

### 3. LEARNING PROFESSIONAL RESPONSIBILITY

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#### a. Introduction<sup>2</sup>

“Teaching professionalism” is a recurrent theme and a high priority in *BEST PRACTICES FOR LEGAL EDUCATION*;<sup>3</sup> however, it is difficult to operationalize the useful information and advice on this theme found throughout the book<sup>4</sup> into specific plans of action either for the course required by the accreditation standards of the American Bar Association (ABA)<sup>5</sup> — typically called “Professional Responsibility” — or for a law school’s overall program of instruction. *BEST PRACTICES* largely relied upon ideas and materials generated by the organized bar’s professionalism movement; however, since publication of *BEST PRACTICES*, both teachers and scholars who generally support the ideals of the professionalism movement<sup>6</sup> have refocused the rather general aspira-

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<sup>1</sup> Readers for this section were Muriel Bebeau, Andrew Boon, Robert Burns, Roberto Corrada, Adrian Evans, Timothy Floyd, John Garvey, Neil Hamilton, Nicole Iannarone, Sally Kift, Patrick Longan, Paul Maharg, Timothy Mahoney, Michael Millemann, Donald Nicolson, Jerome Organ, Deborah Rhode, Hilary Sommerlad, Ann Southworth, Stephen Thoma, and Douglas Yarn.

<sup>2</sup> This section focuses on best practices for learning professional responsibility in the context of U.S. legal education. Portions of this chapter section are based on Clark D. Cunningham & Charlotte Alexander, *Developing Professional Judgment: Law School Innovations in Response to the Carnegie Foundation’s Critique of American Legal Education*, in *THE ETHICS PROJECT IN LEGAL EDUCATION* 79 (2010), available at [www.teachinglegalethics.org/developing-professional-judgment](http://www.teachinglegalethics.org/developing-professional-judgment), archived at <http://perma.cc/M45L-RMN7> [hereinafter Cunningham & Alexander, *Developing Professional Judgment*] and *Learning Professional Responsibility for the Practice of Law: The Way Forward* (working paper). More detailed citations and discussion of sources mentioned herein (and more global overview) available at [www.teachinglegalethics.org/learnngpr](http://www.teachinglegalethics.org/learnngpr), archived at <http://perma.cc/U2DC-4RC9>. This section also draws from several presentations at the National Institute for Teaching Ethics & Professionalism (NIFTEP), particularly by Neil Hamilton in 2007 and Muriel Bebeau in Spring 2009 and Fall 2014, see [www.niftep.org/workshops](http://www.niftep.org/workshops), archived at <http://perma.cc/HH7Y-3PHY>.

<sup>3</sup> ROY STUCKEY AND OTHERS, *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (2007) [hereinafter *BEST PRACTICES*].

<sup>4</sup> See, e.g., *BEST PRACTICES*, text at notes 40–43 and 46–48 (educational goals), 65–75 (graduates conduct themselves unprofessionally), 96–100 (well-being of students), 111–114 (desired outcomes), 134 (ABA Professionalism Report), 153–157 (resolve problems responsibly), 175–182 (practical judgment), 218–267 (professionalism), 287–298 (teach professionalism pervasively), 483–503 (use context-based instruction to cultivate practical wisdom), 579–585 (simulation-based courses to teach ethical demands of practice), 819–868 (Model Best Practices Curriculum).

<sup>5</sup> ABA Standard 303(a)(1) requires “A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members.” ABA Standards and Rules of Procedure for Approval of Law Schools, Standard 303(a)(1), STANDARDS, [www.americanbar.org/groups/legal\\_education/resources/standards.html](http://www.americanbar.org/groups/legal_education/resources/standards.html), archived at <http://perma.cc/WED3-W4NL> [hereinafter ABA Standards]. Prior accreditation standards required the same instructional content but did not specify a minimum number of credit hours of instruction nor that instruction be delivered as “a course.”

<sup>6</sup> Extensive resources for teaching legal ethics and professionalism are now available on-line. A starting point is the *International Forum on Teaching Legal Ethics & Professionalism*, TEACHING LEGAL ETHICS, [www.teachinglegalethics.org](http://www.teachinglegalethics.org), archived at <http://perma.cc/38S4-9STN>. Materials and webcasts of the NATIONAL INSTITUTE FOR TEACHING ETHICS & PROFESSIONALISM, available at [www.niftep.org](http://www.niftep.org), archived at <http://www.niftep.org>.

tional goals of “professionalism” into more specific objectives of developing professional judgment<sup>7</sup> and forming professional identity.<sup>8</sup> This reconception has been deeply influenced by EDUCATING LAWYERS<sup>9</sup> published by the Carnegie Foundation for the Advancement of Teaching (“CARNEGIE REPORT”), which concluded that the prevalent law school approach to teaching the required course in professional responsibility was not only inadequate but potentially harmful.

The CARNEGIE REPORT described conventional courses on professional responsibility as limited to teaching “The Law of Lawyering”:

Students learn the profession’s ethical code as represented in the [ABA] Model Rules [of Professional Conduct], how those rules have been interpreted and applied, and the circumstances under which sanctions have been imposed. . . . Often these courses are structured around legal cases that concern alleged violations of the Model Rules. Students apply their analytical skills to these cases, approaching them in much the same way they have learned to approach challenging legal cases in torts or contracts.<sup>10</sup>

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perma.cc/9K3B-YCBU. See also *Course Portfolios and Conference Materials*, EDUCATING TOMORROW’S LAWYERS, <http://educatingtomorrowlawyers.du.edu/>, archived at <http://perma.cc/EV8J-HC5V>, and teaching materials submitted for the National Award for Innovation and Excellence in Teaching Professionalism co-sponsored by the American Bar Association (ABA) Standing Committee on Professionalism, available at <http://clarkcunningham.org/Professionalism/Award-Home.htm>, archived at <http://perma.cc/3XLL-X7AJ>. Print resources include Deborah L. Rhode, *Annotated Bibliography of Educational Materials on Legal Ethics*, 11 GEO. J. LEGAL ETHICS 1029 (1998); *Symposia on Teaching Legal Ethics*, TEACHING LEGAL ETHICS, [www.teachinglegalethics.org/symposia-teaching-ethics](http://www.teachinglegalethics.org/symposia-teaching-ethics), archived at <http://perma.cc/6N7C-FYFB>; *Journals on Teaching and Ethics*, TEACHING LEGAL ETHICS, [www.teachinglegalethics.org/journals-teaching-and-ethics](http://www.teachinglegalethics.org/journals-teaching-and-ethics), archived at <http://perma.cc/U2ZB-WJ5S>; and *Reports and Studies*, TEACHING LEGAL ETHICS, [www.teachinglegalethics.org/content/reports-and-studies](http://www.teachinglegalethics.org/content/reports-and-studies), archived at <http://perma.cc/4HV8-S7UQ> (see especially reports by Andrew Boon; Kim Economides & Justine Rogers; Maxine Evers, Leanne Houston & Paul Redmond; and James Arthur et al.).

<sup>7</sup> Cunningham & Alexander, *Developing Professional Judgment*; Daisy Hurst Floyd, *Practical Wisdom: Reimagining Legal Education*, 10 U. ST. THOMAS L.J. 195 (2012); BACHELOR OF LAWS: LEARNING AND TEACHING ACADEMIC STANDARDS STATEMENT (Australian Learning and Teaching Council 2010), available at [www.teachinglegalethics.org/australian-learning-outcomes-law](http://www.teachinglegalethics.org/australian-learning-outcomes-law), archived at <http://perma.cc/Y573-6V4X>. See generally David Luban & Michael Millemann, *Good Judgment: Ethics Teaching in Dark Times*, 9 GEO. J. LEGAL ETHICS 31, 31–64 (1995–96) [hereinafter Luban & Millemann, *Good Judgment*].

<sup>8</sup> Neil Hamilton, *Fostering Professional Formation (Professionalism): Lessons from the Carnegie Foundation’s Five Studies on Educating Professionals*, 45 CREIGHTON L. REV. 763 (2012) [hereinafter Hamilton, *Fostering Professional Formation*].

<sup>9</sup> WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND & LEE S. SCHULMAN, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) [hereinafter CARNEGIE REPORT].

<sup>10</sup> CARNEGIE REPORT, at 148. Many professional responsibility teachers endeavor to do more than just teach the “law of lawyering,” but even the most innovative report that they struggle against the dominance of the law of lawyering paradigm, which is reinforced by student hostility if they perceive they are being forced to take a class that is not “a real law school course,” exacerbated by student anxiety over passing the multiple choice Multistate Professional Responsibility Examination (MPRE) which is required for bar admission in most states. The MPRE is the only component of the bar examination process that can be taken during law school, creating intense pressure for the professional responsibility course to be a “bar prep” class. Ironically, the ABA accreditation standard which gave rise to the required professional responsibility course has always had much broader goals than just mastering rules of conduct. See, e.g. ABA Standard 302(a)(5) (2010) (requiring “substantial instruction in . . . the history, goals, structure, values, rules, and responsibilities of the legal profession and its members”). An accreditation interpretation that such “substantial

The Law of Lawyering approach potentially harms students, and the lawyers they will become, by:

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

### b. The Four Component Model

The CARNEGIE REPORT based its critique on a vast body of social science research,<sup>11</sup> which has been developed and applied to professional education as the “Four Component Model.”<sup>12</sup> This “FCM” model identifies four different possible reasons why a well-intentioned professional might nonetheless engage in unprofessional conduct:

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

The model then defines four corresponding capacities for conduct that would be deemed appropriate by professional norms; each capacity is necessary for

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instruction” must include “the law of lawyering and the Model Rules of Professional Conduct of the American Bar Association,” ABA Interpretation 302-9, *id.*, has disappeared from the new ABA standards adopted in 2014.

<sup>11</sup> In particular, the CARNEGIE REPORT relied on the work of James Rest and Muriel Bebeau. The Center for the Study of Ethical Development was established in 1982 by Rest and Bebeau. The Center’s website is the primary resource for the Defining Issues Test as well as number of other materials for assessing moral development. UNIVERSITY OF ALABAMA, CENTER FOR THE STUDY OF ETHICAL DEVELOPMENT, <http://ethicaldevelopment.ua.edu/>, archived at <http://perma.cc/5A67-2R26> [hereinafter Bebeau, Defining Issues Test]. The Halloran Center for Ethical Leadership in the Professions has played a key role in applying the Center’s work to legal education. *Halloran Center for Ethical Leadership in the Professions*, UNIVERSITY OF ST. THOMAS, <http://www.stthomas.edu/hollorancenter/>, archived at <http://perma.cc/N6EG-PWJA>.

<sup>12</sup> Muriel J. Bebeau & Verna E. Monson, *Guided by Theory, Grounded in Evidence: A Way Forward for Professional Ethics Education*, in HANDBOOK ON MORAL AND CHARACTER EDUCATION 557 (2008) [hereinafter Bebeau & Monson, *Guided by Theory*.] See also Neil Hamilton & Verna Monson, *Legal Education’s Ethical Challenge: Empirical Research on How Most Effectively to Foster Each Student’s Professional Formation (Professionalism)*, 9 U. ST. THOMAS L.J. 325, 346–49 (2012) [hereinafter Hamilton & Monson, *Legal Education’s Ethical Challenge*].

professional responsibility, but none by itself is sufficient:

- (1) moral sensitivity that can interpret the need for a moral decision;
- (2) mature ethical reasoning that can reach a morally defensible decision;
- (3) identity formation that will support the prioritization of the moral decision over competing interests;
- (4) effectiveness in implementing the moral decision.<sup>13</sup>

Because the FCM model supports the use of well-validated measures for assessing the effectiveness of ethics education, it will be very useful to law schools as they prepare to comply with new accreditation standards, which now require law schools to ask what their graduates can *do* and not merely what they *know* and specifically require “ongoing evaluation . . . to determine the degree of student attainment of competency in the learning outcomes.”<sup>14</sup> One of the mandated learning outcomes is competency in the “exercise of proper professional and ethical responsibilities to clients and the legal system.”<sup>15</sup> What would “competency” in professional responsibility look like? The Four Component Model offers answers grounded in social science theory and tested by empirical research that provide methods for both teaching and measuring learning outcomes.<sup>16</sup>

### i. The First Component: Moral Sensitivity

Conventional Law of Lawyering courses typically fail to develop the first FCM capacity: “to notice moral issues when they are embedded in complex and ambiguous situations, as they usually are in actual legal practice.”<sup>17</sup> Even more seriously, “when legal ethics courses focus exclusively on teaching students what a lawyer can and cannot get away with, they inadvertently convey a sense that knowing this is all there is to ethics. . . . [Thus] [b]y defining ‘legal ethics’ as narrowly as most legal ethics course is do, these courses are likely to limit the scope of what graduates perceive to be ethical issues.”<sup>18</sup> Moral sensitivity in the context of professional practice does

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<sup>13</sup> The CARNEGIE REPORT paraphrases the first three FCM capacities as follows: “Law school graduates . . . need the *capacity to recognize* the ethical questions their cases raise, even when those questions are obscured by other issues and therefore not particularly salient. They need *wise judgment* when values conflict, as well as the *integrity* to keep self-interest from clouding their judgment.” CARNEGIE REPORT, at 146 (emphasis added).

<sup>14</sup> ABA Standard 315.

<sup>15</sup> ABA Standard 302(c). This outcome requirement is distinct and in addition to the “input” requirement that each student complete a course in professional responsibility. ABA Standard 303(a)(1).

<sup>16</sup> See Hamilton & Monson, *Legal Education’s Ethical Challenge*, which contains a summary of pedagogical approaches recommended by the CARNEGIE REPORT, and later Carnegie reports on professional education for medicine, nursing, engineering, or the clergy, correlated with empirical research showing how these educational methods develop one or more of the FCM capacities.

<sup>17</sup> CARNEGIE REPORT, at 149.

<sup>18</sup> *Id.* See also Bruce A. Green, *Less is More: Teaching Legal Ethics in Context*, 39 WM. & MARY L. REV. 357, 362 n. 29 (1998) [hereinafter Green, *Less is More*]; Ann Southworth & Catherine L. Fisk, *Our Institutional Commitment to Teach about the Legal Profession*, 1 UC IRVINE L. REV. 73, 76 (2011) [hereinafter Southworth & Fisk, *Our Institutional Commitment*].

require knowledge of the profession's norms,<sup>19</sup> so learning the content and applications of the Rules of Professional Conduct and other components of the "law of lawyering" is a *necessary* condition for developing the first FCM capacity; such learning, however, is not by itself *sufficient* for becoming a morally sensitive lawyer. Equally critical is the ability to engage imaginatively as a situation unfolds, constructing various possible scenarios, often with limited cues and partial information, combined with the ability to foresee realistic cause-consequence chains of events.<sup>20</sup> Therefore, both teaching and assessment strategies must avoid reliance on "predigested" or already interpreted fact scenarios, such as appellate decisions or casebook problems that identify the conduct rule to be applied. A well-constructed problem for developing ethical sensitivity should "present clues to a problem . . . without actually signaling what the problem is."<sup>21</sup> Moral sensitivity often requires empathy and role-taking skills, involving both cognitive and affective processes.<sup>22</sup>

## ii. The Second Component: Moral Reasoning

The Center for the Study of Ethical Development has found, based on over 25 years of research, that there are three structures in moral thinking development:

- The Personal Interests Schema which prefers reasons based on avoiding harm, making reciprocal deals, and sustaining personal relationships;
- The Maintaining Norms Schema which prefers reasons based on clear rules that maintain the social order;
- The Postconventional Schema which prefer reasons based on ideals that transcend and can critique social norms.<sup>23</sup>

The Personal Interests Schema is typically dominant from childhood through early adolescence as individuals move from reasons based on harm avoidance through

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<sup>19</sup> Muriel J. Bebeau, *The Defining Issues Test and the Four Component Model: Contributions of Professional Education*, 31 J. MORAL EDUC. 279, 283 (2002).

<sup>20</sup> Muriel J. Bebeau, James R. Rest & Catherine M. Yamoore, *Measuring Dental Students' Ethical Sensitivity*, 49 J. DENTAL EDUC. 225 (1985).

<sup>21</sup> Hamilton & Monson, *Legal Education's Ethical Challenge*, at 399. See Helena Whalen-Bridge, *Teaching Process: Ethics Method Project* (meta-cognition approach used in large, introductory legal ethics classes), available at [www.teachinglegalethics.org/teaching-analysis](http://www.teachinglegalethics.org/teaching-analysis), archived at <http://perma.cc/HP2J-5RVC>, webcast presentation available at [www.niftep.org/workshops/summer-2014-workshop](http://www.niftep.org/workshops/summer-2014-workshop), archived at <http://perma.cc/CV7X-JWF6>.

<sup>22</sup> Hamilton & Monson, *Legal Education's Ethical Challenge*, at 360. See generally Karen Barton, Clark D. Cunningham, Gregory Todd Jones & Paul Maharg, *Valuing What Clients Think: Standardized Clients and the Assessment of Communicative Competence*, 13 CLINICAL L. REV. 1 (2006) [hereinafter Barton, Cunningham, Jones & Maharg, *Valuing What Clients Think*].

<sup>23</sup> Bebeau & Monson, *Guided by Theory*, at 559. This approach is an evolution based on empirical research from the well-known theory of Lawrence Kohlberg that as individuals mature, they pass through identifiable stages of moral development that can be identified by the type of moral reasoning typically used at that stage. James R. Rest, Darcia Narvaez, Stephen J. Thoma & Muriel J. Bebeau, *A Neo-Kohlbergian Approach to Morality Research*, 29 J. MORAL EDUC. 381 (2000). See James Rest & Darcia F. Narvaez, *Introduction*, in MORAL DEVELOPMENT IN THE PROFESSIONS 1-3 (1994) (describing Kohlberg's original theory); see also Steven Hartwell, *Promoting Moral Development through Experiential Teaching*, 1 CLINICAL L. REV. 505, 506-22 (1995) [hereinafter Hartwell, *Promoting Moral Development*].

reciprocity to maintaining friendship. In late adolescence, some shift to the Maintaining Norms Schema; the Postconventional Schema typically only begins to develop in young adults and is promoted by post-secondary education.<sup>24</sup>

To assess the maturity of moral reasoning, the Center for the Study of Ethical Development created an easily administered, and extensively validated, multiple-choice instrument, the Defining Issues Test (DIT), that presents ethical dilemmas and then measures the extent to which an individual prefers arguments based on personal interests, maintaining norms or post-conventional rationales to resolve the dilemmas.<sup>25</sup> The CARNEGIE REPORT cites several studies showing that law students who completed a traditional professional responsibility course did not show significantly more sophisticated moral reasoning, as measured by DIT scores, at the end of the course than at the beginning; other studies show no improvement in DIT scores between the beginning and end of law school.<sup>26</sup> The CARNEGIE REPORT, however, goes on to state that “research makes quite clear . . . that specially designed courses in professional responsibility and legal ethics do support that development.”<sup>27</sup>

Presenting the legal ethics course in terms of learning how to avoid discipline or malpractice liability, or to develop and preserve a good reputation in the legal community, appeals merely to the reasoning of the immature Personal Interests Schema. To develop more mature moral reasoning, students must struggle with complex problems in which the protagonist is a lawyer facing competing duties, responsibilities, and rights that cannot be resolved by application of a rule because: (1) the rule is vague or grants discretion, (2) the problem is not addressed by a rule, or (3) most challenging, a decision may be justified that the rule ought not to be followed.<sup>28</sup> One teacher has described how he designed an unconventional professional responsibility course that combined the pedagogies described above for promoting both moral sensitivity and moral reasoning; he administered the DIT at the beginning and end of the semester each time he taught with these methods and student DIT scores increased significantly.<sup>29</sup>

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<sup>24</sup> Email correspondence from Stephen Thoma and Muriel Bebeau (on file with author).

<sup>25</sup> Bebeau, *Defining Issues Test*.

<sup>26</sup> CARNEGIE REPORT, at 133–34. See also Bebeau, *Defining Issues Test*, at 273–81. Cf. Adrian Evans & Josephine Palermo, *Almost There: Empirical Insights into Clinical Method and Ethics Courses in Climbing the Hill towards Lawyers’ Professionalism*, 17 GRIFFITH L. REV. 252 (2008).

<sup>27</sup> CARNEGIE REPORT, at 134.

<sup>28</sup> See Hamilton & Monson, *Legal Education’s Ethical Challenge*, at 350 (citing Bebeau, *Defining Issues Test*, at 273, 289).

<sup>29</sup> Steven Hartwell described his course over twenty years ago, Hartwell, *Promoting Moral Development*. He used out-of-class attorney-client simulations; students were not told beforehand what ethical issues were raised by the simulations: they met in small groups to identify ethical issues, decide a course of action, and justify that action in terms of moral principles. *Id.* at 522–23. See also Steven Hartwell, *Moral Growth or Moral Angst? A Clinical Approach*, 11 CLINICAL L. REV. 115 (2005). Hartwell and the other law school studies cited by the CARNEGIE REPORT measured development of moral reasoning in terms of how often students preferred the Postconventional Schema (called “the P score”). More recent research using the DIT also measures how often a subject prefers either the Postconventional or Maintaining Norms Schema over Personal Interests (“the N2 score”). See Neil H. Hamilton, Verna E. Monson & Jerome M. Organ, *Empirical Evidence that Legal Education Can Foster Professionalism/Professional Formation to Become an Effective*

Profession-specific measures of moral reasoning have also been developed that better reflect the content of professional education by using “Intermediate Concepts” that represent basic professional norms — rather than the more abstract moral schemas measured by the DIT — but are not as specific as the prevailing codes of professional conduct.<sup>30</sup>

### iii. The Third Component: Moral Motivation

“[L]eading the professional moral life is incredibly challenging”<sup>31</sup> due both to the complexity of professional practice and the many pressures to act, or fail to act, in ways that are inconsistent with what the individual understands to be the moral decision.<sup>32</sup> Competing influences include personal interests, such as desire for advancement and recognition, and peer pressure and economic forces to conform to workplace culture.<sup>33</sup> Perhaps even more corrosive to professional conduct are moral disengagement and the feeling that “someone else should do it.”<sup>34</sup>

“Understanding the self as responsible is at least part of the bridge between knowing the right thing and doing it.”<sup>35</sup> Social science research indicates that moral motivation is a function of how deeply moral values have penetrated an individual’s conception of self and identity.<sup>36</sup> Such commitment can be enhanced if the individual is developing a professional identity that incorporates into the construction of the self the purposes and public duties of the profession, such as placing the interests of the client, the justice system and the public before self-interest.<sup>37</sup>

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*Lawyer*, 10 U. ST. THOMAS L.J. 11, 50–53, 55–62 (2012) [hereinafter Hamilton, Monson & Organ, *Empirical Evidence*] (reporting significant increases in N2 scores over course of three-year program of instruction at the University of St. Thomas School of Law).

<sup>30</sup> Muriel J. Bebeau & Stephen J. Thoma, “*Intermediate Concepts*” and the Connection to Moral Education, 11 EDUC. PSYCHOLOGY REV. 343 (1999). See also Muriel J. Bebeau, *Teaching and Assessment Materials for a Dental Ethics Course Designed to Facilitate the Development of Moral Reasoning and Judgment*, available at <http://ethicaldevelopment.ua.edu/>, archived at <http://perma.cc/B6WA-Q25B>. Bebeau is consulting with law school members of the National Institute for Teaching Ethics & Professionalism consortium to develop Intermediate Concept measures of moral reasoning for use in legal education; for further information, contact the author.

<sup>31</sup> Muriel J. Bebeau & Stephen J. Thoma, *Moral Motivation in Different Professions*, in HANDBOOK OF MORAL MOTIVATION: THEORIES, MODELS, APPLICATIONS 475, 480 (2013) [hereinafter Bebeau & Thoma, *Moral Motivation — Different*].

<sup>32</sup> Stephen J. Thoma & Muriel J. Bebeau, *Moral Motivation and the Four Component Model*, in HANDBOOK OF MORAL MOTIVATION, 49, 52 (2013) [hereinafter Thoma & Bebeau, *Moral Motivation — Four Component*].

<sup>33</sup> Bebeau & Thoma, *Moral Motivation — Different*, at 479. See Hilary Sommerlad, *The Commercialization of Law and the Enterprising Legal Practitioner: Continuity and Change*, 18 INT’L J. LEGAL PROFESSION 73 (2011).

<sup>34</sup> *Id.* at 480; see also Thoma & Bebeau, *Moral Motivation — Four Component*, at 59–61.

<sup>35</sup> Bebeau & Thoma, *Moral Motivation — Different*, at 494.

<sup>36</sup> Muriel J. Bebeau & Kathy Faber-Langendoen, *Remediating Lapses in Professionalism*, in REMEDIATION IN MEDICAL EDUCATION: A MID-COURSE CORRECTION, 103, 104 (2014) [hereinafter Bebeau & Faber-Langendoen, *Remediating Lapses*]; Bebeau & Monson, *Guided by Theory*, at 558.

<sup>37</sup> Bebeau & Faber-Langendoen, *Remediating Lapses*, at 106.

Research has correlated the moral motivation component of the FCM with a life-span model of self-development,<sup>38</sup> finding evidence of stages in an evolving identity moving from (1) individual achievement and approval, to (2) being a team player and ideally culminating in (3) the self-defining professional.<sup>39</sup> Combining the FCM with life-span research has supported the development of a validated measure of professional identity formation: the Professional Identity Essay (PIE).<sup>40</sup>

What are the characteristics of a self-defining professional? Studies of professionals identified by their peers as exemplary show they differ from persons with less developed identities in their ability to integrate membership in a professional community with their own moral agency.<sup>41</sup> Exemplary professionals (a) sense a connection between self and others, (b) can clearly articulate their professional authority and duties, (c) are confident in their ability to affect change, and (d) feel that moral action is obligatory, typically explaining their “hard choice” decisions as simply required by their professional role.<sup>42</sup> They are both strongly identified with their profession and able to critique it.<sup>43</sup>

Research has shown that educational interventions can help students develop an identity aligned with ethical perspectives.<sup>44</sup> At the completion of the Carnegie Foundation’s study of legal education and four other types of professional education, the Foundation’s President concluded that “the most overlooked aspect of professional preparation was the formation of a professional identity with a moral and ethical core of service and responsibility around which the habits of mind and practice could be organized.”<sup>45</sup> Or, as one law student interviewed by the Foundation stated succinctly: “law schools create people who are smart without a purpose.”<sup>46</sup>

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<sup>38</sup> Thoma & Bebeau, *Moral Motivation — Four Component*, at 57–59 (citing Robert Kegan’s model); see also Hamilton, Monson & Organ, *Empirical Evidence*, at 19–20.

<sup>39</sup> Bebeau & Faber-Langendoen, *Remediating Lapses*, at 106; Bebeau & Thoma, *Moral Motivation — Different*, at 487–93.

<sup>40</sup> Hamilton, Monson & Organ, *Empirical Evidence*, at 53–55, 66–73.

<sup>41</sup> Thoma & Bebeau, *Moral Motivation — Four Component*, at 62. See also Neil W. Hamilton, *Changing Markets Create Opportunities: Emphasizing the Competences Legal Employers Use in Hiring New Lawyers (Including Professional Formation/Professionalism)*, 65 S.C. L. REV. 581 (2014).

<sup>42</sup> *Id.* at 59, 62; Bebeau & Thoma, *Moral Motivation — Different*, at 475, 483; Neil W. Hamilton & Verna E. Monson, *Ethical Professional (Trans)Formation: Themes from Interviews about Professionalism with Exemplary Lawyers*, 52 SANTA CLARA L. REV. 921 (2012). See also Cunningham & Alexander, *Developing Professional Judgment*, at 79, 84–85.

<sup>43</sup> Thoma & Bebeau, *Moral Motivation — Four Component*, at 62. Russell Pearce cautions against a “symbiosis” between professional identity as an American lawyer and a “bleached” out racial identity of “whiteness.” Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081 (2005).

<sup>44</sup> Thoma & Bebeau, *Moral Motivation — Four Component*, at 56.

<sup>45</sup> Lee S. Shulman, *Foreword*, in MOLLY COOKE ET AL., *EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY* ix (2010).

<sup>46</sup> CARNEGIE REPORT, at 142. An effective way of helping students understand the purpose of professional practice and motivating their interest in the course is to contextualize professional responsibility in specific practice settings. Green, *Less is More*, at 358–59. For example, Fordham now offers more than 10 different three-credit courses, any of which satisfies the ABA requirement. Each course is titled “Professional

What should students be learning about the purposes of the legal profession and, thus, the core values of a lawyer's professional identity? Several scholars who draw upon long academic study of the professionalism movement in law,<sup>47</sup> have combined the insights from the five Carnegie studies of professional education in law, medicine, nursing, engineering, and for clergy with a wide review of social science research to conclude that the primary goal of professional formation should be the development of "an internalized moral core characterized by a deep responsibility or devotion to others, particularly the client, and some self-restraint in carrying out this responsibility."<sup>48</sup> The same sources document that the most effective pedagogies combine "clinical education and practical experience, coaching, modeling, institutional intentionality, and scaffolding with feedback and reflection."<sup>49</sup> The CARNEGIE REPORT provides similar recommendations: "[C]ritical analysis of students' own experience in both simulated and actual situations of practice, including expert feedback, is a pedagogical process with enormous power. . . . The key components are close working relationships between students and faculty, opportunity to take responsibility for professional interventions and outcomes, and timely feedback."<sup>50</sup>

Although developing professionals need positive role models, the lawyers students meet in the cases studied in a conventional professional responsibility course are typically careless, thoughtless or venal. In contrast, a curriculum carefully designed to promote professional formation will repeatedly present students with exemplary lawyers — through compelling stories,<sup>51</sup> guest speaking appearances, individual or small group meetings, and ideally, as actual mentors.<sup>52</sup>

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Responsibility: \_\_\_\_" with such subtitles as Ethics and Corporate Practice, Corporate Counsel, Ethics in Alternative Dispute Resolution, Ethics in Criminal Advocacy, Large Firm Practice and Transactional. Accord Deborah L. Rhode, *Teaching Legal Ethics*, 51 ST. LOUIS U. L.J. 1043, 1052 (2007) [hereinafter Rhode, *Teaching Legal Ethics*].

<sup>47</sup> See articles by Neil Hamilton and Verna Monson, available at [www.teachinglegalethics.org/category/teaching-topics/identity](http://www.teachinglegalethics.org/category/teaching-topics/identity), archived at <http://perma.cc/XN7H-PLG5>.

<sup>48</sup> Hamilton, Monson & Organ, *Empirical Evidence*, at 13–16. See also Hamilton, *Fostering Professional Formation*, at 794–97.

<sup>49</sup> Hamilton, Monson & Organ, *Empirical Evidence*, at 13–16; Hamilton & Monson, *Legal Education's Ethical Challenge*, at 343–345.

<sup>50</sup> CARNEGIE REPORT, at 177–78.

<sup>51</sup> See generally articles, books, conference presentations, teaching materials and other resources available at [www.teachinglegalethics.org/category/teaching-methods/stories](http://www.teachinglegalethics.org/category/teaching-methods/stories), archived at <http://perma.cc/FR67-3PK8>.

<sup>52</sup> "When a young person, even a gifted one, grows up without proximate living examples of what she may aspire to become . . . her goal remains abstract. . . . [A] role model in the flesh provides more than an inspiration; his or her very existence is confirmation of possibilities one may have every reason to doubt. . . ." SONIA SOTOMAYOR, *MY BELOVED WORLD* 178 (2013). See Clark D. Cunningham, "How Can We Give Up Our Child?" *A Practice-Based Approach to Teaching Legal Ethics*, 42 *LAW TEACHER: INTERN'L J. LEGAL EDUC.* 312, 320–28 (2008) (involving students in role plays based on actual experiences of exemplary lawyers).

#### iv. The Fourth Component: Effective Implementation

The professional cannot stop with “What is happening?” (moral sensitivity), “What ought to be done?” (moral reasoning), and “Will I do what ought to be done?” (moral motivation or identity formation), but must also address “How can I effectively do this?”, “What exactly should I say?”, and “How should I say it?”<sup>53</sup> Thus, the teaching strategies for addressing the fourth capacity, implementation, should require students to develop action plans and even specific dialogue for resolving tough problems.<sup>54</sup> “Creative problem solving is critical” as is perseverance.<sup>55</sup> As the CARNEGIE REPORT puts it, “the ‘bottom line’ [is] . . . not . . . what [students] know but what they can do. They must come to understand thoroughly so they can act competently, and they must act competently in order to serve responsibly.”<sup>56</sup> Therefore, teaching and assessment must “take place in role rather than in the more detached mode that the law-of-lawyering courses typically foster.”<sup>57</sup>

### c. Best Practices for Learning Professional Responsibility as Guided by the Four Component Model

#### i. Features of a “Best Practices” Approach

For law schools in the United States, an ideal program of instruction for learning professional responsibility would include, in addition to learning the basic “law of lawyering,” all of the following elements:<sup>58</sup>

- (1) Before beginning educational interventions intended to develop professional responsibility, have all students for the relevant program complete the Defining Issues Test (DIT),<sup>59</sup> the Professional Identity Essay (PIE),<sup>60</sup> and,

<sup>53</sup> Email correspondence from Muriel Bebeau (on file with author).

<sup>54</sup> Muriel J. Bebeau, *Promoting Ethical Development and Professionalism: Insights from Educational Research in the Professions*, 5 U. ST. THOMAS L.J. 366, 393 (2008).

<sup>55</sup> Thoma & Bebeau, *Moral Motivation — Four Component*, at 64. The fourth component is also described in terms of “moral character” and courage. Bebeau & Faber-Landendoen, *Remediating Lapses*, at 104.

<sup>56</sup> CARNEGIE REPORT, at 23.

<sup>57</sup> *Id.* at 178.

<sup>58</sup> Among the important sources for these recommendations are all the works by Bebeau and her co-authors and by Hamilton and his co-authors cited herein; Robert P. Burns, *Legal Ethics in Preparation for Law Practice*, 75 NEB. L. REV. 684 (1996); Cunningham & Alexander, *Developing Professional Judgment*; Liz Curran, Judith Dickson & Mary Anne Noone, *Pushing The Boundaries or Preserving the Status Quo? Designing Clinical Programs to Teach Law Students a Deep Understanding of Ethical Practice*, INT’L J. CLINICAL LEGAL EDUC. 104 (Dec. 2005) [hereinafter Curran et al., *Pushing the Boundaries*]; Luban & Millemann, *Good Judgment*; Donald Nicolson, “Education, Education, Education”: *Legal, Moral and Clinical*, 42 LAW TEACHER: INT’L J. LEGAL EDUC. 145 (2010) [hereinafter Nicolson, *Education*]; Rhode, *Teaching Legal Ethics*; Southworth & Fisk, *Our Institutional Commitment*; CARNEGIE REPORT; Roger Burridge & Julian Webb, *The Values of Common Law Legal Education: Rethinking Rules, Responsibilities, Relationships and Roles in the Law School*, 10 LEGAL ETHICS 72 (2007); and the Reports referenced in note 6.

<sup>59</sup> The DIT in a convenient on-line format can be purchased for a modest per-subject fee, that includes a free analysis of data, at <http://ethicaldevelopment.ua.edu/>, archived at <http://perma.cc/V6UF-2XSS>.

ideally, a test of Intermediate Concepts relevant to legal practice.<sup>61</sup> The results of these tests would never be used for student grades but would provide baseline data, and results could also be provided back to students for formative assessment. Although anonymous to persons internal to the law school, results should be coded so student responses can be tracked over time.

- (2) Use the DIT, PIE, test of Intermediate Concepts and performance-based assessment<sup>62</sup> at the completion of the program to provide formative assessment and program evaluation.
- (3) Provide early intentional instruction about the structure, values, and duties of the legal profession to lay a foundation for professional identity formation.
- (4) Introduce students to a variety of ethical theories and social science studies of the legal system to provide a basis to interpret and critique existing norms of legal practice.
- (5) Enable students to learn about the wide variety of practice settings, how ethical challenges vary by setting, how institutional contexts can constrain ethical actions, and how exemplary professionals master their practice area by combining exceptional competence with high ethical standards.
- (6) Use small group instruction with realistic, complex, exciting and emotionally engaging simulation exercises that contain only clues to embedded ethical dilemmas to develop moral sensitivity, moral reasoning, and moral implementation capacities. Acting in role with self-assessment and personalized feedback from peers and teachers further promotes professional formation.
- (7) Recurrently expose students to professional exemplars by learning their stories, interacting with them, observing them in action, and developing mentoring relationships.
- (8) Provide repeated opportunities for dialogue with others about “tough calls” and reflection on matters involving the student’s moral core.<sup>63</sup>
- (9) Use collaborative and team-based teaching methods.<sup>64</sup>
- (10) Provide multiple opportunities to observe actual and simulated legal practice performed by expert practitioners and to reflect about the lessons for ethical

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<sup>60</sup> See Hamilton, Monson & Organ, *Empirical Evidence*, at 53–55, 66–73.

<sup>61</sup> See description in note 30.

<sup>62</sup> See, e.g., Barton, Cunningham, Jones & Maharg, *Valuing What Clients Think* (validating simulated clients methodology to assess communicative competence); John B. Garvey & Anne F. Zinkin, *Making Law Students Client-Ready: A New Model in Legal Education*, 1 DUKE F. L. & SOC. CHANGE 101 (2009) (simulated client assessment for admission to practice without taking bar examination) [hereinafter Garvey & Zinkin, *Client-Ready*]. See generally INTERNATIONAL FORUM ON TEACHING LEGAL ETHICS AND PROFESSIONALISM, [www.teachinglegaethics.org/category/teaching-methods/simulated-client](http://www.teachinglegaethics.org/category/teaching-methods/simulated-client), archived at <http://perma.cc/MUT4-6GNM>.

<sup>63</sup> Hamilton & Monson, *Legal Education’s Ethical Challenge*, at 375.

<sup>64</sup> *Id.* at 362–72. See also Barbara Glesner-Fines, *Team-Based Learning*, available at [www.teachinglegaethics.org/category/teaching-methods/collaborative](http://www.teachinglegaethics.org/category/teaching-methods/collaborative), archived at <http://perma.cc/HN83-DZYW>.

conduct in what was observed with the practitioner, a teacher who was not the practitioner, or both.

- (11) Provide multiple opportunities for students to engage in real-life work with authentic responsibility, so that the student can experience both satisfaction and regret for her actions,<sup>65</sup> and be challenged to exercise empathy, cultural sensitivity, diligence, perseverance, and courage.

## ii. Innovative Professional Responsibility Courses and Programs

The past decade has seen a number of law school innovations intended to improve the learning of professional responsibility that illustrate the use of many of these eleven practices. Several law schools have actually designed programs and assessment methods that explicitly reference the Four Component Model and related research.<sup>66</sup>

Among all methods of legal pedagogy, clinical courses involving client representation have distinctive potential for employing the above educational practices, especially items 7–11.<sup>67</sup> Although there is a rich literature about learning professional responsibility in clinics,<sup>68</sup> several challenges have been identified for using a clinical course to satisfy the ABA accreditation requirement for teaching professional responsibility:

- The clinical teacher may not have sufficient expertise in the substantive law, scholarship, and pedagogy of legal ethics;
- The responsibilities of supervision and assuring effective client representation may force the clinical teacher to identify and resolve ethical issues for the student rather than letting the student develop her own moral

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<sup>65</sup> Nicolson, *Education*, at 165.

<sup>66</sup> More detail on some of the approaches is discussed below. Charlotte S. Alexander, *Learning to Be Lawyers: Professional Identity and the Law School Curriculum*, 70 *M.D. L. REV.* 462 (2011) (describing “Fundamentals of Law Practice” course developed and co-taught in 2010 by Alexander and Clark Cunningham that combined simulations, classroom teaching, and fieldwork with small firms); Clark D. Cunningham, *Courage: Operationalizing Research on Virtue Ethics and Moral Development for Professional Education* (working paper) (Fundamentals of Law Practice expanded to add a clinical component representing domestic violence victims and to be further expanded to six credit course called “Transition to Practice” that will satisfy the ABA professional responsibility requirement; the aspiration is that Transition to Practice will use all eleven best practices for learning professional responsibility), available at [www.teachinglegalethics.org/courage](http://www.teachinglegalethics.org/courage), archived at <http://perma.cc/YUQ5-CS8L>.

<sup>67</sup> See Rhode, *Teaching Legal Ethics*, at 1052. Cf. *CARNEGIE REPORT*, at 10–11, 160 (in medical education “beyond the inculcation of knowledge and the simulation of skills, it proves to be the assumption of responsibility for patient outcomes that enables the student for the first time to fully enter and grasp the disposition of a physician. . . . It is in these situations of intensive analysis of practice that the fundamental norms and expectations that make up professional expertise are taught. They are reinforced by the feedback that students receive as they attempt various approximations to expert practice.”).

<sup>68</sup> See, e.g., book chapters and articles by Liz Curran, Judith Dickson & Mary Anne Noone; Peter Joy; Bridget McCormack; Donald Nicolson; Joan O’Sullivan et al.; Antoinette Sedillo Lopez; and Julian Webb. Available at [TEACHING LEGAL ETHICS](http://www.teachinglegalethics.org/category/teaching-methods/clinical), [www.teachinglegalethics.org/category/teaching-methods/clinical](http://www.teachinglegalethics.org/category/teaching-methods/clinical), archived at <http://perma.cc/2EBT-FYBL>.

sensitivity, reasoning, commitment, and implementation capacities;

- The clinical experience may expose the student to only one exemplar professional, the clinic teacher;
- Because clinics typically place a high priority on putting students in lead lawyering roles rather than the teacher (and opposing counsel in the poverty law arena, if there are any, are often negative examples of legal practice), students may have few opportunities to observe the work of an experienced exemplary professional;
- The urgency of client representation may not be conducive to reflection and critique on ethical issues;
- There may not be sufficient credit hours to allow time for teaching the “history, goals, and structure” of the legal profession along with its “values, rules and responsibilities”;<sup>69</sup>
- Ethical issues presented by actual cases may not be sufficiently varied to support teaching about the major issues typically covered in a professional responsibility course.

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

- The same students take both a professional responsibility course and a clinic, and the ethics and clinical teachers collaborate to use clinic cases to teach ethics.<sup>70</sup>
- If the professional responsibility instructor is also an experienced clinical teacher, a regular professional responsibility course can be expanded by adding a client representation component for extra course credit.<sup>71</sup>
- For schools that have a number of clinics under a common administration, students in the professional responsibility course serve as the actual Ethics Committee for the various clinics (but do not directly represent clients).<sup>72</sup>

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<sup>69</sup> ABA Standard 303(a)(1) (2014).

<sup>70</sup> The leading article on this approach is Luban & Millemann, *Good Judgment*, at 64–85 (emphasizing role of Luban in prompting discussion and critique of Millemann’s clinical supervision and direct client representation). See generally TEACHING LEGAL ETHICS, [www.teachinglegalethics.org/category/teaching-methods/hybrid](http://www.teachinglegalethics.org/category/teaching-methods/hybrid), archived at <http://perma.cc/E65D-HMUJ>.

<sup>71</sup> See David F. Chavkin, *Experience Is the Only Teacher: Bringing Practice to the Teaching of Ethics*, in THE ETHICS PROJECT IN LEGAL EDUCATION 52 (2010). Chavkin also used FCM-appropriate assessment methods such as reflective student writing and a final examination based on review of film clips of actual lawyers in action. *Id.* at 63–64. See also resources by Clark D. Cunningham, Lani Guinier, Natsu Saito and other articles, book chapters and materials available at [www.teachinglegalethics.org/category/teaching-methods/hybrid](http://www.teachinglegalethics.org/category/teaching-methods/hybrid), archived at <http://perma.cc/6YKR-R5KX>, and [www.teachinglegalethics.org/category/teaching-methods/service](http://www.teachinglegalethics.org/category/teaching-methods/service), archived at <http://perma.cc/SUH4-TDSM>.

<sup>72</sup> See Cunningham & Alexander, *Developing Professional Judgment*, at 88–91 (describing course taught by Lawrence Marshall); Lawrence Marshall, *Professional Responsibility Course Portfolio*, available at <http://educatingtomorrowlawyers.du.edu/course-portfolios/detail/professional-responsibility>, archived at <http://perma.cc/Z5VD-8CAV>. Marshall had an inventory of problems that he could add to the course to teach issues that did not arise naturally from the current clinical caseload. *Id.* See also Nicolson, *Education*, at 170–71. In addition to the course described in Luban & Millemann, *Good Judgment*, the University of Maryland has offered other “hybrid” ethics-clinic courses that somewhat resemble either Marshall’s

- A clinic can be created with a specific focus on ethics.<sup>73</sup>

At the time BEST PRACTICES was published, just a few law schools had experimented with combining legal ethics and practice skills classes into a single simulation based course.<sup>74</sup> The teacher of one such course, which awarded nine credits for evidence, trial advocacy and legal ethics, reported that moral sensitivity was developed: “Simulation exposes students to the kinds of complex concrete situations in which moral issues can arise quickly and without red flags.”<sup>75</sup> Simulations are, of course, well suited to promoting the fourth aspect of the Four Component Model, implementation, but this approach also enhanced moral reasoning, prompting students even to critique rules of professional conduct when their application appeared possibly unfair or unjust when role playing a concrete, complex situation.<sup>76</sup> Since 2007, a growing number of schools have significantly expanded the use of simulation to teach subjects previously considered only “classroom courses” and also have intentionally designed those simulations to raise ethical issues and develop professional identity.<sup>77</sup> This very promising development has given new life to the “pervasive method” of teaching ethics both in specifically designed courses and through incorporation of ethical issues into other courses throughout the three years of law school.<sup>78</sup>

For the first year of a “Model Best Practices Curriculum,” BEST PRACTICES proposed that students be “introduced to the history and values of the legal profession . . . the roles of lawyers . . . and challenges facing the legal profession.”<sup>79</sup>

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approach or Chavkin’s. Email correspondence from Michael Millemann (on file with author). Deborah Rhode has long encouraged the linking of a professional responsibility course to a clinic. Rhode, *Teaching Legal Ethics*, at 1053.

<sup>73</sup> See Curran et al., *Pushing the Boundaries*, at 114–21. Cf. Lawrence J. Fox, *Ethics Bureau at Yale Combining Pro Bono Professional Responsibility Advice with Ethics Education*, 62 J. LEGAL EDUC. 551 (2013) (clinic provides guidance and expert witness reports to non-profit and pro bono lawyers, in particular documenting ineffective assistance in death penalty cases).

<sup>74</sup> See articles by Robert P. Burns and James E. Moliterno, TEACHING LEGAL ETHICS, [www.teachinglegalethics.org/category/teaching-methods/simulation](http://www.teachinglegalethics.org/category/teaching-methods/simulation), archived at <http://perma.cc/M9JU-XQYV>.

<sup>75</sup> Robert P. Burns, *Teaching the Basic Ethics Class through Simulation: The Northwestern Program in Advocacy and Professionalism*, 58 LAW & CONTEMP. PROBS. 37 (1995) [hereinafter Burns, *Teaching Ethics*]. For the incorporation of simulation pedagogy into the required professional responsibility course, see, e.g., articles, books, book chapters, conference presentations, and teaching materials by Robert P. Burns; Robert P. Burns, Thomas F. Geraghty & Steven Lubet; Clark D. Cunningham; Nigel Duncan; Carol Bensinger Liebman; Paul Maharg; and Ann Southworth & Catherine L. Fisk at [www.teachinglegalethics.org/category/teaching-methods/simulation](http://www.teachinglegalethics.org/category/teaching-methods/simulation), archived at <http://perma.cc/25BT-PVH2>.

<sup>76</sup> Burns, *Teaching Ethics*, at 37-39.

<sup>77</sup> See, e.g., articles, book chapters, conference presentations and teaching materials by David I.C. Thomson; Bill Sullivan & David Thomson; Roberto L. Corrada & David Thomson; Roberto L. Corrada; Stephen Gerst & Gerald Hess; John B. Garvey & Anne F. Zinkin; Clark D. Cunningham & Charlotte Alexander, available at [www.teachinglegalethics.org/category/teaching-methods/hybrid](http://www.teachinglegalethics.org/category/teaching-methods/hybrid), archived at [www.teachinglegalethics.org/category/teaching-methods/pervasive](http://www.teachinglegalethics.org/category/teaching-methods/pervasive) at <http://perma.cc/YUZ5-CTST>.

<sup>78</sup> See book and articles by Deborah L. Rhodes at [www.teachinglegalethics.org/category/teaching-methods/pervasive](http://www.teachinglegalethics.org/category/teaching-methods/pervasive), archived at <http://perma.cc/2V24-UCNA>. Rhode’s “pervasive method” was specifically incorporated as a BEST PRACTICES recommendation. BEST PRACTICES, Executive Summary and text at notes 287-98.

<sup>79</sup> BEST PRACTICES, text at notes 823-39.

This aspiration is increasingly becoming a reality in American law schools. One innovation is to move the required professional responsibility course into the first year in an enhanced format.<sup>80</sup> One pioneering example of such a course is described as going “beyond the review” of the ABA Model Rules of Professional Conduct both by putting the rules in the context of rich information about the culture and work environments of different practice settings, and by focusing heavily on decision-making in areas of broad discretion, thus supporting the development of ethical sensitivity and moral reasoning.<sup>81</sup> This course uses precisely those pedagogic strategies identified by scholars<sup>82</sup> for developing professional identity formation: deliberate teaching about professional norms, examples of exemplary professionals, and a system to promote student self-reflection about their own identity formation.<sup>83</sup> Another approach is to offer an entirely new course introducing students to the fundamental values of the legal profession in the first year while continuing to require completion of an upper level legal ethics course as well. The first course of this type, called simply, “The Legal Profession,” has now been in operation for a decade at one law school: students continuously reflect on their own emerging professional identity through small group discussions, writing assignments, and required non-anonymous regular postings to a blog created for their small group.<sup>84</sup> This course also brings practitioners to the law school, in an interview format, called “Inside the Legal Profession,”<sup>85</sup> as well as requiring a paper based on an “oral history” with a distinguished local practitioner.<sup>86</sup> A rather different innovation is “Ethical Lawyering

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<sup>80</sup> See William D. Henderson, *The Legal Profession*, <http://educatingtomorrowlawyers.du.edu/course-portfolios/detail/the-legal-profession>, archived at <http://perma.cc/BV9N-TKEG>; Cunningham & Alexander, *Developing Professional Judgment*, at 91-93 (describing first year course developed by Henderson); see also Southworth & Fisk, *Our Institutional Commitment* (describing required first year four credit course at a different law school).

<sup>81</sup> Henderson, *Legal Profession*, at 1-2. See also Southworth & Fisk, *Our Institutional Commitment* (teaching first-year course with reference to specific practice settings, uses role-playing exercises, and bringing in over 30 guest speakers to provide inspiring examples of lawyers working in various practice areas); ANN SOUTHWORTH & CATHERINE L. FISK, *THE LEGAL PROFESSION: ETHICS IN CONTEMPORARY PRACTICE* (2014).

<sup>82</sup> Particularly the work of Bebeau, Hamilton, and Monson.

<sup>83</sup> Henderson, *The Legal Profession*, at 2. Recommended teaching methods for the BEST PRACTICES first-year curriculum included “work in collaborative groups . . . reflective journals . . . [and] contact with practicing judges.” BEST PRACTICES, text at notes 823-39.

<sup>84</sup> Three sources describe Mercer’s “The Legal Profession” course: Patrick E. Longan, *Teaching Professionalism*, 60 MERCER L. REV. 659, 663 (2009); Timothy W. Floyd, *Moral Vision, Moral Courage, and the Formation of the Lawyer’s Professional Identity*, 28 MISS. C. L. REV. 339, 351-52 (2009) [hereinafter Floyd, *Moral Vision*]; Daisy Hurst Floyd, *Cultivating Self-Reflection and Lawyer Integrity*, available at [http://educatingtomorrowlawyers.du.edu/images/wygwam/images\\_content/Cultivating-Self-Reflection-and-Lawyer-Integrity.pdf](http://educatingtomorrowlawyers.du.edu/images/wygwam/images_content/Cultivating-Self-Reflection-and-Lawyer-Integrity.pdf), archived at <http://perma.cc/LQP9-ZRFC>. Further details about the course, which has changed significantly since the 2009 articles, are available at <http://law.mercer.edu/academics/centers/lep/education.cfm>, archived at <http://perma.cc/HF4Y-CXGW>. For other first year courses designed to teach about the values of the legal profession, see generally articles, conference presentations, teaching materials and other resources posted at [www.teachinglegalethics.org/category/teaching-methods/first-year](http://www.teachinglegalethics.org/category/teaching-methods/first-year), archived at <http://perma.cc/J74N-VJMV>.

<sup>85</sup> Over a dozen of these interviews are available for webcast viewing at <http://law.mercer.edu/academics/centers/lep/education.cfm>, archived at <http://perma.cc/4MQY-RJYL>.

<sup>86</sup> See also Walter H. Bennett, Jr., *The University of North Carolina Intergenerational Legal Ethics*

in a Global Community,” which uses two “mini-courses” in the first year of a Canadian law school to teach ethics and professionalism in the context of the globalization of legal practice.<sup>87</sup>

According to one of the leading scholars in the field, “education to promote ethical and professional development is most effective when it takes place over an extended time in the context of an overall program,”<sup>88</sup> a point echoed by both the CARNEGIE REPORT and BEST PRACTICES. This aspiration, too, is coming closer to reality at some law schools in the United States.<sup>89</sup> For example, the first year Legal Profession course described above is just the one component of that law school’s professional formation curriculum, which continues in an upper level elective designed to build upon the foundation laid in the first year course by combining externship experience with extensive readings, reflective journaling, and discussion on the formation of professional identity.<sup>90</sup> Another school has established a program that integrates simulation-based courses in which ethical issues are embedded into a comprehensive program that spans the second and third years of law school, producing an extensive portfolio of lawyering work and reflection. Students who successfully complete this program can be admitted to practice upon graduation in the state where the school is located without taking a conventional bar examination.<sup>91</sup> Several of the leaders in the field have, for the first time, applied multiple FCM-based outcome measures to the complete program of instruction at an American law school.<sup>92</sup> The results showed that a three-year integrated professional formation curriculum, including a required mentoring program that extended over all three years, framed by a required first year course on Foundations of Justice, improved (1) moral reasoning, as measured by changes in DIT scores, and (2) understanding of professional identity, as measured by the Professional Identity Essay.<sup>93</sup>

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*Project: Expanding the Contexts for Teaching Professional Ethics and Values*, 58 LAW & CONTEMP. PROBS. 173 (1995); Lois R. Lupica, *Professional Responsibility Redesigned: Sparking a Dialogue Between Students and the Bar*, 29 J. LEGAL. PROF. 71 (2005).

<sup>87</sup> *Ethical Lawyering in a Global Community* (course syllabus), available at [www.teachinglegalethics.org/elgc-syllabus-osgoode-hall-law-school](http://www.teachinglegalethics.org/elgc-syllabus-osgoode-hall-law-school), archived at <http://perma.cc/NC38-NYJV>; Allan Hutchinson & Chantal Morton, *Osgoode’s Required 1st Year Course: Ethical Lawyering in a Global Community* (webcast presentation), available at [www.niftep.org/workshops/spring-2011-workshop](http://www.niftep.org/workshops/spring-2011-workshop), archived at <http://perma.cc/2FQT-PSZW>. See generally resources available at [www.teachinglegalethics.org/category/teaching-topics/global](http://www.teachinglegalethics.org/category/teaching-topics/global), archived at <http://perma.cc/P94P-WUVZ>.

<sup>88</sup> Bebeau, *Promoting Ethical Development*, at 391.

<sup>89</sup> Cf. Donald Nicolson, *Calling, Character and Clinical Legal Education: A Cradle to Grave Approach to Inculcating a Love for Justice*, 16 LEGAL ETHICS 36 (2013) (“Clinical LLB” in Scotland).

<sup>90</sup> Floyd, *Moral Vision* at 352-54 (course syllabus at 355-57). See generally articles, conference presentations, teaching materials and other resources posted at [www.teachinglegalethics.org/category/teaching-methods/externships](http://www.teachinglegalethics.org/category/teaching-methods/externships), archived at <http://perma.cc/D7U5-NKGF>, and at [www.teachinglegalethics.org/category/teaching-topics/identity](http://www.teachinglegalethics.org/category/teaching-topics/identity), archived at <http://perma.cc/TE6N-2ES7>.

<sup>91</sup> Garvey & Zinkin, *Client-Ready*.

<sup>92</sup> Hamilton, Monson & Organ, *Empirical Evidence*, at 29-62 (describing their work at University of St. Thomas School of Law).

<sup>93</sup> *Id.* at 48-62. They further correlated these outcome measures with relevant data from the Law School Survey of Student Engagement. *Id.*

#### d. Conclusion

For decades, legal educators have bemoaned that, although the required professional responsibility course should be viewed as one of the most interesting and important courses in law school, “teaching professional responsibility traditionally has presented an intractable problem” leaving both teachers and students unsatisfied.<sup>94</sup> However, at the same time the CARNEGIE REPORT criticized both the professional responsibility course and the overall program of instruction at American law schools, it held out hope: “[T]his is a propitious moment for uniting, in a single educational framework, the two sides of legal knowledge: (1) formal knowledge and (2) the experience of practice.”<sup>95</sup> A paradigm shift in the approach to learning professional responsibility “guided by theory and grounded in evidence”<sup>96</sup> could be the needed catalyst to transform the current approach to preparation for practice that focuses on what graduates know to a new competence-based model that meets the challenge of the CARNEGIE REPORT to combine “conceptual knowledge, skill, and moral discernment . . . into the capacity for judgment guided by a sense of professional responsibility.”<sup>97</sup>

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<sup>94</sup> Green, *Less is More*, at 357-59.

<sup>95</sup> CARNEGIE REPORT at 12.

<sup>96</sup> Bebeau, *Guided by Theory*.

<sup>97</sup> CARNEGIE REPORT, at 12.