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Recommended Citation

Sophie M. Sparrow, "Practicing Civility in the Legal Writing Course: Helping Law Students Learn Professionalism," 13 LEGAL WRITING J. LEGAL WRITING INST. 113 (2007).

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PRACTICING CIVILITY IN THE LEGAL WRITING COURSE: HELPING LAW STUDENTS LEARN PROFESSIONALISM*

*Sophie Sparrow***

INTRODUCTION

“The central message in both Best Practices and in the contemporaneous Carnegie report is that law schools should: . . . give much greater attention to instruction in professionalism.”¹

“Civility is behaviour in public which demonstrates respect for others and which entails curtailing one’s own immediate self-interest when appropriate.”²

“Even though we can stop talking, we cannot stop sending signals (our tone of voice, our fleeting expressions) about what we feel. Even when people try to suppress all signs of their emotions, feelings have a way of leaking anyway. In this sense, when it comes to emotions, we cannot not communicate.”³

We all hear the complaints about “today’s students.” Today’s law students use their laptops in class to instant message and

* This Article is based on a presentation given at the Association of American Law Schools (AALS) Annual Meeting, Section on Legal Writing, Reasoning, and Research, Washington, D.C., January 5, 2006.

** © 2007, Sophie Sparrow. All rights reserved. Winner, 2004 Inaugural National Award for Innovation and Excellence in Teaching Professionalism, co-sponsored by the American Bar Association Standing Committee on Professionalism and the Conference of Chief Justices; Professor of Law and the Director of Legal Skills, Franklin Pierce Law Center. The Author thanks her colleagues Gerry Hess, Chris Johnson, Kimberly Kirkland, and Margaret Sova McCabe, who provided helpful suggestions on earlier drafts. She also thanks research assistants Elizabeth Sorokin and Michelle Wolfenden for their thoughtful comments and helpful research. The Author is grateful to Franklin Pierce Law Center for its support and assistance in completing this work.

¹ Robert MacCrate, *Foreword*, in Roy Stuckey et al., *Best Practices for Legal Education: A Vision and a Road Map* viii (Clinical Leg. Educ. Assn. 2007).

² Nicole Billante & Peter Saunders, *Six Questions about Civility* 13 (Ctr. for Indep. Stud. Ltd., Occasional Paper No. 82, 2002).

³ Daniel Goleman, *Social Intelligence: The New Science of Human Relationships* 85 (Bantam Dell 2006). Goleman defines “social intelligence” as intelligence “not just about our relationships but also in them.” *Id.* at 11 (emphasis in original).

check eBay accounts. They chat with their neighbors; they eat food with noisy packaging; they are unprepared. Students are rude to professors, support staff, classmates, and teaching assistants. Whether it is Generation X, Y, or Millennials, these students are worse than previous classes.⁴ It is their lack of responsibility, work ethic, respect, and initiative that reduces their ability to learn in school and succeed in the workplace.

I have been skeptical that today's students are really all that different. After all, I participated in 1980s-style disengagement in law school; my friends and I solved many problems by exchanging notes in the back of the classroom. Twenty years ago, I knew which situations demanded professional behavior. Listening to lectures that regurgitated the reading did not; being in the workplace did. I assumed that today's law students made similar distinctions and choices. Reports from legal employers suggest that I am mistaken, at least regarding some students. Supervisors lament that many employees show up late, dress inappropriately, fail to follow-through on assignments, and treat co-workers with disdain. They miss obvious social cues conveyed through body language and facial expressions. They have no idea how their actions affect others. While these behaviors may be limited to a few students and graduates, for years the public, bar, and bench have voiced concerns with the lack of professionalism—including civility—in lawyers.⁵

So what? Why should we care how our students or graduates behave, as long as they can master legal skills and doctrine? Their uncivil behaviors may be annoying, but it is not our job to teach them how to act respectfully; parents and elementary or high school teachers should have given them basic training in how to

⁴ For excellent discussions about teaching the current generation, see generally e.g. Joanne Ingham & Robin A. Boyle, *Generation X in Law School: How These Law Students Are Different from Those Who Teach Them*, 56 J. Leg. Educ. 281 (2006); James B. Levy, *As a Last Resort, Ask the Students: What They Say Makes Someone an Effective Law Teacher*, 58 Me. L. Rev. 50 (2006); and Tracy McGaugh, *Generation X in Law School: The Dying of the Light or the Dawn of a New Day?* 9 J. Leg. Writing 119 (2003).

⁵ E.g. Tim A. Baker, *A Survey of Professionalism and Civility*, 38 Ind. L. Rev. 1305, 1306 (2005); Susan Daicoff, *Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism*, 46 Am. U. L. Rev. 1337, 1344 (1997) (noting the erosion of professionalism in lawyers over twenty-five years, Daicoff refers to the "decline in civility and courteous conduct between lawyers"). An online survey conducted by the Indiana Bar Association in 2004 showed that 43.1% of respondents had a negative impression of lawyers. Comments from respondents showed several themes, one of them being "lawyers do not return telephone calls or care about the client." Baker, *supra* n. 5, at 1312. Similar comments were "start caring about the client" and "[l]awyers should remember that they are working for the client, not the other way around." *Id.* at 1314.

participate in a democracy. In fact, parents and teachers already do this. Most students know that it is important to treat others with respect, work hard, disagree with grace, and listen attentively. The problem is that some students do not seem to know how or when to use these skills. They do not always realize how their actions are perceived by, or influence, others. When stressed,⁶ students struggle to practice civility. They may not realize how important being civil is for them, for their clients, and for the legal profession. If we seek to prepare our students to meaningfully contribute to the profession, we should teach them civility.⁷

Law schools and bar associations have been striving to increase law students' and lawyers' awareness of civility and professionalism for years; studies have been completed, symposiums held, task forces and commissions set up.⁸ This attention to professionalism is not unique to the legal profession; similar concerns

⁶ Many authors have noted the extremely stressful environment of law school and its effects on students. See e.g. Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. Leg. Educ. 75, 77 (2002); Lawrence S. Krieger, *Institutional Denial about the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. Leg. Educ. 112, 113 (2002); Paula Lustbader, *Walk the Talk: Creating Classroom Learning Communities to Promote a Pedagogy of Justice*, 4 Seattle J. for Soc. Just. 613, 623 (2006).

⁷ Stuckey et al., *supra* n. 1, at 11 (noting that although many best practices in teaching law students "seem obvious, most law schools do not employ [them] for educating lawyers"); Melissa H. Weresh, *Fostering a Respect for Our Students, Our Specialty and the Legal Profession: Introducing Ethics and Professionalism into the Legal Writing Curriculum*, 21 Touro L. Rev. 427, 435 (2005) ("[F]ew would dispute that instruction in the areas of ethics, professionalism, legal analysis, and written communication [is] essential [to], if not the bare minimum, [sic] of a legal education."); see *infra* nn. 54–104 and accompanying text. Civility and professionalism are not absolutes, but spectrums. Within components of civility, we may have times when we are very civil, such as almost always using a respectful tone when we speak to others, and different times when we are less civil, such as pushing past others to enter an elevator or grab a table at a crowded function.

⁸ As of the time of this writing, nearly all states have some form of a professionalism code at the state, county, municipal, or bar section level. ABA, Ctr. for Prof. Resp., *Professionalism Codes/Reports*, <http://www.abanet.org/cpr/professionalism/profcodes.html> (accessed Sept. 6, 2007). Many of these have also created commissions or task forces to study and report on the professionalism of lawyers in their area. *Id.* State and federal courts and professional associations have similarly adopted professionalism creeds. *Id.* Illustrative of the references to the need for civility are the words from Arizona's code: "I will advise my client that civility and courtesy are not to be equated with weakness; . . . I will be courteous and civil, both in oral and in written communication . . ." Bd. of Govs., St. B. of Ariz., *A Lawyer's Creed of Professionalism of the State Bar of Arizona*, <http://www.myazbar.org/Members/creed.cfm> (2005). An excellent compilation of the many resources on professionalism is located at <http://professalism.law.sc.edu/index.html>, and <http://law.gsu.edu/cunningham/Professionalism/Index.htm>. For more information about professionalism in law schools, see Standing Committee on Professionalism of the American Bar Association, *Report on a Survey of Law School Professionalism Programs*, available at http://www.abanet.org/cpr/reports/LawSchool_ProfSurvey.pdf.

have been voiced in the medical profession⁹ and in all levels of education.¹⁰ Educational institutions have been asked to address this perceived lack of professionalism.¹¹ Physicians have responded,¹² seeking to teach and assess professionalism.¹³ Meanwhile, neuroscientists and psychologists have been developing the study of emotional and social intelligence¹⁴ and have found that the way we interact with others has an enormous influence on our emotions,¹⁵ physical states, and mental health.¹⁶ Being civil, it turns out, is good for us.¹⁷ So how can we help our students develop as professionals who practice civility? How do we define “civility,” identify its attributes for our students, and then assess their learning? How do we respond to colleagues’ skepticism that professionalism and civility cannot be taught, cannot be learned and, above all, is not what law professors should teach? Finally, how do we teach and assess students’ civility in a way that treats them with dignity and respect?

⁹ “Ensuring that students of medicine at all levels not only acquire but consistently demonstrate the attributes of medical professionalism is arguably the most important task facing medical educators here at the beginning of the twenty-first century.” Jordan Cohen, *Foreword*, in *Measuring Medical Professionalism* vi (David Thomas Stern ed., Oxford U. Press 2006).

¹⁰ Claudia Wallis & Sonja Steptoe, *How to Bring Our Schools out of the 20th Century*, *Time* 50, 52–53 (Dec. 18, 2006).

¹¹ David Thomas Stern, *A Framework for Measuring Professionalism*, in *Measuring Medical Professionalism*, *supra* n. 9, at 3–4; see Parker J. Palmer, *Afterward*, in William M. McDonald et al., *Creating Campus Community: In Search of Ernest Boyer’s Legacy* 191 (Jossey-Bass 2004) (noting that Princeton University’s goals for undergraduate education included developing “reflective, caring, able citizens”).

¹² Ken Bain, *What the Best College Teachers Do* 89–92 (Harvard U. Press 2004) (describing a medical professor’s focus on teaching her students to develop their personal skills as well as learn neurology).

¹³ Stern, *supra* n. 11, at 4–12.

¹⁴ Goleman, *supra* n. 3, at 5.

¹⁵ Malcolm Gladwell, *Blink: The Power of Thinking without Thinking* 12–13 (Little, Brown & Co. 2005) (providing an example of the power and speed with which these emotions are processed; student ratings of a teacher’s effectiveness based on a two-second silent videotape were consistent with ratings at the end of a semester); *id.* at 11–12.

¹⁶ Goleman, *supra* n. 3, at 224.

¹⁷ In his *Epilogue*, Goleman notes,

Surely much of what makes life worth living comes down to our feelings of well-being—our happiness and sense of fulfillment. And good-quality relationships are one of the strongest sources of such feelings. Emotional contagion means that a goodly number of our moods come to us via the interactions we have with other people. In a sense, resonant relationships are like emotional vitamins, sustaining us through tough times and nourishing us daily.

Id. at 312.

This Article suggests some concrete ways to teach civility—one component of professionalism—to law students.¹⁸ Professionalism certainly includes much more than civility, incorporating the concepts of ethics, morals, public service, life-long learning, personal integrity, professional identity, and a commitment to self-development.¹⁹ This Article begins with a brief overview of civility in Part I. Part II provides a few of the many arguments for why we should teach law students to be civil. Part III explores some concrete ways in which we can teach civility within individual classes, using the dynamics of student engagement in the classroom as an opportunity to identify goals, practice, and receive feedback.²⁰

I. WHAT ARE “PROFESSIONALISM” AND “CIVILITY”?

The legal profession has struggled to arrive at a definition of professionalism, with many yielding to Justice Potter Stewart’s

¹⁸ Additional ideas about how and why to teach this are in Melissa H. Weresh, *Legal Writing: Ethical and Professional Considerations* (LexisNexis 2006); Donna C. Chin et al., *One Response to the Decline of Civility in the Legal Profession: Teaching Professionalism in Legal Research and Writing*, 51 Rutgers U. L. Rev. 889 (1999); Leah M. Christensen, *Going Back to Kindergarten: Considering the Application of Waldorf Education Principles to Legal Education*, 40 Suffolk U. L. Rev. 315 (2007); and Weresh, *supra* n. 7.

¹⁹ Patrick Emery Longan, *Longan Application*, <http://www.law.gsu.edu/ccunningham/Professionalism/Award05/Apps/Longan.htm>. Professor Patrick Longan was the winner of the 2005 National Award for Innovation and Excellence in Teaching Professionalism, co-sponsored by the American Bar Association Standing Committee on Professionalism and the Conference of Chief Justices. Professor Longan presented his ideas for teaching professionalism at the AALS Annual Meeting, Section on Legal Writing, Reasoning, and Research, in Washington, D.C., on January 5, 2006.

Susan Daicoff notes that

While it is a nebulous term, “professionalism” has been used to mean several different things. First, it is often used to set apart a profession from a trade or occupation by way of characteristics such as advanced educational and licensing requirements, regulation by government or by the profession itself, and a stated commitment to public service for which financial remuneration is incidental. Second, it can refer to a set of ideals with which the members of a profession conform on a voluntary basis, that are not enforceable or actionable if breached. . . . In a broader sense, professionalism refers to those goals, values, and attitudes which exemplify the nobler aspects of the practice of law and that enhance the public image of lawyers and the legal profession.

Daicoff, *supra* n. 5, at 1343.

²⁰ This is not to suggest that teaching civility in individual law school classes will solve the problem. Law students and lawyers are more likely to practice civility under stress when civility permeates law schools and civility is incorporated into lawyers’ continuing professional development. This would provide the kind of comprehensive, ongoing, and systemic teaching and reinforcement that would be more likely to lead to success. Such a discussion, however, is beyond the scope of this Article.

definition of obscenity: “I know it when I see it.”²¹ Some academics, however, have put forward definitions. For example, in creating his course *The Legal Profession* at Mercer University School of Law, Professor Patrick E. Longan²² arrived at the following five-part definition of professionalism:

(1) that a lawyer have the expert knowledge and skill necessary to provide competent assistance to his or her client; (2) that a lawyer act as a fiduciary of his or her client and always act in the client’s best interest regardless of the financial or other interest of the lawyer; (3) that a lawyer contribute some of his or her services for the good of others without expectation of payment; (4) that a lawyer acting as an advocate place his or her duties as an officer of the Court before the lawyer’s duties to a client or the lawyer’s own interests; (5) that a lawyer act with civility in his or her dealings with others.²³

Other definitions of professionalism include similar themes and concepts, such as promoting diversity, treating others with respect, providing service to the profession, practicing with knowledge and skills, engaging in life-long learning, and having good judgment.²⁴ In contrast to the legal profession,²⁵ the medical profession has reached a consensus: “Professionalism is demonstrated through a foundation of clinical competence, communication skills, and ethical and legal understanding, upon which is built the aspiration to and wise application of the principles of professionalism: excel-

²¹ *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring); see Daicoff, *supra* n. 5, at 1343.

²² Longan, *supra* n. 19.

²³ *Id.*

²⁴ For example, the New Jersey State Bar Association’s Preamble to its Principles of Professionalism states,

The conduct of lawyers and judges should be characterized at all times by professional integrity and personal courtesy in the fullest sense of those terms. Both are indispensable ingredients in the practice of law, and in the orderly administration of justice by our courts.

The following Principles, which focus on the goals of professionalism and civility, are aspirational in nature and are designed to assist and encourage judges and lawyers to meet their professional obligations.

N.J. St. B. Assoc., *NJCOP Principles and Pledges: Principles of Professionalism*, http://www.njsba.com/commission_on_prof/index.cfm?fuseaction=principles (accessed Sept. 6, 2007).

²⁵ Perhaps because words are so critical to the practice of law, lawyers have more difficulty agreeing on a shared definition, but this should not prevent us moving forward. As physicians have noted, if professionalism is to be validly assessed, it must be defined in a way that is “clear, complete and concise.” Louise Arnold & David Thomas Stern, *What Is Medical Professionalism?* in *Measuring Medical Professionalism*, *supra* n. 9, at 16.

lence, humanism, accountability, and altruism.”²⁶ This definition shares many of the concepts lawyers believe essential to professionalism. That which physicians call altruism, we call service. For physicians, humanism focuses on the client–patient and treating patients and others with respect and dignity.²⁷ This is what lawyers commonly call civility.

Civility is defined as “[p]oliteness; consideration; an act or expression of politeness.”²⁸ Being civil is about being respectful and considerate; “[c]ivility is behaviour in public which demonstrates respect for others and which entails curtailing one’s own immediate self-interest when appropriate.”²⁹ Civility is often associated with the notion of manners, but it is more than that.³⁰ It is one of the fundamental “tools for interacting with others.”³¹ Civility “begins with the assumption that humans matter, that we owe each other respect, and that treating each other well is a moral duty.”³² Civility means valuing the reactions, views, and cultures of others. It implies the ability to disagree without violence or insult. When we practice civility, we pay attention, acknowledge others, think the best, listen, are inclusive, and speak kindly.³³ Following these and other guidelines is “fundamental to the making of a good, successful, and serene life.”³⁴ If we want our students to have successful lives, we will teach them these skills.³⁵

²⁶ *Id.* at 19.

²⁷ *Id.* at 21.

²⁸ *Shorter Oxford English Dictionary* 416 (William R. Trumble & Angus Stevenson eds., 5th ed., Oxford U. Press 2002).

²⁹ Billante & Saunders, *supra* n. 2, at 13.

³⁰ *Id.* at 9; Stephen L. Carter, *Civility: Manners, Morals, and the Etiquette of Democracy* xii (Basic Bks. 1998).

³¹ Carter, *supra* n. 30, at xii.

³² *Id.* at 74. George Washington’s first rule of civility was “[e]very Action done in Company, ought to be with Some Sign of Respect, to those that are Present.” U. of Va. Aldeman Lib., *The Papers of George Washington, Washington’s School Exercises: Rules of Civility & Decent Behaviour in Company and Conversation*, <http://gwpapers.virginia.edu/documents/civility/transcript.html> (accessed Sept. 6, 2007).

³³ P.M. Forni, *Choosing Civility: The Twenty-Five Rules of Considerate Conduct* vii (St Martin’s Press 2002) (naming the first six of twenty-five rules). Other rules are Don’t Speak Ill; Accept and Give Praise; Respect Even a Subtle “No”; Respect Others’ Opinions; Mind Your Body; Be Agreeable; Keep It Down (and Rediscover Silence); Respect Other People’s Time; Respect Other People’s Space; Apologize Earnestly and Thoughtfully; Assert Yourself; Avoid Personal Questions; Care for Your Guests; Be a Considerate Guest; Think Twice Before Asking for Favors; Refrain from Idle Complaints; Give Constructive Criticism; Respect the Environment and Be Gentle to Animals; and Don’t Shift Responsibility and Blame. *Id.* at vii–viii.

³⁴ *Id.* at xi.

³⁵ *Id.* at 7. A professor of Italian Literature, Forni realized while teaching his students

One scholar describes the rules of civility as a “code of decency to be applied in everyday life.”³⁶ Some critics argue that “codes of decency” oppress, with those in power prescribing specific behaviors to those from a traditionally disempowered group.³⁷ One response is that civility is “pre-political”—a character trait that applies regardless of our view on life.³⁸ Civility itself does not stifle expression nor bolster the status quo.³⁹ Instead, it is about the manner in which we criticize, disagree, resist, challenge, or advocate. Being civil means that we do all these things. In fact, being civil may require that we take these actions to fight injustice and oppression but that we do so while respecting others.⁴⁰ Civility is not about repressing concerns or individualism, but encouraging those expressions in a constructive way.⁴¹

Civility is implicated in a vast number of interactions; overall, civility means treating others with respect—with communicating the gesture of respect being most important.⁴² Furthermore, civility requires that we communicate these gestures of respect not just to those we care for, but also to complete strangers.⁴³ It means that we engage in self-restraint when doing so would promote “harmonious relations with strangers.”⁴⁴ Specific behaviors and actions—in conveying respect and exhibiting self-restraint—depend on the situation we are in and whom we are with. Being civil includes listening as well as talking. It includes being humble and open to

about Dante’s *Divine Comedy* that “I wanted them to be kind human beings more than I wanted them to know about Dante.” *Id.*

³⁶ *Id.* at xi.

³⁷ See e.g. Randal Kennedy, *The Case against “Civility”*, Am. Prospect 84 (Nov.–Dec. 1998) (suggesting that demanding a standard of civility is simply another means of maintaining control, perpetuating the status quo).

³⁸ Carter, *supra* n. 30, at xi.

³⁹ *Id.* at 242 (noting, “Civility values diversity, disagreement, and the possibility of resistance . . .”).

⁴⁰ Carter also argues that “[c]ivility requires that we express ourselves in ways that demonstrate our respect for others.” *Id.* at 162. “Civility allows criticism of others, and sometimes even requires it, but the criticism should always be civil.” *Id.* at 217.

⁴¹ E. Grady Bogue, *An Agenda of Common Caring: The Call for Community in Higher Education*, in McDonald et al., *supra* n. 11, at 19 (noting that a learning community is one in which “a lively and often contentious argument over the nature of truth” exists).

⁴² Billante & Saunders, *supra* n. 2, at 10. Billante and Saunders note that during focus groups they conducted with a range of Australian citizens, small acts such as having a younger person offer up a seat on a bus to an older rider were “commonly seen as important precisely because it expresses and recognizes a norm of respect The importance, in other words, is in the symbolism of the gesture more than the outcome of the behaviour.” *Id.* at 10.

⁴³ *Id.* at 11; Carter, *supra* n. 30, at 78.

⁴⁴ Billante & Saunders, *supra* n. 2, at 11.

the possibility that “they are right and we are wrong.”⁴⁵ It means that we seek to empathize, to understand the thoughts, motives, and actions of others, rather than jump to conclusions, accuse, or attack based on quick, thoughtless reactions. When we listen, it means more than hearing and comprehending words. It means that we seek to read the behavioral landscape, the body language, tone, and actions that convey much greater meaning than words alone.⁴⁶ Being civil demands that we recognize that social norms are not uniform across cultures and settings. In this regard, we need to acknowledge that social norms change.⁴⁷

Acting with civility has significant emotional influence. Many of the same behaviors and skills attributed to those who act with civility are associated with effective leaders.⁴⁸ These include emotional self-awareness—the ability for leaders to be “candid and authentic, able to speak openly about their emotions.”⁴⁹ Emotionally intelligent and successful leaders also demonstrate the ability “to manage their disturbing emotions and impulses . . . stay[ing] calm and clear-headed under high stress or during a crisis.”⁵⁰ These effective leaders also show empathy.⁵¹ They “listen attentively and can grasp the other person’s perspective . . . get[ting] along well with people of diverse backgrounds or from other cultures.”⁵² These behaviors and skills of civility are the practices

⁴⁵ Carter, *supra* n. 30, at 139.

⁴⁶ E.g. Goleman, *supra* n. 3, at 85; Joshua D. Rosenberg, *Interpersonal Dynamics: Helping Lawyers Learn the Skills, and the Importance of Human Relationships in the Practice of Law* 58 U. Miami L. Rev. 1225, 1239–1240 (2004) (noting that “researchers have shown that merely adopting certain postures or facial expressions has immediate impact on emotions, regardless of the reason the postures are adopted and regardless of whether the positions are physically comfortable, uncomfortable, stressful or relaxing”).

⁴⁷ Billante & Saunders, *supra* n. 2, at 17 (noting that “once it was considered civil to let someone smoke in your home, now it is uncivil to smoke in a non-smoker’s home and in most public situations”).

⁴⁸ Daniel Goleman et al., *Primal Leadership: Realizing the Power of Emotional Intelligence* 253–256, app. B. (Harvard Bus. Sch. Press 2002). The leadership competencies outlined include the self-awareness competencies of emotional self awareness; accurate self-assessment and self-confidence; the self-management competencies of self-control, transparency, adaptability, achievement, initiative, and optimism; the social awareness competencies of empathy, organizational awareness, and service; and the relationship management competencies of inspiration, influence, developing others, change catalyst, conflict management, and teamwork and collaboration. *Id.*

⁴⁹ *Id.* at 253.

⁵⁰ *Id.* at 254.

⁵¹ Gladwell, *supra* n. 15, at 42–43; Goleman, *supra* n. 3, at 254 (both noting that doctors who displayed a dominant tone of voice in their conversations with patients or who otherwise were poor communicators were more likely to be sued than their counterparts who sounded concerned).

⁵² Goleman et al., *supra* n. 48, at 255.

that allow people to engage in satisfying and productive relationships. “To learn how to be happy we must learn how to live well with others, and civility is a key to that. Through civility we develop thoughtfulness, foster effective self-expression and communication, and widen the range of our benign responses.”⁵³ Practicing civility means that we are doing more than outwardly manifesting politeness. Being civil is using and developing our emotional intelligence.

II. WHY SHOULD LAW SCHOOLS TEACH LAW STUDENTS TO BE CIVIL?

In addition to teaching students how to think like a lawyer,⁵⁴ we should be teaching them civility because it will help them in practice,⁵⁵ will enhance their learning, and may even improve the profession.⁵⁶ On the larger scale, civility allows us to re-

⁵³ Forni, *supra* n. 33, at 6.

⁵⁴ Scholars have repeatedly noted the complexity involved in the short phrase “thinking like a lawyer” and how those three words are shorthand for a multitude of higher-order thinking skills. *E.g.* William M. Sullivan et al., *Educating Lawyers: Preparation for the Professor of Law* 71–72 (Jossey-Bass 2007); Nancy B. Rapoport, *Is “Thinking Like a Lawyer” Really What We Want to Teach?* 1 J. ALWD 91 (2002). Addressing the complexity of this notion and how to teach it is beyond the scope of this Article.

⁵⁵ Chin et al., *supra* n. 18, at 895 (responding to the outcry about civility’s decline in the profession, the authors note that they can help by “instilling in our students a sense of civility, fair-dealing, good judgment, and competence”); *see* Rosenberg, *supra* n. 46, at 1229 (noting that “success in law . . . correlates significantly more with relationship skills than it does with intelligence, writing ability, or any other known factor”); Weresh, *supra* n. 7, at 435 (“[F]ew would dispute that instruction in the areas of ethics, professionalism, legal analysis, and written communication [is] essential [to], if not the bare minimum, of a legal education.”).

⁵⁶ I am assuming that law schools have a duty to train students to enter the profession. *See* Stuckey et al., *supra* n. 1, at 16 (“There is general agreement today that one of the basic obligations of a law school is to prepare its students for the practice of law.”). As noted in that work, “it seems hypocritical for law schools to collect three years of tuition while failing to prepare most students for law practice . . .” *Id.* While I recognize that the role of scholarship is important, I also believe that law schools have a duty to provide high-quality teaching and to focus on student learning in exchange for student tuition and state subsidies. *See* John O. Mudd, *Academic Change in Law Schools*, 29 *Gonz. L. Rev.* 29, 60–61 (1993) (identifying as a barrier to academic change in law schools the “predominant” reward system in place that “strongly favors writing law review articles over creating innovative courses or developing new teaching materials”); Alice M. Thomas, *Laying the Foundation for Better Student Learning in the Twenty-First Century: Incorporating an Integrated Theory of Legal Education into Doctrinal Pedagogy*, 6 *Widener L. Symposium J.* 49, 52–53 (2000) (To enjoy promotion and job security, law teachers must devote much of their time to publication, an emphasis that detracts from their teaching.); *see also* Philip C. Kissam, *Lurching towards the Millennium: The Law School, the Research University, and the Professional Reforms of Legal Education*, 60 *Ohio St. L.J.* 1965, 1974–1975 (1999) (noting that a research orientation like that of the traditional university, with publication standards for professors

solve disputes peacefully, helping us fully participate in a democracy;⁵⁷

in a liberal democracy, personal freedom is fundamental. But so is the sense of owing duties to others that leads us to impose limits on our freedom, not because it is required by law but because it is required by morality—the morality of trying to build a civil community together.⁵⁸

For democracy to succeed, it “needs dialogue, and dialogue requires disagreement.”⁵⁹ But how much easier it is to disagree and resolve conflicts when all participants do so with respect and dignity.⁶⁰ Most of us would rather engage in conversation with those who speak politely, audibly, and calmly, who do not attack, accuse, or badger. We would rather read polite, instead of vicious e-mails. Interacting with others, we may have different comfort levels and cultural expectations, but we all perform better when we have positive emotional connections.⁶¹

The vast majority of law students already practice civility.⁶² But even students who practice civility may, when encountering the high-stress environment of law school,⁶³ engage in uncivil behaviors.⁶⁴ These students need reminders and practice. And there

tied to tenure, salary, and chair positions, has left less time for and less interest in teaching in law schools).

⁵⁷ Describing political civility, authors Nicole Billante and Peter Saunders refer to the work of scholars Cheshire Calhoun, John Rawls, Edward Shils, and Michael Meyer, noting the importance of being civil towards strangers in a civilized society. Billante & Saunders, *supra* n. 2, at 8–9, 11.

⁵⁸ Carter, *supra* n. 30, at 84.

⁵⁹ *Id.* at 109 (continuing to note that “sharp criticism . . . is not uncivil”).

⁶⁰ *See id.* at 132 (“[Civility] requires us not to mask our differences but to resolve them respectfully.”).

⁶¹ Goleman, *supra* n. 3, at 270 (“When the mind runs with such internal harmony, ease, efficiency, rapidity, and power are at a maximum. Heightened prefrontal activity enhances mental abilities like creative thinking, cognitive flexibility, and the processing of information. Even physicians, those paragons of rationality, think more clearly when they are in good moods. Radiologists . . . work with greater speed and accuracy after getting a small mood-boosting gift—and their diagnostic notes include more helpful suggestions for further treatment, as well as more offers to do further consultation.”).

⁶² *But see* Amy S. Hirschy & John M. Braxton, *Effects of Student Classroom Incivilities on Students*, 2004 *New Directions for Teaching & Learning* 67, 68 (Fall 2004) (noting that, at the undergraduate level, it is common for students to demonstrate incivilities in the classroom).

⁶³ *See* Krieger, *supra* n. 6, at 114 (citing studies documenting high stress, anxiety, and depression levels among law students).

⁶⁴ In his book *Social Intelligence*, Goleman reports on a study of students at Princeton Theological Seminary who unknowingly participated in an experiment on altruism. Goleman, *supra* n. 3, at 50. Even though some of the students were assigned a task related

are a few students who do not practice civility.⁶⁵ Conversations with colleagues from many different institutions yield frequent complaints about rude behavior, suggesting that these students gather more attention and require more energy than others.⁶⁶

The need and reasons to teach law students civility in preparation for law practice have been well documented.⁶⁷ In practice, lawyers may be required to be civil by procedural rules⁶⁸ and individual courts.⁶⁹ Judges also condemn uncivil behavior when they encounter it.⁷⁰ Just as we teach students the rules of civil proce-

to the parable of the Good Samaritan, students who perceived that they were short on time failed to stop by a man groaning in pain and clearly in need of assistance. *Id.* Goleman notes that “[o]f the many factors that are at play in altruism, a critical one seems to be simply taking the time to pay attention; our empathy is strongest to the degree we fully focus on someone and so loop emotionally.” *Id.* Goleman goes on to note that “empathy alone matters little if we fail to act. Those students who *did* stop to help were exhibiting another sign of social intelligence: concern.” *Id.* at 96.

⁶⁵ Commun. Skills Comm., Sec. Leg. Educ. & Admis. to the B., *Sourcebook on Legal Writing Programs* 155 (Eric B. Easton ed., 2d ed., ABA 2006) [hereinafter *Sourcebook*] (noting that directors of writing programs “should train new professors about a range of techniques for handling abusive students”).

⁶⁶ Illustrative of law faculty’s efforts to curtail uncivil student behavior was the AALS Annual Meeting, Section on Teaching Methods’ presentation, *Classroom Incivilities II: A Play in Four Acts* (Atlanta, Ga., Jan. 5, 2004) (program and notes on file with Author) (presenting a range of student incivilities and ways to address them). At every teaching conference I have attended, such as those sponsored by the AALS; the Gonzaga University School of Law Institute for Law School Teaching; the Legal Writing Institute; the Association of Legal Writing Directors; the Society of American Law Teachers; and individual law schools, I have heard professors complain about student incivilities. Interestingly, while I have heard multiple complaints about “students today” being unprepared, rude, inappropriately demanding, and offensive, colleagues rarely talk about their students who are prepared, engaged, sincerely interested in their learning, and committed to being professional. Consider if the roles were reversed and law students held regular conferences about law teaching—what would they say about their professors?

⁶⁷ See generally e.g. Chin et al., *supra* n. 18; Christensen, *supra* n. 18; Rosenberg, *supra* n. 46; Weresh, *supra* n. 7, at 433–435 (arguing that professionalism and ethics should be taught in legal writing courses, Weresh cites ABA Section of Legal Education and Admission to the Bar, *Legal Education and Professional Development—An Educational Continuum, Report on the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992) [hereinafter *MacCrate Report*] and ABA Section of Legal Education and Admission to the Bar, *Standards for Approval of Law Schools* (ABA 2005)).

⁶⁸ For example, Arizona’s Rules of Civil Procedure provide that “[t]rials shall be conducted in an orderly, courteous and dignified manner.” Ariz. R. Civ. P. 80(a).

⁶⁹ Federal District Court Judge Samuel Der-Yeghiayan requires that all attorneys before his court be civil or face sanctions, providing them with a written outline of expected behaviors when he first meets them. Samuel Der-Yeghiayan, U.S. Dist. Ct. J. of N. D. Ill., Commencement Address (Concord, N.H., May 21, 2005) (copy of transcript on file with the Author). Judge Der-Yeghiayan notes that he rarely has a problem with civility. If there is one, he warns attorneys that they are close to being sanctioned, which almost always causes attorneys to conform their conduct to his guidelines. Interview with Samuel Der-Yeghiayan, U.S. Dist. Ct. Judge, N.D. of Ill. (May 21, 2005) (notes on file with Author).

⁷⁰ Unfortunately, it is all too easy to find examples of uncivil attorney behavior. See The Nelson Mullins Riley & Scarborough Ctr. on Prof., U. S.C. Sch. L., *Recent Cases High-*

ture and ethics,⁷¹ we should teach them about these civility rules. But teaching students about the published rules is only part of our job as teachers.⁷² Our students also need to learn about the “hidden” or “unwritten” civility rules that significantly impact practice.⁷³ For example, the clerk of court who encounters a rude attorney is likely to be less inclined to schedule around an attorney’s conflicting plans. Similarly, opposing counsel may be less flexible when confronted with disrespectful behavior. Colleagues and supervisors may consider uncivil attorneys unsuitable for advancement.⁷⁴ People working for attorneys may be less effective,

light Judicial Concern with Civility among Litigants, Counsel (and Even Each Other), 1 PROFfile: The Chron. of Law. Prof. 3, 3–4 (Winter 2005) (noting judges’ criticisms of lawyers in *Attorney Grievance Commission of Maryland v. Link*, 844 A.2d 1197 (Md. 2004); *Commonwealth v. Poplawski*, 852 A.2d 323 (Pa. Super. 2004); *Lookshin v. Feldman*, 127 S.W.3d 100 (Tex. App. 1st Dist. 2003); *State v. Johnson*, 681 N.W.2d 901 (Wis. 2004); and judges’ criticisms of other judges in *People v. Ehlert*, 811 N.E.2d 620 (Ill. 2004)).

⁷¹ The American Bar Association currently states the following:

- (a) A law school shall require that each student receive substantial instruction in:
 - (1) the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;
 - (2) legal analysis and reasoning, legal research, problem solving, and oral communication;
 - (3) writing in a legal context, including at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;
 - (4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and
 - (5) the history, goals, structure, values, rules, and responsibilities of the legal profession and its members.

ABA Sec. Leg. Educ. & Admis. to the B., *Standards for Approval of Law Schools* Stand. 302(a), 19–20 (ABA 2007) (available at <http://www.abanet.org/legaled/standards/20072008StandardsWebContent/Chapter%203.pdf>).

⁷² See David Leach, Presentation, *The Formation of Physicians: Learning from Another Profession* (Jt. Working Group Conf. co-sponsored by the ABA Sec. Leg. Educ. & Admis. to the B., Assn. of Am. L. Sch., and Natl. Conf. of B. Examrs., Chi., Ill., Oct. 1, 2004) (copy on file with the Author). Addressing how to evaluate physicians, Leach pointed out that “[k]nowing the rules is not enough. [Medical] [r]esidents need to prepare for the unknown. How they think is as important as *what* they think . . . (and may be more important over time).” *Id.* at 5.

⁷³ Before the 1900s’ increasingly scientific approach to medicine, medicine was known as an “art and mystery.” Arnold & Stern, *supra* n. 25, at 17–18. “With science as a foundation of proven medical treatment, expertise became a fundamental responsibility of the good physician, above and beyond compassionate and committed care.” *Id.* at 18.

⁷⁴ Through her empirical work conducting in-depth interviews with large-firm litigators, Kimberly Kirkland notes how many decisions about promotion are based on perceptions. Kimberly Kirkland, *Ethics in Large Law Firms: The Principle of Pragmatism*, 35 U. Mem. L. Rev. 631, 694–695 (2005). Kirkland also notes that firms value “good citizenship” in promoting colleagues to equity partner status. *Id.* at 701. Moreover, Kirkland notes that large-firm lawyers place a premium on civility, equating it to ethical behavior. *Id.* at 720–

productive, efficient, or helpful when they are treated without civility.⁷⁵

A recent survey of legal professionals supports teaching civility. In a 2005 statewide survey of the bench and bar in Arizona, respondents were asked to rank the importance of twenty-two professional skills, twenty-six subjects of legal knowledge, and twenty categories of professional values in being a successful lawyer.⁷⁶ Interestingly, of the three areas—skills, knowledge, and values—values received the highest ratings, with skills second and knowledge last. The professional value “Act honestly and with integrity” was rated by 99% of the respondents as “Essential” or “Very Important.”⁷⁷ The fourth highest professional value was “Treat clients, lawyers, judges, staff with respect,” with 95% of all respondents rating this as “Essential” or “Very Important.”⁷⁸ Significantly, this professional value was rated as more important than any area of substantive knowledge⁷⁹ and only one percent below the highest-ranked professional skills of legal analysis, reasoning, and writing.⁸⁰

722. While ethics are distinct from civility, these lawyers may have been inadvertently acknowledging the power and value of social intelligence in relationship building and practice productivity. The importance of having good interpersonal skills was supported by recent comments from a senior associate at a prestigious Arizona firm. When asked what the firm sought in its new hires, she stated that the firm looked for people whom they could trust to use good judgment and interact well with others. Those who made it to the interview stage were assumed to have the mental capacity to perform well as attorneys. The key question for applicants was, “Would your supervisor trust you enough to leave you alone in the room with their best client?” The firm did not assume that applicants had these skills, regardless of their level of academic success. Phoenix Law School’s Women’s Law Association Program (Mar. 2006) (notes on file with Author).

⁷⁵ This is consistent with Goleman’s findings about social intelligence. *See supra* n. 61.

⁷⁶ Stephen A. Gerst & Gerald F. Hess, *Survey of the Arizona Bench and Bar: The Importance of Professional Knowledge, Skills and Values* (unpublished survey, Phoenix L. Sch. 2005) (copy on file with the Author).

⁷⁷ *Id.* The highest ratings for professional skills were “Legal analysis and reasoning” and “Written communication.” *Id.* These received equal ratings, with 96% of the respondents marking them “Essential” or “Very Important” to being successful in practice. *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* The highest rating for an area of legal knowledge was for civil procedure, which 87% of the respondents ranked as “Essential” or “Very Important” to successful law practice. *Id.*

⁸⁰ *Id.* This finding is also consistent with recent research that seeks to identify factors important to effective lawyering. Among the twenty-six factors associated with lawyering success as identified by Berkeley researchers Marjorie M. Shultz and Sheldon Zedeck were “building client relationships,” “ability to see the world through the eyes of others,” “listening,” and “developing relationships.” Linley Erin Hall, *What Makes for Good Lawyering: A Multi-Year Study Looks beyond the LSAT*, Boalt Hall Transcript 22, 24 (Summer 2005) (available at <http://www.law.berkeley.edu/beyondlsat/transcript.pdf>). Similarly, other countries have noted the importance of professional skills, including civility, social, ethnic, and

Neuroscience also supports the importance of teaching civility: people suffer when civility and respect is lacking.⁸¹ Our brains depend on our social interactions to maintain emotional health.⁸² Interactions with people in work, home, and recreational settings create “a kind of emotional soup, with everyone adding his or her own flavor to the mix.”⁸³ Through these interactions, we “catch” each others’ moods.⁸⁴ Being treated well and interacting with happy people tend to lift our spirits; being treated rudely contributes to our feeling unhappy and angry.⁸⁵ Regardless of their area of law or geographic setting, as part of their professional lives our graduates will interact with colleagues, adversaries, clients, members of the bar, staff, and countless others. If our graduates treat these individuals with respect, they will serve their clients and the profession well. These graduates are more likely to be emotionally healthy, and they are likely to inspire others to be more creative and productive. “When people feel good, they work at their best. Feeling good lubricates mental efficiency, making people better at understanding information and using decision rules in complex judgments, as well as more flexible in their thinking.”⁸⁶

Helping students develop civility also helps their learning in law school.⁸⁷ Across multiple disciplines, people learn best when they are in a learning environment that provides them with a sense of community⁸⁸ and when they are engaged in active learn-

cultural awareness, and ability to work in teams in identifying components of lawyer competence. Stuckey et al., *supra* n. 1, at 54.

⁸¹ Goleman et al., *supra* n. 48, at 17.

⁸² *Id.* at 6.

⁸³ *Id.* at 8.

⁸⁴ *Id.* at 7 (noting that “[s]cientists have captured this attunement of emotions in the laboratory by measuring the physiology—such as heart rate—of two people as they have a good conversation”). The authors note that this emotional “mirroring” occurs when emotions are strong, but not when people are in emotionally neutral situations. *Id.*

⁸⁵ *Id.* at 16 (noting the influence of mood on customer service, and how “rudeness is contagious, creating dissatisfied, even angry customers”).

⁸⁶ *Id.* at 14.

⁸⁷ Behaviors that have an especially negative effect on undergraduate teaching and learning have been identified by students and faculty as

students conversing so loudly that lecturers and student discussants could not be heard throughout a third or more of class meetings, students confronting teachers with sarcastic remarks, and the presence of one or two “classroom terrorists” whose unpredictable and highly emotional outbursts (such as insulting or intimidating disagreements) made the class tense.

Hirschy & Braxton, *supra* n. 62, at 67–68.

⁸⁸ Several scholars have identified a supportive classroom community as vital to students’ ability to learn. *Id.* at 69 (“[A] supportive classroom environment is related to higher levels of participation, and a student’s level of participation is positively correlated to intel-

ing.⁸⁹ Being a part of a community⁹⁰ is facilitated when people trust each other and feel respected and valued. Active learning requires students to be engaged in completing exercises and tasks, rather than passively receiving knowledge.⁹¹ Active learning is complemented by teaching to students' different learning styles, such as having students work with others in small groups.⁹² Many law students, however, report that they dislike working in groups.⁹³ In addition to other complaints about working with classmates, students often express frustration being in groups in which other students dominate the discussion, are not prepared, and are disrespectful or unpleasant. Teaching civility, and asking students to practice it in class, helps with this teaching technique. In the business world, researchers have noted that group work among professionals is more effective when people are civil.⁹⁴ One business leader made an international research group's day-long meetings "among the most focused, productive, and enjoyable of any [meetings]" these group members have attended.⁹⁵ Among the written list of "process norms" this business leader identifies are every group member's responsibility for keeping the group on task,

lectual skill development."); see Comm. on Dev. in Sci. of Learning et al., *How People Learn: Brain, Mind, Experience, and School* 144 (John D. Bransford et al. eds., Natl. Acad. Press 2000) [hereinafter *How People Learn*] ("New developments in the science of learning suggest that the degree to which environments are community centered is also important for learning. Especially important are norms for people learning from one another and continually attempting to improve."); Levy, *supra* n. 4, at 56–65 (addressing how socio-emotional factors in the classroom affect law student learning); see also Bain, *supra* n. 12, at 76–77 (noting that exceptional teachers "took all their students seriously, and treated each one with respect").

⁸⁹ *E.g.* *How People Learn*, *supra* n. 88, at 12–13.

⁹⁰ Twenty years ago, Ernest Boyer, president of The Carnegie Foundation for the Advancement of Teaching, called for a greater sense of community as a way to improve a number of problems in education. Part of that community was building an institution that focused on learning, affirmed civility, valued connections, pursued diversity, and supported individuals. William M. McDonald, *Preface*, in McDonald et al., *supra* n. 11, at xviii.

⁹¹ See Gerald F. Hess & Steven Friedland, *Techniques for Teaching Law* 13–16 (Carolina Academic Press 1999). "Research shows that active learning methods facilitate the development of higher-level thinking (analysis, synthesis, evaluation) and skills acquisition, which are critical goals for most legal educators." *Id.* at 14.

⁹² See *id.* at 132 (noting that "[h]undreds of studies have demonstrated that collaborative learning is more effective than competitive or individualistic learning methods for a broad spectrum of cognitive, affective and interpersonal goals").

⁹³ In response to one end-of-the-semester student evaluation question, "What did you find least effective in this course?," my students regularly write "working in groups." Conversely, other students note that "working in groups" is one of the most effective parts of the course. Colleagues at other institutions who also frequently engage students in groups report similar responses.

⁹⁴ Goleman et al., *supra* n. 48, at 173.

⁹⁵ *Id.* at 180.

listening well, making sure others in the group contribute, and “rais[ing] questions about [the group’s] procedures.”⁹⁶ These civility-oriented responsibilities make self-awareness important and group members accountable. No wonder these groups are enjoyable and productive, and groups in class could be equally so. Groups are more effective when their participants can infuse positive perspectives, humor, enthusiasm for and interest in collaboration, and playfulness.⁹⁷

Many students appreciate having civility included in a course’s goals, and I have included “professional engagement,”⁹⁸ a large part of which comprises acting with civility, in a legal writing course because of student input. Years ago former students, then serving as teaching assistants, reported that asking students to act professionally would make legal writing classes more effective. These students had varying reactions to working in small groups, but all agreed that working in a small group was vastly improved when everyone in the group was respectful, considerate, and prepared. Aside from the students who were extremely shy and who found the notion of working with others exhausting, no matter how professional they were, other students reported that being with classmates who were respectful, helpful, and prepared greatly facilitated their learning.

Teaching professional engagement gave students guidance about how to treat others and how they could expect to be treated, and it gave them permission to speak up when they felt that they were not being treated that way. It helped students give and receive feedback from their peers.⁹⁹ Asking students to be respectful also contributed to creating a safer learning environment. After students learned the course requirement that they treat others

⁹⁶ *Id.*

⁹⁷ *Id.* at 4 (noting that the reverse is also true; “whenever emotional conflicts in a group bleed attention and energy from their shared tasks, a group’s performance will suffer”).

⁹⁸ When my colleagues and I first decided to teach and evaluate professionalism in our legal writing courses, having it comprise 20% of students’ grade, we called it “participation.” No matter what we said or wrote, however, students regularly persisted in perceiving participation as how frequently they talked in class, rather than the quality of their participation. Most students seemed to have lost sight of the importance of listening and being respectful. We later named that 20% of the course “professionalism,” which considerably improved student focus, but was viewed by some students as punitive and “grade schoolish.” Given the literature on learning and the value of student engagement, we have now named this course component “professional engagement.” As with many aspects of the course, we continually revise and refine the course in light of what we learn.

⁹⁹ See *Sourcebook*, *supra* n. 65, at 51–52; Kirsten K. Davis, *Designing and Using Peer Review in a First-Year Legal Research and Writing Course*, 9 *Leg. Writing* 1, 12 (2003).

with civility, and that there would be consequences for them if they did not, students rarely engaged in actions that made others feel devalued, such as rolling their eyes, sighing, whispering, or passing notes when certain classmates spoke, actions that shamed and embarrassed many students. It was no longer acceptable to be uncivil in class.¹⁰⁰

My perception was that requiring students to be civil contributed to building a stronger sense of class community, thus enabling greater student learning. But not all students agreed. Some students were infuriated by the notion that they were asked to behave in certain ways, arguing that such course requirements were inflexible and likely to be abused by professors who did not like these students. They found rules about civility demeaning, degrading, and demoralizing. They interpreted “being respected” as having the right to speak their thoughts in the way they wished and to engage in nonverbal acts of their choice. My response was that I appreciated their views, but as their professor my job is to do the best I can to help all students learn and develop as professionals. Most are investing tens of thousands of dollars in their legal education. I do a disservice to most students in the class if I allow a few students’ uncivil behaviors and words to dominate and disrupt others’ learning. And I do a disservice to the outspoken students if I do not let them know the importance of and provide opportunities for them to practice civility. When they are in class, they are part of a public discourse, and public discourse is most effective when people treat each other with respect.¹⁰¹

Outside the classroom, law students also benefit from practicing civility. As is documented by the many professionalism programs law schools now offer in their orientation programs for first year students,¹⁰² many legal educators stress that students enter the profession the day they begin law school. Many of us explicitly tell students that the reputations they establish in law school for having integrity, being honest, reliable, and responsible, working hard at their learning, and treating others with respect stay with them beyond commencement. To the extent that students show

¹⁰⁰ For an account about the powerful forces of rejection among children in a kindergarten classroom, and an innovative and pioneering approach to building community, see generally Vivian Gussin Paley, *You Can't Say You Can't Play* (Harvard U. Press 1992).

¹⁰¹ See *supra* nn. 87–97 and accompanying text.

¹⁰² See Standing Comm. on Profess. of ABA, *Report on a Survey of Law School Professionalism Programs* 42–44 (2006) (available at http://www.abanet.org/cpr/reports/LawSchool_ProfSurvey.pdf).

their classmates, professors, staff, and law school administrators that they are developing and committed to these values, the more likely these students are to get job referrals, glowing letters of recommendation, and names of potential contacts.¹⁰³ After the first year, many students will be working in externships, clinics, or part-time legal jobs, positions where they will need to demonstrate their skills as soon-to-be lawyers. If they have understood the importance of and have practiced treating others with respect in the classroom, they will be better equipped to do the same in diverse legal environments. In law practice, “success in law (as in other fields) correlates significantly more with relationship skills than it does with intelligence, writing ability, or any other known factor.”¹⁰⁴

III. HOW CAN LAW PROFESSORS AND SCHOOLS TEACH AND ASSESS CIVILITY?

Civility “can be taught and learned.”¹⁰⁵ Law professors often object to this statement, arguing that law students should already know how to behave with civility,¹⁰⁶ and if not, it is too late.¹⁰⁷ But

¹⁰³ In a former life I served as the Assistant Dean for Career Services. I regularly received phone calls from lawyers and judges asking about particular students or asking for names of people they should consider interviewing. Students and graduates also wanted to know about contacts and opportunities. I provided notice of all jobs to all students and graduates, but I was always willing to go out on a limb or make special efforts for students who had shown that they had integrity, valued competence, were reliable and responsible, and would treat all others with respect.

¹⁰⁴ Rosenberg, *supra* n. 46, at 1229.

¹⁰⁵ Goleman, *supra* n. 3, at 263. Teaching and learning are both important. See generally Thomas A. Angelo & K. Patricia Cross, *Classroom Assessment Techniques: A Handbook for College Teachers* 3 (2d ed., Josey-Bass 1993) (“[T]here is no such thing as effective teaching in the absence of learning. Teaching without learning is just talking.”).

¹⁰⁶ This is similar to law professors’ complaints that they should not have to teach basic grammar. See Weresh, *supra* n. 7, at 429.

¹⁰⁷ Several months ago a senior colleague and I were walking down the hall. Coming toward us was a second year law student with the designer logo “fcuk” (French Connection United Kingdom) on his shirt. “Now that’s the kind of person we’re supposed to educate to be a lawyer?” was the colleague’s comment. “Who would think to wear such a shirt? That is someone who will never learn how to be respectful.” This sentiment is also expressed in other disciplines, noting there is a

widely held (although often unconscious) conviction that while it is possible to “grow” the store of knowledge we hold and the skill with which we use it, it is not possible to grow the human soul. Or, if it is possible, “soul work” is out of place in higher education . . . [But] all education is a process of forming or de-forming the human soul—whether or not we understand, acknowledge, or embrace that fact. The only question is whether we will be thoughtful about that process and try to direct it toward the best possible ends.

it is not too late. Law students are smart. They understand what matters. If we show that civility is important by naming it, modeling it, teaching it, providing feedback on it, and evaluating it, students will learn those skills. In teaching professionalism skills to his students, one professor of medicine provides them with what he calls the “three ‘E’s—expectations, experience and evaluation.”¹⁰⁸ He first provides clear expectations for his medical students, naming the behaviors he seeks. Second, he tells them how they will be evaluated. And finally, he gives students opportunities to practice and get feedback on those skills.¹⁰⁹ He has had no difficulty in having his students learn professionalism.¹¹⁰ As another physician noted regarding the teaching and measuring of medical professionalism, people “don’t respect what you expect; they respect what you inspect.”¹¹¹ Teaching medical students to develop emotional and social skills is now a part of the medical school curriculum.¹¹² Medical students must also show they have these skills to get their license to practice.¹¹³ We law professors can similarly ask students to be civil, explain what civility means, provide feedback on civility, and assess how they practice civility. Perhaps acting with civility might even one day be a bar requirement.¹¹⁴

Civility and professionalism are already being taught in many law school courses, such as in stand-alone courses on professional-

Parker J. Palmer, *Forward*, in McDonald et al., *supra* n. 11, at xi.

¹⁰⁸ Stern, *supra* n. 11, at 5.

¹⁰⁹ *Id.* at 8–12.

¹¹⁰ David Thomas Stern, Presentation, Georgia State University Law Review Annual Symposium, “Rethinking the Licensing of New Attorneys—An Exploration of Alternatives to the Bar Exam” (Atlanta, Ga., Jan. 29, 2004) (notes on file with Author).

¹¹¹ Cohen, *supra* n. 9, at v.

¹¹² Bain, *supra* n. 12, at 165 (noting that while teaching these skills is accepted practice now, when medical professor Jeannette Norden first introduced these skills “not all her colleagues were pleased”); John Norcini, *Faculty Observations of Student Professional Behavior*, in *Measuring Medical Professionalism*, *supra* n. 9, at 153 (“There are at least five steps in administering a process for the assessment of professionalism: specifying the purpose, developing assessment criteria, training the faculty and informing the students, monitoring the program, and providing routine feedback.”). Authors contributing to *Medical Professionalism*, *supra* n. 9, describe many ways to teach and assess medical professionalism, for example, having medical students engage in standardized patient encounters, participate in surveys, develop portfolios, and using other instruments for short- and long-term teaching and learning. *Id.*

¹¹³ David Thomas Stern, *Outside the Classroom: Teaching and Evaluating Future Physicians*, 20 Ga. St. U. L. Rev. 877, 900–903 (2004).

¹¹⁴ See Clark D. Cunningham, *Rethinking the Licensing of New Attorneys—An Exploration of Alternative to the Bar Exam: Introduction*, 20 Ga. St. U. L. Rev. vii (2004) (identifying performance-based alternatives to evaluate competency to practice law, such as using New Hampshire’s Webster Scholar Program, programs in England, Scotland, and South Africa).

ism and interpersonal skills, which address many of the same issues and behaviors. And certainly teaching civility is already a part of many clinical and simulation-based classes, such as negotiation, mediation, trial advocacy, externships, and independent studies.¹¹⁵ Many legal writing colleagues also incorporate ethics and professionalism into required courses.¹¹⁶ Given the concern about law students' and lawyers' lack of professionalism, however, these efforts are not enough. Often when faculties have realized that students need to learn additional skills or values, or learn them in greater depth, faculties suggest that the newly identified knowledge or skill be incorporated into an existing course or added as a new stand-alone course.¹¹⁷ This has happened to many legal writing courses, which, as others have noted, become convenient places to incorporate the skills deemed important for law students to learn, but not important enough to be taught in almost any other required course.¹¹⁸

Teaching civility is appropriate in any course, and teaching it in a legal writing course works well for several reasons.¹¹⁹ Legal

¹¹⁵ For example, both Professors Longan and Rosenberg teach stand-alone courses that address interpersonal relationships. See Longan, *supra* n. 19; Rosenberg, *supra* n. 46, at 1229–1234.

¹¹⁶ See generally *e.g.* Chin et al., *supra* n. 18, at 895; Christensen, *supra* n. 18, at 320; Weresh, *supra* n. 7, at 427.

¹¹⁷ Stuckey et al., *supra* n. 1, at 3 (noting that “there is no record of any concerted effort to consider what new lawyers should know or be able to do on their first day in practice or to design a program of instruction to achieve those goals”). As the authors of the Carnegie study noted,

[E]ffective educational efforts must be understood in holistic rather than atomistic terms. For law schools, this means that, far from remaining uncontaminated by each other, each aspect of the legal apprenticeship—the cognitive, the practical, and the ethical-social—takes on part of its character from the kind of relationship it has with the others. In the standard model, in which the cognitive apprenticeship as expressed in the Socratic classroom dominates, the other practical and ethical-social apprenticeships are each tacitly thought of and judged as merely adjuncts to the first. That is why adherents of the additive strategy resist the idea that all experiences are critical, that they are inseparable, and that all three will be strengthened through their integration.

Sullivan et al., *supra* n. 54, at 191

¹¹⁸ *Sourcebook*, *supra* n. 65, at 45. The authors of the *Sourcebook* note that law schools have to make choices about what to include and how in-depth to teach material in the legal writing curriculum, noting that “[a]s more lawyering skills are added into the basic course, law schools must consider increasing the number of required credit hours or semesters, or risk sacrificing the quality of basic analysis, research, and writing instruction.” *Id.* at 47.

¹¹⁹ *Id.* at 10–11 (noting the importance of integrating ethics and professionalism into a legal writing course, and adding that legal writing can also help students learn “such professional requisites as . . . maintaining civil discourse”). Later, the authors argue that students in a legal writing course “should understand the importance of civility and professionalism.” *Id.* at 35. Suggesting that writing professors include teaching civility is not

writing classes are required, relate to the practice of law, usually have smaller numbers of students, and often have teachers who are innovative, dedicated to student learning, and willing to try new approaches.¹²⁰ With the infusion of skills and substance, law students are already practicing a range of lawyering tasks and skills in these courses, making them fertile places in which to teach about the practice of law and the “hidden” rules of civil behavior. And some of the most innovative teaching methods and ideas come from those teaching legal writing.¹²¹ Teaching civility and professionalism in a legal writing course is certainly not the only place to do so. But it is a great place to start, given its small class-size and focus on individual learning. Within that context, having students practice and learn civility may be more likely to succeed.¹²² That success can then be shared with colleagues and transferred to other courses.¹²³

A. Identify the Learning Goals

As with teaching any other subject, when teaching civility, we first need to define our learning goals.¹²⁴ Then we need to provide

meant to discount the labor-intensive job of teaching legal writing, nor to suggest that incorporating civility should occur in the first few years of teaching. Rather, it is to suggest that writing professors who have some years of experience and reasonable teaching loads can consider weaving civility into an established course. *See e.g.* Susan P. Liemer & Jan M. Levine, *Legal Research and Writing: What Schools Are Doing, and Who Is Doing the Teaching (Three Years Later)*, 9 *Scribes J. Leg. Writing* 113, 126 (noting that “[t]he labor-intensive job of teaching legal writing requires a low student-faculty ratio . . .”).

¹²⁰ *See generally e.g.* Chin et al., *supra* n. 18, at 895; Christensen, *supra* n. 18, at 320; Weresh, *supra* n. 7, at 427.

¹²¹ *Sourcebook*, *supra* n. 65, at 53 (“[T]he LRW community is increasingly shaping classroom instruction based on modern teaching and learning theories.”). At every law teaching conference I attended, including those sponsored by the American Association of Law Schools (AALS), Gonzaga University School of Law Institute for Law School Teaching, the Legal Writing Institute, the Association of Legal Writing Directors, and the Society of American Law Teachers, I have been amazed and inspired by the exciting teaching and learning techniques tried, developed, and refined by legal writing teachers. I have not attended clinicians’ and academic success professors’ conferences, but understand them to be similarly innovative.

¹²² In addition to being innovative, writing professors are extremely supportive and generous, regularly offering to share materials and ideas and to brainstorm approaches to improve teaching and learning.

¹²³ In teaching doctrinal courses, I have followed the methods in this Article in teaching civility, most recently in a class of sixty-six students.

¹²⁴ “Students perform better when they know what goals they are trying to achieve.” Hess, *supra* n. 6, at 99; Stern, *supra* n. 11, at 9 (identifying a goal for physicians as choosing wisely “among equally worthy values—such as responsibility to patients versus respect for teachers and the hospital hierarchy”); *see* Barbara E. Walvoord & Virginia Johnson Ander-

these goals to students.¹²⁵ Articulating and publishing these goals requires more than just announcing that students must be polite to each other.¹²⁶ As noted above, individual students, support staff, and professors, based on age, culture, and experience, could well interpret “being polite” differently and apply them differently in varied contexts.¹²⁷ Instead, we need to specify what we expect. For example, to me, and to most of the American legal profession, being respectful includes being on time.¹²⁸ And being on time for class means that students and I are in the class with computers, texts, and handouts organized and in place by the time class starts. To one of my students, treating people with respect may also mean being on time, but being on time may mean being physically present in class at the time the attendance sheet is circulated, usually within the first five minutes. For those students who do not include being on time in their notion of being respectful, it is important to identify timeliness as one of the parts of teaching civility and to explain why it is important. Coming from undergraduate classes, where quietly slipping into the back of a large lecture hall affects almost no one except the tardy student, stu-

son, *Effective Grading: A Tool for Learning and Assessment* 66–67 (Jossey-Bass 1998). The authors note that becoming more explicit in identifying goals and subsequently teaching to them allowed their students to become more proficient on their biology tests. Walvoord & Anderson, *supra* n. 124, at 66.

¹²⁵ Stuckey et al., *supra* n. 1, at 41.

In addition to clarifying what we are trying to teach, it is important that we explain our teaching objectives to our students. Part of the stress and confusion that first year students experience is caused by our failure to explain why we are having them [engage in lawyering skills]. This is a problem that can be easily cured by developing transparent teaching objectives and helping students understand what we are trying to accomplish.

Id.

¹²⁶ See Arnold & Stern, *supra* n. 25, at 23 (showing respect in medicine includes honoring patients’ decisions about their medical care, responding to individuals’ attributes, cultures, and values, and being respectful to colleagues, “learners, institutions, systems, and processes”).

¹²⁷ Billante & Saunders, *supra* n. 2, at 17–18.

¹²⁸ There is flexibility within this definition. Should there be inclement weather, an unlikely traffic jam, or an unpredictable lack of parking, students and professors have good reasons to be late. This is written in the course description and syllabus so that students do not think the rule is absolute, thus endangering themselves and others. This notion of timeliness, as with other notions of civility, may not apply to other cultures. Requiring students to be on time may be appropriate when teaching law students in the United States, where contemporary law practice regards tardiness as a significant insult; this may not apply to other cultures. For example, in describing his experience teaching in Italy, a colleague noted that he had to completely rethink his whole notion of what it meant to be on time. Panel Presentation, *Teaching Legal Writing in Another Country* (ALWD 2007 Biennial Conf., Denver, Colo., June 14, 2007) (notes on file with Author).

dents need to realize that being unprepared and late may distract the rest of the class and detract from classmates' learning. Where students' tardiness affects others, it is disrespectful.

Students benefit from learning this, and from understanding how it relates to practice. Even though being "on time" may seem like an obvious directive, in practice, as in the classroom, it is more nuanced. For example, in practice an attorney may have to choose between cutting off a supervising attorney and being late for a meeting with a different supervising attorney. This problem presents difficult choices. Thinking about the dilemma in advance, and providing both supervisors with notice of the potential conflict reduces the degree of incivility that would otherwise arise from being late or interrupting a meeting. Schedule conflicts frequently occur in school and practice; having students practice how to manage timeliness issues respectfully in law school can later serve them well when they enter the profession.

We need to further explore what is meant by "timeliness." This may sound like tedious work, but it is what many of us do in our courses already.¹²⁹ When we teach legal writing, we identify the many learning goals involved in composing or drafting a legal document, from large-scale organizing to analyzing and synthesizing statutes, regulations, and cases, applying and distinguishing facts, using precise language, and citing authorities accurately.¹³⁰ Within each of those are a myriad of other goals, such as using facts, law, and policy to make analogies and distinctions and organizing arguments around persuasive thesis sentences. We need similarly to identify civility's parts and complexities,¹³¹ the means by which we measure it, and communicate those goals and assessment measures to students.

Because we cannot know what our students intend, we must rely on what our students do and say, recognizing that civil behavior in one set of circumstances may be less civil in another. For example, in general, it is best not to interrupt others when talking.

¹²⁹ Hess & Friedland, *supra* n. 91, at 23 (noting that useful "explicit objectives help teachers and students stay on track"); Sophie Sparrow, *Describing the Ball: Improve Teaching by Using Rubrics—Explicit Grading Criteria*, 2004 Mich. St. L. Rev. 1, 17–22 (noting the complexities involved in any one objective).

¹³⁰ *Sourcebook*, *supra* n. 65, at 5–46.

¹³¹ We may not need to be as explicit in defining and describing some behaviors. For example, all students would likely agree that it is rude to roll one's eyes when a classmate speaks, thus needing no explicit directives from their teacher. In contrast, however, many students may disagree about the meaning of being on time and the degree to which being on time conveys respect.

To use an obvious example, if one student is talking, unaware that a hot cup of coffee has spilled behind her, interrupting to alert her to the danger is the civil thing to do. Or, if one student in the class tends to dominate class discussion, repeatedly making extensive comments, respecting the rest of the class may require the professor to interrupt and invite others' comments.¹³² We need to name the actions and words that we expect to see when people are being civil, and then convey that they need to also use judgment,¹³³ because these are not absolute rules.¹³⁴ Naming the behaviors and the need to use judgment allows us to provide our students with something tangible and specific.¹³⁵

By way of example, in my courses, I have named some of these behaviors as being resourceful, taking risks, encouraging and allowing others to talk, being prepared, listening, having a positive approach to working with others, taking responsibility for independent learning, learning from mistakes, offering solutions when voicing complaints, and demonstrating effort and perseverance.¹³⁶ Even when we name these attributes we seek to see in students and ourselves, it may behoove us to allow for an "other" category, the category of things students will do that, no matter how long we teach, we have never seen previously.¹³⁷

¹³² This suggests the more traditional form of teaching, where the professor is in charge of the classroom environment and expected to control class discussion. It is not the only model. Students may be involved in taking turns being the class leader and facilitator, part of which involves guiding the discussion, including asking some students to be quiet so others can participate.

¹³³ Stern, *supra* n. 11, at 9 (noting that professionalism requires making wise decisions and articulating the reasoning behind the choices made).

¹³⁴ Hess & Friedland, *supra* n. 91, at 6–7 (noting how law students frequently start law school searching for absolutes, trying to identify and memorize "the Good Law"). A student showed me a vivid example of this after I suggested to the class that they keep their sentences to about twenty-five words or less to aid the reader in understanding complex legal analysis. This student started submitting written work with many sentence fragments, a problem that had not appeared in his earlier work. After talking to him, I learned that he had an ear about how to write sentences, but no fundamental understanding of what each sentence required; as a result, after hearing about the value of fewer words per sentence, he proceeded to consistently insert terminal punctuation after the twenty-fifth word in a sentence.

¹³⁵ For an example, compare the goal of "I want each student to think like a lawyer" with "I want each student to use law, facts, and policy to make coherent, organized written arguments about whether a court has personal jurisdiction over a party."

¹³⁶ *Legal Skills Course Description and Handbook* 9–10 (Franklin Pierce L. Ctr. 2006) (copy on file with Author). This is certainly not an exhaustive list, and the behaviors and attributes named should reflect the values the professor is trying to teach. These are ones that my colleagues and I have come up with after tweaking them for years. They remain a work in progress, and we continue to revise and modify them every year.

¹³⁷ For example, one year a student had an aversion to wearing shoes. Given the stu-

In naming civility's components, it helps to note that "being civil" is complex,¹³⁸ much like being a parent, lawyer, or physician. There is no one right way to be a good parent, lawyer, or physician, no one formula, approach, or proven method. For example, just because your parenting methods help your first child develop wonderful habits, that does not mean the same parenting approach will work with your second.¹³⁹ Part of civility's complexity is recognizing that being civil is not an absolute condition, where someone either is or is not civil. Instead we can adopt the language of those teaching medical professionalism and name an incident of incivility as a "lapse."¹⁴⁰ This recognizes our human fallibility and acknowledges that mistakes are possible. Under stress, time-pressure, and high stakes, we may all act in ways of which we are not proud.¹⁴¹ In fact, mistakes or civility lapses may be some of the best learning tools. They allow us to provide feedback to students and to teach about ways to redress acts of incivility. They teach us when we are likely to engage in uncivil behavior, what we perceive as uncivil in others, and how we respond to those interactions.

As with other skills, it is helpful to recognize that the skills of practicing civility emerge over time,¹⁴² and that the level of professionalism in a medical or law student is and should be different than that of an experienced practitioner.¹⁴³ This developmental

dent's choice not to wear socks and the accompanying very strong odor, this presented a problem for the professor and other students.

¹³⁸ Leach, *supra* n. 72.

¹³⁹ *Id.* Leach contrasts the definition of "complex" with that of "simple." "Simple" skills are those such as following a recipe. "Complex" skills are those used in tasks such as building a rocket; with every rocket you build and launch you learn about how to make a better rocket. The same does not hold true for practicing law, medicine, teaching, or parenting. *Id.*

¹⁴⁰ Stern, *supra* n. 11, at 7 (advocating that teachers use the phrase "lapse in professionalism" rather than "unprofessional" because doing so "avoids the immutable label of 'unprofessional' when talking about a single event and helps prevent unnecessary overgeneralization").

¹⁴¹ See *e.g. infra* nn. 188–190 and accompanying text.

¹⁴² Having positive interactions with others from different backgrounds "is often a challenge and requires continuing effort. It does not just happen." Richard J. Light, *Making the Most of College: Students Speak Their Minds* 197 (Harvard U. Press 2001).

¹⁴³ "The skills and values of the competent lawyer are developed along a continuum that start before law school . . . and continue[] throughout a lawyer's professional career." *MacCrate Report*, *supra* n. 67, at 3; see Arnold & Stern, *supra* n. 25, at 27–31. They argue that medical professionalism should be assessed on a continuum:

A developmental view of professionalism has important and beneficial consequences for assessing it. It does not cast professionalism as a series of innate traits or attributes. Rather, it casts professionalism as a continual striving toward principles, toward virtues. It takes account of growth spurts observed in physicians' professionalism as they live out their careers, of transitions and plateaus in their growth, and even of regression. The developmental view high-

approach to learning civility suggests that a goal in teaching civility might not necessarily be that all students perform consistently, but instead that all make gains in their understanding and practice. But what about the students who always appear to treat others with respect and dignity? It would first appear that these students have nothing to learn about civility. My experience is that students in this category frequently shy away from confronting those who treat others with considerably less respect. These are the polite and considerate students who will ask me after class if they can please avoid ever being assigned to a small group with so-and-so because she is offensive, obnoxious, and overbearing. For these students, the goal is to learn how to respond to these behaviors in a way that allows them and their fellow classmates to participate in meaningful, thoughtful, productive dialogue.¹⁴⁴

To arrive at civility guidelines—the naming and describing of behaviors that are expected from all course participants—may be best left to the nature of the individual class and professor.¹⁴⁵ One approach is to engage our students in a short in-class discussion, or out-of-class online discussion, about the behaviors they would expect and want from their classmates and teacher.¹⁴⁶ With different generations, cultures, and genders, we may find that one of the most important things we can do is engage in this conversation

lights the need for formative, longitudinal assessment of learners' professionalism, for the use of qualitative methods involving self assessment and reflection, and for setting stage-specific cut points for acceptable and unacceptable behavior, depending, perhaps, upon the principle of professionalism involved.

Arnold & Stern, *supra* n. 25, at 31.

¹⁴⁴ This is a challenge for many of us. How many of us have looked at committee assignments and sought to be relieved of working with certain colleagues or inwardly cringed when we have a colleague whom we perceive to treat us disrespectfully?

¹⁴⁵ Unlike other subjects, where students usually lack sufficient knowledge to identify appropriate learning goals in required law school courses, the majority of students can identify basic components of civility. This is easier for most of them to do from the perspective of experiencing someone else's civil or uncivil behavior than to identify how others may perceive their actions.

¹⁴⁶ Other educators have written about the advantages of having students work with the teacher in developing the goals, grading, and structure of a course. *See e.g.* Maryellen Weimer, *Learner-Centered Teaching: Five Key Changes to Practice* 23–45 (Jossey-Bass 2002). Professor Gerry Hess, author of *Techniques for Teaching Law* and founder of the Institute for Law School Teaching, notes that he regularly uses this approach in upper level elective courses, but not in teaching first-year students civil procedure because most students are still unaware of what kinds of skills, knowledge, and values they should be learning in law school, meaning that the professor needs to provide the focus and direction for the course. Personal telephone conversations with Gerry Hess (Aug. 2006–Apr. 2007) (notes on file with Author). Even though I teach civility in a first-year legal writing course, students have a notion of what it means to treat people with respect even though most have a limited understanding of what constitutes competent legal writing.

about what should be the behavioral norms for the classroom.¹⁴⁷ This discussion allows the exchange to be reciprocal—we can make students aware of our perceptions of what is civil, and they can inform us and their classmates of the same.¹⁴⁸ This method allows them to participate in the discussion and establish the civility criteria for the class.¹⁴⁹

My approach to teaching civility has changed over the years. Following a colleague's approach,¹⁵⁰ on the first day of class this year I engaged students in a discussion about the kind of class environment that best served individual students' learning needs.¹⁵¹ Each student was asked to interview and then introduce a classmate, including one thing that was critical to creating an optimal learning environment. Within a few minutes, students had identified all the behaviors that I had previously required of them to earn full "professional engagement" points, such as being flexible and open about others' views, being on time, being prepared, not dominating the discussion, contributing to a non-disruptive environment, participating in discussions, and sharing and being considerate of others' educational, personal, and cultural backgrounds. In addition, they revealed the best learning environments

¹⁴⁷ Billante & Saunders, *supra* n. 2, at 31 (noting that "a policy for renewing and promoting civility should begin with an open and public debate aimed at defining a simple set of binding principles and core values"). The notion of renaming "participation" points "professionalism" points was suggested by former students, who noted that the term "participation" to most first-year law students meant "speaking and contributing in class" when what we were asking students to do was more than that.

¹⁴⁸ Students know what makes them feel respected. Including them in this discussion is an important component of establishing a classroom environment where students and professor can practice civility. See William M. McDonald et al., *Conclusion: Final Reflections and Suggestions for Creating Campus Community*, in McDonald et al., *supra* n. 11, at 175–176 (noting that building a sense of community in higher education institutions requires involving students as major constituents and establishing civil methods of communication).

¹⁴⁹ This is also showing them respect, since they do have knowledge and experience with this topic. The value students place on respect is demonstrated by Professor Levy's empirical studies of law students attending a variety of law schools. Levy, *supra* n. 4, at 80.

¹⁵⁰ I first learned about this approach from Stetson professor and former Pierce Law colleague Linda Anderson who used it in her first days of class. I am grateful to her and to so many others whose ideas I have used. Pat Hutchings, Vice President of The Carnegie Foundation for the Advancement of Teaching, validated this concept recently when she talked about making teaching "go public The idea is to move from a circumstance in which teaching is a seat of the pants enterprise that we all learn on our own through trial and error to one in which we stand on the shoulders of others." *A Tug toward the Center*, 16 *Natl. Teaching & Learning Forum* 5, 6 (Dec. 2006).

¹⁵¹ This is not difficult to do in a class of eighteen to twenty-two students. In a larger-enrollment course, however, students could be broken into groups to collectively brainstorm and arrive at group rules, which are then shared with the class as a whole. For ideas about breaking large-enrollment classes into smaller groups, see Hess & Friedland, *supra* n. 91, at 131–148.

included having constructive feedback from me and classmates, engaging in open dialogue, disagreeing with respect, using humor appropriately, being with classmates who sought to know each other, recognizing preconceptions, supporting creativity and out-of-the-box thinking, and collaborating in providing a comfortable environment. They wanted me to provide clear expectations, stay on topic, apply and discuss learning material in class, test what I taught, use a variety of teaching methods, and not waste their time. They wanted me to start and end classes on time.¹⁵²

Rather than ending the discussion there, compiling a list of these “classroom guidelines,” and asking students to adhere to them, I asked all students to propose appropriate consequences for not adhering to a given behavior, and who was responsible for implementing that consequence.¹⁵³ Their proposed consequences and methods of implementing them were far more creative than mine. If I kept the class over a few minutes, I agreed to bring candy to the next class. If any of us were late, we had to dance to our seat. Students who felt that they had been treated disrespectfully had to identify the specific actions that triggered their response and describe how these actions affected them. They were entitled to an apology, to themselves or to the whole class. I was expected to be organized and clear. None of us was expected to be perfect. Assuming that we generally met the class’s expectations, we were entitled to the occasional minor lapse of civility. But we were also expected to learn from our mistakes. And should anyone feel that a guideline needed to be added or altered, students or I could propose such a change.

I plan to continue this approach. Very few students had to dance to their seats; I had to bring candy several times. In past semesters I had been the sole enforcer, a role I did not enjoy but felt I needed to take because I believed in teaching students to be civil. In that role, I noted the details surrounding a student’s lapse of civility. At times this felt petty and punitive, to me and to them. In contrast, in this most recent semester, students and I monitored

¹⁵² Engaging students in designing the course is an approach advocated by experienced educator Maryellen Weimer, who notes that there are considerable benefits to student learning when the teacher does not hold all the power in the classroom. “Power sharing affects the environments in the classroom There is a much stronger sense that the class belongs to everyone. When something is ineffective, students are much more willing than in the past to help me fix it.” Weimer, *supra* n. 146, at 31.

¹⁵³ Most of this was done online, through the course’s webpage. For the first few weeks of the class, minimal class time was used to review where we were in the process, answer questions, and explain the next step.

each other and were collectively responsible for the classroom atmosphere. There were fewer lapses in civility as well.¹⁵⁴ It is far more enjoyable to share this responsibility for building and maintaining a positive classroom environment, and it has helped me be a better teacher. During a mid-semester evaluation, I learned that a number of students thought we were spending too much time off-topic.¹⁵⁵ One of the students agreed to monitor the discussion and let me know after class when he believed we had strayed. Another student helped keep track of time.¹⁵⁶ This technique also gave students practice in shaping and being responsible for contributing to a civil environment. I expect that they will need to be similarly engaged if they want to be a part of a constructive workplace.

An alternative would be to define civility in advance, identifying our learning goals for students as well as the associated actions we expect them to take. In either case, to avoid the “civility” component of a course sounding like overbearing grade school mandates, it is important to explain to students why we are asking them to be civil.

If we truly want our students to practice civility, we need to model the civility behaviors we seek.¹⁵⁷ We teach not just by what we say, but by what we do.¹⁵⁸ Within the first few months of my first year in law school, my classmates and I were shocked to learn through the law school grapevine that some of our professors did not speak to each other. What, we wondered, did it mean for the future of the dispute resolution process if these intelligent leaders

¹⁵⁴ Barbara J. Mills, *Helping Faculty Learn to Teach Better and “Smarter” through Sequenced Activities*, in *To Improve the Academy* 218–219 (Sandra Chadwick-Blossey & Douglas Reimondo Robertson eds., Anker Publg. Co. 2006) (noting that we are motivated to learn when we have a degree of choice and control).

¹⁵⁵ Getting student feedback was a valuable lesson about the inadequacy of self-perception: I had thought I was being open-minded and considerate of alternative views.

¹⁵⁶ At my institution, time is an issue; clocks throughout the building display different times. According to the clock in the cafeteria, a student could believe she still had five minutes before class, only to arrive in class and learn that it had been underway for several minutes. Computers and cell phones have accurate times, but the larger public clock faces tend to shape behavior, a problem exacerbated when a student does not know what particular clock the professor is going by. Because the clocks are run individually, setting one accurately does not guarantee consistency with others in the building.

¹⁵⁷ *Sourcebook*, *supra* n. 65, at 73 (noting that “LRW professors must recognize that they teach a course designed to introduce students to appropriate professional behavior and must demonstrate that professionalism. A professor who is respectful toward students and does not show bias or favoritism, for instance, becomes a good professional role model.”); Christensen, *supra* n. 18, at 327.

¹⁵⁸ Christensen, *supra* n. 18, at 327. “Professors who use behavior that is rude or disrespectful not only prevent their students from learning, but they also reinforce the worst stereotypes about attorneys.” *Id.*

of the legal academy could not acknowledge each other's existence? This distressing news confirmed what I had learned when I worked as a paralegal the year before law school—that almost all lawyers were smart and hard working, but fewer were kind, decent, and respectful. As one law school dean said to me following a professionalism presentation, “The problem with teaching professionalism is that so many of my faculty don't understand what it is or how to practice it themselves.”¹⁵⁹ A colleague of mine who voiced dismay at a student's wearing a T-shirt with a provocative label¹⁶⁰ himself was known by faculty, staff, and students to regularly and openly ogle women. Students notice. We send strong messages when we are not available when we said we would be, fail to respond to students' e-mails, or treat staff and colleagues without respect. Our students and those outside the academy may notice this more than we do. During a recent national conference on professionalism, the editor of a prominent legal periodical asked law school professors and administrators how many of their schools had separate faculty lounges and bathrooms. Responding to his co-speakers' vociferous laments about the lack of respect and professionalism demonstrated by new lawyers and law students, he queried, “If you want them to be professionals, why don't you treat them as professionals?”¹⁶¹

Modeling civility does not mean that we coddle students. It means that we treat them with respect. We can still call on them and demand they participate. We can and should set high standards.¹⁶² We just need to do it the way most highly effective teachers do, “call[ing] on people the way [we] might do so around the dinner table rather than the way [we] might cross-exam[ine] them in a courtroom or challenge them to a duel.”¹⁶³ If we are going to model civility we should similarly take our students seriously¹⁶⁴ and treat them the way we “might treat any colleague, with fair-

¹⁵⁹ Conference, *Conference on Teaching Professionalism* (Atlanta, Ga., Jan. 30, 2004) (notes on file with Author).

¹⁶⁰ See *supra* n. 107.

¹⁶¹ Conference, *Professional Challenges in Large Firm Practices* (N.Y.C., N.Y., Apr. 15, 2005) (notes on file with Author).

¹⁶² Hess & Friedland, *supra* n. 91, at 15–16 (referring to the American Association for Higher Education's study of good practices in higher education, including “Principle 6: Good Practice Communicates High Expectations”).

¹⁶³ Bain, *supra* n. 12, at 131.

¹⁶⁴ For an excellent essay on this topic, see Kent D. Syverud, *Taking Students Seriously: A Guide for New Law Teachers*, 43 J. Leg. Educ. 247 (1993).

ness, compassion, and concern.”¹⁶⁵ I try to practice what I preach, and encourage students and colleagues to let me know when I appear uncivil. This can hurt; I hear that I appear rushed, lack empathy, and am impatient, dictatorial, and controlling. But practicing civility means that we recognize its complexity and are willing to grow and change; we are, after all, talking about people and relationships. Practicing civility means that we are willing to seek, listen, and learn from others’ feedback.

*B. Provide Opportunities for Students to
Practice the Learning Goals*

Once we have identified the civility behaviors we want students to learn, we need to allow students to practice and get feedback. Because civility is about the ways in which we treat and interact with others—something law students do in class on a daily basis—it is relatively easy to give them practice and feedback, especially in a legal writing class with its relatively small class size.¹⁶⁶ Opportunities for multiple interactions abound in these classes as many legal writing classes frequently engage students in hands-on active learning exercises. These exercises require students to work in groups, edit each other’s writing, solve problems, and brainstorm strategies. Students further practice participating in productive and respectful relationships when they complete and receive feedback on their written work, meet with professors in individual conferences, work with teaching assistants, turn in assignments to support staff, and interact with those in the law school library. Professors in large-enrollment courses may not know all of their students’ names or require them to participate in class. They may learn more about their students’ performances only if the students earn very high or low scores on their exams. Writing professors, in contrast, know who their students are from

¹⁶⁵ Bain, *supra* n. 12, at 145. Bain specifically points to law professor Derrick Bell’s way of treating his students with

courtesy and dignity. Much of the class time belongs to the students, but he takes a few minutes at the beginning of each session to talk with them about their lives and to share personal moments from his own. . . . He listens to students, even when they strongly disagree with his views, and more likely than not he asks them a question rather than tells them they are wrong.

Id. at 148–149.

¹⁶⁶ In the 2006–2007 academic year, legal writing teachers taught an average of thirty-six entry-level students. ALWD & Leg. Writing Inst., *2007 Survey Results* vi (2007) (available at <http://www.lwionline.org/survey/surveyresult.asp>).

the very first week of the semester. We are thus in a position to regularly observe students interacting with others, as well as to engage in individual discussions. With small classes, we can also more easily observe, provide feedback, and notice changes over the course of one or two semesters.¹⁶⁷

C. Provide Students with Feedback during the Course

To learn from their experiences, students need to receive formative feedback, which offers guidance and instruction on learning goals, but does not count as part of the student's final grade.¹⁶⁸ One way to do this is to provide whole class feedback by naming students' effective behaviors, and then pointing out how what the students did facilitated the greater learning of the whole class. For example, a recent course I taught contained a fairly high number of eager, motivated, smart, and engaged students, some of whom were extremely enthusiastic about sharing their insights. It was difficult for these students not to blurt out a response. I appreciated their initiative and dedication to mastering material. But when students were involved in working through a problem, such as finding specific language in a statute, the eager students' outbursts detracted from their classmates' engagement. In the past, I would have asked the students outright to try to wait, teased them about being fastest to answer, spoken to them after class, or said nothing, but been annoyed and frustrated. In any event, my focus and energy would have been directed at the students' inability to contain themselves at the expense of their classmates' learning.

This time, having had the benefit of observing gifted colleagues teach,¹⁶⁹ I tried to restrain my tendencies. When several bright students had jumped in to answer several hypotheticals during one class, they were commended for their swift analysis. Several minutes later these and other students did not blurt out

¹⁶⁷ *Sourcebook*, *supra* n. 65, at 89, 95 (noting the value of having full-time writing professors teaching no more than thirty to forty-five students per semester).

¹⁶⁸ Stuckey et al., *supra* n. 1, at 9 ("Law schools should use best practices for assessing student learning, including criteria-referenced assessments, multiple formative and summative assessments, and various methods of assessment.").

¹⁶⁹ During the 2005–2006 year, I was a Visiting Professor at Phoenix Law School, which matriculated its first full-time students that fall. I was fortunate to be surrounded by gifted and innovative teachers committed to engaging in best practices in teaching and learning.

answers but raised their hands. I told the class how grateful I was for seeing raised hands, as it allowed other students time to think, recognized that not all students processed quickly in public settings,¹⁷⁰ increased the range of participants, allowed everyone to hear a range of perspectives, and conveyed respect for other students and the class environment. The same kind of whole-class feedback could be given about students engaging in any civil behaviors, such as exercising self-restraint. Emphasizing the positive—because most students do treat others with respect—runs contrary to most law school teaching, where we tend to focus on “what is wrong” rather than what is constructive and good.¹⁷¹ But it is a more uplifting, positive message than publicly criticizing a few incidents of disrespectful behavior.¹⁷²

This kind of feedback can come from classmates as well. We can ask students to complete a “minute paper”¹⁷³ where they identify positive behaviors and words that they have experienced in class. This allows students to develop an awareness of what respectful behavior looks like, and to practice naming specific behaviors and their reactions to them. These minute papers can be collected and read aloud by the professor during class, or read later, compiled, and shared with students. Assuming that students complete these papers anonymously and do not name their classmates, they can safely express themselves and contribute to the classroom dialogue about professionalism. It allows students to more fully and actively participate in the democracy of the classroom; they learn what their classmates, as well as the teacher, think about classroom civility.

Providing positive group feedback also prevents students from being singled out, something many students find awkward and, by

¹⁷⁰ See generally Paula Lustbader, *Teach in Context: Responding to Diverse Student Voices Helps All Students Learn*, 48 J. Legal Educ. 402 (1998).

¹⁷¹ Stuckey et al., *supra* n. 1, at 30 (“[T]oo many law school classrooms, especially during the first year, are places where students feel isolated, embarrassed, and humiliated, and their values, opinions, and questions are not valued and may even be ridiculed.”).

¹⁷² I was recently struck by how powerful positive reinforcement was when I took a yoga class from a new teacher. After having talked us through a difficult position, the teacher asked us to push ourselves a little bit more and deepen the pose. Upon our having done so, she pronounced us “perfect,” “gorgeous,” and “really beautiful!” saying the words as if she truly meant them. I was struck by how I had never heard any teacher call anything I did “perfect,” how empowered it made me feel, and how it made me learn more from this teacher than almost any other. Being a novice at yoga I knew that my pose was nowhere near perfect, but in the teacher’s words I heard that she valued the work, intention, and effort we put into it.

¹⁷³ Gerald F. Hess, *Minute Papers*, in Hess & Friedland, *supra* n. 91, at 269–270.

extension, disrespectful.¹⁷⁴ Depending on the classroom environment and the progression of the course, it may be appropriate, however, to publicly single out students when they have made significant contributions. For example, to me, civil classroom behavior means participating in class discussion, neither dominating nor being silent. I ask students to participate because I want them to hear different perspectives, practice their oral reasoning skills, and learn from each other. This is extremely difficult for some students. There are times when, after talking to a very quiet student and hearing that the student is comfortable with the idea, I will call on her in class and then, once she responds, publicly congratulate her for sharing her views with the class. This is usually later on in the semester, when students know who is comfortable talking and who is not. They are usually delighted at a classmate's risk-taking and join me in the applause and congratulations.

Using humor can also help with providing feedback, especially for minor lapses.¹⁷⁵ Humor makes comments about lapses easier to take for the students and also lightens the mood of the class. That is not to say that using humor need trivialize a lapse. For example, when a cell phone goes off in class, I usually joke with students,¹⁷⁶ asking with mock incredulity, "Did I hear a cell phone go off? I didn't, did I? That was a bird or something, right?" The class usually laughs. The student whose phone it is usually also laughs, scrambles to turn off the offending noisemaker, and apologizes. I smile, shaking my head and making a comment along the lines of, "You know you will never let that happen again, right? And none of the rest of you will either, right?" There follows a mad scramble when almost all students check that their cell phones are off. These situations are also rich opportunities to discuss the conse-

¹⁷⁴ I learned the hard way that many students do not enjoy being the center of that kind of attention, even when they are being given high praise. They may be embarrassed about being in the spotlight or afraid of being resented by their peers. Of course, some delight in this attention, but this delight seems rarely to be shared by classmates.

¹⁷⁵ Not everyone is comfortable using humor, but it can work well for some professors at some times. As a former college teacher noted, "Humor enhances the vital connection between teacher and student; it humanizes instruction. It builds classroom community. It aids communication and retention. . . ." Linc Fisch, *The Legacy of Sad Sam: A Lesson in Humor*, 16 Natl. Teaching & Learning Forum 12 (Dec. 2006). Fisch, a teacher for over fifty years, notes too that humor should be used carefully and only when it is directed to learning in some way. "It need not be elaborate, comedic, or flamboyant. A little bit can go a long way. It works best when it's spontaneous and in the context of the material." *Id.*

¹⁷⁶ I use this approach when students have already been informed about class guidelines, either in writing, orally, or both; I am not skilled or quick enough to always come up with appropriately funny comments for unexpected lapses.

quences of similar lapses in practice. Asking students to consider the ramifications about cell phone interruptions in the context of a meeting with clients, real estate closing, court hearing, or negotiation session helps them build the connection between what is happening in the class and how this relates to their professional lives. Depending on the students in the particular class, the nature of the lapse, the topic being discussed, and where we are in the semester, some students will also joke with each other about incivilities, including teasing each other about what would happen to them in practice.

These same principles of providing group feedback can be applied when students have lapses in civility, although unless the lapses apply to most students, it is probably best to provide feedback individually in private.¹⁷⁷ I have learned that many students are unaware of their lapses, or at least do not realize how their actions affect others. There was the day Louisa, a hard-working and bright student, loudly informed a classmate that his ideas were stupid. Talking to her alone after class, I learned that the rain-sodden ceiling in Louisa's apartment had fallen on her bed the night before. Wet plaster threatened to damage all her possessions, including her computer. This committed student had been so focused on her own misery that she had not considered how her outburst would affect her classmate. She knew she was not being civil, but found it beyond her power to act respectfully. It was not her lack of knowledge of how to behave, but her inability to practice civility under great stress. In our conversation Louisa suggested that she should have just told her classmate what had happened and why she might not be the best company. It would not excuse her action, but it might help her classmate understand.

It was humbling to have this conversation with Louisa.¹⁷⁸ I realized I could not just assume I knew why someone might have a lapse of civility. I had been lucky to first ask her how she was, and learn about her awful morning before I asked her to explain her behavior or conveyed my responses to it. It was also clear how hard it is for us to perceive the impact of our actions when we are under significant stress. Louisa had not meant to offend anyone, but she had been too caught up in her feelings of frustration and

¹⁷⁷ We take criticism of our behavior very personally, much like we take personally comments about our appearance.

¹⁷⁸ I wish I could say that I never had to learn these lessons again, but I would be wrong.

anger to notice what she was doing, pause, and choose a different response.

The incident helped me see the obvious: we truly master civility when we can practice it under stress, not just when we are well-rested, fed, valued, and have lots of time. It is the distinction between knowing what to do and actually doing the right thing. This is hard. Regardless of their careers, law students will not likely bask in such luxury in the working world. They will instead encounter tough conditions where they will be challenged to stay calm, acknowledge strong emotions, and respond appropriately to others. Giving them opportunities to practice and get feedback during class should help students build constructive relationships in practice.

It is well known that students come to class with experiences like Louisa's and are under great stress.¹⁷⁹ Ignoring this, I regret that I frequently conduct my legal writing classes as if all my students are as interested and invested in their legal writing as I am, and that this is a priority in their lives. And I do not always take the time to ask about their concerns because I am trying so hard to get as much learning as I can in the one-hour teaching slot I have twice a week. But students have other priorities and concerns. Over the years I have been saddened to learn belatedly about students being separated from their families while they are attending law school, sleeping in their cars because they have not yet found housing, or being unable to prepare for class because a child, spouse, or parent is in the hospital. One colleague addresses this by asking all her students to participate in five minutes of "Share Your Baggage" at the beginning of class.¹⁸⁰ During that time, students take a few seconds to voice any pressing concerns or issues they have. The rule is that anyone can share a concern, but no one is allowed to try to solve the problem or comment upon it. The goal is for students and professor to put their concerns on the table. The effect is striking. By voicing a concern, students and professor can let it go, even if only temporarily. Only a few minutes of class time are taken up, but frequently after class students and professor will empathize or discuss ways to solve some of the problems. I wish I had done that in the class Louisa attended just after heavy

¹⁷⁹ Michael Hunter Schwartz, *Expert Learning for Law Students* 17–18 (Carolina Academic Press 2005).

¹⁸⁰ Penny Willrich, Presentation, Section on Legal Writing, Reasoning & Research (AALS Annual Meeting, Washington D.C., Jan. 5, 2006) (notes on file with Author).

wet chunks of ceiling had fallen upon her. It might have given her a forum where she could publicly announce her disaster, and then move on, temporarily having given her concerns about her sodden apartment a resting place. Having Louisa also tell the rest of the class about her rain-sodden disaster might also let the rest of the class realize that she would need extra support that day. It could have opened a door for all of us to talk about how such disasters can threaten our ability to treat others with respect.

Regardless of how we provide feedback, if we are going to evaluate students' civility, we must provide them with multiple opportunities to practice and get feedback.¹⁸¹ Giving students a single end-of-semester score for civility, similar to giving them one final exam with no other ways to practice and get feedback, is not helpful to student learning.¹⁸² As noted above, our perceptions of what constitutes civility are varied and complex. When students learn only after the fact that they were deemed to have multiple lapses of civility, lapses that may have lowered their grades, they have become enraged,¹⁸³ especially if they had no idea that their actions would be considered lapses. In legal writing courses, we know that students learn best when we regularly and repeatedly give them feedback on drafts and assignments; we should do the same in teaching civility.

In addressing the students who behave with regular lapses of civility, it may be helpful for us to realize that these students may have been practicing these behaviors for years, in many cases being reinforced for doing so.¹⁸⁴ This suggests that having them change their behavior will take a lot of time and effort. It will probably take more than one conversation such as I had with

¹⁸¹ Hess & Friedland, *supra* n. 91, at 289

¹⁸² *See id.* at 289–290.

¹⁸³ In the past, as we developed our approach to teaching and assessing “professional engagement,” a few students complained bitterly to administrators and colleagues that this component of the course was grossly unfair. Students felt that they had an idea about their overall performance on their research, analysis, and writing skills based on the extensive feedback they received during the course; this contrasted sharply with the lack of feedback on their skills of professional engagement.

¹⁸⁴ Not in all environments, but in many environments, being uncivil or “high maintenance” may provide great individual rewards. For example, at my own and other law schools, I know of difficult law students who received extensions on assignments, waivers of school requirements, and admissions to restricted highly competitive electives because faculty and administrators wanted to avoid the perceived inevitable conflicts that would follow if they required these uncivil students to follow the rules required of all other students. Similarly, within legal education, uncivil and high maintenance faculty may receive lighter service and committee loads than colleagues by virtue of their being so difficult and unpleasant to work with.

Louisa who was caustic after her wet ceiling collapsed¹⁸⁵ because “[w]e have to work harder and longer to change a habit than when we learned it in the first place.”¹⁸⁶ This means that we have to believe in the importance of teaching civility and commit ourselves to doing our best to have students learn to practice it. This takes a lot of energy. As noted above, being around people who are disrespectful is already emotionally draining. Having to regularly work with them to help them develop more effective interpersonal skills adds to our burden. In the face of grading papers, preparing for class, and all the other tasks we take on as legal writing teachers, why would we bother? We should bother because doing so is beneficial to our students, their clients, and the profession.

D. Decide Whether and How to Grade Students’ Civility

Grading is, as other educators have noted, one of the most important teaching and learning tools we have, and despite its problems, it is not likely to go away.¹⁸⁷ That does not mean in evaluating civility, however, that students must be graded or that all students need to be graded on a curve. One approach is to have professionalism or civility count as a percentage of students’ grades. In our two-semester legal research and writing course, being civil—or showing professional engagement—counts as 10 to 20% of the overall course grade. Unlike other graded assignments, students are not graded on an A to F scale. Instead, students start the course having been allocated “A’s” for that percent of the course. This grade of “A” is theirs to lose, making it possible for all students to receive perfect scores for civility. In fact, the vast majority of students do earn full points. Students lose points for being unprepared; repeatedly late to class; rude to classmates, professors, and staff associated with the course;¹⁸⁸ or missing class without a valid excuse. Students understood that a single lapse rarely caused them to lose points;¹⁸⁹ rather it was a holistic assessment of

¹⁸⁵ See *supra* nn. 178–179 and accompanying text.

¹⁸⁶ Goleman, *supra* n. 48, at 104.

¹⁸⁷ Sparrow, *supra* n. 129, at 3–5 (citing Professors Barbara Glesner Fines, Jay M. Feinman, Steven Frieland, Philip C. Kissam, Gerald F. Hess, and many others).

¹⁸⁸ We added interactions with others associated with the course after we learned that students might be respectful in class, but then would treat administrative assistants, teaching assistants, library staff, and other administrators rudely.

¹⁸⁹ An exception to this is being unprepared for classes where students had been assigned to complete significant research and the class discussion is focused on that research. To avoid students from unfairly benefiting from their peers’ research, students who have

their overall performance. A student who regularly participated in class, treated others with respect, demonstrated a good faith effort on assignments, was prepared and on time to class, and helped facilitate others' learning in class was not penalized for being slightly late to class on one or two occasions, or for committing one or two other minor lapses. Students who were regularly late, unprepared, disrespectful, or failed to show a good faith effort on assignments earned lower points.

An alternative to this holistic, "everyone can succeed" approach is to use an A–F scale, with students earning a range of points for civility, and with only a few earning "A's" for the civility component of the course. We used this approach for a few years, but taking this approach was more difficult for my colleagues and me. It was difficult to make meaningful distinctions among some students. We could certainly distinguish the students who appeared from day one to be consummate professionals, students whom we would never hesitate to recommend for a job. And there were a few students who were often unprepared for class; less than respectful to classmates, staff, and professors; regularly submitted poor quality work; and who had, unfortunately, already drawn a great deal of attention to themselves in these negative ways. These extremes made it acceptable to identify those students earning the highest and lowest grades for civility or professionalism. The students in the middle, however, were much harder to differentiate. As others have commented, "the same person may turn out to be highly civil on one of our chosen indicators yet extremely uncivil on another."¹⁹⁰ The multidimensional and complex nature of civility contributed to making it harder for me to measure students' civility than others skills such as analysis, written coherence, and organization.¹⁹¹

not completed their research are asked to leave the class until they have done so. Very rarely do students come unprepared to those classes.

¹⁹⁰ Billante & Saunders, *supra* n. 2, at 18. Billante and Saunders note,

In our focus groups . . . we encountered well-educated young people who readily give up their seat[s] on the bus for older passengers, and who would never dream of spraying a graffiti tag on the side of the vehicle, yet who saw nothing wrong in routinely evading their fare. How is their level of civility to be measured against, say, that of an adult who always pays the fare but who throws the ticket on the floor at the end of the journey?

Id.

¹⁹¹ This was not the only thing that made it difficult—other factors are the difference between having fleeting glimpses and slices of students' behaviors, which may not be representative of their usual practices, and not having static papers to read, comment upon, and review as many times as necessary to be comfortable assigning a grade or score.

For example, I found it difficult to distinguish different lapses, such as differentiating students who appeared unprepared for class twice and students who were more than five minutes late four or five times during the semester. Depending on the class objectives and active learning exercise, a student's lack of preparedness might only affect that particular student and would not necessarily be disrespectful to classmates. If, however, a student was unprepared on a day when students were working in small groups for most of the class, then that student's being unprepared had a significant impact on the others in the small group. Sometimes students knew before class when they would need to be actively engaged in small group discussions, but not always. I was not convinced it was fair to penalize a student for being unprepared on a day when it might only hurt that particular student, or that the consequence for being unprepared should be different depending on the class.¹⁹²

Comparing the lack of preparation with a student's being late to class posed similar problems. There were times when the first few minutes of class were crucial for reviewing important matters, identifying in-class assignments, or clarifying points of confusion. Having students arrive late disrupted others in the class and meant that I would later be spending time with the student trying to make sure that student was caught up. At other times, the first five minutes were less significant, and a student's late arrival was not very disruptive and would not require me to re-teach material. Even when students were late or unprepared, there were endless variations that made distinctions problematic. There would be the student who had "read" the material but had not engaged in sufficiently careful reading to glean anything from the reading other than passing his eyes over the page. That student could check off the reading assignment as having been completed, but was not prepared for in-depth class discussion. Similarly, there was the student who would arrive late but quietly slip into a seat, quickly figure out what was going on in class, and get himself up to speed by learning from classmates after class. And there would be the student who was a couple of minutes late but would need to crowd and disrupt others in the search for the power cord for the laptop, open a computer program with loud music, and noisily ruffle through papers searching for that class's materials.

¹⁹² In terms of being prepared, as faculty we make similar distinctions. We may never be unprepared for teaching, but fail to do all the reading for a committee or faculty meeting.

Trying to arrive at meaningful ways of “grading” these behaviors was difficult. I sought to evaluate students the way I believed that they would be evaluated in practice. If, as new associates, they were very occasionally late to a meeting, but slipped in quietly, independently learned what they had missed, and contributed appropriately to that discussion, I doubted that their lateness would be a problem. On the other hand, if they were regularly late to professional engagements, their employers or clients would notice it and probably react unfavorably.¹⁹³

Seeking to make grading civility valid, reliable, and fair,¹⁹⁴ in the past I created rubrics,¹⁹⁵ detailed scoring sheets, for civility grades.¹⁹⁶ But because of the variations and difficulty making meaningful distinctions between students’ behaviors as noted above, I have found it to be more effective to take the approach that all students can earn full scores for civility.¹⁹⁷ I see the loss of points not as a penalty for the students who have difficulty meeting the class standards, but as a recognition and reward for those who do. As long as students all have notice of the standards and expectations and opportunities to practice and receive feedback during the course, it seems fair to award full points to those students who treat others with respect and dignity. Students can also earn full points for showing demonstrated commitment and progress in developing civility skills. For example, a student who frequently acts in ways that others perceive as disrespectful early in the course, is given feedback about those perceptions, makes significant gains in changing those behaviors, and acknowledges and apologizes for lapses is someone who has, to my mind, earned full points for civility.

How important is it to allocate a percentage of a course grade to a skill such as civility? There is the argument that grading civility reduces its value, creating incentives to be civil only when

¹⁹³ This very situation happened to a colleague’s two students in their summer jobs. About equally strong in their first-year grades, and, in her view, equally competent in their ability to research, analyze, organize, and write, one of the students was perpetually late. My colleague learned from the employers, whom she knew, that they were considering the punctual student for future employment, but not the classmate who was chronically late. This student had vociferously complained about having a requirement that he be on-time to his writing classes, and was angry that he earned a lower grade because of it.

¹⁹⁴ Hess & Friedland, *supra* n. 91, at 289–290.

¹⁹⁵ Sparrow, *supra* n. 129.

¹⁹⁶ Professionalism rubrics can be found at <http://law.gsu.edu/ccunningham/Professionalism/Award/Apps/AppSparrow.htm>.

¹⁹⁷ I realize that this may also mean that I have not been sufficiently analytical in thinking about civility to make meaningful distinctions.

there is something to be gained for it—such as a higher grade—but not when that incentive is lacking. But for better or worse, in law schools, grades are the coin of the realm. Grades are important to employers, and our schools are considered more rigorous when we award fewer high grades, and actually fail students who do not do well. Regardless of whether we decide to count civility as part of a student’s grade, by grading other parts of the course and not that, we send a message about what is important and what matters to these future lawyers.¹⁹⁸

That civility is hard to measure does not mean we should not measure it, just that we need to be careful about how. As an educator and leader in medical assessment has noted, “That which we measure we tend to improve.”¹⁹⁹ The corollary is that we measure that which is easiest to quantify. Ineffable attributes like civility may be measurable; we just need to keep working to develop better instruments to assess them.

E. Teaching Civility within an Institution

Changing a course is relatively easy; changing an institutional culture is considerably more difficult. Given civility’s complexities and importance, it would be helpful to teach it in more than one class or one setting and to provide students with increasingly more challenging and sophisticated opportunities to practice and develop their skills. Civility and professionalism are not isolated doctrines that can be learned in one place at one time.²⁰⁰ Changing behaviors and building the skills of civility and the kinds of emotional awareness and balance that are required to maintain composure and calm needs to take place over time. “A brief seminar won’t help, and it can’t be learned through a how-to manual.”²⁰¹

Ideally, a law school would identify the values that it considers significant, provide multiple ways for students to practice and receive feedback on those skills, and do so across all three years of

¹⁹⁸ See *Sourcebook*, *supra* n. 65, at 77 (arguing that having a legal writing course as the only pass/fail course in a students’ required course load suggests that the course is less important).

¹⁹⁹ Leach, *supra* n. 72.

²⁰⁰ Weresh, *supra* n. 7, at 428 n. 4.

²⁰¹ Goleman et al., *supra* n. 48, at 104. Goleman notes that “breaking old habits and learning new ones . . . requires an extended period of practice to create the new neural pathway and then strengthen it.” *Id.* at 158.

law school.²⁰² My vote would be that, just as some schools use a “writing across the curriculum”²⁰³ approach, law schools could implement a “professionalism across the curriculum” or “civility across the curriculum” approach.²⁰⁴ Civility across the curriculum is possible, but implementing it would require a greater coherence and connection between courses and professors than currently exists in most law schools. Moreover, this ethic of professionalism and civility would need to be a palpable part of the entire law school, from staff to administration.²⁰⁵ Teaching civility in individual classes or even promoting it consistently throughout a law school generally is no guarantee that the complaints about civility will evaporate, but it is one step in the process.²⁰⁶ Moreover, professors could include a paragraph about civility in all letters of recommendation; if employers started asking about students’ civility and professionalism the way they ask about writing skills, then students and professors would be more likely to recognize the value of students learning civility skills.²⁰⁷

CONCLUSION

Ensuring that law students learn civility may seem insignificant when so many other areas of legal education cry for the kinds

²⁰² Physicians have noted that medical professionalism changes as physicians’ roles develop, and suggest that professionalism should be taught and measured over a career. “Assess each principle of professionalism at each stage of a medical career, but contextualize the principles, set stage-specific achievement levels, and approach assessment of professionalism from a developmental perspective.” Arnold & Stern, *supra* n. 25, at 28–29. As with other legal skills, values, and knowledge, civility should be taught and measured in law school and in practice.

²⁰³ Carol McCrehan Parker, *Writing throughout the Curriculum: Why Law Schools Need It and How to Achieve It*, 76 Neb. L. Rev. 561 (1997); Cathaleen A. Roach, *Is the Sky Falling? Ruminations on Incoming Law Student Preparedness (and Implications for the Profession) in the Wake of Recent National and Other Reports*, 11 J. Leg. Writing 295, 320–322 (2005).

²⁰⁴ “Law schools should . . . teach professionalism pervasively throughout all three years of law school.” Stuckey et al., *supra* n. 1, at 8–9.

²⁰⁵ The value of civility and its role in creating community is explained in McDonald et al., *supra* n. 11. Steps for creating campus community are noted in McDonald et al., *supra* n. 148, at 174–178.

²⁰⁶ “It is likely, however, that any improvement in these negative views will depend upon a sustained, multi-faceted approach aimed at improving the quality of legal representation, promoting the countless good deeds that lawyers do, and correcting any public misunderstanding of the nature of the legal practice.” Baker, *supra* n. 5, at 1316.

²⁰⁷ I am grateful to my colleague Ohio State University Associate Professor Mary Beth Beazley for this excellent suggestion. Beazley notes that she does this in all her letters of recommendation, a practice that I have adopted.

of changes advocated in *Best Practices*. Given the social, emotional, physical, financial, and intellectual benefits of practicing civility, however—for clients, colleagues, and learners—having law students learn civility is a goal worth pursuing. As the authors of *Best Practices* note, “Law schools should help students acquire the attributes of effective, responsible lawyers including . . . professional [skills] and professionalism.”²⁰⁸ The challenge is for law school teachers and administrators to engage in the heavy lifting of figuring out how to teach, assess, and sustain this learning. Individual professors may differ on how best to accomplish the task, but unless their efforts are supported and rewarded, it is unlikely that the frequent complaints about the incivilities of lawyers and law students will radically decrease. In pursuing this goal, as with any other change, it may be most successful if adopted incrementally. As educator Maryellen Weimer suggests, approach change from a long-term perspective; taking an incremental and systematic approach allows us all to grow into it.²⁰⁹ Thinking long term, if we can help our students learn civility, we can help create a more humane and emotionally healthy law practice environment. In my dreams, I fantasize about the day where lawyers are valued not just for how we think, but how we act and feel. I love the idea that one day describing someone as “acting like a lawyer” means that the person acts with humility, compassion, and grace, and, above all, treats others with respect.

²⁰⁸ Stuckey et al., *supra* n. 1, at 8.

²⁰⁹ Weimer, *supra* n. 146, at 188.