Are We Making a Difference?
Developing Outcome Measures to Evaluate the Effectiveness of Law School Efforts to Teach Ethics and Develop Professionalism

The current law school accreditation standards of the American Bar Association focus on required “inputs” to legal education. In relation to legal ethics and professionalism ABA Standard 302 (Curriculum) provides in relevant part:

“A law school shall require that each student receive substantial instruction in ... the history, goals, structure, values, rules and responsibilities of the legal profession and its members. ... A law school shall offer substantial opportunities for live-client or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession ...”

Starting in 2008 the ABA Section on Legal Education has been engaged in a comprehensive review of its accreditation standards. During 2009 the ABA Standing Committee on Professionalism submitted a series of comments encouraging a greater emphasis on preparing students for participation in the legal profession that is ethical and responsible as well as effective. In December 2009 the National Organization of Bar Counsel (NOBC) submitted to the ABA a Law School Professionalism Initiative Report, urging that:

"A key component for accreditation should be a requirement that law schools submit plans for the development of professionalism and professional identity in their students, including the submission of detailed and concrete criteria to measure the success of the school's efforts. A school's plan for achieving this goal of instilling professional values and identity in its students should go beyond curriculum and extend to the tracking of student behavior, remediation of students with observed and demonstrated problems, and holding students accountable for their behavior in the law school environment. These elements are essential to the development of a professional identity that is consistent with the historical and societal expectations for members of the legal profession."

Consistent with the NOBC report, the Florida Supreme Court Commission on Professionalism proposed language to the ABA that, "A law school shall identify, articulate, publish and enforce standards designed to ensure that its law students have the knowledge, skills, values that are necessary for effective, responsible and professional participation in the legal profession."

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1 See www.abanet.org/legaled/committees/comstandards.html
The most recent draft from the ABA’s Student Learning Outcomes Subcommittee (May 5, 2010 Draft) re-titles Standard 302 as “Learning Outcomes” and would require each law school to “identify, define, and disseminate each of the learning outcomes it seeks for its graduating students and for its program of legal education.” The draft goes on to state:

“The learning outcomes shall include competency as an entry level practitioner in the following areas ... the ability to recognize and resolve ethical and other professional dilemmas[,] a depth and breadth of other professional skills sufficient for effective, responsible and ethical participation in the legal profession [and] knowledge and understanding of the following values: (i) ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice; (ii) the legal profession's values of justice, fairness, candor, honesty, integrity, professionalism, respect for diversity and respect for the rule of law; and (iii) responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them.”

In responding to this draft, in June 2010 the ABA Standing Committee on Professionalism proposed language providing for an even broader and deeper emphasis on ethics and professionalism:

“The learning outcomes shall include competency as an entry level practitioner in the following areas ... the exercise of professional judgment consistent with the values of the profession and professional duties to society, including the ability to recognize and resolve ethical and other professional dilemmas.”

The ABA’s comprehensive review of accreditation standards, and the comments received through that process, come in the larger context of wide ranging critiques and reassessments of American legal education, particularly informed by the 2007 study by the Carnegie Foundation. Clearly the time has come for serious, collaborative work to develop outcome measures focused on professionalism and understanding of professional identity along with assessment tools for demonstrating whether desired outcomes have been achieved.

The goal of this project is to develop multiple methods for assessing outcomes that could be used in combination to allow for meaningful comparison of the effects of different educational approaches to teaching ethics, developing professional judgment, and promoting formation of professional identity. By April 2011 the project team will have developed a pilot version of measurement methods that could be used by individual teachers, with the long-term goal of designing and implementing outcome measures that could be used to evaluate the effects of the entire law school experience on the capacity for ethical decisionmaking and the formation of a responsible professional identity. The

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project team draws from the varied experience and expertise of its members, which include: the design and teaching of individual courses, reforms of law school curricula applicable to all students, law school administration, empirical research on legal education and the legal profession, cross-national studies of legal education and law practice, enforcement of ethical rules for practicing attorneys, and the reform activities of the organized bar.

**PROJECT TEAM**

William Henderson, Professor of Law and Harry T. Ice Faculty Fellow, Indiana University Maurer School of Law (Bloomington); Director, Center on the Global Legal Profession at Indiana University; and Director of the Law Firms Working Group, a joint initiative of Indiana Law and the American Bar Foundation.

Effective the 2008-2009 academic year the IU Maurer School of Law moved the required legal ethics course into the core first year curriculum with the same four credit hours as such venerable subjects as Torts, Contracts and Property. In making this significant change the IU faculty wanted to “send a clear and unambiguous signal ... that the ethical practice of law is a foundational value that will affect [students’] long-term job satisfaction, reputation, and career advancement ... instill a deep appreciation for ethics and professional values, and equip our students with the perspective and judgment to eventually become leaders in the profession.”

The faculty also hoped that this innovative course “could become the gold-standard through[out] the legal academy.” At least 50% of the curricular content of the new first year course goes beyond doctrinal analysis of legal ethics, focusing on pedagogic strategies for developing professional identity formation: deliberate teaching about professional norms, examples of exemplary professionals, and a system to promote student self-reflection about their own identity formation. Since initiating this change IU has already seen significant improvement from the Law School Survey of Student Engagement (LSSSE) in their students’ evaluation of how much the law school has contributed to “developing a personal code of values and ethics” as well as “working effectively with others,” “solving real-world problems,” developing clearer career goals,” and other items.

Jerome M. Organ, Professor of Law, University of St. Thomas School of Law, and Associate Director of the Holloran Center for Ethical Leadership in the Professions.

At St. Thomas every student takes Foundations of Justice in the first year, which places a significant emphasis on understanding professional identity. In addition, throughout all three years, each student is required to participate in the Mentorship Externship Program, which is specifically focused on professional identity formation and includes in the second year:

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5 The LSSSE is administered by the Center for Post-Secondary Education, which is based at Indiana University. Each year approximately 80 ABA-accredited law schools utilize the LSSSE survey, which covers a wide number topics that affect the student experience (e.g., type of assignments, faculty feedback, career goals, emphasize on ethics and professionalism, gains in specific lawyer-related skills and constructs, extracurricular experiences, etc.)
and third years a classroom component with a significant amount of reflective journaling. The Mission Statement of the Holloran Center includes the goal of providing “national leadership on empirical research to assess which pedagogies are most effective to help students with ethical professional formation that is the foundation of ethical leadership.” The Holloran Center includes on its staff as a Research Fellow Verna Monson, who completed her Ph.D. under the direction of — Muriel Bebeau at the University of Minnesota, one of the leading scholars in the country on ethical education in the professions. The Holloran Center has recently completed a preliminary empirical research project designed to develop baseline data for measuring the development of an ethical professional identity during law school. St. Thomas' LSSSE results show that St. Thomas exceeded national norms in emphasizing the ethical practice of law, facilitating students’ development of a personal code of ethics and values, deepening students' sense of spirituality, promoting appreciation of diversity within the school’s environment and facilitating students’ ability to contribute to the welfare of the community.

Patrick Longan, William Augustus Bootle Chair in Ethics and Professionalism, Mercer University Walter F. George School of Law, and Director of the Mercer Center for Legal Ethics and Professionalism.

In 2004 Mercer added to its first year curriculum a required course on the legal profession. This three credit course, which does not replace the upper level course in legal ethics, is designed to enable to students to learn: (1) a vocabulary and structure for understanding what professionalism means for lawyers, (2) about the pressures that lead lawyers to engage in unprofessional conduct, (3) how expectations of professionalism are promoted and enforced, and (4) the connection between professionalism and students’ own personal sense of fulfillment. Students taking this course in Spring 2010 completed at the outset and again at completion a short essay instrument based on the research methodology

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8 Verna E. Monson & Neil W. Hamilton, Entering Law Students’ Conception of an Ethical Professional Identity and the Role of the Lawyer in Society, 35 Journal of the Legal Profession No. 1 (forthcoming 2010), available for download at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1581528 One measurement device is a several-item essay questionnaire on each student’s understanding of professionalism, based on the work of Robert Kegan on lifespan identity formation. See, e.g., Robert Kegan, In Over Our Heads: The Mental Demands of Modern Life (1998). The essay questions included: Personally, how do you understand the meaning of professionalism? What will you expect of yourself as you work toward becoming a lawyer? What conflicts do you expect to experience? What would be the worst thing for you if you failed to live up to the expectations you have set for yourself? What would be the worst thing for you if you failed to live up to the expectations of your clients, the profession, and society? Another assessment tool is the Defining Issues Test, a well-validated measure of the development of moral reasoning. Most of the 2009 and 2010 entering classes completed the professionalism questionnaire, and the Defining Issues Test, while the 2010 entering class also completed a short survey on experiences with collaboration.

9 Patrick E. Longan, Teaching Professionalism, 60 Mercer Law Review 659 (2009). For the development of this course, Longan received from the ABA Standing Committee on Professionalism and the Conference of Chief Justices their National Award for Innovation and Excellence in Teaching Professionalism.
being used by the Holloran Center at St. Thomas.\textsuperscript{10} Mercer has also restructured an upper-level externship course to make formation of professional identity the primary educational goal through readings, reflections, discussions, and exercises.\textsuperscript{11}

John Berry, Legal Division Director, and Carl Zahner, Director of the Henry Latimer Center for Professionalism, the Florida Bar.
For the past several years the Latimer Center for Professionalism has focused its efforts on the effect of legal education on the future conduct of lawyers. In addition to considerable work within Florida, the Latimer Center has been actively involved in the ABA’s process of revising standards for law schools. As mentioned above, in March 2010 the Latimer Center presented the ABA with recommendations from the Florida Supreme Court Commission on Professionalism that each law school shall develop a professionalism plan with measurable outcomes. In particular, the Latimer Center letter urged that law schools be required to go beyond a standard which requires only “knowledge and understanding” of professionalism principles. Among the recommendations were a requirement that each law school set up a local remediation system by which student behavior can be monitored and corrected during law school. John Berry also chaired the committee that submitted the NOBC report mentioned above. Among the measurable outcomes recommended in this report were:
- surveys of alumni and employers to gauge the strength and weaknesses of a law school’s efforts to inculcate ethical and professional identity and values
- surveys of former students to determine the impact of a law school’s skills training, leadership courses, and pro bono programs
- maintaining records on violations of the school’s honor code so that its functionality can be documented and monitored
- collecting data on other forms of law student remediation
- tracking the disciplinary experience of alumni

Clark D. Cunningham, W. Lee Burge Chair of Law and Ethics, Georgia State University College of Law, and Director, National Institute for Teaching Ethics and Professionalism.
The National Institute for Teaching Ethics and Professionalism\textsuperscript{12} (of which each law school involved in this proposal is a member) has been conducting national workshops since 2005, including several that have specifically focused on how to assess teaching effectiveness. Cunningham teaches one section of the required upper level course on professional responsibility using a variety of innovative methods,\textsuperscript{13} which creates the possibility of applying outcome measures to see what, if any, effects are produced by

\textsuperscript{10}The questions were: Personally, how do you understand the meaning of professionalism? How did you come to this understand? What conflicts do you expect to experience (e.g. between your responsibility to yourself and to others – clients, family, community, profession)? What would be the worst thing for you if you failed to live up to the expectations (a) you have set for yourself (b) of your clients, (c) of the profession (d) of society. This data has been collected but not yet scored or analyzed.


\textsuperscript{12}http://law.gsu.edu/niftep

\textsuperscript{13}Clark D. Cunningham, "How Can We Give Up Our Child?" A Practice-Based Approach to Teaching Legal Ethics, 42 The Law Teacher: The International Journal of Legal Education 312 (2008); Clark D. Cunningham, How to Explain Confidentiality?, 9 Clinical Law Review 579 (2003).
variations in a single course at the same law school.