ic, with stories told and 'dilemmas' described by students about their real clients.

The first device in teaching ethics is to suggest to students an array of topics for discussion and then ask them to write about one of the topics for class discussion. Virtually without exception, students' written work uses up all of the time available for discussion when using this method. Students give the lecturer their papers the morning of the class. That allows two or three hours for the lecturer to read them, write thoughts in the margins, and make an outline for class discussion. The papers are returned at the beginning of class. When the class is large, it can be divided into three or four writing groups.

There are at least three benefits to this writing device. First, it is ethics as well as morals. Ethics is thinking about morals and, beyond that, explaining one's thoughts to others in an effort to learn from and to persuade others. Second, it is often the prelude to a group exercise in communal discernment. Third, discussion of colleagues' papers tends to resolution or consensus more often than is the case with discussion of appellate-court literature, or bar-association ethics opinions, or professional lectures.

Clinical legal ethics is an enterprise in which law students deal with lawyers' moral issues in a community that is like a law firm, with the difference that the lawyers in the firm systematically set aside time to seek from one another understanding of the moral quality of their cases.

Almost all of the time at every meeting of a clinical ethics seminar is taken up with discussion of the cases the student-lawyers are working on – not only the 'ethical dilemmas' each student-lawyer sees, but what in the client's situation is compelling and what in the plan she and her client have for the case is puzzling or stressful or interesting in some other way.

This approach is as much about how to run a law office as it is about how to run a law-school course. The alternative models in law offices are not to talk at all, in the community of practitioners, about what members of the community are doing or to ordain an expert on ethics to whom 'ethical dilemmas' can be submitted for resolution.

There are four big differences between the traditional classroom scene and the clinical seminars. First, resolution is an imperative in the clinic. These are real cases. The student-lawyers have to proceed with them, often within hours of discussion. We cannot just take statements and move on to the next case. Second, this way of talking about morals tends to overcome obstacles to moral discourse in law school. One such obstacle is the trade unionism and moral evasion that is built into the professional rules.

The third difference between the clinical approach and the classroom approach is that the clinical approach tends to create a receptive atmosphere for discussion throughout the law office. The student lawyers continue to talk about the cases that have been discussed in the seminar. Finally, the fourth difference is that there is a tendency to toward deeper moral reflection.

**On trying to teach judgment**
D N Frenkel
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Teaching professional responsibility is difficult. It is the only nationally required subject for all US law students, but there is no mandate as to its format, duration, or teaching methodology. Most institutions offer a survey course that is elected by large numbers of students. Many, if not most instructors in such courses, aided or guided by the growing wealth of commercially-published course texts, approach the course as encompassing: (i) a large dose of teaching the 'law of lawyering' (ie. a combination of the legal profession's rules for regulating the conduct of its members, the burgeoning body of decisional law reflecting both traditional and emerging ways in which courts are asked to rule on the subject of lawyers' conduct, together with other statutory, regulatory law on the subject); (ii) certain instruction about the adversary system and the structure, history, composition and service delivery systems of the legal profession; and (iii) some discussion of dominant professional norms and their relationship to students' personal values. This prevailing approach has much to recommend it on a number of levels.

First, the subject matter itself warrants it. The field has seen an explosion of law and scholarship in the last two decades, coming into its own as a sophisticated and complex substantive area. As US legal education centres mainly on teaching the legal doctrine underlying societal regulation, it would be odd if the few (and, in some schools, only) courses devoted to the regulation of lawyers did not devote a fair bit of attention to the doctrine. For faculty who have not inhabited the world of law practice or its many settings, a law-based approach may be simplest to master in order to teach.

Given the growing importance of the subject matter, the guaranteed audience of students with a need to know, and an expanding choice of quality commercially-available teaching materials, the conditions would appear to be right for a successful course. Yet this is hardly the case. Over a quarter of a century after the introduction of this requirement, many, if not most find this a difficult, if not undesirable, course to teach. Institutions themselves contribute to the problem directly via curricular planning and resource allocation decisions. Some schools devote only enough resources to ensure that the courses satisfy this curricular requirement end up being large group instruction in discussion-deadening lecture halls.

Resistance on the part of the typical upper-level student-enrollee is legendary. There is resentment at the requirement, a factor not unrelated to undercutting institutional messages. Few feel much urgency in mastering this area, believing that, as subordinates in law practices, they will not have much say in, not to mention control over, ethical decision-making early on in their careers.

Focussing only on professional codes tends to produce a stultifying classroom. Unambiguous rules, however important, are hardly the stuff of scintillating academic inquiry. An ethics-as-law approach

triggers problematic student stances. Attempts at policy discussion can be fruitful, but there tends to be a holding back on the part of those who view the profession's self-regulating scheme with a certain suspicion or derision as either not worthy of being taken as seriously as other positive law, a product of politics of the bar, or both. Other students, socialised in the ways of 'thinking like a lawyer', begin seeing ethical problems as any other set of legal issues in which a premium is placed on being able to argue around or otherwise 'game' the rules in order to justify or reach a desired result.

Can judgment be taught in a large classroom in 13 weeks? The answer depends on the goals for that enterprise. For most of us, the capacity for ethical wisdom will not be developed fully in the first 13 years of experience as lawyers. And the 'commitments' a student makes in the classroom – to an opinion or even a statement of what he would do in a given situation – is not necessarily the same as a real world action. But the process of deliberation, which, if finely developed, will produce good decisions over time, can be modelled and launched in a structured setting if the conditions are right.

What are the desirable conditions for developing a capacity for sound ethical deliberation? The exclusive use of decided case law, with its result-justifying facts already 'established' and 'legally-irrelevant' client interests omitted, will not work to represent the messy, factually ambiguous and contingent setting of most ethical dilemmas. Simplified or skeletal hypothetical issue-spotting problems will fail for similar reasons. Lectures share these limitations and add a dimension of promoting student passivity, a trait arguably antithetical to the active cultivation of a capacity for reflective deliberation. Instead, such goals are best carried out by trying to create an environment in which students can experience a situation on both intellectual and emotional planes. This means attempting to place students in unresolved situations that are complex in terms of the variables internal and external to the lawyer, with current facts unclear, future consequences undefined, and resolutions susceptible to several choices.

Nothing works as powerfully as material derived from real case experiences. When told that a discussion problem, videotape, or other teaching vehicle depicts actual events, students instantly demonstrate a heightened level of attention and show little of the cynicism that sometimes greets hypotheticals or the slavish gravitating to the 'rule' or result that accompanies the use of court decisions. The benefit of using real material is even greater when the professor-mentor has drawn the material from his or her own experience and can relate his or her own process of judgment after the class has considered the problem.

Videotape presents the optimal classroom medium for contextualisng ethical dilemmas. The literature in this area explains what those who use videotape know intuitively: visual images enhance attention, learning, and retention and engage students on an emotional level. For purposes of professional responsibility teaching, a well-done videotape is the most effective and efficient means of portraying in a textured way the atmospheres and personalities, the economics of practices, and nuances of communication that conspire to create classic ethical dilemmas.

In theory, simulations present the greatest classroom opportunity for students to experience and learn from taking responsibility for ethical choices. Some professors make extensive use of them. However, students tend to fight role-plays on numbers of levels. Those who act out claim that their conduct in the game is no indication of how they will behave 'in a real situation'. No matter how the teacher may try to point to the similarities between such a game and the daily, role-based life of a practising lawyer or how real stakes might impact on their potential competitiveness, students resist. Moreover, carefully designed and debriefed exercises that focus on one or a few specific, powerful points can make very useful teaching moments in a course aimed at helping students understand or at least examine what baggage they may be bringing to the development of their own capacity for ethical judgment.

The classroom process of attempting to form judgments involves the use of a deliberate model of open consideration of all relevant factors at each choice point. This borrows heavily from clinical writings on practical judgment in lawyering and on lawyers' roles in assisting clients in decision-making and is designed to make the students appreciate ethical judgment as a conscious structured process in which all considerations are brought to bear before intuitive weighing is applied.

Students often view legal ethics courses as concerned, in the main, with what lawyers ought not or may not do. Lawyering codes are partly couched in terms of prohibition; case law frequently centres on whether a lawyer's conduct violated a prohibition. Examinations that reward the successful identification of lawyering transgressions reinforce this view. One possible solution to this is that practitioners, including the teacher, can share their process of deliberation with the class. When videotapes or films portray problematic lawyering, the instructor can demonstrate or have the class role play a better approach. Depictions of positive images of lawyers in films or in print can be formative inspirations.

**Professional ethics for lawyers and law schools: interdisciplinary education and the law school's ethical obligation to study and teach about the profession**
D B Wilkins
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What does it mean to be a 'professional'? The question lies at the heart of any attempt to teach professional ethics. Yet, despite its undeniable centrality, there is remarkably little consensus among the current generation of legal ethics teachers about what this term actually means beyond its obvious historical and descriptive connotations. The lack of consensus over the meaning and normative