

## “I’d Just As Soon Flunk You As Look at You?” The Evolution to Humanizing in a Large Classroom

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### I. INTRODUCTION

Intellectual haughtiness in law professors is nothing new.<sup>1</sup> Additionally, student complaints—valid or not—about their professors, have been around just as long. Criticism of the current system of legal education, itself longstanding,<sup>2</sup> has recently increased.<sup>3</sup> In the past year, two significant monographs have showcased the weaknesses, as well as the strengths, of legal education.<sup>4</sup> The theory and method of law school teaching are solidly entrenched, so efforts to change have been slow in coming. There have, however, been some inroads.<sup>5</sup>

The criticism of legal education has expanded to include the psychological damage that law school inflicts on law students.<sup>6</sup> Recent evi-

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1. In John Osborn’s *The Paper Chase*, Professor Kingsfield became the face of the quintessential terrorizing law professor. See generally JOHN JAY OSBORN, JR., *THE PAPER CHASE* (1971). The role of Kingsfield was rather smartly reprised in the movie *Legally Blonde* by Holland Taylor playing a cruel Civil Procedure professor, who of course turned out to be beloved at the end. *LEGALLY BLONDE* (Metro-Goldwyn-Mayer 2001).

2. Jerome Frank penned an early critique of legal education as case-method instruction. Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907, 908 (1933).

3. See, e.g., Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992); Morrison Torrey, *You Call that Education?*, 19 WIS. WOMEN’S L.J. 93 (2004). See Amy M. Colton, *Eyes to the Future, Yet Remembering the Past: Reconciling Tradition with the Future of Legal Education*, 27 U. MICH. J. L. REFORM 963, 971-73 (1994) (describing a historical positioning on legal education critique).

4. WILLIAM SULLIVAN ET AL., *EDUCATING LAWYERS* (2007) [hereinafter *CARNEGIE REPORT*]; ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION* 168 (2007). Fifteen years earlier, the MacCrate Report documented flaws in legal education and helped identify the skills and values that law school education should impart to its consumers. ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, *NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM* (1992) [hereinafter *MACCRATE REPORT*].

5. See, e.g., *CARNEGIE REPORT*, *supra* note 4, at 33.

6. See generally Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997); B.A. Glesner, *Fear and Loathing in the Law Schools*, 23 CONN. L. REV. 627 (1991); Ann L. Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524, 526 (1998); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profes-*

dence further demonstrates that the flaws of legal education also affect student performance in law school and on the bar examination.<sup>7</sup> Law faculty who care about both their students' well-being and ability to perform competently would do well to consider data that suggest that students begin to suffer negative effects somewhere in their first year.<sup>8</sup> Once considered, that data suggest that some new ways of teaching are in order.

The purpose of this article is, in the words of the Jesuits, "ferverino"—a deliberate "preaching to the choir."<sup>9</sup> Its natural audience is the converted with, perhaps, some spillover to those still agnostic on the subject. If one is possessed of an interest in developing teaching techniques that reveal the human within, how does one do so?<sup>10</sup> Are there approaches, techniques, or attitudes that are central to this endeavor? How can one do so without compromising classroom rigor? To be human in the classroom and to encourage the same of students need not be a capitulation to soft expectations and ineffectual teaching.<sup>11</sup> Indeed, the latter is a myth that this article hopes to debunk.

Initially, this article sets forth my own progress in becoming a teacher who incorporates humanizing principles. Next, the article analyzes some of the theory behind the humanizing legal education principles.<sup>12</sup> The article will then present some specific teaching techniques for those interested in adding a humanizing dimension to their teaching,

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sion, 52 VAND. L. REV. 871 (1999) (discussing high rates of depression, suicide and divorce among lawyers, with advice to law students on how to avoid them).

7. See generally Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERSONALITY AND SOC. PSYCHOL. BULL. 883 (2007).

8. Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & L. 261, 275 (2004). Sheldon and Krieger report that first year students experience declining happiness and well-being. *Id.* The first year curriculum has been a particular focus across these various studies and reports; however, there has been some study and analysis of upper level stress. See also Nancy J. Soonpaa, *Stress in Law Students: A Comparative Study of First-Year, Second-Year, and Third-Year Students*, 36 CONN. L. REV. 353, 354 (2004).

9. Peter M. Cicchino, *Defending Humanity*, 9 AM. U. J. GENDER SOC. POL'Y & L. 1, 3 (2001). Cicchino laments that the phrase "preaching to the choir" is "invariably pejorative." *Id.* I do not agree and use it here as he hopes to, "to inspire and console." *Id.*

10. To get to this point, one must reject, at least in part, the words of Karl Llewellyn as quoted in the *Carnegie Report*: "[I]t is an almost impossible process to achieve the technique [of thinking like a lawyer] without sacrificing some humanity first." CARNEGIE REPORT, *supra* note 4, at 78 (quoting KARL LLEWELLYN, *THE BRAMBLE BUSH* 101 (1996)). Although Llewellyn holds out hope that the humanness will redevelop, the *Carnegie Report* authors appear less sanguine. See *id.*

11. B. Glesner Fines, *The Impact of Expectations on Teaching and Learning*, 38 GONZ. L. REV. 89, 93 (2003). Glesner Fines examines expectations, both good and bad, and their role in law student performances. *Id.* The expectation effect is a self-fulfilling prophecy in that it "affects behavior that then leads to an outcome consistent with the initial expectation," even if that initial expectation is incorrect. *Id.*

12. The phrase "humanizing legal education" has been extant for awhile, nudging around the edges of legal education. There has been a website supported by Florida State University Law School since 2000. Techniques that are humanizing are often called by other names. See, e.g., James B. Levy, *As a Last Resort, Ask the Students: What They Say Makes Someone an Effective Law Teacher*, 58 ME. L. REV. 50, 53 (2006). Levy refers to an "effective classroom socio-emotional climate." *Id.*

focusing primarily on the large classroom setting. The article will also note the barriers to adopting humanizing techniques, as well as possible ways to overcome those barriers.

## II. A BRIEF EVOLUTIONARY TALE

What influences us as teachers? The answer is both simple and ineffable.<sup>13</sup> Law faculty, as a rule, knows little about educational and learning theory.<sup>14</sup> We oft times confess that we teach like we were taught. Of course, we had different models of teaching from which to choose. It may be that we default to the teaching style that is most in accord with our personality, or that was most effective for us as students.<sup>15</sup>

In addition, different courses naturally bring out different teaching methods. After several years as an adjunct professor in a doctrinal class, I entered teaching fulltime as a clinician. Clinical legal education is inherently humanizing for several reasons. First, it involves only a small group of students. Second, there is less hierarchy between teacher and student. Both of these factors tend to create a closer connection with the faculty member, which is, on balance, positive for the student.<sup>16</sup> Third, many law students discover that the clinical method of experiential learning is the type of legal education that works best for them.<sup>17</sup> Therefore, because of the nature of clinical legal education, most clinical law teachers do not need to do anything special to “humanize” their teaching; it is an inherent part of the undertaking.

The same, however, does not hold true in doctrinal teaching, especially the large and impersonal first-year courses. Thus, when I shifted to teaching Civil Procedure and Property, other things shifted as well. First, like any new teacher—as I was new to those topics and to first-year teaching—I had to give some thought to my teaching style.<sup>18</sup> I wanted to be a hard teacher, probably even feared. Beloved, of course, but hard to the point of unyielding. “Just as soon flunk you as look at you” was to be my motto.<sup>19</sup>

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13. “We teach who we are.” PARKER J. PALMER, *THE COURAGE TO TEACH* 1 (1998).

14. See generally Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347 (2001).

15. Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service from the Inside Out*, 35 TULSA L.J. 227, 228 (2000).

16. Susan B. Apel, *Principle 1: Good Practice Encourages Student-Faculty Contact*, 49 J. LEGAL EDUC. 371 *passim* (1999). This article is part of a series of seven principles for good practice in legal education, all found in the same journal issue.

17. GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* 2-3 (1999).

18. Examining my goals and theories of teaching might have been more useful, but I was content at that point to consider the more superficial idea of “teaching style.”

19. This motto comes honestly—it was part of the initial “scare” lecture that my father, Paul R. Dunlap, Ph.D. would give to his graduate students. Professor Dunlap taught Quantitative Methods at Ohio University in the 1970s and 1980s.

Try as I might, this was not to be. My personality tends towards the casual and irreverent, which usually does not lead to fear. I now also suspect that, the above motto notwithstanding, I had some humanizing urges coursing through my blood. For instance, I remember wanting to adopt a draconian attendance policy. Before doing so, though, I consulted with *my* favorite law professor, who shared with me his policy. His theory is that these law students were adults, could make sound choices and that, in any event, knew better than he ever could where they needed to be at a particular moment in time.

Wow, I thought, that is interesting and, I later concluded, rather mature. Although attendance is important and consequences for excessive absenteeism may be appropriate,<sup>20</sup> this approach recognized that law students actually had the ability to make valid choices. Further, it got the professor out of the business of making qualitative judgments about absences and, one hopes, away from taking personal offense when a student had the temerity to miss that person's class—wherein knowledge, judgment, and wisdom would be generously bestowed.

In addition to my revised and enlightened notions regarding the attendance policy, there were other ways that my hard-shell professorial persona was not foreordained. I was ineffective, perhaps even insecure, as a hard-core Socratic driller. The so-called Socratic Method has assumed prominence as the natural inheritance of the law-teaching profession.<sup>21</sup> An examination of its literature led me to conclude that it can be and often is dangerously misused, although there are signs that its abuse is abating.<sup>22</sup> If done well, however, it can be a form of active learning and is not necessarily dehumanizing.<sup>23</sup> In any event, I did not practice it in its pure form.

Failed hard-ass notwithstanding, I was still cut from the cloth of a more-or-less traditional law professor. I called on students at “random,” and took perverse delight that they never figured out my “sys-

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20. The American Bar Association (ABA) has attendance rules for law school classrooms. ABA Standards for Approval of Law Schools, Standard 304(b), <http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%203.pdf> (last visited Jan. 18, 2008). For instance, excessive absenteeism may result in a student not being permitted to sit for the final examination. *Id.*

21. Ten years ago, ninety-seven percent of law teachers were using some form of the Socratic Method. Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 27 (1996). An extensive exegesis of this material is beyond the scope of this article. See generally James R. Beattie, Jr., *Socratic Ignorance: Once More into the Cave*, 105 W. VA. L. REV. 471 (2003); Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 N.Y.U. REV. L. & SOC. CHANGE 249 (1997); Orin S. Kerr, *The Decline of the Socratic Method at Harvard*, 78 NEB. L. REV. 113 (1999); Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 HOFSTRA L. REV. 955 (2005).

22. Vitiello, *supra* note 21, at 957; Colton, *supra* note 3, at 963.

23. CARNEGIE REPORT, *supra* note 4, at 51-54; Glesner Fines, *supra* note 11, at 119. This conclusion finds support in the idea of multiple learning styles. The extrovert student who is an auditory/verbal learner will do well with a Socratic dialogue, where as an introverted student with a reflective/observer learning style will not be well-served. See Paula Lustbader, *Walk the Talk: Creating Learning Communities to Promote a Pedagogy of Justice*, 4 SEATTLE J. SOC. JUST. 613, 619 (2006).

tem.” I did this not out of malevolence. Rather, in my experience, the classes in which the students cannot slide are the ones for which the students are prepared. This preparation requires grappling with the material which, in turn, benefits the students. Simply put, I believed expectations yielded results.<sup>24</sup>

Nonetheless, the seeds of a humanizing professor—no doubt planted years ago by my own favorite law professor—were beginning to take root.<sup>25</sup> I already knew that I wanted to keep the class interesting and lively—having some innate sense that an engaged student is more likely to learn than a somnolent one. I also wanted to be open and available to students who wanted to see me. So there I sat on the precipice, still wanting to be mean, but doubtful that it was the way to go. It took a year or more of first-year teaching before I decided to tread cautiously into what I now call the humanizing domain.<sup>26</sup> I have stayed there ever since.<sup>27</sup>

### III. DEFINING THE TERMS

#### A. *Humanizing Teachers*

Like a statute that must define its terms so that they are used properly in its interpretation and application, specific definitions are necessary here as well. This article’s declared purpose is to discuss ways to humanize the large law school classroom. But what does that term mean? Moreover, is a humanizing teacher necessarily a good teacher?

A dictionary explains that to humanize is to: (1) “portray or endow with human characteristics or attributes,” (2) “make human,” or (3) “imbue with humaneness or human kindness.”<sup>28</sup> The Humanizing Legal Education web site defines the humanizing movement within legal education as “an initiative shared by legal educators seeking to maximize the overall health, well-being, and career satisfaction of law students and lawyers.”<sup>29</sup> Although that definition is one effort to give content to

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24. While it is true that expectations yield results, as discussed in *The Impact of Expectations on Teaching and Learning* by Barbara Glesner Fines, penalizing students for failing to meet expectations may not. See Levy, *supra* note 12, at 71.

25. My favorite law professor is Robert P. Lawry of Case Western Reserve University Law School. He and my legal writing instructor, Eunice Hester, were the persons who, by their example, convinced me that lawyers were not soul-less creatures. Further, what I have learned from Professor Lawry, in the twenty-five years since law school, far exceeds what he taught me in law school. I owe him much.

26. As noted earlier, the word humanizing is not subject to an innate meaning. In reading the literature on teaching, it seems that a good, i.e. effective, teacher is nearly always humanizing, but not necessarily vice versa. See discussion *infra* Section III.

27. I do not rue my skeptic roots. It allowed and still allows me to question things, rather than accept them unthinkingly because they correspond to my already-developed belief system.

28. THE AMERICAN HERITAGE DICTIONARY (4th ed. 2000), available at <http://www.bartleby.com/61/89/H0318900.html>.

29. See Florida State University College of Law, Humanizing Law School,

the term humanizing, a commonly shared meaning has proven elusive.<sup>30</sup>

A legal periodical search for “humanizing” yields a relatively scant number of articles using the term. There are many articles on the topic, however, even if that specific terminology is not used.<sup>31</sup> Many of these articles focus on what one might dub the law student misery index: depression, isolation, loss of self-esteem, substance abuse, and general dysphoria.<sup>32</sup>

I strongly suspect, however, that even the most humanizing professor is keen on his students succeeding, even excelling, in law school. A focus on student health, well-being, and career satisfaction innately or by implication includes success with the material.<sup>33</sup> By maximizing health, well-being, and career satisfaction, the student’s ability to succeed is also enhanced.

### B. Good Teachers

In contrast to material on humanizing legal education, there is much material on good law-school teaching.<sup>34</sup> Professors Gerald Hess and Steven Friedland have written the book, *Techniques for Teaching Law*.<sup>35</sup> In it, they suggest that there are five constituent parts that measure good or effective teaching.<sup>36</sup> Those measures are: enthusiasm, preparation and organization, stimulating student thought and interest, explaining clearly, and knowledge and love of content.<sup>37</sup>

Hess and Friedland also discuss the research of Joseph Lowman, who has divided exemplary teaching into two dimensions: intellectual excitement and interpersonal rapport.<sup>38</sup> Common words to describe exemplary faculty in the second dimension are concerned, available, caring, encouraging, and challenging.<sup>39</sup> Further, an observer’s description of that dimension states that “teacher acknowledges students’ feelings about matters of class assignments or policy and encourages them to ex-

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[http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool/humanizing\\_lawschool.html](http://www.law.fsu.edu/academic_programs/humanizing_lawschool/humanizing_lawschool.html) (last visited Jan. 18, 2008). A bit of full-disclosure is appropriate here. I was on the Board of Directors for the Humanizing Legal Education Association at the time that description was drafted.

30. It is worth noting that the Humanizing Legal Education Association has become a formal section within the American Association of Law Schools’ institutional structure; the section’s name will be Balance in Legal Education, in part because of perceptions that the word “humanizing” was potentially confusing, sanctimonious, and/or otherwise off-putting. See Petition to AALS, October 2005 (on file with the author).

31. See *supra* notes 2-19.

32. See *supra* notes 2-19.

33. Success in this context, however, is not cabined between the law review editor and the Order of the Coif.

34. Throughout this article, the words “good” and “effective” will be used interchangeably in reference to teaching.

35. HESS & FRIEDLAND, *supra* note 17.

36. *Id.* at 12.

37. *Id.* at 12-14.

38. *Id.* at 16-18.

39. *Id.* at 18.

press their feelings.”<sup>40</sup>

Elsewhere, Hess and others have adapted, for the law school setting, the Seven Principles of Good Practice originally promulgated for higher education.<sup>41</sup> “The Principles assert that good practice in legal education:

- encourages student-faculty contact
- encourages cooperation among students
- encourages active learning
- gives prompt feedback
- emphasizes time on task
- communicates high expectations
- respects diverse talents and ways of learning.”<sup>42</sup>

These two lists establish that there are concrete measures for good teaching.

### *C. The Good and Humanizing Teacher*

Now that good teaching and humanizing teaching have been defined, it should be possible to determine whether a good teacher is necessarily a humanizing one and vice versa. When one looks at what is cited as necessary for good teaching, it appears to easily co-exist with the humanizing goal to maximize the overall health, well-being, and career satisfaction of law-students.<sup>43</sup> Further, the two lists cited for good teaching could be proxy instructions for becoming a humanizing instructor. However, one more inquiry is necessary. The term humanizing does not itself appear in much of the literature; therefore, we must examine the terms that the literature does use.

Professors Krieger and Sheldon frame their discussion and theories from a psychology perspective.<sup>44</sup> They analyze the fairly widespread and accepted data that law school is harmful to a student’s health.<sup>45</sup> In so doing, they looked at two principles, autonomy support and self-determination theory.<sup>46</sup> Later in the article, I apply Krieger and Sheldon’s theory to my classroom exercises and conclude that they are hu-

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40. *Id.*

41. Gerald F. Hess, *Seven Principles for Good Practice in Legal Education*, 49 J. LEGAL EDUC. 367 *passim* (1999).

42. *Id.* at 367. Hess wrote the overview and the discussion of Principle Three. Gerald F. Hess, *Principle 3: Good Practice Encourages Active Learning*, 49 J. LEGAL EDUC. 401, 401 (1999). Other law faculty wrote the other six principles. Although a thorough discussion of these principles is beyond the scope of this article, they are well worth reading and implementing.

43. At least it might if teachers are predisposed to the humanizing method—otherwise it may seem absurd to focus on student well-being and career satisfaction. See James J. White, *Maiming the Cubs*, 32 OHIO N.U. L. REV. 287, 287 (2006). *But cf.* Joshua D. Rosenberg, *A Reply to Professor White*, 32 OHIO N.U. L. REV. 311, 311 (2006).

44. Sheldon & Krieger, *supra* note 7, at 883.

45. *Id.* at 883-93.

46. *Id.* at 884-85.

manizing.<sup>47</sup> At this point, however, I will shorthand Krieger and Sheldon's theory as follows: in order to be psychologically well in addition to performing well in law school, students have certain needs that must be met in the law school setting.<sup>48</sup> Accordingly, so-called humanizing techniques, as well as principles of good teaching, must be examined through this prism.

For instance, Professors Krieger and Sheldon demonstrate that showing interest in, and understanding for, student preferences ultimately enhances student learning.<sup>49</sup> Lowman's observed description of a dimension-two teacher as one who "acknowledges students' feelings about matters of class assignments or policy and encourages them to express their feelings"<sup>50</sup> parallels this nicely.

As to the Seven Principles, these are, in Hess's words, both student- and learning-centered.<sup>51</sup> A teacher who used all of the principles would probably also be a humanizing teacher.<sup>52</sup> It is important to note that the converse is not necessarily true. One can imagine a teacher who is humanizing but who nonetheless lacks the ability to explain clearly, suffers from poor organization, and has neither love nor knowledge of the topic. In sum, humanizing characteristics are necessary but not sufficient to climb the rungs of good teaching.

#### IV. A HUMANIZING CLASSROOM EXERCISE

##### A. *Raison D'etre*

Soon after I began teaching first-year doctrinal courses on a regular basis, I realized that some of the things that occurred naturally in clinic—those aspects that I earlier defined as humanizing<sup>53</sup>—did not occur naturally in my large doctrinal classes. This realization, accompanied by the long faces I encountered in my property class, no doubt watered my humanizing urge.<sup>54</sup> I began to consider what else I could do.

I had already tried to institute classroom policies that I considered friendly, first-year-student-centric, with the proper balance of rigor and openness. It was obvious, however, that this was not enough. I knew a colleague at another institution who was spending a class segment on educating students about some of the demonstrated pitfalls of legal edu-

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47. See discussion *infra* Section IV.D.

48. Sheldon & Krieger, *supra* note 7, at 884-85.

49. *Id.*

50. HESS & FRIEDLAND, *supra* note 17, at 18.

51. Hess, *supra* note 41, at 368.

52. See *infra* Section IV.D for a discussion of the elements of humanizing.

53. See *supra* Section III.

54. My own dim, buried recollection of the painfulness of that class with its very traditional instructor was probably another impetus.

cation.<sup>55</sup> After some consideration, I decided to devote a classroom period to these issues. It worked well, and I decided to make it a permanent part of my first-year teaching.

### *B. The Class Itself*

The class has a basic format, although, as with any class, I tinker with it each year. The primary goal of the class is straightforward: to introduce the idea that law school can have negative effects on students.<sup>56</sup> Secondly, I want students to think about ways that they can minimize these negative effects. I try to fit the class in somewhere in October, when students are feeling oppressed generally and depressed specifically about mid-term results.<sup>57</sup> At this juncture, they are often questioning their judgment about attending law school in the first place.

In order to achieve my goals, I first distribute a reading assignment consisting of several law review articles.<sup>58</sup> Numerous articles would work, but I have settled on articles by Professor Susan Daicoff and the late Professor Peter Cicchino.<sup>59</sup> The Daicoff piece is in the traditional law review mode. It introduces many concepts, two of which we focus on in class. First, her assertion that there are certain lawyer personality traits and, second, the high rate of depression and substance abuse among lawyers.<sup>60</sup> The Cicchino piece is an essay that employs personal narrative to speak more directly to the students.<sup>61</sup> Both pieces have the capacity to annoy students, to surprise them, and to permit the occasional “AHA!” moment.

I attach to the readings an instruction sheet.<sup>62</sup> This, too, has evolved. Central to the assignment is that the students must hand in a written response. The students preserve anonymity by using their grading number. This serves two familiar purposes. First, students will read an assignment if they must respond to it in writing. Second, the process of thinking and writing about the proffered questions enhances the qual-

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55. Marlana Valdez, then at American University Law School, was most generous with her time, material, and enthusiastic support. For a multitude of reasons, for the first several years I would get very cold feet before teaching this class. Professor Valdez gave me gentle—and sometimes not so gentle—encouragement to make this class happen.

56. See *infra* Section IV.C for a discussion of the goals.

57. Although I believe that fall placement is better, the class is still useful even in the spring for year-long classes. Last year I did it in the spring with my property night class. It was a small, cohesive class of more mature students and because of material coverage, I had not been able to squeeze it in the fall nor, significantly, did I perceive it as important as it was for my first-year day students. The students were so hungry for the topic when I finally got to it in February, it reinforced the power and necessity of addressing the matter for all students at some point in time.

58. The break from reading and analyzing cases can itself be received with a grateful heart.

59. See Daicoff, *supra* note 6; Cicchino, *supra* note 9.

60. Daicoff, *supra* note 6, at 1346-95. The article is quite long, which puts some students off. Therefore, although I instruct them to read it in its entirety, I focus their attention on particular parts to be discussed.

61. See Cicchino, *supra* note 9.

62. See *infra* Appendix I.

ity of responses, which in turn enhances the benefit of the assignment to the student.

The two questions that I most frequently ask them to respond to are: (1) Identify the most interesting or surprising part of either article; and (2) Name two ways you have changed—or ways that others close to you would say you have changed—since beginning law school. Other questions that I have asked include: “What are the four words you would like used to describe you as a lawyer?” and “Is there any principle in the defense of which you would be willing to lose your job?”<sup>63</sup>

A new addition to this instruction sheet is a short explanation of why I have assigned this reading. I had not done this previously, out of design rather than default. At the commencement of the class session, I would then explain the purpose of the assignment and class.<sup>64</sup> However, Professor Krieger has convinced me that to include such an explanation initially will make the assignment more humanizing.

In the classroom session itself, I start off with some self-disclosure, and then move to engage the class in discussion. Sometimes I ask the students to share their answers to the first question—the most interesting or surprising part of either article—and then let the discussion flow from there. Other times, I break the students into their law firms,<sup>65</sup> and have them discuss their answer and/or provide a separate list of law firm questions. At the end of the class period, our discussions stop. We do not revisit these issues later in the course. Although I collect and read the responses, I do not offer the students any individualized feedback on what they have written.<sup>66</sup>

### C. Assessment of the Class

Preliminarily, I should disclose that my initial degree of anxiety about the class was very high, although I have now become fairly com-

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63. Professor Krieger accomplishes a similar effect when he does his “eulogy” exercise with students. In asking students to, Mark-Twain-like, listen in on their eulogy, his assignment gets students to focus on what will really matter in their lives. Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 CLINICAL L. REV. 425, 435-38 (2005). Krieger writes that no student has ever listed law review or a high GPA as something they referenced. *Id.* at 436. The eulogy exercise is common. In an interesting twist, Professor Steven Hartwell has students interview each other and then write the other’s obituary. This is done in the context of an interviewing and counseling course, but could probably be implemented elsewhere. Steven Hartwell, *Six Easy Pieces: Teaching Experientially*, 41 SAN DIEGO L. REV. 1011, 1020 (2004). I have done a similar exercise, more directly focused on law practice, which asks students to be a fly on the wall while listening to different constituencies describe that student as a lawyer. The constituencies are: other lawyers, former clients, and judges. We then explore the meaning of why different words are chosen—as they invariably are—for the different categories.

64. See *infra* Section IV.A for an application of the humanizing principles to this assignment.

65. Several years ago, I started using the law firm model described by Professor Schuwerk. See Robert P. Schuwerk, *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students*, 45 S. TEX. L. REV. 753, 790-98 (2004).

66. Given that feedback is cited as a hallmark of good teaching, it may be worth my while to reconsider the issue of feedback.

fortable with it.<sup>67</sup> In many ways, that anxiety was both a leveler and a revelation—if it has been difficult for me to introduce this discussion, certainly, it has to be a challenge for the students to engage in it. This awareness is valuable if one chooses to embark on such a venture.

This class is useful in several ways. First, it opens up a topic—law student distress—that most students are probably living, but that generally receives scant formal attention.<sup>68</sup> Moreover, it can provide the opportunity for students to think about ways to combat what they are experiencing. A second goal of the class is to personalize both their professor and their fellow students. A final goal is to allow me to practice what I try to preach: life and law school are about more than a property or civil procedure class.

As to the first goal, by opening up the topic and providing literature that acknowledges it, the class validates what the students are experiencing. For many students, this is the first time they realize that they are not alone in their altered state; this new-found knowledge is both powerful and reassuring. After naming this phenomenon, the class can then move on to allow the students to think about ways to combat the negative effects. For example, I sometimes ask the law firms to enumerate positive ways of dealing with stress. This past year, near the end of the class, I had students write on an index card the name of someone they had offended since starting law school. It could be, for instance, a loved one, a friend to whom they were rude, or someone to whom they did not allot some necessary time.<sup>69</sup> I then ended class by urging students to find a way to apologize to that person some time in the next week. This elicited more post-class comments and thank-yous than anything else I have done, so it or some variation thereof will become a staple component of the exercise.

By introducing this topic to the students and assuring them that they are not alone in their struggles, my goal is to allow the topic to remain open even though I do not revisit it in any formal way during the course. Although it may raise difficult feelings and issues, I have become convinced that the merits far outweigh any detriments.

Secondarily, I hope to personalize their fellow students as well as me, their professor.<sup>70</sup> Students see that, although their colleagues may

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67. Of the obvious and valid reasons for discomfort, colleague and student disapproval/wariness surely top the list.

68. In addition to some of the more recent articles, astute observers have noted the negative impacts of legal training for quite some time: “[L]aw students become more isolated, suspicious, and verbally aggressive as they progress through law school . . . Will they need help to unlearn a number of things . . . ? The sharing, helping and serving aspects of human endeavor . . . are not recognized adequately in the law school experience.” Roger C. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 J. LEGAL EDUC. 247, 262 (1978).

69. I first assured them that they would not turn this card into me or anyone else.

70. Students appear to remain strangers far into the semester to all but a few of their colleagues. This is understandable but unnecessary.

be strutting and preening with the best of them, it is often just a self-protective act. Of course, my initial self-disclosure humanizes me.<sup>71</sup> Because many student comments suggest that the students feel alienated and devalued, this humanizing of the “other” seems constructive.<sup>72</sup>

A final goal is to practice what I try to preach: life and law school are about more than any particular class. If this is so, then it seems appropriate that I take some time to demonstrate that principle. Indeed, I usually begin the class by telling the students that this seventy-five (or fifty) minutes of class is as important as any other class session I teach. Especially since many of us intentionally or unintentionally convey the message that all classes may be equal, but our particular class is the first among equals, it is nice to demonstrate that we can bring the intensity down a notch.

Does the class always work? Yes and no. The classroom discussions are generally very good, although I have had at least one bona fide dud since I started doing it. The assignments that are turned in are endlessly fascinating and thoughtful, and one can begin to see themes emerging. I also believe that shedding some light on this difficult, formerly taboo topic, is inherently worthwhile.

Doing this exercise is not without risk. Occasionally when I read the assignments, I wonder if I should be doing something more—if I have opened up something that I then have an obligation to pursue. To put it more bluntly, if I have a student who submits an assignment indicating very high levels of distress, what, if anything, should I do?

While students submit assignments anonymously, I could go to the administration and tell them that I need to find a certain student. Of course, I am not a counselor and am not qualified to work with students in significant psychological difficulty. How do I respond to these concerns? First, I have never gotten a response that raised such serious red flags that I have had to directly confront this issue. It is probably safe to assume, however, that one day, I or others who do this exercise will, so the “it hasn’t happened yet excuse,” is not entirely satisfactory.

On balance, I believe that doing this exercise is more beneficial than potentially harmful.<sup>73</sup> It opens up, and therefore makes safer, a topic that has formerly been tamped down. This exercise lets students acknowledge and, therefore, have the option to address, some of the dif-

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71. Barbara Glesner Fines suggests that self-disclosure is an important part of a good teacher-student relationship. See Glesner Fines, *supra* note 11, at 115. But, it is important to figure out what to say and how to say it, as self-disclosure—intentional or not—ought not turn into a burden on the students. See, e.g., DAVID HALL, *THE SPIRITUAL REVITALIZATION OF THE LEGAL PROFESSION: A SEARCH FOR SACRED RIVERS* (2005).

72. Many law students in the same section may remain virtual strangers to each other throughout a semester or even a year. Cramton, *supra* note 68, at 262.

73. Professor Krieger says that this information is *only* helpful to the extent it is communicated effectively to students. Krieger, *supra* note 63, at 435.

faculties that inhabit the law school experience. It shows that I have a concern about the topic and the students, and therefore a student may feel free to see me. If the student does come see me, I can perhaps give him some encouraging advice. Of great comfort is data that suggests that, for mild distress, the ministrations of a concerned faculty member are as effective as those of a counselor.<sup>74</sup>

Alternatively, I can determine that the matter is beyond my capabilities and training and refer the student to the counseling center, something I have done several times in the past with my student advisees. Finally, on the perhaps inevitable day that I get the response demonstrating the need for more active involvement, I will do my best to get the student in my office to make the appropriate referrals, rather than hoping that the student comes to see me.

Some may view this “I’ll deal with it when I see it” attitude as cavalier. I do not agree and offer some context to explain why. As a clinical teacher for eight years, I can attest that these kinds of personal conversations come up *all the time* in clinical teaching. It is one of the things that makes clinical teaching simultaneously satisfying and exhausting.<sup>75</sup> So, I reason, nothing that may be triggered through a large group discussion of these issues will be more trying than some of the issues I discussed and, where appropriate, referred on to other professionals while laboring in the clinical fields.

#### *D. Is This Humanizing?*

I have already explained my motivation for starting to do this class.<sup>76</sup> When I began, I no doubt had a vague thought that it was humanizing and looked at my goals as achieving that effect. But what, really, does it mean to say that something is, or attempts to be, humanizing? As discussed earlier, one definition is: “[A]n initiative . . . to maximize the overall health, well-being, and career satisfaction of law students . . . .”<sup>77</sup> This sounds delightfully mellifluous and totally non-Kingsfieldian. However, it is rather easily ridiculed by those in the academy who consider their primary—and perhaps only—job to be to teach their students “to think like lawyers.”<sup>78</sup> One can envision nasty

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74. See Iijima, *supra* note 6, at 534 n.47 (citing Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL EDUC. 270, 271 (1979)).

75. Those who work in a smaller setting—legal writing classes, academic success programs, seminar teachers, or library staff—regularly get to hear about student distress. But, because clinic, in addition to being in a small setting, involves core issues of legal practice with students in the role as lawyer, it is especially prevalent there. Student anxieties have no place to hide, no book to sneak behind, no legal theory to burrow into—it all comes out!

76. See *supra* Section IV.A.

77. See Florida State University College of Law, Humanizing Law School, [http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool/humanizing\\_lawschool.html](http://www.law.fsu.edu/academic_programs/humanizing_lawschool/humanizing_lawschool.html) (last visited Jan. 18, 2008).

78. See CARNEGIE REPORT, *supra* note 4, at 51-54.

jokes about humanizing teachers requiring students to sit in a circle, hold hands, and sing Kumbaya.<sup>79</sup>

To determine whether this exercise serves some of the salutary purposes discussed by Krieger and Sheldon, we must look in more depth at their research and conclusions. Over a period of years, Professors Krieger and Sheldon have been collecting and analyzing empirical data.<sup>80</sup> Based upon this data, they reach several conclusions. First, Krieger and Sheldon argue effective teaching is comprised of the following triad: student well-being, satisfactory grades and bar examination results, and intrinsic professional motivation.<sup>81</sup> This triad flows from the meeting of student needs for self-esteem, competence, relatedness, and autonomy.<sup>82</sup> These student needs are most likely to be met when the law school faculty and administration provide what Krieger and Sheldon call “autonomy support” to the students.<sup>83</sup>

Krieger and Sheldon assert that autonomy support has three components. They are: (1) respect and understanding for student perspectives and preferences; (2) faculty or administrative actions that provide meaningful choice; and (3) where meaningful choice is not pedagogically sound or is otherwise unavailable, then the students should receive an explanation as to why other choices are not forthcoming.<sup>84</sup>

I will now examine my humanizing exercise to see if it meets Krieger and Sheldon’s notion of autonomy support.<sup>85</sup> Initially, the faculty action must show understanding and respect for student perspectives and preferences. By asking students to read this material and respond to it, I am satisfying this element. The entire exercise is focused on student perspectives and preferences. Next, faculty actions should give students meaningful choices. Although the students in my class do not have a meaningful choice not to do the assignment, they have a vir-

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79. I confess that in classes such as domestic violence law, I arrange the seats in a circle. This surprises and may put off many students initially. A large seminar conference table, however, has been a part of higher education for a long time, so this is really nothing new. Whether or not it is under-used in law schools is a topic for another day.

80. See, e.g., Lawrence S. Krieger, *The Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112 (2002); Sheldon & Krieger, *supra* note 7; Sheldon & Krieger, *supra* note 8.

81. See Sheldon & Krieger, *supra* note 7, at 885.

82. *Id.*

83. *Id.* The value of student autonomy is recognized elsewhere. In *Best Practices for Legal Education*, the authors note that both the institution and the individual teacher should support student autonomy. STUCKEY ET AL., *supra* note 4, at 83. If they do so, they will be rewarded by higher levels of student motivation, a result most law schools should relish. *Id.*; Krieger, *supra* note 80, at 126-29.

84. See Sheldon & Krieger, *supra* note 7, at 884. Note that Sheldon and Krieger’s research does not call for the professor to adhere to student preferences but rather demonstrate respect and understanding. See *id.*

85. My sincere thanks to Professor Krieger for helping me realize that my humanizing assignment was providing autonomy support to the students. In preparation for a session at the 2007 Annual Conference of the Institute of Law School Teaching, we initially worked through my assignment, with Krieger applying the steps of autonomy support.

tually infinite number of choices in completing it. Further, the questions and answers loop back to component number one as they demonstrate a respect and understanding of student views.

If the faculty member is unable to give students meaningful choices, then she needs to explain why those choices are not available. Thus, although I give no meaningful choice about doing the assignment itself, I explain to the students why I give the assignment and why I believe it to be so important. My exercise, therefore, meets the humanizing definition as set forth by Krieger and Sheldon.<sup>86</sup>

## V. ONE CLASS IS NOT ENOUGH

The “touchy-feely” class is but one exercise. There are many more ways to be a humanizing professor, most of them published previously elsewhere, often under the rubric of good teaching. The following section will list and examine a few of those techniques.<sup>87</sup> Smaller classes and seminar-style courses often seem to flow better in terms of student participation, which leads to the logical supposition that larger classes are tougher environments to humanize.<sup>88</sup> Accordingly, the focus here will be on the large classroom setting.

### A. *The Law Firm Method*

Several techniques have worked for me in trying to create a humanizing environment.<sup>89</sup> First, however, please recall that from the beginning, I set forth relatively strict classroom rules and I enforce them.<sup>90</sup> Humanizing does not mean an “anything goes” atmosphere.

Second, I call on students. Although I use volunteers, I also call on students who have not volunteered. Over the years, I have given thought about how best to do this. I am aware that totally random calling could induce stress to a level—for some students at least—that inhibits rather than enhances learning.<sup>91</sup> However, I was not interested in the panel or assigned student methods because of my concern that students who were not “assigned” for that day would view it as an invita-

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86. See Sheldon & Krieger, *supra* note 7, at 884.

87. Technique is not used dismissively here. Although these are, on one level, indeed techniques, the way in which they are done transforms them from a mere technique to a way in which to humanize and improve the law school experience.

88. Of course, classroom participation is not an exclusive measure of a humanizing setting, but vigorous and class-wide discussion and debate is a sign of students’ comfort level in the classroom. A good teacher becomes skilled at knowing when to guide the discussion and when to stay out of it.

89. Many of these are techniques I have learned from others, at conferences, in reading various publications, etc. Like most of us, I have modified them to fit my students and my style. However, I give attribution wherever I can. Further, I rely on the old shibboleth that imitation is the highest means of flattery.

90. It cannot be gainsaid that the way in which the rules are set and the ways in which they are enforced also contribute to a humanizing environment. See, e.g., Lustbader, *supra* note 23, at 625.

91. Glesner Fines, *supra* note 6, at 632-35.

tion to not prepare and, thus, be unable to fully participate and learn. So, I was left with an awkward non-system, in which I defaulted too often to volunteers.

Happily, I discovered the law firm method as used by Professor Robert Schuwerk.<sup>92</sup> In short form, the professor assigns students into law firms—four to five persons—and then calls randomly on a law firm, rather than on an individual.<sup>93</sup> Anyone in the firm can answer, and the firm can consult for a brief period of time if necessary. Thus, random calling is preserved, but the terror factor is eliminated or at least substantially reduced. Like Professor Schuwerk, I have the law firms name themselves.<sup>94</sup> I also distribute a set of law firm rules so that students understand the concept better.<sup>95</sup>

I modified Professor Schuwerk's concept in one way that may be significant. I assign students to the law firm, rather than have them select their own firms. In large part, this is because I have used this technique almost exclusively in first-year courses and these students do not really know each other yet. I have further concerns, however, that also led me to choose the assigned approach. I mix the groups up by gender, race, and Law School Admission Test (LSAT) score. By forcing this collaboration, I at least open the door to greater exposure for all students across lines.

After the law firms are set up and named, they select where to sit for the rest of the semester, which I then reduce to a seating chart. I ask them to use consensus in naming the law firm and in deciding where they will sit. When explaining this, I have learned to include in my introductory lecture about the law firms the importance of accommodating legitimate student preferences. For instance, some students may need to be near the front of the class for reasons of eyesight or hearing and others may prefer the back for laptop usage. Therefore, the students need to be able to articulate their own needs and listen to others' needs.

I have been fairly successful with the law firm model and, by and large, have received good student feedback.<sup>96</sup> There have, however, been wrinkles. First, be prepared for student requests to change groups. I do not allow this, but have added in a section to my introductory lecture on the firms where I explain why I do not allow it and the impor-

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92. Professor Robert Schuwerk presented this idea at the 2004 Institute for Law School Teaching (ILST) annual conference and has written about it in *The Law Professor as Fiduciary: What Duties Do We Owe to Our Students*. Schuwerk, *supra* note 65.

93. For a more complete description, see Schuwerk, *supra* note 65.

94. Giving this choice to the students is valuable; it also leads to amusing results such as Kobe got Lucky, The Five Heart Beats, The Legal Lushes, and The Civ. Pro. Hotline.

95. See *infra* Appendix II.

96. At least one other colleague has adopted this method.

tance of cooperation and collaboration.<sup>97</sup>

My rules specify that everyone in a firm must talk at some point during the semester. However, I have not enforced this especially well. One or two people end up being the regular spokespersons for the group. I often, rather gently, suggest that someone who has yet to speak should answer—this works sometimes.

My best way for urging classroom participation is during the individual review that takes place after the midterm examination. If I am doing an exam review with someone who does not talk when his firm is called on, I raise this point. I suggest that he may want to talk more. If he did well on the mid-term, I can encourage it by saying, “You clearly know the material, now try talking in class.” If he did not do so well, I suggest that we often do not know whether we know material until we have tried to say it aloud—that if it stays in our head and is jumbled up, it has no choice but to come out on the blue book pages all jumbled up. I reframe talking in class as a way to gain mastery over the materials. Luckily, I am able to point out by that time in the semester the fact that the class is a fairly congenial group and neither the classmates nor the teacher is going to bite anyone’s head off for an answer that needs even serious tweaking.

I have found that the law firm works best in larger classrooms. I have used it twice in classes of about thirty-five students, both times with less success.<sup>98</sup> I say less success, perhaps because it also seemed less necessary—almost all the students tended to talk and so the use of the law firm seemed artificial.

The firm qua small group can be used in other ways besides a vehicle through which to secure classroom participation. For instance, opinions in the casebook can be divided up by majority and dissenting opinions and assigned to firms. This, of course, can be done without the law firm structure by assigning the opinions to different sides of the room. With the law firm model all ready set up, however, it increases the likelihood that students might talk about it with each other outside of class. It is in this context that I have had the most success in getting firm members to assist each other.

Next, after covering a particularly difficult topic, I ask the law firms to meet to discuss what concepts they understand and what remains murky. Sometimes I will have them write down on index cards areas that they are still confused about and turn those in. Then, I will try to review those areas briefly at the beginning of the next class.

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97. I do not allow it for several reasons. First and foremost is that law is a profession that is built upon relationships. Interacting with colleagues, opposing counsel, judges, clients, and court clerks are all a critical part of the process. Students need to learn that early on. Thus, even if their law firm is not what they would wish for, they must learn to work within it.

98. This was true regardless of whether the class was first year or upper-class.

I will also have law firms work together to answer questions or problems in the book or exercises that I hand out. This is usually in-class work time, as I tend not to give assignments that force the law firms to work together outside of class. This in-class firm discussion is useful in many ways.<sup>99</sup> I sometimes use it as an antidote to a low-energy situation. It is harder to be silent in a group of four or five, so it gets more people talking.

Finally, I hope for a little more from the firms by encouraging some of the principles of collaborative learning.<sup>100</sup> I suggest to the firms that everyone should have a role, e.g., a time and on-task keeper, a note-taker, a reporter for the large group, and a participation monitor. I also suggest that they rotate these tasks. Although this is not mandatory, I periodically remind the class as a whole of these roles.<sup>101</sup>

### B. Beyond the Firm

There is much advice out there on how to be a good teacher. The list is virtually endless.<sup>102</sup> *Techniques for Teaching Law* contains countless suggestions, most packaged in a page or less.<sup>103</sup> *Best Practices for Legal Education* has a similar list.<sup>104</sup> The *Seven Principles for Good Practice in Legal Education*, especially Principle Three on active learning, is very helpful.<sup>105</sup> The American Association of Law Schools has a section on teaching methods.<sup>106</sup> The Institute for Law School Teaching is another excellent resource.<sup>107</sup> Its annual conference and its newslet-

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99. See *Best Practices for Legal Education* for easy guidelines to promote the more effective use of discussion. See STUCKEY ET AL., *supra* note 4, at 167-71. For effective discussion techniques, see HESS & FRIEDLAND, *supra* note 17, at 57-79. These pages, like most of the book, contain short, specific suggestions supplied by various law professors. It is a treasure trove.

100. Cooperative learning is Principle Two of the *Seven Principles of Good Practice*. See generally David Dominguez, *Principle 2: Good Practices Encourages Cooperation Among Students*, 49 J. LEGAL EDUC. 386 (1999). *Techniques for Teaching Law* also has significant material on collaborative learning. HESS & FRIEDLAND, *supra* note 17, at 131-48. Professors Gary Minda and Rick Nowka describe ways in which they use small groups in the large classroom. *Id.* at 142-44; see also Clifford S. Zimmerman, "Thinking Beyond My Own Interpretation: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum," 31 ARIZ. ST. L.J. 957, 993-95 (1999). Professor Zimmerman draws a distinction between cooperative learning and collaborative learning, but endorses a wider use of both pedagogies. *Id.*

101. Note that many of the above techniques can be used with any small group, regardless of whether the teacher chooses to divide the class into permanent law firms.

102. See, e.g., MADELEINE SCHACHTER, *THE LAW PROFESSOR'S HANDBOOK, A PRACTICAL GUIDE TO TEACHING LAW* (2004); HESS & FRIEDLAND, *supra* note 17. Florida State University College of Law, Humanizing Law School, [http://www.law.fsu.edu/academic\\_programs/humanizing\\_lawschool/humanizing\\_lawschool.html](http://www.law.fsu.edu/academic_programs/humanizing_lawschool/humanizing_lawschool.html) (last visited Jan. 18, 2008).

103. HESS & FRIEDLAND, *supra* note 17, *passim*. Gerald Hess, one of its co-authors, elsewhere states that its "heart" is in "the collection of 137 teaching ideas." Gerald F. Hess, *Monographs on Teaching and Learning for Legal Educators*, 36 GONZ. L. REV. 63, 69 (2000).

104. STUCKEY ET AL., *supra* note 4, at 83.

105. Hess, *supra* note 41, 401-17.

106. The Association of American Law Schools, [http://www.aals.org/services\\_sections.php](http://www.aals.org/services_sections.php) (last visited Jan. 18, 2008).

107. See Gonzaga University School of Law, Institute for Law School Teaching, <http://www.law.gonzaga.edu/About-Gonzaga-Law/Institute-for-Law-School-Teaching/default.asp> (last visited Jan. 18, 2008).

ter, *The Law Teacher*, are both abundant with good ideas.<sup>108</sup> Professor Hess, its founder, has articles that enumerate and discuss books and periodicals on teaching for law teachers.<sup>109</sup> Many of the law articles cited herein are written by law professors who have, for years, been walking this path and pointing it out to others.<sup>110</sup> In sum, this information is there for those inclined to search it out—or read it when it lands on their desks.

### C. *Feedback—Getting It, Not Giving It*

Principles of effective teaching include the necessity of feedback. While much of the writing correctly focuses on giving feedback to students, I will address my practice of getting feedback *from* students.<sup>111</sup> I do this early and often. Initially, I did it for my own benefit, but now I understand that it shows interest in and respect for student preferences and thus folds in nicely with the principles of autonomy support.

Many are familiar with some variation of the exercise that has the participants list certain things, such as their motivation for attending law school, then pass the list in, and have it returned at some later time. I have done this on occasion.

More regularly, however, on the first day of class, I have my first-year students write information on an index card, telling me something about themselves. The information is nothing earth-shattering, the law school equivalent of name, rank, and serial number, perhaps.<sup>112</sup> I always ask what, if any jobs, students have held, and what they would be doing if their law schools plans had not materialized, i.e., what was “Plan B?”

Besides satisfying my curiosity, this exercise can be valuable to me in discovering whether any students bring related work experience.<sup>113</sup> Further, it communicates to the students that I am interested in who

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108. See Association of Law Teachers, *The Law Teacher: The International Journal of Legal Education*, <http://www.lawteacher.ac.uk/about/journal.html> (last visited Jan. 18, 2008).

109. See generally Hess, *supra* note 103; Gerald F. Hess, *The Legal Educator's Guide to Periodicals on Teaching and Learning*, 67 UMKC L. REV. 367 (1998).

110. One idea that I have yet to try but hope to this year is the “think aloud,” introduced to me by Professor Michael Hunter Schwartz at the 2007 ILST conference. In this exercise, the professor models for students the analysis of a particular problem that the professor does internally. As Schwartz describes it, the “think aloud” allows an expert to demonstrate her cognitive analysis to novices. This learning tool could be applied in a variety of circumstances, such as an exam hypothetical or problems or questions in a casebook. The professor can do a “think aloud” with the help of a colleague, as it is easy for experts to skip steps without knowing it. The colleague-observer helps ensure that the analytical process is appropriately broken down and made accessible to students. In short, the amorphous “thinking like a lawyer” principle is made explicit.

111. See, e.g., Terri LeClercq, *Principle 4: Good Practice Gives Prompt Feedback*, 49 J. LEGAL EDUC. 418 (1999) (describing giving feedback to students).

112. When I learned that a colleague, Professor Irene Scharf, did this in her first year torts class, I thereafter “borrowed” it for my property students. Hence, this demonstrates the value of sharing our techniques with others.

113. I find this especially true in my night property class. Often students are employed by day as paralegals, perhaps specializing in real estate closings. Thus, they bring a practical aspect that can be shared in class—a perspective that I cannot offer as a former family law practitioner.

they are. Finally, it reaffirms that there is always a “Plan B,” which is to say that life did, does, and will exist beyond the law school experience.

I use the index cards in other contexts as well, such as: (1) student feedback on a test; (2) areas in which the students are still confused at the end of a unit of instruction; and (3) a sense of how students feel about the class pace.

Sometimes, I also use a more formal feedback instrument. Years ago, a teaching friend suggested that I do a mid-semester evaluation.<sup>114</sup> I compose the questions myself and I am the only one who sees the answers.<sup>115</sup> I tend to use this more frequently in upper level courses. Once, when passing the evaluations out, one student evinced surprise that I would do this mid-semester voluntarily. To this I responded, “Your opinion matters; your tuition pays my salary.” Her surprise elevated to shock when she considered this—it was not something she had heard before, she confessed.

In conclusion, feedback is easy to get, and it matters. For instance, it can help a teacher realize that there are concepts that are still confusing or that she may need to explain. It may lead to an adjustment of the pacing of the course. In addition to such tangible results, the cards/evaluations also communicate to the students that their opinions count.

Professor Gerry Hess has taken this student feedback one step further. He has student advisory teams (SATs) with whom he regularly meets.<sup>116</sup> These are students who are presently in his classes. The primary purpose of the SAT, according to Hess, is twofold: (1) to provide feedback about what the students are “getting” in class and (2) to offer suggestions for improvement. Critical to the process, Hess cautions, is the teacher’s reaction to the suggestions: either implement them, develop a shared alternative, or explain why neither of the first two options work. The SAT is a marvelous example of a teaching methodology that satisfies the Krieger and Sheldon effective teaching model.

I have not yet moved to this, but I admit to being curious. It involves more risk-taking than I am currently comfortable with, but perhaps I will get there one day. As I consider it, I am reminded of the significance of context. In the clinical setting, the most frequently teacher-uttered phrase may well be, “What do you think?” This question is so ubiquitous as to be the subject of jokes. But it is true that, in clinic, the teacher wants the students to script, practice, execute, then reflect on

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114. Judge Paul Buxbaum, a former litigation opponent in the D.C. Superior Court, also taught Juvenile Law at Catholic University. When he moved on to the judicial arena, he recommended me as his successor. Along with that recommendation, he shared with me his notes, his teaching theory, and this midterm evaluation.

115. See *infra* Appendix III.

116. HESS & FRIEDLAND, *supra* note 17, at 279-81. Hess helpfully includes a sample of a memo that he distributes to his class regarding the student advisory teams (SATs). *Id.*

each and every step.

To many doctrinal teachers, however, this level of student autonomy would be anathema. While there may be valid reasons for differences in the two settings, query whether the degree of difference is warranted. We all fear losing control in the classroom, but there are ways to cede appropriate control to the students.<sup>117</sup>

#### *D. Beyond Technique*

The classroom atmosphere has much more impact than any particular technique or teaching method. For those interested in good teaching, or in achieving a humanizing effect, the classroom setting is the place to start. It must be a place where learning is safe, expected, and encouraged.<sup>118</sup> A negative learning environment has, rather predictably, an adverse impact on the students' well-being and their performance.<sup>119</sup> Professor Hess has addressed the importance of the education environment, highlighting other models for creating "effective teaching and learning environments."<sup>120</sup>

Others, too, have urged this point. Professor Paula Lustbader writes of creating "learning communities" in large classrooms.<sup>121</sup> This can be done, she suggests, by respecting diversity, incorporating an integrated curriculum, using active learning exercises, providing assessment and reflection, and fostering community.<sup>122</sup> She details these factors carefully in her article; it is another way to humanize in a large setting.<sup>123</sup> These techniques certainly respect student preferences and give meaningful choices—thus satisfying the Krieger and Sheldon test.

Additionally, Professor David Wilkins talks about creating "a learning atmosphere" for his first year students.<sup>124</sup> This is his primary goal—not the substantive material for the course.<sup>125</sup> He acknowledges their fear on the first day of law school and he has weekly lunches with them so that he can "get to know something about [them] . . . not just how [they] perform on a test."<sup>126</sup> As an antidote to students' hyper-

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117. See generally STUCKEY ET AL., *supra* note 4.

118. A powerful example of this is seen in the 2007 movie *The Freedom Writers*. THE FREEDOM WRITERS (Paramount Pictures 2007). Inner-city Los Angeles high school students see their freshman English class transformed into the only place that is home, a place where the gang-affiliations cease to matter, and where, not coincidentally, the students learn, with a resulting increase in test scores. *Id.*

119. Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 80-81 (2002).

120. *Id.* at 84.

121. Lustbader, *supra* note 23, at 615.

122. *Id.* at 636-45.

123. *Id.* Lustbader refers to this not as humanizing but as teaching and walking social justice within the law school community. *Id. passim.*

124. SARA LAWRENCE-LIGHTFOOT, RESPECT 166-67 (1999).

125. *Id.*

126. *Id.* at 165.

focus on grades, he tells them that “grades are not the measure of you.”<sup>127</sup>

These rather simple acknowledgements that students are humans, not an LSAT score or civil procedure exam grade, are obviously humanizing, as they show respect for the students’ perspectives and honor intrinsic, not extrinsic values and motivation. Wilkins, however, uses some traditional arrows from the law professor’s quiver. He calls on students randomly, although without penalty for being unprepared, and he addresses students by their last name.<sup>128</sup> He thus demonstrates that one need not abandon all traditional methods as one moves toward the humanizing dimension.

## VI. BARRIERS TO HUMANIZING

### A. Time Constraints

Obviously, I think that my humanizing class exercise is valuable and would urge others to try it. But, in addition to the downside already discussed, there are both real and perceived barriers to undertaking such a class.<sup>129</sup> An examination of those barriers and ways to hurdle them may prove useful.

Time constraints constitute an initial barrier. Many professors feel obligated to cover a certain amount of material, particularly in survey courses. Thus, they would be exceedingly loath to spend time on a topic and discussion that was substantively unrelated to their course.

To this concern, there are several responses. First, though, I acknowledge that many law faculty feel those time constraints, particularly in core courses, and that often those constraints are real. If, however, one has been at a law school when it has reduced the number of credit hours that are being allotted to a particular core course, one has learned that there are choices that can be made about what really must be covered. Law faculty are always making choices about what to include based on their own sense of what is most important, indispensable, or interesting. Talk to any given group of faculty in a particular doctrinal area and one would most likely find consensus on eighty to eighty-five percent of the topics to be covered. The topics around the margins, however, give room for some choices.

In addition, the first exercise that I propose can be done in one

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127. *Id.*

128. *Id.* at 168.

129. Perceived barriers can be as disabling as real ones, as perception can be a valid proxy for reality. In Sheldon and Krieger’s research, for example, it was the student’s perception that mattered regarding whether she received a meaningful choice or a good explanation as to why there was none. Sheldon & Krieger, *supra* note 7, at 885, 893-95.

class session. Thus, the time commitment is relatively inconsequential. Moreover, given the theory that supports making the choice to humanize, a class session spent in this way may well have benefits that redound far beyond what would have occurred if the professor spent the class hour discussing, say, impleader or prescriptive easements.<sup>130</sup>

### *B. Respect and Ridicule*

A second barrier is that of respect and its counterpoint, ridicule. In my mind, this is the most significant barrier. First, one must contend with the reactions of colleagues. This concern was so real to me that I did not tell my colleagues that I did this exercise. Even now, if they know, it is by happenstance. Of course, that is probably true for what most of us do in the classroom. Few of us have much real knowledge about what each other does in our fifty minute segments.

It is curious, nonetheless, that I think this exercise is so wonderful that I commit it to writing, but I have yet to share it far and wide with my own colleagues. Pre-tenure, it is inevitable that one is cautious about what “non-traditional” things she does in the classroom.<sup>131</sup> This is particularly true for women and persons of color, whose competence may be in doubt no matter what they do.<sup>132</sup> If one adds in this “soft” class, this may increase the scrutiny and raise new doubts about that person’s teaching.

Sadly, there is no complete solution for this problem. The first piece of advice is the most obvious. Assess the climate of your law school, including both the risk level and the interest level—i.e., what might happen if fellow teachers find out, and the likelihood that they will. Do some practical scouting before you become unduly paranoid. The reality is that there are places where this type of thing would be a real problem; but there are probably many more where it would not be.

The second piece of advice is to be competent in your teaching—let everything else be beyond reproach. An adjunct to this is to be rigorous. Humanizing does not mean going easy; it does not mean expecting and accepting less—in fact, it may mean just the opposite.<sup>133</sup> Show students that you care, that you believe they can apply themselves and succeed, and that you will lend your skills in that endeavor. This is both humanizing as well as good, demanding teaching. The dehumanizing bully ought no longer be the role model for a rigorous classroom.

Third, seek out like-minded colleagues, both within and without

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130. See *supra* Section IV.B.

131. There is, of course, academic freedom, which all will champion loudly. But doubts and concerns filter through that, nonetheless.

132. LAWRENCE-LIGHTFOOT, *supra* note 124, at 191.

133. See generally Glesner Fines, *supra* note 11.

your institution. They are out there, and there is both strength and comfort in numbers. The Institute for Law School Teaching's annual conference will connect you with some of these kindred spirits, as will the Humanizing Legal Education Listserv.<sup>134</sup> Consider asking your faculty development committee to have discussions along these lines. Even consider leading the discussions, perhaps with another colleague.

It is wise to be prepared and educated for these interactions—this constitutes the fourth piece of advice. The notion that it is good to humanize is no longer as far-fetched as it once may have been considered. The Humanizing Legal Education Listserv has been around since the early part of this decade. The Institute for Law School Teaching has been around since 1991.<sup>135</sup> The ultimate in institutional credibility, the American Association of Law Schools (AALS), has recently created a section for its members called Balance in Legal Education. The AALS has, for years, sponsored sessions on the topic at its annual conference. There is, increasingly, more being written on the topic, as witnessed by this symposium issue, which itself grew out of a conference devoted to the topic.

All movements take time and this one is no exception. It is a topic that no longer needs to be relegated to whispered conversations and quickly deleted emails, although it still may be marginalized in some quarters. Be prepared with some credible facts when engaging in these conversations with the skeptics and fence-sitters.

Much of the above advice applies equally to the concern that students will not respect the teacher who does such an exercise. There are some additional concerns, however, to consider here. With the students, the way in which you approach the class session is important. As discussed earlier, it is a good idea to explain to students why you think it is important, even while acknowledging some may not like it. Perhaps draw an analogy or two. They may not like servitude law, for instance, but it must be covered nonetheless because of its significance in the realm of property law. Further, some self-deprecating—or even institutional-deprecating—humor is likely to go a long way with students, so figure out a way to work that in.<sup>136</sup>

Finally, acknowledge and accept that some students will not like it and might not like you for doing it. More students by far, however, will greatly appreciate it. They are experiencing stress, they know they are experiencing stress, and they will be glad to have someone in authority

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134. See Gonzaga University School of Law, Institute for Law School Teaching, <http://www.law.gonzaga.edu/About-Gonzaga-Law/Institute-for-Law-School-Teaching/default.asp> (last visited Jan. 18, 2008).

135. *Id.*

136. As mentioned earlier in the description of the exercise, appropriate self-disclosure is valuable here as well.

acknowledge this and, further, make efforts to assist. To this last point, one further addendum: because students tend to listen a bit more carefully to things that are said by doctrinal faculty, it is important that these professors make an effort to humanize. Ideally, the message would be pervasive—as with the attempts to teach ethics pervasively throughout the curriculum<sup>137</sup>—and heard throughout the school. It cannot, however, be left only to academic support or to a small lecture at orientation.

### C. Risk-Taking

A third and related barrier is the teacher's own resistance to risk-taking. Professor Hess addresses this issue in his article, *Principle Three: Good Practice Encourages Active Learning*.<sup>138</sup> He suggests that there are several risks involved in "pedagogical innovation."<sup>139</sup> First is the risk that "students will not participate . . . and will not learn."<sup>140</sup> Second, the teacher takes risks in potentially ceding control of the classroom.<sup>141</sup> Finally, as discussed previously, there is risk if such innovation is not valued by colleagues or the dean.<sup>142</sup> Hess says that the professor can retain control even while giving up some, and that, further, she may achieve more student respect by sharing control with the students.<sup>143</sup> As for the doubter, Hess advises that we explain the rationale behind our choices and then rest assured in the knowledge we are doing the right thing.<sup>144</sup>

### D. Knowledge of Technique

A fourth barrier is the lack of knowledge of technique. Even if a teacher is not cowed by other barriers, she simply may not know how to infuse her teaching with humanizing techniques. First, remember that there are no magic formulae required to humanize the classroom. As discussed earlier, if one is practicing any, some, or all of the principles of good practice or other indicia of effective teaching, then humanizing is occurring in the classroom. Second, the techniques are out there, ready to be incorporated.<sup>145</sup>

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137. CARNEGIE REPORT, *supra* note 4, at 151-52.

138. Hess, *supra* note 42 at 405-06.

139. *Id.* at 405.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.* at 406.

144. *Id.*

145. Although the academy is rumored to have a petty side, one of its delights is the generosity of teachers to share with one another. This generous, selfless spirit lightens the burden and improves our ability to be effective with our students.

## VII. CONCLUSION

This article has attempted to guide the reader in several ways. It has enumerated specific ways that one can humanize a large class. Second, it has demonstrated that, based on the extant research, such humanizing is a necessary and proper thing.

To be a good, humanizing teacher, one must possess technical teaching competence as well as the desire and ability to create an effective learning community. The elements of the humanizing teacher may appear in both strands, but are more dominant in the latter.

Any given teacher may have none, one, or both.<sup>146</sup> We can have technical competence without caring about our students as persons and/or learners under our tutelage. We can be “humanizing” teachers who telegraph student-centeredness ‘til the cows come home, but who lack the ability to communicate the material and engage students.

This article has described some of the techniques available.<sup>147</sup> These techniques often apply across the categories. There are ways to learn to teach that make your style more humanizing. These same ways are often co-extensive with principles of good teaching. Perhaps the most important principle, however, is: first, do no harm.<sup>148</sup> The evidence shows that law school can damage our students. It also shows that we can construct our teaching to minimize that damage.<sup>149</sup> We owe that effort to our students.

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146. This assessment can be true over a lifetime of teaching, a particular course in a particular semester, or even an individual class session. The good news is we are always capable of aiming for both. If one or the other must fall briefly, the learning community is more critical as it is learning, not teaching, that ultimately matters for the student.

147. Some characteristics of a master teacher are beyond technique: knowing your subject matter cold and having clear, organized lectures are simply a matter of application.

148. See STUCKEY ET AL., *supra* note 4, at 81.

149. Possibly, the harm cannot be avoided. Law school is, and should be, hard. We are training our students to be professionals; that requires rigor and discipline. The problem lies with data that show law school is *more* stressful than other professional schools, with results that render law students more akin to a psychiatric population. Sheldon & Krieger, *supra* note 7, at 883.

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## Appendix I

### Professor Dunlap—Fall 2007—Assignment

1. Please read the two attached articles for class on October 26th. There is no other reading assignment.
2.
  - *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, by Susan Daicoff; and
  - *Defending Humanity*, by Peter M. Cicchino

For the Daicoff article, we will focus particularly on Sections I & II, but please read the whole article.

For the Cicchino article, we will focus particularly on his third point, which begins on page six. But, again, please read it all.

3. After you have read these articles, please do the following in writing:
  - List the most interesting point from either of the two articles.
  - Indicate two ways that you (or others who are close to you would say you) have changed in the last five months, i.e., since you began law school.

You will turn these into me in class. To preserve your privacy, use your student number, not your name. These will not be graded in any way, but I do want to collect them and read them.

## Appendix II

### Law Firm Rules

1. Name your firm.
2. Sit with your firm.
3. Firms cannot pass.
4. Any member of firm may answer—or may consult briefly with other firm members. Other firms should be thinking of how they would answer the question during any such consultations.
5. If you answer for the firm, you are not necessarily on the hot seat for any follow up questions, but the firm is.
6. As class discussion proceeds, I may answer questions, or I may allow the firms to take the questions from other colleagues.
7. Every firm member must speak at least once during the semester.
8. For groups' discussion questions, each firm will need time-keeper/on-task person, note taker, & reporter. These tasks should be rotated.

## Appendix III

### Mid-Semester Domestic Violence Law Course Evaluation

Please answer the following questions about this course. As you can see, no name is requested and this information will be seen only by me and used, as appropriate, to make the rest of the course informative and interesting. The more information you provide, the more responsive I can be. Thank you.

1. How is the pace of the course? (i.e., too slow, too fast, just right)
2. Do you find the supplemental handouts distributed so far helpful? (Yes/no/sort of and why)
3. Would you like some guest speakers in the class? Any suggestions?
4. What do you think of the reaction/reflection papers? Please comment from both perspectives of writing them as well as listening to others' reactions.
5. Do you think the conversation and dialogue of the class flow well? Any suggestions?
6. Please make any suggestions for what you would like to see done differently—or the same—for the rest of the semester.