ALSB JOURNAL OF BUSINESS LAW & ETHICS PEDAGOGY
VOLUME 1; ISSUE 2
SUMMER 2018

ABOUT THE ALSB JOURNAL OF BUSINESS LAW & ETHICS PEDAGOGY

The Academy of Legal Studies in Business is pleased to announce the launch of its new journal, the *ALSB Journal of Business Law & Ethics Pedagogy* (JBLEP). The objective of this double-blind, peer-reviewed journal is to offer faculty another outlet that archives the excellent research and teaching ideas of our members and other faculty, as well as to provide publishing and service opportunities.

The *ALSB Journal of Business Law & Ethics Pedagogy* is dedicated to disseminating business law and ethics pedagogical research and ideas in an online, open-access format. JBLEP welcomes contributors to share their research and innovations in business law and ethics teaching, student learning, and classroom experiences in scholarly articles.

For additional information, visit our online presence at https://www.jblep.com/

CONTENT & OPINIONS

EDITORIAL BOARD AND STAFF EDITORS (2017-2018)

FROM THE EDITOR

Engagement, Innovation, Impact, and Value in Business Law & Ethics Education

Business law and ethics faculty set high standards for themselves and strive to excel and to serve. Impact and value of our work are of utmost importance. After recent changes, the AACSB accreditation standards require and reward proven impact of business faculty work. No longer can faculty produce work only to "check some boxes"; one must document the value, use, and application of the work. By nature of the discipline, business law faculty's scholarship, teaching, and service have always added value to the business and legal worlds. Academia is now catching up to the business law and ethics model and practices.

The AACSB 2013 Eligibility Procedures and Accreditation Standards for Business Accreditation (revised July 1, 2018) mentions the word "impact" 104 times. The concept is the subject of the preamble, two standards, and Appendix I. This Appendix, entitled "Examples of Impact Metrics in Support of Documentation," lists 71 examples illustrating impact of academic activity in eight categories. Clearly, AACSB leadership believes in the sharing, application, and real-world use of faculty work.

The *Journal of Business Law & Ethics Pedagogy* provides an additional opportunity for faculty to publish their work and ideas, as well as to be involved in engagement, to share innovation, and to show impact. The Academy of Legal Studies in Business is filled with accomplished teachers who have developed and utilized innovative teaching methods and concepts that should be shared with all. Additionally, many members research and share through publication of pedagogical topics in business law and ethics. To further engagement, sharing of innovation, and impact of that work, this particular online publication outlet is available to any who have an internet connection.

Four excellent articles are featured in this issue. First, Director Cara Biasucci and Professor Robert Prentice offer a study of the use of behavioral ethics in ethics education. They graciously share information on a host of resources offered by the Ethics Unwrapped Educational Program at no charge, as well as application ideas for those resources. Next, Professor Nanci Carr shares her approach to applying the Five Gears for Activating Learning to decision-making regarding use of technology in course design. This approach is innovative and helpful for learner-focused educators to analyze new technologies, and to resist the temptations and pressures to implement new technologies if they do not enhance learning. Following this, Professor Marc Lampe presents his classroom exercise to prepare our business law students for the realities of the adversarial legal system in both their professional and personal lives. The focus is on both law and ethics, so the exercise can be used in a variety of classes and situations, and the content is extremely valuable information for future business professionals. Lastly, Professor George Siedel advocates for the inclusion of negotiation training in business law and ethics courses, sharing his time-tested exercise in great detail. Negotiation skills are very valuable for students as they move into the business profession.

This journal exists only because of exemplary submissions by our valued authors, as well as due to a very devoted editorial board and an enthusiastic and hard-working group of reviewers. We hope you enjoy the fruits of our labor and are benefited greatly by this issue's offerings.

Zealous Advocacy, Ethics and Future Business Practitioners: A Classroom Exercise[1]

*Marc Lampe**

ABSTRACT

Under the Model Rules of Professional Conduct lawyers have a duty to be zealous advocates on behalf of their clients. This duty, especially when coupled with the pecuniary and ego benefits of winning, can lead to conduct by lawyers that may be unethical and, at times, illegal. The primary purpose of this exercise is to provide business law students with an awareness of this real-world issue that may arise in their personal and professional lives when they hire an attorney. Through an understanding that their own ethical rights and duties differ from those of their lawyer, this exercise prepares students to handle situations where their attorney may be advocating for, or acting in, an unethical manner. Solutions offered include: a client's request to the attorney to cease and desist from such behaviors, and a client's use of ADR. This exercise also may serve as a case study in ethics generally as it relates to business and the law.

KEY WORDS: ZEALOUS ADVOCACY, ETHICS, BUSINESS ETHICS, LEGAL ETHICS, LAWYER ETHICS, BUSINESS EDUCATION, LEGAL EDUCATION, BUSINESS PEDAGOGY, BUSINESS LAW PEDAGOGY, BUSINESS LAW, LAW AND ETHICS, LAWYER CONDUCT, INTEGRITY, ADVERSARIAL SYSTEM

I. Introduction

This article describes an exercise that may be used to prepare business law students as future business practitioners and consumers of legal services. It teaches students about the realities of America's adversarial legal system, and challenges them to think about ethical values such as truth and justice as they relate to contested cases in the U.S. legal system. It educates and prepares them for interacting with lawyers in the real world—particularly with respect to avoiding ethical pitfalls that may be due to zealous or "overzealous" advocacy by their lawyer.

In 2006, the author published an article in the *Journal of Legal Studies Education* entitled "A New Paradigm for the Teaching of Business Law and Legal Environment Classes" (Lampe, 2006). The goal of that article was to persuade instructors of business law and legal environment classes in business schools, and authors of textbooks for those classes, to modify their approaches to give greater consideration to the reality that most students in those classes are going to become business practitioners (and not lawyers). That article argues that the traditional approach to teaching business law is too much like law school, and provides numerous suggestions for modifications. For example, the article advocates adding topics, or increasing the time spent on topics, useful to the businessperson in preventing and resolving conflict, such as:

* Professor of Business Law and Social Responsibility at University of San Diego, School of Business Administration

[1] This article is based upon a guest column by the author, "Zealous Advocacy, Ethics and Business Practitioners," that appeared in the Fall 2016 *Academy of Legal Studies in Business Newsletter*.

1. The relationship of law to ethics and how ethical behavior can prevent legal problems;
2. Hiring and managing an attorney;
3. Alternative dispute resolution.

The present article continues in the spirit of this previous *JLSE* article offering additional ideas that build upon that teaching approach, especially in relation to the three enumerated topics above. Instructors may find a review of this *JLSE* article helpful in implementing the exercise that is the topic of the present article.

II. The Lawyer's Duty of Zealous Advocacy

The centerpiece of this pedagogical endeavor is a lawyer's duty to be a "zealous advocate" in the representation of their client and how that duty, along with other factors, may lead to unethical—and even illegal—conduct on the part of a lawyer. The following background discussion regarding this duty will help prepare instructors for the classroom exercise.

At the outset, students should have an understanding of what is meant by the term "zealous advocacy." *The American Bar Association* (2016) *Model Rules of Professional Conduct Preamble & Scope: A Lawyer's Responsibilities* states with respect to "zealous advocacy:"

- "As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."
- "[W]hen an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done."
- "These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law..."

Several scholars support the premise that because attorneys are required to be "zealous advocates" (within the bounds of the law) they sometimes are required to do things as part of that duty that would be considered unethical by others, including ethicists and the general public. Conlon, 2001, believes that the word "zealous" should be eliminated from the *Model Rules* because "it would remove a favorite excuse used by those who practice over-the-top advocacy" (p. 41) and would help the profession's public image.[2]

In an annual Benjamin N. Cardozo Lecture, published in the *University of Pennsylvania Law Review*, United States District Court Judge Marvin E. Frankel (1975) was critical of the American adversarial system with respect to the rules of professional conduct and law practitioner behavior in relation to truth-finding in court cases. As Frankel states: "The ethical standards governing counsel command loyalty and zeal for the client, but no positive obligation at all to the truth. Counsel must not knowingly break the law or commit or countenance fraud. Within these unconfining limits, advocates freely employ time honored tricks and stratagems to block or distort the truth" (p. 1038). Frankel goes as far as to say that, for an attorney, truth and victory are "incompatible" because of an advocate's drive to win.[3] Accordingly, ethics will become subservient to winning for litigators, especially considering their duty to be "zealous advocates" and, at times, notwithstanding the legal limitations on that duty. Both Frankel (1975) and Lampe (2012) make the point then, that given human nature and under the circumstances (i.e., a litigator's adversarial role as a zealot and drive to win in "battle"), realistic expectations are that, at times, ethical and legal transgressions will take place.

This ethical advocacy tightrope is also explored by Johansen (2006) who writes that "there is little doubt that lawyers stray from the 'whole truth' in a variety of contexts" (p.964). He offers examples of how lawyers "posture, bluff and sometimes outright lie" to deceive the other party in negotiations, noting that few challenge such behavior on ethical grounds, especially since the *ABA Model Rules* permit such deception. With

[2] J. Conlon, *It's Time to Get Rid of the 'Z' Words*, 44(2) RES GESTAE 40-41 (2001).

[3] M.E. Frankel, *The Search for Truth: An Umpireal View*. 123(5) U. PA. L. REV. 1031-1059 (1975).

respect to the stories a lawyer may tell a jury (or in other contexts), Johansen (2006) argues that they "may have strong incentive to embellish or modify the literal truth" (p. 982).

Additionally in his article, *The Ethics of Zealous Advocacy: Civility Candor and Parlor Tricks* (2002), author Richmond describes many examples of rule-breaking misconduct that may be "attributable to lawyers' zeal in advocating on their client's behalf" (p. 4). This misconduct includes various acts of incivility such as rudeness, nastiness, and profanities; lack of candor like lying in a variety of circumstances, including making false statements or mischaracterization of material facts or law; and "parlor tricks" described as "courtroom demonstrations by lawyers that mislead courts or jurors in an attempt to make evidentiary points" (p. 47).

An attorney's support of their client may even cross the line further into unethical (albeit still legal) behavior through attacks on individual reputations and credibility. In a scathing *Stanford Law Review* article regarding a lawyer's behavior as a result of his or her duty of zealous advocacy, West (1999) writes:

> The lawyer, because of his professional adversarial role, need not act in a way that gives equal regard to the moral worth of all. He need not act justly, or honestly, or honorably. He need not, and routinely does not, for example, seek to present a truthful understanding of past events to the world. He can seek to destroy the reputation of those he knows to be upright individuals. He can seek to destroy the credibility of witnesses he believes to be truthful. He can seek to further his clients' ends so long as they are lawful, although he believes those ends to be socially harmful. He can refuse to alleviate personal suffering of others when he could easily do so… (p. 975).

In the context of this article, West is essentially saying that, unless the client steps in and forbids it, a lawyer will do their client's "dirty work" regardless of whether the means or ends are unethical or socially harmful. Students should be aware that based upon their desire to win, and the pecuniary and ego benefits that victory may bring, coupled with their duty of zealous advocacy, lawyers at times not only behave unethically, but illegally, going beyond the rules of professional conduct by which they are bound. This is the reference point at which business law students can make a difference in their future careers. Yet these future business practitioners can only make a difference *if* they are trained in ethics and managing their attorney, and then are willing to do the right thing in such circumstances.

III. A Classroom Exercise

A. Ethics Background

In preparation for this exercise, either as part of prior coverage of the topic of business ethics in class or as an introduction to this exercise, it is recommended that the instructor convey and explain a basic guiding principle of ethics to the class. Namely, that "law is a starting point or minimum for ethical behavior," and that to *truly* be ethical, both individuals and organizations must not just obey the law but go beyond what it requires (Lampe, 2006, p.14). At the outset of this exercise, the instructor also should talk about the following topics with the class:

> 1. The nature of the lawyer's duty of zealous advocacy and how it may result in unethical or, on occasion, illegal behavior by an attorney (per the previous section). This point should include explaining to students that lawyers provide legal advice, but normally do not advise clients on the ethics of a situation where a course of action is otherwise legal. Additionally, indicate to students that a lawyer's behavior may include, in some cases, advising their client to behave unethically.
>
> 2. How a lawyer's drive to win and the pecuniary and ego benefits that victory may bring, especially when paired with zealousness, may lead to unethical and possibly illegal conduct.

(*Discussion topics, continued*)

3. The rights and options students have as clients/consumers of legal services since they are not governed by the code of ethics as are lawyers. It is important that students be made aware that as purchasers of legal services in their personal and professional lives there is a difference between their own ethical responsibilities and those of their attorney.

4. A student's ability to serve as a check on his or her lawyer's actions by telling him or her that they do not want them to say or do something, or that they personally decline to behave as requested by the attorney, if they believe it would be wrong. That is, they as clients have the power to stop acts initiated by legal counsel they feel may be unethical.

B. Video & Discussion: *"A Lawyer's Story"*— The Adversarial System in Action

Once students have been given the background, it is highly recommended that the class view a video from the Public Broadcasting Service (PBS)–Annenberg Learner Video Series entitled *Ethics in America: Truth on Trial*[4]; the video is available for free online at https://www.learner.org/vod/vod_window.html?pid=198. The hour-long program focuses on a fictitious civil case involving a potentially defective space heater (product liability) and has a panel of experts prominent in their fields including a U.S. Supreme Court Justice (Scalia), judges, eminent lawyers, ethicists, a corporate CEO and a newspaper publisher as discussants. A Harvard Law School professor is the moderator. This video case study provides an excellent basis for class discussion of ethics, zealous advocacy and the American legal system including related topics of ethics and law.[5] The fictitious video case appears to be loosely based on the actual Ford Pinto case. Instructors choosing to forgo screening of the video in class should view it themselves, along with this article's content and references, as both in tandem will provide useful ideas and information including hypothetical scenarios for classroom discussion.

An example from this PBS program pertinent to this exercise is the point where the panel generally agrees that a defense lawyer has a duty to "destroy" a witness by revealing her past to make her look like a liar, even though that lawyer knows there is no credibility issue and that the witness has told the truth. Notwithstanding that these revelations could be damaging to the witness's personal life, psychologically and otherwise, and that this witness has been a good employee working for the defendant company for several years, the panel believes the lawyer must take this action.

Another relevant scenario for class discussion raised by the program moderator is whether it is ethical for a litigant in discovery (this situation could also apply at trial) to answer they were wearing their "glasses" when they were wearing their non-prescription sunglasses although they *knew* the question meant prescription glasses. The panelists who say that a simple "yes" would be an acceptable response are all lawyers. They argue that the attorney asking the question was at fault for phrasing the question this way and not asking clarifying questions. On the other side, one of the judges on the panel responds that the witness was sworn to tell "the whole truth and nothing but the truth" and therefore they should not simply say "yes," because they knew what was meant.

In addition to these instances from the video discussed above (i.e., harassment of a truthful witness; ignoring the *clear meaning* of a question by opposing counsel), and situations presented in the previous section, "The Lawyer's Duty of Zealous Advocacy," examples abound of law practitioner behavior that teeters on the ethical-legal boundary. In a lecture given at the University of San Francisco School of Law on trial advocacy, former Federal District Court Judge Charles W. Joiner (1989) (who was also a longtime professor and dean at the University of Michigan School of Law where he attained the status of Professor Emeritus), stated that he believes "zealousness" has led to "hardball advocacy," and offers the following examples (in

[4] D. Deutsch (Director), *Truth on Trial [Television series episode] in C. McFadden (Executive Producer), Ethics in America*. New York, NY: Columbia University Seminars on Media and Society (1989).

[5] The complete ten-part *Ethics in America* series of one-hour video programs can be found at: http://www.learner.org/resources/series81.html , *Truth on Trial* is number eight. A second series of this successful show, *Ethics in America II*, adds six more programs: http://www.learner.org/resources/series207.html. To play any of these sixteen videos click on the small "VoD" box to the right of the description of the desired program.

addition to harassment of a truthful witness): abuse of discovery, damaging an opponent's case by delaying tactics, and intentional attempts to confuse the jury. Joiner adds that: "Hardballers by their actions in the name of [zealous] advocacy, if not reigned in, would destroy the adversary system created by society to do justice through advocacy" (p.19).

During discussion of the aforementioned examples from the video or another source, students may be asked to volunteer what they might do if they were in these situations as the litigant. Since allowing what would, at least arguably, be unethical acts in these situations might decrease their chances of winning the case, this question leads to lively discussion with various perspectives and novel suggestions from class members on how to handle each situation. Many students who go along with one or both of the aforementioned behaviors from the video justify their response on the basis that it is not illegal to do so. This inevitably leads back into a dialogue of the previously mentioned core ethical concept that "law is a starting point or minimum for ethical behavior" and the reasons their approach might be unethical. Those students arguing against one or both of these behaviors sometimes mention their conscience as a reason for not doing it. Also, some students use a cost-benefit analysis/utilitarian approach while others may appeal to higher values representative of universalism/Kant's categorical imperative (deontology) in their arguments in respect to what they would do if in these situations. Therefore, this can be an opportune time to discuss these ethical approaches, their strengths and weaknesses, and how they sometimes lead to different outcomes.[6]

The students who strongly defend "destroying" the witness in that hypothetical can then be asked whether any of them might consider bribing a witness to win an important case, such as the one in the video, if they felt they could get away with it. Usually several students say they would resort to bribery, citing the high stakes of losing the case (e.g., the business going bankrupt) in their reasoning. The author will then ask those students if the stakes were very, very high might they be willing to "bump-off" a witness if they felt they could get away with it (in the author's experience only one student has ever answered yes to that question). Again, the categorical imperative (i.e., "universal" values such as caring for and not harming others and being honest and truthful) and utilitarianism (i.e., student suggestions that transgressions of ethical values or the law would be appropriate because of the costs to the business of losing the case such as bankruptcy) are frequently part of student reasoning here and quite pertinent to discussion about the ethics of the situation. This conversation also affords an opportunity for the instructor to discuss the real-world danger of the ethical *slippery slope* which recent functional magnetic resonance imaging (fMRI) research indicates is an actual phenomenon that takes place in the human brain.[7]

Another concept to which this discussion lends itself is the axiom that "ethics is easier said than done" and that moral integrity means doing the right thing *even when it is hard to do because of the personal cost of such ethical conduct* (this often being monetary in business). The author tells the class that in his opinion the greater the personal cost of ethical behavior, the greater the demonstration of integrity by behaving morally.

"Managing for Organizational Integrity" in the *Harvard Business Review* (*HBR*) by Lynn S. Paine (1994) is an excellent, classic article on integrity that includes several famous business cases which may be brought into class discussion at this point. One case discussed in the article is Beech-Nut. Under pressure to make a profit from their parent company Nestlé, Beech-Nut sold sugar water and chemicals as "100% pure" apple juice because the price advantage allowed them to meet the financial goals set by Nestlé. However, in the end the behavior proved quite costly in fines, legal expenses, and lost sales as the company plead guilty to selling adulterated and misbranded juice. Also, the chief executive officer plead guilty to ten counts of mislabeling (Paine, 1994). The chief executive and a vice president were each sentenced to a year in jail and a $100,000 fine, notwithstanding that the chief executive "begged" the judge: ''Please don't send me to jail'' (Buder, 1988, para. 2). The *HBR* article also discusses Johnson & Johnson's handling of the Tylenol crisis as an example of management behaving with integrity. In that case Johnson & Johnson made the costly decision to recall all bottles of Tylenol nationwide among other steps to warn the public when seven people in the Chicago area died from taking Tylenol that had been poisoned as the result of product tampering .[8] The story of Johnson &

[6] Internet websites providing practical background information for discussion of these ethical philosophies include: Utilitarianism- http://ethicsunwrapped.utexas.edu/glossary/utilitarianism (this website includes a brief video that can be shown in class); https://en.wikipedia.org/wiki/Utilitarianism. Categorical Imperative (Deontology)- http://ethicsunwrapped.utexas.edu/glossary/deontology (this website includes a brief video that can be shown in class); https://en.wikipedia.org/wiki/Categorical_imperative.

[7] N. Garrett, S.C. Lazzaro, D. Ariely & T. Sharot, *The brain adapts to dishonesty*. 19(12) NAT NEUROSCI 1727-1732 (2016).

[8] D. Fletcher, *A Brief History of the Tylenol Poisonings*, TIME (February 9, 2009). *Available at* http://content.time.com/time/nation/article/0,8599,1878063,00.html.

Johnson's action here is a good counterpoint to the behavior in the *Truth on Trial* video where the fictitious chief executive officer knowingly allows a potentially dangerous space heater to remain on the market. In the video hypothetical the result of the CEO's inaction is a child's death because of a fire caused by the space heater.

Also for possible class discussion is the issue that arises in the video regarding the responsibility of a party to a legal action and their moral accountability for having hired a lawyer who makes an error detrimental to their case. The previously mentioned scenario where an attorney ambiguously asks whether the person being deposed or cross-examined was wearing their "glasses" rather than their "prescription glasses," which was the intent of the question, can be used as an example of such a mistake. In the video Justice Scalia takes the position that if one's lawyer makes such an error it is their client's responsibility for hiring a bad lawyer. Scalia's statement usually gives rise to the sentiment and rationalization by some students that neither the party being questioned nor their lawyer would have a moral responsibility to answer "no," even though they knew the *actual intent* of the question, because the lawyer doing the questioning made the mistake. The point regarding whether lawyers actually make such mistakes, such as the aforementioned, is discussed in the video. Students can be made aware that lawyers may make such mistakes for a variety of reasons including inexperience, ineptitude, psychological problems (e.g., depression), or substance abuse. As researchers have found, lawyers suffer from psychological problems and substance abuse at surprisingly high rates [9](Krill, Johnson, Albert, 2016). This also can be a good time for discussion as to which parties to litigation are usually likelier to have better legal representation, (e.g., counsel less prone to make such mistakes). The class response is always that those with greater financial resources (and possibly greater experience and knowledge regarding lawyers and lawsuits), most frequently being wealthy individuals and companies, usually have the ability to retain higher quality legal representation less prone to err.

At the end of the video discussion on the hypothetical space heater case the only businessperson on the panel, Chairperson and CEO of The Upjohn Company (pharmaceutical), speaks for the first time. If his response regarding what should have been done in the hypothetical case has not yet been discussed by the class it should be raised at this time. His perspective is the most pragmatic and ethical of the panelists, especially compared to the lawyers on the panel. He says that the company should have settled the case early on, corrected the product flaw, and that he would fire the CEO of the company that manufactured the space heater for handling the case in the manner he did. The differences between this businessperson and the lawyers' approaches to the case is a stark contrast and good example for students of these parties' differing perspectives.

C. Alternative Dispute Resolution (ADR) to Avoid Ethical Issues from Arising

At the close of class discussion on zealous advocacy, ethics and the business practitioner, it is recommended that the instructor suggest students consider the utilization of ADR, especially mediation, as opposed to the traditional judicial approach for settling disputes. The previously discussed response by the businessperson on the panel, that he would have settled the hypothetical case early, is a good bridge to this topic. ADR offers numerous advantages over litigation including decreasing the likelihood of ethical issues arising such as those in the video and discussed elsewhere in the article that result from the adversarial legal process. The aforementioned *JLSE* article by the author (Lampe, 2006) is a useful reference source for this discussion. It stresses the importance of educating business law students to advocate for the use of alternative dispute resolution (ADR) whenever appropriate in personal or professional disputes. Another article the author wrote published in the *Journal of Business Ethics*, "Mediation as an Ethical Adjunct of Stakeholder Theory" (Lampe, 2001), argues that mediation is a stakeholder-oriented, ethical way for businesses and other organizations to resolve disputes because, unlike litigation, "[i]t is a non-adversarial method that attempts to resolve conflict through mutual understanding, communication and collaboration, offering the unique opportunity to preserve and promote relationship under difficult circumstances" (p.172). Other non-binding ADR methods may also provide benefits similar to mediation because cooperation to arrive at a mutually agreeable settlement is at the core of non-adversarial ADR methods as opposed to the win-all advocacy in litigation. When successful,

---

[9] P.R. Krill, R. Johnson & L. Albert, *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10(1) J ADDICT MED, 46-52 (2006).

non-adversarial ADR normally results in a "win-win" result. In particular, mediation strives towards reconciliation and salvaging disputants' relationship which can be a beneficial outcome for both a business and their stakeholder with whom the dispute arose.

IV. Additional Topics for Possible Discussion

As time allows, the instructor might also want to facilitate a class discussion following the primary exercise above regarding whether our current adversarial system could be improved to better reconcile competing values and, if so, how that might be done. That is, the class could consider revisions to model rules of professional conduct for lawyers that may better balance a lawyer's duties to their client with the goals of the American legal system to bring about fair and just results. The discussion might begin with the students providing examples of potentially competing principles and values as a basis for these revised rules such as the right to competent and diligent representation, and fairness and justice in the judicial system. The class can ponder questions such as: Should we make changes to the adversarial system? If so, what might those changes look like?

A final possible topic for additional discussion, that is briefly raised in the video, is alternatives to the *adversarial system* currently used in the United States. Noting that the focus of the adversarial system is on "victory" and not truth, Strier argues that the *inquisitorial system* predominant in Europe, Asia, Latin America and Africa is better suited to finding the truth.[10] Strier also believes the focus of an adversarial type system naturally results in ethical (and legal) process transgressions.[11]

V. Conclusion

At the close of the video's panel discussion the Harvard Law School moderator states: "We have been through a lawyer's story here in an exercise that was meant to explore law and ethics. We haven't seen a whole lot of truth and we haven't seen a whole lot of ethics…" (Deutsch, 1989). In preparing our students for the real-world it is incumbent upon us to make them aware of its realities. More than any other materials the author has come across for a business law or legal environment class the aforementioned video, accompanied by the classroom exercise that is the subject of this article, can provide students with knowledge of consequential weaknesses in the American legal system and their own ability and ethical responsibility to be proactive in countering the damaging impacts the adversarial system can cause. As teachers we can furnish our students with knowledge in the hope that if and when the time comes, they will make tough choices that demonstrate *integrity* by avoiding harm to others, notwithstanding the cost to their organization or them personally, because it is *the right thing to do*.

[10] F. Strier, *Making Jury Trials More Truthful*, 30(1) U.C. DAVIS L. REV. 95-182 (1996).

[11] Resources for such a discussion can be found on the Internet including a discussion of the differences between the adversarial and inquisitorial system on the LawTeacher website: https://www.lawteacher.net/free-law-essays/constitutional-law/inquisitorial-and-adversarial-system-of-law-constitutional-law-essay.php; and explanations of the inquisitorial system: https://www.britannica.com/topic/inquisitorial-procedure and https://en.wikipedia.org/wiki/Inquisitorial_system.

References and Resource Materials

American Bar Association. (2016). *Model Rules of Professional Conduct Preamble & Scope*. Retrieved from https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_preamble_scope.html.

Buder, L. (1988, June 17). Jail Terms for 2 in Beech-Nut Case. *New York Times*. Retrieved from http://www.nytimes.com/1988/06/17/business/jail-terms-for-2-in-beech-nut-case.html

Conlon, J. (2001). It's Time to Get Rid of the 'Z' Words. *Res Gestae*, 44(2), 40-41.

Deutsch, D. (Director). (1989). Truth on Trial [Television series episode] in C. McFadden (Executive Producer), *Ethics in America*. New York, NY: Columbia University Seminars on Media and Society.

Fletcher, D. (2009, February 09). A Brief History of the Tylenol Poisonings. *Time*. Retrieved from http://content.time.com/time/nation/article/0,8599,1878063,00.html.

Frankel, M. E. (1975). The Search for Truth: An Umpireal View. *University of Pennsylvania Law Review, 123*(5), 1031-1059. doi:10.2307/3311524.

Garrett, N., Lazzaro, S. C., Ariely, D., & Sharot, T. (2016). The brain adapts to dishonesty. *Nature Neuroscience, 19*(12), 1727-1732. doi:10.1038/nn.4426

Johansen, S. J. (2006). This is Not the Whole Truth: The Ethics of Telling Stories to Clients. *Arizona State Law Journal*, 38, 961-993.

Joiner, C.W. (1989). Our System of Justice and the Trial Advocate. *University of San Francisco Law Review.* 24(1), 1-24.

Krill, P. R., Johnson, R., & Albert, L. (2016). The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys. *Journal of Addiction Medicine, 10*(1), 46-52. doi:10.1097/adm.0000000000000182.

Lampe, M. (2001). Mediation as an Ethical Adjunct of Stakeholder Theory. *Journal of Business Ethics, 31*(2), 165-173. doi:10.1023/a:1010749313936.

Lampe, M. (2006). A New Paradigm for the Teaching of Business Law and Legal Environment Classes. *Journal of Legal Studies Education, 23*(1), 1-51. doi:10.1111/j.0896-5811.2005.00020.x.

Lampe, M. (2012). Science, Human Nature, and a New Paradigm for Ethics Education. *Science and Engineering* Ethics. 18(3), 543-549. doi:10.1007/s11948-012-9373-8.

Paine, L. S. (1994, March-April). Managing for Organizational Integrity. *Harvard Business Review*. Retrieved from https://hbr.org/1994/03/managing-for-organizational-integrity.

Richmond, D. R. (2002). The Ethics of Zealous Advocacy: Civility Candor and Parlor Tricks. *Texas Tech Law Review, 34*(3), 3-59.

Strier, F. (1996). Making Jury Trials More Truthful. *University of California-Davis Law Review*, 30(1), 95-182.

West, R. (1999). The Zealous Advocacy of Justice in a Less Than Ideal Legal World. *Stanford Law Review, 51*(4), 973-989. doi:10.2307/1229449.