

MEASURING PROFESSIONALISM

Jayne Reardon Executive Director, Illinois Supreme Court Commission on Professionalism Chair, ABA Standing Committee on Professionalism.

Clark Cunningham W. Lee Burge Chair in Law & Ethics, Georgia State Director, National Institute for Teaching Ethics & Professionalism

John Berry Division Director of the Florida Bar
Former chair, Standing Committee on Professionalism

Benjamin Grimes
Deputy Director, Professional Responsibility Advisory Office, US Dept of Justice; Lt. Col. (ret.), US Army

Jayne Reardon

- As Executive Director of Illinois Supreme Court Commission on Professionalism, oversees programs and initiatives to increase the civility and professionalism of attorneys and judges, create inclusiveness in the profession, and promote increased service to the public.
- Developed the Commission's statewide Lawyer-to-Lawyer Mentoring Program, which focuses on activities designed to explore ethics, professionalism, civility, diversity, and wellness in practice settings, and spearheaded development of an interactive digital and social media platform that connects constituencies through blogs, social networking sites and discussion groups.
- Former counsel, Ill Attorney Registration & Disciplinary Commission Review Board.
- Chair of the American Bar Association's Standing Committee on Professionalism, member of the National Task Force on Attorney Well-Being, Steering Committee member of the National Lawyer Mentoring Consortium. She is also active in the ABA Consortium of Professionalism Initiatives.

Clark Cunningham

W. Lee Burge Chair in Law & Ethics, Georgia State, and Director

The screenshot shows a web browser window displaying the NIFTEP website. The browser's address bar shows 'www.niftep.org'. The website header features the NIFTEP logo and the text 'National Institute for Teaching Ethics & Professionalism'. A navigation menu includes 'Home', 'Workshops', 'Burge Conference', 'International Forum on Teaching Legal Ethics and Professionalism', 'Advisory Board', and 'Contact'. The main content area has a featured image of a building with a statue, titled 'Summer 2014 Workshop' at 'City Law School, Gray's Inn Place, London'. Below this, there are two columns of text. The left column is titled 'Contact Information' and lists Clark Cunningham as the NIFTEP Director and Tiffany Williams Roberts as the Deputy Director, with their respective phone numbers and email addresses. The right column is titled 'National Institute for Teaching Ethics and Professionalism' and describes the institute as a consortium of six nationally-recognized law school programs. It lists these programs: The Experiential Advantage at Stur姆 College of Law, University of Denver; The Louis Stein Center for Law & Ethics at Fordham University School of Law; The W. Lee Burge Endowment for Law & Ethics at the Georgia State University College of Law; The Center on the Global Legal Profession at the Maurer School of Law, Indiana University-Bloomington; The Center for Legal Ethics and Professionalism at the Walter F. George School of Law, Mercer University School of Law; and The Holloran Center for Ethical Leadership in the Professions at the University of St. Thomas School of Law in Minneapolis. It also states that NIFTEP conducts national and international workshops and lists other projects like the International Forum on Teaching Legal Ethics and Professionalism.

NIFTEP | National Institute for Teaching Ethics & Professionalism

Home Workshops Burge Conference International Forum on Teaching Legal Ethics and Professionalism Advisory Board Contact

Summer 2014 Workshop
City Law School, Gray's Inn Place, London

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National Institute for Teaching Ethics and Professionalism
The National Institute for Teaching Ethics and Professionalism is a consortium of the following six nationally-recognized law school programs on ethics and professionalism:

- The Experiential Advantage at the Stur姆 College of Law, University of Denver
- The Louis Stein Center for Law & Ethics at Fordham University School of Law
- The W. Lee Burge Endowment for Law & Ethics at the Georgia State University College of Law
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NIFTEP conducts national and international workshops that bring together leading academics and practitioners involved in teaching legal ethics and promoting professionalism.

Other NIFTEP projects include the International Forum on Teaching Legal Ethics and Professionalism, a user-driven online community and resource library for ethics teachers, scholars, and practitioners worldwide.

2014 Values Survey of 167 English Lawyers

www.jubileecentre.ac.uk

- You work in a law firm and the Partner supervising you gives you some files to get ready for sending bills to clients.
- She asks you to total the number of hours you have spent on each file and specifically directs you to 'round up' your hours to the next hundred in each file, saying that, on average, clients are happy because the main thing they demand is quality work.

2014 Values Survey of 167 English Lawyers

- You know that these clients are more or less satisfied with the firm and are unlikely to question the bills.
- You are uncomfortable with rounding up the hours billed to the clients and, feeling that your supervisor is not about to debate the issue with you, share your concerns with another Partner.

2014 Values Survey of 167 English Lawyers

- This Partner gives you a clear indication that he does not want to be troubled with this matter but says, "if you feel strongly about this, put your concerns in writing to me."

Set your clicker to Channel 20

- Push “Ch”
- Then 2 0
- Then “Ch” again
- Light should be steady green

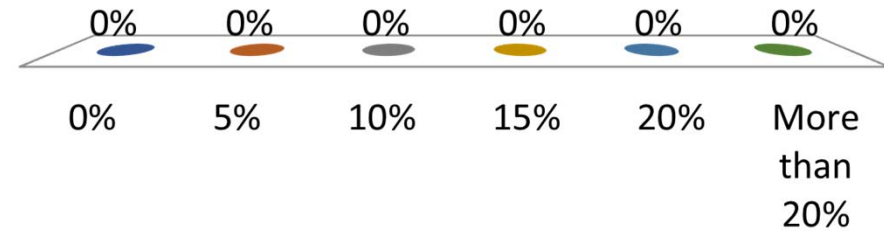


Survey of 167 English Lawyers

- “She asks you to total the number of hours you have spent on each file and specifically directs you to 'round up' your hours to the next hundred in each file”
- What percentage of lawyers said they would carry out the first partner's instructions to round up the hours?

What percentage of lawyers said they would carry out the instructions to round up the hours?

- A. 0%
- B. 5%
- C. 10%
- D. 15%
- E. 20%
- F. More than 20%



Survey of 167 English Lawyers

- What percentage of lawyers said they would carry out the first partner's instructions to round up the hours?

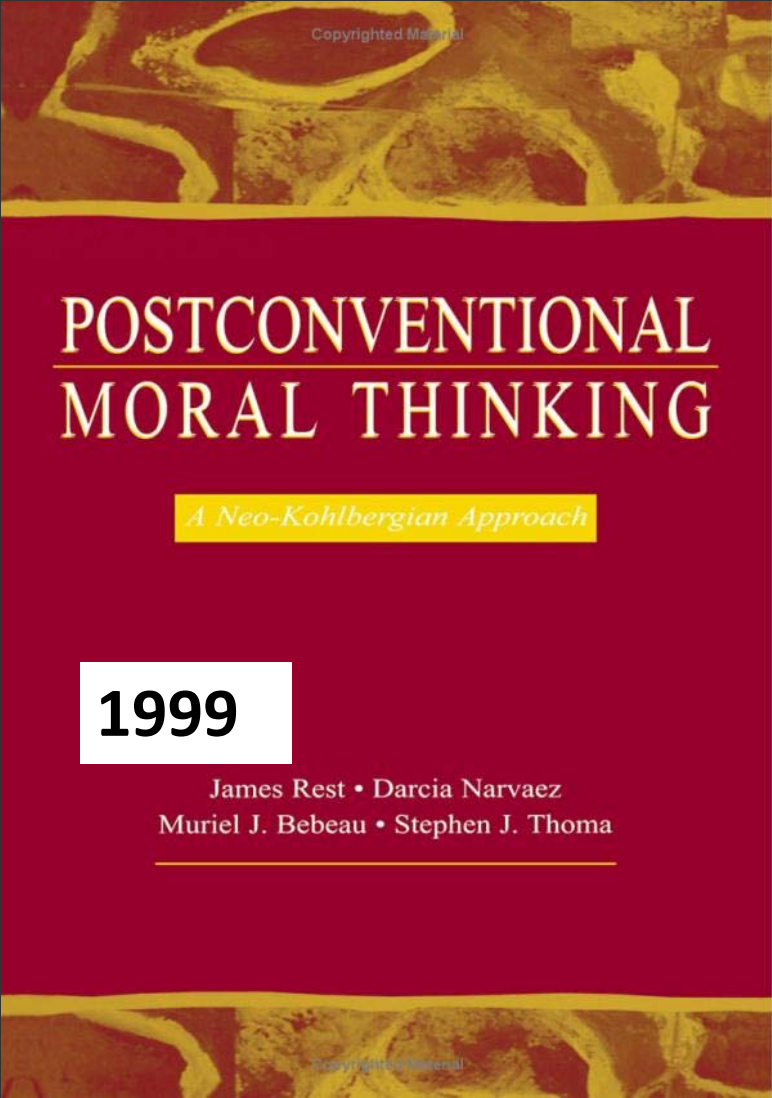
- 16%

- 1 out of 7 lawyers

*Guided by Theory, Grounded in Evidence:
A Way Forward for Professional Ethics Education*

Presented at the Spring 2009 Workshop of the
National Institute for Teaching Ethics & Professionalism

Muriel J. Bebeau, PhD
Professor, School of Dentistry
Director, Center for the Study of Ethical
Development
University of Minnesota



44th ABA Conference on Professional Responsibility

Measuring Professionalism

Four Component Model of Professional Conduct (FCM) (adapted from NIFTEP presentations by Muriel Bebeau)

Moral Blindness

Faulty Reasoning

Inadequate Moral Motivation

Ineffectiveness

Professional Misconduct



FCM1: Moral Blindness

- Lawyer discovers prior error in putting together complex transaction that potentially reduces value of deal for client by more than \$400,000
- Does not realize 1.7 Conflict of Interest applies
- Significant risk that the representation of client will be materially limited by the lawyer's responsibilities
 - to a third person (the lawyer's firm)
 - or by a personal interest of the lawyer (malpractice liability, discipline, reputation, future at the firm)

FCM2: Faulty Reasoning

- Lawyer discovers prior error in putting together complex transaction that potentially reduces value of deal for client by more than \$400,000
- “Reasons” that error need not be disclosed to client if firm can “fix” the mistake

FCM3: Inadequate Moral Motivation (Commitment to Professional Values)

- Lawyer discovers prior error in putting together complex transaction that potentially reduces value of deal for client by more than \$400,000
- Unwilling to risk self or firm by candid discussion of prior error with client

FCM4: Ineffective Implementation

- Lawyer discovers prior error in putting together complex transaction that potentially reduces value of deal for client by more than \$400,000
- Attempts to obtain consent for continued representation from client but it's not informed consent
- Model Rule 1.0 definition of informed consent:
 - “the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct”

Rounding up Errors - FCM1: Moral Blindness

- “I have already raised my concerns with someone, but they seem to see the issue as trivial.”
- “Doing this is common practice in my firm, as the Partner explained.”

Rounding up Errors – FCM2: Faulty Reasoning

- “I respect the authority of my supervising partner.”
- “I should round up the hours out of loyalty to my employer.”

Rounding up Errors – FCM3: Moral Motivation Commitment to Professional Values

- “If I do not do this, it will harm my relationship with my supervising partner.”
- “Antagonizing my supervisor will damage my career.”

Four Component Model of Professional Conduct

Moral Capacity

Operational Definition

Moral Sensitivity

- identify moral issues in real-life settings

Moral Reasoning

- analyze moral issues and provide justifications decisions

Moral Motivation

- internalize and give priority to professional values

Moral Implementation

- effective interaction and problem solving

Effective Professional Conduct

68 Mercer Law Review 591 (2017)

**Educational Programs for
Professional Identity Formation:
The Role of Social Science
Research**

by Muriel J. Bebeau*

Stephen J. Thoma**

and Clark D. Cunningham***

I. INTRODUCTION

This Article on the use of social science research to design, implement, and assess educational programs for the development of professional identity has its origins in the opening presentation made at the 17th Annual Georgia Symposium on Professionalism and Legal Ethics, held on October 7, 2016 at Mercer Law School on the topic “Educational Interventions to Cultivate Professional Identity in Law Students.”¹ The Mer-

John Berry

- Legal Division Director for the Florida Bar
 - supervises lawyer regulation and
 - the Professionalism Center of the Professionalism Commission of the Florida Supreme Court and Florida Bar
- Established Florida Lawyer's Assistance, Inc
- Commission on Lawyer Assistance Program's National Meritorious Service Award for commitment to lawyer assistance programs
- Past chair Standing Committee on Professionalism
- In 2001 received Michael Franck Award
- Former Executive Director, State Bar of Michigan
- Former Director, Professionalism Programs, University of Florida College of Law
- Past President of National Organization of Bar Counsel
 - Liaison for the Special Task Force Report on Health and Well-Being
 - Over 25 years NOBC delegate to ABA House of Delegates

76 Journal of the American College of Dentists 50 (2009)

REMEDICATION PROGRAM FOR DENTISTS PROVIDES DATA ON MORAL DEVELOPMENT IMPORTANT TO ALL PROFESSIONS

Clark D. Cunningham, JD

ABSTRACT

A law school professor recounts the results of Dr. Bebeau's two papers, reporting on her remedial ethics program for oral health professionals who have been referred by the State Dental Board for breaches of professional conduct.

Muriel Bebeau's two-part report on the results of her remedial ethics course for dental professionals in Minnesota found to have violated the rules of professional conduct (Bebeau, 2009a, 2009b) should be of great interest to disciplines other than dentistry, not only because it describes an effective remediation program that could be adapted to other professions, but even more importantly because it provides significant evidence as to the value of empirical research in moral psychology for both designing and assessing ethical education for professionals. Bebeau has been a pioneer in

more than 17 points lower on a test of ethical reasoning and judgment designed by Bebeau specifically for dental professionals (Bebeau, 2002; Bebeau & Monson, 2008).

At the time of referral, the remediating professionals also completed the Role Concept Essay (RCE), designed to elicit the participant's perception of his or her role as a professional; the resulting scores help to measure the development of the kind of professional identity which motivates commitment to ethical standards (the third FCM capacity). On a scale where the maximum possible score was 12, the average RCE score of the

Adapted from NIFTEP presentations by Muriel Bebeau

Moral Sensitivity	Moral Reasoning	Moral Motivation	Moral Implementation
	Outcome	Measures	
<i>Dental Ethical Sensitivity Test</i>	<i>Defining Issues Test Dental Ethical Reasoning & Judgment Test</i>	<i>Identity Essays</i> <i>(Robert Kegan theory of identity development)</i>	<i>Observation clinical interaction simulations</i>

FCM2: Moral Reasoning -- The Defining Issues Test

HEINZ AND THE DRUG: Should Steal Can't Decide Should not steal

<p>GREAT MUCH SOME LITTLE NO</p>	<p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 1. Whether a community's laws are going to be upheld.</p> <p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 2. Isn't it only natural for a loving husband to care so much for his wife that he'd steal?</p> <p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 3. Is Heinz willing to risk getting shot as a burglar or going to jail for the chance that stealing the drug might help?</p> <p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 4. Whether Heinz is a professional wrestler, or has considerable influence with professional wrestlers.</p> <p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 5. Whether Heinz is stealing for himself or doing this solely to help someone else.</p> <p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 6. Whether the druggist's rights to his invention have to be respected.</p> <p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 7. Whether the essence of living is more encompassing than the termination of dying, socially and individually.</p> <p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 8. What values are going to be the basis for governing how people act towards each other.</p> <p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 9. Whether the druggist is going to be allowed to hide behind a worthless law which only protects the rich anyhow.</p> <p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 10. Whether the law in this case is getting in the way of the most basic claim of any member of society.</p> <p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 11. Whether the druggist deserves to be robbed for being so greedy and cruel.</p> <p><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/><input type="radio"/> 12. Would stealing in such a case bring about more total good for the whole society or not.</p>
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Most important item	<input type="radio"/> 1 <input type="radio"/> 2 <input type="radio"/> 3 <input type="radio"/> 4 <input type="radio"/> 5 <input type="radio"/> 6 <input type="radio"/> 7 <input type="radio"/> 8 <input type="radio"/> 9 <input type="radio"/> 10 <input type="radio"/> 11 <input type="radio"/> 12
Second most important	<input type="radio"/> 1 <input type="radio"/> 2 <input type="radio"/> 3 <input type="radio"/> 4 <input type="radio"/> 5 <input type="radio"/> 6 <input type="radio"/> 7 <input type="radio"/> 8 <input type="radio"/> 9 <input type="radio"/> 10 <input type="radio"/> 11 <input type="radio"/> 12
Third most important	<input type="radio"/> 1 <input type="radio"/> 2 <input type="radio"/> 3 <input type="radio"/> 4 <input type="radio"/> 5 <input type="radio"/> 6 <input type="radio"/> 7 <input type="radio"/> 8 <input type="radio"/> 9 <input type="radio"/> 10 <input type="radio"/> 11 <input type="radio"/> 12
Fourth most important	<input type="radio"/> 1 <input type="radio"/> 2 <input type="radio"/> 3 <input type="radio"/> 4 <input type="radio"/> 5 <input type="radio"/> 6 <input type="radio"/> 7 <input type="radio"/> 8 <input type="radio"/> 9 <input type="radio"/> 10 <input type="radio"/> 11 <input type="radio"/> 12

FCM2: Moral Reasoning
41 Disciplined Dentists compared to
dental students at U Minn at graduation

Defining Issues Test
14 points lower

Dental Ethical Reasoning & Judgment Test
17 points lower

*FCM3: Moral Motivation/Internalization of
Professional Values*

Role Concept Essay

Maximum score is 12

***Average score for disciplined
dentists was 3.8***

FCM3: Moral Motivation/Internalization of Professional Values

Majority failed to mention:

Any responsibility to abide by code of ethics

To place interest of patient before self

To engage in lifelong learning

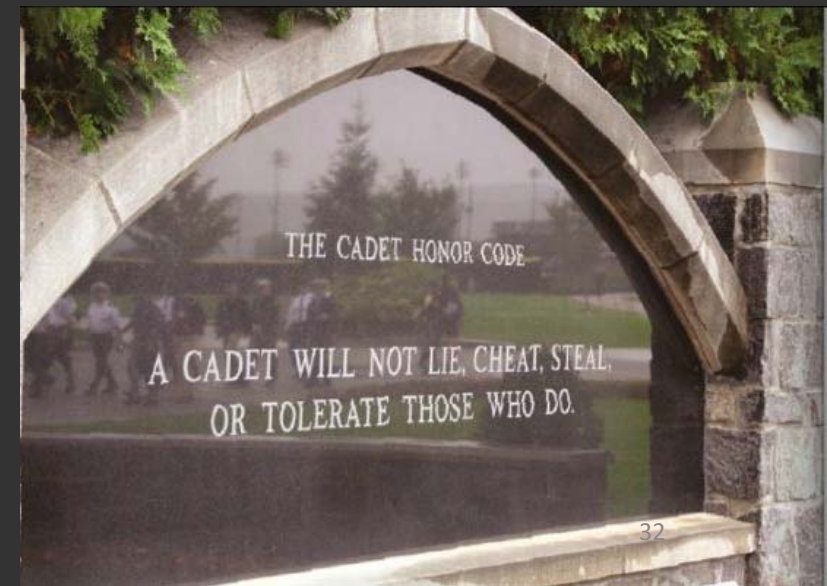
2 dentists in same practice

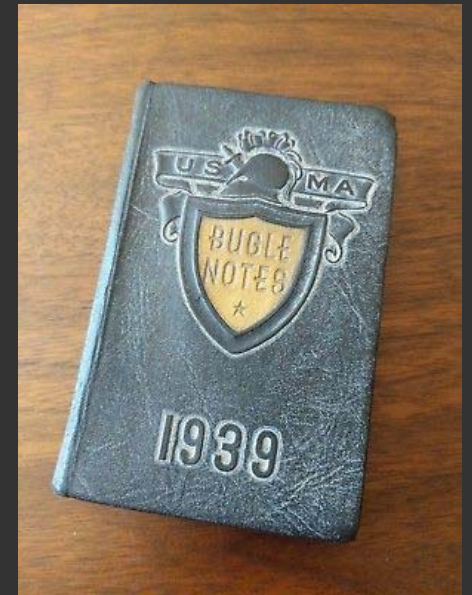
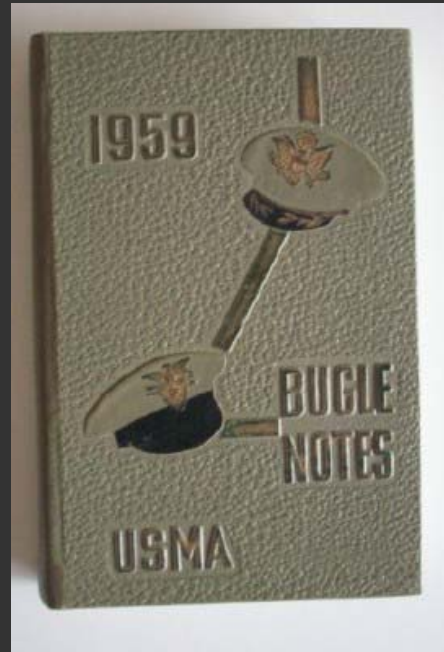
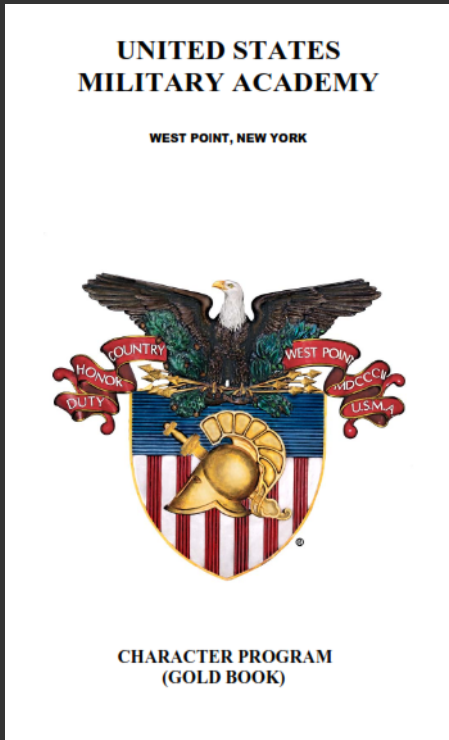
Dental assistants doing prohibited duties

- Junior dentist with low moral sensitivity (FCM 1)
 - Was not aware this was a prohibited practice
- Senior dentist with low moral reasoning (FCM 2)
 - Was aware that it was a prohibited practice
 - But “justified” doing this because he could identify other high status practitioners who also did it

Benjamin Grimes

- Deputy Director, Professional Responsibility Advisory Office, US Department of Justice.
- Retired as a Lieutenant Colonel from the US Army after serving more than twenty years in uniform
- At time of retirement served as the Deputy Staff Judge Advocate (Deputy Legal Advisor) at the Army Intelligence and Security Command
- Previously served as an Associate Professor and Vice Chair of Criminal Law at The Judge Advocate General's Legal Center & School
 - one of two faculty members primarily responsible for teaching ethics and professional responsibility
- After graduating from the West Point, began his military career as a helicopter pilot
 - and served in Alabama, Kentucky, and South Korea.
- He was selected for the Army's Funded Legal Education Program
 - and joined the Army Judge Advocate General's Corps in 2003
 - serving as an Administrative Law Attorney and Trial Counsel (military prosecutor) in Germany
 - and Senior Trial Counsel for Multi-National Corps—Iraq in Baghdad, Iraq
- Following his deployment, served as Trial Defense Counsel and Judge Advocate Recruiting Officer
- After earning his LL.M. assumed duties as Senior (Supervisory) Defense Counsel for Joint Base Lewis-McChord, in Washington





The Evolving Professional Identity



Robert Kegan, The Evolving Self (1982)

Hamilton, Monson & Organ, 10 UNIV. ST. THOMAS L. J. 11 (2012)

Kegan's Stages of Identity Formation in the Professions

Instrumental Mind (Stage 2): Views self in terms of own interests and desires, is egocentric; thinking is concrete, black and white (adolescence and early adulthood).

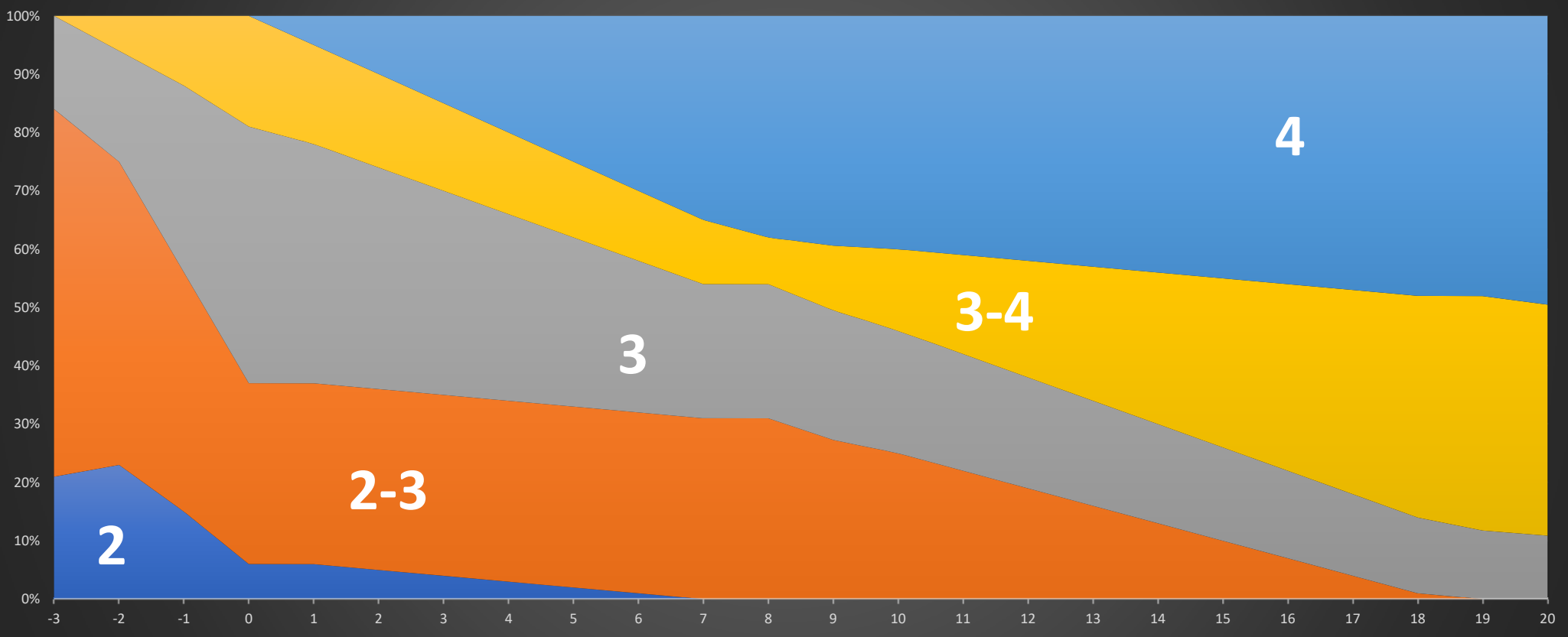
Socialized Mind (Stage 3): Characterized by increased shared interconnections, values, and mutual expectations. Can be idealistic and internally self-reflective, but the self can be subsumed within the social surrounding of peers, friends, spouse, or family (some adolescents and most adults are in this stage).¹⁶³

Self-Authored Mind (Stage 4): Hallmarked by a self-defined system of values that can be distinct from one's social groups. Is increasingly self-reflective and intentional in examining the sources of one's understanding. Can self-define as a professional with a moral core of responsibility and service to others.

Self-Transforming Mind (Stage 5): Characterized by the ability to examine the limitations of one's self-authored personal authority, recognize the limits of any one system of constructing meaning, and seek out novel or alternative systems. Increasing recognition of the interdependencies of different systems or ways of understanding the self and the professional role.

Kegan Developmental Level Scores	USMA Freshman (N=38)	USMA Sophomores (N=52) (LN=34)	USMA Seniors (N=32) (LN=20)	CGSC Students (N=13)	Senior Service College (N=28)
2	8 (21%)	12 (23%)	2 (6%)		
2-3 Transition	24 (63%)	27 (52%)	10 (31%)	4 (31%)	
3	6 (16%)	10 (19%)	14 (44%)	3 (23%)	3 (11%)
3-4 Transition		3 (6%)	6 (19%)	1 (8%)	11 (40%)
4				5 (38%)	14 (50%)

Distribution of Kegan Type Across USMA Cadet and Army Officer Cohorts (Extrapolated)



FCM 3: Moral Motivation Professional Identity Formation

- Professional Identity Essay
 - advanced version of Role Concept Essay used by Bebeau to assess discipline dentists, adapted by Hamilton, Monson & Organ to law students
- “When you become a lawyer, what would be the worst thing for you if you failed to live up to the expectations you set for yourself?”

GSU: The Client Relationship Course

- 3 credit option for satisfying PR requirement
- Team-based learning
- Simulated client meetings
- Case studies of real lawyers coping with ethical dilemmas
- 40% Paper: “what would you do”

34 students

- Before first class and at end of semester
 - “When you become a lawyer, what would be the worst thing for you if you failed to live up to the expectations you set for yourself?”
 - Caveat: not anonymous
- 9 out of 34 responses seemed to indicate positive development on the Kegan scale

Assume that no rule or law requires lawyers to report suspected child abuse

Also assume relevant rules about confidentiality give lawyers discretion to report suspected child abuse.

- Your client hired you 10 days ago to file a lawsuit against her husband seeking an order of protection because the husband has a drinking problem and frequently beats her.
- The court issued a temporary order removing the husband from the home and prohibiting him from having any contact with your client and her two children.

Assume that no rule or law requires lawyers to report suspected child abuse
Also assume relevant rules about confidentiality give lawyers discretion to report suspected child abuse.

- The judge scheduled a court hearing for tomorrow at 10:00 a.m. at which the judge will decide whether to end or continue the temporary order.
- Yesterday, your client called you to say that she has decided to drop her lawsuit and let her husband move back in to the house but she is willing to meet you at the courthouse in the morning if you'd like to talk to her in person.

Assume that no rule or law requires lawyers to report suspected child abuse

Also assume relevant rules about confidentiality give lawyers discretion to report suspected child abuse.

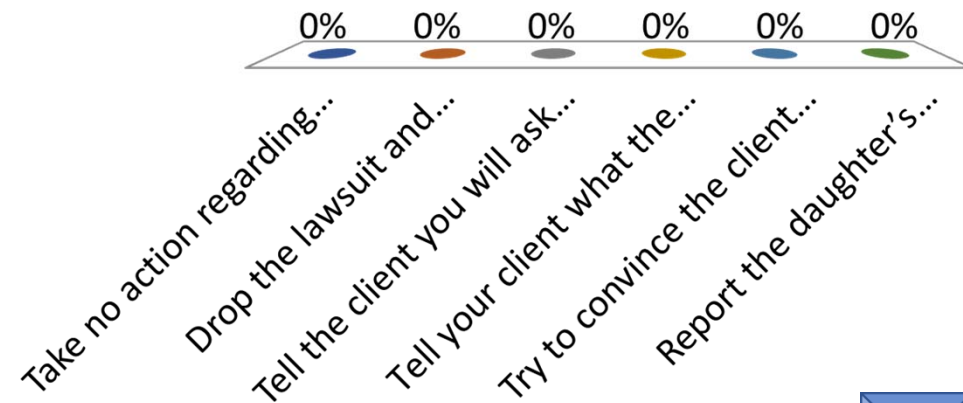
- Five minutes ago, your client's 12 year-old daughter called you very upset after learning that her mother is thinking about letting her father move back into the house.
- The daughter told you that when he gets drunk her father also beats her and her two year-old brother.
- You are meeting your client tomorrow morning at 9:30 a.m. at the courthouse to prepare for the hearing at 10:00 a.m.
- What will you do?

What are best and worst options?

- 1: Take no action regarding the daughter's allegation and drop the lawsuit as instructed.
- 2: Drop the lawsuit and report the daughter's allegations to the local social service agency.
- 3: Tell the client you will ask the court's permission to withdraw from the representation if she continues to instruct you to drop the lawsuit.
- 4: Tell your client what the daughter has told you and ask her to reconsider whether to drop the lawsuit.
- 5: Try to convince the client to proceed with the hearing without telling the client about the daughter's allegations.
- 6: Report the daughter's statements to the court.

What is the best option?

1. Take no action regarding the daughter's allegation and drop the lawsuit as instructed.
2. Drop the lawsuit and report the daughter's allegations to the local social service agency.
3. Tell the client you will ask the court's permission to withdraw from the representation if she continues to instruct you to drop the lawsuit.
4. Tell your client what the daughter has told you and ask her to reconsider whether to drop the lawsuit
5. Try to convince the client to proceed with the hearing without telling the client about the daughter's allegations.
6. Report the daughter's statements to the court.



What is the worst option?

1. Take no action regarding the daughter's allegation and drop the lawsuit as instructed.
2. Drop the lawsuit and report the daughter's allegations to the local social service agency.
3. Tell the client you will ask the court's permission to withdraw from the representation if she continues to instruct you to drop the lawsuit.
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