

(On Law student stress and teaching approaches for working with/minimizing stress)

From: **Schuwerk, Robert** [mailto:RSchuwerk@Central.UH.edu]
September 30, 2002

My critique of law school is bottomed on my beliefs that (1) for many of our students, law school is primarily a series of isolating and emotionally demoralizing, demeaning and degrading experiences; (2) absolutely no worthwhile pedagogical purpose is served by the aspects of the legal education process that produce those negative effects; and (3) the negative impacts of legal education continue past law school, and adversely impact many students' ability to lead productive and fulfilling personal and professional lives.

There are a variety of causes for this situation. The ones that I see as most important are: (1) a misapplied / misunderstood / misused / perverted Socratic Method, in which the search for truth that Socrates saw as its ultimate goal is transmogrified into a concealment of truth and an ability to defend any position (ironically, the avowed aim of Socrates's mortal enemy, the Sophist Protagoras--hence my reference to the commonly practiced technique as the "Protagorean Method"); (2) the systematic denigration of personal values, and their replacement with nothing whatsoever; (3) the systematic denigration of feelings and emotions, the results of which include causing persons to lose touch with their true inner selves and generating an unwillingness to expose one's emotional self to others and an aversion to interpersonal interactions of all types; (4) an over-intellectualization of the study of law, in which the principal--and often the only--goal of legal education is seen as imparting legal knowledge and legal reasoning skills to students, to the exclusion of the many other qualities and attributes needed to practice law in a successful, ethically proper manner; (5) a cut-throat, competitive atmosphere, in which students' worth is measured overwhelmingly by their academic performance; (6) a concerted refusal to provide students with the degree of feedback on their performance that would allow them to prepare themselves intellectually and emotionally for the rigors of final examinations; (7) a forced curve, which "games" students into mulcting one another for information while betraying such confidences as they succeed in inspiring by withholding their own information from others; (8) a disdain on the part of many professors for the practice of law; (9) a disdain on the part of many professors for practicing lawyers; and (10) a resulting relegation to second- or third-class status of all teaching and scholarship devoted to actually providing law students with the necessary skills and attributes of character necessary to practice law--and, most especially, to practice law more or less on one's own.

I have not laid out all of my thoughts on how to address the phenomenon that is a modern legal education, but I think that it is important to realize why there is so much resistance to change: the critique outline above is saying, in essence, to current academics--almost all of whom did quite well in a system very much like that existing today--that the system that anointed you as among the best of the best is fundamentally flawed. None of us like to hear that message. Indeed, I can recall that for many years I resisted changes that I knew in my heart were right because I didn't like to hear it either. For purposes of reform,

however, it seems to me that this message dictates a strategy of focusing on areas of law school faculties--ASP faculty, PR faculty, clinical faculty, lawyering skills faculty, and LRW faculty--that are apt to be more receptive to the criticisms outline above, and try to institute necessary reforms there, before moving on to more traditional courses. This approach has the additional advantage of not directly challenging most members of a law school faculty. Eventually, however, it will be necessary to move into the larger curriculum, but hopefully by then there will be greater knowledge of the favorable impacts of needed reforms among the "traditional" faculty, and a resulting increase in support of those wider changes.

Here, then, are some of the changes that I would recommend:

(1)"ethics by the pervasive method," as advocated by Professor Deborah Rhode, but limited to the areas of the curriculum identified above. I would suggest active and ongoing collaboration between PR teachers and others teaching in the lawyering skills and LRW areas in particular, to develop curricula that present students with gripping, and yet commonly encountered ethical dilemmas, the (proper) recognition and resolution of which impacts students' final grades. The goals of this approach are to (a) link ethical practice and legal practice in students' minds; (b) sensitize students' ethical antennae, so that they are always on the lookout for ethical issues in their own practices.

(2) more group work in covered courses (I realize that this is already a mainstay of many courses in the fields that I refer to above; and I have been experimenting with methods that allow use of a similar approach in large, traditional classes as well, that I would be happy to share with anyone who's interested).

(3) try to raise curves to realistic levels, especially where better-than-average classwide performances could be expected as a matter of course (e.g., seminars, other classes where students receive feedback before being evaluated on their final work product

(4) try to build in greater ranges around curve means, especially in classes where wide variations from an anticipated grade norm could be expected (e.g., "small" classes, statistically speaking).

(5) if possible within your particular institution, try to replace curves altogether, either with grade floors or with nothing at all (at UHLC, we have completed items (3) and (4), but (5) does not appear to be on our horizon).

(6) move toward mandatory graded midterms, at least in the first year of law school. If getting all first-year professors to do that is politically infeasible, try to get at least one professor / course to do so each semester. You might even try a pay incentive to the professor(s) drawing the black bean(s), to partially compensate them for the extra work involved. The test doesn't have to--indeed, should not--count for much of the final grade (mine are 10%), because it's goal is to let students who have no idea about what they should put on a final exam realize that fact at a time when they can take corrective measures. There is a reward on earth for professors who take this step, by the way:

markedly better final examinations, in which true disasters disappear completely. In my case, it made me feel a lot better about how well I had communicated an understanding of the subject matter to my students, once I started giving and grading midterms. I also found that about one-half of the "bad" students made enormous improvements by the time of the final exam. Indeed, one student who bottomed out a criminal law midterm of mine some years ago is on our faculty now, and commonly viewed as one of our very best teachers. (She gives midterms herself, by the way.)

From: **Daisy Hurst Floyd**
October 1, 2002

In my Civil Procedure class, I announced that we would have to hold some makeup classes because I have been out of town and know that I will be gone at least one other time. One of my students called to ask what the date of the canceled class would be because he had a family event out of town, and if my class were canceled, he would leave earlier than he now planned to. The dates weren't the same, but I told him that he should go anyway and just miss class. I told him that succeeding in law school doesn't require that you put it before your family, and that in the overall scheme of things, having the extra time with his family was more important than never missing a moment of class. I don't consider this bold advice on my part. Well, he came to see me the next afternoon to thank me and to say that it made a big difference for him, but that he was so shocked when I said it that he could hardly respond. Then he said that he had told another student this story and that she had burst into tears upon hearing it. It's yet another reminder of how quickly students take on the cultural values of law school and the damage that does. But it also points out that while we are trying to make the large changes needed, small things can make a difference.

On Monday, I decided to spend about twenty minutes in my Civil Procedure class talking about stress, maintaining your values in the difficult environment that law school presents, and balance. I read one of Steve Keeva's columns from the transforming practices website and handed out a short reading about these issues. Included in the handout were some web addresses where students could get more information. I have had quite a few students express appreciation privately. So, emboldened, I did the same thing today in my Evidence class, and several students in that class have also responded positively.

I would love to hear from others about ways in which they have addressed these kinds of issues in their classes.

Best, Daisy

Daisy Hurst Floyd
Professor of Law
Texas Tech University School of Law

1802 Hartford
Lubbock, TX 79409
806-742-3990, ext. 232

From: **Joyce Savio Herleth** [mailto:herlethj@SLU.EDU]
Sent: Wednesday, October 02, 2002 10:51 AM

Tomorrow, during one of my weekly Academic Support workshops for One-Ls, I am having a guest speaker from our university's student counseling service. He will be talking about "good" and "bad" stress, specifically for law students, with the goal of helping most students achieve a perspective on school and life in general. He is also leaving his card so those students who need additional help can feel at least some connection with him. I also asked all faculty to encourage all students to attend (something I rarely do), because stress can be so detrimental to a student's success. Hopefully more students will attend, if their professors acknowledge that students do need to be cognizant of their emotional needs. So support can come in the classroom -- or by supporting the expert who can provide services.

Joyce Savio Herleth, Director of Academic Support, St. Louis University School of Law

From: **Edward C. Brewer, III** [mailto:brewerec@NKU.EDU]
Sent: Wednesday, October 02, 2002 11:44 AM

I begin each year with first-year students by spending part of the time talking about the issues Daisy raises, particularly taking care of yourself and your personal relations so that they can help take care of you, and pointing out that the life habits they follow in law school will follow them into practice. I briefly mention diet and alcohol/drug abuse. What this appears to lead to is that (although I have a four-absences-max policy, I tell them that I do consider mitigating factors) students feel free to inform me of family issues that explain their absence (many do this out of their natural good manners), which gives me an opportunity to say exactly what Daisy said to her student (thanks for the confirmation, Daisy) and to offer to help them with the material once they have gotten someone's notes (in the collateral-consequences department, a may-record-class policy, for those who are otherwise disinclined to permit recording, can help such students--I have never seen my policy abused).

Later on in the first semester, when I get a sense that stress is at the max, I read a one-page essay I wrote about 4 years ago that begins "Law School is like the Land of Oz . . . ," and concludes with the observation

that like the great and powerful Oz, a professor's hope is that, when the [sometimes bewildered] student finds the way home, the professor's assistance has helped them along their way. I never get through it without choking up a little, sometimes a lot. Nothing like trying to live your own words, I suppose. (Yes, I eat quiche, too [smile].)

Daisy's point about doing these things in upper-level courses is well taken. My civil procedure course is for second-year evening students, who have lost the bloom of the first year but do not yet have the experience of the second year. As part of introducing the subject, I work the concept of having a litigation practice that supports and does not ruin your and your family's life by talking about alternative dispute resolution and its philosophy, and talking about how the litigation process requires both mental/emotional and physical fortitude. In professional responsibility, I try to spend time talking about how their personal ethics will guide them in making decisions about issues that require reference to the formal principles of professional ethics, and we get very serious about the alcohol/drug abuse discussion that they have as a prerequisite for the local bar examinations.

We may be giving these matters, and perhaps our own efforts, too little credit by calling them small things. At the levels of morals and values, it is a large matter to remember to put human kindness first where there are principalities and powers calling for our attention, and it is a large matter to mold our behavior out of respect for our students' experience. As a recovering litigator, I am constantly reminded of my own shortcomings in these regards, although I am better than I was two years ago. Deepak Chopra once said something to the effect that God is in the small spaces between one moment and the next, in the "still, small voice" of the hymns that I sing. Jesus found little children and persons outside the power structure very important, and exerted himself for them. I am sure there are many other examples in religion and philosophy that I know nothing about. At the risk of turning the second metaphor on its head, the still, small voices, whether they are those of our children or those of our students, are the largest things we have.

From: **Iijima , Ann** [mailto:Alijima@wmitchell.edu]
Sent: Wednesday, October 02, 2002 2:42 PM

I wrote about the question whether or not to talk about stress in an article which should be coming out this fall. The head of the counseling center & I met weekly with a small group of 1Ls to talk about issues of common concern, one of which was stress. I describe how the program blew up the first year, but was very successful in subsequent years. (I define

successful as producing a cohesive group of supportive students who really appreciated the program.) I haven't run the program for a couple of years because the counselor I was working with left the school and my teaching load increased. I am pleased to report that students from the two last years we ran the program are reinstating it as a student organization called the "Law & Life Association." (They are not going to call it LALA, though.)

I'm very lucky to have a faculty and dean who are supportive of these efforts. A few faculty members are a little skeptical about our ability to deal with emotional issues. Studies show, though, that for less severe instances of depression & stress, a friendly ear can be as effective as a trained ear. I think we only have to know our limitations and err on the side of referring students to professionals.

Our dean requires students to get PLP credits (Perspectives on the Legal Profession). The categories include "Healthy Lifestyle." School counselors talk to the students about stress, relaxation techniques, etc. We also have programs for the spouses/partners/significant others.

Ann Iijima
William Mitchell College of Law

From: **Edward C. Brewer, III** [mailto:brewerec@NKU.EDU]
Sent: Wednesday, October 02, 2002 4:01 PM

The point that "we are not therapists" (well, most of us aren't) seems well taken in principle, although whether the point were germane would depend on exactly what was said and attempted in the meeting. Sometimes the line between legal advice and public education might be applicable by analogy: don't talk about the person's individual issues, but talk about more general principles of stress. But in Amy's situation, I don't know how one avoids talking about the client's situation, and the student's situation as to the emotions arising from that experience.

The relatively rough cut we used to make when I was in practice (I haven't taught in a clinical setting) was to talk about the basis for our emotional responses (e.g., what is it in the client's situation that makes us angry, feel trapped) and the plan for using that response to create a plan or take action for the client. Amy, I think that much was your response to the faculty member's first point. I have never thought that a discussion of stress management techniques were the exclusive province of psychotherapists (e.g., yoga teachers do it), at least if the discussion stays out of the matters I will attempt to describe below. Nor have I ever thought that I was practicing psychotherapy by urging (or conversely, being urged) to turn anger into constructive service for the client, and thinking about ways to do that.

The therapist's realm, it seems to me, is in the deeper questions about, e.g., whether the depth of the lawyer's anger or trapped feeling derives from the relationship with a

controlling parent, cruel elementary school teacher, etc., particularly when those lead to questions or plans for healing that older relationship. (Not to take it to a personal level, but most of my energy in responding to abuses of power comes from similar sources.) Students can appropriately be reminded of those deeper dimensions of their empathy with their clients--indeed, as for both therapists and priests or pastors, professional competence may require managing that dimension in order to help the client effectively (instead of reliving one's own experience through the client). One critical point here is that we do not know, and a student may not know, whether one's outrage at the client's situation derives from a moral decision that outrage is an appropriate response (I have Larry to thank for any clarity on that teaching) or from a response driven more by the student's earlier experience (obviously the answer is, often both). Perhaps it may be enough to point out that difference, although I bet a real psychologist could explain it more precisely than I purport to have just done. Assuming the latter, it may be that in coming out of a meeting with those issues awakened but unresolved (and where no therapy was practiced), the student may well have considerable distress, although perhaps less than would have been where someone tried to resolve those issues by using ersatz therapy techniques. But it also seems to me that saying nothing about that issue, if that was the faculty member's point, is not appropriate, just as the student is not going to progress, and may worsen, from not engaging with the stresses of law school and the future career.

If I am right about all of that, it may be appropriate to point out in closing the meeting that our outrage and distress may be difficult to distinguish and can come from many sources, moral and psychological among them, and (as Joyce did earlier) that other groups of professionals (e.g., philosophers or theologians and therapists) deal with solving those deeper dimensions of our practice and client relations: although I am a cautious consumer of the church's theology and a doubtful one of anyone's philosophy, I am an unashamed consumer of therapeutic services. It may be appropriate to point out that moral outrage can blind us to practical solutions, that our empathic distress can disable us from helping the client, and that our professional ethics require us to avoid both of those results. But for the teacher to go further by crossing the vague border from (a) recognizing and talking about the need to manage that deeper dimension (the "general principle" I adverted to originally), through (b) the point of creating a space for appropriate clinical purposes but within which a student may in fact reflect silently or aloud on the historical source of the distress (which I think is at some considerable likelihood of occurring and, both legally and morally, has to be an acceptable risk of the clinical experience, perhaps with supportive dissuasion from open identification of personal issues), to (c) the process of actually managing that deeper dimension, is to move from a discussion about legal competence to a therapeutic encounter. I am sure that I do not know precisely where the line is crossed, although I think it lies closer to the end than the beginning of the crossing as I just described it.

There are other issues: even if practicing psychotherapy without a license seems a little hypertechnical, there is the question of student consent to engage in (what becomes, in that case) a group therapy session, and if the student's response is derived from something the group finds unacceptable, perhaps even an encounter session or an outing (term used here in its most general sense). Assume against its improbability the worst-

case scenario: the discussion goes too far, a student confronts a long-submerged demon from abusive relations with another person, or perhaps is overwhelmed with self-hatred on identifying a serious character flaw in herself, under circumstances in which there is no competent professional to help her manage this business, and suffers severe emotional distress and hurts or kills herself. I would not be surprised to find the statutory or regulatory violation of unlicensed therapy to be the predicate for a tort claim (whether intentional or negligent probably doesn't matter), which I say not only as a legal observation but primarily to underscore that as a matter of our ethical relations with our students, we should forebear to go that far across that border.

Bringing in a professional therapist could solve the competency problem for the clinical professor, and as Ann's post suggests might well make for a better stress management discussion, but it would not resolve the "choice of forum" issue: is a weekly clinical meeting an appropriate place for the therapist to do what the therapist does? The answer would seem to be, probably not. Whether a portion of a clinical meeting might be reserved for students who have given their informed consent to going together into those deeper dimensions of their response to the client's situation is an interesting proposition, but I think it is also a difficult proposition. To stop a lengthening post at two reasons: first, the students' future relationships with other lawyers in a practice setting, which we are attempting to replicate in the clinic, probably will not include, and we may not be providing a good model by adding, "integrated" or even "in-house" therapy as a dimension of that relationship; and second, sound privacy management may counsel that we not establish forums in which students will learn quite so much about one another as one does in a group therapy session.

Ed

At 12:48 PM 10/2/02, **Amy McDavid** (UWisconsin) wrote:

I am delighted to read the contributions to this discussion. I work in a clinical program in which 50 students provide legal services to inmates. This summer, I shared a group of 10 students with a co-supervisor who directs the victim-offender conferencing program and also supervises family law cases. So, between the victim offender conferencing in serious violence cases, regular criminal cases, and family law cases, all within the prison system, the students have some powerful emotions about their clinical experience. I have been trying to focus our small group discussions and journal assignments on increasing students' awareness of their own emotions and those of their clients.

This summer, I also gave out several readings on stress in the legal profession. I conducted one small group session in which we brainstormed the "productive" and "counter-productive" ways we all deal with stress (the students took issue with the categories, so I will examine that next time around). I got generally positive feedback from the students, along the lines of "it was so great to finally talk about this issue." However, a faculty member sat in on this session and later told me that he didn't think it was appropriate subject matter to be covering in our program. He had, I believe, three primary

points. First, is teaching about stress really part of our mission of creating excellent lawyers, or is it just about trying to create happy people? If it is just about enriching students' lives in a general way, there are innumerable subjects we could cover that have nothing to do with law. Second, we are not therapists and have no expertise in the subject matter. Third, (and possibly related), some things are better left to resolve themselves, and talking about them just makes them worse.

I expressed my belief that law students' (and lawyers') ability to cope with stress has a direct effect on not only their happiness, but also their productivity, creativity, and all-around effectiveness as professionals. I don't know that my argument on that point was heard. Points two and three are of somewhat more concern to me. Especially in a clinical program, discussions of stress can really look like group therapy sessions and I would like to know what methods of dealing with this topic are effective. And, although I basically believe that if somebody gets stressed about talking about stress, that means they already have stress (and I don't create their stress by asking them to think about it), one of my students echoed the faculty member's point that he felt worse when he is asked to think about the stresses of law school and his future career.

Amy

From: **Glesner-Fines, Barbara** [mailto:glesnerb@umkc.edu]
Sent: Wednesday, October 02, 2002 2:27 PM

In my family violence class, I use Clare Dalton & Elizabeth M. Schneider's textbook *Battered Women & the Law* (Foundation Press... or whoever owns them these days...). It has an entire chapter on "Doing the Work" that contains some incredibly insightful excerpts (pp. 1071-83) from Judith Lewis Herman's book *A Healing Relationship*, which is actually addressed to therapists, but is very thought provoking when it comes to the emotional/psychological dimensions of lawyering for clients recovering from trauma and the trauma that can cause the attorneys. You might have a look at it to see if it would be useful for your clinic students. (You could also point out to your colleague that at least one major textbook devotes an entire chapter to this issue of representational stress ;->

Peace,
Barbara Glesner Fines

From: **Fortney, Susan** [mailto:susan.fortney@ttu.edu]
Sent: Wednesday, October 02, 2002 6:26 PM

Like others, I have used Larry Krieger's article on "what we are not telling law students." Last year, I invited interested students from my Torts class to join some second year students in an informal discussion of the article. Students ate pizza and visited in small

groups. Attached are the questions that I posed to stimulate discussion. You will see that some of the questions are ones previously mentioned on our list exchanges.

Interestingly, I have already had last year's Torts students (now second year students) tell me that they want to participate in the discussion with first year students. The second year students told me that they appreciated the session, but now are dealing with different pressures.

While the formal presentations on stress and balance have been helpful, the students tell me that the more informal discussions have been the most meaningful.

Finally, I think that is also important for us to model healthy behavior. For example, last weekend, it was great to run with students participating in the Race for the Cure.

Thanks again for wonderful suggestions.

Susan Saab Fortney
Texas Tech University School of Law

From: **Charles Senger** [mailto:sengerc@cooley.edu]
Sent: Wednesday, October 02, 2002 3:03 PM

Professor McDavid raises some excellent questions. Maybe it would help to first focus on what we can do.

Although the faculty member is correct that we are not therapists, still the research indicates that college teachers do quite well in counseling students, at least in a one-on-one context. As Professor Iijima points out, we obviously do not want to take on deeply disturbed people. We do not have a license but our responsibilities still allow us some room to help and we do.

Second, as Professor Krieger argues so well, it is important to give students information. We can do a lot simply by telling students about problems, tools to use, and resources for further help. This can be done in a group context even when we do not have a prior opportunity to assess potential problems. Orientation talks are a good example and the message can be carried over into the classroom.

Third, people are writing about some of the amazing things that they are doing. I'm thinking, for example, of Calvin Pang's article about his efforts in an Elder Law Clinic - 35 Willamette L. Rev. 241 (1999) He is working with spirituality but it shows what can be done by someone who is really good at this. (Many people should be mentioned here - like Lucia Ann Silecchia, Cheryl Conner, etc. - we can all think of a lot of wonderful models from whom we can learn much.)

Finally, we as teachers can get guidance in this area. Every time I lead a seminar on Law & Spirituality, the materials covered change. Each group is different in what it can handle. I consult with practicing psychologists about what exercises I'm going to use, why I think them appropriate, and what I am looking for. The psychologists are invaluable in alerting me to potential warning signs and in providing me with ideas of what to do if certain things happen. More than once they have advised me not to do a particular exercise because, in their view, it might delve too deeply into the subconscious and I would not have the tools to deal with the potential outcomes.

One thing I've learned from all that is that there are some discussion topics that I will not take on in a large group. Not only do I not know enough about the people involved, but confidentiality understandings are not in place, etc. Again, this is largely a matter of common sense but it doesn't seem to get discussed as much as perhaps it should be.

Charlie Senger
T.M. Cooley Law School

From: **Leonard L. Riskin**

I've been experimenting with the use of mindfulness meditation for student stress, as has Eric Muller at U. North Carolina. Recently, the Office of Student Life at Harvard Law School has introduced instruction in meditation and yoga. A former partner at Hale and Dorr is leading it. There's a symposium on "Mindfulness in the Law and ADR" at 7 Harvard Negotiation Law Review. My article in that symposium, at pp. 1-66, talks a good deal about stress. A webcast of the live symposium is available at

http://www.pon.harvard.edu/news/2002/riskin_mindfulness.php3.

Best,

Len
University of Missouri-Columbia
School of Law

From: **Amy McDavid** [mailto:amcdavid@facstaff.wisc.edu]
Sent: Monday, October 07, 2002 3:02 PM

Mindfulness meditation is a practice that I have been increasingly incorporating into my own life (I just returned from my first retreat), and would like to utilize more in my teaching.

I experimented this summer in a very preliminary way when I gave a journal assignment to my clinic students in which I asked them to pay careful attention to their thoughts, emotions, and body sensations during one of their early client interviews. The journals and group discussion were very rich. One part of the conversation that stands out in my memory is a student from Korea who met with a client who was born in Korea and adopted into an unhappy American family when he was six or seven. The client, now in prison, wanted to find his birth parents and return to Korea, despite the fact that he no longer knows the language or culture. The student expressed his strong feelings of empathy and sense of similarity, as well as his hesitation in helping a convicted criminal return to his country where he would now face discrimination and other difficulties. This was one gem among many during that discussion. I came away feeling that directing the students to be "mindful" during client interactions could be an effective doorway into exploring feelings that may have otherwise been overlooked.

Later in the summer, after they had read, journalled about and discussed some of the materials on stress, I gave them the "Mindfulness in the Law and ADR" article as food for thought. Because I have only recently begun my own mindfulness practice, I did not feel qualified to delve more deeply into the subject than giving them these two tastes of it.

I would like to explore more of the possibilities in using mindfulness with my own students in the clinic and possibly in the law school at large (perhaps in the form of an extracurricular meditation class, or a student-led group). However, since I am not enough of an expert to do the teaching myself and these "lifestyle" topics are pretty foreign in our law school culture, I am at a bit of a loss about where to start in either arena.

Amy McDavid
Remington Center
University of Wisconsin Law School

From: **Krieger, Larry**
Sent: Monday, October 07, 2002 11:06 AM

I'm not qualified professionally to 'counsel' people, but I do think that the observing teacher's objection (mentioned by Amy) about how we're not trained to deal with these issues, and hence shouldn't, is a common example of the institutionalized denial we impose on ourselves, run into, were trained into, etc. I think it's even mentioned as an example of same in my JLE article. After all, you don't have to have a Ph.D. to have lunch with a friend, listen to her problems, and notice she feels better for the chat, or have her do the same for you. It doesn't take a psychologist to know that people ignoring their inner life, their physical health, their family/friends, their conscience, etc, are going to be unhappy; and it's not a great leap to work back from the huge depression/dissatisfaction numbers in the profession to imagine this is part of it. I think the teacher's concerns are

valid in limited situations, but largely function as one more way to avoid dealing with 'The Problem'.

I suggest that adding a humanizing dimension to legal education doesn't mean "psychologizing" it. I refer lots of students to the counseling center, but the greater number seem to benefit broadly from just having some acknowledgement and validation for their genuinely human sides -- subjective preferences, personal values, conscience about right and wrong, caring about other people, etc. Teaching this in the context of lawyer training has turned out to be pretty straightforward, especially in an intensive clinical program. But I do it in my simulation class also, and it seems to go over fine with 9/10 of the students. Trying to model the behavior, as was said, along with teaching it in a traditional, intellectual way seems to work, and I've been surprised with the high % of students that seem to genuinely "get it" by the end. I often wish I'd had this angle on learning law when I was a student; darn!!

Lawrence Krieger
Clinical Professor
lkrieger@law.fsu.edu

From: **Maura A. Flood**
mflood@lawschool.gonzaga.edu

I've spent much of the afternoon with two students. One was in tears, the other near tears. The midterm grades have now come out. And Larry is right --- it takes very little from us to help these students. Often, what they want or need most is just a sympathetic ear, and someone to tell them that they are just as smart as they've always been.

I'm not trained in counseling, and I don't have any "magic" words to use, but the students generally leave my office smiling instead of crying. It frustrates me when some professors say they don't want to engage in this sort of interaction with students because they "aren't qualified" for it --- all you really need is to be human! (Is *that* why we call this "Humanizing Legal Ed."?!)

From: **Floyd, Tim** [mailto:tfloyd@law.ttu.edu]
Sent: Wednesday, October 09, 2002 3:28 PM
Subject: RE: Bob Schuwerk's thoughts on legal ed.

I feel moved to respond to Bob's posting, for a couple of reasons. First, Bob's summary of the problems with modern legal education is one of the best I have seen. He is also right on target in his explanation of the resistance to change.

But as to the possible changes, I would suggest that fundamental problems (as described so cogently by Bob) require more radical solutions. I'm not prepared here to articulate my own radical agenda for the reform of legal education, but I do believe that we should not leave the more traditional parts of the curriculum out of the mix. In a very real sense, the traditional doctrinal curriculum (and the accompanying pedagogy) IS the problem. Clinics, skills courses, LRW, and PR aren't nearly as in need of change as is the rest of the curriculum. I realize the obstacles to fundamental change in the "core" are huge, but I am more and more convinced that the core must be taken on directly. To give only one example, as Bob points out, it is possible to do things like group work even in large traditional classes.

And we must think more radically about grades and curves. Grading and the accompanying competition and false messages about the qualities that make for a good lawyer are a fundamental problem. Curves must be abolished, period. And I haven't yet seen a compelling reason for grading at all, at least not the way we grade now. As a gatekeeper for the profession, we have an obligation to ensure certain levels of competence, but grades are not necessarily the best way to do that. Sorting out our students for the large firms is emphatically not a sufficient justification for our current grading practices.

Bob makes a great point in his suggestion #5 that we must give students feedback in some fashion before the final exam. Gerry Hess in his most recent JLE article has some great suggestions for multiple ways to give feedback along the way. In fact, as I think about it, everything Gerry suggests in his article about the teaching and learning environment is relevant to and can be applied directly to the large traditional courses at the core of legal education.

Anyway, much thanks to Bob for spelling out so clearly and persuasively the problems before us.

Tim
Timothy W. Floyd
J. Hadley Edgar Professor of Law
Texas Tech University School of Law

From: **Schuwerk, Robert** [mailto:RSchuwerk@Central.UH.edu]
Sent: Wednesday, October 09, 2002 7:23 PM

As Tim is one of the few people that I would cheerfully go to academic war with, I want to comment briefly on his post and assure one and all that there is not a lot of light visible between our two positions. My suggestion that we focus our efforts on certain segments of the total law school faculty was tied to injecting ethical issues into the curriculum and into students' law practice psyches. It was not a proposal to saw off the rest of the faculty and cut them adrift in a sea of error. I also agree wholeheartedly with Tim when he says that reform of legal education must extend beyond the areas I identified and include the large traditional classes in which many of us spend a great deal of time. In the near future, I will re-post my own earlier e-mail, discussing what I have found to be a very powerful method of introducing cooperative learning into such classes. I would welcome your thoughts on the approach in the abstract and would appreciate even more the reactions of those of you who have tried the approach out.

As to Tim's observations about curves, I agree that they create enormous problems for our students and are at war with all we hope to achieve in our movement. Thus, I personally would prefer their abolition. However, I think that the sentiment in this area among law school faculties is still overwhelmingly against that development. Thus, I suggested a number of ameliorative measures (most of which I and others have managed to get enacted here) that I believe have been helpful to our students, at least at the margins. Whether such approaches should be adopted in lieu of (or as steps along the road to) abolition is, in my opinion, largely a matter of strategy and tactics rather than principle; but I can certainly understand that others might see such measures differently-- as palliatives that merely mask the fundamental problem and delay an absolutely essential reform.

From: **Floyd, Tim** [mailto:tfloyd@law.ttu.edu]
Sent: Thursday, October 10, 2002 8:20 AM

Bob is, as always, right on target. As I guess I made clear, I don't think we can deal fully with all the problems Bob identifies unless we change legal education root and branch. But I also know that we will not abolish grading or change the basic curriculum any time soon. It certainly won't happen as a result of the rants of people like me. So, we should make whatever ameliorative changes we can, whenever and wherever we can, within the current structure.

The exciting work of so many on this list is a very encouraging sign. In fact, I see more reason for hope now than at any other time in my 20 years as a law teacher.