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FOSTERING A RESPECT FOR OUR STUDENTS, OUR SPECIALTY, AND THE LEGAL PROFESSION: INTRODUCING ETHICS AND PROFESSIONALISM INTO THE LEGAL WRITING CURRICULUM

Melissa H. Weresh[1]

I. INTRODUCTION

Legal writing professors can, should and, indeed, in many respects do teach ethics and professionalism. I argue that we should promote this rich doctrinal material as an essential component of our curricula. We should not only introduce concepts of ethics and professionalism in class, but we should make these concepts a pervasive theme of our curriculum and pedagogy. As Terrill Pollman noted: "The greatest opportunity that the study of law offers 'is not that one can learn to manipulate forms, but that one can acquire *a voice of one's own, as a lawyer and as a mind* . . . .' Lawyering is a craft at the center of which is communication."[2] If our classes provide students with their initial opportunity to communicate in a voice of their own — as a lawyer and as a mind — should we not teach them the ethical and

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[2] Terrill Pollman, *Building a Tower of Babel or Building a Discipline? Talking About Legal Writing*, 85 MARQ. L. REV. 887, 892 (2002) (quoting JAMES BOYD WHITE, FROM EXPECTATION TO EXPERIENCE: ESSAYS ON LAW AND LEGAL EDUCATION 34 (1999)) (emphasis added).

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professional characteristics that will be a part of that voice? Further, if Laurel Oates is correct in her argument that "writing produces meaning,"[3] is it not possible that by incorporating a study of ethics and professionalism into our courses, we can effectively teach a more ethical discourse practice?

In this article I argue that we must make ethics and professionalism a comprehensive theme of our courses. I endeavor to respond to the common objections voiced within our community relating to the introduction of yet another curricular responsibility.[4] I will attempt to offer several reasons why including this type of material in your courses will supplement, rather that supplant your crowded curriculum. I will also endeavor to provide reasons why this additional course material may be beneficial in surprising

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[3] Laurel Currie Oates, *Beyond Communication: Writing as a Means of Learning*, 6 J. LEGAL WRITING INST. 1, 2-3 (2000) (writing " 'allows for – indeed, encourages – the shuttling among past, present, and future,' a process which, through analysis and synthesis, results in the production of meaning") (internal footnote omitted).

[4] At the 11th Biennial Conference of the Legal Writing Institute, held in Seattle, Washington, July 21-24, 2004, Tracy McGaugh's presentation was titled: Teaching Grammar and Punctuation – What If It *Is* Our Job? The presentation related to the issue of grammar instruction in the legal writing curriculum, and whether it is the responsibility of the legal writing professor to teach students basic grammar or whether, as educators functioning in a graduate level curriculum, students should be expected to come to the course with these fundamental skills. The issue is more complicated than the foregoing suggests, and implicates questions regarding our most fundamental pedagogical objectives. Notwithstanding, Professor McGaugh argued in her presentation that legal writing faculty cannot forsake the obligation to provide direction on the grammatical aspects of students' writing if they are to effectively teach students professional, written communication. My argument regarding ethics and professionalism is essentially the same. We cannot teach competent, effective, written communication in an ethical and professional vacuum. Just as the grammatical considerations cannot be ignored, neither can we ignore the ethical and professional considerations that should influence our students' writing.

ways, including dispelling some of the misconceptions about what we actually do and making our course more fulfilling for our students. I will provide a rudimentary framework for including course-related ethics and professionalism material. Finally, I hope to challenge legal writing professionals to go beyond a discussion of professionalism and ethics and to begin to challenge students to think more critically about their fundamental role in society as a professional.

II. WHY SHOULD WE TEACH ETHICS AND PROFESSIONALISM?

There are several, commonly-voiced objections to the introduction of additional course content into the legal writing curriculum, some of which relate specifically to the introduction of ethics and professionalism. First, the legal writing curriculum is already overburdened. In fact, we can only begin to introduce competencies, particularly those of us with a limited two-semester course. Many legal writing professionals object to the responsibility to ensure the grammatical correctness of the next generation of lawyers. This is particularly true because many students are coming to us with very little writing and grammar instruction and, further, because the responsibility to teach the communication of legal analysis in a variety of conventional formats is daunting in and of itself. Ethics and professionalism, moreover, are required upper level subjects. The students are going to get instruction on these critical concepts later in law

school and they are undoubtedly beyond the scope of the 1L context. Furthermore, legal writing and its faculty are already undervalued. Why in the world should we take on an additional pedagogical burden?[5]

These objections undoubtedly resonate with many legal writing professionals and, indeed, I do not argue that they are not legitimate. However, I argue that these objections do not outweigh the benefits of introducing material regarding ethics and professionalism into our courses. At my institution, students are not big fans of legal writing. Legal writing is a labor-intensive course in which students generally receive the first constructive criticism of their professional education. Nevertheless, the student teaching evaluations of the program reveal that students have favorable impressions of their legal writing faculty. This may be due to one-on-one relationship students typically develop with their faculty in the legal writing curriculum. Nationally, favorable impressions of legal writing professionals may be a reflection of

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[5] *See, e.g.*, Brook K. Baker, *Traditional Issues of Professional Responsibility and a Transformative Ethic of Client Empowerment for Legal Discourse*, 34 NEW ENG. L. REV. 809 (2000). Baker sums up the resistance as follows:

> I realize that covering the conventional list of ethical rules governing discourse practice presents a formidable curricular challenge. Most of us rush to get through our already crammed curriculum and feel frustrated at the end that we have only introduced competencies and scratched the surface of the analytical and discourse conundrums which underlie legal research, analysis, and writing activities. Moreover, most of us wonder why we would cover ethical issues most of which must be covered again in the mandatory upper-level professional responsibility course.

Id. at 855-56. However, Baker concludes that we must teach these issues because, quite simply, "[t]he alternative is simply too bleak." *Id.* at 856.

the commitment the legal writing community has made to the well being of its students. Conference presentations attest to the fact that members of the legal writing community seem to genuinely like their students and are sincerely dedicated to their learning experience, even beyond the scope of our particular course.[6] However, while students may look back upon their experience in legal writing as valuable, most see the course as an immediate burden as they experience it. I have some suspicion as to why that is, including the fact that our pedagogy in some ways discourages students from becoming personally integrated in what they are trying to achieve. Moreover, I believe that if we do endeavor to introduce and reinforce concepts of ethics and professionalism into the curriculum our students may further engage in and therefore further enjoy our course. I do not think the burden is too great or

[6] There were a considerable number of presentations at the most recent Legal Writing Institute Biennial conference that demonstrate the legal writing community's commitment to students beyond the scope of the legal writing curriculum. Darby Dickerson and Shannon Moritz each spoke on how legal writing faculty might identify and deal with the troubled student, while the presentation of Lisa McElroy and Jessica Elliott addressed the challenging student. Beth Cohen gave a marvelous presentation on how to encourage students to develop their own philosophy of lawyering. Anne Enquist helped faculty discern why some students are less successful writers than others and Sophie Sparrow and Molly Current each gave some suggestions for giving students sufficient direction to become better writers. Rebecca Cochran focused on students' self-handicapping characteristics. Charles Calleros gave a presentation on how to enable students prepare for exams. Anne Kringel and Sarah Ricks addressed how legal writing faculty can encourage the reluctant student. Tobi Tabor and Katherine Brem provided additional insight on who our students are and how we can motivate them. I have undoubtedly left out additional presentations that were given that went beyond indispensable pedagogical concerns, but the foregoing demonstrate that legal writing faculty are a group committed to students in a way that surpasses our immediate curriculum. *See* Legal Writing Inst. Conference Bibliography Directory (2004), *available at* http://lwionline.org/ publications/bibliographies2004.asp.

the material too challenging to incorporate. I also think there are reasons why our course may be best suited to the introduction of this material. The following represents some of the reasons why the legal writing curriculum may be the best context for introducing students to concepts of ethics and professionalism.

III. SPECIFIC JUSTIFICATIONS FOR INCORPORATING ETHICS AND PROFESSIONALISM INTO THE LEGAL WRITING CURRICULUM

A. *MacCrate Report* and the ABA Accreditation Standards

In 1992, the American Bar Association's Section of Legal Education and Admission to the Bar published a 414 page document titled "The Report of the Task Force on Law Schools and the Profession: Narrowing the Gap."[7] The Task Force chair was Robert MacCrate, whose name became synonymous with the report. The Report was designed to assess the primary skills and values students should learn in law school and which practitioners should possess. Ultimately, the report identified ten fundamental lawyering skills and four professional values. The ten essential skills include: 1) problem solving; 2) legal analysis and reasoning; 3) legal research; 4) factual investigation; 5) communication; 6)

[7] *See* Robert MacCrate, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, Legal Education and Professional Development-an Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISS. BAR [hereinafter *MacCrate Report*], *available at* http://www.abanet.org/legaled/publications/onlinepubs/maccrate.html (selected excerpts).

counseling; 7) negotiation; 8) litigation and ADR resolution procedures; 9) organization and management of legal work; and 10) recognizing and resolving legal dilemmas.[8] The four values include: 1) provision of competent representation; 2) striving to promote justice, fairness and morality; 3) striving to improve the profession; and 4) professional self-development.[9]

The MacCrate Report was met with mixed reaction in the legal education community. Some early scholarly responses were exceedingly negative, including a notable critique from Dean John J. Costonis.[10] Costonis argued, and many agreed that the cost of implementing the skills and values advanced in the report was prohibitory.[11] Costonis noted that the Report "essentially ignore[ed] the most visible impediment to its implementation: the costs of its recommendations and the trade-offs that must be struck."[12] Notwithstanding these objections which relate primarily to the implementation of the standards outlined in the report, few would argue that the values and skills identified in the report — including those which are clearly related to analytical reasoning, communication, and ethics — should, if possible, be addressed in

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[8] *Id.*

[9] *Id.*

[10] John J. Costonis, *The MacCrate Report: Of Loaves, Fishes and the Future of American Legal Education*, 43 J. LEG. EDUC. 157 (1993).

[11] *See generally id.*; *see also* Russell Engler, *The MacCrate Report Turns 10: Assessing its Impact and Identifying Gaps We Should Seek to Narrow*, 8 CLINICAL L. REV. 109 (2001). Several law school deans agreed with Dean Costonis' rejection of the Report on a cost basis, signing a "Dean's letter" which explicitly opposed the use of the ABA accreditation process as an implementation measure to the Report. *Id.* at 118.

[12] Costonis, *supra* note 10, at 190 (stating that "additional law school funds of the magnitude required cannot be generated to absorb these costs").

the context of legal education.

Additionally, the ABA Standards for Accreditation require that law schools provide instruction in both ethics and legal writing. Indeed, these two areas appear to be the only specifically identified curricular requirements. With regard to the curriculum for legal education, Chapter 3, Standard 302(a) requires that all students in a J.D. program receive:

> (1) [Instruction in] the substantive law [values and skills], generally regarded as necessary to effective and responsible participation in the legal profession; and
> (2) legal analysis and reasoning, legal research, problem solving and oral [and written] communication;
> (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year. . . .[13]

Standard 302(a)(1) undoubtedly requires some baseline of standard 1L classes, traditionally including a generous dose of Torts, Contracts and Property, however, the only explicit designation is that for legal writing. Further, the Standards require substantial instruction in "the history, goals, structure, duties, values and responsibilities of the legal profession and its members,"[14] including instruction in the *Model Rules of*

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[13] *ABA Standards for Accreditation*, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS Chap. 3, *available at* http://www.abanet.org/legaled/standards/chapter3.html (last visited Apr. 10, 2005).

[14] *See id.*

Professional Conduct of the American Bar Association."[15] So, insofar as law schools are required by ABA Accreditation Standards to incorporate certain specific topics in the law school curriculum, legal writing and ethics/professionalism seem to be prioritized over other specific, doctrinal areas.

Despite criticisms regarding implementation of MacCrate material, most agree that the skills and values noted in the *MacCrate Report* are indeed those that law students should acquire and that lawyers should possess. Additionally, few would dispute that instruction in the areas of ethics, professionalism, legal analysis, and written communication are essential, if not the bare minimum, of a legal education.

In accord with these noncontroversial premises, legal writing professionals clearly integrate many of the skills and values in the traditional legal writing curriculum. We indisputably teach the essential skills associated with written communication of legal analysis. We are teaching problem solving, analysis, reasoning, research, factual investigation, communication, and organization and management of legal work. We also introduce and foster the value of providing competent representation. These skills and fundamental values form the basis of our curriculum. Moreover, many legal writing courses teach negotiation, counseling, litigation and alternative dispute resolution procedures. I argue that we should introduce the remaining competencies and values in our curriculum – those of recognizing and resolving legal

[15] *See id.* ABA Standard 302, Interpretation 302-9.

dilemmas, striving to promote justice, fairness and morality, and professional self-development. To the extent that these skills and values may already be a component of our curriculum, we might bring to the attention of the legal academy our ability to incorporate these essential skills and values in a curriculum in a manner that supplements our primary objective of introducing and fostering the competency of written communication.

B. Writing Fosters Learning

Writing is epistemic. As Terrill Pollman has noted, "[d]uring the writing process, we learn more than we do by speaking, thinking, listening, or reading because we engage in all these activities and more when we write."[16] Academic discussions have focused on the various ways that writing differs from oral discourse.[17] Academics tend to agree that writing fosters learning.[18] Susan De Jarnett explores the role of discourse in

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[16] Pollman, *supra* note 2, at 904. Pollman explains "in both hermeneutics and composition theory, scholars have examined the exchange of meaning – a dialogue between thought and language, between writing and thought, and between reading and writing – finding a recursive, negotiated, reciprocal process." *Id.*

[17] *See* Susan L. DeJarnatt, *Law Talk: Speaking, Writing, and Entering the Discourse of Law*, 40 DUQ. L. REV. 489 (2002). DeJarnatt's article identifies some of the fundamental ways that writing differs from speech, including the fact that writing offers the possibility of revision. *Id.* at 495. Also, speech is directed at an immediate audience whereas writing is directed at an absent audience. *Id.* at 496.

[18] Pollman, *supra* note 2, at 909. Pollman states:

> [s]ome legal writing scholars have embraced the view that writing is thinking. Others, observing certain tensions between the linear, outcome-oriented ways of thinking in law and the

creating knowledge in a variety of fields, concluding that "[w]riting is no longer viewed as the mere transcription of thought, but rather as an active way of making meaning."[19] To the extent that we endeavor to initiate our students into the discourse community of law, our task is to engage them in a discourse practice while in school that approximates what will be expected of them in practice.[20] Consequently, if ethical and professional communication is commonly accepted as a laudable goal of a legal education and the basic expectation of practice behavior, might legal writing be the most effective course in which to introduce these concepts? Indeed, because students in legal writing would have to immediately put the ethical and professional considerations into context, might they better assimilate an ethical and professional discourse practice if introduced to the concepts as they begin to master the more basic competencies?

Laurel Oates has noted, "Writing 'allows for – indeed encourages – the shuttling among past, present and future,' a process which, through analysis and synthesis, results in the

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> process-based approach of New Rhetoric, have stressed the affinities between the two and applied New Rhetoric principles to legal writing. Writing Across the Curriculum has also arrived in the legal academy, illustrating that law faculties in general have also begun to explore the epistemic view on the connection between writing and thinking.

Id. (internal footnotes omitted).

[19] DeJarnatt, *supra* note 17, at 495.

[20] *See* DeJarnatt, *supra* note 17, at 509 (noting that writing teachers should " 'ensure that students' conversation about what they read and write is similar in as many ways as possible to the way we would like them eventually to read and write.' ") (footnote omitted).

production of meaning."[21] Oates examines different types of writing assignments, concluding that those which require students to transform information, rather than simply recall and present information the writer knows well, will indeed facilitate learning.[22] Oates describes the process the novice writer must engage in when writing objective memos and trial and appellate briefs:

> Students learn to set out the rules first, examples of how those rules have been applied in other cases second, the arguments third, and their conclusion last. In addition, in writing the memo, students are forced to assume a number of different roles. In setting out the rules and cases, they act as a reporter; in determining what each side is likely to argue, they act as an analyst; in predicting how the court is likely to rule, they engage in evaluation; and in advising the attorney about the next step, they become a strategist. In each instance, instead of simply telling what they know, the students are being required to monitor their comprehension, assess the importance of various pieces of information, recognize structures, and make connections between pieces of new information and between new information and previously acquired knowledge, all of which are acts that can result in knowledge transformation.[23]

Based upon this characterization, if we introduce the additional concepts of ethical and professional obligations

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[21] Oates, *supra* note 3, at 2-3.

[22] Oates, *supra* note 3, at 20-22. Oates also specifically notes the two types of writing assignments that do not facilitate learning — those that merely require students to present information the student already knows well and those in which the task of writing distracts the student's attention from the material that needs to be learned. *Id.* at 20.

[23] Oates, *supra* note 3, at 21-22.

associated with the production of different types of documents, students will be forced to integrate those considerations into the analytical and productive framework Oates describes. Also, to the extent that ethical rules specifically are aspirational rather than prescriptive, requiring students to incorporate the concepts will generally be transformative.[24] If this then results in knowledge transformation, might we better enable our students to formulate lawyering skills which are ethical and professional if we introduce these concepts in their formative skills training and make ethics and professionalism a central theme of our lawyering courses? Should we not challenge ourselves and our students to, through their writing, weave "thought and knowledge through language, not merely . . . cloth[e] . . . thought and knowledge in language?"[25]

C. Legal Writing Provides a Constructive Context for Introducing Ethics and Professionalism

1. 1Ls arrive at law school enthusiastic about the practice of law

Legal writing is a required component of the 1L

[24] For example, in persuasive analysis, we advise students to represent the client zealously. The obligation to represent the client zealously is tempered by an obligation to avoid frivolous claims. These competing obligations then require the student to evaluate whether a novel claim is frivolous. The student who must struggle with this issue and ultimately make a judgment call in her writing has engaged in transformative learning. According then to Oates' study, she will have learned the material more effectively, in part because she has had to integrate the material in her analysis and presentation.

[25] Linda L. Berger, *A Reflective Rhetorical Model: The Legal Writing Teacher as Reader and Writer*, 6 J. LEGAL WRITING INST. 57, 58 (2000).

curriculum.[26] Presumably, then, we have an opportunity to teach students when their enthusiasm and respect for the profession is at a high.[27] If we can introduce our students to concepts that humanize the practice of law while teaching basic proficiencies, and in a context where the students are more likely to in fact integrate in the material, shouldn't we?

Legal Writing provides a uniquely well-suited forum within which we can expose our students to issues of ethics and professionalism. As many members of our profession have indicated, the first year legal writing course is central to most law students' induction into the discourse community of law:

> Much of the fundamental task of LRW [Legal Research and Writing] is to enable students to learn [the] discourse [of law] and to become members of both the academic and practice communities. LRW, more explicitly than other law school classes, specifically aims to have students become members of the broader community of law, outside the law school.[28]

Jan Levine has noted that teaching legal writing provides "intense contact with students, a chance to influence them as no one else does, and an opportunity for tremendous pedagogical and

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[26] *See supra* Part III.A.

[27] Notice I avoided characterizing this initial enthusiasm as the pinnacle for students? It is true that many students retain and augment their enthusiasm and respect as they matriculate through law school. However, I argue that many lose this sense of admiration for the practice because of what they are, and are not, exposed to while in law school. Specifically, I believe they lose enthusiasm and respect for the profession in part because ethics and professionalism have not been made an essential and motivating focus of their legal education.

[28] DeJarnatt, *supra* note 17, at 492.

personal rewards."[29] By addressing issues related to ethics and professionalism early in their law school experience, we may be better able to communicate these obligations as central to their legal education. Since ethics and professionalism are undoubtedly essential components of legal education, introducing them in the first year provides a crucial foundation. However, if professional responsibility is taught exclusively as an upper-level course, "students may infer that it is only an appendage to practice, an afterthought. Sensitizing first-year students to issues of professional responsibility, even in the most cursory fashion, sends a message that ethical obligations are a constant in the practice of law."[30]

2. By expecting students to illustrate their understanding of basic ethical and professional considerations as they research and write, we can more effectively teach these essential concepts

Notwithstanding the fact that most professors could agree that ethics and professionalism are an essential part of a legal

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[29] Jan M. Levine, *Leveling the Hill of Sisyphus: Becoming a Professor of Legal Writing*, 26 FLA. ST. U. L. REV. 1067, 1071-72 (1999) (noting further that teaching writing "offers professors the opportunity to get to know individual students well, to see what happens in their minds, to engage them in the process of learning, and to promote their intellectual growth"). *See* Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 DICK. L. REV. 7 (1998). Professor Stanchi also stressed that language is a "powerful tool of social conditioning." *Id.* at 8.

education, there has been a tremendous amount of criticism regarding the way that these concepts are taught in law school.[31] Patrick Schiltz has noted that the law of ethics students are exposed to in law school differs in meaningful ways from the type of susceptibility they will be faced with in practice: "[T]he type of 'meta' questions that so intrigue academics . . . are of little interest to most real world lawyers."[32] Schiltz criticizes the academy and law schools for presenting ethics as a "role-differentiated morality," questioning primarily what a lawyer should do when faced with an unethical client or a client with an unethical motive.[33] While scholarship on these issues might be valuable, what we owe our students is a more basic understanding of the ethical and professional choices they will face when they actually become lawyers. These choices will undoubtedly be reflected in their writing. "[L]awyers typically assess the ethics of other lawyers not based upon whom they represent or what ends they

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[30] Nancy M. Maurer & Linda Fitts Mischler, *Introduction to Lawyering: Teaching First-Year Students to Think Like Professionals*, 44 J. LEGAL EDUC. 96, 102 (1994) (internal footnote omitted).

[31] *See* Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, The Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705, 726 n.63 (1998).

[32] *Id.* at 709. Schiltz further observes that most of the scholarship about legal ethics involves "the hard cases at the margins; it sometimes loses sight of the fact that the easy cases far outnumber the hard ones, and that the easy cases, are [in fact] . . . easy." *Id.*

[33] *Id.* at 710. Schiltz concludes that while an examination of the "bad client" cases is valuable, most cases arise as a disagreement between reasonable people and for whom reasonable arguments can be made. *Id.* To the extent this is true, Schiltz advocates for the role of the mentor in facilitating the ethical development of the new lawyer.

pursue, but based upon the work they do each day."[34]

Schiltz postulates that an evaluation of the ethical behavior of an attorney is typically judged not by whether that behavior conforms to formal, ethical rules, but by whether it conforms to the culture of her legal community. That culture, in turn, "does not reflect the 'big' decisions that members of the community make about 'big' problems, as much as it reflects the dozens of ordinary, mundane decisions that every attorney makes – and makes intuitively — every day."[35]

Schiltz then identifies those specific activities upon which an attorney's "moral fabric" might be evaluated, namely, the production of letters, discovery requests, settlement agreements, and briefs. He concludes:

> The moral fabric of an attorney is stitched out of the dozens — hundreds — of decisions that she makes each day. It is stitched out of the tone of voice she uses in talking with others, out of her choice of adjectives while writing a letter, out of the care she takes in describing what she represents to be the truth of a matter. It is stitched out of one decision after another, each of which may be mundane in itself, but all of which combine to form the moral fabric of the attorney, and combine with like decisions of other attorneys to form the moral fabric

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[34] *Id.* at 711.

[35] *Id.* at 713. In Schiltz's view, "each legal community develops its own culture or 'common law' of ethics, which comprises 'the entire ensemble of understandings that lawyers observe in their dealings with one another, with clients, and with the courts.' " *Id.* at 718 (footnote omitted). [T]his common law "does not define what the community considers unethical. . . . [It] defines what unethical conduct the community will tolerate." *Id.*

of law firms and legal communities.[36]

If our students are indeed going to be evaluated as ethical practitioners based upon the work they do every day, and that work is, by and large, in written form, it certainly behooves us to introduce our students to the ethical and professional influences which should guide their written work.

3. The Legal Writing Course as the Foundation for External Integration

Schiltz argues that lawyers must feel an essential sense of integration to become and remain ethical.[37] Integration is a

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[36] Schiltz, *supra* note 31, at 719. Schiltz argues that the formal ethical rules are irrelevant in influencing ethical or unethical behavior. He contends that acting ethically is an "instinctive reflection of character, rather than a considered application of positive law[,]" noting that there are instances where attorney behavior can be viewed as categorically ethical, or unethical, irrespective of any formal rule. *Id.* at 717. While that may prove true in practice, I am confident that our students need the foundation in ethics and professionalism – and they need that foundation in the context of a skills course – in order to acquire that instinct and therefore be able to make that assessment. This is true regardless of whether the assessment requires an evaluation of a formal, written rule. Schiltz's focus on the imperative of mentoring to instill ethics and professionalism would seem to support this point. *See generally* Schiltz, *supra* note 31.

[37] Schiltz, *supra* note 31, at 732. Schiltz maintains that, generally, rules regarding ethics are irrelevant to ethical lawyering behavior. The rules are irrelevant for a variety of reasons: 1) the rules are general and vague and therefore fail to effectively define unethical behavior; 2) the rules provide an insufficient threat because much of what lawyers do is private; and 3) the rules are largely unenforced because judges and lawyers do not like to punish one another. *Id.* at 713-14. Schiltz argues that intuition and integration are the primary influences on ethical decision-making. *Id* at 717. Schiltz describes the various forms of integration as an anchor, noting that a lawyer must be anchored to be ethical. "If she is not anchored, she is like a buoy that is not anchored: She

concept of anchoring to some force, which enables the student or lawyer to resist pressure to behave in ways that are unethical. Integration can be internal or external. Internal integration suggests that an individual "uses the same moral compass in all aspects of her life."[38] Where the student or lawyer has a strong internal moral compass, she will be better able to resist the pressure to behave in ways that are unethical.

External integration represents the ability of the student or lawyer to anchor to a source outside herself. External integration can be vertical or horizontal. Vertical integration views history and tradition — as demonstrated to the student through legal education — as an anchor for ethical behavior.[39] Horizontal, external integration is anchoring to people about whom the lawyer cares – his family and community. In Schlitz's estimation,

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will drift with the strongest current." *Id.* at 732. Because the forces that influence lawyer's behavior tend to focus on the short-term interests of clients, the lawyer must be integrated or anchored toward ethical behavior if she is to resist unethical conduct that furthers those short-term interests. *Id.*

[38] Schiltz, *supra* note 31, at 732. Schiltz encourages mentoring as a way to ensure that young lawyers maintain that internal anchoring. He reasons that the mentor can help the lawyer "identify and understand her moral compass, which may have taken a beating in law school," and the mentor can help the lawyer as she "negotiates the unfamiliar territory of her new profession." *Id* at 732-33. I suggest that legal writing professionals can begin to provide that mentoring while our students are in law school developing their professional skills.

[39] Schiltz, *supra* note 31, at 734. Schiltz notes the work of Mary Ann Glendon, who characterizes the common law tradition as " 'a vigorous conversation across generations about the goods embodied in our legal and political order.' " *Id.* at 734 (footnotes omitted). This conversation "'helps to orient and reinforce each lawyer's quest for a morally coherent professional life.'" *Id.* (footnote omitted). Ultimately, however, Schiltz concludes that vertical integration has little to do with influencing the ethical behavior of the modern lawyer, reasoning that "it is a rare lawyer who is inspired to do much of anything . . . by devotion to something as abstract, remote, and bloodless as the 'well-being of the law.' " *Id.* at 735 (footnote omitted).

horizontal integration is essential.[40] He argues that horizontal integration facilitates ethical behavior in three ways: 1) It decreases anonymity and therefore increases accountability; 2) It fosters a sense of community and therefore enhances the costs of unethical behavior; and 3) It enhances ownership in the profession and thereby decreases the likelihood of behavior that will damage that profession.[41]

In the context of horizontal, external integration, the legal writing curriculum enjoys a unique sense of community in many respects. Many programs use some type of collaborative learning technique. Also, many programs are taught in a smaller group setting. To the extent that we therefore already enjoy at least the foundation of horizontal integration, we might capitalize on the benefits of that atmosphere by introducing and reinforcing a culture of ethics and professionalism. Doing that may be as simple as providing the ethical and professional context for their writing. It might be noting ethical dilemmas in problems or with regard to clients. It might be including professionalism points for adherence to technical rules. But by introducing these expectations regarding ethical and professional behavior within a context where students' choices are visible, we provide an additional incentive for external, horizontal integration. We also go a long way toward producing a more ethical (and satisfied) community of practitioners.

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[40] Schiltz, *supra* note 31, at 735-36 (concluding that "the anchoring that most matters is horizontal — that is, outward to those people about whom the lawyer cares — rather than vertical — that is, backward to a history or tradition").
[41] Schiltz, *supra* note 31, at 735-36.

The bottom line is this: In law school, our students will be exposed to pressures that may influence them to behave unethically.[42] External, horizontal integration provides a powerful force that enables students to resist the temptation to behave unethically. We should therefore capitalize on the personal and collaborative educational environment we enjoy. Adding content about and expectations of ethics and professionalism provides our students concrete incentives to engage in professional practice. "We professors will influence the character of our students, whether we want to or not. We can do it well, or we can do it poorly. We should choose to do it well."[43]

D. The Image and Personal Satisfaction of Lawyers has been Damaged by a Lack of Attention to Ethical and Professional Values

1. Our students are unhappy and susceptible to depression and substance abuse

Much has been written about the unhappy state of lawyers. A study of law students and practicing lawyers in Arizona illustrates the depressing effects of the study of law.[44] According to the study, approximately 8% of the general population suffers from

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[42] *See* Schiltz, *supra* note 31, at 722-29 (noting "several aspects of the situation of new attorneys that leave them ethically vulnerable").
[43] Schiltz, *supra* note 31, at 792.
[44] *See* Patrick J. Schiltz, *Attorney Well-Being in Large Firms: Choices Facing Young Lawyer[s]: On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy and Unethical Profession*, 52 VAND. L. REV. 871, 874-75 (1999).

depression.[45] The level of depression of entering law students is consistent with that of the general population.[46] By the second semester of law school, however, "32% of law students suffer from depression, and by the spring of the third year of law school, the figure escalates to an astonishing 40%."[47]

Lawyers and law students are not only depressed, they are dissatisfied with being lawyers. According to one study, 20% of lawyers are dissatisfied with their career choice.[48] As confirmation of the dissatisfaction in the profession, lawyers tend to evidence a significantly higher level of substance abuse.[49]

In addition to the troubling statistics about how law students and lawyers feel personally and about their profession, the public's perception of lawyers is increasingly negative. Any number of polls confirm that the public's perception of lawyers is

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[45] *Id.* at 875 (citing 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, 234 (1990)). Note that this approximation is based upon my own rudimentary calculation of Schiltz's statement that two years after graduation, approximately 17% of all lawyers suffer from depression, which is "roughly double the level of the general population." *Id.*

[46] *Id.*

[47] *Id.* It is small relief to then read that two years after graduation the depression rate has decreased to only double that of the general population. *Id.*

[48] Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 AM. U. L. REV. 1337, 1347 (1997) (citing Lawrence R. Richard, Psychological Type and Job Satisfaction Among Practicing Lawyers in the United States 22 (1994) (unpublished Ph.D. dissertation) (on file with Temple University)). *See* Schiltz, *supra* note 44, at 881-88 (noting that "the extent of lawyer dissatisfaction has increased throughout the profession").

[49] Daicoff, *supra* note 48, at 1347. "As evidence of this dissatisfaction, lawyers are currently experiencing a significantly higher level of depression (19%) and substance abuse (15-18%) than individuals in other professions (among the general population, only 3-9% is depressed, and only 10-13% is chemically dependent.)" *Id.* (footnotes omitted).

characterized by disdain and distrust.[50] As the studies and scholarship about public perception of lawyers' reprehensible behavior suggests, the low regard for lawyers is based upon a view that the profession lacks ethics and professionalism.[51]

Moreover, there appears to be a connection between the dissatisfaction that law students and lawyers experience and a lack of focus on ethics and professionalism. Susan Daicoff suggests a "tripartite crisis," which includes the decline in professionalism among lawyers, the decline in public perception of lawyers, and the increase in career dissatisfaction and dysfunction.[52] Krieger's work identifies certain competitive paradigms evident in the law and law school practice which contribute to "differentiation, contingent worth, and competitive outcomes."[53] Our students and new lawyers may be unhappy because of a lack of attention to ethics and professionalism. Further, the sad situation may be recursive: Schiltz observes "that the unhappiness of many new lawyers is itself a threat to their ethical development."[54]

In Krieger's view the legal writing pedagogy that focuses on analytical constructs contributes to student dissatisfaction:

> Exacerbating the negative effect of all of the competitive paradigms, the exclusive valuing of "thinking like a lawyer" directly discourages students from being themselves. They learn to

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[50] *See* Daicoff, *supra* note 48, at 1342-46 and accompanying notes.
[51] *See* Daicoff, *supra* note 48, at 1344-46 and accompanying notes.
[52] Daicoff, *supra* note 48, at 1343-46.
[53] Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 118 (2002).
[54] Schiltz, *supra* note 31, at 729.

> inhibit the expression or consideration of ideals, values, and personal beliefs, and they lose sight of the potential satisfaction inherent in cooperation and mutually beneficial outcomes. Enthusiasm and a sense of relevance that would result from engaging more of the student's inborn capacities are simultaneously undermined by this process.[55]

In fact, the traditional techniques we employ " 'desensitize students to the critical role of interpersonal skills in all aspects of a professionally proper attorney-client relationship and, for that matter, in all aspects of an ethical law practice.' "[56]

Krieger's work suggests that there are universal, basic psychological needs, including self-esteem, relatedness to others, authenticity, competence and security.[57] Humanistic theorists link intrinsic motivations, "the natural striving to be one's best and improve one's society with the experience of satisfaction and well-being."[58] When law schools promote those values whose rewards are extrinsic, such as the gain of a reward, they decrease students'

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[55] Krieger, *supra* note 53, at 118.

[56] Krieger, *supra* note 53, at 125 (quoting John Mixon & Robert P. Schuwerk, *The Personal Dimension of Professional Responsibility*, 58 LAW & CONTEMP. PROBS. 87, 102 (1995)). Krieger's emphasis here is primarily directed at the teaching methods employed in the doctrinal classroom, characterizing the atmosphere as "one in which students are isolated from each other and the teacher, and encouraged to abandon their preferences, values, and instincts as they are trained to wholeheartedly embrace 'thinking like a lawyer.'" *Id.* On the contrary, many legal writing programs reject some of these methods using collaborative approaches to learning and close contact with students. However, to the extent that our pedagogy is designed to teach students to "think like a lawyer," we should be cognizant of the potential effect on the morale — and morality — of our students.

[57] Krieger, *supra* note 53, at 119-20.

[58] Krieger, *supra* note 53, at 120.

sense of meaning, well-being and personal integration.[59] Sadly, Krieger illustrates that many students arrive at law school with healthy values and motives — characteristics that are linked to a sense of well-being and life satisfaction — but that their sense of well-being and life satisfaction decreases markedly within six months.[60] Moreover, Krieger found that the students with the highest grades — those that performed best according to the usual law school paradigms — shifted away from service-oriented practices and toward more lucrative career choices.[61]

Krieger suggests that "we need to remind students regularly that thinking-like-a-lawyer, although a crucial analytical tool, entails a fundamentally negative and dehumanizing worldview."[62] He also suggests that we integrate into our courses questions and assignments that "require students to relate their personal values, beliefs, instincts, and conscience to the cases or principles being studied."[63] Daicoff similarly notes that throughout law school "[c]ynicism about the legal profession increases and opinions of lawyers and the legal system become more guarded and negative by the end of the first year of law school."[64] I suggest that a

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[59] Krieger, *supra* note 53, at 121-22.
[60] Krieger, *supra* note 53, at 122.
[61] Krieger, *supra* note 53, at 123.
[62] Krieger, *supra* note 53, at 127.
[63] Krieger, *supra* note 53, at 128.
[64] Daicoff, *supra* note 48, at 1406. Daicoff, however, argues that there are certain empirically-demonstrated lawyer attributes that are unlikely to change as a result of educational reforms. *Id.* at 1426. Other traits — rationality and objective analysis, for example — may be amplified by the legal education process but, as Daicoff cautions, "it may not be desirable to de-emphasize certain lawyer attributes." *Id.* She concludes that it should be specifically "considered whether an overhaul in lawyers' values, moral, and ideals is at all

discussion of the ethical and professional considerations that should motivate and animate the profession, particularly in the context of written discourse, allows students to integrate into the study of law in a manner that is meaningful and therefore fulfilling.

2. *Our curriculum — particularly one devoid of ethics and professionalism — may contribute to muting and moral relativism*

Kathryn Stanchi has observed that legal writing pedagogy contributes in many ways to the "muting" of outsider voices:

> Legal writing pedagogy . . . teaches law as a language, and thereby both reflects and perpetuates the biases in legal language and reasoning. Indeed, because of the degree of cultural and ideological bias contained in the language of law, legal writing's effectiveness in teaching that language is directly proportional to its effectiveness in muting outsider voices: the better legal writing is at teaching the language of the law, the more effective it is at muting those individuals whose voices are not included in the language of the law, and the more effective legal writing is at ensuring that those voices will continue not to be heard in the legal context.[65]

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possible in light of existing, countervailing, long-ingrained lawyer characteristics and decision-making approaches." *Id.* at 1427. I think it is possible that we can begin to reverse the trends evident in Daicoff's tripartite crisis. I think the writing curriculum provides an effective context in which we might introduce values, morals, ethics, and professional approaches to lawyering. I further argue that including this material in our curriculum in a effort to foster more ethical lawyering behavior is not inconsistent with the attributes Daicoff associates with lawyers.

[65] Stanchi, *supra* note 29, at 20.

Further, the legal writing curriculum may contribute to "moral neutering,"[66] primarily because our emphasis on arguable positions shows "students that their most cherished beliefs are simply a matter of opinion."[67] Schiltz argues that by " 'mak[ing] every position respectable,' law school can destroy a student's 'sense of integrity and personal self-worth,' and leave her with 'the feeling of being unmoored with no secure convictions and hence no identity at all.' "[68]

Baker also addresses this issue specifically in the context of the legal writing curriculum, noting that legal writing students are "alienated from their legal writing projects in law school in part because they miss a sense of ethical and moral presence which has animated" their earlier writing experiences.[69] He concludes that, for the student who enters law school with "the best of intentions" and with a service orientation, "the amoral, non-normative discourse practice we teach must be deeply disturbing."[70]

Stanchi suggests that introducing critical thinking in the context of lawyering — in the first year curriculum — would be a beneficial step in addressing the problem of muting.[71] She further

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[66] Schiltz, *supra* note 31, at 724.
[67] Schiltz, *supra* note 31, at 723.
[68] Schiltz, *supra* note 31, at 723-24 (footnote omitted).
[69] Baker, *supra* note 5, at 856 (footnote omitted).
[70] Baker, *supra* note 5, at 856. He suggests, as I do, that "[i]nstead of contributing to this ethical ennui, I suggest we broaden our perspective to introduce the traditional ethical values that animate the profession." *Id.* Baker further argues that we should strive to introduce our students to a transformative ethic of client empowerment, encouraging our students recognize how their representation and writing might empower outsider interests and advance issues of social justice. *See generally id.*
[71] Stanchi, *supra* note 29, at 51-57.

acknowledges that, engaging students to think about law reform and bias in the context of lawyering, and asking students to confront ethical issues and professional concerns, may be a step toward addressing these biases.[72]

E. Status and Understanding the Objective of the Legal Writing Professional

We teach lawyering behavior.[73] We do not simply teach

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[72] Stanchi is clear in her proposal, however, that an introduction of ethical and professional considerations is only part of the solution. Her primary recommendation is that of institutional reform.

> [L]aw schools must take the initiative. . . . Teaching critical legal theory in the context of teaching lawyering skills – in the first year and beyond – goes a long way toward recognizing our role in shaping legal language. But, it requires that law schools commit to the goal of teaching students to lawyer, to increase the status and pay of those who teach legal writing and lawyering, and to devote the required time and credit hours to allowing those courses to include a substantial component of critical theory.

Stanchi, *supra* note 29, at 56. I agree with this directive and would simply increase the focus on ethical and professional obligations associated with lawyering as an essential foundation for understanding critical legal theory. I am also a big fan of the increased pay and status recommendation.

[73] Notice that I managed to avoid characterizing our curriculum as a "skills" course. I have read with great interest the variety of objections voiced within our field as to how that type of characterization undermines our credibility. I agree with some of that reasoning. For purposes of this essay, however, I must acknowledge that we ask our students to demonstrate lawyering behavior (lawyering skills) to a greater degree than our doctrinal counterparts. Certainly, students must exhibit critical analytical skills in their doctrinal courses, and they are asked to communicate that analysis in writing on exams. However, their performance is evaluated differently and, as far as the constellation of lawyering skills is concerned, less comprehensively in their doctrinal courses. For example, on a traditional issue-spotting exam, the student is evaluated on her ability to recognize legal issues related to the relevant legal doctrine and, typically, to analyze those issues in light of that doctrine. How she communicates her analysis may be relevant, or it may not be, depending on the professor's ability to discern whether she correctly spotted the issue and applied relevant law. In legal writing, she must not only spot the issue and analyze it in

grammar or transitions or roadmap paragraphs. At a basic level, we teach analysis. We then teach our students how to communicate that analysis in written form to achieve a particular result depending on the objective of the document. Our students are therefore evaluated on the basis of their ability to not only identify and articulate the issue and analyze it properly, but also on their ability to master the communication of that analysis in a conventional format that has a particular objective from the perspective of the writer. As our conference presentations often illustrate, many members of the legal academy continue to misunderstand the objective of our courses. In part because of this misapprehension, many members of our profession are devalued and marginalized.

Many of our conference presentations, listserv discussions and scholarship illustrate that, as a profession, we do and must continue to educate other members of the academy about what it is we do. I believe we do this not only out of frustration and a collective sense of marginalization, but also because we are proud of our curriculum, and deservedly so. We reinforce doctrinal course content and the analytical skills students begin to emulate in those courses. Indeed, students' analytical skills are put to the

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light of relevant law; she must communicate that analysis as effectively as possible. She will be evaluated not only on her ability to issue-spot and analyze, but whether she communicates effectively in the type of conventional format she must employ in practice. The evaluation, in most cases, will be based upon an assessment of how closely she has approximated the skills she must demonstrate as a lawyer. To that end, we teach our students lawyering behavior and evaluate them in the context of how closely their behavior approximates that of practicing lawyers.

ultimate test as they are evaluated on their ability to clearly and effectively communicate written analysis. Would the defense of our profession not be enhanced by an acknowledgement that we are not only reinforcing doctrinal course content in the context of our problems, but also allowing students to develop a real sense of ethical and professional discourse practice? And, might this enhanced level of participation and commitment of our students and us translate to greater satisfaction for both our students and us? I think so.

IV. WHAT — EXACTLY — MIGHT WE INTEGRATE?

I argue that we should draw upon three sources of influence in teaching our students how to behave ethically and professionally. The first source is ethics, specifically the *Model Rules of Professional Conduct.* Clearly, we teach competence, diligence, candor, and zealous representation. We should call our students' attention to the foundation for our requirements. They must adhere to our deadlines in order to become accustomed to formal requirements associated with diligence. We require the disclosure and analysis of adverse authority because there is an ethical obligation of candor. Our students' work is evaluated on the basis of competency, a requirement of the practice of law. We do require these things of our students and they are directly related to the ethical rules. I believe it benefits our students to characterize them as such.

The second source of influence is professional standards – both the informal conventions practitioners adhere to in practice as well as conformity with technical rules governing lawyers.[74] There are wonderful illustrations of professionalism lapses associated with writing that we can use to communicate these concepts. Unprofessional tone,[75] disrespect for technical submission requirements,[76] and a lack of attention to research,[77] citation,[78] or

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[74] Here the distinction is between technical rules, such as court rules and citation conventions, and the ethical rules.

[75] *See In re* Wilkins, 777 N.E.2d 714 (Ind. 2002). In *Wilkins,* an attorney was sanctioned for comments made in the footnotes of a brief which accused the lower court of inaccuracies and bias in its ruling. The footnote language provided: "the Opinion is so factually and legally inaccurate that one is left to wonder whether the Court of Appeals was determined to find for Appellee Sports, Inc., and then said whatever was necessary to reach that conclusion (regardless of whether the facts or the law supported its decision)." *Id.* at 715-16 n.2. *See also* Brenda Sapino Jeffreys, *'Antagonistic Motions' Spark Retort From Judge*, TEX. LAW., Aug. 16, 2004, at 5. In this remarkable court order, the U.S. District Court Judge's disdain for the attorneys' lack of professionalism was evident. The order included the following memorable language: "Frankly, the [court] would guess the lawyers in this case did not attend kindergarten as they never learned how to get along well with others. Notwithstanding the history of filings and antagonistic motions full of personal insults and requiting multiple discovery hearings, earning the disgust of this Court . . . ." *Id.*

[76] *See* Westinghouse Elec. Corp. v. NLRB, 809 F.2d 419 (7th Cir. 1987). In *Westinghouse*, the court specifically addressed attorney conduct in attempting to circumvent requirements regarding brief length. Having denied counsel's request for an page limit extension, the court admonished:

> [c]ounsel nonetheless filed a brief as long as the motion had requested, although they tried to disguise the excess by a variety of typographical techniques. This presents a serious question about how lawyers respond to this court's orders. We expect counsel to respond to our orders by complying rather than seeking ways to evade them. In this case counsel tried to evade both the appellate rules and our order.

Id. at 425.

[77] *See* State v. Brown, 687 N.W.2d 543 (Wis. 2004). In *Brown*, the Wisconsin Court of Appeals overturned the conviction of a criminal defendant because of a faulty plea agreement negotiated by the government. During plea agreement negotiations, the government had advised the defendant, who was charged with

technical writing conventions[79] are all the product of unprofessional conduct and are sanctioned as such. We require more of our students not because we are citation or grammar drill sergeants, bent on masochism, but because this baseline level of professionalism will be required of our students in practice.

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certain sex crimes, that he would not have to register as a sexual predator. In fact, the government had relied upon bound volumes of relevant statutes, which had since been updated to include the requirement to register as a sex offender to the list of offenses for which the defendant had been charged. Christopher Wren brought this issue to the attention of the legal writing professors' listserv, evidencing the consequences of failing to update research and concluding that "[a] few minutes of updating the statutes would have avoided this consumption of scarce legal resources." E-mail of Christopher Wren, Asst. Atty Gen., Crim. App. Unit, Wis. Dept. of Just. to LRWPROF listserv, *Real-world Consequences of Failing to Update* (Sept. 1, 2004) (copy on file with Author).

[78] *See* Ikari v. Mason Properties, 731 N.E.2d 975 (Ill. 2000). In *Ikari,* the court criticized counsel for lack of attention to court rules regarding proper citation to authority. The court prefaced its evaluation of the merits of the case with the following comments:

> We begin by noting both parties' failure to comply with [the Supreme Court Rules which require] citation of cases to be to the official reports and to include the page of the volume where the case begins and the pages upon which the pertinent matter appears. All of the cases cited by defendant, and most of the cases cited by plaintiffs, lack reference to the official reports' page numbers upon which the pertinent matters appear . . . We feel compelled to remind attorneys that their failure to comply with the supreme court rules may result in the imposition of sanctions, including the dismissal of an appeal.

Id. at 225.

[79] *See* Devore v. City of Philadelphia, No. 00-3598, 2004 WL 846831, at *1 (E.D. Pa. April 20, 2004). The *Devore* opinion has been the subject of many articles, including one in the September, 2004 issue of *The National Jurist.* In *Devore*, the court reduced an attorney's fees for his written work, while allowing a higher fee rate to apply to the attorney's courtroom fees. The case is noteworthy insofar as the judge commented on the exemplary quality of the attorney's work in the courtroom while lambasting his written work product. The opinion provides numerous examples of the type of characterizations our students should avoid at all costs. Specifically with regard to his writing, the court commented: "Mr. Puricelli's written work is careless, to the point of disrespectful." *Id.* at *6. If the condescending tone of the court's

Finally, personal integrity provides a source of influence for ethical and professional behavior. When I included this concept in my conference presentation, I expected specific reactions from my audience: gasps, eye rolling, and disdain. I genuinely thought legal writing professors would consider addressing integrity in the writing context foolhardy and naïve.[80] In fact, in my presentation I conceded that I expected students' personal integrity to come from their upbringing, certainly not from my class. To the contrary, the discussion that followed my presentation evidenced a commitment on the part of our academy to influence our students' sense of integrity. I believe I do this informally throughout the semester. At orientation I remind students that the choices that they make in law school will influence the way that they are perceived in practice. It is imprudent to believe that the pressure of law school will be greater than that of practice. I therefore advise that students fool themselves when they make morally ambiguous choices based upon a rationalization that, once the pressure to succeed in law school is past, they will behave ethically in practice. I remind them that their behavior toward their colleagues in law school is a good

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characterization of Puricelli's writing is not enough to impact our students, the fact that he made far less money because of his lack of finesse on paper should.

[80] My skepticism regarding how my audience would receive this concept was based upon many of the articles I have read regarding this issue. Brook Baker notes that competence, promptness and diligence – specific forms of professionalism required by rule – "are largely functions of personal disposition, context, and experience rather than self-executing professional standards." To the extent that many legal writing professionals concede that these are ingrained character traits, he describes the common cynicism: "There is little reason to

predictor of how they will behave amongst their peers in practice, and that the relationships they form with colleagues will in turn influence how satisfied they are in their careers. I share these observations not only in my capacity as a mentor to my students, but particularly in the context of, and with reference to, the expectations I have with regard to their writing.

V. HOW CAN WE INTEGRATE ETHICS AND PROFESSIONALISM INTO THE LEGAL WRITING CURRICULUM?

As noted above, there are a variety of ethical obligations that we currently address, but that we do not consciously characterize as ethical in nature. The most obvious example is student performance – our primary goal is to assess a basic level of competency. This is the baseline competency that they are obligated to in practice. In the context of advocacy, we all certainly address the obligation of zealous representation, tempered by an obligation to advance only those claims and arguments that are meritorious. We expect our students to turn in assignments in a timely manner. This underscores their obligation of diligence. We undoubtedly require our students to behave toward one another in a way that behooves the profession. This identifies and enforces the community of professionalism we expect our students to observe while in practice. I think that, to the extent we already require

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think that law school, or legal writing programs, can mold unformed character traits of competence, diligence, and promptness." Baker, *supra* note 5, at 819.

behavior of our students that is related to ethical and professional obligations, we should characterize it as such. As we introduce new forms of writing, we should bring our students' attention to the attendant ethical and professional obligations associated with he production of that document.

In fact, despite Baker's acknowledgement of a certain degree of cynicism regarding the ability of legal writing professors to change certain ingrained characteristics of our students, his position is unequivocal: the legal writing academy can do much to foster essential components of ethical lawyering and professional behavior. Through students' early writing experiences and learning behavior standards, we can advise our students of the following prudent considerations: it might be wise to associate with someone who is more competent in addressing a legal problem; it might be wise to consider referring work to a more specialized attorney; it might be prudent to avoid accepting more work than you can feasibly accomplish; and it is commendable to set high standards for the work product you produce.[81] We can, through the type and content of the problems we assign, expose our students to aspirational standards of legal reform, service to the bar and access to legal services.[82]

There are a number of additional, meaningful ways to introduce concepts of ethics and professionalism into our current curricula. We can address the various types of conflicts our students might face in the context of the problems we assign. We

[81] Baker, *supra* note 5, at 820.

can — and arguably do — address the balance between zealous advocacy and a critical examination of meritorious claims and arguments as we teach writing.[83] We can introduce issues of confidentiality, the allocation of authority between client and attorney, and the issue of informed consent.[84] We can talk about candor to the court and responsibilities to opposing parties and witnesses.

Beyond classroom discussions that focus on particular ethical responsibilities, we can include simulated client contact as a way to personalize and humanize the ethical and professional experience. Our comments on student papers can include observation of ethical and/or professional communication or tone. We can also point out lapses in professionalism, and characterize them as such. Finally, we can include professionalism points, creating an expectation that students interact with their colleagues and us professionally and awarding students for exemplary behavior.

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[82] Baker, *supra* note 5, at 825.

[83] Most of us address these issues in the context of advocacy. Baker makes very helpful, and specific, suggestions that deal with students on either end of the spectrum. With regard to the overly zealous, he notes that the " 'Rambo writers' [those that make all conceivable arguments] . . . must learn that zealousness is tempered with rationality, with logos; that effective advocacy is moderated by compassion, by pathos; and that truly professional discourse is more measured than Machiavellian, that it has ethos, and ethical register." For the underzealous student – those that are reluctant to address adverse authority and/or align themselves with the client's position – we should address the obligation of the lawyer to suppress countervailing personal values and we should increase simulated client contact "as a way to prime the pump of representational zeal." Baker, *supra* note 5, at 836.

[84] Baker, *supra* note 5, at 837-47.

IV. CONCLUSION

" '[M]oral influence is inevitable. It is not possible to choose to have no moral influence: The choice is between good moral influence and bad moral influence.' In other words, the question for us academics is not whether we will shape the character of our students, but how."[85] There is little doubt that the legal writing professional who teaches in the first year curriculum will influence how our students behave in practice, not only with regard to basic competency but also with regard to the ethical and professional character of their representation. We already incorporate many ethical and professional values in our curriculum. We need to characterize and advertise our impact on students as such. I believe that incorporating this material may have beneficial consequences for our students and the way they regard our course, as well as for our specialty community and how it is perceived by the larger legal academy.

[85] Schiltz, *supra* note 31, at 779 (footnote omitted).

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