2020 UPDATE TO

THE LEGAL PROFESSION: ETHICS IN CONTEMPORARY PRACTICE

Second Edition

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CHAPTER 2: THE AMERICAN LEGAL PROFESSION: AN OVERVIEW

On p. 41, add the following before Part E:

A recent study of U.S. law school enrollment trends, based on comprehensive data for the past decade, explored how the demographic composition of law students has changed since the Great Recession. Here are a few of the key findings:

- Law school enrollment has declined almost 25% from its peak in 2010. Although first-year enrollment increased by 8% from 2016 to 2017 (what some have called the “Trump bump”), there were no additional increases in 2018 or 2019.
- Over the past decade, male enrollment has declined by 33%, while female enrollment has declined by 13%. Male enrollment has decreased every year since 2010, while female enrollment decreased from 2010 to 2016 but has increased every year since then.
- From 2010 to 2019, the share of law school enrollment by Black students increased from 7.2% to 7.8%, and the Hispanic share grew from 9.2% to 12.7%.
- Black and Hispanic students are disproportionately enrolled in lower-ranked schools with lower bar passage and post-graduation employment rates.
- Over the past decade, Asian American and White law school enrollments have declined significantly. Law school enrollment by Asian Americans has declined more than the enrollment of any other racial or ethnic group.1

CHAPTER 3: THE LAWYER’S ROLE: THE AMORAL CONCEPTION AND ITS CRITICS

On p. 79, add the following before Notes on the Choice of Clients and Causes:

Harvey Weinstein. In January 2019, Ronald S. Sullivan, Jr., director of Harvard Law School’s Criminal Justice Institute, joined a team of lawyers representing Hollywood producer Harvey Weinstein, who had been charged with rape and sexual assault. Sullivan’s decision to represent Weinstein led to student protests and calls for him to resign from his position as the first black dean of one of Harvard’s undergraduate residential colleges. Some students argued that Sullivan’s representation of Weinstein jeopardized his ability to serve as an effective residential dean with responsibility for overseeing a comfortable social climate at the college. Sullivan said of his decision to represent Weinstein, “Lawyers are not an extension of their client. Lawyers do law work, not the work of ideology. When I’m in my lawyer capacity, representing a client, even one publicly vilified, it doesn’t mean I’m supporting anything my client may have done.”2 Many of Sullivan’s colleagues defended him. One wrote that those calling for Sullivan’s resignation or dismissal as a faculty dean solely because he is serving as Harvey Weinstein’s lawyer in a rape prosecution are displaying an array of disturbingly widespread tendencies . . . [including]

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impatience with drawing essential distinctions such as that between a lawyer and his client.” A journalist criticized this line of argument, writing:

Sullivan isn’t a public defender who’s simply taking the clients assigned to him. He’s not even a full-time criminal defense lawyer who just takes whichever clients happen to come through his door. . . . While it’s obviously true that all criminal defendants have a right to an attorney, it’s equally obvious that criminal defendants don’t have a particular right to Ronald Sullivan’s services. It would be genuinely outrageous to condemn a public defender for catching some heinous clients in the course of pursuing an honorable vocation. But as Sullivan is obviously picking and choosing his clients – and, in Weinstein’s case, getting well paid for his time -- it doesn’t seem unreasonable to draw some inferences based on his choices.

In May 2019, Harvard announced that Sullivan would no longer serve as a faculty dean of the residential college. Sullivan thereafter withdrew from Weinstein’s defense team.

Setting aside whether it was appropriate for Harvard not to allow Sullivan to continue to serve as residential dean, which side do you think has the better of the argument about whether Sullivan’s willingness to represent Weinstein supports some legitimate “inferences”? If you think that some inferences based on his choices might be reasonable, what might such inferences be? Could one reasonably infer that his representation of Weinstein reveals something about his attitudes regarding sexual assault, the #MeToo movement, the #MeToo backlash, something else, or none of the above?

*Insert on p. 79, before Notes on the Choice of Clients and Causes:*

**ExxonMobil.** In January 2020, #DropExxon organizers asked law students to pledge not to interview with or work for Paul, Weiss, Rifkind, Wharton & Garrison until the law firm agreed to stop representing ExxonMobil. The protesters said that Paul Weiss cultivates a reputation for doing impressive amounts of pro bono work and attracting public-spirited lawyers but that its defense of ExxonMobil in a series of cases about the oil company’s role in climate change made it complicit in the destruction of the planet. “As future lawyers, we have a choice,” the pledge reads: “Will we commit ourselves to enabling corporations to continue putting human civilization at risk of climate catastrophe? Or will we dedicate our careers to making a positive impact in our communities and helping build a more just and sustainable future?” Paul Weiss’s chairman responded, “We are proud of the outstanding work we do for a wide range of commercial and pro bono clients in their most challenging and high-profile matters, including our recent defense of ExxonMobil in a securities fraud case in which the court found, after trial, that plaintiff’s claims were entirely without merit. Paul, Weiss is committed to . . . the principle that we represent our clients and safeguard the rule of law zealously and to the best of our abilities.”

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3 Id. (quoting Harvard Law Professor Randall Kennedy’s column in *The Chronicle of Higher Education*).


Also on p. 79, note 1 should now read:

1. **What Would You Do?** Would you have been willing to represent Bernie Madoff in his fraud prosecution, Phillip Morris in tobacco cases, John Demjanjuk in connection with charges that he was an accessory to murder of many thousands, the House of Representatives in the DOMA case, an authoritarian-kleptocratic regime in its efforts to improve its political image in the U.S., Harvey Weinstein in his trial for rape and sexual assault, or ExxonMobil in litigation about its role in climate change?

**CHAPTER 4: DIVERSITY OF THE PROFESSION**

On p. 103, the last paragraph before the notes should include these final sentences: In Formal Opinion 493 (July 15, 2020), the ABA explained that Rule 8.4(g) prohibits conduct that might not violate anti-discrimination law, such as workplace harassment that is not sufficiently severe or pervasive to violate Title VII. However, the Formal Opinion also cautioned: “The Rule does not prevent a lawyer from freely expressing opinions and ideas . . . . The fact that others may personally disagree with or be offended by a lawyer’s expression does not establish a violation.” So far, only a few states have adopted Model Rule 8.4(g) or substantially similar language, and some have considered and rejected it. However, about half the states already included an anti-discrimination provision in their rules before the ABA adopted 8.4(g).

**CHAPTER 7: PROTECTIONS AGAINST LAWYER OVERREACHING**

On p. 155, insert this footnote after the penultimate sentence in the first paragraph:

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On p. 168, after the first carryover sentence at the top of the page, insert the following:

In Formal Opinion 492 (June 9, 2020), the ABA explained that “significantly harmful” information could include views on various settlement issues including price and timing; the prospective client’s strategic thinking; knowledge about a client’s settlement position; sensitive or personal information in a divorce case; and possible terms and structure of proposed bid by one corporation to acquire another. However, such a conflict is not necessarily imputed to other lawyers in the same firm; . . .

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7 An example of a situation potentially involving a conflict between the duty of loyalty to the client and the personal interests of the lawyer arose in connection with the controversy over Michael Cohen’s secret taping of his conversations with his client, then-presidential-nominee Donald Trump. Cohen’s lawyer said that Cohen taped conversations with clients in lieu of taking notes, but Trump complained in a tweet that taping was an act of disloyalty: “What kind of lawyer would tape a client? So sad!” See Deanna Paul, *Michael Cohen Secretly Recorded Trump. Does that Make Him a Bad Lawyer?*, WASH. POST, July 26, 2018. For an article examining whether it is ever ethically permissible to secretly record a conversation with a client, see John Bliss, *The Legal Ethics of Secret Client Recordings*, 33 GEO. J. LEGAL ETHICS 55 (2020).
CHAPTER 9: EXCEPTIONS TO CONFIDENTIALITY AND TO THE ATTORNEY-CLIENT PRIVILEGE

On p. 198, following the second paragraph, add the following:

The Covid-19 pandemic of 2020 has prompted many employers to permit and encourage lawyers to work remotely from home. But lawyers’ reliance on digital technology to facilitate remote work has created a host of ethical challenges, including with respect to the duty to safeguard clients’ confidential information. Home computers often rely on internet security that is inferior to the protections incorporated into professional telecommunications systems. Increased reliance on videoconferencing tools for meetings presents similar dangers relating to data security and confidentiality.

On p. 202, note 1 should read as follows:

1. The History of and Variations on the Death or Injury Exception to Confidentiality. At the time of Spaulding, the ethics rules of Minnesota, like those of most states, did not allow an exception for lawyers to reveal confidential information to prevent death or substantial bodily injury. The Model Rules first recognized such an exception in 1983, but a few states still do not have exceptions as broad as Model Rule 1.6(b)(1). For example, California allows disclosure of confidential information only “to the extent that the lawyer reasonably believes the disclosure is necessary to prevent a criminal act that the lawyer reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.” Calif. Rule of Professional Conduct 1.6(b). Moreover, California also requires that before revealing the confidential information the lawyer “shall, if reasonable under the circumstances” both “make a good faith effort” to persuade the client not to commit or continue the crime and inform the client that the lawyer will reveal the confidential information. Calif. R. Prof. Conduct 1.6(c). Would a lawyer confronted with the situation of Spaulding v. Zimmerman in California be permitted to disclose to David that he was suffering from an aortic aneurysm?

CHAPTER 11: CONCURRENT CONFLICTS

On p. 246, insert this paragraph before the one on “‘Consentable’ Conflicts”:

Lawyers’ Own Interests. This chapter focuses primarily on how lawyers should manage conflicts between two or more current clients. But keep in mind (as discussed in Chapter 7) that a concurrent conflict of interest also exists if “there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer.” Model Rule 1.7(a)(2). This rule was relevant to a controversy that arose in 2018, when the public learned that Michael Cohen had routinely and secretly taped his telephone conversations with his then-client, Donald Trump.8 (We consider the circumstances surrounding the release of the tapes in Chapter 15, Problem 15-8.) If Cohen was taping the phone calls because he feared that Trump would later lie about their conversations and implicate Cohen in wrongdoing, would that constitute a “significant risk” that Cohen’s representation of Trump would be “materially limited” by his own interests? Should a lawyer who mistrusts a client in such circumstances be expected to rely on

8 See Bernie Berk, Was Michael Cohen’s Secret Taping of His Then-Client Donald Trump Improper?, THE FACULTY LOUNGE, (July 26, 2018).
alternative measures to protect himself, such as writing memos to the file or seeking the client’s consent to taping.\(^9\)

**CHAPTER 14: CRIMINAL DEFENSE PRACTICE**

*On pp. 319-320 at the end of the carryover paragraph discussing the crisis in Louisiana’s indigent criminal defense system, add the following:*

A recent study of the situation in Louisiana revealed the crisis continues. An article in the *New York Times* reported that public defender offices are so short-staffed that lawyers must handle the caseload that ordinarily would be full-time work for five lawyers. Richard A. Oppel, Jr. & Jugal K. Patel, *One Lawyer, 194 Felony Cases, and No Time*, N.Y. TIMES, Jan. 31, 2019. The article built on study conducted under the auspices of the ABA finding that as of 2017, the state had enough indigent criminal defense lawyers to handle only 20 percent of the pending cases. AMERICAN BAR ASSOCIATION, THE LOUISIANA PROJECT: A STUDY OF THE LOUISIANA DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS (February 2017), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_s_claid_louisiana_project_report.pdf.

*On p. 347, the first line of the second paragraph quotes ABA Standard 4-7.6, not 4-77.*

**CHAPTER 15: CRIMINAL PROSECUTION**

*On page 379, add this paragraph immediately before the paragraph that begins “Particular controversy surrounds...”:

In 2019, the ABA issued a new formal opinion on the duties of prosecutors while negotiating plea bargains for misdemeanor offenses. It responds to empirical evidence indicating that prosecutors have enormous leverage at this preliminary stage and that many accused know little about the legal system, are willing to accept almost any plea to exit the criminal process, and often do so without consulting a lawyer and without fully understanding the consequences. ABA Formal Opinion 486 reminds prosecutors of their duties to ensure: (i) that the accused is advised of the procedure for obtaining counsel; and (ii) that the nature and timing of prosecution does not interfere with this procedure.

*On p. 391, insert the following paragraph after the first full paragraph, before section 3:

The difficult issues in the politics of prosecuting alleged government corruption extend beyond disclosure violations, as in the Stevens case, or the choice of which officials to prosecute, as in the Siegelman case. A number of incidents during the Trump Administration have sparked debate about the extent to which the U.S. Department of Justice should be independent from the White House. One was the criminal prosecution of Michael Flynn, who briefly served as national*

\(^9\) For a discussion of this issue and other aspects of the ethics of lawyers secretly taping their conversations with clients, see John Bliss, *The Legal Ethics of Secret Client Recordings*, 32 GEO. J. LEGAL ETHICS __ (forthcoming 2019).
security advisor to President Trump and later pleaded guilty to lying to the FBI during a counterintelligence investigation of Russian interference with the 2016 investigation and the Trump campaign’s involvement in it. President Trump maintained that the investigation was politically motivated and urged the Attorney General to dismiss cases against Flynn and another Trump friend, Roger Stone, who was convicted of obstructing the investigation. Political appointees at DOJ, overruling decisions of career prosecutors, dismissed the case against Flynn after he had pleaded guilty and recommended leniency for Stone (whose prison sentence for 7 felonies Trump later commuted). The career prosecutors in the Flynn and Stone cases withdrew from the cases and some resigned from DOJ altogether. Thousands of former DOJ lawyers signed letters criticizing Attorney General William Barr for undermining the rule of law and compromising prosecutorial independence. 10 To reconcile the desire for prosecutorial independence with the fact that the Attorney General is a presidential appointee, in the wake of the Attorney General’s involvement in the Nixon Administration’s Watergate scandal, Congress enacted a 1978 statute providing for an independent counsel chosen by a three-judge panel to handle investigations of senior executive officials. Congress let the statute lapse in 1999 because some believed some independent counsels launched too many investigations.

CHAPTER 19: COUNSELING

On p. 481, insert the following at the end of the carryover paragraph, just before Section C: In Formal Opinion 491 (Apr. 29, 2020), the ABA spelled out that Rule 1.2(d), along with Rule 1.13 and other Rules, impose a duty to inquire on lawyers in order that they avoid assisting clients engage in fraudulent or criminal activity. The duty applies wherever “facts known to the lawyer establish a high probability” that a client or prospective client seeks to use the lawyer’s services to commit a fraud or a crime. And, if the client or prospective client refuses to provide information necessary to assess the legality of the proposed conduct or transaction, the lawyer must decline the representation or withdraw.

CHAPTER 20: IN-HOUSE COUNSEL

On p. 538, add the following sentence at the end of note 1: Would a robust approach to the lawyer’s Rule 1.2(d) duty to inquire to prevent assisting in a crime or fraud have helped the lawyer’s avoid the situations in which they found themselves? See ABA Formal Op. 491 (Apr. 29, 2020), discussed in Chapter 19.

CHAPTER 21: GOVERNMENT LAWYERS

On p. 549, add the following sentences at the end the first full paragraph: The District of Columbia Bar, which exercises authority over the thousands of lawyers who work for the United States in D.C., has proposed revisions to its rules to address confusion over identity of the client of the government lawyer. The comments note that the issue may arise in several contexts, including in deciding issues about the duty of confidentiality and privileged client communications, and conflicts of interest. The memorandum explaining the proposed changes notes that a lawyer employed by an agency has the agency for a client and “may pursue a legal result that will benefit

10 Emily Bazelon & Eric Posner, There Used to Be Justice. Now We Have Bill Barr, N.Y. TIMES (May 13, 2020).
the narrow area of law administered by the agency.” The Bar proposes to add the following comment to its version of Rule 1.13 to guide government lawyers struggling with the question of who is their client: “In general, the client is the organization that has authority to direct the lawyer’s work, as articulated by an organizational constituent who is duly authorized to speak on its behalf. Often, the client may be the agency that employs or retains the lawyer. But some lawyers, such as U.S. Department of Justice lawyers, usually are charged with representing the United States.”

CHAPTER 23: ADVERTISING AND SOLICITATION

In August 2018, the ABA House of Delegates voted to simplify and reorganize the advertising and solicitation rules. While most of the changes do not substantially modify the substance of the rules, and while only a few states have begun to consider whether to adopt and incorporate the amended rules, please note relevant changes in this chapter’s references.

On p. 614, the third sentence in the second paragraph should now read: “Rule 7.2(a) provides that lawyers ‘may communicate information regarding the lawyer’s services through any media.’”

On p. 615, the textbox notes the requirement that advertisements must include the name and contact information of at least one lawyer or law firm responsible for its content. That requirement is now in Rule 7.2(d) rather than 7.2(c).

The second and third sentences in the last paragraph on p. 624 now should read:

It provides that “[a] lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer’s doing so is the lawyer’s or law firm’s pecuniary gain,” unless the person contacted is a “(1) lawyer; (2) person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or (3) person who routinely uses for business purposes the type of legal services offered by the lawyer.” (Rule 7.3(b)).

It also prohibits soliciting employment from a prospective client if the client has made it known that he or she does not wish to be solicited by the lawyer or the solicitation involves coercion, duress or harassment. (Rule 7.3(c)).

The first sentence at the top of p. 638 should now refer to Model 7.3(b) rather than 7.3(a). The textbox on the same page should now read:

Model Rule 7.3: Solicitation of Clients

**Rule 7.3(b)** provides that a lawyer may not solicit professional employment by live person-to-person contact when a significant motive for the lawyer’s doing so is the lawyer’s or law firm’s pecuniary gain, unless the contact is with: 1) lawyer; 2) person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or 3) person who routinely uses for business purposes the type of legal services offered by the lawyer.

**Rule 7.3 (c)** provides that a lawyer may not solicit professional employment even when not otherwise prohibited by paragraph (b) if the target of the communication has made known to the
lawyer a desire not to be solicited by the lawyer, or the solicitation involves coercion, duress or harassment.

On p. 639, the book asks whether Rule 7.3 would be constitutional as applied to a corporate lawyer who seeks to solicit business from a sophisticated business client over golf or lunch. Model Rule 7.3(b)(3) now includes an exception to the solicitation rule for contact with a “person who routinely uses for business purposes the type of legal services offered by the lawyer.”

On p. 640, the last sentence of the first paragraph should be deleted, and on p. 641, the second text box should be disregarded; amended Model Rule 7.3 no longer requires lawyers to label written marketing materials.

Relevant to the discussion at the top of p. 643, note that the comment to Model Rule 7.3 [par. 2] now specifically provides that live person-to-person contact “does not include chat rooms, text messages or other written communications that recipients may easily disregard.”

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On p. 644, the end of the second paragraph should read:

Avvo Legal Services discontinued its online legal marketplace in late 2018, but other similar online platforms have emerged. For example, Basic Counsel offers flat-fee, limited scope services on a platform that allows consumers to search the site for a service they need and facilitates the sharing of documents between attorneys and clients. Basic Counsel addresses one of the ethics concerns raised against Avvo Legal Services; it charges clients a fee for using the platform but does not charge participating lawyers a marketing fee. This service still may be vulnerable to the charge that it violates prohibitions on splitting fees with nonlawyers since the fee that clients pay Basic Counsel increases with the price of the lawyers’ services.

CHAPTER 29: LEGAL SERVICES

On pp. 790-791, the notes following the Hung excerpt should read:

NOTES ON HUNG

1. What Should Poverty Lawyers Aspire to Do? Are you persuaded by Hung’s account of the nature of a social movement lawyer’s practice? Are you persuaded by her critique of how lawyers are trained to think about problems?

2. Who Should Decide? What are the advantages and disadvantages of relying on the judgments of legal services lawyers in determining what will most benefit the client population? Does your answer to this question, informed by Hung’s arguments, suggest you might revise your answer to the question we considered above about whether Congress, legal services program boards of directors, individual legal services lawyers, or clients should decide how to allocate scarce resources? How would a client-directed process of priority setting be implemented?
3. Can an LSC-Funded Lawyer Be an Effective Organizer? If an LSC-funded lawyer were convinced by Hung’s arguments, would the OCRAA restrictions pose an obstacle to implementing their suggestions?

CHAPTER 30: PUBLIC INTEREST LAW

On p. 824, after note 3, add a new note:

4. Another Wrinkle. In a documentary released in May 2020, “AKA Jane Roe,” McCorvey offers what she calls “my deathbed confession” – that she never really supported the anti-abortion movement: “I took their money and they put me out in front of the camera and told me what to say, and that’s what I’d say.” McCorvey died before the documentary was completed.11 If this statement truly reflected her views about abortion just before her death and perhaps also at the time she appeared to have joined the anti-abortion cause, does it influence your perspective about whether Weddington appropriately handled her representation of McCorvey?

CHAPTER 31: THE MARKET FOR LEGAL SERVICES

On p. 840, at the end of the first full paragraph, add a new paragraph:

The Board of Trustees of the State Bar of California convened a task force to identify possible regulatory changes that could remove barriers to innovation and enhance access to legal services. The task force recommended 16 reform options, including exceptions to current restrictions on unauthorized practice and non-attorney ownership. In July 2019, the Board of Trustees invited public comment on the proposed regulatory changes.

CHAPTER 32: UNAUTHORIZED PRACTICE AND NONLAWYER INVOLVEMENT IN THE PROVISION OF LEGAL SERVICES

On p. 862, a new sentence added before the last sentence in the second paragraph should read:

“In 2018, the Utah Supreme Court approved rules creating a new role of ‘licensed paralegal practitioners,’ who will be permitted to provide limited assistance to clients without lawyer supervision in some family law, forcible entry and detainer, and debt collection matters.”

On p. 875, immediately before Notes on Outside Ownership of Legal Services Providers:

In 2018, in response to a study finding that 55 percent of Californians experienced at least one civil legal problem in the previous year and that Californians received inadequate or no legal representation for 85 percent of those problems, the Board of Trustees of the State Bar of California convened a task force to identify options to enhance access to legal services through innovation.

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The task force made several recommendations, including a proposal to create a pilot program, or “regulatory sandbox,” that would allow limited experimentation with changes to the rules of professional conduct to permit participants in the program to explore fee sharing with nonlawyers, nonlawyer ownership of law firms, and other activities that are currently prohibited under California’s rules. Among the questions to be considered in connection with this pilot program are whether a machine using artificial intelligence can deliver advice and legal assistance, and whether the creator of software that enables a law firm to deliver its services more efficiently or effectively or to provide on-line advice and assistance to consumers can take an ownership interest in the firm or share fees. In May 2020, the Board of Trustees of the State Bar of California approved this sandbox proposal.12

The Utah Supreme Court has proposed regulatory reforms that would eliminate the prohibition on attorney fee sharing with nonlawyers and create a new Office of Legal Services Innovation to oversee a pilot regulatory sandbox to evaluate nontraditional legal service providers and entities offering new types of legal services. The Supreme Court has proposed repealing Rule 5.4 and replacing it with provisions that would permit sharing fees with a nonlawyer and forming a professional corporation with a nonlawyer so long as certain conditions are met, including that there is no interference with the lawyer’s professional independent judgment, duty of loyalty to a client, and protection of client confidences. One of the justices explained that the Covid-19 pandemic had increased the need for affordable innovations and that individuals and entities that are able to offer low-cost or no-cost legal services relating to issues stemming from the pandemic would be considered for expedited approval.13

**CHAPTER 33: PRO BONO**

*On p. 887, add the following note:*

3. *Other Costs of Pro Bono.* A recent study of pro bono relationships showed that nonprofit legal services organizations tend to respond to law firms’ requests for pro bono work and board seats in order to secure critical resources, including money, labor and prestige, even when these nonprofit legal services providers are dissatisfied with the commitment and quality of the work provided by the law firms’ pro bono volunteers. It also found that the involvement of law firms in legal services organizations’ work tends to produce a mismatch between the needs of the poor and the kinds of matters that receive free legal representation.14

**CHAPTER 36: BAR ADMISSION AND DISCIPLINE AND THE LAW OF MALPRACTICE**

*On p. 971, add the following new paragraph after note 5.*

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NOTE ON BAR ADMISSION DURING THE CORONAVIRUS PANDEMIC

When the Covid-19 pandemic of 2020 made in-person education and testing dangerous, state bars struggled to determine whether or how to administer the July 2020 bar examination, as well as the summer MPRE. A variety of approaches were adopted, but all may change as conditions evolve. Updates are posted regularly on the website of the National Conference of Bar Examiners: www.ncbex.org.

- Some states announced plans to administer the July bar examination in person.
- About half the states eliminated the in-person July bar examination, opting first to postpone it to September or October and then, when the pandemic persisted, scheduling an online examination. Of those states administering an online examination, some are using the UBE, and others are administering a state-specific exam that will be useful only for admission in that state. To address the concerns of applicants who lack home circumstances enabling them to take an online examination, some state supreme courts have urged law schools to open their facilities for administration of the online bar exam.
- Some states still plan to administer the bar exam in person, in either September or October, but have indicated that plans may change as the public health situation evolves.
- A few small states with few in-state law schools (Oregon, Utah, Washington, and Louisiana) opted for a diploma privilege. Washington extended the diploma privilege for all 2020 bar applicants. Utah extended the diploma privilege to graduates of ABA-accredited schools whose recent bar pass rate for first-time takers met or exceeded the pass rate of the graduates of the in-state schools, which was 86 percent. Oregon copied Utah, and extended diploma privilege to graduates of ABA-accredited law schools with an 86 percent pass rate on recent bar exams. Louisiana’s emergency diploma privilege applies to first-time bar exam takers who graduated from ABA-accredited law schools since December 2019 and who complete 25 hours of CLE and the state’s Transition to Practice Program.
- Some states, such as Montana and Massachusetts, considered and expressly rejected diploma privilege.
- Some states, such as Arizona, California, Colorado, Georgia, Illinois, Kentucky, Montana, New York, and Tennessee, created provisional licenses or expanded their rules that allow law students to practice under supervision to allow candidates to practice under supervision for a period of time until they can safely take the bar examination in person. The California Supreme Court, for example, directed the California State Bar “to expedite creation of a provisional licensure program under supervision to 2020 law school graduates—effective until they can take and pass a California bar exam, and expiring no later than June 1, 2022.”
- While addressing administration of the bar exam during a pandemic, the California Supreme Court also permanently lowered the minimum passing score from 1440 to 1390. This decision responded to longstanding criticism that the minimum passing score is too high and has a disparate impact on some people of color and on candidates from less-privileged backgrounds, and that the impact is not justified by the purpose of assessing competence to practice law. The California State Bar estimates, based on ten years of data about exam pass rates, that lowering the minimum passing score to 1390 will result in a 4 percent increase in passing among graduates of ABA-accredited law schools and a 14 percent increase among graduates from California-accredited schools. The estimated increase in passing rates by race and ethnicity are predicted to be 13 percent among African Americans, 8 percent among Latinx, 8 percent among “other,” 7 percent among Asians,

All states require candidates to pass the MPRE before admission. As of this writing, the National Conference of Bar Examiners, which administers the MPRE, has not announced an on-line option for taking the August 2020 MPRE or future administrations of it.

*On p. 986, add the following:*

(e) Former Illinois governor Rod Blagojevich was removed from office in 2009 and later convicted of various criminal charges, including wire fraud, attempt to commit extortion and corrupt solicitation. President Trump granted him clemency in 2020, soon after an appearance by Blagojevich’s wife on Fox news calling on the president to commute her husband’s 14-year prison sentence. The Illinois Supreme Court disbarred Blagojevich in May 2020.15

*On p. 992, the last sentence of the chapter summary should read:*

“In all but two states, lawyers are not required to carry malpractice insurance and many lawyers do not.”

**CHAPTER 37: LAWYER SATISFACTION AND WELL-BEING**

*On p. 1009, at the end of note 4, add the following:*

A recent study analyzing nationally representative data from the 2015 National Survey of College Graduates to examine gender differences in lawyers’ job satisfaction suggests that any apparent similarity of job satisfaction between genders likely stems from female JDs exiting the legal profession at higher rates than their male counterparts, leaving more satisfied women behind. The researchers found that among those who graduated from law school more than 10 years ago, female JDs were less likely to be working in the legal profession, and that, among new law graduates, female lawyers were less likely to be “very satisfied” with their jobs than male lawyers. The analysis also compared lawyers to other professions and found no gender gap with respect to those other graduate and professional degrees. The article called for additional research to explain what it is about the conditions of law practice that lead women to exit the legal profession.16

*On p. 1012, add to footnote 24:*

This lawyer’s ex-wife has published a book recounting her discoveries about his life and about drug addiction among other high achieving professionals like him. Eilene Zimmerman, SMACKED: A STORY OF WHITE-COLLAR AMBITION, ADDICTION, AND TRAGEDY (2020).