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Practicing Practical Wisdom

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PRACTICING PRACTICAL WISDOM

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INTRODUCTION.

Here is what we believe and what we set out to test: Wisdom is not an innate character trait; no one automatically is wise; wisdom is learned and acquired. More importantly, one can learn and acquire wisdom intentionally and skillfully—one can practice it. And, if the practice is structured in particular ways, the practice *will* improve one's capacities to act with wisdom. For lawyers, and even more so for law students, that should be heartening. For legal educators, that should be a call to action.

We set out to discern what were the best conditions that a legal educator could use to actually cultivate wisdom in law students. As a starting point, we knew we needed to refine what kind of wisdom we were striving to cultivate. We chose to situate ourselves within the Aristotelian tradition, which embraces the idea of wisdom-in-action, or practical wisdom.¹ Practical wisdom is dependent on the particularities and context of the specific choice to be made or problem to be solved.² It does not remain aloof or removed from the facts on the ground.³ It does not try and abstract itself from context.⁴ Furthermore, and critically, practical wisdom always attends to

* Associate Professor, University of Colorado Law School. We want to express tremendous gratitude to the students in our legal ethics classes who so readily and profoundly engaged with us in our efforts to practice practical wisdom. Without them, this article would not exist. We received rich feedback from our colleagues at the University of Colorado works-in-progress series. We would also like to particularly thank Brad Bernthal, Tammy Kuennen, Helen Norton, and Amy Uelmen.

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¹ See Barry Schwartz and Kenneth Sharpe, PRACTICAL WISDOM: THE RIGHT WAY TO DO THE RIGHT THING 5-6 (2010).

² *Id.*

³ *Id.*

⁴ *Id.*

the normative valence of context, thereby also mooring itself to higher order values.⁵

The first step in our project was to reconsider the legal ethics literature about professional identity and to bring together two rich strands of that literature. The first strand we labelled the “formation” strand, and it is a longstanding exploration about how the professional identity of a lawyer is formed, both in law school and beyond.⁶ The second strand we called the “role” strand. It, too, is a longstanding exploration, but it has focused on larger normative questions about what is the appropriate role of a lawyer in a democratic and just society.⁷ Interestingly, the formation strand seldom has explicitly considered the “role” question, while the role strand seldom has explicitly considered the “formation” question. However, practical wisdom demands that both questions be answered concurrently—one can only practice practical wisdom if one knows towards what aim one is striving.

⁵ *Id.* at 7-8.

⁶ Some examples from this rich strand of literature include: William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007)(often referred to as “The Carnegie Report”); James R. Elkins, *Symptoms Exposed When Legalists Engage in Moral Discourse: Reflections on the Difficulties of Talking Ethics*, 17 VT. L. REV. 353 (1993); Thomas D. Morgan, *Use of the Problem Method for Teaching Legal Ethics*, 39 WILLIAM & MARY L. REV. 409 (1998); Robert P. Burns, *Teaching the Basic Ethics Class Through Simulations: The Northwestern Program in Advocacy and Professionalism*, 58 LAW & CONTEMP. PROBS. 37 (1995); Lois R. Lupica, *Professional Responsibility Redesigned: Sparking a Dialogue Between Students and the Bar*, 29 J. LEGAL PROF. 71 (2004-05); Paula M. Young, *Teaching Professional Ethics to Lawyers and Mediators Using Active Learning Techniques*, 40 SOUTHWESTERN L. REV. 127 (2010); Neil Hamilton, *Fostering Professional Formation (Professionalism): Lessons From the Carnegie Foundation’s Five Studies on Education Professionals*, 45 CREIGHTON L. REV. 763 (2012).

⁷ Some of the well-recognized literature in this strand includes: David Luban, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* (1988); William H. Simon, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS’ ETHICS* (1998); Monroe H. Freedman & Abbe Smith, *UNDERSTANDING LAWYERS’ ETHICS* (3rd ed. 2004) Thomas L. Shaffer, *The Practice of Law as Moral Discourse*, 55 Notre Dame L. Rev. 231 (1979); Lucie E. White, *To Learn and Teach: Lessons From Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 (1988); Gerald P. Lopez, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Norman W. Spaulding, *Reinterpreting Professional Identity*, 74 UNIV. COLO. L. REV. 1 (2003); W. Bradley Wendel, *LAWYERS AND FIDELITY TO LAW* (2012).

Our next step was to more carefully discern what are the component parts of practical wisdom. In other words, what particular capacities does a lawyer need to cultivate in order to achieve practical wisdom? We hypothesized that practical wisdom requires a lawyer to have at least three specific capacities: the capacity for empathy, the capacity for compassion, and the capacity to situate the endeavor within a broader web of relationships than just the dyadic relationship between the lawyer and client (what we called “relationality”). We explore each of those capacities more fully below.

Our final step was to craft and test a pedagogy that truly allowed the practice of practical wisdom within the context of a law school legal ethics class. We took seriously the lesson from research on adult learning that adults learn best when they can use their own experiences to form the basis of their learning.⁸ We also took seriously that practical wisdom demands actual context. Thus, we determined that all of our teaching and learning would start from lawyering narratives that students wrote about or orally shared in every class, and that other legal ethics texts and cases would be integrated into these narratives.⁹ While that meant that as teachers we would not actually know in advance how a class would unfold, we always knew that we would be working with material that was deeply engaging for the students. Further, we provided prompts in advance of class for the narrative assignments so that students’ stories usually were of a piece. In that way, we had some helpful focus that still was flexible and dynamic. Finally, we introduced our students to mindfulness training¹⁰ and consistently relied on it to insure that we cultivated another important feature both of adult learning and of the development of wisdom—reflective and iterative practice.

Below, we share our story and our students’ stories of practicing practical wisdom.

⁸ See generally Malcom Knowles, *THE ADULT LEARNER: A NEGLECTED SPECIES* (4th ed. 1990).

⁹ For a compelling example of narrative as a tool for developing practical wisdom, see Timothy W. Floyd and John Gallagher, *Legal Ethics, Narrative, and Professional Identity: The Story of David Spaulding*, 59 MERCER L. REV. 941 (2008).

¹⁰ There are a myriad of particular techniques that can be found under the umbrella of “mindfulness training,” almost all of which spring from some form of Buddhist meditation. “Mindfulness” typically refers to a habit of mental attention that is fulsome and nonjudgmental. See Jay Michaelson, *EVOLVING DHARMA: MEDITATION, BUDDHISM, AND THE NEXT GENERATION OF ENLIGHTENMENT* xv (2013)(listing several different definitions of “mindfulness”).

I. FRAMING THE INQUIRY ABOUT PRACTICAL WISDOM.

How can law schools give students the practice they need to learn practical wisdom? Implicit in that question is the claim that practical wisdom is a competency that can and must be cultivated in an applied way. In other words, abstract or general conversations about the topic of practical wisdom do not build the capacity to behave in a practically wise manner. However, simply insisting that students participate in some hands-on legal practice (whether through law school clinical programs or outside externships) also likely does not cultivate practical wisdom on its own.¹¹ To answer the quandary of how law students might practice practical wisdom, we launched an inquiry along several dimensions. We thought it important to investigate the range of possibilities for what it means generally for a lawyer to be practically wise. We also wanted to be clear about what more specific competencies are imbedded in the idea of practical wisdom. And, we wanted to investigate what kind of a pedagogical design would push students actually to practice practical wisdom in a classroom setting.

A lawyer with practical *intelligence* knows how to give guidance about conduct related to real problems faced by people, and knows how to translate general laws and principles into concrete guidance for action.¹² That practical intelligence becomes practical *wisdom* if the lawyer herself knows how to consider multiple viewpoints relevant in the particular situation, to discern the full range of ethical and moral dimensions of the situation, and to consider all of that in light of the broad normative aims or purposes of the lawyering profession.

The philosophy-based definition of practical wisdom understands practical wisdom as a virtue and as a competency. In other words, practical wisdom requires a lawyer to consider the particular facts presented by a problem in light of more general values and to do so by taking the perspective of the lawyer's client as well as any other person involved in the

¹¹ One of the authors has previously argued that a clinic focused on legal ethics can be a potent setting in which law students learn practical wisdom. See Deborah J. Cantrell, *Teaching Practical Wisdom*, 55 S.C.L. REV. 391 (2003).

¹² The idea of practical intelligence was developed by psychologist Robert J. Sternberg. Sternberg distinguished between practical intelligence and wisdom, noting that wisdom demanded more than just practical intelligence. See generally, Robert J. Sternberg, *A Balance Theory of Wisdom*, 2 REV. OF GEN. PSYCHOL. 347, 351-52 (1998).

problem. The lawyer does not tailor advice so that the client's interests automatically or unquestioningly are served over other interests. The lawyer's advice considers the client's interest, the other interests involved, and the relevant norms. As Anthony Kronman has argued, practical wisdom is "a certain calmness in . . . [the lawyer's] deliberations, together with a balanced sympathy toward the various concerns of which his situation (or the situation of his client) requires that he take account. These are qualities as much of feeling as of thought."¹³ The "balanced sympathy" to which Kronman refers requires the lawyer to advise in a way that capaciously engages the interests of the individuals involved as well as considers broader systemic interests, all of which invariably include ethical and moral dimensions.

Psychologists studying intelligence and wisdom similarly emphasize the importance of norms and the capacity to balance.¹⁴ People demonstrate wisdom when they consider intrapersonal, interpersonal, and extrapersonal interests and balance those interests in deciding how to adapt, shape, or select a particular environment in a way designed to achieve "a common good for all relevant stakeholders."¹⁵

For example, psychologist Robert Sternberg has articulated a balance theory of wisdom.¹⁶ Sternberg argues that wisdom is a particular kind of practical intelligence. In his research, Sternberg looked at practitioners in various fields and gave them a series of problems to solve to determine a measurement for practical intelligence.¹⁷ Sternberg found that practical intelligence includes an ability to solve problems practically, verbal skills, "intellectual balance and integration, goal orientation and attainment, contextual intelligence, and fluid thought."¹⁸ Sternberg further found a subset of skills he labeled and classified as wisdom, including "reasoning ability, sagacity, learning from ideas and environment, judgment, expeditious use of information, and perspicacity."¹⁹

Based on his research, Sternberg proposed that wisdom differs from general practical intelligence in that wisdom is a balancing of interests with the goal of achieving a common good. Practical intelligence does not require a balancing of interests and can include a decision to be self-interested.

¹³ Anthony T. Kronman, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 16 (1993).

¹⁴ Robert J. Sternberg, *A Balance Theory of Wisdom*, *supra* note ____.

¹⁵ Robert J. Sternberg, *Intelligence and Wisdom*, in *HANDBOOK OF INTELLIGENCE* 631, 638 (Robert J. Sternberg ed., 2000).

¹⁶ Robert J. Sternberg, *A Balance Theory of Wisdom*, *supra* note ____.

¹⁷ *Id.* at 351-52.

¹⁸ Robert J. Sternberg, *Intelligence and Wisdom*, *supra* note ____ at 632.

¹⁹ *Id.*

Furthermore, Sternberg's research demonstrates that wisdom is normative and presumes a set of values.

Both Kronman and Sternberg articulate practical wisdom as requiring the ability to balance. When we think of law and of lawyering, the word “balancing” often brings to mind the idea of two sides. We think of the image of lady justice holding her scales, and we are reminded to pay attention to each side of the scale as we strive towards a just outcome. But, the idea of balancing as only two-sided is too crabbed as applied to practical wisdom, including the ways in which Kronman and Sternberg have described it. The balancing required by practical wisdom is multi-faceted and more accurately described as a process that first requires the fulsome identification of the facts, players, issues and dilemmas presented, followed by a consideration of the range of choices available, followed by a weighing and prioritizing of interests achieved with different outcomes. Because legal problems so commonly get presented only as dyadic transactions or disputes, that structural misassumption creates a strong risk that practical wisdom will be misunderstood as the practice of balancing one side against another.

Further, to some degree, the ways that both Kronman and Sternberg investigate practical wisdom result in it becoming a kind of end state. They ask the questions “What is this thing called practical wisdom? What features should we look for in a person who has achieved the state of being practically wise?” Those questions are critical and the answers that Kronman and Sternberg provide are useful markers one can use. What that focus on “end state” misses, however, is that it is equally important to think about practical wisdom as a process.²⁰ If a person who is practically wise shows perspicacity, as Sternberg suggests, what process and what techniques did that person use to gain such perspicacity? It is exactly that critical process question that we took up—what does the *practice* of practical wisdom look like and what competencies are required?

Encouraging students to learn the wisdom needed to practice practical wisdom is partly a problem of pedagogy, and

²⁰ To be sure, both Kronman and Sternberg acknowledge ways in which one learns practical wisdom. For example, Sternberg's research includes descriptions of “end states” that result from actions. For example, Sternberg describes the concept of “tacit knowledge,” which he defines as the “knowing how.” Tacit knowledge is more than knowing a particular fact. Tacit knowledge develops from action and experience. Robert J. Sternberg, *Intelligence and Wisdom*, in HANDBOOK OF INTELLIGENCE, *supra* note ____ at 635-36.

we will turn to that in a moment. But, there also is a deeper (and prior) conceptual problem that appears in the literature about legal ethics. One strand in that literature emphasizes the importance of professional formation: professional identity can and should be taught and trained up.²¹ There are different visions of the pedagogy of formation and debates about whether law schools do it well. It is generally agreed that law schools are really good at teaching students to “think like a lawyer.”²² It is not generally agreed that law schools are good at forming practically-wise lawyers.²³

When one is concerned about forming practically-wise lawyers, then one must widen the debates about professional formation from a focus only on teaching processes to include inquiries about purpose or aim. To converse about practical wisdom demands a normative commitment, and much of the professional formation literature leaves wide open a question critical to the true learning of practical wisdom: “formed for what?”²⁴ For a lawyer to exercise practical wisdom, that exercise must be aimed at some purpose—at some “telos.”²⁵ Katherine Kruse captures that critical question when she writes:

In exercising professional judgment, a lawyer draws on an implicit underlying understanding of professional role that strikes a balance between competing professional values, even if the balancing process remains under the surface. A lawyer’s exercise of professional judgment thus contains within it an operative theory about the

²¹ See note ____.

²² William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW*, supra note ____ at 1-14.

²³ *Id.*

²⁴ The ethics formation literature regularly acknowledges that lawyering has ethical and moral components. However, the literature usually does not delve into the particulars and, instead, implicitly assumes that there is one agreed-upon vision of lawyering. There have been voices scattered throughout who have argued that professional formation processes must always first be embedded in a normative point of view. See, e.g., David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31 (1995); Daisy Floyd, *Practical Wisdom: Reimagining Legal Education*, 10 UNIV. ST. THOMAS L. J. 195 (2012).

²⁵ “Telos” is the Greek word meaning “end, purpose, ultimate object or aim.” OXFORD ENGLISH DICTIONARY.

role of lawyers in the legal system and in society.²⁶

Fortunately, there is a second strand in the legal ethics literature that can be helpful here: it considers what the appropriate *role* of the lawyer is in our society and how that role drives what is considered to be appropriate and ethical lawyering. The role literature is longstanding, robust, and nuanced.²⁷ The literature reflects many of the more general core normative debates about what constitutes a successful (and ethical) individual life and what constitutes a successful (and ethical) collective life. We focused with our students on four views of what the role of a lawyer could (or should) be.

We noted to our students at the outset that our choices of four normative visions for the role of a lawyer were not an exclusive list of choices. We also noted that our descriptions of the four roles in some ways simplified and made static what in practice is a more complicated and dynamic experience. Nonetheless, each of the visions prioritizes certain normative principles over others. What we wanted most was for our students to see how changing normative priorities could lead a lawyer to make different ethical decisions. We asked students to wrestle with the critiques of each view as well so that they truly understood normative assumptions imbedded in each view. We tried regularly to notice in class discussions when and how it was that a lawyer could generally prefer one of the normative roles, but reasonably could choose to act more consistently with a different role because a particular context offered up reasons for a lawyer to prefer the normative prioritizing choices of the different role.

The first role we considered commonly is labeled the "Dominant View" of lawyering.²⁸ Under the Dominant View, a lawyer's role is conceived in the context of the American adversary system. That system presumes that the fairest, most accurate, and therefore just, way to resolve disputes is for a neutral decisionmaker (judge or jury) to hear each side in the dispute tell her story in as robust a manner possible as well as

²⁶ Katherine R. Kruse, *Professional Role and Professional Judgment: Theory and Practice in Legal Ethics*, 9 UNIV. ST. THOMAS L. J. 250, 251 (2011).

²⁷ See note ____.

²⁸ See William H. Simon, *THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS*, supra note ____ at 7. Simon is credited for coining the label of "Dominant View." Others have called the view the "Standard Conception" of lawyering. See David Luban, *LAWYERS AND JUSTICE: AN ETHICAL STUDY*, supra note ____ at xix-xx.

to critique the other side as thoroughly as possible.²⁹ Through such vigorous advocacy the "truth should out." Because the adversary system has specialized rules and procedures, there need to be experts available for disputants to use to navigate the system. Thus, the lawyer's role is to be a vigorous, thorough and diligent advocate for her client. She owes loyalty to her client and follows her client's directions and wishes as fully as the boundaries of law permit. Her role is to be an agent for her client. Thus, she is not accountable for her client's moral choices or choices of action, even if those choices are reprehensible to the lawyer, so long as the client's choices are legal.³⁰

Supporters of the Dominant View highlight its ethos of service—a lawyer who truly commits to this view does so by fully embracing her obligation to be in service to a client and to be a clean and clear conduit in representing her client's views and goals.³¹ The principle of protecting client autonomy strongly animates the Dominant View. Students for whom this view was appealing had to face the critique that the adversary system that exists in real life is not the ideal contained in the Dominant View.³² In the real world, clients (and lawyers) can and do choose to pursue goals other than letting the truth out. Clients do not always have equally-skilled lawyers, and many persons do not have lawyers at all. Thus, the neutral decisionmaker often may not learn the best and the worst

²⁹ See David Luban, *LAWYERS AND JUSTICE: AN ETHICAL STUDY*, supra note __ at 56-58 (describing the key features of the adversary system); see also Deborah J. Cantrell, *What's Love Got to Do With It?: Contemporary Lessons on Lawyerly Advocacy from the Preacher Martin Luther King, Jr.*, 22 ST. THOMAS L. REV. 296, 302-03 (2010)(providing an overview of the Dominant View).

³⁰ David Luban refers to this feature as the Principle of Non-Accountability. David Luban, *LAWYERS AND JUSTICE: AN ETHICAL STUDY*, supra note __ at 6-10.

³¹ See Norman W. Spaulding, *Reinterpreting Professional Identity*, 74 UNIV. COLO. L. REV. 1 (2003); Other defenses of the standard conception of lawyering include Stephen L. Pepper's classic defense, *Counseling at the Limits of the Law: An Exercise in the Jurisprudence and Ethics of Lawyering*, 104 YALE L. J. 1545 (1995), and Monroe H. Freedman & Abbe Smith, *UNDERSTANDING LAWYERS' ETHICS* (2004); cf., Thomas L. Shaffer, *The Unique, Novel, and Unsound Adversary Ethic*, 41 VANDERBILT L. REV. 697, 698 (1988)("[L]awyers claim that the adversary ethic is an *ethic of service to the autonomy*—the self rule or the freedom—*of clients*.")

³² For a thorough-going critique of the underlying assumptions of the adversary system, see David Luban, *LAWYERS AND JUSTICE: AN ETHICAL STUDY*, supra note __ at 67-103; see also Thomas L. Shaffer, *The Unique, Novel, and Unsound Adversary Ethic*, 41 VANDERBILT L. REV., supra note ____.

about each side's position, and may be pressed to make a decision with imperfect information. Further, students, as developing lawyers themselves, had to face the critique that basic psychological and cognitive processes regularly interfere with and impede their ability to be a neutral conduit for their clients.³³

The next view we considered is the "Rebellious Lawyering" View.³⁴ Like Dominant View lawyers, Rebellious lawyers take seriously that their role is to be an agent or a conduit for the client's choices, and take seriously that the client is the expert about whatever challenge or problem she faces. Rebellious Lawyering is consonant with the Dominant View in that both highly privilege client autonomy. However, Rebellious Lawyering is deeply skeptical about most lawyers' skillfulness in allowing the client to make decisions in a truly autonomous way because lawyers are readily affected by cognitive biases.³⁵

Rebellious Lawyering posits that both the elite, privileged backgrounds of most lawyers and the training that happens in law schools cultivate a kind of arrogance in lawyers that they are the true experts about law and legal process.³⁶ Thus, instead of protecting client autonomy, most traditionally-trained lawyers subordinate their clients, and interject the lawyers' own assessments and conclusions into the decisionmaking and problem-solving. Rebellious Lawyering calls on lawyers to be aware of, and reject, such dominating behavior and to return to a pure form of being an agent for the client-principal.³⁷

³³ See generally Paul Brest & Linda Hamilton Krieger, *PROBLEM SOLVING, DECISION MAKING, AND PROFESSIONAL JUDGMENT: A GUIDE FOR LAWYERS AND POLICYMAKERS* (2010); see also Robert Vischer, *Moral Engagement Without the "Moral Law:" A Post-Canons View of Attorneys' Moral Accountability*, 2008 J. OF THE PROFESSIONAL LAWYER 213 (2008) (focusing in particular on the ways in which lawyers and clients might mistake the moral valence of their conversations).

³⁴ Gerald Lopez created the phrase "rebellious lawyering." See Gerald P. Lopez, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE*, supra note ____.

³⁵ Lopez called non-rebellious lawyering "regnant" lawyering. *Id.* at 24 (listing characteristics of "regnant" lawyering).

³⁶ See, e.g., Ruth M. Buchanan, *Context, Continuity, and Difference in Poverty Law Scholarship*, 48 U. MIAMI L. REV. 999, 1024 (1994) ("There are . . . significant dangers when middle class lawyers get intimately involved in the task of organizing the poor. More articulate, better educated, aggressive by nature and training, some lawyers tend to dominate newly formed groups, even when they try not to")

³⁷ See Gerald Lopez, *Reconceiving Civil Rights Practice: Seven Weeks*

Rebellious Lawyers are subversive in another way, too. They situate their work exclusively within communities that are underserved and subordinated because a commitment to justice should include a commitment to disrupting and changing the elite power structure.³⁸ Rebellious Lawyers do not privilege making change through existing structures like courts or legislatures because those institutions themselves are so fully captured by the elites determined to preserve their power.³⁹

As students considered the appeal of Rebellious Lawyering, we asked them to consider whether that role situated lawyers in such a subservient position that they no longer would effectively bring their expertise into conversations with clients.⁴⁰ We also considered how the view of Rebellious

in the Life of a Rebellious Collaboration, 77 GEO. L. J. 1603, 1608 (1989)(arguing that lawyers must understand clients as experts about their own lives).

³⁸ See generally Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L. J. 947 (1992)(critically examining the effectiveness of regnant versus rebellious, collectivized lawyering); see also Jennifer Gordon, *We Make The Road By Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. CIVIL RTS.-CIVIL LIBERTIES L. REV. 407 (1995); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N. U. L. REV. 455 (1995); Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999 (2007); Sameer Asher, *Public Interest Lawyers and Resistance Movements*, 95 Cal. L. Rev. 1879 (2007); Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383 (2009).

³⁹ As part of our class readings about Rebellious Lawyering, we also read literature about cause lawyering. We defined cause lawyering as lawyering where the primary commitment is to a political or ideological goal and where lawyering actions privilege greater social or political change over outcomes that are beneficial solely for an individual client. Cause lawyering was one of several examples of other possible normative frames that we explored with students. We noted how one might consider oneself both a Rebellious Lawyer and a Cause Lawyer, but that one might be a Cause Lawyer without being a Rebellious Lawyer. We also noted how one could have a primary commitment to political or social change while also situating oneself in several of the four normative visions on which we focused. Throughout, we pressed our students to unpack the underlying normative principles that they were prioritizing rather than just to reflexively and unthoughtfully label their lawyering.

⁴⁰ For a critique of Lopez' view, see Deborah J. Cantrell, *Lawyers, Loyalty and Social Change*, 89 DEN UNIV. L. REV. 941 (2012)(labelling the kind of role Lopez calls for as one that requires a lawyer to be hyper-

Lawyering was helpful (or unhelpful) in settings in which the client had no choice but to engage with traditional legal institutions, such as in the field of criminal defense.⁴¹

The third view we discussed is referred to as the "Moral Activist" or "Morally Engaged" View of lawyering, and began with work by David Luban.⁴² Under that normative view, a lawyer's role requires moral behavior that is consistent with the moral behavior required of every member of society.⁴³ Unlike the Dominant View under which a lawyer is not accountable for a client's moral choices and must push the client's goals vigorously, the Morally Engaged View requires a lawyer to actively consider her own moral stance towards the work she is being asked to perform.⁴⁴ The lawyer must also engage her client in respectful conversations about the client's moral choices and how those choices affect the client's conduct and the lawyer's conduct.⁴⁵ The fact that a person is a "lawyer" or a "client" does not permit the person to act outside of expected moral and ethical behavior. The Morally Engaged View argues that just and fair results are most likely to occur when all of the participants in a legal matter, lawyers included, pay attention to their own moral and ethical choices and respectfully, but robustly, engage with others' choices.⁴⁶

Of course, our students worried about their clients' abilities to feel equally situated in the relationship with them as attorneys. Thus, they also worried that the Morally Engaged View would necessarily cause them to disempower their clients. We regularly had to consider what a lawyer might actually say that would invite a moral conversation with a client in a way that insured the client did not feel like she was being talked down to or scolded. We also talked about how and when we assumed something about our client's moral

loyal to a client and describing the negative consequences of such hyper-loyalty).

⁴¹ We asked students to consider whether some settings actually required a lawyer to try and robustly persuade her client to change the client's mind. See Abbe Smith, *The Lawyer's "Conscience" and the Limits of Persuasion*, 36 HOFSTRA L. REV. 479 (2007) (arguing that a criminal defense lawyer should aggressively try and persuade her client to avoid losing physical liberty).

⁴² David Luban, *LAWYERS AND JUSTICE: AN ETHICAL STUDY*, supra note ____.

⁴³ *Id.* at 104-27.

⁴⁴ *Id.* at 154-56.

⁴⁵ See Robert Vischer, *Moral Engagement Without the "Moral Law:" A Post-Canons View of Attorneys' Moral Accountability*, 2008 J. OF THE PROFESSIONAL LAWYER, supra note ____.

⁴⁶ *Id.* at 220-25.

motivations—either good or bad—and why those assumptions might matter in achieving a good and ethical result.⁴⁷

The final normative role view that we discussed was what we've called the Relational View of lawyering.⁴⁸ The Relational View is consonant with the Morally Engaged View of lawyering in that it requires lawyers to comport themselves with generally-expected moral and ethical behavior. The Relational View expands beyond the Morally Engaged View in that it asks lawyers to situate themselves within a relevant web of relationships, and not just the dyadic relationship between lawyer and client.⁴⁹

Under the Relational View, the focal point is not just the client. A Relational lawyer understands herself to have moral and ethical obligations not only to the client, but also to the myriad of other persons who are involved in, or affected by, the issue that the client wishes to address.⁵⁰ The Relational View expects that the lawyer is carefully attentive to the client's perspective and goals.⁵¹ But, the Relational lawyer makes sure that she assists the client in perceiving the contours of the issue from multiple perspectives, and in that way pushes the client to consider the most capacious set of goals and outcomes (competing or consonant). Further, the Relational lawyer is attentive to the range of emotions present in the situation, embraces the positive possibilities of those emotions, and helps

⁴⁷ See generally, Thomas L. Shaffer & Mary M. Shaffer, *LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION* 13-15, 94 (1991) (describing modern legal ethics as a conversation not about being a good person, but about rights and, later, articulating that a key goal for a lawyer should be to help others become good persons).

⁴⁸ The phrase “relational lawyering” is a nascent one. See Russell Pearce & Eli Wald, *Rethinking Lawyer Regulation: How a Relational Approach Would Improve Professional Rules and Roles*, 2012 MICH. ST. L. REV. 513 (2012); see also Deborah J. Cantrell, *Lawyers, Loyalty and Social Change*, supra note __ at 941 (arguing that cause lawyers and clients would be more effective if they took a relational approach to their work). Many would credit Thomas L. Shaffer for laying the foundation for the Relational View of lawyering. See Thomas L. Shaffer, *How I Changed My Mind*, 10 J. L. & RELIGION 291 (1994) (discussing the fact of relationality in human life and in lawyering). For a more expansive overview of the idea of relationality and the law, see Jennifer Nedelsky, *LAW'S RELATIONS: A RELATIONAL THEORY OF SELF, AUTONOMY, AND LAW* (2011).

⁴⁹ See Deborah J. Cantrell, *Lawyers, Loyalty and Social Change*, supra note __ at 964-66.

⁵⁰ For an example of how a relational lawyer might consider multiple perspectives and help her client to do so as well, see Deborah J. Cantrell, *What's Love Got to Do With It?: Contemporary Lessons on Lawyerly Advocacy from the Preacher Martin Luther King, Jr.*, supra note __ at 330-34.

⁵¹ *Id.*

the client navigate the negative consequences of emotions.⁵² The Relational View starts with the descriptive fact that no one ever is in only a dyadic relationship. Thus, one's choices always have consequences that ripple throughout one's web of relationships. A lawyer working within the Relational View provides the wisest advice and counsel only by working across the fullest web of relationships that are presented in the legal matter.⁵³

Again, for those students for whom client autonomy was paramount, the Relational View triggered worries that a lawyer would replace the client's wishes with wishes of some other view represented within the web of relationships. Once again, we pushed students to move from abstract worry to concrete actions and we pressed them to compare and contrast their own behaviors to discern whether they, in fact, did or did not replace their client's wishes with wishes of others. The crux move here, as with the other normative role views, was to insist that students situate their normative inquiries within the context of their own experiences.

In thinking about a pedagogical design through which students could practice practical wisdom we sought to bring the formation and role strands together. We wanted students to answer the question "formed for what" by encouraging them to recognize that there were different legitimate roles for a lawyer, each of which made some claim to being the "best" at achieving a higher order moral goal like justice or fairness or dignity. Since each role implies different and legitimate higher aims for lawyering, those aims necessarily shape what practical wisdom had to be: the exercise of practical wisdom for

⁵² For an example of what this might look like for a client faced with an emotionally-charged and complicated problem, see Deborah J. Cantrell, *Re-Problematizing Anger in Domestic Violence Advocacy*, 21 AM. UNIV. J. GENDER, SOC'L POL'Y & THE LAW 837, 852-54 (2013).

⁵³ Throughout our conversations about the four normative visions on which we focused, we conversed about the idea of "client-centered" lawyering. We noted how lawyers in each of the four normative visions likely would say they were "client-centered" because each view embraced the idea that a lawyer wishes to be in service to a client. Throughout class discussions, we pushed students to articulate more carefully on what underlying normative principle(s) they were relying when they said they were being client-centered. For example, did a student believe in the effectiveness of the adversary system and, thus, was acting in a client-centered manner by spending time to carefully prepare her client to be best able to rebuff the other side's cross-examination? Or, did a student believe that a client could only reach the "best" decision if the lawyer transparently and explicitly checked in with client about the moral dimensions of the problem, and, thus, the student was "client-centered" by having such conversations?

a Rebellious lawyer very well could be different from the practical wisdom of a Dominant View lawyer. We wanted students to notice, argue about, and ultimately respect, those equally legitimate, but competing, roles of the lawyer. We wanted to treat professional formation as the normative process that it is, and should be—and not treat it simply as a technical process.

By acknowledging the importance of the different roles, we could design a pedagogy to encourage the students to learn the competency and the will (or the habits and the disposition) to successfully make wise judgments that are dependent on contested visions of what the telos of the lawyer is.

Concretely, this meant encouraging students to recognize and analyze the “First Principles” that guided *their* practices as student attorneys. For example, were they prioritizing individual client autonomy or prioritizing a commitment to a particular political ideology? We did not want students to start by reading the “black letter law” on legal ethics—the Model Rules of Professional Conduct—without first understanding that they would need to interpret those Rules in light of their normative commitments and First Principles.

Thus, our pedagogy for encouraging the practice of practical wisdom was deeply influenced by the “role” strand of the literature about the practice of legal ethics. But, the “professional formation” strand of the literature emphasized something that also was important to us, which is that practical wisdom is a competency (or habit) which a student can cultivate and acquire. Practical wisdom is multifaceted and includes the abilities, among others, to: analyze a situation from multiple viewpoints, establish rapport with a client, determine competing possible courses of conduct, articulate any ethical or moral concerns raised by the situation, assess the benefits of various outcomes, and proceed with some action.

The question is: how might one learn the competencies that help one cultivate the disposition to act wisely? Here we drew on the literature from the learning sciences, specifically adult learning theories. First we considered learning through lecture. In legal ethics lecture classes, students are presented with information, either as established knowledge or developed through hypotheticals. They may actively participate in discussing the issues or the hypotheticals, and they may posit some behavior they might take as a result, but they do not actually have to *do* anything. Students certainly will learn from a lecture, and such legal ethics classes enable students to pass the legal ethics sections of bar exams. But, if the purpose of professional formation is to launch new lawyers to practice law well that means encouraging them to have the necessary

knowledge and the necessary skills and habits. Here the lecture pedagogy fails. Practical wisdom can be learned, but it can only be learned through experience—a common sense fact that is strongly supported by research.⁵⁴

For example, Malcolm Knowles' adult learning theory contends that experience is critical.⁵⁵ That theory proposes that adults come to learning settings with a sense of themselves as self-directed and motivated to learn those skills related to performing the tasks or roles they plan to undertake.⁵⁶ Adults learn better when they can actively participate in and reflect on the skills they are seeking to gain.⁵⁷ Although practical wisdom can only be learned through experience, not all experiences teach wisdom. To learn from experience you have to *structure experience so that you can learn from it*. And here we drew on some other basic elements of learning theory.

First, we embraced iterative practice with its commitment to acknowledging and harnessing error. We structured learning so that we, and our students, consistently returned to experiences to revisit them through new frames. Further, we made transparent to our students that iterative practice can only be useful if the practitioner reflects on each iteration. There, we relied substantially on mindfulness practices, discussed more fully below, to help us and our students to move into reflection in intentional and transparent ways.⁵⁸ That reflective practice was heightened by our constant grounding of discussion in our lived experiences and the lived experiences of our students. In that way, none of us could become detached from the endeavor. Thus, our conversations about choices of action remained deeply personal and helped each of us to feel strongly that our learning

⁵⁴ Barry Schwartz and Kenneth Sharpe, PRACTICAL WISDOM: THE RIGHT WAY TO DO THE RIGHT THING *supra* note ____ at 81-106.

⁵⁵ *See generally*, Malcom Knowles, THE ADULT LEARNER: A NEGLECTED SPECIES (4th ed. 1990).

⁵⁶ *Id.* at 57-63.

⁵⁷ *Id.* at 86-87.

⁵⁸ We acknowledge the pioneering work of Scott Rogers and Jan Jacobowitz in bringing mindfulness practices into legal education and into the legal ethics curriculum. *See* Jan L. Jacobowitz & Scott Rogers, *Mindful Ethics—A Pedagogical and Practical Approach to Teaching Legal Ethics, Developing Professional Identity, and Encouraging Civility*, 4 ST. MARY'S J. ON LEGAL MALPRACTICE & ETHICS 198 (2014); *see also* Peter Huang, *How Improving Decisionmaking and Mindfulness Can Improve Legal Ethics and Professionalism*, ____ J. OF LAW, BUSINESS & ETHICS ____ (forthcoming), available on SSRN at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2474448.

mattered—not only to us, but to our colleagues in class, and to the persons outside of class with whom we were working.

Finally, we did not separate ourselves from our students in the above processes. We talked about ourselves and our students as one “learning community.” Thus, our structure explicitly embraced the idea that any of us could be a novice in one moment while being an expert in another. In that way, none of us were permitted to be passive or complacent about our place in the learning community.

II. REFINING PRACTICAL WISDOM.

A. Refining the Component Parts of Practical Wisdom

As we thought about our overall definition and framing of practical wisdom laid out above, and as we considered relevant precepts of adult learning theories, we pressed ourselves to better discern what were the critical process components of practical wisdom. We knew that if we provided our students only with a definition of practical wisdom and described to them the end state characteristics such as those provided by Kronman or Sternberg, and then encouraged our students to practice “practical wisdom,” we would have little success in cultivating practical wisdom. We knew our students needed to have some intellectual understanding of practical wisdom, but we also knew that we had to figure out a process that would lead students to practice practical wisdom. Thus, we pressed ourselves to define critical process components of practical wisdom.

We hypothesized that practical wisdom requires one to be competent in at least three particular actions: empathy, compassion, and relationality (each of which we define and discuss more thoroughly below). We also hypothesized that each of the three actions, and thus, practical wisdom as a whole, could be more robustly fostered by mindfulness practices⁵⁹ and by intentional self-reflection.⁶⁰ (We talk about the interconnectedness of mindfulness and self-reflection in a moment.) We were completely transparent with our students that our method of learning practical wisdom included specific efforts to cultivate their capacities for empathy, compassion

⁵⁹ See generally, The Mindful Lawyer Symposium, 61 J. LEGAL EDUCATION 634-82 (2012)(multiple articles discussing the use and benefits of mindfulness techniques in legal education generally).

⁶⁰ See generally, Susan Bryant, Elliot S. Milstein, Ann C. Shalleck, TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 23-24 (2014).

and relationality, and to use mindfulness techniques and intentional self-reflection in those efforts.

We discerned that empathy was an essential component of practical wisdom because it allows for a person to more capaciously be aware of the richness and nuance of the context in which decisionmaking is occurring. We worked with a standard notion of empathy—the ability to perceive and understand another's perspective.⁶¹ However, we emphasized for our students that empathy had to be more than trying to predict what one would do, or how one would feel, if placed in another's situation. To put it colloquially, we urged students to move away from the limited inquiry of "What would I do if I were in X's shoes?" to a more thorough inquiry of "Have I really listened to, and understood, what X is telling me she is feeling about the particular situation, without altering X's story to fit my own interests or experience."

We emphasized empathy of the kind that truly is to stand in another's shoes because we do not think wisdom is achievable without the ability to discern other's perspectives as accurately and non-judgmentally as possible. Practical wisdom often can lose its "wisdom" if it comes from a self-centered or self-referential position. When the frame is limited and only self-referential, the risk is that what one believes is wisdom instead is personal judgment based on one's own limited understanding and interpretation of the specific context.⁶²

We also emphasized that empathy need not include feeling an affinity for, or liking, the other person. Empathy and affinity are different experiences and require different habits of mind. Affinity means feeling some sense of positivity towards another.⁶³ It often can mean feeling some similarity with another or some sense of shared interests. Affinity often does not feel like it is something that one cultivates, but rather

⁶¹ See, e.g., Stephen Ellmann, Robert D. Dinerstein, Isabelle R. Gunning, Katherine R. Kruse, Ann C. Shalleck, *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* 31 (2009).

⁶² Zen Master Norman Fischer humorously captures the distinction between taking another's perspective from a self-interested frame and truly taking another's perspective: "Empathy is the capacity to feel another's feelings. It requires that we not be so self-absorbed that we're tone-deaf to the experience of others. Most of us, unfortunately and without realizing it, are living the old joke, 'Okay, enough about me; let's talk about what *you* think about me.'" Norman Fischer, *TRAINING IN COMPASSION: ZEN TEACHINGS ON THE PRACTICE OF LOJONG* 10 (2012).

⁶³ See OXFORD ENGLISH DICTIONARY (online edition)(definition of "affinity" includes "[l]iking for or attraction to a person or thing; natural inclination towards something; sympathy and understanding for something; an instance of this.")

that it is something that is present or is not. In contrast, empathy can exist (and in our model, must be able to exist) without affinity. A careful practitioner of empathy notices whatever affinity responses she has to another person, positive or negative, and then is able to empathetically take the other's perspective without that process being transfigured by affinity.

A final crucial point we clarified about empathy is that it requires *understanding* another's perspective, *not agreeing* with another's perspective. We were aware how typical it is for all of us to describe a setting in which we were empathizing with another by using a "but" sentence. For example, we might recount: "I heard Jane say how offended she was when her boss told her that her work was not as good as a male colleague's, but I think that" A "but" sentence masquerades as empathy because it acknowledges another's perspective. However, it then immediately moves to a judgment about whether the other's perspective was right, wrong, accurate, inaccurate, or the like.⁶⁴ Empathy in that form is like clearing one's throat in anticipation of making the real statement—the throat clearing is prefatory and is intended to be ignored.

To help students be more aware of whether they were substituting their own reactions to a situation for another's reactions, and aware of when they were subtly judging instead of empathizing, we used the mindfulness technique of "noticing."⁶⁵ That technique simply asks a person to notice what sensations—physical, mental, emotional—arise while a person is doing any kind of activity—whether sitting in meditation, listening to another tell a story, arguing a motion

⁶⁴ Scholars in the field of alternative dispute resolution have described one way to change this dynamic as "adopting the 'and' stance." Douglas Stone, Bruce Patton and Sheila Heen, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* 39-40, 194-95 (1999)(describing the importance of acknowledging that both perspectives in a dispute can be "right," and how using the technique of putting the word "and" in place of words like "but" helps to remind one of the possibility of truthfulness on both sides.).

⁶⁵ For a thorough-going description of a "noticing" practice in a Burmese Theravadan Buddhist practice, see Nyanaponika Thera, *THE HEART OF BUDDHIST MEDITATION* 89-99 (1996). We followed a similar, but simplified version, of a "noticing" practice in which the basic instruction was to notice any sensation that arose (physical or mental), and then to let the thought go and return one's focus to one's breath. We also began every class meeting with a short group noticing practice in which we focused on our breathing for a certain number of breaths. Noticing practices come in many forms, including secular versions such as the ones developed by Jon Kabat-Zinn. See generally Jon Kabat-Zinn, *WHEREVER YOU GO, THERE YOU ARE: MINDFULNESS MEDITATION IN EVERYDAY LIFE* (1994).

to the court, negotiating a deal, or speaking with a client. For example, when a clinic student is meeting with a criminal defense client to discuss a plea being offered by the prosecutor, and the client is reacting to the plea offer, the student might notice things such as:

- "My stomach is growling because I did not have time to eat lunch before meeting with my client."
- "I feel myself getting irritated at my client because she is talking about something that to me seems tangential to whether the plea offer is good."
- "I find myself feeling angry with the prosecutor just like my client is angry because my client and I both agree that the prosecutor is overlooking an important part of our defense."

The second step of the "noticing" practice as it relates to cultivating fulsome empathy is for the student to quickly reflect whether the items she has noticed might have any positive or negative effect on the student's ability to empathize with the other. For example, the clinic student above might notice that her growling stomach is distracting her from carefully listening to her client, thereby impinging on her effectively empathizing. In contrast, when the student notices that she and her client both are angry because they agree that the prosecutor is overlooking a part of the defense, the student can notice how easy it has become to empathize with her client. A key feature of a noticing practice (and of all mindfulness practices) is to notice without judgment. When the student notices her growling stomach, she *just notices* it. She resists making the typical move to judgment. She resists the voice in her head that says: "That was stupid of me not to eat lunch." Thus, she also resists being captured by an unreflective and habituated response.⁶⁶

Noticing practices lead easily into further and deeper self-reflection about empathy, as well as about the other facets of practical wisdom. We talked with our students about "noticing" and "self-reflection" as separate practices that worked best when combined. Often when we ask ourselves or

⁶⁶ See e.g., Shauna L. Shapiro, Linda E. Carlson, John A. Astin, Benedict Freeman, *Mechanisms of Mindfulness*, 62 J. of Clinical Psychology 373, 378 (2006)(identifying axioms of mindfulness and describing "reperceiving" as being able to "observe the contents of consciousness" without being "completely embedded in or fused with such content.")

others to be reflective, we presume that we or they first will be conscientious about paying attention to the myriad pieces of information that will make the reflection useful and fulsome. In fact, however, most of us rush by that “noticing” step. We knew from the mindfulness literature that all of us have developed habits of thought that deeply influence how we think, and that those habits get triggered without us being aware and without us noticing the effects of the habits.⁶⁷ We fail to include information needed for good reflection and we fail to check assumptions we are making. Our “reflection” falls prey to cognitive biases, or to time pressure, or to unacknowledged anxieties and the like. The mindfulness practice of “noticing” gives us the tool to interrupt those failures, and insures that we when we move into reflection, we are doing so with a full complement of information. We have come to talk about mindfulness and self-reflection as “fraternal twins”—they often travel together and are paired up, but they are not exactly the same.

We also used our discussions and experiences related to empathy as the doorway for an ongoing conversations about “difference” and how the experience of being different from another might influence or impede empathy. The “difference” conversations insured that we could engage our students on critical topics including race, gender, poverty, religion, and ethnic or cultural difference.⁶⁸ As we discuss further below, we tried always to situate our “difference” conversations within the context of the students’ actual experiences. It was important to us that students see the “difference” conversations

⁶⁷ See e.g., Shauna L. Shapiro, Linda E. Carlson, John A. Astin, Benedict Freeman, *Mechanisms of Mindfulness*, supra note ____; see also, Daniel Kahneman, THINKING FAST AND SLOW (2011)(describing a similar cognitive processing phenomenon of “fast” thinking based on the habits formed by cognitive heuristics as contrasted to “slow” thinking based on reflection).

⁶⁸ As we thought about how to set up the difference conversations successfully, we drew on the rich literature about cultural competency. See generally, Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001); Susan Bryant and Jean Koh Peters, *Reflecting on the Habits: Teaching About Identity, Culture, Language, and Difference*, in TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY (2014). We also specifically considered the role of implicit bias. See generally, Jerry Kang and Kristin Lane, *Seeing Through Colorblindness: Implicit Bias and the Law*, 58 UCLA L. Rev. 465 (2010). Every student completed at least two implicit bias surveys from the Project Implicit website, available at <https://implicit.harvard.edu/implicit/>. We conversed with students about how their capacity for empathy might be influenced by implicit bias without them even being aware of that influence.

and the affinity (or “sameness”) conversations as inextricably linked together, with both difference and sameness producing the risk that we fail to cultivate empathy to the fullness that is required to produce practical wisdom. Again, noticing practices helped us to bring the above dynamic into the foreground.

We defined compassion, our second component of practical wisdom, as the ability to perceive the discomfiture of others and to be motivated to assist the person to improve her situation.⁶⁹ We see compassion as the mechanism by which one makes sure that wisdom becomes more than an intellectual exercise, and, instead, becomes potentially transformative action. With empathy alone, one might be content to perceive the other's experience, reflect on it and assess it, but do nothing more than engage in that process as an intellectual inquiry. Practical wisdom, however, requires more.

In many ways, compassion is empathy to which one adds a desire to affect change. Just like we insisted that the kind of empathy required for practical wisdom must be robust and nuanced, we insisted that the compassion required for practical wisdom be robust and nuanced. The kind of compassion we hoped to cultivate requires a person to be motivated to act for reasons other than pity for another. We think of pity as an essentially self-referential response—“In comparison to you, I am better (or better off).” We worry that if one acts out of pity, one is not really taking the perspective of the other or considering actions from the other's point of view. Instead, one is expressing one's own perspective on the other's situation. Further, compassion should not be a polite label that one uses to justify arrogance—“I really feel for you and want to help you out of this situation, but only if we do it my way because I know better than do you what is best.”⁷⁰

The robust perspective taking that we required with empathy plays a key role in avoiding self-referential and domineering, though well-intentioned, compassionate behavior. If one commits to perceiving another's experiences, then one also can commit to perceiving that there can be several potential options for action, including at least one's own choice and the other's choice. Cultivating compassion may not resolve

⁶⁹ Our definition of “compassion” as including the motivation to help another improve her situation is informed by Buddhist teachings on compassion (or “*bodhicitta*”). See Norman Fischer, *TRAINING IN COMPASSION: ZEN TEACHINGS ON THE PRACTICE OF LOJONG*, *supra* note ____ at 11-16.

⁷⁰ We used the mindfulness technique of “noticing” in these settings as well to help us become more fully aware of the kinds of responses arising, and to discern between compassion, pity and benign arrogance.

which choice of action is best or which choice is worst, but it moves the inquiry from an abstract one about what is wise to a concrete one about what is the wise course of conduct given all that one has uncovered about the context.

The final component of practical wisdom that we identified is something we called "relationality."⁷¹ As we have studied practical wisdom and observed the practice of practical wisdom, we have discerned that the best decisionmakers view context as a dynamic, interconnected web of relationships.⁷² They configure the setting in terms other than the dyadic relationship between themselves and the other for whom they feel empathy and compassion. In our setting, for example, the practically-wise lawyer assesses context not only from the perspective of the lawyer-client relationship, but situates herself and the client within a larger web of relationships (i.e., law colleagues, client colleagues, opposing parties, other interested friendly parties, the court system, the boardroom, family, the affected community). Further, the relevant web of relationships is wide and not bounded by legal concepts such as plaintiff/defendant, buyer/seller, landlord/tenant and the like.

In other words, even if there might be a legal relationship between two people (e.g., a plaintiff versus a defendant in a lawsuit), that relationship may not be the defining feature of the web of relationships. There could be a more important relationship between the plaintiff and defendant (e.g., they are business partners), and there could be other connected relationships for the plaintiff and defendant that are more important than their relationship to each other (e.g., one of the business partners' spouses is dying of cancer and that partner is more committed to caring for the spouse than focusing on the business).

We think it important for a lawyer and client to discover the web of relationships explicitly because it helps to uncover the relevant context with abundant detail and nuance. It also

⁷¹ We settled on the word "relationality" for brevity, even though we use it to mean a cluster of related issues. For example, relationality can mean the capacity to be sensitive to the range of relationships that are relevant to a particular situation. Relationality also can refer to the actual web of relationships. Throughout this Article, we try to be clear in what sense we are using the word.

⁷² Again, Norman Fischer captures this sense of interrelatedness nicely when he notes: "So it becomes almost impossible to be willfully, intentionally aggressive, almost impossible to be willfully, intentionally disrespectful of others, because we can simply see with our eyes, just as we can see the sky above and the sun when it sets, that all of life is one sky warmed by one sun." Norman Fischer, TRAINING IN COMPASSION: ZEN TEACHINGS ON THE PRACTICE OF LOJONG, *supra* note ____ at 13.

helps both the lawyer and the client discover unchecked assumptions they are making about what the problem is, who in the web is motivated in what ways, what solutions might be available, and what actions are palatable or not. For example, if the lawyer for the business partner above with the ill spouse is focused on the legal relationship of business partner/plaintiff versus business partner/defendant, and the lawyer limits her conversations with the business partner to issues related to the lawsuit, then the lawyer might inappropriately assume that her client also is primarily focused on winning the lawsuit. Or, if the business partner client is focused on the fact that the other business partner now is the defendant in a lawsuit, the client might inaccurately assume that the defendant business partner feels nothing but hostility towards the client because the relationship between plaintiffs and defendants is supposed to be adversarial.

Further, we emphasized the image of a web to help our students visualize the many different pathways and different points of connection contained in the situation so that our students could practice uncovering context as abundantly as possible. We wanted our students to avoid putting themselves or a client in a circle in the middle from which all else radiated. So much of the conversation about legal ethics is framed in the dyadic perspective of the "lawyer-client" relationship. We worry that such framing implicitly (and maybe explicitly) reinforces an unscrutinized choice about the perspectives that matter in decisionmaking—context is what the client reports it to be, and what the lawyer sees it to be from the client's viewpoint. We hoped that even the modest shift in phrasing from the "lawyer-client" relationship to the "web of relationships" would help our students better avoid unscrutinized assumptions.

Finally, as with empathy and compassion, we used the "noticing" practice to help cultivate relationality, and to help move into thoughtful reflection about relationality. We asked students to write about, or draw out, webs of relationships related to their clients or to cases. We used a "noticing" practice to discern from what vantage points the students had gathered a lot of information (usually their clients' or their own), from what vantage points they had less information about, and to investigate whether the context looked different in interesting or illuminating ways if different vantage points of the web of relationships were given priority.

In addition to explicitly discerning what we believed the components of practical wisdom to be, we also believed that practical wisdom cannot truly develop in fields in which there are multiple normative visions unless a person first understands to which normative vision she has committed. As

we noted earlier, one never *just is* practically wise, one always is practically wise *about something*. As we discussed earlier, the legal profession is a field in which there are plural visions about what is the appropriate role of the lawyer. Each of those visions prioritizes a certain configuration of what we've called First Principles. Which First Principles a lawyer prioritizes then affects how that lawyer discerns what would be practically wise in a given context.

Consider a lawyer who prioritizes using the law as a mechanism for large scale social change, and who believes that social change is more important than an individual client personally benefitting from legal action. When that lawyer is faced with a setting in which an individual client, who originally signed on to pursue large scale social change, changes her mind and the client wishes to resolve the matter to her own personal benefit instead of to a larger benefit, the lawyer might believe the practically-wise choice requires the lawyer to forcefully advocate with her client to maintain the client's initial commitment to social change. In contrast, if the lawyer prioritizes individual client autonomy as a First Principle, the lawyer might believe it to be practically wise to resolve the legal matter as quickly as possible in a way that privileges the client's self-interest.

Further, we strongly believe that the Model Rules of Professional Conduct embrace one normative vision of the role of the lawyer (the "Dominant View") and ignore other legitimate normative visions (i.e., cause lawyering) that prioritize different First Principles. Thus, a lawyer who misperceives the Model Rules as being only about technical guidance is likely to act unreflectingly within the normative vision of the Dominant View. Nonetheless, the Model Rules contain many provisions that require a lawyer to exercise discretion or to interpret the scope and contours of duties or obligations. That interpretive process necessarily is guided by one's First Principles. The First Principle of "using law for broad social change" might lead one to interpret how to apply a rule in a particular setting in a different way than would the First Principle of "protecting individual autonomy." Thus, as part of our process of practicing practical wisdom, we thought it critical that students explore their own commitments about First Principles before interpreting, understanding, or applying any Rule of Professional Conduct to a particular context.

As we explored different contexts with our students, our mantra was: "Remind yourself about how you prioritize First Principles, then look and see if there are any Model Rules that might be relevant in the context, then interpret those rules in light of your First Principles, then consider what is practically wise by using each of the components of practical wisdom."

The final process that we thought important was our own commitment to meet the students where they were at. We understood that starting from a student's own experiences and vantage points was important because a student both knows her own stories so well and because a student likely is highly invested in her own stories and in her resulting behavior and decisionmaking. We thought those features would make starting a conversation about judgment, ethics, and wisdom more accessible and more comfortable. We did regularly supplement our students' stories with narratives from other lawyers, but we tried never to work only from those outside narratives. Similarly, we posited hypotheticals in response to students' own stories, instead of relying on outside hypotheticals.

Further, as we built out conversations with our students, we committed to framing the discussions in ways that would trigger "aha" moments, not "gotcha" moments. We wanted students to feel comfortable disclosing that they thought they had made mistakes or that after reflection, they would have done things differently. In order to foster "aha" moments, we often translated the mindfulness noticing technique into questions we would pose to students. While the "noticing" was happening after the fact, it helped us to prompt reflective judgment in our students rather than having us cram down our own judgments on them.

B. Refining a Pedagogy About Practical Wisdom.

How did we build these processes into the actual structure of the class, and what did we observe and experience in the class? We chose to *start* with the lived experience of our students—their own stories about problems they faced, choices they made, emotions they felt, successes or regrets that they had. We had two hypotheses. One was that the best way to learn competencies and habits—the essence of practical wisdom—is by actively grappling with problem solving and choice making. The second was that situation-based learning is best internalized for future application if the problem is one that the student herself has experienced. “Professional practice,” as Sullivan et al. have noted, is “judgment in action.”⁷³ A student both knows her own stories well and is likely to be highly invested in her own stories and in her resulting behavior and decisionmaking. Thus, personally-

⁷³ William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW*, *supra* note ____ at 9.

experienced stories offer the potential to be the richest sources of learning.⁷⁴

We have taught the class twice.⁷⁵ The first time we structured class so that it would be a small, seminar size. The next time, it was sized the same as other sections of the required legal ethics course and was capped at 45 students. For the seminar, we offered the course to students who had taken, or were taking, a clinic.⁷⁶ All of the students who enrolled had experience in one of the clinics that provided legal representation for individual clients (as opposed to working in one of the clinics in which entities are represented). For the larger class, we advised students to enroll only if they felt they had sufficient legal experience to draw on in order to fully engage with the narrative assignments throughout the semester.⁷⁷

We based all the class sessions on the stories we asked the students to bring to class about a lawyering experience each had had. These were not stories about “the theory of the case” or the technical details of a transaction. Instead, they were stories of how the students experienced their legal matter—the choices they made or might have made, their feelings and emotions, and the conundrums they experienced. The stories provided us with the “raw material” that we mined

⁷⁴ Legal scholars and educators have long embraced the use of narrative as a potent teaching tool. See, e.g., Carrie Menkel-Meadow, *Forward Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 *FORDHAM L. REV.* 787 (2000) (reviewing literature specifically about narrative theory and legal ethics). For the use of narratives in the law more generally, see Symposium on Legal Storytelling, 87 *MICH. L. REV.* 2073 (1989).

⁷⁵ The first time we taught the class, Ken was on sabbatical from Swarthmore and he was able to be in Boulder to physically co-teach the first third of class. When he returned to the east coast, he and Deborah set up regular phone calls to talk about how class was proceeding the rest of the semester and to keep him abreast of the students’ stories. Deborah then taught the class the second time on her own. She and Ken continued to speak regularly by phone or e-mail.

⁷⁶ Colorado Law has nine clinics. Six of the clinics focus on representing individual clients in various substantive law areas including criminal defense, family law, and immigration. Another clinic handles environmental advocacy, generally on behalf of non-profit entity clients. One clinic focuses on business formation, and handles no litigation. The final clinic pursues policy work on technology issues.

⁷⁷ Students in the larger class had a mix of summer work experiences, externship experience and clinic experience. Roughly a third of those students worked with or for entities, both private and governmental. The other two-thirds of the students primarily had experience with individual clients.

in class discussion to consider what problem-solving might look like when informed with practical wisdom. Importantly, the raw material included descriptions about the student and her relationships with a client, possibly the client's family, other parties, the decisionmakers (judges, bosses, board chairs), the witnesses, and the broader justice system and society. We asked students to use the techniques of reflectiveness and mindfulness when they wrote and talked about their stories, and we modeled and practiced those techniques in class.

We helped students by providing them with frameworks, theories, tools, readings, or outside narratives that encouraged them to imagine and consider alternative ways that they could have handled their own experience. The students then had a chance to "practice again" when they returned to their work settings (such as clinics or externships.)

Students in both classes met twice a week for 90 minutes each class. Students in both classes completed the same number of written narrative assignments. More particularly, during the first four weeks of the class, every student wrote a narrative based on reflective prompts we provided and related to that week's theme.⁷⁸ We read all of the narratives before the first class meeting of the week. Then, at that first class, each student randomly exchanged narratives with a classmate. Each student in a pair then provided their colleague with reflective comments about the other's narrative by the second class. We read all of those comments as well.⁷⁹ After the initial four weeks, students still brought their own stories into class, but we shared those stories orally.

We designed weekly themes to help the students focus their stories and the discussion. These themes and our follow-up questions were designed to prompt students to learn the core habits and skills of practical wisdom—empathy, compassion, relationality—all of which were encouraged and buttressed through the processes of mindfulness and self-

⁷⁸ When Deborah taught the larger class, she provided everyone technical guidance on a lawyer's duty of confidentiality to ensure that students wrote narratives in ways that would not violate Model Rule of Professional Responsibility 1.6, and could be shared with everyone in class. Since Deborah read the narratives before students exchanged them in class, she was able to make sure that students were making good judgments about preserving confidential information. Deborah was worried that preserving confidentiality in the larger class might be more challenging than it proved to be.

⁷⁹ The students used those weekly narratives and comments as initial material for a final, longer narrative paper in which they expanded their stories, deepened their self-reflection and came to some conclusions about the normative role and First Principles they hoped they were committing to.

reflection. The prompts for written assignments typically started with “tell us a story about”: the best experience you have had as a student attorney with one of your clients, about what you think this experience was like for your client, about a matter that involved a constellation of people in addition to the client (family members, business partners, other professionals), about how you and your client have worked out who makes decisions in your case, about a time that you disagreed with a client, about a client or a project that you really believed in, and then one about a client you did not believe in.

In much of law school, students are asked to write about the law from a removed perspective, and that risks making people ancillary. But, much of actual lawyering and lawyerly writing is about effective storytelling (to a court, to a board of directors, to a government agency). In building the class around actual stories we not only helped the students learn how to tell and analyze stories but we used the narratives and discussion to encourage students to notice and reflect about crucial things that enable good judgment: to locate themselves as an actor in a web of relationships, to empathize with different characters, to listen carefully, to discern nuance in different personalities, handle ethical dilemmas, and imagine alternative stories—and outcomes.

Reflectiveness and mindfulness were not so much prompts but practices encouraged by the very structure of the class discussions and the nature of our facilitation. For example, we typically asked students questions such as: What did you notice then and what do you notice now? What were you thinking? How did you feel? How did you handle your feelings? What other ways might you have handled them? What were the choices not taken? We were not only drawing on their ongoing practical experience as student attorneys, but we were encouraging them to *practice the practice of ethics* so that the habit and skills of reflectiveness/mindfulness would be learned, would become part of their repertoire, and would become a part of them. By inculcating reflection and mindfulness, we aimed for the students to connect their choices and actions to the end goal, the telos, of their roles as lawyers and to help them become clear about the range of normative end goals from which they could choose.

Reflection and mindfulness—like empathy, compassion and a sensitivity to relationality—do not always “happen” by getting students to simply tell their stories. They need to learn *how* to reflect upon them. They need to learn *how* to learn from these reflections. Such learning might (and did) include: learning through analogy to other student cases or other cases in the literature—noticing what the similarities and differences were; getting guidance from other cases, from principles and

guidelines like the Model Rules; and learning to challenge or interpret the usefulness of such Model Rules in the context of any particular case. We also encouraged students to learn how to imagine how they might act in the future.

The format for reflecting on experience in the class always involved writing or telling stories, sharing the writing or telling the stories in class, and then discussion. To help focus this process we provided a rough scaffold for them. We did not, however, rigorously stick to this order or have a checklist requirement about how each paper or discussion had to progress through the stages. However, the guideline/scaffold generally looked like this:

- Tell us a story from your work with a client which illustrates this kind of an experience. (Experiences sometimes were points of challenge, sometimes points of connection.)
- Explain the choice you made and how and why you made it.
- Explain how you felt about it; and how you think your client or other relevant actors felt about it. Think broadly about whom the “relevant actors” could be.
- Now identify what First Principles were underneath this choice. What were you aiming at? What does that say about the kind of lawyering role you are committing to?
- Now look at the Model Rules. How useful were they? What choices would you have had to make about how to interpret the Rule(s) that would have justified your actions? Would have countermanded your actions?
- Looking back on this story, how does understanding your choice, your feelings, the First Principles, and the possible relevant Model Rules, help you think about the lawyering role you chose? Would you make another choice if faced with that situation again? Why?

To start with students’ lived experiences meant that the discussion in the class would not be linear. The first task was to get students to talk about their experiences and their choices. The second step was to help them bring out—to

uncover or discover—the kind of lawyering role and the telos or aim that undergirded their practice. Our aim here was to encourage skill at reflection and self-awareness. We did not want students to stop at the step where they just identified the aim implicit in their story. We pushed them to use mindfulness and self-reflection to deeply engage with their choices, yet also to be curious about what might have happened had they made other choices animated by other normative end goals.

Some of these discussions affirmed the students in the choices they had made and (hopefully) empowered them to choose more intentionally in the future. At times the discussions caused the students to reflect on and change the kind of aim and the kind of lawyering they were doing—or planned on doing. It would not be surprising if, over the arc of their careers, this kind of reflection and change happened a number of times. (In fact, we firmly hope that will occur.) As we noted earlier, the discussions were not meant to be a “gotcha” moment as in: “look, look see the wrong thing that you are *really* doing.” Instead, the conversations were designed to encourage an “ah ha” moment: “Oh, yes, I now see what I am aiming at. And I am going to give myself and others an account of it. I will try to describe it; defend it; wonder about it; reconsider it.”

In discussing the issues, we gently, but adamantly and continuously, encouraged the students to notice what ethical issues were involved in the experience they were recounting. Again, our aim was not to focus on identifying the technical ethical issue—“Oh, maybe I didn’t meet the communication standard set out in Model Rule 1.4”—although we did attend to those kinds of questions. Rather it was to illuminate for them that *every* moment, *every* experience, was infused with an ethical dimension that they needed to be mindful about. We needed students to understand that whether and how they assessed that there was “an ethical issue” and whether they saw that ethical issue as small/easy or big/hard or uncontested/contested inextricably was tied to how they exercised the core competencies of practical wisdom situated within their commitment to one of the normative roles of lawyering. The students’ stories naturally proved the point that similar experiences can be understood and viewed very differently. Because the students respected each other, they embraced our efforts to use class discussion as practice space for reconsidering the ethical components of the stories using empathy, compassion and relationality and situating those competencies in each of the normative views of lawyering. By using class to practice practical wisdom, our own telos was to confirm for the students that practical wisdom is not an innate

trait, but a good mental habit that can be learned and improved upon.

Thus far, we have focused on describing our hypotheses about practical wisdom and our design for implementing the practice of practical wisdom. We want to move now to considering whether our hypotheses and practices proved useful by exploring a handful of stories that came out of our students' writings and class discussions.

III. THE STORIES.

As we already described, the raw materials for each class were the stories that students wrote or told stories about their experiences as lawyers. We revisited stories regularly and learned of updates from students who continued their work. At the end of the semester, students wrote final, more in-depth reflection papers in which they considered whether and how they had developed practical wisdom. Thus, by the end of our time with these particular learning communities, we had a wealth of material that we could reflect back on to consider whether our efforts made a difference in helping students better their competency in practical wisdom. Here are some examples of students practicing practical wisdom.⁸⁰

A. Phil, Joe and Barbara.

Joe was set up to have a bad experience with his student attorney, Phil, the moment Phil first walked through the door. Joe had been in jail for 30 days when Phil first met him. He had been charged with hitting his girlfriend while they were both drunk, and with keeping her from getting away from him. Joe couldn't raise the \$500 bail to get out and needed an attorney to help him reach a plea—or to defend him in court. Joe's previous experiences with lawyers had prepared him not to trust his student attorney.

Phil noticed that immediately: Joe didn't open up. When Phil read him the police reports to try and get Joe's side "Joe just kept saying he was drunk and didn't remember anything in a way that suggested that he just didn't want to talk about it." Phil also noticed how despondent Joe was: alone, with no one to turn to for bail money—the letters Phil had brought to jail for Joe and which Joe had hoped contained

⁸⁰ Throughout the narratives we have anonymized people, places and details so as to preserve confidential information.

bail money totaled only \$50. Phil also noticed how savvy Joe was about the system. Phil explained that the DA was offering 6-9 months of jail time or 12 months of probation, and Joe was quickly willing to bargain. He would take 3-6 months of jail or 6-9 months of probation. Phil felt that crafting the right plea for Joe demanded earning Joe's trust:

Every time we ended a meeting I told Joe when I would be back whether or not I accomplished what I had set out to do and then I kept those appointments . . . Even going back and telling him I didn't have much news to report because I had not heard back from the DA or had been unable to contact witnesses showed him that I respected him enough to keep my word even if from a practical standpoint it wasn't really necessary. Just the fact that I was there when I said I was going to be showed him that he was respected and not forgotten about while in jail.

In our meetings I was always very upfront about things I didn't know, and I think this also helped me gain credibility. One time [Joe] asked me what would happen if he made bail then did not show up for the hearing and I didn't know. I wasn't sure if failing to appear was violating a court order that could be its own separate charge like violating a protection order, or if it wasn't then what other penalties would be involved. I told him I didn't know, but I wrote it down in front of him, told him I'd ask my supervising attorney and would have the answer for him the next time I was back. . . . I think being very willing to show my inexperience gave credibility to the things I said I was certain about and made him feel he could trust his attorney.

And that trust turned out to be important. Joe seemed to favor trial (he was certain his girlfriend wouldn't show up) or probation. Phil nudged him away from the trial, pointing out the maximum sentence if she did show up. And he nudged Joe away from probation: "my primary goal was to get him out of jail; and the secondary goal was to do it without probation because if he got probation he would probably flee the state." When Phil nudged Joe to take the plea, Joe trusted his advice. Because of the two months Joe already had been in jail, in the best case scenario, he would be out in a month before Thanksgiving; in the worst case, it would be after Christmas.

By the end of the process, after Phil's five visits to Joe in jail, Phil had built more than trust. "I got to feel sympathy, compassion, and excitement for [Joe] despite the fact that I think he probably did hit his girlfriend. . . . I was a little apprehensive about how I'd feel about representing DV [domestic violence] clients, but Joe showed me that despite this one bad act I could still feel positive emotions toward him." They were both pleased when the judge sentenced Joe to three months—and Joe was released that same day having already spent that amount of time in jail.

With Joe, Phil was starting to reflect on what it meant for him as a lawyer to like a client and to contrast that with what it meant to feel empathy. In many ways, Phil's starting efforts were self-focused—to make sure Joe trusted him by keeping all his meetings with Joe and by being honest with Joe about legal questions he did or did not know the answer to. But, as Phil's relationship with Joe grew, Phil had to expand his reflection to consider not just how Joe saw him, but how he saw Joe and whether Joe was more nuanced and complicated than merely being a DV "offender." Phil also began to realize that he had unconsciously adopted a starting normative view of a lawyer as a paternalistic Dominant View lawyer. One of the unstated reasons that Phil wanted Joe to trust him was that Phil thought he knew what Joe's best choice was (nudging Joe away from trial). Phil wanted to convince Joe to go along with Phil's advice. But, as their relationship grew, and as we explicitly talked about normative lawyering roles in class, Phil became aware of, and uncomfortable with, his paternalism. Phil wanted genuinely to engage with his clients, and he wanted to be able to speak his mind with them, but not to dominate them. He then began to explicitly plan his actions so that they would be consonant with his developing "telos" of lawyering—a telos that Phil could not yet fully identify or describe, but that strongly rejected certain arrogant behaviors popularly associated with lawyering.

Unlike his experience with Joe, Phil initially could not feel either affinity or empathy for Barbara: she never even showed up to meet Phil. Still, he represented her with diligence and competence. What motivated him and did his work require practical wisdom?

At 2:30 a.m., Barbara drove into a rotary smashing her SUV. She was saved by her airbag and a nearby policeman who helped her out of the vehicle. All signs pointed to her being drunk. No skid marks (she apparently had not even tried to hit the brakes); the officer smelled alcohol on her breath; and then there was the blood alcohol test over the legal limit.

When Phil was assigned the case, he sought out Barbara and, not finding her, he diligently tried to track her down:

I called the phone numbers we had for her, I sent her letters, but they all got me nowhere. I even tracked down her mail [carrier] who confirmed that the address we had was only a summer home with no mailbox. . . . We continued the case [in court] until we couldn't anymore and then we just started to litigate it without her. Our only chance of winning at trial would be to keep the blood test out, and even then we were likely to lose. . . .

But Phil pressed on trying to build a case without her. The lynch pin was convincing the judge to preclude the blood alcohol results based on shoddy lab work. Phil spent days preparing his argument—an investigative report about the lab had shown so many procedural errors that the lab had been forced to close (and the director had resigned). Phil prepared to cross examine the lab technician who had done the tests. But, on the “day of the hearing, Barbara didn't show so a warrant was issued for her arrest .”

“Normally,” said Phil “I find a tremendous amount of motivation from getting to know my clients, their families, and their problems.” But, when it came to Barbara:

I felt no compassion reading about her situation in the police reports. . . . I felt almost no duty whatsoever for Barbara herself . . . never having met her she was just another drunk driver that could have killed someone. I don't have much sympathy for drunk drivers generally and I didn't really care if she was arrested, convicted, whatever. For the first half of our relationship I began to outright resent her. . . .What was so frustrating for me, and made me feel a bitter indignation at having been treated unfairly, was that if I had been able to get in touch with Barbara, we would have just settled the case because there was very little chance of winning her case at trial. In retrospect it's crazy to blame someone for treating me unfairly, when they don't even know who I am. Regardless, I had to actively combat my apathy on her case by finding [a different] motivation . . . or else I would have done a crappy job at the hearings.”

As with his initial work with Joe, Phil initially went forward on Barbara's case motivated by his own need to be seen as competent. But, as Phil went through the experience, he started to consider what "telos" is being served by criminal defense attorneys. His reflection caused Phil to decide to make Barbara's case about two other things. First, to hold the prosecutors to a high standard. Because "we love to incarcerate people in this country like no other in the world, I wanted to make sure the jailors jump through the proper hoops to do it." Phil knew he would lose but "but god dammit I wasn't going to give them an inch they didn't earn. If this blood test was going to come in then it would be over my kicking and screaming." Second, Phil fully stepped into his role as a criminal defense attorney, and, as he said, "I made it about pride. I felt I had a duty to myself to represent myself as professionally as possible in front of the AG, the DA, and the judge. Just because I was an inexperienced student it didn't mean I was going to be a pushover even if it was the AG at the other table. . . . I also felt I had to represent myself and my cohort well out of respect for the court if not the system."

Phil eventually did meet Barbara: she called him a few months later after she was picked up for driving under restraint. They then exchanged over 80 emails and he met her once, in court. She took a plea. Phil then filed a number of complicated motions trying to get her license back. He got to know her "decently well. We've been through highs and lows together and she gave a heartfelt and sincere sentencing argument herself when she accepted her plea. . . . After so much time with Barbara, the dial has certainly moved from mild resentment to perhaps as far as mild compassion."

We did not explicitly prompt Phil to talk about trust or tell us why trust was critical to being a competent or diligent lawyer. But in telling his stories Phil often reflected on the importance of building trust with Joe, and, implicitly, on his own distrust of Barbara. We ran with it (though it was not "scheduled" on the syllabus) and that enabled the class to grapple with the issue concretely—to "discover" it as a potentially crucial issue of professional formation, to feel its importance in their own daily practice. In turn, that opened up a much tougher practical wisdom question about how cultivating empathy and compassion can result in gaining trust. The practical know-how to cultivate empathy and compassion is hard to learn unless it comes from experience and reflection. Phil initially articulated his struggle as one about competency—it was easy to be competent for Joe because Joe opened up and listened to Phil, but it was hard to figure out how to be competent for Barbara because she was absent for so long. Phil struggled to figure this out.

As Phil talked about his experiences and class members reflected back to him, he noticed the difference between empathy and compassion in very concrete situations and considered how both were different from affinity. That, then, raised another critical practical wisdom question: what do you do—what motivates you—when feelings of antipathy are highly salient? In that regard, Barbara’s case seemed like a brick wall that Phil had run into. In reflecting on how he pressed on, it helped reveal broader normative motivations that Phil drew upon to cultivate empathy and compassion, including his desire to hold the prosecutors feet to the fire in a justice system that was overcommitted to incarceration, especially of those without resources like Joe and Barbara.

But what also struck us—because it was something we had been aiming at and encouraging with the stories and class discussions—was Phil’s growing capacity to reflect on *where his feelings were coming from* (self-understanding) and *what he could actively do to educate his emotions*. In his final essay (which was open ended—with no specific prompts from us) Phil chose to focus on understanding what compassion was for him, why he did or didn’t feel it, and what he could do about it.

Phil observed that personally knowing a client helped him cultivate empathy and compassion. As he said, the more “involved and present a client is in her interactions with me” the more it will “directly impact my level of compassion.” With Joe (and a second client who was also in jail):

I shared much more in their human experience. I saw the food they ate. I smelled the jail they lived in. I followed orders from the same guards they did. I saw the rooms they spent 23 hours a day in. . . . With both [people] I made the decision that they should feel taken care of by their attorney, so I visited them even when it was not technically necessary. . . . [T]he legal issues were fairly easy and straightforward. They both had done what they were accused of doing, so my job was to negotiate as good of a plea as I could. And I did. I know I felt compassion for them because I was also motivated to alleviate their suffering that came from being alone.

Phil reflected “that if Barbara and I had emailed half as much but had met in person 2 – 4 more times I would have felt much more compassion for her.” Recognizing that, said Phil “can help me push clients to meet up with me in person if we have the option.”

Phil also reflected on the way that race mattered for him when it came to compassion. “I myself am half Mexican and I speak Mexican Spanish. I can’t help, or perhaps I don’t want to help, that I feel a special connection with Mexican Spanish speakers which inherently makes me feel compassionate toward them.” So, he concluded, he needed to be mindful of “how much these non-Hispanic distinctions affect my compassion” and to “try to monitor this going forward and take steps accordingly.” What kind of steps?

Phil identified some very concrete goals. He wanted to try to have at least three to four personal encounters with clients. Second, he wanted to overcome the resentment that can come when a client is less helpful or less engaged. From the beginning, Phil said: “[I want to] frame our relationship as one where I am there to *assist* in his or her own defense, but am not there to *fix* a client’s problem, [because] then I believe clients will take more responsibility in their cases.” Third:

If I notice that I’m in danger of feeling resentful toward a client I can take affirmative steps to increase my compassion toward him. I have been doing compassion building meditations lately where I first envision a friend I respect and love, and cultivate compassion toward him. Then I do the same with someone I feel neutral about, then someone who is difficult or an enemy. Then I try to picture all three of them around me and hold equal compassion toward each. I have had great success with this recently and have been able to cultivate compassion toward the few people I have despised or hated for years. If I have a difficult client I can take 20 minutes and put them in the difficult spot [i.e., placing the person in the spot where one specifically cultivates compassion for an “enemy”.] I have faith this will make a tangible difference.

B. Maureen, Mr. Moss and Mr. Tuttle.

Maureen was not eager to focus on the call of our opening assignment, which was to discuss her best experience with a client, why she felt she was a “good” lawyer throughout the experience, and to describe her client’s perspective about that experience. The extreme nervousness she was feeling about her ability to serve her clients made her re-frame our questions as asking her to speak about “competency.” More particularly, Maureen was worried that the Model Rules of

Professional Conduct required her to be competent, and she did not want to violate that ethical command. From our perspective, we needed to meet Maureen at her starting point—a worry about competency—while encouraging her to see that she could not possibly answer her own question until she could first answer the question of “competent *for what aim, or for what purpose, or for what telos?*”

In ways similar to Phil, Maureen’s concerns about her competency were deeply tied up with questions of motivation: she was nervous enough about being competent with Mr. Moss with whom she felt a great affinity; but she was even more concerned about being competent with Mr. Tuttle with whom she felt antipathy.

Maureen told us that even before her first meeting with Mr. Moss at a bond hearing in a misdemeanor case:

I was nervous about a potential language barrier. I was nervous about having to deliver the news that, because of [an immigration detainer], Mr. Moss would be immediately transferred to the immigration detention facility after his criminal bond was paid — if it was paid. I was nervous to share that, regardless of his bond amount in the criminal case, Mr. Moss and his family should be prepared to pay a much higher amount in immigration court. I was nervous about giving the client bad legal advice. I was nervous about not fully understanding how Mr. Moss’ criminal charges would affect his immigration case.

After interviewing Mr. Moss, Maureen knew that she would need more time to collect the evidence she needed to persuade the judge to lower Mr. Moss’ bond amount. And, that meant convincing Mr. Moss to agree that she could ask the judge to continue the bond hearing. When Mr. Moss agreed, Maureen was so grateful that she “set out on a one-woman mission to do everything I could to help Mr. Moss.”

Maureen wrote and spoke in class about how much she was motivated in her mission by her affinity for Mr. Moss and his family. Maureen spent numerous hours collecting medical records about Mr. Moss’ youngest daughter to buttress arguments that Mr. Moss would not leave the county given his daughter’s serious illness. She made unannounced visits to witnesses to seek their statements in support of Mr. Moss. She noted how powerful it was for her to meet Mr. Moss’ gravely-ill daughter, and to hear Mr. Moss talk about his family and observe how his worries and concerns played across his face.

Small encounters stayed with Maureen and were potent. She recalled how Mr. Moss' "face lit up when I talked about his youngest daughter and her newest nail polish color." She described her affinity as: "Tu lucha es mi lucha.' Your struggle is my struggle."

Maureen's deep personal affinity for Mr. Moss and his family helped motivate her to act in spite of her nervousness and to learn quickly as much as she could to get the competence she needed. But this deep affinity also had its challenges. "I felt more stress, and lost more sleep, over Mr. Moss' case than I did with any other client." Maureen also felt *personally* responsible for the outcome of Mr. Moss' cases in ways that she did not for other clients. She speculated that she felt such responsibility because she thought Mr. Moss was a good person, because she was dismayed at the harshness of the immigration system, and because she was distressed that a family might be separated with tragic results.

Feelings of affinity helped Maureen overcome her nervousness in the case of Mr. Moss, but such motivation left her in a difficult position with Mr. Tuttle. Maureen's relationship with Mr. Tuttle was rocky from the start. He did not return her phone calls. He showed up at his criminal pre-trial conference early and told the court that Maureen was his attorney, but that he did not know why she was not there. When Maureen arrived at court at the prescribed time, Mr. Tuttle was gone, and she learned from others that he had gone ahead with the pre-trial conference without her, complaining about her absence. When Mr. Tuttle finally came to a meeting with Maureen, he arrived late and high. From the start, Maureen felt disrespected by Mr. Tuttle and was offended by his behavior.

If it were not enough that Maureen found Mr. Tuttle personally challenging, she also did not find his legal case compelling. He had been involved in a ruckus at a local dive bar and arrested. Throughout the criminal case Mr. Tuttle insisted that he should not have been arrested at all, arguing at times that he was racially profiled and at other times that the police were "The Man" and were just out to get average guys like him. As Maureen described it: "My impression was that Mr. Tuttle felt wronged by just about everyone in existence, but that he believed that he could do no wrong himself."

Maureen worried that she would not be competent for Mr. Tuttle because she did not like him. As Maureen put it: "[S]uffice it to say that Mr. Tuttle has never been my favorite client." As Maureen noticed her feelings, she described how she consciously made herself do extra work on Mr. Tuttle's case to make sure that she was being a competent lawyer. She even

took some actions requested by Mr. Tuttle not because she thought those actions would be helpful to his case, but because she did not want Mr. Tuttle to say to her that she was unwilling to help him because of her ill-feelings. But to do this work, Maureen had to “psych herself up.”

At first, Maureen looked to an abstract notion of “competency” to find something to motivate her in spite of her antipathy. Maureen talked about needing to be competent because she wanted to make sure she protected her own professional reputation, the reputation of her clinic, and because she knew that part of her grade for the clinic would be based on her work for Mr. Tuttle. Maureen chastised herself for being worried about her grade.

The initial question we had framed for Maureen and the class was what it meant to them to be a good person and a good lawyer. We did not expect Maureen (and other students) to implicitly translate the question into one about being a competent lawyer. But, that unexpected turn gave us a terrific way to start investigating differences between practical wisdom and technical lawyering prowess. Initially Maureen saw competency as synonymous with paying attention to the technical side of the representation (i.e., gathering evidence, interviewing witnesses, preparing for court hearings and the like). It did not include paying attention to her own reactions or emotions. It did not include understanding what normative role she believed a lawyer should play in our society. Nor did she see competent lawyering as including her own assessment of what she thought was a fair or just outcome in her clients’ cases: when she discussed fairness and justice they were part of her explanation of why she did or did not feel affinity.

However, in response to our prompts about what experiences with a client made her feel good about herself and what experiences she thought were the most salient to the client, Maureen included her sense of personal connection with Mr. Moss (and lack of it with Mr. Tuttle) and her own judgment about whether the legal system was treating the clients justly (it was being just to Mr. Tuttle, and was being unjust to Mr. Moss). Those responses opened the door to a fuller normative conversation: was it appropriate for a lawyer to seek to achieve a bigger aim of justice even if being technically competent in a case did not require seeking that bigger aim? And, if seeking justice was an appropriate goal for a lawyer, then *whose* vision of justice should be used—the lawyer’s or the client’s or someone else’s? Working with Mr. Moss and Mr. Tuttle got Maureen thinking about how she wanted to be more than just a cog in the legal system—more than just technically competent. She started to think through what First Principles, and, thus,

what normative lawyering role, she would adopt that would guide her towards just results.

Maureen's stories also allowed us to continue introducing students to two of the critical components of practical wisdom, empathy and compassion. For example, even from the beginning Maureen had a nascent sense that she would find lawyering fraught in the long term if she only was satisfied working with clients for whom she felt an affinity. But, she was extraordinarily honest and open about the fact that she actually was experiencing profoundly different senses of affinity between Mr. Moss and Mr. Tuttle.

Bolstered by our "noticing" practice, Maureen's openness provided us with an easy opportunity to investigate her experiences of affinity and empathy, and to work through how the two are different. We found it important to spend time in class talking through what empathy actually looked like (or could look like) with particular clients like Mr. Tuttle. Students needed to have some reflective space to talk through what it actually felt like to take a client's perspective while not agreeing with it, including how to engage a client in an active, yet non-judgmental, conversation about perspectives.

For example, Maureen described trying to talk with Mr. Tuttle about the options available to resolve his criminal case. Mr. Tuttle was adamant that the criminal case should be dismissed and that the police and prosecutor had unfairly targeted him. If Maureen had to rely on feeling an affinity with Mr. Tuttle in order to understand his perspective, she knew she would never be able to place herself in his shoes. As she practiced replacing affinity with empathy, she and the other students came to *experience*, not just intellectually understand, that empathy did not mean agreement: it was a kind of perspective taking. Maureen could see how people could feel disempowered in our society and could see how law enforcement wielded power in harsh and punitive ways. From there, while it was still challenging for her to take Mr. Tuttle's perspective, Maureen found that the prospect of getting to his perspective at least felt possible.

Every student had some similar set of experiences, and those shared stories formed the basis for rich class conversations about why empathy was more useful in cultivating practical wisdom than was affinity. Importantly, those stories and the "noticing" mindfulness practice also prompted thoughtful discussions about the fact that lawyers *always* will feel various levels of affinity across clients. However, that descriptive fact need not become overwhelmingly potent so long as an attorney also is able to cultivate empathy towards every client.

Because one of the key features of empathy is being able to take multiple perspectives—not just one’s own or that of the client—it also became a vehicle for expanding the possibilities for students to feel compassion for their clients. In settings like the one between Maureen and Mr. Moss, such feelings were easy. She watched the pain on Mr. Moss’ face when he talked about how worried he was about his family making it while he was in jail. She noticed similar expressions of concern on the faces of his family members. She also strongly believed that Mr. Moss was being treated unfairly. As she said: “[T]he judicial system that I so believed in was failing me” when the judge refused to lower the amount of Mr. Moss’ bond, and she “took personal offense that the great, American judicial system — whose merits [she] so deeply believed in — would allow this to happen.” Thus, taking her own and her client’s perspectives generated more than enough motivation in Maureen for her to help Mr. Moss.

In contrast with Mr. Tuttle, when Maureen took her own perspective, and even when she took Mr. Tuttle’s perspective that he was being persecuted by the police, those perspectives only weakly cultivated compassion and motivation to help Mr. Tuttle. But, as Maureen considered other normative perspectives such as her role as a criminal defense attorney *vis a vis* the state and its powerful prosecutorial authority, or her role as a student attorney in a clinic dedicated to providing free legal services to the poor, or considered the perspectives of friends and family of Mr. Tuttle who worried about him going to jail, those perspectives did help her cultivate a stronger compassion towards Mr. Tuttle. It was easier for Maureen to feel compassion for Mr. Tuttle when she situated him within her developing normative role view and considered how he was just like all of the defendants in the criminal system who need to have an attorney who can push back against the state’s prosecutorial power. It was easier for Maureen to feel compassion for Mr. Tuttle once she became clear about her normative vision for the role of the lawyer, and once she saw Mr. Tuttle as a critical piece of the social justice mission of her clinic.

One of the interesting developments we observed was the qualitative difference between the motivation students showed through compassion versus the motivation students showed through obligation. When Maureen first wrote about why she worked hard for Mr. Tuttle, she relied on language like “duty-bound” and “obligation.” She was forthright that she begrudged Mr. Tuttle at times and that at times she was motivated to do her work to protect her grade in the clinic, not to protect Mr. Tuttle. As her work continued and as she contemplated empathy and compassion, she changed her

language and began to talk about her “motivations to do the work,” and how she could tolerate difficult clients and be motivated to work for them because she could be motivated by something other than her personal connection with a client, including her commitment to the clinic’s mission.

The “motivation” dialogue also proved to be a perfect entry into conversations about First Principles regarding the role of a lawyer. For example, Maureen initially planned her actions for both Mr. Moss and Mr. Tuttle mostly based on what she determined would constitute “competent” lawyering (or what she determined would be good after consulting with her supervising attorney). She also described her lawyerly role consistently with the Dominant View of lawyering. She was “duty-bound” to help only her client and helping her client meant following the client’s instructions as consciously as possible without Maureen interfering in the client’s decision making. Yet, almost immediately, Maureen experienced that she was doing more for Mr. Moss compared to the rest of her clients. And, she experienced that she had to push herself to do enough for Mr. Tuttle. Thus, she experienced almost immediately that even if she wanted to take the Dominant View’s role of being a fulsome agent for her clients, she still faced many choices and decisions about what being a fulsome agent actually looked like in specific contexts and with different clients and with a broader goal of lawyering towards justice.

Maureen discovered quickly that looking at how the Model Rules of Professional Conduct defined competency or diligence did not actually help her understand how much, or what kind of, work she needed to do for her clients, or whether it was ethical to work harder for one client than for others. Through her writings and class conversations, Maureen maintained her commitment to being a fulsome agent for her clients, but she built out a more nuanced understanding of the process she needed to undertake to make sure that she truly understood her client’s perspective and goals. She commented in class that her exploration about the difference in affinity that she felt for Mr. Moss and Mr. Tuttle helped her to realize that she likely was “dismissive” of Mr. Tuttle’s perspective. Maureen further reflected that intentionally cultivating empathy and compassion for Mr. Tuttle helped her to more carefully listen to him and investigate his goals with him. That reflective process also became a part of how Maureen interpreted what constituted diligence and competence under the Model Rules of Professional Conduct.

C. Zoe, Mr. Bradley, Ms. Dennis and Ms. Ames.

Our students not only practiced the habits of empathy and compassion as they figured out how to lawyer well. They also practiced how to notice and discern the fullest range of perspectives presented by the context—something we called paying attention to the “web of relationships” or the “relationality” of the situation. They learned that the possibilities for achieving a good resolution to their clients’ problems were severely limited if they only took a dyadic perspective, focusing on how they or their clients saw the issues. Similarly, we wanted students to consider that how a client’s own views about her available choices could be limited if she did not attend to relationality. However, we did not want students to misperceive relationality as a call for lawyers to usurp decisionmaking authority.

To make that point, we asked students to challenge a common metaphor—the lawyer as the director or manager of the whole stage of actors. We suggested that a view of “relationality” as a kind of top-down “command and control” model is partial and imperfect. It misses the complex network in which a client is enmeshed, including friends and family, enemies, lawyers, judges, social workers. That network can create potential obstacles for the client, while also presenting opportunities for new insights and openings. Being able to perceive that more expansive context often led students to see a good resolution otherwise hidden if they had focused only on the lawyer-client dyad. We wanted students to learn how to embrace and understand those dynamic, interconnected relationships so they could be open to listening and learning, not just managing, and so that their clients might also be more open to listening and learning. Here, as with empathy and compassion, the habits of noticing and reflecting were important wisdom-building practices.

Zoe’s three clients had different capacities for choice making—for exercising client autonomy—and each existed in very different webs of relationships. Learning how respect a client’s stated choice while also working with a client to uncover the fullest range of choices always takes care. In order for Zoe to be practically wise, she needed to understand her client’s viewpoint, to understand the viewpoints of others in the client’s web of relationships, and to discern what were the points of commonality or friction between the various viewpoints. Then, Zoe had to figure out how to present all of that information to her client in a way that respectfully engaged her client in the problem-solving effort instead of making her client feel judged or belittled or bullied. The reflections that Zoe shared with the class as she figured out how to be practically wise in working with three different clients helped us practice relationality skills too.

“[Mr. Bradley] was my very first clinic client – I’d visited him in jail and appeared in . . . court as his student attorney before the semester had even started. [Mr. Bradley] was both my first *and* last clinic client; Mr. Bradley had both mental and substance abuse issues and was perennially homeless. I ultimately handled eight of his cases throughout the course of the semester.”

Zoe listened carefully to how Mr. Bradley perceived the important relationships in his life and discovered that they included people or places entirely unconnected to his current troubles—a supposed lawyer in another state who might be “helping” him, places in the United States that were conducive to being homeless during the winter months, possibly some “brothers” who might be able to bail Mr. Bradley out of jail. Further, Zoe found that Mr. Bradley “vacillated erratically” about what he wanted to do related to his criminal charges. He sometimes wanted to plead to everything. At other times he wanted to challenge everything as well as affirmatively sue the police for violating his constitutional rights. And, at still other times Mr. Bradley seemed not to be interested in engaging in conversation about the criminal charges at all, but wanted to focus on other issues such as relocating.

Zoe tried to track down Mr. Bradley’s relationships, but she came up empty-handed. There did not seem to be any friends or family to consider, nor victims or witnesses, hostile or friendly. Zoe slowly realized that Mr. Bradley’s relevant web of relationships was one that he did not see: the other legal professionals—the prosecutor, the public defender handling a more serious charge, Zoe’s supervising attorney, and the judge. In class, for example, we discussed Zoe’s account of working closely with the public defender representing Mr. Bradley on a more serious criminal charge. The defender’s “abrupt” personality and “disengagement” from Mr. Bradley at first bothered Zoe. Later she surmised that the public defender acted as she did because Mr. Bradley seemed unable to focus on what outcomes he wanted to pursue in his criminal cases. Despite the public defender’s attitude, Zoe noticed that she still was able to negotiate a favorable outcome with the prosecutor (at least, it was favorable from the perspective of what goals an “average” criminal defense client generally pursued). Zoe also noted how in her own cases, with Mr. Bradley’s vacillations, that she and her supervising attorney moved to the same strategy: negotiating vigorously with the prosecution, obtaining some deals and setting other charges for trial.

Zoe worried, however, that she and others were acting more upon Mr. Bradley than in response to him. She did not ignore him. She regularly communicated with him. But his capacity to rigorously engage in planning and strategy

conversations was unpredictable, and he had no real personal network of relationships that Zoe could use to help engage him. Were Mr. Bradley's "decisions" less reflection of his choices and more reflect of the decisions she and her supervisor believed would be the "best" outcome? Yes, Zoe came to think. But, perhaps relying on the experience of those involved in Mr. Bradley's professional web of relationships was justified. And Zoe reasoned that it was important that she never felt that she bullied or coerced Mr. Bradley into any decision.

How different, said Zoe, to work with Ms. Dennis. At their first meeting, Ms. Dennis "was dressed in a smart business casual dress and seemed eager to make a good impression . . ." Ms. Dennis had a "strong understanding" of the assault and domestic violence charges she was facing. While Zoe knew that Ms. Dennis had "drifted" and "struggled" since she had left the military a few years before, Zoe was impressed by Ms. Dennis' efforts at working towards a degree online as well as impressed by Ms. Dennis' well-spokenness and her steady clarity about the goals she had for the criminal case (i.e., get probation). As Zoe recounted in one of her narrative assignments: "From my own nervous and untried perspective, [Ms. Dennis] was a huge relief. She seemed more than capable of understanding what I had to say about the law, and the potential outcomes associated with various courses of action, and I felt confident she could be trusted to make her own informed decisions."

Zoe quickly discerned that the relevant web of personal relationships important to Ms. Dennis included her relatively new husband with whom she regularly discussed the case and potential plea bargains, and her former boyfriend who was the alleged victim related to the assault and domestic violence charges. As she interacted with people in Ms. Dennis' network she expected that they too would portray her as the fairly-well pulled together person that Zoe was experiencing, albeit a person under notable stress from criminal charges.

Her ex-boyfriend sowed the first seeds of doubt when he mentioned information (such as Ms. Dennis' recent DUI plea) that suggested she was making less-reasonable choices than Zoe would have hoped. Zoe felt "mildly betrayed and unsettled"—she expected that Ms. Dennis would have shared such information with her. But, when Zoe thought about Ms. Dennis in the context of the relationships Zoe had with her other clients, she was still inclined to interpret Ms. Dennis' choices as good exercises of client autonomy. As Zoe said: "I felt the urge to give her the benefit of the doubt." So Zoe continued her efforts to convince the prosecutor to offer a deferred judgment. That way, the assault and domestic violence charges would not become a part of Ms. Dennis'

permanent criminal record. However, the best plea bargain the prosecutor was willing to offer was eighteen months of probation with various requirements to take classes and not use alcohol.

Ms. Dennis seemed to have no trouble thinking through her choices and articulating her primary goals, even if she was finding it hard to decide whether she thought going to trial was a risk she wanted to take. Zoe did not strongly counsel her one way or the other. “I refrained from pushing [Ms. Dennis] further and inserting myself in [Ms. Dennis]’ life in [contrast to the] way I’d found myself doing for my other clients. . . . The next week, [Ms. Dennis] took the offered plea and was sentenced to the minimal requirements. [Ms. Dennis] was so relieved she couldn’t stop crying while the clerk processed her paperwork, and couldn’t stop thanking me for all my help, although in both cases, all I had really done was assist her in processing the decisions that she had arrived at herself.” A week later, Zoe was surprised to receive a string of calls and texts from Ms. Dennis saying that her husband was kicking her out of the house, that she had nowhere to stay, had no money, and was panicked that she would not be able to maintain sobriety.

The dramatic change in Ms. Dennis’ circumstances really brought home for Zoe how much her engagement with Ms. Dennis was shaped by her experience with clients like Mr. Bradley. She ignored signals from the ex-boyfriend. She took as fact Ms. Dennis’ repeated mention of her “angel” husband, especially since Zoe perceived that they were genuinely working together on navigating the plea bargaining so that Ms. Dennis’ could move forward in a way that would be positive for them as a couple. Zoe could have counseled Ms. Dennis and still respected her autonomy, but she expected Ms. Dennis to need less assistance in scrutinizing, assessing and contrasting the range of consequences that might flow from taking the plea offer or going to trial. When Zoe reflected on the experience she noticed that *she* had wanted to be perceived by Ms. Dennis as up to the task of resolving the criminal charges as favorably as possible. As Zoe said: “I wanted to reflect back to [Ms. Dennis] the vision of competency she seemed to view me with, and also make sure she understood that I was treating her as a true adult equal, capable of making her own decisions, rather than someone whose life had recently spiraled out of control.”

One of the reasons we found it so helpful to have Zoe describe her work with Ms. Dennis in class is that the story illuminated our core “process” lessons. A core wisdom skill that we were encouraging Zoe and the other students to learn was how to be mindful—particularly by using the practice of noticing. That was critical for identifying the relevant web of

relationships (which Zoe did fairly quickly) and for interpreting them—which gave Zoe more difficulty. She did not initially notice how much her own experience created an obstacle for perceiving the important things she could have learned from Ms. Dennis’ relationships. The challenges she experienced earlier when engaging other clients (like Mr. Bradley with his mental health and substance abuse issues) inclined her to overestimate Ms. Dennis’ competence at taking multiple perspectives, at thinking through choices, and at weighing potential consequences. Zoe’s experience with Ms. Dennis made Zoe notice how her own previous web of relationships with other clients made her assume things that an intentional practitioner would have reflected on and double checked.

Zoe then introduced us to Ms. Ames. When we first met Ms. Ames, Zoe described her as a consummate repeat player in the local criminal justice system.

[Ms. Ames] was a self-proclaimed and almost proud recidivist – but also knew when to take a plea, when the plea offer wasn’t good enough, and when the jail time didn’t appropriately equate with her alleged crimes. She was homeless, likely alcoholic, maybe had a Master’s degree, likely drug addicted, likely bi-polar, had clear (and self-diagnosed) issues with authority and anger management, and yet I felt that she often knew much more about what was going on than I did (which was, quite literally, often very true).

Zoe also quickly discovered the broad web of relationships Ms. Ames was enmeshed in—and deployed. That web included jail personnel who told “funny and affectionate stories” about Ms. Ames and permitted Ms. Ames to meet with Zoe in the jail kitchen instead of in the locked interview rooms as protocol required. It included prosecutors and judges with whom Ms. Ames was on a first-name basis. It included two “steady boyfriends,” one of whom consistently checked in with Zoe because Ms. Ames would stop answering his calls. It included Ms. Ames’ son and mother. It included volunteer social support. It also ultimately included irate hospital personnel and a beleaguered motel clerk. And, Zoe always suspected that the web of relationships that she saw was just the tip of the iceberg.

Unlike Mr. Bradley, who seemed to be lacking a personal web of relationships, or Ms. Dennis who seemed supported by her personal relationships, Ms. Ames operated in a network that was chaotic and cacophonous. Zoe felt that to

effectively work with Ms. Ames, she needed to engage with everyone in the web; it was often her primary means of finding and communicating with Ms. Ames—and the people in this network came to look to Zoe as the only way they could communicate with Ms. Ames when she was choosing not to speak with them.

Zoe quickly found that she needed wisdom of another sort. Because working with Ms. Ames was chaotic from the start, Zoe found that she had to be very intentional and reflective, even if just to stay on top of what was happening. What was Zoe doing, she reflected incredulously, “staking out” a local motel and interrogating the front desk clerk to try and find Ms. Ames when Ms. Ames went on one of her communication black-outs? Zoe had to learn the wisdom skills to navigate the network of relationships. The network provided the context needed to understand Ms. Ames while at the same time it obfuscated and muddled the story—and it often wasn’t clear to Zoe which was which.

Zoe started thinking right away about what it meant to pay attention to relationality while working with Ms. Ames. Some clients need to be encouraged to take advantage of their network of relationships to help meet challenges and choices. However Ms. Ames happily attended to the widest web of relationships that she could. Unfortunately, as Zoe quickly discovered, Ms. Ames could use those relationships to avoid or dodge challenges and choices. When Zoe stepped into Ms. Ames’ world she learned quickly the importance of being mindful. Zoe’s noticing practices became particularly important as they helped her avoid being manipulated while still maintaining empathy and compassion for Ms. Ames (and for those in Ms. Ames’ web of relationships.)

One of the terrific consequences for Zoe about having three very different experiences with clients and relationality is that those experiences gave Zoe (and the rest of us) a remarkable amount of actual material on which to reflect. For all three clients, Zoe felt empathy and compassion. For all three clients, she wanted to “do right” by them. For all three clients, what “doing right” meant was affected by the client’s web of relationships, by Zoe’s own web of client relationships, and by Zoe’s developing normative vision of herself as a good and just lawyer. In the process of comparing the different opportunities and challenges each network of relationships presented for creating solutions that served the clients within their own webs, Zoe and the class experienced the “relationality” skills we needed to make wise choices. We learned methods for intentionally noticing and capaciously engaging context and interconnectivity to problem solve in a

way that was consonant with our clients and that reflected our normative commitments to the role of the lawyer.

Further, as we attended to the inherent relationality of every lawyer-client setting, we were reminded of how important it is for lawyers to check their own assumptions about when and if a client wishes to pursue “self-interested” goals. As our students uncovered the web of relationships in which their clients were situated, they also discovered that what clients wanted (i.e., the client’s “self-interest”) usually reflected the clients thinking through outcomes vis a vis their own web of relationships. For example, Maureen’s client, Mr. Moss, considered all of his options in light of how they would impact his family, not just him. Mr. Moss’ self-interest was not about himself, but instead was about the most important people with whom he was in relationship. Maureen had to attend to that relational context as she thought through options to discuss with Mr. Moss. She discovered that Mr. Moss was willing to stay in jail longer if it meant that his bond might be lowered, which then would place less of a financial burden on his family. If Maureen had presumed that Mr. Moss’ “self-interest” was purely individualized and personal, she might have mistakenly concluded that his most important priority was getting himself out of jail quickly.

IV. OUR REFLECTIONS.

If it was important to encourage the habit and skill of reflection among our students it was equally important to share with them, and now with you, some of our own reflections.

We anticipated that many of our students would begin class already steeped (often unconsciously) within the Dominant View of lawyering. We also knew that both of us believed that the practice of practical wisdom as we devised it would push against the Dominant View’s tight focus on the lawyer-client dyad and on that view’s disinclination towards morally-engaged conversations. Thus, we were somewhat surprised at how difficult it was for many of our students to “move” from the Dominant View of lawyering to views which located the client—and possible solutions—in a web of relationships, and not simply in the lawyer-client dyad. Or, to move to a view that encouraged them to consider different priorities than client autonomy and zealous advocacy. Or, to consider the importance of intentionally engaging in morally-based conversations with their clients rather than unreflectively engaging in such conversations or not engaging in such conversations at all.

It was not that our students fully embraced the Dominant View. Many agreed with David Luban that the Dominant View depended on an idealized version of the adversary system that does not exist in the rough and tumble real world. Similarly, many were skeptical of the Dominant View because they agreed with Gerry Lopez that it too easily brings out the arrogance of elite lawyers. Expressing their skepticism, students took reassuring refuge in defining their position as being “client-centered” lawyers. That was a more comfortable mantle because they genuinely did not wish to be arrogant, and they really wanted to make a difference for their clients. But, calling themselves “client-centered” was often unhelpful because they lacked the perspective and skills to put content into the term. There was no “there” there.

What we observed in our students was not an ethical or principled resistance to other normative views of lawyering, but a hesitancy caused by their fear of the unfamiliar and their lack of experience. Students knew that their clients expected them to be lawyers, but students themselves were unsettled about whether they knew enough actually to be lawyers. That made the students very worried about “getting it wrong” with bad consequences for the client. If they just listened to the client and things screwed up, well . . . at least they had tried to do what the client wanted. Students sometimes might defend their actions in principled terms: they did not want to be elite moralists, subtly playing God, or pushing the client in ways that violated the client’s stated goals and interests. They talked as much, though, and sometimes more ardently, about affirmatively engaging their clients. The rub for them was how to *actually engage* a client well. That entry point gave us a natural opening to introduce our process of the practice practical wisdom.

As we introduced practices related to empathy, compassion and relationality, students tried those habits out—through role playing, through discussing the conversations they had had with their clients, through practicing how else they might have approached them, through actually trying out with their clients ideas from class. We started to see shifts in the students—many of which were first practical, and then became the basis for reflection about normative visions of lawyering. Some of the shifts we observed were subtle. We noticed, for example, the different ways students started talking about engaging their clients in moral conversations. We noticed more and more students beginning to see their legal matters through a larger web of relationships. Students became more empathic and compassionate not simply because they came to see empathy and compassion as important (many already did), but because they learned the listening,

perspective taking, mindfulness, and conversational skills needed to actually practice empathy and compassion.

They then began reporting that they felt that they were being “better” attorneys. As the semester went on, when we would inquire what “better” meant, students described increased confidence in their technical prowess (“Now I know what ‘resisting arrest’ means” or “I know how to find regulations on my own and understand them”) and described increased confidence that they were making intentional choices about how to behave in ways consistent with their developing commitments to one of the normative roles of lawyering.

We also observed that some of the language we used—like the language of “telos” and “first principles”—was not a language the students readily took too. Nor were they familiar with our terms “relationality,” “web of relationships,” and “sensitivity to relationships.” What was gratifying was the way in which students learned and adopted the ideas behind the terms: the ways in which they began to explore innovative solutions to client problems by looking at the context in terms of a web of relationships; the ways in which they started talking about the aim and purpose of what they were doing and how that affected their interpretation of the Model Rules and informed the judgments they were making.

Fear and anxiety based on unfamiliarity was something we experienced too. Just like the students were facing a new, unpredictable, and uncertain situation with their clients, we were facing a somewhat similar situation in class. We were trying new things—making student narratives the foundation of a legal ethics class, having students tell their stories in class, needing to work together with them to figure out the ethical and judgment issues at stake and how to handle them better, figuring out how to help them connect the particulars of their legal work to larger issues in the literatures on legal ethics and practical wisdom. We had to do all of that while also ensuring they could pass the ethics section of the bar exam. We knew we would face problems and make errors: there was no advance guarantee we could create a safe space for discussion, stories fell flat, students saw very different things in the stories than we expected, we had to respond by altering our own conversation, and so on. When we took the conversation down a dead end path, we knew it and we knew the students knew it. Our own uncertainty was always there and we needed to cultivate an openness to learning from our mistakes, to take what came and move from there so that we could improve our own teaching skills. We constantly were balancing how to ask and how to tell, how to know when to be silent, how to re-direct in ways that opened the conversation and did not just turn the

class into a lecture of the form “let us tell you what we were hoping you would say and what we wanted you to learn.”

When we reflect on what kept us going in spite of our uncertainty and anxiety, we noticed three things. First, we are veteran teachers. We already had some experience and skills in directing reflective conversations and we were confident in who we were so our egos (and our jobs) were not on the line every day. Second, an important element undergirding our confidence and energy is that we knew what we were aiming at and it was very important to us. We wanted to foster ethical, competent, practically-wise lawyers because we see this as the heart and soul of a critical profession that is at risk of losing its purpose. Third, we had each other. We taught each other. We prepped each other. Even when we were not teaching together, we knew we could converse by e-mail or phone. We could reflect, strategize, laugh, vent, disagree, argue, and support each other through the ups and downs. And all that made the experience extraordinarily joyful for us. We do not think that one has to be a veteran teacher in order to find success with our methodology. But, one has to dive in wholeheartedly and it would be terrific to identify in advance someone who would be willing to play the support role that we played for each other.

V. CONCLUSION.

We think the stories above richly illustrate our central thesis—that lawyers *can* practice practical wisdom; that there are habits of mind lawyers can intentionally cultivate to better allow them to be wise in any given setting. We think as well that the stories illustrate that practical wisdom is practical and wise only when experience and context are situated within a larger normative vision—and that settling on a normative vision requires one first to consider plural contrasting visions of the role of the lawyer.

We believe that the stories also show that the practice of practical wisdom is achieved more readily when one breaks practical wisdom into component parts. Cultivating empathy and compassion encourages a lawyer to deeply engage with clients without the lawyer (and hopefully without the client) becoming captured by any one point of view. Practicing those capacities with a sensitivity to relationships and a reflectiveness about the web of relationships encourages a lawyer to attend to dynamics other than simply to the lawyer-client dyad and to probe for solutions in unexpected quarters. Using mindfulness techniques ensures that empathy, compassion and relationality happen as robustly as possible.

Finally, by investigating our students' actual stories, we have tried to concretely test our hypotheses—not in an objective, quantitative way—but in the way that knowledge and learning can reveal themselves through lived experiences. We hope our journey and the journeys of our students are convincing evidence that questions of professional formation and questions about the normative role of the lawyer must be harnessed together if one's goal is to practice practical wisdom.