Reply/Rejoinder

**Training the Ethical Lawyer:
A Rejoinder to Schneyer**
Erwin Chemerinsky

Is there a sick patient? I think that the real disagreement between Professor Schneyer and me is over whether there is a problem in the way professional responsibility courses traditionally are taught. My analysis is based on the observation that legal ethics classes often are viewed by teachers and, especially, students as neither useful nor effective. I suggest that courses which primarily emphasize teaching students the codes of professional responsibility are neglecting basic moral questions about the role of the lawyer that should be the focus of professional ethics classes. Schneyer apparently begins with the premise that there is no major problem with this part of the curriculum; his essay is an enthusiastic defense of current courses and casebooks.¹ He explicitly defends the desirability of legal ethics courses that emphasize teaching the professional codes.²

This divergence in starting points explains our different views of the books I reviewed.³ I look at the books and see texts primarily directed to teaching the codes;⁴ books that do not adequately encourage students to question the moral duties of an attorney; books that disproportionately emphasize problems confronting the litigator; books that do not focus enough on examining the method of professional regulation. Schneyer looks at the books and generally likes what he sees. The few passages on the role of the attorney in socie-

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1. In a footnote, Schneyer recognizes some of the problems with the reviewed texts. Schneyer, *Professional Responsibility Casebooks and the New Positivism: A Reply to Professor Chemerinsky*, 1985 A.B.F. Res. J. 943, 953 n.48. I, therefore, do not mean to imply that he is enthusiastic about each of these three books.

2. *Id.* at sec. IV (describing the value of casebooks that "heavily emphasize the code of professional responsibility and model rules of professional conduct").

3. The three books were Andrew L. Kaufman, *Problems in Professional Responsibility* (2d ed. 1984); Thomas D. Morgan & Ronald D. Rotunda, *Problems and Materials on Professional Responsibility* (3d ed. 1984); Mortimer D. Schwartz & Richard C. Wydick, *Problems in Legal Ethics* (1983). My review essay, which is the focus of Schneyer's reply, is *Pedagogy Without Purpose: An Essay on Professional Responsibility Courses and Casebooks*, 1985 A.B.F. Res. J. 189.

4. As used throughout this essay, unless otherwise indicated, when I refer to the codes I am speaking of the American Bar Association Model Code of Professional Responsibility, adopted in 1969, and the American Bar Association Model Rules of Professional Conduct, adopted in 1983.

ty, on the attorney as nonlitigator, and on the justifications for regulation are enough for him.

So it is that Schneyer responds to my criticism that the reviewed texts emphasize the wrong things by pointing to passages here and there that do some of the things that I advocate.⁵ But the few places in the books that he points to only prove my point that these topics—questioning the role of the attorney in society, considering the attorney in nonlitigation situations, challenging the justifications for regulation—are not the central focus of the texts. In fact, by arguing that the books are desirable because they emphasize the codes, Schneyer is agreeing with my observation about the texts. I do not believe the real disagreement is about what the books cover, but is, rather, about whether such an approach is desirable.

Thus, in this reply, I will address the two areas in which Schneyer and I disagree: Is it desirable to place primary emphasis on teaching the codes of professional responsibility in a legal ethics course? And do the books I reviewed adequately question the proper role of the lawyer and the legal profession, the problems confronting attorneys in practice, and the need for regulation?

I

Schneyer correctly identifies our disagreement: It is about whether a professional responsibility course should emphasize teaching the codes or whether it should emphasize encouraging students to consider the moral choices facing attorneys and the profession. Yet, I think that Schneyer somewhat overstates the difference in our positions. I am not arguing that the codes should be ignored completely in class discussions. Students should know the rules that will govern them in their legal careers, and the codes are important as a statement of the views and ideology of the profession. The codes, however, should not be the central focus of the course. Nor do I understand Schneyer to argue that moral questions should be ignored; but he seemingly would prefer that discussions of personal morality be raised in discussing the application and desirability of code sections.

Simply stated, my view is that professional responsibility courses should focus on the underlying moral and regulatory questions and examine code sections in the context of discussing the larger issues. In contrast, Schneyer defends focusing on the code sections and examining the moral questions in the context of discussing the meaning and application of specific provisions. Although the two approaches could be very similar in practice, both Schneyer and I see a significant difference in emphasis between these alternatives.

What is wrong with making the codes the central focus of a professional responsibility course? First, the codes do not deal with most of the ethical problems that attorneys confront in practice. If the goal of a professional responsibility course is to prepare students for the practice of law, organizing

5. I will discuss this further *infra* part II of the text.

the class around the codes precludes achievement of this objective. The codes, for example, say virtually nothing about how the attorney should behave as a negotiator or counselor.⁶ The codes provide little guidance for the attorney working directly for a corporation.⁷ The codes are largely silent about basic questions such as how decision-making authority should be allocated between attorney and client.⁸ The codes hardly even deal with problems confronting every lawyer—for example, when it is permissible to use delay to gain a strategic advantage.⁹ Similarly, the codes provide no clear guidance to attorneys on how to handle the difficult problem of a client who is likely to commit perjury while testifying.¹⁰ The list of omissions could go on and on. If a professional responsibility course is to be practically useful, it must focus on the problems confronting attorneys and consider the code to the extent that it speaks to these situations. A course that emphasizes the codes ignores too many of the real-world problems that lawyers face.¹¹

Second, a code only states the minimum professional obligations that all attorneys must meet. Codes are the floor of professional ethics, not the ceiling. For example, the codes permit attorneys to disclose future crimes, but they do not say anything about whether a moral attorney should do so. The codes do not speak to whether a socially responsible attorney should feel obligated to spend a certain number of hours per year doing pro bono work. I believe a course on professional responsibility should encourage students to consider how a moral person should behave as an attorney; in many important areas, the codes provide little guidance.

Certainly, there is no inherent reason why a course emphasizing the codes could not raise such questions. I fear, though, that when the codes are made the central focus of professional responsibility courses, students are encouraged to believe that all they need do in their practices is comply with the rules. If the teaching materials emphasize the codes, if the exams emphasize the codes, if the students are concerned about the Multistate Professional Responsibility Examination, there is too little incentive to think beyond the

6. Although the model code does not contain provisions specifically dealing with the attorney as negotiator, the model rules have several sections pertinent to this topic. See Model Rules of Professional Conduct Rule 3.4 (fairness to opposing party and counsel); 4.1 (truthfulness in statements to others).

7. The only provision in the model code directly dealing with attorneys representing entities such as corporations is EC 5-18. Model rule 1.13 covers the "organization as client."

8. Model rule 1.2(a) concerns the allocation of decision-making authority and its comment recognizes that it "has no counterpart in the Disciplinary Rules of the Model Code." Model code EC 7-8 does discuss allocation of decision making.

9. For example, concerning delay, the code simply says that an attorney "shall not . . . delay a trial when it is obvious that such action would serve merely to harass or maliciously injure another." DR 7-102(A)(1). For a discussion of the inadequacy of the code, see Edelstein, *The Ethics of Dilatory Motion Practice: Time for a Change*, 44 *Fordham L. Rev.* 1066 (1976).

10. The model code says that attorneys shall not "[k]nowingly use perjured testimony." DR 7-102(A)(4). However, the code also requires attorneys to protect client confidences, DR 4-101, and offers no guidance for how to resolve this conflict. See *Nix v. Whiteside*, 106 S. Ct. 988 (1986) (attorney's threat to disclose client perjury is not ineffective assistance of counsel).

11. Of course, there is no inherent reason why a course emphasizing the code could not also consider problems outside the code. My point is that it is not the content of the codes but the problems confronting attorneys that should determine the coverage of the course. Moreover, if the focus of the course is on the codes, it is all too easy to give short shrift to matters not dealt with in the rules.

rules. Unless my teaching experience is unique, I think all too often students prefer to memorize rules rather than to think about difficult, unanswerable moral questions. A course that emphasizes the codes makes it too easy for students to do the former and avoid the latter.

Third, professional responsibility courses that concentrate on teaching the codes do not adequately encourage students to question the underlying assumptions of the system. It is extremely important that law students be asked to think about why we license and regulate attorneys—is it to preserve a competitive advantage for lawyers, or does it provide more competent, trustworthy attorneys? Is it morally justifiable to favor clients over individuals who are not clients? Is there really an adversary system, and does it actually yield truth more often than alternatives might? How should attorneys behave when it appears obvious that the adversary system is failing?

These fundamental questions should be the core of professional responsibility courses. Merely teaching the codes does not adequately encourage students to examine and analyze the premises of the system. The question is which approach better encourages students to focus on the underlying value questions: an approach that structures discussion around code sections, or an approach that centers analysis around the normative questions themselves? It is too easy for students to uncritically accept the assumptions behind the codes if the primary purpose of the course is teaching its provisions and their application.

Finally, I believe that one of education's most important purposes is encouraging students to think about value questions and make independent moral judgments. All too often, I fear that individuals avoid facing moral questions. For attorneys, especially associates at large law firms, this manifests itself in deference to those in positions of authority. Professional responsibility courses present an opportunity to ask students to think about value conflicts facing all attorneys and to impress on them the importance of careful reflection and choice. Primarily teaching the professional codes forgoes this opportunity. I believe that a professional responsibility course serves its highest purpose when it causes students to confront difficult ethical issues facing attorneys and helps students to clarify and structure their moral intuitions and values.

In light of these arguments against courses that emphasize the codes, what defense does Schneyer make for courses that "heavily emphasize the code of professional responsibility and model rules of professional conduct"?¹² Schneyer begins by labeling my position as the "new positivism." He writes:

The new positivism would restore a sharp line between law and morals. . . . It urges lawyers, if they wish to think clearly about their own moral responsibilities, to approach with suspicion, or even to disregard, the pertinent legal rules—the ABA codes as adopted by the courts. As moral sentiments were once said to interfere with legal thought, so the ABA codes now stand accused of hindering moral reflection.¹³

12. Schneyer, *supra* note 1, at 954.

13. *Id.* at 955.

This misstates my position in an important way. I contend that law students and attorneys should decide moral questions for themselves. Code provisions might correspond to moral judgments, but they also might not. There might be a “sharp line between law and morals,” or there might be no line at all. There simply is no necessary relationship between the two. In some situations the code offers no guidance for resolving difficult moral questions, such as instances in which the codes permit withdrawal from representation or disclosure of harmful information but do not require it.¹⁴ In other situations, the code might be regarded as requiring immoral behavior. For example, the code prohibits attorneys from disclosing a client’s confidential statements about past crimes, even when such disclosure might save the life of an innocent person.¹⁵ I believe it is extremely important to encourage students to make independent moral judgments. The fact that the American Bar Association drafted a rule does not necessarily mean that it states the appropriate behavior for a moral person. Students must decide for themselves what is ethical conduct. As such, if students are only taught the codes, then the rules do stand in the way of moral reflection and moral judgments.

Schneyer defends courses that emphasize the codes by responding to what he identifies as the two major criticisms of such an approach. First, he states that it is incorrect to criticize the codes as being based almost exclusively on the norm of providing zealous representation of clients. Schneyer writes:

I do not think the codes need be read as resting on such an ethic. True, sections of the codes can be read that way, which is not surprising since the hired-gun image has for many years been one important strand in the legal profession’s ethical thought. But one who seeks in the codes can also find competing images of the good lawyer, as evidenced by provisions that actually buffer lawyers against client pressure to betray their off-the-job values.¹⁶

I disagree with Schneyer’s characterization of the codes. Zealous representation of clients is not an incidental aspect of the current system; it is the core. The codes do not command attorneys to evaluate the social effects of their representation or to consider the impact of their advocacy on third parties. But the codes do compel loyalty to clients.¹⁷ Attorneys are permitted to argue any position for a client and are prohibited from disclosing information detrimental to a client, even when revelation would help innocent victims.¹⁸ The codes certainly give attorneys freedom in selecting clients; but they clear-

14. See Model Code of Professional Responsibility DR 2-110(C) (permissive withdrawal); DR 4-101(C) (describing confidences that a lawyer *may* reveal).

15. Neither the model code nor the model rules contain any exception permitting attorneys to disclose confidential information about a client’s past crimes. Model Code of Professional Responsibility DR 4-101(C); Model Rules of Professional Conduct Rule 1.6. Therefore, e.g., if an attorney learned that a client had framed an innocent person who was going to be put to death for the client’s crime, the attorney would violate the codes by disclosing the client’s responsibility for the crime to save the innocent person.

16. Schneyer, *supra* note 1, at 955.

17. See, e.g., Model Code of Professional Responsibility Canon 7 (a lawyer should represent a client zealously within the bounds of the law).’’

18. See, e.g., *People v. Belge*, 372 N.Y.S.2d 798 (1975) (attorney acted properly in not revealing location of victims’ bodies at the bottom of a mine shaft).

ly insist that once an attorney agrees to provide representation, such service must be provided zealously. I do not argue that this commitment to clients is incorrect; rather, I contend only that it should be questioned and critically examined.

More important, if Schneyer is correct that the codes do not necessarily compel attorneys to do everything within the bounds of the law for their clients, then the codes are amoral—they allow the individual attorney to decide how much to do for a client. From this viewpoint, the codes are ambiguous and provide little guidance to attorneys in deciding which actions to refrain from and which to take. In that case, I see little value in emphasizing the codes in professional responsibility courses; by Schneyer's description, the codes have little to say about how the attorney is to behave or to whom the attorney owes the highest duty.

In other words, Schneyer is in a dilemma. If the codes are based on the assumption of zealous representation, then, as I argued in my review, it is essential that professional ethics courses critically examine the desirability of this premise. Alternatively, if the codes embody no particular value, instead leaving it up to the individual lawyer to decide what is moral, then there is no point in focusing on the codes because they supply so little in the way of answers or moral guidance. As explained above, the codes simply do not deal with many of the important ethical problems confronting lawyers. They do not even reveal the issues to be discussed and considered.

Schneyer concludes his discussion of whether the codes are too committed to the hired-gun image by stating that he sees the proper focus of a professional responsibility course as "carefully explor[ing] how much leeway the codes give the morally resourceful lawyer to take her off-the-job values into account."¹⁹ This statement reveals the enormous difference between our positions. I do not think it is enough for professional responsibility courses to focus on identifying the "leeway" in the codes. The focus must be on whether the assumptions of the codes—zealous representation of clients to further the adversary system and uphold the dignity of the client²⁰—are justified. The course should not take the code provisions as axioms and try to find ways around them; rather, it should encourage students to think about whether the provisions are even desirable and whether they are consistent with standards for moral conduct.

Schneyer offers a second, more detailed, response to criticisms of the codes. He argues that professional codes do not have the effect of decreasing the likelihood of independent moral judgments or of "short-circuit[ing] the individual moral reflection these complex situations call for."²¹ Schneyer develops several reasons in support of this conclusion. For example, he states that although attorneys might refer to the code and neglect independent moral thought, there is no reason why law students would do this. Schneyer

19. Schneyer, *supra* note 1, at 956.

20. This is discussed more fully in my review, *supra* note 3, at 192-94.

21. Schneyer, *supra* note 1, at 956.

writes: “while some *lawyers* may consult the codes solely for self-protection or as the only step in a hurried moral inquiry, there is no reason why law students *should* approach the codes that way.”²² I think Schneyer overlooks the many pressures that encourage students to focus almost exclusively on the rules and spend little time on the difficult value questions: this is an area in which a bar examination required in most states tests knowledge of the rules, not moral judgments; in addition, this is an area in which students see great value in knowing the rules to avoid future trouble with potentially disastrous consequences. Moreover, it is easier to think about the rules because there are answers—studying can be structured around getting correct solutions to multiple-choice questions. It is much more difficult to think about hard, uncomfortable questions for which there are no right answers. It is precisely because there is so much pressure to learn the rules that I think it is important for courses to emphasize the normative issues.

Also, Schneyer argues that the codes are often ambiguous and fail to provide answers and that this ambiguity will encourage thought and discussion. He writes: “they rarely give unequivocal answers to questions of any real moral complexity and are therefore as apt to stimulate further reflection as to cut it off.”²³ But if the codes do not provide answers, there is much less reason for focusing on them. In fact, unlike Schneyer, I believe that in courses that focus on the codes, when students realize that the codes provide no answer, they all too often see that as a reason to stop thinking about the issue. The students figure that if the code is ambiguous and does not require any particular conduct, they do not have to worry about a multiple-choice question on the provision and need not be concerned about being disciplined under that rule. I think that discussion is encouraged more by posing the underlying question, illustrating it with a real-world example, noting the absence of a solution in the code, and then focusing on how the ethical attorney should behave under the circumstances.

Additionally, Schneyer says that students can gain insights from examining how the codes were produced and amended. For example, he states that students can benefit from comparing the various drafts of the model rules.²⁴ I agree, but believe this can be accomplished equally well under either of our approaches. For example, in discussing whether attorneys have a duty to provide a certain number of hours of pro bono representation each year, it is worth noting the earlier, subsequently deleted version of the model rules that required pro bono work. This can be done without building the course around the codes.

Finally, and most important, Schneyer says that focusing on the rules is important because students will “live in a sea of rules.”²⁵ Schneyer writes that:

22. *Id.*

23. *Id.*

24. *Id.* at 957.

25. *Id.*

We can either teach them that morality is a separate, land-based realm or teach them that they must find their moral bearings in that sea of rules. If we imply that the professional codes are not worth intensive study by anyone disposed to be virtuous . . . then we should not be surprised if as lawyers they disregard those codes and *other* legal rules as well, interpret rules woodenly, use them cynically.²⁶

First, I never suggest that students be taught that there is a weak correspondence between professional codes and morality. Rather, I suggest that students be asked to question and decide for themselves whether and when there is a correspondence. It is important that students realize that there is no necessary, automatic conformity between rules and morality and that following rules cannot substitute for moral reflection. Too many evils have been perpetrated by individuals who said that they were just following orders. I want professional responsibility courses to remind students that they are responsible for their behavior and its consequences.

Also, I strongly disagree with Schneyer that encouraging students to face ethical questions and examine rules critically will make them cynical and encourage them to violate laws routinely. I believe that the best way to encourage exemplary behavior is to encourage individuals to reflect before acting. In fact, if anything will encourage cynicism and wooden interpretation, I think it is an examination of rules that seeks to find "leeway" and loopholes.²⁷

I agree with Schneyer that professional responsibility is a "sleeping jurisprudential giant" in the curriculum.²⁸ But I think that the slumber can only be ended if the course asks students to deal with the difficult moral questions confronting all attorneys. I fear, from hearing students at a number of schools, that all too often courses teach primarily the rules in the codes, avoid the normative questions, and put both the jurisprudential giant and the students to sleep.

II

Schneyer criticizes my article on another ground: that I unfairly describe the reviewed books. The central question in evaluating this argument is whether the casebooks adequately accomplish the three purposes I identify for a legal ethics course: Do the books adequately encourage students to think about the role of the lawyer in society by questioning the assumptions behind the requirement for zealous representation? Do the books adequately prepare students for legal problems that they will likely confront in practice, especially in nonlitigation roles? Do the books adequately encourage students to think about the methods of regulating the delivery of legal services and the practice of law?

To evaluate whether the books inadequately achieve these goals, there

26. *Id.*

27. See *id.* at 956.

28. *Id.* at 958.

needs to be some criteria for “adequacy.” Schneyer states that the “test of a casebook is not whether *it* discusses the pertinent issues at length, but whether it raises them in a way that promotes *student* thought and discussion.”²⁹ Because I disagree with this criterion, it is not surprising that we view the reviewed books so differently. The length of treatment in a book is very important because it communicates to students a message about the significance of the topic. Also, if a casebook covers a topic at length, assuming it is providing useful materials, it is facilitating a deeper, more comprehensive discussion.

In my review, I did not mean to imply that important topics are not *mentioned*. In most instances, they are. But I strongly feel that the books do not provide adequate coverage of these topics. Although it is tempting to respond to each of Schneyer’s examples, I can illustrate my point with one example from each section of Schneyer’s reply.

First, I criticize the books for inadequately questioning why there is a duty to provide zealous representation. Schneyer responds that the Morgan and Rotunda book includes excerpts from an extensive debate between Monroe Freedman and Marvin Frankel on the value of unqualified adversary zeal.³⁰ However, this exchange is presented in the context of a subchapter focusing on whether attorneys must disclose adverse facts and law to opponents in litigation situations.³¹ I believe that a major focus of the course should be to question the profession’s dominant ideology: the duty of zealous representation. The Morgan and Rotunda text uses the excerpt to explore the attorney’s duty of candor, not as part of a central theme of the book focusing on why attorneys should have an obligation to provide zealous representation.

Similarly, in responding to my charge that the books inadequately consider whether the justifications for loyalty to clients make sense, Schneyer says “on page 64” the authors raise the question of whether there is “another kind of concern that should be considered by lawyers in these cases.”³² The question Schneyer quotes is the fifth and shortest of seven notes following one problem in the book.³³ The problem and its notes, let alone the book as a whole, do not emphasize the question of why there is a duty of loyalty to clients.

I argue that the Schwartz and Wydick book seems almost entirely oriented to teaching students the codes. The chapters are short, consisting mostly of problems, a few cases, and a multiple-choice exam. There is virtually no discussion of the assumptions underlying the current system or the desirability of making zealous representation the attorney’s primary obligation. Schneyer says that I am unfair to this book because the authors state in their introduction that their “far more important” objective is starting students “on a career-long process of studying, critically examining, and applying

29. *Id.* at 946.

30. *Id.*; Morgan & Rotunda, *supra* note 3, at 128–36.

31. The material is in chapter 4 (“Ethical Problems in General Litigation”), at 128–36, in a book of nine chapters and 471 pages.

32. Schneyer, *supra* note 1, at 946.

33. Morgan & Rotunda, *supra* note 3, at 62–65.

the ethics rules that govern' law practice.'"³⁴ But my point is that although the introduction states a laudable objective, there is too little in the book that encourages students to examine the rules critically and, especially, to question the underlying assumptions of the system.

Second, I criticize the books for inadequately preparing students to practice law, in part, because they disproportionately emphasize litigation situations. One important example is the lack of coverage of the ethical issues confronting the lawyer as negotiator. Because virtually all attorneys negotiate, and because the rules provide little guidance as to proper conduct during negotiations, this topic is deserving of substantial coverage. Schneyer responds that Schwartz and Wydick do not omit this topic, noting that their introductory chapter centers on a videotape involving a negotiation and that they pose a question concerning ethics during negotiations.³⁵ However, this chapter is less than three full pages, most of which is devoted to an introduction to the use of the book.³⁶ There is not a single reading on the ethics of negotiations, and most of the questions in the chapter do not deal with negotiations.

Similarly, my review stated that Morgan and Rotunda have one problem titled "Trial and Negotiating Tactics," but that this problem focused entirely on ethics at trial.³⁷ Schneyer replies: "As for Morgan and Rotunda, several pages of questions accompanying their 'Tactics' problem do focus on the ethical issues that arise in settlement negotiations, even if the problem itself does not."³⁸ The Morgan and Rotunda book mentions negotiations; but their treatment is less than three full pages.³⁹ This coverage is totally inadequate in light of the importance of the topic.

Third and finally, I criticize the books for inadequately examining the justifications and efficacy of regulation. Schneyer agrees that "one might reasonably wish the books had covered these issues more systematically," but says that my essay "fails to acknowledge much of the coverage that is there."⁴⁰ But my point is that the coverage that is there does not adequately ask students to consider why the delivery of legal services is regulated and whether regulation is necessary and effective in assuring competent and trustworthy attorneys. Schneyer's primary response to this criticism is to say that the Morgan and Rotunda book has a problem and materials on the definition of unauthorized practice of law and a critique of lawyer certification programs.⁴¹ But the central focus of this material is obviously not a thorough consideration of the purposes and effects of regulation. The problem and notes are much better suited to teaching students the rules concerning unau-

34. Schneyer, *supra* note 1, at 945; Schwartz & Wydick, *supra* note 3, at 1.

35. Schneyer, *supra* note 1, at 949.

36. Schwartz & Wydick, *supra* note 3, at 1-3.

37. Chemerinsky, *supra* note 3, at 195.

38. Schneyer, *supra* note 1, at 949.

39. Morgan & Rotunda, *supra* note 3, at 142-44 (some of the notes on these pages deal with trial tactics, not negotiating tactics, e.g., at 144 n.4). There is a problem concerning negotiating a guilty plea in a later chapter on issues in criminal law practice. *Id.* at 224.

40. Schneyer, *supra* note 1, at 951.

41. *Id.*

thorized practice of law than they are tailored to encouraging students to critically examine the overall system for regulating lawyers.

Schneyer makes two other objections to my analysis. He argues at the outset that the three books are very different and that I overlook these differences.⁴² He is obviously correct that the books differ in length, organization, and format. However, my point is that despite these differences there are strong similarities: all inadequately examine the role of the lawyer in society, all disproportionately emphasize litigation situations, all insufficiently consider the justifications and effects of professional regulation.

Additionally, Schneyer argues that there are other casebooks on the market besides the ones I reviewed.⁴³ Of course this is true; in a footnote I mention and praise some of the other texts.⁴⁴ I made no attempt to review every book and tried to make clear that I was speaking of courses as reflected by *these* texts. Thus, in a number of places I referred to “traditional legal ethics courses, as represented by these three casebooks,”⁴⁵ and “[t]o the extent that [the books] reflect current approaches to teaching professional responsibility.”⁴⁶

Ultimately, the question of whether I fairly described the reviewed books comes down to a simple inquiry: Would an instructor be satisfied with these three books if he or she wanted a professional responsibility course to examine the role of the lawyer in society, discuss practical problems confronting lawyers, and then consider the system for regulating attorneys? For the reasons stated in my review, I think the three texts are inadequate for these tasks.

Conclusion

I was unsettled the first time I read Schneyer's reply, and as a consequence, I carefully reread the books I had reviewed. Although I am convinced that my review accurately portrays the texts, I still felt uncomfortable with the tone of Schneyer's reply. After a while, I rationalized that I was glad he wrote the reply; better to provoke an angry response than to be ignored. But still I wondered why the hostile tone.

Perhaps it is because arguments over teaching professional responsibility are not merely matters of preference in pedagogy, of interest only to instructors in a narrow part of the curriculum. Arguments about legal ethics courses are really a battle for the soul of the legal profession of the future. Will we as teachers be satisfied if our students master the codes and follow them conscientiously? Or do we want more? Do we want students who question the rationalizations of the profession and aspire for a higher morality than the profession historically follows? Schneyer's reply is important because it makes this choice clear. Unlike Schneyer, I firmly believe that mastering and following the codes is not enough.

42. *Id.* at 943.

43. *Id.* at sec. III.

44. Chemerinsky, *supra* note 3, at 185 n.17.

45. *Id.* at 198.

46. *Id.* at 199.