

Defense Against the Dark Arts: A Call for Education About the Rule of Law and Democratic Institutions

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ABSTRACT

Since the inauguration of President Trump to his second term, the country has been flooded with reports of the executive branch making domestic and international policy through reckless unilateral action, encroaching on the domain of the legislative and judicial branches, retaliating against foes and providing clemency for friends, and dismantling the federal government through firings of federal employees, shuttering of departments, and disregarding traditions and norms. There can be little doubt that the country is experiencing democratic backsliding and that threats to the rule of law are daily realities. Against this backdrop, law schools and lawyer organizations need to act to support the legal profession and its role in a functioning democratic republic. Resistance requires education and collective action.

This article enters the conversation about the role of lawyers in this moment from the perspective of education – including law school education, lawyer education, and civic education. While the paper explores and builds upon the work of others relating to the backsliding of democracy, the underlying commitment that lawyers must have to the rule of law, the special role that election lawyers should have to tell the truth, and the necessity of having strong enforcement of rules of professional conduct, ultimately my aim is to enter a conversation about how and why we should be teaching the underlying values that animate the rule of law and democratic institutions as a way to secure the strength of the legal system and the legal profession for generations to come.

In addition to tracking the actions that the Trump administration has taken against lawyers, law firms, the ABA, and legal clinics in the first 100 days of his presidency, and drawing parallels to autocratic rises world-wide, the article looks at the role that professional organizations have in setting standards and disciplining lawyers who fall short of using independent judgment and ethical practices in furtherance of anti-constitutional ends. Then, the article urges that law schools are well-situated to step up their involvement in rule of law

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education and provides some concrete examples of ways that this instruction can be incorporated into existing curriculum.

My hope is that this article will inspire more sharing of ideas about projects and courses that can involve law schools on the front lines of meeting the moment we find ourselves in as a country and a world.

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“DICK THE BUTCHER: The first thing we do, let’s kill all the lawyers.”¹

WILLIAM SHAKESPEARE, KING HENRY VI, PART 2 act IV, sc. 2.

“Dick’s statement (‘The first thing we do, let’s kill all the lawyers’) was spoken by a rebel, not a friend of liberty. See W. Shakespeare, King Henry VI, pt. II, Act IV, scene 2, line 72. As a careful reading of that text will reveal, Shakespeare insightfully realized that disposing of lawyers is a step in the direction of a totalitarian form of government.”

Walters v. Nat’l Ass’n of Radiation Survivors, 473 U.S. 305, 371 n.24 (1985) (Stevens, J., dissenting).

INTRODUCTION

On February 21, 2025, I wrote a question in the Q&A of a webinar asking whether the American Bar Association (the ABA) was discussing whether law schools have a responsibility to teach the “rule of law” as part of the regular law school curriculum. The question was posed during a Society of American Law Teachers (SALT) program with the promising title “Defending the Rule of Law: The Role of Legal Education.” The question was met with confusion and a

1. This oft-quoted line is described by “No Sweat Shakespeare” (a handy website for all things Shakespeare) as follows:

“Cade, a pretender to the throne, hopes to destabilize the existing social order, and the line serves as a tongue-in-cheek recognition that lawyers, by upholding the law and administering justice, are impediments to anarchy. In the context of the play, the line highlights the subversive nature of Cade’s rebellion and the chaos that ensues when legal structures are undermined.”

‘Let’s Kill All The Lawyers’, Meaning & Context, NO SWEAT SHAKESPEARE, [https://nosweatshakespeare.com/quotes/famous/lets-kill-all-the-lawyers/\[https://perma.cc/JQJ5-95NK\]](https://nosweatshakespeare.com/quotes/famous/lets-kill-all-the-lawyers/[https://perma.cc/JQJ5-95NK]).

reflexive “we teach the rule of law in all of our classes already.” Obviously, I had not framed the question well.

To be fair to myself, though, framing this question correctly is challenging. We are at a new moment in the history of the United States, and lawyers are proving critical in both hastening and fighting a slide away from democratic principles and norms that support the rule of law. In fact, we can be sure that lawyers and judges will engineer, resist, defend, and possibly uphold many of the restructures that the new administration seeks to achieve. This is playing out daily in the news as President Donald Trump directs more agencies, government lawyers, and private actors to yield to his will. My question was not whether law schools should teach doctrine and the rules of professional conduct. Clearly, we should and do.

My question was whether law schools have a special role to play in ensuring that the foundations of democratic institutions are upheld by educating new lawyers about the duties of the profession to uphold the rule of law and democracy in the face of threats to the separation of powers and autocratic forces that have taken over seemingly all branches of government, with perhaps the exception of the judiciary at this moment. Lawyers of all ideologies should be able to agree that, as a profession, we are bound to a definition of the rule of law that requires

respecting regular procedures and chain of command; believing that facts and evidence matter; taking contrary evidence and points of view seriously; seeking reasonable interpretations of law on point; keeping straight the distinction between the interests of one’s client and what the client is entitled to as a matter of law, and being willing to resign one’s position if necessary to prevent an abuse of power.²

Assuming we do have a special role to play in teaching these values, what are the sources we need to use and strategies we should employ to provide this education in a responsible and nonpartisan way?³

The trend away from democracy is not a phenomenon just in the United States, and it should not be a concern for only one political party. Worldwide backsliding from democratic principles has been documented.⁴ American law schools are

2. W. Bradley Wendel, *The Good Lawyers of January 6*, 46 CARDOZO L. REV. 2143, 2178 (2025).

3. In a nod to the title of this piece, I think it is relevant to note that students from all Hogwarts houses in the Harry Potter series were required to take a course in “Defense Against the Dark Arts”—aka tyranny—and that over time professors with association to various houses taught the course (Professors Quirinus Quirrell [Ravenclaw], Professor Gilderoy Lockhart [Ravenclaw], Professor Remus Lupin [Gryffindor], Professor Alastor Moody [unidentified, but I like to think Hufflepuff], Professor Dolores Umbridge [Slytherin], and Professor Severus Snape [Slytherin]), although not all taught with equal skill and creativity. See *Defence Against the Dark Arts*, HARRY POTTER ENCYCLOPEDIA, <https://www.harrypotter.com/fact-file/magical-miscellany/defence-against-the-dark-arts> [<https://perma.cc/DSW8-ZYYV>].

4. WORLD JUSTICE PROJECT, RULE OF LAW INDEX 2023 8 (2023) <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIndex2023.pdf>; see also Kathryn Hendley, *Why Study Lawyers Amidst Democratic Decline: Insights From a Study on Lawyers Experiencing Hardship*, THE PRACTICE, Mar./Apr. 2025, <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/lawyers-between-democracy-and-authoritarianism/why-study-lawyers-in-declining-democracies/> [<https://perma.cc/6N68-KVJX>].

educating not just lawyers who will be charged with upholding standards of the legal profession on U.S. soil but also lawyers who will practice internationally and domestically in other countries.⁵ While different countries view the role of lawyers in different ways, the United States, as a constitutional democracy, has historically subscribed to the notion that lawyers are not merely technicians but are professionals with ethical responsibilities to uphold the rule of law.⁶ This article explores the question of whether U.S. law schools should be affirmatively teaching the value of the rule of law and encouraging engagement with the topic outside of the law school walls. Additionally, the piece suggests curricula that law schools should consider incorporating to uphold our collective mission to the legal profession and to society more broadly. Along the way, I discuss the important role for bar associations and lawyer organizations and how law schools should be partnering with these organizations to ensure that the legal profession is functioning as the check on power that it was intended to be.

Part I sets the stage for the parts that follow by acknowledging that democracies are in decline worldwide and that the playbook of autocrats and authoritarian leaders is to use lawyers and courts to legitimize autocratic takeovers. Part II argues that all lawyers, and particularly election lawyers and public-sector attorneys, have a special role to play in preserving democratic institutions and the rule of law. Part III urges that the ABA and state bar authorities have a role to play in ensuring that lawyers are not contributing to the backsliding of democracy, while at the same time recognizing the vulnerability of these organizations to political pressure and threats. Part IV stresses that law schools have a critical role to play in educating students and the broader public in the meaning of the rule of law and the importance of an independent legal system. This part advocates for: retooling professional responsibility and professional identity curriculum to meet this moment; fostering partnerships with bar organizations; and embracing law schools' responsibility to the public more generally by providing civics and rule of law presentations in their communities. Part V proposes that there are a multitude of ways to offer rule of law content including stand-alone courses on the rule of law in a democratic society and modules that can be worked into existing law school and civics curricula. The appendix offers some sample readings and

5. Kathryn Hendley & Alexander J. Straka, *International Students from the Perspective of U.S. Law Schools*, 72 J. LEGAL EDUC. 58, 63 (Fall/Winter 2022–2023) (reporting results of a study that showed that many law schools have robust programs for non-J.D.- seeking foreign students).

6. Kathryn Hendley, *Why Study Lawyers Amidst Democratic Decline: Insights from a study on lawyers experiencing hardship*, THE PRACTICE (Mar./Apr. 2025), <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/lawyers-between-democracy-and-authoritarianism/why-study-lawyers-in-declining-democracies/> (<https://perma.cc/JL4F-HXXH>). Professor Hendley makes the point that lawyers in authoritarian countries like Russia view themselves as technicians and, for this reason, may have an easier time enabling authoritarianism because they are socially conditioned to follow orders rather than think independently about ethical obligations. She also points out that the culture of resignations as resistance that is emerging in the United States is similar to the United Kingdom approach and contrasts with the assumption in Russia that government lawyers are necessarily enablers and facilitators of the regime that is in power.

assignments to integrate rule of law curricula into lawyering skills, professional identity, civil procedure, professional responsibility, and constitutional law classes.

As described more fully below and throughout this paper, as a baseline I am adopting the World Justice Project definition of the rule of law “as a durable system of laws, institutions, norms, and community commitment that delivers: [a]ccountability, [j]ust law, [o]pen government, and [a]ccessible and impartial justice.”⁷ Notably, this definition does not conflate adherence to the rule of law with democratic systems of government, but scholars have observed that the rule of law is more difficult to support in non-democratic systems.⁸

I. THE BACKSLIDING OF DEMOCRACY AND THE RISE OF AUTOCRACY

While American law schools and the U.S. legal profession are acutely feeling the implications of a rise in antidemocratic policies in the United States (primarily manifested through the more than 100 executive orders in President Trump’s first 100 days),⁹ reports by the World Justice Project have shown that the rule of law is in decline worldwide.¹⁰ As adherence to the rule of law declines, so too do democratic institutions.¹¹ Numerous commentators have noted that the playbook currently being followed by leaders of democracies sliding into autocracies includes using lawyers and courts to legitimize autocratic takeovers.¹² Professor Scott Cummings has explained that while autocratic leaders traditionally rule by authoritarian means, those leaders frequently emerge from democratic societies and need to delegitimize the old order by first appearing to follow legal

7. WORLD JUSTICE PROJECT, *supra* note 4, at 14.

8. Gerald J. Postema, *An “Almost Sacred Responsibility”: The Rule of Law in Times of Peril*, 107:3 JUDICATURE 41, 44–45 (2024).

9. Laura Doan & Julia Ingram, *Trump Issues Record 100th Executive Order Within First 100 Days of Term*, CBS NEWS (Mar. 26, 2025), <https://www.cbsnews.com/news/trump-issues-record-100-executive-order-of-second-term-breakdown/> [<https://perma.cc/W594-NG83>]. On March 26, President Trump had not yet been in office for 100 days. After this article was published, he signed eight more orders from March 27 to April 2, bringing the total number in the first 100 days to be substantially more than 100. *Presidential Actions*, THE WHITE HOUSE, <https://www.whitehouse.gov/presidential-actions/> [<https://perma.cc/PEH6-8JFV>].

10. WORLD JUSTICE PROJECT, *supra* note 4.

11. Scott L. Cummings, *Lawyers in Backsliding Democracy*, 112 CALIF. L. REV. 513, 522 (2024) (explaining that the checks and balances that distinguish democracy from autocracy are commonly understood as the rule of law). *See also* HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 408–09 (2017). Originally published in 1951, the book describes how totalitarian movements use and abuse democratic freedoms and disengaged masses to destroy democracy.

12. Steven Levitsky & Lucan A. Way, *The Path to American Authoritarianism: What Comes After Democratic Breakdown*, FOREIGN AFFS. (Feb. 11, 2025), <https://www.foreignaffairs.com/united-states/path-american-authoritarianism-trump#> [<https://perma.cc/HS67-24SZ>]. *See also* Zselyke Csaky, *Capturing Democratic Institutions: Lessons from Hungary and Poland*, FREEDOM HOUSE (Nov. 3, 2021), <https://freedomhouse.org/article/capturing-democratic-institutions-lessons-hungary-and-poland> [<https://perma.cc/C5JS-AAMH>] (written testimony prepared by Research Director Csaky, for the Commission on Security and Cooperation in Europe, discussing the ways in which Hungary and Poland have had the independence in the media, the judiciary, the civic sector, and elections reduced in recent decades).

processes.¹³ “Autocrats therefore cloak attacks on the rule of law in the language of the law, using legal ‘tactics’ to defend changes that undermine the ‘liberal’ dimension of liberal democracy.”¹⁴ Professor Cummings points out that lawyers are the necessary tools for these attacks and tactics.¹⁵

Professor Cummings’ article *Lawyers in Backsliding Democracy* lays out how lawyers are utilized in both “slow road” and “fast track” approaches to democratic decline.¹⁶ Explaining the emergence of “autocratic legalism” in the legal scholarship context, he states

[o]ne of the central lessons from this literature is that recent successes by autocrats—including Vladimir Putin in Russia, Recep Erdoğan in Turkey, and Viktor Orbán in Hungary—dismantling democracy have occurred not through violent coups but rather through ostensibly legal action that undermines the foundations of liberal democracy. For autocrats seeking to push democracy into a state of breakdown, it is critical to have the law—or at least the appearance of legality—on their side.¹⁷

Specifically, in Hungary, the architects of the constitutional changes that dismantled legal institutions were all elite lawyers.¹⁸ Professor Cummings appropriately calls for professional regulation and education to strengthen democratic resilience.¹⁹ The later sections of this paper expand on his well-taken suggestion.

13. Cummings, *supra* note 11, at 522.

14. *Id.* at 526. The framers of the Constitution foresaw the potentiality for ambitious would-be tyrants to use a false commitment to democratic principles and to the people to undermine the system. In Federal Paper No. 1, Alexander Hamilton wrote that “of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people; commencing demagogues, and ending tyrants.” THE FEDERALIST No. 1 (Alexander Hamilton).

15. Cummings, *supra* note 11, at 526; see also David B. Wilkins interview with Scott L. Cummings, *Why American Lawyers Must Fight Democratic Backsliding: A Call for Collective Action*, THE PRACTICE (Mar./Apr. 2025), [https://clp.law.harvard.edu/knowledge-hub/magazine/issues/lawyers-between-democracy-and-authoritarianism/why-american-lawyers-must-fight-democratic-backsliding/\[https://perma.cc/LVC5-XALC\]](https://clp.law.harvard.edu/knowledge-hub/magazine/issues/lawyers-between-democracy-and-authoritarianism/why-american-lawyers-must-fight-democratic-backsliding/[https://perma.cc/LVC5-XALC]).

16. Cummings, *supra* note 11, at 519. The fast track is defined as the creation of some “emergency” that requires extraconstitutional authority that essentially shocks a government into authoritarian rule. The slow road is a series of more incremental changes that lead to the weakening of democratic institutions until they are no longer able to perform their functions.

17. Cummings, *supra* note 11, at 518.

18. Wilkins & Cummings, *supra* note 15. In this interview, Professor Cummings draws a very direct parallel to the work of Victor Orbán in Hungary and the playbook of Project 2025 in the United States:

Because of that, lawyers are the key ingredient to this new autocratic legalism because you need lawyers to design, draft, and defend the laws that dismantle these democratic institutions. That’s why it’s not a coincidence that Victor Orbán was trained as a lawyer and the key parliamentarians that were involved in the initial constitutional revolution that broke down the rule of law institutions were trained at elite law schools in Hungary. It’s no coincidence that Project 2025 in the United States was drafted primarily by lawyers or that the vice president is an elite-trained lawyer. This is a project that depends on lawyers to be effective.

Wilkins & Cummings, *supra* note 15.

19. Cummings, *supra* note 11.

To understand the playbook that Professor Cummings references in his work, it is useful to look to the examples set by Hungary and Poland in recent years. Internationally, there is consensus that Hungary has dropped on the democracy index to a “hybrid regime” from its prior perch as a “semi-consolidated democracy.”²⁰ Poland was heading in the same direction before elections in 2023 brought in a government that expressly espoused democratic principles.²¹ In testimony to Freedom House in November 2021 titled “Capturing Democratic Institutions: Lessons from Hungary and Poland,” Zselyke Csaky explained that institutionally the media, the judiciary, the civic sector, and elections had all been captured in Hungary and Poland and were being used to serve the goals of the governing party.²² In Poland, the government overhauled the judicial system in ways that the European Court of Human Rights declared unlawful and led a campaign of threats, intimidation, and harassment against judges.²³ In Hungary, the governing party adopted a new constitution and appointed new loyalist judges to make the domination of the judicial system appear to be compliant with existing legal structures.²⁴ Similar tactics have been used in other countries by elected leaders to subvert the rule of law.²⁵ Other commentators have observed that “[v]irtually all elected autocratic governments deploy justice ministries, public prosecutors’ offices, and tax and intelligence agencies to investigate and prosecute rival politicians, media companies, editors, journalists, business leaders, universities, and other critics.”²⁶ Taken together with the capture of the media, civic organizations, and elections, the testimony to Freedom House in 2021 suggested that both Hungary and Poland had slid from democracy to autocracy and were being subject to sanctions by the European Union to try to force these countries to restore the rule of law and respect democratic rights.²⁷ The most recent reports

20. Zselyke Csaky, *The Anti-Democratic Turn*, in *NATIONS IN TRANSIT* 2021 1, 24–25, (Freedom House 2021), https://freedomhouse.org/sites/default/files/2021-04/NIT_2021_final_042321.pdf [https://perma.cc/S9R4-EYBG]; see also WORLD JUSTICE PROJECT, *supra* note 4, at 10 (ranking Hungary 73rd out of 142 countries in terms of adherence to the rule of law).

21. *Id.* at 11 (ranking Poland 36th out of 142 countries in terms of adherence to the rule of law in 2023).

22. Csaky, *supra* note 12.

23. *Id.*

24. *Id.*

25. Yana Gorokhovskaia & Cathryn Grothe, *The Uphill Battle to Safeguard Rights*, in *FREEDOM IN THE WORLD* 2025, 2, 12–13 (Freedom House 2025), [https://perma.cc/V49J-KWAW].

But elected leaders have increasingly used three key tactics to weaken judicial independence: taking control of how judges are disciplined, changing the remit of judicial oversight, and controlling court appointments.

Id. at 15 (noting that elected leaders in Mexico, Israel, and India have all attempted to curtail the independence of the judiciary in those countries but that Israeli and Indian courts have so far pushed back).

26. Levitsky & Way, *supra* note 12.

27. See Csaky, *supra* note 12. Ironically, the call in 2021 was for the United States to leverage its relationship with Eastern Europe to speak out firmly against the spreading of autocracy and to work with European allies “to counter the antidemocratic trends in Poland and Hungary.” *Id.* at 9. The current administration has seemed to lock into the opposite course.

from Freedom House recognize that Poland may be on the road to recovering its democracy, but note that the damage done to governmental institutions is much harder to build back than to destroy.²⁸

While Hungary and Poland are recent examples of antidemocratic risings, the example set by Nazi Germany in the 1930s appears to be the model for many of the emerging authoritarian regimes. The work of the late Justice Richard Fybel is instructive in providing the historical background for how the Nazis used the existing legal system to consolidate power and replace the rule of law with the rule of the leader.²⁹ Other scholars have also mapped out the ways in which lawyers and legal systems have been, and are likely to be, used to embed antidemocratic and anti-constitutional orders in formerly democratic systems.³⁰ All commentators seem to recognize that fascist regimes of the 1930s and 1940s are serving as a playbook that has been updated by would-be authoritarian leaders today. Much of the commentary harkens back to lessons that can be, and should have been, learned from World War II.³¹

Michael Scharf, the president of the American Branch of the International Law Association (ABILA), issued a statement on February 25, 2025, calling on the Trump administration to reverse course on a number of actions that threatened the international rule of law.³² In that statement, Scharf noted that since World War II the United States had taken a leadership role in establishing and supporting a rules-based set of international laws and conventions, and that abandoning long-held rule of law principles by the United States would lead to chaos within and economic harm to the international community.³³ A similar statement had been issued by the American Society of International Law (ASIL) president, Mélida Hodgson, stating, among other things, “This retreat from international law is an unparalleled abdication of American responsibility and leaves a vacuum

28. Gorokhovskaia & Grothe, *supra* note 25, at 2.

In 2023, despite antidemocratic headwinds, elections in Guatemala and Poland resulted in transfers of power from illiberal incumbents to opposition figures who espoused explicitly democratic goals. Some progress has been made in the year since, but reform continues to be inhibited by vestiges of the former governments and powerful elites who have benefited from corruption, suggesting that while damage to democratic institutions accumulates quickly, repair efforts can be slow.

Id. at 12–13.

29. See Justice Richard D. Fybel (Ret.), *Judges, Lawyers, Legal Theorists, and the Law in Nazi Germany (1933–1938); Kristallnacht; And My Parents’ Escapes from the Nazis*, 70 UCLA L. REV. DISCOURSE 2 (2022).

30. See Cynthia L. Fountaine, *Complicity in the Perversion of Justice: The Role of Lawyers in Eroding the Rule of Law in the Third Reich*, 10 ST. MARY’S J. ON LEGAL MALPRACTICE & ETHICS 198 (2020); Cummings, *supra* note 11.

31. See generally, HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* *passim* (2017) (for an extensive discussion of the rise of the Nazi regime and how totalitarian governments emerge from democracies and other forms of government).

32. Michael Scharf, *Statement of the President of the American Branch of the International Law Association Regarding the United States and the International Rule of Law*, AM. BRANCH INT’L L. ASS’N (Feb. 25, 2025), <https://www.ila-americanbranch.org/wp-content/uploads/2025/02/Statement-of-ABILA-President-Michael-Scharf-Feb-22.pdf> [https://perma.cc/829Q-DUWP].

33. *Id.*

that will only invite chaos, conflict, and violence, ultimately weakening the United States.”³⁴ Both the ABILA and the ASIL statements point to threats from the Trump administration that include issuing sanctions against the International Criminal Court, forcibly transferring Palestinians from Gaza, withdrawing from long-standing international alliances and treaties, and disregarding legally binding obligations to international rules and norms.³⁵ There is no question that the world perceives the actions in the first 100 days of the Trump administration as creating a threat to the maintenance of peace and prosperity under an agreed-upon set of rules.³⁶

As indicated above, the United States is not the only country that has concerns with the emergence of antidemocratic forces. Across the globe, countries are contending with electorates that do not understand or value the role that independent courts and adherence to the rule of law have in supporting democracy. The Council of Bars and Law Societies of Europe (CCBE), an international nonprofit organization that promotes regulation of European lawyers and the rule of law, chose “Self-Regulation of the Legal Profession” for its European Lawyers’ Day theme in the fall of 2024.³⁷ The CCBE explained the connection between self-regulation of lawyers and democracy as follows:

Self-regulation protects lawyers from external influences that could compromise their integrity and independence, which are essential for a functioning democracy. In many parts of the world, lawyers face pressure from governments or other entities that seek to control or influence their work. Self-regulation acts as a buffer against such pressures, enabling lawyers to act in the best interests of their clients and the justice system.³⁸

The self-regulation of the legal profession, adherence to the rule of law, and the will of lawyers to stand up to authoritarianism are interconnected concepts that are all required to resist antidemocratic slides and the authoritarian leaders

34. Mélida Hodgson, *Statement of ASIL President Mélida Hodgson Regarding the United States and the International Rule of Law*, AM. BRANCH INT’L L. ASS’N (Feb. 13, 2025), https://www.asil.org/sites/default/files/pdfs/ASIL_Statement_2025_Rule_of_Law.pdf [<https://perma.cc/MM5F-W7EZ>].

35. Scharf, *supra* note 32; Hodgson, *supra* note 34.

36. See Tobias Gehrke, *Brussels Hold'em: European Cars Against Trumpian Coercion*, EUR. COUNCIL ON FOREIGN RELS. POL’Y BRIEF (Mar. 20, 2025), <https://ecfr.eu/publication/brussels-holdem-european-cards-against-trumpian-coercion/> [<https://perma.cc/HDZ7-LZPQ>] (explaining that the Trump administration has attacked Europe on multiple fronts and suggesting ways for the EU to fight back); see also Zainab Usman, *The Six Areas in Trump’s Executive Orders that Countries in Africa and the Global South Should Pay Attention to*, CARNEGIE ENDOWMENT FOR INT’L PEACE (Feb. 12, 2025), <https://tinyurl.com/yrymnhjsj> [<https://perma.cc/3WVA-2NE3>] (discussing the adverse ramifications new policies will have to low- and middle-income countries in the global south).

37. CCBE, *Independent Lawyers, Stronger Democracies: Understanding Why Self-Regulation Matters*, EUROPEAN LAWYERS’ DAY (Oct. 25, 2024), https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/EUROPEAN_LAWYERS_DAY/2024/EN_2024_Note-for-ELD.pdf [<https://perma.cc/NVP5-WM2Q>]. See also generally CCBE, *Who We Are*, <https://www.ccbe.eu/about/who-we-are/> [<https://perma.cc/JML2-AN37>].

38. CCBE, *supra* note 37.

who are engineering them.³⁹ Steven Levitsky and Lucan Way, scholars who have been studying authoritarian regimes, have predicted the threats and responses to them in the American arena:

Weaponized states create a difficult collective action problem for establishment elites who, in theory, would prefer democracy to competitive authoritarianism. The politicians, CEOs, media owners, and university presidents who modify their behavior in the face of authoritarian threats are acting rationally, doing what they deem best for their organizations by protecting shareholders or avoiding debilitating lawsuits, tariffs, or taxes. But such acts of self-preservation have a collective cost. As individual actors retreat to the sidelines or censor themselves, societal opposition weakens. The media environment grows less critical. And pressure on the authoritarian government diminishes.⁴⁰

The antidotes to attempts to remove self-regulation, to skirt the rule of law, and to weaken lawyers' ethical resolve are collective action and recommitment to the standards of the profession.⁴¹ Fortunately, lawyers already have a clear duty to operate in a way that prioritizes truth, reasoned argument, and fairness—all components of the rule of law.⁴²

II. THE ROLE OF LAWYERS IN PRESERVING DEMOCRATIC INSTITUTIONS AND THE RULE OF LAW

Lawyers, particularly election lawyers and public-sector lawyers, have a special role in preserving democratic institutions and the rule of law.⁴³ Professional rules of conduct and bar court rulings have confirmed that, at a minimum, government lawyers will be held to the same standards of honesty and candor as other lawyers, and that lawyers who are public officials and operate in the political sphere should be held to an additional standard.⁴⁴ The right to access counsel has

39. Cummings, *supra* note 11, at 528–30. Professor Cummings explains that the rule of law rests on three professional pillars: fairness, independence, and authority. *See also* Cynthia Godsoe, Abbe Smith & Ellen Yaroshfsky, *Can You Be a Legal Ethics Scholar and Have Guts?*, 35 GEO. J. LEGAL ETHICS 429, 440–41 (2022) (explaining that the self-policing nature of the legal profession is essential to independence and autonomy of the legal profession, but that for it to work, lawyers must actually be disciplined).

40. Levitsky & Way, *supra* note 12.

41. Godsoe et. al, *supra* note 39, at 443 (arguing that disciplinary actions by state bars are needed to uphold standards for lawyers in the profession).

42. *See, e.g.*, Renee Knake Jefferson, *Lawyer Lies and Political Speech*, 131 YALE L. J. FORUM 114, 123 (2021).

All lawyers, by virtue of taking an oath to receive their law license, agree to be bound to a self-imposed duty of candor in the courtroom and the obligation not to pursue frivolous litigation. This professional commitment simultaneously demands honesty and constrains speech from lawyers in ways that are not required or allowed for nonlawyers.

Id.

43. *Id.* at 136–37; Cummings, *supra* note 11, at 529 (“Public lawyers, including prosecutors and government legal advisors, have special obligations in this regard, guaranteeing that when legal decisions have a policy impact, they are made in the public interest and not for partisan advantage.”).

44. MODEL RULES OF PROF'L CONDUCT R. 8.4 (2023) [hereinafter MODEL RULES]; *In re* Jeffrey B. Clark, Board Docket No. 22-BD-039, (D.C. Ct. App., Bd. on Professional Responsibility, Aug. 1, 2024) (holding that government lawyers have the same duties of honesty as other lawyers); *see also* Godsoe et. al, *supra* note 39, at 443 (pointing out that Comment 7 to Rule 8.4 makes clear that attorneys holding public office have heightened duties and arguing that those working in the political arena should be treated equivalently).

been identified as a guardian of freedom and critical to the functioning of a free society.⁴⁵ Independent lawyers who conform to the standards of the profession are critical in both the private and public spheres. That lawyers have played, and currently are playing, roles in the decline of democratic institutions supports the idea that government lawyers must have special responsibilities to serve the public good and to uphold the administration of justice consistent with Model Rules of Professional Conduct 1.13 and 8.4(c).⁴⁶

A. LAWYERS' GENERAL RESPONSIBILITY TO THE RULE OF LAW

As an initial matter, the terms “democratic institutions” and “rule of law” need to be defined. Legal theorist Jack Jackson has pointed out that “rule of law” and “rule of democracy” do not mean the same thing and, in fact, can be at odds in our system.⁴⁷ For the purposes of this article, by “democratic institutions” I mean the institutions that enable citizens to exercise democratic rights like voting in free and fair elections, free speech, protest and dissent, and other avenues for voicing their will.⁴⁸ The “rule of law” is a harder term to define, but the WJP has tried to do so without making it synonymous with democracy.⁴⁹ As articulated above, in its 2023 report, WJP defines the rule of law “as a durable system of laws, institutions, norms and community commitment that delivers: [a]ccountability, [j]ust law, [o]pen government, and [a]ccessible and impartial justice.”⁵⁰

45. *Walters v. Natl. Ass'n of Radiation Survivors*, 473 U.S. 305, 370–71 (1985) (J. Stevens, dissenting).

If the Government, in the guise of a paternalistic interest in protecting the citizen from his own improvidence, can deny him access to independent counsel of his choice, it can change the character of our free society. Even though a dispute with the sovereign may only involve property rights, or as in this case a statutory entitlement, the citizen's right of access to the independent, private bar is itself an aspect of liberty that is of critical importance in our democracy. Just as I disagree with the present Court's crabbed view of the concept of “liberty,” so do I reject its apparent unawareness of the function of the independent lawyer as a guardian of our freedom.

Justice Stevens wrote in dissent in a case involving a statute that criminally prohibited veterans with disability or death claims from hiring counsel at a pay rate of more than \$10.

46. Renee Knake Jefferson, *Lawyer Lies and Political Speech*, 131 YALE L.J. F. 114, 122 (2021).

47. Erin Carroll, *Beyond Democracy: How a Free Press Supports the Rule of Law*, 47 CARDOZO L. REV. (forthcoming 2025); see also JACK JACKSON, LAW WITHOUT FUTURE: ANTI-CONSTITUTIONAL POLITICS AND THE AMERICAN RIGHT 16 (2019). Professor Jackson's very thorough critique of the ways in which the rule of law and the rule of democracy have been conflated is beyond the scope of this article. However, his insights into the rise of anti-constitutional politics on the right and the inept response by politicians on the left are vitally important to the discussion about how our country can move forward. His book should be read by law students and politicians. See also Jedidiah Britton-Purdy, *A Democratic Rule of Law*, 87 L. & CONTEMP. PROBS. 293, 296 (2025). Professor Britton-Purdy acknowledges that rule of law and democracy both have the goal of organizing legal power and making government accountable to those who are governed. However, Professor Britton-Purdy also posits that rule of law is possible without democracy, whereas democracy is not possible without rule of law, and in fact, democracy may be a rule of law in and of itself. *Id.* at 296, 329.

48. See Postema, *supra* note 8, at 20. Professor Postema notes that democracy, the respect for fundamental human rights, and the rule of law are distinct moral values, but they are complementary and interdependent. *Id.* “The people can effectively rule only if their will is expressed in law. And the institutions that secure the people's role in ruling—free and fair elections, accountability at the polls, and freedom of speech, assembly, protest, etc.—can succeed only if enshrined in and protected by law.” *Id.*

49. WORLD JUSTICE PROJECT, *supra* note 4, at 13.

50. *Id.* at 14.

The WJP then measures countries based on eight factors that connect to these principles: (1) constraints on government powers, (2) absence of corruption, (3) open government, (4) fundamental rights, (5) order and security, (6) regulatory enforcement, (7) civil justice, and (8) criminal justice.⁵¹ Lawyers clearly play a significant part in all of these measures.⁵²

Professor Gerald Postema has explained that “the rule of law is a normatively demanding and institutionally realized ideal” that “is concerned at its core with ruling power” and “provides protection and recourse against the arbitrary exercise of power through law’s distinctive tools.”⁵³ He has further explained that “those who exercise ruling power must submit to law” and must conform to the three core principles that animate the rule of law: namely, sovereignty of law, equality in the eyes of law, and fidelity.⁵⁴ The last of these principles depends on the political community, most importantly the lawyers and judges working within the community, to commit to and take responsibility for holding one another accountable to the law.⁵⁵ According to Professor Postema, democracy and rule of law depend on each other because “without truly democratic institutions, norms, and practices, the structure set up to meet conditions of the rule of law will be unstable, tending to lean toward authoritarian rule.”⁵⁶ In the United States, the commitment to defend the Constitution is a commitment to defend a republican democracy, because that is the structure embedded into our founding documents.⁵⁷

Professor Erin Carroll has observed that the definition of rule of law can be “thick” or “thin” depending on whether there is a focus on procedural or substantive requirements.⁵⁸ She advocates for a thicker definition that is rooted in the early idea that “the sovereign is subject to the law in the same way as any other citizens” and expanded to include substantive requirements like equality, transparency, predictability, functionality, and nonarbitrariness.⁵⁹ She notes that “neither democracy nor rule of law exist solely in one institution or space”

51. *Id.*

52. See Postema, *supra* note 8, at 19 (explaining that “[l]awyers and judges are conservators of the law and enablers of agents of accountability” and that “the rule of law depends critically on a robust legal profession and judiciary that understand and are deeply committed to it”).

53. *Id.* at 17–18.

54. *Id.* at 18.

55. *Id.*

56. *Id.* at 21.

57. U.S. CONST. art. IV § 4; THE FEDERALIST NO. 39 (James Madison) (arguing that the Constitution is a mixture of a national and a federal constitution and advocating for a definition of republic that means “a government which derives all its power directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behaviour”).

58. Erin Carroll, *Beyond Democracy: How a Free Press Supports the Rule of Law*, 47 CARDOZO L. REV. 1, 9 (2025). Professor Carroll relies on the definitions articulated by political theorists who were writing 150 years ago, including A.V. Dicey and Thomas Paine.

59. *Id.* at *11.

but rather are practiced by legislatures, voters, the judiciary, the press, and public administrators.⁶⁰

When we are seeing antidemocratic positions taken by elected officials and those in the legal profession, alarm bells should ring for the stability of our society. As a profession that is sworn to uphold constitutions and the legal system, all lawyers are duty-bound to resist the abandonment of those institutions for partisan gain. Professor Cummings has defined “antidemocratic legal mobilization” and warned against it:

... *antidemocratic legal mobilization [is] the use of legal strategies, in court and behind the scenes, to attack the legitimacy of essential “democratic” (free and fair elections), “liberal” (the right to speak, assemble, and vote), and “rule of law” (judicial and prosecutorial independence) elements of liberal democracy.* Attacks on these core elements should be considered out of bounds by political leaders and lawyers of all ideological stripes.⁶¹

Numerous oaths taken by lawyers underscore that entry into the profession of law comes with a mandate to defend and support the constitutions, both federal and state, that are the foundation of our democratic society. The oath for California lawyer admission states

I, (licensee name), solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counselor at law to the best of my knowledge and ability. As an officer of the court, I will strive to conduct myself at all times with dignity, courtesy and integrity.⁶²

And, similarly, the oath taken for an attorney to obtain federal court bar admission states

I, _____, DO SOLEMNLY SWEAR (OR AFFIRM) THAT AS AN ATTORNEY AND AS A COUNSELOR OF THIS COURT I WILL CONDUCT MYSELF UPRIGHTLY AND ACCORDING TO LAW, AND THAT I WILL SUPPORT THE CONSTITUTION OF THE UNITED STATES.⁶³

If the references to support the constitutions were not sufficiently clear to alert new lawyers to their obligations to protect and defend the democratic structures created by those foundational documents, the ABA Model Rules of Professional Conduct Preamble Paragraph 6 expands on the role of lawyers vis-à-vis the rule

60. *Id.* at *12.

61. Cummings, *supra* note 11, at 520 (emphasis in original).

62. State Bar of California, *Attorney's Oath*, <https://www.calbar.ca.gov/Admissions/Examinations/California-Bar-Examination/Attorneys-Oath> [<https://perma.cc/7XXR-HZH3>].

63. Administrative Office of the U.S. Courts, *Attorney Oath on Admission (AO 153)* (Rev. 6/96), https://www.uscourts.gov/sites/default/files/ao153_0.pdf [<https://perma.cc/329M-EC2L>].

of law and educating the public about constitutional democracy: “In addition, 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.”⁶⁴

Historically, elected officials in both major political parties, judges in the federal and state judiciaries, and most of the electorate have shared the common belief that the rule of law is a fundamental cornerstone of the U.S. version of a constitutional democracy.⁶⁵ There has also been a general consensus that the United States should be governed in adherence with the tenets that shape constitutional democracies, including support of a free press, an independent judiciary, an engaged civic sector, and free and fair elections.⁶⁶ In this moment, however, the executive branch and the legislative branch seem to be wavering in their commitment to democratic institutions and government as we have come to know it in the United States. It is not hyperbolic to say that the executive is openly trying to dismantle the structures of democratic government in favor of autocracy, or at least in favor of an extreme and unprecedented interpretation of the unitary executive theory that centers the President’s personal interests and grievances at its core.⁶⁷ Judicial branch officers have called out this fact in the first cases that have

64. MODEL RULES pmb1. [6].

65. See A.B.A., *The ABA Rejects Efforts to Undermine the Courts and the Legal Profession* (Mar. 3, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/03/aba-rejects-efforts-to-undermine-courts-and-legal-profession/> [<https://perma.cc/D7AD-RTE5>]. The first paragraph of the ABA’s March 3 statement reads:

We called upon every lawyer to insist that the government adhere to four major principles of law that have guided our country for over 200 years: Defending Judges and Courts, Acknowledging the Role of the Courts, Adhering to the Rule of Law, and Respecting the Separation of Powers and the three co-equal branches of government with distinct duties and responsibilities. These principles have been bedrocks of American democracy. The ABA does not shrink from standing in support of each of them.

Id.

66. See Csaky, *supra* note 12.

67. See Amicus with Dahlia Lithwick, *Long Live the King* (Feb. 22, 2025), <https://open.spotify.com/episode/3A8J0HpbQS7zRCiZigJIE4> (explaining the unitary executive theory as one that claims that all executive branch power is vested in the singular elected president, who has unrestricted authority to set policy goals as a result of their election); see also Michael Waldman, *The Extreme Legal Theory Behind Trump’s First Month in Office*, BRENNAN CTR. FOR JUST., (Feb. 19, 2025), <https://www.brennancenter.org/our-work/analysis-opinion/extreme-legal-theory-behind-trumps-first-month-office> [<https://perma.cc/SA7L-TXEF>]; Adam Liptak, *Aftershocks of Supreme Court’s Immunity Ruling Echo in New Trump Cases*, N.Y. TIMES (Mar. 10, 2025), <https://www.nytimes.com/2025/03/10/us/politics/supreme-courts-immunity-ruling-echo.html> [<https://perma.cc/3PPL-RM6A>] (noting that the Supreme Court’s decision in *Trump v. United States*, 603 U.S. 593 (2024), bolstered the idea that presidential powers were more expansive than most legal scholars and historians would have imagined, even though it was a case purportedly about only presidential immunity from criminal prosecution). For a detailed discussion of why the unitary executive theory embraced in *Trump v. United States* to support core immunity for removal of federal subordinate employees is not historically aligned to the founders’ understanding, see Christine K. Chabot, *Trump v. United States and the Half-Originalist Presidency*, 58 UNIV. MICH. J. L. REFORM 653, 657, 660, 673 (2025) (arguing that *Trump v. United States* expands presidential removal power beyond the scope of executing the law and the faithful execution of the law and in fact has placed the President above the law).

been brought challenging the more than seventy executive orders that were issued in the first month of the second Trump presidency.⁶⁸ Judge John Coughenour,⁶⁹ from the U.S. District Court for the Western District of Washington, was one of several judges who ordered a preliminary injunction to stop Executive Order 14160,⁷⁰ an order purportedly ending birthright citizenship. He did so with the following words of caution and observation from the bench:

It has become ever more apparent that to our president, the rule of law is but an impediment to his policy goals. The rule of law is, according to him, something to navigate around or simply ignore, whether that be for political or personal gain . . . Nevertheless, in this courtroom and under my watch, the rule of law is a bright beacon which I intend to follow.⁷¹

While numerous judges have made similar statements and issued similar injunctions in the first quarter of 2025, these decisions have been demonized and have come with a cost to the jurists.⁷² Some of the early rulings that have halted overreaching by the Trump administration have been met with calls for the impeachment of federal judges.⁷³ Some of the rulings have been disobeyed or partially ignored.⁷⁴

The refusal of government officials to comply with the orders of the judiciary shakes the bones of the constitutional skeleton. Conservative and liberal jurists dating back decades (and even centuries) have made clear that the rule of law requires compliance with even erroneous court orders—at least until the judicial process has played out.⁷⁵

68. See Nigel Chiwaya, et al., *Tracking Trump's Executive Orders*, NBC NEWS (Feb. 5, 2025), <https://www.nbcnews.com/data-graphics/tracking-trumps-executive-orders-rcna189571> [<https://perma.cc/9H2T-TEPC>].

69. Judge Coughenour was appointed to the federal bench by President Ronald Reagan in 1981. See Judge John C. Coughenour Biography, UNITED STATES COURTS, <https://www.wawd.uscourts.gov/judges/coughenour-bio> [<https://perma.cc/Z5LT-28HB>].

70. See Exec. Order No. 14160, 90 Fed. Reg. 8449 (Jan. 20, 2025).

71. Josh Gerstein, *Judge Slams Trump While Extending Block on Birthright Citizenship Order*, POLITICO (Feb. 6, 2025), <https://www.politico.com/news/2025/02/06/judge-slams-trump-birthright-citizenship-00202928> [<https://perma.cc/44UP-AHZW>]; see also Amicus with Dahlia Lithwick, *Trying to Undo a Coup, In the Courts*, at 51:13-53:20 (Feb. 8, 2025), <https://open.spotify.com/episode/1q1gLam4OvvSs7UQX20onx> (presenting audio of Judge Coughenour announcing his ruling from the bench).

72. See, e.g., Mattathias Schwartz & Abbie VanSickle, *Judges Fear for Their Safety Amid Wave of Threats*, N.Y. TIMES (Mar. 19, 2025), <https://www.nytimes.com/2025/03/19/us/trump-judges-threats.html?searchResultPosition=1> [<https://perma.cc/VJA8-L8KG>].

73. See Carl Hulse, *Musk and Republican Lawmakers Pressure Judges with Impeachment Threats*, N.Y. TIMES (Mar. 1, 2025), <https://www.nytimes.com/2025/03/01/us/politics/trump-musk-republicans-congress-judge-impeachment.html>.

74. Adam Liptak, *Defiance and Threats in Deportation Case Renew Fear of Constitutional Crisis*, N.Y. TIMES (March 19, 2025), <https://www.nytimes.com/2025/03/19/us/politics/trump-deportations-constitutional-crisis-impeachment.html?smid=nytcore-ios-share&referringSource=articleShare&sgrp=p&pvid=38762FAF-7F00-4D2A-90DB-A0C4E74CA263>.

75. *United States v. United Mine Workers of America*, 330 U.S. 258, 307–08 (1947) (Frankfurter, J., concurring) (quoting John Adams in the Massachusetts Declaration of Rights, “[a] government of laws and not of men” was the rejection in positive terms of rule by fiat, whether by the fiat of governmental or private power. Every act of government may be challenged by an appeal to law, as finally pronounced by this Court. Even this Court has the last say only for a time. Being composed of fallible men, it may err. But revision of its errors must be by orderly process of law.”).

As Justice Potter concluded in *Walker v. City of Birmingham*,⁷⁶

The rule of law that Alabama followed in this case reflects a belief that in the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics, or religion. This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law and carry their battle to the streets. One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom.⁷⁷

Walker v. Birmingham arose in response to a criminal contempt order resulting from defiance of an injunction issued against civil rights protestors.⁷⁸ Several leaders of the Civil Rights Movement sought to challenge the constitutionality of a parade ordinance and permit process upon which the injunction relied.⁷⁹ Against a vociferous dissent from four justices, who would have allowed the collateral First Amendment challenge to the criminal contempt finding, the majority in *Walker* held that the well-taken First Amendment challenge to the injunction should have been directly made to a court before the order was defied.⁸⁰ While the merits of that particular case may be debatable (and incorrect in terms of the factual findings with hindsight as a guide), the case well illustrates the general principle of adherence to the rule of law.

Even if no judge ends up impeached by a full-blown process in the House of Representatives and then a Senate trial, the threats to the judiciary by calls for removing judges who are fulfilling their official duties signals a move away from the checks and balances envisioned by our constitutional system.⁸¹ Numerous

76. *Walker v. Birmingham*, 388 U.S. 307 (1967).

77. *Id.* at 320–21.

78. *Id.* at 308–10.

79. *Id.* at 311.

80. *Id.* at 324–49 (Warren, J., Douglas, J., Fortas, J., Brennan, J., dissenting). The dissenting opinions of the four justices are worth reading. They assert that the injunction in *Walker* was simply a copy of the unlawful ordinance and not a considered judicial order. While acknowledging “the doctrine that a party subject to a temporary injunction issued by a court of competent jurisdiction with power to decide a dispute properly before it must normally challenge the injunction in the courts rather than by violating it,” the dissenting justices concluded that the facts of this particular case provided a justified exception, since the civil rights activists had attempted to secure a permit and had time constraints for their protest. *Id.* at 321. I tend to agree with the dissenters, but the basic principle of the majority opinion is important precedent.

81. In the wake of calls for impeaching judges, even the Chief Justice of the U.S. Supreme Court took the rare step of rebuking the President for comments he made about removing judges who ruled against the administration. See Adam Liptak, *Rebuking Trump, Roberts Calls Impeaching Judges Over Rulings Improper*, N.Y. TIMES (Mar. 18, 2025), <https://www.nytimes.com/2025/03/18/us/chief-justice-roberts-impeachment-trump.html> [https://perma.cc/4XCY-QU5F]. The Chief Justice was quoted as saying, “[f]or more than two centuries, . . . it has been established that impeachment is not an appropriate response to disagreement concerning a judicial decision. The normal appellate review process exists for that purpose.” *Id.* The statement was issued after Trump posted a tirade on a social media platform calling for the impeachment of a judge who ruled that his administration’s removal of certain immigrants needed to be halted. See Zach Schonfeld, *Roberts Issues Rare Public Pushback After Trump Calls for Judge’s Impeachment*, THE HILL (Mar. 18, 2025), <https://thehill.com/regulation/court-battles/5200768-john-roberts-trump-judge-impeachment/> [https://perma.cc/VWE6-GVV3].

commentators and scholars have noted that misinformation and disinformation have reduced the capacity of the electorate to critically assess the situation we find ourselves in and that the intentional campaign “to corrupt the moral-political environment” presents a danger to the rule of law.⁸² Lawyers are uniquely positioned to combat this danger. For the legal system to operate as the check it was intended to be, lawyers and judges must be free to perform their functions within the system without interference from other branches.⁸³

B. THE SPECIAL ROLE OF ELECTION AND GOVERNMENT LAWYERS TO PRESERVE DEMOCRATIC INSTITUTIONS AND RULE OF LAW NORMS

In addition to all lawyers’ and judges’ need to collectively fulfill their roles in upholding the justice system as an independent institution supporting the rule of law, election lawyers and public-sector lawyers are uniquely called upon to resist undermining the system of government.

Leading up to and in the wake of the 2020 election, lawyers representing Donald Trump became architects and defenders of a narrative surrounding the reliability of the 2020 presidential election.⁸⁴ They filed lawsuits that were based on unreliable facts or no facts at all. In supporting what came to be referred to as the “Big Lie,” lawyers abandoned their oaths to defend federal and state constitutions and undermined faith in the electoral system.⁸⁵ The cases brought by the team of Trump and Republican Party lawyers were dismissed in courts all over

82. See, e.g., Postema, *supra* note 8, at 17, 21–22. The evolution of AI, including the involvement of “deep fakes” and intentional misinformation campaigns in elections, obviously poses a significant threat to the functioning of democracies worldwide. A full discussion of the role of AI, misinformation, disinformation, and the absence of a shared set of common facts in most elections is beyond the scope of this paper, but the Center for Democracy and Technology (“CDT”) has issued a comprehensive report on the use of AI in elections across the world in 2024. CDT’s report recommends that companies and civic space actors work to create resilient policies focused on transparency about the use of AI, fact-checking, and directing users to official information, among other things. See ADAPTATION AND INNOVATION: THE CIVIC SPACE RESPONSE TO AI-INFUSED ELECTIONS 56–62 (Isabel Linzer, ed., Center for Democracy & Technology, 2025), <https://cdt.org/wp-content/uploads/2025/03/2025-02-25-Civic-Space-Response-to-AI-Infused-Elections-report.pdf> [<https://perma.cc/2GB8-AV7V>].

83. See THE FEDERALIST NO. 78 (Alexander Hamilton):

The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

See also THE FEDERALIST NO. 51 (James Madison) (“In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”).

84. See *Results of Lawsuits Regarding the 2020 Election*, CAMPAIGN LEGAL CTR. <https://campaignlegal.org/results-lawsuits-regarding-2020-elections> [<https://perma.cc/D9TW-G4CS>].

85. See Jefferson, *supra* note 42; Cummings, *supra* note 11, at 515–16; Godsoe et. al, *supra* note 39.

the country.⁸⁶ Some individual lawyers and law firms were sanctioned for bringing frivolous actions that did not meet the required standard of prefiling research and authentication.⁸⁷ Criminal charges were brought against lawyers who had conspired to overturn the results of certified state election processes.⁸⁸ In addition, several state bars took action to administer discipline, and in some cases disbarment, as a result of the failures by these lawyers to uphold their oaths.⁸⁹ At least one attorney, Jenna Lynn Ellis, stipulated to a suspension of her law license in the face of disciplinary charges and acknowledged wrongdoing in perpetuating the false narrative about a stolen election.⁹⁰

The special role that lawyers play when representing the government and when serving as counsel for campaigns in elections is underscored by the decisions that emerged from these “Big Lie” cases. While some decision-makers relied on general duties of attorneys, the application of these rules to lawyers working in the political arena is significant. In the John Eastman decision, the judge rejected Eastman’s First Amendment defense, stating that

86. See CAMPAIGN LEGAL CTR., *supra* note 84; *Major Pending Case Tracker*, ELECTION L. AT OHIO STATE, https://electioncases.osu.edu/case-tracker/?sortby=filing_date_desc&keywords=&status=all&state=all&topic=25 [<https://perma.cc/2HK6-86Z2>].

87. See, e.g., *King v. Whitmer*, 556 F. Supp. 3d 680, 689 (E.D. Mich. 2021), *rev’d in part*, 71 F.4th 511 (6th Cir. 2023) (sanctioning nine lawyers for bringing fraud claims after the 2020 election, stating that “this case was never about fraud—it was about undermining the People’s faith in our democracy and debasing the judicial process to do so.”) (emphasis omitted). Fed. R. Civ. P. 11, 28 U.S.C. §1927, and Model Rule of Professional Conduct 3.1 require prefiling research and truthful allegations in court filings. Judge Parker, in her sanctioning order, cited to these provisions and also referred all nine attorneys to the disciplinary authorities in the states where they held bar membership for further investigation. See *King*, 556 F. Supp. 3d at 735. The award of Rule 11 sanctions was mostly affirmed in *King v. Whitmer*, 71 F.4th 511, 529 (6th Cir. 2023).

88. *Georgia Trump 2020 Election Subversion Indictment*, DEMOCRACY DOCKET, <https://www.democracymocket.com/cases/georgia-former-president-donald-trump-indictment/> [<https://perma.cc/L7DX-MMFA>] (reporting on the indictment that charged 18 defendants including Rudy Giuliani, Sidney Powell, John Eastman, Kenneth Chesebro, Jeffrey Clark, and Jenna Ellis with violations of RICO and other criminal conspiracy statutes).

89. See *In re Matter of John Eastman*, Case No. SBC-23-O-30029-YDR (State Bar Ct. of Cal., Mar. 27, 2024); see also *State Bar Court Hearing Judge Recommends John Eastman’s Disbarment*, STATE BAR OF CALIFORNIA (Mar. 27, 2024), <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-court-hearing-judge-recommends-john-eastmans-disbarment> [<https://perma.cc/BB7S-5N32>]. The 128-page ruling methodically goes through a series of false statements that Professor Eastman made to courts, clients, and the public in the course of litigating cases and publicizing theories behind the “Big Lie.” The disbarment of John Eastman is currently being appealed, and his lawyer has argued that Eastman had a factual legal basis and a colorable legal theory to support the statements that he made about the 2020 election. See Edvard Petersson, *Former Trump Lawyer Appeals Disbarment Recommendation Over Role in 2020 Election*, COURTHOUSE NEWS SERV. (Mar. 19, 2025), <https://www.courthousenews.com/former-trump-lawyer-appeals-disbarment-recommendation-over-role-in-2020-election/> [<https://perma.cc/N7VN-RP3Z>]. The appeal has been taken under submission as of this writing. See also *In re Jeffrey Clark*, Bd. Dkt. No. 22-BD-039, (D.C. Ct. App., Bd. on Pro. Resp., Aug. 1, 2024), <https://www.dcbart.org/ServeFile/GetDisciplinaryActionFile?fileName=HCJeffreyBClark22BD039.pdf> [<https://perma.cc/N8Y6-XHRM>].

90. *People of the State of Colorado v. Jenna Lynn Ellis*, Case No., 24PDJ002, Stipulation to Discipline Pursuant to Colo. R. Civ. Pro. 242.19, (Colo., May 23, 2024), <https://www.coloradolegalregulation.com/wp-content/uploads/PDF/2402%20STIPULATION%20TO%20DISCIPLINE%20PURSUANT%20TO%20C.R.C.P.%20242.19.pdf> [<https://perma.cc/KQR7-SJM5>]. In her stipulation, Jenna Lynn Ellis acknowledged a felony conviction, criminal conduct, dishonesty, and a lack of candor in a nonadjudicative proceeding.

[a]t the same time, the First Amendment rights of attorneys are linked to the critical role that they perform within the judicial system. While these rights are fundamental, they must be calibrated to align with the unique role attorneys play in the administration of justice. As the Review Department has stated, “attorneys occupy a special status and perform an essential function in the administration of justice. Because attorneys are officers of the court with a special responsibility to protect the administration of justice, courts have recognized the need for the imposition of reasonable speech restrictions upon them.”⁹¹

The Appellate Division of the New York Supreme Court that stripped Rudy Giuliani of his license to practice law was even more express in underscoring the special role that attorneys have with respect to truth-telling in the context of democratic elections. In 2021, that court explained

[t]he hallmark of our democracy is predicated on free and fair elections. False statements intended to foment a loss of confidence in our elections and resulting loss of confidence in government generally damage the proper functioning of a free society. When those false statements are made by an attorney, it also erodes the public’s confidence in the integrity of attorneys admitted to our bar and damages the profession’s role as a crucial source of reliable information. It tarnishes the reputation of the entire legal profession and its mandate to act as a trusted and essential part of the machinery of justice.⁹²

The New York court recognized the influence that lawyers have in shaping the rules by which all citizens operate and the responsibility that comes with that role.⁹³

The “Big Lie” disciplinary actions were big news in the legal community and, unsurprisingly, these disciplinary actions drew commentary and discussion by academics from the professional responsibility ranks.⁹⁴ Also unsurprisingly, there has not been consensus on the propriety of the actions reached. Most of the discussion surrounding the propriety of sanctions on Trump’s lawyers in constructing and perpetuating the “Big Lie” has centered on the First Amendment and the question of whether lawyers have a right to speak falsehoods freely and publicly.⁹⁵

Some commentators, like Professor Knake Jefferson, recognize that “lawyers, by virtue of taking an oath to receive their law license, agree to be bound to a self-imposed duty of candor in the courtroom and the obligation not to pursue frivolous litigation.”⁹⁶ While Professor Knake Jefferson specifically focuses on

91. *In re John Eastman*, Case No. SBC-23-O-30029-YDR, slip op. at 76 (State Bar Ct. Cal. Mar. 27, 2024) (citations omitted).

92. *In re Giuliani*, 146 N.Y.S.3d 266, 283 (N.Y. App. Div. 1st Dep’t 2021).

93. *Id.*

94. See e.g., Jefferson, *supra* note 42, at 114; Bruce Green & Rebecca Roiphe, *Lawyers and the Lies They Tell*, 69 WASH. U. J.L. & POL’Y 37 (2022); Wendel, *supra* note 2.

95. See Jefferson, *supra* note 42; Green & Roiphe, *supra* note 94; Wendel, *supra* note 2.

96. Jefferson, *supra* note 42, at 123.

the lies told in litigation and in the public arena by lawyers in connection with the 2020 election, she suggests that a carve-out to First Amendment protections might be appropriate for any “lies that threaten democratic government more generally.”⁹⁷ In noting that courts are among the last places in our society where factual statements must be verified and supported by evidence, Professor Knake Jefferson suggests that the *Model Rules of Professional Conduct* ought to more specifically call out the duty of lawyers to tell the truth about elections, even if there might be contexts in which lawyers’ First Amendment protections should not be limited.⁹⁸ Ultimately, she calls for “[a] narrow ban on lawyer lies that undermine valid elections in the court of public opinion.”⁹⁹

In the academic debate about the limitations of First Amendment protections for lawyers, other commentators have minimized the special relationship that lawyers have with setting and upholding the rule of law through truthful communication about elections.¹⁰⁰ Specifically, Professors Bruce Green and Rebecca Roiphe have carved out a position that the ABA *Model Rules of Professional Conduct* should not prescribe discipline for lawyers who lie about politics either in their personal capacity or on behalf of a client.¹⁰¹ Even these scholars, however, acknowledge that the prospect of legal experts and professionals paving a path for disinformation and degradation of the truth is “deeply concerning and even [an] existential crisis for democracy.”¹⁰² Further, Professors Green and Roiphe acknowledge that lawyers’ in-court statements can be regulated and are exempted from the doctrine of unconstitutional conditions—which says that government benefits cannot be contingent on the giving up of rights—because when speaking in court lawyers are functioning as part of the government.¹⁰³ They explain,

[o]f course, First Amendment rights of lawyers vary depending on context because the nature of the professional role itself shifts. While acting on behalf of clients in the courtroom, lawyers behave, for the most part, like government agents responsible for the proper functioning of the judicial system and can be subject to greater regulation than most. But lawyers also engage in classic political speech, challenging state power on behalf of clients and in their own personal capacity, and in this regard are entitled to the same robust protection as private citizens.¹⁰⁴

Their ultimate conclusion is that lawyers’ speech should be regulated and limited more than that of other citizens only when they are performing public functions

97. *Id.* at 125.

98. *Id.* at 132–36.

99. *Id.* at 137.

100. *See, e.g.,* Green & Roiphe, *supra* note 94.

101. *Id.* at 37, 42. Professor Rebecca Roiphe was slated as a witness on behalf of John Eastman in the California proceeding, but her testimony was not permitted by the judge. *See In re Eastman*, No. SBC-23-O-30029-YDR, at 2 n.3 (State Bar Ct. Cal., Mar. 27, 2024).

102. Green & Roiphe, *supra* note 94, at 37–38.

103. *Id.* at 54.

104. *Id.*

related to the administration of justice.¹⁰⁵ They are justifiably concerned that limitations on lawyers' speech—even of false statements—will tamp down on lawyers' representation of unpopular causes and clients and may lead to a silencing of those advocating for change.¹⁰⁶ Unmoved by the idea that upholding the rule of law in a constitutional democracy could arguably be included in lawyers' duties to the administration of justice, Professors Green and Roiphe suggest that disciplining lawyers for telling even democracy-threatening political lies is inappropriate if nonlawyers would not be disciplined for the same speech.¹⁰⁷ As the *Model Rules of Professional Conduct* more generally do, these commentators subscribe to an unduly narrow definition of the role of lawyers when they conclude that lawyers' false speech can be restricted only when they are making statements in court on behalf of clients.¹⁰⁸ Such a limited definition of lawyers' role is not necessary, and as will be more fully explained below, it is certainly not what law school professional identity formation curriculum seeks to instill in law students today.¹⁰⁹

Questions of whether lawyers have a special responsibility to tell the truth and whether they should be disciplined for falsities of a political nature are related to, but not exactly commensurate with, the question of whether there is a duty for lawyers to promote and defend the rule of law. Professor W. Bradley Wendel recently considered the question of whether lawyers need better guardrails for maintaining their commitment to the rule of law. In his article, Professor Wendel explained that “[t]he rule of law . . . differs from other modes of governance by being an institutional process of guiding action, employing procedures for issuing and applying law that emphasize[s] regularity, transparency, and principled reason-giving.”¹¹⁰ While acknowledging that crafting an enforceable rule of professional conduct would be challenging, his piece focuses on the good lawyers of January 6 who upheld a commitment to the rule of law. He notes,

[t]he rule of law is not a concern only for judges or other legal officials, but is an ideal that depends for its realization on the willingness of lawyers to resist the arbitrary exercise of power, to demand reasoned explanations for the use of

105. *Id.* at 66–67.

106. *Id.* at 57–58.

107. *Id.* at 98–99.

108. *Id.* at 100–01.

109. See Mary Walsh Fitzpatrick & Rosemary Queenan, *Professional Identity Formation, Leadership and Exploration of Self*, 89 UMKC L. REV. 539, 539 (2021) (describing the research as showing that “professional identity formation requires the cultivation of a moral/personal code of ethics, self-awareness[,] and collaboration, among other competencies”). This article was part of a larger symposium on Professional Identity Formation and Its Pedagogy at the University of Missouri, Kansas City, in the spring of 2021. A number of the articles published in that symposium support a broad definition of professional identity formation that includes moral and personal codes of ethics.

110. Wendel, *supra* note 2, at 24 (emphasis omitted).

power, and to insist on following procedures, requiring evidence, and being open to contrary points of view.¹¹¹

When clients insist on taking positions that they are not entitled to as a matter of law, and would not be entitled to through a good faith extension or interpretation of the law, Professor Wendel suggests that lawyers must be willing to resign their positions to prevent an abuse of power.¹¹² We saw actions consistent with this principle taken by seven New York prosecutors and Department of Justice lawyers over the Trump administration's insistence that a case for corruption against New York Mayor Eric Adams be dismissed.¹¹³ Danielle Sassoon, the former United States Attorney for the Southern District of New York, grounded her objection to dismissing the Mayor Adams case on the oath that she took upon entering the office and "a sense of duty to contribute to the public good and uphold the rule of law, and a commitment to reasoned and thorough analysis" instilled in her by judicial mentors and by her own understanding of the ethics required of lawyers, particularly criminal prosecutors.¹¹⁴

The moral struggle of government lawyers in the face of policies that are extreme and dangerous to the public is not a new one. Considerable exploration on this topic emerged from the downfall of the Nazi regime and has continued.¹¹⁵ Recently, Professor David Luban explored and tested the moral theory advanced by Hannah Arendt of "desk perpetrators" in her post-World War II work.¹¹⁶ Arendt was unforgiving of those who stayed in government positions that enabled the work of corrupt governments and persuasively argued that they betrayed their moral obligations by claiming obedience to a dictator.¹¹⁷ Professor Luban

111. *Id.* at 37.

112. *Id.* at 36–37.

113. Hannah Rabinowitz, Kara Scannell & Evan Perez, *Seventh Prosecutor in Eric Adams Case Resigns and Calls Out Trump's Former Lawyer in Scathing Letter*, CNN POL. (Feb. 14, 2025), <https://edition.cnn.com/2025/02/14/politics/justice-department-eric-adams-case-new-york-southern-district/index.html> [<https://perma.cc/NR78-KLMR>]; see also Letter from Danielle Sassoon, U.S. Att'y., S.D.N.Y., to Pam Bondi, U.S. Att'y. General, U.S. Dep't Just. (Feb. 12, 2025), <https://static01.nyt.com/newsgraphics/documenttools/24535586a908999e/3801d435-full.pdf> [<https://perma.cc/998J-TLCU>]; Letter from Hagan Scotten, Assistant U.S. Att'y, S.D.N.Y., to Emil Bove, Judge, U.S. 3d Cir. (Feb. 12, 2025), <https://s3.documentcloud.org/documents/25536146/hagan-scotten-resignation-letter.pdf> [<https://perma.cc/P8BU-D2KA>]. Two senior lawyers in the public integrity section of the Department of Justice eventually signed the motion requesting dismissal to avoid the entire section being fired after seven colleagues had already resigned, and many more threatened to do so. See Hugo Lowell, *Under-pressure prosecutors ask to drop Eric Adams charges after seven resign*, THE GUARDIAN (Feb. 14, 2025), <https://www.theguardian.com/us-news/2025/feb/14/justice-department-officials-resign-eric-adams-charges> [<https://perma.cc/ZD9Q-BSSN>].

114. Letter from Danielle Sassoon, U.S. Att'y., S.D.N.Y., to Pam Bondi, U.S. Att'y. Gen., U.S. Dep't Just. (Feb. 12, 2025), <https://static01.nyt.com/newsgraphics/documenttools/24535586a908999e/3801d435-full.pdf> [<https://perma.cc/998J-TLCU>].

115. See generally Hannah Arendt, *Personal Responsibility Under Dictatorship*, in RESPONSIBILITY AND JUDGMENT 17 (Jerome Kohn ed., 2003); David Luban, *Complicity and Lesser Evils: A Tale of Two Lawyers*, 34 GEO. J. L. ETHICS 613 (2021).

116. Luban, *supra* note 115, at 615.

117. Arendt, *supra* note 115, at 46–48.

explained Arendt's theory that "obedience is support because by going about their daily routines, Germans . . . mutually normalized the abnormal."¹¹⁸ In his fascinating case studies of two government lawyers for the Third Reich, Professor Luban tests out Arendt's postulation that one can never morally remain in service of a dictator.¹¹⁹ He concludes that in some extraordinary circumstances "it's at least *possible* to stay on in the job without undergoing or contributing to moral collapse."¹²⁰ Those circumstances include having a job in which it is possible to do concrete good or stop concrete evil, where there is room to exercise resistance to the abhorrent policy being advanced by the party in power, and where there are allies or at least silent sympathizers around.¹²¹ Without these ingredients, Professor Luban concurs with Arendt that "obedience is support" and that government lawyers have a moral obligation not to participate in dictatorial regimes.¹²²

Real questions are daily emerging about whether the work of government lawyers in dropping prosecutions, resisting compliance with court orders, and enforcing executive orders that exceed the scope of presidential powers are violations of State Bar Professional Conduct Rules and, perhaps more importantly, violations of moral obligations. What appears clear, however, is that government lawyers and those involved with elections and the politics surrounding them will continue to be at the center of the attempts to deconstruct the current system of government and, as such, have heightened responsibilities to comport with codes of legal ethics, to follow professional standards, and to perform their work in ways that center reasoned decision-making.

C. THE HISTORICAL BACKDROP UPON WHICH THE ROLE OF LAWYERS SHOULD BE VIEWED AND THE LESSONS WE SHOULD HAVE LEARNED FROM THIS HISTORY

The generation of lawyers and judges who lived through or had parents who lived through World War II are acutely aware of the importance of the rule of law in promoting stability and peace within and among democratic nations. The work of the late Justice Richard D. Fybel from the California Fourth District Court of Appeal in detailing the roles of lawyers and judges in Nazi Germany is illustrative of the personal becoming political and represents how firsthand accounts of fascism informed the understanding of "the rule of law" for jurists and lawyers in the several generations that followed World War II.¹²³ Justice Fybel's account pointed out that German judges took an oath to follow Adolf Hitler, rather than

118. Luban, *supra* note 115, at 621.

119. *Id.* at 613.

120. *Id.* at 661.

121. *Id.* at 661–62.

122. *Id.* at 664. Professor Luban would expand his analysis to regimes other than dictatorships. *Id.*

123. Justice Richard D. Fybel (Ret.), *Judges, Lawyers, Legal Theorists, and the Law in Nazi Germany (1933–1938); Kristallnacht; And My Parents' Escapes from the Nazis*, 70 UCLA L. REV. DISCOURSE 2, 4 (2022).

the German Constitution, starting in August 1934.¹²⁴ German lawyers and legal theorists bought into and created the principles of National Socialism that enabled Hitler to rise to power and to prepare for the “ultimate solution—the elimination of the Jews.”¹²⁵ For Justice Fybel, his lifelong dedication to judicial independence and commitment to upholding the rule of law as articulated by federal and state constitutions was founded in his personal understanding that the misplaced allegiance to a person, political party, or political movement can lead to the destruction of societal norms and lives.¹²⁶

Professor Cynthia Fountaine has also chronicled the role of lawyers and judges in supporting and enabling the rise of the Nazi regime in Germany in the 1930s and through the end of World War II.¹²⁷ She has detailed how lawyers crafted the Nazi legal system, the judiciary’s handover of decision-making to Hitler, and the destruction of an independent judiciary in Germany through incremental steps taken from within the judiciary itself.¹²⁸ Chillingly, Professor Fountaine quotes Hitler’s statements showing disdain for lawyers and notes that his goal was to exert complete control over the legal system such that it could not protect citizens from governmental tyranny¹²⁹—a goal he accomplished.

The *Rules of Professional Conduct* support the need for lawyers to, at the very least, operate truthfully in their in-court interactions,¹³⁰ and the expectations that courts and state bar disciplinary authorities have for lawyers to uphold the rule of law have been made clear in numerous recent decisions.¹³¹ Lawyers will be instruments in either the maintenance or destruction of our legal system during this period of worldwide retreat from democratic systems and the exercise of the rule of law. Knowing the history of what lawyers did and did not do in the face of prior antidemocratic movements is important to understanding how to avoid similar results in our lifetimes. “Those who cannot remember the past are condemned to repeat it.”¹³² All lawyers must be historians.

III. THE ROLE OF LAWYER ORGANIZATIONS IN ENSURING THE LEGAL PROFESSION STANDS STRONG

Having established that a backsliding of democratic norms is occurring, that support for rule of law principles may wane, and that the legal system and

124. Fybel, *supra* note 123, at 8.

125. *Id.* at 11 (quoting HERLINDE PAUER-STUDER, JUSTIFYING INJUSTICE: LEGAL THEORY IN NAZI GERMANY 46, 151 (2020)).

126. *See id.* at 22–24.

127. Cynthia L. Fountaine, *Complicity in the Perversion of Justice: The Role of Lawyers in Eroding the Rule of Law in the Third Reich*, 10 ST. MARY’S J. ON LEGAL MALPRACTICE & ETHICS 198 (2020).

128. *Id.* at 198, 201, 205.

129. *Id.* at 198, 205.

130. MODEL RULES R. 3.1, 3.3.

131. *In re John Eastman*, Case No. SBC-23-O-30029-YDR, slip op. at 76 (State Bar Ct. Cal. Mar. 27, 2024); *In re Giuliani*, 146 N.Y.S.3d 266, 283 (N.Y. App. Div. 1st Dep’t 2021); *Lake v. Gates*, 130 F.4th 1054 (9th Cir. 2025).

132. GEORGE SANTAYANA, THE LIFE OF REASON, OR THE PHASES OF HUMAN PROGRESS, 92, 191–99 (1905).

individual lawyers and judges are instrumental in resisting these phenomena, the question becomes how to do so. And who should lead the resistance?

The ABA and state bar authorities have a role to play in ensuring that lawyers are not contributing to the backsliding of democracy.¹³³ Independent national legal organizations like the American Inns of Court,¹³⁴ the American Board of Trial Advocates (ABOTA),¹³⁵ and Lawyers Defending American Democracy,¹³⁶ and local civics programs spearheaded by lawyers like Operation Protect and Defend in Sacramento, California,¹³⁷ also have a critical role to play in educating attorneys and the public about the role of lawyers in a democratic society.

Professional associations can be supportive networks for lawyers who are trying to take brave positions, but their existence can also serve to maintain standards and hold on to shared principles like the rejection of tyranny. In his book *On Tyranny: Twenty Lessons from the Twentieth Century*, Professor Timothy Snyder includes a lesson that to combat tyranny is to “[r]emember professional ethics.”¹³⁸ He explains that if lawyers, doctors, and businessmen had maintained their professional norms in Nazi Germany, the “regime would have been much harder pressed to carry out the atrocities by which we remember it.”¹³⁹ Professor Snyder views the role of professions as being one in which ethics can be maintained even in the face of a government sliding into tyranny.

Professions can create forms of ethical conversation that are impossible between a lonely individual and a distant government. If members of professions think of themselves as groups with common interests, with norms and rules that oblige them at all times, then they can gain confidence and indeed a certain kind of power. Professional ethics must guide us precisely when we are told that the situation is an exception. Then there is no such thing as “just following orders.” If members of the professions confuse their specific ethics with the emotions of the moment, however, they can find themselves saying and doing things that they might previously have thought unimaginable.¹⁴⁰

133. Cummings, *supra* note 11.

134. The American Inns of Court, modeled on the pupillage inns of England, promotes professionalism, ethics, civility, and excellence in the legal community and brings together lawyers from all backgrounds and political parties to uphold the profession and pass along the lessons of civility in practice to the next generation of lawyers. AM. BD. OF TRIAL ADOCS., <https://www.innsofcourt.org/> [https://perma.cc/J764-Z4XX].

135. ABOTA has a civics education arm that provides programs at law schools, colleges, and high schools across the country. AM. BD. OF TRIAL ADOCS., <https://www.abota.org/> [https://perma.cc/QR39-8XJF].

136. LDAD is a nonpartisan and nonpolitical organization with a mission to “protect the rule of law and the fundamental right to vote, ensure our public officials act with integrity, and promote civil discourse in our communities.” LAWS. DEFENDING AM. DEMOCRACY, <https://ldad.org/democracy-commitment> [https://perma.cc/A5N8-5Q33].

137. OPERATION PROTECT & DEF., <https://www.opdcivics.org/> [https://perma.cc/8HG7-NA55].

138. TIMOTHY SNYDER, *ON TYRANNY: TWENTY LESSONS FROM THE TWENTIETH CENTURY* 38 (2017).

139. *Id.* at 40.

140. *Id.* at 40–41.

Lawyer organizations are vital in creating these ethical conversations. Our organizations should also encourage Congress to hold lawyers in public service to a standard that is consistent with their duties. Senator Adam Schiff repeatedly raised issues of lawyer ethics in the course of Senate Judiciary Committee hearings for attorney appointments in the early days of the Trump administration and has authored letters to lawyers operating in high levels of the government to remind them of ethical duties.¹⁴¹ While questioning Dean John Sauer, the nominee for U.S. Solicitor General, Senator Schiff probed whether Sauer (a former private criminal defense attorney for Donald Trump) would counsel the President that he had immunity from prosecution for ordering violent actions against political opponents unless the President were first impeached and convicted by the Senate.¹⁴² When Mr. Sauer refused to back away from the position that he had taken in court to the effect that the President would be immune from prosecution for ordering violence against political opponents unless first impeached, Senator Schiff stated, “[T]o me you cannot be a good lawyer if you use the law to subvert the law, if you use our system to undermine our system, and I’m deeply afraid that’s what you have done and that’s what you will do in this position.”¹⁴³ The ABA and State Bar Associations can assist elected officials like Senator Schiff by robustly vetting attorney nominees and providing balanced assessments of whether they have met their duties as officers of the court and trusted professionals.

The ABA has taken a strong stand already in calling on lawyers to uphold the rule of law in the face of executive orders and statements by the Trump administration that seemed to undermine it in the winter of 2025.¹⁴⁴ These actions are not without risk, as the ABA itself recognized in the statement issued on February 11, 2025:

141. Letter from Senate Judiciary Committee to Pamela Bondi, U.S. Att’y. Gen., U.S. Dep’t Just. and Emil Bove, Acting U.S. Deputy Att’y Gen., U.S. Dep’t Just. (Feb. 20, 2025), <https://www.judiciary.senate.gov/imo/media/doc/2025-02-20%20SJC%20Dems%20Letter%20to%20DOJ%20re%20Ethics.pdf> [https://perma.cc/X96E-UH2E].

142. Sen. Adam Schiff, *Schiff Dismantles Top Trump Attorney in Fiery Judiciary Committee Back-and-Forth*, YOUTUBE (Feb. 26, 2025), <https://www.youtube.com/watch?v=7kOHxeIWWDC> [https://perma.cc/7FMR-29WB].

143. *Id.* at 05:20. While the use of the law to change the law is manifestly consistent with ethical practice, I understand Senator Schiff’s comment to be one that draws a line between advocacy to alter a particular substantive or procedural law and active assault on the underlying structures of the legal and electoral systems.

144. *The ABA Rejects Efforts to Undermine the Courts and the Legal Profession*, A.B.A. (Mar. 3, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/03/aba-rejects-efforts-to-undermine-courts-and-legal-profession/> [https://perma.cc/PT5Y-ZMSH]; *ABA Condemns Remarks Questioning the Legitimacy of the Courts and Judicial Review*, A.B.A. (Feb. 11, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/aba-statement-re-remarks-questioning-judicial-review/> [https://perma.cc/7VMH-BGP4]. It should be noted that the ABA has historically been a very moderate force, and these position letters are not commonplace for the organization. See *American Bar Association releases final report of the ABA Task Force for American Democracy*, A.B.A. (Sep. 10, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/09/aba-releases-final-report-democracy-task-force/?login> [https://perma.cc/CG4T-Y9PJ] (discussing the ABA’s “bipartisan” support for the rule of law).

We recognize the potential risk to our profession, the ABA and our members, by speaking. But to stay silent is to suggest that these statements are acceptable or the new norm. They are not. And we will not be silent in the face of such words that are contrary to our constitutional system. They pose a clear and present challenge to our democracy and the separation of powers among the three independent branches. We will stand for the rule of law today as we have for nearly 150 years.¹⁴⁵

Shortly after this statement was issued, the U.S. Attorney General, Pamela Bondi, sent a letter to the ABA demanding that it repeal Standard 206 to the ABA Standards and Rules of Procedure for Approval of Law Schools to comply with the mandate of Executive Order 14173¹⁴⁶ and the *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*¹⁴⁷ case that was decided by the U.S. Supreme Court in 2023.¹⁴⁸ The letter from the Attorney General came with an express threat to the ABA in the final paragraph: “The Council’s status as the sole accrediting body of American law schools is a privilege, and mandatory diversity objectives are an abuse of that privilege, which is subject to revocation.”¹⁴⁹ The involvement of the executive branch in directing and threatening the organ of the legal profession that sets standards for lawyer professionalism and conduct is, in and of itself dangerous, and forebodes challenging times ahead for lawyer groups that wish to fortify the rule of law in the face of a government that is backsliding from democratic principles. While an expectation that the ABA, law firms, and other lawyers and law organizations will follow the rules as they currently exist is certainly permissible, the targeted threats to legal actors and organizations that might advocate for a different interpretation of precedent or of presidential authority is chilling.¹⁵⁰

145. *ABA Condemns Remarks Questioning the Legitimacy of the Courts and Judicial Review*, A.B.A. (Feb. 11, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/aba-statement-re-remarks-questioning-judicial-review/> [https://perma.cc/AC6N-YLMN].

146. Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025).

147. *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

148. Letter from Pamela Bondi, U.S. Att’y Gen., U.S. Dep’t Just., to David A. Brennan, Chairman, Council A.B.A. Section Legal Educ. & Admissions to Bar, at 2 (Feb. 28, 2025), <https://www.justice.gov/ag/media/1392081/dl?inline> [https://perma.cc/V3ZK-N3S6] (demanding that the Council of the ABA Section of Legal Education repeal Standard 206 without delay). The letter responded to an ABA announcement that the Council would suspend the standard and continue to review Standard 206. *See Council of Legal Education Continues Review of Standard 206*, A.B.A. (Feb. 25, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/02/council-of-legal-ed-continues-review-206/> [https://perma.cc/Z4UP-RNQB] (indicating that Standard 206 was being reviewed and enforcement of the current version would be suspended until Aug. 31, 2025, to allow for the Council of the ABA Section of Legal Education to consider changes that would continue to expand access to legal education without violating the existing law).

149. Letter from Pamela Bondi, *supra* note 148.

150. In addition to the letters to the ABA, law schools, and individual law firms, President Trump issued a direction to Attorney General Bondi and Secretary of Homeland Security Kristi Noem directing them to seek sanctions and discipline against lawyers who bring “frivolous, unreasonable or vexatious” lawsuits against the government. Memorandum on Preventing Abuses of the Legal System and the Federal Court. 2025 DAILY COMP. PRES. DOC. 387 (Mar. 22, 2025), <https://www.whitehouse.gov/presidential-actions/2025/03/preventing->

Additionally, since President Trump has issued executive orders against individual law firms, the role of lawyer organizations in assisting these firms to fight against the pressure to capitulate to demands from the executive branch is even more pronounced.¹⁵¹ Early in the spring of 2025, the Paul Weiss firm was reported to have entered into a settlement with the Trump administration to repeal an executive order that threatened its ability to represent its clients and maintain its practice of law.¹⁵² In the immediate aftermath of Paul Weiss' agreeing to take on \$40 million worth of work on pro bono causes that President Trump personally cares about and to alter other business practices, a number of lawyers voiced strong disappointment, but no reprimand from lawyer organizations was immediately issued.¹⁵³ The journalists reporting on the Paul Weiss agreement posed a crucial question for the legal community: "... What does it mean to be a lawyer if the administration can make demands on how a firm runs its business?"¹⁵⁴ The answer to this question has to be that interference by the executive branch in the cases that a firm takes or the business practices that it follows is wildly inconsistent with the role of lawyers in a free and democratic society. Other than obviously following all general laws of applicability, law firms should not be singled out for restrictions based on political animus or retribution.¹⁵⁵ In order for lawyers to do the work of resisting autocracy, the profession needs to band together to ensure that all lawyers understand their critical role in upholding norms that include free expression and due process. Nothing about the executive orders issued against U.S. law firms is consistent with either of these constitutional guarantees. Fortunately, federal courts have so far temporarily and in one case permanently

abuses-of-the-legal-system-and-the-federal-court/ [https://perma.cc/3FSC-Z4G2]. Professor Cummings has observed "that disabling law firms from representing interests that are opposed to the administration effectively disables the adversarial system and the rule of law—which is how democracy dies." David B. Wilkins & Scott L. Cummings, *Why American Lawyers Must Fight Democratic Backsliding*, HARV. L. SCH. CTR. ON THE LEGAL PRO.: THE PRACTICE (March/April 2025), <https://clp.law.harvard.edu/knowledge-hub/magazine/issues/lawyers-between-democracy-and-authoritarianism/why-american-lawyers-must-fight-democratic-backsliding/> [https://perma.cc/J64Z-7XLT].

151. See e.g. Executive Orders from Feb. and Mar. 2025, <https://www.whitehouse.gov/presidential-actions/> [https://perma.cc/GMV7-BV8X].

152. Danielle Kaye, Lauren Hirsch & Maureen Farrell, *Paul Weiss Deal with Trump Faces Backlash From Legal Profession*, N.Y. TIMES (Mar. 21, 2025), <https://www.nytimes.com/2025/03/21/business/paul-weiss-trump-reaction.html?smid=nytcore-ios-share&referringSource=articleShare&sgrp=p&pvid=A54BF36C-4D3D-4297-8631-EC999743DA83> [https://perma.cc/L7QM-3FA2].

153. *Id.*

154. *Id.*

155. The bill of attainder doctrine may be a defense to the orders issued by Trump that purport to punish specific law firms for cases they have undertaken in the past. See U.S. CONST. art. I, § 9, cl. 3. In *United States v. Lovett*, 328 U.S. 303, 315 (1946), the court explained the "proposition that legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are bills of attainder prohibited by the Constitution." That case and others finding that punishment can mean a prohibition on employment were not overruled by *Nixon v. Administrator of General Services*, 433 U.S. 425 (1977), which provided a three-part test for assessing whether a law constitutes a bill of attainder.

enjoined the executive orders directed against specific law firms.¹⁵⁶ Judge Beryl Howell, a U.S. District Court Judge in the District of Columbia, started her opinion with the same Shakespeare quote that opens this paper.¹⁵⁷ In her 102-page opinion finding that Executive Order 14230 violates the First, Fifth, and Sixth Amendments to the U.S. Constitution, Judge Howell underscored the role that an independent judiciary and an independent bar have in the fair and impartial administration of justice.¹⁵⁸ Following up on the court's opinion in *Perkins Coie*, the State Bar of California also issued a statement encouraging "California attorneys, consistent with their oath to uphold the United States and California constitutions, and to faithfully discharge their duties as attorneys, to speak out in support of the right to and availability of competent legal counsel to all and of the rule of law."¹⁵⁹

Before the specific legal challenges, the ABA did issue a statement of support for the legal profession, including the one law firm that had been named in an executive order before the statement issued on March 3, 2025.¹⁶⁰ More lawyer associations and state bars will need to step up to support lawyers taking brave stances and to discipline lawyers falling short of their obligations. With all states having adopted Model Rule of Professional Conduct 8.3 in some form, it may be incumbent on other lawyers to report government lawyers who have failed to fulfill their oaths.¹⁶¹ While the "snitch" rule (as Rule 8.3 is affectionately called by practicing lawyers) can certainly be used for nonaltruistic purposes, it may also be a tool for holding one another accountable in the service of maintaining the legal system.

156. *Perkins Coie L.L.P. v. U.S. Dep't of Justice*, 783 F.Supp.3d. 105 (D.D.C. 2025). See Ryan Lucas, *Federal Judge Strikes Down Trump Order Targeting Law Firm Perkins Coie*, NPR (May 2, 2025), <https://www.npr.org/2025/05/02/nx-s1-5385355/perkins-coie-trump-executive-order-law-firms> [<https://perma.cc/E2SQ-5L66>]. Amicus briefs were filed by other law firms, former judges, law professors, and lawyer organizations in support of Perkins Coie in this challenge. See also Carrie Johnson, *In Back-to-Back Rulings, Federal Judges Rule Against Trump Orders Targeting Law Firms*, NPR (Mar. 28, 2025), <https://www.npr.org/2025/03/28/g-s1-56890/law-firms-sue-trump> [<https://perma.cc/E2SQ-5L66>] (noting that Jenner & Block and WilmerHale both obtained temporary injunctions against executive orders directed at those firms in separate federal court actions).

157. *Perkins Coie L.L.P.*, 783 F.Supp.3d. at 119.

158. *Id.* at 119–121.

159. State Bar of Cal., *Statement on Recent Executive Actions Threatening the Availability of Legal Counsel and the Rule of Law* (May 10, 2025), <https://www.calbar.ca.gov/About-Us/News/News-Releases/statement-on-recent-executive-actions-threatening-the-availability-of-legal-counsel-and-the-rule-of-law> [<https://perma.cc/M4GT-SJGD>].

160. *The ABA Rejects Efforts to Undermine the Courts and the Legal Profession*, A.B.A. (Mar. 3, 2025), <https://www.americanbar.org/news/abanews/aba-news-archives/2025/03/aba-rejects-efforts-to-undermine-courts-and-legal-profession/> [<https://perma.cc/7CW9-GLG6>].

161. MODEL RULES R. 8.3. California was the one state that had not adopted a form of Rule 8.3, but it joined the rest of the nation in 2023. Wendy Patrick, *California Joins the Rest of the Nation in Adopting the 'Snitch Rule'*, DAILY J. (June 26, 2023), <https://dailyjournal.com/articles/373523-california-joins-the-rest-of-the-nation-in-adopting-the-snitch-rule> [<https://perma.cc/BT3D-VUGJ>].

IV. THE ROLE OF LAW SCHOOLS IN INCULCATING NEW LAWYERS TO DEFEND DEMOCRATIC NORMS

Law schools have a critical role to play in strengthening the legal profession's ability to stand up to autocracy and in supporting individual lawyers for the entire arc of their careers. In the face of an onslaught of actions taken by the Trump administration against universities, the legal profession, and individual lawyers, the AALS has already recognized that action by law schools collectively and individually is needed:

We write to underscore the seriousness of these actions, both individually and cumulatively, and why all lawyers and educators across the political and ideological spectrums should work together toward restoring our nation's commitments to fairness and good governance. While remaining mindful that each institution and its students, staff, faculty, administrators, and alumni have a range of political and ideological perspectives, we suggest several actions that should help to bolster the conditions in which law and education may continue to thrive.¹⁶²

The AALS letter went on to explain,

The independence of our universities and judiciary, and the ability of lawyers to fully represent their clients, are at the core of our democracy and have long been supported by all Americans, regardless of political party. Whether the policy ends are favored or not, the government must comply with the law. It is not a partisan matter to raise concerns that the methods by which the administration is threatening universities, the judiciary, and the legal profession are unlawful and unconstitutional.¹⁶³

Last summer, a group of over 100 law school deans wrote an open letter to acknowledge the important role of law schools "in sustaining a constitutional democracy" and to call upon law professors and lawyers to work to preserve the rule of law.¹⁶⁴ A more targeted letter was circulated in March 2025 that acknowledged that law schools have a special responsibility to the legal profession and condemned the executive orders directed at specific law firms based on the clients they represent.¹⁶⁵ Additionally, one law school dean has already stood up directly

162. *Standing Together in Support of Higher Education and the Legal Profession*, ASS'N OF AM. LAW SCHS. (Mar. 25, 2025), <https://www.aals.org/app/uploads/2025/03/AALS-Letter-on-Threats-to-Law-and-Legal-Education-.pdf> [<https://perma.cc/2T7J-LD2A>].

163. *Id.*

164. Kerry Abrams et al., *Letter from Deans of American Law Schools* (June 18, 2024), <https://www.americanbar.org/content/dam/aba/administrative/news/2024/deans-letter-061824.pdf> [<https://perma.cc/W837-YS3A>].

165. Nicholas W. Allard et al., *Letter from Deans of American Law Schools* (Mar. 26, 2025), https://www.jurist.org/news/wp-content/uploads/sites/4/2025/03/03.26.25_Deans-Letter-Final.pdf [<https://perma.cc/LAG3-DN89>]. It is worth noting that the March 2025 letter was much narrower in its scope than the June 2024 letter and secured only seventy-nine signatures, compared with over 100. This may suggest that law school deans at

to an attempt by the government to alter the content of his law school's curriculum.¹⁶⁶ Dean William Treanor of Georgetown University Law Center responded to a letter that "ask[ed] whether diversity, equity, and inclusion is part of the curriculum, and assert[ed] that [the U.S. Attorney's] office will not hire individuals from schools where [it] find[s] the curriculum 'unacceptable.'"¹⁶⁷ Dean Treanor rightly pushed back and explained to the interim U.S. Attorney that "[g]iven the First Amendment's protection of a university's freedom to determine its own curriculum and how to deliver it, the constitutional violation behind this threat is clear, as is the attack on the University's mission as a Jesuit and Catholic institution."¹⁶⁸ His response has been viewed as a model for other law schools that are receiving, or will receive, attempts to control curriculum and mission.

Additionally, the executive is not the only branch that has demonstrated a threat to the rule of law and academic freedom in recent months. On March 27, 2025, the House Committee on Education and Workforce sent a request to Northwestern University to produce records relating to the work, policies, and funding of the Bluhm Legal Clinic and specific documents relating to the budget of the Community Justice and Civil Rights Clinic and the contract and performance reviews of that clinic's director.¹⁶⁹ The Board of Directors of the Clinical Legal Education Association (CLEA) and the Executive Committee of the AALS published a letter on April 2, 2025, responding to the congressional subpoena; it concluded,

[i]n the face of these challenges to the fundamental principles our country is founded on, we reaffirm our commitment to uphold the rule of law. We stand in solidarity with Professor [Sheila] Bedi, Northwestern University's Bluhm Legal Clinic, and law students across the United States advocating on behalf of their clients, and we condemn this attack on higher education, academic freedom, and freedom of expression. At this moment, the collective strength of law schools and clinics is not merely our best defense— it is our obligation to the profession, our students, and our democracy.¹⁷⁰

The idea that a House Committee is actively threatening law schools and universities with a removal of federal funds based on the clients that are being

some schools are also being chilled by a desire to keep their schools out of the current administration's crosshairs.

166. Letter from William M. Treanor, Dean & Exec. Vice President, Georgetown Univ. L. Ctr., to Edward R. Martin, Jr., Interim U.S. Att'y, Dist. of Columbia (Mar. 6, 2025), <https://georgetown.app.box.com/s/hr3dgylnuacm23qqm1zv12s2jf00gt0> [<https://perma.cc/Y8BW-WQUB>].

167. *Id.*

168. *Id.*

169. Letter from House Comm. on Educ. & Workforce, U.S. House of Representatives, to Michael Schill, President, Nw. Univ., and Peter J. Barris, Chair, Nw. Univ. Bd. Trs. (Mar. 27, 2025) (on file with author).

170. *Joint Statement From CLEA and AALS Clinical Section on Congressional Attack on Academic Freedom*, CLINICAL LEGAL EDUC. ASS'N & CLINICAL SECTION ASS'N OF AM. LAW SCHS. (Apr. 2, 2025), <https://www.cleaweb.org/news-blog/joint-statement-from-clea-and-aals-clinical-section-on-congressional-attack-on-academic-freedom> [<https://perma.cc/SL4E-2QUL>].

represented by the legal clinics should be concerning to all law schools, regardless of the political leanings of the law school or the legal clinics that are being targeted.¹⁷¹

To prepare new lawyers for the world they will face, one in which government actors may try to deconstruct core principles upon which the United States was founded, professional responsibility and professional identity curricula should be retooled. More than ever, law students need to be armed with critical thinking skills and a foundation in the important protective role that lawyers play in society.¹⁷² To support existing lawyers, state bars should require courses on the role of lawyers in democracy as part of their minimum continuing legal education (MCLE) requirements, and law schools should step up to help provide the content for these MCLE courses. Additionally, to ensure that the legal profession will continue to hold strong, law schools must reach beyond law students and lawyers to ensure that the citizenry understands the role of the people in the democratic endeavor and the role of the legal system and courts in the rule of law.

A. PROFESSIONAL RESPONSIBILITY AND PROFESSIONAL IDENTITY CLASSES SHOULD FOCUS ON THE ROLE OF LAWYERS IN UPHOLDING THE RULE OF LAW

The most obvious place to include content on the role of lawyers is in courses that are focused on professional responsibility and professional identity formation. All ABA-accredited law schools are required to ensure that law students take at least a two-unit course on professional responsibility.¹⁷³ Additionally, at this point, many law schools have responded to Standard 303(b)(3) by including a course on professional identity formation in their first- or second-year required curriculum.¹⁷⁴

Standards 303(a)(1) and 303(b)(3) taken together seem to already mandate that law schools engage in the work that I am advocating here. The language of Standard 303(a)(1) states that a two-credit-hour course in professional responsibility should include “substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members.”¹⁷⁵ The

171. See Joshua Wilson & Amanda Hollis-Brusky, *Higher Law: Can Christian Conservatives Transform Law Through Legal Education?*, 52 LAW & SOC’Y REV. 835, 847 (2018) (pointing out that conservative law schools have public-interest partnerships and clinical opportunities for religious liberty litigation and pro-family policy).

172. Rachel Lopez, *Critical Curriculum Design: Teaching Law in an Age of Rising Authoritarianism*, 109 MINN. L. REV. HEADNOTES 81 (2025).

173. STANDARDS AND PROCS. FOR APPROVAL OF L. SCHS., Standard 303(a)(1) (A.B.A. 2025-2026).

174. *Professional Development Database*, THE HOLLORAN CTR. FOR ETHICAL LEADERSHIP IN THE PROS. AT UNIV. OF ST. THOMAS SCH. OF L. (Nov. 2023), <https://law.stthomas.edu/about/centers-institutes/holloran-center/professional-development-database/> [https://perma.cc/HK3U-TSSN] (reporting that 91 law schools have first-year required professional development initiatives).

175. STANDARDS AND PROCS. FOR APPROVAL OF L. SCHS., Standard 303(a)(1) (A.B.A. 2025-2026).

interpretations to Standard 303(b)(3) help to define what is entailed in professional identity as follows:

Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.¹⁷⁶

Importantly, through this interpretation, the mandate to offer substantial opportunities for development of a professional identity includes a recognition that lawyers have special obligations not just to clients, but also to society.¹⁷⁷ How robustly law schools have been engaging with this requirement is an open question. As a professor of doctrinal and skills classes, including professional responsibility, my own practice has been to engage with these themes more subtly than I think is required in this moment. Given the pushback that the ABA is receiving to Standard 206,¹⁷⁸ it seems likely that there will also be pressure from the U.S. Attorney General to repeal Standard 303(c)(3) requiring instruction in bias, cross-cultural competency, and racism.¹⁷⁹ The interpretations of Standard 303 already connect Standard 303(c)(3) to Standard 303(a)(1) by indicating that cross-cultural competency and elimination of bias are core professional values that students should be introduced to in the course of their law school education.¹⁸⁰ The letter dated February 28, 2025, but apparently delivered days later, from Attorney General Bondi to the Council of the ABA Section of Legal Education and Admission to the Bar can be read as attempting to chill the council from enforcing any standards that mention diversity, equity, or inclusion, broadly defined.¹⁸¹ In fact, the letter expressly states, “At a minimum, accreditation standards that require a ‘commitment to diversity’ encourage compliance through unlawful means. The Council’s status as the sole accrediting body of American law schools is a privilege, and mandatory diversity objectives are an abuse of that privilege, which is subject to revocation.”¹⁸² Against this threat, the ABA Standards

176. STANDARDS AND PROCS. FOR APPROVAL OF L. SCHS., Standard 303(a)(1), Interpretation 303-5 (A.B.A. 2025-2026).

177. STANDARDS AND PROCS. FOR APPROVAL OF L. SCHS., Interpretation 303-5 (A.B.A. 2025-2026).

178. Letter from Pamela Bondi, U.S. Att’y Gen., U.S. Dep’t Just., to David A. Brennen, Chair, Council A. B.A. Section Legal Educ. & Admissions to Bar (Feb. 28, 2025), <https://www.justice.gov/ag/media/1392081/dl?https://perma.cc/AHR6-ZH7V> [hereinafter Bondi Letter].

179. STANDARDS AND PROCS. FOR APPROVAL OF L. SCHS., Standard 303(c)(3) (A.B.A. 2025-2026).

180. STANDARDS AND PROCS. FOR APPROVAL OF L. SCHS., Interpretation 303-6 (A.B.A. 2025-2026).

181. Bondi Letter, *supra* note 178.

182. *Id.* at 3.

Committee considered amendment of Standard 303(c)(3) at its August 2025 meeting but decided to postpone a proposal for changes until the full Council could consider action.¹⁸³ Meanwhile, standards relating to diversity continue to be suspended until August 2026, and a special committee to review numerous standards has been formed.¹⁸⁴ If Standard 303(c) is repealed, it will be incumbent on law schools to continue to incorporate cultural competency and elimination of bias as core values necessary to a successful legal practice and a responsive legal profession in furtherance of Standard 303(a)(1) or any new Standard relating to professional identity.

Many professional identity formation and lawyering skills classes are already incorporating some components of ethical lawyering and the importance of upholding the rule of law. However, law schools should be expressly including these subjects in their institutional learning outcomes and ensuring that students are having multiple touchpoints with information about the importance of a legal system in a democratic society. In particular, students should be introduced and reintroduced to the idea of a self-regulated legal profession and the need for independence of the legal system to be maintained. The necessity of an independent and impartial judiciary may seem obvious, but in a moment when partisanship of judges is a focus of every news report about a ruling, this generation of law students may not understand the value of truly independent judicial officers. Finally, students should receive instruction in the three pillars of the rule of law that Professor Cummings identifies: fairness, independence, and authority, along with the four sectors of successful democracies identified by the World Justice Project: judiciary, elections, media, and civic engagement.¹⁸⁵

B. STATE BARS SHOULD REQUIRE A COURSE ON ROLE OF LAWYERS IN DEMOCRACY, AND MCLE AND LAW SCHOOLS SHOULD PROVIDE CONTENT FOR THESE COURSES

Most state bar licensing authorities or state supreme courts require continuing legal education training for attorneys who are licensed to practice in their jurisdictions.¹⁸⁶ Where continued training is mandatory, a variety of courses can be

183. *Timeline for In-Progress Revisions: ABA Standards and Rules of Procedure for Approval of Law Schools*, A.B.A. (Nov. 2025), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/timeline/standards-timeline.pdf [https://perma.cc/E592-V4LD].

184. Julianne Hill, *ABA Legal Ed Council Will Stand up New Committee Examining Accreditation Standards*, ABAJOURNAL, (Nov. 17, 2025), https://www.abajournal.com/web/article/legal-ed-council-stands-up-new-committee-to-examine-accreditation-standards#google_vignette [https://perma.cc/K62A-FXUY].

185. Cummings, *supra* note 11, at 528–29; WORLD JUSTICE PROJECT, *RULE OF LAW INDEX 13* (2023), <https://worldjusticeproject.org/rule-of-law-index/downloads/WJPIIndex2023.pdf> [https://perma.cc/T5VS-GEKZ].

186. *Minimum CLE Hours by State*, LORMAN, <https://www.lorman.com/Minimum-CLE-Hours-by-State> [https://perma.cc/9TG4-HXXD]. The ABA tracks all fifty states' requirements. *Mandatory CLE*, A.B.A., <https://www.americanbar.org/events-cle/mcle/> [https://perma.cc/3SJ9-T4B5]. Only four states do not have a mandatory CLE requirement: (1) Massachusetts, *Massachusetts CLE Requirements and Courses*, A.B.A., <https://www.americanbar.org/events-cle/mcle/jurisdiction/massachusetts/> [https://perma.cc/C5UC-UPN7], (2)

taken to satisfy these requirements.¹⁸⁷ Many states require some of the training to be in specific topics like legal ethics, DEI or elimination of bias, competence, mental health or substance abuse, technology or cybersecurity, and civility or professionalism.¹⁸⁸

State bars in partnership with law schools in their states should develop a required continuing legal education course focused on the role of the legal system in democracy and the function of individual lawyers in upholding the rule of law. Taking a page from the CCBE in Europe, part of this course should also explain why it is necessary for the legal profession to remain self-regulated and why robust regulation is critical to resisting capture of the judicial branch.¹⁸⁹

C. LAW SCHOOLS SHOULD PROVIDE INCREASED CIVIC EDUCATION TO THE COMMUNITIES IN WHICH THEY OPERATE

More broadly, institutions of higher education have a role to play in ensuring that knowledge remains a value that Americans embrace. Yale English Professor Meghan O'Rourke put it aptly when, in a piece for The New York Times responding to attempts to dismantle university funding, she observed, "What is really happening here is an attack on the American faith in knowledge as a value and a public good that has served us well."¹⁹⁰ In her prescient and doom-filled opinion piece, Professor O'Rourke traced the role that American universities

Maryland, *Maryland CLE Requirements and Courses*, A.B.A., <https://www.americanbar.org/events-cle/mcle/jurisdiction/maryland/> [https://perma.cc/8XGZ-CUSY], (3) Michigan, *Michigan CLE Requirements and Courses*, A.B.A., <https://www.americanbar.org/events-cle/mcle/jurisdiction/michigan/> [https://perma.cc/MA24-2PLX], and (4) South Dakota, *South Dakota CLE Requirements and Courses*, A.B.A., <https://www.americanbar.org/events-cle/mcle/jurisdiction/south-dakota/> [https://perma.cc/H7GU-GTJW]. Attorneys licensed in the District of Columbia also do not have an MCLE requirement. *Washington, D.C. CLE Requirements and Courses*, A.B.A., <https://www.americanbar.org/events-cle/mcle/jurisdiction/washington-dc/> [https://perma.cc/42GM-ZQMh].

187. California MCLE requirements mandate twenty-five hours of training over a three-year reporting cycle, and some of the hours must be participatory, rather than passive. *See, e.g., MCLE Requirements*, STATE BAR OF CAL. (Mar. 29, 2026), <https://www.calbar.ca.gov/legal-professionals/maintaining-compliance/mcle/mcle-requirements> [https://perma.cc/2YLH-8PA6]; *see also, New York CLE Requirements*, N.Y. STATE BAR ASS'N, <https://nysba.org/new-york-cle-requirements/?srsltid=AfmBOooOIBbcSbuurBprM2V-FPIupYvNRnpn6Gq8TKimXNUMUcKPbMjo> [https://perma.cc/WQL9-ZLSJ]. New York requires twenty-four hours of training over a two-year reporting cycle. *Id.*; *see also, How Many CLE Hours Are Required in a Two-Year Reporting Period?*, MCLE BOARD, [https://www.mcleboard.org/files/FAQs/Attorney_FAQs/GC_Requirements/How_many_CLE_hours_including_professional_responsibility_\(PR\)_are_required_in_a_two_year_reporting.aspx](https://www.mcleboard.org/files/FAQs/Attorney_FAQs/GC_Requirements/How_many_CLE_hours_including_professional_responsibility_(PR)_are_required_in_a_two_year_reporting.aspx) [https://perma.cc/L5YS-UNH5]. Illinois requires thirty hours of training in a two-year period. *Id.*; *see also, Arizona CLE Requirements and Courses*, A.B.A., <https://www.americanbar.org/events-cle/mcle/jurisdiction/arizona/> [https://perma.cc/NW5P-Z4XT]. Arizona requires fifteen hours, and the reporting period is yearly. *Id.*

188. *See, e.g., STATE BAR OF CAL., supra* note 187; N.Y. STATE BAR ASS'N, *supra* note 187; MCLE BOARD, *supra* note 187.

189. *See COUNCIL BARS AND L. SOC'YS EUR., INDEPENDENT LAWYERS, STRONGER DEMOCRACIES: UNDERSTANDING WHY SELF-REGULATION MATTERS* 3.

190. Meghan O'Rourke, *The End of the University as We Know It*, N.Y. TIMES (Mar. 16, 2025), <https://www.nytimes.com/2025/03/16/opinion/university-defunding-trump-rufo.html?smid=nytcore-ios-share&referringSource=articleShare&srp=p&pvid=375C5640-B1EF-4C98-A760-9AB72E758E4C> [https://perma.cc/MJ45-EU2F].

have played in promoting science, research, art, and exploration of thought, and then concluded that what we are witnessing in the early days of the second Trump administration is “an attack on the conditions that allow free thought to exist.”¹⁹¹ Because critical thinking and discernment of truth through science and fact-finding are the business of universities and of legal systems, both are essential to combating a rise of tyranny.¹⁹²

The idea that ultimately the education of the electorate is necessary to maintenance of democratic systems is not a new one. In the words of Henry Steele Commager in 1945,

[i]n the last analysis, then, it is the people who make constitutions work. The creation and maintenance of efficient government, the achievement of democratic government, the protection of liberty under government, is a responsibility of the people. Where people are ignorant or apathetic, where they distrust democracy and are frightened by liberty, constitutionalism will fail and tyranny will take its place. Where people are enlightened and alert, where they are inspired by faith in themselves and in democracy, where the spirit of liberty flourishes, constitutionalism will succeed. There is no way whereby people can avoid the ultimate responsibility for the kind of government they get.¹⁹³

Civic engagement programs are therefore now more important than ever for law schools to undertake. The AALS has also recognized the importance of law school involvement in civic education for years.¹⁹⁴ In the fall 2019 AALS newsletter, then AALS President Vicki C. Jackson recounted the types of programs law schools were already engaged in—including Street Law¹⁹⁵ and the Marshall-Brennan Constitutional Literacy Program¹⁹⁶—and encouraged law schools to do more.¹⁹⁷ In her concluding paragraph, she posed some questions and made some observations that are perhaps even more poignant in this moment than they were in 2019:

But could we in legal education be doing more? Is our society in urgent need of being reminded of, or learning, the histories that led to the creation of the institutions of representative democracy? the separation of powers? written rights protecting even those accused of heinous offenses? rights of equality

191. *Id.*

192. TIMOTHY SNYDER, ON TYRANNY: TWENTY LESSONS FROM THE TWENTIETH CENTURY, 65–71 (Tim Duggan Books 2017) (describing, under Lesson Ten “Believe in Truth,” that the renunciation of reality and the death of truth is necessary for the submission to tyranny).

193. Henry Steele Commager, *The Reconciliation of Liberty and Order*, 17 AUSTL. Q. 35, 38 (Sept. 1945).

194. See Letter from Ass’n Am. Law Schs., *supra* note 162; see also Vicki C. Jackson, *Newsletter Fall 2019: Law Schools and Civic Education*, ASS’N AM. LAW SCHS., <https://www.aals.org/about/publications/newsletters/aals-news-fall-2019/law-schools-and-civic-education/> [<https://perma.cc/www8-QKW8>].

195. *U.S. Law School Directory*, STREET LAW INC., <https://streetlaw.org/networks/us-law-school-directory/> [<https://perma.cc/5SYZ-D9E2>].

196. *Marshall-Brennan Constitutional Literacy Project*, AM. UNIV., <https://www.american.edu/wcl/impact/initiatives-programs/marshallbrennan/> [<https://perma.cc/JE8Q-SN8Q>].

197. Jackson, *supra* note 194.

and due process of law? independent courts? Are those histories, and those legal institutions, still valuable today? Or have the lessons of history and practice changed? However these questions are answered, law schools are good places for the inquiries—and for providing broader forms of civic engagement so that, in our representative democracy, more people have a better understanding of their rights, their governments, their choices, the stakes, and how to analyze them.¹⁹⁸

My answer to Professor Jackson's questions of whether we could do more and whether we are in urgent need of learning our history and the unique role that lawyers play in shaping government and society is a resounding yes. Partnerships with communities and the expansion of education broadly are the best remedies to autocratic rule. Some examples of the kinds of partnerships that law schools can engage in are found across the country. The nonprofit Street Law Inc. provides resources and training in civics and law-related education through partnerships with high schools.¹⁹⁹ According to the Street Law website, more than 200 law schools in the United States and worldwide have some form of Street Law program.²⁰⁰ The Marshall-Brennan Constitutional Literacy Project is a similar project that sends law students to teach high school students how to think critically about constitutional issues that impact their lives, in an effort to promote democratic engagement in the long run.²⁰¹ This project, started at American University,²⁰² has branched out to include programs at other law schools.²⁰³ At my own institution, McGeorge School of Law, the Justice Kennedy Learning Center is a civics education project with a space dedicated in the United States District for the Eastern District of California.²⁰⁴ The law school supplies staff and faculty to support the learning center, that hosts an annual educators seminar primarily aimed at high school civics teachers, provides programming and tours for youth groups including schools, Girl Scout troops, and other organizations, and offers presentations to the community as a whole, including a nonpartisan forum reviewing the statewide ballot measures and a Pro Se Litigant Help Day.²⁰⁵ The

198. *Id.*

199. *Approach*, STREET LAW INC., <https://streetlaw.org/our-work/approach/> [<https://perma.cc/FMP4-8EE8>].

200. STREET LAW INC., *supra* note 195. Note that many of the law schools on the list have student organizations rather than formalized courses or pro bono programs to deliver the street law content. *Id.*

201. AM. UNIV., *supra* note 196.

202. *Marshall-Brennan Constitutional Literacy Project: Our History and Mission*, AM. UNIV., <https://www.american.edu/wcl/impact/initiatives-programs/marshallbrennan/who-we-are/index.cfm> [<https://perma.cc/cc/36TX-9FSY>].

203. *Marshall-Brennan Constitutional Literacy Project: National & International Programs*, AM. UNIV., <https://www.american.edu/wcl/impact/initiatives-programs/marshallbrennan/programs.cfm> [<https://perma.cc/2KQV-BBCZ>]. Note that the international aspect of the program might be aspirational, as none of the schools listed as hosting the project are outside of the United States. *Id.*

204. *McGeorge School of Law: Justice Kennedy Learning Center*, UNIV. PAC., <https://www.pacific.edu/law/about-mcgeorge/justice-kennedy-learning-center> [<https://perma.cc/94EP-2H7E>].

205. *See generally id.* The newest addition to the Justice Kennedy Learning Center offerings is a project co-

Administrative Office of the United States Courts has also created content that is readily accessible to all teachers, parents, and community members who seek to help with civic education efforts.²⁰⁶ All of these examples of law school engagement are a good start, but more is evidently needed. Data from the Annenberg Public Policy Center in 2020 found that a majority of American adults did not have “a working knowledge of founding fundamentals that are pillars of democracy.”²⁰⁷ The 2024 survey published by the Annenberg Public Policy Center discovered that “A Majority of Americans Can’t Recall Most First Amendment Rights.”²⁰⁸

V. INTEGRATION OF RULE OF LAW TEACHINGS INTO EXISTING COURSES AND STANDARDS

Adjusting the emphasis of our teaching and integrating new courses and content to meet the needs of the legal profession are not new exercises for law professors. Law school today does not look like law school thirty or forty years ago, in part because the legal profession, accreditation organizations, and reformers from within the legal academic ranks demanded that law schools teach more experiential courses and assess our students’ mastery of the legal skills they would use in practice.²⁰⁹ The Carnegie Report called for an integrated approach to teaching doctrine and skills, as well as an improvement in the assessment methods that law schools were using for both individual courses and institutional learning outcomes.²¹⁰ The authors of the report recognized that law school instruction was

sponsored by the Supreme Court Historical Society for high school students titled *The Supreme Court and My Hometown*. See *id.*; see also SUP. CT. HIST. SOC’Y, <https://supremecourthistory.org/hometown-program-sacramento-ca/> [https://perma.cc/L496-P8WU].

206. *Online Tools Make Civics Accessible to Teachers, Parents, and Teens*, ADMIN. OFF. U. S. CTS. (Mar. 20, 2020), <https://www.uscourts.gov/data-news/judiciary-news/2020/03/25/online-tools-make-civics-accessible-teachers-parents-and-teens> [https://perma.cc/2MMS-ZXF7]; see also *Annenberg Civics Knowledge Survey*, ANNENBERG PUB. POL’Y CTR., <https://www.annenbergpublicpolicycenter.org/political-communication/civics-knowledge-survey/> [https://perma.cc/R3GD-TD5E].

207. ADMIN. OFF. U. S. CTS., *supra* note 206. These materials were created in response to the COVID-19 pandemic and in reaction to a survey by the Annenberg Public Policy Center that found that a majority of American adults did not have “a working knowledge of founding fundamentals that are pillars of democracy.” *Id.*

208. “A Majority of Americans Can’t Recall Most First Amendment Rights”, ANNENBERG PUB. POL’Y CTR (Sept. 12, 2024), <https://www.annenbergpublicpolicycenter.org/most-americans-cant-recall-most-first-amendment-rights/> [https://perma.cc/9HP9-QTA9]. Only 39% of those surveyed were able to name freedom of religion as a First Amendment right, and only 29% were able to name freedom of the press. *Id.* The right to assembly and the right to petition fared even worse, with 27% and 11% recalling those rights, respectively. *Id.* Only freedom of speech was identified as a First Amendment right by more than half of the survey participants, and even then, only 74% of those surveyed identified that right. *Id.*

209. William Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law*, CARNEGIE FOUND. FOR ADVANCEMENT OF TEACHING (2007), http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf [https://perma.cc/BH9Z-NG5A]; ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007); Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 88–95 (1994).

210. Sullivan et al., *supra* note 209, at 8–10.

critical to developing whole professionals, not just lawyers who could regurgitate doctrine. The report concluded with an appeal for law school reform, noting:

It is well worth the effort. The calling of legal educators is a high one—to prepare future professionals with enough understanding, skill and judgment to support the vast and complicated system of the law needed to sustain the United States as a free society worthy of its citizens' loyalty. That is, to uphold the vital values of freedom with equity and extend these values into situations as yet unknown but continuous with the best aspirations of our past.²¹¹

Contemporaneous to the Carnegie Report, Professor Roy Stuckey and others also published a comprehensive plan for reforming legal education, *Best Practices for Legal Education: A Vision and Road Map*.²¹² Both *Best Practices for Legal Education* and the *Carnegie Report* drew upon a 1992 report from an ABA Task Force on law schools and the profession (the MacCrate Report) that focused on law schools' responsibility to train students to enter the profession by teaching skills and values of the practice, not just doctrine.²¹³ Two years after the publication of the ABA Task Force's findings, the chair of the task force, Robert MacCrate, published an essay in the *Journal of Legal Education* providing a response to some critiques of the report, endorsing integration of skills and doctrinal experiences, and encouraging schools to innovate their curricula to support the continuum from law school to the profession based on their own unique missions and constituencies.²¹⁴ Not everyone was impressed with the MacCrate Report's contents. In particular, the report, the Carnegie Report, and *Best Practices* book that came after it, raised the issue of values instruction, but did not robustly explain which values of the legal profession should be covered in the curriculum and how to teach those values.²¹⁵

211. *Id.* at 11.

212. ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007).

213. AM. BAR ASS'N, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP* (1992).

214. Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 88–95 (1994). MacCrate's essay favorably referenced another article in the *Journal of Legal Education* by Nancy Schulz that argued that the delineation between skills and doctrinal teaching should be eliminated in exchange for an integrated curriculum that values practice and knowledge. See Nancy Schulz, *How Do Lawyers Really Think?* 42 J. LEGAL EDUC. 57 (1992).

215. Russell G. Pearce, *MacCrate's Missed Opportunity: The MacCrate Report's Failure to Advance Professional Values*, 23 PACE L. REV. 575 (2003). Professor Pearce's piece in 2003 paints a somewhat bleak picture of the state of legal ethics instruction at American law schools twenty years ago. His assessment is that "[t]he MacCrate Report offered the opportunity for a major rethinking of how to define and teach the fundamental values of the legal profession. By making values a distant second priority, and ducking the most significant challenges involved in defining and teaching values, the Report largely squandered this opportunity." *Id.* at 595. Nevertheless, he concludes by acknowledging that the MacCrate Report served as a conversation starter and that law schools should take the invitation to innovate through including the teaching of values in the first-year curriculum and then reinforcing that instruction in upper-division courses, clinics, and externships. *Id.* at 596–97.

Happily, after three decades of changing ABA standards, and a global pandemic that taught us all how to use online modalities for instruction, law schools are equipped with professors who have experience with integrating new methodologies and new subjects into their courses.²¹⁶ Law school associate deans know how to form committees and lead their faculties to consider how best to integrate new ABA standards into the curricular requirements of specific law schools. For some schools, integrating rule of law teaching may look like a stand-alone course that is required for all students.²¹⁷ For other schools, it may look like a unit in each of a few classes spread out over the first two years of instruction.²¹⁸ Because legal research and writing professors as a group are particularly adept teachers, and because they tend to have smaller class sizes due to the intensity of feedback required to properly teach these skills, legal research and writing (LRW) classes may be an optimal place to dig into the more thorny aspects of this content.²¹⁹ The creation of a legal writing problem that expressly addresses an issue relating to adherence to the rule of law and professional ethics is a useful vehicle for delivering this content, and it can easily substitute for an assignment that would already be in an LRW syllabus.²²⁰

The important thing about the inclusion of rule of law training is that it should be laser focused on instilling law students with a commitment to the rule of law—a core commitment that lawyers need in order to resist degradation of our legal system. In reviewing the D.C. Bar’s findings in the disciplinary case of Jeffrey Clark, Professor Wendel identified a commitment to the rule of law as including the components that were quoted in the introduction to this article, namely:

respecting regular procedures and chain of command; believing that facts and evidence matter; taking contrary evidence and points of view seriously; seeking reasonable interpretations of law on point; keeping straight the distinction between the interests of one’s client and what the client is entitled to as a

216. L. Danielle Tully, *The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 STAN. J.C.R. & C.L. 201 (2020) (demonstrating law schools’ response to changing standards for law school skills education).

217. Example One in the Appendix provides an example of a stand-alone course in the rule of law (albeit an elective course) being offered by a federal district judge at U.C. Davis, King Hall School of Law, and University of the Pacific, McGeorge School of Law.

218. Example Two in the Appendix provides some examples of readings that could be incorporated into existing required doctrinal classes to teach rule of law principles very expressly in those courses. *See generally*, Deborah Maranville, Ruth Anne Robbins, & Kristen Konrad Tiscione, *Faculty Status and Institutional Effectiveness*, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (Deborah Maranville, Lisa Radtke Bliss, Carolyn Wilkes Kaas & Antoinette Sedillo Lopez eds., 2015).

219. One cautionary word here—there is a pattern in legal academia of thinking that LRW classes and LRW faculty can be relied on to cover all the practical teaching required by the ABA and be responsible for all the assessment required by the standards. Overreliance and burnout of skills faculty is a real phenomenon. My suggestion to incorporate rule of law content into LRW classes is not intended to place a further burden on LRW faculty without the removal of some other responsibilities.

220. Example Three in the Appendix provides an outline of a possible LRW problem that could be assigned in a first- or second-year legal writing course.

matter of law, and being willing to resign one's position if necessary to prevent an abuse of power.²²¹

These are all principles that can be taught in civil procedure, various skills courses, including LRW and clinics, and professional responsibility and professional identity formation courses.

The role of professional responsibility and legal ethics professors cannot be understated. While integration across the curriculum is optimal, the Rules of Professional Responsibility and Ethics are at the core of the duty that individual lawyers have to the legal profession, and now more than ever, they should be enforced. Teaching law students, writing opinion pieces, speaking to civics organizations, and volunteering for bar organizations are all the responsibilities of lawyers who are also law professors.²²² As other legal commentators have observed:

It has never been clearer that legal ethics scholars have a significant role to play in society. Perhaps every generation has a moment in which they call on academics to speak up and preserve justice, but this decade has produced unique challenges. We firmly believe that ethical, engaged lawyers are essential in a free society, and the need for legal scholars to engage in public discourse could not be more urgent.²²³

One of the ways that law schools and law professors have responded to other moments of transformation has been through banding together and sharing resources.²²⁴ SALT has been hosting webinars focused on different aspects of the rule of law since the beginning of 2025. Through SALT, ALWD, CLEA, AALS, and other law professor organizations, action networks and resource sharing

221. Wendel, *supra* note 2.

222. As of this writing, there are several well-publicized letters from law professors calling for adherence to the rule of law. See, e.g., “We Believe We Are in a Constitutional Crisis”: Law Professors and Law Teachers Stand Against Administration’s Illegal and Unconstitutional Actions, AM. CONST. SOC’Y (Feb. 26, 2025), <https://www.acslaw.org/inbrief/we-believe-we-are-in-a-constitutional-crisis-law-professors-and-law-teachers-stand-against-administrations-illegal-and-unconstitutional-actions/> [https://perma.cc/3LUR-DZPY]; Berkley Law Faculty Members, *Berkley Law Faculty: The Rule of Law is Under Threat* (Apr. 8, 2025), <https://www.berkeleyside.org/2025/04/08/uc-berkeley-law-open-letter-rule-of-law> [https://perma.cc/GHW6-T4MV]; Bill Alford et al., *A Letter To Harvard Law School Students* (Mar. 29, 2025), <https://big.assets.huffingtonpost.com/athena/files/2025/03/31/67eadfdde4b0b5d66dd01975.pdf> [https://perma.cc/M6P2-Z7AP]; Afra Afsharipour et al., *A Letter to the UC Davis School of Law Community* (Apr. 4, 2025), <https://sites.google.com/view/communityletterucdavislaw/home> [https://perma.cc/NF92-ERJN].

223. Godsoe et. al, *supra* note 39, at 456–57.

224. Examples of noteworthy collaborations include the Holloran Center for Ethical Leadership. *Professional Development Database*, THE HOLLORAN CENTER FOR ETHICAL LEADERSHIP IN THE PROFESSIONS AT UNIV. OF ST. THOMAS SCH. OF LAW (Nov. 2023), <https://law.stthomas.edu/about/centers-institutes/holloran-center/professional-development-database/> [https://perma.cc/354A-E9XZ]. The Holloran Center has a Tools and Resources page that provides materials helpful to professors teaching professional identity formation courses. Other collaborative groups like the Association of Legal Writing Directors and the Legal Writing Institute offer regular conferences, a problem bank, and mentorship for faculty looking for resources or support. AALS subject matter groups also have useful listservs in which materials specific to those subjects can be shared. The civil procedure listserve and the election law listserve are both incredibly robust and useful sources of information.

should take place. It is far easier to engage in public discourse and to make changes to the curriculum when you have other voices joining with you. The ABA can also assist by making clear that the accreditation standards require training in the rule of law and that legal ethics must be robustly integrated into the curriculum. While making changes to the standards relating to faculty employment status, the ABA might also consider recognizing that law professors, along with the protections of academic freedom, have a duty and responsibility to educate the community as well as their own individual students. We are a privileged group. With the privilege should come responsibility to the profession and to the safeguarding of the legal system.

CONCLUSION

The U.S. news cycle provides daily examples of assaults on the rule of law as government officials, many of them lawyers, attempt to reorder constitutional structures and norms. Around the world, antidemocratic politics are also thriving. Law students will be lawyers in a few short years. They will take an oath to defend the constitutions of their countries and their states. It is incumbent on law schools to partner with legal professional organizations and civic groups to ensure that the judicial branch continues to function. Professors Godsoe, Smith, and Yaroshefsky asked “Can You be a Legal Ethics Scholar and Have Guts?” In this moment, it seems to me that every law professor and lawyer in the country is being called upon to act with bravery and responsibility. Not only do we need collective action to uphold the rule of law and preserve our legal system, but we need to teach the next generation of lawyers the value of a democratic system in which lawyers promote fairness, act within ethical bounds, and protect the rights of everyone.

APPENDIX

EXAMPLE ONE

Sample syllabus assignments from “Lawyers and the Rule of Law” class taught by Mary-Beth Moylan, University of the Pacific, McGeorge School of Law.²²⁵

ASSIGNMENTS

Class 1. The Rule of Law Defined and Explained: Why Care?

Class topic: How do political leaders, global organizations, scholars, and philosophers define the rule of law? What are its hallmarks and essential principles? Based on class readings and discussions, what is your definition of the rule of law? Why do we or should we care about the rule of law? Are there good reasons not to care, or to elevate a competing notion or doctrine?

Readings:

Aziz Z. Huq, *The Rule of Law: A Very Short Introduction*, (Oxford University Press 2024)

Gerald Postema, An “Almost Sacred Responsibility”: The Rule of Law in Times of Peril, 107 vol. 3 *Judicature* (2004), <https://judicature.duke.edu/articles/an-almost-sacred-responsibility-the-rule-of-law-in-times-of-peril/>

National Constitution Center—Introduction to the Rule of Law, https://constitutioncenter.org/media/files/LP_-_Rule_of_Law_-_High_School_Level.pdf

Holloran Center for Ethical Leadership Rule of Law Initiative, <https://law.stthomas.edu/about/centers-institutes/holloran-center/rule-of-law/index.html>

Class 2. Defending the Rule of Law in an age of Misinformation and Disinformation

Class topic: Should every lawyer understand his/her/their professional responsibilities to extend to defending and preserving the rule of law? If so, what does fulfilling those responsibilities look like? If not, why not? How can lawyers respond to media sources that are promulgating misinformation and disinformation? What is the difference between these two forms of information?

225. This syllabus was inspired by a course taught by retired judge Kimberly J. Mueller, United States District Court for the Eastern District of California, who taught the course at UC Davis School of Law and McGeorge School of Law in Spring 2025. Judge (Ret.) Mueller is now the director of the Bolch Judicial Institute at Duke University. Much of the structure and many of the class topic questions are attributed to Judge Mueller with thanks.

Readings:

Why Is Disinformation a National Security Threat? (Suzanne Spaulding, Center for Strategic & International Studies; short intro at Girl Security Website, 2:43)

Disinformation and Democracy (Suzanne Spaulding, Notre Dame Mendoza College of Business Speaker Series 2021)

Strategic communication and countering information manipulation (European Commission website, including short video “Protect Yourself from Misinformation”)

Safeguarding Democracy Against Disinformation | German Marshall Fund of the United States (Karen Kornbluh, Ellen Goodman & Eli Weiner, Mar. 24, 2020)

Class 3. Examples of Rule of Law Projects

Class topic: Students to survey the types of projects that might serve as inspiration for the final project called for by this class.

Readings:

Paul Horowitz, *The Coford Lecture: Honour, Oaths, and the Rule of Law*, XXXII Canadian Journal of Law & Jurisprudence 389 (2019)

Students to survey the types of projects that might serve as inspiration for the final project called for by this class:

The ‘Civics at Work’ Initiative, CSIS: <https://www.csis.org/programs/defending-democratic-institutions/civics/civics-work-initiative>

Talking Across Difference, UVA Karsh Institute of Democracy: <https://txd.karshinstitute.virginia.edu/>

Defending the Judiciary, Bolch Judicial Institute: <https://judicialstudies.duke.edu/defending-the-judiciary/>

Supreme Court and My Hometown, Supreme Court Historical Society Civics Resources: <https://supremecourthistory.org/supreme-court-civics-resources/supreme-court-and-my-hometown-application/>

Class 4. Constitutional Creation: America’s First and Second Foundings

Class topic: Among those who signed the Constitution, more than 20 were lawyers. How did they think about the issue of slavery in crafting and finalizing our original founding document, as lawyers? With the Civil War breaking out, the issue slavery coming to a head, President Lincoln famously asked, “Are all the laws but one to go unexecuted and the government itself go to pieces lest that one be violated?” Were his decisions consistent with the rule of

law? After the War ended, following Lincoln's death, the Union faced many questions about how to treat those who had led the Confederate forces, and those who had fought for and sided with the Confederacy. Did the Union's leaders make the right decisions, and if so why? If not, why not? What are the implications of the choices they made?

Readings:

The Slave Trade Clause, National Constitution Center, <https://constitutioncenter.org/the-constitution/articles/article-i/clauses/761>

Proclamation 104, Suspending the Writ of Habeas Corpus, <https://www.presidency.ucsb.edu/documents/proclamation-104-suspending-the-writ-habeas-corpus-throughout-the-united-states>

Bruce Ragsdale, *Ex parte Merryman and Debates on Civil Liberties During the Civil War*, Federal Judicial Center, Federal Judicial History Office (2007)

Dahlia Lithwick, Amicus Podcast, *One Amendment Explains it All*, December 13, 2025, <https://podcasts.apple.com/us/podcast/amicus-with-dahlia-lithwick-law-justice-and-the-courts/id928790786?i=1000741044552>

Sherrilyn Ifill, *Is it Too Late?*, Sherrilyn's Newsletter Substack, December 8, 2025 <https://sherrilyn.substack.com/p/is-it-too-late>

Class 5. Scandal and Congressional Response

Class topic: A hundred years after the Civil War ended, a different kind of constitutional crisis roiled the nation. President Nixon's actions to rig his re-election, exposed after he won by a landslide and then later lost a case before the Supreme Court, meant Congress had to respond. What did Congress do, with the advice of which lawyers? What options did Congress have?

Readings:

U.S. Senate: Select Committee on Presidential Campaign Activities, <https://www.senate.gov/about/powers-procedures/investigations/watergate.htm> (peruse Watergate materials)

Portraits in Oversight: The Watergate Hearings, Levin Center for Oversight and Democracy, <https://levin-center.org/the-watergate-hearings/> (Wayne State Law School)

Liz Tracey, *The Pardon of President Nixon: Annotated*, JSTOR Daily, Sept. 8, 2022, <https://daily.jstor.org/the-pardon-of-president-nixon-annotated/>

Class 6. The Nazi Regime: Constitutional "Reform" and the Judiciary

Class topic: What were Hitler's views about the German Constitution and the judiciary before he came to power? How did he navigate and shape the German legal landscape once he became Fuhrer? Did he have lawyers as close

advisors and if so what role did they play in informing his thoughts and actions? What would you have done if you were a practicing lawyer or judge at the time? After the Allies won the war, the trials at Nuremberg served as the forum for seeking justice for the victims of the war. President Truman appointed Supreme Court Justice Robert Jackson to serve as chief prosecutor for the United States. What are the implications of the Nuremberg trials, and the lessons learned?

Readings:

Justice Richard Fybel, *Judges, Lawyers, Legal Theorists, and the Law in Nazi Germany (1933-1938)*; *Kristallnacht*; and *My Parents' Escapes from the Nazis*, 70 UCLA L. Rev. Discourse 2 (2022) (pdf on Canvas)

National District Attorneys Association, *The Courage to Say "No": Martin Gauger and the Oath to Hitler*, <https://ndaajustice.medium.com/the-courage-to-say-no-martin-gauger-and-the-oath-to-hitler-9dfb430d377>

Opening Statement by Robert H. Jackson before the International Military Tribunal at Nuremberg (November 21, 1945), https://voicesofdemocracy.umd.edu/wp-content/uploads/2019/10/JACKSON_SPEECH-TEXT.pdf

Class 7. Dismantling of Apartheid Era Legal Structures, New South African Constitution

Class topic: How did the Afrikaner state maintain political power in South Africa despite the white population's minority status? What role did lawyers play in supporting and advancing and working to preserve white minority rule? How was the current South African Constitution crafted, and what role did lawyers play in its drafting and adoption? What allowed the transition to majority rule to be as peaceful as it was, contrary to all prior expectations that in the face of white minority intransigence, majority rule could be achieved only through significant bloodshed? South Africa's interim Government of National Unity, prior to elections paving the way for majority rule, famously created a Truth and Reconciliation Commission to address the violence and human rights abuses that characterized the apartheid era. The commission deliberately avoided the kinds of trials held at Nuremberg to hold Nazi leaders accountable. What are the implications of having the commission address grievances?

Readings:

Kieran McEvoy, *Lawyers, Conflict & Transition: South Africa* (Economic & Social Research Council 2016)

Constitution of the Republic of South Africa, 1996, <https://www.justice.gov.za/constitution/SACConstitution-web-eng.pdf> (skim)

Universal Declaration of Human Rights, UN Office of the High Commissioner, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (skim)

Nelson Mandela & Frederik Willem de Klerk, Fight for Human Rights, <https://www.nobelprize.org/student-learning-resources-the-fight-for-human-rights-mandela-klerk/>

Truth and Reconciliation Commission, *TRC Report's Summary and Guide to Contents*, <https://www.justice.gov.za/trc/report/index.htm>

Class 8. Disbarment as Risk of Overzealous Lawyering?

Class topic: In the wake of the 2020 elections, we have seen high-profile attorneys with seemingly impeccable credentials disciplined by their state bars and ultimately disbarred. More complaints have been filed in the last year. We will review the public disciplinary records related to two disbarments, discuss the state bars' handling of the matters, and consider the implications for other lawyers and the rule of law.

Readings:

In the Matter of John Eastman, Case No. SBC-23-O-30029 YDR, March 27, 2024

In the Matter of Rudolph W. Giuliani, Case No. 2021-00506, Supreme Court of the State of New York, Appellate Division, First Judicial Department, July 2, 2024

Class 9. Judicial Ethics

Class topic: Any consideration of lawyers and the rule of law in this era would be incomplete without a session on judicial ethics. Judges, of course, were once lawyers too and interact regularly with law students and lawyers. Judges are bound by judicial canons prescribing their code of conduct. We will review two aspects of judicial ethics—appropriate workplace conduct and the judiciary's own approaches to disciplining a judge, as well as ethics and the Supreme Court, the only court provided for by the Constitution. What are the implications of actual or perceived judicial ethical lapses for the judiciary, and for the rule of law as a whole?

Readings:

Code of Conduct for United States Judges, <https://www.uscourts.gov/administration-policies/judiciary-policies/ethics-policies/code-conduct-united-states-judges>

In re Complaint of Judicial Misconduct of Judge Kindred, Case No. 22-90121, May 23, 2024 (pdf on Canvas)

Code of Conduct for Justices of the Supreme Court of the United States, November 13, 2023 (pdf on Canvas)

Class 10. Community Organizing as Mode of Effecting Social Change

Class topic: How can political and social organizing effectuate change in public perceptions of the rule of law? What kinds of advocacy and change efforts are the most effective and what role to lawyers play in social movements?

Readings:

Sarah Stachowiak, *Pathways for Change: 10 Theories to Inform Advocacy and Policy Change Efforts*, Center for Evaluation Innovation, <https://evaluationinnovation.org/wp-content/uploads/2013/11/Pathways-for-Change.pdf>

Class 11. Applying Lessons Learned to Initial Conceptions, Possible Future Scenarios

Class topic: Review personal definitions of rule of law, starting with first draft and revised definitions prepared earlier in course. Discuss how the readings, class discussion, independent research and work in teams have affected students' understanding of the rule of law, and whether a society based on rule of law is necessarily a democracy.

Scenarios and practical exercises: Examples of what might you encounter in the future, during your legal careers. Class discussion exploring how each student would handle each scenario.

Class 12. Student Presentations on Paper Topics

Class 13. Student Presentations on Paper Topics

EXAMPLE TWO

Reading list to supplement various core courses with Rule of Law content. This is obviously a nonexhaustive list and offered only as a starting point. Ideally, law faculty from across the country can contribute materials drawn from across all law school subjects to the American Association of Law Schools Rule of Law Clearinghouse.²²⁶

Professional Responsibility

In re Giuliani, 146 N.Y.S.3d 266, 283 (N.Y. App. Div. 2021).

Cynthia Godsoe, Abbe Smith & Ellen Yaroshefsky, *Can You Be a Legal Ethics Scholar and Have Guts?*, 35 GEO. L. J. 429, 440–41 (2022).

American Bar Association, *The ABA rejects efforts to undermine the courts and the legal profession*, Mar. 3, 2025, <https://www.americanbar.org/news/>

226. *Rule of Law Clearinghouse*, ASS'N AM. L. SCHS., <https://www.aals.org/rule-of-law-clearinghouse/> [<https://perma.cc/9QJM-MWUQ>]. Currently, there are very few course syllabi posted by the clearinghouse, but my hope is that as the conversation continues, the number will climb.

abanews/aba-news-archives/2025/03/aba-rejects-efforts-to-undermine-courts-and-legal-profession/ (last visited Mar. 27, 2025).

Professional Identity Formation

Gerald J. Postema, *An “Almost Sacred Responsibility”: The Rule of Law in Times of Peril*, 107:3 JUDICATURE 41 (2024).

TIMOTHY SNYDER, ON TYRANNY: TWENTY LESSONS FROM THE TWENTIETH CENTURY, 40–41 (2017).

Amicus Podcast, A Lawyer’s Guide to Not Caving to the President, Apr. 12, 2025, <https://slate.com/podcasts/amicus/2025/04/the-supreme-court-says-bring-kilmar-abrego-garcia-home> (last visited Apr. 15, 2025).

Civil Procedure

Lake v. Gates, __ F.4th __, No. 23-16022 (9th Cir. Mar. 14, 2025) (upholding Rule 11 and 28 USC section 1927 sanctions on lawyers who brought meritless challenges to Arizona voting systems).

Abrego Garcia v. Noem, No. 25-1404, Fourth Circuit Court of Appeal (Apr. 17, 2025), Order of Circuit Judge Wilkinson joined by Circuit Judges King and Thacker.

U.S. v. United Mine Workers of America, 330 U.S. 258, 308-312 (1947) (Frankfurter, J., concurring).

Constitutional Law

Federalist Papers No. 47 and 51 (1787–1788).

Jamelle Bouie, Opinion, *Trump Has Gone from Unconstitutional to Anti-constitutional*, N.Y. TIMES, Mar. 19, 2025, <https://www.nytimes.com/2025/03/19/opinion/trump-musk-constitutional-unconstitutional.html?smid=nytcore-ios-share&referringSource=articleShare&sgrp=p&pvid=A5CB668E-E783-4356-A543-CCDA33066B6E> (last visited Mar. 28, 2025).

Henry Steele Commager, *The Reconciliation of Liberty and Order*, 17:3 THE AUSTRALIAN LAW QUARTERLY 35, 38 (Sept. 1945).

Jack Jackson, LAW WITHOUT FUTURE: ANTI-CONSTITUTIONAL POLITICS AND THE AMERICAN RIGHT (2019).

Perkins Coie L.L.P. v. U.S. Department of Justice, __ F.Supp.3d. __, Opinion of Judge Howell, Civil Action No. 25-716 (U.S. District Court for the District of Columbia May 2, 2025).

EXAMPLE THREE

Legal research and writing prompt for a first-year or second-year lawyering skills class, including a basic outline of the problem and a brief description of what the case file might include.

Problem:

A junior attorney who has been working for a federal agency for two years has a case that they have been working on for months when a new administration is sworn in. The case is not of an obviously political nature, and the complaint has just been filed, but no discovery has occurred. Immediately upon the new President's being sworn in, the head of the agency is terminated and an interim director of the agency is announced. The interim director orders the attorneys in the agency to halt any new filings until they are cleared through the new director and warns the agency attorneys that approaches in already filed cases may be reconsidered. The junior attorney is confident that the case they are working on is in the best interest of the public, and the case is based on verified facts that fairly state a claim for relief. Word comes down from the interim director through the supervising attorney that the new administration does not want to continue with the case unless it can be reassigned to a different judge. The junior attorney is instructed to file a motion to disqualify the judge who was randomly assigned to the case. If the motion is unsuccessful, the case will be dismissed. The junior attorney does not believe that they have a good-faith basis for moving to disqualify, but also believes that they have an obligation to follow instructions given by the interim director. When the junior attorney goes to their supervisor for guidance, the supervising attorney confides that they are in talks to move to a similar position in state government because they do not believe that the federal government will be engaging in ethical lawyering under this new administration. The senior attorney advises the junior attorney to quit if they can. The junior attorney has student loans to pay and no immediate alternative employment prospects. The junior attorney texts with a law school friend about the situation and goes into considerable detail about the situation with this friend, both in a text exchange and during a night out. Before deciding what to do, the junior attorney reaches out via email to a state bar ethics hotline for guidance.

Case File:

1. Memo from a senior attorney stating that, per the interim director, the case must be reassigned or the government will dismiss it;
2. Text exchange between junior attorney and law school friend in which information about the case and the order from the interim director are revealed;
3. Email correspondence between the junior attorney and a state bar representative outlining concerns raised by the direction to file a motion for disqualification;
4. Group text message to all attorneys in the agency from the interim director suggesting that interpretations about the meaning of the statute creating the

agency will be made by the President and that any regulation or court opinion that is contrary to the President's interpretation should be disregarded;

5. Executive Order supporting the position expressed in the text message.

Assignment:

Students should research the rules of professional conduct relating to candor to the court, duties to clients, competence, the special rules for government lawyers, and reporting of unethical conduct. Students should also research the standards for a motion to disqualify. Taking the role of a state bar ethics attorney, the students should draft an objective memo to the junior attorney providing guidance about what their ethical duties are and whether they can file a motion to disqualify the judge without violating their ethical responsibilities. Students should also identify any other ethical missteps that the junior attorney may have already made based on the facts presented.