Building a Professional Community

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I. HOW WE RESPOND TO UNPROFESSIONAL BEHAVIOR

Law teachers frequently express concern about unprofessional behaviors and try to develop strategies for dealing with them. At the end of this article are the detailed results of an informal e-mail survey regarding professionalism among law students that I conducted in the fall of 1996.7 Generally, and not surprisingly, behaviors such as cheating, abuse of library materials, late papers, and excessive absences generated the strongest responses from faculty and the clearest and most consistent consequences for students. Many of us try to head off unprofessional behavior by setting out rules or policies at the beginning of the semester that provide explicit penalties for transgressions. For example, lower grades may result from missing too many classes, handing in late papers, or demonstrating lack of attention to detail by making excessive mistakes in grammar, spelling, or punctuation. It is interesting to note that most professors who report using such policies tended to refer to them as “my” rather than “our” policies or to say “I have a rule” rather than “we have a rule,” thereby implying that such policy decisions are adopted on an individual professor, rather than institutional, basis.
Some of us address unprofessional behaviors privately with students who transgress, while others use class time to discuss professionalism issues. Sometimes we do both, depending on the pervasiveness of the problem. Most of us use some combination of proactive and reactive strategies intended to prevent problems when possible, while remaining prepared to deal with problems if they do occur. Many professors are circumstance-driven, recognizing that there are many causes of human behavior. We generally try to be flexible when students have legitimate reasons for their actions, but we also try to send strong messages about our expectations of professionalism. This can be a difficult balance to achieve.

One respondent observed that “[r]unning through the questions is the extent to which one should use one student’s misconduct to instruct others. That’s a tricky one. We should not, I think, assume that unless we say something to others, they’ll think the misconduct is OK.” Unfortunately, there also is the possibility that if we do not respond publicly, at least when the behavior is known among the students, the perception will be that even if the behavior is not okay, it will not have repercussions. Depending on the type of behavior at issue, this may not be the message we want students to internalize.

In negotiations classes that I have taught since 1990, we have employed a procedure affectionately known as the “ethics trial.” If a student is accused of violating one of the class rules, usually the rule proscribing material misrepresentations of fact, the class hears the case and decides whether sanctions are appropriate. The accuser is given time to present his or her case, the class can ask any questions it chooses, and then the accused is given a similar opportunity to present a response and answer questions. The interested parties are then sent out into the hall while the class and I have a frank discussion of the situation. It requires a three-fourths majority vote of the class (by secret ballot) to sanction the offender. I do not participate in the voting and usually do not express an opinion about what I think the resolution of the case should be.

I have had many ethics trials over the years, and while sometimes they can be painful, it unfailingly has been my experience that the class takes the process seriously. There has been only one sanction meted out in all that time and, in my opinion, it was deserved. There have been a few other instances where a sanction was almost but not quite imposed. I always have been impressed with the care and thoughtfulness students bring to this process. They ask good questions, focusing on the precise language used during the negotiation. The debates have been professional and constructive.

Perhaps the most useful result of the ethics trials has been the long-term effects on later negotiations. Students tend to pay much greater attention to the words used in both asking and answering questions. They also learn that reputations and impressions formed as a result of the parties’ conduct relating to the ethics trials have an effect on others’ perceptions in later negotiations. The issue of reputation is one that becomes a strong theme throughout negotiations courses, but that is a topic for another day.

The professionalism question generates substantial interest and is recurring. In late November and early December of 1996, there was an extensive discussion on the LAWPROF list regarding the tension between collaboration and cheating. The discussion took place in response to a survey of second and third year law students in the November/December 1996 issue of The National Jurist. The magazine reported that 54% of students said they had cheated in some way, with 69% of those saying their cheating took the form of collaboration on homework or legal research assignments. Most participants in the discussion felt that some form of collaboration should be encouraged, but that a line should be drawn to ensure that all students possess necessary skills and to allow for grading of individual effort. Most participants would let students work together and discuss projects up to the point of actually sitting down and writing.

One participant in the discussion, Barbara Glesner-Fines, pointed out the tension between law school rules that say “don’t share” and personal rules of friendship that say “help your friends.” She reported that this tension is one that students frequently identify in response to a required assignment in her professional responsibility class—an essay regarding how rules governing lawyers or law students conflict with a personal moral standard and how the students would resolve the dilemma. She explained:

The students are not ‘cheating’ for their own direct academic benefit, but for the perceived benefit to their colleagues. They are sincerely troubled by the competitive, individualistic environment of law school. Perhaps one can write them all off as wimps who can’t stand the heat of competition. Perhaps one can write them all off as cheaters who are very skilled at rationalizing their misconduct. Perhaps we need to reconsider why we
Another participant in the discussion, Steve Johansen, made a compelling argument for cooperation:

Cooperation improves learning in a number of ways. First, it allows students to learn by teaching .... Second, collaboration and peer review builds confidence and independence .... A third advantage of cooperation is that it is effective modeling for the real world .... Of course, there is a difference between law school and law practice, and we need to be sure that each student possesses the *5 skills that are necessary to practice law successfully. However, cooperation is a valuable tool in developing those skills. When we encourage cooperation, and incorporate it into our teaching methods, we don’t stifle independence, we encourage it.15

Professor Johansen recommends requiring students to do what they want to do anyway--cooperate.16 Jan Levine added: “I tell them they’ll learn more from each other in their courses than from the professor--that the interaction is key. They get each other through law school.”17

In the midst of this discussion appeared an expression of frustration by one professor with the ugliness of dealing with formal allegations of misconduct,18 to which another responded that despite the messiness, there is nothing more important than upholding the integrity of the institution.19 Thus we seem concerned about cheating, but uncomfortable with the processes we have devised for dealing with it after the fact. At least some of us seem to believe that thoughtful collaboration may push students more in the direction we want them to go and reduce the pressure and desire to cheat.

There is a consistent tension between punishing bad behavior after it occurs and devising strategies for avoiding the bad behavior in the first place. In another discussion on LAWPROF20 about policies that encourage preparation for class, Kathleen Waits noted:

I’ve never been able to successfully use negative reinforcement/punishment methods to motivate students. My heart was just never in it. And I found that after a while, even when I tried cajoling, guilt-tripping, etc., the students--especially upperclass students--mostly turned off .... And I think the exchange principle (I’ll reward you if you’ll do X) is more like real life than the terror principle (I’ll punish you if you don’t do X). I’ve long believed, and I think psychological studies agree, that for most people fear is an excellent short-term motivator and a terrible long-term motivator.21

This raises the question of how best to motivate students to internalize the values they will need to function successfully in the professional environment. From whom should the message come? Do we want to set ourselves up as the *6 final word on what is and is not acceptable, thus relieving students of the need to exercise independent judgment? Or do we want to encourage student input into the standards that govern their own professional development?

One administrator has gone so far as to consider offering a course in professionalism covering professional demeanor, dress, business manners, and workplace issues such as sexual harassment, lawyers’ responsibilities as role models, etc., noting that students might appreciate some guidance in these areas.22 Such an approach, while offering a useful opportunity to discuss explicitly professionalism issues, tends to preserve the usual top-down model of education that is so prevalent in law schools--in other words, the instructor remains the perceived repository of all necessary information.

We also can look to how other professional schools resolve concerns about student behavior. In response to a query about unmotivated, disrespectful students in a professional school who showed “inappropriate behavior in professional settings for which they do not accept responsibility,”23 and who also felt that faculty disrespected them as well,24 Jeanne Ballantine reported that at Nova University, class representatives met with faculty representatives “to lay out the problems on both sides and work out solutions.”25 Then the problems were discussed in a larger group and specific behavioral objectives were set out.26 “Students had problems with some of the curriculum and [the] way it was being presented, and faculty had problems with non-compliance with assigned work. The sessions really did produce an understanding and helped with the problem.”27 This raises the possibility that an approach that involves mutual communication and exchange of concerns and ideas may facilitate a resolution of behavioral problems.

Another respondent noted a similar phenomenon in medical school. He noted that while particular classes do sometimes display distinct (and perhaps unpleasant) characteristics, it is dangerous to respond to all individuals “as if they must reflect...
the characteristics of the group just because they are members of the group … Teachers need to be apprised of how important it is that students feel personally engaged in their education. And how destructive it can be for students to feel that they are perceived as a lump.”

*7 We have seen concerns about professionalism, about cheating versus collaboration, and about the psychology of motivating students to behave in a professional manner. Where do we go from here?

II. BUILDING A PROFESSIONAL COMMUNITY FROM THE GROUND UP

While this may be a bit of an oversimplification, it seems that there are two possible sources for behavioral change; it can come from within or it can be imposed from without. In the law school context, students can motivate themselves to create the kind of community of which they can be proud, or faculty and administrators can create and enforce stricter professionalism rules. Ultimately, of course, students, faculty, and administrators all have to work together in the community, but it may help to ask whether the primary source of standards should be the students or the authority figures.

To determine the impact of a student-centered approach, I tried an experiment in my legal research and writing class in the fall semester of 1996. It was sufficiently successful that I repeated it in that course and in my negotiations and client counseling classes in subsequent semesters. On the first day of class, I presented my students with a draft contract, which included the proposed schedule for the semester, the proposed assignments, and some proposed behavioral rules governing the timely submission of assignments and similar issues. I split the students into groups of four and asked each group to produce a proposed redraft of the contract. I then took the redrafts and tried to create a document that reflected all of the proposed changes. Where the proposed changes could not be reconciled, I presented the options for a vote by the class. Decisions were made based on the preference of a majority of the students. Then I produced a final contract for everyone to sign, including myself. I made sure that I saw every *8 signed copy, so we would not have problems later; every student signed the contract without complaint.

Interestingly, the students were harder on themselves in creating contract provisions than I would have been. They imposed a strict “no late papers” rule; students could get an extension in advance, but papers submitted late without such an extension simply would not be accepted. They also imposed a tardiness rule; students who were five or more minutes late had to pay $1 to a party fund, which would be spent at the end of the semester. In addition, there were grade penalties for excessive lateness and absences. We devised a flexible collaboration policy; I would let them know when and what type of collaboration was permissible on each assignment. The students also asked for more from me--written criteria for each assignment, class time spent on feedback when assignments were returned, and timely return of graded and marked-up papers. They spent time and thought on the course objectives, spelled out at the beginning of the contract, but they never touched the proposed schedule or assignments, apparently preferring to defer to my “expertise” in that area. I had told them that everything was negotiable, so they had the option of proposing more or fewer or different assignments.

We also created a procedure for amendment of the contract, which was never employed. Once or twice students expressed dissatisfaction with the harshness of a provision of the contract. I told them all they had to do was submit a written proposal to be voted on by the class. It never happened. The volume of complaints about rules or lack of understanding of the rules was remarkably low, and often I did not even have to articulate the applicable rule when a question or complaint did come up. Usually the other students would handle the explanation.

The contract approach seems to feel natural once students are exposed to it. My students from the fall 1996 semester who signed up for my negotiations class in the spring 1997 semester seemed to assume that we would use the same contract procedure, and began talking about provisions they wanted to see well before the semester began. My spring 1997 legal research and writing class was an evening class, with the usual complement of students who had spent substantial time in the “real world” before coming to law school, and their reaction to the contractual approach demonstrated not only comfort but familiarity with the basic concept. Some of them already had concluded that management by consensus was preferable to management by mandate.

While specific provisions have differed from semester to semester as each class presents and negotiates different options, the
overall satisfaction with the process and results remains high. I expect to use this approach in every class I teach for the foreseeable future.

Such learning contracts are used in other levels of education, from elementary schools to universities. I have not, however, seen them used with any frequency in the law school setting. This seems a shame, particularly given that they offer the perfect opportunity to teach important lawyering skills, such as negotiation and precise use of language, in addition to allowing the students the opportunity to contribute meaningfully to the rules of the community of which they are such an important part.

Although not frequently employed in law school, the idea that students should have input into the rules that govern them is not new. In 1985, Professor Leonard Biernat offered a thoughtful, well-documented argument in favor of student input into law school ethical codes and proposed model rules of conduct. He noted that “[l]aw schools must treat students as professionals if students are to respond as professionals.” We seem to have made some strides in this direction, but I believe we have a long way to go.

After the professionalism survey I conducted on the LAWPROF and LEGWRI-L discussion lists, I asked a follow-up question posted to the same e-mail lists regarding the extent to which students are given input into the rules by which they are governed, to which only eight individuals responded. No respondent said that students had input into the rules governing a specific class; all eight said that students had some input into the formulation of the school’s Honor Code. One said, “[s]tudents have (in fact) little input into the formulation of law school rules. The SBA is always welcome to propose changes; but they rarely take any interest in rules, no matter how much I encourage them to do so.” In my experience, students often are allowed to serve on faculty committees, though their voting rights differ from school to school. There is empirical support for the idea that internalization of behavioral norms by agreement among the group may be more effective and last longer than behavioral change imposed by external authority. In a study involving 93 freshmen undergraduates at a medium-sized New England state university, attitudes regarding rule violations and destructive behaviors were examined in four dormitories. Two of the dormitories were experimental and the other two functioned as controls. In the “external authority” dormitory, the determination of which rules to enforce and the manner of enforcement were made exclusively by the Hall Director and Hall Staff, all employees of the university. Policies were enforced based on a very strict interpretation of the letter of the applicable regulations, and all violations were dealt with quickly and to the fullest extent permitted. Student input was neither solicited nor accepted. In the “social contract” dormitory, rules were enforced by the director and staff in cooperation with a dorm hearing board consisting of five students elected each semester by their fellow residents. The purpose of the board was to decide which cases of rule violation required adjudication, and to determine guilt, innocence, and what, if any, penalty to impose. The control dorms operated according to usual university policy--supervision and enforcement by the director and staff, and adjudication by a campus-wide Judicial Board composed of staff and faculty. Staff could use personal judgment in deciding which cases to refer for adjudication. Attitudes of students in the dorms were measured by pre-test and post-test surveys. The authors of the study concluded that although both methods affected attitudes about the acceptability of disorderly behavior, “an environment allowing individual input and participation in the judicial system may generate more prosocial attitudes than a highly restrictive environment relying on the coercive power of external authorities.” Thus, students in the social contract dormitory were more likely to respect rules concerning misconduct for which they probably would not be caught, because those students had developed an understanding of the need for such rules.

If giving students an opportunity to contribute to the rules of the community may encourage desirable behavior even in situations where the possibility of external control and enforcement is remote (such as hiding or destruction of library materials, an area in which several of those who responded to my survey mentioned the difficulty of catching perpetrators), isn’t this an approach we want to take seriously and give a real chance to work? The psychology of this simply makes sense; it is human nature for many of us to resist that which is forced upon us, while embracing that which we are allowed to choose.

And how would we deal with breaches of behavioral standards under a system? Historical precedent exists among American lawyers for the idea that breaches of professionalism can be dealt with informally within the community.
Building professionalism does not have to be all work and no play:

Lawyers’ associations sought to teach and enforce honesty, integrity, learning[,] and civility. Their methods often were quite informal. Members emphasized shared professional experience and social interaction among lawyers and judges. One early New England lawyer noted that ‘[p]rofessional habits were decidedly convivial, and gentlemen thrown together for several weeks, often under the same roof, were quite disposed to be amused…. [I]n their familiar intercourse there was little formality or restraint…. When the business of the term was nearly completed, it was customary for both Bench and Bar to assemble at the tavern for a social meeting. On these occasions, they constituted a court among themselves, appointing one of their number Chief Justice, for the trial of all breaches of good fellowship during the term.’ Penalties took the form of requiring an individual to purchase liquor for the group.47

This is not to say that we need to encourage more alcohol consumption by law students, nor that truly serious ethical breaches should be treated as joking matters. It is merely to suggest that a focus on community, rather than a hierarchical, rule-based system, has its place.48

*12 III. CONCLUSION

The connection between community and responsibility may strike some as counterintuitive. Frequently when we encounter problems of lack of professionalism and irresponsibility, our first tendency is to look for a way to “crack down,” or create new rules to make people behave. Human nature being what it is, however, many of us have a tendency to resist what is forced on us from above while embracing what we create ourselves. Thus it becomes quite natural for people to comply with policies they have a hand in designing and enforcing. If we can inculcate values of professionalism and responsibility in this way, from the ground up, we encourage voluntary and enthusiastic adherence to values that will serve us and the profession well in the long run.

I will let one of the students from Chapman University School of Law finish this discussion:

It is important to maintain collegiality and professionalism in our interactions with each other and in our contacts with members of the community…. On campus, every student owes his colleagues and professors the obligation to be on time, prepared[,] and able to participate effectively in class. Collegiality is, by definition, dependent on the role of one’s colleagues. That dependence will not end upon graduation, but will extend into courtrooms one day. Conducting ourselves in a professional manner will likewise make a mark on the quality of the legal profession and the public’s perception of it.49

APPENDIX

THE PROFESSIONALISM SURVEY

I distributed an eight-question survey on two e-mail discussion lists (LAWPROF and LEGWRI-L)50 to find out what we law teachers are doing to anticipate and respond to problems of unprofessional behavior. I received 117 responses to the survey. The respondents represent 69 different law schools.51 Here are the *13 survey questions, with the number of responses preceding each option. Because respondents could choose more than one response when appropriate, the number of responses to each question exceeds 117. Each question included an “other” option and an opportunity to comment on the question or the response. Many respondents offered comments and personal experiences, most of which are not reported in detail here; selected comments and general trends are presented.

1. If a student hands in a paper late, without having asked for an extension in advance, I would:

64 Wait to see what the excuse was before deciding what to do.

35 Lower the grade of the paper, regardless of the excuse.

5 Refuse to accept or read the paper, regardless of the excuse.
Read and grade the paper, and not worry about the lateness.

Other (or comments on the above).

Comments:
Honestly, it’s because of student evaluations that I don’t feel I can be as tough about this as I would like to be.

My procedure is to treat a failure to meet a deadline the way a court would. I enter a default judgment, i.e., I will not read the paper and the student must suffer the consequences, whether that be no credit, a failing grade, or simply not getting feedback on a draft. However, the student can petition for relief from the default which will be granted only after a showing of good cause. If lateness would have been excused by a judge, e.g., family emergency, then I will excuse it. If some lesser sanction than default would be appropriate, that is what I will impose, but the burden is on the student to petition for relief.

2. If a student copied answers to exercises or a paper from another student, I would:

Talk to the students involved before deciding what to do.

Refer the matter to the Honor Board (or its equivalent) or the administration, and let them decide how to handle it.

Have the guilty student(s) do another assignment to replace this one.

Give the guilty student(s) a failing grade.

Other (or comments on the above).

Comments:
I tell my students on the first day of class that plagiarism is not acceptable. My papers are also “thought,” not research papers, so I forbid any research other than the designated materials. I tell my students that following the ethical rules is very important, and I usually have them sign a statement when they turn *14 in their paper that certifies that they have followed the rules. I also tell them on the first day that if they violate the plagiarism rule, the no research rule, or the do-your-own-work rule, I will give them a zero, refer them to the Dean for disciplinary action, and will also write a letter to the bar examiners saying that they have a problem following ethical rules. I know this sounds very harsh, and the students always blanch, but so far I haven’t had any real problems. Being harsh up front seems to avoid difficulties later.

This is an annual event with our library searches. If it happens in my section, I usually hand back a graded copy of the paper marked with “please arrange to see me after class.” I listen to the explanation and then give them a “0” for the assignment. If it happens in an adjunct’s section then they do a “good cop/bad cop” of talking to the students and saying that I wanted to toss them out but that the adjunct interceded, etc. The students still end up with a grade of “0” and a lecture on professionalism. Sorry to go on, but I try to take care of this by having the instructor read through the “do your own work” guidelines during the first class. I find that this either eliminates a lot of cheating, or forces students to conceal it.

3. If a student disrupted my class (by coming in late, talking to others, wandering in and out to get drinks, etc.) I would:

Talk to the student privately after class.

Make a comment in front of the class, but not get angry.

Lecture the class on professionalism, and let them know such behavior will not be tolerated.

Ask the student to leave.

Ignore the behavior.
22 Other (or comments on the above).

Comments:

Again, it depends. I don’t worry too much about late arrivals, but I’d probably talk to the student outside of class if he or she often arrived late. In the case of disruptive conversation, I would comment briefly in class (or give The Look). A student who was wandering in and out is far more disruptive, and I would ask that student to leave. I would not get angry or lecture the class or ignore such disruptive behavior. (No point in penalizing the entire class for the boorish behavior of one student, and ignoring such outrageous behavior shows, I believe, a lack of proper assertiveness and classroom control.)

4. If a student consistently handed in papers with typos, spelling errors, poor grammar, etc., I would:

84 Grade the papers down because of the carelessness, and let the student know what portion of the grade was attributable to the errors.

32 Talk to the student (or the whole class) about the need to pay attention to detail, then lower the grade on any sloppy papers after the lecture.

14 Refuse to accept the papers, and make the student rewrite them.

2 Grade the papers for substance and not worry about the little stuff.

20 Other (or comments on the above).

Comments:

Counsel the student to find/get help (from our Academic Support Program) or find a different career.

5. If a student hid or monopolized materials in the library or elsewhere, or removed material from library books, I would:

86 Bring the student up on Honor Code charges.

60 Lecture the class on professionalism and courtesy.

23 Fail the student, either for that assignment or for the course.

48 Talk to the student privately.

14 Other (or comments on the above).

Comments:

Two things--First, I will be warning my students in advance that any hiding of books or careless shelving will cause the entire class to be marked on a lower curve; I would mark everyone down if this occurred. Second, I would report the individual by name to my director--who would then suggest what kind of action to take against the individual. She would probably suggest asking the student to come in and see her.

Again, any form of cheating indicates that the student is an inappropriate candidate to be a licensed practitioner and should be expelled from school. He/she is entitled to know why and to be counseled on other career paths.

6. If a student deleted material or otherwise “sabotaged” the work of a fellow student on a collaborative project, I would:
40 Lower the grade of the “saboteur.”

54 Let the student whose work was affected resubmit the project.

30 Lecture the class on professionalism and inappropriate competitiveness.

89 Bring the “saboteur” up on Honor Code charges.

10 Other (or comments on the above).

Comments:

For me, this kind of behavior (and that in question 5) would raise the question whether the person was really of good enough character to be a member of the bar. So I think the discipline aspect is most important. I might also comment about the incident without revealing names in class, since I think that if matters of discipline are publicly known, they have greater deterrent effect.

7. If a student made derogatory comments about another student (for any reason, either in or out of class), or showed other inconsiderate behavior to colleagues, I would:

82 Talk to the student privately.

42 Lecture the class about professional courtesy.

12 Insist that the offender apologize to the other student, if the other student was aware of the comment.

12 Do nothing.

26 Other (or comments on the above).54

Comments:

This is a critical issue in a professionalism responsibility course, where feelings run high on issues labeled “ethics.” Early on in the course, I devote a portion of the class to teaching students about the appropriate way to criticize another’s position without engaging in offensive or ad hominem tactics. I also sternly remind students of the importance of collegiality and reputation. In other classes, I am less likely to treat the issue up front, unless I perceive that the course materials or the class members require this. Where problems come up, I then deal with them.55

Another aspect of professionalism is treating colleagues with respect. The lessons that are mandated by the bar should be taught in law school by all professors in all courses.

17 8. If a student consistently missed class, I would:

26 Do nothing; they’re adults and can live with the consequences of their choices.

39 Lower the student’s grade (with or without a previously announced policy?).

49 Talk to the student privately, and encourage class attendance.

4 Talk about the student in front of the class, so word would get back that I noticed the absences.56

32 Other (or comments on the above).

Comments:

I have an announced policy of no exam for unreasonable absences, a function of number and reason. If a student is in danger
of becoming unreasonable, they get a note or private oral inquiry. If that doesn’t work, they get a certified letter, return receipt requested, giving them, usually, a business day to drop without failing. Then, they get dropped. If they’ve missed a presentation or something else on which other students depend, they might not get the passing option.

While I believe that students are adults and ultimately are responsible for their own choices, persistent absence often leads to very poor performance on exams and can be an indicator of some other deep personal problem that the school should know about. Typically I inform our dean of students of the persistent absence problem and ask her to contact the student and express my concern, and to suggest that the student drop by to speak with me. It has worked well in all respects.

I announce my attendance/tardy policy on the first day of class. I give students 6 absences (that’s three weeks worth). I do not distinguish between excused and unexcused absences. For the seventh and each successive absence, I lower their grade by one full letter grade. I have taught 5 courses now and in 3 of those I had students enter “grade reduction zone” for excessive absences. I usually make a deal with the affected students—if they write me an extra short paper (off the topics assigned for their regular paper), and it is of “C” or better quality (i.e., they have to make a good faith effort) then I ignore their absences and do not reduce their grade. I do not, however, announce this “deal” at the beginning of class.

Inform the student about the opportunities to get counseling.

*18 One respondent told of a student who had not been seen in days and had committed suicide, and noted that thereafter she always inquired whether anyone knew of the whereabouts and well-being of absent students.

The survey also sought to determine the frequency of professionalism problems. The respondents identified the frequency with which these behaviors were encountered as follows: 10 frequently, 56 occasionally, 56 seldom, 1 never. Some respondents distinguished among the different types of behavior, noting that tardiness, absences, and sloppy work tended to occur more frequently than other behaviors.

Footnotes

a1 Associate Professor of Law at the Chapman University School of Law. The author wishes to thank Al Fuller, Amy Godfrey, and Jason Schwartz, Articles Editor for THE GEORGETOWN JOURNAL OF LEGAL ETHICS, for their assistance and thoughtful contributions to this work. She also wishes to thank her colleagues who responded to the survey and who gave her permission to quote their comments on the e-mail discussion lists mentioned throughout the article.


2 Id. at 6-7.

3 Id. at 7.

4 It is not entirely clear why students behave unprofessionally in law school, and the answers are probably as varied as the individual students themselves. It may be that many students go through their pre-law education without having to worry about details, deadlines, or class attendance, and so are not prepared for the idea that instructors actually care about these things in law school. Some of us suspect that the age or gender of the instructor may have an effect on the students’ attitudes about class and about the kind of behavior that is appropriate. Attitudes also may be affected by the perception the students have of the importance of a particular class within the institution, as signaled by the number of credits for the course, whether it is graded, and who teaches it.

5 REPORT OF THE PROFESSIONALISM COMMITTEE, supra note 1.
I distributed an eight-question survey on two e-mail discussion lists, LAWPROF and LEGWRI-L. LAWPROF and LEGWRI-L can be located at http://www.kentlaw.edu/. These are discussions among individuals who have chosen to subscribe to these e-mail lists in the hope of being able to maintain a dialogue with colleagues across the country. LAWPROF is open to all law professors and LEGWRI-L is open to all teachers of legal research and writing. Both lists are hosted by Chicago-Kent School of Law.

Ross Nankivell, Director of Legal Writing, Emory University School of Law, Response to Professionalism Survey, Aug. 30, 1996.

See supra note 7 for the web address.


Barbara Glesner-Fines, Associate Professor, University of Missouri-Kansas City School of Law, LAWPROF, supra note 7 (Nov. 27, 1996).

Id.

Steve Johansen, Director of Legal Writing, Lewis and Clark Northwestern School of Law, LAWPROF, supra note 7 (Nov. 27, 1996).

Id.

Jan Levine, Director of Legal Writing, Temple University School of Law, LAWPROF, supra note 7 (Dec. 2, 1996).

Roger Baron, Professor, University of South Dakota School of Law, LAWPROF, supra note 7 (Nov. 26, 1996).

Frederick C. Moss, Associate Professor, Southern Methodist University School of Law, LAWPROF, supra note 7 (Nov. 26, 1996).

See supra note 7 for the web address.

Kathleen Waits, Associate Professor, University of Tulsa College of Law, LAWPROF, supra note 7 (Dec. 5, 1996).

Professor Lou Sirico at Villanova offers well-received workshops to law students that cover these and other topics.

Dorothy A. Frayer, Associate Academic Vice President, Duquesne University, Professional and Organizational Development
As Amitai Etzioni has explained:
A wholesome relationship between community and member-individuals is based on a creative tension and a continuous search for balance, not domination of one by the other. If we view the community as merely an aggregation of individuals temporarily joined for their convenience, we leave out the need for commitment to serve shared needs and for involvement in the community that attends to these needs. If we see the community as the source of authority and legitimacy, and seek, in the name of duty to it, to impose behavioral standards on individuals, this leaves an insufficient basis for individual rights. It also prevents the community from being creative and responsive to a changing world.

Open community. I use the term "open community" to try to capture the need to provide full moral status both for individuals and their shared union. An open community is much more integrated than an aggregate of self-maximizing individuals; however, it is much less hierarchical and domineering than an authoritarian community.
Amitai Etzioni, Excessive Individualism Won’t Rebuild America, INDUSTRY WEEK, Nov. 15, 1982, at 44, 49.

This seemed to work well. We had no problems with alleged cheating, improper collaboration, or hoarding of library materials. The level of collegiality in the class remained quite high throughout the semester, even though the two sections of the class were on opposite sides of the semester-long simulation, and developed what I like to think of as a healthy competitiveness in the representation of their respective clients.
The authors of the study concluded as follows: [T]his study provides preliminary evidence that attitudes about the acceptability of destructive and disorderly acts, and alcohol and drug abuse can be effected by fostering a sense of personal control over the environment. The data also shows that the rigid enforcement of rules by external authorities can have a similar effect. Both experimental dormitories showed decreased acceptance of rule-violating behaviors as compared with the control dormitories, especially in the realm of alcohol and drug abuse and destructive behaviors.

The data for the External Authority dormitory suggests that the rigid imposition and enforcement of rules can result in less tolerant attitudes toward proscribed behaviors. This is seen most clearly in comparison with the subjects in the two control dormitories which [sic] operated under less stringent controls. Obviously, prolonged exposure to normative pressure does result in attitudinal compliance. What has yet to be ascertained is the extent to which short-term compliance has resulted in long-term internalization.

In the Social Contract dormitory, however, the motive for rule following was based on fostering a sense of personal responsibility through giving the subjects increased control over their immediate environment. As a result, the subjects in the Social Contract dormitory can be seen as having come to understand the need for rules governing behavior. This resulted in attitudes that were equivalent to, and in the case of drinking in one’s own room, exceeded the rejection of rule violations reported in the External Authority dormitory. It is significant that this one difference in attitude reflects a behavior that occurs in private, and is thus more difficult to bring under external control. In particular, an environment allowing individual input and participation in the judicial system may generate more prosocial attitudes than a highly restrictive environment relying on the coercive power of external authorities.

collective acquiescence in legalistic rules. Reconceptualizing legal professionalism as deliberative moral community provides the opportunity for fostering such an aspirational community. " Colin Croft, Note, Reconceptualizing American Legal Professionalism: A Proposal for Deliberative Moral Community, 67 N.Y.U. L. REV. 1256, 1324 (1992). The author of the Note had a different vision for inculcating professionalism values in lawyers and law students, but his words ring true in this context as well.


50 See supra note 7 for the web address.

51 Akron, Alabama, Albany, Alberta, Arkansas, Baltimore, Boston University, Brooklyn, Buffalo, California Western, Capital University, Cardozo, Case Western Reserve, Chapman University, Chicago-Kent, Cincinnati, Cleveland State, Connecticut, CUNY, Dayton, Detroit College of Law, Emory, Florida, George Washington University, Georgia, Georgia State, Golden Gate, Hamline, Hofstra, Howard, John Marshall, Kansas, Loyola-Los Angeles, McGeorge, Mercer, Miami, Michigan, Missouri-Kansas City, Montana, New England, New York Law School, Lewis and Clark, Notre Dame, Ohio State, Pace, Pennsylvania, Pepperdine, Richmond, Rutgers-Camden, St. John’s, Seton Hall, Nova Southeastern, Southern Methodist University, Stetson, Suffolk, Temple, Texas, Texas Tech, Tulsa, Utah, Vermont, Villanova, Washburn, Washington, West Virginia, Western New England, Western State University, Whittier, and Willamette.

52 Several respondents commented that they did not like the word “lecture” as it is used in several places in the survey, preferring something less negative-sounding. Other respondents used the word themselves in their comments. I intended the word primarily to convey a presentation of information, rather than a parental dressing-down, but certainly understand how it was interpreted in context. I am unsure how or whether my choice of that word, rather than something more appropriate such as “discuss” or “affirm,” may have affected the results of the survey.

53 One respondent expressed concern that the question did not recognize that such errors may be the product of a learning disability rather than carelessness. A few other respondents suggested that before treating such errors as a professionalism problem, they would seek to discover if there was another cause and suggest that the student get appropriate help if that were the case. I certainly did not intend to treat learning disabilities as equivalent to carelessness, and could have included an option in the question that recognized the possibility that there might be another cause of the errors. At the time, because the questionnaire dealt with professionalism, I assumed that respondents would be indicating only how they handled problems involving unprofessional behavior.

54 One respondent observed: “Hasn’t happened thankfully. Professors seem nastier about one another than students. Perhaps we have something to learn!”

55 This responder would notify bar authorities of behavior of the type described in questions 2, 3, 5, and 6.

56 I once employed this method by asking if anyone knew the whereabouts of a frequently absent student and commenting that she needed to come to class. I later had a rather difficult conversation with the student, who found my behavior offensive and felt that I had humiliated her. Nevertheless, I will probably use this approach in the future if similar circumstances arise because I want the students to realize that I notice their absences. I am reasonably lenient in excusing absences when the students speak with me in advance or as soon as possible after they miss class, although in California we have a mandatory 80% attendance rule that is imposed by the state bar.