



Implementing Best Practices & Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum

Workshop 7D

Cultivating the Formation of Professional Identity-- from the First Year to the Third Year

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Floyd has published two books and is the author of numerous articles in the area of legal ethics, law and religion, and criminal law and the death penalty. He served as editor of the Faith and Law Symposium issue of the TEXAS TECH LAW REVIEW, and he is the co-editor of the book *Can A Good Christian Be A Good Lawyer? Homilies, Witnesses, and Reflections*.

Floyd's service activities emphasize access to justice issues and lawyer professionalism. He is a member of the Supreme Court of Georgia Equal Justice Commission Civil Justice Committee, the National Advisory Committee of Equal Justice Works, and is Chair of the Advisory Board of the Georgia Council for Restorative Justice. He was an original member of the Supreme Court of Texas Access to Justice Commission, he chaired the Supreme Court of Texas Lawyer Grievance Oversight Committee, and he was one of the principal drafters of the Texas Rules of Disciplinary Procedure.

Floyd has represented several defendants in death penalty cases, including Louis Jones, Jr., the first person convicted under the Federal Death Penalty Act of 1994, including an appeal to the United States Supreme Court. He served on the Georgia Assessment Team of the ABA's Death Penalty Moratorium Project.

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At Mercer, the formation of professional identity is at the heart of the first year curriculum, in a required course on professionalism. The course reflects a belief that ethics teaching should focus on developing virtues that allow lawyers to serve clients, fulfill public responsibilities, and find meaning in their work. Our upper level externship course follows up this emphasis by making formation of professional identity the primary educational goal through readings, reflections, discussion and exercises. This session will describe and demonstrate ideas for fostering professional identity in both a large first year class and in an externship.

The Beginning: First year Instruction in Professionalism

The process begins with the first year Legal Profession course. That course includes two types of classroom experiences and several that occur outside the classroom. The classroom component includes lectures and small discussion groups. The entire first year class meets twice a week, usually for lectures on topics related to professionalism. These lectures are given by regular members of the Mercer faculty and by distinguished guest speakers. The purpose of the lectures is to give the students a basic understanding of how the legal profession defines professionalism and an appreciation of why practicing with professionalism is important for clients, for society, and for the lawyers themselves. The students also come together in this forum for a series of “conversations” about life in the law with members of the bench and bar. The students then put the lessons from the large meetings to work each week in small discussion sections (each consisting of approximately 25 students) as they discuss a series of case studies.

In these discussions, which are moderated by Mercer faculty, the students confront real life issues of professionalism and practice resolving them. Through the lectures and the discussion groups, the students gain knowledge about professionalism and begin to acquire the skills necessary to apply the virtues of the professional lawyer even when doing so is difficult.

The students also engage in three significant activities out of the classroom. The first of these involves a “blog” that we created for each of the six discussion groups. In preparation for group discussion, each student is required to post a comment to his or her section’s blog. Every student in the section, and the professor, can read all of the posted comments. The comments are not anonymous. The students have the freedom to post an informal comment on any issue that concerns them, whether the issue arises from the lectures, the case studies, or another student’s comments. The blogs serve multiple purposes. They begin conversations about the case studies that carry over into the discussion groups. The blogs also enable students to continue the discussions after the groups have met. Together, the blogs and the discussion groups enable students to work through the unsettling issues of professionalism that the course requires them to face. We have discovered that students need this opportunity to reflect, discuss, and then reflect again. That is a crucial process in the formation of each student’s professional identity.

A second out of class experience that every student has is to conduct an “oral history” of a local member of the bench or bar. The students will have already seen examples of what they will be expected to do in the “conversations” with members of the bench and bar that are presented as part of the large group meetings. In these interviews, the students hear the reflections of seasoned members of the bar on the challenges and joys of life in the law. The students then write a short paper relating the interviews to concepts they have learned in class.

They also have the opportunity to discuss the oral histories in their small groups. The students often comment that this is their favorite part of the course and that it provides a welcome antidote to some of the more sobering lessons they learn about what awaits them after law school. The overriding purpose of the exercise is to give the students role models. The formation of professional identity requires more than an intellectual understanding of what it means to be a good lawyer. It also requires a vision of what such a lawyer actually looks like, and the oral histories are intended to help provide that vision.

The third out of class experience is a set of reflective writings. Before the semester begins, the students reflect on their ambitions. They write about what kind of lawyers and what kind a people they want to become. In other words, they describe the professional identity that they see for themselves. At the end of the course, after all the lectures, readings, discussion groups, blogs, oral histories, and other activities, they complete the same assignment again. We believe that such reflection is necessary for the students to internalize the lessons they have learned in all these different ways, for them to be able to form professional identities based upon a more nuanced, sophisticated understanding of what it means to be a professional lawyer.

With the completion of this final assignment the students have learned what they can learn about professionalism from that part of our program that is based primarily, though not exclusively, in the classroom. They can embark on the next part of the program with a vocabulary and a way of thinking about professionalism that they did not have before. We hope and believe that they take the next step with the beginning of a serious commitment to a professional identity that incorporates the virtues of the professional lawyer.

The Process Continues: Public Interest Practicum

The Public Interest Practicum Course is our externship program at Mercer. Students are assigned to a public interest or government legal office for the fieldwork component of this course where they gain practical work experience. In addition to fieldwork, the course includes readings, reflective journals, and class discussion, all of which are designed to help students learn from their fieldwork experience. Students take the course in either their second or third year of law school.

We created the course Public Interest Practicum in the 2006-07 academic year; the first time it was offered was in Spring 2007. Because the Public Interest Practicum is for many students the capstone of their legal education, we designed the course to build upon the emphasis on professionalism and the formation of professional identity that are at the heart of our curriculum.

The opportunity to practice in the role of a lawyer under supervision and to observe lawyers and judges in action are excellent opportunities to develop the lessons of professionalism taught in the first year course. As in all externships, students learn a good deal of substantive law and acquire valuable practical skills. In our course, however, professionalism is the principal focus. We have constructed the readings and topics around those issues, and we require reflection on professional identity in weekly journals and online discussions.

Because all students have taken our unique first year course on professionalism, we are able to draw upon the seeds planted in that course. The common framework and vocabulary learned in the first year course enables us to foster reflection and discussion on the professionalism of the lawyers they encounter. Throughout the course, we encourage students to reflect on the habits of thought and conduct that cultivate professional virtues such as integrity,

wisdom, competence, and courage. The lessons learned in the first year course also enable students to reflect upon their own emerging professional identities.

We tell our students in practicum that the central question they should ask themselves throughout the course is: “Can I be the person I truly am and also be a good lawyer?” The first part of the question requires deep reflection on personal identity, and the second part requires them to reflect on how a lawyer practices with professionalism. Both parts of the question help them to develop their own professional identity, that is, to internalize the virtues of the legal profession so that they can practice law with integrity.

Our weekly class meetings include both “case rounds,” in which students discuss experiences they have had in their work during the previous week, as well as more general discussion related to topics and readings on professionalism. In the “case rounds” portion of our class meetings, students discuss experiences they have had and observed in their fieldwork placements. They regularly offer observations of lawyers who exhibit the virtues of professionalism as well as those who fall short. From their observation of the legal system and the lawyers they work with, students recognize the importance of professionalism to the legal system, as well as to lawyers’ individual satisfaction and fulfillment in practice. In observing lawyers in action, students also readily perceive some of the threats to professionalism that they learned in the first year course. They often comment upon the pressure of the excessive caseloads faced by public service lawyers and how that impacts competence and fidelity to the client. They observe how the adversary system when taken too far by either prosecutors or criminal defense lawyers threatens the duty of fidelity to the law. They also observe how personal problems such as substance abuse or depression interfere with some lawyers’ professional obligations.

Each weekly class is devoted to a topic that is designed to help the students better understand professionalism and to develop their own professional identities. Some of the topics focus on what it means to be a good lawyer. In other weeks, the emphasis is on self-awareness and reflection, which is designed for students to continue to internalize what they have learned about professionalism.

An excerpt from the syllabus for Public Interest Practicum, showing the topics and readings, follows.

Subject Matter for Weekly Classes and Online Discussion

Throughout this course, I will encourage each of you to explore the following question: “Can I be true to my own core identity and also be a good lawyer?” All of our topics and readings are designed to help you grapple with this question.

This question first requires that we decide what we mean by a “good lawyer.” Many of our topics over the semester will focus on the characteristics or virtues of good lawyers, including:

- integrity (in the sense honesty and of wholeness)
- empathy and compassion
- courage/passion for justice
- humility/magnanimity/civility
- balance/self-discipline
- judgment/practical wisdom/creativity
- professional detachment/objectivity
- excellence in advocacy
- excellence in communication
- excellence in listening

Because lawyers are officers of the court who have a special responsibility for the quality of justice, we will also explore such topics as:

- bias, discrimination, and diversity in the legal profession and the legal system
- access to justice in civil matters
- alternatives to adversarial conflict resolution/restorative justice
- holistic representation and collaborative lawyering

This question also requires that we understand ourselves and our relationships with others. Accordingly, we will explore such topics as:

- self-awareness/recognizing your strengths and weaknesses
- coping with fear

- learning from experience, including mistakes
- relationships with family, friends, and professional colleagues
- establishing priorities in your life/ finding work-life balance
- setting goals for your personal and professional life

Topics and Readings for Weekly Classes

Week 1 (1/22)

Introduction to Course

Week 2 (1/29)

What are the characteristics of a good lawyer?

Week 3 (2/5)

Integrity: Atticus Finch and *To Kill A Mockingbird* (screening pre-class and in-class discussion)

Week 4 (2/12)

Civility, humility, and magnanimity:

Read: Excerpt from Lincoln documentary; Duffey essay

Week 5 (2/26)

Courage, Commitment, and Passion:

Read: *A Man for All Seasons*; View: Guantanamo lawyers panel

Week 6 (3/5)

Objectivity and detachment; practical judgment; empathy and compassion

Relationship with clients; setting boundaries; getting close v. keeping your distance.

Read: *Walking Through the Valley*; *The Patient Examines the Doctor*

Week 7 (3/12)

Understanding ourselves and others

Take Myers-Briggs personality inventory and be prepared to discuss in class

Week 8 (3/19)

Learning from experience, including our mistakes; coping with our fears

Read: “The Rewards of Courage,” (excerpt from Mark Perlmutter, *Why Lawyers (and the Rest of Us) Lie and Engage in Other Repugnant Behavior*)

Week 9 (3/26)

Establishing priorities in your life; balancing personal & professional life;

Relationships with family, friends, and professional colleagues

Read: “The Balanced Practice,” (excerpt from Steven Keeva, *Transforming Practices: Finding Joy and Satisfaction in the Legal Life*)

Week 11 (4/2)

Imagining alternatives to our current legal system and to adversarial conflict resolution

Access to justice in civil matters; restorative justice.

Reading assignment: Howard Zehr, *The Little Book of Restorative Justice*

Week 12 (4/9)

NO CLASS—SPRING BREAK

Week 13 (4/16)

Diversity in the legal profession. Bias and discrimination. Each student prepares one personal report or story of bias or unfairness, either experienced or observed.

Reading assignment: Watch the film “Philadelphia” before class.

Week 14 (4/23)

Drawing from your experience to form career goals; shaping your professional identity. Hopes, dreams, and fears for the future.

Reading Assignment: Excerpts from Rachel Naomi Remen, *Kitchen Table Wisdom*

Week 15 (4/30)

Pulling it all together; reflecting on your practicum experience. Reading from Keeva, “The Choice is Yours.”