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Teaching Professionalism in Context: Insights from Students, Clients, Adversaries, and Judges

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TEACHING PROFESSIONALISM IN CONTEXT: INSIGHTS FROM STUDENTS, CLIENTS, ADVERSARIES, AND JUDGES

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I. INTRODUCTION	

Professionalism is a concept widely articulated within the legal community, yet a clear and uniform definition remains elusive. Legal commentators from the academy, the judiciary, and the practicing bar continuously attempt to define professionalism with negligible resolution.¹ It is a term that is often used, perhaps overused in conversation, and at times underutilized in the legal practice, thereby transforming itself from an ideal into a cliché over time.

As a result, professionalism² holds various meanings and the contextual nature of professionalism requires a definitional reshaping as circumstances and players change. In an effort to examine the concept of professionalism from various perspectives, we explored the meaning of professionalism from our own perspectives, as well as those of students, clients, adversaries, and

1. While there are a variety of opinions on the meaning of professionalism, there is a consensus that there is a perceived decline in professionalism in recent decades. See, e.g., "... In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism, Report of the Commission on Professionalism to the Board of Governors and the House of Delegates of the American Bar Association (August 1986), reprinted in 112 F.R.D. 243, 254; Ellen S. Podgor, *Lawyer Professionalism in a Gendered Society*, 47 S.C. L. REV. 323 (1996); Richard A. Posner, *Professionalisms*, 40 ARIZ. L. REV. 1 (1998); Transcript: Jack L. Sammons, *Law School Efforts to Enhance Professionalism*, 52 S.C. L. REV. 481 (2001) [hereinafter Transcript].

2. For the purposes of this article, "professionalism" is discussed primarily in terms of the legal profession.

judges.³ We presented the results of our analysis and investigation in May 2003, at the American Association of Law Schools (AALS) Workshop on Clinical Education in Vancouver, British Columbia, Canada.⁴ This Article is a distillation and expansion of that presentation in Vancouver. The purposes of this Article are threefold: (1) to emphasize the dynamic and adaptable nature of professionalism, especially in the context of litigation; (2) to explore the various points of view of professionalism, with a focus upon clinical law practice; and (3) to suggest that we, as clinical law professors, utilize these observations of adapting professionalism in our teaching.

The overarching theme of our AALS presentation was that professionalism is never a constant and calls for adaptability. This Article will highlight the substance of that presentation and our exchange with audience participants, as we explored the importance of adapting professional behavior in varying contexts. Additionally, this Article will explore how, as clinical law professors, we may use the various perspectives of professionalism as lessons and learning tools for our law students. We further develop our presentation ideas in this Article to reinforce the conclusion that clinical law professors should explicitly teach the contextual nature of professionalism.

In our quest to define professionalism in preparation for our presentation, we began with a very broad and abstract definition that encompassed various professional ideals and qualities, including good judgment, civility, maturity, competence, zealous advocacy, intelligence, honesty, and integrity. The more we attempted to define the term, the more diluted and inadequate the definition became. Of course, this was to be expected, as there is a vigorous, ongoing debate over the meaning of professionalism.⁵ One meaning of professionalism includes “mak[ing] it possible for people to participate in a meaningful fashion

3. Exploration was conducted through a series of student writing assignments, surveys from clients, a writing contest for child-clients, video interviews of litigants in Queens County Family Court, New York and quotes from adversaries.

4. Melissa Greer et al., “Professionalism in Context: Adapting and Balancing Perspectives,” Presentation at the American Association of Law Schools Workshop on Clinical Education (May 16, 2003) [hereinafter AALS Conference].

5. There are a myriad of definitions provided for professionalism, including that of the 1998 American Bar Association president, Jerome J. Shestack, who stated that “[a] professional lawyer is an expert in law pursuing a learned art in the service to clients and in the spirit of public service, and engaging in these pursuits as part of a common calling to promote justice and public good.” American Bar Association, *Forward to PROMOTING PROFESSIONALISM: ABA PROGRAMS, PLANS AND STRATEGIES* 3 (1998). Professionalism has also been defined as “the set of norms, traditions, and practices that lawyers have constructed to establish and maintain their identities as professionals and their jurisdiction over legal work.” Robert L. Nelson & David M. Trubek, *Introduction: New Problems and New Paradigms in Studies of the Legal Profession*, in *LAWYERS’ IDEALS/LAWYERS’ PRACTICES: Transformations in the American Legal Profession* 1, 5 (Robert L. Nelson et al. eds., 1992). Others broadly define the term professionalism as “denot[ing] self-regulation of professional membership and conduct.” See Allison Marston, *Guiding the Profession: The 1887 Code of Ethics of the Alabama State Bar Association*, 49 ALA. L. REV. 471, 473 (1998); Colin Croft, *Reconceptualizing American Legal Professionalism: A Proposal for Deliberative Moral Community*, 67 N.Y.U. L. REV. 1256, 1304 (1992).

in the resolution of their social disputes or in the prevention of social disputes or both.”⁶ The American Bar Association, in its Report on Professionalism, readily acknowledged that professionalism is an “elastic concept,” and as a result, did not offer a definition of professionalism, but of a “profession,” which is marked by “[p]ursuit of the learned art in the spirit of a public service.”⁷ Thus, we do not attempt to define professionalism in unanimous terms, but rather explore how mutable the term becomes based upon context.

Nonetheless, we have come to some conclusions about the fundamentals of professionalism. For example, we agree that professionalism embraces the realm of ethics, but also reaches far beyond. Professionalism also encompasses principles of appropriate attorney conduct and aspirational ideals for an effective advocate, counselor, officer of the court, and member of the bar. Although ethical rules provide a minimum level of professionalism, there is substantial debate over standards of professionalism beyond the mandatory rules. What may seem like civility to one lawyer may seem like a breach of the ethical duty of zealous advocacy to another.⁸

Furthermore, as clinical law professors, we are often the first lawyers to discuss, define, and model professionalism and ethics for our law students in an actual law practice setting. In reflecting upon our roles as clinical educators, we realized that our views of professionalism are often different from the views of other participants in the legal system. Thus, we began to view professionalism through multiple lenses and in multiple ways.⁹ We began to examine how we were teaching our students about the contextual nature of professionalism and whether we should be teaching it in more explicit ways.

In the end, we did not reach a pure, unanimous definition of professionalism. Thus, our contribution to the conversation on professionalism is not to offer a new definition, but rather to acknowledge its subjectivity and examine the implications for teaching law students. Explicitly teaching law students that professionalism is not a constant and varies upon context should be our collective goal.

6. JACK L. SAMMONS, JR., LAWYER PROFESSIONALISM 5–6 (1988).

7. “. . . *In the Spirit of Public Service*,” *supra* note 1, at 261.

8. MONROE H. FREEDMAN & ABBE SMITH, UNDERSTANDING LAWYERS’ ETHICS 121 (2d ed. 2002).

9. Implicit in our theme that professionalism is contextual is the view that “good judgment” is integral to the meaning of professionalism. One of the core characteristics of being a professional is the ability to make a sound decision on what the appropriate action to take (or refrain from taking) is in uncertain situations. See DONALD A. SCHÖN, EDUCATING THE REFLECTIVE PRACTITIONER (1987). Schön observes that competence in handling indeterminate zones of practice is central to professional practice. “These indeterminate zones of practice—uncertainty, uniqueness, and value conflict—escape the canons of technical rationality.” *Id.* at 6. With specific reference to the legal profession, Schön identifies some of these indeterminate zones as “lawyering . . . negotiation, mediation, and client relations that lie beyond the conventional boundaries of legal knowledge.” *Id.* at 12. What makes certain individual professionals particularly competent is “a core of artistry.” *Id.* at 13.

The balance of this Article is divided into six parts. Part I examines the role and perspective of the clinical law professor in teaching and defining professionalism in context. Part II identifies the perspectives of law students who are learning about professionalism. Part III documents many of our clients' perspectives and how we can teach law students professional behavior through representation of clients. Parts IV and V address the unique perspectives of the bar and bench and how we should teach law students to recognize and respond to opponents' and judges' concepts of professional behavior. Part VI summarizes our thesis—that professionalism should be taught explicitly in the clinical setting from a variety of contexts.

II. LAW SCHOOL CLINICAL TEACHING OF PROFESSIONALISM

Law school professors have long been charged with the goal of teaching professionalism to law students.¹⁰ In fact, law professors have at times been held to the highest of standards in teaching professionalism.¹¹ Nevertheless, many scholars and researchers have argued that the current law school curriculum has failed to teach professionalism adequately.¹² The American Bar Association's Commission on Professionalism observed:

Law professors, along with practicing lawyers, serve as important, early examples for law students of what constitutes proper professional behavior. Law professors can transmit the wrong message through their manner and conduct both inside and outside the classroom. The first image that law students may receive is that the most successful lawyers are those who provide fast repartee and use the Socratic method with facility. As Dean Norman Redlich of New York University Law School told members of the Commission, 'As a client, I would want an attorney who was deliberative and did not immediately respond with the first idea that came to mind and who did not attempt

10. See, e.g., Douglas S. Lang, *The Role of Law Professors: A Critical Force in Shaping Integrity and Professionalism*, 42 S. TEX. L. REV. 509 (2001); Barry Sullivan & Ellen S. Podgor, *Respect, Responsibility, and the Virtue of Introspection: An Essay on Professionalism in the Law School Environment*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 117 (2001).

11. Lang, *supra* note 10, at 513–14 (stating that “law professors direct the metamorphosis of a student’s mind” and should “strive to be an example of the best of everything that it means to be a lawyer.”)

12. See Eleanor W. Myers, “Simple Truths” About Moral Education, 45 AM. U. L. REV. 823 (1996); William Reece Smith, Jr., *Teaching and Learning Professionalism*, 32 WAKE FOREST L. REV. 613 (1997); David B. Wilkins, *The Professional Responsibility of Professional Schools To Study and Teach About the Profession*, 49 J. LEGAL EDUC. 76 (1999). But see Edward D. Re, *Professionalism for the Legal Profession*, 11 FED. CIR. B. J. 683, 699 (2000) (concluding that the ABA Professionalism Committee and the MacCrate Report have “already helped reverse the trend”).

throughout the course of the conference to prove his or her brilliance.’¹³

Admittedly, the primary goals of doctrinal professors are to teach substantive law and to develop students’ skills in legal analysis, reasoning, and oral advocacy.¹⁴ Although they may not be teaching “professionalism” as an explicit part of the syllabus, traditional law professors are role models who convey lessons about professionalism through their conduct, teaching methods, and expectations. Doctrinal courses emphasize the ability to “think like a lawyer” and “to make legal arguments, clarify legal issues by adversarial process, and choose from among plausible judicial precedents the one most relevant to a particular question of legal interpretation.”¹⁵ Students, particularly early in their legal training, may equate “professionalism” with the ability to “think like a lawyer.”¹⁶ While skills training courses, such as trial advocacy, offer opportunities for teaching professionalism, the focus again is on formal advocacy skills and substantive law. Moot court judges and adversaries engage students in rational legal arguments, and when a moot court judge aggressively questions a student, the focus rarely strays from the identified issues of fact and law. Moreover, most training in law school occurs in idealized, controlled and insulated settings, which fail to simulate the vagaries of legal practice that stem from actually representing a client and opposing an adversary.¹⁷ It is the authors’ premise that clinical legal education, with its convergence of theory

13. “. . . *In the Spirit of Public Service*,” *supra* note 1, at 268.

14. See Mark Neal Aaronson, *Thinking Like a Fox: Four Overlapping Domains of Good Lawyering*, 9 CLINICAL L. REV. 1, 1–2 (2002) (“[T]he traditional law school curriculum emphasizes thinking about what the law is and should be.”); Richard K. Neumann, Jr., *Donald Schön, the Reflective Practitioner and the Comparative Failures of Legal Education*, 6 CLINICAL L. REV. 401, 405 (2000).

15. Schön, *supra* note 9, at 14. Cf. Paul J. Kelly, Jr. *A Return of Professionalism*, 66 FORDHAM L. REV. 2091, 2095 (1998) (quoting former United States Supreme Court Chief Justice Warren Burger, who “admonished that ‘lawyers who know how to think but have not learned how to behave are a menace and a liability, not an asset, to the administration of justice.’”).

16. This view of professionalism may be related to the competition for dominance between elite, aristocratic lawyers and nonelite, populist lawyers who were able to enter the profession as some of the formal barriers to entry were relaxed. See Amy R. Mashburn, *Professionalism as Class Ideology: Civility Codes and Bar Hierarchy*, 28 VAL. U. L. REV. 657, 668–70 (1994) (surveying class issues within the bar during the early history of the American legal profession). Affluent business lawyers had an “aristocratic vision. Their mission was to establish lawyers as an intellectual elite in the eyes of the public.” *Id.* at 668.

17. Donald Schön wrote about the gap between professional theoretical knowledge and applied technique in his book *EDUCATING THE REFLECTIVE PRACTITIONER*, *supra* note 9.

[T]he problems of real-world practice do not present themselves . . . as problems at all but as messy, indeterminate situations If [professionals] are to get a well-formed problem matched to their familiar theories and techniques, they must *construct* it from the materials of a situation that is, to use John Dewey’s (1938) term, ‘problematic.’ And the problem of problem setting is not well formed.

Id. at 4.

and real-world practice, provides an ideal opportunity for teaching professionalism and ethics to students in meaningful ways.¹⁸

As professors in a clinical law setting, we are able to provide law students with rich and varied views of professionalism due to the pedagogical structure and wide-ranging practice areas of clinical education. Clinical experiences allow students to explore and discuss theoretical ideals of professionalism in the classroom and then test these ideals in the courtroom as the students employ professional behavior with actual cases. Ultimately, our teaching should include the subjectivity and contextual nature of professionalism.¹⁹ We believe it is critical that students consider whether the standards of professionalism need to adapt based upon the perspective of a judge, adversary, client or other pertinent player in the court system.

A. *Reflecting Upon Professionalism*

Clinical pedagogy encourages students to become reflective practitioners, conscious of the human impact of their work. Interactions with clients, adversaries, judges, and clinical professors allow students to come face-to-face with the impact of their work, providing valuable opportunities to reflect upon professionalism issues. The clinical professor maintains multiple, overlapping roles in this learning experience, including the roles of educator and practitioner. As an educator, one can have candid discussions with students about professionalism issues that arise in actual cases. As a practitioner, one can model what professionalism is or should be with relation to our clients, to the bar, to the bench, and to our students. In the process, one teaches that professionalism requires an adherence to core values²⁰ with appropriate adaptations to advance the clients' interests, depending on the audience and the context.

Another way to teach the adaptability of professionalism is to engage our students in a continuing conversation about what they observe while practicing law and how they wish to be perceived in the legal system. We can model and teach professionalism and aid students in recognizing negative role models in the real world of practice. We, as teachers, need students to realize that professionalism is adaptable, depending upon setting: what might be deemed professional in one context might not be professional in another. Illustratively, dramatic overtures and hyperbolic language might be professional in some jury settings, but might be unprofessional or unwelcome in some bench trials. Even among judges, who maintain differing temperaments and perspectives, it is

18. See Transcript, *supra* note 1, at 484 ("The clinic, of course, has been the home of a truer form of professionalization for a long time . . .").

19. *Id.* (describing contextualization in the teaching of legal ethics and noting that clinical courses take a contextual approach to teaching ethics).

20. Shestack, *supra* note 5, at 3. Shestack lists core values as ethics, integrity, professional standards, competent service to clients while maintaining independent judgment, continuing education, and civility.

essential for law students to learn as much as they can about the fact finder and then present the case accordingly.

Similarly, what might be perceived as professional to one client might be intimidating or alienating to another client. Formal business attire may be seen as standard, intimidating, or respectful, depending upon the client and context.²¹

Clinical legal educators typically teach professionalism by incorporating into the classroom the many lessons that arise from real cases.²² Issues of professionalism are always present within the clinical curriculum, since they arise naturally from cases. Thus, clinical professors can teach professionalism by framing a context for a class simulation, a seminar discussion, or a supervisory session.²³ We often adapt our ideas of what is professional based upon whether we are before a judge, a jury, opposing counsel, or our clients. Some of the most valuable lessons in professionalism are learned through the actual perspectives of varying participants in the legal system. As students take on the role of the attorney and then reflect upon their performance in this role, they must confront the consequences of the professional rules and ideals as they affect actual clients. In the process, students learn how professionalism may be altered depending on context, and thus begin to form their own professional identities. As clinical law professors, we are in a unique position to guide students through the process of learning professionalism in context.

B. The Interrelationship Between Professionalism and Skills

Law school clinics are charged with teaching fundamental lawyering skills and values, guided in the past decade by the formulations and recommendations of the American Bar Association's 1992 *MacCrate Report*.²⁴ The discussion of professionalism in this Article touches upon some, but certainly not all, of the core lawyering skills taught in clinical courses. The skills incorporated into this Article are litigation advocacy, communication,

21. For lawyers representing disempowered groups and individuals, formal business attire can be one of the many obstacles to gaining a client's trust. See GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* 47 (1992). ("Yet subordinated people remain deeply skeptical about legal institutions and perhaps particularly about lawyers. They seem not to place much trust in anyone who knows how to talk, act, dress, and operate confidently in such historically unfriendly environments—anyone who facily travels between the legal culture and their own."). Yet, is it disrespectful to make presumptions and then "dress down" for such clients? See further discussion *infra* note 63.

22. Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 *GEO. J. LEGAL ETHICS* 1 (2000).

23. *Id.*

24. Task Force on Law Schools and the Profession: Narrowing the Gap, *Legal Education and Professional Development – An Educational Continuum*, 1992 A.B.A. SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR [hereinafter *MacCrate Report*]. Another articulation of fundamental skills and values to be taught to law students is the Clinical Legal Educators Association's *Best Practices Project*, which is still in draft form. The document is available at <http://professionalism.law.sc.edu/news.cfm> (last visited Dec. 22, 2003) [hereinafter *CLEA Best Practices Project*].

interviewing, and negotiation.²⁵ Similarly, this Article addresses core professional values such as zeal, loyalty, and civility, as further enumerated below.²⁶ Throughout our discussion, concepts of professionalism sometimes unavoidably merge with evaluations of lawyering skills.

Some overlap between concepts of professionalism and skills is unavoidable, given the clinic's overall goal of teaching good lawyering. Good lawyering represents a convergence of the effective performance of lawyering skills and high standards of professionalism. The *MacCrate Report's* articulation of skills and values recognizes this convergence; for instance, the "ethical obligation to screen the merits of a case before instituting litigation" is part of the skill of litigation.²⁷ Likewise, the value of competent representation requires, *inter alia*, "a degree of proficiency" in lawyering skills.²⁸ As a result, the exploration of professional ideals in a practical context, such as the clinic, often coincides with evaluations of the quality of lawyering skills. It is a conundrum which has been aptly stated as "the professional ideal tells us what a good job is."²⁹

Professionalism, therefore, influences the level of a lawyer's performance. Consequently, the view of professionalism adopted by a lawyer, student, or adversary affects his evaluation of the lawyering skills of others in the legal profession and, in the case of an attorney or student-attorney, his own performance of those skills. Illustratively, assume that a clinical professor asks a student with exceptional written advocacy skills to write a brief. The student is capable of writing a highly persuasive, extensively-researched brief. A thorough and highly persuasive brief may be characterized as very skillful and as embodying the professional values of zeal and diligence.³⁰ The forum, however, is a municipal court and the judge has little time to review papers because of a large caseload. Submitting an extensive brief could irritate the judge as too time-consuming, and the judge may not even have time to read the brief. Thus, it may best serve the client to submit a short brief that is

25. The MacCrate Report formulated ten fundamental lawyering skills: (1) Problem-Solving; (2) Legal Analysis and Reasoning; (3) Legal Research; (4) Factual Investigation; (5) Communication; (6) Counseling; (7) Negotiation; (8) Litigation and Alternative Dispute Resolution Procedures; (9) Organization and Management of Legal Work; and (10) Recognizing and Resolving Ethical Dilemmas. MacCrate Report, *supra* note 24, at 138–140. Each fundamental skill is further subdivided into more specific skill sets; for instance, "[f]amiliarity with the skills and techniques required for effective brief writing" is a subset of skill number 8, Litigation and Alternative Dispute Resolution Procedures. *Id.* at 195.

26. The MacCrate Report formulated four fundamental values: (1) Provision of Competent Representation; (2) Striving to Promote Justice, Fairness, and Morality; (3) Striving to Improve the Profession; and (4) Professional Self-Development. *Id.* at 140–41. Like the skills, these values are further subdivided.

27. *Id.* Skill 8.1(b)(i), at 191.

28. *Id.* Value 1.1(a), at 207.

29. SAMMONS, *supra* note 6, at 4.

30. In formulating the value of competent representation, the MacCrate Report incorporates the ethical rules of the profession, including the requirement that a lawyer "work diligently and zealously on a client's behalf." MacCrate Report, *supra* note 24, Value 1.1(d)(i), at 208.

"sufficient" to represent the client's interests competently. Similarly, if we change the practice setting to a private law firm and assume a budget-conscious client, the "sufficient" brief might be the more professional approach, as it will consume fewer billable hours. Still, one might argue that perhaps the most extensive brief is the most "professional."

In teaching students about professionalism in context, clinical educators must confront students with choices about "how skillful" and "how professional" to be, as required by the circumstances, expectations, and needs of the particular audience.³¹ The process should develop the student's awareness of how various participants may view the student's professionalism, and how those views will influence the evaluation of the student-lawyer's abilities and the client's case itself. Students must assume decision-making responsibility at these junctures, learning that there is often no one right answer. In this manner, students begin to form their own professional identities.

C. *Exploring Professionalism Through Core Values*

We tested and further developed our views of the contextual nature of professionalism through our AALS conference presentation.³² During our presentation, we addressed how we might define professionalism with our students. We also illustrated that we as teachers and lawyers may perceive professionalism in different contexts. Our presentation listed eight core values to begin the discussion about professionalism in context: zeal, loyalty, judgment, expertise, excellence, dedication, competence, and civility. Of course, this is by no means an exhaustive list.³³ The concept of appearance was also explored, not so much as a value, but in terms of how we are perceived by others, and how we perceive others based upon appearance alone. These values were listed in a blank chart.³⁴

The various players were listed as headings (i.e., clinical professor as lawyer, clinical professor as teacher, law student, client, adversary, and tribunal).³⁵ We also referred to and subsequently distributed a completed chart

31. The MacCrate Report's formulation of the value of competent representation includes, in section 1.1(a), "acquiring sufficient knowledge . . . within the time available for doing so and without inappropriately burdening the client's resources." MacCrate Report, *supra* note 24, at 208. The Report's formulation of the skill of communication includes "effectively tailoring the nature, form, or content of the . . . communication to suit: (i) [t]he particular purpose [and] (ii) [t]he audience." *Id.*, Skill 5.2(c), at 175.

32. AALS Conference, *supra* note 4.

33. Integrity, honesty and respect were additional core values suggested by our audience when we presented this article at the Clinical Theory Workshop in New York City in September. These are also critical values of professionalism as well, yet still do not form a complete and non-exhaustive list.

34. See *infra* App. A.

35. Again, there are other participants in the adversarial process who could have been noted, such as court clerk, co-counsel, or law guardian.

of our collective ideas about how these core values are often perceived by the various players in the adversarial process.³⁶ We prepared both the blank and the completed charts prior to our presentation. Preparing the charts aided us in formulating our own views of professionalism. At the presentation, the completed chart with our ideas served as a backdrop to the blank chart. As we each spoke about different perspectives of professionalism, we periodically completed the blank chart with comments from the audience; these comments are noted throughout the text of this article. During our presentation, we were able to compare the audience's perceptions of certain values and perspectives with our initial views.

Next, we explored what these amorphous values might mean in different contexts. For example, a student might perceive excellence in a lawyer as one who is a diligent worker. A clinical law professor might perceive excellence in a lawyer or law student as one who has excelled in written work with exceptional legal analysis. A judge might perceive excellence in a lawyer as one who possesses knowledge of the laws and customs of the court. An adversary might perceive excellence in a lawyer as one who prevails in a particular case, either through litigation or negotiation.

Similarly, a professor might view zeal in her law student as one who is well-prepared, persevering, invested in her case, and enthusiastic. The client, on the other hand, might perceive zeal in a lawyer or law student as one who follows through with a case to the end without ever taking "no" for an answer. The interactive chart exercise not only helped frame our discussion with the audience, but also highlighted how mutable these concepts and values of professionalism can be in different contexts.

We invited the audience to consider and reflect upon how we, as clinical law professors, are teaching these core professional values to our students, and how these values may be perceived by students. The ensuing discussion was lively and engaged. Participants (primarily clinical law professors) volunteered information about how they defined the various values we identified. We examined both how our students view core values of professionalism and how other players in the legal system may in turn view our law students' professionalism.

As we completed the blank chart, we further discussed the various players and values and how they intersected with each other. For example, experienced lawyers know that lawyers do not have all the answers at their fingertips, despite that perception often held by clients and law students. Thus, competency and expertise might be defined by practicing lawyers as simply knowing how to locate unknown answers and employing skillful use of the law, facts, and experience. From a student's perspective, however, competency and expertise may be defined as knowing everything or at least appearing to

36. See *infra* App. B.

know it all.³⁷ Clients may view competency and expertise as a lawyer who knows the answers to all of their questions and knows everything about “the law.” Often, clients view competent and expert lawyers as those who prevail, or those who help them achieve a good outcome through negotiation or litigation. Similarly, judges often view competency as efficiency or the ability to settle a case, and view expertise as something connected more to reputation and experience. The many views of professionalism displayed in our chart pose the challenge of teaching the complexity and adaptability of the concept of professionalism.

During our presentation one of the audience members aptly stated that the teaching of professionalism should also include exploration of cultural competence.³⁸ Cultural issues may impact how the various participants identified in the chart view professionalism.³⁹ Race, age, gender, class, sexual orientation, disability and educational level, for example, may affect perspectives of professionalism. Cultural identities, for instance, may affect how we are perceived as professionals⁴⁰ and impact our own cultural competence. We should start the exploration and conversation with our students by exploring “the complex relationship between race, class, gender and their professional role as lawyers.”⁴¹ Professionalism in context requires that we address with our students the cultural issues that affect perceptions of professionalism, as well as their own cultural competency. For example, how might a clinical law professor address a student’s classist views of her clients? What is the most professional way for a lawyer to respond to a racist or sexist comment by a client? Should the response differ if the comment comes from an adversary? Professionalism requires an awareness of how cultural identities

37. One of the students surveyed for our presentation told us, “Not knowing the answer makes me uncomfortable.” We find this to be a very common concern among students.

38. AALS Conference, *supra* note 4.

39. For a further exploration of cross-cultural lawyering and methods for teaching diversity in clinical programs, see, e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001).

40. Consider, for example, the obstacles faced by a physically-challenged attorney with respect to perceptions by an adversary, a judge, and a jury. Other examples, taken from the authors’ actual teaching experience, include: (1) an elderly white female client’s show of surprise that the student-attorney and clinical professors are all women, or that they are of diverse ethnic backgrounds; (2) the wearing of religious attire, such as an attorney-priest wearing his collar to court or an observant Muslim woman wearing a head veil; (3) an adversary’s showing of more respect to an older student (a retired businessperson) at a deposition than to his younger counterpart (although they had equivalent legal experience); and (4) an adversary referring to a clinic professor and students as “girls.” See also Kara Anne Nagorney, *A Noble Profession & A Discussion of Civility Among Lawyers*, 12 GEO J. LEGAL ETHICS 815 (1999).

41. Wilkins, *supra* note 12. Professor David Wilkins of Harvard Law School writes a critical article about how law schools have not helped law students recognize obstacles to professional success and professionalism, even via clinical legal education and other modern curricula. He contends that law schools embrace a “bleached-out” version of professionalism, suppressing all aspects of one’s identity to assume a “professional self.” *Id.* at 85.

affect the judgments lawyers might make about clients and other participants in the legal system and how clients and others might perceive lawyers.

Many of the comments made during our presentation supported the view that professionalism is altered when seen through different eyes and in different settings. Through clinical education, we can teach our students that high standards of professionalism and ethics can and must be maintained while appropriately adapting behavior to pursue clients' interests. The clinical law professor is especially responsible for instilling in law students the importance of professional values. Ultimately, however, we need to recognize that our perspective of professionalism as clinical professors may be quite distinct from our law students' often pre-formed perception of what it means to be a professional.

III. PROFESSIONALISM THROUGH THE EYES OF LAW STUDENTS

As discussed above, law students absorb messages of what it means to be a professional from law professors, from practicing lawyers and from cultural influences.⁴² In our experience, professionalism is manifested for most students as confidence—the ability to provide a definite answer to a legal question with a formal style of communication, an absence of emotion, and a focus upon only those facts relevant to the court proceeding. Understandably, the neophyte attorney is concerned with the appearance of competence, or as stated in the chart, “knowing it all and appearing so.”⁴³ While there are certainly contexts in which this is the appropriate expression of professionalism, it is not suitable for all settings and for all people. Without hands-on experiences in an instructional setting in which students can learn professionalism, graduating law students will be ill-prepared to fulfill professional expectations in the broader manner that the real world demands. A law student may even develop the notion that what is learned in the classroom is not “real practice,” and this belief may perpetuate the poor professional behavior tolerated in many practice settings today.⁴⁴

42. One of the authors asked her students to identify a well-known fictional or real attorney who exemplified the professional values to which the students themselves aspired. The answers ranged from Atticus Finch, symbolizing the idealized sage counselor and advocate to media-savvy, high-profile lawyers, such as Johnnie Cochran.

43. *Infra* App. B.

44. The ABA Commission on Professionalism similarly opined: “If there is a lack of adequate role models in law schools, lawyers may begin practice with little sense of the responsibilities to a client and to society inherent in a professional relationship.” “. . . *In the Spirit of Public Service*,” *supra* note 1, at 269.

A. The Divergence Between Students' Views of Professionalism and Clients' Needs

In our collective experience in clinical settings that serve real clients, the greater challenge for students is not always legal analysis (the measure of success in doctrinal courses), but rather working with actual clients. Each of the authors works with a different client group at present: juveniles, survivors of domestic violence, and the elderly. Yet, we have all observed that our students are similarly challenged in the area of client interviewing and counseling; thus, much of our teaching about professionalism occurs in this context. While we might seek different solutions and outcomes depending on the client group, we all teach that communication and conduct are contextual and that attorneys must adapt their styles to their particular audiences. Participation in a law school clinic marks a shift in emphasis from those skills that are exercised and rewarded in doctrinal classrooms. This may be the first exposure students entering the clinic have to the breadth of skills essential to good client representation. Indeed, for most students, the clinic is the first opportunity they have to meet, work for, and be accountable to a client.⁴⁵ Their prior courses may not have prepared them to build a relationship of trust or elicit information from a client. Moreover, because client-centered lawyering prevails in clinical programs, students are asked to focus on the client's goals, of which the development of legal claims and defenses are only a part.⁴⁶

Our presentation, therefore, included an exploration of how law student-attorneys experience their professional encounters with clients. While many approaches could have been taken for this portion of our presentation, we chose to focus on students' uncertainty and discomfort with emotional situations, as we found this to be a recurring challenge with every new class of clinical students. As law students adopt their new roles as legal professionals, they often struggle to reconcile the professional distance they believe competency requires with the very human instinct for showing compassion to a client. As one student shared in a reflective written account about counseling an emotional client:

[W]hen we had to inform Ms. C that the judgment had been entered against her . . . things became a bit more difficult than expected. I found it very challenging to call Ms. C. I knew that she did not have much money, and she had already explained that she had tried so hard to keep up with the

45. Students who have backgrounds in peer counseling, social work, customer relations, management, or similar fields may have an advantage in client relations.

46. Client-centered lawyering means fostering decision-making by the client and doing what the client wants without imposing decisions upon clients who may have different values than their lawyer. John Capowski, *Values and Lawyering Skills*, <http://law.gonzaga.edu/ilst/Newsletters/Spring01/1tonlines01.htm> (last visited Dec. 22, 2003).

payments. . . . She was emotional on the phone and kept asking us to tell her what she had to do. I found myself wanting to stay professional to avoid becoming an advisor, but at the same time, I wanted her to feel like I understood what was happening to her and that she could rely on us to do the best we could to help her.⁴⁷

A competent attorney knows how to communicate in a manner that is suitable for the client.⁴⁸ Competent attorneys also build supportive relationships with their clients. Acting professionally and compassionately towards a client are not mutually exclusive qualities. The Clinical Legal Education Association's "Best Practices Project" explicitly recognizes that law school graduates should be able to "provide client services that are compassionate"⁴⁹ and to "demonstrate respect, compassion, and integrity."⁵⁰ Based upon comments from the audience during our presentation, it seems common for students to believe that being professional is inconsistent with a therapeutic or even a kind approach toward a client. Clinical law professors often find it necessary to teach their students to "unlearn" the more reticent or reserved modes of professional behavior as the only acceptable approach to clients.

*B. "She Isn't Real Warm, but They Say She's a Good Lawyer"⁵¹:
 Interpersonal Skills as an Aspect of Lawyer Competency*

We also explored student ideas of professionalism through a discussion of two scenes from the motion picture *Erin Brockovich*.⁵² Audience members were very familiar with the movie and the particular scenes noted. Juxtaposed, the two selected scenes bring out the contrast between what most students view as professional (intellectual and business-like, without regard to the context) and what we believe is professional in the context of a client meeting. Both scenes show a client interview. In the first scene an attorney, who embodies a traditional notion of "professional," interviews a mother, father, and their terminally ill daughter inside their modest farmhouse. This attorney practices at a successful urban law firm, and her appearance is consistent with the stereotypical dress code in such a setting. Her hair is tightly tucked away in a neat chignon; she wears a gray business suit, collared shirt and tie. She is appropriately dressed for the boardroom, but not for the farm. Upon arrival, she appears almost comically out of place standing amidst the mud and the cows.

47. Unpublished statement on file with the authors.

48. MacCrate Report, *supra* note 24, at 172 (recognizing communication as a professional skill).

49. CLEA Best Practices Project, *supra* note 24, at 11, available at <http://professionalism.law.sc.edu/news.cfm> (last visited Dec. 22, 2003).

50. *Id.* at 26.

51. ERIN BROCKOVICH (Universal Studios 2000).

52. *Id.*

The lawyer begins her interview by asking the family to “walk [her] through” the “elements” of the daughter’s illness. “I just need the facts—dates, times . . .,” she instructs. Rather than asking, “When did your daughter begin to feel sick?” or “When was the first time you took her to the doctor?,” she asks them to tell her “when the symptoms began, prior to the first medical visit.” She provides guidelines for answering her questions: “If you can reserve sentimental embellishments, I would appreciate it, because they’re not going to help you in court.”⁵³

The lawyer’s presence and manner make the family uncomfortable. Afterwards, the father complains to Erin Brockovich that the attorney is “stuck-up” and “upsets” his daughter. He so dislikes the lawyer that he tells Erin, “I don’t want her coming to the house again.” Erin explains, “I know [she] isn’t real warm, but they say she’s a good lawyer.”⁵⁴

The second scene we discussed involves the heroine, Erin Brockovich, meeting this same family in the same setting. Erin is a struggling but determined single mother of three, who until recently was unemployed. She is a paralegal, not an attorney. Her dress is casual and her manner is open and friendly. In contrast to the lawyer, Erin leans forward, closer to the family, and is conversational.⁵⁵ The filmmakers end the scene after the rapport-building, but it is apparent that Erin, unlike the attorney, is forming a trusting relationship with her clients.

We asked the audience to consider these two movie scenes as a platform for teaching clinical law students about building client relationships and interviewing clients. Participants recognized common obstacles that many students have when they interview their first clients. Having been trained to identify what facts are relevant to the legal elements of a claim or defense and to view the attorney as a knowledgeable expert, students often approach interviews using the authoritarian style of lawyering exemplified by the lawyer in the film. They confuse confidence and polish with professional behavior.⁵⁶ One interviewing model often taught in clinical programs recommends that interviews begin with casual conversation to allow the student and client to establish a rapport, followed by open-ended questioning to elicit the client’s story in his own words.⁵⁷ It is similar to the approach followed by Erin Brockovich rather than that of the attorney. Although simple to explain, students often find it challenging to follow this paradigm, which calls for allowing the client to describe the legal problem in his own words, even if he initially brings up seemingly irrelevant matters. Allowing clients to speak freely in the beginning of the interview allows them an emotional release,

53. *Id.*

54. *Id.*

55. *Id.*

56. When we asked students for their views of professionalism, one response was, “Professionalism is representing yourself as an educated and well-mannered person.”

57. DAVID F. CHAVKIN, CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS, 67–69 (2002).

provides an overview of the problem in his or her own words, and establishes empathetic understanding.⁵⁸ Students often attempt to force the client to focus narrowly on what the student-lawyer thinks is relevant, rather than on what the client wants to say. This approach immediately establishes the attorney as an authority figure to whom the client must respond as directed. This contrasts to a client-centered lawyering style, where the counselor works with the client to solve a problem. A lawyer using an authoritarian style may fail to establish a rapport or build a relationship of trust with the client. The attorney in the movie so failed to build a rapport with her clients that they never wanted her in their home again.⁵⁹ Students should at least recognize the distinction in styles and choose the appropriate style based upon context.

The audience also noted that the attorney in *Erin Brockovich* used “legalese,”⁶⁰ which the clients may have found off-putting.⁶¹ Students often come to law school with notions of how lawyers act and speak and attempt to emulate the images of professional lawyer behavior they have absorbed from popular culture. Students who have worked for an attorney fond of using arcane legal language may resist teaching efforts recommending use of “plain English.” Despite the plain English movement in legal writing instruction, students may simply be eager to use the new language they are learning in law school. After all, the use of specialized language, impenetrable to others, has been one of the traditional hallmarks of what we might term “the professional mystique.”⁶²

Although the Erin Brockovich character in the film is not an attorney, there was general agreement during our presentation that her approach to client interviewing was more effective and “professional” than the attorney’s approach.⁶³ These film scenes can be helpful in dispelling students’

58. DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* 60 (1977).

59. For those with a poverty law practice (i.e., law school clinics), there may be a particularly distancing effect. A very formal approach can be reminiscent of low-income clients’ experiences with officials at government agencies, who may disregard facts provided by the client about her personal circumstances in the interest of processing applications for benefits or housing with bureaucratic efficiency.

60. For example, she asked the clients for the “elements” of the daughter’s illness.

61. See *supra* note 14 and accompanying text; Dean Redlich’s remarks included in “. . . *In the Spirit of Public Service*,” *supra* note 1.

62. Posner, *supra* note 1, at 3.

63. Some exception, however, was taken to Erin Brockovich’s style of dress. Although her casual style of dress would not be acceptable for many client interviews, the conference participants agreed that it made her more approachable to the clients. As shown in the film, the business suit may be intimidating to some clients, particularly child clients. Others expressed the view that in an elder law practice, in which the client could be the age of a twenty-three-year-old student’s grandparents, wearing a suit would enhance the student’s image of competency. Conversely, an older student would not need such “image enhancement.” Still others believed that suits should be worn in a poverty law practice, to give the clients the sense that they are not receiving substandard representation.

Students should also note that clothing is contextual, and they should be encouraged to

preconceptions of how a lawyer should act versus what an effective lawyer actually does.

Erin's attempt to reassure her clients about the lawyer drew comments about what qualities make a good lawyer. That "she isn't real warm, but they say she's a good lawyer," implies that being a good lawyer does not require being personable toward clients, and that perhaps what matters most is success at trial or in negotiating a deal. It was suggested by an audience member that there might be a divergence between being personable and being "a good lawyer." Another participant suggested that there might be different ways of being a good lawyer. Interpersonal skills, however, are included in modern statements of core lawyering skills⁶⁴ and should be explicitly addressed in clinical programs. Perhaps the approach taken by the attorney in the film would have been appropriate for some clients. It failed, however, with the clients portrayed in the film.

Admittedly, not all people are adept at managing emotionally difficult situations, such as interviewing a family with a terminally ill child. One audience member during our presentation described a "utilitarian approach" that she takes with her students. Allowing a client to express emotions and vent anxiety may help the attorney to obtain more useful information from the client.⁶⁵ Attorneys may develop more patience and insight upon realizing that allowing clients to emotionally express themselves may enhance their client representation.

During our presentation, there was a consensus among the participants that students often come to the clinic with the authoritarian approach to client interviewing epitomized by the attorney in the *Erin Brockovich* scene. One participant commented that there are ample written materials for reading assignments on interviewing techniques, and students exhibit the ability in a classroom or supervisory setting to understand the readings. Nevertheless, as stated above, their performance with real clients is often lacking.

The presentation's discussion then turned to identifying effective pedagogical tools for teaching students to adapt their behavior to a more client-centered approach. The clinician might discuss with the students the new skills and modes of communication they have acquired in law school—legal analysis and argument—and acknowledge their importance. The clinical professor could suggest that these skills may not be effective when working with clients and advise students to try to relate to clients in a more humanistic manner. For a student representing an emotional client, it might be helpful to suggest that

consider whether what they are wearing is appropriate for the context and the audience. For example, a home visit with a child client might call for something less intimidating than a business suit.

64. MacCrate Report, *supra* note 24, Skill 5.2(a)(iii) at 174; CLEA Best Practices Project, *supra* note 24, at 25.

65. See Gay Gellhorn, *Law and Language: An Empirically-Based Model for the Opening Moments of a Client Interview*, 4 CLINICAL L. REV. 321 (1998).

students reflect on a difficult personal experience and consider how they would want someone to respond to them in such a situation.⁶⁶

Students should observe and analyze both good and bad examples of interviewing and counseling techniques. Films or attorney training videos can facilitate that process. To the extent that clinical professors serve as role models of professional behavior, it can be instructive for the professor to demonstrate interviewing skills during a simulated interview in class. When necessary, intervention by an instructor in a real client counseling session can create a valuable opportunity for learning. One of our students remarked that it was helpful to observe her professor's intervention in an interview. When asking the client a question, the student observed that the professor was "effective, even though she was nice."

Although students' first interviews may be imperfect, through theory, practice, and repetition they will learn to adapt appropriate professional behavior. Through mock interviews, followed by real client interviews and reflective discussion of the student's performance, the student's view of professionalism develops. When asked for their perspectives on professionalism at the end of the semester, many students expressed the view that professionalism "depends on the context and is never a constant."

IV. THE CLIENT'S PERSPECTIVE

In preparing this article, we found that often our clients' perspectives of professionalism were somewhat reflective of media messages about the legal profession. Recently, the public and the media have renewed their disparagement of lawyers.⁶⁷ Even within the profession there has been a decline in respect⁶⁸ among fellow lawyers.⁶⁹ Lack of professionalism is exemplified, for example, by phone calls which are not regularly returned, unnecessarily delayed discovery, bad faith instructions given to clients during pre-trial proceedings, and growing legal fees and caseloads.⁷⁰ Is the cost of winning worth the expense of our clients feeling devalued and disenfranchised? Effective lawyering must be more than rote memorization of rules of law or

66. See CLEA Best Practices Project, *supra* note 24 (noting that students have life experiences to bring to the table).

67. N. Gregory Smith, *Ethics v. Professionalism and the Louisiana Supreme Court*, 58 LA. L. REV. 539, 539-42 (1998).

68. Jean M. Cary, *Teaching Ethics and Professionalism in Litigation: Some Thoughts*, 28 STETSON L. REV. 305, 307-08 (1998). There are several suppositions as to why there has been such an increase in incivility. Professor Cary theorizes that it stems from the lengthy process of litigation, often requiring years to resolve; that litigation stirs up performance anxiety; that litigation is so costly and lawyers feel pressure from the clients who demand justification for length and expenses; or perhaps because incivility is easily focused upon in a procession where court room transcripts produce verbatim exchanges. *Id.* at 309.

69. Nagorney, *supra* note 40, at 815.

70. *Id.* at 819-20.

“winning” in court. It is a careful consideration of ethics and obligations coupled with an acute awareness of the interests and needs of clients.

Clinical law professors should emphasize collaborative and interactive learning and demonstrate the professional ideal.⁷¹ We need to teach students that they must consider the expectations of their clients well beyond the minimum aspirations of professional rules of conduct.⁷² To do this we must listen to and observe our clients to understand how they want to be treated and what they value as professional behavior.

In comparison, in the medical profession communication behaviors (as in bedside manner) from physician to patient have been studied⁷³ in an attempt to identify a correlation between conduct and the likelihood of being sued for malpractice.⁷⁴ Physicians who had never been subject to malpractice litigation were found to have engaged in significantly longer visits with their patients.⁷⁵ Patients and families whose medical treatment resulted in a negative outcome were more likely to sue their doctor if they felt the physician was not caring and compassionate.⁷⁶ Although the purpose of this study was primarily to guide malpractice risk prevention, it also serves as a tool for educating the physician⁷⁷ by providing an apparatus for producing greater patient satisfaction.⁷⁸ The Levinson Study identified the specific and teachable communication behaviors associated with fewer malpractice claims, including facilitating comments,

71. Leslie L. Cooney & Lynn A. Epstein, *Classroom Associates: Creating a Skills Incubation Process for Tomorrow's Lawyer*, 29 CAP. U. L. REV. 361, 361 (2001).

72. *Id.* at 379.

73. Wendy Levinson, M.D., et al., *Physician-Patient Communication: The Relationship with Malpractice Claims Among Primary Care Physicians & Surgeons*, 277 JAMA 7, 553 (1997) [hereinafter Levinson Study]. In this specific study, fifty-nine primary care physicians and sixty-five general and orthopedic surgeons and their patients in Oregon and Colorado were subjects using audiotape analysis.

74. Amongst primary care physicians who had not had prior malpractice claims filed against them, the Levinson Study revealed that these doctors educated their patients more about what to expect during the visit and treatment; laughed and used humor more; spent more time soliciting patients' opinions; gave statements of empathy and approval (e.g., “you’re doing great with your diet” and “that must make it tough for you”); checked their understanding and encouraged patients to talk (e.g., “go on, tell me more”); and offered criticism of third parties (e.g., “It’s pretty stupid for the insurance company to do that”). *Id.* at 553, 555 tbl. 4. The authors of this article are in no way incorporating this study with the objective of teaching the avoidance of legal malpractice suits, but rather are attempting to achieve the critical goal in client-centered lawyering: improving client satisfaction.

75. *Id.* at 557.

76. *Id.* at 553.

77. Joy Davia, *UR Focuses on Bedside Manner*, ROCHESTER DEMOCRAT & CHRON., June 26, 2003. In line with what appears to be a relatively recent trend in the effort to improve bedside manners, the University of Rochester, in June 2003, opened a new research center that will study the results of doctors' communication skills to improve patient outcomes, reduce malpractice, and cut health care costs.

78. Levinson Study, *supra* note 73, at 553.

using emotional tone, showing interest in patient opinions, and utilizing humor, warmth, and friendliness.⁷⁹

The physician's bedside manner⁸⁰ is analogous to what we label the lawyer's bench-side manner.⁸¹ These interpersonal skills and behavioral tips could be utilized in the legal profession to reduce the risk of communication failures and assist in building a better rapport.⁸² Although many health care organizations may pressure physicians to shorten routine office visits and lawyers face increasingly voluminous caseloads, it is critical to recognize both patient and client needs.⁸³

A Wisconsin study which interviewed twenty-two inmates to assess satisfaction or dissatisfaction with their criminal defense lawyers mirrors ABA surveys⁸⁴ as well as our survey of clients.⁸⁵ This study surprisingly revealed that clients did not look to their lawyer's conventional advocacy skills nor the outcome of their case (length of sentence) in determining their satisfaction, but rather to the quality of the interaction they had with their counsel.⁸⁶ This "engaged lawyering"⁸⁷ speaks to the lawyer's "expressions of respect, caring and emotional involvement with the client's case."⁸⁸ Lawyers who rated highest in terms of client satisfaction listened well, showed empathy and compassion, visited their clients while incarcerated, and assisted their clients by doing nominal personal favors.⁸⁹

From the medical profession comparison, we learn there is a correlation between dissatisfaction and behavior. People communicate differently when engaged in personal and in professional lives. Arguably, our students' legal

79. *Id.*

80. Additionally, as an analogous learning tool, the medical profession offers *Tips to Improve Bedside Manner*, which in the authors' opinion, should cross professional boundaries as a training tool. Valerie Swift, *Quality Patient Care: Your Bedside Manner*, PRACTICE BUILDERS, Aug. 2002, at 1-2.

81. The authors are not suggesting that lawyers or lawyers-in-training can learn in isolation from doctors' practice habits. Rather, raising awareness of and educating students about failures in communication behavior between patient and physician could in turn prevent or minimize interpersonal problems between lawyer and client.

82. Swift, *supra* note 80, at 1.

83. Levinson Study, *supra* note 73, at 558.

84. American Bar Ass'n, Section of Litigation, *Public Perceptions of Lawyers: Consumer Research Findings* (April 2002), available at <http://www.abanet.org/litigation/lawyers> (last visited on Dec. 22, 2003).

85. Martha E. Gaines, "I Do Make House Calls": Effective Legal Representation from Our Clients' Perspective (1993) (unpublished L.L. M. thesis, University of Wisconsin Law School) (on file with the University of Wisconsin Memorial Library).

86. Katherine R. Kruse, *Engaged Lawyers and Satisfied Clients: Lessons Learned from the Gaines Thesis* (William S. Boyd School of Law) (unpublished manuscript on file with the author).

87. *Id.* at 8. Professor Kruse labels the quality of attorney-client interactions as "engaged lawyering."

88. *Id.* at 8.

89. *Id.* at 10-11. Favors constituted non-case related acts such as picking up a paycheck from a client's employer and depositing money in the client's jail account for the client to purchase snacks or toiletries.

expertise will be at least partially judged by their “bench-side manner.” It is essential to teach law students that routine communication behaviors are critical; therefore, they must adapt their professional behavior to meet the needs of each specific client. We suggest that the clinical setting is the ideal environment in which to reflect upon these behaviors, given the ability of professors to closely supervise and train students.⁹⁰ Furthermore, the student learns that professionalism issues can be successfully addressed by engaging in classroom discussion or in a clinical class meeting where a “source of support” is offered (in contrast to many post-graduation practice settings).⁹¹ The clinical professor can engage in simulations in which he or she plays the role of the uncooperative adversary, surly judge or discouraged client.⁹²

A. The Survey

In preparation for our presentation, we conducted a limited survey of litigants⁹³ ranging from children to adults, asking them what they consider to be “professional” and “unprofessional” attorney behavior.⁹⁴ One theme running through both the adult- and child-client feedback was not unlike the responses from law students—their answers did not generally consider knowledge of the law, but rather focused on the interpersonal skills and behaviors of the lawyers. These real-life reactions mirrored audience feedback during our presentation, which we then put into our blank interactive core value chart. The reactions illustrated a client’s interest in “good outcome[s],” and in having his/her lawyer’s “unwavering trust” and “loyalty.”⁹⁵

B. Child-Client Views of Professionalism

Our client survey followed two primary forms. The first method was reaching out to child-clients by hosting a writing contest in a national foster children’s magazine entitled *Foster Care Youth United, The Voice of Youth in Care*.⁹⁶ The magazine is primarily written and read by teenagers and pre-teens

90. Claire Hughes, *A Test of Patience for Patients*, TIMES UNION (New York), July 26, 2003, at B1. In an attempt to improve communication with patients, Albany Medical School has implemented a day-long clinical skills assessment program, beginning with the Class of 2005, in which medical students are tested on both their medical knowledge and their interactions with mock patients.

91. Cary, *supra* note 68, at 312.

92. *Id.* at 309.

93. We conducted twenty-two face-to-face interviews in Queens County Family Court, New York, in May 2003.

94. The results of these interviews are in no way intended to resemble a poll or to be construed as scientific, but rather are a restricted random sampling. Interviews are constrained to those in the Family Court arena.

95. AALS Conference, *supra* note 4, at 3.

96. *Foster Care Youth United, The Voice of Youth in Care*, YOUTH COMM., March/April 2003, at 28 (containing youth submissions).

who live in foster homes as a result of child protective or juvenile delinquency proceedings.

The contestants wrote that the professional behavior they regard as most important is close communication and contact regarding the status of their court case, and opportunities to provide regular updates on their status and wishes.⁹⁷ The majority of entrants expressed that they most wanted to speak with their attorney and feel that their attorney had a sense of allegiance to them, especially in the courtroom.⁹⁸ The children, through their writing contest entries, provided concrete examples of professional behaviors.⁹⁹ A sampling of child-client responses follows:¹⁰⁰

My lawyer is a once every three months kind of lawyer . . . a lawyer is supposed to pay attention to her clients. Jessica, age 14.

What I expect from my lawyer is to be on my side at all times. Ciara, age 16.

I expect my lawyer to speak for me in court, keep in contact with me and help me accomplish my goals . . . Do I feel I receive this kind of professionalism? . . . My law guardian doesn't bother to call me or return my calls. Christine, age 13.

There is only one thing about [my lawyer] that . . . makes her a bad lawyer—she is not persuasive at all. Monifa.

I feel a [lawyer] should back you up in court. They are supposed to handle your problems. They should not make you uncomfortable. You should be able to trust your lawyer. Criss, age 16.

The kind of professionalism that I expect from my [lawyer] is for her to listen to me and work on my case a little longer. Quanisha, age 15.

Why have all the lawyers I've had lied to me? Christina, age 18.

What I expect from my [lawyer] . . . is to set certain guidelines and to suggest ways to get me out of some situations

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

that I am in . . . to at least give me some advice about how to prosper and stay on top . . . to be strong when talking to a judge for me, even when something is wrong to recognize it and still be on my side the whole way through. Shanay, age 15.

I expect my lawyer to call me. Jeremy, age 16.

I would like my [lawyer] to be more involved in my case. Christina, age 16.

During the AALS presentation, one rather direct observation from the audience was that the majority of writing contest entries by the children were “my lawyer sucks” descriptions.¹⁰¹ This audience member inquired if there were any positive entries.¹⁰² Although the vast majority tended to be critical, there were a few encouraging entries, including the following:¹⁰³

My lawyer shows up on court dates for me . . . I really have no problems with her professionalism. Ciara, age 16.

I have received professionalism from my law guardian. She has been there for me. She has gone to court, comes to my house and spends time with me. Quanisha, age 15.

My law guardian is nice to me. She is good to me and she is working hard to get me out of the system. Every time I have court she is there for me because she wants to [do the] best for me. She wants me to be happy and have a nice life in the future. Maria, age 16.

When I went to court I really was proud of my [lawyer]. She helped me a lot. She was explaining to the judge . . . Jeremy, age 16.¹⁰⁴

During our presentation, commentary noted that the children’s responses closely track American Bar Association surveys of client satisfaction.¹⁰⁵ This is in fact the case, as evidenced by the national consumer survey conducted in

101. AALS Conference, *supra* note 4, at 3.

102. *Foster Care Youth United*, *supra* note 96, at 52.

103. *Id.*

104. *Id.* These comments were a result of a writing contest rather than interviews by the authors; therefore, follow-up questions could not be asked.

105. American Bar Ass’n, Section of Litigation, *Public Perceptions of Lawyers: Consumer Research Findings* (April 2002), available at <http://www.abanet.org/litigation/lawyers> (last visited on Dec. 22, 2003).

2001 on behalf of the ABA Section of Litigation, which provided an in-depth look at public perceptions of lawyers.¹⁰⁶ Lawyers rank a meager second to last in some surveys rating the public's confidence in various institutions.¹⁰⁷ Although the study revealed that Americans believe lawyers are knowledgeable about the law and that the law is a respectable career, results overwhelmingly illustrated that the public believes the profession poorly handles basic client relationships and pays inadequate attention to communication.¹⁰⁸ The survey team found that "lawyers are not doing a good job of developing and maintaining good communication with their clients . . . and that lawyers need to police themselves more vigorously."¹⁰⁹ However, the team suggests that there are ways to improve lawyers' standing in society.¹¹⁰ Perhaps showing respect by improving communication with the client is one of those ways.

C. Adult-Client Views of Professionalism

While our law students may consider the most important goal of the lawyer to be based on substantive legal issues (e.g., a solid grasp of the law and theory of the case), for many clients the goal instead is the quality of the attorney-client relationship.

The litigants we interviewed¹¹¹ unmistakably emphasized being treated with respect, both in word and manner, and appreciated their attorneys' adherence to regular communication with clients.¹¹² Perhaps client demand for good manners from lawyers would improve the quality of legal work, as well as the public's perception of lawyers.¹¹³ As the ABA aptly stated, "[l]awyers must be taught the importance of lawyer-client relationships in law school, and they have an obligation to talk and to work with the public to enhance understanding of our justice system."¹¹⁴

The adult clients the authors surveyed¹¹⁵ in the New York State, Queens County Family Court in April 2003 gave a variety of responses to the following question:

106. *Id.*

107. *Id.* Doctors ranked first with 50%, followed by the executive branch of the government with 46%, lawyers with 19%, and the media ranked last with 16%.

108. *Id.*

109. *Id.*

110. *Id.*

111. These views were not those of the clients we represent in our clinics, but of other litigants who were willing to participate.

112. Queens County Family Court Interviews, *supra* note 93.

113. Nagorney, *supra* note 40 at 815.

114. American Bar Ass'n, *supra* note 105.

115. The clients surveyed were not those of the clinic and the surveys were conducted anonymously.

Can you define “professionalism” and give examples of the types of professional behavior you expect from a lawyer and, if any, the unprofessional behavior you have experienced?

The following is a sample of the responses we received:¹¹⁶

Better representation is when they are on your side . . .

Sometimes they speak to you like you’re an idiot. You know, they talk to you like you don’t know what’s going on.

. . . One not professional behavior in my lawyer is [when she] puts lipstick on in the court instead of talking to me about what’s important.

If I call the lawyer and she doesn’t call me back.

If I don’t understand something and he explains it to me.

A good quality is when they treat you good . . . they remind you what to do.

A good lawyer is when they are polite to you

It’s not professional when an attorney discusses your case out in the open . . . and everyone else in the corridor is over-hearing.

A professional . . . lawyer should respect you for who you are [and] not be a racist

It’s not professional when the attorney holler[s] and scream[s] at the clients because sometimes it makes them nervous and they’ll say the wrong thing not meaning to say it.

Unprofessional behavior is when they wait to the last minute and try to cram it all in.

During our presentation, we showed a videotape of these interviews and then polled the conference audience inquiring what, after viewing the video, they thought clients believed to be professional behavior in a lawyer. Several audience members commented that communication seemed to be what clients

116. Queens County Family Court Interviews, *supra* note 93.

see as the most important trait in their lawyers.¹¹⁷ Although it is explicitly stated in the Model Rules of Professional Conduct and the Lawyer's Pledge of Professionalism that lawyers "should maintain communication with a client concerning the representation"¹¹⁸ and "keep . . . clients well-informed and involved in making the decisions that affect them,"¹¹⁹ clients do not seem to be satisfied with these professional functions. As Appendix B illustrates, we believed that clients often place a greater value on "trust" than upon "advocacy" and on "loyalty" over "diplomacy." Additionally, we theorized that the "outcome" of the case is paramount to "efficiency," "know how," or "solid work." In fact, client comments did mirror our initial ideas reflected in Appendix B.

This client feedback also mirrors research of the social psychology of procedural justice¹²⁰—a field that is concerned purely with what people in the system believe to be "fairness" as opposed to any area of substantive law.¹²¹ The Lind and Tyler study concluded that what people perceive as fairness is "often a stronger factor in procedural preferences than is self-interest."¹²² In other words, people may find some satisfaction with results for procedural reasons, even when the case is not substantively successful.¹²³ Tyler also suggests that the most important determinants of perceived fairness are participation (the person's ability to influence decisions); dignity (being treated with respect, politeness, and dignity); and trust.¹²⁴ Just as in the Tyler study and extrapolations, litigants we interviewed believed that treatment and behavior are paramount to substantive issues and outcome.¹²⁵

One audience member at the conference noted that the adult clients primarily spoke about the process and the relationship they had with the lawyer, rather than what the lawyer did in court or in preparation for court.¹²⁶ Clients looked at how they were spoken to and treated and whether their lawyer showed up in court—as if the cases themselves were secondary to the manner in which the clients were treated.¹²⁷ In contrast, a law student's emphasis, based

117. AALS Conference, *supra* note 4.

118. *Preface* to MODEL RULES OF PROF'L CONDUCT, available at http://www.abanet.org/cpr/mrpc/mrpc_home.html (2003) (last visited Dec. 22, 2003).

119. MODEL RULES OF PROF'L CONDUCT R. 1.4 cmt. 3 (2003), available at http://www.abanet.org/cpr/mrpc/mrpc_home.html.

120. This field originated in the 1970s with studies by John Thibaut and Laurens Walker, discussed in their book *PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS* (1975) and has been carried on further through a large body of research by Dr. E. Lind and Prof. Tom Tyler.

121. See E. ALLAN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988).

122. *Id.* at 123.

123. Paul G. Chevigny, *Fairness and Participation*, 64 N.Y.U. L. REV. 1211, 1217 (1989) (reviewing LIND & TYLER, *supra* note 121).

124. Tom R. Tyler, *The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings*, 46 SMU L. REV. 433, 439 (1992).

125. Queens County Family Court Interviews, *supra* note 93.

126. AALS Conference, *supra* note 4.

127. *Id.*

upon our clinical experience, usually focuses on the law and theory of the case.¹²⁸

The audience member at the AALS presentation also commented that surveyed clients seemed to be speaking about lawyers in general rather than about the lawyer that they had at the moment. The audience further noted that surveying clients on their views of professionalism after the case is completed is equivalent to measuring professionalism by the outcome of the case rather than by the ability of the lawyer.¹²⁹ As all litigants we interviewed had active court cases at the time, perhaps their views were a coupling of current experience and overall opinion.

We were often surprised by our conversations with litigants regarding lawyers who fail to adapt their behavior inside the courtroom, reflecting a lack of respect for the bench, as well as their clients. For example, one client remarked, "It's very unprofessional when lawyers chew gum and read newspapers in the courtroom."¹³⁰ The litigant further stated that "It's unprofessional when lawyers answer their phones in the courtroom."¹³¹ If professionalism implies some guarantees of quality, then such scenarios are creating a perception that is something short of our aspirations.¹³² Clearly, the burden should not be on the client to instruct the lawyer how to behave professionally—especially since the lawyer's behavior and performance are often not subject to the client's control.¹³³

There is often a discrepancy between what lawyers, judges, and law students view as professional behavior, and how clients view such behavior. This might be the basis for the decline in client satisfaction, and perhaps this awareness can ultimately serve as a remedy. Most practitioners and students that we polled responded that they believed they acted professionally. Clients, on the other hand, differed, noting rampant unprofessional behavior as evidenced by the above-captioned remarks.¹³⁴ Lawyers seem to be disregarding, or at least overlooking, good manners, taking a commercial approach and acting in a mechanical way towards their cases and their clients.¹³⁵

The ABA Committee on Professionalism has defined "a professional lawyer as an expert in the law pursuing a learned art in service to clients in the spirit of public service and engaging in these pursuits as part of a common calling to promote justice and public good."¹³⁶ Based on our survey, clients

128. *Id.*

129. *Id.*

130. Queens County Family Court Interviews, *supra* note 93.

131. *Id.*

132. Jeffrey W. Stempel, *Therlaw and the Law-Business Paradigm Debate*, 5 PSYCHOL. PUB. POL'Y & LAW 849, 849 (1999).

133. *See id.* at 855.

134. AALS Conference, *supra* note 4.

135. *See* Nagorney, *supra* note 40, at 817.

136. *Id.*

define a professional lawyer as one who “returns phone calls,” “doesn’t speak to me like I’m an idiot,” and “shows up on time when we have to be in court.”¹³⁷ Would the situation be different if lawyers were in jeopardy of losing their licenses by engaging in conduct that is unprofessional?¹³⁸ There are ramifications when a lawyer does not do what she is *required* to do, but there are often no ramifications for a lawyer not doing what she *should* do.

Although there is a relatively new trend to teach ethics and professionalism in law schools,¹³⁹ some would argue that law schools are not doing enough¹⁴⁰ to teach new lawyers what they *should* do.¹⁴¹ Senior attorneys who fail to serve as sufficient role models heighten this inadequacy.¹⁴² Even discussion of professionalism among practitioners is often discouraged, as many believe their time is better spent working on active cases.¹⁴³ Despite the mass of various codes and creeds touting professionalism throughout the country,¹⁴⁴ these rules encourage lawyers to behave with civility, but according to opponents, are not necessarily intended to be compulsory.¹⁴⁵ Nonetheless, civility is only one component of professionalism.

Since “it is workplace experiences that have the greatest impact on shaping professional behavior,”¹⁴⁶ the clinical setting can be the ideal preliminary setting for students to learn about professionalism. In our dual role as teachers and lawyers, we are challenged to assist with professional restoration¹⁴⁷ and development.¹⁴⁸ The client-centered lawyering model often touted in clinical programs can address client complaints of lack of communication, lack of respect, and lack of loyalty and zeal by promoting a core of professionalism in each student as she employs the rules of professional conduct for the first time.¹⁴⁹ Client-centered lawyering, as practiced in many law school clinical programs, calls upon the student-attorney to be actively involved with the

137. AALS Conference, *supra* note 4.

138. Bruce A. Green, *Public Declarations of Professionalism*, 52 S.C. L. REV. 729 (2001).

139. For example, Harvard Law School introduced a “Program on the Legal Profession” which explores the meaning of professionalism and consists of a three-tiered plan to build students’ understanding of professionalism.

140. Frank X. Neuner, Jr., *Professionalism: Charting a Different Course for the New Millennium*, 73 TUL. L. REV. 2041, 2050 (1999).

141. For a listing of what lawyers *should* do, see *id.* at 2042.

142. Justice Hugh Maddox, *Lawyers: The Aristocracy of Democracy or “Skunks, Snakes, and Sharks”*, 29 CUMB. L. REV. 323, 331 (1999); see also *supra* notes 12 & 13.

143. Green, *supra* note 138, at 730.

144. Various codes of professionalism are available at <http://www.abanet.org/cpr/profcodes.html> (last visited Dec. 22, 2003).

145. FREEDMAN & SMITH, *supra* note 8, at 122. According to the ABA Model Rules of Professional Conduct, there are potential disciplinary ramifications, specifically sanctions, for violation of the rules.

146. Myers, *supra* note 12, at 824.

147. See *id.* at 824–25.

148. Gerald F. Hess, *Learning to Think Like a Teacher: Reflective Journals for Legal Educators*, 38 GONZ. L. REV. 129, 130 (2003).

149. See Maddox, *supra* note 142, at 336.

client throughout each stage of the case as legal problems are defined and resolved. Responsiveness to the client is required under the model and should be promoted by law schools.¹⁵⁰

We believe that teaching our students to excel in professional behavior is essential to good practice. One means of teaching professionalism is by weaving the concept into class discussion topics, including competent legal practice, maintenance of positive rapport with clients, and client-centered lawyering.¹⁵¹

V. PROFESSIONALISM FROM THE PERSPECTIVE OF OPPOSING COUNSEL

One of our clinic students' most insurmountable challenges may be dealing with the adversary. This challenge does not merely stem from the fact that the adversary is opposed to the students in litigation.¹⁵² The real challenge arises from the reputation or absence of a reputation earned by the clinic students within the local bar. The student is seen often as either an unknown entity, or alternatively, as an advocate who "over-lawyers" every case. Because the student may be unfairly branded in this manner before she even speaks in court, the student needs to consider how adversaries perceive her. Thus, adversaries themselves can serve as intimidating, yet powerful, learning tools on professionalism for students.

A. *Teaching Professionalism Through Experiences with Opposing Counsel*

During our presentation, we read sample quotes from lawyers we have encountered in our clinical law experiences describing their views of clinical law students. We encouraged discussion and reflection about how adversaries view clinical law students. Such quotes included:

Stop using your fancy Latin phrases, you show-offs! Flint, MI.¹⁵³ (The phrase was *pro hac vice*.)

You guys have four cases, and I have over one hundred. If I had access to the law school resources, I could gang up on you, too! Albany, NY.¹⁵⁴

150. See Neuner, *supra* note 140.

151. See Hess, *supra* note 148, at 132.

152. The other counsel may be an adversary even though she may not be opposing the students' position, as when an attorney acts as a law guardian in a custody case.

153. These comments are unpublished statements on file with the authors.

154. Similar comments were made by a prosecutor while one author was supervising a law student involved in a juvenile delinquency clinic some years earlier.

These students are not allowed to practice law and are therefore committing malpractice. I object to their very presence at trial! (Voiced mid-trial on the record, as the case turned in favor of the law students' client.) Flint, MI.

You are doing a great job with your cases and clients, but this is just not the reality of practice. Remember that. Troy, NY.

Damn it! How did the law school get assigned to this case? I do not have time for every possible argument to be drawn out and litigated. There are no issues in this case anyway, and I've got to be in criminal court in an hour. Ann Arbor, MI. (The case with "no issues" involved the termination of a mother's parental rights.)

Ultimately, these examples and countless, unrecorded others, demonstrate the fluctuation of professionalism in the context of the adversary system. Specifically, professionalism is often viewed differently through the eyes of our adversaries, especially when adversaries are referring to law school clinics.

As another illustration in our presentation, we read a letter sent to one of our clinics by a disgruntled adversary in Long Island, New York, who was offended by a student's professional advocacy. The letter contained several scathing sentences consistent with our discussion of how some adversaries view clinics and students. The lawyer wrote, "Were the changes made in red pencil on your copies [of my boilerplate contract]?" His last line read, "Perhaps when [the students] are working they will understand the value of an attorney's time since it appears that is not within the curriculum of the law clinic."¹⁵⁵ This letter served as a demonstration of many adversaries' views about clinics and law students, as the values of excellence, dedication and proper practice were deemed insignificant compared to "the value of an attorney's time." Efficiency and cutting corners may be how this lawyer views professionalism.¹⁵⁶ As clinical law professors, we strive to have our students distinguish between an understanding of the local practice of law and a blind acceptance of that practice.

155. AALS Conference, *supra* note 4.

156. In fairness, it should be acknowledged that law clinics providing free legal services do not face the same types of financial pressures faced by private attorneys. At times, this relative freedom from financial concerns affords certain advantages to the clinic and its clients. For example, a clinic may be more willing to go to trial or propound discovery in a case that concerns only a few thousand dollars than an attorney who is representing a fee-paying client. The ABA Commission on Professionalism has acknowledged the impact of economic concerns on professionalism, stating that "[w]hile economic pressure cannot justify unprofessional behavior, it may help explain why some lawyers seem less selfless than before." "... *In the Spirit of Public Service*," *supra* note 1, at 261.

In the relatively controlled setting of a law school clinic, case loads¹⁵⁷ are often predetermined or capped at a specified threshold, making resources proportionately plentiful.¹⁵⁸ For that reason, it is feasible in a clinical setting to teach professionalism as well as a substantive area of law, while providing high quality representation. However, it is questionable whether the same level of professionalism can be provided in a legal services office where lawyers face a high volume caseload. The reality is that legal services attorneys, particularly in urban settings, may face caseloads in the hundreds. Likewise, it may be difficult for a lawyer in a small firm to give her cases the same level of attention accorded in a law school clinic. The Model Rules of Professional Conduct (the "Rules") and the Model Code of Professional Responsibility (the "Code") make no distinction in the standard of client representation based on current caseload.¹⁵⁹ Is it practical to teach students that they are required to maintain the same level of professionalism when they have four cases, as when they are burdened with one hundred sixty-four? From the client's perspective an attorney's other cases will probably not be a consideration when seeking the lawyer's time and expertise. There certainly should not be, but perhaps there is, the silent assumption that indigent legal services clients are due less consideration because their lawyers are overburdened and provide free services.¹⁶⁰ Commentators have suggested that the acceptable standard of service to the poor should be redefined to accurately reflect the reality of legal services representation—in effect, "heighten[ing] the disadvantage to the indigent client."¹⁶¹ We have struggled in our attempt to teach students to maintain a high and equal level of professionalism in their post-graduation practice setting. We suggest that providing a solid foundation and framework of professionalism within the law school setting will enable students, when one day faced with high-volume case loads, to maintain awareness and apply the professional standards to the best of their ability as determined by the particular context.

In terms of observing adversaries, there are many lessons students can learn through an adversary's exceptional practice and professionalism. For example, one of the authors recalls a case in which the opposing counsel engaged the students in a "high level" negotiation session. Opposing counsel encouraged the students to conduct themselves in a professional and highly effective manner by demanding ample support for their position with facts and law and requiring the students to maintain their composure during the heat of

157. Additionally, the suggested faculty to student ratio in law school clinics is a maximum of one to ten. Robert Dinerstein, *Introduction to Report of the Committee on the Future of the In-house Clinic*, 42 J. LEGAL EDUC. 508, 508–10 (1992).

158. For example, in the authors' clinical programs, students are assigned no more than three to seven cases per semester.

159. Michelle S. Jacobs, *Legal Professionalism: Do Ethical Rules Require Zealous Representation for Poor People?*, 8 ST. THOMAS L. REV. 97, 99 (1995).

160. *See id.* at 101.

161. *Id.* at 103.

the negotiation. We can all reflect upon times when the reputation or experience of an adversary has encouraged students to strive to an even higher level of diligence and competence.

Nonetheless, while the experienced adversary may be able to offer positive reinforcement to students, she often may see herself as superior to the students. Opposing counsel may hold preconceived notions, which presents another barrier that students and often neophyte lawyers will need to overcome as they strive towards professionalism. For example, law students often have to work to defeat the misconception that they will litigate any case just for the experience of a trial, rather than settle a case when it suits the client's best interests. This is a common misconception among clinic adversaries, despite any clinic's best efforts to settle appropriate cases.

Essentially, learning about professionalism is gleaned not only from observations of negative role models, but also by awareness of how the students are perceived. Furthermore, it is critical that we discuss with students how lawyers might view values of professionalism in context, including competency, loyalty, zeal, and civility. Students should reflect upon how they and their opposing counsel may define these values. For example, adversaries may view competent lawyers as those who are able to offer a challenge. Adversaries may see a student's loyalty to a client as overzealousness or naiveté, or civility as diplomacy or a sign of weakness. If a lawyer is "too civil," does she run the risk of finding herself in a weakened bargaining position, particularly in a Rambo-style litigation setting?¹⁶²

By providing clinical students with positive examples through modeling, observations of practice, and discussion, and by noting negative examples through analysis, frank discussion, and their own observations, students can begin to define their own sense of professionalism. At a symposium on professionalism, one University of South Carolina law student expressed the student perspective of how professionalism should be taught to law students. She indicated that instructors should teach students how to avoid being the unethical and unprofessional lawyer they observe and provide "the *tools* to be the people you are 'teaching' us to be."¹⁶³ It is often more effective for students to recognize such unethical and unprofessional behavior in actual practice than in reading hypothetical cases.

Another obstacle for clinical law students in the context of their opposing counsel is that students are often prejudged as novices. They may be viewed as overly professional, yet under-qualified. For example, one quote read in our presentation was from an attorney in Flint, Michigan, who said to our students

162. See, e.g., Eugene A. Cook, *Professionalism and the Practice of Law*, 23 TEX. TECH. L. REV. 955, 971 (1992); Robert N. Saylor, *Rambo Litigation: Why Hardball Tactics Don't Work*, 74 A.B.A. J. 79, 79-80 (1988).

163. Transcript, *supra* note 1, at 491.

as they entered the courthouse, "Here comes the law school clinic, all dressed up in their dark suits."¹⁶⁴

Similarly, students may be viewed as overcompensating for their inexperience in the courtroom by overzealously advocating for their clients. As odd as it sounds, opposing counsel may view zealous advocacy as naïve or a symptom of over-lawyering. Those adversaries may see the students' dark tailored suits and detailed arguments as a way for students to mask their inexperience. If the local bar perceives professionalism as being "courteous" to one's fellow lawyers by not filing too many motions or making too many objections at trial, then our students may be seen by those local adversaries as unprofessional. A perfect example of this sentiment is portrayed in another adversary's quote read at the presentation from a lawyer in Albany, New York, who said, "You people beat these cases to death."¹⁶⁵ In fact, this type of comment is frequently heard by those working with law school clinics. We might try to instill best practices in our students, including the values of zeal and excellence. Yet, students may be seen in a very different light by adversaries with heavy caseloads and limited resources.

If one of our goals is to teach and demonstrate "good lawyering practices," then these comments are helpful, even in the face of criticism. Recently, a well-established lawyer in Albany, New York commented to the students that he "should have earned CLE credits for having a trial against [them]."¹⁶⁶ While the students accepted this statement as a compliment, perhaps it was also his way of mocking the "textbook" trial techniques, the abundance of objections and motions, and the proper courtroom manners in a local court often unaccustomed to such conduct.

As litigators and clinical law professors, we too often see sloppy practices and bad habits in our adversaries—behavior which we take great effort to ensure our students will not mirror. Using these negative behaviors as examples in the classroom and in the courthouse hallways, we can talk about what is professional behavior, focusing on both the client's needs and the expectations of the court and of our adversaries.

164. AALS Conference, *supra* note 4. This is certainly not an isolated statement. In fact, while this article was in the editing process, a Judge in Troy, New York told the clinic students that certain attorneys referred to the clinic as a whole as "the chicks in black."

165. AALS Conference, *supra* note 4. This comment seemed well-received by our audience, as evidenced by their thunderous laughter.

166. He actually said a trial against "the ladies," which may have included the professor as well, and brings up a whole host of different gender and age-related issues that must wait for a different article. Another lawyer from Queens, New York similarly said, "Girls, girls, girls, let me tell you how custody law works," speaking to two female law students and the female law professor in the courthouse hallway.

B. Teaching Professionalism Through the Eyes of the Adversary

Professionalism in the courtroom and in the workplace is anything but clear-cut. Lawyers and judges not only try to define what it means to be a professional, but also try to achieve what they perceive to be overall professionalism in the work setting.¹⁶⁷ Professionalism can be partially defined by outlining traits, values, and words synonymous with professional behavior, as we attempted to do by creating the previously mentioned charts for our presentation.¹⁶⁸

Yet, while outlining values and traits is instructive, it is not complete. Professionalism changes and adapts depending on the scenario, and values often collide or conflict. For example, the value of civility often collides with the value of zeal. Both values are critical and are mandated by the Model Rules of Professional Conduct,¹⁶⁹ but often take on different meanings and significance based on context. Imagine a situation in which opposing counsel requests an adjournment for legitimate reasons. Now assume the lawyer knows from the client that the longer the case is adjourned, the more hesitant to testify the key witnesses will become. Granting one reasonable request for an adjournment is a professional courtesy that may embody the value of civility. In this scenario, however, it may change the outcome of the case. Thus, zeal and loyalty to your client will trump civility to opposing counsel. In this scenario, zeal and loyalty may be seen as unyielding from the adversary's point of view. Yet, the client may view any civility to the adversary as passivity.

Referencing the interactive charts we utilized in our presentation, we noted that opposing counsel may view professional values in an entirely different context than would law professors and students. For example, adversaries may view civility as a willingness to settle a case and "give in to the adversary or even as a passivity of sorts."¹⁷⁰ Adversaries may perceive the professional value of judgment as knowledge of the "local culture" of the bench and the bar. Adversaries may define a zealous lawyer as one who is "aggressive, tough and intimidating," even though clinical law professors may teach that zealousness requires acting as a client's champion and advocate, and "leaving no stone unturned" in pre-trial, trial, and post-trial phases. Perhaps an adversary will view a student attorney as competent if the adversary feels challenged; clinics might teach competency instead as a value of good work and of knowing how to find an answer to an unclear problem. Some participants at our presentation viewed competency as "a higher representation than what we would want

167. The New York State Bar Association has a regular column in its journal entitled "Attorney Professionalism Forum" to which lawyers submit hypotheticals seeking guidance on "professionalism."

168. See *infra* Apps. A and B.

169. MODEL RULES OF PROF'L CONDUCT Preamble 1, 2 (2003); *Id.* at R. 1.3 cmt. 1.

170. Nagorney, *supra* note 40.

ourselves¹⁷¹ or as cultural competence and awareness of cross-cultural lawyering.¹⁷²

In our presentation, we challenged the audience to consider how terms such as zeal, loyalty, and civility can alter in meaning depending on the scenario. Imagine a situation in which a prosecutor and defense lawyer stipulate to the testimony of an undisputed eyewitness. The defendant has previously requested that this witness testify in court. Whether the statements are stipulated to or testified will have no real impact on the case. The prosecutor has hinted that she might be inclined to offer the defendant a reasonable plea offer if defense counsel can pare down the witness list (by stipulating to undisputed witnesses). Again, the value of professional courtesy may be in direct opposition to the values of zeal and loyalty. If defense counsel denies this reasonable request, is the client harmed more by facing an angry prosecutor who might withdraw her plea offer? The prosecutor may view the defense counsel's zeal and loyalty as naïve. On the other hand, what will the client think if defense counsel sides with the prosecutor, even on a minor issue? Would the client view the professional courtesy and civility as betrayal and passivity? Will the client feel even more disenfranchised?

These issues are prevalent with repeat players¹⁷³ in the institutional lawyering context,¹⁷⁴ where lawyers are working with the same adversaries and judges day after day. Does zealous and aggressive advocacy on behalf of a single client ever compromise future clients by alienating the repeat lawyers and judges? In the clinical setting, too, zealous advocacy often raises interesting dilemmas.¹⁷⁵ The actual local court context may differ from our students' image of how the courtroom "should look."

As demonstrated earlier, students may often question how to balance the apparent tensions between various professional values such as zeal and courtesy. We should discuss with our students how to balance the multiple, often paradoxical, roles of being a professional. For example, a lawyer has the multifaceted role of being a safeguard of justice and an officer of the court while acting as a zealous advocate to the client. In teaching our students, we need to work through the challenge any lawyer faces to be truthful and noble to the court while simultaneously being loyal and zealous to the client.

171. AALS Conference, *supra* note 4.

172. *Id.*

173. Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y 95 (1974).

174. See Kim Taylor-Thompson, *Individual Actor v. Institutional Player: Alternating Visions of the Public Defender*, 84 GEO. L. J. 2419, 2425 (1996); Martin Guggenheim, *Divided Loyalties: Musings on Some Ethical Dilemmas for the Institutional Criminal Defense Attorney*, 14 N.Y.U. REV. L. & SOC. CHANGE 13, 13 (1986); Charles Ogletree & Randy Hertz, *The Ethical Dilemmas of Public Defenders in Impact Litigation*, 14 N.Y.U. REV. L. & SOC. CHANGE 23, 23 (1986).

175. This is the subject of one of the authors' works-in-progress, *Making Waves or Keeping the Calm: Institutional Lawyering in the Clinical Legal Education Context*.

In teaching students about professionalism and good lawyering practices, clinics may encounter resistance from adversaries, or even from the law students. The students will observe firsthand how some professional values appear in conflict with other values. The students might observe the bench complimenting rather than reprimanding unprofessional lawyers, and might pick up on cues that their adversaries view them as acting “too professionally.” Despite these potential imbalances, however, the students will learn through their own awareness and observation of the adversary system. Working together in the classroom or after a court appearance, clinical professors can analyze, critique, and evaluate whether such tensions exist and how to address them. Ultimately, through a variety of teaching methods, clinical professors can impart to students the knowledge and experience that we have derived from the very settings in which the students are beginning to practice.

VI. PROFESSIONALISM FROM THE PERSPECTIVE OF THE JUDICIARY

During our presentation, we discussed professionalism primarily in the context of state and local trial courts. Each author teaches in a litigation clinic which handles cases in metropolitan state trial courts and administrative tribunals. A student or new attorney appearing before a judge often underestimates what is necessary to prepare for a court appearance. The neophyte lawyer tends to focus on the single matter that is before the court, be it a motion to vacate a default judgment, a petition for a temporary order of protection, or a request for an adoption subsidy. Because the new attorney or clinic student is just learning to practice, he may focus on the discrete legal and factual issues addressed in the written submissions. Often, however, the judge has questions about the overall subject matter of the case and the procedural history. Trial court judges commonly focus on a practical resolution of the litigated matter, regardless of the outcome that would result from a decision based purely on the merits of the case. The chart of professional values that we employed during our presentation reflected that judges often view “judgment” as “competency,” and “civility” as “practicality, efficiency, adaptable, and settlement.”¹⁷⁶

In our experience, busy trial court judges may become impatient with attorneys who do not respond directly and succinctly to their questions. Clinical students, however, are accustomed to ruminating over the case with their clinic professors and exploring different strategies and legal authorities. Also, communication with a judge is often the opposite of the open communication style used with clients. Students are learning both communication styles simultaneously as part of the clinic curriculum. Similarly, with respect to written submissions, judges can be alternatively impressed or annoyed by extensively researched motions and briefs.

176. See *infra* App. B.

Trial courts are finders of fact, and an attorney's mastery of the facts is an important measure of competency in trial courts. Having studied cases in which the facts are already digested and been rewarded primarily for their knowledge of legal rules, students, at least early in their clinical training, tend to struggle with investigating, analyzing, and recognizing the importance of facts. In the supervisory meetings leading up to a court appearance, students show a tendency to emphasize information that a sitting trial judge would not deem important and to neglect information that a judge wants to know. This can be particularly challenging because judges are often interested in facts that are not strictly relevant to the issues raised in the motion or other matter that is the subject of the court proceeding.

Clinical programs address matters of case preparation in part by instilling "ownership" in a case as a critical professional value.¹⁷⁷ Not only is full knowledge of the procedural history, facts, evidentiary issues, and the client's interest essential for meeting the client's goals, such complete knowledge is necessary for every court appearance. Students' mastery of the case can be tested by the questions and discussions that arise in supervisory sessions. Moreover, the very process of representing a client, from client interview to research memorandum, fact investigation, solution strategies, and legal brief, develops the student's mastery of the case.

Ultimately, students need to learn to adapt communication styles to suit the courtroom. Otherwise, their court presentations will result in interruptions and admonitions from the bench, perhaps diminishing the judge's view of the student's competency.

A. Examining Judges' Views of Student Competency

Steeped in their clinical instructors' teachings on "zealous advocacy" and "competency," students exhaustively prepare for court appearances. They meticulously research and draft affidavits and legal briefs, review the court rules, and prepare for all of the issues that could arise during the court appearance. Given the volume of cases in state and city trial courts, however, judges allow little time for oral argument of motions and other matters that, from the court's perspective, are routine.¹⁷⁸ Having "mooted" their arguments

177. Of course, we must acknowledge that because students are in a clinical program for only a semester or two and take on cases in various stages of development, they lack the intimate knowledge of a case's history that comes from shepherding a case from commencement through discovery and motions and on to settlement or trial. Particularly when a quickly approaching deadline looms, it is difficult for a student to get up to speed on all aspects of a case. One way to address this in clinical education is to have students work in teams of two, at least on large cases.

178. In her study of rent court in Baltimore, Maryland, Professor Barbara Bezdek reports that there could be as many as 2500 cases on the daily docket. Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533, 535 (1992); Transcript: *Defining & Refining Professionalism: Assessing the Roles and Regulation of Lawyers in the Twenty-First Century*, 27 FLA. ST. U. L. REV. 205 (2000) (transcript of panel discussion and audience comments).

many times, students are often surprised when a decision-maker does not engage them on the legal issues they so arduously briefed, and instead becomes impatient and inquires about settlement efforts.¹⁷⁹ Complicating the situation, adversaries may dominate argument before the bench. This can be challenging, if not disillusioning, for students who lack substantial practical experience and who have been trained in a formal “moot court” style of oral argument.

While clinical professors might attempt to prepare students for all anticipated developments at a hearing, there will be surprises.¹⁸⁰ A significant number of students have not yet developed the confidence and judgment to react effectively to unexpected developments at a hearing, particularly if making a record to protect the client’s interests would provoke the decision-maker’s ire.

Many of those in our audience during our presentation seemed to agree with the foregoing characterization of how professionalism is viewed in trial court settings. In our presentation, we shared student accounts of their court experiences. The following excerpt describes two students’ experiences in a New York municipal court:

Our goal was to make an oral argument. Opposing counsel was able to squeeze in the first word, and that seemed to set the stage for the rest of the day. Opposing counsel basically jumped in front of us and told the Judge that he had been trying to reach a settlement with us for quite some time. . . . He tried to make it look like we were the ones being stubborn and noncompromising, while he is the one who had hardly ever returned our phone calls for months. He also told the Judge that he had tried to explain to us that the money in the account was not exempt [from judgment execution] The Judge seemed to lend him a sympathetic ear from that point on.

As opposing counsel was going on and on without allowing us to get a word in, we finally interrupted him. The Judge . . . did not seem to care about our recurring recitation of the case law and statutes that supported our theory that the funds were exempt. He wanted us to settle the case. We (more than once) explained that the case did not concern the underlying debt, but the wrongful restraint on exempt funds. The judge’s exact words to us were, “Well, he’s [the

179. One of the authors recalls a housing court judge’s announcement, made just before the calendar call, that the “word of the day” was “settle.” Another author heard a criminal court judge telling attorneys waiting for their cases to be called “This is like a ‘white sale’ today, counselors—it’s a one-day-only offer. Take [the plea] or leave it!”

180. “Lawyers cannot predict what particular judges are going to do, and too often lawyers are unable to provide clients with meaningful information upon which to make litigation decisions.” Transcript, *supra* note 1, at 532 (Remarks of Professor Peter Joy).

judgment creditor] not going away!" He said this repeatedly to us, as we tried diligently to recite the supporting law. When we stated our latest offer, the judge said we were playing hardball. He kept telling us that he had many more cases "in the back" to deal with . . . and asked us to go away and try to resolve this among ourselves.¹⁸¹

A law school moot court competition could never have prepared the students for the response they received from the judge described in the passage. Yet, versions of this experience often occur in county and city courthouses.

We can draw important lessons about judges' views of professionalism from this account. The students lost a strategic advantage when the opponent aggressively "jumped in front of" them and "squeezed in the first word." Unlike the more orderly moot court experiences offered by law schools, the students' inability to get in the first word meant that they lost the opportunity to identify the real issues in the case and establish themselves in control. Perhaps believing in the ideal that judges are always fair and impartial to both sides, the students may have expected the judge to be more even-handed. They may have expected him to have admonished the opponent for rudely "jumping in" and to have given them an equal opportunity to be heard. Instead, they had to cast aside any formalities they learned in moot court training. To be heard, the students needed to become as aggressive as their opponent, an uncomfortable approach for these particular students. Once given the opportunity to speak, the students acted as zealous, competent student advocates, presenting the legal and factual merits of their client's case. They presented their position to the judge, and consistent with their advocacy training, tried to redirect the judge's attention to what they saw as the real issues in the case. The judge, however, was interested in a more comprehensive resolution of the case—settlement. Implicit in the judge's impatience with the students may have been his awareness that even if the restraint were lifted, the debt would remain and the creditor could make future attempts to collect the debt.¹⁸² The students learned that while a zealous advocate makes every

181. Student Memorandum to Professor Gina Calabrese, St. John's University Elder Law Clinic (Oct. 10, 2001) (on file with co-author Gina Calabrese).

182. Because attorneys, and especially student attorneys in a clinical program, must always show deference to the court, we chose this scenario as an opportunity to teach a judge's view of what is expected of attorneys. On the other hand, it may also be said (perhaps cynically, perhaps candidly) that the judge acted unprofessionally, and merely wanted the case off of his calendar, regardless of the impact on the parties. Jack Sammons defines professionalism as a way of making it possible for people to meaningfully participate in the resolution of their social disputes. SAMMONS, *supra* note 6, at 56. Sammons notes that the adversarial system works best "when there is meaningful participation by all parties and when the decision-maker is keeping that participation meaningful by avoiding premature conclusions and by not prejudging the disputants." By refusing to allow legal argument, the judge barred the meaningful participation of the client with the restrained bank account. He failed to avoid premature conclusions and he appeared to prejudice the disputants. To the extent that efficiency may have been this judge's

reasonable attempt to persuade the judge and, at the very least, to place his or her position on the record, an advocate must also address the issues that the judge deems important. Here, it appeared that the most important issue for the judge was a practical resolution of the case and removing it permanently from his calendar.

The court's emphasis on settlement reflects the importance that judges—indeed, the court system—often place on efficiency.¹⁸³ Perhaps the students' competency and zealotry in arguing the legal and factual merits of the case were viewed as "over-lawyering," "naïve," and "unrealistic" by the judge.

Hence, the criticism that clinical students "over-lawyer" cases, discussed above with reference to adversaries, sometimes comes from the bench. Based upon the authors' experiences and anecdotal evidence, litigation practices by clinical programs are, in general, more comprehensive than those of the practicing bar.¹⁸⁴ Students often receive mixed messages from judges about their preparation. Decision-makers often praise the quality of the clinic's rule-based arguments. At other times, they send messages that the student is consuming too much of the court's time or is raising unimportant issues.¹⁸⁵ As reflected in our chart and as discussed in the earlier section, the decision-

guiding principle, it was to the detriment of professionalism. We recognize, however, that situations like this arise in court, and while before the bench the attorney is not in a good position to question the judge's professionalism. To some degree, advocates are at the mercy of the decision-maker, and it is important to teach students how to navigate these situations without making matters worse for themselves and for their clients.

183. It is widely acknowledged that because of their large caseloads, urban and metropolitan area trial courts place a premium on efficiency. Sometimes, however, efficiency appears to overshadow justice and the rule of law. *See, e.g.,* Bezdek, *supra* note 178, at 570 (noting, with criticism, that because of its caseload, Baltimore Rent Court cannot require every landlord to prove every element of its case), at 573 (instructions to tenants are "compromised by the concerns of docket management"), and at 582 n.164 (court announcements include "the high value the court places on speedy administrative efficiency"); Eric K. Yamamoto, *Efficiency's Threat to the Value of Accessible Courts for Minorities*, 25 HARV. C.R.-C.L.L. REV. 341, 351-53 (1990); Kelly, *supra* note 15, at 2096 ("However, the practice of law as well as the practice of judging has got to consist of more than merely compiling good statistics. If the practice is to be more than a trade, if we want to once more be considered, in the true sense, a profession, we must take or make the time to do what is necessary.").

184. For example, in courts where institutional lawyers routinely spend their full days in the courthouse, it is not uncommon for such lawyers to remark that they do not have the time or resources to draft opposition papers after business hours. Susan Hanley Kosse & David T. ButleRitchie, *How Judges, Practitioners, and Legal Writing Teachers Assess the Writing Skills of New Law Graduates: A Comparative Study*, 53 J. LEGAL EDUC. 80, 99-100 (2003) (observing that practicing lawyers do not write well because of time and financial constraints.).

185. In our view, clinical professors should teach their students to meet high standards of practice, even if the actual level of practice in the forum does not meet the standard. As teachers of skills and professionalism, we are charged with holding our students to high levels of performance. Indeed, not doing so may only serve to continue the perceived decline in professionalism. At the same time, we sometimes grapple with the tension between teaching good lawyering practices and teaching the approach that will most effectively advance the client's interests in the real-world court setting.

makers sometimes view a student's zeal as "over-lawyering."¹⁸⁶ The following examples from the authors' clinical teaching experiences bear this out:

One clinic represented a client before the Social Security Administration in a claim for retroactive disability benefits. At the first hearing, the administrative law judge complimented the students on their brief, stating that he wished that the practicing attorneys who routinely appear before him would submit such well-researched and well-written briefs. At a subsequent hearing, however, he admonished the students for taking too long to cross-examine the Administration's medical expert. He consoled the expert witness, assuring him that he was only allowing the student leeway because she was a student.

In another clinic case, the judge became impatient with the student's zealous advocacy during a pre-trial settlement conference. When the student cited a statute in support of her position, the judge was skeptical. The student persisted, referring to the citations in her legal brief. The professor supported the student's position. The judge admonished the professor for not setting a good example for the student by allowing her to resist the settlement proposal recommended by the judge.

When students raised procedural issues in a zoning violation hearing before a municipal agency where most parties appear without representation, the hearing officer became impatient and irritated. Rather than address the students' arguments, she adjourned the matter so that "someone else will have to deal with it."

In a New York state trial court, the judge decided a motion for summary judgment without reading any of the papers. Although the students had spent a month preparing their brief, the judge only heard short arguments from each side before saying, "There's a lot paper here, so there must be an issue of fact. Motion denied!"

In all of these examples, the students performed exactly as taught. All of these examples required the clinical professor to reassure the student that she had performed well, despite contrary indications from the decision-maker. In the Social Security hearing above, for example, the student litigated the case

186. See *infra* App. B; Section VI. A.

as any experienced attorney would have done, with a thorough cross-examination of an expert and a solid foundation for documentary evidence. Such thorough witness examinations may not be part of the usual "culture" of the Social Security Administration. Like the urban trial courts discussed above, the administrative law judge was concerned with efficiency. The expert was someone the Administration used regularly, and there was probably a pre-existing relationship between the administrative law judge and the expert. This may explain the judge's apology to the expert for allowing the student to take so much time in her cross-examination. The clinical professors lauded the student's performance, but the judge did not. From the student's perspective, two authority figures were at odds. The professors, however, took this opportunity to teach the importance of heeding the judge's instructions, while simultaneously making the record that is necessary to zealously advocate for one's client.

B. Teaching Professionalism Using Real Lessons from the Courtroom

The foregoing scenarios call for clinical law professors to have frank discussions with students about the sometimes imperfect level of professionalism among the judiciary. We must be willing to acknowledge that courtroom professionalism can be less than ideal, as Professor Peter Joy recently observed:

The justice system in our country relies, in large part, on a fiction. The fiction maintains that all judges have the requisite skill level, competencies both in substantive law and in the rules of evidence, and are always fair and impartial. Unfortunately, that is not true. . . . As I continue to go to court with the clinical students I teach, I see some judges running their courtrooms along the lines of a feudal system with the courtrooms being their fiefdoms."¹⁸⁷

While in the law school environment we might be uncomfortable acknowledging that scenarios like the ones described above occur, denial does students a disservice because they will not be adequately prepared for real practice.

The challenge for the clinical law professor is to encourage students to provide high quality lawyering and to meet the expectations of the judges

187. Transcript, *supra* note 1, at 531. Even judges have acknowledged problems with professionalism among the judiciary. *Id.* at 494 (Judge Henry Ramsey, Jr. (Retired), noting, "What judges need to do is act professional within their courtrooms. They need to start their matters when scheduled. They need to complete them when scheduled. They need to make fair and honest rulings that are understood and explainable. They need to just behave in a competent way."). *See also id.* at 533 (Judge Thomas A. Zlaket agreeing with Prof. Joy's remarks).

before whom they appear. As teachers of skills and professionalism, we are charged with holding our students to high levels of performance. In our view, we should teach our students to aim for excellence (i.e., well-researched briefs and exacting compliance with procedural rules) even if the actual level of practice in the forum falls short of the mark. Indeed, not encouraging such behavior may only serve to continue the perceived decline in professionalism. At the same time, the authors sometimes grapple with the tension between teaching good lawyering practices and imparting the approach that will most effectively and efficiently¹⁸⁸ advance the client's interests in the real-world court setting.

Teaching students about professionalism in the context of court proceedings requires multi-faceted and multi-leveled preparation. Certainly, a student attorney who appears in court or before agencies with only appellate advocacy-style preparation will not be effective. To prepare students for these settings, the clinical professor should insist that the student take "ownership" of the case and develop a thorough knowledge of the procedural history, facts, legal issues, parties' positions, and the client's goals. Research about the forum and, if possible, about the judge is also important. The clinical professor can usually perform this function, as he presumably has experience in the various forums in which the clinic practices. Personal contacts with and experience before the tribunal should also be considered; law school clinics may be particularly advantaged, due to their network of faculty, alumni, and adjunct professors. Finally, clinical professors should role-play and raise issues that a judge would contemplate, such as settlement efforts. It is important that the student be questioned in the manner the judge could challenge him, which may include impatience and pressure.

Courtroom experiences are among the most difficult to predict and can provoke anxiety for both the student and the clinical law professor. Because of their unpredictability, however, court appearances offer an ideal opportunity to teach the importance of professional qualities, such as thorough preparation and zealous advocacy.

188. We are also called upon to teach students about priorities and time management, so it follows that we should teach students to identify which tasks require substantial time and preparation and which tasks do not.

VII. CONCLUSION: TEACHING STUDENTS ABOUT THE ADAPTABLE AND SUBJECTIVE NATURE OF PROFESSIONALISM

*"Professionalism begins well before one's first day in court. From the moment one steps through the law school door, a student begins to lay the foundation of his or her professional career."*¹⁸⁹

The above sentiment calls for clinical law professors to assist students in forming a solid foundation of professionalism as early in law school as possible. Moreover, because law schools educate judges, public officials, and business executives as well as lawyers, law schools should teach that professionalism extends beyond legal skills and includes sensitivity to the ethical and professional responsibility towards clients as individuals.¹⁹⁰

Again, different values of professionalism may include different qualities based on one's location and role. This mutability is one reason why the term "professionalism" is so multi-faceted and must be viewed in context. Ultimately, we strive to teach our students that lawyers may need to adapt certain values of professionalism to suit their client's needs or the tribunal's customs or rules.

The purpose of this Article is to demonstrate how critical it is to teach students to see issues of professionalism through a variety of perspectives. Although the student may not (and should not) adopt all of the perspectives as truth, she will at least maintain some level of empathy for each player in the adversarial system by exploring their views of professionalism. As opportunities arise, we need to remind our students that others may have different concepts of professionalism.

In the end, we strive to have our law students arrive at professional judgments on their own and develop their professional identities. Students will have greater success in assuming their own professional identities, however, by observing and understanding differing views of professionalism based upon context. It is our thesis that clinical legal education, with its convergence of theory, practice, and multiple contexts, offers an unparalleled opportunity to teach professionalism to students. We strongly encourage teaching professionalism in the clinical law school setting from a myriad of contexts and with an eye towards clients, judges, and adversaries. Professionalism is most certainly a fluid term that inevitably calls for adaptability.

189. Nagorney, *supra* note 40, at 825.

190. Alan M. Lerner, *Law & Lawyering in the Work Place: Building Better Lawyers by Teaching Students to Exercise Critical Judgment as Creative Problem Solver*, 32 AKRON L. REV. 107, 110-11 (1999).

APPENDIX A

BLANK INTERACTIVE CORE VALUES CHART

	CLINIC PROF. AS TEACHER	CLINIC PROF. AS LAWYER	LAW STUDENT	CLIENT	JUDGE	OPPOSING COUNSEL (adversary)
Zeal						
Loyalty						
Judgment						
Expertise						
Excellence						
Dedication						
Competency						
Civility						
Appearance						

APPENDIX B

INTERACTIVE CORE VALUES CHART

	CLINIC PROF. AS TEACHER	CLINIC PROF. AS LAWYER	LAW STUDENT	CLIENT	JUDGE	OPPOSING COUNSEL (adversary)
Zeal	Diligence; no stone unturned	Client's champion & advocate	Aggression	Enthusi- asm; cham- pion; asser- tiveness	Strong position for client? (or over- lawyering)	Aggressive; intimidating; tough
Loyalty	Devotion, despite client's flaws	Advocacy	Naïveté	Unwaver- ing trust	Advocacy	Overzealous- ness
Judgment	Doing right thing at the right time	Common sense; timing	Experience	Good advice; advice client wants to hear	Practical- ity; efficiency	Knowledge of the "culture"
Expertise	Law, experience, & facts	Skillful use of law, facts, & experience	Knowing the law	Knowing everything about "law"	Reputa- tion; experience	Knowledge of setting, law, & facts
Excellence	Thorough; no stone unturned	Thorough research & advocacy	Working hard; student's "best efforts"	Good outcome	Writing, trial skills	Persuasion; reputation
Dedication	Long-term commitment	True ` advocacy	Good solid effort	100% loyalty; close commu- nication	Zealous advocacy	Unyielding
Civility	Reason- ableness	Necessity	Passivity; weakness	Disloyalty	Adaptable; work towards settling	Diplomacy (or weakness?)
Competency	Know how to find an answer	Good solid work	Know it all & appear- ing so	Good outcome	Efficien- cy; settle- ment	Feeling challenged
Appearance	Dress for client	Suit in court; business casual	Navy blue pinstripe suit	Intimidating or reassur- ing? (Depends on client)	Business Suit (Regional)	Business suit (Regional)

