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Ethics Symposium

What Do Clients Want?

***1053 FOREWORD: WHAT CLIENTS WANT, WHAT LAWYERS NEED**

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Imagine rooting professional ethics in the desires and entitlements of clients.

To be sure, such a turn would have to be taken with caution. Misunderstood as a rationale for dishonest behaviors or lazy omissions--rather than a source of guidance on how to render legal services--a move like this one could push lawyers down a perilous slope. It is lawyers, not clients, who hold moral responsibility for the professional decisions that lawyers make. [FN1] Only lawyers can delineate the boundaries of what an attorney may and may not do in the context of furnishing legal services to clients. To the extent that legal ethics refuses to care about these boundaries, the ever-expanding law of accomplice liability and obstruction of justice will teach lawyers not to turn over to their clients the task of professional reckoning. [FN2] Indeed, the very *1054 concept of a profession asserts the value of expertise: Professions like to say that providers at some level know best, or at least better than their clientele. [FN3]

Nevertheless, this Symposium proposes that understandings of the professional responsibility of lawyers may have strayed too far from what clients want. The crisis that sparked the Symposium is the gulf between what occupies clients on the one hand, and what occupies lawyers' attention on the other hand, with respect to legal ethics. What occupies lawyers' attention, according to the Symposium, is a selected fraction of what warrants that attention.

For good or ill, the profession has put a complaint-driven disciplinary system at the forefront of its measures to enforce strictures on client representation. Alternatives have so far proved too feeble to be more than complements to discipline. Legal malpractice actions are relatively scarce and have always been difficult to mount. Procedural devices like [Rule 11 of the Federal Rules of Civil Procedure](#) appear to have gone into retreat in the last decade after a pre-1993 heyday, while the constitutionalization of Sixth Amendment new-trial remedies have never enjoyed a heyday. Government agency enforcement, such as what the Securities and Exchange Commission has promoted with respect to the disclosure of covert client wrongdoing, [FN4] has become powerful in the last two decades, but it can cover only a small fraction of the profession even if it is permitted to control what lawyers do, and it is not clear that the profession will tolerate that rise. More than any other source, the disciplinary rules--along with their long shadow--decree the duties of a lawyer. [FN5]

In two maneuvers, lawyers make the narrow framework for enforcing legal ethics narrower. First, notwithstanding our devotion to the ideal of Profession rather than Trade, we often resort to market-thinking when we

evaluate questions of legal ethics. Inclined to juxtapose wily lawyers against naive clients, the Model Rules of Professional Conduct nevertheless also presume that much lawyer wrongdoing, even structural and predictable kinds, will be cured by clients' voting with their feet. The Rules' frequent recourse to *1055 market-focused solutions to the client-relations problems that lawyers can expect to face--solutions that include disclosure, client consent, reduction of words to writing, and warnings to clients that they can seek other advice--rests on a belief that market failure is exceptional, rather than a fixture of practice: What clients need is to be turned into slightly more informed consumers.

In this market environment, clients who are wealthy individuals or business entities needn't point anything out: they just find another lawyer. [FN6] Endemic problems related to representing wealthy or entity clients thus remain unseen until they begin to cost lawyers a lot of money. We can live with getting dumped by the occasional disgusted retained client, but grow anxious when we think of structural threats: accomplice liability for expensive frauds, for instance, or competition from nonlawyer businesses. Particular needs retreat from view. We feel open to learning what clients want, but tend to hear little of their whole stories.

Second, when we do acknowledge market failure, in framing strictures we favor the topics that line up with our own tastes rather than the needs or wishes of our clients. We begin by writing the rules ourselves, with little input from the public, so that instances of client discontent must fit into an apparatus that nonclients built. Having written the rules to suit our predilections, we go on to pay selective attention when lawyers violate these rules.

What do lawyers want from legal ethics? Overt conflict captures our imagination, starting from early in our training, when we are taught to spot it and make a living from it. And so, for instance, the high melodrama of a client --hero and villain rolled into one--who insists on testifying falsely in his own defense at a criminal trial has for decades enjoyed a high perch in legal ethics classrooms. Since the rise of this protagonist thirty or so years ago, thousands of lawyers have come to the end of their practice days unpricked by the horns of the dilemma; [FN7] a large majority of them will never encounter it. [FN8] We hold *1056 lurid characters up for example (child molesters, serial killers) and ask ourselves whether we would represent them-- again, rather rhetorically, although the possibility of a court-ordered appointment can lend a little realism to the hypothetical. We do stray now and then from TV-drama conflict. Like other white-collar service providers we go where the money is: bring on a Sarbanes-Oxley seminar! Before that, we fretted about liability for the savings and loan debacle, a calamity that forced law firms to pay hundreds of millions of dollars to settle federal-agency charges. When we need a prurient change of pace or a drafting exercise, we consider codifying a ban on sex between lawyers and clients. Mandatory pro bono: forced labor, or fair compensation for prestige and above-median income? Multidisciplinary practice: downfall or redemption of the profession? At their loftiest plane, legal ethicists like to contrast truth with partisanship, a perpetual wrestling match where T never quite pins P to defeat.

Clients, it turns out, draw up a different list of favorite topics in professional responsibility. In the Symposium, **Leslie Griffin** and Mark Armitage address the implications of this stark preference; Armitage provides an especially pertinent up-close perspective as a disciplinary official of a large, diverse state bar. [FN9] The set of client preferences is remarkable. Check the disciplinary dockets in any state and you will find neglect, failure to communicate, and failure to represent clients diligently or competently heaped together at the top of the pile. In most jurisdictions these three offenses add up to more than half the total disciplinary volume-- whether you count the number of complaints filed, the number of lawyers sanctioned, or the rules deemed violated in published disciplinary decisions. [FN10] Another client favorite is the fee *1057 dispute, treated in some states as a disciplinary complaint and others as a subject for non-discipline-based alternative dispute resolution. Most fee

disputes reduce to a failure to communicate: I thought I said I was expensive, but you heard me say cheap. Thus the clients' roster of principal disciplinary offenses--neglect, failure to communicate, and failure of diligence and competence--does not overlap with the profession's favorite subjects: truth and falsity and partisanship, sex and (institutional) money, lawyers' civil liberties, discretion on questions of client intake and retention, and dominion over other occupations.

Because lawyers and not clients control the content of legal ethics discourse, this discourse regards our strictures about neglect and communication and competence and diligence as inane, lacking both substantive content and theoretical interest. Neglect gets reduced to an absence of "bedside manner," a phrase we borrow from physicians without omitting the physicians' derision: to peers, a physician who lacks bedside manner must hold estimable skills in something important, like surgery or the ability to make a diagnosis. [FN11] Communication means marketing, advertising, or psychobabble; to care about it is to emphasize packaging over what lies inside. [FN12] Competence, as Mark Armitage notes, is what all of us have, and for the tiny few who don't have it--present company always excepted-- nothing can be done. [FN13] Diligence is for plodders, not high-end knowledge workers like us.

What accounts for this divergence between what clients want and what lawyers think they must do--or, to put the point another way, what lawyers need to construe and nurture their professional identity? Although contributions to this Symposium only hint at the possibility, I wonder whether our professional disinclination to ponder the ethical categories that focus on clients' needs manifests a bias against the poor and in favor of the rich. We know that competence, diligence, and communication come amply to those who pay for them. In this light Model Rules 1.1, 1.3, and 1.4 augment the welfare of those who cannot afford to demand that their lawyers make a priority of their needs. They impose on every attorney-client relationship a *1058 kind of Rawlsian minimum of decent care and attention, analogous perhaps to what the implied warranty of habitability does for indigent tenants. [FN14] Another possible explanation, not broached here and probably in need of its own paper, is that the rules on neglect, communication, competence, and diligence resemble injunctions to take care of another person, and legal ethics, like other venues of privilege in the United States, recoils from enforcing a duty of care. In American culture, caregiving is associated with women (especially mothers), and consequently suffers from low status and social invisibility. I offer these hypotheses only tentatively; they need more investigation. It's interesting, at any rate, that our profession gives so little thought to its biggest categories of disciplinary offenses. Contributors to this Symposium offer pioneering inroads into a longstanding "neglect of neglect."

The Symposium authors offer jurisprudential foundations on the duty to be responsive to client needs as well as specific treatments of topics, particularly communication, that fall within this jurisprudence. Social scientist Lynn Mather opens the book with *What Do Clients Want? What Do Lawyers Do?*, [FN15] an invaluable survey of the literature on the desires of clients that builds on description in order to achieve prescription. Should the desires of clients generate professional duties on the part of lawyers? For this distinguished social scientist, all the familiar debates about authority, discretion, and professional independence need factual content if they are to get past the platitude level. As it turns out, this factual content varies: experiences with clients vary pivotally depending on who the clients are and what kind of work the lawyer does. Mather cautions us to look past the overbroad labels of Lawyer and Client, which she argues encompass too much divergence to support unitary duties or even conclusions, and move to smaller categories where generalizations can become pertinent.

In the next article, *A Clients' Theory of Professionalism*, [FN16] **Leslie Griffin** takes a stand that both agrees and disagrees with the Mather thesis. Like Mather, **Griffin** wants to ground theorizing about lawyers' ethics in concrete particulars: what happens during lawyer-client relations, how conflicts arise, and which differ-

ences prove significant in practice. **Griffin** and Mather also agree about the centrality of clients' desires. **Griffin** finds more value than does Mather, however, in the categories of Lawyer and Client. She suggests *1059 that once the concept of neglect crystallizes--to be sure, professional ethicists have not completed this task--one can say to lawyers, Don't neglect, and to clients, You have a right not to be neglected. Griffin advocates strict liability for neglect, a stance that goes further than the current disciplinary consensus but follows from her careful condemnation of client neglect as unjustifiable. More explicitly than any other contributor to the Symposium, Griffin locates professional duty in what clients want. [FN17] The conclusion is provocative: lawyers, those in the criminal defense and divorce bars in particular, might resist it. [FN18] Like other kinds of desire, the desires of clients are problematic. [FN19] Despite difficulties, however, Griffin's argument for heeding these needs makes a powerful case for revising and re-understanding current lawyer-client regulation.

Thus far we have accepted an epistemological premise that whatever their clients' desires may be, lawyers can make use of these desires in the representation. Sociolinguist Diana Eades and law school dean Burnele Powell relax this assumption in different ways. For Eades, the lawyer and client can be separated by language despite their best efforts at communication. Powell claims that for good reasons of their own, the lawyer and client typically do not talk together about the one subject that matters most to them.

Diana Eades explores the communication gap between client and lawyer, a linguistic layer of difficulty on the question of what clients want: [FN20] She uses a case from Australia that she knows well, the real-life account of an Aboriginal defendant named Robyn Kina. After being accused of murder, Robyn Kina recited information about self-defense and provocation that sufficed to get her acquitted of the charge. Straightforward? Client is accused; client denies the accusation; client supplies facts to put herself in a better light; justice prevails. But Robyn Kina told her story of exculpation not to her lawyers but to television journalists who were filming a documentary about convicted criminals. The revelations came after she served years of hard-labor time for murder. Before telling to journalists the facts that would set her free, Kina had been convicted in a hasty Queensland trial. In "I Don't Think the Lawyers *1060 Were Communicating with Me," Eades explores cultural differences in speaking and listening that divided Kina from her lawyers, who regarded Kina as a difficult and uncommunicative client.

Is the Robyn Kina story just a little flotsam from far shores? Citing illustrative case law from the United States, Eades says no: she posits instead that Kina's dreadful encounter with law and lawyers stands as "the tip of what is undoubtedly a massive iceberg." [FN21] "I Don't Think the Lawyers Were Communicating with Me" concludes with applications of Eades' sociolinguistic studies. Her scholarship moves beyond theory into practice, for the benefit of lawyers facing clients whom they deem impossible. [FN22] What may be impossible, Eades suggests, is communication without barriers.

In What Clients Want and Why They Can't Have It, [FN23] Burnele Powell uses "victory" and "winning" as summary answers to the question of what a client wants, not limiting his analysis to litigation. Powell argues that what clients want is not only to win but also to hear from their lawyers-- authoritatively and in advance--that they will win. Their desire is tragic, because skill and luck and "the merits" limit what even the most excellent lawyer can deliver, while an array of written and unwritten rules discourage lawyers from promising victory to clients. Powell bridges some of the gap. He tells lawyers to accept a degree of what he calls "martyrdom" [FN24]--lost cases, irked clients, disappointment--and at the same time to build an alternative role model, "the lawyer of stature," [FN25] who resembles the client's preferred professional model in salient respects, although this lawyer will not always win and cannot promise victory in advance.

In Proceedings papers, Clark Cunningham, Judson Graves, and Joseph Gladden continue the theme of communication. Cunningham, a scholar with a long record of accomplishment in bettering lawyer-client communication, draws on the feature film *Amistad* for another illustration of how lawyers and clients fail to talk to each other. [FN26] Graves adds written communication to the picture. [FN27] He and Joseph Gladden [FN28] draw on their extensive experience *1061 representing entity clients, touching on the difficulties of communicating with a legal fiction and the varied human beings who serve as its agents.

Whereas the contributions thus far have addressed lawyers and clients at a general plane, the next three pieces take up “What do clients want?” with respect to particulars of practice: Bruce Green considers the defense of indigents accused of crimes, [FN29] John C.P. Goldberg addresses personal-injury lawyers and their clients, and Jennifer J. Barnes outlines some pitfalls of immigration work.

Indigent defense is an area where various institutional actors--prosecutors, judges, and disciplinarians--have roles to play in redressing lawyers' neglect of criminal-defense clients, but few fulfill their potential. In *Criminal Neglect: Indigent Defense from an Ethics Perspective*, Green argues that case law on the Sixth Amendment right to effective assistance of counsel might be lowering the bar for indigent defense, rather than augmenting lawyers' ethical duties to their clients with another safeguard. The Supreme Court's crabbed jurisprudence on effective assistance may be sending a message to harried criminal defense lawyers that very little is good enough. [FN30] Green documents the catastrophic inadequacy of indigent-defense funding in the United States, strongly emphasizing a theme of this Symposium: Neglect can be just another word for no money. Clients who pay their lawyers well are well-paid in the currency of attorney attention, but indigent defendants can expect neglect.

A cynic would stop here--surprise! them as has, gets--but Green refuses to sink. He gives specific, pointed advice to prosecutors on how to ameliorate the injustices of systemic client neglect when they frame charges and try cases. He tells judges what they can do, finding instruction in legal scholarship, case precedents, and the judicially created Commission on Indigent Defense in Georgia. With full appreciation for the hard work that criminal-defense lawyers do, Green holds them to high standards, and shows how these ideals build duties.

The question of duties has long occupied torts scholar John C.P. Goldberg, who brings to the Symposium a different, yet pertinent, expertise. In order to consider what clients want, observers cannot overlook legal malpractice, an avenue of redress that takes client grievances directly to the courts without the mediating influence of a disciplinary procedure. Legal malpractice is, *1062 however, woefully overlooked in quarters where it ought to be studied, [FN31] and Goldberg is almost alone among torts scholars in addressing it. In *What Clients Are Owed: Cautionary Observations on Loss of a Chance*, [FN32] Goldberg examines the case-within-a-case tort framework, where the plaintiff has to prove that she probably would have won at trial before she can attribute causation of her losses to the lawyer's malpractice. The burden is steep, and so perhaps amenable to a reform patterned on the loss-of-a-chance cause of action, now usually reserved for medical malpractice claims where the plaintiff's injury is death. This move could lower the burden of proof in legal malpractice, “rendering tort law once again friendly to what clients want. . . . [i]ndeed, it might even help clients complaining of misconduct such as the failure to return phone calls.” [FN33]

But wait: Goldberg doesn't think so after all, and his conclusion is as important to legal-profession readers as they are to his large following in tort law. Loss of a chance should not be applied to legal malpractice, Goldberg contends, because of the centrality of damages to tort. [FN34] When it does not produce a discrete injury, legal malpractice is inchoate, and negligence law becomes the wrong response to attorney misconduct. In the end, Goldberg defends the maligned case-within-a-case standard for legal malpractice, arguing with compelling au-

thority that the solution to What Do Clients Want? does not lie in tort law.

Next, Jennifer Barnes adds a third practice context--the unique immigration bar, which Barnes knows thoroughly from a variety of posts at the Department of Justice [FN35]--and then the final article returns us to the general categories of Lawyer and Client. Diane Ellis contributes to the Symposium its only empirical study, [FN36] a review of the "conditional diversion" program that the Arizona bar installed to deal with problems on which this Symposium has focused: neglect, failures of diligence, difficulties in communication, and perceived or actual lack of competence. The conditional diversion response *1063 sees these problems in terms of office management and confronts them with an eye toward prevention and rehabilitation. The Ellis study of conditional diversion suggests that office-management failures in the attorney-client relationship are more than--yet also less than--disciplinary offenses. A lawyer who falls short on communication, competence, and diligence needs attention from the disciplinary system, but mere punishment can miss the point. Conditional diversion, as Ellis documents and Maryland bar counsel Melvin Hirshman relates more colloquially, [FN37] gives lawyers a sense of their future that backward-looking sanctioning cannot achieve. Yet as Ellen Pansky indicates, [FN38] even the backward-looking remedy of malpractice litigation has a prospective component; Pansky, a prominent specialist in malpractice defense, discusses this measure in a forward-looking framework of injury avoidance.

These fourteen answers to the question of What Do Clients Want? express four distinct themes: fundamentals, lawyer-client communication, practice contexts, and remedies. In the "fundamentals" category of Part One, Lynn Mather, **Leslie Griffin** and Mark Armitage ask about basics: Are the categories of lawyer and client meaningful? Can competence be regulated? In Part Two, Diana Eades, Burnele Powell, Clark Cunningham, Judson Graves, and Joseph Gladden evaluate lawyer-client communication--in principle the way to learn what clients want, in practice a difficult undertaking. Part Three addresses the question away from the broad category of Lawyers and Clients, referring to specific areas of practice. As Bruce Green, John Goldberg, and Jennifer Barnes show respectively, criminal defense, legal malpractice grounded in tort, and immigration each raise particular challenges with respect to perceiving and meeting the desires of clients; Green and Goldberg and Barnes give a somber tone to Part Three, but the three systems they examine present hope as well as difficulty. Part Four takes a pragmatic, let's-look-ahead perspective, as Diane Ellis, Melvin Hirshman, and Ellen Pansky discuss What Do Clients Want? from the vantage point of practitioners (including lawyers participating in the disciplinary system and the courts) who seek to anticipate dissatisfaction before it occurs. Insights from these leaders of legal ethics begin to answer the question of what clients want and, from there, what we lawyers need.

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[FN2]. According to ethicist Russell Pearce, this precept is the fundamental rule of legal ethics. Russell G. Pearce, *Model Rule 1.0: Lawyers Are Morally Accountable*, 70 *Fordham L. Rev.* 1805 (2002).

[FN3]. See Geoffrey C. Hazard, Jr. et al., *The Law and Ethics of Lawyering* 119-20 (3d ed. 1999) (arguing that apparent retreats like *Central Bank of Denver v. First Interstate Bank of Denver*, 511 U.S. 164 (1994) and the Securities Litigation Uniform Standards Act of 1998 merely complicate, rather than reduce, attorney liability for client misconduct).

[FN4]. Peter Bowal, *A Study of Lay Knowledge of Law in Canada*, 9 *Ind. Int'l & Comp. L. Rev.* 121 (1998).

[FN4]. Jonathan D. Glater, S.E.C. Adopts New Rules for Lawyers and Funds, N.Y. Times, Jan. 24, 2003, at C1.

[FN5]. Although this Symposium focuses mainly on attorney discipline, it does not neglect extradisiplinary regulators of errant lawyer behavior: Jennifer Barnes takes up government-agency enforcement; John Goldberg and Ellen Pansky cover legal malpractice; Bruce Green addresses the Sixth Amendment right to counsel.

[FN6]. Lynn Mather makes the same point using “autonomy,” noting the paradox that lawyers at the bottom of the elite hierarchy call the shots when they deal with clients, whereas lawyers for corporations and wealthy individuals, who are wealthy and powerful people themselves, obey orders. See Lynn Mather, [What Do Clients Want? What Do Lawyers Do?](#), 52 Emory L.J. 1065, 1080 (2003) (referencing the work of Richard Abel and Joel Handler).

[FN7]. Trilemma, perhaps. Monroe H. Freedman, Understanding Lawyers' Ethics 111 (1990) (using “trilemma” to identify three lawyers' duties in tension: the duty to learn facts, the duty of zeal, and the duty not to present false evidence in court).

[FN8]. Perhaps the relatively high chance that a lawyer will encounter client perjury in civil litigation, especially at depositions, makes the illustration pertinent beyond its context of criminal defense practice. In my view, the differences between the two contexts are too great for the criminal-defense scenario to shed light on its civil litigation counterpart. The criminal defendant's perjury sets up binary oppositions: acquittal against conviction, falsity against truth. Dishonest testimony from civil litigants typically splits hairs. It disputes degrees of recall, opts for either too much vagueness or too much precision, and says “No” when the truth is more like “Yes, but.” For a famous exception to this general rule, see Walter Kiechel III, The Strange Case of Kodak's Lawyers, Fortune, May 8, 1978, at 188 (describing a perjurious affidavit about discovery in an antitrust suit, made by a senior partner of a Wall Street firm).

[FN9]. **Leslie Griffin**, [A Clients' Theory of Professionalism](#), 52 Emory L.J. 1087 (2003); Mark A. Armitage, [Regulating Competence](#), 52 Emory L.J. 1103 (2003). Armitage is Associate Director of the Michigan Attorney Discipline Board. See *id.*

[FN10]. In March 2002 a research assistant and I reviewed the most recent annual reports of state bar authorities, mailed to me in response to my written request. Not all states prepare such a report, and the time periods covered in the reports included a melange of various calendar and fiscal years, making cross-state comparisons difficult. See generally **Leslie C. Levin**, [The Emperor's Clothes and Other Tales About the Standards for Imposing Lawyer Discipline Sanctions](#), 48 Am. U. L. Rev. 1, 6-7 (1998) (summarizing problems that researchers face when they attempt to survey state-level discipline). Ragged data notwithstanding, I can assert that neglect, failure to communicate, and failure to represent clients diligently or competently when added together fill at least half the nation's disciplinary docket. See also *id.* at 4 (noting “the most common client complaints about lawyers”).

[FN11]. See Chris van Weel, Examination of Context of Medicine, 357 Lancet 733, 733 (2001) (noting the medical profession's contempt for “bedside manners”).

[FN12]. See generally Alison Schneider, Taking Aim at Student Incoherence, Chron. Higher Ed., Mar. 26, 1999, at A16 (surveying comments from academics that university communications departments are “vacuous,” and noting how these criticisms resemble ancient Athenian attacks on rhetoric).

[FN13]. Armitage, *supra* note 9, at 1104.

[FN14]. Cf. Frank I. Michelman, [Foreword, On Protecting the Poor Through the Fourteenth Amendment](#), 83 *Harv. L. Rev.* 7 (1969) (arguing for a right to minimum welfare based on Rawlsian notions of justice).

[FN15]. Mather, *supra* note 6.

[FN16]. Griffin, *supra* note 9.

[FN17]. *Id.*

[FN18]. Mather, *supra* note 6, at 1084; see also Bruce A. Green, [Criminal Neglect: Indigent Defense from a Legal Ethics Perspective](#), 52 *Emory L.J.* 1169, 1174 (2003) (“[I]t is hard to know what defendants want. Different defendants may have different desires.”).

[FN19]. Cf. Margaret Jane Radin, [The Pragmatist and the Feminist](#), 63 *S. Cal. L. Rev.* 1699, 1702 (1990) (calling women's desire for heterosexual intercourse “problematic”).

[FN20]. Diana Eades, [“I Don't Think the Lawyers Were Communicating with Me”: Misunderstanding Cultural Differences in Communicative Style](#), 52 *Emory L.J.* 1109 (2003).

[FN21]. *Id.* at 1128.

[FN22]. *Id.* at 1138.

[FN23]. Burnele V. Powell, [What Clients Want and Why They Can't Have It](#), 52 *Emory L.J.* 1135 (2003).

[FN24]. *Id.* at 1144.

[FN25]. *Id.* at 1145.

[FN26]. Clark Cunningham, [But What Is Their Story?](#), 52 *Emory L.J.* 1147 (2003).

[FN27]. Judson Graves, [Taking the Duty to Communicate Seriously](#), 52 *Emory L.J.* 1157 (2003).

[FN28]. Joseph Gladden, [A Client's Perspective](#), 52 *Emory L.J.* 1165 (2003).

[FN29]. Green, *supra* note 18.

[FN30]. *Id.* at 1188-89 (citing [Strickland v. Washington](#), 466 U.S. 668 (1984)).

[FN31]. See Manuel R. Ramos, [Legal and Law School Malpractice: Confessions of a Lawyer's Lawyer and Law Professor](#), 57 *Ohio St. L.J.* 863, 874-77 (1996) (exploring how legal malpractice is neglected by the ABA, the law school curriculum, legal ethics texts, and even required courses in professional responsibility).

[FN32]. 52 *Emory L.J.* 1221 (2003).

[FN33]. *Id.* at 1205.

[FN34]. *Id.* at 1211. Goldberg develops this theme more fully in John C.P. Goldberg & Benjamin C. Zipursky,

Unrealized Torts, 88 Va. L. Rev. 1625 (2002).

[FN35]. Jennifer J. Barnes, *The Lawyer-Client Relationship in Immigration Law*, 52 Emory L.J. 1215 (2003).

[FN36]. Diane M. Ellis, *A Decade of Diversion: Empirical Evidence that Alternative Discipline Is Working for Arizona Lawyers*, 52 Emory L.J. 1221 (2003).

[FN37]. Melvin Hirshman, *Managing Conditional Diversion in Maryland*, 52 Emory L.J. 1271 (2003).

[FN38]. Ellen Pansky, *Communication and Diligence*, 52 Emory L.J. 1277 (2003).
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