

## Symposium

# We Can Do More

Daisy Hurst Floyd

I believe that law student distress is real and significant. I also believe that it has a lasting impact—one that goes far beyond the years of legal education and affects not just our students. Law student distress is not a result of our asking too much of our students; it happens because we ask too little of them. They are capable of so much more than we demand of them in law school and we are failing our students by not asking for more.

Students come to us wanting to be lawyers. They want work that is meaningful, connects them to others, involves problem-solving and helping people through difficult times, and uses their talents in creative and challenging ways. Students enter with a broad view of the world and its possibilities and of their place in the world as lawyers. Not long after students enter law school, their visions narrow as a result of the structure and pedagogy of law school. The law school environment signals to students that their goals for lawyering are naïve and that they must give up those goals.

I believe that law school causes many students to lose the purpose that brought them to us in the first place. For some, that loss is akin to a death. No wonder they are distressed.

The damage does not end in law school, however. Students' reduced expectations are carried into practice, and those reduced expectations therefore have an effect on lawyers, their clients, and their families and friends. The effect may last for the whole of their careers. Those of us who are full-time legal educators are affected as well.

Our topic today is balance in legal education as we celebrate the founding of the new AALS section focused on this important topic. However, this loss that I describe is about more than a loss of balance. It is about a loss of self.

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### **What is my evidence?**

Unlike Professor Krieger's evidence,<sup>1</sup> which is based on empirical studies, my evidence is anecdotal. I am glad that Professor Krieger and others are doing important data collection and analysis because it brings us greater understanding of what is happening and greater credibility in conversations such as these. I also believe, however, in the power of narrative and of learning about our students through the stories they share. We can learn a great deal about this topic by listening to our students. The stories that I have heard lead me to the following conclusions that are, I believe, consistent with what the empirical studies are showing.

Some years ago, I became interested in the ways in which the legal profession was addressing a described crisis of meaning in the profession, the manifestation of distress among lawyers. As I was observing the profession struggle with these tough issues, I began to wonder whether the seeds for some of the professional distress were sown in law school. So I began to investigate this question: How do students develop their professional identities as lawyers, or, to put it another way, what really happens to students during their time in law school that affects their experiences as lawyers? My methodology was simple but revelatory: I decided to ask the students what they were experiencing. I have done so in a variety of contexts: in a series of seminars on legal education, in classes in Law and Literature, and even in more traditional classes such as Evidence and Civil Procedure.

Students report positive consequences of their time in law school. They become disciplined. They develop confidence. They acquire an improved ability to articulate arguments and to depersonalize disagreement. Students report that they learn to think like a lawyer, as we tell them that they will do when they come into law school. They also report a great deal of pride in successfully meeting a challenging educational program.

But students also report negative consequences. Law school is a highly competitive environment. Classrooms can be actively hostile, regardless of the professor's teaching style or the professor's accessibility; much of the classroom atmosphere is dictated by the general peer competition. Students feel pressure to "win" at law school, which becomes the end game. Winning is defined by the identified prizes of law school: high grades; high class rank; law review or other journal membership; the right kinds of jobs in the summer and after graduation. Unfortunately, legal education defines the prizes as goals that cannot be achieved by most of our students. If winning is defined by being in the top 10 percent of the class, then 90 percent of our students are set up for failure from the beginning. Most students enter because they want to graduate, pass the bar, and become lawyers. Almost all of them will do

1. See Lawrence S. Krieger, Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Values, Motivation and Well-Being, 22 *Behav. Sci. & L.* 261 (2004) (with Kennon Sheldon); Lawrence S. Kreiger, Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence, 52 *J. of Legal Educ.* 112 (2002).

so. Yet many will see themselves as failures by the time they accomplish the goal because of the artificial definition of success implicit in the law school environment.

I also discovered that students see law school through a short-term perspective and focus on short-term goals, such as graduation and getting the first job. They fail to see the connection between what they were doing in law school and what kinds of lawyers they will be. The short-term perspective often leads to a lack of investment or engagement with the law school experience and to a great deal of frustration.

Some of the real difficulties for students emerge because of what we are so good at doing: teaching students to think like lawyers. The law school culture values the cognitive, rational, and analytical to the almost total exclusion of other qualities. The result is a devaluing of everything else, including emotional matters, relationships, and students' ethical and moral values. For many students, those were the things that gave their lives meaning before they began law school. When they are devalued, students perceive that those must be given up if they are to become good lawyers.

The devaluing of relationship skills is a particularly significant outcome. It is not just that legal education fails to teach students about relationship skills. Legal education actually diminishes or may even eliminate the ability to form and sustain relationships, including those that students possessed when they began law school. One student reported that she lost the ability to sustain relationships with family and friends within three weeks of beginning law school. She compared this experience to a loss of self that she said was akin to the loss of a close family member. When she shared this in class, there was almost unanimous recognition of the experience and ensuing emotions from the other students in the class.

Law school is isolating for many students and an environment intolerant of fears, anxieties, vulnerabilities, and mistakes. Therefore, students who struggle with the complexity of law school, who are anxious about the responsibilities that come with being a lawyer, and who make mistakes or fear making them interpret these reactions as signs of inability or incompetence. Students develop self-doubts about their competence as lawyers and about their choice of profession, but they learn to hide the self-doubt behind masks of assuredness. Yet, we know that professionals are called upon to make judgments in conditions of inherent uncertainty, and that mistakes and doubts are inevitable under those conditions. The belief that the profession does not tolerate mistakes begins a professional pattern of failing to acknowledge mistakes and to deal with them appropriately. I also found that students feel a lack of control over their lives—and that they don't expect that to change after graduation.

### **Why does this matter?**

The discussion of these issues is dismissed by some as being about whether we as legal educators bear responsibility for preventing student unhappiness. Or, some say that unhappiness is good because it means that students are working hard. After all, the argument goes, it is difficult to be a lawyer, so law school should be difficult, too. I have heard some say that when we focus on student distress, we make an argument for less rigor in law school. But that is not so. Although I would argue that the statistics on law student distress demonstrate that this issue alone is worth remedying, I think it is important to recognize that this conversation is not just about whether law students are happy or unhappy for three years. It is about so much more.

It is about developing ethical, competent lawyers, who are whole and healthy and therefore able to do their jobs well. It is about lawyers being able to discover and meet the opportunities for creativity, problem-solving, and making a difference in people's lives. Healthy, happy lawyers serve their clients better. Further, if lawyers bring all of who they are to the practice of law, they allow the client to bring that into the representation as well, and are much more likely to obtain a satisfactory resolution for the client.

### **What should we be doing?**

There is much that we can change. I have a few suggestions to get us started. First, we should value and teach the habits and skills of reflection and connection. We should urge students to take the time to develop the inner life, to know who they are and what matters to them, to consider such questions as what their places are in the world, and how to practice law consistently with their values and morals. These skills are inclusive of notions of balance—how not to be overtaken by the demands of law practice and to blend personal and professional values and demands. Students are hungry for discussions of these matters and usually pleased to learn that such considerations are part of being a lawyer.

Second, we should value and teach relationship skills and help students to develop connections between each other, and with lawyers, family and friends, and in the future, clients. We should be explicit about the importance of such skills to good lawyering. Steven Keeva<sup>2</sup> has pointed out that the law is about relationships but that law school is almost exclusively about the law. The typical law school environment is isolating and competitive and prevents students from forming healthy relationships with each other. It actively discourages collaboration, which is neither emotionally healthy nor adequate preparation for law practice. The time demands and competitiveness are harmful to relationships with friends and family.

2. Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life* (Contemporary Books 1999).

We should ask ourselves what legal education would look like if we valued relationships as much as we value the law. I do not have a complete answer to that question, but I know that it would look different than it does now. I believe that the question is worth serious exploration.

Connections with lawyers are important, as well. When I have asked students to interview local lawyers, the most amazing things happen. One student, a third-year, nontraditional student who had become disillusioned with law school, came back from the interview and told me that the time with a practicing lawyer had dramatically changed him. Before the interview, this student had decided that he had made a mistake in coming to law school and that he did not want to practice law. But after the interview, he was inspired. He told me, "I do want to practice law now." Two and a half years of full-time legal education had driven him to the opposite conclusion. Two and a half hours with a lawyer in Lubbock, Texas changed his mind and his vision of what it was going to be like for him to be a lawyer. The lawyer with whom he met was not doing particularly glamorous work, but he loved what he was doing, and felt that he was helping his clients. He was explicit that his satisfaction came through his relationships with his clients. The student had learned how to think like a lawyer in law school, but not about these other aspects of being a lawyer.

We need to add people to the law and to law school. Two groups of people are generally omitted from legal education—lawyers and clients. We need to make sure that our students hear from both as part of their transition to becoming lawyers, and that they know how to connect to both. I already have noted that we offer too narrow a vision of what it is to be a lawyer. We do an even poorer job of fleshing out what it is like to be a client—and of exploring clients' motivations, goals, and foibles.

We also need to teach and model integration, that is, integrating the personal and the professional into a whole—or to use today's theme, finding a balance between the personal and professional. We do that in part by valuing our students for all they are and not just for their ability to analyze and synthesize the written law. The terminology is a little tricky here. I prefer integration to balance because balance implies the need to manage separate parts while integration aspires to be whole. Similarly, talking about this challenge as a part of one's professional identity, as I often do, gives the impression that the professional identity is separate from a personal identity. The goal really should be integration of those two. When we talk about developing a professional identity in law school, we need to recognize that we are not replacing the identity that students bring to law school, but are blending professional skills, knowledge, and values with their personal identities. The message we usually send, that we are replacing students' personal identities with something new, is damaging to our students.

What we are doing in law school is not wrong, but it is incomplete. We need to do more than teach students how to think and act. We need to help them to become and to be lawyers. A third-year student once told me, "You know, you

teach us to do one thing very well, and then you just keep asking us to do it over and over and over again.” She was right. Our students are capable of so much more, and we need to rise to the challenge of doing more.

We can do these things in small but powerful ways as well as by making larger, more systemic changes. Some of what we can do involves major efforts and difficult challenges: adding courses, modifying the curriculum or the grading system, or attempting and occasionally succeeding at other pretty unwieldy changes. But we can make a big difference by changing the small things, such as how we interact with students, what questions we ask of them and of ourselves, whether we create an environment in which it is permissible—or even expected—to talk about mistakes or anxieties. We can invite lawyers and clients to speak to our students. We can use ten minutes of class time to remind students of their long-term goals and the need to value relationships. We can examine the messages we send about institutional values, including the values expressed in our grading and rewards system.

These changes will not just benefit our students. They will enrich the environment for faculty, as well. When I began to really listen to my students and to ask how they were experiencing their transitions to lawyers, I developed a new appreciation for my students and for the fullness of their lives. I began to see my students as whole people in ways that I had not previously. I broadened my vision of who my students are and of my task as a legal educator. That, in turn, made teaching that much more challenging and satisfying for me.

My hope is that we will ask more of our students and ourselves. By doing so, we will graduate students who are better equipped to be good lawyers and happier and more fulfilled people.