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Introduction

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INTRODUCTION

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The paradoxes and complexities of teaching professional responsibility have received much attention in the past thirty years, and justly so. It is a difficult task to thoroughly prepare our students to capably analyze sometimes clashing professional goals and to grapple with the normative issues which underlie the regulations and jurisprudence in this area. Reading this issue of the *Saint Louis University Law Journal*, brimming with useful and thought-provoking articles, will be time well-spent. The issue includes two sets of articles. First are a pair of articles by Milton C. Regan, Jr. and Sarah Helene Duggin, which were presented at a panel at the 2007 Association of American Law Schools (AALS) Annual Meeting. Following these articles are fifteen papers focusing on teaching professional responsibility and legal ethics.

ARTICLES FROM THE “NAVIGATING TREACHEROUS WATERS” PANEL

The Section on Professional Responsibility sponsored a panel titled “Navigating Treacherous Waters: Initiating an Investigation, Going Up the Ladder and Reporting Out” at the 2007 AALS Annual Meeting. Academics interested in corporate practice, cognitive psychology, organizational behavior, and the advisory function of in-house attorneys attended the session. Sarah Helene Duggin, Susan Koniak, Milton C. Reagan, Jr., and Charles Wolfram were speakers on the panel, and I served as moderator. The focus of the panel was on the very earliest stages of an investigation, including recognizing a need to begin an investigation, overcoming cognitive hurdles to delivering unwelcome news, and determining the propriety of reporting outside the organization.

Two of the papers from that panel, each a notable contribution to the literature, are published in this issue of the *Law Journal*. In *Moral Intuitions and Organizational Culture*, Milton C. Regan, Jr. focuses our attention on ways in which “research on moral intuitions [processes that occur outside our conscious awareness] might inform our understanding of the possibilities of and limits on efforts to foster an ethical organizational culture.” And, he considers the question of whether the social context of organizational life influences moral intuition. A legal compliance program which includes a

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values-based component, along with a commitment to procedural justice when dealing with members of the organization, may enhance the participants' perception of an organization as a system of cooperation, which may trigger certain moral intuitions. And, he argues that when ethical behavior is modeled by those in authority in an organization, it is more likely to become a cooperative venture, which ultimately can promote self-regulation rather than rule-following as the basis for ethical behavior in an organization.

Sarah Helene Duggin, in *The Pivotal Role of the General Counsel in Promoting Corporate Integrity and Professional Responsibility*, provides an academic analysis of the complexities of the general counsel's role from an important perspective—that of a scholar who has served as General Counsel for two entities: National Railroad Passenger Corp., commonly known as Amtrak, and the University of Pennsylvania Health System. This article makes a considerable contribution to the literature in its assessment of the multifaceted roles played by general counsel, with a discussion of the impact of regulatory efforts designed to promote corporate integrity and professional responsibility on the ability of general counsel to successfully perform their functions, and an evaluation of whether or not general counsel are appropriately empowered to carry out their responsibilities.

SYMPOSIUM ON TEACHING PROFESSIONAL RESPONSIBILITY AND LEGAL ETHICS

Each of the fifteen participants in the written symposium on teaching professional responsibility and legal ethics brings a perspective to the material which is well worth attention. The authors invited to participate include well-recognized scholars with a depth of expertise who have been working in this academic area for decades as well as newer scholars who bring a fresh perspective to the discussion. The symposium also includes contributions from scholars in other fields who include analysis of professional responsibility issues in their teaching of other courses in the law school curriculum. Although the papers transcend categorization, we find at least three approaches to the topic.

Deborah L. Rhode, Stephen Gillers, Judith L. Maute, Lonnie T. Brown, Laurel S. Terry, and Ronald D. Rotunda have written papers addressing a broad consideration of the multiple objectives of a professional responsibility course and on various methods of achieving those objectives.

Rhode, in *Teaching Legal Ethics*, discusses the importance of “[b]uilding students’ capacity for reflective judgment,” the inclusion of interdisciplinary perspectives on issues such as cognitive bias, moral reasoning, and market failures, and providing students with the opportunity to systematically reflect on their future lives as lawyers and how they will live out their principles in their legal practice. She then details some of the challenges and strategies for achieving those objectives.

In “*Eat Your Spinach?*”, Gillers provides a candid account of his own plunge into a storefront solo law practice and urges the importance of starting with the story of the case as the basis for discussion of intuition, positive law, and governing principles in professional responsibility courses.

Maute, in *Lawyering in the 21st Century: A Capstone Course on the Law and Ethics of Lawyering*, describes an advanced course in legal ethics designed to help graduating students transition into the practice of law, providing a grounding in moral philosophy, the economic realities of law practice management, and lawyers’ public service responsibilities. The course also includes development of lawyering skills, including live presentations requiring collaborative teamwork in addition to legal research and analysis.

Brown discusses the benefits of using film clips, including scenes from *A Time to Kill* and *The Rainmaker*, and group assignments, along with bringing out the complexities of the human dimension of the situations that led attorneys to the decisions and actions later dissected in judicial opinions. The most powerful testament to teaching impact in his essay, “*Lawyers’ Not ‘Liars’*: A Modified Traditionalist Approach to Teaching Legal Ethics, is perhaps the simplest. He gives a bit of extra credit to those students who spend at least six hours of volunteer service to “any organization or endeavor that is designed to help those who are less fortunate.” His quotation of a student’s reflection on the perspective-changing effect of volunteering in a homeless shelter illustrates the value of focusing our students’ attention on such experiences while they are in law school.

Terry demonstrates her command of a body of literature unfamiliar to many U.S. law professors in her characteristically cogent introduction to the growing body of professional responsibility guidance that is developing in countries outside the United States in her essay *A “How To” Guide for Incorporating Global and Comparative Perspectives into the Required Professional Responsibility Course*. She also focuses attention on the key documents necessary to introduce a comparative perspective, which include the Council of Bars and Law Societies of Europe (CCBE) Code of Conduct, the United Nations’ Basic Principles on the Role of Lawyers, the International Bar Association Resolution on Deregulating the Legal Profession, the Union Internationale Avocats’ Turin Principles, the 2005 Statement of Core Principles of the Legal Profession, and the CCBE Charter of Core Principles of the European Legal Profession.

Rotunda, in *Teaching Professional Responsibility and Ethics*, cites developments in Japan and in the United States to make the point that as a country’s economic activity increases, there will be a greater need for lawyers who implement economic activity.

We have contributions from Nancy J. Moore, Alan M. Weinberger, Michael Korybut, and Bruce A. Green in a group of articles focusing on teaching particular material related to professional responsibility.

Moore, in *Mr. Prinzo's Breakthrough and the Limits of Confidentiality*, describes her classroom use of the Bruce J. Friedman story to enliven the debate regarding the varying standards for exceptions to lawyers' duty of confidentiality and to highlight some of the problematic aspects of extremely client-centered ethics.

Weinberger discusses the value of specifically focusing on ethics issues in transactional legal practice when teaching a Real Estate Transactions or Property course in *Some Further Observations on Using the Pervasive Method of Teaching Legal Ethics in Property Courses*. He highlights the cases of *In re Austern*,¹ in which an experienced lawyer acting as escrow agent furthered his client's fraud, and *Penthouse Int'l, Ltd. v. Dominion Federal Savings and Loan Ass'n*,² which provides a case study of combative transactional lawyering.

In *Teaching Selected Ethical Issues in Bankruptcy*, Korybut describes his treatment of conflicts issues in Chapter 11 corporate reorganizations, in connection with the disclosure requirements in Federal Rules of Bankruptcy Procedure Rule 2014(a) and the Bankruptcy Code section 327(a) requirement that the attorney representing the bankruptcy trustee be disinterested and not have any interest adverse to the bankruptcy estate.

Green turns our attention from law students to practitioners in his essay, *Teaching Lawyers Ethics*, which details some of the advantages of using the problem method to promote thoughtful exchange among lawyers participating in mandatory Continuing Legal Education (CLE) programs in legal ethics. He includes an edited transcript of an illustrative exchange at a CLE program as an example to ground his discussion of the tradeoffs between breadth and depth of coverage and of broader questions about the efficacy of mandatory CLE and the objectives such programs can achieve.

A third group of articles by Nathan Crystal, Thomas L. Shaffer, Dennis J. Tuchler, Steven H. Hobbs, and W. Bradley Wendel evaluate the degree to which lawyers and law students can or should be encouraged to bring to bear their own moral judgments in their legal work.

In *Using the Concept of "A Philosophy of Lawyering" in Teaching Professional Responsibility*, Crystal further develops the argument articulated in *Developing a Philosophy of Lawyering*³ that lawyers must develop a principle-based approach as a basis for exercising discretion and making difficult professional decisions. He argues that "[I]aw school courses on ethics and professional responsibility can be enriched, deepened, and made more relevant to students if teachers help students begin to develop their own philosophy of lawyering," and explains how he approaches that work with his students.

1. 524 A.2d 860 (D.C. Cir. 1987).

2. 855 F.2d 963 (2d Cir. 1988).

3. 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 75 (2000).

Shaffer, in *A Search for Balance in the Whirlwind of Law School: Spirituality from Law Teachers*, reflects on what teachers of professional responsibility can do to urge students to integrate the professional training they are receiving in law school and remain a person with a sense of integrity and humanity. He discusses the importance of listening “with the ear of the heart,” as a Benedictine would put it, and “helping our students to get in touch with their feelings, to grow, and to accept themselves as children of God” so that they will be able to be humane to the clients they will serve.

In *Teaching Legal Profession: Ethics Under the Model Rules*, Tuchler considers the problem of what actions a lawyer is to take once the duty of loyalty is set aside by the applicable rules, particularly in situations in which the lawyer can exercise discretion. The potential for the lawyer’s self-interest to interfere with his “interpretation of the predicate conditions for taking advantage of the permission” to use his discretion and his determination of “what steps are permissible and which steps are mandatory” underlines the importance of raising these issues with students.

Hobbs’ *Hitting the Sweet Spot: Finding the Center in Teaching Professional Responsibility* envisions the law professor as a “teacher engaged in a process of teaching values and ideals about what it means to be a lawyer.” Building on Parker J. Palmer’s book *The Courage to Teach*, Steven Hobbs challenges readers to evaluate whether the time spent in the law school classroom engages the core values and principles of professional responsibility “as if they matter personally to us and to the institutions in which we teach.”

In his contribution, *Moral Judgment and Professional Legitimation*, Wendel distinguishes between a lawyer’s exercise of technical authority and the exercise of normative authority independent of his clients’ goals. He argues that “a law school legal ethics course should focus on the values of lawyering that are imminent within the law governing lawyers—values such as fiduciary obligation and candor to third parties—and not purport to address the way people make moral judgments in ordinary life.”

The articles and essays in this collection are by turns informative, thought-provoking, and inspiring. I encourage you to rummage around in the issue, dipping into articles in addition to the one you originally intended to read.

