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**REPORT AND RECOMMENDATIONS
AMERICAN BAR ASSOCIATION
TASK FORCE ON THE FUTURE OF LEGAL EDUCATION**

OVERVIEW

The American legal profession, the nation's law schools, the American Bar Association, the states' supreme courts, and others have collaborated over several generations to create a system of legal education widely admired around the world. The system is decentralized, involves both private and public actors, and is grounded in the J.D. programs of ABA-approved law schools.

At present, the system faces considerable pressure because of the price many students pay for their education, the large amount of student debt, consecutive years of sharply falling applications, and dramatic changes, possibly structural, in the market for jobs available to law graduates. These factors have resulted in great financial stress on law schools, damage to career and economic prospects of many recent graduates, and diminished public confidence in the system of legal education. The predicament of so many students and so many recent graduates who may never procure the employment they anticipated when they enrolled in their law schools is a compelling reality that should be heeded by all who are involved in our system of legal education.

The Task Force on the Future of Legal Education has been charged to examine the current problems and conditions in American legal education and present recommendations that are workable and have a reasonable chance of broad acceptance. This Report and Recommendations constitutes the conclusions of the Task Force about those problems and their potential solutions. While not every Task Force member embraces every conclusion and every recommendation, the Report and Recommendations does reflect a very high level of agreement.

A. Key Conclusions

Some highlights of the conclusions reached in this Report and Recommendations are the following:

- *Pricing and Funding of Legal Education:* Law schools are funded through a complex system of tuition revenue and varying amounts of non-tuition sources (such as endowment income and state subsidies). Law school pricing practices are also complex. They involve extensive discounting and reliance on the broad availability of loans. A widespread practice is to announce nominal tuition rates, and then pursue certain high LSAT or GPA students by offering substantial discounts (styled as scholarships) without

regard to the recipient's financial need. Other students, by contrast, receive little if any benefit from discounting and must rely extensively on borrowing to finance their education. Various federal programs make such loans available with little limitation on amount. This system has many deleterious features. One is that it contributes to the steadily increasing price of legal education. Another is that students whose credentials are the weakest tend to incur large debt in order to sustain the school budget and enable higher-credentialed students to attend at reduced (or even no) cost. Many of these less credentialed students also have lower potential return on their investment in a legal education. A further consequence is that, to support the current discounting structure, law schools have drastically reduced the amount of discounts, scholarships, or other support based on student financial need. Finally, the current system tends to impede the growth of diversity in legal education and in the profession. The current system of pricing and funding in legal education demands serious re-engineering.

- *Accreditation:* The present system of accreditation is administered by the ABA Section of Legal Education and Admissions to the Bar. The system has served the profession and the nation well. However, it reinforces a far higher level of standardization in law schools and legal education than is necessary to turn out capable lawyers. The accreditation system, through the ABA Standards for Approval of Law Schools, also imposes requirements that increase costs without conferring commensurate benefits. The Task Force concludes that the accreditation system would better serve the public interest by enabling more heterogeneity in law schools and by encouraging more attention to services, outcomes, and value delivered to law students. The Task Force recommends, in particular, that a number of the Standards be repealed or dramatically changed.
- *Innovation:* The accreditation system should also seek to facilitate innovation in law schools and programs of legal education. The current procedures under which schools can seek exceptions from ABA Standards in order to pursue experiments or innovations are narrow and confidential. The Task Force recommends that the Section energetically restructure the variance system as an avenue to foster experimentation by law schools and open the variance process and results to full public view.

- *Skills and Competencies:* A given law school can have multiple purposes. But the core purpose common to all law schools is to prepare individuals to provide legal and related services in a professionally responsible fashion. This elementary fact is often minimized. The calls for more attention to skills training, experiential learning, and the development of practice-related competencies have been heard and many law schools have expanded practice-preparation opportunities for students. Yet, there is need to do much more. The balance between doctrinal instruction and focused preparation for the delivery of legal services needs to shift still further toward developing the competencies and professionalism required of people who will deliver services to clients.
- *Broader Delivery of Legal and Related Services:* The delivery of legal and related services today is primarily by J.D.-trained lawyers. However, the services of these highly trained professionals may not be cost-effective for many actual or potential clients, and some communities and constituencies lack realistic access to essential legal services. To expand access to justice, state supreme courts, state bar associations, admitting authorities, and other regulators should devise and consider for adoption new or improved frameworks for licensing or otherwise authorizing providers of legal and related services. This should include authorizing bar admission for people whose preparation may be other than the traditional four-years of college plus three-years of classroom-based law school education, and licensing persons other than holders of a J.D. to deliver limited legal services. The current misdistribution of legal services and common lack of access to legal advice of any kind requires innovative and aggressive remediation.

Other conclusions are described in the body of the Report and Recommendations.

B. The Nature of This Report and Recommendations

The Task Force faced three substantial challenges in carrying out its work.

First, this document had to be prepared and submitted quickly. The urgency of the problems and the serious threats to public confidence demanded rapid action. Thus, the Task Force set a goal of approximately one year to complete all its work. This necessarily constrained its ability to gather information, test hypotheses, and vet recommendations with interested parties.

Second, while there are many current problems relating to legal education, some of the most profound are not susceptible to any quick fix. Two are the *price* of legal education and the *culture* of law schools. Regarding price—in particular its relentless increase—there is no simple and easy solution. The dynamics of price are strongly affected by the financing of legal education, the cost structure of law schools, and the nature of the market for legal education. These forces, which challenge the larger field of higher education, are complex and interconnected, making piecemeal solutions ineffective. Similar limitations govern the problem of culture. The culture of law schools is at the root of many aspects of current conditions. Today's customs and practices in law schools developed when decision-making involved modest changes that could be implemented over relatively long time frames. Today's challenges require a much stronger culture of innovation, nimbleness, and attention to factors outside the academy. However, culture cannot be changed through prescription. It can only change over time, by influencing attitudes and behaviors to create a positively reinforcing cycle.

Third, the Task Force had to develop a framework for presenting its findings and recommendations to ensure a reasonable chance of influencing action. This called for balancing competing goals: of articulating hard truths while building wide endorsement of them; of proposing clear, and not always popular, courses of action for the various participants in the legal education system while still respecting those actors' autonomy and judgment; and of offering narrow recommendations that could be implemented immediately while laying the foundation for more comprehensive, long-term improvements.

The Task Force has resolved these challenges by structuring the Report and Recommendations as a field manual for people of good faith who wish to improve legal education in both its public and private respects. It is designed to guide the activities of these participants within the scope of their respective responsibilities and areas of influence. The heart of the field manual is Section VII, which is addressed to all parties in our system of legal education. Key themes detailed in Section VII include: the need for a systematic (rather than tactical) approach to the deficiencies of law school financing and pricing; greater heterogeneity in law schools and in programs of legal education; a renewed attention to the delivery of value by law schools; a focus on the development of competencies in graduates of legal education programs; the profound importance of cultural change, particularly on the part of law faculties; the need for changes in the regulation of legal services to support key changes in legal education; and the need for institutionalization of the process of assessment and improvement in legal education, commenced in this Report and Recommendations.

Section VIII contains recommendations for specific actions by various participants in the legal education system to implement the key themes.

Other sections of the Report contain analyses that provide context for the recommendations of Sections VII and VIII, and a set of tools that persons, groups, and organizations can use in initiatives designed to bring about improvement.

The Task Force believes that if the participants in legal education continue to act in good faith on the recommendations presented here, with an appreciation of the urgency of coordinated change, significant benefits for students, society, and the system of legal education can be brought about quickly, and a foundation can be established for continuous adaptation and improvement.

I. LAW SCHOOLS AND THE SUBJECT OF THIS REPORT AND RECOMMENDATIONS

A. Law and Legal Education in General

Recent discussions of the problems in legal education have focused on ABA-approved law schools and the J.D. programs they deliver. The Task Force early recognized, however, that in order to comprehensively address the issues and make recommendations for reshaping legal education, it would have to expand its focus to legal education more broadly understood.

Law is the fundamental form of social ordering (including dispute resolution) in reasonably organized societies. The nature and function of law has been subject to extensive investigation and theorizing, which cannot and need not be reviewed here. For purposes of this Report and Recommendations, the functional description just given will suffice.

Given this understanding, we will refer to a *law services provider* (or *legal services provider*) as a person who is skilled in knowledge and application of law. A *legal education program* is a program of education that: (a) is designed to develop knowledge or skills in law or related fields; and (b) prepares individuals to be law services providers.

B. Law Schools and Legal Education Programs in the United States

In the United States, a *lawyer* is the primary form of law services provider. A lawyer is a law services provider who has been admitted to practice in a state, territory, or district, through passage of a bar examination or otherwise. A lawyer is potentially a generalist, authorized to provide substantially any form of representation or legal service to a client. Ordinarily, a lawyer must have received a *Juris Doctor* (J.D.) from a law school. In some states, a person holding a foreign law degree may be admitted to practice on the basis of having received a Master of Laws (LL.M.) degree.

In the United States, a *law school* is an institution providing a legal education program that trains lawyers. An *ABA-approved law school* is a law school that has been accredited by the ABA Section of Legal Education and Admissions to the Bar under the ABA Standards for Approval of Law Schools. A graduate of an ABA-approved law school is eligible to be admitted to practice in any state.

The program leading to the Juris Doctor is the principal program of legal education at every ABA-approved law school today. Some ABA-approved law schools also offer legal education programs in addition to the Juris Doctor program.

In the United States, some institutions of higher education other than law schools offer programs of law or related education. None, however, offers an ABA-approved Juris Doctor program.

C. The Context of Legal Education and Participants in Solutions

The relationship between law schools, and legal education, law, social ordering, and society, is elementary, yet key to understanding current problems and their potential solutions. Law schools and legal education do not function in isolation. They function in a larger environment and are affected by changes in many other areas. Current stresses and problems in law schools are caused in part by changes or conditions in the economy, in demographics, in the delivery of legal services, in secondary and college education, and in regulatory systems. For that reason, in developing solutions to the current problems, it is necessary to address actors beyond law schools and their accreditor, and consider how changes in other domains have the potential to improve the present system and induce changes that can preempt the recurrence of similar problems in the future.

II. THE FUNDAMENTAL TENSION

Despite the great breadth of current stresses and criticisms (detailed in Section V), the Task Force has identified a fundamental tension that underlies the current set of problems. An understanding of it must be kept firmly in mind in designing solutions.

The tension is as follows. On the one hand, *the training of lawyers provides public value*. Society has a deep interest in the competence of lawyers, in their availability to serve society and clients, in the broad public role they can play, and in their professional values. This concern reflects the centrality of lawyers in the effective functioning of ordered society. Because of this centrality, society also has a deep interest in the system that trains lawyers: it directly affects the competence, availability, and professionalism of lawyers. From this public-value perspective, law schools may have obligations to deliver programs with certain characteristics, irrespective of the preferences of those within the law school. For example, the

requirement that law schools teach professional responsibility was long ago imposed on schools under pressure by the larger profession because of public concern with the ethics of lawyers. The fact that the training of lawyers provides public value is a reason there is much more concern today with problems in law schools and legal education than with problems in education in other disciplines, like business schools and business education.

But the training *also provides private value*. Legal education provides those who pursue it with skills, knowledge, and credentials that will enable them to earn a livelihood. For this reason, the training of lawyers is part of our market economy and law schools are subject to market conditions and market forces in serving students and shaping programs. From this private value perspective, law schools may have to respond to consumer preferences, irrespective of the preferences of those within the law school, at least in order to ensure the continued financial sustainability of their programs.

The fact that the training of lawyers delivers both public and private value creates a constant, never fully resolvable tension regarding the character of the education of lawyers. To take an example, disagreement over the role of faculty scholarship in law schools reflects in part a difference between public and private value perspectives.

Proponents of a substantial role for scholarship often argue that faculty scholarship promotes public value, directly and indirectly, by developing more intellectually competent lawyers and by improving law as a system of legal ordering.

On the other hand, critics claiming that law schools devote excessive resources to faculty scholarship generally invoke considerations of private value. They argue that faculty scholarship increases costs, and thus the price, of legal education, with adverse economic consequences such as limiting access to legal education and increasing the loan repayment obligations of law school graduates. (Still others argue that scholarship makes faculty members better teachers and so confers a private benefit on students by better equipping them to earn a living.)

Another area in which public and private value considerations are in tension is the length of the J.D. program of education. Public value considerations support a longer, rather than shorter, program to ensure that lawyers can deliver the highest quality service to clients. A longer program arguably would develop in graduates greater knowledge of legal doctrine, a greater range of practice-related competencies, greater facility in legal analysis, and deeper acculturation into the values of the legal profession. Private value considerations, on the other hand, would suggest a shorter program. The longer the J.D. program of legal education, the greater is its total cost, in both out of pocket outlay and foregone or deferred earnings. This could adversely affect the economic interest of lawyers.

This tension between the public and private perspectives on the training of lawyers affects a wide range of issues before this Task Force. Any credible set of recommendations must carefully calibrate public and private concerns.

III. PRINCIPLES GUIDING TASK FORCE WORK

The Task Force has distilled from the comments and literature submitted to it six core principles to guide the development of its recommendations. These principles are not axioms: they are not bases for logical deduction of results. Rather, they are fundamental and widely shared values and goals, which are sometimes in competition with each other and which must be thoughtfully balanced in order to become pragmatic guides to action.

The six principles are the following:

- A. The System of Legal Education in the United States Should Meet Society's Need for Persons Who Have the Knowledge and Ability to Deliver Legal Services.***
- B. The System of Legal Education Should be Decentralized and Include Both Private and Governmental Parties.***
- C. The System of Legal Education Should Minimize Obstacles for Those Who Wish to Pursue a Career in Legal Services and Who Have the Ability to Do So.***
- D. Law Schools and Other Organizations that Provide Programs of Legal Education Are Accountable, in Respects Appropriate to the Program, for Delivering the Public Value of Legal Education.***
- E. Law Schools and Other Organizations that Provide Programs of Legal Education Are Accountable, in Respects Appropriate to the Program, for Delivering the Private Value of a Legal Education.***
- F. Law Schools Are Not Solely Responsible for the Public Value of Providing Legal Education to Lawyers.***

IV. FORCES AND FACTORS PROMPTING NEED FOR ACTION AND SHAPING TASK FORCE RECOMMENDATIONS

Recognizing the fundamental tension and the six core principles is necessary, but not sufficient, for crafting concrete recommendations. The Task Force has identified forces and factors that must be taken into account to redress problems and improve the legal education system. Not all are independent: some overlap or reinforce others.

A. *Criticism of Law Schools and Legal Education*

1. *The Impact of Criticism.* Law schools and legal education have been subject to intense criticism in national media, blogs, Congress, the courts, and elsewhere. This criticism is diminishing public confidence in law schools and legal education and it adversely affects attitudes of prospective law students. Yet the criticism has a positive side: it has generated strong pressure for reforms and has induced a climate of receptivity to change.

2. *Moralizing and Blame.* Some of the criticism takes the form of moralizing and blaming current problems on various actors in the legal education community. Deans are blamed for raising law school tuition or failing to stand up to certain constituencies. Faculty are blamed for supposedly self-seeking behavior and the pursuit of questionable goals for the law school. Universities are blamed for supposedly pressuring law schools to become profit centers. The legal profession is blamed for insufficiently supporting law schools and recent graduates, and steadily shifting educational responsibilities and costs to law schools.

Moralizing and blaming are not particularly productive. What is needed instead is a dispassionate and pragmatic examination of the current situation that begins with a presumption of good faith on the part of all participants. This enables those in the legal education system to collaboratively articulate credible goals and strategies, identify reasonably achievable short-term actions, and move legal education along a path toward continuing improvement and value for all participants.

B. *The Rise of Consumer Outlook*

1. *Consumer Attitudes toward Legal Education.* There are two broad perspectives on higher education in the United States: (a) education as a means to personal growth and development; and (b) education as a means to a job or career. The influence of the latter has greatly increased in recent years. This has affected the relationship between higher education institutions and students, causing higher education to take on more transactional and consumer attributes.

Law schools are pathways to a specific type of career, but have long positioned themselves under perspective (a), as providing an advanced general purpose (if not advanced liberal arts) education. This is reflected, for example, in the traditional view that law school substantially involves teaching students to think in a certain way. Law schools, however, now find that they have to reposition themselves at least partly under perspective (b). This requires a restructuring of curriculum, student services, and the business of legal education.

2. *The Importance of Consumer Information.* As part of the shift to a consumer relationship with students, law schools have increasingly been subject to market and regulatory demands for disclosure of accurate consumer information. The shift has also prompted the establishment of new organizations whose goal is to influence information disclosure and related consumer matters. This has led to revised ABA Standards governing information disclosure and reporting.

3. *Misleading Consumer Information.* Rankings of law schools strongly influence the behavior of applicants, law schools, and employers. Some ranking systems (in particular *U.S. News*) purport to supply objective consumer information. However, little of the information used in ranking formulas relates to educational outcomes or conventional measures of programmatic quality or value. To that extent, rankings may provide misleading information to students as consumers.

Indeed, the choice of data on which to base rankings can adversely affect the interests of students as consumers. For example, *U.S. News* rankings are based in part (among other debatable criteria) on calculations of law school expenditures per student. This rewards increasing a school's expenditures for the purpose of affecting ranking, without reference to impact on value delivered or educational outcomes. It promotes, rather than discourages, continued increase in the price of law school education.

4. *Communication of Accurate Information.* Some parties who engage in communications about legal education have a responsibility to understand the current situation so that they can properly carry out their work. These parties include: prelaw advisors, who counsel persons on pursuing career paths in law-related fields; media, particularly those who provide the public with information about developments in legal education; faculty members, who participate in both the delivery of educational services and in contributing to decisions about the operations of a law school; and members of the bar, who have or can have relationships with law schools, new and prospective lawyers, and other providers of legal services. It is important to the proper functioning of the legal education system that these parties obtain, and know how to obtain, complete and accurate information about both conditions in legal education and progress in improving it.

C. *The Pricing of Legal Education*

1. *Law School Pricing in General.* Law schools price a J.D. education by reference to their cost of delivering it, less revenue from other sources (such as endowment income or state subsidies). In general, law schools do not take market price as given and then seek to manage costs on the basis of that market price.

2. *Law School Cost Structure.* Several factors tend to increase the cost of delivering a J.D. education (and thus the cost-based price).

One structural factor is what economists call cost disease. This is the inability of an organization to achieve productivity gains at the rate of productivity gains in the overall economy because of: (a) the high proportion of costs attributable to services; and (b) the fact that the services in question are of a type that do not easily lend themselves to productivity improvement.

Another factor is the pressure to deliver services and engage in functions other than core instructional services. For example, law schools generally allocate significant resources to faculty scholarship and related activities. This arguably provides public value and arguably increases the private value of the J.D. education, but it nonetheless involves costs that contribute to price.

Yet another factor is continual change in the nature of the educational services delivered. Law schools have steadily altered the package of services offered their students to include, e.g., clinical education, career services, academic support, bar preparation support, and increased writing and inter-school competitive activities. The rationale for these additions is improving the educational services delivered to students. As this rationale reflects, law schools compete with each other on the basis of quality of service, in addition to price.

3. *Differential Pricing.* J.D. program pricing involves a high level of price differentiation. Some students pay very little for their legal education: they are given discounts, denominated “scholarships,” in order to attract them to the school. Others pay full or substantially full posted price. This form of price differentiation reflects the importance of status competition among law schools, in particular competition for students with high LSAT scores. High LSAT students strongly affect a law school’s status by contributing directly and indirectly to higher law school rankings.

D. *The Financing of Legal Education*

1. *Loan Repayment.* Students in J.D. programs who do not receive substantial scholarships (through differential pricing or otherwise) generally pay for their education through loans. Loan repayment requirements can be a major burden, particularly in the early part of a career when earnings may be low.

Although loan forgiveness programs and income-based repayment programs have been beneficial, loan repayment obligations can still affect job or career choices and the totality of these choices can affect the distribution of legal services throughout society. For example, loan repayment obligations may decrease the ability of law school graduates to enter certain forms of lower-paying public service, or decrease the ability of graduates to enter practice in communities or geographic areas where income potential is not sufficient in light of loan obligations. A recent report by the Illinois State Bar Association has described this development in compelling terms and offered several recommendations that the Task Force has embraced.

2. *Public Interest in Outstanding Student Loans.* Most law student loans are made by the federal government as part of a larger program of higher education loans. Law student loans are a relatively small part of the total, yet the amount of all outstanding higher education student loans is large and has substantial effects on the economy. This increases the already high level of public interest in law school financing and creates a complex interplay between public and private interests.

The fact that most law student debt is issued and managed by the federal government gives the federal government great potential control over law school financing and indirectly over those programs so financed. However, there have historically been few limitations on the amount of available student loans, as a result of which the loan system does not currently serve to check tuition increases.

E. Accreditation and Quality of J.D. Programs

The ABA Standards for Approval of Law Schools are largely prescriptive. As such, they affect costs, although the degree of that effect is disputed. Also disputed is how much the Standards constrain law schools from innovation and experimentation. There is reason to believe the Standards do not so much constrain law schools as reflect what law schools assume to be the norm and reinforce that norm. A 2009 study by the Government Accountability Office suggests that most schools would arrange their affairs according to this model even if the ABA Standards were not in place. What is not reasonably disputable, however, is that the Standards do not encourage innovation, experimentation, and cost reduction on the part of law schools.

What the ABA Standards do encourage is a continued increase in the quality of the J.D. educational program. The pursuit of quality by law schools has unquestionably led to a strong system for training lawyers, and the ABA Standards have played a key role. But “quality of legal education” is an abstract notion as to which there is no objective metric for achievement. The pursuit of this notion has tended to be one-dimensional, not linked to concrete goals, cost-benefit assessment, or market considerations. As a result, it has been a factor in rising costs and thus the price of the J.D. education.

F. Law-Related Services and Employment

1. *Structural Changes in the Legal Employment Market.* The economy of law and related services and the associated employment market have changed sharply in recent years. This has affected traditional legal services, where hiring decreased, particularly for new lawyers in large firms and lawyers in government practice. The pace of structural changes that were already under way (for example, use of contract labor and increased reliance on technology to increase productivity) accelerated. These changes have had a substantial and adverse impact on employment opportunities for new and recent law school graduates.

Moreover, there are clear structural changes that reflect increasing price sensitivity by users of legal services, with resulting price competition and innovations in the mode of delivery. The developments are likely to continue, with continuing impact on lawyer employment. The profession is also experiencing a shift in demand from bespoke representation of clients to the commoditization of legal services (e.g., Legal Zoom).

The American market for legal education and legal services is also increasingly affected by globalization. Others inside the ABA and elsewhere are engaged in evaluating these trends and making recommendations about them. The Task Force has elected not to reproduce those efforts, but does believe that its recommendations are generally consistent with other work under way to address these trends.

2. *Misdistribution of Legal Services.* The supply of lawyers appears to exceed demand in some sectors of the economy. Yet in other sectors demand very much exceeds supply. In some rural areas, for example, there are few lawyers and it is difficult for communities to encourage new ones to set up practice, either because of low prospective return on investment or lack of interest in small town or rural life.

Most strikingly, poor and lower income populations remain underserved because lawyers can be made available to clients like these only if the lawyers are paid or subsidized by a government or private benefactor. Funding for lawyers to serve these populations is far less than what is needed and, except as noted below, there are few alternatives to fully trained lawyers as providers of law-related services. This lack of access to affordable legal assistance affects segments of the middle-income population as well.

3. *Delivery of Law-Related Services by Persons Without a J.D.* The relatively high cost of the services of lawyers has encouraged the development of programs to prepare graduates for practices focused on low- and moderate-income

clients. But it has also facilitated the use (or proposed use) of persons who have not received a J.D. to deliver lower-cost legal services. Businesses increasingly use persons other than admitted lawyers, e.g., for compliance work and for expertise in the human resources field. For individuals who cannot afford lawyers, the adaptation has been slower, but the extensive use of law students with special licenses reflects one approach to broadening the availability of low cost service.

Other changes are under way that would respond to both business and individual needs, for example the system in Washington State of limited licenses to deliver categories of legal service by persons who are not lawyers admitted to practice. The extensive work of the ABA in developing and accrediting paralegal education programs is a rich resource for evaluating possible further innovations along these lines.

G. *The Nature and Purpose of Law Schools*

1. *Diverse Views As to the Purpose of Law Schools.* There is disagreement about the purpose of law schools. For example, it is commonly stated that the basic purpose of law schools is to train lawyers, but there is no consensus about what this means. It matters greatly whether, for example, one takes a view of lawyers as primarily deliverers of technical services requiring a certain skill or expertise, or as persons who are broad-based problem solvers and societal leaders. Different views about what it means to “train lawyers” yield different views about curricula; different views about faculty; and different emphases regarding services to students.

2. *Mismatch Between Curriculum and Goals.* A law school’s ostensible view about its purpose may not be reflected well in the curriculum. One reason is that certain goals have traditionally not been viewed as matters to be incorporated in the curriculum. For example, as important as jobs and career success are to graduates and, again, to the success of the law school, the curriculum is generally not used for preparing students to pursue and compete for jobs. Rather, that service is generally delegated to a non-academic unit of the law school. Another reason is that emerging goals are often slow to be incorporated into the curriculum. For example, although changes in the delivery of legal services have made competence in the use and management of law-related technology important, only a modest number of law schools currently include developing this competence as part of the curriculum.

H. *The Business of Legal Education*

1. *Insulation of Law Schools from the Market.* The standard model of a law school has long been that of a college or school in a university, which provides a post-baccalaureate education in law, whose programs are academically oriented

and taught mainly by full-time professional educators. Under this model, law schools have understood themselves to be like graduate programs in the university, with minimal need to be concerned about their relationship to any market. Law schools have long escaped pressure to adapt programs or practices to customer demands or to the pressures of business competition. Except during periods like the Depression and the Great Recession, curriculum, culture, and services have developed with little relation to market considerations.

The current market forces now require more drastic changes for law schools than they have faced in the memories of current law faculties or administrators. Universities are requiring law schools to become financially self-sustaining, and competition for students and tuition revenue has come to resemble competition in the non-education economy. Many, if not most, law schools lack the experience, expertise, or the organizational structure to deal with these new conditions. Some constituencies in law schools resist dealing with them. In some cases, universities are unwilling or unable to support law schools as they attempt to make a transition to a new market-oriented way of conducting their affairs.

2. Lack of Integration of Business and Academic Aspects of Law Schools. Law schools are in the business of delivering educational services for a fee. There can be tension between the need to serve customers (students) well and the need to run a financially sustainable operation. Yet the tension in law schools need not be greater than in any other service business. Indeed, delivering quality service is generally viewed as the best path to an organization's long-term financial health.

In law schools, however, educational services and business considerations are widely seen as in conflict, even in irresolvable conflict. This entrenched lack of integration of business and academic aspects of a law school suggests to many that academic considerations ordinarily have to be sacrificed to business considerations, or vice versa. This view hampers discourse about the current challenges to law schools and potential solutions, often leading to polarization or oversimplification of issues or solutions.

I. Culture and Conservatism

1. Faculty Culture. Culture is the cluster of beliefs and practices of a group that is passed on through social behavior. There is a large-scale law faculty culture in the United States as well as sub-cultures particular to individual schools. Law faculty are socialized by each other and new faculty absorb beliefs, practices, and expectations from more senior faculty. Cultures tend to be stable and not easily changed.

Law faculty culture today is generally marked by the following beliefs and practices, which vary somewhat in detail and emphasis from school to school:

- A professorial position should involve long-term security, and tenure means very strong and prolonged security.
- Scholarship is an essential aspect of a faculty's role.
- Faculty members are materially different from non-faculty members of the law school.
- Faculty have decision-making authority for key aspects of the law school.
- Status is important in measuring individual and institutional success.

All of these elements of faculty culture are challenged by the current economic and market stresses on law schools and by the calls for law schools to change their ways of conducting business.

2. *Resistance to Change.* People are generally risk-averse. Organizations, which are composed of people, tend to be conservative and to resist change. This tendency is strong in law schools (and higher education generally), where many people in the organization find their positions especially attractive because they are largely outside market- and change-driven environments. A law school's successful embrace of solutions to the challenges, problems, and demands described in this Report and Recommendations requires a reorientation of attitudes toward change, including market-driven change, by persons within the law school.

J. The Profession and Legal Education

The model of legal education that took shape in the twentieth century involved a rough division of educational responsibility: law schools took on responsibility for basic, general education of lawyers, largely in an academic environment and through an academic approach; and the remainder of legal education—in particular, the more skills and business-oriented aspects—was left to be learned from those already in practice.

This rough allocation eventually began to break down. The legal profession increasingly began to assign, or try to assign, more responsibility to law schools for the practical and business aspects of the education of lawyers, mainly for economic reasons (including unwillingness of clients to subsidize the education of new lawyers). The result has been increased pressures on law school curricula. Such pressures have surely contributed to increasing costs and increasing tuition, as law schools have had to take on these additional, sometimes expensive, forms of education no longer provided elsewhere.

Some state and other bar organizations have developed programs for educating or mentoring new or less experienced lawyers. However, there are many more resources in the practicing bar, in business organizations, and elsewhere, that could contribute to the education of law students, new lawyers, and less experienced lawyers, thereby achieving the goals of improving legal education while potentially lowering or controlling the price of obtaining the education.

K. The Tangible, but Fragmented, Responses to Date

Participants in the system of legal education have responded to the environmental and structural stresses and challenges described in this Report with good faith and increasing commitment. Self-criticism and search for solutions abound. Many schools have reduced expenses, changed curricula, introduced new degree programs, and experimented in a variety of areas. The Section of Legal Education and Admissions to the Bar has increased transparency in consumer information reporting. It has also moved to streamline accreditation standards, for example those relating to libraries. Bar associations have launched mentoring and scholarship programs and offered their support to law schools. Bar regulators have moved to modify criteria for admission to practice. The list of initiatives is extensive and impressive.

The list, however, is one of limited and fragmented responses, the efficacy of which is often difficult to measure. What is lacking is coordination, a full understanding of tools available to effect change, mechanisms for assessment of progress, and a strategy for long-term continuous improvement. This Report and Recommendations seeks to help fill that need.

V. PARTIES TO WHOM TASK FORCE RECOMMENDATIONS ARE ADDRESSED

Proposals for curing present problems and improving the legal education system are most often addressed to law schools and to the accreditor of law schools, the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association. Law schools and the Section of Legal Education are central players in any systematic approach to improvement. But the Task Force recognizes that there are many more actors with a role in the system and to whom any recommendations must also be addressed.

The Task Force has identified the following as institutions, entities, or persons who have significant interest roles relating to legal education, and who can productively participate in improving the system for the benefit of students, graduates, and the public:

- Law schools
- Deliverers of law-related education other than law schools
- Law faculties
- Universities and other institutions of higher education
- American Bar Association
- American Bar Association Section of Legal Education and Admissions to the Bar
- Other organizations whose purpose is to support or improve law schools or legal education
- Regional and other higher education accrediting bodies
- State Supreme Courts
- State and local bar associations
- Bar admission authorities
- Federal government
- State governments
- Law firms and law offices
- Media
- Prelaw advisors

As this list reflects, the system of legal education in the United States is complex and decentralized. No one person, organization, or group can alone direct change or assume sole (or even principal) responsibility for it.

VI. NATURE OF ACTIONS AND INITIATIVES THAT CAN BE UNDERTAKEN

Many of the suggestions for improving legal education being advanced today consist either of new directives—e.g., proposals that “law schools must do X”—or else elimination of existing directives—e.g., proposals that “organization Z should stop requiring law schools to do Y.” Although there is a place for directives and elimination of directives in any plan, the Task Force finds that place to be more limited than generally assumed.

As explained above, there are many decision-makers and actors in the system of legal education. Each has specialized knowledge; particular relationships with its members or participants, or with persons or other organizations served; and distinctive opportunities to guide or influence the actions of others. The problems in legal education will not disappear simply by telling participants what must or must not be done. Rather, the task in structuring a plan for the improvement of legal education is to: (a) encourage and facilitate appropriate action by each actor in the legal education system; and (b) to the extent possible, coordinate those actions to achieve large-scale improvement.

In order to achieve that, the Task Force has inventoried the many ways in which the actors in legal education can be addressed and can act in order to promote desired outcomes. These ways are the following:

A. *New or Strengthened Requirements*

The current system of legal education is based in part on requirements. The current ABA Standards are largely prescriptive. Other organizations use prescriptions as well: they are found in bar admission requirements, United States Department of Education regulations, and university and law school faculty handbooks.

Prescriptions, when well crafted, can have the benefit of marking boundaries of what is permissible or obligatory. In doing so, and in appearing to control action, they seem to provide easy solutions. Yet, they only work if they can credibly be enforced. Thus, they require enforcement mechanisms—sometimes complex ones. These can be costly and the costs may be passed on to the regulated parties (here, law schools and ultimately students). Prescriptions, if effective, are also relatively inflexible and so have the disadvantage of requiring periodic updating to adapt to changing conditions. The Task Force generally recommends against new prescriptions as solutions to current problems in the system of legal education.

B. *Eliminated or Lessened Requirements*

Eliminating or relaxing an existing requirement can lower costs in an area of operation, or allow greater opportunity for innovation or experimentation. Because of the potential for such benefits, there is much insistence that current prescriptions in the ABA Standards be moderated or eliminated. Similar arguments can be (and are) made regarding other prescriptions, such as ones in bar admission rules or in rules regulating the practice of law.

The potential benefits of lessening or eliminating a requirement are more likely to be realized when the requirement in question constrains an actor from doing what it would prefer to do absent the requirement. But as this Report and Recommendations has noted, the ABA Standards—the main subject of the demand for lessened requirements—tend to reflect prevailing beliefs and culture regarding how law schools should be structured and operated, and it is not clear that elimination of a prescription in the Standards alone would bring about desired benefits.

The Task Force has concluded that, while removing certain prescriptions in the ABA Standards and elsewhere could be beneficial, particularly as to matters of cost, market orientation, and innovation, many such changes would have to be coupled with other methods that non-coercively move law schools or other actors toward achieving the desired outcomes or benefits.

C. Incentives

A common and often effective tool for promoting a desired outcome is incentives. For example, law schools typically promote faculty scholarship through a tenure system and financial incentives. If a law school wished to promote, for example, pedagogical innovation, it could use these same types of incentives (or others) to promote that goal. If another organization wished to promote pedagogical innovation in law schools, it could do so, e.g., through offering financial awards or prominent honors to encourage the desired behavior or outcomes.

An advantage of an incentive system is that it can facilitate alignment in goals and attitudes between those promoting the desired outcome and those targeted to be influenced. Incentives also can promote creativity. Potential disadvantages are that they do not always succeed and that an incentive system can be captured by its targets, with a resulting distortion or weakening of the system.

D. Facilitation

Desired outcomes can be promoted through facilitation, i.e., by providing resources that will advance efforts to achieve the outcomes. The resources can be in the form of funds, expertise, physical facilities, logistics, management, mediation, or other services. For example, bar associations may be able to facilitate law school initiatives to control costs and improve processes, by making available members' business expertise and experience. Just as with offering incentives, facilitation can promote alignment.

E. Coordination

Desired outcomes can be promoted through coordination of actors working toward shared goals or outcomes. For example, coordination among law schools, or between law schools and bar organizations, can promote efficiencies, new processes, or new educational initiatives. Coordination can be through a variety of mechanisms, for example: joint ventures of the coordinating parties; facilitation of group efforts by other persons or organizations; or the creation of new associations or organizations. The consortium of law schools collaborating on innovation under the banner "Educating Tomorrow's Lawyers" is an encouraging example of such developments.

F. Enablement or Empowerment

Enabling or empowering an individual or group to take action is another method to promote a desired outcome. This method is used to a limited extent in the ABA Standards for Approval of Law Schools. Enablement or empowerment promotes

flexible implementation of goals by encouraging solutions from persons with a high level of expertise or influence and by allowing solutions to be adapted to changing circumstances or environments. Enablement or empowerment sometimes needs to be coupled with facilitation to assist the empowered person in taking action or implementing an appropriate plan.

G. Leadership

A disadvantage of the highly decentralized character of the legal education system is that, ordinarily, no person or organization is in a position to alone drive rapid change. A related disadvantage is that collective action for the common good can be difficult to achieve, despite general knowledge of its benefits. For example, despite wide understanding of the benefits of collective action against law school ranking systems, a lack of leadership among law school deans has prevented it.

Effective leadership is based on influence, not on command. In the legal education system today, there are many opportunities for persons, organizations, or groups to establish influence in a part of legal education and to promote improvements at least within that part. Opportunities for influence can arise, for example, from holding a position as head of an organization; achieving credibility derived from experience; or (for a group or organization) having as members a large proportion of one segment of legal education.

H. Pilots, Experiments, and Examples

Desired outcomes can be promoted through examples that can be a source of learning by others. In many areas of society and the economy, the efforts of one person or one organization to try something new or achieve something innovative leads others in the field to copy it or improve it, thereby yielding broader progress.

This type of progress can be catalyzed through a pilot project that demonstrates how a desired result can be attained. Or, it can be catalyzed through a small-scale test of a new way of operation, or, through the action by an agent that is willing to take a risk on a new or untried method. This mechanism for progress, like others, may have to be coupled with facilitation.

I. Encouragement

Desired results can be promoted through encouragement, both positive and negative. Encouragement is sometimes underestimated as a method for redressing problems in legal education, but it has significant potential in an environment of good faith. Some of the recent improvements in legal education result from articles in influential publications. Most of this writing has been critical, yet the criticism has served to encourage actors in legal education to respond. As this shows, parties at

the center of legal education can be influenced by voices from outside the core. Those who have been critics can also have influence in a more positive fashion, for example by publicizing improvements and encouraging continued progress.

VII. THEMES ADDRESSED TO ALL PARTIES

The Task Force has identified the following nine themes as guides for the efforts of all participants in legal education. The project of improving legal education, to deliver both public and private value, will require independent, yet coordinated, initiatives by all participants in the system. The themes can serve as a common framework and a shared set of goals for this project. They are intended to promote coordination while enabling each participant to use its best judgment about choices of initiatives to pursue.

A. The Financing of Law-Related Education Should Be Re-engineered

The current system for financing law school education harms both students and society.

To begin, there is relatively little scholarship funding or discounting provided to students on the basis of financial need. Rather, the widespread practice is for a school to announce nominal tuition rates and then use extensive discounting to build class profiles it finds desirable. In particular, schools pursue students with high LSAT scores and high GPA's. Students who do not contribute positively to the desired class profile receive little if any benefit from discounting and must rely extensively on borrowing to finance their education. A result of such practice is that students whose credentials are the weakest incur large debt to subsidize higher-credentialed students and make the school budget whole.

These loans to law students are readily available as part of the federal loan program for students in higher education. This system of lending distances law schools from market considerations and it supports pricing practices that do not well serve either the public or private value in legal education. The system also promotes conditions in which many law school graduates embark upon a career or career search under the cloud of a massive debt obligation.

A positive development in federal law has been the addition of loan forgiveness and income-based repayment opportunities for law graduates. Still, federal law does not take into account the public value in training *any* lawyer, not just those who enter what is commonly viewed as public service. In general, the recognition in the regulatory framework that law students and legal education are distinctive is very limited.

The Task Force believes that the financing mechanisms for law school education and the pricing practices they facilitate must change, and that continued public confidence in the system of legal education is dependent on that change. However, it would be extraordinarily difficult for individual law schools alone to initiate substantial change in practices because of the entrenchment of the competitive race for credentialed students.

Although many of the specific recommendations in this Report and Recommendations, if adopted, could improve financing and pricing, the Task Force also recognizes the enormous economic and political complexity of the issues. Various observers have submitted testimony or filed comments suggesting everything from an accreditation standard requiring that half of all scholarships be need-based to a cap on the amount students could borrow under current loan programs. Some suggest that Congress treat legal education loans as requiring a different system from that governing other segments of higher education.

The time and resources available to the Task Force have made it impractical to develop a structure of equitable and effective solutions. Accordingly, the Task Force strongly recommends that the American Bar Association undertake a prompt, but fuller examination of these issues, in order to develop comprehensive sets of recommendations to correct the deficiencies in financing and pricing legal education.

B. There Should Be Greater Heterogeneity in Law Schools

While it is an overstatement to say that all ABA-accredited law schools are stamped from the same cookie cutter, accredited law schools in the United States have long been highly uniform. Although the American Bar Association and the Association of American Law Schools were instrumental in bringing about this uniformity, the current Standards for Approval of Law Schools do not so much enforce the common structure as reflect and reinforce it. The structure mirrors what those involved in legal education believe a law school ought to be.

Differentiation of law schools has increased in recent years. Some schools have, for example, added to the basic educational framework an institutional emphasis (real or nominal) in a particular field of law. Some differentiation has been deeper, involving, for example: a commitment to providing opportunity for legal education to those who might otherwise not have it; a pervasive focus on developing trial or other practice skills; or development of integrated systems through branch campuses or consortium arrangements. This trend toward differentiation and experimentation will likely continue and the Task Force believes the American Bar Association, the ABA Section of Legal Education and Admissions to the Bar, and state authorities should energetically promote it.

It is useful to compare the system of law schools with the college and university system in the United States. The latter is marked by a modest degree of standardization (e.g., an undergraduate program, generally of four years) with substantial variety beyond that. Some colleges or universities are highly focused on research; some are highly focused on undergraduate teaching. Some are schools of access; some are highly selective. Some are multi-campus; some are single campus. Some have a high level of distance instruction; some are entirely residential.

This diversity suggests that a system in which law schools with very different missions can be accommodated: including, for example: (1) a school where relatively little time was committed to faculty research and publishing and much more time spent on practice-ready training; or (2) a school where practice-skill courses were regarded as a diversion from the central task of teaching students to “think like lawyers” through emphasis on doctrine-based instruction.

One can acknowledge the success of the prevailing model brought into being by the schools, the ABA, and the wider profession and still believe that it might not be the exclusive way of effectively preparing people to be good lawyers.

The system of legal education would be better with more room for different models. Variety and a culture encouraging variety could facilitate innovation in programs and services; increase educational choices for students; lessen status competition; and aid the adaptation of schools to changing market and other external conditions.

The Task Force recommends that participants in the legal education system, but particularly law schools, universities, the Section of Legal Education, the Association of American Law Schools, and state bar admission authorities, pursue or facilitate this increased diversification of law schools as they each develop plans and initiatives to address the current challenges in legal education.

C. There Should Be Greater Heterogeneity in Programs that Deliver Legal Education

American legal education today is built around a single degree-granting program: the J.D. This is an expensive program that generally requires seven years of higher education. The J.D. program seeks to develop professional generalists, whose services can be costly.

There continues, and will continue, to be a need for professional generalists. However, many people today cannot afford the services of these professional generalists or may not need legal services calling for their degree of training. There is today, and there will increasingly be in the future, a need for: (a) professionals who are qualified to provide limited law-related services without the oversight of a lawyer; (b) a system for licensing or regulating individuals competent to provide

such services; and (c) educational programs that train individuals to provide those limited services. The new system for limited license legal technicians developed by Washington State and now being considered by others is an example and a positive contribution.

There is no logical necessity that law schools provide these new educational programs, but there is also no logical reason why they should not do so. The Task Force recommends that law schools and other institutions of higher education develop these educational programs.

The Task Force also recommends, correspondingly: (a) that the Section of Legal Education, in collaboration with state regulators, develop standards for accrediting these educational programs or else expressly defer to other bodies to do so; and (b) that state authorities regulating the practice of law develop licensing or other regulatory systems for the delivery of limited legal services, which assure quality but do not limit access or unduly raise the price of services. As part of ensuring access, state regulators should limit barriers to interstate mobility for providers of such services. Other participants in the legal education system should support this increased heterogeneity of programs and forms of legal service as appropriate to their role in the legal education system.

D. Delivery of Value to Students in Law Schools and in Programs of Legal Education Should Be Emphasized

The traditional emphasis on legal education as delivering public value has led to a focus on quality of legal education as an overriding goal by law schools, the ABA Section of Legal Education, and the Association of American Law Schools. Unquestionably, pursuit of quality has helped create a strong system for educating new lawyers in the United States. But the pursuit has also been a significant source of increasing costs. This tendency has been exacerbated by law school ranking methodologies that uncritically confuse higher cost per student with higher educational quality.

On the other hand, the new emphasis on consumer considerations—and more broadly on legal education as a private good—has had an opposite tendency. The intense consumer focus has created pressure to drive down price. This has been beneficial in the short run. Yet, pressure to uncritically reduce price tends to minimize the impact on student outcomes and on the long-term sustainability and success of the legal education system.

These polar perspectives each represent incomplete pictures of what law schools are and what law schools do. It is inescapable that *law schools are in the business of delivering legal education services*. And no business can succeed in the long run unless it pays close attention to the value it is promising to deliver and consistently

holds itself accountable to deliver that value. Law schools paying closer attention to value and its delivery would not only promote sustainability and accommodate the legitimate concerns of both quality and price; it could help bridge the widespread gaps between academic and business perspectives, and between the concerns of faculty and administration.

The Task Force believes that each law school should make an assessment of the particular value it believes it can and should deliver, and make a commitment to communicating and delivering that value. There is substantial existing literature on which schools can draw to develop a statement of value to be delivered, such as the Carnegie Report and the statement of skills and values in the MacCrate Report.

E. There Should be Clear Recognition that Law Schools Exist to Develop Competencies Relating to the Delivery of Legal and Related Services

Law schools, whatever their individual differences, have a basic societal role: to prepare individuals to provide legal and related services. Much of what the Task Force heard from recent graduates reflects a conviction that they received insufficient development of core competencies that make one an effective lawyer, particularly those relating to representation and service to clients.

The educational programs of a law school should be designed so that graduates will have (a) some competencies in delivering (b) some legal services. A graduate's having *some* set of competencies in the delivery of law and related services, and not just some body of knowledge, is an essential outcome for *any* program of legal education. What particular set of competencies a school, through an educational program, should ensure is a matter for the school to determine. However, a law school's judgment in this regard should be shaped in reference to: (a) the fact that most students attend law school desiring to practice law; (b) available studies of competencies sought by employers or considered broadly valuable for long-term professional success; and (c) the mission and strengths of the particular school. Further, whatever competencies a particular law school chooses to emphasize, the school should incorporate professionalism education into both doctrinal and experiential instruction.

Although this theme deals with the function of law schools, ensuring the delivery of competencies in graduates is not and cannot be a responsibility of law schools alone. State supreme courts and bar admitting authorities shape legal education, for example, when they decide what to test on bar examinations. Shifting bar examination design toward greater emphasis on assessment of skills and less on adding new substantive subjects would tend to encourage greater reliance on experiential learning in law schools.

In addition, for J.D. programs in particular, it is a responsibility of members of the legal profession as individuals, and through bar associations, firms and other organizations in which legal services are delivered, to support this redirection of legal education by: helping identify competencies to be delivered and continuing to assess their importance; providing teaching resources; providing settings in which students can practice and develop skills and talents; and helping instill in students the culture and professional values that surround and shape the competences of lawyers. The support of lawyers and others in law practice must be fashioned in a way that is mindful of the demands of employment and impact of substantial debt on so many recent graduates.

Writ large, the profession should strive to recapture its former substantial role in the education of new lawyers.

F. There Should Be Greater Innovation in Law Schools and in Programs That Deliver Legal Education

There is need for innovation in legal education and a fair amount of it is under way. Although “innovation” is a malleable concept, at bottom what is needed, and being called for, is: (a) a greater willingness of law schools and others entities which deliver legal education services to experiment and take thoughtful risks; and (b) support for the experiments and risk-taking by other participants in the legal education system.

Innovation cannot come from a directive to experiment and take risks. Nor can it come simply from the removal of real or perceived barriers to innovation. Rather, it must come from a change in attitude and outlook, and from openness to learning, particularly from other fields. With regard to the latter, there exists a wealth of knowledge and experience from other disciplines and fields, on which schools can draw to facilitate their acting in ways that might lead to innovation.

The ABA Section of Legal Education can support innovation by modifying or eliminating Standards (including those governing variances) that constrain opportunities for experimentation and risk-taking. To stimulate and encourage innovation and experimentation, the Section should issue requests for variances, both as to the various Standards that the Task Force has identified and as to education reform more generally.

G. There Should Be Constructive Change in Faculty Culture and Faculty Work

Prevailing law faculty culture, and the prevailing faculty structure in a law school, reflect the model of a law school as primarily an academic enterprise, delivering

public value. This entrenched culture and structure has promoted declining classroom teaching loads and a high level of focus on traditional legal scholarship.

Some, perhaps many, law schools will continue to operate under the current model. But for law schools that choose to pursue other models, faculty culture and faculty role may have to change to support them. These changes may relate to: accountability for outcomes; scope of decision-making authority; responsibilities for teaching, internal service, external service, and scholarly work; career expectations; modes of compensation; interdependence; scope of the category “faculty” and internal classifications within that category; and a host of other factors.

The Task Force recommends that universities and law faculties move to reconfigure the faculty role and promote change in faculty culture, so as to support whatever choices law schools make to adapt to the changing environment in legal education. The Task Force further recommends that the Section of Legal Education, the Association of American Law Schools, and other organizations in the legal education system take steps to support the ability of schools and faculties to undertake chosen adaptations.

H. The Regulation and Licensing Should Support Mobility and Diversity of Legal and Related Services

Although the focus of this Report and Recommendations is the system of legal education, the Task Force finds that associated improvements are needed in the system of regulation and licensing of legal and related services.

One reason is that much of legal education is directed toward preparing persons to become lawyers admitted to practice in a state and thus subject to state licensing and regulation. The nature of this licensing and regulation can strongly influence the character and cost of the education of lawyers. Accordingly, improvements in the regulation and licensing of lawyers can promote or enable improvements in legal education.

For example, state supreme courts, state bar associations and bar admitting authorities could create paths to full licensure with fewer hours than the Standards require by devices such as: (1) accepting applicants who, like joint degree graduates, have fewer hours of law-school training than the Standards require; or (2) accepting applicants with two-years of law school credits plus a year of carefully-structured skills-based experience, inside a law school or elsewhere. Such options require careful planning and substantial partnership.

Finally, certain recommendations concerning diversification of legal education programs will have their full benefit only with corresponding diversification in legal services and legal service providers. Thus, with regard to these recommendations,

law schools and other providers of legal education services must work collaboratively with regulators of legal services to develop an integrated system that will promote the public and private good. The recent report of the State Bar of California's task force on admissions regulation lays out many of the possible reforms in lawyer licensing that might help prepare practitioners to serve clients.

I. The Process of Change and Improvement Initiated by this Task Force Should Be Institutionalized

The recommendations made here for improving the system of legal education respond to conditions in the past few years. These recommendations have been developed under substantial time constraints because of the widely shared view that action is needed promptly to address the current problems. A risk is that these recommendations will be viewed as solutions for transient conditions and that as soon as conditions improve, the recommendations will be ignored.

The Task Force believes that many of the forces and factors that give rise to the current conditions are either permanent or recurring. Legal education must continually deal with these factors in a systematic fashion. An evolution is taking place in legal practice and legal education needs to evolve with it.

To begin, the fundamental tension between education of lawyers as delivering public value and education of lawyers as delivering private value is structural. The tension may manifest itself in different ways under different conditions, but it will always be with us and must always be managed. Other matters likely to continually give rise to stresses, challenges, and the need for managing change are: the economics of law schools; the rapid evolution in the market for legal services; the function and value of accreditation standards; the financing of legal education; the role of parties other than law schools in legal education; and the role of media in understanding legal education and communicating with the public.

Since these forces and factors will always be with us, it is prudent for the system of legal education to institutionalize the process of dealing with them. All parties involved in legal education should support a framework for the continual assessment of strengths and weaknesses and of conditions affecting legal education, and for fostering continual improvement. The process should ensure that not only law schools, but also practicing lawyers, judges, and other interested actors have a voice and an opportunity for meaningful contribution. Such meaningful action by the bench and organized bar has become more difficult since the ABA House of Delegates acceded to a call by the U.S. Department of Education that the House give up its role as the final decisionmaker on accreditation standards and delegate that authority to the Council of the Section of Legal Education and Admissions to the Bar.

The Task Force recommends that this process of institutionalization be accomplished through a standing committee of the American Bar Association, through the Section of Legal Education and Admissions to the Bar, or through periodically commissioning a task force assembled for this particular purpose.

VIII. SPECIFIC RECOMMENDATIONS

The Task Force not only offers the general themes discussed above; it also makes specific recommendations to particular actors or groups in the system of legal education. These recommendations are not intended to be exclusive.

The Task Force's specific recommendations are as follows.

A. *American Bar Association*

The American Bar Association should undertake the following:

1. *Establish a Task Force to Examine and Recommend Reforms Concerning the Pricing and Financing of Law School Education. Issues within the Scope of Such a Project Should Include:*

- a. Current methods of pricing used by law schools, including the impact of readily available loans and common methods of discounting based on LSAT scores and related factors.
- b. The relative lack of need-based discounting offered by law schools.
- c. The impact of current methods of pricing on access to law school.
- d. The impact on legal education and access to justice of reliance on loans to finance law school education.
- e. The structure of the current loan program for financing of law school education and potential alternative.

2. *Establish a Center or other Framework to Institutionalize the Process of Continuous Assessment and Improvement in the System of Legal Education.*

3. *Establish a Mechanism for Gathering Information About Improvements in the System of Legal Education and Disseminate that Information to the Public.*

4. *Establish Training and Continuing Education Programs for Prelaw Advisors to Improve their Understanding of the System of Legal Education and the Current Environment.*

B. *The Council of the ABA Section of Legal Education and Admissions to the Bar*

The Council of the Section of Legal Education and Admissions to the Bar should undertake the following:

1. *Eliminate or Substantially Moderate the Restrictiveness of Standards, Interpretations, and Rules that Directly or Indirectly Raise the Cost of Delivering a J.D. Education without Commensurately Contributing to the Goal of Ensuring That Law Schools Deliver a Quality Education. Specific Standards and Interpretations that Should be Eliminated or Substantially Moderated on this Ground Include the Following:*

- a. Interpretation 304-5 (relating to credit for work prior to matriculation in law school).
- b. Standard 306 (relating to distance education).
- c. Interpretations 402-1 and 402-2 (relating to student-faculty ratios).
- d. Standard 403 (relating to proportion of courses taught by full-time faculty).
- e. Standard 405 (relating to security of position and tenure).

2. *Eliminate or Substantially Moderate the Restrictiveness of Standards, Interpretations, and Rules that Directly or Indirectly Impede Law School Innovation in Delivering a J.D. Education without Commensurately Contributing to the Goal of Ensuring That Law Schools Deliver a Quality Education. Specific Standards and Interpretations that Should be Eliminated or Substantially Moderated on this Ground Include the Following:*

- a. Standard 206(c) (requiring that, except in extraordinary circumstances, a dean be a faculty member with tenure).
- b. Standard 304 (relating to course of study and academic calendar) including:

- a. Standard 304(b) (requiring as a condition of graduation 45,000 minutes of attendance in regularly scheduled class sessions).
- b. Standard 304(c) (requiring that the J.D. program be completed no earlier than 24 months after commencement of law study).
- c. Interpretation 305(c) (prohibiting credit for field placements in which the student receives compensation).
- d. Standard 603 (relating to requirements for Library Directors).
- e. Interpretation 701-2 (relating to physical facilities).
- f. Rules 25 and 27 (relating to confidentiality and disclosure of information about law schools).

3. *Carefully Study whether to Eliminate or Substantially Moderate the Requirement in Standard 304(b), of a Course of Study for the J.D. Consisting of No Fewer than 58,000 Minutes of Instruction Time, in that the Requirement may Impede Law School Innovation in Delivering a J.D. Education without Clearly Contributing to the Goal of Ensuring that Law Schools Deliver a Quality Education.*

4. *Revise the Standards, Interpretations, and Rules Concerning Variances as Follows:*

- a. Requests for variances from existing Standards should be regarded as opportunities for experimentation and innovation, and granted subject to sound evaluation of the experiment or innovation.
- b. The process for applying for and granting variances should be transparent and the grant or denial of a variance should be disclosed to the public.
- c. The Council of the Section of Legal Education and Admissions to the Bar should develop a procedure to request applications for variances in specific areas or with respect to specific Standards.
- d. An experiment or innovation authorized under variances, if demonstrated to be successful, should constitute an example potentially leading to a permanent exemption from a Standard or a change in a Standard.

5. *Provide Additional Consumer Information to Prospective Students as Recommended in 2007 by the Section's Accreditation Policy Task Force and in 2008 by the Section's Special Committee on Transparency.*

6. *Establish Standards for Accreditation of Programs of Legal Education Other than the J.D. Program.*

C. State Supreme Courts, State Bar Associations, and Other Regulators of Lawyers and Law Practice

State and territorial high courts, state bar associations, and other regulators of lawyers and law practice should undertake or commit to the following:

1. *Undertake to Develop and Evaluate Concrete Proposals for Reducing the Amount of Law Study Required for Eligibility to Sit for a Bar Examination or be Admitted to Practice, in Order to be Able to Determine Whether Such a Change in Requirements for Admission to the Bar Should be Adopted.*

2. *Undertake to Develop and Evaluate Concrete Proposals for Reducing the Amount of Undergraduate Study Required for Eligibility to Sit for a Bar Examination or be Admitted to Practice, in Order to be Able to Determine Whether Such a Change in Requirements for Admission to the Bar Should be Adopted..*

3. *As a Means of Expanding Access to Justice, Undertake to Develop and Evaluate Concrete Proposals to: (a) Authorize Persons Other than Lawyers with J.D.'s to Provide Limited Legal Services Without the Oversight of a Lawyer; (b) Provide for Educational Programs that Train Individuals to Provide those Limited Legal Services; and (c) License or Otherwise Regulate the Delivery of Services by Those Individuals, to Ensure Quality, Affordability, and Accountability.*

4. *Establish Uniform National Standards for Admission to Practice as a Lawyer, including adoption of the Uniform Bar Examination.*

5. *Reduce the Number of Doctrinal Subjects Tested on Bar Examinations and Increase Testing of Competencies and Skills.*

6. *Avoid Imposing More Stringent Educational or Academic Requirements for Admission to Practice than those Required Under the ABA Standards for Approval of Law Schools.*

D. Universities and Other Institutions of Higher Education

Universities and other institutions of higher education should undertake the following:

1. *Develop Educational Programs to Train Persons, other than Prospective Lawyers, to Provide Limited Legal Services. Such Programs May, but Need Not, Be Delivered through Law Schools that are Parts of Universities.*

E. Law Schools

Each law school should undertake the following:

1. *Develop and Implement a Plan for Reducing the Cost and Limiting Increases in the Cost of Delivering the J.D. Education, and Continually Assess and Improve The Plan.*

2. *Develop and Implement a Plan to Manage the Extent of Law School Investment in Faculty Scholarly Activity, and Continually Assess Success in Accomplishing the Goals in the Plan.*

3. *Develop a Clear Statement of the Value the Law School's Program of Education and other Services Will Provide, Including Relation to Employment Opportunities, and Communicate that Statement to Students and Prospective Students.*

4. *Adopt, as an Institution-Wide Responsibility, Promoting Career Success of Graduates and Develop Plans for Meeting that Responsibility.*

5. *Develop Comprehensive Programs of Financial Counseling for Law Students, and Continually Assess the Effectiveness of Such Programs.*

F. Law Faculty Members

Law school faculty members should undertake the following:

1. *Become Informed About the Subjects Addressed in This Report and Recommendations, in Order to Play an Effective Role in the Improvement of Legal Education at the Faculty Member's School.*

2. *Recognize the Role of Status as a Motivator but Reduce its Role as a Measure of Personal and Institutional Success.*

3. *Support the Law School in Implementing the Recommendations in Subsection E.*

G. The Legal Profession

Members of the legal profession should undertake the following:

1. *Become Informed About the Subjects Addressed in This Report and Recommendations, and Play an Effective Role in the Education of Law Students and Young Lawyers.*

H. Those Who Inform the Public About Legal Education

Those who supply information and those who employ it should undertake the following:

1. *Law Schools, the Profession, and Others in the System of Legal Education Should Commit to Providing the Public with Information about Improvements and Innovations in Legal Education that Respond to the Criticisms Previously Raised.*

2. *News Organizations Should Strive to Develop Expertise Regarding Legal Education among Staff, and the Organized Bar Should Seek to Assist Them in Doing so.*

3. *U.S. News & World Report Should Cease Using Law School Expenditures as a Component of Its System for Ranking Law Schools and, in General, Should Ensure that Its Ranking Methodology Does Not Promote Conduct Damaging to the Interests of Law Students and the System of Legal Education.*

IX. CONCLUSION

Respectfully submitted by the Task Force on the Future of Legal Education, January, 2014.

The Honorable Randall T. Shepard, Chair

APPENDIX

I. THE TASK FORCE AND ITS WORK

The Task Force on the Future of Legal Education was commissioned by then-President of the American Bar Association Wm. T. (Bill) Robinson III in Spring 2012. President Robinson appointed the Honorable Randall T. Shepard, Chief Justice Emeritus of the Indiana Supreme Court, as Chair, and appointed other Task Force members and the Reporter. The Task Force received continued support from the successor American Bar Association Presidents, Laurel G. Bellows and James R. Silkenat, throughout the term of Task Force's operation.

In addition to this support by the ABA leadership, the Task Force has been empowered by the staffs of the Center for Professional Responsibility and the Section of Legal Education and Admissions to the Bar. Direct financial support has been provided by the Law School Admissions Council, Indiana University-Purdue University-Indianapolis, and the Indiana University McKinney School of Law.

The Task Force was asked to submit a report within two years. Because of the urgency of the matter, the Task Force took it upon itself to accelerate the timeline and is submitting this Report and Recommendations in December 2013, so that it can be further refined and considered at the February 2014 Meeting of the ABA House of Delegates.

To prepare this Report and Recommendations, the Task Force: solicited written comments from interested parties throughout the period of September 2012-August 2013; held two hearings, one in Dallas at the February 2013 Midyear Meeting and one in San Francisco at the August 2013 Annual Meeting; and held a Mini-Conference in Indianapolis in April 2013, to which various knowledgeable parties were invited to share information and perspectives with the Task Force.

In addition, the Chair and the Reporter met twice with the Board of Governors of the American Bar Association; met with the leadership of the Association of American Law Schools; met twice with the Council of the ABA Section; and presented a panel at the ABA Section's meeting for deans of ABA-approved law schools. The Chair or other members of the Task Force held forums at the Annual Meeting of the Council on Higher Education Accreditation and the Conference of Chief Justices. The Task Force gathered and reviewed literature on problems and solutions. It met, both in subcommittees and as a Task Force, both in person and by teleconference, throughout its term to develop clear statements of the issues, to review and test potential actions and solutions, and to prepare this Report and Recommendations.

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An incomplete inventory of NewLaw

By Jordan Furlong

So I was asked to give a presentation about “NewLaw.” No problem at all — aside from the minor, niggling detail of figuring out what “NewLaw” is supposed to be.

Like other terms in vogue within the legal profession (cf. “non-lawyer”), we seem to understand better what “NewLaw” isn’t than what it is. George Beaton of Australia, who has [written more than anyone else on this subject](#), describes the NewLaw business model as [the antithesis of the BigLaw model](#), and that’s certainly true. For my purposes, though, I was inclined to cast the net a little more widely — to encompass not just law firm models, but also new legal talent combinations, legal service managers, and technology that both changes how lawyers practice and places the power of legal service provision in clients’ hands. So I decided to use “NewLaw” to describe any model, process, or tool that represents a significantly different approach to the creation or provision of legal services than what the legal profession traditionally has employed.

With that definition and goal in mind, I set out to catalogue the *genus* “NewLaw” as best I could. What I wound up with was two broad categories, six sub-groups, and a whole bunch of exceptions. I thought I’d share the lot with you, partly because I thought you might be interested, and partly because I’d welcome your suggestions for supplementing the list with new entries, transferring an entry into a different category, expanding upon the disclaimers, and generally broadening and deepening the conversation. This is not meant to be a definitive inventory of “NewLaw.” It’s merely my attempt to understand the term better and identify at least some of its manifestations in the market.

First, the exceptions and disclaimers.

1. Several innovative legal companies and technologies aren’t on the list, but only because I think their primary focus is the marketing or management of law practices, rather than the creation and delivery of legal services. So I set aside the growing number of practice management support companies like [Clio](#), [CaseTrek](#), [Curo Legal](#) and [Rocket Matter](#), as well as marketing, management, and business development services like [Avvo](#), [DirectLaw](#), [LawDingo](#), [LawGives](#), [FlatLaw](#), [Legati Law](#) and [UpCounsel](#), although they’re certainly in the NewLaw neighbourhood (and if you think they should be in the NewLaw community itself, let me know why in the Comments).

Evolutionary Road

2. I also decided not to include e-discovery providers, but mostly because I’d have been here all week cataloguing all the players in this market. Also, while there’s no question it’s had a serious impact on how litigators do their job and sell their time, I might argue that e-discovery is increasingly accepted as part of litigation and isn’t all that “New” anymore. Similarly, predictive coding (or more accurately, binary classification) is a warp-drive engine for e-discovery and many other emerging legal functionalities; the whole area of legal machine learning promises to be extraordinarily disruptive. But aside from a few firms that made the list, I was hard-pressed to think of many clear leaders in this area. Again, I’d welcome your recommendations.

3. I really wasn’t sure where to put [LegalZoom](#) and [Rocket Lawyer](#) in this list. They’re clearly “NewLaw” leaders and must be included, even if they’re frequently (and wrongly) described by lawyers as legal technology companies. They provide a sort of hybrid combination of legal documents available online and networks of affiliated law firms that supplement the documents with higher-value services ([Jacoby & Meyers](#), which is listed below, could also fit within this category). Given that LegalZoom is frequently challenged by state bars and that Rocket Lawyer presumably also gets dirty looks from legal regulators, we might also refer to these enterprises as the NewLaw strike force.

4. Also not making the cut: [BigLaw online legal services](#) (Ron Friedmann's list is essential, but I'm not sure how many of these entries are game-changers), law school-based entities ([Reinvent Law](#), [LawSync](#), and [Law Without Walls](#) are still all worth your attention, though), and some true category killers that just haven't reached a critical mass yet ([say hello to accountants practicing law](#)).

5. I repeat: this list neither pretends nor aspires to be exhaustive. You may have a fascinating legal startup that I've never heard of, or that (to my mind) hasn't gained enough traction yet to merit inclusion here. But if you belong to a small or midsize firm that's pricing everything with fixed fees or selling through online delivery, or if you've launched a legal technology offering that's changing the way legal services are produced or obtained, by all means identify yourselves in the Comments section.

6. A final note to startups: in no way does this post mean I can give you useful feedback on your product or service, because I very likely can't. I was a liberal arts major for a reason. This really is just an attempt at a "NewLaw" catalogue, not a stealth advertisement for consulting services.

With all that out of the way, we can move to the actual lists. I ended up putting all the NewLaw entities I could find into two broad categories and six sub-groups:

1. Aligning Human Talent with Legal Tasks

- *New-Model Law Firms*
- *Project/Flex/Dispersed Legal Talent Providers*
- *Managed Legal Support Services*

2. Applying Technology to the Performance of Legal Tasks

- *Tools To Help Lawyers Do Legal Work Differently*
- *Tools To Help Clients Resolve Disputes Directly*
- *Tools to Help Clients Conduct Their Own Legal Matters*

Of course, many of the tools and enterprises listed below overlap to some degree with other sub-groups and categories. There are very few NewLaw human enterprises that don't make use of technology and very few NewLaw technologies that don't involve human application; I tried to position each entry under the heading that made the most sense. (The one-line descriptions are taken from the entities' own websites or materials; the parenthesised jurisdiction is where the entity is headquartered.)

1. Aligning Human Talent with Legal Tasks

A. *New-Model Law Firms*

- [Brilliant Law](#) - "Legal advice and expertise you can trust, at prices your business can afford – the fixed price legal services solution for you and your business." (UK)
- [Clearspire](#) - "We offer a complete, value-driven solution for outsourcing complex legal matters ... a radically new and efficient law firm for the 21st century." (US)
- [Cloudigy Law](#) – "A cloud-based intellectual property & technology law firm." (US)
- [Co-Op Legal Services](#) - "Our legal team provides confidential help, exactly the level of advice and support you need with fixed fee pricing for most services." (UK)
- [Gunner Cooke](#) - "A boutique corporate law firm with one, clear vision: to challenge, improve and evolve the way legal services are provided." (UK)
- [HiveLegal](#) - "Law firm which improves the experience for our clients, our team and our network." (Australia)

- [Hunoval Law](#) - “A premier law firm for default servicing clients. Our dynamic leadership leverages cutting-edge proprietary technologies and Six Sigma process analysis.” (US)
- [Jacoby & Meyers](#) - “It’s our goal to make the legal system more accessible and more affordable for everyone, and we’ll evaluate your case or legal matter for free.” (US)
- [Justice Cafe](#) - “We are striving to bridge the justice gap by dishing up affordable legal help in our communities.” (US)
- [Keystone Law](#) - “A dispersed business model, with senior solicitors working from satellite offices, supported by a central London office.” (UK)
- [LegalForce](#) - “A modern progressive law firm based in Silicon Valley with over 23,000 clients worldwide.” (US)
- [Marque Lawyers](#) – “We started our firm with the desire to practise law in a new and better manner, and in particular to do away with the business of charging for legal services on the basis of the time spent doing it.” (Australia)
- [Potomac Law](#) - “We are able to offer clients exactly what they are seeking: sophisticated legal advice from knowledgeable attorneys at attractive rates.” (US)
- [Quality Solicitors](#) - “A group of modern, progressive law firms spread across the UK, each one chosen because their clients tell us that they deliver great customer service.” (UK)
- [Riverview Law](#) – “We deliver fixed-fee legal advice for businesses of all sizes. We are changing the way businesses use, measure and buy legal services.” (UK)
- [Salvos Legal](#) - “We provide quality commercial and property law advice on a paid basis. However, all of our fees fund our ‘legal aid’ sister firm. Both are wholly owned by The Salvation Army.” (Australia)
- [Seyfarth Lean](#) – “A distinctive client service model that provides a different way of thinking about and delivering legal services.” (US)
- [Slater & Gordon](#) - “A leading consumer law firm in Australia with a growing presence in the UK consumer law market. We employ 1,200 people in 70 locations across Australia and 1,300 people in 18 locations in the UK.” (Australia)
- [VLP Law Group](#) - “We provide sophisticated legal advice in a wide range of practice areas, but our overhead is low, our staffing lean, our fees flexible and value-driven.” (US)
- [Winn Solicitors](#) - “We are national road traffic accident specialists. With Winns, you have no excess to pay.” (UK)

B. Project/Flex/Dispersed Legal Talent Providers

- [Advent Balance](#) - “A firm that combines the expertise of outside counsel with the best qualities of a sophisticated in-house team.” (Australia)
- [Avokka Virtual GC](#) - “Virtual counsel. Real results. Shift your thinking about legal counsel. Change the way you do business.” (Canada)
- [Axiom](#) - “A 1,000-person firm, serving nearly half the F100 through 12 offices and 4 centers of excellence globally.” (US)
- [Bespoke Law](#) - “A network of experienced lawyers who are available to provide clients with tailored support without watching the clock.” (Australia)
- [Cognition](#) - “A team of highly experienced and skilled lawyers offering first-class business legal counsel either on-site or off-site, on a flexible, as-needed basis.” (Canada)
- [Conduit](#) - “We pride ourselves on providing knowledgeable and effective legal counsel to address your needs as they emerge within your business.” (Canada)

- [Custom Counsel](#) - “We are a nationwide collective of over 100 experienced attorneys who provide project-based legal services to other attorneys.” (US)
- [Daily General Counsel](#) - “We come to your place of business for a full day and help you to solve your most pressing legal-related business problems.” (US)
- [Delegatus](#) - “We have reinvented the law firm business model for you.” (Canada)
- [Eversheds Agile](#) - “We meet a demand by clients for temporary, high-quality legal professionals that provide peace of mind and a link to an international law firm.” (UK)
- [Fondia](#) - “A strategy that breaks with traditional law firm culture to transform the experience of clients and staff.” (Finland)
- [Halebury Law](#) - “Your external in-house lawyers – offering clients senior ex in-house lawyers on a flexible basis.” (UK)
- [Intermix Legal](#) – “Experienced freelance attorneys providing project-based legal support services to law firms & solo practitioners.”
- [Lawyers On Demand](#) - “You can flex the size and capability of your team just when you need to.” (UK)
- [Paragon](#) - “We provide embedded attorneys on a project basis to assist with overflow work, hiring gaps, interim backfills and special projects.” (US)
- [Pinsent Masons Vario](#) - “We are a hub of freelance legal professionals who are not just technically skilled, but have the personality and drive to ‘fit right in’, to add value from day one.” (UK)
- [The Posse List](#) - “We post document reviews, paralegal positions, forensics positions, litigation support positions, project management positions, compliance positions, general counsel/assistant general counsel positions – pretty much everything across the legal employment field.” (US)
- [Project Counsel](#) - “We post European, Asia Pacific and Persian Gulf based document reviews, paralegal positions, forensics positions, litigation support positions, project management positions, compliance positions, law firm associate positions, and general counsel positions.” (Belgium)
- [VistaLaw](#) - “A global team of former in-house attorneys with broad experience in providing legal support and advice to international companies.” (UK)

C. *Managed Legal Support Services*

- [Elevate Legal Services](#) - “A global legal service provider helping law firms and corporate legal departments operate more effectively.” (US)
- [LeClair Ryan Legal Solutions](#) - “We provide a wide range of support services and incorporate best-in-class technology and quality control processes which will be uniquely integrated into the law firm’s litigation and transactional practice areas.” (US)
- [MiamiLex](#) - “A revolutionary alliance of the School of Law at the University of Miami and UnitedLex, a leading global provider of legal support and technology services.” (US)
- [Novus Law](#) - “We provide legal document management, review and analysis services for lawyers that are measurably more accurate, faster and less expensive.” (US)
- [Obelisk Legal Support](#) - “We provide flexible, affordable and quality support for in-house legal teams and law firms.” (UK)
- [OnRamp Apprentice](#) - “We hire recent law grads to work on large scale ‘contract genome mapping’ projects.” (US)
- [Pangea3](#) - “The global leader in legal outsourcing. Our LPO provides comprehensive legal services to corporate lawyers and law firms.” (US)

- [Radiant Law](#) - “Outsourcing, IT, commercial contracts from negotiations to disputes. We bring together legal judgement, process and technology.” (UK)
- [United Lex](#) - “The global leader in legal services outsourcing, provides litigation, contracts and IP services to corporations and law firms.” (US)

2. Applying Technology to the Performance of Legal Tasks

A. Tools To Help Lawyers Do Legal Work Differently

- [AAA ClauseBuilder](#) - “Designed to assist individuals and organizations develop clear and effective arbitration and mediation agreements.” (US)
- [BrightLeaf](#) - “A technology-driven service that automates the entire process of abstracting information from all your contracts for upload to your CMS or for use with our abstraction analysis tool.” (US)
- [CaseText](#) - “Judicial opinions and statutes are annotated with analysis by prominent law professors and attorneys at leading firms, giving you unique insight. And everything is 100% free.” (US)
- [ClearAccess IP](#) – “Serving the patent marketplace by lowering transactions and streamlining data management at the prosecution level.” (US)
- [Diligence Engine](#) - “Technology-enhanced contract review: faster and more accurate.” (Canada)
- [Judicata](#) - “Mapping the legal genome to help you better understand the law.” (US)
- [Jurify](#) - “We harness the collective genius of legal titans to deliver a complete set of resources on legal topics in one quick search.” (US)
- [KM Standards](#) - “Our patented software allows you to build model forms from your own agreements, audit entire contract sets, and quickly review incoming contracts.” (US)
- [Koncision Contract Automation](#) - “A subscription-based service providing lawyers with document-assembly templates for business contracts.” (US)
- [Legal Systematics](#) - “We deliver automated document drafting programs and other advanced knowledge tools for making legal work more efficient.” (US)
- [Lex Machina](#) - “We provide legal analytics to companies and law firms, enabling them to craft successful strategies, win cases, and close business.” (US)
- [Littler CaseSmart](#) - “A case management solution that combines a Littler-developed proprietary technology platform with rigorous quality assurance measures.” (US)
- [Mootus](#) - “We help law students and lawyers build skills, reputation and knowledge for free through open, online legal argument.” (US)
- [Neota Logic](#) - “We transform expertise into answers and action.” (US)
- [Ravel Law](#) - “Data-driven legal research and analytics.” (US)
- [Sky Analytics](#) - “Helps reduce legal spend, control legal costs and benchmark legal spend.” (US)
- [TyMetrix](#) - “The leader in bringing advanced technologies to critical dimensions of legal transactions and analytics.” (US)

B. Tools To Help Clients Resolve Disputes Directly

- [CleanSplit](#) - “An easy-to-use tool that allows divorcing couples to divide their property without confrontation while saving time and legal fees.” (US)
- [Fair Outcomes](#) - “Provides parties involved in disputes or difficult negotiations with access to newly developed proprietary systems that allow fair and equitable outcomes to be achieved with remarkable efficiency.” (US)

- [Fixed](#) - “The easiest way to fix a parking ticket.” (US)
- [Modria](#) - “The world’s leading Online Dispute Resolution platform.” (US)
- [Picture It Settled](#) - “Using neural networks to examine the behaviour of negotiators in thousands of cases, we can predict what an opponent will do, thereby saving time and money while optimizing settlements.” (US)
- [Rechtwijzer](#) - “Rechtwijzer 1.0 was ... an appropriate, trustable legal helping hand that would assist people throughout their conflicts. [Rechtwijzer 2.0] enhances its services from diagnosing and referral into dispute-solving.” (The Netherlands)
- [Resolve Your Dispute](#) - “A self-help online tool for consumers to settle disputes with a business.” (Canada)
- [Road Traffic Representation](#) - “We provide you free expert advice to help you with your motor offence, from speeding fines to driving without insurance.” (UK)
- [WeVorce](#) - “Divorce is more than a legal problem. ... You’ll come out with the necessary legal documents as well as a lifetime of tools, knowledge and agreements as you begin again.” (US)

C. Tools to Help Clients Conduct Their Own Legal Matters

- [A2J Author](#) – “A software tool that delivers greater access to justice for self-represented litigants by enabling non-technical authors from the courts, clerk’s offices, legal services programs, and website editors to rapidly build and implement customer friendly web-based interfaces for document assembly.” (US)
- [Docracy](#) - “The web’s only open collection of legal contracts and the best way to negotiate and sign documents online.” (US)
- [EverPlans](#) - “We provide guides, resources and a platform to help you create a plan that contains everything your loved ones will need if something happens to you.” (US)
- [Fair Document](#) - “You get all your necessary estate planning documents completed quickly, and our streamlined process of working with an attorney affords peace of mind.” (US)
- [Iron Tech Lawyer](#) - “A competition held at Georgetown Law, where student teams show off apps built in our Technology Innovation and Law Practice practicum.” (US)
- [Law Help Interactive](#) - “Helps you fill out legal forms. Answer a series of questions and print your legal form. The forms are free and have been created by nonprofit legal aid programs and courts.” (US)
- [Lexspot](#) - “Our online platform ... makes the convoluted and expensive immigration process easy and affordable. ” (US)
- [Peppercorn](#) - “Create legal agreements, in multiple languages, in just minutes.” (Italy)
- [Probate Wizard](#) - “Probate is daunting. We make it simple. ... the most advanced DIY probate system in the UK.” (UK)
- [Shake](#) - “We strive to combine the simplicity, convenience, and collaborative spirit of a handshake with the protection of a legal agreement.” (US)
- [Smart Legal Forms](#) - “Designed for US consumers and small business who want to resolve their legal problems at the lowest possible cost.” (US)

Some closing observations:

1. A disproportionate number of new legal talent arrangements are found outside the US (especially in England & Wales), while a disproportionate number (nearly all of them, in fact) of technology solutions are found inside the US. I attribute the former to more liberal regulatory regimes in other jurisdictions and the latter to the enormous amounts of venture capital available within the United States. (Conceivably, the restrictions on American law firm ownership help drive more resources towards tech solutions.)

2. When I started this inventory, I expected the tech entries to outnumber the talent entries, and I was surprised to see the opposite result. That might be purely a function of what I found, rather than what's actually there. But I do take it as evidence that many more lawyers have seen and responded to the changes in how clients are buying legal services and engaging legal professionals than we generally credit. If anyone within your organization wants to reject change on the basis that "no one else is doing it," show them this post.

3. A lot of these companies and products might want to reconsider the fad in branding that creates a name by joining two related terms together to make one word. (Says the guy with a blog called "Law21.")

So there you have it: my incomplete inventory of this indeterminate thing called "NewLaw." It's good enough for my presentation; hopefully, with your contributions and observations, you can make it even better.

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A PRIMER ON PROFESSIONALISM FOR DOCTRINAL PROFESSORS

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INTRODUCTION

Legal education reform advocates agree that law schools should integrate “professionalism” throughout the curriculum.¹ Ultimately, it falls to individual professors to decide how to incorporate professionalism into each course. This can be an especially difficult task for doctrinal professors. The law—and not the practice of law—is the focus of most doctrinal casebooks. Law students typically do not act in role as lawyers in these classes, so they are not compelled to resolve professional dilemmas in class, as students would be in a clinic or simulation-based course. As a result, it takes some additional preparation and thought to introduce professionalism issues into these courses. Some professors may resist making this change—not knowing which aspect or aspects of professionalism should be the focus, fearing that time spent on professionalism will

1. ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 73–76 (2007), *available at* www.law.sc.edu/faculty/stuckey/best_practices/best_practices-full.pdf; WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 14, 147 (2007) (arguing that “professionalism needs to become more explicit and better diffused throughout legal preparation” and describing the various ways professionalism can be integrated into the curriculum).

detract from the real subject matter of the class, or believing professionalism is adequately covered elsewhere in the curriculum.

This Article considers how and why doctrinal professors should address the challenge of integrating professionalism into the classroom. Part I briefly discusses the multitude of meanings ascribed to attorney professionalism and argues that the lack of a clear, concise, and shared definition is a substantial barrier to effectively incorporating professionalism into the law school curriculum. Next, Part II provides a more coherent, streamlined definition of attorney professionalism. This Part also identifies and describes three primary aspects of lawyer professionalism: fulfilling duties to clients, satisfying duties to the bar, and possessing core personal values essential to being a good lawyer. This simplified conception of professionalism should begin to address the concerns of professors who do not know where to begin to incorporate professionalism into their classes. It is also intended to persuade skeptics that professionalism is something they can and should teach as part of their doctrinal classes.

Thereafter, Part III provides guidance for developing course outcomes that connect course subject matter and professionalism. Questions prompt doctrinal professors to look for the natural connections between their course subject matter and issues of professionalism. Then, Part IV considers various methods doctrinal professors can use to introduce professionalism topics into their courses. Integrating professionalism into the classroom does not require professors to abandon their casebooks; using case law can be an effective method. This Part also considers other teaching methods and materials for combining doctrine, skills, and professionalism. Finally, Part V concludes with thoughts on how students benefit when professors make the effort to incorporate professionalism into every law school classroom.

I. COMPLEX DEFINITIONS OF ATTORNEY PROFESSIONALISM

The term professionalism encompasses the standards, values, and qualities of members of a profession.² Attorney professionalism has been defined in a multitude of ways.³ For example, *Best*

2. G. & C. MERRIAM CO., WEBSTER'S NEW COLLEGIATE DICTIONARY 911 (1980) (defining "professionalism" as "the conduct, aims, or qualities that characterize or mark a profession or a professional person"); RIVERSIDE WEBSTER'S II NEW COLLEGE DICTIONARY (Marion Severynse et al. eds., 1995) (defining "professionalism" as "professional status, methods, character, or standards").

3. Alison Donahue Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current*

Practices for Legal Education: A Vision and a Roadmap (“*Best Practices*”) explains that beyond complying with professional conduct rules, professionalism is the conduct “expected [by the public and] . . . the best traditions of the profession itself.”⁴ After discussing various facets of attorney professionalism,⁵ *Best Practices* concludes that five professional values deserve special attention: (1) a commitment to justice;⁶ (2) respect for the rule of law;⁷ (3) honor, integrity, fair play, truthfulness, and candor;⁸ (4) sensitivity and effectiveness with diverse clients and colleagues;⁹ and (5) nurturing quality of life.¹⁰

Educating Lawyers: Preparation for the Profession of Law (the “*Carnegie Report*”) provides another definition of professionalism. It explains the “apprenticeship of professional identity” as involving professional ethics (the rules of professional conduct) and “wider matters of morality and character.”¹¹ The *Carnegie Report* argues that professionalism education “should encompass issues of both individual and social justice” and should include “the virtues of integrity, consideration, civility, and other aspects of professionalism” and “conceptions of the personal meaning that legal work has for practicing attorneys and their sense of responsibility toward the profession.”¹²

Of course, these are but two definitions of attorney professionalism. Many other authorities have weighed in on the meaning of the term.¹³ With so many definitions, some have

Trends in Professionalism Education in American Law Schools, 38 U. DAYTON L. REV. 57, 68 n.52 (2013) (noting the numerous definitions of legal professionalism and the lack of consensus about what the term means).

4. STUCKEY ET AL., *supra* note 1, at 59. *Best Practices* lists the following ways that lawyers demonstrate professionalism: “civility, honesty, integrity, character, fairness, competence, ethical conduct, public service, and respect for the rule of law, the courts, clients, other lawyers, witnesses, and unrepresented parties.” *Id.*

5. *Id.* at 61–62.

6. *Id.* at 62–63.

7. *Id.* at 64–65.

8. *Id.* at 65–66.

9. *Id.* at 66–67.

10. *Id.* at 67.

11. SULLIVAN ET AL., *supra* note 1, at 129. *The Carnegie Report* conceptualized education concerning professional ethics as “the law of lawyering” and education on moral and ethical matters as “professionalism.” *Id.*

12. *Id.* at 132.

13. *See infra* notes 77–98 and accompanying text (discussing various authorities on professionalism and focusing on the values and traits of the professional lawyer).

questioned whether the legal profession has a common understanding of professionalism.¹⁴

This variety of definitions creates several barriers to effectively incorporating professionalism into doctrinal classes. First, although many professors say they are incorporating professionalism into their classes,¹⁵ it is impossible to know what they mean without probing further. For one professor, “teaching professionalism” means pointing out a relevant professional conduct rule from time to time, while another thinks professionalism education means discussing civility, service, or something else. Second, some professors may be open to integrating professionalism into their classes, but do not know where to begin in addressing the seemingly innumerable aspects of the term. Third, other professors might choose not to address the topic at all because they perceive professionalism to be unrelated to their expertise or the subject matter of their class. Depending on their view of the term’s meaning, they may think professionalism cannot be developed in law school¹⁶ or that someone else on the faculty is better equipped to teach the topic.¹⁷ In each of these cases, professors are not integrating professionalism into the doctrinal classroom because they do not have a clear understanding of what attorney professionalism means.

II. THREE ASPECTS OF ATTORNEY PROFESSIONALISM

Law professors need a better definition of attorney professionalism. A more streamlined and concise definition could help the willing professor know where to focus as he or she begins planning to incorporate the topic into a doctrinal class. A clearer definition could also help skeptical professors understand that

14. Daisy Hurst Floyd, *Foreword Empirical Professional Ethics Symposium of the University of St. Thomas Law Journal*, 8 ST. THOMAS L. J. 101, 102 (2011) (“Even as the discussion has broadened and our understanding has deepened, however, there remains a tendency towards anecdotal or intuitive approaches to the topic of professionalism rather than empirical research.”).

15. See SULLIVAN ET AL., *supra* note 1, at 151 (noting that most law schools say that their faculties use the pervasive method of teaching legal ethics in doctrinal classes, at least to some extent).

16. See *id.* at 133 (asserting that faculty believe that by the time students enter law school it is too late to impact their moral development).

17. For example, a professor who believes that professionalism is synonymous with professional conduct rules will undoubtedly believe professors who teach the law school’s required professional responsibility course are in the best position to teach professionalism. See *id.* at 149 (explaining that professors whose specialty is not the “law of lawyering” might not consider themselves qualified to introduce ethical concerns into their courses).

professionalism is something they are qualified to teach and that addressing the topic will enhance—rather than detract from—student understanding of course subject matter. A shared definition of the term can help faculty members know they mean the same thing when they agree to teach professionalism.

When all of the various meanings ascribed to professionalism are considered, three aspects of attorney professionalism emerge. Professional lawyers (1) fulfill duties to clients, (2) meet their obligations to the bar by complying with professional conduct rules, and (3) exhibit core personal values essential to being a good lawyer. The third aspect—a lawyer's ideal personal values—has been discussed in numerous writings.¹⁸ The other two aspects of professionalism—fulfilling duties to clients and complying with professional conduct rules—are almost always mentioned,¹⁹ but are seldom discussed at length.²⁰

The following discussion is intended to help doctrinal professors develop their understanding of each aspect of professionalism. In the process, many professors will also recognize the natural fit between some of these issues and the subject matter of the doctrinal courses they teach.

18. See STUCKEY ET AL., *supra* note 1, at 62 (concluding that five professional values deserve special attention: (1) a commitment to justice; (2) respect for the rule of law; (3) honor, integrity, fair play, truthfulness, and candor; (4) sensitivity and effectiveness with diverse clients and colleagues; and (5) nurturing quality of life).

19. A 1992 report (generally known as the *MacCrate Report*) of an ABA Task Force described “the provision of competent representation” as one of four values of the profession. AM. BAR ASS'N, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM 140 (1992) [hereinafter “MACCRATE REPORT”]. *Best Practices* mentioned complying with professional conduct rules as an aspect of professionalism, but did not include it (or fulfilling duties to clients) in the five professional values that were highlighted in the volume. See STUCKEY ET AL., *supra* note 1, at 60–61. Additionally, the *Carnegie Report* explained that “professional ethical engagement” encompasses both “matters of character and rules of conduct.” SULLIVAN ET AL., *supra* note 1, at 129.

20. Perhaps these aspects of professionalism (fulfilling duties to clients and duties under professional conduct rules) have received less attention because legal educators believe they are adequately covered in professional responsibility classes or elsewhere in the curriculum. Certainly, students in clinics and simulation-based classes naturally receive more exposure to these issues. If professionalism is to be covered in the doctrinal classroom, however, professors must be deliberate in discussing all three aspects.

A. Fulfilling Duties to Clients

A central value of the legal profession is fulfilling duties to clients. Lawyers and clients are in a fiduciary relationship.²¹ As such, lawyers owe their clients duties of competence, diligence, and loyalty.²² An attorney must act with the competence and diligence normally exercised by lawyers under similar circumstances.²³ The duty of loyalty provides that a lawyer must protect client property and confidences, avoid prohibited conflicts of interests, and take no advantage arising from the attorney–client relationship.²⁴ When a lawyer violates these duties, the client has a cause of action for professional negligence, malpractice, and/or breach of fiduciary duty.²⁵

Professors in doctrinal classes may believe they are focused on the competence component of fiduciary duty. The content of a class is selected, in part, to provide students with the legal knowledge necessary to navigate an area of the law. But there is more to

21. See, e.g., *Cultra v. Douglas*, 444 S.W.2d 575, 578–79 (Tenn. Ct. App. 1969) (“The relationship of attorney and client is an extremely delicate and fiduciary one, so far as the duty of the attorney toward his client is concerned, and the courts jealously hold the attorney to the utmost good faith in the discharge of his duties.”).

22. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 16 cmt. b (2000) (“*Rationale*. A lawyer is a fiduciary, that is, a person to whom another person’s affairs are entrusted in circumstances that often make it difficult or undesirable for that other person to supervise closely the performance of the fiduciary. Assurances of the lawyer’s competence, diligence, and loyalty are therefore vital.”).

23. *Id.* § 16(2) (“[A] lawyer must, in matters within the scope of the representation: . . . act with reasonable competence and diligence. . . .”); *id.* § 52 (“a lawyer who owes a duty of care must exercise the competence and diligence normally exercised by lawyers in similar circumstances”); see also RESTATEMENT (THIRD) OF THE LAW OF AGENCY § 8.08 (2006) (“If an agent claims to possess special skills or knowledge, the agent has a duty to the principal to act with the care, competence, and diligence normally exercised by agents with such skills or knowledge.”).

24. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 16(3) (2000) (describing the duty of loyalty as encompassing the obligation to “comply with obligations concerning the client’s confidences and property, avoid impermissible conflicting interests, deal honestly with the client, and not employ advantages arising from the client-lawyer relationship in a manner adverse to the client”). See also RESTATEMENT (THIRD) OF THE LAW OF AGENCY §§ 8.02–8.06 (2006) (describing the duty of loyalty as including the duty not to take a material benefit arising from the relationship, not to act as or on behalf of an adverse party, not to compete, not to use the principal’s property or confidences, absent principal consent).

25. RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 49, 50 (2000) (describing a lawyer’s liability for professional negligence and breach of fiduciary duty).

competence than knowledge of law. Competence demands that a lawyer act as a reasonable lawyer would in a given situation.

Doctrinal professors may unwittingly give students the wrong impression about lawyer competence in a class where case law is the centerpiece of most readings and discussions. Through case law, students are primarily exposed to the lawyer's role as zealous courtroom advocate—someone who presents the best arguments in favor of a client's version of the law or facts.²⁶ Advocacy in litigation by skilled attorneys on both sides of a contested factual or legal issue is central to our system of justice.²⁷ But, lawyers necessarily do more than battle with adversaries on behalf of their clients. In fact, an adversarial mindset hinders a lawyer's ability to play other roles that a competent lawyer must fulfill.

Law students should be reminded frequently that every issue in litigation is not in dispute and need not be contested by counsel. In the course of litigation, many issues (such as an extension of time or resolution of a discovery issue) do not impact parties' substantive rights and need not be the subject of argument. In these situations, competent lawyers should be problem-solvers skilled in the give and take necessary to provide excellent representation to their clients.²⁸ When attorneys think it is their role to zealously argue every point, however, they can cost their clients time, money, and good will with the court and opposing counsel.²⁹ And, when they later raise an issue that is genuinely important to their client, it is difficult for the court to know the difference or for opposing counsel to care.

Another lawyering role that is generally absent from the doctrinal casebook is lawyer as advisor: a lawyer in a non-litigation setting advising a client about the propriety of future conduct. Contrary to the conception of most students, the legal advisor's job is not to zealously argue that the client's plan is arguably within the

26. See SULLIVAN ET AL., *supra* note 1, at 127 (explaining that law school's focus on courtroom advocacy neglects the lawyer's role as counselor and court officer).

27. See DAVID LUBAN, *LAWYERS AND JUSTICE: AN ETHICAL STUDY* 54–55 (1988) (describing the lawyer's role as zealous advocate in trial); Stephen Gillers, *Is Law (Still) an Honorable Profession?*, 19 *PROF. LAW.* 23, 24 (2009) (describing the roles of opposing counsel and judge in checking zealous advocacy in a courtroom); Michael Hatfield, *Professionalizing Moral Deference*, 104 *NW. U. L. REV. COLLOQUY* 1, 6 (2009) (explaining the role of zealous advocacy in the American legal system).

28. See, e.g., *The Sedona Conference Cooperation Proclamation*, 10 *THE SEDONA CONF. J.* 331, 331–32 (2009) (explaining that cooperation in discovery is consistent with zealous advocacy).

29. An example is provided later in this article. See *infra* notes 107–08 and accompanying text.

bounds of the law. A competent advisor must fully analyze the client's prospect for liability and advise the client of the risks of liability.³⁰ A competent advisor knows that moral reasoning plays an essential role in providing legal advice. This is because conduct that attorneys recognize as "unethical" often results in legal liability. Lawyers who ignore moral intuition do so at their clients' peril.³¹

There are three key reasons that competent legal advisors must have a mindset of exercising judgment and *advising* (sometimes advising against) rather than *advocating*. First, a client cannot make an informed decision to engage in risky conduct if a lawyer has not fully apprised the client of the risks of liability. In this way, good advising respects client autonomy.³² Second, lawyers face civil and criminal liability (as well as professional discipline) when they facilitate client crimes, frauds, and breaches of fiduciary duty.³³ So, even if a client decides to engage in legally risky behavior, the lawyer still must decide if facilitating the client's plan puts the lawyer at risk of liability as well. Third and finally, lawyers owe special duties to protect clients who cannot protect themselves, such as organizational clients and clients with diminished capacity.³⁴ The lawyer's duties of competence and loyalty are owed to the clients themselves and not to the clients' agents who may otherwise harm the clients by engaging in a legally misguided course of conduct.³⁵

If law students are not exposed to these issues in the doctrinal classroom, they are less likely to act competently when addressing client problems in practice.

30. See, e.g., *Bellino v. McGrath North Mullin & Kratz, PC LLO*, 738 N.W.2d 434, 445–47 (Neb. 2007) (client stated a claim against attorney for failing to advise client of the risk of liability if client engaged in planned conduct).

31. Paula Schaefer, *Harming Business Clients with Zealous Advocacy*, 38 FLA. ST. L. REV. 251, 265 (2011) (explaining that the problem with lawyers separating morality and legality is that "morality often bears upon legal liability").

32. See Fred C. Zacharias, *The Images of Lawyers*, 20 GEO. J. LEGAL ETHICS 73, 87 (2007) (explaining the lawyer's role in enhancing client autonomy).

33. See, e.g., RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 94(1)(a) (2000) (explaining when a lawyer will be liable to third parties for conduct arising from the lawyer's representation of a client); *id.* § 8 (discussing lawyer criminal liability). Professional conduct rules require lawyers to withdraw from a representation in those circumstances. See MODEL RULES OF PROF'L CONDUCT R. 1.16 (2013).

34. See, e.g., RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 96 cmt. f (2000) (stating that a lawyer's duties are owed to organizational client and the lawyer must act in best interests of the client when the client's agents plan to violate a duty to the organization or engage in misconduct that will be imputed to the organization).

35. *Id.* § 96 cmt. e.

B. Fulfilling Duties to the Bar as Reflected in Professional Conduct Rules

The next aspect of professionalism is an attorney's duties to the bar. These duties are reflected in the professional conduct rules adopted by the highest court of each state as well as federal courts. In most jurisdictions, these rules are based to some extent upon the ABA's *Model Rules of Professional Conduct*.³⁶ It is important to know that most jurisdictions adapt the rules (sometimes slightly and other times extensively), which results in widely varying versions of the rules in each jurisdiction.³⁷

Some professors may think they can effectively teach professionalism without reference to professional conduct rules. They will simply tell students to "do more than the minimum" required by the rules.³⁸ That approach, however, does a great disservice to students. Professional conduct rules apply in a multitude of situations that lawyers may encounter. In most cases, "do more than the minimum" is not meaningful guidance for handling these situations.³⁹ It would be more enlightening for classes to explore whether a lawyer's personal values can be reconciled with conduct permitted or required under the applicable rule.⁴⁰ But having that discussion requires students—and their professors—to be familiar with professional conduct rules.

36. It is important to note that the Model Rules are not binding authority—they are merely model rules upon which a jurisdiction may base its professional conduct rules. Doctrinal professors should avoid the common mistake of referencing conduct "required by the Model Rules." An attorney is not required to do anything under the Model Rules; an attorney is bound to follow the *professional conduct rules* of a given jurisdiction. When it is unclear which of various jurisdictions' rules may govern, choice of law principles incorporated into professional conduct rules should resolve the issue. *See, e.g.*, MODEL RULES OF PROF'L CONDUCT R. 8.5(b) (2013).

37. For example, the ABA has created a twenty-one page chart describing state variations on the confidentiality rule. *See* CPR Policy Implementation Comm., *Variations of the ABA Model Rules of Professional Conduct, Rule 1.6*, AM. BAR ASS'N (Aug. 16, 2013), http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_1_6.authcheckdam.pdf.

38. STUCKEY ET AL., *supra* note 1, at 59 (describing complying with professional conduct rules as what is "the minimally required conduct of lawyers").

39. For example, Rule 1.6 requires a lawyer to keep client confidences except in certain defined situations when the lawyer can reveal client confidences to protect third parties. MODEL RULES OF PROF'L CONDUCT R. 1.6 (2013). What does it mean to "do more than required" by this rule—should the lawyer disclose more or less than permitted by the rule?

40. For example, students should be prompted to consider whether they could be respectful to opposing counsel and uphold their obligation to provide competent

The following overview will surprise anyone who has previously dismissed professional conduct rules as merely describing an ethical minimum.⁴¹ From a conceptual standpoint, professional conduct rules can be understood as falling into one of three categories: (1) rules that guide attorneys in fulfilling fiduciary obligations to their clients, (2) rules that describe limits of what lawyers can do on a client's behalf, and (3) rules aimed at promoting and preserving the integrity of the profession. The following discussion explains the rules that fall within each category. The goal of this discussion is to provide a framework for professors who do not teach professional conduct rules on a daily basis. Knowing a rule's purpose can help professors (and students) better understand the interests at stake and the choice the bar has made in adopting a given rule.

1. Professional Conduct Rules Guiding Attorneys in Fulfilling Fiduciary Duties to Clients

Rules in the first category provide guidance to lawyers in fulfilling their fiduciary duties of competence, diligence and loyalty. Rule 1.1 provides that a lawyer must be competent, while Rule 1.3 states a lawyer's obligation to be diligent.⁴² Rule 2.1 notes the attorney–advisor's obligation to provide independent professional judgment to the client.⁴³ Rules 1.13 and 1.14 outline the special issues that arise when a lawyer owes a fiduciary duty to an organizational client and to a client with a diminished capacity.⁴⁴ Further exploring the fiduciary nature of the attorney–client relationship, Rule 1.2 describes the allocation of authority between

representation to their client under Rule 1.1. *See* MODEL RULES OF PROF'L CONDUCT R. 1.1 (2013). Students should also be asked whether they could comply with a confidentiality rule even if it means that the wrong person will be convicted of murder. *See* CARL PIERCE ET AL., PROFESSIONAL RESPONSIBILITY IN THE LIFE OF A LAWYER 495 (2011) (discussing the case in which lawyers kept their client's confidence that he had committed a murder for which another man—Alton Logan—was wrongly convicted and imprisoned for twenty-six years).

41. This discussion does not suggest that the professional conduct rules are a perfect guide in all circumstances. Many scholars have articulated good reason to find fault with various professional conduct rules. The point here is simply that the professional conduct rules cannot be lumped together and described generally as stating an ethical minimum.

42. MODEL RULES OF PROF'L CONDUCT R. 1.1, 1.3 (2013).

43. *Id.* at R. 2.1. Rule 2.3 states that a lawyer can provide an evaluation of a matter affecting a client for use by a third party but only if doing so is compatible with other aspects of the lawyer's relationship with the client, the client provides informed consent. *Id.* at R. 2.3.

44. *Id.* at R. 1.13, R. 1.14.

attorney and client, while Rule 1.4 explains the lawyer's duty to communicate with the client.⁴⁵

"Loyalty" rules concern protecting client confidences, money, and property; prohibiting conflicts of interest; and forbidding attorneys from taking unfair advantages arising from the attorney-client relationship.⁴⁶ Rules 1.5 and 1.15 address the lawyer's obligation to fairly bill the client and to protect the client's property.⁴⁷ Rule 1.6 describes a lawyer's duty of confidentiality.⁴⁸ Rules 1.7 through 1.10 concern conflicts of interest, with Rule 1.8 specifically addressing conflicts between the lawyer's self-interest and that of the client.⁴⁹

Recognizing that the relationship is fiduciary in nature, Rule 1.16 provides that the relationship ends when the client discharges the lawyer.⁵⁰ Rule 1.17 explains the information a current client must be provided if the lawyer sells his or her law practice.⁵¹ Rule 1.18 explains duties to prospective clients.⁵²

2. Professional Conduct Rules Concerning Limits On What a Lawyer May Do On a Client's Behalf

Even though lawyers owe fiduciary duties to their clients, there are limits to what a lawyer can or should do on a client's behalf. The rules in this category address situations when a lawyer *may* or *must* take action that is contrary to a client's stated interests. Some of these rules are adopted by the bar as an expression of its values—such as rules that protect the integrity of the legal process or the

45. *Id.* at R. 1.2, R. 1.4.

46. *See supra* note 24 and accompanying text.

47. MODEL RULES OF PROF'L CONDUCT R. 1.5, 1.15 (2013).

48. *Id.* at R. 1.6.

49. *Id.* at R. 1.7 ("Conflict of Interest: Current Clients"), R. 1.8 ("Conflict of Interest: Current Clients: Specific Rules"), R. 1.9 ("Duties to Former Clients"), R. 1.10 ("Imputation of Conflicts of Interest: General Rule"). Rule 1.8 primarily addresses situations in which the lawyer's interests are likely to conflict with clients' interests, including business transactions with clients, using information to the disadvantage of clients, soliciting gifts from clients, agreements giving the lawyer media or literary rights to a portrayal of the representation, financial assistance to clients, settlement of malpractice claims with clients, a lawyer taking a proprietary interest in clients' causes of action, and sexual relations with clients. *Id.* at R. 1.8(a)–(f), (i)–(j). This rule also guides attorneys in avoiding these situations or taking steps to lessen or eliminate the conflict. *Id.*

50. *Id.* at R. 1.16. The rule also describes the circumstances in which a lawyer may or must decline or terminate a representation. *Id.* Those rule provisions are discussed in more detail later in this Article.

51. *Id.* at R. 1.17.

52. *Id.* at R. 1.18.

rights of third parties. Other professional conduct rules recognize ethical dilemmas that attorneys may face in practice and give the attorney discretion to make a personal judgment within the rule's parameters—such as rules that allow the disclosure of client confidences to protect a third party in defined circumstances. Still other rules mirror other sources of law—a lawyer is legally and ethically prohibited from participating in a client crime.

The following discussion describes the Model Rules of Professional Conduct that fall within this category. Professors should be mindful that many of the rules in this category vary widely from jurisdiction to jurisdiction.

A lawyer must comply with legal obligations even when a client might prefer otherwise. Thus, Rule 1.16 requires that a lawyer withdraw if the representation will violate law or professional conduct rules.⁵³ In the same vein, Rule 1.2 prohibits a lawyer counseling a client to engage in or assist a client in criminal or fraudulent conduct.⁵⁴ Lawyers are not shielded from court sanctions or civil or criminal liability for their own conduct—even if they were acting as a lawyer.⁵⁵ These professional conduct rules guide attorneys in avoiding personal liability.⁵⁶

Other provisions of Rules 1.2 and 1.16 acknowledge that lawyers must make choices about how they conduct themselves in the representation of a client.⁵⁷ While the client decides about the ultimate objectives of a representation, the attorney takes the lead in determining the means by which those objectives are achieved.⁵⁸

53. *Id.* at R. 1.16(a)(1) (requiring a lawyer to withdraw from a representation if “the representation will result in violation of the rules of professional conduct or other law”). *See also id.* at R. 1.16(b)(2)–(3) (permitting—but not requiring—withdrawal if the attorney reasonably believes the client is either persisting in a course of action involving the lawyer’s services that is criminal or fraudulent or that in the past the client used the lawyer’s services to perpetrate a crime or fraud).

54. *Id.* at R. 1.2(d).

55. *See* RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS § 94(1)(a) (2000) (discussing lawyer civil liability to third parties); *id.* § 8 (discussing lawyer criminal liability).

56. Bruce A. Green, *The Criminal Regulation of Lawyers*, 67 *FORDHAM L. REV.* 327, 347–48 (1998) (explaining that professional conduct rules encourage lawyers to comply with criminal law).

57. MODEL RULES OF PROF’L CONDUCT R. 1.2, R. 1.16 (2013).

58. *Id.* at R. 1.2(a) (“Subject to paragraphs (c) and (d) [concerning limited scope representations and client crime and fraud], a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.”).

If attorney and client disagree about how the representation should be conducted, either may seek to terminate the relationship.⁵⁹

In adopting professional conduct rules, each jurisdiction makes a judgment about the role a lawyer should play in protecting the integrity of the legal process. Jurisdictions that follow Model Rule 3 prohibit lawyers from bringing non-meritorious claims and contentions,⁶⁰ require lawyers to expedite litigation,⁶¹ prohibit lawyers from presenting false statements to a court, and require that lawyers not present false evidence to a tribunal (and correct false statements that have already been made to the court).⁶² Further, this rule requires a lawyer to act honestly in discovery,⁶³ prohibits lawyers from attempting to improperly influence a judge or juror,⁶⁴ restricts defined forms of trial publicity,⁶⁵ and bars the lawyer testifying as a witness in the same case in which he or she is counsel.⁶⁶

Some professional conduct rules require or permit the lawyer to act in the interest of someone other than the client. For example, Rule 3.8 details eight special responsibilities of prosecutors.⁶⁷ Rule 1.6(b) lists several situations in which an attorney may disclose confidential information even though the client would prefer confidences be maintained.⁶⁸ Other rules elevate attorney honesty and integrity above any advantage that might be gained by a client if the attorney acted to the contrary. These rules require truthfulness in statements to third parties,⁶⁹ prohibit lawyers communicating with people represented by counsel,⁷⁰ require that a lawyer clarify the lawyer's role when meeting with unrepresented

59. *Id.* at R. 1.2 cmt. 1–2 (describing how attorney and client may end the representation if they cannot agree to the means to be used to accomplish the client's objectives); *see also id.* at R. 1.16 (explaining when a lawyer may and must withdraw from a representation, including when the lawyer has been discharged by the client, when withdrawal can be accomplished without material adverse effect on the client, and when the client insists upon action the lawyer considers repugnant or "with which the lawyer has a fundamental disagreement").

60. *Id.* at R. 3.1.

61. *Id.* at R. 3.2.

62. *Id.* at R. 3.3.

63. *Id.* at R. 3.4.

64. *Id.* at R. 3.5.

65. *Id.* at R. 3.6.

66. *Id.* at R. 3.7.

67. *Id.* at R. 3.8.

68. *Id.* at R. 1.6(b).

69. *Id.* at R. 4.1.

70. *Id.* at R. 4.2.

parties,⁷¹ and mandate that an attorney give notice to someone who inadvertently discloses a confidential document.⁷²

3. Professional Conduct Rules Promoting and Preserving the Integrity of the Profession

In the third and final category, professional conduct rules are aimed at promoting and preserving the integrity of the profession. Rule 5 describes when lawyers are responsible for their own or someone else's violation of a professional conduct rule.⁷³ Rule 6 concerns public service and covers issues such as the lawyer's obligation to accept court appointments and the duty to perform pro bono service.⁷⁴ Rule 7 places limits on how a lawyer may advertise and solicit clients.⁷⁵ Finally, Rule 8 concerns bar admission, prohibits false statements about the integrity or qualifications of judges, mandates that attorneys report professional misconduct, and explains a jurisdiction's disciplinary authority.⁷⁶

71. *Id.* at R. 4.3.

72. *Id.* at R. 4.4(b). Subpart (a) of this rule also requires that a lawyer "not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person." *Id.* at R. 4.4(a).

73. *Id.* at R. 5.1 ("Responsibilities of Partners, Managers, and Supervisory Lawyers"), R. 5.2 ("Responsibilities of a Subordinate Lawyer"), R. 5.3 ("Responsibilities Regarding Nonlawyer Assistance"). Rule 5 also contains provisions aimed at protecting the lawyer's independence, defining prohibited unauthorized practice and permitted multijurisdictional practice, prohibiting restrictions on the right to practice (such as in an employment agreement), and explaining a lawyer's obligation to comply with professional conduct rules while providing law-related services. *Id.* at R. 5.4–5.7.

74. *Id.* at R. 6.1 ("Voluntary Pro Bono Publico Service"), R. 6.2 ("Accepting Appointments"). Rule 6 also addresses conflicts between a lawyer's duty to client and a lawyer's role in a legal services organization, participation in law reform activities, and participation in nonprofit and court-annexed limited legal services programs. *Id.* at R. 6.3–6.5.

75. *Id.* at R. 7.1 ("Communications Concerning a Lawyer's Services"), R. 7.2 ("Advertising"), R. 7.3 ("Solicitation of Clients"), R. 7.4 ("Communication of Fields of Practice and Specialization"), R. 7.5 ("Firm Names and Letterheads"). Rule 7.6 provides that a lawyer shall not make a contribution or solicit contributions for the purpose of obtaining or being considered for a government legal engagement or an appointment by a judge. *Id.* at R. 7.6 ("Political Contributions to Obtain Government Legal Engagements or Appointments by Judges").

76. *Id.* at R. 8.1 ("Bar Admission and Disciplinary Matters"), R. 8.2 ("Judicial and Legal Officials"), R. 8.3 ("Reporting Professional Misconduct"), R. 8.4 ("Misconduct"), R. 8.5 ("Disciplinary Authority; Choice of Law"). Rule 2.4 describes the lawyer's role when serving as a third-party neutral. *Id.* at R. 2.4.

In conclusion, a lawyer's compliance with the rules cannot be assumed and it should not be dismissed as reflecting shallowness in ethical judgment. The rules require much of attorneys—that they fulfill duties to clients, the profession, courts, and others. The rules leave ethical judgments to the attorney in some situations, and guide the attorney in how other conflicts must be resolved in the judgment of the bar. Integrating a meaningful discussion of pertinent professional conduct rules will help students understand their purpose. Perhaps then these students will become lawyers less likely to engage in hyper-technical interpretations of the rules and more likely to comply with the rules' spirit—in furtherance of the bar's vision of attorney professionalism.

C. Exhibiting Core Personal Values Essential to Being a Good Lawyer

Much of the scholarship on lawyer professionalism has focused on the values and traits of the ideal lawyer. This scholarship provides a vision of lawyering to which students and professors should aspire.⁷⁷ The professional lawyer effectively builds and maintains relationships, acting with integrity and treating others with civility and respect. This lawyer also embraces the special role that lawyers play in the legal system and in society. Further, the ideal lawyer demonstrates a strong work ethic and the ability to work effectively with others. Finally, the professional lawyer continuously seeks personal growth and fulfillment.

To help students develop their professional identities, professors must do far more than tell them to act with “integrity” and “civility.”⁷⁸ Certainly that is part of it, but there is much more. Students should be prompted to analyze the reasons attorneys in cases and problems they study sometimes act inconsistent with these core values—i.e., why they lie, show a lack of respect, violate legal obligations, etc. Students should not be left to believe that such lawyers are just bad people. Instead, professors should probe the pressures, rationalizations, and misunderstandings about a lawyer's

77. Consistent with this, many law schools have described the values they hope to instill through professionalism education. See, e.g., Earl Martin & Gerald Hess, *Developing a Skills and Professionalism Curriculum—Process and Product*, 41 U. TOL. L. REV. 327, 336–37 (2010) (describing twelve essential values defined by Gonzaga University School of Law).

78. Deborah L. Rhode, *Lawyers as Leaders*, 2010 MICH. ST. L. REV. 413, 414 (2010) (noting the lack of utility in “homespun homilies and platitudinous exhortations” like “[b]e true to your core values” and “create a climate of goodness”).

proper role that lead lawyers to engage in unprofessional behavior.⁷⁹ This will help students understand they are capable of making such mistakes if they are not vigilant.

Just as important, students must be encouraged to explore how these core values can be harmonized with their other duties as lawyers. Here, context is key. Students should be prompted to reflect on how lawyers in various situations can act consistently with their personal values while also serving their clients' interests and meeting their professional conduct obligations.⁸⁰

The following four sub-parts attempt to bring together old and new research on the core personal values essential to being an excellent lawyer.

1. Effective in Relationships with and Treatment of Others

The professional lawyer is effective in building and maintaining relationships with others, including clients, opposing counsel, opposing parties, judges, colleagues, and support staff.⁸¹ This lawyer is often described as having integrity and treating others with respect, honesty, civility, and courtesy.⁸² The lawyer is sensitive and

79. See *id.* at 420 (explaining how “cognitive bias, situational pressures, and organizational dynamics” undermine good decision-making); Patrick E. Longan, *Teaching Professionalism*, 60 MERCER L. REV. 659, 673–79 (2009) (describing challenges to professionalism).

80. Michael H. Schwartz, *Improving Legal Education by Improving Casebooks: Fourteen Things Casebooks Can Do to Produce Better and More Learning*, 3 ELON L. REV. 27, 51–52 (2011) (explaining that it is not enough to teach professional values, but that students must also be given the opportunity to synthesize personal and professional values).

81. See Susan L. Brooks, *Meeting the Professional Identity Challenge in Legal Education Through a Relationship-Centered Experiential Curriculum*, 41 U. BALT. L. REV. 395, 405–10 (2012) (describing the relationship-centered lawyer); Daisy Hurst Floyd, *We Can Do More*, 60 J. LEGAL EDUC. 129, 132 (2010) (explaining a lawyer's need for “relationship skills”); Neil Hamilton & Verna Monson, *Ethical Professional (Trans)formation: Early Career Lawyers Make Sense of Professionalism*, 8 U. ST. THOMAS L. J. 129, 147 (2011) (discussing that lawyers surveyed early in their careers described professionalism in terms of successful relationships with others, noting the need for respect, decency, kindness, courtesy, and excellent service to clients).

82. STUCKEY ET AL., *supra* note 1, at 65–66 (explaining that special consideration should be given to acting with “honor, integrity, fair play, truthfulness, and candor.”); SULLIVAN ET AL., *supra* note 1, at 130–31 (noting essential qualities of honesty, integrity, consideration, and civility); Hamilton & Monson, *supra* note 81, at 147 (of 37 early career lawyers surveyed about professionalism, the most frequently cited trait was respect (n=15), with honesty (n=11), and courtesy (n=9) close behind); Neil W. Hamilton, *Law Firm Competency Models and Student Professional Success:*

effective in interacting with, building relationships with, and leading diverse people, appreciating dimensions of culture, empowerment, strengths, and emotion.⁸³

2. Accepts a Special Role in the Legal System and Society

A professional lawyer understands that being a public servant means providing access to the legal system.⁸⁴ This lawyer is committed to seeking individual and social justice.⁸⁵ The lawyer devotes time to pro bono service, bar associations, and community.⁸⁶ Further, the ideal lawyer shows respect for the rule of law and courts, and works to improve both.⁸⁷

Building on a Foundation of Professional Formation/Professionalism 7 (Univ. of St. Thomas (Minn.) Legal Studies Research Paper No. 13-22, Aug. 4, 2013), available at <http://papers.ssrn.com/abstract=2271410> (noting firms that consider integrity, honesty, and/or trustworthiness in evaluating attorneys); Rhode, *supra* note 78, at 417 (describing a leader's values as including "integrity, honesty, trust, [and] an ethic of service").

83. STUCKEY ET AL., *supra* note 1, at 66 (urging that law students "learn to identify and respond positively and appropriately to issues of culture and disability that might affect communication techniques and influence a client's objectives"); Brooks, *supra* note 81, at 406–09 (describing how lawyers can develop in their understanding of the person-in-context and appreciate the need for attention to four issues in building relationships: (1) culture, (2) empowerment, (3) strengths, and (4) emotion); Rhode, *supra* note 78, at 416–17, 422 (describing the interpersonal skills of a leader as including social awareness, empathy, persuasion, and conflict management).

84. Brooks, *supra* note 81 (describing how lawyers can provide clients with respect for the law and its actors by attending to issues of "trust, respect, fair-mindedness, judgment, and perceptions around the opportunity to be heard").

85. STUCKEY ET AL., *supra* note 1, at 62–63 (one of five professional values deserving special attention is "a commitment to justice"); SULLIVAN ET AL., *supra* note 1, at 130–31 (explaining that the apprenticeship of professional identity should encompass issues of both individual and social justice); MACCRATE REPORT, *supra* note 19, at 140–41 (describing two of the fundamental values of the legal profession as "[s]triving to [p]romote [j]ustice, [f]airness, and [m]orality" and "[c]ontributing to the [p]rofession's [f]ulfillment of its [r]esponsibility to [e]nhance the [c]apacity of [l]aw and [l]egal [i]nstitutions to [d]o [j]ustice").

86. SULLIVAN ET AL., *supra* note 1, at 130–31 (professional lawyers have a sense of responsibility to the profession); Hamilton, *supra* note 82, at 7 (eight of eighteen law firms studied evaluate lawyers' pro bono, community, and bar association involvement).

87. STUCKEY ET AL., *supra* note 1, at 64–65 (listing "respect for the rule of law" as one of five professional values deserving special attention and explaining, "[a]s gate keepers to the judicial system . . . lawyers have a special obligation to respect and foster respect for the rule of law, irrespective of their personal opinions about

3. Demonstrates a Strong Work Ethic and Works Effectively With Others

The professional lawyer demonstrates a strong work ethic and produces an excellent work product.⁸⁸ The lawyer is described as hard working, responsible, dependable, and self-motivated.⁸⁹ He “takes ownership” of a client’s case or matter (putting forth the thought and effort necessary to see it through) and is responsive to client needs.⁹⁰ Further, the professional lawyer is skilled at project management, working efficiently and completing work in a timely manner.⁹¹ This lawyer can work independently and also works effectively with others. She has the ability to collaborate (and form strong working relationships) with various groups, including clients, colleagues, support staff, and others.⁹² The lawyer is also a leader, as demonstrated by an ability to delegate, supervise, and mentor others.⁹³

4. Continuously Strives for Personal Growth and Fulfillment

Finally, the professional attorney continuously strives to develop personally and professionally. This lawyer seeks happiness and balance in his personal and professional life.⁹⁴ He strives to manage

particular aspects of the law”).

88. Hamilton, *supra* note 82, at 7–8 (eight of the twenty-three competencies considered by eighteen large law firms in evaluating associates are directly related to an attorney’s work habits and work ethic).

89. *Id.* at 7 (fifteen of eighteen law firms studied evaluate lawyers’ initiative, ambition, drive, or strong work ethic).

90. *Id.* (sixteen of eighteen law firms studied evaluate lawyers’ responsiveness to clients or dedication to client service).

91. STUCKEY ET AL., *supra* note 1, at 80 (“A professional lawyer will . . . perform on schedule, keep promises, [and] respond promptly to telephone calls”); Hamilton, *supra* note 82, at 7 (seventeen of eighteen law firms in the study evaluate lawyers’ “project management, including high quality, efficiency, and timeliness”).

92. Hamilton, *supra* note 82, at 7 (eighteen of eighteen law firms studied evaluate lawyers’ ability to initiate and maintain strong work and team relationships while four of the subject firms specifically state that they evaluate the ability to work independently).

93. *See id.* (noting that nine of eighteen studied firms evaluate an attorney’s delegation, supervision, and mentoring, while two specifically evaluate “leadership”).

94. SULLIVAN ET AL., *supra* note 1, at 131 (discussing the personal meaning that attorneys find in legal work); Floyd, *supra* note 81, at 132 (“We should urge students to take the time to develop the inner life, to know who they are and what matters to them, to consider such questions as what their places are in the world, and how to practice law consistently with their values and morals.”).

stress in healthy ways.⁹⁵ The professional lawyer is a self-reflective learner, growing from past experiences.⁹⁶ The lawyer seeks feedback and guidance from others and shows gratitude to others.⁹⁷ Further, the professional lawyer engages in strategic planning to reach both personal and professional goals.⁹⁸

D. Conclusion on Integrating All Three Aspects of Professionalism

All three parts—duties to clients, duties to the bar, and core personal values—are essential aspects of attorney professionalism. Failing to describe to law students what each aspect entails will leave students to draw their own (often incorrect) conclusions. Neglecting to explain how all three aspects can be harmonized may actually result in less professional behavior. Equally dangerous, if professors discuss personal values without reference to duties to clients and obligations under professional conduct rules, students might believe that their conscience must be their sole guide. This is also incorrect.

95. STUCKEY ET AL., *supra* note 1, at 67 (identifying “nurturing quality of life” as a professional value deserving special attention, and explaining that lawyers suffer high rates of depression, anxiety, mental illness, suicide, divorce, alcoholism, drug abuse, and poor physical health); Jerome M. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L.J. 225, 268–70 (2011) (noting prior studies supporting a conclusion that lawyers disproportionately experience alcoholism, depression, and other mental health issues and urging further study of these issues and their relationship to lawyer satisfaction with the practice of law).

96. Hamilton & Monson, *supra* note 81, at 147–48 (surveyed early career lawyers frequently noted that an aspect of professionalism is “growth in understanding professionalism” over time and indicated the importance of self-reflection to professionalism); Rhode, *supra* note 78, at 417 (explaining the importance of “being reflective about experience”).

97. Hamilton, *supra* note 82, at 7 (five of eighteen law firms studied evaluate this trait in attorneys).

98. MACCRATE REPORT, *supra* note 19, at 141 (noting that a fundamental value of the legal profession is “professional self-development” which includes seeking opportunities to increase knowledge and improve skills and selecting employment that will allow the lawyer to “[d]evelop [a]s a [p]rofessional and [p]ursue [h]is or [h]er [p]rofessional and [p]ersonal [g]oals”); Hamilton, *supra* note 82, at 7 (twelve of eighteen law firms studied evaluate lawyers’ “commitment to prof[essional] development toward excellence”).

III. DEVELOPING COURSE-SPECIFIC PROFESSIONALISM OUTCOMES

This section concerning course outcomes and the next (on course content) are written for doctrinal professors who have decided to be more deliberate about integrating professionalism into a course. Though presented in this order, the process of developing course outcomes and planning course content will likely be more cyclical than linear. Generating ideas for outcomes may result in decisions to add certain content into the course. Decisions about content—or teaching a course with a greater sensitivity to professionalism issues—may result in subsequent updates to course outcomes.

The following questions are intended to prompt doctrinal professors to think about professionalism issues that may be a good fit for a specific course. A professor's answers to these questions could be the starting point for drafting professionalism-related outcomes for the course syllabus.

A. What does a competent lawyer need to know and do to effectively represent clients in this area of the law in both litigation and non-litigation settings?

This first question encourages professors to describe what students should expect to know at course completion about being a competent lawyer in the subject area of the law.⁹⁹ Professors should consider how knowledge of the law in this area will be used by lawyers in both litigation and non-litigation settings. This means considering lawyers' various roles of counseling clients, planning for future events with clients, negotiating on behalf of clients, drafting documents, and advocating on a client's behalf in court. A course outcome in an employment law course could be as simple as, "Students will understand issues that a competent lawyer must address when counseling clients about employment matters and when representing plaintiffs or defendants in employment litigation."

B. When attorneys practice in this area of the law, do they face specific temptations to act in a manner that is disloyal to clients?

As discussed earlier, an attorney's fiduciary duty of loyalty requires an attorney to keep client confidences, protect client property, not represent parties with conflicting interests, and not

99. See *supra* notes 21–35 and accompanying text concerning a lawyer's competency obligation.

take an unfair advantage arising from the attorney-client relationship.¹⁰⁰ When planning the course, professors should consider whether any of these issues frequently occur in the subject area of law. For example, attorneys are often asked to represent multiple parties in estate planning and when forming a new business. An outcome in an estates and trusts or business organizations course might include the following: “Students will be able to identify and resolve potential conflicts of interest in [estate planning or business formation].”

C. Which professional conduct rules are of particular interest to lawyers who practice in this area?

Many professional conduct rules are of particular interest to practitioners in specific practice areas. The following are just a few examples. Prosecutors have multiple obligations under Rule 3.8, “Special Responsibilities of a Prosecutor.”¹⁰¹ The up-the-ladder reporting and loyal disclosure provisions of Rule 1.13 (and related Securities and Exchange Commission professional conduct rules) are of critical importance to all attorneys who represent business organizations.¹⁰² Attorneys who represent plaintiffs for a contingent fee—such as in a personal injury practice—should understand not only Rule 1.5(c) (concerning when a contingent fee is permissible), but also Rule 1.8(e) (the limits on financial assistance to a client) and Rules 1.5(e) and Rule 5.4 (limits on to whom a lawyer may pay a referral fee).¹⁰³ When doctrinal professors identify a relevant rule or rules, they should make reference to understanding that professional obligation in course outcomes.

D. Which aspects of a lawyer’s ideal personal values do I want to emphasize throughout the course?

Rather than drafting a course outcome that references “professionalism” without further explanation, professors should consider referencing two or three values students should expect to develop in the course.¹⁰⁴ This decision could be driven by the values a law school has emphasized in its mission statement or in its

100. See *supra* notes 24–25 and accompanying text concerning a lawyer’s loyalty obligation.

101. MODEL RULES OF PROF’L CONDUCT R. 3.8 (2013).

102. *Id.* at R. 1.13(b)–(c).

103. *Id.* at R. 1.5(c), (e), R. 1.8(e), R. 5.4.

104. See *supra* notes 81–98 and accompanying text (discussing values and traits of professional lawyers).

articulation of professionalism. Other professors may wish to include the values that they have always emphasized but not previously referenced explicitly in course outcomes.

IV. COURSE CONTENT: TEACHING AND ASSESSING PROFESSIONALISM
IN THE DOCTRINAL CLASSROOM
A. *Using Case Law*

Doctrinal professors can integrate professionalism themes into their classes using cases already in their textbooks. Even when a case says little or nothing about the role of lawyers in the matter, lawyers were undoubtedly involved.¹⁰⁵ From the advice and services the client received prior to litigation to the way a lawyer conducted the litigation, every case contains the fingerprints of lawyers. These cases provide opportunities to discuss every aspect of lawyer professionalism.

A lawyer's advisory role can be highlighted by asking students to present a case from the perspective of the lawyer who advised a client about the underlying conduct. Some of the following questions would facilitate a discussion of the competent legal advisor. What fact investigation and legal research do you think the lawyer completed prior to advising the client? Based on later events in the case, what advice do you believe the lawyer provided? Do you think that advice allowed the client to adequately weigh the risk of this very litigation? Do you think the lawyer made any mistakes in the way he or she handled the matter? All of these questions consider both the substantive law of the class and the lawyer's role as advisor.

Other cases can be used to discuss factors that should influence how a competent lawyer conducts litigation. For example, civil procedure casebooks often include cases involving discovery misconduct.¹⁰⁶ Professors can ask students to present such a case from the perspective of the lawyer who advised the client to withhold responsive documents, who failed to advise a client to preserve evidence, etc. In many cases, the issue was not a close call: the client

105. Of course, some cases are explicit in discussing the role of attorneys in the underlying matter. These cases are particularly rich tools for discussing attorney professionalism. *See, e.g.*, *Anderson v. Wilder*, No. E2006-02647-COA-R3-CV, 2007 WL 2700068, at *13 (Tenn. Ct. App. Sept. 17, 2007) (discussing the advice provided by counsel when client asked for guidance regarding ability to expel owners of minority interest in the limited liability company).

106. *See, e.g.*, BENJAMIN SPENCER, *CIVIL PROCEDURE: A CONTEMPORARY APPROACH* 691–97 (2011) (excerpting a discovery dispute ruling in *Poole ex rel. Elliott v. Textron*, 192 F.R.D. 494 (D. Md. 2000)).

had an obligation under the rules of civil procedure and other law to comply with the discovery obligation.¹⁰⁷ Professors can ask students whether the lawyer or the client was in a better position to understand the legal obligation (they will see that it is the lawyer) and how the lawyer could have explained the law to the client. Ask if a client might have preferred this information prior to paying the legal fees (for the lawyer's time arguing the motion) and the sanctions that resulted.¹⁰⁸

Cases can also present opportunities to discuss how professional conduct rules should influence a lawyer's conduct. Returning to the discovery example, Rule 3.4 prohibits a lawyer from unlawfully obstructing a party's access to evidence and prohibits failing to comply with a proper discovery request.¹⁰⁹ Introducing these rules can help students see the connection between professional conduct rules and other sources of law. If a professor is uncertain of the exact text of a given rule, then the professor could ask a student to research the applicable rule (in the jurisdiction where the case was pending) and report it at the next class.

Finally, cases can be a springboard for discussing how core personal values are consistent with providing excellent representation to a client. In most cases, students will see it is possible for a lawyer to act in accordance with the personal values discussed in this Article while simultaneously fulfilling duties to clients and complying with professional conduct rules. Further, as noted earlier, treating others with honesty and respect is a value that lawyers should exhibit. Cases can highlight the connection between a party's mistreatment of others and legal liability.¹¹⁰ A lawyer who understands these issues can better advise his client regarding how to avoid liability.¹¹¹ Finally, a client is at a substantial advantage in litigation if her lawyer can get along with opposing counsel. Litigation is more productive and less expensive for clients when lawyers are fair and respectful to everyone involved.¹¹² Consistently raising these issues enhances student understanding of how the content of the course is relevant to their future practice and consistent with their personal values.

107. See, e.g., *Poole*, 192 F.R.D. at 501–03 (discussing Textron and its counsel's deficient efforts in locating, collecting, and producing documents responsive to a request for production of documents).

108. See *id.* at 510–11 (court imposed monetary sanction of \$37,258.39 jointly and severally against attorney and client for discovery misconduct).

109. MODEL RULES OF PROF'L CONDUCT R. 3.4 (2013).

110. See Schaefer, *supra* note 31 and text accompanying note 31.

111. *Id.*

112. See *supra* note 28 and accompanying text.

Assessment is possible—and necessary—when professors use case law to discuss professionalism. Students may believe that anything professionalism-related is a matter of opinion and there is no right answer.¹¹³ It is essential that students be dissuaded of this notion. Professors should point to concrete examples of the consequences: the negative repercussions to a client of a lawyer's poor legal advice, the possibility of a malpractice lawsuit against the attorney, and the prospect of a disciplinary complaint with the bar. Undoubtedly, there are many professional dilemmas for which there is not a single right answer, but professors should still share their perspective on the issue—particularly when the class discussion heads in a questionable direction. Professors should offer examples from their own practice and explain why handling a matter in a certain way is advantageous to the client and good for the profession.¹¹⁴ Professors should guide students in discussing the consequences—legal, ethical, and reputational—of following a different course.

B. Experiential Learning Exercises in the Doctrinal Classroom

Some professors teaching doctrinal classes already recognize the benefit of using experiential learning activities in class. By requiring students to act in the role of lawyers, these exercises help students understand doctrine and develop lawyering skills. The same exercises can be used to improve students' ability to identify professionalism challenges and reconcile a lawyer's various professional obligations and values.

A growing number of resources are available to help doctrinal professors introduce such exercises into their classes. Subject matter specific websites contain compilations of exercises in various areas of law.¹¹⁵ Groups such as the International Forum on Teaching Legal Ethics and Professionalism,¹¹⁶ the Legal Education, ADR, and

113. SULLIVAN ET AL., *supra* note 1, at 133 (remarking that law students believe that it is too late to develop morally in law school).

114. Of course, this is more difficult for professors without significant practice experience. This is another reason why law schools should be open to hiring professors who practiced law.

115. See, e.g., FAMILY LAW EDUCATION REFORM PROJECT, <http://flerproject.org> (last visited Nov. 17, 2013).

116. See *Teaching Materials*, INT'L FORUM ON TEACHING LEGAL ETHICS AND PROFESSIONALISM, www.teachinglegalethics.org/content/teaching-materials (last visited Nov. 17, 2013); Ctr. for Transactional Law & Practice, *Emory Exchange for Transactional Training Materials*, EMORY UNIV. SCH. OF LAW, www.law.emory.edu/centers-clinics/center-for-transactional-law-practice/emory-exchange-for-transactiona

Practical Problem Solving (“LEAPS”) Project,¹¹⁷ *Educating Tomorrow’s Lawyers*,¹¹⁸ and others provide experiential learning materials that can be used in courses across the curriculum.

Additionally, a number of individual textbooks¹¹⁹ and several practice-focused series of texts and supplements¹²⁰ from every law school publisher contain experiential learning exercises for doctrinal classes. Addressing professionalism issues is central to students working through the questions and problems in these books. Michael Hunter Schwartz’s and Denise Riebe’s text, *Contracts: A Context and Practice Casebook*,¹²¹ contains questions that implicate professional conduct rules and that require students to reflect on the intersection of legal ethics and personal values.¹²² A representative exercise in Colleen Medill’s book *Developing Professional Skills: Property* gives students the opportunity to learn about property law and attorney professionalism as they negotiate a commercial lease.¹²³

Numerous law review articles describe innovative exercises law professors have developed to put students in the role of lawyers in the doctrinal classroom. The exercises they describe can be adopted by a professor teaching the same class, or may serve as an

l-training-materials.html (last visited Nov. 17, 2013).

117. See, e.g., *Consultants and Resources by Subject Area*, LEAPS PROJECT, <http://leaps.uoregon.edu/content/consultants-and-resources-subject-area> (last visited Nov. 17, 2013).

118. Inst. for the Advancement of the Am. Legal System, *Educating Tomorrow’s Lawyers—Course Portfolios*, UNIV. OF DENVER, <http://educatingtomorrowlawyers.du.edu/course-portfolios> (last visited Nov. 17, 2013).

119. See, e.g., *Legal Texts that Incorporate Practical Problem-Solving and Professional Skills Development*, LEAPS PROJECT, <http://leaps.uoregon.edu/content/legal-texts-incorporate-practical-problem-solving-and-professional-skills-development> (last visited Nov. 17, 2013).

120. *Id.* Current series include: CONTEXT & PRACTICE (Carolina Academic Press); SKILLS & VALUES (LexisNexis); DEVELOPING PROFESSIONAL SKILLS (West Academic Press); BRIDGE TO PRACTICE (West Academic Publishing); THE LEARNING SERIES (West Academic Publishing); EXPERIENCING LAW (West Academic Publishing).

121. MICHAEL HUNTER SCHWARTZ & DENISE RIEBE, *CONTRACTS: A CONTEXT AND PRACTICE CASEBOOK* (2009).

122. Schwartz, *supra* note 80, at 54–55 (discussing questions in the text that prompt students to think about gratitude, to reframe struggles in a positive way, and to plan how they will manage stress in practice).

123. COLLEEN MEDILL, *DEVELOPING PROFESSIONAL SKILLS: PROPERTY* (2011). Students who complete this Chapter Eight exercise will gain experience representing a client in a non-litigation setting, see the benefits of treating opposing counsel with respect, and gain an understanding of their obligation under professional conduct rules (Rule 4.1) to be truthful in statements to others. *Id.* at 63–69.

inspiration to a professor thinking about creating his or her own materials. The following are some notable examples from a variety of doctrinal courses. Miriam Albert and Jennifer Gundlach focus on professionalism in the first year curriculum, explaining a simulation they use in a contracts class.¹²⁴ Ann Juergens and Angela McCaffrey explain how to use role-plays in the first year curriculum.¹²⁵ Transactional (rather than litigation-focused) experiential learning is the focus of articles by Karl S. Okamoto¹²⁶ and Celeste M. Hammond.¹²⁷ Other excellent articles describe exercises developed for family law,¹²⁸ civil procedure,¹²⁹ and land use law courses.¹³⁰

Shorter problems can also be used to put students in the role of lawyer to explore the law of the course and professionalism. Doctrinal professors should consider developing problems based on recent cases, news items, issues discussed in blogs in the legal subject matter area, and clips from movies and television. Problems already in casebooks can often be reframed to prompt a discussion of professionalism issues. For example, a problem in an excellent business organizations textbook mentions in passing that a lawyer represented two women in forming a limited liability company.¹³¹

124. Miriam R. Albert & Jennifer A. Gundlach, *Bridging the Gap: How Introducing Ethical Skills Exercises Will Enrich Learning in First Year Courses*, 5 DREXEL L. REV. 165 (2012).

125. Ann Juergens & Angela McCaffrey, *Roleplays as Rehearsals for "Doing the Right Thing" – Adding Practice in Professional Values to Moldovan and United States Legal Education*, 28 WASH. U. J.L & POL'Y 141 (2008).

126. Karl S. Okamoto, *Learning and Learning-to-Learn by Doing: Simulating Corporate Practice in Law School*, 45 J. LEGAL EDUC. 498 (1995).

127. Celeste M. Hammond, *Integrating Doctrine and Skills in First-Year Courses: A Transactional Attorney's Perspective*, 17 LEGAL WRITING: J. LEGAL WRITING INST. 409 (2011).

128. Susan B. Apel, *No More Casebooks: Using Simulation-Based Learning to Educate Future Family Law Practitioners*, 49 FAM. CT. REV. 700 (2011).

129. William R. Slomanson, *Pouring Skills Content Into Doctrinal Bottles*, 61 J. LEGAL EDUC. 683 (2012); Lloyd C. Anderson & Charles E. Kirkwood, *Teaching Civil Procedure With the Aid of Local Tort Litigation*, 37 J. LEGAL EDUC. 215 (1987).

130. Keith H. Hirokawa, *Critical Enculturation: Using Problems to Teach Law*, 2 DREXEL L. REV. 1 (2009).

131. The referenced problem even goes on to explain how the lawyer was the father of one of the women and that he drafted the LLC agreement to favor his daughter, making her the sole manager with no term limit and providing no method for her removal. D. GORDON SMITH & CYNTHIA A. WILLIAMS, BUSINESS ORGANIZATIONS, CASES, PROBLEMS, AND CASE STUDIES 111 (2012). Certainly, this problem is meant to be humorous and is intended to prompt a discussion of limited liability company law. It seems just as important, though, for students in a business associations class to recognize the lawyer violated a duty to one of his clients and a

The conflict of interest issue is not meant to be the focus of the question, but should be addressed by the class just as a lawyer in the situation must confront the issue.

Integrating service-learning or pro bono projects into doctrinal classes is another way to connect legal knowledge and professionalism. Professors Susan Waysdorf and Laurie Morin teach disaster law in a course with a service-learning requirement that sends students to the Mississippi Center for Justice for a week of work.¹³² At UNLV William S. Boyd School of Law, Community Law Practicums are offered for various doctrinal courses. In these companion courses, students do legal work for a selected community partner in coordination with the doctrinal class.¹³³ Professor Tony Arnold teaches a Land Use and Planning Law course with a service-learning component.¹³⁴ In these classes, students learn the law and lawyer professionalism, including the value of pro bono service.

C. Other Avenues to Introduce Professionalism into Doctrinal Classrooms

Inviting members of the bench and bar to speak in a doctrinal class can add a valuable perspective on professionalism issues in a given area of practice. United States Magistrate Judge Clifford Shirley often speaks to an e-discovery class at the University of Tennessee College of Law, explaining how costly it is to clients when attorneys engage in “over-discovery” and refuse to cooperate with opposing counsel.¹³⁵ Attorneys who have been engaged in high profile local litigation in the subject matter area are also good candidates for guest speakers. For example, Hamline University has

related professional conduct rule by favoring one client over another.

132. Susan Waysdorf & Laurie Morin, *Syllabus: Katrina and Beyond: Reclaiming Rights and Restoring Communities in the Face of Disasters*, UNIV. OF THE DIST. OF COLUMBIA DAVID A. CLARKE SCH. OF LAW, <http://c.ymcdn.com/sites/www.law.udc.edu/resource/resmgr/syllabi/katrinasp2012.pdf> (last visited Nov. 17, 2013).

133. *See Electives*, UNLV WILLIAM S. BOYD SCHOOL OF LAW, <http://law.unlv.edu/academics/courses/list-of-electives.html> (last visited Nov. 17, 2013) (providing a description of the community law practicum course).

134. *See generally Craig Anthony (Tony) Arnold*, UNIV. OF LOUISVILLE LOUIS D. BRANDEIS SCH. OF LAW, www.law.louisville.edu/faculty/tony_arnold (last visited Nov. 17, 2013) (noting that Professor Arnold “integrates professional practical skills development through experiential learning into the courses he teaches, such as service-learning projects and zoning permit hearing simulations in Land Use & Planning Law”).

135. Paula Schaefer, *Syllabus: E-Discovery – Fall 2012*, UNIV. OF TENN. COLL. OF LAW 5 (on file with author).

invited local attorneys engaged in litigation concerning a bridge collapse to speak with law students.¹³⁶ It is easy to envision how lawyers from such a case—including attorneys that represented opposite sides in the underlying dispute—can contribute to students' understanding of the law and attorney professionalism.

Doctrinal professors might also consider assigning a book that integrates issues of professionalism and the subject matter of the course.¹³⁷ Civil procedure professors have assigned *A Civil Action*¹³⁸ and *The Buffalo Creek Disaster*¹³⁹ for their students; both books highlight professionalism issues in civil litigation.¹⁴⁰ *The Smartest Guys in the Room*,¹⁴¹ a book that describes the Enron collapse, can be a springboard for discussing what an attorney should do when a corporate client is engaged in fraudulent conduct. William Colby's book *Long Goodbye: The Deaths of Nancy Cruzan*¹⁴² is the story of a young attorney who took on the Cruzan family's right to die case pro bono. Colby litigated the case for years, including arguing the case at the Supreme Court of the United States. This book would be a good fit for a law and medicine class or a professional responsibility course. Finally, professors might consider assigning biographies of famous lawyers and judges who have a connection to the subject area of the course.¹⁴³

136. Bobbi McAdoo et al., *It's Time to Get It Right: Problem-Solving in the First-Year Curriculum*, 39 WASH. U. J.L. & POL'Y 39, 87 (2012).

137. Alternatively, books that are not closely related to course doctrine, but that will help students prepare for the challenges of practice, could be incorporated as an optional reading in any doctrinal class and discussed outside of class time. Some examples include: KELLY LYNN ANDERS, *THE ORGANIZED LAWYER* (2009); AMIRAM ELWORK, *STRESS MANAGEMENT FOR LAWYERS* (1995); NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* (2010); MICHAEL F. MELCHER, *THE CREATIVE LAWYER* (2007).

138. JONATHAN HARR, *A CIVIL ACTION* (1995).

139. GERALD M. STERN, *THE BUFFALO CREEK DISASTER* (1977).

140. *Approaches to Incorporating PPS into Civil Procedure*, LEAPS PROJECT, <http://leaps.uoregon.edu/content/approaches-incorporating-pps-civil-procedure> (last visited Nov. 17, 2013).

141. PETER ELKIND & BETHANY MCLEAN, *THE SMARTEST GUYS IN THE ROOM: THE AMAZING RISE AND SCANDALOUS FALL OF ENRON* (2004).

142. WILLIAM H. COLBY, *LONG GOODBYE: THE DEATHS OF NANCY CRUZAN* (2003).

143. See, e.g., Longan, *supra* note 79, at 697 (discussing assigning biographies of lawyers and judges to professional responsibility students).

V. CONCLUSION

Doctrinal professors have the tools necessary to integrate professionalism into their classes. Doing so does not require a shift away from doctrine, but only a slight change in orientation—a focus on the lawyers who practice in the subject matter area. Integrating professionalism topics into a class can be seamless. Rather than taking away from the subject matter of the class, professionalism discussions provide students greater context and enhance their understanding of the area of practice.

**Washington Supreme Court Adopts Rule Authorizing
Non-Lawyers to Assist in Certain Civil Legal Matters
June 15, 2012**

Olympia, WA June 15—With a goal of making legal help more accessible to the public, the Washington Supreme Court has adopted APR 28, entitled “Limited Practice Rule for Limited License Technicians”. The rule will allow non-lawyers with certain levels of training to provide technical help on simple legal matters effective September 1, 2012.

The rule was approved by a majority of the Court, with Justices Charles W. Johnson, Susan J. Owens and Mary E. Fairhurst dissenting. A copy of both the final order can be found online by clicking [here](#) together with the text of the new rule.

“This new rule serves as an important first step to assist the thousands of unrepresented individuals seeking to resolve important civil legal matters each day in our courts,” said Chief Justice Barbara Madsen of the new rule. “With our civil legal aid system overtaxed and underfunded, this is one strategy the Court believes can help assist those who find themselves in court, yet are unable to afford an attorney.”

The rule was recommended by the Practice of Law Board, created by the Supreme Court in 2001 to investigate unauthorized practice of law complaints, issue advisory opinions and recommend ways to the Court in which non-lawyers can improve access to law-related services. The proposal was first submitted to the Court in 2008 and revised in 2012.

Under the new rule, persons who are trained and authorized by a newly-established Limited License Legal Technician Board will be able to provide technical help to the public on civil cases.

The type of assistance the legal technician will be able to provide include, but are not limited to:

- Selecting and completing court forms;
- Informing clients of applicable procedures and timelines;
- Reviewing and explaining pleadings and;
- Identifying additional documents that may be needed in a court proceeding.

Under the rule, limited license legal technicians will not be able to represent clients in court, or contact and negotiate with opposing parties on a client’s behalf.

The rule also requires continuing education requirements, annual proof of financial responsibility and an annual license fee to be established by the Practice of Law Board and approved by the Supreme Court.

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To view the rule:

<http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1005.pdf>