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## Practical Wisdom: Reimagining Legal Education

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## ARTICLE

# PRACTICAL WISDOM: REIMAGINING LEGAL EDUCATION

DAISY HURST FLOYD\*

### INTRODUCTION AND BACKGROUND

We are at a moment of both crisis and opportunity in American legal education. Recent public criticism of what we do and how we do it has generated heated debate. Justifiable concerns about the high cost of a legal education, a difficult job market for recent graduates in the midst of unmet needs for legal services, the influence of rankings, the proliferation of law schools, and a shrinking applicant pool call into question both the purpose and value of legal education.<sup>1</sup> It is a time that calls for innovation, creativity, and rethinking legal education's goals and methods. It is a time to reimagine the education our students receive. This symposium, which focuses on identity formation as a primary purpose of law school and urges

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1. See generally David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, [http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all&_r=0); David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 19, 2011, <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all>; David Segal, *For Law Schools, A Price to Play the ABA's Way*, N.Y. TIMES, Dec. 17, 2011, <http://www.nytimes.com/2011/12/18/business/for-law-schools-a-price-to-play-the-abas-way.html?pagewanted=all>; Chris Mondics, *Villanova Law Censured by ABA Over Admissions-Data Fraud, But Retains Accreditation*, PHILADELPHIA INQUIRER, Aug. 16, 2011, [http://articles.philly.com/2011-08-16/business/29892664\\_1\\_law-school-american-bar-association-lsat-scores](http://articles.philly.com/2011-08-16/business/29892664_1_law-school-american-bar-association-lsat-scores); Ameet Sachdev, *U of I Law School Falls 12 Spots, to No. 35, in U.S. News and World Report List: Lower Ranking Related to Admissions Scandal Last Fall*, CHI. TRIB., March 15, 2012, [http://articles.chicagotribune.com/2012-03-15/business/ct-biz-0315-law-rankings-20120315\\_1\\_median-gpa-median-lsat-score-admissions-scandal](http://articles.chicagotribune.com/2012-03-15/business/ct-biz-0315-law-rankings-20120315_1_median-gpa-median-lsat-score-admissions-scandal); David Segal, *Law Students Lose the Grant Game as Schools Win*, N.Y. TIMES, April 30, 2011, <http://www.nytimes.com/2011/05/01/business/law-school-grants.html?pagewanted=all>; Katherine Mangan, *Lawsuits Over Job-Placement Rates Threaten 20 More Law Schools*, CHRON. HIGHER EDUC., March 14, 2012, <http://chronicle.com/article/Lawsuits-Over-Job-Placement/131163/> (for some of the recent negative attention to law schools in the popular press).

legal educators to think empirically about ways to meet that purpose, is a positive step toward reaching that goal.<sup>2</sup>

We can reimagine legal education by taking seriously the ethical formation of our students. A focus on ethical formation requires us to consider not just what lawyers should know and what they should do, but also who they should be in order to live out the best ideals of the profession. It requires us to envision our graduates as the lawyers they will be. It demands that we think about the multiple capacities we want our graduates to use in the service of their clients and their profession. This article proposes that we conceive of the purpose of ethical formation as developing lawyers who can exercise practical wisdom. Practical wisdom is an ancient concept, derived from Aristotle, which has continuing resonance for modern life and particularly for modern professional life.

To make the case that we need lawyers with practical wisdom, I will start by imagining our students as they will be some years from now. Please consider with me three former law students—Nick, Daphne, and Maria—who are now experienced lawyers. We meet each of them at a particular moment of professional practice, in which they are called upon to act out of their professional knowledge, education, and experience.

#### A. *Moments of Professional Practice: Three Lawyers*

##### 1. *Nick*

Nick has been a lawyer for just over six years, practicing as an associate in a mid-sized law firm. The firm will be deciding very soon whether he will be invited to partnership. Nick's practice focuses on transactional matters. He has recently been representing one of the firm's regular clients, the owner of a large manufacturing facility, in negotiating an agreement with an import company for the regular purchase of materials. The negotiations developed an impasse over a particular provision that the other party insists on putting into the contract. The provision is an escape clause from the contract in the event that natural disaster or civil unrest in the country of origin makes the material either difficult or more expensive to import. Nick's client was adamant that he will not agree to the provision, even though it is unlikely to be invoked during the two-year term of the contract. After heated negotiations, Nick believes that he and the other lawyer have agreed that the contract will not include the contingency provision. The other lawyer sends Nick the final version of the agreement. Because Nick is

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2. Another positive sign is the creation of the Educating Tomorrow's Lawyers consortium ("ETL"), which has brought together law schools that are committed to reform of legal education along the lines suggested by the Carnegie Foundation's study of legal education. ETL's first annual symposium, focused on the development of professional identity, was held at the University of Denver on September 27–29, 2012, bringing together representatives from over twenty law schools with practitioners and experts from other disciplines to discuss ways to advance innovation in legal education.

in a hurry and distracted by other matters, he overlooks the fact that the twenty-three page contract actually has the disputed provision in it. Three days after his client has signed the contract, Nick discovers the mistake. It is a week before his partnership vote. What should Nick do?<sup>3</sup>

## 2. *Daphne*

Daphne is more experienced than Nick; she is a lawyer of twenty years. Her practice has been in criminal law, first as an assistant district attorney and for the last ten years in a private criminal defense practice. She is an excellent trial lawyer with a reputation among the local bench and bar as a forceful advocate for her clients and a “person of her word.” She is currently representing Carla, who is charged with murder in the shooting death of her husband. The evidence is undisputed that Carla was subject to abuse at the hands of her husband for many years and that she shot him in the back of the head while he was sleeping.

Daphne plans to use a defense of battered woman syndrome, which will require an expert witness to explain to the jury that the years of abuse that Carla suffered meant that she was in fear of her life when she killed her husband, even though at that moment he was asleep and not actively threatening her. Daphne is confident in her trial skills but also aware that battered woman syndrome can be a hard sell to jurors. Usually, self-defense requires that the defendant is under an immediate threat of bodily harm at the time of the killing. During the time that Daphne has been representing Carla, they have spent a lot of time together. Daphne knows that one of Carla’s major concerns is what will happen to her two children—ages two and six—should she be sent to prison. She has been able to care for the children while on bail.

Just before the trial begins, the prosecutor comes to Daphne with a plea offer. If Carla will plead guilty to voluntary manslaughter, he will recommend that the judge sentence her to three to five years. Daphne must meet with Carla to tell her about the offer and to help her make a decision about whether to take the offer or go to trial. If she takes the offer, she will be taken into custody immediately after making the plea and her children will be put into foster care. If she goes to trial, she has a chance of acquittal, but if she is convicted, she will likely be sentenced to twenty years in prison. They have forty-five minutes for Daphne to explain the options to Carla and to help her reach a decision. How should Daphne handle the conversation?<sup>4</sup>

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3. This hypothetical is based upon one developed by my Mercer Law School colleagues, Professors Patrick Longan and Karen Sneddon, for use in teaching ethics issues in contracts. See SUSAN M. CHESLER ET. AL., *TEACHER’S MANUAL FOR A DAY IN THE LIFE OF A LAWYER* 73–77 (Wolters Kluwer Law & Business 2012).

4. This hypothetical is based upon the Theresa Trujillo problem, which was developed by my Mercer Law School colleague Professor David Oedel for use in Mercer Law School’s Intro-

### 3. *Maria*

Maria is a trial lawyer in a large civil-litigation firm, handling primarily the defense of personal injury claims brought against a major automobile manufacturer. She graduated from law school almost thirty years ago. Although most of her cases settle, a particularly difficult case has come to trial. The plaintiff is a thirty-two year old man who suffered severe and permanent injuries from an allegedly defective automobile manufactured by Maria's client. There is an issue in the case about whether the plaintiff was wearing a seat belt at the time of the accident. The physical evidence is inconclusive, but the plaintiff claims that he was wearing his seat belt. Maria knows that cross-examining a severely-injured plaintiff must be handled carefully; she also knows that making the client seem unappealing to the jury is likely to affect their view of his credibility and hence their decision about liability and possibly damages. She also knows that if the jurors perceive that she is attacking an injured plaintiff, it can turn them against her client and increase the likelihood of a plaintiff's verdict. Based on her experience while deposing the plaintiff, Maria is aware that he dislikes discussing his injuries, particularly the effect they have had on both his private and professional life. In fact, during the deposition, the plaintiff reacted to this line of questioning by insulting Maria and almost losing control. While Maria is cross-examining the plaintiff at trial, she senses that he is becoming angry and emotional. She must decide in the moment whether to pursue aggressive questioning or to refrain from such questioning to avoid the risk of backlash from the jury.

#### *B. The Challenges of Ethical Action*

In each of these situations, the lawyer is called upon to act as both a moral human being and an ethical professional. Nick, who makes a mistake resulting in his client having signed a contract with a provision he does not want, represents the kind of professional dilemma that would most readily be recognized as raising a moral or ethical issue. Nick is no doubt tempted to cover up the truth, at least until after his partnership vote, to avoid negative consequences to himself. Both non-lawyers and lawyers would recognize the moral wrong in lying to advance personal interests. Lawyers would also recognize that basic obligations of competence and fidelity to the client are potentially violated by Nick's behavior. The other two situations do not as obviously raise alternatives that implicate either personal moral values or obligations of professional responsibility. Instead, they involve choices among a range of possible professional action, all of which may be consis-

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duction to Counseling course. It is used each fall to help teach counseling skills to Mercer's second-year law students. I have witnessed different lawyers perform the problem with an actor playing the role of the client.

tent with standards of professional ethics, but some of which are better than others.

Despite those differences, all three scenarios capture the essence of what it means to be a professional, including the attendant moral implications and responsibilities. All implicate the lawyers' moral judgment and behavior. Daphne, Nick, and Maria are each called upon to act upon their education, experience, and expertise in these moments of professional practice. They must exercise judgment under conditions of inherent uncertainty in a way that fulfills their professional obligations to their clients.

If a group of legal educators witnessed these situations played out in alternative ways by different lawyers, they would have opinions about which lawyers did a better or worse job in responding to these situations; there may even be some consensus about those assessments. However, they might have a difficult time describing what they are looking for in a way that informs the structure and goals of legal education. Like obscenity, we are more likely to recognize it when we see it than we are to be able to describe it.<sup>5</sup>

How do we explain what we see when we watch good lawyers in action? How does a lawyer get to the moment when she does the right thing in the midst of conflicting values and tensions while under the pressure of time and emotion? How is it that a lawyer accesses education, experience, character, and skills in real time to do the right thing? What is going on in her mind and with her emotions? How does she integrate what she learned in law school and from her experiences in law practice so that she knows not just the right thing to do in the moment, but also the right way to accomplish it? How does she tailor her response to this particular client's needs at this moment and also for the long term?

What is happening in Daphne's mind and heart when she offers counsel to Carla, with just a few minutes to evaluate recommendations for her client and only a few seconds during her conversation to respond to Carla's emotional state or to her questions? What is happening in Nick's mind and heart when he puts his career and professional reputation at risk to tell his client about his mistake and then takes the necessary steps to correct it, including telling the members of his law firm and his malpractice carrier? What is happening in Maria's mind and heart when she has less than a minute to decide what strategy to use during her cross-examination of the injured plaintiff? And at the core of our daily enterprise as legal educators, what is the role of legal education in preparing lawyers for these moments of professional practice?

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5. See *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, concurring), for Mr. Justice Stewart's statement regarding obscenity: "I know it when I see it."

C. *From Professional Responsibility to Professionalism to Professional Identity*

Legal educators have struggled at times to find the appropriate language describing what we want lawyers to do in such moments of professional practice. We have collectively used different labels to describe the lawyer who performs well with regard to professional challenges. When legal education first began to teach the subject of ethics, we relied on the framework of the law of professional responsibility, focusing on the rules of duty.<sup>6</sup> Out of that emphasis, we developed the curricular framework for teaching and writing about professional responsibility that still holds today. That framework focuses on the law of lawyering, often described as the floor below which a good lawyer must not fall, and it places the topic of legal ethics within a discrete place academically for most law students.

Since its emergence in the 1980s, the professionalism movement has offered us broader and more helpful language. The professionalism movement's intentional focus on legal ethics as encompassing aspirational goals has enlarged our discussion of how to prepare ethical lawyers. However, professionalism is still often viewed as separate from professional ethics, and it has been subject to the criticism that professionalism is still somewhat in the eye of the beholder and easier to describe in its absence than to fully articulate what it looks like at its best.

The publication of *Educating Lawyers*<sup>7</sup> (hereafter referred to as the Carnegie report), in 2007, offered us different helpful language and concepts, particularly that of professional identity.<sup>8</sup> It argued compellingly that the common purpose of all professional education is to develop in our students both specialized knowledge and professional identity.<sup>9</sup> It provided a framework of three apprenticeships for evaluating legal education: the cognitive, practical, and normative.<sup>10</sup> The report concluded that legal education is strongest in developing the first and weakest in developing the third, and it proposed that legal education should strengthen its attention to law students' professional identities.<sup>11</sup> As used in the report, professional identity provides a powerful image for understanding both the strengths and the deficiencies of modern legal education: legal education's traditional strength of developing cognitive and analytical skills and its relative neglect

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6. Professional responsibility has developed through, first, a canon of ethics, to next, a code of professional responsibility, and now, to rules of professional conduct. This development had as its purpose, in part, emphasizing that the law that governs the ethical conduct of lawyers should be regarded as enforceable rules, that is, the minimum standards that one must meet to avoid disciplinary sanction.

7. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

8. *Id.* at 132–144.

9. *Id.* at 3.

10. *Id.* at 28.

11. *Id.* at 29–33.

of the apprenticeships of practice and ethics. The concept of professional identity, as used in the report, also reveals legal education's failure to fully integrate the three apprenticeships.

The concept of professional identity has also been helpful in identifying the complexity of the lawyer's work and of the task of legal educators to provide students with the right kinds of experiences to help them develop their professional identities. It has provided a powerful image for a more holistic approach to legal education, and it has focused attention on the formative possibilities of legal education. The concept of professional identity formation has helped many legal educators move beyond conceptualizing the purpose of law school as about only what lawyers should think and do, and to embrace the notion that legal education is also about who our students are becoming. It has generated thoughtful scholarship and been the subject of conversations and conferences.<sup>12</sup>

Like the language of professionalism, however, the language of professional identity remains a bit vague as applied to legal education. A clear definition does not emerge from the Carnegie report. At times, professional identity is equated with the third apprenticeship, which focuses on the student's growing normative and ethical capacities. At other times, professional identity is used to capture the desired outcome of a sound legal education, which is the integration of the cognitive, practical, and normative apprenticeships. Although I have relied heavily upon the concept of professional identity in my own work, I have found the lack of a clear definition challenging.<sup>13</sup> I have encountered puzzled faces when I have tried to explain that my role as a legal educator includes helping students develop their professional identities. And in response to those puzzled faces, I have stumbled a bit in trying to concisely explain what that means. In fact, my failure to be concise is demonstrated by the definition of professional identity I have settled upon: "Professional identity refers to the way that a lawyer integrates the intellectual, practical, and ethical aspects of being a lawyer and also integrates personal and professional values. A lawyer with

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12. The current symposium is an example of a conference focused on the role of professional formation in the development of ethical lawyers, as was the Educating Tomorrow's Lawyers Conference. See *supra* note 2. Since the publication of the Carnegie report, several of the semi-annual workshops of the National Institute for Teaching Legal Ethics and Professionalism have included discussion tracks related to the development of professional identity. See *Past NIFTEP Workshops*, GEORGIA STATE UNIVERSITY COLLEGE OF LAW, <http://law.gsu.edu/niftep/pastworkshops.html> (last visited Apr. 11, 2013).

13. See Daisy Hurst Floyd, *We Can Do More*, 60 J. LEGAL EDUC. 129 (2010); Daisy Hurst Floyd, Remarks published in *Symposium: The Opportunity for Legal Education*, 59 MERCER L. REV. 859 (2008); Daisy Hurst Floyd, *Lost Opportunity: Legal Education and the Development of Professional Identity*, 30 HAMLINE L. REV. 555 (2007); Daisy Hurst Floyd, *Reclaiming Purpose: Our Students' and Our Own*, THE LAW TEACHER, Spring 2003, at 1-2.



an ethical professional identity is able to exercise practical wisdom and to live a life of satisfaction and well-being.”<sup>14</sup>

In addition to its lack of clarity, I have also struggled with two other aspects of the concept of professional identity. First, it is a neutral term: our students *will* graduate with a professional identity as lawyers, regardless of whether we are paying attention to developing those identities. The Carnegie report has brought attention to our responsibility to develop a particular kind of professional identity and to avoid the development of the wrong kind of professional identity. While many legal educators now agree that we must attend to developing our students’ professional identities, we have not yet settled on finding the right adjective for the kind of professional identity we seek for our students. Is our goal a *healthy* professional identity, a *strong* or *positive* or *ethical* one, or, to borrow from the professionalism movement, are we seeking a *professional* professional identity?<sup>15</sup>

A second difficulty with the language of professional identity is that it can imply that one’s professional identity can or should be separate from one’s personal identity. I believe, as I think many legal educators do, that lawyers cannot truly live fulfilled lives, nor meet their professional obligations well, unless they integrate their personal and professional values.<sup>16</sup> The semantic challenge is to make the connection between the personal and professional clear when using the language of professional identity.

In this article, I propose that we use practical wisdom as a framework for conceiving of the purpose of legal education and further propose a research agenda for understanding how to develop and support practical wisdom in law students and lawyers. Practical wisdom draws upon an ancient tradition and is supported by contemporary understandings of human behavior and motivation. It complements the valuable concept of professional identity and helps us understand the goal of an ethical professional identity. We must develop an ethical professional identity in our students so that they are able to exercise practical wisdom.

## I. PRACTICAL WISDOM

Practical wisdom is derived from Aristotle, who considered it the master virtue.<sup>17</sup> Practical wisdom encompasses all of the other virtues, in-

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14. John T. Berry, Daniel R. Coquillette, & Daisy Hurst Floyd, *Legal Education and the Formation of Professional Identity: Past and Future*, Address at the American Bar Association 38th National Conference on Professional Responsibility, Boston, Massachusetts (June 2012) (on file with the author).

15. In my opinion, the best among these choices is an ethical professional identity.

16. See also Michael S. McGinnis, *Virtue Ethics, Earnestness, and the Deciding Lawyer: Human Flourishing in a Legal Community*, 87 N. DAK. L. REV. 19 (2011) (offering a compelling discussion of the importance of integrating personal and professional values).

17. ARISTOTLE, *NICOMACHEAN ETHICS* (Martin Ostwald, ed., Prentice Hall, 1962) (c. 384 B.C.). My own understanding of practical wisdom and its relationship to professional identity has been influenced greatly by three Mercer University symposia relating to the topic of practical

cluding loyalty, self-control, courage, fairness, generosity, gentleness, friendliness, and truthfulness.<sup>18</sup> Aristotle believed that a person who knows how to use the virtues “practically,” to apply them in concrete situations, is wise.<sup>19</sup> Barry Schwartz and Kenneth Sharpe offer this definition: practical wisdom is the “right way to do the right thing in a particular circumstance, with a particular person, at a particular time.”<sup>20</sup> Because of its emphasis on the particular, practical wisdom is nuanced and contextual.<sup>21</sup> It requires one to move back and forth between the general and the particular and to adapt understandings of general concepts and norms to particular, sometimes unexpected, situations.<sup>22</sup>

I believe that the best lawyers possess practical wisdom.<sup>23</sup> Practical wisdom is a desired trait for everyone, but it is particularly important for lawyers, who offer their clients both professional expertise and judgment informed by wisdom. Indeed, wisdom is arguably the distinctive value that a lawyer offers a client. The client needs more than expertise in general rules; he seeks the lawyer’s judgment about what the rule means for his situation, given his particular needs and goals at a particular moment.

William May explains why practical wisdom is important for lawyers:

The very ideal of the wise counselor highlights the importance of the ancient cardinal virtues in which the virtue of *practical wisdom* heads the list. Wisdom requires a spacious openness to often competing ends or goods which the lawyer must balance and proportionately honor in a particular case. Wisdom also requires a prudent choice of means in negotiating ends. The lawyer surely professes a body of knowledge, including a set of laws and guid

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wisdom. The proceedings of one of those, including case studies and other materials for engaging students in the topic of practical wisdom, are in MARK L. JONES, PAUL A. LEWIS & KELLY E. REFFITT, *TOWARD HUMAN FLOURISHING: THE ROLE OF CHARACTER, PRACTICAL WISDOM, AND PROFESSIONAL FORMATION* (2013).

18. ARISTOTLE, *supra* note 17.

19. *Id.*

20. BARRY SCHWARTZ & KENNETH SHARPE, *PRACTICAL WISDOM: THE RIGHT WAY TO DO THE RIGHT THING* 85 (2010).

21. *Id.*

22. WILLIAM M. SULLIVAN & MATTHEW S. ROSIN, *A NEW AGENDA FOR LEGAL EDUCATION: SHAPING A LIFE OF THE MIND FOR PRACTICE* 109 (2008).

23. See ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1995) (calling for using practical wisdom to revive the lost purposes of the legal profession). For others who have applied Aristotle’s notion of practical wisdom to discussions of legal ethics, see Timothy W. Floyd, *The Practice of Law as a Vocation or Calling*, 66 *FORDHAM L. REV.* 1405 (1998); Deborah J. Cantrell, *Teaching Practical Wisdom*, 55 *S.C. L. REV.* 391 (Winter 2003); Brett Scharffs, *The Role of Humility in Exercising Practical Wisdom*, 32 *U.C. DAVIS L. REV.* 127 (1998); Lorie M. Graham, *Aristotle’s Ethics and the Virtuous Lawyer: Part One of a Study on Legal Ethics and Clinical Legal Education*, 20 *J. LEGAL PROF.* 5 (1995); Mark L. Jones, *Perspectives on Curriculum Reform, Mercer Law School’s Woodruff Curriculum, and ‘Perspectives,’* 63 *MERCER L. REV.* 975 (2012); Jack L. Sammons, *Traditionalists, Technicians, and Legal Education*, 38 *GONZ. L. REV.* 257 (2002–03); Alexander Schert, *Lawyers and Decisions: A Model of Practical Judgment*, 47 *VILL. L. REV.* 161 (2002).

regulations governing professional conduct, but neither a limitless elaboration of that knowledge nor a mastery of the cognate social sciences will of itself produce a wise counselor. Scientists—even applied scientists—traffic in generalizations; wise counselors may draw on such generalizations but they must also artfully take in the scene and counsel, in the light of the complex of players and particulars that congregate in a given case, whether it be a divorce proceeding, a contract, or a criminal trial.<sup>24</sup>

Practical wisdom reveals that Nick, Daphne, and Maria are most likely to do the right thing if they have developed certain virtues and are able to call upon those virtues to take action that (1) meets their clients' needs and goals, (2) represents the fulfillment of their professional obligations, and (3) integrates their personal and professional values. The virtues allow them to pay attention to the particularities of the situation, to recognize how the situation they are in is both similar to and different from other situations, and to understand what those similarities and differences mean before taking action in these particular moments. Practical wisdom allows them to follow the rules and norms of professional expectations, to apply the general lessons learned through their education and experience, and to understand the particularities of what these clients need in this moment. It allows them to recognize that these are each unique situations and that what they need to do in these situations is informed by, but is not the same as, what they have done in any other situation. Nick, Daphne, and Maria will develop the virtues that allow them to act professionally through habit, by practicing the virtues first as students and later as they mature throughout their careers.

In the sections that follow, I provide an overview of two modern studies of practical wisdom that have relevance for legal education. I also briefly summarize empirical research from a variety of disciplines that can help legal educators apply the concept of practical wisdom to the task of preparing lawyers for ethical and fulfilled lives. I then make the case for practical wisdom as the reframed purpose for legal education and set out a research agenda that flows from that purpose.

#### A. *Schwartz and Sharpe, Practical Wisdom: The Right Way to Do the Right Thing*

A recent book on professional wisdom offers help in understanding its modern relevance.<sup>25</sup> As noted above, Barry Schwartz and Kenneth Sharpe define practical wisdom as “the right way to do the right thing in a particular circumstance, with a particular person, at a particular time.”<sup>26</sup> Schwartz,

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24. WILLIAM F. MAY, *BELEAGUERED RULERS: THE PUBLIC OBLIGATIONS OF THE PROFESSIONAL* 79 (2001).

25. SCHWARTZ & SHARPE, *supra* note 20.

26. *Id.* at 85.

a psychologist, and Sharpe, a political scientist, are professors at Swarthmore College who have developed and taught a course in practical wisdom. They see a disturbing erosion of the capacity for practical wisdom in the United States today.<sup>27</sup> They place the blame in part on our social and governmental institutions, arguing that these institutions both fail to nurture practical wisdom and have adopted practices that impede practical wisdom.<sup>28</sup> Their critique has resonance for our work as legal educators.

Schwartz and Sharpe argue that America's ability to exercise practical wisdom has been eroded because of the use of rules and incentives as a means of controlling human behavior.<sup>29</sup> When conduct is guided only by rules, judgment is distorted.<sup>30</sup> One is deprived of information and discretion that allows nuanced decisions.<sup>31</sup> A rule-bound culture groups situations by their similarities and differences, but does not take into account when similarities and differences matter and when they don't.<sup>32</sup> Discretion is eroded when all seemingly similar situations require application of the same rules in the same way.<sup>33</sup>

Just as an over-reliance on rules erodes practical wisdom, so does reliance on incentives to govern behavior.<sup>34</sup> Incentives lead to standardization of criteria, negating particularization and discretion, and remove the moral dimension from behavior. Once one is motivated only by rewards, social interactions become financial or commercial transactions rather than moral ones.<sup>35</sup>

Schwartz and Sharpe argue that the solution is to develop "moral skill" and "moral will," which will in turn lead to practical wisdom.<sup>36</sup> More specifically, Schwartz and Sharpe's model of practical wisdom tells us that for Nick, Daphne, and Maria to do the right thing, they must:

1. Know the proper aim or purpose of both being a lawyer and of this particular representation;
2. Know how to improvise, which requires "balancing conflicting aims and interpreting rules and principles in light of the particularities" of the situation;<sup>37</sup>
3. Know how to read context and to see the particularities in a situation;

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27. *Id.* at 3–4.

28. *Id.*

29. *Id.* at 4.

30. *Id.* at 86.

31. *Id.*

32. *Id.* at 113–28.

33. *Id.*

34. *Id.* at 177–96.

35. *Id.*

36. *Id.* at 272.

37. *Id.* at 25.

4. Know how to take the perspective of another, including developing empathy for others;
5. Know how to make emotion “an ally of reason;”<sup>38</sup> and
6. Know how to make use of their accumulated experiences as a person and lawyer.<sup>39</sup>

As this list demonstrates, practical wisdom is both nuanced and particular. It requires the balancing of seeming opposites. In responding to their situations, our three lawyers must temper honesty with kindness, detachment with empathy, talking with listening, and rules with discretion.<sup>40</sup>

*B. Sullivan and Rosin, A New Agenda for Higher Education: Shaping a Life of the Mind for Practice*

Another recent study of practical wisdom likewise demonstrates its relevance for our tasks as legal educators. The Carnegie Foundation for the Advancement of Teaching gathered fourteen educators from various professional and undergraduate disciplines to determine how to develop students’ capacities for practical wisdom.<sup>41</sup> The group, convened under the title “A Life of the Mind for Practice Seminar,” concluded that equipping students with the capacities for exercising practical wisdom requires going beyond higher education’s traditional emphasis on subject-matter knowledge and critical thinking skills.<sup>42</sup> Instead, a pedagogy for practical wisdom must integrate the acquisition of subject-matter knowledge with concepts of identity, community, and responsibility.<sup>43</sup> Teaching that helps develop practical wisdom requires students, first, to understand and use a *body of knowledge*, which focuses on the subject-matter content of a course. It also requires, however, that students be informed by three additional factors: (1) their developing *identities* (who they are and who they are becoming), (2) *community* (how others use this knowledge and why), and (3) awareness of *responsibility* to others (recognizing that they use their knowledge on behalf of or in service to someone else and that there will be consequences to others).<sup>44</sup>

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38. *Id.* at 26.

39. *Id.* at 25–26.

40. *Id.* at 36–45.

41. SULLIVAN & ROSIN, *supra* note 22, at xvii–xx. The book and the Life of the Mind for Practice project it describes use the term “practical reasoning” instead of “practical wisdom.” For the purposes of this article, I use “practical wisdom” for consistency. I was one of the fourteen faculty who participated in the seminar, based upon my Advanced Legal Ethics course. The course, and the ways in which it integrates subject-matter knowledge with identity, community, and responsibility, are described in Sullivan and Rosin’s book. I have also written about my experience with the project and its applicability in legal education. See Daisy Hurst Floyd, *Pedagogy and Purpose: Teaching for Practical Wisdom*, 63 MERCER L. REV. 943 (2012).

42. SULLIVAN & ROSIN, *supra* note 22, at xvii.

43. *Id.* at 94.

44. *Id.* at 93–126.

When this approach is applied to law schools, it expands the traditional purpose and pedagogy of legal education, which has long defined its goal as teaching students to think like a lawyer and whose curriculum is organized primarily around subject-matter content. The addition of the three other goals broadens legal education's purpose and pedagogy so that students develop skills of practical wisdom. Incorporating *identity* helps law students integrate their new professional roles with their existing understanding of themselves, including incorporating their pre-law school values and concerns with the new ones they are developing. *Community* addresses the norms and habits of the legal profession and asks students to reflect upon how other lawyers have acted or would act in a particular situation; it provides concrete models of lawyers in action. *Responsibility* challenges students to think about both the fiduciary obligation to the client and broader obligations for responsible deliberate action in the world at large, including consideration of the consequences of one's actions for others.

The pedagogy developed in the Sullivan and Rosin study captures the best of both traditional undergraduate liberal education and professional education. It describes what the authors call a "pedagogy of engagement," which prepares students to interact with the world in practically wise ways and has the potential to transform the formative dimension of higher education.<sup>45</sup>

### C. *Practical Wisdom as Synthesis*

The two studies discussed above provide arguments and means for adopting a framework of practical wisdom to understand how the best lawyers fulfill their professional obligations and lead satisfying lives. They also provide a window into ways to synthesize research from multiple disciplines into a coherent theory that can help legal educators develop and assess whether we are adequately preparing our students for the challenges of professional practice. While not explicitly framed in terms of practical wisdom, research in philosophy, moral and educational psychology, professional education, and professional ethics can be synthesized within our understandings of how the best professionals exercise practical wisdom. This research allows the application of scientific understandings about why people behave as they do to our task of preparing law students for the demands of professional practice. In the next sections, I will briefly summarize research from several different disciplines that supports reforming legal education so that it develops practical wisdom in our students.<sup>46</sup>

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45. *Id.* at 2.

46. Much has been written about both wisdom research and the concept of practical wisdom. I don't pretend to be comprehensive in my discussion of the kinds of research that can be synthesized under the concept of practical wisdom and usefully applied to legal education. The areas discussed here represent the most pertinent in my opinion at this time in my own developing understanding of practical wisdom.

1. *Moral Psychology: Understanding the Psychological Processes that Affect Moral Behavior*

Psychologist James Rest demonstrated the psychological processes that occur when people behave morally, identifying four needed capacities for ethical action.<sup>47</sup> First, one must be able to recognize that a moral or ethical problem exists in the situation, what Rest calls “moral sensitivity.”<sup>48</sup> For example, our three lawyers must understand that the situations they are in and what they do in response to those situations have consequences for others than themselves. Daphne must recognize that counseling Carla requires her to be sensitive to Carla’s needs and goals as well as recognizing her professional obligations as a lawyer. She must put aside self-interest, such as a concern that her time on the case will increase significantly if it goes to trial. She must also be sensitive to the professional norm that the final decision is Carla’s, even if it is not the one that Daphne recommends. Nick must recognize that how he handles the mistake in the contract will affect his client’s rights and responsibilities as well as have consequences for his career, his law firm, and its partners. Maria must recognize that the questions she asks next in cross-examination will affect her client as well as the witness. Whether Daphne, Maria, and Nick are morally sensitive will depend in part on their personal values, and also on their understanding of professional norms and expectations. They will have learned about the applicable professional norms and how to integrate them with their personal values, through both education and experience.

But, it is not enough for our lawyers to recognize the moral aspects of these situations. In addition to moral sensitivity, Rest found that one must have moral judgment or moral reasoning skills.<sup>49</sup> Our lawyers must be able to reason through alternative outcomes to the correct decision. Rest and other moral psychologists draw on Lawrence Kohlberg’s work to understand the capacity of moral reasoning, but they expand upon it to demonstrate that moral reasoning does not necessarily result in moral behavior.<sup>50</sup> Rest’s work shows that there are non-cognitive factors that affect whether one will act morally, in addition to the cognitive factors upon which Kohlberg focused. Kohlberg demonstrated that moral reasoning skills develop over a lifetime as humans potentially move through six sequential stages, with each subsequent stage representing a more developed capacity for moral reasoning.<sup>51</sup> An individual in the earlier stages will act primarily out of self-interest. One then moves through stages where external sources

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47. James R. Rest, *Background: Theory and Research*, in *MORAL DEVELOPMENT IN THE PROFESSIONS: PSYCHOLOGY AND APPLIED ETHICS* 1, 22–25 (James R. Rest & Darcia Narvaez eds., 1994).

48. *Id.*

49. *Id.* at 23–24.

50. *Id.* at 24.

51. *Id.* at 4–10.

of authority such as rules and the law are primary influences on one's moral judgment. They next move to what Kohlberg called "post-conventional stages" in which one is focused on abstract moral principles, such as fairness and justice, and acts out of an autonomous self.<sup>52</sup> The self in the later stages experiences consistency between internal and external values, which is lacking in the earlier stages. While age is linked to progressively higher stages, one is not guaranteed to move into higher stages based on experience alone. Some individuals continue to develop their capacities for moral reasoning, while others remain at a particular stage and fail to progress.

Just as moral sensitivity is not sufficient for ethical action, neither is moral judgment. Rest identified a third necessary capacity, "moral motivation."<sup>53</sup> It is not enough to recognize a moral situation and be able to reason through to what the ethical action is. One must also be motivated to act morally, which is a product of one's identity. That is, Daphne may know the right way to counsel Carla, but she must also want to do it. Will she be able to set aside self-interest and do what this situation calls for, if necessary? Will she overcome her personal desire to use an unusual legal theory such as battered woman syndrome, or conversely, will she overcome anxiety about going to trial? Daphne must be sufficiently motivated to put aside personal concerns and exercise her professional judgment and skill so that Carla's needs take precedence over her own. Will Nick be motivated to set aside his desire to be a partner in the firm, which may have been jeopardized by his mistake? Will Maria be able to set aside her personal dislike for the witness and her fondness for being known as a tough cross-examiner if she decides that the best strategy is to handle the witness gently? Research informs us that because one's moral identity is shaped throughout a lifetime by a range of experiences and influences, whether Daphne, Nick, and Maria will be motivated to do the right thing will also be a product of their education and experience.

Rest's concept of moral motivation is consistent with studies that tell us that Daphne, Nick, and Maria will be more likely to do the right thing if they are primarily motivated by intrinsic values rather than by extrinsic values in the critical moment.<sup>54</sup> Intrinsic values are those that carry their own rewards and that bring joy or move one closer to fulfillment of major life goals.<sup>55</sup> Extrinsic values, on the other hand, are rewards such as prestige, money, or publicity.<sup>56</sup> That same research tells us that not only will our lawyers be more likely to do the right thing for their clients if they are primarily motivated by intrinsic values, but that they will also be happier

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52. *Id.* at 4–9.

53. *Id.* at 24.

54. Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness*, 11 *CLINICAL L. REV.* 425, 429–30 (2005).

55. *Id.*

56. *Id.*



for it.<sup>57</sup> Lawyers' satisfaction with their professional lives will be greater when their moral actions are guided by intrinsic values.<sup>58</sup>

Finally, Rest demonstrates that our lawyers must also have a fourth capacity, that of moral implementation.<sup>59</sup> In addition to moral sensitivity, moral judgment, and moral motivation, they must have the ability and the will to carry out the moral result. Moral implementation requires courage, resolve, and ego strength.<sup>60</sup> It includes, for example, the courage to tell the client bad news, or to face the jury with a potentially losing case, or to incur the wrath of the judge or the opposing attorney on behalf of the client. Daphne must be able to overcome her aversion to difficult conversation and help Carla see that she must choose among two very difficult options, including that her time in prison may begin today, without time for explaining to her children what is happening. Nick must overcome his human tendency to deny mistake and do the hard work of correcting it. Maria must overcome her fear of an unsuccessful outcome to implement the choice she has made.

Importantly, Rest emphasizes that the four capacities are interrelated.<sup>61</sup> Moral action requires all four. Unlike Kohlberg's model of moral reasoning, which is linear, Rest's model does not call for humans to move through stages of the four capacities. The challenge is to develop and strengthen all four capacities so that an individual can call upon all four to act ethically. While the capacities influence each other, they are also distinct. A person may be skilled at one or more and not skilled at others.

The importance of the four capacities is sometimes best understood by recognizing that deficiencies in any of them can prevent moral action.<sup>62</sup> A person can fail to do the right thing because of missing the moral context of the situation. Or, a person can fail because although recognizing that the situation has moral consequences, he lacks the ability to make moral judgments, including lacking the cognitive capacity to reason through alternative decisions and consider the multiple perspectives necessary to choose the moral outcome among competing considerations. Or, a person may have both moral sensitivity and moral judgment, but lack the third element—moral motivation. He may know what the right thing is to do but not be motivated to do it because other values dominate. And finally, a person may fail to do the right thing because although recognizing a moral dilemma, reasoning through to the right result, and wanting to do the right thing, he lacks the will or ability to implement the moral action.

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57. *Id.* at 430–31.

58. *Id.*

59. Rest, *supra* note 47, at 24.

60. *Id.*

61. *Id.*

62. *Id.*

Rest's four-part model of ethical action is consistent with practical wisdom in emphasizing the complexity and nuance of the multiple human capacities necessary for ethical action. But, his is not the only model that offers helpful insight. Other commentators have noted the symmetry between modern research in moral psychology and the concept of practical wisdom. For example, theologian Paul Lewis has noticed the way in which modern understandings support Aristotle's concept of the formation required to develop practical wisdom. Lewis offers the following helpful summary:

[C]haracter develops over time and requires the expert integration of skills in three areas that can be identified as knowing, desiring, and doing. The skills involved in the cognitive or knowing dimension of character are many and operate at both tacit and explicit levels, dealing with matters of both content and process. They include perception, facility at decision-making in ambiguous and/or complex situations, the ability to examine a situation from a viewpoint other than one's own and a perception of one's self as moral agent that includes knowledge of one's own convictions. The second skill set has to do with desiring. According to these authors, to be of good character one must desire what is morally good, i.e., foster pro-social attitudes and behaviours. In addition, one must give priority to moral values in decision-making and be able to control or temper one's desires. The third skill set is that of doing, that of acting in a manner consistent with these thoughtful desires and desiring thoughts. These points of rough convergence between some of this work in psychology and its affinities with Aristotle suggest that his account of character remains viable today.<sup>63</sup>

## 2. *Educational Theory: Understanding How Education Affects Students' Ethical Formation*

In addition to being consistent with the research of moral psychology, practical wisdom is also consistent with modern research on the education of professionals. Relying on William Sullivan's three apprenticeships,<sup>64</sup> we know that Daphne, Maria, and Nick require integrated cognitive, practical, and normative skills so that they can call upon all of those in moments of professional practice to discern the right thing to do. In a precursor to his work in the Carnegie report, Sullivan categorized the multiple capacities required of effective practitioners into three "apprenticeships." The best

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63. Paul Lewis, *In Defence of Aristotle on Character: Toward a Synthesis of Recent Psychology, Neuroscience, and the Thought of Michael Polanyi*, 41 J. OF MORAL EDUC. 155, 160 (2012), available at <http://dx.doi.org/10.180/03057240.2012>.

64. See WILLIAM M. SULLIVAN, *WORK AND INTEGRITY: THE CRISIS AND PROMISE OF PROFESSIONALISM IN AMERICA* 207–10 (2d ed. 2005) [hereinafter SULLIVAN, WORK]; SULLIVAN ET AL., *supra* note 7, at 27–29.

professionals have cognitive abilities, which include analytical and reasoning skills. They also are well-developed in the practical skills of their profession, including such things as research, writing, counseling, and negotiation. Finally, they have developed normatively, learning the particular ethical demands of their profession and integrating those successfully with their personal values. The model of three apprenticeships emphasizes the need for multiple integrated capacities; a deficiency in any of the three can lead to poor practice.

Within those three apprenticeships, practical wisdom values the traditional purpose of legal education as “thinking like a lawyer” and the understandings of how to teach toward that goal. “Thinking like a lawyer” entails highly refined cognitive skills in legal analysis and an understanding of the substantive law that will guide the lawyer to the right result. While practical wisdom would argue that this skill is not sufficient, it values the cognitive dimensions of professional work, just as Rest’s model and Sullivan’s three apprenticeships do.

A concept of practical wisdom for lawyers also takes into account educational theory that demonstrates the importance of reflection and the relevance of imagination and perception to the professional’s work. Donald Schön’s concept of the reflective practitioner has influenced professional school pedagogy over the last several decades.<sup>65</sup> We know from Schön that if we want to create lawyers who act ethically and professionally, we need to help them develop “knowing-in-action,”<sup>66</sup> “reflection-in-action,”<sup>67</sup> and “reflection on our past reflection-in-action.”<sup>68</sup> An action in a moment of professional practice requires using general expertise, acquired by both education and experience, to meet the demands of the moment, which is what Schön describes as reflection-in-action.<sup>69</sup> Consistent with practical wisdom’s emphasis on adapting the general to the particular, the reflective practitioner has both broad-based, general understandings and the often-overlooked skill of applying those understandings to unique situations. When Daphne counsels Carla, she is informed by her substantive and technical knowledge and by her years of experience in counseling clients on plea offers. Her actions will begin from that base, but she will adapt in the moment to Carla’s particular vulnerabilities and strengths and to the facts of Carla’s legal situation. Nick’s decision about how to handle the mistake in the contract will begin from his knowledge of a lawyer’s ethical duties, his own moral framework, and the previous times he has had to deal with error.

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65. See DONALD A. SCHÖN, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* (1983); DONALD A. SCHÖN, *EDUCATING THE REFLECTIVE PRACTITIONER: TOWARD A NEW DESIGN FOR TEACHING AND LEARNING IN THE PROFESSIONS* (1987) [hereinafter SCHÖN, *EDUCATING*].

66. SCHÖN, *EDUCATING*, *supra* note 65, at 22–26.

67. *Id.* at 27–31.

68. *Id.* at 31.

69. *Id.* at 26.

He will adapt to take into account his law firm structure, the client's personality, and possible scenarios for correcting the problem. Maria will be informed by her years of trial experience, including cross-examination of other witnesses, but also by watching the facial expressions and other body language of the witness who is currently on the stand and adapting in a second to what she is reading there. Our three lawyers' abilities to adapt that experience and knowledge to the needs of the moment demonstrate what Schön calls "reflection-in-action."<sup>70</sup>

If our lawyers want to continue developing their professional abilities, however, they must not stop there. Schön importantly demonstrated that adapting in the moment is not enough for continued development of ethical capacities. After encountering the new or unexpected situation through reflection-in-action, the professional must then reflect upon the adaptation and action; she must reflect upon reflection-in-action. If Daphne, Nick, and Maria want to continuously improve as professionals, they must take the time to reflect upon what happened in recent professional actions so that the next time they encounter a new situation, they have learned from the previous one. Schön identifies a continuous cycle of action being informed by previous action and by reflection upon that action. He notes that "present reflection on . . . earlier reflection-in-action begins a dialogue of thinking and doing"<sup>71</sup> that leads to more skillful practice. Without reflection upon the reflection-in-action, the professional will not improve, but will be stuck in a cycle of repetitive responses. She will be unable to respond to new situations in adaptive ways, and her professional practice will become mechanical.

Similarly, philosopher Michael Pritchard has called upon educators to develop the professional's skills of perception and imagination.<sup>72</sup> Although Pritchard's ideas have developed from work with engineers, they also apply to lawyers.<sup>73</sup> Pritchard notes that good professionals perceive their client's particular situations in broad ways: they imagine both the way in which their client experiences the situation and alternative solutions for the client.<sup>74</sup> Perception requires empathy,<sup>75</sup> defined as being able to take the perspective of the client. Empathy is developed through careful attention to the client.<sup>76</sup> Empathy is not an innate ability; it is a skill that must be devel-

70. *Id.*

71. *Id.* at 31.

72. Mike Pritchard, *Perception and Imagination in Engineering Ethics*, 21 INT'L J. OF ENGINEERING EDUC. 415 (2005) [hereinafter Pritchard, *Perception*]; MICHAEL S. PRITCHARD, PROFESSIONAL INTEGRITY: THINKING ETHICALLY (2006) [hereinafter PRITCHARD, PROFESSIONAL]. Pritchard also notes the importance of reflection to professional practice. *Id.*

73. PRITCHARD, PROFESSIONAL, *supra* note 72, at ix.

74. Pritchard, *Perception*, *supra* note 72, at 415.

75. *Id.* at 415–16.

76. *Id.*

oped.<sup>77</sup> Without it, one will not be able to inform reason with empathy, to appreciate what the right thing is for the situation in this moment.<sup>78</sup> Pritchard's perspectives on empathy reinforce Rest's work on moral sensitivity and Schwartz and Sharpe's description of the role of empathy in practical wisdom, and help translate them to the context of professional action. Indeed, Hamilton and Monson suggest that empathy can be used as a proxy for Rest's component of moral sensitivity.<sup>79</sup>

Pritchard links a professional's imagination to perception, which affects how humans will encounter situations.<sup>80</sup> According to him, a professional's perception determines what is salient about a situation. Perception then determines what one imagines as possibilities.<sup>81</sup> For lawyers, perception will be informed by "thinking like a lawyer," a skill acquired through both education and experience. It may begin with sorting relevant from irrelevant facts, a skill learned as a first-year law student. But it will also be informed by the lawyer's professional identity, which calls upon the more sophisticated skill of integrating knowledge of professional standards with personal values. Perception and imagination will also be determined by non-cognitive skills such as empathy and kindness, as well as practical skills such as interviewing and counseling.

Consistent with Aristotle's concept of the acquisition of virtues, Pritchard argues that professional habits and virtues can broaden the lens of perception and insure that the professional "notice[s] what others fail to notice."<sup>82</sup> He notes:

In the end, ethical values appropriate to a profession must be joined with professional commitment, competence, and imagination in order to provide a complete picture of the virtues in professional life . . . . This requires a blending of moral dispositions and professional expertise; and this is not primarily a matter of making this or that momentous, ethical decision. It is a way of (professional) life.<sup>83</sup>

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77. *Id.*

78. *Id.*

79. Neil W. Hamilton & Verna E. Monson, *Answering the Skeptics on Fostering Ethical Professional Formation (Professionalism)*, 20 *PROF. LAW* 3 (2011). Equating ethical sensitivity to empathy allows educators to use assessment techniques developed for empathy for measuring moral sensitivity. Pritchard's work is also consistent with the Sullivan and Rosin study, discussed above, which found that a pedagogy for practical wisdom must include understandings of community. *See SULLIVAN & ROSIN*, *supra* note 22. In the context of legal education, community would include asking the student to imagine what other lawyers would do in the situation. Imagination is useful for the professional not only as a way to understand the client's perspective, but also as a way to understand how others would apply professional norms and obligations to the situation.

80. Pritchard, *Perception*, *supra* note 72, at 416.

81. *Id.*

82. *Id.*

83. PRITCHARD, *PROFESSIONAL*, *supra* note 72, at 141.

Pritchard is not the only one who has invoked imagination as a way of capturing the complex interaction of a professional's capacities. The Carnegie study of clergy education uses "the pastoral imagination" as a metaphor for identifying the formative goal of clergy education.<sup>84</sup> It defines pastoral imagination as "a distinctive way of seeing and thinking that permeates and shapes clergy practice."<sup>85</sup> The pastoral imagination results from integrating "knowledge and skill, moral integrity, and religious commitment in the roles, relationships, and responsibilities [students] will be assuming in clergy practice."<sup>86</sup> The study found that learning vital skills of theological reflection and ministerial reflection are essential to the development of the pastoral imagination.

Similarly, noted legal scholar James Boyd White has called for lawyers to develop and exercise "the legal imagination," so that they conceive of the law broadly as "habits of mind and expectations—what might also be called a culture."<sup>87</sup> In his argument to law students that they should develop their legal imaginations, he challenges them to think about the ends of their legal educations: "How will you, you personally, as an independent mind, respond to and attempt to control the pressure of your training in the law?"<sup>88</sup>

### 3. *Professional Ethics: Understanding How Lawyers Develop and Implement Ethical Skills*

As mentioned earlier, both our understanding of lawyers' ethical responsibilities and of professional education have been influenced by growth in the fields of professional responsibility and professionalism. Practical wisdom as a framework can encompass the scholarly work on professionalism to help us understand the complexity of capturing aspirational values beyond the disciplinary rules that govern lawyers.

Finding a consistent definition of professionalism is challenging. While a number of people have written about professionalism, Hamilton notes that "legal scholars have so far been unable to construct and agree on a widely-accepted, clear, and succinct definition of 'professionalism.'"<sup>89</sup> However, two particularly helpful syntheses of the literature shed light on

84. CHARLES R. FOSTER ET AL., *EDUCATING CLERGY: TEACHING PRACTICES AND PASTORAL IMAGINATION* 13 (2006).

85. *Id.*

86. *Id.*

87. JAMES BOYD WHITE, *THE LEGAL IMAGINATION* xiii (abr. ed. 1985).

88. *Id.* at 7.

89. Neil Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, 5 U. ST. THOMAS L.J. 470, 480 (2008). Hamilton notes that there are three types of professionalism scholarship. The first discusses professionalism without defining it, seeming to assume that the definition is self-evident; the second defines it through identification of one or more core values; and the third dismisses it as "a misguided concept," focusing more on the consequences of its absence rather than defining its presence. *Id.* at 480–82.

what is required of lawyers such as Nick, Daphne, and Maria. They help us answer the question of what qualities of professionalism should be included in a model of practical wisdom for lawyers. First, Patrick Longan has synthesized the literature to identify five virtues of the professional lawyer. They are: (1) fidelity to the law, (2) fidelity to the client, (3) responsibility for the public good, (4) professional competence, and (5) civility.<sup>90</sup> Similarly, Neil Hamilton offers his synthesis of the professionalism literature and has also distilled it into five attributes. They are: (1) personal conscience (in which he explicitly incorporates Rest's four capacities), (2) the ethics of duty, (3) the ethics of aspiration, (4) the duty of peer review, and (5) the fiduciary duty to refrain from self-interest in the service of the client and the public purpose of the profession.<sup>91</sup>

Longan's and Hamilton's syntheses help us understand the virtues that legal education must develop in our students if we want them to exercise practical wisdom. They emphasize the importance of multiple integrated capacities for ethical professional action, and they reflect the profession's understanding of what capacities are required.

In addition to the professionalism literature, scholarship regarding the history of the professions and their role in American life helps us understand what qualities we need in lawyers.<sup>92</sup> Through this broader societal lens, we understand that Daphne, Nick, and Maria's ability to do the right thing in these moments is not only what is best for their clients, but it also justifies the trust placed in professionals that is the basis for the long-standing social contract between society and the professions. It is that contract that justifies self-regulation and the privileged place of professionals in modern society.<sup>93</sup> Therefore, a concept of practical wisdom for lawyers must encompass the historical justification for the peer-reviewed professions, including law.

## II. PUTTING IT ALL TOGETHER: PRACTICAL WISDOM AS A FRAMEWORK FOR REIMAGINING LEGAL EDUCATION

Most, if not all, of the theories discussed above have influenced legal education in one way or another, as have other helpful concepts not discussed for reasons of limited time and space. However, legal educators have only recently begun to take seriously rethinking the purposes and methods of legal education. We need a coherent theory to shape the changes to come. Practical wisdom, as a complement to the Carnegie Foundation's focus on professional identity, is that theory.

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90. Patrick E. Longan, *Teaching Professionalism*, 60 *MERCER L. REV.* 659, 665–69 (2008).

91. Hamilton, *supra* note 89, at 482–83.

92. See SULLIVAN, WORK, *supra* note 64; WILLIAM F. MAY, *BELEAGUERED RULERS: THE PUBLIC OBLIGATION OF THE PROFESSIONAL* (2001).

93. MAY, *supra* note 92, at 55–68.

A framework of practical wisdom builds upon an ethical professional identity, one in which the lawyer integrates professional and personal skills and values. It goes beyond identity, however, and demonstrates the desired end of a developed professional identity: ethical action. Practical wisdom also resonates more intuitively than does framing our work in terms of professional identity alone. Because wisdom is the distinctive trait offered by lawyers to their clients, it is easier to understand the importance of teaching knowledge, habits, and virtues that will prepare lawyers to exercise practical wisdom than it is to explain why developing a lawyer's professional identity matters. Wisdom is the desired outcome; developing an ethical professional identity is a precursor to that outcome. An ethical professional identity is necessary, but it is not sufficient for ethical action.<sup>94</sup>

There is another advantage to practical wisdom. It addresses not just how we prepare our students for ethical action, but also how we prepare them for fulfilled lives. Aristotle believed that practical wisdom is essential to human flourishing, which to him was the purpose of life. Modern happiness studies show that Aristotle's hypothesis is confirmed by science. Happiness requires close social connections and is enhanced when we are engaged in our work and find meaning in it. Schwartz and Sharpe describe a "virtuous circle": people are happiest when their work has meaning and provides the discretion to use their judgment.<sup>95</sup> That discretion allows the development of the wisdom needed to do the work well. In turn, people are motivated to develop judgment so that they can do their work well and serve others, which makes them happy. "It turns out that the characteristics of work that most demand the exercise of practical wisdom are the same characteristics that make work engaging, meaningful, and potentially satisfying."<sup>96</sup>

This is good news for lawyers, law students, and legal education. By focusing on teaching for practical wisdom, we are also enhancing our students' chances of living out the purpose that brought them to law school and achieving fulfilled lives.

In sum, the framework of professional wisdom can help us understand how the best lawyers do the right thing in the moment. It emphasizes that we are trying to cultivate multiple capacities in future lawyers. It is broad enough to allow synthesis of social science research about moral identity, moral reasoning, and moral action; educational theory about how students learn; scholarship on professions generally and lawyers, in particular; and professional norms and values. It demonstrates that while an ethical professional identity is necessary, it is not sufficient. Identity is one of the multiple capacities that students must develop so that they can exercise practical

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94. See Muriel J. Bebeau, *Promoting Ethical Development and Professionalism: Insights from Educational Research in the Professions*, 5 U. ST. THOMAS L.J. 366, 368 n.6 (2008).

95. SCHWARTZ & SHARPE, *supra* note 20, at 284.

96. *Id.* at 280.



wisdom. Likewise, practical wisdom makes it clear that a focus on reasoning—the comfort zone of legal education—is valuable, but it is not enough. Practical wisdom provides a focus not only on *what* we are trying to develop in our students; it answers the *why*.

### III. MOVING FORWARD: A PRACTICAL WISDOM RESEARCH AGENDA FOR LEGAL EDUCATION

Legal education reform will be enhanced by the framework of practical wisdom, and legal educators can build upon existing work to understand how to make needed reforms. We must also recognize that there are many unanswered questions about how to adapt legal education to a new goal of developing practical wisdom. There is a rich research agenda for those who are interested, stemming from the particular context of professional action, the unique history and nature of legal education, the developmental character of acquiring the virtues that will allow one to exercise practical wisdom, and the potential for interdisciplinary collaboration. In the following sections, I address the need for research around the following questions: (1) how should the existing understandings of practical wisdom be adapted for the context of professional action?; (2) what does practical wisdom look like when exercised by lawyers in moments of professional practice?; (3) what are effective strategies for developing practical wisdom in law students?; (4) what are effective strategies for supporting the continued development of practical wisdom in lawyers?; and (5) what can we learn from other professions?

#### A. *How Should Practical Wisdom Be Adapted for the Context of Professional Action?*

Lawyers are required to not only develop the multiple capacities for practical wisdom, but they must do so while taking into account particularized professional norms and requirements and acting in conditions of inherent uncertainty. Moreover, lawyers act on behalf of someone else, a client. At the heart of a lawyer's actions is the fiduciary obligation owed to the client. Therefore, ethical lawyers must not only have developed the multiple capacities that allow them to exercise practical wisdom, they also have to integrate those capacities with the special responsibilities of a lawyer. This challenge brings with it another: while we expect the lawyer to act ethically, she is also in a position to help another act ethically through the client's exercise of practical wisdom. Therefore, the lawyer must understand enough about what it takes to act ethically to help her client act ethically.

A concept of practical wisdom for lawyers must take into account the special attributes and obligations of being a professional. These include the lawyer's specialized knowledge or expertise, developed through lengthy education and enhanced by experience. That expertise includes proficiency in

the legal profession's normative values, including both the code of professional conduct and more tacit, communal understandings about ways of behaving. Additionally, lawyers act on behalf of someone else. That fiduciary obligation requires the suppression of self-interest and also calls upon an ability to empathize with another and to imagine someone else's perspective. This fiduciary obligation may include an obligation to help others act as moral agents, which requires the lawyer to be able to counsel and support clients in their own desires to act as moral agents. Moreover, members of a profession have a duty of public service, arising from the historic relationship between society and the professions. This obligation of public service means that many professionals become community and national leaders, calling for moral actions in enlarged contexts.

As professionals, lawyers must exercise judgment under conditions of inherent uncertainty. They are often called upon to collaborate with others and to act within institutional contexts. Their collective ability to display practical wisdom justifies the trust placed in professionals by society and the social contract that allows professionals to continue to self-regulate.

The obligations, tensions, and pressures attendant to being a professional must be incorporated into a concept of practical wisdom that will work for legal education and the profession. However, much of the research encompassed by a framework of practical wisdom has been developed in the context of individuals taking actions for themselves rather than in the particular context of professional action. There is a resulting need to build upon our existing understandings by addressing the special nature of the lawyer as professional.

*B. What Does Practical Wisdom Look Like When Exercised by Lawyers in Moments of Professional Practice?*

As part of developing the research on practical wisdom for lawyers, there is a need to identify what it looks like in action, to expand our understanding of what the best lawyers do when they exercise practical wisdom. We need to answer such questions as: What does practical wisdom look like when exercised by lawyers in moments of professional practice? How do lawyers access their education and experience in real time, adapting to the particular situation?

There is some basis for beginning this work, but expansion is needed. We can look to research on professionalism as a model for exploring practical wisdom in lawyers, as well as the ways in which measurement tools developed for moral psychology have been applied to professionals. Hamilton has concluded that “[t]o date, no adequate comprehensive assessment tool is available to assess a professional’s progress on internalizing the ele-

ments of professionalism,”<sup>97</sup> and none of the existing models has attempted to measure the use of the multiple capacities simultaneously.

Possible methods for exploring practical wisdom include interviews, role-playing, and surveys, as well as adapting existing tools for the situations in which lawyers must exercise practical wisdom. Rest and others have developed tools for measuring moral sensitivity, judgment, and motivation, but an effective tool for measuring moral motivation has not been developed. Using the existing tools based on Rest’s model falls short of capturing the whole picture of what happens when a lawyer exercises practical wisdom. Those tools measure some of the individual components of practical wisdom. They do not address all of the components of practical wisdom, nor do they measure the interaction of these components. Further, Rest’s model and the measurement tools he developed have not been adapted for the context of lawyers’ work.<sup>98</sup>

To the extent that measuring moral sensitivity, judgment, and motivation are helpful to an exploration of practical wisdom, we may look to the work of Muriel Bebeau. She has applied Rest’s model to dental students and dentists,<sup>99</sup> and has developed particularized measurement tools for moral sensitivity and moral judgment in the context of dental practice. Bebeau has also developed a Professional Role Orientation Inventory, which assesses commitment to professional values over personal values, and has used exemplars in teaching dental students.<sup>100</sup> Bebeau’s work provides a model for adapting tools to the professional context in ways that could be helpful for legal educators.

### C. *What are Effective Strategies for Developing Practical Wisdom in Law Students?*

Legal education is highly formative, requiring us to be intentional about what we are forming. The empirical research of psychologists and of educators demonstrates that the right kinds of experiences support the development of moral judgment and moral behavior, consistent with Aris-

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97. Hamilton, *supra* note 89, at 503.

98. Although tools have not been comprehensively developed for applying Rest’s model to lawyers or law students, several legal educators have recommended that they hold promise for legal education. See Timothy W. Floyd, *Moral Vision, Moral Courage, and the Formation of the Lawyer’s Professional Identity*, 28 MISS. C. L. REV. 339 (2009); Hamilton & Monson, *supra* note 79; Clark D. Cunningham & Charlotte Alexander, *Developing Professional Judgment: Law School Innovations in Response to the Carnegie Foundation’s Critique of American Legal Education*, in *THE ETHICS PROJECT IN LEGAL EDUCATION* (Michael Robertson, et al. eds., 2011).

99. Bebeau, *supra* note 94; Muriel J. Bebeau, *Influencing the Moral Dimensions of Dental Practice*, in *MORAL DEVELOPMENT IN THE PROFESSIONS: PSYCHOLOGY AND APPLIED ETHICS*, *supra* note 47.

100. JAMES T. RULE & MURIEL J. BEBEAU, *DENTISTS WHO CARE: INSPIRING STORIES OF PROFESSIONAL COMMITMENT* (2005). Aristotle recommended the use of exemplars in the development of practical wisdom, and Lawrence Kohlberg recommended that exemplars be used in developing moral judgment skills.

totle's notion that the right kinds of experiences support the development of practical wisdom. Just as important as providing the right kinds of formative experiences is avoiding the wrong kinds of experiences. The framework of practical wisdom provides helpful perspectives for reimagining law school curriculum and pedagogy so that the full potential of the formative educational experience is captured.

First, practical wisdom and the research underlying it responds to skeptics who argue that we have no responsibility for students' ethical formation because their characters are already formed by the time they begin law school. Practical wisdom develops over a lifetime of experiences, including education. Aristotle's original understanding of practical wisdom as the acquisition of virtues through habit, the modern formulations of his concept, and the consistent social science research all demonstrate that the effort is required and is worthwhile.

Second, the complexity of practical wisdom makes it clear that fostering ethical action requires that we develop multiple, interrelated capacities in our students and that we guide them toward balanced and nuanced deployment of those capacities. A framework of practical wisdom helps to unpack the requirements of a pedagogy of ethical formation along the lines of the Sullivan and Rosin study, or by focusing on Rest's four capacities for ethical action, or on particular virtues. It emphasizes the importance of teaching skills of reflection and of developing non-cognitive capabilities, such as empathy. It puts the development of a lawyer's imagination on the list of pedagogical tasks. A model that allows for this complexity helps us understand the tasks and challenges legal educators to move beyond their traditional emphasis on the cognitive, just as the Carnegie report does.

Third, a framework of practical wisdom reveals that law school's traditional approach to teaching ethics is stronger on what Schwarz and Sharpe characterize as moral skill (synonymous with Rest's capacities of moral sensitivity and judgment) than on moral will (synonymous with Rest's capacities of moral motivation and implementation). Traditional professional responsibility courses and discussions of the ethical rules in other courses are often aimed at developing law students' sensitivities to the particular ethical issues that arise in lawyering situations. Similarly, the development of judgment, including moral judgment, is a well-established strength of legal education. The perspective of practical wisdom reveals the areas in which legal education is deficient in teaching ethical skills. It demonstrates that a lawyer who has only some of the needed capacities will not be equipped for ethical action if other capacities are missing. It teaches us that addressing only capacities for moral skill, and not those for moral will, leaves our students, and ultimately those who depend upon them, at risk for falling short of ethical action. Similarly, failing to teach students how to balance the multiple capacities they are developing in ways that allow them to pay attention and adapt to the immediate situation, leaves them unpre-

pared for ethical action. And, developing only some, but not all, of Lon-gan's five virtues or Hamilton's five attributes of professionalism, leaves them unprepared for the challenges they will encounter. These potential deficiencies, revealed through the lens of practical wisdom, reveal ripe areas for research about law school pedagogy and curriculum.

A framework of practical wisdom also recognizes the effect of the overall institutional environment of law school. Schwartz and Sharpe's critique of American institutions is applicable to law school. They note that the primary barriers to practical wisdom are rules and incentives, both of which are often used as motivators in law school. A law school environment that creates a grade-based hierarchy or that prizes the application of rules to the exclusion of discretion may be creating impediments to the development of practical wisdom and therefore to our students' abilities to act ethically.

Fortunately, there are better-developed resources relating to the educational environment than there are relating to understanding practical wisdom as it occurs in moments of professional practice. For example, we can build upon Larry Krieger's work, which shows that law students' moral motivation shifts from intrinsic values to extrinsic values during the first year of law school and that they do not experience a shift back to internal motivations later in law school.<sup>101</sup> This shift undermines practical wisdom. Krieger and Sheldon have also demonstrated that students at law schools that provide autonomy support experience lower declines in well-being and satisfaction and other positive indicators than did students at schools without autonomy support.<sup>102</sup> Their findings underscore the importance of the overall institutional environment for students' ethical formation and development of practical wisdom.

The innovative work of the Holloran Center likewise demonstrates that particular pedagogical interventions and the right kind of institutional environment can support the development of law students' capacities for moral action. Hamilton and Monson have drawn upon moral psychology to call for legal educators to set aside their "outdated understanding" of the developmental nature of ethical capacities and adopt changes that will support ethical formation.<sup>103</sup> Consistently with Bebeau and with the Sullivan and Rosin study, they have found that pedagogy that fosters students' moral reasoning, motivation, and identity has three characteristics: it provides feedback on students' ideas and conduct; it allows for self-assessment; and it develops skills of reflection.<sup>104</sup>

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101. Krieger, *supra* note 54.

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

103. Hamilton & Monson, *supra* note 79.

104. *Id.*

Recent work on professional identity in the wake of the Carnegie report highlights what are the right kinds of experiences for students' ethical formation and is instructive about what the wrong kinds of experiences are. The Sullivan and Rosin study offers a framework specifically designed to develop practical wisdom. And the development of pedagogical scholarship during the past several decades has enlarged our understanding of the potential of law school to integrate practical and normative skills with the teaching of subject matter.<sup>105</sup>

Legal educators can look to the work of Muriel Bebeau with dental students, which demonstrates that students learning to be professionals can develop their ethical capacities through appropriately-designed educational experiences.<sup>106</sup> The pedagogy and assessment instruments she has developed for dental education are transferable to legal education.<sup>107</sup> Also instructive for legal education, Bebeau has emphasized the importance of the "educational milieu"<sup>108</sup> in students' ethical development as have medical education professionals who have identified the influence of the "hidden curriculum" on the formation of medical students.<sup>109</sup>

Understanding of legal education pedagogy has grown substantially in the last two decades, as has the quality of pedagogical scholarship. However, a framework of practical wisdom will guide future understandings of how best to reform legal education in productive ways.

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105. See, e.g., GERALD F. HESS & STEVEN FRIEDLAND, *TECHNIQUES FOR TEACHING LAW* (1999); *TEACHING THE LAW SCHOOL CURRICULUM* (Steven Friedland & Gerald F. Hess eds., 2004); MICHAEL HUNTER SCHWARTZ ET AL., *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* (2009); Jess M. Krannich et al., *Beyond "Thinking Like a Lawyer" and the Traditional Legal Paradigm: Toward a Comprehensive View of Legal Education*, 37 *DENV. U. L. REV.* 381 (2009); Laurie A. Morin, *Reflections on Teaching Law as Right Livelihood: Cultivating Ethics, Professionalism, and Commitment to Public Service From the Inside Out*, 35 *TULSA L.J.* 227 (2000); Michael Hunter Schwartz, *Teaching Law Students to be Self-Regulated Learners*, 2003 *MICH. ST. DCL L. REV.* 447 (2003); Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education Into Doctrinal Pedagogy*, 6 *WID. L. SYMP. J.* 49 (2000); Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 *FORDHAM L. REV.* 997 (2004).

106. Bebeau, *supra* note 94, at 380–81.

107. Among her recommendations are that professional schools focus on pedagogies that address each of the four capacities Rest finds necessary for ethical action, and, that in doing so, they use instructional methods that provide opportunities for reflection, feedback, and good assessment. *Id.* at 380–83.

108. *Id.* at 380.

109. MOLLY COOKE ET AL., *EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY* 64 (2010). The hidden curriculum includes the "enacted values" that students experience from the institutional environments in which they are educated; its influence is particularly damaging when they are at odds with the stated values or those that are taught in the curriculum. *Id.*

D. *What are Effective Strategies for Supporting the Continued Development of Practical Wisdom in Lawyers?*

Because empirical research demonstrates that a person's capacity to behave ethically continues to develop over a lifetime and that the growth is a result of their experiences in addition to education, it is vital that lawyers are supported in their continued development of practical wisdom after they graduate from law school. The way that professions are organized and the structures within which professionals practice make a difference as to whether lawyers will act ethically.

Therefore, a framework of practical wisdom provides a lens for understanding how bar associations, lawyers' work environments, and other institutional actors should be organized to best support practical wisdom. Studies such as Leslie Levin's research into the influence of the American Immigration Lawyers' Association on the professionalism of immigration lawyers provide significant insights.<sup>110</sup> Similarly, Stephen Boutcher's study of law firms' decision-making about pro bono efforts demonstrates the influence of external sources on law firm culture and the ways in which that culture shapes those who work within it.<sup>111</sup>

If we view those, and other institutional actors, through the lens of practical wisdom, we have a framework that can help us articulate why certain structures and activities either support the kind of conduct we want or erode the ability to access the multiple capacities required for practical wisdom.

E. *What Can We Learn From Other Professions?*

A research agenda to understand how to develop and support practical wisdom in lawyers should be undertaken in collaboration with those in other professions. As discussed earlier, there is helpful work in engineering, clergy, and dental education that has relevance for legal education. Just as we contemplate what we want from lawyers, we can envision the complex demands on other professionals in moments of practice. The challenges faced by our three lawyers are similar to those faced by a clergyperson who must respond to a fractured family at a moment of loss while struggling with her own feelings of grief and doubt. It is similar to the challenges faced by a trauma surgeon who must leave an important family event when

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110. See Leslie C. Levin, *Specialty Bars as a Site of Professionalism: The Immigration Bar Example*, 8 U. ST. THOMAS L.J. 194 (2011). Levin notes that bar associations are one of four institutional settings that affect lawyers' conceptions of professionalism. *Id.* at 195 (citing Robert L. Nelson & David M. Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Context*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATION IN THE AMERICAN LEGAL PROFESSION* 179, 185 (Robert L. Nelson et al. eds., 1992)). The others are legal education, disciplinary enforcement, and the workplace. *Id.*

111. See Stephen A. Boutcher, *Rethinking Culture: Organized Pro Bono and the External Sources of Law Firm Culture*, 8 U. ST. THOMAS L.J. 108 (2011).

he is called to the emergency room to treat a woman who has been seriously injured in an auto accident, requiring him to not only deal with personal tensions but also to direct a team of other medical professionals involved in the patient's diagnosis and treatment and prepare for his own surgical duties.<sup>112</sup> Similarly, a structural engineer who learns that she has made a mistake in designing a large urban building that could cause the building's collapse must decide how to best address the problem, putting aside concerns about her own reputation and career to protect public safety.<sup>113</sup>

For too long, legal educators have looked only to each other to understand what law schools should be doing. We have more in common with other professions than we have differences, and we can learn from both. The Carnegie Foundation's Preparation for the Professions project provides an excellent starting point for interdisciplinary understanding.<sup>114</sup> We can build upon existing interdisciplinary work through collaborations involving both research and teaching. Understanding how other professionals develop, and then exercise, practical wisdom will enlarge our understanding of how to meet the challenges facing lawyers and legal education.<sup>115</sup>

#### CONCLUSION

As we address the current challenges facing legal education, we must think about new ways of conceptualizing and fulfilling our purpose as legal educators. If we think about our students as they will be when they leave us—as lawyers who face difficult challenges that require them to respond as moral human beings and ethical lawyers—we can reimagine the purpose of a legal education. The current emphasis on formation of professional identity is a positive development toward that end. It holds great promise for reform. Pairing our developing understanding of professional identity with an understanding of practical wisdom will further enhance the opportunities for innovation for both legal education and the profession. Practical wisdom answers the question of why it is important that our students de-

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112. This scenario is based upon a more developed snapshot of a physician's life provided in the book *Educating Physicians*. See COOKE ET AL., *supra* note 106, at 35.

113. This is based upon the true case of William LeMessurier, who revealed the problem that cost millions of dollars to correct. See Pritchard, *Perception*, *supra* note 72, at 419–20.

114. The Preparation for the Professions project studied law, nursing, clergy, medicine, and engineering education. See SULLIVAN ET AL., *supra* note 7; COOKE ET AL., *supra* note 109; FOSTER ET AL., *supra* note 84; SHERI D. SHEPPARD, ET AL., *EDUCATING ENGINEERS: DESIGNING FOR THE FUTURE OF THE FIELD* (2009); PATRICIA BENNER, ET AL., *EDUCATING NURSES: A CALL FOR RADICAL TRANSFORMATION* (2010). Neil Hamilton provides an excellent synthesis of the Carnegie Foundation's five studies on educating professionals. See Neil Hamilton, *Fostering Professional Formation (Professionalism): Lessons from the Carnegie Foundation's Five Studies on Educating Professionals*, 45 CREIGHTON L. REV. 763 (2012). Hamilton finds that there is significant agreement among the studies on what constitutes professional formation and what pedagogies support professional formation. See *id.* at 775.

115. See, e.g., Daisy Hurst Floyd et al., *Learning from Clergy Education: Externships Through the Lens of Formation*, 19 CLINICAL L. REV. 83 (2012).



velop ethical professional identities. It also raises questions about how we apply the lessons of practical wisdom to our particular context. Answering those questions creates a research agenda that can enhance our understanding of legal education and of lawyers' work.