

LAWYERING IN THE 21ST CENTURY: A CAPSTONE COURSE ON THE LAW AND ETHICS OF LAWYERING

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I. INTRODUCTION

Those who teach and write in the field of legal ethics know the Professional Responsibility survey course cannot possibly cover the basic principles essential for minimal ethical competence and do little more than mention the wide range of other emerging issues. As scholars, we are drawn to think about complex, subtle, or cutting-edge issues on the horizon of legal practice, perhaps from both national and global perspectives. Some schools have approved innovative curricular approaches to satisfy (or supplement) the American Bar Association (ABA) accreditation mandate that each student take a course in Professional Responsibility. Students at those schools can take specialized boutique courses, such as Legal Ethics of Civil Litigation, Ethics in Defense and Prosecution of Criminal Cases, Ethical Issues Arising in Business Transactional Practice, and Comparative International Legal Ethics.¹

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1. Lisa G. Lerman, *Teaching Moral Perception and Moral Judgment in Legal Ethics Courses: A Dialogue About Goals*, 39 WM. & MARY L. REV. 457 (1998) (discussing a range of approaches to teaching professional responsibility, including specialized ethics courses). For example, David B. Wilkins, Harvard Law School Professor of Law, teaches one seminar on the Future(s) of the Large Law Firm and another seminar on Cause Lawyers. See Harvard Law School Program on the Legal Profession, Courses, <http://www.law.harvard.edu/programs/plp/courses.htm> (last visited May 25, 2007). Laurel S. Terry, Penn State Dickinson School of Law Professor of Law, teaches a seminar on Global Legal Practice. See Penn State, The Dickinson School of Law, <http://www.personal.psu.edu/lst3> (last visited May 25, 2007). Charles M. Silver, Texas School of Law Professor of Law, teaches a course on Professional Responsibility for Civil Litigators. See University of Texas at Austin School of Law, Student Affairs Office, <http://utdirect.utexas.edu/lore/pgrs.WBX?id=csilver> (last visited May 25, 2007).

In recent years I have developed an advanced course in legal ethics, entitled “Lawyering in the 21st Century.”² What began as a seminar has evolved into a three-hour upper-division elective course offered in the spring semester and designed as a capstone experience to help graduating third year students transition into the practice of law. Enrollment is capped at around thirty students to provide a safe environment for frank discussion and to allow time for small group presentations and individual presentations by those who use the course to satisfy their graduation writing requirement. Although the survey Professional Responsibility course is not a formal prerequisite, because enrollment often fills with third year students, most students have already studied the basic legal principles. This permits the class to probe in-depth issues of moral philosophy, economic realities of practice, and a wide range of other matters that are beyond the scope of the survey course.³ Coverage varies from year to year, depending on student interest, current hot issues, and my current scholarship. In this brief essay I describe the course structure and pedagogical objectives, topical coverage, and various methods used to develop the materials throughout the semester. Finally, I step back and evaluate the output, both from the perspective of student satisfaction and my own assessment of its success, identifying areas for improvement.

Overall, I think the class has been a grand success, helping to prepare our students to enter the practice with confidence about how to think about and research ethical issues, advising them who to call when they are uncertain or uncomfortable, and exposing them to the political and economic realities of legal practice. Invited speakers are selected because they are good people who are solid and reasonably successful lawyers. Through these speakers students are introduced to persons who can be role models and mentors and provide students with entry-level opportunities to become involved with the organized bar on matters of ethics and access to justice.

2. Professor Nancy Moore generously shared the title, her syllabus, and ideas for such a course, which she offered at Boston University. When we last discussed it a few years ago, her course was an alternative to the basic survey course, meaning that her students were seeing the legal principles for the first time.

3. Spring 2007 enrollment included eight second year students, which possibly raised the level of engagement in class preparation and participation, as contrasted with some third year students who perhaps had “one foot out the door.”

II. COURSE OBJECTIVES, THEMATIC COVERAGE, PEDAGOGY, AND STRUCTURE

A. *Course Objective: “When the Rubber Hits the Road”: Prepare Them for Practice in the Real World*

I teach at a state-supported law school that charges comparatively low tuition for both in-state and out-of-state students.⁴ As the only Oklahoma law school supported with public money, it is often preferred by students who can afford to attend full-time and plan to practice in the state, and by many who plan to practice in the regional southwest.⁵ Most of our graduates do not have the crushing student debt load of those who attended private, tuition-dependent law schools.⁶ Our graduates also have been quite successful in passing the bar and obtaining employment before or shortly after graduation.⁷ Nearly all our graduates enter the practice of law, whether in private firms or government work.⁸ Some of the top students have been successful in obtaining prestigious judicial clerkships and positions at large national law firms. Most, however, define the region as “home” and plan to practice in Oklahoma or Texas. Although much of the professional responsibility literature focuses on large firm practice, that does not reflect the national reality of where the majority of lawyers work for the substantial portion of their careers—in small firm settings.⁹ In Oklahoma and other states with substantial expanses of rural land, lawyers are clustered in the metropolitan areas and thinly dispersed throughout the rural areas, as sole practitioners or in small firms.¹⁰ Although the metropolitan areas have some “larger” firms and branch offices, the largest firms have fewer than 150 lawyers.¹¹ Most of the state’s private firms would be considered small by mega-city standards, with the majority of lawyers in firms with fewer than twelve lawyers.¹² At the risk of overgeneralizing, our state’s lawyers, while concerned about profitability, do not typify the obsession with greed that Patrick Schiltz addresses, in vilifying large firm practice.¹³ Many of the state bar leaders actively subscribe to principles of public good, although they may differ in definition and manner of pursuit.¹⁴

4. For the 2006–2007 academic year, in-state tuition and fees, based on a thirty-hour course load, is \$13,564. University of Oklahoma, Office of the Bursar, <http://www.ou.edu/bursar/fees.htm> (last visited May 25, 2007). For non-residents, tuition and fees total \$23,492. *Id.* By contrast, in 2002 the median law school tuition was \$9,252 for public resident law school students and \$18,131 for public non-resident law school students. ABA COMMISSION ON LOAN REPAYMENT AND FORGIVENESS, LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE: THE FINAL REPORT OF THE ABA COMMISSION ON LOAN REPAYMENT AND FORGIVENESS 10 (2003), available at <http://www.abanet.org/legalservices/downloads/lrap/lrapfinalreport.pdf> [hereinafter LIFTING THE BURDEN]; see also THOMAS E. BRENNAN & DON DELUC, JUDGING THE LAW SCHOOLS (8th ed. 2006), <http://www.cooley.edu/rankings>; Thomas M. Cooley Law School Comparison Program, <http://www.cooley.edu/rankings/search/report-byfactor.php> (last visited May 25, 2007) (go to “Compare by Factor”) (rating University of

Oklahoma 32d for full-time resident tuition and 27th for full-time non-resident tuition of 186 ABA-approved law schools).

5. As a public institution that receives most of its funding from the state legislature, the University of Oklahoma College of Law is statutorily required to draw 85% of its student body from in-state residents (although how that figure is calculated has some flexibility). Memorandum from Kyle L. Buchanan, University of Oklahoma Director of Career Services, to Judith L. Maute, Perspectives on Jobs After Law School (Feb. 14, 2006) (on file with author). About 70% of our graduates remain in the state immediately upon graduation, and another 10% practice in the neighboring state of Texas. *Id.* Approximately 40% of the active Oklahoma Bar Association (OBA) membership graduated from the University of Oklahoma, 24% from the University of Tulsa, 21% from Oklahoma City University, and approximately 15% graduated from other law schools around the country. *Oklahoma Bar Association 2002 Membership Survey*, 73 OKLA. B.J. 3393, 3397 (2002) [hereinafter *OBA 2002 Membership Survey*].

6. See *America's Best Graduate Schools 2008: Whose Graduates Have the Most Debt? The Least?*, U.S. NEWS & WORLD REP. (2007), available at http://www.usnews.com/usnews/edu/grad/webextras/brief/sb_law_debt_brief.php. Our average student debt load is about \$63,000; 79% of our graduates have educational debt. *Id.* The mean debt is skewed by students who have no debt and those who have substantially greater debt. See *id.* (indicating that approximately \$70,000 to \$80,000 is the average law school debt for graduates of ranked law schools and that the median debt is \$70,000); see also Nancy H. Rogers, *Preserving the Route to Public Service Careers*, AALS NEWS, Apr. 2007, at 1 (stating that the "ABA's current median law school debt figures for the Class of 2006 are \$83,181 for private law school graduates and \$54,509 for public law school graduates. After adding in undergraduate debt, a quarter of our graduates begin their careers with six-figure debt").

7. See, e.g., Email from Charlotte Nelson, Administrative Director, Oklahoma Board of Bar Examiners, to Judith L. Maute (Sep. 8, 2006) (on file with author) (relaying July 2006 Oklahoma Bar Examination Statistics, and indicating an overall 88% pass rate, with 95% of University of Oklahoma examinees passing; that number increases to 98% for first-time takers). See also BRENNAN & DELUC, *supra* note 4; Thomas M. Cooley Law School Comparison Program, <http://www.cooley.edu/rankings/search/report-byfactor.php> (select "Bar Passage Percentage, First-Time") (last visited May 25, 2007) (stating that the University of Oklahoma has a 96% first-time pass rate, tying it for seventh place, along with Harvard, Michigan, Notre Dame, and Washington University); *id.* (select "Graduates Employed") (stating that the University of Oklahoma has 86% of graduates employed at graduation). This number, we believe, significantly understates actual employment. Students and recent graduates have resisted providing this information, not appreciating its significance to the school's rankings and national perception. Cf. *America's Best Graduate Schools 2008: Top Law Schools*, U.S. NEWS & WORLD REP. (2007), available at http://www.usnews.com/usnews/edu/grad/rankings/law/brief/lawrank_brief.php (ranking graduates employed at graduation and nine months later in columns eight and nine).

8. See Buchanan, *supra* note 5; Class of 2005 Placement Statistics, ABA Questionnaire Response of University of Oklahoma College of Law (on file with author) (stating that 68% of 2005 graduates entered private practice, and that consistent with the national statistics, about 70% of all attorneys in private practice are in small to mid-sized firms).

9. BARBARA A. CURRAN ET AL., *THE LAWYER STATISTICAL REPORT: A STATISTICAL PROFILE OF THE U.S. LEGAL PROFESSION IN THE 1980S* 13 (1985) (stating that in 1980, nearly two-thirds of all lawyers in private practice worked as sole practitioners or in association with one or two others); see also DEBORAH L. RHODE & GEOFFREY C. HAZARD, JR., *PROFESSIONAL RESPONSIBILITY AND REGULATION* 28 (2d ed. 2007) (citing CLARA CARSON, *THE LAWYER STATISTICAL REPORT* 8 (2004)) (stating that three-quarters of lawyers are in private practice,

With a view to the diverse work environments my students are likely to enter, the course aims to focus their attention on “what next” in very practical terms. My pedagogical objective is to help prepare them for the next stage of their lives by identifying the potential issues they may face and helping them anticipate their responses. The semester begins with consideration of broad philosophical issues, of professional core values of loyalty, confidentiality, access to justice, and of the tension between doing good and doing well economically. It considers a wide range of economic issues: contrasting law firm business structures, their creation, management, and dissolution, methods of developing practice areas, and ethical issues raised by technology. Throughout, it addresses what it means to be a lawyer, in terms of what we do for our clients, tensions between our clients’ expectations and our personal values (moral, religious, and work/life balance concerns), civil liability to clients and non-clients and malpractice insurance, the legal profession’s responsibility for the quality of justice, and the importance of an independent

48% of whom are sole practitioners, and of the 52% of lawyers in firms, about half work in offices with twenty or fewer lawyers).

10. *OBA 2002 Membership Survey*, *supra* note 5, at 3400–02 (stating that close to 70% of in-state active members of the bar practice in the metropolitan areas of Oklahoma City and Tulsa, or in cities with populations exceeding 60,000; eighteen counties have fewer than ten lawyers).

11. Only four Oklahoma-based law firms have 100 or more lawyers—McAfee & Taft, 127 lawyers; Crowe & Dunlevy, 115 lawyers; Hall Estill, 110 lawyers total, including 11 in Washington, D.C. or Arkansas; and Riggs Abney, 106 lawyers. *See* Email from Kyle L. Buchanan, University of Oklahoma Director of Career Services, to Judith L. Maute (May 14, 2007) (on file with author). Four firms have between fifty and ninety-nine lawyers—Conner & Winters, 78, including 12 in offices outside the state; Gable & Gotwals, 59 lawyers; Phillips McFall, 55 lawyers; and Fellers Snider, 50 lawyers. *Id.*

12. *See OBA 2002 Membership Survey*, *supra* note 5, at 3413.

13. *See* Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999); *see also* NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION & AMERICAN BAR FOUNDATION, AFTER THE JD: FIRST RESULTS OF A NATIONAL STUDY OF LEGAL CAREERS 41–44 *available at* <http://abfn.org/ajd.pdf> [hereinafter AFTER THE JD]; Susan Saab Fortney, *An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 64 TEX. B.J. 1060, 1061 (2001) (stating that pay scales were based on firm size and billable hours). *Compare OBA 2002 Membership Survey*, *supra* note 5, at 3431 (stating that 38.30% of respondents reported earning between \$50,000 and \$100,000 annual income from employment as attorney, 9.63% earn between \$100,001 and \$125,000, and 30.79% earn more than \$125,000), *with* Memorandum from Buchanan, *supra* note 5 (estimating that the mean salary for 2004 graduates, including those in the business, public, and government sectors at the start of 2006, “would be somewhere in the \$55,000 to \$60,000”). For private sector 2004 graduates, the median was \$51,000, and the 75th percentile was \$75,000. *See* Memorandum from Buchanan, *supra* note 5.

14. *See, e.g.*, OKLA. BAR ASS’N STANDARDS OF PROFESSIONALISM (2006), *available at* <http://okbar.org/ethics/standards.htm> (last visited May 25, 2007) (defining “Professionalism” to require “honesty, integrity, competence, civility, and public service”).

judiciary. Besides exposure to an expanded range of substantive legal and ethical questions, it also seeks to develop practical lawyering skills involving teamwork and public presentations. Throughout the semester, the course discussion considers how to identify and deal with the varying ethical cultures of prospective employers. The main course objective is to help prepare the students to embark on a healthy, happy, and reasonably successful professional career.

B. *Thematic Coverage*

Five main themes are developed throughout the semester: 1) Integrity, Professionalism, and Civility, 2) Regulation of Lawyers and Researching the Law Governing Lawyers, 3) Lawyers' Responsibility for the Quality of Justice and Core Professional Values, 4) Economic and Business Aspects of the Legal Profession, and 5) Practical Lawyering Skills. This section briefly surveys the coverage, including citation to some of the materials that might be used as assigned reading. As the themes regularly overlap, it describes coverage in approximate chronological sequence.¹⁵

1. Integrity, Professionalism, and Civility

Can integrity be taught, or is it something that one has or does not have based on one's personal life story? Is professionalism a meaningful and definable concept, or is it a fluff term with largely symbolic value? What of professionalism's companion term "civility"? Can it be defined as an affirmative set of expectations, or is it usually addressed in the negative—"incivility," decried when offended by another lawyer's conduct? Like obscenity, *we* may claim to know it when *we* see it. Much has been written about these questions, providing rich fodder for probing discussion.¹⁶

15. The last week of the 2007 course was spent discussing 1) presentational skills, 2) course themes, and 3) critiquing the course with ideas for the future. For the class hour devoted to course themes, students were assigned to prepare a one-minute statement on how their individual or law firm projects related to one or more of the themes. After five minutes of small group discussion, designated representatives reported to the class. I served as scrivener, making notes on the board. For each of these class sessions, several students volunteered to take notes and submit to me for (eventual) preparation of a summary document to be posted on the course webpage and distributed electronically to the class. To assist in creating the thematic document, student presenters also submitted emails that summarized their statements.

16. ABA COMMISSION ON PROFESSIONALISM, "... IN THE SPIRIT OF PUBLIC SERVICE:" A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986) [hereinafter "IN THE SPIRIT OF PUBLIC SERVICE"]; *see, e.g.*, Nancy J. Moore, *Professionalism Reconsidered*, 1987 AM. BAR FOUND. RES. J. 773 (1987); Timothy P. Terrell & James H. Wildman, *Rethinking "Professionalism"*, 41 EMORY L.J. 403 (1992); *see also* Robert S. Summers, "Good Faith" in *General Contract Law and the Sales Provisions of the Uniform Commercial Code*, 54 VA. L. REV. 195, 202-03 (1968) (arguing that the concept of good faith must be understood as an

Teaching the topic of professionalism is more of a challenge. After a few hours of class discussion on selected readings,¹⁷ a prominent and respected lawyer who exemplifies professionalism discusses what it means “to walk the walk” of professionalism.

2. Lawyer Regulation and Subtext: Rules, Discipline, Civil Liability, Researching the Law and Ethics of Lawyering, and Life as a Lawyer

Throughout, the course seeks to empower students to identify, research, and analyze the ethics issues they will encounter in practice. Many students and lawyers think of legal ethics from the perspective of personal ethics or from the larger perspective of moral philosophy. While I agree that those perspectives play an important role in what a lawyer will or will not do—what Nathan Crystal calls one’s “philosophy of lawyering,”¹⁸—I maintain that analysis of most ethical issues must begin with reference to the applicable law. In the words of (now senior status) Tenth Circuit Judge Tacha,

Legal instruction is about integrating and the focusing of knowledge. It is about recognizing the relevant and dispensing with the irrelevant. It is about constructive problem solving. It is about being able to articulate an issue and then draw upon the germane facts and precedent necessary to advance a decision. In short, . . . [it] must teach people to organize, integrate, and focus information.¹⁹

First, I provide an initial overview of the Model Rules of Professional Conduct, the Ethics 2000 review, and both national and local activity in revising the rules.²⁰ The class is asked to consider whether any of the rules

“excluder,” which courts often use in finding that certain conduct is bad faith, and not “the positive content of a standard”).

17. The readings include: Mary C. Daly, *Teaching Integrity in the Professional Responsibility Curriculum: A Modest Proposal for Change*, 72 FORDHAM L. REV. 261 (2003); Russell G. Pearce et al., *Revitalizing the Lawyer-Poet: What Lawyers Can Learn From Rock and Roll*, 14 WIDENER L.J. 907 (2005). The Pearce article is now available in movie form as a DVD, with an accompanying teacher’s guide. The movie plays out much of the professionalism debate contained in abstract writings and argues that lawyers, like rock musicians, can have fun, do good work, and earn a respectable living. REVITALIZING THE LAWYER-POET: WHAT LAWYERS CAN LEARN FROM ROCK & ROLL (Fordham Univ. 2006).

18. Nathan C. Crystal, *Developing A Philosophy of Lawyering*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 75 (2000).

19. Deanell Reece Tacha, *Refocusing the Twenty-First-Century Law School*, 57 SMU L. REV. 1543, 1543 (2004).

20. This is one of the few classes where I attempt to use real-time technology, navigating the ABA Center for Professional Responsibility website, to demonstrate how to access current information on the ABA Model Rules of Professional Conduct and the current status of state review projects. Charlotte “Becky” Stretch prepares an excellent periodic update and Ethics 2000 Review Status Chart. See American Bar Association, Status of State Review of Professional Conduct Rules, http://www.abanet.org/cpr/jclr/ethics_2000_status_chart.pdf (last visited May 25, 2007). I then navigate to the Oklahoma Bar Association website and demonstrate how to access

embody higher ethical principles that reflect thinking about the moral quality of the client-lawyer relationship, or that guide a lawyer in reconciling conflicts between the lawyer's morality and client demands. Next, students are broken into clusters for small group discussion of the topics addressed in their first written assignment, an emotive journal.²¹ Reporters for each cluster group present the main points and the themes of their discussions, which I chart on the board. They are asked to consider what they learned about ethics in their legal work experiences or other experiences with lawyers, and how that compares to the law and ethics of lawyering they learned in school. We then spend two class sessions on how to research the law and ethics of lawyering. One hour is spent with professional librarians who introduce students to online ethics research, treatises, and standard reference sources, and explain how to formulate literature searches.²² During the next hour, I bring to class a library cart with multiple copies of standard reference materials on the law governing lawyers. Again sitting in cluster groups, students are to conduct preliminary research on the topics identified in their group's journals.²³ This exercise is intended to get them started on their second assignment, a legal memorandum addressing a discrete issue raised in their journals. Thereafter, students' research memoranda are distributed to their cluster groups, which discuss the substantive issues addressed and identify other avenues of research that might be pursued by a practicing lawyer.

Guest speakers are invited from the integrated state bar association and from the state's captive insurance carrier. Because most states' disciplinary arms are badly underfunded, reported decisions resulting in discipline often present egregious fact patterns. If risk of discipline were the primary incentive

and contrast the current rules with pending proposals. Finally, I demonstrate how to locate rules of other jurisdictions, through the Center for Professional Responsibility link, the Cornell Ethics library, or directly to an online source of the relevant jurisdiction.

21. Students who do not submit a journal because they are writing the substantial research paper are assigned to cluster groups.

22. University of Oklahoma Library Director and Associate Professor Darin Fox and his staff devoted extensive time creating exercises for print and online research. The students, who obviously enjoyed discrete competitive tasks, completed the written exercises in the limited time allowed. The exercise questions were largely informational, for example, seeking a definition or statutory cite. For Professor Fox's Powerpoint presentation, see University of Oklahoma College of Law, Lawyering in the 21st Century, Researching Legal Ethics Slides (Feb. 5-6, 2007), http://jay.law.ou.edu/faculty/JMaute/Lawyering_21st_Century/.

23. We agree that further experimentation is needed for presenting the research component. The 2007 class made the following suggestions: have professional library staff work with small groups to introduce the materials and walk through the library, provide print-outs of the electronic Powerpoint presentation, and provide a bibliography of reference sources both in print and electronic form. See University of Oklahoma College of Law, Lawyering in the 21st Century, Researching Legal Ethics Slides (Feb. 5-6, 2007), http://jay.law.ou.edu/faculty/JMaute/Lawyering_21st_Century/ (listing my favorite research sources).

guiding lawyer conduct, the legal profession would truly be in a sorry state. Over and above individual lawyers' personal and professional value systems, the risk of civil liability plays a significant role in shaping behavior. Students are introduced to key local actors who could be their friends—or foes—including ethics counsel, senior trial discipline counsel and malpractice carrier representatives. When lawyers are trained to recognize ethical issues, they must think about the issues as matters of law (not visceral, as in whether it causes an aching gut) to research, and if still uncertain, to call knowledgeable advisors, including ethics counsel of the bar or their malpractice carrier for claims prevention and repair. Lawyers and malpractice managers can address details of the malpractice insurance policy and its costs, red flags that cause carriers concerns (or denial of coverage), emerging issues in civil liability, and practical issues about what lawyers should do when they see a potential problem on the horizon.²⁴ A recurring topic of disciplinary counsel and in-class discussion considers the professional problems of lawyers with unhealthy lives fostered by psychological problems, substance abuse, or bad judgment on sexual and private matters.²⁵

The subtext to legal regulation addresses an overarching course theme on life as a lawyer. Lawyers make bad judgments or drop the ball because they are overstretched in time or money, they are overstressed, or their moral compass has lost its center. The material on regulation offers an opportunity to revisit the issues of integrity and professionalism. Most law schools have done little to prepare students to deal with the realities of stress, competition, aggression, and tension from the practice of law.²⁶ Lawyers are not machines.

24. See, e.g., Thomas W. Hyland & Christina M. Thompson, *Professional Liability*, 690 PLI/LIT. ADMIN. PRAC. COURSE HANDBOOK SERIES 191 (2003); American Bar Association, *Professional Liability Insurance Directory: Oklahoma Attorneys Mutual Insurance Company* (Feb. 6, 2007), <http://www.abanet.org/legalservices/lpl/directory/carriers/okmut.html>; Jett Hanna, *About Lawyers' Professional Liability Insurance*, TEX. LAW. INS. EXCH., Apr. 14, 2003, <http://www.tlie.org/newslet/adv0103/art1.htm>; Robert I. Johnston & Kathryn Lease Simpson, *O Brothers, O Sisters, Art Thou Insured?: The Case for Mandatory Disclosure of Malpractice Insurance Coverage*, PENN. LAW., May-June 2002, at 28.

25. These class sessions are scheduled around Valentine's Day, titled: "What's Love Got to Do With It?" In 2006, disciplinary counsel discussed reported decisions on these issues, which complemented a prior class session in which Susan Saab Fortney discussed her important study on work/life balance. SUSAN SAAB FORTNEY, *THE NALP FOUNDATION, IN PURSUIT OF ATTORNEY WORK-LIFE BALANCE: BEST PRACTICES IN MANAGEMENT* (2005). In 2007 the guest speaker was a therapist retained by the state bar to provide limited counseling services to troubled lawyers. Next year, a prominent lawyer with knowledge and experience on substance abuse issues will be invited.

26. Gary Bauer, *Addressing the Needs of Solo/Small Firm Practitioners Through Law School Based Programs to Reduce Stress in Practice—Several Approaches*, 6 T.M. COOLEY J. PRAC. & CLINICAL L. 1, 23 (2003); William D. Henderson & David Zaring, *Young Associates in Trouble*, 105 MICH. L. REV. 1087, 1106 (2007) (reviewing fictional accounts of large firm

We command high rates of compensation because of advanced training, analytical skills, and judgment. And yet it is known that errors of judgment are more probable when actors are fatigued or distracted by personal problems. Demands for work/life balance by recent entrants to the practice have reached a stage where they all but require recognition by the organized bar and legal employers.²⁷ They can no longer be flatly rejected as the whiney complaints of a few with substandard work ethics. Law firms may hire “the best and the brightest,” but increasingly disaffected associates leave firms for kinder, more humane workplaces. Enlightened firm managers are beginning to deal with the issue, at least in symbolic ways.²⁸

associates as compared with empirical data at such firms, and “wonder[ing] if law schools should be doing more to prepare their students for future firm life”).

27. See, e.g., Stephanie Francis Ward, *The Ultimate Time-Money Trade-Off*, ABA E-JOURNAL REP. (Feb. 2, 2007), <http://www.abanet.org/journal/ereport/t2as.html> (reporting results of an unscientific online survey of young lawyers; 84.2% of nearly 2,400 respondents stated a willingness “to earn less money in exchange for lower billable-hour requirements”); Deborah Epstein Henry, *Professional Women and Work/Life Conflict*, 27 WOMEN’S RTS. L. REP. 19 (2006); see also Martha Neill, *A “Cheat Sheet” For Honest Answers*, ABA E-JOURNAL REP. (Jan. 12, 2007), <http://www.abanet.org/journal/ereport/j12women.html> (discussing a list of specific questions for lawyers to ask prospective employers); *What’s Keeping Law Firm Owners Up at Night With Associate Pay Now?*, PARTNER’S REP., Apr. 2007, at 1 (listing survey responses, including retention of quality associates and balancing quality of life with firm profitability through billable hours); Joan Williams & Cynthia Thomas Calvert, *Balanced Hours: Effective Part-Time Policies for Washington Law Firms: The Project for Attorney Retention, Final Report Third Edition*, 8 WM. & MARY J. WOMEN & L. 357 (2002); Joan C. Williams et al., *Law Firms as Defendants: Family Responsibilities Discrimination in Legal Workplaces*, 34 PEPP. L. REV. 393 (2007).

28. See, e.g., AFTER THE JD, *supra* note 13, at 80. Some state and city bar groups have established task forces on work/life balance. See, e.g., Boston Bar Association, Boston Bar Association Task Force on Work-Life Balance, <http://www.bostonbar.org/prs/wfcplan.htm> (last visited May 25, 2007); Minnesota State Bar Association, Life and the Law Committee, <http://www2.mnbar.org/committees/lifelaw/index.htm> (last accessed May 25, 2007); New York State Bar Association, Special Committee on Balanced Lives in the Law, <http://www.nysba.org/MSTemplate.cfm?MicrositeID=97> (last visited May 25, 2007); Oklahoma Bar Association, Work/Life Balance, <http://www.okbar.org/members/worklife/Default.htm> (last accessed May 25, 2007). Some law firms are developing a persona that embraces sensitivity to work/life balance issues. See, e.g., Lowrie, Lando, & Anastasi, LLP, <http://www.ll-a.com/index.cfm> (last accessed May 25, 2007). Numerous articles and publications are available on the internet exploring work/life balance issues. See, e.g., AMERICAN BAR ASSOCIATION COMMISSION ON WOMEN IN THE PROFESSION, CHARTING OUR PROGRESS: THE STATUS OF WOMEN IN THE PROFESSION TODAY (2006), available at <http://www.abanet.org/women/ChartingOurProgress.pdf>; AMERICAN BAR ASSOCIATION YOUNG LAWYERS’ DIVISION, LIFE IN THE BALANCE: ACHIEVING EQUILIBRIUM IN PROFESSIONAL AND PERSONAL LIFE (2003), available at <http://www.abanet.org/yld/publications/Compilation2002-03.pdf>; TOMI W. BRYAN, NORTH CAROLINA BAR ASSOCIATION, STAYING POWER: WORK-LIFE BALANCES FOR RETAINING YOUNG LAWYERS, available at <http://younglawyersdivision.ncbar.org/LegalResources/WorkLife+Balance+Survey+Results/default.aspx> (last visited May 25, 2007); Christina Plum,

At various times in the semester, while addressing different professional work settings, class discussion raises issues of stress, time demands, and pressure to assist or ignore wrongdoing. In addition to raising the problems, these discussions also identify how students can acquire useful information about potential employers so they can make informed choices about their careers.²⁹ Anxious graduating 3Ls without a firm job commitment often state that they feel resigned to accept any offer of employment, just to pay their living expenses and student loans. The conversations present opportunities to consider how a lawyer's name and reputation is developed by osmosis with one's professional affiliations.³⁰

The "life as lawyer" subtext also considers financial pressures, with specific focus both on student loans and the challenge of sole practitioners to cover operating expenses while representing "personal plight" clients on small matters such as divorce, petty crimes, and small injury claims. Two class hours are spent considering the impact of educational loans on career choices and practical application of how to consolidate and repay without mortgaging one's professional and personal life.³¹

Make the Effort to Achieve Balance, AFFILIATE, Mar.-Apr. 2003, at 1, available at <http://www.abanet.org/yld/affiliate/marchapril03.pdf>.

29. See, e.g., LISA G. LERMAN & PHILIP G. SCHRAG, ETHICAL PROBLEMS IN THE PRACTICE OF LAW 626-29 (2005) (identifying specific ways to obtain information about prospective legal workplaces).

30. Former New York University Dean and noted ethics expert, Norman Redlich, quips: "If you sleep with dogs you'll get fleas." I sometimes share stories of my two law firm experiences, "Firm One" and "Firm Two," as the reason why I teach legal ethics.

31. See EQUAL JUSTICE WORKS, FINANCING THE FUTURE: 2004 REPORT, LAW SCHOOL REPAYMENT ASSISTANCE AND PUBLIC INTEREST SCHOLARSHIP PROGRAMS 15-20 (2004), available at http://www.nlada.org/Training/Train_Civil/Equal_Justice/2004_Materials/090_2004_Article1; LAW SCHOOL ADMISSION COUNCIL, FINANCIAL AID FOR LAW SCHOOL: A PRELIMINARY GUIDE (2005), available at <http://www.lsac.org/pdfs/2006-2007/FINAIDTEXTWeb06.pdf>; LIFTING THE BURDEN, *supra* note 4, at 9-13; Sarah Kellogg, *How to Manage Law School Debt*, WASH. LAW., Oct. 2004, at 21. Access Group, which appears to have some prominence in the national legal education and access to justice community, was not responsive to requests for information, guest lecturer, or specific student inquiries. Access Group contact information is available at <http://www.accessgroup.org/about-access-group/contact-us.htm> (last visited May 25, 2007). In 2006, SunTrust sent a representative to speak and be available to meet with other students. See Financial Aid Officer Overview, <http://www.suntrustededucation.com/finoff.asp> (last visited May 25, 2007). Bill Richins since moved to Graduate Leverage. In 2007, non-profit Graduate Leverage co-founder Jeff Wanic and Bill Richins addressed the class and were available for individual consultation. See Graduate Leverage, <http://graduateleverage.acrobat.com/lawpresentation2007/> (last visited May 25, 2007); Graduate Leverage, <http://www.graduateleverage.com/loanassessment.aspx> (last visited May 25, 2007); see also Rogers, *supra* note 6; John A. Sebert, *The Cost and Financing of Legal Education*, 52 J. LEGAL EDUC. 516 (2002). Students found these class sessions extremely helpful.

3. Lawyers' Responsibility for the Quality of Justice and Core Professional Values

The first paragraph in the Preamble of the ABA Model Rules of Professional Conduct provides that “[a] lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”³² As a representative of individual clients, the lawyer must be competent, diligent, and loyal, preserving confidential information and respecting the client’s autonomy and informed consent about lawful choices about the representation. As an officer of the legal system, the lawyer must exercise independent professional judgment about whether the client’s proposed course of action and desired means of pursuit fall within legal bounds, respecting the institutional demands of the adversary process or transactional setting. As public citizens, with specialized knowledge and persuasive influence, lawyers have both collective and individual responsibility to improve the legal system, pursuing the ideals of access and impartiality embraced in the phrase “equal justice under the law.” As individuals with personal moral systems, lawyers should be able to resist repugnant client demands, with their professional lives reflecting their personal integrity.³³ Because these multiple roles sometimes conflict, the individual lawyer must be prepared to evaluate when and why one of these roles takes precedence over the others.

Potential coverage on “lawyers’ responsibility for the quality of justice” could range widely. At present, it considers the civil and criminal adversary system, judicial independence, integrity, and accountability,³⁴ the partisanship principle and traditional justifications for the adversary role, modern claims to

32. MODEL RULES OF PROF’L CONDUCT pmb1. (2007).

33. Compare Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation*, 85 YALE L.J. 1060 (1976), with Stephen Gillers, *Can a Good Lawyer Be a Bad Person?*, 84 MICH. L. REV. 1011 (1986). In popular culture, the Winston Churchill quip is often retold: it’s not a question of what you are, but of the price you command. Likewise, consider Atticus Finch explaining to Scout why he agreed to represent an unpopular client, a black man accused of raping a white woman: “If I didn’t, I couldn’t hold my head up in town, I couldn’t represent this county in the legislature, I couldn’t even tell you or Jem not to do something again.” HARPER LEE, *TO KILL A MOCKINGBIRD* 75 (Warner Books 1982) (1960).

34. Protecting an independent judiciary has become an issue of paramount importance. See, e.g., Editorial, *Voting for Judicial Independence*, N.Y. TIMES, Nov. 2, 2006, at A26 (explaining that Sandra Day O’Connor urged rejection of radical judge-bashing schemes, including a South Dakota ballot initiative to hold judges civilly and criminally liable for their decisions); Judith L. Maute, *Selecting Justice in State Courts: The Ballot Box or The Backroom?*, 41 S. TEX. L. REV. 1197 (2000); Lance J. Rogers, *ABA Commission Hears from Speakers Seeking to Modify Judicial Conduct Rules*, ABA/BNA LAWYER’S MANUAL ON PROFESSIONAL CONDUCT: CURRENT REPORTS 1 (Feb. 11, 2004), available at http://www.abanet.org/judiciaethics/resources/LM_021104.pdf.

reign in unbridled zealous advocacy, and whether a lawyer's personal values or faith might properly influence one's professional conduct.³⁵

Following discussion of partisanship in the civil context, focus shifts to the criminal justice system. "'Pursuit of justice' in a criminal case requires that each component of the holy trinity—the judiciary, the prosecution, and the defense—faithfully perform their institutionally-defined professional roles."³⁶ As a "minister of justice," the prosecutor must be a wise and fair steward of public resources, with "the twofold aim . . . that guilt shall not escape or innocence suffer."³⁷

Defense counsel are not mere cogs in the criminal justice bureaucracy. They play a crucial role in guarding against governmental excesses that could jeopardize individual liberties and undermine confidence in the fair administration of justice. When representing a defendant charged with especially heinous crimes, faithful performance of one's role takes exceptional courage, dedication, and sound professional judgment. Notwithstanding public and official hostility, defense counsel must be willing to engage with the client, thereby establishing a relationship of trust and confidence.³⁸

Fascinating discussion took place on the legal ethics listserv and in class on 1) whether there is a tension between the duties of loyalty and confidentiality owed to the client and the duties of candor owed to a tribunal, and 2) if so, how it should be resolved.³⁹

35. See DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* 49–58 (2000); Steve C. Briggs, *The Myth and the Mischief of Zealous Advocacy*, COLO. LAW., Jan. 2005, at 33, 33–35; Stephen Carter, *Panel Discussion: Does Religious Faith Interfere with a Lawyer's Work?*, in *LAWYERS' ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER* 329–38 (Susan D. Carle ed., 2005) [hereinafter *LAWYERS' ETHICS*].

36. Judith L. Maute, *"In Pursuit of Justice" in High Profile Criminal Matters*, 70 *FORDHAM L. REV.* 1745, 1746 (2002).

37. *Berger v. United States*, 295 U.S. 78, 88 (1935).

38. Maute, *supra* note 36, at 1751.

39. Some listserv contributors debated the existence of any tension; some avoiding candor duties because no "knowledge"; others resolving in favor of candor where disclosure required compliance with other law. See *MODEL RULES OF PROF'L CONDUCT* 1.6(b)(6) (2007). The 2007 assigned reading was "Officer of the Court," in LAWRENCE J. FOX & ABA SECTION OF LITIGATION, *LEGAL TENDER: A LAWYER'S GUIDE TO HANDLING PROFESSIONAL DILEMMAS* (1995) (describing an indigent defense lawyer who was forced to represent skuzzy, racist, and sexist client but obtained acquittal on the most serious charge; at sentencing, the lawyer corrected the judge's misperception that client had no prior convictions); see also *In re Paul J. Page*, 774 N.E.2d 49 (Ind. 2002) (providing a public reprimand for the lawyer's failure to reveal that the client lied under oath); *In re Complaint as to the Conduct of A*, 554 P.2d 479 (Or. 1976) (making a prospective ruling that in civil case, where the client's testimony deceptively omitted a crucial fact and the client refuses to allow rectification, a lawyer must withdraw, regardless of the adverse effect). Recent changes to rules on electronic discovery may place new importance on this topic. See Email from Arthur Smith to listserv (Feb. 15, 2007) (on file with author). On the question of whether a criminal defense lawyer must correct a trial court's mistaken belief in

Discussion about lawyers' public service responsibilities, a traditional professional hallmark,⁴⁰ occurs throughout the course. While altruism prompted some students to pursue legal careers, many frankly acknowledge that they were motivated by desire for economic success and prestige.⁴¹ To develop a culture of public service, law students (and lawyers) must be persuaded that there are substantial unmet legal needs of persons who cannot afford customary fees, that "every lawyer" bears some responsibility for providing pro bono legal services, and that the intrinsic benefits to the lawyer and her employer outweigh the costs.⁴² Individual and "law firm" team presentations further develop the theme, on innovative delivery systems and loan repayment assistance for graduates who accept low-paid public service employment.⁴³

Quality of justice, in my view, also must embrace issues of diversity in the legal profession. Powerful empirical data demonstrates a vast racial divide

sentencing that a client has no prior convictions, most ethics opinions conclude the lawyer has no affirmative duty to disclose. *See* ABA Comm. on Ethics & Prof'l Responsibility, Formal Op. 87-353 (1987) (prohibiting disclosure); Tex. Prof'l Eth. Op. 504 (1995) (prohibiting disclosure absent a false statement by lawyer or client); Va. Legal Ethics Op. 1400 (1991) (finding no affirmative duty); New Mexico Op. 1990-2 (1990) (same); Nat'l Ass'n of Crim. Defense Lawyers Ethics Advoc. Comm., F. Op. 90-4 (1990) (same). *Compare* Ohio Ethics Op. 99-8 (finding that the lawyer was not required to correct the mistake of the corrections department, but that the lawyer must correct a mistake in a court order), *with* Fla. Prof'l Ethics Comm. Minutes (June 1997) (permitting but not requiring disclosure); *see also* Email from Gina Hendryx to Judith L. Maute (Feb. 20, 2007) (forwarding 2005 string from National Organization of Bar Counsel).

40. *See* ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953), *quoted in* "IN THE SPIRIT OF PUBLIC SERVICE", *supra* note 16, at 10.

41. In all fairness, the decision to attend law school cannot be simplified into primary motivators; most students weigh a complex set of factors, often including significant uncertainty about their futures and a lack of clear alternatives.

42. *See* MODEL RULES OF PROF'L CONDUCT 6.1(a) (2007) (stating that "[e]very lawyer has a professional responsibility to provide legal services to those unable to pay"); *id.* at R. 6.1 cmt.11 (stating that "[l]aw firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this rule"); *see also* INTRODUCTION TO VAULT GUIDE TO LAW FIRM PRO BONO PROGRAMS (3d ed. 2007); University of Oklahoma College of Law, Lawyering in the 21st Century (Feb. 21, 2007), http://jay.law.ou.edu/faculty/JMaute/Lawyering_21st_Century/ (including the reading American Bar Association, Path to Pro Bono, An Interviewing Tool for Law Students (2001), *available at* <http://www.abanet.org/legalservices/downloads/probono/path.pdf>). *See generally* DEBORAH L. RHODE, ACCESS TO JUSTICE 145-84 (2004). The University of Oklahoma College of Law, Students for Access to Justice (SATJ) "promotes a culture of public service commitment by connecting students with meaningful pro bono volunteer opportunities." University of Oklahoma College of Law, Students for Access to Justice, <http://adams.law.ou.edu/satj/> (last visited May 25, 2007).

43. *See* University of Oklahoma College of Law, Lawyering in the 21st Century (Apr. 4, 2007), http://jay.law.ou.edu/faculty/JMaute/Lawyering_21st_Century/ (providing student papers on debt repayment). An exciting outgrowth of this team project may be statewide exploration by law school representatives, the state bar, and legal service providers about potential loan repayment assistance programs.

between ethnic communities' perception of the legal system.⁴⁴ While the number of law students from ethnic minority groups has increased significantly in the last twenty years, the new graduates have not consistently met with success on the bar exam or in their legal careers.⁴⁵ Women now comprise about fifty percent of law school entering classes,⁴⁶ with their strong academic performance making them attractive candidates for entry level law firm positions. Bright women attorneys may experience career frustrations unique to women: the glass ceiling limiting advancement to highest levels of firm management and pressures from juggling family and work responsibilities prompting career moves or impeding opportunities for client development.⁴⁷ Sexual minorities regardless of race or gender, experience additional challenges, particularly if they must hide their orientation from employers and clients.⁴⁸ Meanwhile, those who have been the unconscious beneficiaries of privilege because of their class, race, gender, or sexual orientation may contend they have gotten where they are solely on merit.⁴⁹ Although these can be "uncomfortable conversations" in law school classrooms, I think it worth the risk to discuss openly why diversity of all kinds in the legal profession

44. See generally NATIONAL CENTER FOR STATE COURTS, HOW THE PUBLIC VIEWS THE STATE COURTS: A 1999 NATIONAL SURVEY 8, 22, 30 (1999), available at http://www.ncsconline.org/WC/Publications/Res_AmtPTC_PublicViewCrtsPub.pdf (explaining that nearly 80% of respondents agreed that "[j]udges are generally honest and fair in deciding cases"; as compared to whites and non-Hispanics, both African-Americans and Hispanics were significantly less likely to agree, with 32% of African-Americans and 25% of Hispanics stating moderate or strong disagreement with the statement); *Race and the Law*, ABA J., Feb. 1999, at 41 ("The contrast in perceptions of black and white lawyers as to how bias-free our legal system is today is, frankly, stark.").

45. See Jane E. Cross, *The Bar Examination in Black and White: The Black-White Bar Passage Gap and the Implications for Minority Admissions to the Legal Profession*, 18 NAT'L BLACK L.J. 63, 82 (2005).

46. John Fisher, *The Changing Nature of Legal Education Continued*, W. VA. LAW., June 2006, at 12.

47. See, e.g., AFTER THE JD, *supra* note 13 at 58 (reporting gender differences in pay in all practice areas, with the greatest disparity in the largest law firms (over 250 lawyers); Kenneth G. Dau-Schmidt & Kaushik Mukhopadhyaya, *The Fruits of Our Labors: An Empirical Study of the Distribution of Income and Job Satisfaction Across the Legal Profession*, 49 J. LEGAL EDUC. 342 (1999); Judith L. Maute, *Lady Lawyers: Not an Oxymoron*, 38 TULSA L. REV. 159, 163-66 (2002); Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEX. J. WOMEN & L. 27, 33-50 (2004) (providing a longitudinal study reporting the persistence of gender-based disparities in women lawyers' pay, promotions, and retention).

48. See Cristina Smith, *Lawyer Life After Lawrence: Gay and Lesbian Attorneys Pleased with the Profession's Progress When it Comes to Acceptance—But Prejudice Lingers*, DE NOVO, July 28, 2003, at 24.

49. See Stephanie M. Wildman, *The Persistence of White Privilege*, 18 WASH. U. J.L. & POL'Y 245 (2005).

makes a positive difference in the quality of justice and the associated costs of making such diversity happen.⁵⁰

The format used to develop this broad theme begins with open class discussion on the assigned readings, which I facilitate. A respected prosecutor and a criminal defense attorney are invited to address the class about specific ethical issues important to their practices.⁵¹ Student presentations then elaborate on topics of interest to them. Student authors have presented on prosecutorial ethics and the risks of unbridled charging discretion, standards of determining indigency, and the ethical quagmire involving Guantanamo Bay detainees. In the segment on “innovations in delivery of legal services,” teams have presented on lawyer referral services, group legal services, transactional pro bono, unbundled legal services, holistic lawyering, collaborative lawyering, unauthorized practice restrictions, multi-disciplinary practices, and litigation financing.⁵²

50. To facilitate discussion, I distribute a hypothetical law firm problem and carefully assign students to roles as senior partners, senior and junior associates, and a bar association diversity committee. See University of Oklahoma College of Law, *Lawyering in the 21st Century, Lawyering Diversity Hypothetical* (Feb. 27, 2007), http://jay.law.ou.edu/faculty/JMaute/Lawyering_21st_Century/. Other assigned readings include ELIZABETH VRATO, *THE COUNSELORS: CONVERSATIONS WITH 18 COURAGEOUS WOMEN WHO HAVE CHANGED THE WORLD* 96–105 (2002) (interviewing Elaine Jones, head of The NAACP Legal Defense and Educational Fund, Inc); Paul Butler, *Walking While Black: Encounters with the Police on My Street*, *LEGAL TIMES*, Nov. 10, 1997, at 23; Bill Ong Hing, *In the Interest of Racial Harmony: Revisiting the Lawyer's Duty to Work for the Common Good*, in *LAWYERS' ETHICS*, *supra* note 35, at 258–64; Adam Liptak, *Debate on Why Blacks Lag at Law Firms*, *N.Y. TIMES*, Nov. 29, 2006, at A1; Carrie Menkel-Meadow, *Portia Redux: Another Look at Gender, Feminism, and Legal Ethics*, in *LAWYERS' ETHICS*, *supra* note 35, at 258–64, 274–81.

51. Last year, John C. Richter, United States Attorney, Western District of Oklahoma, spoke about constraints on prosecutors' exercise of discretion, extrajudicial publicity, and communications with represented persons. See *United States v. Ryans*, 903 F.2d 731, 734 (10th Cir. 1990); MODEL RULES OF PROF'L CONDUCT R. 3.6, 4.2 (2007). Debbie Maddox, who is now in private practice but previously worked for the state indigent defense system, spoke with passion about defense counsels' duty to protect the client's rights under the law in very human terms, evoking images of Charles Fried's piece on the lawyer as the client's special purpose friend. Assigned reading included an excerpt from *Miller v. State*, 29 P.3d 1077 (Okla. Crim. App. 2001) (reversing a capital conviction based on ineffective assistance of counsel because of the complete breakdown in communication between attorney and client, possibly caused by the attorney's negative attitudes about the client, the case, and client's decisions), and GEOFFREY C. HAZARD, JR. ET AL., *THE LAW AND ETHICS OF LAWYERING* 438–46 (4th ed. 2005) (summarizing the constitutional standard for evaluating conflicts of interest).

52. 2006 and 2007 Presentation Schedule (distributed to class via email April 21, 2006 and March 7, 2007, respectively) (copies on file with author).

4. Economic and Business Aspects of the Legal Profession

Because the primary purpose is to prepare students for the practice of law, about one-fourth of the course is devoted to the economic and business aspects of legal workplaces and issues pertaining to their ethical culture and infrastructure. I have introduced students to the empirical data using the National Association of Law Placement (NALP) study and *After the JD*.⁵³ J. William Conger,⁵⁴ who is among the most respected attorneys in the state, speaks from the heart about what should matter in a private law firm, billable hours, mentoring, and the personal satisfaction from making a difference in clients' lives. Whether through traditional class discussion, guest speakers, or student presentations, in-depth consideration is given to law firm organization and management,⁵⁵ formation and dissolution, billing practices,⁵⁶ and mechanisms to reduce risk of malpractice liability.⁵⁷

Depending on student interest, innovative forms of practice are considered, including ancillary business practices, multi-jurisdictional practice, outsourcing, and various issues presented by technology and lawyering on the Internet. Technologically adept students demonstrate how to strip metadata from documents to avoid inadvertently revealing confidential information. Unauthorized practice issues are considered both from the perspective of risk-

53. See *AFTER THE JD*, *supra* note 13.

54. J. William Conger, University General Counsel and Distinguished Lecturer in Law, Oklahoma City University School of Law, http://www.okcu.edu/law/facultyandadministration/faculty_conger.php (last visited May 25, 2007).

55. JAY G. FOONBERG, *HOW TO START AND BUILD A LAW PRACTICE* (4th ed. 1999); GETTING STARTED: BASICS FOR A SUCCESSFUL LAW FIRM (Arthur G. Greene ed., 1996); ROBERT W. HILLMAN, *HILLMAN ON LAWYER MOBILITY: THE LAW AND ETHICS OF PARTNER WITHDRAWALS AND LAW FIRM BREAKUPS* (2d ed. 2006); Scott Baker & Kimberly D. Krawiec, *The Economics of Limited Liability: An Empirical Study of New York Law Firms*, 2005 U. ILL. REV. 107 (2005); Jim Calloway, OBA Management Assistance Program, *Getting Started* (2000), available at <http://www.okbar.org/members/map/CallowayGettingStarted.pdf>; see Susan Saab Fortney, *Seeking Shelter in the Minefield of Unintended Consequences—The Traps of Limited Liability Law Firms*, 54 WASH. & LEE L. REV. 717 (1997); Geoffrey C. Hazard, Jr., *The Underlying Causes of Withdrawal and Expulsion of Partners from Law Firms*, 55 WASH. & LEE L. REV. 1073 (1998); Robert W. Hillman, *Loyalty in the Firm: A Statement of General Principles on the Duties of Partners Withdrawing From Law Firms*, 55 WASH. & LEE L. REV. 997 (1998); Kimberly D. Krawiec, *Organizational Form as Status and Signal*, 40 WAKE FOREST L. REV. 977 (2005).

56. ABA Comm. on Prof'l Ethics and Grievances, Formal Op. 379 (1993) (discussing billing for professional fees, disbursements, and other expenses); ABA COMMISSION ON BILLABLE HOURS REPORT 2001–2002 (2002), available at <http://www.abanet.org/careercounsel/billable/toolkit/bhcomplete.pdf>; Terry Carter, *No Time for A Round-Up: Court Censures Attorney for Making 45 Minutes Equal to One Hour of Work*, Mar. 10, 2006, ABA J. E-REPORT.

57. Susan Saab Fortney & Jett Hanna, *Fortifying a Law Firm's Ethical Infrastructure: Avoiding Legal Malpractice Claims Based on Conflicts of Interest*, 33 ST. MARY'S L.J. 669 (2002).

aversion and theoretically critiquing the profession's broad assertion of monopoly to impede unlicensed service providers from delivering low-cost products to the consuming public. Students interested in business transactions may address the complex issues of assisting clients' fraudulent conduct in the context of fraudulent tax shelters, or securities law under Sarbanes-Oxley and amended ABA Rule 1.13.

5. Practical Lawyering Skills

Legal education's "signature pedagogy," teaching abstract principles and analysis through the case-dialogue method, becomes stale and repetitive as students progress through law school.⁵⁸ Learning theorists from both the general and legal academies and the organized bar encourage law schools to develop curricular innovations that better prepare graduates for the nuanced "modes of thinking" and "fluid expertise needed in much professional work."⁵⁹ Without question, law students vary greatly in their reading, analysis, and writing skills. Some commentators suggest that the American educational system is undergoing generational changes, in which many students have deficient skills in planning, critical thinking, and problem-solving.⁶⁰ Most of our students are "digital natives"—persons born after 1985, who grew up alongside burgeoning information technology, marking what technology expert Linda Stone identifies as the "Age of Continuous Partial Attention."⁶¹

58. WILLIAM M. SULLIVAN ET AL., THE CARNEGIE FOUNDATION FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 50–52, 74–77, 87 (2007). After students figure out the case method routine and analytical process, there is a significant

drop-off in interest and effort in classroom learning . . . significant reduction in the amount of time and effort spent on their academic work . . . suggest[ing] that case dialogue is overused as a pedagogy, resulting in unbalanced learning . . . [and] disengagement [with] . . . corrosive effect on the development of the full range of understanding necessary for a competent and responsible legal professional.

Id. at 77.

59. *Id.* at 87–88, 96–97; see also ABA SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992).

60. See, e.g., Darin K. Fox, *Book Review*, 98 LAW LIBRARY J. 178 (2006) (reviewing RUTH ANN MCKINNEY, *READING LIKE A LAWYER: TIME-SAVING STRATEGIES FOR READING LAW LIKE AN EXPERT* (2005)); Mark Taylor, *Generation NeXt Comes to College: 2006 Updates and Emerging Issues*, in A COLLECTION OF PAPERS ON SELF-STUDY AND INSTITUTIONAL IMPROVEMENT (2006), available at http://www.taylorprograms.org/images/Gen_NeXt_article_HLC_06.pdf.

61. See JOYCE RABY ET AL., HOW PEOPLE *REALLY* USE TECHNOLOGY: CURRENT RESEARCH ON PEOPLE, THE MEDIA, AND THE MESSAGE 23–40 (Mar. 22, 2007), available at http://www.abanet.org/legalservices/ejc/workshop_preview_2007.html (scroll halfway down and select "Raby handout") (providing a Powerpoint presentation by Lee Rainie, describing "digital

This course provides students with experiential learning opportunities to further develop crucial lawyering skills: legal research and analysis, legal writing and citation, and live presentational skills requiring collaborative teamwork. In reading the 2007 students' first research paper, I observed that they cited to many cases and authorities that did not accurately stand for the proposition stated. Their computer-based research skills enabled them quickly to find and plug in authorities with sound bytes within the legal ballpark. It appeared, however, that their brains did not engage sufficiently to read and assess whether that source correctly supported the proposition. That disappointing realization provided teachable moments for constructive feedback and in-class discussion about the impact of these generational changes on lawyering skills.⁶² Students realized the importance of technical writing skills to their professional career, and welcomed my editorial comments and close attention to improving those skills.⁶³

All lawyers, regardless of their practice area or personality type, must be able to make verbal presentations to interact with clients, courts, colleagues, and adversaries. When class time is devoted to student presentations, it is a challenge for the professor to guide and assist the presenters, for purposes of quality assurance, while maintaining enough distance to evaluate for grading purposes. Although some student presenters may not appreciate real-time intervention when they are adrift in front of the class, I am not willing to abdicate responsibility for the quality of class time when an individual presenter or law firm team flounders or does not adequately anticipate glitches in the presentation.

This year's experiments produced some interesting results and ideas for the future. Evaluation forms used by the state bar continuing education program were distributed at the outset of each presentation; most students completed the forms with both numerical and qualitative statements and suggestions. With little editorial input from me, faculty support staff tabulated the numbers and compiled the comments. These summary evaluations were returned (sealed) to

natives" as persons born since 1985, as contrasted with "digital immigrants" who were born earlier). Linda Stone, a former executive at both Apple and Microsoft, coined the phrase "continual partial attention" to describe how many persons use their attention: "To pay continuous partial attention is to pay partial attention—CONTINUOUSLY." See Linda Stone, Linda Stone's Thoughts on Attention and Specifically, Continuous Partial Attention, <http://www.lindastone.net> (last visited May 25, 2007). Some experts contend this phenomenon, in which we have become "a nation of compulsive multitaskers," may alter brain functions, including learning abilities, critical thinking skills, and ability to concentrate in depth. See Kate N. Grossman, *Stop Interrupting Yourself: If You Keep Multitasking—Talking on the Phone, E-mailing, Downloading Music and Watching TV All at Once—You May Damage Your Ability to Think Deeply, Learn and Remember*, CHI. SUN-TIMES, Mar. 4, 2007, at B1.

62. Written comments and grades on individual papers furthered the point.

63. Even though most students had clerked for judges or law offices, or served on law reviews, several students sought help with proper legal citation format.

the student presenters.⁶⁴ At the start of the next class, I critiqued the presentation, making positive observations and diplomatic constructive criticisms. The final week of class was devoted to course wrap-up, with a full hour spent discussing presentational skills. With student assistance, I prepared a written summary of this discussion for future use in practice and for the next course offering.⁶⁵

The final class hour was spent critiquing the course, with students offering suggestions for the future. We agreed that the syllabus should provide clearer instructions for student presentations, with stated deadlines requiring advance submission of proposed hypothetical problems, skits, and handouts so that I can provide useful assistance in streamlining the problems and the logistics of team presentations.

C. *Logistics: Course Structure and Pedagogy*⁶⁶

1. Experimenting with Substantive Coverage and Course Materials

The first month of class is spent laying the foundation on issues of professionalism, core values, civil liability, and discipline, and how to research the law and ethics of lawyering. Specific coverage for the balance of the

64. Apparently one student perceived the anonymous evaluations as a strategic, competitive opportunity to make gratuitous, mean-spirited remarks. I elected to include these statements in the compilation returned to the presenters. Although disturbing, these remarks provided opportunity to reflect with the class how some people take advantage of anonymity to make nasty, hurtful, or hateful statements, and why that is unacceptable, both personally and professionally. Cf. Larry Gordon & Louis Sahagun, *Gen Y's Ego Trip Takes a Nasty Turn*, L.A. TIMES, Feb. 27, 2007 (discussing current research on increased narcissism among college students in 2006, as compared with those in 1982 and the risk of poor social behavior and interpersonal connections). The next syllabus will explicitly so provide.

65. See University of Oklahoma College of Law, *Lawyering in the 21st Century, Presentation Skills* (Apr. 24, 2007), http://jay.law.ou.edu/faculty/Jmaute/Lawyering_21st_Century/. Early team presentations tried game show formats; in retrospect students found them more entertainment than educational. Short sound bytes are not effective means to deliver complex information or in-depth thinking. Students thought lecture (or “talking head”) format was more effective, if delivered with passion and supported by succinct Powerpoints that re-enforced what was being said, as opposed to distracting the audience from listening. Well crafted skits or role plays engaged the audience and provided a contextual narrative for mini-lectures and directed class discussion on the legal issues. Breakout groups provided opportunities for everyone to interact, but generated a lot of noise. It was suggested that small groups be given specific discussion questions to discuss in a limited time, with reporting back and general class discussion. General ideas for all presentations would include practice runs, advance distribution of specific discussion questions, vetting to an outsider, and trouble-shooting for technology glitches. Individual presentations should be interspersed with team presentations, with the professor exercising more control on topical coverage so that presentations flow in logical order.

66. University of Oklahoma College of Law, *Lawyering in the 21st Century, Spring 2007 Syllabus*, available at http://jay.law.ou.edu/faculty/Jmaute/Lawyering_21st_Century/lawyering%20syll%20s07.pdf.

semester varies from one year to the next, based on my sense of the emerging hot issues from the news, advance sheets, and other sources,⁶⁷ and student survey responses.⁶⁸ The timing and specifics of thematic development vary, depending on availability of guest speakers.

As yet, there is no fixed set of course materials.⁶⁹ Weekly readings are posted on the course webpage and distributed by email. Each semester I locate new or better readings, or identify where some could be shortened for better focus. Because the current generation of students is technologically adept, they appreciate not having to purchase materials or manage excess paper. In this year's supplemental evaluations, they strongly endorsed electronic assignments and rejected my suggestion to distribute in hard copy, for purchase.⁷⁰ That is an issue I must consider further; some brain research suggests that reading on computer screens is less effective and more stressful than the printed page.⁷¹ One advantage of electronic posting the week before scheduled coverage is the flexibility to include new materials and fine-tune the reading to current class discussion. A disadvantage, for the professor, is the amount of time and planning, and the risk of equipment failures.

67. Besides the usual end of year reflections in traditional news sources, each December, John Steele, a lecturer at UC Berkley School of Law and Santa Clara University School of Law, prepares a list of the hot topics in ethics, which he distributes to the legal ethics listserv. His message prompts further suggestions by other thoughtful contributors to the listserv.

68. The survey sought basic information about the student's career plans, aspirations and concerns, level of concern about paying off student loans, and ranking interest on specific topics, including: rethinking professionalism, pending changes to the Rules of Professional Conduct and Code of Judicial Conduct, conflicts between professional norms and personal values, law firms, politics of professional regulation, diversity, work/life balance, attorney-client privilege, and ethical issues raised by technology. Either I tabulate or request that faculty support staff prepare a chart summarizing each student response and the topical rankings. Although the numerical rankings on topics did not reveal any heavy favorites or strong lack of interest, the comments were very helpful for tailoring discussions to these students' probable work settings. I am still experimenting with when to distribute the survey: at time of enrollment, in December while planning for the spring course, or on the first day of class.

69. In the future, as the assigned readings become more stable, I will obtain permission rights from the authors or copyright holders. Occasional use of excerpts, I believe, falls within "fair use" for educational purposes.

70. This year's class persuaded me of the vast generational differences in technological comfort, borne out by ample research. See, e.g., Grossman, *supra* note 61; Stone, *supra* note 61; Researching Legal Ethics Slides, *supra* note 23.

71. Stone, *supra* note 61 (providing research support for the conclusion that paper beats screen). From my perspective, I have questioned whether students conducted the appropriate level of advance preparation with the electronic materials and will consider how to achieve higher levels of engagement.

2. Grading

Students' performance is evaluated based on written papers, class presentations, and class participation. A limited number of students can use this course to satisfy their "Graduation Writing Requirement" by preparing a first and final draft of a substantial research paper,⁷² which the author presents to the class and facilitates discussion with assistance of assigned commentators. Most students select the grading option that requires three shorter papers. The first paper has two components: a journal addressing their emotive reaction to an ethical issue they have seen in their legal work setting or experience with lawyers, and a follow-up research memorandum on the law or scholarly discussion of an issue presented in their journal.⁷³ The first month of class time builds on these issues. The second research paper is prepared and presented to the class as part of a law firm team project (three or four students), on one of the legal practice or "hot topics" I identified for coverage that semester. The third paper, due at the end of the semester, is on a topic of their choice, within five suggested categories.⁷⁴

72. The final paper must be twenty-five to thirty pages of completely original work with all sources properly attributed and with footnotes conforming to the Bluebook or ALWD. Spring 2007 Syllabus, *supra* note 66, at 3. The first draft is distributed in advance to the entire class and is assigned as the reading for the day. *Id.* at 2.

73. The syllabus defines the assignment for the four page journal. *Id.* at 3–4. Electronic submission enabled transmission to cluster groups. *Id.* at 3. In 2007, students self-identified the topical cluster(s) they thought their journals fit in and transmitted their papers electronically to the faculty support office, which handled the technological aspects of course communication. I adjusted the cluster group assignments to provide for even size and diversity in demographics and viewpoints.

Identify a question of professional responsibility that came to your to your attention in a legal work setting. It might relate to something you were asked to do or something you observed another person in the legal system doing, or something that involves the operation of the legal system. Write your entries so as to preserve client confidences. Use hypothetical names if necessary. Describe how you resolved the question presented, including any "practical" or "ethical" factors you considered relevant. Class discussion on (on stated date early in the semester) will be devoted to discussion of the subjective, emotional, professionalism issues raised in the journals.

Unless you specifically request that your paper be preserved as confidential, it will be distributed without your name to a group of your classmates for small group discussion, with the themes presented for discussion by the entire class. The journals will be sorted in clusters, using the following categories: 1) Positive examples of ethical atmosphere; 2) Quality of justice issues; 3) Client-lawyer relationship (competence, diligence, client autonomy); 3) Confidentiality; 4) Conflict of interest; 5) Economic issues (fees, innovations in delivery of legal services).

Id. at 3.

74. Options include:

a. Attend disciplinary, reinstatement or court hearing on law governing lawyers issue, paper addressing relevant legal, ethical or procedural issues, and your observations or perceptions of what you saw.

I try to grade the journal and follow-up research memorandum promptly, with written comments and a letter grade, so that students have early notice of the expected quality of work. The second paper is tentatively graded at the time of the team presentation; final grades are not assigned until all teams have presented, to check for overall consistency. In 2006 a few student evaluations stated they would have liked to know their grade on the second paper before writing the third, so they could decide whether to skip doing the third paper. I think that reflected third year malaise and the type of mentality fostered by traditional lower levels of education. This year the syllabus explicitly provided that all three papers must be done to receive a passing grade.

Regardless of the grading option selected, all course work must be original work prepared by the student only for this course and not previously prepared for another course, law review, or outside employment. Proper attribution must be given for all sources in accepted legal citation form.⁷⁵

b. Interview a lawyer in your chosen practice field on ethics issues encountered; identify, research and analyze one or two issues you find to be significant.

c. Memorandum to the American, Oklahoma, or other state bar association Rules of Professional Conduct Committee, Code of Judicial Conduct drafting committee (ABA or relevant state), or to the ethics committee of the American Bar Association, Oklahoma, or other state bar ethics committee, chief disciplinary counsel, bar foundation on a matter concerning the law governing lawyers.

d. Amicus brief on issue concerning the law governing lawyers that is now pending before some state or federal appellate court (page length based on text, not including space for usual caption or signature, certificate of service pages).

e. Select a movie, television show, book, short story or similar material from popular culture involving lawyers, judges or the legal system and discuss the ethical issues presented by that depiction.

Id. at 4.

75. The syllabus explicitly addresses plagiarism, which applies to all work submitted for the class, including first drafts. *Id.* at 7. The syllabus states the following:

Always footnote to ideas or phrases taken from another source. As a rule of thumb, if you use three or more consecutive words from a source, it must be contained in quotation marks and footnoted to the original source, including pinpoint cite. When you have paraphrased or used an idea from another source, proper attribution to that source is required.

Id. Electronic research using Westlaw, LexisNexis, or the Internet has created new opportunities and temptations for students to appropriate words and ideas not their own, and it has made enforcement much more difficult. One year a student submitted a first draft that was mostly cut and pasted from information available on the Internet. Sad to say, based on conversations with colleagues around the country, this is not an isolated incident unique to that student. I require that students submit an electronic version of all papers, so that in case of doubt, I can have it run through a national database to police against plagiarism such as <http://turnitin.com>. Because I post student papers submitted for team presentations to my faculty webpage, I have to be on guard for recycled papers that are not the original work of the student. While I am dismayed by any incidents of plagiarism, it was appalling that it occurred in an advanced legal ethics class.

This form of plagiarism occurs often, with students and faculty having divergent views on frequency of occurrence and the seriousness of the offense. Compare undergraduate student

III. CONCLUSION: EVALUATING OUTPUT

During the semester we often observed that both life and the practice of law are works in progress; that practice makes better (but seldom perfect). Because I regularly critiqued student presentations, it seemed only fitting to devote the final class hour to critiquing the course and making suggestions for the future. Besides the usual course evaluations that seek narrative responses, I distributed a supplemental evaluation solely for myself, eliciting comments on course materials, substantive coverage, and guest speakers. The students and I were pleased (indeed, enthusiastic) with the substantive coverage, in-depth quality discussion, and selection of guest speakers. In brainstorming about future course offering, they suggested further coverage on job-hunting strategies, substance abuse, professional dress and demeanor, service within the organized bar, and issues surrounding law school rankings.⁷⁶

The special challenges of engaging last semester law students are widely recognized. To some extent, nothing can be done beyond selecting material that is intellectually stimulating and relevant to the next stage in their lives. For students who already are out the door and are unwilling to invest their time and thought in the material, I recommend they take another course. For those who joyfully (or anxiously) anticipate what comes next, this is a wonderful opportunity to prepare for the transition.

A word of caution for any colleagues tempted to undertake such a course offering: it is labor-intensive and complex to administer.⁷⁷ Because it aims to

and faculty responses to a University of Oklahoma Academic Integrity Survey to the incidence and seriousness of “copying a few sentences of material from a written source without footnoting” and “copying a few sentences from an Internet source without footnoting.” See Academic Integrity Survey (Oct. 2004), http://www.ou.edu/honorcouncil/files/2004_Integrity_Survey_-_Students.pdf. Approximately one-third of students self-reported engaging in such behavior once or more in the past year; a slightly smaller percent of students considered these behaviors “trivial” forms of cheating (31% if from written source; 28% if from Internet source). *Id.* By contrast, nearly two-thirds of faculty observed one or more incidences of such behavior in that time period (63% from written source; 64% from Internet source). *Id.* Faculty overwhelmingly considered such behavior a moderate or serious form of cheating (100% if from written source; 90% if from Internet source). *Id.*

76. See University of Oklahoma College of Law, *Lawyering in the 21st Century*, Summary of Ideas for Course Improvement (Apr. 25, 2007), http://jay.law.ou.edu/faculty/Jmaute/Lawyering_21st_Century/. Two excellent sources for future use are KIMM ALAYNE WALTON, J.D., *WHAT LAW SCHOOL DOESN'T TEACH YOU . . . BUT YOU REALLY NEED TO KNOW* (Harcourt 2000) and KIMM ALAYNE WALTON, J.D., *GUERRILLA TACTICS FOR GETTING THE LEGAL JOB OF YOUR DREAMS* (1999). Much criticism has been leveled at the dominant role of rankings by *U.S. News & World Report*. See Julie Rawe, *The Rankings Revolt*, Apr. 2, 2007, at 49; Association of American Law Schools 2007 Annual Meeting, Workshop on the Ratings Game (or not!): The Search for Sensible Assessment (Jan. 3, 2007) (audio available at <http://www.aals.org/am2007/wednesday/ratings.html>).

77. To reduce my own administrative responsibilities in the future, student teams will be assigned to write professional thank you letters to guest speakers.

capture cutting edge issues, the materials are in a constant state of flux. Because it aims to teach students how to research and analyze specific legal issues of their own choosing, it requires a lot of hands-on guidance, consultation with individuals and groups of students, and detailed feedback. Because it aims to teach students teamwork and effective presentational skills, at least two meetings are needed with each team—first to identify specific topics for each team member to research and present, and another before their presentation to trouble-shoot and help ensure the class time is coherent and well spent. It is, however, richly rewarding to students and faculty alike.⁷⁸

78. Email from Lauren Barghols to Judith L. Maute (May 10, 2007) (on file with author). Thank you for all the time and energy you put into creating and executing all the different facets of this class. I think it was the most wide-ranging and real-world-useful class that I have taken in law school. I really enjoyed the individual speakers, especially the ones that are essential to know for the practice of law in this part of the state. Thank you again for all your efforts!

Id.

