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 satisfying 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

In recent years I have developed an upper division, three-hour elective course in advanced legal ethics, entitled “Lawyering in the 21st Century.” What began as a seminar has evolved into a full three-hour 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 course is not a formal prerequisite, because enrollment often fills with third year students, most students have already studied the basic legal principles, so the class can 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. 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

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2 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 Enrollment for Spring 2007 includes ten second year students, who may raise the level of engagement in class preparation and participation, as contrasted with the others, who are in their last semester and have “one foot out the door.”
people who are good and reasonably successful lawyers, therefore, students are introduced to persons who can be role models and mentors, and provide them with entry-level opportunities to become involved with the organized bar on matters of ethics and access to justice.

I. COURSE OBJECTIVES, 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 which is blessed with low tuition for both in-state and out-of-state students. As the only school supported with public money, it is often the school of choice for students who can afford to attend full time and who plan to practice in the state, and for many who plan to practice in the regional southwest. Because our tuition is low, most of our graduates do not have the crushing student debt load of those who attended private, tuition-dependent law schools. Our graduates also have been exceptionally successful in passing the

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5 As a public institution that receives most of its funding from the 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, Director of Career Services, on “Perspectives on Jobs After Law School” to author (Feb. 14, 2006) (on file with author) [hereinafter Buchanan, Jobs After Law School]. 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 2007: Whose Graduates Have the Most Debt? The Least?, U.S. NEWS & WORLD REPORT (2007) available at http://www.usnews.com/usnews/edu/grad/webextras/brief/sb_law_debt_brief.php. Our mean student debt load is about $65,000; that mean is of course skewed by students who have no debt and those who have substantially greater debt. See id. (indicating approximately $70,000–$80,000 average law school debt for graduates of ranked law schools).
bar and obtaining employment before or shortly after graduation.\textsuperscript{7} Overwhelmingly, our graduates enter the practice of law, whether in private firms or government work.\textsuperscript{8} Some of our 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 most lawyers work for the substantial portion of their careers.\textsuperscript{9} In Oklahoma and many other states with substantial expanses of rural land, lawyers are clustered in the metropolitan areas and thinly dispersed throughout the rural areas, mostly as sole practitioners or in small firms.\textsuperscript{10} Although the metropolitan areas have some “larger” firms and branch offices, the larger firms have fewer than 250 lawyers. Most of the state’s private firms would be considered small on mega-city standards, with the majority of lawyers in firms with fewer than twelve lawyers.\textsuperscript{11} At the risk of overgeneralizing, our state’s lawyers, while concerned about profitability, do not typify the

\textsuperscript{7} See, e.g., E-mail from Andrew M. Coats, Dean, University of Oklahoma College of Law, on July 2006 Oklahoma Bar Examination Statistics, to the Faculty (Sep. 8, 2006) (on file with author) (indicating an overall 88% pass rate, with 95% of University of Oklahoma examinees passing; that number increases to 98% for first time takers).

\textsuperscript{8} Buchanan, Jobs After Law School, 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).

\textsuperscript{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).

\textsuperscript{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 metropolitan areas of Oklahoma City and Tulsa, or in cities with populations exceeding 60,000; eighteen counties have fewer than ten lawyers).

\textsuperscript{11} See id. at 3413.
obession with greed that Patrick Schiltz addresses, in vilifying large firm practice.\(^{12}\) Many of the state bar leaders actively subscribe to principles of public good, although they may differ in definition and manner of pursuit.\(^{13}\)

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 issues and helping them anticipate their responses. 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 semester begins with consideration of broad philosophical issues, on professional core values of loyalty, confidentiality, access to justice and the tension between doing good and doing well, from an economic perspective. 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

\(^{12}\) 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 THE NALP FOUNDATION FOR LAW CAREER RESEARCH AND EDUCATION AND THE 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 Buchanan, Jobs After Law School, supra note 5 (“best guestimate . . . [of mean salary for 2004 graduates, including business, public and government sectors at start of 2006] would be somewhere in the $55,000 to $60,000 range.”). For private sector 2004 graduates, the median was $51,000, and the 75th percentile was $75,000. Id.

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 nonclients and malpractice insurance, the legal profession’s responsibility for the quality of justice and the importance of an independent judiciary. The main course objective is to help prepare the students to embark on a healthy, happy and reasonably successful professional career.

B. Course Structure and Pedagogy

1. 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, 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. The

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15 The final paper must be twenty-five to thirty pages, completely original work with all sources properly attributed with footnotes complying with the bluebook or ALWD. Id. 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.

16 The syllabus defines the assignment for the four page journal. Id. at 3–4. Electronic submission enabled transmission to cluster groups, which were created after reading the journals. Id. at 3. Identify a question of professional responsibility that came 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
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, on one of the legal practice or “hot topics” I identified for coverage that semester. The third paper, which is due the last day of class, is on a topic of their choice, within five suggested categories.¹⁷

I attempt 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 level of work expected. The second paper is tentatively graded at the time of the team presentation, but final grades cannot be assigned until all teams have presented, so that there is a built-in check for overall consistency. Last year a few student evaluations stated they would have liked to know

"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.

¹⁷ 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.

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.
their grade on the second paper before writing the third, so they could decide whether to skip doing the third paper. I think that reflects third year malaise and the type of mentality fostered by traditional lower levels of education. Next year the syllabus will explicitly provide 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.\textsuperscript{18}

2. Experimenting with Substantive Coverage and Course Materials

Generally, 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 semester can vary from one year to the next, based on my sense of the emerging hot issues from the news, advance sheets and other sources,\textsuperscript{19} and student responses to a survey electronically distributed while I am in the planning

\textsuperscript{18} The syllabus explicitly addresses plagiarism, which applies to all work submitted for the class, including first drafts. \textit{Id.} at 7. The syllabus states the following:

[a]lways 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.

\textit{Id.} Electronic research using Westlaw, Lexis or the Internet has created new opportunities and temptations for students to appropriate words and ideas not their own, and made enforcement much more difficult. One year a student submitted a first draft that was mostly cut and paste 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 at “turnitin.com” and other electronic databases. Because I began posting student papers submitted for team presentations to my faculty webpage, I will 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 is truly appalling that it could occur in an advanced legal ethics class.

\textsuperscript{19} 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.
stage. The timing and specifics of thematic development also vary, depending on scheduling of selected guest speakers.

To date, there is no fixed set of course materials. I continue to experiment with methods for distributing assigned reading. Last year I dispensed with having students buy photocopied materials and instead I tried posting the materials to a web-page. Because students reported some difficulty with access, I began also distributing all of the materials via e-mail. Having identified suitable readings for certain topics that will be regularly covered, I will have those materials compiled in hardcopy for students to purchase, as being more reliable for access and quality class preparation. Electronic posting will be continued for other, more variable topics and new materials that first become available during the semester.

A word of caution for any colleagues tempted to undertake such a course offering: it is labor-intensive and complex to administer. Because it aims to 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 and consultation with individuals and groups of students. 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 insure the class time is coherent and well spent.

C. Thematic Coverage

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. Faculty support staff prepared 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 at tailoring discussions to these students probable work settings.

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Four main themes are developed throughout the semester: 1) Integrity, Professionalism and Civility; 2) Core Professional Values and Regulation of Lawyers; 3) Lawyers’ Responsibility for the Quality of Justice; and 4) Economic and Business Aspects of the Legal Profession. This section briefly surveys the coverage, including citation to some of the materials that might be used as assigned reading.

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 that largely has only symbolic value? And what of professionalism’s often companion term, “civility”—can we define it as an affirmative set of expectations, or is it really discussed more in negative terms, “incivility”—decried when offended by what another lawyer is doing? Much has been written about these questions, providing rich fodder for probing discussion.  

Like obscenity, we may know it when we see it (or its absence). Teaching the topic of professionalism is more of a challenge. After a couple hours of class discussion on selected readings, a prominent and respected lawyer who exemplifies professionalism is invited to address the class on what it means to walk the walk of professionalism.


22 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
2. Lawyer Regulation and Researching the Law Governing Lawyers

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”\(^\text{23}\)—I maintain that analysis of most ethical issues must begin with reference to the applicable law. In the words of Tenth Circuit Judge Tacha,

\[ \text{[l]egal 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.}\(^\text{24}\)\]

An overarching course theme aims to empower students to identify, research, and analyze the ethics issues they will encounter in practice.

First, I provide an initial overview of the Rules of Professional Conduct, the Ethics 2000 review and both national and local activity in revising the rules.\(^\text{25}\) The class is asked to consider whether any of the rules 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


\(^{25}\)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 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 ABA, Status of State Review of Professional Conduct Rules, [http://www.abanet.org/cpr/jchl/ethics_2000_status_chart.pdf](http://www.abanet.org/cpr/jchl/ethics_2000_status_chart.pdf). I then navigate to the Oklahoma Bar Association website and demonstrate how to access and contrast the current rules with pending proposals. I then demonstrate how to locate rules of other jurisdictions, through the Center for Professional Responsibility link, the Cornell Ethics library, or directly to an on-line source of the relevant jurisdiction.
group discussion of the topics addressed in their journals.\(^{26}\) Reporters for each cluster present the main points and the themes of their discussions, which I chart on the board. Overall, 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 in the library, conducted by a team of professional librarians who rotate them through a series of exercises introducing them to on-line ethics research, treatises and standard reference sources, and formulating literature searches.\(^{27}\) 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 clusters, students are to conduct preliminary research on the topics identified in their journals. This exercise is intended to get them started on the 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.

3. Lawyer Regulation: Discipline, Civil Liability and Malpractice Insurance Subtext: Life as a 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 guiding lawyer conduct, the legal profession would truly be

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\(^{26}\) Students who did not submit a journal because they are writing the substantial research paper are assigned to cluster groups.

\(^{27}\) University of Oklahoma Library Director Darin Fox and his staff devoted extensive time creating these exercises. 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. (copy of Powerpoint presentation on how to research ethics issues and library exercises on file with author).
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. When lawyers are trained to recognize ethical
issues, they must think about the issues as matters of law (not visceral, 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. 28 Disciplinary counsel can talk about some of the cases that result in discipline. Last
year, for example, the class was on Valentine’s Day, which facilitated focus on lawyers with
unhealthy lives, fostered by psychological problems, substance abuse or bad judgment on sexual
and private matters. This was preceded by Susan Saab Fortney’s guest appearance, discussing
her important study on work-life balance. 29

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,
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

28 See, e.g., Thomas W. Hyland & Christina M. Thompson, Professional Liability, 690 PLI/LIT 191 (2003); ABA.,
Lawyers’ Professional Liability Insurance, TEX. LAWYER’S INS. EXCH. (Apr. 14, 2003),
http://www.tlie.org/newslet/adv0103/art1.htm (last visited Jan. 24, 2007); Robert I. Johnston & Kathryn Lease
Simpson, O Brothers, O Sisters, Art Thou Insured?: The Case for Mandatory Disclosure of Malpractice Insurance

little to prepare students to deal with the realities of stress, competition, aggression and tension from the practice of law.\textsuperscript{30} Lawyers are not machines. 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 are demanding recognition by the organized bar and legal employers.\textsuperscript{31} They can no longer be flatly rejected as the whiny 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.\textsuperscript{32}

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.\textsuperscript{33} Anxious graduating 3Ls without a job in hand often feel resigned to accept any offer of employment, just to pay their living expenses and student loans. The conversations

\textsuperscript{30} Gary Bauer, \textit{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).

\textsuperscript{31} See, e.g., \textit{Calling All Associates! Would You Trade Cash for Time?} On-line survey of ABA e-journal (Nov. 10, 2006) [abajournalereport@abanet.org].

\textsuperscript{32} See, e.g., \textit{AFTER THE JD}, supra note 12, at 80.

\textsuperscript{33} See, e.g., LISA G. LERMAN & PHILIP G. SCHRAG, ETHICAL PROBLEMS IN THE PRACTICE OF LAW 626–629 (2005)(identifying specific ways to obtain information about prospective legal workplaces).
present opportunities to consider how a lawyer’s name and reputation is developed by osmosis with one’s professional affiliations.\textsuperscript{34}

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.\textsuperscript{35}

4. Lawyers’ Responsibility for the Quality of Justice and Core Professional Values

The first paragraph in the Preamble of ABA 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.”\textsuperscript{36} As a representative of individual clients, the lawyer must be competent, diligent, and loyal, preserving

\textsuperscript{34} 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.

\textsuperscript{35} It was a major challenge to identify helpful practical reading materials and a knowledgeable speaker on student loan debt repayment. To spare others the effort, see \textit{EQUAL JUSTICE WORKS, Financing the Future: 2004 Report, Law School Repayment Assistance and Public Interest Scholarship Programs 15–20 (2004)}, available at http://jay.law.ou.edu/faculty/Jmaute/Lawyering%20in%20the%2021st%20Century/Equal%20Justice.pdf; Sarah Kellogg, \textit{How to Manage Law School Debt}, WASH. LAWYER, Oct. 2004, at 21; \textit{LIFTING THE BURDEN, supra} note 4, at 9–13; \textit{LAW SCHOOL ADMISSION COUNCIL, Financial Aid for Law School: A Preliminary Guide} (2005), available at http://www.lsac.org/pdfs/2006-2007/FINAI DTEXTWeb06.pdf. Access Group, which appears to have some prominence in the national legal education and access to justice community, was notably unhelpful in responding to inquiries providing information, or responding to specific student inquiries. Perhaps others will have better success. Access Group contact information is available at http://www.accessgroup.org/about-access-group/contact-us.htm (last visited Jan. 24, 2007). By contrast, SunTrust, which recently negotiated a discounted rate arrangement with the Oklahoma Bar Association, sent a representative from Delaware to address the class and be available to meet with other students. Students reported both informally and on the course evaluations that this session was extremely helpful. See Financial Aid Officer Overview, http://www.suntrusteducation.com/finoff.asp (last visited Jan. 24, 2007); my faculty profile page for Powerpoint presentation of representative Bill Richins. See also, John A. Sebert, \textit{The Cost and Financing of Legal Education}, 52 J. LEGAL EDUC. 516 (2002).

\textsuperscript{36} \textit{MODEL RULES OF PROF’L CONDUCT} pmbl. (2006)
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.\(^\text{37}\)

Because these multiple roles sometimes conflict, the individual lawyer must be prepared to evaluate when and why one of these role takes precedence over the others.

Potential coverage of “what is in the interests of justice in the 21\(^{\text{st}}\) century” could range widely. At present, primary coverage focuses on the civil and criminal adversary system, judicial independence, integrity and accountability.\(^\text{38}\) Readings consider the traditional justifications for the adversary role, modern claims to reign in unbridled zealous advocacy, and whether a lawyer’s personal values or faith might properly influence one’s professional

\(^{37}\text{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 about the price you command. See also HARPER LEE, TO KILL A MOCKINGBIRD 75 (Warner Books 1982) (1960) (Atticus Finch explaining to Scout why he agreed to represent 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.”).}

\(^{38}\text{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 (Sandra Day O’Connor urged rejection of radical judge-bashing schemes, including South Dakota ballot initiative on voter initiative to hold judges civilly and criminally liable for their decisions); 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/judicaethics/resources/LM_021104.pdf; Judith L. Maute, Selecting Justice in State Courts: The Ballot Box or The Backroom?, 41 S. TEX. L. REV. 1197 (2000).}
conduct. 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.”

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.”

Quality of justice, in my view, also must embrace issues of diversity in the legal profession. Powerful empirical data demonstrates a vast racial divide between ethnic communities’ perception of the legal system. 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. Women now comprise about fifty per cent of law school entering classes, with their strong academic performance making them attractive candidates for entry level law firm positions. Bright women attorneys may experience other career frustrations: the glass ceiling limiting advancement to highest levels of firm management, pressures from juggling family and work responsibilities prompting career


42 See generally 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.”); 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 (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 statement).
moves or impeding opportunities for client development. Sexual minorities of whatever race or gender experience additional challenges, particularly if they must hide their orientation from employers and clients. Meanwhile, those who have been the unconscious beneficiaries of privilege because of their race, gender or sexual orientation may contend they have gotten where they are solely on merit. Although these can be “uncomfortable conversations” in law school classrooms, I think it worth the risk to discuss openly why diversity in the legal profession makes a difference in the quality of justice and the costs of making it happen.

Typically, the format used to develop this theme begins with open class discussion on the assigned reading, which I facilitate. Next, a respected prosecutor and criminal defense attorney are both invited to address the class about specific ethical issues important to their practices. Student presentations then elaborate, with focus on specific issues. For example, student authors presented on the risks of unbridled charging discretion in the segment on “judicial independence,

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46 Last year, John Richter, spoke about constraints on prosecutor’s exercise of discretion, extrajudicial publicity, and communications with represented persons. See MODEL RULES OF PROF’L CONDUCT R. 3.6 and 4.2 (2006); United States v. Ryans, 903 F.2d 731, 734 (10th Cir. 1990). Debbie Maddox, now in private practice, and who previously worked for the state indigent defense system, spoke with passion of defense counsel’s duty to protect the client’s rights under the law, in very human terms evoking images of Charles Fried’s piece on lawyer as client’s special purpose friend. Assigned reading included an excerpt from Geoffrey C. Hazard, Jr. et al., THE LAW AND ETHICS OF LAWYERING 438–46 (4th ed. 2005) (summarizing constitutional standard for evaluating conflicts of interest) and Miller v. State, 29 P.3d 1077 (Okla. Crim. App. 2001) (reversing capital conviction based on ineffective assistance of counsel because of complete breakdown in communication between attorney and client, possibly caused by attorneys’ negative attitudes about the client, the case and client’s decisions).
integrity and selection.” I introduced the issues, and two teams presented on judicial campaign speech, discipline and accountability and threats to an independent judiciary. In the segment on “innovations in delivery of legal services,” two teams presented on lawyer referral services, group legal services, transactional pro bono, unbundling, holistic multidisciplinary services and litigation financing.

5. 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 infrastructure. I introduce students to the empirical data using the National Association of Law Placement (“NALP”) study “After the J.D.,” and last semester Susan Fortney presented some of her key findings in her recent work on attorney work-life balance. Bill Conger, who is among the most respected attorneys in the State, spoke 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, formation and dissolution, billing practices and mechanisms to

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47 Maute, supra note 38, at 1230–43.

48 March & April Presentation Schedule (distributed to class via e-mail April 21, 2006 to facilitate final class discussion to synthesize what was covered throughout the semester) (copy on file with author).

49 J. William Conger, University General Counsel and Distinguished Lecturer in Law, Oklahoma City University.

reduce risk of malpractice liability.\textsuperscript{52} Additionally, innovative delivery systems are considered, including ancillary business practices, group legal services, unbundling and lawyering on the Internet. Technologically adept students demonstrate how to strip metadata from document to avoid inadvertently revealing confidential information. Unauthorized practice issues are considered both from the perspective of risk-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. Complex issues about assisting clients’ fraudulent conduct were periodically discussed, with specific focus on dubious tax shelters, recent IRS regulation, and the Department of Justice’s demands for a corporation’s waiver of privilege during plea negotiations.

CONCLUSION: EVALUATING OUTPUT

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 uniformly pleased with the substantive coverage and in-depth quality discussion, and with the selection of guest speakers. We also are in agreement about the need to develop clearer instructions and feedback for the team presentations. When class time is devoted to student presentations, it is a challenge for the


\textsuperscript{52} 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).
professor to guide and assist the presenters, for purposes of quality assurance. Although student presenters may not appreciate real-time intervention when they are adrift in front of the class, I am unwilling to abdicate responsibility for the quality of class time to a student team that may not have adequately planned or anticipated how their presentation would unfold. In the future, my syllabus will more clearly state guidelines for presentations, such as requiring that proposed hypothetical problems, skits and hand-outs be submitted enough in advance that I can provide useful assistance in streamlining the problems and the logistics of team presentations. Perhaps a scoring sheet, similar to that used in moot court and small, interactive classes, could be devised so that the students evaluate each other’s performance, helping them focus on what techniques improve public presentations. All lawyers, regardless of their practice area, need to develop presentational skills, to interact with clients, courts, colleagues and adversaries. Students who are involved in Inns of Court have experienced first-hand the amount of planning that goes into an effective presentation.

Students strongly preferred electronic transmission of the assigned reading materials, as opposed to having them distributed in hard copy, for which they would be charged. E-mailed transmissions, in Word format, seemed to work better than posting on my faculty webpage, although the logistics of using technology should improve with experience. From my perspective, I doubted that students had done the level of preparation I expected with the electronic materials, and will need to consider how to demand higher levels of engagement. I am considering giving students the option of electing to purchase the printed materials, at the usual per page copying charge. 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.

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, my current inclination is to 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.