

V.
**A Collaborative Approach To Examining The Causes Of
Law Student And Lawyer Distress**

The approach outlined above of dividing a larger class into small groups also provided a useful starting point for a special course developed nearly ten years ago now at the Law Center by Professor John Mixon, and taken over by me in subsequent years, entitled “Personal and Professional Ethics.” This course, an early version of which has been reported on elsewhere,¹ explores the root causes of professional misbehavior. Its basic premise is that lawyers do not misbehave because of some cognitive deficiency—that is, because the applicable disciplinary rules are either unknown or too difficult to understand. Rather, it posits that such misbehavior occurs because of individual pathologies—mental or emotional illness, substance abuse, or rampant excesses of the “lawyering skills” that every law student manages to acquire, namely rationalization and denial—that leave them either unable to discern their true ethical situation or unable to conform their conduct to known standards of professional behavior.

The applicable ethical standards are not the subject of this course. The causes of human frailty are. Unlike many of us, I believe that issues of that kind can be addressed to beneficial effect. The approach taken in the latest iterations of the course explore three basic determinants of students’ character and personalities, both personal and professional: (1) their family of origin; (2) their unique personality profile, as measured by the Myers-Briggs Personality Inventory; and (3) their experiences in law school. Obviously, these issues can involve highly sensitive personal matters. Indeed they almost inevitably will do so. The paramount issue for the course, then, becomes how

¹See John Mixon & Robert P. Schuwerk, *The Personal Dimension of Professional Responsibility*, 58 J.L. & CONTEMP. PROBS. 87 (1995). For an earlier effort to explore such issues—one that we were not aware of at the time we began our own efforts—see Harvey M. Weinstein, *The Integration of Intellect and Feeling in the Study of Law*, 32 J. LEGAL EDUC. 87, 93-98 (1982).

one develops a classroom environment that is considered by the students—or at least a substantial majority of them, with respect to most issues—to be “safe” enough to discuss such matters openly and honestly.

We begin this process by removing external factors that might lead students to consider the class material to be “unsafe.” The first of these is grades. Both to do away with the barriers to cooperation engendered by a curved, graded course and to eliminate the absurdity of offering grades to people based on papers discussing their personal feelings about a variety of topics, the course is taught on a pass-fail basis, with a grade of “pass” given to anyone who attends 90% of the classes² and turns in all of the written assignments. There is no final exam as such, but students are required to complete a number of special evaluations of the course, together with a small group paper addressing similar issues in narrative form.

²The normal attendance requirement for a class at the Law Center is 80%, but it is higher for this class, because almost the entire benefit of the class derives from “showing up” and experiencing the presentations personal interactions that occur.

The second step is to give students the opportunity to “pass” on any given assignment, rather than respond to the question(s) asked of them. There are almost daily short written assignments in the class, most of which ask students to describe their feelings about subjects that may mean a great deal to them. Students may be asked, for example, to describe the most humiliating experience they have had or witnessed in law school. They may be asked to write about the ethical dilemma that they most fear encountering in practice. They may be asked to describe instances of substance abuse in their family of origin. They may be asked to describe the aspects of their own upbringing that, in their opinion, pose the greatest threat to their ability to practice law in an ethical manner, or pose the greatest threat to their ability to balance their work lives and their most important intimate relationships. Obviously, some of these topics may prove to be too painful to write about (or just too personal to reveal to me, even under a solemn promise of confidentiality). For those persons, the option of turning in a single sheet of paper saying “pass” is sufficient to give them credit for that assignment. Interestingly, despite the temptation the “pass” option might present to avoid virtually all of the work in the course, I have not ever found that to be a problem. Only one student out of the hundreds that I have taught chose a “pass” option more than twice out of the twenty-odd assignments in the course and, given the many assignments that she did write about with exceptional candor and courage, I have no doubt that her three “pass” assignments were entirely justified.³

With those matters resolved, the question became how to make the classroom discussion of sensitive topics itself “safe.” The answer that we have developed has three main components: (1) have all of the most sensitive discussions in which a student reveals his or her own views, occur in

³I encourage, but do not require, students who “pass” on an assignment to me, to prepare a substantive response for their own benefit. Many have told me that they chose that option, because they wanted a written record of how they felt about the questions that I posed to them, even though they did not wish to share those feelings with me.

small groups, with only views of otherwise unidentified “members of the group” reported to the larger class; (2) develop a set of “safety guidelines” governing the discussion of such issues, both in the small groups and in the larger class;⁴ and (3) establish a rule of absolute confidentiality with respect to discussions occurring in both the small groups and the larger class, with nothing said in a small group attributed to the speaker individually in the larger class without his or her permission, and nothing said in either the small group or the larger class repeated outside of class without the permission of the person making the statement.

⁴These guidelines are developed over the course of a discussion that often takes the better part of a two-hour period, in which we go over at length what makes a conversation with another person either “safe” or “unsafe” to have. A recent set of “safety guidelines” growing out of such discussions is set out as Appendix 1 to this paper.

The formation of the small groups in this course has undergone a metamorphosis over time. Initially, I followed the same “affinity” or “friendship” model for this course as I later used in all of my other courses. However, over time, I reconsidered and ultimately abandoned that approach, for one in which I make random assignments that assure a mix of men and women in each small group.⁵ I did this because I discovered that there were two groups of people who tended to be attracted to this class. One group consisted of generally disaffected law students, many of whom had not done well academically, and harbored serious doubts about their future legal careers. The other group, consisted of law review students, many of whom⁶ were perfectly happy with law school and had careers lined up that were exactly what they wanted and, so they felt, deserved.⁷ Left to their own devices, however, neither of these two factions wanted anything to do with the other. Each saw the

⁵The precise method I employ works as follows. If I have, say, fifty-eight students and want groups of four or five, I would have all of the men line up on one wall and count consecutively from one to twelve, repeating the process until everyone has a number, while all of the women would line up on the opposite wall and count down from twelve to one, again repeating the process until all of them have a number. All persons with the same number end up in the same group.

The one-group-counts-up, one-group-counts-down approach serves two purposes. First, it makes it harder for the students to arrange themselves so that they end up in the same groups whose formation I am trying to disrupt. Second, it assures that the maximum number of groups end up being the size that I want them to be. In a class of 28 men and 30 women, for example, if both men and women counted up from one to twelve, there would be four groups of six (Groups 1-4), two groups of five (Groups 5-6) and six groups of four (Groups 7-12). On the other hand, using the same numbers but having the men count up and the women count down, there are ten groups of five (Groups 1-4 and 7-12) and only two groups of four (Groups 5-6). Try it and see!

⁶Many, but not all. I have found that in every law review subset of the class there will be a number of students who have serious reservations about their law school experience and how it has affected them personally, most especially in terms of their ability to form or maintain intimate relationships, or who harbor concerns about the likely impact of their chosen legal career on them in those respects.

⁷The main attractions for this group are that the class is taught on a “pass-fail” basis and has no final examination. Thus it poses no threat to their GPA’s, and parlays that benefit with leaving them additional time to study for their other courses.

other as having negative opinions about them and, to a certain extent, each was right to feel that way.

The law review students, in particular, tended to form small—often single-sex—groups consisting entirely of their “own kind,” groups that often and openly expressed their disregard for class activities and objectives.

These hierarchy- and gender-based groupings were among the negative aspects of the law school experience that I wished to confront, but their re-constitution in my class was thwarting that objective. Believing that those developments were beginning to seriously impede the classroom dynamics that I wanted to achieve, I consciously decided to break up those cliques, and at least expose persons from these two factions to the perspectives of the other, as well as to possible gender-based differences in students’ assessment of their law school and clerking experiences. I have been very happy with those changes overall. I have found that within small groups, these two factions developed increased levels of understanding and respect for one another, a development that in all likelihood would not have occurred if each had not had to listen and to respond to the views of the other—and to do so in a restrained and civilized way, within the governing ambit of the safety guidelines.⁸

⁸I knew I had made a good deal of progress along these lines when, in an effort to confront the stereotypes involved, I asked the groups to provide positive and negative stereotypes of persons who were not successful in law school as measured by grades alone, and several absolutely refused to do it. Through their spokespersons, those groups told me in front of the entire class that my exercise was demeaning to such persons who were in the class, that I should never have asked that the exercise be undertaken, and, in essence, that I had committed a massive violation of my own safety guidelines by choosing to do so.

With these preliminary matters in hand, we begin to examine the three major vectors of personal exploration involved in the early stages of the course. Course sessions consist of two two-hour sessions per week. After the organizational efforts of the first week (an overview of the course, the formation of small groups, some group-member familiarization exercises, and the development of and commitment to safety guidelines), one session each week is developed to purely personal exploration issues and the remaining one to law-school-related ones. Thus, for example, week 2 of the course might see a presentation by a counselor in the University of Houston's student center of the Myers-Briggs Personality Inventory and its interpretation. Students will have taken this test prior to the presentation and have their results in hand. The counselor discusses what those results mean in terms of the students' own preferred learning styles, the common misperceptions that people strongly committed to particular learning styles have of those equally committed to the opposite ones, and the benefits and burdens created by having to work with persons having very different learning profiles. Students discuss their own profiles in their small groups, and a series of exercises reinforce those anecdotal recitations by having the students apply particular learning styles—typically not their own—to resolving problems posed to them. All of these activities strengthen the bonds between students within the small groups, and facilitate their ability to collaborate on more sensitive tasks that will arise later in the course. Students will be given homework of an essay to be turned in to me, in which they discuss their learning profile, whether they think the description of that profile in class accurately describes them, whether they think that profile has changed since they entered law school, and what they think have been the most helpful and least helpful aspects of their learning style in terms of coping with the demands of law school.⁹

⁹Homework assignments are given almost daily. They are due no later than one week after they are given. I try to read them more or less as I get them, and have them back in students' hands by the week after they are turned in. Because I frequently find something in

them worth commenting on, as opposed to merely checking them off as turned in, this can be a fair amount of work.

The second day of week 2 might be devoted to a series of articles offering a specific critique of law school. I usually lead off with the literature documenting the tragic and enormous increase in the incidence of depression, alcohol abuse, and cocaine abuse among law students over the course of their law school studies. Two or three of the small groups will each have been assigned to summarize different ones of the articles, and to offer that summary to the class. Since the articles in question typically do not claim to understand exactly why those changes occur, the discussion moves naturally into speculation on those causes, topics that are explored in greater detail in succeeding weeks. These discussions occur in the small groups, and their results are reported to the class as a whole as opinions voiced within those groups, rather than being identified with particular individuals. Thereafter, the discussion moves into what could easily be a more “dangerous” phase: which, if any, of these possible causes of distress has affected each student individually. This discussion generally occurs entirely within the small groups, which are advised that they need not disclose their intra-group results to the class as a whole, although many choose to do so. That day’s written assignment asks the students to answer the questions posed in that final round of small group discussions, and, if they feel that they have not been adversely affected by law school, why they believe that to be so.¹⁰

¹⁰I urge contented students to divulge their “secrets to success,” which I keep track of, because their approaches to keeping law school stresses in perspective might prove to be beneficial to others. In subsequent classes, I make a point of announcing these factors or techniques, without attributing them to the particular students involved.

The third week is used to initiate a series of three or four lectures on “family of origin” psychological theory, offered by a practicing psychologist, who has a considerable number of lawyers and a few law students among his clientele. His discussions of the problems that confront his patients (in general terms, of course, individual identities are protected) and his relation of those sorts of concerns to his patients’ families of origin prove compelling, and serve as the springboard of intense discussions among the students, some of which occur in the large group, but the more sensitive of which are reserved for the small groups and the students’ follow-up written assignments. The second day of each of these three weeks is devoted to a different critique of the law school experience,¹¹ each of which requires submission of individual papers discussing what appear to be the most emotion-laden issues that grew out of the class discussion. This discussion often continues into weeks 6 and 7, still continuing to occupy only one day each week.

Some time in or by the sixth or seventh week of the course, I conduct a session with students that is designed to segue into a series of topics that will cover the rest of the semester. This aspect of recent iterations of the course is very similar to that described by Professor Mixon and I some years ago, and I will not repeat that treatment here. Basically, this phase of the course is designed to present students with a variety of ethical and personal dilemmas that they may confront in the practice of law. These sessions are presented through speakers drawn from the author’s acquaintance, as well as from persons suggested by past or present students in the course. Generally

¹¹The mix of perspectives that I use varies from year to year, but often includes classes focusing on the impact (and frequent misuse) of the Socratic Method, the use of a grading curve, the effect of gender on the law school experience, student-on-student abuses, the disjunction between legal education and the practice of law, legal education as a perpetuator of hierarchy, and a wrap-up session on what changes the students would make in legal education if they had the power to do so. A recent partial syllabus containing a list of those readings appears as Appendix 2 to this paper, but it omits a number of more recent articles that I will use the next time I teach this course. Most of those readings are mentioned in footnotes to this article.

the presentations offered by these persons take about one-half of the two-hour class period, after which the presentations become the subject of a mix of small- or large-group discussions as seems appropriate.

The two topics that I raise in the segue class session are (1) which of a listed set of topics do they believe merit further treatment in this course, and how enthusiastic are they about them; and (2) what is the personal or ethical dilemma that they most fear encountering in the practice of law? The first of these instruments generates group feedback on particular topics,¹² a number of which, based on past experience, are generally quite popular. The second vector, personal fears, is reported to me on a small-group basis (but with every member of each group who expressed an opinion having that view noted) and is backed up with an individual paper on that same topic. It serves both as a check on the group-based response to the first instrument¹³ and as a source of additional topics that may have been left off that instrument altogether or not revealed in the small-group discussions. I continue to find that students are impressed by the fact that they “own” the course to this extent—that issues that *they* think are the most important ones to discuss will be the ones that get top billing. Of course, it is only fair that they have that power. After all, it is *their* personal and professional lives that we are talking about.

Based on the feedback that I receive and my familiarity with local judges, practitioners and others, I arrange for a series of speakers who will cover the topics selected for further treatment.

¹²A recent topic list for this question is set out as Appendix 3 to this paper. The group can rate each topic from “0” (skip it, PLEASE!) to “5” (emphasize it heavily). I require a group consensus on these topics, so that I do not have to review and collate sixty-odd responses.

¹³One problem with the group-consensus vote is that stark individual differences within the group can be concealed. A topic might get a “3,” for example because three people thought that it was worth a “5” but the other two rated it as a “0.” The separate individual preference tabulation reveals this.

Working through that list occupies most of the remainder of the course. Speakers are informed of areas of student concern that they might be particularly well qualified to address, but they are encouraged not to have set speeches that they read to the class. Speakers are encouraged to address their topics from the viewpoint of their personal experiences, rather than offer the sort of scholarly treatment that might be appropriate for a CLE program or a more traditional academic presentation.¹⁴

The topics covered by these presenters vary widely. For example, I have had several suspended or disbarred lawyers make presentations to the class. Their stories are riveting, as they take students through the rationalizations that led them to engage in the conduct that cost them their right to practice law, the difficulties they have experienced since losing that right, and how they have come to think about the practice since being forced to leave it behind. Some have since regained their right to practice, and discuss the changes in their attitudes towards being a lawyer, as well as in the ways that they balance that work and their personal relationships. Presentations are followed by questions placed on the board by various groups, and selective issues raised by those presentations and responses are discussed in the small groups and in student “homework” papers.

A wide variety of other topics are covered as well, but often with unique twists designed to focus on the mind-set of lawyers who get in trouble of one kind or another. Attorney tort and grievance defense lawyers tell the class not just what kinds of conduct most frequently result in tort claims or disciplinary actions, but also what attitudes on the parts of lawyers tend to lead to those

¹⁴These speakers can be viewed as providing “borrow[ed] experience,” that students can use to begin structuring their own professional personae, rehearsing possible responses to ethical dilemmas and buttressing their own moral defenses to those presented in class. For an excellent article discussing one professor’s use of non-fiction accounts of the legal profession for a similar purpose, see Jamison Wilcox, *Borrowing Experience: Using Reflective Lawyer Narratives in Teaching*, 50 J. LEGAL EDUC. 213 (2000).

kinds of mistakes. A lawyer from Dallas who has become very well known for innovative, collaborative lawyering activities, but who once was a rather notorious hell-raiser candidly discusses the problems in his own life that led him to behave as he once did, and the forces that led to the constructive changes that he has made in his behavior. Lawyers who are currently battling mental illness or substance abuse talk about their struggles, the personal issues they had that led to those problems, and the steps that they are taking to lead happier, more productive, and more balanced lives. All of these presentations follow the same general format just discussed, and key points are reinforced through “homework” assignments.

Both lawyers and non-lawyers get called on to deal with the topics on the students’ “greatest fears” lists. Students worry about what to do if a superior demands that they do something that is clearly unethical. We talk about that from a variety of perspectives, by bringing in lawyers who have found themselves in that situation, or who have had to deal with its aftermath. They worry about whether they can avoid humiliation and defeat at the hands of unethical opponents if they are not willing to “fight fire with fire.” We bring in lawyers and judges who deal with misconduct, who explain ways for lawyers to protect themselves and their clients in such situations. We bring in senior members of law firms, who stress the importance of getting help from within the firm when confronted with such behavior, and how it will not be held against them if they do.¹⁵ They worry about how they will balance their professional and personal lives. We bring in (usually younger) lawyers who are wrestling with those kinds of issues, some successfully and others not, who are willing to talk about such sensitive topics, as well as older ones who may have changed careers within the law in order to re-balance their lives. We also bring in lawyers who have abandoned the

¹⁵This is another great fear of law students. They assume that they should be able to handle everything that comes up in their practice themselves, and that they will be seen as ineffectual and weak if they cannot.

practice of law to pursue an alternative career, often in large part for that very reason, so that students who have reason to do so can consider that option. The discussions, both in the large and the small groups, are very serious, focused, and moving, as are many of the follow-up “homework” papers.

Some groups are interested in negative structural forces at work within the bar and perhaps within law school as well, and when they are, we generate speakers on such topics. Students may want to know if discrimination against minorities or women is a problem in the profession and, if so, to what extent. Speakers representing various points of view discuss those issues. They may view particular areas of the law as posing special problems for lawyers who wish to be ethical and, if they do, we bring in practitioners from those areas to speak to them about such matters. They may want to know how to enhance the legal careers of those not destined for large law firms. Lawyers working in smaller firms are available to answer those question, as are speakers, both in and out of the active practice, who are familiar with law office management, and setting up and running solo or ultra-small (less than five-person) law firms from scratch. Students may want to explore the possibilities for engaging in public interest legal service. Speakers familiar with such opportunities come to class and discuss them. Again, the standard model of using small groups to generate follow-up questions for speakers and, thereafter, to develop particularly interesting points in greater depth, coupled with “homework” papers to get students’ personal perspectives on such matters, drives those key points home.

We focus on good lawyering too. Special efforts are made to attract attorneys to speak to the class who have been recognized for outstanding performance in some area of the law. Knowledgeable speakers talk about such topics as the many good things that lawyers do, model programs they may have developed for improving the quality of life within their law firms, major public interest initiatives that have recently been undertaken within a number of larger law firms in the Houston area, and the opportunities for service to the profession presented by state bar activities and other law reform efforts going on around the state. We find lawyers who are happy with their practices and with their personal lives, who explain how they have managed to achieve that desirable

state of affairs. In short, while covering topics that could endanger our students as attorneys, we also seek to instill hope and resolve for a better life in them. We seem to be doing something right, as student satisfaction with this course remains very high.