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ARTICLE

RICH, SMART, HONEST?: DOES SUCCESS LEAD TO UNETHICAL LAWYERING?

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ABSTRACT

The causes of unethical behavior in society, and among lawyers specifically, are the subject of significant interest in legal and psychological academia. Among the hypothesized causes of unethical behavior is class distinction. This research offers a preliminary inquiry into whether the structure of law school education leads to greater unethical behavior because it imposes an additional level of class distinction among lawyers through class rankings and coveted spots on law review and other “elite” organizations. Empirical results suggest possible correlation between ethical standards and various indications of law school “class” status. While the results are not statistically significant to a high confidence level, the small number of observations may have led to the lack of statistical significance, indicating a need for further research to verify the results.

INTRODUCTION

“I have never forgotten my humble background and family raised ethics of integrity and honesty.”¹

“And this is good old Boston,
The home of the bean and the cod,
Where the Lowells talk only to Cabots,
And the Cabots talk only to God.”²

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1. Michael Facchini, *Profile*, LAW OFFICES OF MICHAEL D. FACCHINI, <http://www.facchini.facchinipa.com/Profile/> (last visited Jan. 15, 2013).

2. ROBERT ANDREWS, *FAMOUS LINES: A COLUMBIA DICTIONARY OF FAMILIAR QUOTATIONS* 53 (Robert Andrews ed., 1996).

Why do some lawyers put short-term personal gain ahead of all other considerations, including ethical rules, social norms, and the long-term health of their careers?³ Perhaps lawyers are every bit as disreputable as the stereotypes used in the multitude of lawyer jokes⁴ and professional laments.⁵

Of course, most lawyers maintain their ethical standards when faced with the opportunity for personal gain, even when they are unlikely to be caught, so from the perspective of the Holmesian “bad man,”⁶ the more interesting question is why there are any ethical lawyers at all. Why are some lawyers good people and others not? What makes the difference? Is unethical lawyering brought on by a mixture of high stress and desperation by lawyers “on the edge,” beset by financial and other stresses? On the other hand, do lawyers become more unethical as they develop a sense of entitlement while (in large part due to the fruits of past unethical actions) they rise to positions of wealth and prominence in their communities? Are unethical lawyers the poor and deprived, lured into temptation by the allure of wealth and success, or are they the spoiled and wealthy, who “know how the world works” and who always took their ethics courses with several grains of salt? Do the wealthy, having “earned their first million” by cutting ethical corners when poor, decide that they can now afford to “walk the line?” Or is the bottom line that unethical behavior is something more mundane: the result of bad parenting, poor instruction in law school, or inadequate mentoring in practice?

Attempting any sort of generalization about human motivation is fraught with risks, yet locating the roots of unethical behavior drives many researchers to hazard those risks. In the realm of social psychology, researchers have argued that wealth,⁷ social class,⁸ religion,⁹ and gender,¹⁰ among other factors, may be independent variables impacting ethical

3. See generally Lisa G. Lerman, *Blue-Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers*, 12 GEO. J. LEGAL ETHICS 205 (1999) (describing the plight of sixteen high-paid lawyers who lost their law licenses for stealing from clients).

4. David Mellinkoff argues that, historically, lawyers have been seen as: “a consummate malevolence, callousness to truth the basic vice, hardened with the sin of avarice, and a consequent denial of God’s favored—the downtrodden poor.” DAVID MELLINKOFF, *THE CONSCIENCE OF A LAWYER* 13 (1973). Alexis de Tocqueville, on the other hand, referred to the legal profession as “the most cultivated portion of society.” ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 124 (Richard D. Heffner ed. 2001) (1840).

5. See, e.g., Patrick Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 874–80 (1999).

6. Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 459 (1897).

7. Francesca Gino & Lamar Pierce, *The Abundance Effect: Unethical Behavior in the Presence of Wealth*, 109 ORG. BEHAV. & HUM. DECISION PROCESSES 142, 143 (2009).

8. Paul K. Piff, Daniel M. Stancato, Stéphanie Côté, Rodolfo Mendoza-Denton & Dacher Keltner, *Higher Social Class Predicts Increased Unethical Behavior*, 109 PROC. NAT’L ACAD. SCI. 4086, 4086 (2012).

9. Ellen J. Kennedy & Leigh Lawton, *Religiousness and Business Ethics*, 17 J. BUS. ETHICS 163, 163 (1998).

choices. Alternatively, an economist might avoid actual predictions by restating the foundational truism that individuals tend to take those actions in which the benefits most outweigh the costs.¹¹ Increase the rewards of unethical behavior and more lawyers will act unethically; increase the cost and unethical behavior should decrease.¹²

The economic analysis, which for some law and economics scholars appears to have been inspired by Holmes' "bad man,"¹³ is perfectly sensible but also unhelpful. By itself, it restates (in economic language), but does little to explain, unethical behavior. Most notably lacking is any explanation of why most lawyers, even those working with large sums of money, continue to adhere to the Rules of Professional Conduct¹⁴ while others "cross the line," often destroying their careers in order to achieve seemingly paltry rewards. Obviously, if we consider that each individual is unique and, as a result, views the costs and benefits of unethical behavior through the lens of his or her unique life experiences, the economist's answer can be seen as a tautological warning that while we can observe individual choices and can speak broadly about which direction a proposed solution is likely to take us, choice is still "free" and ultimately "uncaused" by anyone but the actor.

Whether one listens to social psychologists or economists, one conclusion seems inescapable—the factors that influence lawyers' choices when responding to ethical dilemmas are legion. Upbringing, legal education, and mentoring, among other factors, help define the lawyer's baseline moral identity, that set of beliefs that help the lawyer make ethical decisions. For

10. Yuh-Jia Chen & Thomas Li-Ping Tang, *Attitude Toward and Propensity to Engage in Unethical Behavior: Measurement Invariance Across Major Among University Students*, 69 J. BUS. ETHICS 77, 82 (2006).

11. See, e.g., Sean Griffith, *Ethical Rules and Collective Action: An Economic Analysis of Legal Ethics*, 63 U. PITT. L. REV. 347, 352–53 (2002) (arguing that the collective best interests of the legal profession are best served by avoiding tactics where the cost of a motion are greater than its benefits).

12. See, e.g., David Barnhizer, *Profession Deleted: Using Market and Liability Forces to Regulate the Very Ordinary Business of Law Practice for Profit*, 17 GEO. J. LEGAL ETHICS 203, 249–65 (2004) (describing potential reforms that would change the incentives faced by lawyers who are presented with ethical dilemmas). Some critics argue that economics, itself, may be at the root of unethical behavior. See, e.g., Long Wang, Deepak Malhotra & J. Keith Murnighan, *Economics Education and Greed*, 10 ACAD. MGMT. LEARNING & EDUC. 643, 643 (2011); Robert H. Frank, Thomas Gilovich & Dennis T. Regan, *Does Studying Economics Inhibit Cooperation?*, 7 J. ECON. PERSP. 159, 170 (1993). Whether or not economics leads students down a dark path of anti-social behavior, the analytical tools of economics are still useful for analyzing how individuals respond to incentives.

13. See STEPHEN J. BURTON, *THE PATH OF THE LAW AND ITS INFLUENCE: THE LEGACY OF OLIVER WENDELL HOLMES, JR.* 4 (2000) ("Chief Judge Richard Posner is the grand man of economic analysis. Holmes's portrait hangs in his office.").

14. As a threshold matter, let it be noted that we do not believe that compliance with the Rules of Professional Conduct is all that is required to consider a lawyer ethical. For one thing, there are many areas of life not covered specifically by the Rules. For another, while the Rules may provide a baseline minimum for the ethical profession of law, it is at least debatable whether the Rules embody the professional standards that lawyers *should* aspire to achieve. Compliance with the Rules may be neither sufficient nor always necessary for ethical practice.

example, each of these factors will help determine whether and to what extent the lawyer will incur internal (conscience) costs if he or she succumbs to the temptation to act unethically for personal gain. Although it is possible to overcome temptation, the baseline remains important.¹⁵ Change the baseline and you change the likely outcome in many situations.

This article attempts to start a dialog about how legal education impacts the lawyer's baseline moral identity. Legal ethics training is one way in which legal academia attempts to shift the baseline in favor of greater ethics,¹⁶ so impact of legal ethics training is considered. Building on research from psychology and sociology, we also ask whether the structure of legal education might encourage or exploit a sense of entitlement that some have suggested might lead to more serious, and more numerous, ethical deviations.

Our culture is beset with contradictory signals about the relationship of wealth to ethical choice. The Judeo-Christian tradition seems torn on this matter. In the Hebrew Bible, Proverbs 13:11 reads, "Wealth *gotten* by vanity shall be diminished: but he that gathereth by labour shall increase."¹⁷ This seems to imply that the rich are those who have been industrious,¹⁸ while those who are poor may have succumbed to vanity. On the other hand, Proverbs 28:6 states, "Better is a poor man who walks in his integrity than a rich man who is crooked in his ways."¹⁹ This implies at the very least that there are honest poor and dishonest rich, though it may also imply that the special tribute given to the ethical poor may be due because it is so hard to be ethical and poor at the same time. And the New Testament says, "Beware of the scribes, who like to walk around in long robes, and love greetings in the marketplaces and the best seats in the synagogues and the places of honor at feasts, who devour widows' houses and for a pretense make long prayers. They will receive the greater condemnation."²⁰ This may merely be a condemnation of Scribes, but it also seems to condemn the general ethical outlook of the wealthy.

15. See Karl Aquino, Americus Reed II, Dan Freeman, Vivien K. G. Lim & Will Felps, *Testing a Social-Cognitive Model of Moral Behavior: The Interactive Influence of Situations and Moral Identity Centrality*, 97 J. PERSONALITY & SOC. PSYCHOL. 123, 124 (2009).

16. See, e.g., David Wilkins, *Professional Ethics for Lawyers and Law Schools: Interdisciplinary Education and the Law School's Ethical Obligation to Study and Teach About the Profession*, 12 LEGAL EDUC. REV. 47, 48–49 (2001) ("The legal academy must become an active participant in developing and transmitting the empirical and theoretical knowledge about legal practice that will allow us to construct a vision of legal professionalism fit for the twenty-first century . . .").

17. *Proverbs* 13:11.

18. Hard work and diligence are strongly emphasized by Protestant (and particularly Calvinist) ethics. For a description of Calvinism in general, see MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 98–128 (Talcott Parsons trans., Routledge 1992) (1905).

19. *Proverbs* 28:6.

20. *Luke* 20:46–47.

If being treated to a life of privilege, as were the ancient Scribes, might lead people to choose to live lives of luxury by lower ethical standards, then law schools' constant reminders to their most successful law students that they are somehow different and better than other law students might have similar results. Indeed, high status might lead to lowered ethics even if, unlike Scribes, the "best" law students were originally raised within society's lower classes. By its constant reinforcement of successful students, law schools could potentially bestow a sense of superior class status that leads those students to choose a less ethical path.

Section I of this article describes portions of the larger literature that address the possible link between class status and ethical behavior. Various theories have been proposed for why ethics and class might be linked, with a number having specific application to the legal profession and law school ethics training, specifically. Section II describes a survey instrument distributed to law students at the George Mason University School of Law. This survey was designed to gauge the baseline level of ethics of each student, and to allow for comparison across students based on socioeconomic and law-school-specific characteristics. Section III analyzes the empirical results of the survey, detailing shortcomings of the results and ways in which they might be strengthened by further research. The analysis provides weak evidence that social and law school specific measures of class are correlated with lower ethics. Section IV offers suggestions for future research and ways to proceed in uncovering sources of unethical behavior.

I. FACTORS THAT INFLUENCE ETHICAL CHOICES

Why do people make unethical choices? As a foundational principle, we assume most would agree that there is no easily identifiable quality that separates the world's virtuous people from its evil people, for human morality is far too complicated and contingent for such easy answers.²¹

Even the most pious person sometimes violates the moral standards he or she claims to hold dear, and even the meanest scoundrel sometimes displays acts of kindness and generosity. That we vacillate from abandoning our moral principles in one situation to acting on them with extraordinary will and determination in another is merely to recognize that in the messy, imperfect world of everyday morality, the situations in which we find ourselves can often be decisive in determining the direction towards which our moral compass turns.²²

So the ethical and unethical are not like redheads and blonds: they cannot be easily identified and distinguished from each other. That we may

21. Aquino et al., *supra* note 15, at 123.

22. *Id.*

not find a magical “ethics gene,”²³ however, does not mean that we have nothing interesting to say about the factors that influence ethical choices. Researchers in various academic disciplines have offered useful insights that can allow us to generate reasonable hypotheses about the “causes” of good and bad choices; human free will and the complexities of our psyches simply mandate a healthy dose of caution as we proceed.

A. *The Influence of Class Status on Ethics*

One conspicuous focus of social psychology research has been on the impact of class on ethical behavior. In March 2012, a prominent National Academy of Sciences (NAS) study purported to describe an indirect (and negative) correlation between higher social class and ethical choices.²⁴ Psychologists at the University of California at Berkeley considered study subjects’ rank in society (measured by wealth, occupational prestige, and education) and found that those who were higher ranked were more likely to cheat, lie, and break the law than those who were lower ranked.

In the first of two component experiments, researchers found that those who drove more expensive cars were more likely to cut off other cars and pedestrians at a busy San Francisco four-way intersection than those who drove older, less-expensive vehicles.²⁵ In the second study, researchers found wealthier people were more likely to cheat in an online game to win a \$50 prize.²⁶

Of course, even if this finding is accurate, it would be difficult to know whether richer people succeed because of their unethical behavior, or whether wealth and high standing cause people to misbehave ethically. “It seems like a vicious cycle,” concluded study leader Paul Piff.²⁷ Of course, Piff was obliged to add that the study’s results obviously don’t apply to all high-class people. He noted that Bill Gates and Warren Buffett were among the wealthiest people in the world and also the most philanthropic.²⁸ Piff also pointed to high rates of violent crime in the poorest neighborhoods, a robust observation that seemingly contradicts the NAS study’s findings.²⁹ Still, Piff concluded, “What it comes down to, really, is that money creates more of a self-focus, which may account for larger feelings of entitlement.”³⁰ If, as the NAS study suggests, wealth creates an “it’s all about me”

23. See Nora T. Walter, Christian Montag, Sebastian Markett, Andrea Felten, Gesine Voigt & Martin Reuter, *Ignorance Is No Excuse: Moral Judgments Are Influenced by a Genetic Variation on the Oxytocin Receptor Gene*, 78 *BRAIN & COGNITION* 268, 269 (2012).

24. Piff et al., *supra* note 8, at 4088–89.

25. *Id.* at 4087.

26. *Id.* at 4088.

27. Mikaela Conley, *Are Rich People Unethical?*, ABC NEWS HEALTH BLOG (Feb. 27, 2012, 5:48 PM), <http://abcnews.go.com/blogs/health/2012/02/27/are-rich-people-unethical/>.

28. Piff et al., *supra* note 8, at 4089.

29. *Id.*

30. Conley, *supra* note 27.

mentality, why would any wealthy individual consider a decision's effects on anyone else?

Several psychologists raised serious methodological concerns about this study,³¹ and we also find certain aspects of its methodology very troubling. For example, one portion of the study investigated the willingness of individuals to proceed at a four-way stop sign earlier than would be allowed under the law and standard driving etiquette. The NAS study concluded that higher-class individuals are more likely to cut off other drivers, yet the only evidence of social class available to the researchers was the make of car driven by those who cut others off.³² The observer waited until one driver cut off another, and then attempted to obtain as much data as possible about the intruding car. Even if we assume that observers could distinguish between a relatively new Mercedes Benz and a well-maintained older model, or between a high-end BMW and the low-end model leased for the same price as a Subaru (and driven by any number of law students), the study still assumes a correlation between wealth, status, and car choice that is far from certain given current automobile financing.³³ In any case, the wealthier are perhaps more likely to drive more powerful cars, which are more likely to succeed in a high-speed acceleration maneuver. In other words, the "rude" behavior might be "caused" by the car's power, not the driver's social class. People may cut off others because they can.

Our methodological doubts aside, the study nonetheless made a very publicly noticed case that higher "class" individuals are more likely to make certain unethical choices: the NAS study was cited by *Science Daily* and by a host of American publications. Of course, to unpack the study's conclusion we must first have a firm idea of what is meant by the term "class." In the psychological literature, "class" is a complex and somewhat nebulous concept, as the authors of the NAS study freely admit.³⁴ If further research

31. See, e.g., Gregory Francis, *Letter: Evidence That Publication Bias Contaminated Studies Relating Social Class and Unethical Behavior*, 109 PROC. NAT'L ACAD. SCI. E1587, E1587 (2012), available at <http://www.pnas.org/content/109/25/E1587.full.pdf+html> (claiming that statistical biases resulted in the over-representation of significant results). *But see* Paul K. Piff, Daniel M. Stancato, Stéphanie Côté, Rodolfo Mendoza-Denton & Dacher Keltner, *Letter: Reply to Francis: Cumulative Power Calculations Are Faulty When Based on Observed Power and a Small Sample of Studies*, 109 PROC. NAT'L ACAD. SCI. E1587, E1588 (2012), available at <http://www.pnas.org/content/109/25/E1588.full.pdf+html> ("[D]ifferent tests of publication bias are frequently used inappropriately, often fail to correspond with one another, and can generate misleading inferences about bias.").

32. Piff et al., *supra* note 8, at 4087.

33. See, e.g., Len Penzo, *Why Your Expensive Luxury Car Doesn't Impress Smart People. (Or Me.)*, LEN PENZO DOT COM (May 19, 2010), <http://lenpenzo.com/blog/id1145-why-your-expensive-luxury-car-doesnt-impress-smart-people-or-me.html>.

34. "Social class is a multifaceted construct that is rooted in both objective features of material wealth and access to resources (income, education . . .) as well as in conceptions of socioeconomic status (SES) rank vis-à-vis others in society." Paul K. Piff, Michael W. Kraus, Stéphanie Côté, Bonnie Hayden Cheng & Dacher Keltner, *Having Less, Giving More: The Influence of Social Class on Prosocial Behavior*, 99 J. PERSONALITY & SOC. PSYCHOL. 771, 772 (2010).

is to be helpful in generating proposals designed to enhance ethics, it would be preferable to specify exactly which measures of class status are being measured.

Second, if “class” is relevant to ethical behavior, how relevant is it? What is the type and extent of variation in ethical choices that could be predicted to result from differences in class status?³⁵ Even that question may be too broad, since responses to ethical dilemmas can be highly situational. Thus, members of a particular social class may respond differently when interacting with others in their own class than when associating with members of other social classes. For example, the ancient concept of *noblesse oblige* requires general benevolence by the upper classes when associating with those in the lower classes.³⁶ However, *noblesse oblige* may be foreign to modern American behavior, to the extent that the upper classes consider social classes as being fluid over time and the poor as being, in large part, “morally weak and undeserving.”³⁷ Sharing such a view might enable upper-class individuals to believe themselves justified in acting unethically toward the poor as a tit-for-tat³⁸ reaction to populist political predation. Alternatively, upper-class citizens might act unethically, not out of avarice or malice but out of sheer negligence—their material independence leads them to ignore the impact of their decisions on others.³⁹ Those in upper classes might also feel threatened by anticipated unethical actions

35. It is possible to approach the question by attempting to compare wealthy people with those who have been clearly stigmatized as criminals. See Note, *A Look Inward: Blurring the Moral Line Between the Wealthy Professional and the Typical Criminal*, 119 HARV. L. REV. 2165, 2169 (2006). We reject that methodology as unsound, as it appears to assume the conclusion, that the wealthy are less ethical. A more sound methodology is to establish standards for ethics and then determine whether the wealthy violate those standards more frequently, and/or more egregiously, than those in lower classes.

36. Professor Rosser offers a strong defense of the argument that the wealthy have societal obligations as a result of their success in life. Ezra Rosser, *Obligations of Privilege*, 32 N.Y.U. REV. L. & SOC. CHANGE 1, 33 (2007). While we disagree with both the analysis and the conclusions of Professor Rosser, it is possible that many wealthy individuals see themselves as having societal obligations that mandate extremely ethical behavior towards their fellow citizens. Of course, since *noblesse oblige* requires no benevolence to others of the same class, theoretically it would countenance unethical behavior as long as the victims were also within society’s upper classes.

37. Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499, 1499 (1991).

38. See ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* 113 (1984).

39. Lisa G. Lerman, *Greed Among American Lawyers*, 30 OKLA. CITY U. L. REV. 611, 613 (2005); Susan T. Fiske, *Controlling Other People: The Impact of Power on Stereotyping*, 48 AM. PSYCHOLOGIST 621, 625–26 (1993). However, the material independence of the wealthy might also reduce the perceived need to act unethically in order to survive. See Adam D. Galinsky, Deborah H. Gruenfeld, Joe C. Magee, Jennifer A. Whitson & Katie A. Liljenquist, *Power Reduces the Press of the Situation: Implications for Creativity, Conformity, and Dissonance*, 95 J. PERSONALITY & SOC. PSYCHOL. 1450, 1451 (2008).

(violent theft, etc.) by those in the lower classes, and may engage in unethical behavior as a preemptive defense of their status.⁴⁰

Understanding the response of those in lower socioeconomic classes when making ethical choices about interactions with the upper classes is similarly opaque. The more limited material circumstances of the lower economic classes may lead many of the poor to feel vulnerable.⁴¹ As a result, they may avoid risky actions that might result in adverse consequences to “powerful” others, not out of altruism or ethics, but because they believe that those adverse consequences could easily be redirected toward them.⁴² Thus, “low-profile” (introverted, non-aggressive) behavior might appear to be “ethical” on the surface but really be selfishly careful. On the other hand, lower classes’ relative reliance on state and charitable welfare might convince some of them that they are not free and responsible individuals, but passive victims of others.⁴³ If they reach this conclusion, they might decide that they are not responsible for ethical lapses.⁴⁴ This would decrease conscience cost and therefore increase the frequency of such lapses. The poor might also feel justified in manipulating others in order to “level the playing field,” if they perceive⁴⁵ or have been told that their relative class status is the result of unethical treatment by “the 1%.”⁴⁶

Many of these hypothetical responses, by upper- and lower-class individuals, to ethical choices involving other social groups are motivated by stereotypes of “the other.”⁴⁷ The wealthy might stereotype themselves as industrious and politically besieged, and the poor as needing their beneficence, or to the contrary, as undeserving of compassion. The poor might stereotype themselves as helpless and the wealthy as exploitative, vindic-

40. See Leonard J. Long, *Optimum Poverty, Character, and the Non-Relevance of Poverty Law*, 47 RUTGERS L. REV. 693, 725–30 (1995) (arguing that the non-poor might refuse to fund public education if they believed that poorer children might benefit and, therefore, compete against the non-poor children).

41. Michael W. Kraus, Paul K. Piff & Dacher Keltner, *Social Class as Culture: The Convergence of Resources and Rank in the Social Realm*, 20 CURRENT DIRECTIONS IN PSYCHOL. SCIENCE 246, 247–49 (2011); Piff, Kraus, Côté, Cheng & Keltner, *supra* note 34, at 772.

42. Piff et al., *supra* note 34, at 773.

43. See Ana Guinote, *Power and Goal Pursuit*, 33 PERSONALITY & SOCIAL PSYCHOL. BULL. 1076, 1084–85 (2007).

44. See Michael W. Kraus, Paul K. Piff & Dacher Keltner, *Social Class, Sense of Control, and Social Explanation*, 97 J. PERSONALITY & SOC. PSYCHOL. 992, 993–94 (2009).

45. See, e.g., Denise Giroux, *Unethical Greed Cannot Continue*, OCCUPY THE BOARD ROOM, <http://posts.occupytheboardroom.org/post/47561> (last visited Sept. 3, 2012) (“People have the power, and are realizing that they have the power, to change the status quo.”).

46. Some research indicates that lower-class individuals are better able to accurately read the emotions of those with whom they are interacting. Michael W. Kraus, Stéphanie Côté & Dacher Keltner, *Social Class, Contextualism, and Empathic Accuracy*, 21 PSYCHOL. SCI. 1716, 1721 (2010). A lower-class individual could therefore be better able to manipulate another individual in an unethical fashion. See *id.* at 1722.

47. Fiske, *supra* note 39, at 625.

tive, or otherwise deserving of spoliation.⁴⁸ These, and other stereotypes, may drive unethical behavior.

According to conventional psychological literature, an individual's pursuit of goals involves four separate phases: 1) a pre-decision phase where the goal is decided upon; 2) a pre-action phase where the methods for obtaining the goal are chosen; 3) an action phase where the goal is pursued; and 4) a post-action phase where the individual decides whether to set new, advanced goals along the same lines.⁴⁹ Poor ethical choices might manifest themselves in the choice of goal, the choice of methods, the zeal with which the methods are pursued, and the insatiability of setting further goals to attain. In the end, we see little reason to suspect, *ex ante*, that one particular socioeconomic class is more likely to exhibit a lack of ethics in any of these four areas. Thus, we find the NAS study to be not only empirically doubtful but theoretically non-intuitive.

The NAS study is not the first to examine ethical choices by the various social classes, however, though not all studies place the blame on upper classes. One study, for example, finds the poor to be less ethical than the rich, and suggests that the poor may be motivated to behave unethically due to an increasing awareness of (through media, etc.) and bitterness toward, wealth inequality.⁵⁰ Indeed, one of us grew up in a household where one parent had been a welfare recipient throughout her orphaned youth. That parent, who has not been impoverished for some time, considers "ethics" a "luxury" for the rich that is meant to "keep down" the poor. Life is a "steal or be stolen from," proposition, in this parent's eyes.⁵¹ Of course, envy, like most base human emotions (envy, fear, greed, lust, a sense of entitlement to others' property,⁵² etc.), is not limited to those looking up the socioeconomic pyramid; it is an emotion likely experienced by every member of society, independent of class status.⁵³ Indeed, in addition to what the French call *ressentiment*,⁵⁴ fear and greed⁵⁵ likely play a role in a large number of ethical lapses, regardless of social class, as individuals act out of a desire to

48. There is some evidence that the poor are more likely than the wealthy to stereotype, largely because the wealthy are more likely to simply disregard others. *Id.* at 624–26.

49. Guinote, *supra* note 43, at 1077.

50. Gino & Pierce, *supra* note 7, at 143.

51. See generally Eric Noreen, *The Economics of Ethics: A New Perspective on Agency Theory*, 13 ACCT. ORGS. & SOC'Y 359 (1988) (discussing the bilateral economic impact of ethical behavior).

52. See W. Keith Campbell, Angelica M. Bonacci, Jeremy Shelton, Julie J. Exline & Brad J. Bushman, *Psychological Entitlement: Interpersonal Consequences and Validation of a Self-Report Measure*, 83 J. PERSONALITY ASSESSMENT 29, 29–30 (2004) (describing the extensive literature showing the existence of entitlement as a personality trait across numerous social groups).

53. Gino & Pierce, *supra* note 7, at 143.

54. *Ressentiment* is "a sense of hostility directed at that which one identifies as the cause of one's frustration, that is, an assignment of blame for one's frustration." *Ressentiment*, WIKIPEDIA, <http://en.wikipedia.org/wiki/Ressentiment> (last viewed Aug. 27, 2012). The ego creates a morality that damns an enemy in order to insulate the ego from culpability. *Id.* *Ressentiment* is "not to be considered interchangeable with the normal English word 'resentment' . . . [w]hile the normal

exploit others as part of a selfish “prisoner’s dilemma” and then exit before they are themselves reciprocally exploited by the other.⁵⁶ Wealthy and poor, elite and downtrodden, are certainly all susceptible to the allure of the prisoner’s dilemma.⁵⁷

Economics, again, offers only limited help in clarifying this issue. We know, courtesy of the law of diminishing marginal returns,⁵⁸ that a very wealthy individual has a lower marginal utility of wealth than the same individual would have if she were very poor. However, marginal utility measurements are of no use in situations requiring a comparison of two individuals. Even if it were possible to compare the marginal utilities of wealth of upper-class and lower-class individuals, it would be impossible to know with certainty what the reaction of those individuals would be when faced with an ethical dilemma that offers some fixed amount of personal gain in return for violating ethical norms. For that type of comparison, we would need a clear understanding of the individuals’ tastes and preferences. Upper-class individuals might be less desperate for additional wealth because of diminishing marginal utility, making them less willing to engage in unethical activities in order to gain that additional wealth, whereas the poor (Jean Valjean) might overcome ethical scruples in the face of high marginal utility. This might lead one to believe that the law of diminishing marginal utility predicts that the poor will be less ethical than the rich. However, the wealthy might also have turned into “wealth junkies,” as it were. If so, they might need the marginally useful “fix” of a bit more wealth (and so dread the disutility that comes from falling back a bit in the “race”) to such an extent that they pursue it more strenuously than a lower-class individual who needs wealth “merely” to procure relative necessities.⁵⁹ Making any

words both speak to a feeling of frustration directed at a perceived source, neither speaks to the special relationship between a sense of inferiority and the creation of a morality.” *Id.*

55. Greed is often defined as an almost insatiable desire for greater consumption, especially when accomplished at the expense of others. Lerman, *supra* note 39, at 615.

56. See Wang et al., *supra* note 12, at 646 (arguing that economics majors, steeped in the concept of rational self-interest, will act unethically because they believe everyone else will); see also Toshio Yamagishi & Kaori Sato, *Motivational Bases of the Public Goods Problem*, 50 *J. PERSONALITY & SOC. PSYCHOLOGY* 67, 68 (1986) (describing why individuals choose not to pay for public goods for which they receive benefits).

57. Some have argued that a free market economy cultivates and reinforces greedy tendencies. David P. Levine, *The Attachment of Greed to Self-Interest*, 2 *PSYCHOANALYTICAL STUD.* 131, 139 (2000). We are not inclined to accept that type of ideological argument, for the counter-argument is that the capitalist must gratify (procure consumer surplus for) others in order to prosper. See, e.g., GEORGE GILDER, *WEALTH AND POVERTY* 21–27 (1981); MICHAEL NOVAK, *THE SPIRIT OF DEMOCRATIC CAPITALISM* (1982). In any case, all such arguments assume a pre-existing tendency in human nature towards greed.

58. JEFFREY L. HARRISON, *LAW AND ECONOMICS: POSITIVE, NORMATIVE & BEHAVIORAL PERSPECTIVES* 29 (2d ed. 2007) (explaining that the law of diminishing marginal utility states that as more and more of some positive thing is received, each additional unit adds a smaller amount to the total benefit).

59. Cf. ALEX KUCZYNSKI, *BEAUTY JUNKIES: INSIDE OUR \$15 BILLION OBSESSION WITH COSMETIC SURGERY* 6–17 (2006) (describing the manner in which Americans increasingly seek plastic

definitive prediction about class and ethics from the economics perspective, then, would require two pieces of information that no known human science can produce—definable and comparable utility functions for individuals and a comprehensive list of tastes and preferences.

Alternatively, perhaps it is not class status itself but how that status is obtained that matters for ethics. When an individual is granted an elevated status, there is a danger that the individual will feel a sense of isolation, not only from others, but also from the moral and ethical standards that those others had helped the individual establish prior to the bestowal of status.⁶⁰ *Rex non potest peccare*, the grounding for the doctrine of sovereign immunity, implies that the best are above the rules applied to others.⁶¹ The greater the distance between one's former baseline and one's new class status, perhaps, the greater the potential for isolation.⁶² The behavior of Hollywood stars and Wall Street magnates, suddenly lifted onto pedestals very much higher than their points of origin, may be manifestations of this phenomenon.⁶³

Thus, a law student might come into law school with certain measures of status: high household income during childhood, elite undergraduate education, and perhaps a prior graduate degree from a respected university. However, it is not clear that any of these class distinctions will be sufficient to overcome poor performance in law school, at least if that law school is not one of America's most renowned.⁶⁴ At least for schools not at the Brahmin end of America's caste system,⁶⁵ it would seem possible that "class"

surgery, hormone replacement therapy, and other enhancement technologies to obtain a "youthful fix").

60. Bella L. Galperin, Rebecca J. Bennett & Karl Aquino, *Status Differentiation and the Protean Self: A Social-Cognitive Model of Unethical Behavior in Organizations*, 98 J. BUS. ETHICS 407, 408 (2011).

61. The doctrine of sovereign immunity from suit . . . went under the slightly misleading but popular maxim of 'the King can do no wrong' (*Rex non potest peccare*), from which it was but a slight jump in logic to conclude that the King could not commit mistakes such as laches either. This conclusion also entered our common law in the form of the maxim on which the city relies here: 'time does not run against the King' (*Nullum tempus occurrit regi*). American courts in this century have viewed both doctrines as embodying a policy of protecting the public purse rather than as perpetuating philosophical notions of sovereign power and incapacity to err.

City of Shelbyville v. Shelbyville Restorium, Inc., 96 Ill. 2d 457, 460 (Ill. 1983) (citation omitted).

62. See Galperin et al., *supra* note 60, at 408 (investigating the effects of a wide gap in status between high status employees and lower status employees).

63. See generally Kevin Hassett, *Just Why Do Our Celebrities Behave So Boorishly?*, BLOOMBERG, Feb. 12, 2007, http://www.bloomberg.com/apps/news?pid=newsarchive&sid=ac8L2h2465ls&refer=columnist_hassett (explaining that the characteristic of being "hard to replace" may factor into why celebrities act boorishly).

64. The most renowned law schools have largely abandoned grades, allowing students at the bottom of the class to be camouflaged, as it were. See, e.g., Michael Estrin, *Will BigLaw Embrace Grade-Less, High-Pedigree JDs?*, Ms. JD (Dec. 22, 2008), <http://ms-jd.org/will-biglaw-embrace-gradeless-highpedigree-jds>.

65. The "Brahmin" or priestly class is at the summit of the Indian caste system. American legal education arguably also displays caste characteristics. For a good description of the caste

achieved in law school might exert a greater amount of influence on the ethical choices of law students and lawyers than class status achieved prior to law school.

Indeed, some research indicates that the heightened status that is often most relevant is the status within an organization, here exemplified by the high status bestowed by law schools on certain law students as a result of their performance.⁶⁶ A student enters law school with certain measures of status—family income/wealth (or, rarely, personal income/wealth from a previous career), educational background, etc.—as well as a certain set of internal ethical standards. Once within law school, however, the student acquires a new status through class ranking and participation in elite organizations, such as law review, student government, and moot court board.⁶⁷ Previous measures of class status may be insufficient to outweigh a failure to obtain relevant law school honors, so the influence of new class status on ethical decisions might possibly dominate the pre-existing status. If achieving new class status creates a sense of regal isolation, pre-existing ethical standards may be lost. Not every high-status student will feel isolated; nor should we expect the relationship between status and isolation to be linear. For example, a law student in the top 25% of her class at a non-Brahmin law school has certain advantages over those outside the top 25%, but her status may not be a highly distinguishing characteristic as between students. Being in the top 10%, however, along with membership in elite organizations, might increase the sense of isolation more dramatically.

Even if this musing is accurate, it is not clear what long-term impact it might have on the legal profession. If law students begin to exhibit lower ethical standards after being granted higher status, does that mean that the law student has turned a dark corner in her life and that she will now be less ethical in a wide range of circumstances, or will the impact of the isolation she feels as a high-status student dissipate once she has graduated and migrated to the (low-class) status of entry-level associate? Indeed, research indicates that even isolated, permanent high-status individuals will retain ethical and moral standards if they see those standards as being relevant to their professional duties.⁶⁸ If true, it has implications for the teaching of legal ethics. Law students might be more likely to maintain long-term ethical standards if legal ethics were taught in a way that allows law students to

system of American law schools, see Kent D. Syverud, *The Caste System and Best Practices in Legal Education*, 1 J. ASS'N LEGAL WRITING DIRS. 12 (2002).

66. See Galperin et al., *supra* note 60, at 413 (theorizing that a “high status group identity” may deactivate a person’s moral identity).

67. Each school manages students’ participating in moot court competitions in its own way. If there are no restrictions on participation, then there would be no prestige involved except, perhaps, for the prestige associated with winning. At some schools, participation in moot court competitions is largely determined by participation on the moot court “board,” a (theoretically) merit-based organization. The fact that it is merit-based grants prestige to its members.

68. See Galperin et al., *supra* note 60, at 414–15 (2011).

see standards of professionalism as being intrinsically tied to the success of both the profession and practitioners. Also important is that the legal profession credibly threatens sanctions against those who violate those standards.⁶⁹

Even if there were a clear answer to the question of whether class status is correlated with ethical behavior, we would still need to know exactly *why* upper-class or lower-class individuals choose less ethical paths. “[B]ehavior is determined by intentions, which is a function of attitude towards the behavior and subjective norms.”⁷⁰ In other words, people are aware of the social norms that govern behavior, but they are also led by cultural pressures to develop their own attitudes toward unethical behavior, so culture helps determine not only what ends are acceptable but also which means to achieve those ends are seen to be acceptable.⁷¹ An individual’s course of study in college might influence those attitudes,⁷² as might the atmosphere in which the individual works.⁷³ Education and class can combine to “impart values and practices relating to self-actualization and self-expression.”⁷⁴

Some have argued that normal people engage in unethical behavior through a cognitive process called “moral disengagement.”⁷⁵ At its core, the theory argues that individuals are able to convince themselves that their unethical actions are not really worthy of condemnation.⁷⁶ This theory might seem to be in contrast to the economic explanation that individuals’ actions are a manifestation of their tastes and preferences, applied to the costs and benefits of the various choices. Upon further reflection, though, moral disengagement theory shows how individuals are capable of modifying, at least provisionally, their own perceptions of the costs of unethical behavior.

69. Without credible sanctions, lawyers will see legal ethics instruction as mere posturing.

70. Chen & Tang, *supra* note 10, at 78.

71. See, e.g., Alana Conner Snibbe & Hazel Rose Markus, *You Can’t Always Get What You Want: Educational Attainment, Agency, and Choice*, 88 J. PERSONALITY & SOC. PSYCHOL. 703, 704 (2005) (“At the individual level, cultural models provide implicit blueprints of how to think, feel, and act. When people act according to these blueprints, they reproduce public models, thereby perpetuating the cultural context . . .”). When we talk about culture, we mean not only national or ethnic cultures, because there can be significant differences between subcultures, including subcultures defined by socioeconomic status. *Id.* at 705.

72. See Chen & Tang, *supra* note 10, at 82–83. Note that the circular nature of the argument also allows for a student’s preexisting attitudes to determine the choice of major, and the courses required for that major will likely then reinforce the preexisting attitudes.

73. *Id.* at 78–79 (describing survey results in which “56% of American business people have experienced pressure to behave unethically in order to achieve company goals”).

74. Snibbe & Markus, *supra* note 71, at 706.

75. James R. Detert, Linda Klebe Treviño & Vicki L. Sweitzer, *Moral Disengagement in Ethical Decision Making: A Study of Antecedents and Outcomes*, 93 J. APPLIED PSYCHOL. 374, 374 (2008).

76. See *id.* at 374–76.

One specific way in which upper-class individuals might engage in moral disengagement is by influencing those in lower socioeconomic classes to take unethical actions that benefit the upper-class individual.⁷⁷ By placing a distance, perhaps via other individuals, between themselves and the actual actions taken, the powerful may be able to (at least provisionally) convince themselves that they have not personally violated any ethical norms.⁷⁸ As described above, lower-class individuals might justify their own unethical behavior by arguing that their lives are controlled by others, so that their unethical actions are not truly their own, but rather those of the powerful individuals pulling their strings.⁷⁹ These two factors are of course mutually reinforcing and allow both upper and lower classes to engage in unethical behavior while purporting to lay responsibility at the feet of the other party.

B. *What Makes Lawyers Act Unethically?*

Perhaps an even more important definitional question is what it means for an individual to act unethically. How are ethical limits properly determined?⁸⁰ Trivially, some actually ask if one is ethical if one obeys all laws.⁸¹ What if one constantly inches up to the ethical “line” but never goes over? Or does living ethically require an individual to stay as far away from “the line” as possible? Are ethics objective, or is there a subjective element (your ethics versus my ethics)?⁸² If these questions are supremely difficult to answer as a matter of first principles,⁸³ they become even more complicated when examined in the context of a lawyer’s various duties to clients,

77. See Galinsky et al., *supra* note 39, at 1451 (discussing how individuals can exert power over others, influencing them to do things that will help the powerful achieve their own goals).

78. See, e.g., DAVE GROSSMAN, ON KILLING: THE PSYCHOLOGICAL COST OF LEARNING TO KILL IN WAR AND SOCIETY 99–141 (Back Bay Books rev. ed. 2009) (analyzing how much easier psychologically it is to kill from afar than hand-to-hand).

79. See generally Martha Minow, Professor of Law, Harvard Law School, What the Rule of Law Should Mean in Civics Education: From the ‘Following Orders’ Defence to the Classroom, Address Before the Harvard Facing History Conference (Nov. 4, 2005) in 35 J. MORAL EDUC. 137 (2006) (discussing the Nuremberg trials and how holding individuals accountable for war crimes may encourage future individuals to resist illegal actions); Stanley Milgram, *Behavioral Study of Obedience*, 67 J. ABNORMAL & SOCIAL PSYCHOL. 371 (1963) (discussing Milgram’s famous laboratory experiment where the subject was ordered to give electrical shocks to a victim).

80. Wang et al., *supra* note 12, at 643 (detailing some of the difficulties in defining the term “greed”—a commonly used metric in discussions of ethics); Chen & Tang, *supra* note 10, at 79–81 (acknowledging the impossibility of creating a single operational definition of unethical behavior and resorting, instead, to describing accepted examples).

81. Bruce Weinstein, *If It’s Legal, It’s Ethical, Right?*, BUSINESSWEEK (Oct. 17, 2007), <http://www.businessweek.com/stories/2007-10-15/if-its-legal-its-ethical-right-businessweek-business-news-stock-market-and-financial-advice>.

82. See generally JAMES FISHKIN, BEYOND SUBJECTIVE MORALITY: ETHICAL REASONING AND POLITICAL PHILOSOPHY 45–81 (1984) (discussing arguments for subjectivism).

83. See generally George Freeman, *Liberalism and the Objectivity of Ethics*, 47 LA. L. REV. 1235 (1987) (critiquing JAMES FISHKIN, BEYOND SUBJECTIVE MORALITY: ETHICAL REASONING AND POLITICAL PHILOSOPHY (1984)).

courts, and justice.⁸⁴ The complexities of the legal profession, especially as it pertains to ethical obligations, are such that unethical behavior by lawyers can arise out of negligence or incompetence, not merely from malicious motives.⁸⁵

Does this added complexity make the legal profession particularly unethical? David Barnhizer argues that the answer is yes:

Even if we concede that perhaps half of lawyers in private practice are ethically astute and superior in the quality of their work and commitment to clients and social justice that leaves a substantial number of lawyers who can be described as *ethically challenged*. These wanderers in the ethical wastelands will not be affected by professorial exhortations in law school about the moral and ethical integrity of the legal profession.⁸⁶

Some lawyers may consciously cut corners because they believe they will not be caught or effectively punished for ethical violations.⁸⁷ Even if a client is able to detect an ethical lapse, the cost of pursuing a remedy against the lawyer can be significant, and many injured clients may rationally choose to forgo any attempt at punishment so as to avoid shame and further hurt.⁸⁸ This type of ethical lapse is far more likely to occur with small-value cases, making it less likely that elite lawyers, working on large-value lawsuits at BigLaw,⁸⁹ will be involved.

Barnhizer proposes a range of potential solutions to the law's "ethical crisis."⁹⁰ While we respect the desire to correct troubling trends in the legal profession, and agree with some of Barnhizer's proposed solutions, we believe that solutions will be far more likely to be successful if greater care is taken in diagnosing the problem. In other words, achieving consensus regarding the existence of a problem gets us only halfway home; if we begin implementing solutions without carefully considering what is causing the

84. See, e.g., David Luban, *A Midrash on Rabbi Shaffer and Rabbi Trollope*, 77 NOTRE DAME L. REV. 889, 894 (2002) (describing the difficult ethical situation faced by many defense attorneys in staying within the bounds of the truth). We focus exclusively on the ethics of individual action and set aside specific arguments about the ethical quality of various *policies*, such as whether certain levels of taxation are ethical. See, e.g., Susan Pace Hamill, *An Evaluation of Federal Tax Policy Based on Judeo-Christian Ethics*, 25 VA. TAX REV. 671 (2006) (arguing that tax policy is unethical if not sufficiently progressive).

85. See Barnhizer, *supra* note 12, at 206, 217.

86. *Id.* at 204.

87. *Id.* at 215.

88. *Id.*

89. The term has entered the English language to refer to a particularly elite form of large law firm. See *An Introduction to BigLaw*, TOP-LAW-SCHOOLS.COM, <http://www.top-law-schools.com/introduction-to-biglaw.html> (last updated Sept. 2010). For an example of current use of the term BigLaw, see Ashby Jones, *BigLaw's China Dilemma*, WALL ST. J. L. BLOG (Dec. 5, 2012, 10:29 AM), <http://blogs.wsj.com/law/2012/12/05/the-am-roundup-bad-news-for-big-lots-biglaws-china-dilemma-more/>.

90. Barnhizer, *supra* note 12, at 249–65.

problem in the first place, we might end up making matters worse.⁹¹ This article is intended as a diagnostic aid, shedding light on possible causes of the crisis, specifically those that might even be a direct result of the current structure of legal education.⁹²

So where *does* the path to unethical behavior begin? This article examines whether it may have at least partial roots in the way lawyers are trained, and especially the way law students are repeatedly reminded of the importance of class status. The pressure to succeed in American law schools is intense,⁹³ and is centered on certain law-school-specific measures of class (academic ranking, law review membership, etc.). Students know that, outside Brahmin schools, only the highest class students will receive the high-paying, prestigious jobs at major law firms. These pressures, which are increasing,⁹⁴ almost assuredly impact student attitudes towards ethical norms. But a number of other factors likely interact with the pressures of law school to make unethical choices even more likely.

C. Other Factors That Impact Ethics

Lawyers not only face ethical dilemmas in connection with their legal practice, but also in other areas of their lives, as do all citizens. How they respond to these dilemmas is certainly influenced by their legal training and the pressures of the legal environment, but is also a function of the standards they cultivate for their everyday lives. Those standards are likely to be a composite of many different influences, and it would seem fruitless to attempt to list and analyze them.⁹⁵ For that reason, we will test only a hand-

91. Professor Barnhizer argues that the current ethical crisis in the legal profession has arisen because lawyers have abandoned professionalism in favor of cutthroat business practices. *Id.* at 238–44 (ascribing the blame to “Taylorism” in the law and the control of “bean counters”). That still leaves the glaring lack of any explanation for exactly why professionalism was abandoned. Moreover, attacking competitive business practices could hurt clients in the long run if it turns out that the desire to be competitive was not the reason why lawyers began turning away from professionalism.

92. *Id.* at 246–48 (arguing, *contra* this project, that many in the profession have been incorrectly scapegoating law schools for the lack of ethics in the profession).

93. These pressures have been intense for a long time. See generally Bruce Kimball, *Before the Paper Chase: Student Culture at Harvard Law School, 1895-1915*, 61 J. LEGAL EDUC. 31 (2011–2012) (depicting the highly competitive, academic meritocracy that students at Harvard Law School were exposed to between 1895 and 1915).

94. Paul Horwitz, *What Ails the Law Schools*, 111 MICH. L. REV. (forthcoming 2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2113116## (describing the heavy debt load law students take on, combined with the fact that only the top ranking students will receive high-paying jobs).

95. For example, some research suggests that it is possible that those who cheat do so in part because they experience feelings of exhilaration, as do individuals who are suspected of cheating and those who are aware that others are cheating on their behalf, even if not at their request. See Rachel Emma Silverman, *Wrongdoers Feel a ‘Cheater’s High’*, WALL ST. J. AT WORK (Aug. 6, 2012, 1:02 PM), http://blogs.wsj.com/atwork/2012/08/06/wrongdoers-feel-a-cheaters-high/?blog_id=226&post_id=229. However, outside of a sophisticated lab setting, it is impossible to test this hypothesis.

ful of potential factors that seem particularly important and that have been identified by previous researchers.

Most would agree that the environment in which individuals are raised, and the education they receive, must have some impact on their ethical choices, but it is difficult to untangle the many factors that play into what we might call an individual's upbringing. Some psychologists have argued, for instance, that materialism arises from the way children and parents interact during childhood: parents who value economic success very highly have been found to raise more materialistic children.⁹⁶ Critical and controlling mothers, distant parents, and parents who allow their children to watch a lot of television also apparently tend to raise materialists.⁹⁷ Another aspect of childhood education that has interested researchers is how parents teach their children about the importance of individualism. It has been suggested that wealthy parents teach a "soft" individualism wherein children are left free to discover who they are, while poor parents teach their children a "hard" individualism wherein children are taught to keep antecedent values intact against all pressures to the contrary.⁹⁸ These results would seem to indicate that individuals raised in upper-class families are less likely to feel constrained by society's ethical norms than lower-class children. But upper-class children might develop high ethical standards on their own, and lower-class children might have the misfortune of being raised by parents who instill in them "hard" ethical norms that are significantly worse than society's norms.

Just as parents arguably shape the ethical outlook of their children, academic and career mentors are potentially quite influential in transmitting ethical attitudes to their "offspring."⁹⁹ Some commentators are skeptical of the ability of law schools to improve ethical responses by lawyers,¹⁰⁰ but law professors and mentoring partners do seem to exert influence on young lawyers. As one commentator notes: "Law schools are the gateway to the legal profession. They introduce students to the values of the profession. Law professors can either foster or discourage materialism in their stu-

96. Lerman, *supra* note 39, at 622 (collecting psychological studies). Certain cultural trends may also be in play here, as one researcher argues that Americans tend to differentiate between "earned" and "unearned" material gain. Marjorie E. Kornhauser, *The Morality of Money: American Attitudes Toward Wealth and the Income Tax*, 70 IND. L.J. 119, 128-31 (1994).

97. Lerman, *supra* note 39, at 622-23.

98. Snibbe & Markus, *supra* note 71, at 705.

99. See, e.g., Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91, 117 (1968); James White, *Professionalism and the Law School*, 19 CUMB. L. REV. 309, 314 (1989); James E. Moliterno, *An Analysis of Ethics Teaching in Law Schools: Replacing Lost Benefits of the Apprentice System in the Academic Atmosphere*, 60 U. CIN. L. REV. 83, 94 (1991) (arguing that law professors have a seminal influence on their students' ethical and professional attitudes).

100. Barnhizer, *supra* note 12, at 204-05. Barnhizer goes on to argue that it might be too late for the legal profession, as it is currently structured, to achieve meaningful reforms, noting that "[s]ome systems can't be fixed." *Id.* at 221.

dents.”¹⁰¹ Every law professor who loves what she does surely feels she has influenced the ethical outlook of at least some of her students. Mentoring partners often fulfill the same role.

Religion is also likely to play a role in developing and maintaining ethical standards. There is some evidence that religiosity is positively correlated with ethical behavior.¹⁰² “Religion promotes social solidarity, partly by providing norms that reduce conflict and also by imposing sanctions against antisocial conduct.”¹⁰³ To critics, religion may “legitimize the established social order by sanctioning the social arrangements that prevail in it,”¹⁰⁴ so it is possible that religion only promotes ethical behavior to the extent that the social structure served by the religion is itself ethical. There is some dispute regarding whether the *type* of religious beliefs adhered to make a difference, specifically whether conservative religious beliefs are more or less conducive to ethical behavior than liberal religious beliefs.¹⁰⁵ Some research suggests that religions that value material prosperity may unwittingly encourage unethical behavior by pushing adherents to achieve material success by any means, as an outward display of righteousness.¹⁰⁶ Because the literature is unsettled on this point, we refrain from testing that hypothesis and focus, instead, on the relative strength of the individual’s belief, measured by the frequency of her participation in religious services. Frequency of religious participation may increase ethical behavior by allowing the individual to repeatedly and publicly self-affirm as an ethical person.¹⁰⁷

As noted, other factors are likely relevant to the ethical decision-making process. We do not dispute that it is possible to include far more factors into our analysis, but this article is intended to begin a discussion, not resolve it. We therefore leave to future research—the development of which we hope legal scholars will play a significant role—the task of untangling the many other factors that influence our ethical decisions.

II. SURVEY INSTRUMENT AND ANALYSIS

In order to test the level of ethics exhibited by law students, a survey was administered electronically to law students at George Mason University School of Law (GMUSL), a law school consistently ranked in the top tier by *U.S. News & World Report*.¹⁰⁸ All 2L, 3L, and 4L (evening) students

101. Lerman, *supra* note 39, at 632.

102. Kennedy & Lawton, *supra* note 9, at 163.

103. *Id.*

104. *Id.*

105. *Id.* at 163–66.

106. Thomas L. Shaffer, *Jews, Christians, Lawyers, and Money*, 25 VT. L. REV. 451, 469–70 (2001).

107. Aquino et al., *supra* note 15, at 125.

108. We note that there is one law-school-specific class distinction that we do not test here, and it may be the most important—the ranking of the law school, itself. However, we leave that

enrolled at GMUSL, as of spring semester 2012, and all rising 1Ls matriculating in fall 2012, were sent e-mail invitations. The e-mail stated that the research was intended to help identify how lawyers react when faced with difficult choices, either in their capacity as lawyers or as individuals. Participants were told that their identities would be kept strictly confidential, that their responses would remain anonymous, and that the results would be used only in the aggregate and only for academic purposes. If they were inclined to participate, they were invited to click on a hyperlink in the e-mail, which directed them to a web-based survey. One hundred and twelve students responded to the e-mail, yielding an approximate 15% response rate.¹⁰⁹ We have no reason to believe that respondents were more or less ethical than non-respondents, though it is plausible to assume that respondents were more interested in the subject matter of legal ethics.

The survey was comprised of nineteen scenarios in which participants were presented with an ethical dilemma and required to choose from four potential responses.¹¹⁰ Nine of the scenarios describe ethical questions that might arise in a law firm setting, two describe law-school specific concerns, and eight describe ethical dilemmas that arise outside of the legal realm. For those questions pertaining to legal practice, the questions were not limited to a single practice area, but covered criminal law, commercial transactions, and family law. The subject matter of the ethical dilemmas included small monetary transactions, non-monetary considerations, and serious social questions.¹¹¹

The questions were scenarios presented to the participants in randomized order, minimizing the risk of bias that could arise from the order in which the questions were presented. Participants were asked to choose one of four responses for each of the scenarios. One of the four responses was intended to represent an ideal ethical response and another was intended to represent a largely unethical response. Two additional responses were provided for each scenario, representing options that contained at least one ethical flaw but did not fall as far as the lowest ethical response. The four possible responses (a through d) were randomized for each question, limiting the risk of bias in the order of answers.

and other interesting questions regarding inter-law-school class distinctions to future research, and focus only on intra-school rankings.

109. Of the 112 responses, ten were from incoming first-year students. Because these students had no ranking and no chance to be selected to elite organizations, their responses could not be used in the initial regression analysis. However, their responses can provide useful comparisons.

110. The entire survey instrument is provided in the Appendix, *infra* pp. 274–85.

111. We chose to include more minor ethical dilemmas because we find that most discussions of ethics revolve around serious ethical transgressions, but minor infractions may be far more widespread. “Everybody has the capacity to be dishonest, and almost everybody cheats—just by a little.” Dan Ariely, *Why We Lie*, WALL ST. J., May 26, 2012, <http://online.wsj.com/article/SB10001424052702304840904577422090013997320.html>. While serious transgressions may be more noticeable, the cumulative effect of small-scale ethical violations may be far more damaging to society. *Id.*

In fashioning the responses, care was taken not to signal which of the responses was a “good” or “bad” response. In fact, for many of the scenarios, participants with existing legal ethics instruction might have viewed one or more of the non-ideal, intermediate responses as being acceptable under the Model Rules of Professional Conduct. We then ranked respondents’ answers from least ethical to most ethical.¹¹² The least ethical response was assigned a score of one, the most ethical a score of four, and the intermediate responses scores of two and three. This resulted in each participant being scored on a scale from nineteen to seventy-six, with higher numbers representing more ethical responses. Participants were not informed whether their answers were considered ethical or not, were not informed that their scores were being ranked, and were not informed of their own or global final scores, eliminating the possibility that participants might camouflage their own predilections in order to achieve a higher score.

After completing the scenario portion of the survey, participants were asked to provide demographic data. Specifically, participants were asked to identify their gender, age,¹¹³ how often they attended religious services,¹¹⁴ the name of the institution(s) where they received their undergraduate¹¹⁵ and/or graduate degrees,¹¹⁶ and the zip code where they grew up. The median household income of each zip code provides a rough proxy for the class status in which respondents were raised.¹¹⁷

In order to test the hypothesis that class distinctions created in law school have an impact on ethical behavior, respondents were also asked to identify their LSAT score. We also asked 2L, 3L, and 4L respondents for

112. This ranking process is subject to two legitimate criticisms. First, ranking the answers in terms of their ethical quality requires imposition of the researchers’ own ethical standards and it is uncertain how well those standards parallel society’s ethical standards. Second, this is an ordinal, not a cardinal ranking system. We do not assume the existence of a discrete and identical ethical disparity between the ranked responses. In other words, the “best” response is not four times better than the “worst” response.

113. Age categories were coded as follows: 0 = 20–24; 1 = 25–29; 2 = 30–34; 3 = 35–39; 4 = 40–44; 5 = 45+. Note that use of a zero is a common statistical technique, used in order to provide a baseline against which the other categories are compared. In this case, for example, a positive value for the coefficient would mean that, on average, increasing age groups are more likely to provide ethical responses.

114. Religious participation categories were coded as follows: 0 = never; 1 = annually; 2 = monthly; 3 = weekly; 4 = multiple times per week.

115. Undergraduate education institutions were coded according to the following scale, to represent increasing levels of prestige associated with the institutions: 0 = colleges known primarily by the local community only; 1 = colleges known primarily only within the region; 2 = colleges known nationally; 3 = colleges known internationally.

116. Graduate degrees were coded according to the following scale: 0 = no graduate degree; 1 = graduate degree from non-prestigious institution; 2 = graduate degree from prestigious institution.

117. This is, admittedly, an imperfect proxy. Wealth is not a perfect proxy for class and, even if it were, an individual may have been raised in a household that had an income significantly above or below the median. We believe, however, that the proxy is useful, even if flawed.

their class rank,¹¹⁸ their participation on law review, other journals,¹¹⁹ or moot court board.¹²⁰ Finally, in order to measure the impact of legal ethics training, 2L, 3L, and 4L respondents were asked to identify whether they had previously taken a legal ethics course at law school.

After collection and coding of the data were completed, each participant was represented by a total ethical score and twelve independent variables, represented in the following equation:

$$\text{Score} = \alpha + \beta_1 * \text{Age} + \beta_2 * \text{Gender} + \beta_3 * \text{Religion} + \beta_4 * \text{Zip} + \beta_5 * \text{Undergrad} + \beta_6 * \text{Grad} + \beta_7 * \text{LSAT} + \beta_8 * \text{Ranking} + \beta_9 * \text{LR} + \beta_{10} * \text{OJ} + \beta_{11} * \text{MCB} + \beta_{12} * \text{Ethics} + \epsilon.$$

A number of participants either failed to respond to every scenario or provided incorrect responses to the requests for demographic data.¹²¹ Unless data could be extrapolated from other data provided,¹²² their survey responses were discarded.

III. RESULTS

Sixty-eight full responses were identified and analyzed using ordinary least squares analysis.¹²³ From that initial analysis, only three independent variables—Religious, Zip, and Ranking—were statistically significant within a 90% confidence interval. However, standard testing of the system revealed that a transformation of the dependent variable was required.¹²⁴

118. Class rankings were coded as follows: 0 = bottom 50% of class; 1 = top 50% of class; 2 = top 25% of class; 3 = top 10% of class.

119. During analysis, separate categories were created for Law Review and Other Journal, with the following coding identifying the level of participation: 0 = not a member; 1 = member; 2 = Editorial Board Member.

120. For students at the law school in question, Moot Court Board is an exclusive organization, and is considered to be one of the elite organizations at the law school. At other schools, participation in a trial advocacy organization might be the equivalent. The purpose of this variable is to test the impact of elite and exclusive groups other than Law Review or other Law Journals.

121. For example, one participant indicated a score of 1200 for the LSAT, apparently believing the question was asking for an SAT score. Other participants simply failed to identify ranking, zip code, or other crucial information.

122. A small number of participants incorrectly provided a four-digit number when asked for the zip code of the area where they grew up. For a few of these responses, a zip code could be extrapolated by comparing the participant's undergraduate institution with all possible zip codes that could be formed by adding a single digit to the front or end of the four-digit number provided. When a zip code could be found that had a strong relationship with the undergraduate institution, it was used; if no strong candidate could be identified, that participant's responses were discarded.

123. Least squares regression is a method for finding the best-fit estimate for the relationship between the dependent variable—in this case the participants' total score—and the individual independent variables. DAVID FREEDMAN, ROBERT PISANI & ROGER PURVES, *STATISTICS* 207–11 (3d ed. 1998).

124. The correlation and covariance of the independent variables were tested without any areas of concern. However, when the residuals were tested, a problem emerged with the dependent variable. Essentially, a properly specified model should have residuals—the error term left over after the impact of the independent variables on the dependent variable have been calculated—that are uncorrelated to any of the independent variables or the dependent variable. Visually, plotting

Taking the natural log of each dependent variable corrected the problem and allowed some confidence in moving forward with regression analysis.

A. Regression Results

The first regression conducted post-transformation was mildly disappointing, with only one variable—Religion—showing weak statistical significance.¹²⁵ The coefficient was positive, indicating that an increase in the frequency with which a participant attended religious services correlated with more ethical responses to the survey scenarios. The magnitude of the coefficient was small,¹²⁶ but interpretation of the magnitude of coefficients is complicated by the transformation of the dependent variable. The small sample size and relatively large number of dependent variables may have contributed to the relative lack of strength exhibited in the results.¹²⁷ Further investigation of these issues should allow for greater accumulation of data and, therefore, greater confidence in the results.

While only one independent variable was significant within a 10% confidence interval, a number of other variables had t-statistics that were large enough that there was some evidence, however small, for rejecting the null hypothesis.¹²⁸ We therefore proceeded to use a technique known as stepwise regression¹²⁹ to further refine the model. Under stepwise regression, independent variables are added or removed from the model according

the (in)dependent variable on the horizontal axis and the residuals on the vertical axis should result in a random cloud of data points. *Id.* at 187–89. If there is an obvious trend line for the residuals, then the system is not correctly estimating the value of the coefficients. In this case, the independent variables exhibited the proper random distribution but a distinct upward sloping trend line existed for the dependent variable. We believe this resulted from the fact that the responses were heavily concentrated on the higher end of the possible range of values—total scores ranged from a low of 31 to a high of 70 with a median of 58, an average of 55.96, and a mode of 63–64. This type of problem can be corrected by transforming the variable in question—dependent or independent—by putting each variable through the same process. JOHN McDONALD, HANDBOOK OF BIOLOGICAL STATISTICS 160–64 (2d ed. 2009). Common methods are to raise each variable to a larger power, to take a root of each variable, or to take a log of each variable. *Id.*

125. The P-value for Religion was 0.0757.

126. $\beta_3 = 0.032$.

127. The system also had a very low Adjusted-R² value, at 0.076. This indicates that the variables present in this model are explaining only a very small amount of the total variability. Considering that individual ethics are a highly complicated issue, the results are not at all surprising.

128. In statistics, the null hypothesis is whatever hypothesis your analysis is attempting to disprove. If the statistical results are not strong enough, then you have failed to provide evidence that rejecting the null hypothesis (and adopting the premise of the analysis) is appropriate. FREEDMAN ET AL., *supra* note 123, at 478–89. In this case, the null hypothesis is that the independent variables are uncorrelated with the participants' ethical scores.

129. WILLIAM H. GREENE, ECONOMETRIC ANALYSIS 334 (4th ed. 2000). We acknowledge the weaknesses of this technique and understand that our analysis will be subject to legitimate skepticism as a result. *Id.* However, we also reiterate that the intent of this paper is to generate further discussion regarding these issues and to determine whether further research might prove fruitful. As a means of furthering those two goals, we believe the benefits of using stepwise regression outweigh the costs in this instance.

to some criteria and further regression analysis is conducted. After each regression, the independent variable with the lowest t-statistic was removed from the model until only those variables remained which were significant within a 90% confidence interval. The results are reported in Table I.

Table I		
Variable	Coefficient	P-value
Intercept	4.096753	0.000
Religion	0.031386	0.060
Zip	-0.000001	0.048
Ranking	-0.044118	0.022
LR	0.070212	0.096

With regard to those characteristics that a law student brings with them to law school, very few were significant. There was no significant difference between participants based on age, gender, or where they received any previous education. Similarly, participants' LSAT scores had no significant impact on their ethical responses. Each of these results is at least harmonious with the hypothesis that it is class status *earned within law school* that exerts a strong influence on ethical thought processes. Previous education—even from a prestigious institution—and high LSAT scores may boost a student's confidence when he or she enters law school, but they appear to have only minimal impact on the actual achievement of elite status inside George Mason Law School.¹³⁰ The effect of age and gender on obtaining elite status also appears to be minimal.¹³¹

Of those characteristics that predate law school, only religion and childhood income have any significant impact on ethical decisions. Household income as a child, reflected by the zip code in which the participants grew up, could establish self-perception of class status that would not be easily diminished by any inability to achieve elite status in law school.¹³²

130. The prestige of former educational institutions was negatively correlated to law school ranking and membership on the Law Review, although not strongly so ($\rho_{\text{Undergrad,Ranking}} = -0.275$; $\rho_{\text{Undergrad,LR}} = -0.072$; $\rho_{\text{Grad,Ranking}} = -0.024$; $\rho_{\text{Grad,LR}} = -0.116$) and LSAT score was positively but weakly correlated with ranking and Law Review membership ($\rho = 0.152$ and $\rho = 0.006$, respectively). Perhaps this is because, at first-tier non-"Brahmin" law schools such as George Mason, students from prestigious undergraduate institutions tend to have underperformed at college, else they would have matriculated at "Brahmin" law schools. Students from less prestigious law schools, however, may be overachievers, and both groups may continue on that path after matriculation at George Mason. For more information on "Brahmin" law schools, see Syverud, *supra* note 65 and accompanying text.

131. Age had a small but negative correlation with ranking and Law Review membership ($\rho = -0.052$ and $\rho = -0.027$, respectively) and gender had a small but positive correlation with both ($\rho = 0.166$ and $\rho = 0.114$, respectively).

132. Childhood household income was positively but weakly correlated with Law Review membership ($\rho = 0.077$) and negatively but weakly correlated with ranking ($\rho = -0.041$). As an

Alternatively, if childhood household income operates as a proxy for a more stable current financial situation, these participants might be more independent and less likely to feel as if they must sacrifice ethical norms in order to survive. Similarly, greater frequency of religious observance tends to signal a stronger dedication to a set of beliefs that, at least theoretically, require submission of selfish motives to some higher ideal, which hopefully would include a set of ethical norms. The results seem to support those theories, although it is not certain how strong an influence either factor exerts.¹³³

Once admitted to law school, most previous measures of class status begin to fade in importance, but they are replaced with others. Elite status in law school can be obtained in a number of ways, but apparently not all measures of status are created equal, at least as they impact ethics. At least for GMUSL students, being a member of the Moot Court Board or one of the non-Law Review journals does not significantly impact their ethical responses. Membership on the Law Review is significant within a 90% confidence interval, so there is some weak evidence that it has a positive impact on ethical responses.

Of all the measures of class ranking obtained in law school, the one that proved to be the most important in explaining the variance in ethical responses between survey participants was academic class ranking. It is almost certainly not coincidental that the factor most relevant for obtaining lucrative post-law-school employment, judicial clerkships (especially prestigious federal clerkships), academic appointments, and other rewards is the most significant factor in determining how participants reacted to the ethical dilemmas presented in the survey. It is also telling that students with high class ranking were more likely to give *less* ethical responses. The data do not allow us to state with certainty that higher ranked students are less ethical because the imposition of elite status causes them to feel removed from the rules applicable to “the masses,”¹³⁴ but alternative explanations do not necessarily reflect more favorably on the state of legal education.¹³⁵

Also disappointing was the fact that those that took a legal ethics course did not score significantly higher on the survey. That result need not

interesting (but perhaps unsurprising) side note, childhood income was positively correlated with the prestige of the undergraduate institution ($\rho = 0.454$).

133. Care should especially be taken in interpreting the seemingly small value for β_4 . Because median household incomes are denominated in dollars, the values ranged from \$25,310 to \$189,545. Therefore, an incremental change in the variable represents a small portion of the total differential, so while the effect of income is still likely quite small, it is not as small as the value of the coefficient might initially appear to suggest. Also, the transformation of the dependent variable makes it particularly difficult to interpret the magnitudes of the coefficients.

134. See *supra* notes 60–63 and accompanying text.

135. One such explanation is that those students who achieve high rankings in law school enter law school with lower baseline ethical standards, which if true would suggest that our “best and brightest” might have obtained their status through unethical means.

be interpreted as a condemnation of legal ethics training. For example, legal ethics instruction helps students, at a minimum, understand the boundaries established by professional standards. But if those standards are *lower than* the standards students have upon entering law school, legal ethics training would not be expected to increase ethical responses. Instead, legal ethics training might prevent further erosion of ethical standards below official professionalism standards. Similarly, even if ethics training does not significantly increase ethical responses, it can serve as an effective reminder to law students that ethics and professionalism matter, which can help them retain their existing ethical standards after they enter practice.¹³⁶

B. Does Law School Negatively Impact Ethics?

At GMUSL, legal ethics is taught by several different instructors: some make the course a “Multistate Professional Responsibility Exam (MPRE) prep class” while others focus almost exclusively on “lawyer goodness” as opposed to “obedience to the Model Rules.” For obvious reasons, our polls did not distinguish among legal ethics instructors in its questions.

Obviously, to the extent a legal ethics course in law school teaches only the Model Rules of Professional Conduct and trains students to pass the MPRE, students receive training on how to avoid disciplinary action by their State Bar Association. Even setting aside our own personal beliefs that the Model Rules do not reflect strong ethical norms, we find it implausible that enforcement of the Model Rules will ever create a firm commitment to ethical lawyering. Although there is certainly going to be some variability between the strictness with which the various State Bar Associations enforce the Rules, we do not think it controversial to assert that many unethical actions are not grounds for official disciplinary action. One can be a licensed practicing attorney and still engage in unethical behavior without being sanctioned by the Bar. Even more to the point, legal ethics training provides little reinforcement of ethical standards outside of legal practice.

Our regression analysis provides no evidence that legal ethics training impacts ethical decisions. However, the data may still say something regarding the ethical choices of those who have had legal ethics training, in comparison to newly-accepted 1Ls or other law students who have not yet received legal ethics training. The average total score for all returning or graduating law students was 54.186, while the average total score for students with legal ethics training was 56.583, an increase of 2.361 for those students with ethics training. Conducting a simple ANOVA test¹³⁷ between

136. See Galperin, et al. *supra* note 68 and accompanying text.

137. ANOVA, or analysis of variance, testing is a test for statistical significance. McDONALD, *supra* note 124, at 123–30. In this case, we are testing the null hypothesis that the responses of those with ethics training and those without are all drawn from the same population. If the null

the two samples yields a P-value of 0.186, indicating that there is little evidence that the difference between the averages is the result of anything other than random chance.¹³⁸ Students with ethics training were, it turns out, slightly more likely to be religiously observant,¹³⁹ less likely to have been raised in wealthy households,¹⁴⁰ and more likely to be on law review¹⁴¹—all factors which correlate with higher ethical responses. Perhaps such students tended to take a legal ethics course at the first opportunity. These students were also more likely to have a higher law school rank,¹⁴² which correlates overall with *less* ethical responses. In the end, there is very little evidence to suggest that legal ethics teaching at GMUSL has any significant impact on the responses given to the survey.¹⁴³

One more interesting finding: incoming 1Ls actually scored higher than any 2L, 3L, or 4L students, with an average score of 58.944.¹⁴⁴ The 1L ethics score represents an increase of 4.758 over law students without ethics training and a 2.361 increase over law students who have received ethics training. Comparing the mean score for incoming first-year students against students with ethics training and those without, using a simple ANOVA test, yields P-values of 0.352 and 0.181, respectively. There is still not enough evidence to reject the null hypothesis (that the difference is nothing more than random chance), but the positive and negative factors are evenly balanced in this case, with incoming first-year respondents having been raised in wealthier families¹⁴⁵ but also being more religious.¹⁴⁶ Therefore

hypothesis is correct, then any difference in mean is the result of random chance. GREENE, *supra* note 129, at 236–42.

138. To interpret the P-value, you must assume the null hypothesis to be correct (in this case, that the two averages are actually the same), and the P-value tells you the chance of getting the particular results of the test, given that the null hypothesis is correct. As a result, a smaller P-value is an indication that it is less likely that the null hypothesis is correct. FREEDMAN ET AL., *supra* note 123, at 480–82.

139. Students with ethics training had an average Religion score of 1.45, compared with an average score of 1.35 for those students with no ethics training.

140. The average level of median household income for students with ethics training was \$62,790.89, compared with the average median household income of \$76,557.93 for students with no ethics training.

141. Only 10% of students without ethics training were on Law Review, with 3% serving in an editorial capacity. By contrast, 16% of students with ethics training were on Law Review, with half serving in an editorial capacity. Some of the discrepancy is likely due to the fact that only second- and third-year law students at GMUSL may take legal ethics, so law students without ethics training are more likely to be rising second-year law students.

142. Average law school rank was 1.02 for students with ethics training, compared to 1.16 for students with no ethics training.

143. To be fair to the faculty and students at GMUSL, there is no reason to suspect, *ex ante*, that the results would be any different at any other law school. We suspect that this is a systemic problem of legal ethics instruction.

144. Only ten responses were received from incoming first-year students, which represents a 5.5% response rate. The lower number of observations urges caution in interpreting results, but there is no reason to suspect that the students who responded to the invitation are a biased sample of the population.

145. Average median household income for incoming first-year students was \$76,512.11.

there is less reason to suspect that any difference—to the extent that there is a difference not explained by random chance—is the result of other independent variables. Based on these results, attending law school, might actually lower law students' ethical baselines.

It is important to stress that inability to reject the null hypothesis is not the same as the null hypothesis being proven correct. We therefore ask the question: what if these differences are not the result of random chance? We acknowledge the empirical evidence is not strong enough to reach that conclusion yet, but what if it is true that incoming first-year students have higher ethical standards than their more advanced classmates? Does that mean that students arrive at law school with a certain set of ethical principles, that those principles are diluted once students begin their legal training, and then partially (though not completely) salvaged by legal ethics training? Is it possible that current ethics training is not sufficient to restore the high level of ethics that students brought with them to law school? Could law school be simply too ethically corrosive an environment for any ethics training to be successful? Another, less dramatic explanation is that our current ethics training is aimed in the right direction, but is simply too tepid, in need of increased strength. Our study did not distinguish among the various legal ethics courses offered at GMUSL, but it is plausible that some courses place far too much emphasis on compliance with the Model Rules to have an effect on students' ethical baselines.¹⁴⁷

If law students find their original ethical standards eroded by the complex and confusing ways in which lawyers view the world, it would not be surprising for the ethical standards of law students to begin deteriorating. To the extent that students suffering through this process are simultaneously taught a specific code of abstract and sometimes vacuous Model Rules of Professional Conduct which, they are told, will keep them from putting their careers at risk, students' new ethical standards would likely reflect the Model Rules.

C. *Effect of Ranking*

When one achieves statistically significant results from a regression analysis, it is tempting to focus exclusively on those results. Doing so, however, can mask interesting complexities in the data. For example, our data show that student ranking within law school is negatively correlated with ethics, which might suggest to some readers that ethics diminish incrementally as ranking increases. However, the data do not support that con-

146. Incoming first-year students had an average Religion score of 1.6.

147. The Appendix, *infra* pp. 274–85, reproduces our survey, and indicates which responses would practically guarantee the respondent immunity from Professional Responsibility discipline. In almost every case, that response is not the most ethical one. According to our scoring metric, a respondent trained to respond as required by the MPRE would be expected to achieve a score of 37, well below the average for respondents as a whole or for any sub-group we identify here.

clusion, at least not as a general rule. Students in the bottom 50% of their class were the most ethical, with an average score of 58.290, and students in the top 10% were the least ethical, with an average score of 52.079. That fits with the regression results, but it turns out that students in the top 25% of their class had the second highest average scores, at 57.222, only a single point lower than those in the bottom 50%.

Likewise, when we consider the average answers to each scenario, the bottom 50% provided the highest average response for eight scenarios, the top 25% provided the highest average response for nine scenarios, and the top 50% provided the highest average response for two scenarios. Notably, in none of the scenarios did the top 10% provide the highest average response, but those students did provide the lowest average response for ten of the nineteen scores.¹⁴⁸ So, while the data is clear that those at the very top have the lowest level of ethics, it is anything but clear which group has the highest level of ethics.

Why would those students at the very top be noticeably less ethical than their lower-ranked counterparts? One possible explanation is the isolation hypothesis,¹⁴⁹ which predicts that, having been shoved into a position of status that differentiates them from their classmates, they will lose connections not only to those classmates, but also to the standards that they had adopted prior to their elevation. These top-ranked students come from families with median family incomes lower than the sample mean,¹⁵⁰ and were less likely to have received their undergraduate degree from a prestigious institution.¹⁵¹ There is little reason to suspect that these students considered themselves among the elite of society before they entered law school, but they found themselves elevated to elite status due to their performance within law school. It is possible that the standards they adopted prior to law school were discarded along with their lower class status, and new lower standards (perhaps in part communicated through their legal ethics course) replaced them.

Another interesting picture is presented by students in the top 50% of their class. Their average score of 54.722 placed them approximately halfway between the top-ranked, low-ethics students in the top 10% and the high-ethics students in either the top 25% or the bottom 50%. Isolation cannot explain the low ethical scores of these students, but perhaps their level of ethics is still due to a disconnect between what they knew before and the experience they encountered in law school. These students come from

148. Students in the top 50% provided six of the remaining lowest average scores, and the top 25% provided three.

149. See *supra* notes 60–63 and accompanying text.

150. Students from the top 10% came from households with an average median income of \$63,275.64, compared to the sample mean of \$68,472.42.

151. Students from the top 10% had an average undergraduate score of 1, compared to the sample mean of 1.48.

wealthier homes¹⁵² and were far more likely to have attended a prestigious undergraduate institution.¹⁵³ It is possible that many of these students considered themselves among society's upper classes, and they have been disappointed when they were unsuccessful in maintaining that status in law school.¹⁵⁴ If class is a motivator of unethical behavior, as some researchers claim, these students may have come to law school with lower ethical standards in the first place. But it seems at least plausible that some students in the top 50% allowed their disappointment to turn into a sense of entitlement, turning to unethical behavior to regain a status which they had provisionally lost in their law school experience.

CONCLUSION

It is troubling to witness the apparent decline of ethics and professionalism within the legal profession.¹⁵⁵ Solutions are needed, but fashioning solutions without good information regarding the source of the decline is problematic at best. Without good information, resources spent to fix the problem could be wasted or might even make things worse.

The literature in social psychology identifies a number of possible factors that might be relevant to a discussion of legal ethics. One of the most prominent is class status. This research provides mild support for that hypothesis in a narrow, law-school specific setting. Success in law school is largely unrelated to the class status enjoyed by students prior to entering law school. Higher incomes, a prominent family name, or prestigious degrees may grant entrance to law school, but they cannot ensure success. Instead of traditional measures of class, law school bestows its own class distinctions, based on success. Class rankings, law review membership, and participation in other prestigious organizations divide the elite from the chaff. To the victor go the spoils, and to the elite law students go the coveted clerkships, jobs at prestigious firms, and possibly academic appointments. By constantly reminding elite students that they are "different" or "better" than their classmates, legal educators may be emphasizing this new class status and, as a result, diminishing the ethical standards of those who receive the reinforcement.

We say that this research provides "mild" support because it is an introductory effort, intended to spur further inquiry. The structure of the survey instrument, the method of scoring, and many other aspects of this

152. These students had an average median household income of \$79,703.45.

153. The students had an average undergraduate score of 1.9.

154. Students in the top 50% reported the lowest average LSAT score, at 162.3, indicating that their expectations for success in law school should probably have been lower.

155. See generally Patrick Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705 (1998) (arguing that senior partners at elite law firms and law professors teaching at elite law schools are increasingly driven by greed for money and/or prestige, further contributing to the deterioration of ethics in the legal community).

research can be refined to provide stronger results. For example, it would be useful to track students as they enter law school, throughout their experience, and possibly even during their first few years of legal practice, in order to determine whether any direct causal effects exist. If multiple legal ethics courses, with different foci, are offered, any differentiation in outcome could be determined. Similarly, if survey data could be obtained from multiple law schools, cross-school comparisons could be made to identify the impact of law school ranking, institutional emphasis on ethics, or other “best practices.”

Theoretical work is also required in order to determine how best to proceed in remedying the trends in legal ethics. Other than at Brahmin law schools, relative grades provide both an important signal to potential employers and (in large part as a result) meaningful incentives to students. It is unlikely that law schools would be willing or able to discontinue relative class rankings. There may be ways, however, to de-emphasize the “otherness” of successful law students, congratulating them on their successes without creating the isolation that may be at the heart of many students’ abandoning their ethical standards.

Better students, better lawyers—that is how the system is supposed to work, and yet when it comes to ethics and professionalism, the system appears to be broken. If law students leave law school with lower ethical standards, the downward trend in legal ethics will continue and may even accelerate. We need solutions, but those solutions should be informed by both theoretical and empirical research in order to ensure that we can identify and promote ideas that work. The stakes are simply too high to waste resources and effort on ineffective programs. It is understood that legal ethics education must receive significant emphasis in any set of reforms, but this research highlights the importance of avoiding a narrow view of necessary reforms. More research is needed to test the implications of these results, but we provide evidence that the current model of legal education, itself, may be part of the problem.

APPENDIX

Dear Student:

As a law student at George Mason University School of Law, you are invited to participate in a short academic research survey regarding the ethical dilemmas that many lawyers face, either in their capacity as lawyers or as individuals. Your participation is voluntary, but we hope you will participate, as we believe that the responses provided will help us better understand the way we process information when faced with sometimes difficult ethical choices. In order to allow you to answer with complete honesty, the identity of all participants will be strictly confidential and all responses will remain anonymous. In addition, please note that the results will serve academic purposes only.

To participate, please click on the following link:

<https://www.surveymonkey.com/s/G86HSN3>.

We estimate the survey will take approximately 30 minutes to complete.

If you have any questions, please feel free to contact either or both of the following individuals:

Prof. Michael Krauss
mkrauss@gmu.edu
(703) 993-8024
Prof. Jeremy Kidd
jeremylynnkidd@gmail.com
(571) 345-6533

[NOTE: the possible answers, a through d, were randomized for individual respondents. In this appendix, though, “a” always represents the most ethical answer and “d” the worst, while “b” and “c” finish second and third. An asterisk is placed next to the least ethical answer that, in our opinion, would arguably not result in sanctions under the Model Rules of Professional Responsibility.]

How would you react in the following scenarios? Even if none of the options is your ideal choice, pick the one that is closest to your view. Take it for granted that, whatever you do, there will be no sanctions for you of any kind.

1. Arriving at your law office one Monday morning, you find a potential client (“X”) waiting for you. X, whom you find honest and sympathetic, refused to “look the other way” when confronted with the illegal and immoral activity of a supervisor, and was immediately fired for denouncing the supervisor’s misbehavior. X wishes to sue for “specific performance” (reinstatement),

and *not* for damages. This is because X knows that a damages award would likely hurt the business, while reinstatement will help the enterprise. You believe X's desired suit is winnable given the law in your jurisdiction, but X is struggling financially and cannot afford your firm's usual retainer and hourly rate. To make matters worse, business at your firm has been slow and you have only limited discretionary funds. What do you do?

- a. Waive your retainer and take X's case pro-bono, paying your firm from your own pocket for the hours of your time that are lost.
- b. Tell X you are sorry, but that your firm cannot help.
- c. *Refer X to a less-qualified attorney you know, who might be willing to take the case in order to enhance his or her reputation.
- d. Convince X that suing for damages is the best thing X can do (this will enable you to take the case on a contingent fee basis).

2. Your law firm assigns you to represent the interests of a wealthy client. The client owns a number of properties, including a commercial space in a run-down area of town. The current tenant, a pastry chef who runs a *pâtisserie* at the location, had been complaining for years about leaky pipes; your client had repeatedly promised to fix the problem but in fact had never performed any repairs. A little less than a year ago the pipes burst, destroying all the tenant's equipment. The tenant had no insurance, and was forced to purchase new cooking equipment. Your client could not, by law, require the tenant to pay rent while the property was being repaired, but those repairs are now finished and the tenant is finally ready to reopen the *pâtisserie*. A week ago, the tenant contacted your client and requested a meeting to discuss the possibility of your client paying for some of the replacement costs of the destroyed equipment. Your client's liability for these costs is crystal clear, but no lawsuit has been filed and the statute of limitations for the relevant legal claims will have run in five days. What will you do?

- a. Recommend that your client pay the cost of replacing the equipment.
- b. *Inform your client that he is liable for the cost of the destroyed equipment, but that he will be immune from suit in five days, and make no recommendation as to whether to pay or not.
- c. Recommend that your client delay responding to the chef's request until after the statute of limitations has run.
- d. Recommend that your client transmit a noncommittal response to the chef's request and schedule a lunch to discuss the matter a week after the statute of limitations has run.

3. You represent a client in a divorce proceeding where everything has been informally agreed upon except for alimony and child support. Your client, the husband, wants to maintain a healthy relationship with his two young children, but he concedes to you that their mother (your client's soon-to-be ex-wife) would provide a much more stable environment than he can provide. He therefore wishes not to fight for custody, which the mother has requested and which means the world to her. However, your client also believes that the children's mother is likely to demand a high level of alimony and child-support, given that she stays at home to care for her children. Your client fears that he may have to relocate from his luxury condo to an outer suburb, twenty miles from the family home, in order to meet the alimony and child-support demands. His commute to work will be worse, and he also fears that moving farther out will make it more difficult to sustain his relationship with his children. He asks you whether there is anything he can do to reduce the mother's child alimony support demands. What do you do?

- a. Recommend that the client disclose his concerns frankly early in negotiations and trust in the good faith of the other side to possibly reduce alimony and child support demands.
- b. Recommend that the client refuse to formally consent to any custody arrangements until alimony and child support payments have been settled.
- c. Hire a private detective to examine the children's mother's behavior closely, and threaten to expose anything embarrassing the detective discovers unless the alimony and child support issues are favorably settled.
- d. *Recommend that the client fight for custody, and then concede the custody question on condition that the children's mother significantly reduces her requested alimony/child support demand.

4. An old girlfriend (or, if you are female, an old boyfriend) who knows you are a lawyer calls your office for help. She is going through an acrimonious divorce and is having difficulty with the property settlement, because she cannot get reliable information about the value of certain assets held by her husband (or his wife, as the case may be, etc.). She has received complete and correct data on all her spouse's bank accounts and other savings, as well as property holdings. However, she cannot determine the value of her spouse's retirement benefits through the spouse's employer—these benefits are important to track down. The spouse has been secretive, and so your girlfriend asks you to pretend you are her husband and call his company's human resources department to get the current balance. She knows her spouse's password and will provide it to you, but she cannot make the call herself be-

cause her woman's voice will give the ruse away. She doesn't want to ask her divorce lawyer for this help, but you are a former friend and she feels more comfortable asking you. What do you do?

- a. Refuse to make the call and advise her against this strategy.
- b. *Apologize for not being able to do as she requests, because she is already represented by an attorney, but advise her to ask her own attorney to make the call.
- c. Tell her to hire a third party, who is not a lawyer, to make the call.
- d. Agree to make the phone call.

5. Your parked car was recently damaged by a hit-and-run driver. As a result, you (and your insurance company, through your "uninsured motorist" coverage) are responsible for all repairs. You take your car to a mechanic who estimates the cost of repair to be \$450. Your "uninsured motorist" coverage has a \$500 deductible, so you will have to pay the entire amount. However, the mechanic offers to tell the insurance company that repairs cost \$1000; he would then waive the \$500 deductible. As a result, you would in fact pay nothing for the repairs and the mechanic would receive \$500 (from the insurance company) rather than \$450 from you. You recall reading that insurance companies regularly charge customers more than what is "actuarially fair," and the money you save would help you make your next rent payment without resorting to a high-cost "payday loan." Your mechanic informs you that he happens to know that your insurance company never asks for a second opinion when the damages are this low. What do you do?

- a. *Decline the offer and pay the mechanic \$450 for the repairs.
- b. Modify the offer by requiring that the mechanic claim that the repairs cost \$750. The insurance company would therefore pay the mechanic \$250 (the amount above the deductible) and your client would pay the mechanic \$250 more.
- c. Modify the offer by requiring that the mechanic claim that the repairs cost \$950. The insurance company would therefore pay \$450 (the amount above the deductible) and the mechanic would forego any payment from you.
- d. Accept the mechanic's offer.

6. You are drafting lease agreements for a client who owns a number of rental properties. Beyond the standard terms common to leases, the client has specifically asked for two additional clauses: first, a clause that makes *all* repairs the responsibility of the tenants; and second, a clause that expressly rejects the right of

a tenant to cease paying rent if the premises cannot be used because they require major repairs. The highest court in your state has already declared both such clauses illegal and of no effect, but none of the uneducated tenants are likely to know this or to object to their inclusion. Indeed, the client says that the two clauses will save thousands of dollars every year from compliant tenants who decline to seek legal advice and who make the payments in reliance on the lease's terms. The client has offered to bring additional work to your firm if you include the two clauses in the lease. What do you do?

- a. Refuse to include either of the two clauses.
- b. Include one clause (at the client's option) but not both.
- c. Include the clauses, but make them more noticeable by putting them in **boldface**, or in ALL CAPS.
- d. *Include the two clauses as requested.

7. As a criminal defense lawyer, you are contacted by a wealthy individual who has just been arrested for rape and murder. You speak with the accused, who admits that he was "high" the night of the murder, cannot remember any details, but very likely committed the crimes. Your client also acknowledges that he may well commit the same crime in the future, because he "gets really angry at any girl who says no after I've shared my heroin with her." The prospective client tells you that he will pay you five times your normal hourly rate if you take his case. Reviewing the evidence against the accused, you discover that the government's case is somewhat weak (his semen is a DNA match, but the murder weapon was never found, and as the victim was a heroin addict you think suspicion can be directed onto her dealer). You are experienced in such cases, and you think a strong defense in this case will likely result in a not-guilty verdict. What do you do?

- a. Refuse to represent the accused.
- b. Represent the accused but only if he agrees to a plea-bargain wherein he is convicted of manslaughter.
- c. Represent the accused in a half-hearted way, increasing the likelihood of a conviction.
- d. *Represent the accused vigorously, maximizing the likelihood of an acquittal.

8. You are in the checkout line at the local supermarket, part of a large national chain, and the store is full of shoppers with long lines at each checkout counter. The cashier scans your purchases, and you pay in cash. You count your change while en route to your car, and immediately realize that you received \$10 more than you should have. You have several important errands to run today. What do you do?

- a. Return the \$10 regardless of the amount of time required to do so.
- b. Give the \$10 to a homeless person you see on the street.
- c. *Leave with the \$10, but vow to return the money the next time you shop at that store.
- d. Keep the \$10.

9. Your bank allows you to make payments on-line. You use this service to pay your credit card bill, and the transaction is completed without any glitches on the credit-card side of the transaction. However, you notice the next day that the amount deducted from your bank account is \$200 less than the amount received by the credit card company. What do you do?

- a. Contact your bank and inform them of the discrepancy.
- b. Keep the \$200 but donate \$100 to a worthy charity.
- c. Use the additional \$200 to pay your law school tuition, but vow to report the error if it ever occurs a second time.
- d. *Pocket the money and make sure you always pay that particular credit card bill online in the future, on the chance that whatever computer glitch caused this will recur.

10. You arrive in Bermuda for a business trip, and check into your luxury hotel. Once in your room, you spread the curtains wide to open the windows and let in the tropical breeze from the ocean. On the window ledge, you find an attractive silver bracelet. It appears to be new and looks similar to the types of products sold at numerous shops that surround your hotel—somewhat classy but not expensive. Your mother's birthday is a week away and she loves Bermuda, so you had planned on buying her a gift while here. What do you do?

- a. Turn the bracelet in to the hotel management.
- b. *Leave the bracelet on the ledge where you found it, where it is likely to be found by a member of the housekeeping staff.
- c. Give the bracelet to your mother.
- d. Use the bracelet as a tip to the housekeeper, then claim \$50 in tips on your expense report (your employer does not require receipts for tips).

11. Your grades from last semester have improved your class rankings, just in time for an important round of interviews that will largely determine where you are employed after graduation. Although you are satisfied with your latest grades, you take advantage of the exam review period to gain additional insights so as to improve even more in the future. When reviewing one exam, you realize that the professor inaccurately summed up your point

scores, awarding you an A grade when your score actually warranted a B+. What do you do?

- a. Identify the apparent error to the professor.
- b. Reveal the error to the administration, insisting that all exams in this course be recounted.
- c. Ask your professor to review one question on your exam that troubled you, but without identifying the apparent counting error.
- d. *Remain silent and decline to have the professor review the exam.

12. While on vacation in Palm Beach, Florida, you encounter an old friend who has been hugely successful in business and is now fabulously wealthy. Your friend invites you to a once-in-a-lifetime "A-list" dinner party to be attended by many *glitterati*, and you happily accept. You spend the afternoon shopping for suitable attire for the event and you splurge, paying the \$2,000 price tag with your credit card. This is way more than you would otherwise spend on clothing, and it breaks your budget, but you convince yourself that this is a once-in-a-lifetime event. The next day, while packing your belongings, you notice that you had inadvertently left the price tags on the inside of your new clothing, and that there is no visible evidence of its use. You then recall that the store has a liberal returns policy, accepting returns of new clothing for a full refund "if buyers are not satisfied for any reason." What do you do?

- a. Give the clothing to charity.
- b. Sell the clothing at a consignment store.
- c. Return the clothing on the grounds that you tried the pieces on at home, and they were not "as attractive on you as you had hoped."
- d. *Return the clothing to the store for a full refund and solicit more invitations to big events, while making a point of buying expensive clothing for such events at this store.

13. Suppose that a one-way ticket from A to B on an airline costs \$450, while the cheapest available advance purchase round trip ticket between those two points is only \$275. You need to fly from A to B, but a buddy will be driving you home. What do you do?

- a. Buy the one way ticket.
- b. Buy a round-trip ticket with no intention of using the return leg.¹⁵⁶

156. An explicit condition of purchase of the round-trip ticket is that the purchaser intends to travel round-trip. The airlines' contract of carriage indicates that purchasing a round-trip ticket with the intention of flying one-way is a violation of the contract.

- c. *Buy the round trip ticket, try to find someone with your very common last name who can use the return leg, and donate the return ticket to that person.
- d. Buy the round trip ticket and try to sell the return leg to someone with your very common last name.

14. You are on a business trip to Chicago, and you arrive at your hotel mid-afternoon the day prior to any of your appointments. You had reserved the room for \$159. [Your employer, like most employers, will reimburse up to \$200 per night for hotels in Chicago.] Upon arrival the hotel receptionist asks you if you prefer a room with a minibar, and you respond in the affirmative, as you enjoy drinking one bottle of beer in your room. The receptionist then indicates to you that they have a “special offer” in effect for business guests. You can rent the room for \$159 as previously agreed, or you can rent the room for \$199 and have unlimited use of the minibar. Your employer, like most employers, does not reimburse for use of the minibar: and if you take the room for \$159, all minibar charges will be listed separately. But if you accept the “special offer,” no minibar charge will appear on your bill. What do you do?

- a. Decline the special offer.
- b. Accept the special offer, but tell the employer that you are only claiming \$159 for the hotel room, as the balance was an indirect minibar charge.
- c. Accept the special offer, claim the \$199 as a hotel expense, but try to “really get your employer’s money’s worth” that night on the grounds that a happy employee is an effective employee.
- d. *Accept the special offer, claim the \$199 as a hotel expense, and drink one bottle of beer from the minibar.

15. A fantastic career opportunity has drawn you to a new city in a new area of the country. Rents are high, but you have managed to find a reasonable apartment in a somewhat run-down area of town, within walking distance of your workplace. After moving in and getting your belongings arranged, you discover to your surprise that cable television and high speed internet service are already being provided to your apartment. You review your lease and are unable to find any language that would indicate that these services are included in your monthly rent. Due to the apartment’s location and low rent, you in fact believe it is highly unlikely that this is the case—for other similar apartments had advertised cable and internet services and demanded much more in rent. What do you do?

- a. Call the cable company and report the situation.

- b. Ask your neighbors if they have cable included in their rent, and if they respond in the negative, call the cable company and report the situation.
- c. Do nothing but give \$20 per month more to charity than you otherwise would have done.
- d. *Do nothing and hope that the service continues.

16. It has been an extremely busy day and you are exhausted. You would like nothing better than to go home, but your law firm requires that time sheets be filed on a daily basis in order to keep clients continually apprised of their billings. You have trained yourself to keep meticulous records of time spent on each item, and today is no exception. After completing your calculations, you find that you have worked on 15 different items during the day. Your firm bills clients in 6 minute increments, or for every tenth of an hour or part thereof. Amazingly, for each of the 15 items you worked on today, you worked exactly 43 minutes, which is 1 minute beyond 7 full units of time. You worked an impressive $10 \frac{3}{4}$ hours today, but if you bill in accordance with the firm's practices, you will bill 12 hours. What do you do?

- a. Bill 10 hours and ignore the single additional minute per item.
- b. Bill 10.8 hours (the actual time spent, rounded to the closest billing unit) allotting 42 minutes (7 billing units) to 12 of the items and 48 minutes (8 billing units) to the 3 items that were the most difficult.
- c. *Bill 12 hours as prescribed by firm practices.
- d. Bill 12 hours and resolve to try to work 43 minutes on as many items as possible in the future.

17. You are the senior associate on a complex commercial case that is of great importance to your firm. Your adversary has been unusually reluctant to provide adequate responses to your discovery requests, but after a lot of coaxing and some pressure by the judge presiding over the case, you have received hundreds of thousands of pages of documents. You are asked to supervise document review, which will require the use of a dozen junior associates. Towards the end of the first week of document review, one junior associate approaches you with a written memo that entirely corroborates your theory of the case. However, upon further review, you realize that the memo is privileged attorney-client communication that was stapled to a much more innocuous form and sent to you erroneously by your adversary. What do you do?

- a. *Return the document to opposing counsel and screen the junior associate from the rest of the case.

- b. Return the document to opposing counsel but have the junior associate relate the contents of the document to the lead partner on the case.
- c. Retain the document and plan trial strategy around its contents.
- d. Inform your adversary of his mistake, and threaten to use the document against the adversary unless the adversary settles with you on very favorable terms.

18. As a member of your school's Law Review, you have benefited from a number of opportunities that you would likely not have had otherwise. You are now a candidate for Editor in Chief, which will add additional prestige to your resume. Two weeks before the meeting where the new Editor in Chief will be elected, you discover a disturbing fact about the way in which articles were chosen for the previous three issues. The current Editorial Board has acted unethically and possibly illegally, "selling" law review placement in return for favors. Since the current Board chooses the upcoming year's Board, raising your concerns will destroy any chance of becoming Editor in Chief. It is also possible that the current Board will face sanctions for their actions. What do you do?

- a. Report the current Editorial Board to the Law School Administration and request a full investigation.
- b. Remain quiet and resolve to fix the institutional problem once you are on the Editorial Board.
- c. *Confront individual members of the current Board and use your knowledge to leverage their votes in the upcoming election for Editor in Chief.
- d. Leverage your knowledge to assure your election as Editor in Chief and resolve to continue the current Board's practice if you are elected Editor in Chief.

19. Your firm is prepping for trial in what is shaping up to be your firm's biggest lawsuit in decades. If the case is won, your firm will be financially stable for years to come and you, as senior associate assigned to the case, will be assured of being offered a full partnership at the next partner's meeting. Your primary task leading up to trial is to review the reports prepared by your experts. As you are reviewing the report prepared by your damages expert, you notice a number of errors, each one of which makes the conclusions more favorable to your client. The cumulative effect of all these errors is very substantial, making your damages position fraudulent. You meet with the expert to discuss other matters and while doing so you raise these errors, but the expert dismisses your concerns as being extremely unlikely ever to be noticed by your adversary or by the judge. Because of your edu-

cational and work experience in business, you know that the expert's conclusions are wrong. But you also know that this particular expert is very well respected, that the lawyer on the other side lacks your quantitative sophistication, and that the judge is likely to look very favorably on the conclusions. What do you do?

- a. Confront the expert and threaten to expose the flaws publicly unless the analysis and conclusions are changed.
- b. Explain the situation to the partner who is supervising the trial prep and insist that the expert report not be used at trial.
- c. *Explain the situation to the partner who is supervising the trial prep and offer suggestions on how to rebut any attacks the other side might possibly make.
- d. Conceal the situation from all, resolving to use this expert again if you are successful and to deny ever discussing the matter with the expert if his errors happen to be discovered.

We would now like to ask you some questions that will help us better understand the survey results.

20. What is your age?
 - a. 20–24
 - b. 25–29
 - c. 30–34
 - d. 35–39
 - e. 40–44
 - f. 45+
21. What is your gender?
 - a. Female
 - b. Male
22. How often do you typically attend religious services?
 - a. Multiple times per week
 - b. Weekly
 - c. Monthly
 - d. Annually
 - e. Never
23. What was the name of the institution where you received your undergraduate degree?
24. What was the name of the institution where you received your graduate degree (if applicable)?
25. What was the zip code where you grew up?

26. What was your highest LSAT Score?
27. What is your law school class ranking?
 - a. Top 10%
 - b. Top 25%
 - c. Top 50%
 - d. Bottom 50%
28. Are you a member/editor of a law journal/review?
 - a. Law Review Editorial Board
 - b. Law Review Member
 - c. Other Journal Editorial Board
 - d. Other Journal Member
29. Are you a member of the Moot Court Board?
30. Have you taken a legal ethics course?