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# Learning Intentionally and the Metacognitive Task

Patti Alleva and Jennifer A. Gundlach

The understanding, like the eye, whilst it makes us see, and perceive all other things, takes no notice of itself: and it requires art and pains to set it at a distance, and make it its own object. But whatever be the difficulties, that lie in the way of this inquiry; . . . sure I am, that all the light we can let in upon our own minds; all the acquaintance we can make with our own understandings, . . . bring us great advantage, in directing our thoughts in the search of other things.

—John Locke, AN ESSAY CONCERNING HUMAN UNDERSTANDING<sup>1</sup>

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This symposium grew out of a program of the same name, hosted by the Teaching Methods Section (and co-sponsored by the Civil Procedure Section) at the Association of American Law Schools' (AALS) annual conference in New York City on Jan. 8, 2016. Professors Brooke D. Coleman, David B. Oppenheimer, Christine P. Bartholomew, Angela Upchurch, Cynthia M. Ho, Susan M. Gilles, and Elizabeth G. Thornburg presented. The program podcast can be found at <http://memberaccess.aals.org/eweb/DynamicPage.aspx?WebCode=LoginRequired&expires=yes&Site=AALS>. Professor Kris Franklin, Section Chair, invited us to put together that program. Professor Margaret Y.K. Woo, Co-Editor of the *Journal of Legal Education*, then invited us to put together this symposium based on that program. We are extremely grateful to both for giving us these opportunities to explore this important subject and to work with an inspiring group of colleagues who truly care about the learning side of teaching. We also thank Dean Eric Lane and Professors Christine Bartholomew, Richard Neumann, Jessica Santangelo and Kristin Weingartner for thoughtful comments on earlier article drafts, as well as law students Tyler Margolis and Alexa Zelmanowicz for their helpful perspectives. Our appreciation also goes to Janet Metcalfe, Professor of Psychology and of Neurobiology and Behavior at Columbia University, for sharing insights on metacognition and an earlier draft, and to Anne Mostad-Jensen, Head of Faculty Services at the University of North Dakota School of Law, for her unfailing research support. And we owe eternal gratitude to all of our students, past and present, who have inspired us to continually learn.

1. JOHN LOCKE, AN ESSAY CONCERNING HUMAN UNDERSTANDING, BOOK I, CH. I, § I, 55 (Roger Woolhouse, ed., Penguin Books 1997) (1690).

## Introduction

Teaching is not learning. This deceptively simple proposition unites in purpose the authors and articles in this symposium—*The Pedagogy of Procedure: Using Civil Procedure to Showcase Innovative Teaching Methods*. None of our contributors takes for granted a causal connection between teaching and learning. The strategies developed by our civil procedure authors recognize the learning process as an active partnership, where both teacher and student share responsibilities for maximizing student learning.<sup>2</sup> This collaboration may well mean more, and not less, work for both professor and student. However, that extra work is worth it if it engages students in ways that motivate them to self-activate their own strategies for independent and higher-level learning so that they, in turn, become their own teachers.<sup>3</sup>

To that end, the articles in this symposium are designed to provide guidance for addressing the challenges of teaching *and* learning civil procedure.<sup>4</sup> Our authors who specialize in this area offer a variety of intentional teaching strategies, with an eye toward being more conscious about what is being taught, how it is being taught, and why.<sup>5</sup> They put learning theory principles

2. See J.D. Vermunt, *Metacognitive, Cognitive, and Affective Aspects of Learning Styles and Strategies: A Phenomenographic Analysis*, 31 HIGHER EDUC. 25, 25 (1996) (noting that “[i]nstruction does not lead to learning automatically,” that “[t]he learning activities that students employ determine to a large extent the quality of the learning outcomes they achieve,” and that “teaching should be directed at encouraging students to use high-quality learning activities.”); Hope J. Hartman, *Teaching Metacognitively*, in METACOGNITION IN LEARNING AND INSTRUCTION: THEORY, RESEARCH AND PRACTICE 153 (Hope J. Hartman, ed., 2001) (noting that teachers who concentrate too much on presenting content and too little on students’ understanding of it “suffer from the fallacious assumption that ‘teaching = learning’”).
3. In this sense, teaching *is* learning. See Vermunt, *supra* note 2, at 27 (positing that “learning and instructional activities can be seen as images of each other and that they may be described in similar terms.”).
4. For an earlier collection of articles on pedagogy and civil procedure, see Symposium, *Teaching Issues: Civil Procedure*, 47 ST. LOUIS U. L.J. 1 (2003). For historical treatments of the course, see, e.g., Bruce A. Kimball & Pedro Reyes, *The “First Modern Civil Procedure Course” as Taught by C.C. Langdell, 1870-78*, 47 AM. J. LEGAL HIST. 257 (2005); Paul D. Carrington, *Teaching Civil Procedure: A Retrospective View*, 49 J. LEGAL EDUC. 311 (1999); Mary Brigid McManamon, *The History of the Civil Procedure Course: A Study in Evolving Pedagogy*, 30 ARIZ. ST. L.J. 397 (1998). See also David L. Noll, *A Reader’s Guide to Pre-Modern Procedure*, 65 J. LEGAL EDUC. 414 (2015) (explaining the concepts and devices of pre-modern procedure).
5. For key insights on intentional teaching, see generally, e.g., MICHAEL HUNTER SCHWARTZ, SOPHIE SPARROW & GERALD HESS, *TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM* xiii (2009) (exploring intentional teaching and learning techniques for “all aspects of teaching law students,” especially in doctrinal classes). See also Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347, 383 (2001) (defining instructional design as “a reflective, systematic, and comprehensive approach to creating instruction” that requires analyzing “the learning context, the learners, and the learning task” in developing instructional strategies that are evaluated and modified, if necessary, in accordance with what the designer learns from the evaluation); Beryl Blaustone, *Improving Clinical Judgment in Lawyering with Multidisciplinary Knowledge About Brain Function and Human Behavior: What Should Law Students Learn About Human Behavior for Effective Lawyering?*, 40 U. BALT. L. REV. 607, 615, 637-46

into practice to help students deepen their learning of the subject and to develop their own intentional learning strategies.<sup>6</sup> These principles underscore the importance of shifting the locus of learning from teacher to student by creating context for learning and offering opportunities for active and applied learning.

This symposium also serves those who teach courses other than civil procedure. The pedagogic approaches presented here, though placed in a subject-specific setting, could be modified for use in other classes. In fact, we undertook to coordinate this symposium and the AALS Teaching Methods Section Program (of the same name) to spotlight creative and effective methods for teaching a variety of challenging legal concepts. In this way, civil procedure is merely an exemplar. It serves as a platform for exploring the benefits of being intentional about choosing teaching strategies designed to facilitate deep learning, whatever the subject.

Talking intentionally about teaching and learning within a specialty, as our civil procedure authors have done, can also provide a springboard for broader dialogue among law faculty. Our one author who does not teach civil procedure encourages consideration of subject-specific pedagogy, and how that approach might improve teaching of that subject as well as inspire collective conversation about design of the curriculum as a whole.<sup>7</sup> Those most familiar with teaching a course can best identify its specific learning outcomes and how best to attain them.<sup>8</sup> Drawing upon these insights can

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(2011) (proposing a reflective “Intentionality framework . . . to assist students in applying a metacognitive approach to their own learning” and in developing the self-awareness necessary for law practice). Notably, the AALS 2006 Conference on New Ideas for Law School Teachers in Vancouver, British Columbia, was titled “Teaching Intentionally.”

6. Educational practices promoting intentional learning “help students become self-conscious about and self-directed in their own learning . . . .” WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 179 (2007) [hereinafter CARNEGIE REPORT] (citation omitted). “Teaching for intentional learning aims explicitly at enabling students to become aware of what they are doing as they learn the law.” *Id.* For key insights on intentional, self-regulated learning, see generally, e.g., Michael Hunter Schwartz, *Teaching Law Students to be Self-Regulated Learners*, 2003 MICH. ST. DCL L. REV. 447, 452-54 (2003) (defining self-regulated learners as those who assume responsibility for their own learning, in a repeated but adaptive cycle involving planning, performance, and reflection, in order to create their own meaning from the materials); Elizabeth M. Bloom, *Teaching Law Students to Teach Themselves: Using Lessons from Educational Psychology to Shape Self-Regulated Learners*, 59 WAYNE L. REV. 311, 315 (2013) (exploring teaching and academic counseling strategies to enable a diverse population of law students to become self-regulated learners); Roy Stuckey, *Teaching with Purpose: Defining and Achieving Desired Outcomes in Clinical Law Courses*, 13 CLINICAL L. REV. 807, 822-23 (2007) (advocating that teaching for intentional learning in experiential courses, if done properly, is “the best tool for helping students develop self-directed learning skills”).
7. In her symposium article, Professor Kris Franklin encourages faculty within subjects to explore the unique challenges and aspects of their courses, to determine what teaching methods are called for to respond to those challenges, and to be more deliberate about considering the role that their courses play in the curriculum. See generally Kris Franklin, *Do We Need Subject Matter-Specific Pedagogies?*, 65 J. LEGAL EDUC. 839 (2016).
8. See LORI E. SHAW & VICTORIA L. VANZANDT, STUDENT LEARNING OUTCOMES AND LAW

be especially helpful for discerning the proper purpose and placement of a subject within a progressive curricular structure<sup>9</sup> and for transitioning students from scaffolded<sup>10</sup> to independent learning as they move through law school. This intentional curricular dialogue can also play an important role in a law school's ongoing evaluation of the curriculum.<sup>11</sup>

This symposium also seeks to benefit our students. In particular, if first-year students read any of these articles (and we hope faculty members will encourage them to do so), they might gain a better understanding about why civil procedure is so challenging and how these challenges might be overcome. Accordingly, we commend not only the intentionality but the transparency of our authors in laying bare their thinking about how they teach to facilitate these types of discoveries, as well as to steer “the conversation of colleagues into the deep places where we might grow in self-knowledge for the sake of our professional practice . . . .”<sup>12</sup> We hope this symposium, and the AALS program that led to it, will inspire more of us to take calculated and creative teaching risks in the classroom and curriculum—and to study and share what we learn about learning as we go.

With these goals in mind, this article begins by suggesting why civil procedure doctrine is so challenging to teach and learn, noting how the symposium pieces help to tackle those challenges. Then, we join the growing number of law professors who advocate that learning how to learn deserves

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SCHOOL ASSESSMENT: A PRACTICAL GUIDE TO MEASURING INSTITUTIONAL EFFECTIVENESS 14 (2015) (explaining that “[a]s a professor, setting outcomes is really simply a question of thinking about where your course fits in the bigger picture.”). See generally AM. BAR ASS'N, *Standard 302: Learning Outcomes*, in STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2015-2016, at 15 (2015) [hereinafter ABA STANDARDS], [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2015\\_2016\\_chapter\\_3\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_chapter_3_authcheckdam.pdf) (requiring every law school to establish learning outcomes for specified competencies and for “[o]ther professional skills needed for competent and ethical participation as a member of the legal profession.”).

9. See Deborah Maranville with Cynthia Batt, *Pathways, Integration, and Sequencing the Curriculum*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD 52-58 (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo López, eds., 2015) [hereinafter BUILDING ON BEST PRACTICES] (describing various approaches to creating curricular coherence). Sequencing the curriculum involves “structuring offerings from introductory to intermediate to advanced, so that later classes build on the concepts and skills learned in earlier ones.” See *id.* at 52 (footnote omitted).
10. See SUSAN A. AMBROSE ET AL., HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING 215 (2010) (“Scaffolding refers to the process by which instructors provide students with cognitive supports early in their learning, and then gradually remove them as students develop greater mastery and sophistication.”).
11. See AM. BAR ASS'N, *Standard 315: Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods*, in ABA STANDARDS, *supra* note 8, at 23 (requiring the dean and faculty to “conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods” as the basis for curricular improvements).
12. PARKER J. PALMER, THE HEART OF A TEACHER: IDENTITY AND INTEGRITY IN TEACHING 14 (1997), [http://www.couragerenewal.org/PDFs/Parker-Palmer\\_The-Heart-of-a-Teacher.pdf](http://www.couragerenewal.org/PDFs/Parker-Palmer_The-Heart-of-a-Teacher.pdf).

greater attention in the law school curriculum, given the importance of learning to law students and lawyers alike. In particular, to round out the teaching approaches of our authors, we suggest that law schools should do more to demonstrate respect for the process of learning as an end in itself.<sup>13</sup> We especially extol the use of metacognitive<sup>14</sup> strategies to help students develop greater self-sufficiency and proficiency in confronting learning challenges of any kind, civil procedure or otherwise. We highlight metacognition because of its importance to self-regulated learning<sup>15</sup> and its benefits for professional development.<sup>16</sup> In doing so, we draw upon the literature in this area, from law faculty and those in other disciplines, to create what we hope is a helpful mini-primer-plus for use in civil procedure and other doctrinal courses. We close with suggestions for how law schools can show more institutional respect for learning as a subject worthy of independent attention.

### I. THE CHALLENGES OF TEACHING AND LEARNING CIVIL PROCEDURE

Civil procedure is difficult to teach and to learn for a number of reasons.<sup>17</sup> Most of these challenges also appear in some form in other courses, particularly those in the traditional first-year curriculum. But civil procedure involves them all. We briefly explain these challenges below, footnoting how our symposium authors have responded to them.

13. Cf. JOHN DEWEY, *DEMOCRACY AND EDUCATION* 54 (Barnes & Noble Books 2005) (1916) (explaining that “the educational process has no end beyond itself; it is its own end” involving “continual reorganizing, reconstructing, transforming.”); Judith Welch Wegner, *Lawyers, Learning, and Professionalism: Meditations on a Theme*, 43 CLEV. ST. L. REV. 191, 199 (1995) (arguing that “[i]f legal educators took [a commitment to learning as a professional value] seriously, law professors would consider the ethical imperative of reexamining how and what they teach. Law students would come to grips with their personal responsibility to learn while in law school, and find common ground with their professors in more active learning partnerships.”).
14. Metacognition is “the awareness of the *process of learning* . . . [It] involves choosing the best way to approach a learning task, i.e., self-monitoring. . . [and] includes the ability to know when and why to apply different strategies to study or solve different problem types. . . . The whole purpose of teaching metacognitive strategies is to increase students’ self-awareness about what it takes to learn.” PATRICIA LIOTTA KOLENCIK & SHELIA A. HILLWIG, *ENCOURAGING METACOGNITION: SUPPORTING LEARNERS THROUGH METACOGNITIVE TEACHING STRATEGIES* 6, 7 (2011). See also *infra* Part II (discussing metacognitive approaches and the importance of learning about learning to the classroom, curriculum, and legal profession).
15. See Julie Dangremond Stanton, Xyanthe N. Neider, Isaura J. Gallegos & Nicole C. Clark, *Differences in Metacognitive Regulation in Introductory Biology Students: When Prompts Are Not Enough*, 14 CBE—LIFE SCI. EDUC. 1, 2 (2015) (noting that “metacognitive regulation is also a significant part of self-regulated learning.”) (citation omitted).
16. See *CARNEGIE REPORT*, *supra* note 6, at 173 (asserting that “the essential goal of professional schools must be to form practitioners who are aware of what it takes to become competent in their chosen domain and to equip them with the reflective capacity and motivation to pursue genuine expertise. They must become ‘metacognitive’ about their own learning . . .”).
17. This article draws heavily from our combined thirty-seven-plus years of experience teaching some form of civil procedure and related litigation or trial courses.

(1) *Students Lack Direct Experience with the Civil Litigation Process.*<sup>18</sup> Perhaps more than any other first-year course, civil procedure implicates not only a subject, but a legal system in action. With that comes the need for students to understand the nature of the adversarial system, the roles of each player in it, including judges, jurors, lawyers, and clients, and the impact of strategic choice.<sup>19</sup> The civil litigation process is also a lot more difficult to grasp without some foundation in the professional skills and values necessary for making ethical judgments.<sup>20</sup> In addition, it is hard for students to fully appreciate the competing policy interests that influence the disposition of actions, such as resource, efficiency, and access-to-justice concerns. The power of the rules of procedure, which implicate all of these considerations, may not be evident to students who know little about their practical operation within, and impact upon, the course of a lawsuit.<sup>21</sup> In short, the many moving parts of a living litigation at legal, factual, and strategic levels can make understanding any particular stage of it a daunting challenge.<sup>22</sup>

(2) *Students Are Unfamiliar with Procedural Devices.*<sup>23</sup> Civil procedure is also among the least intuitive of the first-year courses, as many students do not

18. To respond to this challenge, Professor David Oppenheimer discusses use of a semester-long simulated case file of his own design to provide a realistic context for bringing procedural concepts to life and placing students in an active role as lawyers. The exercises that stem from the case are designed to balance the desire to provide context and active learning opportunities with the very real pressures created by time limits and coverage constraints. See generally David B. Oppenheimer, *Using a Simulated Case File to Teach Civil Procedure: The Ninety-Percent Solution*, 65 J. LEGAL EDUC. 817 (2016).
19. See George Rutherglen, *Teaching Procedure: Past and Prologue*, 47 ST. LOUIS U. L. J. 13, 14 (2003) (arguing that the “strategic behavior of participants in the process should . . . be the focus” of a civil procedure course).
20. See Richard A. Matasar, *Teaching Ethics in Civil Procedure Courses*, 39 J. LEGAL EDUC. 587, 588 (1989) (noting that “[c]ivil procedure courses are ideal for connecting doctrine and ethics” given that the rules “strain constantly to balance competing interests,” “make moral assumptions,” “sometimes promote individual over group rights, frequently allow judicial over party control, and occasionally enhance participatory rights over efficiency.”).
21. See JAY TIDMARSH, STRATEGIES AND TECHNIQUES FOR TEACHING CIVIL PROCEDURE I (2013) (observing that “procedure is best understood by working with it”); Jack H. Friedenthal, *Exploring Some Unexplored Practical Issues*, 47 ST. LOUIS U. L. J. 3, 12 (2003) (extolling the periodic importance of examining “some of the intensely practical matters that illuminate the realities of litigation” in civil procedure); Stephen B. Burbank, *Procedure, Politics, and Power*, 52 J. LEGAL EDUC. 342, 343 (2002) (highlighting the importance of imparting to civil procedure students the reality that “procedure is power”).
22. See Stephen N. Subrin, *Teaching Civil Procedure While You Watch It Disintegrate*, 59 BROOK. L. REV. 1155, 1174, 1180 (1993) (noting that “much of contemporary civil procedure can be understood only superficially unless we contextualize and enrich the doctrine” and that “[i]t is not self-evident to a first-year student why and how lawyers take the massiveness of the too many realities of a dispute and encapsulate them into elements and causes of actions.”).
23. To respond to this challenge, Professor Oppenheimer’s simulation materials, discussed *supra* note 18, include exercises where students are asked to draft the remaining 10% of partially completed pleadings or motion briefs, allowing them to focus on key aspects of the subjects studied. These exercises give students exposure to the actual documents litigators

initially apprehend that the law has a procedural dimension with independent (and interdependent) legal significance.<sup>24</sup> Especially challenging are the peculiarities of the procedural devices themselves. Most first-year students have no experience with, or concept of, motions or pleadings. While many students have watched trials on television, in films, and online, they simply lack exposure to the technical tools of litigation given that much of the procedural action is not visible in popular culture recreations. In addition, students struggle to understand the purpose of each device, where and how it is used in the litigation process, and the different legal and factual standards applicable to each. Truly understanding any device requires understanding them all, which means that the click of comprehension may not come until after the course concludes.<sup>25</sup>

(3) *The Indeterminate Nature of Procedural Rules.*<sup>26</sup> Exacerbating these problems is the common misconception of novice law students that the “rules” of civil procedure are just that—black-letter strictures capable of objective application with clear results. In fact, the words of the rules are merely starting points for understanding what they actually mean. Thus, debunking the myths of rule certainty becomes a course priority, as this misunderstanding can obscure the interpretative subtleties and ambiguities of the fact-sensitive, case-specific rules. It also inhibits students from envisioning more clearly the strategic use of procedural rules, their interrelationship with other legal authorities, and

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use in practice and help to demonstrate how those documents connect with the underlying doctrine and legal rules the students are learning.

24. Thus, to some extent, civil procedure professors teach against the curricular grain. The bulk of the traditional first-year curriculum comprises substantive law courses (e.g., contracts, torts, property), which also happen to be the subjects most familiar to novice law students. The unfamiliarity of civil procedure contributes to the sense that it is somehow different from, and perhaps more difficult than, these other courses, especially given its focus on process rather than substance. However, as Professor Brooke Coleman observed at the January 2016 AALS Teaching Methods Section program, civil procedure may indeed be more intuitive than it appears if the professor taps into students’ inherent appreciation for fairness in the process of resolving disputes.
25. Kevin M. Clermont, *Integrating Transnational Perspectives into Civil Procedure: What Not to Teach*, 56 J. LEGAL EDUC. 524, 527 (2006) (cautioning that in “a subject so marked by interdependencies . . . [t]o understand anything, the student must understand everything.”).
26. To respond to this challenge, Professor Christine Bartholomew tackles the juxtaposition of the seemingly straightforward language of the pleadings standard in Federal Rule of Civil Procedure 8 (“short and plain statement of the claim”) with the perplexity caused by the U.S. Supreme Court’s interpretation of that rule in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (collectively known as “*Twiqbal*”). Her approach asks students to apply and interpret *Twiqbal*’s legal standard as they compare and evaluate a range of different complaints taken from real cases. These exercises also help to acquaint students with the practical consequences of drafting decisions as they personally experience the indeterminacy of the rules and how they intimately affect the strategic choices that lawyers must make. See generally Christine P. Bartholomew, *Twiqbal in Context*, 65 J. LEGAL EDUC. 744 (2016). See also *infra* Part IIB (discussing how a professor might model the metacognitive task of “thinking aloud” about rule interpretation to show the indeterminate nature of procedural rules).



the key roles of judicial discretion and subjectivity in their interpretation and application.

(4) *Negotiating the Procedure/Substance Divide*.<sup>27</sup> To make matters more complicated, mastering the procedural rules requires understanding their relationship to the substantive law. This pedagogic conundrum is inescapable, because the procedural rules apply to an array of subject matters or substantive claims,<sup>28</sup> and take their meaning, in good part, from these case-specific applications. The flexibility of the rules, and their interpretation as applied in a changing claim environment, can create terrible confusion for students, especially those in the first year, who may too easily focus more on the substantive law than on the procedural dimensions of the case.<sup>29</sup> Moreover, it can be challenging for students to comprehend how a procedural result might be affected by the substantive claim, especially since the rules are meant for uniform application. Couple this with the congressional stricture that procedural rules should not curtail or change substantive rights<sup>30</sup> and the concomitant principle that procedure, as servant of the substantive law, exists solely to serve its ends.<sup>31</sup> These perspectives may lead students to falsely conclude that procedural law is less important or has less impact than substantive law, and to undervalue the unique power of procedure to give life to substantive rights.<sup>32</sup>

27. To respond to this challenge, Professor Bartholomew has designed her complaint exercises to enable students to explore the interaction between procedural rules and substantive claims and how judges' gatekeeping authority comes into play. See Bartholomew, *supra* note 26, at 765-70. These issues are particularly pertinent to understanding motions made pursuant to Federal Rules 12(b)(6) and 56, both of which, for their application, rely on understanding the basic contours of the substantive law claims under scrutiny.
28. See Subrin, *supra* note 22, at 1174 (noting that the cases studied in civil procedure "often first require one to understand the law from entirely different fields, many of which are not covered during the first year."); cf. Timothy W. Floyd, Oren R. Griffin & Karen J. Sneddon, *Beyond Chalk and Talk: The Law Classroom of the Future*, 38 OHIO N.U. L. REV. 257, 279 (2011) (opining that "the pervasive presence of civil procedure rules, doctrines, and concepts in virtually every judicial opinion a law student will ever read raises the stakes regarding the importance of the traditional civil procedure course.").
29. See Subrin, *supra* note 22, at 1173-74 (pointing out that, for many students, "it is an unpleasant surprise" that civil procedure is a course that focuses on "rules that govern how lawyers deal with disputes" rather than rules that "govern the every-day behavior of people and the relationship of people to property.").
30. See The Rules Enabling Act, 28 U.S.C. § 2072(b) (2012) (stating that the rules of practice and procedure "shall not abridge, enlarge or modify any substantive right.").
31. Charles E. Clark, *The Handmaid of Justice*, 23 WASH. U. L.Q. 297, 297 (1938) (explaining that the newly adopted Federal Rules of Civil Procedure "involv[ed] the due subordination of civil procedure to the ends of substantive justice"); see also Edward W. Cleary, *Presuming and Pleading: An Essay on Juristic Immaturity*, 12 STAN. L. REV. 5, 5 (1959) (noting that "all are agreed that procedure exists only for the purpose of putting the substantive law effectively to work.").
32. McManamon, *supra* note 4, at 438 (championing civil procedure as an important course given the fact that "without a remedy, there is no right."). See also Tidmarsh, *supra* note 21, at 1 (observing "[b]ecause [the course] focuses on *how* we enforce rights, not *what* those

(5) *Overlapping State and Federal Sovereigns and Judicial Systems*.<sup>33</sup> Understanding the procedure/substance divide—as well as the limited subject matter jurisdiction of the federal trial courts, their extraterritorial reach, and the *Erie* doctrine (to name a few course concepts)—necessarily implicates the most fundamental notions of a constitutional democracy.<sup>34</sup> Those notions include the sources of law in our federalist system, the relationship among federal and state sovereigns, the separation and balance of powers among the federal branches of government, and the overlapping yet discrete roles of the federal and state courts in settling fact-specific disputes. These, in turn, implicate the constitutionally and congressionally confined role that the federal trial courts play in resolving those disputes. Without solid grounding in these fundamentals, students may have trouble fitting the course together into a coherent whole and seeing the intricate interrelationships among sovereigns that affect procedural and jurisdictional design.

(6) *The Complexity of Legal Interpretation*.<sup>35</sup> Civil procedure requires students to master the relationships among constitutional provisions, statutes, rules, cases, and advisory committee notes—an unsettling prospect for even experienced lawyers. The U.S. Supreme Court’s interpretation of key jurisdictional doctrines has notably shifted over time, requiring students to synthesize a series of difficult-to-reconcile cases (not infrequently with fractured opinions), all of which implicate understanding principles of constitutional law, federalism, and statutory interpretation. Accordingly, novice law students must employ a complex array of doctrinal knowledge and analytical skills, all at the same time, often without mastery of any or even an awareness of the different strands of learning bundled together at each step of the reasoning process.

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rights are, Civil Procedure seems odd or out of kilter to most students.”); cf. Elizabeth N. Schneider, *Rethinking the Teaching of Civil Procedure*, 37 J. LEGAL EDUC. 41, 42 (1987) (noting that civil procedure “focuses students’ attention on the value of process as a social and human value in and of itself.”).

33. For a response to this challenge, see *infra* Part IIB (discussing the use of metacognitive questions for students to assess their understanding of the *Erie* doctrine).
34. Professor Richard Freer captures some of these complexities in describing the separation of powers and federalism aspects of the Rules Enabling Act: “First, it attempts to limit rulemaking authority to matters of ‘procedure.’ If the judicial rulemaking process were to stray into matters of substantive law, it would constitute a usurpation of legislative power. To the extent the federal government wishes to legislate regarding substantive law and policy, it must do so through Congress. . . . Second, it attempts to ensure that the federal government does not use the guise of a rule of procedure to encroach on state substantive law.” RICHARD D. FREER, *CIVIL PROCEDURE* 541 (3d ed. 2012).
35. To respond to this challenge, Professors Cynthia Ho, Angela Upchurch, and Susan Gilles target the teaching and learning quandaries of personal jurisdiction, which, as they explain, is a subject that epitomizes this complexity. They offer a number of teaching methods designed to provide students with context for learning, including the use of visual aids and analytical frameworks for approaching the material, as well as active-learning opportunities such as multiple forms of assessment questions. See generally Cynthia M. Ho, Angela Upchurch & Susan M. Gilles, *An Active-Learning Approach to Teaching Tough Topics: Personal Jurisdiction as an Example*, 65 J. LEGAL EDUC. 772 (2016).

While some of these six challenges are not unique to civil procedure, they certainly add a layer of opacity to the learning process, especially if the course is taught in the first semester of the first year. There are simply too many new things to be learned at once. In our experience, civil procedure students appreciate and benefit from hearing explicitly from us that these particular challenges exist, are difficult to surmount, and require dedicated efforts to master. Making students aware of these challenges can enhance their abilities to be more intentional in monitoring their learning about them. These are important preliminary steps in positioning students to take ownership of their own learning and to become strategic, self-regulated learners who pay attention to how they are learning. Knowing how to learn effectively should also help them to become lifelong learners, equipped to tackle the daily demands of practice, replete, as it is, with an ever-changing landscape of variables requiring adaptability and versatility. Accordingly, we join those in the legal academy who advocate that law schools elevate the subject of learning about learning to a more prominent place in the professional development of law students.

## II. BRINGING THE SUBJECT OF “LEARNING ABOUT LEARNING” TO THE FOREFRONT OF CURRICULAR CONSCIOUSNESS

Professor Judith Welch Wegner argued more than two decades ago that “a commitment to learning is an appropriate and necessary professional value for lawyers.”<sup>36</sup> She cautioned:

Lawyers are (or should be) by temperament and training “learners.” Unless lawyers embrace that notion more consciously, they run the risk of forfeiting their proud heritage and compromising their capacity to deal with a rapidly changing future. A more self-conscious commitment to learning can provide a needed anchor in times when many fear that lawyers’ sense of professionalism has drifted.<sup>37</sup>

At the heart of Wegner’s admonition is the reality that lawyers must actively and continually learn in order to exercise sound professional judgment, to self-understand and self-improve, and to assume leadership roles in the profession and community at large.<sup>38</sup> Simply put, the ability to learn is essential for the problem-solving legal professional.<sup>39</sup>

36. Wegner, *supra* note 13, at 192.

37. *Id.*

38. See generally STEPHEN PRESKILL & STEPHEN D. BROOKFIELD, *LEARNING AS A WAY OF LEADING: LESSONS FROM THE STRUGGLE FOR SOCIAL JUSTICE* (2009). In debunking traditional notions of leadership (as individual, hierarchical, dispassionate, and controlling), Preskill and Brookfield advocate instead for a model of relational and collaborative leading they call “learning leadership”: “[W]e need leaders who strive to place learning at the center of their work. Such leaders know in their bones that they have much to learn and that the people likely to be their best teachers are the co-workers they see and collaborate with everyday. They also see encouraging the learning of others as the central responsibility of leadership.” *Id.* at 3, 6.

39. See Anthony S. Niedwiecki, *Lawyers and Learning: A Metacognitive Approach to Legal Education*,

But not only must learning be continuous throughout a lawyers' career, the learning process itself must be sound. Learning, after all, is a process to be honed.<sup>40</sup> It must involve interrogating assumptions, thoughts, conclusions, and feelings. It further requires the willingness to assess and revisit knowledge to ensure its integrity. Learning deeply takes discipline, experimentation, struggle, patience, and perseverance in the face of unsatisfying uncertainty. It may not be an overstatement to say that losing sight of the deliberateness of learning in a quick-click world threatens the integrity of legal education and, in turn, the legal profession.

Research shows that many students leave high school and college with insufficient understanding of how to learn effectively, despite prior educational successes.<sup>41</sup> Compounding this is the fact that our students live in a world complicated by the overload and distractions of electronically available, digitized information—a reality that can adversely affect some of the constituent skills of learning, such as reading and concentration.<sup>42</sup> The upshot

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13 WIDENER L. REV. 33, 41 (2006) [hereinafter Niedwiecki, *Lawyers and Learning*] (arguing “lawyers never stop learning. . . . Law schools, however, fail to teach lawyers *how* to learn.”) (emphasis added); ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP II (2007) (noting that “[l]awyers learn throughout their careers from experience, collaboration, self-study, reflection, and continuing legal education.”).

40. AMBROSE ET AL., *supra* note 10, at 3 (explaining that “[l]earning is a process, not a product. . . . [It] involves change in knowledge, beliefs, behaviors, or attitudes. . . . [And it] is not something done to students, but rather something students themselves do. It is the direct result of how students interpret and respond to their experiences—conscious and unconscious, past and present.”) (emphases omitted).
41. See, e.g., SAUNDRA YANCY MCGUIRE WITH STEPHANIE MCGUIRE, TEACH STUDENTS HOW TO LEARN: STRATEGIES YOU CAN INCORPORATE INTO ANY COURSE TO IMPROVE STUDENT METACOGNITION, STUDY SKILLS, AND MOTIVATION 10-12 (2015) (explaining why so many college students do not know how to learn even though they did well in high school); Ruth Vance & Susan Stuart, *Of Moby Dick and Tartar Sauce: The Academically Unprepared Law Student and the Curse of Overconfidence*, 53 DUQ. L. REV. 133 (2015) (positing various factors contributing to the unpreparedness of new law students, including misplaced confidence about underdeveloped study habits that seemed to work well in other, less challenging academic settings); RICHARD ARUM & JOSIPA ROKSA, ACADEMICALLY ADRIFT: LIMITED LEARNING ON COLLEGE CAMPUSES 31, 121 (2011) (reporting that “large numbers of U.S. college students . . . are failing to develop the higher-order cognitive skills that it is widely assumed college students should master” in part because “many contemporary college academic programs are not particularly rigorous or demanding”).
42. See generally Shailini Jandial George, *Teaching the Smartphone Generation: How Cognitive Science Can Improve Learning in Law School*, 66 ME. L. REV. 163 (2013) (surveying studies describing how millennial law students' use of technology affects their attention and learning and proposing ways for law schools to teach students how to learn in law school). One 2005 study analyzed changes in reading behavior in a digital, screen-based environment over the prior ten years. It found that while overall time spent on reading increased, the nature of the reading behavior was quite different, characterized by more browsing, scanning, keyword spotting, one-time reading, selective reading, and nonlinear reading. The study also found that screen-based readers spent less time on in-depth and concentrated reading and showed declining sustained attention. See Ziming Liu, *Reading Behavior in the Digital Environment: Changes in Reading Behavior over the Past Ten Years*, 61 J. DOCUMENTATION 700 (2005). Given the reading

is that any number of students may be entering law school without an in-depth understanding of *how* to learn. This suggests that law schools must undertake a systematic response to this problem by targeting improvement of the learning process itself.<sup>43</sup>

Some law faculty may rightfully question whether law schools should bear the responsibility to teach “learning about learning.” After all, within each course there is already precious little time to teach the basics. In addition, to our knowledge, most law professors are not learning-theory experts, and few have professional education in this area. Nor are most faculty traditionally rewarded for taking the time to become more familiar with the teaching and learning literature and to incorporate what they learn about learning into their courses.

These are appropriate cautions. But given the centrality of learning to lawyering, it is increasingly difficult to indulge a presumption that all of our students enter law school with sufficient knowledge of *how* they need to learn in order to become self-regulated learners in the ways required of the well-rounded legal professional.<sup>44</sup> Placing a premium on the process of learning—and what it means to learn deeply in line with learning theory—should become a prime consideration as the legal academy tackles its reinvention.<sup>45</sup> It is imperative that we equip our students with the skill set necessary to learn effectively and efficiently, not only in law school, but in practice.

Thus, to best confront *any* challenging subject, be it civil procedure or otherwise, all law students should be taught how to be self-regulated and intentional learners who view it as their charge to learn for a lifetime. This is a professional necessity. Helping law students to become more aware of, to monitor, and to reflect on their learning processes will help them to better discern what they know, need to know, and cannot know in attempting to

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brain’s plasticity and adaptability, screen-based behaviors may be affecting its abilities to “slow read,” and cognitive neuroscientists caution that humans “seem to be developing digital brains with new circuits for skimming through the torrent of information online. This alternative way of reading is competing with traditional deep reading circuitry developed over several millennia.” Michael S. Rosenwald, *Serious Reading Takes a Hit from Online Scanning and Skimming, Researchers Say*, WASH. POST (April 6, 2014), [www.washingtonpost.com/local/serious-reading-takes-a-hit-from-online-scanning-and-skimming-researchers-say/2014/04/06/088028d2-b5d2-11e3-b899-20667de76985\\_story.html](http://www.washingtonpost.com/local/serious-reading-takes-a-hit-from-online-scanning-and-skimming-researchers-say/2014/04/06/088028d2-b5d2-11e3-b899-20667de76985_story.html).

43. Susan Stuart & Ruth Vance, *Bringing a Knife to the Gunfight: The Academically Underprepared Law Student and Legal Education Reform*, 48 VAL. U. L. REV. 41, 46 (2013) (noting that the “increasing academic underpreparedness” of incoming law students is “becoming systemic rather than singular.”).
44. See Cheryl P. Preston, Penée Wood Stewart & Louise R. Moulding, *Teaching “Thinking Like a Lawyer”: Metacognition and Law Students*, 2014 B.Y.U. L. REV. 1053, 1087 (2014).
45. See *infra* Part IIC. See also Niedwiecki, *Lawyers and Learning*, *supra* note 39, at 34 (positing that “[b]y introducing learning theory into the law school curriculum and specifically teaching the students how to learn, law schools can extend the one-dimensional learning that is currently central to the law school curriculum to one that focuses on teaching students to transfer learned knowledge and skill to new and novel situations.”).

make sound but creative professional judgments, both in and after law school. This is the metacognitive task.

#### A. *The Importance of Metacognition to Learning*

Metacognition<sup>46</sup> describes a higher level of cognition<sup>47</sup> focused on knowing about one's learning or "thinking about thinking."<sup>48</sup> As one author explained, "It's like you have a big brain outside of your brain looking at what your brain is doing."<sup>49</sup> And another: "It is this attention to how [one learns] that gives rise to . . . the moment of *meta* in metacognition—that is, the moment of standing above or apart from oneself . . . in order to turn one's attention back upon one's own mental work."<sup>50</sup> Although the term has been used across disciplines and sometimes with different variations, it is generally agreed that metacognition involves both "students' *awareness* of the processes they need to successfully complete a task, and . . . students' *cognitive monitoring*—the ability to determine if the task is being completed correctly and make corrections as appropriate."<sup>51</sup> As Professor Anthony Niedwiecki put it:

Metacognition also can be described as the internal voice people hear when they are engaged in the learning process—the voice that will tell them what they have to do to accomplish a task, what they already know, what they do not know, how to match their previous learning to the new situation, when they do not understand what they are reading or learning, and how to evaluate their learning. It is this internal reflection and conscious control of the learning process that goes to the heart of metacognition.<sup>52</sup>

46. John Flavell, a pioneer in modern metacognitive research, defined metacognition as "one's knowledge concerning one's own cognitive processes and products or anything related to them, e.g., the learning-relevant properties of information or data." John H. Flavell, *Metacognitive Aspects of Problem Solving*, in *THE NATURE OF INTELLIGENCE* 231, 232 (Lauren B. Resnick, ed., 1976).
47. Cognition involves the actual component skills that constitute the learning process, such as retrieval, comprehension, analysis, and knowledge utilization. See JOHN S. KENDALL, SUSAN RYAN, SANDRA WEEKS, ALAN ALPERT, AMITRA SCHWOLS & LAURIE MOORE, *THINKING & LEARNING SKILLS: WHAT DO WE EXPECT OF STUDENTS?* 2, 7-9 (2008), <http://eric.ed.gov/?id=ED544689>.
48. See JENNIFER A. LIVINGSTON, *METACOGNITION: AN OVERVIEW* 4 (2003), [https://www.researchgate.net/publication/234755498\\_Metacognition\\_An\\_Overview](https://www.researchgate.net/publication/234755498_Metacognition_An_Overview) (observing that "[m]etacognitive and cognitive strategies may overlap in that the same strategy, such as questioning, could be regarded as either a cognitive or metacognitive strategy depending on" why it is used, given that a reader could self-question both to obtain knowledge and to monitor understanding of it).
49. MCGUIRE, *supra* note 41, at 16.
50. Naomi Silver, *Reflective Pedagogies and the Metacognitive Turn in College Teaching*, in *USING REFLECTION AND METACOGNITION TO IMPROVE STUDENT LEARNING: ACROSS THE DISCIPLINES, ACROSS THE ACADEMY* 1, 1 (Matthew Kaplan, Naomi Silver, Danielle LaVaque-Manty & Deborah Meizlish eds., 2013).
51. KOLENICK & HILLWIG, *supra* note 14, at 5 (emphasis added).
52. Anthony Niedwiecki, *Teaching for Lifelong Learning: Improving the Metacognitive Skills of Law Students*

When students successfully engage in metacognition, they are more aware of themselves as learners and are better able to judge and improve their learning process.<sup>53</sup> In this way, the insight and control metacognition provides can promote not only deeper engagement with the subject, but an eagerness about learning generally that goes “beyond a particular task or class” and positions the student “to exploit this learning in the service of personal and professional goals as well.”<sup>54</sup>

The specific benefits for law students of developing metacognitive skills are many. First, there is notable support for the theory that integrating the teaching of metacognitive skills with the teaching of substantive content can improve students’ deep learning of the subject matter.<sup>55</sup> Second, encouraging law students to think about how they think better prepares them, in a broader sense, for the higher-level skills required for sound academic and professional judgments, including analysis, synthesis, and critical thinking.<sup>56</sup> Third, metacognition also supports the transfer of learning or the “ability to use knowledge gained in one setting or situation in another,”<sup>57</sup> including those that

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*Through More Effective Formative Assessment Techniques*, 40 CAP. U. L. REV. 149, 156-57 (2012) [hereinafter Niedwiecki, *Teaching for Lifelong Learning*] (footnotes omitted).

53. Silver, *supra* note 50, at 3 (noting that “[m]etacognition allows students to make decisions about how they learn best by helping them become aware of what they are doing when they are learning.”); KOLENCIK & HILLWIG, *supra* note 14, at 7 (noting that “[s]tudies show that increases in learning have followed direct instruction in metacognitive strategies.”); Paul R. Pintrich, *The Role of Metacognitive Knowledge in Learning, Teaching, and Assessing*, 41 THEORY INTO PRAC. 219, 219 (2002) (explaining that students “tend to learn better” when they “become more aware of their own thinking as well as more knowledgeable about cognition in general” and act on that awareness) (citation omitted).
54. Silver, *supra* note 50, at 4.
55. See Xiaodong Lin & Florence R. Sullivan, *Computer Contexts for Supporting Metacognitive Learning*, in INTERNATIONAL HANDBOOK OF INFORMATION TECHNOLOGY IN PRIMARY AND SECONDARY EDUCATION 281, 285-87 (J. Voogt & G. Knezek, eds., 2008) (discussing how metacognitive monitoring skills and content learning must “work in concert with one another” to improve the subject understanding resulting in adaptive expertise); Pintrich, *supra* note 53, at 223 (noting that although metacognition can be taught in a separate course, to produce more effective learning, “[i]t is more important that metacognitive knowledge is embedded within the usual content-driven lessons in different subject areas” and not be “taught in the abstract.”). See also MCGUIRE, *supra* note 41, at 13 (discussing “immediate—and in some cases remarkable—results” when she started teaching her chemistry students about the learning process and how to improve their learning).
56. *E.g.*, Preston, Stewart & Moulding, *supra* note 44, at 1060 (noting that “metacognition is important for the execution of higher-level thinking skills, such as analysis and synthesis”); Carlo Magno, *The Role of Metacognitive Skills in Developing Critical Thinking*, 5 METACOGNITION LEARNING 137, 149 (2010) (reporting the results of a study showing that “metacognition helps in developing critical thinking, because it is likely that critical thinking requires a form of meta-level operation”) (citation omitted).
57. Pintrich, *supra* note 53, at 222. See also NATIONAL RESEARCH COUNCIL, HOW PEOPLE LEARN: BRAIN, MIND, EXPERIENCE, AND SCHOOL 12 (John D. Bransford, Ann L. Brown & Rodney R. Cocking, eds., 2000) [hereinafter HOW PEOPLE LEARN] (finding that “[t]eaching practices congruent with a metacognitive approach to learning include those that focus on sense-

students will face in practice.<sup>58</sup> Relatedly, developing metacognitive skills can better prepare law students to be self-reflective, lifelong learners throughout their professional careers.<sup>59</sup> Fourth, a metacognitive consciousness should assist students in both seeing and making connections between the different dimensions of professional work, promoting a deeper understanding of the synergistic nature of professional judgment. Thus, teaching metacognitive skills to law students can foster the integrative learning necessary for “making those links between doctrine, skills, and values, between theory and practice, and between the personal and professional facets of a more holistic and authentic life as a problem-solving lawyer.”<sup>60</sup>

Important to note here is that learning involves not only cognition and metacognition, but an affective aspect as well.<sup>61</sup> Deep thinking about one’s own thinking necessarily implicates awareness and monitoring of thoughts *and* emotions. Correspondingly, teaching that does not engage the affective “may result in relatively incomplete, temporary, and unsophisticated learning.”<sup>62</sup> As

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making, self-assessment, and reflection on what worked and what needs improving. These practices have been shown to increase the degree to which students transfer their learning to new settings and events.”) (citation omitted).

58. Preston, Stewart & Moulding, *supra* note 44, at 1073-80 (describing how metacognition enhances basic lawyering skills, relieves anxiety, and boosts confidence).
59. See Niedwiecki, *Teaching for Lifelong Learning*, *supra* note 52, at 155 (asserting that “[t]he most important skills law schools can teach students to make them better lifelong learners are metacognitive strategies.”); cf. Nelson P. Miller, Mapping Lawyer Competencies onto the Law School Curriculum to Confirm that Graduates Are Prepared to Practice Law (June 30, 2011) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2461037](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2461037) (listing metacognition as a lawyer competency).
60. Patti Alleva & Laura Rovner, *Seeking Integrity: Learning Integratively from Classroom Controversy*, 42 Sw. L. REV. 355, 372 (2013) (offering a definition of integrated learning and exploring the meaning of that term in the context of addressing classroom controversies as prototypically integrative experiences). See also Xiaodong Lin, Daniel L. Schwartz & Giyoo Hatano, *Toward Teachers’ Adaptive Metacognition*, 40 EDUC. PSYCHOL. 245, 249 (2005) (noting that metacognition can be a mechanism for identity building and value clarification).
61. See Caroline Maughan, *Why Study Emotion?*, in AFFECT AND LEGAL EDUCATION: EMOTION IN LEARNING AND TEACHING THE LAW 11, 17 (Paul Maharg & Caroline Maughan, eds., 2011) (noting that “[i]n higher education the role of emotions in learning has largely been ignored and certainly under-theorised. Yet all participants in the educational process recognise, both explicitly and implicitly, the significance of the non-cognitive and its influence on student learning and behaviour.”) (footnote omitted). See also Vermunt, *supra* note 2, at 26 (explaining that “[a]ffective learning activities are directed at coping with the feelings that arise during learning, and lead to an emotional state that may positively, neutrally or negatively affect the progression of a learning process. Examples are motivating oneself, attributing learning results to causal factors, attaching subjective appraisals to learning tasks and getting blocking emotions under control.”) (emphasis omitted); Maksymilian Del Mar, *Legal Understanding and the Affective Imagination*, in AFFECT AND LEGAL EDUCATION: EMOTION IN LEARNING AND TEACHING THE LAW 177, 177 (Paul Maharg & Caroline Maughan, eds., 2011) (noting that “[w]hen we learn the law, we learn emotionally; further, what we are learning has emotional content.”).
62. Nancy L. Chick, Terri Karis & Cyndi Kernahan, *Learning from Their Own Learning: How*



one author observed: “It is now widely accepted that students’ worries and fears about studying are not necessarily only to do with course content; often they are about motivation, feelings about self-esteem, self-efficacy, fear of failure, security, fitting in, well-being, boredom, and so on.”<sup>63</sup> Encouraging students to examine both what they are thinking *and* feeling as part of introspection about learning puts them in closer touch with the reality that their internal reactions and past experiences may be affecting not only how they learn, but who they are and might become as professional beings.<sup>64</sup> This promotes self-awareness generally, an important element for developing professional identity and judgment.<sup>65</sup> This, in turn, may broaden students’ recognition that they live and work as lawyers in relation to others—especially their clients.<sup>66</sup> Prompting these realizations is nothing short of critical in helping law students to enrich professional judgments and relationships, to harmonize personal with professional insights and values, and to strengthen their capacities for meaningful and satisfying professional lives.

Despite considerable research establishing the value of teaching metacognitive skills from elementary school years onward, it would be a mistake to assume that all law students have already been taught metacognitive skills, that they know how to use metacognitive strategies to improve their learning, or that they are even aware of metacognition when they enter law school.<sup>67</sup> In all likelihood, students begin law school with varying levels of metacognitive proficiency.<sup>68</sup> A recent study aimed at measuring the metacognitive aptitude

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*Metacognitive and Meta-Affective Reflections Enhance Learning in Race-Related Courses*, 3 INT’L J. SCHOLARSHIP TEACHING & LEARNING, 1, 4 (2009) (describing use of meta-affective activities to enhance learning about race).

63. Maughan, *supra* note 61, at 24.
64. *Cf.* Del Mar, *supra* note 61, at 177 (advocating that “the learning experience can be greatly enhanced by teachers becoming more aware of the role of the emotions in learning law.”).
65. *See* Patti Alleva, *The Personal As Predicate*, 81 N.D. L. REV. 683, 689-91 (2005) (noting the importance of teaching to self-awareness and encouraging metacognition). *See also* Del Mar, *supra* note 61, at 187 (observing that “[t]he life of the law is, to a great extent, about the emotional life of a community; about its emotional relationships, its troubles and temptations, its conflicts and forms of resolving them. . . . A lawyer must be able to understand affectively—i.e. to explore the infinitely possible affective dimensions of—the pictures that are associated with certain terms or phrases . . .”).
66. *See* Alleva & Rovner, *supra* note 60, at 375 (noting that “[t]he professional, as fiduciary, does not enjoy the unadulterated luxury of self-indulgence or isolation. She or he must think, act, and value in relation to others, especially client and community.”).
67. *See* Jennifer McCabe, *Metacognitive Awareness of Learning Strategies in Undergraduates*, 39 MEMORY & COGNITION 462, 462 (2011) (describing two studies of undergraduate students giving low marks to their levels of metacognitive awareness).
68. Niedwiecki, *Lawyers and Learning*, *supra* note 39, at 45 (noting that students often come to law school with metacognitive deficiencies); Pintrich, *supra* note 53, at 223 (noting “[continual surprise] at the number of students who come to college having very little metacognitive knowledge; knowledge about different strategies, different cognitive tasks, and, particularly, accurate knowledge about themselves.”).

of students at one law school confirmed that even top students in the entering class did not exhibit well-developed metacognitive skills.<sup>69</sup>

These findings have critical implications for both the academic and practice worlds. As Professors Cheryl Preston, Penée Wood Stewart, and Louise Moulding have recognized:

Metacognitive skills improve oral communication, written communication, the deciphering of complex texts, and the ability to see the nuanced factual connections that help a lawyer build a case from a set of facts. Metacognitive thinkers develop a pattern for approaching and unraveling thinking problems, which gives them confidence in new situations and helps relieve stress. These skills are particularly pertinent to the practice of law.<sup>70</sup>

Thus, given the importance of metacognition to both learning and law practice, law faculty should give serious consideration to the teaching of metacognitive skills more intentionally and pervasively throughout the entire curriculum, including in doctrinal courses like civil procedure.<sup>71</sup> Highlighting the importance of thinking about learning as a natural part of the first-year curriculum sends the strong signal that *how* a law student learns matters—and, in fact, like civil procedure itself, reinforces the primacy of process in mastering substance.

*B. Integrating the Teaching of Metacognitive Skills into Doctrinal Classes to Enhance Intentional Learning*

We recognize at the outset that law professors, particularly those who teach first-year doctrinal courses, primarily expect students to demonstrate the basic *cognitive* skills necessary to master their courses. Understandably, legal educators have traditionally focused on teaching the substantive *content* and developing the skills related to that content, and less on teaching *how to most effectively learn* that content. Further, teaching metacognitive skills in substantive law classes may increase the pressure on professors already concerned about how to cover the desired depth and breadth of material, especially in a one-semester civil procedure course.

From the student vantage point, there is also the potential additional challenge of thinking about thinking while simultaneously learning course

69. See Preston, Stewart & Moulding, *supra* note 44, at 1054. In the authors' study, first-year law students from the entering classes of Fall 2010 and Fall 2013 at the J. Reuben Clark Law School at Brigham Young University were given the Metacognitive Awareness Inventory (MAI), a self-report questionnaire commonly used in metacognitive studies. *Id.* at 1063, 1066. Notably, the law students entering in 2010 had a median GPA of 3.75 and a median LSAT score of 164 and those entering in 2013 had a median GPA of 3.77 and a median LSAT score of 161. *Id.* at 1064. Despite these indicators for future success in law school, the authors' review of the MAI responses established "that the metacognitive skills of many, and probably most, entering law students are weak." *Id.* at 1057.

70. *Id.* at 1080.

71. Preston, Stewart & Moulding, *supra* note 44, at 1056 (arguing that "law schools should adopt teaching methods that directly teach metacognitive skills.").

substance. It is hard enough to learn civil procedure doctrine while attempting to purposefully track and evaluate one's learning of that doctrine. Initially, students may complain that adding or surfacing the metacognitive layer might affirmatively interfere with learning because it is distracting, inefficient, and time-consuming on their end, taking attention and energy away from mastering the substance. Moreover, studies also indicate that students may be inaccurate in their metacognitive knowledge about their own learning, which may limit the utility of the concept unless there is appropriate instructional support for their self-assessment efforts.<sup>72</sup>

There are, however, a number of countervailing considerations that counsel strongly in favor of teaching to metacognition. To start, it may not be as onerous to integrate as one might think.<sup>73</sup> The metacognitive task need not be overly complicated, and simple illustrations might suffice for introducing the skill to first-year students.<sup>74</sup> Also, the class time a professor devotes to these exercises might be minimized by flipping some or all of this instruction out of class. And the reality is that a number of law professors have already zeroed in on the importance of metacognitive skills to learning or incorporated teaching to those skills in their classes.<sup>75</sup> Others may be supporting their students'

72. JOHN DUNLOSKY & JANET METCALFE, METACOGNITION 32 (2009), citing John H. Flavell, *Metacognition and Cognitive Monitoring: A New Area of Cognitive-Developmental Inquiry*, 34 AM. PSYCHOL. 906, 908 (1979) (observing that “[metacognitive knowledge] can be inaccurate, can fail to be activated when needed, can fail to have much or any influence when activated, and can fail to have a beneficial or adaptive effect when influential”); cf. Xiaodong Lin-Siegler, David Shaenfield & Anastasia D. Elder, *Contrasting Case Instruction Can Improve Self-Assessment of Writing*, 63 EDUC. TECH. RES. DEV. 517 (2015) (discussing results of study showing that students could improve their self-assessment skills through use of effective instructional supports).
73. LIVINGSTON, *supra* note 48, at 2 (explaining that metacognition is “not as daunting a concept as it might seem. We engage in metacognitive activities everyday.”); DUNLOSKY & METCALFE, *supra* note 72, at 1 (observing that “[a]lthough the term [metacognition] itself may seem mysterious, metacognitive acts are common”).
74. *Infra* text at notes 84-96.
75. See, e.g., Elizabeth M. Bloom, *A Law School Game Changer: (Trans)formative Feedback*, 41 OHIO N. U. L. REV. 227 (2015) [hereinafter Bloom, *A Law School Game Changer*] (suggesting concrete formative assessment exercises designed to enable students to become successful, self-regulated learners); Preston, Stewart & Moulding, *supra* note 44 (discussing the importance of metacognitive skills for law students and lawyers); E. Scott Fruehwald, *How to Help Students From Disadvantaged Backgrounds Succeed in Law School*, 1 TEX. A&M L. REV. 83 (2013) (discussing how to teach law students metacognitive awareness and regulatory skills to enhance self-regulated learning); Niedwiecki, *Teaching for Lifelong Learning*, *supra* note 52 (discussing the use of formative assessment to promote metacognition); Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 101 (2010) (describing metacognitive reflection as the “gold standard of transfer tools”); Kristina L. Niedringhaus, *Teaching Better Research Skills by Teaching Metacognitive Ability*, 18 PERSPECTIVES 113 (2010) (offering techniques for teaching metacognitive awareness in legal research classes); Niedwiecki, *Lawyers and Learning*, *supra* note 39, at 41-68 (detailing the concept of metacognition and suggesting ways to incorporate metacognitive learning in the law school curriculum); Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy from Professor to Student*, 81 U. OF DET. MERCY L. REV. 1, 13-17, 19-20 (2003) (describing various active-learning and metacognitive techniques used in class); Nancy Millich, *Building Blocks of*

metacognitive learning strategies even if they are not consciously aware of doing so. For them, it is but a short step to be more intentional about what they already do, which can facilitate even greater learning gains for their students.

But perhaps more important, a professor's integration of the explicit teaching of metacognitive skills within a doctrinal course ultimately serves to position students to be successful, self-regulated learners in *that* class.<sup>76</sup> Metacognition, in effect, offers another method for them to learn the specific course content more deeply—a method with benefits beyond the boundaries of any particular classroom.<sup>77</sup> Thus, student investment in the additional time and attention spent on becoming more metacognitive can pay off in deeper content learning and enhanced transfer capabilities within that subject. Further, for some students who may already employ metacognitive strategies without knowing that they do, naming the concept will help them to be more conscious about reiterating and refining those strategies. Moreover, teaching metacognitive skills, especially during the first year, will help position students for greater success in their upper-level classes and, ultimately, for the practice of law.<sup>78</sup> To assist with these ends, we next offer a few well-established methods for teaching metacognition, tailored for use in civil procedure classes.

*Being Explicit About Metacognition.* Teachers who want to “teach for, of, and about thinking” must pave the way by establishing a climate for doing so.<sup>79</sup> Being explicit about metacognition increases the likelihood that students will take greater responsibility for practicing these skills. Particularly if law students lack exposure to metacognition in their prior educational experiences, the professor should explain why it is important for deeper learning of the substantive material, especially given students’ natural and understandable

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*Analysis: Using Simple “Sesame Street Skills” and Sophisticated Educational Learning Theories in Teaching a Seminar in Legal Analysis and Writing*, 34 SANTA CLARA L. REV. 1127 (1994) (using metacognition and other learning strategies to benefit students who had trouble with legal analysis and exam taking); Paul T. Wangerin, *Learning Strategies for Law Students*, 52 ALB. L. REV. 471 (1988) (highlighting the importance of metacognition to learning). See also CARNEGIE REPORT, *supra* note 6, at 109-11 (noting that legal writing and clinical faculty employ metacognitive coaching and modeling strategies to improve student performance).

76. See generally Wangerin, *supra* note 75 (offering metacognitive strategies that can be taught in substantive law courses to help make students more “autonomous” learners and to facilitate their understanding of the substantive law).
77. See Niedwiecki, *Lawyers and Learning*, *supra* note 39, at 41 (explaining that integrating metacognitive strategies into the curriculum “will enhance the teaching of how to ‘think like a lawyer’ while also teaching students how to ‘learn like a lawyer.’”). See also McCabe, *supra* note 67, at 474 (positing that “educational intervention, in the form of targeted instruction on learning and memory topics, may have the potential to improve metacognitive awareness of factors associated with academic success.”).
78. Preston, Stewart & Moulding, *supra* note 44, at 1073-80 (discussing the importance of metacognitive skills to lawyering).
79. KOLENICK & HILLWIG, *supra* note 14, at 8.

inclination to prioritize their learning to that end.<sup>80</sup> In addition, the professor might explain how she intends to integrate the teaching of metacognitive skills during the course by providing a roadmap of metacognitive exercises that will be required of students, as indicated in the syllabus or in materials to be introduced.<sup>81</sup> As one learning theorist put it: “The shared language and discourse about cognition and learning among peers and between students and teacher helps students become more aware of their own metacognitive knowledge as well as their own strategies for learning and thinking.”<sup>82</sup> This explicitness also helps to demystify the learning process.<sup>83</sup>

*Modeling Metacognitive Skills.* Students benefit from practicing metacognitive skills when that practice has been modeled first by their teacher.<sup>84</sup> Sometimes referred to as a professor’s “think-aloud,” legal educators have recognized the value of sharing the thinking steps that an expert follows to successfully complete a specific learning task.<sup>85</sup> In the context of teaching metacognitive skills, the teacher describes what is going on in her mind in thinking about her thinking, demonstrating the process before asking students to try it.<sup>86</sup>

80. See Pintrich, *supra* note 53, at 223 (stressing the importance of teaching metacognition explicitly, especially given “the number of students who come to college having very little metacognitive knowledge . . .”).
81. It may also help to briefly revisit the benefits of metacognition the first few times the professor reintroduces the skill during the course, or to establish a catchphrase to invoke the concept whenever the professor wishes to activate or reference the process amidst a substantive discussion (e.g., “let’s pause and ‘go meta’ to think about the thinking we just shared with one another in analyzing the shift of burdens from movant to non-movant on a Rule 56 motion”). Two leading learning theorists have used this phrase in a different, but instructive, pedagogic context. Cf. Pat Hutchings & Lee S. Shulman, *The Scholarship of Teaching: New Elaborations, New Developments*, CHANGE, Sept.–Oct. 1999, at 10, 13 (noting that the scholarship of teaching “requires a kind of ‘going meta,’ in which faculty frame and systematically investigate questions related to student learning . . .”).
82. Pintrich, *supra* note 53, at 223. See also KOLENICK & HILLWIG, *supra* note 14, at 13-18 (examining the importance of using specific “language that implements the teaching of thinking” and offering examples of “metacognitive talk” to help the teacher “model the metacognitive awareness that students need to develop.”).
83. See Pintrich, *supra* note 53, at 223.
84. *Id.* at 224 (discussing the importance of modeling strategies to assist students with learning metacognitive skills).
85. E.g., Fruehwald, *supra* note 75, at 111-12 (discussing modeling of strategies for how to approach legal analysis and problem-solving); Leah M. Christensen, *The Psychology Behind Case Briefing: A Powerful Cognitive Schema*, 29 CAMPBELL L. REV. 5, 22-23 (2006) (suggesting how a professor might “think aloud” to demonstrate reading a case); Debra Moss Curtis & Judith R. Karp, “*In a Case, In a Book, They Will Not Take a Second Look!*” *Critical Reading in the Legal Writing Classroom*, 41 WILLAMETTE L. REV. 293, 305-13 (2005) (surveying various methods for teaching metacognitive strategies such as “think-alouds” to develop students’ critical reading skills). See also Mary A. Lundeberg, *Metacognitive Aspects of Reading Comprehension: Studying Understanding in Legal Case Analysis*, 22 READING RES. Q. 407 (1987) (reporting on a study demonstrating how legal novices benefited in reading opinions by using guidelines based on metacognitive strategies derived from the reading protocols of legal experts).
86. KOLENICK & HILLWIG, *supra* note 14, at 21-23 (describing the method of “thinking aloud” to

For example: A civil procedure professor might use this modeling method in an exercise designed to debunk the belief that a Federal Rule of Civil Procedure represents “black-letter law” not open to interpretation.<sup>87</sup> The professor might begin by asking students to review the text of a specific rule which has confounded them in this way (perhaps as revealed on a recent assessment) and ask students to write their own brief interpretation of its meaning. Then, the professor can demonstrate her review of the rule’s text for the class, pausing preliminarily to ask and then answer for herself the question, “What learning steps are involved in determining the meaning of a Federal Rule?” She may first decide to explore certain terms or phrases from the rule’s text, and “think aloud” about why she started with the rule’s language and how she initially interprets one or more of those terms.

The professor might then pause and ask herself out loud whether there might be other interpretations of the rule. This is a moment when the professor might self-question why she may have too easily landed on the initial interpretation, noting that her experiences, values, feelings, or political persuasions might have “blinded” her to alternative interpretations. At this point, the professor might pause and ask students to share *their* initial interpretations of the rule, encouraging them to reflect on the personal factors that might have influenced those interpretations.<sup>88</sup> That survey of responses can illustrate the range of ways that different people might read the same language in a rule, underscoring the importance of self-monitoring initial interpretations.

The professor can turn then to a demonstration of how she tests her learning by examining various authorities that offer interpretations of the rule. In addition, she can illustrate how the meaning of the rule is ultimately a function of its application to a given set of facts—a process that, in turn, implicates the underlying purpose of the rule and the subjectivity stemming from both the decision-maker and the peculiar circumstances of the case. She might then summarize the learning strategies revealed or yet to be undertaken, indicating that interpreting a rule requires looking all around

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teach metacognitive strategy).

87. See *supra* text at Part I (describing the third civil procedure learning challenge).

88. Professor Paul Maharg vividly describes when students, in seeking to understand “disciplinary text” (“the text as object”), struggle “to make that powerful discourse part of their own voice” (“the text as subject”) in attempting to mediate personal with professional dimensions of learning:

The object on the legal textbook page, so polished, neutral, candid yet arcane, bears little mark of any such struggle: it has been stripped of emotion. Readers and writers, though, come to the text object with prior emotions about the text, about what to do with it, about their organic lives around the text. . . . The past and its affective freight cannot be ignored; present experience beyond the text presses in upon the reading experience; the academic future lies beyond and is dependent on the student’s struggle with the text.

Paul Maharg, *Space, Absence, Silence: The Intimate Dimensions of Legal Learning*, in *AFFECT AND LEGAL EDUCATION: EMOTION IN LEARNING AND TEACHING THE LAW* 283, 284-85 (Paul Maharg & Caroline Maughan, eds., 2011).

it—to other rules, to advisory committee notes, to the cases interpreting the rule, to the subjective processes of applying it to a peculiar set of facts, and to the purposes guiding that application. The ultimate goal is to slow down what normally is instantaneous analysis for the expert metacognitive thinker. This requires freezing the frames at critical steps along the chain of reasoning, self-interrogating assumptions and interpretations, and making visible the learning process itself, thus demonstrating how adjustments, if needed, can improve understanding.

*Providing Questions to Encourage Metacognition.* After laying the groundwork by modeling it, the professor can reinforce the critical metacognitive skill of self-questioning by encouraging students to engage in it on their own in order to build awareness about their learning.<sup>89</sup> Strategic self-questioning is not necessarily innate, and may need to be developed and refined.<sup>90</sup> Teachers can provide a list of targeted questions designed to facilitate deeper metacognitive sensitivity by asking students to self-diagnose their grasp of difficult material in order to determine what they understand, and to monitor where they are struggling, and why.

For example: A civil procedure professor might provide students with a set of questions to assist them in gaining an understanding of what they are learning (or not learning) about the *Erie* doctrine and its relationship to the notion of overlapping state and federal sovereigns and judicial systems.<sup>91</sup> Students can be encouraged to test their understanding through queries that help situate the substance of *Erie* in more of a learning-process framework (that emphasizes context, connection, and application) in order to help them organize their thinking in constructing the doctrine for themselves:

- Do I understand why we are studying the *Erie* doctrine at this point in the semester?
- Can I clearly articulate what an *Erie* question is?
- What other course concepts might help me to answer this question?
- Do I understand what types of situations trigger an *Erie* problem?
- Am I able to articulate what types of cases do not pose *Erie* issues?
- Am I able to identify the federal constitutional dimensions of an *Erie* question and isolate the implicated constitutional provisions? Can I articulate why these provisions are pertinent? If not, why can't I?
- Am I able to identify the federal statutory dimensions of an *Erie* question and isolate the implicated enactments? Can I articulate why these provisions are pertinent? If not, why can't I?
- Am I able to identify the sequence of steps a federal court might take under *Erie* to determine whether it should apply state or federal law in a diversity case?

89. See generally KOLENICK & HILLWIG, *supra* note 14, at 101-14 (exploring the use of “thinking with questioning” as a technique to enhance metacognition).

90. *Id.* at 101.

91. See *supra* text at Part I (describing the fifth civil procedure learning challenge).

- Do I understand the strategies I should use for applying the *Erie* analysis to a new fact pattern? How can I assess the true level of my comprehension in this area, and not just what I think I now know?
- If I can't articulate the basic *Erie* question or problem on my own, what else could I do? What sources might I consult?
- Have I put the necessary time into mastering this difficult series of cases?
- What, if any, emotional reactions did I have to the material, and did that affect my ability to understand it? For example, did I give up because I was frustrated? If so, how might I manage this and any other emotional reactions going forward?

These are just some of the questions that can assist students to monitor and evaluate their learning of a difficult doctrine. At least initially, students should be encouraged to share their responses to these types of questions so the professor can assist with judging the accuracy and comprehensiveness of the students' self-assessment of their learning process. Teachers can then ask students to practice this type of self-interrogation on their own, getting them into the habit of running down a similar mental checklist of questions whenever they find themselves up against troubling substantive concepts.<sup>92</sup> To reinforce the importance of this strategy from a different angle, a teacher might conclude the course by posing new questions designed to encourage students to reflect on their learning trajectory over the course of the semester.<sup>93</sup>

*Using Assessment to Encourage Monitoring of Learning.* Particularly in classes that include only a final exam and perhaps a midterm, students often lack enough extrinsic opportunities to monitor their learning. To help remedy this problem, teachers can offer benchmarks, such as grading rubrics or checklists of expected skills, for students to use as the basis for self-assessment of their learning.<sup>94</sup> Likewise, a formative assessment, such as a practice test, can be used as a platform to further students' metacognitive understanding of their content learning. Specifically, a professor may create a metaquestion set that assists students to prompt the necessary self-assessment of their learning process and performance concerning that practice test (as opposed to prompting solely a content review of what they got right or wrong).<sup>95</sup> These questions might include:

92. See KOLENICK & HILLWIG, *supra* note 14, at 105-13 (discussing the importance of a student's use of questions while learning, including those relating to comprehension, connections and contrasts, strategies or approaches, and reflection).
93. See Niedwiecki, *Teaching for Lifelong Learning*, *supra* note 52, at 192 (describing a course-end self-assessment tool to help evaluate learning for the entire course and to set future learning goals). *Cf. id.* at 185-86 n.238 (suggesting a series of metacognitive questions in the context of portfolios for students to reflect on their learning process and progress).
94. *E.g.*, Shirley Lung, *The Problem Method: No Simple Solution*, 45 WILLAMETTE L. REV. 723, 759-60 (2009) (proposing a number of prompts for students to encourage post-problem reflection about learning and to internalize metacognitive habits of self-questioning); Floyd, Griffin & Sneddon, *supra* note 28, at 300-04 (describing self-assessment worksheets for written assignments to encourage self-reflection about learning).
95. See Bloom, *A Law School Game Changer*, *supra* note 75, at 231 (suggesting that formative assessment can be used to assess more than pure content knowledge, but also to help



- What did I do to prepare for the assessment? Was that preparation adequate? What could I do differently next time to ensure a more successful result?
- Did I read the call of the question carefully? If not, why not? What can I do next time to ensure that I do so more successfully?
- Did I skip over important facts in the question? How did I determine which facts were relevant and which facts were not? What methods might I use to be sure I read more closely during my next assessment?
- Did I get distracted during the assessment? If so, why? How can I avoid this problem in the future?
- Did I make any faulty assumptions in responding to the questions? If so, what were they, and why were they faulty? How can I avoid this problem in the future?
- What emotions did I experience while preparing to take this assessment? Did they influence how I performed?

The idea going forward is that students would use these questions in advance of and during the next assessment to monitor and self-correct to avoid prior pitfalls.<sup>96</sup>

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Helping students to learn intentionally, especially through the use of metacognitive strategies that highlight the connection among learning, professional development, and personal growth, reinforces the significance of learning as an end in itself. Assisting students to “learn to learn to think like lawyers,”<sup>97</sup> so that they experience firsthand the benefits of a self-conscious learning process, is a powerful way to both convey and ennoble that process. Hopefully, the meta self-dialogue of deep learning will become ever more

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students develop the skills necessary to be self-regulated learners); Niedwiecki, *Teaching for Lifelong Learning*, *supra* note 52, at 175-93 (describing how formative assessment coupled with self-assessment and self-regulation can be used to improve metacognitive skills); Andrea A. Curcio, Gregory Todd Jones & Tanya M. Washington, *Does Practice Make Perfect? An Empirical Examination of the Impact of Practice Essays on Essay Exam Performance*, 35 FLA. ST. U. L. REV. 271, 313 (2008) (reporting on a study suggesting that “students learn better when given opportunities to practice a skill and receive feedback on that practice” (though some benefit more than others) and that combining metacognitive exercises with teaching methods may help to improve all student performances).

96. Carol Springer Sargent & Andrea A. Curcio, *Empirical Evidence that Formative Assessments Improve Final Exams*, 61 J. LEGAL EDUC. 379, 400-01 (2012) (showing the importance “shifting the law school culture away from a single summative assessment” and of using feedback on formative assessments to help students develop metacognitive strategies to spot and fix learning weaknesses). See also Stanton, Neider, Gallegos & Clark, *supra* note 15 (tracking metacognitive regulation in college biology students through post-exam self-evaluation assignments). The authors found that “nearly all of the students were willing to reflect [on] and adjust their study plans, but many did not identify appropriate learning strategies, and many did not carry out their new plans.” *Id.* at 11. Thus, post-exam assignments encouraged metacognitive regulation, but many students needed additional metacognitive assistance to benefit from these exercises.

97. Wegner, *supra* note 13, at 203.

instinctual the more students engage it and come to understand and feel the power of making informed learning choices—a pattern of introspection and conscious correction we hope students will import into the practice arena when they problem-solve and attempt to make informed legal choices in the exercise of professional judgment.

*C. Building Institutional Respect for Learning About Learning*

Building greater respect for learning as an end in itself cannot be achieved solely by teaching metacognitive skills in one or two classes. The CARNEGIE REPORT identified the need for “institutional intentionality” and endorsed the view that law schools should refocus their curricula and assessment practices around the “twin goals” of student learning and faculty improvement, designed to “help students learn—and also learn to learn.”<sup>98</sup> As Professors David Moss and Debra Moss Curtis suggested in their overview of recent curricular redesign efforts in law schools, law faculties should:

shift the conversation away from teaching and toward one of learning as a means to address issues of reform. In short, learning theory (how individuals learn) should drive curriculum and instruction. Such a perspective will shift the emphasis away from teachers and toward the needs of our students as adult learners. It will encourage us to ask what motivates our students to learn.<sup>99</sup>

Thus, the legal academy must recognize its inherent responsibility as educators of lawyers to foster respect for and understanding of the learning process *itself* as a professional imperative—both in educational and practice settings.<sup>100</sup> Integrating metacognitive skills within individual classes is an important step toward this goal,<sup>101</sup> but it does not ensure that every student receives adequate instruction about and repeated opportunities to practice how to learn.

*Dedicated Curricular Outcome.* The ultimate show of respect for learning as an end in itself might be for a law school to simultaneously adopt a programmatic goal to teach students how to learn about their learning *and* a corresponding

98. See CARNEGIE REPORT, *supra* note 6, at 181 (citation omitted).

99. David M. Moss & Debra Moss Curtis, *Essential Elements for the Reform of Legal Education*, in REFORMING LEGAL EDUCATION: LAW SCHOOLS AT THE CROSSROADS 224 (David M. Moss & Debra Moss Curtis eds., 2012). See also Maharg, *supra* note 88, at 300 (calling for improvements in learning the law, especially in the “affective domain,” by “bring[ing] together the paradigms of education and educational psychology with the natural science basis of neuroscience.”).

100. Patti Alleva, *Respect Is Key to Teaching, and Also to Learning*, NAT’L L. J. 16 (Sept. 29, 2014) (noting that teaching respectfully “involves honoring learning as an end in itself, and not merely as a prelude to doing something else. This can be done in part by teaching students the basics of how people learn. Understanding that learning is a skill not only helps students while in law school, but better prepares them for the lifelong teaching and learning at the heart of practicing law.”).

101. See Preston, Stewart & Moulding, *supra* note 44, at 1056 (noting that “metacognition undoubtedly will become a major component in any successful law school reform”).

learning outcome focusing on their capacity to self-consciously know and monitor themselves as learners.<sup>102</sup> Indeed, nearly a decade ago, Professor Roy Stuckey and his co-authors proposed that best practices for setting goals of a law school's program of instruction should involve helping students to acquire the attributes of effective, responsible lawyers, including self-reflection and lifelong learning skills, so that law graduates are "skillful in planning their learning by setting goals and identifying strategies for learning" and have the ability "to implement those strategies, monitoring and reflecting on their learning efforts as they work, and making any necessary adjustments in those strategies."<sup>103</sup> Especially with the ABA's recent curricular directives on learning outcomes and programmatic evaluation, every law school now has an unparalleled opportunity to consciously consider whether it should make an express programmatic commitment (if it hasn't already) to teach and assess basic tenets of learning theory, especially the importance of metacognitive strategies to deep learning.<sup>104</sup> Such a capstone recognition would explicitly legitimize the study of learning as part of the faculty's collective obligation (and

102. See Neil W. Hamilton, Verna Monson & Jerome M. Organ, *Encouraging Each Student's Personal Responsibility for Core Competencies Including Professionalism*, 21 PROF. LAW. 1, 9 (2012) (proposing that law schools "[i]dentify student educational needs (including the meta-cognitive capacities of self directed learning and self-regulation capacity)" and "[a]rticulate student learning outcomes (educational objectives) that respond to student educational needs"). See also George, *supra* note 42, at 181 ("encouraging or teaching students to learn about their own metacognition would be an excellent addition to the first year curriculum.") (footnote omitted).
103. See STUCKEY ET AL., *supra* note 39, at 65-66. Cf. Carolyn Wilkes Kaas with Cynthia Batt, Dena Bauman, & Daniel Schaffzin, *Delivering Effective Education in Externship Programs*, in BUILDING ON BEST PRACTICES, *supra* note 9, 216, 228-29 (proposing as an externship course learning goal "Learning How to Learn, Think, and Make Choices for the Future"). As Moss and Curtis have suggested: "Ideally, the defining elements for law school curriculum should be grounded in the host of metacognitive skills that support the development of expert-level thinking paired with substantial experiences with the law. Thus, the notion of reflection becomes a key element of promoting learning for schools of law. One means to promote this would be the requirement that new course proposals explicitly reference the various pedagogical approaches for a new course in addition to the traditional content outline. Such a more holistic course proposal review system will help ensure that a course is not merely rigorous in terms of doctrinal substance, but acknowledges the broader notions of authentic learning and the necessary classroom culture to bring that to life." Moss & Curtis, *supra* note 99, at 225-26.
104. Some law schools have already begun to adopt learning outcomes or objectives that include skills necessary for lifelong learning, such as self-reflection about one's learning. See, e.g., Learning Outcomes for Graduating Law Students, Maurice A. Deane School of Law at Hofstra University, [http://law.hofstra.edu/\\_site\\_support/files/pdf/academics/academicresources/learningoutcomes/learning-outcomes.pdf](http://law.hofstra.edu/_site_support/files/pdf/academics/academicresources/learningoutcomes/learning-outcomes.pdf) (stating "each graduating student must have demonstrated proficiency in . . . learning from experience through self-critique"). We propose a more explicit programmatic commitment that calls for teaching students to learn about their own learning and for them to understand and practice metacognitive skills.

increase the likelihood that work in this area would be counted for promotion and tenure purposes)<sup>105</sup> as well as signal a law school's acknowledgment of the subject's importance to legal education and the practice of law.

In addition to instruction in individual classes, the subject of learning about learning might be covered in a separate short course or workshop on learning theory, or as part of a faculty-led orientation session, preferably at the start of the first year, so that the entire class is exposed to learning how to learn from the outset of the law school experience.<sup>106</sup> Assigned materials could provide critical background on the foundations of learning theory and stress the importance of metacognition and self-regulation to the type of deep learning required by legal professionals. These materials could also include illustrations of metacognitive strategies, perhaps through the use of tailored metaquestion sets concerning basic study approaches in law school or particularly difficult topics in each of the first-year courses. Alternatively, in the second or third years, law faculty might discuss ways to introduce metacognitive skills not only in their classes, but through cocurricular methods such as collaborative workshops that teach metacognitive skills in connection with problem-based exercises targeting integrated learning in the context of professional judgment formation. Ideally, learning about learning would become a pervasive focus throughout the law school experience.

*Learning Strategies Doubling for Lawyering Strategies.* Another way for legal educators to show respect for the learning process itself is to explicitly impress upon students that certain pedagogic strategies intentionally used to facilitate learning in the law school classroom double for the same strategies needed to succeed in law practice. Teaching about learning is really teaching about the necessity of learning as a skill of lawyering, thereby directly linking learning theory to professional competence. Making express this connection highlights both the intrinsic and the functional value of learning about learning. It also creates an opportunity to note the doubling effect of *teaching*—that lawyers are as much teachers as learners, in that they simultaneously learn from and provide instruction for clients, judges, jurors, opposing counsel, and parties. Thus, paying attention to all sides of the learning partnership is pertinent to professional success. Doubling provides a vehicle to reinforce this critical point in any class at any time.

Of course, teaching students metacognitive skills is an important illustration of the doubling effect, given their parallel utility in law practice. Consider, as another example, small-group discussions. On the academic side, intentionally teaching students the communication and relational skills necessary to function effectively in small classroom groups mirrors precisely the types of skills they

105. Cf. Hutchings & Shulman, *supra* note 81, at 13 (proposing that “all faculty have an obligation to teach well, to engage students, and to foster important forms of student learning—not that this is easily done.”) (emphasis in original).

106. See George, *supra* note 42, at 180-84 (proposing that all students be taught about the level of learning required in law school, metacognition, the risks of cognitive overload and multitasking, and successful learning and studying techniques).

will need on the practice side to function effectively in client or law firm committee meetings or in other gatherings of legal professionals.<sup>107</sup> Similarly, using guidelines for class discussion (predominantly in seminar courses) serves a dual purpose: They can help to promote thoughtful, productive, and courteous classroom conversation, and simultaneously model or reinforce certain understandings or skills essential to the practicing professional. These types of guidelines could include, when communicating, the need for self- and other-awareness, respectfulness, active listening, open-mindedness, nondefensiveness, authenticity, and humility. These skills are critical for learning and for teaching, as they promote the capacity to receive and to instruct or persuade. Thus, on the classroom side, these guidelines promote safe, respectful, yet critical conversation while doubling as aspirational standards for realistic and responsible professional discourse.

*Teacher Metacognition.* Yet another way to promote respect for learning about learning in law school is for professors to model the same learning behavior they expect from their students. This requires teachers to make conscious efforts to educate themselves about how people learn and to think about the effectiveness of their teaching on student learning.<sup>108</sup> Being metacognitive about one's teaching involves the explicit engagement of metacognitive practice through awareness and monitoring of teaching strategies, conditions, effectiveness, and self.<sup>109</sup> It includes planning what and how to teach, monitoring the lesson while teaching it, making adjustments, if necessary, and evaluating the lesson for purposes of future improvement.<sup>110</sup> In short, it involves knowing oneself as a teacher and as a learner. Teaching, after all, is a process of learning for the instructor.<sup>111</sup> When legal educators embrace their identity as *learners*, it follows that they would benefit from developing their own

107. Cf. EILEEN SCALLEN, SOPHIE SPARROW & CLIFF ZIMMERMAN, *WORKING TOGETHER IN LAW: TEAMWORK AND SMALL GROUP SKILLS FOR LEGAL PROFESSIONALS* (2014) (exploring the collaborative skills necessary for successful teamwork in law practice).

108. As Wegner observed: "If legal educators treat commitment to learning as an important professional value, they would learn more about learning. Law professors can do so by talking with colleagues about what does or does not work in the classroom. They can also engage their students in such conversations, and commit themselves to listening and learning from dialogue of this sort." Wegner, *supra* note 13, at 203.

109. See Lin, Schwartz & Hatano, *supra* note 60, at 246 (arguing that teaching—a "deeply social act involving peers, students, and parents"—can benefit from a type of metacognition that "involves both the adaptation of oneself and one's environment in response to a wide range of classroom variability" because each class is different, exhibits unique "challenges and charms," a "number of hidden features," and a "cross-cultural" aspect given that "teachers and students rarely share the exactly same values and experiences.").

110. See Hartman, *supra* note 2, at 150. See also *id.* at 155-61 (offering a range of strategies for teachers to practice metacognition about their teaching, including teaching strategy projects, self-questioning to plan, monitor, and evaluate lessons, and self-reflection on their own videotaped teaching).

111. AMBROSE ET AL., *supra* note 10, at 218 (noting that "when it comes to teaching, most of us are still learning").

metacognitive skills with respect to what they are learning about teaching. Thus, consciously contemplating what is learned about student learning might itself be a form of teacher metacognition—in essence, “[t]hinking about other people’s thinking.”<sup>112</sup>

Being metacognitive about course work can heighten appreciation for the significance of critical awareness and self-evaluation to professional growth and being. As educational specialists have put it in describing the importance of being “more reflective—that is, metacognitive—about our teaching”:

[W]e need to carefully consider our own strengths and weaknesses in relation to our teaching, not only so we can play to our strengths but also so we can challenge ourselves to develop in areas in which we may need work. Moreover, since the task of teaching constantly changes . . . we must continually reassess the task, plan an effective approach, monitor our progress, evaluate, and adjust. . . . [And] refining our teaching practice requires being aware of our core beliefs about teaching and learning. For instance, what do we believe is the purpose of our teaching? What do we believe about intelligence, ability, and learning? All these beliefs will impact our metacognitive cycle.<sup>113</sup>

Certainly, legal educators have heralded the importance of critical self-reflection about their teaching.<sup>114</sup> Whatever the label applied to this process,<sup>115</sup> we simply encourage systematic self-assessment to the ends of becoming more aware of our own learning and thinking processes as teachers and making the adjustments necessary to optimize teaching and learning on the basis of what we learn about the learning that is or is not taking place within

112. Penée W. Stewart, Susan S. Cooper & Louise R. Moulding, *Metacognitive Development in Professional Educators*, 21 THE RESEARCHER 32, 38 (2005), <http://www.nrmera.org/PDF/Researcher/ResearcherV21n1Stewart.pdf> (discussing study showing that educators’ metacognition increases with age and teaching experience, and noting the need to support metacognitive awareness in teachers).
113. AMBROSE ET AL., *supra* note 10, at 223.
114. See, e.g., Gerald F. Hess, *Improving Teaching and Learning in Law School: Faculty Development Research, Principles, and Programs*, 12 WIDENER L. REV. 443 (2006); Gerald F. Hess, *Learning to Think Like a Teacher: Reflective Journals for Legal Educators*, 38 GONZAGA L. REV. 129 (2002-2003); Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505 (2012); Mitchell M. Simon, M.E. Occhialino & Robert L. Fried, *Herding Cats: Improving Law School Teaching*, 49 J. LEGAL EDUC. 256 (1999); Filippa Marullo Anzalone, *It All Begins with You: Improving Law School Learning Through Professional Self-Awareness and Critical Reflection*, 24 HAMLINE L. REV. 324 (2001).
115. Silver, *supra* note 50, at 1, 6 (noting that the terms reflection and metacognition “have deeply intertwined histories in discourse on teaching and learning” and that their definitions “are both varied and contested in the research literature”) (citations omitted). Generally speaking, “reflection is often defined as a conscious exploration of one’s own experiences . . . and metacognition as the act of thinking about one’s own thought processes . . .” *Id.* at 1 (emphases and citations omitted). Nontechnically, “the two terms are relatively synonymous and are often used interchangeably by educators,” though technically, “these terms have developed relatively independently in research and practice.” *Id.* at 6.

our classrooms.<sup>116</sup> Among other approaches, this could entail intentionally revisiting old assumptions about student learning,<sup>117</sup> assessing the substantive assessments given to students from teaching and learning (rather than content) perspectives,<sup>118</sup> and being transparent with colleagues and students about what we learn from particular teaching strategies.<sup>119</sup> Ideally, law school colleagues would create an institutional environment that supports a community of learning for one another, as well as for students.

*Learning-Centered Curricular Redesign.* To further actualize a stated commitment to the principles of learning theory, a law school could undertake creation (or refinement) of a learner-friendly curriculum. The time is past due for law schools to consider the advantages of a coordinated and progressive program of legal education, with each learning stage deliberately building upon the last, to produce graduates capable of entry-level proficiency in the profession. The concept of intentional and integrated curricular design is not new.<sup>120</sup>

116. See Vance & Stuart, *supra* note 41, at 158-61 (noting that the legal academy has a “collective responsibility” to change its teaching strategies to meet the learning needs of law students).
117. For example: Do our students read and concentrate as students did twenty years ago? How can the different strengths of more introverted students be tapped and modeled for others to appreciate? What does it mean to have a safe classroom when social hierarchies and inequities are unavoidably imported into learning spaces despite what a professor intends or even expressly signals? These are just a few of the questions getting at teaching and learning assumptions that deserve deeper scrutiny. See HOW PEOPLE LEARN, *supra* note 57, at 266 (“For teachers to think about and conduct their teaching differently, they need to learn, and the principles of learning should guide that effort. It is therefore recommended that . . . [l]earning opportunities be developed that challenge misconceptions about how people learn and support the development of a new model that is based on learning research.”).
118. See Niedwiecki, *Teaching for Lifelong Learning*, *supra* note 52, at 179 (suggesting that professors take information gleaned from formative student assessments “to self-reflect and self-assess their own teaching.”) (footnote omitted). A related option is to create an assessment vehicle that asks students directly about the teaching of particular subjects soon after the subjects are covered in class. Questions (themselves encouraging metacognition) might request students to identify what teaching techniques, examples, exercises, or expressions promoted or detracted from their learning, or to isolate, if they could, the single most important factor in their learning of a subject, whether directly related to the teacher or not.
119. Sharing with students that we use metacognitive skills to engage in a conscious learning process about our teaching could motivate students to examine more closely their own learning processes and to provide important feedback about their learning to us. Also, talking about teaching trials and errors may have the incidental benefit of helping to mitigate the paralyzing fear that many law students have about being wrong. Emphasizing that deep learning requires experimenting with alternative lines of thought until the best emerges could be quite comforting to the legal novice, encouraging the student to be more creative about and comfortable with unfamiliar ways of thinking or the struggle necessary for deep learning. Of course, the classroom power differential may make these conversations more difficult or less authentic than they would be in its absence. And self-disclosure like this necessitates a certain comfort level that may not exist for all professors.
120. See generally, e.g., Maranville, *supra* note 9, at 52-58; Sarah O. Schrup & Susan E. Provenzano, *The Conscious Curriculum: From Novice Towards Mastery in Written Legal Analysis and Advocacy*, 108 NW. U. L. REV. COLLOQUY 80 (2013); Nancy B. Rapoport, *Rethinking U.S. Legal Education: No More “Same Old, Same Old”*, 45 CONN. L. REV. 1409 (2013); Kristine Strachan, *Curricular Reform in the*

But neither is it old or entrenched. Perhaps most important of all, it must be evolving. Just as teaching is a process in constant motion, so is rethinking the curriculum. And applying metacognitive practice to curricular redesign efforts means educating ourselves, as best we can, about the collective learning processes fostered by the curriculum, and re-examining those processes to make adjustments necessary to maximize student learning in accordance with the law school's curricular mission, while honoring basic teacher autonomy and a faculty member's pedagogic strengths within individual classrooms or courses.<sup>121</sup>

As Professor Kris Franklin argues in this symposium, the candid examination of how we teach and why we teach the way we teach in our own subjects—such as civil procedure—provides a springboard for discussing these and other issues related to the broader educational mission.<sup>122</sup> It is precisely these types of conversations we hope to encourage with this symposium—conversations with an eye toward promoting the collective educational experience, with the ultimate end of serving student learning in and of itself, both as the foundation for acquiring professional competence and spurring personal growth for both student and teacher.<sup>123</sup> As Parker Palmer urged:

Involvement in a community of pedagogical discourse is more than a voluntary option for individuals who seek support and opportunities for growth. It is a professional obligation that educational institutions should expect of those who teach—for the privatization of teaching not only keeps individuals from growing in their craft but fosters institutional incompetence as well.<sup>124</sup>

The more deeply we each understand what, where, when, how, and why we teach in the ways that we do, the more informed our collective discussions

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*Second and Third Years: Structure, Progression, and Integration*, 39 J. LEGAL EDUC. 523 (1989).

121. See AM. BAR ASS'N, *Standard 315: Evaluation of Program of Legal Education, Learning Outcomes, and Assessment Methods*, in ABA STANDARDS, *supra* note 8, at 23 (requiring that every law school “conduct ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods . . . and . . . use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.”).
122. Franklin, *supra* note 7, at 839-41.
123. Not to be overlooked are the important contributions that academic support professionals can make to these conversations. See generally Louis N. Schulze Jr., *Alternative Justifications for Academic Support II: How “Academic Support Across the Curriculum” Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 CAP. U. L. REV. 1 (2012) (calling for expansion of academic support programs to reach all law students, with the goals of orienting them to learning objectives and expectations and assisting them to become self-regulated and lifelong learners).
124. PARKER J. PALMER, *THE COURAGE TO TEACH: EXPLORING THE INNER LANDSCAPE OF A TEACHER’S LIFE* 144 (1998). And as Wegner analogously urged, in advocating the creation of communities for “civic dialogue,” “[I]awyers can work together in the interest of learning, coming together in candid discourse about things that matter, with open minds, and mutual respect for each other.” Wegner, *supra* note 13, at 198.



about the curriculum will be. Thus, in metacognitive mode, it would be important to discern what subjects, skills, or values are being taught throughout the curriculum and where.<sup>125</sup> In addition, consideration should be given to the *methods* being used to teach them, why such methods are being used, and whether there are any lessons to be learned about sequencing of pedagogic strategies, especially given the importance of providing students with opportunities both to practice what they learn and to self-evaluate their performance.<sup>126</sup>

For example, based on what they are learning about their students' learning, faculty might together consider questions like those proposed below as part of an effort to create or refine a learner-friendly curriculum that reconsiders the basic assumptions of the traditional law school model and demonstrates a new respect for the efficacy of the learning process in professional life:

- How, if at all, should learning about learning be taught in the law school, and when?
- How can we effectively teach students to recognize and reconcile the cognitive, metacognitive, and affective dimensions of learning?
- How can the first semester of law school be redesigned to provide better context or scaffolding for the learning to come in subsequent semesters?
- Are there particular subjects or skills that are most challenging to learn and, if so, why?
- Within a subject, are there different ways of organizing what we teach for better understanding?
- Should certain courses be taught before others to better position students to learn the subjects or skills taught within them?
- Which teaching methods are most appropriate for which learning outcomes and why?
- How might we adapt teaching materials to incorporate learning about learning or to better facilitate the metacognitive process?
- What can we do to negotiate the impact of our technology-rich world and its effect on the law school's learning environments?
- How can we use the teaching of learning about learning to further students' development of professional judgment?
- How might learning about learning affect ethical development and the integration

125. These are curriculum mapping decisions. "A curriculum map is a wide-angle view of a program of instruction. For each outcome, a curriculum map identifies where in the curriculum students will be introduced to the skill, value, or knowledge; where in the curriculum the students will practice it; and at what point in the curriculum students can be expected to have attained the desired level of proficiency." STUCKEY ET AL., *supra* note 39, at 93. See also Judith Welch Wegner, *Curricular Mapping as a Tool for Improvement*, in BUILDING ON BEST PRACTICES, *supra* note 9, at 37-42 (describing the benefits and processes for curricular mapping). See also *id.* at 42 (noting that curriculum mapping "involves the process of making actual teaching and learning visible, rather than relying on assertions of goals and plans.").

126. See, e.g., AM. BAR ASS'N, *Standard 303: Curriculum*, in ABA STANDARDS, *supra* note 8, at 16 (requiring at least six credit hours of experiential courses that "provide multiple opportunities for performance" and "provide opportunities for self-evaluation.").

of personal with professional values?

- What insights can practicing lawyers provide about the nature of learning about learning in practice?
- What resources (human or otherwise) does the institution have, or what resources need to be added, to assist with these questions?
- What alliances or understandings should be forged, if any, with undergraduate or graduate institutions to better prepare students to learn how to learn?
- What could law schools be doing to study the educational impact of teaching students how to learn?

Discussing these types of pedagogic choices and the consequential impact on student learning seems essential for a curricular design that strives to be intentional, progressive, and responsive to the demands of professional life. Being collectively self-reflective as a faculty about larger curricular questions is vital to getting at what is actually happening in the broader learning processes across the three years of law school and to discerning what can be done to better align the overall learning experience with the institution's learning outcomes.<sup>127</sup> This, perhaps, is the ultimate metacognitive task—becoming aware, to the extent feasible, of the cumulative learning across the entire law school journey and monitoring the efficacy of the teaching practices used, as a whole, for producing the types of graduates envisioned by a school's curricular mission.

### Conclusion

Intentionality—at both individual and institutional levels—takes center stage in this symposium. Each article, in its own way, asks us to *consciously* confront what exactly it is we are trying to do in educating our students. These types of inquiries, whether subject-specific or curriculumwide, naturally implicate thinking and talking about ourselves, not just as teachers, but as learners. If, as Parker Palmer observes, “[t]eaching, like any truly human activity, emerges from one’s inwardness, for better or worse,”<sup>128</sup> then venturing within, through self-awareness and monitoring of our work, seems not only wise but necessary to truly understand the pedagogic choices we make and their consequences for our students, our curriculums, and, ultimately, our professional communities.

As legal professionals—whether students, professors, or practitioners—it behooves us to leave our metacognitive monitors in the “on” position more often to capitalize on what we learn from thinking about thinking, whether the subject of thought is the student, the day’s class, the curriculum, the client, or ourselves. It is important to be explicit that knowing how to learn, and to learn deeply, is imperative for both studying and practicing law. At the heart

127. Another benefit of collective conversation is the intellectual vitality and faculty scholarship that can result from thinking deeply about intersections between one’s subject area and learning theory. Indeed, teachers thinking and writing on these dual planes actually face complex questions of “substance and procedure” that go to the heart of each—not unlike the basic dilemma of civil procedure itself.

128. PALMER, *supra* note 12, at 1.

of this imperative is the humility in consistently testing our assumptions about learning and demonstrating the intellectual and emotional discipline required for assessing the quality of the learning necessary to do our jobs as educators or practicing lawyers in a complex and rapidly changing world.

What we have discussed in these pages, frankly, has an exhausting quality about it. There are so many aspects of the law school curriculum that require deliberate, dedicated, and reiterated effort and attention. There may not be enough time to do it all, particularly in this exciting yet uncertain time of transition for the legal academy, required, as it has been, to take a deep look at itself, institution by institution, and, ultimately, individual by individual, to ascertain how, what, and, ultimately, why we teach. Clearly there are choices to be made and compromises to attend them in landscapes of limited resources, both human and financial. But despite these obstacles, it is our primary obligation to prepare our students to enter a learned profession, one that plays a fundamental role in safekeeping a justice ideal that, at its core, honors all.

And *that*, perhaps, is the ultimate purpose of this symposium.