The Ethical Development of Lawyers: An Empirical Investigation

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The Ethical Development of Lawyers:

An Empirical Investigation

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A Thesis in the Field of Legal Studies
for the Degree of Master of Liberal Arts in Extension Studies

Harvard University
November 2018
Abstract

The purpose of this article is to examine the evolution of lawyers’ ethical values as they progress through their career from law school to retirement. Specifically, using an empirical study of 2711 people who have graduated or will graduate from law school, this article examines the role that age, sex, religion, ethnicity, class, disability, debt load, practice area and location, and school, all play in forming the ethical beliefs of lawyers along three continuums; 1) their general ethical outlook (do they believe in and adhere to high levels of ethicality or not?), 2) their belief in the role of personal morality in the lawyering process (should lawyers be moral agents or zealous advocates?), and 3) their view of the appropriateness of the commercialization of law (is law a profession or a business?). This article is a follow up study to one previously published in 2009. While the earlier study focused on the ethical development of law students only, this reiteration significantly broadens the scope and depth of the research by focusing on the ethical development of lawyers.

Numerous statistically significant results were observed, including:

1) Students who graduate with high debt loads are more likely to view the law as a business to make money and view themselves and others in the profession as less ethical.

2) Lawyers tend adopt the view that the law is a profession for the good of society and view themselves and others in the profession as more ethical as they age.

3) Female lawyers are more likely to incorporate personal morals into their
practice and view the law as a profession, while males are more likely to view the law as a business to make money and more strongly believe that lawyers should be zealous advocates.

4) Both male and female law students learn the role of zealous advocate within the first 6 months of law school, after which time their view is largely solidified.
Dedication

This dissertation is dedicated to my wife, Dr. Angela Wang, whom I can always look to for encouragement to work harder. And my children, Evelyn and Jackson, who not only encourage me to, but require me to work harder. And my parents, John and Ellen, who taught me the value of an education.
Acknowledgements

I would like to acknowledge Harvard Law School Professor David M. Wilkins, for his guidance and encouragement on this thesis. His suggestions have much improved this resulting work.

I would also like to express my thanks to Bryon Fong and Nathan Cleveland, who have greatly assisted with this project.

Finally, I would like to acknowledge Professor Trevor C. Farrow, of Osgoode Haw Law School, with whom I collaborated for the original research on law students in 2009.
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I. The Research Problem

In Toronto, there is a well-known personal injury lawyer who has been repeatedly ridiculed by the media for advertising for clients above the urinals at the Toronto Raptors arena.¹ This lawyer has faced numerous sanctions from the local law society for behavior that may be considered unethical. Conversely, there are many diligent lawyers whose personal ethical belief systems would not let them dream of acting in such a manner.

There is obviously a wide range of ethicality among lawyers in practice today. This study hopes to examine some of the factors that influence the personal ethics held by lawyers.

For decades, legal ethics was an area of scholarship woefully lacking in empirical data². While there was always a very active theoretical debate on the various ethical issues facing the practice of law, this debate was held in an academic vacuum detached from empirical reality³. However, over the last 15 years or so the number of empirical

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ethical investigations designed to verifiably assess the ethical beliefs of students and lawyers has increased dramatically. This study seeks to build upon and expand past research in the area. In specific, this study will examine the ethical beliefs of lawyers and law students concerning three main questions:

1. Do lawyers view themselves and others in the legal profession as being highly ethical or not? (i.e. High Ethicality $\leftrightarrow$ Low Ethicality)

2. Do lawyers view their role of lawyer as allowing for their personal moral beliefs to influence their representation of the client or do they believe they must act as a zealously advocate for their client? (i.e. Moral Agent $\leftrightarrow$ Zealous Advocacy)

3. Do lawyers tend to view the law as a business to make money or as a profession to serve the good of society? (i.e. Law as a Profession $\leftrightarrow$ Law as a Business)

More importantly, this study hopes to determine how the following factors: age, sex, ethnicity, religion, class, student debt load, practice location, practice area, year of

___


graduation, years of practice, bar association, and school, all combine to influence the ethical belief system held by individual lawyers.

It is hoped that by elucidating the factors that drive ethicality we can learn how to create more “ethical” lawyers should that be the wish of law schools and the legal profession. The results will also be useful to understand how and why “thinking like a lawyer” is based partially upon a lawyer’s individual identity and experiences.

This study is a direct continuation of a previous empirical investigation published in the article; Joshua J. A. Henderson and Trevor C. W. Farrow, “The Ethical Development of Law Students: An Empirical Study” Saskatchewan Law Review 72 (2009): 75-104.

The prior study was completed in 2006-2007 under the guidance of Professor Trevor Farrow at Osgoode Hall Law School while I was a third year law student there. It examined the ethical development of Canadian law students at Osgoode Hall Law School and the University of Saskatchewan. At paragraph 43 of that first publication, Professor Farrow and I wrote:

It would be intriguing to conduct a study of practicing lawyers to determine whether the exigencies of practice further promote the adoption of the role of zealous advocate. It is entirely possible that this would be the case and that practicing lawyers would fall more heavily on the zealous advocate side of the continuum (and farther away from their first year of law school starting point).

After more than 11 years, I finally have a chance to answer this question, along with many others.
II.

Theoretical Framework

There are three theoretical questions underlying this investigation:

i) How do personal characteristics affect ethicality?

ii) What role should personal morality play in a lawyer’s fiduciary duty to zealously represent their client within the bounds of the law and rules of professional conduct? And,

iii) Should we insist on the law being a profession for the good of society or can we accommodate the view that law is a business for pecuniary gain?5

The first theoretical question is simply an investigation into the general ethical beliefs held by lawyers. It examines whether lawyers view themselves and their peers (judges, law students, professors, and lawyers) as ethical. For this study, individuals who score low on this measure (towards 1) view themselves and others in the profession as being highly ethical. While individuals who score high on this measure (towards 2) view themselves and others in the profession as being more unethical.

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Figure 1 – Category 1 – Ethicality

<table>
<thead>
<tr>
<th>High Ethicality</th>
<th>Low Ethicality</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>(Strongly Identify as High Ethicality)</td>
<td>(Middle)</td>
</tr>
<tr>
<td>5</td>
<td></td>
</tr>
<tr>
<td>(Strongly Identify as Low Ethicality)</td>
<td></td>
</tr>
</tbody>
</table>

The second theoretical question can be viewed as a continuum with two ends as follows: Moral Agent ⟷ → Zealous Advocate. Lawyers who adhere to the traditional “Zealous Advocate” role of a lawyer typically believe that their role in the English common law adversarial system is simply to provide the most vigorous representation possible for their client within the bounds of the law.\textsuperscript{6} Lawyers who fall towards the other end of the continuum, “Moral Agency”, believe that the ethical representation of their clients must include personal considerations of morality, religion, ethics, politics, and custom, such that the strong representation of their client is not the only important goal in the successful practice of law.\textsuperscript{7} Rather clients may be refused and legal actions on behalf of the client may be limited based on the personal moral beliefs of the lawyer.


For the purposes of this article, those who score low (towards 1) in this category can be viewed as more strictly adhering to the Moral Agency side of the spectrum, while those who score high (towards 5) consider their role as lawyer to be more as a Zealous Advocate, with little room for their personal morality in the representation of clients.

Figure 2 – Category 2 – Moral Agency vs. Zealous Advocacy

<table>
<thead>
<tr>
<th>Moral Agent</th>
<th>Zealous Advocate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>(Strongly Identify as Moral Agent)</td>
<td>(Middle)</td>
</tr>
</tbody>
</table>

The third theoretical question can also be viewed as a continuum: *Law as a Profession* \(\leftrightarrow\) *Law as a Business*. Individuals who view the law as a profession tend to think that law exists to protect the public interest, improve society, and help citizens recognize and maximize their legal rights regardless of the financial ability to do so\(^8\).

In contrast, lawyers who view the law as a business think of the law in terms of its commercial opportunities, as a way to maximize the pecuniary interests of the client and themselves. In this view, law is essentially a business\(^9\).


Lawyers who score low on this continuum (towards 1) tend to view law as a business for pecuniary gain, while those who score high on this continuum (towards 5) view law as a profession for the good of society.

Figure 3 – Category 3 – Law as a Business vs. Law as a Profession

<table>
<thead>
<tr>
<th>LAW AS BUSINESS ↔ LAW AS PROFESSION CONTINUUM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law as Business</td>
</tr>
<tr>
<td>1</td>
</tr>
<tr>
<td>(Strongly Believe in Law as Business)</td>
</tr>
<tr>
<td>5</td>
</tr>
</tbody>
</table>

III.

Literature Review

Historically, there were very few empirical investigations into the ethical values of lawyers and law students. There were even fewer investigations into the ethical changes lawyers and law students experience as they progress through law school and on into their career. As such, it has been uncertain how ethical values evolve over the course of a lawyer’s career.\(^{10}\)

1. Overview of Empirical Studies

A 1976 study by Rathjen found that students at the Tennessee College of Law experienced a decrease in their interest in performing civil liberties work as they progressed from 1\(^{st}\) year to 3\(^{rd}\) year.\(^{11}\)

Similarly, Erlanger and Klegon showed in 1978 that students at the University of Wisconsin-Madison Law School showed a small but significant decrease in the perceived importance of pro-bono work as they progressed through law school. Those students also expressed changes in thinking patterns such that they learned to “think like lawyers,” but

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\(^{10}\) Henderson and Farrow, “Ethical Development,” paragraphs 9-12 review some of the following literature in more detail.

these changes were never scientifically elucidated. In 1996, Erlanger et al. updated his 1970s research to determine whether those who were most interested in public interest jobs in first year maintained that interest upon graduation. He found that although half of the class indicated an interest in public interest, only 13% of the graduates took a job in the field as their first place of employment.

In 1981, Willing and Dunn found that the first year of law school did not produce any change in the moral development of law students nor did an upper year course on legal ethics.

In 1987, Wangerin found that lawyers and law students emphasized the importance of maintaining social justice, social obligations and commitments, when making moral decisions.

In 1989, Jack and Jack published a book based on interviews with 18 male and 18 female lawyers showing that men were more aligned with zealous advocacy and women


tended towards the moral agent view of the ethical role of a lawyer.\textsuperscript{16} But with such a small sample size and the inherent bias in direct interviews it is hard to extrapolate much from this study.

The Jack and Jack study was partially confirmed by White and Manolis in 1997 when they showed that female law students identified with the moral agent view and male law students identified with the zealous advocate view of the lawyer.\textsuperscript{17}

Other researchers have found that public sector lawyers have higher moral judgment levels than those working in the private sector;\textsuperscript{18} and that “age, education, well-being, and faith were not predictive of ethical and moral decision making” for lawyers contrary to the original hypothesis.\textsuperscript{19} And that practicing lawyers display pluralistic ignorance in their perception of other’s unethical behaviors, i.e., lawyers think other lawyers are more unethical than they actually are.\textsuperscript{20}

\begin{thebibliography}{9}
\end{thebibliography}
In a more general literature review of moral reasoning conducted in 2002, King and Mayhew, reviewed 500 articles in which a standardized moral test (Defining Issues Test) was administered to college students and then correlated with various moral situations. King and Mayhew found that in the vast majority of these articles, the level of moral reasoning of students was not very predictive of their behavior. Most students behaved in a similar manner regardless of their moral reasoning scores on the test. However, there was a slight correlation between those students who acted morally and those who had a higher score on the test.  

Given the wide variety of applications covered in the 500 articles on the subject, it would be expected that this would apply equally to law students.

In 2003, Granfield and Koenig conducted an empirical study and “found that law school did not prepare young lawyers for the recurring conflicts produced by remaining a moral human being while simultaneously upholding the ethical obligations associated with the legal profession”. The authors suggested that a lawyer’s school did not provide training in moral sensitivity for the issues that would face lawyers in practice.

In 2003, Krieger and Sheldon, showed that law students demonstrated a decline in their endorsement of intrinsic values of serving the community and embraced they

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appearance and image values. That is, they found that law students move away from altruistic practice and towards selfish considerations.

In 2004, Landsman and McNeel, found that practicing lawyers regularly employ post-conventional reasoning during tests of morality (the highest level of moral reasoning according to Lawrence Kohlberg’s theory of moral development). Indicating that practicing lawyers often consider both universal principles as well as conventional practices when deciding the appropriate moral course of action. They concluded that “law school does not have a significant effect on the moral judgment of law students” based on application of the Defining Issues Test.

In 2015, Moorhead and Hinchley observed through semi-structured interviews that “ethical identity is strongly associated with gender and career intentions” in both the UK and US, but they found mixed results on the impact of legal education on a lawyer’s ethical identity. Instead, they concluded that gender and career intentions (i.e. business law) seem to be more important factors than the effects of a particular school.


Overall, a limited view of practicing lawyers emerge from these few studies, with men and private lawyers more likely to be zealous advocates, women and public lawyers more likely to be moral agents, and law students losing their zest for public service.

2. Special Question – Question 39

To further ground this empirical investigation in the academic literature and theories. One specific question, Question 39, was taken from a well-known hypothetical in Canadian legal ethics academia. Question 39 of this survey asks:

39. Scenario – A plaintiff lawyer files a medical malpractice suit on behalf of a client. Based on the suit the doctor’s lawyer offers to settle. Before the settlement is accepted the client is definitively informed by an independent third party expert that they were not actually injured by the doctor. The client informs their lawyer of this yet nevertheless instructs their lawyer to accept the settlement on the basis that it is the responsibility of the opposing party to discover any weaknesses in their suit. The lawyer accepts the settlement on behalf of their client. Do you agree that the plaintiff lawyer’s actions were ethical?

This question is based on a famous Canadian legal ethics problem posed by Osgoode Hall Law School Professor Allan Hutchinson, in his 1999 text book Essentials of Canadian Law: Legal Ethics and Professional Responsibility. The question is essentially a pure Category 2 question, should lawyers act as Zealous Advocates and ignore their personal morals? Or should they ignore their obligation to do as the client demands and follow their personal morals?

The theoretical academic underpinning of the possible various answers to the question have been summed up nicely in a 2013 article by Professor Alice Woolley, of

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the University of Calgary. She outlines the four theoretical approaches to the importance of Zealous Advocacy at the expense of Moral Agency as follows:

9 The political philosophers’ position on the lawyer’s role is that the lawyer is justified in resolutely advocating for clients’ interests within the bounds of the law. The moral justification for the lawyer’s role follows from the legitimacy and authority of the system of laws as a mechanism for resolving disputes about the right way to live in a society where people will have divergent views on how that question should be answered, and given individual claims to autonomy and equality under the law. Although lawyers can legitimately engage with moral questions, the resolution of moral quandaries takes place either at the level of the legal system itself, or through the decisions of the client. The lawyer may counsel the client about the morality of her goals, or may try to find some other way to square the circle caused by the divergence between her role responsibilities and ordinary moral claims, but ordinary morality does not directly constrain the lawyer’s role. The lawyer’s role is instead constrained by her duty to represent the client's interests and to act respectfully towards the requirements imposed by the legal system.

10 The second category of theoretical accounts of the lawyer’s role is … that in any given case a lawyer must take those “actions that, considering the relevant circumstances of the particular case, seem likely to promote justice”. … [T]hat while lawyers are not judges, they similarly “instinctively rely on principles, policies, and informal norms” in understanding what the law permits or requires….

Justice can be defined, for the purposes of the lawyering process, as the correct resolution of legal disputes or problems in a fair, responsible, and non-discriminatory manner.

The [third] theoretical approach to legal ethics is the ordinary morality critique. It notes that legality and morality diverge, such that fulfilling the legal obligations of the lawyer in representing clients may require the lawyer to do things judged as wrongful by ordinary morality. The ordinary morality critique argues that the requirements of law and role cannot excuse immoral conduct. There may be a presumption in favour of following the obligations of the lawyer’s role, but that presumption is "one that any serious and countervailing moral obligation rebuts.…

[W]hen professional [role] and serious moral obligation conflict, moral obligation takes precedence”.

25 … The post-modern assertion that a lawyer ought to make “an informed and conscientious decision in accordance with their own political and moral lights” is another ethical contender for guiding what lawyers do.

In a subsequent article, published in 2014, Professor Woolley, chose to eschew an application of the above four legal ethics frameworks to resolve the Question 39 hypothetical²⁹. Instead she relied on a substantive law solution as the purported answer to the hypothetical:

In a classic legal ethics hypothetical posited by Allan Hutchinson, in which students are asked whether they can accept a settlement on behalf of a client who the lawyer (and the other side) thought was HIV positive but who the lawyer now knows is not HIV positive (while the other side remains misinformed), the answer arises from the law of fraud, not morality or ethics apart from law. That is, the lawyer cannot accept the settlement on the client’s behalf because to do so would be to participate in the commission of fraud, regardless of any moral or ethical concerns with doing so.

While concerns with this substantive law rationale are more fully discussed below, it should be noted that for the first time, this study allows us to test the actual ethical thinking of lawyers in relation to a theoretical legal problem posed by academics. In contrast to proponents of the four academic frameworks proposed above who can and do go in endless circles arguing with each other, or as Professor Woolley states:

49 … And what becomes overwhelmingly apparent when reviewing the debates between them is that while they may soften or shift on small points or particular questions, none of them ever change their minds on the fundamental issues. They are all occupying the same philosophical ground they have occupied for years, or decades. One could posit that that is pride, or that the exercise of their reason prohibits any substantial change. But it seems far more likely that the real reason is that they are intuitively and emotionally drawn to the account they put forward,

and no amount of rational persuasion or argument does anything other than to spur them to better articulations of their own point of view.

This investigation allows the direct testing of the various moral frameworks debated in the literature, because not only was this investigation able to gather statistics on the range of answer given by lawyers, but we can read the written responses of practicing lawyers as they confront the ethical dilemma presented in the hypothetical for the first time. As reviewed below, literally dozens of lawyers took the opportunity to better explain their moral reasoning in response to this hypothetical. This affords the unique opportunity to actually observe the ethical thought processes of lawyers on a question that has been endlessly debated.

3. Prior Administrations of the Empirical Study

In the fall of 2006, I took an advanced Legal Ethics class with Professor Trevor Farrow at Osgoode Hall Law School. For my final paper I conducted the first version of this study by administering a questionnaire to 106 students at Osgoode Hall (representing 10% of the 900 J.D. students matriculated at that time). The same survey was administered early in the spring of 2007, to 70 students at the University of Saskatchewan College of Law (representing about 25% of the 300 matriculated LL.B. students).30

That study yielded interesting results pertaining to the ethical development of law students, including:

i) That both male and female law students viewed members of the legal profession as ethical, but women held this view more strongly.

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30 Henderson and Farrow, “Ethical Development,” 75-104.
ii) That female law students were more likely to view themselves as moral agents than men.

iii) That male and female law students viewed the law as a profession to protect the public interest, but female students held this view more strongly.

iv) That third year law students tended to believe lawyers were more ethical than first year law students. And,

v) That while both students at Osgoode and Saskatchewan viewed the law more as a profession than a business, third years at Saskatchewan changed to hold this view more strongly than first years at Saskatchewan, whereas third years at Osgoode held this view less firmly than first years at Osgoode; indicating that law schools do have differential effects on students’ ethical development.

In a follow up to the first iteration of this study, Professor Alain Roussy, of the University of Ottawa Law School, independently administered a second iteration of this study to law students at the University of Ottawa. Using a questionnaire that was based on and almost identical to our earlier version (with only minor grammatical changes), Professor Roussy was able to administer the questionnaire to 493 first year law students on the very first day of law school in September 2016 (i.e. before any socialization effect was possible) and to 218 law students in March 2017 during their third and final year (i.e. before any socialization effect was possible).

Professor Roussy’s research is unpublished as of now, but the results were the topic of a presentation given for the Annual Meeting of the Canadian Association for Legal Ethics on October 27, 2017, at Dalhousie Law School. Professor Roussy entitled his presentation “The Ethical Identify and Development of Law Students” and a copy of his slideshow is available upon request.
at the end of their law school career after they have been fully indoctrinated as law students). Of those respondents, 482 were female and 223 were male (a demonstration of the current gender imbalance in Canadian law schools). While 183 were visible minorities and 525 were not.

Amazingly (and gratifyingly) Professor Roussy replicated most of the outcomes achieved in the first administration of this study. Specifically, Prof. Roussy found that for law students at the University of Ottawa:

vi) Both male and female law students viewed members of the legal profession as ethical, but women held this view more strongly.

vii) Female law students were more likely to view themselves as moral agents than men.

viii) Male and female law students viewed the law as a profession to protect the public interest, but female students held this view more strongly.

ix) Third year law students of both sexes had moved slightly away from the Moral Agent view of practice and towards the Zealous Advocacy view (although they still fell on the Moral Agent side of the continuum).

x) Third year law students of both sexes had moved slightly away from the Law as a Profession view of practice and towards the Law as a Business view (although they still fell on the Law as a Profession side of the continuum).

What is so amazing is that the results match almost exactly the results achieved when the first version of this study was administered to students at Osgoode Hall more than a decade earlier in the fall of 2006. Similar to the first study, the only material
difference from the students in Saskatchewan is that at Saskatchewan the students were socialized towards the view that the Law is a Profession while at Osgoode and Ottawa the students were socialized towards the view that the Law is a Business.32

So with this survey based on a very solid empirical foundation and the knowledge that the study design appears to work, this third iteration of the study has expanded the research to include more than a hundred thousand lawyers and law students across Canada and the USA.

32 It should be noted that while Prof. Roussy reported the net results, no associated statistical significance levels were reported. Nevertheless, I take confidence in the fact that the results matched perfectly the results obtained at Osgoode and also the results obtained in this study.
IV.

Research Methods

Preliminary approval of this study was required by the Harvard Human Research Protection Program as the ethics questionnaire was administered to human beings who may suffer adverse consequences from participation. After completing numerous ethics training courses, the Harvard Human Research Protection Program provided approval for the study to proceed and numerous other institutions relied on this ethics approval in lieu of assessing the survey themselves.

Administration of this study was by far the most difficult aspect of the research as most people declined to participate or assist with forwarding the questionnaire. The original planned scope of the survey was for it to be sent directly to every single practicing lawyer in Canada and the USA, along with every single law student in Canada, and law students at 30 schools in America.

While such an ambitious plan was not achieved, in the end, the questionnaire was emailed to over 120,000 lawyers and law students across Canada and the USA, with 2,711 individual participants opening the study and answering at least one question. This response rate of approximately 2.25%, is still an order of magnitude greater than all previous empirical investigations into the ethicality of lawyers and law students.
1. General Approach

To attract participants the author emailed requests to the following groups of people:

1. Every single member of the bar in Florida, as the list is available free of charge from the public registry maintained by the Florida Bar Association.
2. Every single member of the bar of Oregon, as the list is available for a nominal charge from the Oregon Bar Association.
3. Executive Directors of every single bar association in all Canadian and American Bar Associations, requesting that they distribute the questionnaire to everyone on their Bar Association List.
4. Deans at every single Canadian law school and at 30 law schools across the USA, requesting that the survey be administered to both current J.D. students and alumni.\(^{33}\)

Most Deans and Executive Directors politely declined to forward the ethics survey to the people on their mailing lists (even my own Law Society in Ontario declined to participate, despite the fact that I’ve paid them more than $20,000 over the last ten years and they inundate me daily with nuisance emails). However, a number of Deans and Executive Directors were gracious enough to forward the survey to participants. In

\(^{33}\) The 30 American law schools selected were the 15 top law schools and 15 schools ranked from 133 to 148 according to rankings of US News in 2017. The complete list is; Yale, Stanford, Harvard, Chicago, Columbia, NYU, Pennsylvania, Michigan – Ann Arbor, Virginia, Duke, Northwestern, Berkeley, Cornell, Texas-Austin, Georgetown, Northern Illinois, Widener, Samford, Loyola, North Dakota, South Dakota, University of the Pacific, Willamette, Suffolk, Memphis, Main, Mercer, Akron, Arkansas – Little Rock, and Vermont.
the end the following groups of people were sent an email soliciting their participation in
the legal ethics survey:

1. 91,767 members of the Florida bar.
2. 21,945 members of the Oregon bar.
3. Every single member of the bar in Newfoundland and Labrador.
4. Every single member of the bar in Quebec.
5. Every single alumni of the University of Saskatchewan.
6. All students matriculated during Spring 2018 at the following law schools,
   a. Osgoode Hall Law School,
   b. University of Saskatchewan,
   c. University of Maine,
   d. University of Alberta,
   e. University of Western Ontario.
7. Possibly other law schools and bar associations that did not confirm their
   participation directly.

Although the size of the groups of 3, 4, 5, 6, and 7, are not exactly known, as a
rough estimate an email script containing a request to participate and a link to the
questionnaire was sent directly to about 125,000 potential participants.

Of these potential participants approximately 2.25% clicked on the link and
participated in the study. In an era of heightened security concerns about clicking on
unsolicited email links this can be considered a very strong response rate.

This study was administered over a period of three months from February to April
2018. While it would have been preferable to administer the study as early as possible to
first year law students, the spring administration date for lawyers should have no practical
effect (although it did effect the law school analysis).

A copy of the email solicitation script for both law schools and bar associations
can be found at Appendix A. A copy of the surveymonkey.com questionnaire can be
found attached as Appendix B.

The questionnaire asked participants to identify numerous individual
characteristics before answering a set of 26 questions designed to rate their ethical values.
The specific individual questions concerned their; 1) law school, 2) year of graduation, 3)
whether they were practicing and if so, 4) in what area, and 5) work environment, 6) age,
7) sex, 8) disability, 9) ethnicity, 10) religion, 11) and childhood socioeconomic class.

The survey was hosted on www.surveymonkey.com and the website collected the
data directly, which was easily exported into SPSS and Microsoft Excel spreadsheets.
Statistics were then run using both SPSS and Excel.

There was no compensation for participation, participation was voluntary and
could be ended at any time. The survey did not generally contain any identifying
information, although some participants did leave their name and contact information in
the comments box. IP addresses were collected and stored to ensure that the same person
did not complete the survey more than once.

The survey took on average 7 minutes to complete and once the survey was
finished, participants’ answers could not be changed, although up until the point of
completion participants could change their answers.
2. Condensed Scores

The survey contained 26 separate questions relating to the three categories outlined above. These questions were rated on a 5-point Likert scale from Strongly Agree (1) to Strongly Disagree (5). Such that if participants agreed with the proposition they would select 1 or 2, while if they disagreed with the proposition they would select 4 or 5.

The questions combined to create Category 1: High Ethicality $\leftrightarrow$ Low Ethicality are found in Figure 4. An overall Category 1 average score of 1.0 would indicate that the respondent was strongly agreeing with all questions that indicate High Ethicality, while an average score of 5.0 would indicate that the respondent was strongly disagreeing with all of those questions.

Some of the questions were framed in the negative to reduce positive answer bias. They are indicated in the Figures as (Reverse Scored).

Figure 4 – Questions comprising Category 1: High Ethicality $\leftrightarrow$ Low Ethicality

<table>
<thead>
<tr>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>14. I often think about the ethical aspects of the cases I read.</td>
</tr>
<tr>
<td>17. I believe practicing lawyers are generally ethical.</td>
</tr>
<tr>
<td>18. I believe the students I know in the legal profession are unethical. (Reverse Scored)</td>
</tr>
<tr>
<td>21. I hold moral beliefs in line with those held by my community.</td>
</tr>
<tr>
<td>23. I believe judges are ethical.</td>
</tr>
<tr>
<td>25. I believe the lawyers I know in the legal profession are ethical.</td>
</tr>
<tr>
<td>26. Legal ethics should be a mandatory course for all law students and part of continuing legal education for lawyers.</td>
</tr>
</tbody>
</table>
27. I am comfortable with my understanding of the ethical requirements of the practice of law.

33. I am an ethical person.

35. I believe the professors I know in the legal profession are unethical. (Reverse Scored)

38. I am familiar with the ethical guidelines of my bar association.

40. The unethical reputation of lawyers in society is well deserved. (Reverse Scored)

The questions combined to create a Category 2 score: Moral Agent $\leftrightarrow$ Zealous Advocate, are found in Figure 5. An overall Category 2 average score of 1.0 would indicate that the respondent was strongly agreeing with all questions that indicated they viewed the role of a lawyer as a Moral Agent, while an average score of 5.0 would indicate that the respondent was endorsing the role of a lawyer as Zealous Advocate.

Figure 5 – Questions comprising Category 2: Moral Agent $\leftrightarrow$ Zealous Advocate

15. I would turn down a client or refuse to argue an issue based on my personal moral beliefs.

20. I can practice law ethically while still following my personal morals.

22. I feel the role of the lawyer is solely to provide the best service to the client within the bounds of law. (Reverse Scored)

24. I would feel comfortable representing a tobacco company who is being sued for lying about the addictive properties of cigarettes. (Reverse Scored).

28. It is best for society at large if lawyers base decisions on who to represent upon their
personal morals.

29. For criminal charges, every person should be entitled to have a lawyer represent them in court, regardless of the specific criminal charge or financial capacity. (Reverse Scored)

30. For civil actions, every person should be entitled to have a lawyer represent them in court, regardless of the civil cause of action or financial capacity. (Reverse Scored)

32. I would not feel comfortable representing a parent who I know sexually molested their child.

36. A lawyer must be able to put aside their personal beliefs to argue a client’s case of which they do not approve. (Reverse Scored).

39. Scenario - A plaintiff lawyer files a medical malpractice suit on behalf of a client. Based on the suit the doctor’s lawyer offers to settle. Before the settlement is accepted, an independent third party expert definitively informs the client that they were not actually injured by the doctor. The client informs their lawyer of this yet nevertheless instructs their lawyer to accept the settlement on the basis that it is the responsibility of the opposing party to discover any weaknesses in their suit. The lawyer accepts the settlement on behalf of their client. Do you agree that the plaintiff lawyer’s actions were ethical? (Reverse Scored).

The questions combined to create a Category 3 score: Law as a Business ↔ Law as a Profession, are found in Figure 6. An overall Category 3 average score of 1.0 would indicate that the respondent was strongly agreeing with all questions that indicated Law as a Business for pecuniary gain, while an average score of 5.0 would indicate that the respondent was strongly endorsing the view of the Law as a Profession.
Figure 6 – Questions comprising Category 3: Law as Business \(\leftrightarrow\) Law as Profession

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>16.</td>
<td>I entered law school because it is a good way to achieve financial security.</td>
</tr>
<tr>
<td>19.</td>
<td>Law is a business with financial gain as its central goal.</td>
</tr>
<tr>
<td>31.</td>
<td>Law is a profession to serve the good of society. (Reverse Scored)</td>
</tr>
<tr>
<td>34.</td>
<td>Law school will/has provide(d) me with the ability to change society for the better. (Reverse Scored).</td>
</tr>
<tr>
<td>37.</td>
<td>My main consideration when seeking employment is remuneration.</td>
</tr>
</tbody>
</table>

While the statistics for each question are interesting and can be found in Appendix C – Question Response Graphs\(^{34}\), a more useful measure for conducting statistics is achieved by combining the questions in each category into one average score per category.

This overall category score was taken by reversing those questions posed in the opposite fashion to other questions in the category (i.e. questions 18, 22, 24, 29, 30, 36, 31, 34, 35, 39, and 40) and then averaging the scores for all questions contained in each of the three categories. (Inserting reverse questions, tends to keep respondents honest and diminishes the effect of any respondent who simply strongly agrees with every proposition put forward in the questions.)

\(^{34}\) The Appendix C Graphs do not include data from Oregon, due to the manner of data collection in surveymonkey.com. The graphs from Oregon are very similar and do not show enough of a difference to be worth including.
Once overall category scores were obtained for each respondent meaningful statistics could be calculated to determine the importance of the independent variables: 1) law school, 2) year of graduation, 3) whether they were practicing and if so, 4) in what area, and 5) work environment, 6) age, 7) sex, 8) disability, 9) ethnicity, 10) religion, 11) and childhood socioeconomic class.
V.

Analysis

Using various statistical analyses, statistically significant differences and correlations were found among the scores for the three categories on numerous individual characteristics.

1. Overview of Responses

The following table summarizes the important findings of this study.

Table 1 – Overview of Statistically Significant Responses

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Category 1</th>
<th>Category 2</th>
<th>Category 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bar Association</td>
<td>Differences Found</td>
<td>None</td>
<td>Differences Found</td>
</tr>
<tr>
<td>School</td>
<td>Differences Found</td>
<td>Differences Found</td>
<td>Differences Found</td>
</tr>
<tr>
<td>Law School Year</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Lawyer Year</td>
<td>Differences Found</td>
<td>None</td>
<td>Differences Found</td>
</tr>
<tr>
<td>Practicing Currently</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Practice Type</td>
<td>None</td>
<td>None</td>
<td>Differences Found</td>
</tr>
<tr>
<td>Practice Area</td>
<td>None</td>
<td>Differences Found</td>
<td>Differences Found</td>
</tr>
<tr>
<td>Age</td>
<td>Differences Found</td>
<td>None</td>
<td>Differences Found</td>
</tr>
<tr>
<td>Sex</td>
<td>None</td>
<td>Differences Found</td>
<td>Differences Found</td>
</tr>
<tr>
<td>------------</td>
<td>------------</td>
<td>-------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Disability</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Ethnicity</td>
<td>Differences Found</td>
<td>None</td>
<td>Differences Found</td>
</tr>
<tr>
<td>Religion</td>
<td>Differences Found</td>
<td>None</td>
<td>Differences Found</td>
</tr>
<tr>
<td>Class</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Debt</td>
<td>Differences Found</td>
<td>Differences Found</td>
<td>Differences Found</td>
</tr>
</tbody>
</table>

A complete table of the mean scores associated with each independent variable is found at Appendix D.\(^{35}\) It is interesting to see how the Category scores change depending on each demographic factor (i.e. independent variables). However, it must be noted that although Appendix D shows many interesting trends, viable conclusions can only be drawn when the differences are shown to be statistically significant.

It is also important to remember that when interpreting the specific average scores of the Categories the scores on the Categories themselves are essentially meaningless, it is the differences between the scores that is important. For example, just because the 57 practicing Academics scored an average of 3.00 on Category 2 (Appendix D, Practice Type), this does not mean that they equally value the two ends of the continuum, Moral Agency \(\leftrightarrow\) Zealous Advocacy. The continuum itself is not anchored to anything.

\(^{35}\) Concerning Table 1: although differences were found between the schools, these differences largely occurred because for some schools the participants were alumni and for other schools the participants were students. No differences were found between male and female participants on Category 1, however, those participants who chose the option “I do not wish to answer” were significantly different from both Male and Female. No participant selected Trans Gendered. No differences were found between able and disabled on Category 1, however, those participants who chose the option “I do not wish to answer” significantly different from both able and disabled.
objective. A score on that continuum is arbitrary, someone who scored an average of 5.0 on the continuum is not the platonic ideal of a Zealous Advocate with no role for Moral Agency. It just means that they more strongly value Zealous Advocacy than others in the study.

The only thing the specific scores on the Categories can show us is movement along the continuums. So while those same 57 practicing Academics scored 3.74 on Category 3 (Appendix D, Practice Type), the score itself doesn’t have inherent meaning, but we can tell that their score is statistically different from the 1207 lawyers in private practice who scored an average of 3.44 in Category 3. As such, we are able to state that lawyers in academia tend to view the law as a profession more than lawyers in private practice. We can tell the difference in their average answers, but we cannot place them categorically on some type of ultimate scale of the issue.

It should also be noted that not all of the actual differences between the groups have been demonstrated to a statistically significant difference level of .05. This may happen where an actual difference exists (i.e. the pattern observed in the average Category means something in reality), but not enough participants in that particular subcategory participated, such that there was no enough power to prove the difference to the statistically significant level of .05.

2. Analysis of Responses: Comparisons

This section on “comparisons” is best used to consider discrete groups that do not appear to be on a continuum, such as sex, ethnicity, practice area, religion etc. In contrast,
correlations are best used to describe variables that exist on a continuum such as age or
debt load.

There are many ways to make discrete comparisons between groups, including t-tests,
Analysis of Variance (ANOVA), Post Hoc Bonferroni Analyses, and Multivariate
Analysis (MANOVA). All of these tests have been done on the data set and the
statistically significant differences are reported below.

a. Bar Association Comparison

At least four bar associations, Florida, Oregon, Quebec, and Newfoundland,
participated in this study. Other bar associations, such as North Dakota, participated as
well by such methods as posting a link to the study on a members’ newsletter. The
University of Saskatchewan also forwarded the study to their entire Alumni list, which is
similar but not identical to the bar of Saskatchewan (because although the University of
Saskatchewan is the only law school in the entire province, some of the alumni may have
moved to other jurisdictions to practice and alumni of other schools may have moved
there).

Table 2 – Bar Association Comparisons by Category

<table>
<thead>
<tr>
<th>Bar</th>
<th>Category 1</th>
<th>Category 2</th>
<th>Category 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Florida</td>
<td>Mean = 1.98</td>
<td>Mean = 3.11</td>
<td>Mean = 3.49</td>
</tr>
<tr>
<td></td>
<td>N = 1073</td>
<td>N = 1073</td>
<td>N = 1073</td>
</tr>
<tr>
<td>Oregon</td>
<td>Mean = 1.91</td>
<td>Mean = 3.08</td>
<td>Mean = 3.60</td>
</tr>
<tr>
<td></td>
<td>N = 333</td>
<td>N = 333</td>
<td>N = 333</td>
</tr>
<tr>
<td>Quebec</td>
<td>Mean = 2.06</td>
<td>Mean = 3.02</td>
<td>Mean = 3.52</td>
</tr>
<tr>
<td></td>
<td>N =126</td>
<td>N =126</td>
<td>N = 126</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>Mean = 1.87</td>
<td>Mean = 3.22</td>
<td>Mean = 3.52</td>
</tr>
<tr>
<td></td>
<td>N = 322</td>
<td>N = 322</td>
<td>N = 322</td>
</tr>
</tbody>
</table>
For the purposes of this study four groups of individuals were compared, the: 1) Florida Bar, 2) Oregon Bar, 3) Quebec Bar, and 4) Saskatchewan Alumni. Numerous significant differences were found.

One Way Analyses of Variance (ANOVA) were run on the four groups. Significant differences were found between some of the groups with respect to Category 1 and 2. To explore these differences, Post-Hoc Bonferroni tests were done on Category 1 scores, these indicted that:

i) Oregon (M = 1.91) scored as more ethical than both Quebec (M = 2.06) and Florida (M = 1.98), but not different from Saskatchewan (M = 1.87). Meaning that members of the Oregon Bar rated themselves and their peers as more highly ethical than members of the bar in Quebec and Florida.

ii) Saskatchewan (M = 1.87) also scored as more ethical than both Quebec (M = 2.06) and Florida (M = 1.98), but not different from Oregon (M = 1.91). Meaning that Saskatchewan alumni rated themselves and their peers as more highly ethical than members of the bar in Quebec and Florida.

iii) There was no significant difference between Oregon and Saskatchewan.

iv) There was no significant difference between Florida and Quebec, which is slightly surprising since lawyers in Quebec practice in a civil law jurisdiction, as opposed to a common law jurisdiction like the other three.

Post-Hoc Bonferroni tests were also done on Category 2 scores. These indicated that:

i) Saskatchewan Alumni (3.22) were different from bar members of Florida (3.11), Oregon (3.08), and Quebec (3.02). Meaning that Saskatchewan fell
more towards the Zealous Advocate side of the spectrum when compared to the other three bars, who fell more towards the middle of the spectrum.

ii) No other significant differences were found between the other bars.

These are very interesting results in that it shows personal perceptions of ethicality vary by bar association. For whatever reason, members of the Oregon Bar and Saskatchewan Alumni rated themselves and those they knew as more ethical than members of the bar in Florida and Quebec. This result may seem to correspond to the common stereotype of lawyers who practice in large urban centers such as Miami and Montreal, versus lawyers who practice in small centers such as Portland or Regina.

Similarly, it appears as though Saskatchewan law school alumni, are more inclined to view the role of a lawyer as being a zealous advocate than are members of other bars. It is uncertain if this result occurs because criminal law comprises a greater portion of the legal practice in Saskatchewan than in the other jurisdictions (as explained below).

This study allowed participants to write comments in a comment box at the end of the questionnaire. Many of the participants took it upon themselves to write out their thoughts on particular issues they were concerned about that were raised in the study. Appendix E contains the comments of participants excluding Oregon, Appendix F contains the comments of members of the Oregon bar. A number of the participants chose to comment on the perceived comparative ethics of the members of the bar association. Participant #366 - 1/31/2018 3:43 PM (Appendix E), wrote:

This study should separate the views of Canadian vs. American respondents. In my view, American respondents are more likely to be far less ethical than Canadians.
As a Canadian, I admit that I maintained this personal prejudice as well. However, it does not seem to be borne out by the data, as Oregon lawyers rated themselves and their peers as more ethical than lawyers from Quebec.

Interestingly, one Judge in Oregon had his own personal biases in favor of his state at the expense of larger bars. Participant #8 (Oregon) – 3/21/2018 4:41 PM (Appendix F), stated:

… I suspect your results will vary wildly in this country given the high professionalism expectations of a small place like Portland Oregon versus what I understand are the lack of standards in many other larger jurisdiction

Probably most lawyers tend to share this stereotype and the results of this study tend to confirm what many practitioners suspect.

b. School Comparison

School Comparisons were conducted and significant differences were discovered, but these differences were virtually all as a result of the fact that some schools that participated were comprised entirely of students, while others were comprised of alumni who have graduated.

Osgoode Hall Law School demonstrates this well. Osgoode was found to be significantly different from Dalhousie, Florida, FSU, Miami, Montreal, Nova, Oregon, Saskatchewan, South Carolina, Stetson, and Willametta (only schools with more than 30 participants were tested), with respect to Category 1.

In contrast, Osgoode was not found to be significantly different from Alberta, Florida Costal, Maine, and University of Western Ontario, with respect to Category 1.
All of the schools that Osgoode was significantly different from were schools where practicing lawyers, not current students, participated. All of the schools that Osgoode was not significantly different from (except Florida Coastal), were schools where current law students participated.

Because age is such an important factor in ethical development of lawyers for Category 1, it is very likely that the detected difference is just a manifestation of the age difference, rather than a school difference.

c. School Year Comparison (1\textsuperscript{st} vs. 3\textsuperscript{rd})

In contrast to the earlier two administrations of this questionnaire, no overall difference between first and third year students was observed for any of the three Categories. This result was initially shocking, but on deeper reflection entirely makes sense.

This iteration of the study was administered to schools between February and April, 2018, meaning that first year students had completed their first term of law school, including their first set of exams.

Therefore, it would seem that the “socialization” effect of law school is largely completed during the first 6 months of school. After a half year of law school, students have progressed through the initial socialization of meeting new friends, learning the Socratic method, reading thousands of pages of case law and text books, studying for and writing exams, being shocked with their results, and getting the hang of law school. By the time they reach second and third year, it has become just more of the same.
Given that both the initial version of this study, and the subsequent independent verification of the study by Professor Allan Roussy, both demonstrated that if first year students are tested early enough their results will be significantly different from students who have been fully socialized by law school. The results of the study further refine the picture to demonstrate that the socialization occurs before six months have expired.

d. Year of Call Comparison

Year of Call is a variable that is better viewed on a continuum, and as such, a correlation is a better type of analysis than using a group comparison method. Nevertheless, “moderately” significant differences were found using Multivariate General Linear Modelling (MANOVA) for Year of Call along Category 1 and 3 (significance levels of .05 and .06, respectively). Although not technically, meeting the .05 cutoff, these trends match up entirely with the “Age” correlations and comparison discussed below.

The trend confirms that lawyer’s with more post-call experience tend to view themselves and others they know as more highly ethical than lawyers with less experience. They also tend to view the law as a profession to help society more so than younger lawyers, who view the law as a business to make money slightly more. Although both groups are strongly on the high ethicality and law as a profession side of the spectrum.
e. Active Practice Comparison

No significant differences were found between lawyers who were currently practicing and those who were not.

f. Practice Environment Comparison

Significant differences were found for lawyers in different types of practice for Categories 3 using an Analysis of Variance test. Subjecting the ANOVA to Post-Hoc Bonferroni tests demonstrated that lawyers in Private Practice (M = 3.44) were found to be different from Government lawyers (M = 3.59), Legal Aid lawyers (M = 3.96), Academic Lawyers (M = 3.74), and lawyers who answered other (M = 3.64) (who would presumably include judges *inter alia*). Private Practice lawyers were not significantly different from In-House lawyers (M = 3.48).

The above results indicate that lawyers in Private Practice more strongly viewed the Law as a Business to make money, than lawyers in other types of practice.

Interestingly, lawyers who work for the government (M = 3.59) more strongly viewed Law as a Business than did lawyers who worked for a Legal Aid Organization (M = 3.74).

A Multivariate General Linear Model (MANOVA) was also applied to Practice Environment. This more advanced statistical test demonstrated that there were significant differences between the practice types on the Moral Agent ← Zealous advocacy spectrum. The group scores were Academic (M = 3.00), In House (M = 3.06), Private Practice (M = 3.13), Government (M = 3.15), Other (M = 3.15), and Legal Aid (M =
3.27). Indicating that lawyers who practice Legal Aid work more strongly identify with the Zealous Advocacy role of a lawyer than do Academics.

But given that most legal aid work is criminal law, it could be an artifact of the fact that criminal law lawyers are much more aligned with the Zealous Advocacy role of the lawyer than are others as discussed in the next section.

g. Area of Practice Comparison

Significant differences were found in numerous practice areas.

Criminal law lawyers (M = 3.34) were found to more strongly adhere to the Zealous Advocacy end of the spectrum for Category 2, than were lawyers who focused on Administrative law (M = 3.17), Plaintiff Civil Litigation (i.e. personal injury) (M = 3.17), Corporate/Commercial (M = 3.04), Employment/Labor Law (M = 2.99), Family (M = 3.02), Real Estate (M = 3.00), Wills and Estates (M = 3.02), and Other (M = 3.07) types of law.

Family law lawyers (M = 3.69) were found to adhere more strongly to the view that law is a profession for the good of society than were Bankruptcy lawyers (M = 3.30), Civil litigation – defense (Insurance Defense) (M = 3.38), Corporate Commercial (M = 3.40), and Real Estate (M = 3.27), all of whom fell more towards the Law as a Business side of the spectrum.

This analysis demonstrates the importance of power. In fact, Environmental lawyers (M = 3.82) viewed the law even more strongly as a Profession for the good of society than did Family law lawyers, but there were only 20 lawyers who identified as Environmental lawyers, compared to 109 Family law lawyers, and so the power was not
large enough to prove the difference to the .05 statistical significance level. The same lack of power prevented a finding of statistical significance for Securities lawyers (3.03, n = 8). (A review of the chart will show many similar trends among the means that were not proven to the point of statistical significance because of a lack of power due to small sample size (N)).

Finally, lawyers who practice Mediation or Alternative Dispute Resolution (M = 3.73), were more strongly of the view that the law as a profession than were Bankruptcy lawyers (M = 3.30), Civil litigation – defense (Insurance Defense) (M = 3.38), and Real Estate (M = 3.27) lawyers.

h. Age Comparison

The better analysis for age is below in the correlations section. But using an Analysis of Variance (ANOVA) on age groupings in Category 3 shows that lawyers aged “over 70” (M = 3.71), “60-69” (M = 3.62), and “50-59” (M = 3.56), are significantly more towards the law as a profession side of the spectrum in Category 3 than lawyers aged “25-29” (M = 3.39), “30-39” (M = 3.41), and “40-49” (M = 3.45), who tend to view the law as a business to make money.

i. Sex Comparison

Significant differences between the sexes were observed both for Category 2 and Category 3. Males (M = 3.19) fell more towards the Zealous Advocacy side of the spectrum of Category 2 than females (M = 3.08). Males (M = 3.43) were also
significantly more likely to view Law as a Business to make money for Category 3 than were females (M = 3.61).

No difference was observed between Males (M = 1.97) and Females (M = 1.98) on Category 1, which tested perceptions of Ethicality. However, participants who identified as either Male or Female were both more likely to rate themselves and others in their profession as Highly Ethical than were individuals who selected “I don’t wish to answer” (M = 2.38). No importance is attributed to this last finding given that only 18 people selected this answer and it is entirely possible that people who did not want to disclose their identity are less trusting of others.

j. Disability Comparison

No difference on any category was observed between disabled and able bodied lawyers. Lawyers who refused to answer this question and chose “I do not wish to answer” were statistically more likely to score lower on Category 1 than both disabled and able-bodied lawyers (M = 2.20; 1.98; 1.97, respectively). No importance is attributed to this finding other than that group of lawyers may be less trusting in general.

k. Ethnicity Comparison

Interesting and statistically significant results were observed with respect to ethnicity. Latin Americans (M = 1.80) were more likely to view themselves and others in the legal profession as being Highly Ethical in Category 1 than were African Americans (M = 2.15). Similarly, Latin Americans (M = 3.70) were more likely to align with the Law as a Profession side of the spectrum than were African Americans (M = 3.44).
The author has no explanation as to why this result was the only statistically significant result found among the various ethnic groups. However, it should be noted that many of the ethnicities did not have much representation at all, so these calculations lacked power due to small sample size. It is entirely possible that there were more differences between various ethnicities, but these were not discovered due to lack of power.

The “White” ethnicity comprised fully 85.6% of those tested and many respondents expressed their concern that the “White” category was not further subdivided in the comments section. Fully 79 participants refused to answer this question. Assuming that it is likely that 85% of those people were also white, this would put the total percentage of white participants at approximately 90%. Demonstrating just how stratified by race the profession is.

Also, the author would like to apologize to participants for failing include an option for “Native American” participants to identify themselves.

1. Religion Comparison

Statistically significant differences were found between the various religions with respect to Category 1 and Category 3.

Specifically, Jewish participants (M = 1.93) were more likely to view themselves and their peers as highly ethical compared to Atheists (M = 2.01) and Agnostics (M = 2.02). While Agnostics (M = 3.43) were more likely to view the law as a business to make money than were Protestants (M = 3.60)
Anecdotally, there were two Nihilists in the study who were very clearly aligned with the view that law is a profession for the good of society (M = 3.70), while also viewing themselves and their peers as less ethical (M = 2.83) than other religious groups. However, statistical inferences could not be drawn about the Nihilists because there were only two of them.

Religion was not correlated with a lawyer’s view of zealous advocacy.

m. Class Comparison

No statistically significant differences were found between the self-identified classes. Which is actually a pleasant finding, if you think about it.

n. Debt Load Comparison

Debt load was a statistically significant factor for Categories 1 and 3. But, like age, correlations are a better method of describing the effect of Debt Load.

Very generally lawyers who have more debt “$150,000+” (M = 2.02) tend to view themselves and others in the profession as less ethical in Category 1 than those with “$0” debt (M = 1.91), and they also tend to view law as a business in Category 3 (“$150,000+”; M = 3.38) more so than those with “$0” debt (M = 3.52).

2. Analysis of Responses: Correlations

As stated above, correlations are used to show general trends for independent variables located along a continuum. The correlations performed in this study show some very interesting results as summarized by this table:
Table 3 - Correlations

<table>
<thead>
<tr>
<th>Correlations</th>
<th>Category 1</th>
<th>Category 2</th>
<th>Category 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>-.216</td>
<td>-.02</td>
<td>.164</td>
</tr>
<tr>
<td>Years of Practice</td>
<td>-.159</td>
<td>-.01</td>
<td>.134</td>
</tr>
<tr>
<td>Class</td>
<td>.03</td>
<td>-.02</td>
<td>.01</td>
</tr>
<tr>
<td>Debt Load</td>
<td>.102</td>
<td>-.01</td>
<td>-.067</td>
</tr>
<tr>
<td>Category 1</td>
<td>--</td>
<td>-.04</td>
<td>-.323</td>
</tr>
<tr>
<td>Category 2</td>
<td>-.04</td>
<td>--</td>
<td>-.03</td>
</tr>
</tbody>
</table>

a. Age

Age was strongly correlated with both Category 1 and Category 3. Age had no statistical correlation with Category 2.

The Age x Category 1 Spearman correlation was -.216, which demonstrates that as participants increased in age their average scores on Category 1 fell lower, towards the Highly Ethical end of the spectrum. That is older lawyers tended to view themselves and others they know in the legal profession as more ethical than did younger lawyer.

The Age x Category 3 Spearman correlation was +.164, which means that as participants increased in age their average Category 3 score increased. This means that older lawyers tend to view the law as a profession more so than younger lawyers, who were still on the law as a profession end of the spectrum but closer to the middle.

It is in an interesting and encouraging result, that as lawyer’s age they tended to view themselves and others as more ethical and tend to more strongly endorse the view that the law is a profession for the good of society.

This is not the result that was anticipated by some participants. Participant #97 – 3/14/2018 2:52 PM, believed that the opposite would be true. Participant #97 stated:

…When I graduated I wanted to help people. When I retired, the practice of law was driven by the billable hour and knee jerk reactions to unethical practices of some that resulted in onerous rules and regulations for the majority. It would be
simpler to weed out the unethical practitioners and prohibit them from practicing. Also common sense seems to have gone out the window.

Which simply proves the power of the statistical correlation; while not everyone embraces the view of the Law as Profession as they age, most do.

b. Years of Practice

Because “Years of Practice” corresponds very much with “Age”, the correlations are similar; Category 1 had a Spearman correlation of -.159, and Category 3 had a Spearman correlation of +.134.

These results indicate the same thing as the age correlation, giving it independent credence. However, they are not as strong, indicating that the individual age of a lawyer is more important to the correlation than the years spent practicing (i.e. people might have become lawyers later in life).

c. Class

There were no statistically significant correlations based on class.

d. Debt Load

One of the most interesting findings of this study is that “Debt Load” is correlated with both Category 1 and 3, but not 2.

The “Debt Load” Spearman correlation with Category 1 was + .102 meaning that as people graduated with more law school debt their scores on Category 1 increased. That
is, people who graduated with more debt viewed themselves and others in the practice as less ethical than those who graduated with less debt.

Similarly, the “Debt Load” Spearman correlation with Category 3 was -.067 meaning that as people graduated with more law school debt their scores on Category 3 decreased. That is, those who had more debt tend to view law as a business to make money more than those that graduated with less debt, who tended to view law as a profession for the good of society.

This is actually shocking and disappointing. Without forgetting that correlation does not prove causation, it may indicate that law schools that charge a punishing amount for tuition and put their students deeply into debt upon graduation tend to change the ethical viewpoint of their graduates. Such that their students will rate themselves and others in the profession as less ethical and will view law as a business to make money to get out of debt.

In a profession that already has a public perception problem with ethicality, such a trend can only serve to exacerbate the problem.

While the result may be considered shocking; many lawyers who participated in the study entirely agreed with the sentiment. For instance, Participant #18 – 3/19/2018 2:28 PM (Appendix E), expressed their dismay as follows:

My debt has grown since graduation due to high interest rates and low paying jobs − over 250,000; most attorneys are overworked, under paid, under appreciated; partners at law firms treat employees horribly − corporate abuse; state bar does not help individual attorneys with these types of problems, it only admonishes them (ex: law firm tells atty to do something unethical or be fired- state bar tells atty they must refuse even if they are fired and that they don’t monitor law firms, no jobs available so atty is forced to do something unethical or not be able to feed their children). Law schools lie about gainful employment stats (inflate them with non-lawyer jobs as gainfully employed). Loan debt is crippling. Unsatisfying profession.
While Participant #27 – 3/19/2018 10:02 AM (Appendix E), observed:

Personally, I believe a large amount of the unethical behavior in the legal community can be correlated to our massive student loan debt, but is often mistaken for greed. I owe over $200,000 for law school alone as do many of my classmates.

Finally, Oregon Participant #58 - 3/19/2018 11:16 PM wrote:

The dynamic between student debt and ethics is more serious than many have given credit. When law students are sold on attending school with promises of high salaries and the promise turns into a fraud with high debt, many students are left with less independence. It does not help that many of the hiring firms have an abundance of associates to choose from and unrealistic understandings of the cost of living. Some jurisdictions still enjoy a good degree of professionalism and civility while others do not. In my opinion multijurisdictional practice has further eroded the value of attorneys familiar with the nuances of state specific practice.

These recent graduates may be correct; crushing law school debt affects the ethical values of lawyers. Law schools that sell students a bill of goods serve no benefit to the profession by churning out students who cannot hope to repay their debts.

e. Three Categories

Just for the sake of completeness, the three Categories were correlated with each other. It was observed that Category 2 did not correlate with either Category 1 or 3. While Category 3 had negative Spearman correlation with Category 1 of −.323, meaning those who scored high on Category 1 tended to score slightly lower on Category 3 and vice versa.

The fact that Category 2 was not at all correlated with the other categories demonstrates that it is a truly independent category testing something different from the other categories.
The fact that Category 1 and 3 were slightly correlated, means that there is some overlap in what those two categories were testing, which is to be expected because you would expect that those who view law as a profession would also view others as slightly more ethical. While those who view law as a business to make money would also view others as slightly less ethical. But the fact that the correlation is not approaching 1.0 indicates that the two categories are distinct enough so as to usefully measure different aspects of ethicality.

3. Analysis of Question 39 – Legal Ethics Hypothetical

While the above statistical analyses are the most important results of this empirical investigation, the specific anecdotal answers of participants to Question 39 is also quite interesting and serves to elucidate the ethical thought processes engaged in by many lawyers who may not be familiar with the academic framework concerning legal ethics.

As discussed above, Question 39 is a hypothetical scenario based upon the theoretical issue of a plaintiff accepting a defendant’s offer to settle when the plaintiff lawyer definitively and unquestionably knows that the plaintiff did not actually suffer any damages. The academic literature suggests at least four different theoretical approaches to the problem, which result in disparate views of what is ethical in the situation. While many articles have been written promoting one ethical model over another, the debate has not been successful in resolving the issue (or even convincing opposing academics). Therefore, the response of actual practicing lawyers to this academic hypothetical is illuminating.
Figure 7 is the SurveyMonkey.com printout of a graph of all respondents excluding Oregon\(^{36}\) (taken from Appendix C, Question 39). The chart shows that this question received the most even distribution of answers of the entire survey, meaning that lawyers were virtually split on whether they agreed or disagreed that it was ethical for the plaintiff’s lawyer to accept the money.

**Figure 7 – Question 39 Answer Distribution Graph**

![Graph showing answer distribution](image)

<table>
<thead>
<tr>
<th>ANSWER CHOICES</th>
<th>RESPONSES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (Strongly Agree)</td>
<td>13.71%</td>
</tr>
<tr>
<td>2</td>
<td>23.19%</td>
</tr>
<tr>
<td>3</td>
<td>16.97%</td>
</tr>
<tr>
<td>4</td>
<td>22.95%</td>
</tr>
<tr>
<td>5 (Strongly Disagree)</td>
<td>23.19%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100%</td>
</tr>
</tbody>
</table>

While this distribution demonstrates that it is a very difficult question for lawyers to uniformly answer, the hypothetical becomes even more informative when one considers the individual answers written by lawyers and law students in the comments section. A

\(^{36}\) The Oregon bar distribution is almost identical, but the results were excluded from this chart because of the method of results collection.
surprising number of participants went to great lengths to explain why they answered the question in the way they did. Their answers, excerpted from Appendices E and F and tabulated in reverse chronological order, are as follows:

Table 4 – Participant Comments with respect to Question 39

<table>
<thead>
<tr>
<th>Date</th>
<th>Time</th>
<th>Participant Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 - 3/19/2018 6:27 PM</td>
<td>Your ethical hypothetical was not well thought out. There are different settlements for different variables, just because a &quot;settlement&quot; is offered does not mean it is based upon the medical injuries to the client, it is not unusual for an insurance carrier to specifically declare a claim as medically unsupported but offer a nominal settlement contingent on dismissal with prejudice. The ethical considerations of accepting such an offer are far different than accepting an offer to compensate a medical injury. … As to ethics, for whatever its worth to you, culturally I find older attorneys to generally be far more ethical that younger attorneys who have culturally bought into the whole concept of moral or ethical relativism. I also find attorneys from Ivy League schools to be somewhat less ethical than State Universities and State Universities somewhat less ethical than small independents . . . with exceptions certainly but as a general rule that has been my experience, but it seems to be relatively accurate in my experience.</td>
<td></td>
</tr>
<tr>
<td>19 - 3/19/2018 2:07 PM</td>
<td>Never believe a third party who tries to tell you your client was not injured if your client says they were injured. The insurance companies are extremely unethical</td>
<td></td>
</tr>
<tr>
<td>33 - 3/19/2018 7:02 AM</td>
<td>The med mal scenario is presented is wildly unrealistic.</td>
<td></td>
</tr>
<tr>
<td>37 – 3/18/2018 5:25 PM</td>
<td>Lawyers sometimes are obligated to take actions on behalf of their clients that the lawyer finds personally distasteful. They share one of these obligations with psychotherapists and clergymen. They can also withdraw from representing a client if they don’t wish to pursue a case as aggressively as the client wants, and I have seen more than one lawyer do just that. I was in private practice for only a few years, but have been in government service as a lawyer for more than 30 years. I have accepted a significantly lower salary than I could have earned in the private sector because I can practice criminal law without representing criminals but can refuse to take a position on behalf of the state that I think is wrong--which I have done on occasion</td>
<td></td>
</tr>
<tr>
<td>43 – 3/18/2018 8:18 AM</td>
<td>… Some questions confuse legal ethics with client ethics. Is the lawyer ethical to accept the med mal settlement? Yes. Is the client ethical to instruct her to do so? No. The ethics rules have some helpful lines that are not to be crossed - misrepresentation, for example. Same with the tobacco company example. Legal ethics has to be different from individual ethics if a rule of law prevails. …</td>
<td></td>
</tr>
<tr>
<td>51 - 3/17/2018 12:50 PM</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
You should have had another answer box -- It depends. There is no blanket right or wrong for many situations. It depends upon the people involved and their view of what is right and wrong. E.g., you hypothesis about the alleged malpractice case. It depends, some attorneys want to settle because the cost of litigation is too much. And put it behind them. Doctors generally fight to the bitter end because their license and reputation are on the line. … Sometimes there are no answers and we muddle on.

56 - 3/17/2018 10:00 AM
In the Scenario pertaining to question 39, though I believe to understand the point of the question, I selected the neutral option on the Likert scale for lack of context concerning the settlement offer. In most cases, however, there should not be an ethical conflict--at least not in any of the states in which I am licensed. …

80 - 3/16/2018 6:54 PM
Dear authors, while I was happy to help you on your research, some of your questions reflected a lack of precision. For instance, it would be necessary in your factual scenario to know at what point in the case we were at when the offer of settlement came in. While lawyers have a duty during the discovery phase to turn over everything responsive to a request, we owe a duty of confidentiality to the client not to disclose damaging information (unless it reflects a future intent to commit a crime or to harm someone). While you have already "launched" this survey to the world, should you do any others, I would suggest running the questions by practicing lawyers to ensure they are worded such that correct responses could be given. I also feel that you were trying to get a lawyers bad reputations, but only focused on ethics. Ethics to we lawyers is tied to state specific rules. And most lawyers follow them. What your questions should have also covered are issues surrounding lawyer advertising and professionalism. These, in my view, are far more the problem with the legal profession than ethics. Law schools have long taught ethics. But how to be civil to one another, how to not draft and file poor pleadings, how to not take junk cases just because you know insurance is on the other side and so a settlement offer is likely if you just file a claim, all these are what are killing our profession. In sum, following the state’s rules of ethics is not the same as being moral, kind, wise or fair. Best of luck on your research!

81 – 3/16/2018 6:42 PM
As to the teacher question, I think they don’t really have to deal with the practical ethical quandaries of law, so its easy for them to potentially appear to be more ethical then they are because they don’t have to make those difficult decisions.

96 – 3/14/2018 4:06 PM
Interesting fact pattern (med malpractice). I grappled with it and finally resolved to mark strongly agree not so much based on the defendant’s role in the adversarial process, but in the fact they initiated the settlement based on their perception of the liability. I think we need to accept that cases never involve the truth, but rather a version of the truth intended to settle a dispute. This is not to say lies and mistruths are allowable, but that we are fooling ourselves if we think courts are equipped to determine the objective truth behind a lis. Good luck, I’d be keen to see the outcome of your study.

99 – 3/14/2018 12:58 PM
Deception is not just the act of lying but the failure of FULL and complete disclosure. Many do not practice this definition.

101 – 3/14/2018 11:18 AM
...And your question about the medical malpractice case was puzzling on several levels and displayed a naïveté about the law and legal ethics that I can assume you have shed by now. As you know, medical experts can and often do disagree. The opinion of one medical expert is not necessarily “the truth,” and thus should not cause any lawyer to terminate the representation or to refuse the client’s instruction to settle the case. There simply is no ethical issue here. The hypothetical, as I recall, indicated that the expert said that the treating physician “did not injure” the client. Does that mean there was no injury at all? That the treating doctor met the standard of care? That the treatment did not cause the injury? Which element of a medical negligence case was missing, in the expert's opinion: breach of duty? Causation? Damage? Finally, as you well know, liability is disputed in most cases and most settlement agreements recite that payment is being made to buy peace and to save the cost of further litigation, not as an admission that the defendant is at fault. …

I don’t sufficiently know how medical malpractice works to understand the scenario you outline.

The hypothetical regarding the personal injury claim is quite unrealistic, procedurally – at least in my jurisdiction – which made answering it difficult in the abstract.

The ethical scenario at the end of the survey did not have enough information to truly assess the ethics of the lawyer in that situation. There are facts that could make accepting that settlement unethical, but they were not included. …

…I also found the thought experiment question about the medical settlement difficult to answer without more information.

The scenario is hard to answer simply on a gradient scale as it pits ethical point of view of a lawyer against their duty to represent their client.

Good survey. The settlement question was a hard one, as I was unclear of the basis for the settlement offer. I have also had expert opinions that are “definitive”, and then prove not to be so definitive at trial - so I am assuming that before making any settlement decisions, a thorough risk analysis was undertaken.

The challenge with this survey is that lawyers are taught throughout their law school is "it depends”. Some of these questions attempt to account for certain variables it seems in its research, but lawyers likely think to each question, "it depends". For example I would not represent someone I know who molested their child, but if I was required to do so by a judge or was the only competent attorney to provide the defense, I would expect that I would. Similarly, with the last question regarding the settlement. Attorneys will likely think, "well experts often disagree or can be wrong" and see taking the settlement as a valuable resolution for both parties. Instead, if the lawyer had a compelling reason to actually know its client was indeed lying, defrauding or faking the injury of illness, of course an ethical lawyer would not represent the client any further for a settlement.
Your medical malpractice scenario is flawed. First, in order to move forward on a med Mal case (in Florida at least) you need an expert affidavit that a malpractice existed. And experts always disagree on malpractice cases. It would be totally unethical for any lawyer to take the word of one expert in a malpractice case. A better example would be in the criminal law field.

151 – 3/9/2018 5:29 PM
I have been involved in numerous med-mal cases over the years. They are uniquely (well, rare in degree) expert opinion driven. I consider the hypo to be incomplete, thus not definitive, though I appreciate the gist of the question. For instance, is the haggling over? i.e., does the Plaintiff counsel need to make further representations? Would your analysis of the responses vary if there was an expression in the settlement agreement that the settlement was not an admission of liability? Otherwise, is the only import of the standard language meant to benefit the defendant? Has the plaintiff attorney obtained any independent corroboration?

156 – 3/9/2018 1:36 PM
I have practiced medical malpractice, representing plaintiffs, since 1976. The hypothetical is interesting but incomplete. I have an obligation not to bring a frivolous lawsuit. There is no obligation to bring a “perfect” lawsuit. Expert witnesses, even neutral or treating experts, are often mistaken in their opinions. That’s why your hypothetical is somewhat misleading and assumes that somehow a lawsuit is not an adversarial proceeding and I am obligated to share my work product information with the defendant, or even the court.

159 – 3/9/2018 12:36 PM
I am not familiar with the ethics involved with the civil scenario that you gave. I am sure there must be an ethical rule on point re settlement, etc and what suppose to do. I would follow that rule.

162 – 3/9/2018 12:05 PM
The last fact pattern was difficult to answer without more facts – comparative negligence would justify acceptance of a settlement offer. Also, use of the word “solely” in one of the questions made the answer difficult to choose, because I understood what you were asking, but “solely” was not the correct word to use in that question. I’m all for more ethical lawyers joining the profession. I haven’t met many unethical lawyers, maybe just ones that need training in civility.

164 – 3/9/2018 11:31 AM
In 38 you cannot represent to the court or the opposing lawyer a fact you know to be untrue. You do not say if there is a conflict as to any injury if there was then the lawyer could take the settlement, if the treating Drs say no inj, then no you could not take the settlement.

177 – 3/9/2018 10:13 AM
Your medical malpractice scenario provided insufficient facts to make an ethical judgment. The medical report of one doctor opposing the client's statement of what occurred, supported by a medical expert (required in some states before a medmal claim can even be made), is not enough to make a determination of the attorney’s ethics.

178 – 3/9/2018 10:10 AM
I was not pleased with many of the questions as they did not provide enough information to answer the question fairly. One expert, whether they are “independent” or not may...
differ in opinion from others and should not be the basis, solely for settlement or not.

<table>
<thead>
<tr>
<th>184 – 3/9/2018 8:05 AM</th>
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<tbody>
<tr>
<td>You omitted Native American as a choice for race. Your ethics scenario does not capture the complexity of litigation. Typically, experts disagree. One Plaintiff expert saying doctor not liable or not at fault does not mean, necessarily, that the doctor is not at fault or liable. If you said two or three experts said the doctor was not at fault, that would change my answer.</td>
</tr>
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<thead>
<tr>
<th>188 – 3/9/2018 12:00 AM</th>
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</table>
| In the hypothetical personal injury case there is a parallel with criminal law where the prosecution owes no duty to the defense to disclose the sudden death of a key witness. Also, attorney owes duty to his clients not the adversary. Further, I find this hypothetical a bit simplistic because it ignores the discovery process. I have been practicing law in Miami, Florida after 13 years in Houston, Texas, where lawyers cared about justice and the rule of law. My experience in South Florida is that 90 percent of all lawyers and other professionals - doctors, dentists, vets and accountants are crooks and shysters, preoccupied with $$$.

<table>
<thead>
<tr>
<th>229 – 3/5/2018 12:14 PM</th>
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<tbody>
<tr>
<td>With regard to question 39, I agree that the plaintiff lawyer’s actions were ethical in the sense that I do not believe the actions technically violated the Florida Bar’s Rules of Professional Conduct. But, that doesn't necessarily mean I agree that the plaintiff lawyer’s actions were moral.</td>
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<tr>
<th>235 – 3/5/2018 11:19 AM</th>
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</thead>
<tbody>
<tr>
<td>The hypothetical plaintiff scenario was not fair. Anyone can have an opinion concerning an injury and causation of an injury. The lawyer's duty to the client is to represent that client diligently. There was no evidence of fraud in the hypothetical.</td>
</tr>
</tbody>
</table>

<table>
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<tr>
<th>253 – 3/4/2018 7:10 PM</th>
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</thead>
<tbody>
<tr>
<td>Med mal case should be settled for costs.</td>
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<tr>
<th>267 – 3/3/2018 4:30 PM</th>
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<tbody>
<tr>
<td>The hypo doesn't explain whether the plaintiff has an expert who has opined that the plaintiff’s injuries were caused by defendant’s negligence. If so he can move forward, if not, in our state he can’t meet his obligation to possess a certificate of merit.</td>
</tr>
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<tr>
<th>275 – 3/3/2018 12:57 PM</th>
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<tbody>
<tr>
<td>A few of the questions indicate, whether intended or not, a bias against the legal profession or the practice of law in the US. I don’t regard the malpractice settlement directed by the client as having any ethical impropriety unless the report was part of a production request or continuing discovery order. Overall the questions are interesting. Lawyers care much more about legal ethics than the public may think they do.</td>
</tr>
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<tbody>
<tr>
<td>Medical malpractice question: I would contact the Florida Bar ethics hotline to seek guidance and follow their advice most likely. I call them often when ethical issues come up. It is free and they provide immediate assistance, citing applicable rules etc. their assistance is invaluable to me.</td>
</tr>
</tbody>
</table>

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<thead>
<tr>
<th>291 –</th>
</tr>
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<tbody>
<tr>
<td>This is a tough survey because ethical issues are not easily put into black and white boxes. In the med mal hypo the lawyer would be ethically precluded from revealing the opinion of the consulting expert. The only option would be to withdraw which in itself</td>
</tr>
</tbody>
</table>
could harm the client’s interests.

The question about the doctor settling I think it is much more nuanced than presented. If the doctor is offering to settle it is likely to be in the course of weighing the likelihood of success at trial based on the evidence. Although the client was not injured that does not mean the doctor did everything they should have done in the situation, which may incline them to settle the case. I didn’t really see it as black and white as the molesting parent situation.

On the malpractice hypothetical, it isn’t clear whether the IME result might be the subject of some sort of affirmative disclosure or discovery obligation. If not, I would feel more comfortable accepting the settlement offer. If so, I would be less comfortable, and perhaps not comfortable at all if immediate disclosure was mandated.

On the question about whether civil litigants should be entitled to representation, I think the answer might depend on the case and the personal and financial circumstances of the litigant. On questions in general about the tension between professional responsibility codes and personal morals, I think what one says in the abstract and what one does in the moment may greatly vary. I have frequently said that I would not represent certain reprehensible people — unless I was the last lawyer on the planet they could turn to. I believe in due process, I’m just not sure I have to be the one guaranteeing it, unless I’m the only one who could provide it.

My answer to the hypothetical was predicated on the understanding that as an officer of the court, I have a duty not to pursue claims which I know to be unsubstantiated. In a case like the one set forth in the example, I would likely reach out to our Ethic’s Hotline prior to making any formal decision.

The malpractice settlement hypothetical is intriguing. After reviewing my state’s rules of professional responsibility, I’m still not sure of the correct answer. I don’t think it make sense to look at that question from an abstract moral perspective. We are advocates required to act zealously within restrictions. I think a lawyer who follows the rules in this hypothetical is acting ethically by any meaningful standard. I just can’t figure out what the rule is. I’m pretty sure the rules prohibit the attorney’s actions, but it’s not clear.

Was the lawyer unethical in accepting a settlement after learning the other side is not a fault. If the other side had not requested discovery, the yes it is ethical; if the other side had requested discovery then it was unethical as the lawyer has a continuing duty to disclose information.

Your scenario offered advice from only one independent expert. This influenced my answer. In medical issues, one expert is not enough.

These questions are not all well conceived. For example, just because one expert tells the client that the doctor did not cause his injury does not answer the question. Another expert might opine differently. Also, I don't think lawyers have an “unethical reputation in society.” Very loaded questions, meaning the data you gather will be of questionable
Some of the questions required assumptions. For example, the question related to the medical malpractice asked only about the 3/p independent examiner. Absent other facts we could have concluded that the "independent" examiner was accurate and that there were no other medical experts to opine otherwise. However, no ethical lawyer would file or make such a claim without having a med expert who says the doctor was at fault and caused the injury making this a battle of the experts.

Several of the questions were not actually answerable with the info provided. The answer to the question re: med. mal. is actually "it depends"... on many facts not stated. Questions asking about feeling comfortable are also difficult. Many times the ethical route is uncomfortable but taken because that is what we are required to do.

For question 39, I could not answer because I felt the fact pattern was incomplete. It would matter to me what the plaintiff affirmatively alleged in the lawsuit, and whether there was any evidence contrary to the one medical expert’s opinion.

Is it ethical to accept a settlement offered by the opposing party when you are told there is no basis to the lawsuit by your client? The ethical thing to do was to get the client to dismiss the lawsuit or withdraw as counsel. The counsel in the hypo accepted the settlement. Ethical – no

In your hypo, the lawyer has no choice but to proceed with the settlement. S/he has an unequivocal ethical and legal duty to act in the best interest of his/her client, which means to go forward. To do otherwise is to risk liability for legal malpractice and a bar complaint. The expert’s opinion is just that – an opinion, not binding on anyone.

Question 39 generated the most written responses and was the most evenly split of all the questions. From the above comments we can see lawyers struggling to grasp the ethical implications of the questions.

Many adopted the political philosopher’s position that “the lawyer is justified in resolutely advocating for clients’ interests within the bounds of the law,” such that the resolution of this hypothetical is that the lawyer must follow the decision of the client unless it is specifically prohibited by the legal system itself (by checking the local law and rules of professional conduct). Others seemed to adopt the second viewpoint in that they judge the morality of the situation by considering issues of fairness and
responsibility to society at large. Still others decided that the moral obligation not to perpetrate a fraud or lie must take precedence over a lawyer’s obligation to the client who instructs him to do something immoral. While more than a few adopted the post-modern assertion that a lawyer must “make an informed and conscientious decision in accordance with the own political and moral lights.” Some even resorted to the strict legal argument of fraud.

Based on the question statistics, a virtually equal amount of lawyers endorsed every available question option from Strongly Agree to Strongly Disagree. Indicating that lawyers could not easily resolve such an abstract moral problem and that there is no clear ethical rule that must be borne in mind. In fact, the hypothetical sits at the intersection of two equally important imperatives, which drives the disparate range of answers.

In my personal view, the following themes among the comments were particularly salient:

1) A lawyer has an ethical obligation not to present a fact to the Court or other side that they know is untrue.

2) Settlements are not “Admissions of Liability” but negotiated resolutions of claims with no admission of wrongdoing on the part of the defendant.

3) In reality, a lawyer does not have perfect, unassailable knowledge of the truth.

4) A lawyer is under an obligation to follow their client’s instructions and cannot contravene the wishes of their client. It is the client’s ethical choice to accept the settlement or not, so long as the lawyer does not break a law or rule of professional conduct applicable to the case.
It should be recalled that the standard form medical malpractice release that many lawyers use has something similar to the following clause: “IT IS UNDERSTOOD AND AGREED that the said payment is deemed to be no admission whatsoever of liability on the part of the defendant.”

Settling a claim on the basis of a standard form release requires no affirmative statement from plaintiff’s counsel with regard to a fact that they know to be untrue. In my view, so long as the claim can be settled without a false statement, there is no ethical problem for the lawyer, as it allows the lawyer to balance the two opposing obligations.

Similarly, if the matter is taken to trial and the jury decides a set of facts that the lawyer knows to be untrue, this also poses no ethical issue to the lawyer so long as the lawyer does not actively tell a lie; a lawyer can adduce evidence from another source, so long as each and every statement the lawyer utters is not a lie. For instance, a lawyer could adduce the historical clinical notes and records of the family doctor and state “on this date you diagnosed this injury,” which is a technically true statement, despite the knowledge of the lawyer that the injury that was diagnosed did not in fact occur.

This is the same result that occurs in a criminal trial where the defense lawyer factually knows the defendant to be guilty, but puts evidence forward to attack the prosecution’s case. The rules of professional conduct require to the lawyer to attempt have the defendant found not guilty despite the factual knowledge of guilt.

There is a very famous case in Canada, involving an accused named Donald Marshall Jr., a Native American man, whose own criminal defense lawyer came to the definitive view that his client had actually murdered the victim. As such, the judge, the prosecutor, and the defense lawyer all knew the definitive truth that the accused had
murdered the victim. The defense lawyer let his personal knowledge affect his zealous advocacy and Mr. Marshall was convicted. Of course, the defense lawyer’s knowledge of his client’s guilt was incorrect and the conviction was unjust. It stands as a famous example of what can happen when a lawyer lets their personal knowledge affect their zealous advocacy on behalf of a client.\textsuperscript{37}

The same concern is true for criminals who confess their crime to the police and even to the criminal defense lawyer. There could be no stronger proof of a fact than having a defendant tell you the truth of their guilt (certainly having an expert tell you the plaintiff isn’t injured is not stronger proof to a lawyer during the vicissitudes of practice). But a lawyer who limits the zealous advocacy of a client based on a fact ascertained from the client or an expert can certainly do a disservice to the client personally and the administration of justice overall.

Approaching Question 39 from a practical angle, it is very hard to imagine a situation where a practicing lawyer, who has invested tens of thousands of dollars in time and disbursements into the development of a case would be willing to drop it completely in face of new knowledge that the underpinnings of the case have fallen away. As Professor Alice Woolley explained in her 2014 article\textsuperscript{38}:

\begin{quote}
The statistically most significant factor in individual decision-making is the situation in which the decision-maker finds himself. In a vast number of empirical studies it has been demonstrated that changing circumstances will change behaviour, and that individuals show relatively little cross-situational consistency in their actions. Situations do not determine conduct -- it is rare to find uniform and universal responses to situations, and in any situation there will be some
\end{quote}


\textsuperscript{38} Woolley, “The Future of Law School Legal Education,” page 810.
individuals who do not behave as predicted -- but in statistical terms the best correlation to behaviour is situation. Thus in a summary of studies correlating moral reasoning to behaviour, it was noted that while individuals who make ethical choices tend to demonstrate higher moral reasoning skills, generally speaking, circumstances were the most significant factor in predicting behaviour. Further, in a range of studies it has been demonstrated that creating or altering situations will strongly affect how people respond to moral dilemmas. For example, in the famous Milgram experiment, 63% of research subjects instructed to administer electric shocks to a person giving incorrect answers to a test were willing to do so to the point where the test taker was apparently suffering severe pain that could have led to death. However, where the research subject was paired with a confederate apparently also participating in that experiment (but who was actually one of the researchers), and the confederate enthusiastically followed the instructions to shock, compliance jumped from 63% to 90%. Conversely, where the confederate refused to participate, compliance fell from 63% to 10%.

While I personally identify with the moral framework that holds that a lawyer can accept any settlement their client instructions them to, so long as the lawyer does not break any laws or rules of professional conduct, I can certainly understand why other disagree with that viewpoint.

But as a practical concern, I can say that in practice, plaintiff’s lawyers (and defense lawyers) almost never disclose harmful information of the nature described in Question 39. This is because plaintiff’s firms often invest more than $50,000 or $100,000 in a medical malpractice case. To come to the realization that the claim is totally without merit and your $100,000 investment is lost, and to forthrightly admit that to the defendant insurance company and expose your client to potentially more than $100,000 in defense costs, is simply an unacceptable outcome in the real world. Professor Woolley’s observation that morality is situation dependent must certainly be true for those lawyers faced with this actual situation, rather than just contemplating it from the comfort of their armchair.
3. Research Limitations

While this empirical investigation of the ethical values of law students and lawyers is by far the biggest investigation ever completed, it does have some signification limitations. First, because 97.75% of solicited respondents did not participate it possible that the results are skewed in one way another. While it may make sense that to assume that lawyers and law students more interested in legal ethics might have participated in the study, this is unverifiable conjecture. Another possibility is that busy lawyers could not take the time to participate while lawyers with less busy practices had no problem sparing 10 minutes. But it is difficult to know one way or the other.
VI.

Discussion

This study, completed by over 2,500 lawyers and law students has demonstrated dozens of interesting findings relating to the development of ethical values and the role played by numerous independent factors, such as age, sex, race, and religion.

1. Moral Agency ↔ Zealous Advocacy Socialization

a. Role of the Lawyer in the Legal Process.

This study did not demonstrate that law schools socialize students towards adopting an approach to the law that requires zealous advocacy at the expense of their personal morals, the survey was administrated to law students too late in first year, such that they had already gone through the indoctrination period prior to being tested.

Past research has robustly shown that law students “learn to think like a lawyer” when they enter law school, meaning that they all adopt the view to some extent that lawyer’s must act as zealous advocates and repress their personal morality for the benefit of the client.39 This research further clarifies this process and suggests that the socialization process takes place within the first six months of school.

One of the shortcomings of this research is that the survey did not clearly give an option for members of the judiciary to identify themselves, because it was not anticipated that judges would participate. However, based on the comments in response to the survey it is clear that a number of judges did complete the questionnaire. A total of 157 individuals marked “Other” in the Practice Type question, presumably a fair number of those were judges. Unfortunately, we were unable to test for differences between clearly identified judges and practicing lawyers because we could not pinpoint exactly who the judges were.

Nevertheless, one of the main critiques of lawyer’s who adopt the role of zealous advocate, is that they are “amoral” or sacrifice their personal morality to do bad things. This argument may stem from a confusion of how the common law system works. As Participant #22, 3/19/2018 11:37 AM (Appendix E), states:

> although I feel that effectively representing a client who’s case runs contrary to my moral beliefs is my duty as a practicing lawyer, I do not feel that the entire purpose of law is to serve clients. Rather, that is the primary duty of practitioners. Thanks for making lawyers think about the purpose of our roles in society. I hope this research builds on that growing theme in our profession.

The participant is correct. The entire purpose of the legal system is not to serve clients through zealous advocacy; that is the role of lawyers. The entire purpose of the legal system is to create a standardized process through which fair results based on the truth can be achieved most of the time.

Certainly, judges and lawyers realize that unfair and untrue results do occur in the legal system, but it is impossible or at least prohibitively expensive to attempt to achieve 100% correct results in every case. It simply can’t be done, and even if it could be, it would be impossible to verify that a 100% correct result has been done in every case.
because ultimate truth cannot be known in most cases, only truth on a balance of probabilities or beyond a reasonable doubt.

The legal system requires the necessary sacrifice of truth in some circumstances, for the benefits of expediency, consistency, and process. In this system lawyers are required to zealously advocate for their client and judges and juries are required to attempt to arrive at a decision that best approximates the truth of the matter, based on the facts presented, accepting the expediencies of the process.

As Oregon Participant #9 – 3/21/2018 3:44 PM (Appendix F), explained:

Ethics is central to law practice. There is some difference between professional and personal ethics of the lawyer and the personal ethical beliefs (or lack thereof) of the client. Western Society is based on the Roman theory that if a process is correct and followed a correct result will be had in most cases and the damage from aberrations will be contained. The ethics of the lawyer must be aimed at assuring that process is well designed to give each his due (Plato) and that process is followed. (Thomas, Aristotle and Marcus)

For this process to work, law schools must socialize law students to adopt the zealous advocacy role of a lawyer. If too much personal morality is allowed to influence a lawyer, then the system cannot function as intended. If too many lawyers refuse to represent a child molester because they morally disagree with the accused, or if they refuse to zealously defend a homosexual because it is against their religious morals, then the legal system will break down and injustice will follow. Perhaps the child molester should be convicted, but it is of utmost importance that the process is followed by lawyers who understand and adopt their role of zealous advocate.

b. Individual Views.

By no means do all lawyers or academics agree with this role of a lawyer. Many lawyers and academics do suggest that lawyers be permitted to follow their person morals
when choosing clients. The following three written responses demonstrate the variety of viewpoints that practicing lawyers possess:

Participant 145 – 3/9/2018 2:43 PM (Appendix E)
My Christian faith guides my moral decisions and how I approach the law.

Participant 355 – 2/6/2018 7:10 PM (Appendix E)
The important distinction I make between legal ethics and personal ethics is the first governs the capacity with which you fulfill your role as a tool of society and the second dictates your personal notions of right and wrong. To apply one’s own personal ethics to their representation of a client is unethical. It is not the job of lawyers and judges to be the conscience of society. It is our job to fulfill our roles within the bounds set out by legislation, internal codes of conduct, and the common law. The people have every right to look at us as amoral creeps who help big corporations take money from widows and orphans. What ought to change is their misunderstanding that our amoral nature cannot just as easily be shifted in the opposite direction through legislative reform.

Participant 21 – 3/20/2018 12:59 PM (Appendix F, Oregon)
I am an anarcho-socialist; the legal profession is capitalist. I am a radical amidst a sea of liberal careerists and reactionary quasi-fascists. It’s incredibly difficult to practice in this field and stay true to my ethics; that’s why I’m a public defender.

Personally, I most agree with Participant 21, I find it incredibly difficult to practice law and stay true to my personal morals. In fact, this difficulty is probably greatly exacerbated by my exposure to the extensive debate surrounding the issue of moral agency and zealous advocacy. If anything, being alive to the conflict between my personal morality and the requirements of my role as zealous advocate has increased my personal distress when faced with cases where I must represent a client with whom I disagree. Although I would imagine criminal defense would be a particularly hard area to practice in this regard, my practice of insurance defense routinely has me destroying the cases of brain injured children and denying them full compensation. I find the requirement to zealously destroy the case of a brain-injured child to cause me great moral consternation, especially when it is as a result of the fact that the child has hired a less
competent lawyer. Ironically, it may actually have been easier for me to do my job if I had not been exposed to this theoretical academic debate on legal ethics.

In any event, I fully agree with the following respondents:

Participant #116 3/13/2018 7:01 PM (Appendix E):

If Satan existed, I could comfortably represent him as long as he understood I would be presenting true facts and true and fair citations. I could even submit arguments on his behalf which I did not personally accept, based upon those facts and citations. I could comfortably rely on onuses and presumptions to argue that the trier of fact was barred from true conclusions or was obliged to draw untrue conclusions.

The survey poses what is quintessential conflict in trial advocacy versus morality. A strange paradox to anyone observing from outside the legal profession. These two principles are frequently at odds with each other in the practice. Thus, the practice of law has been described (by my torts professor 30 years ago) an amoral profession. If the survey attempts to reconcile or study morality juxtaposed against zealous advocacy its difficult to reconcile the two or quantify the practice through the morality lens. In reality, advocacy is the underlying driver of the profession, e.g. representing a murderer who confesses guilt in confidence and with privilege. Justice requires we zealously represent that individual, that is the true practice. To be objective in cases where the practitioner’s world view is at odds with the client’s beliefs you have to check personal beliefs and subjective morality/mores at the door, in favor of Justice. M. in Florida.

c. Changes in Zealous Advocacy in Lawyers

Interestingly, lawyers do not seem to more thoroughly adopt the role of zealous advocate as they age. It appears that after their initial indoctrination in the law during the first 6 months of law school, they find their happy balance; whatever works for them.

But there is obviously a wide range along the continuum, with some lawyers choosing to refuse clients because they disagree with their cases and others accepting clients they thoroughly detest. The study did prove that lawyers who practice criminal defense much more strongly adhere to their role of zealous advocate than do many other
types of lawyers. But this is a chicken and the egg type problem. It is unclear if lawyers who strongly believe in zealous advocacy are self-selecting as criminal defense lawyers, or whether lawyers who end up in criminal law learn to become even stronger zealous advocates.

Similarly, this study has repeated the well-documented result that men more strongly embrace the zealous advocacy role of a lawyer than do women. Given that this is true for both law students and practicing lawyers, it would seem safe to say that this is an artifact of sex rather than legal indoctrination, unless for some reason female students are being indoctrinated differently during the first 6 months of law school than male students.

It seems clear that what is happening is that students enter law school, laying wherever they do on the continuum through their own set of personal upbringing experiences, and that law school immediately moves them towards the zealous advocacy side of the continuum a bit, but not completely.

It is also interesting to note, that no other personal demographic factor seemed to impact the assumption of the role of zealous advocate to a statistically significant level. It is not immediately clear why age, disability, ethnicity, religion, and class upbringing, do not seem to impact an individual’s view of the zealous advocacy model, but sex does.

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40 As demonstrated in past studies, such as Henderson and Farrow, “Ethical Development,” and Roussy, unpublished, supra.
2. Law as a Business or Profession

a. Demographic Factors

This study found many interesting demographic factors played a role in lawyers’ view of the law as a profession vs. business. Some of these results had been produced before, but many of the major ones had not been empirically proven before.

Perhaps the most important result of this study is that Debt Load is correlated a lawyer’s view the purpose of the practice of law. Lawyers who graduated law school with high debt loads (sometimes in excess of 250,000 USD), tend to view law as a business to make money, more than lawyers who graduate with low debt loads, who are more likely to view law as a profession. This is a surprising and disappointing result.

While law school professors often exhort law students to view law as a noble profession for the good of society, perhaps the most significant method to achieve this outcome would be to cut law school tuition. Rhetorical exhortations can only go so far; when the real lesson that students are learning is that law schools view them as clients to be billed, they must inevitably form the opinion that this profession is all about money. It is entirely likely that putting more legal ethics classes in the curriculum won’t be sufficient to counteract this rude first lesson in law. As they say, “money talks.”

In a similar vein, this study has proven that lawyers who practice in areas with large urban centers such as Florida and Montreal, tend to view law as a profession to make money, more than lawyers who practice in bars with smaller urban centers such as Portland and Regina. This is the first study to empirically confirm the commonly held stereotype. While the data did not definitively test the precise size of the urban center of
lawyer’s practice location, it seems reasonable to conclude that big city lawyers are more focused on money than lawyers practicing in small centers. This would be a good candidate for confirmation in future research as all we can confirm right now is that size of bar seems to play a role.

A pleasant finding of this study is that neither class nor disability played a statistically significant role in lawyers’ view of the purpose of law. While this may be due to small sample size, it is nice to think that lawyers across those spectrums are equal.

It is hard to explain the finding that Latin Americans tend to view law as a profession for the good of society more than African Americans. It is well documented that African Americans are often victims in the oppressive wheels of the legal system, but so are Latin Americans. It is unclear why this statistically significant difference is observed.

As with prior studies, this study confirms that men are more likely to view the law as a business to make money than are women. Perhaps the two sexes are called to the profession for slightly different reasons.

The finding that family law lawyers are more likely to view law as a profession for the good of society may be partly explained by the stereotype that more females enter family law than males. It could also be due to the fact that family law is often seen as a practice area where it is hard to make money. The same is true of lawyers who have retired from active practice and become mediators.

It seems slightly predictable that lawyers engaged in private practice directly billing clients, were more likely to view the law as a business to make money, than were salaried lawyers who worked for the government, academia, legal aid, and “others”
(presumably judges). Succeeding in the practice of law is very difficult, and it is not easy to build a practice that earns enough money to support a family. Those lawyers who are business minded are more likely to stay in practice versus transferring to a salaried position.

It is unclear why Protestants are more likely to view law as profession for the good of society than are Agnostics. It is unlikely that belief in God is driving this difference as Atheists and Agnostics are not statistically different from Roman Catholics, Other Christians, or most other religions.

The final demographic variables, age and years of practice, seem to be two sides of a coin and both demonstrated that as lawyers age they tend to more strongly adopt the view law as a profession. It is unclear why this would be so, and directly contradictory to the impression of at least a few participants. For instance, Participant #145 3/10/2018 11:40 AM (Appendix E), wrote:

I have been highly disillusioned by the profession. Once I started practicing I understood really quickly that everything resolves around money, not justice or doing right by people. As soon as I find another profession that pays me enough to continue paying my student loan debt I am getting out.

Fortunately, this does not appear to be the experience that most older lawyers have. It is possible that young lawyers graduate law school with more debt than older lawyers did in the past, and it is this albatross that is jading their view of the law. Alternatively, it is possible that as lawyers gain more experience with the practice of law they come to appreciate how important the rule of law is to society. It is also possible that once lawyers become rich enough to support a good quality of life they allow themselves the luxury of viewing law as a profession for the benefit of society.
b. Written Responses

It seems undoubtedly true that society in general view many lawyers are schemers who are trying to get rich; advertising for personal injury clients above basketball urinals certainly does not help that perception. But many lawyers who participated in this study do not agree with that view of the law. The following table includes a selection of comments on this continuum.

Table 5 – Comments on Law as Business ↔ Law as a Profession

<table>
<thead>
<tr>
<th>Date/Time</th>
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<tbody>
<tr>
<td>37 - 3/18/2018 5:25 PM (Appendix E)</td>
<td>Lawyers sometimes are obligated to take actions on behalf of their clients that the lawyer finds personally distasteful. They share one of these obligations with psychotherapists and clergymen. They can also withdraw from representing a client if they don’t wish to pursue a case as aggressively as the client wants, and I have seen more than one lawyer do just that. I was in private practice for only a few years, but have been in government service as a lawyer for more than 30 years. I have accepted a significantly lower salary than I could have earned in the private sector because I can practice criminal law without representing criminals but can refuse to take a position on behalf of the state that I think is wrong—which I have done on occasion.</td>
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<td>60 – 3/17/2018 12:14 AM (Appendix E)</td>
<td>Your survey needs to address what an attorney will do when faced with unethical demands on them by a firm’s managing partner(s). I have practiced nearly 30 years now, and have left 3 firms due to the impact of refusing to undertake unethical and/or illegal actions. The questions in the survey need to be more real. Every day attorneys are asked by clients and/or their employers to engage in conduct that is improper. Most attorneys I know will choose to make a living over leaving a job that requires unethical conduct.</td>
</tr>
<tr>
<td>78 – 3/16/2018 7:02 PM (Appendix E)</td>
<td>Most lawyers outside of public interest law don’t think too much about the ethical aspects of their work. They think mainly about the business/material ramifications of practicing law (salary, bonuses, intellectual rewards, reputation, prestige). Law was considered a profession in the past, but it has become a business.</td>
</tr>
<tr>
<td>100 – 3/14/2018 12:11 PM (Appendix E)</td>
<td>I am called in both Canada and the US and through the course of my career, dealt with lawyers around the globe. Legal services is a business, yes, but to be a lawyer is a vocation. Modern legal education must develop professionals who consider and discuss the ideals of Rule of Law, the responsibility of being an Officer of the Court and the difference between strong advocacy and “winning”. I have seen the rise of sharp practice</td>
</tr>
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</table>
There were many other very interesting comments in the appendices which demonstrate how frequently lawyers battle with the dichotomous views of law. I think it is very understandable that when lawyers are young, struggling to pay back their law school debts and establish a family they seem to be more focused on law as a way to make money. But once a certain financial level is reached, it appears that older lawyers tend to swing more towards the professional aspects of law, which, in a sense, could be seen as being focused on prestige and reputation for doing good and important things in society.

3. Demographics in Ethicality

This investigation discovered many interesting results with respect to lawyers’ views of the ethicality of themselves and their peers.

It found that lawyers who practice in small bars, such as Oregon and Saskatchewan, tend to rate themselves as more ethical than lawyers who practice in large bars, such as Florida and Quebec. Interestingly, it confirmed that American lawyers practicing in a small bar tend to rate themselves and their peers as more ethical than Canadian lawyers practicing in large bars, suggesting that nationality does not play much if any role in the ethicality of lawyers.
Unfortunately, the study has shown that lawyers who graduate law school with high debt loads tend to rate themselves and their peers as being less ethical than lawyers who graduate law school with low debt loads. Again, this might just be a demonstration of “money talking”; when law students learn that law schools are focused on the money, and despite all the highfalutin talk, it is a harsh lesson in the reality of law which tends to create the view that people in the field are less ethical.

This study also found that Latino lawyers view themselves and their peers as more highly ethical than African American lawyers, but there were no other differences the various ethnicities. It is unclear why there should be a significant difference between the two groups.

The study also demonstrated that Jewish lawyers tend to view themselves and their peers as more highly ethical than did Atheist and Agnostic lawyers. While there are many stereotypes about Jewish lawyers, it is nice to see that they believe they and those they know hold themselves to high ethical standards.

Finally, it confirmed that older lawyers tend to view themselves and their peers as more ethical than do younger lawyers. It is not exactly clear why this should be the case, except that perhaps after practicing for a few years one becomes more forgiving of the mistakes of other lawyers as you have certainly committed a few of your own by the time your enter a few years of practice.

It is interesting that there were not differences in ethicality ratings due to sex, school, disability, or class.
4. Conclusion: Role of Law School in Legal Ethics

In the academic debates it is taken as self-evident that law schools should emphasize the role of legal ethics and morality in their curriculum. Many of the study participants also adopted this view. For instance, Participant 14 - 3/20/2018 12:32 PM (Appendix E), commented:

Part of problem is that law school does little in the area of “formation”: forming men and women who thirst for justice in all of its aspects. This cannot be done by simply adding Ethics courses (although it’s a good step!): it is done by designing the entire law school program – not only around creating the best advocates, but also men and women of integrity, ready to fight for those who are on the margins and ready to align themselves with clients and causes, even if it means little or no compensation. I do not see this happening in our law schools.

While Participant 358 – 2/6/2018 6:33 PM (Appendix E) wrote:

I’m very influenced by Robert Vischer’s argument for the re-introduction of the lawyer’s personal moral perspective into dialogue with the client. I believe that ostracizing the moral from the legal benefits neither the practitioner nor the client. While I may struggle with the prospect of representing certain clients (more so white-collar crime than violent crime), I believe all people charged with an offence are entitled to a defence. Finally, I have major concerns about how legal ethics is taught in law school. It is often one course, pushed to the periphery. This suggests the demotion of a subject that should really be a lawyer’s constant companion throughout practice.

But it is not so clear that the results of this study support the argument that law schools should move away from focusing on black letter law and embrace teaching legal ethics and moral agency.

First of all, it seems clear that a major factor in determining legal ethics is debt load. If law schools really wanted to graduate lawyers who valued law as a profession and adopted views of high ethicality, reducing tuition may be the biggest step they can make in that direction.
But secondly, practicing law is hard. It is highly stressful, with myriad demands on a lawyer’s time, intellect, and health. Teaching a type of legal ethics that emphasizes moral agency at the expense of zealous advocacy may be detrimental to the “process” of law that demands lawyers do their best for every client and the judge and jury do their best to achieve justice.

Moreover, it may also be detrimental to the personal well being of lawyers. Focusing on the cognitive dissonance that must inevitably arise when the obligations of a lawyer conflict with the personal morals of a lawyer, may not actually be in a lawyer’s best interest. It could possibly serve to add extra stress to a lawyer on an issue they cannot really be resolved easily.

There will always and inevitably be tension between the lawyer’s obligation to zealously represent a client and what they personally think should happen. It may not be best for the lawyer to dwell on the tension.

While law schools seem to be rushing headlong into this brave new world of legal ethics, it may be best to consider if what is being taught actually makes it easier for lawyers to practice the law. If it is adding extra burdens to a lawyer, those burdens need to be carefully weighed against the purported benefits, especially when non-practicing academics cannot even agree on whether it is ethical to incorporate moral agency into a role that traditionally requires zealously advocacy. As Professor Woolley stated in 2014:

47 Legal education reform literature sometimes seems to offer enthusiastic yet vague exhortations to law schools and the profession to instill ethics and morality in law school graduates, without giving real and serious thought to where, exactly, our professional obligations lie.41

One of the clarion calls of this study is the travesty that as law students are forced to pay ever-escalating tuition fees their view of the purpose of law changes. Perhaps if law schools want to imbue legal ethics into their students, they should start there.

Perhaps it is right to leave the last word up to one of the practicing lawyers who participated in this study. Participant # 173 – 3/9/2018 10:37 AM (Appendix E) eloquently explained:

There are many flaws in my profession that I wish could be changed immediately but no career/job is perfect. The best we can do is be the best possible attorney on a daily basis, something that allows us to go home to our families knowing that things are not fair and justice may not always be served but we WILL always strive for that one time where justice is within our grasps.
VII.

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