Toward a Deeper Understanding of Professionalism: Learning to Write and Writing to Learn during the First Two Weeks of Law School

Ben Bratman
University of Pittsburgh School of Law, beb9@pitt.edu

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Recommended Citation
Ben Bratman, Toward a Deeper Understanding of Professionalism: Learning to Write and Writing to Learn during the First Two Weeks of Law School, 32 Journal of the Legal Profession 115 (2008). Available at: https://scholarship.law.pitt.edu/fac_articles/64

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TOWARD A DEEPER UNDERSTANDING OF PROFESSIONALISM: LEARNING TO WRITE AND WRITING TO LEARN DURING THE FIRST TWO WEEKS OF LAW SCHOOL

Ben Bratman*

I. INTRODUCTION

Last year, a local, financially successful personal injury attorney came to speak at the University of Pittsburgh School of Law to inaugurate a visiting scholars program in his name.¹ The brochure promoting his speech briefly set forth the history of his legal career, describing a firm that he established in 1982 as a “business” that “flourished.”² The brochure exalted his production of over 500 television commercials, each one featuring a catch phrase that highlights the firm’s contingency fee arrangement, as indicative of how he “sets the example for a successful career in law.”³ The brochure further highlighted his motivation for establishing the scholars program and for engaging in community service outside legal practice: “If you’re fortunate to be successful in business, you have a responsibility to give something back.”⁴

The brochure was troubling for numerous reasons. Notwithstanding the admirable and superior legal services this attorney and his firm have provided to many people,⁵ the brochure’s use of the term “business” and its blithe celebration of financial success and copious television advertisements as indicia of a successful lawyer were disconcerting.⁶ The bro-

* Associate Professor of Legal Writing, University of Pittsburgh School of Law. The author wishes to thank Professor Melissa Weresh; my research assistant, Nick Cassell; and Nancy Bratman for their feedback on earlier drafts of this article.
1. Edgar M. Snyder, University of Pittsburgh School of Law, Distinguishing Visiting Scholar Program, Inaugural Speaker: Looking Back on 40 Years as a Lawyer (April 4, 2007) (brochure promoting Snyder’s speech and detailing his legal career) (brochure on file with author and with The Journal of the Legal Profession).
2. Id. (emphasis added).
3. Id.
4. Id. (emphasis added).
5. With respect to the attorney and the firm’s legal work, the brochure frankly did not do him justice. In an unscientific survey among some of the author’s colleagues and some of the attorney’s fellow practitioners, the author discovered that the attorney is well respected. Further, the attorney and his wife perform exemplary community service outside the legal practice.
6. Snyder, supra note 1.
church's wording confirmed the reality that lawyers in private practice seem to be in a business more than a profession.

As a law professor teaching first-year law students, however, the author of this article found the brochure to be a helpful teaching tool. The brochure reinforced the author's decision to require his legal writing students to complete—as their very first law school writing assignment—a memo discussing the differences between a business and a profession. When assigning this memo during the past two years, the author has acted on two beliefs: (1) law schools should actively seek to orient their students to law as a profession, above all else; and (2) the first step for student appreciation regarding what it means to be in a profession—in other words, developing the all-important understanding of lawyer "professionalism," an oft-used but never clearly defined term—7—is recognizing what sets professionals apart from business persons. While introducing students to legal writing, the author also wanted to convey the lesson that lawyers, first and foremost, serve the public. Public service is "the very essence of being a lawyer in our society."8 Only with this foundation can law students learn, appreciate, and ultimately fulfill the professional and ethical obligations that a law license will place upon them.

This article explores the development and implementation of the aforementioned writing assignment as a tool for teaching the concept and meaning of professionalism. Part II provides a brief background regarding the concept and meaning of professionalism. Professionalism ultimately must be understood as the fundamental commitment to public service that distinguishes professionals from business people. Part II closes with a brief discussion of how lawyers often fail to distinguish themselves from business people, and therefore, fail at professionalism. Part III summarizes how law schools largely have fallen short of their obligation to impart the meaning and importance of professionalism to their students.

7. Most individuals would agree that lawyer "professionalism" involves obligations beyond compliance with the various ethical rules governing lawyers. See, e.g., Frank X. Neuner, Jr., Professionalism: Charting a Different Course for the New Millennium, 73 Tul. L. Rev. 2041, 2042 (1999) ("The basic distinction between ethics and professionalism is that rules of ethics tell us what we must do and professionalism teaches us what we should do."); Evanoff v. Evanoff, 418 S.E.2d 62, 63 (Ga. 1992) (Benham, J., concurring) ("[E]thics is that which is required and professionalism is that which is expected.") (quoting Chief Justice Clarke of the Georgia Supreme Court). However, beyond that premise, there is much ambiguity and disagreement. See Susan Daicoff, Articles Lawyer, Know Thyself: A Review of Empirical Research on Attorney Attributes Bearing on Professionalism, 46 Am. U. L. Rev. 1337, 1343 (1997) (describing "professionalism" as a "nebulous term, . . . used to mean several different things"); Ted Schneyer, Policymaking and the Perils of Professionalism: The ABA's Ancillary Business Debate as a Case Study, 35 Ariz. L. Rev. 363, 365 (1993) (labeling the term "professionalism" a "notoriously vague and contested concept."). See also infra Part II.

Further, Part III identifies the legal writing classroom as a promising venue for teaching the meaning of professionalism. Part IV examines the aforementioned memorandum assignment as a means of introducing first-year legal writing students to the idea of professionalism. By analyzing whether a fictional personal injury lawyer is running a "professional office" or a "business office" under a zoning ordinance and a single case precedent, students not only begin learning to write, but also begin learning about a lawyer's role as a professional.

II. PROFESSIONALISM AND PUBLIC SERVICE VS. COMMERCIALISM AND PROFIT: AN IMBALANCE

Over twenty years ago, in response to concern that the legal profession might have "abandoned principle for profit, professionalism for commercialism[,]" the American Bar Association's Commission on Professionalism (Stanley Commission) charged the bench, the bar, and law schools with taking steps to revive lawyer professionalism. Embedded in the very premise of the Commission's report is the notion that professionalism is the opposite of commercialism. In other words, the defining elements of a profession should be those attributes that distinguish it from a business.

There certainly is no shortage of literature on lawyer professionalism, or efforts to define lawyer professionalism. Professionalism stretches beyond complying with ethical rules, for many non-professionals in business are likewise governed by laws and regulations that are ethical in nature. However, professionalism does not merely

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10. Id. at 266-71.

11. Id. at 261 (relying on "common elements which distinguish a profession from other occupations" to form the report's working definition of "professionalism."). See also Daicoff, supra note 7, at 1343 (noting that "professionalism... is often used to set apart a profession from a trade or occupation") (quoting Rob Atkinson, A Dissenter's Commentary on the Professionalism Crusade, 74 Tex. L. Rev. 259, 271 (1995)).

12. A March 2008 Westlaw search in the Journals and Law Reviews database yielded 663 articles with the word "professionalism" in the title. The same search eleven years earlier found 145 articles. Daicoff, supra note 7, at 1347 n.33.

13. See, e.g., Blueprint, supra note 9, at 251; Dane S. Ciolino, Redefining Professionalism as Seeking, 49 Loy. L. Rev. 229, 232-37 (2003) (identifying and discussing various definitions of professionalism); Daicoff, supra note 7, at 1343 (identifying three different usages of the term); Amy Mashburn, Professionalism as Class Ideology: Civility Codes and Bar Hierarchy, 28 Val. U. L. Rev. 657, 657 n.2 (1994) (identifying three categories of definitions).


15. Ethical lapses in the business world, which may be in violation of a variety of laws, are legion and are repeatedly in the headlines. Several of the more prominent ones, including the Enron debacle, led to passage of the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002). As an additional example, every state has consumer protection and anti-fraud statutes, which set ethical standards for businesses. To be sure, as professionals, lawyers must abide by a "standard of ethics higher than that of the market place," and abiding by those standards is part of professional-
equate with civility or with a collection of other mature behaviors that are important for a lawyer to exhibit, including competence, diligence, preparation and promptness. While professionals, including lawyers, are expected to be civil, competent, diligent, prepared and prompt, these traits also are desirable and perhaps even necessary in business.

Ultimately, professionalism means something more. In the words of former U.S. Supreme Court Justice Sandra Day O'Connor,

One distinguishing feature of any profession, unlike other occupations that may be equally respectable, is that membership entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market.

In other words, laws and market forces (including unwritten standards of civility, competence, diligence, preparation and promptness that, if not followed, will result in a loss of business or clients) govern the conduct of business people and professionals, but something more governs only professionals. Adhering to that something more is "professionalism." Professionalism's goal "transcends the accumulation of wealth. That goal is public service."
Indeed, lawyers function primarily as public servants.\textsuperscript{21} Even a source as basic as Webster’s Dictionary tells us that a profession “has for its prime purpose the rendering of a public service.”\textsuperscript{22} Moreover, the law is “no less a public service because it may incidentally be a means of livelihood.”\textsuperscript{23} The argument—no doubt familiar to law professors but not necessarily to practicing lawyers or law students—is that lawyers have a state-licensed monopoly on most forms of legal services, just as doctors have a state-licensed monopoly on most forms of medical services. In addition, lawyers have a specialized body of knowledge and experience that the public does not have but always needs.\textsuperscript{24} Accordingly, lawyers breach the public’s trust when they prioritize financial return over public service. Instead, in a capitalistic system, businesses prioritize financial return.\textsuperscript{25}

While lawyers and law firms are part of a legal marketplace in which there is competition and attention to revenues and costs, at times the pendulum swings too far toward the central imperative of a business, i.e. profit, and too far away from the central imperative of a profession, i.e. public service. Two or three decades ago, the pendulum swung too far toward business and it has not swung back.\textsuperscript{26} The aforementioned bro-

\section*{Footnotes}

\footnotetext[21]{The Stanley Commission adopted a definition of professionalism that emphasizes public service and public trust, referring to the legal profession as “[a]n occupation whose members have special privileges, such as exclusive licensing, that are justified by the following assumptions:
1. That its practice requires substantial intellectual training and the use of complex judgments.
2. That since clients cannot adequately evaluate the quality of the service, they must trust those they consult.
3. That the client’s trust presupposes that the practitioner’s self-interest is overbalanced by devotion to serving both the client’s interest and the public good, and
4. That the occupation is self-regulating—that is, organized in such a way as to assure the public and the courts that its members are competent, do not violate their client’s trust, and transcend their own self-interest.” Blueprint, supra note 9, at 261-62.}

\footnotetext[22]{WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1811 (2002) [hereinafter WEBSTER’S].}

\footnotetext[23]{ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (West Pub. Co. 1953), quoted in MARY ANN GLENDON, A NATION UNDER LAWYERS 17 (1st ed. 1994).}

\footnotetext[24]{To the public, lawyers “appear to have a map of the labyrinth through which [a] client must travel in order to reach his objective.” Walter P. Armstrong, Jr., The Law: Business or Profession?, 18 MEM. ST. U. L. REV. 81, 82 (1987).}

\footnotetext[25]{See BLACK’S, supra note 15, at 211 (defining “business” as “[a] commercial enterprise carried on for profit”); Norman Bowie, The Law: From a Profession to a Business, 41 VAND. L. REV. 741, 745 (1988) (“Business people are egoistic; their primary motivation, according to economic theory, is to maximize their self-interest. This lack of altruistic spirit is sufficient to distinguish business from the professions.”). See also Webster’s, supra note 22, at 302 (defining “business,” in relevant part, as “a usu. [sic] commercial or mercantile activity customarily engaged in as a means of livelihood . . . and sometimes contrasted with . . . professions . . . .”).}

\footnotetext[26]{Though the commercialization of the legal practice has been fodder for commentary and critique for over a century, the more pronounced anti-professional commercial practices seem to have originated in the 1970s and 1980s. Samuel J. Levine, Rediscovering Julius Henry Cohen and the Origins of the Business/Profession Dichotomy: A Study in the Discourse of Early Twentieth Century Legal Professionalism, 47 AM. J. LEGAL HIST. 1, 1 n.1 (2005) (collecting sources dating back to 1900). During this time period, clients began shopping around for legal services instead of remaining loyal to a single firm. This gave birth to a competitive legal marketplace and a commercial culture in
chore promoting the personal injury attorney’s speech was just another exhibit supporting this tide.27

Perhaps the most important indicator that the legal profession is prioritizing profits is the fact that individuals with limited financial means usually cannot retain adequate legal representation, if any.28 Moreover, few lawyers even come close to satisfying Rule 6.1 of the ABA’s Model Rules of Professional Conduct, which states that lawyers should aspire to render at least fifty hours of pro bono legal services annually.29 What is more, attorneys who do perform pro bono work usually do not serve the truly needy, as Model Rule 6.1 requires. Instead, they serve “family, friends, clients who fail to pay their fees, and middle-class organizations like hospitals and schools that might become paying clients.”30

Of course, ensuring that all people have access to legal representation is not a lawyer’s only public service obligation. A lawyer’s ultimate goal in all of his or her professional actions, whether on behalf of paying or pro bono clients, should be public service.31 “[P]ublic service is not


27. The sullied image of lawyers, caused by their forays into advertising and marketing, is not the chief commercial evil plaguing the legal profession. Instead, the most troubling aspect of the legal profession is the perverse incentive to prioritize profits and to cut ethical corners that have been created by the billable hour and by contingency fee arrangements. GLENDON, supra note 23, at 54; Joseph E. La Rue, Redeeming the Lawyer’s Time: A Proposal for a Shift in How Attorneys Think about—and Utilize—Time, 20 NOTRE DAME J.L. ETHICS & PUB POL’Y 473, 476 (2006).

28. Ingrid V. Eagly, Community Education: Creating a New Vision of Legal Services Practice, 4 CLINICAL L. REV. 433, 440 n.46 (1998) (“Numerous studies have shown that only 15 to 20 percent of the nation’s poor receive legal services.”).


30. Id.

31. The greatest challenge in prioritizing public service (including duties to the court, the profession, and other parties) during the day-to-day course of legal representation is simultaneously upholding the duty of client loyalty. A tension exists between a lawyer’s duty to perform public service and a lawyer’s duty of client loyalty. See Baker, supra note 17, at 847; Ronald J. Gilson, The Devolution of the Legal Profession: A Demand Side Perspective, 49 MD. L. REV. 869, 874 (1990). However, zealously advocating for each and every client within the bounds of the law can simultaneously serve the broader goal of public service. Where zealously advocating clearly does not serve the goal of public service, client loyalty must give way. For example, Model Rule 3.1 prohibits lawyers from advancing frivolous claims, even if doing so might net the client proceeds in a “nuisance settlement.” MODEL RULES OF PROF’L CONDUCT R. 3.1 (2007). The unwritten spirit of public service should dissuade lawyers from advancing frivolous claims in any event. More broadly, Model Rule 8.4(d) declares it “professional misconduct” to “engage in conduct that is prejudicial to the administration of justice.” MODEL RULES OF PROF’L CONDUCT R. 8.4(d) (2007). An in-depth discussion of this issue is beyond the scope of this article, but see infra Part IV-F for a brief discussion on incorporating the relationship between the duty of public service and the duty of client loyalty into writing assignments.
merely an aspiration or an ideology.” A lawyer’s role is to serve the public “by aiding in the resolution of disputes through orderly means without recourse to violence.”

III. Teaching Professionalism in First-Year Legal Writing

The Stanley Commission, an ABA commission convened from 1985-1986, critically studied the legal profession and looked beyond ethics into issues concerning lawyer professionalism. Encouraging law schools to take steps toward enhancing lawyer professionalism, the Stanley Commission recommended that law professors “weave ethical and professional issues into courses in both substantive and procedural fields.”

By recent accounts, most law schools and law professors have failed to heed the Stanley Commission’s call. Following a two-year study of legal education, the Carnegie Foundation for the Advancement of Teaching concluded that law schools show “inadequate concern with professional responsibility.” In its report, the Carnegie Foundation recommended that law schools offer integrated curriculums that include “opportunities to wrestle with the issues of professionalism.”

Likewise, in a 2007 report, the Clinical Legal Education Association (CLEA) concluded that law schools are graduating students with inadequate understanding and appreciation of professionalism. CLEA recommended, among other things, that law schools provide “pervasive professionalism instruction and role modeling throughout all three years of law school.”

For many years, legal writing professors have advocated using the mandatory first-year legal writing course as a venue for conveying the

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32. Teaching and Learning Professionalism, supra note 8, at 6.
33. Armstrong, supra note 24, at 83. This principle applies with as much force to non-litigators in that they aid in the avoidance of disputes.
34. See AMERICAN BAR ASSOCIATION AND RONALD JAY COHEN, LAWYERS DOING BUSINESS WITH THEIR CLIENTS: IDENTIFYING AND AVOIDING LEGAL AND ETHICAL DANGERS (Section of Litigation, ABA, 2001), available at http://www.abanet.org/litigation/ethics/abareport.pdf.
35. Blueprint, supra note 9 at 266. Six years later, in 1992, the famous MacCrate Report, also from the ABA, concluded that law schools should strive to emphasize not only practical skills and substantive knowledge, but also professional “values.” LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP 136 (American Bar Association, 1992) (hereinafter MacCrate Report).
37. Id. at 8-9.
39. Id. at 100.
meaning and importance of professionalism. As these professors accurately point out, first-year students are receptive to new ideas, and legal writing courses usually have smaller teacher-student ratios than doctrinal courses and much more student-faculty interaction. Accordingly, legal writing courses afford greater opportunities for professors to discuss professionalism and to teach the principles of professionalism that are implicated in the production and delivery of legal documents, especially written arguments on behalf of clients.

The legal writing course is an appropriate venue for exposing students to the importance of civility, competence, diligence, preparation, and promptness in the legal practice and for considering the related, mature behaviors expected of a professional. In addition, the legal writing course presents an ideal opportunity for introducing students to the many ethical rules governing legal communications. In this spirit, the author has always tried to be a model of civility, competence, diligence, preparation and promptness for his students. Likewise, the author expects his students to exhibit these attributes in their coursework and in-class behavior. In addition, the author teaches a lesson on the ethical rules governing persuasive writing to a court.

However, until two years ago, the author had done little, if anything, to teach or model professionalism as a synonym for public service. Instead, the author had taught professionalism as a synonym for mature and ethical behavior, both of which the marketplace certainly expects of non-lawyers who are business people. Recognizing that the law and other professions require advanced and continuing education for licensure, and that the world of business does not, the author began questioning the adequacy of his pedagogical approach to professionalism, as well as the approach of legal education in general. Law schools are obligated to impart the professional imperative of public service to their students, and the author concluded that he must do his part via his first-year legal writing course.

40. See Chin, supra note 16; Beth D. Cohen, Instilling an Appreciation of Legal Ethics and Professional Responsibility in First-year Legal Research and Writing Courses, 4 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 5 (1995); Margaret Z. Johns, Teaching Professional Responsibility and Professionalism in Legal Writing, 40 J. LEGAL EDUC. 501 (1990); Nancy M. Maurer & Linda Fiits Mischler, Introduction to Lawyering: Teaching First-Year Students to Think Like Professionals, 44 J. LEGAL EDUC. 96 (1994); Melissa H. Weresh, Fostering a Respect for Our Students, Our Specialty, and the Legal Profession: Introducing Ethics and Professionalism into the Legal Writing Curriculum, 21 TOURO L. REV. 427 (2005) [hereinafter Weresh, Fostering a Respect].
42. See, e.g., Maurer & Mischler, supra note 40, at 113.
43. There is even a casebook designed largely for just this purpose. Weresh, LEGAL WRITING, supra note 18.
44. The lesson mainly focuses on candor toward the court, as covered by Rule 3.3(a) of the Model Rules and comparable sections of the Model Code of Professional Responsibility. See generally MODEL RULE OF PROF'L CONDUCT R. 3.3(a) (2007).
IV. THE ASSIGNMENT

Step one in conveying the importance of public service in the legal profession was to teach a fundamental and foundational understanding of the difference between a profession and a business and the difference between professionalism and commercialism. The author decided to pursue this task via the first assignment, to be distributed during the first week of class. Students were assigned to write a memorandum analyzing whether a mock lawyer described in the assignment is a professional or a business person. Students were provided one piece of authority—a precedent case holding that an insurance agent and broker ran a business office, not a professional office, for purposes of a zoning ordinance—and they were expected to incorporate that authority into their analysis. The first version of the assignment was given to the students in the author’s first-year legal writing course in fall 2006. The assignment was then slightly revamped for use in the same course in fall 2007.

A. The First Version

1. Format

Given the subject area of a legal writing course, the assignment was designed to introduce students to the fundamentals of legal analysis and writing—analyzing the applicability of precedential authority to a set of case-specific facts and reducing this analysis into writing. In other words, the students were not merely writing to learn about professionalism; they were also learning to write. However, as this the assignment was the first of the year, the author kept things relatively simple. The assignment was a two-page memo through which students were required to apply a single precedent case to a straightforward set of facts.

The author did not provide any of the ethical rules governing lawyers in the assigned materials. To emphasize a theme of ethics and professionalism throughout the legal writing course, the author, in the future, may

45. The phrase “writing to learn” originates from a book bearing that title written by Professor William Zinsser. WILLIAM ZINSSER, WRITING TO LEARN (Collins 1993). Legal writing and other scholars generally agree on the proposition that writing is, among other things, a means of thinking and learning about the substantive subject of the paper. Weresh, Fostering a Respect, supra note 40, at 436-39 (discussing sources).

46. The assignment was closed-resource; in other words, the students were only permitted to use the authority provided by the author. In addition, the author only required the students to write the discussion section of the memorandum. As part of the assignment, the author provided the issue and facts sections of the memorandum and indicated where the brief answer section would be included. However, the author did not include a brief answer section in order to prevent prejudicing the students’ analysis and writing of the discussion section. Moreover, recognizing that the students did not know the proper citation formats, the author included a sample of the proper way to cite the precedential case.
structure later assigned memorandums around the applicability of ethical rules to a hypothetical attorney's conduct. But, before requiring students to analyze how ethical rules apply to lawyers, the author wanted the students to understand why lawyers are subject to such ethical rules and why society expects higher standards of conduct from lawyers. Accordingly, the author searched for a subject area that would impart a basic understanding of what distinguishes a lawyer and a professional from business people.

The author found an instructive discussion of this issue in, of all places, case law interpreting zoning ordinances. It is quite common for municipalities to permit professional offices, but not business offices or service establishments, in otherwise residential districts. As a result, several published opinions reason whether home offices are that of a "professional," in compliance with the zoning ordinance, or that of a "business," in defiance of the zoning ordinance. The author was unable to find any case law interpreting whether a law office is a "professional" office under a zoning ordinance most likely because this is commonly considered a non-issue. According to the traditional understanding of the legal practice, law is considered one of the three "learned professions." As such, many zoning ordinances specify law offices as examples of permitted professional offices in residential districts.

As there is a lack of precedent concerning whether lawyers run "professional offices," the author decided to prepare a hypothetical fact scenario that required students to examine whether lawyers are professionals and whether a particular lawyer was running a "professional office." Therefore, in the assignment, the mock client was a lawyer running an office in a residential zone.

2. The Precedent Case

The author chose *Reich v. City of Reading* as the single precedent case for the assignment. *Reich* is a 1971 Pennsylvania Commonwealth Court case involving an insurance agent and broker who maintained an office in the basement of an apartment building. The building was in a

49. *La Rue, supra* note 27, at 473.
52. *See id.*
residential zoning district that permitted "professional offices." Prior to Reich's establishment of an office in the basement, the apartment building exclusively was used for residential purposes. By a letter to policyholders, Reich announced that the office would be for insurance services and for the preparation of income tax returns. Besides "professional offices," the Reading residential, multiple-family zoning ordinance at issue permitted a very small number of non-residential uses. "By contrast," the court points out, "various additional principal uses are permitted in a Business Neighborhood Zoning District, including 'business or professional office,' retail businesses, service establishments, eating places, and automotive parking and service facilities."

The court's opinion presents a methodical analysis of the issue before it. After providing the facts and posing the issue, the court states that its overall goal is to determine the legislature's intent when choosing and employing the word "professional." The court first attempts to interpret the legislature's intent by determining whether the municipality designated a meaning for the term "professional" in the ordinance's definition section. However, the ordinance does not define the term "professional." Second, the court attempts to gather legislative intent "from the ordinance as a whole, assigning the usual and generally accepted meaning to the words or phrases employed." In pursuit of this step, the court explains the contrast between the more expansive zoning district that allows "business offices," and the more restrictive residential districts that allow "professional offices." Within this context, the court proceeds to Webster's Third New International Dictionary definition of "profession:"

[A] calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical, or scholarly principles underlying such skills and methods, maintaining by force of organization or concerted opinion high standards of achievement and conduct and committing its members to continued study and to a kind of

53. Id. at 319.
54. Id. at 317. Upon visiting the basement office, city inspectors noted the presence of three employees, a client, and Mr. Reich, as well as four desks, a counter, and other office equipment. Outside the building there were two signs, one reading "Harry W. Reich," and the other reading "Insurance." Id.
55. Reich, 284 A.2d at 319.
56. Id.
57. Id. at 318.
58. Id. at 319.
59. Id.
60. Reich, 284 A.2d at 319.
work which has for its prime purpose the rendering of a public service.\footnote{Id. (quoting WEBSTER'S, supra note 22, at 1811). The court also provides Webster's definition of "professional:" "engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency . . . ." Id.}

The court also cites a Pennsylvania Supreme Court opinion for the proposition that a profession involves more than "mere skill in performance of a task."\footnote{Id. (quoting Howarth v. Gilman, 73 A.2d 655, 658 (Pa. 1950)).} Rather, a profession is "...a calling in which one professes to have acquired some special knowledge used by way [ ] of instructing, guiding, or advising others or of serving them in (some) [sic] art."\footnote{Id. (quoting Howarth, 73 A.2d at 658) (alteration in the original).}

Reich's primary argument, the court writes, is that he had been licensed by the Commonwealth of Pennsylvania to be an insurance agent and a broker. The court then discusses the relevant licensing act in some depth, first identifying how the act defines "agent" and "broker."\footnote{Id.} Under the act, "agent" is defined as one who, in essence, sells insurance, issues policies, and collects premiums. "Broker" is defined as one who, for compensation, aids a person other than himself in obtaining insurance. To become licensed, an agent or a broker only must answer some questions and obtain statements from two agents or officers in an insurance company affirming that the applicant "is of good business reputation, and has experience in underwriting, other than soliciting, and is worthy of a license."\footnote{Id. Not surprisingly, given the lack of an educational requirement for the license, the court concludes that licensing, standing alone, does not make the occupation of insurance agent and/or broker a "profession."\footnote{Id.}} Not surprisingly, given the lack of an educational requirement for the license, the court concludes that licensing, standing alone, does not make the occupation of insurance agent and/or broker a "profession."\footnote{Id.}

Finally, though the court acknowledges that the concept of a profession has evolved beyond the traditional "learned professions, namely theology, medicine and law," to several other professions, it notes that all professions, whether newly anointed as such or traditionally considered as such, require "considerable educational preparation and continuing study . . . ."\footnote{Id.} The court then concludes that Reich's insurance office is a "business office," not a "professional office."\footnote{Id.}

Pedagogically speaking, the court's opinion presented the author with two problems. First, the court's explicit identification of law as one of the three learned professions might invite students to engage in a conclusory analysis of whether the law is a profession and whether the particular law-
yer in the instant case is a professional. To avoid this complication, the author deleted the court’s references to the phrase “learned professions” and to law being a “learned profession.”\textsuperscript{70} Second, the court’s reference to the importance of “considerable educational preparation and continuing study” just prior to concluding that the law is a profession, might lead students to believe that this is the dispositive factor, leaving public service out of the picture.\textsuperscript{71} While student recognition of the importance of educational prerequisites to the practice of law is very important, the author did not want the students’ written analysis to begin and end with the educational factor. To emphasize public service as factor of a profession, and given that the definition of “profession” adopted by the court included a reference to public service,\textsuperscript{72} the author inserted the following sentence of reasoning before the court’s conclusion:

The occupations of insurance agent and broker do not require the extensive educational preparation and continuing study engaged in by professionals (for example, medical doctors or religious clergy), and are not as public-service oriented as a pursuit needs to be to qualify as a ‘profession’ instead of a ‘business.’

Because \textit{Reich} was the first piece of legal authority the students would read and their memorandum would be their first piece of written work product, the author only minimally altered \textit{Reich}. The author wanted the students to read as close to a real case as possible and still meet his two teaching goals: (1) learning to analyze and write, and (2) writing to analyze and learn about a lawyer’s role as a professional. With few alterations, \textit{Reich} was a strong case for both purposes.

\textit{Reich} seemed approachable and manageable for new law students; at the same time, \textit{Reich} is a challenging case to dissect and understand and is a challenging rule to apply to a set of case-specific, client facts. \textit{Reich} seems manageable because it is a short opinion—made even shorter by excising the court’s discussion of a nonrelated issue.\textsuperscript{73} Second, the court explicitly states the pertinent issue in no uncertain terms: “whether [an] insurance office comes within the definition of ‘Professional Offices.’”\textsuperscript{74} Moreover, the methodical, straightforward way the court examines and interprets the ordinance results in a textbook-like primer on the basics of statutory interpretation.\textsuperscript{75} At the same time, the opinion presents appro-

\textsuperscript{70} \textit{Reich}, 284 A.2d at 319-20. Altering precedential authority is one of the great advantages of a closed-resource assignment; of course, any alterations must be made within reason.

\textsuperscript{71} \textit{Id.} at 320.

\textsuperscript{72} \textit{Id.} at 319.

\textsuperscript{73} \textit{Id.} at 317-18.

\textsuperscript{74} \textit{Id.} at 317.

\textsuperscript{75} \textit{Reich}, 284 A.2d at 318-19.
appropriate challenges. By employing the dictionary definition of "profession," the court suggests a multi-element test for determining whether an occupation is a "profession." Yet, the court does not explicitly identify such elements within its definition as a test. Similarly, the court’s ultimate focus on educational preparation and continued study and, with the author’s alteration, public service, suggests the possibility of dispositive factors in the court’s analysis without explicitly defining them as such. Finally, and most important for the author’s “writing to learn” purposes, Reich—through the court’s definition of “profession” and through the phrasing that the author added concerning the public interest—appropriately emphasizes the public service component of professions and the high standards of conduct expected of professionals.

3. The “Client”

As Reich does not concern a lawyer, the client needed to be a lawyer. In the assignment, the lawyer’s office was in Reading, Pennsylvania and was located in an apartment subject to the same zoning ordinance as Reich’s. The students were informed that the client-lawyer, named Mr. Boyle (Boyle), is a duly licensed attorney—having graduated from an ABA accredited law school and having passed the Pennsylvania Bar Exam—and is current on his continuing education requirements. The impetus for the memorandum assignment was a neighbor’s complaint to the city that Boyle was using his apartment as an office.

The difficult part of the assignment was describing Boyle’s law practice with some attributes of a business, in order to avoid the “slam dunk” conclusion that the office was a professional office. The author described Boyle as a personal injury attorney who takes all cases on a 33% contingency fee basis and who is extremely financially successful. While the argument that a lawyer’s lofty profits support a “business office” conclusion might seem elementary and easily dismissed, Boyle’s considerable financial success was intended to suggest that, under the Reich definition, Boyle may not have public service as his “prime purpose.”

76. Id. at 319.
77. Id. at 320.
78. Id.
79. Id. at 319-20.
80. The author randomly chose four hundred fifty thousand dollars ($450,000) as Boyle’s net profits for the previous year. In retrospect, this figure probably was too low, though the law students likely viewed it as a sizeable sum.
81. In the context of a zoning ordinance, a professional’s income, standing alone, probably signifies very little.
82. Of course, this would not indict the entire legal profession as not promoting public service as the profession’s primary purpose. The question in the instant assignment was whether one particular lawyer is running a “professional office.”
To prevent students from completely disregarding Boyle’s substantial profits, the author also considered indicating that the basis for the neighbor’s complaint was the high volume of clients coming and going from Boyle’s apartment. The author considered including facts such as a large number of cars parked in the apartment building’s parking lot, a lot of foot traffic, and/or a lot of noise coming and going from Boyle’s apartment. These facts would require students to consider the legislative purpose behind permitting professional offices in a residential district, but excluding business offices and service establishments. Indeed, if a professional office disrupts the residential nature of the neighborhood by producing lots of non-residential traffic, then the professional office is functioning more like a business office and is subverting the purpose of the zoning ordinance.

In the end, because the Reich opinion included no discussion of the underlying legislative purpose for the zoning ordinance, the author did not include any facts regarding the volume of clients coming and going from Boyle’s office. In addition, while a high volume of client traffic may defeat the rationale for permitting professional offices in residential zoning districts, it does not necessarily detract from a lawyer’s role as a professional in society. The author was not interested in teaching his students about zoning law; instead, he was using zoning law as a vehicle to teach students about the professional attributes of lawyers generally.

4. The Author’s Expectations

In considering how Reich applies to Boyle’s office, students would need to deduce a rule of law from the opinion—in other words, a test based on three or four elements drawn from the dictionary definition of “profession” quoted by the court. Students additionally would need to frame their analysis around the rule they deduced and apply the rule to the client’s facts. Further, students would be expected to compare the func-

83. For one thing, the Reich case did not provide a definition of “business” and did not discuss the significance of profits or income. Reich, 284 A.2d at 319.
84. See, e.g., Vislisel, 372 N.W.2d at 319 (“We must keep in mind that the purpose of zoning is to maintain the residential flavor of the neighborhood.”).
85. Cf. People v. Kelly, 175 N.E. 108, 109 (N.Y. 1931) (noting that the question of whether a “profession may not be so conducted as to deteriorate or extend into a business, or industry” was not before the court).
86. This also speaks to the limitations of zoning law as a vehicle for teaching the societal meaning of being a “professional.” See infra Part V-B.
87. Reich, 284 A.2d at 320.
88. Given that the ultimate authority in a zoning case is the ordinance itself, ideally the author wanted students to begin their analysis by quoting the relevant passage from the ordinance and then move on to the Reich rule interpreting the ordinance. The author did not provide the students with a copy of the ordinance; rather, he informed the students that they could use the Reich passage quoting the ordinance.
tions and duties of insurance agents and brokers, as described in *Reich*, to the functions and duties of lawyers. Similarly, students would be expected to contrast the educational prerequisites for law practice against the lack of educational prerequisites for the insurance business. 89 Perhaps most importantly, students would be expected to explain how and why the practice of law is more of a public service than the procuring, selling and servicing of insurance policies. Along these lines, the author hoped that students would recognize the court’s reference to medicine and theology as professions, and analogize those professions to law. 90 Consistent with the court’s reasoning in *Reich*, students could not rely solely on Boyle’s licensure by the state as a reason for the professional nature of the law. 91

The author expected that most, if not all, students would conclude that Boyle is running a “professional office” because Boyle likely possesses all the attributes of a person practicing a “profession,” as defined in *Reich*. 92 To reach this conclusion, students would need to distinguish *Reich* from Boyle’s case and would need to reach an outcome opposite from *Reich*, arguably a greater challenge for a first-year law student than analogizing and reaching the same outcome. The author did expect students to briefly identify and defeat the counterargument concerning the substantial profit generated by Boyle’s law practice. This profit suggests that Boyle is using his residential apartment to house a business for profit, not a profession for public service. The author did not expect his students to infer that Boyle had a large number of clients, thereby creating a level of traffic that might suggest a “business office,” but the author did not discourage students from including that argument, if they were so inclined.

5. Implementation and Results

After distributing the assignment, the author spent a portion of one class discussing the basics of methodical legal analysis and introducing the students to the “CRuPAC” model 93 in as simple terms as possible. The author assured the students that they would spend much more time learning to effectively structure written legal analysis later in the semester, 94 and assured the students that a basic introduction would enable them to complete the first assignment. In pursuit of this goal, the author provided

89. See *Reich*, 284 A.2d at 319-20.
90. Id. at 320.
91. Id.
92. Id. at 319.
93. This acronym is commonly used by legal writing professors to describe an organizational model of legal analysis. The legal analysis follows the order: Conclusion, Rule, Proof (of rule), Application, and Conclusion (restated). Richard Neumann, Legal Reasoning and Legal Writing 101 (5th ed. 2005).
94. The author also informed students that later in the semester they would complete exercises on the effective reading of judicial opinions and on how to dissect judicial opinions into parts.
students with examples of how to perform a simple application of a precedent case to a set of case-specific facts.

The initial drafts of the memorandums were due on the first day of the second week of school. The author then met with each student individually to discuss his or her draft. Following this conference, the students were required to rewrite the paper and turn in a final version.

Concerning the lesson on the lawyer as a professional, the author let the assignment do most of the talking. While the author spoke about the meaning of being a professional with several students during their individual meetings, the author did not shove a didactic lesson down the students’ throats via an in-class lecture.

In their first drafts, every student concluded that Boyle is running a “professional office” under the zoning ordinance. Moreover, several students appropriately observed that even though a state-issued license, standing alone, will not meet the “profession” test, a license to practice law is earned only after considerable educational study and passage of an exam. Therefore, the legal practice is more like the profession of medicine (and, hence, a public service) and less like the occupation of insurance agent and/or broker. A small number of students insightfully noted that the extensive requirements for obtaining a law license also suggest that law is a public service, for as with medicine, the state goes to significant lengths to protect the public from unqualified practitioners.

Very few students identified or discussed the factual contrast between selling and servicing a product (i.e. an insurance policy), on the one hand, and representing an aggrieved person within the legal system, on the other. One student keenly argued that it is much easier for a layperson to obtain an insurance policy without an agent or broker than it is for a layperson to navigate the legal system without a lawyer.

Several students found the conclusion that Boyle was running a “professional office” too obvious to merit much discussion and hence turned in memos barely exceeding one page that did not address public service at all. When meeting with these students, the author discovered that some of them had not even considered the argument that lawyers are primarily public servants, both generally and in comparison to insurance agents and brokers. Other students simply did not think that such an argument was relevant to the analysis of a zoning question. In meeting with these students, the author emphasized that the court in Reich explicitly identified public service as a component of a profession, and accordingly, public service should be analyzed in the students’ memorandums. To help some of these students develop analysis of the public service component, the

95. See Reich, 284 A.2d at 319-20.
96. Id. at 319.
author engaged them in philosophical discussions about the role of lawyers in society as compared to the role of other occupations that are not typically defined as professions.

A further group of students engaged in circular and superficial reasoning, for example arguing that lawyers serve the public because the law is a public service. In meetings with these students and all other students whose drafts included inadequate analysis, the author emphasized the necessity of conducting a thorough, comprehensive legal analysis. Fortunately, most students who did not adequately confront the issue of public service in their first draft only needed a brief, general reminder to include an analysis of this issue. As the final drafts of the memorandums demonstrated, most students constructed cogent arguments concerning why the client meets the public service component (and the other components) of the definition of a "professional."97

In addition, in the first drafts, very few students raised the issue of Boyle’s income level. During some of the student meetings, the author discussed how Boyle’s hefty profits might support a conclusion that he is operating a “business office.” The author noted that a lawyer, earning $450,000 a year from an occupation that is run out of a residential apartment, might primarily be using the apartment to earn a profit. The author did not try to persuade students that Boyle’s primary purpose is to earn a profit nor did the author try to persuade students that Boyle’s profit conclusively establishes a “business office.” The author only encouraged students to raise and defeat these arguments at the appropriate places in their memorandums. Several students argued that many surgeons and physicians make a large profit similar to Boyle’s, if not more. The author noted that this observation might form a basis for responding to the counterargument. Indeed, for doctors and lawyers, earning a large sum of money may be incidental to performing a public service.

Unfortunately, most final drafts that raised and responded to this suggested counterargument seemed forced and unpersuasive. As a result, the author was dissatisfied with this aspect of the assignment. A more cogent response to the counterargument was that Boyle works under a contingency fee arrangement, and as such, provides a service to people who otherwise might not be able to afford legal representation.98 Therefore, while Boyle earns a large sum of money, he only earns such money be-

97. See id.
98. Naturally, this raises the argument that a lawyer who charges by the hour and earns a very high salary, is less of a public servant than a lawyer who works off a contingency fee. Such an argument was beyond the scope of the author’s two-page memo assignment. Nevertheless it is important to note that both the billable hour and the contingency fee arrangements contain incentives to prioritize profit over service. See supra note 27.
cause he provides a needed service to the public. Nevertheless, none of the students considered or analyzed this idea, even in the final drafts.

Most of the students attempted to complete a thorough analysis on their first drafts, and the most common problems involved the students’ structure and writing style, rather than their substantive analysis. Along these lines, several students did not form a rule (i.e., a test or a list of factors) and use this rule as the linchpin of their analysis. Others students compared and contrasted the insurance agent/broker to the lawyer before fully explaining the case precedent as a legal foundation for their analysis.99 The author fully expected these “learning to write” problems, and indeed, most students showed significant improvement concerning their structure and writing style in the final drafts.

B. The Second Version

Given the successes and failures of the author’s first distribution of this assignment, the author revised and improved the assignment before distributing it to his Fall 2007 writing class. The author primarily focused on strengthening the counterargument that Boyle’s office was a business office, thereby making the argument more plausible and requiring students to draw explicit comparisons using the facts of the precedent case. To this end, the author introduced facts concerning the volume of clients coming in and out of Boyle’s office, the size of Boyle’s staff, and the scope of Boyle’s work—all subjects alluded to by the Reich court in its factual description of Reich’s office.100 The author hoped to indicate that Boyle’s office arguably defeats the residential character of the apartment building. Providing more substance and plausibility to the argument that Boyle is running a “business office” assisted the author’s goal of writing to learn, for it required students to examine a lawyer’s role more deeply.101 Moreover, establishing an opportunity for greater factual comparisons also assisted the author’s goal of facilitating students’ learning to write.

Along these lines, the author revised the assignment to include facts about the volume of Boyle’s clientele, and revised the Reich opinion slightly to invite factual comparisons to the volume of Reich’s clientele. The new assignment stated that Boyle’s complaining neighbor specifically counted twenty clients going in and coming out of Boyle’s office between

99. See Reich, 284 A.2d at 319-20.
100. Id. at 317-18. The addition of these facts reintroduced the question of whether a zoning law can be a vehicle for analyzing the importance of public service in the definition of “profession.” See supra notes 83-86 and accompanying text.
101. Students should be troubled by the prospect, even if it is unlikely, that a court could conclude that a lawyer is running a “business office” rather than a “professional office.”
In Reich, however, city inspectors saw a client during at least one inspection (as well as three employees), but did not indicate how many clients typically came and went from Reich’s apartment office. As such, to better facilitate the counterargument, the author altered the Reich opinion to state that the city inspectors saw “several clients” on each of their visits to Reich’s office. Further, to provide a greater legal context for the additional facts and the counterargument they imply, the author added the following sentence to the end of the Reich opinion:

In addition, the legislative intent of a residential zoning ordinance that forbids ‘business’ offices is, of course, to maintain the residential character of a neighborhood or building, and based on the nature of Mr. Reich’s office and the volume of his business, we are not satisfied that his office fulfills that intent.

The author hoped that this addition would indicate that the Reich decision was at least partially based on Reich’s large number of clients, and given Boyle’s sizeable clientele, Boyle’s case might be decided similarly.

To provide further fodder for responding to the counterargument, the author also stated that Boyle employs one person, a secretary, and that Boyle only uses the office for client meetings and completing legal work. These facts set up a factual distinction with Reich, as Reich employed at least three people and provided at least one additional service beyond his alleged profession—completing tax returns.

While all the students again concluded that Boyle, unlike Reich, is running a professional office, many students raised the counterargument that the author had planted and many of these students cited the new passage inserted in Reich to support their argument. In contending that Boyle’s case was nonetheless distinct from Reich’s, some students pointed to the wider scope of work performed in Reich’s office and Reich’s larger staff as reasons for the court’s conclusion that Reich’s office defeated the residential character of the building. However, very few students expressly drew the inference—based on the inspectors’ findings of “several clients” in Reich’s office and Reich’s side business of income tax re-

102. By employing the complaining party as the person noting Boyle’s large clientele, as opposed to simply providing the students with numbers, the author hoped that students would more readily identify a counterargument.
103. Reich, 284 A.2d at 317.
104. Id.
105. See id.; supra notes 102-104 and accompanying text.
106. See Reich, 284 A.2d at 317
turns—that there might have been more clients coming and going from Reich's office than from Boyle's office.107

A few students skillfully noted that professionals cannot exist without clients; therefore, the "professional offices" provision of a zoning ordinance would be rendered meaningless if the mere presence of a reasonable number of clients disqualified an office from comporting with the definition of a "professional office." A few students skillfully noted that professionals cannot exist without clients; therefore, the "professional offices" provision of a zoning ordinance would be rendered meaningless if the mere presence of a reasonable number of clients disqualified an office from comporting with the definition of a "professional office."108 The students argued that twenty clients over an eight-hour period was not unreasonable, especially for a lawyer working on contingency fee basis who may need a high volume of clients in order to make a living.

C. Concluding Thoughts: Assessing the Assignment and Building on its Foundation

While the impact of the assignment on the students' understanding of the professional identity of lawyers might not be ascertainable, the assignment did force the students to organize and to write a memorandum concerning the requirements that lawyers complete "long and intensive preparation including instruction in skills and methods," maintain "high standards of achievement and conduct," engage in "continued study," and have as their "prime purpose, the rendering of public service."109 Through examining these aspects of the legal profession, hopefully the students gained reason to question and perhaps be disappointed by the exaltation of "business" success in the initial brochure promoting the real personal injury attorney's lecture.110

Regarding further improvement of the assignment, the author continues to consider ways he may challenge students to critically examine a lawyer's duty to engage in public service and a lawyer's role in society. In future assignments, the author may further enhance the attributes of Boyle's law practice that suggest Boyle's primary purpose is to earn a profit. To this end, the author may attribute to Boyle the advertising prowess and reputation possessed by the real personal injury attorney in the aforementioned brochure. Boyle could regularly advertise on local television, radio, and newspapers—and, yes, with a catchy slogan.111 The author may even include that Boyle places signs right outside his office.112

107. Id.
108. Id. at 318. See also supra notes 57-79 and accompanying text.
109. Reich, 284 A.2d at 319 (quoting WEBSTER'S, supra note 22).
110. Snyder, supra note 1. See also supra notes 1-4 and accompanying text.
111. Lawyer advertising is legal and is protected by the First Amendment. Bates, 433 U.S. 350. However, the author does not believe that it is at all professional; instead, advertising is quintessentially commercial in nature.
These advertisements should elicit student analysis of how much commercial activity a lawyer may engage in before the legal profession will stop treating him or her as a professional, even if only in the context of zoning.

Seeking to build on the foundation provided by the initial zoning memorandum assignment, the author will try to incorporate professionalism into the subject of subsequent memorandum assignments. Two areas that the author intends to explore are: (1) lawyers' professional obligation to comply with the spirit of ethical rules as well as the actual letter of the rules, and (2) the challenges created by the existing tension between public service and client loyalty. As to the latter, the author would seek to offer practical examples concerning how and when a lawyer should put public service ahead of client loyalty and concerning how and when client loyalty functions as a public service itself. Finally, the author hopes to add more lessons regarding the various ethical rules governing legal communications—whether the communication is with the court, with clients, or with opposing counsel.

By addressing ethical and professional issues in the students' first written assignment and in subsequent assignments, the author hopes to instill an appreciation of professionalism in his students' minds. This form of professionalism goes beyond civility, competence, diligence, preparation, promptness, and compliance with laws and ethical rules. Law students should learn that an attorney—no matter what lawyerly pursuit he or she engages in—is ultimately a public servant. Realistically, law students likely will not be inspired to restore the practice of law to the (non-existent) glory days of the past when all lawyers were clones of Atticus Finch.113 Rather, introducing future lawyers to the definition of a "professional" hopefully will help to tip the balance, however slightly, back in the direction of law as a public service.

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113. Indeed, there really never were such glory days, and to the extent there were, they were overshadowed by "shameless exclusionary practices" within the legal profession. David Barnhizer, Profession Deleted: Using Market and Liability Forces to Regulate the Very Ordinary Business of Law Practice for Profit, 17 GEO. J. LEGAL ETHICS 203, 204 (citing GLENDON, supra note 23, at 28).