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I. INTRODUCTION

Assume that a child's guardian allows a sadist to rob and torture his ward in order to win a bet. Would it be just to convict the guardian for robbery and torture? Most fair-minded people would respond, "yes." Some people made of "sterner stuff" might even think that since the duty of a guardian is one of the highest imposed by law, the guardian should have a session on the rack.

Would the answer change, however, if the guardian were God? This is the question that Yale law students must try to answer when posed to them by Professors Robert Burt and Fred Streets.[1] Burt and Streets use the biblical story of Job to explore the meaning of justice.[2] Their strategy is also an intriguing way to introduce religious underpinnings for the concept of justice without creating a sectarian atmosphere that might offend some students.

The Job case is a compelling one. God allows Satan to torment Job in all possible ways, short of killing him.[3] Satan proceeds to destroy all of Job's wealth, health, and kills off his children.[4] Job cries out for justice, saying, if only "there were an arbiter between us, who could lay his hand upon us both."[5] However, Job knows that he does not have a chance of bringing God before the bar of justice, that no man can win his case against God. If a man chooses to argue with him, God will not answer one

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[1] Robert Burt is a professor at Yale Law School. Fred (Jerry) Streets is a professor at Yale Divinity School.

[2] The story of Job is a tale from *The Bible* that begins with a conversation between God and Satan. *Job* 1:1-42:17. God is bragging about Job being such a devout, god-fearing man. *Id.* Satan is not impressed. *Id.* He points out that since Job is wealthy, healthy, and blessed with many handsome children, he should be grateful. *Id.* Satan dares God to take away some of those "blessings" and see if Job continues to praise God for his goodness. *Id.* Job holds up pretty well under the circumstances and although he would like to know why God has forsaken him, he never curses God. *Id.* Eventually both Satan and God are impressed and God returns all of Job's wealth and health, and provides him with a new batch of perfect children. *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.* at 9:33.

question in a thousand.[6] "If I cry out 'Injustice' I am not heard. I cry for help, but there is no redress."[7] Job gains no solace from his friends either.[8] They are convinced that he must have done something to justify God's displeasure.[9] They declare, "[s]urely, God cannot act wickedly, the Almighty cannot violate justice."[10]

In the end, God provides Job with an answer to his question about the justice of his suffering.[11] God scoffs, "Do you know the ordinances of the heavens, can you put into effect their plan on the earth?"[12] This answer resembles one often offered by the tyrants of the world, who simply declare, "I have the power, so I have the right."[13]

Professor Burt explores Job's predicament in his course, entitled "The *Book of Job* and Injustice." The course also includes other examples from the Bible raising troublesome moral issues about what Judeo-Christians mean by the term "justice." The course reflects Burt's attempt to incorporate the discussion of ethical, moral, and religious issues into the law school curriculum.

Yale Law School is not alone in this endeavor. Many other law schools are trying to increase their students' exposure to ethical and moral issues as they relate to the practice of law. This paper will discuss some of the approaches taken by those schools. Furthermore, this paper will also suggest a way in which law schools could improve their curricula by sensitizing students to the moral and ethical implications of being a lawyer. Part II reviews the criticism leveled at law schools for not doing more to train ethical, moral lawyers.[14] Part III examines the attempts of several law schools in addressing the problem.[15] Part IV describes how medical and theological schools strive to incorporate more ethical and moral questions into their training, while demonstrating to their students how those issues

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6 *Id.* at 9:3.

7 *Id.* at 19:7.

8 *Id.* at 19:19.

9 *Id.* at 19:1-29.

10 *Id.* at 34:12.

11 *Id.* at 38:1-42:6.

12 *Id.* at 38:33.

13 THE LION IN WINTER (Image Entertainment 1968). Henry II's response to the question of why he should not return Vexin, a French province, because he failed to abide by the terms of the contract is characteristic. "I am not obliged to return Vexin because my troops are all over it." *Id.*

Elie Wiesel expresses a similar sentiment: "Man prefers to blame himself for all possible sins and crimes rather than come to the conclusion that God is capable of the most flagrant injustice. I still blush every time I think of the way God makes fun of human beings, his favorite toys." ELIE WIESEL, NIGHT, DAWN, AND DAY 239 (1985).

14 *See infra* notes 18-43 and accompanying text.

15 *See infra* notes 44-119 and accompanying text.

relate to their treatment of patients and parishioners.[16] Part V proposes a method by which law schools can accomplish two important, but related, goals: first, to make the discussion of ethical and moral issues a more important part of the curriculum; and second, to help law students recognize how their own ethical and moral values affect their relationships with clients, other lawyers, and judges.[17]

II. ETHICS, MORALITY, AND LAW SCHOOLS

> And so perhaps you will begin to live at the *ethical stage.* This is characterized by seriousness and consistency of moral choices . . . . You try to live by the law of morals . . . . The important thing is not what you may think is precisely right or wrong. What matters is that you choose to have an opinion at all on what is right or wrong.[18]

A case might be made that ethics, morality, and law schools do not mix. Consideration of ethical and moral issues tends to be separate from typical law school courses, which focus primarily on introducing students to a substantive area of the law and getting them to "think like lawyers." This "lack of mixing" phenomenon is occurring at the same time that law schools have been paying increasing attention to the teaching of professionalism and ethics.[19]

A full-court press by the accrediting agencies has spurred law schools to find a combination of ethics, morality, and law that would work in the law school setting.[20] The American Bar Association ("ABA") is also concerned about the decline in professionalism among members of the Bar.[21] Both the American Association of Law Schools ("AALS") and the ABA mourn the ebb of lawyers practicing law as a "calling," and observe that many lawyers do not value the traditional concept of "serving the public good as the intermediaries between the conflicting interests in our

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[16] *See infra* notes 120-69 and accompanying text.

[17] *See infra* notes 170-89 and accompanying text.

[18] JOSTEIN GAARDER, SOPHIE'S WORLD 384 (1996) (quotations omitted).

[19] *See* Eleanor W. Meyers, *"Simple Truths" About Moral Education*, 45 AM. U. L. REV. 823, 829 (1996).

[20] The two principal accrediting agencies for law schools are the American Bar Association and the American Association of Law Schools.

[21] The ABA Professionalism Committee defines a professional lawyer as follows: "*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.*" Professionalism Committee Report, *Teaching and Learning Professionalism*, 1996 A.B.A. SEC. LEGAL EDUC. & ADMISSION TO THE BAR 6.

society."[22] Some of the blame for this change in professional attitude is laid at the doors of law schools:

> We extol loyalty to the client above moral and other concerns. Our case-by-case method, which focuses on identifying principles of doctrine rather than principles of behavior, also encourages moral relativism. The values we attend to in the classroom are apt to be individualism and autonomy, which we present as the basis for the adversary system . . . . We fail to teach our students that lawyering involves responsibility to and for others.[23]

In the MacCrate Report, the ABA promulgated a series of guidelines for law schools which focus on those skills that are critical for the education of a lawyer.[24] Ethical considerations form a large part of the Committee's recommendations.[25] For example, the MacCrate Report suggests that it is legitimate and proper for a lawyer to take into account considerations of fairness, justice, and morality when counseling a client.[26] At the same time, however, the MacCrate Report warns about factoring too much justice and morality into the lawyering equation.[27] In the client-

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[22] *Id.* at 3-4.

[23] *Id.* at 13; *see* Task Force on Law Schools and the Profession Report, *Legal Education and Professional Development—An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSION TO THE BAR 236 [hereinafter MacCrate Report]. This report indicates:

> Too often, the Socratic method of teaching emphasizes qualities that have little to do with justice, fairness, and morality in daily practice. Students too easily gain the impression that wit, sharp responses, and dazzling performance are more important than the personal moral values that lawyers must possess . . . .

Id.

[24] *See* MacCrate Report, *supra* note 23, § 6.1, at 177.

[25] *Id.*

[26] *Id.* With regard to counseling the MacCrate Report states:

> (a) An understanding of the various ethical rules and professional values that shape the nature and bounds of a counseling relationship between lawyer and client, including those applying to:
>
> . . . .
>
> (iii) The extent to which it is proper for a lawyer, in counseling a client, to take account of considerations of justice, fairness, or morality by: Attempting to persuade the client to modify his or her decisions or actions to accommodate the interests of justice, fairness or morality.

Id.

[27] *Id.* § 6.1(ii), at 178. With regard to understanding the bounds of the lawyer's role in a counseling relationship, the MacCrate Report explains:

> The lawyer's need to guard against being so dispassionate and objective as to be unable to: (A) View issues and options from the client's perspective; (B) Counsel the client in a manner that communicates to him or her that the lawyer is committed to furthering the client's objectives and interests . . . .

lawyer relationship, after all, there is always the opposing pull of the lawyer's duty to act zealously for the client. Therefore, the MacCrate Report encourages the lawyer to follow broader moral principles, but also cautions the lawyer not to be so guided by justice and morality that the client's interest is sacrificed.[28] Furthermore, it recognizes that the entire burden for training ethical and just lawyers cannot be placed on law schools. The MacCrate Report recognizes that a lawyer's ethical standards are shaped more by a lawyer's early years of practice than the three years spent attending law school.[29]

A good argument can be made that the rhetoric by the ABA and the AALS—about sensitizing law students to codes of conduct that emphasize the balance between a lawyer's duty to the client and the lawyer's responsibility to the larger society—misses the main point. By making the ethical standards articulated by some ABA code of conduct the criteria for governing conduct, the argument goes, the lawyer's image with the public-at-large will never improve. The public, after all, does not care much about lawyers abiding by some formalistic code of professional responsibility.[30] The public assumes that if the rules are written down, lawyers will discover some way to avoid them. The public is hostile to lawyers because they appear to make immoral choices and yet are able to dodge responsibility by claiming they are required to act for the benefit of their clients. "To the public, the lawyer seems to say: 'Don't blame me if the work I've performed, or the client I've helped, ends up hurting you.'"[31] A lawyer's character, not rules, determines whether he or she acts ethically and

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Id.

[28] *Id.* § 2.1, at 213. In section 2.1, the MacCrate Report describes values to which the lawyer should be committed:

> *Promoting Justice, Fairness, and Morality in One's Own Daily Practice*, including:
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> . . . .
>
> (b) To the extent required or permitted by the ethical rules of the profession, counseling clients to take considerations of justice, fairness and morality into account when the client makes decisions or engages in conduct that may have an adverse effect on other individuals or on society.

Id.

[29] *Id.* § 2.1, at 235.

[30] Robert C. Post, *On the Popular Image of the Lawyer: Reflections in a Dark Glass*, 75 CAL. L. REV. 379, 385 (1987).

[31] *See* Robert Eli Rosen, *Ethical Soap: L.A. Law and the Privileging of Character*, 443 U. MIAMI L. REV. 1229, 1246 (1989).

morally. Therefore, what law schools must do is bolster character, not force students to learn more rules and regulations.[32]

Commentators have noted that character is a product of how a person accepts the fact of being connected to others. "[V]irtue relies on a sense of community, on an awareness of relationships with others."[33] Justice is an attempt to achieve fair relationships among members of the community. According to Robert Araujo, the virtuous lawyer should ponder three questions:

> (1) what kind of people are the parties and the lawyers in this case and what do their interests mean for them and the rest of society; (2) what is it that the parties and lawyers desire and how do these wishes for legal relief relate to the interests of both parties and the community at large which will be affected by the legal precedent established by the court's decision; and (3) what does the virtuous lawyer consider in order to help reach a just or, better yet, the most just decision?[34]

Another way of asking the same question is for the lawyer to ask, "who am I as a lawyer and as a person?"[35] The answer to that question may vary, however, depending on to whom the lawyer is relating. The lawyer develops a variety of relationships in the practice of law, which require an adjustment between what the lawyer is "as a person" and what the lawyer is "as a lawyer."[36] Such an adjustment does not mean that the lawyer must regularly change the answer to the question of which he or she is as a person. Self-identity should not change like the color of a chameleon reflecting its surroundings. However, depending on the relationship, a lawyer may have to give a higher priority to the answer of the "Who am I as a lawyer?" question than to the response of the "Who am I?" inquiry.

The critical issue is what law schools can do to foster the development of the virtuous lawyer. Some may argue that entering the murky field of virtue and morality does little to alter students' moral principles, which have already been formed by the time they enter law

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[32] *See* Walter H. Bennett, Jr., *The University of North Carolina Intergenerational Legal Ethics Project: Expanding the Contexts for Teaching Professional Ethics and Values*, LAW & CONTEMP. PROBS., Summer/Fall 1995, at 173, 175 [hereinafter *North Carolina Ethics Project*].

[33] Robert Araujo, *The Virtuous Lawyer: Paradigm and Possibility*, 50 SMU L. REV. 433, 440 (1997).

[34] *Id.* at 488-89.

[35] James Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83, 101 (1991) [hereinafter *Ethics Teaching*].

[36] *Id.* A laundry list of possible relationships for a lawyer would be: "lawyer-client, lawyer-justice system, lawyer-adverse lawyer, lawyer-witness, lawyer-juror, subordinate lawyer-supervisory lawyer, lawyer-society." *Id.* at 100.

school. Moreover, there is concern that taking the morality road, with all its subjective and religious connotations, could result in professors promoting their own particular moral and religious views. Finally, there are probably many law professors who feel inadequate in their own philosophical and theological knowledge and are therefore loathe to tackle those topics in the classroom.[37]

Perhaps most law students *do* come to law school with their moral compasses substantially calibrated. Nevertheless, law schools can foster the development of the virtuous lawyer by persuading students that one *can* be a complete professional without leaving one's personal moral code at the office door.[38] Law schools provide most students with their first exposure to the legal profession. Therefore, it is important for them to learn that other lawyers and law professors respect and support their moral sensitivities, and that it is appropriate professional behavior for a lawyer to use moral influence with a client to help the client be a better person.[39]

Religious values constitute a related issue with respect to the introduction of broader morality issues into the law school curriculum. Although it might be appropriate for law schools to address "moral issues" in some sort of generic sense, is it appropriate for law schools to introduce "religion-based moral values" into the curriculum? Some educators insist that any discussion of moral issues without referencing their origin in religious beliefs is a distortion of history, and that it does not provide important context to the dialogue.[40] This is a ticklish question, however, because the prevailing attitude toward religion in law schools is that religion is strictly a private affair and public moral issues should be

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[37] Paul Haskell, *Teaching Moral Analysis in Law School*, 66 NOTRE DAME L. REV. 1025, 1025 (1991).

[38] Thomas L. Shaffer, *Should a Christian Lawyer Serve the Guilty?*, 23 GA. L. REV. 1021, 1032 (1989).

[39] *Id.* Furthermore, Michael Distelhorst explains:

> [A] new "jurisprudence of ethics" would encompass at least three major teaching responsibilities for law faculty. First, we should have to teach the student how to explore an ethical self-awareness. Second, we would have to explore with the student what it means to be in an ethical relationship with others. Third, we would need to teach the student how to explore questions about the law using an ethical reasoning process.

Michael Distelhorst, *Judging Ourselves as Heirs to the Realist Insight: The Role of Ethics as a Bridge Between Land and Life*, 60 U. CIN. L. REV. 43, 60 (1991).

[40] *See* Thomas L. Shaffer, *Erastian and Sectarian Arguments in Religiously Affiliated American Law Schools*, 45 STAN. L. REV. 1859, 1862-63 (1993) [hereinafter *Sectarian Arguments*]. "Why should we be afraid to offer such helpful perspectives from an entire host of sources? From psychology, philosophy, history, religion, sociology, economics, literature, from many other places, we must offer our students sources and insights as to the underlying values of the law." Distelhorst, *supra* note 39, at 64.

discussed in a religion-free vacuum.[41] The language of discussion should be secular, pursuant to secular principles.[42]

On the other hand, most students arrive at law school with a full complement of religious and moral values. Law schools should nurture those values rather than disparage them, correct? Would the incorporation of religious values mean that there would be less need for professional codes of ethics because the "Golden Rule" would be a more effective restraint on unethical conduct?[43] There are no easy answers to these questions. It may be inoffensive, for example, to say "love your neighbor," but when one starts weighing other "laws" pronounced by God according to many religious sects, there will be considerably less agreement on the need to abide by them. Therefore, the heated debate about the wisdom of including theological questions in law school courses should come as no surprise.

III. HOW SOME LAW SCHOOLS HAVE ATTEMPTED TO INCORPORATE ETHICS AND MORALITY INTO THE CURRICULUM

A. Mandatory Professional Responsibility Courses

Typically, law schools address the need to incorporate more ethics into the curriculum by adding a mandatory Professional Responsibility course.[44] Such a course may be adequate to convey information about the Code of Professional Responsibility, because that is what law school teaching methodology is designed to do. The typical format may also do a credible job at preparing students for the required Multi-state Professional Responsibility Examination.[45] However, mandatory Professional Responsibility courses do little to instill an appreciation for underlying moral values.[46] Their focus on "the rules" encourages law students to look

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[41] Rex E. Lee, *St. Mary's Law School Dedication*, 16 ST. MARY'S L. J. 533, 533 (1985).

[42] *Sectarian Arguments*, *supra* note 40, at 1859.

[43] Lee, *supra* note 41, at 534. This is because all of the thousands of words of professional responsibility codes, as worthwhile as they are, would be not only subsumed, but also enlarged by the simpler yet broader mandate expressed in thirteen short words, "You shall love the Lord your God . . . and . . . love your neighbor as yourself." *Matthew* 22:37.

[44] Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31, 39 (1992) [hereinafter *Pervasive Method*].

[45] The Multi-State Professional Responsibility Examination is a multiple choice test that most states administer to test if applicants of the Bar understand the "principles of ethics."

[46] *Pervasive Method*, *supra* note 44, at 36.

for the loopholes like they do in so many other law courses. Furthermore, mandatory Professional Responsibility courses are generally not well-received by the students. Few students appreciate the subject's relevance to the practice of law because lectures about the need for professional responsibility provide little context about the relationship between ethical behavior and what a lawyer does.[47] Most of these stand-alone courses try to fill the context gap by including problem-based discussion. This form of teaching relies on highlighting various ethical dilemmas that lawyers face in practice. Students may relate better to this form of teaching because it appears more relevant to the practice of law. However, appearances can be deceiving. The practice of law is not usually a series of dilemmas in which the answers can either be found in the rules or are completely unsolvable. As one commentator noted:

> [M]ost of the relevance of ethics to lawyers lies in the answers to day-to-day questions of how to live life—apparently small things that are really the biggest things, like, "how will I treat my clients?," or "where do 'honesty' and 'care' fit in my daily dealings with others?"[48]

These questions cannot be satisfactorily addressed in a large class. They can only be experienced when a lawyer forms a relationship with a client or must negotiate with a fellow attorney.

B. Teaching Professional Responsibility in Clinic

The live-client clinic, which is found in the vast majority of law schools, provides a good model for students learning how to deal with the day-to-day ethical issues that arise in the practice of law.[49] In the clinic, students actually represent real clients, so they are forced to answer the question of how they will treat clients.[50] Those ethical issues that arise certainly are in context, and supervising attorneys have ample opportunities to structure "case discussion" around ethical concerns. Furthermore, students are encouraged to bring any ethical problems they are experiencing with their cases to the larger clinic seminars.[51]

A problem with the clinic setting for addressing ethical and moral issues, however, is that the primary focus of clinic activity is solving the

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[47] *Ethics Teaching*, *supra* note 35, at 105.

[48] *Id.* at 108.

[49] Christine Mary Ventura, *Encouraging Personal Responsibility: An Alternative Approach to Teaching Legal Ethics*, LAW & CONTEMP. PROBS., Summer/Fall 1995, at 287, 291.

[50] *Id.*

[51] *Id.*

client's legal problems rather than examining ethical questions. Students often miss these questions in the hurly-burly of drafting a complaint or getting prepared for a hearing. Ethical issues in the clinic setting arise haphazardly and cannot be anticipated, so the clinic course cannot be relied upon to raise specific ethical questions. One is forced to go with the issues that the actual cases provide, if any. Moreover, those selective issues may not prove very useful in guiding a student's moral development.[52] Unfortunately, law clinics must restrict enrollment to a few students, so they cannot be a law school's primary means for addressing ethical and moral questions. Finally, law clinics with a high faculty-to-student ratio are very expensive. It would be beneficial if every law school required clinical experience for every student, but in an era of limited budgets it is more likely that clinic offerings will be reduced rather than expanded.[53]

C. The Pervasive Method for Teaching Professional Responsibility

Professor Deborah Rhode is a strong advocate for the "pervasive method" of incorporating ethical issues into the law school curriculum.[54] Rhode maintains that ethical issues should be a part of every law school substantive course because professional responsibility considerations arise in all substantive areas. To Rhode, relegating professional responsibility to a single course during a three-year program marginalizes the significance of ethical issues.[55] Furthermore, she believes that only by following the pervasive method do law schools have a chance to impact their students' moral reasoning.[56]

The Stanford program, administered by Professor Rhode, represented an attempt to incorporate her ideas into a law school curriculum.[57] The two-year pilot program required all professors teaching mandatory first-

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[52] *Ethics Teaching*, *supra* note 35, at 108.

[53] Notre Dame Law School ran an experiment with seven clinical ethics seminars with the aid of a generous grant from the W.M. Keck Foundation. *See* Ventura, *supra* note 49, at 290. Even with all the extra money from the foundation, Notre Dame could not extend the experience to all of their students. *Id.* at 295. The study also concluded that because the clinic dealt only with needy people and civil law, it was limited in the kind and quality of ethical issues that could be raised. *Id.* Finally, the study concluded that it was not a "cost effective" means of teaching ethics. *Id.*

[54] *See Pervasive Method*, *supra* note 44, at 50.

[55] *Id.*

[56] *See* Deborah L. Rhode, *Into the Valley of Ethics: Professional Responsibility and Educational Reform*, LAW & CONTEMP. PROBS., Summer/Fall 1995, at 139, 149 [hereinafter *Valley of Ethics*].

[57] *Id.* The Stanford program also got its start with substantial funds from the Keck Foundation. *Id.* at 142. Thus one must speculate about the viability of such a program even at a well-endowed school like Stanford. It would appear, however, that most of the costs of the Stanford experiment were for designing the program and developing materials, and not for its operating budget. *See id.* at 143.

year courses to set aside at least two full class hours for ethical discussion each semester.[58] First-year students attended professional responsibility programs and completed an exercise or written assignment.[59] In addition to the first-year requirements, each student had to "complete at least one unit of upper-level instruction in ethics."[60]

The book developed by Professor Rhode could be used to implement the pervasive method.[61] It includes ethical materials specifically designed for incorporation into basic first-year and second-year courses.[62] Rhode assumes that professors teaching first-year courses will be more eager to incorporate ethical issues into their substantive courses when they do not have to figure out how to do it, when to do it, and how to develop good supplemental materials.

Although the concept of teaching ethics by the pervasive method is an attractive one, few law schools have adopted it. The politics of law school governance, academic freedom, and faculty resistance to radical change are just some of the obstacles encountered by the pervasive method. A faculty member who would be willing to slice out a large chunk of his or her substantive course or require other faculty to do so, in order to cover a topic beyond his or her expertise, is a rarity.[63] Enthusiasm is such an important element of teaching that forcing a professor to cover material that he or she would not ordinarily choose to teach only results in the professor giving the topic short shrift.[64] Furthermore, tying professional responsibility to substantive courses makes it likely that the methodology for teaching the professional responsibility component will be the same as the methodology used for the rest of the course.[65] As noted previously, this methodology is particularly unsuited for meaningful ethical instruction.[66]

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[58] *Id.*

[59] *Id.*

[60] *Id.*

[61] DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (1994).

[62] *Id.*

[63] It is interesting to note that the Stanford faculty did require each first-year professor to devote two class sessions to relevant ethical issues, but that the requirement only lasted as long as the grant ran for the experiment. When the grant expired, the participation of faculty was made voluntary.

[64] When this happens the message often perceived by the students is that "this is not an important topic." Thus, instead of being reinforced with the idea that ethics and morality are central to the practice of law, the students reach an opposite conclusion.

[65] *See Ethics Teaching, supra* note 35, at 121-22. Similar methodology would not be a problem if one only wanted to convey the doctrinal aspects of professional responsibility. The usual classroom format, however, will not help students understand how ethical issues relate to the lawyer's work.

[66] *See supra* notes 44-46 and accompanying text.

There are other fundamental problems with trying to graft ethical concerns onto substantive courses. First, the ethical issues are still being raised in large classes. Consequently, students never experience a personal "feel" for how one resolves these kinds of issues. Second, it is very difficult to get any kinds of comprehensive coverage of professional responsibility issues when a myriad of professors are covering the topic.[67] The pervasive method requires a coordinator with clout to insure that certain topics are covered, and covered well.[68]

Professor Robert Lawry, at Case Western Reserve University School of Law, avoids the coverage problem in his "pervasive" program by ignoring it.[69] Participation in the program at Case Western is voluntary, so Lawry's operating principle is to make it as easy as possible for professors to take part. Professors teaching first-year courses can select whatever ethical topic they want, and teach it in whatever manner they want. The goal is not to cover the rules of professional responsibility but to expose students to what it means to act like a professional. Professor Lawry provides a gentle kind of coordination and guidance by offering ethical vignettes and materials that are specifically adapted for use in first-year substantive courses. Most professors who choose to participate in the program adopt Professor Lawry's materials. Furthermore, Professor Lawry is ever ready to play the role of troubleshooter, advisor, and father-confessor for professors who need help incorporating the professional responsibility materials into their courses.[70]

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[67] James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV., 71, 105 (1996) [hereinafter *Experiential Education*]. Moliterno explains:

> The pervasive method as presently conceived is organized around the wrong theme; rather than being divided up among substantive law courses, the professional responsibility law field should be organized around diversity of practice settings. In other words, instead of asking torts and corporations professors to teach the parts of professional responsibility law that come from tort law or corporate law, for example, we would do better to focus on the nuances in professional responsibility law that are created by differences in practice setting.

Id.

[68] The coordinator of such a program would probably be very frustrated most of the time by trying to urge fellow law faculty to follow some uniform plan.

[69] Telephone Interview with Robert Lawry, Professor of Law, Case Western Reserve University School of Law, (June 1997) [hereinafter Lawry Interview].

[70] If a law school decides to adopt some kind of pervasive methodology, the Case Western model is probably the most realistic. It does not require approval by the faculty since it is done entirely by agreement. Of course, it also requires the dedication and patience of someone like Professor Lawry to encourage law faculty to take the plunge.

D. Teaching Professional Responsibility Through Oral Histories of Practicing Attorneys

The University of North Carolina School of Law, with funds received from a Keck grant, has taken a somewhat unique approach.[71] North Carolina promotes interaction between its students and members of the Bar in order to demonstrate the connection between ethics and morality to the practice of law.[72] North Carolina students are required to visit the homes and offices of lawyers and judges to interview them about their lives.[73] The students make a record of the meetings and then present the stories and their reactions to the interviews to the class.[74] Students are also required to keep a journal and write a term paper about their experience.[75] An important line of inquiry is for the students to ask the interviewees about the values that are important to them as lawyers and how their personal moral codes impact their roles as professionals. Listening to the stories of practicing attorneys encourages students to explore their own views about the roles that ethics and morality should play in the profession. The life stories also trigger broader discussion. Finally, narratives provide an experiential context that students would not otherwise have.

Needless to say, however, there are some problems with the rather loose structure of the oral history approach. There is no way to predict the direction that a discussion will take when a student goes to his or her interview, and then presents his or her interviewee's story, and there is no assurance that ethical issues will be the focus of a student's interview or class presentation. The professor must be ready to cover whatever issues may crop up and to move the discussion in directions that raise issues of professionalism. Presumably, every lawyer's saga will contain material from which a moral dialogue can be constructed by the professor.[76] For the most part, according to one North Carolina professor, the students do reflect on their own moral limits, even though for some it may give them

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[71] *North Carolina Ethics Project*, *supra* note 32, at 173 (explaining the University of North Carolina's method of expanding a student's learning environment in the area of professional ethics by establishing connections between the students and the lawyers within the community).

[72] *Id.* at 174.

[73] *Id.*

[74] *Id.*

[75] *Id.* at 181.

[76] It may be, of course, that many lawyers have not faced a moral dilemma. For example, I asked a good friend, who has been practicing law in a very large law firm since 1970, to tell me about the times he faced a moral dilemma about doing something for a client that he would not have done for himself. He could not think of a single instance in which he felt uncomfortable with the actions he took on behalf of a client.

more doubts about the ethical nature of the profession than they had when they began the program.[77]

E. Teaching Professional Responsibility Through Simulations

Several law schools have created professional responsibility curricula that attempt to integrate ethical issues by having students participate in simulated exercises that are designed to raise ethical and moral concerns. The exercises may incorporate doctrine from a parallel substantive course but their primary thrust is to give students the experience of trying to be a virtuous lawyer. These courses avoid some of the pitfalls of the pervasive method by using small groups in the simulations. Such courses are taught by professors and practicing lawyers who wish to teach professional responsibility, and by professors who are not required to teach the courses in addition to the existing substantive courses.

1. Seattle University School of Law

The Seattle University School of Law has developed what it calls a "Parallel, Integrative Curriculum" for addressing lawyering issues.[78] Seattle offers a number of one-credit simulation lawyering courses that students can graft onto a more traditional upper-level course. For example, a student enrolled in the Evidence course may choose to include the one-credit Evidence/Lawyering course as part of the Evidence package.[79] The parallel lawyering course is taught by a clinic professor who takes total responsibility for the class. The professor who teaches the parallel substantive course has no responsibility for the lawyering component, and does not even attend the lawyering classes. Grades for the lawyering component are awarded separately. If the professor of the substantive course wishes to be active in the lawyering component, so much the better.[80]

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[77] *North Carolina Ethics Project*, *supra* note 32, at 183.

[78] *See* John B. Mitchell et al., *And Then Suddenly Seattle University Was On Its Way to a Parallel, Integrative Curriculum*, 2 CLINICAL L. REV. 1, 2 (1995).

[79] *Id.* at 3. All students in the Evidence course do not have to take the add-on course, but in order to take the lawyering add-on course the student must be enrolled in Evidence. *Id.*

[80] *Id.* Like the Case Western program, the Seattle program was not mandatory and did not require approval of the faculty. *See id.* at 4. The Dean had the power to approve a course as an experiment and then the movers of the concept used old-fashioned salesmanship to persuade other non-clinical faculty to give it a try. *Id.* at 6-7.

The lawyering class is divided into law firms and meets once a week for seven weeks in two-hour blocks. The first lawyering class occurs five weeks into the semester. There are two main components: first, class discussion focuses on doctrine and plans for performance exercises; and second, performance exercises allow students to role-play. The topics of the performances are related to the law of the parallel substantive course. For example, the Lawyering/Evidence simulation will be based on some evidentiary issue. Students are placed in the roles of attorneys representing clients and must perform some lawyering tasks such as drafting, interviewing, negotiation, and counseling.[81] For example, students would lay the foundation for expert testimony and then conduct a direct examination of the expert.[82] Other students would then argue for the exclusion of the testimony and conduct a cross-examination of the expert.[83]

The purpose of the Seattle program is to bridge the gap between theory and practice by exposing students to a range of practice contexts while improving their judgment and interpersonal skills. There is no reason, however, why the Seattle format could not be used to focus on moral reasoning skills. The simulations could place students in those lawyering situations where they are faced with ethical and moral questions that practicing attorneys regularly encounter. For example, the expert testimony simulation mentioned above could be modified to raise an ethical issue about the propriety of offering experts who are proponents of "junk science."

2. Northwestern University School of Law

With the help of another Keck grant, Northwestern University School of Law created a program that was similar to Seattle's but was designed to teach basic ethics through the use of simulations.[84] Northwestern had previously integrated evidence and trial advocacy into one eight credit course, so it was not difficult to integrate topics in ethics into the evidence/trial advocacy package.[85] This integration of ethics increased the

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[81] *Id.*

[82] *Id.* at 3.

[83] *See id.*

[84] *See* Robert P. Burns, *Teaching the Basic Ethics Class Through Simulation: The Northwestern Program In Advocacy and Professionalism*, LAW & CONTEMP. PROBS., Summer/Fall 1995, at 37.

[85] *Id.* at 42-43.

new course to ten credit hours.[86] Approximately forty percent of the student body at Northwestern opted for the new course.[87]

The ethical topics at Northwestern are sequenced to provide students with insights into the ethical dimensions of evidentiary and advocacy issues at the same time they are covering those issues in the remainder of the course.[88] "For example, issues of client perjury are considered in Ethics while direct examination is considered in Trial Advocacy; confidentiality is considered in Ethics while the attorney-client privilege is considered in Evidence."[89]

Part of the ethical component includes discussions of the relationship between morality and legal ethics, but simulations are the heart of the program.[90] The simulations involve a role-playing performance by two or more students, which may be followed by a disciplinary hearing before a hypothetical bar association ethics committee, in which one student plays the prosecutor and another defense counsel.[91] The remaining students constitute the members of the disciplinary committee.[92] The committee questions the advocates, deliberates, makes a decision, and, if appropriate, recommends a sanction.[93] After the judgment, the class holds a general discussion dealing with the broader implications of the simulation.[94]

The faculty at Northwestern believes that the teaching of ethics through the use of simulations is the best way to cover the subject.[95] Simulations provide concrete situations in which ethical issues arise.[96] They provide drama and offer the students the opportunity to see how their *own* ethical norms can fit into the practice of law.[97] The students feel the stress of trying to do the "right thing" while still trying to carry out their professional duties as a lawyer.[98]

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[86] *Id.* at 43.

[87] *Id.*

[88] *Id.*

[89] *Id.*

[90] *Id.* at 45.

[91] *Id.* at 46.

[92] *Id.*

[93] *Id.*

[94] *Id.*

[95] *Id.* at 47, 49.

[96] *Id.* at 37.

[97] *See id.* at 39.

[98] *Id.* Cost is still a big factor with the Northwestern program. The program requires three faculty members and eight adjunct professors to teach eighty students. *Id.* at 40. Of course, the combined course gives students ten hours of credit. *Id.* at 43.

3. College of William and Mary School of Law

James Moliterno, at the College of William and Mary School of Law, runs one of the most comprehensive simulation programs in the country.[99] Students engage in all kinds of lawyering activities, such as researching, writing, interviewing, negotiating, and counseling.[100] In addition to introducing students to these clinical skills, however, Professor Moliterno builds ethical and moral issues into the simulations.[101] As a result, while attempting to perform other lawyering tasks, students stumble on vexing professional responsibility issues.[102] The issues cannot be ignored, and the students quickly realize that resolving professional responsibility issues is as critical for lawyers as knowing how to research the law.

The program at William and Mary requires four semesters and represents nine credit hours.[103] Every student there must take the four-course sequence during the first and second years of law school.[104] The entire program is organized around a simulated student law office, which must deliver effective, competent, and ethical service to clients.[105] Third-year students and other members of the community assume roles as clients.[106] The problem materials used in the course create simulations that are designed to continue throughout the four semesters.[107] Students interact with the same clients, opposing counsel, and court personnel during the entire program.[108] It is this continuity which is unique to Moliterno's program. Students are "forced" to repair poor relationships, and required to report unethical behavior of fellow members of the "Bar" (other students in these simulations) under appropriate circumstances.[109] Thus, the students must face the consequences of their lawyering conduct.[110]

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[99] *See Experiential Education*, *supra* note 67, at 71.

[100] *See id.* at 84.

[101] *See id.*

[102] *See id.* at 84-85.

[103] Telephone Interview with James E. Moliterno, Associate Professor of Law and Director of the Legal Skills Program at the College of William and Mary School of Law, (June 1997) [hereinafter Moliterno Interview].

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] *Id.*

[108] *Id.*

[109] Moliterno Interview, *supra* note 103.

[110] *Ethics Teaching*, *supra* note 35, at 110.

In a telephone interview, Professor Moliterno described how the program attempts to create a moral atmosphere.[111] He wants the students' simulated world to reflect as much as possible the same demands and ethical pressures that practicing attorneys experience.[112] Therefore, he endeavors to make the activities of the program highly visible to the entire student body.[113] Since every first and second year student is enrolled in the program, it is like practicing law in a small legal community.[114] Virtuous student-lawyers will have their reputations enhanced in the community while the less virtuous "corner-cutters" will experience a weakening reputation.[115] Peer and supervisor pressure provides an effective moral force for ethical behavior.[116] Furthermore, faculty supervisors are not reluctant to speak with students about apparent lapses of professional behavior, intentional or accidental.[117] There is even a hint that future recommendations by faculty supervisors in the program may be influenced by what they observe of the students' work and ethical habits while they are acting as lawyers.[118]

Professor Moliterno indicated that his program does require a substantial amount of faculty resources,[119] but that it is not as costly to run as first impressions might suggest. The course series replaced a number of other courses that had been offered at William and Mary and were no longer necessary; the program subsumed Legal Writing and Research, Interviewing and Negotiation, Appellate Practice, and Professional Responsibility. The key ingredient to the success of the William and Mary program, however, is clearly Professor Moliterno himself. His enthusiasm and energy is infectious. That, of course, represents both a strength and a weakness of the program. A dynamo like Professor Moliterno can create and direct such an extensive program, but law school programs that require a faculty dynamo do not often have long life spans.

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[111] Moliterno Interview, *supra* note 103.

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.* The program utilizes three to four permanent faculty and twelve to thirteen adjunct professors. *Id.*

IV. HOW MEDICAL SCHOOLS AND THEOLOGICAL SEMINARIES USE SIMULATIONS TO TRAIN THEIR STUDENTS

A. Medical Schools

Medical school faculties realized long ago that there was much more to being a physician than knowing human anatomy and being able to take a pulse. As a result, medical students spend most of their third and fourth years "doing rounds" in hospitals. During the course of these last two years, a medical student rotates through most departments and is mentored by dozens of specialists. This clinical experience with real patients helps students develop their diagnostic skills and a "bedside manner." Recently, however, many medical schools have begun to offer analogous clinical learning experiences to first and second year students. They do it by using simulations.[120] The pedagogy is usually referred to as "Objective Structured Clinical Examinations" ("OSCE").[121]

The essential ingredient of an OSCE program is the use of trained, healthy people to act as real patients with real symptoms.[122] The patient role goes beyond medical complaints. The actors are provided with personal histories and personality types, including fears, desires, and quirks.[123] Each medical student is asked to perform the same task with the same patient.[124] For example, a student may conduct an interview with a patient having chest pains; explain to a wife that her husband has just had a heart attack; or tell parents that their child has inoperable cancer.[125] The advantage of the OSCE simulation is that the circumstances are tightly controlled. Every student has almost identical experiences, except for the manner in which each student handles the simulation.[126] Therefore, when

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[120] M. Brownell Anderson et al., *Growing Use of Standardized Patients in Teaching and Evaluation in Medical Education*, TEACHING AND LEARNING IN MED., 6(1):15-22 (1994).

[121] ASME, MED. EDUC. BOOKLET NO. 23: ESSENTIALS OF PROBLEM-BASED LEARNING 547 (M.B. Mathews ed., 1987) [hereinafter ASME MED. EDUC. BOOKLET].

[122] *Id.*

[123] *See* R.M. Harden & F.A. Gleeson, *Assessment of Clinical Competence Using an Objective Structured Clinical Examination (OSCE)*, 1979 MED. EDUC. 13, 41-54.

[124] *Id.*

[125] *Id.*

[126] *Id.* A big advantage for the use of simulations is the professor's opportunity to incorporate any kind of medical, moral, or religious issue. *Id.* For example, the simulated patient could have very strong religious views and the students could explore how those views might or might not relate to treatment. *See* Katherine S. Mangan, *Blurring the Boundaries Between Religion and Science*, CHRON. HIGHER EDUC., Mar. 7, 1997, at A14.

the simulation is discussed in a larger class setting, all of the students are intimately familiar with the problem because they all went through the same experience. This uniformity is not possible in the traditional clinic setting, where the students must take the patients as they are found and cannot be "cut loose" to deal with the situation on their own.[127] The supervising doctor always has the last word, and the students know that the supervising doctor will lead them to the "correct" path.[128] In OSCE, however, the students are allowed to make their own judgments and brave the consequences of their choices.[129] "The students have to learn to become comfortable with the concept of 'probability' rather than the concept of 'certainty' and to realize that decisions often have to be made on inadequate grounds. They have to learn to tolerate doubt."[130]

The University of South Carolina College of Medicine has gone further than grafting simulations onto its standard curriculum.[131] It has created a "parallel curriculum" for a small number of its students that uses "problem-based learning."[132] The curriculum is designed to teach basic science concepts, but does so in the context of investigating and managing clinical problems.[133] Learning groups consist of six students and two faculty members.[134] An actor playing the role of a patient with a specific complaint presents each member of the group with a unique problem.[135] Students then share information with other members of the group, raise questions, and analyze the problem until they reach the limits of their knowledge.[136] At that point, students must develop a plan for additional research and carry it out.[137] Three times a week, the small groups meet to share findings about the case.[138] During the first year, the school offers short courses including, but not limited to, anatomy and biochemistry.[139] These courses parallel the patient cases investigated by the students in the

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[127] *Id.*

[128] *Id.*

[129] *Id.*

[130] *See* ASME MED. EDUC. BOOKLET, *supra* note 121, at 547.

[131] *See* MEDICAL UNIVERSITY OF SOUTH CAROLINA, PARALLEL CURRICULUM, COLLEGE OF MEDICINE (1994) [hereinafter PARALLEL CURRICULUM]; *see also* H.G. Schmidt, *Problem-based Learning: Rationale and Description*, 17 MED. EDUC. 1, 11-16 (1983).

[132] PARALLEL CURRICULUM, *supra* note 131.

[133] *Id.*

[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] *Id.*

[139] *Id.*

small groups.[140] For example, in order to deal with the patient's problem, the medical student may have to learn more about a particular aspect of immunology.[141]

Problem-based learning forces medical students to learn "doctoring" skills very early in their careers so that these critical skills are assimilated while more traditional doctrinal information is being learned. Students cultivate a "habit" of interpersonal skills. This pedagogical method permits supervising doctors to assess professional skills and provide constructive feedback, because each student is faced with exactly the same symptoms and the same patient.[142] Evaluation can be meaningful, with students understanding that interpersonal skills are as important to being a doctor as test-taking skills.[143] Evaluators can tell a student that he or she must improve his or her interpersonal skills if he or she wants to advance to the next level, or they can provide positive reinforcement to a student who has an innate knack for relating to patients and colleagues.[144]

More and more medical schools are implementing problem-based learning because students acquire a wide range of professional skills, especially the skill of making informed, reasoned decisions.[145] Other advantages offered by the OSCE approach include learning methods of scientific decision-making, attempting clinical reasoning, practicing holistic medicine, self-directed learning, collaboration in teams, and learning to listen.[146] Students learn all of these skills in a context analogous to what they will encounter in practice.[147]

Certain aspects of OSCE-type programs could be incorporated into the law school curriculum. Standard, well-prepared simulations would assist law students in developing their interpersonal lawyering skills and in sensitizing them to the kinds of ethical and moral judgments an attorney must make on a regular basis in the practice of law.[148]

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[140] *Id.*

[141] *Id.*; *see* Schmidt, *supra* note 131, at 11-16.

[142] It is much more difficult to evaluate such things as "bedside manner" when the dynamics of the patient-doctor relationship are so dependent on the personality of the patient. The first medical student may get an articulate and cooperative patient while the second one gets stuck with a curmudgeon. When each medical student gets the same patient, playing the same role, it is easier to compare and contrast performances. Furthermore, the patient is able to provide valuable feedback to the students, again comparing and contrasting the bedside manners to which they were subjected.

[143] ASME MED. EDUC. BOOKLET, *supra* note 121, at 544.

[144] *Id.*

[145] *Id.*

[146] *Id.*

[147] *See id.*

[148] In the ideal world, law students would go through the kind of clinical training that all medical students must complete. Law schools, however, do not have the financial resources available to

B. *Theological Seminaries*

Theological seminaries face many of the same issues that concern medical schools and law schools.[149] Seminaries recognize that it takes much more than knowledge of scripture to be a good minister.[150] Hence, they search for ways to improve their students' pastoral skills. Furthermore, seminaries believe that their graduates must be capable of making the connection between their theological beliefs and their activities as ministers.[151] In fact, seminaries hope that the motivating factor for students entering the pastoral field is religious conviction.[152] Therefore, unlike law school faculty, seminary faculty do not resist incorporating spiritual and religious values into the curriculum.[153] Nevertheless, seminaries are still faced with the problem of how to hone pastoral skills and integrate them with religious beliefs.[154]

Many seminaries try to accomplish this task through externship programs. The externship program at the United Theological Seminary in Dayton, Ohio is called the "Core Program,"[155] and is similar to those at other theological schools.[156] All students who are studying to be ministers and who will eventually lead congregations are required to be part of the Core Program.[157] Core students are assigned to churches in the Dayton area, and spend a large amount of time serving in a quasi-ministerial capacity with those churches.[158] Through the Core Program, students encounter a wide range of pastoral issues like fund raising, personality conflicts, boring sermons, and off-key choirs.[159] Thus, United exposes its

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medical schools, and can only offer a limited clinical experience to a handful of students. By adopting a form of OSCE, law schools could offer a more economical version of the medical school program.

[149] Interview with Professor Thomas Boomershine of the United Theological Society, Dayton, Ohio (May 29, 1997) [hereinafter Boomershine Interview].

[150] *Id.*

[151] *Id.*

[152] *Id.* This concern is more important than I had originally thought. Professor Boomershine commented that they have many students who want to be ministers for the wrong, even bizarre, reasons. *Id.* He believed part of the seminary's responsibilities was to identify those students and either guide them to a better path or, if necessary, not recommend them for pastoral work. *Id.*

[153] *Id.*

[154] *Id.*

[155] *Id.*

[156] Telephone Interview with Dr. Fred Streets of the Yale Divinity School (July 1997). The Yale Divinity School has a program that is similar to those mentioned above. *Id.*

[157] *See* Boomershine Interview, *supra* note 149.

[158] *Id.*

[159] *Id.*

students to real problem-solving exercises and there is no need for the seminary to use simulations as a substitute.[160]

There is a downside to relying on extern placements instead of simulations, however. The professors in the program cannot insure that a group of students in different placements will encounter similar ministering problems, or that each student will experience those most critical dilemmas which every minister will have to face sooner or later.[161] The Core Program, however, provides some uniformity of experience by including a weekly seminar for its externs.[162] At the seminar, students are encouraged to bring to the group some of the problems they experienced while doing their pastoral work.[163] The group then discusses practical ways in which the problems could be handled.[164] Most importantly, from the seminary's perspective, the discussion also provides an opportunity to connect a student's religious and ethical beliefs to possible solutions. The professor may ask, for example, how a particular biblical passage relates to the problem that a student is experiencing. Does the Scripture provide guidance? When should God's admonitions, if ever, be ignored in the quest to help others? Can beliefs be reconciled with the most practical efficient solutions?

Doctor Boomershine of the United Theological Seminary indicated that the seminar portion of the Core Program is the most difficult to conduct.[165] Students must trust each other before they will expose their doubts and fears to the whole group.[166] Furthermore, students in the seminar often challenge fundamental beliefs or criticize proposed solutions.[167] Finally, the professor is obliged to periodically assess students' aptitudes for the ministry and to counsel students whose "parishioner-side" manners are deficient.[168] Doctor Boomershine reported

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[160] *Id.* The placement of seminary students in churches is similar to extern programs offered by law schools. Law school accrediting agencies, however, impose substantial restrictions on such extern programs that effectively limit the number of law students who can participate in extern programs. *Id.* Furthermore, law faculty tends to be skeptical of the educational value of extern programs because the student's education is in the hands of "practitioners." *Id.*

[161] *Id.*

[162] *Id.*

[163] *Id.*

[164] *Id.*

[165] *Id.*

[166] *Id.*

[167] *Id.*

[168] *Id.* In the most extreme case, a professor may recommend that a particular student not be approved for pastoral work. *Id.* The student can still obtain a theological degree, but will not likely obtain a pastoral position. *Id.*

that many professors are not skilled at this kind of critique and are reluctant to evaluate a student's interpersonal skills.[169]

Programs like the Core Program demonstrate a methodology for introducing religious values into students' real-world experiences. It is doubtful, however, that a similar approach could be utilized in law schools. First, it would be expensive to require a high faculty-to-student ratio in such programs. More importantly, law schools would not want to be perceived as pushing a religious agenda. Indeed, they would not wish to open a Pandora's box containing law students' strongly held and often conflicting spiritual beliefs.

V. PROPOSED PROGRAM FOR LAW SCHOOLS WITH MODEST MEANS

The ideal solution for law schools would be to adopt a curriculum much like the program developed by James Moliterno at the College of William and Mary School of Law. His program emphasizes the development of lawyering skills and provides an excellent opportunity for students to confront real-life ethical and moral issues.[170] Professor Moliterno also thinks that law schools with a religious affiliation are in a unique position to enhance his program in ways unavailable to more secularized schools.[171] He points out that access to Departments of Theology and Philosophy could provide a law program that emphasizes ethics and morality with more in-depth insights into the subject.[172]

Unfortunately, it is unlikely that many law schools would be eager to make such a major change in their curricula. Many faculty members would be skeptical of any curriculum change that might be interpreted as making the law school more sectarian. Besides the usual inertia in heavily-tenured faculties, there are legitimate concerns about the cost of a William and Mary-type program. Accordingly, any proposal for a curriculum change must take into account the realities at law schools with restricted budgets and reluctant faculty. Therefore, set out below, is a list of suggested conditions for a professional responsibility program at a typical law school:

1. The program should not add more expense to the existing program.

2. Changes in curriculum should not require approval by the faculty.

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[169] *Id.*

[170] Moliterno Interview, *supra* note 103.

[171] *Id.*

[172] *Id.*

3. Individual faculty members who choose to modify courses they presently teach by including a greater emphasis on ethical and moral values should bring about desired curricular changes.[173]

4. The faculty as a whole should possess an attitude of tolerance. Many faculty members may not want to alter their own courses, but they should not be too quick to condemn other faculty who might wish to incorporate more ethical, moral, and even religious values into their courses.

5. Course materials which raise ethical and moral issues should be designed so that faculty who want to incorporate more professional responsibility issues into their courses can do so with a minimum of effort.[174]

6. Individual faculty wishing to participate in the program should have a great deal of flexibility as to how they add ethical and moral issues to their courses. They should be free to do as much or as little as they choose.

7. Faculty should encourage one another to use simulations as a means to present the professional responsibility material.

8. Discussion of professional responsibility issues should, preferably, occur in a small-group setting.

9. Linkage with Theology and Philosophy professors who could bring an added dimension to the discussion of morality and religion should be fostered.

A. Professional Responsibility and Legal Profession Programs

Fortunately, many law schools already have programs in place that could be easily revised to include a more meaningful professional responsibility component. At the University of Dayton School of Law, the program is called Legal Profession, though other schools may refer to similar programs as Legal Method or Legal Research and Writing.[175] The Legal Profession Program/Legal Research and Writing sequence at the

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[173] This would insure that a professor's academic freedom would not be infringed upon either by changes in the course dictated from the law school administration, or changes prevented by intervention of the administration or faculty.

[174] Professor Lawry at Case Western University School of Law emphasized the same point.

[175] The Seattle and the Northwestern Programs are also attractive, but they do not provide for the infusion of professional responsibility throughout the curriculum. Furthermore, the adoption of their programs would require approval by the full faculty.

University of Dayton is an eight-credit block that all students take during their first three semesters of law school. Its primary focus has been teaching legal reasoning, research, and writing, but it also exposes students to other kinds of lawyering skills such as interviewing, negotiation, and pretrial practice.[176] Consequently, the Legal Profession Program already includes simulated lawyering experiences that often give rise to professional responsibility issues.[177] It would not be too difficult to modify a negotiation, or interview exercise, for example, to include a professional responsibility problem that the students must resolve before engaging in the negotiation.[178] Alternatively, an initial client interview could introduce students to the moral dilemma of representing a client who wants the attorney's help in doing what the attorney might regard as an immoral act.

No restructuring of class size is necessary because Legal Profession classes are already small groups of approximately fifteen students. The logistics become more complicated, however, if the law school intends to have every student participate in a simulation, such as a negotiation or an interview. It is highly doubtful that a legal profession professor would have time to observe fifteen to twenty client interviews. This is where the medical school model of OSCE may be helpful. The law school could hire a theater student to play the same client for seven or eight interviews conducted by teams of two law students.[179] The interviews could take place at any time convenient to the parties. Not all of the interviews would require observation by a law professor, because one can be assured that the interviews would be very similar, with the client supplying identical information and having the same persona. Most importantly, however, the script for the actor would include a significant ethical or moral issue.

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[176] When I first developed the Legal Profession Program, I placed more emphasis on exposing students to a wide array of lawyering skills so that all students did interviews, took depositions, and engaged in negotiations. I even included some pure problem-solving exercises like logic problems. When others began taking more responsibility for the program, however, they placed more emphasis on the research and writing component. This was due, in part, to student resistance to doing anything that cannot be figured into the final grade and also, in part, to the necessity to ease the logistical problems of running so many simulations.

[177] Throughout the rest of this article I will use the term "Legal Profession Program" for the sake of simplicity, but the term is also meant to include similar programs that have different titles.

[178] One of the negotiators in a contract negotiation might be provided with information that a mathematical calculation relied on by the other party to determine cost of performance is incorrect and greatly underestimates the true value of his services. Should the negotiator take advantage of the bargain or point out the mistake? The dilemma could be sharpened by suggesting to the student that the evaluation of the exercise will be based on "the deal" the negotiators get for their clients.

[179] It is also possible that the theater students could play the roles for credit in one of their acting classes. Through this mutually beneficial exercise, every student in a law firm would be able to conduct an interview.

After all of the students conducted their individual interviews, the class as a whole would then meet to discuss the lawyering issues raised during the interview. The actor who played the client in the interviews would be an important participant in the "debriefing" process. The discussion would focus on the professional responsibility issues built into the interview. Students would have to propose their own solutions to the problems and justify them to their colleagues in the class. The actor would be part of the discussion and would provide a lay person's reaction to the morality of the proposed solutions. The professor of a Legal Profession class could supply a broader perspective, and the dialogue would be even richer if a philosophy or theology professor participated in the discussion.[180]

As the following list indicates, the use of the existing Legal Profession Program as a means to incorporate more professional skills, including ethical behavior, into the curriculum could satisfy all of the conditions listed previously:

1. There is little by way of additional costs except the creation of the simulations. No new faculty would have to be hired and no faculty would have to be transferred from other courses.

2. There is no need to obtain faculty approval for the changes because they would occur within the context of an existing course.

3. Professors presently teaching in the Legal Profession Program would make the changes in their own courses.

4. The rest of the faculty should not be too quick to condemn professors who alter their own courses in a manner which would have no impact on them or their courses.

5. Materials for the simulations would not have to be developed by the Legal Profession professors, and the format would require little professorial preparation, other than setting aside class time.

6. The Legal Profession professors would have the final say on how professional responsibility issues should be infused into their courses. They could conduct many simulations over the course of a semester or only one.

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[180] This combination of personnel in the discussion might help meet the goal of keeping the process simple for the law school professor. He or she would not have to develop the interview script, hire the actors, or be very active during the discussion. An in-depth knowledge of professional responsibility would not be necessary.

7. Simulations may already be a part of the Legal Profession Program, so it would be simple to adapt them to raise professional responsibility issues.

8. Discussion groups would be compact, because Legal Profession classes are usually small.

9. A simple phone call would probably be sufficient to induce a theology or philosophy professor to participate in the discussion.[181]

Although introducing professional responsibility issues into the Legal Profession curriculum could be done without too much stress on the part of the professors, how the students might receive the new emphasis is more problematical. Many law students, after all, lack interest in any topic that is not going to be covered on an exam. In fact, many consider any discussion of non-tested topics as a waste of time. Their opposition is even greater if a professor actually asks them to perform some extra work in connection with the discussion of a non-graded topic. If the above-outlined program were adopted, all students would have to participate in simulations, so one can anticipate a lot of backsliding. Furthermore, there is the risk that implementation of ethical simulations into the Legal Profession curriculum would send the wrong message regarding the importance of ethical issues. Students may perceive the exercises as unimportant "add-ons" to a non-substantive course and conclude that ethical behavior is also an afterthought when it comes to practicing law.

The "add-on" trap raises a number of additional problems. If a professor does try to attach a grade to the exercises, then the workload for the professor increases dramatically and condition number five on the list above is violated.[182] The professor would have to observe all the simulations to have a basis for awarding grades. Furthermore, it would be very difficult to assign grades for student performances except satisfactory or unsatisfactory. Those nebulous evaluations may negatively influence the motivation of many students, because they know that the threshold level for a satisfactory performance is usually low. A professor could test students on the material covered in the class, but that adds to the workload (again, violating condition number five) and would necessarily change the dynamics of the class. Discussion could not be wide-ranging and varied because the professor would have to make sure that the material covered on the test was introduced during the class.

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[181] Many would be eager to uplift the morality of lawyers!

[182] Increasing the ethical or moral component should not significantly increase a professor's workload.

Perhaps the best solution to the "add-on" dilemma is to ignore it, and hope for the best. Grading to increase student interest would cause more problems than it is worth. The hope is that by dodging the grading problem, and by introducing students to professional responsibility issues early in their law school education, ethical behavior will become a bigger blip on their moral radar screen.[183]

B. Professional Responsibility Beyond a Legal Profession Program

Although a first-year Legal Profession Program is a logical place to begin introducing students to ethical and moral questions connected to the practice of law, it should not be the only course in the curriculum that incorporates professional responsibility issues. Ideally, every law professor, in every course, should spend some time reinforcing the importance of being a virtuous lawyer. The recurring problem, however, is a practical one. How can these issues be efficiently introduced[184] into other law school courses in a way that does not trivialize the message?

In the absence of a curriculum change that would require a faculty decision, something to be avoided, the faculty must be persuaded to revise their courses to include a professional responsibility component. Since, as a rule, persuasion is a weak inducement, making ethical issues a significant focus in a law school curriculum would be a "hit or miss" proposition. Some students might be engulfed by an ethical tidal wave over the course of their law school careers, while other students in the same class would be exposed to less than a ripple of moral rectitude. Again, however, one might well conclude that it would be preferable to increase some of the students' exposure to professional responsibility issues even though other students might be left to wander in an ethical wasteland.

1. Other First-Year Courses

First-year courses outside the Legal Profession Program is an excellent place for moral reinforcement. In the first place, all students take the same courses in their first year, so the potential for complete coverage is present. Moreover, first-year students are more prone to be receptive to

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[183] Medical schools do not have the same dilemma for their simulation exercises. Medical students are observed when engaged in the simulations and, more importantly, their performances are critiqued and evaluated by the supervising doctor. In medical school a negative evaluation of a student's interpersonal skills means something.

[184] Read: "Not much work for the professor."

the message that ethical lawyering and successful lawyering are not incompatible concepts. Finally, the bond among professors who teach first-year courses is often a little stronger than that between professors who teach upper-level courses. Therefore, what one first-year professor does in his or her course is more likely to influence what a colleague might do in another first-year course.

Assuming an across-the-board cooperative attitude on the part of first-year professors, the small group format of the Legal Profession Program would work well in other substantive courses. Each first-year professor assumes responsibility for one small group. Every first-year student is placed in a small group. That group would attend Legal Profession together as well as a substantive course. For example, students attending group number one would have Professor Smith for the Legal Profession group and Professor Deal for the Contracts group. Students attending group number two would have Professor Brown for Legal Profession and Professor Land for the Property small group. Assuming participation by all first-year professors, every student becomes part of one ethical discussion group that is connected with a substantive course.

Professors of the substantive courses would meet with their groups periodically to discuss professional responsibility issues connected to their substantive course. Hence, Professor Deal would focus on ethical problems that arise out of contractual transactions and Professor Land would emphasize ethical issues connected with property transactions. The format, topics, and number of meeting times would be completely at the discretion of the faculty.[185] The use of simulations like those proposed for the Legal Profession Program would probably be the most effective pedagogy, but the most important benefit, regardless of pedagogy, would be the reinforcement of the idea that ethical behavior *is* a fundamental aspect of the practice of law.

2. Upper-Level Courses

The final piece of the program to emphasize professional responsibility issues throughout the law school curriculum should involve traditional upper-level courses. As indicated above, the traditional law school clinic provides a good environment for including professional responsibility issues, but it serves relatively few students. Therefore, in

[185] Lawry Interview, *supra* note 69. As Professor Lawry explains it, the goal is to make the program as user-friendly as possible, since the existence of the program depends entirely on professors volunteering to take on the extra responsibility. *Id.*

order to increase the exposure of upper-level students to ethical and moral issues, such issues must be included in upper-level, non-clinical courses.

The strategy for the upper-level courses would be similar to the one described above for first-year courses outside of the Legal Profession Program. Upper-level teachers would be urged, cajoled, and enticed into devoting course time to the discussion of professional responsibility issues related to their substantive legal area. For example, Professor Fix, who teaches Anti-Trust, would raise ethical and moral problems that are inherent in the practice of anti-trust law. Preferably, problems would be addressed in the context of simulations in which all students could participate, but this might not be possible in the larger classes such as Corporations and Taxation. Nevertheless, even in large classes, a professor could easily distribute a hypothetical fact pattern to all the students—a fact pattern that raises ethical issues related to corporate and tax practice. It would also not be difficult to produce a vignette on video tape or a live in-class performance portraying a scene giving rise to a professional responsibility question. The hypothetical or simulation would provide the context for a full discussion of the issues. Finally, it would be "icing on the ethical cake" to include a local practitioner in relevant specialty and a professor from the theology or philosophy department in the discussion.[186]

Unfortunately, the introduction of professional responsibility issues into other upper-level substantive courses may produce the "add-on" effect described above. Students might be tempted to "blow off" the discussion, considering it a waste of their time if they are not being tested on the material. However, once again, it is a question of whether the benefit of reinforcing the point for the receptive students offsets the negative reaction of other students. Will more students think positively about ethical lawyering, or will more students be turned off by what they perceive as irrelevant pious preaching? Most likely this question can never be satisfactorily answered.

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[186] I produced a simulated experience for students in my Conflicts of Law class. I hired two actors from the theater department to play a gay couple, one of whom was dying of AIDS. They were seeking legal advice on how to arrange an assisted suicide. An added dimension to the problem was that the healthy member of the couple was the sole beneficiary of the partner's substantial estate. Each student in the class conducted an initial interview with the couple. The actors were quite convincing with the sick partner being "made-up" to look very ill.

The interviews were taped, but I did not review the interviews or provide feedback about interviewing techniques because that was not the purpose of the exercise. I also knew that each student was provided with identical facts, so that the case could be discussed by the entire class without having to account for variations among interviews. One class period was set aside to discuss the ethical and moral issues raised by the simulation. A professor from the Religious Studies Department and the actors participated in the discussion.

3. Costs of the Modest Proposal

As mentioned above, the pedagogical costs and benefits of the program are difficult to estimate because they depend on measuring student attitudinal changes to issues of professional responsibility. Will more law graduates be virtuous lawyers as a result of a more pervasive exposure to ethical and moral issues during their three years at law school? No one knows. One thing is for sure, what law schools are doing now is not working.[187]

Beyond pedagogical costs, questions remain about the more tangible costs of the proposed program, namely, money. The program does require participating faculty to invest some additional time in the process, and "time is money." Much of the program will operate on the fuel of interest, perhaps even enthusiasm, but the long-term continuation of the program would require some permanent structure and assigned responsibilities. The program's design makes the way as smooth as possible for members of the faculty to add a professional ethics component to their courses. One would hope that they would see the importance and value of such an addition and take the plunge. The actual effort expended might be quite minimal. Material could be developed and designed specifically for their particular course. If simulations are used, "someone" will have to make the arrangements, including the hiring of actors, filming, and so forth. If students participate in simulations, "someone" other than the professor must organize and schedule them. "Someone" will need to work with the professor to plan the professional responsibility class. If the professor wants other members of the legal community or the university to participate, "someone" will have to issue the invitations and make the logistical arrangements. The professor would only have to prepare for the class (which he or she would do anyway) and schedule class time for the professional responsibility discussions.

As is apparent from the above paragraph, a mysterious "someone" will need to do most of the work and ease the way for the rest of the faculty who want to include more professional responsibility components into their classes. As any administrator knows, that "someone" is not going to volunteer to perform that administrative task for very long, no matter how enthusiastic he or she is about the program. That someone, who might be described as Director of the Center for Professional Ethics, will have to be compensated for the work, either by an increase in salary or a reduced teaching load. How can there be a Director without violating the first condition that any program not add costs to the existing program?

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[187] *See* Rhode, *supra* note 56 at 149.

The answer arises from the fact that most law schools presently offer Professional Responsibility as a required upper-level course.[188] After initiation of the program previously described, there would be no need for a two-credit Professional Responsibility course. The course could be reduced to one credit, and would focus primarily on teaching statutes in preparation for the Multi-state Professional Responsibility Examination.[189] Therefore, the professors who teach Professional Responsibility would have a reduced teaching load and could then direct their efforts to administering the Center for Professional Ethics. They could be co-Directors, or take turns being Director. In any event, they would have the time to persuade their colleagues to incorporate a professional responsibility component into their substantive courses, develop course materials and simulations which could be used in their colleagues' substantive courses, obtain actors for simulations, arrange for members of the local Bar and other university faculty to participate in the classes, and hold their colleagues' hands, if necessary, throughout the process.

The only wrinkle in the proposal to reduce the credit hours for the required Professional Responsibility class is that it violates condition number two that proposed changes should not require faculty approval. The change of the credit hour requirement for Professional Responsibility would require approval by the whole law school faculty, and this could occur only after the proposal survived its odyssey through the Academic Policies Committee. There is also the possibility, however, that the administration could approve the credit-hour reduction on an experimental basis if the Professional Responsibility professors agreed with the proposed changes.

VI. CONCLUSION

Almost everyone agrees that law schools must do more to help law students make the connection between professional responsibility and successful lawyering. This article summarizes the programs of some law schools that tackle the problem. These strategies have their costs and benefits, and some are not reasonable possibilities for law schools of modest means. The need to address ethical issues is certainly not unique to law schools. Medical schools and seminaries are faced with similar concerns and they have adopted programs that attempt to address the problem. Some aspects of their solutions, but clearly not all, could be

[188] This is usually a two-credit course.

[189] It might be appropriate that only one large section of this class be offered, which would result in additional savings.

adopted by law schools. This article proposes an approach designed specifically for law schools of modest means that would improve the ethical and moral sensibilities of law students. The next stage is implementation. An effective method of infusing ethics into the legal curriculum would *not* be one small step for law schools, but could be a big step forward for the legal profession.