

July 2019

Let's Be Honest About Law School Cheating: A Low-Tech Solution for a High-Tech Problem

Lori A. Roberts

Monica M. Todd

Please take a moment to share how this work helps you [through this survey](#). Your feedback will be important as we plan further development of our repository.

Follow this and additional works at: <https://ideaexchange.uakron.edu/akronlawreview>

 Part of the [Legal Education Commons](#), and the [Legal Ethics and Professional Responsibility Commons](#)

Recommended Citation

Roberts, Lori A. and Todd, Monica M. (2019) "Let's Be Honest About Law School Cheating: A Low-Tech Solution for a High-Tech Problem," *Akron Law Review*: Vol. 52 : Iss. 4 , Article 5.

Available at: <https://ideaexchange.uakron.edu/akronlawreview/vol52/iss4/5>

This Article is brought to you for free and open access by Akron Law Journals at IdeaExchange@UAkron, the institutional repository of The University of Akron in Akron, Ohio, USA. It has been accepted for inclusion in Akron Law Review by an authorized administrator of IdeaExchange@UAkron. For more information, please contact mjon@uakron.edu, uapress@uakron.edu.

LET’S BE HONEST ABOUT LAW SCHOOL CHEATING: A LOW-TECH SOLUTION FOR A HIGH-TECH PROBLEM

*Lori A. Roberts & Monica M. Todd **

I.	Introduction	1155
II.	Students Cheat!.....	1159
	A. The Prevalence and Normalization of Cheating in Higher Education.....	1160
	B. Educators’ Futile Responses to Cheating	1163
III.	Special Implications of Academic Dishonesty in Law School	1165
IV.	Calibrating Law Students’ Ethical Compass	1171
	A. Fostering Integrity During Orientation	1171
	B. The Honor Code - Discussion and Practice	1172
	C. Student Oath Assignment	1174
V.	Curtailling Opportunities to Cheat.....	1176
	A. Exam Design.....	1177
	B. Exam Administration.....	1178
	C. Grading Procedures.....	1179
	D. Plagiarism Detection Tools.....	1180
VI.	Reinforcing Integrity Throughout the Curriculum ..	1182
	A. Exacting Administrative Policies for Handling Allegations of Academic Misconduct.....	1185
VII.	Conclusion	1188

I. INTRODUCTION

*“I always regret it when I ‘choose to do the right thing’ and don’t
cheat on tests.”*

-Anonymous¹

* A robust conversation during the authors’ presentation on this topic at the University of Denver’s Rocky Mountain Legal Writing Conference in March 2018 furnished many precepts included in this

Students have outpaced professors and educational administrators scrambling to keep up with the tech-savvy world of academic dishonesty. A culture of cheating in higher education has become pervasive, and even normalized. Sophisticated cheating techniques are openly shared by students online in blog postings, videos, and social media outlets. YouTube tutorials provide everything that a motivated student needs,² whatever the academic dishonesty pursuit, and sites like www.coursehero.com tout their efficient study resources, as students upload papers, tests, and textbook solution material to their banks for others to consult.³ Students rationalize cheating, deny it is really cheating, and even blame others for their own behaviors. In some students' minds, cheating is necessary to even the playing field.

There is no question that "every law school has problems with cheating and plagiarism," but engaging in a competition with students to "catch the cheaters"⁴ is not the only or best solution, particularly for an educational program meant to prepare students for a profession necessarily regulated by a professional code of conduct.

Once upon a time, professors asked students to remove all of the papers from their desks before an exam to ensure no scribbled notes remained; more strict professors made students put their backpacks in the front of the room. Some educators instituted policies permitting just one person to use the restroom at a time, thus eschewing illicit conversations during an exam. Obvious digital devices like cell phones and other gadgets that connected to the internet were banned inside testing areas once those developed. As technology has evolved, more items have been prohibited; indeed, all devices with wireless transmission capability are

article, and the authors express deep gratitude to their colleagues that attended that presentation, contributed to the discussion, and encouraged their scholarship on this topic.

1. *21 Whisper Cheating Confessions That Might Change How You Think About Your Classmate*, Smosh (2014), <http://www.smosh.com/articles/whisper-cheating-confessions-might-change-how-you-think-about-your-classmates> (*Whisper* is an anonymous social media app).

2. Christopher Carbone, *YouTube stars being paid to push academic cheating*, FOX NEWS, <http://www.foxnews.com/tech/2018/05/06/youtube-stars-being-paid-to-push-academic-cheating-report-says.html> [<https://perma.cc/R8RF-YKTF>] ("EduBirdie, a Ukraine-based firm that allows students to bypass school assignments and buy essays online, is being hawked by some of YouTube's big stars, with the site's ads appearing in more than 1,400 videos on more than 250 channels, according to a BBC investigation. . . . earn[ing] a total of 700 million views.").

3. Course Hero, <http://www.coursehero.com> [<https://perma.cc/2BSN-TNG5>].

4. Paul L. Caron, *45% of Law Student Cheat*, TAXPROFBLOG (2009), https://taxprof.typepad.com/taxprof_blog/2009/05/45-of-law-students-cheat.html [<https://perma.cc/V43K-A6YN>] (quote by Vice Dean Terri Davlantes, Florida Coastal Law School, responding to a story that FCLS expelled a student who sought to pay someone to write a paper for him).

routinely banned (including eyeglasses that can capture and transmit images,⁵ pens that can be linked to wireless audio transmissions,⁶ nearly imperceptible earbuds,⁷ and smart watches and rings that can easily store large amounts of text and images⁸ for easy retrieval during a bathroom break or even in plain sight during the exam). Now, even more high-tech hijinks—seemingly straight out of a James Bond movie—have emerged. On the horizon are Intel’s Vaunt glasses that project images directly into the retina.⁹

Worldwide, defensive technology has sprung up to help uncover illicit devices. In China, educators monitor radio signals with drones and check students with scanners;¹⁰ in India, mobile cell jammers are deployed during certain standardized exams;¹¹ and in Romania, educators changed the definitions in an online dictionary during national standardized exams after noticing a spike in certain online word searches during a previous exam.¹² Some of these defensive techniques would have

5. Ritesh Chugh, *Students Are Using ‘Smart’ Spy Technology To Cheat In Exams* (2016), <http://theconversation.com/students-are-using-smart-spy-technology-to-cheat-in-exams-59241> [<https://perma.cc/6N55-RWEE>]; Jonathan Strickland, *How Google Glasses Work* (2012), <https://electronics.howstuffworks.com/gadgets/other-gadgets/project-glass.htm> [<https://perma.cc/2WBM-YZB9>]; Eye Glass Set: Innovative Spy Device for Successful Exam, GSM-Earpiece.com, <https://www.gsm-earpiece.com/products/glasses-set/> [<https://perma.cc/J3GJ-FK22>] (“Spy Glasses is an innovative spy product designed with the aim to establish two-way secret communication between you and your assistant during tests, exams, public speeches, etc. Instead of lenses ordinary glass is used, which permits everyone regardless of the eye sight make use of the device . . . This set is exactly what you need for successful exam without preparation!”).

6. r0seller, *Bluetooth Pen for Cheating*, YouTube (2010), <https://www.youtube.com/watch?v=r29-4QXcgWc> [<https://perma.cc/22AC-935S>].

7. GSM-Earpiece.com, <https://www.gsm-earpiece.com/products/glasses-set/> [<https://perma.cc/J3GJ-FK22>] (“the connection between Glasses, spy earpiece and your phone is wireless and thus absolutely unnoticeable for others”).

8. *Id.* (“includes a Bluetooth transmitter embedded into a watch and a spy earpiece - all you need for easy and invisible cell phone connection”).

9. Dieter Bohn, *Intel Made Smart Glasses That Look Normal*, THE VERGE (2018), <https://www.theverge.com/2018/2/5/16966530/intel-vaunt-smart-glasses-announced-ar-video> [<https://perma.cc/F4HJ-U9G8>] (smart glasses that look and feel “[v]irtually indistinguishable from regular eyeglasses” but “[w]hen you’re wearing them, you see a stream of information on what looks like a screen – but it’s actually projected onto your retina”).

10. Saskya Vandoorne, *From Smartwatch and Smartpen . . . To Smartcheat?*, CNN BUSINESS (2014), <https://www.cnn.com/2014/06/19/business/high-tech-cheating/index.html> [<https://perma.cc/N48R-GN85>].

11. Iftikhar Gilani, *Now, Mobile-Phone Jammers To Check Cheating At Exam Centers*, DNA India (2016), <http://www.dnaindia.com/india/report-now-mobile-phone-jammers-to-check-cheating-at-exam-centres-2169893> [<https://perma.cc/MAS5-3XXD>].

12. Gianluca Mezzofiore, *This Dictionary Has Found A Brutal Way To Catch Cheating Students*, Mashable (2017), https://mashable.com/2017/03/20/dictionary-romania-cheat-students/#_0vEMvG5vmqB [<https://perma.cc/6PKK-DERK>].

questionable legality in the United States,¹³ and even if they were permitted, history demonstrates that students would soon hurdle those obstacles. The savvy nature of cheating has simply outpaced educators racing to foil students' high-tech and ever-changing innovative cheating mischief.

While problematic in all educational contexts, the implications of this erosion of academic integrity have particularly profound consequences in law school, given that law schools prepare students for a profession regulated by high ethical standards via a code of professional conduct.¹⁴ The American Bar Association ("ABA")¹⁵ does not specifically address academic integrity in its standards for accreditation; thus, law schools are tasked with implementing procedures and tools themselves to prevent, catch, and respond to students' elaborate schemes of academic dishonesty. False accusations are inevitable. Students must also implement safety practices to avoid such accusations, as they can have a devastating impact on students' academic records, employment opportunities, and bar admission. Unfortunately, litigation can, and often does, ensue between students and law schools when allegations of academic dishonesty arise.¹⁶

The importance of mending the disconnect between the prevalence of academic dishonesty in law school and the high ethical standards of law practice must be addressed by legal educators. The best practices include developing stringent exam procedures and appropriate means of handling allegations of cheating, providing explicit instruction on integrity, and creating a law school culture that reinforces the high ethical standards that students will be held to once in practice. While perhaps provocative to think that academic integrity can be taught, this article contends that indeed, academic integrity should be part and parcel of legal education, as a means to teach students the harm cheating will have on the

13. Cultural considerations may affect many aspects of students' motivation to cheat and educational institutions' responses but, though worthy of deeper analysis and separate scholarship, are outside the scope of this article.

14. See MODEL RULES OF PROF'L CONDUCT (AM. BAR ASS'N 1983).

15. Elie Mystal, *Is there an Epidemic of Cheating at Law Schools?* ABOVE THE LAW (2009), <https://abovethelaw.com/2009/05/is-there-an-epidemic-of-cheating-at-law-schools/> [<https://perma.cc/QEC6-J9KH>].

16. See *Kerr v. Bd. of Regents of the Univ. of Neb.*, 15 Neb. App. 907 (2007), wherein a law student petitioned Nebraska Court of Appeals for review of decision by the law school to dismiss student for instances of plagiarism; *Beauchene v. Miss. Coll.*, 986 F. Supp. 2d 755 (2013), wherein a law student suspended and expelled for plagiarism brought suit against the law school alleging breach of contract, defamation, and negligent and intentional infliction of emotional distress; and *Valente v. Univ. of Dayton*, 438 Fed. Appx. 381 (2011), wherein a law student sued his law school alleging breach of contract, promissory estoppel, and various torts.

students' education, reputation, profession, and future ethical core as lawyers. With such instruction, students can develop and practice habits of integrity that will contribute to self-identity as lawyers.

This article explores how law students are primed to cheat, as well as the particular consequences students will face from academic dishonesty in law school. It further addresses the impact of cheating in the legal profession and proposes a multifaceted solution, including teaching integrity as part of the law school curriculum. Part I explores the prevalence of academic dishonesty in higher education and details some of the high-tech and often-changing methods of cheating, which in turn make responding to and catching cheaters so difficult. Part II examines the special implications of cheating in law school; in particular, the disconnect between the high standards of ethical conduct mandated in the practice of law, and the prevalence of academic dishonesty in law school. Given research that indicates that a school's academic policies and explicit instruction on academic integrity can positively influence student behavior,¹⁷ Part III of this article seeks to identify the best practices that law schools can implement to ensure fairness to students, and to protect the academic integrity of their institution and of the profession.¹⁸ This article posits that robust academic policies, including well-communicated rules and standards, faculty trust regarding the enforcement of academic integrity policies, stringent exam procedures to deter cheating, and embedded instruction on integrity in the law school curriculum can be effective in curbing academic dishonesty, and lead to a significant impact on student behavior.

II. STUDENTS CHEAT!

The problem of academic dishonesty is compounded by the fact that students and professors appear to have discrepant definitions of cheating, and technological advancements have provided students more means and methods to cheat than ever before. Educators valiantly counter high-tech cheating efforts with high-tech solutions of their own, but alas, such efforts are ultimately futile as cheating methods continue to adapt to developing technology, with dishonest students seemingly always one step ahead of the game. The cat and mouse game between educators and

17. Donald McCabe, et al., *Cheating in Academic Institutions: A Decade of Research*, 11 *Ethics & Behavior* 219, 225-26 (2001).

18. This article is not meant as a blueprint that will wholly resolve the problem of academic dishonesty in legal education, but rather is meant as a springboard for legal educators to more thoughtfully consider how academic integrity can be embedded into the law school curriculum.

cheating students is a technological arms race, and most educators cannot keep up.

A. *The Prevalence and Normalization of Cheating in Higher Education*

*“I don’t feel any guilt when I cheat on a test.
I actually feel better knowing I won’t fail the test.”*

-Anonymous¹⁹

In February 2017, Kessler International surveyed 300 students from both public and private colleges and universities, including online universities, and found that 86% of college students reported that they “have cheated in some way while in school.”²⁰ A shocking 76% copied another student’s assignment, 42% said they purchased custom papers online, and 72% admitted to using their phone, tablet, or computer to cheat in class.²¹ A staggering 97% of these admitted cheaters said they had never been caught.²² Such cheating trends generally are validated by other studies as well: more than one-half of university²³ and nursing students report cheating;²⁴ another study reported that almost 12% of pharmacy students admitted to cheating, and that 55% were aware of cheating at their institutions.²⁵ “Subsequent research by Sisson and Todd-Mancillas found that as much as 56 percent of an entire graduating class of engineers

19. Christopher Carbone, *YouTube stars being paid to push academic cheating*, FOX NEWS, <http://www.foxnews.com/tech/2018/05/06/youtube-stars-being-paid-to-push-academic-cheating-report-says.html> [<https://perma.cc/R8RF-YKTF>].

20. Kelly Mattmuller, *Survey Shows Cheating and Academic Dishonesty Prevalent in Colleges and Universities*, PR Newswire (2017), <https://www.prnewswire.com/news-releases/survey-shows-cheating-and-academic-dishonesty-prevalent-in-colleges-and-universities-300402014.html> [<https://perma.cc/8YVR-ZCML>] (in addition to the prevalence of student cheating, Kessler also reported “some teachers were found to be becoming increasingly unethical in the face of increased pressure to have their students perform while others have left the profession because of the pressures of Universities to pass students so the income stream continues”).

21. *Id.*

22. *Id.*

23. Julia M. Christensen Hughes & Donald L. McCabe, *Understanding Academic Misconduct*, 36 Can. J. of High Educ. 49 (2006); Donald L. McCabe, *It Takes a Village: Academic Dishonesty and Educational Opportunity*, 91 Liberal Educ. 26, 28 (2005).

24. Linda Krueger, *Academic Dishonesty Among Nursing Students*, 53(2) *J. Nurs. Educ.* 77-87 (February 2014).

25. Eric J. Ip, et al., *Motivations and Predictors of Cheating in Pharmacy School*, 80 Am. J. Pharm. Educ. 133 (2016).

(287 students) ignored explicit instructions not to collaborate on graded work.”²⁶

Pressure on academic achievement in college has contributed to students’ academic dishonesty, and observations of classmates who cheated and “got away with it” influence others to become academically dishonest simply to “level the playing field.”²⁷ Research has found that when “[s]tudents who might otherwise complete their work honestly observe [that cheating is] overlooked or treated lightly by faculty (who do not want to become involved in what they perceive as the bureaucratic procedures designed to adjudicate allegations of academic dishonesty),” they “convince themselves they cannot afford to be disadvantaged by students who cheat and go unreported or unpunished.”²⁸ Indeed, the payoffs can be huge. One study examining academic misconduct found that 60% of cheating students had earned scores of 80% or higher.²⁹

There have never before been so many opportunities and strategies for cheating. WikiHow provides step-by-step instructions for effective cheating should a student find themselves “simply unprepared, lazy, or otherwise unable to successfully pass an exam”³⁰ The site categorizes methods, such as traditional secreted cheat sheets, the water-bottle cheat sheet,³¹ stashing answers in the bathroom or on bulletin boards, and various partner cheating methods including elaborate signing codes to perform with another test-taker during exams.³² While still easily accessible, modern cheating technologies make the smartwatch, cell phone, and “water-bottle cheat” almost passé.³³ Mobile apps allow

26. William R. Todd-Mancillas & Edwin Sisson, *Cheating Among Engineering Students: An Analysis*, Paper presented at the Annual Meeting of the American Association for the Advancement of Science (Chicago, IL, February 17, 1987) at 5.

27. McCabe, *supra* note 17, at 220 (exacting enforcement of a school’s honor code is critical in order to create a law school culture of zero-tolerance for cheating).

28. McCabe, *supra* note 17, at 220.

29. Kristine Ottaway, et al., *Cheating after the test: who does it and how often?* 41 *Adv. Physiol. Educ.* 368 (2017) (suggesting that “large competitive courses face significantly higher prevalence” of cheating, and that the prevalence of cheating among “high-achieving students may have gone underreported in previous literature”).

30. *How To Cheat On A Test*, WIKIHOW, <http://www.wikihow.com/cheat-on-a-test> [<https://perma.cc/RJB7-39FP>].

31. *Id.* (The “water-bottle cheat sheet” is a cheating method whereby the label is removed from a clear water bottle, anticipated exam answers are written on the adhesive side, and then the label is reattached to the water bottle. The student may have the water bottle placed in front of them in an exam and given the clarity of the bottle and water, can read the cheat notes inscribed on the label).

32. *Id.*

33. Charlie Osborne, *How do students use tech to cheat?*, ZDNet (2012), <https://www.zdnet.com/article/how-do-students-use-tech-to-cheat/> [<https://perma.cc/SF5S-TFLV>] (explaining methods of cheating including earpieces, signals and MP3 files, Bluetooth pens, image editing software, smartwatches, calculators, and cameras).

students to share exam questions with the next group of students taking the exam;³⁴ exams may be intercepted wirelessly and transmitted to remote printers; and shared Google documents allow multiple people to share documents online during exams.³⁵ A University of Iowa student reportedly stole exams and accessed the University's grading systems by installing keylogging devices on computers in University classrooms and using software to intercept and record everything typed on them.³⁶

Students have been known to buy research papers off of the Internet for many years. Nowadays, however, students can find customized written documents (virtually undetectable by plagiarism detection software) from various commercial websites presenting themselves as "document preparation services."³⁷ Students can hire people to take entire online courses on their behalf.³⁸ They have also been known to sign up for an online class twice: once to fail but gain exposure to course content and exam questions and answers, and a second time to ace via advance exposure to the previewed content.³⁹

34. Casey Fabris, *Another Use for Yik Yak on Campus? Cheating on Exams*, Chron. of Higher Educ. (2015), <https://www.chronicle.com/blogs/wiredcampus/another-use-for-yik-yak-on-campus-cheating-on-exams/56543> [<https://perma.cc/7NNK-27FF>].

35. Jeffrey R. Young, *Online Classes See Cheating Go High-Tech*, Chron. of Higher Educ. (2012), <https://www.chronicle.com/article/Cheating-Goes-High-Tech/132093> [<https://perma.cc/MR4L-549L>].

36. Louise Matsakis, *College Kid Changed His Grade 90 Times with a High-Tech Hack*, *FBI Says*, VICE (2017), https://www.vice.com/en_us/article/qv3wmm/college-kid-changed-his-grades-90-times-with-a-high-tech-hack-fbi-says-vgtrn [<https://perma.cc/JZ5C-Y5EW>].

37. Brad Wolverson, *The New Cheating Economy*, Chron. of Higher Educ. (2016), <https://www.chronicle.com/article/The-New-Cheating-Economy/237587> [<https://perma.cc/22DC-3XNK>].

38. Xian Bu, *Contract Cheating's African Labor*, Chron. of Higher Educ. (2016), <https://www.chronicle.com/article/Contract-Cheating-s-African/237586> [<https://perma.cc/45BA-CX97>] (college-educated Africans in countries with a per capita gross annual income of \$1,300 per year may earn up to \$5,000 per month in slow seasons and \$14,000 in high seasons. Given the relative economic advantages of providing services in the cheating industry, commercial cheating services are here for the long term.); *See also* BoostMyGrade.com, OnlineClassHelp.com, TakeYourClass.com, NoNeedtoStudy.com (websites that specialize in taking entire online courses); Wolverson, *supra* note 37 (11,000 students at Duke, Michigan State, and Harvard Universities were purported to have used NoNeedtoStudy.com); Brad Wolverson, *Fake Online Class With Students Paid to Cheat. Could Professors Catch the Culprits?*, CHRON. OF HIGHER EDUC. (2015), <https://www.chronicle.com/article/In-a-Fake-Online-Class-With/234687> [<https://perma.cc/DJ7U-FJ4Z>] (Reporting an experiment where two professors taught an online psychology class in which one-third of the enrolled students paid \$1,000 for someone else to take the class on their behalf; neither professor detected the cheat and both awarded A grades to the cheating "students.").

39. Andy Thomason, *This is How Students Cheat in MOOCs*, Chron. of Higher Educ. (2015), <https://www.chronicle.com/blogs/ticker/this-is-how-students-cheat-in-moocs/103617> [<https://perma.cc/M3CD-XL6A>].

Even more concerning than the alarming rates at which cheating is taking place and the savvy technological nature of the methods is the increasing normalization of the behavior. While 54% of the students surveyed in the Kessler study indicated that cheating was “OK,” some even reported it was necessary to stay competitive⁴⁰ and “a perfectly acceptable way to get ahead.”⁴¹ A mere 12% of polled students stated their ethics would preclude them from cheating.⁴²

A comparison of student comments collected in a 2006 survey with comments from earlier surveys (one of which dated to the mid-1950s) revealed that modern students reported perceiving “more gray areas between honesty and dishonesty.”⁴³ In particular, students’ definitions of academic dishonesty involving citations and attribution to sources have evolved such that behavior regarded as plagiarism in 1964 is no longer considered cheating by many modern students.⁴⁴ Indeed, students self-report a higher incidence of cheating *after* they are provided with definitions of “cheating,” indicating that students’ understanding of what behavior constitutes “cheating” is more lax than that of their professors.⁴⁵ The very concept of cheating has likely become blurrier in a post-internet society because it is so easy to find, lift, and include language from online sources. Thus, whether the plagiarism results from inadvertent mistakes, sloppy citation habits, poor training in proper citation and quotation skills, or a deliberate choice to cheat, such behavior has increased simply because there is more opportunity and accessibility to do it easily.

B. Educators’ Futile Responses to Cheating

Part of the problem with a mere ban on technological devices generally is the difficulty in differentiating them from traditional glasses, watches, earpieces, jewelry, etc.⁴⁶ Educators are not necessarily

40. Mattmuller, *supra* note 20.

41. Mattmuller, *supra* note 20.

42. Mattmuller, *supra* note 20.

43. Leigh Jones, *Cheating 2.0*, THE NATIONAL LAW JOURNAL (2009), <https://www.law.com/nationallawjournal/almID/1202430936451/?slreturn=20180528210353> [<https://perma.cc/XG5M-K493>].

44. McCabe, *supra* note 17, at 220.

45. Robert T. Burrus et al., *Self-Reports of Student Cheating: Does a Definition of Cheating Matter?*, 38 J. of Econ. Educ. 3 (2007) (“Prior to being provided a definition of cheating, students reported whether they had cheated. Students were then provided a definition of cheating and asked to re-report their cheating behaviors. Results indicate that students do not understand what constitutes cheating and are much more likely to report cheating post definition.”).

46. See Saskya Vandoorne, *From Smartwatch and Smartpen . . . to Smart Cheat?*, CNN BUSINESS (2014), <https://www.cnn.com/2014/06/19/business/high-tech-cheating/index.html>

technology experts and are not always able to identify traditional glasses, hearing aids, or watches from wearable cheating devices. Moreover, some professors are not even aware of low-tech cheating methods popular today. For example, students can print custom water bottle labels that look remarkably like a retail label at a glance.⁴⁷ Few educators are motivated to keep up with changing cheating practices at the pace cheating is evolving. This is an even more daunting task quelling cheating when assignments include work performed outside of the classroom, though webcam proctoring and keystroke recognition software have responded to this as well. Students have long been able to purchase (or sometimes even obtain for free) papers online,⁴⁸ copy and paste material from the internet (other electronic media) for papers they are working on, purchase exams online, and use social media to share information. Plagiarism and exam testing software curbs and catches some of these cheats, but not all.⁴⁹

Given the prevalence of academic dishonesty, some educators go to extraordinary efforts to intercept, prevent, and catch their sophisticated student cheaters. Googling suspect phrases and using plagiarism-detection software are first line high-tech defenses. Additional sophisticated efforts to catch cheaters range from the use of airport security-like wands to detect contraband electronic devices,⁵⁰ to webcams and keyboard dynamics software to verify student identity based on typing

[<https://perma.cc/9D6L-G9WE>] (“It’s hard to find a teacher who’s up on what’s happening in the tech world . . . they don’t know about the latest wearable technology. . .”).

47. *The Editable ‘Print a Cheat-Sheet On an Aquafina Bottle Label and Ace Your Test’ Website*, GEEKOLOGY (2013), <http://geekologie.com/2013/04/the-editable-print-a-cheat-sheet-on-an-a.php> [<https://perma.cc/8BTW-GEZH>] (“just in time for exams comes *the White Weasel* editable and printable Aquafina cheat-sheet bottle label . . . You just go to the website, replace the label text with the info you need for your exam, print it out, glue it to a water bottle, and PRESTO, you passed a test you didn’t really deserve to.”); *See also* Nextraker, *How to Cheat On a Test with A Water Bottle*, YOUTUBE (2012) <https://www.youtube.com/watch?v=PeTk3lnSeM4> [<https://perma.cc/2EVN-XKWU>]; *The California Bar Exam now does not allow students to have a water bottle on their desk. Exam Rules*, THE STATE BAR OF CALIFORNIA <http://www.calbar.ca.gov/Admissions/Examinations/Exam-Rules> [<https://perma.cc/TVZ6-6SHK>].

48. Academic papers can be purchased from numerous online sources. *See e.g.* www.schoolsucks.com [<https://perma.cc/JP64-QQCH>], www.cheatouse.com [<https://perma.cc/N5KF-G92N>], and www.123helpme.com [<https://perma.cc/A83Z-FFQP>].

49. Carl Straumsheim, *False Security: Plagiarism detection software is costly, ineffective, and error-prone. Why are more and more teachers turning to it?* SLATE (2015), http://www.slate.com/articles/life/inside_higher_ed/2015/07/turnitin_and_safeassign_plagiarism_detection_programs_why_are_they_all_ineffective.html [<https://perma.cc/Z7DF-NTAA>] (Turnitin.com and Safeassign do not catch up to 50% of plagiarism).

50. Mary Ellen McIntire, *Universities Ban Smart Watches During Finals*, Chron. of Higher Educ. (2015), <https://www.chronicle.com/blogs/wiredcampus/universities-ban-smart-watches-during-finals/57003> [<https://perma.cc/LF6M-RADB>].

patterns,⁵¹ to professional proctors that watch student exams via laptop cameras.⁵² Educators make valiant efforts to keep up with the latest innovations, but for every high tech-solution, there is a new high-tech cheating alternative. The end result is the “gamefication of education, and [it seems to be that] students are winning . . .”⁵³

III. SPECIAL IMPLICATIONS OF ACADEMIC DISHONESTY IN LAW SCHOOL

“Let’s kill all the lawyers.”

-William Shakespeare⁵⁴

As the gatekeeper to the legal profession, law school is meant to prepare students for a profession where a code of conduct regulates nearly every aspect of practice, and sometimes even conduct outside of practice.⁵⁵ However, emerging from an undergraduate culture of almost routine academic dishonesty, students in law school continue to cheat on law school exams at an alarming rate. A 2006 survey of 54 colleges found that 45% of law school students had engaged in some form of cheating at least once in the previous year.⁵⁶ The disconnect between academic dishonesty in law school and the integrity expected in law practice is evident, and lawyers uncomfortably remain the butt of jokes as a profession of unethical scoundrels.⁵⁷

The ABA specifies that “[a] lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”⁵⁸ The ABA Model Rules of Professional Conduct “provide a framework for

51. Wolverson, *supra* note 37.

52. *Id.*

53. Young, *supra* note 35.

54. Debbie Vogel, ‘Kill the Lawyers,’ *A Line Misinterpreted*, NEW YORK TIMES (1990), <http://www.nytimes.com/1990/06/17/nyregion/1-kill-the-lawyers-a-line-misinterpreted-599990.html> [<https://perma.cc/N9NX-TWUD>] (“Let’s kill all the lawyers,” is an oft-quoted Shakespearian quote implying the author’s poor regard for lawyers; however, contrary to common misconception, “Shakespeare meant it as a compliment to attorneys and judges who instill justice in society.”).

55. MODEL RULES OF PROF’L CONDUCT (AM. BAR ASS’N 1983).

56. Lucia Graves, *Which Types of Students Cheat Most?*, U.S. NEWS AND WORLD REPORT (2008), <https://www.usnews.com/education/articles/2008/10/03/which-types-of-students-cheat-most> [<https://perma.cc/26K4-RJNX>].

57. *Public Esteem for Military Still High*, PEW RESEARCH CENTER (2013), <http://www.pewforum.org/2013/07/11/public-esteem-for-military-still-high/> [<https://perma.cc/9KG8-CM4K>] (According to a 2013 survey by the Pew Research Center, lawyers were ranked at the bottom of a list of ten professions in terms of public perception of contributions to society with only 18% of respondents opining that lawyers contribute “a lot” to society contrasted to that of military members and teachers at the top of the scale with 78% and 72% respectively).

58. MODEL RULES OF PROF’L CONDUCT: Preamble & Scope (AM. BAR ASS’N 1983).

the ethical practice of law” and is “designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies.”⁵⁹ Maintaining the integrity of the profession is critical to the profession, and as such,⁶⁰ the Rules proscribe high ethical standards for lawyers as representatives and advocates for justice in all dealings with clients and the courts,⁶¹ and even in the lawyer’s personal affairs.⁶² In justifying a strict ethical code of conduct, The New York Lawyer’s Code of Professional Responsibility opens with a central principal: “The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law Lawyers, [in turn], [are] guardians of the law.”⁶³ Similarly, the California Rules of Professional Conduct, binding on all members of the California State Bar, express that they are meant “to protect the public. . . and to promote the administration of justice and confidence in the legal profession.”⁶⁴

Most states require state bar applicants to pass the Multistate Professional Responsibility Exam and complete a moral character background check, in addition to passing the state bar exam, prior to licensing and admission to the bar.⁶⁵ Every state bar also has some mechanism for enforcing any breach of state ethics rules through disciplinary proceedings and maintains a duty to report known violations

59. *Id.* (The ABA Model Rules of Professional Conduct were adopted by the ABA House of Delegates in 1983. They serve as models for the ethics rules of most jurisdictions. California is the only jurisdiction that does not have professional conduct rules that follow the format of the ABA Model Rules of Professional Conduct).

60. *Id.* “In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.”

61. *Id.* at Preamble (“a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession’s ideals of public service”); See also Brian Martin, *Integrity and Personal Conscience Guide Ethical Lawyers*, LAW.COM (2010), <https://www.law.com/almID/4dcafb4b160ba0ad57001ba9/> [<https://perma.cc/C3VE-RBGT>] (“there is more to being an ethical lawyer than following the letter of the Model Rules. Indeed, the Model Rules are spirited by integrity, and that value envelopes them to assure that lawyers will do right even if the Model Rules are silent or permit less.”).

62. *Id.* (“A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs.”).

63. *New York Lawyer’s Code of Professional Responsibility*, NYSBA (2007), <https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=26638> [<https://perma.cc/KE5M-N28J>].

64. *Exam Rules, THE STATE BAR OF CALIFORNIA* <http://www.calbar.ca.gov/Admissions/Examinations/Exam-Rules> [<https://perma.cc/TVZ6-6SHK>].

65. See *Jurisdictions Requiring the MPRE*, National Conference of Bar Examiners, <http://www.ncbex.org/exams/mpre/> [<https://perma.cc/E4W9-6S3F>].

of professional code by other lawyers.⁶⁶ Indeed, a lawyer can be disbarred for committing a misdemeanor or a felony,⁶⁷ and disciplined not only for lying, but also for omitting necessary information or having a “reckless disregard for the truth.”⁶⁸

Regrettably, the law school environment is exacerbating the prevalence of academic dishonesty because of the central importance of grades to many law school opportunities and future employment options.⁶⁹ Law students are obsessed with grades because the benefits of academic superiority are critical to a student’s membership in Law Review and Moot Court teams, and acceptance to coveted internships and clinical experiences. The “focus on grades extends not just to ‘big firm’ [jobs] . . . , but to judicial clerkships and public interest fellowship programs as well.”⁷⁰ “In no other profession do grades play such a central role in hiring decisions, and they matter even 10 years out of law school.”⁷¹ Particularly, when students are graded on a curve or classes have mandatory distributions,⁷² the cut-throat stereotypes of law school

66. The findings of disciplinary proceedings can be searched online. Directory of Lawyer Disciplinary Agencies, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/directory_disciplinary_agencies_online.authcheckdam.pdf (last updated Oct. 2018).

67. Hal R. Lieberman, *Lawyers Who Commit Crimes: Disciplinary Consequences*, N.Y. Law J., (2013), <http://nylegalethics.attorney/lawyers-who-commit-crimes-disciplinary-consequences/> [<https://perma.cc/9FP3-LZTX>]; See also *Washington State Bar Association*, RULES OF PROFESSIONAL CONDUCT, http://www.courts.wa.gov/court_rules/?fa=court_rules.rulesPDF&groupName=ga&setName=rpc&pdf=1 [<https://perma.cc/UNX2-F62M>].

68. *Chapter 4. Rules of Professional Conduct Preamble: A Lawyer’s Responsibilities*, THE FLORIDA BAR, <https://www.floridabar.org/rules/rtrfb/> [<https://perma.cc/AW9W-8EEL>].

69. Deborah Cassens Weiss, *Reports of Law School Cheating Increase Along with Focus on Grades*, ABA JOURNAL (2009), http://www.abajournal.com/news/article/reports_of_law_school_cheating_increase_along_with_the_focus_on_grades/stay_connected/newsletter [<https://perma.cc/626J-ZE64>] (William Chamberlain, assistant dean for law career strategy and advancement at Northwestern University law school, reports that despite grades not being a “particularly good predictor of a lawyer’s success” in practice, the profession’s “obsession with grades is harming the profession by diverting law students from focusing on the skills they need to serve clients’ needs.”)

70. William Chamberlain, *Grades matter, but service matters more: The obsession with grades has harmed the legal profession by diverting lawyers and law students from focusing on the skills that they need to serve their clients’ needs*, *The National Law Journal* (2009), <https://www.law.com/nationallawjournal/almID/1202435980553&src=EMC-Email&et=editorial&bu=National%2520Law%2520Journal&pt=NLJ.com-%2520Daily%2520Headlines&cn=20091204NLJ&kw=Grades%2520matter%252C%2520but%2520service%2520matters%2520more/> [<https://perma.cc/9W4R-9BBD>].

71. *Id.*

72. *List of Law School GPA Curves*, WIKIPEDIA (2009) https://en.wikipedia.org/wiki/List_of_law_school_GPA_curves [<https://perma.cc/9HTD-Q53Z>], (“Grading on a curve contributes to the notoriously competitive atmosphere within law schools.”), citing *Competition and the Mandatory Curve in Law School*, CALI’S PRE-LAW BLOG (2006), <https://classcaster.net> [<https://perma.cc/B9X9->

are on full display. It is no wonder that law school is notorious for being stressful and competitive.

Moreover, this pressure-cooker environment creates an astronomically tense situation when allegations of academic dishonesty are lodged. A class failure because of cheating can be devastating to a student's academic record and overall grade point average. Further, honor code violations may preclude students from participating in certain prestigious activities.⁷³ Educational funding can be affected as well because many grants and scholarships are predicated upon maintaining good academic standing.⁷⁴ At a time when the average cost of legal education exceeds \$45,000 a year for tuition alone, students cannot afford to lose funding opportunities due to allegations of academic dishonesty.⁷⁵ Ultimately, such accusations may even affect the student's ability to practice law. The ABA mandates that law schools report instances of cheating as they may be considered during the moral character background check prior to admission to the bar. Accordingly, students wrongly accused or disciplined for academic dishonesty rightfully seek exonerations, including withdrawal of the action from the student's permanent record, even if it means moving the accusation from an internal institutional "honor board" issue to a legal concern.⁷⁶ Given the

VC9F]. ("The main source of this competition is the mandatory curve you will likely encounter once you enter law school.").

73. *Id.* ("The curve affects the class rank, affects the chances of making law review, affects the chances of scoring that big job/internship.").

74. *List of Law School GPA Curves*, WIKIPEDIA (2009) https://en.wikipedia.org/wiki/List_of_law_school_GPA_curves [<https://perma.cc/9HTD-Q53Z>], ("Some law schools set their curve lower to retain scholarship funding; others set their curve higher to make their students more competitive in the job market.").

75. *Law School Costs*, LAWSCHOOLTRANSPARENCY, <https://www.lawschooltransparency.com/reform/projects/Tuition-Tracker/> [<https://perma.cc/JR9N-LHFX>].

76. Faced with the dire consequences of a notation of academic dishonesty on their transcript, or removal from certain honors organizations because of such allegations, law students respond with claims for breach of contract, due process violations, emotional distress, and defamation. *See e.g.* *Valente v. Univ. of Dayton*, 438 F. Appx. 381 (2011) (law student asserted breach of contract and tort claims arising from an accusation of cheating filed against him); *Viriyapanthu v. Regent of the Univ. of Cal.*, 2003 WL 22120968 (2003) (law student alleged violation of procedural due process by failing to afford him proper notice and hearing in response to charge of plagiarism against him); *Kiani v. Trustees of Bos. Univ.*, 2005 WL 6489754 (2005) (student brought claim for breach of contract arising from allegations of plagiarism against her); *Kerr v. Bd of Regents of the Univ. of Neb.*, 15 Neb. App. 907 (2007) (law student filed a petition under the Administrative Procedure Act for review of a decision by the law school's honor committee relating to charges of plagiarism against the student); *Walker v. Harvard*, 840 F.3d 57 (2016) (student brought claim for breach of contract and defamation against law school that issued a transcript notation of plagiarism of draft article submitted to law journal); *Beauchene v. Miss. Coll.*, 986 F.Supp.2d 755 (2013) (law student claimed breach of contract,

competitive legal job market, law students cannot afford to take chances that damage their opportunities for securing meaningful employment.⁷⁷

Even when a student prevails in litigation over false cheating accusations, the student may still suffer irreparable damage to his reputation.⁷⁸ People cannot always forget what they know, even if they should. Moreover, accused students must simultaneously respond to and prepare for investigatory procedures, while also managing the accompanying fear and anxiety such an investigation will undoubtedly provoke. At the same time, the student must contemplate potential loss of ability to complete law school, inability to repay student loans, lost investments of time and effort, possible relocation, and permanent damage to one's academic record.⁷⁹ Not only do such accusations prompt unhealthy levels of stress and difficulty during law school, but a student's reputation may be forever tainted by shadows of doubt.⁸⁰

defamation, and intentional infliction of emotional distress against law school that suspended and later expelled student for plagiarism).

77. 2016 *Law Graduate Employment Data*, ABA SECTION OF LEGAL EDUCATION AND EDUCATION TO THE BAR, (2016), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/2016_law_graduate_employment_data.authcheckdam.pdf [<https://perma.cc/WN34-T7M6>]. According to the ABA's 2016 Law Graduate Employment Data report, only 72.6% of law school graduates had secured long-term, full-time employment. Of the remainder, almost 10% of 2016 graduates were unemployed or seeking employment, whereas the remainder had secured law school funded positions or either part-time and/or short-term employment. Further, there was a 7.15% decrease in the ability of law graduates to secure employment between 2015 and 2016. Between the decreased ability to secure employment, and the rising number of graduates seeking employment, new graduates need every advantage they can get.

78. Carolyn Hoyle, et al., *The Impact of Being Wrongly Accused of Abuse in Occupations of Trust: Victims' Voices*, UNIVERSITY OF OXFORD CENTRE FOR CRIMINOLOGY, https://www.law.ox.ac.uk/sites/files/oxlaw/the_impact_of_being_wrongly_accused_of_abuse_hoyle_et_al_2016_15_may.pdf [<https://perma.cc/XE67-DDL3>] (studies have shown that victims of wrongful convictions or false accusations still suffer from the stigma unfairly attached to them. For example, research studies on the "psychological effects of imprisonment for the innocent" include: "shock, . . . betrayal, a sense of injustice, . . . , a sense of abandonment by humanity, and . . . loss of self." While such study references the experience of prisoners wrongfully convicted for serious crimes, and thus the effects are more extreme, students wrongfully accused of cheating suffer similar effects, for there is hardly a more direct challenge to one's sense of dignity and honor than a charge of cheating).

79. G.M. Filisko, *Not a Cheater? Are You Sure?* Student Lawyer (2012), <https://abaforlawstudents.com/2012/12/01/not-cheater-sure/> [<https://perma.cc/9V3C-C5NV>].

80. Joe Patrice, *Cheating Scandal Embroils Law School in Federal Lawsuit*, ABOVE THE LAW (2014), <https://abovethelaw.com/2014/09/cheating-scandal-embroils-law-school-in-federal-lawsuit/> [<https://perma.cc/6QRT-7XUB>] (detailing Penn State Dickenson's "pretty terrible grasp on how the justice system is supposed to work" when a 3L law student was accused of using her cell phone to look up answers on an evidence exam. While she was not expelled, the student received a suspension and lost her good character standing, resulting in her losing her position in a legal clinic. The student filed a complaint against the school alleging due process violations and breach of contract arising from the investigation and prosecution of academic dishonesty allegations charged against her. The

Perhaps most demoralizing of all, a culture of cheating in law school impacts the legal profession as a whole. According to a 2013 survey by the Pew Research Center, lawyers ranked at the bottom of ten professions in terms of public perception of contributions to society.⁸¹ Only 18% of respondents viewed lawyers as contributing “a lot” to society (contrasted to that of military members and teachers at the top of the scale with 78% and 72% respectively); while 43% of respondents considered lawyers as making “some” contribution, and a full 34% evaluating them as making very little or no contribution to society.⁸² The stigma of unethical students who become unethical attorneys beleaguers the reputation of what, until modern times, has long been recognized as a noble and honorable pursuit.⁸³ Lawyers who care about their profession have every incentive to protect it. Law school cheats who demonstrated a lack of integrity from the outset, do nothing to further this cause.⁸⁴

school’s investigation including questioning the student, inspecting her phone, and pressuring the student to admit to cheating or face expulsion. The school also interviewed other witnesses, including the student’s boyfriend, who ultimately testified at an honor board hearing against the student, allegedly under threat by the Dean to expel him if he did not so testify. Other witnesses offered exculpatory evidence during interviews, but those notes were not disclosed to the student).

81. PEW RESEARCH CENTER, *supra* note 57.

82. Kate Reilly, *Respect for Journalists Contributions Has Fallen Significantly In Recent Years*, PEW RESEARCH CENTER (2013), <http://www.pewresearch.org/fact-tank/2013/07/25/respect-for-journalists-contributions-has-fallen-significantly-in-recent-years/> [<https://perma.cc/P3T8-8Q6L>].

83. *Esquire*, DICTIONARY.COM, <http://www.dictionary.com/browse/esquire> [<https://perma.cc/5DQH-FSVG>] (the term “esquire” originated in the late 14th century from the word “squire,” or shield bearer, and was eventually extended to refer to the educated class. In the United States, the suffix “esquire” or “Esq.,” is used to indicate lawyer. It is perhaps no accident this custom developed as such, given that lawyers are the shield-bearers and guardians of social justice in modern society).

84. Sissela Bok, *Can Lawyers Be Trusted?*, 138 U. of Penn. L. Rev. 913, 916-17, 919 (1990). (There is a “common perception that too many lawyers violate basic moral principles when it suits their purposes.” Bok asserts that deceit, failure to keep promises, and excessive secrecy are the primary ways in which people hurt one another; therefore, every society institutes safeguards to protect against such violations. Given society’s lack of understanding about professional responsibilities, one can imagine how laypersons may misinterpret the codes of professional responsibility as they pertain to issues such as attorney-client privilege, where one may mistakenly assume that a lawyer is deceitful, keeping secrets, or are abusing society’s trust when they do not disclose protected client communications. As Bok so astutely observes, even when “public distrust [is] . . . misplaced, it is not easily stilled once it has been awakened.”).

IV. CALIBRATING LAW STUDENTS' ETHICAL COMPASS

“When students cheat on exams it’s because our school system values grades more than students’ value learning.”

-Neil de Grasse Tyson⁸⁵

Despite these concerns, this article rejects the notion that “cheating is an inevitable consequence of high-stakes testing.”⁸⁶ Further, abandoning testing altogether is not practical in legal education, especially considering that licensing after graduation relies on exactly that. Instead, by calibrating students’ ethical compasses at the beginning of law school, reinforcing and reorienting that compass regularly, and employing other best practices throughout law school, legal educators can help students develop a sense of integrity, teach them how to behave honorably, and instill ethical values. The repetition of these skills and reinforcement of this mindset may eventually become habit and an integral component of a student’s self-identity as an honorable lawyer—a worthy aspiration for future shield bearers and guardians of justice.

A. *Fostering Integrity During Orientation*

Incoming 1Ls wax lyrical about their reasons for becoming a lawyer. Many describe a desire to contribute to society, represent the oppressed, rise to the intellectual challenge of law school, and so on. Yet in the midst of long days studying for class and cramming for exams, they may forget their reasons for attending law school in the first place. Moreover, due to the prevalence and normalization of cheating in college, students may bring a “win at all costs” mentality to law school without understanding how it can wreak havoc on their future careers. Accordingly, a multifaceted approach to discourage cheating should begin during orientation, starting with a presentation that highlights the importance of integrity in law school and the legal profession and expectations for academic integrity, and that facilitates student commitment to adhere to those standards.

85. American astrophysicist and Director of the Hayden Planetarium at the Rose Center for Earth and Space in New York City.

86. Arne Duncan, Former U.S. Secretary of Education, *Despite Cheating Scandals, Testing and Teaching are Not at Odds*, The Washington Post, July 19, 2011. [<http://perma.cc/D5E6-G5D6>].

B. *The Honor Code - Discussion and Practice*

The law school's honor code⁸⁷ is a portal to discussing the expectations of integrity in legal education. Evidence suggests that adoption of academic honor codes is one of the simplest and most effective ways to curb academic dishonesty.⁸⁸ Indeed, two different studies by McCabe, et al, found that cheating was much less prevalent in schools that had an honor code than in schools that did not.⁸⁹ Discussion of the honor code at orientation assures students that it is “well implemented and strongly embedded in the student culture.”⁹⁰ The honor code presentation should emphasize that the transition into the legal profession begins in law school, and that even after, students will be held to rigorous ethical and professional standards; standards that are perhaps higher than those of other graduate programs. It should include time to address student questions and concerns, demonstrations of honor code violations, and a discussion of the consequences for violators. Students may be required to attest to their understanding of the requirements of the code as well as potential sanctions.

The presentation should include common ethical dilemmas faced by law students, as well as instruction on the desired choice or action, and consequences for failure to make the right choice.⁹¹ Small group exercises can be created to reinforce these concepts, including:

87. The particular substantive and procedural content of codes is outside the scope of this article. See Steven K. Berenson, *What Should Law School Student Conduct Codes Do?*, 808 AKRON L. REV. 803 (2005) (evaluating the role that student codes play in the development of ethical lawyers, and providing specific substantive and procedural suggestions including that priority should be placed on a law school code's regulatory function).

88. McCabe, *supra* note 17, at 219-223.

89. McCabe, *supra* note 17, at 223. (T. 1 “Self-Admitted Cheating – Summary Statistics,” wherein the authors report that in their 1990-1991 study of self-admitted cheating among college students, 44% of students at schools that did not have an academic honor code reported seriously cheating on an exam or written work, contrasted with 71% of students self-reporting seriously cheating. The authors' 1995-1996 replicate study confirms these findings with 54% of students self-reporting serious cheating at schools that had adopted an academic honor code, compared to 71% of students seriously cheating at schools that did not). *But see* Burrus *et al.*, *supra* note 45 (reporting that students at schools with “well-publicized honor codes” are less likely to self-report cheating, implying that the relatively negative correlation between academic honor codes and self-reported cheating is more likely a result of student reluctance to admit as such instead of an actual quelling effect on the incidence of cheating).

90. McCabe, *supra* note 17, at 223.

91. See e.g., *Cornell University Code of Academic Integrity*, THE UNIVERSITY FACULTY, OFFICE OF THE DEAN (2016), <http://theuniversityfaculty.cornell.edu/academic-integrity/code-of-academic-integrity/> [<https://perma.cc/W55R-CKPD>] (examples of violations of the code of academic integrity, including in exams, on papers, in research, in the library, in academic records, in using computers or network services).

- Group Quizzes: Students can participate in group quizzes, preferably with “scratch off” cards, [also known as IF-AT (Immediate Feedback Assessment Technique)⁹² cards], that require students to work together to select the best option for handling dilemmas involving academic dishonesty and/or understanding of the honor code.
- Guided Small Group Discussions: With guidance from a moderator, students can engage in small group discussions addressing such topics as:
 - Definitions of academic dishonesty and integrity, as well as the importance of both, within the context of law school and the profession.
 - Plagiarism: What it is and how to avoid it with specific emphasis on proper use of quotations, as well as when and where to cite in legal documents.
 - Ethical Collaboration: Discuss and clarify the type of outside the classroom student discussions that is or is not allowed on writing assignments
 - “What would you do?”: A guided discussion where students are presented with various common scenarios implicating academic dishonesty and are asked to consider proper ways to handle them.

Students should be informed of the consequences for failing to uphold standards set forth in the honor code, including grade reduction, suspension, expulsion, loss of scholarships, and potential notification to the state bar.⁹³ The professional implications for lawyers who fail to act

92. Epstein Educational Enterprises set forth a description of the IF-AT:

The [Immediate Feedback Assessment Technique], IF-AT uses a multiple-choice answer form with a thin opaque film covering the answer options. Instead of using a pencil to fill in a circle, each student scratches off his/her answer as if scratching a lottery ticket. The student scratches off the coating of the rectangle corresponding with his/her first-choice answer. If the answer is correct, a star or other symbol appears somewhere within the rectangle indicating he/she found the correct answer. The student's learning is immediately reinforced, the student receives full credit for the answer, and moves on to the next question. If incorrect, the student must re-read the question and remaining answer options and scratch off a second or even third choice until the correct answer is identified. The student will earn partial credit for multiple attempts and learn the correct response for each question while taking the test. One of the keys to the IF-AT system is that students never leave a question without knowing the correct answer.

What is the If-At?, EPSTEIN EDUCATIONAL ENT., <http://www.epsteineducation.com/home/about/> [<https://perma.cc/P2C8-UMQA>].

93. See also *Sanctions for Honor Code Violations*, *Levin College of Law*, UNIVERSITY OF FLORIDA REGULATIONS 6C1-4.016(3), <https://www.law.ufl.edu/life-at-uf-law/office-of-student->

with integrity should be discussed, such as denial of bar admission, public sanctions, suspension from practice, or revocation of a license to practice law.⁹⁴

Online tutorials present another format for addressing and discussing the honor code if time and/or resources render in-person presentations impractical. Just as some universities require entering students to complete online learning modules to raise awareness about such topics as the dangers of alcohol abuse and date rape in college,⁹⁵ so too can law schools require entering students to complete online learning modules on the topic of academic integrity. The format of the program should be simple, short, engaging, and designed to appeal to a variety of learners.⁹⁶ Ideally, the modules will “link theory and practice”⁹⁷ by discussing the importance of integrity for law students and lawyers by practical application of ethical values to common scenarios. Module designs should involve multimedia to appeal to a variety of learning styles, provide opportunities for student interaction, and include flexible assessment.⁹⁸ Examples may include vignettes for handling compromising situations, short online quizzes, and interactive student discussion boards where students are required to meaningfully engage by posting and replying to one another’s posts.

C. *Student Oath Assignment*

Another suggested practice for introducing and reinforcing the concept of academic integrity involves the student oath assignment. A reminder of one’s positive character traits can effectively inspire and reinforce students’ sense of professional integrity, and can be built into the law school curriculum at certain critical points, including prior to

affairs/additional-information/honor-code-and-committee/sanctions-for-honor-code-violations [https://perma.cc/MBB5-EWCX] (wherein sanctions may also include a reprimand, conduct probation, loss of university privileges, suspension, expulsion, restitution, reduced or failing grade, community/university service, transfer or removal from residence hall, and/or no contact order).

94. *Model Rules for Disciplinary Enforcement*, American Bar Association (2017), https://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_10/ [https://perma.cc/4P2Y-7CRU].

95. *Sexual Violence Prevention and Response FAQ*, UNIVERSITY OF SANTA BARBARA, <http://sexualviolence.ucsb.edu/faq/> [https://perma.cc/JG6X-GCK9].

96. Mary Burns, *Designing Effective Online Courses: 10 Considerations*, ELEARNING INDUSTRY (2016), <https://elearningindustry.com/designing-effective-online-courses-10-considerations> [https://perma.cc/V4KX-DN95].

97. *Id.*

98. *Id.*

taking exams.⁹⁹ One fascinating study found that students had a higher number of “correct” answers on a test when they were asked to correct the answers themselves compared to when they were graded by a peer (thus indicating cheating); however, the incidences of cheating nearly disappeared when they asked self-graders to recall as many of the Ten Commandments as they could, just prior to taking and grading their test.¹⁰⁰ The researchers posited that students who think about moral and ethical behavior before an exam will cheat less because people like to think of themselves as honest individuals.¹⁰¹ This “self-concept maintenance” effects student behavior positively. “Th[e] research shows that people behave dishonestly enough to profit but honestly enough to delude themselves of their own integrity.”¹⁰²

In the student oath assignment, small groups of incoming students are tasked with creating an oath for their induction into the law school. The oath underscores student commitment to act with integrity via a public vow to themselves, their classmates, and their school. In the following example, students demonstrate a commitment to the values of respect, scholarship, good faith, professional conduct and ethics: “We solemnly swear that we will: Be respectful of each other as peers and colleagues; Perform our scholarly duties with our best effort and commitment; Conduct ourselves professionally inside and outside the classroom; and Be ethical in our academic and professional careers.”¹⁰³

The oath functions both as introduction and reinforcement of the expectation of integrity in law school, and it serves as an important reminder of the importance of these values via frequent reminders and references to it.

Similar to the Ten Commandments exercise referenced above, the oath may also remind students of their commitment to integrity by requiring students to review it or a copy of the honor code prior to each exam. Both serve as reminders of student vows to honor their oaths, as well as the high expectations for academic honesty.¹⁰⁴ Mounting the

99. Christian Miller, *How The Ten Commandments Stop Us From Cheating*, Christianity Today (2016), citing Nina Maza et al., *The Dishonesty of Honest People: A Theory of Self-Concept Maintenance*, J. of Marketing Res. (2008) Vol. 45, No. 6, pp. 633-644.

100. *Id.*

101. *Id.*

102. *Id.*

103. Western State College of Law Student Oaths created by students Jenna Goodman, Julio Perez, Daniel Ueno and Christy Edson, Fall 2017.

104. Christian Miller noted that:

Normally the place where you sign your name and pledge that you have completed [tax documents] honestly comes at the very bottom. The London Business School researchers found that 79 percent of participants in their study who signed on the bottom of a tax form

student oath in a common area of the law school further reinforces the notion of accountability and serves as a continuing reminder of the values students promised to uphold when they began the law school program.

V. CURTAILING OPPORTUNITIES TO CHEAT

“I generally avoid temptation until I can’t resist it.”

-Mae West, American Actress

Law schools should seek to both guard students against temptation to cheat *and* nurture a community of ethics where cheating is not tolerated.¹⁰⁵ The most obvious guards against temptation are exam protocols. Thorough, thoughtful, and consistent implementation of testing protocols may help law students resist the temptation and prevent their ability to cheat. Typical exam safeguards include placing backpacks, purses, water bottles, and electronic devices—including smartphones, smartwatches, and the like—in the front or back of the testing room. Proctors should vigilantly monitor students. For example, proctors may require students to sign in and out when they exit the exam room for a bathroom break and may only allow one or two students to leave the exam room at a time. Additionally, they may use colored scrap paper with student names printed on it that must be returned with each exam to help ensure students are not referencing unauthorized materials because the difference in color will make it easier to spot.¹⁰⁶ Additionally, as most students are ultimately preparing themselves to take and pass state bar licensing exams, including these guidelines with the school exam proctoring guidelines to the extent it is sensible to do so may reinforce the importance of stringent procedures and give students the opportunity to practice testing under such conditions.¹⁰⁷

misreported their earnings. But when they moved the moral reminder to the top of the form, the percentage of participants misreporting shrank to 37 percent.

Christian Miller, *How The Ten Commandments Stop Us From Cheating*, Christianity Today (2016).

105. Tammy VanDeGrift, Heather Dillon, & Loreal Camp, *Changing the Engineering Student Culture with Respect to Academic Integrity and Ethics*, 23 *Sci. Eng. Ethics* (2017), <https://doi.org/10.1007/s11948-016-9823-9> [<https://perma.cc/VQ8C-BCWM>].

106. Aimee Strang, *Stop the Cheating! Best Practices to Minimize Security Risks on Exams*, EXAMSOFT (2017) <https://www.slideshare.net/examssoft/stop-the-cheating-best-practices-to-minimize-security-risks-on-exams> [<https://perma.cc/XB5Q-TSPU>].

107. *Exam Rules*, THE STATE BAR OF CALIFORNIA <http://www.calbar.ca.gov/Admissions/Examinations/Exam-Rules> [<https://perma.cc/TVZ6-6SHK>]. (“Permission to use specific items will not be granted as a matter of convenience or preference. Applicants cannot bring wallets, tissues, cough drops/throat lozenges, gum, candy, or other food or drinks into the examination room, unless specifically granted permission to do so through the testing accommodations petition process.”).

A. *Exam Design*

Thoughtful exam design and administration can discourage and prevent cheating. Even simple measures such as including cover sheets that explicitly state exam testing procedures, guidelines, and consequences for academic dishonesty can be effective by clarifying and reinforcing high expectations up front.

Moreover, within the context of a high-stakes exam, it stands to reason that more students will cheat because more of their academic and professional future depends upon it. Indeed, panelists in a Stanford University forum on ethics noted that students are increasingly pressured to “prize high grades over education and other values, including creativity and imagination.”¹⁰⁸

Consequently, legal educators should consider a variety of other forms of assessment beyond the traditional end-all-be-all-your-entire-grade-depends-on-it typical law school examination.¹⁰⁹ For example, instead of designing student assessment in terms of an exam with critical time constraints, professors might consider assessing student learning more evenly throughout the semester. Doing so may result in a variety of beneficial outcomes, such as: (1) more accurate assessments because students can focus more energy on demonstrating understanding of fewer learning outcomes at one time (thus reducing the pressure to take shortcuts, i.e. cheat);¹¹⁰ (2) provide more opportunities for students to adjust to a professor’s exam or assessment style and improve performance accordingly; and (3) provide professors with feedback on their own teaching effectiveness with more frequent and earlier assessments, for student performance is often also an indicator of how well the professor has communicated key concepts.¹¹¹

While core doctrinal courses may test the same legal principles each year, students should not be tempted with unauthorized copies of old exams. Professors should regularly create novel fact patterns requiring customized legal analysis so that students are fairly rewarded for their

108. Barbara Palmer, *Pressure for Good Grades Often Leads to High Stress, Cheating, Professors Say*, STANFORD NEWS (2005), <https://news.stanford.edu/news/2005/february23/cheat-022305.html> [<https://perma.cc/VG64-CAF9>].

109. Kate Stoltzfus, *To Stop Exam Cheats, Try Assigning Seats*, Chron. of Higher Educ. (2015), <https://www.chronicle.com/article/To-Stop-Exam-Cheats/233741> [<https://perma.cc/3Y6W-9NR>] (“if students have only two or three high-stakes tests the pressure to earn high marks increases, thus increasing the likelihood of cheating.”).

110. Lynn S. Aaron & Catherine M. Roche, *Stemming the Tide of Academic Dishonesty In Higher Education: It Takes A Village*, 42:2, J. EDUC. TECH. SYS., 161, 191 (2013).

111. In turn, this allows professors the opportunity to revisit particularly problematic topics before the class is over.

individual mastery of the subject. Other techniques to discourage and prevent cheating include creating multiple versions of exams and ensuring that all exams are collected before students are allowed to leave the room.¹¹²

B. Exam Administration

Procedures for exam administration can also deter cheating behavior, including seating charts, active proctors, and use of exam software. In one study, random seat assignments combined with an increased number of proctors completely eliminated premeditated cheating behavior.¹¹³

Seating assignments ensure that student placement around the room is random and deters certain premeditated cheating behaviors such as developing signaling systems for cheating with friends during exams.¹¹⁴ Seating charts may also protect students in the event of a cheating allegation because students can refer to them to find percipient witnesses that can attest to their observation of the alleged cheater during the exam. For optimal effectiveness, presumably to prevent advance planning, seating charts should not be made available to the students more than an hour prior to the exam, and seating charts should be different for each exam.¹¹⁵

Testing software that prevents opening other applications on a student's computer during testing is another tool to help deter cheating. It also provides the added benefit of helping students prepare for the computer-based test-taking platform used in state bar examinations. While some schools report reluctance to use such software due to the concern about technical glitches,¹¹⁶ the benefit of using this type of software likely outweighs any potential downside. In the event there is a

112. Casey Fabris, *Another Use for Yik Yak on Campus? Cheating on Exams*, Chron. of Higher Educ. (2015), <https://www.chronicle.com/blogs/wiredcampus/another-use-for-yik-yak-on-campus-cheating-on-exams/56543> [<https://perma.cc/L2GH-X43J>].

113. Stoltzfus, *supra* note 109.

114. Stoltzfus, *supra* note 109 (“According to a new study, randomly assigned seats are also the most immediate way to prevent cheating among college students.”).

115. Stoltzfus, *supra* note 109.

116. Frank C. Lee, *Law Schools Use Software to Prevent Cheating*, Law Crossing, <https://www.lawcrossing.com/article/411/Law-Schools-Use-Software-to-Prevent-Cheating/> [<https://perma.cc/ZV26-UX5L>] (However, Yale Law School, “one of the most prestigious law schools in the country, does not use any type of exam software. ‘And [they] don’t have any plans to do so in the near future.’” Yale “. . . permits tests to be taken on computers, with students subject to an honor code.” Notably, Yale uses a pass/fail grading system; consequently, so the competitiveness theorized to result from stressful grading procedures may make such exam software unnecessary).

computer malfunction, Blue Book examination booklets can be readily placed so as to provide the option to handwrite exam essays if needed.

Further active monitoring practices include periodically walking about the examination room, keeping track of outstanding exams, using assigned seating charts, and logging student restroom leaves with the sign in/out sheet. Proctors should keep an eye out for large fonts that can be read by another student from a distance, and indeed, to the extent possible, screen protectors should be used to limit view of other classmates' laptops.¹¹⁷ If exams are given in large lecture halls, multiple proctors spaced throughout the testing room can ensure proper coverage;¹¹⁸ a student is more likely to cheat if they think the proctor does not see them, for the nature of dishonesty is such that it takes place in the shadows. However, by seating an exam proctor in the back of the room, students cannot see if the proctor is observing them, and are not likely to turn around to look at the proctor without garnering attention.

Uniform exam administration procedures should also include requiring proctors to count the number of students in the examination room and to confirm every student has returned the exam before leaving the room. If it is a computer-based exam using ExamSoft anti-cheating software, proctors should make certain that students have exited the program before leaving the classroom.¹¹⁹

C. *Grading Procedures*

Given the overwhelming pressure on academic achievement in law school, and the great importance on grading, there is no question that the grading procedures in law school can be altered to reduce incentives to cheat.¹²⁰ More frequent low-stakes assignments can reduce the pressure on a midterm or final examination, and provide more meaningful emphasis on assessment of discrete learning objectives.¹²¹ Creating opportunities for ethical collaboration—where students work together on a graded written document or oral presentation—further allows students to practice the skills of academic integrity.¹²²

117. Strang, *supra* note 103.

118. Stoltzfus, *supra* note 109.

119. Stoltzfus, *supra* note 109.

120. Law school grading structures are the source of much pedagogical debate, and the proposal to eliminate a grading curve is outside the scope of this article, except to acknowledge that such a grading scheme may increase student stress and a perceived “need” to cheat to compete for a limited number of high grades; *See also supra* discussion in Part II “Special Implications in Legal Education”.

121. Lisa Z. Baine, *How Students Use Technology to Cheat and What Faculty Can Do About It*, 13:5, *Inf. Sys. Educ. J.*, 92-99 (2015).

122. Not to be confused with unauthorized collaboration outside of class.

Finally, removing the zero-sum game for grades is perhaps the best tool for preventing the perceived “need” to cheat. When students are graded on a curve, or classes have mandatory distributions,¹²³ there is a stressful and competitive academic environment that promotes grades over learning.¹²⁴ “Truth In Grading” practices whereby each student is awarded the grade they actually earn—regardless of the other students’ performance—may curb cheating by reducing student pressure.¹²⁵ Curved grading schemes force students into a virtual game of musical chairs where students may be tempted to sacrifice their integrity in their desperation to earn a higher grade,¹²⁶ while a scheme that sets forth static criteria for earning an “A” as well as rubrics that include “explicit descriptions of the quality of performance required to achieve a given grade” may reduce the pressure.¹²⁷

D. *Plagiarism Detection Tools*

One of the most important things educators can do to promote academic integrity is to teach law students how to avoid plagiarism and how to properly cite, and to clarify why exacting attribution is so important. These should be explicit learning goals and the consequences for honor code violations involving plagiarism should be clearly stated. Students may not fully understand why avoiding plagiarism is critical to academic integrity until they are flagged for having committed it, as inadvertent plagiarism is easy to commit.

Many professors, especially in the legal writing courses, use plagiarism detection software (“PDS”) programs to detect plagiarism.

123. See *List of Law School GPA Curves*, WIKIPEDIA (2009) https://en.wikipedia.org/wiki/List_of_law_school_GPA_curves [https://perma.cc/9HTD-Q53Z], citing *Competition and the Mandatory Curve in Law School*, CALI’S PRE-LAW BLOG (2006), <https://classcaster.net> [https://perma.cc/B9X9-VC9F] (“The main source of this competition is the mandatory curve you will likely encounter once you enter law school. The curve affects the class rank, affects the chances of making law review, affects the chances of scoring that big job/internship.”).

124. See McCabe, *supra* note 17 at Table 3, #6 and 7 (2001) (from students’ perspective, “reduc[ing] pressure by not grading on a strict curve” and “focus[ing] on learning, not grades” are two ways that cheating behavior can be managed in the classroom).

125. *Enhancing Education: Solve A Teaching Problem, Students Cheat on Assignments or Exams*, Carnegie Mellon University <https://www.cmu.edu/teaching/solveproblem/strat-cheating/index.html> [https://perma.cc/2JC6-NK9M].

126. Kit Richert, *Why Grading on the Curve Hurts*, <http://teaching.monster.com/benefits/articles/5658-why-grading-on-the-curve-hurts> [https://perma.cc/69U4-Q7SB].

127. This article is not meant to address the many faceted issues involved with curved grading practices.

However, PDS is also a valuable tool for teaching students how to avoid plagiarism and improve their writing. PDS programs assist professors in detecting plagiarism by “comparing submitted text against a database, and identifying identical or near-identical passages.”¹²⁸ PDS helps to identify situations where students have copied from each other, purchased written material over the internet, or improperly lifted language without proper citations. However, it cannot be relied upon exclusively as results for overall effectiveness of such programs are mixed,¹²⁹ depending on the program,¹³⁰ and there are numerous workarounds to avoid detection.¹³¹ Nevertheless, it can serve as a “first pass” for helping to identify potential sources of academic dishonesty, and faculty should be ever on the alert for potential instances of academic dishonesty throughout the grading process, even when not flagged by the program.¹³²

Perhaps more importantly, PDS can be used as a tool to teach students how to avoid plagiarizing in the first place. As mentioned earlier, part of explicit teaching includes providing direct instruction on how to perform desired skills, plenty of opportunities to practice the skills, and direct feedback for improving the skill. A 2009 study by Stappenbelt and Rowles found that utilization of PDS within the context of academic writing “assisted in building a community of academic integrity.”¹³³ By adopting [PDS] as a learning tool, the educator’s role was seen more as assisting writing skill development rather than policing plagiarism.”¹³⁴ Moreover, “[t]here was a substantial 79% decrease in assignment first-draft mean level of plagiarism from the first to the second written assignment.”¹³⁵ “[N]o cases of plagiarism [were] detected in the final assignment across approximately 620 students,” and “most students

128. Emily Rose, *Plagiarism Checkers: Dispelling 5 Misunderstandings* (2017), <https://www.plagiarchecker.com/blog/plagiarism-checkers-dispelling-5-misunderstandings/> [https://perma.cc/M4UL-ME6V].

129. Bruce Schneier, *The Effectiveness of Plagiarism Detective Software*, SCHNEIER (2011), https://www.schneier.com/blog/archives/2011/09/the_effectivene_2.html [https://perma.cc/XP5M-AZDE].

130. Rose, *supra* note 128.

131. Hannah Fearn, *Plagiarism Software Can Be Beaten by Simple Tech Tricks*, WORLD UNIVERSITY RANKINGS (2011), <https://www.timeshighereducation.com/news/plagiarism-software-can-be-beaten-by-simple-tech-tricks/414881.article#survey-answer> [https://perma.cc/WM7H-78X6].

132. *Id.*

133. Brad Stappenbelt, & Chris Rowles, *The Effectiveness of Plagiarism Detection Software as a Learning Tool in Academic Writing Education*, 4th Asia Pacific Conference on Educational Integrity (Sep. 2010), 28-30.

134. *Id.*

135. *Id.* (Another “key idea” from this study include the adoption of PDS as a “learning tool, rather than as a plagiarism policy enforcement mechanism.”).

strongly agreed that . . . [PDS] . . . improved their ability to avoid plagiarising [sic].” Rather than simply considering PDS as a “plagiarism cop,”¹³⁶ PDS can ensure “peace of mind, to ensure quality work.”¹³⁷

VI. REINFORCING INTEGRITY THROUGHOUT THE CURRICULUM

At the outset, law schools have discretion to deny admission to students that do not meet initial standards of moral character.¹³⁸ After the fact, the ABA mandates that law schools report instances of cheating to the state bar so that it may be considered as part of the moral character background check. However, little student education is required in between admission to law school and the ultimate practice of law. While the ABA maintains that “[a] law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession,”¹³⁹ law schools often tick this box with a two-credit professional responsibility course aimed towards preparing students to pass the Multistate Professional Responsibility Exam.¹⁴⁰ Otherwise, academic integrity is generally mentioned only as an administrative matter and is implicitly assumed to be included in the curriculum.

While it may be unconventional to think of integrity as a teachable skill, given the fiduciary duties and ethical responsibilities of future lawyers, it is an effort worth pursuing. As respected elders and role models within the legal profession, legal educators assume an *in loco parentis*¹⁴¹ role within legal studies. As such, mindful and deliberate instruction in integrity is not only preferred, but obligatory.

136. Rose, *supra* note 128.

137. Rose, *supra* note 128.

138. Beginning with the law school application, students are on notice they will eventually be bound to a code of ethical conduct, as they are required to disclose anything that would compromise their fitness to practice law. See Julie Ketover, *Understand Bar Exam Character, Fitness Requirements*, U.S. NEWS & WORLD REPORT (2018), <https://www.usnews.com/education/blogs/law-admissions-lowdown/articles/2018-01-22/law-school-applicants-understand-bar-exam-character-fitness-requirements> [<https://perma.cc/W79T-ZSSV>].

139. *2018-19 Standards and Rules of Procedure for Approval of Law Schools*, AMERICAN BAR ASSOCIATION (2018-2019), https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_standards_chapter3.authcheckdam.pdf [<https://perma.cc/LLJ6-3N9Q>].

140. *Id.*

141. “The term *in loco parentis*, Latin for “in the place of a parent” refers to the legal responsibility of a person or organization to take on some of the functions and responsibilities of a parent.” *In loco parentis*, Wikipedia, https://en.wikipedia.org/wiki/In_loco_parenti [<https://perma.cc/JN97-DBB7>].

Understanding the importance of and learning how to act with integrity are legitimate law school learning outcomes that may effectively curb a culture of academic dishonesty, positively influence student behaviors and mindset, and better prepare students for the practice of law.¹⁴² Integrity should be an explicit learning outcome in every course because “research shows that . . . students are more motivated and task-oriented if they know why they are learning about the context or task [and] they are also able to make better decisions about how to go about the task.”¹⁴³ Furthermore, it should be clearly defined so that students understand what is meant by the concept in the context of that particular course.¹⁴⁴ Legal educators should envision how the development of integrity can be assessed, and periodically assess the school’s effectiveness in teaching integrity so that necessary adjustments can be made to continuously improve the quality of instruction in this area.¹⁴⁵

Instruction and opportunities to practice integrity can also be embedded in every class in the law school curriculum, with the explicit instruction that the habits practiced in law school will translate to the professionalism expected of lawyers in practice. Given the nature of law as a subject matter, there are plenty of opportunities to do this, and faculty members should be encouraged to examine how they do, or could, highlight integrity in their courses. Low-stakes quizzes may be conducted with little (or no) proctoring, so students practice acting in an environment where they are trusted to conduct themselves with integrity.¹⁴⁶ Moreover, consequences for professional conduct violations are shared weekly on state bar websites. By sharing sanctions imposed against real-life attorneys, the importance of integrity is reinforced—if not for the intrinsic reward of practicing law honorably, then for the practical desire to avoid the external consequences of suspensions and monetary sanctions.

Just as creating an academic culture that fosters integrity may effectively discourage a win-at-all-costs mindset, so too may fostering a

142. *Id.*

143. *Make Learning Explicit, TKI: New Zealand Curriculum Guides*, Te Kete Ipurangi (2012), <https://seniorsecondary.tki.org.nz/Science/Pedagogy/Assessment-for-learning/Learning-explicit> [<https://perma.cc/Q4NF-2ZUJ>]; *See also* McCabe, *supra* note 17, at T. 3 #1 (from students’ perspective, a way to manage cheating behavior in class is to “clearly communicate expectations (e.g. regarding behavior that constitutes appropriate conduct and behavior that constitutes cheating).”

144. *Id.*

145. *Purpose of Assessment, TKI: New Zealand Curriculum Guides, Te Kete Ipurangi*, <http://assessment.tki.org.nz/Assessment-in-the-classroom/Underlying-principles-of-assessment-for-learning/Purposes-of-assessment> [<https://perma.cc/EJ8X-XU5U>].

146. *See* Stoltzfus, *supra* note 109.

love of learning¹⁴⁷ as a worthy pursuit in its own right encourage the development of “other [meaningful] values,” such as problem-solving, “creativity[,] and imagination.”¹⁴⁸ Sometimes students lack confidence in their ability to do well, and a classroom environment that encourages questions and allows students opportunities to practice and get feedback will further focus students toward learning rather than grades.¹⁴⁹

Finally, one of the easiest actions that faculty can implement in every course is to make expectations of academic integrity explicit in their syllabus and discuss that expectation with students. Clear expectations close any potential loopholes in student understanding.¹⁵⁰ The syllabus can provide explicit definitions of what constitutes cheating within the context of a particular course. For example, for a course that has a take-home exam, explicit instruction in the syllabus regarding what materials may be of reference later in the semester during the exam may assist students in preparing during the semester. If reference to the text book is not authorized, but student notes are, that may affect a student’s approach to studying during the semester.

Similarly, in a writing course, explicit admonition against plagiarism, including examples of what might be considered plagiarism, may affect a student’s outlining and writing process (i.e. not cutting/pasting from internet sources into an outline, which may later be

147. *Whatedsaid: 10 Ways to Foster a Love of Learning*, Wordpress (2010), <https://whatedsaid.wordpress.com/2010/07/09/10-ways-to-foster-a-love-of-learning/> [<https://perma.cc/4SHG-8WYR>]. While there is a dearth of research on the topic of how to promote a love of learning in law school, we can borrow and adapt effective techniques for doing so from elementary education pedagogy such as: (1) expressing one’s own interest in learning; (2) connecting abstract concepts to meaningful life experiences; (3) encouraging creative expression; (4) bringing the outside world into the classroom; (5) expressing one’s passion for the subject matter; (6) treating students respectfully; (7) providing different types of learning activities; and (8) creating learning activities that are interactive. Suggestions for transferring these concepts to the law school settings might include creating exercises where professors and students seek answers to legal questions together; incorporating small-group activities within lessons instead of relying on straight lecture format; inviting “real” attorneys into the classroom to talk about their practice areas; and activating engagement in the subject matter by beginning lectures with a query, and leading students toward their own revelation of legal doctrine instead of simply presenting it to students via the traditional lecture format.

148. Palmer, *supra* note 108.

149. See McCabe, *supra* note 17, at T. 3 #6 and 7 (2001) (manage cheating behavior in the classroom by adopting 10 Principles of Academic Integrity for Faculty, including fostering a love of learning, treating students as an end in themselves, and fostering an environment of trust in the classroom).

150. Don McBurney, *Cheating: Preventing and Dealing with Academic Dishonesty*, The Observer, The Ass’n for Psy. Sci. (1996) (advising professors to explicitly state their policy on cheating in the syllabus, as students sometimes argue that they should not be punished for cheating when they were not told that they could not do it).

converted to a draft.) Course-specific examples can be discussed both at the beginning of the term and reinforced immediately before certain assignments are begun, along with explicit description of the consequences of cheating. An explicit admonition against cheating, examples of cheating, and the consequences of cheating all signal to students the importance of academic integrity introduced at orientation, and how it transfers to a particular class.

A. *Exacting Administrative Policies for Handling Allegations of Academic Misconduct*

A school's exacting academic policies in collaboration with a faculty and administration that care about issues of academic integrity and are committed to enforcing academic policies can influence a culture of integrity in a law school and can affect student behavior. However, even under the best of all circumstances, incidences of cheating will occur. The law school's response to allegations of academic dishonesty is a critical aspect in signaling to students that academic integrity is the school's norm. Administrative policies for handling an accusation of academic dishonesty should both avoid overzealous, witch-hunt practices, and laissez-faire attitudes that may implicitly foster further unethical behavior by students.

In order to create a community of integrity, students must feel confident that the law school culture is one of zero-tolerance for cheating and the honor code is more than "window dressing."¹⁵¹ Embedding the honor code into the law school culture means both communicating the expectations to students and exacting enforcement. To this end, faculty should take action *every time* an allegation of academic misconduct is alleged, regardless of severity, to send the message that "academic integrity is expected and that cheating will result in negative consequences, and more than just a slap on the wrist."¹⁵²

Law schools should implement efficient procedures to report and investigate suspected cases of academic dishonesty and make sure faculty know about them to avoid accusations of arbitrary proceedings and decisions.¹⁵³ Law professors may be hesitant to report suspected cheating

151. McCabe, *supra* note 17, at 220, 225-226.

152. McCabe, *supra* note 17, at 231 ("campuses . . . must be willing to employ sanctions that have both significant educational and deterrence value . . . the institution must convince students that cheating will be met with strong disapproval and that cheating is the exception on campus, not the rule).

153. Martha Neil, *Federal Court Dismisses Former Cooley Law Student's Suit Over Being Kicked Out of School*, ABA Journal (2012), <http://www.abajournal.com/news/article/>

if they feel that lack of full evidence or reporting requirements are onerous.¹⁵⁴ This may result in creating an environment where students feel that professors turn a blind eye to cheating, which in turn may encourage cheating by other students who otherwise would not engage in such behavior.¹⁵⁵ Noting that faculty are sometimes reluctant to report incidences of suspected cheating, McCabe's 1993 study indicated that "word seems to travel quickly among students as to who these faculty are, and student comments suggest their courses become particular targets for cheating."¹⁵⁶

Accordingly, faculty must be trained and supported to avoid unnecessary confusion and distress as they attempt to determine the proper way to handle the incident. Indeed, McCabe suggests that faculty may "overlook" or treat allegations of academic dishonesty "lightly" because they (ignorantly or not) "do not want to become involved in . . . bureaucratic procedures . . . to adjudicate allegations of academic dishonesty"¹⁵⁷ Open discussions, and advance training for all faculty, whether they be tenured, junior faculty, visitors, or adjuncts is essential.¹⁵⁸ In-service trainings, even in the form of online learning modules, should be required for all faculty members. The trainings can be tailored to the needs of each institution, but generally should include topics such as the prevalence in law school cheating, institutional commitment to high

federal_court_dismisses_former_cooley_law_students_suit_over_being_kicked/
[<https://perma.cc/VN7D-ZF47>] (Amit Ghoshal, a student at Thomas M. Cooley Law School at the Grand Rapids, Michigan, campus, filed suit in federal court in Michigan, contending that the school prevented him from transferring to another law school by falsely accusing him of cheating. A federal court dismissed the student's complaint, noting "[a]s detailed in the plaintiff's complaint, the determination to dismiss plaintiff from law school was made only after an investigation, an evidentiary hearing, and several levels of review and reconsideration," and the court decided it would be unreasonable to call the school's actions "arbitrary and capricious.").

154. Sue D. Naim, *Student Cheats and Those Who Harbor Them*, 60 J. Leg. Educ. 664 (2011).

155. Baine, *supra* note 121, at 92-99.

156. McCabe, *supra* note 17, at 224.

157. McCabe, *supra* note 17, at 225-226.

158. See Naim, *supra* note 155. (recounting in colorful detail, the range of considerations and psychological stressors professors face in such situations. From trying to determine the correct burden of proof for determining whether or not a student has in fact cheated, to threats to personal safety, reputation and livelihood, to ascertaining whether or not cheating is a value that law schools are "consistently willing to defend," Naim's experience implicates the importance of law schools providing, at a minimum, faculty training with regard to: the school's commitment to upholding academic integrity; formal procedures for reporting and investigating suspected cheating; potential formal and informal resolutions and the range of options available to the professor¹⁵⁸; how to address the issue and communicate about it with the student; how to protect themselves from potential personal liability and exposure from eviscerating internet reviews; addressing the extent and limit of student power; and providing the name and information of a "point person" to consult for advice. The training should include an open discussion on the importance of following handbook procedures for cheating allegations while avoiding overzealous prosecution).

ethical standards, common cheating methods, measures to prevent cheating in law school, and school policies for handling cheating allegations and detailed instructions for handling suspected incidences of academic dishonesty.

Ideally, a multistep procedure for responding to and investigating cheating allegations should start with an informal discussion between student and faculty member, with notice given to the dean of students' office for the student's record.¹⁵⁹ Some allegations can be resolved at this point, and a more minor academic consequence—such as a written warning—can be imposed at the discretion of the instructor, again with notice to the dean of students' office. Students should be permitted to both appeal the consequence, and also the underlying allegation, if a resolution is not reached.¹⁶⁰ If a resolution cannot be reached after discussion between the student and faculty member involved, the student should have an opportunity for a hearing before an academic integrity committee, ideally composed of students and faculty.¹⁶¹

The procedures should be explicitly laid out in the student handbook and administered and followed strictly to ensure due process.¹⁶² Importantly, the student must be given timely notice of the allegations against him¹⁶³ and opportunity for an impartial hearing,¹⁶⁴ including calling and cross-examining witnesses.¹⁶⁵ The process should be fully documented and preserved, and opportunity for appeal preserved.¹⁶⁶ While a right to counsel is not absolute in an academic misconduct hearing,¹⁶⁷ ideally a school should not prohibit such if the student requests representation. Finally, while consequences should vary according to the type and severity of the offense, all offenses should be reported and all

159. See generally, Dr. Jim Castagnera, *Cheating and Plagiarism in Higher Education: Practical Guidance for How to Respond Lawfully*, An EducAdminWebAdvisor Webinar (2017).

160. *Id.*

161. *Id.*

162. *Regents of the Univ. of Michigan v. Ewing*, 106 S. Ct. 507 (1985) (students can mount both procedural and substantive due process claims to dismissal for academic reasons.); *Park v. Indiana Univ.*, 692 F.3d 828 (7th Cir. 2012); *Barnes v. Zaccari*, 669 F.3d 1295 (11th Cir. 2012).

163. *Dixon v. Alabama Bd. of Educ.*, 294 F.2d 150 (5th Cir.), cert denied 368 U.S. 930 (1961) (students cannot be expelled for misconduct unless given notice of the charges against them and some opportunity for hearing); See also *Nash v. Auburn Univ.*, 621 F.Supp. 948, 953 (M.D. Ala. 1985) (notice to student given 30-hours in advance of hearing); *Bleicker v. Bd. of Trustees*, 485 F. Supp 1381 (S.D. Ohio 1980).

164. *Nash*, 621 F.Supp. at 953; See also *Clayton v. Trustees of Princeton Univ.*, 608 F. Supp 413 (D.N.J. 1985).

165. *Dixon*, 294 F.2d.

166. *Id.*

167. *Givens v. Poe*, 346 F. Supp. 202 (W.D.N.C. 1972) (right to counsel not required in academic misconduct student hearing).

verified incidences of cheating should be penalized in some way to assure both faculty and students of the school's commitment to zero-tolerance.¹⁶⁸

VII. CONCLUSION

Students cheat, and the profound consequences of academic dishonesty in law school are apparent in the harm resulting to students, law schools, and the legal profession. There is no question that every law school has problems with cheating and plagiarism, but this article is meant to cast doubt that engaging in a technological arms race with students to catch the cheaters is the best solution. A pedagogical commitment to teaching integrity in law school is perhaps a more efficient and effective low-tech solution to the high-tech problem of cheating. Robust academic policies including honor codes with well-communicated rules and standards, student oaths that serve as constant reinforcement to students and faculty of the culture of academic integrity at the law school, and faculty trust regarding the exacting enforcement of academic integrity policies are critical. Moreover, embedded instruction on integrity throughout the curriculum can further create a culture of integrity in law school. Legal education should provide students with opportunities to practice exacting academic integrity so that necessary habits can be formed that contribute to a community of ethical lawyers. The aim of fostering academic integrity in law students is worthy of a wider discussion among legal educators. Whatever the multi-faceted solution may be for a particular law school, it should include nurturing a culture of academic integrity, as this can lead to a significant impact on student behavior, and better prepare students for the practice of law.¹⁶⁹

168. Baine, *supra* note 121.

169. McCabe, *supra* note 17, at 225-226.