PROFESSIONALISM'S Triple E Query: Is Legal Academia Enhancing, Eluding or Evading PROFESSIONALISM?

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Laws control the lesser man. Right conduct controls the greater one.¹

I. INTRODUCTION

Most lawyers govern their behavior to ensure compliance with the rules of Ethics; violation of which dictates specific sanctions. The rules of ethics, however, do not specifically address boundaries for appropriate behavior in other matters of integrity and civility. No guidelines exist on the acceptable standards for rude, discourteous vulgarity, physical altercations, or plain lackluster (to the point of falling asleep!) behavior. As such, there is an existing and growing population of attorneys who have yet to cross the line into “unethical hell”: operating under principles exhibiting behavior which, though not violative of the rules of ethics, is patently unprofessional. The actions of these “line-toers” crosses into a realm where the pattern of behavior threatens the perceived sanctity of the profession.

Take for example the following incidents:

A. On January 30, 1984, Calvin Jerold Burdine was convicted of capital murder by a Texas jury, and sentenced to die by lethal injection.² Following a failed direct appeal, Burdine file a writ of habeas corpus.³ The request was denied and the Texas Court of Criminal Appeals affirmed the denial in 1994.⁴ Burdine filed another application for writ of habeas corpus and secured an evidentiary hearing.⁵ The trial courts findings of fact recounted the number of times Burdine’s counsel, Joe Frank Cannon, slept during trial.⁶ The trial court recommended that the writ be granted, but the

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¹ Chinese Proverb. Author Unknown.
⁴ Id. at 856
⁵ Id. at 864, 866
⁶ Id. at 712
Texas Court of Criminal Appeals denied same. Following a series of appeals, the Fifth Circuit heard the Burdine case en banc for the first time in 2000. Sitting en banc, the Fifth Circuit found that Cannon’s act of sleeping during his client’s capital murder trial, prejudiced Burdine’s case. A petition filed in 2001 to the US Supreme Court to review the Fifth Circuit’s decision was denied. Calvin Jerold Burdine was granted a new trial.

B. In 1988, during closing arguments to the jury in a criminal case, the defense attorney referred to the “sleazy scum bag tactics” of the prosecutor, and noted a “smelly odor” in reference to said prosecutor.

C. In 1994, during discovery for the case of Paramount Communications, Inc. v. QVC Network, Inc., the following deposition testimony was recorded:

**MR. JAMAIL:** Don’t answer that.

How would he know what’s going on in Mr. Oresman’s mind?

Don’t answer it. Go on to your next question.

**MR. JOHNSTON:** No, Joe –

**MR. JAMAIL:** He’s not going to answer that. Certify it. I’m going to shut it down if you don’t go on to your next question.

**MR. JOHNSTON:** No, Joe, Joe –

**MR. JAMAIL:** Don’t “Joe” me, asshole. You can ask some questions, but get off that.

I’m tired of you. You could gag a maggot off a meat wagon. Now, we’ve helped you every way we can.

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7 *Burdine v. Johnson*, 234 F. 3d 1339 (5th Cir. 2000).

8 *Burdine v. Johnson*, 262 F. 3d 336 at 334 (5th Cir. 2001).


10 See *Re Disciplinary Proceedings against Eisenberg* (1988), 144 W2d 284, 423 NW2d 867. See also, generally, Annotation -----

Attorney Jamail’s fond use of expletives during depositions has been noted in other cases.12

D. In 1993, during deposition testimony of an insurance adjustor for a major corporation the following deposition testimony was taken:

(WITNESS): I don’t have any copies of the Notice of Injury or the initial doctor’s report in this file.

MR. A*: You made me drive all the way up here to Tallahassee. You’re going to find those reports!

(WITNESS): I’m sorry, I don’t have them.

MR. A: You’re nothing but a liar!

MS. BOOTHE-PERRY: Watch it.

MR. A: This is bull sh*t! I came way up here, you all better find those f***ing reports.

MS. BOOTHE-PERRY: We’re not going to sit here and have you curse at my client. You need to tone it down.

MR. A: I don’t give a f**k what you want to do.

MS. BOOTHE-PERRY: Okay, I think we’re done here.13

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JAMAIL: You don't run this deposition, you understand?

CARSTARPHEH: Neither do you, Joe.

JAMAIL: You watch and see. You watch and see who does, big boy. And don't be telling other lawyers to shut up. That isn't your goddamned job, fat boy.

CARSTARPHEH: Well, that's not your job, Mr. Hairpiece.

WITNESS: As I said before, you have an incipient -

JAMAIL: What do you want to do about it, asshole?

CARSTARPHEH: You're not going to bully this guy.

JAMAIL: Oh, you big tub of shit, sit down.

CARSTARPHEH: I don't care how many of you come up against me.

JAMAIL: Oh, you big fat tub of shit, sit down. Sit down, you fat tub of shit.

13 The name of the offending attorney has been excluded. The deposition which reflects the noted testimony was filed with the court only as evidence at a Show Cause hearing. Following a public apology by the offending attorney, the testimony was stricken from the formal record.
These examples of attorney conduct are unfortunately not isolated, and highlight the growing trend of behavior not commensurate with the legal profession.\(^{14}\) Outside the scope of the Code of Ethics, there are some forms of the behavior that are condemned by the Canons of Professional Ethics.\(^{15}\) For example, the Canons condemn verbal abuse between attorneys.\(^{16}\) However, many instances of unprofessional behavior between lawyers often escape the imposition of any meaningful sanctions.\(^{17}\)

In a profession that takes pride in “professional status” and is hypersensitive about its image there is increasing discomfort about both the state of professionalism exhibited by the profession and the perception of lack of professionalism held by the general public.\(^{18}\)\(^^{19}\) This discomfort has spawned a much-needed conversation exploring the causes, effects and suggestions to increase professionalism in the legal arena. The professionalism conversation repeatedly acknowledges that law schools provide one of the first exposures to professionalism in the practice of law.\(^{20}\) With so many lawyers acting in an uncivilized and unprofessional manner just bordering on unethical behavior (i.e. behavior that specifically violates the Code of Ethics), it begs the questions: Are the line-toeing actions a learned behavior? If so, who is teaching our lawyers to toe-the-line up to the point of violative behavior, while simultaneously practicing in a mire of

\(^{14}\) See, generally, Annotation
\(^{15}\) Canon 7, Canons of Professional Ethics, which provides that clients, not lawyers, are the litigants, and that whatever ill feeling exists between clients, counsel should not be influenced by this ill feeling in their conduct and demeanor towards each other, or towards suitors in the case. The Canon advised that personalities between counsel should be scrupulously avoided.
\(^{16}\) Id.
\(^{17}\) See generally, Annotation
\(^{20}\) See, generally, James L. Baillie & Judith Bernstein-Baker, In The Spirit of Public Service: Model Rule 6.1, The Profession and Legal Education, 13 Law & Ineq. 51 at pg. 63 (1994), (the author’s address ABA Standard 302 (a), as written in 1974, and note that the standard “reflects the profession’s view that learning professional responsibility is a fundamental educational objective of legal education.”).
unprofessional behavior? Who is teaching our lawyers to practice with an appropriate level of civility and professionalism? What if any role does legal academia play in the promotion of professional behavior? Is the academy enhancing a spirit of professionalism in the legal community? Is it merely alluding to professionalism in a few chosen courses? Or is it actively taking steps to enhance the standards commensurate with professional behavior?

Despite ostensible promulgation of the principles of professionalism, it is questionable whether those standards and foundations beyond ethical rules are actively eruditional or are simply empty exhortations.

Professionalism as a concept is largely absent from mainstream law school curricula. It may receive cursory to fair treatment at best in classes on Professional Responsibility.\(^\text{21}\) It has been observed that “law schools do not focus much attention on the ideas that seem to be most popular in the current discussions of professionalism.”\(^\text{22}\) Few professors courageously step beyond the line of straightforward rule memorization, and specific ethical and regulatory problems.\(^\text{23}\) Students who raise general ethical objections in traditional law school courses are often told that these concerns are

\(^{21}\) Unfortunately, the popular perspective of Professional Responsibility courses is that of a type of “stepchild” with law school faculty and considered important to law school students inasmuch as its mastery is necessary to succeed on the Multi-State Professional Responsibility Examination. See also Stephen Goldberg, *Bringing the Practice to the Classroom: An Approach to the Professionalism Problem*, 50 J. Legal Educ. 414 at 419 (2000) (stating, “[T]he result is a group of students, ranging from discontented to aggravated, who will resist with inattention and silence anything beyond black letter recitation calculated to help them successfully traverse the MPRE.”)


irrelevant to the “legal” issues being discussed. Questions and objections based on professionalism are similarly summarily dismissed.

Ethics and compliance with ethical rules, receive a fair amount of discussion with an almost voyeuristic approach taken to violations of such rules. An unquestionable need exists to prevent the flow of unethical behaviors in the profession; a need that has been identified and discussed in both political and pedagogical arenas. From widespread dissertation, rules and models have emerged with state and local Bar associations instituting a variety of support provisions for those professionals seeking guidance for ethical behavior and those disciplined for unethical behavior.

Compliance with the rules of ethics however, is simply insufficient if such compliance ignores acts of vulgarity, lack of respect, fairness and civility in the

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24 David B. Wilkins, Redefining "The Professional" in Professional Ethics: An Interdisciplinary Approach to Teaching Professionalism, 58-AUT Law & Contemp. Probs. 241 at 245 (1995) Professor Wilkins observes that the “clear message to law students is that lawyer professionalism, and indeed ethics in general, is (sic) either irrelevant to their lives or something to be deployed instrumentally to further their self-interest.”


As pointed out by Associate Justice Brent Dickson of the Indiana Supreme Court: “It is noteworthy that all of these codes were created in the last decade, perhaps indicating recent awareness of the civility crisis, or more appropriately, the shift in focus to the cure of the civility crisis.” Brent Dickson & Julia Bunton Jackson, Renewing Lawyer Civility, 28 Val. U. L. Rev. 531 at footnote 49 (1994).
performance of ones legal skills. An attorney who acts unethically by definition exhibits unprofessional behavior. However, the attorney who acts unprofessional does not always act in an unethical manner. The line between the unethical and unprofessional is incongruous and dull. Young lawyers must be given the tools to recognize and avoid behaviors that brings that line into focus. Skills must be developed to enhance behavior replete with civility and responsibility through appearance, actions, words and deeds.

Judging by the ever-increasing unprofessional behaviors (particularly the lack of civility) exhibited by those in the legal profession, it is a fair conclusion that the importance and practice of professionalism is not being absorbed by young lawyers. Numerous limbs comprise the body of the American legal profession: the bench (judiciary), the practicing bar, and the academy. Each limb is as important as the next in fostering professionalism within the legal community, and no one limb can be held solely responsible for the transmission of professionalism values. Yet each limb must bear its fair burden of fulfilling the goal to maintaining and strengthening professionalism in the legal community.

27 See, e.g. Neil Hamilton, Professionalism Clearly Defined, 18 No. 4 Prof. Law. 4 at 8 (2008). Professor Hamilton’s provides a “clear definition” of Professionalism based on analysis of various ABA reports, Chief Justice Reports and the Preamble to the Model Rules of Professional Conduct: "professionalism means that each lawyer: 1. Continues to grow in personal conscience over his or her career; 2. Agrees to comply with the ethics of duty -- the minimum standards for the lawyer's professional skills and ethical conduct set by the Rules; 3. Strives to realize, over a career, the ethics of aspiration -- the core values and ideals of the profession including internalizing the highest standards for the lawyer's professional skills and ethical conduct; 4. Agrees both to hold other lawyers accountable for meeting the minimum standards set forth in the Rules and to encourage them to realize core values and ideals of the profession; and 5. Agrees to act as a fiduciary where his or her self-interest is overbalanced by devotion to serving the client and the public good in the profession's area of responsibility: justice.

a. Devotes professional time to serve the public good, particularly by representing pro bono clients; and

b. Undertakes a continuing reflective engagement, over a career, on the relative importance of income and wealth in light of the other principles of professionalism.” See, generally, Timothy Terrell and James Wildman, Rethinking Professionalism, 41 Emory L.J. 403, 406 (1992) (professionalism is an elusive concept and defining it is a lofty goal); and Burnele V. Powell, Lawyer Professionalism as Ordinary Morality, 35 S. Texas L. Rev. 275, 277-278 (1994) (stating that the concept of professionalism is “widely discussed, passionately supported, has generated innovative programs, codes and experiments, but is little-defined”).
The focus of this article will be the role and responsibility specifically of law schools in the propaedeutic instruction of professionalism in the legal community.

Part II of this paper will discuss the ubiquitous definition of professionalism. Part III will address the practicing Bar’s approach to the issue of professionalism, reflecting in Subsection A on the public’s perception of lawyers, and discussing in Subsection B, the response of the governing bodies to such perception. Part IV will highlight the role of legal education in fostering professionalism, discussing in Subsection A the fertile ground for change in the first year of law school, and noting in Subsection B, the relationship between law schools and the legal profession regarding the enhancement of professionalism. Part V will provide suggestions to increase professionalism “training” in law schools.

II. WHAT IS PROFESSIONALISM?

Before ever entering law school, most students, from watching any one of many available television shows or movies depicting the lives of lawyers, know that “[a] lawyer should represent the client zealously within the bounds of the law.” For years, zealous representation once served as a mantra for excellence with adherence to the “zealous” mandate evolving into an excuse for obnoxious, rude, and oftentimes bullying behavior.

Many states have recognized that the “zealous” “buzz word” excused unprofessional behavior. Consequently, states have abandoned the idea of “zealous

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30 Kathleen P. Browe, Comment, A Critique of the Civility Movement: Why Rambo Will Not Go Away, 77 Marq. L. Rev. 751, 767 (1994). (Professor Browe noted that “Zealous advocacy is the buzz word which is squeezing decency and civility out of the law profession. ... [It is] the modern day plague which infects and weakens the truth-finding process and makes a mockery of the lawyer's claim to officer of the court status.”).
advocacy,” embracing the concept that lawyers “act honorably,” not “zealously” in pursuit of clients’ interests. 31, 32

The “zealous” representation standard persists nonetheless, both in the learning and practice of law. It therefore becomes imperative in legal education that law students recognize that the model of zealous representation does “not countenance unrestrained zeal on the part of an advocate.” 33 Such zeal, commendable in itself, is to be exercised within the bounds of the law and within specific ethical considerations. 34 As such, students must be provided the tools to distinguish between “zealousness” and “professionalism.”

In 1953 Dean Roscoe Pound of Harvard Law school articulated a definition of profession which serves as foundational guidance for entry into the abyss of defining “professionalism”. Dean Pound noted that “[t]here is much more in a profession than a traditionally dignified calling”; described the term “profession” as “a group . . . pursuing a learned art . . . in the spirit of a public service--no less a public service because it may incidentally be a means of livelihood;” and asserted that this “esteemed “group” should aspire to behaviors consistent with their professional status: “professionalism.”” 35 What those “behaviors consistent with the professional status” should look like has not been solidified.

31 Arizona became the first state to abandon the “zealous advocacy” standard. Indiana, Louisiana, Montana, Nevada, New Jersey, Oregon and Washington have omitted all reference to zealousness in their rules, preambles and commentary.
33 State v. Kansas, 538 P.2 966 (Kan.1975) (holding that that public censure is appropriate penalty for the verbal abuse and improper attack on opposing counsel in a civil proceeding.)
Noteworthy attempts have been made but to date no consensus has been reached regarding a firm definition of “professionalism”. Professor Fred Zacharias observed that “[n]o term in the legal lexicon has been more abused than ‘professionalism’.” It is a “highly contested concept, the symbolic capital of which varies from one part of the bar to another.” A lay person, lawyer, or scholar may define professionalism in one word; a word that necessarily will be dictated by his or her own innate personal beliefs of appropriate behavior for one in a stated profession.

From competency to candor; adversarial behavior to aspirational behavior; in the legal melting pot, the views of what “professionalism” means may vary and prove to be an illusory or capacious concept. Within the legal profession alone, when the question is posed, the definitions of “professionalism” vary. Any proposed definition would be subjective and constantly changing. As Professor Bruce Green states:

“‘professionalism’ is a subject on which we lack a shared vocabulary and shared...
understanding.” A word apparently hollow of any moral meaning, it has been suggested that the “language of professionalism” should simply be “jettisoned”.

Providing definition to the term has been sought by social academicians. Sociologist Eliot Freidson described the “idea” of professionalism as nothing more than a “social label applied to a limited number of occupations considered to be in some way superior to ordinary occupations.” A more diverse definition of professionalism is espoused by Sociologist Bernard Barber:

[P]rofessionalism is a matter of degree, varying in terms of such attributes as degree of generalized and systematic knowledge; orientation to community interest rather than self-interest; degree of self-control through internalized codes of ethics and voluntary associations controlled by work specialists themselves; and degree to which a system of monetary and honorary rewards primarily symbolizes work achievement and not individual self-interest.”

“Professionalism” has been touted as the “ideology and associated activities in an occupational group whose members aspire to professional status, even though actual professional status may never be achieved.

Others present professionalism as merely a rhetorical device that disguises the pursuit of self-interest as public spiritedness. Simply stated, it is an effort to “assert and

44 Bruce A. Green, supra note 42 at 731.
48 See Bernard Barber, Some Problems in the Sociology of Professions, in The Professions in America 17 at 18 (Kenneth S. Lynn ed., 1965).
49 See Howard M. Vollmer & Donald L. Mills, Editors’ Introduction to Professionalization at viii (Howard M. Vollmer & Donald L. Mills eds., 1996).
protect their own privileged position against the challenges of other lawyers or of outside
groups.” 51 A device that serves to exclude those groups or marginalize new entrants to
the bar. 52 Professor Stephen Goldberg aptly observed that “[p]rofessionalism,
ultimately, is no more or less than acculturation into a group with enough in common so
its members can identify themselves and each other by what they do and how they do
it.” 53

A derivative of state Bar’s surveyed defines professionalism as a “feel-good”
concept relating to the courtesy and respect that lawyers should have for their clients,
adverse parties, opposing counsel, the courts, court personnel, witnesses, jurors and the
public. 54 Chief Justice Harold G. Clarke of the Georgia Supreme Court has observed that
professionalism “is the kind of thing that you may look at, like the Cheshire cat's grin--
you see it now, then you don't see it, but when you finally get through it and see it you
have an awfully good feeling about it.” 55 The all-encompassing term includes a variety of
ideals, traditions, and tenets that have been historically associated with the practice of
law. 56 It is a term however, that can neither be “divorced from nor subsumed by the
realities of contemporary practice.” 57

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50 See, e.g., Jerold S. Auerbach, Unequal Justice: Lawyers and Social Change in Modern America 12-13
(1976).
51 See generally, Rue Bucher & Anslem Strauss, Professions in Process, 66 Am. J. Soc. 325, 330-31
(1961).
52 Sarat, supra note 38 at 813 (as explanation of one critical view that certain segments of the bar claim a
“crisis” in the professionalism area simply to protect their “privileged position”).
53 Stephen H. Goldberg, Bringing The Practice To The Classroom: An Approach To the Professionalism
Problem, 50 J. Legal Educ. 414 at 430 (2000).
54 See generally, Conference of Chief Justices, A National Action Plan on Lawyer Conduct and
cjc.nsc.dni.us/natlplan/natlactionplan.html (last visited July 2, 2008).
55 Interview with Chief Justice Harold G. Clarke, Supreme Court of Georgia, History, Mandate, Structure,
56 See Wm. Reece Smith, Jr., Teaching and Learning Professionalism, 32 Wake Forest L. Rev. 613 (1997)
(defining professionalism as “competence, character, and commitment: competence in serving the client;
The circularity of the definitions, rather than providing clarification of the types of behavior illustrative of professionalism, tends to increase the ubiquitous nature of the word. Yet, as ubiquitous as the definition of “professionalism” may prove, theoretically, the broader the definition, the greater the opportunity to flush out unsavory and unacceptable behavior within the profession.\(^5^8\) As such, any expansive word or term to describe professionalism cannot be banished as an undesirable term because a narrow term could provide additional non-professional arsenal for an espoused “professional.” In other words, the ‘line-toers” would simply then toe-the-line to the defined un-professional behavior.

Despite its anomalous nature, one vacuous analogy binds the professionalism debate. As much as one would shudder at the analogy\(^5^9\), it is as Justice Potter Stewart remarked in a famous pornography case: “you know it when you see it.”\(^6^0\) Certainly one knows behavior lacking in professionalism when one sees it. Ill-timed power naps and sleeping habits in courtrooms; inappropriate recorded expletive-riddled language, the lack of civility among attorneys, the lack of respect for the judiciary and the practice of law, and plain obnoxious, despicable and inappropriate behavior screams “unprofessional” to even the disinterested onlooker.

\(^{57}\) Wilkins, supra note 31 at 249.

\(^{58}\) Many states have recognized the danger in limiting the scope of the “professionalism” definition. For example, the Florida Bar Center for Professionalism has been careful to not equate professionalism exclusively with matters of civility. See, e.g., Blame Teagle, Remarks at the Professionalism Conference in Charleston, South Carolina, Enhancing the Accountability of Lawyers for Unprofessional Conduct (Sept. 28, 2002), in Transcript, 54 S.C. L. Rev. 897, 920 (2003), as cited by Wendel supra note 24 at fn 14.

\(^{59}\) Keith W. Rizzardi, Defining Professionalism, 79-AUG Fla. B.J. 38 at 42 (2005) (stating that “we should shudder at the realization that pornography and professionalism share a common definition.”).

While the root of the problem may remain unknown, avenues to change the behaviors need to be established and enforced. Every person in the legal profession, regardless of whether they consider themselves a member of the judiciary, a Bar member, or an academician, should have a vested interest in the state of professionalism, however it may be defined.

For its part, the state legal governing regulatory bodies (Bar associations) have aggressively joined the professionalism conversation as they recognize that professionalism “continues to offer a superior approach to influencing the behavior of attorneys in the way most beneficial to society,”61

III. A SELF-REGULATING PROFESSION THAT IS NOT REGULATING ITS PROFESSIONALISM – THE PRACTICING BAR AND THE JUDICIARY’S APPROACH TO UNPROFESSIONAL BEHAVIOR.

Self-regulation is widely viewed as a “hallmark of professional status.”62 By definition, a self-regulatory system allows for vast autonomy over internal affairs, and discretion for the individual members of the profession.

As officers of the court, early English lawyers were subject to direct supervision by the court.63 In the late 1800s, American lawyers recognized a decrease in public trust of the profession due to a variety of factors, including increasing legal fees.64 Increasing

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62 See Richard L. Abel, American Lawyers 4 (1989) (noting the profession’s “exalted social, economic, political and cultural standing”); See also Stempel, supra note 46.
64 Id.
calls for reform led to the development of a self-regulating bar. By the turn of the
Twentieth Century, the American Bar Association (“ABA”) had embraced the English
self-regulating system.

Between 1878-1902, the ABA was a group of less than 2000 lawyers, selected by
local bar organizations and attending by invitation only, who met informally each
summer in Saratoga Springs, New York. The stated purposes of this early ABA were:
“(1) To advance the science of jurisprudence; (2) To promote the administration of
justice; (3) To promote uniformity of legislation throughout the union; (4) To uphold the
honor of the profession; and (5) To encourage cordial intercourse among the members of
the American Bar.”

In an effort to spurn movement to fulfill the stated purpose, the ABA initially
attempted to regulate attorney conduct through promulgation of the Canons of
Professional Ethics in 1908. Some sixty years later, the Model Code of Professional
Conduct was drafted; subsequently followed by adoption by the ABA House of Delegates
of the Model Rules of Professional Conduct in 1983. At the dawn of the new
millenium, California, Maine, and New York were the only states that did not have

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66 Id. at fn. 51.
67 See Gerald Carson, A Good Day at Saratoga 3-6 (1978); Edson R. Sunderland, History of the American Bar Association and Its Work 3-14 (1953)
68 Id. at 17.
69 American Bar Association Canon Of Ethics, reprinted in Henry S. Drinker, LEGAL ETHICS 309 (1953) (Mr. Drinker was a longstanding member of the American Bar Associations Committee on Professional Ethics and Grievances. He acknowledged that “legal ethics” is impossible, but seemed to adhere to Bouvier’s definition that “legal ethics” is that branch of moral science which treats of the duties which a member of the legal profession owes to the public, the court, to his professional brethren, and to his client.”) See, also John F. Sutton, Jr., Guidelines to Professional Responsibility, 39 Tex. L. Rev. 391 at note 7 (1961) (quoting Mr. Drinker).
professional conduct rules that follow the format of the ABA Model Rules of Professional Conduct.\footnote{New York follows the predecessor ABA Model Code of Professional Responsibility, and California and Maine developed their own rules. See State Adoption of Model Rules, www.abanet.org/cpr/mprc/model_rules.html, last visited, August 4, 2008.}

The stated purposes of the rules are to protect the public, to preserve the integrity of the legal profession, and to preserve public confidence in the profession.\footnote{See Pugh, supra note 51 at fn. 12 (citing cases illustrating courts stating that the critical factor influencing their decisions in legal disciplinary proceedings, as public protection rather than attorney punishment.)} The rules emphasize an exercise of independent judgment and provision of independent professional services to every client; and note that “[t]he legal profession is largely self-governing.\footnote{See Model Rules of Prof’l Conduct; Paragraph 10 to the Preamble; R. 2.1 (2007); Model Code of Prof’l Responsibility EC 1-1 (1983).}

Autonomy remains an important hallmark of professionalism. Hundreds of bar associations exist in the United States, including 282 state and local bar associations with at least 300 members.\footnote{ABA Div. for Bar Servs., 2005 Bar Activities Inventory (Joanne O’Reilly ed., 2006) [hereinafter 2005 Bar Activities Inventory].} In 2006, the ABA was the largest comprehensive bar association with over 400,000 members.\footnote{See, About the American Bar Association, http://www.abanet.org/about/ (last visited Nov. 18, 2007).} Hundreds of those bar members are subject to disciplinary actions yearly by their state and local Bar organizations.\footnote{Leslie C. Levin, The Case for Less Secrecy in Lawyer Discipline, 20 Geo. J. Legal Ethics 1 (2007) (Professor Levin cites statistics from the 2004 Survey on Lawyer Discipline Systems 2004 which reported in excess of 125,000 lawyer discipline complaints in 2004 against the 1.3 million lawyers in the United States).} Many times, names prominently displayed in the local Bar newspaper cite various forms of discipline summarily meted out, from reprimand to disbarment. Disciplinary measures are generally provided as a result of behavior which is not only unprofessional, but also violative of the ethical rules.

In a single month one state Bar’s newspaper reported:

\footnote{ABA Div. for Bar Servs., 2005 Bar Activities Inventory (Joanne O’Reilly ed., 2006) [hereinafter 2005 Bar Activities Inventory].}
“The [Court] in recent court orders disciplined 34 attorneys, disbarring 12, suspending 14, and placing three on probation. Seven attorneys were reprimanded and four were ordered to pay restitution. Some attorneys received more than one form of discipline.”

Disciplinary actions have been instituted for claims stemming from failure to maintain or mishandling of trust accounts (including the dreaded co-mingling of funds), neglecting to advise clients of case status, and failing to appear for court hearings; to criminal charges: theft, possession, sale, trafficking of drugs, money-laundering, bank fraud, child pornography, DUI, securities fraud, and aggravated assault. Disciplinary action duly meted out for the egregious and the unethical violations pursuant to United States Supreme Court’s recognition that sanctions for “abusive” litigation may be imposed even when no specific rule is violated.

Despite judicial efforts, the judiciary cannot become the primary source of regulating lawyer behavior. The judiciary routinely comes under attack for using its

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77 The Florida Bar News June 1, 2008.
78 See Chambers v. NASCO, Inc., 501 U.S. 32, 50-51 (1991) (upholding an award of nearly one million dollars and holding that explicit textual authority is not a prerequisite to a district court's award of sanctions for litigation abuse).
79 Recognizing that the judiciary should not be the primary source, it is important to note that it does, however, routinely use is permissive power in that regard. See e.g. Lee v. American Eagle Airlines, Inc., 93 F. Supp. 2d 1322 (S.D. Fla. 2000) (Title VII plaintiff attorneys fee reduced because of his attorney's unprofessional and abusive behavior before and during trial, including insulting the court reporter, and “trash talk” directed at defendant's lawyers and representatives; The court noted that: “The manner in which a lawyer interacts with opposing counsel and conducts himself before the court is as indicative of the lawyer's ability and skill as is his mastery of the rules of evidence.”); United States v. Ortlieb, 274 F.3d 871 (5th Cir. 2001) (attorney's use of profanity during trial was criminal “misbehavior” that obstructed the administration of justice, warranting conviction for contempt); Lockheed Martin Energy Sys., Inc. v. Slavin, 190 F.R.D. 449 (E.D. Tenn. 1999) (imposing monetary sanctions and sanction of a written apology where defendant’s assertion of irrelevant matters to portray plaintiff as an entity of ill repute, and pursuit of a campaign of personal attacks on plaintiff and plaintiff’s attorney was found to be violative and undeserving of legal rights and protections, without any legal or rational basis to believe such materials were germane in any way to the court’s determination); Edberg v. Neogen Corp., 17 F. Supp. 2d 104 (D. Conn. 1998) (court concerned with plaintiff counsel's lack of forthrightness and professionalism in letter sent to her adversary and the threatened use of Rule 11 sanctions to intimidate her adversary into not filing motion to dismiss; court also referred to curt and uncivil response of defense counsel to letter); In re Ramunno, 625 A.2d 248,
power to effect social change,\(^8\) and some appellate courts have noted the presence of an outer limit to the judiciary’s “inherent powers”\(^81\) to enforce “aspirational civility standards.”\(^82\)


\(^{81}\) See *Revson v. Cinque & Cinque*, 221 F.3d 71 (2d Cir. 2000) (reversing $50,000 award of sanctions and noting that an award of sanctions under trial court's inherent powers requires both clear evidence that the challenged actions are entirely without color, and are taken for reasons of harassment or delay or for other improper purposes, and a high degree of specificity in the factual findings of the lower courts; a claim is colorable when it has some legal and factual support, considered in light of the reasonable beliefs of the individual making the claim); *Oliver v. Thompson*, 803 F.2d 1265, 1272 (2d Cir. 1986) (in order for court to exercise inherent power to sanction there must be a finding of bad faith); *Maynard v. Nygren*, 332 F.3d 462 (7th Cir. 2003) (“There is no authority under the Rules or under the inherent powers of the court to sanction attorneys for mere negligence.”); *United States v. Johnson*, 327 F.3d 554 (7th Cir. 2003) (disallowing sanction under court's inherent powers where there was no bad faith); *Byrne v. Nechat*, 261 F.3d 1075, 1106 (11th Cir. 2001) (affirming Rule 11 sanctions against attorney but vacating sanctions awarded against plaintiff; “Because the court's inherent power is so potent, it should be exercised 'with restraint and discretion.'”); *Cooper Tire & Rubber Co. v. McGill*, 890 So. 2d 859 (Miss. 2004) (under rules of civil procedure and the inherent power to protect the integrity of its process, trial court has broad authority to impose sanctions for discovery violations and violations of its orders; however, sanctions of $10,000 against defendant for violating discovery order requiring it to produce or allow inspection of documents reversed because it was a constructive criminal contempt—purely punitive fine which would be paid to the trial court and did not involve rights of plaintiffs or other private parties—therefore, it could not
Hundreds of bar members escape the unsavory visit to the judiciary for behaviors that are clearly violative of the Rules, the Models and the Codes; practicing for years without crossing the boundary into the hedonistic land of the unethical; simply focusing on staying “within the bounds of the law.” In an effort to stem the steady flow of these “line-toers,” most states now have Rules of Professional Conduct. States have also

be imposed without procedural safeguards, including that the citing judge recuse himself from conducting the contempt proceeding involving the charges); United Artists Theatre Circuit, Inc. v. Sun Plaza Enterprise Corp., 352 F. Supp. 2d 342 (E.D. N.Y. 2005) (Defendant's motion for sanctions pursuant to the court's inherent power denied despite defendant's argument that the plaintiff movie theatre company's only motivation for filing the complaint was to tie up the site in litigation to deter competitors from developing the property and that plaintiff filed a Rule 41 motion for voluntary dismissal once the lis pendens plaintiff had filed on the site had expired and after years of litigation, where the complaint was not without a colorable basis in fact, there was no evidence to suggest that plaintiff's sole motive in filing suit was to deter development of the site by competitors and plaintiff had plausible good faith reasons for moving to dismiss the complaint when it did (its financial inability to continue the litigation as evidenced by the fact that the motion closely followed plaintiff's bankruptcy filing).) Mathias v. Jacobs, 167 F. Supp. 2d 606 (S.D.N.Y. 2001) (magistrate erred in imposing sanctions under court's inherent power against defendant's counsel for taking the deposition of prospective defense witnesses; depositions of witnesses were relevant to asserted defenses and taking of the deposition of one witness did not become sanctionable just because counsel did not reach the issue during the actual deposition); New York v. Solvent Chem. Co., 210 F.R.D. 462 (W.D.N.Y. 2002) (“[T]he bad faith standard [for invoking the court's inherent power] is not easily satisfied in the Second Circuit.”); Walker v. Ferguson, 102 P.3d 144 (Okla. 2004) (Trial court could not order counsel for plaintiffs in personal injury action to pay attorneys fees to defendant as sanction for counsel's causing a mistrial by mentioning in opening statement that defendant driver had been convicted of driving under the influence following the collision giving rise to the action, where the trial court did not find that counsel's conduct constituted bad faith or oppressive conduct, as required for an award of attorney's fees as sanctions under the court's inherent or equitable power to impose such sanctions.); State ex rel. Tal v. City of Oklahoma City, 61 P.3d 234 (Okla. 2002) (“[T]he inherent power was not meant to be a mechanism to sanction or punish parties or their attorneys for raising novel theories or espousing unpopular causes that are neither baseless nor frivolous.”).

82 See Carnival Corp. v. Beverly, 744 So. 2d 489 (Fla. Dist. Ct. App. 1999) (although courts have inherent authority to sanction attorney misconduct, including disqualification, the trial court abused its discretion in disqualifying counsel because it did not provide clear and unambiguous directions to counsel concerning the conduct requirements at trial); In re Lerma, 144 S.W. 3d 21 (Tex. Ct. App. 2004) (sanctions for filing an allegedly misleading appendix were not warranted against mandamus petitioner who included in his mandamus appendix a void dismissal order which the trial court signed and faxed to the parties but never filed; although Lawyer's Creed requires lawyers to fairly portray the record on appeal, giving petitioner the “benefit of the doubt” in a decidedly close question, court would exercise its discretion by declining to impose sanctions); Continental Carbon Co. v. Sea-Land Serv., Inc., 27 S.W. 3d 184 (Tex. Ct. App. 2000) (Lawyer's Creed provision requiring that a lawyer notify opposing counsel regarding his intent to take a default judgment did not trigger the court's inherent powers, and thus was not enforceable by the courts, so as to require plaintiff that properly served defendant with citation on a sworn account to give further notice).

83 See discussion supra re: “line-toers” in introduction.
adopted Creeds of Professional Conduct or some form thereof. Many states and local bar associations have created professionalism committees and commissions. Others

84 ALABAMA RULES OF PROFESSIONAL CONDUCT (adopted 5/2/90); ALASKA CODE OF PROFESSIONAL RESPONSIBILITY (adopted 4/14/93); ARIZONA RULES OF PROFESSIONAL CONDUCT (adopted 9/7/84); ARKANSAS MODEL RULES OF PROFESSIONAL CONDUCT (1992); CALIFORNIA RULES OF PROFESSIONAL CONDUCT (adopted 12/16/85); COLORADO RULES OF PROFESSIONAL CONDUCT (adopted 5/7/92); CONNECTICUT RULES OF PROFESSIONAL CONDUCT (adopted 6/23/86); DELAWARE LAWYERS' RULES OF PROFESSIONAL CONDUCT (adopted 9/12/85); DISTRICT OF COLUMBIA RULES OF PROFESSIONAL CONDUCT (adopted 3/1/90); FLORIDA RULES OF PROFESSIONAL CONDUCT (adopted 7/18/86); GEORGIA RULES OF PROFESSIONAL CONDUCT (adopted 6/12/00); HAWAII RULES OF PROFESSIONAL RESPONSIBILITY (adopted 12/6/93); IDAHO RIGHTS AND DUTIES OF ATTORNEYS (adopted 9/3/86); ILLINOIS RULES OF PROFESSIONAL CONDUCT (adopted 2/8/90); INDIANA RULES OF PROFESSIONAL CONDUCT (adopted 11/25/86); IOWA RULES OF PROFESSIONAL RESPONSIBILITY FOR LAWYERS (adopted 4/20/05); KANSAS MODEL RULES OF PROFESSIONAL CONDUCT (adopted 1/29/88); KENTUCKY RULES OF PROFESSIONAL CONDUCT (adopted 6/12/89); LOUISIANA RULES OF PROFESSIONAL CONDUCT (adopted 12/18/86); MARYLAND RULES OF PROFESSIONAL CONDUCT (adopted 4/18/86); MASSACHUSETTS RULES OF THE SUPREME JUDICIAL COURT, ETHICAL REQUIREMENTS AND RULES CONCERNING THE PRACTICE OF LAW (1992); MICHIGAN RULES OF PROFESSIONAL CONDUCT (adopted 3/11/88); MINNESOTA RULES OF PROFESSIONAL CONDUCT (adopted 6/13/85); MISSISSIPPI RULES OF PROFESSIONAL CONDUCT (adopted 2/18/87); MISSOURI RULES OF PROFESSIONAL CONDUCT (adopted 8/7/85); MONTANA RULES OF PROFESSIONAL CONDUCT (adopted 6/6/85); NEBRASKA CODE OF PROFESSIONAL RESPONSIBILITY (1992); NEBRASKA RULES OF PROFESSIONAL CONDUCT (adopted 6/8/05); NEVADA RULES OF PROFESSIONAL CONDUCT (adopted 1/26/86); NEW HAMPSHIRE RULES OF PROFESSIONAL CONDUCT (adopted 1/16/86); NEW JERSEY RULES OF PROFESSIONAL CONDUCT (adopted 7/12/84); NEW MEXICO RULES OF PROFESSIONAL CONDUCT (1992); NEW YORK CODE OF PROFESSIONAL RESPONSIBILITY (adopted 6/26/86); NORTH CAROLINA RULES OF PROFESSIONAL CONDUCT (adopted 10/7/85); NORTH DAKOTA RULES OF PROFESSIONAL CONDUCT (adopted 5/6/87); OHIO CODE OF PROFESSIONAL RESPONSIBILITY (1992); OHIO RULES OF PROFESSIONAL CONDUCT (adopted 3/10/88); OREGON CODE OF PROFESSIONAL RESPONSIBILITY (1992); OREGON RULES OF PROFESSIONAL RESPONSIBILITY (adopted 11/1/05); PENNSYLVANIA RULES OF PROFESSIONAL CONDUCT (adopted 10/16/87); RHODE ISLAND RULES OF PROFESSIONAL CONDUCT (adopted 11/1/88); SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT (adopted 1/9/90); SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT (adopted 12.15/87); TENNESSEE CODE OF PROFESSIONAL RESPONSIBILITY (1992); TENNESSEE RULES OF PROFESSIONAL RESPONSIBILITY (adopted 8/27/02); TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT (adopted 6/20/89); UTAH RULES OF PROFESSIONAL CONDUCT (adopted 3/20/87); VERMONT CODE OF PROFESSIONAL RESPONSIBILITY (1992); VIRGINIA CODE OF PROFESSIONAL RESPONSIBILITY (1992); VIRGINIA RULES OF PROFESSIONAL CONDUCT (adopted 3/9/99); WASHINGTON RULES OF PROFESSIONAL CONDUCT (adopted 7/25/85); WEST VIRGINIA RULES OF PROFESSIONAL CONDUCT (adopted 6/20/88); WISCONSIN RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS (adopted 6/10/87); WYOMING RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW (adopted 11/7/86).

85 For e.g., the Florida Bar’s “Creed of Professionalism” (echoing ideals set forth in the Rules of Professional Conduct), which states: “I revere the law, the judicial system, and the legal profession and will at all times in my professional and private lives uphold the dignity and esteem for each. I will further my profession’s devotion to public service and to the public good. I will strictly adhere to the spirit as well as the letter of my profession’s code of ethics, to the extent that the law permits and will at all times be
maintain professionalism centers created by the state judiciary. At a minimum, most states have continuing education requirements in the areas of ethics and professionalism.

guided by a fundamental sense of honor, integrity, and fair play. I will not knowingly misstate, distort, or improperly exaggerate any fact or opinion and will not improperly permit my silence or inaction to mislead anyone. I will conduct myself to assure the just, speedy and inexpensive determination of every action and resolution of every controversy. I will abstain from all rude disruptive, disrespectful, and abusive behavior and will at all times act with dignity, decency, and courtesy. I will respect the time and commitments of others. I will be diligent and punctual in communicating with others and in fulfilling commitments. I will exercise independent judgment and will not be governed by a client’s ill will or deceit. My word is my bond.” Florida Bar, Center for Professionalism, Creed of Professionalism, available at www.floridabar.org/professionalism.

86 See Professionalism Committee, American Bar Ass’n Section of Legal Educ. and Admissions to the Bar, Teaching and Learning Professionalism 2, App. C (1996).

87 For example, the Supreme Courts of both Florida and Georgia, both commissioned Centers for Professionalism. For a general overview of the states leading the professionalism movement, see Thomas E. Richard, Professionalism: What Rules Do We Play By? 30 S.U. L. Rev. 15 at 22 (2002).

88 See Ala. R. Continuing Legal Educ. 9.A. (requiring lawyers to complete a six-hour course in professionalism within twelve months of being licensed to practice law); Ariz. Rev. Stat. Sup. Ct. R. 45(a)(3) (requiring a three-hour state bar course every year on professionalism); Colo. R. Civ. P. 260.2(4) (requiring lawyers to satisfy four of the seven unit continuing legal education ethics requirement every three years by completing a required course on professionalism); Del. R. Continuing Legal Educ. 4(A)(2) (requiring four hours credit every two years in programs which are designated as instruction in legal ethics or professionalism); Fla. St. Ann. Bar. R. 6-10.3(b) (requiring five credit hours every three years in legal ethics or professionalism); Ga. Sup. Ct. R. 8-104(B)(3) (requiring a one-hour course per year on professionalism); Kan. Sup. Ct. R. 802(a) (requiring two credit hours per year in the area of professional responsibility, which includes legal ethics, professionalism, and malpractice prevention); Ky. Sup. Ct. R. 3.661(6) (requiring two credit hours per year in legal ethics, professional responsibility, or professionalism); La. Sup. Ct. R. 30(c) (requiring one credit hour in professionalism every year); Minn. Stat. Ann. Sup. Ct. R. Continuing Legal Educ. 3, Definitions pt. h (requiring three credit hours every three years in “courses in ethics and professional responsibility,” defined to include courses specifically addressing professionalism, although not limited to such courses); Mo. Sup. Ct. R. 15.05(f) (requiring three credit hours every three years in professionalism, legal or judicial ethics, or malpractice prevention); N.H. Sup. Ct. R. 53(A) (requiring two credit hours per year in legal ethics, professionalism, or the prevention of malpractice, substance abuse, or attorney-client disputes); N.Y. Ct. R. §§ 1500.12(a), 1500.22(a) (requiring newly admitted attorneys to complete a total of six credit hours in ethics and professionalism within the first two years of admission to the Bar, and requiring experienced attorneys to complete four credit hours every two years in ethics and professionalism); N.C. St. B.R. 1(D), § .1500 (requiring two credit hours per year in the area of professional responsibility or professionalism); Ohio Rev. Code Ann. Gov. Bar. R. 10(3)(A)(1) (requiring one hour in professionalism every two years); Pa. R. Continuing Legal Educ. 105(a) (requiring twelve hours per year of continuing legal education in general; subjects include substantive law, lawyer ethics, professionalism, and substance abuse); Tenn. Sup. Ct. R. 21(3.01) (requiring three credit hours every three years in ethics and professionalism); Va. Sup. Ct. R., pt. 6, § 4, P 17(C)(1) (requiring a course for recent admittees and two credit hours per year in legal ethics or professionalism); Wash. Ct. Adm. Prac. R. 45(a), (c) (requiring six credit hours every three years in legal ethics, professionalism, and professional responsibility).
As commendable as the instituting of these rules, committees, commissions and requirements may be, the danger still lurks when relying on the “rule” and not the spirit of professionalism.\(^{89}\)

Despite an entrenched system of self-regulation, the public’s perception of lawyers and their failure to adhere to the spirit of professionalism continues to be a source of primary concern for the profession.\(^{90}\) Lawyers generally believe that declining public perception is, if not a “crisis”, at least a significant problem.\(^{91}\) A sentiment echoed by the judiciary.\(^{92}\)

### A. The Public Perception of Lawyers

“The first thing we do, let’s kill all the lawyers.”\(^{93}\)

Scholars have disagreed on the true meaning of the Shakespearean statement; some arguing that the statement was merely Shakespeare’s effort to praise the profession as the guardian of states plagued by conspirators.\(^{94}\) However, its plain language could very well echo the perception of the legal profession held by the public: that the members


\(^{92}\) See, e.g. *Chevron Chem. Co. v. Deloitte & Touche*, 501 N.W.2d 15, 19-20 (Wis. 1993) (“There is a perception both inside and outside the legal community that civility, candor and professionalism are on the decline in the legal profession and that unethical, win-at-all-costs, scorched-earth tactics are- on the rise.”).

\(^{93}\) (Spoken by Shakespeare’s Butcher) William Shakespeare, The Second part of King Henry the Sixth Act 4, sc. 2, line 75 (Sylvan Barnet ed., Signet 1989) (1623).

\(^{94}\) See, e.g. Serena Stier, *Legal Ethics: the Integrity Thesis*, 52 Ohio St. L.J. 551, 552 (1991) (stating that when Shakespeare’s words are taken in context, such words “relate the intent of conspirators to take over the state and get rid of those who might protect the peace and the law of the land – the lawyers.”).
of the profession, because of their unsavory reputations, are worthy of being first in line for eradication.

Philosophy professor, Dr. Kenneth Kipnis, observed that professions like law and medicine are "interesting" as a result of "three distinct but connected features": a certain claim to maximal competence in some set of pursuits; a certain commitment to the realization of certain social values; and exclusive social reliance upon the profession. The "professionalism" of law and medicine, however, are shaped in different ways, and viewed differently by the general public. As far back as Biblical times, law was a disparaged profession. Disparagement turned to near-repulsion during Colonial,

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95 Kenneth Kipnis, *Ethics Expertise in Civil Litigation*, 33 J.L. Med. & Ethics 274 at 277 (2005); (the pursuits as noted by Dr. Kipnis are: the certification that practitioners obtain in accredited educational programs, the constant updating of the curriculum, the continuing education requirements, the exams that candidate-professionals must pass. He notes that the oversight they must undergo are all intended to ensure a high levels of competency among the profession's membership. With regard to the social values, Dr. Kipnis also notes that those values are also referred to as "core professional values." "They are the profession's answer to the question: what do we care about?" [Emblazoned on the Chicago building where the AMA has its headquarters are the words: "Physicians dedicated to the health of the American people."] Professor Kipnis aptly states that "[A] profession's core values should be ones that practitioners broadly embrace, that the profession's novices are taught how to secure and further, and that the communities served by the profession want practitioners to take seriously." See also K. Kipnis, "Medical Ethics Education in a Problem Based Curriculum" *Newsletter of the American Philosophical Association Committee on Philosophy and Medicine* 1 (Fall 2000)). Dr. Kipnis identifies the exclusive social reliance up on the profession stating that "to the extent that a profession's claims to maximal competency are legitimate, and to the extent that the profession is reliably committed to the realization of significant social values, it is reasonable to delegate to the profession exclusive responsibility for the delivery of its distinctive services to the community as a whole."

96 Wilkins, supra note 12 at 250. (Observations based on Harvard University professionalism interdisciplinary course. Professor Wilkins notes that professional education [from the feel of the classrooms to the lecturing styles of faculty members], shapes lawyers and doctors in subtly different ways: law students are taught to argue and challenge authority from the moment they arrive, and have limited opportunities to form mentoring relationships with experienced lawyers. "Medical students, on the other hand, spend the first two years of their education passively absorbing large quantities of data and immediately enter into complex hierarchical relationships in which they start at the bottom with the expectation that they will eventually work their way to the top; and have greater opportunities for mentoring and a real immersion in the medical profession's ideals unmediated (or at least only partly mediated) by the profit motivations that attend mentoring relationships in law to the extent that they exist at all."

97 Luke 11: 46 "How terrible also for you teachers of Law! You put onto people's backs loads which are hard to carry, but you yourselves will not stretch out a finger to help them carry those loads."
Luke 11: 52 "How terrible for you teachers of the Law! You have kept the key that opens the door to the house of knowledge; you yourselves will not go in and you stop those who are trying to go in!" Good News Bible: The Bible in Today's English Version (1976)
Republican, and Jacksonian periods. Nonetheless, public perception of lawyers has actually improved over the centuries. In surveys taken by actual clients, large majorities report that they are “very satisfied” or “somewhat satisfied” with their lawyer. Despite their perceived necessity and any improvements in the public perception, lawyers have continued to suffer some form of unpopularity by the public. As one attorney put it, “[a]s long as there have been lawyers, there have been critics condemning them for their cramped souls, their devotion to lucre, their abusive and uncivil ways.”

Once viewed as a profession of prestige, the public perception of law as a profession has steadily declined. An overabundance of lawyer jokes lends to the negative stereotypes and disparaging perception of the public. The problem with

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98 For a general review of the public perception of lawyers see, Marc Galanter, The Faces of Mistrust: The Image of Lawyers in Public Opinion, Jokes, and Political Discourse, 66 U. Cin. L. Rev. 805, 808 (1998) (provides survey data revealing the perception of lawyers per public opinion surveys. The surveys reviewed note that over half of American adults have used lawyers and most report themselves satisfied with the service provided).
100 Galanter, supra at note 98.
102 See Lawrence M. Friedman, A History of American Law 94 - 96, 303-304 (2d ed. 1985); also American bar Association, Commission on Professionalism, In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism 1, 3 (1986) (“has our profession abandoned principle for profit, professionalism for commercialism”?)
103 Ryan, supra note 45.
105 Gross, supra note 101 (1999) (Professor Gross recounts typical lawyer jokes, for instance “[H]ow many personal injury attorneys does it take to change a lightbulb? Three – one to turn the bulb, one to shake him off the ladder, and one to sue the ladder company.”
lawyer jokes, however, is twofold: first, lawyers don’t think they are funny; and second everyone else doesn’t (sic) think they are jokes! 106

Over the years, “the morally ambiguous universe in which lawyers live” has “delighted script writers” and “fascinate[d] the public.”107 Such fascination is rather indign, as the public continues to perceive lawyers as “confrontational, manipulative, unscrupulous, arrogant, and greedy.”108 Such unpopularity may very well be a result of a number of different factors, including jealousy, concern that lawyers make matters as unintelligible as possible for laymen in order to enhance the lawyer’s own position, association of lawyers with unpopular clients and unpopular causes, and the perception that the wealthy get a different brand of justice than the poor.109

In a national survey conducted on behalf of the ABA Section of Litigation, consumer confidence in the legal profession ranked second to last: only above the media. Less than one in five (19%) of consumers say that they are “extremely” or “very confident” in the legal profession or lawyers. Slightly fewer (16%) expressed confidence in the media.110

The Gallup Poll found that when the honest and ethical standards of different occupations were ranked, lawyers ranked near the bottom receiving just 15% of the

106 Id.
109 See, Gross, supra. note 101 at 1459.
public vote; well below nurses, doctors, teachers and policemen, and just barely above lobbyists, car salesmen, and state officeholders.\textsuperscript{111}

A state survey showed that 44\% of people had little or no respect for lawyers; a nineteen percent increase from 25\% eight years earlier.\textsuperscript{112} Lawyers had the dubious distinction of belonging to the least liked profession. Attorneys themselves believe that the public has an even worse view of them. Among New Jersey attorneys, 86.2\% believe the public is becoming more anti-lawyer; only 12.1\% believe that the image of lawyers is not deteriorating and 1.7\% have no opinion.\textsuperscript{113}

\textbf{B. The “Governing Bodies” Responses to the Troubling Public Perception of the Legal Profession.}

The American Bar Association, with former ABA president, Justin Stanley as Chair, formed its Commission on Professionalism in response to the growing concern of those in the legal profession that the profession was “moving away from the principles of professionalism:” a shift “so perceived by the public.”\textsuperscript{114} In large part due to the writings and commentary of Chief Justice Warren E. Burger\textsuperscript{115}, one of the earliest professionalism advocates\textsuperscript{116}, “.... In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism” (The “Stanley Commission Report”) was prepared and finalized in 1986.\textsuperscript{117} This report fanned into flames a concern that had been

\begin{itemize}
\item \textsuperscript{111} \textit{Gallup Poll: Honesty/Ethics in Professions}, at http://www.gallup.com/poll/1654/Honesty-Ethics-Professions.aspx (last visited July 8, 2008);
\item \textsuperscript{112} See Peter Wallsten, \textit{Commission Aims To Help Lawyers Be More Appealing}, St. Petersburg Times, Oct. 2, 1996, at 10B
\item \textsuperscript{114} ABA Comm. on Professionalism, 1987, In the \textit{Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism}, 112 F.R.D. 243; (also known as the Stanley Commission Report).
\item \textsuperscript{116} Id.
\item \textsuperscript{117} ABA Comm. on Professionalism, supra note 99.
\end{itemize}
smoldering since the late 1960s,” advocating twenty-six (26) recommendations to improve and strengthen the principles of professionalism of the legal profession.¹¹⁸

Within the Stanley Commission Report are specific challenges that invite action directed to the organized bar, the judiciary, the law schools and every individual lawyer to restore a high level of professionalism in the spirit of public service.¹¹⁹

Six years later (July 1992), the ABA’s Section on Legal Education and Admissions to the Bar, chaired by Robert MacCrate, issued: “An Educational Continuum Report of The Task Force on Law Schools and the Profession: Narrowing the Gap” (also known as The MacCrate Report).¹²⁰ The central mission of the MacCrate Report Task Force was stated as follows: to identify the necessary skills and values for lawyers, determine a description of what law schools and the practicing bar were doing to advance the professional development of lawyers; and to formulate recommendations on how the legal education community and the practicing bar can join together to fulfill their respective responsibilities to the profession and the consuming public.¹²¹

The Task Force dismissed the notion of a “gap” between law schools and the practicing bar.¹²² Instead the Task Force observed that “[t]here is only an arduous road of professional development along which all prospective lawyers should travel;”¹²³ therefore concluding that “[i]t is the responsibility of law schools and the practicing bar

¹¹⁹ See, generally, Stanley Commission Report, supra note 100.
¹²¹ Id.
¹²² Id.
¹²³ Id.
[collectively] to assist students and lawyers to develop the skills and values required to complete the journey.\textsuperscript{124}

In 1996, the ABA’s Section of Legal Education and Admissions to the Bar issued the 1996 Haynsworth Report in an effort to “better inculcate a higher sense of professionalism among American lawyers”.\textsuperscript{125} The Haynsworth Report noted particularly that there is a “loss of an understanding of the practice of law as a calling” and “the loss of civility.”\textsuperscript{126}

Concerned about the decline in the public’s perception of lawyer professionalism, the Conference of Chief Justices (CCJ) adopted the National Action Plan on Lawyer Conduct and Professionalism in January of 1999, \textsuperscript{127} The National Action Plan defined professionalism as follows:

Professionalism is a much broader concept than legal ethics. . . . professionalism includes not only civility among members of the bench and bar, but also competence, integrity, respect for the rule of law, participation in pro bono and community service, and conduct by members of the legal profession that exceeds minimum ethical requirements. Ethics rules are what a lawyer \textit{must} obey. Principles of professionalism are what a lawyer \textit{should} live by in conducting his or her affairs. Unlike disciplinary rules that can be implemented and enforced, professionalism is a personal characteristic. The bench and the bar can create an environment in which professionalism can flourish, and these recommendations are intended to assist in that endeavor. But it is the responsibility

\textsuperscript{124} Id.
\textsuperscript{126} Id. at 2-4, footnote 2.
\textsuperscript{127} National Action Plan on Lawyer Conduct and Professionalism (adopted January 21, 1999 by the Conference of Chief Justices).
of individual judges and lawyers to demonstrate this characteristic in the performance of their professional and personal activities.\textsuperscript{128}

More than a decade after the CCJ adopted the National Action Plan, the Carnegie Foundation for the Advancement of Teaching documented findings that legal education and the profession itself could do substantially better at socializing students into an ethical professional identity.\textsuperscript{129} The Carnegie Foundation left no doubt as to the importance of the role of legal academia in the fight to maintain professionalism.

Notwithstanding the wide-spread dissemination, review, and use of those reports, concerns about a perceived decline in lawyer professionalism and the decline’s effect on public confidence in the legal profession and the justice system has persisted.\textsuperscript{130}

The “tenaciously negative perception” of the legal profession has and continually raised concerns about the integrity of the judicial process and the rule of law.\textsuperscript{131}

IV. WHAT IS THE LAW SCHOOL’S ROLE IN FOSTERING PROFESSIONALISM IN THE LEGAL PROFESSION?

In most law schools, professionalism is largely identified with the standard version of legal ethics as articulated in the Codes, Models and other official sources through courses such as Professional Responsibility or Ethics.\textsuperscript{132} This narrow definition

\textsuperscript{128} Id. At 2 (emphasis in original)
\textsuperscript{130} See generally, Hamilton, supra note 34.
\textsuperscript{132} ABA, Approval of Law Schools: American Bar Association Standards and Rules of Procedure § 302(a)(iv) (1983). Codified precepts for American lawyers have their genesis in the ABA’s Canons of Professional Ethics, adopted in 1908. In 1969, the ABA replaced the Canons with the Model Code of Professional Responsibility which was succeeded by the Model Rules of Professional Conduct in 1983. In 2002, the ABA adopted its most significant modification of the Model Rules since 1983 with the adoption
has, as one scholar observed, left such courses vulnerable to the criticism that the rules merely enforce the “self-interested view” of lawyer professionalism or that they “attempt to teach a personal moral code that bears little or no relationship to the competence or the mission of legal education.”

The confinement of professionalism to Professional Responsibility, an ABA mandated course, marginalizes its importance to malleable law students. As Professor Deborah Rhode eloquently stated, ethics and professionalism have been “ghettoized” into one professional responsibility course.

Law schools provide new lawyers with their first exposure to the appropriate standards of the profession. This exposure therefore holds a centrally important role in development of professional behavior. Law schools necessarily have a responsibility in developing attitudes and dispositions consistent with professionalism, making it of changes recommended by the ABA's Ethics 2000 Commission. For a historical discussion of these transitions, see Geoffrey C. Hazard, Jr., The Future of Legal Ethics, 100 Yale L.J. 1239, 1249-60 (1991). Wilkins, supra note 31 at 245.

134 In 1974, in part due to the events of the Watergate scandal which involved attorneys in the highest seats of government, the ABA House of Delegates voted to amend the standards to require for the first time a substantive curricular requirement -- the teaching of professional responsibility. Standard 302(a) of the American Bar Associations Standard for Approval of Law Schools and Interpretations now reads in part: “The law school shall offer . . . and shall provide and require for all student candidates for a professional degree, instruction in the duties and responsibilities of the legal profession. Such required instruction need not be limited to any pedagogical method as long as the history, goals, structure and responsibilities of the legal profession and its members, including the ABA Code of Professional Responsibility, are all covered. Each law school is encouraged to involve members of the bench and bar in such instruction.” For an overview of the assimilation of Professional Responsibility courses into American law schools, see See, generally, James L. Baillie & Judith Bernstein-Baker, In The Spirit of Public Service: Model Rule 6.1, The Profession and Legal Education, 13 Law & Ineq. 51 at pg. 63 (1994), ( the author’s address ABA Standard 302 (a), as written in 1974, and note that the standard “reflects the profession’s view that learning professional responsibility is a fundamental educational objective of legal education.”).

135 Robert Granfield and Thomas Koenig, “It’s Hard to be a Human Being and a Lawyer” : Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice. 25 W. Va. Law Rev. 495 (2003) at 522 and note 7, quoting Deborah L. Rhode, Institutionalizing Ethics, 44 Case W. Res. L. Rev. 665, 732-735 (1994), and noting that ethical issues need to be integrated into the whole curriculum in a pervasive manner.


“unthinkable today that law schools should be unable or unwilling to accept that responsibility.”

In most legal academia institutions however, law professors focus on teaching, scholarly agendas and service entrenched in theory, doctrine and analysis. This approach leaves little room for reflection and action regarding the importance of professionalism values which may seem tangential. Professor Stephen Goldberg notes that “[t]he faculties responsible for law school curricula have not thought much about professionalism, have not agreed about the existence or the nature of the problem when they have thought about it, and would have little idea of what to do if they could agree.” As such, in the law school setting, giving effect to these additional aspects of professionalism too often appears to be second-seated to teaching theory, doctrinal principles, and analytical skills.

The life of a law professor, as esoteric as it may be, is not as simple and limited as portrayed in pop culture. The modern law professor fulfills multiple roles. Teaching the law may be a simple task compared to the requirements to juggle demands on time

138 Id. at 144.
139 Id., acknowledging that amongst law professors, the development and maintenance of professional reputations, both of individuals and of institutions, depend heavily on scholarly publication, making strong incentives to maximize the amount of time spent in scholarship; and illustrating that despite the appropriately placed emphasis on scholarship, law schools have other purposes as well, including the preparation of students for the pursuit of a profession.
140 Id. (The authors note that many law professors have somewhat limited awareness of current problems in the profession for a variety of reasons, including the fact that the practice experience of many law professors at many prominent law schools will have been brief, and the life and concerns of practice soon seem far removed from current intellectual interests, even in the case of those who practiced for substantial periods).
141 Stephen H. Goldberg, supra note 28 at 430.
142 Sullivan & Podgor, supra note 137 at 118.
143 See generally, Scott Turow, One L, Farrar, Strauss & Giroux (1977). In addition to literature depicting law professors as aloof and philosophically removed from their craft, television shows and movies also portray law professors as stern and Socratic with little to no other facets about them. See also, John Jay Osborn, Jr. Paper Chase, (1971), and the subsequent movie in 1973 and television series based on the movie.
from students (both in and outside the classroom), and institutional demands (from scholarship to other responsibilities in various academic and professional organizations). Just as importantly, “[law professors] are also individual human beings who must deal authentically with their own values and relationships and the people who depend upon them.”

Academicians stated primary focus rests on teaching/instruction, with scholarly pursuits a close second and oftentimes concordant goal. Clearly, the focus on scholarly pursuits is not misdirected. Hegemonic at their goals and objectives, institutions of higher learning serve to broaden the intellectual landscape of the world by contributing to the enhancement of knowledge and advancement of positively transformative ideas and concepts. The mission of higher education is to create and disseminate knowledge; such creation necessarily including the scholarship of discovery, integration, application, and teaching. Individual and institutional scholastic endeavors of that vein possess unquantifiable value which cannot be diminished.

Legal academia has ostensibly promulgated principles of professionalism towards fulfilling the obligation to broaden the intellectual landscape. Scholarship focusing on

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144 The many roles of law professors each have “requirements and moral demands that must be given effect and harmonized in some way.” See, generally, Sullivan & Podgor, supra note 137 at 137 - 138 (2001). Professors Sullivan and Podgor espouse the idea that the effectiveness of law professors depends necessarily on their ability “to recognize the moral challenge of accommodating [the] competing claims, on the attitude with which they approach that task, on the degree of success they have in doing so, and, indeed, on the perception of others that they have actually worked out the conflicting claims in a true and responsible way.” The authors surmise that “[l]aw teachers cannot be effective law teachers or teachers of professionalism by example if they categorically place the demands of scholarship or their personal lives over the responsibilities they owe their students, or otherwise demonstrate that they are unable to live lives that take seriously, and give effect to, each of the parts of the morally complex role that they have undertaken to perform.”


146 Sullivan & Podgor supra note 137 at 145.
professionalism has been recognized as being a necessity.\textsuperscript{147} Despite this recognition, dialogue in academia, though prolific, has been arguably ineffective.\textsuperscript{148}

In his essay “Professionalism Clearly Defined”, Professor Neil Hamilton summarizes the “Definition of Professionalism in Legal Scholarship” as three “typical varieties”.\textsuperscript{149} The first brand assumes the definition of professionalism to be self-evident, describing the problems in the profession and equating these problems with a lack of professionalism.\textsuperscript{150} Secondly he attempts to define the term by focusing on one of more specific characteristics such as professional standards created by the ABA or individual morality and respect for the human beings and the community the lawyers serve.\textsuperscript{151} The third brand summarily dismisses “professionalism” as a misguided concept.\textsuperscript{152}

Bolstering any lethargic attitudes regarding the “teaching” of professionalism, it has been critically argued that professionalism education becomes nugatory when new lawyers are faced with the stressors related to practicing law, such as the pressure to generate billable hours.\textsuperscript{153} The critics suggest that such programs have “bleak prospects” of improving the practice of law, since unethical (and arguably, unprofessional) behavior results mainly from deep character roots.\textsuperscript{154} Admittedly, “character” can be “changed”.

\begin{itemize}
\item\textsuperscript{148} See generally, Bridget McCormack, \textit{Teaching Professionalism}, 75 Tenn. L. Rev. 251 (2008) (noting that, “[r]egrettably, current trends in legal education focus little attention on the development of this “everyday professionalism.”)
\item\textsuperscript{149} Hamilton, supra note 34 at 5.
\item\textsuperscript{150} Id. See also, Burnele V. Powell, \textit{Lawyer Professionalism as Ordinary Morality}, 35 S. Texas L. Rev. 275, 277 - 278 (1994) (noting that professionalism is often treated as a “self-evident concept requiring no definition.”)
\item\textsuperscript{151} Hamilton, supra note 21 at 5.
\item\textsuperscript{152} See Rob, Atkinson, \textit{A Dissenter’s Commentary on the Professionalism Crusade}, 74 TEX. L. REV. 259, 263 (1995) (Challenging the work of the Bar and scholars on professionalism on grounds that movement has become an altogether too simplistic “crusade” based on an implicit assumption that there is one universal way to be a legal professional which categorically condemns certain conduct.)
\item\textsuperscript{153} See generally, Ryan, supra note 45.
\item\textsuperscript{154} Id. at 9
\end{itemize}
The change takes a long time, but is possible through “the result of action, reflection on action, and further action.”

Action and reflection’s underpinning roots should be planted during law school. Yet, as powerful as law schools may be, it cannot honestly be believed that they can change those recalcitrant souls who are “resolutely amoral.” As Professor Wendel observed “[for law students and lawyers] who simply refuse to pay any heed to ethical reasoning, there is little that any educational efforts associated with the professionalism movement, no matter how well conceived, can do.” The effort still must be made because professionalism begins well before one’s first day in court.

Any preconceived ideas which new students possess about the practice of law must be refined and reshaped where necessary in a manner to produce professional behavior.

A. The Importance of The 1L Year

The most important years of a person’s life are infancy – years providing the best opportunity to shape character content and habitually-developed behavioral norms. Similarly, the arguably most important years of legal infancy are the three years of law school, with special importance granted to the first year. The comparison is not inapt.

155 Id.
157 Id. at 602 (quoting the cynical comment made by White House counsel John Dean on his role in the Watergate scandal: “I knew that the things I was doing were wrong, and one learns the difference between right and wrong long before one enters law school. A course in legal ethics wouldn't have changed anything.” Thomas Lickona, What Does Moral Psychology Have to Say to the Teacher of Ethics?, in Ethics Teaching in Higher Education 103, 129 (Daniel Callahan & Sissela Bok eds., 1980) (quoting D. Goldman, “Exclusive Interview with John Dean,” Comment, Boston University School of Law 1 (1979)).
159 Literature quoting studies on child-rearing agree that the fundamental of learning are best formed during the first three years of life. See, for e.g., Arnold Gessel, M.D. et al., The First Five Years: A Guide to the Study of the Preschool Child, from the Yale Clinic of Child Development, Harper, 1940.
From the moment of entering the doors of a law school to commence the start of the law school studies, a student begins to lay the foundation of his or her professional career. Analogizing the first year of law school to other institutional initiation, it has been stated:

“[T]he 1L year can be understood as a process of identity homogenization in which students are broken down and “detached” from their connections to the lives they lived before. This process can be a painful one. People come to law school with commitments to ideals and causes, but even more significantly, they come with a sense of self--of being a unique person with a particular history, rhythm of life, perspective on the world, and style of interacting with others. First-year students arrive imagining that they will draw upon these particular features of personal identity through the course of this new challenge. Instead, the lesson learned in the first term of life in the total institution of [the law school] is that personal identity is largely irrelevant to their legal education and careers.”

Students and lawyers come to the study and practice of law with their own sources of value and precepts based on those values. A legal education process that provides a platform from which the student-lawyers might conceptualize themselves in relation to the law becomes necessary to provide a perspective which would “reinforce that who they are as lawyers matters as much as legal competency.”

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160 Nagorney, supra note 158.
to realize that law is a logical process involving building blocks which promote fairness and rationality.\(^{163}\)

Psychological research indicates that significant changes in an individual’s basic strategies for dealing with moral issues occur during early adulthood.\(^{164}\) Through interactive education, individuals can enhance skills in ethical analysis and increase their awareness of the situational factors that skew judgment.\(^{165}\)

The first year of a legal career, akin to the first year of life, is a fertile landscape for the enhancement both of analytical skills and professional behavior. The opportunity to educate first year law students beyond the pedagogical and institutional skills, should be wholeheartedly embraced by legal academia in its esteemed position on the front-lines of the professionalism debate.

**B. The Relationship Between Legal Academia and the Legal Profession**

**Regarding the Enhancement of Professionalism**

Despite recognition of the importance of professionalism “education” there is, notably, a growing separation between law schools and the legal profession itself, particularly regarding who bears the burden of professionalism teaching.\(^{166}\) Such perceived separation, however, has not caused any wavering of the organized Bar’s focus on legal academia as a primary source to increase professionalism among the bar itself.\(^{167}\)


\(^{165}\) Id. Over 100 studies evaluating ethics courses find that well designed curricula can significantly improve capacities for moral reasoning.


\(^{167}\) Goldberg, supra note 28 at 417.
The Bar’s focus remains firm despite the varied views on professionalism and the widening abyss separating practicing attorneys from legal academicians.\textsuperscript{168}

Over a decade ago, the MacCrate Report admonished that”[l]egal educators and practicing lawyers should stop viewing themselves as separated by a "gap" and recognize that they are engaged in a common enterprise --the education and professional development of the members of a great profession.”\textsuperscript{169} Having reached the conclusion that the task of educating students to assume the full responsibilities of a lawyer is a “continuing process that neither begins nor ends with three years of law school study”, the Task Force sought to identify the role of law schools in assisting prospective lawyers.\textsuperscript{170} The Task Force clearly recognized that the skills and values of the competent lawyer are developed “along a continuum that starts before law school, reaches its most formative and intensive stage during the law school experience, and continues throughout a lawyer's professional career.”\textsuperscript{171}

Other studies and reports generated during the past few decades (e.g. Clare Proposals,\textsuperscript{172} Indiana Supreme Court’s Rule 13, Cramton Report,\textsuperscript{173} and the Carrington

\textsuperscript{168} See, e.g. Edwards, supra note 166.
\textsuperscript{169} MacCrate Report, supra note 120.
\textsuperscript{170} Section of Legal Education and Admissions to the Bar, American Bar Association, Report of the Professionalism Committee: Teaching and Learning Professionalism I (Chicago, 1996).
\textsuperscript{171} Id.
\textsuperscript{172} In response to Chief Justice Warren Burger’s urgency that lawyers not fully trained in trial law be prohibited from litigating in federal court, a committee appointed by the United States Court of Appeals for the Second Circuit in 1973 circulated the “Clare Proposals” which included the proposal that “only lawyers who had taken trial advocacy, ethics, criminal procedure, civil procedure and evidence in law school could practice in the Circuit’s district courts.  The Proposals were not adopted, yet they still alerted legal educators across the country of the need for added attention on “practice” training.  See Final Report of the Advisory Committee on Proposed Rules for Admission to Practice, 67 F.R.D. 161, 168 (1975) (noting that the Clare Committee proposed that attorneys be required to complete courses in evidence, criminal law and procedure, professional responsibility, trial advocacy, and civil procedure as a prerequisite to practicing law in the Second Circuit).  For a general discussion on the Clare Proposals, See Michael I. Swygert, \textit{Valparaiso University School of Law, 1879 – 2004: A Contextual History}, 38 Val. U. L. Rev. I (2004).  A.B.A. Section of Legal Education & Admission To the Bar., Report and Recommendation of the Task Force On Lawyer Competency: The Role of the Law Schools (1979) [hereinafter Cramton Report] (termed the Cramton Report in recognition of the Task Force Chairman, Roger Cramton).
Report,\textsuperscript{174} highlighted the disparity between legal academicians and the practicing bar; and the need to improve legal education.

The consensus perception is that legal academia consists of a hermitic group disconnected from the profession. Law school teachers seemingly lack practice experience and merely provide “lip service” instructions in legal ethics and professionalism.\textsuperscript{175} The implication is that law schools have little interest in professionalism instruction of any kind.\textsuperscript{176} The assertion is made that “much of law school's pedagogical activity presumes that issues of professionalism are somehow, somewhere, being handled.”\textsuperscript{177} Summarily, law schools evade and inadequately develop an ethos of professionalism in law students.\textsuperscript{178}

The query floats like a dangling participle: Have academics strayed so far from the actual practice of law to notice the need for increased professionalism?

Undoubtedly, Professional Responsibility as a core subject is taught nationwide in law schools, often as a required course. Law schools appear to therefore fulfill their obligations to instruct prospective lawyers in conduct appropriate for the profession. Ethical scenarios are explored, and Model rules and Canons are oftentimes memorized by

\textsuperscript{174} In 1971, the AALS, funded by a grant from the Ford Foundation, published a report, known generally as the Carrington Report, which concluded that, among other things, “[s]chools should free themselves of received dogmas, such as the conception that all graduates must be trained to omnicompetence, or that the first degree in law can be awarded only after three years of law study within the walls of a law school.” Curriculum Study Project Committee, Association of American Law Schools, Training for the Public Professions of the Law: 1971, 1971 Ass’n Am. L. Sch., Pt. 1, § 2, reprinted in Herbert L. Packer & Thomas Ehrlich, \textit{New Directions in Legal Education} 93, 97 (1972).

\textsuperscript{175} Goldberg, supra note 141 at 418 - 421. Professor Goldberg points to the legal faculties' general lack of practice experience, among other things, as a reason why professionalism is not often addressed in classes other than formal professional responsibility or ethics courses.

\textsuperscript{176} Id. at 417, citing the ABA report of 1996 at 14.

\textsuperscript{177} John E. Montgomery, \textit{Incorporating Emotional Intelligence Concepts Into Legal Education: Strengthening The Professionalism of Law Students}, 39 U. Tol. L. Rev. 323 (2008) (recommending that instruction about emotional intelligence competencies be incorporated into the existing law school curriculum can strengthen an ethos of professionalism among law students and better support the profession's efforts to increase the professionalism of lawyers.).

\textsuperscript{178} Id. at 323.
Bar-preparing law students. Yet, based on the embarrassing public perception and documented attorney misconduct it is evident that there is a lack of appropriate guidance for mundane day-to-day professional behavior.

The preparation for the practice of law encompasses learning the law, learning to think like a lawyer, learning how to act like a lawyer, and learning how to be a professional. Accepting their role in this preparation, law professors must realize that “in addition to knowing and liking their subject, professional school teachers must “know the world” in the sense of knowing and respecting, albeit from an appropriately critical perspective, the profession and professional work for which their students are being prepared.”

V. SUGGESTIONS TO INCREASE PROFESSIONALISM “TRAINING” IN LAW SCHOOLS.

There is inherent difficulty to formulate suggestions to increase professionalism in law schools as the definition of the word itself remains indefinite. Recognizing the potential for adherence to such an excuse, the ABA’s Professionalism Committee on Teaching and Learning Professionalism issued a report seeking to negate any excuses for construction and implementation of a plan to increase professionalism in law schools on the grounds that the term itself is ambiguous. The Committee’s Report contains seven

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179 It is important to note that the Model Rules employ a two-tier system: one espousing the black letter, enforceable “disciplinary rules” (“DR”); and the second with idealistic “ethical considerations” (“EC”). This division has frequently been criticized for “creating interpretive confusion” (see Deborah L. Rhode, Professional Responsibility: Ethics by The Pervasive Method 44 (1994)). However, the ECs continue to provide aphoristic meaning to the discussion of professionalism among law students.

180 Sullivan & Podgor, supra note 137 at 134 (noting that professional school teachers are not simply preparing their students for “the world” in a general sense; their students are being prepared for “the world” in a very immediate and particular sense, that is, for participation in a profession that aims to make a difference in the world.)

181 A.B.A. Sec. of Legal Educ. and Admissions to the Bar, Teaching and Learning Professionalism: Report of the Professionalism Committee, (1996); see also generally Sullivan & Podgor, supra note 137 at 134.
suggestions that offer a detailed outline for fostering an atmosphere of professionalism in law schools. The suggestions range from adopting a method of incorporating professionalism in a pervasive method through the law school curriculum, to having publishers of law books incorporating professionalism and ethics into their publications.

Scholars have also weighed in with suggestions for increasing professionalism in law schools.

University of Michigan Associate Dean of Clinical Affairs and Clinical Professor of Law, Bridget McCormack, suggests that law schools can begin to bear more responsibility and thereby dramatically improve their current methods of teaching professionalism by making one simple change: requiring clinical education.

Professor Deborah Rhode, suggests that teaching ethics and professionalism should be integrated into substantive courses. Professor Rhode posits that such integration is necessary as the issues “arise[s] in all substantive areas.”

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182 ABA Professionalism Committee Report, supra note 170 at 16 – 25.
183 The seven suggestions posited:
(1) Faculty must become more acutely aware of their significance as role models for law students’ perception of lawyering... (2) Greater emphasis needs to be given to the concept of law professors as role models of lawyering in hiring and evaluating faculty... (3) Adoption of the pervasive method of teaching legal ethics and professionalism should be seriously considered by every law school... (4) Every law school should develop an effective system for encouraging and monitoring its ethics and professionalism programs... (5) The use of diverse teaching methods such as role playing, problems and case studies, small groups and seminars, story-telling and interactive videos to teach ethics and professionalism, should be encouraged... (6) Law book publishers should consider adopting a policy requiring that all new casebooks and instructional materials incorporate ethical and professionalism issues. Law book publishers should also publish more course-specific materials on legal ethics and professionalism issues as part of new casebooks, new editions of old casebooks, supplements to casebooks, compilations of supplemental readings, and compendiums... (7) Law schools need to develop more fully co-curricular activities, policies, and infrastructures that reflect a genuine concern with professionalism. A.B.A. Sec. of Legal Educ. and Admissions to the Bar, Teaching and Learning Professionalism: Report of the Professionalism Committee, at 16-25(1996).
185 Rhode, supra note 164 at 53.
“faculty who decline, explicitly or implicitly, to address ethical issues encourage future practitioners to do the same.”\textsuperscript{187} She adds that “[i]t is time to translate rhetorical allegiance into curricular priorities.”\textsuperscript{188}

In a similar vein, it has been asserted that beyond the integration of normative and empirical disciplines, the law school curriculum should focus on the values and techniques of ethical decision making and moral lawyering.\textsuperscript{189} Concededly, to design effective instruction regarding professionalism “is extremely difficult since rules regarding ethical behavior do not always provide sufficient guidance.”\textsuperscript{190} Despite its difficulty, change is however, still possible.

One proposal for change recommends as follows:

[The] profession would do well to move away from a narrow, “legalistic” conceptualization of professionalism as defined in professional codes of conduct, and to adopt instead an encompassing conceptualization of the profession as “deliberative moral community” ... united in its commitment to the overarching norms of respect for truth, fidelity to law, public service, and dedication to serving an increasingly complex society.\textsuperscript{191}

A further suggestion advocated by Professor Croft, is the reassessment of the current methodology of legal ethics education, addressing more expansive professional and ethical issues in various legal professional contexts than those typically raised in discussion of the model Code and Model Rules.\textsuperscript{192}

\textsuperscript{187} Id. at 140.
\textsuperscript{188} Id. at 151.
\textsuperscript{190} Granfield & Koenig, supra note 135 at 504 – 505.
\textsuperscript{191} Croft, supra note 147 at 1261.
\textsuperscript{192} Id.
Richard Matasar of New York University School of Law, proposes a grassroots organizing campaign by young lawyers, law schools, leaders of the bar, justices of state supreme courts, legal commentators, and other folks influential on law firms and government agencies. Matasar’s campaign proposal would take as its purpose to have the organizations make professionalism personal by adopting missions for their organizations that explicitly embrace the skills and values of the MacCrate Report’s statement of skills and values.

A. Where to Start with Implementation of Professionalism In Law Schools?

There is ambivalence about how law schools can participate. With arguments of insufficient time and resources available for teaching professionalism values, some institutions decry the importance of the law school’s role in formulating a sense of professionalism in its students. Despite challenges that may arise from low or lacking financial support, cursive dismissal of the law school’s importance could prove detrimental to the legal profession.

The recognition of such a detriment has been evident as members of law faculties strive to assist in designing the professionalism programs of state Bars. There are law firms working closely with faculty members on projects; and law schools sponsoring bridge the gap programs, participating in CLE programs, creating externships for their students, and employing leading “practitioners” as law school adjunct and full-time faculty members.

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194 Id. at 427.
195 Sullivan & Podgor, supra note 137.
196 Matasar, supra note 193 at 406.
With what they already have, and where they already are, law schools possess the power to delve headfirst into the professionalism preparation. Academia is beginning to acknowledge that the auspicious position of educating the nation’s future lawyers inseparably involves instilling professionalism values as a core of one’s law school career. But where to start?

Feather by feather the goose can be plucked.\textsuperscript{197}

One first “pluckable” feather is provision of experiential learning opportunities. Students are generally unable to clearly glean any meaning from Professional Responsibility courses outside of the robotic memorization of the rules. This in large part is due to the lack of context to apply such rules. Similarly, the difficulty to “see the forest for the trees” in other doctrinal courses results in part from that same lack of context.

Students need both a “window on actual professional practice” and a “vantage point to discuss and evaluate these practices from a critical distance.”\textsuperscript{198}

Effective programs generally require a strong institutional commitment to the subject, together with well-structured course materials and methods for evaluating student performance.\textsuperscript{199} Other important features include interactive teaching formats,

\begin{itemize}
  \item Do more to teach the skills and values needed to be a competent professional.
  \item Teach less about esoteric theory and more about the kind of doctrinal issues that make up the day-to-day concern of the living law.
  \item Teach more about what it takes to be a good lawyer and a good person.
  \item Teach more about the philosophy of the law.
  \item Teach about how the profession can be changed so the legal system will better serve society.
  \item Study and teach more about the organization and structure of the legal profession.
  \item Do more to acquaint students with the life of a lawyer.
\end{itemize}

\textsuperscript{197} French Proverb.
\textsuperscript{198} Wilkins, supra note 31 at 250. See also Patrick E. Longan, \textit{Teaching Professionalism}, 60 Mercer L. Rev. 659 (2009) (outlining the efforts and outcome of Walter F. George School of Law of Mercer University to teach professionalism).
\textsuperscript{199} Goldberg, supra note 141 at 418. As an alternative to attempting to resolve which “professionalism” is the subject that law schools should teach, Professor Goldberg offers “solutions” for law schools to attack the “professionalism problem”: • Do more to teach the skills and values needed to be a competent professional. • Teach less about esoteric theory and more about the kind of doctrinal issues that make up the day-to-day concern of the living law. • Teach more about what it takes to be a good lawyer and a good person. • Teach more about the philosophy of the law. • Teach about how the profession can be changed so the legal system will better serve society. • Study and teach more about the organization and structure of the legal profession. • Do more to acquaint students with the life of a lawyer.
opportunities for faculty and student choice, and tolerant classroom approaches that are neither value-neutral nor overly rule-bound. Studies find that interactive learning, such as problem solving and role playing, is the best way of enhancing skills in moral analysis. Faculty must be encouraged indirectly, or through direct faculty-voted curriculum changes, to incorporate interactive learning tools into doctrinal subjects, providing students with an opportunity to explore the boundaries of professionalism.

Judgment on professionalism (and even ethical) issues can be cultivated through “trial and error and by imitation.” As Harvard professor, David Wilkins noted: “[o]bserving others, although not a perfect substitute for individual effort, can provide valuable insight and encourage the development of both empathy and critical judgment.”

Academicians should suppress the urge against application of “war stories.” Instead realistic depictions of drama applications should be used to enhance the understanding of the use and necessity of a spirit of professionalism: not just to the practice of law, but for those who themselves aspire to be law professors. The sharing of the esteemed place behind the lectern with visiting members of the bar should be

Professor Goldberg notes that the “first two are less about teaching professionalism as a course or a body of understanding than they are competing critiques of a perceived general educational gap between the legal academy and the profession”; indicating that it is worth noting that experiential learning in clinics, externships, and simulation courses has provided some students an opportunity to develop lawyering skills and, to some extent, lawyering values.”


Wilkins, supra note 31 at 250.
encouraged. Around the country, law faculty are “studying real lawyers to better understand the profession for which their students are preparing.” Some faculty have held “professionalism” seminars as forums to encourage discourse on the subject.

In a standard first year law school curriculum, one class in each topic could be dedicated to having a lawyer (Bar member, judiciary, or working in a non-law-related field) with experience in the particular subject matter, address the students regarding real-life application of the knowledge they are accumulating in that subject. In some instances the lawyer could provide a case-file depicting facts from a real case, and discuss the lawyer’s role in the application of the law governing the case, and the implication of actions of other parties to the case. Dedicating one to two hours per first year doctrinal course, would not cause any undue disturbance to the curriculum, and would undoubtedly enhance the student’s comprehension of the subject matter. This practice could be implemented in subsequent second and third year courses.

Additionally, use of non-traditional learning tools (current, happening-now cases, pop culture – movies, television shows and books) whose presence will underscore the

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204 See, Sullivan & Podgor, supra note 137 at 150 (suggesting that law school administrators can help foster a professionalism atmosphere by encouraging alumni, lawyers, and judges to participate in the life of the law school in ways that assist students in learning about the aspirations and values of the legal profession. Other suggestions include seeking additional resources, both within the university and from potential donors, to support smaller classes, where law teachers can demonstrate professionalism in the context of small-scale interactions in which substantive issues of ethics and professionalism can be pursued thoroughly. “Law school administrators can also serve as advocates with the central administration, trustees, and prospective donors, carrying the message that law schools are not simply graduate schools, but professional schools which have an obligation to strive for excellence, both with respect to the “scientific” part of the law and with respect to the conversation about moral values that defines the profession and its relationships with other aspects of human life.”)

205 Matasar, supra note 193 at 406 (discussing New York Law School’s New York Center for Professional Values and Practice, which takes as its mission to gain a better understanding of what lawyers do and takes as its vision the need to train lawyers in what they ought to do).

206 For e.g. The University of Florida, Levin College of Law, hosts an annual “professionalism” conference, bringing faculty, members of the local bar, and students to the law school together for an all-day symposium.
importance of ethical and thus professionalism concerns in everyday practice, should be employed.\textsuperscript{207} Once the importance is accepted, the professionalism possibilities are endless in academia.

It is a necessary element for each law school to create an environment which encourages values of professionalism. It has been noted that in order for such an environment to exist it must be a matter of interest to and be valued by the law school as an institution.\textsuperscript{208} Although law school administrators can go far to foster an environment of professionalism, it is undoubtedly the collective faculty with common commitments that will be the true catalyst to foster such an environment.\textsuperscript{209}

Law professors should possess an awareness that the conversation of “professionalism” should not involve leaving “ordinary life behind for the hazy aspirational world of the Law Day sermon and the Bar Association after-dinner speech--inspirational, bozily solemn, anything but real.”\textsuperscript{210}

Most faculty are fully capable of addressing professionalism issues in core courses; the problem however, is that some (generally already feeling overextended) would prefer not to do so.\textsuperscript{211} Others worry about “entrapment in ‘touchy feely’ or

\textsuperscript{207}For a general survey observation on the impact of guest practitioners highlighting the influence of ethical matters in everyday practice, see Rhode, supra note 164 at 140.
\textsuperscript{208}Sullivan \& Podgor, supra note 137 at 147 (stating that the “[encouragement of] values of professionalism within the law school environment enriches the law school environment, and, ultimately, the profession and society, but it must be a matter of interest to the law school because, in the current circumstances, it is only the individual law school that can provide incentives adequate to cause faculty to devote time and energy to this end. If a faculty member’s own institution does not value the time that faculty members spend in this way, the time will not be spent.”]. See also, generally, Deborah L. Rhode, \textit{The Professional Responsibilities of Professional Schools: Pervasive Ethics in Perspective, Teaching and Learning Prof.: Symp. Proc.} 25, 25-26 (1997) (noting how most pervasive ethics programs “rely on voluntary participation of faculty and students”).
\textsuperscript{209}See, Sullivan \& Podgor, supra note 137 at 150.
\textsuperscript{211}Rhode, supra note 164 at 151.
platitudinous discussions.”212 Such marginalization of professionalism discussions convey a message belying the importance of professionalism to students’ legal careers.213 Professor Colin Croft noted that by “fencing off” (law school ethical & professionalism) discourse “with a limited credit, delayed enrollment course, providing precious little time for extending discussions beyond the uninspiring rules of the Model Code and Model Rules, legal education effectively insulates discussions of legal professional standards from the rest of the law school curriculum.”214

Course materials to familiarize law professors with basic professional responsibility that fits into substantive areas215 and lends to discussions of professionalism are available to minimize any discomfort about wading into unfamiliar territory outside their expertise.216

A number of law schools now institute some form of an Oath of Professionalism or Ethical Conduct during orientation for incoming law students.217 The effect of taking the Oath on a law student’s academic and subsequent professional career has not been determined to date. Administration of these oaths, is however, a positive start to reshaping the minds of incoming first year law students. Nevertheless, that one “plucked

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212 Id.
213 Ronald Pipkin, Law School Instruction in Professional Responsibility: A Circular Paradox, 2 Am. B. Found. Res. J. 247, 258 (1979) (finding that students perceive “legal ethics courses as requiring less time, as substantially easier, as less well taught and as a less valuable use of class time than their other course work).
215 See, e.g., Deborah Rhode, Professional Responsibility: Ethics by the Pervasive Method 3-8 (1994); also Rhode, supra note 164.
216 See also, Thomas D. Morgan, Use of the Problem Method for Teaching Legal Ethics, 39 Wm. & Mary L. Rev. 409, 409 (1998).
217 Florida A & M College of Law’s Professional Oath reads as follows: (BEING FINALIZED as of 7/23/09) INSERT OATH.
feather” although an excellent starting point, cannot be sufficient to fulfill legal academia’s role in the attainment of the ultimate goal of increasing professionalism.

VI. CONCLUSION

There is no shortage of help for academia to firmly embrace its role in fostering professionalism. No valid reasons exist for any further evasion in embracing this role. It is past time for the academy to simply provide “lip service”, eluding to the hallowed tenets of professionalism. Legal academia cannot and should not lose focus of the importance of preaching, teaching, practicing (and enhancing) professionalism.\[218\]

Regardless of any actual or perceived shortcomings, lawyers should not practice or teach law at all if lawyers cannot find ideals and objectives with positive values that deserve commendation and support.

It has been said a nation without ideals cannot long survive. Neither can the legal profession.\[219\]

Legal academia must uphold its responsibility of increasing professionalism in the legal community and freeing the profession from the clutches of poetical analogies such as that of Samuel Taylor Coleridge:

“He saw a Lawyer killing a Viper
On a dunghill hard by his own stable;
And the Devil smiled, for it put him in mind
Of Cain and his brother, Abel.”\[220\]

\[218\] For an in-depth review of the “Development of Lawyers’ Monopoly”, see, Elizabeth Chambliss, Professional Responsibility: Lawyers, A Case Study, 69 Fordham L. Rev. 817. Professor Chambliss notes that losing focus on the importance of professionalism will lead to the loss of the monopolistic holding that profession has long strived to strengthen.

\[219\] Wm. Reece Smith, Jr., Teaching and Learning Professionalism, 32 Wake Forest L. Rev. 613 at 619 (1997).
Samuel Taylor Coleridge, the *Devil’s Thoughts*, in the *Complete Works of Samuel Taylor Coleridge* 320, 320 (Ernest Hartley Coleridge ed., 1912)