Snitches Get Stitches: Ditching the Toleration Clause in Law School Honor Codes

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> It is a capital mistake to theorize before one has data. Insensibly one begins to twist facts to suit theories, instead of theories to suit facts.
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> —Sherlock Holmes, *A Scandal in Bohemia*

Introduction

Imagine you are a brand new first-year law student. During your law school's orientation, you were briefed on your school's academic honesty policy. You learned about how honor offenses at your school included both receiving unauthorized assistance on assignments and plagiarizing the work of others without providing appropriate citations. This seemed relatively straightforward to you. But you also learned that honor offenses extended to conduct violations, such as the audio recording of classes. You shifted in your seat uncomfortably when the Dean told you that not reporting an honor offense was itself an honor offense. You are not too concerned because you plan to stay focused on your studies and not be caught up in any kind of cheating. But, alas, you are not that lucky.

In your first Contracts class, you notice a student sitting next to you press record on their cell phone and place it on the desk. You are relatively certain that this is an honor violation. You also surmise that if you said something to your fellow student, she might thank you for the heads up, stop the recording, and explain that she was just hoping to review the audio after class to review. You then realize that if you say anything at all, your words will confirm that you saw a violation—and in not reporting it you are committing an honor offense yourself. You search for the email address you were told to report violations to and begin to draft an email. You hate the idea of being a "snitch" on the first day of class. And you know you could just as easily stop your classmate from committing what is probably one of the less-obvious offenses. Should you just stay quiet? What, then, are you to do?

Now imagine that at the end of the semester, instead of witnessing a student recording on the first day of class, you witness a fellow student share a news article in a group chat on which your first year Civil Procedure Exam's fact pattern is based. You know that some of your classmates have yet to take the exam due to

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personal reasons. What should you do here? Is your answer different from the hypothetical presented above? Why?

Current and former law students may be familiar with this stressful culture of fear that results from an academic environment that requires students to report violations of an honor or conduct code or be in violation of it themselves. The unique task of the law school is to create an environment that balances the training of students with the demanding realities of their eventual practice as attorneys which may include addressing difficult ethical questions. Law school honor and conduct codes play an integral part in this endeavor. Thus, it becomes critical to ask, how should law schools cultivate tomorrow's lawyers and what role does the school's honor or conduct code play? Should law schools emphasize rigidity and a culture of reporting? Or should they emphasize student ownership, peer leadership, and place their trust in the agency of individual students and faculty?

In Part I this Note will first provide a brief overview of the relevant distinctions between honor codes, conduct codes, and codes of professional ethics. Part II will then narrow the discussion to analyze the debate surrounding a school's use of the "toleration clause" which mandates student reporting of observed violations, with emphasis on the United States Naval Academy as a relevant example. Part III will provide an overview of modern law school approaches at the top one hundred schools in the nation. Finally, Part IV will argue that more law schools should remove the toleration clause to better prepare future attorneys for the reality of their eventual practice of law in their respective jurisdictions.

The conclusions and recommendations made in this Note are a result of obtaining and analyzing the honor codes of the U.S. News and World Report's top one hundred law schools. In addition, traditional legal research involving secondary source material and, in some instances, relevant case law is used. This data was compiled in the Fall of 2019. It includes both the 1987[1] and 2019[2] U.S. News and World Report law school rankings and bar passage rates, along with the location of the school in accordance with the United States Census geographical regions.[3] A school's classification as faith-based was made based upon a review of the school's history provided on its website. Great care was taken to ensure the integrity of this data set, but any errors are entirely the author's own.

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1. *America's Best Colleges And Professional Schools: An exclusive survey by the editors of U.S. News & World Report*, U.S. NEWS & WORLD REPORT, 1987, at 32–34 [hereinafter *1987 Rankings*]. These rankings are reproduced in the Appendix *infra*.

2. *Best Law Schools: Ranked in 2019*, U.S. NEWS & WORLD REPORT, https://web.archive.org/web/20191210045418/https://www.usnews.com/best-graduate-schools/top-law-schools/law-rankings [https://perma.cc/X2GD-3FP6] (last visited April 20, 2020) [hereinafter *2019 Rankings*]. These rankings are reproduced in the Appendix *infra*.

3. U.S. Census Bureau, *Census Regions and Divisions of the United States*, https://www2.census.gov/geo/pdfs/maps-data/maps/reference/us_regdiv.pdf [http://perma.cc/X89S-TMZR] (last visited Jan. 6, 2020); *see also* United States Census Bureau, *Regions and Divisions*, https://www.census.gov/history/www/programs/geography/regions_and_divisions.html [http://perma.cc/BH87-2K6E] (last visited Jan. 6, 2020) (describing renaming of North Central Region as Midwest).

I. STANDARDS OR RULES?

Skepticism of the legal profession has a long history. Ever since Dick the Butcher uttered "Let's kill all the lawyers" in Shakespeare's *Henry VI*,[4] lawyers have borne the brunt of many jokes.[5] The Pew Research Center's 2013 survey ranked lawyers last of ten professions with respect to the public perception of "contributions to society" as compared to military officers, who ranked at the top of the list.[6] Over time, attorney organizations have developed their own policing mechanisms to uphold the integrity of the profession.[7] Law schools, in turn, have drafted their own standards to prepare their attorneys-in-training. Just as the *Model Rules of Professional Conduct* are a "cooperative undertaking" in coordinating the conduct of the profession,[8] law school honor codes seek to standardize conceptions of honor amongst the student body.[9] Honor, then, may be defined as "an ethical system in which one's outward presentation as a worthy person is confirmed or challenged by others in the relevant social group, who confer honor on persons exhibiting valued characteristics and shame on those who deviate from prescribed standards."[10] The imposition of broad moral constructs upon a diverse student body coming from myriad cultural backgrounds is a challenging task. Yet, this is the task of the law school—indeed, of any institution of higher learning.

Because the concept of honor is broad and may be applied to any number of potentially unethical situations, some suggest that true honor codes "tend to be codified in very general terms, or not codified at all."[11] Ethical codes or codes of

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4. WILLIAM SHAKESPEARE, HENRY VI, act 4, sc. 2.

5. Arguably, this line was not a critique, but rather a compliment. *See* Debbie Vogel, Letter to the Editor, 'Kill the Lawyers,' A Line Misinterpreted, N.Y. TIMES, June 17, 1990, at LI 12, https://www.nytimes.com/1990/06/17/nyregion/l-kill-the-lawyers-a-line-misinterpreted-599990.html [http://perma.cc/KBX7-XG7W] ("Dick the Butcher was a follower of the rebel Jack Cade, who thought that if he disturbed law and order, he could become king. Shakespeare meant it as a compliment to attorneys and judges who instill justice in society.").

6. *Public Esteem for Military Still High*, PEW RESEARCH CENTER (2013), http://www.pewforum.org/2013/07/11/public-esteem-for-military-still-high/ [http://perma.cc/ZDG3-U92Y] [hereinafter *Pew Research Survey*].

7. *See generally* Walter Burgwyn Jones, *Canons of Professional Ethics, Their Genesis and History*, 7 NOTRE DAME LAWYER 484, 496–98 (1932) (describing origins of the Canons of Professional Ethics of the American Bar Association).

8. MICHAEL DAVIS, PROFESSION, CODE, AND ETHICS 51 (2002) ("A profession is . . . a cooperative undertaking. In exchange for putting herself under an obligation to do as those in her profession are doing, each member of the profession receives the benefits of being identified as a member of that profession.").

9. K.C. Carlos, *The Future of Law School Honor Codes: Guidelines for Creating and Implementing Effective Honor Codes*, 65 UMKC L. REV. 937, 958 (1997) ("First and foremost, this body should have the responsibility of promoting the values of the honor code to the student body."); *see also* Nicola Boothe-Perry, *Enforcement of Law Schools' Non-Academic Honor Codes: a Necessary Step Towards Professionalism?*, 634 NEB. L. REV. 634, 645 (2015) ("In addition to pedagogical acquisition, standards of professional conduct should be instilled: standards which may very well be substantially influenced by the models of those persons or institutions from whom professional competence is acquired.").

10. W. Bradley Wendel, *Regulation of lawyers without the code, the rules, or the restatement: Or, what do honor and shame have to do with civil discovery practice?*, 71 FORDHAM LAW REV. 1567, 1577–78 (2003).

11. Steven K. Berenson, *What Should Law School Student Conduct Codes Do?*, 38 AKRON L. REV. 803, 808 (2005).

ethics, on the other hand, are somewhat different from honor codes because while they reflect broad standards of morality, they also establish clear-cut guidelines or rules for conduct in a variety of situations.[12] For example, the legal profession's adoption of the *Model Rules* as a replacement of the *Model Code* "represented a further step in the movement of the code governing the legal profession from standards to rules."[13] In comparison, law school honor and conduct codes generally "seem to reflect a more particular focus on specific rules regulating the behavior of law students, without regard to the informal community norms that are at the center of honor systems, or the moral precepts that are at the center of ethics codes."[14] Some have argued that for this reason, law school honor codes are more accurately described as conduct codes because "the vast majority of law school codes consist primarily of a large number of detailed regulatory provisions covering a wide range of possible student behaviors [rather than] emphasis on broad moral precepts."[15]

It is not surprising, then, that a variety of approaches are employed by the top one hundred law schools in the United States. Some schools offer broad ethical canons[16] in their respective codes while others meticulously list various offenses and bear a striking resemblance to the criminal law's *Model Penal Code*.[17] This Section will provide an overview of the purposes and critiques of existing law school honor codes and examine duties to report and peer counseling as they exist currently in the legal profession. While there are a wide variety of approaches by law schools in governing student conduct in the form of honor codes, conduct codes, academic honesty policies, etc., such codes will be referred to as honor codes for the purposes of consistency throughout this analysis.

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12. *Id*. at 809; s*ee also* David Luban & Michael Millemann, *Good Judgment: Ethics Teaching In Dark Times*, 9 GEO. J. LEGAL ETHICS 31, 45 (1995) (stating that the "term 'ethics' dropped out of the title, to be replaced by the more technical sounding 'professional responsibility'" which represented a "de-moralization of the ethics rules").

13. Berenson, *supra* note 11, at 823.

14. *Id*. at 809.

15. *Id*. at 809–10.

16. For example, Stanford University's honor code was written by students in 1921, is merely a paragraph long, and contains broad ethical guidelines for students and faculty. *See* Stanford University Office of Community Standards & Student Affairs, *Honor Code*, https://communitystandards.stanford.edu/policies-and-guidance/honor-code [http://perma.cc/88CF-UFQE] (last visited Jan. 7, 2020) [hereinafter *Stanford Honor Code*].

17. The Model Penal Code levels of intent, for example, are even codified in the honor codes at the University of Maryland and the University of San Diego. *See* University of Maryland Francis King School of Law, Student Honor Code, https://www.law.umaryland.edu/Policy-Directory/Academic-Standards-and-Honor-Code-Policies/Honor-Code/ [http://perma.cc/UBD4-GNXC] (last visited Jan. 7, 2020); University of San Diego, *Honor Code*, https://www.sandiego.edu/law/current/student-handbook/honor-code.php [http://perma.cc/8AST-TNAX] (last visited Jan. 7, 2020). *But see* Esteban v. Central Missouri State College, 415 F.2d 1077, 1088 (8th Cir. 1969) ("It is not sound to draw an analogy between student discipline and criminal procedure.").

A. PURPOSES & CRITIQUES OF EXISTING LAW SCHOOL HONOR CODES

The American Bar Association Standards for Law School Accreditation provide that the dean and faculty of the law school have the primary responsibility for "planning, implementing, and administering the program of legal education of the law school, including curriculum, methods of instruction and evaluation, admissions policies and procedures, and academic standards."[18] Honor codes and academic honesty policies, therefore, are employed by law school administrations to educate, regulate, and prepare students who will one day be admitted to the bar. Today, honor codes often serve this role in conjunction with an ethics course taken during law school that is required by many state bars,[19] but this is a relatively new concept in the world of legal academia.

The growth in ethics education that has necessitated new ethics curricula has been referred to as a response to a "clamor for reform" motivated by new pedagogical developments in experiential education, the evolving nature of the attorney's role, decreased job growth in the legal sector, rising attendance cost at the nation's law schools, and the need for so-called "practice ready" graduates increasingly entering solo and smaller-sized practices.[20] Along with academic requirements, career counseling, clinics, experiential learning, and extracurricular activities, honor codes are just one of many tools employed by school administrations in their quest of producing competent attorneys.[21] Codes themselves,

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18. American Bar Association, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS: 2019–2020 9 (2019); *see also* Nicola Boothe-Perry, *Standard Lawyer Behavior? Professionalism as an Essential Standard for ABA Accreditation*, 42 N.M.L. REV. 33, 38 (2012) (suggesting how the ABA may function as a "source of pressure to encourage and foster professionalism education in law schools").

19. *See* Denise Platfoot Lacey, *Embedding Professionalism into Legal Education*, 18 J.L. BUS. ETH. 41, 41–48 (2012). *But see* Alan Lerner, *Using our Brains: What Cognitive Science and Social Psychology Teach us About Teaching Law Students to Make Ethical, Professionally Responsible, Choices*, 23 QUINNIPIAC L. REV. 643, 650 (2005) (asserting that "learning the rules of professional conduct does not necessarily lead to eventual ethical practice"); Helia Hull, *Legal Ethics for the Millennials: Avoiding the Compromise of Integrity*, 80 UMKC L. REV. 271, 284 (2011) (suggesting that it is "unclear" how much else is taken from the ethics course).

20. Karen Tokarz et al., *Legal Education at a Crossroads: Innovation, Integration, and Pluralism Required*, 43 WASH. U.J.L. & POL'Y 11, 11–12 (2013); *see also* Miriam R. Albert & Jennifer A. Gundlach, *Bridging the Gap: How Introducing Ethical Skills Exercises will Enrich Learning in First-Year Courses*, 5 DREXEL L. REV. 165, 172–86 (2012); Deborah Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 437, 448 (2013); Harry T. Edwards, *The Growing Disjunction between Legal Education and the Legal Profession*, 91 MICHIGAN L. REV. 34, 67 (1992). *But see* Alice Woolley, *Legal Education Reform and the Good Lawyer*, 51 ALTA L. REV. 801, 805 (2014) (arguing that existing approaches do not help students "develop the attributes and competencies necessary for ethical professional practice"); Hull, *supra* note 19 at 285 (suggesting "schools need to integrate legal ethics lessons into courses throughout the curriculum" rather than just offering one mandated ethics course); Martin J. Katz, *Teaching Professional Identity*, 42 COLO. LAW. 45, 45–48 (2013) (recommending increased experiential education in law schools); KIM ECONOMIDES, ETHICAL CHALLENGES TO LEGAL EDUCATION & CONDUCT 107 (1998) (describing how "attempts to encourage or require instruction in legal ethics *simpliciter* have been largely unavailing" and offering the Canadian model, which does not require professional training in ethics while in law school, in contrast).

21. *But see* Hull, *supra* note 19, at 275 (asserting that millennial law students are less likely to report cheating despite presence of an honor code); *see also* Steven C. Bennett, *When Will Law School Change?*, 89 NEB. L. REV. 87, 97–99 (2010) (arguing that in order to become "fully-functioning and ethical lawyers, students

however, serve many purposes and interact with nearly every facet of the curriculum offered at any law school.

The educative purpose of law school honor codes is arguably their most important function, as they prepare students for how to ethically navigate their future practice of law.[22] Often times, honor codes are drafted with the ABA's *Model Rules* or the relevant rules of professional conduct from the law school's serving jurisdiction in mind.[23] Codes also ordinarily provide for formal proceedings in which students may practice skills relevant to the legal profession by serving in an investigatory, prosecutorial, or defense counsel role in processing of an alleged violation.[24]

The regulation of student conduct, however, is also a critical function of law school honor codes. Codes define the rules by which each student must abide in the course of earning their degree. In doing so, they establish the efficient system of "fair academic competition" that is essential to the law school's primary role of educating future lawyers.[25] To truly be effective, therefore, an honor code must "ensur[e] the integrity of testing and other evaluative tools" in order to "have the effect of enhancing some of the more salutary learning goals of the law school[.]"[26]

The regulatory and educative purposes of honor codes may be complemented by the school's desire to maintain its public image. For example, some scholars argue that both increases in student misconduct and the school's aim to avoid the appearance of impropriety amongst the general public play major roles in the drafting or enforcement of a school's honor code.[27] Additionally, the function of honor codes has evolved to include a school's relevant bar reporting requirements.[28] For example, academic misconduct is addressed in the *Code of*

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must develop ethical sensitivity" and "make a commitment to ethical practices during the course of law school").

22. Berenson, *supra* note 11, at 825 (arguing that similar to the goals of the *Model Rules*, regulation is the most important function of the student honor code, followed by education and then aspirational objectives). *But see* Raymond M. Ripple, *Learning Outside The Fire: The Need for Civility Instruction in Law School*, 15 NOTRE DAME J. L. ETHICS PUBLIC POLICY 359, 369 (2001) (noting that the *Model Rules* themselves were "not seen as aspirational in nature").

23. Berenson, *supra* note 11, at 821 ("Indeed, a number of law school conduct codes specifically incorporate the applicable professional code, making those standards binding on law students for purposes of academic discipline.").

24. *Id*. at 824–25.

25. *Id*. at 826.

26. *Id*.

27. *See id*. at 810 n.43 ("Thus, codes may also express to the broader public the ideals and values of the group that promulgated the code.").

28. *See* Elizabeth Gepford McCulley, *School of Sharks? Bar Fitness Requirements of Good Moral Character and the Role of Law Schools*., 14 GEO. J. LEGAL ETHICS 839, 856 (2001) (describing how bar authorities may inquire regarding student misconduct but schools vary in the types of misconduct they report); *see also* Michael C. Wallace, *Moral Character and Fitness Means More Than Just a Passing Score to the Board of Law Examiners*, 7 CHARLOTTE L. REV. 157, 175 (2016) (describing how bar authorities focus on the applicant's character and fitness and use past misconduct as a predictive measure for the future).

Recommended Standards for Bar Examiners as one of thirteen recommended assessment points in the character and fitness evaluation.[29] Furthermore, most states require both a passing score on the Multistate Professional Responsibility Exam and a complete moral character background check before being admitted to the state bar.[30]

Critiques of law school honor codes are diverse but generally concern the degree to which the school's honor code prepares students to eventually abide by the rules of their admitting jurisdiction upon graduation.[31] In addition, some argue that the educational purpose of the law school's honor code is hindered if proceedings are not open to the public.[32] Finally, any "aspirational" goals of law school honor codes in standardizing the morals of a vastly diverse student body may be "questionable" at best.[33] Because students generally arrive at law school later in life, it may be very difficult for these institutions to re-define key tenets of morality for their students.

Ultimately, law schools must prepare lawyers to address issues before them "thoughtfully and effectively while carrying out their professional responsibilities as representatives of their clients, officers of the judicial system, and public citizens, exercising both their analytical skills, and moral judgment."[34] Schools may not be able to re-define morality, but they can certainly familiarize their students with ethical requirements of practicing law. Thus, assuming that the goal of honor codes is to prepare students for the ethics of law practice, an examination of the ethical standards of practicing lawyers is necessary before examining the effectiveness of individual law school codes.

B. EXISTING DUTIES TO REPORT AND PEER COUNSELING IN THE LEGAL PROFESSION

Model Rule 8.3 states that a "lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority."[35] The Rule's comments elaborate, however, stating that if "a lawyer were obliged to report every

29. Caroline P. Jacobson, Note, *Academic Misconduct and Bar Admissions: A Proposal for a Revised Standard*, 20 GEO. J. LEGAL ETHICS 739, 739 (2007); *see also* George L. Blum, Annotation, *Falsehoods, Misrepresentations , Impersonations, and Other Irresponsible Conduct as Bearing on Requisite Good Moral Character for Admission to Bar–Conduct Related to Admission to Bar*, 107 A.L.R.5th 167, 3 (2019).

30. *See* Lori A. Roberts & Monica M. Todd, *Let's Be Honest About Law School Cheating: A Low-Tech Solution For a High-Tech Problem*, 52 AKRON L. REV. 1155, 1165 (2018).

31. *See, e.g.*, Leonard Biernat, *Why Not Model Rules of Conduct For Law Students?*, 12 FLA. ST. U.L. REV. 781, 797 (2019); David M. Tanovich, *Learning To Act Like A Lawyer: A Model Code of Professional Responsibility for Law Students*, 27 WIND. Y.B. ACCESS JUST. 75, 78 (2009).

32. Berenson, *supra* note 11, at 824–25; *see also* Sarah Ann Bassler, *Public access to law school honor code proceedings*, 15 NOTRE DAME J. L. ETHICS PUBLIC POLICY 207, 209–30 (2001).

33. Berenson, *supra* note 11, at 827.

34. Lerner, *supra* note 19, at 643.

35. MODEL RULES OF PROF'L CONDUCT R. 8.3 (2018) [hereinafter MODEL RULES].

violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable."[36] Thus, the Rules require an attorney to report only "those offenses that a self-regulating profession must vigorously endeavor to prevent."[37]

Although the Rules *technically* impose a duty to report, the analysis does not end there. The Rules also *empower an individual attorney to make a judgment* about the severity of the potential offense observed and report only what the observer deems to be one of those infractions which "a self-regulating profession must vigorously endeavor to prevent."[38] Perhaps this ambiguity is by design.[39] The comments accompanying Rule 8.3 are ultimately "ambivalent" as to whether attorneys have a duty to report *any* observed misconduct, suggesting that the obligation is limited[40] to only "those offenses that a self-regulating profession must vigorously endeavor to prevent."[41] These amplifying notes found in the *Model Rules* are significant because they embody the profession's decision to demand and rely upon the sound ethical judgment of attorneys.

Examples of requiring ethical judgment are found elsewhere in the profession. The Federal Rules of Civil Procedure, for example, lay out certain requirements of truthfulness in making written representations regarding purposes, soundness of the legal argument, and the basis for factual allegations to courts.[42] However, Rule 11(c)(1) states that "[i]f, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation."[43] Rule 11(c)(2) meanwhile provides the process by which an attorney may make a motion for sanctions against opposing counsel. It states that the motion "must not be filed or be presented to the court *if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected* within 21 days after service or within another time the court sets."[44] This rule does not require an attorney to request sanctions against opposing counsel immediately upon realizing that a representation to the court

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36. MODEL RULES R. 8.3 cmt. 3; *see also* Arthur F. Greenbaum, *The Attorney's Duty to Report Professional Misconduct: A Roadmap for Reform*, 16 GEO. J. LEGAL ETHICS 259, 265 (2003) ("[R]eliance on voluntary reporting, the norm before 1970, was found to be a failure, and bar counsel believe that remains true today.").

37. MODEL RULES R. 8.3 cmt. 3.

38. *Id.*; see also Greenbaum, *supra* note 36, at 281.

39. *See* Greenbaum, *supra* note 36, at 281 ("The Rule's ambiguous, but mandatory, standards may be intended to require lawyers to engage in self-reflection about reporting while conferring broad, but not unlimited discretion, about whether or not to report.").

40. ANN SOUTHWORTH & CATHERINE L. FISK, THE LEGAL PROFESSION: ETHICS IN CONTEMPORARY PRACTICE 983 (2014) (concluding the obligation to report is limited in nature by the Rules).

41. MODEL RULES R. 8.3 cmt. 3.

42. FED. R. CIV. P. 11(b).

43. FED. R. CIV. P. 11(c)(1).

44. FED. R. CIV. P. 11(c)(2) (emphasis added).

has been made in an untruthful manner.[45] Rather, it seems to encourage attorney communication with opposing counsel prior to the request for sanctions by the court, and thus has the ethical tool of peer confrontation built right into it.[46]

In the discovery phase, attorneys consistently resolve disputes outside of the courtroom. Trial judges rule on motions to compel or motions for protective orders, but the "vast majority of disputes that arise in the context of discovery are 'settled' by the parties among themselves, without judicial intervention."[47] There are essential human motivations underlying this assertion: maintaining good relationships with fellow attorneys and clients, attracting business, and "winning" the favor of judges.[48] For example, as a preliminary matter in discovery disputes, federal courts will often first examine whether the parties have "sufficiently conferred" to resolve differences.[49]

In reality, most bar disciplinary authorities dismiss a majority of complaints made against members of the bar due to a lack of probable cause; as a result, less than one percent of investigated complaints result in disbarment.[50] Further, "only a small fraction" of these complaints come from fellow lawyers, although complaints from lawyers are more likely to be investigated than complaints from clients or nonlawyers.[51] As of 2005, there were only two known cases where a lawyer was subject to disciplinary consequences for failing to report misconduct by a fellow attorney.[52] Significantly, across the nation, not all states consistently require an attorney to report any and all observed ethical violations in their respective state rules.[53] And among the states that do impose a duty to report, debate surrounding the effectiveness of such a requirement is thriving.[54] Thus, the question becomes: how are law schools preparing students to one day become practicing attorneys in compliance with these requirements?

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45. *Id.*; s*ee also* A. BENJAMIN SPENCER, CIVIL PROCEDURE: A CONTEMPORARY APPROACH 571 (5th Ed. 2018) ("Opposing parties may only seek sanctions with the court 21 days after submitting a separate motion for sanctions to the alleged violator of the rule.").

46. *See* FED. R. CIV. P. 11(c)(2); Spencer, *supra* note 45, at 571.

47. Wendel, *supra* note 10 at 1572–73.

48. *Id*. at 1573; *see also* Ripple, *supra* note 22, at 361–66 (regarding need for increased civility on the part of attorneys in the course of litigation).

49. *See, e.g.*, Raymond v. Spirit AeroSystems Holdings, Inc., No. 16-JTM-GEB, 2017 WL 2831485, at *6 (D. Kan. June 30, 2017) (in which the court first analyzed as a threshold matter whether the parties had attempted to resolve the dispute amongst themselves before proceeding to analyze the matter under the relevant rules and ethical professional standards).

50. Southworth, *supra* note 40, at 979.

51. *Id*. at 983.

52. Berenson, *supra* note 11, at 834.

53. *See, e.g.*, Southworth, *supra* note 40, at 983 (noting that California and Massachusetts do not require attorneys to report). *But see* Greenbaum, *supra* note 36, at 263 (noting that the "vast majority of the states and the ABA presently favor mandatory reporting and will continue to do so in the absence of a more compelling case to dispense with such rules").

54. *See, e.g.*, Greenbaum, *supra* note 36, at 274 (describing how the empirical data on reporting patterns is "slim" due to lack of state reports).

II. THE "TOLERATION CLAUSE" PLURALITY

The pedagogical method of law schools is unique amongst its fellow graduate schools, as law school courses often singularly emphasize a student's performance on the dreaded final exam.[55] This has resulted in law students' reported "obsession" with grades which arguably "exacerbate[es] the prevalence of academic dishonesty."[56] Thus, the task of drafting an effective honor code that will ensure a fair and respectful academic environment for all is essential for law schools. The so-called "toleration clause" is one weapon in the arsenal that administrations may choose to employ.

In *United States v. Virginia*,[57] the Supreme Court defined the toleration clause as a notable feature of the Virginia Military Institute's (VMI) "adversative" method of education.[58] The school's code stated that a cadet "does not lie, cheat, steal *nor tolerate those who do*."[59] Quite simply put, a toleration clause requires all students (and in some cases, faculty) to report an honor offense that they observe.[60] This straightforward approach is shared by the majority of service academies such as the United States Military Academy (USMA) and United States Air Force Academy (USAFA), with the United States Naval Academy (USNA) as a notable exception.[61] Although these institutions have an honor code that is notoriously blunt, they also have a "complex, multi-layered 'honor system,' which includes extensive regulations that provide a multitude of narrow rules to supplement the code itself."[62]

The standards codified in law school honor codes tend to be less straightforward than those of military academies. While some are blunt, like that of VMI's, many are vastly complex and even go so far as to list and describe various offenses. The University of Illinois College of Law, for example, enumerates the violations of misrepresentation, unfair advantage, interference with property, harassment, and gross neglect of professional duty.[63] In contrast, Stanford Law School's honor code is a mere paragraph's worth of prohibited and recommended

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55. *See* Ron M. Aizen, *Four Ways To Better 1L Assessments*, 54 DUKE L. J. 765, 765–66 (2004); Steven Friedland, *A Critical Inquiry Into the Traditional Uses of Law School Evaluation*, 23 PACE L. REV. 147, 150 (2002).

56. Roberts, *supra* note 30, at 1167.

57. 518 U.S. 515, 522 (1996).

58. United States v. Virginia, 518 U.S. 515, 522 (1996).

59. *Id*. at 522 (emphasis added).

60. *See* Larry A. DiMatteo & Don Wiesner, *Academic Honor Codes: A Legal and Ethical Analysis*, 19 S. ILL. U. L.J. 49, 76–77 (2015).

61. U.S. GOV'T ACCOUNTABILITY OFFICE, B-260802, DOD SERVICE ACADEMIES: COMPARISON OF HONOR AND CONDUCT ADJUDICATORY PROCESSES 63 (April 1995) [hereinafter *GAO Report*].

62. Berenson, *supra* note 11, at 815 (citing DiMatteo & Weisner, *supra* note 60, at 56–57).

63. University of Illinois Law, Academic Policy Handbook 2016–17, https://law.illinois.edu/wp-content/uploads/2016/06/Academic-Policy-Handbook-JD-1617-2.pdf [http://perma.cc/5TF2-WZC9] (last visited Jan. 7, 2020) (providing for meticulously defined offenses of misrepresentation, unfair advantage, interference with property, harassment, gross neglect of professional duty, and other university offenses).

student and faculty conduct.[64] Regardless of how a law school's honor code is codified, incorporation of some variant of a toleration clause ensures that students who observe a violation of the code, but do not choose to report it to the appropriate authority, are in violation of the code themselves. American University Washington College of Law, for example, states in its honor code that it is the "duty and obligation of every member of the WCL community—faculty, administrators, staff, and students—to assist . . . by (1) reporting facts which establish reasonable grounds to believe a violation has occurred, and (2) assisting those responsible for administering the Honor Code in determining whether a violation has occurred."[65] In other words, in addition to the myriad of other requirements of a student honor code, a toleration clause is an additional "rule" or "contractual duty" imposed on students—a student must not tolerate (and thus, a student must report) observed offenses.[66]

If the *Model Rules* do impose a clear unequivocal duty to report, then the argument goes, so should law schools.[67] On the other hand, the Rules may be empowering individual attorneys to decide for themselves which offenses should be reported.[68] In that case, perhaps the law school's honor code should focus on guiding students through the process of determining the severity of the offense they allegedly observed and encourage, rather than mandate, reporting. Thus, it is necessary to understand the foundation upon which arguments in favor and in opposition to a law school's incorporation of the toleration clause are based.

A. IN FAVOR OF THE TOLERATION CLAUSE

Proponents of the toleration clause argue that the clause imposes a contractual duty on students, thereby virtually ensuring student ownership of the code and higher levels of reporting.[69] Of course, this view necessarily assumes that in a system where students are not required to report observed violations, reports are unlikely to occur.[70] Thus, the true effectiveness of such a system is very difficult to measure. Regardless, scholars have argued that the incorporation of a toleration clause results in lower reports of cheating throughout the campus.[71] For example, some of the first studies done on cheating in the educational context in the 1990s concluded that self-reported rates of cheating at schools with so-called

64. Stanford Honor Code, *supra* note 16.

65. American University Washington College of Law, *Honor Code for the Washington College of Law*, https://www.wcl.american.edu/studentaffairs/honorcode/ [http://perma.cc/E4E8-QD7F] (last visited Jan. 7, 2020).

66. *See* DiMatteo & Weisner, *supra* note 60, at 80 ("In this case, a student has entered into a 'contract' to uphold the honor code. Therefore, by violating the honor code, one is breaching a contractual duty. American jurisprudence has strongly protected the sanctity of contractual duties.").

67. *See, e.g.*, Carlos, *supra* note 9, at 960–61.

68. *See, e.g.*, Biernat, *supra* note 31, at 816.

69. *See* Carlos, *supra* note 9, at 960; DiMatteo & Weisner, *supra* note 60, at 62.

70. *See* Greenbaum, *supra* note 36, at 264.

71. JAMES M. LANG, CHEATING LESSONS 167–68 (2013).

"traditional" honor codes with toleration clauses were lower than at schools that did not have a so-called "traditional" honor code.[72] Researchers reached similar conclusions in 1999.[73] But there is no way to know whether or not lower self-reports of cheating truly mean these codes are effective, or if it just means that students are less likely to admit to cheating at such an environment even in a confidential survey. After all, the largest impediment to the enforcement of such codes is the assumption that the toleration clause is working—that is, that students are actually reporting.[74]

It is also argued that so-called non-toleration provisions in the legal profession "may enhance the legal profession's public image" and lawyer professionalism.[75] Similar arguments are proffered in favor of mandatory reporting requirements amongst state bars.[76] Higher instances of reporting, they contend, are a good thing provided that the administration is able to handle the presumably higher numbers of reports.[77] Proponents of the toleration clause assert that this "floodgate" of reporting may be calmed by carefully defining those offenses which the law school actually cares about prosecuting.[78] These types of provisions embody the idea that the law school—not the student body—knows best.

Ultimately, it is impossible to ignore that the incorporation of the clause effectively admits that the role of the institution is not to teach or "become a reformatory of morals."[79] Instead, it is to "weed out" those students who arrived with "poor moral character"—it fills no role of education or rehabilitation.[80] Notably, this is the approach favored not only by half of the nation's law schools, but it is also the "adversative"[81] method employed by a majority of the nation's service academies, who, presumably, are preparing the next generation of military officers to head into armed conflict and execute their duties ethically.[82]

B. IN OPPOSITION TO THE TOLERATION CLAUSE

Advocates against the toleration clause emphasize that the clause takes agency away from students by assuming students would not report infractions of the code in its absence, results in less student ownership of the code, and establishes a

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72. *Id*. at 168.

73. *Id*.

74. *See id*. at 169; s*ee also* Greenbaum, supra note 36, at 271 (arguing that a mandatory reporting rule is worth the costs it imposes only if it is effective).

75. Berenson, *supra* note 11, at 833–34.

76. *See* Greenbaum, *supra* note 36, at 275–76.

77. *See id*.

78. *See, e.g*., *id*. at 288.

79. DiMatteo & Weisner, *supra* note 60, at 56.

80. *Id*. at 57.

81. United States v. Virginia, 518 U.S. 515, 522 (1996).

82. *See Honor Codes at the Service Academies: Hearings Before the Subcomm. On Manpower and Personnel of the United States Senate Committee on Armed Services*, 94th Cong. 34 (1976) (statement of Senator Hart).

culture of fear and reporting rather than a culture of education and rehabilitation. In a law school environment, although mandating student reporting may result in a higher number of reports, this increase "must be balanced against likely widespread disregard for the reporting requirement[.]"[83] In other words, those opposed to the toleration clause argue that it may be wiser for schools to focus on incidents leading up to the reporting of an offense and shaping student behaviors or motivations rather than mandating reports. While it has been contended that "enforcement of academic honesty should not be the primary responsibility of students"[84] and presumably the burden should fall on the administration, this reasoning arguably does not apply to the law school, whose students are steps away from entering the legal profession where they will be expected to act accordingly.

The toleration clause sends the message to students that they must report any and all potential offenses, thereby removing the student's own "intrinsic motivation" which may be helpful in the educative context because it allows "students opportunities to respond in authentic ways over which they have some control."[85] This is especially relevant in law school, a haven of the Socratic classroom where students are expected to be "engaging with difficult questions, thinking for oneself, challenging and being challenged by other thinkers in the room."[86]

Further, dissenters argue that "while there may be good reasons to have a mandatory reporting provision in the legal practice context . . . this is unlikely the case with regard to an academic code" and "would only undermine the seriousness with which the entire code is taken."[87] Mandating student reporting, then, may transform the student body into a group of individuals not focusing on what is and is not ethical but rather forcing them to simply serve a policing function on behalf of the administration. Because reporters are forced to interact with the accused at school, mandating student reports can often be stressful and unpleasant.[88] Schools with a toleration clause, therefore, create a culture of fear.[89] While they may have lower numbers of reports, this may just be a product of the reluctance of students to report rather than the non-existence of cheating.[90] To illustrate, only one percent of students at institutions with a "traditional" code believed that the code effectively ensured that students reported instances of cheating.[91] The students elaborated on the causes of this ineffectiveness:

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83. Berenson, *supra* note 11, at 834.

84. Lang, *supra* note 71, at 170.

85. *Id*. at 65, 202.

86. *Id*. at 156.

87. Berenson, *supra* note 11, at 834.

88. McCulley, *supra* note 28, at 860; Greenbaum, *supra* note 36, at 270 (regarding unpleasant consequences if a lawyer learns that he has been reported by another attorney).

89. *See* Lang, *supra* note 71, at 169.

90. *See* Greenbaum, *supra* note 36, at 265 (regarding reluctance of members of the bar to report misconduct of peers); *see also* GAO Report, *supra* note 61, at 67–68 (stating that the way in which students with a reluctance to report at such institutions might also affect their view of administration of the code at large).

91. Lang, *supra* note 71, at 169.

> a fear of being responsible for having another student expelled, a fear of making an enemy, a concern about reporting on a friend, a fear that the accused student might actually be innocent, a code of silence that exists in some honor code environments based on the sentiment that squealing is worse than cheating, peer intimidation associated with the code of silence, and a fear that the instructor or administrators will not be able or willing to prosecute the offender.[92]

A campus without a toleration clause, if executed properly, can foster "self-efficacy" and actually result in less motivation for students to cheat, as cheating is less likely when students see their own learning objectives as "intrinsically fascinating, useful, or beautiful."[93] Although motivation to cheat comes in many forms, scholars have suggested that the best way to counteract this impulse is through the development of metacognition and providing students a chance to truly grasp what will be expected of them in future challenges where they may be inclined to cheat or act dishonestly.[94] Further, more important than the actual code is the "*dialogue about academic honesty that the code inspires*."[95]

C. A RELEVANT EXAMPLE

The inner-workings of law school administrations, or students in some cases, in the drafting and executing of their respective honor codes is generally not available to the public. While we know that many law schools have altered their reporting requirements over the years, it would be a significant undertaking to investigate the reasons why such a decision was made at each individual school. Fortunately, however, there are certain public institutions that have made such a decision in recent years whose internal workings are not only available to the public, but are debated in the halls of Congress. I am speaking of the United States service academies, which have been referenced at multiple points throughout this discussion thus far. I feel uniquely qualified to speak on this subject as I am a graduate of the United States Naval Academy, the only service academy which does not have a toleration clause. Further, I served there as the First Regimental Honor Adviser and was responsible for overseeing the code's execution and administration by and amongst the student body. I took pleas, made recommendations to the administrations on retention or dismissal, and presided over adversarial proceedings that took place between the student guardians of the code and their accused.

It may seem unnecessary to discuss the Naval Academy's honor code and its relevance to the world of legal academia,[96] but I would suggest otherwise.

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92. *Id*.
93. *Id*. at 152.
94. *See, e.g*., Lerner, *supra* note 19, at 688–89.
95. Lang, *supra* note 71, at 172 (emphasis added).
96. *See* DiMatteo & Weisner, *supra* note 60, at 85 (describing the United States Military Academy, for example, as a "unique category in higher education").

Although law school graduates are not "heading into battle" upon graduation, a code of ethics is a pillar requirement of both the military and legal profession. And public perception of both professions is integral to their survival.[97] The fact that the Naval Academy's honor code has been "battle tested" only serves to legitimize its example and inform the process of revising the honor codes at any institution of higher learning, including law schools.

The Naval Academy's Honor Concept is different from many academic dishonesty policies at universities because it was drafted by and for midshipmen.[98] In drafting their honor code, the midshipmen[99] rejected a system of codification because they believed such a process would lose "the very principles upon which the whole system was based."[100] The Naval Academy's decision to do away with the toleration clause was precipitated not by a lack of honor, but *because of it*. And at times, this decision has been met with criticism.[101] In the original founding documents of the Honor Concept, the issue of toleration is addressed directly:

> The question arises, what should a midshipman do if he sees another midshipman committing an act of moral turpitude? The class Honor Committees and Brigade Executive Committee are set up to handle such cases, however, the final decision as to what action the individual seeing the act committed should take rests solely with the individual. No one is ever "honor bound" to turn in another midshipman whom he has seen commit an act of moral turpitude. The Brigade feels that the decision as to what action should be taken rests entirely with the individual.[102]

Originally, the Honor Concept directed the midshipmen in the process of deciding whether or not to report a student to consider, essentially, two matters: (1) whether or not one's fellow midshipman deserves to wear the uniform or class ring and (2) if one would willingly serve, including in combat, with the offender in the future.[103]

Today, the decision to not report, or to tolerate honor offenses, still rests with the individual, though in certain circumstances it may be processed as a conduct offense, rather than an honor offense.[104] The Naval Academy has even allowed for the alternative "approach and counsel" option in which a student can take the matter into their own hands and counsel the offender that what they did was

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97. *See* Pew Research Survey, *supra* note 6.

98. H. R. Perot, The United States Naval Academy Honor Committees 31 (unpublished report, on file with the United States Naval Academy Nimitz Library) [hereinafter *Perot Report*]; *see also* Letter from H. R. Perot to Captain Buchanan, Commandant of Midshipmen (Aug. 19, 1952) (on file with the United States Naval Academy Nimitz Library).

99. Students at the United States Naval Academy are referred to as midshipmen.

100. Perot Report, *supra* note 98.

101. *See, e.g.*, Steven E. Shaw, *Naval Academy Honor Concept Strays From Roots*, CAPITAL GAZETTE, (Feb. 21, 2010).

102. Perot Report, *supra* note 98.

103. *Id.*

104. GAO Report, *supra* note 61, at 55.

morally reprehensible—all without making an official report.[105] Even following a series of public cheating scandals in the 1990s, the Naval Academy did not do away with this important provision.[106] At this critical time, the notion was that "changes in the Academy's orientation have attempted to move away from a model of leadership grounded in fear rather than aspiration; to incorporate a non-toleration clause into the Honor Concept would undermine these laudable goals."[107] An Air Force cadet summarized the alternative at the United States Air Force Academy well:

> The problem with the honor code itself is not the code—it is the way the toleration clause is enforced. There is no leeway for a cadet to confront another cadet about something—counsel them and leave it at that. If a friend of mine makes a dumb mistake—by regulation I have to turn him in. I can't talk to him and solve the problem from there. Everything has to go to a board. I think that's wrong and rather than admit I saw or witnessed a violation by counseling the person myself, I'm not going to run the risk of getting a toleration hit and I'm going to pretend I never knew a thing.[108]

There are, of course, compelling competing narratives to the Naval Academy's approach espoused by the high-ranking officers in charge of the administration of the other service academies.[109] These arguments are strikingly similar to the arguments presented above regarding the use of the toleration clause in law schools.[110]

And so, our journey now leads to examining law schools. What approach do the nation's top one hundred law schools take with their respective honor codes? The result is much less standardized than one might assume.

III. MODERN LAW SCHOOL HONOR CODES

In examining modern law school honor codes, the U.S. News and World Report's top one hundred law schools' policies were examined thoroughly for the

105. United States Naval Academy, *2010 Honor Concept of the Brigade of Midshipmen* 13, https://www.usna.edu/Commandant/Directives/Instructions/1000-1999/COMDTMIDNINST-1610.3H_2010%20HONOR%20CONCEPT%20OF%20THE%20BRIGADE%20OF%20MIDSHIPMEN.pdf [http://perma.cc/MNB7-TL6U] ("informal counseling should only be used for simple mistakes").

106. *See* REPORT OF THE HONOR REVIEW COMMITTEE TO THE SECRETARY OF THE NAVY ON HONOR AT THE UNITED STATES NAVAL ACADEMY, as reprinted in Honor Systems and Sexual Harassment at the Service Academies Hearing Before the United States Senate Committee on Armed Services, 103d Cong. 1, 10 (1994).

107. *Id.*

108. GAO Report, *supra* note 61, at 56–57.

109. *Honor Codes at the Service Academies: Hearings Before the Subcomm. On Manpower and Personnel of the United States Senate Committee on Armed Services*, 94th Cong. 7 (statement of Secretary Hoffman, Secretary of the Army) ("The inclusion in the cadet honor of a proscription against toleration is not without roots in the society in general and in notions of public service in particular: It is the duty of a lawyer, for instance, to take action should he become aware of a subornation of perjury, or hiding of evidence. . . . Considerations of when friendship must be put aside in favor of a duty to an institution or the society are complex, but not to the point that to address them is impossible.").

110. *See supra* Part II.A.

relevant provision regarding whether or not students were required to report observed violations—the toleration clause. The schools were further categorized based on U.S. News and World Report Ranking,[111] geographical location, faith affiliation, and bar passage rates according to the U.S. News and World Report.[112] At the time of this Note's publishing, only one law school, Arizona State University, had an honor code that was not publicly accessible.[113]

The data reveals that the use of the toleration clause in law school has been relatively consistent for the last four decades, only rising by four percent since 1983.[114] In a 1983 study of law school honor codes, forty-five percent of the schools surveyed throughout the United States included a toleration clause.[115] In some cases, this requirement was meant to mirror the applicable state's lawyer disciplinary rules.[116] The majority of schools surveyed, however, did not require students to report observed violations.[117] Today, forty-nine percent, or nearly half, of the U.S. News and World Report's top one hundred law schools in the nation impose a duty to report observed violations upon students. Interestingly, of those law schools that have changed their approach since 1983, the majority have changed in favor of requiring students to report.[118]

In many cases, religiously affiliated law schools were "established with the hope and expectation that the moral and religious mission of the parent university would be echoed and carried out in the law schools attached to these institutions."[119] There appears to be only a small correlation between whether or not a law school was faith-based and the school's use of a toleration clause. While forty percent of schools with a faith affiliation required their students to report observed violations, this is only nine percent lower than the national average of forty nine percent. This seems consistent with the notion that "as society became more secularized and as other church-related universities lost some of their religious orientation . . . [schools] became less directly active in advancing moral or religious ideas."[120] For example, Georgetown University Law Center was

111. Both the 1987 and 2019 rankings were taken into account. *See* 2019 Ranking, *supra* note 2; 1987 Ranking, *supra* note 1.

112. *What schools have the best first-time bar passage rate?*, U.S. NEWS AND WORLD REPORT, 2019 (on file with the author) [hereinafter *Bar Passage Rates*].

113. Arizona State University Sandra Day O'Connor College of Law has an honor code that is not publicly accessible. The school did not, however, require students to report in 1983. *See* Fritz Snyder & Shirley Goza, *Law School Honor Codes*, 76 LAW. LIBR. J. 585, 596 (1983). The percentages displayed in this analysis assume that this requirement is unchanged in modern times.

114. Our understanding of this data is somewhat skewed because only forty-three law schools were surveyed in 1983.

115. Snyder, *supra* note 113, at 590.

116. *Id*. at 590–91.

117. *Id*.

118. Sixty-three percent, or twelve schools, that were surveyed in 1983 have added a reporting requirement.

119. Robert F. Drinan, *New Horizons in the Role of Law Schools in Teaching Legal Ethics*, 58 LAW CONTEMP. PROBL. 347, 350 (1995).

120. *Id*. at 350.

founded by Jesuits and does not include a toleration clause in its honor code, while Notre Dame University Law School has a Catholic affiliation and requires its students to report observed violations.[121]

Geographic location, however, is somewhat relevant. Midwestern and southern law schools were slightly more likely to mandate that a student report an observed violation in their respective honor codes. Midwestern and southern schools were seven and eight percent more likely, respectively, when compared to the national average. Meanwhile, Northeastern and Western law schools were less likely to require a student to report. Western law schools were four percent below the national average, and thus four percent less likely to require their students to report. Northeastern law schools, when compared with the national average, were twenty-four percent less likely to require students to report observed violations. Notably, a law school's northwestern geographical location represented the second-most statistically relevant variable in determining whether or not the school requires its students to report an alleged honor code violation.[122]

The reported bar passage rates of law schools is also a significant factor. Thirty-nine percent of law schools with a bar passage rate above ninety percent required students to report. This is ten percent below the national average. This number drops slightly as the bar passage rate increases. For example, thirty-five percent of law schools with a bar passage rate above ninety-five percent required students to report, only fourteen percent below the national average. Thus, schools with a high bar passage rate were moderately less likely to require a student to report an observed honor violation.

By a long shot, the most relevant predictor of a school's decision to incorporate some fashion of a toleration clause was whether or not the school was in the U.S. News and World Report's T-14.[123] This also somewhat skews our understanding

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121. Georgetown University Law Center, 2019-2020 Georgetown Law Student Handbook of Academic Policies 104, https://georgetown.app.box.com/s/qjr82yzdyo0rdao3xheynozx9h6969rv [http://perma.cc/NWY8-2GTQ] (last visited Jan. 10, 2020) ("Complaints regarding student conduct *may* be made by any member of the Law Center community" (emphasis added)); The Notre Dame Law School Honor Code, https://www3.nd.edu/~ndlaw/currentstudents/hoynes/honorcode.pdf [http://perma.cc/78WZ-HRCL] (last visited May 11, 2020) ("All law students . . . have the duty to report promptly . . . all circumstances that they believe to constitute a clear violation of the Honor Code. Knowing breach of this duty shall be a violation of the Honor Code.").

122. *But see discussion infra* regarding top tier schools being predominately located in the Northeastern region of the United States.

123. The U.S. News and World Report ranks law schools based on the weighted average of various measures of quality which include: peer assessment by law school deans and recently tenured faculty, assessment by practicing lawyers and judges, selectivity (median LSAT, undergraduate GPA, and acceptance rate), placement success in legal employment and bar passage rates reported to the ABA, faculty resources, library resources, and student-faculty ratio. *Methodology: 2020 Best Law School Rankings*, U.S. NEWS AND WORLD REPORT, https://web.archive.org/web/20191206074024/https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology [https://perma.ccX2GD-3FP6] (last visited April 20, 2020). The top fourteen schools include Yale, Stanford, Harvard, University of Chicago, Columbia, New York University, University of Pennsylvania, University of Virginia, Michigan (Ann Arbor), Duke, Northwestern University, University of California (Berkeley), Cornell, Georgetown University, and the University of California (Los Angeles). 2019 Ranking, *supra* note 2.

of how other factors such as geography and bar passage rate factor in because schools in the T-14 tend to have higher than average bar passage rates and are predominately located in the northeast. Only two out of the fourteen schools in the T-14 have such a provision. Interestingly, the data also reveal that there is a statistical correlation between the law school's ranking and the choice to include a toleration clause made within the last forty years. In 1983, schools that are in today's T-14 that responded to the survey included the University of Pennsylvania, University of Virginia, University of Michigan, Northwestern University, and Cornell University. In 1983, the majority of these schools required students to report an observed violation.[124] Today, only one of these schools that was surveyed in 1983, the University of Michigan, imposes such a duty. And of the modern T-14 at large, only the University of Michigan[125] and Duke University impose a duty to report.

It is only possible to speculate as to why the majority of modern T-14 schools do not have a toleration clause, but a few theories may be advanced. Perhaps the administrations at these schools have a more nuanced view of what the *Model Rules* actually require their future attorneys to ethically negotiate when practicing law in the real world.[126] Perhaps these schools are motivated to a greater extent by their public image and see lower numbers of reports as a good thing.[127] Perhaps they are less concerned about "weeding out" students because students at T-14 schools are more academically capable and less likely to be motivated to cheat in preparing for the bar exam.[128] Or perhaps they wish to not be administratively hindered by reporting numerous instances of alleged cheating to state bars during the moral character background check, as this would impact their students' abilities to be admitted to the bar.[129]

Ultimately, there is no way to be sure of any of these theories based on the data alone, representing a potentially boundless new opportunity for research.

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124. This includes University of Virginia, University of Michigan, and Cornell University.

125. The University of Michigan has dropped six places in the U.S. News and World Report rankings since 1987, from the number three position to the number nine position. *See* 2019 Ranking, *supra* note 2; 1987 Ranking, *supra* note 1.

126. *See generally* Greenbaum, *supra* note 36.

127. *See, e.g.*, Graham Zellick, *The Ethical Law School*, 36 IND. L. REV. 747, 757 (2003) ("For example, there may be an inertia on the part of those administrators who ought to deal with the matter, feeling it to be a distraction from more pressing commitments. There is the assessment that to take action will only lead to publicity which would have a damaging impact on the school and its reputation. There is the psychology of those–and it is not uncommon–who recoil from confrontations and difficult or emotionally charged situations. And there is the failure truly to comprehend the nature and quality of the issue at hand.").

128. *See* Bruce Green & Jane Campbell Moriarty, *Rehabilitating Lawyers: Perceptions of Deviance and Its Cures in the Lawyer Reinstatement Process*., 40 FORDHAM URBAN L.J. 139, 173–74 (2012); Greenbaum *supra* note 36, at 268.

129. *See* Roberts, *supra* note 30, at 1168 ("such accusations may even affect the student's ability to practice law. . .[a]ccordingly, students wrongly accused or disciplined for academic dishonesty rightly seek exonerations"); Greenbaum, *supra* note 36, at 274 ("such a move might overwhelm local disciplinary officials or obscure some instances of misbehavior in the sheer weight of complaints to investigate").

However, one thing is relatively certain: a school's position in the U.S. News and World Report is the most significant factor in determining whether or not it requires its students to report. Further, there are several schools in the lower 100 that have glowing bar passage rates on par with or exceeding those of the T-14 and yet do require their students to report. For example, Marquette University has a bar passage rate of one hundred percent and requires its students to report an observed honor violation.[130] The University of Oklahoma, meanwhile, requires its students to report and has a bar passage rate of nearly ninety five percent.[131] In light of this national disparity, the toleration clause is ripe for reconsideration.

IV. DITCHING THE "TOLERATION CLAUSE"

Proponents of the toleration clause often assert that, "[l]aw students are entering a profession where they must face the difficult task of reporting others and, therefore, they should become accustomed to this task."[132] Ultimately, the argument that law schools should impose a duty to report because the *Model Rules* impose such a duty is a flawed one. The reality of modern legal practice—and even the Rules themselves—suggest otherwise.[133] Yet, while the *Model Rules* have undergone significant changes in this area, the approach of law schools has remained relatively consistent since 1983.[134] Arguably, the growth of professional responsibility training in law schools and compulsory ethics continuing legal education have filled the gap that a reporting requirement might have relied upon.[135]

Disparity in the use of the toleration clause also reveals a deep flaw in the world of legal academia's concept of what is and is not ethical.[136] While half the nation's top law schools have chosen that the decision to "do nothing" is ethically acceptable, half have not. And very few law schools provide for any kind of peer-counseling option; often times, peer counseling is only mandated so as to

130. Bar Passage Rates, *supra* note 112; Marquette University Law School, Academic Regulations 36 (August 2019), https://law.marquette.edu/assets/current-students/pdf/current-academic-regulations.pdf [http://perma.cc/T8XK-YPYQ] (last visited Jan. 7, 2020) (stating that "[a]ll complaints of violations . . . *shall* be submitted to the Dean in writing (emphasis added)). Notably, law students in Wisconsin may exercise the diploma privilege which allows them to be admitted to the Wisconsin bar without sitting for a bar exam.

131. Bar Passage Rates, *supra* note 112; University of Oklahoma College of Law, Student Handbook 28 (2018–2019), http://www.law.ou.edu/sites/default/files/Files/Registrar/student_handbook_2017_2018.pdf [http://perma.cc/B9H2-25F3] (last visited Jan. 7, 2020).

132. Carlos, *supra* note 9, at 961 (citing Phillip Walzer, *W&M Students Irked By Changes To Honor Code While Some Support Changes, Many Just Want A Say*, THE VIRGINIAN-PILOT AND THE LEDGER-STAR, Feb. 26, 1996, at 3; *see also* DiMatteo, *supra* note 60, at 62.

133. MODEL RULES R. 8.3 cmt. 1–3; *see also* Greenbaum, *supra* note 36, at 265.

134. *See infra* Part III.

135. *See* Greenbaum, *supra* note 36, at 266.

136. *See* Lang, *supra* note 71, at 164–65; *see also* Roberts, *supra* note 30, at 1159 (stating that "the problem of academic dishonesty is compounded by the fact that students and professors appear to have discrepant definitions of cheating, and technological advancements have provided students more means and methods to cheat than ever before"); DiMatteo, *supra* note 60, at 80 (regarding philosophical theories underpinning ideas of ethical decision-making as it applies to the toleration clause).

determine whether an offense actually occurred and reporting still remains mandatory.[137] Further, only a limited number of schools provide for the option of any similar kind of confrontation between students and professors.[138]

What's more, while future studies of this data might reveal that the school's honor codes are drafted in such a way as to be consistent with the jurisdiction in which most students graduating will one day practice law, this conclusion is likely untenable because there is already so much discrepancy existing within a single jurisdiction. It is true that in some jurisdictions, like New York for example, law schools generally have the same requirements across the state.[139] But others, like California and Texas, are split relatively even: half of the schools requiring students to report and the other half imposing no such requirement.[140]

Debate surrounding the prevalence of cheating is thriving.[141] When cheating does occur, however, it is arguably primarily driven by a student's lack of preparation.[142] Research suggests, then, that the best defense against cheating is simply "students' knowledge, and their metacognitive awareness of that knowledge[.]"[143] Law schools serve the role of hosting the formation of students' memories and creative power they will undoubtedly draw upon as future attorneys while acting ethically in the performance of their duties.[144] They already serve this role excellently in the classroom, but at many schools, "[n]oticeably absent from the explicit teaching, except in the course on ethics, is any consideration of values."[145]

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137. *See, e.g.*, Washington and Lee University, Student Handbook (Sept. 2019), https://www.wlu.edu/print?title=Student+Handbook&ids=x15939%7cx15950 [http://perma.cc/8CYQ-2S6X] (last visited Jan. 7, 2020) ("Anyone with knowledge of a possible Honor Violation should confront the suspected student and ask for an explanation of the incident").

138. *See, e.g.*, McCulley, *supra* note 28 (noting that Vanderbilt University's honor process provides for faculty sanctions without formal reporting).

139. Only Yeshiva University in New York imposes a duty to report on students. *See* Yeshiva University, Student Handbook (May 2019), https://cardozo.yu.edu/sites/default/files/2019-10/joint_jd-llm_student_handbook_2019-2020_updated_01oct2019_0.pdf [http://perma.cc/44DZ-QJQ8] (last visited Jan.7, 2020).

140. For example, in California, the University of California (Los Angeles) and The University of California (Irvine) require students to report, while the other law schools in the state do not. In Texas, The University of Texas at Austin requires reporting, while Texas A&M University does not.

141. *See* Lang, *supra* note 71, at 168; Hull, *supra* note 19, at 274. *But see* Ripple, *supra* note 22, at 380 ("While everyone seems to hear about stories about students stealing exams and tearing pages out of books, the percentage of law students who actually witness this type of behavior is small.").

142. Lang, *supra* note 71, at 137. *But see* Roberts, *supra* note 30, at 1160, 1165 (providing survey result of law student cheating and motivations).

143. Lang, *supra* note 71, at 135; *see also* E. Scott Fruehwald, *Developing Law Students' Professional Identities*, 37 U. LA VERNE L. REV. 1, 5–7 (2013).

144. Lerner, *supra* note 19, at 671–74 (suggesting that intuitions within culturally supported ethics become more likely to be able to be used by the student).

145. *Id.* at 681; *see also* Benjamin V. Madison, *The Emperor Has No Clothes, But Does Anyone Really Care? How Law Schools are Failing to Develop Students' Professional Identities and Practical Judgment*, 27 REGENT UNIV. L. REV. 339, 342 (2014) (suggesting that law schools provide excellent instruction in analytical skills but most the most "glaring" deficiency is schools' failure to cultivate professional ethical identity and practical judgment).

Professional ethics, however, cannot be taught with the case-method of deriving a series of rules from cases to be applied to real-world facts, but the process of doing so may inform it.[146] So what, then, is the alternative, to the toleration clause? "Ditching" the toleration clause is much more complex than simply amending a school's honor code to remove the words. Indeed, "any movement to adopt honor codes is ill conceived if it is undertaken as the sole solution to the academic dishonesty problem."[147] Schools that do earnestly choose to "ditch" the toleration clause must replace their efforts with new practices of a different variety that ensure student ownership of the code, and the United States Naval Academy's journey in reaching this destination may inform the road ahead for law schools.

Law schools, or the ABA in guiding law schools,[148] must initiate and continue a conversation about integrity that begins at orientation and extends until graduation, an approach that has been defined as "contextually rich, emotionally engaged learning."[149] This includes being educated about the code, providing written versions of it in handbooks and online, and reminding students that they are accountable to the code at critical points throughout their law school career.[150] Law students must also feel a sense of ownership and accountability regarding their honor code and be given a sense that it is actually working in its administration.[151] The foundation of the code is not the words themselves, but rather, "a campus tradition of mutual trust and respect among students and between faculty members and students."[152]

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146. Lerner, *supra* note 19, at 684 (describing the instrumentalist perspective in which students do not consider "matters of professional responsibility [but] ask only how to do something"); *see also* Regina v. Instan, 1 QB 450 (1893) ("It is not correct to say that every moral obligation is a legal duty; but every legal duty is founded upon a moral obligation."); Lois R. Lupica, *Professional Responsibility Redesigned: Sparking a Dialogue Between Students and the Bar*, 29 J. LEG. PROF. 71, 77 (2005) (offering an example curriculum in which the *Model Rules* may serve as "governing rules" in the jurisdiction).

147. Lang, *supra* note 71, at 173 (quoting Donald L. McCabe & Kenneth D. Butterfield, CHEATING IN COLLEGE: WHY STUDENTS DO IT AND WHAT EDUCATORS CAN DO ABOUT IT 955 (2012).

148. Boothe-Perry, *supra* note 18, at 38.

149. Lerner, *supra* note 19, at 689 (schools may consider teaching ethics as a first year course); Ripple, *supra* note 22, at 380–81 (arguing schools should promote an ethical and civil atmosphere in law school); Ian Gallacher, *My Grandmother Was Mrs. Palsgraf: Ways to Rethink Legal Education To Help Students Become Lawyers, Rather Than Just Thinking Like Them*, 46 CAP. UNIV. L. REV. 241, 253 (2018) (suggesting traditional doctrinal method has no need for human subjects").

150. Lang, *supra* note 71, at 172; *see also* Roberts, *supra* note 30, at 1182–85 (regarding reinforcement of integrity throughout the law school curriculum); Hull, *supra* note 19, at 283–285 (proposing integration of legal ethics lessons into courses throughout curriculum); Lerner, *supra* note 19, at 706; Woolley, *supra* note 20, at 804–06; Neil Hamilton & Sarah Schaefer, *What legal education can learn from medical education about competency-based learning outcomes including those related to professional formation*, 29 GEO. J. LEGAL ETHICS 399 (2016) (suggesting law schools might benefit from competency based training as in medical school).

151. *See* DiMatteo, *supra* note 60, at 67–68 (suggesting students ideally as "shareholders" of the university).

152. Lang, *supra* note 71, at 174; *see also* Lynn. C. Herndon, *Help You, Help Me: Why Law Students Need Peer Teaching*, 78 UMKC L. REV. 809, 812 (2010) (suggesting peer teaching method that is cooperative and collaborative); Brigette Luann Willauer, *The Law School Honor Code and Collaborative Learning: Can They*

The Naval Academy's approach gives an enormous amount of responsibility to young people—indeed, the notion seems shocking to some. But the miraculous thing is that *it works*. In my time serving as a Regimental Honor Advisor, I took the administration of the code so seriously that it informed my decision to one day become a lawyer. Arguably, academic disagreement about statistics regarding how many reports exist at a school as a measure of code effectiveness is missing the point entirely. The real question is about student ownership of the code as a reflection of attempting to embody what will be demanded of them in the profession they have chosen to serve. And this logic applies just as much to law schools as it does to a service academy.

CONCLUSION

> [T]he virtues we get by first exercising them . . . For the things we have to learn before we can do them, we learn by doing them.
>
> —Aristotle, *Nicomachean Ethics* (1103a32-1103b2)

Harkening back to the hypothetical posed at the beginning of this Note, now imagine that you are a law school administrator considering our hypothetical first year law student's ethical dilemma. In drafting or revising your law school's honor code, should you include a toleration clause? Do the *Model Rules* and the legal profession require it? If your answer is either yes or no, half of the administrations at the top one hundred law schools in the nation disagree with you. If your answer is yes, nearly all of the administrations in the T-14 disagree with you. It seems odd that at the dawn of a new decade, after years of reform regarding the ethical teachings at the nation's law schools,[153] there should be so much national inconsistency[154] surrounding the toleration clause. But the decision whether or not to make use of the clause is important.

In 1983, Dean Wayne E. Alley of the University of Oklahoma College of Law pointed out the problem quite poignantly:

> We have not had an honor code case since my arrival in July 1981. I have been informed that our system is not particularly effective for two reasons. Students are reluctant to report instances of cheating during the course of examinations because it makes them conspicuous. The prosecutorial function has not been well conducted by students. This responsibility represents an inroad into study time, and results in derision from some peers, and has not always been done in a professional manner.[155]

Coexist?, 73 UMKC L. REV. 513, 516–21 (2004) (reviewing the benefits of collaborative learning applicable to the law school).

153. *See supra* Part II.

154. *See* Veronica J. Finkelstein, *Giving Credit Where Credit Isn't Due (Process): The Risks of Overemphasizing Academic Misconduct And Campus Hearings In Character and Fitness Evaluation*, 38 J. LEG. PROF. 25, 44 (2013) (suggesting that standardization of academic honor codes would result in less problems associated with character and fitness requirements for bar admission).

155. Snyder, *supra* note 113, at 594.

Today, the University of Oklahoma still has a toleration clause and requires its students to report alleged violations of its honor code.[156] And yet, the Dean in 1983 believed it was not working, even then.[157] The integrity of the legal profession has always been important to preserve, but as it is especially poignant in the modern era,[158] we must examine additional paths.

The alternative to the toleration clause may be more difficult or administratively burdensome,[159] but so are most moral choices. A law school should properly educate its students about what the legal profession will require of them. It should define relevant principles and enable its students to enforce these principles amongst one another as an underpinning of its commitment to creating a community of ethically minded future lawyers. It should empower students to confront one another in self administration of the code. It should provide confidential counsel to students in navigating the choice of whether or not to report. And it should empower students to distinguish between minor offenses made out of ignorance rather than those offenses "a self-regulating profession must vigorously endeavor to prevent."[160] These administrative practices, when combined with leaving the toleration clause *out* of a school's honor code, will pay off in the long run. After all, "[s]tudents who want to learn, and who have been given all of the tools they need to learn, have no need to cheat."[161]

Law schools employ the toleration clause at their own peril. Mandating students report any and all potential honor offenses reduces an ethical skillset to a mere rule of construction and undermines the true ethical development of future lawyers. Our hypothetical first-year law student at the beginning of this Note does not have a choice. Her agency is destroyed. She will not develop the skills she needs to separate major offenses from minor ones, as the *Model Rules* require, nor will she develop the skills of peer confrontation with opposing counsel that one day a judge will likely demand of her. The ivory tower of legal academia is at a crossroads. It is time to place our trust in ourselves.

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156. University of Oklahoma College of Law, Student Handbook 2017–2018 27, https://www.law.ou.edu/sites/default/files/Files/Registrar/student_handbook_2017_2018.pdf [https://perma.cc/2XE4-DQCQ] ("Each student has an ethical responsibility to report any known or suspected violation of this Code[.]").

157. Snyder, *supra* note 113, at 594.

158. *See* Ryan Lizza, *How Trump Broke the Office of Government Ethics*, THE NEW YORKER (July 14, 2017), https://www.newyorker.com/news/ryan-lizza/how-trump-broke-the-office-of-government-ethics [http://perma.cc/J3RU-RKLX] (describing how the ethical constraints of attorneys are increasingly important in the Trump Era).

159. Lang, *supra* note 71, at 174–91 (presenting potential administrative burdens to adoption of honor codes); Lerner, *supra* note 19, at 685 (describing the role law schools should play in creating "new explicit and implicit emotional memory of being ethically responsible, while exercising the skills necessary to effective problem solving as advocates for their clients").

160. MODEL RULES R. 8.3 cmt. 3.

161. Lang, *supra* note 71, at 82.

APPENDIX

Rank*	Law School	Geographic Location	Faith ased	Relevant Faith	Bar Passage Rates	Reporting Requirement in 1983	Modern Reporting Requirement
1 (1)	**Yale**	Northeast	No	N/A	98.3	Not surveyed	No
2 (4)	**Stanford**	West	No	N/A	94.3	Not surveyed	No
3 (1)	**Harvard**	Northeast	No	N/A	97.2	No	No
4 (6)	**University of Chicago**	Midwest	No	N/A	98.9	Not surveyed	No
5 (4)	**Columbia**	Northeast	No	N/A	97.7	Not surveyed	No
6 (9)	**New York University**	Northeast	No	N/A	97.5	Not surveyed	No
7 (10)	**University of Pennsylvania**	Northeast	No	N/A	98.5	No	No
8 (8)	**University of Virginia**	South	No	N/A	99	Yes	No
9 (3)	**Michigan (Ann Arbor)**	Midwest	No	N/A	96.6	No	Yes
10 (12)	**Duke**	South	No	N/A	97.8	Not surveyed	Yes
10 (16)	**Northwestern University**	Midwest	No	N/A	93.5	No	No
10 (7)	**University of California (Berkeley)**	West	No	N/A	89.2	Not surveyed	No
13 (15)	**Cornell**	Northeast	No	N/A	95.9	Yes	No
14 (13)	**Georgetown**	South	Yes	Roman Catholic (Jesuit)	95.6	Not surveyed	No

Rank*	Law School	Geographic Location	Faith ased	Relevant Faith	Bar Passage Rates	Reporting Requirement in 1983	Modern Reporting Requirement
15 (14)	**University of California (Los Angeles)**	West	No	N/A	86	No	Yes
15	**University of Texas (Austin)**	South	No	N/A	89.3	Not surveyed	Yes
15 (17)	**University of Southern California (Gould)**	West	No	N/A	87.6	Not surveyed	No
18	**Vanderbilt University**	South	No	N/A	95	Not surveyed	No
18	**Washington University of St. Louis**	Midwest	No	N/A	95.5	Yes	Yes
20 (19)	**University of Minnesota**	Midwest	No	N/A	90.2	Yes	Yes
21	**Notre Dame University**	Midwest	Yes	Catholic	84.1	Not surveyed	Yes
22	**George Washington University**	South	No	N/A	95.8	No	Yes
23	**Boston University**	Northeast	No	N/A	87.4	No	Yes
23	**University of California (Irvine)**	West	No	N/A	80.5	Not surveyed	Yes
25	**University of Alabama**	South	No	N/A	94.5	Yes	Yes

Rank*	Law School	Geographic Location	Faith ased	Relevant Faith	Bar Passage Rates	Reporting Requirement in 1983	Modern Reporting Requirement
26	**Emory**	South	No	N/A	80.8	Yes	Yes
27	**Arizona State (Phoenix)**	West	No	N/A	74.3	No	Not surveyed (Assumed Yes)
27	**Boston College**	Northeast	No	N/A	88.6	Not surveyed	No
27	**University of Georgia**	South	No	N/A	89.4	Not surveyed	Yes
27	**University of Iowa**	Midwest	No	N/A	93.2	Not surveyed	No
31	**University of California (Davis)**	West	No	N/A	75.7	Yes	No
31	**University of Florida**	South	No	N/A	76.7	Not surveyed	Yes
31	**Wake Forest University**	South	No	N/A	88.7	Not surveyed	No
34	**Indiana University**	Midwest	No	N/A	87.5	Not surveyed	Yes
34	**Ohio State University**	Midwest	No	N/A	87.1	Yes	Yes
34	**University of North Carolina**	South	No	N/A	83.8	Not surveyed	No
34 (20)	**University of Wisconsin (Madison)**	Midwest	No	N/A	100	No	No
34	**Washington and Lee**	South	No	N/A	86.7	Yes	No
39	**Brigham Young University**	West	Yes	Latter Day Saints	83.3	No	No

Rank*	Law School	Geographic Location	Faith ased	Relevant Faith	Bar Passage Rates	Reporting Requirement in 1983	Modern Reporting Requirement
39	**Fordham**	Northeast	No	N/A	92.3	Not surveyed	No
39	**University of Arizona**	West	No	N/A	75.6	Not surveyed	Yes
39 (17)	**University of Illinois (Urbana)**	Midwest	No	N/A	95.3	No	No
39	**William & Mary**	South	No	N/A	79.1	Yes	No
44	**University of Washington**	West	No	N/A	85.7	Not surveyed	No
45	**George Mason**	South	No	N/A	81.5	Not surveyed	Yes
45	**University of Colorado**	West	No	N/A	87.4	No	Yes
47	**University of Utah**	West	No	N/A	86.7	No	No
48	**Baylor**	South	Yes	Baptist	92.1	Not surveyed	Yes
48	**Florida State**	South	No	N/A	81.1	No	No
48	**Temple University**	Northeast	No	N/A	83.8	Not surveyed	Yes
51	**Pepperdine University**	West	Yes	Christian	63.8	Yes	No
52	**Southern Methodist University**	South	Yes	Methodist	85	Not surveyed	No
52	**Tulane University**	South	No	N/A	90.7	Not surveyed	Yes
52	**University of Connecticut**	Northeast	No	N/A	83	Not surveyed	No

Rank*	Law School	Geographic Location	Faith ased	Relevant Faith	Bar Passage Rates	Reporting Requirement in 1983	Modern Reporting Requirement
52	**University of Maryland**	South	No	N/A	76.7	Not surveyed	Yes
52	**University of Richmond**	South	No	N/A	73.1	Not surveyed	Yes
52	**Yeshiva University**	Northeast	No	N/A	85.6	Not surveyed	Yes
58	**University of Nevada Las Vegas**	West	No	N/A	79.2	Not surveyed	Yes
59	**Seton Hall**	Northeast	No	N/A	81.8	No	Yes
59	**University of Houston Law Center**	South	No	N/A	85.1	Not surveyed	Yes
59	**University of Tennessee**	South	No	N/A	86	Not surveyed	Yes
62	**Loyola Marymount**	West	Yes	Catholic	74.2	Not surveyed	No
62	**University of California (Hastings)**	West	No	N/A	58.8	Not surveyed	No
64	**Northeastern**	Northeast	No	N/A	90.1	No	No
64	**Pennsylvania State University (University Park)**	Northeast	No	N/A	92.6	Not surveyed	No
64	**University of Missouri**	Midwest	No	N/A	88.6	Yes	Yes
67	**Georgia State**	South	No	N/A	81.8	Not surveyed	Yes

Rank*	Law School	Geographic Location	Faith ased	Relevant Faith	Bar Passage Rates	Reporting Requirement in 1983	Modern Reporting Requirement
67	**University of Denver**	West	No	N/A	76.8	No	Yes
67	**University of Kansas**	Midwest	No	N/A	86	No	No
67	**University of Miami**	South	No	N/A	86.3	No	Yes
71	**Brooklyn Law**	Northeast	No	N/A	78.7	No	No
71	**Case Western**	Midwest	No	N/A	91.9	Not surveyed	Yes
71	**University of Pennsylvania (Carlile)**	Northeast	No	N/A	92.1	Not surveyed	No
71	**University of Kentucky**	South	No	N/A	77.4	No	Yes
71	**University of Oklahoma**	South	No	N/A	94.9	Yes	Yes
71	**Villanova University**	Northeast	No	N/A	76.6	Yes	Yes
77	**American University Washington College of Law**	South	No	N/A	66	Not surveyed	Yes
77	**Loyola University Chicago**	Midwest	Yes	Catholic	77.8	No	Yes
77	**Rutgers University**	Northeast	No	N/A	76.4	Yes	No
77	**St Johns**	Northeast	Yes	Roman Catholic	88.6	Not surveyed	No

Rank*	Law School	Geographic Location	Faith ased	Relevant Faith	Bar Passage Rates	Reporting Requirement in 1983	Modern Reporting Requirement
77	**University of Nebraska**	Midwest	No	N/A	93.4	No	No
77	**University of Pittsburg**	Northeast	No	N/A	85.5	No	No
83	**Texas A&M**	South	No	N/A	81.4	Not surveyed	No
83	**University of Cincinnati**	Midwest	No	N/A	82.3	Not surveyed	Yes
83	**University of Oregon**	West	No	N/A	85.1	No	Yes
86	**University of San Diego**	West	No	N/A	76.1	Not surveyed	Yes
87	**Illinois Tech**	Midwest	No	N/A	79.1	Not surveyed	No
87	**University of New Hampshire**	Northeast	No	N/A	91.9	Not surveyed	Yes
87	**University of Tulsa**	South	No	N/A	95.2	No	Yes
90	**Saint Louis University**	Midwest	No	N/A	92.2	Not surveyed	Yes
91	**Florida International**	South	No	N/A	86.6	Not surveyed	No
91	**Marquette University**	Midwest	Yes	Roman Catholic (Jesuit)	100	Not surveyed	Yes
91	**Michigan State**	Midwest	No	N/A	82.7	Not surveyed	No
91	**Syracuse University**	Northeast	No	N/A	91.4	Not surveyed	No

Rank*	Law School	Geographic Location	Faith ased	Relevant Faith	Bar Passage Rates	Reporting Requirement in 1983	Modern Reporting Requirement
91	**University of Arkansas**	South	No	N/A	80	Yes	Yes
91	**University of Hawaii**	West	No	N/A	72.7	Not surveyed	Yes
91	**University of New Mexico**	West	No	N/A	90.4	Not surveyed	No
91	**University of South Carolina**	South	No	N/A	76.4	Yes	Yes
91	**Wayne State University**	Midwest	No	N/A	77.8	Not surveyed	No
100	**Drexel**	Northeast	No	N/A	76.1	Not surveyed	No

*1987 Rank is shown in parenthesis. In 1987, only the top 20 law schools were ranked.