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CULTIVATING ETHICAL, SOCIALLY RESPONSIBLE LAWYER JUDGMENT: INTRODUCING THE MULTIPLE LAWYERING INTELLIGENCES PARADIGM INTO THE CLINICAL SETTING

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The exercise of judgment in legal decision-making and problem-solving is inherently complex, requiring the lawyer to draw on a multiplicity of intellectual capacities. Although central to lawyering, the development of independent professional judgment is not given appreciable attention in the conventional law school curriculum. Indeed, focusing almost exclusively on rule-based inductive, deductive, and categorical reasoning processes and linguistic precision, traditional law school pedagogy neglects other kinds of intellectual activity such as narrative, interpersonal, intrapersonal, and strategizing work, all of which are essential to the exercise of sound legal judgment. This disproportionate privileging of some lawyering intelligences over other equally important ones has been shown to effectively desensitize law students to personal and structural concerns that are critical to the sort of broad-gauged, contextualized, and morally nuanced judgment that is the hallmark of ethical and socially responsible lawyering.

To counteract this tendency, this Article elaborates the concept of "multiple lawyering intelligences," a pedagogical construct designed to expand our frame of reference for what it means to "think like a lawyer." The lawyering intelligences framework names a range of intellectual activities engaged in by lawyers across all kinds of legal work, and includes logical-mathematical, linguistic, categorizing, narrative, intrapersonal, interpersonal, and strategic intelligences. The Article explores the ways in which conscious attention to the various multiple lawyering intelligences can enhance the quality of both the lawyer's exercise of independent professional judgment and the

* Associate Professor of Law, City University of New York (CUNY) School of Law. I would like to thank Professor Peggy Cooper Davis for introducing me to the multiple intelligences concept, and for her encouraging and helpful comments and suggestions on early drafts of this paper. Thanks are also in order to (former Dean) Daan Braveman of Syracuse University College of Law for material support for the early research on the paper, to Arlene Kanter, Deborah Kenn, and Peter Joy for their comments and suggestions on early drafts, and to all the students who participated in the Children's Rights and Family Law Clinic during the 1998-2003 terms and who endured my pedagogical experiments with the multiple lawyering intelligences paradigm, and who provided needed and useful feedback and critiques of my efforts.

choices made as a result of that process. The Article also suggests some ways clinical teachers can use the lawyering intelligences framework to more consciously and deliberately assist students in their development of the divergent, complex, and morally-referenced thinking involved in the exercise of independent professional judgment.

I. Introduction

The ethical rules guiding lawyer-client relationships mandate that lawyers exercise "independent professional judgment" in representing clients.[1] In accordance with the dominant view of the lawyer's role, the profession's ethical norms specify that lawyers provide clients "with an informed understanding of the client's legal rights and obligations" and explain the practical implications or those rights and obligations.[2] Along with this deeply embedded and preeminent emphasis on legal rights in the ethical rules governing lawyer conduct, there is also a recognition (albeit a sort of off-handed one) of the law's inseparability from practical, moral, and ethical concerns inherent in the realities of human conflict situations. Authorizing the lawyer to refer to concerns such as "moral, economic, social and political factors" when advising a client,[3] the Comment to Rule 2.1 notes that because such concerns "may decisively influence how the law is applied," advice premised entirely upon a technical interpretation of legal rules "may be of little value to a client."[4] In light of the rules' discretionary stance regarding issues other than those of a specifically legal character, on-going exploration about the extent to which lawyers should engage clients in such discussions, and approaches they might adopt in doing so, fills the literature.[5]

[1] "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice." American Bar Association, Model Rules of Professional Conduct, R. 2.1 (2003) (Advisor) (hereinafter Model Rules).

[2] *Id.*, pmbl. sec. 2.

[3] "In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation." *Id.*, R. 2.1.

[4] "Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied." *Id.*, Comment to R. 2.1.

[5] *See, e.g,* John M. Burman, *Advising Clients About Nonlegal Factors,* 27-Feb Wyo. Law 40 (2004); Larry O. Natt Gant, II, *Integration as Integrity: Postmodernism, Psychology, and Religion on the Role of Moral Counseling in the Attorney-Client Relationship*, 16 Regent U. L. Rev. 233 (2003/2004); Peter Margulies, *"Who Are You To Tell Me That?": Attorney-Client Deliberation Regarding Nonlegal Issues and the Interests of Nonclients,* 68

Despite the profession's reluctance to mandate that lawyers bring non-doctrinal issues to the table when giving advice, it seems unlikely that a lawyer fulfills her duty to provide a client with adequately informed assessments of the strengths and weaknesses of alternatives, and to provide reasoned opinions about the relative propriety of various options if she has not factored both legal rules and relevant contextual considerations into her deliberative calculus.[6] Given the prevalence of influences other than rights, powers, and obligations derived from formal legal rules, the notion that lawyer's judgment can be either truly "independent" or "professional" without reference to the potential impact of social, cultural, and structural factors operating within the situation appears untenable.[7]

Indeed, the rules stress that such things as financial and relationship interests often trump concerns rooted solely or primarily in legal rights and powers: "[a]dvice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people are predominant."[8] The lawyer therefore acts more consistently with her professional role when she brings to the client's attention the potential impact of the client's decision on other people, and when she engages in dialogue with a client around issues of "the right thing to do" than when she fails to do so. The practical realities of client situations more often than not justifiably demand more of the lawyer than an assessment of legal permissibility,[9] and it is therefore, in the words of the Model Rules, "proper for a lawyer to refer to relevant moral and ethical considerations in giving advice."[10]

N.C. L. Rev. 213 (1990).

6 Peter Margulies defines "nonlegal" issues generally as "issues apart from the narrow discussion of whether a client will prevail on a given legal point before a given tribunal and what the client can do to maximize her chances of prevailing. Peter Margulies, *Who Are You to Tell Me That?: Attorney-Client Deliberation Regarding Nonlegal Issues and the Interests of Nonclients,* 68 N.C. L. Rev. 213, 214 n.3 (1990). A range of non-doctrinal factors that may influence a given client's situation have been identified, and include social, cultural, and structural considerations. *See, e.g., id.* (arguing that "lawyers have a professional responsibility to counsel their clients on issues of morality, policy, and – in certain situations – psychology"); Model Rules, *supra* note 1 (moral, social, political); Restatement (Third) of the Law Governing Lawyers § 94(3) (2000) (moral, reputational, economic, social, political, and business).

7 *See generally* Burman, *supra* note 5; Gant, *supra* note 5; Margulies, *supra* note 6.

8 Model Rules, *supra* note 1, cmt. para 2.

9 "Human disputes, problems, conflicts, transactions, or events, while often having legal implications, most often involve a host of other concerns: intrapsychic (emotional), interpersonal (social, including both familial and more instrumentalist relations, as in employment), economic, political, moral, and religious." Carrie Menkel-Meadow, *The Lawyer as Problem-Solver and Third-Party Neutral: Creativity and Non-Partisanship in Lawyering*, 72 Temp. L. Rev. 785, 794 (1999).

10 *Id.*

In addition to non-doctrinal influences and concerns and interests of third parties, lawyers have an obligation to consider the ramifications of their judgments on others beyond clients and potentially affected third parties. Membership in the legal profession imposes upon lawyers duties inuring not only to the benefit of clients, but to the legal system and the public interest as well. Each lawyer is a "representative of clients, an officer of the legal system, and a *public citizen having special responsibility for the quality of justice.*"[11] In accordance with this caretaking obligation, the expectation of the profession is that lawyers will act "in conformance with justice, fairness, and morality" by counseling clients to take non-doctrinal considerations into account "when the client makes decisions or engages in conduct that may have an adverse effect on other individuals or on society," as well as when functioning as an agent for clients.[12] When lawyers do not account for social, cultural, and structural influences in their decision-making processes, cumulatively, and over time, decisions made and actions taken in contemplation of lawyers' judgments can and do result in a variety of negative consequences to clients, to non-clients, and to the quality of justice.[13]

Given its highly discretionary nature and inextricable entwinement with notions of morality, ethics, and justice, the exercise of independent professional judgment has substantial normative content. As the Model Rules point out, legal practice is fraught with "many difficult issues of professional discretion" which "must be resolved through the exercise of sensitive professional and moral judgment."[14] The often competing responsibilities of lawyers to clients, third parties, and the public demand much more of the lawyer than mastery of technical and interpretive complexities of reasoning and analysis required to understand the legality of alternative courses of action. These obligations demand that the lawyer appreciate and integrate a broad range of influences, concerns, and interests into her deliberative

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[11] *Id.*, pmbl. para. 1 (*emphasis added.*)

[12] ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) 213 (1992) [hereinafter "MACCRATE REPORT"].

[13] *See generally* DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION (2000); WILLIAM H. SIMON, THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS (1998); *see also* Nancy Rappoport, *Seeing the Forest and the Trees: The Proper Role of the Bankruptcy Attorney,* 70 IND. L. J. 783, 783-84 (1995) (surmising that the public's hostility toward lawyers may be partly attributable to a sense that lawyers are just "hired guns" who fail to consider the long-term implications of how their strategies affect society, and that "lawyers who further shortsighted, individual focused goals are imposing a real cost on society by not taking a more holistic approach").

[14] MODEL RULES, *supra* note 1, pmbl. para. 9.

process as she prepares to counsel and advise her clients. Noticeably, the rules of professional responsibility do not provide specific guidance to assist lawyers in this complex undertaking. As a result, some have argued, lawyers do not sufficiently consider or counsel clients with respect to non-doctrinal issues and the interests of third parties, with the result that "[e]veryday, lawyers and clients make decisions that do violence to others and create harshness and suffering, through the assertion of positions sanctioned by law."[15]

To date, the legal academy as a whole has done little to foster good judgment in its students. Indeed, law schools lag behind medical, architectural, and business schools where educators "have deliberately set out to teach judgment and artistry."[16] And even though clinical legal education holds special promise within the academy for moving students beyond a purely rule-normed, individual-centered, instrumentalist view of lawyering,[17] we are nevertheless reluctant to embrace judgment as a specific learning objective. As Professor Mark Aaronson points out, while "practical judgment . . . is the key faculty needed when lawyers seek to identify, assess, and propose concrete solutions in particular and often complex social circumstances . . . .exercising judgment as a subject within clinical legal education is usually something mentioned in passing, not something seriously explored."[18] As clinicians charged with training new generations of lawyers, we are in a unique position to minimize the violence, harshness, and suffering created by decisions made by lawyers and clients without regard to their larger social consequences. One of the ways we can ameliorate this situation is by explicitly identifying the criteria and consciously fostering the various intellectual capacities associated with independent professional judgment.

Given its critical importance in legal decision-making and problem-solving, it is at first blush perplexing that clinical teachers are reluctant to name judgment as an explicit pedagogical focus. On further contemplation, however, several reasons come easily to mind. For one, it is likely that a good number of clinicians share the belief that

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[15] Mark Neal Aaronson, *We Ask You To Consider: Learning About Practical Judgment in Lawyering,* 4 CLIN. L. REV. 247, 249 (1998).

[16] Judith Welch Wegner, *Lawyers, Learning, and Professionalism: Meditations on a Theme,* 43 CLEV. ST. L. REV. 191, 200-01 (1995).

[17] *See generally* Jon Dubin, *Clinical Design For Social Justice Imperatives,* 51 SMU L. REV. 1461 (1998); Linda Morton, *Teaching Creative Problem Solving: A Paradigmatic Approach*, 34 CAL. W. L. REV. 375 (1998); Katherine R. Kruse, *Biting Off What They Can Chew: Strategies For Involving Students In Problem-Solving Beyond Individual Client Representation*, 8 CLIN. L. REV. 405 (2002); Andrea M. Seielstad, *Community Building As A Means of Teaching Creative, Cooperative, And Complex Problem Solving in Clinical Legal Education*, 8 CLIN. L. REV. 445 (2002).

[18] Aaronson, *supra* note 15, at 249.

good judgment is an innate character trait: either you have it or you don't, and it therefore cannot be taught.[19] On the other hand, while some may be guardedly optimistic that judgment can be taught or at least fostered, there is the epistemological problem: we may "know it when we see it," but we do not know how to describe good judgment in a way that is easily conveyed to students.

Some clinicians probably subscribe to at least one of these notions about teaching judgment, and I am sure other rationales present themselves to the reader's mind. I suspect, however, that a prime cause of clinicians' reluctance to teach judgment is that we lack a sufficiently precise language for talking about the diverse intelligences that are integral to the exercise of this complex quality. I propose that we can dramatically improve our students' ability to appreciate the range of intelligences called into play in making the complex normative choices required of lawyers in exercising independent professional judgment. With a conceptual model and vocabulary for talking about the criteria and standards associated with good judgment, we can more consciously develop methods and techniques to nurture our students' ability to reason about and make choices that are responsive to the particularities of clients' situations and are morally and ethically sound, and attuned to the broader social ramifications of those choices.[20] In short, the basic premise of this Article is that naming and understanding the intellectual capacities associated with lawyers' work can increase our comfort level with the idea that judgment can be nurtured. With this greater comfort level, we will be more inclined to design our courses to incorporate the exercise of independent, socially responsible judgment as an explicit pedagogical goal.

To some, "[i]t is a commonplace that good judgment is the most valuable thing a lawyer has to offer clients — more valuable than legal learning or skillful analysis of doctrine."[21] It therefore seems imperative that law schools take seriously the need to understand and teach students about what it means to exercise socially responsible and ethical professional judgment.[22] To assist in that endeavor, Part III of this

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[19] *See, e.g,,* Wegner, *supra* note 16, at 200 (asking why legal educators "do not set goals of teaching sound "judgment", and of striving for "artful" or "wise" exercise of such judgment?" and answering that "[p]erhaps law professors believe that judgment, artistry, and wisdom cannot be taught, or that we have no time for the endeavor, striving as we do to emphasize the rigors of analytical thought").

[20] *See, e.g.,* Alex Scherr, *Lawyers and Decisions: A Model of Practical Judgment,* 47 VILL. L. REV. 161, 277 (2002) (observing that "we may not be able to teach practical judgment, at least not fully, although we can talk about it, and suggest ways to guide what we do when we exercise it").

[21] David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times,* 9 GEO. J. LEG. ETHICS 31, 31 (1995).

[22] DEBORAH RHODE, IN THE INTERESTS OF JUSTICE 186 (1999) ("Any serious commit-

Article elaborates the concept of "multiple lawyering intelligences," a framework and vocabulary designed to enhance our understanding of and ability to nurture in our students the various intellectual and affective capacities associated with sound lawyer judgment. To provide a context for the description of the lawyering intelligences and their relationship to lawyer judgment, Part II will briefly outline some of the criteria identified by clinical scholars and others as crucial to sound lawyer judgment, and will note the detrimental effects of the conventional law school pedagogy on students' ability to exercise independent professional judgment. With this brief outline in place, particular criteria identified as essential to sound lawyer judgment will be taken up in more detail within the context of the discussion of each of the lawyering intelligences.

II. What Is Involved In The Exercise Of Independent Professional Judgment?

Comprising a range of qualities such as soundness, logic, discrimination, discernment, imagination, sympathy, detachment, impartiality, and integrity "[j]udgment is one of the most difficult topics to explore and to theorize about."[23]

However, we are not without guidance in trying to understand the complexities and nuances of this important lawyering quality. Drawing on a range of sources in jurisprudence, legal ethics, philosophy, and the social sciences, Mark Aaronson has developed perhaps the most comprehensive and accessible description to date of the criteria and dynamics associated with good lawyering.[24] According to Aaronson, the principal function of judgment in the legal context "is

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ment to improvements in the practice of law and the regulation of lawyers must start in law school . . . . Law schools should equip their graduates with legal knowledge, legal skills, and above all, legal judgment. Students should acquire the habits of mind and ethical values that will serve the public in the pursuit of justice."); *see also* Henry Rose, *Law Schools Should Be About Justice Too,* 40 Clev. St. L. Rev. 443, 445 (1992) (asserting that "[l]egal education should not be about ideology. But it should be about transmitting to students clear notions of what is expected of the 'good lawyer' as embodied by applicable codes of ethics and each law school's vision of professionalism").

[23] Aaronson, *supra* note 15, at 273.

[24] In developing his ideas about judgment, Aaronson relies on a range of contemporary and ancient sources including Dean Anthony T. Kronman, Karl Llewellyn, Aristotle, Immanuel Kant, Hannah Arendt, and Ronald Beiner. I caution the reader that my treatment here does not reflect the depth and nuance of his work. In my opinion Aaronson's sustained treatment of what he calls "the overlapping domains of good lawyering — role conceptualization, problem solving, decision making, and practical judgment" is required reading for those wishing to learn more about the criteria and dynamics of lawyer decision-making and judgment from a clinical legal education perspective. In addition to his 1998 article, *We Ask You To Consider, supra* note 15, see also Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering,* 9 Clin. L. Rev. 1 (2002).

to invoke and apply knowledge responsively when there are competing concerns and discrete decisions" to be made.[25] It "is the key faculty needed when lawyers seek to identify, assess, and propose concrete solutions in particular and often complex social circumstances."[26]

In these complex circumstances, "the expectation is that there is not likely to be a set, technical approach to follow to reach a solution nor necessarily a single determinant answer to resolve the matter."[27] In these decision contexts, good lawyer judgment is marked by a number of particularly salient characteristics, which include: (1) attention to a wide range of contextual information along legal, personal, social, and structural dimensions; (2) respect for and conscientious consideration of the perspectives of a variety of relevant persons and entities in addition to those of the client; (3) the ability to alternate between empathy and impartiality with respect to the client's desires; (4) appreciation of and commitment to moral values such as fairness, equity, and justice; (5) critical and imaginative action-oriented thinking; and (6) the ability to learn from experience. Working together, these qualities and abilities support what Aaronson describes as the defining characteristic of good judgment: "a highly developed talent for identifying and weighing competing considerations comprehensively and responsively."[28] In the next Part, I point out some ways in which linguistic, categorizing, logical-mathematical, narrative, interpersonal, intrapersonal, and strategizing intelligences are implicated in the exercise of independent professional judgment.

In comparison to this complex mix of capacities, conventional law school pedagogy focuses almost exclusively on linguistic, categorization, and de-contextualized logical reasoning abilities. Not coincidentally, these privileged capacities are also those most highly valued in the argumentative, adversarial aspects of lawyers' work.[29] Even though there is widespread agreement that the approaches to conflict resolution reflected in the prevalent image of lawyer as "gladiator" or "hired gun" does not adequately respond to the actual needs of clients

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[25] Aaronson, *supra* note 15, at 264.

[26] *Id.* at 249.

[27] *Id.* at 257.

[28] Aaronson, *Thinking Like A Fox, supra* note 24, at 37.

[29] *See generally* Alan M. Lerner, *Law & Lawyering In The Workplace: Building Better Lawyers By Teaching Students To Exercise Critical Judgment As Creative Problem Solver*, 32 AKRON L. REV. 107 (1999); Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering As Portrayed In The Clinical Teaching Implicit In The Law School,* 37 UCLA L. REV. 1157 (1990); Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations about Women, the Academy, and the Legal Profession,* 4 DUKE J. GENDER L. & POL'Y 119, 134 (1997).

and of society,[30] law schools nevertheless continue to emphasize this particular narrow band of intellectual abilities, thereby inculcating in students a default orientation toward a conception of lawyering grounded in a "win at all costs" mentality. This neglects interpersonal, intrapersonal, strategic, and narrative ways of knowing and reasoning that tend to feature prominently in lawyer functions such as advocate, planner, negotiator, mediator, and counselor.

Anthropologist and law professor Elizabeth Mertz provides compelling evidence that the faculty of judgment is a major casualty of what she calls the "dynamic process of socialization into the legal profession."[31] Using the tools of linguistic anthropology to investigate the linguistic patterns and discourse conventions in a cross-section of first year classrooms across America, Mertz convincingly demonstrates that the first year socialization process to which the majority of law students are subjected is one in which "increasingly instrumental and technical appeals to legal authority blunt moral and contextual judgment."[32] Meticulously recounting and analyzing actual classroom exchanges, Mertz points out how law professors control the dialogue in a way that "pulls students away from grounded moral judgment and fully contextualized consideration of human conflict."[33] In Mertz's account, this "decontextualized orientation" directs students' attention away from the narrative elements of character, plot, and context — "the drama of the conflict itself" — and towards substantive and procedural sources of legal authority.[34] This orientation toward legal pre-

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[30] *See generally* Carrie Menkel-Meadow, *When Winning Isn't Everything: The Lawyer As Problem Solver,* 28 Hofstra L. Rev. 905 (2002).

[31] Elizabeth Mertz, *Teaching Lawyers the Language of Law: Legal and Anthropological Translations*, 34 J. Marshall L. Rev. 91, 91 (2000).

[32] *Id.* at 114. *See also* Lerner, *supra* note 29, at 109 (suggesting that "the focus in law school on teaching students to 'think like lawyers' almost exclusively through the analysis of appellate court opinions, while effectively developing students' analytical skills, toughness, quickness, and the like, interfere[s] with the students' learning many other qualities that we have observed in good lawyers, in particular, critical judgment and problem solving").

[33] Mertz, *supra* note 31, at 106 (asserting that some students come to experience a sense of alienation as a consequence of the overly "objective approach to human conduct" which "eras[es] many of the concrete social and contextual features of human conflict and direct[s] attention away from grounded moral understandings, which some critics believe to be crucial to achieving justice . . . . [A]s a result, the alienation experienced by some law students during legal training may be an unavoidable consequence of a process in which increasingly instrumental and technical appeals to legal authority blunt moral and contextual judgment").

[34] *Id.* at 101. Mertz identifies these sources of authority as the relationship of the text under scrutiny with previously decided cases, the procedural history of the case, and "the related strategic questions involving framing legal arguments within this authoritative backdrop." *Id.* In illustration of her point, she describes an interchange in which the professor focuses the student on categorizing work, repeatedly urging the student to "place any 'facts' concerning the conflict story of the case within the framework of the relevant

cedent and legal procedure forces "students to suspend, at least temporarily, their judgments about the emotional or moral character of events."[35] Lerner has similarly remarked on legal education's partiality to amoral and de-contextualized problem solving and the resulting detrimental effects on students' ability to exercise "critical judgment."[36]

In light of the firmly entrenched epistemological and pedagogical stance of legal education that prioritizes highly decontextualized, abstract logical reasoning over the kind of highly particularized, morally referenced decision-making required for independent professional judgment, the need for a powerful antidote to the conventional pedagogy is imperative. To that end, in the next Part, I elaborate the Workways multiple lawyering intelligences, an innovative framework conceived as part of a multidisciplinary project dedicated to the design and testing of curricular interventions. The project members seek to develop counterbalancing frameworks and methodologies to counterbalance legal education's persistent neglect of the range of intellectual capacities with which lawyers perceive and respond to the complex human concerns implicated in legal problems.[37]

The central value of the lawyering intelligences framework lies in its expansive conceptualization of the various capacities involved in legal work. Extrapolating from the insight previously expressed by my Workways colleagues that virtually all legal work "require[s] narrative, interpersonal, intrapersonal, and strategic intelligences in equal

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precedential legal categories instead of focusing on morality or narrative structure." *Id.* at 102.

[35] *Id.*

[36] Lerner offers an instructive account of his experience (along with colleague Susan Sturm) of teaching a course focusing on the exercise of critical judgment which was designed to counteract the tendency of students to focus only on legal rules and authority in addressing legal problems. Based on his observations and student responses to the course assignments, Lerner concluded that law schools should offer opportunities for students "to exercise critical judgment and to operate in the problem solving paradigm in the first year of law school." Lerner, *supra* note 29, at 125. In arriving at this conclusion, Lerner observed that:

> When confronted with a problem in law school, the students were inclined to ask what hoops the professor wanted them to jump through rather than to examine the problem from the client's perspective and consider how best to solve it using their considerable analytical and creative powers. . . . This experience reinforced our concerns that our students needed something more than what they were getting in law school if they were to become the quality lawyers that their clients and their communities need. It also pointed out how quickly the students had absorbed several implicit messages from their first semester: (1) legal disputes are resolved in litigation; (2) their role is to figure out, working alone, how to "win" disputes in litigation; and (3) when faced with a question from a person in a position of power to figure out what the questioner wants to hear and answer accordingly.

Id.

[37] *See* description of Workways at http://www.law.nyu.edu/workways/index.html.

measure with categorizing and deductive reasoning,"[38] my main thesis in this paper is that greater consciousness of the ways in which these capacities support the exercise of good judgment will enable us to work more systematically and methodically to nurture students' ability to make ethical, socially responsible lawyering choices.

III. The Workways Lawyering Intelligences

The lawyering intelligences model is a product of the collaborative efforts of Workways, a group of law professors, social scientists, and education specialists devoted to the study of the varieties of work necessary to effective and socially responsible lawyering.[39] Primarily the brainchild of Workways' founder Peggy Cooper Davis,[40] the model comprises *logical-mathematical, linguistic, narrative, interpersonal, intrapersonal, categorizing, and strategic intelligences,* a set of distinct yet interconnected intellectual capacities that animate every kind of legal work.[41] The conceptual framework of the lawyering intelligences model is a domain-specific adaptation of Howard Gardner's theory of multiple intelligences (also known as "MI theory"),[42]

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[38] Sarah Berger, Angela Olivia Burton, Peggy Cooper Davis, Elizabeth Ehrenfest Steinglass & Robert Levy, *"HEY! THERE'S LADIES HERE!!" Reflections on: Becoming Gentlemen: Women, Law School, and Institutional Change by Lani Guinier, Michelle Fine, and Jane Balin, Women in Legal Education: A Comparison of the Law School Performance and Law School Experiences of Women and Men by Linda F. Wightman, Law School Admission Council What Difference Does Difference Make?: The Challenge for Legal Education by Elizabeth Mertz with Wamucii Njogu and Susan Gooding, Cultivating Intelligence: Power, Law, and the Politics of Teaching by Louise Harmon and Deborah W. Post*, 73 N.Y.U. L. Rev. 1022, 1061 (1998).

[39] Workways is a multidisciplinary group of scholars devoted to study of the varieties of work necessary to effective and socially responsible lawyering and to the design of pedagogies that will foster balanced development of those varieties of intellectual work. *See* Workways website, *supra* note 37.

[40] Professor Davis is the John Shad Professor of Lawyering and Ethics, and Director of the Lawyering Program, New York University School of Law. *See* Davis homepage at http://www.law.nyu.edu/davisp/index.html.

[41] "For several years, [Workways has] worked collaboratively to name, understand, learn, and develop the workways of lawyering. In our research, we have isolated logical-mathematical, interpersonal, intrapersonal, narrative, categorizing, and strategic intelligences, and found that each of them is important to doing every kind of lawyering work." Berger *et al.*, *supra* note 38, at 1061. While the conceptualization of lawyering work in terms of multiple intelligences is primarily attributable to Professor Davis, the descriptive content set out here is the product of my experience working with the model in the clinical setting and of my canvass of the literature on lawyering and lawyering theory.

[42] Howard Gardner, Frames of Mind: The Theory of Multiple Intelligences (10th Anniversary ed., 1993) (hereinafter Frames). In Frames, first published in 1983, Gardner challenged the traditionalist view of intelligence as a single, immutable, general intellectual faculty that can be measured through the assessment of logical-mathematical and linguistic abilities. While the Workways lawyering intelligences is drawn from observations about what lawyers actually do and how they think in practice, Gardner's taxonomy is based on criteria developed with reference to his scientific observation and investigation

which defines "intelligence" in terms of specific intellectual frames – for example, linguistic, logical, interpersonal or intrapersonal – through which information is processed "in a cultural setting to solve problems or create products that are of value a culture."[43] MI theory posits effective problem solving or intelligent behavior as arising from the interaction among numerous forms of intelligence, rather than from the operation of a single unitary faculty. Similarly, while parsing out the mental activities underlying the problem solving work of lawyers, the Workways lawyering intelligences model recognizes that, more often than not, these capacities work synergistically within any given lawyering activity in an infinite variety of combinations, and toward different ends.

Starting from the foundation provided by the Workways lawyering intelligences model, this Article seeks to elaborate our understanding of each of the intelligences and the ways in which they are implicated in lawyering work in general, and in the exercise of judgment in particular. The descriptions proposed here are necessarily partial, as it would be impossible to explicate the multitude of ways in which the intelligences manifest in lawyers' work. The following discussion is framed with a primary focus on the lawyers' exercise of independent professional judgment in the context of counseling and advising clients. As an orienting theme, it will be helpful to keep in mind the insightful observations of Alan Lerner, which echo Aaronson's description of the multi-faceted and complex dimensions of thought and action associated with sound lawyering judgment:

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into a variety of sources including: knowledge about normal development and development in gifted individuals; information about the breakdown of cognitive skills under conditions of brain damage; studies of exceptional populations, including prodigies, idiots savants, and autistic children; data about the evolution of cognition over the millennia; cross-cultural accounts of cognition; psychometric studies, including examinations of correlations among tests; and psychological training studies, particularly measures of transfer and generalization across tasks. *Id.* at 59-70; *see also* HOWARD GARDNER, INTELLIGENCE REFRAMED: MULTIPLE INTELLIGENCES FOR THE 21ST CENTURY 41-66 (1999) (hereinafter INTELLIGENCE REFRAMED). Gardner's original list included seven intelligences – logical-mathematical, linguistic, interpersonal, intrapersonal, musical, bodily-kinesthetic, and spatial; in recent times he has considered the case for three additional intelligences – naturalist, spiritual and existential. *Id.* at 41-66. In debunking the conventional notion of intelligence as a quality measured solely by logical-mathematical reasoning and linguistic ability, Gardner's theory revolutionized educational philosophy, and has served as a springboard for educational reform across the world. A recent search of the internet using the key words "multiple intelligences theory" turned up over 19,000 listings. For a partial list of written and video works that have appeared about the theory of multiple intelligences since 1983, and of contacts on multiple intelligences theory and its applications *see id.* at 249-83 (Appendices B through D). Along with other leading theorists, including Jerome Bruner, Carol Gilligan and Claude Steele, Gardner has served as a source of guidance and advice for the Workways research agenda. Workways website, *supra* note 37.

[43] GARDNER, INTELLIGENCE REFRAMED, *supra* note 42, at 33-34.

> To exercise critical judgment lawyers need to analyze the law critically, question the theory on which it rests, and challenge the appropriateness of its application. They need to gather analyze, and synthesize information from a variety of sources and disciplines, while understanding that each source has its own perspective. They need to recognize and deal with ambiguity. They need to communicate effectively, orally and in writing with people as different from each other and themselves as clients, government officials, judges, jurors and experts in various fields. In today's multi-cultural "global village" lawyers will need to engage in difficult discussions about complex and contentious issues such as the law's relationship to matters of race, culture, and gender. Further, because so much of being an effective lawyer is learned through experience and reflection, they need to apply the same critical skills that they apply to a problem brought to them by a client in order to examine their work as lawyers.[44]

A. *Linguistic Intelligence*

Sensitivity to the spoken and written word, facility with different languages, and the ability to use language pragmatically are some of the general characteristics of linguistic intelligence.[45] Gardner identifies four primary functions of language that have "proved of striking importance in human society," which are also particularly relevant to lawyering work: the rhetorical aspect – "the ability to use language to convince other individuals of a course of action;" the mnemonic potential – "the capacity to use [language] to help one remember information;" the explanatory aspect; and "the ability to use language to reflect upon language, to engage in 'metalinguistic' analysis."[46] For the lawyer, these aspects of language are crucial to every kind of lawyering activity.

Clarity, logical organization, precision, and conciseness are fundamental principles of effective legal writing.[47] Over the last three decades, the trend in legal writing has been away from the unnecessarily convoluted and dense style characteristic of earlier times, toward

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44 Lerner, *supra* note 29, at 111-12.

45 *See generally* Gardner, Frames, *supra* note 42, at 73-77 (identifying grammar and pragmatics as the core operations of language, with grammar focusing on the internal structure of language, including the meanings and connotations of words, phrases, and sentences (semantics); the ordering of words (syntax); and the pronunciation of words (phonology), while pragmatics involves how we use language to communicate meaning and influence others to think, believe, feel, and act).

46 Gardner, Frames, *supra* note 42, at 78.

47 *See, e.g.*, Veda R. Charrow, Myra K. Erhardt & Robert P. Charrow, Clear and Effective Legal Writing 1 (3d ed. 2001) ("The rules of good expository writing and good legal writing are identical. Both require clarity, logical organization, precision, and conciseness.").

the use of "plain language" in all kinds of legal writing.[48] While attention to principles of clarity, precision, and plain language contribute greatly to the effectiveness of legal writing in its function of transmitting and receiving information, for the lawyer-as-professional writer, facility with both the communicative and pragmatic aspects of language is indispensable.

The study of language is divided between grammar, or the study of the internal structure of language, and pragmatics, or the study of how language is used to communicate.[49] Concerned as it is with the way we use language to *do* things, the pragmatic function of language is of particular interest with respect to the exercise of lawyer judgment. The beginning of judgment is problem-identification, and to recognize that our choice of language – the words we use to describe a problem, person, or event – is to appreciate that alternative conceptualizations, and therefore, alternative choices, are possible.[50] To the extent that we must use words to describe or define the problem, our choice of language "frame[s] the questions open for debate or for consideration."[51]

In the ill structured settings in which most lawyering decisions are made, framing the problem is the first step in the process of generating potential solutions.[52] Our choice of language can greatly influence the way we and others view the world; those choices can either open up or close off consideration of potential solutions, and impact how we think about the desirability, feasibility, and propriety of different courses of action.[53]

Our choice of language also serves to bring us closer to, or to distance us from, the humanity and viewpoints of others.[54] Moreover,

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48 Richard C. Wydick, Plain English for Lawyers 4 (4th ed. 1998).

49 *See, e.g.*, Frank Parker, Linguistics for Non-Linguists 11 (1986).

50 *See, e.g.,* Anthony G. Amsterdam & Jerome Bruner, Minding the Law 166 (2000).

51 *Id.*

52 *See, e.g.*, Stefan H. Krieger & Richard K. Neumann, Essential Lawyering Skills: Interviewing, Counseling, Negotiation, and Persuasive Fact Analysis 27 (2d ed. 2003) (identifying problem-identification as the first step in a six-step process of diagnosis, prediction, and strategizing; *see also* Aaronson, *supra* note 15, at 257 (noting that in ill-structured problem settings "[t]he place to begin to define the problem is usually not clear and "the goals to be sought are frequently subject to debate and refinement").

53 "Issues arise when choices are possible and when the need to make them is perceived. Language can foreclose the logical possibility of certain choices or conceal the need to make them." Amsterdam & Bruner, *supra* note 50, at 181.

54 "Our image of the characters who seem to us central to any set of events will affect the story that we discern in those events and the issues posed by the events for judgment or decision." *Id.* at 187. *See also* Mertz, *supra* note 31, at 106-09 (describing ways in which "human characters in the conflict story become strategizing skeletons, defined by legally delimited contexts, shaped by their places in ongoing dialogic arguments" as law professors compel students, through the use of "abstraction to distance themselves from the human

the terms we use to describe people involved in legal situations are often freighted with stereotypical images and evocative of unwarranted assumptions and inferences.[55] Because these assumptions can operate to affect our own responses and actions, and those of other people in ways more or less predictable, we need to "choose our words with attention to the possibility that alternative, contending views may be taken of what is happening or should happen."[56]

Understanding the ways in which language "poses, defines, structures, and connects (or isolates) issues and the ways in which language averts, blurs, prompts, and conceals issues" is essential to good lawyering judgment. Sensitivity to the potential implications of our language choices for others, as well as to the ways in which our own understandings, beliefs, and attitudes are manifest in those choices is critical to good lawyer judgment.

B. *Categorizing Intelligence*

Categorization occurs when we order or classify concepts, people, things or events on the basis of significant generalizations or on patterns of difference and similarity.[57] Some cognitive psychologists suggest that our inclination to categorize and stereotype is an inherent aspect of the way we process information and assign meaning to expe-

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dimensions of their client's problems").

[55] *See generally* Jane B. Baron, *Language Matters,* 34 JOHN MARSHALL L. REV. 163 (2000) (reflecting on "the way in which language matters, how we use and abuse stereotypes, and, most of all, the liberatory potential of understanding that language and stereotypes (and so much else) are social constructions"); Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Laws Marginalization of Outsider Voices,* 103 DICK. L. REV. 7 (1998) (asserting that "language has the power to regulate human social relations in subtle ways that are difficult to see" and exploring the ways in which legal writing pedagogy contributes to the marginalization of outsider voices). *See also* Jane Aiken, *Provocateurs for Justice,* 7 CLIN. L. REV., 287, 298-300 (2001) (describing law guardian's negative reaction to the use of the word "Mom" to describe clinic's female client who was formerly a male and the father of the child involved in a custody dispute, and noting that the "paradigmatic assumption" that a child cannot have two biological parents was operating in the situation).

[56] *Id.*

[57] AMSTERDAM & BRUNER define a category as "a set of things or creatures or events or actions (or whatever) treated as if they were, for the purposes at hand, similar or equivalent or somehow substitutable for each other." AMSTERDAM & BRUNER, *supra* note 50, at 20. GARDNER's "naturalist intelligence," framed in terms of the ability to recognize and classify species in nature, is essentially concerned with the general ability to recognize important aspects of one's environment and to appropriately categorize or classify those phenomena on the basis of relevant similarities and distinctions. GARDNER, INTELLIGENCE REFRAMED, *supra* note 42, at 48-52. GARDNER recognizes this when he notes that "it seems reasonable to assume that a naturalist's capacities can be brought to bear on artificial items . . . Thus, it is possible that the pattern-recognizing talents of artists, poets, social scientists, and natural scientists are all built on the fundamental perceptual skills of naturalist intelligence." *Id.* at 49-50.

rience.[58] Amsterdam & Bruner identify a number of functions of categorizing that relate to legal categorization, including: (1) *mental economy*, which allows us "to treat things *as if* they were the same as what we had encountered before;"[59] (2) *pragmatic utility* – that is, the use of categories to "do some job to pursue some interest;"[60] (3) *reference group relevance*, which referes to the notion that "our categories are grounded in conceptions of *what matters* to ourselves and those on whom we depend . . . the people with whom we feel interdependent in the conduct of life;"[61] (4) *communal power* – shared category systems function to create and promote communal solidarity and cultural cohesion;[62] (5) *personal gratification* – that is, we use categories "to serve our personal needs and quirks" to classify aspects of our perceptions, as manifest in categorizations such as "suspicious-looking people;"[63] and, finally, (6) *risk regulation* – the use of categories to guard against risk by minimizing error or optimizing utility, for instance.[64]

In the legal domain, the basic categorization process consists of a deductive process which Amsterdam calls a FARF analysis.[65] In this "fact-and-rule-fit" process, new sets of facts or stories are connected with legal precedent by focusing on narrowly parsed aspects of the conflict stories as delineated by previously determined circumstantial specifications which, when satisfied, lead to a particular outcome.[66] The process of fitting specific facts within categorical constructs is central to the inductive, deductive, and analogical reasoning processes typically involved in legal analysis and legal reasoning, and as such, categorization choices significantly affect the outcomes of legal

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[58] STEVEN WINTER, A CLEARING IN THE FOREST 101 (2001).

[59] AMSTERDAM & BRUNER, *supra* note 50, at 21.

[60] *Id.* at 22.

[61] *Id.* at 23.

[62] *Id.* at 24-25.

[63] *Id.* at 25.

[64] *Id.* at 26.

[65] Peggy Cooper Davis & Elizabeth Ehrenfest Steinglass, *A Dialogue About Socratic Teaching*, 23 REV. L. & SOC. CHANGE 249, 265 (1997); *see also* AMSTERDAM & BRUNER, *supra* note 50, at 42-48 (distinguishing common model of categorizing from categorizing by "prototyping" or by reference to "implicit praxic knowledge" or "folk psychology" consisting of familiar narratives and scripts).

[66] As described by Davis & Steinglass:

> The first step in a FARF analysis is to cull from an appellate opinion (1) the facts of the matter before the court, and (2) the rule of law that has been applied. The rule is parsed into a definitional component (prescribing the circumstances under which the rule attaches) and an outcome component (prescribing the result once the rule attaches). FARFing consists of establishing the fit between the facts of the matter and the definitional component of the rule, so as to justify the result prescribed by the rule's outcome component. It is understood as a deductive process: The rule says that if X happens, Y will be the consequence. X has happened; therefore, Y.

Davis & Steinglass, *supra* note 65, at 265.

matters.

An "an act of meaning making,"[67] legal categorization relies on a process of abstraction and generalization that "eras[es] many of the concrete social and contextual features of human conflict" that "can direct attention away from grounded moral understandings, which some critics believe to be crucial to achieving justice."[68] It commonly requires that the people involved in a legal dispute be defined solely or primarily by their argumentative positions within a litigation context and their legally defined identities (e.g., "defendant," "plaintiff," "custodial" or "non-custodial parent," "biological stranger"). Notably, "this step out of social context . . . can conceal the ways in which law participates in and supports unjust aspects" of the political and economic structure of society.[69] Furthermore, legal categorization "hid[es] the ways that legal approaches exclude from systematic consideration the very details and contexts that many would deem important for moral assessments."[70] Thus, while serving the purpose of narrowing the pool of "facts" considered relevant to a particular legal outcome, categorizing, as typically used in legal thinking, tends to circumscribe rather than enlarge possible resolutions to a legal problem. As Amsterdam & Bruner tell us:

> Once we put a creature, thing, or situation in a category, we will attribute to it the features of that category and fail to see the features of it that don't fit. We will miss the opportunities that might have existed in all the alternative categories we did *not* use. We will see distinctions where there may be no differences and ignore differences because we fail to see the distinctions.[71]

In other words, "[l]aw defines categorically the limits of the permissible or, more often, the impermissible."[72]

Given the strictures of classroom discourse, it is not surprising that most students, when they even notice that categorization moves

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[67] "To put something in a category is to assign it a meaning, to place it in a particular context of ideas." AMSTERDAM & BRUNER, supra note 50, at 28.

[68] Mertz, *supra* note 31, at 105. Describing the way students are indoctrinated into the process of abstracting the "relevant" facts, Mertz says:

> In order to connect each new conflict story with legal precedent, students must focus on detailed aspects of the stories, in order to categorize the new facts as instances of general, legally-specified types. For example, a student would argue that a particular act or event in this new conflict story constitutes a breach of contract because it is arguably the "same" as an action or an event in a previous case where the courts found a breach. Yet, this apparent concern for specificity wrenches detail from its particular social and narrative context in ways that can obscure or erase the features of the story to which lay people look when reaching moral judgments. *Id.*

[69] *Id.*

[70] *Id.*

[71] AMSTERDAM & BRUNER, *supra* note 50, at 49.

[72] *Id.* at 8.

are being made in judicial opinions, typically view the process simply as an exercise of definition-matching, in which the facts of the case at hand are matched with the terms set out in a doctrinal rule. A more nuanced view of categorization will allow them to understand *that* categories are created; *how* they are created; and the function that a category serves in a particular case.[73] Amsterdam & Bruner note a variety of methods we use to create categories – for instance, by "assimilating the thing-to-be-categorized to a *prototype* rather than by comparing its observed attributes with a checklist of definitional components,"[74] or by relying on "implicit praxic knowledge" in the form of shared and familiar stories ("narratives" and "scripts") about "what-you-are-supposed-to-do" in particular situations or how things are supposed to work and "what happens when a script is thrown off track or threatened with derailment."[75] Armed with this knowledge, students will come to realize that "categories are made, not found."[76]

Consciousness of the process of categorization can allow our students to engage in more sophisticated critique of judicial opinions and to make more conscious and deliberate categorization choices in their own reasoning processes. With a deeper understanding of the dynamics of categorization, students will start to realize that the categories selected and used by legal actors, including themselves, inevitably embody choices of values, priorities, and norms,[77] whether consciously or not, and that those choices then determine, to a large degree, what "facts" matter to the determination of probable or desirable outcomes.[78] Thus, students' ability to creatively imagine alternative outcomes for their clients starts with the ability to unearth hidden assumptions and identify fallacious or erroneous factual premises underlying categorical choices. Once students understand this basic truth, they will be in a better position to choose and rebut underlying premises, to select or create alternative categorizations, which lead to different syllogisms and ultimately, different outcomes, thereby expanding the possible options available to clients.[79]

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[73] *Id.* at 61.

[74] *Id.* at 43.

[75] *Id.* at 44-48.

[76] *Id.* at 27.

[77] WINTER, *supra* note 58, at 101.

[78] *See* AMSTERDAM & BRUNER, *supra* note 50, at 20. The authors use two Supreme Court decisions, *Missouri v. Jenkins*, 515 U.S. 70 (1995) and *Michael H. v. Gerald D.*, 491 U.S. 110 (1989), to illuminate the kinds of categorizing moves judges make within judicial opinions, how they are accomplished, and what functions categories serve within the larger movement of the opinion. *Id.* at 54-109.

[79] *See* Catherine Pierce Wells, *Situated Decisionmaking,* 63 CAL. L. REV. 1727, 1731 (1990) (contrasting the "highly structured procedure of investigation and interpretation" that "transforms the case into an instance of a more general rule" with "a less structured,

C. Logical-Mathematical Intelligence

Generally, logical-mathematical intelligence involves the ability to think abstractly, to analyze problems logically, to carry out mathematical operations, and to investigate issues scientifically.[80] Lawyers use this mode of thinking in developing and analyzing legal arguments, drawing inferences and conclusions from facts or premises, and in recognizing fallacies within a set of facts. Although a variety of logical processes may be usefully employed in legal problem-solving,[81] legal education typically emphasizes inductive, deductive and analogical forms of reasoning.[82] Reasoning from specific instances to create general principles – inductive reasoning – involves comparison of differences and similarities in fact situations to discern or create general legal rules and overarching principles of decision.[83] Reasoning from a general legal precept to specific facts to justify a legal outcome – deductive reasoning – is employed when the general rule is then applied to a new case. Analogical reasoning involves noting similarities and differences in sets of facts, and is foundational to both inductive and deductive reasoning processes.[84] The ability to marshal related facts and order them so that general concepts can be applied, and to understand and interpret opinions, regulations, and statutes relies heavily on the ability to engage in deductive, inductive, and analogical processes.

When advising and counseling clients about alternative ways of resolving their problematic situations, the syllogistic and paradigmatic mode of reasoning is crucial for developing an adequate understand-

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more contextual exploration of the case" which "recreates the case as an individual narrative that requires an outcome satisfactory to our sense of justice in this particular context," and prods "sound intuitive recommendations" concerning resolution of the matter. In the first case, legal structure and deductive reasoning is foregrounded, whereas the narrative turn "brings background to the foreground" by focusing directly upon "the facts of the case as they are experienced by the participants").

[80] *See generally* GARDNER, FRAMES, *supra* note 42, at 128-69.

[81] *See, e.g.*, Anthony G. Amsterdam, *Clinical Legal Education – a 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 614-15 (1984) (identifying ends-means thinking, hypothesis formulation and testing, and contingency planning).

[82] For a detailed discussion of the various forms of legal reasoning see generally RUGGERO J. ALDISERT, LOGIC FOR LAWYERS: A GUIDE TO CLEAR LEGAL THINKING 45-113 (3d ed. 1997) (providing detailed explanation of deductive and inductive reasoning); *see also* LINDA H. EDWARDS, LEGAL WRITING AND ANALYSIS 55-62 (2003) (identifying rule based, analogical, policy-based, principle-based, custom-based, and narrative forms of reasoning).

[83] *See generally* ALDISERT, *supra* note 82, at 89-115.

[84] *See, e.g.*, ALDISERT, *supra* note 82, at 93 (describing analogy as "reasoning from the particular to the particular" and noting its close relations to inductive reasoning, or "reasoning from the particular to the general"); Edwards, *supra* note 82, at 56 ("The most common variety of analogical reasoning justifies a result by making direct factual comparisons between the facts of prior cases and the facts of the client's situation.").

ing of how application of legal doctrine to the relevant facts may affect the available options. Framed primarily in terms of what Jerome Bruner calls "paradigmatic thinking," typical legal argument "attempts to fulfill the ideal of a formal, mathematical system of description and explanation."[85] The logical-mathematical intelligence, therefore, is crucial to many aspects of lawyering ranging from client counseling to appellate argument.

Certainly lawyers need a well-developed ability to engage with the logical processes described above to understand the legal landscape that may influence the possible courses of action available to a client in a given situation. Of course, legal rules need not restrain courses of action not contemplated by the law, but it is axiomatic that a lawyer's judgments will be made in the shadow of the law.[86]

D. *Narrative Intelligence*

Viewed by some psychologists as a fundamental category of understanding,[87] narrative intelligence refers to our apparently inherent propensity to interpret and construct stories so as to make sense of events, circumstances, and situations.[88] Lawyers draw on their narrative ability across a variety of lawyering functions such as interviewing and counseling, negotiation, case theory development, and doctrinal analysis.[89]

Too often obscured by intense focus on legal rules, storytelling suffuses the work of lawyers. Indeed, the law is only meaningful in relation to some situation or factual circumstance: "[t]o the extent

[85] KRIEGER & NEUMANN, *supra* note 52, at 133, *quoting* JEROME BRUNER, ACTUAL MINDS, POSSIBLE WORLDS 12 (1986).

[86] *See generally* Scherr, *supra* note 20, at 253-61 (discussing the ways in which law influences lawyering choices and decisions).

[87] Some theorists suggest that our propensity to make meaning of experience through storytelling may well be an innate and universal human competence. *See, e.g.*, AMSTERDAM & BRUNER, *supra* note 50, at 115 (summarizing theories of narrative and noting that the central claim of endogenous theories of narrative is typically that "narrative is inherent either in the nature of the human mind, in the nature of language, or in those supposed programs alleged to run our nervous systems").

[88] Beginning law students often exhibit this propensity. Mertz noted that, in response to a request to "start developing for us the arguments for the plaintiff and the defendant, law students instinctively "begin by concentrating on the drama of the conflict itself" by starting to tell the story of the events in questions, typically responding "through the lens of a traditional semantic reading, one focused on character, plot, and content." Mertz, *supra* note 31, at 102.

[89] *See, e.g.*, KRIEGER & NEUMANN, *supra* note 52, at 129-36 (2d ed. 2003); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994). For a brief but detailed summary of the role of narrative from initial client interview through appeal in the litigation context, see Sally Frank, *Eve Was Right To Eat The "Apple": The Importance Of Narrative In The Art Of Lawyering*, 8 YALE J. L. & FEMINISM 79, 85-88 (1996).

that law is fact-contingent, it is inescapably rooted in narrative."[90] Certainly stories serve the elemental purpose of describing "what happened." But they also have substantial persuasive power arising from their potential to evoke both intellectual and emotional responses: "stories give comfort, inspire, provide insight, they forewarn, betray, reveal, legitimize, convince."[91]

The narrative mode of thinking takes on particular relevance in the process of judgment. Whereas a focus on logical-mathematical thinking in law school encourages students to think about legal problem-solving primarily with reference to legal texts and legal authority,[92] narrative thinking takes a more capacious approach, structuring facts in the context of stories rather than in the context of legal rules, in an attempt to discover or demonstrate the meaning of the situation.[93]

Lawyering judgment is enhanced by "substantial contextual awareness and highly inclusive deliberation."[94] Legal disputes cannot be fully understood without reference to the particular circumstances and lived experiences of the people involved and to the larger environ-

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[90] AMSTERDAM & BRUNER, *supra* note 50, at 110. The authors amplify the nexus between narrative and law as follows:

> Law lives on narrative, for reasons both banal and deep. For one, the law is awash in storytelling. Clients tell stories to lawyers, who must figure out what to make of what they hear. As clients and lawyers talk, the client's story gets recast into plights and prospects, plots and pilgrimages into possible worlds. If circumstances warrant, the lawyers retell their clients' stories in the form of pleas and arguments to judges and testimony to juries. Next, judges and jurors tell the stories to themselves or to each other in the form of instructions, deliberations, a verdict, a set of findings, or an opinion. And then it is the turn of journalists, commentators, and critics. This endless telling and retelling, casting and recasting is essential to the conduct of the law. It is how law's actors comprehend whatever series of events they make the subject of their legal actions. It is how they try to make their actions comprehensible again within some larger series of events they take to constitute the legal system and the culture that sustains it.

Id.

[91] *Id.* at 115; *see also* Susan Bandes, *Empathy, Narrative, and Victim Impact Statements*, 63 U. CHI. L. REV. 361 (1996) (exploring victim impact statements as a kind of story that evokes powerful emotions at the sentencing stage of a trial).

[92] *See, e.g.*, Mertz, *supra* note 31, at 101. Mertz notes that the emphasis on placing the "facts" concerning the conflict story of the case into legal categories instead of focusing on morality or narrative structure "requires students to suspend, at least temporarily, their judgments about the emotional or moral character of events. Thus, whether someone was right or wrong, moral or immoral, reprehensible or ethical is not an issue in this pragmatic reading." *Id.* at 102.

[93] *See, e.g.*, KRIEGER & NEUMANN, *supra* note 52, at 133-36, 155-70 (identifying narrative mode of thinking about facts and describing the "story model of organizing facts," with instructions on how to "organize and present facts to endow them with a meaning that supports your client's case").

[94] Aaronson, *supra* note 15, at 257.

ment within which the conflict has developed.[95] Unlike legal categorical reasoning, narrative reasoning permits of a range of contextual factors, including "moral, political, sociological, philosophical, psychological, or jurisprudential" considerations, and is thus an important tool for lawyers in assessing potential options for client decision and action.[96] In comparison to judges writing appellate judicial opinions who may not be "particularly interested in the material/social interactions and positioning of the parties that lead up to lawsuits or the material/social consequences of decisions after they are rendered,"[97] the exercise of independent professional judgment requires a sensitivity to the network of personal and structural circumstances in which real disputes are embedded.

To effectively hear, tell, and write stories, lawyers should become familiar with the general elements that make a good narrative. A story is marked by a "focus[ ] on a central character, the protagonist, who is faced with a dilemma; the dilemma develops into a crisis; the crisis builds through a series of complications to a climax; in the climax, the crisis is solved."[98] In short, a story is "an account of a char-

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[95] *See, e.g*,. Regina Austin, *"Bad For Business": Contextual Analysis, Race Discrimination, And Fast Food,* 34 J. MARSHALL L. REV. 207 (2000) (using contextual analysis and ethnographic methods to critically examine law as it relates to low-wage, low-status minority service workers).

[96] Aaronson, *supra* note 15, at 250. Alex Scherr sheds further light on this important subject by articulating various legal and non-legal "topics," that lawyers must assess as a foundation for imagining and evaluating possible plans of action or options for resolving a client's problematic situation. Scherr, *supra* note 20, at 221-22. Scherr discusses narrative, emotion, relationships, power, money, interests, and difference as the non-legal realities, or external and internal factors that lawyers need to take into account in shaping their judgments and decisions. *Id.* at 218-51. According to Scherr, these are the influences, along with law, which "produce[ ] possible plans of action, which embody both means (whether and how to use dispute resolution process, when and with what style to pursue settlement, what formal structures to use for transactions) and ends (what remedies to seek, what interests to stress, what relationships to foster and structure"). *Id.* at 221.

[97] *Id.* at 207.

[98] Brian J. Foley & Ruth Anne Robbins, *Fiction 101: A Primer For Lawyers On How To Use Fiction Writing Techniques To Write Persuasive Facts Sections*, 32 RUTGERS L.J. 459, 466 (2001). Amsterdam's and Bruner's "austere definition of narrative" elaborates on this thematic:

> A narrative can purport to be either a fiction or a real account of events; it does not have to specify which. It needs a *cast of human-like characters,* beings capable of *willing their own actions, forming intentions, holding beliefs, having feelings.* It also needs a *plot* with a beginning, a middle, and an end, in which particular characters are involved in particular events. The unfolding of the plot requires (implicitly or explicitly): (1) an initial *steady state* grounded in the legitimate ordinariness of things (2) that gets disrupted by a *trouble* consisting of circumstances attributable to human agency or susceptible to change by human intervention, (3) in turn evoking *efforts* at redress or transformation, which succeed or fail, (4) so that the old steady state is *restored* or a new (*transformed*) steady state is created, (5) and the story concludes by drawing the then-and-there of the tale that has been told into the here-and-now of

acter running into conflict, and the conflict being resolved."[99] The general topics in narrative include "character, conflict, resolution, organization (plot), point-of-view [perspective], setting, voice, style, description, and word choice."[100] Drawing on the insight that "[w]hat lawyers call 'thinking through a course of action' is a narrative projection of the perils of embarking on one pilgrimage or another,"[101] the use of narrative imagination enhances judgment by focusing attention on the roles that character, context, plot, conflict and resolution play in arriving at a richly contextualized appreciation of the client's lived experience and her interactions and connections with other people in her world.[102]

While conventional legal education "pushes students to direct their attention toward textual and legal authority, casting aside issues of 'right' and 'wrong,' of emotion and empathy – the very feelings most likely to draw the hearts of lay readers as they encounter tales of human conflict,"[103] narrative thinking specifically embraces these facets of human reaction and judgment. Thinking in narrative terms can prompt students to consider "both the big picture and the particular details of the client's situation," including "the likely viewpoints and concerns of different participants, whether they [are] clients, potential allies, adversaries, or decision makers."[104] Moreover, focusing on the element of "character" highlights that the "facts" of a case are not limited to "what happened," but include the client's relationships with other people who may be relevant in the client's world, as well as the thoughts, feelings, perceptions, attitudes, expectations, hopes and fears of the client and others.

Narrative thinking is also a useful tool for imagining alternative courses of action that might not otherwise occur if the focus is only on possibilities proscribed within available legal categories.[105] The narrative form is uniquely suited to the justice-referenced goal analysis re-

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> the telling through some *coda* – say, for example, Aesop's characteristic *moral of the story*.

AMSTERDAM & BRUNER, *supra* note 50, at 113-14 (emphasis in original).

[99] Foley & Robbins, *supra* note 98, at 466. The authors identify character, conflict, resolution, organization and point-of-view as "the most important elements for lawyers," *id.*, noting that "[v]oice and style are largely dictated by the conventions of legal writing, and description boils down to a matter of emphasis – how, or how much a writer describes an event or person. Word choice pervades all other elements: what we call something goes a long way toward what or how a reader will think of that thing." *Id.*

[100] *Id.*

[101] AMSTERDAM & BRUNER, *supra* note 50, at 110.

[102] *See generally* KRIEGER & NEUMANN, *supra* note 52, at 155-70.

[103] Mertz, *supra* note 31, at 99.

[104] Aaronson, *supra* note 15, at 252.

[105] *See generally* Miller, *supra* note 89.

quired for the exercise of independent professional judgment.[106] James Boyd White says that lawyers' work demands "a capacity to envision different versions of the future" through "a social and narrative imagination . . . . The lawyer must be able to tell himself imaginary stories about the future."[107]

Judgment is about choice and decisions, and involves opinions, evaluations, and values. If our "pedagogical goal is not so much to teach students judgment explicitly, as it is to enlarge their awareness and appreciation of the kinds of considerations, whether they be moral, political, sociological, philosophical, psychological or jurisprudential, that shape a lawyers' sense of judgment,"[108] then narrative thinking is a useful entry point into thinking and talking about the specific mental operations, personal behaviors, and ethical and moral considerations involved in the exercise of independent professional judgment and about the lawyer's role as public citizen with a special responsibility for the quality of justice. Thus, the importance of a strong narrative sensitivity and imagination emerges as a prominent capacity in judgment.

E. *The Personal Intelligences: Intrapersonal and Interpersonal*

The personal intelligences – interpersonal and intrapersonal – shape our understanding of ourselves and others. Sensitivity to issues of personality, motivation, belief, and values is essential to effective interaction and communication, and these issues are inextricably implicated in the process of defining and solving legal problems.[109] "How one listens, talks and acts affects the identification and gathering of information and one's ultimate persuasiveness and effectiveness

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106 "Narrative certainly provides a cognitive frame for the data which decision-makers (clients or otherwise) need to reach a final decisions . . . . Narrative provides a tissue of language through which decision-makers can discern the certainty necessary for decision. More assertively, narrative moves decision-makers towards the actions that will flow from their decisions." Scherr, *supra* note 20, at 231.

107 James Boyd White, The Legal Imagination 208-09 (abridged ed. 1985).

108 Aaronson, *supra* note 15, at 250.

109 *See generally* Stephen Feldman & Kent Wilson, *The Value of Interpersonal Skills in Lawyering*, 5 Law & Human Behavior 311 (1981) (reporting on a study designed to explore the relative roles of legal competency and relational skills as factors in client satisfaction with the attorney-client relationship and finding that relational skill had a significantly positive affect on how the attorney was perceived by a client). *See also* Lawrence Grosberg, *Should We Test for Interpersonal Skills? The Value of Interpersonal Skills in Lawyering*, 3 Clin. L. Rev. 349 (1996); Marjorie Silver, *Emotional Intelligence and Legal Education,* 5 Psychol. Pub. Pol'y & Law 1173 (1999); Ian Weinstein, *Testing Multiple Intelligences: Comparing Evaluation By Simulation and Written Exam*, 8 Clin. L. Rev. 247 (2001) (arguing that written exams are not adequate assessment tools for law schools because they cannot test capacities such as interpersonal and intrapersonal intelligences, and suggesting that a combination of simulation and written exams may be more useful in assessing students' aptitude for lawyering).

as a problem solver."[110] Lawyers need to learn how to relate well to people. This requires knowing oneself and an appreciation of how others' experiences, values, and expectations may differ from one's own.[111] Thus, the quality of legal work, including the exercise of independent professional judgment, is enhanced by heightened sensitivity to the intrapersonal and interpersonal dimensions of lawyering.

1. Intrapersonal Intelligence

Intrapersonal intelligence refers to the ability to distinguish and respond to our own feelings, needs, desires, and motivations, to build accurate mental models of ourselves, and to use these mental models to guide us in making important decisions about our lives.[112] While "emotional sensitivity" is integral to the development of intrapersonal intelligence, it is in how a person uses self-knowledge for personal and professional problem-solving that the full measure of intrapersonal intelligence is actualized.[113]

Lawyers do not leave their beliefs, cultural norms, and personal values at the door when they assume the roles of counselor, advisor, advocate, planner, judge or legislator. It is therefore important that we notice and monitor how our beliefs, norms, and values tend to affect our attitudes and interactions in lawyering work.[114] For example, lawyers are said to be, as a group, risk adverse. Such a predisposition regarding risk can lead the lawyer to overvalue certain alternatives for clients while undervaluing others, even though the client may not be so risk adverse as the lawyer. As a counselor, part of the lawyer's job is to assist a client in making a decision that makes sense in terms of the client's – and not the lawyer's – disposition toward risk.[115]

Beyond the impact that a lawyer's own beliefs, attitudes, and val-

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110 Aaronson, *supra* note 15, at 253.

111 *Id.*

112 GARDNER, INTELLIGENCE REFRAMED, *supra* note 42, at 43.

113 *Id.* at 43, 200. Gardner distinguishes intrapersonal intelligence from what he calls "emotional sensitivity," noting that while "emotions do accompany cognition," intrapersonal intelligence concerns a type of cognition that helps us make sense of ourselves and others through emotional sensitivity. *Id.* at 43.

114 *See generally* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers,* 8 CLIN. L. REV. 33 (2001) (describing a process designed to increase lawyers' cross-cultural competence); Michelle Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997) (examining the ways in which lawyers' unconscious racism and cultural bias may impact the attorney-client relationship and suggesting that clinical law professors integrate self-awareness training into their clinical courses).

115 *See, e.g.*, Paul Brest & Linda Krieger, *On Teaching Professional Judgment,* 69 WASH. L. REV. 527, 550 (1994) (describing the role of "utility function" or a person's attitude toward risk – neutral, averse or seeking – has on how she values alternative choices under conditions of uncertainty).

ues may have in terms of individual client decision-making, the lawyer's role as "public citizen" with "special responsibility for the quality of justice"[116] magnifies the importance of intrapersonal sensitivity. As members of a self-regulated profession that encourages the public's faith in lawyers, lawyers have a high level of individual discretion with regard to ethical decision-making.[117] Without the ability to identify one's own morals, values, and beliefs, recognizing and resolving ethical dilemmas will be difficult, if not impossible. While rules and codes of professional responsibility provide general standards of conduct, the integrity of the legal system depends ultimately on each individual lawyer's independent judgment as to how to conform her behavior to the rules. Further, because the rules often do not provide specific guidance, the lawyers must in many cases be guided by their own sense of right and wrong in making decisions about their conduct within the law.

2. Interpersonal Intelligence

Interpersonal intelligence denotes "a person's capacity to understand the intentions, motivations, and desires of other people and, consequently, to use this knowledge effectively in dealing with others."[118] Virtually all legal work is relational: it is something we do with words, with our minds, and with each other.[119] Sensitivity to the social milieu in which we operate is therefore integral to the work that lawyers do on behalf of clients as we interact with colleagues, decision-makers, and other actors in the legal system.

The personal intelligences are inextricably intertwined. "[K]nowledge of one's own person perennially [is] dependent upon the ability to apply lessons learned from the observations of other people, while knowledge of others draws upon the internal discriminations the individual routinely makes."[120] A person, including a law-

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[116] MODEL RULES, *supra* note 1, pmbl, para. 1.

[117] The Preamble to the MODEL RULES notes that:

> In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.

Id., para. 9.

[118] GARDNER, INTELLIGENCE REFRAMED, *supra* note 42, at 43.

[119] JAMES BOYD WHITE: HERACLES' BOW: ESSAYS ON THE RHETORICS AND POETICS OF LAW 49 (1985).

[120] GARDNER, FRAMES OF MIND, *supra* note 42, at 241.

yer, who fails to fully understand the feelings, the responses, and the behavior of others, is likely to interact inappropriately with others.[121]

Judgment is "the process by which we take into account relevant information and values, and then determine what ought to take priority in a particular context."[122] Thus, judgment is not merely a matter of collecting information and deciding what to do. It involves how we perceive, think, and know, as well as our moral attitudes about right and wrong; it involves careful thinking and deliberation as well as a willingness to recommend or take decisive action.[123] Thus, the ethical mandate to provide clients with independent professional judgment is not fulfilled by simply figuring out how to get the client what he or she wants; it involves the more complex process of using a broad base of knowledge to weigh all the available information, including the values, preferences, and sensibilities of others to arrive at informed opinions regarding alternative courses of action that will best facilitate both a legal and a just outcome.

Arriving at such an opinion requires the ability to navigate between empathetic connection with, and impartial detachment from one's client. While, on the one hand, empathy involves "heightened sensitivity to the interpersonal dynamics of human relationships" and an "understand[ing] of [one's] own predilections and biases as well as trying to understand someone else's,"[124] detachment involves "[t]he ability to see things from someone else's perspective without necessarily sharing or endorsing that viewpoint or concern."[125] The ability to distance oneself from the client's perspective allows for a "survey [of] alternatives from shifting vantage points and [the ability to] to raise pertinent concerns that are not immediately obvious,"[126] and is what guides us in weighing personal and structural considerations such as "race, ethnicity, gender, religion, poverty, wealth, imbalances of power, organizational interests, economic motives, psychological needs, and so on."[127] Detachment allows us to "step back and decide what really needs to be acknowledged and what does not . . . . [C]ritically considering the ideas of others is a first step in identifying what is most relevant and likely to be decisive in a set of circumstances."[128]

In sum, this "double distancing" of empathy and detachment re-

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121 *Id.* at 254.
122 Aaronson, *supra* note 15, at 262.
123 *Id.* at 256.
124 *Id.* at 269.
125 *Id.* at 265.
126 *Id.*
127 *Id.*
128 *Id.*

quires a capacity to identify the viewpoints of others, and to then step back and evaluate those viewpoints in relation to each. It requires as well the ability to step back from one's own viewpoint. The notion of lawyer as a moral agent who responsibly exercises discretion in ethical decision-making and judgment envisions a "social being[ ] whose existence is grounded in relationships with others."[129] By focusing students on this aspect of the lawyer's role we "can assist [them] to understand and answer better the ethical and moral questions which members of the legal profession face as they promote the reconciliation of differences within society."[130]

F. Strategic Intelligence

Part of the "essential logic of lawyering,"[131] strategic intelligence is important across a variety of lawyering tasks: from generating an overall plan of action for the conduct of a complex litigation to developing a legal research plan; from planning a client or witness interview to preparing for a negotiation. A strategy can be simply defined as a careful plan or method devised to accomplish a goal.[132] Lawyers call on their strategic intelligence when they imagine, generate and evaluate alternative plans for reaching a desired end, and make choices about the most effective course of action. It is forward looking, concerned with exploring multiple scenarios, alternatives and options, and involves anticipating the potential consequences of various courses of action and anticipating the behavior of the relevant actors in the situation. Most accounts of the phases of strategic planning and implementation include problem framing, gathering and evaluating information about the potentially relevant law and facts, including an assessment of a broad range of possibly relevant interests, solution generation, solution evaluation, decision, and action.[133]

Once a lawyer has gathered the information and used her narrative, categorizing, and logical capacities to make sense of it all, the task is then to generate as many feasible alternatives for helping the client resolve the matter as possible given the inevitable time, resource, and energy constraints in any given decision situation. The lawyer must weigh the pros and cons of each option, and work with the client to prioritize the possibilities in terms of the likelihood that each will satisfy the client's situational needs. Strategic planning can

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[129] Robert Araujo, S.J., *The Virtuous Lawyer: Paradigm And Possibility,* 50 SMU L. REV. 433, 440 (1997).

[130] *Id.*

[131] Richard K. Neumann, *On Strategy,* 59 FORDHAM L. REV. 299, 320 (1990).

[132] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARYOF THE ENGLISH LANGUAGE (unabridged ed., 1993).

[133] *See, e.g.,* KRIEGER & NEUMANN, *supra* note 52, at 27-28.

be informed by a variety of approaches: ends-means thinking, hypothesis formulation, information-acquisition analysis, contingency planning, and comparative risk evaluation.[134]

"Judging for lawyers is a process of deliberation directly linked to concrete action,"[135] and strategic thinking is crucial to this process.

IV. *Coda* – First Principles: Thinking Like a Lawyer and Student-Centered Learning

"Thinking like a lawyer" takes on different meaning depending on the person, the context, and the purpose for which the lawyers' thoughts are operating. Far too many law students internalize a narrow vision of law and lawyering, resulting in their inability to appreciate the "complex interplay of information, experience, power and culture" by which the exercise of independent professional judgment is characterized.[136] Consequently, many incipient lawyers graduate from law school with an image of themselves not as sources of authority and "trustees of justice,"[137] but as a mere instrument for obtaining whatever lawful, although potentially amoral or immoral goals their clients may desire. This narrow view of the lawyer's role permeates the consciousness of law students early on and becomes more and more resistant to change over time, leaving society with vast numbers of lawyers who fail to appreciate or take seriously their role as public citizen and promoter of social justice.

To counteract this tendency, the lawyering intelligences model simultaneously seeks to enlarge our vision of law and bring some measure of order and clarity to the complexities inherent in lawyering activities by naming these essential lawyering capacities as a "first step in bringing discipline to the process of developing intellectual capacities about which we have been inarticulate and neglectful."[138] With

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134 Amsterdam, *supra* note 81, at 613-14.

135 Aaronson, *supra* note 15, at 267.

136 Aiken, *supra* note 55, at 292.

137 *Id.* at 288.

138 Workways Overview, http://www.law.nyu.edu/workways/workways.html (visited July 26, 2004). To engage students in the active learning process and to set the foundation for introducing the lawyering intelligences concept, at the beginning of the semester, I distribute a questionnaire which asks students, among other things, to describe their understanding of "intelligence," and to briefly describe their own intelligence profile. In response to this inquiry, virtually all of the student responses evidence a multi-dimensional rather than a unitary understanding of what it means to be intelligent. The following sampling of responses reveals that students come to law school with a much more flexible, fluid and broad view of intelligence than is embodied in the traditional law school epistemology:

> Intelligence as a "broad concept . . . not necessarily knowing factual things, but also understanding the hows and whys of things. Intelligence can be seen in the way people view, understand, process, and define situations and relationships.

this expansion of our pedagogical vocabulary we can re-orient the way we talk with our students about law, legal reasoning, and legal practice toward a more inclusive, complex, and human-centered conception of lawyer's work than is projected through the language of the conventional pedagogy. Further, reference to the intelligences framework can help us to develop and carry out our course, classroom, and supervisory plans to include more explicit focus on developing sound judgment.

In my own experience I have found that a multiple intelligences approach to teaching and learning law reminds students of what they already know: that lawyers' work involves more than fitting facts into legal categories and predicting how a judge will most likely rule if a case goes to court. A description of one way I have used the model will serve as an illustration of this point. During a class session early in the semester devoted to discussing the clinical experience and the expectations for student participation, I ask students to identify "good lawyer" and "bad lawyer" characteristics.[139] Contemplation of the

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> I don't necessarily equate intelligence with "book" smarts or grade point averages. I think intelligence is embodied in a global understanding of the world and the many people and cultures that are within in it. I think intelligence is acquired by creating the experiences and opportunities to learn about different things and people.
>
> My understanding of intelligence is that there are often two levels: intelligence that results from being book smart and intelligence that results from common sense. Common sense intelligence is what is gained through experience, studying, practicing, loving and living life whereas book intelligence revolves around study with a lesser emphasis on life experiences. I like to believe that each person possesses their own varying degrees or combinations of the two. Law school has shown me that I possess common sense intelligence, and I like that better anyhow.
>
> I believe intelligence comes in many forms. Ultimately, it depends on the situation or the problem at hand. Everyone has strengths and weaknesses. It is the person who has the ability to acquire knowledge and employ the skills to solve his/her problems consistently and in a reasonable amount of time who is the most intelligent. It is not necessarily the person who scored the highest on an IQ test.

As one insightful student summed up: "Intelligence is judgment, intuition, speed of understanding, depth of understanding, and a general ability to understand."

[139] Some of the qualities and characteristics students have described include: good listener; good organizational skills; empathizes with people of diverse backgrounds; compassionate ally; communication skills; prepares thoroughly; confident and strong advocate; curious; honest; strikes balance between over-lawyering and under-lawyering; asks good questions; ethical; takes care of self; patient; learns from others; seeks to understand the motivation of clients; able to view problems/issues from a variety of perspectives; knowledgeable about law and legal process; consults rules of professional responsibility; fierce and determined to help clients; humble; maintains balance; self-less; diligent balances aggressiveness with prudence; reflective; integrity; keeps client informed; self-directed learner; continuously improves and updates; thinks "outside the box;" good oral and written skills; desire to serve others; communicates well with others; exercises good judgment; respectful; good analytical skill; hard worker; maintains relationships with family/friends; can tell a good story; avoids self-destructive activities; seeks help for personal problems; humane; intelligent; strong; knowledgeable about people and how they behave; exhibits

sheer diversity and length of the list always seems to have a sobering effect on the group. This exercise draws on the students' own knowledge and perceptions of lawyering, and involves a shared discovery experience in which students collaboratively construct a group framework of lawyering as multi-faceted, complex, and ripe with potential for social change and positive contributions to society.[140] It also serves as a jumping off point for discussion with students of the notion that the more conscious we are of the mental processes that underlie our work, the more effective we can become at developing and using them fully.[141] Additionally, access to a common vocabulary and

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detached empathy; present focused; dedicated; assertive; anticipates consequences of actions/decision; consults with client; passionate.

[140] Highlighting the social aspect of learning and cognition, sociocultural theorists suggest that the development and use of a common vocabulary for group use around a particular learning activity can advance learners' ability to "negotiate meaning, build new knowledge and restructure problems in terms of the perspective of another" by enforcing intersubjectivity." Curtis Jay Bonk & Kyung A. Kim, *Extending Sociocultural Theory To Adult Learning*, *in* ADULT LEARNING AND DEVELOPMENT: PERSPECTIVES FROM EDUCATIONAL PSYCHOLOGY 71 (M. CECIL SMITH & THOMAS POURCHOT eds., 1998). The exercise draws on students' prior knowledge, and emphasizes "dialogue, teacher co-learning, peer collaboration, questioning, and joint knowledge construction." *Id.* at 69.

Reactions of students to the use of the lawyering intelligences framework for this purpose provides anecdotal support for the proposition that having a common language with which to talk about the range of lawyering intelligences encourages intersubjectivity. As one student reported, the lawyering intelligences list encouraged her to participate in class discussions more than she might have otherwise. In response to a mid-semester questionnaire inquiring into students' perception of the clinic experience generally, and the value of the lawyering intelligences framework in particular, this student wrote that she had become "more confident in expressing [her] ideas without fear of being laughed at or chastised by colleagues and supervisors." Another student echoed those sentiments, writing that she had become "willing to share more of [her] thoughts with others than [she had] ever been before" in her life. Another student indicated the usefulness of the paradigm, writing:

> In such a small class, each student's presence and contributions are especially noticeable and essential. This can be an issue for someone like me, whose aim thus far has been to promote invisibility in law school classes. I do not have a fear of speaking necessarily, but I generally try to keep quiet unless I feel that I have something brilliant to say. As that does not happen very often, I do not have a great track record in the area of participation. However, because I know that my comments don't have to be brilliant, and that a lot of thoughts that come to mind actually are "*relevant*," I have made a sincere effort to contribute to discussions and answer questions.

(emphasis in the original). These and similar responses reinforce for me the idea that by expanding the scope of issues and topic that are "legally relevant," the lawyering intelligences framework not only enriches the classroom discourse but also encourages otherwise reticent students to participate and contribute.

[141] After we have pretty much exhausted the possibilities for the list (given the constraints of time), I distribute a handout with a condensed description of each of the lawyering intelligences, something in the nature of a "crib sheet" for easy reference. Once students have looked over the lawyering intelligences list and ask any questions about it, we proceed to an exercise in categorization, in which students match items in the "good lawyer" characteristics list with the lawyering intelligences outlined on the handout. As the categories begin to flesh out, the lawyering intelligences framework emerges as a sche-

framework for understanding helps students to engage more meaningfully in their own learning as they identify, reflect on, appreciate, practice and internalize the habits of mind that work together in all lawyering tasks.[142]

V. Conclusion

Embodied in the Workways philosophy and approach is the notion that legal education should facilitate students' understanding of fundamental legal concepts and foster the development of intellectual versatility and "a critical consciousness about their professional role."[143] To this end, the goal of this Article has been to elaborate the Workways lawyering intelligences framework as an additional tool to assist us in becoming "clearer about what strengths our students need to develop and how those strengths will be integrated and used in

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matic encompassing the "good lawyer" characteristics generated by the students, and I explain that we will be using the framework as a reference vocabulary, as a diagnostic for assessment of our strengths and weaknesses, and for monitoring and evaluating growth, and as a frame of reference for noticing and appreciating diverse approaches to law and lawyering and of multiple ways of working. I mention its genesis in Gardner's theory of multiple intelligences, connecting the concept back to the inquiry on the student questionnaire about how they understand the concept of intelligence. Finally, I stress that the lawyering intelligences framework is one approach among many that can aid our understanding of what lawyers do and how they think in practice.

[142] Another way that I have used the framework is as a tool for diagnosing learning needs and developing learning objectives. Commenting on the importance of self-assessment and the commitment to self-development, the MacCrate Report notes that: "The responsibility for assessing one's fitness for any career must ultimately rest with the individual, who through careful introspection can make judgments regarding personal strengths, priorities, and other aptitudes and thereby maximize the likelihood of experiencing a satisfying and rewarding professional life. This personal responsibility for self-assessment in beginning one's self-development should continue through professional school and throughout one's professional life." MacCrate Report, *supra* note 12, at 225. The lawyering intelligences model, together with the MacCrate Report, can serve as a relatively comprehensive catalogue of tasks, skills, values, and intellectual capacities needed by legal professionals. The following student comments suggest the value of the lawyering intelligences framework as a tool for self-assessment and self-monitoring:

- I believe that I have made significant progress in developing professionalism and self-directedness. I have made a conscious effort to become aware of my strengths and weaknesses in the various lawyering intelligences and have tried to integrate these strengths and weaknesses into my work.
- I have naturally been able to be self-directed and take the initiative regarding tasks that need to be done. I have had a harder time taking the initiative when it comes to interpersonal situations. My ability to do so is improving through my interactions with my partner, my professor, and other clinic members.
- My ability to be self-reflective has grown considerably. I am willing to share more of my thoughts and ideas with others than I have ever been before in my life. I have come a long way in just one semester, but there is still much more growth that can occur in these areas.

[143] Berger et al., *supra* note 38, at 1062.

practice."[144]

Independent professional judgment is not only an essential aspect of the lawyer-client relationship; it is also "mandatory rule of conduct,"[145] and lawyers must take into account issues of justice, fairness, and morality in its exercise. Susan Sturm has argued that "[t]he lawyer's claim to professionalism in the twenty-first century may well rest on the capacity to bring together diverse skills and perspectives and to facilitate informed judgment and constructive action."[146] If that is true, then it is imperative that we find ways to foster in students "a broader conception of what a lawyer should be – a professional with a wide range of particular skills but also a human being who exercises judgment, cares for her fellow human beings, both clients and the larger society and who has a vision of what professional work should be that goes beyond litigation."[147]

As a general rule, clinical teachers engage with students around the narrative, interpersonal, intrapersonal, and strategic facets of lawyering, as well as the linguistic, categorizing, and strategic aspects. This article provides a vocabulary and framework that will allow us to become more conscious of how these intellectual activities are implicated in the exercise of judgment, and more articulate about the criteria and internal dynamics of judgment associated with each. The hope is that we will thus become better able to develop and gauge pedagogical choices and interventions designed to enhance our students' ability to exercise ethical and socially responsible lawyering judgment.

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[144] *Id.* at 1061.

[145] Geoffrey C. Hazard, Jr. & W. William Hodes, The Law of Lawyering 23-4 (3d ed. 2001 & Supp. 2004-2).

[146] Sturm, *supra* note 29, at 140.

[147] Carrie Menkel-Meadow, *Narrowing the Gap By Narrowing the Field: What's Missing from the MacCrate Report – Of Skills, Legal Science and Being a Human Being*, 69 Wash. L. Rev. 593, 594 (1994).