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Teaching Professional Ethics to Lawyers and Mediators Using Active Learning Techniques

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I. Introduction

Professional ethics! Oh my god, how boring! As a law student, I recall thinking this thought nearly every time I faced yet another hour of my professional ethics course.² As a practicing lawyer, I recall with some dread my attendance, every three years, at continuing legal education programs that fulfilled my ethics requirement and thereby ensured my continued existence as a licensed attorney.³ As a new law professor, I experienced both elation and surprise when a law journal editor asked me to join several high-profile colleagues at a symposium on mediation ethics.⁴ As a scholar, I have enjoyed reading every (yes, every) published ethics opinion relating to mediation ethics.⁵

As a member of the Standing Committee on Mediator Ethical Guidance of the American Bar Association’s Section of Dispute Resolution, I have taken pleasure in the intellectual challenge of writing the first drafts of several advisory ethics opinions that respond to inquiries from practicing mediators.⁶ In that same role, I have waited, with a little trepidation, for the pre-

² My favorite professor in law school, Professor Edward J. Immwinkelreid, taught the class. In retrospect, he adopted active learning techniques long before the academy began talking about them much. Accordingly, this comment in no way reflects on the skill of Professor Immwinkelreid or his passion for the topic. In fact, I clearly remember the day when he scolded the class, in a fairly angry tone, for our bad attitude about the subject. He warned us about our duties to our future clients, the courts, and the profession. After that, I remember sitting taller in my seat and taking the course more seriously.
³ Mo. S. Ct. R. 15.05(f) (2008) (requiring at least three hours of professionalism, ethics, or malpractice prevention training within a specified three-year reporting period).
⁴ Presenter, Mediator Malpractice: Preventative Checklist for Mediators or Roadmap for Tort Lawyers, Ohio State J. on Disp. Resol. (Columbus, Ohio Jan. 19-20, 2005). I still do not know why the student editor sponsoring the event even asked me to come. I suspect she found the only article I had written at that time on legal ethics in the context of alternative dispute resolution. Paula M. Young, ADR – Ethically Speaking, Mo. Lawyers Weekly, July 31, 2000, at 16A, available at http://www.mediate.com/articles/young2.cfm (last visited Jan. 30, 2009).
⁵ The Ethics Advisory Opinions Database Subcommittee of the Standing Committee, which I co-chaired for a year, assembled, in an easily accessed database, ethics advisory opinions issued in the few states providing them relating to mediation. It also assembled and posted the disciplinary grievances filed against mediators in states with mediator grievance systems. http://www.abanet.org/dispute/clearinghouse.html (last visited March 24, 2010).
⁶ The twelve-member committee also includes myself and former-Dean James Alfini (South Texas College of Law), Prof. Jay Folberg (University of San Francisco), Prof. Maureen Laflin (University of Idaho College of Law); Roger Wolf (Professor Emeritus, University of Maryland School of Law); Hon. Ellen Sickles James (retired); Prof. Susan Exon (University of La Verne College of Law); Susan Yates, Michael Young, Roger Deitz, and Larry Watson.
publication scrutiny of the text of those draft opinions by the far-more experienced members of that committee. In my role as a law school professor, I structure my mediation practicum around the core values of mediation and infuse a discussion of ethics throughout the role-plays, exercises, and de-briefing discussions. As a mediator, my deeper understanding of mediation ethics has made me a more skillful and, surprisingly, more patient mediator. As a member of Virginia’s Mediator Review Committee, I heard and disposed of complaints filed against certified mediators. As a member of Virginia’s Mediation Ethics Committee, I helped revise Virginia’s mediator qualification rules, mediation ethics code, and mediator grievance procedures. As a member of Virginia’s mediation community, I have taken great joy in sharing with colleagues in workshops sponsored by the Virginia Mediation Network (VMN) the pride I have in our mediation community and the enthusiasm I have developed over the last 10 years for the theory and application of mediation ethics.

What explains this change in my own perspective about professional ethics? Can we create the same level of interest and enthusiasm for mediation ethics in newly trained mediators?


7 For access to the opinions of this committee, see Standing Committee on Ethics, Committee on Mediator Ethical Guidance, American Bar Association Section of Dispute Resolution, http://www.abanet.org/dch/committee.cfm?com=DR018600(last visited March 24, 2010).

8 The 5-person Mediator Review Committee reviews complaints filed by unhappy parties against mediators. Virginia is only one of less than a dozen states in the U.S. with a system for disciplining mediators working in court-connected mediation programs who violate the mandatory standards of ethics for mediators. For a description of the regulatory infrastructure created for Virginia mediators, see Paula M. Young, Take it or Leave it. Lump it or Grieve it: Designing Mediator Complaint Systems that Protect Mediators, Unhappy Parties, Attorneys, Courts, the Process, and the Field, 21 OHIO ST. J. DISP. RESOL. 721, 814-30 (2006) [hereinafter Young, Take it or Leave it].

9 The 7-member committee included myself, Lawrie Parker, the Executive Director of Piedmont Dispute Resolution Center, Jeanette Twomey of Mediation Works, John McCammon, founder of the McCammon Group, and lawyer–mediators Lawrence Hoover, Samuel Jackson, and Frank Morrison. Three of the committee members, including myself, serve or have served on the Virginia Supreme Court’s Mediator Review Board. Messrs. Hoover, Jackson, Twomey, and Morrison teach mediation at Virginia law schools. The committee met over a three-year period at the invitation of the Director of the Dispute Resolution Services, Department of Judicial Services, Office of Executive Secretary of the Supreme Court of Virginia.

10 See Virginia Mediation Network, http://www.vamediation.org/ (last visited March 23, 2010). At these workshops, I share the microphone with well-trained mediators in the audience who comprise a very vibrant mediation community.
What barriers to learning do we face as instructors who hope to convey to new mediators the core values of mediation? What teaching techniques can we use to enliven the learning experience? And, how do we know if the trainees have learned the values we wish to impart?

II. This Article

Section III of this Article briefly discusses the barriers that exist to learning about professional ethics in the law school environment. Section IV considers the possible approaches to teaching legal and mediation ethics to new and experienced practitioners. I found only one article on techniques for teaching mediation ethics. Otherwise, mediation instructors cover the topic from time to time at the major dispute resolution conferences. In the face of this gap in the literature, I have considered by analogy the articles about active learning in law school courses designed to teach legal and judicial professional ethics. Section V discusses the series of articles I have planned on the use of active learning to teach the core values of mediation – mediator impartiality, party self-determination, confidentiality, and quality of the process.

Section VI concludes that we can create enthusiasm in students for professional ethics by providing well-designed training programs that use active learning techniques.

11 Mary Thompson, Teaching Ethical Competence, DISP. RESOL. MAG., Winter 2004, at 23, 23 (describing several types of interactive training exercises designed to teach mediation ethics).
12 See infra note 107.
13 For a discussion of active learning techniques, see generally CHET MEYERS & THOMAS B. JONES, PROMOTING ACTIVE LEARNING: STRATEGIES FOR THE COLLEGE CLASSROOM (1993) (with chapters on informal small groups, cooperative student projects, simulations, case studies, guest speakers, and the effective use of technology); WILLIAM M. TIMPSON ET AL., TEACHING AND PERFORMING: IDEAS FOR ENERGIZING YOUR CLASSES (1997) (with chapters on lecture; questions, answers and discussions; energy, creativity, and spontaneity; and three chapters on using theater techniques and improvisation in class); Using Active Learning in College Classes: A Range of Options for Faculty (Tracey Sutherland & Charles Bonwell eds., Jossey-Bass No. 67, Fall 1996)(pamphlet)(chapters on the active learning continuum; providing structure (the critical element); enhancing the lecture; using writing exercises as active learning; using electronic tools to promote active learning; using cooperative learning; and emerging issues in active learning). For a discussion of active learning techniques used to teach Millennial generation students, see J. BRADLEY GARNER, A BRIEF GUIDE FOR TEACHING MILLENNIAL LEARNERS (2007). For a discussion of self-regulated learning, see generally BARRY J. ZIMMERMAN, SELF-REGULATED LEARNING: FROM TEACHING TO SELF REFLECTIVE PRACTICES (1998); Laurel C. Oats, Beating the Odds: Reading Strategies of Law Students Admitted through Alternative Admissions Programs, 83 IOWA L. REV. 139 (1997) (finding that successful students – those who out-performed their “indicators” -- were self-regulated learners who engaged in “active learning” techniques; finding that those who performed at or below their indicators were passive learners); Michael H. Schwartz, Teaching Law Students to be Self-Regulated Learners, 2003 MICH. ST. DCL L. REV. 447 (2003).
III. Barriers to Learning About Professional Ethics

Scholars agree that the law school system for imparting legal ethics and the values of professionalism works poorly. The source of that failure remains in dispute. The mediator in me wants to suggest that students, professors, law schools, and the law practice environment all make a contribution to the potential skepticism and ennui students show towards the subject of legal ethics and professionalism as taught in the typical law school format.

A. Blame the Students?

Students, because of life-cycle phase, ego development, cognitive development, and generational characteristics may resist the rich, but ambiguous, concepts surrounding legal

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15 Most professors teaching legal ethics and professionalism are at later life-cycle phases and at later ego development stages. Accordingly, they focus on the tough questions, the ambiguity, and the broader issues of professionalism. Professors aged 45 to 55 have entered the “Settling Down” life-cycle phase that brings with it “increased feelings of self-awareness and competence.” They exhibit “Autonomous” or “Integrated” stages of ego development. At these stages of ego development, a person engages in increased conceptual complexity, looks for complex patterns, tolerates ambiguity, seeks to broaden the scope of discussions, and applies more analytical objectivity. Linda Morton, Janet Weinstein & Mark Weinstein, Not Quite Grown Up: The Difficulty of Applying Adult Education Model to Legal Externs, 5 CLINICAL L. REV. 469, Appendices I & II (1999). Most law school professors are between the ages of 46 to 65 years old. See AALS Statistical Report on Law Faculty Index, 2007-2008 AALS Statistical Report on Law Faculty, http://www.aals.org/statistics/s008dlt/gender.html (last visited Jan. 30, 2009).

16 See infra notes 24-47 and accompanying text.

17 Morton et al., supra note 15, at 514. Lerner, Using our Brains, supra note 14, at n.161 (“I have heard of only one law firm, during one hiring season, that considered an applicant’s responses to questions of professional responsibility, during the hiring process, or paid particular attention to the applicant’s grade in that course.”)


19 Morton et al., supra note 15, at 497.

20 LAWRENCE KOHLBERG, THE PSYCHOLOGY OF MORAL DEVELOPMENT: THE NATURE AND VALIDITY OF MORAL STAGES (ESSAYS ON MORAL DEVELOPMENT, Vol.2) (1984) (suggesting that as students mature, they experience stages of moral development that reflect the moral reasoning individuals apply in resolving moral dilemmas); Steven
ethics. Most likely, they do not have the professional experience to put the lessons in context.\(^\text{23}\)

An in-depth discussion of these factors goes beyond the scope of this article.

**B. Pacification of Students by the Pre-Law and Law School Curriculum**

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I. Friedland, *How we Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 4-12 (1996) [hereinafter Friedland, *How we Teach*] (describing nine positions of cognitive development that apply to law students); Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLINICAL L. REV. 505, 505 (1995) (suggesting: “[T]he capacity to reason morally develops in identifiable stages as the result of an interaction between an individual’s cognitive structure and certain significant life experiences” and describing a series of semester-long legal ethics courses taught experientially at the University of San Diego School of Law).


\(^{22}\) Younger learners at earlier stages of ego development show discomfort with ambiguity. Many law students pursued a legal education because they expected it to provide clear, predictable rules -- substantive, procedural, and ethical. Studies of individuals attracted to law school reveal that the students tend to be more fact-oriented and emphasize analysis, logic, and decisiveness. They have difficulty looking at broader issues and discussing matters of increased conceptual complexity. Instead, younger students at earlier ego development stages want the “right answer,” or the right way to do something. They want the skills they will need to survive, succeed, and feel competent. Only later stages of ego development permit people to make the distinction between process and outcome and approach problems with more objectivity. Morton et al., *supra* note 15, at 499, 502, 508, 510. Characteristics of the Millennial generation may reinforce these tendencies. *See supra* note 21. *See also* James B. Taylor, *Law School Stress and the “Deformation Professionelle.”* 27 J. LEGAL EDUC. 251, 264 (1975).

Students with these needs prefer an information-giving lecture over a high risk Socratic teaching method. They also may prefer lecture over more chaotic active learning exercise from which they must draw conclusions and principles. Law students’ undergraduate experience may also bias them in favor of formal approaches to learning, such as lecture. *See infra* notes 24-34 and accompanying text. Morton and her colleagues explain that, in the externship program they supervised, they often asked students to examine moral dilemmas derived from readings, class discussions, and clinical experiences. The problems are “complex, cause discomfort[,] and are resisted by the students.” Morton et al., *supra* note 15, at 506 & nn. 133, 161. Younger learners at earlier stages of ego development show discomfort with ambiguity.

\(^{23}\) Robert P. Burns, *Teaching the Basic Ethics Class through Simulations: The Northwestern Program in Advocacy and Professionalism*, 58 LAW & CONTEMP. PROBS. 37, n. 4 (1995) [hereinafter Burns, *Teaching the Basic Ethics Class*]explaining: “Practicing lawyers understand the context of the practice in which ethical issues arise and are themselves deeply involved in that practice. Legal education [,however,] is disengaged from that practice. Thus[,] students have neither the imagination nor the incentives to appreciate the importance of ethical issues”; also describing an 80-student legal ethics course taught with simulations involving faculty members, local attorneys, professional actors, and drama students at Northwestern Law School); Lupica, *supra* note 14, at 72 (saying: “Students are not yet in proximity to the context in which the professional responsibility issues arise, and often it is difficult for them to relate to the conflicting tensions faced by the hypothetical lawyers; thus, they fail to see the course’s relevance. The fact is that the context of lawyering is too foreign for students to have fully developed a moral sensitivity (which is the foundation of moral decision-making) to the issues of professional responsibility.”); Christine Venter, *Encouraging Personal Responsibility – An Alternative Approach to Teaching Legal Ethics*, 58 LAW & CONTEMP. PROBS 287, 294 (1995) (suggesting that law students “do not yet have a vested interest in how the profession is viewed and what their contribution is to that appearance”) *See also* Brook K. Baker, *Beyond MacCrata: The Role of Context, Experience, Theory, and Reflection in Ecological Learning*, 36 AZ. L. REV. 287, 291 (1994).
Pre-law education could also set up expectations of law students that make it even more difficult for law professors to use richer, active-learning, formats to teach professional ethics. Professor Michael Richmond argues that the pacification process begins early for students. Pre-law education promotes rote memorization and fact regurgitation on exams. Professor Richmond believes that law students need to learn first how to learn in law school, especially to the extent law professors use active learning techniques. He argues that they do not have the skills to benefit from teaching techniques other than lecture.

Harvard Professor Bruce Patton, of Getting to Yes fame, advised at a 2007 teaching conference that students resist active learning in law school because the first-year curriculum “infantilizes” them. He even suggested that family systems dynamics or power dynamics could explain the pacification of law students.

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24 Michael L. Richmond, Teaching Law to Passive Learners: The Contemporary Dilemma of Legal Education, 26 CUMB. L. REV. 943, 955 (1995-96). Writing in 1995, Richmond may have been talking about GenXers. We do know that Millennials aged 6-8 reported in 1997 that they did 123 minutes of homework per night. Earlier, in 1981, the same-aged GenXer students reported doing 44 minutes of homework per night. MILLENNIALS RISING, supra note 21, at 159.

25 Richmond, supra note 24, at 955.


27 Robert Bordone, Kelly O. Brown, & Bruce Patton, Session G11: Fitting the Pedagogy to the Purpose: Intentionality & Creativity in Teaching Negotiation, Am. Bar Ass’n Section of Dispute Resolution, Ninth Annual Conference, ADR in Bloom (Washington, D.C. April 25-26, 2007). See also James E. Groccia et al., Creating Interactive Learning Environments, Program for Excellence in Teaching, University of Missouri School of Law (Columbia, Mo. Sept. 1996) (on file with author), at 1-2, 7-8 (suggesting that students resist active learning because they doubt their own knowledge and competence, fear deviating from approaches with which they have had past success, and show discomfort with their own social skills in a classroom situation); Richmond, supra note 24, at 943-44, 954, 956 (“Most law students simply do not have the skills necessary to profit from methods of instruction other than lectures . . . . [F]aculties . . . preferred the power and control they gained from adoption of lecturing as their teaching method.”); Note, Making Docile Lawyers: An Essay on the Pacification of Law Students, 111 HARV. L. REV. 2027, 2027 (1998) [hereinafter Making Docile Lawyers] (“[B]y the second (2L) year, a surprising number of Harvard Law students come to resemble what one professor has called ‘the walking wounded’: demoralized, dispirited, and profoundly disengaged from the law school experience . . . . [students] become subdued, withdrawn, and uncertain of their own self-worth . . . .” The undisclosed author attributes this passivity to a high student-faculty ratio that undermines greater opportunities for feedback from faculty, large class sections, the use of semester-end exams as the sole means of measuring student performance, the stigma students feel after receiving average grades despite their history of high scholastic performance as undergraduate students, and the emphasis on a corporate career upon graduation).

28 Bordone, Brown, & Patton, supra note 27. See also Catherine W. Hantzis, Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching, 38 J. LEGAL EDUC. 155, 156, 158 (1988) (discussing
Like Professors Patton and Richmond, Professor Morton and her colleagues complain that the typical law school teaching methodology “focuses on intimidation and passive learning.” They suspect that students come to expect that all “important” teaching happens in the same way. These messages undercut Morton’s efforts to encourage students to enter into “trusting, cooperative relationships with classmates, instructors, and others.”

The dominant style of law school teaching – lecture and the Socratic method – also leaves students unprepared for active learning approaches like simulations, group discussions, group projects, or other types of collaborative problem-solving exercises. Students find the shift to a self-directed, active mode of learning difficult after the exposure over several semesters to passive learning techniques.

**C. The Law School Environment**

The law school environment also contributes to the lack of student interest in professional ethics. Law schools, facing higher operating costs and increasing demands on their financial and human resources, may simply opt to teach legal ethics in the large-class format with the simple objective of helping students pass the MPRE. The accreditation standards of the

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Morton et al., *supra* note 15, at 512. One legal scholar believes that pre-law education promotes passive learning, especially rote memorization. He suggests students suffer culture shock when asked to engage in more active learning in law school. *See Richmond, supra* note 24, at 955-56.


*See generally* Friedland, *How we Teach, supra* note 20, at 3, 28-29 (finding that 94% of professors responding to a survey used lecture “some of the time” with 16% saying they used it “most of the time” in upper level courses; 97% of professors responding to a survey used the Socratic method (as they defined it) at least some of the time in first year classes; with 30% using it “most of the time” and 41% using it “often”; only 5% of responding professors “rarely” used it).

Id. at 513. However, Howe & Strauss assert that Millennials are familiar with these teaching techniques and may prefer them. *MILLENIAL GO TO COLLEGE, supra* note 21, at 102.

William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 487 (1995), cited in Morton et al., *supra* note 15, at 513. Quigley also says that the average law student does not have the “adult capacity to learn through critical scrutiny of . . . values, assumptions and beliefs.” Id. at 47. He also says they are not prepared for an educational experience that asks them to “think and act in opposition to the dominant culture.” Id. at 47-48, quoted by Morton et al., *supra* note 15, at n. 116. *See also* Making Docile Lawyer, *supra* note 17, passim.
American Bar Association (ABA) make no meaningful demands on schools to do it any other way.\textsuperscript{35}

Professor Alan Lerner also says:

One reason for our persistence on our current path is, I believe, that we have not incorporated into our teaching scientific discoveries over the past two or three decades about how people learn, what inhibits and enhances their effective use of what we teach, and the effective use of learning to address emerging problems, particularly when those problems are professionally threatening to \{people\}.\textsuperscript{36}

Professor Howard Lesnick notes that the selection of courses to offer or the selection of subjects covered within courses taught “teaches \{students\} a powerful implicit lesson that the matters not included are unimportant.”\textsuperscript{37} Thus, if law schools confine the discussion of ethics to a 2- or 3-credit course, it may implicitly tell students that the subject is not very important.

Professor Lerner suggests that the pedagogical focus in most first-year classes on appellate opinions and effective legal arguments “without regard to the moral and ethical consequences of [lawyers’] actions” undermines a student’s motivation to embed “ethical and moral considerations in their professional behaviors as lawyers.”\textsuperscript{38} In other words, students may learn from this pedagogical approach that winning is everything and should happen at the expense of professionalism, civility, and ethics. He argues that “students learn only tools for their role as instrumentalist lawyer, and not those that support their pro-social intuitions.”\textsuperscript{39}

\textsuperscript{35} See infra notes 89-93 and accompanying text.


\textsuperscript{38} Lerner, \textit{Using our Brains}, supra note 14, at 686.

\textsuperscript{39} \textit{Id.} at 692
Law school evaluation can also play a role in determining how students interact with the subject-matter. Professor Friedland says:

While class is an opportune place for dialogue and analysis, it becomes apparent to students that creativity beyond the exam is irrelevant at best and even deleterious to the assessment of performance . . . . In class, the shadow cast by examinations shifts attention to the teacher’s agenda and away from students [who are] making comments.40

Moreover, if doctrinal and skills instructors do not discuss legal ethics and professionalism in the context of contracts, property, civil procedure, criminal law, evidence, and other first- or second-year courses, students can easily dismiss their importance to effective lawyering. Professor Friedland agrees, saying:

Ethical components of basic courses are often left untested, sending the message that these issues are of secondary importance. Further, the subject matter is relegated to the contents of a single upper-level course, with few credits and subject to examination like any other class. Thus [,] it lacks the primacy of a multiple credit first-year class or the uniqueness of a simulation course.41

Professor Bruce Green has recommended that law schools teach legal ethics in the context of doctrinal classes rather than confine it to a survey class. It would give students the opportunity to make decisions in context and would also give them additional time to develop professionalism skills.42 Professor Russell Pearce recommends that law schools make the legal ethics course a required, 3-credit first-year, first-semester course, offer an upper level course as well, and infuse ethics into all other courses.43 Research indicates that the transfer of knowledge

41 Id. at 182.
43 Russell G. Pearce, Teaching Ethics Seriously: Legal Ethics as the Most Important Course in Law School, 29 LOY. U. CHI. L. J. 719, 735-36 (1998). See also Carrie Menkel-Meadow, The “Infusion” Method at UCLA: Teaching Ethics Pervasively, 58 LAW & CONTEMPO. PROBS. 129 (1995) [hereinafter Menkel-Meadow, The “Infusion” Method at UCLA] (describing faculty-wide project to infuse ethics teaching in at least six doctrinal courses or clinical situations at U.C.L.A. School of Law). Some law schools have put the course in the first-year curriculum. Most of them later moved it to the second-year because the faculty found students had insufficient context to make the instruction meaningful. See, e.g., Stephen M. Bundy, Ethics Education in the First Year: An Experiment, 58 LAW &
from one situation to the next depends on the context in which the student first learned the knowledge.\textsuperscript{44} Thus, the context offered by the law school to students for the consideration of legal ethics and professionalism may deeply matter in ensuring they can complete the four steps in learning discussed below.\textsuperscript{45}

Professor Lupica also notes that the law school environment undermines the ability of many students to anticipate the ethical realities of law practice. She notes:

Large classes, no [teaching] assistants, one final exam, and very little feedback or accountability allows students to potentially do very well on exams without steady and sustained effort. [In contrast,] law practice is hard work, both in terms of pressure and substance; lawyers have responsibility for people’s lives, families, businesses, and money. Making a mistake or neglecting a matter can have far-reaching consequences. While it might work in law school, being barely prepared in practice is not good enough.\textsuperscript{46}

Finally, the promotion and tenure process at some schools may discourage professors from experimenting with teaching methodologies other than lecture and the Socratic method. Using active learning techniques can create risk for instructors by leading to lower student ratings, by drawing the scorn or disapproval of colleagues, by affecting tenure and promotion decisions, by creating the misperception that courses using the technique are “easy, and [by] suggesting to colleagues that the professor has lost control of the class.”\textsuperscript{47}

\textbf{D. Implications for Teaching Mediation Ethics to New and Experienced Mediators}

\textsuperscript{44} See \textit{How People Learn: Brain, Mind, Experience and School} 62 (John D. Bransford et al. eds., 2000).
\textsuperscript{45} See infra notes 112-58 and accompanying text.
\textsuperscript{46} Lupica, \textit{supra} note 14, at n.51.
\textsuperscript{47} Groccia et al., \textit{supra} note 27, at 7. See also Friedland, \textit{How We Teach}, \textit{supra} note 20, at 39 (“[P]rofessors may be influenced by peer pressure to use the Socratic method, as the majority of professors use it and the majority of students are accustomed to it.”).
Instructors teaching mediation ethics may face some of the same barriers to learning that law professors face in teaching legal ethics. The barriers in the mediation context likely depend on the context of the course, the age and interest of the students taking it, the prior experience of the students with mediation practice, the time allowed for the discussion of ethics, the skills of the instructor, and his or her preference for teaching method.

IV. Possible Approaches to Teaching Professional Ethics

While many scholars have written about teaching legal ethics\(^{48}\) and several scholars have written about mediation ethics,\(^{49}\) the scholarship on teaching mediation ethics remains quite

\(^{48}\) See, e.g., infra notes 112-158 and accompanying text.

thin. Accordingly, I have surveyed and summarized the few articles written by professors who use active learning methods to teach legal ethics in law school. These articles suggest some possible approaches to teaching mediation ethics to law students or to practicing mediators.

A. Possible Learning Objectives of a Professional Ethics Course

Courses, workshops, or continuing education programs can focus on one or more of the following learning objectives of professional ethics training. The scope of any course will reflect the limits on the time and teaching resources available. In (approximately) descending order of higher-order thinking, an instructor could design a course to ensure that students:

- Pass the Multistate Professional Responsibility Examination (MPRE) or other professional ethics exam;

- Gain mastery of the rules creating the boundaries of, or lower limits to, ethical conduct;

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50 See supra note 11 and accompanying text.
51 Burns, Teaching the Basic Ethics Class, supra note 23; Mary Daly & Bruce Green, Teaching Legal Ethics in Context, N.Y. St. B. J., June 1998, at 6; Bruce Green, Teaching Lawyers Ethics, 51 ST. LOUIS U. L. J. 1091 (2007) (providing a transcript of a discussion of a real-life ethics problem); Steven H. Hobbs, Hitting the Sweet Spot: Finding the Center in Teaching Professional Responsibility, 51 ST. LOUIS U. L. J. 1269 (2007); Lerner, Using our Brains, supra note 14; Lupica, supra note 14; Ben Sheehy, Sinners, Saints, & Lawyers: Exercises for Teaching Ethics, The LAW TEACHER, Spring 2003, at 4; Stephen Simon & Maury Landsman, Judicial Ethics Simulation Based Training, 58 LAW & CONTEMP. PROBS. 323 (1995); Maria Tzannes, Legal Ethics Teaching and Practice: Are There Missing Elements?, 1 T.M. COOLEY J. PRAC. & CLINICAL L. 59 (1997); Venter, supra note 23; Steven Wechsler, Attorney Trust Accounts: Teaching the Basics Using a Classroom Simulation, The LAW TEACHER, Spring 2000, at 8. See also Frenkel, supra note 14, at 30-43 (teaching ethics with real world dilemmas, discussion, and role-plays); Myers, supra note 36, at 411-12 (teaching a course covering trusts and estates, professional responsibility, interviewing, counseling, negotiating, and drafting); Luban & Millemann, supra note 36 at 64-87 (discussing clinic-based ethics class).
53 Venter, supra note 23, at 288 (suggesting that if students treat the ethics course as a review course for the MPRE and learn ethics for the sake of passing that exam, they trivialize professional ethics).
54 Burns, Teaching the Basic Ethics Class, supra note 23, at 38-39; Venter, supra note 23, at 288. The case law method of teaching ethics simply conveys the “sense of the boundaries or limits within which one must conduct oneself if one is to be an ‘ethical’ attorney, or at least if one is to avoid being disciplined.” Id. at 288. Hartwell suggests that in teaching students professional ethics “we do not always distinguish between formal ethics and moral
• Learn to avoid conduct that will put a lawyer before a disciplinary board;\textsuperscript{55}

• Understand that avoiding conduct that will put a lawyer before a disciplinary board is not the same as engaging in conduct consistent with professional ethics, professional responsibility, or good practice;\textsuperscript{56}

• Gain an appreciation of the moral, social, and historical content involved in the rules, values, and norms of professionalism;\textsuperscript{57}

• Recognize moral and professional ethics issues when they arise, especially in complex situations or in moments of stress;\textsuperscript{58}

• Learn to “unpack” ethical dilemmas in a conscious way, successfully describe their features,\textsuperscript{59} and select the standard of judgment or framework of analysis to identify morally appropriate action;\textsuperscript{60}

• Apply the rules, values, and norms in a “real world” context to reach an appropriate ethical decision;\textsuperscript{61}

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reasoning. For me, ethics refers to rules of conduct; moral reasoning refers to the criteria one employs in deciding what is moral conduct.” Hartwell, supra note 20, at 536.

\textsuperscript{55} Hartwell’s review of 285 ethical disbarments showed that in nearly half the cases, the lawyers “had simply failed to perform or communicate with their clients. More than one-third had abandoned their clients. Almost one-fourth had stolen from their clients and another near one-fourth had been suspended for serious crimes . . . .” These disbarments reflect “immaturity in . . . moral reasoning . . . not [a] failure to know the rules.” \textit{Id.} at 537.

\textsuperscript{56} Burns, \textit{Teaching the Basic Ethics Class}, supra note 23, at 38-39. Venter seems to associate “legal ethics” with the learning of rules of ethics and “professional responsibility” with learning “moral and ethical issues that rules do not raise.” Venter, \textit{supra} note 23, at n. 22.

\textsuperscript{57} Venter, for instance, describes learning lawyer ethics in South Africa when it still adhered to apartheid. “[N]o one ever discussed with me the moral and ethical implications of practicing law in a country with a completely perverted system of justice.” Venter, \textit{supra} note 23, at n. 16. Lon Fuller suggested that each process, including each ADR process, has its own “morality” because of the way in which neutrals and parties might use it. Accordingly, ethicists and practitioners should develop theory and practices defining the morality, or ethics, relating to each process. Carrie Menkel-Meadow, \textit{From Legal Disputes to Conflict Resolution and Human Problem Solving: Legal Dispute Resolution in a Multidisciplinary Context}, 54 J. LEGAL EDUC. 7, 25 (2004) [hereinafter Menkel-Meadow, \textit{From Legal Disputes}].

\textsuperscript{58} Burns, \textit{Teaching the Basic Ethics Class}, supra note 23, at 38; Professor Tzannes calls the recognition of the ethical dilemma “the threshold question.” “If a lawyer does not recognize an ethical dilemma or conflict, then she will likely proceed with no consideration of the ethical issues arising because she is deprived of the opportunity to enter into the ethical decision-making process.” Tzannes, \textit{supra} note 51, at 76. Lupica describes this process -- moral sensitivity -- as the first step in moral decision-making. Lupica, \textit{supra} note 14, at n. 6 (citing Edward J. Conry & Donald R. Nelson, \textit{Business Law & Moral Growth}, 27 AM. BUS. L. J. 1, 7-8 (1989)).

\textsuperscript{59} Tzannes, \textit{supra} note 51, at 77.

\textsuperscript{60} Lupica, \textit{supra} note 14, at n. 6 (citing Conry & Nelson, \textit{supra} note 58, at 7-8) (this process is also known as “moral judgment”). \textit{See also} Pau Brest & L. Krieger, \textit{Symposium on the 21st Century Lawyer: On Teaching Professional Judgment}, 69 WASH. L. REV. 527 (1994).

\textsuperscript{61} Burns, \textit{Teaching the Basic Ethics Class}, supra note 23, at 42 (making the analogy that learning ethics rules without contextual application of them is like “knowing all the grammatical rules of a language” but still not being able to speak or write). \textit{See also} Alan M. Lerner, \textit{Law and Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solvers}, 32 AKRON L. REV. 107 (1999)
• Resolve to act in conformity with the moral judgments made by the practitioner;\textsuperscript{62}

• Implement the appropriate ethical decision\textsuperscript{63} and foster ethical behavior of lawyers;

• Gain an appreciation that resolving an ethical dilemma often requires the good judgment of the self-regulated lawyer;\textsuperscript{64}

• Understand when situations also implicate personal responsibility or morality in the practice of law;\textsuperscript{65}

• Achieve sufficient sophistication and competence so the lawyer can appropriately resolve tensions between particular rules, values, or norms in a particular situation;\textsuperscript{66}

• Realize that law practice norms may not adhere closely to the rules of ethics or values of professional responsibility. Without conscious self-awareness, young lawyers may take the “slippery slope” and engage in unethical conduct by adopting “the attitudes and behavior prevalent in a [law practice] culture;”\textsuperscript{67}

• Achieve sufficient sophistication and competence so the lawyer can evaluate or criticize a particular rule, value, or norm and recognize a need for appropriate reforms to those rules, values, and norms;\textsuperscript{68}

• Create self-regulated practitioners who “honor the values of excellence, integrity, respect, and accountability while still operating their law practices as successful businesses”;\textsuperscript{69}

• Produce competent, caring, and thoughtful professionals; and,\textsuperscript{70}


\textsuperscript{62} Lupica, supra note 14, at n. 6 (citing Conry & Nelson, supra note 58, at 7-8).

\textsuperscript{63} Tzannes, supra note 51, at 77; Lupica, supra note 14, at n. 6 (citing Conry & Nelson, supra note 58, at 7-8) (also known as “moral action”).

\textsuperscript{64} Burns, Teaching the Basic Ethics Class, supra note 23, at 38-39.

\textsuperscript{65} Venter, supra note 23, at 288.

\textsuperscript{66} Jamie Henikoff & Michael Moffitt, Remodeling the Model Standards of Conduct for Mediators, 2 Harv. Negot. L. Rev. 87, 95-97 (1997) (criticizing the 1994 Model Standards as looking and operating too much like rules governing the ethics of legal practice and arguing that the nine principles set out absolute duties without mentioning the ways the principles might interact with each other); Paula M. Young, Rejoice! Rejoice! Rejoice, Give Thanks, and Sing: ABA, ACR and AAA Adopt Revised Model Standards of Conduct for Mediators, 5 Appalachian J. of L. 195, 234-38 (2006) (responding to Henikoff & Moffitt’s criticisms). See also Hartwell, supra note 20, at 510-11 (describing the last stage of moral development as involving considerations of fundamental fairness and equity, the well-being of society as a whole, and the well-being of individuals in that society; lawyers at this stage of moral development “consider not only the language of formal ethics rules but also the social utility the rules were presumably designed to effect”).

\textsuperscript{67} Tzannes, supra note 51, at 73.

\textsuperscript{68} Burns, Teaching the Basic Ethics Class, supra note 23, at 39

\textsuperscript{69} Lupica, supra note 14, at 73.

\textsuperscript{70} Venter, supra note 23, at 288.
• Want to protect their own professional reputations, the reputations of the profession, the courts, and the U.S. system of justice by engaging in conduct meeting the highest standards of professionalism.71

Mary Thompson suggests that instructors teaching mediation ethics should focus on four “competency areas;” (1) self-awareness of potential sources of bias; (2) knowledge of professional standards; (3) analysis of ethical dilemmas and development of skills to decide on a course of action; and (4) performance in the moment when the mediator faces an ethical dilemma.72 These competencies also roughly correspond to the four stages of learning discussed below. Students take the knowledge gained and develop the analytical and performance skills to apply it to different situations arising in mediation.73

B. Stages of Learning in the Context of Professional Ethics Training

Learning theory suggests that students must complete four stages of learning: (1) absorbing information, (2) processing information, (3) retaining and recalling information, and (4) transferring the information to a new situation and solving problems.74 First, students must absorb or receive the information through reading assigned materials, listening to lectures, engaging in the Socratic method, listening to podcasts, taking notes, asking questions, engaging in after-class self-directed learning, participating in study group discussions, or attending

71 “If lawyers actively demonstrate respect for the legal system, the public perception will follow.” Lupica note 14 (citing Timothy P. Terrell & James H. Wildman, Rethinking Professionalism, 41 EMORY L. J. 403, 426 (1992)). After compiling this list, it occurred to me that it paralleled my own cognitive and moral development as outlined in the first paragraphs of this article. See supra notes 2-10 and accompanying text.
74 Friedland Presentation to Faculty of the Appalachian School of Law (Grundy, Va. Oct. 24, 2007).
optional classes offered by the instructor.\textsuperscript{75}

Second, students must process or encode the received information. They must answer the question: “What does it mean?” They obtain deep knowledge of the topic or concept by examining its elements, understanding explanations about it, reviewing examples of it, identifying exceptions to it, and making comparisons of it to other topics or concepts.

The third stage of learning requires students to retain and recall the learned information. The instructor can create opportunities for feedback to the student that encourage self-reflection about the student’s progress towards learning the subject matter. In this stage of the process, the instructor may give an exam to encourage students to outline the concepts or otherwise commit them to memory.\textsuperscript{76} The professor can provide other types of feedback that will help students retain and recall the information, including comments in class, cumulative or interim performance reviews, exam comments and sample answers, paper comments, TWEN discussions, and student conferences. A student’s peers can also provide feedback about how well the student is retaining and recalling information through buzz group work, group exam work, study group work, informal student exchanges, and in-class comments, guffaws, and discussions. Finally, a student can assess his or her own retention and recall by using flash cards and other means of self-assessment or testing.\textsuperscript{77}

The last stage of the learning process requires students to transfer to a new situation the information and knowledge learned. An instructor can test whether a student has reached this


\textsuperscript{76} See ASSOCIATION FOR CONFLICT RESOLUTION, ACR MEDIATOR CERTIFICATION TASK FORCE, REPORT AND RECOMMENDATION TO THE ACR BOARD OF DIRECTORS (March 31, 2004), http://www.acmnet.org/about/taskforces/certification.htm [hereinafter ACR CERTIFICATION TASK FORCE] (proposing test of eleven areas of knowledge, including communication, conflict theory, content management and resources, cultural diversity, ethics, history of mediation, models, strategies and styles, negotiation, process structure, role of third party, and systems and group dynamics).

\textsuperscript{77} Friedland Presentation, supra note 74.
stage of learning, otherwise known as problem-solving, by evaluating a student’s application of the information, concept, theory, or doctrine to new facts set out in an exam, through performance-based testing or evaluation, with a capstone simulation, by late-course writing assignments, and other assignments requiring application of learned knowledge to new facts, circumstances, or problems.

In terms of each class session, instructors will plan to (1) give students an experience, (2) review the experience, (3) have students make conclusions from the experience, and (4) help them plan the next steps in light of that experience. Thus, the instructor should “close the loop” for each planned experience by explaining to the students what they have done and reinforcing the learning the instructor has observed.

C. Designing an Active (or Interactive) Learning Environment

Professor Michael Josephson has applied developmental learning theory to the law classroom suggesting that students engage in the highest order of cognition in law school when engaged in synthesis, then judgment, then problem-solving, then issue spotting, then understanding, and then knowledge acquisition, in descending order of cognitive complexity.

Unless the instructor defines very narrow, knowledge acquisition goals for a course, the

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79 Friedland Presentation, supra note 74. Jacobson, however, suggests that attempts to directly teach thinking and reasoning in a classroom setting generally show little transfer to activities outside the classroom, and because moral judgment involves [more highly emotionally charged] topics than are usually dealt with in courses that attempt to teach thinking and reasoning, the degree of transfer is likely to be even smaller. Jacobson, supra note 75, at 170.
80 Sophia Sparrow, Using Active Learning Techniques in the Legal Writing Classroom, Legal Writing Institute Biennial Conference (Knoxville, TN June 2002) (on file with author), at 3.
instructor should encourage higher-order thinking. An active learning environment can enhance higher-order thinking.

An active (or interactive) learning environment is a classroom in which (1) students seek and create knowledge for themselves and others; (2) students are engaged in listening, thinking, writing, discussing, questioning, responding, solving problems, computing, forming hypotheses, doing experiments, working on projects, and sharing information and feelings, as contrasted to passive learning whereby they listen and take notes; (3) the instructor does not perceive the students as empty vessels waiting to be filled with knowledge by the instructor; (4) students construct the knowledge; (5) the instructor gives and students accept responsibility for their own and, to some degree, other students’ learning; (6) the learning environment encourages communication between the instructor and students, and between one student and another student; (7) the environment encourages all participants to perceive students as potential teachers; (8) students engage in higher-order thinking (analysis, synthesis, and evaluation), as well as memorization, recall, and recognition; (9) students perceive learning as developing new skills as well as learning facts and information; (10) faculty provide immediate and detailed feedback; (11) the learning environment motivates students to learn and apply what they learn, not just to perform on exams; (12) the instructor and students show excitement for learning; and (13) the learning environment puts the focus of attention on each student, rather than on the instructor. In short, the teacher primarily organizes and creates situations that present to

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82 Groccia et al., supra note 27, at 1-2, 7-8 (suggesting the reasons students resist active learning). See generally MEYERS & JONES, supra note 13 (with chapters on informal small groups, cooperative student projects, simulations, case studies, guest speakers, and the effective use of technology); WILLIAM M. TIMPSON ET AL., supra note 13 (with chapters on lecture; questions, answers and discussions; energy, creativity, and spontaneity; and three chapters on using theater techniques and improvisation in class); Robin A. Boyle, Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student, 81 U. DET. MERCY L. REV. 1 (2003); Gerald F. Hess, Seven Principles for Good Practice in Legal Education: Principle 3: Good Practice Encourages Active Learning, 49 J. LEGAL EDUC. 401, 402 (1999).
students useful problems and situations that they will discuss, consider, and for which they will evolve strategies and solutions.\textsuperscript{83}

Hyland and Dale have devised a “cone of learning” that correlates retention of information with the level of the student’s involvement. Thus, a student only retains ten percent of what he or she reads, 20 percent of the words he or she hears,\textsuperscript{84} and 30 percent of the pictures he or she views. However, at the other extreme, a student retains 70 percent of what he or she says in a discussion or in giving a talk. He or she retains 90 percent of what the student and the instructor says and does in a dramatic presentation, in a simulation, or in doing the real thing.\textsuperscript{85}

\textbf{D. Course Design}

An instructor designing a course on professional ethics must consider its format, organization, scope, personnel requirements, materials, time available, scheduling options, and teaching techniques or methodologies.\textsuperscript{86} A law school’s faculty must agree on the course’s place in the sequencing of all law school courses.\textsuperscript{87} Courses using more experiential learning techniques typically require smaller class size and, accordingly, additional faculty or other

\textsuperscript{83} Groccia et al., \textit{supra} note 27, at 4 (citing Piaget’s theory of cognitive development).
\textsuperscript{84} The research on lecture as a teaching methodology shows: (1) student attention and concentration during lectures declines after 15-20 minutes; (2) students cannot listen to an entire lecture effectively; (3) lectures no more effectively transmit information than other teaching methodologies; (4) lecture less effectively promotes thought or change in attitudes than other teaching methods; (5) a lecture’s effectiveness depends on the educational level of the audience; (6) students do not pay attention to the lecture 40% of the time; (7) students retain 70% of the information in the first 10 minutes of the lecture, but in the last 10 minutes of the lecture they retain only 20% of the information; and (8) four months after taking a traditional lecture oriented introduction to psychology course, student knew only 8% more than a control group of students who had never taken the course. Groccia et al., \textit{supra} note 27, at 2-3.
\textsuperscript{85} Id.
\textsuperscript{86} Burns, \textit{Teaching the Basic Ethics Class, supra} note 23, at 39-40.
\textsuperscript{87} Burns suggests that students take the simulation-based ethics/trial advocacy/evidence courses in the first semester of their second year. “[I]t is an ideal time for students to focus on the world of trial court and to experience pedagogical methods quite different from the analysis of appellate cases in a Socratic classroom. It does much . . . to give students a sense of progression in their legal educations and to dissipate the ennui that can come from a feeling of running in place.” \textit{Id.} at n. 14.
teaching resources. These types of classes tend to be more expensive for the institution to offer than courses taught in large groups by lecture, the Socratic method, or case-law methods.

E. Teaching Methodologies

1. Commitment to Teaching Processional Ethics Effectively

   a. Commitment to Teaching Legal Ethics Effectively

   In the last few years, the legal academy has given teaching theory and methodology greater attention. Even so, two scholars cynically note that “many law schools and the ABA tolerate indifferent teaching of [legal ethics], maintaining the course requirements largely as a means of reassuring the public that the profession cares about ethics.” The ABA’s accreditation standards for law schools provide:

   (a) A law school shall require that each student receive substantial instruction in:

   * * *

   (5) the history, goals, structure, values, rules and responsibilities of the legal profession and its members.

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88 Venter, supra note 23, at 295.
89 WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (Carnegie Foundation for the Advancement of Teaching 2007). See also STEPHEN BROOKFIELD, THE SKILLFUL TEACHER (1990)(providing a good discussion of active learning techniques with chapters on lecturing creatively, facilitating discussion, using simulations and role-playing, giving helpful evaluations, overcoming resistance to learning, and building trust with students); STEVEN I. FRIEDLAND & GERALD HESS, TEACHING THE LAW SCHOOL CURRICULUM (2004) (providing tips on approaches, materials, class exercises, “brief gems,” and evaluation of students); DAVID ROYSE, TEACHING TIPS FOR COLLEGE AND UNIVERSITY INSTRUCTORS: A PRACTICAL GUIDE (2001) (offering chapters on classroom strategies; small group, peer learning and role-playing; teaching the large lecture class; teaching students how to learn; experiential learning; use of instructional technology; examinations; grading; managing problem situations; cheating; humor in the classroom; improving teaching performance; values and ethics); ROY STUCKEY AND OTHERS, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (Clinical Legal Education Association 2007) [hereinafter BEST PRACTICES]; Steven Hartwell & Sherry L. Hartwell, Teaching Law: Some Things Socrates Did not Try, 40 J. LEGAL EDUC. 509 (1988); Gerald F. Hess, Heads and Hearts: The Teaching and Learning Environment in Law School, 52 J. LEGAL EDUC. 75, 75-79 (2002)(summarizing the research showing that the law school environment is stressful, intensely competitive, alienating, anxiety producing, isolating, intimidating, de-motivating and distressing; it emphasizes linear, logical, doctrinal analysis and de-emphasizes emotion, imagination, morality, respect, support, collaboration, inclusion, engagement, delight, and feedback); Mary Kay Lundwall & Arturo L. Torres, Moving Beyond Langdell II: An Annotated Bibliography of Current Methods for Law Teaching, 2000 GONZ. L. REV. 1 (spec. ed. 2000).
91 AM. BAR ASS`N, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2007-2008), at Standard 302(a)(5) [hereinafter ABA STANDARDS].
The commentary to Standard 302 encourages each law school to involve members of the bench and bar in meeting this requirement. It also advises that courses should include the law on lawyering and the Model Rules of Professional Conduct of the ABA. Beyond these brief instructions, the ABA says nothing about teaching methodologies for legal ethics classes.

b. Commitment to Teaching Mediation Ethics Effectively

The mediation field could be accused of even less concern for mediation ethics, including how, or whether, we teach the subject. Only seventeen states have a mandatory ethics code for mediators. Very few states impose any requirements that instructors include a discussion of mediation ethics in courses designed to train new mediators. Similarly, very few states require mediators to obtain additional ethics training as a condition to remaining certified, registered, or rostered.

Schools must also create “substantial opportunities for . . . student participation in pro bono activities.” Id. at Standard 302(b)(2).

92 Id. at Interpretations 302-6 & 302-9. For a discussion of integrating practicing lawyers and judges into the program of instruction, see BEST PRACTICES, supra note 89, at 157-59.

93 The interpretation of the standard governing practice skills, however, encourages law schools “to be creative in developing programs of instruction in professional skills . . . using the strengths and resources available to the school.” ABA STANDARDS, supra note 91, at Interpretation 302-2.

94 See Young, Take it or Leave it, supra note 8, at 735-36, n.48.

95 ABA SECTION OF DISPUTE RESOLUTION, TASK FORCE ON CREDENTIALING, REPORT ON MEDIATOR CREDENTIALING AND QUALITY ASSURANCE § 1(C), (Discussion Draft Oct. 2002), at 3-6, http://www.abanet.org/dispute/taksforce_report_2003.pdf (recommending that the task force develop “model standards for mediator preparation programs [and] [o]utline one or more model systems of mediator credentialing . . . focusing initially on the accreditation of mediator preparation programs”).

96 For example, by Administrative Order, the Florida Supreme Court has imposed continuing mediator education (CME) requirements on all certified mediators. Fla. Sup. Ct. Adm. Order No. A0SC08-23 (June 30, 2008), at 10-13, available at http://www.flcourts.org/gen_public/adr/index.shtml. It requires certified mediators to complete sixteen hours of CME, including four hours of ethics training, each two-year certification renewal cycle.

The Georgia Commission on Dispute Resolution (GODR) sets standards for continuing mediation education that appear in Appendix A to the ADR Rules. GA. SUP. CT., UNIFORM RULES FOR DISPUTE RESOLUTION PROGRAMS, APP. A TO GEORGIA ADR RULES 5.3 (Jan. 27, 1993), http://www gode.org.org/pdfs/CURRENT%20ADR%20RULES%20COMPLETE%202003-28-08.pdf. This same appendix declares that “neutrals must be competent.” Id. at 5.4. The rules require six hours of additional CME during every two-year registration renewal cycle. GA. SUP. CT., UNIFORM RULES FOR DISPUTE RESOLUTION PROGRAMS, APP. B TO GEORGIA ADR RULES (Jan. 27, 1993), at 16. The rule does not require, however, additional ethics training. Id. at 16–17. The GODR can remove a neutral from the registry if he or she fails to meet the requirement. Id. at 16.
Unlike lawyers, who typically toil in firms, before opposing counsel, and in public court rooms, mediators typically toil in private conference rooms, bound by ethical constraints of confidentiality. When lawyers make an ethical misstep, someone might be there to help the lawyer get back on track. In contrast, mediators typically make ethical slips with only the disputing parties present. While parties may feel a procedural justice “quake,” they will not know whether the mediator has violated the provisions of any mandatory or aspirational code, at least not during the mediation.97

Moreover, the rules governing confidentiality in mediation make it difficult for mediators to talk with others about ethical dilemmas that arise in a particular mediation.98 Workshops sponsored by groups like the VMN99 permit a collaborative exchange of ideas about mediation ethics in a context that respects its core values, including the confidentiality of mediation communications.

The need for conversations about mediation ethics could not be clearer according to Leila Taaffe, the former Director of the Georgia Office of Dispute Resolution. She sees it this way:

In the court [connected mediation] context we’re very concerned about protecting the public. We say to the courts, “You should send certain cases to us . . . .” And there’s a quid pro quo . . . . If we’re saying to the courts . . . “Send [us] your poor, your tired, your depressed, what [ever] . . . to mediation,” and we don’t guarantee [the courts] some kind of minimal quality in terms of performance [of the mediator] . . . [the courts are] putting themselves into a very precarious position. Because [we are] . . . taking people who have availed themselves of the

The Virginia Supreme Court requires mediators to obtain recertification every two years. Mediators seeking recertification must complete an additional eight hours of training, including two hours of mediation ethics instruction. Training Guidelines for the Training and Certification of Court-Referred Mediators § G (effective Jan. 1, 2000), http://www.courts.state.va.us/drs/main.htm. 97 Honeyman reminds us that: “The widespread use of mediation, along with its frequent success, shows that the effects of bias are limited, that the talents available are considerable, and that parties can learn to live with imperfection.” Christopher Honeyman, Understanding Mediators, in THE NEGOTIATOR’S FIELDBOOK 581, 589 (Andrea K. Schneider & Christopher Honeyman eds., 2006).

98 For this reason, I ask parties to permit me to discuss “this mediation as a teaching tool, but only if I keep the name of the parties confidential and talk about the facts of the dispute in a general manner so students will not be able to identify the parties from the disclosure of those facts.” Paula M. Young, Agreement to Mediate (on file with author).

courtroom. Who have followed the process that we acknowledge in this country for settling disputes and [the courts are] saying, “Well, try this [mediation], this is going to enhance the civil justice system, or this is going to give you control over resolving the dispute.” But unless we can guarantee them some quality and some consistency in that practice, [the courts are] putting themselves on the line. And most of these people are elected officials, and they care what their community thinks. And they should care. 100

Given the important role mediators play in our current system of justice, we should care whether mediators understand their ethical and professional obligations to the parties, the courts, and the field. We should care that the unethical conduct of a mediator undermines public confidence in the process. As instructors, we should care that we teach mediation ethics in a way that makes the topic interesting, understandable, applicable to practice, and -- god willing -- fun.

Most mediators learn the theory and skills of mediation through highly-interactive experiential teaching methods, including discussion, role-plays, video clips, and performance feedback. 101 Accordingly, instructors will face little resistance to using these types of methodologies when teaching mediation ethics. In fact, these adult learners may expect a more inter-active learning environment. 102 Even so, my experience suggests that, at least in basic mediation training, instructors rely heavily on lecture to discuss ethics with trainees. They do so because of the time constraints existing in most courses.

I have experienced basic mediator training three times in my career. The first time, I received my “baby” mediation training through the University of Missouri School of Law in 1999. The training materials for the 16-hour class indicate that we received two hours of ethics

101 Recently, I updated a bibliography of law review articles and books discussing active learning techniques. I was surprised to find no articles discussing the use of active learning techniques in the ADR classroom.
102 Morton et al., supra note 15, at 475-77 & 496.
The materials included applicable court orders, rules, statutes, and an aspirational code of ethics. I do not recall discussing any of them. I certainly do not recall discussing ethics for two hours. Moreover, like law students or persons new to the mediation field, even if we had discussed the aspirational code of ethics included in the materials, I had no experiential context for understanding the discussion. At that point in my mediation career, I had served as a mediator in one role-play for less than two hours. Based on the reputation and knowledge of the instructors of the course, I am certain they discussed ethical considerations throughout it, but I do not remember any of that discussion.

Three years later, I served as a role-play coach in the same basic mediation training offered by University of Missouri School of Law, but the course had expanded to 20 hours. I remember how they taught the ethics portion of the course, because at the last minute, one of the instructors asked if I wanted to teach it. My face probably registered something between surprise, shock, and distress. Accordingly, a member of the law school’s administrative staff taught it in a lecture format for about an hour.

In the summer of 2008, I took a 40-hour family mediation training with Zena Zumeta, a master mediator. She introduced ethical issues early in the course, first by disabusing the Illinois and Wisconsin family lawyers in the room that they could give any kind of legal advice as a mediator. She continued to infuse ethical considerations throughout the lectures and discussions. On the last afternoon of class, we spent at least an hour in a problem-based analysis of the ethics

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104 See supra note 23 and accompanying text.
105 James R. Coben, Professor at Hamline University School of Law and Director of its Dispute Resolution Institute and James Levin, Associate Director of the Center for the Study of Dispute Resolution, at University of Missouri School of Law.
issues a family mediator would likely face. In that process, we carefully examined applicable 
aspirational codes of ethics.  

The major dispute resolution conference providers seem to encourage the use of a panel 
of instructors to teach the offered 1.5 hour workshops. As a panel member on three of these 
workshop programs, I noticed that panel members delivered short lectures on their assigned 
topics, usually assisted by Power Point presentations. Because of time constraints, panel 
members rarely discussed issues between themselves or with the audience. While the panel 
members attempted to reserve some time for audience questions, the time allotted rarely 
exceeded 10 or 15 minutes and the individual presentations often consumed that time.  

2. Teaching Methods Relying Less on Active Learning  

Instructors teaching professional ethics often rely on teaching methodologies that fail to 
create an active learning environment. Lecture, Socratic method, case-based method, and some 
forms of discussion-based learning could fall in this category. Other scholars have discussed the 

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106 The courts and bar associations of Missouri, Illinois, and Wisconsin do not require any additional training in 
mediation ethics. I recently submitted my annual CLE reports to the Missouri Bar for approval, the administrator 
denied my effort to claim mediation ethics training in satisfaction of the required legal ethics training. To claim the 
training, I had to show a nexus to legal ethics. However, the two hours I earned in my first “baby” mediation 
training did count as legal ethics hours according to the CLE reporting form I received from the trainers. The same 
person at the Missouri Bar manages the Missouri CLE reports and the state-wide rostering of Rule 17 mediators. E-
mail from Christopher C. Janku, Dir. of Programs, Missouri Bar, to author (Sept. 30, 2008, 08:51 CST) (on file with 
author).  

107 For example, at one national conference, several mediators engaged in discussion of mediation ethics with other 
panel members, and sometimes with the audience. See, e.g., Paula M. Young et al., Session B1: Ethical Codes and 
Frameworks for Mediation: Does Form Follow Function?, Am. Bar Ass’n Section of Dispute Resolution, Ninth 
Annual Conference, ADR in Bloom (Washington, D.C. April 25-26, 2007); Kim J. Askew et al., Session C1: Gold 
Standard Commercial Mediation: Joining Ethical Practice with Practical Results, Am. Bar Ass’n Section of Dispute 
Statewide System of Mediator Excellence, Am. Bar Ass’n Section of Dispute Resolution, Ninth Annual Conference, 
ADR in Bloom (Washington, D.C. April 25-26, 2007); Jack Cooley, Leila Taaffe, Wayne Thorp, Larry Watson, & 
Susan Yates, Session D8: Ethical Tensions in Caucus: Exploring the Parameters under the Model Standards of 
Conduct, Am. Bar Ass’n Section of Dispute Resolution, Ninth Annual Conference, ADR in Bloom (Washington, 
D.C. April 25-26, 2007); Michael Young & Wayne Thorpe, Session Skills 2: Models and Mayhem: Practical 
Solutions to Prickly Problems, Am. Bar Ass’n Section of Dispute Resolution, Ninth Annual Conference, ADR in 

108 Power Point slides, especially those using color, charts, diagrams, illustrations, or cartoons will aid “visual” 
learners to absorb information. See Jacobson, supra note 75, at 151, 152-53.
drawbacks of lecture,\textsuperscript{109} the Socratic method,\textsuperscript{110} and the case-law method,\textsuperscript{111} so I do not spend time on those techniques in this article. Instead, I focus on methodologies designed to create active learning environments.

\textsuperscript{109}Friedland describes lecture as: “[A] teaching form that focuses on the delivery of information from the teacher to students with few, if any, questions put to the students by the teacher.” Friedland, \textit{How We Teach}, supra note 20, at n. 79. \textit{See also} Hartwell, \textit{supra} note 20, at 532-33 (identifying data and two examples showing that “stand-up” “teacher-centered” teaching was “often ill-suited to eliciting students’ own moral growth”); Richmond, \textit{supra} note 24, at 945 (arguing that the effectiveness of the lecture method depends on the effectiveness and skill of the individual professor); Tzannes, \textit{supra} note 51, at 61-62 (noting that lecture requires students to put themselves into “a quite receptive state [] of listening and of remembering . . . [thereby] placing demands on them wholly unlike the demands . . . on practicing lawyers”; criticizing the use of lecture because it “does not require any involvement from the student nor provides any hands on experience [and is] not very stimulating or interesting”; conceding, however, that lecture can effectively deliver the black letter law or specific rules of ethics and so has its place in the classroom); Venter, \textit{supra} note 23, at n. 1 (using lecture to convey professional values by learning about the lives and examples of famous lawyers including St. Thomas More). \textit{See generally} DONALD A. BLIGH, \textit{supra} note 31; \textit{BEST PRACTICES}, \textit{supra} note 89, at 233, 234 (encouraging the use of short intervals of lecture, because student retention of information drops quickly as the lecture lengths).

\textsuperscript{110}Friedland, \textit{How We Teach}, \textit{supra} note 20, at n. 77 (defining the Socratic method as “a question and answer method in which the professor asks a series of questions of the students, uncovering both preconceptions and cogent legal analysis”); DONALD H. ZEIGLER, \textit{HOW I TEACH} (2008) (describing a “soft” Socratic method that helps students develop sophisticated legal reasoning, independent thinking, verbal skills, and the ability to think on “your” feet.); Grayford Gray, Remarks at the A.A.L.S. Conference on New Ideas for Experienced Law Teachers (June 1995), \textit{cited in} Friedland, \textit{Law School Evaluation}, \textit{supra} note 40, at 201(suggesting that at the core of most Socratic dialogues are the following questions: “(1) Why are the rules/principles of law the way they are? (2) What are the rules/principles of law? (3) How do you solve problems using the rules/principles of law? (4) What if the facts were changed in these problems?”).

For criticisms of the method, \textit{see} June Cicero, \textit{Piercing the Socratic Veil: Adding an Active Learning Alternative in Legal Education}, 15 WM. MITCHELL L. REV. 1011, 1016-19 & n. 34 (1989) (noting: “It is virtually impossible to have a Socratic dialog with 200 students”); J.T. Dillon, \textit{The Paper Chase and the Socratic Method of Teaching Law}, 30 J. LEGAL EDUC. 529 (1980) (describing the scenes in \textit{The Paper Chase} between Professor Kingsfield and his students as a “contest, not collaboration; more entrapment than inquiry”); Jack Himmelstein, \textit{Reassessing Law Schooling: Towards a Humanistic Study of Law}, in \textit{PROJECT FOR STUDY AND APPLICATION OF HUMANISTIC EDUCATION IN THE LAW: HUMANISTIC EDUCATION IN LAW, MONOGRAPH I} (1980) (describing the Socratic method as “infantilizing, demeaning, dehumanizing, sadistic, a tactic for promoting hostility and competition among students, self-serving, and destructive of positive ideological values”); Ruta K. Stropus, \textit{Mend It, Bend It, Extend It: The Fate of Traditional Law School Methodology in the 21st Century}, 27 LOY. U. CHI. L.J. 449 \textit{passim} (1996) (describing the criticisms of the Socratic method, explaining the need for the method, and suggesting ways to respond to the criticisms of the method); David D. Garner, \textit{Note}, \textit{Socratic Misogyny? – Analyzing Feminist Criticisms of Socratic Teaching in Legal Education}, 2000 B.Y.U. L. Rev. 1597, 1634-48 (2000) (arguing that despite the concern of feminist scholars, the Socratic method, if modified, deserves a place in the law school pedagogy); Tzannes, \textit{supra} note 51, at 62-63 (suggesting that the Socratic method can help students explore “moral, ethical, and psychological issues” relating to legal ethics and professionalism, can expose finer points of the problem or case, help students formulate an appropriate response to the ethical problem under considerations, but it deals with hypothetical problems; expressing concern that a student may fear disclosing -- either before other students or to the instructor who is grading him or her -- the actual, perhaps unethical, response he or she might have to the ethical dilemma or problem; revealing she had abandoned teaching her legal ethics course with the Socratic method and confessing: “I found the student’s lack of enthusiasm and engagement in the class and with the material increasingly disturbing. They rarely became animated about the ethical dilemmas facing the parties in the cases or agonized over the conflicting choices confronting the lawyers in my hypotheticals”). Professor Friedland cautions us about the limits of the method for feedback and evaluation purposes.
3. **Teaching Methods Relying on Active Learning**

   **a. Discussion-Based Method**

Professor Lupica, after abandoning the Socratic method of teaching professional responsibility, designed a 16-student seminar course in which practicing bar members, judges, and the law students engaged in weekly discussions about the subject assigned for the class. She noted that the course required good contacts in the local bar, good scheduling skills, and good class management skills, especially those required to keep the discussion focused on the assigned topic.\(^\text{112}\) Research shows that students in discussion-based courses increase retention of information, engage in problem-solving, engage in higher-order thinking, experience changes in attitude, and have greater motivation for further learning over those students learning in lecture-based courses.\(^\text{113}\)

Professor Lupica wanted to ensure that the discussion of the rules, values, and norms occurred within a real world context, based on hypothetical (yet realistic) contexts. She confirmed with the invited guests that the hypothetical problems accurately reflected the type of dilemmas a lawyer could face. She also sought to test student biases or presumptions about

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\(^\text{111}\) Richmond, *supra* note 24, at 946 (describing the case law method as requiring students to “inductively learn the law by distilling the rule of each case and synthesizing the progression of rules into a body of law”); Tzannes, *supra* note 51, at 62 (criticizing the use of the case method to teach legal ethics for the reason that the cases tend to involve serious breaches of ethical rules rather than the relatively minor dilemmas practitioners face in the “hurly-burly of practice”); Venter, *supra* note 23, at 288 (“For most ethics classes, students are expected to buy copies of the . . . Rules . . . . These students spend their time reading opinions by appellate courts and bar association ethics committees . . . . An increasing number of course books . . . . by law teachers . . . add[] academic opinions to those of judges and bar association lawyers”).

\(^\text{112}\) *Id.* at 88.

\(^\text{113}\) Groccia et al., *supra* note 27, at 3.
ethical conduct. For instance, when she assigned the topic of lawyer advertising, she invited as a guest speaker a local attorney who advertised aggressively on television with a message highlighting the firm’s hard-hitting style of practice. Students brought to class negative impressions of the firm and its television advertising. At the end of class, students better understood that the law firm sought to represent clients with little power, resources, or information. The advertising, in its own way, served social justice and professionalism goals.\textsuperscript{114}

To broaden the scope of the discussion and to encourage students to engage in a higher level of critical reflection, she used Kohlberg’s “stage theory of moral development.”\textsuperscript{115} She wanted to avoid preaching and instead wanted to allow students to “discover for themselves that the profession is not designed to resolve the [] ambiguities [attendant to the practice of law] – but that it exists because of them.”\textsuperscript{116} She did not identify to students the pedagogical framework or its source, but she asked the same questions in every class to guide students through the moral development stages.\textsuperscript{117}

Professor Tzannes describes the use of videos or film clips portraying lawyers in ethical dilemmas as a method for stimulating student discussion.\textsuperscript{118} These clips can engage students emotionally and intellectually in a way that leads to vigorous debate.

\textsuperscript{114} Lupica, supra note 14, at 84-85.
\textsuperscript{115} Id. at 75 (citing LAWRENCE KOHLBERG ET AL., MORAL STAGES: A CURRENT FORMULATION AND A RESPONSE TO CRITICS (John A. Meacham ed., 1983)).
\textsuperscript{116} Lupica, supra note 14, at 75.
\textsuperscript{117} Id. at 69.
b. Demonstrations

As noted below, Professor Burns used demonstrations by faculty members to illustrate a concept when the topic did not lend itself to a simulation exercise. Instructors often teach mediation ethics by engaging in a role-play demonstration or using a video-taped demonstration of the scenario giving rise to an ethical dilemma or concern.\textsuperscript{119}

c. Problem-Based Method

Richmond describes the problem-based method of teaching as, for example, giving “students an extended set of facts and require[ing] them to resolve the issues presented.”\textsuperscript{120} It can give students insight to legal problems without live-client experiences. Students “(a) recognize issues; (b) find both assigned and unassigned materials on point; (3) isolate rules or principles; and (d) formulate arguments for application of those rules and principles to the particular problem.”\textsuperscript{121} The method has its limits, too. Research suggests that students “only rarely . . . stud[ied] problem cases with care.”\textsuperscript{122}

Professor Lerner uses an understanding of cognitive science and problem-based learning to help students respond to ethical dilemmas in more analytical and less emotion-driven ways. He argues that lawyers engage in complex problem-solving, whether legal or ethical, using a diverse set of tools. However, most law schools teach students to solve a narrow range of

\textsuperscript{119} For a discussion of the use of technology in the classroom, see BEST PRACTICES, supra note 89, at 159-61. See also Pearl Goldman, Legal Education and Technology II: An Annotated Bibliography, 100 LAW. LIBR. J. 415 (2008).

\textsuperscript{120} Richmond, supra note 24, at 950. See generally The Challenge of Problem-Based Learning (Davis Boud & Graham I. Feletti eds., 2d ed. 1997); The Power of Problem-Based Learning: A Practical “How To” for Teaching Undergraduate Courses in Any Discipline (Barabara J. Duch et al. eds., 2001); Mark Broïda, Creative Problem Solving, THE LAW TEACHER, Spring 2001, at 9; Suzanne Kurtz et al., Problem-Based Learning: An Alternative Approach to Legal Education, 13 DALHOUSIE L. J. 797, 801-03 (1990); Myron Moskovitz, Beyond the Case Method: It’s Time to Teach with Problems, 42 L. LEGAL EDUC. 241, 244 (1992); Steven Shapiro, Teaching First-Year Civil Procedure and other Introductory Courses by the Problem Method, 34 CREIGHTON L. REV. 245 (2000).

\textsuperscript{121} Richmond, supra note 24, at 950 (citing DAN D. DOBBS, TEACHING NOTES FOR PROBLEMS IN REMEDIES TEACHING MATERIALS xi (1974)).

\textsuperscript{122} Richmond, supra note 24, at 950 (citing ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM 1850S TO THE 1980S 228-229 n. 87 (1983)).
problems using a narrow range of practice tools. He recommends an “experiential, highly contextualized, behaviorally oriented, problem based teaching” approach.

Professor Tzannes generally approves of the problem-based method of teaching legal ethics and describes its use at the University of Western Sydney, Macarthur. The technique also incorporates small group discussion and some role-play, and it focuses on skills and behavior. Instructors create problems that more closely reflect the likely dilemmas young lawyers will face in practice. They can effectively serve the purpose of sensitizing students to problems they may soon face as lawyers.

Professor Green illustrates the use of the problem-based method by providing a transcript of the discussion he led at a large law firm. Partners and associates participated in the workshop.

d. Simulations and Role-plays

Professor Burns asserts that the simulation-based course offers “the most powerful way to teach certain fundamental aspects of the subject” and represents a better learning experience than other methods of instruction. Research may confirm this conclusion. It shows that students

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124 Id. at 658.
125 Tzannes, *supra* note 51, at 78-80.
126 Id. at 79.
127 Id. at 61.
engaged in cooperative learning retain more information, engage in higher-level reasoning and critical thinking, gain deeper-level understanding, spend more time on task with less disruptive behavior, show greater motivation to learn, gain greater ability to view situations from other person’s perspectives, build more supportive social relationships, express more positive attitudes towards teachers, the subject, learning and the school, show higher self-esteem, and show greater social competencies.\textsuperscript{130} The American Association for Higher Education identifies as “good practice” encouraging cooperation among students. It explains, “Learning is enhanced when it is more like a team effort than a solo race. Good learning, like good work, is collaborative and social, not competitive and isolated. Working with others often increases involvement in learning. Sharing one’s ideas and responding to others’ reactions improves thinking and deepens understanding.”\textsuperscript{131}

Simulation-based courses require students to assume various roles -- including those of lawyers, clients, judges, witnesses, mediators, arbitrators, and members of a disciplinary committee – and to perform tasks in hypothetical situations under the supervision and coaching of an instructor. The simulation allows time for feedback and reflection.\textsuperscript{132}

In 1997, Profession Tzannes described role-plays and simulations as a newer method for teaching legal ethics to law students.\textsuperscript{133} Since that time, instructors have increasingly used simulations and other experiential exercises in doctrinal, skills, and professional responsibility...
courses. Professor Tzannes noted the benefits of the method, but also recognized the additional costs associated with its effective use. Instructors using it could also videotape the simulation and provide feedback to students about their performances and the ethical choices they made.

Northwestern Law School offers students a three-course 10-credit integrated program that includes professional ethics, trial advocacy, and evidence law. The two-hour ethics course meets twice a week. The instructor gives a short lecture providing the “outer limits” of the ethics subject under study. As noted above, in some classes, faculty members demonstrate a particular subject or problem that does not lend itself to a simulation experience. In other classes, the instructors rely on simulations. Simulations may extend over two or three classes, with students playing the roles of the lawyers. Actors or drama students play the roles of witnesses or parties. In some simulations, a student will play the role of a senior law firm partner who consults with the student-lawyers about an appropriate course of action. Other students will play the roles of prosecutor and defense counsel in any subsequent disciplinary proceeding that arises from the conduct displayed in the simulation. Remaining class members play the role of the members of the disciplinary committee. After the students deliberate and render a decision, the instructors lead a discussion of the issues. The instructors ask students to look beyond the scope of the applicable professional rules to broader issues of professional responsibility, values, or norms.

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134 See supra notes 23, 51. See infra note 129.
135 Instructors could also use CALI-based MediaNotes to annotate and review videotaped performances. See Larry Farmer, Workshop: How MediaNotes can be Used in Skills Courses, Ass’n of Am. Law Schools, 2009 Annual Meeting (San Diego, Ca. Jan. 6, 2009).
137 Burns, Teaching the Basic Ethics Class, supra note 23, at 45.
138 See infra note 209 and accompanying text.
139 Burns, Teaching the Basic Ethics Class, supra note 23, at 46.
Professor Hartwell used out-of-class attorney-client simulations to teach legal ethics at the University of San Diego Law School. Following the simulation, students working in class in small groups identified the ethical issue raised in the simulation, formulated the appropriate course of action, reached consensus on the applicable ethics rule, and justified the application of the rule in terms of certain operative principles. “These principles were: (1) the integrity and self-respect of the attorney; (2) the integrity and autonomy of the attorney-client unit; (3) the fairness and efficiency of the legal system; and (4) the public’s right to be informed.” The course allowed students “to think about the immediate moral dilemmas of law practice, and, perhaps more importantly, to rehearse how they are going to talk about those dilemmas [in the future].” He explained further:

[O]ur courses were decidedly “student centered,” in that the students framed the ethical issues for discussion and the instructor’s chief role was to clarify and record student responses. Our ethical problems were broadly drawn to raise issues that lawyers face but which were often not amenable to solution by reference to formal ethical rules. Attendance was very high. Student evaluations . . . were uniformly favorable.

Students also worked on weekly quiz questions designed to help them learn the material tested on the MPRE. Hartwell graded the course on the curve with the grades “bunched” in the center to encourage cooperation among students and to create a more collaborative learning atmosphere. Based on a test administered to students, the course significantly and positively influenced students’ moral reasoning. While the relationship between more mature moral

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140 Hartwell later moved the simulations to scheduled class periods to accommodate the needs of evening students. Hartwell, supra note 20, at 525.
141 Id. at 522-23.
142 Id. at 535.
143 Id. at 533. Hartwell described the class as less formal, interactive and “noisy.” Id. at 535.
144 Id. at 525.
145 “[F]outeen students made significant gains, three students recorded significant losses[,] and thirteen [students] did not change significantly” based on their scores on a Kohlberg-based test known as the Defining Issues Test. Id. at 526-27.
reasoning and moral conduct is not clear, Hartwell hypothesizes that enhancing a student’s moral reasoning should also strengthen his or her conduct.  

Minnesota experimented with a simulation program designed to train new trial judges.  

It used a mock criminal trial scenario in which volunteer lawyers played the roles of trial counsel. It used experienced judges to critique the student judges, with particular attention paid to the gender, race, and culture of both sets of judges.  

The designers recommended that the state offer the course at the beginning of the judge’s career, again one year later, and then occasionally throughout his or her career.  

The simulation’s designers also recommended that the course (1) allow assigned readings before the simulation exercises, (2) take more time, and (3) permit greater reflection by the judges. Its then-existing design at least achieved the lower-order learning goal of sensitizing new judges to some of the ethical issues they would likely face on the bench.  

Somewhat defensively, the designers cited the use of simulations in law school clinics, law school classes, continuing legal education offerings, and computer-assisted legal education programs to explain the reason for the design of their course.  

In 2008, an assessment of Florida’s training program for certified mediators found that trainees wanted to learn about mediation ethics through methodologies other than lecture exclusively. The state’s training guidelines permitted the use of role-play and other creative

146 Id. at 539.  
147 Simon & Landsman, supra note 51, passim.  
148 Id. at 326, 331-34.  
149 The designers believed this repeated reinforcement of the provided information would help the judges transfer the learned skills into the actual courtroom. Id. at 336. This suggestion further supports other persons’ concerns that students transfer the learned information, skills, and values outside the classroom with some difficulty. Groccia, supra note 27, at 5 (suggesting a “cone of learning” described supra at n.85).  
150 Id. at 336. For a discussion of high-order learning, see supra note 81 and accompany text.  
151 Id. at 322-24.
approaches to teaching mediation ethics, but surveyed trainees apparently saw little use by instructors of these alternatives.\textsuperscript{152}

e. \textit{Live Client Work and Externships}

Clinical professors have long argued that live-client experiences provide the best opportunities for teaching legal ethics to students. But, few clinicians have described their experiences in the legal literature.\textsuperscript{153} Notre Dame Law School used a W. M. Keck Foundation grant to design and operate clinical legal ethics seminars as an option for students.\textsuperscript{154} The increased cost of providing this option, was outweighed, Professor Venter argued, by the method’s “extreme effectiveness.”\textsuperscript{155}

Professor Lerner identified live-client clinics as the type of learning environment that would better teach professional ethics by allowing students to examine and understand the problem as presented by the client, theorize as to potential solutions, plan and carry out legal research and factual investigation, remain open to ongoing re-examination of the critical issues, identify limits in their own knowledge and overcome those limits, integrate knowledge from other disciplines or domains, learn, build, on their prior learning, exercise judgment, make choices and experience their consequences.\textsuperscript{156}

However, without much explanation, he expressed concern that in a clinical environment the unpredictability of every case would make it “difficult to plan a problem solving or professional responsibility curricular thread . . . “\textsuperscript{157} As noted above, Professor Morton’s experience in

\textsuperscript{153} Hartwell, \textit{supra} note 20, at n. 4 (citing to the available literature); Menkel-Meadow, \textit{The “Infusion” Method at UCLA}, \textit{supra} note 43, at 131 (describing the UCLA clinical instructors experimentation with different ways to teach legal ethics).
\textsuperscript{154} Venter, \textit{supra} note 23, at 290-293 (describing the clinical legal ethics classes at Notre Dame Law School).
\textsuperscript{155} \textit{Id.} at n. 33.
\textsuperscript{156} Lerner, \textit{Using our Brains, supra} note 14, at 694.
\textsuperscript{157} \textit{Id.} at 694-95.
supervising externship students shows that, even in this active learning environment, students may resist engaging in higher-order thinking relating to professional ethics.\(^{158}\)

\(f. \quad Other \ Teaching \ Methods\)

*Best Practices* provides a long list of other teaching methodologies that instructors can use in the design of a professional ethics course.\(^{159}\) The include brainstorming,\(^{160}\) buzz groups,\(^{161}\) free group discussion,\(^{162}\) group tutorial,\(^{163}\) individual tutorial,\(^{164}\) problem-centered groups,\(^{165}\) programmed learning,\(^{166}\) the syndicate method,\(^{167}\) synectics,\(^{168}\) and the t-group method.\(^{169}\)

\(^{158}\) See *supra* note 22 and accompanying text.

\(^{159}\) *Best Practices*, *supra* note 89, at 132-33.

\(^{160}\) “An intensive discussion situation in which spontaneous suggestions as solutions to a problem are received uncritically.” *Id.* at 132.

\(^{161}\) “Groups of 2-6 students who discuss issues or problems for a short period, or periods, during a class.” *Id.* at 132. The name must come from the sound several groups make as their members discuss a topic or work on a problem.

\(^{162}\) “A learning situation in which the topic and direction are controlled by the student group; the teacher observes.” *Id.* at 132.

\(^{163}\) “The topic and general direction is given by the tutor, but the organization (or lack of it), content and direction of the discussion depends on the student group of up to 14 students.” *Id.* at 132.

\(^{164}\) “A period of teaching devoted to a single student.” *Id.* at 132-33.

\(^{165}\) “Groups of 4-12 students discussing a specific task.” *Id.* at 133.

\(^{166}\) “Usually a text or computer program containing questions each of which must be answered correctly before proceeding.” *Id.* at 133.

\(^{167}\) “Teaching where the class is divided into groups of about 6 members who work on the same or related problems with intermittent teacher contact and who write a joint report for the critical appraisal of the whole class.” *Id.* at 133.

\(^{168}\) “A development of brain-storming in which special techniques, such as choosing group members from diverse backgrounds, are used to produce a creative solution to a problem.” *Id.* at 133.

4. Methods for Teaching Mediation Ethics

As noted above, Mary Thompson suggests that instructors teaching mediation ethics should focus on four “competency areas:” (1) self-awareness of potential sources of bias; (2) knowledge of professional standards; (3) analysis of ethical dilemmas and development of skills to decide on a course of action; and (4) performance in the moment when the mediator faces an ethical dilemma.\(^{170}\) She teaches self-awareness using a personal bias exercise,\(^ {171}\) a “stand by your values” exercise,\(^ {172}\) and the Prisoner’s Dilemma game.\(^ {173}\)

Thompson teaches knowledge of professional standards governing mediators using a code comparison exercise and games.\(^ {174}\) These exercises serve the learning objectives of helping students recognize ethical dilemmas when they arise and help them anticipate situations in which ethics code provisions provide conflicting obligations. They can also encourage mediators to develop marketing, intake, office procedures, and mediation procedures that avoid appearances of lax ethical standards. They may also help mediators avoid complaints from unhappy parties, especially those lodged with state grievance programs. In the first exercise, Thompson presents

\footnote{Beyond my own Interpretations”: Reflections on Collaborative and Cooperative Learning Theory in the Law School Curriculum, 31 AZ. ST. L. J. (1999).}
\footnote{Thompson, Teaching Ethical Competence, supra note 11, at 1.}
\footnote{Students view photos of individuals with diverse race, gender, and cultural backgrounds. The instructor asks the students to identify with whom they would most likely be friends and least likely to be friends. In small groups, the students discuss the assumptions underlying these judgments. Id.}
\footnote{In this exercise, the instructor posts on flip chart paper in different areas of the room possible options to the resolution of a particular mediated conflict. The instructor asks students to identify the solution they would find most difficult to live with as a mediator. Students stand by the option most difficult for them. They talk with each other about what that option says about their personal values. Thompson, Teaching Ethical Competence, supra note 11, at 1.}
\footnote{This negotiation game helps students identify values and assumptions about competition and cooperation. Thompson, Teaching Ethical Competence, supra note 11, at 1.}
\footnote{See also Robin K. Craig, The Plays the Thing: Learning Civil Procedure by Breaking the Routine, THE LAW TEACHER, Spring 1999, at 4 (describing the use of the game “hot potato” to use rules of civil procedure governing joinder of claims and parties to “build a lawsuit”); Brannon Heath, The Research Quiz Show, THE LAW TEACHER, Spring 2000, at 11; Jennifer L. Rosato, All I Ever Needed to Know about Teaching Law School I Learned Teaching Kindergarten: Introducing Gaming Techniques into the Law School Classroom, 45 J. LEGAL ED. 568, 570-71 (1995) (explaining the use of games in class to increase student comprehension of a large amounts of discrete information, including a discovery game based on the Buffalo Creek disaster (Buffalo Creek Family Feud), a game for civil procedure class that examines class action rules (Class Action Jeopardy), and a game based on the TV series Law and Order).}
an ethical dilemma to the students. Working in small groups, they analyze it under several
different mediation codes. It helps students identify the similar and different approaches taken
by common mediator codes.\textsuperscript{175}

I have used her suggestion to adapt popular television game shows to test students’
knowledge of mediation codes of ethics. My law school students especially enjoy playing
\textit{Mediation Ethics Jeopardy}, a Power Point game I created to teach them specific provisions of
the Virginia ethics code for mediators.\textsuperscript{176} They play for \textit{Monopoly} money. Members of the team
with the highest bank account at the end of the class hour get a box of Lucky Charms, 15 ounce
cans of Green Giant sweet peas, and law books no one else wants.\textsuperscript{177} With the help of a
computer savvy research assistant, I also developed a game called \textit{You can be a Survivor on ADR
Island}. It plays like \textit{Who Wants to be a Millionaire}, complete with the option to reduce the
multiple choice answers by 50 percent. But, if a team fails to answer a question correctly, they
must vote a member off the team like the TV reality show, \textit{Survivor}. The team with the most
members remaining at the end of the game wins the same prizes mentioned above. I use this
game to apprise \textit{1Ls} of the role ADR plays in the current resolution of legal disputes. I could
easily convert it to an ethics learning game.

An instructor at one national ADR conference used a multiple choice Power Point game
that participants played in groups to test their recall (stage 3 learning) of the provisions of the
2005 Model Standards of Conduct for Mediators.\textsuperscript{178} While these games may help students

\textsuperscript{175} Thompson, \textit{Teaching Ethical Competence, supra} note 11, at 2.
\textsuperscript{176} I am happy to share a copy of this game with other ethics instructors.
\textsuperscript{177} I retrieve these books from a stack that develops over time in our law school business office. Faculty members receive books from publishers that they do not want. They put them on the stack. Other faculty members can then take books from the stack if they like. Any book left over after that becomes a prize for the \textit{Jeopardy} game.
\textsuperscript{178} \textsc{Model Standards of Conduct for Mediators} (2005),
identify code provisions or reinforce their learning of specific concepts, they do not lend themselves to a deeper discussion of ethical values.

Thompson teaches students how to analyze an ethical dilemma and choose a course of action using hypothetical situations. She calls these exercises the “most challenging for trainers [and] frustrating for trainees looking for the ‘right’ answer.”\textsuperscript{179} This competency, however, is “crucial to ethical practice.”\textsuperscript{180} Mediators competent in these skills should know what questions to ask when analyzing a dilemma, choose between conflicting principles of practice, understand when the mediator needs to take action, and defend the choice he or she has made.\textsuperscript{181} To teach these skills, she uses a decision tree analysis of an ethical dilemma,\textsuperscript{182} an exercise called “Where do you Draw the Line?,”\textsuperscript{183} and an exercise called “Defend Yourself.”\textsuperscript{184}

Thompson helps students put theory into practice using several activities including role-play, stop-action demonstrations, and a “quick decisions” exercise. In the role-play exercise, the instructions for the students who play the roles of each party create an ethical dilemma. The third student, playing the mediator, must deal with it “in the moment.” In the stop-action demonstration, the students stop the role-play when they spot an ethical dilemma. The instructor helps them discuss the dilemma, choose a course of action, and implement it in the role-play. They then discuss the effect of the chosen response. In the quick decision exercise, students working in groups of three, play the role of parties and the mediator. The instructions to the parties create an ethical dilemma. The mediator responds in the moment. The entire group then

\textsuperscript{179} Thompson, Teaching Ethical Competence, supra note 11, at 2.
\textsuperscript{180} Id.
\textsuperscript{181} Id.
\textsuperscript{182} Students use a case study and a decision-tree model to arrive at an ethical solution to the dilemma. Id.
\textsuperscript{183} In this exercise, students assume that the parties have asked the mediator for advice. Using a continuum of five to seven responses, arranged from most to least directive, the students analyze which responses support or undermine party self-determination and mediator impartiality. Id. at 3.
\textsuperscript{184} Students work in small groups, with three students playing the part of a grievance committee. They must consider a complaint filed by a party to a mediation. A fourth student plays the role of the mediator who must justify his or her actions to the committee. Thompson, Teaching Ethical Competence, supra note 11, at 3.
offers feedback about whether the mediator’s response was ethical and effective. The exercise continues for several rounds until all students have played the role of mediator.\footnote{Charles Pou, Jr., Assuring Excellence, or Merely Reassuring? Policy and Practice in Promoting Mediator Quality, 2004 J. DISP. RESOL. 303, 335, 343-44, 351–53.}

Charles Pou, expanding on his thoughts published in an earlier article,\footnote{Charles Pou, expanding on his thoughts published in an earlier article, supra note 49, at 211–13.} suggests that mediators develop an informal system that enhances mediation ethics by encouraging the discussion of the relationship between ethics and good practice, by providing a hotline or other real-time ethics feedback for mediators, by creating ethics websites and other informational sources, by developing case studies for use in mediation ethics training, and by fostering peer or expert discussion groups that could focus on ethical issues.\footnote{Charles Pou, Jr., Assuring Excellence, or Merely Reassuring? Policy and Practice in Promoting Mediator Quality, 2004 J. DISP. RESOL. 303, 335, 343-44, 351–53.}

The researchers who assessed the training of certified mediators in Florida recommended that trainers teach mediation ethics using role-play, scenario analysis, discussion, video analysis, and review of actual ethics complaints.\footnote{See Barton, Raines & Hedeen, supra note 152, at 47, 49.} All of these techniques involve active or interactive learning and would facilitate the students’ learning of the theory and skills needed for ethical mediation practice.

\textbf{F. Assessing Student Learning}

\textit{1. Best Practices for Assessment}

The authors of \textit{Best Practices} devote over 30 pages to the principles governing student assessment.\footnote{BEST PRACTICES, supra note 89, at 235-64.} Assessment measures can be used to rank and sort students for the job market (summative). Or, an instructor can use them to provide learning feedback to students (formative).\footnote{Friedland, Law School Evaluation, supra note 40, at 155, 186, 198, 204-10. Another author says that we use assessments “(1) to screen candidates for admission, grades, rank or employment . . . (2) to determine awards and honors; (3) to determine the most effective educational pedagogies; and (4) to foster self-knowledge and
schools. Its authors also identify the best practices for assessing student learning as (1) being clear about goals of each assessment; (2) assessing whether students learned what the instructor taught (as opposed to testing topics not taught by the instructor); (3) conducting criteria-referenced assessments, rather than norm-referenced assessments (also known as reliability of the assessment method); (4) using assessments to inform students of their level of professional development; (5) being sure the assessment is feasible in light of the subject, time, training required to implement the assessment, equipment or technology needed, number of assessments required, and financial cost; (6) using multiple assessment methods; (7) distinguishing between formative and summative assessments; (8) conducting formative assessments throughout the term of the course; (9) conducting multiple summative assessments throughout the term of the course, when possible; (10) ensuring that summative assessments are also formative assessments; and (11) requiring students to compile educational portfolios.

2. Assessment Methods in the Professional Ethics Course

Instructors can use a number of tools to assess student learning of legal or mediation ethics. Obviously, the chosen assessment tool should reflect the learning objectives of the course.

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191 BEST PRACTICES, supra note 89, at 236-39.

192 The authors of Best Practices explain that a formative assessment provides feedback about learning to students and instructors. The instructor may score the assessment tool, but treats it as educational and not as a tool for grading or ranking students. BEST PRACTICES, supra note 89, at 255-59. A professor uses a summative assessment to assign a grade to a student’s level of achievement, typically at the end of a course. Id. at 255.

193 Id. at 239-64. Hamilton also wants assessments of professional and ethical development of law students to be longitudinal to show development and change over time, be confidential so students need not fear that someone could later use the assessment data to cause the student public embarrassment, have broad buy-in from students, and be coupled with ample opportunities for feedback, developmental coaching, and educational enrichment programs. Hamilton, supra note 190, at 500.

194 See generally AM. BAR ASS’N, SECTION ON LEGAL EDUCATION AND ADMISSION TO THE BAR, SPECIAL COMMITTEE ON OUTPUT MEASURES, INTERIM REPORT OF THE OUTCOME MEASURES COMMITTEE (May 12, 2008), http://www.abanet.org/legaled/committees/OutcomeMeasures.doc. See also discussion infra at notes 189-215 and accompanying text. Teaching objectives can include: covering substantive rules or statutes; issue-spotting; teaching
a. **Exams**

Professor Friedland notes that a “valid” exam should measure what the professor wanted the students to learn. “For example, a written law school examination might test: (1) the student’s knowledge of the subject; (2) the accuracy of the student’s recall of the knowledge and his understanding of it; (3) how effectively and accurately this knowledge can be communicated; (4) how skillfully and efficiently this knowledge can be applied to particular circumstances; and, (5) how rapidly these functions can be accomplished in an exam situation.”  

Exams can take several forms: essay, short answer, selected responses or multiple-choice, true/false, or guided essay.

Professor Lupica used a five-day take-home exam to assess the performance of the 16 students in her legal ethics seminar class. The grade on the exam counted as 50 percent of the student’s grade. She gave students an article excerpt giving one perspective on a subject of lawyer professionalism. Students then wrote an 8 to 10 page essay that Professor Lupica hoped would reveal their evolution through the stages of moral reasoning. After three semesters, she concluded that the students learned more in this course than they had in the course she had taught by the Socratic method. The essays showed detailed analysis, careful reflection, a higher level of moral sensitivity, and greater facility with the range of analytical frameworks used in the course.

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195 See supra notes 52-73 and infra notes 502-06 and accompanying text.
197 *Id.* at 165-66. For a discussion of other assessment tools a trainer could use in teaching professional ethics, see Hamilton, *supra* note 190, at 501-10.
In the context of mediation, the Association for Conflict Resolution (ACR) recommended in 2002 that mediators, seeking ACR’s certification, first pass a written exam covering eleven areas of knowledge, including communication, conflict theory, content management and resources, cultural diversity, ethics, history of mediation, models, strategies and styles, negotiation, process structure, role of third party, and systems and group dynamics. In the 2008 assessment of the Florida training programs for certified mediators, surveyed persons supported the use of a written test to show that each trainee had mastered basic concepts of mediation ethics. Utah Supreme Court Rule 4-510, governing the court-connected ADR program, requires new applicants to the roster of ADR providers to pass an examination on the applicable Code of Ethics.

b. Performance Evaluations

The law academy has given the role of performance evaluation more attention in recent years. Best Practices recommends that (1) the instructors digitally record or videotape student performances as often as possible to facilitate student and faculty review; (2) faculty receive training in the best practices for providing feedback; and (3) students receive training in how to receive feedback.

Some mediation programs require mediators to prove a minimum level of competence, including ethical awareness, through performance-based evaluations. Several mediation

199 See ACR CERTIFICATION TASK FORCE, supra note 76.
200 See Barton, Raines & Hedeen, supra note 152, at 48, 49.
202 See, e.g., BEST PRACTICES, supra note 89, at 174-79.
203 Id. at 174-76 (including a list of guidelines for performing effective critiques).
204 Robert A. Baruch Bush, One Size Does Not Fit All: A Pluralistic Approach to Mediator Performance Testing and Quality Assurance, 19 OHIO ST. J. ON DISP. RESOL 965, 1000–03 (2004) (concluding no current performance test can adequately assess mediators with different styles or skills and suggesting different tests for different models of mediation practice); Roselle L. Wisler & Robert W. Rack, Jr., Assessing Mediator Performance: The Usefulness of Participant Questionnaires, 2004 J. DISP. RESOL. 229, 238–57 (proposing the use of participant evaluations as a
instructors have advocated the use of video-taped performance assessments or other assessment processes. A few states require new mediators to work with a mentor who is a more experienced mediator. In some of these states, the mentor provides written and verbal feedback that the state certification authority may also review. 

\[\text{c. Weekly Papers or Student Journals}\]

The instructors in the legal ethics program at Northwestern Law School evaluate the journals students write and their performances in simulations. The journals contained the student’s analysis of five simulation exercises involving legal ethics.

\[\text{d. Class Participation}\]

Professor Lupica based 50 percent of a student’s final grade in her 16-student legal ethics seminar on the student’s class participation. For each class, she assigned two students as discussion leaders. They designed an approach to the presentation of the material and the burden shifted to them to encourage discussion. With this motivation, all students actively participated. Some students met this burden by designing role-plays. Other students framed questions for debate. Professor Lupica remarked that the students “engage[d] the material with way to enhance mediator quality, based on a study in the federal courts). See also Beryl Bluestones, Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance, 13 CLINICAL L. REV. 143 (2006); Stuckey, Teaching With Purpose, supra note 52, at 827-28.


See Barton, Raines & Hedeen, supra note 152, at 47-50. For an example of the requirements of a mentor program, see Virginia Supreme Court, Office of Executive Secretary, Mentor Information, http://www.courts.state.va.us/drs/certification_process/mentor_info.html (last visited Jan. 30, 2009). Florida and Maryland also require new mediators to work with a mentor. See Fla. Sup. Ct. Adm. Order No. A0SC08-23, supra note 96, at 3-8; MD. R. CIV. P. R. 17-104(a)(5), 17-104(b)(3), 17-104(d)(3).


Burns, Teaching the Basic Ethics Class, supra note 23, at 47; Venter, supra note 23, at n. 24.

Lupica, supra note 14, at 78.
an intensity I had never before seen. The intensity was contagious. With every class, the discussion rose to an increasingly more sophisticated level.”

e. Other Methods of Assessing Student Learning

The authors of *Best Practices* identify several formative assessment methods that instructors of professional ethics courses could use. They include practice exams, short homework assignments, self-scoring computer quizzes, exercises, “The Minute Paper” and other short answers to questions about the lesson of the class, misconception checks, preconception checks, empty outlines, categorization grids, defining features matrices, classroom opinion polls, course-related self-confidence surveys, electronic mail feedback, a group instruction feedback technique, and clickers.

V. Future Articles on Teaching Mediation Ethics

In a series of future articles, focused on the core values of mediation – mediator impartiality, party self-determination, confidentiality, and quality of the process, I plan to examine in detail the active learning or interactive teaching methodologies I have used to teach mediator ethics in a workshop or law school classroom. These techniques include short lectures, buzz group discussions, video clips, a defining features matrix or analytical grid, and exercises based on grievances filed against Florida mediators. These articles will illustrate how an instructor can use these grievance exercises to assess student learning of mediator ethical values. The articles will make these grievances available to ethics trainers for the first time. Finally, the

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211 *Id.*

212 *BEST PRACTICES*, supra note 89, at 256-59.


215 *BEST PRACTICES*, supra note 89, at 257-59.
articles will provide an analysis of the learning objectives met in the workshop and class, and they will suggest how I could improve the training. They conclude that instructors can find ways to make the topic of mediation ethics interesting, understandable, applicable to practice, and fun.

VI. Conclusion

At the beginning of this article I posed several questions about my own professional and ethical growth as a mediator. The change in my own perspective about professional ethics reflects my stage of ego, cognitive, and moral development and my increasing experience as a lawyer and mediator with the ethical issues we face as professionals. It also reflects my concern that parties -- whether legal clients or mediation participants -- come away from the dispute resolution process feeling they have gotten procedural justice and a substantive outcome that serves their basic interests and psychological needs. It also reflects my concern for the reputation of lawyers and mediators with the public and for the reputation of the courts that handle disputes or refer parties to mediation.

We can create the same level of enthusiasm for legal and mediation ethics in new professionals by providing well-designed ethics training programs that simulate the ethical dilemmas we face in practice and that use other active learning techniques. We need to garner the time and resources required to offer ethics training in highly interactive sessions that engage students in higher-order thinking. We should also continue to design assessment tools that help us analyze whether students and trainees have learned the values we wish to impart.