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Role, Identity, and Lawyering: Empowering Professional Responsibility

Natasha Martin*

INTRODUCTION: PROFESSIONAL ROLE AND PERSONAL IDENTITY

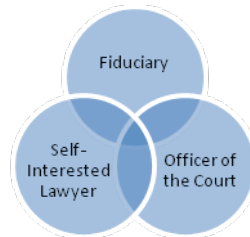
The Professional Responsibility course has the potential to have the greatest impact on our students’ futures in the profession. Paradoxically, however, it remains one of the most undervalued courses in most law school curricula. The complexity of teaching Professional Responsibility is well documented by scholars.¹ Most teachers in this area, novices and veterans alike, acknowledge the challenge of teaching a course whose subject matter and application is so deeply personal for the students. This course remains challenging due in part to the competing goals of teaching students issue resolution using the law governing lawyers and fostering understanding of the

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* Associate Dean for Research and Faculty Development and Associate Professor of Law, Seattle University School of Law. The author wishes to thank the AALS Section of Law and Humanities in Legal Education for sponsoring and facilitating this important discussion, as well as her husband and daughter for their support and inspiration.

1. Recent symposia have explored these challenges from various perspectives. *See, e.g.*, Symposium, *Teaching Professional Responsibility and Legal Ethics*, 51 ST. LOUIS U. L.J. 935 (2007). Steven Hobbs captures well the delicate balance in trying “to find the appropriate blend of conveying sufficient information, presenting sophisticated analytical processes, and inspiring students to take the ideal of professionalism to heart.” *See* Steven Hobbs, *Hitting the Sweet Spot Finding the Center in Teaching Professional Responsibility*, 51 ST. LOUIS U. L.J. 1269 (2007); *see also* Anita Bernstein, *Pitfalls Ahead A Manifesto for the Training of Lawyers*, 94 CORNELL L. REV. 479 (2009).

normative values that underlie the regulations. Of course, I want my students to gain command of the standards that govern the legal profession. Reducing the course to a rules-only venture, however, excises much that remains vital to their futures as lawyers. I aim to bring harmony to the divergent roles of lawyers as fiduciaries for clients, officers of the court, and individuals with personal identities and interests.



Far too often, legal ethics or professional responsibility is deemed a hopeless oxymoron. The literature on the state of the profession reflects a decline in the public perception of lawyers, a fragile self-image, and low morale across the legal profession.² Media outlets and other sources are replete with examples of the role of lawyers in everything from corporate scandals like Enron to liberty deprivations due to wrongful convictions.³ Structural and market forces heighten the intensity of such pressures in contemporary practice, including billing structures, organizational cultures, and the sheer labor-intensity of the work.⁴

After several years of law practice, observing and experiencing some of the ills and tensions of the profession firsthand, I remain committed to

2. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 971 (1999); see also Symposium, *Perspectives on Lawyer Happiness*, 58 SYRACUSE L. REV. 217 (2008). Recent works offer some hope for disillusioned lawyers. See, e.g., NANCY LEVIT & DOUGLAS O. LINDER, *THE HAPPY LAWYER: MAKING A GOOD LIFE IN THE LAW* (2010); Allison D. Martin & Kevin L. Rand, *The Future's So Bright, I Gotta Wear Shades Law School Through the Lens of Hope*, 48 DUQ. L. REV. 203 (2010).

3. See, e.g., INNOCENCE PROJECT, <http://www.innocenceproject.org/> (last visited Jan. 22, 2012); BARRY SCHECK ET AL., *ACTUAL INNOCENCE* (2000). For a review of lawyers' role in corporate scandals, see Susan P. Koniak, *When the Hurlyburly's Done The Bar's Struggle with the SEC*, 103 COLUM. L. REV. 1236 (2003).

4. See generally Deborah Rhode, *The Profession and Its Discontents*, 61 OHIO ST. L.J. 1335 (2000). More recently, there is no shortage of commentary on the changing landscape of the legal enterprise, including structural changes in the profession, mounting student loan debt, and the need for innovation in legal education. See, e.g., Karen Sloan, *The Year the Chickens Came Home to Roost*, NAT'L L.J., Dec. 26, 2011, available at http://quest.law.com/Search/Search.do?Ntt=%22Karen%20Sloan%22&x=0&y=0&Nty=1&N=0&site=law&Ntk=SI_All&cx=0&sortVar=1; David Segal, *What They Don't Teach Law Students Lawyering*, N.Y. TIMES, Nov. 19, 2011, available at <http://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html?pagewanted=all>; David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, available at <http://www.nytimes.com/2011/01/09/business/09law.html?pagewanted=all>. For a contrasting view, see Karen Sloan, *Students Happy with Law School Experience, with Caveats*, NAT'L L.J., Jan. 12, 2012, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202538236462&slreturn=1>.

changing this perception for the benefit of those whose lives we impact through our professional service. The antidote, I believe, lies at the intersection of professional role and personal identity in the practice of law. I cultivate a mode of ethical reasoning in which identity is not only relevant, but also is integral to sound, professionally-responsible decision making. Thus, I place an identity question at the center of the study of legal ethics and professionalism—what difference will *your* difference make in law practice in the furtherance of justice?⁵ In my view, the ills of the profession will be mediated only if we are willing to engage students in critical examination of the profession and the law governing lawyers in relation to their own identities. This endeavor is particularly relevant in light of the most recent report on legal education, *Carnegie Report—Educating Lawyers: Preparation for the Profession of Law* (2007),⁶ which highlights *professional formation* as one of three voids in the development of lawyers. This facet involves exposing students to opportunities for exploring “identity, values and dispositions consonant with the fundamental purposes of legal education.”⁷

I.

THE RULES OF PROFESSIONAL CONDUCT: A PEDAGOGICAL STARTING POINT

The Rules of Professional Conduct (RPCs) serve as the natural starting point in addressing ethical dilemmas using a problem-based method.⁸ This technique allows for discussion with little at stake for the students personally, but realistic enough to begin appreciating the various dimensions of the lawyer’s role.

The students begin to learn the mechanics of ethical reasoning as they negotiate scenarios using as guidance the RPCs and other laws governing lawyers. They realize fairly quickly, however, that often the standards fail to appoint a single answer. In fact, on so many key ethics issues, the RPCs are silent, ambiguous, or permissive on including rules that address hallmarks of the lawyer-client relationship like confidentiality. The question becomes not simply, “What is the right solution?” but more subtly, “What can I do and still maintain congruence with my personal integrity within the bounds of my professional obligations?”

5. This query was inspired by some of the work of David Wilkins. *See, e.g.*, David B. Wilkins, *Beyond “Bleached Out” Professionalism: Defining Professional Responsibility for Real Professionals*, in *ETHICS IN PRACTICE: LAWYERS’ ROLES, RESPONSIBILITIES, AND REGULATION* (Deborah Rhode ed., 2000); ANDREW L. KAUFMAN & DAVID B. WILKINS, *PROBLEMS IN PROFESSIONAL RESPONSIBILITY FOR A CHANGING PROFESSION* (5th ed. 2009).

6. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

7. *Id.*

8. MODEL RULES OF PROF’L CONDUCT (2010), *available at* http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html (last visited Jan. 22, 2012).

One of the classic scenarios places the student in the role of a young lawyer who has landed a position with a solo practitioner after a year-long job search. The student must decide whether to report professional misconduct under Rule 8.3 of the supervising attorney who may have misappropriated client funds. The scenario routinely evokes strong reactions along with admissions from students that they can rationalize their way out of the reporting requirement in order to keep the new job.⁹

Occupying this discretionary space often presents the most difficult challenge for lawyers, yet it captures precisely what professional judgment is all about. How does one draw the line in accepting and advocating matters? How does one decide whether to help the elderly woman who wants to disinherit her gay son or to defend the alleged serial child molester with the cognitive ability of an eighth grader? How does one strike the appropriate balance in representing a minor, or the eccentric client who wavers between sharp wit and incoherence? Rather than leaving my students to fend for themselves without a rational roadmap for resolution, I want to prepare them to unpack the dilemma with an acute awareness not only of what is at stake legally and professionally, but also of how their personal identity and function as a lawyer intersect to inform their professional judgment.

II.

FORGING A “SELF-INTEGRATIVE” APPROACH TO PROFESSIONAL RESPONSIBILITY

Once the students have parsed a dilemma using the applicable rules and situated it in the larger context of the profession, it is time to turn inward—to understand how the role of lawyer is cloaked with power and discretionary authority; how *who* we are drives what we do in particular contexts. The goal is to raise awareness of the power imbalances in the lawyer-client relationship and the role that identity plays in ethical decision making.

I often begin the semester with a discussion of *In re Pautler*, a case about a prosecuting attorney who impersonates a public defender in a telephone call with the alleged perpetrator of a heinous triple homicide.¹⁰ William Neal, the alleged murderer, agreed to surrender if he could speak with a public defender.¹¹ Mark Pautler, a chief district attorney, defended his actions based

9. Rule 8.3 provides in pertinent part that a lawyer who knows of misconduct by another lawyer “that raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.” The students’ mood often shifts at the realization that simply reporting to a more senior lawyer does not alone provide cover or defense. The ambiguity lies in what constitutes “substantial” and “knowledge” of such conduct. See MODEL RULES OF PROF’L CONDUCT R. 8.3 (2010), available at http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_8_3_reporting_professional_misconduct.html (full text of the rule and comments) (last visited Jan. 22, 2012).

10. *In re Pautler*, 47 P.3d 1175 (Colo. 2002).

11. *Id.* at 1177.

on an imminent public threat as Neal remained at large.¹² Notwithstanding Pautler's protective motives, the court determined that he engaged in misconduct by subordinating his duty as an officer of the court, especially where he had the capacity to contact a lawyer for Neal.¹³ I receive a range of student reactions from admiration for the prosecutor's covet of his duty to protect the public from harm to outrage that he would lie and deprive the accused of his basic right to counsel. This spectrum of perspectives is typical, especially at the outset when students' idealism reigns, but by the time we reach the end of the course revisiting their earlier stance on *In re Pautler*, they have shed some veneer of judgment and their rose-colored eyes have widened.

Appreciation of the complexity of ethical choices when balancing various roles as a lawyer is precisely the excavation that I envision for my students. My approach works toward empowering future lawyers to take ownership of their individual contributions and the profession as a whole.

*A. Introducing the "Self-Integrative" Approach:
Supplementing the Rules with Vivid Artistic Examples*

To further prepare students for this vigorous dissection of professional responsibility and personal judgment, I draw from examples of lawyering from the silver screen. The dilemmas faced by lawyers in the films *To Kill a Mockingbird*¹⁴ and *Changing Lanes*¹⁵ provide students with characters and scenarios from which they can begin to answer difficult questions about a lawyer's role. I use these examples to introduce students to what I call a "self-integrative" approach to professional responsibility. In forging this self-integrative approach, films such as these effectively illuminate the tensions lawyers face as fiduciaries, officers of the court, and self-interested professionals.

The main characters in *To Kill a Mockingbird* and *Changing Lanes* appear to be foils of one another. The adaptation of Harper Lee's *To Kill a Mockingbird* involves the archetype of the lawyer statesman, Atticus Finch, who, amid the objection and hostility in his community, takes on representation of an innocent black man wrongly accused of rape. In *Changing Lanes*, Ben Affleck portrays a hot-shot lawyer in a BigLaw firm setting who discovers his participation in defrauding a charity and considers colluding with his partners to cover it up by forging a power of appointment. We juxtapose the actions and impulses of each subject. What begins as a comparative discussion of these polar opposites becomes an exploration of fundamental values and philosophical orientation. Is Atticus Finch as integrated as he appears? Are the two lawyers alike in more ways than are readily apparent? We consider what

12. *Id.* at 1179–80.

13. *Id.* at 1180–83.

14. *TO KILL A MOCKINGBIRD* (Universal Pictures 1962).

15. *CHANGING LANES* (Paramount Pictures 2002).

import the institutional settings and their attendant cultural influences have on the behavior and motivations of the characters and their capacities to exercise sound judgment.

Over the course of the semester, I refer back to these conversations as we pursue in more depth the tensions that influence ethical decision making and the need for integration of personal and professional identities. For sure, the artistic portrayals of ethical dilemmas enliven the material.¹⁶ Importantly, however, these silver screen narratives allow the students to experience the gravity of ethical tensions visually and emotionally. Their identification with and projection onto the character promotes the ability to connect in human terms unlike reading hypotheticals in the text, and sets the stage for their own identity processing. This internal excavation builds throughout the semester as I ask the students to engage in critical reflection exercises to facilitate their development of a philosophy of lawyering.¹⁷

B. Developing Critical Capacities

After introducing the students to the self-integrative approach, I then assign critical reflection exercises meant to solidify some of the observations evoked from the *Mockingbird* and *Changing Lanes* discussion, as well as our exploration of various ethics scenarios.¹⁸ I first devised the foundations of this framework in my review of and engagement with the late Derrick Bell's *Ethical Ambition*, a powerful reflection on achieving success while maintaining fidelity to core values.¹⁹ The title itself appears oxymoronic, yet Bell pulls off a grand job of modeling precisely the kind of internal interrogation necessary for

16. Sometimes there is an interesting convergence of the realities of practice and the films I use to illuminate the issues when students hear from lawyers who have experienced the seemingly Hollywood moments in real-life law practice. Fiction comes to life each year, for example, when a partner at a prestigious national law firm shares an experience from his days as a new lawyer that sounds hauntingly similar to a scene from *Changing Lanes*.

17. I cannot take credit for framing the concept of a "philosophy of lawyering," which is derived in part from the work of Nathan Crystal including his course text that I used for several years. Crystal defines a philosophy of lawyering as a "general approach to dealing with issues of professional responsibility." See Nathan M. Crystal, PROFESSIONAL RESPONSIBILITY PROBLEMS OF PRACTICE AND THE PROFESSION, 52-55 (5th ed. 2011). For more extensive discussion, see Nathan M. Crystal, *Developing a Philosophy of Lawyering*, 14 NOTRE DAME J.L. ETHICS. & PUB. POL'Y 75 (2000), and Nathan M. Crystal, *Using the Concept of "A Philosophy of Lawyering" in Teaching Professional Responsibility*, 51 ST. LOUIS U. L.J. 1235 (2007). I have developed an approach that advances my goal of fostering deeper reflection on the legal profession and ethical decision making.

18. I integrate these assignments with material on various doctrinal topics of ethics study that I design specifically to encourage personal engagement with the concepts and the broader meaning of what it means to be a lawyer in society.

19. Derrick Bell, ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH (2002). Bell devotes a chapter to each of six areas that he deems essential to ethical success—passion, courage and risk taking, faith, relationships, inspiration, and humility. I have asserted that *Ethical Ambition* "serves as the allegory from the cave" because of Professor Bell's refusal to sugarcoat ethics and his transparency about the struggle toward authenticity and congruency. Natasha Martin, *Allegory from the Cave: A Story About a Mis-Educated Profession and the Paradoxical Prescription*, 9 LEWIS & CLARK L. REV. 381, 385-86, 399 (2005).

decisive ethical discernment. Through his candid reflections, I draw a direct connection between ethics and self-examination. Thus, the critical reflection process facilitates self-reflection and ultimately nurtures the students' capacity, as Professor Bell articulated, to "listen and respond to what is actually happening, being said, being felt," rather than their perceptions or expectations of what ought to be happening.²⁰ This self-integrative approach becomes a pathway to understanding what motivates their discretionary moves in any given scenario.

One such critical reflection exercise pivots the identity question this way:

If I close my eyes and IMAGINE A LAWYER, I expose myself to a *ROLE*

If I close my eyes and SEE ME, I expose myself to an *IDENTITY*

If I close my eyes and SEE MYSELF AS A LAWYER, I expose myself to the *CONFLICT BETWEEN MY ROLE AND MY IDENTITY*²¹

Consider your personal values, background, identity, and life experiences that shape the person you are today:

- a) How might this context *assist* me in dealing with challenging ethical situations and the daily practice of law?
- b) How might this context *hinder* my ability to resolve challenging situations and to engage in the daily practice of law?²²

This inquiry places the student squarely at the center of the exploration. In a profession of well over a million lawyers, it remains largely a homogeneous group.²³ Yet, those in need of legal services comprise a diverse mix, both ethnically and socio-economically. This incongruence can result in distortion of the scope of authority between lawyer and client, blurring the lines between a client's goals, which ought to govern the representation, and the lawyer's perception of the right objective.²⁴ Notwithstanding the demographic realities,²⁵

20. Bell, *supra* note 19, at 165.

21. Thomas Shaffer, *Christian Theories of Professional Responsibility*, 48 S. CAL. L. REV. 721, 731–32 (1975). Per Shaffer, the "role concept is sociological—seen from the outside in; the identity concept is psychological—seen from the inside out." *Id.*

22. This inquiry was inspired by my own law school experience and former legal ethics professor Thomas Shaffer. See Thomas Shaffer, *On Living One Way at Home and One Way in Town*, 31 VAL. U. L. REV. 879 (1997) (exploring these personal and professional tensions).

23. See, e.g., Linda E. Davila, *The Underrepresentation of Hispanic Attorneys in Corporate Law Firms*, 39 STAN. L. REV. 1403 (1987); Kimberly Blanton, *Few Women Reach Top at Law Firms Glass Ceilings, Family Duties Seen Taking Toll*, BOSTON GLOBE, Oct. 24, 2003, at D2. The Blanton study also reflected that law firms employed only one African-American, one Latino, and one Asian partner.

24. Bell identified this as the "white knight" phenomenon. See BELL, *supra* note 19, at 155–59.

25. The barrier to entry for women and minorities remained pervasive until well into the twentieth century. And some would say that the net effect of increased diversity has not penetrated the profession, leaving major gaps of unmet needs and a void of perspectives. See, e.g., DUNCAN KENNEDY, *LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM* (1983). See also David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CALIF. L. REV. 493 (1996); J. Cunyon Gordon,

lawyers bring a variety of experiences, backgrounds, and dispositions to the practice of law and to the exercise of ethical prerogative: A first-generation lawyer may bring a different set of sensibilities to ethical decision making than one born with a gavel in his mouth.²⁶ A female lawyer may decide to represent the mother accused of neglect because she too has embarked upon a career without an adequate support network.²⁷ A gay lawyer may understand the plight of the teenager injured as a result of bullying.²⁸ And a lawyer with entrepreneurial roots may identify with the business owner who must file bankruptcy to survive. Significantly, all of them are susceptible to any number of assumptions about their clients, opposing counsel, or the objectives of the representation.²⁹

In addition to the critical reflection exercises, this self-integrative endeavor includes consideration of cases involving disciplined lawyers. Thus, we move beyond the hypothetical problems to case studies, which further contextualize the subject. This slate naturally includes bar decisions of the local jurisdiction. The students can more readily see the trappings once they have examined their own values, experiences, as well as the sociological and cultural forces at work in the profession.³⁰ The point is made that lawyers do not start

Painting by Numbers "And, Um, Let's Have a Black Lawyer Sit at Our Table," 71 FORDHAM L. REV. 1257 (2003); AMERICAN BAR ASSOCIATION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION (2001); AMERICAN BAR ASSOCIATION, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION (2004). The growing numbers of lawyers of color and other "outsiders" continue to struggle with notions of belonging and oftentimes of discrimination. See, e.g., *The Los Angeles County Bar Association Report on Sexual Orientation Bias*, 4 S. CAL. REV. LAW & WOMEN'S STUDIES 297 (1995); A Closer Look at NALP Findings on Women and Minorities in Law Firms by Race and Ethnicity, NALP Bulletin, Jan. 2011, http://www.nalp.org/jan2011wom_min (last visited Jan. 22, 2012); see also ABA, Women in the Profession Resources, http://www.americanbar.org/groups/women/resources/articles_reports_research_topic.html (providing statistics and resources on women in the profession); Roberta D. Liebenberg, *Breaking Through the Glass Ceiling Attaining Equality for Women Lawyers*, U.S. NEWS (2010), <http://bestlawfirms.usnews.com/editorial/articles.aspx?articleid=10> (last visited Jan. 22, 2012).

26. Stephanie Francis Ward, *A Question of Class White-Collar Lawyers with Blue Collar Backgrounds Often Straddle Dissimilar Worlds*, 90 A.B.A. J. 36 (July 2004) (discussing value and identity clashes experienced by lawyers from working-class backgrounds), available at http://www.abajournal.com/magazine/article/a_question_of_class/.

27. Stephanie Francis Ward, *Betrays of the Trade*, 89 A.B.A. J. 34 (Aug. 2003) (documenting the experiences of female lawyers who experience gender exclusion in client development); ABA Comm. on Women in the Profession, *A Current Glance at Women in the Law 2011* (Jan. 2011), http://www.americanbar.org/content/dam/aba/uncategorized/2011/cwp_current_glance_statistics_2011_authcheckdam.pdf (last visited Jan. 22, 2012).

28. See, e.g., William B. Rubenstein, *Queer Studies II Some Reflections on the Study of Sexual Orientation in the Legal Profession*, 8 UCLA WOMEN'S L.J. 379, 392 (1998).

29. See, e.g., Russell G. Pearce, *White Lawyering Rethinking Race, Lawyer Identity, and the Rule of Law*, 73 FORDHAM L. REV. 2081 (2005).

30. A particularly illuminating case is *In re Christopher*, in which a lawyer with less than five years of practice falsified pleadings, forged her secretary's signature, and made false declarations. *In re Disciplinary Proceeding Against Christopher*, 105 P.3d 976, 978-79 (Wash. 2005). I ask the students to consider what made the lawyer proceed down a path of dishonesty and to continue the ruse. We discuss the decision-making process that ultimately led to her downfall.

out with unethical intentions or predilections. Anyone can fall short of the standards of the profession, including each of them.

There is much to learn from studying the pathology of the profession, including bar reports, disciplinary notices, and empirical studies documenting the rampant dissatisfaction in law and the various maladies experienced by lawyers, including substance abuse.³¹ This sociological gloss illuminates the complexity of ethics embedded within the structure and realities of contemporary law practice. If I left it here, however, students would emerge demoralized and without the clarity or tools to empower their capacity to make confident choices among what often appear to be less than satisfying alternatives.

C. Supplementing the Self-Integrative Approach with Social Justice Values

Beyond priming the students to engage in self-reflection and developing a philosophy of lawyering, I seek to impart the broader institutional impact of a particular ethical judgment on the profession and on notions of justice by assigning a variety of supplemental materials that coincide with particular doctrinal topics. For example, when we discuss the more theoretical issue of justifications for defending the “guilty,” I show a television clip from a *60 Minutes* episode documenting the wrongful prosecution of Alton Logan, an African-American man who was released after unjustly serving twenty-six years in prison.³² The students observe interviews with Logan who appears nothing like a cold killer, as well as interviews of the lawyers who failed for years to disclose exculpatory information of Logan’s innocence based on a claim of confidentiality.³³ Additionally, there exist numerous colorful examples of incivility among lawyers and other unsavory advocacy tactics.³⁴ This material bears tremendous fruit in humanizing the effects of law, lawyering, and its inherent tensions.

31. See, e.g., Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337 (1997); G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT’L J. L. & PSYCHIATRY 233, 233–46 (1990).

32. *26-Year Secret Kept Innocent Man in Prison*, CBS News, Mar. 9, 2008, available at <http://www.cbsnews.com/stories/2008/03/06/60minutes/main3914719.shtml> (last visited Jan. 22, 2012).

33. The lawyers came forward only after the death of their client who had admitted years before that he committed the crimes. Rule 1.6 provides that a lawyer shall maintain the confidences of the representation of a client with some exceptions. MODEL RULES OF PROF’L CONDUCT R. 1.6 (2010).

34. See, e.g., *Texas-Style Deposition*, YOUTUBE.COM, <http://www.youtube.com/watch?v=ZlxmrvbMeKc> (last visited Jan. 22, 2012). See also *Paramount Commc’ns Inc. v. QVC Network Inc.*, 637 A.2d 34 (Del. Sup. Ct. 1994) (litigator’s outrageous and unprofessional conduct criticized); *Mullaney v. Aude*, 730 A.2d 759 (Md. Ct. Spec. App. 1999) (male lawyer disciplined for sexist and racist conduct during deposition).

CONCLUSION: RECOGNIZING THE EFFECTS OF
EMPOWERING PROFESSIONAL RESPONSIBILITY

I prefer to address issues of ethics and professionalism pervasively in the context of any subject of the core curriculum.³⁵ This methodology reinforces the notion that ethical and professionally responsible decision making remains a competency integral to the creation, application, and practice of law generally. Building the students' capacity for reflective judgment remains a central objective of any course I teach. Yet, my professional responsibility course remains the venue for the most intensive self-integrative work.

Through this methodology, I seek to teach and to encourage the skill of reflection on the lawyering role in relation to one's identity, values, and hidden assumptions. The pursuit of integrating the lawyering role and personal identity addresses the pull towards a technocratic rules-compliance approach to issues of professional responsibility and emphasizes the self-regulatory nature of the profession. It affords students a process for developing a reasoned and thoughtful perspective. There is a tendency toward overconfidence by students when pursuing ethical dilemmas, a seemingly natural stance for any prospective lawyer who has not fully experienced the daily pressures of modern law practice. Moreover, before taking the Professional Responsibility course, students have been immersed in subject matters that they command while maintaining a curious detachment. That is, they can treat the substance and the application of law as externally-derived, remove themselves from its force, and more easily take the moral high ground (or avoid moral questions altogether). The Professional Responsibility course does not afford this safe haven, however. The solutions most often are *internally* derived, requiring students to contemplate their own ideals, identities, and moral convictions in order to untangle the ethical bind.

I realize that what I am asking of the students requires a great deal of courage, trust, and honesty. My justification is simple—being a responsible lawyer undoubtedly requires careful attention to rules, but it also demands the capacity to exercise sound judgment in the midst of the tension and pressures of contemporary law practice and personal interests. Gaining the confidence to confront some of the hardest realities of lawyering has become even more relevant in the current economic climate.³⁶

35. Deborah Rhode advanced the pervasive approach in one of her Professional Responsibility course books. See DEBORAH L. RHODE, *PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD* (2d ed. 1998).

36. Notwithstanding student reticence toward the subject of Professional Responsibility, I often hear from alumni years later of the lasting impression the orientation has had on their outlooks and approaches to practice. This anecdotal information confirms that the pervasive approach to professional responsibility realizes benefits beyond law school after one has been immersed in the rigors of daily law practice. Interestingly, recent empirical literature reflects that fostering ethical professional formation correlates to effective lawyering and decision making. See Neil Hamilton & Verna Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law*, 24 GEO. J. LEGAL ETHICS 137 (2011).

At the end of the day, Professional Responsibility is a course about the students—individually and collectively—and how they will ultimately deploy their services for the good (or bad) of their clients, the legal enterprise, and the rule of law more broadly. A holistic approach including critical reflection, supplemental material on the state of the profession, and the dramatized depictions of lawyers in film enlivens the topic, and, significantly, creates the pathway for students to begin developing their own philosophies of lawyering. Because the law comprises a complex web of political, cultural, and social forces, lawyers bring the essence of *who* they are to bear on ethical and professional dilemmas. A “self-integrative” approach prepares them to do so in a measured, informed, and effective way, and without checking their social realities at the door. My course centers on training lawyers who lead by the power of their person, not by the privilege of their positions as lawyers in society.