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Neil Fulton

University of South Dakota, Knudson School of Law

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How Do You Represent “Those People?”

Neil Fulton*

Many lawyers who try cases have heard some version of the question: “How do you represent those people?” The tone placed on the words “those people” makes it clear that they are not the speaker’s kind of people, nor should they be much of anyone’s kind of people. The interlocutor will politely note they mean no disrespect, but they just cannot understand how someone like you, presumptively raised right by your parents, can have contact with “those people,” much less stand up for them in court.¹

If you have tried cases, you have heard this question. It is important to consider how lawyers represent “those people.” My answer runs through a case I had as a federal public defender in South Dakota.²

My client, I will call her Maya, was barely out of her teens and charged with murder. Maya had admitted to abusing her child repeatedly before fatally smashing his head against a piece of furniture. Horrible acts, to be sure, but humans and human actions are complicated. Throughout her childhood, Maya’s father abandoned her, and her drug addicted mother

* Neil Fulton is the fourteenth Dean of the University of South Dakota Knudson School of Law and previously served as Federal Public Defender for North and South Dakota. The author wishes to thank the many lawyers and clients who helped him grow to understand the importance of recognizing and defending the humanity of every client we have the privilege to represent as lawyers.

1. Commonly implicit and often only thinly veiled is the implication that the speaker may not view “those people” as fully human. Sadly, dehumanization is all too easy for most humans and more common than we would hope in the legal system, particularly in criminal justice settings. See, e.g., Lasana T. Harris, *Dignity Takings and Dehumanization: A Social Neuroscience Perspective*, 92 CHI.-KENT L. REV. 725, 729–30 (2017) (discussing the ubiquity of propensity to dehumanize among “everyday people” (citing Lasana Harris et al., *Assigning Economic Value to People Results in Dehumanization Brain Response*, 7 J. NEUROSCI. PSYCH. & ECON. 151, 159–63 (2014))); J. Clark Kelso, *Corrections and Sentencing Reform: The Obstacle Posed by Dehumanization*, 46 MCGEORGE L. REV. 897, 901–03 (2014) (summarizing Eighth Amendment cases that reflect a dehumanized view of incarcerated persons (citing *Weems v. United States*, 217 U.S. 349, 368–77 (1910); *Trop v. Dulles*, 356 U.S. 86, 99–103 (1958); *Estelle v. Gamble*, 429 U.S. 97, 101–06 (1976); *Brown v. Plata*, 563 U.S. 493, 502 (2011))). Others have recognized the importance of this question and the attempt to answer it in a humane way. See generally HOW CAN YOU REPRESENT THOSE PEOPLE? (Abbe Smith & Monroe H. Freedman eds., 2013); Dean A. Strang, *How Can You Defend Those People*, 45 HOFSTRA L. REV. 747 (2017).

2. Given South Dakota’s population and political structure, a large percentage of criminal cases filed in the United States District Court for the District of South Dakota involve crimes from Indian Country. U.S. Att’y’s Off., Dist. of S.D., *Indian Country*, U.S. DEP’T JUST. (Mar. 8, 2023), <https://www.justice.gov/usao-sd/indian-country> [<https://perma.cc/YV7W-L72B>].

subsequently alternated between neglecting and abusing her. I became convinced that Maya had been sexually abused by men who passed through her mother's life, and that she had repressed those memories more deeply than she could access.

In her early twenties, Maya lived in poverty and addiction with three children, a fourth on the way, and a boyfriend whose family humiliated her for being "a bad mom." That family pressure drove Maya to reclaim her young son from a voluntary foster placement. Having known no parental care herself, it was tragically little surprise that Maya responded to a challenging toddler with impatience and eventually violence. As a young woman Maya had survived trauma that most of us, fortunately, do not understand. She lacked financial, educational, and other resources that many of us can fortunately take for granted.³ Now her young life was too easily defined by a terrible and criminal act that had roots in the criminal acts she endured as a child. Maya was exactly "those people" that some people question how lawyers represent.

It is easy to say that we represent clients that some people do not understand, dislike, or even dehumanize because it is our job or because the Constitution provides for it—those things are true.⁴ But there is more to this work than that. There are profoundly practical acts, not abstractions, that lawyers who try cases, wherever and for whoever, offer "those people." The simple acts of listening openly, advising thoughtfully, and advocating courageously affirm the dignity of all "those people" we represent and the humanity of our justice system. I will come back to the dignity and humanity of the work that we do and the way we do it. It is important to think about each of these actions in turn.

We must start with listening. Listening is where it started for Maya and me. Maya and I could not form a productive attorney-client relationship until she told me her story. For that to happen, I had to earn her trust by listening. Listening openly and actively, not with one ear out for what I wanted to hear and the other out the door. Initially, I listened to a lot of silence. Maya did not choose me as her lawyer, and nothing in her experience suggested that trusting strangers was a good idea. Then, bits of information began to dribble out. Some of it was unclear, some of it

3. The lack of resources in Indian Country has many nefarious effects. One of the most significant is the failure to protect women from domestic and other violence. *See, e.g.,* Rebecca A. Hart & M. Alexander Lowther, *Honoring Sovereignty: Aiding Tribal Efforts to Protect Native American Women from Domestic Violence*, 96 CAL. L. REV. 185, 186 (2008) (discussing how the absence of misallocation of resources inhibits efforts to prevent or respond to violence against Native American women).

4. *See* U.S. CONST. amend. VI ("In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence.").

included terribly painful recollections of her past and her actions, but all of it was vital to understanding who Maya was and her story. The more I listened, the more Maya told me. Eventually, I truly heard Maya’s story. Getting there took a lot of listening, however.

Lawyers who try cases rightly pride themselves on telling client stories, but telling client stories starts with hearing those stories. It starts with listening. Television lawyers deliver poetic arguments in perfectly scripted ninety-second blocks, but real lawyers listen. They listen to the questions of opposing counsel. They listen to the answers of the witness. They listen to the instructions of the judge. Most fundamentally, they listen to clients.⁵

It is amazing how much grows out of the simple act of listening. For the speaker, engaged listening translates to being heard. Little is more affirming for any human than being heard and realizing that the person across from us cares and that what we say is not wasted. Listening cuts through clouds of preconception, distrust, and miscommunication; it builds engagement, trust, and understanding. Lawyers who try cases cannot do much without those things. Listening is where everything starts.

Like Maya, many people have never had anyone truly listen to them. Lawyers who try cases can offer each person in our justice system the fundamental dignity of listening.

Listening is the first thing we can offer each of “those people” whom we represent. The next thing is thoughtful advice based on the understanding gained by listening.

Clients do not consult with lawyers just to talk. They come with problems. They come with problems they want their lawyer to solve. They come for advice about what to do. They come to find out what actually can and cannot be done in their case. The importance of giving thoughtful advice to clients cannot be overstated.

Many clients have never had anyone provide them with thoughtful and honest advice. They probably have had no shortage of advice, just not the good kind. There is a near-limitless supply of uninformed and ill-considered advice in the world—go on Facebook and see. Everyone can find someone to provide them with bad advice that benefits the adviser, if not so much the advisee. Clients, however, need expert advice—reasoned, reasonable, and disinterested guidance through complicated and uncertain terrain.

5. At least one lawyer who is legendary for successfully trying difficult and high-profile cases argues that listening is the necessary first step to effective advocacy. *See generally* GERRY SPENCE, HOW TO ARGUE AND WIN EVERY TIME 67 (1995) (“Listening is the ability to hear what people are saying, or *not saying* as distinguished from the words they enunciate.”).

Lawyers who try cases are those experts. Before the law applies against anyone—president or pauper—they can have an expert interpret and explain it for them. Based on this expert advice, clients decide the best (or in many cases, least bad) option for them.

For Maya and me, this process of advice and decision was tough. She had made an uncoerced confession, which hard evidence corroborated. There was no workable defense to mount, even after exploring mental incapacity, insanity, and other options. The penalties for child homicide were severe. Her options were limited and had limited appeal. The “best” options were focused on ensuring that Maya would leave prison alive someday. The prospects of enduring life in prison, admitting to killing her child, and reliving childhood trauma in sentencing mitigation hits hard, particularly for an unsophisticated girl just over twenty. Slowly and carefully, I was able to answer Maya’s questions about the options that she did have, to provide counsel about what choices made sense in my judgment, and to support Maya in the choices that she ultimately made. That was not easy. Thoughtfully talking clients through difficult choices is hard. It is frustrating. But it is profoundly valuable.

Thoughtful advice helps clients make thoughtful decisions. That agency alone is important; who does not want to feel more control over their life?⁶ The thoughtful advice of legal experts goes further to provide clients with informed choices. Uniformed choice is no choice at all. It is not enough to echo what clients want to hear; some of the most thoughtful advice patiently and persistently explains what clients absolutely do not want, but need, to hear.

Finally, lawyers who try cases do not leave clients alone with their decisions; they walk with them. Few gifts are greater than walking with someone in their darkest hours, counseling them in their hardest choices.

Once their important choices are made, lawyers can advocate courageously for clients. Many clients have never had an advocate. Some would not even know what an “advocate” is. They would not recognize that person who “zealously asserts the client’s position under the rules of the adversary system,” as the *Model Rules of Professional Conduct* direct.⁷ As rare as open listening or thoughtful advice is in the world, having someone courageously advocate on your behalf is exceptionally so.

Lawyers who try cases carry their clients’ stories zealously forward, courageously advocating complicated, difficult, and sometimes

6. Self-determination is often undermined by the criminal justice system, however. Richard J. Bonnie, *The Competence of Criminal Defendants: Beyond Dusky and Drope*, 47 U. MIA. L. REV. 539, 577–78 (1993).

7. MODEL RULES OF PRO. CONDUCT pmb. ¶ 2 (AM. BAR ASS’N 2024).

unpopular client stories. Courageously advocating for another person, carrying their story into the world, is at some level to carry them as humans. It is a profound recognition of their human dignity and a deep sign of respect. Many clients cannot believe that anyone would do that for them—likely nobody ever has. Lawyers who try cases can forget in the moment that this act alone, advocating courageously, is a profound affirmation of the dignity and worth of each client regardless of the outcome.

It is also terrifying.

Note that I said advocate “courageously,” not “fearlessly.” It is scary to advocate for clients. Standing up in a courtroom and speaking with every eye on you is scary. It is even scarier with another well-prepared, skilled, aggressive advocate on the other side. We might lose. We might just lose in an embarrassing fashion. That is scary for anyone. But I think that what really scares lawyers who try cases is that we recognize our role as the literal bearers of another person’s story and the importance of that task.⁸

Trying to adequately tell Maya’s story certainly terrified me. Given her difficult personal history and the severity of her acts, it was a hard story to tell. No penalty was enough for her tragic acts; any penalty was too much in light of her personal history, which had left her utterly unprepared to parent. It was hard to talk about what she had done without minimizing it; it was hard to talk about what had been done to her without making her a caricature. As I tried to strike that balance, I felt not only the fear of making a mistake that might harm her case, but also the weight of telling her story honestly, completely, and in a way that helped people understand her and her experiences. Maya had almost never been understood, so I felt obligated to ensure she was in this difficult moment. That obligation was scary.

For the advocate who has openly listened to their client and thoughtfully provided advice, the fear of not adequately or effectively telling a client’s story is hard to shake. I think that is a good thing. It demonstrates a recognition of that client’s humanity, the burden to communicate that humanity to others, and to get them to recognize it, too. I doubt anyone can do that without fear, but we can do it with courage. Our work may not be perfect, but it can be done the best that we can. Offering clients our very best is an obligation and a gift.

The simple acts of openly listening, thoughtfully advising, and courageously advocating aggregate into something more than their sum; they

8. Even the most accomplished courtroom lawyers feel this fear and burden but seek to channel it into providing motivation to effectively argue for their clients. Spence, *supra* note 5, at 13–15 (“Fear is our ally. Fear confirms us. Fear is energy that is convertible to power—our power.”).

provide clients with basic human dignity. That is no small feat. The reality that our work affirms basic human dignity is at the soul of how and why lawyers who try cases represent “those people.” It is my answer to that question. It is important to understand why that answer is so important as a profession.⁹

The question of how lawyers can represent “those people” rests on a fundamentally flawed perception. That mistaken perception is that “those people” are not so much real people as some object, class member, or other dehumanized trope. It is a perception that “they” are not like us. “They” are different. “They” are lesser.

The uncomfortable reality is that all the people that lawyers represent are “those people” to some people. Whether we represent the convict or the cop, the laborer or the CEO, the injured or the insurer, the citizens demanding the right to their vote or exercise their faith, some significant segment of the population questions how we choose to represent “those people.”

Our answer to this question is imperative. On one hand, we can accept that there are “those people” and “our people.” The emotional, economic, and other costs of litigation make this entirely too easy. In fact, it can be a comfort to remove the humanity from the entirely human enterprise of applying the law. But to do so makes the work of lawyers who try cases less important, less impactful, and less sustaining of our community.¹⁰

Our answer can instead affirm that we represent “those people” because doing so reaffirms the dignity of all people and the humanity of our legal system. Trial work retains the requirement of face-to-face human engagement. It demands the empathy needed to understand clients, witnesses, and opposing counsel. It is imperative that lawyers who try cases preserve these human aspects of their craft; that we acknowledge and defend the human dignity of all “those people.”

9. Candidly, this is also a question that law schools do a poor job of encouraging students to ask themselves or equipping them to answer. See, e.g., Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education Through a Relationship-Centered Experiential Curriculum*, 41 U. BALT. L. REV. 395, 398–99 (2012) (citing Daisy Hurst Floyd, *Lost Opportunity: Legal Education and the Development of Professional Identity*, 30 HAMLINE L. REV. 555, 561 (2007)). Perhaps little is more important for law schools to change about their curriculum than providing students real opportunities to wrestle with the humanity of their work, and how to get to know and respect the humans they work for, not just the doctrine and skills they use to do that work.

10. An alternative is to consider the full capacity of the jury trial system to check negative social impulses such as dehumanization and more. The jury trial system can check modern social trends toward factionalism, counter-factualism, and excessive individualism. Neil Fulton, *Fake News on Trial: The Jury Trial as a Guard Against Societal Entropy*, 52 TEX. TECH L. REV. 743, 779–81 (2020).

The law is the most human of enterprises, seeking as it does to regulate the entirety of human affairs and relationships. Without a fundamental recognition and respect for the humanity of every participant in the process, the law becomes dehumanizing. It becomes simple mechanics with humans in the place of gears and levers. This would constitute a profound failing by our profession. Whatever else we do, we can and must preserve the human dignity of all participants within the legal process and our work by extension.

Working for Maya was a reminder of this for me. That is my story. It is not the only story of a lawyer working with and advocating for their client in a way that recognizes and sustains their human dignity. These stories are as numerous as lawyers and clients. The point of sharing my experience is not to say that I did something special. In fact, it must emphatically be said that I did not do something special. The provision of human dignity to clients and the role of the trial process in preserving that dignity must be the bottom line for lawyers who try cases. It should perpetually and undeniably answer the question of how you represent “those people.”

Make that your answer as a lawyer. Make that our answer as a profession. Be proud of that answer. It is the right answer.

APPENDIX

LAW SCHOOL LESSONS: ONE LAWYER'S SEARCH FOR HUMANITY IN TRIAL PRACTICE

The essay “How Do You Represent ‘Those People?’” draws on one public defender’s experience with their client to offer some larger conclusions about the role of the jury trial system. It makes the case that effective work for clients can counteract impulses towards dehumanizing individuals and classes of people. Fundamental aspects of representing clients in trial work, such as active listening, provision of honest advice, and zealous advocacy, can affirm the basic human dignity of clients.

Often, that fundamental human dignity is questioned. That is reflected by the question sometimes posed to lawyers of how they represent “those people?” While the question may come up in many settings, it is perhaps most common in the case of lawyers representing marginalized clients. At a minimum, characterizing the individual or groups inquired about as “those people” reflects a dismissal of them as “other” than the interlocutor’s “people.” It assumes an “us” and a “them” in which it is implicit that “we” are good, and “they” are bad. At a more overtly insidious level, however, categorizing certain groups of clients as “those people” can reflect discrimination based on race, gender, socioeconomic status, and a host of other invidious classifications. Consistently implicit in the question is a dehumanization of the group inquired about; the motive of that dehumanizing impulse is more complicated.

These are real questions that practicing lawyers will encounter. How to sustain the humanity of their clients and all participants in the trial system is a question that lawyers will likely face. So, too, is the hostility and dehumanization of classes of clients by citizens, other lawyers, and judges at times. The adversarial process can lead participants to reduce other participants to mere tropes instead of actual humans in all their flaws, complexity, and dignity. Unfortunately, law school often does far too little to prepare law students to eventually face these questions. This Appendix seeks to provide questions and resources to use the essay as a tool for law professors to raise these questions for their students.

Questions about how to resist the dehumanization of groups of clients can be germane in many settings. Advocacy classes such as trial practice, civil procedure, and criminal procedure can certainly utilize a story of client representation to pose these questions. Arising as it does in a

criminal context, the essay may be appropriate for discussion in criminal law, criminal procedure, and related classes on criminal policy and practice—many of the questions of how lawyers respond and why are relevant to professional responsibility. As an introduction to practical concerns with real clients, it may provide an avenue for reflective journaling in clinics, externships, and other experiential learning settings. Finally, as first-year classes on experience and professional identity expand in response to the requirement of ABA Standard 303 for “the development of professional identity” and “cross-cultural competency,” it may provide an important tool for discussing these issues at orientation and in first-year courses.¹¹

Creating opportunities for law students to wrestle with these questions is essential to form lawyers oriented toward a more humane and just trial system. The balance of this Appendix presents potential discussion questions and supporting resources to use this essay as a teaching tool to do exactly that.

Sample Discussion Questions

Establishing a human connection was important to providing Maya with effective representation. Developing the ability to establish such relationships with clients will be imperative in practice.

- What barriers may exist for a lawyer seeking to establish an effective relationship with clients? How can lawyers work to overcome those?
- How can a lawyer demonstrate to clients that they are genuinely seen, heard, and valued as humans? In what settings may that effort be difficult (e.g., indigent defense) and why?
- What types of cultural and social awareness and competence are necessary for lawyers to build these types of human relationships with their clients?
 - The author was a white male, and Maya was a young Native American female. How can relationships with clients be informed, negatively or positively, by realities of history and culture?
 - What types of reading, study, or cultural engagement are important for lawyers to undertake to be prepared to work in communities not their own?

11. ABA STANDARDS & RULES PROC. FOR APPROVAL L. SCHS. 2023–2024, Curriculum 303(b), (c) (AM. BAR ASS’N 2023).

Describing a lawyer’s clients as “those people” can reflect a degree of dehumanization and characterization as “other” in the mind of the descriptor. The author argues that effective client engagement can overcome this impulse.

- What can be the groups and traits by which some clients are dehumanized by lawyers, judges, other participants in the trial system, or citizens? (e.g., race, gender, nationality, religion, LGBTQ+ status, economic status or poverty, disability, criminal defendant)
- The author uses the terminology “those people” when describing a question posed to some lawyers about how they represent groups of clients. Does that term perpetuate negative stereotypes or views of groups of clients? How can lawyers resist such negative characterizations without perpetuating them in their descriptions of the issues?
- How can lawyers try to break through the feelings or beliefs that give rise to such characterizations? Will approaches vary depending on the audience? (e.g., other lawyers, judges, jurors, citizens)
 - Does the setting limit the ability of a lawyer to break through the feelings or beliefs that give rise to a “those people” characterization? For example, what should a lawyer do if they encounter such a characterization by a judge? By a law partner? By a juror? By another citizen outside the context of a case?
- Have you encountered such characterizations yourself? How have you responded? Why?

Advocating for Maya required the author to tell a complicated and painful story of trauma and abuse that crossed generations. Telling deeply-human stories can pose a challenge for lawyers.

- How can an advocate effectively tell a story of a client who has suffered extreme trauma and abuse without reducing them to a caricature or to their worst conduct?
- How can an advocate acknowledge the trauma and loss of victims while zealously advocating for their client and telling a complete story of their life and circumstances?
- How can an advocate break through barriers to reach the empathy that may exist among other lawyers, jurors, judges, or others who assist clients who have engaged in criminal conduct?

- How can a lawyer make traumatic experiences understandable for jurors, judges, prosecutors, other lawyers, and those who do not share similar experiences?

Representing clients in settings of significant trauma can impose secondary trauma on lawyers.

- How do you recognize the impact of client trauma upon you as a lawyer? How do you respond in a healthy way?
- How do you recognize this impact on others and support them in healthy responses?
- What can a lawyer do when encountering a case or client that is simply too much to handle?
 - For example, how might a lawyer with young children struggle with a case like Maya's?
 - How can and should a lawyer respond when their emotional investment in a client begins to intrude on their objectivity?
 - What can a lawyer do when they feel like the issues presented in a case are just too difficult (e.g., a "no win" scenario)?
 - What can a lawyer do with a client that they find personally offensive or unlikeable? Or the client who dislikes or distrusts the lawyer?
- How does an effective advocate establish the emotional connection necessary to tell their client's story while maintaining the emotional distance necessary to remain objective?
- How can the legal profession try to systematically identify and address the existence of secondary trauma upon lawyers?

The essay puts a lot of faith in the jury trial system and the lawyers participating in it as checks against dehumanizing impulses.

- Does this faith strike you as well-deserved? Why or why not?
- What aspects of the legal system, particularly the trial process, can be dehumanizing in their own right? Can this be improved? How?
- What can lawyers do to make their client engagements affirm rather than undermine human dignity? Can these ideas be expanded systematically? How?
- What behaviors by lawyers can dehumanize other participants in the trial process?

- The essay focuses on clients, but are other participants in the trial process at risk of being dehumanized? Who? How? What can be done to avoid this?
- Is dehumanization a risk inherent to the adversarial process, or does it seem more a bug than a feature of the system?

Lawyers may have “blind spots” in their perception of themselves, their clients, or their work.

- What “blind spots” does the author manifest? How did they potentially impact their representation of Maya?
- What “blind spots” do you perceive in yourself? How might they negatively affect your work? How can you remediate them?
- In general, what seem like some of the most common “blind spots” for lawyers?

Law school is the beginning, not the end, of the formation of a lawyer.¹²

- How has law school prepared you to represent clients? What is missing?
- How prepared do you feel to engage in the following skills necessary to represent clients: active listening, emotional intelligence, cross-cultural competency, mental and emotional self-regulation and care, advocacy and storytelling, pursuing justice?
- What areas of ongoing learning strike you as most the important as you move from a law student to a lawyer? How can you develop and execute an ongoing professional development plan?
- How could the law school curriculum be changed to provide better education in the areas you feel less prepared than you would like?
- Is it even possible to truly prepare law students for some of the practical questions lawyers will face? In other words, do some things have to be experienced?
 - What areas seem most likely to be in that category?
 - How can law schools keep that list as small as possible?
 - How can law schools help law students recognize the things on that list?

12. See Anthony G. Amsterdam, *Clinical Legal Education—A 21st Century Perspective*, 34 J. LEGAL EDUC. 612, 617 (1984).

RESOURCES FOR FURTHER DISCUSSION AND EDUCATION

Client Focused Lawyering Skills

Lela P. Love & Thomas J. Stipanowich, *Dear IL: Five Guideposts for Your Future Professional Practice*, 22 CARDOZO J. CONFLICT RESOL. 529 (2021) (communicating vital ideas for beginning law students about the divide between practice and law school).

Kathleen Elliott Vinson, *What's Your Problem?*, 44 STETSON L. REV. 777 (2015) (describing how law schools can help students cultivate client focus).

Deborah Jones Merritt, *Client-Centered Legal Education and Licensing*, 107 MINN. L. REV. 2729 (2023) (critiquing the absence of client focus in legal education and licensing).

Lawyering Skills Education

Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008) (cataloguing and critiquing current approaches to clinical education).

Jeanne Charn, *Service and Learning: Reflections on Three Decades of the Lawyering Process at Harvard Law School*, 10 CLINICAL L. REV. 75 (2003) (assessing the efficacy of Harvard lawyering process program).

Susan L. Brooks et al., *Moving Toward a Competency-Based Model for Fostering Law Students' Relational Skills*, 28 CLINICAL L. REV. 369 (2022) (describing and arguing for the value of personal skills in legal education).

Professional Identity Education

Subha Dhanaraj, *Making Lawyers Good People: Possibility or Pipedream?*, 28 FORDHAM URB. L.J. 2037 (2001) (describing efforts to provide moral education to law students).

Kenneth Townsend, *Forming Good Lawyers*, 58 WAKE FOREST L. REV. 981 (2023) (describing the importance of and methods for professional identity education in law school).

Susan G. Kupfer, *Authentic Legal Practices*, 10 GEO. J. LEGAL ETHICS 33 (1996) (discussing various approaches to legal ethics and how lawyers' function).