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Volume 40

Number 2 *Symposium: Celebrating Twenty Years of Continuing Legal Education: The Art and Science of Educating Attorneys*

pp.485-507

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## Competence and Character: The Heart of CLE for the Profession's Gatekeepers

Patricia H. Murrell

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### Recommended Citation

Patricia H. Murrell, *Competence and Character: The Heart of CLE for the Profession's Gatekeepers*, 40 Val. U. L. Rev. 485 (2006).

Available at: <https://scholar.valpo.edu/vulr/vol40/iss2/10>

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# Looking to the Future: Improving the Delivery of Continuing Legal Education to Achieve Optimal Results

## COMPETENCE AND CHARACTER: THE HEART OF CLE FOR THE PROFESSION'S GATEKEEPERS

Patricia H. Murrell\*

In *Legal Education and Professional Development—An Educational Continuum*, the judiciary was referred to as the legal profession's gatekeeper.<sup>1</sup> "Today the highest courts of the several states are the gatekeepers of the profession both as to competency and as to character and fitness."<sup>2</sup> Graduation from an ABA-accredited law school and a written bar examination provide evidence of competence, and an individual state's investigation utilizing guidelines provided by the ABA establishes proof of character and fitness for entry into the profession. However, while competence and character are thus initially established, they are not assumed to be "finished." Rather, it is expected that there will be continued growth and development in both of these areas as the lawyer moves from novice to expert in the legal profession. The responsibility for encouraging and supporting professional development rests with the courts, with judges in ultimate control as gatekeepers.

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\* Patricia H. Murrell is the Director of the Center for the Study of Higher Education at the University of Memphis, Memphis, Tennessee. She also directs the Leadership Institute in Judicial Education and the Institute for Faculty Excellence, projects funded by the State Justice Institute and the Bureau of Justice Assistance. The purpose of these institutes is to instill the principles of adult development and learning in the judicial system. For her work in this area, she has received three national awards: the State Justice Institute's Howell Heflin Award, the National Center for State Courts' Warren Burger Award, and the American Law Institute/American Bar Association's Harrison Tweed Award. Most recently, she received a Tennessee Board of Regents' Excellence and Quality Award. She is on the Advisory Council for the Institute for Court Management and served on Tennessee's Judicial Evaluation Commission. In addition to her work with judicial educators in numerous states and organizations, she has taught judges in Russia, Macedonia, Jordan, and Morocco.

<sup>1</sup> LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM: 1992 REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 116 (1992).

<sup>2</sup> *Id.*

This Article describes an approach to continuing judicial education that not only provides support and direction for judges to maintain and increase their own competency and character, but views the role of gatekeeper as an opportunity to care for the profession and shape its future.

Competence and character—what the judge *does* and who the judge *is*—might be referred to as the judge's role and the judge's soul. Learning in these two areas can be delineated as instrumental (having to do with skills) and developmental (having to do with personal characteristics such as integrity). It may also be conceived as informative (filling the mind with information) and transformative (changing the form of the mind). The intertwining of these two distinct factors shapes the quality of justice in our courts. What kind of curriculum is needed in order to provide educational experiences that respond to these needs? What knowledge does the continuing professional educator need in order to develop this curriculum?

The good news is that positive adult development is possible after adolescence! Competence and character are shaped and reshaped across the life span. I would like to suggest three areas in which a continuing professional educator should be knowledgeable and competent: experiential learning, life cycle theory, and cognitive development. These three perspectives provide a road map to guide and inform our thinking about how continuing education can contribute to continued learning and growth, and prepare us for innovative and creative solutions, such as therapeutic jurisprudence, to the courts' problems.<sup>3</sup>

#### I. EXPERIENTIAL LEARNING THEORY

David Kolb's Experiential Learning Model provides a useable framework for describing learners' preferences for taking in and processing information that is easily understood and accessible.<sup>4</sup> It promotes the kind of mutual and interdependent relationships increasingly required in our courts. Additionally, the model provides a way to look at teaching and learning in continuing professional education and to design activities that enable people to move towards greater complexity in their thinking and behaviors.

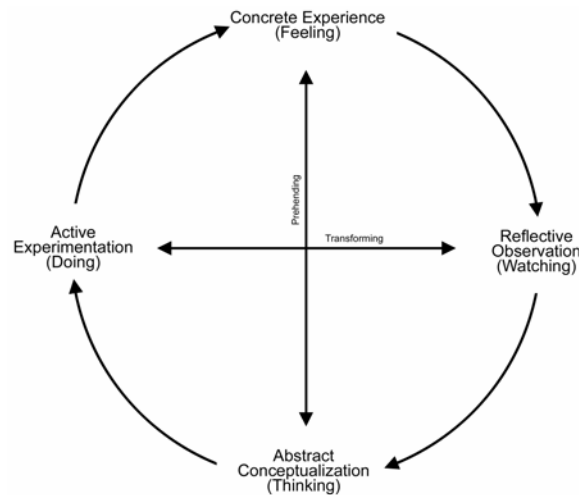
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<sup>3</sup> See, e.g., Philip Gould & Patricia H. Murrell, *Therapeutic Jurisprudence and Cognitive Complexity: An Overview*, 29 FORDHAM URB. L.J. 2117-32 (2002).

<sup>4</sup> See generally DAVID A. KOLB, *EXPERIENTIAL LEARNING: EXPERIENCE AS A SOURCE OF LEARNING AND DEVELOPMENT* (Prentice-Hall 1984).

As displayed in Figure 1, Kolb describes learning as a four-step process in which learners have an immediate concrete experience, involving themselves fully and interacting directly with people and things. The experience is subjective, feeling-based, emotional, intuitive, connected, and relational. Learners then reflect on the experience from their own different perspectives. They are internally focused, weighing different opinions and "talking to themselves," trying on opposing points of view, reactions, and judgments. From these reflective observations, they engage in abstract conceptualization, by which they develop generalizations that help them integrate their observations into sound theories, principles, or hypotheses. In this mode, learners are learning about something. They are more objective, logical, rational and scientific, analytic, and conceptual. Finally, learners use these generalizations as guides to further action, or active experimentation, and try out what they have learned in new, more complex, situations. They are more externally focused and action oriented. The result of this is another concrete experience, and the cycle begins again. However, this time the learner operates at a more complex level.

FIGURE 1

EXPERIENTIAL LEARNING<sup>5</sup>

<sup>5</sup> Adapted from KOLB, *supra* note 4, at 42 [hereinafter Figure 1].

The experiential learning cycle also distinguishes between two dimensions of learning: prehending or grasping, and transforming or processing.<sup>6</sup> The prehending dimension represents the continuum between the concrete and abstract modes, and the transforming dimension represents the continuum between the reflective and active modes. Both prehending and transforming must occur if learning is to take place. Information must not only be taken in, but changed and processed. Learners have the responsibility of gleaning meaning from their experience and information. This represents a departure from much formal education, where the emphasis is almost exclusively on taking in information, with little attention to the learners' responsibility for transformation and meaning making. One of the major roles of teaching is to create opportunities for such transformation and meaning making to occur.

While the best learner will need to be proficient in all of the four separate modes, few learners are equally facile or at ease with the demands placed on them by each mode. Individuals have preferred or habitual methods of responding on each of the dimensions. These preferences impinge on the learner's desire and willingness to engage in activities that teachers plan, whether in a formal classroom or in an informal learning setting, such as a committee meeting or a courtroom.

These preferences also impact how we live our lives or how we act. Parker Palmer asserts that a "way of knowing [is a] way of living," or a way of being.<sup>7</sup> The person who learns in only abstract or objective ways will probably behave in an objectivist way. That is, he or she will approach the world abstractly and may show little feeling in dealing with people or interest in people's problems. Similarly, those who prefer to process information and experience in a highly action-oriented way may go about living their lives in that modality, allowing little time for reflection. Thus, an understanding of how people prefer to take in and process information may be useful in understanding the way they go about solving problems and making decisions – very useful information indeed, if a judge wishes to have an impact on others' problem-solving and decision-making behavior. These four learning modes also serve as a guide in the design of learning activities, providing an excellent way to utilize the experiences that adults bring to the classroom.

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<sup>6</sup> See Figure 1, *supra* accompanying note 5.

<sup>7</sup> Parker J. Palmer, *Change Community, Conflict, and Ways of Knowing: Ways to Deepen Our Educational Agenda*, CHANGE MAGAZINE, Sept.-Oct. 1987, at 20, 20-25, available at <http://www.mcli.dist.maricopa.edu/events/afc99/articles/change.html> (last visited Sept. 13, 2005).

*A. Presentation Strategies*

Charles Claxton and Patricia Murrell suggest that this model of learning can be translated into a model of teaching.<sup>8</sup> They offer strategies or methods that teachers and presenters may use to ensure that learners of all styles are addressed in the classroom. The following teaching strategies are examples of ways that a course or presentation can be designed to incorporate all of the four learning modes. By including all four modes, all learning preferences will be addressed and all learners will be supported. Also, the learners will be challenged when their preference is not being addressed. The result of this balance between challenge and support is a more sophisticated learner, capable of more complex thinking and decision-making.

The model begins with the mode of *concrete experience* and assumes that learners approach the new learning with their own individual experiences. An astute teacher will want to connect with that experience and tap into it as soon as possible. Asking learners to recall a past experience regarding the topic is a simple and quick way to achieve this connection. Asking questions to which learners can respond by raising hands or briefly writing information brings their experience into alignment with the topic to be discussed.

Concrete experience activities involve the learner in the experience directly, either physically or emotionally. The experience is "hands on," uses the senses, engages the learner affectively or emotionally, and involves "here and now" data. It may have to be a vicarious experience in view of the danger involved in some experiences or the experience's inappropriateness for a class. In addition to recalling past experience, other strategies may include demonstrations, observations, case studies, interviews, self-tests, site visits, or stories. Scripted role-play is also an effective technique to foster active and spirited involvement.

If carefully chosen, films or guest lecturers can be excellent tools for engaging learners concretely. When a teacher attempts to connect with the learner, emotionally or affectively, the film or lecture should attempt to engage the learner in the same feelings that are portrayed in the movie or presentation. For example, if a lecture on the topic of child abuse is used as a concrete experience, the content should relate a personal story or first-hand experience with that topic.

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<sup>8</sup> CHARLES S. CLAXTON & PATRICIA H. MURRELL, EDUCATION FOR DEVELOPMENT: PRINCIPLES AND PRACTICES IN JUDICIAL EDUCATION 3 (JERITT 1992).

Second, *reflective observation* involves activities that require the learner to step back and look at experience, get the perspectives of others, and make connections to other experiences. At its best, it requires us to take one position and then to take another position. It is an internal process that is often difficult for the teacher to ensure or to observe. However, we can engage learners in some activities that we believe promote this kind of process. For example, reflective papers or journals can help to promote reflective observation if the assignment requires the learner to give a reaction to a topic or event as opposed to simply summarizing or documenting the topic.

Structured small group discussions provide a context in which learners can share their reflective observations with others. If carefully designed and assigned, such discussions enable learners to present their thinking about an issue and to see how their perspective compares to the perspectives of others in the group. Parker Palmer refers to teaching as “creat[ing] a space in which the community of truth [can be] practiced.”<sup>9</sup> Setting up small groups where individuals are invited to submit their feelings, reactions, or perspectives to the scrutiny of others in a non-competitive and supportive environment may help learners arrive at that community of truth.

Encouraging learners to formulate questions demands reflection on their part. Most teachers can relate experiences where learners asked questions that indicated no reflection had taken place! We would like for learners to formulate questions that question authorities, make comparisons, request clarification, or ask for additional information. Sometimes it is helpful to have learners pair up or get in groups of three and collaboratively formulate a question. The purpose of the group is not to answer the questions, but to ask them. This can be instructive to group members if they reveal the thought process that has gone into their question.

Asking learners to make connections to other learning promotes reflection. Asking how one case relates to another, or how one law relates to another, encourages learners to see connections rather than isolated facts. At the conclusion of a class, teachers can ask learners how they react to the session or how they feel about a topic that was presented, giving them a few minutes to go back over the class and reflect on it. Encouraging learners to discuss a class or a topic with other

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<sup>9</sup> PARKER PALMER, THE COURAGE TO TEACH: EXPLORING THE INNER LANDSCAPE OF A TEACHER’S LIFE 90 (Jossey-Bass 1998).

people may help to ensure that the information is not simply filed away as a "fact" to be retrieved in the future. Finally, reflective observation encourages the habit of "stopping and thinking" and practicing critical and reflective judgment.

Third, *abstract conceptualization* represents the principles or hypotheses developed from the reflections on experience. Often, they are presented as information from authoritative sources. Less often, learners are encouraged to create their own principles or hypotheses. As opposed to concrete experience, abstract conceptualization is "there and then" data. It often uses specialized disciplinary knowledge and methods of inquiry in research to develop principles.

Such information may be made available in the form of books, journal articles, or other readings, and the information is most often presented to learners in lectures. While some "active lectures" may include discussion, visual aids, a self-test, raising hands to vote, or question and answer sessions, the primary purpose is the transfer of information from teacher to learner.

Films may be used as abstract conceptualization to convey information that is authoritative and factual, as opposed to the more emotionally charged presentation described in concrete experience. Materials in the form of authoritative guidelines, such as checklists, rules, procedural steps, chronologies, forms, charts, or quick reference guides, often accompany or provide the abstract portion of a class or session.

The final step in the experiential learning model is *active experimentation*. This step provides opportunities for learners to try out principles, hypotheses, or theories in problem solving. "How will you handle this situation when it occurs in your court?" is an excellent question for launching active experimentation. Role play in which learners have the chance to practice a skill is a common strategy when a course has dealt with a topic such as oral argument or, in judicial education, in the case of judges who are taking the bench for the first time. Often, video or audiotape can be used to provide feedback to the learner, "coaches" can be assigned, or faculty can provide critique.

"What if" situations or hypothetical problems offer excellent opportunities for learners to apply and try out their new learning. To do this in a safe environment, such as a class, is preferred to risking new behaviors or promoting new ideas in a competitive work environment



where the consequences of failure are much greater. Asking learners to devise a plan of action is good preparation for eventually facing the problem that prompted the class or course. Working in groups or as individuals in problem-solving activities similarly enables learners to simulate new behaviors.

*B. Examples*

I would like to offer two examples that illustrate “walking around the circle,” utilizing topics that might be included in continuing education for judges. The first example is a course on the effects of domestic violence in child custody cases. I have chosen it because of its generally high affective or emotional content. A very effective activity to initiate a course on this topic is the use of an audiotape of a live 911 call involving a small boy calling the police to notify them that his daddy is hurting his mother and asking what he can do. A videotaped re-enactment might also be used. It is difficult to listen to or view such a tape and not be caught up in the emotion, feeling, and sense of being there. Such a film need not be long and needs very little introduction. It establishes an immediate “need to know” on the part of the learner and provides a vicarious concrete experience.

Reflective observation can be accomplished in several different ways. One possibility is to take a few minutes and ask learners to jot down on paper their reaction to the tape or film. Another possibility is to ask them to think of their own professional experience with domestic violence cases where children were involved. Questions that may be posed include, “How many have handled divorce cases involving domestic violence where child custody was an issue?” and “How satisfied were they with the resolution of the case?” Participants may be asked to pair up with the person next to them and share this material for a few minutes, or the teacher may ask for a few participants to share their experiences with the whole group, remembering to limit the amount of time that one person can speak.

As the teacher moves to abstract conceptualization, he or she may provide factual information about domestic violence in the community and implications for divorce cases where custody is an issue. Special rules and conditions concerning children may be introduced. If questions and answers are permitted, the activity probably moves back and forth between questions from the learners, demonstrating reflective observation, and answers from the teacher or other learners,

demonstrating abstract conceptualization. Print materials may be made available that detail specific laws, rules, and procedures.

Active experimentation might consist of a hypothetical case that involves the application of the law. Judges in the class might be called on to role-play situations in which they interview clients who are either victims or perpetrators of domestic violence. Playing out children's roles may also aid in ascertaining the appropriateness of their involvement in the resolution of the case.

The second example I would like to address is evidence, which is much less emotion-laden and more abstract. The attention to concrete experience may be limited to an opening question such as, "Raise your hand if you can remember a time when you failed to establish the proper foundation for the introduction of a piece of evidence?" A quick count of the hands raised indicates that the learners' experience is directly related to the topic of the session, in this case, evidence. The desire for reflective observation might cause an instructor to ask another question, such as, "What problems did you have in introducing the evidence?" Listing the problems on newsprint or an overhead might be appropriate, or the teacher might simply move to introduce his or her presentation on "Evidence" with a statement such as, "Let's ask ourselves what basic things we need to do to get evidence introduced."

A lecture seems appropriate for abstract conceptualization on this topic. The rules of evidence might be presented along with the foundations for exhibits. Decorum issues, such as when to approach the bench or when witnesses should be addressed, along with procedural issues, such as when an exhibit should be marked by the court reporter, may be appropriate lecture topics. As suggested earlier, if a question and answer session is allowed, the teaching and learning moves back to reflective observation for the questions, and to the teacher or another learner for the abstract conceptual answer. Print material may be furnished to augment the oral presentation.

Active experimentation again carries the learner to the application of problem-solving that completes the learning circle. A videotape of a mini trial can be shown and the tape can be stopped whenever the narrator says, "objection." Participants may then be asked to actually make a ruling on the objection.

This example provides an ideal illustration of a course that could continue around the circle for a second time or many times. The active

experimentation actually feeds into a new concrete experience, and the circle begins again. The learners, having been around the circle once, now approach evidence at a more complex level. The course can rapidly move to reflective observation, with learners having the opportunity to offer opinions as to why some evidence was admitted and why other evidence was ruled inadmissible. The teacher again utilizes abstract conceptualization and cites specific rules that provide guidance in the proper foundation to admit a piece of evidence. Finally, the class returns to the video again and delineates the process of ruling on the objection. This process can actually continue “going around the circle” as many times as is necessary for the class to feel satisfied that it has mastered the material.

These activities for the four modes have been described much more discreetly than they occur in the teaching process or in the learning process. As indicated in Figure 1, the modes are points on a continuum represented by the arrow to show that the learner is moving from one mode to another. The transition should be smooth and, hopefully, effortless.

While experiential learning theory holds great promise for designing learning activities, it also empowers learners themselves as they come to understand the role of learning in their daily lives and how to benefit from their experiences. As learners become more adept at transiting the circle, they develop an appreciation for differences and a better understanding of the distinguishing gifts that people bring to the legal profession. Thus, the role of gatekeeper expands. In summary, teaching in all of the four modes has the potential for more retention of material, more satisfied participants and better evaluations, and, most importantly, more complex learners.<sup>10</sup>

## II. ADULT DEVELOPMENT

A second major theoretical set useful in guiding continuing professional education for judges are the age-related developmental experiences that serve as powerful motivators for both judges and teachers. The work of developmental theorists inform our thinking about the stories that each of us has to tell, reminding us of the journey that we have traveled as well as the paths that others have taken. It sharpens our appreciation for the periods of stability and transitions

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<sup>10</sup> See, e.g., Patricia H. Murrell, *Experiential Learning and Learning Styles: A Model for Continuing Legal Education*, 2 CLE JOURNAL 5-16 (2000).

people experience as they move through the life cycle, while cautioning us to never underestimate what people have been through to get where they are today.

*A. Milestone Exercise*

The importance of events in the life cycle can be recognized and acknowledged by completing a Milestone Exercise that asks for a recall of the major turning points or milestones in our adult life. Each milestone represents an event that moved us into a new status. There are no “right” ways to develop a lifeline, and it gives us the opportunity to look back at the things that we have done—the *concrete experiences* of our lives. We think of what tasks we had to perform or what competencies we had to develop in order to move from one segment to the next. This might be an instrumental task, such as learning a particular skill or earning a credential, or it might be a developmental task, such as becoming sufficiently independent to make a decision. This helps us to see the central role that learning plays in growth and development.

This exercise is more meaningful if we recall both personal and professional milestones. While professional accomplishments and work changes are very important, we know that in our lives, the personal and professional are intertwined and one often influences the other. Relationships as well as events often shape our growth. We note the people who have moved in and out of our lives, particularly parents, siblings, spouses, partners, or children. The death of parents often marks a major transition as we take on the responsibilities of family leadership. Associating book titles, song titles, or movie titles with time periods often helps us to think about segments of our lives that have a common thread or some coherence.

*B. Life Cycle Theory*

Life cycle theory is particularly pertinent as new information is generated from census data about different cohorts in our rapidly changing society. We have to be careful to avoid regarding the material as normative, but instead, find where our lives intersect or parallel the material and where they do not intersect. While we may have common tasks and the commonality of change, the individuality with which each of us approaches the challenges and demands of each period prevents one from regarding the model as prescriptive.

We are also encouraged to think of other people in our lives and work, and how this material might increase our understanding of them. The work of Gail Sheehy is especially pertinent, particularly as she uses census data to document age-related changes, such as the elongation of adolescence, the increasing need and desire for a second career or retirement job, and increased life expectancy.<sup>11</sup> As age increases, so does diversity within age groups. For example, twenty-year-olds are much more homogeneous than eighty-year-olds.

Erik Erikson's psychosocial developmental approach gives us another perspective for our consideration.<sup>12</sup> Erikson studied individual behavior as well as the psychological drives, sociological circumstances, and physical maturation that shape behavior across the life span. His work resulted in the description of eight phases beginning with infancy and extending to old age. It is interesting to note that in Erikson's framework, "elderly" was about sixty-five, the same age that Sheehy now places in mid-life! While we acknowledge the cumulative nature of development and recognize the value of successfully negotiating each phase, we concentrate on *identity*, *intimacy*, and *generativity* as the recurring themes of the adult years.<sup>13</sup>

While *identity* is initially dealt with in adolescence, it is never completely resolved. As changes and crises are met and dealt with, we must address the question, "Who am I?" anew. The major components of identity are an understanding and comfort with our sexuality; a sense of values and views about how societies, nations, and communities interact and get along; and vocational choice—some clarity about the kind of work we will do and some desire to invest ourselves in it. What we do plays a major role in identity, and largely we are what we do. However, it is not all that we are, and a balance between the personal and professional, between family and work, is essential for congruence, authenticity, balance, and integration in our lives. Relationships also shape identity, and occurrences, such as the loss of a spouse or partner and the aging of children, cause us to re-evaluate our identities.

Any educational program designed for new judges has the opportunity to contribute to the participants' identities and new self-

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<sup>11</sup> See GAIL SHEEHY, *NEW PASSAGES: MAPPING YOUR LIFE ACROSS TIME* (Random House 1995); GAIL SHEEHY, *PASSAGES: PREDICABLE CRISES OF ADULT LIFE* (Bantam Books 1976).

<sup>12</sup> ERIK ERIKSON, *CHILDHOOD AND SOCIETY* (2d ed., W. W. Norton & Co. 1963).

<sup>13</sup> NANCY K. SCHLOSSBERG ET AL., *IMPROVING HIGHER EDUCATION ENVIRONMENTS FOR ADULTS: RESPONSIVE PROGRAMS AND SERVICES FROM ENTRY TO DEPARTURE 1-7* (Ursula Delworth ed. Jossey-Bass 1989).

images. While there is a need for specific skill building, there is also a need for an “induction” into the vocation that calls for instruction in the values and beliefs of the profession. Challenge and support are important principles to remember—new judges cannot learn everything all at once. They need information that is immediately useful, but they should not receive so much information that they are overwhelmed. Ongoing and continuing support is important as they acquire more skills and assimilate into the profession. Mentoring may be an important part of this process. Courses such as judicial philosophy can assist in identity formation for judges. Judicial educators should be especially sensitive and responsive to gender issues around identity because women and men may experience identity formation at different times, depending on age and socialization. Judges who have a firm sense of self will be able to take an expanded view of their role as gatekeepers.

*Intimacy*, Erikson’s second seminal theme of adult development, is the capacity to commit oneself to a relationship or partnership and to develop the ethical strength to abide by such commitment.<sup>14</sup> Personal and family relationships present an obvious forum in which this plays out. However, the nature of relationships in the workplace also demands this capacity. Without it, the potential dangers of exploitation and manipulation are extraordinary. Individuals who have the capacity for intimacy value mutuality in relationships, more effective collaboration, freedom from abuses of power, and trust that survives conflict and sustains bonds.

In the work setting, interpersonal competence and collegial intimacy are certainly required of judges who wish to be successful in their professional lives. The ability to work cooperatively with others is a recurring issue for judges and often shows up as a deficiency on performance evaluations. Interpersonal competence can be taught through courses addressing interviewing and counseling, diversity, human relations, collegiality, and sexual harassment. Any cross-professional training also contributes to a capacity to work effectively with other disciplines and to an ability to see oneself as part of a larger picture. While judging has historically been a very isolated endeavor, there seem to be increasing opportunities to work more collaboratively, especially in dedicated courts such as drug or community courts. The ability to compete effectively, to seek and offer help, to influence others, and to perform well in one’s social roles are all characteristics that make

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<sup>14</sup> See JAMES W. FOWLER, STAGES OF FAITH: THE PSYCHOLOGY OF HUMAN DEVELOPMENT AND THE QUEST FOR MEANING 106–10 (Harper & Row 1981).

for a more smoothly working organization. The ability to master these tasks while respecting the identity of others and without imposing one's self on co-workers is essential if work settings are to be free of abuses of power.

Finally, *generativity*, perhaps the most salient of Erikson's phases for judicial education, is the readiness to care for that which has been created, whether it be people, ideas, or institutions. It grows out of a need to be needed and results in caring for the welfare of others and in actively investing in society by passing down traditions, values, and culture. Mentoring and teaching provide avenues for the expression of generativity and capitalize on the fact that a generative man needs to teach and has an innate psychological drive to care for that which has been created.<sup>15</sup> Judicial education itself seems to be a generative activity. By providing professional development activities in "how to teach," the court system encourages and nurtures generative behavior.

The recurring cyclical nature of *identity*, *intimacy*, and *generativity* provoke continuing growth and development and make learning throughout adulthood very powerful, placing the enterpriser of continuing judicial education in an enviable position. Because development is never "finished," judicial educators have the opportunity to contribute repeatedly to the attempted resolution of the issues that judges confront as they face major transitions and move through the life cycle. The individual energy involved in working through these developmental imperatives is enormous, and educators who can channel that energy into learning stand to make substantial gains. Judicial education that addresses these themes will look beyond programs that simply disseminate information toward a process that contributes to individual and corporate growth and development.

Nurturing new judges as they struggle with their identity, looking at emerging ideas and challenges with courage, and creatively leading the judiciary into a new role in a post-modern society are activities that generative judges and judge educators embrace with enthusiasm. Providing a climate in which generativity can find expression and support is essential if the judicial branch is to play a major role in shaping its future.

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<sup>15</sup> DON S. BROWNING, *GENERATIVE MAN: PSYCHOANALYTIC PERSPECTIVES*, 21-24, 145-228 (Westminster Press 1973).

George Vaillant's recent book, *Aging Well: Surprising Guideposts to a Happier Life*, provides strong empirical support for Erikson's work.<sup>16</sup> Utilizing longitudinal data from three separate cohorts of 824 individuals studied from their teenage years through their eighties, he offers a revised model that expands upon the concept of generativity as caring for that which has been created to keeper of the meaning. According to Vaillant, "This task [keeper of the meaning] involves passing on the traditions of the past to the next generation . . . [and] allows one to link the past to the future."<sup>17</sup> It is epitomized by the role of the wise judge. Judges who have resolved the tasks associated with identity, intimacy, and generativity are comfortable shifting the role of gatekeeper from a narrow stance of controlling entry and admission to include preserving the culture and the values of the legal profession and courts, which is more associated with the keeper of the meaning.

One of the cases that Vaillant chronicles from a happy childhood to age seventy-eight is that of Justice Oliver Holmes, whose life illustrates successful mastery of identity, intimacy, and generativity. When asked for his prescription for successful aging, Holmes replied, "Share Socrates' love of the search, while knowing no answer will be found. Exercise the little gray cells (Hercule Poirot), work and love (Freud). Show respect for and try to care for the planet . . . . Don't dwell on the past except when blue and then only remind oneself that those problems that seemed insurmountable often weren't. Try not to worry about the future. It's not over, 'til it's over."<sup>18</sup> Clearly, here is a judge who has assumed a keeper of the meaning role.

Additionally, Carol Hoare's extensive synthesis of Erikson's unpublished papers, in *Erikson on Development in Adulthood*, adds a freshness and depth to the understanding of adult development through the lens of psychosocial stages.<sup>19</sup> She affirms Erikson's concept of identity as the personal coherence or self-sameness that provides both the "capstone to youth and . . . the springboard and the ongoing

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<sup>16</sup> See generally GEORGE E. VAILLANT, *AGING WELL: SURPRISING GUIDEPOSTS TO A HAPPIER LIFE FROM THE LANDMARK HARVARD STUDY OF ADULT DEVELOPMENT* (Little, Brown & Co. 2002).

<sup>17</sup> *Id.* at 45.

<sup>18</sup> *Id.* at 94.

<sup>19</sup> See generally CAROL H. HOARE, *ERIKSON ON DEVELOPMENT IN ADULTHOOD: NEW INSIGHTS FROM THE UNPUBLISHED PAPERS* (Oxford Univ. Press 2002).



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nutrient” for intimacy in young adulthood and the caring and productivity in the middle years necessary for generativity.<sup>20</sup>

Peter Senge, in his important work on the art and practice of the learning organization, writes of the need for lifelong generative learning—learning that enhances our capacity to create.<sup>21</sup> Such learning is particularly important as judges struggle with how to provide justice in a society where the issues are increasingly complex, where courts are viewed by many as the source of values, and where the courts serve as the primary formative institution in the lives of millions of people, both those who work there as well as those who are transients in the system.

Each of us can examine the implications that this material has for our own life and work in the legal system. How can this knowledge influence practice? How can courses or activities be designed to respond to these developmental phases? How can a course or activity contribute to the successful “navigation” of the tasks of the life cycle? How can an understanding of identity, intimacy, and generativity help a judge to not only guard the entry to the profession but also support those who have been admitted?

Adults approach learning with their own life histories and unique perspectives. The extent to which continuing judicial education programs can plan learning activities and strategies that tap this rich lode of experience and enable people to use new information to make meaning of that experience determines our success in serving these students. Work in the area of life cycle and adult development enables us to understand and appreciate those psychic tasks and imperatives that often provide the impetus for adults’ engagement within our programs.

By telling our own stories, listening to the stories of others, and learning from the accumulated wisdom about life stories that have been collected by scholars, we can arrive at a greater understanding of an individual’s psychological journey in the context of his environment.<sup>22</sup> Furthermore, the more we know about another person’s story, the more difficult it is to dismiss or disrespect that person.<sup>23</sup> Hopefully, such

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<sup>20</sup> *Id.* at 31.

<sup>21</sup> PETER SENGE, *THE FIFTH DISCIPLINE: THE ART AND PRACTICE OF THE LEARNING ORGANIZATION* 142 (Currency 1990).

<sup>22</sup> *See* GAIL SHEEHY, *UNDERSTANDING MEN’S PASSAGES: DISCOVERING THE NEW MAP OF MEN’S LIVES* (Ballantine 1998).

<sup>23</sup> *See* Palmer, *supra* note 7.

appreciation and understanding will assist us in our development of more effective teaching and learning as well as the improvement of the quality of justice in our courts.

### III. COGNITIVE DEVELOPMENT

Cognitive development is the third theoretical perspective that will aid continuing judicial educators. Cognitive development involves the personal unfolding of methods of organizing experiences that are not simply replaced as we grow but are subsumed into more complex systems of the mind.<sup>24</sup> These structures of the adult mind shape our view of the world and our capacity for mental activity and meaning making. Cognitive development joins experiential learning, life cycle theory, and the teachings of the legal profession and the court system to provide the necessary guidance for planning and carrying out educational programs. These three streams of research also support the mission and purpose of judicial education and help to define its outcomes.

#### A. Stage Theories

Stage theories attempt to plot the progressions or changes in how people think as they experience and try to cope with the challenges of their lives, regardless of age. Each stage has particular intellectual tasks and ways of thinking to be mastered before a person can move to the next stage. However, as in life cycle theory, issues are not resolved "once and for all" and have to be re-visited as changes and crises occur.

William Perry's *Scheme of Intellectual and Ethical Development* offers one description of the stages through which people move as their ways of thinking become more inner-directed and complex.<sup>25</sup> It represents the way individuals process information and interpret the world outside of themselves, including peers, knowledge, the environment, and authority, and it addresses the processes used in decision-making. Each stage represents a qualitatively different way of thinking and a restructuring in the direction of increasing complexity.

Perry's work has found some application in legal education, the academic course followed by most people in their journey to become

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<sup>24</sup> See generally ROBERT KEGAN, IN OVER OUR HEADS: THE MENTAL DEMANDS OF MODERN LIFE (Harvard 1994).

<sup>25</sup> WILLIAM G. PERRY, JR., FORMS OF ETHICAL AND INTELLECTUAL DEVELOPMENT IN THE COLLEGE YEARS: A SCHEME (Jossey-Bass 1999).

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judges. Paul Wangerin, Associate Professor of Law at John Marshall Law School, states: "William Perry . . . describes a cognitive development sequence in the intellectual abilities of young adults that can readily be used to catalogue the various developmental phases through which many law students seem to pass."<sup>26</sup> He links Perry's ideas to law school students anecdotally, indirectly, and empirically. More recently, Jane H. Aiken, a law professor at Washington University School of Law and a Carnegie Scholar, has discovered Perry's work, which has contributed to her ability to help learners develop higher order thinking skills and arrive at what she terms "justice readiness."<sup>27</sup> Both of these works assist us in making the leap from undergraduate education, to legal education, and on to continuing judicial education. L. Lee Knefelkamp reminds us of Perry's anticipation of later models of adult transition. It makes perfect sense to assume that as adults encounter the imperatives of identity, intimacy, and generativity, they will find their way of thinking increasingly inappropriate and at odds with their experience and the learning derived from it.<sup>28</sup> The resulting disequilibrium and dissonance require a transition to a new stage.

In the first stage, *dualism*, truth and authority are so integrally linked that people assume that what is said is true simply because the source is authoritative. In their systematic search for authority, dualistic thinkers place little value on the opinions of their peers, and when presented with two opposing views will ask, "Which one is correct?" They often have trouble accepting the response that there is no universally accepted answer to that question. Aiken assumes that most of her learners are beyond dualism.<sup>29</sup> However, she observes that the shock of law school and its traditional teaching methods often drive students to embrace this dualistic thinking, and Wangerin acknowledges the frequency of dualism seen in law school students.<sup>30</sup>

Movement from early dualism begins when people see that different authorities give different answers to the same questions. Aiken proposes challenging and confronting students with hypothetical problems that have multiple solutions and contextual complexities as a way of

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<sup>26</sup> Paul T. Wangerin, *Objective, Multiplistic, and Relative Truth in Developmental Psychology and Legal Education*, 62 TUL. L. REV. 1237, 1240-41 (1988).

<sup>27</sup> Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 289 (2001).

<sup>28</sup> L. Lee Knefelkamp, *Introduction to WILLIAM G. PERRY, JR., FORMS OF ETHICAL AND INTELLECTUAL DEVELOPMENT IN THE COLLEGE YEARS: A SCHEME* (Jossey-Bass 1999).

<sup>29</sup> Aiken, *supra* note 27, at 292.

<sup>30</sup> *Id.* at 291; Wangerin, *supra* note 26, at 1246-48.

promoting the desired growth.<sup>31</sup> However, it is essential to provide adequate support in this process.

In the early part of Perry's next stage, *multiplicity*, people believe that the world of knowledge is divided into that which is known and that which is not known. As they come to experience more and more unanswered questions, they recognize diversity of opinions as legitimate. Because they lack the ability to discriminate between opinions as a function of context and particular circumstance, they are unable to make sound judgments as to which is better. As Aiken observes, they come to understand that knowledge is constructed but believe that there are no ethical or moral principles within which such construction occurs.<sup>32</sup> There is little concern for substantiating the way one looks at an issue.

The shift to the next stage, *contextual relativism*, is regarded as the most dramatic. As the locus of control shifts from external to internal, the self assumes legitimacy not only in the learning process but also in defining reality. In legal education, this may occur when the learner encounters complex problems where the law and justice do not seem in accord.<sup>33</sup> They recognize that while everything is relative, it is not equally valid, and that only in context can truth and value be defined. Here people are able to enter into the thinking of other people, experience empathy, and thus understand them more fully.

Perry's final stage is *commitment in relativism*. Individuals at this stage are characterized by an ability to deal with paradox, to make decisions in the absence of clear or complete information, and to tolerate ambiguity. They know that commitments do not actually settle things or make them easier. In fact, they may generate additional options, present new and difficult questions, and recognize that a conflict often occurs when commitments intersect with an adversarial system of justice such as ours. According to Aiken, choices are mediated by values.<sup>34</sup> She wishes her students to commit to social justice. This happens when the student realizes that law is not neutral and that the playing field is not level. This stage is also marked by an ability to identify assumptions and the effect of those assumptions on choices and behavior.

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<sup>31</sup> Aiken, *supra* note 27, at 292-93.

<sup>32</sup> *Id.* at 291.

<sup>33</sup> *See id.* at 292-93.

<sup>34</sup> *Id.* at 295-96.

Adding strong support and breadth to Perry's work is the work of Mary Belenky and her colleagues.<sup>35</sup> Raising questions about the paths that females take in moral and intellectual development, they propose a set of perspectives associated with women's views of reality that shape their conceptions of truth, knowledge, and authority that are similar to those Perry identified for men, but that differ in some ways as well. One of their significant findings is a pre-dualism category that they call *silence*, where women experience the self as mindless and voiceless with no capacity for knowing. This stage was not found on college campuses, but it may be found often in the court system. An understanding of this intellectual deprivation can be very helpful to judges and others who encounter victims of sexual, emotional, or physical abuse.

The power in the two studies, as they blend and overlap, is their representation of a wide range of humanity, rather than similarities and differences based on gender. This broad spectrum of men and women at several stages of growth closely resembles our diverse population and contributes to our understanding of the complex mosaic of human development. Together with experiential learning and life cycle, they provide a powerful underpinning for judicial education.

Planning education programs for judges that prompt and support individuals as they move from dualism through multiplicity to relativism and commitment is a challenge. However, the complexity of the issues brought before the courts demands an equivalent level of complexity in the thinking of judges. Such programs demand attention to both the content of material as well as the processes or strategies used by the teacher.

While this theoretical material may be unfamiliar to legal educators, it resonates with our understanding of ourselves, our journeys through law school and other formal education experiences, our experience in practicing law or other work, and our analysis of our roles as judges. Most of us are introspective enough to nod in the affirmative when asked if we can recall our own cognitive functioning at stages lower than Perry's relativism.

The consensus of the court system personnel who have worked with this material has overwhelmingly been in favor of judges who function at the stage of relativism or commitment to relativism. This goal

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<sup>35</sup> MARY BELENKY ET AL., *WOMEN'S WAYS OF KNOWING: THE DEVELOPMENT OF SELF, VOICE AND MIND* (Basic Books, Inc. 1986).

presents an enormous challenge in designing continuing professional development for the judiciary. It demands that greater attention be paid to teaching strategies—the Kolb model addressed earlier is one possibility—and that more attention be paid to content that introduces new and stimulating ideas, that challenges the participants, and that encourages introspection rather than mere information exchange. A curriculum that attends to the following four areas offers a starting place: (1) substantive content, both law and other disciplines; (2) judicial and technical skills; (3) personal authenticity; and (4) personal growth and development.

The content of judicial education programs has historically focused on substantive law. Increasingly, courses that deal with social issues and new knowledge that has been discovered in areas that impinge on the law, such as genetics, are necessary. The establishment of dedicated courts that deal with specific types of cases has created a need for understanding issues, such as drug abuse and domestic violence. Thus, the curriculum has moved toward a more interdisciplinary content, challenging judicial educators to reach beyond traditional topics and presenters.

The advent of technology in the courts has brought about a need for new skills on the part of judges and others who work in the courts. Case flow management, use of computers on the bench, electronic presentations in the courtroom, and the provision of access to electronic information for users of the courts are only a few of the applications that judicial educators may be responsible for offering. Other skill areas, such as opinion writing, courtroom management, and interviewing, also remain important.

Judicial education has the opportunity to address not only the role of the judge, but the soul of the judge as well. Judicial philosophy, ethics, professionalism, collegiality, and issues of civility are extremely important and emanate from the internal character and integrity of the person as much or more as they depend on external, rule-based codes of behavior or conduct. They cannot be effectively taught in ways that leave our inner lives untouched.<sup>36</sup> The opportunity for individuals to explore the landscape of their own minds, habits, and values as they craft a personal code that can guide their practice with integrity is a worthy purpose of continuing judicial education—one that demands

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<sup>36</sup> See PARKER PALMER, *A HIDDEN WHOLENESS: THE JOURNEY TOWARD AN UNDIVIDED LIFE* (Jossey-Bass 2004).

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introspection on the part of the learner. Annping Chin, in *Four Sisters of Hofei*, reminds us that “[o]nly the deepest inwardness allows integrity to take form.”<sup>37</sup>

Other curricular areas that address the personal growth of court personnel may be stress management, retirement planning, substance abuse, or professional/personal balance. Roxie Bacon, suggests that “[there is a] piece in each of us that seeks a larger meaning in what we do in our lives . . . . It has to do with the spirit and the soul.”<sup>38</sup> As stated by Daloz, Keen, Keen, and Parks, such a curriculum responds to the call for “clear space, contemplative time, and good conversation to engage and understand complex problems.”<sup>39</sup> Chin suggests that such contemplative time should be “without the pressure of competition or the need for argument or analysis.”<sup>40</sup>

This call includes the need for different teaching strategies. While there remains a substantial amount of information exchange, particularly in the substantive area, there is a need for presentation skills on the part of the teacher that enable the participants to engage in meaning-making or see the application of the new material to their work and lives. For these presentation and process skills, we encourage judicial educators to return to the work of David Kolb.

B. Literature

Literature has long been accepted and utilized as a vehicle for the transmission of values in our culture and as a means of engaging with larger issues and universal concerns. The use of literature in judicial education offers a means to explore how various life experiences shape our moral and ethical character at different stages during our lives. David Denby writes about reading literature as the trying on of selves and taking on one identity after another.<sup>41</sup> This active engagement with the narrative and characters can assist judges in moving toward a greater understanding for and appreciation of the complexity of the human condition. It can enlarge one’s system of values, provide a greater

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<sup>37</sup> ANNPING CHIN, *FOUR SISTERS OF HOFEI* 57 (Scribner 2002).

<sup>38</sup> Roxie Bacon, *Professionalism: Changing Interior Voice to Exterior Voice*, 15 PROF. LAW. 21 (2005).

<sup>39</sup> LAURENT A. PARKS DALOZ ET AL., *COMMON FIRE: LEADING LIVES OF COMMITMENT IN A COMPLEX WORLD* 11 (Bacon Press 1996).

<sup>40</sup> CHIN, *supra* note 37, at 243.

<sup>41</sup> See DAVID DENBY, *GREAT BOOKS* (Simon & Schuster 1996).

capacity for ethical behavior, and help to ensure a more effective judicial system.

In *Reconnecting with Values and Ethics: Learning Lessons from Literature and Human Developmental Theory*, Patricia Murrell and William Carpenter discuss various literary selections and their connections with the three theoretical perspectives addressed earlier.<sup>42</sup> Each of these selections can contribute to the development of character in judges.

#### IV. CONCLUSION

The three theoretical streams of experiential learning, life cycle, and cognitive development intertwine, support, and compliment each other. They serve as a background against which to design continuing education activities for judges. The experiential learning material provides teaching strategies that challenge learners to take in and process information in new and different ways while simultaneously providing support. Taking into consideration identity, intimacy, and generativity as powerful motivators, a curriculum can be developed that encourages movement from simplistic to more complex ways of thinking and making meaning. Judges are thus encouraged to become life-long learners and recognize that learning is the process by which they master the tasks necessary for resolution of life cycle issues and capable of more complex thinking. I believe that such an outcome is essential for the courts to appropriately deal with the complexities that our global society presents. Otherwise, we will be, to use Robert Kegan's phrase, "In over our heads."<sup>43</sup>

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<sup>42</sup> Patricia Murrell & William Carpenter, *Reconnecting with Values and Ethics: Learning Lessons from Literature and Human Development Theory*, 38 JUDGES J. 17 (1999).

<sup>43</sup> See KEGAN, *supra* note 24.