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## The Most Ethical of People, the Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation

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## ARTICLE

# THE MOST ETHICAL OF PEOPLE, THE LEAST ETHICAL OF PEOPLE: PROPOSING SELF-DETERMINATION THEORY TO MEASURE PROFESSIONAL CHARACTER FORMATION

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## INTRODUCTION

In the fall of 2010, the University of St. Thomas School of Law, in conjunction with the Holloran Center for Ethical Leadership in the Professions, hosted a symposium on Empirical Professional Ethics. One of the purposes of this symposium was to advance our understanding of how to effectively address questions of attorney professionalism through empirical study.<sup>1</sup>

The complexities of ethical and professional behavior present major challenges for systematic study. In order to illuminate the understanding and promotion of ethics and professionalism, scientific inquiry will require testable hypotheses that reach deeply to the sources and means of developing professional behaviors.<sup>2</sup> A functional consideration must also be broad, reaching many subtle factors that impact ethics and professionalism, including personal purpose, attitudes, values, character, integrity, interpersonal

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1. We must all express gratitude and appreciation to the Holloran Center for Ethical Leadership in the Professions for providing a focal point for empirical research into critical issues of professionalism and ethics among lawyers, and for seeking to create a community of interest in this important work. I would also like to thank the Holloran Center staff who made this symposium possible, particularly Neil Hamilton, Professor of Law and Director; Jerry Organ, Professor of Law and Associate Director; and Verna Monson, Research Fellow.

2. If we do not elucidate the sources of professional/ethical (and unprofessional/unethical) behavior, the value of our work is limited. Beyond counting ethics complaints or determinations of violation before ethics panels, how do we get a sense of the level of professional development within a lawyer, judge, or law student? And if we do count such complaints and determinations, what would that tell us about why they occurred or how they might be prevented?

behaviors, and more. I discuss here many of these factors, and an approach to measure them that is sufficiently broad and deep to offer real promise.

My interest in this field began as an attorney, wondering why some lawyers behaved in deceptive, hyper-aggressive, and other seemingly immature ways.<sup>3</sup> Many also seemed physically tired and emotionally depleted. When I first encountered classical psychologist Abraham Maslow's description of fully-mature people, including his observations that they are spontaneously "the most ethical of people,"<sup>4</sup> I was taken with the idea that mental health, ethics, morality, constructive and respectful interpersonal behavior, and enjoyment of life and work might all be natural consequences of personal maturity.<sup>5</sup> I am now increasingly convinced of this idea, and that a range of important concerns among lawyers—lack of ethical/professional behavior, diminished well-being, and strikingly high incidence of depression or other forms of emotional distress—are inextricably tied together<sup>6</sup> as manifestations of immature personality structure.<sup>7</sup>

I have previously argued that psychological maturity requires the integration of diverse personality qualities: an autonomous "self" (incorporating authentic values, self-reflection, and self-expression) combined with a strong orientation toward interpersonal relatedness (including community feeling and contribution to others).<sup>8</sup> I further argued that the style of intellectual training, combined with the competitive/adversarial paradigms that dominate traditional law school teaching inhibit, and at times even reverse, the development of these optimal personality qualities, setting the stage for crucial wellness and professionalism problems among lawyers.<sup>9</sup> I based these arguments on empirical research involving both the general popula-

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3. As I reflected then, decades ago, on the characteristics of lawyers whom I considered "unprofessional" during my years of litigation, I realized that some of them shared traits with the unkind or even bullying schoolmates I had encountered in childhood. The lawyers tended to be pushy, demanding, manipulative, aggressively unpleasant, and they definitely sought to discount and dominate others. Perhaps they had not really "grown up" before entering the law or had regressed to immature and insecure behavior as part of their legal training or practice.

4. ABRAHAM H. MASLOW, *MOTIVATION AND PERSONALITY* 158 (2d ed. 1970).

5. *Id.* at 51–58 (observing that a person's level of wellness and enjoyment of life was directly related to her psychological maturity).

6. For a brief, general treatment of the concept of a unified source of well-being and professional/ethical behavior, including suggestions and graphics for introducing the idea to law students, see Lawrence S. Krieger, *The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity, and Happiness*, 11 *CLINICAL L. REV.* 425 (2005).

7. I do not suggest that lawyers or law students are "immature" in the plain sense of the word, but that attitudes adopted during acculturation and training into the legal profession contribute to a worldview, and resulting behaviors, more typical of psychologically immature people. See *infra* Part IV.B–C.

8. See Lawrence S. Krieger, *Human Nature as a New Guiding Philosophy for Legal Education and the Profession*, 47 *WASHBURN L.J.* 247, 250–51 (2008).

9. See *id.* at 277–82.

tion and law students, largely employing a robust branch of modern positive psychology, Self-Determination Theory (SDT).<sup>10</sup>

I have found, after conducting research applying SDT to law student populations,<sup>11</sup> that it is exceptionally well-suited for a systematic inquiry into professional traits and qualities. In this article, I propose that SDT can be a powerful new tool for understanding attorney motivation and behavior, and that it can answer core questions regarding ethics and professionalism. I suggest that SDT is particularly suited to such research because it has both the necessary conceptual breadth and well-established measures to empirically study character formation and many of its attendant features—including integrity, psychological health, constructive interpersonal relations, altruistic values, and other traits underlying ethical and professional behavior.

Ultimately I seek to forward two ideas in this article, with the goal of encouraging others to employ SDT in research on ethics and professionalism: (1) professionalism, well-being, and emotional health share inescapable common foundations in personal maturity, and hence, ethical and professional propensities can be gauged by measuring the core traits of psychological health; and (2) SDT provides established measures for investigating and understanding fundamental issues of professional/ethical formation<sup>12</sup> and behavior.

In the next section, I describe the core SDT measures. I then explain in detail how those measures apply to considerations of professionalism and ethics, by showing how all of the core qualities of ethical and professional behavior are located within the SDT domains. I then refer to past research on law students, and to current research on lawyers, to clarify these applications. Having shown in principal that SDT can directly apply to our empirical study of professionalism, I offer two concrete examples. I summarize recent studies of lawyer behavior and law student ethical formation that did

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10. The primary tenets of SDT are fully explored later in this article. *See also* Kennon M. Sheldon & Lawrence S. Krieger, *Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being*, 22 BEHAV. SCI. & LAW 261, 263–64 (2004) [hereinafter Sheldon & Krieger, *Undermining*] (briefly summarizing SDT); Kennon M. Sheldon & Lawrence S. Krieger, *Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory*, 33 PERS. & SOC. PSYCHOL. BULL. 883, 884 (2007) [hereinafter Sheldon & Krieger, *Understanding*] (exploring two components of SDT—psychological need satisfaction and the nature of the social context—which were not addressed in the initial study).

11. *See generally* Sheldon & Krieger, *Undermining*, *supra* note 10 (Study 1, applying SDT to students at a public university during their three years in law school, and Study 2, a study of first-year students at a private law school); Sheldon & Krieger, *Understanding*, *supra* note 10 (applying SDT to two law schools with different educational and pedagogical philosophies). Dr. Sheldon and I are also currently engaged in a study of several thousand lawyers in various states, employing the same measures used in our law student studies. *See infra* note 102 and accompanying text.

12. I do not seek here to review definitions of professionalism, but I note that the broad scope of the SDT measures also makes them relevant to many ways of conceptualizing professionalism.

not use SDT measures and explain how SDT measures could have enhanced those studies.

## I. SELF-DETERMINATION THEORY AND MEASUREMENT OF KEY FACTORS

SDT provides a broad and detailed view of human personality and motivation. It employs empirical measures to determine causes of, and contributions to, positive aspects of human experience, including positive mood/affect, life satisfaction, sense of purpose, and effective performance. I use the summary term “thriving” to denote a positive life experience that includes these factors, particularly positive mood/affect, life satisfaction, and sense of purpose. SDT adds a strong empirical component to the observational approach of Maslow and the early humanists, and has established its key measures over about thirty years of research.<sup>13</sup>

There are three primary domains of SDT inquiry: fundamental needs, values, and motivations.<sup>14</sup> Studies have identified a few factors in each of these domains that are crucial to human thriving. These factors are particularly important because each promotes the experience of well-being<sup>15</sup>—which is typically determined by aggregating responses regarding life satisfaction, positive affect, and negative affect.<sup>16</sup> They also generally produce improved performance.<sup>17</sup> These factors, explained below, are fundamental to human experience and appear to specifically embody critical sources of professional and ethical behavior.

### A. Fundamental Needs and Their Measurement

SDT research has identified *autonomy*, *competence*, and *relatedness to others* as the psychological needs required for satisfying human life.<sup>18</sup> *Self-esteem* is a fourth need that strongly promotes well-being.<sup>19</sup> In this article, I do not discuss it to the same extent as the other needs, since it has not been

13. Sheldon & Krieger, *Undermining*, *supra* note 10, at 263–64.

14. *See id.*

15. *See id.*; Sheldon & Krieger, *Understanding*, *supra* note 10, at 884.

16. Life satisfaction is determined with a brief, established measure (Likert scale) asking the subject for her level of agreement with statements such as “My life is going very well,” and “A lot would have to change for me to be satisfied with my life right now.” Affect is measured using the Positive and Negative Affect Scale (PANAS), with which subjects indicate their recent frequency of experience of various common emotions, including “scared,” “content,” “excited,” and “proud.” *See, e.g.*, Sheldon & Krieger, *Undermining*, *supra* note 10, at 267–68.

17. We measured (1) grade performance in law students as a function of values and motivations, *id.* at 274–75, and (2) grades and bar exam results as a function of autonomy support and need satisfaction, Sheldon & Krieger, *Understanding*, *supra* note 10, at 891. The latter study is one of the few that has simultaneously investigated all of the primary SDT domains—needs, values, motivations, well-being, and performance. *Id.* at 885. Findings generally confirmed all of the predicted relationships.

18. *See id.* at 884–85 for a general discussion of needs and supplemental citations.

19. Self-esteem is a critical need for well-being, Kennon M. Sheldon et al., *What is Satisfying About Satisfying Events? Testing 10 Candidate Psychological Needs*, 80 J. PERS. SOC. PSYCHOL. 325, 326 (2001).

shown to affect motivation or performance.<sup>20</sup> To measure satisfaction of the autonomy need, subjects are asked about their sense of freedom to make choices they prefer, and the extent to which their choices reflect their “true selves” and their “true values and interests.”<sup>21</sup> Measuring satisfaction of the competence need is straightforward, asking subjects about their sense of capability, and ability to master tasks and meet challenges.<sup>22</sup> The relatedness items ask about the sense of closeness, connectedness, and intimacy subjects feel with important people in their lives.<sup>23</sup>

### B. Values and Their Measurement

SDT has empirically identified four values that promote thriving and a number of others that tend to undermine it. The four constructive (“intrinsic”) values are: *self-understanding/growth*, *intimacy with others*, *helping others*, and *being in/building community*.<sup>24</sup> The self-oriented value is measured by asking about the importance of learning, personal growth, insights into one’s self, and a life of purpose.<sup>25</sup> The intimacy value is measured by asking the importance of loving, intimate relationships, and for trusting, close relationships with various people.<sup>26</sup> Helping and community values are measured with shared questions about desire to help those in need (without expectation of return), to improve the lives of others generally, and to improve society and the world.<sup>27</sup>

These values that promote well-being and life satisfaction mirror, and in some cases appear identical to, the fundamental needs. The conclusions about the central importance of these needs and values appear to be mutually confirming—they have been identified by different researchers at different times, using different empirical measures. Indeed, research is beginning to indicate that these values promote thriving specifically because they lead people to choose behaviors that fulfill those basic needs for *autonomy*, *competence*, and *relatedness to others*.<sup>28</sup> By comparing the list of constructive values and basic needs, it is clear how they would relate. For example, if one values community and helping others, she is more likely to

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20. Our study confirmed that self-esteem is a critical need for well-being and, unlike the other three needs, did not affect performance and motivation outcomes. Sheldon & Krieger, *Understanding*, *supra* note 10 (unpublished findings) (on file with author).

21. Survey instruments on file with the author.

22. *Id.*

23. *Id.*

24. See Sheldon & Krieger, *Undermining*, *supra* note 10, at 264.

25. Values are measured using the Aspirations Index. See Univ. of Rochester, *Aspirations Index*, Univ. of Rochester, [http://www.psych.rochester.edu/SDT/measures/ai\\_description.php](http://www.psych.rochester.edu/SDT/measures/ai_description.php) (last visited May 18, 2011); Christopher P. Niemiec, Richard M. Ryan & Edward L. Deci, *The Path Taken: Consequences of Attaining Intrinsic and Extrinsic Aspirations in Post-College Life*, 43 J. RES. IN PERSONALITY 291, 294 (2009).

26. Univ. of Rochester, *supra* note 25.

27. *Id.*

28. Niemiec et al., *supra* note 25, at 305.

help others in need. This behavioral choice will likely engender experiences of competence, self-esteem, and relatedness to others. A person who values self-understanding will likely be more genuine with others, resulting in experiences of authenticity and relatedness. Valuing intimacy would lead to experiences of genuineness and connection, because one will seek out and make time to be with others in meaningful ways.

### C. Motivations and Their Measurement

A third strand of SDT research has identified two “internal” or “autonomous” motivations for behavior—*intrinsic* and *identified* motivation—that support psychological health and well-being.<sup>29</sup> A person is *intrinsically* motivated when he inherently enjoys or feels stimulated by an activity. When the activity expresses or furthers one of his core beliefs or values, he experiences *identified* motivation.<sup>30</sup> The experience of intrinsic motivation is straightforward, in that it involves enjoyment and interest. Identified motivation is more subtle, and is central to the experience of *meaning* in daily activities. When people focus time, energy, and attention on things they deeply value, they tend to experience their lives as meaningful; when they focus primarily on activities they do not perceive as important, they feel empty or devoid of meaning.

These internal motivations are core considerations within SDT that, like the needs and values previously discussed, have direct wellness and satisfaction consequences.<sup>31</sup> For example, new graduates who choose jobs primarily for salary and benefits, but do not enjoy the work each day nor feel that it is important, are likely to experience low mood, irritation, and generally low life satisfaction regardless of whether their income supports the appearance of high “quality of life.” Conversely, a person who loves the activities involved in her work, and/or feels she is helping people or “making a difference” in a way she believes is important, will tend to experience vitality, energy, meaning, and positive mood. In the first case, thriving results from her intrinsic enjoyment of the activity, in the second case from her sense of usefulness—that her time and energy matter for a significant purpose.

Measurement of motivation in SDT is accomplished with “self-regulation” questionnaires<sup>32</sup> that assess internal or autonomous motivation. We determine the strength of both internal and external motivations by asking

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29. Richard M. Ryan & Edward L. Deci, *Self-Determination Theory and the Role of Basic Psychological Needs in Personality and the Organization of Behavior*, in HANDBOOK OF PERSONALITY: THEORY AND RESEARCH 654, 660, 662 (Oliver P. John et al. eds., 3d ed. 2008); see also Krieger, *supra* note 8, at 256 (Figure 3 showing the continuum of external to autonomous motivation).

30. Ryan & Deci, *supra* note 29, at 662.

31. *Id.*

32. Univ. of Rochester, *The Self-Regulation Questionnaires*, UNIV. OF ROCHESTER, [http://www.psych.rochester.edu/SDT/measures/SRQ\\_text.php](http://www.psych.rochester.edu/SDT/measures/SRQ_text.php) (last visited May 18, 2011).

subjects the extent to which each motivation inspired a past or current choice (e.g., going to law school or taking their current job). Intrinsic motivation is measured by asking about “the enjoyment or stimulation [an activity] provides you” while identified motivation is assessed by the extent to which “you really believe it is an important thing to do.”<sup>33</sup> Other familiar external motivations are measured for comparison, including the desire to gain money or rewards, please or impress others, be famous or powerful, etc.<sup>34</sup>

## II. IMPLICATIONS OF THE SDT DOMAINS FOR RESEARCH RELATING TO ETHICS AND PROFESSIONALISM

All of the primary SDT domains appear to strongly predict core propensities for ethical and professional behaviors, and it may turn out that the core qualities measured by SDT are actually the identical qualities in personality that result in ethical, professional behavior.<sup>35</sup>

### A. *Fundamental Needs as Predictors of Professionalism*

The autonomy need is measured by asking about capacity for choice and consistency between chosen behaviors and a person’s “true self” and “true values.” Hence, this quality of coherence between one’s perceived “self,” one’s values, and one’s chosen actions defines *autonomy* within the context of SDT. Autonomy is therefore virtually identical to the common meaning of *integrity*—the character quality of adhering to moral principles and speaking the truth that one knows.<sup>36</sup> Integrity is certainly a foundation—perhaps the primary foundation—of professionalism and ethics, since it produces an honest, trustworthy person who acts on principles. Thus this one SDT need implicates many dimensions of ethics and professionalism, including those involving candor before the court, fair dealing, truthfulness, and trust between lawyers. We may also consider autonomy the most important of the three basic psychological needs, since people must have a well-defined sense of self, feel intimately connected to themselves, and express their core values in daily life in order to function in a consistent way and with a sense of security and grounding. Further, the critical relatedness need depends on the authentic aspect of autonomy, because having mean-

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33. Survey instruments on file with the author.

34. For more information on the external motivations, see Sheldon and Krieger, *Undermining*, *supra* note 10, at 263–64.

35. See *infra* Part II.A–D.

36. See RANDOM HOUSE WEBSTER’S UNABRIDGED DICTIONARY 990 (2d ed. 2001) (“integrity” defined as “adherence to moral and ethical principles; soundness of moral character; honesty.”); see generally Sharon Dolovich, *Ethical Lawyering and the Possibility of Integrity*, 70 FORDHAM L. REV. 1629 (2002) (arguing that lawyers who behave ethically possess the character trait of integrity).



ingful relationships requires both knowing and presenting genuine parts of one's self to others.

Satisfaction of the relatedness need also has important predictive implications for ethical and professional behavior. An effective attorney must have developed interpersonal skills in order to connect and interact constructively with clients and other lawyers. This capacity also requires authenticity (integrity), as mentioned above. Social sensitivity, honesty, decency, respectfulness, thoughtfulness, and consideration are necessary for relations in life generally, just as for professional relations. Thus, we would predict that high satisfaction of the relatedness need would predict positive relations with other lawyers and clients.<sup>37</sup>

The competence need is clearly central to professionalism.<sup>38</sup> A professional obviously must be capable and effective, and it is all too common to observe incompetent attorney performance.<sup>39</sup> It is important to realize, however, that many factors beyond actual skill and ability play a critical role in a lawyer's ability to "get the job done" well. A highly qualified person will demonstrate poor performance if disinterested, unmotivated, and not expending sufficient effort for the task. On the other hand, a person of modest ability will typically perform very well if fully engaged, dedicated, and enthusiastic about the work. Other SDT measures of aspirations and motivations discussed in this paper relate to critical factors of desire, effort, and persistence. In combination with one's level of skill or ability, those measures will likely prove to be strong predictors of professional competence.<sup>40</sup>

### *B. Values as Predictors of Professionalism*

The intrinsic values previously discussed all represent core qualities that further predict professional behavior. The desire for self-understanding and growth suggests a thoughtful, reflective person who is constantly improving herself. The associated desire for meaning in life will also likely lead to pursuits that express the other intrinsic values (i.e., doing one's best, having close friendships, helping others, being in community), resulting in positive professional behaviors while fulfilling the individual's core needs.

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37. It might be that some lawyers with strong relatedness experiences in their personal lives would behave differently in professional settings for reasons such as perceived needs to exert power or to manipulate others or information. The converse is also true. See *infra* note 100 and accompanying text. This would be an interesting direction for future research.

38. It might be that the contribution to professional behavior of this need satisfaction is less clear than the contribution of the other basic needs because people may *feel* quite capable but be overestimating their ability. This topic would be another interesting direction for future research—the correlation between a person's sense of her competence and objective measures or observations of others about her competence—but it touches only tangentially on professionalism concerns addressed in this paper.

39. My personal experience as a litigator for more than a decade, the journal observations of a thousand or so of my students, and concerns stated to me by other lawyers suggest this is not a controversial conclusion.

40. See *infra* Part II.C.

The intimacy value, like the relatedness need, results in constructive, respectful, and trusting relations with others, whether in the personal or professional sphere of life. Aspirations to help others in need and to be in community also clearly represent professional characteristics. In particular, these qualities generate a service, rather than selfish orientation. They also indicate a person who respects, and therefore conveys respect, to others. Helpful community-mindedness further requires consideration of the needs of others, and tends to moderate a lawyer's adversarial behavior—contributing to a harmonious and effective professional community. When a lawyer is guided by intrinsic values, therefore, she is consistently disposed toward professional and ethical behavior. It is also worth restating that these values, like satisfaction of the basic needs, have been shown to produce a sense of well-being and meaning in life,<sup>41</sup> thereby addressing at least two areas of critical current concern for the legal profession.

Although these values, on their face, appear to encompass core qualities of professionalism, they must be actualized to produce professional behavior. As stated above, research is beginning to indicate that values impact life experience when, and to the extent that, people make choices consistent with those values.<sup>42</sup> Just as the relationship between competence and performance is mediated by interest and effort, intrinsic values are mediated by consistent behavioral choices to produce positive outcomes. For example, a lawyer may endorse the value of relating to family and friends, but fail to actually spend time with them because of excessive hours at the office. Or a lawyer might espouse community values, but conduct herself in ways that infuriate adverse counsel, earn her a negative professional reputation, and result in her feeling like an outcast. Hence, whether a person is “walking her talk” will largely determine the actual impact of her values.<sup>43</sup>

### C. *Motivations as Predictors of Professionalism*

Core qualities of professionalism are embedded within the internal motivations, as they are within the other SDT domains (intrinsic values and fundamental needs). *Intrinsically* motivated lawyers act for the joy and interest inherent in their work.<sup>44</sup> As a result, these lawyers are naturally more focused on and engaged in their work, resulting in enhanced effort, dedica-

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41. Sheldon & Krieger, *Undermining*, *supra* note 10, at 269.

42. Common sense tells us that endorsing a value but doing nothing about it will not produce satisfaction or positive mood. In fact, the person might well sense hypocrisy in herself and thus a decreased satisfaction of the autonomy need. The consideration of values attainment and actualization has also begun in SDT research. See generally Niemiec et al., *supra* note 25.

43. Our current study of lawyers employs a new measure, specifically asking about the level of one's time and effort devoted to each goal or value area. We hope to correlate findings of (in)coherence between values and their actualization with other measures, such as the level of autonomy need satisfaction and general life satisfaction, to learn about these factors in lawyers' lives.

44. See *supra* Part I.C.

tion, diligence, and similar professional qualities. When *identified* motivation drives the work—when the lawyer experiences meaning because the work is furthering her own core values and beliefs<sup>45</sup>—she will similarly tend to be engaged, energetic, diligent, and thorough. Either source of motivation (or any combination of both) results in persistence in the face of distractions and difficulties, resulting in better work product in any circumstance.

Internal motivations combine with satisfaction of the critical needs identified by SDT (*autonomy, relatedness to others, and competence*) to produce professionalism in at least two ways. First, as discussed above, there is a fundamental interaction between the competence need and internal motivations. Ultimately, internal motivations promote a high level of performance and an enhanced sense of competence. Of course, competent work product is a core issue for professionalism, and hence the connection with these SDT qualities and their measurement is obvious. The second interaction among needs and motivations that enhances professionalism involves the autonomy need. Internal motivation is also referred to as “autonomous” motivation, because the person experiences the source of the behavior as internal, or within herself.<sup>46</sup> Indeed, the more a person chooses her primary activities (including her work) based on these internally-referenced factors—noticing her own enjoyment or appreciation of the work, and expressing her values through the work—the greater is her experience of autonomy and satisfaction.

As noted earlier with regard to the SDT research on needs and values, the research on needs and motivation also has been conducted at different times and using different measures. Observing consistency and mutual confirmation among these diverse findings should increase our confidence both in those findings and in the applicability of SDT to these critical professionalism considerations. Some of the more obvious relationships between the primary SDT measures and the core qualities of professionalism and ethics are set forth in the following table:

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45. *Id.*

46. Ryan & Deci, *supra* note 29, at 658.

TABLE 1. RELATIONSHIPS BETWEEN SDT AND PROFESSIONALISM/ETHICS

<b>Ethical/Professional Qualities</b>	<b>Related Personality Factor (SDT)</b>
Honesty, Integrity, Candor	Authenticity, Relatedness, and Self-esteem needs; Intimacy and Community values
Diligence, Dedication, Zealous Advocacy	Competence and Self-esteem needs; Helping value; Intrinsic and Identified motivation
Service, Loyalty	Helping value; Relatedness and Self-esteem needs
Competence	Competence and Self-esteem needs; Intrinsic and Identified motivation
Fair dealing, Decency	Authenticity, Relatedness, and Self-esteem needs; Intimacy and Community values

*D. Values, Motivations, and Proposed Needs that Predict Unprofessional or Unethical Behavior*

We have seen that all of the constructive factors within the primary SDT domains—the needs for *autonomy*, *competence*, and *relatedness*, valuing *self-understanding and growth*, *intimacy*, *helping others*, and *being in community*, and autonomous motivations for *enjoyment*, *interest*, and *meaning*—represent and predict core professional and ethical attitudes and behaviors. SDT research has, of course, found other values, motivations, and proposed needs that do not promote thriving, and that can have negative effects on mood, life satisfaction, psychological health, and performance. These potentially undermining factors include financial affluence, luxuries, power, fame, attractive appearance, and other goals and motivations commonly shared by many people in many cultures.<sup>47</sup>

*1. Undermining Factors as Distractions from Thriving*

Before discussing the less constructive, more negative factors identified by SDT research specifically, we should realize that goals, attitudes, and behaviors can produce negative emotions, and detract from life satisfaction and meaning, in different ways. Some attitudes and behaviors can be inherently negative in the sense that they inevitably undermine thriving (e.g., using a damaging narcotic, going without sleep, or habitually using stimulants in order to improve grades), while other attitudes and behaviors could have negative effects only when a person spends an unwarranted amount of time and energy on them. In the latter situation, the goals and

47. See generally Tim Kasser & Richard M. Ryan, *Further Examining the American Dream: Differential Correlates of Intrinsic and Extrinsic Goals*, 22 PERS. & SOC. PSYCHOL. BULL. 280 (1996) (concluding that lower well-being and greater distress occur in individuals whose desire to attain extrinsic goals is central to their personality).

behaviors would simply *distract* the individual and divert her energy and attention from constructive behaviors that produce worthwhile results (in particular, from a psychological perspective, satisfaction of the needs for *autonomy*, *relatedness*, and *competence*).

For example, one lawyer might spend an hour or so with her child on a work night, relaxing, unwinding, and watching an educational television show that they both enjoy and look forward to each week. Another lawyer might stay up late every night watching several hours of television as a diversion. The television activity itself is neutral but the resulting experiences are likely to be very different. For the first lawyer, the television time provides experiences of closeness with her child, personal relaxation, and the opportunity to teach important lessons through her comments. She satisfies her needs for autonomy (self-awareness, self-care), relatedness (to her child), and competence (in parenting). The evening feels meaningful and supportive for herself and her child. She can go to bed early, be rested, refreshed, positive, and effective the next day, and will be capable of constructive interactions with clients, employees, and other lawyers and judges. She is personally thriving and is professional at work. By contrast, the second lawyer spends most of her free time absorbed in the television, which now functions as an external input that distracts her from experiences of autonomy, competence, and relatedness. She is basically “zoning out” habitually for extended periods and depriving herself of time for activities that could satisfy the basic needs. Here, the television creates fatigue and an overly sedentary lifestyle, undermines her health and competence at work, and likely results in negative moods that further impair her satisfaction and impact her professional and personal relationships.

These examples should be kept in mind when considering and discussing the findings on values, motivations, and proposed needs that do not support thriving. It is particularly important, when explaining to others, to be clear: these are not moral judgments or determinations that a goal, value, or motivation is inherently “good” or “bad.” Instead, it is more useful to focus on whether or not a person’s values, motivations, and behavioral choices will consistently lead to experiences of *autonomy*, *relatedness*, and *competence*. This then becomes an objective, empirically-based undertaking that informs other people (whether students, other attorneys, friends, or family) about the experience of human thriving, its sources, and the common distractions from that experience. I have found this approach particularly helpful in the teaching role, allowing me to explain all of these factors without moralizing about “good” and “bad,” and without telling others what is “right” or “wrong” behavior for them. Because I am typically presenting this material to law students and lawyers, I can then show the professional tendencies as outgrowths of the thriving factors discussed above, creating a scientific context for professionalism that people can more readily accept.

## 2. *The Distracting Values, Motivations, and Proposed Needs, and Their Measurement*

I describe here the common factors in human experience that SDT research has shown to correlate negatively with thriving outcomes (these factors predict decreased well-being, less effective performance, etc.). Based on the foregoing discussion, I refer to these non-supportive factors as psychological *distractions*.

The principal distractions are in the domains of valuing and motivation, and as stated above, are very common motivating factors across most cultures. In contrast to the intrinsic values and internal motivations, the distractions involve external rewards, appearances, influences, or outcomes. They are therefore referred to as *extrinsic* values and *external* motivations.<sup>48</sup> These distracting factors include *money/financial affluence, power/influence over others, fame, physical attractiveness, pleasing other people, comparative/competitive outcomes* (feeling or being “better” than other people), and *relieving guilt or fear*.<sup>49</sup>

In the leading study identifying the universal human needs,<sup>50</sup> ten “candidate needs” were tested. *Autonomy, self-esteem,*<sup>51</sup> *competence, and relatedness* strongly predicted well-being; most others had a modest correlation with well-being; and two actually had an inverse correlation with well-being.<sup>52</sup> The modestly correlating factors were *pleasure-stimulation, physical thriving, self-actualization-meaning, and security*.<sup>53</sup> The candidate needs that showed an inverse correlation with wellness were *money-luxuries* and *popularity-influence*.<sup>54</sup> Subjects endorsing those factors as “satisfying” experienced more negative than positive affect associated with their most satisfying events.<sup>55</sup>

The latter, inverse candidate needs correspond with the distracting motivations and values in the same way that the basic human needs correlated closely with the intrinsic values and internal motivations. Valuing money or power will lead one to choose behaviors that maximize money or

48. Because these motivations and values overlap substantially, and are not directly operative on wellness or professionalism, I will not seek to distinguish the values from the motivations.

49. See Kennon M. Sheldon & Tim Kasser, *Goals, Congruence, and Positive Well-Being: New Empirical Support for Humanistic Theories*, 41 J. HUMANISTIC PSYCHOL. 30, 46 (2001) (“[I]t is clear that the interpersonal relationships of individuals who value intrinsic aspirations typically have many more positive characteristics than do the relationships of people who greatly value image, status, power, and wealth.”).

50. Sheldon et al., *supra* note 19.

51. Recall that we do not consider self-esteem in the same way as the other three needs in this grouping, since it has not been shown to have the same impact on improved performance.

52. See Sheldon et al., *supra* note 19, at 329 (Table 3 showing the correlation of candidate needs with event-related affect).

53. *Id.*

54. *Id.*

55. *Id.* Money–luxuries had a clear inverse correlation with well-being, while popularity–influence was at the margin between no effect and a modest negative effect. *Id.*

power. These findings indicate that a person who focuses on attaining “external” goals, and who achieves those goals (including financial affluence and the things it can buy, popularity, or power/influence over others) will not experience satisfaction.<sup>56</sup> It is very important, however, to realize that it is the *focus* on money or power (or beauty, fame, or the other external factors listed above), not the *attainment* of money or power, that undermines well-being and thriving. If a person has a healthy focus on intrinsic factors, like the lawyer who is genuine and effective at work and loving/supportive at home, she may very well have high earnings and many benefits from those earnings, which results in an exceptionally fulfilling life. She has the intrinsic satisfaction from her appropriate values and motivations, regular experiences of autonomy, relatedness, competence, and self-esteem, and also has relative affluence and its attendant advantages for life experience.

Ongoing SDT research continues to measure the distractions as well as the constructive values and motivations. Our research on law students investigated the specific impact of law school on extrinsic values and motivations, as well as on intrinsic values, internal motivations, and fundamental needs. Our current research on lawyers continues with the same measures, seeking to reveal a pattern of psychosocial development beginning before law school and extending throughout lawyers’ careers. To determine extrinsic value orientation, subjects are asked to indicate the extent to which they endorse the following factors: “achieving affluence and financial success,” “projecting an appealing and attractive image,” “being known and admired by many people,” and “gaining prestige, influence, or power.”<sup>57</sup> To determine the level of external motivation, subjects are asked to what extent specific motivations affected their choice of work or school program: “because someone else wants you to or thinks you should,” “because of the rewards, such as high income, luxuries, or status, that it produces,” “because you would feel ashamed, guilty, or anxious if you didn’t,” and “because of the pressure you feel from your law school loans.”<sup>58</sup>

### 3. *Extrinsic Values and External Motivations as Predictors of Unprofessional or Unethical Behavior*

The very definitions of the needs, values, and motivations that form the focus of SDT make clear their likely implication for ethics and professionalism. Terms like *authenticity*, *relatedness*, *competence*, *community feeling*, *self-improvement*, and *helping others* immediately evoke images of ideal professional behaviors. In this paper I have discussed some of the

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56. For confirming research, see Niemiec et. al., *supra* note 25, at 293, 305 (describing the study and its findings).

57. Survey instruments on file with the author.

58. *Id.*

more obvious professional behaviors that will likely proceed from the basic needs, intrinsic values, and internal motivations. By contrast, the distractions are likely to produce unprofessional and unethical behavior, both indirectly and directly. First, considerable indirect effects accrue when any such factor or combination of factors principally drives an attorney's behavior, because her mindset and personal resources are diverted from the positive professional influences of the adaptive needs, values, and motives. For example, if a person does not care about relating positively to others, she is more likely to be abrasive, abusive, inconsiderate, or untrustworthy. When distracted from self-awareness and authenticity by external aspirations, she is less aware of critical internal checks on behavior (e.g., conscience and sense of morality) and thus more prone to dishonesty, lack of candor, manipulation of facts, and (again) untrustworthy behavior. When not focused on serving her client, profession, or society, she is more likely to exhibit selfish or self-serving behaviors, and less likely to be well prepared or to keep her caseload within limits that assure her full attention and best work product.

A second reason that the distracting values and motivations indirectly produce unprofessional, if not unethical, behavior is that even if a person successfully attains her extrinsic goals, her resulting life experience will tend toward frustration, irritation, and stress.<sup>59</sup> In other words, the person may work intently and attain her goals, but still feel frustrated and dissatisfied. This experience naturally produces an unhappy, unpleasant person, one who may be sharp, short, and irritable in dealing with clients, colleagues, employees, and other lawyers. Everyone observes such people in daily life; the most obvious examples are celebrities—professional athletes, television and movie stars, and politicians who fully attain wealth, fame, and power, and yet seem quite unhappy, experience divorces and other family problems, and can be overtly rude to others. At the extreme, apparently successful people of all kinds are troubled by addictions, depression, and scandals around immoral behavior, despite their wealth, power, or fame.<sup>60</sup>

Direct negative effects on professionalism and ethics are also likely to occur, given the specific nature of extrinsic and external motivators. An attorney driven by a desire for power, popularity, image, or influence may seek to manipulate or dominate others to achieve those goals. If driven to “win,”<sup>61</sup> she will experience pressure and angst, and tend to “do what it takes” to achieve victory. She is more likely to engage in many kinds of

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59. See Sheldon & Kasser, *supra* note 49, at 42–43 (describing how a focus on obtaining extrinsic goals will leave a person frustrated, irritated, and stressed).

60. Indeed, in my many years as a litigator, some of the most “successful” attorneys I met were blatantly unhappy, unpleasant people that virtually everyone avoided whenever possible.

61. Unlike the natural and healthy desire to prevail common to an adversarial environment, the perceived *need* to prevail is likely to produce distortions in mental health and behavior. See Lawrence S. Krieger, *What We're Not Telling Law Students—and Lawyers—That They Really Need to Know: Some Thoughts-in-Action Toward Revitalizing the Profession from Its Roots*, 13



unprofessional behavior, particularly if authenticity, integrity, and conscience are not constantly paramount in her value system. When extrinsic goals dominate, such “ends” ultimately can justify aberrant “means” in many forms—such as withholding information during discovery, filing frivolous or excessive pleadings or motions to gain advantage unwarranted by the merits, making false representations in or out of court, or exhibiting abusive behavior toward the opposing client or counsel. The negative possibilities are all too well known to litigators today.<sup>62</sup> And of course, if maximizing earnings and gaining affluence primarily drives a lawyer, she again may part from honesty, integrity, and decency to reach her goals. Clearly, these results can, and often do, entirely undermine attorney ethics, professionalism, health, and satisfaction along the way.<sup>63</sup>

### III. HOW SDT MEASURES ARE APPLIED IN STUDIES OF LAWYERS AND LAW STUDENTS

I have described SDT as an established framework of investigation that employs well-being and thriving measures which provide explicit insights into the sources of professional/ethical (and unprofessional/unethical) behavior among lawyers. In essence, *the sources of thriving revealed by SDT are also the sources of integrity, decency, caring, helping, competence, and other core professional qualities*. I have outlined the basic SDT parameters and measures, and shown how they apply to (un)professional and (un)ethical qualities and behaviors of many kinds. These links to ethics and professionalism are largely common sense, but only conceptual at this point. They will benefit from empirical confirmation, to provide greater confidence in the basic conclusions and also to elucidate the precise relationships between thriving sources, ethics, and professionalism.

One purpose for this paper, therefore, is to encourage other researchers to employ SDT measures in their future empirical work—both to extend the reach of that work and to clarify the operative links between ethical and professional attorney/judge behavior on the one hand, and the sources and experiences of human thriving on the other. To concretely illustrate the application of these measures, I will describe past studies of law students that

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J.L. & HEALTH 1, 14 (1999) (stating, with explanation, “[t]he desire to prevail is natural; the need to prevail is destructive”).

62. During CLE presentations that I have made to lawyers on these topics, the lawyers regularly voice great concern with the excessive competitiveness and abusive behavior of current lawyers and the enormous negative impact they have on the profession and the experience of other lawyers trying to deal with them. In our current research on lawyers, we are seeking to measure their perception of the professionalism of the lawyers and judges with whom they interact.

63. Much has been made of the commercial nature of current law practice and the eroding influences it can have on ethics and well-being. A literature review is beyond the scope of this article, but for a focused discussion, see Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 *VAND. L. REV.* 871 (1999).

used SDT measures and also show how another, recent study of students could have benefited from such measures. I will also describe a very large, ongoing study of lawyers that incorporates all of the primary SDT measures,<sup>64</sup> using its ambitious empirical goals as another example of how researchers might use these measures. I then describe other recent research on attorney behavior and professionalism to provide a further example of how SDT could be used to clarify and extend such studies. I hope that as others begin to use these measures in their own investigation of professionalism and ethics, it will benefit our growing understanding of attorney behavior, its causes, and, most importantly, possible approaches to improving the tenor of the profession.

### A. *SDT Research on Law Students*

Dr. Ken Sheldon and I have completed two longitudinal studies using SDT, tracking students from their arrival through their third year at two very diverse law schools.<sup>65</sup> Both studies addressed well-being and ill-being using both SDT and more traditional measures of psychological health. The first study<sup>66</sup> also focused on student goals, values, and motivations, while the second study<sup>67</sup> added universal needs and the sources and effects of autonomy support.<sup>68</sup> Of particular relevance to this symposium and the purposes of the Holloran Center, we conceived both of these studies to empirically investigate the reported emotional distress in the legal profession and in law schools, and to see whether any psychosocial changes occurring in students during law school might explain the malaise and unprofessional/unethical conduct among lawyers. We reasoned, as described throughout this paper, that employing SDT measures could shed light on both emotional health and core aspects of the person (i.e., needs, values, and motivations) that could predict these students' likely level of ethical, professional, and constructive interpersonal behaviors in law school and beyond.

The results of both studies supported our hypotheses.<sup>69</sup> The data showed broad, precipitous declines in wellness that were most pronounced

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64. I am not aware of previous studies of lawyers that employed SDT.

65. The schools differed in many ways: they were located in different regions of the country; one was private, while the other was public; one was in a very large city, while the other was in a small city; one school had nearly double the student population of the other; one was high-tier, according to U.S. NEWS & WORLD REPORT, while the other was low-tier; one school placed a strong emphasis on scholarship, while the other strongly emphasized teaching quality.

66. Sheldon & Krieger, *Undermining*, *supra* note 10, at 263.

67. Sheldon & Krieger, *Understanding*, *supra* note 10, at 884.

68. Autonomy support is a relatively recent and important addition to SDT concepts and measures. It is a three-pronged measure of supportiveness that inheres in the relationships between subordinates (law students in this case) and superiors (here, law professors), and has important implications for subordinates' need satisfaction and motivation. *Id.*

69. There were also some surprises, as might be expected. See Sheldon & Krieger, *Undermining*, *supra* note 10, at 281–82 (discussing the study's unexpected results).

in the first year but continued throughout law school.<sup>70</sup> More directly relevant to this symposium and future research on professionalism, we found losses in internal motivation at both schools and a surprising, negative shift from intrinsic to extrinsic value orientation among students at one of the law schools.<sup>71</sup> These results lead us to discuss the potential effects on the professional lives and professionalism of these students as future lawyers:

Past scholarly commentaries and previous studies paint a bleak picture of the effects of legal education on the well-being of law students. Our data from two very diverse law schools confirms these negative reports, and further reveals that in these classes, the law school experience was associated with troubling increases in extrinsic motivation and declines in self-determined motivation. If these experiences are common in American law schools, as anecdotal reports and other studies indicate, it would suggest that various problems reported in the legal profession, such as depression, excessive commercialism and image-consciousness, and lack of ethical and moral behavior, may have significant roots in the law-school experience.<sup>72</sup>

*B. How SDT Can Clarify Other Law Student Research Bearing on Professionalism and Ethics: An Example*

In 2007, the American Bar Association (ABA) published a linguistic analysis of the effects of first year training on law students.<sup>73</sup> The findings bear explicitly on critical issues of ethics and professionalism and confirm in many ways the Sheldon/Krieger findings just described. This ABA study offers an apt opportunity to illustrate the potential benefits of SDT measurement as an adjunct to other methods of inquiry into professionalism.

The findings of this study are explicit, and almost gruesome, regarding the impact of basic legal education on the ethical and professional formation of law students. The author, Professor Elizabeth Mertz,<sup>74</sup> found broad impacts on integrity, morality, values, conscience, social sensitivity, and caring for others. These impacts are all integral to the core domains of SDT, and Mertz came to conclusions much like those I advance here—that these factors will substantially impact professionalism and ethical behavior, and that the erosion of these factors in law school is likely to undermine future

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70. *Id.* at 272, 278; Sheldon & Krieger, *Understanding*, *supra* note 10, at 883.

71. The same shift was apparent in the data from both schools but did not reach statistical significance at one of them. Sheldon & Krieger, *Undermining*, *supra* note 10, at 273, 280.

72. *Id.* at 283.

73. The first year of law school is focused on learning to “think like a lawyer”—finding legal precedents and rules, applying them to the facts of a given situation, and making arguments about conclusions to be reached. ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL* 97–98 (2007). The study involved a detailed analysis of teaching methods and teacher-student exchanges throughout the first semester of the Contracts courses at eight diverse law schools. *Id.* at 31–32.

74. John and Rylla Bosshard Professor of Law at the University of Wisconsin Law School.

ethical behavior. Specifically, Mertz observed that fundamental legal training promotes an instrumental, amoral mindset;<sup>75</sup> has the goal of changing people's values;<sup>76</sup> forces students to abruptly set aside their sense of morality, fairness, and sensitivity to human suffering;<sup>77</sup> replaces moral reasoning with "combat dialogue";<sup>78</sup> and encourages an amoral worldview.<sup>79</sup> Further, judgments about what is right or wrong, moral or immoral, reprehensible or ethical are irrelevant, or nearly so.<sup>80</sup> Students become emotionally detached,<sup>81</sup> "unmoored from ethical and social identities,"<sup>82</sup> centered in identity-based adversarialness,<sup>83</sup> and learn to ignore misery, justice, and injustice.<sup>84</sup> Students lose touch with their values for justice, public service, and helping others.<sup>85</sup> Ultimately, Professor Mertz concludes that this classroom training drains away social and cultural contexts, morality, and emotions, erasing the common bases for forming ethical judgments.<sup>86</sup>

Given such findings, we might expect law students to become the *least* ethical of people, and hopefully law professors and deans will give these findings their full attention.<sup>87</sup> My purpose, however, for summarizing the study here is to provide another example of a recent study on law students that looks in depth at personality qualities and their likely impacts on professionalism. In order to encourage others to begin employing SDT in research bearing on ethics and professionalism, I next explain how incorporating SDT measures might have added to the impact of this linguistic study.

If Professor Mertz had incorporated basic SDT measures and investigated longitudinal changes in the students, she would have essentially combined our studies on needs, values, motivation, and autonomy support with her detailed linguistic analysis of teaching and learning in law school. The SDT measures would add many potentially important features. Most importantly, those measures, using a longitudinal design, would have permitted confirmation, if occurring in these students, of Mertz's predictions of dire impacts on integrity, autonomy, interpersonal relations, and valuing of self-

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75. See MERTZ, *supra* note 73, at 98, 132 (discussing that law students learn to push their emotions aside in order to be able to argue both sides of an issue).

76. *Id.* at 1.

77. *Id.* at 4, 95.

78. *Id.* at 4, 6.

79. *Id.* at 1, 4.

80. *Id.* at 120.

81. *Id.* at 99.

82. *Id.* at 214.

83. *Id.* at 100–01.

84. *Id.* at 10.

85. *Id.* at 11.

86. *Id.* at 132.

87. For an extended discussion of ways to restore the foundations of ethics and morality to law students, see generally Krieger, *supra* note 8 (arguing for a legal education framework based on the core qualities of human nature).

knowledge, community feeling, and helping others. If the author detected such changes, she could also correlate the strength of change with observed teaching methods and specific language used by professors. She might then determine which teaching practices were particularly supportive or unsupportive of integrity (autonomy), interpersonal capacity (relatedness need and intimacy value), and service ideals (community and helping values). This study, if incorporating SDT, would also measure the correlating impacts on well-being and internal motivations, and would indicate whether and to what extent the “unmooring” of the self and loss of social capacity observed in the study might account for reported depression and other emotional distress in law students and lawyers.<sup>88</sup> Such integrated findings could then lead to concrete changes in teaching methods to ameliorate some of the negative effects of traditional law teaching. The ultimate benefit would be improvement of the ethics, professionalism, and well-being of lawyers and law students.<sup>89</sup>

### C. *Current Research on Lawyers: Goals and Usefulness of SDT Measures*

To extend the findings of our studies of law student needs, values, motivations, and well-being, Dr. Sheldon and I have currently undertaken a major study of lawyers and judges. The study incorporates the same SDT measures of needs, values, motivations, autonomy support, and well-being applied previously to law students, combined with many demographic and career variables. We hope that correlating the SDT measures with many aspects of lawyers’ lives and careers will provide insight into the experience of lawyers. We also hope to discover how choices and accomplishments in law school, career choices, practice setting and type of cases, income, position, and the usual age, ethnicity, gender, and other sorting factors influence lawyers’ values, purposes, satisfaction, and emotional health.

Incorporating SDT measures permits sufficiently broad inquiry to investigate complex areas like the psychodynamics of the legal profession. This study is an example of the potential reach of the SDT measures, with which we hope to provide answers to a wide array of important questions: Are lawyers fundamentally like other people psychologically—i.e., do those with the most intrinsic value systems, the most autonomous motivations, and the most frequent experiences of *autonomy*, *competence*, and *re-*

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88. See Sheldon & Krieger, *Undermining*, *supra* note 10, at 261–62 (citing many studies showing problems such as depression and anxiety in law students); Sheldon & Krieger, *Understanding*, *supra* note 10, at 883 (citing many studies showing stress and emotional distress in law students); Matthew M. Dammeyer & Narina Nunez, *Anxiety and Depression Among Law Students: Current Knowledge and Future Directions*, 23 L. & HUM. BEHAV. 55, 55–56 (1999) (discussing the recent empirical focus on law student well-being).

89. See Krieger, *supra* note 8, offering systematic recommendations for improving both performance and psychological outcomes of law school, based on the results of the studies to date.

*latedness* fare best in terms of life satisfaction and well-being? Who is satisfied in his law practice? What kind and size of practice promotes well-being? Do lawyers' values tend to predict their practice area? How do extrinsic factors, like income and law school standing, impact satisfaction and well-being? Which factors, including practice setting and practice area, appear most likely to promote professional and unprofessional behavior—e.g., which correlate most strongly with autonomy, relatedness, and competence satisfaction, and with valuing of others, service, and community? Do students with higher pay and/or lower debt have more satisfying life experiences than others? Is the assumption at the heart of most law school rewards systems—that the highest grades, law review membership, and other achievements will translate into the greatest success and satisfaction as a lawyer—actually true?

As of August 2011, more than 8,000 attorneys in four states had provided data for this study. We expect to begin detailed analysis of the data in the fall of 2011. Although it is too early to draw any conclusions, preliminary data analyses support many of our hypotheses. It appears that incorporating SDT measures in this study will provide many new areas of understanding, and at a much more operative, causal level than previous studies of lawyers. In addition, we hope and expect that the apparent correlations between the SDT domains and ethical/professional qualities and behavior will permit useful conclusions about important influences on attorney professionalism.

*D. Is the Ethical Professional, by Definition, the Thriving Professional?*

I have sought to show that promoting the sources of thriving in lawyers is likely to generate increased professionalism and ethical behavior in the practicing bar, because the values, needs, and motivations that promote positive, thriving experiences correlate closely with core professional and ethical qualities. Because these correlations appear so numerous and precise, it may be that there is no difference between a thriving attorney and a professional/ethical attorney. If the sources of thriving are the sole, or primary sources of morality, conscience, decency, relatedness, and integrity within personality (which they well may be), it will necessarily imply that unethical or unprofessional lawyers are not psychologically mature, thriving people.<sup>90</sup> It will also necessarily imply that people with less ideal motives and values, and thus with decreased experiences of autonomy, competence, or relatedness, are more likely to engage in unprofessional and/or unethical behavior. The consequences for legal education and the continuing education of lawyers would be substantial. This would mean that education de-

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90. These conclusions bring us back to the observations of Maslow: that fully mature, self-actualizing people experience maximum fulfillment, find maximum meaning in work, and are spontaneously the most ethical of people. MASLOW, *supra* note 4, at 51–58.

signed to cultivate the primary SDT factors in order to maximize enjoyment, mental health, and satisfaction in life and work (worthy goals in themselves, of course) would also directly improve the level of professionalism and ethics among attorneys and students.<sup>91</sup>

Our ongoing study of practicing lawyers is based on the thriving measures described in this article, but will touch only indirectly on attorney behavior. If SDT research is sufficiently extended and applied in studies that focus primarily on professional and ethical behaviors, it may increasingly demonstrate that the sources of human thriving are also the sources of ethical behavior, and that an ethical professional is inevitably the product of intrinsic values, internal motivations, and high satisfaction of the basic needs for *autonomy*, *competence*, and *relatedness to others*. I fully expect this to be the case, but there is no empirical study yet that investigates the question directly.<sup>92</sup> In order to further encourage such studies in the future, the next section provides an example of a previous, revealing study of lawyer professionalism, and explains how SDT could have been applied to expand its reach.

#### *E. Application of SDT Measures to Recent Research on Lawyers Bearing on Professionalism and Ethics*

Ultimately, SDT may provide concrete and fully credible insights into professional formation and professional qualities. The reliability of the apparent correlations between the sources of thriving and the professional/ethical traits and behaviors will be established as research in this area incorporates and tests the SDT measures. Here, I summarize a study involving a variety of attorney ethical and professional behaviors and suggest fundamental insights that SDT measures, if integrated into such a study, might well have provided.

Andrea Schneider<sup>93</sup> and Nancy Mills<sup>94</sup> surveyed approximately 800 attorneys in two Midwestern cities, asking them to rate, for behavior and

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91. I have been teaching law students and lawyers these topics for many years, with the assumption that the values, motivations, and needs elucidated by SDT will benefit them in all of these important areas. Although we do not have supporting data yet, the anecdotal feedback from students in clinical programs, and later in law practice after graduation, strongly confirms what seems obvious but is still a supposition: the sources of personal thriving and wellness also promote professionalism and ethics. It is not clear whether the SDT factors are identical to the sources of appropriate behavior or are related in some way not yet fully understood, but inclusion of SDT in many other studies of attorney behavior should help answer this question.

92. Such a study might, for example, analyze the values orientation, motivations, and need satisfaction of lawyers with recent ethical violations or lapses in professionalism, in comparison to other lawyers. The study described next in this paper offers an example of how this research could readily be accomplished.

93. Andrea Schneider is a professor of law at Marquette Law School in Milwaukee, Wisconsin.

94. Nancy Mills is a graduate of Marquette University Law School and practices as a mediator and a family law attorney.

effectiveness, their opposing counsel in a recent negotiation.<sup>95</sup> They provided the attorneys lists of adjectives and behaviors with which to rate their counterparts. The results were then examined through cluster analysis, with respondents organized into two primary groups. Each group was then divided into two additional clusters at the most detailed level.<sup>96</sup> As the following descriptions show, the four resulting groups clearly represent different strata of ethical and professional behavior. The “adversarial” negotiators were divided into two groups, which the researchers termed “ethical” and “unethical,” based on the adjectives and behaviors attributed to the lawyers by their opposing counsel.<sup>97</sup> Some of the descriptors characterizing the unethical group include: *zero-sum mentality, ignore other’s needs, aggressive, arrogant, irritating, deceptive, greedy, narrow, rigid position, and inflicted needless harm.*<sup>98</sup> By contrast, adjectives and behaviors describing the most open, cooperative group of negotiators include: *seek mutual benefit, honest, courteous, friendly, reasonable, cooperative, forthright, trusting, prepared, and zealous within limits.*<sup>99</sup>

The first two columns in the tables below summarize key portions of Schneider and Mills’ findings, showing the descriptions of the participating attorneys during negotiations, as provided by their opposing counsel. Relationships between these findings and the core SDT factors are immediately apparent, and are shown in the third column in each table. The different adjectives and behaviors ascribed to the ethical and unethical lawyers appear to correlate with very different motivations and values, and very different levels of need satisfaction, life satisfaction, and well-being. This study is extremely compelling as is. Integrating SDT measures into a similar, future study would substantially extend it by providing insights into these apparent correlations among integrity, relatedness, decency, cordiality, service values, effectiveness, satisfaction, and enjoyment—all current issues of real concern in the legal profession.

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95. Andrea Kupfer Schneider & Nancy Mills, *What Family Lawyers are Really Doing When They Negotiate*, 44 FAM. CT. REV. 612, 612 (2006).

96. *Id.* at 613.

97. *Id.* at 614–15.

98. *Id.* at 615–16.

99. *Id.*



TABLE 2. EXTREME PROBLEM SOLVERS (ETHICAL)

<b>Adjectives and Behaviors</b> (attributed by oppos. counsel)	<b>Effectiveness</b> (attributed by oppos. counsel)	<b>Predicted Thriving Level</b> (SDT domains)
Seek Mutual Benefit, Honest, Courteous, Friendly, Reasonable, Cooperative, Forthright, Trusting, Prepared, Zealous Within Limits	Very High: 72% rated effective 1.3% rated ineffective	High: Demonstrating high integrity, authenticity, relatedness, self-esteem, community values. Primary intrinsic/cooperative values. <i>High satisfaction/well-being.</i>

TABLE 3. EXTREME ADVERSARIALS (UNETHICAL)

<b>Adjectives and Behaviors</b> (attributed by oppos. counsel)	<b>Effectiveness</b> (attributed by oppos. counsel)	<b>Predicted Thriving Level</b> (SDT domains)
Zero-Sum Mentality, Ignore Other's Needs, Aggressive, Arrogant, Irritating, Deceptive, Greedy, Narrow, Rigid Position, Needless Harm	Very low: 2.6% rated effective 75% rated ineffective	Low: Demonstrating low integrity, authenticity, relatedness, self-esteem, community values. Primary extrinsic/competitive values. <i>Low satisfaction/well-being.</i>

Appearances, of course, can be deceiving. It is possible that some of the ethical attorneys in this study have learned to act in seemingly harmonious, respectful, cooperative ways simply as a means of enhancing their effectiveness. If that is the case, the more constructive, adaptive behaviors of the ethical lawyers could simply be tools applied to produce a desired outcome (settlement of the dispute) rather than expressions of their true values, internal beliefs, and preferences—the “true selves” of those lawyers. If this were true, the lawyers would experience some benefits of thriving, both by maximizing their performance outcomes to increase competence, and by engaging in behaviors that, even if not entirely genuine (from a personality perspective), do result in the experience of trust, harmony, and cooperation with adverse counsel.<sup>100</sup> Here, again, inclusion of the SDT measures could

100. SDT research has demonstrated that, in terms of well-being, it is most advantageous to do the “right thing” for the “right reason” (i.e. engage in behaviors that express intrinsic values like relating well and being in community with others, for intrinsic/internally motivated reasons).

shed light on these more subtle dynamics by revealing the actual values and motivations of the lawyers as well as their level of authenticity, relatedness, and satisfaction.

*F. Employing SDT to Clarify Questions of Lawyer Satisfaction and Professional Development*

The question of lawyer satisfaction and dissatisfaction is complex. There is no lack of discussion about it, but there is a lack of reliable, repeatable research to provide a clear answer.<sup>101</sup> For this purpose, SDT is precisely suited to attorney research because of its established measures of life satisfaction and wellness, and because those measures also go to the heart of professional and ethical behavior. In the Schneider and Mills study, for example, SDT measures would have shown how the lawyers in the four clusters compared in experiences of *autonomy* (integrity), *relatedness to others*, and *competence*, and their level of life satisfaction and emotional well-being. We would also know the comparative values and motivations of the different groups—whether intrinsic/internal (seeking self-understanding, intimacy, community, and helping/serving others) or extrinsic/external (seeking earnings, power, competitive advantage, and appearance). All of these SDT factors, including satisfaction, would be correlated with one's level of ethical and professional behavior in such a study.

Beyond the contribution to understanding attorney satisfaction and its correlations with values, motivations, and ethical/professional behaviors, SDT measures combined with additional demographic variables would allow researchers to investigate the impact of many diverse factors on values, motivations, career choices, and emotional health. Possible causal and contributing factors could include: students' law school choices, experiences, and performance; methods of instruction, curricula, and educational practices (grading systems, experiential/clinical programs, explicit training in professional identity and values, etc.); lawyers' practice settings, incomes, career goals, and other factors.<sup>102</sup> Given the precise fit of SDT measures to

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However, there is also a beneficial effect from doing the "right thing," even if it is for the "wrong reason" (i.e. an extrinsic motivation, like a desired reward). See Kennon M. Sheldon et al., *The Independent Effects of Goal Contents and Motives on Well-being: It's Both What You Pursue and Why You Pursue It*, 30 PERSONALITY & SOC. PSYCHOL. BULL. 475, 484–85 (2004) (finding that goals affect well-being even when motives are controlled, meaning that goals have positive and negative effects based on the goal itself regardless of why a person chooses to pursue that goal).

101. See generally Jerome N. Organ, *What Do We Know About the Satisfaction/Dissatisfaction of Lawyers? A Meta-Analysis of Research on Lawyer Satisfaction and Well-Being*, 8 U. ST. THOMAS L.J. 225 (2011) (synthesizing past empirical data on lawyer well-being and arguing that the number of satisfied lawyers is higher than what is typically reported). For a discussion of conflicting findings regarding lawyer satisfaction, see Schiltz, *supra* note 63 (arguing that the legal world is generally an unhappy, unhealthy, and unethical place to work).

102. The second Sheldon/Krieger study of law students, Sheldon & Krieger, *Understanding*, *supra* note 10, begins this effort with concrete findings about the differences between two law schools, and suggestions for further research. Our current study of lawyers continues this inquiry

all of these concerns within the profession, we might learn relatively quickly how to educate lawyers, both while in law school and after, so they adopt thriving attitudes, values, and behaviors to benefit themselves, other lawyers, their clients, and society generally.

#### IV. CONCLUSION

Two fields of inquiry that are critical for legal education and the profession—professional/ethical attorney behavior and the psychosocial components of a healthy adult—have separately become subjects of focused empirical study in recent years. Psychologists employing SDT have discovered and established reliable measures of an emotionally healthy, mature person, including universal needs for autonomy, relatedness, and competence; intrinsic valuing of self-improvement, intimacy, community, and altruism; and internal motivations for interest, enjoyment, and meaning. Each of these sources of human thriving bears close, apparently causal relationships to ethical and professional behavior of lawyers, and with further investigation may prove to be the sole or primary sources of such constructive behavior. SDT is therefore particularly well-suited to our continuing investigation and understanding of ethics and professionalism in the practicing Bar, and may lead to a clearer understanding of how to best educate law students and lawyers to function as ethical professionals.<sup>103</sup>

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by including questions about law school attended, activities and curricular choices during law school, academic and other achievements, and perceived autonomy support in law school and law practice, but has too many measures to also include correlations with specific attorney behaviors.

103. Because SDT provides universally applicable constructs for educating lawyers and law students about the personal sources of professionalism, emotional health, and satisfaction in their lives and careers, it may also be immediately incorporated in law schools and CLE programs to improve the level of professionalism among lawyers. Such programs could also be integrated in an experimental design to later measure changes in the lawyers and law students receiving this instruction.