

# LEARNING PROFESSIONAL RESPONSIBILITY FOR THE PRACTICE OF LAW: THE WAY FORWARD

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Extensive resources for teaching legal ethics and professionalism are now available on-line. A useful starting point is the *International Forum on Teaching Legal Ethics & Professionalism*, a user-driven online community of over 500 ethics teachers, scholars, and practitioners worldwide that contains a resource library of not only articles and book chapters but also conference materials, reports, and an increasingly comprehensive directory of rules regulating both legal practice and legal education from around the world, available at [www.teachinglegalethics.org](http://www.teachinglegalethics.org). This website is now in the process of archiving presentations from six International Legal Ethics Conferences sponsored by the International Association of Legal Ethics. See [www.teachinglegalethics.org/category/other-topics/ilec](http://www.teachinglegalethics.org/category/other-topics/ilec). Materials and webcasts from twelve workshops of the National Institute for Teaching Ethics & Professionalism are available at [www.niftep.org](http://www.niftep.org). See also Course Portfolios and conference materials posted by *Educating Tomorrow's Lawyers* at <http://educatingtomorrowlawyers.du.edu/> and 39 applications (with supporting materials) submitted in 2004, 2005 and 2006 for the National Award for Innovation and Excellence in Teaching Professionalism co-sponsored by the American Bar Association (ABA) Standing Committee on Professionalism and Conference of Chief Justices, available at <http://clarkcunningham.org/Professionalism/Award-Home.htm>. Print resources include Deborah L. Rhode, *Annotated Bibliography of Educational Materials on Legal Ethics*, 11 GEO. J. LEGAL ETHICS 1029 (1997 – 1998); a number of law review symposia on teaching legal ethics (see [www.teachinglegalethics.org/symposia-teaching-ethics](http://www.teachinglegalethics.org/symposia-teaching-ethics)); specialty journals on legal ethics, the legal profession, and legal education (see [www.teachinglegalethics.org/journals-teaching-and-ethics](http://www.teachinglegalethics.org/journals-teaching-and-ethics)); and a wide variety of reports by academics and bar organizations; see especially Andrew Boon, LEGAL ETHICS AT THE INITIAL STAGE: A MODEL CURRICULUM (Report prepared for the Education & Training Committee of the Law Society of England & Wales 2010) available at [www.teachinglegalethics.org/ModelEthicsCurriculum](http://www.teachinglegalethics.org/ModelEthicsCurriculum); Kim Economides & Justine Rogers, PREPARATORY ETHICS TRAINING FOR FUTURE SOLICITORS (2009) available at [www.teachinglegalethics.org/economides-rogers-report](http://www.teachinglegalethics.org/economides-rogers-report); and James Arthur et al, VIRTUOUS CHARACTER FOR THE PRACTICE OF LAW: RESEARCH REPORT (2014) available at [www.jubileecentre.ac.uk/1553/projects/gratitude-britain/virtuous-character-law](http://www.jubileecentre.ac.uk/1553/projects/gratitude-britain/virtuous-character-law); and see generally [www.teachinglegalethics.org/content/reports-and-studies](http://www.teachinglegalethics.org/content/reports-and-studies)

A course in legal ethics, typically called “Professional Responsibility,” has been a required component of the curriculum in US law schools for over thirty years; at many schools it is the only required course after the first year. The influential 2007 report from the Carnegie Foundation for the Advancement of teaching, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (“CARNEGIE REPORT”)*,<sup>2</sup> describes the traditional approach to this course as limited to teaching “The Law of Lawyering”: “Students learn the profession’s ethical code as represented in the [American Bar Association] Model Rules [of Professional Conduct], how those rules have been interpreted and applied, and the circumstances under which sanctions have been imposed. ... Often these courses are structured around legal cases that concern alleged violations of the Model Rules. Students apply their analytical skills to these cases, approaching them in much the same way they have learned to approach challenging legal cases in torts or contracts.”<sup>3</sup> Learning professional responsibility only in terms mastering a set of rules imposed on practitioners by courts or other regulatory bodies, however, is increasingly viewed as unsatisfactory for both teachers and students<sup>4</sup> and as inadequate preparation for practice. Even worse, many educators, prompted by the critiques in the Carnegie Report, are coming to the conclusion that the traditional approach may potentially harm students, and the lawyers they will become, by:

- limiting the ability to identify ethical problems as they actually arise in practice and creating tunnel vision about what constitutes issues of professional responsibility;
- encouraging immature moral reasoning when faced with issues of complexity that require resolution of conflicting interests and values;
- failing to connect the hard choices implicated by professional responsibility with the need to develop a well-internalized professional identity that honors the public duties of the profession and puts service to others above self-interest; and
- obscuring the reality that professional responsibility requires not only sound ethical choices but also a wide range of competencies necessary to implement such choices effectively.

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<sup>2</sup> William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, & Lee S. Shulman, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

<sup>3</sup> CARNEGIE REPORT 148. Many professional responsibility teachers endeavor to do more than just teach the “law of lawyering,” but even the most innovative report that they struggle against the dominance of the law of lawyering paradigm, which is reinforced by student hostility if they perceive they are being forced to take a class that is not “a real law school course,” exacerbated by student anxiety over passing the multiple choice Multistate Professional Responsibility Examination (MPRE) which is required for bar admission in most states. The MPRE is the only component of the bar examination process that can be taken during law school, creating intense pressure for the professional responsibility course to be a “bar prep” class. Ironically, the ABA accreditation standard which gave rise to the required professional responsibility course has always had much broader goals than just mastering rules of conduct. *See, e.g.* ABA Standard 302(a)(5) (2010) (requiring “substantial instruction in ... the history, goals, structure, values, rules and responsibilities of the legal profession and its members”). An accreditation interpretation that such “substantial instruction” must include “the law of lawyering and the Model Rules of Professional Conduct of the American Bar Association,” Interpretation 302-9, *id.*, has disappeared from the new ABA standards adopted in 2014.

<sup>4</sup> Bruce Green, *Less is More: Teaching Legal Ethics in Context*, 39 WM. & MARY L. REV. 357 (1998) (“teaching professional responsibility traditionally has presented an intractable problem”).

Both an opportunity and incentive for radical improvement in teaching professional responsibility in the US came into being on August 12, 2014, when the American Bar Association (ABA) House of Delegates concurred in major changes to accreditation standards for law schools promulgated by the ABA's Legal Education Section Council (which is the official accrediting agency). American law schools will be required for the first time as a condition of continued accreditation to establish specific learning outcomes and to evaluate on an ongoing basis the "degree of student attainment of competency" in these outcomes.<sup>5</sup> Although law schools are generally given flexibility to define their own learning outcomes, the new standards specifically require that those outcomes must include competency in the "exercise of proper professional and ethical responsibilities to clients and the legal system."<sup>6</sup> This outcome requirement is distinct and in addition to an "input" requirement that each student satisfactorily complete one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members."<sup>7</sup> Another "input" standard requires that each student complete at least six credit hours of experiential learning further specifies that if an experiential course is counted toward this requirement, it must "integrate doctrine, theory, skills, and *legal ethics*."<sup>8</sup>

Such new accreditation standards force law schools to ask what their graduates can *do* and not merely what they *know*. What then would "competency" in professional responsibility look like? According to the Carnegie Report: "Law school graduates . . . need *the capacity to recognize* the ethical questions their cases raise, even when those questions are obscured by other issues and therefore not particularly salient. They need *wise judgment* when values conflict, as well as the *integrity* to keep self-interest from clouding their judgment."<sup>9</sup>

This description of educational outcomes, which might seem hopelessly aspirational at first glance, is in fact derived by the authors of the Carnegie Report from extensively validated social

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<sup>5</sup> American Bar Association STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standards 302, 314 *available at* [www.americanbar.org/groups/legal\\_education/resources/standards.html](http://www.americanbar.org/groups/legal_education/resources/standards.html). [hereinafter ABA Standards].

These accreditation requirements and others discussed below become mandatory starting academic year 2016-17. A number of other countries have been ahead of the US in moving to a learning outcomes approach to curricular design. See in particular BACHELOR OF LAWS: LEARNING AND TEACHING ACADEMIC STANDARDS STATEMENT (Australian Learning and Teaching Council 2010) (endorsed by the Council of Australian Law Deans Nov. 2010) *available at* [www.teachinglegalethics.org/australian-learning-outcomes-law](http://www.teachinglegalethics.org/australian-learning-outcomes-law). ("Threshold Learning Outcome 2: Ethics and professional responsibility. Graduates of the Bachelor of Laws will demonstrate: a) an understanding of approaches to ethical decision-making, b) an ability to recognise and reflect upon, and a developing ability to respond to, ethical issues likely to arise in professional contexts, c) an ability to recognise and reflect upon the professional responsibilities of lawyers in promoting justice and in service to the community, and d) *a developing ability to exercise professional judgement*") (emphasis added) (the author was an international member of the Expert Advisory and Discipline Reference Group for this project); Maxine Evers, Leanne Houston & Paul Redmond, GOOD PRACTICE GUIDE (BACHELOR OF LAWS): ETHICS AND PROFESSIONAL RESPONSIBILITY (THRESHOLD LEARNING OUTCOME 2) (2011) (implementation of new threshold learning outcomes for ethics and professional responsibility for Australian law schools) *available at* [www.teachinglegalethics.org/australian-good-practice-guide](http://www.teachinglegalethics.org/australian-good-practice-guide);

<sup>6</sup> ABA Standard 302(c).

<sup>7</sup> ABA Standard 303(a)(1). Prior accreditation standards required the same instructional content but did not specify a minimum number of credit hours of instruction nor that instruction be delivered as "a course."

<sup>8</sup> Standard (a)(3)(i)(emphasis added).

<sup>9</sup> EDUCATING LAWYERS at 146 (emphasis added).

science research which has been used by other disciplines to design and assess ethics education - an approach termed “Guided by Theory, Grounded in Evidence.”<sup>10</sup>

### The Four Component Model

The social science research relied upon in the Carnegie Report has been led by the Center for the Study of Ethical Development (Center), established in 1982 at the University of Minnesota with James Rest as its first research director, and currently housed at University of Alabama with Stephen Thoma as its Executive Director.<sup>11</sup> The Center’s research was first applied to design a comprehensive ethics program for professional education by Muriel Bebeau, who served as the Center’s Research Director after Rest, and implemented by her at the University of Minnesota’s school of dentistry over the past 30 years. Bebeau’s curriculum has been widely adopted throughout American dental education and adapted for use in a number of other disciplines.

The central theory that guides Bebeau’s educational design is the “Four Component Model” developed by Rest for explaining how cognition, affect and social dynamics interact to influence moral behavior.<sup>12</sup> This “FCM” model identifies four different possible reasons why a well-intentioned professional might nonetheless engage in unprofessional conduct:

- 1) missing the moral issue;
- 2) defective moral reasoning;
- 3) insufficient moral motivation;
- 4) ineffective implementation.

The model then defines four corresponding capacities for conduct that would be deemed appropriate by professional norms; each capacity is necessary for professional responsibility, but none by itself is sufficient:

- 1) moral sensitivity that can interpret the need for a moral decision;
- 2) mature ethical reasoning that can reach a morally defensible decision;
- 3) identity formation that will support the prioritization of the moral decision over competing interests;
- 4) effectiveness in implementing the moral decision.

Because the FCM model supports the use of well-validated measures for assessing the effectiveness of ethics education, it will be very useful to law schools that are moving to an outcome based approach to curriculum design, as US law schools are now being compelled to do

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<sup>10</sup> Muriel J. Bebeau & Verna E. Monson, *Guided by Theory, Grounded in Evidence: A Way Forward for Professional Ethics Education*, in Darcia Narvaez & Larry Nucci (eds.), *HANDBOOK ON MORAL AND CHARACTER EDUCATION* (2008) (hereinafter *Guided by Theory*).

<sup>11</sup> The Center for the Study of Ethical Development, <http://ethicaldevelopment.ua.edu/> The Holloran Center for Ethical Leadership in the Professions at the University of St. Thomas School of Law in Minneapolis has played a key role in applying the Center’s work to legal education. <http://www.stthomas.edu/hollorancenter/>.

<sup>12</sup> *Guided by Theory* at 557-560; see also Neil Hamilton & Verna Monson, *Legal Education’s Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student’s Professional Formation (Professionalism)*, 9 UNIV. ST. THOMAS L. J. 325, 346-49 (2012).

by new accreditation standards.<sup>13</sup> The Four Component Model offers a way forward grounded in social science theory and tested by empirical research that provide methods for both teaching and measuring learning outcomes.<sup>14</sup>

### The First Component: Moral Sensitivity

According to the Carnegie Report, Law of Lawyering courses typically fail to develop the first FCM capacity: “to notice moral issues when they are embedded in complex and ambiguous situations, as they usually are in actual legal practice.”<sup>15</sup> Even more seriously “when legal ethics courses focus exclusively on teaching students what a lawyer can and cannot get away with, they inadvertently convey a sense that knowing this is all there is to ethics. ... [Thus] [b]y defining ‘legal ethics’ as narrowly as most legal ethics course is do, these courses are likely to limit the scope of what graduates perceive to be ethical issues.”<sup>16</sup> Moral sensitivity in the context of professional practice does require knowledge of the profession’s norms,<sup>17</sup> so learning the content and applications of the Rules of Professional Conduct and other components of the “law of lawyering” is a *necessary* condition for developing the first FCM capacity; such learning however is not by itself *sufficient* for becoming a morally sensitive lawyer. Equally critical is the ability to engage imaginatively as a situation unfolds, constructing various possible scenarios, often with limited cues and partial information, combined with the ability to foresee realistic cause-consequence chains of events.<sup>18</sup> Therefore, both teaching and assessment strategies must avoid reliance on “predigested” or already interpreted fact scenarios, such as appellate decisions or casebook problems that identify the conduct rule to be applied (typically when the rule is complicated, vague or ambiguous thus engaging only conventional law school analytic skills). A well-constructed problem for developing ethical sensitivity should “present clues to a problem for the protagonist without actually signaling what the problem is.”<sup>19</sup> Moral sensitivity often requires empathy and role-taking skills that elicit rather than interrogate the client’s perspective, thus involving both cognitive and affective processes.<sup>20</sup>

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<sup>13</sup> REVISED STANDARDS FOR APPROVAL OF LAW SCHOOLS, Standard 315.

<sup>14</sup> See Hamilton & Monson, *Legal Education’s Ethical Challenge* (summary of pedagogical approaches recommended by Sullivan, EDUCATING LAWYERS, and later Carnegie reports on professional education for medicine, nursing, engineering, or the clergy, correlated with empirical research showing how these educational methods develop one or more of the FCM capacities).

<sup>15</sup> Sullivan, EDUCATING LAWYERS 149.

<sup>16</sup> *Id.* See also Bruce Green, *Less is More: Teaching Legal Ethics in Context*, WM. & MARY L. REV., 1998, 39, 362 n. 29; Ann Southworth & Catherine Fisk, *Our Institutional Commitment to Teach about the Legal Profession*, 1 UC IRVINE L. REV. 73,76 (2011).

<sup>17</sup> Muriel J. Bebeau, *The Defining Issues Test and the Four Component Model: Contributions of Professional Education*, 31 J. MORAL EDUC. 279, 283 (2002).

<sup>18</sup> Muriel J. Bebeau, James R. Rest, & Catherine M. Yamoore, *Measuring Dental Students’ Ethical Sensitivity*, 49 J. DENTAL EDUC. 225 (1985).

<sup>19</sup> Hamilton & Monson, *Legal Education’s Ethical Challenge* 399. See Helena Whalen-Bridge, *Teaching Process: Ethics Method Project* (explaining meta-cognition approach used at large, introductory legal ethics classes at National University of Singapore in which students develop their own approaches to analyzing dilemmas without actually resolving them at that point), available at [www.teachinglegalethics.org/teaching-analysis](http://www.teachinglegalethics.org/teaching-analysis), webcast presentation available at [www.niftep.org/workshops/summer-2014-workshop](http://www.niftep.org/workshops/summer-2014-workshop).

<sup>20</sup> Hamilton and Monson therefore recommend instruction in communication skills, taking examples from medical pedagogy which have been shown by research to improve ability to take the patient’s perspective. *Id.* at 360. See

## The Second Component: Moral Reasoning

Based on over 25 years of research, psychologists affiliated with the Center for Study of Ethical Development have theorized that there are three structures in moral thinking development:

- 1) The Personal Interests Schema which prefers reasons based on avoiding harm, making reciprocal deals, and sustaining personal relationships;
- 2) The Maintaining Norms Schema which prefers reasons based on clear rules that maintain the social order;
- 3) The Postconventional Schema which prefer reasons based on ideals that transcend and can critique social norms.<sup>21</sup>

The Personal Interests Schema is typically dominant through early adolescence as individuals move from reasons based on harm avoidance through reciprocity to maintaining friendship. In late adolescence some shift to the Maintaining Norms Schema; the Postconventional Schema typically only begins to develop in young adults and seems to be promoted by post-secondary education.<sup>22</sup>

To assess the maturity of moral reasoning the Center for the Study of Ethical Development created an easily administered, and extensively validated, multiple-choice instrument, the Defining Issues Test (DIT), that presents ethical dilemmas and then measures the extent to which an individual prefers arguments based on personal interests, maintaining norms or post-conventional principles to resolve the dilemmas.<sup>23</sup> The Carnegie Report cites several studies showing that law students who completed a traditional professional responsibility course did not show significantly more sophisticated moral reasoning, as measured by DIT scores, at the end of the course than at the beginning; other studies show no improvement in DIT scores between the beginning and end of law school.<sup>24</sup> The Carnegie Report however goes on to state that “research

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*generally* Karen Barton, Clark D. Cunningham, Gregory Jones & Paul Maharg, *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 CLINICAL L. REV. 1 (2006)

<sup>21</sup> Bebeau & Monson, *Guided by Theory* 559. This approach is an evolution based on empirical research from the well-known theory of Lawrence Kohlberg that as individuals mature they pass through identifiable stages of moral development that can be identified by the type of moral reasoning typically used at that stage. James R. Rest, Darcia Narvaez, Stephen J. Thoma & Muriel J. Bebeau, *A Neo-Kohlbergian Approach to Morality Research*, 29 J. MORAL EDUC. 381 (2000). See James Rest and Darcia F. Narvaez, *Introduction in MORAL DEVELOPMENT IN THE PROFESSIONS 1-3* (James Rest and Darcia F. Narvaez, eds., 1994) (describing Kohlberg’s original six stages of moral reasoning); see also Steven Hartwell, *Promoting Moral Development Through Experiential Teaching*, 1 CLINICAL L. REV. 505, 506-22 (1994-95).

<sup>22</sup> Email correspondence from Steve Thoma on file with author.

<sup>23</sup> Bebeau, *Defining Issues Test*.

<sup>24</sup> Sullivan, *EDUCATING LAWYERS* 133-34. See also Bebeau, *Defining Issues Test* 273-81; Adrian Evans & Josephine Palermo, *Almost There: Empirical Insights into Clinical Method and Ethics Courses in Climbing the Hill towards Lawyers' Professionalism*, 17 GRIFFITH L. REV. (2008) (longitudinal study of 700 Australian law students from 21 law schools, finding that law schools have minimal impact on graduates’ values formation but insertion of personally challenging circumstances into hypothetical ethical scenarios can allow students to more clearly identify their preferred decisions and the values sets which motivated those decisions)

makes quite clear ... that specially designed courses in professional responsibility and legal ethics do support that development”.<sup>25</sup>

Presenting the legal ethics course in terms of learning how to avoid discipline or malpractice liability, or to develop and preserve a good reputation in the legal community, appeals merely to the reasoning of the immature Personal Interests Schema.<sup>26</sup> To develop more mature moral reasoning, students must struggle with complex problems in which the protagonist is a lawyer facing competing duties, responsibilities and rights that cannot be resolved by application of a rule: because (1) the rule is vague or grants discretion, (2) the problem is not addressed by a rule, or (3) most challenging, a decision may be justified that the rule ought not to be followed.<sup>27</sup> In an article published 20 years ago that deserved much greater attention, Steven Hartwell described how he designed an unconventional professional responsibility course which combined the pedagogies described above for promoting both moral sensitivity and moral reasoning; he administered the DIT at the beginning and end of the semester each time he taught with these methods and student DIT scores increased significantly.<sup>28</sup>

Bebeau and Stephen Thoma have also developed profession-specific measures of moral reasoning that better reflect the content of professional education by using “Intermediate Concepts” that represent basic professional norms – rather than the more abstract moral schemas measured by the DIT – but are not as specific as codes of professional conduct.<sup>29</sup>

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<sup>25</sup> Sullivan, EDUCATING LAWYERS 134.

<sup>26</sup> Reliance in professional responsibility pedagogy on the Personal Interests Schema is illustrated by the following statement: “I always start my professional responsibility classes by telling my students that the most important class law students will take is the course *on the law governing lawyers*. All the *other courses* make the students *better lawyers for their clients*. But professional responsibility *teaches them about protecting themselves*.” Lawrence J. Fox, *Ethics Bureau at Yale Combining Pro Bono Professional Responsibility Advice with Ethics Education*, 62 J. LEGAL EDUC. 551, 560 (2013) (emphasis added). (Fox has taught the professional responsibility course at Yale, Harvard and the University of Pennsylvania law schools and is co-author of a professional responsibility text book. The appeal to self-interest Fox makes to his students stands in striking contrast to his own long-time service to the legal profession and those in need: for example, he is the former chair of the American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility and received the ABA’s Pro Bono Publico Award in 2005 and the ABA’s Michael Franck Professional Responsibility Award in 2007.)

<sup>27</sup> See Hamilton & Monson, *Legal Education’s Ethical Challenge* 350, citing Bebeau, *Defining Issues Test* 273, 289.

<sup>28</sup> Hartwell, *Promoting Moral Development*. In Hartwell’s course very little time was spent discussing formal ethical rules or reported cases. Instead most of the course was built around extensive out-of-class attorney-client simulations; students were not told beforehand what ethical issues were raised by the exercises. Students then met in small groups to identify for themselves an ethical issue raised by the exercise, decided an appropriate course of action, and then were required to justify that action in terms of one or more moral principles. They were allowed to consult conduct rules for guidance but not to justify their decision. *Id.* at 522-23. A similar study of students in 2002 and 2004 produced comparable results. Steven Hartwell, *Moral Growth or Moral Angst? A Clinical Approach*, 11 CLINICAL L. REV. 115 (2004-2005). Hartwell and the other law school studies cited by the Carnegie Report measured development of moral reasoning in terms of how often students preferred the Postconventional Schema (called “the P score”). More recent research using the DIT also measures how often a subject prefers *either* the Postconventional or Maintaining Norms Schema over Personal Interests (“the N2 score”). See Hamilton, Monson & Organ, *Empirical Evidence* 50-53, 55-62 (reporting significant increases in N2 scores over course of three year program of instruction at the University of St. Thomas School of Law in Minneapolis).

<sup>29</sup> Muriel J. Bebeau & Stephen J. Thoma, “*Intermediate Concepts and the Connection to Moral Education*,” 11 EDUC. PSYCHOLOGY REV. 343 (1999). See also Muriel J. Bebeau, TEACHING AND ASSESSMENT MATERIALS FOR A DENTAL ETHICS COURSE DESIGNED TO FACILITATE THE DEVELOPMENT OF MORAL REASONING AND JUDGMENT, available at <http://ethicaldevelopment.ua.edu/>. Bebeau is consulting with law school members of the National

### The Third Component: Moral Motivation

“[L]eading the professional moral life is incredibly challenging”<sup>30</sup> due both to the complexity of professional practice and the many pressures to act, or fail to act, in ways that are inconsistent with what the individual understands to be the moral decision.<sup>31</sup> Competing influences include personal interests, such as desire for advancement and recognition, and peer pressure and economic forces to conform to workplace culture.<sup>32</sup> Perhaps even more corrosive to professional conduct are moral disengagement and the feeling that “someone else should do it.”<sup>33</sup>

“Understanding the self as responsible is at least part of the bridge between knowing the right thing and doing it.”<sup>34</sup> Social science research indicates that moral motivation is a function of how deeply moral values have penetrated an individual’s conception of self and identity.<sup>35</sup> Such commitment can be enhanced if the individual is developing a professional identity that incorporates into the construction of the self the purposes and public duties of the profession, such as placing the interests of the client, the justice system and the public before self-interest.<sup>36</sup>

Research has correlated the moral motivation component of the FCM with Robert Kegan’s life-span model of self-development,<sup>37</sup> finding evidence of stages in an evolving identity moving from (1) striving for individual achievement and approval from others to (2) being a team player and ideally culminating in (3) becoming a self-defining professional.<sup>38</sup> Combining the FCM with Kegan’s research has supported the development of a validated measure of professional identity formation: the Professional Identity Essay (PIE).<sup>39</sup>

What are the characteristics of a self-defining professional? Studies of professionals identified by their peers as exemplary show they differ from persons with less developed identities in their ability to integrate membership in a professional community with their own moral agency.<sup>40</sup>

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Institute for Teaching Ethics & Professionalism consortium to develop Intermediate Concept measures of moral reasoning for use in legal education; for further information, contact the author.

<sup>30</sup> Muriel J. Bebeau & Stephen J. Thoma, *Moral Motivation in Different Professions*, in HANDBOOK OF MORAL MOTIVATION: THEORIES, MODELS, APPLICATIONS 475, 480 (Karin Heinrichs et al eds., 2013).

<sup>31</sup> Stephen J. Thoma & Muriel J. Bebeau, *Moral Motivation and the Four Component Model*, in HANDBOOK OF MORAL MOTIVATION: THEORIES, MODELS, APPLICATIONS 49, 52 (Karin Heinrichs et al eds., 2013).

<sup>32</sup> Bebeau & Thoma, *Moral Motivation in Different Professions* 479. See Hilary Sommerlad, *The commercialization of law and the enterprising legal practitioner: continuity and change*, 18 INT’L J. LEGAL PROFESSION 73 (2011).

<sup>33</sup> *Id.* at 480; see also Thoma & Bebeau, *Moral Motivation and the Four Component Model* 59-61.

<sup>34</sup> Bebeau & Thoma, *Moral Motivation in Different Professions* 494.

<sup>35</sup> Muriel J. Bebeau & Kathy Faber-Langendoen, *Remediating Lapses in Professionalism*, in REMEDIATION IN MEDICAL EDUCATION: A MID-COURSE CORRECTION, 103, 104 (A. Kalet & C. L. Chou eds., 2014); Bebeau & Monson, *Guided by Theory* 558.

<sup>36</sup> Bebeau & Faber-Langendoen, *Remediating Lapses* 106.

<sup>37</sup> Thoma & Bebeau, *Moral Motivation and the Four Component Model* 57-59; see also Neil H. Hamilton, Verna E. Monson & Jerome Organ, *Empirical Evidence That Legal Education Can Foster Professionalism/Professional Formation to Become an Effective Lawyer*, 10 UNIV. ST. THOMAS L. J. 11, 19-20 (2012).

<sup>38</sup> Bebeau & Faber-Langendoen, *Remediating Lapses* 106; Bebeau & Thoma, *Moral Motivation in Different Professions* 487-93.

<sup>39</sup> Hamilton, Monson & Organ, *Empirical Evidence* 53-55, 66-73.

<sup>40</sup> Thoma & Bebeau, *Moral Motivation and the Four Component Model* 62. Recent research indicates that key elements of professional formation are also identified as competencies desired by employers when hiring new



Exemplary professionals (a) sense a connection between self and others, (b) can clearly articulate their professional authority and duties, (c) are confident in their ability to affect change, and (d) feel that moral action is obligatory, typically explaining their “hard choice” decisions as simply required by their professional role.<sup>41</sup> They are both strongly identified with their profession and able to critique it.<sup>42</sup>

Research has shown that educational interventions can help students develop an identity aligned with ethical perspectives.<sup>43</sup> At the completion of the Carnegie Foundation’s study of legal education and four other types of professional education, the Foundation’s President concluded that “the most overlooked aspect of professional preparation was the formation of a professional identity with a moral and ethical core of service and responsibility around which the habits of mind and practice could be organized.”<sup>44</sup> Or, as one law student interviewed by the Foundation stated succinctly: “law schools create people who are smart without a purpose.”<sup>45</sup>

What should students be learning about the purposes of the legal profession and thus the core values of a lawyer’s professional identity? Neil Hamilton has drawn upon his long academic study of the professionalism movement in law,<sup>46</sup> and, together with Verna Monson and Jerome Organ, has combined insights from the five Carnegie studies of professional education in law,

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lawyers. Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competences Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 581 (2014).

<sup>41</sup> *Id.* at 59, 62; Bebeau & Thoma, *Moral Motivation in Different Professions* 475, 483; Neil W. Hamilton & Verna E. Monson, *Ethical Professional (Trans)Formation: Themes from Interviews about Professionalism with Exemplary Lawyers*, 52 SANTA CLARA L. REV. 925 (2012) When military lawyer Charles Swift was asked by an interviewer on National Public Radio whether he had considered that suing the Secretary of Defense on behalf of Osama Bin Laden’s driver “might be a career killer,” Swift responded: “I didn’t think about it in those terms. I thought about it as this is the ethical way I can do my job.” Cunningham & Alexander, *Developing Professional Judgment* 79, 84-85; see also Clark Cunningham, *Teaching Demonstration: Representing Bin Laden's Driver* available at [www.niftep.org/workshops/fall-2013-workshop](http://www.niftep.org/workshops/fall-2013-workshop).

<sup>42</sup> Thoma & Bebeau, *Moral Motivation and the Four Component Model* 62. Russell Pearce cautions against a “symbiosis” between professional identity as an American lawyer and a “bleached” out racial identity of “whiteness.” Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081 (2005); see also Russ Pearce, *Professional Role, Identity, and the Rule of Law: Teaching Demonstration* available at [www.niftep.org/workshops/summer-2014-workshop](http://www.niftep.org/workshops/summer-2014-workshop).

<sup>43</sup> Thoma & Bebeau, *Moral Motivation and the Four Component Model* 56.

<sup>44</sup> Lee S. Shulman, *Foreword*, in Molly Cooke et al, *EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY* ix (2010). See also Anne Colby & William M. Sullivan, *Formation of Professionalism and Purpose: Perspectives from the Preparation for the Professions Program*, 5 UNIV. ST. THOMAS L. J. 404 (2008).

<sup>45</sup> Sullivan, *EDUCATING LAWYERS* 142. An effective way of helping students understand the purpose of professional practice and motivating their interest in the course is to contextualize professional responsibility in specific practice settings. Green, *Less is More* 358-59 (Fordham now offers more than 10 different three credit courses, any of which satisfies the ABA requirement. Each course is titled “Professional Responsibility: \_\_\_\_\_” with such subtitles as Ethics and Corporate Practice, Corporate Counsel, Ethics in Alternative Dispute Resolution, Ethics in Criminal Advocacy, Large Firm Practice and Transactional). Accord Rhode, *Teaching Legal Ethics* 1052; Southworth & Fisk, *Our Institutional Commitment* 77-78, 80, 84-85; David B. Wilkins, *Redefining the “Professional” in Professional Ethics: An Interdisciplinary Approach to Teaching Professionalism*, 58 LAW & CONTEMP. PROBS. 241 (1995).

<sup>46</sup> See, e.g., Neil W. Hamilton, *Professionalism Clearly Defined*, 18 PROF. LAWYER 4 (2008); Neil W. Hamilton & Verna Monson, *Ethical Professional (Trans)formation*; Neil Hamilton & Verna Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law*, 24 GEO. J. LEGAL ETHICS 137 (2011); Neil Hamilton, *Assessing Professionalism: Measuring Progress in the Formation of an Ethical Professional Identity*, 5 UNIV. ST. THOMAS L.J. 470 (2008).

medicine, nursing, engineering, and for clergy with a wide review of social science research to conclude that the primary goal of professional formation should be the development of “an internalized moral core characterized by a deep responsibility or devotion to others, particularly the client, and some self-restraint in carrying out this responsibility.”<sup>47</sup> The same sources document that the most effective pedagogies combine “clinical education and practical experience, coaching, modeling, institutional intentionality, and scaffolding with feedback and reflection.”<sup>48</sup> The Carnegie Report provides similar recommendations: “[C]ritical analysis of students’ own experience in both simulated and actual situations of practice, including expert feedback, is a pedagogical process with enormous power. . . . The key components are close working relationships between students and faculty, opportunity to take responsibility for professional interventions and outcomes, and timely feedback.”<sup>49</sup>

Although it is clear that developing professionals need positive role models, the lawyers students meet in the cases studied in a conventional professional responsibility course are typically careless, thoughtless or venal. In contrast, a curriculum carefully designed to promote professional formation will repeatedly present students with exemplary lawyers – through compelling stories,<sup>50</sup> guest speaking appearances, individual or small group meetings, and ideally as actual mentors.<sup>51</sup>

#### The Fourth Component: Effective Implementation

The professional cannot stop with “What is happening?” [moral sensitivity], “What ought to be done?” [moral reasoning], and “Will I do what ought to be done?” [moral motivation or identity formation], but must also address “How can I effectively do this?”, “What exactly should I say?”, and “How should I say it?”<sup>52</sup> Thus the teaching strategies for addressing the fourth capacity, implementation, should require students to develop action plans and even specific dialogue for resolving tough problems.<sup>53</sup> “Creative problem solving is critical” as is perseverance.<sup>54</sup> As the Carnegie Report puts it, “the ‘bottom line’ [is] . . . not . . . what [students]

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<sup>47</sup> Hamilton, Monson & Organ, *Empirical Evidence* 13-16. See also Hamilton, *Fostering Professional Formation* 794-97.

<sup>48</sup> Hamilton, Monson & Organ, *Empirical Evidence* 13-16; Hamilton & Monson, *Legal Education’s Ethical Challenge* 343-345.

<sup>49</sup> Sullivan, *EDUCATING LAWYERS* 177-78.

<sup>50</sup> See Rhode, *Teaching Legal Ethics* 1053-55 and sources cited therein; LEGAL ETHICS: LAW STORIES (Deborah L. Rhode & David Luban eds., 2006); Lisa G. Lerman & Philip G. Schrag, *ETHICAL PROBLEMS IN THE PRACTICE OF LAW* (2005) (teacher’s manual includes disc of recorded interviews with lawyers whose stories are told in casebook).

<sup>51</sup> “When a young person, even a gifted one, grows up without proximate living examples of what she may aspire to become . . . her goal remains abstract. . . . [A] role model in the flesh provides more than an inspiration; his or her very existence is confirmation of possibilities one may have every reason to doubt . . .” Sonia Sotomayor, *MY BELOVED WORLD* 178 (2013) (U.S. Supreme Court Justice Sonia Sotomayor describing importance of being mentored during law school by Jose Cabranes, then General Counsel of Yale University). See Cunningham, *How To Explain Confidentiality* 590-618; Cunningham, *How Can We Give Up Our Child* 320-28 (involving students in role plays based on actual experiences of exemplary lawyers).

<sup>52</sup> Email correspondence from Muriel Bebeau, on file with author.

<sup>53</sup> Muriel J. Bebeau, *Promoting Ethical Development and Professionalism: Insights from Educational Research in the Professions*, 5 *UNIV. ST. THOMAS L.J.* 366, 393 (2008).

<sup>54</sup> Thoma & Bebeau, *Moral Motivation and Four Component Model* 64. The fourth component is also described in terms of “moral character” and courage. Bebeau & Faber-Landendoen, *Remediating Lapses* 104. Cf. Nicolson,

know but what they can do. They must come to understand thoroughly so they can act competently, and they must act competently in order to serve responsibly.”<sup>55</sup> Therefore, teaching and assessment must “take place in role rather than in the more detached mode that the law-of-lawyering courses typically foster.”<sup>56</sup>

### **Best Practices for Learning Professional Responsibility Guided by the Four Component Model**

An ideal program of instruction for learning professional responsibility prior to receiving a license to practice law would include, in addition to learning the basic “law of lawyering,” all of the following elements:<sup>57</sup>

- 1) Before beginning educational interventions intended to develop professional responsibility have all students for the relevant program complete the Defining Issues Test (DIT),<sup>58</sup> the Professional Identity Essay (PIE),<sup>59</sup> and ideally a test of Intermediate Concepts relevant to legal practice.<sup>60</sup> The results of these tests would never be used for student grades but would provide baseline data and results could also be provided back to students for formative assessment. Although anonymous to persons internal to the law school, results should be coded so student responses can be tracked over time.
- 2) Use the DIT, PIE, test of Intermediate Concepts and performance based assessment<sup>61</sup> at the completion of the program to provide formative assessment and program evaluation.
- 3) Provide early intentional instruction about the structure, values and duties of the legal profession to lay a foundation for professional identity formation.

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Education 154-59. See Clark D. Cunningham, *Courage: Operationalizing Research on Virtue Ethics and Moral Development for Professional Education* (presented at VARIETIES OF VIRTUE ETHICS, Oriel College, University of Oxford Jan. 9, 2015) available at [www.teachinglegalethics.org/Courage](http://www.teachinglegalethics.org/Courage).

<sup>55</sup> Sullivan, EDUCATING LAWYERS 23.

<sup>56</sup> Sullivan, EDUCATING LAWYERS 178.

<sup>57</sup> Among the important sources for these recommendations are all the works by Bebeau and her co-authors and by Hamilton and his co-authors cited herein; Robert P. Burns, *Legal Ethics in Preparation for Law Practice*, 75 NEB. L. REV. 684 (1996); Cunningham & Alexander, *Developing Professional Judgment*; Liz Curran, Judith Dickson & Mary Anne Noone, *Pushing The Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice*, INT’L J. CLINICAL LEGAL EDUC. 104 (Dec. 2005); David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31 (1995-96); Donald Nicolson, “Education, Education, Education”: *Legal, Moral and Clinical*, 42 LAW TEACHER: INTERN’L J. LEGAL EDUC. 145 (2010), Deborah L. Rhode, *Teaching Legal Ethics*, 51 ST. LOUIS U. L.J 1043 (2006-2007); Southworth & Fisk, *Our Institutional Commitment*; Sullivan, EDUCATING LAWYERS, Roger Burridge & Julian Webb, *The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School*, 10 LEGAL ETHICS 72 (2007); and the Reports listed in note 2.

<sup>58</sup> The DIT in a convenient on-line format can be purchased for a modest per-subject fee, that includes a free analysis of data, at <http://ethicaldevelopment.ua.edu/>

<sup>59</sup> See Hamilton, Monson & Organ, *Empirical Evidence* 53-55, 66-73.

<sup>60</sup> See note 35.

<sup>61</sup> See, e.g., Barton, Cunningham, Jones & Maharg, *Valuing What Clients Think* (validating use of student interviews of simulated clients at Glasgow Graduate School of Law in Scotland to assess communicative competence); John B. Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 DUKE F. LAW & SOC. CHANGE 101 (2009) (using simulated client methodology validated by Barton, Cunningham, Jones & Maharg as summative assessment required for admission to practice without taking the conventional bar examination in New Hampshire for graduates who complete “two-year bar examination” program of instruction at University of New Hampshire School of Law). See generally [www.teachinglegalethics.org/SimulatedClients](http://www.teachinglegalethics.org/SimulatedClients) .

- 4) Introduce students to a variety of ethical theories and social science studies of the legal system to provide a basis to interpret and critique existing norms of legal practice.
- 5) Enable students to learn about the wide variety of practice settings, how ethical challenges vary by setting, how institutional contexts can constrain ethical actions, and how exemplary professionals master their practice area by combining exceptional competence with high ethical standards.
- 6) Use small group instruction with realistic, complex, exciting and emotionally engaging simulation exercises that contain only clues to embedded ethical dilemmas to develop moral sensitivity, moral reasoning, and moral implementation capacities. Acting in role with self-assessment and personalized feedback from peers and teachers further promotes professional formation.
- 7) Recurrently expose students to professional exemplars by learning their stories, interacting with them, observing them in action, and developing mentoring relationships.
- 8) Provide repeated opportunities for dialogue with others about “tough calls” and reflection on matters involving the student’s moral core.<sup>62</sup>
- 9) Use collaborative and team-based teaching methods.<sup>63</sup>
- 10) Provide multiple opportunities to observe actual and simulated legal practice performed by expert practitioners and to reflect about the lessons for ethical conduct in what was observed with the practitioner, a teacher who was not the practitioner, or both.
- 11) Provide multiple opportunities for students to engage in real-life work with authentic responsibility, so that the student can experience both satisfaction and regret for her actions,<sup>64</sup> and be challenged to exercise empathy, cultural sensitivity, diligence, perseverance, and courage.

The past decade has seen a number of law school innovations intended to improve the learning of professional responsibility that illustrate the use of many of these eleven practices. Several law schools have actually designed programs and assessment methods that explicitly reference the Four Component Model and related research.<sup>65</sup>

Among all methods of legal pedagogy, clinical courses involving client representation have distinctive potential for employing the above educational practices, especially items 7-11.<sup>66</sup>

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<sup>62</sup> Hamilton & Monson, *Legal Education’s Ethical Challenge* 375.

<sup>63</sup> *Id.* 362-72. For a practical, step-by-step guide to using co-operative learning and peer feedback to teach professional responsibility see Barbara Glesner-Fines, *Using Team Based Learning in the Professional Responsibility Course* (Working Paper 2012), available at [www.teachinglegalethics.org/team-based-learning-pr](http://www.teachinglegalethics.org/team-based-learning-pr); see also Barbara Glesner-Fines, *Team Based Learning* (webcast presentation) available at [www.niftep.org/workshops/summer-2012-workshop](http://www.niftep.org/workshops/summer-2012-workshop).

<sup>64</sup> Nicolson, *Education* 165.

<sup>65</sup> See notes 88-90, 94-96 and accompanying text; Charlotte S. Alexander, *Learning to be Lawyers: Professional Identity and the Law School Curriculum*, 70 MARYLAND L. REV. 462 (2011) (describing “Fundamentals of Law Practice” course developed and co-taught in 2010 by Alexander and Clark Cunningham at Georgia State University College of Law that combined simulation and conventional classroom teaching with fieldwork on solo and small firm practice).

<sup>66</sup> See Rhode, *Teaching Legal Ethics* 1052. Compare the description in the Carnegie Report of clinical teaching in medical education: “beyond the inculcation of knowledge and the simulation of skills, it proves to be the assumption of responsibility for patient outcomes that enables the student for the first time to fully enter and grasp the disposition of a physician.” Sullivan, EDUCATING LAWYERS 160 “It is in these situations of intensive analysis of practice that the fundamental norms and expectations that make up professional expertise are taught. They are

Although there is a rich literature about how clinical settings offer opportunities for students to engage with ethical issues,<sup>67</sup> several challenges have been identified for using a clinical course as the primary method for teaching a student professional responsibility:

- (1) the clinical teacher may not have sufficient expertise in the substantive law, scholarship and pedagogy of legal ethics;
- (2) the responsibilities of supervision and assuring effective client representation may force the clinical teacher to identify and resolve ethical issues for the student rather than letting the student develop her own moral sensitivity, reasoning, commitment and implementation capacities;
- (3) the clinical experience may expose the student to only one exemplar professional, the clinic teacher;
- (4) because clinics typically place a high priority on putting students in lead lawyering roles rather than the teacher (and opposing counsel in the poverty law arena, if there are any, are often negative examples of legal practice), students may have few opportunities to observe the work of an experienced exemplary professional;
- (5) the urgency of client representation may not be conducive to reflection and critique on ethical issues;
- (6) there may not be sufficient credit hours to allow time for teaching the “history, goals, and structure” of the legal profession along with its “values, rules and responsibilities”;<sup>68</sup>
- (7) ethical issues presented by actual cases may not be sufficiently varied to support teaching about the major issues typically covered in a professional responsibility course.

At least four approaches have been tried to address these challenges.

- 1) The same students take both a professional responsibility course and a clinic, and the ethics and clinical teachers collaborate to use clinic cases to teach ethics.<sup>69</sup>

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reinforced by the feedback that students receive as they attempt various approximations to expert practice.” *Id.* at 10-11.

<sup>67</sup> See, e.g., Curran, Dickson & Noone, *Pushing The Boundaries* (describing Legal Practice and Conduct clinical course at La Trobe University in Australia with primary focus on ethical practice; “[our aims] are to challenge conventional and narrow interpretations of ethical conduct, the status quo, and to push the boundaries of our own and students’ understanding of the requirements of an ethical lawyer”); Peter Joy, *The Ethics of Law School Clinic Students as Student Lawyers*, 45 S. TEX. L. REV. 822 (2003-2004); Peter A. Joy, *The Law School Clinic as a Model Ethical Law Office*, 30 WM. MITCHELL L. REV. 35 (2003); Bridget McCormack, *Teaching Professionalism*, 75 TENN. L. REV. 251 (2007-2008); Donald Nicolson, *Learning in justice: ethical education in an extra-curricular law clinic*, in THE ETHICS PROJECT IN LEGAL EDUCATION 171 (Michael Robertson et al eds., 2010)(describing student-run voluntary clinic at University of Strathclyde in Scotland); Nicolson, *Education*; Joan O’Sullivan et al, *Ethical Decisionmaking and Ethics Instruction in Clinical Law Practice*, 3 CLINICAL L. REV. 109 (1996-97); Antoinette Sedillo Lopez, *Teaching a Professional Responsibility Course: Lessons Learned from the Clinic*, 26 J. LEGAL. PROF. 149 (2001); Julian Webb, *Inventing the Good: A Prospectus for Clinical Education and the Teaching of Legal Ethics*, 30 LAW TEACHER: INTERN’L J. LEGAL EDUC. 270 (1996). See also Section 6F. See generally articles, conference presentations, teaching materials and other resources posted at [www.teachinglegalethics.org/category/teaching-methods/clinical](http://www.teachinglegalethics.org/category/teaching-methods/clinical).

<sup>68</sup> ABA Standard 303(a)(1) (2014).

<sup>69</sup> The leading article on this approach is Luban & Millemann, *Good Judgment* 64-85 (1995-96) (emphasizing role of Luban in prompting discussion and critique of Millemann’s clinical supervision and direct client representation). See also Joan O’Sullivan 165-67; Thomas Shaeffer, *On Teaching Legal Ethics in the Law Office*, 71 NOTRE DAME L. REV. 613 (1995).

- 2) If the professional responsibility instructor is also an experienced clinical teacher, a regular professional responsibility course can be expanded by adding a client representation component for extra course credit.<sup>70</sup>
- 3) For schools that have a number of clinics under a common administration, students in the professional responsibility course serve as the actual Ethics Committee for the various clinics (but do not directly represent clients).<sup>71</sup>
- 4) A clinic can be created with a specific focus on ethics.<sup>72</sup>

“La Trobe is the only university [in Australia] that has incorporated a core unit, ethics, into a CLE [clinical legal education] elective. This is a core subject and acts as a substitute to the conventional ethics elective. This means that the CLE unit is not compulsory for students but students can choose between the conventional theoretically-taught subject or the clinically-taught ethics elective. To this extent, La Trobe represents best practice ...”<sup>73</sup>

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<sup>70</sup> See David F. Chavkin, *Experience is the only teacher: bringing practice to the teaching of ethics*, in THE ETHICS PROJECT IN LEGAL EDUCATION 52 (Michael Robertson et al eds., 2010) (at American University one additional credit hour added to professional responsibility course; students provided assistance in drafting wills and advance directives regarding end-of-life medical treatments). Chavkin also used FCM appropriate assessment methods such as reflective student writing and a final examination based on review of film clips of actual lawyers in action. *Id.* at 63-64. See also Cunningham, *Courage*. Lani Guinier uses externship placements to provide an optional clinical component to her course at Harvard Law School, the Legal Profession: Responsibilities of Public Lawyers. See <http://hls.harvard.edu/faculty/directory/10344/Guinier/courses>. Guinier’s approach appears to be a blend of clinical pedagogy and service learning; students in her professional responsibility course have the option of substituting for the final examination “an empirical-based study of an ongoing public lawyering project in which the student is a participant-observer” either as a clinic student or weekly volunteer at a public policy or public interest organization. *Id.* Cf. Natsu Saito, *Community Lawyering Project: Access to Justice*, available at [www.teachinglegalethics.org/CommunityProject](http://www.teachinglegalethics.org/CommunityProject). Service learning is a pedagogy recommended by Hamilton and Monson for developing both moral reasoning and professional identity. *Legal Education’s Ethical Challenge* 352.

<sup>71</sup> See Cunningham & Alexander, *Developing Professional Judgment* 88-91 (describing clinic-based professional responsibility course taught by Lawrence Marshall at Stanford Law School) and Lawrence Marshall, *Professional Responsibility Course Portfolio*, available at <http://educatingtomorrowlawyers.du.edu/course-portfolios/detail/professional-responsibility>. (Consistent with best practices for developing moral sensitivity and moral reasoning, Marshall’s approach did not rely on assigned readings taken from published court decisions and other “law of lawyering” materials, nor were students given guidance on precedents and rules relevant to a given problem. “Instead, the students are instructed to research in teams to find the sources that help inform the decision the Committee will reach on the issue presented ... [they] become acutely sensitized to the ways in which these issues arise and the methods through which they can be resolved ... Teaching this way engages students deeply because they understand that real decisions (often very critical ones) are at stake.” *Id.* See also Nicolson, *Education* 170-71. In addition to the course described in Luban & Millemann, *Good Judgment*, the University of Maryland has offered other “hybrid” ethics-clinic courses that somewhat resemble either Marshall’s approach or Chavkin’s. Email correspondence from Michael Millemann on file with author. Deborah Rhode has long encouraged the linking of a professional responsibility course to a clinic. Rhode, *Teaching Legal Ethics* 1053.

<sup>72</sup> See Curran, *Pushing the Boundaries* 114-21. Cf. Fox, *Ethics Bureau* (describing clinic at Yale Law School where students do not directly represent clients but provide guidance and expert witness reports to non-profit and pro bono lawyers, in particular documenting ineffective assistance in death penalty cases).

<sup>73</sup> Evans, A.H., Cody, A., Copeland, A., Giddings, J., Noone, M., Rice, S., (2012), *Best Practices: Australian Clinical Legal Education*, Monash University, Clayton Vic Australia p.30, available at [www.cald.asn.au/assets/lists/Resources/Best Practices Australian Clinical Legal Education Sept 2012.pdf](http://www.cald.asn.au/assets/lists/Resources/Best Practices Australian Clinical Legal Education Sept 2012.pdf)

*Legal Practice and Conduct* at the LaTrobe University School of Law in Australia is a semester length subject (12 weeks) where the primary focus is to study, explore and analyse the required area of knowledge (stipulated by the Council of Legal Education under the heading Professional Conduct). This includes “professional and personal conduct in respect of the practitioner’s duty to: the law, the courts, clients and fellow practitioners”. What constitutes ethical legal practice is examined in detail. The context for this study is students acting in the role of lawyer in a clinical legal education environment under supervision of an academic/legal practitioner. Students are encouraged to critically reflect upon the ethical issues that arise regularly in practice and on the extent of lawyers’ professional responsibility to the courts and access to justice.<sup>74</sup>

The subject has both classroom and placement components. (The subject includes three-four hours classroom work each week in addition to the work on placement one day a week). The clinical program is a major component of the course and is assessed for 40% of the total mark in the subject.

### Learning Objectives

<b>To describe and illustrate knowledge of the legal aspects of the lawyer/client relationship including the contractual, tortious and fiduciary nature of the relationship.</b>
<b>To describe and illustrate knowledge of the professional ethical responsibilities of a lawyer in the context of daily legal practice.</b>
<b>To apply the <i>Legal Profession Act 2004</i>, statutory regulations and rules and the common law governing legal practitioners’ conduct in relation to client, the courts and other practitioners.</b>
<b>To apply the best practice principles of client-centred, non-judgemental legal interviewing, oral and written communication skills.</b>
<b>To apply the best practice principles of legal file maintenance to a specific professional and ethical standard.</b>
<b>To identify and analyse the professional and ethical responsibilities of a legal practitioner having regard to a variety of lawyering paradigms and conceptual frameworks.</b>
<b>To identify ethical dilemmas facing a legal practitioner and analyse how to handle them in an appropriate and professional manner.</b>
<b>To identify the principles relating to legal practitioners and the holding of money on trust.</b>

Students spend a minimum of one day a week for 12 weeks on clinical placement, including working through a semester break. Students are expected to attend between the hours of 9am and 5.30pm. There is an expectation that students will need to spend additional time at the office to meet the needs of their clients. Students currently work predominantly on issues of immigration law in the in-house clinic. Students have the opportunity to interview clients, provide legal research and evidence analysis. Each day includes a group discussion of the day’s work, not only

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<sup>74</sup> Liz Curran, Judith Dickson & Mary Anne Noone, *Pushing the Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice*, INT’L J. CLINICAL LEGAL EDUC. 104, 114-21 (Dec. 2005), free download at [www.northumbriajournals.co.uk/index.php/ijcle/article/view/90/93](http://www.northumbriajournals.co.uk/index.php/ijcle/article/view/90/93)

to learn the substantive law of professional conduct but also, importantly, “to challenge conventional and narrow interpretations of ethical conduct, the status quo, and to push the boundaries of [the instructors’] and students’ understanding of the requirements of an ethical lawyer.”<sup>75</sup>

At the University of Strathclyde in Scotland, approximately one-third of all undergraduate law students participate in a voluntary, not-for-credit law clinic. All of these students are required to take an introductory two hour “taster” or “crash course” in legal ethics, where they are exposed briefly both to the primary conduct code rules applicable to solicitors and to more detailed ideas from the legal ethics literature on the issues of taking on immoral cases, pursuing immoral tactics, confidentiality, conflicts and paternalism in the lawyer client relationship. Students then discuss in groups a series of vignettes (all taken from actual clinic cases) on these issues. Clinic students can then opt to take a course called Ethics and Justice in either their final or penultimate year of study.<sup>76</sup> This course lasts for 12 weeks and in each week includes a one hour discussion at which one or two students present a case they have undertaken or are undertaking which has given rise to issues of legal ethics and/or access to justice (and which they might go to use as the basis for the required essay). The class is taught by Professor Donald Nicolson who is both a legal academic specialising in legal ethics and director of the legal clinic, along with another legal ethics academic and a practitioner with an interest in access to justice. The topics taught include introduction to ethics theory (such as deontology and utilitarianism), an examination of means of making lawyers moral (education, codes, regulation), an introduction to the sociology of the profession and professionalism (including discussion of obligations to promote access to justice), four sessions on various aspects of access to justice, two sessions on role morality, immoral means and immoral ends, one on client confidentiality and conflicts, and one on client autonomy and lawyer paternalism. The aim is to raise issues not dealt with in the codes of conduct, such as access to justice and paternalism, or dealt with by the conduct rules in ways which are controversial, thus providing students with ethical tools found in both the general ethics and legal ethics literature which can supplement and sometimes supplant both formal professional rules and those adopted more informally in modern practice settings. Assessment for the class comprises of a reflective essay in which students research and discuss issues of ethics or justice which have arisen in one (or occasionally more) of their cases and the keeping of a weekly journal in which students reflect on issues of ethics and justice which arise in the classes, cases or wider clinic activities. (Clinic students also engage in public legal education, law reform work, supporting survivors of gender based violence and investigating miscarriages of justice). Around 20 students each year opt to take the Clinical LLB<sup>77</sup> which is designed to provide additional skills training, to provide experiential insight as to how areas of substantive law actually operate in practice and are affected by issues of access to justice, and to engage students in an ongoing dialogue through the keeping of a fortnightly journal in ethical issues are raised when they are relevant. In response to journal entries, students are provided with relevant

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<sup>75</sup> Curran, Dickson & Noone, *Pushing The Boundaries* 115.

<sup>76</sup> Donald Nicolson, “Calling, Character and Clinical Legal Education: A Cradle to Grave Approach to Inculcating a Love for Justice” (2013) 16 *Legal Ethics* 36-56, also available at [www.teachinglegalethics.org/calling-character](http://www.teachinglegalethics.org/calling-character)

<sup>77</sup> For more information about the Clinical LLB at Strathclyde, see Donald Nicolson, “*Education, Education, Education*”: *Legal, Moral and Clinical*, 42 *LAW TEACHER: INTERN’L J. LEGAL EDUC.* 145 (2010), also available at [www.teachinglegalethics.org/education-education](http://www.teachinglegalethics.org/education-education) and Nicolson, *Legal Education, Ethics and Access to Justice: Forging Warriors for Justice in a Neo-Liberal World* (2015) *INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION*.



reading to help them grapple with identified ethical issues. The Ethics and Justice class is compulsory for all Clinical LLB students.

At the Georgia State University College of Law in Atlanta beginning in the Fall 2015 semester, 16 students who have completed the first year of law school will participate in a new 6 credit course called Transition to Practice, which will teach the professional responsibility curriculum required by the ABA through a combination of clinical representation of domestic violence victims, fieldwork with private practitioners, and simulation of small firm practice. The course will be team-taught by a full time academic with expertise in both legal ethics and clinical education and two part-time instructors, one of whom operates her own solo law firm and one who is a staff attorney with a legal aid organization.<sup>78</sup>

As long as twenty years ago, a few law schools in the USA began experimenting with combining legal ethics and practice skills classes into a single simulation based course.<sup>79</sup> Robert Burns' description of a course at Northwestern University School of Law, which awarded nine credits for evidence, trial advocacy and legal ethics, reported that moral sensitivity was being developed: "Simulation exposes students to the kinds of complex concrete situations in which moral issues can arise quickly and without red flags."<sup>80</sup> Simulations are of course well suited to promoting the fourth, implementation, aspect of the Four Component Model, but Burns also claimed that this approach enhanced moral reasoning, which he called "moral vision," prompting students even to critique rules of professional conduct when their application appeared possibly unfair or unjust when role playing a concrete, complex situation.<sup>81</sup>

The City Law School in London, England, prepares university graduates for entry into the legal profession, teaching both the Legal Practice Course required to become a solicitor and the Bar

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<sup>78</sup> This course combines elements from *Fundamentals of Law Practice*, described in Charlotte S. Alexander, *Learning to be Lawyers: Professional Identity and the Law School Curriculum*, 70 MARYLAND L. REV. 462 (2011), and *Professional Responsibility: Heroes & Villains*, described in Clark D. Cunningham, 'How Can We Give Up Our Child?' A Practice-Based Approach to Teaching Legal Ethics, 42 LAW TEACHER: INTERN'L J. LEGAL EDUC. 312 (2008) and Clark D. Cunningham, *How to Explain Confidentiality?*, 9 CLINICAL L. REV. 579 (2003). The aspiration is that this course will use all eleven best practices for learning professional responsibility listed above. The course website is <http://www.clarkcunningham.org/TTP/index.htm>

<sup>79</sup> See Robert P. Burns, *Teaching the Basic Ethics Class through Simulation: The Northwestern Program in Advocacy and Professionalism*, 58 LAW & CONTEMP. PROBS 37 (1995); Burns, *Legal Ethics* 692-703; Robert P. Burns, Thomas F. Geraghty & Steven Lubet, EXERCISES AND PROBLEMS IN PROFESSIONAL RESPONSIBILITY (2d ed. 2001); James E. Moliterno, *Teaching Legal Ethics In a Program of Comprehensive Skills Development*, 15 J. LEGAL PROF. 145 (1990) (describing nine credit Legal Skills program extending over first four semesters at William & Mary School of Law); Southworth & Fisk, *Our Institutional Commitment* 88-89 (describing use of simulations in 4 credit first year course on the legal profession). See also James E. Moliterno, *On the Future of Integration Between Skills and Ethics Teaching: Clinical Legal Education in the Year 2010*, 46 J. LEGAL EDUC. 67 (1996).

<sup>80</sup> Burns, *Teaching the Basic Ethics Class through Simulation* 37. For the incorporation of simulation pedagogy into the required professional responsibility course see, e.g., Clark D. Cunningham, 'How Can We Give Up Our Child?' A Practice-Based Approach to Teaching Legal Ethics, 42 LAW TEACHER: INTERN'L J. LEGAL EDUC. 312 (2008); Clark D. Cunningham, *How to Explain Confidentiality?*, 9 CLINICAL L. REV. 579 (2003). See generally Paul Maharg, "Associated life": democratic professionalism and the moral imagination, in THE MORAL IMAGINATION AND THE LEGAL LIFE, 112, 129-37 (Zenon Bankowski & Maksymilian del Maar eds. 2012) (describing curriculum-wide implementation of simulation activities in the post-graduate Diploma in Legal Practice at the Glasgow Graduate School of Law in Scotland) and articles, conference presentations, teaching materials and other resources posted at [www.teachinglegalethics.org/category/teaching-methods/simulation](http://www.teachinglegalethics.org/category/teaching-methods/simulation)

<sup>81</sup> Burns, *Teaching the Basic Ethics Class through Simulation* 37-39.

Professional Training Course required for barristers. In addition to a mandatory course called Professional Ethics, which focuses on professional conduct rules, ethical issues are embedded into required simulation classes such as Conference Skills and Advocacy. Marks are lost for ethical errors and a “red light fail” system comes into play when a student’s simulated conduct would constitute seriously unethical behavior in practice. In addition, in optional clinical courses students write a reflective report which is expected to address ethical issues encountered.<sup>82</sup>

All persons who have obtained a university law degree and want to practice as lawyers in Nigeria must complete a one year program of training at the Nigerian Law School, which is operated by the national Council of Legal Education. Part of the required curriculum is the Law in Practice course, which combines the teaching of ethics, professional responsibility and law office management with skills training in communication and dispute resolution in the context of criminal and civil litigation, corporate practice, and property law.<sup>83</sup> Students must also complete an externship. At the conclusion of each externship, every student is required to submit a portfolio, showing what tasks they undertook or observed with reflective journaling, including two essays: (1) “The management and organization of the law firm where I was placed”; and (2) “An ethical dilemma” (either hypothetical or real).

In the past decade a growing number of schools in the USA have significantly expanded the use of simulation to teach subjects previously considered only “classroom courses” and also have intentionally designed those simulations to raise ethical issues and develop professional identity.<sup>84</sup> This very promising development has given new life to the pioneering work of Stanford Professor Deborah Rhode, who advocated that ethics be taught “pervasively” both in

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<sup>82</sup> For further detail see Nigel Duncan, *Ethics at the Professional Stage of Legal Education in the UK*, available at [www.teachinglegalethics.org/ethics-professional-stage](http://www.teachinglegalethics.org/ethics-professional-stage).

<sup>83</sup> A full course description including a detailed, class-by-class syllabus and assessment criteria is available at: [www.teachinglegalethics.org/law-practice-course-nigeria](http://www.teachinglegalethics.org/law-practice-course-nigeria).

<sup>84</sup> See, e.g., David I.C. Thomson, “*Teaching*” *Formation of Professional Identity*, \_\_ REGENT U.L. REV. \_\_ (forthcoming 2015) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=); David Thomson, *Carnegie Integration through Simulations: The Discovery Practice Example*, available at [http://educatingtomorrowlawyers.du.edu/images/wygwam/images\\_content/Carnegie-Integration-through-Simulations.pdf](http://educatingtomorrowlawyers.du.edu/images/wygwam/images_content/Carnegie-Integration-through-Simulations.pdf); Bill Sullivan and David Thomson, *Formation of Professional Identity: Towards an Intentional Pedagogy*, *Educating Tomorrow’s Lawyers*, available at [http://educatingtomorrowlawyers.du.edu/images/wygwam/images\\_content/Formation-of-Professional-Identity.pdf](http://educatingtomorrowlawyers.du.edu/images/wygwam/images_content/Formation-of-Professional-Identity.pdf); Roberto L. Corrada and David Thomson, *Carnegie Integrated Course Template*, available at <http://www.law.du.edu/index.php/experiential-advantage/course-simulations>; David Thomson, *Discovery Practicum* (course portfolio), and Roberto L. Corrada, *Labor Relations Law and Administrative Law* (course portfolios) available at <http://educatingtomorrowlawyers.du.edu/course-portfolios>. See also Stephen Gerst & Gerald Hess, *Professional Skills and Values in Legal Education: The GPS Model*, 43 VAL. U. L. REV. 513 (2009) (describing six credit course at Phoenix School of Law that combines teaching of professional values with thirteen different professional skills); John B. Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 DUKE F. LAW & SOC. CHANGE 101 (2009) (issues of ethics and professionalism are integrated into two years honors curriculum at University of New Hampshire School of Law that combines simulation, externship and clinical teaching). When the Washington & Lee School of Law changed its entire third year to experiential education, it included a required course called The Legal Profession (which is not the conventional legal ethics class) to be taught in synergy with the clinical, externship and practicum courses. Cunningham & Alexander, *Developing Professional Judgment* 93-95.

specifically designed courses and though incorporation of ethical issues into other courses throughout the three years of law school.<sup>85</sup>

In 2007 the influential book, *BEST PRACTICES FOR LEGAL EDUCATION*,<sup>86</sup> recommended a “Model Best Practices Curriculum” for US law schools in which during the first year students would be “introduced to the history and values of the legal profession ... the roles of lawyers ... and challenges facing the legal profession.”<sup>87</sup> This aspiration is increasingly becoming a reality in American law schools. One innovation is to move the required professional responsibility course into the first year in an enhanced format.<sup>88</sup> Indiana University at Bloomington has moved the required professional responsibility course into its first year curriculum and expanded it to four credit hours. This course is described as going “beyond the review” of the ABA Model Rules of Professional Conduct both by putting the rules in the context of rich information about the culture and work environments of different practice settings, and by focusing heavily on decision-making in areas of broad discretion, thus supporting the development of ethical sensitivity and moral reasoning.<sup>89</sup> The course at Indiana uses precisely those pedagogic strategies identified by Bebeau, Hamilton and Monson for developing professional identity formation: deliberate teaching about professional norms, examples of exemplary professionals, and a system to promote student self- reflection about their own identity formation.<sup>90</sup> Mercer University has pioneered an approach of requiring a first year course that introduces students to the fundamental while continuing to require completion of an upper level legal ethics course as well. This course, called simply “The Legal Profession,” has now been in operation for more than a decade: students continuously reflect on their own emerging professional identity through small group discussions, writing assignments, and required non-anonymous regular postings to a blog created for their small group.<sup>91</sup> This course also brings practitioners to the law school, in an interview

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<sup>85</sup> See Deborah L. Rhode, *Ethics by the Pervasive Method*, 42 J. LEGAL EDUC. 31 (1992); *Into the Valley of Ethics: Professional Responsibility and Educational Reform*, 58 LAW & CONTEMP. PROBS. 139 (1995); PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD (2<sup>nd</sup> ed. 1998) (extensive materials for introducing ethical issues into conventional doctrinal courses). Significantly, Rhode reports that the pervasive ethics initiative at her law school that was rated highest by students was based on a simulated negotiation. *Valley of Ethics* 144. Rhode’s “pervasive method” was specifically incorporated as a BEST PRACTICES recommendation. BEST PRACTICES, Executive Summary and text at notes 287-98

<sup>86</sup> ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (CLEA 2007) [hereinafter BEST PRACTICES].

<sup>87</sup> BEST PRACTICES, text at notes 823-39.

<sup>88</sup> See William D. Henderson, *The Legal Profession*, available at <http://educatingtomorrowlawyers.du.edu/course-portfolios/detail/the-legal-profession> and Cunningham & Alexander, *Developing Professional Judgment* 91-93 (describing first year course developed by Henderson at Indiana University-Bloomington) ; see also Southworth & Fisk, *Our Institutional Commitment* (describing required four credit course designed to be taught over first and second semesters of first year at University of California at Irvine School of Law);

<sup>89</sup> Henderson, *Legal Profession* 1-2. The UC Irvine course teaches legal ethics with reference to specific practice settings, uses role-playing exercises, and brings over 30 guest speakers into the course, mostly practicing lawyers, primarily to provide inspiring examples of lawyers working in various practice areas. Southworth & Fisk, *Our Institutional Commitment*. See also Ann Southworth & Catherine L. Fisk, *THE LEGAL PROFESSION: ETHICS IN CONTEMPORARY PRACTICE* (2014) (casebook used in UC Irvine’s legal profession course; teachers’ manual includes sample syllabi and instructions for role-play exercises).

<sup>90</sup> Henderson, *The Legal Profession* 2. Recommended teaching methods for the BEST PRACTICES first year curriculum included “work in collaborative groups ... reflective journals .... [and] contact with practicing judges”. BEST PRACTICES, text at fn. 823-39.

<sup>91</sup> Patrick E. Longan, *Teaching Professionalism*, 60 MERCER L. REV. 659, 663 (2009) (describing “The Legal Profession” first year required course at Mercer Law School; the “course seeks to equip students with the

format, (modeled on the television show “Inside the Actor’s Studio”) called “Inside the Legal Profession,”<sup>92</sup> as well as requiring a paper based on an “oral history” with a distinguished local practitioner.<sup>93</sup> A rather different innovation is “Ethical Lawyering in a Global Community,” which uses two “mini-courses” in the first year to teach ethics and professionalism in the context of the globalization of legal practice.<sup>94</sup>

According to Bebeau, “education to promote ethical and professional development is most effective when it takes place over an extended time in the context of an overall program,”<sup>95</sup> a point echoed by both the Carnegie Report and BEST PRACTICES. This aspiration too is coming closer to reality at some law schools in the United States.<sup>96</sup> For example, Timothy Floyd explains that the first year Legal Profession course described above is just the one component of his law school’s professional formation curriculum, which continues in an upper level elective designed to build upon the foundation laid in the first year course by combining externship experience with extensive readings, reflective journaling, and discussion (both in class and on-line) on the formation of professional identity.<sup>97</sup> Neil Hamilton, Jerome Organ and Verna Monson have

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information they need to choose what kind of lawyer they will become and inspire them to make choices that will enable them best to serve their clients, fulfill their public responsibilities, and find deep meaning in their work”). Also describing the course, Timothy W. Floyd, *Moral Vision, Moral Courage, and the Formation of the Lawyer’s Professional Identity*, 28 MISS. COLLEGE L. REV. 339, 351-52 (2009); Daisy Hurst Floyd, *Cultivating Self-Reflection and Lawyer Integrity*, available at [http://educatingtomorrowlawyers.du.edu/images/wygwam/images\\_content/Cultivating-Self-Reflection-and-Lawyer-Integrity.pdf](http://educatingtomorrowlawyers.du.edu/images/wygwam/images_content/Cultivating-Self-Reflection-and-Lawyer-Integrity.pdf). Further details about the course, which has changed significantly since the 2009 article was published, are available at <http://law.mercer.edu/academics/centers/clep/education.cfm>. For other first year courses designed to teach about the values of the legal profession see generally articles, conference presentations, teaching materials and other resources posted at [www.teachinglegalethics.org/category/teaching-methods/first-year](http://www.teachinglegalethics.org/category/teaching-methods/first-year).

<sup>92</sup> Over a dozen of these interviews are available for webcast viewing at <http://law.mercer.edu/academics/centers/clep/education.cfm>.

<sup>93</sup> See also Walter H. Bennett, Jr., The University of North Carolina Intergenerational Legal Ethics Project: Expanding the Contexts for Teaching Professional Ethics and Values, 58 LAW & CONTEMP. PROBS. 173 (1995) (providing specific methodological guidance for doing oral history); Lois R. Lupica, Professional Responsibility Redesigned: Sparking a Dialogue Between Students and the Bar, 29 J. LEGAL. PROF. 71 (2005) (describing extensive involvement of local lawyers in course).

<sup>94</sup> *Ethical Lawyering in a Global Community* (course syllabus) available at [www.teachinglegalethics.org/elgc-syllabus-osgoode-hall-law-school](http://www.teachinglegalethics.org/elgc-syllabus-osgoode-hall-law-school); Allan Hutchinson & Chantal Morton, *Osgoode’s Required 1st Year Course: Ethical Lawyering in a Global Community* (webcast presentation describing course at Osgoode Hall in Canada) available at [www.niftep.org/workshops/spring-2011-workshop](http://www.niftep.org/workshops/spring-2011-workshop). See also Laurel S. Terry, A “How To” Guide for Incorporating Global and Comparative Perspectives into the Required Professional Responsibility Course, 51 ST. LOUIS U. L.J. 1136 (2006-2007); Susan Saab Fortney, *Collaborative Legal Ethics Course* (describing use of internet to teach legal ethics course in which law students from Slovenia and Texas collaborated on specific practitioner problems) available at <http://clarkcunningham.org/Professionalism/AwardApps/AppFortney.htm>. See generally *Spring 2011 Workshop of the National Institute for Teaching Ethics* available at [www.niftep.org/workshops/spring-2011-workshop](http://www.niftep.org/workshops/spring-2011-workshop).

<sup>95</sup> Bebeau, *Promoting Ethical Development* 391.

<sup>96</sup> Cf. Donald Nicolson, *Calling, Character and Clinical Legal Education: a Cradle to Grave Approach to Inculcating a Love for Justice*, 15 LEGAL ETHICS 272 (2013) (describing “Clinical LLB” launched in 2010 at University of Strathclyde, Scotland that “seeks to integrate a focus on ethics and justice” throughout the four year law degree); for further details see [www.strath.ac.uk/humanities/courses/law/courses/cllb/#d.en.550102](http://www.strath.ac.uk/humanities/courses/law/courses/cllb/#d.en.550102).

<sup>97</sup> Floyd, *Moral Vision* at 352-54 (course syllabus at 355-57). See also Carolyn Kaas, *Professionalism and Professional Identity Formation: The Unifying Theme of a Diverse Externship Program*, available at [www.teachinglegalethics.org/externship-materials-professionalism](http://www.teachinglegalethics.org/externship-materials-professionalism), webcast at [www.niftep.org/workshops/spring-2011-workshop](http://www.niftep.org/workshops/spring-2011-workshop). See generally articles, conference presentations, teaching materials and other resources posted at [www.teachinglegalethics.org/category/teaching-methods/externships](http://www.teachinglegalethics.org/category/teaching-methods/externships).

described a three year integrated professional formation curriculum at their law school; a required mentoring program extends over all three years, framed by a required first year course on Foundations of Justice.<sup>98</sup> They have compiled empirical evidence that their school's approach improves (1) moral reasoning, as measured by changes in DIT scores, and (2) understanding of professional identity, as measured by the Professional Identity Essay; they further have correlated these outcome measures with relevant data from the Law School Survey of Student Engagement.<sup>99</sup> One school has established an honors track that includes all of the second and third years; the program recurrently embeds ethical issues into simulation-based courses and requires students to develop a two-year portfolio of lawyering work and reflection. Students who successfully complete the program can be admitted to practice upon graduation without taking a conventional bar examination.<sup>100</sup> A recent independent report indicates that graduates of this program outperform comparable newly admitted lawyers on a performance-based assessment of client relationship skills and are viewed by employers as significantly better prepared than typical new graduates for the responsibilities of client representation.<sup>101</sup>

## Conclusion

At the same time the Carnegie Report criticized both the professional responsibility course and the overall program of instruction at American law schools, it held out hope: "[T]his is a propitious moment for uniting, in a single educational framework, the two sides of legal knowledge: (1) formal knowledge and (2) the experience of practice."<sup>102</sup> A paradigm shift in the approach to learning professional responsibility, that is in the words of Bebeau "guided by theory and grounded in evidence,"<sup>103</sup> could be the needed catalyst to transform an approach to preparation for practice that focuses on what graduates know to a competence-based model that meets the challenge of the Carnegie Report to combine "conceptual knowledge, skill, and moral discernment ... into the capacity for judgment guided by a sense of professional responsibility."<sup>104</sup>

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<sup>98</sup> Hamilton, Monson & Organ, *Empirical Evidence* 31-33.

<sup>99</sup> *Id.* at 48-62.

<sup>100</sup> Garvey & Ziskin, *Making Law Students Client-Ready*.

<sup>101</sup> Alli Gerkman & Elena Harman, *AHEAD OF THE CURVE: TURNING LAW STUDENTS INTO LAWYERS* (Institute for the Advancement of the American Legal System 2014) (with original research by two of the authors of the Carnegie Report: Lloyd Bond and William M. Sullivan).

<sup>102</sup> *Id.* at 12.

<sup>103</sup> Bebeau, *Guided by Theory*.

<sup>104</sup> Sullivan, *Educating Lawyers* 12.