4 (describing how Steiner school defied conventions of its time by being coeducational, open to children of any background, comprehensive, and independent of external control).

20. Dancy, *supra* note 11, at ¶ 4.

21. Dancy, *supra* note 11, at ¶ 5.

22. Dancy, *supra* note 11, at ¶ 5 (citing Rudolf Steiner, *Addresses and Articles 1915-1921*, in *THE THREEFOLD SOCIAL ORDER* (F. C. Heckel trans., 1919), *quoted in* *LEARNING TO LEARN: WALDORF ALUMNI REFLECTIONS* (Marianne Alsop & Kay Skonieczny eds., 2001)). Today, there are more than 870 Waldorf schools in over 40 countries, with 140 schools affiliated with the Association of Waldorf Schools of North America. *See generally* JACK PETRASH, *UNDERSTANDING WALDORF EDUCATION: TEACHING FROM THE INSIDE OUT* (2002) (discussing Waldorf Education in the elementary school context); Association of Waldorf Schools of North America, <http://www.awnsna.org> (last visited Feb. 19, 2007).

23. Edwards, *supra* note 15, at ¶ 8 (citing RUDOLF STEINER, *THE KINGDOM OF CHILDHOOD: INTRODUCTORY TALKS ON WALDORF EDUCATION* (1995)).

24. Edwards, *supra* note 15, at ¶ 11.

25. *See* Edwards, *supra* note 15, at ¶ 11.

and the artistic with a notion of the spiritual, as well.²⁶ “The teacher is also a didactic moral leader, seeking to provide an intimate classroom atmosphere permeated with a sense of *harmony* and full of themes about caring for the community and for the natural and living worlds.”²⁷ The teacher supports a classroom in which the individual needs of each student are considered, including their own unique personalities and temperaments.²⁸ The aim is to educate the whole child, “head,” “heart,” and “hands,” with an appropriate balance of academics, art, movement, and spirituality.

Interestingly, these same educational principles apply to law students. As we find ourselves in the midst of our own ethical crisis in the world of lawyering, we need to orchestrate our own “cultural renewal.”²⁹ If we want to educate law students to be ethical and professional, and to develop their own moral compasses, then we need to go beyond educating only our students’ minds and intellects. Teaching students how to reason or “think like a lawyer” is not enough. Using Waldorf Education as a guide, we should recognize the individuality of each law student and strive to provide a balanced legal education: one that challenges students’ intellect while also providing instruction and exploration into ethics, professionalism, and personal values.

III. APPLYING WALDORF EDUCATION TO LAW SCHOOL

At the University of St. Thomas, we have the unique mission of educating students to be “morally responsible leaders who think critically, act wisely, and work skillfully to advance the common good.”³⁰ This mission manifests itself in many different ways.³¹ One way the University’s mission informs my teaching is in defining my ultimate goal: I want to help create future lawyers who are not only intellectually strong, but lawyers who will be thoughtful, ethical, and professional. To me, this goal seems very similar to the goal of Waldorf Education: to create students who think independently while

26. Edwards, *supra* note 15, at ¶ 12.

27. Edwards, *supra* note 15, at ¶ 12; *see also* Joseph Chilton Pearce, *A Humanist Talks About Waldorf Education*, in WALDORF EDUCATION, A FAMILY GUIDE 82 (Pamela Johnson Femmer et. al., eds., 1992) (describing Waldorf Education as most undamaging and beneficial education system we have).

28. *See* Edwards, *supra* note 15, at ¶ 12.

29. *See supra* note 21 and accompanying text.

30. University of St. Thomas Mission Statement, <http://www.stthomas.edu/aboutust/missionstatement/default.html> (last visited Feb. 19, 2007). The University states its mission as follows: “The University of St. Thomas School of Law, as a Catholic law school, is dedicated to integrating faith and reason in the search for truth through a focus on morality and social justice.” *Id.* Even as a non-Catholic in a Catholic law school, I wholeheartedly embrace this mission as do each of my students. The values represented in this mission are common to all of us, and we each interpret the mission in our own unique way.

31. Although the identity of the University of St. Thomas School of Law is distinctly “Catholic,” the faculty at the University of St. Thomas represents a variety of religious, philosophical, and political backgrounds. Personally, I see the mission as a mandate to create students with a personal moral compass, regardless of their backgrounds, religious or otherwise.

considering how their actions will impact the common good.³² Waldorf Education can serve as a guide to the legal academy as it begins to incorporate concepts of ethics, professionalism, and personal values into the classroom. Legal educators can use Waldorf principles to inform and enhance the traditional law school curriculum and pedagogy.

*A. Integrating the Law School Curriculum: Combating the Trend to
Compartmentalize Our Public and Private Lives*

One of the guiding principles of Waldorf Education is the intersection of the spiritual and scientific planes: Steiner “wanted to integrate these two forms of understanding and experience” into a single forum.³³ The Waldorf curriculum focuses on building compassion and respect among its students, including cultivating an interest in the world around us and a sense of social responsibility.³⁴ Waldorf educators ask the question: “What image of the human being do we want to use as a model for our students?”³⁵ One Waldorf educator answers the question as follows: “It is an image of the human being as . . . compassionate, reverent, respectful, engaged, tolerant, patient . . . wise, balanced, [and] in harmony with [everyday life]”³⁶

Ideally, law students should possess many of these qualities. We all want our students to grow into lawyers who have a social conscience and show compassion, respect, and cooperation.³⁷ Further, we want our students to develop the cognitive and practical skills necessary for practicing law. Waldorf Education asserts that students need a balanced curriculum in order to develop into socially conscious, productive adults. Likewise, legal education should strive to provide a balanced legal curriculum in order to produce ethical and professional attorneys. Yet law schools do not typically train the “whole” student or consider the multiple intelligences of each entering class.³⁸ Instead,

32. See *supra* notes 14-28 and accompanying text (describing the philosophy and objectives of Waldorf Education).

33. Edwards, *supra* note 15, at ¶ 4.

34. See William Ward, *Is Waldorf Education Christian?*, RENEWAL, spring/summer 2001, available at <http://www.awsna.org/renchristian.html>.

35. *Id.* at 2.

36. *Id.*

37. See, e.g., Cynthia L. Fountaine, *In the Shadow of Atticus Finch: Constructing A Heroic Lawyer*, 13 WIDENER L. REV. 123 (2003) (discussing what makes a lawyer heroic, including the qualities of conscience and compassion); Bruce A. Green, *The Role of Personal Values in Professional Decisionmaking*, 11 GEO. J. LEGAL ETHICS 19, 24 (1997) (considering that personal and moral understandings can and should inform a lawyer’s work).

38. In my experience both as a former law student and now as a law professor, the focus of law school can be primarily on test scores, essay exams, and achievement. We determine who gets into law school based upon applicants’ LSAT scores and undergraduate grade point averages. Although there are certainly well-rounded activities in law school (i.e., moot court competitions, clinic experiences, writing competitions, negotiations, etc.), we often assign value to students based upon test scores. A student’s law school grade point average (GPA) determines whether they are on law review; and their class ranking determines the jobs for

the legal academy focuses on training students to be logical thinkers and zealous advocates. We reward students when they “think like a lawyer.” Further, many young attorneys abandon what little professionalism they have learned once they experience the pressures inherent in the legal marketplace.³⁹ By expanding the law school curriculum to integrate discussions of ethics, professionalism, and personal morals, students will be better prepared to tackle the various dilemmas they will encounter each day.

Admittedly, this task is not an easy one. One author believes this difficulty stems, in part, from the fact that law students, much like contemporary American society, tend to compartmentalize their lives: “The social obstacles derive from the way in which modernity partitions each human life into a variety of segments, each with its own norms and modes of behavior.”⁴⁰ Alasdair MacIntyre, Professor and Political Philosopher, reasoned that in the present world, we separate private life from public life, as well as our work life from leisure.⁴¹ Because of this division, lawyers often view personal ethics as a private affair, separating it from their work and public life.⁴² MacIntyre further contends that these philosophical obstacles arise from two modern societal tendencies: (1) the tendency to take complex matters and divide them into simpler components; and (2) the tendency to separate the individual being from her occupational or professional role.⁴³ MacIntyre further opines that this second tendency is prevalent and affects lawyers most specifically: the practice of law “divorce[s] the lawyer as person from the lawyer as professional.”⁴⁴

Understanding these societal pressures towards separation, law schools may need to be more proactive in bridging the gap between the lawyer as person and professional.⁴⁵ Further, it is time to demand that our students take

which they can apply. Although we teach professionalism in professional responsibility classes, we may not often go beyond that. Yet the profession of being a lawyer requires many more skills than we currently test and/or focus upon in law school. See Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201, 206 (1999) (arguing that law schools are too focused on the sorting and weeding out of students).

39. Gantt, *supra* note 3, at 234 (noting study revealing organizational pressures of law firm life caused young attorneys to compromise ethical standards).

40. Gantt, *supra* note 3, at 241 (citing Alasdair MacIntyre, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 204 (2d ed. 1984)).

41. Gantt, *supra* note 3, at 241 (citing Alasdair MacIntyre, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 204 (2d ed. 1984)).

42. Gantt, *supra* note 3, at 241 (citing Alasdair MacIntyre, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 204 (2d ed. 1984)).

43. Gantt, *supra* note 3, at 241 (citing Alasdair MacIntyre, *AFTER VIRTUE: A STUDY IN MORAL THEORY* 204 (2d ed. 1984)).

44. Gantt, *supra* note 3, at 241 (citing Robert F. Cochran, Jr., *Professionalism in the Postmodern Age: Its Death, Attempts at Resuscitation, and Alternative Sources of Virtue*, 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 305, 315 (2000)).

45. The main way that law schools can be more proactive is to integrate other skills and values within the traditional law school curriculum. Instead of merely talking about a court's decision in class, consider uncovering the real story behind the published case. What were the social and economic issues that led to the court case? What was the real story behind the particular case? Did the outcome benefit the client? Engage

responsibility for their own ethical and professional development. Students come to law school with their own sense of personal integrity. To the extent that we, as legal educators, can reinforce and encourage our students' understanding of their personal values, we can begin to change the current legal climate and our profession as a whole.

B. *The Legal Educator as a Mentor, Partner, and Guide*

A teacher in Waldorf Education is a “nurturer, partner and guide” to the student.⁴⁶ Like the Waldorf teacher, the legal educator is uniquely situated to be a mentor, partner, and guide to a law student's professional development. Law professors teach more than black-letter law. “We teach lawyering behavior. We do not simply teach grammar or transitions or roadmap paragraphs.”⁴⁷ Further, in any discipline, a professor's “personal integrity provides a [rich] source of influence for ethical and professional behavior.”⁴⁸ For example, Professor Patrick Schiltz argues that our moral influence occurs whether we want it to or not: “[M]oral influence is inevitable. It is not possible to choose to have no moral influence: The choice is between good moral influence and bad moral influence.” In other words, the question for us academics is not whether we will shape the character of our students, but how.⁴⁹ Likewise, attorneys engaged in private practice understand that law schools teach values:

Professors construct the very foundation of the life-long learning process in which a law student embarks and continues as a lawyer. Professors teach law students the concepts of law and how to think like a lawyer. However, law professors must simultaneously teach law students about the law and the ethical, moral and professional responsibilities which are at the core of a lawyers' existence. Without value-based education, the law schools will send lawyers into practice who have little recognition of responsibility to anyone other than to their own commercial self-interest in trading technical word-smithing and liability avoidance for cash.⁵⁰

students in class by focusing on the human aspects of the case as much as the legal aspects of any decision. Talk about professionalism and moral issues. It is precisely these human aspects of lawyering that a practicing attorney must deal with on a daily basis.

46. See Edwards, *supra* note 15, at ¶ 11.

47. Melissa H. Weresh, *Fostering a Respect For Our Students, Our Specialty, and the Legal Profession: Introducing Ethics and Professionalism Into the Legal Writing Curriculum*, 21 *TOURO L. REV.* 427, 454-55 (2005)[hereinafter Weresh, *Fostering a Respect*]. Although Weresh looks at these issues from the perspective of the legal writing discipline, her techniques and examples are applicable to the doctrinal classes as well. See generally Melissa H. Weresh, *LEGAL WRITING: ETHICAL AND PROFESSIONAL CONSIDERATIONS* (2006) [hereinafter Weresh, *LEGAL WRITING*] (providing comprehensive analysis of ethical considerations involved in various aspects of legal writing).

48. Weresh, *Fostering a Respect*, *supra* note 47, at 459.

49. Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, The Elite Law School, and the Moral Formation of the Novice Attorney*, 82 *MINN. L. REV.* 705, 779 (1998) (footnotes omitted).

50. Douglas S. Lang, *The Role of Law Professors: A Critical Force in Shaping Integrity and*

Every legal educator possesses the power to exert this type of moral influence. Like the Waldorf classroom, the legal classroom can become an active exploration into ethical, moral, and professional issues.⁵¹

IV. INTEGRATING ETHICS, PERSONAL VALUES, AND PROFESSIONALISM INTO THE CLASSROOM

Most of us have strayed from our lecture notes at one time or another to begin a conversation about how to behave ethically and professionally. Perhaps we bring up a Rule of Professional Conduct as it relates to a legal issue.⁵² Certainly we remind students to adhere to court deadlines and instruct them to research accurately and precisely. We point out they must disclose adverse authority because there is an ethical obligation to bring it to the court's attention. In addition to these more casual conversations and discussions, we can guide our students more directly in the classroom. How many ethical and professional dilemmas can actually be resolved by the Professional Rules of Responsibility? In my personal experience, these "rules" solve very few of

Professionalism, 42 S. TEX. L. REV. 509, 514 (2001).

51. It is true that most, if not all, law students are introduced to the Code of Professional Responsibility and the Model Rules of Professional Responsibility in law school. The American Bar Association (ABA) Standards for the Accreditation of Law Schools Section 302(a)(iv) mandates that all students take instruction in professional responsibility. The courses must also include instruction in the ABA's ethics rules. In addition, nearly all jurisdictions require that bar applicants pass the Multi-state Professional Responsibility Examination (MPRE) in order to become a licensed lawyer. However, the fact that students are introduced to these rules in law school does not necessarily mean that they truly understand how these rules apply to the real-world dilemmas that a practicing lawyer faces each day.

52. For example, the Model Code begins Canon I with the obligation that "[a] [l]awyer [s]hould [a]ssist in [m]aintaining the [i]ntegrity and [c]ompetence of the [l]egal [p]rofession." MODEL CODE OF PROF'L RESPONSIBILITY Canon 1 (1983). The Model Rules also state that "[a] lawyer should aid the legal profession in pursuing these objectives [reforming the legal system and ensuring access to justice] and should help the bar regulate itself in the public interest." MODEL RULES OF PROF'L RESPONSIBILITY, Pmb1. (1999). The Preamble further states:

The legal profession's relative autonomy carries with it special responsibilities of self-government . . . Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

Id. Although this language is quite substantive and weighty, it may not be understandable to a law student who has little context for how these rules or canons apply in a real-life context. By taking that additional step and explaining to our students our own stories regarding ethical dilemmas or by referencing ethical dilemmas or choices that other attorneys face in any given day, our students will gain much more from our classroom discussions of ethics and professional responsibility. Consider another example: DR1-102(A) of the Model Code provides that a lawyer "shall not . . . engage in illegal conduct involving moral turpitude" and prohibits conduct which involves "dishonest, deceit or misrepresentation." But what is "moral turpitude" and does the rule prohibit attorneys engaging in illegal conduct which does not involve moral turpitude? See Edward Cheng, *A Discussion On Ethical Decisions*, 21 J. LEGAL PROF. 89, 89-90 (1996).

most real-life ethical questions.⁵³ If, however, our students cannot rely upon rules or codes for guidance, then where do they go for answers? Schiltz frames the issue as follows:

The formal rules of professional responsibility are often the focus of discussions of legal ethics in law reviews, bar journals, and other periodicals, as well as at academic conferences, bar conventions, and other professional meetings. In one sense, this is as it should be. The rules are important, for they affect the conduct of lawyers (in both anticipated and unanticipated ways) and they influence the values of the profession. In another sense, though, it is easy to overestimate the degree to which formal rules determine whether lawyers behave unethically or whether the profession regards particular types of conduct as unethical Lawyers make decisions every day about what conduct is ethical and about whether they will behave ethically, but often the formal rules have little to do with those decisions.⁵⁴

If we agree with this observation, that formal rules rarely help us resolve ethical dilemmas in the real world, then we need to give our students something else. The answer is perhaps that each student will need to draw upon his or her own personal value system or moral compass while using the formal rules as a point at which to begin. Accordingly, legal educators need to guide law students early on in developing their moral “muscles.” The following section provides some practical strategies I use in my classroom.

A. *Take Advantage of Student Enthusiasm During The First Year*

The first year of law school is the ideal time to begin a discussion of legal ethics and professionalism. First-year law students enter law school with

53. In my class, I regularly discuss the ethical dilemmas I faced in practice during my first year. For example, I ask students how far they would go in a discovery deposition of an opponent’s client. If your job is to discover information that may affect the credibility of a witnesses’ testimony, how far do you push the deponent to reveal other information? Do you ask about information that may be irrelevant to the principal case, but that will create questions about the witnesses’ credibility in the jury’s mind? I will sometimes have my students watch a movie clip that shows a lawyer clearly going too far in deposing a client so my students can “see” what it looks like. The Model Rules do not always answer these types of questions. I tell my students the true story of my first deposition in private practice where my much more experienced opponents objected to every single deposition question I asked simply to aggravate both me and my client. Is this acceptable behavior? I ask my students what rule governs this behavior? Practically, what recourse did I have? Should I have stopped the deposition, called the judge, etc.? What about the concept of double-billing? In practice, lawyers may be waiting for a meeting in regards to one client, and reading cases to prepare for a motion brief for another client. Is it permissible to “bill” both clients? Again, there may not be a right or wrong answer based upon the Rules or Model Code, but these scenarios will undoubtedly come up in my students’ careers if they choose to practice law. Discussing “real-life” ethical issues like these also provides for some of the most interesting and beneficial classes for my students during their first year of law school.

54. Schiltz, *supra* note 49, at 713 (footnotes omitted); see also Dennis Turner, *Infusing Ethical, Moral, and Religious Values Into a Law School Curriculum: A Modest Proposal*, 24 U. DAYTON L. REV. 283, 292 (1999) (arguing that a typical course in Professional Responsibility is not adequate because teaching rules does not prepare students for the practice of law, which is “not usually a series of dilemmas in which the answers can . . . be found in the rules . . .”).

excitement for the practice of law.⁵⁵ Professors have an opportunity to teach entering students when their enthusiasm and respect for the law is high.⁵⁶ Make those first few weeks of law school count for something. At a time when many legal concepts are new and overwhelming, allow students to engage in conversations about professionalism and ethics as they relate to your course. For example, choose five “tricky” situations you encountered in practice and spend class time discussing how best to resolve them. Students might truly appreciate the opportunity to draw on their own values and experiences to resolve these dilemmas.

Professor Melissa Weresh points out that professors owe their students more than simply academic discourse about ethics, but rather an accurate understanding of the ethical issues faced in legal practice.⁵⁷ Likewise, Professor Schiltz points out that “lawyers typically assess the ethics of other lawyers not based upon whom they represent or what ends they pursue, but based upon how they do their work each day.”⁵⁸ Schiltz further suggests that whether an attorney’s behavior is “ethical” is judged not by whether that behavior conforms to formal, ethical rules, but by whether it conforms to the culture of that particular community as a whole.⁵⁹ That culture, in turn, “does not reflect ‘big’ decisions that members of the community make about ‘big’ problems, as much as it reflects the dozens of ordinary, mundane decisions that every attorney makes—and makes intuitively—every day.”⁶⁰ As educators, we can help our students understand the “ordinary” and “mundane” decisions they will need to make by providing specific examples and discussing possible resolutions based upon our own past experiences.

In my first year classes, I talk about specific situations I have encountered in my past law practice that called upon my personal values for resolution. One experience I relay to my students is when I accidentally heard an opposing attorney’s witness discuss key aspects of the case in a bathroom stall. As a young associate in one of my first jury trials, I had no idea what to do with this information, if anything. Should I tell my co-counsel? Should I keep quiet? Clearly the witness had not intended to make the disclosure. I began one of my classes with this example and ended up having a rich and fruitful discussion about professionalism, personal values, and ethics.

Further, research suggests that significant changes occur in the way our students think about legal problems between their first and second year of law school. Psychologist Sandra Janoff conducted a study on how the moral reasoning processes of law students change during their first year of law

55. See Weresh, *Fostering a Respect*, *supra* note 47, at 440.

56. Weresh, *Fostering a Respect*, *supra* note 47, at 440.

57. See Weresh, *Fostering a Respect*, *supra* note 47, at 442-43.

58. Schiltz, *supra* note 49, at 711 (footnotes omitted).

59. Schiltz, *supra* note 49, at 713 (footnotes omitted).

60. Schiltz, *supra* note 49, at 713 (footnotes omitted).

school.⁶¹ Although her study focused on the differences that gender played in moral reasoning, her conclusions are arguably applicable to all law students. Janoff concluded that:

Women enter law school predominantly oriented to the web of interpersonal relationships rather than to a hierarchy of abstract principles. However, after one year of learning about a structure that emphasizes rights and rules within a learning environment that is congruent with that content, women express their connectedness to others less frequently but their objectivity and separateness more frequently.⁶²

Janoff's study suggests a change occurs between the first and second year of law school that serves to decrease some law students' sensitivity to moral issues.⁶³ Knowing this, legal educators need to combat this shift actively by using our students' enthusiasm to our advantage. If we begin our discussions of ethics and professionalism early on, our students are more apt to recognize the importance of these concepts and to consider their implications throughout their law school careers and into practice.

B. Lead Discussions Respectfully and Make Time for Students

Human beings learn by example. One of the most important lessons we can teach our students is the lesson of respectful discourse. Simply because your opposition disagrees with your legal position does not give you the right to bully, argue, or steamroll your way through an argument.⁶⁴ Students can learn this lesson in two ways.⁶⁵ First, students observe peers making arguments in class, analyzing and observing the "effectiveness of different techniques."⁶⁶ Second, our students model teachers' styles of argument.⁶⁷ Managing classroom discussions "so that all points of view are expressed and debated respectfully" can set an example of civil argument.⁶⁸ Finally, we need to monitor our own comments and opinions. The days where we can use fear to motivate our students are long gone. Professors who use behavior that is rude or disrespectful not only prevent their students from learning, but also reinforce the worst stereotypes about attorneys.⁶⁹

61. See generally Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 193 (1991).

62. *Id.* at 238.

63. *Id.* at 237-38.

64. See Donna C. Chin et al., *One Response to the Decline of Civility in the Legal Profession: Teaching Professionalism in Legal Research and Writing*, 51 RUTGERS L. REV. 889, 896-97 (1999).

65. *Id.* at 897.

66. *Id.*

67. *Id.*

68. Chin et al., *supra* note 64, at 897.

69. See Chin et al., *supra* note 64, at 897; see also Carrie J. Menkel-Meadow, *Can a Law Teacher Avoid Teaching Legal Ethics?*, 41 J. LEGAL EDUC. 3, 7-9 (1991) (discussing law professors' communication of negative messages about ethics and professionalism through conduct modeled in class); Thomas D. Morgan,

As difficult as it can be to find extra time in any given week, students benefit when their professors create opportunities for mentoring outside of the classroom. Professors should encourage conversations with their students to any extent possible. It is in these situations that students often learn their most memorable lessons about professionalism.

C. Integrate Lessons of Ethics and Professionalism in Each Class

Regardless of the course being taught, professors can, and should, strive to create unlimited opportunities to discuss the ethics of a particular problem or case, or to comment upon a litigant's professionalism. One of my favorite concepts to teach is the persuasive motion or brief. Brief writing presents a concrete way in which my students can explore how to effectively advocate a legal position with poise and professionalism as opposed to with overly aggressive advocacy.⁷⁰ Another example is the simple task of researching a legal issue for the first time:

A simple but powerful lesson can be taught when the first research assignment is distributed and legal research and writing students must share library resources. Ethical issues arise when access to limited resources is critical to the successful completion of a graded assignment in a highly-charged, competitive environment in which grades are equated with future success and earning power. A few students have succumbed to temptation and have hidden those resources in an effort to better their own chances of excelling. Though it is difficult to catch such students in the act, when such behavior is discovered, severe penalties must be imposed to convey the message that such conduct is intolerable.⁷¹

Any professor can discuss specific ethical problems in class and provide examples of how to argue a point persuasively, yet professionally.⁷² Likewise, any professor can show students how to critique a judicial opinion. An effective, albeit perhaps less frequently used technique, is to change the classroom dynamic for a day and hold "oral arguments." By simulating a motion hearing or appellate argument, we give our students the experience of arguing a particular point of law in front of a tribunal. Students get the opportunity to be effective advocates, while still maintaining civility toward

Law Faculty as Role Models, in TEACHING AND LEARNING PROFESSIONALISM 37 (American Bar Association Section of Legal Education and Admissions to the Bar 1996),

available at <http://www.abanet.org/legaled/publications/tlprofsymp.html>. Professor Morgan urged that, although most of our students do not aspire to become law professors, they "do want to live a professional life of which they can be proud. The effort to do that is something that law teachers model—for better or worse. The traits we hope they model have been called by some writers 'virtues.'" *Id.* at 38.

70. See Chin et al., *supra* note 64, at 898.

71. Chin et al., *supra* note 64, at 897 (footnotes omitted).

72. See Chin et al., *supra* note 64, at 897.

each other.⁷³ Other students can take on the role of judge and experience the challenge of negotiating the arguments of opposing lawyers. The main point for any of these exercises is to get the students to play the role of lawyer, to grapple with legal and ethical issues, and to understand the art of persuasive yet respectful advocacy.

D. Use the Problem Method of Instruction In Addition to the Case Method

Even if you are a faithful proponent of the case study method for teaching law, the problem method provides particular advantages for integrating ethical and professional issues. The problem method uses “hypothetical fact situations [based upon real world fact situations] as the centerpiece for student analysis and discussion.”⁷⁴ The problem method allows students to practice the type of analysis that a real attorney would use, yet allows students to make mistakes without real world consequences.⁷⁵

Professor Christine Venter advocates teaching students about professional ethics by simulating the practical questions that may arise in a typical law office setting:

If our students buy into the notion of professionalism without any critical evaluation of its moral, social, and historical content, their relationships with their clients will be influenced only by their adoption of the professional value system. Students need the opportunity—in law school and practice—to explore moral and ethical issues with their colleagues and clients in a way that seeks consistency with the principles of professionalism, but one in which professionalism is not the sole source of guidance If lawyers are not taught to engage clients in moral conversations about the lawyers’ and the clients’ moral responsibilities and the moral dimensions of a case, personal responsibility in the practice of law may not turn out to be something that comes naturally.⁷⁶

The more experience students have in handling ethical problems, the more their conversations about ethical and professional issues take on growing significance.⁷⁷ Even professors teaching a doctrinal course and introducing a largely “legal” issue to their class can find opportunities to simulate a lawyer-client experience. I suggest having the students play out the factual situation in the case. Create an in-class appellate tribunal and simulate the arguments to the

73. See Chin et al., *supra* note 64, at 898.

74. Thomas D. Morgan, *Use of the Problem Method for Teaching Legal Ethics*, 39 WM. & MARY L. REV. 409, 409 (1998).

75. See *id.* at 417-18; see also Gregory L. Ogden, *The Problem Method in Legal Education*, 34 J. LEGAL EDUC. 654, 654-57 (1984) (explaining the problem method and evaluating its advantages relative to the case method).

76. Christine Mary Venter, *Encouraging Personal Responsibility—An Alternative Approach to Teaching Legal Ethics*, 58 LAW & CONTEMP. PROBS. 287, 289-90 (1995) (footnotes omitted).

77. See *id.* at 290.

court. By using the problem method at various times throughout the semester, all professors can discuss specific professional dilemmas within a legal context. In my classes, I have touched on issues involving document production and confidentiality, the attorney-client privilege, and informed consent. I talk with my students directly about a lawyer's duty of candor to the court and responsibilities to opposing parties and witnesses. Throughout the semester, I also teach my students important lessons about empathy and compassion by discussing how the legal issues in any case affect the clients practically and personally. We as legal educators are limited only by our imaginations.

E. Point Out Lapses in Professionalism

Take the time to observe the legal world today with students. Discuss current events. Professors should point out lapses in professionalism that they see and tell the students why certain actions or decisions appear to them to be unprofessional.⁷⁸ For example, you can likely find a court decision in which the judge publicly reprimands the poor behavior of an attorney.⁷⁹ By sharing this with your class, you give your students a context within which to apply the legal rules you have discussed. Likewise, you can also show your students examples of professional and appropriate behavior. This makes an equally important impression upon students.⁸⁰

F. Include Professionalism as Part of the Graded Portion of Your Class

If you include professionalism as part of the graded portion of your class, you will create expectations that students interact with each other professionally.⁸¹ In the law school environment where grades are extremely important, allocating ten percent of your course grade to account for student professionalism may provide students with a clear incentive to act in accordance with generally accepted professional standards. The "professionalism" part of the grade can encompass everything from attendance to preparedness for class to late papers. In addition, it can serve as a reward for students who truly embody and model high standards of professionalism.

78. See Weresh, *Fostering a Respect*, *supra* note 47, at 462.

79. One of my favorite examples is to use what I call the "most painful oral argument ever," where an attorney argues in front of the 7th Circuit Court of Appeals but fails to make any appropriate legal argument to the court. The students clearly see the extreme displeasure of the judges. The fact that they are exposed to this example through actual audio of the argument makes it a powerful lesson. See Seventh Circuit Court of Appeals: Public Access to Oral Arguments, Opinions, Nonprecedential Dispositive Orders and Other Selected Materials, <http://www.ca7.uscourts.gov/fdocs/docs.fwx?caseno=04-2732> (Case Number 04-2732).

80. There is an excellent website where you can download recent United State Supreme Court oral arguments. These are often some of the best examples of professionalism in a real-world context. See U.S. Supreme Court Media, <http://www.oyez.org> (last visited Feb. 19, 2007).

81. See Weresh, *Fostering a Respect*, *supra* note 47, at 460-62.

V. STUDENTS ARE RESPONSIBLE FOR THEIR OWN ETHICAL DEVELOPMENT

Finally, although we can guide and encourage students to consider ethical questions and dilemmas ever present in the legal field, the students themselves are ultimately responsible for their own ethical, professional, and moral development. Waldorf Education views students as “active authors of their own development, strongly influenced by natural . . . forces within themselves.”⁸² Accordingly, the task of educators in Waldorf Education is to prepare students for “an unpredictable future by nurturing healthy development ‘from the inside’ [out] . . .”⁸³

Legal educators have a similar goal. If we want our students to be motivated to engage the world as professional and ethical lawyers, then our students must have the tools to accomplish these tasks. In Waldorf Education, each child is valued as an individual with their own talents and strengths.⁸⁴ Likewise, in law school, every student is an individual with unique talents and values. It is time law schools valued the “whole” law student. While some students excel at taking exams, others excel in legal writing or clinic participation. If provided with the right tools and inspiration, each student has unlimited potential to contribute to the legal profession positively. It is the job of legal educators to guide our students and provide this initial inspiration.

Our students come to law school with their moral compasses intact.⁸⁵ They have an inherent sense of right and wrong. We need only build upon what already exists within our students. Although it is the students’ ultimate responsibility to nurture their personal ethical development, legal educators can remind students to rely upon their personal values when faced with problems in the context of their professional roles.⁸⁶

VI. CONCLUSION

Law students cannot postpone their understanding of ethics, professionalism, and personal values until after they finish law school and start their careers. As legal educators and members of the bar, we have a responsibility to teach students about these real issues before they become lawyers. In response to the educational crisis of our younger children, many of us have turned to Waldorf Education as a guide. The fundamental principles of Waldorf Education apply equally to law students. Legal education is only now coming to realize what

82. Edwards, *supra* note 15, at ¶ 7.

83. Bob Hale & Karen MacLean, *Overview of Steiner Education* (2004), <http://www.steiner-austrailia.org/other/overview.html>.

84. See *supra* notes 14–28 and accompanying text.

85. Dennis Turner, *Infusing Ethical, Moral and Religious Values into a Law School Curriculum: A Modest Proposal*, 24 U. DAYTON L. REV. 283, 290 (1990). Turner argues law schools should stress that being a lawyer does not require checking one’s “moral code at the office door.” *Id.*

86. See Cheng, *supra* note 52, at 89 (asserting individual’s code of morality necessarily plays a fundamental role in guiding and shaping consideration and resolution of problems faced).

Waldorf educators have known for years: the purpose of education is not “merely to instill knowledge, which can be coldly abstract and destructive when separated from human values,”⁸⁷ but “to educate the whole human being.”⁸⁸ Steiner felt that by integrating thinking and feeling, we could create leaders in society who would be more “likely to discover and implement solutions,” rather than simply follow the trends of the past.⁸⁹

The same principles hold true when we consider educating the future leaders of our legal profession. In order to change the profession, our students need to begin considering the ethical consequences of their actions and the advice they will offer their future clients. In order to produce healthy lawyers that have the capacity to shape the legal profession and the world, the legal academy needs to integrate ethics, professionalism, and personal values into every aspect of the law school curriculum. If we can accomplish this, we will not only give future lawyers a greater sense of satisfaction, we will also better the legal profession as a whole.

87. Dancy, *supra* note 11, at ¶ 4.

88. Dancy, *supra* note 11, at ¶ 4.

89. *See* Dancy, *supra* note 11, at ¶ 4.