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ETHICAL PROFESSIONAL (TRANS)FORMATION: THEMES FROM INTERVIEWS ABOUT PROFESSIONALISM WITH EXEMPLARY LAWYERS

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I. Introduction
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We wish to give our most sincere thanks to each of the twelve lawyer exemplars who participated in our research. We were personally inspired by our conversations with them, and appreciate their willingness to review transcripts and respond to requests for clarification or permission to publish selected quotes.

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I. INTRODUCTION

The purpose of this Article is to explore the critical need for a fundamental paradigm shift in legal education, focusing on fostering each student's ethical professional identity. The Article then defines the educational goal of fostering an ethical professional identity by reporting on an empirical study of how peer-honored exemplary lawyers understand an ethical professional identity. Higher education in other

professions faces similar challenges to define, foster, and assess the elements of an ethical professional identity. This study provides a useful model for research or evaluation of ethical professional identity.

A. *The Need for a Paradigm Shift*

There is growing pressure on law schools to do more to foster each student's ethical professional identity or professionalism.[1] For example, in July 2011, the Standards Review Committee of the ABA's Section of Legal Education proposed changes regarding professionalism to Accreditation Standard 302 on Learning Outcomes.[2] The proposed

1. The terms "professionalism" and "ethical professional identity" are used as synonyms in this literature. *See* Neil Hamilton, *Professionalism Clearly Defined*, 18 PROF. LAW., no.4, 2008 at 4 [hereinafter Hamilton, *Defined*]; Neil Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, 5 U. ST. THOMAS L.J. 470, 472–73 (2008) [hereinafter Hamilton, *Assessing*]; Neil Hamilton & Verna Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law*, 24 GEO. J. LEGAL ETHICS 137, 141, 143 (2011) [hereinafter Hamilton & Monson, *Empirical Relationship*]. The Carnegie Foundation study of medical education uses "'*professional formation*' rather than '*professionalism*' to emphasize the developmental and multifaceted nature of the construct." MOLLY COOKE, DAVID M. IRBY & BRIDGET C. O'BRIEN, EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY 108 (2010) [hereinafter EDUCATING PHYSICIANS]. "By professional formation [Carnegie] mean[s] 'an ongoing self-reflective *process* involving habits of thinking, feeling and acting.' These habits of thought, feeling and action ideally develop in ways that allow learners to demonstrate '*compassionate, communicative, and socially-responsible physicianhood*.'" *Id.* at 41 (citations omitted). We also use transformational professionalism, linking lifespan developmental psychologist Robert Kegan's work to Carnegie and to an assessment methodology that is used in organizational development. *See* ROBERT KEGAN, IN OVER OUR HEADS: THE MENTAL DEMANDS OF MODERN LIFE 185 (1994); *see also* WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELSH WEGNER, LLOYD BOND & LEE S. SHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 17–19 (2007) [hereinafter EDUCATING LAWYERS]. We distinguish the concept of transformational professionalism, or a contextual expansion of consciousness that Kegan describes, from increased intelligence. Neuroscientist Antonio Damasio describes a parallel concept of "extended consciousness," stating that it "is not the same as intelligence . . . [it] has to do with making the organism aware of the largest possible compass of knowledge . . . ." *See* ANTONIO R. DAMASIO, THE FEELING OF WHAT HAPPENS: BODY AND EMOTION IN THE MAKING OF CONSCIOUSNESS 198 (1999).

2. *See* Draft for July Meeting, Program of Legal Education, American Bar Association 1 (July 9, 2011), *available* at http://www.americanbar.org/content/dam/aba/migrated/2011_build/legal_education/committees/standards_review_documents/july2011meeting/20110621_ch_3_program_of_legal_education_

language requires the learning outcomes for each accredited law school to include competency as an entry-level practitioner in the following areas:

> [T]he professional skills of . . . (ii) the exercise of professional judgment consistent with the values of the legal profession and professional duties to society, including recognizing and resolving ethical and other professional dilemmas.
>
> . . . . [and]
>
> [K]nowledge and understanding of the following values: . . . (ii) the legal profession's values of justice, fairness, candor, honesty, integrity, professionalism, respect for diversity, and respect for the rule of law . . . .[3]

These proposed changes to legal education's accreditation standards reflect an increasing awareness across the peer-review professions, including law, that higher education must do more to foster each student's ethical professional identity. In 2010, the Carnegie Foundation for the Advancement of Teaching completed over ten years of in-depth studies of education for the professions including the clergy, lawyers, engineers, nurses and physicians.[4] Lee Shulman, president of the Carnegie Foundation during these studies of the professions, emphasized "[i]n every field we studied, we concluded that the most overlooked aspect of professional preparation was the formation of a professional identity with a moral core of service and responsibility around which the habits of mind and practice could be organized."[5]

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3. *Id.*

4. *See* PATRICIA BENNER ET AL., EDUCATING NURSES: A CALL FOR RADICAL TRANSFORMATION (2010); EDUCATING PHYSICIANS, *supra* note 1; CHARLES R. FOSTER, EDUCATING CLERGY: TEACHING PRACTICES AND PASTORAL IMAGINATION (2006); SHERI D. SHEPPARD ET AL., EDUCATING ENGINEERS: DESIGNING FOR THE FUTURE OF THE FIELD (2009); EDUCATING LAWYERS, *supra* note 1.

5. EDUCATING PHYSICIANS, *supra* note 1, at ix. Our operationalization of Carnegie's concept of professionalism, which includes a "moral core," stems from two sources: (1) Hamilton's review and synthesis of the professionalism literature in law and medicine, see Hamilton, *Assessing*, *supra* note 1, at 477–82, and (2) from the work of James R. Rest, see James R. Rest, *A Psychologist Looks at the Teaching of Ethics*, 12 HASTINGS CENTER REP. 29, 29 (1982) [hereinafter Rest, *Psychologist*] and James R. Rest, *Morality*, *in* 3 HANDBOOK OF CHILD PSYCHOLOGY: COGNITIVE DEVELOPMENT 556, 556 (Paul H. Mussen et al.

In order to provide legal education and the profession with more insights on the challenge of professional identity, Educating Lawyers reports on an in-depth case study of sixteen law schools. Their direct and urgent advice has become something of a roadmap for law schools in meeting the changing demands of the profession and society.

> Ours is an era marked by a growing body of lawyers trained by an increasing number of law schools who then enter unstable and highly competitive domains of practice . . . . The result has been confusion and uncertainty about what goals and values should guide professional judgment in practice, leaving many lawyers "wandering amidst the ruins of those past understandings." Not in spite of but precisely because of these social pressures, legal education needs to attend very seriously to its apprenticeship of professional identity. Professional education is highly formative. Under today's conditions, students' great need is to begin to develop the knowledge and abilities that can enable them to understand and manage these tensions in ways that will sustain their professional commitment and personal integrity over the course of their careers. In a time of professional disorientation, the law schools have an opportunity to provide direction.[6]

Educating Lawyers continues:

> To neglect formation in the larger public purposes for which the profession stands and their meaning for individual practitioners is to risk educating mere legal technicians for hire in the place of genuine professionals.

eds., 4th ed. 1983). Rest's Four Component Model (FCM) of moral behavior posits that four distinct psychological capacities explain moral behavior, including (1) sensitivity (or perceptual clarity and empathy), (2) moral judgment and reasoning, (3) moral motivation (also character and identity), and (4) moral implementation. Rest, *Psychologist*, *supra* note 5, at 29. Rest's FCM, applied to the professions, provides measurement tools and is informed by over three decades of research and curriculum development. Kegan's theory of identity development is used as a proxy for component three: moral motivation and identity. *See generally* JAMES R. REST, MORAL DEVELOPMENT: ADVANCES IN RESEARCH AND THEORY 3 (1986) [hereinafter REST, MORAL DEVELOPMENT]. For a review and discussion of research on ethical development in the professions, see generally Muriel J. Bebeau, *Promoting Ethical Development and Professionalism: Insights from Educational Research in the Professions*, 5 U. ST. THOMAS L.J. 366, 369–79 (2008) [hereinafter Bebeau, *Ethical Development*].

6. EDUCATING LAWYERS, *supra* note 1, at 128.

> Therefore, the goal of professional education cannot be analytical knowledge alone or, perhaps, even predominantly. Neither can it be analytical knowledge plus merely skillful performance. Rather, the goal has to be holistic: to advance students toward genuine expertise as practitioners who can enact the profession's highest levels of skill in the service of its defining purposes.[7]

Educating Physicians, the last of the Carnegie studies published in 2010 based on an extensive literature review and fourteen site visits, puts even more emphasis on the importance of ethical professional identity for effective practice in a profession. "[F]ormation [i]s the fundamental goal of the learning process,"[8] and "professional formation [is] the purpose that should guide medical education."[9]

B. *Skepticism About Professional Formation*

There is substantial skepticism among legal educators as to whether legal education can foster each student's ethical professional identity.[10] For example, Richard Posner, an influential legal scholar and judge, believes "[a]s for the task of instilling ethics in law students . . . . I can think of few things more futile than teaching people to be good."[11] The Carnegie scholars studying legal education found extensive skepticism among law professors as to whether legal education can instigate the developmental changes that are part of ethical professional formation. Law faculties "often argue that by the time students enter law school it is too late

7. *Id.* at 160.

8. EDUCATING PHYSICIANS, *supra* note 1, at 41.

9. *Id.* at 60, 65 ("[T]ransformation of identity should be the highest purpose of medical education.").

10. Neil Hamilton & Verna Monson, *Answering the Skeptics on Fostering Ethical Professional Formation (Professionalism)*, 20 PROF. LAW., no.4, 2011 at 3 (2011) [hereinafter Hamilton & Monson, *Skeptics*]. We note that skepticism is a necessary element of scientific inquiry; as scholars, we rely on peer review for constructive criticism of our empirical work. We distinguish, however, healthy skepticism that is accompanied by a serious consideration of the merit of empirical evidence, versus skepticism based on intractable opinions or beliefs. In the social sciences, the use of peer review serves a vital function of maintaining standards for scientific evidence and the ability to discriminate between pseudoscience and credible empirically and theoretically grounded scholarship and research.

11. Richard A. Posner, *The Deprofessionalization of Legal Teaching and Scholarship*, 91 MICH. L. REV. 1921, 1924 (1993).

to affect their ethical commitment and professional responsibility."[12] Many faculty harbor concerns that the subjectivity of ethical values can potentially interfere with the all-important values underlying legal analysis: skepticism, intellectual rigor, and objectivity.[13]

C. New Empirical Evidence Rebutting the Skepticism

This skepticism, based on the belief that moral character is formed by the time one reaches adulthood, ignores thirty years of accumulating empirical evidence in how education promotes moral development[14] and moral psychology[15] on moral formation that goes far beyond the idea that morality is a matter of "being good" or of the belief that complex socio-moral problems[16] can be reduced to "right and wrong."[17]

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12. Hamilton & Monson, *Skeptics*, *supra* note 10.

13. *See id.*

14. For an overview of the use of developmental theory in higher education or organizations with respect to mentoring programs, see generally Eileen M. McGowan et al., *A Constructive-Developmental Approach to Mentoring Relationships*, *in* THE HANDBOOK OF MENTORING AT WORK: THEORY, RESEARCH AND PRACTICE 1, 5, 9, 12–14 (Belle Rose Ragins & Kathy E. Kram eds., 2007). For a comprehensive review of developmental outcomes research within higher education, see generally 2 ERNEST T. PASCARELLA & PATRICK T. TERENZINI, HOW COLLEGE AFFECTS STUDENTS: A THIRD DECADE OF RESEARCH 36–45 (2005). For a review of moral development in professions education, see generally Muriel J. Bebeau, *The Defining Issues Test and the Four Component Model*, *Contributions to Professional Education*, 31 J. MORAL EDUC. 271, 271–72 (2002) [hereinafter Bebeau, *Defining Issues*]; Muriel J. Bebeau, *Evidence-Based Character Development*, *in* 10 LOST VIRTUE: PROFESSIONAL CHARACTER DEVELOPMENT IN MEDICAL EDUCATION: ADVANCES IN BIOETHICS 47, 47 (Nuala Kenny & Wayne Shelton eds., 2006) [hereinafter Bebeau, *Character Development*].

15. *See* REST, MORAL DEVELOPMENT, *supra* note 5. Critics of Rest and Kohlberg's approach to moral development will sometimes charge that these theories are biased against women, stemming from Kohlberg's original research conducted with boys. However, over three decades of research, involving hundreds of studies using Rest's Defining Issues Test (DIT), reveal no gender differences in moral reasoning, and when there are, women score higher. The origin of the gender bias criticism stems from CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 1 (1982).

16. Moral psychology differentiates between "macro-moral" issues and personal moral issues, with the former referring to the complex interdependencies between social institutions, for example, how a democratic society addresses the needs of all citizens, and the social contract between the professions and society. *See* JAMES REST ET AL., POSTCONVENTIONAL MORAL THINKING: A NEO-KOHLBERGIAN APPROACH 2–3 (1999).

17. *See* Hamilton & Monson, *Skeptics*, *supra* note 10.

Harvard human development psychologists Robert Kegan and Lisa Lahey concluded, on the basis of such long-term longitudinal research, that some people continue to grow over a lifetime from an egocentric understanding of the world to a "more penetrating, more responsible, less egocentric grasp of reality."[18] Similarly, empirical studies over the last thirty years on moral reasoning find that as we progress in our education and encounter challenging life experiences, our moral reasoning and judgment become more complex—moving from justifications based on self-interest to a fuller analysis of the implications of our conduct on others and society more broadly.[19]

18. ROBERT KEGAN & LISA LASKOW LAHEY, IMMUNITY TO CHANGE: HOW TO OVERCOME IT AND UNLOCK THE POTENTIAL IN YOURSELF AND YOUR ORGANIZATION xiii (2009). Kegan's theory of identity development describes stages or "orders of consciousness," from infancy through the lifespan, challenging conventional notions that adults cannot continue to grow or change how they view the self and others past high school or college. ROBERT KEGAN, THE EVOLVING SELF: PROBLEM AND PROCESS IN HUMAN DEVELOPMENT 11–12 (Second Vintage Books, 1982). Kegan's theory builds on the work of Jean Piaget (cognitive and moral development of children), Lawrence Kohlberg (cognitive moral development), William Perry (epistemological development of college students), and Jane Loevinger (ego development). Kegan describes his theory as "meta-psychological," in that it integrates the cognitive, emotional, and social expansion of self or consciousness. *See id.* at 14–15. As a meta-theory, Kegan's ideas of development as an unfolding of hidden assumptions or motivations are useful in leadership or executive coaching, or organizational change. Applied to morality, Kegan's theory aligns with the ideas of Piaget, Kohlberg, or Perry that with development, there is increased complexity of thought, awareness of others, and that with expanded consciousness, conscience or moral responsibility grows. Thus, at latter developmental stages, there is increased appreciation of diversity, capacity for critical thinking, and awareness of ethical issues. For an extensive review of Kegan's theory in relation to other lifespan developmental theories, see generally *id.* (Second Vintage Books, 1982). For a succinct discussion on the integral relation between consciousness, conscience, and moral responsibility, see generally VIKTOR E. FRANKL, THE DOCTOR AND THE SOUL: FROM PSYCHOTHERAPY TO LOGOTHERAPY (1986). Additional evidence that adults can grow in consciousness (and conscience) is emerging from neurosciences. *See*, *e.g.*, Heleen A. Slagter et al., *Mental Training as a Tool in the Neuroscientific Study of Brain and Cognitive Plasticity*, 5 FRONTIERS HUM. NEUROSCIENCE 1 (2011), http://www.frontiersin.org/human_neuroscience/10.3389/fnhum.2011.00017/full.

19. *See* Bebeau, *Ethical Development*, *supra* note 5, at 380; *see generally* KEGAN & LAHEY, *supra* note 18, at 13–14.

Moral reasoning[20] may determine what we think is the morally appropriate answer to a moral problem, but does our conduct actually reflect our moral reasoning or does our self-interest take over? Moral psychologists Daniel Lapsley and Darcia Narvaez describe the role of moral identity as pivotal in closing the gap between moral reasoning and doing what we know is right.[21] A recent line of applied research on moral identity in education in the professions explores the importance and prioritization of moral values in competition with other values, addressing the gap between knowing what is the right course of action, and acting upon it in one's professional role.[22]

Empirical "research reveals a developmental continuum of moral identity that proceeds in a sequence from self-interest to more other-centered ways of understanding the

20. Jonathan Haidt, *The Emotional Dog and Its Rational Tail: A Social Intuitionist Approach to Moral Judgment*, 108 PSYCHOL. REV. 814, 814 (2001). The idea that judgments based on intuition are more prevalent, and, in some cases, superior to more deliberate, conscious reasoning, was made popular by author Malcolm Gladwell in Blink. *See* MALCOLM GLADWELL, BLINK: THE POWER OF THINKING WITHOUT THINKING 14–17 (2005). Gladwell reviews scholarship on cognitive information processing, citing evidence that "rapid cognition," or what he calls "thin slicing" can be superior to more deliberate, effortful cognitive processing. *Id.* at 18–23. For a discussion of moral intuition in relation to the culture of law, see generally Milton C. Regan Jr., *Moral Intuitions and Organizational Culture*, 51 ST. LOUIS U. L.J. 941 (2007).

21. Daniel Lapsley & Darcia Narvaez, *A Social Cognitive Approach to the Moral Personality*, *in* MORAL DEVELOPMENT, SELF, AND IDENTITY 189–212 (2004) (Daniel Lapsley & Darcia Narvaez eds., 2004) [hereinafter Lapsley & Narvaez, *Social Cognitive Approach*]. Note that there is some correlation between these two different capacities that are both necessary for a moral action to occur. The difference between the two capacities is easiest to see in extreme circumstances. For example, many people in Nazi Germany or the Stalinist Soviet Union knew the right thing to do in terms of moral reasoning, but their moral commitment and identity failed.

22. *See generally* Augusto Blasi, *Bridging Moral Cognition and Moral Action: A Critical Review of the Literature*, 88 PSYCHOL. BULL. 1, 1–45 (July 1980); *see also* Lapsley & Narvaez, *Social Cognitive Approach*, *supra* note 21. In legal education, moral identity research is a recent line of inquiry. *See* Verna E. Monson & Neil W. Hamilton, *Ethical Professional (Trans)formation: Early Career Lawyers Make Sense of Professionalism*, 9 U. ST. THOMAS L.J. 129 (2012) [hereinafter Monson & Hamilton, *(Trans)formation*], *available at* http://ssrn.com/abstract=1733282; *see also* Verna E. Monson & Neil W. Hamilton, *Entering Law Students' Conceptions of an Ethical Professional Identity and the Role of the Lawyer in Society*, 35 J. LEGAL PROF. 385 (2011) [hereinafter Monson & Hamilton, *Entering*], *available at* http://ssrn.com/abstract=1581528.

moral self."[23] In addition, there is a growing body of empirical evidence showing that a developed ethical professional identity correlates positively with how clients and senior lawyers define professional effectiveness.[24] Considering these findings, as well as the evidence that refutes the assumption that education cannot foster change or growth in moral reasoning, a well-designed ethics curriculum would result in significant change in ethical capacities, including psychological, emotional, and social abilities.[25] This growth in moral capacities can be framed as the acquisition of expertise or competence in moral character.[26] Overall expertise or competence of the professional has been called by David Leach as a "habit of reflective practice."[27] The distinction between novices and experts, and definition of levels of competence, has been emphasized by leaders in graduate medical education, which adopted a system of assessment of professionalism competencies in the past fifteen years.[28]

Finally, scholars studying the professions also reject the idea that the collective profession cannot have or, perhaps, should not have influence on the values and core ethics of aspiring members of the profession.[29] Instead, these scholars

23. *See* Hamilton & Monson, *Skeptics*, *supra* note 10, at 4.

24. *See* Hamilton & Monson, *Empirical Relationship*, *supra* note 1, at 137, 141.

25. *See* Bebeau, *Ethical Development*, *supra* note 5; MURIEL J. BEBEAU & VERNA E. MONSON, PROFESSIONAL IDENTITY FORMATION AND TRANSFORMATION ACROSS THE LIFE SPAN 1, 18 (2011); *see also* HOWARD GARDNER, MIHALY CSIKSZENTMIHALYI & WILLIAM DAMON, GOOD WORK: WHEN EXCELLENCE AND ETHICS MEET 11 (2001) [hereinafter GOOD WORK]; Hamilton & Monson, *Skeptics*, *supra* note 10, at 3–5.

26. Daniel Lapsley & Darcia Narvaez, *Character Education*, *in* 4 HANDBOOK OF CHILD PSYCHOLOGY: CHILD PSYCHOLOGY IN PRACTICE 189, 282 (William Damon et al. eds., 6th ed. 2006) [hereinafter Lapsley & Narvaez, *Character Education*].

27. David Leach, *Commentary*, *Competencies: From Deconstruction to Reconstruction and Back Again, Lessons Learned*, 98 AM. J. OF PUB. HEALTH 1562, 1564 (2008).

28. *Id.* at 1562. David C. Leach, former Executive Director of the Accreditation Council of Graduate Medical Education (ACGME), led medical schools through a multi-year process of gaining consensus on defining what professionalism competencies should be required and assessed. *Id.*

29. *See* Ann Colby & William M. Sullivan, *Formation of Professionalism and Purpose: Perceptions from the Preparation for Professions Program*, 5 U. ST. THOMAS L.J. 404, 423–24 (2008) (discussing institutions of professions education serving in the role as "trustee institutions" of the profession); *see also*

view the role of higher education for the professions as one of the "trustee institutions" whose aim is to "help prevent the profession from degenerating into technical work for hire, giving up 'higher aims' to become 'hired hands.'"[30] These scholars argue that the purpose of the professions, and the authority and autonomy granted to the professions, is based on a balance of the economic interests of each profession with the duty to serve society.[31] They explain that as this balance becomes misaligned—through an over-focus on the market aspects of the profession, away from the central values and purpose of serving society—a devolving of the profession occurs, towards that of an occupation conducted simply for short-term profit.[32] Thus, at stake is the underlying social contract between the profession and society.[33]

D. Purpose of This Study and Overarching Research Questions

Part I of this Article defines the educational goal of fostering an ethical professional identity by reporting on an empirical study of the concept of professionalism involving in-depth interviews with peer-honored exemplary lawyers. The purpose of this study is to empirically explore how peer-honored attorneys, considered exemplars of professionalism, define the elements of professional identity, and second, how the exemplar of professionalism differ in their understanding of professionalism as compared to early career lawyers or law students. The reason for this second focus is to determine whether there are differences between experts and novices. The existence of a difference is an indicator of developmental capacity or competence, drawing on a methodology in character development research and industrial-organizational

William F. May, *Money and the Professions: Medicine and Law*, 25 WM. MITCHELL L. REV. 75 (1999). The phrase "Hired Hands" is used in the title of a book by RAKESH KHURANA, FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF MANAGEMENT AS A PROFESSION (2007).

30. Colby & Sullivan, *supra* note 29, at 423; *see generally* Bebeau, *Character Development*, *supra* note 14; Bebeau, *Defining Issues*, *supra* note 14.

31. BEBEAU & MONSON, *supra* note 25, at 1; *see also* GOOD WORK, *supra* note 25, at 254–55.

32. *See* Colby & Sullivan, *supra* note 29.

33. *See* Hamilton, *Defined*, *supra* note 1; Hamilton, *Assessing*, *supra* note 1.

psychology.[34] The overarching research question was: How do peer-honored exemplary lawyers understand the meaning of professionalism?

In Part II, we provide an overview of our theoretical perspectives. In Part III, we report on our methodological approach. In Part IV, we report the results of our analysis and interpretation of in-depth interviews, focused around salient themes and issues of relevance to the legal profession. In Part V, we discuss our interpretations and implications for legal education.

II. THEORETICAL PERSPECTIVES

A. Building on Earlier Scholarship on Professionalism and Moral Identity

This study builds on three earlier ideas about professionalism summarized below.

(1) **Law and Professionalism**. Hamilton's analysis and synthesis of the ABA and Conference of Chief Justice Reports on professionalism defines three elements of professionalism including (a) the ethics of duty, (b) the ethics of aspiration, and (c) personal conscience.[35]

(2) **Professionalism and Moral Psychology**. Personal conscience[36] in Hamilton's synthesis is an analog to moral behavior defined in the scholarship and research of Rest[37] and Bebeau,[38] developed over a lifespan. Rest's Four Component Model or FCM includes (a) perceptional clarity

34. *See* Lapsley & Narvaez, *Character Evidence*, *supra* note 26.

35. Hamilton, *Defining*, *supra* note 1; Hamilton, *Assessing*, *supra* note 1.

36. "Personal conscience" is an analog to Rest's Four Component Model of moral behavior. *See* REST, MORAL DEVELOPMENT, *supra* note 5, at 556. "Conscience" means moral awareness, moral sense, or moral responsibility to others. *See generally* FRANKL, *supra* note 18 (discussing the etymological roots and meaning of consciousness and conscience). Psychologist Martha Stout points out that not all individuals possess a conscience, which clinically is referred to as sociopathy, which her research indicates represents approximately four percent of the population, or one out of every twenty-five individuals. MARTHA STOUT, THE SOCIOPATH NEXT DOOR: THE RUTHLESS VERSUS THE REST OF US 9 (2005). Dr. Stout makes the point that most sociopaths do not commit crimes or appear mentally unstable.

37. *See generally* REST, MORAL DEVELOPMENT, *supra* note 5.

38. *See generally* Bebeau, *Ethical Development*, *supra* note 5.

and empathy, (b) moral reasoning and judgment, (c) moral identity or motivation, and (d) moral implementation.[39]

(3) **Moral Identity: A Starting Point**. The concept of moral identity is pivotal in closing the gap between moral reasoning (knowing what is right) and doing what we know is right.[40] Section B gives some background on scholarship concerning moral identity. In Section C, we utilize Kegan's constructive-developmental theory to understand moral identity. In Section D we summarize the purpose of our study of lawyer exemplars of professionalism, and the overarching research question.

B. Background on Moral Identity

What explains the underlying characteristics of professionals known consistently to act upon moral values? The concept of moral identity is used to describe a holistic combination of motivational, social, emotional, and cognitive capacities that shape our decisions and behavior. The integration of moral identity with the stations a person holds (for example, lawyer, parent, spouse, and friend) is the basis for the concept of integrity.[41] Howard Gardner and colleagues describe the construct as: "When a person thinks about self, or the self's occupations, in moral terms, the person experiences a sense of moral identity."[42]

Individuals recognized by others as representing the highest levels of moral identity are known as moral exemplars, often identified through nomination processes by peers within different occupational or professional fields.[43] Colby and Damon conducted in-depth interviews with twenty-two moral exemplars from a range of professions and occupations.[44] They found that exemplars viewed their moral self as integral to their broader self-conceptions.[45] Rather

39. Hamilton, *Defining*, *supra* note 1, at 8; Hamilton, *Assessing*, *supra* note 1, at 484–88.

40. *See supra* text accompanying note 21.

41. *See* ANNE COLBY & WILLIAM DAMON, SOME DO CARE: CONTEMPORARY LIVES OF MORAL COMMITMENT 293–312 (1992).

42. GOOD WORK, *supra* note 25, at 163.

43. COLBY & DAMON, *supra* note 41, at 25, 298.

44. *Id.* at 313.

45. *Id.* at 298; *see also* JAMES T. RULE & MURIEL J. BEBEAU, DENTISTS WHO CARE: INSPIRING STORIES OF PROFESSIONAL COMMITMENT 162–63 (Lindsay

than describing their choices and behaviors as morally courageous, the exemplars instead saw themselves as simply doing the right thing.[46] Colby and Damon observed that,

> Time and again we found our moral exemplars acting spontaneously, out of great certainty, with little fear, doubt, or agonized reflection. They performed their moral actions spontaneously, as if they had no choice in the matter. In fact, the sense that they lacked a choice is precisely what many of the exemplars reported.[47]

In the decade following the Colby and Damon study, Gardner and colleagues[48] conducted studies examining aspects of moral identity across nine professions over a ten-year period, including (1) journalism, (2) genetics and medicine, (3) law, (4) accounting, (5) fine arts, (6) education, (7) marketing, (8) banking, and (9) acting.[49] They defined work that is (a) high quality, (b) socially responsible, and (c) meaningful to the professional as representative of the concept of "good work."[50] Like Colby and Damon, Gardner's methodology used a nomination process to seek individuals considered exemplary in their field.[51]

Using the good work approach in a study of seventy-four lawyers in four practice areas [criminal law (twenty-five respondents), mergers & acquisitions (seventeen respondents), cyber-law (seventeen respondents), and small-town general practice (fifteen respondents)],[52] Gardner and colleagues found differences in how the occupational specialization or "communities" of lawyers conceptualized

Harmon ed., 2005).

46. *See* COLBY & DAMON, *supra* note 41, at 303.

47. *Id.*

48. GOOD WORK, *supra* note 25.

49. *Id.* at ix; *see generally* COLBY & DAMON, *supra* note 41; GOOD WORK, *supra* note 25.

50. *Id.* at 313–18 app. A; *see generally* COLBY & DAMON, *supra* note 41; GOOD WORK, *supra* note 25.

51. *See generally* COLBY & DAMON, *supra* note 41; GOOD WORK, *supra* note 25.

52. PAULA MARSHALL & HOWARD GARDNER, GOOD WORK PROJECT REP. SERIES, THE COLLECTIVE ENTERPRISE OF LAW: THREE TYPES OF COMMUNITIES 3–5 (June 2005), *available at* http://www.goodworkproject.org/wp-content /uploads/2010/10/37-Law-Collective-Ent.pdf.

their identity as professionals, as well as their moral identities.[53]

Among the majority of M&A lawyers in the study, researchers noted only partial alignment of the majority of responses to the criteria for "good work" set forth above. Researchers found a need for greater focus on the social contract between the profession and society, and in particular, a need for a broader view of lawyers' responsibilities:

> The M&A lawyers were devoted to their work, indeed, most loved what they did and were fully engaged with the institution that supported their work. What got lost in the mix was the larger picture, not just the value of corporate responsibility, but the active role of the lawyer played in that equation and the lawyers' responsibility to something greater than the client.[54]

In contrast, the dominant moral identity of small-town general practitioners (and a minority of M&A lawyers) was to "have an abiding responsibility [both] to their clients . . . [and] the common belief that their professional obligation is for the benefit of the larger community; they feel an obligation to satisfy themselves beyond economic gains and they recognize the importance of respecting and working cooperatively with colleagues."[55]

In a study of eight influential and effective Canadian lawyers (nominated by peers) using Robert Kegan's concept of self or identity (discussed in the next section), O'Donovan-Polten investigated the meaning of life-career success in the legal profession.[56] The lawyers interviewed discussed the importance of self-reflection in negotiating the meaning across different dimensions of their career experiences. O'Donovan-Polten found those lawyers' ideals[57] to be part of their core self-definition, motivated by social belonging and responsiveness to the needs of society. This parallels Colby

53. *Id.* at 34.
54. *Id.* at 14.
55. *Id.* at 20, 24.
56. SHEELAGH O'DONOVAN-POLTEN, THE SCALES OF SUCCESS: CONSTRUCTIONS OF LIFE-CAREER SUCCESS OF EMINENT MEN AND WOMEN LAWYERS 4 (2001).
57. *Id.* at 172–73. We interpret "ideals" as an analog to values.

and Damon's conclusion that among exemplars the moral self is inextricable from self-conceptions. O'Donovan-Polten states in her analysis that the lawyers she interviewed shared a desire to act upon their self-defined values.[58]

In a similar study of moral exemplars in dentistry, Rule and Bebeau, found (1) all dentists had self-defined moral values, (2) the moral self was consistent across situations, and (3) the self system drove their obligation to moral action—not a sense of unusual bravery or individual heroism.[59] For example, when a young dentist repeatedly voiced concerns about unsafe, and potentially lethal sedation practices to her supervisors, but those reports went unheeded, the dentist felt compelled to report it to authorities, risking retaliation from her employer.[60] When asked why she risked her career, she said simply, "There was no way I could leave the situation the way it was."[61]

Rule and Bebeau found exemplars could step back and criticize the profession, while holding a deep commitment to their identity as professionals.[62] The dentists they interviewed were simultaneously able to reflect on their own limitations.[63] Reflection about the profession, their role, and their identity as professionals were common elements. When asked how their understanding of professionalism has changed over their career, these dentists discussed a more internalized, expanded sense of the profession's obligation to society.[64] Among their peers, these dentists were known as effective leaders—concerned not about enhancing their reputation by doing good, but because of a deeper, internalized motivation to be of service to others.[65]

C. Moral Identity as Lifelong Growth of "Mental Complexity"

Building on these studies of moral identity, we use Robert Kegan's constructive-developmental theory of identity

58. *Id.* at 183.
59. RULE & BEBEAU, *supra* note 45, at 162–63.
60. *Id.* at 66.
61. *Id.*
62. *Id.* at 162–63.
63. *See id.*
64. *See* Bebeau, *Ethical Development*, *supra* note 5, at 371.
65. *See generally* RULE & BEBEAU, *supra* note 45.

formation.[66] The fundamental premise of constructive-developmental theory is that adults can become increasingly self-aware of both egocentric views and hidden assumptions that might block our attempts to change, hamper our ability to empathize with others, or limit our potential effectively to lead others from an internalized, authentic source of authority.[67] This growth occurs through exposure to and reflection about ideas or situations that stretch our current patterns of thinking, instigating a change or adaptation of our view of self and others.[68] We consider this growth as a necessary aspect of developing competence and expertise in moral capacities.[69] These moral capacities are also critical to effectiveness for professionals.[70]

Constructive-developmental growth refers not only to growth in our patterns of thinking, but to the growth of our conscious awareness of emotions, motivations, and intentions. This growth is integral to our ability to operate effectively in the social world. Cognitive and emotional development enables more nuanced and effective ways of communicating with others, bridging across difference, and resolving conflict.[71] These holistic cognitive, emotional, and social capacities grow across one's lifespan progressing from self-centered to other-centered. Kegan describes this growth as increasing "mental complexity."[72] Also called "orders of consciousness," levels of mental complexity can be assessed using the Subject-Object Interview (SOI),[73] a minimally structured, forty-five minute to one-hour interview. Stages of

66. *See generally* KEGAN, *supra* note 1, at 1–11.
67. *See id.* at 7, 9.
68. *Id.* at 7–10.
69. *See* KEGAN & LAHEY, *supra* note 18, at 6–7.
70. Hamilton & Monson, *Empirical Relationship*, *supra* note 1, at 137.
71. The answer to how people can know what is moral but fail to act upon their moral values, stems from empirical research in social psychology pointing to social influence and situational variables as co-determinants of behavior. *See* KEGAN & LAHEY, *supra* note 18, at 17–18.
72. "Mental complexity" is the move from an egocentric understanding of the world to a "more penetrating, more responsible, less egocentric grasp of reality." *Id.* at xiii, 13–14.
73. *See* LISA LAHEY, EMILY SOUVAINE, ROBERT KEGAN, ROBERT GOODMAN & SALLY FELIX, A GUIDE TO THE SUBJECT OBJECT INTERVIEW: ITS ADMINISTRATION AND INTERPRETATION 14–16 (1988) [hereinafter SUBJECT OBJECT INTERVIEW].

mental complexity relevant to adulthood include:[74]

- The Instrumental Mind (Stage 2)[75] is characterized by external definitions of self, predominance of "either-or" thinking, limited perspective taking ability, and an egocentric view—characteristic of adolescence and early adulthood;[76]
- The Socialized Mind (Stage 3) is characterized by increased social perspective taking ability among allies or in-group, but understanding and expectations continue to be externalized, shaped by relationships, particular "schools of thought," or by both;[77]
- The Self-Authoring Mind (Stage 4) involves the ability "to step back enough from the social environment to generate a 'seat of judgment' or personal authority that evaluates and makes choices about external expectations."[78] The independence of judgment and problem solving abilities of stage 4 translates to greater fidelity to one's inner moral code. At stage 4, one is not easily swayed by group membership or loyalties;[79] and
- The Self-Transforming Mind (Stage 5) is characterized by the ability to examine one's self-authored personal authority, recognize the limits of any one system of constructing meaning, and seek out novel or alternative systems. A recognition of the interdependencies of different systems or ways of being, and an ability to reconcile contradictory or seemingly paradoxical ways of constructing meaning is a hallmark of the emergence of the self-transforming mind.[80]

Development proceeds not as an abrupt change, but as a gradual unfolding of new ways of understanding the self and

74. *See* KEGAN, *supra* note 1, at 29–31, 314–15; *see also* KEGAN & LAHEY, *supra* note 18, at 16–20.

75. Stage 1 is omitted, as this is early childhood and not relevant to the present study. Stage 2, while it occurs primarily in adolescence, can continue well into one's twenties, and empirical research finds it common in professions education. Monson and Hamilton found Stage 3 the modal stage among entering law students. *See* Monson & Hamilton, *Entering*, *supra* note 22, at 388; Monson & Hamilton, *(Trans)formation*, *supra* note 22.

76. *See* KEGAN, *supra* note 1, at 29.

77. KEGAN & LAHEY, *supra* note 18, at 17.

78. *Id.*

79. *Id.* at 17–19.

80. *Id.* at 17, 19–20.

others.[81] Rather than a complete shift in development, people retain earlier stage ways of constructing meaning. For example, self-authored (stage 4) individuals do not lose their ability or desire for social belonging, or the ability for perspective taking.[82] They are, instead, additionally grounded in such a manner that they are more resistant to forms of social influence that may violate their own inner moral code.

Appendix A provides a summary of past studies using the Kegan framework from law, military education, dental education, managers, graduate management education, and professional coaches.

D. Summary and Research Questions

The need for legal education to increase its focus on ethical professional formation[83] (guided by empirical evidence) is apparent. Substantial work remains to clarify the specific elements of an ethical professional identity that define the educational goal. With a clear definition of these elements, educators can design learning models, educational programs and curricula, and assessments to foster students' and practicing professionals' ethical formation.[84] With the

81. *Id.* at 21.

82. *Id.* at 19–20.

83. The word "formation" has dual roots in the paradigm of human developmental psychology, which views the mind as an organism capable of growth with age and with experiences that nurture potential; and in education in the professions, including lawyers, clergy, engineers, physicians, and nurses. The use of the term implies a parallel process of developing professional knowledge and skills along with moral development. An opposing viewpoint is that the mind is shaped through learning acquired through instruction of knowledge or skills, and that this ability naturally varies in the population in the same way variation in height and weight occurs, and this potential is reached at the point of physical maturation. More recent theories of human potential, including moral formation, emphasize the potential for growth or "formation" to occur throughout the lifespan. Thus, "formation" is conceived in this literature as growth of the mind's capacities, not as acquiring surface layer "skills" through learning based on punishment or reward. For a concise review of the term "formation" and its history, see Michael W. Rabow et al., *Professional Formation: Extending Medicine's Lineage of Service into the Next Century*, 85 ACAD. MED. 310, 310–17 (Feb. 2010). For an extensive review of lifespan developmental theory, see generally KEGAN, *supra* note 18.

84. Neil Hamilton, *Foreword*: *The Formation of an Ethical Professional Identity in the Peer-Review Professions*, 5 U. ST. THOMAS L.J. 361, 361–63 (2008); Hamilton, *Assessing*, *supra* note 1, at 498.

goal of providing an empirically-validated definition of the elements of professionalism (professional formation), this study examined how peer-honored exemplary lawyers understand professionalism.[85]

The overarching research question was: How do peer-honored exemplary lawyers understand the meaning of professionalism? We also explored other questions including: Do exemplary lawyers, as experts in legal professionalism, differ in their understanding of professionalism from novices (i.e., early career lawyers or law students)? Do exemplary lawyers perceive their understanding of professionalism as stemming largely from formative experiences early in life, or has the meaning of professionalism evolved and changed throughout their careers? What are the implications with respect to legal education?

III. METHODOLOGIES

We used methodologies informed by research in lifespan developmental psychology,[86] novice-expert studies in character development,[87] and the development of professionalism competencies in graduate medical education.[88] We sought to describe exemplary lawyers' perspectives and understanding of professionalism towards the goal of defining levels of competence or expertise.[89]

85. Graduate medical education utilized the expert-novice approach to defining and assessing professionalism competencies, now part of a learning portfolio that tracks resident physicians' milestones. *See generally* The ACGME Learning Portfolio, ACGME, http://www.acgme.org/acWebsite/portfolio/learn_alp_aboutalp.asp#one (last visited March 28, 2012). Defining professional competencies is also widely used in business and academe, and largely credited to a model developed by Hubert and Stuart Dreyfus. *See generally*, STUART E. DREYFUS & HUBERT L. DREYFUS, A FIVE-STAGE MODEL OF THE MENTAL ACTIVITIES INVOLVED IN DIRECTED SKILL ACQUISITION (1980); *see also* Bebeau, *Ethical Development*, *supra* note 5, at 390.

86. *See* COLBY & DAMON, *supra* note 41; *see also* RULE & BEBEAU, *supra* note 45.

87. *See* Lapsley & Narvaez, *Social Cognitive Approach*, *supra* note 21.

88. David C. Leach, *Medical Professionalism and the Formation of Residents: A Journey Toward Authenticity*, 5 U. ST. THOMAS L.J. 512, 512 (2008); *see also* Leach, *supra* note 27.

89. This goal relates to the ABA's urging for law schools to assess competencies. *See* Neil W. Hamilton & Verna Monson, *Legal Education's Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student's Professional Formation (Professionalism)*, 9 U. ST. THOMAS L.J.

A. *Interview Method*

We utilized an adaptation of the SOI[90] supplemented with questions about the meaning of professionalism and perceptions of change in how the interviewees defined professionalism over the course of their careers, including their recollection of particularly important influences or events.[91] The SOI interview is designed to elicit developmental stage differences related to the meaning of professionalism. We used five word prompts[92] (each written on an index card) including: (1) trust, (2) success, (3) disappointment in self or others, (4) crucibles, or painful, difficult decisions, and (5) love.[93] We informed them they could select any of the words to discuss in the interview, in any particular order, and that there was no need to discuss all of the cards. To minimize self-presentation effects or social desirability bias,[94] we informed them that the purpose of writing notes on cards was to jog their memory, that we would not read what they had written, and that they could

(forthcoming 2012) (manuscript 6), *available at* http://ssrn.com/abstract =2004749.

90. We modified the protocol slightly by using only five-word prompts and reducing the time from one hour or more to forty-five minutes. *But see* SUBJECT OBJECT INTERVIEW, *supra* note 73 (explaining that it is recommended to give ten words and the participant flexibility to choose words most relevant to them). We also added general interview questions related to the meaning of professionalism and to self-perceptions of change over time. For details for using the Subject Object method, see generally *id.*

91. This line of questioning was related to perception of change over time and stems from lifespan development and professions education. We were influenced by COLBY & DAMON, *supra* note 41, at 321, and also in general, by RULE & BEBEAU, *supra* note 45.

92. We reviewed word prompts recommended from SUBJECT OBJECT INTERVIEW, *supra* note 73, choosing the words "success," "trust," and "conflicts," all standard in the Subject-Object Interview. Collaboratively, we chose additional words or phrases, including "crucibles or painful and difficult decisions" and "love."

93. Participants were given ten to fifteen minutes to free-write on the cards, noting any problem, issue, or story that related to the word in relationship to professionalism, giving a total of thirty to thirty-five minutes for the interview. The overall interview was shortened to permit time to focus on our direct questions about professionalism.

94. Self-presentation effects or social desirability bias occurs when research participants respond in the way that places them in a more favorable or flattering light, and not disclosing their true opinion or private belief. *See*, *e.g.*, Jessica Messner-Magnus et al., *Social Desirability: The Role of Over-Claiming, Self-Esteem, and Emotional Intelligence*, 48 PSYCHOL. SCI. 336 (2006).

keep the cards at the end of the interview.[95]

Hamilton served as the point of contact throughout the research process, because as a seasoned law professor and practicing attorney, he was viewed as an insider.[96] This is a key consideration in research involving potentially sensitive topics that increases the extent responses are candid and truthful.[97]

B. Participants and Sampling

To identify lawyers formally recognized by peers in Minneapolis and the surrounding metropolitan area for exemplary professionalism or pro bono service to the community, we reviewed county and state bar association websites to identify professionalism award winners from the past ten years.[98] We chose to limit the sample to lawyers within Hennepin County due to time and resource constraints, and because of Hennepin County's diversity in size and practice area of law firms (compared to other counties). To further limit the scope, we also excluded judges, public defenders, prosecutors, or public administration attorneys, reasoning that these specializations would be the focus of future exemplar studies.

After compiling a master list of forty-five professionalism award winners, we randomly selected lawyers from a diverse range of organizations, including large and medium firms,

95. *See id.*

96. The importance of "insider" perspectives in social science research relates to the research effort's credibility perceived by members and the tacit understanding of the "culture" of law. These practices are common in interpretivist research, action research. *See generally* MATTHEW B. MILES & A. MICHAEL HUBERMAN, QUALITATIVE DATA ANALYSIS (2d ed. 1994).

97. *See* IRVING SEIDMAN, INTERVIEWING AS QUALITATIVE RESEARCH: A GUIDE FOR RESEARCHERS IN EDUCATION AND THE SOCIAL SCIENCES 8, 63–64, 89 (2d ed. 1998).

98. The associations and award lists we used included: (1) Hennepin County Bar Association 2001 Pro Bono Publico Public Sector Award, (2) Minnesota State Bar Association Professional Excellence Award, and (3) Minnesota Women Lawyers Myra Bradwell Award. These three associations represent approximately 23,000 lawyers. All of these awards stem from a peer nomination process. An internal committee reviews nominees, selecting the final recipients. In order to judge the comparability between the organization's criteria for selection, we requested the criteria from the associations' administrative representatives. As of the date of this publication, this documentation has not been obtained.

legal aid organizations, and non-profits.[99] We also excluded lawyers who were retired, whose role was primarily teaching, or lawyers whom were personal friends or past colleagues. We first selected nine attorneys, and later added three more to increase diversity (i.e., type of organization and ethnic background). The final sample was diverse by gender (six men and six women); ethnicity (including one Native American and one Hispanic American); age (ranging from late forties to mid-eighties); and socioeconomic background (two lawyers in our sample were the first generation in their families to attend college and obtain a law degree).

All of the selected attorneys agreed to participate in a forty-five-minute interview, and to review the interview transcript to ensure accuracy. We provided participants a paper survey that recapped our questions, inviting afterthoughts about the interview. All were encouraged to add content or to redact statements that they later wished to exclude from quotations in research reports. Participants were told that any identifying information about them, their firm, or clients that arose in the interview would be altered in order to protect their confidentiality. Pseudonyms are used throughout this research report. *Table 1* displays the twelve attorneys and general characteristics of each as an individual, as well as the nature of their organization.

99. We do not list the organizations because of our confidentiality agreement with participants.

Pseudonym	Primary Area of Practice	Role in Organization
Alicia	Small Non-Profit	President
Harold	Intellectual Property Law	Partner
Julia	Public Finance	Shareholder
Alfred	Litigation	Partner
Catherine	Employment	Partner/Principal
Lawrence	Appellate Law, Ethics	Shareholder
Carla	Legal Aid	Supervising Attorney
Joe	Litigation, Public Interest	Shareholder
Martha	Family Law	Shareholder
Henry	Banking	Senior Counsel
Michael	Litigation	Partner
Elizabeth	Litigation	Partner

Table 1. Exemplars: Pseudonyms, Primary Area of Practice, and Role in Organization

C. Data Sources

Data sources included (1) the twelve interview transcripts (a total of ninety-nine pages, single spaced); (2) two post-interview surveys reiterating key questions in order to triangulate our findings and check for consistency of responses; (3) biographical data from website reviews, (4) notes from interviews, and (5) email correspondence with participants, in which checks for clarification of interview content were conducted. Additional supplemental data, consisting of materials intended to illustrate key points in the interview, provided an additional source allowing triangulation of data sources to verify our interpretations and results.

D. Interview Context and Process

All interviews were conducted in the offices of our participants, of which ten out of twelve were located in

downtown Minneapolis.[100] The two exceptions included the offices of Carla, a legal aid organization located in a diverse, low-income, commercial area of Minneapolis; and Alicia, who founded a non-profit providing legal services located in a small office in an urban neighborhood in Minneapolis.

After greeting each participant, participants learned the purpose of the interview and the Subject-Object Interview protocol, given the set of cards, and informed that they could take as much time as needed to jot down their thoughts related to each word and the concept of professionalism.[101] We strived to set as much of a conversational tone as possible, allowing the interview to flow, and to set the participants at ease. When they were ready to discuss their thoughts, we asked them to choose a card. Following the end of the SOI interview we asked respondent about their personal meaning of professionalism and whether they had perceived change over the course of their career.

E. Data Analysis

We conducted cross-case analysis,[102] involving both inductive and deductive analysis, identifying (1) salient themes related to professionalism, and (2) content related to developmental stage. We both independently reviewed each transcript, highlighting sentences or paragraphs that suggested themes, and noting content suggesting a developmental stage (i.e., that explained the underlying motivation and reasoning of the theme). As a lawyer and law professor, Hamilton's status as an expert ensured that selected themes would be relevant to the practice of law and

100. The metropolitan area of Minneapolis-St Paul is home to sixteen Fortune 500 companies, including multinational corporations 3M, Cargill, Medtronic, and United Health, among others. *See* Minnesota Department of Employment and Economic Development, http://www.positivelyminnesota.com/Business/Locating_in_Minnesota/Major_Companies_Employers/Fortune_500_Companies.aspx (last visited March 28, 2012). It is also considered a major midwestern financial center. *Id.*

101. Informed consent was obtained prior to the beginning of the interview. For detailed procedures using the SOI, see SUBJECT OBJECT INTERVIEW, *supra* note 73.

102. Cross-case analysis of interview data refers to the focus on unifying themes or concepts throughout the cases; alternatively, a case study approach would describe single cases or individuals in depth. *See* MILES & HUBERMAN, *supra* note 96, at 174.

to legal education. Monson next reviewed the themes identified by Hamilton, and conducted two additional layers of analysis: (1) a search for confirming or disconfirming evidence within the data, and (2) identification of phrases or paragraphs suggestive of developmental stage related to each theme. We met on three different occasions to discuss our coding and interpretations, and to agree upon a conceptual structure for reporting findings.

We also independently coded each individual case for developmental content, discussed each interview, and assigned a developmental stage estimate to each case.[103] We noted content that was ambiguous or unclear, or required clarification from our interview participants. One participant was contacted early on in the analysis to clarify some content related to retrospective self-assessment. Later in the research process, each participant was contacted to check on the accuracy of our transcriptions, to respond to our interpretations, and to ask participants for permission to use quotations in this research report.

In the next section, we report on the overall results of key themes, followed by examples of variation within those themes related to the developmental stage. Following these displays, we provide a more in-depth analysis using quotes from participants to illustrate their understanding of these various dimensions of professionalism.

IV. RESULTS: KEY THEMES AND EVIDENCE OF DEVELOPMENTAL STAGES

A. *The Meaning and Elements of Professionalism*

We begin next with a description of how the attorneys we interviewed defined the meaning of professionalism, in what ways they perceived change over the course of their career, and in general, how they reacted to the interview process. We then examine excerpts representative of key themes from their definitions that illustrate differing paradigmatic beliefs held by lawyers we interviewed, as well as different stage-related excerpts that align with Kegan's developmental

103. Dr. Monson is trained in the administration and analysis of the Subject-Object Interview and is presently seeking certification.

theory. Part B explores the exemplary attorneys' view that professionalism is more a way of being than a set of technical skills or capacities—a living definition constantly undergoing development, rather than as an externally imposed code or technical definition. The volume of content and emerging themes from the interviews exceeded expectations and space limitations within this Article to fully report on each theme.[104] We thus limit the scope of this Article to most salient themes related to the meaning of professionalism. In the conclusion, we offer suggestions for further studies.

B. Participants' Response to the Interview

Interviews took place in May and June of 2010. From our final sample of twelve, all attorneys agreed to the interview. All signed a standard research consent form in which we agreed to maintain the confidentiality of their statements in interviews, and agreed not to publish quotes without their express permission. The non-traditional format of the interview met some with surprise—comments included that it reminded them of a type of "Rorschach test," or that the nature of the words were surprising, but all indicated it was enjoyable and engaging. In only one out of the twelve interviews, the attorney chose to depart from the word prompts, and speak in an unstructured way about her definition of professionalism. We allowed each interview to flow in as close to a conversational manner as possible. The tone and pace of the interviews varied from formal and guarded, to more open and willing to freely discuss personal viewpoints about potentially sensitive topics or experiences, suggesting more candor.[105] In three cases, the respondents started out more guarded, but opened up as the interview proceeded.

The word prompts most frequently chosen by interviewees were "trust" and "success;" third, "disappointments in self or others." "Love" proved to be the

104. We plan future studies based on emerging themes within this dataset to include, at minimum, the impact of law firm culture on professionalism and in-depth case studies on leadership and professionalism.

105. The distinction between interviewee's "public voice" and "inner voice" is a distinction related to whether the interviewee's words can be judged as truthful. *See* SEIDMAN, *supra* note 97, at 63.

most difficult word for interviewees to connect with professionalism, with only four choosing to discuss the concept. Among those four, the focus was on their love for practicing the law or for their law firm, or to state that their interpretation of love was limited to family. We view the content from interviews relating love to professionalism is somewhat beyond the scope of this paper, and see it as a potential future research topic.

C. Major Themes

Hamilton identified a total of eleven broad themes.[106] Towards gauging consistency of coding and interpretations, Hamilton re-coded the data over a three-month period on two separate occasions, comparing themes and selecting representative quotes most relevant to the law. Monson reviewed these themes and the data, identified conceptual overlap, and then Hamilton and Monson agreed on four generalized themes, three of which have sub-themes:

1) moral core or moral compass, including deep sense of responsibility to others; trustworthiness in relationships with others (including clients, colleagues, the profession, the justice system, broader society); and honesty with self and others as an important basis of trust;

2) counseling the client, including giving independent judgment; candid and honest counsel informed by the lawyer's moral core; and lawyer as facilitator in identifying client's long-term interest,

106. The eleven original themes identified by Hamilton included: (1) continuous dynamic growth in understanding and internalizing the meaning of professionalism; (2) the internalized moral compass or core values of the lawyer; (3) the habits of reflection and learning from mistakes as an important element of dynamic growth in understanding; (4) counseling the client and giving independent judgment; (5) deep sense of commitment and responsibility toward others; (6) importance of firm or department culture and mentoring junior lawyers; (7) relationships built on trust and being trustworthy; (8) moral courage; (9) respect for other people, including kindness and humility; (10) internalized standard of excellence at the technical skills of lawyering; and (11) gender differences in terms of boundaries of role, and the critical importance of mentoring. Because of conceptual overlap in these categories, and the limitations of the scope of this Article to address fully each topic, we are focusing this Article on the set of themes respondents emphasized most.

growth, or movement towards healing and forgiveness;

3) ongoing reflection and learning (1) from mistakes or losses, and (2) about the limitations of the status quo of legal practice, including professional setbacks, i.e., failing to meet internalized standards of excellence, or losing important cases; personal setbacks, i.e., experiencing depression or loss of loved ones; alternative methods of practice (e.g., mediation); and the limitations of the justice system in serving the poor or oppressed, or imbalances of power; and

4) self-assessment of how the meaning of professionalism has evolved, including continuous dynamic growth in understanding and internalizing the meaning of professionalism (including reflection and learning from mistakes).

1. Professionalism as Moral Compass or Moral Core

Although all twelve lawyers discussed aspects of a moral core or moral compass, there was some variation in this theme with three of the lawyers expressing views that core morality is formed significantly but not completely in childhood, and that this trait is stable with some additional growth throughout life. The nine others observed that moral formation continues, as an ongoing process over a lifespan involving reflection and self-awareness.

2. Commitment and Responsibility to Others

As part of the moral core or moral compass theme, commitment and responsibility to others was an important subtheme mentioned by all twelve attorneys. "Others" referred to one-on-one relationships with clients or colleagues, as well as the firm or organization, the profession, and broader society. The following illustrates the qualitative differences in how our attorneys viewed responsibility to others.

Michael described his core value of service to the community as part of professionalism, illustrating how he conveys this value to associates at his firm:

> You have to do something . . . other than be a good lawyer. You have to do it not only for yourself and just feeling good about yourself and for community, but frankly, it is part of marketing these days. You have to be connected to people, you can't just go home after work and . . . play with your kids . . . . I am constantly harping on them. . . . I look around in an associate meeting and I say "okay what are you guys doing . . . what groups are you involved with? What groups are you active with?"[107]

In contrast to Michael's view of community service as a partially external market-driven requirement, Michael stated that his core value of service started not from any marketing objective, but rather, it was "one step leading to another step associated with an interest associated with something that plucked at [my] heart strings at some point in time."[108]

For Michael, that interest was helping children, first through his service as a county prosecutor in child abuse cases, and then through his leadership in forming a center for child law, as well as pro bono work to a large non-profit that serves children.[109]

Joe described similar motivations as Michael, describing how he is "deeply involved in diversity-related issues" and that the motivation was internal (i.e., "first of all it is enjoyment . . . I feel I am making a contribution)."[110]

For Elizabeth, who had started out in a legal aid office after law school, her stature as a partner with a big firm afforded her the opportunity and flexibility to make a much larger impact in pro bono cases.[111] Most recently, Elizabeth discussed a pro bono case in a Southern state involving an African American teen charged with capital murder, which carried a possible death penalty.[112] Elizabeth's firm investigated, finding evidence that the teen should be exonerated of capital murder (no evidence of intent was

107. Interview with Michael, in Minneapolis, Minn. (June 11, 2010).
108. *Id.*
109. *Id.*
110. Interview with Joe, in Minneapolis, Minn. (June 7, 2010).
111. Interview with Elizabeth, in Minneapolis, Minn. (May 26, 2010).
112. *Id.*

found).[113] For Elizabeth, pro bono work appeared to be a tremendous source of energy and meaning. She said:

> [O]ne of the things that has been just a gift to my professional career is the ability to do this pro bono work . . . so there is that credibility you have from when you are in a firm like mine that can make you able to do [more] . . . .[114]

Last, one of our exemplars, Alicia, spoke about how volunteering her time was part of her identity, and that it meant she had accepted the tradeoff of a more modest lifestyle, with respect to income.[115] She stated:

> [A]nother aspect of my life is volunteering . . . doing the right thing in all cost . . . maybe seeking who you are . . . . I wish I really cared more about money . . . but there are other things that seem to be more important.[116]

A strong human rights advocate recognized for her service, Alicia spoke with great passion about her human rights work, and her view that professionalism entails "doing the right thing . . . no matter what the cost, seeking justice on behalf of those who have no access to justice . . . ."[117]

3. *Toward a Living Definition of Professionalism*

a. *Continuous Dynamic Growth in Understanding*

During the interview, the attorneys were asked to self-assess whether their understanding of professionalism had evolved throughout the years.[118] The results from this portion

113. *Id.*
114. *Id.*
115. Interview with Alicia, in Minneapolis, Minn. (June 9, 2010).
116. *Id.*
117. *Id.*
118. There is a distinction between "retrospective self-assessment," a technique used in medicine and medical education in measuring professional competence, and the methods of Colby and Damon and others, which are derived from idiographic traditions such as assisted autobiography. The latter align most closely to our philosophy and method for the present study. *See* COLBY & DAMON, *supra* note 41, at 322. A comprehensive review of the research in medical education shows only a limited correlation between self-assessment of competence and actual performance, with the most high performers underestimating and low performers overestimating their abilities. *See* David A. Davis et al., *Accuracy of Physician Self-Assessment Compared with*

of the interviews support the idea that an individual's self-understanding of the concept of professionalism evolves to become more complex and internally defined. With this development comes increased cognizance of the dynamic tension between economic self-interest, and the roles representative of clients, officer of the legal system, and public citizen responsible for the quality of justice. We also heard that our respondents' self-understanding of growth and change is that it is not a result of incremental gains of knowledge, facts, or skill, but is a gradual transformation of thought or way of making sense of the world.

This shared self-perception also contained the sense that ongoing learning was the norm, and that it was energizing. For example, Elizabeth stated "I am a partner . . . . How did this ever happen? And then I answered that question that I am still learning. I haven't learned everything, so I continued on happily . . . ."[119]

In the words of Martha: "I used to think of professionalism as rules or something outside of myself that was imposed on me and instead of thinking about it as a way of life."[120] Lawrence shared this perception, noting that in starting his career, he relied on senior partners as mentors, and now, has taken on the role of mentor to younger associates.[121] Lawrence stated, "I have become the person whose approval I wanted . . . [I've grown] into the person that I wanted to become."[122]

Catherine discussed her perception of change in terms of a better ability to set boundaries:

> I had you know [when I first started practicing law], perfectly good intentions and a lot of brain power but very little sense when it came to boundaries. And um, if I ran

Observed Measures of Competence: A Systematic Review, 296 J. AM. MED. ASS'N 1094, 1094 (2006).

119. Interview with Elizabeth, *supra* note 111.
120. Interview with Martha, in Minneapolis, Minn. (June 11, 2010).
121. Interview with Lawrence, in Minneapolis, Minn. (June 10, 2010).
122. *Id.*

> into myself [laughs] I would say, you need some immediate remedial work on boundaries among other things. So yes, I think that it is absolutely born of experience um, but it requires more than simply experiencing of life or the profession or even a role as a manager. I think it requires of real . . . thoughtfulness, mindfulness, it requires caring about the people that you interact with and more than caring feeling an obligation to care, that makes sense? So yeah there is no doubt that I have grown and I am still growing. I mean I get better at it all the time and I make mistakes all the time.[123]

For Alfred, he now attributes his success to the contributions of those around him: "I have come to appreciate over the years how . . . much what I am able to achieve depends on those around me, and those I work with, and those that work for me than I ever did before."[124]

This shift to increased understanding of interdependencies was shared by Michael, who stated, "I think I have . . . a better feel for how the system works and therefore a better judgment now than I had twenty years ago when I was more or less a pure advocate."[125]

b. Reflection and Learning from Mistakes

An important theme related to professionalism as a growing, living phenomenon is how our exemplars experienced mistakes or failures. Part of that process, to Carla, was about becoming "self-aware—aware of if you are burning out or if you are becoming stale."[126] For Carla, a legal aid attorney who represents children, the intensity of the work is counterbalanced by satisfaction she derived from doing policy work and mentoring younger attorneys.[127] For others, like Joe, the experience of losing a first trial brought important lessons that helped them be more effective in their careers. Joe said:

123. Interview with Catherine, in Minneapolis, Minn. (May 25, 2010).
124. Interview with Alfred, in Minneapolis, Minn. (Apr. 18, 2010).
125. Interview with Michael, *supra* note 107.
126. Interview with Carla, in Minneapolis, Minn. (May 24, 2010).
127. *Id.*

> [W]hen I lost a trial . . . for the first time I lost, it was just devastating especially because I thought I should win. I mean it was really, it was really a rotten experience. It turned out [to be] one of the best things that could have happened to me. And the reason was because it made it so I was able to give better advice that, that no matter how hard I worked there is a risk in a trial or a risk in a motion and the risk is that the judge or the jury might not agree with you. And candidly if you haven't lost a trial or you haven't lost a motion, I think it is hard for you be a good adviser. Because you end up saying things like well I have never lost a trial, so the client thinking. I had this happen to me and the client thinks well, as long as I got you as a lawyer I am in good shape. Well that means that the client can't understand the sense of risk. It is crazy.[128]

Although our exemplars talked openly about losing cases, experiencing frustrations, or overcoming obstacles, only one of them candidly reflected during the interview on disappointment with self in professionalism. Julia stated:

> [A] couple of years ago . . . I was disappointed with myself. You know, I made a decision and I stuck with it, even though [it] wasn't the most thought out decision but the thought did come to me that I had unearned my professionalism award. That was one case where I didn't think I acted very professionally. You know I took a position that was hard to substantiate. And then when I was challenged, I just didn't back down, which maybe the best thing to do, if you want to be successful you know. But I let myself down, time[] heals. And you don't trust others who let you down. So you know this particular person was disappointed in me and probably [will] never trust me again.[129]

Julia's reflection and admission of falling short of her internally defined standard of professionalism stands in contrast with other exemplars, such as Michael, who stated, "I don't recall scenarios when I was disappointed with myself in terms of ethics of professionalism."[130]

128. Interview with Joe, *supra* note 110.
129. Interview with Julia, in Minneapolis, Minn. (May 26, 2010).
130. Interview with Michael, *supra* note 107.

c. Ways of Self-Transformational Growth

We identified structural (i.e., developmental)[131] evidence of Kegan's Stage 5, self-transformation, within four of our exemplars. Part II.C. earlier defined Stage 5 to be characterized by the ability to examine one's self-authored personal authority to recognize the limitations of any single system of constructed meaning. A perspective-taking process for continually challenging their understanding was common among these four individuals. For example, Michael discussed a process he uses in preparing to go to trial:

> I often consciously put my or almost automatically put myself in the position of the judge hearing the case and what would I do if I was the judge? What arguments would I respond to? What information would I need? How would I resolve an issue? And that's a way of thinking that I wouldn't have done even maybe ten years ago, maybe five years ago.[132]

Joe, who earlier recalled the experience of losing a case and realizing that it had been critical in helping more effectively prepare his clients and himself, summed up his philosophy of how he puts his ideas out for refinement through a process of perspective taking:

> You have to find it; you have to find the other side's annoyingly good point because you can't just go for your conclusion. You got to figure out how to cope with what

131. The term "structure" is differentiated from "content" in developmental psychological theory. "Structure" refers to the degree of complexity of consciousness. It is the "why" of the individual, not the "what." Structure refers to one's reasoning, motivations, assumptions, or intentions that can be held out for conscious examination. At earlier stages, one's motivations and assumptions are unconscious or hidden; as growth in consciousness proceeds, individuals can consciously identify underlying motivations and assumptions. For example, if a participant expounds upon on the importance of cross-cultural experiences, that fact alone is insufficient to classify the individual as stage 3 or 4. If the participant explains that cross-cultural experiences are expected by teachers or peers, then that likely reflects the indelibility of the socialized (stage 3) meaning making structure. On the other hand, if the explanation is that cross-cultural experiences are important because of how immersion in a diverse cultural experience resulted in a re-evaluation of life goals, then this reflects the meaning making structure of stage 4, with its new capacity to consciously reflect upon how one is constructing meaning. Stage 3 is "going along with" the crowd; stage 4 is holding out one's rationale and motivations and consciously reflecting upon them. *See generally* KEGAN, *supra* note 1, at 20–36.

132. Interview with Michael, *supra* note 107.

> somebody else might have which might be a very good point so I think that the if I haven't traveled that pathway of uncertainty and maybe I am wrong and maybe the other side has way too many annoyingly good points you know. If I feel like I have traveled that pathway then I am able to say to myself, alright I think I trust myself with this current pathway.[133]

In contrast, Alicia reported using ethical analysis questioning the obligation of the profession to society. Alicia stated she asks herself, as she prepares a case, "[w]hat is my duty to law and seeking justice, what's my duty to judicial system, what's my duty in terms of you know legal professionalism, what's my duty to those seeking justice."[134]

Martha provided insight into how transformation can take place beyond the level of individual, and throughout a field within the profession. Martha, the divorce attorney, discussed how she had helped lead a movement to shift divorce from an adversarial to a collaborative process by bringing in a psychologist to "divorce camp."[135] She stated:

> And we decided we were going to transform how lawyers in this state practice family law, which you know is a little arrogant at best. But we have, we have, and that's so powerful when you are there and someone stands up and says I am going to do that differently. I have been coming here and suddenly it daunts to me I am going to that differently. And so making that difference, but you cannot convince someone else to change until you have changed.[136]

Describing a technique to help move towards self-transformation, Martha posed the following questions, which she used in a process of ongoing refinement or testing of her core beliefs about professionalism:

> [A]sking those questions that make you think, okay, what am I doing that for? Am I doing that for myself or am I doing that for my client? Why am I doing that? Am I doing that to win or am I doing that to move

133. Interview with Joe, *supra* note 110.
134. Interview with Alicia, *supra* note 115.
135. Interview with Martha, *supra* note 120.
136. *Id.*

this family forward?[137]

V. DISCUSSION AND CONCLUSION

Interviews with peer-honored lawyers exploring the meaning of professionalism revealed four primary, overarching themes, including the ideas that:

1. Professionalism is linked to a lawyer's moral core or moral compass, and includes a deep commitment to clients, colleagues, the firm, and broader society. The foundation of this moral core is trustworthiness, which serves to "hold together" the day-to-day functions of practicing law, and serves as an important marker in both establishing and maintaining a lawyer's credibility and reputation. A major part of this foundation of trustworthiness is honesty, with self and others. Honesty serves also as an internal mechanism that is part of an ongoing practice of self-reflection and growth.
2. Counseling the client with independent judgment and candid advice is central to the lawyer's role.
3. Self-reflection becomes habitual, and ongoing, and is related to ongoing growth in a lawyer's professionalism.
4. A lawyer's understanding of professionalism evolves over a career.

When asked directly if they perceived a change in how they viewed professionalism, all attorneys agreed that their understanding had evolved throughout their careers. Although all perceived a gradual change, three of the lawyers pointed to the importance of upbringing, family, virtues such as the "golden rule," or innate personality traits as also important.

With recent increased focus on leadership in law,[138] the observance that, among exemplars who were in transition to

137. *Id.*

138. *See* Neil W. Hamilton, *Ethical Leadership in Professional Life*, 6 U. ST. THOMAS L.J. 358, 387–93 (2009) [hereinafter Hamilton, *Ethical Leadership*]; *see also* Deborah L. Rhode, *Lawyers and Leadership*, 20 PROF. LAW., no.3, 2010 at 4.

Stage 5, conceptions of professionalism began to overlap conceptions of leadership seems particularly fruitful for further research to mine this relationship.[139] Our exemplars discussed a range of leadership actions that they associated with professionalism including: (1) playing a change agent role in transforming family law from an adversarial approach to one that facilitates a healing process, (2) addressing the holistic and legal needs of women victims of domestic violence in undeveloped nations, and (3) doing pro bono work on a Guantanamo Bay defense camp, defending a juvenile accused of murder in a rural town in the South, or working behind the scenes for policy change within state or local government towards improving how children in poverty are served by the system.

A. Comparison with Past Studies

Compared with our earlier studies of law students and early career lawyers,[140] exemplary lawyers' conceptions of professionalism show later stages of mental complexity defined earlier in Part II.C. Mental complexity is the move from an egocentric understanding of the world to a more penetrating, more responsible, less egocentric grasp of reality. This movement toward later stages of mental complexity provides justification for viewing the themes articulated by the exemplary lawyers as a benchmark for defining levels of competencies in professionalism. To illustrate, we include a figure that displays the overall results of estimating Kegan stages with past studies, shown in Figures 1 and 2.

139. Professionalism and leadership are likely overlapping concepts, with respect to interpersonal skills, communication, strategic thinking, and values of service to others. Our personal view of professionalism encompasses theories emphasizing humility, service, and interdependence over competition. *See*, *e.g.*, RONALD A. HEIFETZ, LEADERSHIP WITHOUT EASY ANSWERS 20 (1994). Professionalism and ethical leadership are overlapping concepts since the foundation of both in ethical professional identity and ethical leadership is a strong moral core or personal conscience. *See* Hamilton, *Ethical Leadership*, *supra* note 138, at 365–68, 396. We think a lawyer who seeks to be an ethical leader with clients or law firm colleagues will need to demonstrate a strong ethical professional identity.

140. *See* Monson & Hamilton, *Entering*, *supra* note 22; Monson & Hamilton, *(Trans)formation*, *supra* note 22.

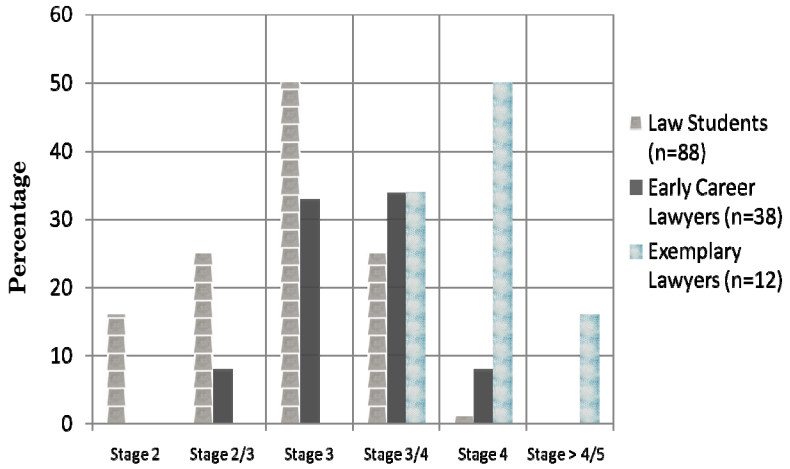

Figure 1. Stages of Professional Identity Among Law Students, Early Career, and Exemplary Lawyers

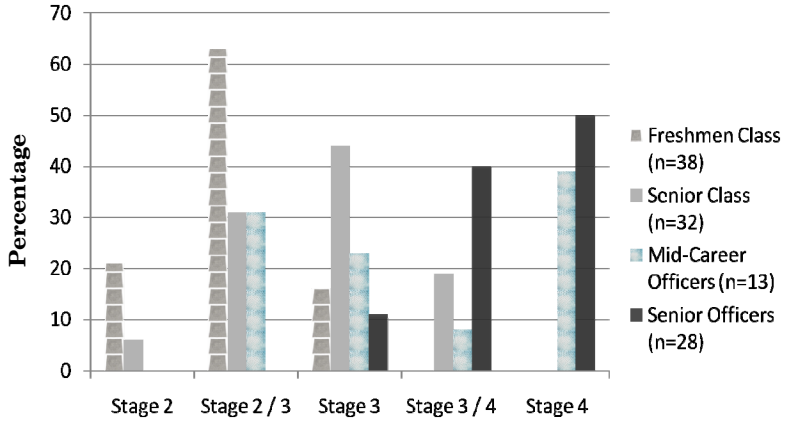

Figure 2. Stages of Professional Identity Development Among U.S. Professional Military

As Part II.C. explained, Stage 2 is the instrumental mind characterized by an external definition of self and an egocentric view. Stage 3 is characterized by increased social perspective taking ability among allies or the in-group, but understanding and expectations continue to be externalized. Stage 4 involves the capacity to step back enough from the social environment to generate a seat of judgment that evaluates and makes choices about external expectations. The independence of judgment here translates into a greater fidelity to one's inner moral code. Stage 5 is characterized by

the ability to examine one's personal moral code and recognize the limits of any one system of constructed meaning.

A comparison of the bar showing the stages of mental complexity of entering law students with much higher proportions of earlier stage 2 and stage 3 than the bar for early-career lawyers or the bar for exemplary lawyers. Similarly, only one percent of entering law students is at Stage 4, whereas fifty percent of exemplary lawyers are at Stage 4, with sixteen percent at higher stages.

We want to emphasize that the purpose of this study was not to assess developmental stage for each participant. The estimates we report represent a snapshot of development for expert and novice groups, and any individual assessment intended for diagnostic purposes would require multiple measures, across time, in order to increase validity.[141] If we were to discuss the results of this assessment with individuals, we would follow the practices of experts in this methodology who view the assessment process as collaborative and developmental, in a type of synthesis between coaching and assessment.[142]

B. Limitations of the Present Study and Future Research Topics

This study has limitations. Ideally, we would have longitudinal data following a group of entering law students through their careers. We are working on a longitudinal data set. A longer interview would help with the process of probing for more stage-related content. Observing attorneys or having the results of 360-degree reviews in the course of practice would be useful to gauge the extent that espoused beliefs and values matched with behaviors. However, given the time pressures on practicing lawyers and concerns

141. For example, William Torbert's studies of CEOs and managers utilize Loevinger's Washington Sentence Completion Test, which measures epistemological development, a construct close to Kegan's notion of mental complexity. *See* KEGAN & LAHEY, *supra* note 18, at 27.

142. *See* Marcia B. Baxter Magolda, *Learning Partnerships Model: A Framework for Promoting Self Authorship*, *in* LEARNING PARTNERSHIPS: THEORY AND MODELS OF PRACTICE TO EDUCATE FOR SELF-AUTHORSHIP 37–62 (Marcia B. Baxter Magolda & Patricia M. King eds., 2004).

regarding client confidentiality, this may not be feasible. More extensive analysis of archival and biographical data would have added depth and richness to this dataset, and permitted greater chances to triangulate evidence across different data sources.

Another limitation is that our sample is limited to one region of the U.S. Criteria for professionalism awards and understandings of professionalism might vary by region. Also, the criteria for selecting award winners might vary between the nominating organization's committees, as well as vary from year to year. Given more adequate resources for follow-up studies, we would seek additional geographical locations to replicate this study, and consider an open nomination process that would permit individuals who do not belong to bar associations to be nominated. Open nomination processes are extremely time consuming and run some risks of claims that the investigators biased the selection process.[143]

The scope of this Article limited the extent we could fully cover the multiple themes that emerged from this data. A series of follow-up studies building on these results should guide law schools clear definitions and assessments of professionalism. At minimum, topics for future research should include (1) the importance of law school and law firm culture; and (2) the experience of women and non-white lawyers, both in the changes they observed over the past decades, and in how younger generations of women lawyers are experiencing socialization into the firms. Studies focusing on individual cases, delving more deeply into the stories of challenges and triumphs of exemplary professionals, represent another avenue of research. Other replications of this study should focus on (1) judges, (2) prosecutors or criminal defense attorneys, (3) in-house corporate attorneys, and (4) public administrative or non-profit attorneys.

Last, this topic could arguably be addressed by broad, population studies using surveys, in which we would attempt to estimate the extent that these themes were present among the population of practicing attorneys.[144] Although

143. Open nomination processes for exemplar studies were used in Colby and Damon's study of exemplars, and Rule and Bebeau's study of dental exemplars. *See* COLBY & DAMON, *supra* note 41, at 25; *see* RULE & BEBEAU, *supra* note 45.

144. Proponents of empirical studies aimed at objectively estimating the

scientifically-administered surveys would permit broader generalization of some beliefs, the resulting information would lack the depth, meaning, and realism yielded from interviews and dialogs with participants.[145]

C. Implications for Law Schools

Legal education must undertake a paradigm shift to focus on each student's ethical professional identity. This Article advances this educational goal by interviewing peer-honored exemplary lawyers to clearly define the elements of an ethical professional identity. Law faculty can design curriculum, programs and assessments to reach a clearly defined educational goal.[146]

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parameters of a population might criticize our methodology as subjective and biased. Self-report questions from surveys, however, are also subject to numerous forms of bias, and although scales might yield important information, quantitatively, given the complexity of the topic, and the nature of human beings, an approach that seeks in-depth understanding, from the perspectives of participants, is more useful. Readers interested in the philosophical and the methodological underpinnings of our study should refer to COLBY & DAMON, *supra* note 41, at 322–23. For readers concerned we might be embracing a postmodernist view that there is no objective, discoverable "truth" about professionalism, see Robert Kegan's discussion of postmodernism, in which he discusses the idea of "reconstructive postmodernism"—the concept that multiple truths may arise in our interviews or discussions with individuals, but that through dialog and synthesis of different positions, a new "truth" can be constructed. *See* KEGAN, *supra* note 1, at 329. For a more general discussion about the nature of positivistic and naturalistic research paradigms, see MILES & HUBERMAN, *supra* note 96, at 4–7.

145. Miles & Huberman stated, in 1994, "[t]he paradigms for conducting social research seem to be shifting beneath our feet, and an increasing number of researchers now see the world with more pragmatic, ecumenical eyes." MILES & HUBERMAN, *supra* note 96, at 5. However, the appeal of quantitative, test-based approaches to studying human abilities, in education and organizations, remains a societal bias, and is reflected by approaches such as "No Child Left Behind," or in policies that require experimental methods to "prove" the effectiveness of a program. For human abilities that are complex, holistic methodological approaches are needed, both to study the phenomenon of interest and to promote development. *See* Hamilton & Monson, *Skeptics*, *supra* note 10, at 3–6, for a discussion of how a bias in favor of a quantitative paradigm is inadequate for assessment and development of complex abilities such as professionalism and moral development.

146. *See generally* Hamilton & Monson, *supra* note 89. *See also* Verna Monson, *Group Learning in Law Schools: A Key to Fostering Professional Formation* (Mar. 23, 2012), *available at* SSRN, http://ssrn.com/abstract=2021455.

The main findings of this study are that exemplars understand professionalism in a qualitatively more complex, or expert manner, than do early career lawyers and entering law students. Our exemplars' understanding of professionalism represents a high level of competence or expertise in professionalism, providing law schools and bar associations with a clear benchmark to use in defining levels of competencies in professionalism.[147] This methodology ensures the definition of the elements of professionalism is captured, not theoretically, but in a way grounded in the realistic context of practice.[148]

The Article proposes a shift from a static definition of professionalism and ethical professional identity, focused on ethics education about the Rules of Professional Conduct, to a constructive developmental definition that emphasizes also fostering each student's moral core of responsibility to others, trustworthiness and honesty, independent counsel to clients, and habits of seeking feedback, reflection, and self-assessment. The entire model recognizes that a student's stage of moral identity development will influence how the

147. The literature in medical education is especially informative about the concepts and processes of defining and measuring professional competencies. *See* Ronald M. Epstein, & Edward M. Hundert, *Defining and Assessing Professional Competence*, 287 J. AM. MED. ASS'N 226 (Jan. 2002); *see also* David C. Leach, *Competence Is a Habit*, 287 J. AM. MED. ASS'N 243 (Jan. 2002).

148. This is a strategic difference compared to other methodologies from industrial-organizational or clinical psychology that employ off-the-shelf tests of constructs associated with professionalism, with a similar purpose of defining competencies (i.e., knowledge, skills, and abilities). With these methods, the possibility exists that more advanced levels of competencies in character will go undetected (i.e., transformational professionalism). The resulting narrowed range of competencies means that the highest level of character development related to professionalism might not be articulated, thus missing an important opportunity to raise standards by providing key role models of exemplary professionalism. *See* MARJORIE M. SHULTZ & SHELDON ZEDECK, IDENTIFICATION, DEVELOPMENT, AND VALIDATION OF PREDICTORS FOR SUCCESSFUL LAWYERING 3 (2008). Shultz and Zedeck's work is critically important with respect to determining if an alternative law school entrance exam has improved predictive validity over current assessments; our point is not to criticize their effort, but to point out that the development of complex moral capacities is better accomplished with assessments that are formative, giving developmental feedback to foster growth. This suggestion is a central one from scholars of change in legal education practices. *See*, *e.g.*, Hamilton, *Assessing*, *supra* note 1; ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 26–27 (2007).

student understands an ethical professional identity, so legal education must engage each student at the student's current level of identity development.

Essentially we are proposing that a major goal of legal education should be to foster formation, in as large a proportion of students as possible, toward both the elements of professionalism as understood by peer-honored exemplary lawyers and an internalized ethical professional identity (Kegan's Stage 4). Carnegie argues that, for medical education, "[f]ormation is the most fundamental goal of the learning process."[149] The same should be true for legal education.

We analyzed the empirical evidence of which pedagogies are most effective to foster formation of an ethical professional identity in a separate shorter article,[150] and we are working on a longer article reviewing this empirical literature. One critical insight in this literature is that since the students come to us at different developmental stages, and by definition, an earlier stage student will not understand a question relevant at a much later stage, the professor must ask a variety of questions relevant to the range of development stages of his or her students. Kegan and Lahey provide one important window on effective pedagogies to foster formation. They note that the conditions for optimal growth center on what they call "optimal conflict," characterized by four conditions[151]:

- Challenges or problems must represent a "persistent experience of some frustration" or "quandary;"
- The problem must challenge one's assumptions and beliefs or "our current way of knowing;"
- The underlying issues must connect deeply to who we are and what we value; and
- Social support from instructors, supervisors, mentors, peers, and others must be effective to prevent the

149. EDUCATING PHYSICIANS, *supra* note 1, at 41.
150. *See* Hamilton & Monson, *supra* note 89.
151. KEGAN & LAHEY, *supra* note 18, at 54.

> student from being overwhelmed or able to "escape or diffuse it."[152]

There is a significant challenge to design assessment measures for these competencies that would meet the criteria for validity and reliability of psychological or educational measurement. For example, as part of this educational engagement, the Subject Object Interview methodology would be useful with law students or associates as a formative assessment within the context of leadership courses or mentoring programs.[153] Developmental feedback, based on the assessment results, is practical and realistic within the context of professional responsibility or clinical practice courses.[154] We urge the use of assessments that students can use to foster self-development of these professionalism elements.

D. Conclusion

Empirical evidence over three decades of research shows that ethical professional identity can grow across the lifespan. The exemplars we interviewed represent a benchmark for a high level of competence in professionalism; the finding that this expert group differed from novices supports the contention that growth occurs across the lifespan. With a clear definition, educators can design educational programs, curricula and assessments to foster students' ethical professional formation. This paradigm shift toward fostering students' potential for ethical professional formation and transformation is one that will ultimately better meet the needs of the changing nature of the legal job market and law firms because it promotes dynamic change and transformation in a variety of capacities and skills that contribute to effectiveness in the practice of law.[155] The students on this path realize both internal and external benefits.

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152. *Id.*

153. *See* McGowan et al., *supra* note 14, at 5.

154. MURIEL J. BEBEAU & PHILIP LEWIS, MANUAL FOR ASSESSING AND PROMOTING IDENTITY FORMATION 117–20 app. B (2004).

155. *See* Hamilton & Monson, *Empirical Relationship*, *supra* note 1.

APPENDIX A

Summary of Kegan Identity Assessment Studies in Education in the Professions[156]

STUDY	STAGE 2	STAGE 2 / 3	STAGE 3	STAGE 3 / 4	STAGE 4	STAGE 4 / 5
Bartone et al., 2007, professional military cadets (freshmen), n=38	8 (21%)	24 (63%)	6 (16%)	0	0	0
Bartone et al., 2007, professional military cadets (senior), n=38	2 (6%)	10 (31%)	***14 (44%)***	6 (19%)	0	0
Eigel, 1998, CEOs, n=21	0	0	0	0	***17 (81%)***	4 (19%)
Eigel, 1998, middle managers, n=21	1 (5%)	2 (10%)	7 (33%)	0	***10 (48%)***	1 (5%)
Monson & Bebeau, 2006, dental students (freshmen), n=94	12 (13%)	***48 (51%)***	18 (19%)	12 (13%)	4 (4%)	0
Hamilton, M., 2011, professional coaches, n=26	0	5 (19%)	6 (23%)	***11 (42%)***	4 (15%)	
Monson & Hamilton, N., 2010, first-year law students, n=88	14 (16%)	22 (25%)	29 (33%)	22 (25%)	1 (1%)	0
Monson & Hamilton, N., 2010, early career lawyers, n=37	0	4 (11%)	19 (51%)	9 (24%)	5 (14%)	0
Roehrich & Bebeau, 2005, dental students (freshmen) n=46	6 (13%)	32 (70%)	4 (7%)	4 (7%)	0	0
Snook et al., 2007, Harvard MBA students, *n*=26	***9 (35%)***		7 (27%)		***9 (35%)***	

156. This table is a modification of one included in Monson & Hamilton, *(Trans)formation*, *supra* note 22.

APPENDIX B

Guidelines for Giving Developmentally Appropriate Feedback[157]

Feedback is an important component of learning. This section is concerned with the development of comments and questions that, in addition to being constructive, take into account how the student sees the self in relation to others. Individuals at different stages of identity have different concerns. Thus, questions that may make sense to a Stage 3 learner may not be understood by a Stage 2 learner and may be less likely to challenge further thinking.

Below are listed some prototypic questions to promote further thinking about what the respondent has written. To identify what kind of probe questions to include, ask yourself, is this an essay that reflects:

1. Individual competence or role enactment? (Primarily a Stage 2 Identity)
2. Team player orientation or sense of social obligation? (Primarily Stage 3 Identity)
3. Values orientation or professionalism? (Primarily a Stage 4 Identity)

If some of both, then the individual may be in the transition. Select questions from each level that will direct attention to the dimension that is missing.

FOR STAGE 2 IDENTITY

What is the respondent grappling with?

Concrete individualistic performance

How does he/she see the world?

Concrete and dualistic

PROBE QUESTIONS

Strategy: *When the respondent sees things in dualistic terms: good and bad, right and wrong, black and white.*

157. Adapted from BEBEAU & LEWIS, *supra* note 153, at 111–13. For further in-depth discussion of language and constructive developmental viewpoints, see generally ROBERT KEGAN & LISA LASKOW LAHEY, HOW THE WAY WE TALK CAN CHANGE THE WAY WE WORK: SEVEN LANGUAGES FOR TRANSFORMATION 7–10 (2001).

Ask: Does everyone see it the way you do? How did the other person think about what you did or said? Is there any evidence to support your view? Some people think there are situations which are not clearly right or wrong. Can you think of such examples?

Strategy: *When the respondent sees only his/her interest in the situation, encourage perspective taking.*

Ask: What does (name other party) care about? How does the profession think about that? How would you feel if you were on the receiving end of that action? How would your friend (or family) feel? Do you actually know what your friend (parent, superior, subordinate) thought about what you did? Did you ask? It is helpful to ask and to collect evidence on how others see things.

Strategy: *Take other's perspective with respect to their intent or experience.*

Ask: Do you think the other person perceived what you did as helpful, disrespectful, dishonest, etc.

Strategy: *Try to elicit an internal focus.*

Ask: Would you feel guilty if you did that? If so, why would you feel guilt or shame?

Ask: What emotion would your parents or friends experience if you failed (cheated, lied, harmed someone, failed a course, or failed the bar exam)? How would their reaction make you feel? What if you succeeded (earned good grades, an offer in a top firm)? Maybe we can find some words that capture those feelings (self-confident, shameful, compassionate, remorseful). What sort of qualities would you like to strengthen in yourself?

Strategy: *Try to elicit the respondent's experience of being regarded by others?*

Ask: What do you want your friends (or superiors, subordinates, parents) to say about you? What kind of person would you like to become? How do you feel when your friends are worried about you (or proud of you, upset with you)? How do you feel when your family members or instructors are worried (or proud or upset or angry) with you?

Strategy: *Develop a perspective on failure. Help them see that failures can be opportunities for learning.*

Ask: What can you learn from that experience? What would be the worst thing that would happen to you if you failed? What circumstances might lead you to repeat this failure?

FOR STAGE 3 IDENTITY

What is the respondent grappling with?

Being a team member or team player

Concern for societal role, professional ideals

How does he/she see the world and the self?

Reflective and idealistic

PROBE QUESTIONS

Strategy: *Take the respondent's perspective on what they accepted as a shared value.*

Ask: How do you know that is true? What is your source of authority for that? Do different authorities disagree about that? What reasons do they use to come to their conclusions?

Strategy: *Raise consciousness about likely conflicts between interpersonal allegiances and one's ideals.*

Try to do two things:

1. Raise consciousness that conflict:

Ask: "What if you marry someone who wants you to stay home rather than have a career?" "What if your friend asks you to keep secret about something that harms someone else?" "What if a senior associate or partner asks you to lie in order to help a client?" "What if your client asks you to overlook an ethically questionable policy in an employee contract negotiation?"

2. Raise consciousness as to whether one's ideals can be met:

Example: Sometimes respondents get very frustrated when they know they should live up to some ideal standard, but do not see how to do it.

Ask: Have you worked out a way to really do what is right?

Strategy: *Develop a perspective on failure. Help them see that failures can be opportunities for learning.*

Ask: What can you learn from that experience? What would be the worst thing that would happen to you if you failed? What circumstances might lead you to repeat this failure?

FOR AN EMERGING STAGE 4 IDENTITY

(someone in Stage 3 to Stage 4 transition)

What is the respondent grappling with?

Constructing a discerning principled identity

Staying centered and responsibly attuned to and tolerant of complexity

How does he/she see the world and the self?

Developing and changing

Contextual and constructed

Ambiguous and paradoxical

Strategy: *Because respondents are grappling with a number of issues and are already rather discerning, they may need help in finding mentors for their problems.*

Ask: Who can you talk to about this issue? How do you know if you are seeing this issue clearly? What set of criteria do you use to judge whether you views on this matter are defensible? How do you deal with people who do not know where you are coming from? Is there another whole way of looking at this situation? How do you hold on to your core values in this sort of situation? What about this situation caused you to lose your focus?

Strategy: *Locating decision criteria within the self.*

Ask: How do you go about deciding what to trust when you get conflicting guidance from others? How do you resist falling back into accepting the status quo or standard solution when pressured to do so?