

Rhetorical Criticism as Essential Legal Skill: Some Thoughts on Developing Lawyers as “Public Citizens”¹

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The Model Rules of Professional Conduct for lawyers, upon which nearly all fifty state supreme courts base their legal ethics codes,² direct lawyers to pursue the public good in their roles as “public citizen[s] with special responsibility for justice.”³ Yet, at a time when law schools are under pressure to prepare students for the client-centered demands of lawyering,⁴ preparing lawyers to perform their public role has received little educational emphasis. One commentator notes that “the special responsibilities of . . . [lawyers as public citizens] are under-theorized in the professional literature and not the typical fair of legal education.”⁵

This essay is an initial exploration into the question of how to educate lawyers as the special public citizens the Preamble contemplates. The essay argues that rhetorical criticism skills—skills for interpreting and evaluating symbol use in discourse—align with the duties of the lawyer as public citizen and that learning rhetorical criticism skills is foundational to the lawyer’s ability to perform that role. The essay first describes how the Model Rules create three categories of “public citizen” duties for lawyers but offers little guidance about how the lawyer should perform those duties.⁶ The essay then discusses the efforts to fill this guidance gap by describing how other commentators have described the role and actions of the lawyer as public citizen. The essay then explores the view that law schools have not given much attention to teaching the skills related to lawyers’ roles as citizen lawyers. Finally, the essay argues that rhetorical criticism skills are foundational for the lawyer’s role as a public citizen and demonstrates how rhetorical criticism skills and the lawyer as public citizen are connected. Thus, the essay advances the idea that if law students learn rhetorical criticism skills in law school, they will be better equipped to perform their roles as fiduciaries of the rule of law, justice, and participatory democracy and be more likely to adopt the identity of the Preamble’s “public citizen.”

Preamble of the Model Rules: Creating the “Public Citizen”

The Preamble of the American Bar Association’s Model Rules of Professional Conduct states that lawyers have essentially three main roles as professionals: (1) “representative[s] of clients”; (2) “officer[s] of the legal system” and (3) “*public citizen[s] having special responsibility for*

the quality of justice.” The Model Rules do not define what it means to be a “public citizen,” but the Preamble describes some duties a lawyer has in that role. Although not explicitly, the Preamble’s language creates three interrelated categories of duties a lawyer has a public citizen: access duties, improvement of law duties, and democracy/rule of law duties.

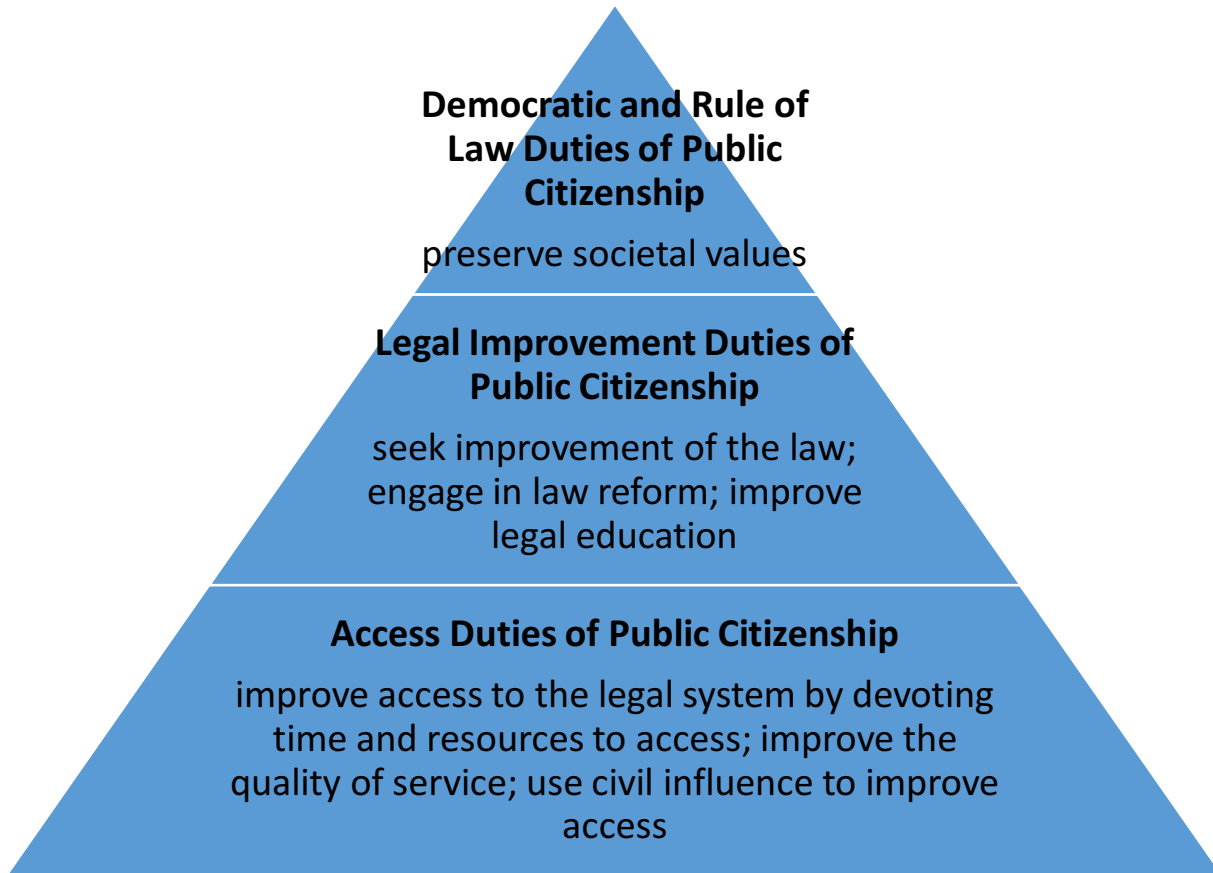
The first category of public citizen duties is related to providing access to legal representation and the legal system, public duties that might be viewed as those most closely related to serving clients. The Preamble says that lawyers as a public citizens should seek to improve “access to the legal system” as well as “the quality of service rendered by the legal profession.”⁸ As part of this duty, lawyers should not only “devote professional time and resources” to providing these needed services but should also “use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.”⁹ It is important to note that in the Preamble, a lawyer is not directly called upon to provide pro bono representation to those in need of legal services; that directive appears in Rule 6.1 of the Model Rules.¹⁰ Instead, the Preamble suggests a broader, arguably policy-oriented, approach for improving access to legal services, including by using the lawyer’s influence in the public sphere.

The second category of public citizen duties is addressed to the lawyer’s obligation to improve the law. In this capacity, lawyers are expected to turn their attention away from individual clients and instead focus their attention on the central role that can lawyers play in society regarding the rule of law. The Preamble says that “a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law[,] and work to strengthen legal education.”¹¹

The third category of public citizen duties addresses the lawyer’s relationship to society and obligates lawyers to promote the rule of law and further the values of participatory democracy. The Preamble says that a lawyer should “further the public’s understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority.”¹² Relatedly, the Preamble ends by reminding lawyers that they “play a vital role in the preservation of society.”¹³

The pyramid below illustrates one way of visualizing the relationship between the Preamble’s public citizenship duties. The public citizen duties most related to the lawyer’s other roles as client advocate and judicial officer are at the bottom of the pyramid, and the ones most

related to the lawyer's relationship to the public are at the top. This visual is not meant to suggest a hierarchy of duties but rather to simply offer one way of thinking about the relationship between the categories.



Although the Preamble outlines the lawyer's duties as a public citizen, the Preamble provides only a "general orientation"¹⁴ to the enforceable rules of conduct and does not, itself, contain "rules" that lawyers must follow. Moreover, most of the enforceable rules that follow the Preamble are devoted to explaining how a lawyer performs her duties when representing clients and appearing before courts,¹⁵ not when she is performing her duties as a public citizen. To the extent that the enforceable rules say anything about how a lawyer should perform her public citizen duties, that discussion is focused primarily on increasing access to justice through pro bono activities, court appointments, or legal services programs. Specifically, the rules state that lawyers have a professional duty (but not an enforceable obligation) to engage in fifty hours of pro bono activities annually and to "not avoid" court-ordered appointments except for good cause.¹⁶ Further, the rules describe the boundaries for participation in legal services programs, but do not require participation in them. In sum, little is said in the enforceable rules about what it means for a lawyer

to improve the law, reform the law, protect the rule of law, or to preserve society. In other words, “the ethical codes have never prescribed [] how to apply specifically the commitment to the public good in concrete situations.”¹⁷

Beyond the Model Rules: Fleshing Out the Meaning of “Public Citizen”

Given the limited information in the Model Rules about the lawyer as public citizen, others have explored the meaning of the role, associating it with civic affairs and attentiveness to the “ideals of democratic citizenship.”¹⁸ The Preamble’s public citizen has been described as a “citizen lawyer,” one who engages in “building the nation”¹⁹ and takes “responsibility for the integrity of society’s legal framework.”²⁰ A citizen lawyer “devote[s] time and effort to public ends and values[;] the service of the Republic, [her] communities, the ideal of the rule of law, and reforms to enhance the law’s efficiency, fairness, and accessibility.”²¹ “[A]s public citizens, lawyers [take] leadership positions in public life, politics, and business and serve[] in prominent positions within their communities.”²² They agree to “make insightful and well-articulated explanations of the demands of justice.”²³

These actions are consistent with the world view of the “citizen lawyer”—to do good in society and “over balance” his interests in the community against his own interests.²⁴ That is, when a lawyer has a conflict between her own interest and that of the public, an invisible hand is already on the scale, weighing the public interest more heavily because if lawyers “seek self-advantage to the same degree as individuals in other occupations, then society has no reason to grant the profession the authority to regulate itself.”²⁵

Not only does the citizen lawyer get involved in civic affairs, the citizen lawyer manages discourse in the public sphere consistent with virtuous deliberative engagement and democracy. In other words, lawyers have a duty to guide others on public performances of civility in a civil society²⁶ and teach about attributes necessary for civic participation that may not be enforceable by law such as “fair dealing, respect for others, and, generally, concern for the public good.”²⁷ Lawyers as public citizens create space in the public sphere for substantive engagement, particularly in the context of disagreements.²⁸ Because of their training in reasoning and argument, lawyers can lead by example to demonstrate to others how to engage in civil discourse that preserves democracy.²⁹

Finally, lawyers as public citizens are emotionally self-aware and able to morally reason.³⁰ They should have a “quality of mind” that is “creative and constructive,” not just critical.³¹ They ask

the “what ought we . . . do” questions, reveal “the value tensions” that exist in most decisions, understand different cultures, and see the “multiple dimensions of issues,” including ethical ones.³² Ultimately, lawyers as public citizens understand how “their work as lawyers is inextricably intertwined with the quality of justice in our society,”³³ and “take on the big issues of the contemporary world, or redefine what are the big issues.”³⁴

Whether lawyers are living up to the public citizen obligation has been questioned for at least the last twenty years. Yale Dean Emeritus Anthony Kronman lamented the “lost lawyer-statesman” in his 1993 book that expressed concern for the extinction of the lawyer as a citizen with interests beyond those of clients.³⁵ Eli Wald and Russell Pearce more recently have worried that “lawyers have begun to deny the existence of the public sphere beyond the aggregate of client interests and of public duties separate from the duty to serve the clients’ private interests” and largely conceive of their role as serving a client’s autonomous self-interests.³⁶ This shift from a public motive to do good for society to a private motive to reap rewards for the self and the client is a likely catalyst in the diminishing interest in developing skills associated with the lawyer as public citizen.

Law Schools: Ignoring the Lawyer as Public Citizen

Legal education has been criticized for doing little to educate law students about the skills, activities, and identity of the lawyer as public citizen.³⁷ When students successfully acquire the technical skills and patterns of thinking that lawyers and judges use, these skills and patterns of “thinking like a lawyer” can replace other forms of reasoning that lawyers need to function as and with other human beings in social life.³⁸ Accordingly law school has been criticized for lacking a counter-discourse of “moral meaning and moral awareness,” the kind of discourse that “lawyers need to fully apprehend their roles” as citizen lawyers.³⁹ Former law school dean Daisy Hurst Floyd further criticizes law schools for devaluing “emotional and ethical matters, including students’ . . . individual sense of justice” and argues that law students should be taught how to “interact[] with society at large,” not just with clients.⁴⁰ Wald and Pearce warn that law school is still traditionally taught, consistent with Harvard Law School Dean Christopher Columbus Langdell’s original intent, as “a morally free zone,” where “the public interest is nothing more than an aggregate of clients’ private interests, and in which a lawyer’s role is to pursue aggressively her clients’ autonomous self-interest.”⁴¹

Remedies for the failure of law schools to teach students how to be citizen lawyers focus on

education about moral thinking, democracy, justice, and public policy. For example, one suggestion is that law schools should educate students as “citizens of the democracy who find moral worth in the practice of law and virtue in the democracy.”⁴² Others advocate that law students should be taught “how their work as lawyers is inextricably intertwined with the quality of justice in our society.”⁴³ While “[t]eaching how to think about justice would not be simple,” Wald and Pearce suggest, “it is the only way to fulfill lawyers’ obligations as ‘public citizens’ who will inevitably influence the justness of specific outcomes, as well as public policy.”⁴⁴

In sum, although lawyers have been and continue to be characterized as public citizens with a special responsibility for justice that involves taking on public leadership roles, pursuing the public good in an “overbalanced” way, improving and cultivating knowledge about the law, teaching others civic virtue and conduct, engaging in emotional and moral reasoning and critical thinking, and ensuring the continuation of participatory democracy and the rule of law, these duties are underrepresented and arguably undervalued in the Model Rules of Professional Conduct. Moreover, the skills and values associated with the lawyer as a public citizen are largely ignored in the traditional law school curriculum. The question for this essay, then, is what might an education in rhetorical criticism offer for developing skills associated with the actions, and, relatedly, the identity, of the public citizen role.

Rhetorical Criticism: Developing Lawyers as Public Citizens

As Marianne Constable notes, when we “fail to notice what is being said and how, words lose their ability to show us our world.”⁴⁵ Learning rhetorical criticism skills ensures that lawyers, as public citizens, do not fail to notice the world created by legal language and how it generates just or unjust outcomes, furthers or stifles democratic dialogue, and promotes or dismantles the rule of law. Rhetorical criticism enables critics to “identify[] the complications of [messages] and unpack or explain them in a comprehensive and efficient manner” and to “build [] an argument about social conditions by observing what people say.”⁴⁶ As such, a solid understanding of rhetorical criticism can equip lawyers to do what lawyers as public citizens are expected to do: to be more than “effective technicians [and instead] be wise and prudent individuals, trained to interpret the rhetorical culture of their society with creativity, fairness, and decency.”⁴⁷ Trained as rhetorical critics, lawyers can better perform as public citizens, unpacking the complications in the language of rules and policies, explaining those complications, offering and arguing for justice based upon their evaluation of the moral valence of the law.

Rhetorical criticism gives lawyers a set of intellectual skills that both guide their *actions* as public citizens (an instrumental consequence) and help them self-author an *identity* as a public citizen with a kind of “rhetorical sensibility” (an ontological consequence). Training in rhetorical criticism gives lawyers new methods (actions) for analyzing legal texts from the vantage point of the public citizen, to “contest opacity and dishonesty [and] to challenge injustice” in legal texts.⁴⁸ Rhetorical criticism provides a structure for asking questions of language; by understanding and choosing between different methods of rhetorical criticism, a lawyer accesses an extra-legal vocabulary of skepticism, description, interpretation, and evaluation. This vocabulary is a “tool to discovery, insight, communication”⁴⁹ that is *outside* the law. That is, rhetorical criticism provides lawyers with a language for “discussing the hard to discuss”⁵⁰ aspects of the law, aspects that resist explication by doctrinal or policy analysis alone. By examining the persuasive power of metaphors in a legal text, for example, a lawyer might show how that text communicates about conceptions of justice. By applying Kenneth Burke’s cluster analysis or dramatism method to a text, a lawyer might demonstrate how motives are embedded in legal language and what those motives at might mean to applying the law in everyday contexts. By examining the function of ideographs in a legal text, a lawyer might improve citizens’ access to the democratic process by showing how some word choices further equal access to public spaces and some do not. Or by understanding modes of argument and the relationship between civil discourse and participatory democracy, a lawyer might guide others in valuing and preserving public space for engagement and dissent.

Beyond providing new methods and vocabularies for talking about the law, rhetorical criticism offers lawyers critical probes to apply to legal texts. In other words, rhetorical criticism gives lawyers new, non-legal questions for discovering in legal texts cultural and social messages beyond the legal messages the texts purport to convey. For example, legal scholar James Boyd White suggests that law can be evaluated as a rhetoric by asking questions that explore how the “inherited language” in a text operates, whether that text is coherent with the outside world, and what kind of rhetorical community the text creates.⁵¹ By using White’s categories as a starting point for rhetorical criticism, lawyers as public citizens can ask important questions about justice, democratic values, and the social good. For example, a lawyer might look at a legal text, and, using White’s method, ask: How does the language in the text work to improve access to justice? Does the text’s notions of fair play match what is understood in the broader public? What voices are included and excluded in the text? What are the consequences to democracy regarding who

speaks here? What societal values are furthered in the text?

In addition to critiquing legal texts, lawyers who are good rhetorical critics can critique legal theory, asking questions about the language of law's positivistic, formalistic, and critical legal theories; how those theories delineate the social "good"; and how they implicitly assign values for law in the material world. By being rigorously sensitive to the language of justice and injustice in legal theories, for example, lawyers with rhetorical criticism skills can intentionally question whether a legal theory operates to benefit society and, then, act on the answer.

Being trained in rhetorical criticism also gives lawyers the awareness and insight to be effective translators, equipping them to more easily talk about justice, democracy, and the rule of law in terms of ordinary language. White asserts that lawyers translate everyday experience into language of the law.⁵² By extension, then, lawyers trained in the skills of evaluating law as a social discourse have the enhanced ability to translate legal symbols back into the language of everyday events. Importantly, lawyers are well-positioned to be mindful of what happens in the "space between" translations, where meaning is particularly slippery and open to transformations that can be just or unjust, emancipating or oppressing, revealing or concealing. Lawyers as public citizens who function as rhetorical translators, then, can offer insight at this translation point, commenting on the moral valence of the terms, silences, structures, and symbolic content of legal texts, and drawing upon both the lawyer's legal and rhetorical knowledge to do so.

Finally, rhetorical criticism skills can help develop lawyers into public citizens who are "ecologists" of a sort. If one imagines "justice" as a location, then justice can be viewed as an ecosystem where speakers use morally-charged legal messages to collaborate and compete with one another for control over the meaning and experience of justice. As an ecologist, the lawyer as public citizen analyzes law's language and then acts to preserve balance between competing ideas of justice. By using rhetorical criticism skills, lawyers can recognize the persuasive patterns in legal texts that enhance or disrupt this balance and then educate others or reform the law to restore balance. They can also act to protect civility and democracy so that the voices heard and views promulgated are diverse and thriving. Perhaps today more than ever, a society awash in mediated legal messages needs lawyers who perform as ecologists, looking at how "each day's [legal] messages [are] recycled for use in understanding new messages,"⁵³ and examining texts to see how individual messages fit into a narrative about justice that is larger than the messages themselves.

In sum, a lawyer using rhetorical criticism skills as a public citizen improves his ability to be

skeptical, discerning, and imaginative. The skills heighten her ability to morally reason and interpret legal texts for their impact on the social good. She has a vocabulary, method, and questions for interrogating legal texts as rhetorical texts with social consequences. He can be a more effective translator between legal and ordinary language. Moreover, he can serve as an ecologist, looking for balanced notices of justice that leads to human flourishing.

Rhetorical criticism is not only about equipping lawyers with a set of skills for taking *action* as public citizens but also helping lawyers self-author *identities* as public citizens. A good rhetorical critic is more than just the sum of her actions. Rather, she possesses a “rhetorical sensibility,” a way of being in the world that motivates her critical and undivided attention to the function of language. This attentiveness is second-nature, and it animates a world view that inspires her to speak up when messages that at first seem innocuous or ridiculous have dangerous implications.⁵⁴ This sensibility—skeptical, self-disciplined, discerning, aware of significance, reasonable, imaginative, and courageous⁵⁵—is the same sensibility that lawyers as public citizens should possess.

Of the characteristics above, “imaginative” is perhaps one of the most important that rhetorical criticism can generate in lawyers. For some law students, their experience law school persuades them that law is for the unimaginative, applying “black letter” law to pre-existing facts using technical procedures. Rhetorical criticism, however, encourages lawyers to develop their imaginative capacities for what is possible in legal language.⁵⁶ Rhetorical criticism forces lawyers to turn away from the idea that legal language always, unassailably, means what it says it means. Once lawyers see the openness in legal language, then they are empowered to imagine different realities the words might invoke. By enabling lawyers to imagine the myriad possibilities for meaning in legal texts, rhetorical criticism offers lawyers a way to develop a creative and imaginative sense of self, a self that reforms—not just applies—the law, a self that creates ways to preserve democracy and the rule of law.

Lawyers who learn rhetorical criticism also can adopt an *outsider* identity that facilitates the public citizen role. When lawyers evaluate and translate legal texts and theories as rhetorical forces, interpreting them with an outsider's methods, vocabulary, questions, and perspective, they can begin to see themselves as something other than (or in addition to) client representatives or court officers. They become undistracted by the patterns of thought that they take seriously as legal insiders and instead shift to looking at the law as an outsider, evaluating the intersect between those thought patterns and the public good. They take a second look at legal texts for their rhetorical

implications, a look particularly needed when legal texts deny their own polyvalence and polysemy.⁵⁷ This stubbornness—taking a second look, persisting in critiquing what others might not—is the key characteristic of the good critic and a lawyer as public citizen: “The good critic does not look elsewhere. The good critic does not even blink.”⁵⁸

Finally, rhetorical criticism skills can help students identify within themselves a passionate connection to the legal institutions they are meant to protect. Anthony Kronman suggests that our laws and legal institutions make the fulfillment of our longings possible,⁵⁹ and, as such, law and legal institutions, as the province of rhetoric, always involve passion and emotion.⁶⁰ Lawyers, then, as the guardians of legal institutions, must understand themselves as more than functional, amoral intermediaries who link clients to each other and to courts. Instead, they must understand themselves as moral actors in a legal system with a duty to ensure that our institutions are places where the “longed for” can be fulfilled.

If a lawyer’s identity includes the rhetorical critic, she cannot help but be sensitive to the emotions and passions that underlie the institutions of law and be passionate about them. Law’s language raises questions of justice, equality, freedom, liberty, love, hate, joy, sadness, desire, and rejection, to name few. Legal language institutionalizes these ideas, and lawyers have great power in deciding how these emotional commitments will be expressed within and drawn from law’s language. Once a lawyer is sensitive to the emotional underpinnings of law’s language, passion must always be part of the equation of lawyering. And this passion for the emotional “good” of society can be expressed in the public citizen role, a role grounded in the skills of rhetorical criticism. A rhetorical critic is passionate about language; a lawyer as public citizen and rhetorical critic is passionate about law’s language.

Conclusion

The skills of rhetorical criticism are closely tied to the lawyer’s public citizen role. As moral leaders in public, lawyers must be able to evaluate messages about the rule of law and participatory democracy, identify for others what is significant in messages about justice, offer education about and ideas for reforming the law, act as engaged translators between legal and everyday discourse, and promote participation in civic discourse. By learning rhetorical criticism skills, lawyers can not only take these actions but also develop an identity as public citizens.

Notes

¹This essay is an adaptation of a presentation given as part of a panel at the 2016 Biennial Rhetoric Society of America Conference entitled “Legal Education as Rhetorical Education.” The author thanks her co-presenters, Elizabeth Britt and Jay Mootz, and panel discussant, John Louis Lucaites, for their comments and conversations about the ideas in this essay.

²*State Adoption of Model Rules of Professional Conduct*, American Bar Association, accessed December 10, 2016, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules.html. Forty-nine states plus the District of Columbia and the Virgin Islands have adopted the Model Rules either wholesale or in an amended form.

³American Bar Association, *Model Rules of Professional Conduct* (2016), Preamble, para. 1, accessed December 9, 2016, http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents.html.

⁴See, for example, Alfred S. Konsefsky and Barry Sullivan, “There’s More to Law Than ‘Practice Ready,’” *The Chronicle of Higher Education*, Oct. 24, 2011, <http://www.chronicle.com/article/Theres-More-to-the-Law-Than/129493>. The authors point to the American Bar Association’s “adoption of a resolution calling for [law schools] to ‘use curricular programs intended to develop practice-ready lawyers,’” who are ready to provide services to clients sooner.

⁵Kevin P. Lee, “The Citizen Lawyer in the Coming Era: Technology Is Changing the Practice of Law, But Legal Education Must Remain Committed to Humanistic Learning.” *Ohio Northern University Law Review* 40 (2013): 24.

⁶*Ibid.*, 25.

⁷American Bar Association, *Model Rules*, para. 1 (emphasis added).

⁸*Ibid.*, Preamble, para. 6.

⁹*Ibid.*

¹⁰*Ibid.*, Rule 6.1. “Pro bono” representation is legal representation provided at no or low-cost to those who cannot otherwise afford legal assistance. Paradoxically, the duty to provide legal services without expectation of pay to individuals “of limited means” or to non-profit groups is an unenforceable obligation set forth by rule. In other words, lawyers cannot be disciplined under the rules for failing to do pro bono work. Rule 6.1 is the only unenforceable rule in the Model Rules and states that “[t]he responsibility set forth in this Rule is not intended to be enforced through disciplinary process.” Comment 12.

¹¹*Ibid.*, Preamble, para. 6.

¹²*Ibid.*

¹³*Ibid.*, para. 13.

¹⁴*Ibid.*, para. 21.

¹⁵The Model Rules are addressed in large part to describing lawyer’s duties of competence, diligence, confidentiality, communication, and loyalty to clients as well as the lawyer’s duties of candor, fairness, and decorum in relation to court proceedings.

¹⁶American Bar Association, *Model Rules*, Rules 6.1 & 6.2.

¹⁷Eli Wald and Russell G. Pearce, “Making Good Lawyers.” *University of St. Thomas Law Journal* 9 (2011): 408-410.

¹⁸Lee, 26.

¹⁹Rachel Moran, “The President’s Message,” *aalsnews: A Quarterly Publication of the Association of American Law Schools* (Mar. 2009), 10, <http://www.aals.org/documents/newsletter/march2009newsletter.pdf>.

²⁰Rachel Moran, “Transformative Teaching: From the Classroom to the Culture,” *aalsnews: A Quarterly Publication of the Association of American Law Schools* (Nov. 2009), 1, <http://www.aals.org/wp-content/uploads/2014/04/novembernewsletter09.pdf>.

²¹Robert W. Gordon, “The Citizen Lawyer—A Brief Informal History of a Myth with Some Basis in Reality.” *William and Mary Law Review* 50 (2009): 1169.

²²Wald and Pearce, 410.

²³Lee, 27.

²⁴Neil Hamilton, “Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity.” *University of St. Thomas Law Journal* 5 (2008): 493.

²⁵*Ibid.*

²⁶Russell G. Pearce and Eli Wald, “The Obligation of Lawyers to Heal Civic Culture: Confronting the Ordeal of

Incivility in the Practice of Law.” *University of Arkansas Little Rock Law Review* 34 (2011) 6.

²⁷ Ibid., 40, quoting Bruce A. Green & Russell G. Pearce, “Public Service Must Begin at Home: The Lawyer as Civics Teacher in Everyday Practice.” *William and Mary Law Review* (2009): 1212.

²⁸ Ibid., 42.

²⁹ Ibid., 5.

³⁰ Lee, 31.

³¹ Ben W. Heineman, Jr., “Law and Leadership.” *Journal of Legal Education* (Dec. 2006): 599.

³² Ibid., 599-601.

³³ Wald and Pearce, 436.

³⁴ Heineman, Jr., 614.

³⁵ Anthony Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Cambridge, MA: Belknap, 1993), 3.

³⁶ Wald and Pearce, 411.

³⁷ Ibid., 414.

³⁸ Lee, 30-31, citing Elizabeth Mertz, *The Language of Law School: Learning to “Think Like a Lawyer”* (Oxford: Oxford University Press, 2007), 3.

³⁹ Ibid.

⁴⁰ Daisy Hurst Floyd, “Lost Opportunity: Legal Education and the Development of Professional Identity.” *Hamline Law Review* 30 (2007): 558, 564.

⁴¹ Wald and Pearce, 415.

⁴² Lee, 20.

⁴³ Wald and Pearce, 436.

⁴⁴ Ibid.

⁴⁵ Marianne Constable, *Our Word Is Our Bond: How Legal Speech Acts* (Stanford, CA, Stanford University Press, 2014), 4.

⁴⁶ Roderick P. Hart and Suzanne Daughton, *Modern Rhetorical Criticism*, 3rd ed. (Boston: Pearson, 2005), 22-23.

⁴⁷ Marouf Hasian, Jr., Celeste Michelle Condit, and John Louis Lucaites, “The Rhetorical Boundaries of the Law: A Consideration of the Legal Practice and the Case of the ‘Separate but Equal’ Doctrine.” *Quarterly Journal of Speech* 82 (1996): 339.

⁴⁸ Constable, 4.

⁴⁹ Bruce E. Gronbeck, “Rhetorical Criticism in the Liberal Arts Curriculum.” *Communication Education* 38(6) (1989): 186.

⁵⁰ Hart and Daughton, 61.

⁵¹ James B. White, “Law as Rhetoric, Rhetoric as Law: The Arts and Culture of Communal Life.” *University of Chicago Law Review* 52 (1985): 701-02.

⁵² Ibid., 692.

⁵³ Hart and Daughton, 27.

⁵⁴ For an example of this sensibility at work, see Kenneth Burke, “The Rhetoric of Hitler’s ‘Battle,’” *The Southern Review* 5 (1939): 1-21.

⁵⁵ Hart and Daughton, 26-31.

⁵⁶ Ibid., 31.

⁵⁷ Gerald Wetlauffer, “Rhetoric and Its Denial in Legal Discourse.” *Virginia Law Review* 76 (1990): 1555.

⁵⁸ Hart and Daughton, *Modern Rhetorical Criticism*, 30.

⁵⁹ Anthony Kronman, “Rhetoric.” *University of Cincinnati Law Review* 67 (1999): 706.

⁶⁰ Ibid, 609.