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# TEACHING ETHICS AND PROFESSIONALISM IN LITIGATION: SOME THOUGHTS

Jean M. Cary\*

*"One of the serendipities of his being gone is that he doesn't have to see what has happened to our profession."*<sup>1</sup>

What has happened to our profession? When Darby Dickerson, a professor at Stetson College of Law, asked me to write this essay on teaching ethics and civility in litigation, I asked myself: Why do we need to teach ethics and civility now when it was not taught twenty-five years ago?<sup>2</sup> Has the profession really changed, or as my fiftieth birthday looms, am I nostalgic for the "good old days of the profession"?<sup>3</sup>

After looking at reported cases, reviewing the literature, and spending countless hours on the telephone with former students who have recently embarked on their legal careers, my conclusion is that the profession has changed, and the change has been for the worse. I also believe that law schools must take the leading role in changing the tide so the ethical standards embraced by my grandfather's generation will again govern the profession. However, schools must find a way to teach ethics while teaching both traditional doctrinal courses and the newer courses that teach skills formerly provided after graduation by the graduates' first firm.

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\* © 1998, Jean M. Cary. All rights reserved. Professor of Law, Campbell University, Norman Adrian Wiggins School of Law. J.D., Georgetown University Law Center; B.A., Duke University; Director, National Institute for Trial Advocacy (NITA) Southeast Deposition Program. The Author wishes to thank Patrick K. Hetrick, Richard A. Lord, S. Leary Davis, and Caroline A. Thatcher for their thoughtful insights into the composition of this essay. The Author also wishes to thank Benjy Overby for his helpful research assistance.

1. Telephone Interview with Gerald Kirven, Retired Practitioner, in Louisville, Ky. (June 8, 1998) (concerning the change in the legal profession since the death of the Author's grandfather, Judge S. Merrill Russell, of Louisville, Kentucky).

2. See, e.g., SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, TEACHING AND LEARNING PROFESSIONALISM: SYMPOSIUM PROCEEDINGS 26 (1996) (noting that in the wake of Watergate, the American Bar Association mandated "that all accredited law schools require 'instruction in . . . the history, responsibility, and goals of the bar and its Code of Professional Responsibility'" (citing AMERICAN BAR ASS'N, STANDARDS FOR THE APPROVAL OF LAW SCHOOLS B 302(a)(iv) (1993)).

3. CARLY SIMON, *Anticipation*, on ANTICIPATION (Elektra/Asylum Records 1971).

### DEFINING THE PROBLEM

A couple of years ago, I compiled research on the reported cases of lawyer-to-lawyer incivility during depositions.<sup>4</sup> I was shocked by the taunting, rude, and demeaning epithets lawyers hurled at their opposing counsel while speaking “on the record.” The presence of the court reporter did not appear to deter this behavior.

For instance, the undisputed transcript in one disciplinary proceeding revealed the respondent calling his opposing counsel a “lying son-of-a-bitch,” “asshole,” “child and a punk,” “fat slob,” “f—ker,” and “c—ksucker.”<sup>5</sup> In another proceeding, the respondent verbally attacked his opponent with a religious slur in the middle of the deposition.<sup>6</sup> In yet another case, the plaintiff, who was also an attorney, accused the opposing attorney of being “so scummy and so slimy and such a perversion of ethics or decency because you’re such a scared little man.”<sup>7</sup> During a deposition in another case, an attorney “threw the contents of a soft drink cup on the plaintiff’s attorney and grabbed him near or around his neck, restraining him in his chair.”<sup>8</sup> Needless to say, that deposition ended prematurely.

Unfortunately, this outrageous behavior of one attorney towards another attorney does not appear to be limited to the deposition room. Attorneys are attacking each other both verbally and

4. See Jean M. Cary, *Rambo Depositions: Controlling an Ethical Cancer in Civil Litigation*, 25 HOFSTRA L. REV. 561 (1996).

5. Office of Disciplinary Counsel v. Levin, 517 N.E.2d 892, 893–94 (Ohio 1988) (per curiam) (actual language deleted).

6. In *In re Williams*, 414 N.W.2d 394 (Minn. 1987), counsel argued over the witness’s right to see a document he was being questioned about during the deposition:

Mr. Rosen: If you’re going to hand the [C]omplaint to him to coach him we are going to see the Judge.  
 Mr. Williams: Just get your foul odious body on the other side.  
 Mr. Rosen: Then don’t show the witness anymore —  
 Mr. Williams: I’m giving the witness the Complaint —  
 Mr. Rosen: You’re not entitled to coach the witness any further, you’re not entitled to —  
 Mr. Williams: Don’t use your little sheeny Hebrew tricks on me, Rosen.  
 Mr. Rosen: Off the record —  
 Mr. Williams: No, on the record.  
 Mr. Rosen: You son of a bitch.  
 Mr. Cox: Let’s call a recess.  
 Mr. Rosen: Tell the Judge I called him a rotten son of a bitch for calling me a sheeny Hebrew and I want to go see the Judge right now.

*Id.* at 397.

7. *Corsini v. U-Haul Int’l, Inc.*, 630 N.Y.S.2d 45, 46 (N.Y. App. Div. 1995).

8. *In re McClure*, 652 N.E.2d 863, 864 (Ind. 1995).

physically in the hallways outside court, in judicial chambers, and even in the courtroom. The Fourth District Court of Appeal of Florida recently affirmed the thirty-day contempt of court sentence against an attorney who called opposing counsel “a f—king c—t” and threatened that he would ‘see her later’ during a conversation in the hall outside the Courtroom immediately following the granting of her Motion for Directed Verdict.”<sup>9</sup> Similarly, the Supreme Court of Indiana imposed a sixty-day suspension on an attorney who struck opposing counsel at the end of a meeting in judicial chambers.<sup>10</sup> A Massachusetts Superior Court judge fined an attorney \$500, the maximum fine allowable in a summary contempt proceeding, for “[u]sing abusive and vulgar language with an opposing attorney within earshot of the Court, during a motion session, and while within the bar enclosure.”<sup>11</sup>

Not only do attorneys attack other attorneys, but in a few reported cases, they also attack the judge as well. The Florida Supreme Court upheld a six-month suspension of an attorney who was so angry after a ruling by a judge that he stood and shouted his criticism, waved his arms, challenged the judge to hold him in contempt, and banged on the table.<sup>12</sup> Ten days before the incident in open court, this same attorney, after receiving an unfavorable response to a question over the telephone, had said to the judge’s judicial assistant, “You little motherf—; you and that judge, that

9. *Hoeffler v. State*, 696 So. 2d 1265 (Fla. 4th Dist. Ct. App. 1997) (indicating the incivility took place in a hall outside the courtroom).

10. *See In re Moore*, 665 N.E.2d 40, 43 (Ind. 1996). Respondent’s attack was not completely unprovoked; respondent had stated that he was offended by a comment opposing counsel had made in chambers that respondent was not being truthful. *See id.* at 41. Respondent grabbed opposing counsel’s tie. *See id.* When respondent released the tie, “opposing counsel called the respondent a ‘son of a bitch.’ The respondent struck opposing counsel with one blow causing him to fall back onto a table in the judge’s chambers. The judge ordered the attorneys out of his office and thereafter recused himself from the case.” *Id.*

11. *Suckley v. Whyman*, No. CIV.A.95-1482-A, 1996 WL 533849, at \*2 (Mass. Super. Ct. Sept. 16, 1996). In this case, the judge summarized the proceeding as follows: Based on the statements of Attorney Smerczynski, my own observations, and the admissions of Attorney Diamond, I find that Attorney Diamond stated to Attorney Smerczynski, in open Court, within the bar enclosure, and in front of the bench, and in a tone that could be heard by others attending the motion hearing, words to the effect that Attorney Diamond would now make sure to ‘stick discovery up his [Attorney Smerczynski’s] ass.’ Far from provoking any such vulgar comment, Attorney Smerczynski consistently displayed admirable patience and restraint.

*Id.*

12. *See The Florida Bar v. Wasserman*, 675 So. 2d 103, 104 (Fla. 1996).

motherf— son of a b—.”<sup>13</sup> The judicial assistant was so upset by the incident that she had to leave the office early that day.<sup>14</sup> In 1998, the Supreme Court of New Jersey ordered disbarment of an attorney whose pattern of abuse and intimidation extended beyond opposing counsel to witnesses and even to the judiciary.<sup>15</sup>

These reported cases provide vivid examples of the decline in professionalism decried by so many in recent years.<sup>16</sup> Judge Marvin E. Aspen, United States District Court Judge for the Northern District of Illinois, described how this change in the profession has affected many practicing lawyers in his cover letter which accompanied the Interim Report of the Committee on Civility of the Seventh Federal Judicial Circuit, which Judge Aspen chaired: “We learned there is widespread dissatisfaction among judges and lawyers at the gradual changing of the practice of law from an occupation characterized by congenial professional relationships to one of abrasive confrontations.”<sup>17</sup>

The decline in professionalism described by Judge Aspen is certainly not limited to the major metropolitan areas of the Seventh Circuit. Subcommittee members of the North Carolina Bar Association’s “Bench-Bar-Law School” Committee surveyed attorneys throughout North Carolina on the topic of professionalism. Despite the fact that North Carolina has the fewest attorneys per capita in the country and remains a largely non-urban state, 65.8% of the attorneys responding to the statewide survey concluded that unprofessional conduct and incivility among lawyers were problems in the State.<sup>18</sup> When asked whether they thought the problems had gotten worse in the last few years, 45.9% said the problems were somewhat more prevalent than when they had begun practicing, while 24.8% said the problems were much more prevalent than

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13. *Id.*

14. *See id.*

15. *See In re Vincenti*, 704 A.2d 927 (N.J. 1998). “During the A.R.S. trial, respondent was repeatedly disrespectful to Judge Hanifan. He constantly interrupted the Judge, particularly when he was ruling on objections or motions.” *Id.* at 929.

16. *See, e.g.*, ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS IN THE LEGAL PROFESSION* 165 (1993); SOL M. LINOWITZ, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* 21 (1994); Warren E. Burger, *The Decline of Professionalism*, 61 TENN. L. REV. 1 (1993).

17. Interim Report of the Committee on Civility of the Seventh Federal Judicial Circuit, 143 F.R.D. 371, 374–76 (1991).

18. *See* Judith Wegner, *Lawyers, Learning, and Professionalism: Meditations on a Theme*, 43 CLEV. ST. L. REV. 191, 204–05 (1995).

when they had started practicing.<sup>19</sup>

Many of the most outrageous lawyer-to-lawyer incivility examples appear in the middle of litigation. There are several explanations for this phenomenon, though none excuses or justifies it. First, litigation often requires years to resolve. Lawyers, who may have conducted civil conversations about settlement in the early stages of a case, lose their composure two years later as time and economic pressures increase. Second, litigation brings out performance anxiety. Lawyers, who are anxious about their ability to persuade a jury or obtain a usable admission in a deposition, strike out in anger at whoever is hampering their ability to "win." Sometimes they aim their insults at their legal opponents, while at other times they strike out at uncooperative witnesses or even judges who dare to thwart them. Third, litigation is costly and attorneys feel the pressure from clients who complain about the high cost of courtroom battles and from partners who demand that junior associates justify the length and expense of depositions. Finally, litigation requires court reporters to transcribe whatever occurs in the courtroom or in the trial. Incivility is more likely to be the focus of later discussion when it is recorded verbatim, and lawyers, judges, and the general public can see the exact words used by the attorneys.

The decline in professionalism appears to be nationwide. After two years of study, the 1996 Professionalism Committee of the American Bar Association Section of Legal Education and Admissions to the Bar concluded: "In the Committee's view, the bottom line is that lawyer professionalism has declined in recent years and increasing the level of professionalism will require significant changes in the way professionalism ideals are taught and structural changes in the way law firms operate and legal services are delivered."<sup>20</sup> Consequently, the balance of this essay will focus on teaching these litigation professionalism ideals in law schools.

### *ETHICS AND CIVILITY IN LITIGATION CAN AND MUST BE TAUGHT IN LAW SCHOOL*

When my grandfather attended law school at the turn of the century, law schools did not require courses in ethics, civility, or

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19. *See id.*

20. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR. ASS'N, TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE 4-5 (1996).

professionalism. So how did the lawyers of his generation learn to treat each other with courtesy and respect? Many would argue that my grandfather's generation learned morality in church and in the family setting, not in law school. Those same critics would say that "legal ethics, 'like politeness on subways . . . or fidelity in marriage' cannot be acquired through course assignments in professional schools."<sup>21</sup> What those commentators ignore is that while earlier generations did not take courses in ethics and civility in law school, they had an informal mentor system to help them with both ethical and practical questions when they graduated from law school. If they did not already firmly grasp ethics and professionalism before they entered law school, they could learn how to treat other lawyers, witnesses, and judges by watching successful attorneys once they started practicing law.

When young lawyers graduated from law school, older lawyers included them in informal case discussions, permitted them to help on larger cases,<sup>22</sup> and found ways to mentor the younger attorneys.<sup>23</sup> Even as recently as the mid-1970s when I started practicing, several more experienced attorneys in my legal services office included the new attorneys in the daily trip to the luncheonette down the street. Lunch consisted of a discussion of difficult cases, legal strategies, and the ethical issues posed by those cases. When a new attorney felt overwhelmed, those with more experience were available to discuss the issues and give advice, if not actually assist on the case. When a new attorney described how an opposing attorney had lost his temper in a telephone or face-to-face encounter, experienced counsel could provide insight and guidance about how to handle the matter. The new attorney could obtain advice about opponents or judges known to be particularly difficult or to

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21. Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31, 44 (1992) (citing Eric Schnapper, *The Myth of Legal Ethics*, A.B.A. J., Feb. 1978, at 202, 205).

22. The modern expression for being permitted to help on a case is being asked to "second-chair" a case. The old Southern expression for being offered the chance to help on a case was "he allowed me to carry his briefcase."

23. For example, see comments made by Chief Justice Burley B. Mitchell, Jr., of the North Carolina Supreme Court when he was interviewed for the University of North Carolina Oral History Project, Walter H. Bennett, Jr. & Judith W. Wegner, *Lawyers Talking: UNC Graduates and Their Service to the State*, 73 N.C. L. REV. 846, 913 (1995) (focusing on the part of the article dedicated to Justice Burley B. Mitchell, Jr. — *A Life of Responsibility: Righting the Wrongs of Society and Serving the Less Fortunate*). "Part of the problem, he believes, stems from the fact that young lawyers do not receive as much patient, personal guidance from older lawyers as his generation did." *Id.* at 921.

possess peculiar eccentricities. The “rookie” lawyer could vent his anger in a safe place with sympathetic, older, and more experienced professionals. Many a revenge-laden, verbal battle was averted over the blue plate special.

In the fast-paced, billable-hours-conscious, computer-driven world of today, clients are not willing to pay for two lawyers on a case, firms cannot afford two attorneys engaged in lengthy ethical discussions, lunches consist of a Diet Coke and a packet of Nabs or a container of yogurt while returning telephone calls, and many new lawyers flounder in the moral relativism created by *L.A. Law* and *The Firm* media images when wrestling with an ethical issue. These new lawyers have no support system in which to make tough ethical decisions, and no reflective time to analyze why tempers are flaring and how best to respond to them. They have no time to write the angry response to a settlement offer, put it in the top drawer, think about it overnight, and tear it up the next day. They have already faxed the letter to opposing counsel.

Technological advances make it possible to have instantaneous written conversations. Although we may all enjoy the ease of being able to respond quickly to a request or settlement offer, fax machines and e-mail do not have temper-cooling time devices built into them. Old-fashioned dictation and typing gave an attorney time to retrieve a letter from the “out-going” mail bin, after he or she had thought through the reasons for the anger. I certainly remember the day I called an opponent, humbly explained I had written a letter in anger, and asked him not to open a letter that my particularly efficient secretary had typed and mailed before I had resumed my composure. Gracious gentlemen that he was, he returned the letter unopened.

Economic pressure also contributes to these angry faxes. Attorneys who bill by the hour cannot justify to the client the hours spent in writing a letter that was never mailed, and junior associates cannot explain to the senior partner the hours spent in temper-cooling reflection.

Those of us who teach trial advocacy or clinical courses know the frustrations of these young attorneys because we get their telephone calls once they start to practice. These new attorneys are desperate to discuss their cases with someone, but helpful counsel is often unavailable. Many of their colleagues are in solo practice or small firm practices, and have neither the time nor the resources (assuming they have the inclination) to offer assistance. Others practice in “young” firms with no elder statesmen to provide the



guidance so sorely needed. In still other, more traditional firms, there is no formal or informal mentoring mechanism to provide the help. Economic and other pressures make senior partners unable or unwilling to share their experience, or make junior associates unwilling to display their youth and inexperience, lest it be viewed as a professional weakness.

What can law schools do to correct what appears to be so pervasive a problem in the profession? Deborah Rhode, Professor of Law and Director of the Keck Center on Legal Ethics and the Legal Profession has challenged the naysayers who claim that morality is a matter of personal integrity that is gained through early socialization and cannot be acquired in later life.<sup>24</sup> These critics claim that post-graduate training offers too little too late. In her article recommending that law schools adopt a course plan in which ethical issues permeate the entire curriculum, Rhode points out: "Recent psychological research indicates that significant changes occur during early adulthood in individuals' basic strategies for dealing with moral issues. . . . Through interactive learning, such as problem solving and role playing, individuals can enhance skills in moral analysis and build awareness of the situational factors that skew judgment."<sup>25</sup> From the ethics and civility teaching that I have done, I wholeheartedly endorse Professor Rhode's analysis. The cornerstone of success in teaching ethics is the opportunity for the students to participate in role-playing and discussions. We may not know the results for another generation, but we must try to teach civility and professionalism now.

### *SUCCESSFUL MODELS FOR TEACHING ETHICS AND PROFESSIONALISM IN LITIGATION*

The higher the stakes for the student and the greater the amount of participation by the student, the greater the amount of learning. Most of us know we are much more attentive to advice when we have a personal stake in the problem we are trying to solve than when it is an abstract legal question — which is why the mentoring system of earlier generations functioned so well. If a new attorney had a problem with a client, the new attorney focused on the advice he received from a more experienced attorney, and by implementing the advice, he gained immediate feedback on the

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24. See Rhode, *supra* note 21, at 44.

25. *Id.* at 46.

effectiveness of the advice. As the client's attorney, he had a high stake in the case and participated in the solution.

### Live Client Clinics

Live client clinical teaching mirrors this mentoring system. The student has a client with a problem and a paid mentor, his or her clinical supervisor. The ethical or professionalism dilemma can be discussed and then a solution implemented. To maximize the learning that can be developed out of one case, the student can be encouraged to seek advice from his peers by discussing the problem in a clinical class meeting. This format mimics the luncheon discussions described above. The students, as a group, learn that ethical and professionalism issues can be most effectively solved with discussion. They also learn that client confidentiality requires complete silence concerning the cases outside the classroom. The student with the problem discovers a source of support and an end to the isolation of trying to solve the problem alone. Ideally, the clinical instructor can brief an "ethics professor" on the problem prior to class and then invite him or her to participate in the class discussion.<sup>26</sup>

Of course, the effectiveness of live client clinical teaching depends on several factors. First, the clinical instructor needs to be an insightful teacher whom the students wish to follow as a mentor. The ethics of this mentor must be above reproach. Second, the types of cases accepted by the clinic need to include ethical and professionalism issues.<sup>27</sup> Third, the clinical instruction needs to include a classroom component as well as individual case assignments so that group discussions of ethical and professionalism questions involved in litigation can occur. Finally, the biggest obstacle to this methodology is the expense of hiring sufficient clinical instructors to supervise the third-year law students. The instructors need to be available for frequent meetings with their students. The teaching is labor intensive and expensive.

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26. As a clinical instructor at the University of North Carolina from 1982 to 1986, I was fortunate to find several excellent ethics professors, including Burnele Powell, Paul Haskell, and Norm Lefstein, who met with my students to discuss difficult ethical issues that arose in our daily practice.

27. In my experience, many cases present an ethical or professionalism problem at some point during the litigation. As clinical instructors gain experience, they will be able to recognize these cases in advance.

### Simulation Exercises in Performance Sections of Trial Advocacy Classes

Thoughtful trial advocacy professors can include ethical and professionalism issues in the performance exercises assigned to the students each week in trial practice courses. Many times, effectively teaching the problem will require the professor to play an active role in the actual performance. If the professionalism issue is how an attorney should respond to a surly, rude, and ill-tempered judge, the professor needs to assign himself or herself the role of the obnoxious judge. If the ethics issue is how to handle the tough question of what to do when a criminal defendant takes the stand to present an unknown alibi defense, the professor should play the role of the lying criminal defendant. And if the problem is how to handle a nasty opponent in a deposition, the professor should play the obstreperous attorney who makes totally ill-founded objections to proper questions. Students should not be placed in the awkward position of playing the roles of ill-tempered judges, lying witnesses, or "Rambo" defenders in a deposition, lest they learn to mimic this role in real life. In addition, if the students play these roles, their peers may react in anger towards them.

The effectiveness of these simulation exercises as a teaching vehicle for litigation ethics will, of course, depend on the skill and practical experience of the trial advocacy professor, the choice of simulation exercises,<sup>28</sup> and the size of the class.<sup>29</sup> A major advantage of simulation exercises over the problems presented in the "live client clinic" is the control the professor can assert over how the issues arise. These exercises work particularly well after students have bonded in a supportive small class and have overcome their initial performance anxiety. The exercises do not work well when students are still struggling with the difference between an open and a leading question. Once they have mastered the basic skills of examining witnesses, these problems elicit more classroom discussion and even volunteer performances from other students who suggest how they would handle a particular witness.

Many schools arrange for final trials for their trial advocacy

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28. See Robert P. Burns, *Teaching the Basic Ethics Class Through Simulation: The Northwestern Program in Advocacy and Professionalism*, 58 LAW & CONTEMP. PROBS. 37 (1996).

29. Twenty-five students or less work well as a class size for these simulation exercises.

students at the end of the semester. These trials offer a unique opportunity for a discussion of professionalism. Students who have listened passively to earlier lectures concerning unethical and unprofessional trial tactics suddenly become embroiled in disputes over pretrial rulings, motions in limine, "agreements" over stipulations, and the admissibility of evidence. Students who never dreamed they would ever engage in ex parte contact with a judge are waiting outside the professor's office to "clarify" a point of evidence. When questioned, they often look in horror at the professor who dares to ask, "Your opponent knows you are meeting with me now, doesn't he?"

In civil mock trial cases, professors can insert professionalism issues by disseminating "new facts" to one group of students with an attached note that the professor is not giving the information to the students on the other side of the case. At the pretrial conference, the professor can then explore whether the students disclosed the information to their opponents under either the *Federal Rules of Civil Procedure* or under any outstanding discovery requests in the case. Professors can facilitate smoother trials and teach professionalism by pointing out how minor disagreements over unknown facts and misunderstood agreements between counsel have entangled the emotions of the students in a "mock" case, and how much harder it will be to control tempers and act professionally when they have "real" clients at stake.

#### Simulation Exercises in Lecture Classes

If professors have the luxury of team-teaching a lecture class, they can use simulation exercises to illustrate how an attorney should respond to a difficult ethical or professionalism question that may arise in the middle of litigation.<sup>30</sup> Because students are often afraid of performing in front of their peers in a large classroom, professors may find that students are more attentive to the substantive content of an exercise if the professors play the roles in the exercise. Ideally, professors play the roles of judge, plaintiff's attorney, and defendant's attorney, and another professor moderates the discussion after each role-playing vignette.

Professionalism issues concerning racism and sexism can be

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30. If a professor is teaching alone in a large class, he or she can use short videotaped performances of ethical issues arising in litigation as a means of setting the stage for a class discussion.

handled very effectively in this setting. However, the discussion after the vignettes needs to be led by those who played the sexist or racist actors in the presentation. The actors need to be given the opportunity to condemn the roles they were assigned in the exercise.<sup>31</sup>

### Seminar Planning Classes

Law students, particularly those in their third year who are only months away from practicing on their own, are desperate to learn the nuts and bolts of what practicing law will be like for them. Those of us who teach third-year students are familiar with watching these students listen with rapt attention to lectures by "real" lawyers practicing in the trenches even though we (their regular teachers) may have said the same thing the week before. The challenge this presents to the law professor is the age old question, "How can I make this subject relevant so that the students will listen without having the class degenerate into a war story?" I believe the students are giving us the clues — to present the ethics and civility to them as problems they will soon face.

Campbell University's School of Law requires every graduate to take a planning course. Many of the planning courses include exercises in which the students are divided into law firms representing different clients with mock — but very realistic — legal problems. When the students are assigned "clients," they become invested in the class. For instance, in my Family Law Planning Course, the students start the semester with the ethical problem of how to represent a man and woman who appear in the lawyer's office wishing to have a premarital agreement drafted.<sup>32</sup> The students then follow this family through infertility problems, drafting adoption documents, eventual separation of the spouses, drafting separation agreements, and negotiating a final settlement. This type of simulation offers the professor many opportunities to insert ethical

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31. I have learned the importance of this denial from bitter experience after I persuaded a male colleague to play the role of a sexist jerk in a simulated deposition. I wanted to illustrate to the women in the audience that there were several ways to handle the situation without resorting to a verbal tirade on the record. In the course evaluations at the end of the semester, several students wrote scathing comments to my colleague concerning the sexist comments he had made to me during the vignette.

32. To make the problem more interesting, I hire law students to play the roles of the imaginary couple throughout the semester. Whenever the "clients" have to be consulted, these students are available for role-playing in the seminar.

or professionalism problems. For instance, after the class in which the students negotiate a settlement, I ask the students to tell the rest of the class if there were things they said in the negotiation session that appeared to change the tenor of the negotiations. We then discuss how easy it is to anger the other side and how difficult it is to avoid becoming so invested in our client's results that we lose our objectivity.

### Role Models

Although it is almost impossible for law schools to duplicate the mentoring system of earlier generations, law schools can bring in outstanding attorneys for professionalism discussions. Three years ago, Campbell University started a monthly "Professionalism Lecture Series" for first-year students. Highly respected attorneys from across the state have described why they chose to be lawyers and their vision for the profession.<sup>33</sup>

Walter Bennett, Jr. at the University of North Carolina School of Law uses a different approach to provide his students with mentors. In the UNC Oral History Project, Professor Bennett teaches a seminar in which the students undertake the field work of gathering the oral history of a selected North Carolina attorney or judge. The students then give an oral presentation and write a seminar paper on the history of their chosen mentor.<sup>34</sup>

### CONCLUSION

The law profession is facing a crisis in professionalism and ethics. Law schools have the opportunity to provide a framework of moral reasoning for new lawyers to fall back on when they face ethical and professionalism problems in their litigation practices. By providing "live-client clinics," simulation exercises, and role models, law schools can in some part duplicate the mentoring system of earlier generations. If students learn to bring their questions to those with more experience, they will not be overwhelmed when

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33. See Patrick K. Hetrick, *Heroes Aren't Hard to Find: The Idea Behind Campbell's Professionalism Lecture Series*, in SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE app. at 51-53 (1996).

34. See Bennett & Wegner, *supra* note 23, at 847, for a more extensive discussion of the UNC Oral History Project and a summary of selected oral histories. See also Wegner, *supra* note 18, at 207-10.

they start practicing law. They will rapidly learn these problems can be solved with a group discussion among experienced litigators and not in the isolation of the late-night, angry ruminations in which the new attorney constantly tries to second guess his or her own actions.