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## Our Institutional Commitment to Teach about the Legal Profession

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# Our Institutional Commitment to Teach about the Legal Profession

Ann Southworth\* and Catherine L. Fisk\*\*

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## I. INTRODUCTION

During the autumn of 2008, the founding faculty at the University of California, Irvine School of Law (UCI) undertook a challenge: to create a first-year curriculum that captures the latest wisdom about what knowledge, skills, and values law schools should impart to their students. The faculty adopted a number of proposals, including a four-unit, year-long, required, first-year Legal Profession course. The course's design responds to a number of calls for improved law school instruction on the legal profession and professional ethics. Most recently, the Carnegie Foundation's 2007 report, *Educating Lawyers*, challenges law schools to create more opportunities for students "to learn about, reflect on, and practice the responsibilities of legal professionals."<sup>1</sup> It acknowledges that law schools have largely succeeded in honing students' skills in legal analysis, but it faults them for failing to cultivate professional identity and knowledge about "the social and cultural contexts of legal institutions and the varied forms of legal practice."<sup>2</sup> In this respect, the report's recommendations echo earlier demands for reform. The American Bar Association's 1992 MacCrate Report, for example, claimed that law schools were not teaching students the skills they need to practice ethically.<sup>3</sup>

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1. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 188 (2007).

2. *Id.*

3. ABA, COMMITTEE ON LEGAL EDUCATION, *LEGAL EDUCATION AND PROFESSIONAL*

Around the same time, Judge Harry Edwards complained that law schools had abdicated their responsibility to work with the profession to ensure that lawyers practice law honorably.<sup>4</sup> Harvard's David Wilkins has urged the legal academy to "make the norms, structures, and conditions of legal practice" the focus of "serious teaching [and scholarship]," and he has called law schools' failure to do so thus far a "profound ethical failing."<sup>5</sup> Responding to these various critiques, our course illustrates some of the possibilities for, and rewards of, pursuing what Wilkins calls an "institutional commitment" to teach about the profession.<sup>6</sup>

UCI's Legal Profession course offers students an empirically grounded understanding of actual practice realities and critical perspectives on those practices, drawn from history, sociology, anthropology, philosophy, and economics. It situates issues of professionalism in broader contexts, including the history and social structure of the bar, the market for legal services, and the organizations of practice. It relies heavily on theoretical and empirical literature about the profession, as well as case studies, simulations, and commentary by guest speakers. We require our students to engage with issues of the profession from the very start of law school, and we pitch the course in terms that appeal to the students' self-interest—as an effort to help them chart successful, rewarding, and responsible careers in law.

This essay describes the premises, goals, circumstances of creation, and content of our Legal Profession course. We also assess the success of the course and identify continuing challenges. One of our purposes is to offer guidance to professors who might wish to teach a legal profession course similar to ours. Accordingly, we describe the course in detail in Section IV below. Those not interested in the particulars of the course design can read Sections II, III, and V and skim or skip Section IV.

## II. THE PREMISES AND GOALS OF THE UC IRVINE LEGAL PROFESSION COURSE

The course rests on four basic premises. The first is that law schools are obliged to provide students with information and perspectives that will prepare them to navigate careers in law. That task requires attention to the profession's

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DEVELOPMENT: AN EDUCATIONAL CONTINUUM: REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION—NARROWING THE GAP (1992)(the MacCrate Report).

4. Harry Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 (1992). Judge Edwards's claim that law schools "should be training ethical practitioners" generated much less controversy than his assertion that they should be "producing scholarship that judges, legislators, and practitioners can use." *Id.* at 34.

5. David B. Wilkins, *Professional Ethics for Lawyers and Law Schools: Interdisciplinary Education and the Law School's Ethical Obligation to Study and Teach about the Profession*, 12 LEGAL EDUCATION REVIEW 47, 47–48 (2001) (Australia), reprinted in ANDREW L. KAUFMAN & DAVID B. WILKINS, PROBLEMS IN PROFESSIONAL RESPONSIBILITY FOR A CHANGING PROFESSION 846 (5th ed. 2009).

6. David B. Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach About the Profession*, 49 J. LEG. EDUC. 76, 78 (1999).

political and social history and the profession's relationship to the market for legal services and to the legal system as a whole. It demands close examination of the various practice settings in which lawyers operate, the opportunities and challenges of each, and the broader cultural and economic forces that are reshaping the profession. Law students and young lawyers often intuit the values and power dynamics of the practice settings they consider and those they join.<sup>7</sup> But the process of discerning and adapting to the goals and rewards of the workplace sometimes causes considerable stress. We hope to prepare students to make deliberate and informed rather than unwitting choices about where to practice and how to reconcile individual and institutional values. A law school career services office is not equipped to fulfill all these various purposes, and students should not be left to rely on legal recruiters and the legal press for instruction on issues so central to their futures.<sup>8</sup> Nor should education about the profession be delayed until the second or third year of law school. Students want to learn about the profession they have chosen to enter in the first semester of law school, when they are often anxious about the decision to attend law school and eager to begin finding ways to match their interests, aptitudes, and ideals with available professional opportunities.<sup>9</sup>

The second premise of our course is that developing students' capacities for critical reflection about their roles and futures in the profession requires them to learn more than just the law that governs lawyers. The standard law school professional responsibility course tends to focus on the overlapping rules, regulations, and case law that govern individual lawyers' conduct. It is important for students to learn that law, and they generally are obliged to obey it.<sup>10</sup> But much of the law is incomplete or ambiguous, and it frequently vests lawyers with discretion.<sup>11</sup> Deciding how to exercise discretion, and appreciating the likely

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7. See Robert Granfield & Thomas Koenig, "It's Hard to be a Human Being and a Lawyer": *Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice*, 105 W. VA. L. REV. 495, 517 (2003).

8. See Wilkins, *Professional Ethics*, *supra* note 5, at 56 (arguing that the legal academy's failure to study and teach about the profession has created an enormous "knowledge vacuum" that leaves students, practitioners, and citizens vulnerable to "self-interested and inaccurate information merchants").

9. On the advantages of teaching professional responsibility in the first year and for an account of the Berkeley experiment with doing so, see Stephen McG. Bundy, *Ethics Education in the First Year: An Experiment*, 58 LAW & CONTEMP. PROBS. 19 (1995).

10. For articles discussing lawyers' general duty to obey the law and narrow circumstances in which conscientious objection might be justified, see David B. Wilkins, *In Defense of Law and Morality: Why Lawyers Should Have a Prima Facie Duty to Obey the Law*, 38 WM. & MARY L. REV. 269 (1996); W. Bradley Wendel, *Civil Obedience*, 104 COLUM. L. REV. 363, 418–23 (2004). William Simon and David Luban take a more permissive view of lawyers' discretion to disobey law to achieve justice. See David Luban, *Legal Ideals and Moral Obligation*, 38 WM. & MARY L. REV. 255 (1996); William H. Simon, *Should Lawyers Obey the Law?*, 38 WM. & MARY L. REV. 217 (1996).

11. See KAUFMAN & WILKINS, *supra* note 5, at 856–57; David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31, 56 (1995); DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS 7–8 (5th ed. 2009); Richard L. Abel, *Why Does the ABA*

consequences of such choices, requires attention to information and perspectives that law alone cannot deliver. Whatever virtue there might be in teaching students to “lawyer” rules in other contexts, that approach is highly problematic as applied to the law governing lawyers’ own obligations; lawyers’ aptitude for finding legal ambiguity and exploiting it on behalf of clients tends to make the “bounds of the law” that are supposed to mark the limits of partisan advocacy highly indeterminate.<sup>12</sup> Students need to understand that the efficacy and integrity of law depends upon their compliance with duties that compete with client demands—even when statements of those duties in the ethics rules are inevitably vague and imprecise. They also need to understand how the economics and social-psychology of law practice tempts lawyers beyond the bounds of ethical advocacy and counseling and how that phenomenon affects our legal system. Moreover, the law governing lawyers says almost nothing about some of the most important ethical issues confronting lawyers—e.g., what practice areas to pursue, which clients to represent, how to reconcile conflicts between legal requirements and conscience, and, generally, how to live a good life as a lawyer.<sup>13</sup> At the macro level, the law governing legal practice is largely unhelpful for understanding the economic, political, and social forces that are reshaping our profession. Nor does that law, which focuses primarily on the duties of individual lawyers,<sup>14</sup> offer much guidance about the challenges facing lawyers who practice in organizations<sup>15</sup> or questions facing the profession as a whole.

Law schools, therefore, need to look to disciplines other than law—to moral

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*Promulgate Ethical Rules?* 59 TEX. L. REV. 639, 642 (1981) (arguing that “the Model Rules are drafted with an amorphousness and ambiguity that makes them almost meaningless”); Ted Schneyer, *Moral Philosophy’s Standard Misconception of Legal Ethics*, 1984 WIS. L. REV. 1529 (noting that ethics codes give lawyers considerable moral discretion).

12. See David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 801, 861 (1992) (noting that “society has an important stake in the content lawyers give to discretionary norms”); RHODE & LUBAN, *supra* note 11, at 8 (observing that many ethics rules “leave the ultimate decision to the lawyer’s discretion” and thus that the law itself invites lawyers to engage in “moral deliberation”); Paul Tremblay, *The New Casuistry*, 12 GEO. J. LEGAL ETHICS 489 (1999) (discussing how casuistry can inform lawyers’ exercise of discretion); Heidi Li Feldman, *Codes and Virtues: Can Good Lawyers Be Good Ethical Deliberators*, 69 S. CAL. L. REV. 885 (1996) (noting that ethics rules frequently are inconclusive and that lawyers tend to respond to such ambiguity with technocratic lawyering of the rules rather than good ethical deliberation). See also KAUFMAN & WILKINS, *supra* note 5, at 858–59.

13. See MICHAEL J. KELLY, LIVES OF LAWYERS REVISITED: TRANSFORMATION AND RESILIENCE IN THE ORGANIZATIONS OF PRACTICE 12–15 (2007); HOWARD LESNICK, BEING A LAWYER: INDIVIDUAL CHOICE AND RESPONSIBILITY IN THE PRACTICE OF LAW (1992); Joseph Allegretti, *Lawyers, Clients, and Covenant: A Religious Perspective on Legal Practice and Ethics*, 66 FORDHAM L. REV. 1101 (1998).

14. See David B. Wilkins, *Everyday Practice is the Troubling Case: Confronting Context in Legal Ethics*, in EVERYDAY PRACTICES AND TROUBLE CASES 68, 71 (Austin Sarat et al. eds., 1998) (“The codes of professional conduct concentrate almost exclusively on defining the rights and obligations of individual lawyers.”).

15. Notable exceptions include Model Rules 5.1, which addresses the responsibilities of partners, managers, and supervisory lawyers, and 1.13, which addresses the duties of lawyers who represent organizations.

philosophy, economics, sociology, psychology, and organizational theory—and to sources outside the academy for perspectives from which students can draw in deciding how to resolve ambiguity, exercise discretion, and evaluate and navigate lawyers' practices and institutions. Materials drawn from a large empirical literature on lawyers, including group portraits of lawyers working in a variety of settings and rich case studies of lawyers gone astray—along with commentary by guest speakers from various types of legal practice settings—can provide a “window on actual professional practice.”<sup>16</sup> These accounts sometimes provide what the Carnegie Report calls “appealing representations of professional ideals.”<sup>17</sup> They also help students appreciate the mix of factors that lawyers consider in evaluating career satisfaction—e.g., sense of purpose, intellectual challenge, relationships, compensation, autonomy, hours, and working conditions.<sup>18</sup> Thus, our course reflects the view shared by many colleagues around the country that effective preparation for an ethical and rewarding practice cannot be based solely—or perhaps even primarily—on the study of the law governing lawyers and instead requires a much broader lens.<sup>19</sup>

The third premise of the course is that the types of legal and ethical issues that lawyers face and the factors that influence their norms and behavior differ by practice type and setting. Some issues arise in virtually all types of practice. Attorneys in every sector confront time pressures, conflicts of interest, and confidentiality issues. Other issues are much more relevant in some practice settings than others.<sup>20</sup> Lawyers are increasingly subject to rules and regulations that vary by practice specialty.<sup>21</sup> Moreover, even for ethical concerns that cut across practice settings, “context counts.”<sup>22</sup> Lawyers' judgments about ethical issues are

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16. KAUFMAN & WILKINS, *supra* note 5, at 852.

17. SULLIVAN ET AL., *supra* note 1, at 135.

18. See KELLY, *supra* note 13, at 10–15 (invoking Charles Taylor's interest in an axis of ethics that focuses less on one's obligations to others than on living a full life).

19. See, e.g., Elizabeth Chambliss, *Professional Responsibility: Lawyers, A Case Study*, 69 FORDHAM L. REV. 817 (2000) (describing a sociological approach); Luban & Millemann, *supra* note 11 (calling for courses that integrate theoretical classroom teaching and clinical casework to develop critical judgment); John M. Conley, *How Bad Is It Out There?: Teaching and Learning About the State of the Legal Profession in North Carolina*, 82 N.C. L. REV. 1943 (2004) (describing an anthropological approach); Wilkins, *supra* note 8, at 64 (“[A] course in professionalism must ultimately infuse the study of particular professional practices with normative perspectives from disciplines such as philosophy, sociology, psychology, and political science that stand outside the traditional discourse of professionalism.”).

20. To take a few obvious examples, bill padding is a matter of significant concern in private firms, but not in most in-house counsel positions or government offices. Similarly, prosecutors' dilemmas in exercising charging discretion have no counterpart elsewhere. Issues about working with clients with diminished capacity are highly relevant in criminal, elder law, and trust and estates practices, but not in securities litigation and business transactions.

21. John Leubsdorf, *Legal Ethics Falls Apart*, 57 BUFF. L. REV. 959 (2009).

22. David Wilkins coined this phrase in describing why unitary codes of ethics should give way to more particularized standards of practice. See David B. Wilkins, *Making Context Count: Regulating Lawyers After Kaye Scholer*, 66 S. CAL. L. REV. 1145 (1993); Wilkins, *Who Should Regulate Lawyers?*, *supra*

and should be shaped by the nature of the tasks they perform, the institutional frameworks in which they work, the types and sophistication of clients they serve, and the consequences for third parties and the public.<sup>23</sup> Context also counts in another important sense; lawyers tend to identify less with the profession as a whole than with their own subgroups and practice specialties.<sup>24</sup> As Heinz and Laumann's classic study demonstrated, the American legal profession is fundamentally divided by types of clients served, and the division among what they call the "hemispheres" of the bar has grown more pronounced over the last two decades.<sup>25</sup> As the bar has become larger, less cohesive, and more specialized, the organized bar has found it difficult to forge a common identity<sup>26</sup> and to articulate meaningful visions of professionalism.<sup>27</sup> Lawyers often take their cues about appropriate behavior from other lawyers within their practice organizations and within their practice specialties.<sup>28</sup> These contexts have become important "arenas of professionalism," where lawyers' views about their roles and obligations take shape.<sup>29</sup> Indeed, practice settings appear to be at least as important as ethics rules, disciplinary processes, and liability controls in forging lawyers' professional values. Therefore, practice settings and the norms that emerge from them are

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note 12. For an early and classic discussion of the importance of context in defining lawyers' ethical responsibilities, see Murray L. Schwartz, *The Professionalism and Accountability of Lawyers*, 66 CALIF. L. REV. 669 (1978).

23. *Id.*; Roger C. Crampton & Susan P. Koniak, *Role, Story, and Commitment in the Teaching of Legal Ethics*, 38 WM. & MARY L. REV. 145, 162–63 (1996); Bruce A. Green, *Whose Rules of Professional Conduct Should Govern Lawyers in Federal Court and How Should the Rules Be Created?*, 64 GEO. WASH. L. REV. 460, 517–18 (1996).

24. JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 44–47 (2005).

25. JOHN P. HEINZ & EDWARD LAUMANN, *CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR* (1982); HEINZ ET AL., *supra* note 24 at 29–47.

26. John P. Heinz, Edward O. Laumann, Robert L. Nelson, Ethan Michelson, *The Changing Character of Lawyers' Work: Chicago in 1975 and 1995*, 32 LAW & SOC'Y REV. 751 (1998).

27. See Robert L. Nelson & David M. Trubek, *New Problems and New Paradigms in Studies of the Legal Profession*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATION IN THE AMERICAN LEGAL PROFESSION* 1, 14 (Robert L. Nelson, David M. Trubek & Rayman L. Solomon, eds. 1992); Ted Schneyer, *The ALI's Restatement and the ABA's Model Rules: Rivals or Complements?*, 46 OKLA. L. REV. 25 (1993); Ted Schneyer, *Professionalism as Bar Politics: The Making of the Model Rules of Professional Conduct*, 14 LAW & SOC. INQ. 677 (1989).

28. See generally KELLY, *supra* note 13. Specialized bar associations have occasionally succeeded in developing useful standards. See Tanina Rostain, *Sheltering Lawyers: The Organized Tax Bar and the Tax Shelter Industry*, 23 YALE J. ON REG. 77, 95–113 (2006) (describing the New York State tax bar's creation of standards condemning the lucrative practice of designing and marketing tax shelters); AM. ACAD. OF MATRIMONIAL LAWYERS, *BOUNDS OF ADVOCACY* (Nov. 2000), <http://www.aaml.org/library/publications/19/bounds-advocacy/preliminary-statement> (last visited Nov. 27, 2010) (manual designed to assist matrimonial lawyers on moral and ethical problems as to which the Model Rules provide "insufficient, or even undesirable, guidance").

29. Robert L. Nelson & David M. Trubek, *Arenas of Professionalism: The Professional Ideologies of Lawyers in Context*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES*, *supra* note 27, at 177, 205 ("The legal workplace is an arena of professionalism in the sense that the specific organizational contexts in which lawyers work produce and reflect particular visions of professional ideals.").

worthy of careful consideration by anyone interested in promoting ethical law practice.<sup>30</sup>

This premise about the nature of the law of professional responsibility and the circumstances that affect how lawyers respond to it highlights an advantage of teaching Legal Profession in the first year. While any law school course offers the opportunity to teach about the gap between the law on the books and the law in action, as well as the complex social processes that affect compliance with law, a first-year Legal Profession course affords an especially promising context in which to discuss these issues. Research on bar disciplinary processes demonstrates that there is little formal enforcement of the ethics rules.<sup>31</sup> Yet, when the regulated group is one with which law students identify (their peers and future selves), students readily understand that law is not simply a set of government-mandated rules and that compliance is not simply a function of enforcement. Of course, exposure to evidence of the enforcement gap could potentially promote student cynicism—about individual lawyers who violate law without adverse consequences, the organized bar’s failure to adequately police lawyer misconduct, and the bar’s resistance to alternative sources of regulation. But our course also gives students an opportunity to consider the reasons for obeying law even in the absence of a significant threat of compulsion, to see that legal compliance is sometimes a function of the behavior of groups and organizations as well as individuals,<sup>32</sup> and

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30. Michael Kelly has argued that “[p]ractice organizations now by and large constitute the legal profession(s),” and that “no coherent account of professionalism, legal ethics, or the contemporary legal profession is possible without understanding the workings of practice organizations.” MICHAEL J. KELLY, *LIVES OF LAWYERS: JOURNEYS IN THE ORGANIZATIONS OF PRACTICE* 18 (1994). See also James E. Moliterno, *Practice Setting as an Organizing Theme for a Law and Ethics of Lawyering Curriculum*, 39 WM. & MARY L. REV. 393, 394 (1998) (arguing that “the ethics of lawyering varies according to the practice setting” and suggesting that law schools should use practice context as the organizing theme for ethics teaching).

31. Research documents many deficiencies in bar disciplinary processes. Lawyers and judges, who are best positioned to detect misconduct, rarely report it, and clients often lack incentives and/or resources to pursue complaints. RHODE & LUBAN, *supra* note 11, at 982. Moreover, only a small proportion of complaints that reach the disciplinary process actually result in any kind of sanction or other remedial measure. See *2008 Survey on Lawyer Discipline Systems*, ABA CTR. FOR PROF’L RESPONSIBILITY (2009); Fred C. Zacharias, *The Future Structure and Regulation of Law Practice: Confronting Lies, Fictions, and False Paradigms in Legal Ethics Regulation*, 44 ARIZ. L. REV. 829 (2002).

32. Mitt Regan’s account of the John Gellene case suggests that Gellene’s misdeeds were partly explained by Milbank Tweed’s “eat what you kill” culture, which encouraged aggressive, risk-taking behavior. MILTON C. REGAN, JR., *EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER* (2004). Ted Schneyer, the leading advocate for imposing discipline at the level of the law firm, emphasizes how firms’ policies and procedures constitute an “ethical infrastructure” that “cuts across particular lawyers and tasks.” See Ted Schneyer, *Professional Discipline for Law Firms?*, 77 CORNELL L. REV. 1, 10 (1992). The strategies that liability insurance companies use to promote compliance with professional responsibility standards demonstrate this critical connection between firm culture, management policies, and the conduct of individual lawyers. See William H. Simon, *The Ethics Teacher’s Bittersweet Revenge: Virtue and Risk Management*, 94 GEO. L.J. 1985 (2006) (noting that liability insurers are beginning to require large law firms to adopt risk management measures that promote collaborative decision-making, such as peer review and confidential internal grievance

to observe how patterns of compliance and noncompliance constitute the meaning of law.

The final premise of the UCI Legal Profession course is that law students benefit from pedagogies that require active engagement and thereby lend elements of immediacy and self-discovery to the curriculum. Active engagement may be especially beneficial in courses in which lawyers are the central focus, such as skills training, professional responsibility, and legal profession classes.<sup>33</sup> Other scholars have documented the benefits of teaching ethics in clinical contexts,<sup>34</sup> but role-playing exercises can achieve similar ends; simulations allow students to step into the shoes of lawyers and other actors in real practice dilemmas and policy controversies and to enter the subjective experiences of the people involved.<sup>35</sup> They help students appreciate external influences on lawyer conduct and the consequences of lawyers' choices. Thus, role-playing is a useful strategy for implementing the Carnegie Foundation's call to "engage the moral imaginations of students as they move toward professional practice."<sup>36</sup>

With these premises in mind, our new first-year course is designed to achieve four primary goals. First, we seek to give students an understanding of the enormous range of activities in which lawyers engage and to help them assess the fit between various types of practice and their own skills, values, and aptitudes so that they can choose wisely and avoid the career dissatisfaction that plagues too many lawyers. Second, the course teaches and critiques the law governing lawyers. Although that is a fairly conventional goal of professional responsibility courses, we analyze the law primarily as it arises in the practice contexts where it is most salient—an approach that encourages students to consider how lawyers' deliberations might be influenced by the institutional context of their work, their practice organizations and clientele, and other economic, cultural, psychological, and social factors. Third, we help students develop a capacity for critical reflection about lawyers' work. We encourage students to be skeptical about self-

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procedures).

33. James E. Moliterno, *Legal Education, Experiential Education, and Professional Responsibility*, 38 WM. & MARY L. REV. 71, 100–02 (1996); Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLINICAL L. REV. 505 (1995).

34. See Moliterno, *supra* note 33, at 100–02; Luban & Millemann, *supra* note 11, at 40–41; Joan L. O'Sullivan et al., *Ethical Decisionmaking and Ethics Instruction in Clinical Law Practice*, 3 CLINICAL L. REV. 109 (1996); Robert P. Burns, *Legal Ethics in Preparation for Law Practice*, 75 NEB. L. REV. 684 (1996); Peter A. Joy, *The Law School Clinic as a Model Ethical Law Office*, 30 WM. MITCHELL L. REV. 35 (2004); Thomas L. Shaffer, *On Teaching Legal Ethics in the Law Office*, 71 NOTRE DAME L. REV. 605 (1996).

35. See Carrie Menkel-Meadow, *Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 FORDHAM L. REV. 787 (2000); Eleanor W. Myers & Edward D. Ohlbaum, *Discrediting the Truthful Witness: Demonstrating the Reality of Adversary Advocacy*, 69 FORDHAM L. REV. 1055 (2000); Alan M. Lerner, *Using Our Brains: What Cognitive Science and Social Psychology Teach Us About Teaching Law Students to Make Ethical, Professionally Responsible, Choices*, 21 QUINNIPIAC L. REV. 643, 695–96 (2004).

36. SULLIVAN ET AL., *supra* note 1, at 6.

congratulatory statements of professional ideals sometimes offered by lawyers and the organized bar, while also encouraging them to take seriously their own ethical obligations and to understand that many practicing lawyers do too. Finally, we seek to help them develop informed views about the issues facing the American legal profession as a whole in the twenty-first century, including questions relating to the cost of legal services, access to the legal system, the market for legal services, competition for regulatory control over the profession, diversity, globalization, and technology.

In designing this course, we have drawn ideas and inspiration from others too numerous to mention by name. UCI is only one among many law schools experimenting with methods of teaching about the legal profession and professional responsibility, and many of our ideas are based on the innovative writing and teaching of colleagues elsewhere. This essay is thus part of a rich and continuing conversation among scholars and teachers in the field.<sup>37</sup>

### III. BACKGROUND

The founding faculty and Dean Chemerinsky envisioned the Legal Profession course as a core part of the UCI School of Law curriculum. Curricular planning began in September 2008 with a faculty meeting at which we identified the skills and competencies that law students need to acquire to become effective and responsible lawyers: legal analysis, legal research, oral and written argumentation and exposition, drafting, negotiation, ethical judgment, fact investigation, problem-solving, close and critical reading, interviewing, counseling, cooperative learning and teamwork, and communication with clients, experts, and other nonlawyers with whom lawyers deal. In the next meeting, we discussed how to integrate interdisciplinarity into the curriculum. At a third meeting, we considered what courses to teach in the first year, and we immediately included Legal Profession on the list. The decision to teach Legal Profession as a required first-year course was based partly on our sense that students should immediately begin learning about the profession they are preparing to enter, as well as our expectation that they would need to know some basic ethics rules that might be relevant to pro bono projects in the first year and in their first summer jobs. It also reflected the view of some faculty that we should avoid any upper-level requirements beyond completion of a writing requirement and a clinical

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37. To list any of the people whose writing or teaching has been particularly influential for us or any of the law schools that have adopted particularly interesting required professional responsibility courses risks offense by unintentional omission. Aside from acknowledging intellectual debts, the principal purpose for compiling such a list is to alert any reader who is new to the field of where to look for ideas for course design. Among the many law schools that have experimented with courses that are similar to ours in one way or another are American, California Western, Duke, Fordham, Georgetown, Harvard, Indiana University, Maryland, Mercer, New York Law School, Northwestern, North Carolina, Southwestern, Stanford, UCLA, University of San Diego, USC, and William and Mary.

experience.

As we discussed how to allocate units among first-year courses, we assumed that Legal Profession required, and therefore should be allocated, the same number of units (four) as most other first-year courses except Lawyering Skills, to which we assigned six units divided into three per semester. From that point forward, every curriculum discussion assumed that Legal Profession would be a required first-year course and that it would be taught as a year-long course of two units each semester.

Although the decision to spread the course out over the entire year was not driven by pedagogy as much as by a convenient division of the units of instruction, it has contributed to the distinctiveness of the course. The year-long format has enabled us to cover more material and to incorporate different types of learning and multiple forms of assessment, including role-play exercises, the research and writing of a major paper, and a wide array of speaker panels. Thus, it may be an important feature of the course design that was largely accidental.

A vision for the course that emerged early in the curriculum design process was that Legal Profession could include some aspects of interdisciplinarity and experiential learning as core elements.<sup>38</sup> The founding faculty had identified interdisciplinarity and experiential learning as signature characteristics of the UCI School of Law for a number of reasons. As to interdisciplinarity, a significant factor was the large number of noted scholars elsewhere on the campus who study law through the lens of another discipline (including many in the Schools of Humanities, Social Ecology, and Social Sciences) and whose efforts led to the creation of the law school at UCI. We discussed various ways to incorporate interdisciplinary study into the law school curriculum, and a somewhat inchoate consensus emerged that Legal Profession might be an ideal first-year portal to interdisciplinary study. We cannot speak definitively to the reasons that faculty (other than ourselves) may have believed this, nor can we accurately declare it to be a universal view. What our notes and recollections of the curriculum planning discussion do allow us to say is that some felt that it would be desirable to teach interdisciplinary study of law, that it would be easy to convince law students of the professional utility of studying lawyers from the perspective of other disciplines, and that law students would learn a little bit about the study of law & economics, anthropology, sociology, and history painlessly as they learned about what scholars trained in these disciplines have said about the legal profession.

As to the experiential learning element of Legal Profession, the faculty deliberations evinced a general sense that it was desirable to introduce experiential learning as early as possible in law school and throughout the curriculum, and that

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38. We use experiential in the most general sense to refer to pedagogies that ask students, through simulation and/or involvement of practicing lawyers, to consider how they might act as a lawyer in a situation. We do not incorporate live-client representation in our Legal Profession course.

Legal Profession offered many opportunities to do so. But beyond that, the faculty left it up to us as to whether or how to incorporate simulations or other practice-based exercises into the course. In a way, Legal Profession became a course on which some of the founding faculty—and, significantly, not just those who teach the course—could focus their aspirations for how legal education could be enriched by being both more grounded in the real world of practice and more informed by interdisciplinary perspectives.

We attribute the institutional commitment of our law school to teaching Legal Profession in the first year to several factors, including the values and vision of the dean and many members of the founding faculty and the expectation that we should do better than conventional legal education in training lawyers. All curricular change is difficult, especially in the first year of implementation. It helped that we worked on a blank slate, with no status quo. This enabled us to commit the number of units necessary to cover the material thoroughly; because allocating four units to teaching Legal Profession was not perceived as subtracting units from courses the faculty already taught at UCI, there was no entrenched opposition.<sup>39</sup>

#### IV. THE LEGAL PROFESSION COURSE

When the two of us began planning the course, we immediately agreed to take a unified approach to the readings, the syllabus, and the various exercises and assessment devices. While this decision was in part a product of the particular circumstance that only one of us was a long-time teacher of the subject and a scholar of the profession, it also reflected our belief that collaborative teaching would be more enjoyable for us. The result—a school-wide, unified approach to the course—may be part of what contributes to student satisfaction: students apparently regard Legal Profession as a signature part of the UCI School of Law experience because it is an experience shared by all our first-year students. The unified format certainly facilitates planning of speaker panels, and it allows us to share the work of organizing and the fun of brainstorming.<sup>40</sup>

The organization of the syllabus reflects several of the course's basic premises. During the first few weeks, we introduce broad questions about lawyers' competing duties, as well as two large bodies of law that cut across practice areas—confidentiality and conflicts. But thereafter we discuss legal and ethical

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39. The curriculum at UCI is described elsewhere in this Symposium issue. To put it briefly, the units devoted to Legal Profession are available because we decided to make Property an upper-level elective. Thus we avoided the problems described by Professor Bundy in his description of efforts to revamp the curriculum at Berkeley to make Legal Profession a required first-year course, which resulted in the course being allocated too few units to be taken seriously by students or to allow the faculty to realize the course's potential. *See Bundy, supra* note 9, at 23–24.

40. Professors considering this form of collaborative teaching should ensure that every section is taught on the same days at the same time and that a room large enough to accommodate all students enrolled in all sections is available at the time when speaker panels are scheduled.

issues in the practice contexts where they are most relevant. The primary organizing theme of the course is the practice setting, and the survey of practice contexts accounts for the lion's share of reading materials and class time. We save large questions about issues facing lawyers collectively for the end of the course, on the theory that students will be better prepared to consider those big picture questions after they have acquired a basic understanding of the profession's structure and operation.

The course is organized in five segments (which we call units) with a total of forty-five reading assignments.<sup>41</sup> Our class meets twice a week for an hour each session for twenty-six weeks through both the fall and the spring semesters, for a total of fifty-two class sessions. The first unit (comprising five one-hour classes) introduces the role of the lawyer, the concept of a profession (and the controversy over the concept), the profession's demographics, and major sources of regulation and control of lawyers' practices. As is common with introductory materials, our first unit attempts to capture the students' interest by raising the big issues that we will consider throughout the course, including the ethical claims embedded in the notion of a profession, the American legal profession's relationship to the market for legal services, and the agency of individual lawyers in deciding how to resolve the moral dilemmas they encounter in practice. Since the unit is covered in the first few weeks of the first year of law school, it also offers students an overview of the profession they have chosen to enter and an orientation to the pedagogical methods of legal education (close reading followed by class discussion). The second unit (three assignments; three classes) considers the duty of confidentiality, and the third unit covers conflicts of interest in five assignments taught in five classes. The second and third units are the most intensive discussion of legal doctrine and rely most heavily on the typical modified Socratic classroom method. As we cover the rules, we highlight for the students that rules-based discipline is only a tiny part of the professional experience of lawyers and that other sources of regulation—especially markets, liability controls, judicial and agency regulations, and workplace cultures—are typically much more relevant.

The fourth unit, by far the longest, is a study of professionalism in context. We systematically examine different practice settings in which lawyers work, including prosecutors' offices, public defender organizations, private firms of all sizes, corporate counsel offices, nonprofit advocacy groups, legal aid, and government. For each of these, we offer students the best empirical and ethnographic accounts, drawn from various disciplines and from the popular press. We also present panels of speakers to discuss their work and practice organizations. These sources complement one another. The written sources

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41. For the sake of simplicity, we describe here the version of the course we taught in 2009–10. As we explain below, *see infra* text accompanying note 44, in 2010–11 we have modified the course slightly, but the overall structure remains the same. Readers interested in examining the current syllabus are welcome to contact us.

provide background and allow students to draw general conclusions about the organizations, work, clients, and common ethical dilemmas in each practice type. The speakers illustrate variation and breathe life into the portraits of practice and practitioners offered by scholars and journalists. As Michael Kelly has noted about his in-depth accounts of five practice organizations, lawyers' descriptions of their lives as lawyers tend to be "stories about what lawyers want to believe," but they also give students an appreciation for how particular practice cultures, management practices, and incentive structures influence the lives of lawyers.<sup>42</sup> Together, these sources help our students assess the fit between various practice types and their own character traits, values, strengths, and aspirations in ways that career offices and the legal press cannot possibly hope to do.

Unit IV includes several sections. The first includes two assignments on criminal defense and two on criminal prosecution. (In 2010–11 we moved these assignments to Unit I to illustrate different conceptions of the lawyer's role and to introduce guest speakers earlier in the course.) The next section includes five assignments on the individual and small business "hemisphere" of the profession. It addresses solo and small firm practice, advertising and solicitation, stratification within the plaintiffs' bar, ethics in negotiation, and boutique firms. The next section covers the large organizational client hemisphere. It begins with two sets of readings on large firms, a class on supervisory and subordinate relationships, a case study of the downfall of Milbank Tweed's John Gellene,<sup>43</sup> a class on the distinction between counseling and advocacy, two sessions on in-house counsel, and one on government lawyers. The final section of the fourth unit covers the public interest sector and includes assignments on legal aid, cause lawyers, and accountability in the representation of groups.<sup>44</sup>

The fifth and final unit of the course examines what we call "challenges for the profession in the twenty-first century." We begin with three sets of readings on access to legal services: unauthorized practice and nonlawyer services, the cost of legal services, and pro bono. We then address multijurisdictional practice and bar admission, lawyer discipline, transnational practice and globalization, and diversity in the profession. The final two assignments of the year focus on professional identity and reflections on the future of the legal profession and the students' places within it.

While some of the assignments in Units IV and V involve close reading of cases and rules (e.g., on client perjury and impeachment, the ethics of negotiation,

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42. KELLY, *supra* note 13, at 8. See also Deborah L. Rhode, *Teaching Legal Ethics*, 51 ST. LOUIS U. L. REV. 1043, 1055 (2007) (noting that "visitors from practice can . . . be excellent if they are candid and self-reflective and if they prepare something beyond war stories.").

43. See Milton C. Regan, Jr., *Bankrupt in Milwaukee: A Cautionary Tale*, in LEGAL ETHICS: LAW STORIES (Deborah L. Rhode & David Luban, eds. 2006).

44. In 2009–10 we also included a section on the judiciary, with readings on judicial elections, on regulation of judicial speech off the bench, and on recusal, but we reluctantly cut that section in 2010–11 to save time.

supervisory and subordinate relationships, and lawyer discipline), other assignments consist entirely of excerpted articles. We offer students some of the classic readings on lawyers' ethics, as well as recent empirical or policy-oriented analyses of particular practice settings and challenges facing the profession as a whole. On student evaluations, some students called for more policy analysis and theoretical and empirical literature and less law; others asked for the reverse. Our own sense is that a mix of law, policy analysis, and social science research is entirely constructive. Our students certainly gave us no indication that they thought that only the doctrine "mattered" or that the empirical and theoretical literature was not "real law."<sup>45</sup>

From the students' standpoint, a highlight of the course is the variety of the classroom presentations and exercises. In 2009–10, we hosted thirteen different panels with a total of thirty-six speakers, mostly practicing lawyers in Orange County or Los Angeles. Each speaker was asked to spend no more than ten minutes discussing his or her career history and describing the challenges and rewards of his or her current practice. Most of each session was devoted to questions and answers with the students. Our panels included criminal defense lawyers (a state public defender, a federal public defender, and a lawyer in private practice handling white collar defense), criminal prosecutors (a state deputy D.A., an Assistant U.S. Attorney, and a lawyer handling internal affairs for a sheriff's department), plaintiff's attorneys, lawyers practicing in boutique firms (civil rights, intellectual property, and appellate), large firm lawyers, in-house counsel of companies of different sizes, government lawyers (local, state, and federal), legal aid lawyers, lawyers doing public interest impact litigation, judges (a federal district judge and a recently retired state trial judge who is working as a mediator), lawyers who supervise pro bono work for large law firms, and lawyers discussing racial, ethnic, and gender diversity.<sup>46</sup> In addition, we had a former lawyer who had pled guilty to a crime speak to our students because we felt it important for students to understand that all too many lawyers—including lawyers with elite credentials and apparently successful careers—make judgment errors of such magnitude as to result in criminal indictment. We also used three guest speakers from academia to introduce students to interdisciplinary perspectives on the legal profession: a sociology professor discussed her empirical research on solo and small firm

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45. See, e.g., Rhode, *supra* note 42, at 1048 (noting the potentially perilous pressure to focus instruction on the ethics rules tested on the bar and the MPRE); Chambliss, *supra* note 19, at 850–54 (defending her sociological approach to teaching legal profession against arguments that it will not prepare students for the MPRE or the bar exam and that it provides insufficient coverage of the issues raised by the Model Rules).

46. One benefit of using speakers from the bench and bar is compliance with ABA Standard 302(a)(5) (requiring instruction in the legal profession); Interpretation 302–06 states that "A law school should involve members of the bench and bar" in instruction on the profession. *ABA Standards and Rules of Procedure for Approval of Law Schools, 2009–2010*, ABA SEC. OF LEGAL EDUC. & ADMISSIONS TO THE BAR (2009).

practice; a law professor with a Ph.D. in economics offered an economic analysis of the market for legal services; and a law professor with long experience in Law & Society scholarship brought his expertise on the British and Indian legal professions to bear in a discussion of globalization in the commercial sector.

Each speaker panel occurred during class time, although we often allowed more than the usual sixty-minute class period for a speaker panel, because our class met on Fridays and the students had a free period after the class. The overwhelming majority of students did not object to the extra time allocated to speakers. When we felt the need to cover the assigned reading before the panel, we did so. When we felt that the reading assignment was reasonably self-explanatory, we assigned the reading for the day of the speaker panel. We required the students to attend panels prepared to ask questions of the speakers, and we enforced the preparation requirement by having students submit their questions to us in advance of the panel. The best questions brought some insight from the assigned reading to bear on the phrasing of the question. Students interested in the practice areas of particular speakers appreciated networking opportunities after the formal session ended, and some students secured summer jobs based in part on these informal conversations. The panelists uniformly reported they enjoyed their chance to interact with the students; although it took several hours out of their busy days, they apparently relished the opportunity to reflect upon their professional experiences, to debate with fellow panelists, and to interact with students. We gave speakers the assigned readings before they attended class, and many of them skimmed or read the readings and used them as a jumping off point for their remarks.

The largest single assignment was to write a paper based on an in-depth interview of a lawyer of the student's choice.<sup>47</sup> The paper's principal purpose was to require each student to have a lengthy and structured conversation with a lawyer about issues of professionalism, career satisfactions and challenges, and ethics (broadly defined), and to use the interview to engage with some of the issues that we had studied in class. A second major purpose was to offer each student the opportunity to develop his or her own theories about the lawyer's role in light of the readings, speakers, and interviews. Our hope was that students would prepare for the interview, and also for the writing of the paper, by thinking carefully about how the issues we had discussed all year arose in the practice setting in which the interview subject practiced. The students were invited, essentially, to contribute to research on the profession in a small way through their own mini-ethnography of a lawyer and his or her practice environment. A third purpose was to allow students to practice interview techniques, an important skill for lawyers to develop, whether as part of a research project or as an aid to fact-

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47. The inspiration for this assignment came from John M. Conley. *See* Conley, *supra* note 19, at 1956–60.

finding in law practice. A fourth purpose was to give students sustained commentary on original writing, which happens all too seldom in the first year of law school. A minor but not entirely inconsequential purpose of the project, given the interdisciplinary ambitions of the course, was to allow students to experience some of the joys and frustrations of qualitative empiricism so that they could appreciate the more rigorous works of legal anthropology and interview-based sociology that we had read throughout the year.

The students embraced the challenge of the interview paper. The remarkably varied interview subjects included a recently retired general counsel of a large government office, lawyers at various career stages in major law firms, an environmental advocate, a senior public defender, a prosecutor, the director of pro bono and training for a large firm, a solo practitioner, a litigator for an insurance company, a superior court judge, and a federal court of appeals judge. The students asked probing questions and elicited fascinating insights from their subjects and then used those insights to question, elaborate upon, or revise their own understandings of the issues we had covered in readings. Each student prepared and distributed a short written abstract of the paper to the rest of the class, so that, in addition to hearing the oral presentations, the students received the benefit of sixty interviews with lawyers in all sorts of practice settings.

We assigned less formal writing assignments as well. As noted above, each student was required to prepare a written question for each speaker panel. The task of framing questions is a valuable skill, and most students showed improvement over the course of the year. The quality of the questions also enabled us to assess, at least to some extent, student comprehension of the assigned readings. In addition, students wrote short (two- or three-page) reflection papers on their role-playing exercises.

The course used a total of about a dozen simulations and role-play exercises of varying length and complexity throughout the year, and students received individualized feedback on their performances on the simulations.<sup>48</sup> Every student was required to play a leading role in at least two simulations, and most students availed themselves of the chance to play a leading role in three or more. One—a negotiation exercise based on the *Valdez v. Ace Auto Repair* problem<sup>49</sup>—occurred outside the classroom, although the next class discussion focused on the problem. Some of the role-playing exercises occupied most of the class hour, while others lasted only a portion of it. Several were based on real cases, such as

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48. We benefitted from using role-play exercises developed by others, including our colleague, Carrie Menkel-Meadow, who developed a superb collection of simulations with Murray Schwartz. MURRAY L. SCHWARTZ & CARRIE MENKEL-MEADOW, *TEACHERS' MANUAL, LAWYERS AND THE LEGAL PROFESSION: CASES AND MATERIALS* (2d ed. 1985).

49. This simulation, developed by Henry Hecht, is based on a hypothetical problem originally published by the American Bar Association Consortium for Professional Education and the American Bar Association Center for Professional Responsibility. See RHODE & LUBAN, *supra* note 11, at 457.

one involving objections by a large law firm's associates to the firm's decision to represent a bank that holds the account of a Rwandan minister implicated in the 1994 genocide of Tutsis.<sup>50</sup> Another involved a fictional meeting of Milbank Tweed's firm management committee to decide what to do after John Gellene's misstatements have come to light but before criminal charges have been filed against him.<sup>51</sup> One particularly interesting role-play exercise required the students of a fictional new law school to debate what public interest law is and what counts as public interest work for purposes of determining eligibility to receive a grant funded by the new student-run Public Interest Law Fund (PILF). The exercise drew into the classroom the very real debate already informally underway among the inaugural class of students as they established the UCI PILF and raised money to fund summer public interest fellowships. Other simulations focused on unauthorized practice restrictions, resource constraints for public defenders, and a disciplinary proceeding against a solo practitioner charged with misconduct. Each student was also required to give a short (three- to five-minute) oral presentation of his or her lawyer interview paper, and students received brief feedback on their oral presentation skills.

The course used multiple forms of assessment. We gave mid-year and end-of-year exams that tested both the application of the law of lawyering to hypothetical facts and competence in discussing larger issues about the profession. The latter type of questions required resort to the speaker panels and the social science literature. Students received a final grade at the end of the year; we also gave them a provisional grade in December simply to give them an idea of their progress. One quarter of the final grade was based on the fall semester exam and one quarter rested on the spring semester exam. Class participation, including the role-playing exercises, accounted for twenty percent of the grade, and the writing assignments comprised the remaining thirty percent.

Based on what we learned during our first year, we are making some changes in our second year of teaching the course. We are trimming two or three assignments for 2010–11 in order to allow for more in-depth discussion of certain topics. As noted above, we are moving the materials and speaker panels on criminal defense and prosecution to the first unit. The latter change will help illustrate the real-world relevance of lawyers' conceptions of role, and it mixes some of the more abstract elements of the course (drawn primarily from moral philosophy) with the more immediately riveting stories and concrete examples associated with criminal defenders and prosecutors. That revised approach also allows us to include two speaker panels—the students' favorite element—early in the course. We have also updated the syllabus to take account of new scholarship,

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50. See RHODE & LUBAN, *supra* note 11, at 181–82.

51. This excellent case study is Mitt Regan's. See Regan, *Bankrupt in Milwaukee: A Cautionary Tale*, *supra* note 43; see also Regan, *supra* note 32.

current news stories, and recent cases.

#### V. EVALUATION OF THE COURSE: SUCCESSES AND CHALLENGES

By the conventional and short-term measure of a course's success—student evaluations—the Legal Profession course was a success. The end-of-year written student evaluations were among the highest of any course in our inaugural year. Students praised the course's utility. Generally, their favorite part was the speaker panels, but they also liked the focus on practice settings, the attention paid to what lawyers actually do, and the discussion of how lawyers reconcile their professional and personal lives and resolve the practical, ethical, and moral challenges they confront. They appreciated learning about the range of lawyers' practices and the large number of career paths open to them; several students said they learned of possible careers of which they had not previously been aware, and some said they had tentatively ruled out types of practice that they had originally considered. Several students also reported satisfaction in knowing basic rules of ethics while handling pro bono projects during the spring semester of their first year (ninety-five percent of students did pro bono legal work) and during their summer jobs.

We were pleasantly surprised to discover that some of the features of the course that in some contexts can draw law students' ire did not seem problematic to ours. Our students generally did not mind the dose of interdisciplinary readings. While we did not explicitly emphasize the interdisciplinary goals of the course—we simply presented materials from other disciplines as the best available research on the profession—students read excerpts of works in sociology, anthropology, philosophy, and economics without complaint. That the interdisciplinary materials were about the students and their chosen career appears to have made the readings seem relevant and useful rather than academic. We were also pleased that students were good-natured about the frequent short writing assignments and the fact that the course involved more work than conventional lecture and discussion courses. Their equanimity about the amount of effort required may be attributable to the fact that the work was spread out over the entire year so that no single Legal Profession assignment or exam was worth as much toward their GPA as a single exam in their other courses. It may be that students considered the course work helpful preparation for practice, and, in a bad economy, they seemed eager to gain the skills and knowledge necessary to get an edge in the job market.<sup>52</sup>

We do not have any measures of the course's longer-term impact. Will students find the survey of practice settings useful in making career choices? Will they find greater career satisfaction than peers at other law schools that do not

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52. The favorable reactions of our students to Legal Profession is consistent with what Professors Conley and Chambliss report about their own experiences with teaching unconventional courses about the legal profession grounded in sociological and ethnographic accounts of the profession. See Chambliss, *supra* note 19, at 851, 854, 856; Conley, *supra* note 19, at 1961 (both reporting favorable student reaction to their course).

offer such a course? Will they be more aware of their own agency in choosing styles of practice and in determining how to interact with clients, opposing counsel, and other participants in the legal system? Will they be more conscientious, ethical, or professional? Obviously, to the extent all the foregoing questions ask for comparisons between UCI School of Law graduates and other lawyers, we will never find answers; there are insurmountable difficulties of research design and measurement. But even if we do not attempt comparative judgments and focus solely on the course's long-term influence on our own students, it will be years before we have data from which we could draw any solid conclusions.<sup>53</sup>

We can only speculate about why UCI students reported enjoying the Legal Profession course and saw it as a core part of the first year experience. As we suggested above, it may be that including the course in the first-year curriculum,<sup>54</sup> assigning it the same unit value as every other course, and making it one of only two year-long courses, signaled its importance. It may be that no upper-level students were around to tell them which courses were serious and which were fluff. The course's solid grounding in the "real world" of law practice, and its combination of skills, law, theoretical and empirical methods and training may have enhanced its appeal. That the course was largely the same for all 1L students—we assigned the same readings, speaker panels, simulation exercises, papers and examinations—may have encouraged students to treat it as an essential part of law school. It may be that in a year-long small-group (thirty students per section) format, the students enjoyed the opportunity to bond with each other and with the professor. It may be that the two of us really loved teaching it and did not hide our feelings. And it may simply be that everything at UCI School of Law is new, so the students understood the course to be just another aspect of being at an innovative new law school.

Although the course was successful, we still face many challenges. Perhaps the most significant one is trying to accomplish all the goals noted above in four

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53. Beginning with the inaugural class, we have surveyed all of our students upon entering law school, and we plan to re-survey them at graduation and at intervals thereafter to gather data about their lives and careers. We hope that our survey will enable us to understand the impact of our curriculum, including the Legal Profession course, and other unique features of the early years of UCI Law (such as the reduction or absence of educational debt associated with the substantial scholarships for the first few classes).

54. For arguments that first-year courses communicate what law schools view as critical elements of legal education, see Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 LOY. U. CHI. L.J. 719, 736–37 (1998) (“[F]irst-year courses signal what it means to think and act like a lawyer.”); Howard Lesnick, *Infinity in a Grain of Sand: The World of Law and Lawyering as Portrayed in the Clinical Teaching Implicit in the Law School Curriculum*, 37 UCLA L. REV. 1157, 1159 (1990) (“[I]t is what is imprinted in that initial immersion, and not any broader message of the three years, that shapes students’ consciousness of what is important and not important to being a lawyer. Any significant shift in the portrayal of law and lawyering in subsequent courses does not alter students’ ‘map’ of the legal world.”).

units. We sowed the seeds of many different ways of thinking about the profession and careers, and we attempted to teach a little bit of a wide range of skills. As with any survey course, achieving the right balance of breadth and depth is an elusive goal. We have already cut important and interesting topics from the syllabus (e.g., the judiciary) in order to cover other topics less summarily. Of course, these kinds of pressures are hardly unique to this course; professors struggle with breadth-versus-depth issues in most courses.

Identifying a logical and coherent structure for the course also remains a significant challenge. The problem is this: how to organize and synthesize the coverage of the basic law governing lawyers (e.g., confidentiality, conflicts of interest) with the contextual materials and the theoretical or “big picture” issues about the profession? Because the law of confidentiality and conflicts of interest is foundational, we taught it over the course of about four weeks beginning in the third week of the fall semester, and several students reported afterward that they felt the course really came to life when that part of the course ended. But to understand the origin and application of some rules requires knowledge about some practice settings in which the rules are most salient. Should one provide the context by teaching about practice settings and then cover the most relevant law, or can one understand the issues that arise in practice settings without first having learned the law and its underlying policy?<sup>55</sup>

It also remains a challenge to introduce other disciplines and the insights about the legal profession that they afford without oversimplifying. While other legal profession scholars and teachers have used a single discipline as the primary lens through which to study the profession,<sup>56</sup> we prefer to draw on many. Our more eclectic approach allows us to take advantage of some of the best of social science and humanities research on lawyers, but it may be less intellectually coherent. And because both of us are legal generalists to a greater or lesser extent, our treatment of these materials may lack the rigor that others might bring to the task. We attempt to draw the disciplinary expertise that we lack from colleagues who graciously agree to guest lecture. But even the most talented guest lecturer finds it difficult to introduce a new discipline to an unfamiliar group of students and to explore it in any depth in a single hour-long class. Finally, to the extent that the founding faculty hoped that the UCI Legal Profession course would be a portal into interdisciplinary study of law by offering sustained discussion of the goals and methods of social science and humanities, we simply did not have the time to achieve that goal. We used bits of anthropology, moral philosophy, history, economics, sociology, and psychology to enrich students’ understanding of the legal profession. But we did not even try to teach students much about any

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55. For a more detailed discussion of this tension, see Crampton & Koniak, *supra* note 23, at 165–67.

56. John Conley, for example, uses anthropology as his frame. *See* Conley, *supra* note 19. Elizabeth Chambliss uses sociology. *See* Chambliss, *supra* note 19.

of these disciplines per se or any of the rich debates about interdisciplinary studies of law. Students taking upper level “Law & \_\_\_\_\_” courses in any of these fields would likely enter with no more insight or sophistication about the interdisciplinary study of law than would students who have not taken our course. This is not a failing of our course, but it is a cautionary note about the limits of what can be accomplished in one four-unit class.

An additional difficulty over the long term will be staffing the course. It is a great deal of fun to teach, but it requires a huge amount of work to keep it flowing. There is always a speaker panel to plan, a set of questions from students to read, the next role-play exercise to design and participants to organize. It is a lot of work to grade two exams, a major paper, and a dozen short writings and role-play exercises, and to give individual feedback to students about paper drafts and oral presentations. For students and faculty alike, the course is more work than a four-unit course in which assessment is based exclusively on a final exam. It helps, of course, that we have all the same assignments and speakers for the whole 1L class so that we can share the planning and logistics, and it helps that the work is spread out over the course of the year. But it also means that we are busy with the course and with relatively demanding first-year students all year. When we are both eligible for sabbatical, the school will have to either condense the course to a single semester, which would make it almost impossible to have as many speakers and cover as much material, or find two faculty to replace us. And it is probably not realistic to expect a visitor to undertake the institution-specific work of teaching this kind of course. As with other ambitious efforts to enrich law courses through simulations, skills training, and other real-world elements, the long-term sustainability of the course will depend on attracting a corps of faculty committed to teaching it, and the history of other schools’ experience with this challenge is not encouraging.<sup>57</sup>

A fifth challenge is teaching materials. We heavily supplemented the only assigned casebook, and for most assignments we did not use a casebook at all. Choosing, editing, and distributing readings and obtaining copyright permissions is a considerable task. We liberally supplemented the major readings with short and timely news articles on as many topics as possible, and those will need to be updated annually. None of the major professional responsibility casebooks is well-suited for teaching a course such as this in the first year. Some books offer rich accounts of practice settings but are written for second- or third-year students who know more substantive law than first year students do. Some books offer a variety of opportunities to teach through simulations but are less appropriate for a course with a substantial empirical or interdisciplinary focus. And, of course, any

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57. For example, Loyola Law School of Los Angeles, where one of us taught for over a decade, required in the second year a skills-based course called Ethics, Counseling and Negotiation. It was a constant struggle to recruit faculty to teach the course.

effort to tie readings to current events or to the particularities of local practice cultures is difficult to accomplish in a casebook intended for a national market.

Finally, professors teaching a course such as ours may find it challenging to recruit good guest speakers. It may be especially difficult if the professor teaches in a rural area or in a region in which he or she does not know the local legal community. The dean and the director for development will likely be happy, as ours were, to identify lawyers who would welcome the invitation to speak. They will likely also offer advice about avoiding unintentional offense to friends of the law school by extending invitations to some but not others. One can also reach out to colleagues, alumni, and acquaintances in the local bar to identify talented and inspiring public speakers. It is important to find speakers who react well—with candor and good will—to probing student questions about sensitive issues, such as the existence of and reasons for wrongful convictions in prosecutors' offices, the lack of diversity at the higher echelons of large firms, or the matter of accountability between lawyer and client in issue-oriented advocacy organizations. It takes time and diplomacy to recruit and manage the constant stream of speakers, but our experience suggests that student gratitude and enthusiasm repay the effort.

## VI. CONCLUSION

If law schools are to fulfill the Carnegie Report's mandate to cultivate professional identity and teach students about the legal profession, learning about these issues should begin in the first year and continue throughout law school. We have argued that teaching Legal Profession can be rewarding to faculty and students alike when there is an adequate commitment of institutional support. What is needed is a sufficient number of units, faculty willingness to work a bit harder than usual, and an institutional and curricular message that knowledge about the legal profession is as essential to lawyers as is knowledge about contracts, torts, procedure, or any other staple of the first-year curriculum. Implicitly, we have argued that teaching a rigorous, interdisciplinary, and practice-based course in the first year is not only possible but perhaps even essential to fulfill the Carnegie Report mandate. The first year of law school communicates to students what concepts and values are foundational. Students begin to form their professional identities in the first year, and they make choices about career plans that can have lifelong impact. Moreover, professors in advanced courses who wish to raise nuanced and complex ethical issues that arise in particular practice settings (e.g., in tax, corporate, securities, or labor law), can do so at a reasonable level of sophistication only if students have already acquired basic working knowledge about the institutions of practice and the law governing lawyers. It is simply not realistic to expect professors in such courses to lay this groundwork as a prelude to addressing the complex variations on the problems of legal ethics that arise in their particular fields. Thus, ethics taught pervasively can be ethics never taught

seriously at all unless a foundation has been laid in the first year.

While it is essential to begin teaching students about the legal profession in the first year, it is important not to end there. As with any other subject, students interested in the legal profession and professional responsibility should be offered a menu of advanced courses. They should receive opportunities to take classes that focus on particular practice areas and on the specialized law that governs lawyers' conduct in those fields.<sup>58</sup> They should gain direct experience with the ethical dilemmas in live-client clinics. They also should be offered courses that compare professions and conceptions of role across occupations (e.g., medicine, journalism, engineering, business, architecture)<sup>59</sup> and across national boundaries (to appreciate the similarities and differences between the American legal profession and legal professions in other countries). UC Irvine School of Law, situated in a large university with deep expertise in all these fields, strong interdisciplinary research and teaching traditions, and ambitions to build ties to practice communities around the globe, seems well-positioned to develop such a dynamic upper-level curriculum. UCI, however, is not unique in these characteristics: faculty at law schools across the country can draw on the resources of their universities, legal communities, and alumni to offer a rich upper-level curriculum on the legal profession and on professionalism more generally.

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58. For a discussion of the usefulness of courses targeted to particular practice contexts, see Mary C. Daly et al., *Contextualizing Professional Responsibility: A New Curriculum for a New Century*, 58 LAW & CONTEMP. PROBS. 193 (1995); Bruce A. Green, *Less is More: Teaching Legal Ethics in Context*, 39 WM. & MARY L. REV. 357 (1998); Thomas B. Metzloff, *Seeing the Trees Within the Forest: Contextualized Ethics Courses as a Strategy for Teaching Legal Ethics*, 58 LAW & CONTEMP. PROBS. 227 (1995); Rhode, *supra* note 42, at 1051–52. For descriptions of specialized ethics courses—some offered as alternatives to a survey course on legal ethics and others as supplemental courses—see Daly, *supra* (describing specialized courses on ethics in corporate and international practice, public interest law, and criminal advocacy); John S. Dzienkowski et al., *Integrating Theory and Practice into the Professional Responsibility Curriculum at the University of Texas*, 58 LAW & CONTEMP. PROBS. 213, 224–26 (1995) (large firms); Green, *supra*, at 370–77 (corporate counsel, small firm, and solo practice); Heidi Li Feldman, *Enriching the Legal Ethics Curriculum: From Requirement to Desire*, 58 LAW & CONTEMP. PROBS. 51 (1995) (insurance defense); Metzloff, *supra*, at 228–38 (civil litigation); Deborah L. Rhode, *Annotated Bibliography of Educational Materials on Legal Ethics*, 58 LAW & CONTEMP. PROBS. 361, 380 (1995) (describing George Fisher's materials for course on prosecutorial ethics). Several excellent casebooks have been developed for specialized upper-level courses. See, e.g., CARRIE MENKEL-MEADOW & MICHAEL WHEELER, *WHAT IS FAIR? ETHICS FOR NEGOTIATORS* (2004); MILTON C. REGAN & JEFFREY D. BAUMAN, *LEGAL ETHICS AND CORPORATE PRACTICE* (2005); BERNARD WOLFMAN ET AL., *ETHICAL PROBLEMS IN FEDERAL TAX PRACTICE* (3d ed. 1995).

59. See David B. Wilkins, *Redefining the "Professional" in Professional Ethics: An Interdisciplinary Approach to Teaching Professionalism*, 58 LAW & CONTEMP. PROBS. 241 (1995) (describing an intensive course for law and medical students titled "Ethical Dilemmas in Clinical Practice: Physicians and Lawyers in Dialogue"); Rhode, *supra* note 42, at 1055 (noting that perspectives from other occupations "frequently serve to jog otherwise unchallenged assumptions on issues like confidentiality, conflicts of interest, and third-party responsibilities" and that "courses that combined students and faculty from different disciplines offer particularly valuable settings to explore cross-cutting ethical concerns and prepare participants for an increasingly multidisciplinary legal landscape").

At this point, we can report only on our first steps toward the goal we should all share: educating law students to become knowledgeable and reflective about the profession they are preparing to enter and their places within it. As we have shown, a Legal Profession course can and should introduce students to lawyers' norms and institutions through an approach that is neither cynical nor naïve. It should pay close attention to how practice contexts influence individual lawyer conduct without denying that individual lawyers remain morally accountable for their behavior. It should provide illuminating portrayals of lawyers' norms, practices and organizations, while also offering critical perspectives from which to evaluate them. The course should survey the many career paths available to lawyers and give students opportunities to assess whether those careers measure up to their own aspirations. It should alert students to some of the most glaring failures of the American legal system, including the difficulties faced by all but the wealthy in finding competent legal representation. It should show that the unequal distribution of legal talent affects how law is enforced and used throughout society. The entire curriculum of any law school will benefit if students appreciate that the skewed availability of legal services, as well as lawyers' decisions about what clients to serve, what tactics to use and ends to pursue, and what advice to dispense to clients, have powerful implications for the administration of justice.<sup>60</sup> A legal profession course should also make students aware of the enormous changes facing the legal profession in the United States and around the world, and it should prepare them to assume leadership roles in efforts to improve our legal system. Our course advances UCI School of Law's commitment to preparing students to practice competently and ethically. It also reflects our commitment to join with colleagues at law schools across the country to engage with the bench and bar in developing meaningful conceptions of professionalism for the twenty-first century.

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60. See Robert W. Gordon, *The Citizen Lawyer—A Brief Informal History of a Myth with Some Basis in Reality*, 50 WM. & MARY L. REV. 1169 (2009); Wendel, *supra* note 10.